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8 Attorneys for Plaintiff
 9 ERIC GRANT

10 UNITED STATES DISTRICT COURT
 11 EASTERN DISTRICT OF CALIFORNIA

11 ERIC GRANT,)	Case No.: CV 2:07-CV-01087-GEB-EFB
)	
12 Plaintiff,)	AMENDED COMPLAINT FOR BREACH OF
)	SETTLEMENT AGREEMENT,
13 v.)	DECLARATORY RELIEF, BREACH
)	OF WRITTEN FEE AGREEMENT, AND
14 JOHN DOE and JANE DOE,)	QUANTUM MERUIT
)	
15 Defendants.)	

16
 17 **I.**

18 **INTRODUCTION**

19 1. This is an action for breach of a settlement agreement, declaratory relief and breach of an
 20 attorney’s fee agreement resulting from defendants’ unwarranted refusal to pay a contingent fee they
 21 were obligated to pay pursuant to a settlement agreement with plaintiff and pursuant to a written
 22 contingent fee agreement. Plaintiff Eric Grant is an attorney. He represented John Doe and Jane Doe in
 23 federal civil rights litigation initiated in the United States District Court for the District of Hawaii. The
 24 defendants were designated John Doe and Jane Doe in that litigation because that litigation was
 25 extremely controversial and involved a danger of invasion of privacy, retaliation and physical or mental
 26 harm to such a degree that the district court permitted the plaintiffs to litigate that case using fictitious
 27 names.

28 2. Following the settlement of that litigation, a dispute arose between plaintiff and

1 defendants as to the amount of Mr. Grant's attorney's fee. Following a period of negotiation, John Doe
2 and Jane Doe, through counsel, offered to pay Mr. Grant an attorney's fee constituting 40% of the
3 settlement proceeds, and Mr. Grant accepted that offer. Some days after that settlement was reached,
4 John Doe and Jane Doe repudiated that settlement and communicated their refusal to pay any attorney's
5 fee at all to Mr. Grant.

6 II.

7 JURISDICTION AND VENUE

8 3. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(c)(1)
9 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest or costs,
10 and is between citizens of different states.

11 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because the contingent fee
12 agreement at issue in this litigation was made in this district, the services under the agreement were
13 substantially performed in this district and the agreement itself has a provision fixing venue at
14 Sacramento, California.

15 5. Plaintiff avers that defendants John Doe and Jane Doe are, and at all times mentioned
16 herein were, citizens of the State of Hawaii. Plaintiff refers to defendants as John Doe and Jane Doe
17 because they were so named in the underlying litigation for the reasons discussed in paragraph 1, *supra*.
18 Additionally, the settlement agreement resolving the underlying litigation required all parties and
19 counsel to maintain the confidentiality of the identities of John Doe and Jane Doe. The obligation to
20 maintain that confidentiality is subject to exception, one of which may apply here. Nevertheless, out of
21 an abundance of caution, plaintiff names defendants here using fictitious names.

22 6. Plaintiff, Eric Grant, is and at all times mentioned was, an adult resident of Sacramento
23 County, California. Mr. Grant is and at all times mentioned was a citizen of the State of California. Mr.
24 Grant is an attorney-at-law admitted to the California State Bar.

25 AVERMENTS COMMON TO ALL CLAIMS FOR RELIEF

26 7. Eric Grant was a partner of a law firm called Sweeney & Grant LLP.

27 8. On or about June 17, 2003, Mr. Grant entered into that certain Attorney-Client
28 Engagement Agreement with Jane Doe pursuant to which Jane Doe engaged Mr. Grant and Sweeney &

1 Grant LLP to represent her in connection with an anticipated lawsuit as next friend for her child, John
2 Doe, against Kamehameha Schools/Bishop Estate (“KSBE”) in the United States District Court for the
3 District of Hawaii. The purpose of the anticipated lawsuit was to seek a declaration from the United
4 States District Court that KSBE’s self-described preference for student applicants of native Hawaiian
5 ancestry constituted discrimination on the basis of race in violation of federal civil rights statutes. The
6 anticipated lawsuit would also seek injunctions ordering KSBE to admit applicants to Kamehameha
7 Schools without regard to their race or ancestry and in particular to admit John Doe to a KSBE campus.
8 Finally, the anticipated lawsuit would seek money damages from KSBE. A true copy of the Sweeney &
9 Grant fee agreement (redacted) is hereto attached as Exhibit A and is incorporated by reference.

10 9. The law firm of Sweeney & Grant has assigned its rights in and to the fee agreement
11 referenced above to Mr. Grant.

12 10. Pursuant to paragraph 13 of the fee agreement, Jane Doe and Mr. Grant agreed that all
13 disputes “that arise out of or relate to” the fee agreement that were not otherwise arbitrable under the
14 Mandatory Fee Arbitration Act (CAL. BUS. & PROF. CODE §§ 6200, *et seq.*) should be decided by
15 binding arbitration at Sacramento, California in accordance with the rules of the American Arbitration
16 Association. As such, Mr. Grant may henceforth seek the defendants’ stipulation for an order staying
17 this litigation and referring it to arbitration, or if defendants refuse, petition this Court for a stay and for
18 a referral of the litigation to arbitration.

19 11. On June 7, 2007, plaintiff Eric Grant served the defendants with a Notice of Client’s
20 Right to Arbitration pertaining to those claims herein which were subject to mandatory fee arbitration
21 under sections 6200-6206 of the California Business and Professions Code, with the summons and
22 complaint through their attorney, Mr. Robert L. Esensten. On June 11, 2007, Mr. Esensten confirmed he
23 received the correspondence enclosing the Notice of Client’s Right to Arbitration and confirmed he had
24 authority to accept service on behalf of the defendants. Defendants waived their right to fee arbitration
25 when they failed to request arbitration pursuant to the provisions of Business and Professions Code
26 section 6200, *et seq.*, within the 30 day statutory period. A true copy of the July 11, 2007 letter
27 (redacted) from Mr. Esensten is hereto attached as Exhibit B and is incorporated by reference.

28 12. Jane Doe filed the action styled, *Doe v. Kamehameha Schools/Bernice Pauahi Bishop*

1 *Estate, et al.* on or about June 25, 2003 in the United States District Court for the District of Hawaii (the
2 “District Court”), civil action number 03-00316. The defendants in that action are herein referred to as
3 the defendant-trustees.

4 13. On or about December 8, 2003, the District Court entered judgment in the defendant-
5 trustees’ favor in that action.

6 14. On or about December 30, 2003, John Doe and Jane Doe timely appealed that judgment
7 to the United States Court of Appeals for the Ninth Circuit.

8 15. On or about August 2, 2005, a panel of the Ninth Circuit Court of Appeals reversed the
9 District Court’s judgment and remanded the litigation for further proceedings.

10 16. On or about August 23, 2005, the defendant-trustees petitioned to the Ninth Circuit for
11 rehearing *en banc* in the action and on December 5, 2006, the Ninth Circuit, sitting *en banc* affirmed the
12 judgment of the District Court by a vote of 8 to 7.

13 17. On March 1, 2007, John Doe and Jane Doe timely filed a petition for a writ of certiorari
14 in the United States Supreme Court, which petition was docketed on March 5, 2007. Thereafter, without
15 the Supreme Court having acted on the petition, John Doe and Jane Doe and the defendant-trustees in
16 the District Court action agreed to a settlement pursuant to which they amicably settled and resolved
17 their outstanding differences.

18 18. On or about May 11, 2007, the parties entered into a settlement and general release
19 agreement. Paragraph 7 of the settlement and general release provides that the amount of the settlement
20 and the true names and addresses or any other information identifying John Doe and Jane Doe or their
21 family is and would remain confidential, save and except “when necessary to effectuate the purposes
22 and benefits of the settlement agreement and general release,” pursuant to court order, or when
23 necessary to obtain tax, accounting, legal or other professional advice. Although plaintiff believes that
24 this claim is filed to effectuate the purposes and benefits of the settlement agreement and thus subject to
25 that exception of the confidentiality provision, out of an abundance of caution, plaintiff will continue to
26 keep the amount of the settlement and the identities of the defendants confidential until this Court rules
27 on the applicability of the confidentiality provision in this litigation.

28 19. The defendant-trustees subsequently funded the settlement.

1 20. Thereafter, Mr. Grant and John Doe and Jane Doe had a dispute over the amount of the
2 contingent attorney's fee, which Mr. Grant was owed under his fee agreement with plaintiff Jane Doe.

3 21. On or about May 23, 2007, John Doe and Jane Doe engaged Robert L. Esensten of
4 Wasserman, Comden & Casselman, LLP to represent them. At all relevant times, Mr. Esensten
5 represented to Mr. Grant and his counsel, James J. Banks, that he had authority to negotiate on behalf of
6 John Doe and Jane Doe. The parties in their negotiations referred to John Doe and Jane Doe by their
7 given names, which names shall be redacted in the exhibits appended to this Complaint.

8 22. On or about May 24, 2007, Mr. Esensten corresponded with Mr. Banks and confirmed
9 that he was representing John Doe and Jane Doe. Mr. Esensten demanded that all settlement proceeds
10 not in dispute be immediately wire transferred to coordinates that John Doe and Jane Doe previously had
11 provided. A true copy of Mr. Esensten's letter (redacted) is hereto attached as Exhibit C.

12 23. On May 24, 2007, Mr. Grant wrote Mr. Esensten and advised him of the identity of his
13 counsel in the fee dispute. A true copy of Mr. Grant's letter is hereto attached as Exhibit D. Mr. Banks
14 also wrote Mr. Esensten on May 24, 2007 and advised that he would act as counsel to Mr. Grant in the
15 dispute concerning the attorney's fees owing in the *Doe v. Kamehameha Schools* litigation. A true copy
16 of Mr. Banks' letter (redacted) is attached hereto as Exhibit E.

17 24. On May 24, 2007, Mr. Banks and Mr. Esensten conducted negotiations regarding the
18 dispute between Mr. Grant and John Doe and Jane Doe over the amount of attorney's fees owed
19 pursuant to the contingent fee agreement between Jane Doe and Mr. Grant. During those negotiations,
20 Mr. Esensten offered on behalf of John Doe and Jane Doe to pay an attorney's fee to Mr. Grant in an
21 amount constituting 40% of the settlement proceeds. Mr. Banks accepted that offer on Mr. Grant's
22 behalf.

23 25. On May 24, 2007, Mr. Banks sent correspondence to Mr. Esensten confirming the
24 settlement as to the amount of the attorney's fees reached and asking that Mr. Esensten procure the
25 signatures of John Doe and Jane Doe to a facsimile copy of that correspondence. A true copy of
26 Mr. Banks' May 24, 2007 letter (redacted) to Mr. Esensten is hereto attached as Exhibit F.

27 26. On May 25, 2007, Mr. Esensten wrote Mr. Banks and confirmed that John Doe and Jane
28 Doe had executed their names to the settlement confirmation letter dated May 24, 2007:

1 “I have obtained the signatures of [John Doe and Jane Doe] agreeing that
2 the attorney’s fee shall be the sum [constituting 40% of the settlement
3 proceeds].”

4 A true copy of Mr. Esensten’s May 25, 2007 letter (redacted) to Mr. Banks is attached as Exhibit G.

5 27. On May 25, 2007, Mr. Esensten forwarded wiring instructions to Mr. Banks confirming
6 that the exact balance of the settlement, less the agreed attorney’s fee and modest remaining costs of
7 \$1,375.26 should be wired to coordinates provided by John Doe and Jane Doe. A true copy of the
8 wiring instructions (redacted) is hereto attached as Exhibit H.

9 28. On May 25, 2007, Mr. Banks forwarded correspondence to Mr. Esensten advising that
10 the wiring instructions had arrived after a bank-imposed 2:00 P.M. deadline to wire funds. Mr. Banks
11 advised that funds would be wired on Tuesday, May 29, 2007, after the Memorial Day weekend.
12 Mr. Banks also confirmed that with the signatures of John Doe and Jane Doe to the settlement letter, the
13 question of the amount of attorney’s fees owing under the fee agreement had been settled and resolved.
14 A true copy of Mr. Banks’ May 25, 2007 letter (redacted) is hereto attached as Exhibit I.

15 29. Mr. Grant caused the amount of the settlement, less attorney’s fees and remaining costs to
16 be wired to the coordinates directed by John Doe and Jane Doe on May 29, 2007.

17 30. Mr. Grant has maintained the amount of the attorney’s fees and the remaining costs in an
18 interest-bearing attorney-client trust account as is his obligation under Rule 4-100 of the California
19 Rules of Professional Conduct and pending a further order or judgment of this Court.

20 31. On May 31, 2007, Mr. Esensten contacted Mr. Banks at or about 6:00 P.M. to advise that
21 Jane Doe now claimed that “since there wasn’t an award of damages according to the retainer
22 agreement, . . . the [40% of the settlement proceeds] is not earned.” Jane Doe’s new “position” is bereft
23 of merit for the simple reason that “damages” under the pertinent fee agreement is defined explicitly to
24 include “the total amounts received *by settlement or judgment*” (emphasis added).

25 32. In settling and releasing his claims under the fee agreement, Mr. Grant withdrew any
26 claim that he was entitled to fees in addition to the settled fee, and in particular, fees which could be
27 owing pursuant to the first paragraph of paragraph 5 of the fee agreement.
28

1 **FIRST CLAIM FOR RELIEF**

2 **(Breach of a Settlement Agreement Confirmed in Writing)**

3 33. Plaintiff repeats and incorporates the averments of paragraphs 1 through 32.

4 34. On or about May 24, 2007, the plaintiff and defendants John Doe and Jane Doe reached a
5 settlement of an attorney's fee dispute between them pursuant to which John Doe and Jane Doe, through
6 counsel, offered to pay an attorney's fee to Mr. Grant in an amount constituting 40% of the settlement
7 proceeds from KSBE. That settlement was confirmed in writing between counsel. In addition, counsel
8 to John Doe and Jane Doe confirmed in writing that they had executed a settlement memorandum
9 memorializing that settlement.

10 35. On May 31, 2007, John Doe and Jane Doe, through counsel, repudiated and breached that
11 settlement through their claim that the aforesaid attorney's fee was not earned or owing under the fee
12 agreement between Mr. Grant and Jane Doe.

13 36. As a consequence of John Doe's and Jane Doe's breach of the settlement reached and
14 memorialized in writing on May 24, 2007, plaintiff has suffered damage in an amount according to
15 proof.

16 **SECOND CLAIM FOR RELIEF**

17 **(Declaratory Relief)**

18 37. Plaintiff repeats and incorporates the averments of paragraphs 1 through 32.

19 38. Defendants claim and contend that they may repudiate the agreement they reached with
20 Mr. Grant settling and fixing the amount of attorney's fees that he would be paid under the contingent
21 fee agreement between Mr. Grant and Jane Doe.

22 39. An actual and justiciable controversy has arisen and now exists between the parties as to
23 the enforceability of the settlement reached and as to the obligation of the defendants to follow through
24 with that settlement and pay Mr. Grant an attorney's fee constituting 40% of the settlement proceeds
25 from KSBE.

26 40. Plaintiff desires a judicial declaration of his rights with respect to the settlement
27 agreement reached.
28

1 **THIRD CLAIM FOR RELIEF**

2 **(Breach of Written Fee Agreement)**

3 41. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 32.

4 42. On or about June 17, 2003, Mr. Grant and Jane Doe entered into an Attorney-Client
5 Engagement Agreement pursuant to which Jane Doe agreed to pay a specified contingent fee on the
6 client's "net recovery" of damages. "Net recovery" is defined under the agreement to mean total
7 amounts received by settlement or judgment, net of any further payment or award of attorney's fees and
8 costs, less costs and disbursements.

9 43. Notwithstanding the clarity of paragraph 5 of the fee agreement, John Doe and Jane Doe
10 have communicated their intent to breach and repudiate that fee agreement and have refused to remit to
11 Mr. Grant the attorney's fee owed thereunder.

12 44. As a direct and proximate consequence of the repudiation and breach by John Doe and
13 Jane Doe of the fee agreement between Jane Doe and Mr. Grant, Mr. Grant has been damaged in sums
14 to be proven at trial of this cause.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Quantum Meruit)**

17 45. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 32.

18 46. Between June 17, 2003 and May 2007, Plaintiff performed and provided professional
19 legal services to Defendants, and each of them, and incurred costs on behalf of and for the benefit of
20 Defendants, and each of them. These services were performed and provided, and these costs were
21 incurred at Defendants' specific request, and Defendants promised to pay the reasonable value of such
22 services provided and costs incurred.

23 47. Defendants have refused to pay the reasonable value of the services provided and the
24 costs incurred, which in all events is 40% of the net settlement proceeds.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, plaintiff prays judgment as follows:

27 On the First Claim for Relief:

28 1. For compensatory damages in an amount to be proven at trial but in no event less than

1 40% of the settlement proceeds from KSBE;

2 2. For prejudgment interest on such sum from and after May 25, 2007;

3 3. For costs of suit and for such other and further relief as this Court may deem proper.

4 On the Second Claim for Relief:

5 1. For a declaration that the attorney's fee owed pursuant to the settlement reached under
6 the attorney contingent fee agreement between Mr. Grant and Jane Doe is 40% of the settlement
7 proceeds from KSBE;

8 2. For prejudgment interest on such sum from and after May 25, 2007;

9 3. For costs of suit and for such further relief as this Court may deem proper.

10 On the Third Claim for Relief:

11 1. For compensatory damages in an amount to be proven at trial but in no event less than
12 40% of the settlement proceeds from KSBE;

13 2. For prejudgment interest on such sum from and after May 25, 2007;

14 3. For costs of suit;

15 4. For attorneys' fees pursuant to California Civil Code section 1717;

16 5. For such other and further relief as this Court deems just and proper.

17 On the Fourth Claim for Relief:

18 1. For money damages in the amount of 40% of the settlement proceeds from KSBE, which
19 is the reasonable value of the professional legal services provided to Defendants;

20 2. For costs incurred on behalf of Defendants;

21 3. For prejudgment interest on such sum from and after May 25, 2007;

22 4. For such other and further relief as this court deems just and proper.

23
24 DATED: July 17, 2007

BANKS & WATSON

25
26 By: /s/ James J. Banks
27 JAMES J. BANKS
28 Attorneys for Plaintiff ERIC GRANT

EXHIBIT A

Attorney-Client Engagement Agreement Sweeney & Grant LLP

This Attorney-Client Engagement Agreement (“Agreement”) is entered into between the law firm of Sweeney & Grant LLP (“Firm”), a California limited liability partnership and [REDACTED] (“Client”). The Agreement is intended to satisfy the requirements of California Business & Professions Code §§ 6147-6148.

1. **Conditions.** This Agreement will not take effect, and the Firm will have no obligation to provide legal services, until Client returns a signed copy of this Agreement.

2. **Scope of Services.** Client engages the Firm to represent Client in connection with Client’s anticipated lawsuit, as next friend for her [REDACTED] against Kamehameha Schools/ Bishop Estate (“KSBE”) in the United States District Court for the District of Hawaii. The lawsuit would seek a declaration that KSBE’s self-described preference for applicants of Native Hawaiian ancestry constitutes discrimination on the basis of race in violation of federal civil rights law. The lawsuit would also seek an injunction ordering KSBE to admit applicants without regard to their race or ancestry and, in particular, to admit [REDACTED] to a KSBE campus. Finally, the lawsuit would seek money damages from KSBE.

If the lawsuit is filed, the Firm will represent Client until settlement or judgment is reached. The Firm will further represent Client in prosecuting or defending an appeal in the United States Court of Appeals for the Ninth Circuit and in representing Client as respondent before the United States Supreme Court. The Firm may represent client as petitioner before that Court if, in the sole judgment of the Firm, there is a reasonable chance that the Court would grant Client’s petition for writ of certiorari. The Firm will not represent Client in any other proceeding, including a proceeding designed to execute on the judgment, without such additional compensation as may be agreed upon between the Firm and Client in a separate Agreement.

3. **Responsibilities of the Parties.** The Firm will provide those legal services reasonably required to represent Client in prosecuting the claims described in Paragraph 2 above and will take reasonable steps to keep Client informed of significant developments and to respond promptly to Client’s inquiries and communications. Client agrees to be truthful with the Firm, to keep the Firm informed of any developments that come to Client’s attention, to abide by this Agreement, and to keep the Firm advised of Client’s address, telephone number(s), and whereabouts. Client agrees to appear at all legal proceedings the Firm deems necessary and to cooperate fully with the Firm on all matters related to the investigation, preparation, and presentation of Client’s claims.

4. **Local Counsel.** The parties contemplate that John Goemans of Kamuela, Hawaii, will be associated with the Firm as local counsel for this lawsuit. Client agrees, however, that the Firm rather than Mr. Goemans will have final responsibility for the conduct of the lawsuit. Client further agrees that Mr. Goemans may, to the extent of his active participation, share in the payment or award described in Paragraph 5 below. The Firm warrants that Client’s liability for fees will not be increased by reason of Mr. Goeman’s participation.

5. **Legal Fees.** If Client does not obtain an award of money damages from KSBE, the Firm will be compensated for legal services only to the extent that the Firm obtains, through settlement or judgment, a payment or award of attorney's fees from KSBE or other parties. Any such payment or award will belong to the Firm alone.

If Client does obtain an award of money damages, the Firm will receive, *in addition* to the payment or award set forth immediately above, 40% of Client's "net recovery" of damages. The term "net recovery" means (a) the total amounts received by settlement or judgment, *not* including any payment or award of attorney's fees and costs; (b) minus all costs and disbursements set forth in Paragraph 7 below.

In the event of the Firm's discharge or withdrawal as provided for in Paragraph 9 below, Client will cooperate with the Firm, and will direct Client's new attorneys to cooperate with the Firm, in seeking a payment or award of attorney's fees for the Firm's work. Client further agrees that, upon payment of any settlement or judgment in Client's favor in this matter, including but not limited to any payment or award of attorney's fees and costs, the Firm shall be entitled to be paid a reasonable fee for the legal services it has rendered. Such fee shall be determined by considering the following factors:

- (a) the actual number of hours expended by the Firm in performing legal services for Client;
- (b) the hourly rate of the Firm's lawyers who expended time;
- (c) the extent to which the Firm's services have contributed to the result obtained;
- (d) the amount of the fee in proportion to the value of the services performed;
- (e) the amount of recovery obtained;
- (f) the time limitations imposed on the Firm by Client or by the circumstances; and
- (g) the experience, reputation, and ability of personnel performing the services.

Any monetary sanctions awarded to the Firm by a court during the course of this engagement will not be considered part of the Client's recovery and will belong to the Firm as additional compensation for extraordinary time and effort.

6. **Negotiability of Fees.** The fee arrangement set forth above is not set by law, but is negotiated between attorney and client.

7. **Costs and Litigation Expenses.** The Firm will incur various costs and expenses in performing legal services under this Agreement. The Firm agrees to advance all reasonable costs and expenses on behalf of Client in this matter. Client will *not* be responsible for reimbursing such costs and expenses except to the extent that client obtains an award of money damages as set forth in Paragraph 5 above. If the Firm obtains, through settlement or judgment, a payment or award of costs or expenses from the opposing parties, such payment or award will belong to the Firm alone.

Client is aware that [REDACTED] which is interested in the outcome of Client's lawsuit against KSBE, has agreed to reimburse the Firm for some or all of the costs and expenses incurred by the Firm in this matter. Client agrees that such reimbursements from [REDACTED] will have no bearing on Client's responsibility, if any, to reimburse the Firm for costs and expenses as set forth above. The attorney-client relationship will only exist between the Firm and Client, and [REDACTED] will have no right to information regarding the representation of Client by the Firm and have no right to control or direct the Firm in providing the services under this Agreement, unless specifically approved by Client.

Client acknowledges that Client may be required by the courts to pay fees or costs or both to other parties in the lawsuit. Any such award shall be entirely Client's responsibility.

8. **Settlement.** The Firm will make no settlement or compromise of Client's claims without Client's prior approval. Client retains the right to accept or reject any settlement offer by KSBE. Client agrees to make no settlement or compromise of Client's claims without prior notice to the Firm. Should it appear that settlement is advisable or potentially available, Client authorizes the Firm to negotiate the terms of the settlement simultaneously with the negotiation of the amount of attorney's fees and costs, if any, that the settling parties would pay to the Firm.

9. **Discharge and Withdrawal.** Client may discharge the Firm at any time on written notice to the Firm. The Firm may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) if no lawsuit is filed, for good cause on reasonable notice to Client. Good cause includes Client's breach of this Agreement, Client's refusal to cooperate with the Firm or to follow the Firm's advice on a material matter, or any other fact or circumstance that would render the Firm's continuing representation unlawful or unethical. If a lawsuit has been filed on behalf of Client, Client shall promptly deliver to the Firm a signed substitution of counsel form at the Firm's request.

10. **Conclusion of Services.** When the Firm's services conclude, whether by completing the terms of this Agreement or by discharge or withdrawal under Paragraph 10 above, the Firm will deliver Client's file and property to Client upon request. If Client does not request the return of Client's file, the Firm will retain Client's file for a period of five years, after which time the Firm may have the file destroyed. If Client desires to have Client's file maintained beyond the five years after Client's matter has concluded, separate arrangements with the Firm must be made.

11. **Lien.** Client hereby grants the Firm a lien on any and all claims or causes of action that are the subject of the Firm's representation under this Agreement. The Firm's lien will be for any sums owing to the Firm at the conclusion of the Firm's services. Such lien will attach to any recovery Client may obtain, whether by judgment, settlement, or otherwise.

12. **Disclaimer of Guarantee.** Nothing in the Agreement and nothing in any statement by the Firm to Client maybe construed as a promise or guarantee about the outcome of this matter. Indeed, the Firm makes no such promises or guarantees. There can be no assurance that Client will recover any money in this matter or that [REDACTED] will gain admission to a KSBE school. The Firm's comments about the outcome of this matter are expressions of opinion only, and Client acknowledges that the Firm has made no promise or guarantee about the outcome of this matter.

13. **Arbitration.** By initialing this arbitration provision, Client and the Firm are agreeing to have any and all disputes (except where Client may request arbitration of a fee dispute by the California State Bar or a local bar association as provided by California Business and Professions Code §§ 6200, et seq.), that arise out of, or relate to this Agreement, including but not limited to claims of negligence or malpractice arising out of or relating to the legal services provided by the Firm to Client, decided only by binding arbitration in Sacramento, California, in accordance with the then-existing rules of the American Arbitration Association and not by court action, except as provided by California law for judicial review of arbitration proceedings. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Firm and Client shall each have the right of discovery in connection with an arbitration proceeding in accordance with California Code of Civil Procedure § 1283.05.

In agreeing to this arbitration provision, THE PARTIES ARE SPECIFICALLY GIVING UP:

(1) ALL RIGHTS THEY MAY POSSESS TO HAVE SUCH DISPUTES DECIDED IN A COURT OR JURY TRIAL; AND

(2) ALL JUDICIAL RIGHTS, INCLUDING THE RIGHT TO APPEAL FROM THE DECISION OF THE ARBITRATOR(S).

IF EITHER PARTY SHOULD REFUSE TO SUBMIT TO ARBITRATION, THAT PARTY MAY BE COMPELLED TO ARBITRATE UNDER CALIFORNIA LAW. THE PARTIES HEREBY ACKNOWLEDGE THE ABOVE AND THAT THIS MUTUAL AGREEMENT FOR BINDING ARBITRATION IS VOLUNTARY.

By initialing below, Client confirms that Client has read and understands this provision and voluntarily agrees to binding arbitration. In doing so, Client voluntarily gives up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client is advised that Client has the right to have an independent attorney review this arbitration provision (and this entire Agreement) prior to initialing this provision or signing this Agreement.



(Client Initial Here)

EG

(Attorney Initial Here)

14. **Entire Agreement.** This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties. This Agreement may be modified by subsequent agreement of the parties as expressed only in an instrument in writing signed by both of them.

15. **Venue and Applicable Law.** This Agreement shall be deemed to have been entered into in Sacramento County, California, and all questions regarding the validity, interpretation, or performance of any of its terms or provisions or of any rights or obligations of the parties, shall be governed by the internal law, and not the law pertaining to choice or conflict of law, of the State of California.


16. **Attorney's Fees.** The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement—with the exception of a fee arbitration or mediation under California Business and Professions Code §§ 6200-6206—will be awarded reasonable attorney's fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered thereon.

THE PARTIES HAVE READ AND UNDERSTAND THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE THE FIRM FIRST PROVIDED SERVICES. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

SWEENEY & GRANT LLP

Date: June 12, 2003

By:


Eric Grant

Date: June 17, 2003

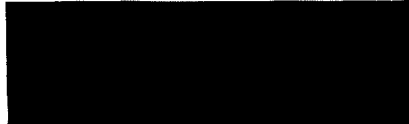


EXHIBIT B

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JAYNE B. SCHUMER**
CORNELIA STERNER
RYAN J. STONEROCK
STEVE Z. WANG
CHRISTOPHER P. WARNE

OF COUNSEL

TIM T. CHANG
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OSCAR C. GONZALEZ
KATHRYN S. MARSHALL
CHARLES A. SHULTZ**

KARASIK LAW GROUP

OLGA A. KARASIK
TERRY D. SHAYLIN

* A PROFESSIONAL LAW CORP.
** ALSO ADMITTED IN NEW YORK

REDACTED

June 11, 2007

WRITER'S DIRECT CONTACT
(818) 609-2384
RESENSTEN@WCCLAW.COM

VIA FACSIMILE AND U.S. MAIL

James J. Banks, Esq.
Banks & Watson
813 Sixth Street, Suite 400
Sacramento, CA 95814

Re: Fee Dispute

John Doe vs. Kamehameha Schools / Bernice Pauahi Bishop Estate, et al.

Dear Mr. Banks:

I have received your letter of June 7, 2007. I will accept service on behalf of my client. I will also to agree to stay this action so that this matter may be arbitrated. Please prepare a stipulation for my review. I would prefer to have this matter arbitrated before the State Bar of California versus the Sacramento Bar Association.

Is the intent of your lawsuit to sue [REDACTED] only? From reading the complaint, it was not apparent that this lawsuit would cover the dispute between Mr. Grant and Mr. Goemans. Was that your intent?

Please provide me with evidence that the [REDACTED] remains Mr. Grant's Client Trust Account. Based on the size of the funds, I would recommend that the funds be transferred to a special trust account requiring two signatures to withdraw the funds, one being either you or Mr. Grant, and the other being, a representative of this firm or me. Please also provide me a copy of the Settlement Agreement executed by [REDACTED]. I understand that [REDACTED] has made multiple requests for this Settlement Agreement to date.

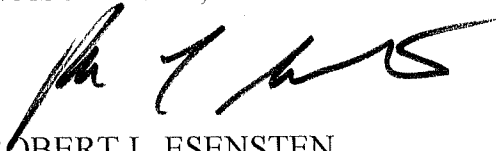
Mr. James J. Banks
June 11, 2007
Page 2

REDACTED

Should you wish to discuss this matter, please call me.


Very truly yours,

WASSERMAN, COMDEN & CASSELMAN, L.L.P.



ROBERT L. ESENSTEN

RLE/llt

cc: John Goemans, Esq.


814992.1

EXHIBIT C

STEVEN G. BRENNER
DAVID B. CASSELMAN
FRANK W. CHEN
LEONARD J. COMDEN
ROBERT L. ESENSTEN*
CATHERINE S. GARCIA
MARK S. GOTTLIEB
MELISSA HARNETT
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GREGORY J. RAMIREZ
JAY N. ROSENWALD
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I. DONALD WEISSMAN
CECILIA S. WU

ROBERT BORSKY
PAUL D. CADMAN
ASTER C. CHANG
KIRK S. COMER
JOEL FISCHMAN
SUSU KHINE
AARON KOLLITZ
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REDACTED

DAVID PLASKOW
ERIC R. REED
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JAYNE B. SCHUMER**
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STEVE Z. WANG
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* A PROFESSIONAL LAW CORP
** ALSO ADMITTED IN NEW YORK

May 24, 2007

VIA FACSIMILE AND U.S. MAIL

James J. Banks, Esq.
Banks & Watson
813 Sixth Street, Suite 400
Sacramento, CA 95814

Re: Fee Dispute
John Doe vs. Kamehameha Schools / Bernice Pauahi Bishop Estate, et al.

Dear Mr. Banks:

This morning I was faxed a letter from Eric Grant stating that you are representing him in the fee disputes with John Goemans and [REDACTED].

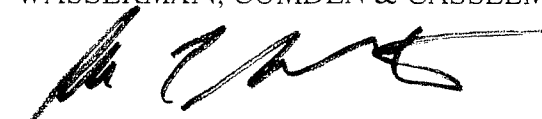
Mr. Grant's letter further states that all of the settlement proceeds remains in his trust account. **It is imperative that the undisputed amount, [REDACTED] is wire-transferred to [REDACTED] account today.** [REDACTED] was under the impression that said funds were wire-transferred yesterday.

I would appreciate the opportunity to discuss this matter with you sometime today so we can see if there is a foundation to resolve these disputes. If we are unsuccessful, do you agree that these disputes should be resolved before the State Bar of California?

I look forward to speaking with you.

Very truly yours,

WASSERMAN, COMDEN & CASSELMAN, L.L.P.



ROBERT L. ESENSTEN

RLE/ilt

cc: John Goemans, Esq.
[REDACTED]

812778.1

BRENTWOOD

ALHAMBRA

OXNARD

EXHIBIT D

ERIC GRANT
ATTORNEY AT LAW

8001 FOLSOM BOULEVARD, SUITE 100
SACRAMENTO, CALIFORNIA 95826
(916) 388-0833 ♦ FAX (916) 691-3261
grant@eric-grant.com

May 24, 2007

Via Facsimile: (818) 705-8927

Mr. Robert L. Esensten
Wasserman, Comden & Casselman, L.L.P.
5567 Reseda Boulevard, Suite 330
Tarzana, California 91356

Re: *John Doe vs. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.*

Dear Mr. Esensten:

I write in response to your letter dated May 23, 2007, which came by facsimile yesterday evening at approximately 6:30 p.m.

Let me confirm that I received the entire amount of the settlement proceeds yesterday and that all of those funds remain in my firm's client trust account.

I have engaged counsel to assist me in this matter:

Mr. James J. Banks
Banks & Watson
813 Sixth Street, Suite 400
Sacramento, California 95814
(916) 325-1000 (voice)
(916) 325-1004 (facsimile)
jbanks@bw-firm.com

Mr. Banks is tied up with other matters this morning, but he will contact you by telephone this afternoon. Consistent with your statements regarding resolution of this matter, I am confident that you Mr. Banks can make rapid progress toward resolution. In all events, I would appreciate your communicating directly with Mr. Banks. Thank you for your consideration.

Cordially,



Eric Grant

EXHIBIT E

BANKS & WATSON
ATTORNEYS

REDACTED

813 SIXTH STREET, SUITE 400 · SACRAMENTO, CALIFORNIA 95814-2403
TELEPHONE 916 325.1000 · FAX 916 325.1004
WWW.BW-FIRM.COM

May 24, 2007

JAMES J. BANKS

VIA FACSIMILE

Robert L. Esensten
Wasserman, Comden & Casselman, L.L.P.
5567 Reseda Boulevard
Suite 530
Tarzana, CA 91356

Re: *John Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.*

Dear Mr. Esensten:

We are counsel to Eric Grant in connection with a putative dispute concerning the attorneys' fees owing as a consequence of Mr. Grant's successful prosecution of the captioned litigation. Mr. Grant is desirous of reaching a resolution to Mr. Goemans' and [REDACTED] concerns regarding the attorneys' fees owed to Mr. Grant as soon as practical. In that respect, I will contact you today to discuss this matter further.

Please do direct all further communications to my care.

Very truly yours,


JAMES J. BANKS

JJB:jw

cc: Eric Grant
(Personal & Confidential)

EXHIBIT F

BANKS & WATSON
ATTORNEYS

REDACTED

813 SIXTH STREET, SUITE 400 · SACRAMENTO, CALIFORNIA 95814-2403
TELEPHONE 916 325.1000 · FAX 916 325.1004
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May 24, 2007

JAMES J. BANKS

VIA FACSIMILE

Robert L. Esensten
Wasserman, Comden & Casselman, L.L.P.
5567 Reseda Boulevard
Suite 530
Tarzana, CA 91356

Re: *John Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.*

Dear Mr. Esensten:

I write to confirm our telephone conference today in which you, on behalf of [REDACTED], offered to settle a putative fee dispute between them and Mr. Eric Grant, relating to the attorney's fee owing in the captioned litigation, through their agreement to pay a total attorney's fee to Mr. Grant in the amount of [REDACTED]. I acknowledge that this agreement does not resolve the question of the division of that fee between Mr. Grant and Mr. Goemans, which shall be the subject of further negotiations. Regardless of the outcome of those negotiations, the total fee to be paid by [REDACTED] shall be [REDACTED] per the agreement reached today.

I am instructed to communicate Mr. Grant's acceptance of that offer. As a precaution, we should have all concerned execute a copy of this letter where indicated below so that the settlement reached is enforceable, if need be, under section 664.6 of the California Code of Civil Procedure.

If you have any questions or if I have been unfaithful to our discussion today, please advise immediately.

Very truly yours,


JAMES J. BANKS

JJB:jw
cc: Eric Grant
(Personal & Confidential)

Robert L. Esensten
May 24, 2007
Page 2

AGREED:

ERIC GRANT

Eric Grant

EXHIBIT G

REDACTED

Law Offices

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CHARLES A. SHULTZ**

KARASIK LAW GROUP

OLGA A. KARASIK
TERRY D. SHAYLIN

* A PROFESSIONAL LAW CORP.
** ALSO ADMITTED IN NEW YORK

May 25, 2007

VIA FACSIMILE AND U.S. MAIL

WRITER'S DIRECT CONTACT
(818) 609-2384
RESENSTEN@WCCLAW.COM

James J. Banks, Esq.
Banks & Watson
813 Sixth Street, Suite 400
Sacramento, CA 95814

Re: Fee Dispute
John Doe vs. Kamehameha Schools / Bernice Pauahi Bishop Estate, et al.

Dear Jim:

Enclosed please find the payment instructions executed by [REDACTED] and the undersigned, approving it as to form. Your May 24th letter has been sent to Mr. Goemans for his approval and execution on page two as he was an attorney of record in the case, will be a recipient of attorneys fees and thus needs to approve the amount of attorneys fees payable to all counsel.

I have obtained the signatures of [REDACTED] agreeing that the attorneys fees shall be the sum of [REDACTED]. As stated above, I will obtain Mr. Goemans approval of said fees and thus, this issue is resolved.

Last night, we discussed our relative positions relating to the distribution of the [REDACTED] in attorneys fees between our clients. I provided you with the foundation for our belief that the attorneys fees should be divided fifty-fifty between our clients, consistent with their responsibilities on the case and my client's understanding of the fee agreement.

Your client's initial offer of [REDACTED] was so low as to make a counter offer impossible. Until Mr. Grant is prepared to make a counter offer, "within the ball park" of our demand, negotiation on this subject will be counter productive. **Pending a resolution of the attorneys fees or an arbitration award, demand is made that all of the attorneys fees be segregated in an interest bearing account in both of our clients' names. Our bank would be happy to hold said funds, pending a resolution.**

Mr. James J. Banks

May 25, 2007

Page 2

Should you wish to discuss this matter, please feel free to call me. You have my cell phone number of (310) 505-4055, should you wish to call me this weekend.

Very truly yours,

WASSERMAN, COMDEN & CASSELMAN, L.L.P.



ROBERT L. ESENSTEN

RLE/ltt

cc: John Goemans, Esq.

[REDACTED]

813029.1

EXHIBIT H

REDACTED

06/24/2007 18:07 FAX 9189261004

BANKS & WATSON

009/005

PAYMENT INSTRUCTIONS

We, [REDACTED] and [REDACTED], instruct our attorney Eric Grant to pay to us settlement proceeds in the amount of \$ [REDACTED] from the *Doe v. Kamehameha Schools* case by wire transfer to the following bank account:

Citibank NA, 111 Wall Street, New York, NY 10043

ABA#: [REDACTED] 0089

FBO: Charles Schwab & Co., Inc.

A/C#: [REDACTED]

For the Account of Schwab A/C# [REDACTED]

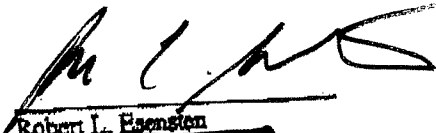
I am the plaintiff, John Doe, in the *Doe v. Kamehameha Schools* case, and I concur in the foregoing instructions.

Executed on May 24, 2007.

I am the plaintiff's mother and next friend "Jane Doe" in the *Doe v. Kamehameha Schools* case, and I concur in the foregoing instructions.

Executed on May 24, 2007.

APPROVED AS TO FORM



Robert L. Esenstein
Counsel to [REDACTED] and [REDACTED]

EXHIBIT I

May 25, 2007

JAMES J. BANKS

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. Robert L. Esensten
Wasserman, Comden & Casselman, L.L.P.
5507 Reseda Boulevard
Suite 330
Tarzana, California 91356

Re: Fee Dispute
John Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.

Dear Bob:

Thank you for your letter bearing today's date with which you enclosed wiring instructions executed by [REDACTED]. Unfortunately, your letter arrived on my desk after a 2:00 p.m. deadline imposed by Bank of America for wire transfers, which deadline we discussed last evening. I can advise that the funds will be wired Tuesday morning.

Thank you for your advisement that you have obtained the signatures of [REDACTED] to the settlement letter I sent you yesterday. I disagree that the settlement letter needs to be approved and executed by Mr. Goemans for the simple reason that he is not a party to the fee agreement between [REDACTED] and Mr. Grant. That said, if you prefer to have him execute the settlement letter out of an abundance of caution, that is fine. With the [REDACTED] execution of the letter we have a binding settlement as to the total amount of the attorney's fee; I do thank you for seeing that aspect of this matter through to conclusion. I would be grateful if you could forward a copy of the executed settlement letter. I will return to you a copy of that letter executed by Mr. Grant for your file.

I would encourage you and Mr. Goemans to continue negotiating a resolution to his claims to a portion of the attorney's fee. His refusal to negotiate further until Mr. Grant is prepared to make a counteroffer "within the ballpark" effectively forces Mr. Grant to bid against himself, which he will not do.

REDACTED

Mr. Robert Esensten
May 25, 2007
Page 2

I will discuss your remaining request in your letter with Mr. Grant. It suffices to say for now that the funds are on deposit in Mr. Grant's attorney trust account and as such, he is trustee of those funds with all of the co-commitment obligations of that office. Moreover, we will need to assure compliance with Rule 4-100 in all events. To that end, we will forward a settlement disbursement form for the [REDACTED] signatures on Tuesday.

We will, no doubt, discuss this matter further next week. If you would like to discuss this matter during the interim, please call me at 916.296.2842. Do have an enjoyable holiday weekend.

Very truly yours,

JAMES J. BANKS

JJB:tda

cc: Mr. Eric Grant
(via electronic mail)