

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-cv-02517-RPM

MURRY L. SALBY,

Plaintiff,

v.

UNIVERSITY OF COLORADO, and  
PROVOST PHILLIP DISTEFANO,

Defendants.

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**ANSWER**

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Defendant, **PROVOST PHILIP DISTEFANO**, by his attorneys, **SENER  
GOLDFARB & RICE, L.L.C.**, answers and responds to Plaintiff's Complaint as follows:

**ANSWER**

1. Defendant denies the allegations contained in paragraphs 9, 10, 11, 12, 14, 15, 17, 18, 20, 21, 23, and 26 of Plaintiff's Complaint.

2. Defendant is without sufficient information and knowledge to enable him to form a belief as to the veracity of the allegations contained in paragraphs 3, 4, 5, 6, 7, and 8 of Plaintiff's Complaint and, as a result, denies same.

3. With respect to the allegations contained in paragraph 1 of Plaintiff's Complaint, Defendant admits that Plaintiff was a tenured professor at the Boulder campus of the University of Colorado, that the Boulder campus of the University of Colorado is located in Boulder, Colorado, and that Defendant holds the position of Provost and Executive Vice Chancellor

Academic Affairs for the Boulder campus; however, Defendant is without sufficient information and knowledge to enable him to form a belief as to the veracity of all other allegations contained in said paragraph and, as a result, denies same.

4. With respect to the allegations contained in paragraph 2 of Plaintiff's Complaint, Defendant admits that this court has subject matter jurisdiction over the claims asserted by Plaintiff against this Defendant pursuant to 42 U.S.C. § 1983; however, Defendant denies all other allegations contained in said paragraph.

5. With respect to the allegations contained in paragraph 13 of Plaintiff's Complaint, Defendant admits that, in general, employment contracts with tenured faculty span the nine month academic year; however, Defendant either denies or is without sufficient information and knowledge to form a belief as to the veracity of all other allegations contained in said paragraph and, as a result, denies same.

6. With respect to the allegations contained in paragraph 25 of Plaintiff's Complaint, Defendant admits that Plaintiff through legal counsel served a letter dated February 1, 2008 that is captioned "Notice of Intent to Sue"; however, Defendant denies all other allegations contained in said paragraph.

7. Defendant hereby incorporates his responses to those paragraphs that are re-alleged in paragraphs 16, 19, 22, and 24 of Plaintiff's Complaint.

8. Defendant denies all allegations not otherwise expressly admitted herein.

### **DEFENSES**

1. Plaintiff's Complaint fails, at least in part, to state a claim upon which relief can be granted as against this Defendant.

2. Plaintiff's claims against this Defendant are barred by the doctrine of qualified immunity.

3. Defendant would have reached the same conclusion concerning discipline imposed upon Plaintiff even in the absence of Plaintiff's alleged protected speech.

4. Plaintiff has no property interest in the laboratory referenced in the Complaint.

5. Plaintiff has failed to reasonably mitigate his alleged damages.

6. Plaintiff's claims are barred by the applicable statutes of limitation.

7. Defendant reserves the right to add such additional defenses as become apparent upon disclosure and discovery.

### **REQUESTS FOR RELIEF**

**WHEREFORE**, Defendant requests that the Court grant relief as follows:

- a. Dismissing Plaintiff's claims with prejudice;
- b. Entering judgment in favor of Defendant and against Plaintiff for attorney's fees as Plaintiff's claims are groundless;
- c. Entering judgment in favor of Defendant and against Plaintiff for costs; and
- d. Such other and further relief as the Court deems just and proper.

### **JURY DEMAND**

Pursuant to Fed.R.Civ.P. 48, Defendant hereby demands that this case be tried to a jury of not less than six.

Respectfully submitted,

s/ Thomas S. Rice

***Thomas S. Rice***

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*Counsel for Defendant Distefano*

**DEFENDANT'S ADDRESS**

Regents Administrative Center, Room 306

Boulder, Colorado 80309-0040

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 16<sup>th</sup> day of January, 2009, I electronically filed a true and correct copy of the above and foregoing **ANSWER** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email address:

Robert M. Liechty, Esq.  
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s/ Stephanie Hood