
From: Newman, Kendall (USACAE) [Kendall.Newman@usdoj.gov]
Sent: Wednesday, April 08, 2009 11:02 AM
To: Trinity, Frank; Abdal-Haqq, Irshad; Palella, Michael (USACAE)
Subject: FW: Emailing: SETTLEMENT AGREEMENT

Attachments: SETTLEMENT AGREEMENT.doc



SETTLEMENT
REEMENT.doc (57 kb)

For us to discuss their requested changes.

Ken

-----Original Message-----

From: Matthew G. Jacobs [mailto:mgj@sojllp.com]
Sent: Tuesday, April 07, 2009 6:26 PM
To: Newman, Kendall (USACAE)
Subject: Emailing: SETTLEMENT AGREEMENT

<<SETTLEMENT AGREEMENT.doc>> Ken, this should be it. As I state in the comments section, we will e-mail you some good course alternatives later.

I am available this evening and tomorrow morning to discuss. Thanks.
Matt.

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Settlement Agreement”) is entered into by and between the United States of America (“United States”), acting through the United States Attorney’s Office for the Eastern District of California, on behalf of the United States Corporation for National and Community Service, an agency of the United States Government (the “Corporation”) (hereafter collectively referred to as the “United States”); and St. HOPE Academy (“St. HOPE”), through its authorized representatives, Kevin Johnson, individually (“Johnson”), and Dana Gonzalez, individually (“Gonzalez”), through their authorized representatives. Hereinafter, the United States, St. HOPE, Johnson and Gonzalez are jointly referred to as “the Parties.”

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II. PREAMBLE

As a preamble to this Settlement Agreement, the Parties agree to the following:

A. AmeriCorps grant funds were awarded by the State of California to and administered by St. HOPE under grant award numbers 03AFHCA002Y11-F102, 03AFHY12-F102, and 06AFHY13-F102 (“AmeriCorps Grants”). Additionally, AmeriCorps members were entitled to Education Awards if they fulfilled their service requirements for St. HOPE pursuant to the terms of the grant requirements. The Education Awards and grants awarded to St. HOPE (collectively the “Grant Awards”) totaled \$847,673.00.

B. During the majority of the relevant time period herein, Johnson was the President and Chief Executive Officer of St. HOPE, and Gonzalez was the Executive Director of St. HOPE.

C. The United States contends that St. HOPE did not appropriately spend a portion of the Grant Awards pursuant to the terms of the grant requirements, and/or did not adequately document its expenditures of the Grant Awards.

D. By letters dated September 24, 2008, the Debarment and Suspension Official for the Corporation, notified St. HOPE, Johnson and Gonzalez that they were suspended from participation in Federal procurement and nonprocurement programs for a temporary period of time pending the completion of an investigation by the United States Attorney's Office, or the conclusion of any legal or debarment proceedings resulting from the investigation, of the alleged misuse of Federal funds provided in support of the AmeriCorps Grants.

E. By letter dated March 31, 2009, St. HOPE, Johnson and Gonzalez requested that the Debarment and Suspension Official of the Corporation immediately rescind the suspensions until they had been granted a name-clearing hearing.

F. This Settlement Agreement is not an admission of liability or fault by St. HOPE, Johnson or Gonzalez, nor a concession by the United States that its claims are not well founded. However, as acknowledged below and in the attached Stipulation for Judgment, St. HOPE acknowledges that it did not adequately document a portion of its expenditures of the Grant Awards.

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Comment [MGJ1]: Ken, I don't think you need that we're liable for repayment of the stipulated amount, since that's what the rest of the agreement says. We also don't have to agree that we owe the full settlement amount, but that's why we're settling; you say we owe more and we say we owe less.

Deleted: and is liable for repayment of the stipulated amount, plus interest.

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G To avoid the delay, uncertainty, inconvenience, and expense of further litigation, the Parties mutually desire to reach a full and final settlement of the Parties' claims with respect to the AmeriCorps Grants and Grant Awards and the related claims and investigation, pursuant to the Terms and Conditions set forth below.

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H Although issues of suspension and possible debarment are ordinarily addressed by the Corporation separately from resolution of any civil claims, at the request of St. HOPE, Johnson and Gonzalez for a global resolution of all matters related to the AmeriCorps Grants and Grant Awards, this Settlement Agreement also addresses the resolution of suspension issues and further proceedings, if any, related to debarment proceedings.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, terms, and obligations set forth in this Settlement Agreement, the Parties agree to settle this matter as follows:

III. TERMS AND CONDITIONS

1. In consideration of the obligations of the Parties set forth in this Settlement Agreement, St. HOPE agrees to pay the total sum of Four Hundred Twenty-Three Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$423,836.50) (the "Settlement Amount"). St. HOPE shall pay the Settlement Amount to the United States as follows:

a. An initial payment of Seventy-Three Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$73,836.50) (the "Initial Payment") by electronic funds transfer pursuant to written instructions to be provided by the United States

Attorney's Office for the Eastern District of California. St. HOPE agrees to make this electronic funds transfer within 5 business days of this Settlement Agreement being signed by all parties.

b. The Parties acknowledge that St. HOPE has played a significant role in the community and that Johnson believes that it will continue to do so. For that reason, Johnson has decided to assist St. HOPE in paying the settlement amount and agrees to pay Seventy-Two Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$72,836.50) of the Initial Payment by paying such amount to St. HOPE in time for St. HOPE to make the Initial Payment to the United States pursuant to the terms of this Settlement Agreement. Johnson and St. HOPE may enter into an agreement whereby St. HOPE agrees to repay Johnson when St. HOPE has the financial ability to do so while still meeting all of its other financial obligations.

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c. Gonzalez shall pay One Thousand Dollars (\$1,000.00) of the Initial Payment by paying such amount to St. HOPE in time for St. HOPE to make the Initial Payment to the United States pursuant to the terms of this Settlement Agreement.

d. St. HOPE shall enter into a stipulated judgment for the remainder of the Settlement Amount, Three Hundred and Fifty Thousand Dollars (\$350,000.00), plus 5% annual interest. Such amount shall be paid Thirty-Five Thousand Dollars (\$35,000.00) annually for ten years, each payment being due on or before April 15th of each year. The first payment pursuant to the Stipulated Judgment is due on or before April 15, 2010. The final payment shall be in the amount of Thirty-Five Thousand

Dollars (\$35,000.00), plus the interest due and owing on the stipulated judgment, and shall be due on or before April 15, 2019.

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2. Within 5 business days of this Settlement Agreement being signed by all parties, Johnson and Gonzalez shall register to take a course offered by Management Concepts either in person or on-line, titled "Managing Federal Grants and Cooperative Agreements for Recipients" (in person) or "Managing Federal Grants for Recipients" (on-line), and shall provide written proof to the Corporation, through its counsel, of having registered for the course. Johnson and Gonzalez agree to complete the course within 120 days of this Settlement Agreement being signed by all parties, and shall provide written verification under oath of having completed the course.

Comment [MGJ2]: We have found some good alternatives and will e-mail you them later this evening. Please consider them. Thanks.

3. The Corporation shall terminate the suspension of St. HOPE, Johnson and Gonzalez from participation in Federal procurement and nonprocurement programs upon all of the following:

- a. This Settlement Agreement having been signed by all parties;
- b. St. Hope having made the Initial Payment pursuant to the terms of Paragraph 1a-c above;
- c. St. HOPE having signed the Stipulated Judgment in accordance with Paragraph 1d above;
- d. Johnson and Gonzalez having made the payments in accordance with Paragraph 1b-c above; and
- e. Johnson and Gonzalez having provided verification of having registered for the course in accordance with Paragraph 2 above.

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4. The Corporation agrees not to institute debarment proceedings against St. HOPE with respect to the AmeriCorps Grants and Grant Awards so long as it complies with the terms of this Settlement Agreement. The Corporation also agrees not to institute debarment proceedings against Johnson and Gonzalez with respect to the AmeriCorps Grants and Grant Awards so long as they comply with their obligations under this Settlement Agreement, including the certification of course completion pursuant to Paragraph 2 above.

5. Once the Corporation has terminated the suspension against St. HOPE, Johnson and Gonzalez, nothing herein is intended as a prohibition against their applying for federal grants. However, St. HOPE agrees that it may be considered a high-risk grantee by the Corporation for a period of two years, until April 15, 2011. After April 15, 2010, and upon the request of St. HOPE and its submission of any supporting documents, the Corporation agrees to reconsider this high-risk designation to determine if it should be rescinded.

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6. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of St. HOPE, Johnson and Gonzalez in this Settlement Agreement, and conditioned upon the full payment by St. Hope of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) hereby releases St. HOPE and its current and former directors, officers, agents, shareholders, and employees (including Johnson and Gonzalez), from all liability for any civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, and expenses, which the United States has or may have relating to the

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application and handling of the AmeriCorps Grants and payment of the Grant Amounts, including under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act and its implementing regulations, 31 U.S.C. §§ 3801-3812, 45 CFR Part 2554, investigation and litigation of this matter (including public statements), and matters related to the suspension and possible debarment of St. HOPE, Johnson and Gonzalez.

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Comment [MGJ3]: Ken, this insertion is just to make the releases track each other.

7. Notwithstanding any term of this Settlement Agreement, specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person are the following claims of the United States:

a. Any civil, criminal, or administrative liability arising under Title 26, United States Code (Internal Revenue Code);

b. Any criminal liability; and

c. Any liability to the United States (or its agencies) for any conduct

other than that explicitly released in this agreement.

Comment [MGJ4]: Ken, Richard makes a good point here that we should really get a side letter from the criminal division like the one we got for [REDACTED] and [REDACTED] in the [REDACTED] matter. Can we get that? I would be happy to forward you the ones we got in that case.

Deleted: relating to the application and handling of the AmeriCorps Grants and payment of the Grant Awards.

8. In consideration of the obligations of the United States set forth in this Settlement Agreement, St. HOPE and its current and former directors, officers, agents, shareholders, and employees (including Johnson and Gonzalez), hereby release the United States and its employees, former employees, agents, agencies, and departments from all liability for any civil claims, demands, obligations, actions, causes

of action, damages, costs, losses, attorneys' fees, and expenses, which they have or may have as of the Effective Date of this Settlement Agreement relating to the application and handling of the AmeriCorps Grants, payment of the Grant Awards, investigation and litigation of this matter (including public statements), and matters related to the suspension and possible debarment of St. HOPE, Johnson and Gonzalez.

9. The Parties to this Settlement Agreement shall bear their own costs, attorneys' fees, and expenses incurred in any manner in connection with the investigation, litigation, and resolution of this matter.

10. This Settlement Agreement is binding upon St. HOPE's successors, transferees and assigns. Otherwise, this Settlement Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity not expressly released by this Settlement Agreement.

11. The individual signing this Settlement Agreement on behalf of St. HOPE represents and warrants that he or she has the power, consent, and authorization of St. HOPE to execute this Settlement Agreement.

12. The individuals signing on behalf of the United States represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

13. Each Party represents and warrants that it has not transferred anything being released under this Settlement Agreement, and is not aware of any such transfer, and that the Party is not aware of any prohibition of any type that prevents the Party from performing the terms of this Settlement Agreement.

14. St. HOPE warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment to the United States of the Settlement Amount.

15. The Parties warrant that, in evaluating whether to execute this Settlement Agreement, they (i) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to St. HOPE, Johnson and Gonzalez, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which St. HOPE, Johnson or Gonzalez was or became indebted on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. Nothing in this Settlement Agreement constitutes an agreement by the United

States concerning the characterization of the Settlement Amount for purposes of Title 26, United

States Code (Internal Revenue Code).

17. Each Party warrants that it has been represented by, and has sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect of this Settlement Agreement. This Settlement Agreement was negotiated by the Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. The Parties hereby declare that the terms of this Settlement Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

18. Each Defendant warrants and represents that it is freely and voluntarily entering into this Settlement Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Defendants further warrant and represent that no other party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Settlement Agreement, and that the Defendants have not relied on any inducements, promises, or representations made by any Party to this Settlement Agreement, or its representatives, or any other person, except as expressly set forth herein.

19. The Parties understand and acknowledge that if the facts relating to the application and handling of the subject grants and payment of the grant amounts are

found hereafter to be different from facts now believed by any Party described herein to be true, each Party expressly accepts and assumes the risks of such possible difference in facts and agrees that this Settlement Agreement shall remain effective, notwithstanding any such differences.

20. The Parties expressly recognize that the United States may publicly disclose this Settlement Agreement, and truthful information about the case and this Settlement Agreement.

Comment [MGJS]: Ken, this is causing some concern because of the IG. The OIG investigative reports will remain confidential, right? Can we limit this to the USAO publicly disclosing information about the case and the settlement agreement? This is one of the points we probably need to discuss.

21. This Settlement Agreement constitutes the complete agreement between the Parties, and supercedes and replaces all prior negotiations and agreements, whether written or oral, relating to the application and handling of the subject grants and payment of the grant amounts

22. This Settlement Agreement may be executed in counterparts, and each of the counterparts taken together shall constitute one valid and binding Settlement Agreement between the Parties.

23. This Settlement Agreement may not be altered, amended, or modified, except by a writing duly executed by authorized representatives of all of the Parties.

24. This Settlement Agreement is governed by the laws of the United States.
The

Parties agree that, should any judicial action be required to enforce or interpret this Settlement

Agreement, or to resolve any dispute hereunder, the exclusive jurisdiction and venue for such

action shall be in the United States District Court for the Eastern District of California.

25. This Settlement Agreement is effective, final, and binding as of the date of signature of the last signatory to the Settlement Agreement ("Effective Date").

Facsimiles of

signatures shall constitute acceptable, binding signatures for purposes of this

Settlement

Agreement.

UNITED STATES OF AMERICA

Dated: _____

LAWRENCE G. BROWN
Acting United States Attorney

By:

KENDALL J. NEWMAN
Assistant United States Attorney
Chief, Civil Affirmative Section

Attorneys for
United States of America

Dated: _____

WILLIAM ANDERSON
Acting Chief Financial Officer and
Debarment and Suspension Official
on behalf of the Corporation for National
and Community Service

ST. HOPE ACADEMY

Dated: _____

By: _____

Name:

Title:

Approved as to form:

Dated: _____

SEGAL & KIRBY

MALCOLM S. SEGAL, Esq.
Attorneys for St. HOPE Academy

KEVIN JOHNSON

Approved as to form:

Dated: _____

KEVIN JOHNSON, in his individual capacity

Dated: _____

STEVENS, O'CONNELL & JACOBS
LLP

MATTHEW G. JACOBS, Esq.
Attorneys for Kevin Johnson

DANA GONZALEZ

Approved as to form:

Dated: _____

DANA GONZALEZ, in her individual capacity