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THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANNIE McCULLUMN, NANCY
RAMEY and TAMI ROMERO, on behalf
of themselves and all others similarly
situated,

Plaintiffs,

vs.

VANCOUVER HOUSING
AUTHORITY,

Defendant.

CLASS ACTION

No. 3:15-cv-05150-RBL

PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF
CLASS ACTION SETTLEMENT

NOTE ON MOTION CALENDAR:

JULY 31, 2015, at 1:30 P.M.

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

3 On April 23, 2015, this Court entered an order provisionally certifying two Settlement
 4 Classes, preliminarily approving the proposed Settlement Agreement, approving the Parties'
 5 proposed class notices and notice plan, and setting a July 1, 2015 deadline for Class Members to
 6 opt out or object to the settlement. [Dkt. # 21][hereafter "Order"].^{1, 2} Since then, the Vancouver
 7 Housing Authority (VHA) mailed class notices to some 981 Class Members and, together with
 8 Class Counsel, took other steps to inform Class Members of the proposed settlement in
 9 accordance with the Order. Following this notice, only five members of the Damages Class
 10 completed, signed, and mailed requests to opt out to Class Counsel by the July 1, 2015 deadline;
 11 three of them, however, subsequently retracted their requests to opt out. No Class Members filed
 12 or served objections to the settlement by the July 1, 2015 deadline.

13 The settling Parties have complied with all the notice and procedural requirements of
 14 Rule 23(e) and this Court's Order. A balancing of the relevant *Churchill* factors, including the
 15 reaction of Class Members to the proposed settlement, demonstrates that the Settlement
 16 Agreement is fair, reasonable, and adequate. There is no evidence of any fraud, overreaching, or
 17 collusion between the settling Parties. For these reasons, the Plaintiffs respectfully ask that
 18 following the July 31, 2015 Fairness Hearing the Court (1) approve the Settlement under Rule
 19 23(e); (2) grant Plaintiffs' request for fees, costs, and incentive payments; and (3) enter the
 20 Parties' proposed Final Order and Judgment filed in conjunction with this motion. As part of this
 21 motion, Plaintiffs are also asking the Court to consider appointing a magistrate judge as
 22 permitted by 28 U.S.C. § 636(c)(1) to handle any appeals filed by Class Members.

23 ¹ A copy of the Settlement Agreement was filed in conjunction with Plaintiffs' motion for preliminary approval as
 Dkt. # 11-1.

² All capitalized terms in this motion have the meanings set out in the Settlement Agreement, Dkt. 11-1.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 The background of this dispute and the investigation and negotiations that led to, and
3 preceded, the filing of this lawsuit and the Settlement Agreement are set forth in Plaintiffs’
4 motion seeking preliminary approval of the settlement and are not repeated here. *See* Dkt. # 11 at
5 pp. 2-7.

6 Following entry of this Court’s Order on April 23, 2015, the Parties notified Class
7 Members of the proposed settlement and of their right to opt out of the Damages Class and
8 object to the settlement in accordance with Rule 23(e), this Court’s Order, and the Settlement
9 Agreement. Only five (5) Class Members took steps to opt out; three of these individuals,
10 Tiffany Cross, Aleksandr Dzyuba, and Candy Ruff, subsequently filed declarations retracting
11 their requests to opt out before the July 1, 2015 deadline for excluding oneself from the Damages
12 Class. Dkt. # 31, 32, and 33; *see also* Declaration of Gregory D. Provenzano (“Provenzano
13 Decl.”) at ¶ 8. No Class Members filed or served objections to the Settlement Agreement by the
14 July 1, 2015 deadline imposed by this Court. Provenzano Decl. at ¶ 9.

15 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

16 The Settlement Agreement provides for payments to most members of the Damages
17 Class. The Settlement Agreement also includes prospective, non-monetary relief enforceable by
18 the Declaratory and Injunctive Relief Class for a period of forty-eight (48) months. The
19 Settlement Agreement also authorizes payment of a portion of Plaintiffs’ attorneys’ fees and
20 costs, and modest incentive payments for the three Class Representatives, if approved by this
21 Court. The key terms of the Settlement Agreement were described in Plaintiffs’ motion for
22 preliminary approval, and in the detailed Class Notice [Dkt. # 21-1] approved by the Court and
23 mailed to Class Members.

1 **A. The Settlement Classes**

2 The Settlement Agreement provides for the certification of two Settlement Classes: a
3 Damages Class under Federal Rule of Civil Procedure 23(b)(3) and a Declaratory and Injunctive
4 Relief Class under Rule 23(b)(2). This Court certified both Classes for purposes of settlement on
5 April 23, 2015. Dkt. # 21. The Damages Class, which consists of some 887 households, is
6 defined in Paragraph 2 of that Order. The Declaratory and Injunctive Relief Class consists of 272
7 households and is defined in Paragraph 3 of the Order. There are some 179 Class Members who
8 are members of both Settlement Classes.

9 **B. Monetary Relief for Members of the Damages Class**

10 VHA has agreed to establish a Settlement Fund in the amount of \$488,824.02 from which
11 it will disburse payments to members of the Damages Class. Dkt. 11-1 at ¶ 3.1. For each member
12 of the Damages Class, Plaintiffs calculated the excess rent he or she paid from April 1, 2004
13 through April 30, 2011. *Id.* at ¶ 3.1.3. Plaintiffs' calculations were based on VHA's records and
14 on 24 C.F.R. § 965.507(b), as interpreted by *McDowell v. Philadelphia Housing Authority*, 423
15 F.3d 233 (3d Cir. 2005). Plaintiffs also calculated the prejudgment interest using an annual
16 inflation factor of 2.4%.³ *Id.* at ¶ 3.1.3. Plaintiffs then subtracted the rent refund payments that
17 VHA previously made to each Class Member, or rent credits, if any, in the months of January
18 2010, February 2010, and March 2011. *Id.* The difference, if any, is the balance due each Class
19 Member under Plaintiffs' theory of the case. *Id.* There are a small number of Class Members
20 entitled to no damages under this approach because VHA's rent refunds in January 2010,
21 February 2010, and March 2011 exceed the excess rent and prejudgment interest due.

22 ³ According to the U.S. Department of Labor, Bureau of Labor Statistics, Portland-Salem Consumer Price Index, All
23 Items 1982-84 =100 for All Urban Consumers (CPI-U), the annual average inflation rate (over-the-year percent
change) [for "All Items" in the Portland metro area] from 2004 through 2013 (the last full year available when the
amount of the Settlement Fund was negotiated) was 2.4%.

1 VHA will refund to each Damages Class member 59% of the balance due him or her
 2 under Plaintiffs' theory of the case as his or her Settlement Share.⁴ Exhibit F shows the
 3 Settlement Share due each member of the Damages Class. *Id.* at ¶¶ 3.1.3, 3.1.4. VHA shall have
 4 the right to set off against each Class Member's Settlement Share any unpaid rent or other
 5 charges due under the Class Member's Public Housing lease.⁵ *Id.* at ¶ 3.1.5. VHA will not,
 6 however, assert any such setoff without providing the Class Member notice and an opportunity
 7 to contest the setoff.⁶ *Id.* at ¶¶ 3.1.5; 3.2.1.2. Class Members also have a limited right to appeal
 8 the calculation of their Settlement Share and mathematical errors in determining the Class
 9 Member's Settlement Payment. *Id.* at ¶ 3.2.1.1 and 3.2.1.3. As part of the Settlement Agreement,
 10 the parties have consented to the appointment of a magistrate judge, if the Court so approves, to
 11 handle all such appeals. *Id.* at 3.2.4.1. As a practical matter, the Parties believe that most Class
 12 Members' appeals will be resolved informally without the necessity of any appeals being
 13 submitted to the Court or a magistrate judge for resolution.

14 If a potential member of the Damages Class opts out or requests exclusion from the
 15 Damages Class, his or her share of the Settlement Fund will revert to VHA. *Id.* at ¶ 3.5. If VHA
 16 cannot locate a Class Member, or a settlement check is not negotiated, the funds shall be
 17 considered "abandoned property" and shall be handled in accordance with the provisions of
 18 Chapter 63.29 RCW Uniform Unclaimed Property Act. *Id.* Lastly, VHA will not seek to recoup
 19 or recover refunds from those members of the Damages Class not eligible to receive a Settlement

20 _____
 21 ⁴ The Settlement Fund constitutes 59% of the total amount due Damages Class Members under Plaintiffs' theory of
 the case. *Id.* at ¶ 3.1.3.

22 ⁵ This type of provision has been routinely included in similar settlements involving other housing authorities. *See,*
e.g., Shump v. Balka, 574 F.2d 1341,1346 (10th Cir. 1978).

23 ⁶ A Class Member shall have no right to contest a setoff where the debt has been reduced to judgment, where the
 validity of the debt was previously decided by a hearing officer following a hearing under VHA's Public Housing
 Grievance Procedure, or where the Class Member previously executed a written repayment agreement
 acknowledging the debt. *See, S.A.* at ¶3.2.1.2.

1 Share because they received rent refunds in excess of the damages Plaintiffs claim are due. *Id.* at

2 ¶ 3.4.2.

3 **C. Non-Monetary Relief for the Declaratory and Injunctive Relief Class**

4 The Settlement Agreement also provides prospective, non-monetary relief enforceable by
5 members of the Declaratory and Injunctive Relief Class. The non-monetary relief is spelled out
6 in ¶¶ 3.7.2-3.7.7 of the Settlement Agreement. Because of the Court’s familiarity with the
7 Settlement Agreement, Plaintiffs do not repeat those terms here. If the Court approves the
8 settlement, these provisions will be incorporated into a Final Order and Judgment and will
9 remain in effect for 48 months from the effective date of that order. *Id.* at ¶ 3.7.10.

10 The Settlement Agreement has reporting and other provisions designed to ensure that
11 Class Members and Class Counsel can monitor VHA’s compliance with the Settlement
12 Agreement. *Id.* at ¶¶ 3.6, 3.7.9. The Settlement Agreement contains specific provisions
13 addressing noncompliance. They include notice requirements, a requirement that the Parties
14 work in good faith to resolve any dispute, mandatory third-party mediation, and the right of a
15 prevailing party to seek reasonable attorneys’ fees and costs. *Id.* at ¶¶ 11.3, 11.4.

16 **D. Release of Claims**

17 If the Court approves the Settlement Agreement, members of the Damages Class and the
18 Declaratory and Injunctive Relief Class will be deemed to have released all Settled Claims,
19 including any claim for additional attorneys’ fees and costs. *Id.* at ¶ 11.1, 1.29, 1.29.1, 1.29.2,
20 1.29.3. A member of the Declaratory and Injunctive Relief Class who is not also a member of the
21 Damages Class will not waive any monetary claims. The release does not bar members of the
22 Declaratory and Injunctive Relief Class from seeking relief should VHA fail to comply with the
23 Settlement Agreement or should it engage in future conduct giving rise to similar claims.

1 **E. Attorneys' Fees, Costs, and Incentive Payments for Class Representatives**

2 Class Counsel has filed a separate request for approval from the Court of an award of
3 \$110,000.00 in attorneys' fees and costs, including modest incentive payments for the three
4 Class Representatives. Dkt. # 23. VHA does not oppose Plaintiffs' motion. Dkt. # 30. VHA has
5 also indicated that it would be appropriate for the Court to award the amounts requested as
6 incentive payments to the Class Representatives. *Id.* The incentive payments will come out of
7 the attorneys' fee award that would otherwise go to Class Counsel. Dkt. # 23 at pg. 8. Notably,
8 no Class Member has objected to or responded to Plaintiffs' request for fees, costs, and incentive
9 payments. Provenzano Decl. at ¶ 9.

10 **IV. ARGUMENT**

11 **A. Standards Governing Final Approval of a Class Action**

12 The law favors settlement, particularly in class actions and other complex cases. *Van*
13 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). Final approval of a proposed
14 class action settlement will be granted where it is established that the proposed settlement is
15 "fair, reasonable, and adequate." Rule 23(e)(2). In evaluating fairness, the Court must consider
16 the settlement as a whole, rather than its component parts. *Hanlon v. Chrysler Corp.*, 150 F.3d
17 1011, 1026 (9th Cir. 1998) (citation omitted).

18 District courts consider one or more of the following *Churchill* factors in deciding
19 whether to approve a class action settlement:

20 The strength of plaintiffs' case; the risk, expense, complexity, and
21 likely duration of further litigation; the risk of maintaining class
22 action status throughout the trial, the amount offered in settlement;
23 the extent of discovery completed, and the state of the proceedings;
 the experience and views of counsel, the presence of a
 governmental participant; and the reaction of the class members to
 the proposed settlement.

1 *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625
2 (9th Cir. 1982); *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). “Not
3 all of these factors will apply to every class action settlement. Under certain circumstances, one
4 factor alone may prove determinative in finding sufficient grounds for court approval.” *Nat'l*
5 *Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-26 (C.D. Cal. 2004)
6 (citing *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993)).

7 A court may not modify the terms of a negotiated settlement. *Evans v. Jeff D.*, 475 U.S.
8 717, 727, 106 S. Ct. 1531, 89 L. Ed. 2d 747 (1986). Rather, the court’s inquiry must be limited to
9 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud
10 or overreaching by, or collusion between, the settling parties, and that the settlement, taken as a
11 whole, is fair, reasonable and adequate to all concerned. *Officers for Justice*, 688 F.2d at 625.
12 The court’s role is to protect the rights of the unnamed class members. *Id.* at 624.

13 Once this Court has an opportunity to address questions or concerns at the Fairness
14 Hearing, it should approve the proposed settlement. The notification requirements of Rule 23 and
15 the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, have been satisfied. The relevant
16 *Churchill* factors amply demonstrate that the settlement is fair, reasonable, and adequate. There
17 is no evidence of any fraud, overreaching, or collusion, and the Parties have disclosed all
18 agreements made in connection with the proposed settlement. Members of the Damages Class
19 have been given an opportunity to opt out as required by Fed. R. Civ. P. 23(c)(2)(B). All Class
20 Members have had an opportunity to object. The reaction of Class Members has been favorable;
21 only two out of some 887 members of the Damages Class have excluded themselves from the
22 settlement; and there have been no objections to the proposed settlement.
23

1 **B. The Notification Requirements in the Preliminary Approval Order Have**
2 **Been Satisfied**

3 This Court previously approved the class notices and the methods for providing notice to
4 potential class members, finding that both met the requirements of due process and are
5 reasonable and the best notice practicable under the circumstances. Dkt. # 21 at ¶ 6. The Parties
6 have complied with the Court’s instructions.

7 **1. The two Settlement Classes Were Notified in Accordance with Rule 23**
8 **and the Court-Approved Notice Plan**

9 VHA contracted with Tilghman & Co. P.C. (“Tilghman”) to handle the mailing of the
10 Notice of Proposed Class Action Settlement with the Damages Class Opt-Out Form (Dkt. # 21-
11 1) and standardized cover letter (Dkt. # 21-2) to all Class Members. Declaration Adrian U.
12 Winder (“Winder Decl.”), Dkt. #37 at ¶ 7. Tilghman mailed both documents to all Class
13 Members on May 22, 2015, together with an insert advising Class Members (1) they could
14 request Spanish and Russian translations of these documents; and (2) of the availability of oral
15 interpretation services in other languages if English was not the Class Member’s primary
16 language. Declaration of L. Stephens Tilghman, (“Tilghman Decl.”). Dkt. #36 at ¶ 3. Before
17 mailing these notices, Tilghman took steps to update Class Members’ mailing addresses. *Id.* at ¶
18 2. Tilghman also took steps to find current addresses for those Class Members whose notices
19 were initially returned as undeliverable and to send corrected notices to some 58 Class Members
20 whose standardized cover letters included a mathematical error. *Id.* at ¶ 3-6. As a result of these
21 efforts, only 123 of the 981 Class Members (approximately 12.5% of all Class Members) appear
22
23

1 to have not received the notice mailed to them due to the mail being returned as undeliverable,
2 with no forwarding address. *Id.* at ¶ 7.⁷

3 VHA published the Summary Notice (Dkt. # 21-3) in the *Columbian* newspaper for three
4 (3) consecutive days starting on May 20, 2015. Winder Decl., Dkt. #37 at ¶ 9. VHA also
5 published a copy of the Summary Notice in its Resident Newsletter, posted it on its website,
6 together with other relevant documents, and distributed the notice to its various community
7 partners by email, asking that they post the notice where it might be seen by Class Members. *Id.*
8 at ¶¶ 10 -12.

9 On April 28, 2015, Class Counsel issued a media release addressing the proposed
10 settlement. Provenzano Decl. at ¶ 2; Exhibit A. The *Columbian* newspaper published an article
11 on its website based on this release. *Id.*; Exhibit B. Class Counsel also posted the notices and
12 other relevant documents on their website within thirty days of the Preliminary Approval Order
13 and will keep them posted there until after the Fairness Hearing. *Id.* at 6; Exhibit C.

14 **2. VHA Complied with the Class Action Fairness Act of 2005**

15 Pursuant to the Court's order, VHA also notified appropriate federal and state officials of
16 the proposed Settlement as required by the Class Action Fairness Act of 2005, 28 U.S.C. §1715.
17 Winder Decl., Dkt. #37 at ¶¶ 3-5. The Office of the Washington State Attorney General
18 acknowledged receipt of this notice. *Id.* at ¶ 4; Exhibit 3. None of these officials has filed or
19

20 ⁷ The fact that some 12.5% of Class Members did not receive the class notices is neither probative nor dispositive.
21 Courts have consistently recognized that, even in Rule 23(b)(3) class actions, due process does not require that class
22 members actually receive notice. *See Silber v. Mabon*, 18 F.3d 1449, 1453-54 (9th Cir. 1994) (explaining that even
23 in an opt-out class action, class notice standard is "best practicable," as opposed to "actually received"); *see also*
Newberg on Class Actions § 22:91 (4th ed.) ("due process does not require actual notice, but rather a good faith
effort to provide actual notice. Courts have consistently recognized that due process does not require that every
class member receive actual notice so long as the court reasonably selected a means likely to apprise interested
parties").

1 served any objections to the proposed settlement by the July 1, 2015 deadline imposed by this
2 Court. Provenzano Decl. at ¶ 9.

3 **C. The Court Should Grant Final Approval to the Settlement**

4 The Court should find that all of the relevant *Churchill* factors are met here. There is no
5 evidence of any fraud, overreaching, or collusion between the settling Parties. Based on these
6 findings, the Court should grant final approval of the Settlement Agreement under Rule 23(e).

7 **1. The Strength of Plaintiffs' Case and Risk of Continued Litigation**

8 While Plaintiffs believe that their case is strong, continued litigation would involve
9 significant expense, protracted legal battles, and other risks, which can be avoided through
10 settlement. In recommending settlement, Class Counsel took into account the past and ongoing
11 cost of this dispute, the scope of relief being sought and that might be provided, the cost and
12 benefit of such relief, the risks of class certification and trying the matter, and the possibility of
13 appeals from the Court's decision. Dkt. # 11 at 24. All these factors weigh in support of
14 approving the proposed settlement.

15 **2. The Amount Offered in Settlement is Fair and Reasonable**

16 VHA has agreed to establish a Settlement Fund in the amount of \$488,824.02 from which
17 it will disburse payments to members of the Damages Class. Dkt. 21-1. at ¶ 3.1. The Settlement
18 Agreement spells out how Settlement Shares were calculated. The settlement will result in
19 significant monetary compensation for most members of the Damages Class, more than doubling
20 the relief that the VHA had previously provided. See Dkt. 21-1, Exhibit F at Page 17 (Compare
21 Settlement Share Totals of \$488,824 to the \$357,175 that VHA previously provided to class
22 members through refunds and rent credits in January 2010, February 2010 and March 2011 as
23 shown under the Total Adjustments column).

1 Members of the Damages Class are recovering almost 59% of the damages that they may
2 be entitled to recover at trial if Plaintiffs prevail on all claims. Dkt. # 11-1 at ¶ 3.1.3. Given the
3 uncertainties and delay of litigation and appeal, this percentage falls well within the range of
4 percentages courts have previously approved. *See, e.g., Monterrubio v. Best Buy Stores, L.P.*,
5 291 F.R.D. 443, 454 (E.D. Cal. 2013) (finding a recovery of approximately 30% of estimated
6 damages favored settlement). Additionally, the only moneys in the Settlement Fund that may
7 revert to VHA are the Settlement Shares of individuals who opt out of the Damages Class. Dkt.
8 11-1 at ¶ 3.5. Any other undisbursed moneys shall be considered abandoned property and shall
9 be handled in accordance with the provisions of RCW 63.29. *Id.* Based on these facts, the Court
10 should find the monetary terms of the Settlement Agreement are fair, reasonable, and adequate.

11 The Settlement Agreement also includes extensive non-monetary relief provisions. *See*,
12 Section 3.7 of the Settlement Agreement (Dkt. # 11-1). These provisions will ensure that VHA
13 annually reviews and adjusts its utility allowances as required by HUD regulations, thereby
14 further increasing the value of the settlement.

15 3. The Extent of Investigation and Informal Discovery

16 “In the context of class action settlements, ‘formal discovery is not a necessary ticket to
17 the bargaining table’ where the parties have sufficient information to make an informed decision
18 about settlement.” *Linney v. Cellular Alaska Partnership*, 1515 F.3d 1234, 1239 (9th Cir. 1998)
19 (*quoting In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 241 (5th Cir. 1982)); *see also*
20 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) *as amended* (June 19, 2000)
21 (no error approving settlement where class counsel conducted significant investigation and
22 worked with experts throughout litigation). Here the parties reached a settlement only after a
23 thorough factual investigation and exchange of informal discovery.

1 Prior to entering into discussions with VHA, Class Counsel engaged in a lengthy, time-
2 consuming, and thorough factual investigation. Dkt. 15 at ¶¶ 14, 19, 20; Dkt. 12 at ¶¶ 12 and 13.
3 As part of this investigation, Class Counsel undertook extensive informal discovery, researched
4 applicable law, retained an expert witness to help them in this effort, and arranged for our clients
5 to retain Perkins Coie, LLP to assist with mediation and further litigation should that be
6 necessary. Dkt. 15 at ¶¶ 26-27; Dkt. 12. at ¶ 16. VHA, for its part, responded to requests for
7 public records, shared their consultant's report and recommendations, produced extensive
8 electronic data and allowed Plaintiffs to query VHA's consultant. Dkt. 15 at ¶¶ 14, 17, 18, 19
9 and 20. These efforts support approval of the Settlement Agreement.

10 4. The Settlement was the Product of Arm's-Length Negotiations

11 The Settlement Agreement was the product of formal, arm's-length negotiations between
12 the Parties. Dkt. 15 at ¶¶ 29-32. The Parties met for a full day of mediation before a retired judge
13 experienced in mediating complex civil litigation. *Id.* at ¶ 29. The negotiations continued
14 thereafter for more than twenty-nine months, concluding in September 2014. *Id.* at ¶ 32. The
15 Parties formally executed the Settlement Agreement some five months later, after securing HUD
16 Approval of the settlement. *Id.* at ¶¶ 33-34.

17 A presumption of fairness exists if the settlement is reached through arm's-length
18 negotiations between experienced capable counsel after meaningful discovery. *See* Dkt. 11 at ¶¶
19 23-24. This Court has recognized that presumption. *See, e.g., Hughes v. Microsoft Corp.*, C98-
20 1646C, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) (*citing Manual for Complex*
21 *Litigation (Third)* §30.42 (1995)). This presumption applies here. Moreover, the involvement of
22 a third party mediator and the scope, breadth and arm's length nature of the negotiations all
23 support approval of the settlement.

1 **5. VHA and HUD’s Approval of the Settlement Agreement Weigh**
 2 **Heavily in Favor of Final Approval**

3 The participation of a governmental entity serves to protect the interests of the class
 4 members, particularly absentees, and approval by a government agency is an important factor for
 5 the court’s consideration. *See Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir.
 6 1977). The fact that VHA, as a governmental participant, has entered into the proposed
 7 settlement demonstrates its reasonableness. The United States Department of Housing and Urban
 8 Development’s (HUD) approval of the proposed settlement after a lengthy review process is
 9 equally, if not more, important. Dkt. 15 at ¶¶ 32, 33. HUD is the federal agency charged with
 10 oversight of the nation’s federal housing programs, including the Public Housing program. *See*,
 11 42 U.S.C. § 3532. VHA’s and HUD’s independent review and approval of the settlement weigh
 12 heavily in favor of final approval.

13 **6. Class Counsel’s Experience and View**

14 Class Counsel’s judgment that the Settlement Agreement is fair and reasonable is entitled
 15 to great weight. *Officers for Justice*, 688 F.2d at 625; *Nat’l Rural Telecomm.*, 221 F.R.D. at 528
 16 (quotation marks and citations omitted). Here, Class Counsel have extensive experience handling
 17 class action lawsuits in state and federal courts and particular expertise in the substantive law
 18 governing Public Housing. Dkt. 15 at ¶¶ 5-6. With the assistance of co-counsel from Perkin
 19 Coie, Class Counsel analyzed and researched all the claims and likely defenses. *Id.* at ¶ 28.

20 After fully investigating Plaintiffs’ claims and researching the applicable law, Class
 21 Counsel determined that the settlement is fair, reasonable, and adequate. Dkt. 15 at ¶ 43. Based
 22 on this determination, Class Counsel recommended that the Class Representatives enter into the
 23 Settlement Agreement. *Id.* In reaching this determination, Class Counsel took into account
 similar class action utility allowance cases in other jurisdictions that were litigated and settled.

1 Provenzano Decl. at ¶ 10; Exhibit F (Final Orders approving class action settlements in three of
2 these cases). The settlement here is comparable to those reached in similar cases elsewhere. *Id.*
3 This is a useful benchmark for assessing whether a settlement is fair, adequate and reasonable.
4 Newberg on Class Actions (5th ed.) (“Newberg”) at § 13:49.

5 **7. Reaction of Class Members to the Proposed Settlement**

6 The reaction of the class, specifically “the quality and quantity of any objections and the
7 quantity of class members who opt out,” is an important factor to consider in determining
8 whether to approve a class action. Newberg at § 13:54; *see also, e.g., Nat’l Rural*
9 *Telecommunications Coop.*, 221 F.R.D. at 528-529 (“It is established that the absence of a large
10 number of objections to a proposed class action settlement raises a strong presumption that the
11 terms of a proposed class settlement action are favorable to the class members”). Approximately
12 981 members of the two Settlement Classes were mailed notice of the proposed settlement. No
13 objections were received. Provenzano Decl. at ¶ 9. Only five (5) members of the Damages Class
14 filed requests to opt out. *Id.* at ¶ 10. Three of these individuals—Tiffany Cross, Aleksandr
15 Dzyuba, and Candy Ruff—subsequently filed declarations retracting their previous requests to
16 opt out before the July 1, 2015 deadline for excluding oneself from the Damages Class. *See* Dkt.
17 31, 32, and 33. Where, as here, these three Class Members clearly and unequivocally made
18 known to the Court a desire to opt back into the class, he or she should be able to rescind any
19 prior contrary communication asking to be excluded from the class, having done so by the
20 deadline imposed by the court for excluding oneself from the class. *Bailey v. Cost Control Mktg.*
21 *& Sales Mgmt. of Virginia, Inc.*, 132 F.R.D. 435, 437 (W.D. Va. 1990). Plaintiffs respectfully
22 ask that the Court confirm that these three Class Members’ have not excluded themselves from
23 this lawsuit under Rule 23(c)(2)(B).

1 The complete absence of objections and only two opt outs from over 980 Class Members
2 is a final and important factor weighing heavily in favor of final approval.

3 **D. The Court Should Also Approve Plaintiffs’ Motion for Attorneys’ Fees and**
4 **Costs, Including Incentive Payments**

5 This Court should grant Plaintiffs’ request for attorneys’ fees, costs, and incentive
6 payments, Dkt. # 23. This motion is not opposed by VHA; no Class Members filed any
7 objections or response. Dkt. #30; Provenzano Decl. at ¶ 9. The attorneys’ fees and costs being
8 sought here are reasonable based on the hours Class Counsel expended on this action and the
9 relief obtained for the two Settlement Classes. *See*, Dkt. # 23 at pp. 3-7. The proposed incentive
10 payments are modest, within the range typically approved, and well earned. *Id.* at pp. 8-10.

11 **V. CONCLUSION**

12 For all the foregoing reasons, Plaintiffs respectfully request that following the Fairness
13 Hearing on July 31, 2015, the Court (1) grant final approval of the proposed Settlement
14 Agreement; (2) grant Plaintiffs’ request for attorneys’ fees, costs and incentive payments; (3)
15 appoint a magistrate judge to handle any appeals under the Settlement Agreement; and (4) enter
16 the Parties’ proposed Final Order filed in conjunction with this motion.

17 RESPECTFULLY SUBMITTED on July 21, 2015.

18 COLUMBIA LEGAL SERVICES

19 s/ Gregory D. Provenzano
Gregory D. Provenzano, WSBA #12794
Merf Ehman, WSBA #29231

20 PERKINS COIE LLP

21 s/ Kaustuv M. Das
Brendan Peters, WSBA No. 34490
Kaustuv M. Das, WSBA No. 34411

22 ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the United States of America that on July 21, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel on the Electronic Mail Notice List as shown below.

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case:

Adrian Urquhart Winder
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101

Manual Notice List

None.

DATED: July 21, 2015, at Olympia, Washington.

s/Gregory D. Provenzano
Gregory D. Provenzano