

14769

Attachment A
2003-407

SETTLEMENT AGREEMENT, RELEASE OF ALL CLAIMS,
COVENANT NOT TO SUE, AND HOLD HARMLESS AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is entered into by and among the *Dupuis* Plaintiffs, as defined below and King County, effective August 1, 2003.

Plaintiffs commenced a civil action in *Dupuis, et al. v. King County* as filed in King County Superior Court under Cause No. 03-2-20982-1 SEA. King County agrees solely for the purposes of this settlement and its implementation that King County Superior Court Cause No. 03-2-20982-1 SEA shall proceed as a class action under CR 23(b)(1) and CR 23(b)(2), but if such settlement fails to be approved by the Metropolitan King County Council or the King County Superior Court, then King County retains all rights to object to the maintenance of the action as a class and all parties retain any claim or defense they may have had prior to this Settlement Agreement. The class is defined as all hourly King County employees who were paid on the MSA payroll system at any time from April 2, 1997 through May 31, 2003, other than those individuals who are plaintiffs in *Covey, et al. v. King County*, filed in King County Superior Court under Cause No. 02-2-08317-0 SEA.

This Settlement Agreement is made pursuant to CR 23(e) to settle the class action of *Dupuis, et al. v. King County*. The provisions of this Settlement Agreement apply to all members of the *Dupuis* class. Class membership alone does not necessarily make relief available. Class members are entitled to relief only as specifically stated in this Settlement Agreement. This Settlement Agreement is not effective until approved by the Metropolitan King County Council and by the King County Superior Court as set forth herein.

The *Dupuis* named plaintiffs and the *Dupuis* class members (collectively referred to as "Plaintiffs") and King County by this Settlement Agreement wish to resolve fully and finally all of their differences related to the above-referenced lawsuit, all actual or potential claims regarding the timeliness of any wage payments or wage related benefit and related violations of WAC 296-126-023, RCW ch. 49.48 and RCW ch. 49.52, and any actual or potential claims regarding payment for 2088 hours of scheduled work in any year for any period of time up to and including May 31, 2003 except for any claims for attorneys' fees and costs incurred therein, which claims are being resolved by separate agreement (the "Fee Settlement Agreement").

Therefore, for and in consideration of the mutual promises and conditions contained in this Settlement Agreement, the parties agree as follows:

1. After the signing of this Settlement Agreement by all parties, the King County Executive will present to the Metropolitan King County Council and recommend

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement

Page 1 of 13

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14769

the adoption of an ordinance requesting a supplemental appropriation for the funds necessary to fulfill the terms of this Agreement ("the Appropriation Ordinance") and the parties will present this Settlement Agreement to the Superior Court for approval. The parties recognize there is no guarantee the Metropolitan King County Council will enact the Appropriation Ordinance, and agree that if the Metropolitan King County Council does not enact the Appropriation Ordinance or if this Settlement Agreement is not approved by the King County Superior Court, the terms of this Settlement Agreement shall have no force or effect, and this civil action shall proceed to trial as determined by the parties and the Court. If within 60 days of the transmittal by the Executive of the Appropriation Ordinance, the Metropolitan King County Council has not enacted the Appropriation Ordinance, Plaintiffs may revoke the Settlement Agreement and the Fee Settlement Agreement and proceed to trial as determined by the Court. Time is of the essence for this Settlement Agreement. The parties will process this Settlement Agreement as expeditiously as practicable within the terms of this Agreement. In the event either party believes the other party is not processing the Settlement Agreement accordingly, Judge Terrence L. Carroll will arbitrate the issue of whether a party is dilatory without good cause. If a party is found to be dilatory without good cause, the Settlement Agreement may be revoked and the lawsuit may proceed to trial as determined by the Court.

2. Within 60 days of Court's settlement hearing approving this Settlement Agreement or within 30 days of the effective date of the Appropriation Ordinance, whichever is later, King County will provide Plaintiffs who are current King County employees at the time this provision is implemented with a one-time only addition of three and one-half (3.5) hours (for full-time, leave eligible employees with a 35 hour work schedule on June 30 or December 31 for the years listed below or four (4) hours (for full-time, leave eligible employees with a 40 hour work schedule on June 30 or December 31 for the years listed below) to each Plaintiff's vacation leave account for each of the following dates on which Plaintiffs were employed by or on approved leave from King County: June 30, 1999, December 31, 1999, June 30, 2000, December 31, 2000, June 30, 2001, December 31, 2001; June 30, 2002; December 31, 2002.

Plaintiffs who are no longer King County employees at the time this provision is implemented will receive a disbursement of three and one-half (3.5) hours (for full-time, leave eligible employees with a 35 hour work schedule on June 30 or December 31 of the years listed below or four (4) hours (for full-time, leave eligible employees with a 40 hour work schedule on June 30 or December 31 for the years listed below) of pay at the hourly rate in effect at the time the Plaintiff separated from employment for each of the following dates on which Plaintiffs were employed by or on approved leave from King County: June 30, 1999, December 31, 1999, June 30, 2000, December 31, 2000, June 30, 2001, December 31, 2001, June 30, 2002, December 31, 2002.

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement

Page 2 of 13

Initialed: 
J.D. G.D. C.S. C.B. M.K. D.T. J.H. D.G. J.S. B.G.

14769

Plaintiffs who work or formerly worked in a position that was not eligible for leave benefits on June 30, 1999, December 31, 1999, June 30, 2000, December 31, 2000, June 30, 2001, December 31, 2001, June 30, 2002, December 31, 2002 will not receive either leave or pay under this Paragraph for the period worked in the non-leave eligible position. Plaintiffs who work or formerly worked in a part-time, leave eligible position will receive either leave or pay, as appropriate, prorated to reflect his or her normally scheduled work week. King County will pay hourly employees based on the number of hours in a work year from this point forward.

Plaintiffs who receive vacation under this Paragraph and have reached their maximum vacation accrual amount shall have the maximum accrual amount raised by the amount of vacation received under this Paragraph for a period of three years following the date the additional time is added to their vacation balance.

3. The disbursements of money referenced in Paragraph 2 of this Settlement Agreement are subject to withholding and payroll deductions as required by law. King County shall, as required by law, withhold the customary amount for federal income tax purposes and shall make deductions and contributions for FICA, Medicare, and retirement purposes as required by law. Each Plaintiff receiving money pursuant to this Settlement Agreement shall be solely liable for any employee income tax or FICA liability, if any exists.

4. As further consideration for the payment specified in this Settlement Agreement, Plaintiffs represent and warrant there are no lien holders or other persons or entities having any interest in the proceeds being paid in accordance with the settlement of this lawsuit and the conditions of this Settlement Agreement. If such liens or interests exist, any Plaintiff so affected agrees to jointly and severally and fully indemnify, hold harmless, and defend King County from any claims of others to the proceeds of the settlement.

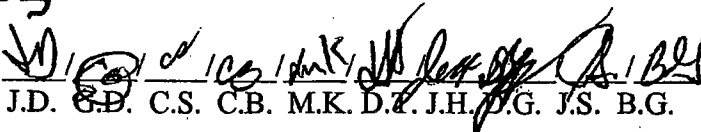
5. The disbursements of money referenced in Paragraph 2 of this Settlement Agreement shall be made directly to Plaintiffs as provided in Paragraph 2. For those Plaintiffs who are either retired from or no longer employed by King County, such disbursements shall be made to Plaintiffs at their last known address. After disbursement of the Fund, no further claims against King County as released herein shall be considered or allowed.

6. Plaintiffs shall have 6 months from the date a check making a disbursement of money referenced in Paragraph 2 of this Settlement Agreement is mailed to them to cash the check. In the event a Plaintiff's check is returned to King County as undeliverable,

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement

Page 3 of 13

Initialed:


J.D. G.D. C.S. C.B. M.K. D.Z. J.H. D.G. J.S. B.G.

14769

King County will promptly notify Plaintiffs' counsel. If Plaintiffs' counsel locates other address information the information will be provided to King County to re-mail the check. King County shall only be obligated to re-mail a check once. Any unclaimed settlement funds following eighteen (18) months from the date the original check is mailed shall be returned to King County.

7. If this Settlement Agreement is approved by the King County Superior Court and both the Settlement Agreement and the Fee Settlement Agreement are approved by the Metropolitan King County Council, Plaintiffs fully release and promise not to sue, make any claim, file any grievance, or initiate any action of any kind whatsoever regarding the claims in King County Superior Court Cause No. 03-2-20982-1 SEA, all actual or potential claims regarding the timeliness of any wage payments or wage related benefit and related violations of WAC 296-126-023, RCW ch. 49.48 and RCW ch. 49.52, and any actual or potential claims regarding payment for 2088 hours of scheduled work in any year, for any period of time up to and including May 31, 2003 including, but not limited to, any action pursuant to the Fair Labor Standards Act, the Washington Minimum Wage Act, the Washington Wage Rebate Act, the Wage Payment Act, County ordinances, or collective bargaining agreements, against the County, any of its subunits, its officers, agents, or employees, past, present, or future, for any event or occurrence in any manner related to either the above-referenced lawsuit against King County, or the timeliness of any wage payments or wage related benefit and related violations of WAC 296-126-023, RCW ch. 49.48 and RCW ch. 49.52, or to payment for 2088 hours of scheduled work in any year, for any period of time up to and including May 31, 2003, whether such claims be based on statute, regulation, ordinance, contract, tort, or any other theory of law or damages whatsoever. Plaintiffs waive all rights to bring any claim which, in connection with their pending civil action under King County Superior Court Cause No. 03-2-20982-1 SEA, would have been the subject of mandatory joinder.

8. If this Settlement Agreement is approved by the King County Superior Court and the both the Settlement Agreement and the Fee Settlement Agreement are approved by the Metropolitan King County Council, Plaintiffs, being of lawful age, for themselves, their heirs, executors, administrators and assigns, release, acquit and forever discharge King County, a municipal corporation, and its officers, agents and employees, from any and all actions, causes of action, claims or demands for damages, attorneys' fees, costs, loss of use, loss of services, loss of consortium, expenses, compensation, lost wages, back pay, front pay, employment rights, reemployment rights, leave benefits, medical/dental benefits, any other employment benefits, consequential damages or any other thing whatsoever on account of, or in any way arising out of, any and all known and unknown personal injuries, emotional distress and/or property damage resulting from or in any way related to the claims contained in the Dupuis lawsuit, and for any claims which

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement
Page 4 of 13

Initialed: J.D. G.D. C.S. C.B. M.K. D.T. J.H. D.G. J.S. B.G.

would have been the subject of mandatory joinder in this lawsuit and for any claims regarding the timeliness of any wage payments or wage related benefit and related violations of WAC 296-126-023, RCW ch. 49.48 and RCW ch. 49.52, and for any claims regarding payment for 2088 hours of scheduled work in any year, for any period of time up to and including May 31, 2003, whether such claims be based on statute, regulation, ordinance, contract, tort, or any other theory of law or damages whatsoever.

9. If this Settlement Agreement is approved by the King County Superior Court and both this Settlement Agreement and the Fee Settlement Agreement are approved by the Metropolitan King County Council, each Plaintiff agrees to make no grievance, claim, or lawsuit arising out of the matters released in this Settlement Agreement for a period of 3 years following dismissal of this lawsuit by the Superior Court, except to enforce the terms of this Settlement Agreement

10. This Settlement Agreement is contingent upon adoption by any collective bargaining representative representing any Plaintiff of a memorandum of understanding with King County regarding this Settlement Agreement, and the withdrawal, with prejudice, of all related grievances. Such agreements are contingent upon the approval of this Settlement Agreement by the Metropolitan King County Council and the King County Superior Court.

11. This Settlement Agreement is a compromise of disputed claims and is the product of serious negotiation. The parties understand that this Settlement Agreement is a compromise and is not to be construed as an admission of liability on the part of any party. The compromise embodied in this Settlement Agreement is intended to fully and finally resolve the claims of Plaintiffs in this case.

12 This Settlement Agreement and the Fee Settlement Agreement constitute the ENTIRE AGREEMENT between the parties. There are no other or further agreements which modify or amplify the terms of these Agreements. The terms of these Agreements are contractual and not a mere recital.

13 Upon the signing of this Settlement Agreement by all parties, King County and the Plaintiffs' counsel shall jointly request the King County Superior Court to approve this Settlement Agreement, notice to the class and the proposed judgment pursuant to LR 23(e).

14 Class counsel shall prepare a motion for a settlement hearing and a proposed notice of settlement hearing and summary of this Settlement Agreement to be distributed to the Class pursuant to KCLR 23(e)(1). The notice shall be as approved by the parties, or in

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement

Page 5 of 13

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the event of disagreement, as approved by the Court. The proposed notice shall be presented to the Court for its approval. The notice shall summarize the major terms of this Settlement Agreement, state the time, date, and place of the settlement hearing, and explain the procedures and deadlines for submitting written comments or objections in compliance with the Court Rules. King County shall send such notice by mail or by attachment or addendum to regular payroll to identifiable plaintiffs. King County will provide notice by publication in the Sunday edition of the Seattle Times/Seattle Post Intelligencer to be published once a week for two consecutive weeks.

15 This Settlement Agreement is a product of substantial negotiation and compromises by the parties and thus this Settlement Agreement represents a unitary whole and each and every term herein is an integral part of the entire Settlement Agreement. Pursuant to CR 23, the King County Superior Court shall determine whether this Settlement Agreement as a whole is fair and reasonable and whether to approve or reject the entire Settlement Agreement. The Court is not authorized to modify the terms of the negotiated settlement.

16 Class counsel shall be responsible for dismissing this case within 30 days following completion of the distribution process set forth in this Settlement Agreement. Upon such dismissal, each and every claim brought by Plaintiffs in connection with King County Superior Court Cause No. 03-2-20982-1 SEA shall be dismissed with prejudice and without costs or fees to either party. Prior to such dismissal the parties agree that the litigation shall be stayed except as provided in this Settlement Agreement.

17 King County will not unlawfully retaliate against any Plaintiff for his or her participation in this lawsuit.

18. Plaintiffs shall submit any matter arising under Paragraph 2 of this Settlement Agreement in writing to the King County Director of Finance and Business Operations within twenty-one (21) calendar days from the date of distribution of the disbursement referenced in this Settlement Agreement. The Finance Director or his designee will review the matter and render a decision. The parties agree that the decision of the Director shall be final and binding on each of the parties and that they will abide thereby, except that Plaintiffs who are represented by a collective bargaining agreement may grieve the Finance Director's decision pursuant to the terms of their collective bargaining agreement.

19. Plaintiffs acknowledge that they have carefully read the foregoing provisions and know the contents thereof, have had the opportunity to review this Settlement Agreement with their attorneys, George E. Merker and Merker Law Offices, and

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement

Page 6 of 12

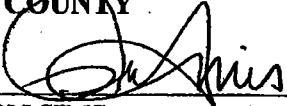
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J.D. G.E. C.S. C.B. M.K. D.T. J.H. J.G. J.S. B.G.

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sign the same as their own free act.

DATED this 19 day of August, 2003.

KING COUNTY

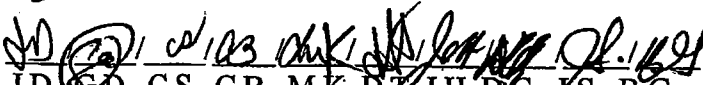
By: 
RON SIMS
King County Executive

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Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement
Page 7 of 13

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J.D. G.D. C.S. C.B. M.K. D.T. J.H. D.G. J.S. B.G.

14769

PLAINTIFFS

By: [Signature]
JANIS DUPUIS

By: [Signature]
GENE DUPUIS

By: [Signature]
CHARLENE SHAW

By: [Signature]
CATHY BOSSETT

By: [Signature]
MARTY KAPLAN

By: [Signature]
DIANA THOMASON

By: [Signature]
JASON HERRING

By: [Signature]
DAN GRIFFIN

By: [Signature]
JEFF STUEBY
STUEBY

By: [Signature]
BONNIE GILBERT

Approved as to form:

NORM MALENG
King County Prosecuting Attorney

MERKER LAW OFFICES

By: [Signature]
SUSAN N. SLONECKER
Senior Deputy Prosecuting Attorney
Attorneys for King County

[Signature]
GEORGE E. MERKER
Attorneys for Plaintiffs

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 14th day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement

Page 8 of 13

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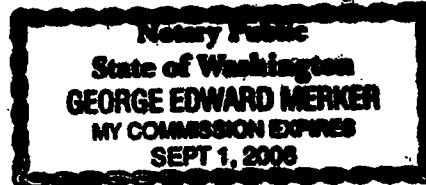
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appeared, JANIS DUPUIS, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003.

Printed Name: George E. Merker
NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.



My Commission Expires: September 1, 2006.

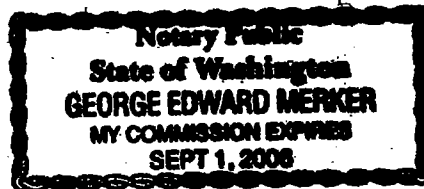
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 14th day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, GENE DUPUIS, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003.

Printed Name: George E. Merker
NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.



My Commission Expires: September 1, 2006.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 14th day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement
Page 9 of 13

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14769

appeared, CHARLENE SHAW, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

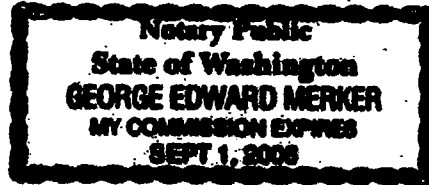
WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003.

~~Printed Name: George E. Merker~~

NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.

My Commission Expires: September 1, 2006.



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 14th day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, CATHY BOSSETT, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

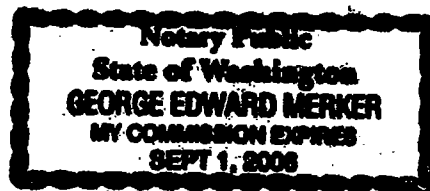
WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003.

~~Printed Name: George E. Merker~~

NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.

My Commission Expires: September 1, 2006.



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 14th day of August, 2003, before me the undersigned, a Notary Settlement Agreement, Release of All Claims, Covenant Not to Sue, and Hold Harmless Agreement Page 10 of 13

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J.D. G.D. C.S. C.B. M.K. D.T. J.H. G.G. J.S. B.G.

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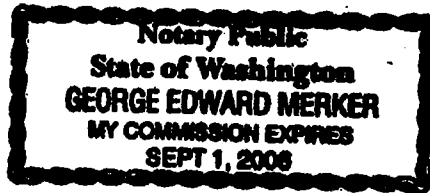
Public in and for the State of Washington, duly commissioned and sworn, personally appeared, JASON HERRING, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003.

[Signature]

Printed Name: George E. Merker
NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.



My Commission Expires: September 1, 2006.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

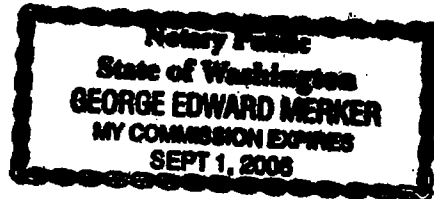
On this 14th day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, DAN GRIFFIN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003.

[Signature]

Printed Name: George E. Merker
NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.



My Commission Expires: September 1, 2006.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement

Page 12 of 13

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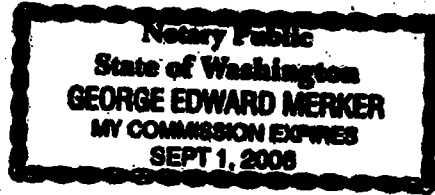
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On this 14th day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, JEFF STEUBY, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003.

[Signature]
Printed Name: George E. Merker
NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.



My Commission Expires: September 1, 2006.

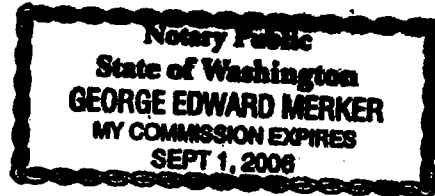
STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 14th day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, BONNIE GILBERT, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003.

[Signature]
Printed Name: George E. Merker
NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.



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Settlement Agreement, Release of All Claims,
Covenant Not to Sue, and Hold Harmless Agreement
Page 13 of 13

Initialed: [Signatures]
J.B. G.D. C.S. C.B. M.K. D.T. J.H. D.G. J.S. B.G.