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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 MARKELETTA WILSON, MARIE  
8 TOWNES, and all other similarly situated  
9 individuals,

10 Plaintiffs,

11 vs.

12 SEATTLE HOUSING AUTHORITY, and  
13 THOMAS TIERNEY, Executive Director of  
14 the Seattle Housing Authority, in his Official  
15 Capacity,

16 Defendants.

17 CLASS ACTION

18 No. 09-CV-00226-MJP

19 PLAINTIFFS' MOTION FOR  
20 ATTORNEYS' FEES, COSTS, AND  
21 INCENTIVE PAYMENTS

22 NOTE ON MOTION CALENDAR:

23 JANUARY 9, 2012

(ORAL ARGUMENT REQUESTED)

24 **I. INTRODUCTION**

25 Plaintiffs are entitled to seek up to \$195,000 in reasonable attorneys' fees, costs, and  
26 incentive payments pursuant to the terms of the Settlement Agreement. Plaintiffs therefore ask  
27 the Court to award \$165,000 in attorneys' fees and \$15,000 in costs to Columbia Legal Services  
28 and \$15,000 in incentive payments to the Class Representatives.

29 **II. FACTUAL AND PROCEDURAL BACKGROUND**

30 Plaintiffs filed suit against the Seattle Housing Authority ("SHA") to challenge its  
31 unconstitutional Section 8 termination hearing process and its policies and practices that  
32 discriminated against disabled voucher holders and voucher holders seeking to add members to  
33 their households. Fourth Am. Compl. Dkt. No. 111 at ¶¶ 1.1, 1.2. Plaintiffs sought relief from

1 SHA's unlawful policies and practices in three main ways: (1) require SHA to provide new  
2 termination hearings that meet all constitutional, regulatory and statutory requirements including  
3 fair housing laws; (2) prohibit SHA from requiring proof of court-approved legal custody prior to  
4 adding a minor to a household; and (3) require SHA to allow voucher holders to live with close  
5 relatives. *Id.* at ¶¶ 16.18-16.20.

6 Over a three-year period, the parties engaged in extensive discovery and motions practice  
7 on these issues. Plaintiffs' attorneys spent six weeks reviewing hundreds of Section 8 participant  
8 files at SHA's headquarters and at SHA's warehouse. Declaration of Merf Ehman ("Ehman  
9 Decl.") ¶ 5. During the litigation, the parties filed numerous motions, including summary  
10 judgment motions, discovery motions, a preliminary injunction motion, and motions related to  
11 the participation of the U.S. Department of Housing and Urban Development. Plaintiffs' second  
12 summary judgment motion was supported by approximately 17,000 pages of exhibits. Ehman  
13 Decl. ¶ 6. After filing their second summary judgment motions, SHA and Plaintiffs engaged in  
14 serious and intensive mediation with the Honorable Terrence Carroll (retired). Mediation  
15 resulted in a Settlement Agreement that provides much of the relief initially sought by Plaintiffs,  
16 as well as other considerable benefits to voucher holders. Settlement Agreement Dkt. No. 211-1.

17 **A. New Termination Hearings**

18 The Settlement Agreement provides new constitutionally adequate hearings to a class of  
19 80 voucher holders. *Id.* at ¶¶ 2.2, 3.5. At these hearings, voucher holders can raise all relevant  
20 legal arguments. *Id.* at ¶¶ 3.1(a), (b), 3.5(e). Trained hearing officers will preside over these  
21 hearings. *Id.* at ¶ 3.1(a), (c). Voucher holders who prevail will be placed at the top of the SHA  
22 Section 8 waiting list. *Id.* at ¶ 3.5(f). SHA will provide notice of the opportunity for judicial  
23 review following any adverse termination hearing decision for these and all future hearings. *Id.*  
at ¶¶ 3.4, 3.5(e). SHA will also include referral information for legal services in this notice. *Id.*

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1           **1.       Plaintiffs Are the Prevailing Party**

2           Plaintiffs obtained a settlement agreement that alters SHA’s administration of the  
3 Section 8 program in significant ways and directly benefits voucher holders. They are therefore  
4 the prevailing party in this case. *Richard S. v. Dep’t. of Developmental Servs. of Cal.*, 317 F.3d  
5 1080, 1086 (9th Cir. 2003) (plaintiff is prevailing party when she obtains a judicially enforceable  
6 settlement agreement that modifies defendant’s behavior in a way that directly benefits plaintiff).

7           **2.       Plaintiffs Request for Attorneys’ Fees Is Reasonable**

8           Courts use a two-step process to determine the amount of a reasonable fee award.  
9 *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, courts calculate a  
10 “lodestar” amount by multiplying the number of hours reasonably expended in the litigation by a  
11 reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). This calculation  
12 includes factors like the novelty and complexity of the issues, special skill and experience of  
13 counsel, quality of representation, and the results obtained. *Morales v. City of San Rafael*, 96  
14 F.3d 359, 363-64 & nn. 8-9 (9th Cir. 1996). Second, courts may adjust the “lodestar” amount  
15 based on factors not already included in the calculation like the undesirability of the case or fee  
16 awards in similar cases. *Id.*

17           Here, Plaintiffs seek a fee amount based on the hourly rate of \$250 per hour. This rate is  
18 commensurate with the attorneys’ experience and the average fee rate in the Seattle legal  
19 community. Ehman Decl. ¶ 9; Declaration of Nicholas Straley (“Straley Decl.”) ¶ 5; *see also*  
20 *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992) (reasonable hourly fee set at market  
21 rate for the relevant legal community based on the attorney’s expertise). Plaintiffs’ attorneys  
22 expended 3,406.5 hours on this case. Ehman Decl. ¶ 10; Straley Decl. ¶¶ 7, 9. Thus, \$750,000  
23 would be an appropriate fee award. *See, e.g., Morales*, 96 F.3d at 363 n.8 (“There is a strong  
presumption that the lodestar figure represents a reasonable fee.”). However, despite the fact

1 that Plaintiffs achieved excellent results in this factually, legally, and procedurally complex case,  
2 they do not seek the full amount to which they are entitled. Rather, to facilitate settlement,  
3 Plaintiffs greatly reduced their attorneys' fee request and seek only \$165,000. Because that  
4 amount is eminently reasonable, Plaintiffs' request should be granted.

5 **B. Plaintiffs Are Entitled to an Award of Costs**

6 Plaintiffs also seek reimbursement for costs incurred in litigating this action pursuant to  
7 42 U.S.C. § 1988. *Harris v. Marhoefer*, 24 F.3d 16, 19-20 (9th Cir. 1994) (plaintiffs' reasonable  
8 costs compensable under 42 U.S.C. § 1988). Plaintiffs' costs consist of \$15,000 for litigation  
9 expenses. *See* Ehman Decl. ¶ 12, Exhibit B (Plaintiffs' Cost Bill).

10 **C. The Court Should Approve Incentive Payments**

11 Finally, Plaintiffs seek the Court's approval of a \$5,000 incentive payment for  
12 Ms. Townes and a \$10,000 incentive payment for Ms. Wilson to recognize their efforts on behalf  
13 of the Class.

14 The Settlement Agreement provides that SHA will pay up to \$195,000 to Plaintiffs for  
15 fees, costs, and incentive payments, if awarded by the Court. *See* Dkt. No. 211-1 at § 3.7(a)  
16 ("Plaintiffs and Class Counsel intend to seek approval from the Court for an award of attorneys'  
17 fees and costs including Class Representative incentive payments, not to exceed, in total,  
18 [\$195,000]. The Parties recognize that allocation of this settlement amount among attorneys'  
19 fees and costs, including incentive payments, is discretionary with the Court.").<sup>1</sup> Thus,  
20 approving the incentive payments requested here will not increase SHA's liability in any way.  
21 Nor will it reduce relief to the Class. *See In re Cendant Corp., Derivative Action Litig.*, 232 F.

22 \_\_\_\_\_  
23 <sup>1</sup> SHA reserved the right to object to incentive payments to Ms. Townes and Ms. Wilson. *See id.* ("SHA does not agree that any amount should be allocated to the Class Representatives as incentive payments in this case and SHA reserves its right to object to and/or to oppose any portion of any motion or request seeking allocation of any amount to the Class Representatives as incentive payments.").

1 Supp. 2d 327, 344 (D.N.J. 2002) (when incentive payments neither increase defendants'  
2 liabilities nor reduce relief to the class, “the interests of . . . the public . . . and the defendants are  
3 not directly affected”). Moreover, as described below, Ms. Townes and Ms. Wilson have rightly  
4 earned incentive payments, and the amounts requested are well within the range of payments  
5 approved in comparable cases. The Court should therefore approve the incentive payments.

### 6 **1. Courts Routinely Approve Incentive Payments**

7 Trial courts have discretion to approve incentive payments, and they routinely do so.  
8 *See, e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (incentive payments  
9 are “fairly typical”); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1330 (W.D. Wash.  
10 2009) (approving four \$7,500 incentive payments); *Cullen v. Whitman Medical Corp.*, 197  
11 F.R.D. 136, 145 (E.D. Pa. 2000) (courts “routinely approve incentive awards”).

12 In determining the propriety and amount of proposed incentive payments, courts  
13 consider:

14 (1) the risk to the class representative in commencing a class  
15 action, both financial and otherwise; (2) the notoriety and personal  
16 difficulties encountered by the class representative; (3) the amount  
17 of time and effort spent by the class representative; (4) the duration  
of the litigation; and (5) the personal benefit, or lack thereof,  
enjoyed by the class representative as a result of the litigation.

18 *Pelletz*, 592 F. Supp. 2d at 1329. Courts also consider the class representatives’ ability and  
19 willingness to provide insight into the defendant’s conduct, *see Glass v. UBS Fin. Servs., Inc.*,  
20 No. C-06-4068 MMC, 2007 WL 221862, at \*17 (N.D. Cal. Jan. 26, 2007); the class  
21 representatives’ contributions to settlement negotiations, *see Ingram v. The Coca-Cola Co.*, 200  
22 F.R.D. 685, 694 (N.D. Ga. 2001); and “the ultimate recovery,” *Roberts v. Texaco, Inc.*, 979 F.  
23 Supp. 185, 200 (S.D.N.Y. 1997). Finally, courts have emphasized that incentive payments are  
particularly appropriate in the discrimination context, because they “create[] the proper

1 incentives for individuals to come forward and undertake the arduous efforts needed to challenge  
2 alleged discrimination on a class-wide level[.]” *Ingram*, 200 F.R.D. at 694; *see also Roberts*,  
3 979 F. Supp. at 201 n.2.

## 4           **2.       Incentive Payments Are Appropriate in This Case**

5           Virtually every relevant consideration supports the request for incentive payments here.  
6 First, despite being disabled and living on meager incomes, both Ms. Townes and Ms. Wilson  
7 invested substantial time and effort in this case. Over the course of nearly three years, they  
8 helped Class Counsel prepare several complaints; reviewed briefs; endured many hours of  
9 depositions; responded to interrogatories and other discovery requests; provided declarations in  
10 support of motions; and attended court hearings. In addition, they attended and participated in an  
11 intense, 14-hour mediation session that ultimately led to settlement. *See* Declaration of Marie  
12 Townes (“Townes Decl.”) ¶¶ 5-6; Declaration of Markeletta Wilson (“Wilson Decl.”) ¶¶ 6-7.  
13 Their efforts warrant the limited compensation sought here. *See Nichols v. SmithKline Beecham*  
14 *Corp.*, No. Civ.A.00-6222, 2005 WL 950616, at \*24 (E.D. Pa. April 22, 2005) (“It is particularly  
15 appropriate to compensate named representative plaintiffs with incentive awards where they  
16 have actively assisted plaintiffs’ counsel in their prosecution of the litigation for the benefit of a  
17 class.”).

18           Second, Ms. Townes and Ms. Wilson incurred a variety of costs and bore significant  
19 burdens to represent the class. For example, Ms. Townes paid for childcare and transportation  
20 out of her own pocket so she could meet with Class Counsel and keep abreast of the case, and the  
21 stress of serving as Class Representative caused her to seek treatment from a therapist on several  
22 occasions. *See* Townes Decl. ¶ 8. Ms. Wilson, for her part, served the Class despite severe  
23 disabilities that often prevent her from performing basic tasks like sleeping, bathing, and leaving

the house. *See* Wilson Decl. ¶ 8; *see also Equal Rights Ctr. v. Wash. Metro. Area Transit Auth.*,

1 573 F. Supp. 2d 205, 214 n.10 (D.D.C. 2008) (approving payments to several class  
2 representatives in part because their “various disabilities . . . made travel to and from depositions  
3 and other court proceedings especially difficult”).

4 Third, Ms. Townes and Ms. Wilson provided valuable information about SHA’s  
5 challenged conduct. For example, Ms. Wilson provided information about how SHA’s hearing  
6 procedures disadvantaged disabled Section 8 participants, while Ms. Townes imparted a more  
7 practical understanding of the hardships imposed by SHA’s related-child policy. *See* Townes  
8 Decl. ¶ 5(a); Wilson Decl. ¶ 6(a). The insights provided by Ms. Townes and Ms. Wilson  
9 ultimately helped obtain the major changes to both aspects of the Section 8 program resulting  
10 from this litigation. *See* Townes Decl. ¶¶ 5(a),(d),(e), 7; Wilson Decl. ¶¶ 6(a),(d),(e), (7); *see*  
11 *also Glass*, 2007 WL 221862 at \*17 (approving incentive payments in part because the class  
12 representatives “provided a great deal of informal discovery . . . and a great deal of insight into  
13 the policies and practices of [the defendant]”).

14 Fourth, Ms. Townes and Ms. Wilson made significant contributions to the settlement  
15 process. As noted above, both attended the first day of the parties’ mediation session, which  
16 lasted about 14 hours; both participated in key strategic decisions during settlement negotiations;  
17 and both made affirmative efforts to protect the interests of the Class. *See* Townes Decl. ¶ 6;  
18 Wilson Decl. ¶ 7; *see also Ingram*, 200 F.R.D. at 694 (approving incentive payments in part  
19 because “Class Representatives . . . directly participated in the mediation process and vigorously  
20 asserted the interests of the class”).

21 Fifth and finally, as a direct result of Ms. Townes’ and Ms. Wilson’s dedication and  
22 effort, many other low-income, vulnerable families will be able to regain their Section 8  
23 vouchers, add family members, and have their disabilities reasonably accommodated.

Ms. Townes’ and Ms. Wilson’s service to past and future Section 8 participants deserves

1 recognition. *See Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250  
2 (S.D. Ohio 1991) (“Courts approve incentive awards . . . where the representatives have earned  
3 the awards.”).

4 **3. The Requested Incentive Payments Are Fair and Proportional**

5 The requested incentive payments are fair and proportional. Ms. Wilson is entitled to a  
6 larger (if still modest) payment than Ms. Townes because Ms. Wilson was more extensively  
7 involved in the case and because she performed her duties despite severe disabilities. *Compare*  
8 *Townes Decl. with Wilson Decl.* The requested payments fall squarely within the range of  
9 payments approved in comparable cases. *See, e.g., Dupler v. Costco Wholesale Corp.*, 705 F.  
10 Supp. 2d 231, 245 (E.D.N.Y. 2010) (approving \$25,000 incentive payment to named plaintiff);  
11 *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010) (\$5,000 payments  
12 to class representatives appropriate); *Razilov v. Nationwide Mut. Ins. Co.*, No. 01-CV-1466-BR,  
13 2006 WL 3312024, \*3-4 (D. Or. Nov. 13, 2006) (approving \$10,000 payments for class  
14 representatives); *Selzer v. Bd. of Educ. of the City of New York*, No. 82 Civ. 7783 (MEL), 1993  
15 WL 42787, at \*2, \*4 (S.D.N.Y. Feb. 16, 1993) (court approved incentive payments of \$47,000).

16 Ms. Townes and Ms. Wilson have served the Class diligently for almost three years.  
17 Class Counsel therefore respectfully requests that the Court authorize incentive payments of  
18 \$5,000 for Ms. Townes and \$10,000 for Ms. Wilson.

19 ///

20 ///

1 **V. CONCLUSION**

2 For the foregoing reasons, the Court should award \$180,000 to Columbia Legal Services  
3 for attorneys' fees and costs and \$5,000 to Ms. Townes and \$10,000 to Ms. Wilson as incentive  
4 payments.

5  
6 Respectfully submitted this 9<sup>th</sup> day of  
November, 2011

7 s/ Merf Ehman  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 9th day of November 2011, I electronically filed the foregoing  
3 Plaintiffs' Motion for Attorneys' Fees, Costs, and Incentive Payments with the Clerk of the  
4 Court using the CM/ECF system, which will send notice to counsel as follows:

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

13 DATED at Seattle, Washington this 9<sup>th</sup> day of November, 2011.

14  
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