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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, DECLARATORY RELIEF, BREACH OF WRITTEN FEE AGREEMENT, AND QUANTUM MERUIT
13 v.	)	
14 JOHN DOE and JANE DOE,	)	
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  
proceeds]."

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

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

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

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

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

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

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



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.

24 DATED: July 17, 2007

BANKS & WATSON

26 By: /s/ James J. Banks

JAMES J. BANKS

Attorneys for Plaintiff ERIC GRANT