



1 alleges contributed to a pattern or practice of constitutional violations. The Parties intend to  
2 ensure that police services are delivered to the Seattle community in a manner that complies with  
3 the Constitution and laws of the United States.

#### 4 **I. DISCUSSION**

5 Entry of the Settlement Agreement is appropriate because the Agreement is  
6 fundamentally fair, adequate, and reasonable, resulted from arms-length negotiations by  
7 sophisticated parties, is consistent with the purpose of Section 14141, and is the most effective  
8 way to address the allegations of unconstitutional policing made by the United States. Moreover,  
9 public policy favors settlement, particularly in complex litigation such as the pattern or practice  
10 claim brought by the United States here. *Officers for Justice v. Civil Service Comm'n*, 688 F.2d  
11 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983) (“[I]t must not be overlooked that  
12 voluntary conciliation and settlement are the preferred means of dispute resolution.”); *United*  
13 *States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999) (“In considering whether to enter a  
14 proposed consent decree, a district court should be guided by the general principle that  
15 settlements are encouraged.”); *Arthur, et al. v. Sallie Mae, Inc., et al.*, No. CV10-198-JLR, 2012  
16 U.S. Dist. LEXIS 3313, at \*17-18 (W.D. Wash. Jan. 10, 2012) (“As a matter of express public  
17 policy, federal courts strongly favor and encourage settlements, particularly in class actions and  
18 other complex matters.”).

#### 19 **A. The Settlement Agreement Is Fundamentally Fair, Adequate, and Reasonable.**

20 To assess whether to approve a proposed settlement, courts consider whether the  
21 settlement is “fundamentally fair, adequate, and reasonable.” *United States v. Oregon*, 913 F.2d  
22 576, 580 (9th Cir. 1990); *see also Cemex Inc. v. L.A. County*, 166 Fed. Appx. 306, 307  
23 (9<sup>th</sup> Cir. 2006) (“Review of a consent decree is limited to ensuring that the agreement is not the

1 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the  
2 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”). This analysis  
3 does not require “the achievement of the optimal outcome for all parties,” but rather “[t]he court  
4 need only be satisfied that the decree represents a reasonable factual and legal determination.”  
5 *Oregon*, at 580-81. Indeed, the court’s approval “is nothing more than an amalgam of delicate  
6 balancing, gross approximations and rough justice.” *Officers for Justice v. Civil Service Com.*,  
7 688 F.2d at 625. In addition to considering the overall scope of the agreement, courts make this  
8 “gross approximation” by considering whether the agreement is consistent with the law, whether  
9 it was forged by arms-length bargaining, and whether there is an evidentiary basis supporting its  
10 provisions. *North Carolina*, 180 F.3d at 581.

11 Consistent with these requirements, the Settlement Agreement agreed upon by the Parties  
12 is fundamentally fair, adequate, and reasonable; is fully consistent with the public objectives of  
13 Section 14141; was negotiated at arms-length; supported by an evidentiary record; and offers the  
14 best path forward for SPD.

15 1. The Settlement Agreement Furthers the Objectives of Section 14141.

16 Congress enacted Section 14141 to forbid law enforcement officers from engaging in a  
17 pattern or practice “that deprives persons of rights, privileges, or immunities secured or protected  
18 by the Constitution or laws of the United States.” 42 U.S.C. § 14141. It contains no limitation  
19 on the nature of the constitutional or federal rights that it protects. Where a pattern or practice of  
20 constitutional or statutory violations exists, Congress granted the Justice Department the  
21 authority to sue police departments to correct the underlying policies that led to the misconduct.  
22 H.R. Rep. No. 102-242, pt. 1, at 137.  
23

1 Here, the Settlement Agreement's substantive provisions relate directly to the policies,  
2 procedures, training, and oversight that the United States alleges contribute to a pattern or  
3 practice of SPD officers using excessive force in violation of the Fourth Amendment and Section  
4 14141. In the United States' Complaint, the United States alleges that this pattern or practice is  
5 evidenced by the number and nature of recent incidents in which SPD officers have used  
6 excessive force. In the Settlement Agreement, the Parties negotiated and agreed upon revisions  
7 to SPD's policies, procedures, and practices to address the allegations in the United States'  
8 Complaint. The nexus between these reforms and the alleged pattern or practice of constitutional  
9 violations in the United States' Complaint provides strong evidence that the Settlement  
10 Agreement furthers the purpose of Section 14141.

11 2. The Settlement Agreement Derives From Arms Length Negotiations and Is  
12 Supported by the United States' Investigation of SPD's Enforcement Activities.

13 The process of formulating the Settlement Agreement underscores its reasonableness.  
14 The Settlement Agreement's substantive provisions derive from lengthy negotiations between  
15 sophisticated parties and are tailored to the findings of the United States' investigation of SPD's  
16 activities.

17 a. *Arms Length Negotiations*

18 The Parties agreed to the Settlement Agreement following extensive negotiations over  
19 policies and procedures that are capable of preventing SPD officers from engaging in a pattern or  
20 practice of constitutional violations as alleged by the United States. These negotiations  
21 underscore the Settlement Agreement's reasonableness. Indeed, negotiations over the Settlement  
22 Agreement began shortly after the United States announced, on December 16, 2011, that its nine-  
23 month investigation into SPD's policing activities had found reasonable cause, under § 14141, to

1 believe that SPD engages in a pattern or practice of excessive force. The United States also  
2 identified concerns that certain practices could have a disparate impact on minority communities.

3 The Settlement Agreement reflects the Parties' efforts to ensure that these alleged  
4 violations do not recur. The Parties are intimately familiar with SPD's practices and invested  
5 significant time negotiating the Settlement Agreement. During this process, both the United  
6 States and the City consulted with subject matter experts to ensure that each remedial measure in  
7 the Settlement Agreement is tailored to address the concern and may be reasonably implemented.  
8 This adversarial posture, combined with the respective duties of these government agencies  
9 towards those they represent, provides further assurance that the Settlement Agreement is fair,  
10 adequate, and reasonable, and may be relied upon by the Court in so finding.

11 *b. The Settlement Agreement is Tailored to the Findings of the United States'*  
12 *Extensive Investigation.*

13 Moreover, the Settlement Agreement is supported by the findings of the United States'  
14 nine-month investigation that began in March 2011. The investigative team consisted of lawyers  
15 and other staff from the Civil Rights Division and the United States' Attorneys Office for the  
16 Western District of Washington (collectively, "DOJ"), working closely with police professionals  
17 with expertise in the areas on which the investigation focused. The City and SPD fully  
18 cooperated with the investigation.

19 During its nine-month inquiry, DOJ and its police experts gathered information through  
20 interviews and meetings with SPD officers, supervisors and command staff, as well as members  
21 of the public, City and State officials, and other community stakeholders. The investigation  
22 included on and off-site review of a wide array of documents, and multiple on-site tours in which  
23 DOJ personnel and experts accompanied SPD officers during their shifts. In sum, DOJ reviewed  
hundreds of thousands of pages of documents, including SPD policies and procedures, training

1 materials, internal use of force reports, public reports, the Office of Professional Accountability's  
2 ("OPA") complaints, and investigative files and data generated from SPD and OPA databases.

3 The investigation also included hundreds of interviews and meetings with SPD officers,  
4 supervisors and command staff, as well as Seattle City officials, local community advocates and  
5 attorneys, and members of the Seattle community at large. Indeed, DOJ hosted six full days of  
6 interviews with community members.

7 The evidence underlying the United States' investigative findings is summarized in the  
8 December 16, 2011, report of that investigation. While litigation of the City's liability would  
9 create an even more extensive factual record, an adequate factual record supporting the  
10 legitimacy of this Settlement Agreement already has been established. The Settlement  
11 Agreement is based upon the results of the United States' investigation, and reflects the input of  
12 hundreds of individuals, including SPD officers and members of the community.

13 This extensive record demonstrates that the Settlement Agreement is tailored to the  
14 alleged deficiencies identified by the United States. Accordingly, it is consistent with and  
15 furthers the objectives of Section 14141 because it embodies the agreement of the City and its  
16 police department to ensure that no pattern or practice of unconstitutional police conduct exists.  
17 The Settlement Agreement requires the City and SPD to implement numerous reforms  
18 throughout SPD, including in each of the areas the United States' investigation found  
19 problematic: use of force, including use of impact weapons, escalation of minor encounters, and  
20 force used against individuals with mental illness and persons of color; training on each of these  
21 aspects of use of force; discriminatory policing; front line and supervisory review; and complaint  
22 intake, investigation, and adjudication. The Settlement Agreement also includes ongoing  
23 mechanisms to solicit input from SPD officers and members of the Seattle community.

1           3.     Implementing the Settlement Agreement Is Necessary To Remedy Allegations of  
2                     Unconstitutional Patterns of Conduct.

3           Finally, approval and entry of the Settlement Agreement is appropriate here because  
4 voluntary compliance is more likely to conserve public resources and accomplish the statutory  
5 goals of Section 14141 than orders imposed at the end of protracted litigation. *See* Fed. R. Civ.  
6 P. 16(b) advisory committee’s note (“Since it obviously eases crowded court dockets and results  
7 in savings to the litigants and the judicial system, settlement should be facilitated at as early a  
8 stage of the litigation as possible.”); *Kirkland v. New York State Dep’t of Cor. Serv.*, 711 F.2d  
9 1117, 1128 n.14 (2d Cir. 1983) (Explaining that in the Title VII context, settlements “may  
10 produce more favorable results for protected groups than would more sweeping judicial orders  
11 that could engender opposition and resistance.”); *United States v. City of Jackson, Miss.*, 519  
12 F.2d 1147, 1152 n.9 (5th Cir. 1975) (“Because of the consensual nature of the decree, voluntary  
13 compliance is rendered more likely . . . . At the same time, the parties . . . minimize costly  
14 litigation and adverse publicity and avoid the collateral effects of adjudicated guilt.”). Indeed,  
15 “the value of voluntary compliance is doubly important when it is a public employer that acts,  
16 both because of the example its voluntary assumption of responsibility sets and because the  
17 remediation of governmental discrimination is of unique importance.” *Wygant v. Jackson Bd. of*  
18 *Educ.*, 476 U.S. 267, 290 (1986) (O’Connor, J., concurring).

19           Here, the Settlement Agreement provides an opportunity to continue the Parties’  
20 considerable efforts to ensure constitutional policing in Seattle. To date, the United States has  
21 conducted a comprehensive investigation and concluded that there were deficiencies in SPD’s  
22 policies and procedures; the City has instituted its own reform efforts through the development  
23 of its “20/20 Plan;” and the Parties jointly negotiated a lengthy Settlement Agreement to address  
the alleged causes of unconstitutional practices and to resolve this litigation.





1 those reasons and the others described herein, the parties request that this Court enter the  
2 Settlement Agreement as an Order of the Court.

3 Respectfully submitted to and jointly presented on July 27, 2012.

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1                    [PROPOSED] ORDER APPROVING SETTLEMENT AGREEMENT  
2                    AND STIPULATED ORDER OF RESOLUTION AND ENTRY OF JUDGMENT

3                    AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2012, upon consideration of the  
4                    Complaint of the United States of America, and the Parties' below-signed Settlement Agreement  
5                    and Stipulated Order of Resolution, it is hereby ORDERED, ADJUDGED, AND DECREED  
6                    that the Settlement Agreement and Stipulated Order of Resolution is APPROVED and Judgment  
7                    shall be ENTERED in this matter in the below-agreed form.

8                    \_\_\_\_\_  
9                    Hon.  
10                    United States District Court Judge