

14769

Attachment B

FEE SETTLEMENT AGREEMENT

2003-407

This Fee Settlement Agreement (" Fee 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. A separate Settlement Agreement has been signed and presented to the Court for approval pursuant to CR 23 and the provisions contained therein. King County has agreed solely for the purposes of 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 either 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 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 separate Fee Settlement Agreement is made pursuant to CR 23(e)(2) to settle the attorney fee and cost issues in the class action of *Dupuis, et al. v. King County*. The provisions of this Fee Settlement Agreement shall apply to all members of the *Dupuis* class. This Fee Settlement Agreement is not effective until the Settlement Agreement referenced herein is approved by the King County Superior Court and both the Settlement Agreement and this Fee Settlement Agreement are each approved by the Metropolitan King County Council in a resulting Appropriation Ordinance as set forth herein.

King County faces potential liability for fees and costs under both a statutory fee-shifting basis and under a common fund theory. The *Dupuis* named plaintiffs and the *Dupuis* class members (collectively referred to as "Plaintiffs") and King County by this Agreement wish to resolve fully and finally all of the Plaintiff's fee and cost claims related to the above-referenced lawsuit in order to relieve the Plaintiffs from any liability for fees and costs, and to quantify the King County's liability for fees and costs. As a result, the parties have negotiated and agreed herein to an attorneys' fee which is a hybrid alternative, recognizing that Plaintiffs' benefited from their ability to undertake this litigation on a contingent basis in that they will wind up paying nothing for fees or costs; counsel would not have undertaken this case without the potential for a contingent fee, and King County will benefit from the certainty that arises from this settlement arrangement. This Fee Settlement Agreement will not produce a typical common fund in which the attorneys' fee will be payable from the fund itself.

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

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Initialed:

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

1. After the signing of this Fee Settlement Agreement by all parties, the King County Executive will present to the Metropolitan King County Council and recommend the adoption of an ordinance requesting an appropriation for the funds necessary to fulfill the terms of this Agreement and the Settlement Agreement ("the Appropriation Ordinance") and the parties will present the Settlement Agreement to the King County 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 the separate Settlement Agreement is not approved by the King County Superior Court, the terms of this Fee 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 Fee Settlement Agreement and proceed to trial as determined by the Court. Time is of the essence for this Fee Settlement Agreement. The parties will process this Fee 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 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 Agreement may be revoked and the lawsuit may proceed to trial as determined by the Court.

2. Within 10 business days of the effective date of the Appropriation Ordinance, or within 10 business days of the settlement hearing and approval of the separate Settlement Agreement by the King County Superior Court, whichever is later, King County will pay to Plaintiffs' attorney, George E. Merker, the total sum of three hundred seventy five thousand dollars (\$375,000.00) for attorneys' fees and costs, including but not limited to the Plaintiffs' filing fees and service costs except that King County has paid for all mediation expenses incurred to date, and shall pay the expenses of all further mediation, mailing, notice and publication incurred pursuant to this Agreement. This sum is less than the payment identified in the retainer agreement between George E. Merker and the class representatives. The fee represents less than twelve percent (12%) percent of the estimated total economic recovery herein. The Class Representatives agree that said attorneys' fee and cost reimbursement is reasonable under the circumstances. This case involved novel and complex questions of law, resulted in a substantial, fair, and appropriate settlement of the claims of the Class, and included prospective changes in the County's payroll practices that will benefit class members.

3. This Fee Settlement Agreement is a compromise of disputed claims and is the product of serious negotiation. The parties understand that this Fee 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 Fee Settlement Agreement is intended to fully and finally resolve the claims of Plaintiffs in this case.

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

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4 This Fee Settlement Agreement and the related Settlement Agreement referenced herein 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.

5 This Fee Settlement Agreement is a product of substantial negotiation and compromises by the parties and thus this Agreement represents a unitary whole and each and every term herein is an integral part of the entire Agreement. Pursuant to CR 23 and other applicable law, the King County Superior Court shall determine whether the separate Settlement Agreement as a whole is fair and reasonable and whether to approve or reject the entire separate Settlement Agreement. The Court may also change or reject this Fee Settlement Agreement with respect to the fees and costs awarded, but if it does so, neither party will be bound by its terms absent further agreement to the changes, the Metropolitan King County Council will not adopt the Appropriation Ordinance, and neither the Plaintiffs nor the Defendant will be bound to agree to the terms of the related Settlement Agreement, nor will the Defendant be required to pay the Plaintiffs or their counsel any sum whatsoever.

6. Plaintiffs acknowledge that they have carefully read the foregoing provisions and know the contents thereof, have had the opportunity to review this Agreement with their attorneys, George E. Merker and Merker Law Offices, and 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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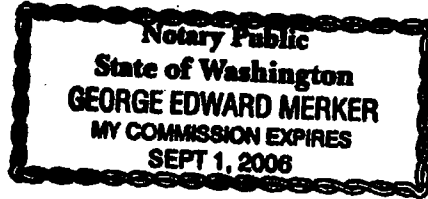
14769

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

SUBSCRIBED AND SWORN to before me this 14<sup>th</sup> day of August, 2003.

*[Handwritten 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 )

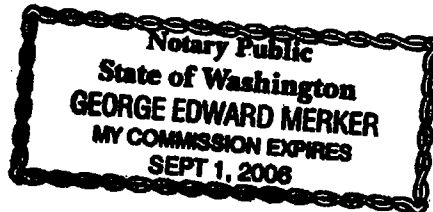
On this 14<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, GENE DUPUIS, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that 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 14<sup>th</sup> day of August, 2003.

*[Handwritten 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.

Initialed: *[Handwritten Initials]*  
J.D. G.D. C.S. C.B. M.K. D.T. J.H. T.G. J.S. B.G.


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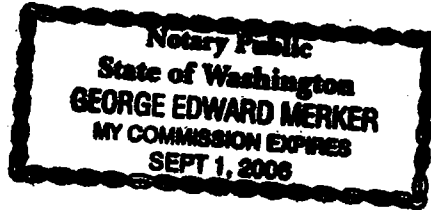
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

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

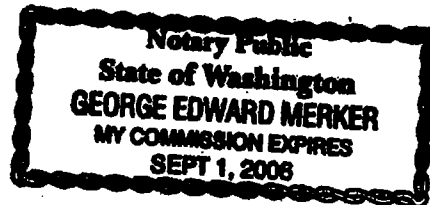
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 14<sup>th</sup> 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 14<sup>th</sup> day of August, 2003.

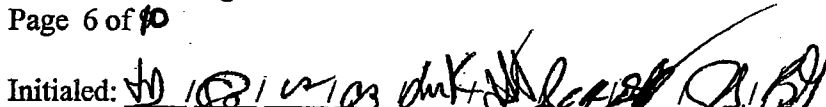
  
Printed Name: George E. Merker  
NOTARY PUBLIC in and for the State of Washington, residing at Bainbridge Island.



My Commission Expires: September 1, 2006.

STATE OF WASHINGTON )  
 ) ss.

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

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COUNTY OF KING )

On this 14<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, MARTY KAPLAN, 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.

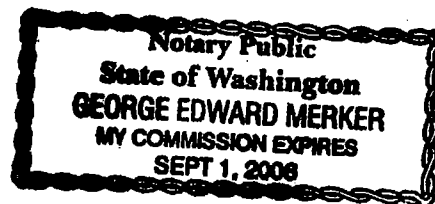
WITNESS My hand and official seal hereto affixed the day and year first above written.

SUBSCRIBED AND SWORN to before me this 14<sup>th</sup> 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.



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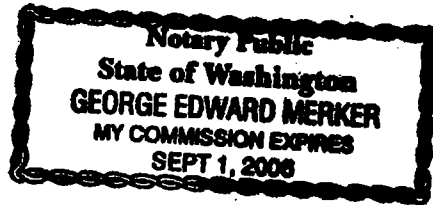
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 14<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, DIANA THOMASON, 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 14<sup>th</sup> 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.

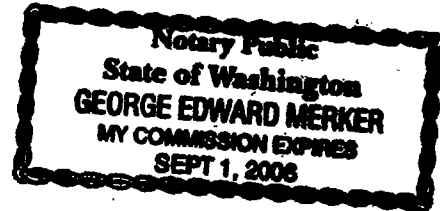
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 14<sup>th</sup> day of August, 2003, before me the undersigned, a Notary 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 14<sup>th</sup> 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.

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




STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

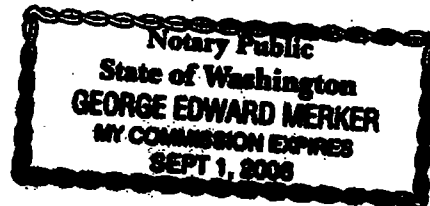
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On this 14<sup>th</sup> day of August, 2003, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, DAN GRIFFIN, to me known to be the individual described in and who executed 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 14<sup>th</sup> 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.

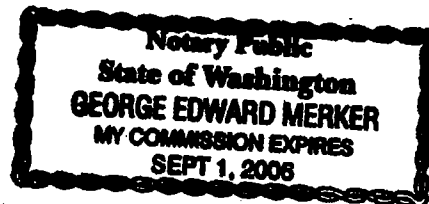
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 14<sup>th</sup> 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 STUEBY, 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 14<sup>th</sup> 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 )

14769

On this 14<sup>th</sup> 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 14<sup>th</sup> 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.

