

HARDY MYERS  
Attorney General  
KATHERINE G. GEORGES #84231  
Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096  
Telephone: (503) 378-6313  
Fax: (503) 378-3465  
Email: kate.georges@state.or.us

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

KENNEDY-WESTERN UNIVERSITY, CLIFF  
BENNETT, GLORIA BRACY, and JAMES  
CORNISH,

Plaintiffs,

v.

ALAN CONTRERAS, Administrator of the  
Oregon Student Assistance Commission  
Office of Degree Authorization, and HARDY  
MYERS, Attorney General for the State of  
Oregon,

Defendants.

Case No. 04-CV-1023-HU

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter, "Agreement") is made between Hardy Myers, in his official capacity as Attorney General of the State of Oregon; Alan Contreras, in his official capacity as Administrator of the Office of Degree Authorization of the Oregon Student Assistance Commission; and the Oregon Student Assistance Commission (collectively

“Defendants”) and Kennedy-Western University, Clif Bennett, Gloria Bracy, and James Cornish (collectively “Plaintiffs”).

### RECITALS

WHEREAS, ORS 348.609(1) provides that no person who has been warned by the Oregon Student Assistance Commission, through the Office of Degree Authorization, to cease and desist shall claim or represent that the person possesses an academic degree unless the degree has been awarded or conferred upon the person by a school that (a) has accreditation recognized by the United States Department of Education or the foreign equivalent of such accreditation; (b) has been approved by the Oregon Student Assistance Commission through the Office of Degree Authorization to offer and confer degrees in Oregon; (c) is described in ORS 348.594; or (d) is located in the United States and has been found by the commission to meet standards of academic quality comparable to those of an institution located in the United States that has accreditation, recognized by the United States Department of Education, to offer degrees of the type and level claimed by the person. Individuals who violate ORS 348.609 are subject to civil penalties and criminal prosecution for a Class B misdemeanor;

WHEREAS, plaintiff Kennedy-Western University is a degree-granting online university that is incorporated and licensed in the State of Wyoming. Kennedy-Western University does not satisfy the criteria of ORS 348.609. Kennedy-Western University is not accredited by an accrediting body recognized by the United States Department of Education nor is it separately approved by the Oregon Office of Degree Authorization to offer degrees in Oregon;

WHEREAS, plaintiffs Clif Bennett, Gloria Bracy, and James Cornish have degrees from Kennedy-Western University which they seek to use in the state of Oregon. Clif Bennett holds a Masters Degree in Business Administration (“MBA”) from Kennedy-Western University.

Gloria Bracy holds a doctoral degree (“PhD”) in Business Administration from Kennedy-Western University. James Cornish holds a Bachelor of Science (“BS”) in Business Administration and a Masters Degree in Business Administration (“MA”) from Kennedy-Western University;

WHEREAS, on July 27, 2004, plaintiffs Kennedy-Western University, Clif Bennett, Gloria Bracy and James Cornish filed a civil rights lawsuit under 42 U.S.C. § 1983 in the United States District Court for the District of Oregon entitled *Kennedy-Western University, et al. v. Contreras et al.*, USDC # CV-04-1023-HU. Plaintiffs seek declaratory relief that ORS 348.609 violates the First Amendment, the Commerce Clause and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and a preliminary and permanent injunction to bar enforcement of ORS 348.609 against plaintiffs; and,

WHEREAS, in order to avoid the costs and the uncertainties of litigation, including appeals, the parties have entered into this Settlement Agreement.

### **AGREEMENT**

1. If plaintiffs or another Kennedy-Western University (KWU) degree holder use a KWU degree for business or professional purposes, securing employment or promotion, soliciting or obtaining business or holding oneself out as qualified to engage in a particular line of gainful employment, defendants agree that ORS 348.609 will not be enforced against plaintiffs or another KWU degree holder so long as plaintiffs or the other KWU degree holders disclose in writing that KWU is not accredited by an accrediting body recognized by the United States Department of Education or approved by the Oregon Office of Degree Authorization. The disclosure by a KWU degree holder will be deemed sufficient if it states in reasonable proximity to the reference to KWU or the KWU degree: “Kennedy-Western University does not have

accreditation recognized by the United States Department of Education and it has not been approved by the Oregon Office of Degree Authorization.”

2. The disclosure described in paragraph 1 is required whenever the KWU degree holder uses above degree for business or professional purposes, including a resume, letterhead, business card, advertisement or announcement. The disclosure must be made on that document.

3. The Settlement Agreement is not intended to alter in any way any credential or academic requirement, if any, for obtaining any license in Oregon, or admission into any Oregon college or university, or for teaching, public employment or in other areas for which a degree from an accredited school is required.

4. Commencing upon execution of this Settlement Agreement, none of the Defendants shall refer to KWU as a diploma mill or substandard school on the Office of Degree Authorization (ODA) website or in any other place, orally or in writing, but may describe KWU on the ODA website as unaccredited by an accrediting body recognized by the United States Department of Education and not approved by the Oregon Office of Degree Authorization.

5. Defendant Oregon Office of Degree Authorization will timely make a good faith effort to amend the statute to decriminalize the use of an unaccredited degree if disclosure of lack of accreditation or approval is made by the individual who claims to possess the degree, including introducing a bill to amend the statute with ODA’s support. The Attorney General pledges his good faith efforts to achieve the stated amendment and is not obligated by this agreement to support any other policy choice. If, despite best good faith efforts, the statute is not amended in the 2005 session, then ODA will make good faith effort to obtain the amendment in the next legislative session in 2007.

6. The lawsuit shall be immediately stayed, and the complaint shall be dismissed with prejudice, and each party will bear its own costs and fees, ten days after the effective date of the above-referenced amendment, so long as defendants have complied with the obligations contained in paragraphs 4 and 5. If the above-referenced amendment is not passed by the end of the 2007 legislative session, the stay shall be lifted.

7. Plaintiff KWU agrees to disclose that it is not accredited by an accrediting body recognized by the United States Department of Education or approved by the Oregon Office of Degree Authorization in any advertising reasonably expected to reach Oregon residents.

8. The Oregon Department of Justice will provide a seminar within the next year to ODA and Mr. Contreras on the law of defamation.

9. Each party and its agents, employees and assigns releases all claims and potential liabilities that are contained in or arise from the allegations contained in the Complaint, known or unknown, and all prior agreements (e.g., consent agreement), except that no party releases any obligations arising from this Settlement Agreement. The releases shall take effect at the same time that the judgment of dismissal with prejudice is entered.

10. This Agreement contains the entire Agreement between the parties. The Agreement may not be modified except in writing.

11. The parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of this Settlement Agreement.

12. To the extent the duties, functions or powers of the Oregon Student Assistance Commission or its Office of Degree Authorization are imposed, transferred or vested in any other State agency or commission, the State shall act through the successor agency or commission for purposes of this Agreement.

13. If action beyond the control of ODA or the commission, such as a change in state or federal law not initiated by ODA or the commission, or action by another governmental agency, prohibits ODA or the commission from performing a material provision of this Agreement, the remaining parts shall remain in full force and effect.

14. This Agreement shall be governed by the laws of the State of Oregon.

15. There are no third party beneficiaries to this Agreement except as expressly stated herein.

KENNEDY-WESTERN UNIVERSITY

DATED: \_\_\_\_\_, 2004

By: \_\_\_\_\_  
Paul Saltman, President

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
CLIF BENNETT

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
GLORIA BRACY

DATED: \_\_\_\_\_, 2004


\_\_\_\_\_  
JAMES CORNISH

DATED: Nov 29, 2004

  
\_\_\_\_\_  
ALAN CONTRERAS

Administrator  
Office of Degree Authorization  
Oregon Student Assistance Commission

DATED: Nov 29, 2004

  
\_\_\_\_\_  
SHELLEY TURNER

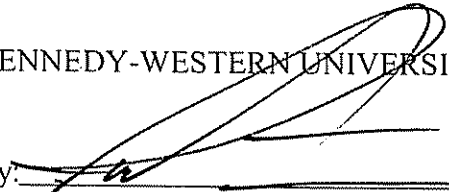
Executive Director  
Oregon Student Assistance Commission

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DATED: December 1, 2004

KENNEDY-WESTERN UNIVERSITY  
By:   
Paul Saltman, President

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
CLIF BENNETT

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
GLORIA BRACY

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
JAMES CORNISH

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
ALAN CONTRERAS  
Administrator  
Office of Degree Authorization  
Oregon Student Assistance Commission

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
SHELLEY TURNER  
Executive Director  
Oregon Student Assistance Commission

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DATED: \_\_\_\_\_, 2004

By: \_\_\_\_\_  
Paul Saltman, President

DATED: DEC. 1, 2004

Clif Bennett  
CLIF BENNETT

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
GLORIA BRACY

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
JAMES CORNISH

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
ALAN CONTRERAS  
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Office of Degree Authorization  
Oregon Student Assistance Commission

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DATED: \_\_\_\_\_, 2004

By: \_\_\_\_\_  
Paul Saltman, President

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
CLIF BENNETT

DATED: 11/30, 2004

  
\_\_\_\_\_  
GLORIA BRACY

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
JAMES CORNISH

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
ALAN CONTRERAS  
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Office of Degree Authorization  
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By: \_\_\_\_\_  
Paul Saltman, President

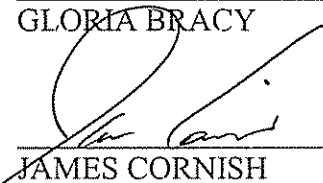
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CLIF BENNETT

DATED: \_\_\_\_\_, 2004

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GLORIA BRACY

DATED: Dec 1, 2004

  
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JAMES CORNISH

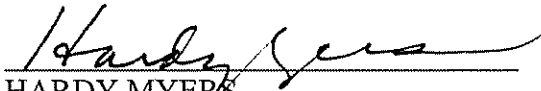
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Oregon Student Assistance Commission

DATED: \_\_\_\_\_, 2004

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SHELLEY TURNER  
Executive Director  
Oregon Student Assistance Commission

DATED: 11/30, 2004

  
HARDY MYERS  
Attorney General, State of Oregon

REVIEWED AND APPROVED AS TO FORM:

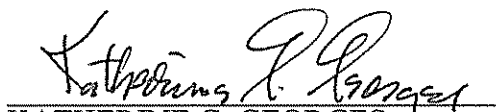
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STOLL STOLL BERNE LOKTING &  
SHLACHTER

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ROBERT A. SHLACHTER  
Attorney for Plaintiffs

DATED: 11/30, 2004.

OREGON DEPARTMENT OF JUSTICE

  
KATHERINE G. GEORGES  
Assistant Attorney General  
Attorney for Defendants

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
HARDY MYERS  
Attorney General, State of Oregon

REVIEWED AND APPROVED AS TO FORM:

DATED: 12/3 \_\_\_\_\_, 2004.

DATED: \_\_\_\_\_, 2004.

STOLL STOLL BERNE LOKTING &  
SHLACHTER

OREGON DEPARTMENT OF JUSTICE

  
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ROBERT A. SHLACHTER  
Attorney for Plaintiffs

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