

THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARKELETTA WILSON, MARIE
TOWNES and all other similarly situated
individuals

Plaintiffs,

v.

SEATTLE HOUSING AUTHORITY, et al.,

Defendants.

Case No. C09-00226 MJP

JOINT MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED CLASS
ACTION SETTLEMENT

NOTE FOR MOTION CALENDAR:
September 8, 2011

Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs¹ Markeletta Wilson and Marie Townes and Defendants Seattle Housing Authority and Thomas Tierney, Executive Director of SHA in his official capacity, request an Order from the Court: (1) granting preliminary approval of the proposed settlement; (2) provisionally certifying the Settlement Class and appointing Class Representatives and Class Counsel; (3) approving the proposed notice of the settlement and authorizing its dissemination to the Settlement Class; and (4) setting dates and procedures for the Fairness Hearing, including deadlines for the Class Members to file

¹ All capitalized terms in this motion have the meanings set out in the attached Settlement Agreement.

1 objections to the proposed settlement. The Settlement Agreement and its exhibits are attached
2 hereto as Exhibit 1.
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5 6 **I. INTRODUCTION**

7 Plaintiffs brought this action on behalf of themselves and all others similarly situated,
8 alleging that Defendants' practices and procedures violated numerous federal and state statutes
9 as well as the United States and Washington Constitutions. The Parties have engaged in
10 extensive discovery and motions practice. Currently pending before the Court are cross-motions
11 for summary judgment, a motion to certify the class, and a motion for leave to amend the
12 complaint. Given the risk and cost of continuing the litigation, the Parties engaged in settlement
13 discussions with the Honorable Terrence Carroll (ret.) and, after two days of arms-length
14 negotiation, agreed to a settlement. The Parties have worked diligently to draft the Settlement
15 Agreement and its exhibits and to develop the content and plan for notice to the Settlement
16 Class.
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27 **II. BACKGROUND**

28 **A. The Complaint**

29 The Seattle Housing Authority ("SHA") administers the Section 8 Voucher Program in
30 Seattle, a federal program for extremely low-income residents. Individuals with vouchers find
31 their own housing and pay a percentage of their income for rent. Section 8 pays the rest of the
32 rent to the landlord. SHA has policies and procedures that relate to termination of an
33 individual's Section 8 voucher. If a voucher holder is accused of noncompliance with the
34 participant obligations or violation of SHA's rules, the voucher holder is provided with a written
35 termination notice and has an opportunity to request an informal hearing in accordance with 24
36 C.F.R. § 982.555 ("termination hearing"). If the voucher holder is not successful at the hearing,
37 the voucher is terminated. The Fourth Amended Complaint alleges that SHA's Section 8
38 voucher termination process prior to August 1, 2008 did not meet constitutional standards; SHA
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2 discriminated against disabled voucher holders by failing to provide them with reasonable
3 accommodations; and SHA discriminated against voucher holders by not permitting them to live
4 with closely related family members.
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8 **1. Due Process Claims**

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10 Plaintiffs allege that SHA consistently denied due process safeguards during voucher
11 termination hearings. Specifically, Plaintiffs allege that SHA denied voucher holders their due
12 process rights to have legal arguments and factual evidence considered during termination
13 hearings and to confront and cross-examine witnesses. Moreover, Plaintiffs contend that these
14 due process violations occurred during a time when SHA hearings were conducted by an
15 untrained, inexperienced hearing officer. Additionally, Plaintiffs allege that SHA misled
16 terminated voucher holders regarding their rights to seek and receive review of SHA's
17 termination decisions. *See, e.g.*, Fourth Am. Compl. ¶ 4.42.
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26 **2. Disability Claims**

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28 Plaintiffs also contend that SHA's voucher termination policies and practices violated
29 SHA's obligation to provide reasonable accommodations under the federal Fair Housing Act and
30 the Washington Law Against Discrimination. Plaintiffs allege that even when notified of the
31 presence of a disability and the need for an accommodation, SHA regularly failed to take any
32 steps to provide such accommodation or engage in an interactive process with the voucher holder
33 to determine whether an accommodation was required, as mandated by federal and state anti-
34 discrimination laws. *See, e.g., id.* ¶¶ 4.42, 4.49-4.64.
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42 **3. Familial Status Claims**

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44 Plaintiffs claim that two of SHA's policies unlawfully infringe upon voucher holders'
45 rights. First, Plaintiffs allege the policy for adding minors to a voucher uses family status as a
46 basis to deny housing, in violation of federal and state anti-discrimination laws. Second,
47 Plaintiffs contend that the minor policy and SHA's no-added-adults policy violate the federal and
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1 state constitutions by interfering with the fundamental right to live with close relatives. *See, e.g.,*
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3 *id.* ¶¶ 4.68-4.111.
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5 Notwithstanding Plaintiffs' belief in the strength of their claims, Plaintiffs recognize the
6 uncertainty, risk, expense, and burden of litigation and pursuing this action and have agreed to
7 the terms of the Settlement Agreement as set forth in Exhibit 1.
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10 11 **B. SHA's Response to Plaintiffs' Claims**

12 Defendants have denied and continue to deny any liability for any claim by any plaintiff
13 or by any putative class which was asserted. Defendants deny that SHA's policies and practices
14 violate federal or state constitutions or federal or state laws, and deny that SHA breached any
15 contractual obligation to the Plaintiffs or putative class members. Specifically, Defendants deny
16 that SHA's voucher termination hearings have, at any time, denied voucher holders their due
17 process rights. Defendants deny that SHA's policies and practices regarding reasonable
18 accommodations violated the federal Fair Housing Act or the Washington Law Against
19 Discrimination. SHA's policies and practices provided for consideration of all requests for
20 reasonable accommodations by any voucher holder and complied with state and federal law.
21 Defendants deny that SHA's policy on adding minor children to existing Section 8 vouchers, or
22 its policy on adding adults to Section 8 vouchers, violates state or federal anti-discrimination law
23 or federal or state constitutions.
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37 Notwithstanding Defendants' denial of any liability or wrongdoing, Defendants recognize
38 the uncertainty, risk, expense, and burden of litigation and defending this action and have agreed
39 to the terms of the Settlement Agreement as set forth in Exhibit 1.
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43 44 **C. Plaintiffs' Investigation of the Case**

45 Plaintiffs conducted extensive discovery both before filing and during the pendency of
46 this case. Prior to filing suit, Class Counsel filed a public disclosure request with SHA seeking
47 copies of all Section 8 termination hearing decisions from 2003 to the present. Declaration of
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1 Merf Ehman (“Ehman Decl.”) ¶ 7; Declaration of Nicholas Straley (“Straley Decl.”) ¶ 8. SHA
2 provided Class Counsel with copies of 500 redacted hearing decisions. Ehman Decl. ¶ 7; Straley
3 Decl. ¶ 8. Class Counsel then reviewed each hearing decision and interviewed several former
4 Section 8 participants. Ehman Decl. ¶ 7; Straley Decl. ¶ 8. After filing suit, Plaintiffs sought
5 initial discovery from HUD and SHA regarding HUD’s approval of SHA’s Administrative Plan.
6 Class Counsel received and reviewed approximately 23,000 pages of discovery. Ehman Decl.
7 ¶¶ 10-11; Straley Decl. ¶¶ 11-12. Plaintiffs then requested additional discovery from SHA
8 regarding the issues set forth in the complaint. Ehman Decl. ¶¶ 12-13; Straley Decl. ¶¶ 13-14.
9 Class Counsel spent six weeks reviewing hundreds of Section 8 participant files at SHA
10 headquarters and at SHA’s warehouse. Ehman Decl. ¶ 12; Straley Decl. ¶ 13. Following this
11 document review, Class Counsel conducted four depositions of SHA staff and one deposition of
12 a HUD official. Ehman Decl. ¶ 15; Straley Decl. ¶ 16. Class Counsel also reviewed Plaintiffs’
13 documents and records, including Ms. Wilson’s voluminous medical records. Ehman Decl.
14 ¶¶ 13-14; Straley Decl. ¶¶ 14-15.

30 **D. Mediation and Settlement**

31 After the Parties thoroughly briefed the legal and factual issues in cross-motions for
32 summary judgment, the Parties discussed possible settlement, agreed to a mediation and worked
33 together to find a mutually agreeable time and mediator. Ehman Decl. ¶ 17.

34 On June 22, 2011, the Parties met for a formal mediation session with the Honorable
35 Terrence Carroll, a retired state court judge who has extensive experience as a mediator,
36 including in complex cases. Ehman Decl. ¶ 18; Straley Decl. ¶ 18. The Parties submitted
37 mediation statements to the mediator prior to the mediation. *Id.* The Parties and their counsel
38 worked diligently through a fourteen-hour day of mediation with Judge Carroll, which was also
39 attended by the Class Representatives. *Id.* The next day, counsel for both Parties met again for
40 nearly the entire working day, with Judge Carroll joining them in the afternoon. Ehman Decl.
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1 ¶ 19; Straley Decl. ¶ 19. These mediation sessions resulted in a written Memorandum of
2 Understanding, which the Parties subsequently worked to memorialize into a complete
3 Settlement Agreement. *Id.*
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7 **III. THE TERMS OF THE SETTLEMENT AGREEMENT**

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9 As the result of the extensive arms-length negotiation described above, the Parties have
10 agreed to settle the litigation on the terms set out in the Settlement Agreement. The Settlement
11 Agreement includes key changes SHA will make to its policies and procedures as well as
12 clarifications it will make in its written documentation regarding changes it has already made;
13 the provision of new voucher termination hearings for all Class Members upon request; and
14 monetary terms including attorneys' fees and costs and damages to Ms. Wilson.
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21 **A. The Settlement Class**

22 The Settlement Class is defined as all SHA Section 8 voucher holders who had
23 termination hearings on or after February 20, 2006 and before August 1, 2008 and whose Section
24 8 vouchers were terminated as a result of such hearings. The Settlement Class consists of 82
25 members; the identities of Class Members are known and are listed on Exhibit E to the
26 Settlement Agreement.
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33 **B. Settlement Benefits**

34 The settlement confers five significant benefits on the Settlement Class and the public.

35 First, SHA agrees to make certain clarifications of and supplements to its Administrative
36 Plan and Procedures Manual policies and procedures regarding individuals with disabilities and
37 those alleging that they have disabilities. Settlement Agreement ¶ 3.1.
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43 Second, SHA agrees to amend its Administrative Plan to list documentation it will
44 accept, in addition to court orders of custody, as proof that a subsidized household is the primary
45 residence of a minor. *Id.* ¶ 3.2.
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2 Third, SHA agrees to amend its Administrative Plan to reflect that upon request by a
3 participant, SHA may, in its discretion, consider extenuating circumstances to extend the time
4 period that a guest, including a related adult, is allowed to stay in the subsidized residence. *Id.*
5 ¶ 3.3.
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9 Fourth, SHA agrees to amend its Administrative Plan to require that hearing officer
10 decisions upholding termination of Section 8 vouchers include written notice of the availability
11 of judicial review. *Id.* ¶ 3.4.
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14 Fifth, SHA agrees to provide a new termination hearing to each Class Member who
15 requests one in writing in accordance with the terms of the Settlement Agreement. *Id.* ¶ 3.5.
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19 **C. Attorneys' Fees and Costs**
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21 Pursuant to the Settlement Agreement, Class Counsel will file a separate request for
22 approval from the Court for an award of up to, but no more than, a total of One Hundred Ninety
23 Five Thousand Dollars for attorneys' fees and costs including Class Representative incentive
24 payments, if any, which the Court may, in its discretion, allocate out of this amount. SHA will
25 pay up to, but no more than a total of One Hundred Ninety-Five Thousand Dollars (\$195,000)
26 for any such award made by the Court. SHA does not agree that any amount should be allocated
27 to the Class Representatives as incentive payments in this case and SHA reserves its right to
28 object to and/or to oppose any portion of any motion or request seeking allocation of any amount
29 to the Class Representatives as incentive payments. The Parties recognize that allocation of the
30 settlement amount among attorneys' fees and costs, including incentive payments, is
31 discretionary with the Court.
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43 **D. Release of Claims**
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45 Under the Settlement Agreement, Plaintiffs will be deemed to have released any and all
46 claim, liability, right, demand, suit, matter, obligation, damage, including consequential
47 damages, losses or costs, compensatory damages, punitive damages, injunctive relief, declaratory
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1 relief, attorneys' fees and costs, action or cause of action of every nature and description
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3 whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted,
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5 accrued or which may thereafter accrue, which regard, arise out of, or relate to facts giving rise
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7 to the subject matter of the Action or the Defendants' defense of the Action. All other Class
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9 Members will be deemed to have released any claim, liability, right, demand, suit, matter,
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11 obligation, injunctive relief, declaratory relief, attorneys' fees and costs, action or cause of action
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13 of every kind and description, whether known or unknown, suspected or unsuspected, asserted or
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15 unasserted, accrued or which may thereafter accrue, which regard, arise out of, or relate to facts
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17 giving rise to the subject matter of the Action or the Defendants' defense of the Action.
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20 **E. Notice**

21 The Parties have agreed, subject to Court approval, to a notice plan that includes
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23 individual notice by U.S. Postal Service first-class mail, postage prepaid, addressed to General
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25 Delivery, Seattle, WA 98101 and also to the last known address for each Class Member. In
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27 addition, Class Counsel will post the Notice of Proposed Class Action Settlement and Settlement
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29 Agreement on its website.
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31 The Notice of Proposed Class Action Settlement informs Class Members of the nature of
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33 the action, the litigation background and terms of the Settlement Agreement, including the
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35 definition of the Settlement Class, the relief provided by the Settlement Agreement, Class
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37 Counsel's request for fees, costs, and incentive payments, and the scope of the release and
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39 binding nature of the settlement on Class Members. It also describes the procedure for objecting
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41 to the settlement and states the date and time of the final approval hearing.
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43 The Settlement Agreement proposes that the notice program set forth above be
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45 established and notices be sent within thirty days after the Court enters an order granting
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47 preliminary approval of the Settlement Agreement. Pursuant to the requirements of the Class
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49 Action Fairness Act, 28 U.S.C. § 1715, Defendants shall also serve notice of the Settlement
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2 Agreement on the appropriate federal and state officials not later than ten days after the
3 Settlement Agreement is filed with the Court.
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6 **F. Objections**

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8 Objections must be received and filed not later than twenty-one days before the Fairness
9 Hearing. The written statement must include: (1) a detailed statement of the Class Member's
10 objection(s), as well as the specific reasons for each objection, including any evidence and legal
11 authority the Class Member wishes to bring to the Court's attention and any evidence the Class
12 Member wishes to introduce in support of his or her objection(s); (2) the Class Member's name,
13 address, and telephone number; and (3) information demonstrating that the Class Member is
14 entitled to be included as a member of the Settlement Class. Class Members or their attorneys
15 intending to make an appearance at the Fairness Hearing must, not later than twenty-one days
16 before the Fairness Hearing, file and serve a notice of appearance and a notice of their intention
17 to appear at the hearing.
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28 **IV. ARGUMENT**

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30 **A. Preliminary Approval Is Proper**

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32 **1. The Standard for Preliminary Approval**

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34 Federal Rule of Civil Procedure 23(e) provides that a class action cannot be settled or
35 compromised without approval by the court. Judicial approval is required regardless whether the
36 action is certified for trial and later settled or is certified for purposes of settlement. *Manual for*
37 *Complex Litigation* (Fourth) § 21.61 (2004). The approval process typically involves three steps:
38 (1) preliminary approval of the proposed settlement; (2) dissemination of mailed and/or
39 published notice of the settlement to all affected class members; and (3) a formal fairness
40 hearing. *Id.* § 21.63. Ultimately, to approve the proposed settlement, the court must determine
41 that it is fair, reasonable, and adequate. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir.
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2 2008); *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d
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4 615, 625 (9th Cir. 1982).

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6 At the preliminary approval stage, the Court's evaluation of whether the Settlement
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8 Agreement is fair, reasonable, and adequate is limited. "Where the proposed settlement appears
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10 to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies,
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12 does not improperly grant preferential treatment to class representatives or segments of the class
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14 and falls within the range of possible approval, preliminary approval is granted." *In re NASDAQ*
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16 *Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997). *See also Young v. Polo*
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18 *Retail, LLC*, No. C-02-4546 VRW, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006); *In re*
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20 *Vitamins Antitrust Litig.*, Nos. Misc. 99-197 (TFH), MDL 1285, 2001 WL 856292, at *4-5
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22 (D.D.C. July 25, 2001).

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24 A presumption of fairness exists if the settlement is reached through arms-length
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26 negotiation, sufficient investigation has taken place to allow counsel and the court to act
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28 intelligently, and counsel is experienced in similar types of litigation. *Nat'l Rural Telecomm.*
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30 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("A settlement following
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32 sufficient discovery and genuine arms-length negotiation is presumed fair."); *In re Orthopedic*
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34 *Bone Screw Prods. Liab. Litig.*, 176 F.R.D. 158, 184 (E.D. Pa. 1997) ("Significant weight should
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36 be attributed to the belief of experienced counsel that settlement is in the best interest of the
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38 class.") (internal quotation marks and citation omitted). Thus, at this stage, so long as the
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40 settlement falls into the range of possible approval—giving deference to the result of the Parties'
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42 arms-length negotiation and the judgment of experienced counsel following sufficient
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44 investigation—the settlement should be preliminarily approved and a final Fairness Hearing
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46 scheduled.

1 **2. The Proposed Settlement Is Fair and Within the Range of Possible Approval**

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3 **a. The Settlement Is the Result of Serious, Arms-Length, Informed**
4 **Negotiation**

5 One indication of whether a settlement is fair and reasonable is whether it is the product
6 of serious, arms-length negotiation following substantial investigation of the merits of the case.
7 Negotiation and investigation minimize any concerns that the Settlement Agreement might be
8 the result of collusion among the Parties or their counsel to undermine the interests of the class
9 for their own benefit. Indeed, “[a] presumption of correctness is said to attach to a class
10 settlement reached in arms-length negotiations between experienced capable counsel after
11 meaningful discovery.” *Hughes v. Microsoft Corp.*, Nos. C98-1646C & C93-0178C, 2001 WL
12 34089697, at *7 (W.D. Wash. Mar. 26, 2001) (internal quotation marks and citation omitted).
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15 The settlement in this case easily meets this standard. Class Counsel undertook
16 significant factual and legal investigation of the issues prior to filing the case and prior to the
17 mediation that resulted in the settlement. Class Counsel sought and reviewed approximately 500
18 redacted SHA Section 8 hearing decisions before filing suit. Ehman Decl. ¶ 7; Straley Decl. ¶ 8.
19 Prior to settlement, Class Counsel reviewed thousands of pages of documents obtained from
20 Defendants through an extensive review of SHA participant files, including termination files and
21 files where participants sought to add minors or related adults to their households. Ehman Decl.
22 ¶ 12; Straley Decl. ¶ 13. Class Counsel also reviewed SHA’s administrative plans, procedure
23 manuals and relevant electronic case notes and emails. Ehman Decl. ¶ 13; Straley Decl. ¶ 14.
24 Following this investigation and review, Class Counsel deposed four SHA staff members,
25 including SHA’s general counsel, as well as a high-ranking HUD official. Ehman Decl. ¶ 15;
26 Straley Decl. ¶ 16. The information obtained in discovery was used to file motions for summary
27 judgment and class certification. Plaintiffs’ summary judgment motion, including the brief and
28 supporting exhibits, ran to approximately 1700 pages.
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2 Defendants also engaged in discovery regarding the Plaintiffs' claims, issued written
3 discovery, took depositions, and reviewed thousands of pages of documents. Defendants
4 evaluated Plaintiffs' claims and filed Defendants' motion for summary judgment seeking
5 dismissal of plaintiffs' claims in their entirety. Defendants also filed their opposition to class
6 certification.
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11 Additionally, the Settlement Agreement unquestionably emerged from a formal, arms-
12 length negotiation process between the Parties. Mediation took place over two days with the
13 assistance of a retired judge experienced in mediating complex civil litigation. Ehman Decl.
14 ¶¶ 17-19; Straley Decl. ¶¶ 18-19. Class Counsel is confident, based on experience in litigating
15 complex civil matters, that they have a full understanding of the facts at issue and the strengths
16 and weaknesses of the allegations in the operative complaint.
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24 **b. The Terms of the Settlement Are Fair and Reasonable**

25 There can be little doubt that the proposed settlement is "within the range of possible
26 approval." *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. at 102. The settlement
27 mandates that Defendants make certain changes to SHA's Administrative Plan and Procedures
28 Manual to clarify and improve SHA's procedures regarding individuals with disabilities and
29 those alleging that they have disabilities; amend SHA's Administrative Plan to list
30 documentation it will accept to prove residency of a minor for the purpose of adding minors to
31 existing Section 8 vouchers; amend SHA's Administrative Plan to reflect that upon request by a
32 participant, SHA may, in its discretion, consider extenuating circumstances to extend the time
33 period that a guest, including a related adult, is allowed to stay in the subsidized residence;
34 provide at the end of hearing officers' termination hearing decisions written notice of the
35 participant's right to judicial review as well as an abbreviated list of legal resources that may be
36 available to assist the participant; and provide a new termination hearing to each Class Member
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1 who requests one in writing. This package of procedural improvements and benefits is
2 significant.
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5 The settlement is a fair and reasonable resolution to this litigation. First, it provides Class
6 Members, upon timely request in accordance with the terms of the Settlement Agreement, with a
7 new termination hearing with additional procedural safeguards. Class Members will have the
8 opportunity to regain their Section 8 voucher, allowing them access to decent and affordable
9 housing. While no result is guaranteed at the new hearing, if a Class Member prevails at her
10 hearing, meets all Section 8 voucher income and eligibility requirements, passes a background
11 check, and satisfies any outstanding debts to SHA, she will be placed at the top of the Section 8
12 waitlist.² Class Members who meet these requirements will be able to bypass the lengthy
13 process of reapplying, going through the lottery and then being placed at the bottom of the
14 current waitlist. Instead, their vouchers will be restored in the fastest and most practicable way
15 possible.
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18 Second, under the Settlement Agreement, SHA will take certain actions to ensure that
19 disabled voucher holders have an opportunity to seek a reasonable accommodation if needed to
20 avoid termination. SHA will clarify its Administrative Plan to make clear that the independent
21 hearing officer in a termination hearing will address requests for reasonable accommodation
22 raised during the hearing. SHA will also amend its Administrative Plan to reflect its procedure
23 for processing pre-hearing accommodation requests. In addition, SHA will modify the definition
24 of disability in its Administrative Plan to reflect the current definition of disability under the
25 Americans with Disabilities Act and to include temporary disabilities. SHA will supplement its
26 Procedures Manual to reflect that its staff members receive training in what constitutes a
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50 ² SHA represents that it is not possible to simply award a voucher to a Settlement Class Member who prevails at a
51 new voucher termination hearing.

1 disability and in responding to requests for reasonable accommodation. And SHA's informal
2 process of pre-termination conferences will be formalized in the Procedures Manual.
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5 Third, SHA will amend its Administrative Plan to require consideration, upon request by
6 a participant and in SHA's discretion, of extenuating circumstances as a basis for extending the
7 time period that a guest, including a related adult, is allowed to stay in the subsidized residence.
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10 Fourth, SHA will amend its Administrative Plan to (1) clarify that, in order to add a
11 minor to an existing Section 8 voucher, SHA will not require proof of court-awarded custody of
12 the minor but will require, in addition to other eligibility requirements, proof that the subsidized
13 household is the primary residence of the minor and (2) list the documents it will accept as proof
14 that the subsidized household is the primary residence of the minor. This will allow families to
15 prove residency of minors without the time and expense of court proceedings.
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23 Finally, the settlement ensures that all current and future Section 8 participants who lose
24 their termination hearing will receive notice of the availability of judicial review. SHA will also
25 provide information on how to find legal resources that are available to help the participant.
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29 Of particular relevance to the reasonableness of the relief obtained under the proposed
30 settlement is the fact that Defendants have contested and would continue to contest the merits of
31 Class Members' claims, as well as the Plaintiffs' ability to pursue this action on a class-wide
32 basis. Defendants deny that SHA's policies and practices violated the Washington and United
33 States Constitutions or any of the statutes or regulations asserted by Plaintiffs. Defendants also
34 deny that SHA's actions constituted breach of any contract. Lastly, Defendants deny that
35 Plaintiffs' claims were appropriate for class certification or that Plaintiffs were appropriate class
36 representatives.
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45 Throughout the course of settlement negotiations, the Parties considered factors such as
46 the past and ongoing cost of this contentious litigation, the scope of relief that was being sought
47 and that might be provided, the cost and benefit of such relief, the risks to each party of class
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1 certification and trying the matter, and the possibility of appeals from the Court's decision which
 2 would only add to the expense, delay, and uncertainty of the litigation. The Parties believe that
 3 the settlement is fair, reasonable, and adequate and, given the uncertainties of continued
 4 litigation, there can be no doubt that this proposed settlement falls well within the range of
 5 possible approval.
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11 **B. The Settlement Class Should Be Provisionally Certified Pursuant to Federal Rule of**
 12 **Civil Procedure 23(b)(2) For Purposes of Settlement**
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14 The Court should provisionally certify this action as a class action for the purpose of
 15 settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure. Provisional certification
 16 is an appropriate device in the settlement of class actions. *See, e.g., Jaffe v. Morgan Stanley &*
 17 *Co.*, No. C-06-3903 TEH, 2008 WL 346417, at *2-3 (N.D. Cal. Feb. 7, 2008); *In re Portal*
 18 *Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 1991529, at *2-3 (N.D. Cal. June 30,
 19 2007). Although Defendants vigorously disagree that a class could be certified if the litigation
 20 proceeded without settlement, the Parties agree that the class may be certified for settlement
 21 purposes only under Rule 23(b)(2).
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31 **1. Plaintiffs Contend That the Settlement Class Has Numerous Members and**
 32 **Individual Joinder of All Class Members Would Be Impracticable³**
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34 The numerosity requirement is presumed to be met when a proposed class exceeds forty
 35 members. *See, e.g., Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995);
 36 *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670,
 37 673-74 (W.D. Wash. 2010) (collecting cases). In assessing impracticability of joinder where the
 38 number of class members is not great, courts consider such factors as the geographical diversity
 39 of class members, the ability of individual claimants to institute separate suits, and whether
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49 ³ This joint motion is based in part on Plaintiffs' factual and legal arguments. Defendants contest
 50 Plaintiffs' arguments regarding class certification but agree, for settlement purposes only, that certification of a class
 51 is appropriate given the risks of proceeding with litigation.

1 injunctive or declaratory relief is sought. 1 Alba Conte & Herbert Newberg, *Newberg on Class*
2 *Actions* § 3:6 (4th ed. 2011).
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5 The Settlement Class that Plaintiffs seek to represent consists of 82 former voucher
6 holders. Given the presumption that the numerosity requirement is met for classes exceeding
7 forty, the requirement has been satisfied. In addition, the realities facing former voucher holders
8 make joinder impracticable. When their Section 8 vouchers were terminated, the Class Members
9 were placed at serious risk of losing stable housing. Without stable housing and financial means,
10 it is unlikely that these individuals would institute separate lawsuits.
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18 **2. Plaintiffs Contend That Questions of Law and Fact Are Common to**
19 **Plaintiffs and Members of the Settlement Class**

20 Next, Rule 23(a)(2) requires that common questions of law or fact exist among class
21 members. “Commonality requires the plaintiff to demonstrate that class members have suffered
22 the same injury.” *Wal-Mart Stores, Inc. v. Dukes*, ___ U.S. ___, 131 S. Ct. 2541, 2551, 180 L. Ed.
23 2d 374 (2011) (internal quotation marks and citation omitted). Courts have certified classes of
24 voucher holders in similar circumstances. *See, e.g., Davis v. Mansfield Metro. Hous. Auth.*, 751
25 F.2d 180, 182 n.2 (6th Cir. 1984) (class of voucher holders certified to challenge housing
26 authority’s pretermination notices and procedures); *McNeill v. New York City Hous. Auth.*, 719
27 F. Supp. 233, 251-53 (S.D.N.Y. 1989) (same); *Ferguson v. Metro. Dev. & Hous. Agency*, 485 F.
28 Supp. 517, 519 (M.D. Tenn. 1980) (same). “In a civil rights suit, commonality is generally
29 satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the
30 putative class members.” *Tarrer v. Pierce Cnty.*, No. C10-5670 BHS, 2010 WL 5300801, at *2
31 (W.D. Wash. Dec. 21, 2010) (citing *LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985)).
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44 Here, Plaintiffs alleged that SHA’s policies and procedures were unlawful in a variety of
45 ways, each of which affected at least one of the Plaintiffs and some or all of the Class Members.
46 For example, Plaintiffs alleged that SHA failed to consider Class Members’ requests for
47 disability accommodations during voucher termination hearings; failed to inform Class Members
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2 of their right to judicial review of the hearing officer’s decision; failed to properly train the
3 hearing officer who oversaw the Class Members’ voucher termination hearings; imposed
4 unlawfully burdensome requirements on Class Members who wished to add a minor to a
5 voucher; and imposed unlawfully burdensome requirements on Class Members who wished to
6 allow a guest, including a related adult, to remain in a subsidized household temporarily. Each
7 Class Member shares common legal questions regarding the lawfulness of SHA’s policies and
8 procedures.
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16 **3. Plaintiffs Contend That Their Claims Are Typical of the Claims of the**
17 **Settlement Class**

18 Rule 23(a)(3), which requires that the named plaintiffs be members of the class and
19 possess claims that are “reasonably co-extensive with those of absent class members,” is also
20 interpreted permissively. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). “The
21 test of typicality is whether other members have the same or similar injury, whether the action is
22 based on conduct which is not unique to the named plaintiffs, and whether other class members
23 have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497,
24 508 (9th Cir. 1992) (internal quotation marks and citation omitted).
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32 Here, Plaintiffs have claims that are typical of the Settlement Class. Both Ms. Wilson
33 and Ms. Townes together were subject to the allegedly unlawful hearing procedures described in
34 the previous subsection, and the same hearing officer that presided over the hearings for each
35 Class Member also conducted the named Plaintiffs’ hearings. Plaintiffs were also subject to the
36 other allegedly unlawful policies described above. Plaintiffs’ claims are typical.
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43 **4. Plaintiffs Contend That the Class Representatives and Their Counsel Have**
44 **Fairly and Adequately Protected the Interests of the Class and Will Continue**
45 **to Do So**

46 Finally, Rule 23(a)(4) and Rule 23(g) together ensure the satisfaction of what courts have
47 recognized as a two-part test: (1) that the named plaintiffs and their counsel do not have
48 conflicts of interest with the proposed class; and (2) that the named plaintiffs and their counsel
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2 can prosecute the action vigorously through qualified counsel. *Hanlon*, 150 F.3d at 1020. In
3 considering the adequacy of counsel, the court must consider: (1) the work counsel has done in
4 investigating the potential claims in the action; (2) counsel’s experience in handling class actions
5 and the types of claims asserted in the action; (3) counsel’s knowledge of the applicable law; and
6 (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).
7
8 Plaintiffs adequately represent the interests of absent class members if they have no conflicts
9 with class interests and are willing and able to vigorously prosecute the action on behalf of the
10 class. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462-63 (9th Cir. 2000).
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17 Class Counsel, Columbia Legal Services (“CLS”), is a nonprofit law firm that has
18 extensive experience in housing issues as well as complex civil actions, including class actions.
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20 CLS is also experienced in representing low-income clients. Ehman Decl. ¶¶ 3-5; Straley Decl.
21 ¶¶ 4-6. As described in more detail above, Class Counsel has invested significant time,
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23 resources and effort in investigating the claims in this action. Class Counsel has fairly and
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25 adequately protected the interests of the Settlement Class and will continue to do so if appointed
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27 by the court as Class Counsel.
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32 The named Plaintiffs do not have conflicts of interest with the proposed Settlement Class.
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34 The only claim asserted by one of the Class Representatives that differs from the claims asserted
35 on behalf of the Settlement Class is Ms. Wilson’s claim for monetary damages.⁴ Monetary
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37 damages were never sought on behalf of the Settlement Class. A named representative may seek
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39 remedies that are not sought for the class as a whole. It is only “[w]hen the interests of the class
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41 representative can be pursued . . . at the expense of the interests of all the class members, and the
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43 resulting conflict cannot be resolved by the creation of subclasses or otherwise abated, [that] the
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45 conflict will render the plaintiff an inadequate representative.” 1 Conte & Newberg, *supra*,
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⁴ Ms. Townes initially asserted a claim for damages but she sought and the Court granted dismissal of that claim.
See Dkt. 171.

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2 § 3:26 (footnotes omitted). Here, monetary damages were never sought on behalf of the
3 Settlement Class and the damages being awarded to Ms. Wilson through the settlement do not
4 cause a conflict. Ms. Wilson and Ms. Townes are adequate representatives.
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8 **5. The Alleged Acts or Omissions of Defendants Apply Generally to the**
9 **Settlement Class, So That Final Injunctive Relief or Corresponding**
10 **Declaratory Relief Is Appropriate Respecting the Settlement Class as a**
11 **Whole**

12 The settlement of this action is maintainable under Rule 23(b)(2), which permits class
13 certification if “the party opposing the class has acted or refused to act on grounds that apply
14 generally to the class, so that final injunctive relief or corresponding declaratory relief is
15 appropriate respecting the class as a whole.”
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20 Ms. Wilson and Ms. Townes seek injunctive and declaratory relief requiring SHA to
21 provide legally adequate hearings to all people whom it has terminated pursuant to an inadequate
22 unconstitutional termination hearing process.
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26 Where, as here, plaintiffs allege discriminatory and unlawful
27 systemic or policy-level actions, certification under Rule 23(b)(2)
28 is proper, and in fact this case presents a “prime example[]” of the
29 type of case for which Rule 23(b)(2) certification is particularly
30 appropriate.
31

32 *Taylor v. Hous. Auth. of New Haven*, 257 F.R.D. 23, 32 (D. Conn. 2009) (quoting *Amchem*
33 *Prods., Inc. v. Windsor*, 521 U.S. 591, 614, 117 S. Ct. 2231, 138 L. Ed. 2d 297 (1997)), *vacated*
34 *on other grounds*, 267 F.R.D. 36 (D. Conn. 2010) (decertifying class after trial because facts no
35 longer supported certification), *aff’d sub nom. Taylor ex rel. Wazylyuk v. Hous. Auth. of City of*
36 *New Haven*, 645 F.3d 152 (2d Cir. 2011). Here, Defendants applied the same allegedly deficient
37 policies and procedures, to each member of the Settlement Class. The nature of the allegations at
38 issue and the nature of the relief sought both support certification under Federal Rule of Civil
39 Procedure 23(b)(2).
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1 **C. The Proposed Notice to the Settlement Class of the Settlement Should Be Approved**

2 Due process requires that interested parties be provided with “notice reasonably
3 calculated, under all the circumstances, to apprise [them] of the pendency of the action and
4 afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust*
5 *Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). The settlement notice must fairly
6 apprise the class members of the terms of the proposed compromise and give class members
7 sufficient information to decide whether they should accept the benefits offered or object to the
8 settlement. *Id.* Additionally, the notice must be designed so as to have a reasonable chance of
9 reaching a substantial percentage of the class members. *Id.* at 318.

10 Here, the proposed notice and the method of dissemination meet each of these
11 requirements. First, the notice is written in plain language that uses short sentences, everyday
12 terms and the active voice to help readers find what they need, understand what they find, and
13 effectively use what they find. The first page of the notice uses a logical organization and a chart
14 to help readers understand the settlement terms, determine if they are a Class Member, and
15 understand their options. The document also contains a table of contents and uses an easy to
16 understand question-and-answer format to apprise Class Members of their rights and the
17 information necessary to determine whether to accept the settlement or object.

18 Second, the settlement provides for several methods to ensure that the notice reaches as
19 many Class Members as possible. The notice will be sent to general delivery and the last known
20 address of all Class Members. Class Counsel will also post the Notice of Proposed Class Action
21 Settlement and Settlement Agreement on its website.

22 Third, the notice provides all the information necessary for Class Members to make
23 informed decisions with respect to whether they object to the proposed settlement.

24 Accordingly, the content and method of dissemination of the proposed notice fully
25 comports with the requirements of due process and applicable case law. As such, the notice
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1 should be approved by the Court, and the Court should direct that the notice be distributed as
 2 agreed by the Parties.
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5 **D. The Fairness Hearing and Order of Preliminary Approval**

6 Assuming the Court grants the motion for preliminary approval, the Parties propose the
 7 following sequence of events and deadlines.
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	Event	Timing
11		
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15	1. Deadline for dissemination of Notice of	Not later than thirty days after
16	Proposed Class Action Settlement	Preliminary Approval Order signed
17		
18	2. Deadline for Class Counsel to file petition for	Not later than sixty days before the
19	award of attorneys' fees, costs, and incentive	Fairness Hearing
20	payments to Class Representatives	
21		
22		
23	3. Deadline for filing objections	Not later than twenty-one days before
24		the Fairness Hearing
25		
26	4. Deadline for responses to Class Counsel's	Not later than twenty-one days before
27	petition for award of attorneys' fees, costs, and	the Fairness Hearing
28	incentive payments to Class Representatives	
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30		
31	5. Deadline for Class Counsel to file any reply in	Not later than six days before the
32	support of Class Counsel's petition for award	Fairness Hearing
33	of attorneys' fees, costs, and incentive	
34	payments to Class Representatives	
35		
36	6. Deadline for Class Counsel to reply to any	Not later than six days before the
37	opposition memorandum filed by any objector	Fairness Hearing
38		
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40	7. Fairness Hearing	At least ninety days after Preliminary
41		Approval Order signed
42		

43 **V. CONCLUSION**

44 For the foregoing reasons, Plaintiffs, Defendants, and their respective counsel
 45 respectfully request that the Court grant this motion for preliminary approval of the Settlement,
 46 provisionally certify the Settlement Class, approve the content and authorize the dissemination of
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1 the proposed settlement notice, and schedule a Fairness Hearing and adopt the proposed schedule
2 of events and deadlines.
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5 RESPECTFULLY SUBMITTED this 8th day of September, 2011.
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2011, I electronically filed the foregoing JOINT MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT with the Clerk of the Court using the CM/ECF system, which will send notice to counsel as follows:

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Counsel for Defendants Seattle Housing Authority and Thomas Tierney

I CERTIFY UNDER PENALTY OF PERJURY under the laws of the United States of America that the foregoing is true and correct.

DATED at Seattle, Washington this 8th day of September, 2011.

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