

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 (9th 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 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