

**From:** Graham, Charles  
**To:** [Bustamante, Ernesto](#)  
**Cc:** [Archive, GC](#)  
**Subject:** Separation Agreement  
**Date:** Tuesday, August 09, 2011 12:39:12 PM  
**Attachments:** [Separation Agreement - signed.pdf](#)

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ATTORNEY-CLIENT COMMUNICATION – Confidential and privileged

Dear Dr. Bustamante:

Attached for your records is a copy of the fully signed Separation Agreement and Release of Claims.

Sincerely,

Charles L. (Hoey) Graham  
Sr. Assoc. General Counsel  
University of Idaho  
phone: 208-885-6125  
fax: 208-885-8931  
email: [hgraham@uidaho.edu](mailto:hgraham@uidaho.edu)

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## **SEPARATION AGREEMENT AND RELEASE OF CLAIMS**

This Separation Agreement and Release of Claims (hereinafter "Agreement") is entered into by and between Ernesto A. Bustamante (hereinafter "Employee") and the Regents of the University of Idaho (hereinafter "University").

WHEREAS, Employee has been employed by University since August 12, 2007, and is currently employed as Assistant Professor of Psychology and Communication Studies;

WHEREAS, Employee desires to resign from his position at the University effective August 19, 2011, and University desires to accept Employee's resignation on the terms and conditions set forth below;

WHEREAS, Employee and University desire to settle fully and finally all issues regarding Employee's employment status;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, Employee and University agree as follows:

### 1.0

1.1 Employee hereby resigns from and relinquishes his position as Assistant Professor of Psychology and Communication Studies, effective August 19, 2011 ("Termination Date.") Employee acknowledges that he will not be reemployed in his current position with the University or in any other position as of the Termination Date.

1.2 Employee agrees to diligently and conscientiously perform his regularly assigned duties, and any other duties as may reasonably be assigned, until the Termination Date. Reasonably assigned duties include any duties customarily assigned to an individual in Employee's position or otherwise agreed to by the parties. Employee understands and agrees that this Agreement does not change the policies and regulations of the Board of Regents of the University of Idaho or of the University that apply to non-classified personnel, and that, until the Effective Date, all such policies and regulations shall continue to apply to his employment unless otherwise agreed to in this Agreement.

1.3 Employee specifically agrees that prior to noon on August 9, 2011, he will submit final grades for Psychology 218 (Introduction to Research, WWW) and his two Psychology 499 Directed Study courses. Employee understands that as soon as the grades are submitted, his access to Vandal Web will end.

1.4 Employee agrees that no later than 4:30 p.m. on August 9, 2011, he will remove all of his personal belongings from his office and laboratory and return his University-owned laptop computer and all other University property, including without limitation keys, files,

records, computer access codes, and computer programs, to Kenneth Locke, Department Chair. Employee understands that he will not have access to the laboratory unless accompanied by Dr. Locke, and access shall be for the limited purpose of retrieving his personal property. Employee will not have access to either his office or the laboratory for any purpose after August 9, 2011. His email account will be closed on August 12, 2011.

1.5 Employee agrees to have no further contact with any of the students who were in any way associated with complaints against Employee, and agrees not to retaliate against these students in any manner whatsoever, to disparage them, or to do or say anything that will prejudice them in any way.

1.6 Employee agrees not to seek future employment with the University of Idaho in any capacity at any location. Employee further agrees that he will not bring any claim, demand, lawsuit, charge, or other legal action based upon the University's refusal or failure to reinstate or reemploy him.

## 2.0

2.1 University shall continue to pay Employee at his current rate of pay, and shall continue to provide health and other benefits under the University's current plans and policies, through the Termination Date. After the Termination Date, Employee shall be entitled to continuation of benefits under the same terms and conditions as other similarly situated separating employees.

2.2 University agrees not to seek to recover from Employee unearned AY 2012 salary paid to Employee from May 15, 2011, through the Termination Date.

2.3 University agrees to end the ongoing investigation into Employee's conduct.

2.4 University makes no representation, and Employee agrees that it is his responsibility to seek independent legal advice, regarding the effect of Employee's resignation on his immigration status.

## 3.0

3.1 Employee acknowledges that this Agreement shall not in any way be construed as an admission of any liability, fault, or impropriety on any basis whatsoever on the part of Employee or of the University.

3.2 Employee further acknowledges that this Agreement is made and entered into for the sole purpose of resolving fully and finally all questions and issues regarding Employee's past, present, and future employment status.

#### 4.0

4.1 As a material inducement for University to enter into this Agreement, Employee hereby irrevocably and unconditionally releases, acquits, and forever discharges the state of Idaho and University and its officers, agents, and employees and all persons acting by, through, under, or in concert with any of them (collectively "Releasees"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, known or unknown ("Claim" or "Claims"), that Employee may now have, own, or hold, or claims to have, own, or hold, or which Employee at any time prior to the date of signature of this Agreement had, owned, or held or claimed to have, own, or hold, and that relate to employment with University, including the termination thereof, against Releasees, or any of them.

This release specifically includes, but is not limited to, the following claims:

- (1) Any and all "wrongful discharge" or "constructive discharge" claims;
- (2) Any and all claims relating to any contracts of employment, express or implied, or breach of the covenant of good faith and fair dealing, express or implied;
- (3) Any and all tort claims of any nature, including but not limited to claims for defamation, misrepresentation, fraud, negligent or intentional infliction of emotional distress, or negligence;
- (4) Any and all claims for attorneys' fees and costs; and
- (5) Any and all claims under federal, state or municipal statute or ordinance, including but not limited to claims under the Idaho Human Rights Act; the Idaho State Constitution; the Idaho Protection of Public Employees Act; the United States Constitution; Title VII of the Civil Rights Act of 1964; the Equal Pay Act; the Civil Rights Act of 1991; 42 U.S.C. § 1981; the Age Discrimination in Employment Act; the Age Discrimination Act; the Older Workers' Benefit Protection Act; the Fair Labor Standards Act; the Americans With Disabilities Act and amendments; the federal Rehabilitation Act of 1973; the federal Family and Medical Leave Act; the Uniformed Services Employment and Reemployment Rights Act of 1994; and any other federal, state, or local statutory or common laws and regulations relating to employment or employment discrimination.

Employee further agrees that if any such claim is prosecuted in his name before any court or administrative agency, he waives and agrees not to take any award of money or other damages from such action.

This paragraph is not intended to limit Employee from instituting legal action for the sole purpose of enforcing this Agreement, or from pursuing any rights or claims arising after the date Employee signs this Agreement. This paragraph is also not intended to limit in any way

Employee's right to receive workers compensation benefits to which Employee might otherwise be entitled.

4.2 For the purpose of implementing a full and complete release and discharge of the University and all Releasees, Employee hereby expressly acknowledges that this Agreement is intended to include, in its effect, without limitation, all Claims which Employee does not now know or expect to know to exist in his favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such Claim or Claims, except as set forth elsewhere in this Agreement.

#### 4.3

4.3.1 As a material inducement for Employee to enter into this Agreement, and except as to claims described in paragraph 4.3.2 below, University hereby irrevocably and unconditionally releases, acquits, and forever discharges Employee from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorneys' fees and costs actually incurred), of a civil nature, known or unknown ("Claim" or "Claims"), that University may now have, own, or hold, or claims to have, own, or hold, or which University at any time prior to the date of signature of this Agreement had, owned, or held or claimed to have, own, or hold, that relate to Employee's employment with University, including the termination thereof. This paragraph is not intended to limit University from instituting legal action for the sole purpose of enforcing this Agreement, or from pursuing any rights or claims arising after the date Employee signs this Agreement.

4.3.2 Employee understands that University exercises no control over the actions of its students, faculty, or staff with respect to their rights to independently pursue claims or legal action, civil or criminal, against Employee or against University arising from the acts of Employee. University retains the right to seek indemnification from Employee for claims asserted against the University by third parties, including without limitation students, faculty, or staff, arising out of Employee's conduct during the term of his employment with University.

#### 5.0

5.1 Employee represents that he has not filed any complaints, causes of action, or claims against University with any local, state, or federal agency or court, that he will not do so at any time hereafter as to any acts occurring at any time before Employee executes this Agreement, and that if any such agency or court assumes jurisdiction of any complaint, cause of action, or claim against University on behalf of Employee, he will request such agency or court to withdraw from the matter.

5.2 Employee hereby waives any and all rights he may have under any Idaho Board of Education, Regents of the University of Idaho, or University of Idaho policy or regulation to

grieve or otherwise complain about any matter or issue related to his employment with University.

## 6.0

6.1 Employee represents and agrees that he has read and fully understands all aspects and provisions of this Agreement, that he is entering into this Agreement voluntarily, and that he has had the opportunity to consult with an attorney.

6.2 Employee represents and acknowledges that in entering into and executing this Agreement he does not rely and has not relied upon any representation or statement made by the University or its regents, agents, officers, employees, representatives, and attorneys, other than those specifically contained in this Agreement.

6.3 This Agreement shall be binding upon Employee and upon his heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of University, its regents, agents, officers, employees, representatives, and attorneys, and to their heirs, administrators, representatives, executors, successors, and assigns.

6.4 This Agreement shall in all respects be governed under the laws of the state of Idaho. Any action seeking an interpretation or enforcement of this Agreement shall be commenced in the courts of the state of Idaho in and for the county of Latah.

6.5 This Agreement sets forth the entire agreement between the parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter covered herein. It may not be modified except in writing subscribed to by all parties.

6.6 All times provided for in this Agreement, or in any other document executed hereunder, for the performance of any act will be strictly construed, time being of the essence.

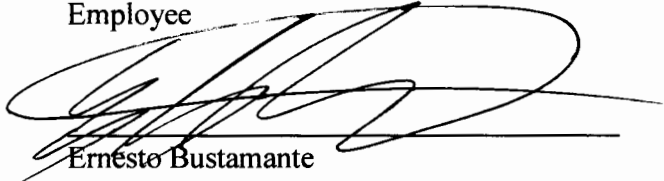

6.7 If any term or provision of this Agreement shall, to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law; and it is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, the provision shall have the meaning that renders it valid.

6.8 No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any other covenant, term or condition herein. Acceptance by a party of any performance by another party after the time the same shall have become due shall not constitute a waiver by the first party of the breach or default of any such covenant, term or condition unless otherwise expressly agreed to by the first party in writing.

**PLEASE READ CAREFULLY. THIS SEPARATION AGREEMENT AND RELEASE OF CLAIMS INCLUDES A RELEASE OF ALL KNOWN OR UNKNOWN CLAIMS. EMPLOYEE HAS READ THE FOREGOING SEPARATION AGREEMENT AND RELEASE OF CLAIMS, HAS BEEN ADVISED AS TO ITS MEANING AND EFFECT BY HIS ATTORNEY OR HAS DECLINED TO SEEK LEGAL ADVICE, AND FULLY UNDERSTANDS IT.**

Regents of the University of Idaho

Employee



M. Duane Nellis,  
President

Ernesto Bustamante

Date: 8.8.11

Date: 08/05/2011



Ron Smith  
Vice President for Finance and Administration

Date: 8.9.11