UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Linda Lee Soderstrom, Maria Johnson, Craig Goodwin, Jurline Bryant, and Julio Stalin de Tourniel, *on behalf of themselves and others similarly situated*, and HOME Line, *a Minnesota nonprofit corporation*, Plaintiffs, v. MSP Crossroads Apartments LLC, *a Minnesota corporation*, and Soderberg Apartment Specialists (SAS), *a Minnesota corporation*, Defendants.	Civil No. 0:16-cv-00233 (ADM/KMM)

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL, APPROVAL OF SETTLEMENT NOTICE AND DISTRIBUTION, APPOINTMENT OF A SETTLEMENT ADMINISTRATOR, AND SCHEDULING OF A FINAL APPROVAL HEARING

TABLE OF CONTENTS

I. INTRODUCTION

Plaintiffs Linda Lee Soderstrom, Maria Johnson, Craig Goodwin, Jurline Bryant, and Julio Stalin de Tourniel (collectively, the "Class Plaintiffs,"), and HOME Line (with Class Plaintiffs, collectively "Plaintiffs"), on behalf of themselves, for Class Plaintiffs, those similarly situated (the "Settlement Class"), respectfully request that the Court: (1) grant preliminary approval of the proposed Settlement with Defendants MSP Crossroads Apartments LLC ("MSP") and Soderberg Apartment Specialists (SAS) (collectively "Defendants") as described herein; (2) conditionally certify the settlement class; (3) appoint class representatives; (4) appoint class counsel; (5) approve the form and manner of the notice of Settlement to the Settlement Class;[1] (6) appoint the settlement administrator; and (7) schedule a hearing wherein the Court may consider final approval of the Settlement.

The proposed Settlement is an excellent resolution that provides substantial benefits to the Settlement Class. As set forth in the Parties' Agreement, Defendants will amend their screening criteria for tenancy at the apartment complex formerly known as Crossroads at Penn and now known as Concierge Apartments in several important ways, and will amend the screening criteria for applications, marketing materials, and websites. Defendants will also adopt the amended criteria at properties owned by MSP Crossroads Apartments and managed by Soderberg Apartment Specialists, and recommend that the amended criteria be adopted at properties at which Soderberg Apartment Specialists

[1] Any capitalized terms have the definitions given in the Settlement Agreement if not otherwise defined herein.

manages. Defendants will provide training on the Fair Housing Act to all leasing agents employed at the property. In addition, Defendants will pay $650,000 to resolve all claims in the lawsuit, which shall be allocated to: (1) an Equitable Relief Fund for the purpose of assisting in the acquisition and preservation of naturally affordable rental properties in the Twin Cities Metro Area at risk of conversion to higher rents and the threat of displacement of low and moderate income residents; (2) class payments for the Settlement Class, which consists of two subclasses, the Displacement Class, and the Application Class, as defined herein; (3) a payment to Plaintiff HOME LINE; and (4) attorney's fees, incentive awards, and notice and administration costs.

The Settlement is the result of serious, non-collusive, arm's length negotiations, and is fair, reasonable, and adequate under the governing standards for evaluating class action settlements in this Circuit. All prerequisites for preliminary approval of the Settlement have been met. The proposed notice to the settlement class members also satisfies the requirements of due process. Upon the Court's preliminary approval, notice of the Settlement will be sent to Settlement Class Members, the case website and toll-free telephone script will be updated to include details of the proposed Settlement, and Settlement Class Members will be given an opportunity to object to the Settlement prior to final approval.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. The Underlying Litigation

On February 1, 2016, Plaintiffs Crossroads Residents Organized for Stable and Secure ResiDencieS (CROSSRDS), Linda Lee Soderstrom, Maria Johnson, Craig and

Donna Goodwin, Jurline Bryant, Claire Jean Lee, Viky Martinez Melgar, Aurora Saenz, Deborah Suminguit, on behalf of themselves and all others similarly situated, and Individual Plaintiffs Norma Ziegler, Darlene Fisher, Samuel Graham, Carlos Hines, Kenneth Orr, Bernard Campbell, Lisa Brown, David Moffet, Quaintance Clark, Khadijah Abdul-Malik,[2] Kevin Vaughn, Maria de Lourdes Vargas-Pegueros, Julio Stalin de Tourniel, Rocillo Rodriquez, Sandra Ponce, Kerly Rios, Juan Martinez and Mercedes Melgar, Tamara Ann Bane, Charles Ward, Tressie Neloms, Dorothy Pickett, Sylvia Anderson, Guadalupe Rodriguez Bonilla, Tyrus Johnson, Leticia Barban, Alice Joiner, Beverly Griffin, and HOME Line, a Minnesota nonprofit corporation, filed a putative class action in the U.S. District Court for the District of Minnesota against Defendants MSP Crossroads Apartments LLC and Soderberg Apartment Specialists (SAS). ECF No. 1. Plaintiffs alleged that Defendants violated the prohibitions in the Fair Housing Act ("FHA") against disparate treatment and disparate impact discrimination under 42 U.S.C. § 3604, and also violated Minn. Stat. § 504B.315.

Plaintiffs moved for a Preliminary Injunction, and Defendants moved to dismiss Plaintiffs' claims. ECF Nos. 10, 15. Argument on both motions was held April 7, 2016. Plaintiffs' Motion for Preliminary Injunction was denied on April 15, 2016. ECF No. 39. On July 5, 2016, the Court denied Defendants' Motion to Dismiss with regards to Plaintiffs' claims under the Fair Housing Act and granted their motion to dismiss Plaintiffs' claim under Minn. Stat. § 504B.315. ECF No. 41.

[2] Plaintiff Khadijah Abdul-Malik's dismissal with prejudice was approved by this Court on March 10, 2017. ECF No. 97.

Between July 2016 and March 2017, the Parties engaged in extensive discovery, including requests for production, interrogatories, and requests for admission. Defendants produced over 2,300 pages of documents, which Plaintiffs' counsel reviewed and analyzed. *See* Declaration of Kristen G. Marttila, filed herewith ("Marttila Decl.") ¶ 3. Plaintiffs produced responses and documents for at least twelve Plaintiffs, and three named Plaintiffs were deposed. *Id*. Plaintiffs also have produced over 900 pages of documents. *Id*. The Parties negotiated extensively over written discovery and the parameters of documents that Defendants would need to produce. *Id*. Plaintiffs also conducted third-party discovery and served and reviewed documents from the former Crossroads at Penn owners. *Id*. In addition, the Parties extensively litigated the contours of the case, including the inclusion of particular Plaintiffs, lead counsel motions, the scheduling order, and proposed amendments to the complaint. *Id*.

On March 27, 2017, Plaintiffs Linda Lee Soderstrom, Maria Johnson, Craig Goodwin, Jurline Bryant, Norma Ziegler, and Julio Stalin de Tourniel, on behalf of themselves and others similarly situated, and Individual Plaintiff Claire Jean Lee,[3] with HOME Line, filed a First Amended Class Action Complaint. ECF No. 110.

On June 30, 2017, Plaintiffs Linda Lee Soderstrom, Maria Johnson, Craig Goodwin, Jurline Bryant, and Julio Stalin de Tourniel, on behalf of themselves and others similarly situated, and HOME Line filed a Second Amended Class Action Complaint. ECF No. 164.

[3] Ms. Lee's claims were severed from this case on June 14, 2017, *see* ECF No. 159, and she has since filed an individual case against Defendants, *see Lee v. MSP Crossroads Apartments LLC et al.*, Civil No. 0:17-cv-02045 (ADM/KMM) (D. Minn.) at ECF No. 6.

B. Settlement Discussions

In early March 2017, as discovery was ongoing, the Parties began discussing whether a settlement conference might be worth pursuing. Upon request, United States Magistrate Judge Kate M. Menendez scheduled a day-long settlement conference for April 6, 2017. ECF No. 105. Plaintiffs prepared extensively for that meeting. Marttila Decl. ¶ 4. Counsel for Plaintiffs and Defendants met on March 24, 2017, in advance of the settlement conference, and exchanged additional offers. Several Class Representatives attended the conference, as did Defendants, and the class and Defendants were also represented by counsel. *Id*. While the Parties moved closer together throughout the day, no settlement was reached. *Id*.; *see also* ECF No. 121. However, the Parties agreed that further negotiations would be useful, and continued to have meetings and exchange offers throughout April. Marttila Decl. ¶ 4. Judge Menendez held an additional follow-up settlement conference for Class Plaintiffs and Defendants on April 20, 2017, once again attended by several Class Representatives, where the Parties again got closer on acceptable settlement terms but did not reach agreement. *See id.*; ECF Nos. 123, 129. After that conference, the Parties continued to negotiate potential settlement terms throughout the next few months, including holding periodic status conferences with Judge Menendez, exchanging offers, and negotiating injunctive relief terms. Marttila Decl. ¶ 4; *see also* ECF Nos. 166 (July 14 status conference), 173 (August 24 status conference). The Parties reached a settlement in principle in late August 2017, and have spent September negotiating the Settlement Agreement and working out final details. Marttila Decl. ¶ 4. All parts of the negotiating have been at arm's length, polite but contentious, and extensive.

Marttila Decl. ¶ 5. The Settlement confers a substantial benefit on the Settlement Class and also avoids the considerable risks, delays, and expense inherent in complex class action litigation, while also resolving the case now rather than several years in the future. *Id.* ¶ 8. The Settlement will completely and finally dispose of all claims in this litigation for Class Plaintiffs, HOME Line, and the Settlement Class against Defendants.[4] Marttila Decl. ¶ 10.

C. The Settlement

The terms of the settlement are set forth fully in the Settlement Agreement. Marttila Decl. ¶ 1, Ex. 1 (hereinafter "Settlement Agreement"). The principal terms of the settlement are described below.

1. Class Definition

The Settlement Class includes two Classes, the Displacement Class and the Application Class, to be certified under Federal Rule of Civil Procedure 23(b)(2) and defined as follows:

(a) **The Displacement Class.** All persons who were tenants at the Property as of September 30, 2015 but no longer reside there and whose household at the time of their occupancy of the property included at least one person qualifying as a member of a protected class under the Fair Housing Act, 42 U.S.C. § 3602 et seq., (the "Act") under one of the following categories:

1. Non-white;
2. Handicapped as defined by the Act;
3. National origin; and
4. Familial status. In this case, that would be limited to tenants who had or desired to have more than two individuals reside in the unit due to at least one individual under the age of 18 residing in the unit.

[4] The Settlement Agreement explicitly acknowledges that Individual Plaintiff Claire Lee retains whatever individual claims she has above and beyond participation in the Settlement Class in her currently pending, severed action. *See* Marttila Decl. ¶ 18, Ex. 1 (hereinafter "Settlement Agreement") at ¶¶ C, G, I(B)(3), I(B)(24), V.

(b) **The Application Class.** All persons who, from September 30, 2015 until the Execution Date of this Settlement Agreement, either applied for tenancy at the Property but were rejected, or completed a Guest Card expressing interest in tenancy at the Property but did not apply, as a result of the screening criteria imposed by Defendants and whose household included at least one person qualifying as a member of a protected class under the Act, under one of the following categories:

1. Non-white;
2. Handicapped as defined by the Act;
3. National origin; and
4. Familial status. In this case, that would be limited to tenants who had or desired to have more than two individuals reside in the unit due to at least one individual under the age of 18 residing in the unit.

Settlement Agreement at ¶ II(A).

2. Equitable Relief by Defendants

The Settlement Agreement provides that, beginning on the Effective Date of the Settlement Agreement and for three years thereafter, Defendants will amend their screening criteria for applications for tenancy at the Property:

- In determining eligibility for tenancy at the Property, Defendants will discontinue the use of a standard requiring all tenants to have monthly income equal to at least two and one-half times the monthly rent amount. Defendants will not impose a minimum income requirement, except that where an applicant for tenancy has a zero credit score, the applicant must submit proof of monthly income equal to at least four times the monthly rent amount.

- The occupancy of each unit at the Property will be limited to two persons per bedroom, however, Defendants will not consider individuals under the age of 2 years old for purposes of determining the number of occupants and will comply with Minnesota Statute section 504B.315.

- In evaluating an applicant's rental history, Defendants will consider evictions for any reason at any time in the three years immediately preceding the date the application is submitted. Defendants will not consider evictions more than three years old as of the date the application is submitted. Defendants will not consider eviction actions when there is a judicial determination that the tenant is the prevailing party.

- Applicants must have a credit score of 625 or higher.

- In evaluating an applicant's criminal history, Defendants will not deny any applicant solely based on an arrest. Defendants will consider open and pending charges, and will look at convictions with consideration for the date of the disposition; the severity of the offense; the impact that the offense may have on the potential safety and welfare of residents and management staff; and conformance to rental licensing, local ordinance requirements, and participation in any crime free/drug free housing program. Defendants will not consider criminal charges against an applicant that, upon final determination, did not result in a conviction.

- All applicants must provide a social security number, except that when an applicant does not have a social security number, the applicant must provide Defendants information sufficient for Defendants to obtain reliable information relating to the applicant's suitability for tenancy, including information related to credit score, rental history, and criminal history. Examples of information that may be sufficient, but are not necessarily sufficient under this paragraph include an I-94 form or passport, an Individual Taxpayer Identification Number (ITIN), a Permanent Resident Card or Alien Registration Receipt Card, Form 1-551, and Employment Authorization Card, or a Temporary Residence Card. An applicant's inability to provide such information sufficient for Defendants to obtain reliable information will result in rejection of the application.

- All applicants over the age of 18 must provide a current, government issued photo identification. Acceptable forms of identification include a valid drivers' license, valid identification card issued by a foreign or domestic government, valid United States military identification, or valid passport.

Settlement Agreement at ¶ II(B)(1).

The Settlement Agreement further provides for Defendants to amend all screening criteria, "including in all public marketing materials, application materials, screening criteria disclosures, and any other publicly facing documents, including websites" to be consistent with the criteria described above. Settlement Agreement at ¶ II(B)(2). Defendants have agreed that Soderberg Apartment Specialists will recommend to the owners of each of the properties for which it is retained as the property management company that the owners of those properties likewise amend the screening criteria for those properties to be consistent with those described above. *Id*. at ¶ II(B)(3). Defendants have agreed that, at the time of the final approval hearing, they will inform the Court of how many units will be subject to those amended screening criteria as a result of such a recommendation. *Id*.

Furthermore, if MSP, or an entity in which it or at least one member or director of MSP beneficially owns, holds, or controls an ownership interest, or an entity that is an affiliate of MSP, acquires a property located within the seven-county metropolitan area within the next three years, and if that property is managed by Soderberg Apartment Specialists (SAS), Defendants will apply the same screening criteria described above to application for tenancy at that newly acquired property for a period of two years, and will

amend all screening criteria and materials accordingly for that same period. *Id.* at ¶ II(B)(6).

Under the Settlement Agreement, Defendants must also provide Fair Housing Act training within one year of the Effective Date to all leasing agents at the Property, to be provided by a trainer approved by Class Counsel. *Id*. at ¶ III(B)(4).

3. Settlement Amount and Payment Schedule

Defendants agree to pay a total of $650,000, which will be allocated as follows:

- **Equitable Relief Fund.** A minimum of $200,000, plus any funds remaining unspent after the notice and claims administration costs have been fully paid, and any funds deemed waived following expiration of a check, will be allocated to the NOAH Impact Fund, which is a subsidiary non-profit entity of the Greater Minnesota Housing Fund, for the purpose of assisting in the acquisition and preservation of naturally affordable rental properties in the Twin Cities Metro Area at risk of conversion to higher rents and the threat of displacement of low and moderate income residents. *See id.* at ¶ IV(A); *see also generally* Declaration of Warren Hanson ("Hanson Decl."), filed herewith.
- **Class Payments.** A total of $300,000 will be allocated to Participating Class Members as follows:
  - A total of $290,000 will be allocated to Participating Class Members with respect to the Displacement Class. Although the size of payments made to Participating Class Members pursuant to this

paragraph cannot be known until after the Claims Deadline, such payments will be allocated as follows: each Unit will be allocated a pro rata share of the funds allocated; if multiple Participating Class Members of the Displacement Class and associated with the same Unit timely submit a valid, executed Claim Form and Release, each such person will receive a pro rata share of the funds allocated for that Unit. Settlement Agreement at ¶ IV(B)(1).

- A total of $10,000 will be allocated to Participating Class Members with respect to the Application Class. Awards will not exceed $25 per Participating Class Member, and any funds allocated but not distributed will revert to the Equitable Relief Fund. *Id.* at ¶ IV(B)(2).

- **Incentive Awards**
  - Certain current or former Class Representatives who testified at a deposition in the Action *and* who attended one or more settlement conference in their capacity as class representatives—Jurline Bryant and Maria Johnson—will each be allocated $2,500 as an Incentive Award. *Id.* at ¶ IV(C)(1).
  - Certain current or former Class Representatives who either testified at a deposition in the Action *or* who attended one or more settlement conference in their capacity as class representatives Linda Soderstrom, Julio Stalin de Tourniel, and Viky Martinez Melgar—

will each be allocated $2,000 as an Incentive Award. *Id.* at ¶ IV(C)(2).

- Certain current or former Class Representatives or Plaintiffs who produced documents to Defendants in the Action—Craig Goodwin, Norma Ziegler, and Kerly Rios—will each be allocated $1,000 as an Incentive Award. *Id.* at ¶ IV(C)(3).

- **Plaintiff HOME Line.** HOME Line will be allocated $40,000 to resolve all claims brought on its own behalf in the Action. *Id.* at ¶ IV(D).

- **Attorney's Fees.** Class Counsel will be allocated a total of $76,000 as reimbursement of reasonable litigation expenses and attorney's fees, as follows:
  - Housing Justice Center will be allocated $46,000 as reimbursement of its reasonable litigation expenses and attorney's fees, *id.* at ¶ IV(E)(1); and
  - Lockridge Grindal Nauen P.L.L.P. will be allocated $30,000 as reimbursement of its reasonable litigation expenses and attorney's fees, *id.* at ¶ IV(E)(2).

- **Notice and Administration Costs.** A maximum of $20,000 will be allocated for expenses related to the Notice Program and Claims Administration, with the final amount and disposition to be awarded and approved by the Court. Of such funds, a maximum of $5,000.00 may be allocated to HOME Line as fair compensation for work related to the Notice

Program and Claims Administration that is conducted at the direction of Class Counsel and adequately documented. Any funds allocated for notice and administration costs that are not ultimately awarded and approved by the Court will revert to the Equitable Relief Fund. *Id.* at ¶ IV(F).

4. Plan of Allocation

This is a claims-based settlement. There will be no reversion of the Settlement Fund to Defendants. *Id.* at ¶¶ IV(A), IV(B)(2), IV(F), X(G) (providing that certain funds that are waived, unspent, or not distributed revert to the Equitable Relief Fund).

5. Claims

Settlement Class members must complete and return a valid, executed Claim Form and Release. In order for a Claim to be considered timely, a Settlement Class member must submit a completed Claim Form and Release within sixty (60) days after the Notice Date (the "Claims Deadline"), by mailing a completed Claim Form and Release to the Claims Administrator at the address designated in the Notice, with such mailing postmarked on or before the Claims Deadline. *Id.* at ¶ IV(G).

6. Releases

If approved, the Settlement will release Defendants from any and all claims that were, or could have been, raised arising out of the subject matter of this litigation (subject to the exclusion described in note 4, *supra*). *Id.* at ¶ V, I(B)(24).

III. PRELIMINARY APPROVAL SHOULD BE GRANTED

Whether a proposed settlement should be approved is within the sound discretion of the district court, which should be exercised in the context of public policy strongly

favoring the pretrial settlement of controversies, particularly in the context of class action lawsuits. *See MSK EyEs Ltd. v. Wells Fargo Bank, N.A.*, 546 F.3d 533, 541 (8th Cir. 2008) (noting "strong public policy of encouraging settlement") (citation and quotation marks omitted); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999) ("A strong public policy favors agreements, and courts should approach them with a presumption in their favor.") (internal citation omitted); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."); *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975) (approval of a settlement "is committed to the sound discretion of the trial judge").

Review of a proposed settlement generally proceeds in two stages: preliminary approval, followed by final approval. *See Federal Judicial Center, Manual for Complex Litigation* § 21.632 (4th ed. 2004). At the preliminary approval stage, a court determines whether a proposed settlement is "within the range of possible approval" and whether notice should be sent to class members. *White v. Nat'l Football League*, 836 F. Supp. 1458, 1468 (D. Minn. 1993); *Manual for Complex Litigation* § 21.632.

"In evaluating a settlement for preliminary approval, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute." *Curiale v. Lenox Grp., Inc.*, *v. Lenox Grp., Inc.*, No. 07-1432, 2008 WL 4899474, *4 (E.D. Pa. Nov. 14, 2008) (internal citation omitted). Instead, the court must determine whether "the proposed settlement discloses grounds to doubt its fairness or other obvious

deficiencies, such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation for attorneys, and whether it falls within the range of possible approval." *Id.*; *Martin v. Cargill, Inc.*, 295 F.R.D. 380, 383 (D. Minn. 2013).

A. The Standard for Preliminary Approval Has Been Satisfied in This Case.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, before a class action may be settled, voluntarily dismissed, or compromised, the court must determine whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Van Horn v. Trickey*, 840 F.2d 604, 606 (8th Cir. 1988) (quoting *Grunin*, 513 F.2d at 123); *see also DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1176 (8th Cir. 1995). The Settlement here is fair, reasonable, and adequate and falls within the range of possible approval.

1. The Settlement Was Negotiated at Arm's Length and Therefore Satisfies the Procedural Component for Preliminary Approval.

"Before approving a class action settlement, a district court must reach a reasoned judgment that the proposed agreement is not the product of fraud and overreaching by, or collusion among, the negotiating parties[.]" *Ficalora v. Lockheed Cal. Co.*, 751 F.2d 995, 997 (9th Cir. 1985); *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) ("prior to approving settlement . . . the court must determine there has been no fraud or collusion in arriving at the settlement agreement"); *see In re NASDAQ Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations . . . and falls within the range of possible approval, preliminary approval is granted").

If a settlement is negotiated at arm's length, there is a presumption that the settlement is procedurally sound. *See, e.g.*, *In re UnitedHealth Grp. Inc. Shareholder Derivative Litig.*, 631 F. Supp. 2d 1151, 1158 (D. Minn. 2009) ("Where sufficient discovery has been provided and the parties have bargained at arm's length, there is a presumption in favor of the settlement.") (quoting *City P'ship Co. v. Atlantic Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996)).

Here, there is no dispute that this proposed settlement is the product of extensive, arm's length negotiations. It was reached after months of negotiations between highly experienced counsel. *See* Marttila Decl. ¶ 4. The Settlement was reached after two settlement conference sessions and additional settlement-related status conferences over the course of several months conducted by a knowledgeable and experienced magistrate judge, in addition to several in person sessions conducted by the Parties. *Id*. There was no fraud or collusion and there are no indicators suggesting there was.

Over the course of this litigation, Counsel gained extensive knowledge regarding the merits, strengths, and weaknesses of the claims asserted. Marttila Decl. ¶ 3. Based on their familiarity with the factual and legal issues, Interim Co-Class Counsel made well-informed, good faith assessments of the costs and risks of proceeding based on their extensive experience litigating claims of this type. Thus, the settlement is "the product of hard-fought adversarial negotiations" between the Parties. *Wietzke v. CoStar Realty Info. Inc.*, No. 09-cv-2743, 2011 WL 817438, *5 (S.D. Cal. Mar. 2, 2011).

2. There Was Sufficient Discovery for Plaintiffs to Make an Informed Decision Concerning the Reasonableness of the Settlement.

Counsel had sufficient information to properly weigh the advantages and risks of continued litigation and have made an informed decision concerning settlement. As noted above, the Parties exchanged written discovery in the form of requests for production, interrogatories, and requests for admission. Defendants produced over 2,300 pages of documents, which Plaintiffs' counsel reviewed and analyzed. Plaintiffs produced responses and documents for at least twelve Plaintiffs, and three named Plaintiffs were deposed. Plaintiffs also have produced over 900 pages of documents. In addition, Plaintiffs sought and reviewed documents from the former Crossroads at Penn owners. *See generally* Marttila Decl. ¶ 3.

The scope of discovery conducted by Plaintiffs more than satisfies the threshold necessary to grant preliminary approval of the Settlement. *See Briggs v. Hartford Fin. Servs. Grp., Inc.*, No. 07-CV-5190, 2009 WL 2370061, *10 (E.D. Pa. July 31, 2009) (finding "sufficient discovery" even when no formal discovery had taken place); *Smith v. Prof'l Billing and Mgmt. Servs., Inc.*, No. 06-4453, 2007 WL 4191749, *2 (D.N.J. Nov. 21, 2007) ("settlement occurred after plaintiff conducted sufficient discovery to determine that the benefits of the settlement outweighed the cost and risk of continued litigation," the size of the class, and maximum damages for each class member); *In re UnitedHealth Grp Inc. Shareholder Derivative Litig.*, 631 F.Supp.2d at 1158 ("Discovery has been extensive; the parties are fully informed of the merits of their claims. Where

sufficient discovery has been provided . . . there is a presumption in favor of the settlement.") (internal citation and quotations omitted).

3. Experienced Class Counsel Have Concluded That the Proposed Settlement Reflects a Reasonable Assessment of the Strength of the Class's Claims.

Courts give substantial weight to the views and experience of the attorneys who prosecuted the case and negotiated the settlement. *Christina A. v. Bloomberg*, No. Civ. 00–4036, 2000 WL 33980011, *4 (D.S.D. Dec. 13, 2000) ("The Court attributes significant weight to Plaintiffs' attorney's assertion that the Settlement Agreement is fair, reasonable and provides significant benefits to the Plaintiff class. Indeed, Plaintiffs' lead attorney . . . based this assertion on his 22 years of experience in this field and his participation in similar cases in 15 other states."). Counsel's approval of a settlement weighs in favor of the settlement's fairness. *EEOC v. Fairbault Foods, Inc.*, Civ. Nos. 07-3976 (RHK/AJB), 07-3986 (RHK/AJB), 07-3977 (RHK/AJB), 07-3985 (RHK/AJB), 2008 WL 879999, *4 (D. Minn. Mar. 28, 2008); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005). Here, Interim Co-Class Counsel, who collectively have extensive experience in both class action litigation and litigation under the Fair Housing Act, conducted an extensive factual investigation and legal analysis in connection with the claims and allegations asserted in the Action and believe that the benefit conferred by the Settlement is an excellent result for the Class. Marttila Decl. ¶¶ 7, 8.

The Settlement should be preliminarily approved because it reflects a reasonable assessment of the strengths and weaknesses of the claims and the risks of establishing liability and damages. While Interim Co-Class Counsel believe in the merits of this case,

they recognize that the outcome of further litigation is uncertain. Interim Co-Class Counsel understand that there are significant legal obstacles and defenses which render recovery in this case uncertain and could affect the amount of any potential recovery. In addition, litigating this case to final judgment would delay any recovery for Settlement Class Members.

Defendants have vigorously defended against the allegations made by Plaintiffs and would be expected to continue to do so should this action proceed through trial and potential appeals. While Plaintiffs do not agree with Defendants' conclusions, they recognize that succeeding at trial or on appeal was far from certain.

4. The **Settlement Has No Deficiencies.**

The Settlement has no deficiencies such as "unduly preferential treatment of class representatives or segments of the class, or excessive compensation for attorneys." *Curiale*, 2008 WL 4899474, at *4. There is no unduly preferential treatment of class representatives or segments of the class. Nor does the Settlement provide counsel with "excessive compensation." The Settlement Agreement allocates only approximately 11.6% of the total Settlement Proceeds to attorney's fees and reasonable litigation expenses, combined. That allocation is substantially below the amount that the Eighth Circuit recently noted that district courts within the circuit routinely award: "courts have frequently awarded attorney fees [exclusive of reasonable litigation expenses] between 25 and 36 percent of a common fund in class actions." *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017). And any attorneys' fees to be requested from the settlement fund by Interim Co-Class Counsel, any request for reimbursement of expenses, and any service

award for Class Representative Plaintiffs all will be subject to the Court's approval, after the class receives notice and an opportunity to object.

Interim Co-Class Counsel were ultimately able to negotiate an excellent result for the Class. The Court should grant preliminary approval to the Settlement, permitting notice to the Settlement Class and an opportunity for Settlement Class Members to evaluate the settlement.

IV. CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS IS APPROPRIATE

The Parties agree, as part of the settlement, to stipulate to Rule 23 class certification of the claims for the purpose of notice and settlement. Marttila Decl. ¶ 11. Specifically, the Parties stipulate to certification under Fed. R. Civ. P. 23(b)(2) of both the Displacement Class and the Application Class, as defined above. Marttila Decl. ¶ 12.

Class certification is appropriate because the four prerequisites under Fed. R. Civ. P. 23(a) of numerosity, commonality, typicality, and adequacy are met, and because Plaintiffs seek injunctive relief from Defendants' acts "on grounds that apply generally to the class," as required by Fed. R. Civ. P. 23(b)(2).[5] For the reasons discussed below, this Court should grant class certification for settlement purposes here, should approve appointment of Named Plaintiffs Linda Soderstrom, Maria Johnson, Craig Goodwin, Jurline Bryant, and Julio Stalin de Tourniel as class representatives of the Displacement

[5] Rules 23(a) and 23(b) apply equally in determining class certification for settlement purposes except the judge need not determine "whether a case, if tried, would present intractable management problems." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Manual for Complex Litigation*, § 21.132.

Class, should approve appointment of Named Plaintiffs Linda Soderstrom, Maria Johnson, and Jurline Bryant as class representatives of the Application Class, and should approve appointment of the Housing Justice Center and Lockridge Grindal Nauen P.L.L.P. as Co-Class Counsel.

A. The Prerequisites of Rule 23(a) Are Met.

1. The Proposed Class Meets the Numerosity Requirement.

Fed. R. Civ. P. 23(a)(1) requires a proposed class be "so numerous that joinder of all members is impracticable." "No arbitrary or rigid rules regarding the required size of a class have been established by the courts, and what constitutes impracticability depends on the facts of each case." *Cooper v. Miller Johnson Steichen Kinnard, Inc.*, No. Civ. 02- 1236 (RHK/AJB), 2003 WL 1955169, *2 (D. Minn. April 21, 2003) (internal citations omitted); *see also Gen Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980) (stating that when analyzing the numerosity requirement, "examination of the specific facts of each case [is required] and imposes no absolute limitations" on size). When analyzing whether Rule 23(a)(1) has been met, courts consider the type of action, the size of individual claims, inconvenience of trying individual claims and other relevant factors to show the practicability of joining all class members. *See Paxton v. Union Nat'l Bank*, 688 F.2d 552, 559-60 (8th Cir. 1982). Notably, the burden is not to show joinder is impossible. *In re Charter Communications, Inc.*, No. 4:02-CV-1186 CAS, 2005 WL 4045741, *11 (E.D. Mo. June 30, 2005) (internal citations omitted). This District has held that a class of forty individuals "should raise a presumption that joinder is impracticable" and "should meet the test of Rule 23(a)(1)." *Lockwood Motors v. Gen. Motors Corp.*, 162 F.R.D. 569, 574 (D.

Minn. 1995) (internal citations omitted). Here, the proposed class is made up of a subset of the residents of 698 apartment units for the Displacement Class, numbering at least 698 persons but as many as 2,230, based on estimates from Defendants' records. Marttila Decl. ¶ 13. The Application class contains as many as approximately 1,800 people, some of whom overlap with the Displacement Class. Marttila Decl. ¶ 14. Thus, the requirements for Fed. R. Civ. P. 23(a)(1) are met in this case.

2. The Class Shares Common Questions of Law and Fact.

Fed. R. Civ. P. 23(a)(2) requires the Parties to show there is a question of law or fact common to the class. This threshold is not high and is "easily met" in most cases. *Lockwood*, 162 F.R.D at 575 (citing NEWBERG, CLASS ACTIONS § 3.10 at 3-50). While not every question of law or fact must be common to the entire class, the Plaintiffs must show that the course of action giving rise to their cause of action affects all putative class members, or that at least one of the elements of that cause of action is shared by all of the putative class members. *See Cooper*, 2003 WL 1955169, at *2 (internal citations omitted). Common questions about a defendant's liability are appropriate for class-wide treatment even when the damages among the class members might be different. *See In re Select Comfort Corp. Sec. Litig*., 202 F.R.D. 598, 603 (D. Minn. 2001).

Here, the commonality requirement is met because the proposed Class Members' claims all derive from the same theories: disparate impact and disparate treatment discrimination under the Fair Housing Act. These legal theories each form an independent basis for certification and give rise to numerous common questions of law and fact. Such questions include, but are not limited to: whether Defendants' application criteria have a

disparate impact on protected classes; whether Defendants intentionally discriminated in violation of the Fair Housing Act; and, if discrimination is found, whether injunctive relief and punitive damages relief are warranted. These common questions of law and fact apply and must be answered for each potential Class Member and, therefore, demonstrate that the commonality requirement under Rule 23(a)(2) is met in this case.

3. Plaintiffs' Claims are Typical of the Class Claims.

Rule 23(a)(3) requires that "the claims or defenses of the representative Parties are typical of the claims or defenses of the class." The typicality requirement works "to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals." *Prudential*, 148 F.3d at 311; *see also In re Control Data Corp. Sec. Litig.*, 116 F.R.D. 216, 220 (D. Minn. 1986) (citations omitted). Thus, it requires that the Class Representatives' claims have the "same or similar grievances" as the class. *See Cooper*, 2003 WL 1955169, at *2. "Typicality is satisfied when the claims of the named plaintiffs emanate from the same event or are based on the same legal theory as the claims of the class members." *Lockwood Motors*, 162 F.R.D. at 575. Courts liberally apply the typicality requirement when the representative claims come from the same event or based on the same legal theory as the class members' claims. *See Alpern v. UtiliCorp. United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996). Slight factual differences are allowed so long as the claims arise from the same event.

Here, all Named Plaintiffs are members of the Displacement Class—they were all residents of Crossroads at Penn on September 30, 2015, and none resides at Concierge Apartments now. Marttila Decl. ¶ 15. And the households of all Named Plaintiffs included

at least one person qualifying as a member of the Fair Housing Act, 42 U.S.C. § 3602 et seq., under one of the following categories: 1. Non-white; 2. Handicapped as defined by the Act; 3. National origin; and 4. Familial status (which, for purposes of this settlement, is limited to tenants who had or desired to have more than two individuals reside in the unit due to at least one individual under the age of 18 residing in the unit). *Id*. In addition, Named Plaintiffs Linda Soderstrom, Maria Johnson, and Jurline Bryant, who are all members of a protected class as described above, are members of the Application Class – they either applied for tenancy at the Property but were rejected, or completed a Guest Card expressing interest in tenancy at the Property but did not apply, as a result of the screening criteria imposed by Defendants. Marttila Decl. ¶ 16. If the practices outlined by Plaintiffs are found lawful or unlawful, the Named Plaintiffs' claims will be affected in the same way as those of the other class members. Thus, here, the typicality requirement under Rule 23(a)(3) is met.

4. The Class Representatives Are Adequate.

Fed. R. Civ. P. 23(a)(4) requires Plaintiffs show "the representative parties will fairly and adequately protect the interests of the class." Courts find the adequacy requirement is met when: "(1) the representatives and their attorneys are able and willing to prosecute the action competently and vigorously and (2) each representative's interests are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge." *See In re Potash Antitrust Litig.*, 159 F.R.D. 682, 692 (D. Minn. 1995). Moreover, class counsel must be "qualified, competent and diligent." *In re Acceptance Ins.*

Cos. Secs. Litig., No. 8:99-CV-00547, 2001 U.S. Dist. Lexis. 25829 (D. Neb. Aug. 6, 2001) (*citing Bishop v. Committee Prof. Ethics*, 686 F.2d 1278, 1288 (8th Cir. 1982)).

Named Plaintiffs Linda Soderstrom, Maria Johnson, Craig Goodwin, Jurline Bryant, and Julio Stalin de Tourniel seek to be appointed Class Representatives of the Displacement Class. Named Plaintiffs Linda Soderstrom, Maria Johnson, and Jurline Bryant seek to be appointed Class Representatives of the Application Class. Plaintiffs' Counsel, Housing Justice Center and Lockridge Grindal Nauen P.L.L.P., seek to be appointed Co-Class Counsel. The adequacy requirements are met, and the Court should approve these appointments. First, each Named Plaintiff is a member of the class(es) he or she seeks to represent, as outlined above. Moreover, the Named Plaintiffs have diligently participated in this case by assisting their attorneys in the investigation of the claims, drafting of the Complaint and prosecution of this litigation, reviewing initial disclosures, producing documents, sitting for deposition, and participating in settlement conferences on behalf of the class. Marttila Decl. ¶ 17. Further, the Named Plaintiffs have no known conflicts of interest that would compromise their representation of the best interests of the class. *Id*.

Second, proposed Co-Class Counsel is made up of qualified litigators with extensive experience in housing justice and class action litigation. Both firms have been appointed as Interim Co-Class Counsel by this Court on January 11, 2017. ECF No. 82. The qualifications and experience of proposed Interim Co-Class Counsel in federal and state courts and, specifically, in complex class cases involving alleged violations of federal

statutes, and protection of fair housing in Minnesota, are set forth in the resumes of HJC and LGN. ECF No. 71.

The Housing Justice Center is a nonprofit public interest advocacy and legal organization whose primary mission is to preserve and expand affordable housing for low income individuals in Minnesota and nationwide. ECF No. 71-1. HJC works to prevent the loss of affordable rental housing by conversion to market rate, demolition, foreclosure, and other causes, through a variety of innovative strategies, including litigation. HJC attorneys work with tenant and advocacy organizations, public and private housing funders, owners, developers, and policy makers in their efforts to protect and expand affordable housing. From 2007 through 2012, HJC was home to the Foreclosure Relief Law Project, and used legal and advocacy strategies to help avert and prevent foreclosures. Timothy Thompson, the President and Senior Staff Attorney at HJC, specializes in tenants' rights, government housing programs, and class actions, and has been lead counsel or co-counsel in over 30 cases in federal court brought on behalf of low income residents. *Id.*

LGN has a wealth of experience litigating cases in state and federal courts in Minnesota and across the country, especially class action litigation on behalf of individuals and consumers. ECF No. 71-2. LGN has extensive knowledge and experience with class certification, discovery and motion practice, and coordination of activities between and among class members. LGN has worked on extensive and varied class cases through initial motion practice, class certification, and all the way through settlement and trial. *Id*.

In sum, Interim Co-Class Counsel bring a wealth of litigation and settlement experience with respect to class actions in general, and fair housing in particular.

Moreover, through their collective experience, proposed Co-Class Counsel possess a strong command of the applicable law, the Federal Rules of Civil Procedure and the Local Rules of this District. For these reasons, the adequacy requirement is met under Fed. R. Civ. P. 23(a)(4).

B. The Prerequisites of Rule 23(b)(2) Are Met.

Rule 23(b)(2) provides that "an action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition . . . (2) the party opposing the class has [allegedly] acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." This case satisfies the requirements of Fed. R. Civ. P. 23(b)(2) for purposes of preliminary certification of a Settlement Class.

Rule 23(b)(2) certification is appropriate when plaintiffs seek injunctive relief in civil rights cases "against parties charged with unlawful, class-based discrimination." *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 614 (1997) (holding certification under 23(b)(2) is appropriate when plaintiffs seek injunctive relief from discrimination*); United States Fidelity & Guar. Co. v. Lord*, 585 F.2d 860, 875 (8th Cir. 1978), *cert. denied*, 440 U.S. 913 (1979); *Sperry Rand Corp. v. Larson*, 554 F.2d 868, 875 (8th Cir. 1977); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 284 (W.D. Tex. 2007) (certifying settlement class alleging racial discrimination under the Fair Housing Act as the "paradigm" of the type of case that should be certified under Rule 23(b)(2)); *Pitt v. City of Portsmouth, Va.*, 221 F.R.D. 438, 451 (E.D. Va. 2004) (certifying damages and injunction for class relief under Rule 23(b)(2) in the context of Fair Housing Act).

In this case, Plaintiffs' claims focus on Defendants' alleged discriminatory practices and procedures. By allegedly changing selection criteria after purchasing the rental housing complex known as Crossroads at Penn, and by making public statements about the types of tenants that Defendants hoped the changes to the property and tenant screening would result in, Defendants are alleged to have acted or refused to act on grounds that apply generally to members of the Displacement and Application Classes. As such, final injunctive relief addressing such actions is appropriate as to the class as whole. Plaintiffs sought in their Second Amended Complaint, and Defendants have agreed to in the Settlement Agreement, a broad range of non-monetary relief, including extensive revisions to tenant screening criteria, use of that criteria at properties beyond the Property, and training on the Fair Housing Act for employees. In addition, a substantial portion of the cash payment in the Settlement is committed to directly increasing access to fair housing through the NOAH impact fund. The fact that the Named Plaintiffs also seek money damages for themselves and on behalf of the class is consistent with the equitable remedy of injunctive, non-monetary relief. This type of remedy has been found by numerous courts to be permissible under Rule 23(b)(2). *Franks v. Bowman Transp. Co., Inc.*, 424 U.S. 747, 762-64 (1976); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 416 (1975); *Paxton*, 688 F.2d at 563; *Kirby v. Colomy Furniture Co., Inc.*, 613 F.2d 696, 699 (8th Cir. 1980) (holding it was reversible error to only award injunctive relief and not money damages); *Glenn v. Daddy Rocks, Inc.*, 203 F.R.D. 425, 430-31 (D. Minn. 2001). Thus, potential differences among class members, which only bear in the computation of damages, do not

preclude class certification. *Eisen Carlisle & Jacquelin*, 391 F.2d 555, 566 (2d Cir. 1968), *vacated and remanded on other grounds*, 417 U.S. 156 (1974).

Unlike Rule 23(b)(3), Rule 23(b)(2) does not require an opportunity for class members to opt out. *Compare* Fed. R. Civ. P. 23(c)(2)(B)(v) (requiring opt-out for classes certified under Rule 23(b)(3)) *with* Fed. R. Civ. P. 23(c)(2)(A) (no opt out requirement for Rule 23(b)(2) class actions). Rule 23(b)(2) settlements commonly do not include an opt-out period, even when cases involved monetary relief but equitable relief "predominated." *See e.g., DeBoer*, 64 F.3d at 1175 (Rule 23(b)(2) certification without opt-out appropriate where injunctive relief is sought for class as a whole regardless of fact that damages are also sought incidentally to injunctive relief); *White*, 822 F. Supp. at 1141 ("[C]ourts routinely certify mandatory non-opt-out classes under Rule 23(b)(2) in cases involving hybrid claims for injunctive relief and damages."). Even after *WalMart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2557 (2011),[6] courts continue to recognize that Rule 23(b)(2) classes do not require opt-outs. *See Lewis v. City of Chicago*, 702 F.3d 958, 963 (7th Cir. 2012); *Cobell v. Salazar*, 679 F.3d 909, 917 (D.C. Cir. 2012) (mandatory Rule 23(b)(2) settlement class including standard monetary awards was appropriate). For example, courts have certified discrimination cases in the employment context for settlement purposes under Rule 23(b)(2) after the *Dukes* decision—with no opt-out provision. *Cronas*

[6] In *Dukes*, the Supreme Court held that monetary claims cannot be certified under Rule 23(b)(2) where the monetary relief is not incidental to the injunctive or declaratory relief. 131 S.Ct. at 2557. The Court explained that "at a minimum, claims for individualized relief (like the back pay at issue here) do not satisfy the Rule." *Id.* (emphasis in original). Here, the relief provided by the Settlement Agreement is primarily injunctive and predominates over individualized relief, and thus the *Dukes* analysis does not apply.

v. Willis Group Holdings, Ltd., No. 06 civ 15295 (RMB), 2011 WL 5007976 (S.D.N.Y. Oct. 18, 2011) (where, for purposes of settlement, parties agreed to a formula for backpay damages, eliminating the need for individualized determinations or for defendants to raise individual defenses, and there was an opportunity to hear from any objectors, court decided that an opt-out procedure was not necessary).

Likewise, post-*Dukes* courts continue to acknowledge that Rule 23(b)(2) classes may include claims for monetary relief that are incidental to injunctive or declaratory relief. *See e.g. Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 987 (9th Cir. 2011) (remanding to district court to determine if damages were permissible as incidental relief). Courts have certified Rule 23(b)(2) classes post-*Duke*s where monetary relief is incidental to injunctive relief. *See e.g., Rosmond, et al. v. Minneapolis Pipe Fitters Joint Apprenticeship Training Committee et al*, Case No. 0:12-cv-2000-DSD-JSM (D. Minn. Oct. 30, 2013) (ECF No. 48) (approving settlement under Rule 23(b)(3) with monetary relief incidental to injunctive relief); *Karsjens v. Jesson,* No. 11-3659 (D. Minn. July 24, 2012) (certifying class under Rule 23(b)(2) where relief sought was primarily injunctive despite seeking incidental monetary damages).[7]

[7] *See also Mezyk v. US Bank Pension Plan*, 09-cv-384 (S.D. Ill. Dec. 21, 2011) (Rule 23(b)(2) certification appropriate because any monetary relief flowing from declaration that plan provisions violated ERISA would be incidental to injunction requiring ERISA compliance); *In re Brannan*, 485 B.R. 443 (Bankr. S.D. Ala. Jan. 8, 2013) (certifying class under Rule 23(b)(2) where any monetary damages would be incidental to injunctive relief); *Knight v. Lavine*, No. 1:12-cv-611, 2013 WL 427880 (E.D.Va. Feb. 4, 2013) (certifying Rule 23(b)(2) class where declaratory and injunctive relief predominate); *Johnson v. Meritor Health Services Retirement Plan*, 702 F.3d 364 (7th Cir. 2012) (affirming Rule 23(b)(2) certification of subclasses where single injunction would appropriately address entire subclass although "incidental" monetary relief potentially may flow from injunctive

Here, the claimed basis for relief is the alleged impropriety of screening criteria used and public statements made, which applied generally to the class as a whole. Thus, the equitable relief pertaining to those screening criteria predominates under Rule 23(b)(2). Defendants are making extensive changes to their screening criteria as injunctive relief, and are recommending application of those criteria in other housing in the Twin Cities. In addition, nearly one-third of the Settlement Proceeds would be used to advance affordable housing in the Twin Cities Metro Area. *See generally* Hanson Decl. Plaintiffs seek to contribute a minimum of $200,000 of the settlement proceeds to the Greater Minnesota Housing Fund's ("GMHF") NOAH Impact Fund to support the acquisition and preservation of naturally affordable rental properties in the Twin Cities Metro Area that are at risk of conversion to higher rents and to address the threat of displacement of low- and moderate-income residents. Hanson Decl. ¶ 4. Contribution of these settlement proceeds will meaningfully further these goals. *Id.* If the Court approves the proposed settlement, the GMFH will create a separate and complementary fund known as the "Crossroads Fund." Hanson Decl. ¶ 5. GMHF would administer the Crossroads Fund, using those funds to defer, for a time, rent increases for the lowest income households in properties acquired with NOAH Impact Fund financing, amounting to a temporary rental subsidy to those households. *Id.* By giving recipients additional time before their post-acquisition rent increases kick in, residents will have additional time to secure new housing, identify

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relief); *In re Budeprion XL Marketing & Sales Litig.*, No. 09-md-2107, 2012 WL 2527021 (E.D. Pa. July 2, 2012) (certifying settlement class under Rule 23(b)(2) where monetary relief was incidental and flowed from liability to class as a whole forming the basis of injunctive or declaratory relief).

other resources for absorbing the increase, or for their children to finish the school year in a familiar school. *Id.* This would directly ameliorate some of the time pressure created by acquisitions that imposes hardships on residents. *Id.*

The injunctive relief provided by Defendants and the seed fund contributions are, by their nature, not possible to provide on an individualized basis, but rather inure to the benefit of the class as a whole and the greater community. The monetary relief sought in this action flows from the alleged liability to the class as a whole. Payments to individual class members would be made on a pro-rata basis; therefore, individualized determinations would not be required as to eligibility for monetary relief. Thus, Rule 23(b)(2) certification would be feasible without an opt-out, and also consistent with the purposes of the Rule. In addition, as the Court noted in *Cronas,* an opt-out procedure is not necessary because the Court will have an opportunity to hear from any objectors.

V. THE COURT SHOULD ORDER THE DISSEMINATION OF THE PROPOSED NOTICE

Because a class action under Rule 23 has *res judicata* effect on all members of the settlement class, due process requires that notice of a proposed settlement be given to the class. *See Grunin*, 513 F.2d at 120; *see also* 3b J. Moore, Federal Practice ¶ 23.80(1) at 23-1502. Rule 23(e)(1) states that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (the notice given must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.").

In addition, the notice must "reasonably [] convey the required information . . . and it must afford a reasonable time for those interested to make their appearance." *Grunin*, 513 F.2d at 120.

Rule 23(e) requires that notice of a proposed settlement inform class members of the following: (1) the nature of the pending litigation, (2) the general terms of the proposed settlement, (3) that complete information is available from court files, and (4) that any class member may appear and be heard at the final approval hearing. Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 8.32 at 262-268 (4th ed. 2002); *White*, 836 F. Supp. at 1462 (noting that the notice ordered pursuant to Rule 23(e) "described the terms of the proposed settlement and informed all class members" of the date of the final approval hearing and "that they had a right to submit written objections and to appear at the final approval hearing, in person or by counsel, to be heard in support of, or in opposition to, the settlement, or make any other statement of their position concerning the settlement."); *In re Packaged Ice Antitrust Litig.*, No. 08-md-1952, 2011 WL 717519, *5 (E.D. Mich. Feb. 22, 2011) (quoting Newberg).

A settlement notice need only be "reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections." *See In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 707 (E.D. Mo. 2002) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Indeed, notice must only satisfy the "broad 'reasonableness' standards imposed by due process." *See Petrovic*, 200 F.3d at 1153 (citing *Grunin*, 513 F.2d at 121). There is no requirement that the notice provide "a complete

source of information" or an exact amount of recovery for each Class Member. *Id.* (citing *DeBoer*, 64 F.3d at 1176).

Notice to class members for a class certified pursuant to Fed. R. Civ. P. 23(b)(2) must be "appropriate notice." Here, Interim Co-Class counsel propose a notice program that will include individual notice to all members who can be identified with reasonable effort, in addition to a campaign in both English and Spanish designed to reach as many former tenants as possible throughout the west Metro area. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-76 (1974); *see also Manual for Complex Litigation* § 21.311. This meets and exceeds the "limited but important interests, such as monitoring the course of the action," required by Fed. R. Civ. P. 23(b)(2). *Accord Manual for Complex Litigation* § 21.311.

Counsel propose that Settlement Class Members will receive direct notice by mail, based on a class list that Defendants have agreed to help Plaintiffs compile. *See* Declaration of Amanda Horn ("Horn Decl.") ¶¶ 6-8 *and* Ex. A (proposed Long-Form Notice). Because some Settlement Class Members may use Spanish as their primary language, the mailed notice will include also claims forms in both English and Spanish, and a Spanish translation of the short-form notice which will provide a summary of the notice and the toll-free number and website where they can obtain a copy of the long-form notice in Spanish. *See* Horn Decl. ¶ 9 *and* Ex. B (proposed Short-Form Notice).

The proposed notice will advise Settlement Class Members of the case name, docket number, and nature of the Action, identify essential terms of the Settlement, explain the injunctive and monetary relief accorded to them by the Settlement, outline the claim

process, set forth dates for objecting to the Settlement, direct recipients to a case web site for additional information, and provide specifics on the date, time, and place of the final settlement approval hearing. Horn Decl. Ex. A. The Notice of Settlement will be mailed to the last known address of each Settlement Class Member based on Defendants' records and publically available information. Horn Decl. ¶ 7-8. In addition, the website will contain the full Long-Form Notice and the full Settlement Agreement. Horn Decl. ¶ 12 *and* Ex. B. Thus, the proposed notice program provides the necessary information for Settlement Class Members to make an informed decision regarding the proposed settlement. While an individual notice is not required under Rule 23(b)(2), *see Manual for Complex Litigation* § 21.311, Interim Co-Class Counsel propose that such notice is appropriate in this instance to ensure that as many Class Members as possible be able to fill out a claim form. The Court should approve the proposed form and method of giving notice to the Settlement Class.

VI. THE COURT SHOULD SCHEDULE THE TIMING OF THE DISSEMINATION OF THE NOTICE AND THE DATE FOR THE FINAL APPROVAL HEARING

If the Court grants preliminary approval to the proposed Settlement, the next step is for the Court to set a schedule for: (1) disseminating the notice to the Settlement Class as set forth in this motion; (2) filing the Motion for Final Approval; (3) filing objections to the Settlement; (4) responding to any Class Member objections to the Settlement; and (5) the Final Approval or Fairness Hearing. Counsel proposes the schedule set forth below:

Event	Date
Deadline to disseminate class notice	**Mail**: 7 days from the Date of Preliminary Approval **Website/Toll-Free Line**: 7 days from the Date of Preliminary Approval, create and make public website outlining claims and settlement, and telephone number
Claims Deadline	60 days after Class Notice is disseminated in accordance with the Notice Program
Last day for objections to Settlement	60 days after Class Notice is disseminated in accordance with the Notice Program
Last day to file Motion for Final Approval	21 days after the Claims Deadline
Fairness Approval (Final Fairness) Hearing	_____ [To be set by the Court within 30 days after the Claims Deadline, if possible]

VII. JND LEGAL ADMINISTRATION LLC SHOULD BE APPOINTED AS SETTLEMENT ADMINISTRATOR

JND is experienced and qualified in the area of class action administration and notice and has worked with Interim Co-Class Counsel previously in handling complex cases. Horn Decl. ¶ 2. JND has also worked with Counsel to draft the Long Form Notice, and create the case-specific website. *See generally* Horn Decl. ¶ 3 *and* Ex. B. Payment of the Settlement Administrator's services will be made from the Settlement Proceeds. Settlement Agreement at ¶ IV(F). Plaintiffs request that the Court appoint JND as the Settlement Administrator to exercise the duties set forth in the Settlement Agreement, and permit HOME Line to use their expertise and pre-existing relationships with members of

the class to aid JND and Interim Co-Class Counsel in ensuring both notice to the Settlement Class and that any questions or concerns be timely answered.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs and the Settlement Class respectfully request that the Court preliminarily approve the Settlement; approve the appointment of Named Plaintiffs Linda Soderstrom, Maria Johnson, Craig Goodwin, Jurline Bryant, and Julio Stalin de Tourniel as class representatives of the Displacement Class; approve the appointment of Named Plaintiffs Linda Soderstrom, Maria Johnson, and Jurline Bryant as class representatives of the Application Class; approve appointment of the Housing Justice Center and Lockridge Grindal Nauen P.L.L.P. as Co-Class Counsel; approve as to form and content the Settlement Class notice; direct dissemination of class notice; appoint the settlement administrator; and set a hearing for the purpose of deciding whether to grant final approval of the Settlement. A proposed order is submitted herewith.

Dated: September 29, 2017

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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