

W8343-8

W8343-8

W8343-8
No. 86310-5

SUPREME COURT
OF THE STATE OF WASHINGTON

DUANE STORTI, and a class of faculty members,

Appellants,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

STATEMENT OF GROUNDS
FOR DIRECT REVIEW

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ORIGINAL

A. INTRODUCTION

The appellant class, consisting of over three thousand faculty members at the University of Washington ("University") who have received meritorious evaluations, seeks direct review under RAP 4.2(a) of the decision of the King County Superior Court on June 24, 2011 granting the University's motion for summary judgment and dismissing the class's action against the University. That decision also denied the class's motion for partial summary judgment on liability.

The case presents two distinct issues suitable for direct review by this Court:

1. Where the University's unilateral contract – set forth in the Faculty Handbook and the President's Executive Order 64 – was that any faculty member whose performance was deemed meritorious was entitled to a 2% merit salary increase in the upcoming academic year, and the work of class members like Professor Storti in year 2008-09 was found to be meritorious, did the University breach its contract with faculty members by suspending in April 2009 the merit salary increase for academic year 2009-10, after the faculty had substantially performed its obligations entitling them to the 2% merit increase?

2. Where the University previously maintained in May, 2002 (after the academic year was nearly over) that it did not have to comply with the Faculty Salary Policy for work performed during 2001-02 and Storti and the plaintiff class (same class as here except the years are different) successfully litigated the same contract defenses raised by the University here (the 2% raise was discretionary and conditioned on legislative funding) and the court expressly rejected these defenses and determined that the faculty were owed the 2% raise for the 2002-03 academic year, which the University then paid, is the University barred by res judicata and collateral estoppel in this, the second *Storti v. University* class action concerning the same unilateral contract.

B. FACTUAL BACKGROUND TO PRESENT CASE

1. The University's Faculty Salary Policy¹

Since 1999-2000, in response to internal University faculty and administration discussions involving faculty salary issues, the University has had a policy² in place in the Faculty Handbook and by an Executive Order of the President mandating 2% annual salary increases for faculty whose service in the previous academic year was deemed "meritorious."

Before the Faculty Salary Policy was approved by the faculty and adopted by the University, the University President, Provost, and faculty leaders repeatedly told the faculty that the proposed policy would guarantee the University's commitment of annual 2% merit salary increases to any meritorious faculty and that such commitment did not depend on receiving additional funds from the Legislature for that raise.³

¹ The class's discussion of the facts is taken from its motion for summary judgment below.

² This policy was adopted to deal with major faculty pay problems -- that money available for pay raises was being focused on "recruitment" (new hires) and "retention" (keeping "star" faculty) while the bulk of the faculty normally received *no* raises. The pre-1999 salary policy meant that (1) new faculty members recently out of graduate school could make as much or more than long-term faculty and (2) faculty members who threatened to leave or obtained offers from other institutions could obtain much larger salaries than other faculty members. Accordingly, the primary function of the policy was to establish small minimum raises for all meritorious faculty as a matter of "first priority."

³ The University fully recognized the funding implications of this salary policy in times of economic weakness. Provost Lee Huntsman told the Faculty Senate Executive Committee on February 22, 1999:

After receiving these assurances, the faculty approved the policy, and the President then adopted Faculty Handbook §24-70.B, which requires that a “salary increase . . . shall be granted to provide an initial minimum equal-percentage salary increase to all faculty following a successful merit review” and §24-71.A.1, which requires that the President “shall each year make available funds to provide an initial minimum increase to all faculty deemed meritorious under Section 24-55.” After establishing this policy, the President reported to the Regents in September 1999 that “[a]ll the major recommendations regarding faculty . . . salaries” have been “approv[ed] by the President” and “the new policies . . . provide for minimum annual salary increases for meritorious faculty.” After consulting with the faculty, President Richard McCormick, then issued Executive Order 64 on January 7, 2000 which stated:

[T]he real significance of the new policy is however, the priority position given to this sort of merit salary increase. We are saying that, independent of what Olympia does, independent of what the market does, we will make this a first priority from our own available resources. In an era with a budget cut from Olympia, we’re going to be downsizing new-faculty positions in order to fund this first priority. We’re saying than when real crunch times come, we’re no long going to balance the budget on the backs of the continuing faculty in favor of retaining “stars.” We’re going to fund a minimum level of “career progression.”

Again, on March 1, 1999, the Provost pointed out the real significance of the policy would be in the “lean” years:

[T]he essence of the proposed policy . . . will have almost no impact in normal years, when there is enough to fund everything, but it will have a profound impact in lean years, when it will mean that, despite the lack of additional funding from the Legislature, we will use the recapture money first to do this –even if we have to reduce the faculty count by cannibalizing vacancies. That’s where the power of this policy is.

All faculty shall be evaluated annually for merit and for progress towards reappointment, promotion and/or tenure, as appropriate. A faculty member who is deemed to be meritorious performance *shall* be awarded a regular 2% merit salary increase at the beginning of the following academic year. Higher levels of performance shall be recognized by higher levels of salary increases as permitted by available funding.

(Emphasis added). A copy of the order is Appendix A.

2. Storti I Litigation

The effect of the Faculty Salary Policy was litigated by Professor Duane Storti in a case filed in the King County Superior Court ("*Storti I*") when the University failed to provide the 2% increase to faculty whose work in the 2001-02 academic year was found to be meritorious.⁴ The court, the Honorable Mary Yu, certified the class of faculty members (the *Storti I* class is the same as the *Storti II* class although the years at issue are different). The court granted summary judgment to the *Storti I* class. A copy of the court's order is Appendix B. The court ruled that "the plain language [of the Faculty Salary Policy] creates a mandatory duty that requires the University to provide meritorious faculty an annual increase of at least 2%." The court rejected the University's argument that it retained discretion to not fund a 2% merit raise or that such increase was conditioned upon legislative funding. The court found that the funding caution in the Faculty Salary Policy allowed the UW to "reevaluate" the policy, but agreed with the class that the provision reserved the University's right to change the

⁴ The University recognized the 2% increase for meritorious service in academic years 1999-2000, 2000-01, and 2002-03.

policy at some future date, going forward, not to revoke or repeal it after the work for the raise had been substantially performed.

After losing on the merits in *Storti I*, the University agreed to provide back pay and it reset faculty salaries to reflect the omitted 2% raise. The court approved the settlement, entering findings of fact and conclusions of law approving the settlement, which are Appendix C.

3. Storti II Litigation

At the beginning of the 2008-09 academic year, the Faculty Salary Policy remained in place, promising Storti and fellow faculty class members that they would receive a 2% raise for meritorious work performed in 2008-09. Because of budget-related fears, in April 2009, after the faculty's work was substantially performed for academic year 2008-09, the President and the Board of Regents voted to suspend the policy for a two-year period; and Executive Order 29 was issued to implement that suspension policy. A copy of that Order is Appendix D.

In the meanwhile, Professor Storti's performance for academic year 2008-09 was specifically found in May 2009 to be meritorious in accordance with the review required by § 24-55 of the Faculty Handbook. He, like other faculty members, was denied a 2% increase for academic year 2009-10 because the University applied Executive Order 29 to work already meritoriously performed in 2008-09.

This case ("*Storti II*") was commenced in the King County Superior Court in December, 2010. The case was ultimately assigned to the Honorable Bruce Hilyer after the University filed an affidavit of prejudice against Judge Yu. Judge Hilyer certified the same class of faculty members as in *Storti I*. A copy of that order is Appendix E. The class contended that the University breached its unilateral contract with the faculty in the Handbook and Executive Order 64 by applying the suspension of Executive Order 29 to work performed for 2008-09, and that the University was also precluded by principles of res judicata and/or collateral estoppel from re-litigating the legal issues inherent on the Faculty Salary Policy resolved in *Storti I*. The University opposed the class's motion and supported its own motion for summary judgment on the same grounds that it argued in *Storti I*, i.e., that the "reevaluation" provision in Executive Order 64 made the 2% merit raise discretionary with the University and contingent on legislative funding. The re-evaluation section argued by the University stated:

This Faculty Salary Policy is based upon an underlying principle that new funds from legislative appropriations are required to keep the salary system in equilibrium. Career advancement can be rewarded and the current level of faculty positions sustained only if new funds are provided. Without the infusion of new money from the Legislature into the salary base, career advancement can only be rewarded at the expense of the size of the University faculty. Without the influx of new money or in the event of decreased State support, a reevaluation of this Faculty Salary Policy may prove necessary.

The University also denied that either res judicata or collateral estoppel applied.

The trial court granted the University's motion for summary judgment and denied the class's motion on liability. A copy of that order is Appendix F. This timely appeal followed.

C. GROUNDS FOR GRANTING DIRECT REVIEW

This Court determines whether to grant direct review based on the criteria set forth in RAP 4.2(a). Review is appropriate here under RAP 4.2(a)(4). This is a case involving a fundamental and urgent issue of broad public importance which requires prompt and ultimate determination by the Washington Supreme Court.

The class presents two significant issues for this Court's consideration.⁵ First, the parties agreed below that the Faculty Salary Policy is a unilateral contract. Further, in the public employment context, a public employer's policies and rules constitute a part of an employee's employment contract. *See, e.g., Scannell v. City of Seattle*, 97 Wn.2d 701, 656 P.2d 1083 (1982) (city charter provision on employee vacations); *Roberts v. King County*, 107 Wn. App. 806, 27 P.3d 1267 (2001), *review denied*, 145 Wn.2d 1024 (2002) (county policy on equal pay for equal work). And in the university setting, a faculty handbook becomes part of a professor's contract. *Nostrand v. Little*, 58 Wn.2d 111, 123, 132, 361 P.2d 168 (1961); *Mega v. Whitworth College*, 138 Wn. App. 661, 158 P.3d 1211 (2007), *review denied*, 163 Wn.2d 1008 (2008); *Mills v. WWU*, 170 Wn.2d 903, 908-09, 246 P.3d 1254 (2011).

⁵ The class offers a only summary of its arguments, without an exhaustive treatment of them.

In the public employment context, this Court has offered some latitude to public employers to make employment contracts contingent on appropriations being forthcoming from legislative bodies to fully fund *prospective* elements of the employment contract. But such latitude must be *expressly* articulated in the contract. *Carlstrom v. State*, 103 Wn.2d 391, 394-95, 694 P.2d 1 (1985) (provision making contract for future percentage pay raises between community college faculty and state “subject to all present and future acts of the legislative” did not make contractual salary increase contingent on legislative appropriation to fund it; in absence of express language making increase contingent on legislative appropriate; State impaired contract when legislation was enacted abrogating increases). Similarly, to make a seeming promise of additional pay discretionary the employer must explicitly state that the additional pay is optional or discretionary. *Spooner v. Reserve Life Ins. Co.*, 47 Wn.2d 454, 457-58, 287 P.2d 735 (1955).

Here, the Faculty Salary Policy, as set forth in the Handbook and Executive Order 64, constituted a part of the University’s unilateral contract with the faculty.⁶ This contract is subject to a traditional contract analysis. *Multicare*

⁶ That an employer’s offer of a bonus or a raise to an employee after work is performed is a “unilateral contract” binding upon the employer when the employee accepts the offer by performing the work is clear in the case law. *Scott v. J.F. Duthie & Co.*, 125 Wash. 470, 471, 216 Pac. 853 (1923) (employer bound by promise to give employee bonus when employee accepts the offer by performing); *Powell v. Republic Creosoting Co.*, 172 Wash. 155, 159-60, 19 P.2d 919 (1933) (employer’s practice of paying a year-end bonus created an implied contract for a bonus which the employee accepted and earned by working); *Simon v. Riblet Tramway Co.*, 8 Wn. App.

Med. Ctr. v. Dep't Soc. & Health Servs., 114 Wn.2d 572, 583-85, 790 P.2d 124 (1990).

The class members performance, or substantial performance by providing meritorious service in academic year 2008-09, constituted their necessary acceptance of and performance of the contract with the University. The University could not unilaterally withdraw the policy so as to deprive the faculty of the 2% merit increase for the 2009-2010 academic year. *Carlstrom, supra* (faculty pay raise could not be rescinded). The Court recently explained again that “[i]n the employment context, an employee who renders service in exchange for compensation has a vested right to receive such compensation.” *Navlet v. Port of Seattle*, 164 Wn.2d 818, 828 n. 5, 194 P.3d 221 (2008). Indeed, “a unilateral contract becomes enforceable and irrevocable ‘when performance has occurred in response to a promise.’” *Id.* at 848. The Court stated that “[a]n employer cannot expect to accept the benefit of continued service from its employees while reserving the right to not compensate those employees once it has received the full benefit of their service.” *Id.* at 848-49.

The *Navlet* court cited 1 *Corbin on Contracts* § 3.16, at 388 (1993) with approval, *id.* at 848, which states:

[A]n employer’s promise is usually made on condition that the employees remain in service for a stated period. In such cases ... it [is] unnecessary for the employee to give any notice of assent. It is

289, 292-94, 505 P.2d 1291 (1973), *rev. denied*, 82 Wn.2d 1004 (1973), *cert. denied*, 414 U.S. 975 (1973).

sufficient that the employee continues in the employment as expressly or impliedly requested....A unilateral contract exists when the period of service is substantially completed. Prior to that time the offer becomes irrevocable.

2 *Corbin on Contracts* § 6.2, at 217 (2005) noted that “although the bonus is not fully earned until the service had continued for the full time, after a substantial part of the service has been rendered the offer of the bonus cannot be withdrawn without a breach of contract.”

Washington recognizes the doctrine of substantial performance in contract law. *Barr v. Day*, 124 Wn.2d 318, 329, 879 P.2d 912 (1994); *Taylor v. Shigaki*, 84 Wn. App. 723, 930 P.2d 340 (1997) (client may not avoid paying contingent fee by terminating lawyer once that lawyer has substantially performed contract).

It is important for this Court in lean budget times when state and local government employees' employment contracts are impacted to reaffirm that the foregoing principles apply.

A second issue for review here is the preclusive effect of the court's decision in *Storti I*. Under res judicata principles, the University is precluded from making the arguments it now advances on the Faculty Salary Policy. Under that doctrine, issues resolved in prior litigation carry preclusive effect in subsequent litigation. That doctrine requires a concurrence of identity between the cases as to (1) subject matter, (2) cause of action, (3) persons and parties, and

(4) the quality of the persons or person for or against whom the claim is made. *Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 222 P.3d 791 (2009). Those principles apply here, even though *Storti I* was resolved on summary judgment and later settled. *Estate of Black*, 153 Wn.2d 152, 170, 102 P.3d 796 (2004) (res judicata applies to issues resolved on summary judgment).

The present case qualifies on all of the res judicata grounds — a summary judgment was entered on liability, the case involves the same subject matter (the University's unilateral contract in only the year of the breach is different), and it involves the very same parties. In fact, in the earlier *Storti I* case, Judge Yu determined that the Faculty Salary Policy created a contract between the University and the faculty, and rejected the University's argument that the re-evaluation provision in Executive Order 64 was an express reservation of any right on the University's part to walk away from its contractual obligation to the faculty in the face of inadequate legislative appropriations. As indicated *supra*, in adopting the Faculty Salary Policy, the University made an express determination that the 2% increase policy would persist at the beginning of each academic year, even in times of inadequate funding by the Legislature and even if other fiscal choices such as layoffs were required. The trial court erred in allowing the University to relitigate the very same issues it lost in *Storti I*.

The two issues posed in the class's appeal merit direct review by this Court. RAP 4.2(a)(4). This Court has no fixed guidelines as to when a case

involves an issue of substantial public importance. But this Court has granted direct review in cases involving challenges to State collection of revenues, *State ex. Rel Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 88 P.3d 375 (2004) and cases challenging fiscal initiative measures *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000) (Initiative 695 on car tab fees); *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001) (Initiative 722 on tax limitations).

This case involves public employees and a major State institution, the University of Washington. The decision also has significant potential expenditure implications. This Court granted direct review in similar expenditure cases. *See, e.g., Carlstrom, supra* (dispute between community college and teachers union over cancelling of contractual raises after the Governor declared a fiscal emergency); *Caritas Services, Inc. v. Dep't of Soc. & Health Servs.*, 123 Wn.2d 391, 869 P.2d 28 (1994) (impairment of existing nursing home contracts by subsequent legislative action); *Washington State Farm Bureau Federation v. Gregoire*, 162 Wn.2d 284, 174 P.3d 1174 (2007) (expenditure limits); *Federal Way School Dist. No. 210 v. State*, 167 Wn.2d 514, 219 P.3d 941 (2009) (challenge to funding formula under Basic Education Act). Thus, this Court has found RAP 4.2(a)(4) applicable in cases involving significant fiscal implications to State and local government, whether those implications involve revenues or expenditures.

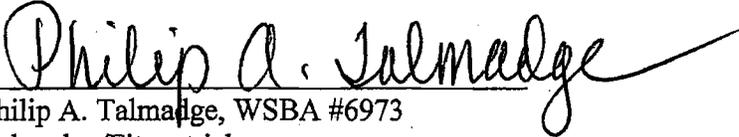
This is a Supreme Court case. Direct review under RAP 4.2(a)(4) is appropriate.

D. CONCLUSION

This case presents two significant issues for this Court's consideration under RAP 4.2(a). Both issues involve a major State institution and public employment contracts, and carry significant fiscal implications. The principles at issue here have implications for other public employment contracts. Direct review under RAP 4.2(a)(4) is appropriate in this significant public case because, in the absence of direct review, a case with such serious fiscal implications could languish in the Court of Appeals, leaving open and persistent questions about the viability of the State budget. This Court will ultimately be presented with the issues in this case in any event.

DATED this 5th day of August, 2011.

Respectfully submitted,


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APPENDIX

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, August 05, 2011 12:03 PM
To: 'Paula Chapler'
Subject: RE: Duane Storti, et al. v. University of Washington, Cause No. 86310-5

The appendix is too large to send via email. The allowed page amount is 25 pages. Please send the appendix by messenger or by mail. I have printed the Pleading. Rec. 8-5-11.

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Paula Chapler [<mailto:paula@tal-fitzlaw.com>]
Sent: Friday, August 05, 2011 11:58 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: Duane Storti, et al. v. University of Washington, Cause No. 86310-5

Per Mr. Talmadge's request, please see the attached Statement of Grounds for Direct Review for filing in the following case:

Case Name: Duane Storti, et al. v. University of Washington
Cause No. 86310-5
Attorney: Philip A. Talmadge, WSBA #6973
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Sincerely,

Paula Chapler
Legal Assistant
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APPENDIX

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BY RONALD R. CARPENTER
OLENA

APPENDIX A

and chairs are directed to study the whole record of candidates. To warrant recommendation for the granting of tenure or for promotion in the professorial ranks, a candidate must have shown outstanding ability in teaching or research, an ability of such an order as to command obvious respect from colleagues and from professionals at other universities; and substantial contribution in other phases. The qualifications of teaching and research must remain unequivocally the central functions of the faculty, but administrative and other internal and extramural professional services must also be recognized.

The factors with reference to the granting of tenure or for promotion thus far mentioned have to do with the qualifications of the candidate as an individual and may be regarded as the intrinsic factors. Consideration must also be given to the way in which the candidate will fit into the present and foreseeable future of the department. Does there appear to be a place for a candidate with these special interests? Will a given candidate help to bring the department into balance or throw it out of balance? It does happen that individuals whose performance would otherwise warrant the granting of tenure should not, and cannot, become tenured here because the special nature of staff requirements in the department makes it impractical.

Executive Order No. 45 of the President, June 1, 1972 (formerly University Memorandum No. 70, June 15, 1964); revised March 21, 1978; April 20, 1979.

Footnote #2: Faculty Salary Policy

The fundamental purpose of the University of Washington Faculty Salary Policy is to allow the University to recruit and retain the best faculty. To accomplish these two objectives, the faculty must have confidence that their continuing and productive contributions to the goals of their units and to the University's missions of teaching, research, and service will be rewarded throughout their careers. To compete for the best faculty, the University must be competitive with its peers. To retain the best faculty requires a similarly competitive approach. Therefore, the University places as one of its highest priorities rewarding faculty who perform to the highest standards and who continue to do so throughout their appointments at the University. This new policy is designed to provide for a predictable and continuing salary progression for meritorious faculty.

Salary funds must be used to attract, retain, and reward those faculty whose continuing performance is outstanding, while recognizing that disciplinary variations exist in the academic marketplace. Accordingly, the University's Salary Policy must allow for differential allocations among units. This provides the necessary flexibility to address the market gaps that develop between UW units and their recognized peers, acknowledges existing and future differentials in unit performance and contribution, and also recognizes that differing funding sources and reward structures exist among schools and colleges. The policy must ensure that equity considerations and compression are also addressed as needed.

The University's Salary Policy is founded upon the principle that individual salary decisions must be based on merit as assessed by a performance review conducted by faculty and administrative colleagues. Salary adjustments for performance and retention, as well as salary awards stemming from differential unit performance and marketplace gaps, are based upon a consultative process of faculty and administrative evaluation. Merit/performance evaluations are unit-based and reward the faculty for their contributions to local units as well as to the University's goals.

Allocation Procedure. Resources from both external and internal sources are used to fund faculty salaries. The Faculty Salary Policy anticipates new resources being made available from the Legislature, including legislative allocations for faculty salary increases and special legislative allocations for recruitment and retention, or through funds from tuition increases. Funds centrally recaptured from faculty turnover, grant,

EXHIBIT B

contract, and clinical funds available to individual units, and other internal resources which the Provost might identify are also used to support the plan.

Prior to the beginning of each biennium, the Provost will meet with the Board of Deans, the Faculty Senate Planning and Budget Committee, and the University Budget Committee to formulate a recommendation for a salary distribution plan. After consultation with the above groups, the Provost shall make a recommendation to the President for faculty salary allocations. The President shall decide faculty salary allocations for the biennium, and this decision shall be reported to the Faculty Senate and to the University community more broadly.

Allocation Categories. Consistent with the stated objectives, the first priority shall be to support regular merit and promotion awards to current faculty. Further, each biennium the minimum salaries by rank will be reviewed and, if adjusted, support will be provided to ensure those minimum levels are achieved. Other funds, as available, may be allotted among the following faculty salary+ adjustments:

1. Additional merit to all faculty;
2. Differential distributions by unit to correct salary gaps created by changing disciplinary markets or assessments of unit quality;
3. Recruitment and retention;
4. System wide adjustments to raise the salaries of all meritorious faculty

The University commits to support salary adjustments based on performance evaluations for those faculty deemed meritorious after a systematic review by faculty colleagues, department or unit head, Dean, and Provost. In order for these performance evaluations and merit salary recommendations to be meaningful, they must be done systematically and over an appropriate length of time to be able to make true quality assessments about performance and progress, considering the cumulative record of faculty.

All faculty shall be evaluated annually for merit and for progress towards reappointment, promotion and/or tenure, as appropriate. A faculty member who is deemed to be meritorious in performance shall be awarded a regular 2% merit salary increase at the beginning of the following academic year. Higher levels of performance shall be recognized by higher levels of salary increases as permitted by available funding.

Any faculty member whose performance is not deemed meritorious shall be informed by the Chair/Dean of the reasons. If deemed meritorious in the next year's review, the faculty member shall receive a regular 2% merit increase at the beginning of the following academic year. A departmental advisory committee, appointed consistent with Section 24-55H of the Faculty Code, will consider the development needs of faculty members not receiving regular merit salary increases for two consecutive years.

Promotion. In addition to regular merit salary allocations, each faculty member who is promoted in rank shall be awarded a 7.5% promotion salary increase beginning on the date the promotion is effective.

Unit Adjustments. Additional salary funds may be allocated by the Provost to colleges and schools at any time during the biennium, after appropriate consultations with the Faculty Senate Planning and Budgeting Committee, to address differentials occurring in the academic labor markets and to reflect assessments of the quality, standing, and contributions of units to College, School, and University goals. Unless specifically allocated by the Provost for a particular unit or purpose, the Deans shall consult with their elected faculty councils before distributing any additional salary increase funds among their constituent units. The procedures of Section 24-55 of the Faculty Code will be followed in distributing funds allocated to adjust faculty salaries based on merit.

Retention Adjustments With approval from the Provost, college-administered or University funds may be used to adjust faculty salaries as a means to retain faculty members at the University of Washington either at the time of merit reviews or at other times as necessary throughout the academic year. Assessments of a faculty member's quality and unit contribution are essential elements in decisions to make retention adjustments. Consultative processes to recommend retention adjustments shall be established at the unit level following the procedures set forth in Section 24-71 of the Faculty Code.

Funding Cautions. This Faculty Salary Policy is based upon an underlying principle that new funds from legislative appropriations are required to keep the salary system in equilibrium. Career advancement can be rewarded and the current level of faculty positions sustained only if new funds are provided. Without the infusion of new money from the Legislature into the salary base, career advancement can only be rewarded at the expense of the size of the University faculty. Without the influx of new money or in the event of decreased State support, a reevaluation of this Faculty Salary Policy may prove necessary

Executive Order No. 64 of the President, January 7, 2000.



APPENDIX B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DUANE STORTI, and a class of similarly
situated individuals,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

No. 04-2-16973-9 SEA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the undersigned judge on cross motions for summary judgment. Plaintiff filed a Motion for Summary Judgment re: University's Duty to Provide a 2% Merit Salary Increase in the 2002-03 Academic Year and Defendant filed a Motion for Partial Summary Judgment dismissing claims asserted as part of Plaintiff's contract claim. The court reviewed the following:

- Plaintiffs' Second Amended Complaint;
- Plaintiffs' Motion for Partial Summary Judgment re: University's Duty to Provide 2% Merit Salary Increase in the 2002-03 academic year;
- Stephen Festor's December 20, 2004 declaration and its attached exhibits;
- Stephen Festor's January 21, 2005 declaration and its attached exhibits;

Judge Mary I. Yu
King County Superior Court
516 Third Avenue
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- 1 • Stephen Festor's March 16, 2005 declaration and its attached exhibits;
- 2 • Stephen Festor's September 23, 2005 declaration and its attached exhibits;
- 3 • Excerpts from University Handbook;
- 4 • Brief of Plaintiff Class in Opposition to UW's Motion for Summary Judgment;
- 5 • Stephen Strong's October 10, 2005 declaration and its attached exhibits;
- 6 • Excerpts from University Handbook (Volume II);
- 7 • Plaintiffs' Reply Brief on Summary Judgment;
- 8 • Stephen Festor's October 17, 2005 declaration and its attached exhibits;
- 9 • Defendant's Motion for Partial Summary Judgment;
- 10 • Declaration of David B. Robbins and its attached exhibits;
- 11 • Declaration of Gerry Philipsen;
- 12 • Declaration of Bradley Holt;
- 13 • Declaration of Sandra Silberstein and its attached exhibits;
- 14 • Declaration of Steven Olswang;
- 15 • Declaration of Michael Madden and its attached exhibits;
- 16 • Memorandum in Opposition to Plaintiff's Motion for Summary Judgment;
- 17 • Declaration of Richard L. McCormick;
- 18 • Second Declaration of David B. Robbins and its attached exhibits;
- 19 • Defendants' Reply Memorandum in Support of Motion for Summary Judgment;

20 and heard oral argument on October 21, 2005.

21 Decision and Order

22 After considering the pleadings and argument presented by the parties, the court finds
23 that there are no material issues of fact and that the court can decide the issues presented as a
24 matter of law. Summary judgment in a contract dispute is appropriate where the terms of a
25 written contract are unambiguous or where reasonable minds could reach only one conclusion
26 from all of the evidence presented. Therefore, for the following reasons,

27 IT IS HEREBY ORDERED that Plaintiff's Motion IS GRANTED and Defendant's
28 Motion IS DENIED.

29 The University of Washington's ("the University's") Faculty Salary Policy is contained
in the Faculty Handbook §§24-70 and 24-71, and Executive Order 64. Plaintiff claims that the
Faculty Handbook constitutes the employment contract between the University and its faculty.

1 The University does not dispute this claim for summary judgment purposes and indeed argued
2 that principles of contract interpretation should apply (*see* Memorandum in Opposition to
3 Plaintiff's Motion for Summary Judgment at p.6).
4

5 The Faculty Salary Policy outlines the University's policy on faculty salary pay raises.
6 The Faculty Salary Policy was the result of extensive negotiations between the University
7 Administration and the faculty represented by the Faculty Senate. The issue presented on
8 summary judgment is whether the Faculty Salary Policy regarding merit salary increases
9 constitutes a contractual obligation for the University in the year 2002-03.¹
10

11 A preliminary question is whether the court should consider extrinsic evidence in order to
12 interpret the contract. Both parties offered such evidence to support their respective
13 interpretations.² While the contemporaneous material submitted by Plaintiff supports the court
14 finding that the parties intended to bind themselves to funding a 2% meritorious salary increase,
15 the court concludes that it is not necessary to consider this extrinsic evidence since the intent of
16 the parties is ascertainable by reading the plain language of the agreement. *Hearst*
17 *Communications v. Seattle Time Co.*, 154 Wn.2d 493 (2005).
18
19

20 The Faculty Handbook outlines principles and procedures for implementing promotion,
21 merit based salary, and tenure considerations. It also discusses the purpose of the Faculty Salary
22 Policy which is to "recruit and retain the best faculty" by rewarding faculty based on
23 performance. "This new policy is designed to provide for a predictable and continuing salary
24

25
26 ¹ The University provided at least 2% salary increases to meritorious faculty in 2000-01, 2001-02, and 2003-04. The
only year in question is 2002-03.

27 ² The Plaintiff offered extensive contemporaneous material such as minutes, e-mails, and hard copy
28 correspondence. The Defendant offered *post hoc* testimony of individuals who were directly involved in the
development of the salary policy.
29

1 progression for meritorious faculty.” §24-57, at p.10. The policy goes on to describe allocation
2 categories and prioritizes the salary distribution plan. The first priority is to support regular
3 merit and promotion awards to current faculty. *Id.*, at p. 11. It further states that all meritorious
4 faculty shall receive a 2% merit salary increase:
5

6 All faculty shall be evaluated annually for merit and for progress towards reappointment,
7 promotion and/or tenure, as appropriate. A faculty member who is deemed to be
8 meritorious in performance shall be awarded a regular 2% merit salary increase at the
9 beginning of the following academic year. Higher levels of performance shall be
10 recognized by higher levels of salary increases as permitted by available funding.

11 *Id.*, at p.11-12.

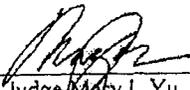
12 The Faculty Salary Policy states that a “salary increase . . . shall be granted to provide an
13 initial minimum equal-percentage salary increase to all faculty following a successful merit
14 review.” §24-70.B.1, at p. 13. Section 24-71.A.1 states that the University President “shall each
15 year make available funds to provide an initial minimum equal percentage salary increase to all
16 faculty deemed meritorious . . .” Executive Order 64, incorporated by reference into the Faculty
17 Salary Policy, states an express commitment by the University to support a salary adjustment
18 based on performance evaluations for those faculty deemed meritorious; that “[a] faculty
19 member who is deemed to be meritorious in performance shall be awarded a regular 2% merit
20 salary increase at the beginning of the following academic year.”

21 After reviewing all of the relevant portions of the Faculty Salary Policy, the court
22 concludes that the plain language creates a mandatory duty that requires the University to
23 provide meritorious faculty an annual merit increase of at least 2%. The court cannot find any
24 language that makes the merit salary increase contingent on funding.
25
26
27

1 must mean that if funding became an issue, the parties would subject the Faculty Salary Policy to
2 further evaluation or review. It does not say that the Faculty Salary Policy will be rescinded,
3 cancelled, or repealed and this court cannot transpose such a meaning to the word
4 "reevaluation." One might assume that reevaluation would require a re-opening of discussions
5 with the Faculty Senate and resubmitting the Salary Policy for review and consideration by all of
6 the stakeholders. However, the court need not reach the question of what process would have
7 been utilized to repeal, evaluate, or modify the Faculty Salary Policy. The Faculty Salary
8 Policy's plain language creates a mandatory duty that requires the University to provide
9 meritorious faculty an annual 2% merit salary increase in the year 2002-03.
10

11
12 In regard to Defendant's Motion for Partial Summary Judgment, the court denies the
13 Motion in its entirety. For the above stated reasons, the court denies Defendant's Motion to
14 dismiss plaintiff's contract claims. The court also rejects Defendant's assertions that the court
15 does not have jurisdiction to consider Plaintiff's claims. The court has original jurisdiction over
16 this contract dispute in which the relief sought is monetary damages. Moreover, the University
17 rejected Plaintiff's attempts to adjudicate the dispute on the basis that the adjudication process of
18 the University was "not the proper forum" to review the faculty salary issue.
19

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21 IT IS SO ORDERED this 25th day of October, 2005.

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24 _____
25 Judge Mary I. Yu
26 KING COUNTY SUPERIOR COURT
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The Honorable Mary Yu

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DUANE STORTI and a class of similarly
situated individuals,

Plaintiffs,

vs.

UNIVERSITY OF WASHINGTON,

Defendant.

NO. 04-2-16973-9 SEA

CLASS ACTION SETTLEMENT
AGREEMENT

CLASS ACTION SETTLEMENT
AGREEMENT

LAW OFFICES
BENNETT BIGELOW & LEEDOM, P.S.
1700 Seventh Avenue, Suite 1900
Seattle, Washington 98101
T: (206) 622-5511 / F: (206) 622-8986

APPENDIX -
000353

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1 I. INTRODUCTION AND SUMMARY OF PROCEEDINGS

2 1. This Settlement Agreement ("Agreement") is made pursuant to Civil
3 Rule 2(a) and Civil Rule 23(e) to settle all aspects of the class action in *Storti v. University*
4 *of Washington*, King Cty. No. 04-2-16973-9 SEA.

5 2. This Agreement is for settlement purposes only. The Agreement shall not
6 constitute, be construed as, or be admissible in evidence in this Action or any other action as an
7 admission of the validity of any claim or any fact alleged by Plaintiff or the validity of any fact
8 or defense asserted against Plaintiff, except for the purpose of enforcing this Agreement.

9 3. On July 14, 2004, Plaintiff filed a complaint under the Public Disclosure
10 Act, RCW Ch. 42.17. The Parties have agreed to separately settle Plaintiff's claim under
11 the Public Disclosure Act for \$50,000 and it is not part of the class action.

12 4. On October 14, 2004, Plaintiff filed an amended complaint seeking relief,
13 on behalf of himself and others similarly situated, for an alleged breach of contract based
14 on the failure of the University of Washington to award a minimum salary increase for the
15 2002-2003 academic year to faculty members deemed meritorious. The University
16 answered the complaint, denied all liability, and asserted that the case was not appropriate
17 for class treatment under Civil Rule 23. The University also raised various defenses that, if
18 successful, could have limited the size of the Class or the potential recovery to the Class.

19 5. On December 30, 2004, Plaintiff moved for class certification under Civil
20 Rule 23. The University opposed certification on several grounds, including that Plaintiff
21 lacked standing to sue and that he was not an adequate class representative. On April 13,
22 2005, the Court issued an order granting Plaintiff's motion for class certification and
23 certified the following class pursuant to CR 23(b)(2):

24 All University of Washington faculty who worked in the 2001-02 academic
25 year and the 2002-03 academic year, and who were not found
26 unmeritorious for their service in the 2001-02 academic year. The class
does not include Steven Olswang, Richard McCormick, and Lee Huntsman.

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Subsequently, the class definition has been amended twice by stipulated order to exclude certain University administrators from the Class.

6. The University sought discretionary review of the class certification order in the Court of Appeals. On September 30, 2005, the Court of Appeals denied discretionary review. The University could still, however, appeal the class certification decision after entry of a final judgment if the Action were not settled.

7. Following the Court of Appeals' denial of discretionary review, the parties made cross-motions for summary judgment on the claim that the University was contractually obligated to provide class members a 2% minimum salary increase for the 2002-2003 academic year. Plaintiff contended that the relevant sections of the University Handbook and Executive Order 64 unambiguously created a mandatory obligation on the part of the University to provide a two percent minimum annual salary increase to faculty members deemed meritorious under the University's faculty salary policy and that the University's failure to do so constituted a breach of contract. Plaintiff also argued that extrinsic evidence in the form of contemporaneous statements regarding the faculty salary policy's intent showed that the policy created a mandatory duty to provide the 2% merit raise. The University contended that the University Handbook and Executive Order 64 did not create an unqualified obligation, that the provisions in question allowed the University administration to withhold a merit increase in years when adequate state funding was not provided and that, in any event, the Handbook provisions and Executive Order did not limit the authority of the Regents with regard to budget matters. The University further contended that, to the extent the language of the Handbook or Executive Order were unclear on this point, evidence in the form of statements of former University administrators and Faculty Senate leaders should be considered in order to determine the intent of the faculty salary policy.

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8. On October 25, 2005, the Court entered an order granting summary judgment in favor of the Class on liability. The University would be able to appeal this order after entry of a final judgment.

9. Class Counsel conducted extensive and comprehensive discovery concerning the University's practices including, but not limited to, Public Disclosure Act requests, and formal and informal discovery resulting in production of numerous documents and electronic records. Discovery has included eligibility of faculty members for merit increases pursuant to the faculty salary policy and various alleged exclusions from eligibility, as well as the amount of compensation allegedly due to Class Members. Extensive further discovery would be required in order to prepare for trial, however.

10. Jury trial was set to begin on June 5, 2006 with respect to the amount of compensation due to the plaintiff-class. A number of significant issues remained to be resolved at or before trial, including whether persons holding certain faculty titles were entitled to receive minimum merit increases under the faculty salary policy; whether persons who received two percent or greater non-promotional increases for 2002-2003 are entitled to relief; whether persons who received eight percent or greater non-promotional salary increases over the intervening time are entitled to relief; the measure of additional compensation owed; and whether the Class was entitled to receive the present cash value of any salary lost as a result of the failure of the University to award a two percent merit increase for the 2002-2003 academic year.

11. The parties have engaged in extensive arms'-length settlement discussions with the assistance of a mediator. As a result of their exchange of information and through the course of protracted, arms'-length negotiations, the parties have concluded that voluntary resolution of this case is in all parties' interests. The parties recognize that to continue the litigation (including the time for appeals) would delay the resolution of the

1 matter for years, would create additional burdens and costs for both parties, and would
2 present uncertainty and risks for all parties.

3 12. Plaintiff, Class Counsel, and the University believe that the formal and
4 informal discovery conducted in the Action, in addition to the extensive investigation
5 conducted by Class Counsel, are sufficient to assess adequately the relative strengths and
6 weaknesses of the respective parties' positions on the merits of Plaintiffs' claims, and to
7 compromise the fundamental issues on a fair and equitable basis.

8 13. To avoid the uncertainty, risks, delays and burdens of further litigation, the
9 Parties have agreed to enter into this Settlement Agreement.

10 14. All provisions in this Settlement Agreement apply to all members of the
11 Class as defined in ¶22, unless an exception is specifically stated. Class Members are
12 entitled to relief only as specifically stated in this Settlement Agreement.

13 15. Class Counsel and the University's Board of Regents have approved this
14 Settlement Agreement. This Settlement Agreement remains subject to final approval by
15 the King County Superior Court.

16 16. In the event that final approval of this Settlement Agreement is not attained,
17 nothing herein shall be deemed to waive any party's positions, and in such event this
18 Settlement Agreement is null and void and neither this Settlement Agreement, any
19 pleadings submitted in support of the Agreement, nor the Court's preliminary or
20 provisionally final approval hereof shall be admissible in any court regarding any issue or
21 subject related to this case. In such event, all proceedings that were stayed in order to
22 pursue settlement will be reinstated, but with a new trial schedule and new hearing dates.

23 **II. DEFINITIONS**

24 As used in this Agreement and the attached Exhibits, in addition to any definitions
25 elsewhere in this Agreement, the following terms below, when capitalized, shall be defined as
26 follows:

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17. "Action" means the above-captioned action, *Duane Storti, et al. v. University of Washington*, No. 04-2-16973-9 SEA (King County Superior Court, WA).

18. "Agreement" or "Settlement Agreement" means this Settlement Agreement, including all Exhibits hereto.

19. "Allocation Date" means May 1, 2006 and is the date as of which the payments to Class Members required under ¶ 59 of this Agreement will be calculated.

20. "Approval Date" means the date upon which the Court signs an order determining that the Settlement Agreement is fair, adequate and reasonable to the Class as a whole under Civil Rule 23(e), after: (a) notice to members of the Class, (b) an opportunity to submit timely objections to the Agreement, and (c) a hearing on the fairness of the settlement.

21. "Class Counsel" refers to the law firm of Bendich, Stobaugh & Strong, P.C. and its attorneys, Stephen K. Strong and Stephen K. Festor.

22. "Claims Period" means the sixty day period for submissions of claims, as described in ¶ ¶ 76-81 of this Agreement.

23. "Class" or "Class Member" means members or a member of the University of Washington faculty who held one of the faculty titles listed on Exhibit A to this Settlement in the 2001-02 and 2002-03 academic years, and who were not found unmeritorious in the 2001-02 academic year.

24. "Court" means the Superior Court of Washington for King County, in which this Action is pending.

25. "Defendant" or "the University" means the University of Washington.

26. "Effective Date" means the date on which the salary adjustment required under ¶ 58 shall take effect and shall be the first day of the next month following the Final Settlement Date.

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27. "Fairness Hearing" means the settlement approval hearing to be conducted by the Court in connection with the determination of the fairness, adequacy, and reasonableness of this Settlement Agreement in accordance with Civil Rule 23(e). It is the intention of the Parties that the Fairness Hearing will be scheduled at the earliest date the Court is available that is more than 45 days after the Initial Notice Date (§29).

28. "Final Settlement Date" means the date on which all of the following have occurred: (a) entry of the Order and Judgment without material modification and (b) finality of the Order and Judgment by virtue of that order having become final and non-appealable through: (i) the expiration of all allowable appeal periods without an appeal having been filed; (ii) final affirmance of the Order and Judgment on appeal or final dismissal or denial of all such appeals, including petitions for review, rehearing, or certiorari; or (iii) final disposition of any proceedings, including any appeals, following any appeal from entry of the Order and Judgment. Notwithstanding the provisions of paragraph 50, in order to address circumstances resulting from lack of objections, objections, or appeals, Class Counsel and the University may, for the protection of the Parties, stipulate to an amendment of this definition.

29. "Initial Notice Date" means the date upon which the Notice of Proposed Class Action Settlement is first mailed to Class Members pursuant to §§ 67-68 of this Agreement.

30. "Notice of Proposed Class Action Settlement" or "Notice" means the Court-approved notice to Class Members of proposed settlement in the form attached as Exhibit B to this Agreement.

31. "Notice Period" means the 30-day period commencing from the Initial Notice Date.

32. "Order and Judgment" means the order to be entered by the Court, in a form that is mutually agreeable to the Parties, approving this Agreement as fair, adequate, and reasonable and in the best interests of the Class as a whole in accordance with Civil Rule 23(e) and making such other findings and determinations necessary and appropriate to effectuate the terms of this Agreement.

1 percent minimum merit salary increase to all Class Members for the 2002-2003 academic
2 year.

3 42. Contingent upon final approval of this Settlement Agreement by the Court
4 and performance of the undertakings specified herein, Plaintiff, Class Counsel, and Class
5 Members for themselves, their heirs, executors, community estates, legal representatives,
6 trustees, administrators predecessors, successors and assigns, hereby completely release
7 and forever discharge the University, and its Regents, officers, agents, attorneys,
8 employees, agencies and departments, both individually and in their representative
9 capacities from any and all demands, obligations, actions, causes of action, claims, rights,
10 damages, costs (including payment of attorney fees), expenses, compensation, and
11 liabilities of any kind that Plaintiff asserted or could have asserted (whether known or
12 unknown, choate or inchoate) on behalf of themselves and the Class Members in this
13 Action that arise from, relate to or underlie the facts, allegations, and/or claims articulated
14 in their complaints or that might be cognizable before any federal or state agency, or any
15 other court.

16 43. This release includes, but is not limited to, claims of breach of contract,
17 failure to abide by a promise of specific treatment, or failure to comply with a statute or
18 regulation related to the University's decision in May 2002 not to provide a two percent
19 merit salary increase to all faculty members subject to the faculty salary policy who were
20 not deemed unmeritorious, and extends to all claims of any nature related to that decision,
21 including declaratory or injunctive relief, lost salary or benefits, double damages,
22 penalties, interest, attorney fees and other costs.

23 **IV. GENERAL MATTERS**

24 **A. Cooperation of the Parties**

25 44. The Parties recognize that time is of the essence and they have a duty to
26 each other and the Class Members to expeditiously and diligently effectuate this

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Settlement Agreement. In addition to the other methods of cooperation discussed in the Settlement Agreement, the parties also agree (a) to cooperate in presenting this Settlement Agreement to the Court, (b) to support its provisions at the Preliminary Approval and Fairness Hearings, (c) to cooperate in drafting and reviewing Court orders, notices, forms, modifications, if any, required by the Court for approval and other documents required by or necessary to effectuate this Settlement Agreement, (d) to minimize expenses, and (e) to do all other acts and duties assigned to each party in this Settlement Agreement to effectuate and implement this Agreement. In the event of a disagreement with respect to the matters in this paragraph, the matters shall first be mediated, if possible with the mediator who assisted with settlement (with the cost to be split evenly between the parties), before bringing the matter to the Court.

B. Choice of Law

45. This Settlement Agreement shall be governed by and construed and enforced in accordance with Washington law.

C. Disposition of Documents

46. Within ninety (90) days after the close of the claim period described in ¶78, all documents covered by the CR 29 stipulation entered into by the Parties shall be returned to the producing party unless the parties mutually agree to some other disposition of the documents.

D. No Assignment

47. No provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Class Member, Party, or Class Counsel. No Class Member or Class Counsel may assign or otherwise convey any right to enforce any provision of this Settlement Agreement.

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E. Joint Drafting – No Construction Against Either Party

48. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any dispute concerning this Agreement, it shall not be construed against any of the Parties.

F. Timeliness

49. The Settlement Agreement includes certain commitments by the Parties and their counsel to take actions. Any procedural failure or error, such as a failure to act in a timely manner, does not preclude final approval and enforcement of the Settlement Agreement if the error can be corrected or made harmless.

G. Entire Agreement and its Intent

50. The Parties represent, warrant, and agree that no promise or agreement not expressed herein has been made to them, that this Agreement contains the entire agreement between the Parties, that the Agreement supersedes any and all prior agreements or understandings between the Parties with respect to the matters herein, and that the terms of this Agreement are contractual and not a mere recital; that in executing this Agreement, no Party is relying on any statement or representation made by the other Party, or any other Party’s agents or attorneys concerning the subject matter, basis or effect of this Agreement other than as set forth herein; and that each Party is relying solely on its own judgment and knowledge.

H. Liens

51. As further consideration for this settlement, the University shall not be liable to third parties or lien holders having any interest in the payments or proceeds, except to the extent the University is required by law to make such payment (e.g., a valid and effective wage assignment, child support lien, or garnishment). Any Class Member who receives a payment that should have been made to such a third party or lien holder by the University shall reimburse the University and hold the University harmless.

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I. Amendment

52. Up to the Initial Notice Date, the Parties may amend the Settlement Agreement, if the amendment(s) or supplements are in writing, approved by Class Counsel, the University and the Court. After the Initial Notice Date, the parties, with approval of the Court, may amend the Agreement in writing as approved by Class Counsel and the University where the amendment is clarifying and/or does not materially and substantially change the terms of the settlement.

J. Enforcement of Agreement

53. In the event any Party fails to perform under the Agreement, counsel for the other Party shall notify the other Party and may notify the Court. If a breach is not cured within a reasonable period of time, the other Party may apply to the Court for relief.

K. Miscellaneous Provisions

54. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

55. This Agreement, if approved by the Court, shall be binding upon and inure to the benefit of the Class, the Parties, and their representatives, heirs, successors, attorneys, and assigns.

56. The headings of the sections of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

57. Any notice, instruction, application for Court approval, or application for Court order sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, to the attention of their respective representatives identified below and

1 to other recipients as the Court may specify. As of the date of this Agreement, the respective
2 representatives are as follows:

3 **For the University:**

4 Bennett Bigelow & Leedom, P.S.
5 1700 Seventh Avenue, Suite 1900
6 Seattle, WA 98101
7 Attn: Michael Madden, Esq.

8 **For the Class:**

9 Bendich, Stobaugh & Strong, P.C.
10 900 Fourth Avenue, Suite 3800
11 Seattle, WA 98164
12 Attention: Stephen K. Strong, Esq.

13 **V. SETTLEMENT TERMS**

14 **A. Adjustment to Current Salary**

15 58. On the Effective Date, the University will increase by two percent the
16 University-Paid Salary Rate of each Class Member then employed in one of the faculty
17 positions listed in Exhibit A. The increase will be based upon a Class Member's
18 University-Paid Salary Rate on May 1, 2006.

19 **B. One-Time Cash Payment**

20 59. The University will allocate \$17.45 million to be paid to the Class in
21 settlement of all claims for back pay, interest and attorney fees or costs; \$3.49 million of
22 this amount shall be deemed to represent interest on back pay. In the event of an appeal
23 from an order approving this Settlement, within 30 days from the date the Notice of
24 Appeal is filed, the University shall establish a reserve sufficient to fund the \$17.45 million
25 One Time Payment to the Class. If the appeal is results in a decision overturning the
26 Settlement or a material modification of this Agreement, the \$17.45 million will be
retained by the University. If the appeal is unsuccessful, the \$17.45 million plus earnings
on that amount at the distributed earnings rate for the Invested Funds of the University for
that period will be distributed in accordance with the terms of this Agreement. After
deduction of fees and costs awarded to Class Counsel by the Court and the class

1 representative award to Plaintiff, the University will allocate the remaining funds (back
2 pay and interest) to Qualified Class Members pro rata based on their Total Earned
3 University-Paid Salary during the period from and after July 1, 2002 to the Allocation Date
4 as compared to the aggregate Total Earned University-Paid Salary paid to all Qualified
5 Class Members during the same period. The University may, at its option, make payment
6 of the back pay component to currently employed Qualified Class Member through its
7 payroll system or by separate payment. In either instance, the University will provide each
8 Qualified Class Member with a brief explanatory document showing how the payment was
9 calculated.

10 **C. Taxes and Retirement Contributions**

11 60. The One-Time Payment to the Class represents a compromise of claims for
12 back pay and interest. After deduction of attorneys fees, the University shall make required
13 withholdings from the back pay component of the One-Time Payment at the supplemental
14 rate for federal income tax purposes and shall also make deductions and contributions for
15 FICA, Medicare, pension and other deductions and contributions as required by applicable
16 law for the portion of the payment to Qualified Class Members designated as back pay.
17 The University shall also pay the employer contributions to the pension funds of Qualified
18 Class Members as required by applicable law. For tax and pension purposes, the back pay
19 component shall be treated as compensation earned in the pay period that includes the
20 Allocation Date. The University shall not withhold taxes or make contributions on the
21 interest portion of the payment. The University takes no position as to any taxes that may
22 be due. Each Class Member or other person receiving money pursuant to this Settlement
23 Agreement shall be solely liable for any income tax liability, if any exists. The University
24 will include the back pay component of the One-Time Payment on a W-2 Form for each
25 Qualified Class Member and will issue a Form 1099 for the interest component and
26

1 recognition award. Plaintiff and Class Members agree that they are solely responsible for
2 any employee tax payments that may be owed as the result of the Settlement Agreement.

3 **D. Class Representative Award**

4 61. From the One-Time Cash Payment, Plaintiff shall receive a class
5 representative award of \$15,000, to be paid by the University on or before the Effective
6 Date. This payment shall be reported on a Form 1099 and not subject to withholding.
7 Plaintiff's participation from 2004 through 2006 has included, but is not limited to,
8 commencement of this lawsuit, discovery matters (including answering interrogatories,
9 producing records, and deposition testimony), attendance at meetings, and assisting Class
10 Counsel. In connection with its consideration of whether to approve the settlement, the
11 Court may, without otherwise affecting this Settlement Agreement, modify the amount of
12 the class representative award if the Court determines that the award is unreasonable in the
13 context of the case.

14 **VI. ATTORNEY FEE & COSTS**

15 62. The Washington Supreme Court determined the method of computing
16 attorney fees in common fund class actions in a public employee benefit case, *Bowles v.*
17 *Department of Retirement Systems*, 121 Wn.2d 52 (1993). The Court said that when Class
18 Counsel's efforts have created a "common fund," counsel's fees are a percentage of the
19 fund because "the size of the recovery constitutes a suitable measure of the attorneys'
20 performance." *Id.* at 72. Division I of the Court of Appeals also recently said in a
21 common fund class action that "[u]nder the percentage of recovery approach, the attorneys
22 are to be compensated according to the size of the judgment recovered[.]" *Okeson v. City*
23 *of Seattle*, 130 Wn.App. 814, 828 (2005) (quoting *Bowles, supra*, 121 Wn.2d at 75). The
24 recovery obtained in a common fund includes the value of both monetary and prospective
25 relief obtained for the class. *Bowles, supra*, 121 Wn.2d at 70-71; *Lyzanchuk v. Yakima*
26 *Ranches*, 73 Wn.App. 1, 8 (1994). *Bowles* therefore adopted the percentage approach to

1 calculate common fund fees and it specifically rejected the lodestar method of calculating
2 fees in a common fund case. 121 Wn.2d at 73; accord *Okeson, supra*, 130 Wn.App. at 828.
3 The Supreme Court said a percentage-of-recovery approach to review common fund
4 attorney fees “furthers important policy interests[.]” *Id.* at 72 (emphasis added). The
5 approach set forth in *Bowles* is applied here.

6 63. In accordance with the *Bowles* criteria, a reasonable attorney fee is \$5.235
7 million based on the value conferred on class members as described in this Settlement
8 Agreement. The value includes the \$17.45 million One-Time Payment, plus the value of
9 benefits paid by the University estimated at 14% of the One-Time Payment, and the two
10 percent adjustment to current salaries, which is estimated to result in annual payments to
11 Class Members of approximately \$ 6.2 million including benefits. The \$5.235 million fee
12 for Class Counsel thus equals 30% of the \$17.45 million cash fund and is less than 10% of
13 the total value of relief when the value of the adjustment to current salary and the
14 accompanying retirement contributions by the University are considered. The fee is thus
15 within the range of reasonableness as set forth in *Bowles, supra*.

16 64. Class Counsel’s fee is also reasonable because Class Counsel worked on a
17 contingent-fee basis and assumed substantial risk in the representation of the plaintiffs.
18 Class Counsel believes they achieved excellent results for the Class, both in the monetary
19 fund and the future relief, which adjusts the current salaries of all Class Members currently
20 employed by the University in one of the faculty positions listed on Exhibit A upward by
21 2%. This adjustment to current salaries will benefit the Class not only in the year the
22 adjustment is made, but also in future years.

23 65. The attorney fee award will, with the remainder of the Settlement
24 Agreement, be subject to final approval by the Court. In connection with its consideration
25 of whether to approve the Settlement, the Court may modify the amount of the fee to Class
26 Counsel without rejecting the Settlement as a whole if the amount of the proposed fee is

1 found to be unreasonable in the context of the results obtained, risks, and overall
2 settlement.

3 66. The University shall pay Class Counsel the \$5.235 million fee out of the
4 One-Time Payment on or before the Effective Date, in exchange for a full release of all
5 claims against the University, including claims for attorneys fees and other costs. Class
6 Counsel will provide the University with a W-9 form at the time the Agreement is
7 executed and the University will report the attorneys fees payment on a 1099 form. Class
8 Counsel is responsible for any further reporting of the attorney fee payment required by
9 law.

10 **VII. NOTICE TO CLASS AND SETTLEMENT HEARING PROCEDURES**

11 **A. Preliminary Approval**

12 67. The Parties agree, as soon as practicable after execution of this Settlement
13 Agreement, to jointly move the Court to:

14 (a) Modify the class definition to conform to the definition in this
15 Agreement;

16 (b) Find preliminarily that this Settlement is a fair and reasonable
17 compromise of the claims;

18 (c) Order that Notice of the Settlement be provided to Class Members;

19 (d) Declare that the content of the proposed Notice and the mechanisms
20 of communicating such notice meet the requirements of Civil Rule 23(e) and the Due
21 Process Clause with respect to all class members;

22 (e) Schedule a date, at least ten days prior to the Fairness Hearing, by
23 which any Class Member who objects to the terms of this Settlement Agreement may file
24 written objections to this Settlement Agreement with the Clerk of the Court, and serve such
25 objections on Class Counsel and the University; and

26 (f) Schedule a date pursuant to Civil Rule 23(e) for a Fairness Hearing.

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B. Notice Provisions

68. Notice shall be provided to Class Members in the manner described herein. The Notice shall be in a form attached as Exhibit B to this Agreement, subject to approval or modification by the Court.

69. The University shall pay all costs of providing Notice to Class Members. The Parties shall otherwise bear their own costs in this regard.

70. The University is able to identify all Class Members through its personnel records and payroll systems. The Class includes 3,174 individuals, of whom approximately 2800 are employed by the University as of the date of this Agreement (currently employed Class Members). The University shall provide the Notice to currently employed Class Members by, at its option, electronic mail to each currently employed Class Member's University electronic mail address or delivering the Notice to each currently employed Class Member via campus mail. The University shall transmit the Notice to each Class Member not currently employed by first class mail sent to the Class Member's last known address as reflected in the University's personnel and payroll records, after updating the same through the USPS National Change of Address database. A list of mailings returned as undeliverable shall be provided to Class Counsel and the Parties shall thereafter confer regarding appropriate further measures to provide notice to such persons. The University and Class Counsel will also post the Notice on their websites.

C. Objections to Settlement

71. Unless the Court directs otherwise, all objections to the Settlement shall be submitted in writing to the Court, Class Counsel, and the University in a manner and at a time prescribed by the Court no less than 10 days in advance of the Fairness Hearing. Any objections not so submitted shall be waived. Anyone wishing to appear at the Fairness Hearing to object to the Settlement shall so specify in his or her written objection.

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VIII. SETTLEMENT ADMINISTRATION

A. Responsibility for Settlement Administration

72. The University has maintained records regarding the titles, and University—Paid Salaries of Class Members and has provided the same to Class Counsel. For purposes of this Agreement, such records are deemed accurate and shall be used to determine eligibility for and the amount of the relief provided herein.

73. The University, at its expense, shall be responsible for the costs of administering the settlement process. The University shall keep Class Counsel reasonably informed about the settlement administration process. At Class Counsel's request, the University shall, upon reasonable notice, provide Class Counsel with substantive information about settlement administration. Class Counsel shall bear their own costs and expenses incurred in relation to their monitoring and/or involvement in the settlement administration process.

74. The University shall maintain reasonable records of its administration of the settlement, including the Notice process, and determination and distribution of the relief provided hereunder. Such records shall be available to Class Counsel. In addition, the University shall, within 30 days after the Allocation Date and again within 30 days after the after the close of the Claims Period, provide Class Counsel with an electronic record detailing its calculation of the relief to each Class Member under this Agreement.

75. The University will establish a webtool or email account to receive and respond to inquiries from Class Members concerning the calculation of relief under this Agreement or payment issues. This mechanism or mechanisms shall be operational as of the Effective Date and until 60 days after the close of the Claims Period.

1 **B. Claim Forms and Claim Process for Class Members Not Employed by**
2 **Defendant on the Approval Date**

3 76. In order to receive a portion of the One-Time Payment, Class Members who
4 are not employed by the University on the Final Settlement Date in one of the positions
5 listed on Exhibit A must timely submit a claim to the University. The claim shall be in a
6 form approved by Class Counsel and the Court and must be received at the address
7 designated by the University within 60 days after claim forms are first mailed to Class
8 Members no longer employed by the University, as described in ¶ 76.

9 77. Within 30 days of the Final Settlement Date (¶28), the University shall
10 transmit the claim forms by first class mail addressed to the last known address of Class
11 Members who are not employed by the University on the Final Settlement Date (¶28). The
12 claim form will require these Class Members, or their agents, heirs or representatives, to
13 verify under penalty of perjury their name, address, Social Security Number, and/or other
14 identifying information and will instruct that, in order to become Qualified Class Members
15 and receive a share of the One-Time Payment, they must return the completed form to the
16 University within 60 days from the date of mailing, which date shall be specified in the
17 claim form.

18 78. The University shall post a claim form on its internet website and Class
19 Counsel shall post a claim form on its website. The claim form should be removed from
20 the websites 60 days after the claim form is first mailed to Class Members.

21 79. The University shall take the following actions to locate Class Members
22 whose claims forms are returned by the U.S. Postal Service as undeliverable. The
23 University shall utilize the services of one or more search firms or databases, such as the
24 National Change of Address Database (NCOA) or Accurint, and shall review emergency
25 contact information in the University's computerized records and in personnel files. If a
26 new address is discovered as a result of this process, the University shall mail a claim form
27 to the newly discovered address. The University shall also provide Class Counsel with the

1 identity of these Class Members within seven (7) days of a claim form being returned by
2 the U.S. Postal Service as undeliverable. The University shall have no further obligations
3 beyond those specified in this paragraph.

4 80. For Class Members who are not employed by the University on the
5 Approval Date, and to whom this claim form process applies, only those Class Members
6 (or their agents or heirs) who mail a claim form within 60 days from the date of the first
7 mailing of the claim forms shall qualify to receive a payment.

8 81. Claims must be postmarked by the specific date specified in the claim form
9 or the claim will be untimely and the claimant will not receive any monetary payment.

10 **C. Computation of Cash Payments to Qualified Claimants**

11 82. At the close of the claims period, the University shall compute each
12 Qualified Class Member's share of the fund in the manner required by ¶ 59 of this
13 Agreement.

14 83. The University shall maintain records available for review by Class
15 Members (or their agents or heirs) and Class Counsel showing how each component was
16 calculated. Any challenges to the calculations will be resolved by the University in its sole
17 discretion based on the express terms of the Agreement.

18 **D. Consistency Check and Disbursements to Qualified Class Members**

19 84. In determining the Qualified Class Members *pro rata* shares, the University
20 shall conduct one or more consistency checks to ensure the accuracy of its calculations.
21 The consistency checks shall include, at a minimum, two database programmers
22 independently applying the criteria in this Settlement Agreement to the University's data to
23 ensure the criteria are accurately applied and the result is substantially the same.

24 85. Disbursement to each Qualified Class Member of his/her *pro rata* share of
25 the fund shall occur within six months of the close of the Claim Period. For good cause,
26

1 agreed to by the Parties or determined by the Court, the University may without further
2 liability have up to four additional months to disburse the fund.

3 **E. Unclaimed Payments**

4 86. Qualified Class Members shall have no more than six (6) months from the
5 date of issuance under ¶ 85 to cash checks representing the One-Time Payment, except as
6 stated in paragraph 87. Thereafter, the University shall have no obligation to honor the
7 same.

8 87. In the event that a check mailed to a Qualified Class Member is returned to
9 the University as undeliverable due to an invalid address, the University will notify Class
10 Counsel. If, within a period of 30 days after such notification, Class Counsel provides the
11 University with a new address, the University will be obligated to re-mail the check. If the
12 check is once again returned as undeliverable, the University shall have no further
13 obligation to re-mail. If a re-mailed check is not cashed within ninety (90) days from the
14 date of the second mailing or the time set in ¶86, whichever is greater, these unclaimed
15 settlement funds shall be returned to and become the property of the University, except that
16 if a Class Member warrants within six months of the first mailing of the check that he did
17 not receive or lost his check, the University shall issue a new check upon receiving
18 satisfactory documentation from the Class Member and confirmation that the check has not
19 been cashed.

20 **IX. COURT'S AUTHORITY AND ENFORCEMENT**

21 88. This Settlement Agreement is a product of substantial negotiations and
22 compromises by the Parties, and thus the Settlement Agreement represents a unitary whole
23 and each and every term therein is an integral part of the entire Agreement. Pursuant to
24 Civil Rule 23, the Court determines whether the proposed settlement as a whole is fair and
25 reasonable and determines whether to approve or reject the entire Settlement Agreement.
26 The Court is not authorized to modify the terms of the negotiated settlement, except as

1 which the Parties agree, and to correct minor mistakes and minor technical errors, provided
2 the purposes and intent of the Agreement are fulfilled. Subsequent to the dismissal of
3 claims, the Court retains authority to compel performance of all requirements of the
4 Settlement Agreement that have not been effectuated. The Settlement Agreement is
5 effective for a period of three years after the Approval Date.

6 **X. DISMISSAL OF CLAIMS**

7 89. The claims in this Action described in ¶¶ 41-43 that were or could have
8 been brought in this Action shall be dismissed with prejudice on the Final Settlement Date.
9 If there is an appeal from an order approving the settlement by an objector, the parties will
10 request that the appeal be dismissed unless a sufficient bond is posted to mitigate the loss
11 to the class from delays caused by the appeal.

12 Stipulated and approved for entry:

13 THE UNIVERSITY OF WASHINGTON

14 By: Mark A. Emmert 3/16/06
15 Mark A. Emmert, President Date

16 BENNETT BIGELOW & LEEDOM, P.S.

17 By: Michael Madden 3/17/06
18 Michael Madden, WSBA #08747
19 David B. Robbins, WSBA # 13628
20 Special Assistant Attorneys General
Attorney for Defendant

21 BENDICH, STOBAUGH & STRONG, P.C.

22 By: Stephen K. Strong 3/17/06
23 Stephen K. Strong, WSBA #6299
24 Stephen K. Festor, WSBA #23147
25 Attorneys for Plaintiff Class and Duane Storti

26 w:\wdclient\1408\00049\mm609628.doc

EXHIBIT A

The faculty titles covered by this lawsuit are: Professor, Professor Without Tenure, Associate Professor, Associate Professor Without Tenure, Assistant Professor, Assistant Professor Without Tenure, Acting Assistant Professor Pending Ph.D., Research Professor, Research Associate Professor, Research Assistant Professor, Lecturer Full-Time, Senior Lecturer, Principal Lecturer, Artist in Residence, Senior Artist in Residence, and clinical professors holding multi-year promotional pathway appointments. All other faculty titles are not covered by this lawsuit.

EXHIBIT B

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DUANE STORTI and a class of similarly situated individuals,)	
)	NO. 04-2-16973-9 SEA
)	
Plaintiffs,)	NOTICE OF CLASS ACTION
)	SETTLEMENT
v.)	
)	
UNIVERSITY OF WASHINGTON,)	
)	
Defendant.)	

TO: UNIVERSITY OF WASHINGTON FACULTY CLASS MEMBERS DENIED A 2% MERIT RAISE IN THE 2002-03 ACADEMIC YEAR.

This notice pertains to your legal rights. Please read it carefully. In 2004 plaintiff Duane Storti brought a class action lawsuit against the University of Washington for failing to provide a 2% merit salary increase in the 2002-03 academic year. To resolve this lawsuit, the University has agreed to provide faculty class members the omitted 2% salary increase and pay \$17.45 million in back pay and interest. Class Counsel believes the proposed settlement provides substantial relief to the class and recommends that it be approved.

The Court will hold a hearing on May 12, 2006 at 1:30 p.m. to decide whether the parties' Settlement Agreement should be approved. The following sections summarize some of the key aspects of the Settlement Agreement:

RELIEF PROVIDED IN SETTLEMENT AGREEMENT

Class Members Will Receive a 2% Raise

The Settlement Agreement provides relief for both the past and the future. The future relief is a 2% salary increase for all class members who are employed by the University on in the month following final court approval of the settlement in one of the covered faculty titles. The estimated value of this increase for all class members for 2006-07 is \$6.2 million, including benefit contributions. The 2% increase to class members' base salaries will affect salaries in both the upcoming academic year and future years.

\$17.45 Million for Back Pay and Interest

Under the Settlement Agreement the University will pay the plaintiff class \$17.45 million

to compromise claims for omitting the 2% salary increase in the 2002-03 academic year and interest. After deduction of attorney fees to Class Counsel and a \$15,000 class representative award to representative plaintiff Duane Storti (these items are discussed below), the University will allocate the remaining funds to "Qualified Class Members" on a *pro rata* basis.

"Qualified Class Members" for the purpose of receiving a *pro rata* share of the cash settlement fund (back pay and interest) are those class members employed by the University on the effective date of the settlement and class members formerly employed by the University who submit a timely claim form. The purpose of the claim form is to verify each formerly employed class member's identity and address for the purpose of sending the formerly employed class member a check for his or her share.

The University will allocate the funds to Qualified Class Members *pro rata* based on their total earned University-Paid Salary during the period from and after July 1, 2002 to May 1, 2006, compared to the aggregate total earned University-Paid Salary to all Qualified Class Members during the same period. University-Paid Salary means the gross amount of monetary compensation paid to a class member by the University as regular salary for faculty duties. It does not include administrative supplements, temporary salary supplements, endowment supplements, additional salary to nine month faculty for four quarter duties, excess compensation or compensation paid directly to faculty members by entities other than the University.

After calculating each Qualified Class Member's *pro rata share*, the University will issue a check to each Qualified Class Member that represents each Qualified Class Member's share, less applicable tax and retirement deductions. The University will also make required employer contributions to Qualified Class Members' retirement plans based on the amount of back pay paid to the class member (not including the interest component of the check). The University will provide each Qualified Class Member a notice explaining how the payment was calculated.

Award to Representative Plaintiff Duane Storti

Plaintiff Duane Storti will receive \$15,000 for participation as class representative. His participation included, but is not limited to, investigating the claim, commencing this lawsuit, involvement in discovery matters (including answering interrogatories, searching for and producing documents, and deposition testimony), attending court proceedings, attending meetings, and assisting class counsel.

Class Counsel's Attorney Fees and Costs

Class Counsel's attorney fees and costs are based on the Washington Supreme Court decision in *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52 (1993), which provides for an attorney fee award based on a reasonable percentage of the value of the relief (both present and future) recovered in a class action brought by public employees. The value of the relief conferred on class members here includes the \$17.45 cash settlement, the 2% increase to current salaries, the additional compensation the class members will earn in the future due to the 2% increase in current base salaries, and an accompanying increase in retirement benefits. The Settlement Agreement provides Class Counsel \$5.235 million in attorney fees and costs for

prosecuting the lawsuit, which is 30% of the \$17.45 million cash settlement fund, but less than 10% of the total value of relief when considering the increase in retirement benefits and the present value of the 2% increase in base salaries that will continue in the future.

WHO IS A CLASS MEMBER?

A "class member" is a University of Washington faculty employee who: (1) held one of the covered faculty titles in the 2001-02 academic year, (2) was not found unmeritorious in the 2001-02 academic year, and (3) continued to hold one of the covered faculty titles in the 2002-03 academic year. The faculty titles covered by this lawsuit are: Professor, Professor Without Tenure, Associate Professor, Associate Professor Without Tenure, Assistant Professor, Assistant Professor Without Tenure, Acting Assistant Professor Pending Ph.D., Research Professor, Research Associate Professor, Research Assistant Professor, Lecturer Full-Time, Senior Lecturer, Principal Lecturer, Artist in Residence, Senior Artist in Residence, and clinical professors holding multi-year promotional pathway appointments. All other faculty titles are not covered by this lawsuit.

THE AGREEMENT, NOT THIS SUMMARY, DETERMINES YOUR RIGHTS

The foregoing is a brief summary of the lengthy Settlement Agreement. **The actual agreement determines your rights, not this summary.** Copies of the complete agreement may be obtained from the University's website (www.washington.edu/president/facultysalaryclassactionsettlement), class counsel's website (www.bs-s.com) and from the UW Office of the Provost.

FINAL APPROVAL PROCEDURE

The Settlement Agreement is a product of extensive negotiations and constitutes a compromise of disputed claims. Class counsel have concluded the terms and conditions of the settlement are fair and reasonable and in the best interest of the class. Class Counsel, the University's Board of Regents, and the University's attorneys have approved the Settlement Agreement and recommend it be approved by the Court, and Judge Mary Yu, the King County Superior Court Judge assigned to the case, has given tentative approval. The Settlement Agreement is subject to final approval by Judge Yu. By approval of the content of this notice, the Court expresses no final opinion on the merits of the case or the amount and terms of the settlement. A final hearing will be held in Judge Yu's courtroom, W-928 King County Courthouse, Third and James, 516 Third Avenue, Seattle, WA 98104, at 1:30 p.m., on May 12, 2006, to decide whether the Court should approve the settlement. You do not have to attend this hearing to receive the above-described benefits of the settlement. Final approval of the settlement will make its terms binding upon you.

If any class member has an objection to the proposed Settlement Agreement, the objection must be made **in writing** (**DO NOT TELEPHONE AN OBJECTION TO THE ATTORNEYS**) prior to 4:00 p.m. on May 2, 2006, by filing the original objection with the Clerk of the Court and by delivering copies of the written objection to the attorneys for both sides. Any statements in support of the proposed settlement should be submitted in the same manner as objections. Class Counsel and the University may respond to any objections or statements in support. You may speak at the hearing only if you state your intent to do so in the written

objection or statement. Any objections or statements in support must be submitted as set forth below. You may also ask questions of Class Counsel by mail or email (UWFaculty@bs-s.com).

File original objections or statements in support in writing, showing case name and number (*Storti v. University of Washington*, No. 04-2-16973-9 SEA) and include your name, address, and telephone number with:

**Clerk of King County Superior Court
6th Floor, King County Courthouse
516 Third Avenue
Seattle, WA 98104**

Provide copies of all objections to both the following offices by no later than 4:00 p.m. on May 2, 2006:

IF YOU DO NOT TIMELY FILE AN OBJECTION OR STATEMENT IN SUPPORT FOLLOWING THESE PROCEDURES, YOUR OBJECTION OR STATEMENT IN SUPPORT IS WAIVED. YOU MAY SPEAK AT THE HEARING ONLY IF YOU STATE YOUR INTENT TO DO SO IN YOUR OBJECTION OR STATEMENT.

Attorneys for Plaintiffs:

Stephen K. Strong
Stephen K. Festor
Bendich, Stobaugh & Strong, P.C.
900 Fourth Avenue, Suite 3800
Seattle, WA 98164

Attorneys for Defendants:

Michael Madden
David Robbins
Bennett Bigelow & Leedom, P.S.
1700 Seventh Avenue, Suite 1900
Seattle, WA 98101

Approved on March 17, 2006, by Judge Mary I. Yu, King County Superior Court.

\\Storti\Final-NoticeOfClassActionSettlement.doc

APPENDIX C

FILED
KING COUNTY, WASHINGTON

Honorable Mary Yu

MAY 12 2005

SUPERIOR COURT CLERK
ANGIE VILLALOVOS
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DUANE STORTI and a class of similarly)
situated individuals,)
)
Plaintiffs,)
)
v.)
)
UNIVERSITY OF WASHINGTON,)
)
Defendant.)

NO. 04-2-16973-9 SEA

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER APPROVING
SETTLEMENT AGREEMENT

This matter came before the Court on May 12, 2005, for final approval of the Settlement Agreement. The Court has considered the Settlement Agreement, the prior proceedings in this case, and the materials submitted by the parties concerning the Settlement Agreement. The Court makes the following findings of fact and conclusions of law and approves the settlement:

FINDINGS OF FACT

History of the Litigation

1. In July 2004 plaintiff Duane Storti filed a lawsuit against the defendant University of Washington (UW), alleging that it had violated the Public Disclosure Act in responding to Dr. Storti's requests.¹

¹ Dr. Storti and the University settled the PDA claim for \$50,000. The PDA claim, and the settlement of that claim, are not part of the class action settlement.

1 2. In October 2004, Dr. Storti filed an amended complaint that alleged the UW
2 breached its contract with its faculty by failing to provide a minimum 2% merit salary increase
3 in the 2002-03 academic year. In December 2004, Dr. Storti moved for class certification,
4 which the UW opposed.

5 3. In April 2005, the Court certified the class. The UW sought discretionary re-
6 view of the class certification in the Court of Appeals. In September 2005, the Court of Ap-
7 peals denied discretionary review.

8 4. The parties then submitted cross-motions for summary judgment on the claim
9 that the UW was contractually obligated to provide class members a 2% minimum salary in-
10 crease each year. In October 2005, the Court granted summary judgment in favor of the class
11 on liability.

12 5. Jury trial was set to begin in June 2006 with respect to the compensation due to
13 the class. A number of significant issues remained to be resolved at or before trial including,
14 but not limited to, whether persons holding certain faculty titles were entitled to receive mini-
15 mum merit increases under the faculty salary policy; whether persons who received two percent
16 or greater non-promotional increases for 2002-03 were entitled to relief; and the measure of
17 additional compensation owed. The UW could also, of course, appeal the earlier rulings.

18 6. Due to the risks and delays of further litigation, the parties engaged in extensive
19 settlement discussions with the assistance of a mediator. Prior to these discussions, class coun-
20 sel extensively and comprehensively investigated the claim under the Public Disclosure Act
21 and through discovery under the Civil Rules. The parties also exchanged information. Class
22 counsel's investigation and discovery resulted in the production of numerous documents and
23 electronic records relating to the eligibility of faculty members for merit increases under the
24 faculty salary policy, the various alleged exclusions from eligibility, as well as the amount of
25 compensation allegedly due to the class. The parties' discussions resulted in the Settlement
Agreement. The UW Regents approved the Settlement Agreement on March 16, 2006.

1 *The Terms of the Settlement Agreement*

2 7. The Settlement Agreement provides relief for both the past and the future. The
3 future relief is a 2% salary increase for all class members who are still employed by the Uni-
4 versity in one of the covered faculty titles. Agreement, ¶58. The 2% salary adjustment will
5 result in annual additional payments to class members of approximately \$6.2 million including
6 benefits and costs to the University. *Id.*, ¶63. The 2% increase in class members' base salaries
7 will therefore affect salaries in the upcoming academic year and future years.

8 8. Under the Settlement Agreement the University will also pay the plaintiff class
9 \$17.45 million for omitting the 2% salary increase in the 2002-03 academic year. Agreement,
10 ¶59. From this amount attorney fees and a \$15,000 class representative award to plaintiff
11 Duane Storti are deducted, and the University will allocate the remaining funds to "Qualified
12 Class Members" on a *pro rata* basis. *Id.*, ¶59.

13 9. "Qualified Class Members" for the purpose of receiving a *pro rata* share of the
14 cash settlement fund (back pay and interest) are class members employed by the University on
15 the date the Settlement Agreement is approved and class members formerly employed by the
16 University who submit a timely claim form. *Id.*, ¶36. The purpose of the claim form is to ver-
17 ify each formerly employed class member's identity and address for the purpose of sending the
18 formerly employed class member a check for his or her share.

19 10. The University will allocate the funds to Qualified Class Members *pro rata*
20 based on their total earned University-Paid Salary during the period from and after July 1, 2002
21 to the date the shares are computed, compared to the aggregate total earned University-Paid
22 Salary to all Qualified Class Members during the same period. *Id.*, ¶59. University-Paid Sal-
23 ary means the gross amount of monetary compensation paid to a class member by the Univer-
24 sity as regular salary for faculty duties. It does not include administrative supplements, tempo-
25 rary salary supplements, endowment supplements, additional salary to nine month faculty for
four quarter duties, or compensation paid directly to faculty members by entities other than the

1 University. *Id.*, ¶38.

2 11. After calculating each Qualified Class Member's *pro rata share*, the University
3 will issue a check to each Qualified Class Member that represents each Qualified Class Mem-
4 ber's share, less applicable tax and retirement deductions. *Id.*, ¶¶59-60, 82-87. The University
5 will also make appropriate employer contributions to the applicable retirement plans based on
6 the amount of back pay paid to the class member (not including the interest component of the
7 check). *Id.*, ¶60.

8 12. The Settlement Agreement here also provides a \$15,000 class representative
9 award to Duane Storti. This amount is consistent with and within the range in similar class ac-
10 tion cases. Dr. Storti's participation here has included, but was not limited to, investigating the
11 claim, filing an administrative claim, commencing both the PDA lawsuit and the class action,
12 discovery matters (including producing personal papers, testifying at a deposition, and review-
13 ing the UW's documents and discovery responses), attending meetings and hearings, and assist-
14 ing class counsel. The class representative award is fair and reasonable.

15 13. The Settlement Agreement provides a common fund fee for class counsel based
16 on the common fund percentage fee method in *Bowles v. Dep't of Retirement Systems*, 121
17 Wn.2d 52, 72 (1993). A fee of 20% to 30% of the common fund, including the value of future
18 relief, is the percentage range for common fund fees set by the Washington Supreme Court.

19 14. The Settlement Agreement, ¶64, provides for a \$5.235 million attorney fee
20 award, which equals 30% of the \$17.45 million cash fund and is less than 10% of the total
21 value of relief considering the value of the adjustment to current salary (estimated to be an an-
22 nual \$6.2 million benefit). The attorney fees are well within the range of reasonableness as set
23 forth in *Bowles*. The attorney fees are also consistent with other class action fee awards. The
24 fees are therefore reasonable as a percentage of the recovery and in light of the risks, complex-
25 ity and relief in this litigation.

1 *Preliminarily Approval, Notice to the Class, and Class Member Comments*

2 15. An order preliminarily approving the settlement was entered by the Court on
3 March 17, 2006. The Court directed that notice of the proposed settlement and the settlement
4 hearing be given to the class as provided in that order. The declaration submitted by UW Act-
5 ing Vice Provost Cheryl Cameron on March 31, 2006, shows that, as required by the Court or-
6 der, notices were e-mailed to 2,847 class members currently employed by the UW and notices
7 were air-mailed to 476 class members who are no longer employed by the UW. The notice and
8 settlement agreement were also posted on the UW's website and class counsel's website.

9 16. No class member objected to the settlement or any provision in the agreement.
10 Instead, class members have voiced their support for the settlement, including inquiries con-
11 cerning whether they are able to participate in the relief and what steps they possibly need to
12 participate in the relief.

13 17. The UW chapter of the American Association of University Professors, which
14 "was founded in 1918 and helped create the faculty senate and the system of tenure at UW,"
15 describes the lawsuit and settlement as a "historic victory that will shape governance at the
16 University of Washington and potentially other schools for decades to come":

17 In 2003, Associate Professor Duane Storti (Mechanical Engineering) sued the
18 University charging that President McCormick had violated the Faculty Code
19 when he refused to allocate funds for the 2% annual merit salary increase that is
20 guaranteed as part of University salary policy. On March 17, 2006 the Univer-
21 sity of Washington Regents agreed to settle the case. The settlement restores the
22 lost 2% raise and awards \$17.45 million in back pay to more than 3,000 faculty
23 members. *Most importantly, the settlement and the Oct 25, 2005 summary
24 judgment by Superior Court Judge Mary Yu establish that the Faculty Code
25 (University Handbook) is an enforceable contract and cannot be ignored just
because the administration finds it to be inconvenient. This is an historic victory
that will shape governance at the University of Washington and potentially
other schools for decades to come. (Emphasis added.)*

The results obtained for the class here are thus considered a "historic victory" by faculty mem-
bers affected by the action.

18. On April 26, 2006, the UW Faculty Senate also passed a "Resolution Regarding

1 Duane Storti Lawsuit Settlement. The Resolution states "the class-action lawsuit initiated by
2 Professor Duane Storti has been settled in a manner that restores the lost 2% increase and
3 validates the Faculty Code;" and "the Faculty Senate commends Duane Storti, Associate Pro-
4 fessor of Mechanical Engineering, for having the courage and commitment to defend the Fac-
5 ulty Code and the 2% salary policy[.]"

6 CONCLUSIONS OF LAW

7 1. The notice to the class of the settlement hearing satisfied due process and the
8 requirements of CR 23(e).

9 2. The Settlement Agreement is fair and reasonable.

10 3. The Settlement Agreement should be approved and each term therein should be
11 a binding order of the Court.

12 4. An individual who is not a class member, Susan Helf, filed a motion to intervene
13 so that she could make an objection to the Settlement Agreement. She is concerned that the
14 release and dismissal of claims in the Settlement Agreement (§§41-42) could apply to persons
15 such as her who are not class members. Helf has no standing to object to the settlement be-
16 cause she is not a class member. Helf's motion to intervene and proposed objection are also
17 mistaken because only parties and class members represented in this action are bound by the
18 settlement. Mary McGough appeared, but she is not a

19 ORDER
20 *Class member and her comment was not considered.* MSF
21 *MSF*

22 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered:

23 1. The Settlement Agreement is approved.

24 2. Each term in the Settlement Agreement is and shall be a binding order of the
25 Court.

3. This Court retains jurisdiction for further proceedings in this matter, as provided
in the Settlement Agreement.

4. Susan Helf's motion to intervene is denied.

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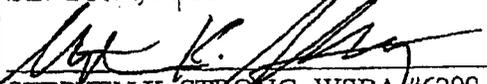
DATED: May 12, 2006.



MARY YU, Judge

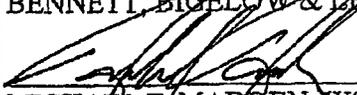
Presented by:

BENDICH, STOBAUGH & STRONG, P.C.


STEPHEN K. STRONG, WSBA #6299
STEPHEN K. FESTOR, WSBA #23147
Attorneys for Plaintiffs and Class

Approved for Entry:

BENNETT, BIGELOW & LEEDOM, P.S.


MICHAEL F. MADDEN, WSBA #8747
DAVID ROBBINS, WSBA #13628
Special Assistant Attorneys General
Attorneys for Defendant

APPENDIX D

Executive Order No. 29 of the President, March 31, 2009.

Partial Suspension of Executive Order No. 64

Purpose. The purpose of this Executive Order is to address the immediate financial circumstances facing the University by temporarily controlling faculty salary levels while reaffirming the University's commitment to ensuring the quality of the University through a competitively compensated faculty dedicated to academic excellence.

Need for Temporary Reevaluation of Faculty Salary Policy. Executive Order No. 64 recognized that in the event of decreased State support, a reevaluation of the Faculty Salary Policy could prove necessary. Unfortunately, we face that contingency to a degree that could not have been predicted even a year ago. The nation and the state of Washington are experiencing the effects of a global financial crisis of historic proportions. One consequence of this financial crisis is a drastic reduction in the State budget, which is virtually certain to result in significant reductions in State support for the University. The expected reductions in State support, combined with other economic forces, will result in cuts to programs, increased tuition, and reduced access for students, lay-offs and non-renewal of personnel, as well as limitations on the University's ability to increase salaries for broad classes of its employees. The cost of maintaining regular merit increases for the 2009–11 biennium would be even more damaging in the midst of broad and dramatic budget cuts across the institution.

Partial Suspension of Executive Order No. 64. In light of the economic circumstances facing the University, the following portions of Executive Order No. 64 must be and are immediately suspended:

1. The phrase "regular merit" in the first sentence of the subsection entitled *Allocation Categories*.
2. The sentence that reads, "A faculty member who is deemed to be meritorious in performance shall be awarded a regular 2% merit salary increase at the beginning of the following academic year."
3. The sentence that reads, "If deemed meritorious in the next year's review, the faculty member shall receive a regular 2% merit increase at the beginning of the following academic year."
4. The phrase, "In addition to regular merit salary allocations," in the sentence in the subsection entitled *Promotion*.

All other portions of Executive Order No. 64 remain in effect. This suspension shall expire at the conclusion of the 2009–11 biennium.

Reaffirmation of Principles and Commitment. Although the suspension of merit salary increases is a temporary imperative, it remains equally evident that regular merit increases, promotions, hiring, retention, and competitive compensation of faculty are critical to the long-term success of the University. University leadership remains steadfastly committed to the fundamental elements of Executive Order No. 64, and its principles and priorities are reaffirmed. As evidence of this commitment, the following steps, subject to State law or formal changes to University policy, will be taken to respect the principles of the salary policy in Sections 24-70 and 24-71 of the *Faculty Code* and the portions of Executive Order No. 64 that have not been suspended:

APPENDIX E

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DUANE STORTI, and a class of similarly)
situated individuals,)
)
 Plaintiffs,)
)
 v.)
)
 UNIVERSITY OF WASHINGTON,)
)
 Defendant.)

NO. 10-2-44086-1 SEA
~~PROPOSED~~ ORDER CERTIFYING
CLASS

This matter came before the Court on plaintiffs' motion for class certification. Having considered all the materials filed by plaintiffs and defendant, and the papers from Peter Nye, and the record in the case, the Court hereby finds and orders as follows:

1. Plaintiffs' complaint asserts that the University breached its employment contract with the University faculty by not providing a 2% merit-based salary increase for work performed in the 2008-09 academic year. Plaintiffs ask for declaratory relief regarding the University's contractual duties and monetary relief. Plaintiffs' claim is summarized in paragraph 39 of the complaint as follows:

The UW promised Duane Storti and other faculty members at the beginning of the 2008-09 year that they would receive a 2% raise in the next year (2009-10) if their service was meritorious in 2008-09. Storti and the other faculty members accepted the UW's unilateral contract offer by performing work and they had substantially performed the work expected in the offer when in April 2009 the UW suspended the Faculty Salary Policy that contained the promise. Because Storti and the other faculty members had substantially performed the work expected under the offer, the UW's suspension of the Faculty Salary Policy after most of the year had passed

1 does not affect the 2008-09 offer of a 2% raise in the 2009-10 fiscal year.
2 Accordingly, the UW breached its promise to Storti and other class members
3 by failing to provide them with a 2% raise in the 2009-10 fiscal year, and the
4 failure to provide this raise affects Storti and the other faculty members' base
5 pay in years they work after the 2009-10 fiscal year.

6 2. This claim is common to the class, and it involves a common question that
7 affects thousands of class members, *i.e.*, whether the University was contractually obligated to
8 pay its faculty for work performed in 2008-09 a merit-based 2% salary increase in the year
9 beginning July 1, 2009. Because the class includes thousands of faculty members, and each
10 class member's claim is relatively small, joinder of all class members is impracticable under
11 CR 23(a)(1).

12 3. The class also shares several common issues, including application of the faculty
13 salary policy and issues of *res judicata* and collateral estoppel.

14 4. There are thus questions common to the class as required under CR 23(a)(2).

15 5. Plaintiff Duane Storti's contract claim, summarized in paragraph 39 of the
16 complaint, arises from the same event that gives rise to all faculty members' claims. Plaintiff
17 Storti's claim and the class's claim are also based on the same legal theory, *i.e.*, plaintiffs allege
18 the University breached its contract with the University faculty. Plaintiff Storti's claim is thus
19 "typical" of the class's claim as required under CR 23(a)(3).

20 6. Duane Storti successfully represented the class members in *Storti I* and Storti's
21 counsel here in *Storti II* represented the class in *Storti I*. Storti's counsel are experienced class
22 action litigators who have successfully prosecuted many class action on behalf of employees, in
23 addition to their representation of the class in *Storti I*. Plaintiff Storti has no conflict of interest
24 with the class, and the lawsuit is not collusive. The requirements of CR 23(a)(4) are therefore
25 met.

26 7. Accordingly, the class claim here satisfies the requirements for a class action in
27 CR 23(a). For purposes of class certification, a class action claim must also satisfy at least one
of the requirements of CR23(b).

1 8. Plaintiff alleges that the University failed to perform a legal duty on grounds
2 applicable to the class. Plaintiffs seek declaratory relief concerning the University's
3 contractual duties to the class as a whole. Class certification is thus appropriate under CR
4 23(b)(2).

5 9. Class certification is also appropriate under (b)(2) because pay allegedly owed
6 to the class would be incidental to any declaratory relief, *i.e.*, the pay would flow directly from
7 any declaratory relief that the University had a contractual duty to provide the class a 2% raise
8 for work performed in 2008-09 at the beginning of the following year. Any pay due will
9 therefore be computed by a mechanical formula based on University records, as it was in
10 *Storti I.*

11 10. The class is defined as:

12 All University of Washington faculty who served in the 2008-09 academic year
13 and the 2009-10 academic year, and who were not found unmeritorious for their
14 service in the 2008-09 academic year.

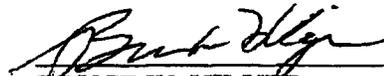
15 This class definition includes employees identifiable from University records. The class is
16 defined as the same as the class in *Storti I* except that the years are different. The class in
17 *Storti I* had over three thousand class members. Complaint ¶11; Answer ¶11. The class does
18 not include Peter Nye and the high-level University officials assisting in the defense of this
19 case. The defendant UW will identify these individuals.

20 11. The fact that some faculty members may oppose or not wish to benefit from the
21 relief sought by Professor Storti here does not preclude or impair this case from being a class
22 action. *Zimmer v. City of Seattle*, 19 Wn.App. 865, 870 (1978).

23 12. The University previously argued in *Storti I* that when the primary relief sought
24 is money damages it is necessary to provide class members notice and an opportunity to opt
25 out. And the University sought discretionary review on that point (and review was denied).
26 Complaint ¶12; Answer ¶12. Plaintiffs do not agree with the University, but to ensure that this
27 is not an issue in this action, they agree that if the University waits and after liability is

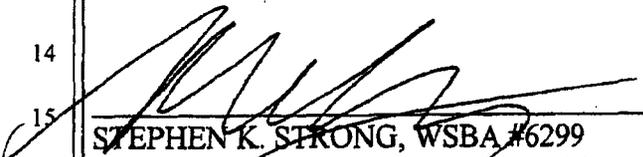
1 determined, the Court may direct that class members receive notice and an opportunity to opt
2 out under CR 23(d)(2), which states that "the court may make appropriate orders . . . requiring,
3 for the protection of the members of the class or otherwise for the fair conduct of the action,
4 that notice be given in such manner as the court may direct." For the protection of the
5 University, class members will not be allowed to opt out of a class defeat.

6 DATED this 23 day of June, 2011.

7
8 
9 BRUCE W. HILYER
Superior Court Judge

10
11 Presented by:

12 BENDICH, STOBAUGH & STRONG, P.C.

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14 
15 STEPHEN K. STRONG, WSBA #6299
16 DAVID F. STOBAUGH, WSBA #6376
17 STEPHEN K. FESTOR, WSBA #23147
Attorneys for Plaintiffs and the Class

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APPENDIX F

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FILED
KING COUNTY, WASHINGTON

JUN 24 2011

SUPERIOR COURT CLERK
BY DAVID J. ROBERTS
DEPUTY

THE HONORABLE BRUCE W. HILYER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DUANE STORTI, and a class of faculty
members,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

No. 10-2-44086-1 SEA

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

[CLERK'S ACTION REQUIRED]

This matter comes before the Court on Defendant's Motion for Summary Judgment ("Motion") and Plaintiffs' Motion for Partial Summary Judgment. The Court has reviewed the Motion; Declaration of Louis D. Peterson in Support of Defendant's Motion for Summary Judgment, and the Declarations of Mark A. Emmert and David Lovell attached thereto; Plaintiff's Response to UW's Motion for Summary Judgment; University's Reply in Support of Motion for Summary Judgment; Plaintiff's Motion for Partial Summary Judgment on Contract Claim; Declaration of Stephen Fester; Declaration of Duane Storti; Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment on Contract Claim; Plaintiff's Reply in Support of Motion for Summary Judgment on Contract Claim; and Declaration of

*Order Granting Defendant's Motion for Summary
Judgment and Denying Plaintiffs' Motion for Partial
Summary Judgment - 1*

ORIGINAL

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 Stephen Festor. The Court has heard oral argument and has also reviewed the record and the
2 other papers and pleadings filed herein. Being fully advised, it is hereby

3 ORDERED, ADJUDGED AND DECREED that

4
5 1. Plaintiff's Motion for Partial Summary Judgment on Contract Claim is
6 DENIED, and

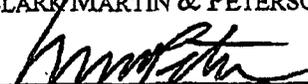
7 2. Defendant's Motion for Summary Judgment is GRANTED and this matter is
8 hereby DISMISSED WITH PREJUDICE.

9 3 THE COURT, HOWEVER IS NOT GRANTING
10 Dated this 24 day of June, 2011. JUDGMENT BASED
ON THE APP ARGUMENT
& CONCLUDED IT WAS
ORIGINAL JURISDICTION
HERE.

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13 
THE HONORABLE BRUCE W. HILYER

14 Presented By:

15 HILLIS CLARK MARTIN & PETERSON P.S.

16 By 

17 Louis D. Peterson, WSBA #5776
18 Mary E. Crego, WSBA #31593
19 Michael J. Ewart, WSBA #38655
20 1221 Second Avenue, Suite 500
21 Seattle, Washington 98101-2925
22 Tel: (206) 623-1745; Fax: (206) 623-7789
23 Email: ldp@hcmp.com; mec@hcmp.com;
24 mje@hcmp.com

25 Attorneys for Defendant University of Washington

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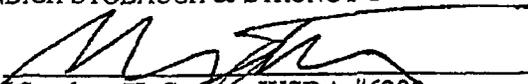
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Order Granting Defendant's Motion for Summary
Judgment and Denying Plaintiffs' Motion for Partial
Summary Judgment - 2

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
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1 ~~Notice of Presentation Waived;~~
2 Approved as to Form

3 BENDICH STOBAUGH & STRONG PC

4 By 

5 Stephen K. Strong, WSBA #6299

6 David F. Stobaugh, WSBA # 6376

7 Stephen K. Festor, WSBA # 23147

8 Bendich Stobaugh & Strong PC

9 701 5th Avenue, Suite 6550

10 Seattle, WA 98104-7097

11 Telephone: (206) 622-3536

12 Facsimile: (206) 622-5759

13 Email: skstrong@bs-s.com;

14 davidfstobaugh@bs-s.com

15 Attorneys for Plaintiff Duane Storti

16 ND: 4844-5940-0457v1

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*Order Granting Defendant's Motion for Summary
Judgment and Denying Plaintiffs' Motion for Partial
Summary Judgment - 3*

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Paula Chapler

From: OFFICE RECEPTIONIST, CLERK [SUPREME@COURTS.WA.GOV]
Sent: Friday, August 05, 2011 12:03 PM
To: Paula Chapler
Subject: RE: Duane Storti, et al. v. University of Washington, Cause No. 86310-5

The appendix is too large to send via email. The allowed page amount is 25 pages. Please send the appendix by messenger or by mail. I have printed the Pleading. Rec. 8-5-11.

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Paula Chapler [mailto:paula@tal-fitzlaw.com]
Sent: Friday, August 05, 2011 11:58 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: Duane Storti, et al. v. University of Washington, Cause No. 86310-5

Per Mr. Talmadge's request, please see the attached Statement of Grounds for Direct Review for filing in the following case:

Case Name: Duane Storti, et al. v. University of Washington
Cause No. 86310-5
Attorney: Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Sincerely,

Paula Chapler
Legal Assistant
Talmadge/Fitzpatrick

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SUPREME COURT
STATE OF WASHINGTON
2011 AUG -8 P 2:25
BY RONALD R. CARPENTER
CLERK