

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
CORINNE VARGAS, KISHA TRENT, ANNIE SMITH
and R.G., on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

TOWN OF SMITHTOWN,

Defendant.

07-CV-5202 (JS)(WDW)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the accompanying (i) Declaration of Robin Nunn, dated May 6, 2009; and (ii) Memorandum of Law in Support of Plaintiffs' Unopposed Motion, the Plaintiffs, by and through their counsel, will move this Court before the Honorable Joanna Seybert, at the United States Courthouse located at 100 Federal Plaza, Central Islip, New York, on a date and time to be set by the Court, for an order to (i) preliminarily approve the class action settlement, (ii) preliminarily certify the putative class, and (iii) approve of the form and manner of the notice and the plan of allocation, and for such other relief as the Court may deem just and proper.

Dated: May 6, 2009
New York, New York

Respectfully submitted,

/s/ Philip L. Graham

Philip L. Graham, Jr. (PG-5028)

Stacey R. Friedman (SF-8877)

Tyler J. Smith (TS-0878)

Robin Nunn (RN-1908)

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New York, New York 10004

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Joseph D. Rich
Karlo Ng
LAWYERS' COMMITTEE
FOR CIVIL RIGHTS
UNDER LAW
1401 New York Avenue, NW
Suite 400
Washington, DC 20005
(202) 662-8331

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2009, I caused true and correct copies of the foregoing Notice of Motion, the Declaration of Robin Nunn, dated May 6, 2009, the Memorandum of Law in Support of Plaintiffs' Unopposed Motion, and the accompanying proposed order to be served on all counsel of record in the above-captioned matter through the Court's electronic filing system.

/s/ Robin Nunn
Robin Nunn

Attorneys for Plaintiffs

Joseph D. Rich
Karlo Ng
LAWYERS' COMMITTEE
FOR CIVIL RIGHTS
UNDER LAW
1401 New York Avenue, NW
Suite 400
Washington, DC 20005
(202) 662-8331

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Plaintiffs,

V.

Defendant.

:
 :
 :
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 : Case No. 07-CV-5202
 : (JS)(WDW)
 :
 : DECLARATION IN SUPPORT
 : OF PLAINTIFFS' UNOPPOSED
 : MOTION FOR PRELIMINARY
 : APPROVAL OF CLASS
 x ACTION SETTLEMENT,
 PRELIMINARY CLASS
 CERTIFICATION, AND
 APPROVAL OF FORM AND
 MANNER OF NOTICE AND
 PLAN OF ALLOCATION

**DECLARATION OF ROBIN NUNN IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,
PRELIMINARY CLASS CERTIFICATION, AND APPROVAL OF FORM AND
MANNER OF NOTICE AND PLAN OF ALLOCATION**

NEW YORK)
)
NEW YORK) SS.:

ROBIN NUNN declares:

1. I am an attorney duly admitted to practice before this Court and represent Plaintiffs Corinne Vargas, Kisha Trent, Annie Smith, and R.G., on behalf of themselves and all others similarly situated in the above-captioned action. I submit this Declaration in support

the Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Class Certification, and Approval of Form and Manner of Notice and Plan of Allocation.

2. The Parties in this action filed their Stipulation of Settlement and Consent Decree on March 4, 2009.

3. A true and correct copy of the Plan of Allocation is attached hereto as Exhibit A.

4. A true and correct copy of the Stipulation of Settlement and Consent Decree is attached hereto as Exhibit B.

5. A true and correct copy of the Notice of Pendency of Class Action and Settlement of Class Action and Settlement Hearing is attached hereto as Exhibit C.

6. A true and correct copy of the Summary Notice is attached hereto as Exhibit D.

7. A true and correct copy of the Preliminary Order For Approval of Settlement of Class Action is attached hereto as Exhibit E.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 6, 2008.

/s/ Robin Nunn

Robin Nunn

Exhibit A

EXHIBIT E
PLAN OF ALLOCATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CORINNE VARGAS, KISHA TRENT, ANNIE SMITH	:	
and R.G., on behalf of themselves and all others similarly	:	
situated,	:	Case No. 07-CV-5202
	:	(JS)(WDW)
Plaintiffs,	:	
	:	
v.	:	
	:	
TOWN OF SMITHTOWN,	:	
Defendant.	:	
-----	x	

PLAN OF ALLOCATION

1. Except as indicated in this Plan of Allocation, the capitalized terms used herein shall have the meanings ascribed to them in the Settlement Agreement and Stipulation, dated _____, 2009 (the "Stipulation").

2. Pursuant to paragraph 34 of the Stipulation, within forty-five (45) days following Preliminary Approval of the settlement, the Claims Administrator shall notify Class members of the settlement in a form substantially the same as that attached to the Stipulation as Exhibit F. That notice will provide (i) an indication that Class members may be entitled to monetary compensation, (ii) a description of the class, (iii) the procedures by which Class members should apply to receive their monetary relief. Class members shall have one hundred fifty days (150) to send their application for relief (the "Close of the Application Period"). For avoidance of doubt, applications for relief postmarked on the one hundred fiftieth day following mailing of the notice shall be accepted as timely. The Claims Administrator shall review applications to determine whether each applicant is a member of the Class entitled to a distribution pursuant to the plan of

distribution in accordance with the Plan of Allocation. The Claims Administrator shall complete the review of claims applications within six (6) months after the Close of the Application Period.

3. The Claims Administrator, in his or her sole discretion, shall determine whether or not a person or group of people qualify as Class members entitled to monetary relief and the amount to which they are entitled in accordance with the Plan of Allocation (“Payment Determination”). It shall notify Class members of its determination in writing, indicating that the decision may be appealed as provided by paragraph 4.

4. Individuals may appeal the Claims Administrators’ Payment Determination by sending written notification of their disagreement with the Claims Administrator’s decision (“Appeal”) along with any materials supporting their claimed classification to the Claims Administrator within forty-five (45) days of the mailing date of the Payment Determination. The Claims Administrator will review the Appeal and, if necessary, interview the individual appealing the determination and/or gather additional information from the Parties within thirty (30) days of the Appeal (the “Close of the Appeal Period”). The Claims Administrator will determine whether based on the Appeal and any new information its original Payment Determination was incorrect and revise its Payment Determination as necessary and appropriate. If the Class member disagrees with the Claims Administrator’s appeal decision, the member may request review by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”), counsel for the Class, within fifteen days of the Class members’ receipt of notification of the Claims Administrator’s decision by sending a letter with such a request to the Lawyers’ Committee or Claims Administrator. Lawyers’ Committee will review all information concerning the claim within thirty days and determine whether the decisions made by the Claims Administrator should be reversed. If so, the Claims Administrator will be directed by Lawyers’

Committee to revise its Payment Determination as necessary and appropriate. Any final decision of the Claims Administrator or Lawyers' Committee regarding whether an individual is a Class member, whether an individual is entitled to monetary relief, or what monetary relief an individual is entitled to is not appealable to any court or other tribunal.

5. After deduction of all fees and costs provided by paragraph 29 of the Stipulation and based upon the Claims Administrator's final Payment Determinations, the Claims Administrator shall calculate the amounts to be paid to each Plaintiff for Settlement of their claims based upon the following schedule:

(a) Plaintiffs Corinne Vargas, Kisha Trent, Annie Smith, and R.G. each shall receive compensation in the amount of \$20,000.

(b) Those Class members, not identified in paragraph (a), who applied and were informed of a date on which they would be interviewed by Smithtown or its agents or employees in regards to determining their eligibility for the Section 8 Program, whether or not the Class member was actually interviewed and whether or not the interview appointment was rescinded, shall receive compensation in the amount of \$10,000 per Class member.

(c) Those Class members, not identified in paragraphs (a) or (b), who were on the 2002 Smithtown Section 8 Waitlist shall receive compensation in the amount of \$1,000 per Class member.

(d) Those Class members, not identified in paragraphs (a), (b), or (c), who were on the 2006 Smithtown Section 8 Waitlist and whose number has been passed by Smithtown shall receive compensation in the amount of \$400 per Class member.

6. If, after deduction of all fees as provided by paragraph 29 of the Stipulation and after the Close of the Application Period and the Close of the Appeal Period, the Settlement

Fund does not contain sufficient funds to pay claims based upon the above schedule, the Class members shall receive compensation based upon their category as described in paragraph 5 and the ratios concerning amount of compensation embodied in paragraph 5, such that any individual Class member identified in paragraph 5(a) shall receive compensation that is 2 times the compensation received by any individual Class member identified in paragraph 5(b); any individual Class member identified in paragraph 5(c) shall receive compensation that is one-tenth of the compensation received by any individual Class member identified by paragraph 5(b); and any individual Class member identified in paragraph 5(d) shall receive compensation that is four-tenths of the compensation received by any individual Class member identified by paragraph 5(c).

7. Within twenty (20) days following the Close of the Application Period and the Close of the Appeal Period, the Claims Administrator shall provide the Escrow Agent with written notification of its final determination of Class members entitled to monetary relief and the payment each person shall receive. Within twenty (20) days after the Claims Administrator's delivery of this notification, the Escrow Agent shall deliver to the Claims Administrator checks made out to each of these persons in the amounts determined by the Claims Administrator.

8. If a potential Class member submits an application seeking monetary compensation after the close of the application deadline and before all funds in the Escrow Account have been disbursed, the Claims Administrator and Lawyers' Committee will make a determination about the putative class member's eligibility for monetary relief and the amount, if any, to which the putative member may be entitled and determine whether the Class member may receive compensation despite their late application.

9. In the event that distribution checks mailed to Class members are returned, the Claims Administrator shall use reasonable efforts to deliver the returned monies to the appropriate person. After ninety (90) days, any unclaimed checks will be destroyed and the unclaimed funds will be distributed in accordance with paragraph 10.

10. In the event that, after the final determination by the Claims Administrator, there are insufficient claims to utilize all of the monies set aside in the Escrow Property, any unused monies, including any interest accrued, shall revert to an organization or organizations whose mission is advancement of fair housing and/or affordable housing in Suffolk County as designated by Plaintiffs ("Recipient Organization"). After such a determination the Claims Administrator will notify the Escrow Agent, which shall deliver a payment of the remaining Escrow Property to the Recipient Organization. within fifteen (15) days.

11. The Court will retain jurisdiction over the Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.

SO ORDERED.

Dated: _____, 2009
Central Islip, New York

THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CORINNE VARGAS, KISHA TRENT, ANNIE SMITH	:
and R.G., on behalf of themselves and all others similarly	:
situated,	:
	: Case No. 07-CV-5202
	: (JS)(WDW)
Plaintiffs,	:
	:
v.	:
	:
TOWN OF SMITHTOWN,	:
Defendant.	:
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STIPULATION OF SETTLEMENT AND CONSENT DECREE

This Stipulation of Settlement and Consent Decree (“Stipulation” or “Settlement”) is submitted pursuant to Federal Rule of Civil Procedure 23. Subject to approval of the Court, this Stipulation is entered into by and between Named Plaintiffs Corinne Vargas, Kisha Trent, Annie Smith, and R.G. in the above-captioned Action for themselves and on behalf of the Class they represent, as defined below (together, “Plaintiffs”), on the one hand, and the Defendant Town of Smithtown (hereinafter referred to as the “Town”, “Smithtown” or “Defendant”), by and through their respective counsel, on the other hand (together, the “Parties”).

WHEREAS, on December 13, 2007, Plaintiffs filed a Complaint (the “Complaint”), which alleges claims against Smithtown for discrimination on the basis of race, color, and national origin in administering the Smithtown Section 8 Housing Choice Voucher Program (hereinafter referred to as “Smithtown Section 8 Voucher Program”) in violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982; the Civil Rights Act of 1871, 42 U.S.C. § 1983; the Equal Protection Clause of the Fourteenth

Amendment to the United States Constitution; and the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*

WHEREAS, Smithtown has denied, and continues to deny any and all liability for the claims alleged in the Complaint, but believes that the Stipulation is in its best interest to:

- (a) avoid further expense; (b) dispose of potentially burdensome and protracted litigation;
- (c) finally put to rest all claims the Plaintiffs may have arising from or relating to the allegations in the Complaint; and (d) support its continued effort to affirmatively further fair housing.

WHEREAS, the Parties engaged in arm's-length negotiations with the assistance of Court-approved mediator Lela Love, and have agreed to the Stipulation, the terms of which are entirely set forth herein.

WHEREAS, the Parties agree that the Stipulation furthers their mutual goal of promoting non-discriminatory distribution of Section 8 housing vouchers and ensuring that any residency preference utilized in the provision of housing benefits does not result in discrimination on the basis of race, color, or national origin in violation of the Fair Housing Act.

NOW, THEREFORE, it is hereby stipulated and agreed, by and among the Parties, through their respective attorneys, subject to approval of the Court, that all claims, as defined below, shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the terms and conditions of this Stipulation, as follows:

SECTION I **DEFINITIONS**

1. As used herein the following terms shall have these meanings:
 - a. "Action" shall mean *Vargas et al. v. Town of Smithtown*, No. 07-CV-5202 (JS)(WDW), pending in the United States District Court for the Eastern District of New York, and any and all cases now or hereafter consolidated therewith.

- b. “Smithtown Section 8 Housing Choice Voucher Program” or the “Program” means the Section 8 Housing Choice Voucher program, as provided by 24 C.F.R. § 982, administered by Smithtown.
- c. “Defendant” or “Smithtown” shall mean the Town of Smithtown and its directors, officers, agents, employees, former employees, attorneys, and predecessors.
- d. The term “minority,” as used herein, means African-Americans and Hispanics.

SECTION II
STIPULATION NOT AN ADMISSION

2. This Stipulation and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, used as, or deemed to be evidence of an admission or concession by Smithtown or Plaintiffs or any member of the Class: (a) regarding the validity of the Settled Claims; or (b) of any fault, wrongdoing, omission or liability whatsoever. This Stipulation and all negotiations, statements and proceedings in connection therewith shall not be construed as, used as, or deemed to be evidence of, an admission or concession that Smithtown, Plaintiffs, or, upon entry of the Preliminary Order, any Class member, has or has not suffered any damage in connection with this Action. This Stipulation and all negotiations, statements and proceedings in connection therewith shall not be offered or received in evidence against any of the Parties, or, upon entry of the Preliminary Order, any Class member, in any civil, criminal or administrative action or proceeding in any court, administrative agency or other tribunal, other than such proceedings as may be necessary to consummate or enforce the Settlement, the releases executed pursuant thereto, and/or the Judgment Order. Notwithstanding any of the foregoing, the Stipulation and the Exhibits hereto may be filed in any subsequent action brought against Smithtown in order to support a defense or counterclaim by Smithtown of res judicata, collateral estoppel, release, good faith settlement,

judgment bar or reduction or any other theory of claim or issue preclusion or similar defense or counterclaim.

SECTION III
CONDITIONS TO FINALITY OF THE SETTLEMENT

This Settlement shall be final when each of the following conditions in this Section have been satisfied or waived by written agreement of the Parties.

3. Court Approval. The Settlement shall have been approved by the Court, as provided for in this Section. As soon as practicable following the signing of this Stipulation, the Parties shall jointly request that the Court enter an order and judgment approving this Stipulation and the Settlement contemplated hereunder. The Parties shall cooperate in good faith, which shall include taking all steps and making all efforts contemplated by this Stipulation that are reasonably necessary to secure preliminary and final approval by the Court of the Settlement, and any other steps or efforts which may become necessary by order of the Court (unless such order materially modifies the terms of this Stipulation), to carry out this Settlement Agreement, including the following:

- a. Preliminary Approval of Settlement. As soon as reasonably possible upon the full execution of this Stipulation by the Parties, Plaintiffs will request that the Court enter a preliminary order of approval substantially in the form annexed hereto as Exhibit A (the “Preliminary Approval Order”).
- b. Class Certification. The Plaintiffs have asserted that the Action should be certified as a class action as defined in the Federal Rules of Civil Procedure for settlement purposes and to effectuate this Stipulation.

Defendants will not object to such certification on the terms set forth in this Stipulation only and for no other purpose than as set forth herein.

- c. Issuance of Class Notice. On the date and in the manner set by the Court in its Preliminary Approval Order, the Plaintiffs shall cause the Class Notice to be transmitted in the form and manner approved by the Court as directed in the Preliminary Approval Order.
- d. The Fairness Hearing. Upon entry of the Preliminary Approval Order, the Parties contemplate that the Court will schedule and then conduct a hearing at which the Court will determine whether the Settlement is fair, reasonable, and adequate (the “Fairness Hearing”). Specifically, the Plaintiffs will request that the Court make a final determination, on or after the date of the Fairness Hearing concerning the following:
 - (i) whether the Notice methodology met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable laws; (ii) whether to enter judgment finally approving the Settlement (which judgment is referred to herein as the “Final Order”); (iii) whether the distribution of the Settlement Fund as provided in the Plan of Allocation should be approved; and (iv) what legal fees, compensation and expenses should be awarded to Class Counsel, and to Named Plaintiffs, as contemplated by Section XVIII of this Stipulation.

4. Final Approval. The approval by the Court of the Settlement proposed in this Stipulation shall be considered final (“Final Approval”) upon the occurrence of all of the

following events: (a) this Settlement is approved in all material respects by the Court and (b) the Court enters the Final Order, and the time to appeal or seek permission to appeal from any portion of the Final Order has expired, or, if appealed, the Final Order has been affirmed in its entirety by a court of last resort to which an appeal has been taken and the affirmance is no longer subject to further appeal or review.

SECTION IV **RELEASE**

5. Subject to the approval of the Court, any and all claims, demands, actions or causes of action, rights, liabilities, damages, losses, obligations, judgments, suits, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, that have been or could have been asserted in this Action or in any court tribunal, or proceeding (including, but not limited to, claims of discrimination in housing in violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982; the Civil Rights Act of 1871, 42 U.S.C. § 1983; the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*), and any related charges or complaints, including all statutory, tort, contract or other claims which were or might have been asserted by Plaintiffs or on their behalf in any suit, grievance, charge of discrimination (whether federal, state or local) by or on behalf of the Named Plaintiffs or any members of the Class, and/or their heirs, executors, administrators, successors and assigns, against the Town of Smithtown and/or its directors, officers, agents, employees, former employees, attorneys, successors, and predecessors which Named Plaintiffs or any member of the Class ever had, now has or hereafter can, shall or may have by reason of, arising out of, relating to or in connection

with the allegations, facts, events, transactions, acts, occurrences embraced, involved, set forth or otherwise related, directly or indirectly, to the allegations in this Action (the “Settled Claims”) shall be compromised, discharged, settled, released, and dismissed with prejudice upon and subject to the terms and conditions contained in this Stipulation. Notwithstanding any other provision hereof, the releases set forth in this Stipulation will remain in effect during the pendency of any appeal. Only if any appeal results in a reversal or vacation of the Final Order will the releases set forth in this Stipulation become void and lose their effect.

6. For avoidance of doubt, the Settled Claims include, without limitation, any unknown claims relating to or arising from the allegations in this Action that could have been brought in this Action which any Named Plaintiffs or Class member does not know or suspect to exist at the time of this Stipulation but which, if known, might have affected the decision to enter into this Stipulation. Named Plaintiffs acknowledge, and all Class members by operation of law shall be deemed to have acknowledged, that the inclusion in the Settled Claims of all unknown claims was separately bargained for and was a key element of the Settlement.

SECTION V

CLASS

7. The Parties shall use best efforts to have the Court certify a settlement class (the “Class”) consisting of:

All African-American and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were determined not eligible for the Program because they did not live or work in Smithtown.

SECTION VI
EDUCATIONAL PROGRAM

8. Defendant agrees to provide information in reasonable detail to all of its current employees and agents, including the Community Development Corporation of Long Island employees, involved with the Program regarding the requirements of non-discrimination set forth in the Fair Housing Act of 1968, as amended, and of the Defendant's policy of equal housing opportunity. The purpose of such action is to ensure that all such employees and agents of the Defendant understand and implement the policy of the Defendant's Section 8 voucher and affordable housing-related services in accordance with objective, non-discriminatory criteria.

9. Defendant agrees that within 120 days of signing of this Stipulation it will provide mandatory training (the "Training") to all of its current employees and agents involved with the Program, which shall cover the requirements of the federal Fair Housing Act, applicable local fair housing laws, Defendant's policy of equal housing opportunity, and the policies, operation, methods, and procedures governing the Program. The Training shall be provided to any new employee involved in the Program within 30 days of the start of their involvement in the Program. The Training shall be repeated every three years for all of Defendant's employees and agents involved in the Program. The first Training shall be provided by the Fair Housing Justice Center, at Smithtown's expense. Any subsequent trainings shall be provided by Smithtown.

10. At least 10 days prior to each presentation of the Training, Defendant shall provide a detailed summary of the Program to the Lawyers' Committee. Defendant agrees to make any reasonable changes to the content of the Training proposed by the Lawyers' Committee for Civil Rights Under Law (hereinafter "Lawyers' Committee"). The Lawyers'

Committee shall also be entitled to observe any provision of the Training identified in the above paragraph.

11. Within sixty (60) days of the signing of this Stipulation, the Parties shall draft a mutually agreeable "Equal Opportunity Housing Statement," which shall then be attached to this Stipulation as Exhibit B. Defendant shall provide to all employees and agents who attend the Training a copy of the statement. Each employee who receives a copy of the statement shall sign an acknowledgment that he or she has read it and agrees to act in accordance with it. The acknowledgment shall state that the breach or failure to observe the guidelines in Defendant's "Equal Opportunity Housing Statement" will subject the employee or agent to disciplinary action, as would the breach of any duty or responsibility of his or her employment.

SECTION VII **AFFIRMATIVE MARKETING**

12. Defendant shall affirmatively market the Section 8 Program to minority persons during the term of this Stipulation. Compliance with this term of the Stipulation shall be deemed fulfilled by faxing a copy of every advertisement placed by the Defendant or notice sent by the Defendant, five (5) days prior to the date of its publication, to the Lawyers' Committee.

SECTION VIII **ADVERTISING**

13. Defendant shall inform the public of its non-discriminatory policies and its desire to serve all persons in a considerate and professional manner with respect to the Section 8 Program by displaying the local and federal fair housing posters at all offices where it conducts business, pursuant to 24 C.F.R. Part 110.

14. Within one hundred twenty (120) days of the signing of this Stipulation, the Defendant shall add to stationery, applications, and forms used in the Program a notice that the defendant is committed to “equal housing opportunity.”

15. Defendant shall include an equal housing opportunity slogan or logo in all future newspaper or other printed advertising according to the following HUD standards:

<u>Size of Advertising</u>	<u>Size of Logo or Slogan</u>
1/2 page or larger	2 inches x 2 inches
1/8 page to 1/2 page	1 inch x 1 inch
4 column inches to 1/8 page	½ inch x ½ inch
Non-newspaper ad	proportionate to above standard

- a. Alternatively, should the Defendant choose to use the equal housing opportunity slogan in 24 C.F.R. Part 109, such slogan shall be printed in typeface comparable in size to the other print in the advertisement.
- b. For newspaper advertisements of less than four (4) column inches, the Defendant may include the phrase “equal housing opportunity” in place of the logo or slogan. All such slogans or logos shall be included in newspaper and other printed advertisements within sixty (60) days of the effective date of the Stipulation.

16. Defendant shall comply in all of its advertising with the federal fair housing advertising regulations issued by HUD. *See* 24 C.F.R. Part 109.

17. Other than the requirements agreed to above, Defendant shall place or retain a statement of non-discrimination and equal opportunity policies on all Section 8 Program materials.

18. Defendant shall provide individuals who receive or apply for Section 8 vouchers with materials regarding fair housing laws and their rights.

19. Defendant shall continue its Section 8 affirmative advertising plan and shall broaden its advertisement of Section 8 waitlist openings, including, at a minimum, in periodicals and newspapers with general readership, such as *Newsday*, and minority publications and news

sources that are likely to reach potential minority applicants in Nassau and Suffolk Counties. In addition, Smithtown shall provide notification of waitlist openings to organizations agreed upon by the Parties, including, but not limited to, those identified in Exhibit C. Prior to any reopening of the waitlist, Smithtown will notify the Lawyers' Committee, which will provide updates to the list in Exhibit C. The Parties shall act in good faith and use reasonable efforts to agree upon specific provisions in the Town's affirmative advertising plan as part of the Stipulation. The Town shall submit this plan to HUD for review as required.

SECTION IX
PROCEDURES FOR THE OPERATION OF THE SECTION 8 PROGRAM

20. Defendant, on its own behalf and on behalf of those persons and entities over whom it has authority or control, agrees to the following:

- a. It shall administer the Section 8 voucher program in a manner that makes vouchers available on an equal basis without regard to race, color, or national origin, in compliance with the Fair Housing Act of 1968, as amended 42 U.S.C. § 3601 *et seq.* as provided by the terms of this Stipulation and its administrative plan.
- b. It shall communicate with all prospective applicants or applicants concerning the availability and the requirements for obtaining a Section 8 voucher in Smithtown concisely and on an equal basis without regard to such person's race, color, or national origin.
- c. It shall not enter into any agreement or contract that will require it to undertake obligations inconsistent with the terms of this Stipulation.

21. Defendant shall not retaliate against any person who has asserted rights under the Fair Housing Act of 1968, as amended, or under the Civil Rights Act of 1866, 42 U.S.C. § 1981 *et seq.*

22. Within sixty (60) days of the signing of this Stipulation, Defendant shall provide the Lawyers' Committee with a written description of the operating policies with respect to the

Program, which shall then be attached to this Stipulation as Exhibit D. That description shall be consistent with the components set forth in the following paragraphs of this Section.

23. The Program shall be implemented, made available, and marketed to all persons in the geographic areas in which it is offered without regard to race, color, national origin, or residency status.

24. Defendant shall use uniform methods to inform all prospective applicants and applicants, without regard to race, color, national origin, or residency status, about the availability of the Program, the application procedures, the methods and procedures for distributing vouchers, and about the defendant's equal housing opportunity policy.

25. Defendant shall revise its Section 8 Administrative Plan (the "Plan") with respect to the operation of the Section 8 waitlist to ensure that it complies with civil rights and the fair housing law, and accurately reflects the terms of this Stipulation. In revising the Plan, Smithtown shall remove any language regarding a residency preference in the Section 8 application form, in any correspondence it has with applicants on the waiting list, and in any advertising or any other public documents describing the selection process for vouchers. Each reopening of the waitlist shall be for at least a one-month period. The Plan shall be revised to reflect that no applicant shall be removed from the waitlist unless (1) the applicant requests that his or her name be removed; (2) the applicant fails to respond to two written requests for information that indicate that a failure to respond may result in removal from the waiting list; (3) the applicant misses three scheduled appointments; or (4) the applicant does not meet Section 8 federal program eligibility criteria. Further, the Plan shall be revised to reflect that a voucher-holder who does not have a domicile within the Town (and is therefore not statutorily guaranteed portability rights) shall make a diligent search for housing in Smithtown during the initial 60-day

term of the voucher, and shall document said search. If the voucher-holder is not able to locate suitable housing within Smithtown during that initial term, the voucher-holder shall be granted full portability rights. The Town shall resubmit this Plan to HUD for review as required.

26. Defendant may revise the methods and procedures of its Program at any time, provided they remain consistent with the terms and conditions of this Stipulation. The Defendant shall notify the Lawyers' Committee of any modification of the terms and conditions of the Program which are effective at any point during which this Stipulation is in effect.

27. After completion of the remediation provided for in Section XII, the Defendant, in administering the remainder of the 2006 waitlist, may use a residency preference whereby vouchers are awarded to eligible applicants in the order they appear on the Section 8 waitlist on a "one resident" to "one non-resident" basis, *i.e.*, alternating between the next eligible resident who receives a voucher followed by the next eligible non-resident who receives a voucher.

28. At the implementation of the residency preference and at each reopening of the Section 8 waitlist, the Town will examine its residency preference to ensure that:

- a. The operation of the preference will not result in a selection rate for minority applicants that is less than four-fifths of what the selection rate would be expected to be for African-American and Hispanic applicants without consideration of a residency preference.
- b. In the event that the makeup of any new waitlist is such that the current procedures will not result in that agreed selection rate, the process will be adjusted to require the selection of sufficient non-residents to achieve this result.

SECTION X
MONETARY SETTLEMENT

29. Defendant and/or its insurers shall pay Nine Hundred Twenty-Five Thousand Dollars (\$925,000) (“Settlement Fund”) in consideration for settlement of the Settled Claims. The Settlement Fund shall be paid into an escrow account (the “Escrow Account”) established and maintained by Berdon Claims Administration LLC (the “Escrow Agent”). Thirty Thousand Dollars (\$30,000) shall be paid into the Escrow Account within ten (10) business days following the date on which Plaintiffs’ counsel provides the Defendant with written details of the Escrow Account number and routing information. Thereafter, within five (5) business days following entry of the Final Order and Judgment by the Court, the remaining Eight Hundred Ninety-Five Thousand Dollars (\$895,000) shall be paid into the Escrow Account. The following shall be paid from the Settlement Fund: (a) any fees and expenses awarded to Plaintiffs’ counsel by the Court, (b) any taxes, fees, and expenses associated with the Escrow Account, (c) costs and expenses incurred by the Claims Administrator in providing notice of the Settlement to Class members and administering the distribution of funds, and (d) as set forth herein, distributions to the members of the Class.

30. The Settlement Fund and all funds held by the Escrow Agent in connection with the Settlement shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed. The Parties hereto agree that the Settlement Amount and all funds held by the Escrow Agent in connection with the Settlement (the “Escrow Property”) is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and will cooperate fully to have such Qualified Settlement Fund treatment apply to the Escrow Property as of the earliest possible date.

SECTION XI
CLAIMS ADMINISTRATION

31. Plaintiffs designate Berdon Claims Administration LLC as Claims Administrator who, as provided by this Section, shall be responsible for (i) identifying potential Class members, (ii) providing notice of the settlement to potential Class members, (iii) making determinations as to the eligibility of potential Class members for distributions from the Settlement Fund in accordance with the Plan of Allocation attached hereto as Exhibit E, and (iv) instructing the Escrow Agent to make distributions to Class members as provided by the Plan of Allocation.

32. The Parties shall work in good faith to provide the Claims Administrator a copy of any information necessary for administration of this settlement, promptly following execution of this Stipulation and as requested by the Claims Administrator thereafter.

33. As soon as reasonably practical, the Claims Administrator shall take reasonable steps to identify the current addresses or other contact information for potential Class members, which shall include all individuals on the Program waitlists from 2002 and 2006 through the present or who applied in this period. The Claims Administrator shall use the information described in the above paragraph, as well as public or proprietary databases, to conduct a reasonable search for the current address or other contact information of potential Class members.

34. Within forty-five (45) days following Preliminary Approval of the settlement, the Claims Administrator shall notify Class members of the settlement in a form substantially the same as that attached as Exhibit F. That notice will provide (i) an indication that Class members may be entitled to monetary compensation, (ii) a description of the class, (iii) the procedures by

which Class members should apply to receive their monetary relief. Class members shall have one hundred fifty days (150) to send their application for relief following the date of the Fairness Hearing. For avoidance of doubt, applications for relief postmarked on the one hundred fiftieth day following the date of the Fairness Hearing shall be accepted as timely. The Claims Administrator shall review applications to determine whether each applicant is a member of the Class entitled to a distribution pursuant to the plan of distribution in accordance with the Plan of Allocation. The Claims Administrator shall complete the review of claims applications within six (6) months after the close of the application period.

35. The Claims Administrator, in its discretion, shall determine whether or not a person or group of people qualify as Class members entitled to monetary relief pursuant to the Plan of Allocation. It shall distribute the Escrow Property pursuant to the Plan of Allocation attached as Exhibit E.

SECTION XII

PROVISION OF HOUSING VOUCHERS

36. Defendant shall give immediate priority for Corinne Vargas, Kisha Trent, Annie Smith and R.G. to receive the next available Section 8 housing vouchers, provided that at the time this Stipulation is executed they are eligible to receive a voucher. These vouchers shall be provided to them at no cost. Compliance with this term of the Stipulation shall be fulfilled by Defendant executing a mutually agreed upon voucher agreement between Smithtown and each Named Plaintiff.

37. The Town shall place the non-resident applicants for Section 8 vouchers, who were on the waitlists created in 2002 and 2006 and whose numbers have already been passed over, at the top of the current waitlist in the order they would have been assigned based on their

original waitlist numbers. The Town shall also make reasonable attempts to identify and contact the non-resident applicants who were on the 2002 and/or 2006 waitlists who are not currently on the waitlist and restore those non-resident applicants to the current waitlist in the manner indicated by this paragraph.

38. The individuals added to the existing waitlist as described in this Section shall be served prior to the Town serving any other applicant on the waitlist and without regard to any residency preference.

SECTION XIII **RECORDKEEPING AND REPORTING REQUIREMENTS**

39. Defendant shall maintain and preserve records, including but not limited to the records relating to the Program and all complaints of discrimination, beginning with the date hereof and continuing for the duration of this Stipulation, and shall make this information available for inspection by the Lawyers' Committee upon written request and at a mutually convenient time and place, but not more frequently than once every six months.

40. The Town shall provide reports annually to the Lawyers' Committee detailing the data collected pursuant to its record keeping responsibilities.

41. The Town shall also notify the Lawyers' Committee each time the waitlist is reopened during the life of the Stipulation.

SECTION XIV **TERM OF STIPULATION AND COMPLIANCE REPORT**

42. This Stipulation shall continue in force from the date on which it is approved by the Court until ten (10) years thereafter. Within ninety (90) days after approval of this Stipulation, Smithtown shall file a compliance report with the Court which enumerates the steps

they have taken to implement the provisions of the Stipulation. Such report shall also be served on Plaintiffs' counsel. Thereafter during the term of the Stipulation, such reports shall be filed with the Court and served on Plaintiffs' counsel annually on January 1st. The Court shall retain jurisdiction of this action for the duration of this Stipulation.

SECTION XV
FINAL ORDER

43. If, following distribution of the Notice pursuant to the terms of this Stipulation or the Court's Order and a Settlement Hearing as provided for in the Notice, the Court certifies the Class and approves the Settlement (including any modification thereto made with the consent of the Parties as provided herein) as fair, reasonable, and adequate and in the best interests of the Class, the Parties shall jointly request that the Court enter an Order and Final Judgment substantially in the form attached hereto as Exhibit G.

SECTION XVI
DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT.

44. If approval of the United States Department of Housing and Urban Development ("HUD") is required for implementation of any term of this Stipulation, the Town will institute all terms for which HUD approval is not required within a reasonable period of time, but not longer than ninety (90) days after the date of Final Approval, and will submit all other terms for HUD approval within a reasonable period of time, but not longer than ninety (90) days after the date of Final Approval.

45. In the event HUD indicates to either Party its disapproval or opposition to material items in this Settlement, Plaintiff agrees to cooperate and work with Defendant to

overcome such disapproval or opposition. In the event such disapproval or opposition is not overcome, Plaintiffs or Defendant shall have the right to terminate the Settlement.

SECTION XVII **TERMINATION**

46. Each Party shall have the right to terminate this Stipulation by providing written notice to the other Party of its election to do so within thirty days of any of the following: (a) the Court declining to approve the Settlement in any material respect; (b) disapproval by HUD as indicated in paragraphs 44 and 45; or (c) any other event that would preclude Final Approval. If this Stipulation is terminated or fails to become effective for any reason, each Party shall be restored to its respective position as if this Stipulation had never existed, and neither the existence of this Stipulation nor its contents shall be admissible in evidence or referred to for any purpose in this Action or any other litigation or proceeding.

SECTION XVIII **ATTORNEYS' FEES**

47. If the Settlement provided herein is approved by the Court, Plaintiffs intend to make an application to the Court for an allowance of attorneys' fees and expenses incurred in prosecution of this Action in the amount of \$200,000, to be paid out of, not in addition to, the Settlement Amount. Smithtown will not oppose the fee and expense application of Plaintiffs as described in this paragraph. Ten days after entry of the Judgment Order, the Escrow Agent identified in paragraph 29 of this Stipulation shall pay the attorneys' fees and expenses as ordered by the Court into an account (the "Fee Account") established and controlled by counsel for Plaintiffs.

48. The payment to Plaintiffs' counsel of attorneys' fees into the Fee Account is subject to the obligation of Plaintiffs' counsel to refund to the Escrow Account the entire amount of the fees paid into the Fee Account plus accrued interest at the rate paid on the Fee Account by the financial institution holding it within five business days of any of the following occurrences: (a) Final Approval as defined herein is not achieved or reasonably achievable for whatever reason; or (b) the Stipulation is voided by any of the Parties or otherwise terminated as provided herein.

SECTION XIX **EFFECT OF RELEASE**

49. The release contemplated by this Stipulation extends to claims that Named Plaintiffs, for themselves or on behalf of the Class, do not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into this release. Upon entry of the Judgment Order, Plaintiffs and each member of the Class shall be deemed to: (a) waive any and all provisions, rights, and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person's release of unknown claims; and (b) relinquish, to the full extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

50. In addition, upon entry of the Judgment Order, Plaintiffs, for themselves and on behalf of the Class, also shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. Plaintiffs

acknowledge that they or members of the Class may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Plaintiffs and on behalf of the Class, to settle and release—fully, finally, and forever—any and all claims released hereby, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, without regard to the subsequent discovery of such additional or different facts.

SECTION XX **FURTHER PROCEEDINGS**

51. Pending the Court’s consideration of the Settlement, the Parties agree that they will not engage in any further proceedings in this Action other than those incident to the Settlement. The Parties further agree to use their best efforts to prevent the entry of any interim or final relief in favor of any member of the Class in any other litigation against any of the Parties to the Stipulation that challenges the Settlement or otherwise involved a Settled Claim.

52. The Parties will request the Court order that, pending Final Approval of the Settlement, Named Plaintiffs and all members of the Class shall be barred and enjoined from commencing, prosecuting, instigating, continuing, or in any way participating in the commencement or prosecution of any action asserting any Settled Claims, either directly, representatively, or in any other capacity against Smithtown or challenging the Settlement (other than in this Action in accordance with the procedures established by the Court).

SECTION XXI **MISCELLANEOUS**

53. For avoidance of doubt, the Parties agree that the terms of this Stipulation shall apply to Smithtown, its employees, directors, officers, agents, related municipalities, successors,

assigns and administrators, including the Community Development Corporation of Long Island employees to the extent they are acting as agents of or at the direction of Defendant.

54. As soon as practicable after signing of this Stipulation, the Parties shall prepare a joint statement for public release that will disclose in reasonable detail the terms of this Stipulation and shall otherwise keep the terms and conditions of this agreement confidential, subject to (a) disclosures and approvals that must be made to and obtained from HUD and/or the Court, and (b) those terms that will be made a part of the Smithtown Section 8 Program Administrative Plan.

55. The titles used in this Stipulation are non-substantive descriptions included solely for the Parties' ease of reference and shall not be construed to alter the substantive provisions of this Stipulation.

56. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation, except that any extensions of the time that relate to providing Notice to the Class shall be so ordered by the Court.

57. This Stipulation constitutes the entire agreement of the Parties with respect to the subject matter hereof, and may only be amended or any of its provisions waived by a writing executed by all Parties hereto.

58. This Stipulation, and all rights and powers granted hereby, will bind and inure to the benefit of the Parties hereto and their respective agents, executors, heirs, successors and assigns.

59. Any failure by any of the Parties to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to

insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party.

60. This Stipulation may be executed in two or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when such counterparts have been signed by each of the Parties and delivered to the other Parties. Signed signature pages of this Stipulation may be delivered by electronic or facsimile transmission, which will constitute complete delivery without any necessity for delivery of original, signed signature pages in order for this Stipulation to constitute a binding agreement.

61. This Stipulation shall be construed and enforced in accordance with the laws of the State of New York, without regard to the conflict of law provisions thereof. Any action to enforce or challenge the provisions of this Stipulation shall be filed exclusively in the District Court for the Eastern District of New York.

62. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement, and to use their best efforts to effect, as promptly as practicable, the consummation of this Stipulation and the Settlement provided for hereunder and the dismissal of the Action, including any and all complaints filed in the Action, with prejudice and without costs to any Party.

63. The Parties recognize that questions may arise as to whether Defendant is fulfilling its obligations as set forth herein. In the spirit of common purpose and cooperation which occasioned this Stipulation, the Parties agree to try to resolve such disputes informally before applying to the Court for resolution of any issue.

AGREED:

Dated: March 4, 2009
New York, New York

Jeltje deJong
David H. Arntsen
Devitt Spellman Barrett, LLP
50 Route 111
Smithtown, NY 11787
(631)724-8833

Attorneys for Smithtown

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Joseph D. Rich
Karlo Ng
LAWYERS' COMMITTEE
FOR CIVIL RIGHTS
UNDER LAW
1401 New York Avenue N.W.
Suite 400
Washington, DC 20005
(202) 662-8331

Attorneys for Plaintiffs

IT IS HEREBY ORDERED this ____ day of _____, 2009, that:

1. The Court preliminary approves a settlement class of all African-American and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were or would have been determined not eligible for the Program because they did not live or work in Smithtown.
2. A hearing (the "Settlement Hearing") shall be held on _____, 2009 at ____:____m., in the District Court for the Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, New York 11722, to:
 - a. determine whether the Settlement should be approved by the Court as fair, reasonable, adequate and in the best interests of plaintiffs in the Action ("Plaintiffs") and all members of the class (the "Class"), which is all African-American and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were or would have been determined not eligible for the Program because they did not live or work in Smithtown; and
 - b. rule on such other matters as the Court may deem appropriate.
3. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of Plaintiffs' application for attorneys' fees and reimbursement of expenses, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof.
4. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification as may be consented to by the Parties and without further notice to the Class.

5. The Court approves the appointment of Berdon Claims Administration LLC as Claims Administrator.
6. Within 5 days of the entry of this Order, Smithtown shall provide the Claims Administrator with its 2002 and 2006 Section 8 waitlists, including the names, addresses, and social security numbers of individuals on those waitlists.
7. The Claims Administrator shall make reasonable efforts to locate each individual who has been on the 2002 or 2006 waitlist for the Smithtown Section 8 Voucher Program and shall within 45 days of the entry of this Order cause a Notice of Pendency of Class Action, Proposed Settlement of Class Action, and Settlement Hearing (the "Notice") to be mailed by United States mail to the current address of such individuals, or, if the current address cannot be determined, the last known address of such individuals.
8. The Claims Administrator shall also advertise notice of the Settlement in the Long Island edition of *Newsday*.
9. The Claims Administrator shall also provide notice to Long Island housing organizations as identified in Exhibit C to the Stipulation.
10. The form and method of the Notice specified herein: (a) is the best notice practicable; (b) shall constitute due notice of the Settlement Hearing to all entitled to receive such a notice; and (c) meets the requirements of Rule 23(e)(1) of the Federal Rules of Civil Procedure. Prior to the Settlement Hearing, counsel for the Town shall file with the Court an appropriate affidavit with respect to preparation, mailing, and advertising of the Notice.

11. Any member of the Class (“Class Member”) may appear at the Hearing, in person or through counsel of his, her or its choice, to show cause why (i) the Settlement should not be approved, (ii) a judgment dismissing the Action on the terms contained in the Stipulation should not be entered, or (iii) the Plaintiffs’ attorneys should not be awarded their requested attorneys’ fees and expenses. No Class Member shall be heard, or be entitled to object to or otherwise contest the foregoing, unless such class member, no later than fourteen days prior to the Hearing, has filed with the Clerk of the Court and served on each of the following counsel:

Stacey Friedman
32nd Floor
125 Broad Street
New York, New York 10004
Tel: (212) 558-4000
Fax: (212) 558-3588

Jeltje deJong
Devitt Spellman Barrett, LLP
50 Route 111
Smithtown, NY 11787
(631)724-8833

A written statement of all of such Class Member’s objection(s) and all of the grounds or reasons for such objection(s), including any briefs or affidavits in support of such objection(s), and a statement indicating whether such Class Member intends to appear at the Hearing, together with the following information:

- a. the name, address and telephone number of the Class Member and his, her or its counsel, if any;
- b. the approximate date on which the Class Member applied for the Smithtown Section 8 Voucher Program; and

c. the race and ethnicity of the Class Member.

Any Class Member who does not file and serve a timely objection in the manner provided herein shall be deemed to have waived any objection such Class Member might have had, and shall forever be barred, in these proceedings or in any other proceeding, from making any objection to or otherwise challenging the Settlement, the Stipulation or any provision thereof, the judgment dismissing the Action, the application and award of attorneys' fees and expenses or any other proceedings herein, and shall have no right to appeal therefrom.

12. If the Settlement, including any amendment made in accordance with the Stipulation, does not obtain Final Approval (as defined in the Stipulation) or does not become effective for any reason whatsoever, the Settlement and any actions taken or to be taken in connection with the Settlement (including this Order and any judgment created herein) shall be terminated and shall become void and of no further force and effect. In any such event, neither the Stipulation, nor any provision contained in the Stipulation, nor any action taken pursuant thereto, shall be deemed to prejudice in any way the respective positions of the Parties. Additionally, the Parties shall be restored to their respective positions as if the Stipulation never existed, and neither the existence of the Stipulation nor its contents shall be admissible in evidence or shall be referred to for any purpose in the Action or in any other litigation or proceeding and shall not entitle any party to recover from any other party any costs or expenses incurred in connection with the implementation of the Stipulation.

13. All proceedings in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination of whether the Settlement should be approved, Plaintiffs and all members of the Class are barred and enjoined from commencing, instituting, prosecuting, instigating or continuing, or in any way participating in the commencement or prosecution of any action asserting any Settled Claims, either directly, individually, representatively, derivatively or in any other capacity against any of the Class, and are barred and enjoined from challenging the Settlement (other than in this Action in accordance with the procedures established by the Court).
14. The Stipulation and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, used as, or deemed to be evidence of an admission or concession by any Defendants or Plaintiffs or the Class, as defined in the Stipulation: (a) regarding the validity of the Settled Claims; or (b) of any fault, wrongdoing, omission or liability whatsoever. The Stipulation and all negotiations, statements and proceedings in connection therewith shall not be offered or received in evidence against any of the Parties, or, upon entry of this Scheduling Order, any Plaintiff or Class Member, in any civil, criminal or administrative action or proceeding in any court, administrative agency or other tribunal, other than such proceedings as may be necessary to consummate or enforce the Settlement, the releases executed pursuant thereto, and/or the Judgment Order. Notwithstanding any of the foregoing, the Stipulation and the Exhibits hereto may be filed in any subsequent action brought against any

Defendants or Plaintiffs or Class Member in order to support a defense or counterclaim by any Defendants or Released Persons of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim or issue preclusion or similar defense or counterclaim.

SO ORDERED.

Dated: _____, 2009
Central Islip, New York

THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE

EXHIBIT B
EQUAL HOUSING OPPORTUNITY HOUSING STATEMENT

It is the policy of the Town of Smithtown ("Smithtown") to provide all persons with equal opportunity in all of its housing programs and activities. Smithtown's Section 8 Housing Voucher Program ("Section 8 Program") is operated in accordance with the Fair Housing Act's obligation to affirmatively further fair housing, and does not discriminate against any person on the grounds of race, color, creed, sex, sexual orientation, religion, age, familial status, marital status, disability, national origin, or military status.

This policy is in accordance with Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act of 1968, as amended by the Fair Housing Amendment Act of 1988; Federal Executive Order 11063; the Americans with Disabilities Act of 1990; the New York State Human Rights Laws; and all applicable regulations, and with all applicable requirements related to receipt of federal and/or state funds.

In administering the Section 8 Program, Smithtown does not base any of the following actions on race, color, creed, sex, sexual orientation, religion, age, familial status, marital status, disability, national origin, or military status:

- A. Treat a person differently in determining eligibility or other requirements for admission.
- B. Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the program that indicates a preference, limitation, or discrimination, or an intent to make such a preference, limitation or discrimination, based on the aforementioned protected categories.
- C. Restrict a persons' access to any benefit enjoyed by others in connection with the program.
- D. Deny a person access to the same level of services.
- E. Subject a person to segregation or disparate treatment.
- F. Deny a Smithtown Section 8 recipient the opportunity to participate in any resident advisory group required to be formed by federal or state law.

Any agent or employee of Smithtown who fails to comply with this policy will be subject to appropriate disciplinary action which may include termination. Any action taken by Smithtown's agent or employee that results in the unequal service, treatment, or behavior to applicants and participants on the basis of race, color, creed, sex, sexual orientation, religion, age, familial status, marital status, disability, national origin, or military status may constitute a violation of state and federal fair housing laws.

EXHIBIT C
OUTREACH ORGANIZATIONS

**CIRCULO DE LA
HISPANIDAD, INC.**
26 West Park Avenue
Long Beach, NY 11561
(516) 431-1135

**WYANDANCH
COMMUNITY
DEVELOPMENT
CORPORATION**
59 Cumberbach Street
Wyandanch, NY 11798
(631) 643-4786

**HAVEN HOUSE/
BRIDGES, INC.**
840 Suffolk Avenue
Brentwood, NY 11717
(631) 231-3619

**LI HOUSING
SERVICES, INC.**
640 Johnson Avenue,
Suite 8
Bohemia, NY 11716
(631) 467-5111

CDCLI
2100 Middle Country
Suite 300
Centereach, NY 11720
(631) 471-1215

**BELLPORT,
HAGERMAN, EAST
PATCHOGUE
ALLIANCE, INC.**
1492 Montauk Highway
Bellport, NY 11713
(631) 286-9264

HOUSING HELP, INC.
91-101 Broadway, Suite 6
Greenlawn, NY 11740
(631) 754-0373

**SUFFOLK INDEPENDENT
LIVING ORGANIZATION
(SILO)**
3680 Route 112
Coram, NY 11727
(631) 880-7929

**LAW SERVICES
COMMITTEE-
HEMPSTEAD**
1 Helen Keller Way, 5th Floor
Hempstead, NY 11550
(516) 292-8100

**LAW SERVICES
COMMITTEE-ISLANDIA**
1757 Veterans Memorial
Highway
Islandia, NY 11749
(631) 232-2400

**LAW SERVICES
COMMITTEE-
RIVERHEAD**
313 West Main Street
Riverhead, NY 11901
(631) 369-1112

**GENERAL SCO FAMILY
SERVICES**
1 Alexander Place
Glencove, NY 11542
(516) 671-1253

**SMITHTOWN TOWN
PLANNING AND
COMMUNITY
DEVELOPMENT**
99 West Main Street
P.O. Box 575
Smithtown, NY 11787
(631) 360-7540

**HANDS ACROSS
LONG ISLAND, INC.**
P.O. Box 1179
Central Islip, NY 11722
(631) 234-1925

**SOUTH SHORE
ASSOCIATION FOR
INDEPENDENT
LIVING**
1976 Grand Avenue
Baldwin, NY 11510
(516) 855-1800

**ADELANTE OF
SUFFOLK COUNTY,
INC.**
10 Third Avenue
Brentwood, NY 11717
(631) 434-3481 ext. 23

**OPTIONS FOR
COMMUNITY
LIVING**
202 East Main Street,
Suite 5
Smithtown, NY 11787
(631) 361-9020 ext. 114

**COMMUNITY
HOUSING
INNOVATIONS, INC.**

55 Medford Avenue,
Suite B
Patchogue, NY 11772
(631) 475-6390
(631) 475-6390 ext. 241
(for home ownership)
(631) 475-6390 ext. 230
(for rental applications)

HELP SUFFOLK

685 Brookhaven Avenue
Bellport, NY 11713
(631) 286-2400

**LONG ISLAND
ACORN**

91 North Franklin
Street, #209
Hempstead, NY 11550
(516) 481-6769

**LI CENTER FOR
INDEPENDENT
LIVING**

3601 Hempstead
Turnpike, Suite 208 &
500
Levittown, NY 11756
(516) 796-0144

**PEACE VALLEY
HAVEN, INC.**

86 Park Avenue
Roosevelt, NY 11575
(516) 223-2355
(516) 850-8540
(24 Hour hotline)

**RESURRECTION
HOUSE, INC.**

1650 Straight Path
Wheatley Heights, NY
11798
(631) 491-3954

**SURBURBAN HOUSING
DEVELOPMENT AND
RESEARCH, INC.**

1360 5th Avenue
Bay Shore, NY 11706
(631) 665-2866

**WYANDANCH HOMES &
PROPERTY
DEVELOPMENT
(HOMELESS HOUSING)**

1434 Straight Path
Wyandach, NY 11798
(631) 491-7285

**UNITED VETERANS
BEACON HOUSE, INC.**

1715 Union Boulevard
Bay Shore, NY 11706
(631) 665-1571

EXHIBIT D
DESCRIPTION OF SMITHTOWN VOUCHER PROGRAM'S OPERATING POLICIES

INTRODUCTION

The Town of Smithtown Housing Choice Voucher Program (Program), as funded by the United States Department of Housing & Urban Development (HUD), provides rental subsidies through the Housing Choice Voucher Program and is operated by Community Development Corporation of Long Island, Inc., (CDC) as contract administrator on behalf of the Town's Planning and Community Development Department (P&CD).

The Program is operated in conformance with all applicable federal code regulations as set forth under 24 CFR, with applicable fair housing regulations, and with such other regulations as required. This is an equal housing opportunity program.

CDC is responsible for the daily operation of the Program, under the management of its Housing Choice Voucher program manager. CDC in turn reports to the Director of P&CD, who in turn is responsible to the Town Council.

CDC's Housing Choice Voucher staff duties include performance of all client intake procedures and eligibility determinations, preparation of client and landlord materials, preparation of advertisements, performance and supervision of unit inspections, maintenance of client files, and maintenance of Program files. Additionally, the Accounting Department staff prepares all necessary budget information and documentation to draw down funds from HUD for rental assistance payments and administrative fees, makes payments on all appropriate HAP expenses and provides documentation monthly to the Town Comptroller's Office for reimbursement of said expenses, and prepares all required reports to HUD. All clerical functions and unit inspection services are provided by CDC staff.

The Office of the Comptroller of the Town of Smithtown is responsible for the transfer of funds for HAP expenses based on documentation provided monthly by CDC staff. The Comptroller's Office is responsible for the keeping of accurate financial records. Account records are maintained by CDC's accounting staff as well, to ensure prompt payment to landlords and tracking of Program funds.

Goals and Objectives

The mission of the Town of Smithtown Housing Choice Voucher Program is to promote adequate and affordable housing, economic opportunity and a suitable living environment free from discrimination. The Town of Smithtown has initiated a comprehensive housing program designed to provide a full spectrum of housing programs to serve the Town's population. The Consolidated Plan prepared by the Suffolk County Community Development Consortium

indicates a substantial housing need by lower income families in the County. The Housing Choice Voucher Program provides assistance to very low income families who need rental assistance.

Administration

Through the Stipulation of Settlement for Case No. 07-CV-5202, the Town adopted an Equal Housing Opportunity Statement. This statement guarantees that the Program is operated in accordance with the Fair Housing Act prohibitions against discrimination and that the Program does not discriminate against any potential applicant, applicant, participant, family or family members on the basis of race, color, creed, religion, sex, sexual orientation, national origin, age, familial status, marital status, military status, or disability. It also guarantees compliance with the Fair Housing Act's provision that the Town affirmatively further fair housing. A copy of this policy will be included in the information provided with applications and a copy will be provided at each eligibility or recertification interview. This statement is also available for review at the offices of the Smithtown Planning and Community Development Department and the offices of CDC

All screening and termination of assistance procedures will be administered uniformly, fairly and in such a way as not to violate rights to privacy or discriminate on the basis of race, color, creed, religion, sex, sexual orientation, national origin, age, familial status, marital status, military status, or disability or other legally protected status.

To the maximum extent possible, CDC and the Town of Smithtown will involve other community and governmental entities in the promotion and enforcement of this policy. This policy will be posted on CDC's bulletin board and copies made readily available to applicants and participants upon request.

SELECTION AND ADMISSION OF APPLICANTS FROM THE PHA WAITING LIST

General

The major function of the Housing Choice Voucher Program is to enable families with low incomes to obtain decent, safe, and sanitary housing. Program outreach is designed to reach the broad range of families who will benefit from this Program.

The outreach process consists of two major activities. On an ongoing basis, the Program provides information to prospective applicants who inquire about the Housing Choice Voucher Program. The second component of the outreach process is community-wide publication of Program availability when the application period is open. This notification is made through advertisements made in periodicals and newspapers with general readership, such as *Newsday*, flyers placed in public places, minority publications, news sources likely to reach potential minority applicants in Nassau and Suffolk Counties, and notices mailed to community groups. Community groups to be notified are regularly added to the outreach list as Program staff develops broader community contacts. The Program staff is available to meet with groups which serve low and moderate income households and persons with disabilities to explain the Program. Efforts are made to assure widespread advertisement of the Program and to inform applicants

and participants of the availability of housing opportunities in areas outside of impacted areas. Outreach materials conform to requirements for Equal Housing Advertisements and stress the advantages to owners who participate in the program.

Briefing the Family and Issuing the Voucher

When the eligibility verification is complete, the applicant meets with a staff person for a briefing that includes information on the topics required by regulation (24 CFR 982.301(a)) and is issued a voucher and a tenant packet which includes information on the topics required by regulation (24 CFR 982.301(b)).

The briefing provides a description of how the Program works, the family and owner responsibilities and where the family may lease a unit, including "portability" options. A Smithtown voucher holder who wishes to "port" to another town in Suffolk County will continue to be administered as a Smithtown client by CDC. The Program accepts voucher holders from any initial PHA and determines whether to absorb the family as a Town of Smithtown participant or to bill the initial PHA based on the availability of funding for the Program.

Applicants who do not have a domicile within the Town (and therefore are not statutorily guaranteed portability rights) shall make a diligent search for housing in Smithtown during the initial 60-day term of the voucher, and shall document said search. If after said documented search the applicant is not able to locate suitable housing within Smithtown during that initial term, he/she shall be granted full portability rights.

The applicant signs a form acknowledging receipt of the tenant package and indicating that he/she is aware he/she must inform the Program of any changes in household income or family composition. If the family is currently living in a high poverty census tract the briefing explains the advantages of moving to an area that does not have a high concentration of poverty. In briefing a family that includes any disabled person, steps are taken to ensure effective communication in accordance with 24 CFR 8.6.

PHA Admission Preferences

Temporary Procedures to Comply with a Stipulation of Settlement (Case No. 07-CV-5202)

The following procedures shall terminate: when all non-resident applicants who were on the waiting list prior to 2006, and all non-resident applicants who applied in 2006 and had waiting list numbers 1 through 119, and who can be located according to the procedures of the Stipulation, have been interviewed and, if found eligible, issued a voucher; or ten years from the date of the signing of the Final Court Order on Case No. 07-CV-5202, whichever comes first.

The Town shall place (a) first the named plaintiffs and (b) next the non-resident applicants who were on the waiting list prior to the 2006 reopening of the waiting list or were on the 2006 waiting list and who had waiting list numbers 1 through 119, at the top of the current waiting list in the order they would have been assigned based on their original waiting list number, save that

the named plaintiffs shall be the first four individuals on the current waiting list. The individuals described in the first sentence of this paragraph shall be served prior to the Town serving any other applicant on the waiting list and without regard to any residence preference.

Screening and Selecting Participants

As assistance becomes available, applicants are interviewed, in waiting list order. Families must be timely in responding to every request for information. If requested information or response is not received by the Program within the designated response period, the family's application may be dropped from the list.

Families who reside in, or whose head of household or spouse is employed or has a firm job offer in, the Town of Smithtown are considered residents. Following the termination of the Temporary Procedures described above, the program shall use a residency preference whereby vouchers are awarded to eligible applicants in the order they appear on the Section 8 waiting list on a "one resident to one non-resident" basis, *i.e.*, alternating between the next eligible resident followed by the next eligible non-resident. Because the racial composition of the waiting list may change over time, at each reopening of the waiting list, the Town will reexamine and adjust the residency preference after a new waiting list is created in a manner that ensures that the residency preference will not result in a selection rate for minority applicants that is less than four-fifths of what the selection rate would be expected to be for the African-American and Hispanic applicants without consideration of a residency preference. In the event that the makeup of the waiting list is such as that the "one resident to one non-resident" procedure will not result in that agreed selection rate, the process will be adjusted to require the selection of sufficient non-residents to achieve this result.

When an applicant's number is reached on the waiting list as described above, each applicant head of household attends an intake interview with a CDC staff person. (Home visits will be made by CDC staff for clients physically unable to come to the office.) Following the intake interview, CDC staff verifies all information concerning family income, citizenship, handicap and/or disability, medical expenses, and other relevant information.

If an applicant is found to be ineligible, the applicant is informed in writing of the reasons for ineligibility and the procedure to request a review of the decision. If after the review the applicant is deemed to be eligible, the family is served in the order that they would have been had they been deemed eligible when the application was first considered. The procedures for the informal review are described in a separate section later in this plan.

Procedures for Removing Applicant Names from the Waiting List

Any employee or agent of the Town will not remove an applicant's name from the waiting list unless one of the following occurs:

- 1) The applicant requests that the name be removed;
- 2) The applicant fails to respond to two written requests for information indicating that a failure to respond may result in removal from the waitlist;
- 3) The applicant misses 3 scheduled appointments; or
- 4) The applicant does not meet Section 8 federal program eligibility criteria.

Procedures for Closing and Reopening the PHA Waiting List

Applications are accepted at specified periods, which are the only times the waiting list is open. Generally, the waiting list is only reopened when there are fewer than 100 applicants on the list. However, if it becomes necessary to reopen the waiting list so as to meet the requirements of the Admission Procedures set forth above, then the list will be reopened to fulfill the Admission Procedures' obligations regardless of the number of applicants on the waiting list. Each reopening period is for a one-month period. The application requests basic data concerning family size, current family income, whether head of household or spouse is disabled, handicapped, or elderly, current residence, race/ethnicity, and further information related to housing needs. When the waiting list is opened, public notice is given of how and when to apply for the Program. Such notice is in compliance with applicable fair housing and equal opportunity requirements of the Town, including the Equal Housing Opportunity Statement, and of HUD. Potential applicants may pick up an application at the P&CD office or CDC or may request that one be mailed to them. Applications are sent to the civic and community organizations on the outreach list. Completed applications are to be returned to CDC by a specific and published date. No applications are accepted at any time outside of the specified application period.

All applications are assigned an identification number. Applicants are informed by mail of the identification number assigned to their application. No late applications are accepted. At the end of the application period, every application is assigned a waiting list number by random choice in a lottery by identification number. The waiting list numbers and related identification numbers are recorded in a bound waiting list log in order of their waiting list numbers. Applicants are informed by mail of their waiting list number.

If a family submits more than one application during an application period, even if the applications name different heads of house, all the applications shall have the identification number assigned to the first application received; any subsequent identification numbers assigned to applications received from the same family shall be void and shall have entered in the bound waiting list log the word "duplicate" over the void identification number if a subsequent identification number has been assigned.

If an applicant who has not yet been reached on the waiting list joins a family which is currently participating in the Program or currently seeking housing through the Program, the applicant's original application shall be considered a "duplicate" application and the applicant shall not be entitled to be served when his/her "duplicate" waiting list number is reached.

ASSISTING FAMILY CLAIMS OF ILLEGAL DISCRIMINATION

It is the policy of the Town of Smithtown's Section 8 Housing Choice Voucher Program to ensure that participating or prospective owners fully comply with Federal, State, and local

nondiscrimination laws; the Americans With Disabilities Act; and the U.S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity.

No person shall, on the grounds of race, color, creed, religion, sex, sexual orientation, national origin, age, familial status, marital status, military status, or disability shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the HCV program.

CDC will provide Federal/State/local information to applicants and participants in the Section 8 Housing Choice Voucher Program regarding discrimination and any recourse available to them if they believe they may be victims of discrimination. All applicable Fair Housing Information and Discrimination Complaint forms will be made available. In addition, all written information and advertisements will contain the Equal Housing Opportunity language and logo.

CDC will assist any family that believes they have suffered illegal discrimination by providing them copies of the housing discrimination forms from HUD and the New York State Division of Human Rights. CDC will also assist them in completing the form, if requested, and will provide them with the address of the nearest HUD Office of Fair Housing and Equal Opportunity and the nearest office of the New York State Division of Human Rights.

No person who has asserted rights under federal or state fair housing laws shall be retaliated against by Program staff.

FAIR HOUSING PROVISIONS

The Town of Smithtown Housing Choice Voucher Program is operated, in all its phases, in accordance with the following and/or such other acts or regulations that shall apply:

- The Fair Housing Act, as amended by the Fair Housing Amendment Act of 1988, 42 U.S.C. 3601, *et seq.*;
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (implementing regulations at 24 CFR part 1);
- The Age Discrimination Act of 1975, 42 U.S.C. 6101 (implementing regulations at 24 CFR part 146);
- Federal Executive Order 11063, Equal Opportunity in Housing (1962), as amended; Executive Order 12259, 46 FR 1253 (1980), as amended; Executive Order 12892, 59 FR 2939 (1994) (implementing regulations at 24 CFR part 107);
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (implementing regulations 24 CFR part 8);
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.*; and
- New York State Human Rights Laws

The Program is operated in accordance with HUD's affirmative fair housing objectives and does not discriminate against families or family members on the basis of race, color, creed, religion,

sex, sexual orientation, national origin, age, familial status, marital status, military status, or disability.

*The text above has been excerpted from the 43-page Town of Smithtown Housing Choice Voucher Program Administrative Plan. The locations in this excerpt where the full text has been interrupted are indicated by the symbols ***** appearing below the text.*

EXHIBIT E
PLAN OF ALLOCATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	x	
CORINNE VARGAS, KISHA TRENT, ANNIE SMITH	:	
and R.G., on behalf of themselves and all others similarly	:	
situated,	:	Case No. 07-CV-5202
	:	(JS)(WDW)
Plaintiffs,	:	
	:	
v.	:	
	:	
TOWN OF SMITHTOWN,	:	
	:	
Defendant.	:	
-----	x	

PLAN OF ALLOCATION

1. Except as indicated in this Plan of Allocation, the capitalized terms used herein shall have the meanings ascribed to them in the Settlement Agreement and Stipulation, dated _____, 2009 (the "Stipulation").

2. Pursuant to paragraph 34 of the Stipulation, within forty-five (45) days following Preliminary Approval of the settlement, the Claims Administrator shall notify Class members of the settlement in a form substantially the same as that attached to the Stipulation as Exhibit F. That notice will provide (i) an indication that Class members may be entitled to monetary compensation, (ii) a description of the class, (iii) the procedures by which Class members should apply to receive their monetary relief. Class members shall have one hundred fifty days (150) to send their application for relief (the "Close of the Application Period"). For avoidance of doubt, applications for relief postmarked on the one hundred fiftieth day following mailing of the notice shall be accepted as timely. The Claims Administrator shall review applications to determine whether each applicant is a member of the Class entitled to a distribution pursuant to the plan of

distribution in accordance with the Plan of Allocation. The Claims Administrator shall complete the review of claims applications within six (6) months after the Close of the Application Period.

3. The Claims Administrator, in his or her sole discretion, shall determine whether or not a person or group of people qualify as Class members entitled to monetary relief and the amount to which they are entitled in accordance with the Plan of Allocation (“Payment Determination”). It shall notify Class members of its determination in writing, indicating that the decision may be appealed as provided by paragraph 4.

4. Individuals may appeal the Claims Administrators’ Payment Determination by sending written notification of their disagreement with the Claims Administrator’s decision (“Appeal”) along with any materials supporting their claimed classification to the Claims Administrator within forty-five (45) days of the mailing date of the Payment Determination. The Claims Administrator will review the Appeal and, if necessary, interview the individual appealing the determination and/or gather additional information from the Parties within thirty (30) days of the Appeal (the “Close of the Appeal Period”). The Claims Administrator will determine whether based on the Appeal and any new information its original Payment Determination was incorrect and revise its Payment Determination as necessary and appropriate. If the Class member disagrees with the Claims Administrator’s appeal decision, the member may request review by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”), counsel for the Class, within fifteen days of the Class members’ receipt of notification of the Claims Administrator’s decision by sending a letter with such a request to the Lawyers’ Committee or Claims Administrator. Lawyers’ Committee will review all information concerning the claim within thirty days and determine whether the decisions made by the Claims Administrator should be reversed. If so, the Claims Administrator will be directed by Lawyers’ Committee to revise its Payment Determination as necessary and appropriate. Any final decision of the Claims Administrator or Lawyers’ Committee regarding whether an individual is a Class

member, whether an individual is entitled to monetary relief, or what monetary relief an individual is entitled to is not appealable to any court or other tribunal.

5. After deduction of all fees and costs provided by paragraph 29 of the Stipulation and based upon the Claims Administrator's final Payment Determinations, the Claims Administrator shall calculate the amounts to be paid to each Plaintiff for Settlement of their claims based upon the following schedule:

(a) Plaintiffs Corinne Vargas, Kisha Trent, Annie Smith, and R.G. each shall receive compensation in the amount of \$20,000.

(b) Those Class members, not identified in paragraph (a), who applied and were informed of a date on which they would be interviewed by Smithtown or its agents or employees in regards to determining their eligibility for the Section 8 Program, whether or not the Class member was actually interviewed and whether or not the interview appointment was rescinded, shall receive compensation in the amount of \$10,000 per Class member.

(c) Those Class members, not identified in paragraphs (a) or (b), who were on the 2002 Smithtown Section 8 Waitlist shall receive compensation in the amount of \$1,000 per Class member.

(d) Those Class members, not identified in paragraphs (a), (b), or (c), who were on the 2006 Smithtown Section 8 Waitlist and whose number has been passed by Smithtown shall receive compensation in the amount of \$400 per Class member.

6. If, after deduction of all fees as provided by paragraph 29 of the Stipulation and after the Close of the Application Period and the Close of the Appeal Period, the Settlement Fund does not contain sufficient funds to pay claims based upon the above schedule, the Class members shall receive compensation based upon their category as described in paragraph 5 and the ratios concerning amount of compensation embodied in paragraph 5, such that any individual Class member identified in paragraph 5(a) shall receive compensation that is 2 times the

compensation received by any individual Class member identified in paragraph 5(b); any individual Class member identified in paragraph 5(c) shall receive compensation that is one-tenth of the compensation received by any individual Class member identified by paragraph 5(b); and any individual Class member identified in paragraph 5(d) shall receive compensation that is four-tenths of the compensation received by any individual Class member identified by paragraph 5(c).

7. Within twenty (20) days following the Close of the Application Period and the Close of the Appeal Period, the Claims Administrator shall provide the Escrow Agent with written notification of its final determination of Class members entitled to monetary relief and the payment each person shall receive. Within twenty (20) days after the Claims Administrator's delivery of this notification, the Escrow Agent shall deliver to the Claims Administrator checks made out to each of these persons in the amounts determined by the Claims Administrator.

8. If a potential Class member submits an application seeking monetary compensation after the close of the application deadline and before all funds in the Escrow Account have been disbursed, the Claims Administrator and Lawyers' Committee will make a determination about the putative class member's eligibility for monetary relief and the amount, if any, to which the putative member may be entitled and determine whether the Class member may receive compensation despite their late application.

9. In the event that distribution checks mailed to Class members are returned, the Claims Administrator shall use reasonable efforts to deliver the returned monies to the appropriate person. After ninety (90) days, any unclaimed checks will be destroyed and the unclaimed funds will be distributed in accordance with paragraph 10.

10. In the event that, after the final determination by the Claims Administrator, there are insufficient claims to utilize all of the monies set aside in the Escrow Property, any unused monies, including any interest accrued, shall revert to an organization or organizations whose

mission is advancement of fair housing and/or affordable housing in Suffolk County as designated by Plaintiffs ("Recipient Organization"). After such a determination the Claims Administrator will notify the Escrow Agent, which shall deliver a payment of the remaining Escrow Property to the Recipient Organization. within fifteen (15) days.

11. The Court will retain jurisdiction over the Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.

SO ORDERED.

Dated: _____, 2009
Central Islip, New York

THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE

CORINNE VARGAS, KISHA TRENT,
ANNIE SMITH and R.G., on behalf of
themselves and all others similarly situated,

Plaintiffs,
v.

TOWN OF SMITHTOWN,

Defendant.

PLEASE REVIEW THIS NOTICE CAREFULLY

ABOUT THE VARGAS V. SMITHTOWN LAWSUIT AND THE PROPOSED SETTLEMENT

What is Vargas v. Smithtown?

Vargas v. Smithtown is the name of a lawsuit. The lawsuit claimed that the defendant Town of Smithtown ran the Section 8 Housing Voucher Program in Smithtown in a way that discriminated against African-Americans and Hispanics.

The lawsuit was brought as a class action. A class action is a lawsuit that tries to protect the rights of a group of people (class members) instead of just one or two persons. The class members are:

All African-Americans and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Housing Voucher Program in 2002 or 2006 when the waitlist was opened and who were subsequently determined to be not eligible for the Section 8 Housing Voucher Program because they did not live or work in Smithtown.

This means that if you applied to the Section 8 Housing Voucher Program in 2002 or 2006, you may be a member of the class. If you are a member of this class, the Smithtown case was brought to help you.

What was the main policy that the lawsuit challenged?

In Smithtown, the Section 8 Housing Voucher Program is run by an agency, the Community Development Corporation of Long Island, which administers the program for Smithtown, at the direction of Smithtown. The main policy challenged in this lawsuit is that Smithtown preferred giving vouchers to people who lived in Smithtown.

For example, if someone who lived in Smithtown applied for a Section 8 Housing Voucher and a non-Smithtown resident also applied, the person living in Smithtown would get the Section 8 Housing Voucher first because of the local residency policy. Because most Smithtown applicants for Section 8 Housing Vouchers are white, the lawsuit claimed that the

local residency policy has an illegal discriminatory effect against African-Americans and Hispanics.

The defendant Town of Smithtown has denied any wrongdoing.

Why does it matter if I am a class member?

First, the class and defendant Town of Smithtown have agreed to settle the case. This means that if you are a member of the class, you will have to accept the final settlement. Second, you may be entitled to receive a money distribution.

At this point, the settlement still has to be approved by the Judge. The Judge will hold a “fairness hearing” on _____, 2009 that gives class members the right to go to Court and tell the Judge why the settlement is fair or unfair.

What does the settlement say?

The settlement is complicated, but here are some of the details:

- Smithtown and its insurance company will pay into the Settlement Fund.
- Smithtown will use a modified “residency preference” as follows: in administering the remaining 2006 waitlist, Smithtown will give vouchers to eligible applicants in the order that they appear on the Section 8 waitlist on a “one resident to one non-resident” basis; in other words, alternating between the next eligible resident followed by the next eligible non-resident.
- Smithtown will make sure that this modified “residency preference” does not harm minority applicants.
- Smithtown agrees to tell all of its current employees and agents, including the Community Development Corporation of Long Island employees, involved with the Section 8 Housing Voucher Program about the requirements contained in the Fair Housing Act of 1968 and about Smithtown’s policy of equal housing opportunity.
- Smithtown agrees to provide mandatory training to all of its current employees and agents involved with the Section 8 Housing Voucher Program, which will include the requirements of the federal Fair Housing Act, applicable local fair housing laws, Smithtown’s policy of equal housing opportunity, and the policies, operation, methods, and procedures governing the Section 8 Housing Voucher Program.

- Smithtown will actively advertise the Section 8 Housing Voucher Program to minority persons during the term of this settlement.
- Smithtown will let the public know about its non-discriminatory policies and its desire to treat all people in a considerate and professional manner with respect to the Section 8 Housing Voucher Program by displaying the local and federal fair housing posters at all offices where it conducts business.
- Smithtown will remove any language regarding a residency preference in the Section 8 Housing Voucher Program application form, in any correspondence it has with applicants on the waitlist, and in any advertising or any other public documents describing the selection process for vouchers.
- Each reopening of the waitlist in the future will be for at least a one-month period.
- Smithtown will change its Administrative Plan so that no applicant will be removed from the waitlist: (1) unless the applicant requests that his or her name be removed; (2) unless the applicant fails to respond to two written requests from Smithtown for information, which contain warnings that a failure to respond may result in removal from the waitlist; (3) unless the applicant misses three scheduled appointments; or (4) unless the applicant does not meet Section 8 Housing Voucher Program eligibility standards.
- Smithtown will change its Administrative Plan so that a voucher-holder who does not have a home within Smithtown (and is therefore not guaranteed by law the right to commute) will make every effort to search for housing in Smithtown during the first 60-day term of the voucher, and will keep a record of that search. If the voucher-holder is not able to find acceptable housing within Smithtown during that first term, the voucher-holder will be granted full commuting rights.
- Smithtown will place the non-resident applicants at the top of the current waitlist in the order they would have been assigned based on their original waitlist number if they were on the waitlist before the 2006 reopening of the waitlist, or were on the 2006 waitlist and their number has already been reached.

What do I do if I want to tell the Judge what I think about the proposed settlement, whether I like it or I think it is unfair?

The District Court will hold a fairness hearing. You can go to the hearing to tell the Judge why you think the settlement is fair or unfair. After the fairness hearing, the Judge will decide whether the proposed settlement is fair to both the class members and the defendant Town of Smithtown. If she decides it is fair, the Judge will sign the proposed settlement as an Order of the Court, and it will take effect.

The fairness hearing will be held on _____, 2009 in the courtroom of Judge Joanna Seybert located in the Alfonse M. D'Amato Federal Building, 100 Federal Plaza, Central Islip, New York 11722. Any member of the class may go to the Hearing, in person or by choosing a lawyer to go to the Hearing, and tell the Judge: (1) why the settlement should not be approved; (2) why a judgment dismissing the lawsuit on the terms contained in the settlement agreement should not be entered; or (3) why the attorneys for the class should not be awarded their requested attorneys' fees and expenses.

In order to appear at the Hearing, you must send the following information to the Clerk of the Court and to the lawyers listed below:

- A written statement of all of your objection(s) and all the reasons for those objection(s), including any briefs or affidavits in support of those objection(s), and a statement telling the Clerk of the Court whether or not you are going to come to the Hearing;
- Your name, address and telephone number, or the name, address and telephone number of your lawyer;
- The approximate date on which you applied for the Smithtown Section 8 Housing Voucher Program; and
- Your race or ethnic group

Remember, the above information must be sent to the Clerk of the Court at Office of the Clerk, United States District Court, Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, NY 11722 and to **each** of the following lawyers:

Stacey Friedman
32nd Floor
125 Broad Street
New York, New York 10004
Tel: (212) 558-4000
Fax: (212) 558-3588

Jeltje deJong
Devitt Spellman Barrett, LLP
50 Route 111
Smithtown, NY 11787
Tel: (631) 724-8833
Fax: (631) 724-8010

You do not have to come to the Hearing if you think the settlement is fair. But, if you do not go to the Hearing after you have already sent the information (as discussed above) to the

Clerk of the Court and the lawyers, you will never be allowed to object to the fairness of the settlement.

How can I decide if the settlement is fair?

This notice gives you some information about the settlement. The good news is that the settlement includes a lot of information and gives a lot of help to class members. The bad news is that there are many details. We have tried to make it easy to understand.

If you want to go over the proposed settlement with someone, please contact the Claims Administrator by mail at Smithtown Housing Discrimination Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914; by toll-free phone at (800) 766-3330; by fax at (516) 931-0810; or visit the website at www.berdonclaims.com.

What if I have questions about this notice?

If you have questions about this notice or the Smithtown lawsuit, please contact the Claims Administrator, as indicated above.

HOW TO GET A MONEY DISTRIBUTION

Who can get a money distribution?

To receive a money distribution, the following must be true:

- You are an African-American or Hispanic individual;
- You applied to the Smithtown Section 8 Voucher Program when the waitlist was opened in 2002 or 2006; and
- You were not eligible for the Smithtown Section 8 Voucher Program because you did not live or work in Smithtown, New York.

This means that if you applied to the Smithtown Section 8 Housing Voucher Program in 2002 or 2006 YOU MAY BE A MEMBER OF THE CLASS.

**IF YOU THINK YOU MAY BE ELIGIBLE, MAKE SURE THAT THE
CLAIMS ADMINISTRATOR HAS YOUR CONTACT INFORMATION:**

***write to: Smithtown Housing Discrimination Litigation, c/o Berdon Claims
Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914
call toll-free: (800) 766-3330 • fax: (516) 931-0810
or visit the website: www.berdonclaims.com***

**If you do not know if you are eligible, please
contact the Claims Administrator to find out.**

Please share this information with anyone else you know who also
may have applied to Smithtown for Section 8 Housing Vouchers.

What if I applied for Section 8 from Smithtown but I don't remember the date I applied?

Contact the Claims Administrator as indicated above, and make sure the address they
have on file is correct.

What is the procedure for getting a money distribution?

The Claims Administrator will: (1) decide whether or not you qualify as a class member
who is entitled to money; and (2) make the distribution of money to qualified class members.

The Claims Administrator will decide whether or not a person or a group of people qualify as class members who are entitled to receive money. Individuals who disagree with the decision may appeal to the Claims Administrator but not to any court or other tribunal.

The Claims Administrator will decide the amounts to be paid to each class member. If there is enough money to pay all class members, payments will be based upon the following schedule:

15. Those class members who applied and were given a date to be interviewed by Smithtown or its agents or employees about their eligibility for the Smithtown Section 8 Housing Voucher Program, whether or not the class member was actually interviewed and whether or not the interview was cancelled, will receive \$10,000.

16. Those class members, not described in paragraph (a), who were on the 2002 Smithtown Section 8 Housing Voucher waitlist will receive \$1,000.

17. Those class members, not described in either paragraphs (a) or (b), but who were on the 2006 Smithtown Section 8 Housing Voucher waitlist and whose number has been passed by Smithtown will receive compensation in the amount of \$400.

If there is not enough money, payments may be lower.

How will the Claims Administrator know where to contact me?

The Claims Administrator will use the last address that Smithtown had on file for you. Because some class members have been on the Smithtown waitlist for years, this may be a problem because class members may have moved.

If you moved and did not leave your new address, contact the Claims Administrator and update your address.

If you moved more than one year ago, the request you gave to the post office to forward your mail will no longer be in effect. Contact the Claims Administrator and update your address. **YOU MUST MAKE SURE THAT YOUR ADDRESS IS CORRECT.**

If you know someone else who may have applied to Smithtown but who may have moved since they applied, tell them to contact the Claims Administrator and update their address.

What if I have more questions?

If you have questions or want to update your address, please contact the Claims Administrator at:

Smithtown Housing Discrimination Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914
Phone: (800) 766-3330
Fax: (516) 931-0810
Website: **www.berdonclaims.com**

Dated: _____, 2009

BY ORDER OF THE COURT

EXHIBIT G
ORDER AND FINAL JUDGMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	x	
CORINNE VARGAS, KISHA TRENT, ANNIE SMITH	:	
and R.G., on behalf of themselves and all others similarly	:	
situated,	:	Case No. 07-CV-5202
	:	(JS)(WDW)
Plaintiffs,	:	
	:	
v.	:	
	:	
TOWN OF SMITHTOWN,	:	
Defendant.	:	
-----	x	

ORDER AND FINAL JUDGMENT

A Hearing (the "Hearing") having been held before this Court on _____, 2009, pursuant to this Court's Order, dated _____, 2009 (the "Preliminary Order"), on the Settlement set forth in the Stipulation and Agreement of Settlement, dated _____, 2009 (the "Stipulation"), and on the application for an award of attorneys' fees and expenses to the Plaintiffs' attorneys as set forth in their fee application; and due and sufficient notice of the Hearing was given in accordance with the Scheduling Order; the respective parties having appeared by their respective attorneys, and such attorneys having been heard; ["no person having objected" or "all persons objecting having been heard in opposition"] to the Settlement and the fee application; the Court having heard and considered the matters, including all papers filed in connection therewith and the oral presentations of counsel; and the Court having made its findings of fact and conclusions of law as set forth below:

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Stipulation.
2. This Court has subject matter jurisdiction over the Action and personal jurisdiction over the Parties.
3. This action is properly maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure for the class of all African-American and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were or would have been determined not eligible for the Program because they did not live or work in Smithtown.
4. The form and manner of notice given to the Class, as previously approved preliminarily by the Court in the Preliminary Order, are hereby determined to have been the best notice practicable under the circumstances and constitute due and sufficient notice to all persons entitled to receive such notice in compliance with the provisions of Rule 23(e) of the Federal Rules of Civil Procedure and the requirements of due process. A full opportunity has been offered to Class Members to object to the Settlement and the fee application and to participate in the Hearing.
5. The Settlement, and all transactions preparatory or incident thereto, are found to be fair, reasonable, adequate and in the best interests of all Plaintiffs and members of the Class, and the Settlement is hereby approved. The Parties are hereby ordered to comply with and to consummate the Settlement in accordance with the terms and provisions of the Stipulation, the terms of which shall become a part of this Order.

6. This Order and Final Judgment shall not constitute any evidence or admission by any party to the Action that any acts of wrongdoing have been committed by any of the Parties and should not be deemed to create any inference that there is any liability therefor.

7. The Court shall reserve continuing and exclusive jurisdiction (a) over implementation of the settlement pursuant to further orders of the Court; (b) over the action until each and every act agreed to be performed by the Parties hereto shall have been performed pursuant to this Settlement Agreement, including the implementation and administration of the Settlement Fund; (c) over enforcement, construction and interpretation of this Settlement Agreement and any subsequent related agreements; (d) over the Parties hereto for the enforcement of any continuing obligations hereunder; and (e) for ten years from the date of Court Approval of all changes to the Section 8 Program.

8. Counsel for Plaintiffs are hereby awarded \$_____ for attorneys' fees and expenses incurred in the prosecution of the Action, which fees the Court finds to be fair and reasonable and which shall be paid to counsel for Plaintiffs in accordance with the terms of the Stipulation.

SO ORDERED.

Dated: _____, 2009
Central Islip, New York

THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE

Exhibit C

CORINNE VARGAS, KISHA TRENT,
ANNIE SMITH and R.G., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

TOWN OF SMITHTOWN,

Defendant.

PLEASE REVIEW THIS NOTICE CAREFULLY

ABOUT THE VARGAS V. SMITHTOWN LAWSUIT AND THE PROPOSED SETTLEMENT

What is Vargas v. Smithtown?

Vargas v. Smithtown is the name of a lawsuit. The lawsuit claimed that the defendant Town of Smithtown ran the Section 8 Housing Voucher Program in Smithtown in a way that discriminated against African-Americans and Hispanics.

The lawsuit was brought as a class action. A class action is a lawsuit that tries to protect the rights of a group of people (class members) instead of just one or two persons. The class members are:

All African-Americans and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Housing Voucher Program in 2002 or 2006 when the waitlist was opened and who were subsequently determined to be not eligible for the Section 8 Housing Voucher Program because they did not live or work in Smithtown.

This means that if you applied to the Section 8 Housing Voucher Program in 2002 or 2006, you may be a member of the class. If you are a member of this class, the Smithtown case was brought to help you.

What was the main policy that the lawsuit challenged?

In Smithtown, the Section 8 Housing Voucher Program is run by an agency, the Community Development Corporation of Long Island, which administers the program for Smithtown, at the direction of Smithtown. The main policy challenged in this lawsuit is that Smithtown preferred giving vouchers to people who lived in Smithtown.

For example, if someone who lived in Smithtown applied for a Section 8 Housing Voucher and a non-Smithtown resident also applied, the person living in Smithtown would get the Section 8 Housing Voucher first because of the local residency policy. Because most Smithtown applicants for Section 8 Housing Vouchers are white, the lawsuit claimed that the local residency policy has an illegal discriminatory effect against African-Americans and Hispanics.

The defendant Town of Smithtown has denied any wrongdoing.

Why does it matter if I am a class member?

First, the class and defendant Town of Smithtown have agreed to settle the case. This means that if you are a member of the class, you will have to accept the final settlement. Second, you may be entitled to receive a money distribution.

At this point, the settlement still has to be approved by the Judge. The Judge will hold a “fairness hearing” on _____, 2009 that gives class members the right to go to Court and tell the Judge why the settlement is fair or unfair.

What does the settlement say?

The settlement is complicated, but here are some of the details:

- Smithtown and its insurance company will pay into the Settlement Fund.
- Smithtown will use a modified “residency preference” as follows: in administering the remaining 2006 waitlist, Smithtown will give vouchers to eligible applicants in the order that they appear on the Section 8 waitlist on a “one resident to one non-resident” basis; in other words, alternating between the next eligible resident followed by the next eligible non-resident.
- Smithtown will make sure that this modified “residency preference” does not harm minority applicants.
- Smithtown agrees to tell all of its current employees and agents, including the Community Development Corporation of Long Island employees, involved with the Section 8 Housing Voucher Program about the requirements contained in the Fair Housing Act of 1968 and about Smithtown’s policy of equal housing opportunity.
- Smithtown agrees to provide mandatory training to all of its current employees and agents involved with the Section 8 Housing Voucher Program, which will include the requirements of the federal Fair Housing Act, applicable local fair housing laws, Smithtown’s policy of equal housing opportunity, and the policies, operation, methods, and procedures governing the Section 8 Housing Voucher Program.
- Smithtown will actively advertise the Section 8 Housing Voucher Program to minority persons during the term of this settlement.
- Smithtown will let the public know about its non-discriminatory policies and its desire to treat all people in a considerate and professional manner with respect to the Section 8 Housing Voucher Program by displaying the local and federal fair housing posters at all offices where it conducts business.
- Smithtown will remove any language regarding a residency preference in the Section 8 Housing Voucher Program application form, in any correspondence it has with applicants on the waitlist, and in any advertising or any other public documents describing the selection process for vouchers.
- Each reopening of the waitlist in the future will be for at least a one-month period.
- Smithtown will change its Administrative Plan so that no applicant will be removed from the waitlist: (1) unless the applicant requests that his or her name be removed;

(2) unless the applicant fails to respond to two written requests from Smithtown for information, which contain warnings that a failure to respond may result in removal from the waitlist; (3) unless the applicant misses three scheduled appointments; or (4) unless the applicant does not meet Section 8 Housing Voucher Program eligibility standards.

- Smithtown will change its Administrative Plan so that a voucher-holder who does not have a home within Smithtown (and is therefore not guaranteed by law the right to commute) will make every effort to search for housing in Smithtown during the first 60-day term of the voucher, and will keep a record of that search. If the voucher-holder is not able to find acceptable housing within Smithtown during that first term, the voucher-holder will be granted full commuting rights.

- Smithtown will place the non-resident applicants at the top of the current waitlist in the order they would have been assigned based on their original waitlist number if they were on the waitlist before the 2006 reopening of the waitlist, or were on the 2006 waitlist and their number has already been reached.

What do I do if I want to tell the Judge what I think about the proposed settlement, whether I like it or I think it is unfair?

The District Court will hold a fairness hearing. You can go to the hearing to tell the Judge why you think the settlement is fair or unfair. After the fairness hearing, the Judge will decide whether the proposed settlement is fair to both the class members and the defendant Town of Smithtown. If she decides it is fair, the Judge will sign the proposed settlement as an Order of the Court, and it will take effect.

The fairness hearing will be held on _____, 2009 in the courtroom of Judge Joanna Seybert located in the Alfonse M. D'Amato Federal Building, 100 Federal Plaza, Central Islip, New York 11722. Any member of the class may go to the Hearing, in person or by choosing a lawyer to go to the Hearing, and tell the Judge: (1) why the settlement should not be approved; (2) why a judgment dismissing the lawsuit on the terms contained in the settlement agreement should not be entered; or (3) why the attorneys for the class should not be awarded their requested attorneys' fees and expenses.

In order to appear at the Hearing, you must send the following information to the Clerk of the Court and to the lawyers listed below:

- A written statement of all of your objection(s) and all the reasons for those objection(s), including any briefs or affidavits in support of those objection(s), and a statement telling the Clerk of the Court whether or not you are going to come to the Hearing;

- Your name, address and telephone number, or the name, address and telephone number of your lawyer;

- The approximate date on which you applied for the Smithtown Section 8 Housing Voucher Program; and

- Your race or ethnic group

Remember, the above information must be sent to the Clerk of the Court at Office of the Clerk, United States District Court, Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, NY 11722 and to **each** of the following lawyers:

Stacey Friedman
32nd Floor
125 Broad Street
New York, New York 10004
Tel: (212) 558-4000
Fax: (212) 558-3588

Jeltje deJong
Devitt Spellman Barrett, LLP
50 Route 111
Smithtown, NY 11787
Tel: (631) 724-8833
Fax: (631) 724-8010

You do not have to come to the Hearing if you think the settlement is fair. But, if you do not go to the Hearing after you have already sent the information (as discussed above) to the Clerk of the Court and the lawyers, you will never be allowed to object to the fairness of the settlement.

How can I decide if the settlement is fair?

This notice gives you some information about the settlement. The good news is that the settlement includes a lot of information and gives a lot of help to class members. The bad news is that there are many details. We have tried to make it easy to understand.

If you want to go over the proposed settlement with someone, please contact the Claims Administrator by mail at Smithtown Housing Discrimination Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914; by toll-free phone at (800) 766-3330; by fax at (516) 931-0810; or visit the website at www.berdonclaims.com.

What if I have questions about this notice?

If you have questions about this notice or the Smithtown lawsuit, please contact the Claims Administrator, as indicated above.

HOW TO GET A MONEY DISTRIBUTION

Who can get a money distribution?

To receive a money distribution, the following must be true:

- You are an African-American or Hispanic individual;
- You applied to the Smithtown Section 8 Voucher Program when the waitlist was opened in 2002 or 2006; and
- You were not eligible for the Smithtown Section 8 Voucher Program because you did not live or work in Smithtown, New York.

This means that if you applied to the Smithtown Section 8 Housing Voucher Program in 2002 or 2006 YOU MAY BE A MEMBER OF THE CLASS.

**IF YOU THINK YOU MAY BE ELIGIBLE, MAKE SURE THAT THE
CLAIMS ADMINISTRATOR HAS YOUR CONTACT INFORMATION:**

***write to: Smithtown Housing Discrimination Litigation, c/o Berdon Claims
Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914
call toll-free: (800) 766-3330 • fax: (516) 931-0810
or visit the website: www.berdonclaims.com***

**If you do not know if you are eligible, please
contact the Claims Administrator to find out.**

Please share this information with anyone else you know who also
may have applied to Smithtown for Section 8 Housing Vouchers.

What if I applied for Section 8 from Smithtown but I don't remember the date I applied?

Contact the Claims Administrator as indicated above, and make sure the address they have on file is correct.

What is the procedure for getting a money distribution?

The Claims Administrator will: (1) decide whether or not you qualify as a class member who is entitled to money; and (2) make the distribution of money to qualified class members.

The Claims Administrator will decide whether or not a person or a group of people qualify as class members who are entitled to receive money. Individuals who disagree with the decision may appeal to the Claims Administrator but not to any court or other tribunal.

The Claims Administrator will decide the amounts to be paid to each class member. If there is enough money to pay all class members, payments will be based upon the following schedule:

(a) Those class members who applied and were given a date to be interviewed by Smithtown or its agents or employees about their eligibility for the Smithtown Section 8 Housing Voucher Program, whether or not the class member was actually interviewed and whether or not the interview was cancelled, will receive \$10,000.

(b) Those class members, not described in paragraph (a), who were on the 2002 Smithtown Section 8 Housing Voucher waitlist will receive \$1,000.

(c) Those class members, not described in either paragraphs (a) or (b), but who were on the 2006 Smithtown Section 8 Housing Voucher waitlist and whose number has been passed by Smithtown will receive compensation in the amount of \$400.

If there is not enough money, payments may be lower.

How will the Claims Administrator know where to contact me?

The Claims Administrator will use the last address that Smithtown had on file for you. Because some class members have been on the Smithtown waitlist for years, this may be a problem because class members may have moved.

If you moved and did not leave your new address, contact the Claims Administrator and update your address.

If you moved more than one year ago, the request you gave to the post office to forward your mail will no longer be in effect. Contact the Claims Administrator and update your address. **YOU MUST MAKE SURE THAT YOUR ADDRESS IS CORRECT.**

If you know someone else who may have applied to Smithtown but who may have moved since they applied, tell them to contact the Claims Administrator and update their address.

What if I have more questions?

If you have questions or want to update your address, please contact the Claims Administrator at:

Smithtown Housing Discrimination Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914
Phone: (800) 766-3330
Fax: (516) 931-0810
Website: **www.berdonclaims.com**

Dated: _____, 2009

BY ORDER OF THE COURT

Exhibit D

Important Legal Notice

PLEASE READ ON

YOU MAY BE ENTITLED TO A MONEY DISTRIBUTION!!!

Because of a lawsuit called *Vargas v. Smithtown*, you may be able to receive money if you are African-American or Hispanic and applied to the Smithtown Section 8 Housing Voucher Program.

**IF YOU THINK YOU MAY BE ELIGIBLE,
OR IF YOU WANT TO RECEIVE A COPY OF THE DETAILED NOTICE,
MAKE SURE THAT THE CLAIMS ADMINISTRATOR HAS YOUR
CONTACT INFORMATION:**

***write to:* Smithtown Housing Discrimination Litigation,
c/o Berdon Claims Administration LLC,
P.O. Box 9014, Jericho, NY 11753-8914.**

***call toll-free:* (800) 766-3330 • *fax:* (516) 931-0810
or visit the website: www.berdonclaims.com.**

**If you do not know whether you are eligible, please
contact the Claims Administrator to find out.**

Please share this information with anyone else you know who also
may have applied to Smithtown for Section 8 Housing Vouchers.

Exhibit E

PRELIMINARY ORDER FOR APPROVAL OF SETTLEMENT OF CLASS ACTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	X
CORINNE VARGAS, KISHA TRENT, ANNIE SMITH	:
and R.G., on behalf of themselves and all others similarly	:
situated,	: Case No. 07-CV-5202
	: (JS)(WDW)
Plaintiffs,	:
	:
v.	:
	:
TOWN OF SMITHTOWN,	:
Defendant.	:
-----	X

**PRELIMINARY ORDER FOR APPROVAL
OF SETTLEMENT OF CLASS ACTION**

The parties to the above-captioned matter (the “Action”), having applied for an Order determining certain matters in connection with the proposed settlement of the Action (the “Settlement”), in accordance with their Stipulation and Agreement of Settlement, dated _____, 2009 (the “Stipulation”), and for dismissal of the Action upon the terms and conditions set forth in the Stipulation, the terms and definitions of which are incorporated herein by reference;

NOW, upon consent of the parties to the Action (collectively, the “Parties”) and on behalf of the Class as defined below, after review and consideration of the Stipulation filed with the Court and the Exhibits annexed thereto, and after due deliberation,

IT IS HEREBY ORDERED this ____ day of _____, 2009, that:

1. The Court preliminary approves a settlement class of all African-American and Hispanic individuals who do not live or work in Smithtown, New York and who

applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were or would have been determined not eligible for the Program because they did not live or work in Smithtown.

2. A hearing (the "Settlement Hearing") shall be held on _____, 2009 at ____:____.m., in the District Court for the Eastern District of New York, Long Island Courthouse, 100 Federal Plaza, Central Islip, New York 11722, to:
 1. determine whether the Settlement should be approved by the Court as fair, reasonable, adequate and in the best interests of plaintiffs in the Action ("Plaintiffs") and all members of the class (the "Class"), which is all African-American and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were or would have been determined not eligible for the Program because they did not live or work in Smithtown; and
 2. rule on such other matters as the Court may deem appropriate.
3. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of Plaintiffs' application for attorneys' fees and reimbursement of expenses, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof.
4. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification as may be consented to by the Parties and without further notice to the Class.
5. The Court approves the appointment of Berdon Claims Administration LLC as Claims Administrator.

6. Within 5 days of the entry of this Order, Smithtown shall provide the Claims Administrator with its 2002 and 2006 Section 8 waitlists, including the names, addresses, and social security numbers of individuals on those waitlists.
7. The Claims Administrator shall make reasonable efforts to locate each individual who has been on the 2002 or 2006 waitlist for the Smithtown Section 8 Voucher Program and shall within 45 days of the entry of this Order cause a Notice of Pendency of Class Action, Proposed Settlement of Class Action, and Settlement Hearing (the "Notice") to be mailed by United States mail to the current address of such individuals, or, if the current address cannot be determined, the last known address of such individuals.
8. The Claims Administrator shall also advertise notice of the Settlement in the Long Island edition of *Newsday*.
9. The Claims Administrator shall also provide notice to Long Island housing organizations as identified in Exhibit C to the Stipulation.
10. The form and method of the Notice specified herein: (a) is the best notice practicable; (b) shall constitute due notice of the Settlement Hearing to all entitled to receive such a notice; and (c) meets the requirements of Rule 23(e)(1) of the Federal Rules of Civil Procedure. Prior to the Settlement Hearing, counsel for the Town shall file with the Court an appropriate affidavit with respect to preparation, mailing, and advertising of the Notice.
11. Any member of the Class ("Class Member") may appear at the Hearing, in person or through counsel of his, her or its choice, to show cause why (i) the Settlement should not be approved, (ii) a judgment dismissing the Action on the terms

contained in the Stipulation should not be entered, or (iii) the Plaintiffs' attorneys should not be awarded their requested attorneys' fees and expenses. No Class Member shall be heard, or be entitled to object to or otherwise contest the foregoing, unless such class member, no later than fourteen days prior to the Hearing, has filed with the Clerk of the Court and served on each of the following counsel:

Stacey Friedman
32nd Floor
125 Broad Street
New York, New York 10004
Tel: (212) 558-4000
Fax: (212) 558-3588

Jeltje deJong
Devitt Spellman Barrett, LLP
50 Route 111
Smithtown, NY 11787
(631)724-8833

A written statement of all of such Class Member's objection(s) and all of the grounds or reasons for such objection(s), including any briefs or affidavits in support of such objection(s), and a statement indicating whether such Class Member intends to appear at the Hearing, together with the following information:

1. the name, address and telephone number of the Class Member and his, her or its counsel, if any;
2. the approximate date on which the Class Member applied for the Smithtown Section 8 Voucher Program; and
3. the race and ethnicity of the Class Member.

Any Class Member who does not file and serve a timely objection in the manner provided herein shall be deemed to have waived any objection such Class

Member might have had, and shall forever be barred, in these proceedings or in any other proceeding, from making any objection to or otherwise challenging the Settlement, the Stipulation or any provision thereof, the judgment dismissing the Action, the application and award of attorneys' fees and expenses or any other proceedings herein, and shall have no right to appeal therefrom.

12. If the Settlement, including any amendment made in accordance with the Stipulation, does not obtain Final Approval (as defined in the Stipulation) or does not become effective for any reason whatsoever, the Settlement and any actions taken or to be taken in connection with the Settlement (including this Order and any judgment created herein) shall be terminated and shall become void and of no further force and effect. In any such event, neither the Stipulation, nor any provision contained in the Stipulation, nor any action taken pursuant thereto, shall be deemed to prejudice in any way the respective positions of the Parties. Additionally, the Parties shall be restored to their respective positions as if the Stipulation never existed, and neither the existence of the Stipulation nor its contents shall be admissible in evidence or shall be referred to for any purpose in the Action or in any other litigation or proceeding and shall not entitle any party to recover from any other party any costs or expenses incurred in connection with the implementation of the Stipulation.
13. All proceedings in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination of whether the Settlement should be approved, Plaintiffs and all members of the

Class are barred and enjoined from commencing, instituting, prosecuting, instigating or continuing, or in any way participating in the commencement or prosecution of any action asserting any Settled Claims, either directly, individually, representatively, derivatively or in any other capacity against any of the Class, and are barred and enjoined from challenging the Settlement (other than in this Action in accordance with the procedures established by the Court).

14. The Stipulation and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, used as, or deemed to be evidence of an admission or concession by any Defendants or Plaintiffs or the Class, as defined in the Stipulation: (a) regarding the validity of the Settled Claims; or (b) of any fault, wrongdoing, omission or liability whatsoever. The Stipulation and all negotiations, statements and proceedings in connection therewith shall not be offered or received in evidence against any of the Parties, or, upon entry of this Scheduling Order, any Plaintiff or Class Member, in any civil, criminal or administrative action or proceeding in any court, administrative agency or other tribunal, other than such proceedings as may be necessary to consummate or enforce the Settlement, the releases executed pursuant thereto, and/or the Judgment Order. Notwithstanding any of the foregoing, the Stipulation and the Exhibits hereto may be filed in any subsequent action brought against any Defendants or Plaintiffs or Class Member in order to support a defense or counterclaim by any Defendants or Released Persons of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim or issue preclusion or similar defense or counterclaim.

SO ORDERED.

Dated: _____, 2009
Central Islip, New York

THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X	:	
CORINNE VARGAS, KISHA TRENT, ANNIE SMITH	:	
and R.G., on behalf of themselves and all others similarly	:	
situated,	:	07-CV-5202 (JS)(WDW)
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
TOWN OF SMITHTOWN,	:	
Defendant.	:	
-----X		

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, PRELIMINARY CLASS CERTIFICATION, AND APPROVAL
OF FORM AND MANNER OF NOTICE AND PLAN OF ALLOCATION**

Philip L. Graham, Jr. (PG-5028)
Stacey R. Friedman (SF-8877)
Tyler J. Smith (TS-0878)
Robin Nunn (RN-1908)
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Karlo Ng
LAWYERS' COMMITTEE
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UNDER LAW
1401 New York Avenue, NW
Suite 400
Washington, DC 20005
(202) 662-8331

May 6, 2009

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs Corinne Vargas, Kisha Trent, Annie Smith, and R.G. (the “Plaintiffs”) respectively submit this memorandum of law in support of their Motion for Preliminary Approval of the Proposed Class Action Settlement (the “Settlement”) with Defendant Town of Smithtown (“the Town”, or “Smithtown” or “Defendant”), Preliminary Class Certification, Approval of the Form and Manner of Notice, and Plan of Allocation. Plaintiffs also respectfully request that the Court set a date for a final approval hearing in connection with these settlement proceedings. Through vigorous efforts, Plaintiffs have achieved a settlement that is fair, reasonable and adequate and should be approved.¹

PRELIMINARY STATEMENT

The Proposed Settlement confers significant benefits on Class members by providing eligible individuals the opportunity to receive substantial cash payments to compensate them for the Town’s alleged racial and ethnic discrimination in the provision of federal housing benefits. Specifically, the Proposed Settlement provides for the payment of \$925,000 in cash into a Settlement Fund (“Settlement Funds”) for distribution to Class members.² Moreover, the Settlement requires the Town and its agents to place Class members at the top of its current Section 8 Voucher Program waitlist.³ The

¹ The terms and conditions of the Settlement are contained in the Stipulation of Settlement and Consent Decree (the “Proposed Settlement” or “Stipulation Settlement”) dated March 4, 2009, the original of which was filed with the Court on March 4, 2009. Unless otherwise defined herein, terms shall have the meaning ascribed to them in the Proposed Settlement. Under the terms of the Proposed Settlement, all claims asserted against the Town will be dismissed with prejudice.

² In accordance with the terms of the Proposed Settlement, Smithtown timely deposited \$30,000 in cash into the Escrow Account. If the Settlement is granted final approval, Smithtown will transfer the remaining \$895,000 to the Escrow Account.

³ Class members will be assigned to the current waitlist based on their original waitlist number.

Settlement also provides for mandatory training for all of Smithtown's current employees and agents involved with the Section 8 Voucher Program. Additional consideration for the Settlement is the agreement of Defendant to affirmatively market and advertise the Section 8 Voucher Program to minority persons and revise its Administrative Plan with respect to the operation of the Section 8 waitlist in order to ensure that it complies with civil rights and fair housing laws. Given the facts and circumstances of this case, this equitable relief, while not quantifiable, is a significant benefit to the Class.

As discussed in more detail below, the Settlement was reached at a stage in the litigation when Plaintiffs' counsel was well-versed in the strengths and weaknesses of the claims against the Defendant. By the time the Settlement was reached, Plaintiffs' counsel had conducted an extensive investigation into the underlying facts, thoroughly researched the law pertinent to the Class members' claims and Defendant's potential defenses, consulted with experts in housing and damages, prepared and filed a motion to compel discovery, scheduled a 30(b)(6) deposition, and engaged in substantial merits discovery (including the review of over 68,000 pages of documents produced by Defendant and third parties). Thus, Plaintiffs' counsel had a thorough understanding of the risks Plaintiffs faced in continuing to prosecute the Action against Defendant.

Moreover, the Settlement is the product of extensive, adversarial arm's-length negotiations among Plaintiffs' counsel, counsel for the Defendant and a representative of Defendant's insurance carrier, that took place over an extended period of time, culminating in formal mediation in front of Lela Love of the Eastern District of New York Mediation Panel on October 20 and November 16, 2008. After the mediation

resulted in an agreement in principle, there were months of continued negotiation between the Parties over the specific terms of the Proposed Settlement.

On the basis of the immediate and long term benefits of the Settlement, the substantial risks relating to the continued prosecution of the claims against the Defendant, and Plaintiffs' counsel's informed assessment of the strengths and weaknesses of the claims and defenses thereto, Plaintiffs respectfully request that the Court rule preliminarily that the Settlement is fair, reasonable and adequate.

Likewise, the Court should approve the proposed Plan of Allocation set forth in the Plan of Allocation attached hereto as Exhibit A. If approved, the Plan of Allocation will govern how the Settlement Funds will be distributed among Class members who submit appropriate applications. Based upon the extensive investigation and discovery conducted in the Action, extensive consultation with Named Plaintiffs and Plaintiffs' housing and damages experts and negotiations with Defendant, Plaintiffs' counsel have proposed a Plan of Allocation that is specific to the merits of this case and designed to achieve an equitable distribution of the settlement funds to Class members. Accordingly, it is respectfully submitted that the Plan of Allocation is fair, reasonable and adequate and should be approved.

In addition, the requirements of Fed. R. Civ. P. 23(a) and (b)(2) are satisfied. Plaintiffs therefore respectfully submit that the Class should be certified for settlement purposes pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

Finally, as set forth herein, the Proposed Settlement provides for comprehensive notice to be given to Class members. The form and manner of the Notice of Pendency of

Class Action and Settlement Hearing (“Proposed Notice”) satisfies the requirements of Rule 23 as fur process and should be approved.

BACKGROUND OF THE ACTION

I. Factual Summary

Residency Preference. The Town of Smithtown administers a Section 8 Housing Voucher Program using a preference that requires applicants and participants to either work or live in the Town (the “residency preference”). A person who does not live or work in Smithtown cannot receive a Section 8 housing voucher through Smithtown’s Section 8 Voucher Program until *every* person on the waitlist who lives or works in Smithtown has been considered for a voucher. The population of Smithtown is over 93% White and non-Hispanic. As a result, it is alleged that this preference effectively makes Smithtown Section 8 vouchers unavailable to the non-resident minorities who applied for a Section 8 voucher and were placed on the Program’s waitlist.

Plaintiffs. The named Plaintiffs (the “Named Plaintiffs”) in this class action are four low-income minority individuals who need affordable housing, live outside of Smithtown, New York, and have applied for a Smithtown Section 8 Housing voucher.⁴

The Plaintiffs’ proposed class (the “Proposed Class”) consists of:

All African-American and Hispanic individuals who do not live or work in Smithtown, New York and who applied to the Smithtown Section 8

⁴ Named Plaintiff Corinne Vargas is a Hispanic mother who currently lives in a rental home in Central Islip, New York with her two daughters. Named Plaintiff Kisha Trent is an African-American woman who lives with her fiancé and two children in a rental house in Shirley, New York. Named Plaintiff Annie Smith is an African-American mother of five, who currently resides with her daughter’s family in Selden, New York in a house financed by her daughter’s Section 8 voucher. Named Plaintiff R.G. is an Ecuadorian woman who currently lives in rental housing in Queens County with her two children. R.G. is using her initials because she is a victim of domestic violence who fears that her abuser will find and hurt her.

Voucher Program in 2002 or 2006 when the waitlist was opened and who subsequently were or would have been determined not eligible for the Section 8 Voucher Program because they did not live or work in Smithtown.⁵

Plaintiffs' Claims. On December 13, 2007, Plaintiffs brought this action in the United States District Court for the Eastern District of New York on behalf of themselves and a class of minority voucher applicants as defined above. This housing discrimination class action challenges Defendant's alleged ongoing discriminatory acts and long-standing practice of unlawfully restricting the ability of African-American and Hispanic individuals ("minority individuals" or "minorities") to obtain federally funded Section 8 rental assistance in Smithtown, New York. Plaintiffs allege that by making housing opportunities "unavailable" to minority individuals because of race, color, and national origin, Defendant has committed illegal and discriminatory acts against the Plaintiffs and violated their rights under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (2009), the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982 (2009), the Civil Rights Act of 1871, 42 U.S.C. § 1983 (2009), the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (2009).

Damages. Plaintiffs alleged that they have suffered both tangible and non-tangible damages. The tangible damages include costs such as lost wages or other income for time spent searching for alternative housing, the cost of temporary housing, the cost of storing furniture, additional moving costs, packing costs, security or casualty

⁵ The Class definition has been amended with the approval of all parties from the Class Definition stated in the Stipulation of Settlement.

costs occasioned by the need to acquire alternative housing, the cost of alternative housing and utilities, losses associated with increased time and money spent commuting, charges for medical and psychotherapy counseling caused by housing discrimination, and time spent preparing this case. The non-tangible elements are humiliation, embarrassment, emotional distress, loss of civil rights, inconvenience, and lost housing opportunity, for which damages are recoverable in housing discrimination cases.

Relief. Plaintiffs sought equitable relief and money damages to correct these harms and compensate them for their injuries.

II. Extensive Investigation and Discovery

Plaintiffs' counsel conducted extensive pre-filing investigation of the claims and have since filing served document requests, a document subpoena, and interrogatories and noticed a 30(b)(6) deposition. Defendant and third parties produced – and counsel has reviewed – over 68,000 pages of documents in this case, including 23 boxes of documents produced by the Community Development Corporation of Long Island. Plaintiffs have retained two experts. Plaintiffs have also responded to the Town's interrogatories and document requests.

III. Settlement Terms

After the lawsuit was filed, Plaintiffs met with Smithtown for settlement discussions on three occasions – January 9, March 31 and April 21, 2008. These talks were unsuccessful. Settlement negotiations proceeded intermittently as the case was litigated, but intensified in October and November of 2008. Counsel to the Parties reached an agreement in principle in mid-November and a Settlement Agreement was

completed in late December of 2008. A copy of the Stipulation of Settlement setting out the terms of the Settlement is attached hereto as Exhibit B.⁶

Under the terms of the Proposed Settlement, the Town of Smithtown and/or its insurers has agreed to pay \$925,000 in consideration for settlement of the Action. The following shall be paid from the Settlement Fund: (a) any fees and expenses awarded to Plaintiffs' counsel by the Court, (b) any taxes, fees, and expenses associated with the Escrow Account, (c) costs and expenses incurred by the Claims Administrator in providing notice of the Settlement to Class members and administering the distribution of funds, and (d) as set forth herein, distributions to the members of the Class.

The precise amount of cash awarded to each claimant will vary depending on the number of claimants and their status on the Section 8 Voucher Program Waitlist. The Claims Administrator shall calculate the amounts to be paid to each Plaintiff for settlement of his or her claims based upon the following schedule:

(a) Plaintiffs Corinne Vargas, Kisha Trent, Annie Smith, and R.G. each shall receive compensation in the amount of \$20,000.

(b) Those Class members not identified in paragraph (a) who applied for a Smithtown Section 8 voucher and were informed of a date on which they would be interviewed by Smithtown or its agents or employees in regard to determining their eligibility for the Section 8 Program, whether or not the Class member was actually

⁶ The class definition, Equal Housing Opportunity Statement, and Description of Smithtown Voucher Program's Operating Policies have been updated in the Stipulation of Settlement, including the relevant exhibits, attached hereto as Exhibit B.

(c) Those Class members, not identified in paragraph (a) or (b), who were on the 2002 Smithtown Section 8 Waitlist shall receive compensation in the amount of \$1,000 per Class member.

(d) Those Class members, not identified in paragraph (a), (b) or (c), who were on the 2006 Smithtown Section 8 Waitlist and whose number has been passed by Smithtown shall receive compensation in the amount of \$400 per Class member.

To receive payment, a claimant is required to prove that he or she applied to the Smithtown Section 8 Voucher Program in 2002 or 2006 and has not received a voucher – either by documentary evidence or through the presence of his or her name on the official Smithtown waitlists. In the event that there is disagreement regarding the application of a Class member, Plaintiffs have established an expeditious and inexpensive dispute resolution mechanism that will make a preliminary determination of eligibility and ineligibility of each claimant, yet also permits claimants to challenge such preliminary determination.

In the event that a claim is denied, the Claims Administrator is required to mail a written notice to the claimant informing the claimant why his or her claim was denied and explaining the agreed-upon dispute resolution process.

In addition to providing cash payments to eligible Class members, the Proposed Settlement requires that any unused moneys, including any interest accrued, be donated to an organization or organizations whose mission is advancement of fair housing and/or affordable housing in Suffolk County.

The Stipulation of Settlement also requires the Town to submit to the United States Department of Housing and Urban Development (“HUD”) within a reasonable period of time, but not longer than 90 (ninety) days after the Final Approval, any term of the Proposed Settlement for which HUD approval is required.

Finally, the Town has agreed to pay – from the Settlement fund – Plaintiffs’ counsel’s fees and costs in the amount of \$200,000. Although this amount represents only a small fraction of the fees and costs ordinarily billable for the work done and results achieved by Plaintiffs’ counsel in prosecuting this action, Plaintiffs’ counsel will not seek fees or costs in excess of this amount.

IV. Proposed Notice

The Stipulation of Settlement provides for comprehensive Notice to be given to Class members. Under the terms of the Proposed Settlement, this Notice will be mailed to all Class members identified in the database maintained by counsel for Plaintiffs at their last known address, and to all individuals on the 2002 and 2006 waitlists who have not yet received a voucher, at the address disclosed by the waitlists.⁷ Plaintiffs’ counsel will also mail Notices to various outreach organizations with a request that they be disseminated by those groups to potential Class members. Finally, the Notice will be available on the Web sites of Lawyers’ Committee for Civil Rights Under Law and HELP USA.

⁷ The Claims Administrator shall use public and proprietary databases to conduct a reasonable search for the current address or other contact information of potential Class Members.

ARGUMENT

I. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. The Standard for Preliminary Approval

Under Rule 23(e) of the Federal Rules of Civil Procedure, any “settlement, voluntary dismissal or compromise” of a class action is subject to judicial review and approval. Approval of a proposed settlement is within the discretion of the district court, which should be exercised in accordance with judicial policy strongly favoring pretrial settlement of class action lawsuits. *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 509 (E.D.N.Y. 2003); *see also In re PaineWebber Ltd. P’ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998). “It is well established that there is an overriding public interest in settling and quieting litigation, and this is particularly true in class actions.” *In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) (citations omitted).

“Preliminary approval of a proposed settlement is the first in a two-step process” required before a class action may be settled. *Bourlas v. Davis Law Associates*, 237 F.R.D. 345, 355 (E.D.N.Y. 2006) (quoting *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005); *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997)). During the first step, a court must consider whether the settlement warrants preliminary approval, providing notice to the Proposed Class and the scheduling of a final settlement hearing. In the second step, after notice of the proposed settlement has been provided to the class and a hearing has been held to consider the

fairness and adequacy of the proposed settlement, the court considers whether the settlement warrants final approval. *Id.*

Accordingly, the Court's role at this juncture is to determine whether the proposed Settlement is the product of informed, arm's-length negotiations, and free of obvious deficiencies, and, thus, whether it is within the range of what might later be found fair, reasonable and adequate. *Karvaly v. Ebay, Inc.*, 245 F.R.D. 71, 86 (E.D.N.Y. 2007); *Bourlas*, 237 F.R.D. at 355. This preliminary determination establishes an initial presumption of fairness when the court finds that: (1) the negotiations occurred at arm's length, (2) there was sufficient discovery, and (3) the proponents of the settlement are experienced in similar litigation. *See* NEWBERG ON CLASS ACTIONS § 11.41 (Alba Conte & Herbert Newberg eds., 4th ed. 2003); MANUAL FOR COMPLEX LITIGATION (Third) 30.41 (1995). In short, the Court should determine whether the settlement is "at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard." *In re Prudential*, 163 F.R.D. at 209 (S.D.N.Y. 1995) ("The Court's function now is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.") (internal quotation marks omitted). In other words, "preliminary approval should be granted and notice of the proposed settlement given to the class if there are no obvious deficiencies in the proposed settlement." *In re Med. X-Ray Film Antitrust Litig.*, No. CV 93-5904, 1997 WL 33320580, at *6 (E.D.N.Y. Dec. 26, 1997).

The circumstances underlying the proposed Settlement warrant preliminary approval.

B. The Proposed Settlement is Fair, Reasonable and Adequate and the Result of Good Faith, Arm's-Length Negotiations Between Experienced Counsel

A proposed class action settlement “will enjoy a presumption of fairness” where the settlement “is the product of arm’s length negotiations conducted by experienced counsel knowledgeable in complex class litigation.” *In re Excess Value Ins. Coverage Litig.*, No. M-21-84 (RMB), 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001)); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005).

First, the Proposed Settlement is the product of difficult, adversarial arm’s-length negotiations that culminated in formal mediation with a member of the Eastern District of New York Mediation Panel. At the time the Parties reached the Proposed Settlement, the primary allegations had been actively discussed between the Parties for a year and had been sufficiently developed so that both sides were able to assess the strengths and weaknesses of their claims and defenses. Discovery had resulted in the exchange and review of over 68,000 documents, including waitlist information and applicant data. Plaintiffs had also researched the pertinent law and consulted with experts in housing and damages and other non-profit affordable housing organizations. The settlement process was not collusive. Indeed, the Parties engaged in three rounds of settlement discussions that, while furthering the process, ultimately resulted only in a standstill. Plaintiffs intended to move forward with discovery, issuing 30(b)(6) deposition notices and drafting motions to compel when, on the eve of the next phase of discovery, counsel for

the Defendant approached Plaintiffs' counsel with a proposal for mediation. These extensive arms-length efforts satisfy the Second Circuit requirement for procedural fairness. *D'Amato v. Deutsche Bank*, 236 F.3d at 85-86.

Second, the Proposed Settlement falls within the range of outcomes that might reasonably be approved and does not improperly grant preferential treatment to any members of the Class. This determination need not focus on the monetary benefits alone, but should also weigh the value of any non-monetary or intangible benefits associated with the agreement. *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 197 (S.D.N.Y. 2005) (internal citations omitted). The Proposed Settlement, including the Plan of Allocation, were based on extensive discovery and input from experienced counsel, as well as negotiations with Defendant, with the intent of achieving an equitable result for the entire Class with regard to both money and injunctive relief. The Plan of Allocation sets out a matrix for awarding monetary relief, ranging from \$20,000 to \$400, depending on the stage of involvement in the program and alleged harm to each individual class member.⁸ The structural changes to the Section 8 Voucher Program are perhaps the most significant aspect of the Proposed Settlement, and both the Named Plaintiffs and the Class members will benefit from that relief. Specifically, the Stipulation of Settlement provides that to remediate for past harm, Smithtown must provide housing vouchers to the Named Plaintiffs and the individuals on the 2002 and

⁸ The Named Plaintiffs, who have been burdened most with this litigation, are slated to receive \$20,000. A proposed settlement with a distribution of funds that varies amongst class participants may still be provisionally approved, based on plaintiffs' receipt of intangible benefits. *See, e.g., In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 197 (S.D.N.Y. 2005); *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

2006 waitlists who have been passed over due to the application of the residency preference before providing vouchers to any individual not on those waitlists. Following this period of remediation, “[Smithtown Section 8] vouchers [will be] awarded to eligible applicants in the order they appear on the Section 8 waitlist on a ‘one resident’ to ‘one non-resident’ basis” and that in the event there is still a disparate impact on minorities, “the process will be adjusted to require the selection of sufficient non-residents to achieve . . . a selection rate for minority applicants that is less than four-fifths of what the selection rate would be expected to be for African-American and Hispanic applicants without consideration of a residency preference.” Such benefits, both monetary and injunctive, place the Proposed Settlement well within the range of reasonable outcomes eligible for approval.

Finally, there are no “obvious deficiencies” that would preclude a preliminary determination that the Proposed Settlement is fair, reasonable, and adequate. The Proposed Settlement affords the Class prompt and complete relief, while avoiding significant legal and factual hurdles that otherwise may have prevented any recovery for Plaintiffs at all.⁹ For those reasons, preliminary approval should be granted.

II. ALL THE REQUIREMENTS FOR CLASS CERTIFICATION ARE MET

Federal Rule of Civil Procedure 23 (hereinafter “Rule 23”) is to be liberally construed in favor of class certification. *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997) (“Rule 23 is given liberal rather than restrictive construction, and courts are to

⁹ The compromise achieved by this settlement is appropriate because, although it is alleged minorities have been improperly disadvantaged regarding the receipt of Smithtown Section 8 Housing Vouchers, the Town has a legitimate interest in securing resources for its own citizens.

adopt a standard of flexibility. . . .” (citation omitted)). Rule 23’s “inherent flexibility and the . . . court’s ability to manage . . . litigation as it develops,” together weigh in favor of class certification in civil rights cases. *Marisol A.*, 126 F.3d at 377; *see also In re Playmobil, Antitrust Litig.*, 35 F. Supp. 2d 231, 249 (E.D.N.Y. 1998).

Although a party seeking class certification bears the burden of establishing that the prerequisites of Rule 23 are satisfied, the Court should not decide the merits of the complaint when determining whether class certification is warranted. *Caridad v. Metro-North Commuter R.R.*, 191 F.3d 283, 291 (2d Cir. 1999), *cert. denied*, 529 U.S. 1107 (2000); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974) (“[N]othing in either the language or history of Rule 23 . . . gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action.”). Therefore, to determine whether to certify a class, the court must assume the truth of the allegations in the complaint. *Shelter Realty Corp. v. Allied Maint. Corp.*, 574 F.2d 656, 661 n.15 (2d Cir. 1978).

A proposed class should be certified if the requirements of Rule 23(a) are satisfied, and the class meets the requirements of one or more subsections of Rule 23(b). As set forth below, the Proposed Class in the instant case meets these requirements.

A. The Proposed Class Satisfies the Rule 23(a) Requirements for Class Certification

Federal Rule of Civil Procedure 23(a) (hereinafter “Rule 23(a)”) requires that: (1) the class be so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims of the named plaintiffs are typical of the claims of the class, and (4) the plaintiffs will fairly and adequately protect

the interests of the class. Fed. R. Civ. P. 23(a). The Proposed Class fulfills all four criteria.

1. The Proposed Class Numbers Approximately 550 and Easily Satisfies the Numerosity Requirement

The Proposed Class, consisting of approximately 550 African-American and Hispanic Smithtown Section 8 voucher applicants who did not live or work in Smithtown and were placed on the Section 8 waitlist in 2002 or 2006, meets the first prerequisite of Rule 23(a), which requires that the proposed class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[I]mpracticable . . . does not mean that joinder must be impossible; rather, ‘the court must find that the difficulty or inconvenience of joining all the members makes class litigation desirable.’” *Koster v. Perales*, 108 F.R.D. 46, 49 (E.D.N.Y. 1985) (citation omitted). Moreover, the inquiry “requires the examination of the specific facts of each case and imposes no absolute limitations.” *Gen. Tel. Co. of the Northwest, Inc. v. E.E.O.C.*, 446 U.S. 318, 330 (1980). Finally, “[p]laintiffs need not establish the precise number of potential class members [as] courts are empowered to make common sense assumptions to support a finding of numerosity.” *Nicholson v. Williams*, 205 F.R.D. 92, 98 (E.D.N.Y. 2001) (internal citations and quotation marks omitted) (noting that 16 identifiable plaintiffs are sufficient to satisfy Rule 23(a)(1) when the proposed class seeks injunctive and declaratory relief challenging policy of general application).

Here, the sheer size of the Proposed Class creates a presumption that the numerosity requirement has been met. Claimants may rely on “reasonable inferences drawn from the available facts in order to estimate the size of the class.” *In re Blech Sec.*

Litig., 187 F.R.D. 97, 103 (S.D.N.Y. 1999). In the instant action, Plaintiffs have examined Smithtown's Program waiting lists for 2002 and 2006, and identified at least 550 individuals who would qualify as Class members. Courts have found that cases involving class members numbering fewer than 550 satisfied the numerosity requirement. *See Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (citation omitted) (holding that either 700 or 300 class members would meet the numerosity requirement); *Korn v. Franchard Corp.*, 456 F.2d 1206, 1209 (2d Cir. 1972) (approximately 70 members); *Koster*, 108 F.R.D. at 49-50 (60 members). In fact, the Second Circuit has held that numerosity may be presumed when there are more than 40 class members. *Id.*

Furthermore, the Second Circuit has looked at certain non-numerical factors to determine the practicability of joinder. These considerations include: (1) judicial economy arising from the avoidance of a multiplicity of actions, (2) geographic dispersion of class members, (3) financial resources of class members, (4) the ability of claimants to sue individually, and (5) requests for prospective injunctive relief involving future class members. *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993) (citations omitted). Here, these factors weigh heavily in favor of class certification:

- Judicial Economy: Given the size of the Proposed Class in this case, consolidating in a class action claims that could otherwise yield 550 individual suits serves judicial economy. Even if a fraction of the proposed class members brought individual suits, the Court would be faced with numerous claims that were essentially identical.
- Geographic Location of Class Members: The Proposed Class members are applicants who were placed on the waiting lists three or seven years ago. These individuals cannot afford market-rate units, may live in temporary housing such as shelters, and face the difficulty of finding affordable housing in a scarce

market. Given the years that have passed since the individuals applied to the Program and the temporary housing circumstances of some proposed members, it is likely that a number of potential class members have left the immediate geographic area.

- Financial Resources and Ability to Prosecute Claims: Prosecuting the claims in this case will involve examining complex legal and factual issues surrounding Smithtown's longstanding use of a residency preference in administering the Program. The Proposed Class members are individuals who cannot afford to pay for market-rate housing and seek Section 8 vouchers to assist them in obtaining decent and affordable housing. Therefore, it is reasonable to conclude that they would lack the financial resources to prosecute their claims individually.
- Prospective Injunctive Relief: The Parties have agreed that the Named Plaintiffs and Proposed Class members have immediate priority for the next available vouchers. After the remediation terms are fulfilled, Smithtown will use a "one-resident-to-one-non-resident" preference and other non-discrimination standards in administering the Program to ensure that the policy does not have a disparate impact on minority applicants. This injunctive and remedial relief would impact all potential Class members in the same manner.

For the aforementioned reasons, the Proposed Class has met the numerosity requirement under Rule 23(a)(1).

2. The Claims Present Questions of Law and Fact Common to the Class

This case, which alleges Smithtown's use of a discriminatory residency preference in administering the Section 8 Program, raises many questions of law and fact that are common to the Class members. Claims challenging systemic policies or practices, like the racial discrimination claims raised here, typically meet the commonality requirement. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 (1982); *E. Tex. Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 405 (1977). The Supreme Court in *Falcon* set forth three class-wide common issues that, if fairly alleged, would constitute suitable common issues for certification: (i) that the alleged discriminatory treatment was typical of defendants' practice, (ii) that the alleged actions of the defendants were motivated by a policy of

discrimination which affects all of the class members, and (iii) that such a policy was similarly applied. *See Falcon*, 457 U.S. at 158.

The Complaint alleges that Smithtown's long-standing and uniform policy, namely the residency preference, in administering the Program excludes minority applicants from receiving Section 8 vouchers. Plaintiffs' claims for relief on behalf of the Proposed Class "do not depend on the plaintiff-variable, but on the [decisions of] defendant[], who are a constant." *Comer v. Cisneros*, 37 F.3d 775, 797 (2d Cir. 1994). Here, Plaintiffs contend that Smithtown's residency preference operated as a requirement in the Program and affected all the putative Class members. As set forth in the Complaint, this case raises many common questions of fact and law, including the following:

1. Does Smithtown's use of a residency preference in administering the Program result in the exclusion of a disproportionate number of African-American and Hispanic applicants from receiving vouchers?
2. If so, does this difference rise to the level of a disparate impact according to the EEOC's 4/5 test? *See Langlois v. Abington Housing Auth.*, C.A. No. 98-12336, 1998 U.S. Dist. Lexis 22871 at *24 (D. Mass. Dec. 30, 1998).
3. Has Smithtown used the residency preference essentially as a requirement in administering the Program?
4. If so, was the residency requirement used intentionally to ensure that only White, non-Hispanic applicants would receive vouchers?
5. Did Smithtown reopen the waiting list during times when there were more than 100 names on the list, a majority of which were minorities, in contravention of its written policy that the waiting list not be reopened unless there were fewer than 100 names?
6. If so, did Smithtown reopen the list intentionally to ensure that the waiting list has a sufficient supply of White, non-Hispanic residents so as to prevent minority applicants from receiving vouchers?
7. Does the racial makeup of the voucher recipients reflect the racial makeup of the applicants on the waitlist?

8. Did Smithtown purge the names of non-resident minorities from the waiting list?

Given such predominant common issues, class certification is appropriate despite minor factual variations between Class members. For example, although some of the Class members were waitlisted for vouchers in 2002 and others were waitlisted in 2006, all Class members were subject to the same residency preference used by Smithtown, which Plaintiffs allege was discriminatory. In addition, the amount of damages claimed by each Class member will vary according to how far along the member was in the Section 8 screening process at the time they were passed over and how long that individual waited for a voucher. Nevertheless, the type of harm and nature of damages are uniform and subject to the specific amounts outlined in the Proposed Settlement.

Such minor variations do not bar certification because Rule 23(a)(2) does not require that all class members make identical claims and arguments. *Warren v. Xerox Corp.*, No. 01-CV-2909, 2004 U.S. Dist. LEXIS 5115 at *27 (E.D.N.Y. Jan. 26, 2004) (citation omitted). Factual differences in the class' claims do not automatically preclude a finding of commonality. *Fox v. Cheminova, Inc.*, 213 F.R.D. 113, 126 (E.O.N.Y. 2003) (citing *Marisol A.*, 126 F.3d at 377; 5 MOORE'S FEDERAL PRACTICE § 23.23[2] (Matthew Bender 3d ed.)). Instead, to satisfy the commonality requirement of Rule 23(a)(2), the Named Plaintiffs need only show a single question of fact or law common to the prospective class. *Robinson v. Metro-North Commuter Railroad Co.*, 267 F.3d 147, 155 (2d Cir. 2001) (quoting *Marisol A.*, 126 F.3d at 376); *Fox*, 213 F.R.D. at 126 (E.D.N.Y. 2003). "The critical inquiry is whether the common questions are at the 'core' of the cause of action alleged." *Labbate-D'Alauro v. GC Services Ltd. Partnership*, 168 F.R.D.

451, 456 (E.D.N.Y. 1996) (citation omitted). As demonstrated above, there are numerous common questions of law and fact that are at the heart of this lawsuit. Therefore, the Proposed Class meets Rule 23(a)(2)'s requirements.

3. The Claims of the Class Representatives Are Typical of Those of the Class

The “claims or defenses of the representative parties are typical of the claims or defenses of the Class,” which satisfies the typicality requirement of Rule 23(a)(3). This prerequisite is met “when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.” *Robidoux*, 987 F.2d at 936 (citing *In re Drexel Burnham Lambert Group*, 960 F.2d 285, 291 (2d Cir. 1992)); *In re Alcoholic Beverages Litig.*, 95 F.R.D. 321, 324 (E.D.N.Y. 1982). There is no requirement that “the factual background of each named plaintiff’s claim be identical to that of all class members.” *Caridad*, 191 F.3d at 293. Instead, “when the same unlawful conduct was directed at both the named plaintiff and the class to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.” *Labbate-D’Alauro*, 168 F.R.D. at 456-7 (internal quotations omitted). In essence, typicality “requires that the disputed issue of law or fact occupy essentially the same degree of centrality to the named plaintiff’s claim as to that of other members of the proposed class.” *Caridad*, 191 F.3d at 293 (internal quotations omitted).

Here, the Named Plaintiffs’ claims are representative of those of the putative Class. The Proposed Class representatives allege that, as African-Americans and Hispanics who applied to the Program, they suffered racial discrimination from

Smithtown's use of the residency preference in administering the Section 8 Voucher Program. They further contend that this discriminatory policy systematically denied them the opportunity to receive Section 8 vouchers. In addition, they seek redress for injuries suffered because of the preference, as well as remedial measures designed to end the allegedly discriminatory policy in the future. Although the amount of damages claimed by each Class member will vary according to how far along the member was in the Section 8 application process and how long that individual waited for a voucher, the alleged unlawful conduct (Smithtown's racially discriminatory use of the preference in operating the Program) was directed at both the Named Plaintiffs and Class members alike. *See Labbate-D'Alauro*, 168 F.R.D. at 456-7. The typicality requirement, therefore, is satisfied because the Named Plaintiffs and Proposed Class members share an identical legal theory and there are no antagonistic interests between the representative Parties and the Class members. *In re Alcoholic Beverages Litig.*, 95 F.R.D. at 324.

4. The Class Representatives and Class Counsel Will Adequately Protect the Interests of the Class

Since the Named Plaintiffs and counsel for the Class "will fairly and adequately protect the interests of the class," Plaintiffs also satisfy Rule 23(a)(4). Two factors are recognized as basic requirements for Rule 23(a)(4): "(1) absence of conflict and (2) assurance of vigorous prosecution." *Robinson*, 267 F.3d 147, 170 (2d Cir. 2001) (internal quotation marks omitted); *Marisol A.*, 126 F.3d at 378; *Walsh v. Northrup-Grumman Corp.*, 162 F.R.D. 440, 447 (E.D.N.Y. 1995). Here, both requirements are met.

First, the Proposed Class will be adequately protected because it is represented by the Lawyers' Committee for Civil Rights Under Law (the "Lawyers' Committee"), a

nationally recognized civil rights law firm, and individual attorneys. Class counsel is extremely qualified to litigate this matter and have substantial experience in similar litigation:

- The Lawyers' Committee is a non-profit, non-partisan civil rights legal organization that was founded in 1963, at the request of President John F. Kennedy, to help defend the civil rights of racial minorities and the poor. The litigation docket of the Lawyers' Committee includes numerous civil rights cases across the country, including a large number of cases challenging discrimination in the terms and conditions of housing on the basis of race. Continuing its historic role, the Lawyers' Committee has also acted as either the lead or co-counsel in a number of recent or pending class action civil rights cases.¹⁰
- Individual attorneys who have broad experience in an array of class action cases.

The counsel have vigorously represented the interests of the Proposed Class members in proceedings before the Court and during multiple rounds of settlement discussions. Furthermore, counsel will continue to commit substantial resources to representing the Class.

Second, as shown above, the Named Plaintiffs share a common interest with all members of the Class in both the factual and legal issues in this case. The Proposed Class representatives, like all the Class members, applied to Smithtown's Section 8 Voucher Program and were placed on the waiting list. They allege that Smithtown's policies and practices in administering the Program, including using the residency

¹⁰ These cases include *Pitt et al. v. City of Portsmouth et al.*, Case No. 2:02-cv-489 (E.D. Va.) (class settlement providing almost \$2 million for over 700 families displaced from African-American neighborhood targeted for redevelopment); *Washington Park Lead Cmte, Inc. v. United States Environmental Prot. Agency*, Case No. 2-98-cv-421 (E.D. Va.) (settlement providing for relocation rights of class members in public housing development located on toxic site, including remediation of site); *Equal Employment Opportunity Commission et al. v. Local 638 etc. et al.*, Case No. 2:71-cv-2877 (S.D.N.Y.) (class intervention in employment discrimination action based on race resulting in a class-wide settlement distributing \$6.2 million in back pay).

preference, were racially discriminatory and prevented them from receiving vouchers. The named representatives seek to rectify civil rights, statutory, and constitutional wrongs imposed on themselves and all Class members in like manner. Therefore, in nearly all respects, the Named Plaintiffs' interests are identical to the interests of the Class members, ensuring that they will fairly protect the interests of the Class.

Accordingly, Named Plaintiffs will adequately represent a cohesive class satisfying the requirements of Rule 23(a).

B. Certification is Appropriate Under Fed. R. Civ. P. 23(b)(2)

Certification under Rule 23(b)(2) is appropriate when the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole. Fed. R. Civ. P. 23(b)(2). The Rule 23(b)(2) class action is "intended for cases where broad, class-wide injunctive or declarative relief is necessary to redress a group-wide injury." *Robinson*, 267 F.3d at 162. One of the primary purposes of subdivision (b)(2) of Rule 23 is to facilitate the use of class actions in the civil rights area. WRIGHT, MILLER, & KANE, FEDERAL PRACTICE & PROCEDURE: CIVIL 3D § 1775 (2005); [see also Fed. R. Civ. P. 23(b)(2), Advisory Comm. Nts. (1966) ("Illustrative [of Rule 23(b)(2) cases] are various actions in the civil rights field where a party is charged with discriminating unlawfully against a class");] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997); NEWBERG ON CLASS ACTIONS 3d § 4.11 (Alba Conte & Herbert Newberg eds., 4th ed. 2003); *Marisol A.*, 126 F.3d at 378 (allowing class actions where parties seek broad injunctive relief to vindicate civil rights of a class of individuals);

Marcera v. Chinlund, 595 F.2d 1231, 1240 (2d Cir. 1979), *vacated on other grounds*, *Lombard v. Marcera*, 442 U.S. 915 (1979) (“It is well established that civil rights actions are the paradigmatic 23(b)(2) class suits, for they seek classwide structural relief that would clearly redound equally to the benefit of each class member.”); *Alexander A. v. Novello*, 210 F.R.D. 27, 34 (E.D.N.Y. 2002) (“There is a long line of cases in the Second Circuit allowing class actions [pursuant to Rule 23(b)(2)] that seek to enjoin governmental actions.”).

In accordance with that purpose, Rule 23(b)(2) provides a basis for certifying a class in actions challenging a pattern and practice of violations of fair housing. *See, e.g., Comer*, 377 F.3d 775; *Matyasovszky v. Housing Auth. of the City of Bridgeport*, 226 F.R.D. 35 (D. Conn. 2005); *German v. Fed. Home Loan Mortgage Corp.*, 885 F. Supp. 537 (S.D.N.Y. 1995); *Open Housing Ctr., Inc. v. Samson Mgmt. Corp.*, 152 F.R.D. 472 (S.D.N.Y. 1993); *Glover v. Crestwood Lake Section 1 Holding Corp.*, 746 F. Supp. 301 (S.D.N.Y. 1990); *Cason v. Rochester Housing Auth.*, 748 F.Supp. 1002 (W.D.N.Y. 1990); *McNeill v. New York City Housing Auth.*, 719 F. Supp. 233 (S.D.N.Y. 1989); *Dix-Jones v. Saxon Apartments Assocs. II*, No. 86 CV 1846, 1987 WL 12033 (E.D.N.Y. May 22, 1987). The present case, like other housing discrimination cases, is a classic Rule 23(b)(2) class action. The discriminatory housing practices alleged are part of a pattern of activity or regulatory scheme common to each of the classes, respectively, and in their entirety. Furthermore, each Class member’s claims may be remedied by final injunctive relief with respect to the Class as a whole. *See Robinson*, 267 F.3d at 162.

This subsection is satisfied when the party opposing the class either has acted in a consistent manner toward members of the class so that its actions may be viewed as part of a pattern of activity, or has established or acted pursuant to a regulatory scheme common to all class members. WRIGHT, MILLER & KANE, *FEDERAL PRACTICE AND PROCEDURE*: CIVIL 3D § 1775 (3D ED. 2005). In a 23(b)(2) class, the focus of the inquiry is on whether the plaintiffs have alleged that defendant has a policy that deprives putative class members of rights. *Sparks v. Seltzer*, No. 05 CV 1061, 2005 LEXIS 28924 at *16 (E.D.N.Y. Nov. 22, 2005) (“[23(b)(2)] merely requires [plaintiffs] to establish a colorable claim.”) As noted above, Plaintiffs allege that Defendant has implemented policies and practices that unlawfully restrict the ability of minorities to obtain federally-funded Section 8 rental assistance in Smithtown, resulting in injury to the plaintiff class. Plaintiffs further satisfy this requirement by seeking declaratory and injunctive relief against Defendant’s policies and practices which have harmed all Proposed Class members. If Plaintiffs were to succeed on the merits, equitable relief would clearly be both reasonably necessary and appropriate to cure the alleged discriminatory practices committed by Smithtown in administering the Section 8 Program.

In addition, the Named Plaintiffs and the Proposed Class members seek remedial relief in the form of compensatory damages. Under Rule 23(b)(2), when the class plaintiffs request damages, certification is appropriate if: (i) the positive weight of the injunctive or declaratory relief sought by the plaintiffs is “predominant even though compensatory or punitive damages are also claimed” and (ii) treatment as a class would be “efficient,” “manageable,” and “achiev[e] an appreciable measure of judicial

economy.” *Robinson*, 267 F.3d at 164 (citations omitted). The *Robinson* Court outlined the following test:

[B]efore allowing (b)(2) certification a district court should, at minimum, satisfy itself of the following: (1) even in the absence of a possible monetary recovery, reasonable plaintiffs would bring the suit to obtain the injunctive or declaratory relief sought; and (2) the injunctive or declaratory relief sought would be both reasonably necessary and appropriate were the plaintiffs to succeed on the merits.”

Id.

Here, these standards are clearly met. First, even in the absence of the possibility of monetary relief, reasonable plaintiffs would prosecute this action seeking injunctive and declaratory relief to force Smithtown to cease its use of a residency preference that prevents a disproportionate number of African-American and Hispanic applicants from receiving Section 8 vouchers. The named representatives and the Proposed Class members are individuals who are seeking housing assistance in a scarce market. If the Court approved the Parties’ Proposed Settlement, all Plaintiffs would have priority to receive the next available vouchers, after which, the Section 8 Voucher Program would be operated under a “one-resident” to “one-nonresident” preference. Under these terms, Plaintiffs would have a much better chance to get a voucher, and, therefore, decent and affordable housing, than they would have under the former residency preference. As such, the injunctive and declaratory relief here predominates over any monetary relief requested.

Second, the injunctive and declaratory relief sought by the Proposed Class is necessary and appropriate. Such equitable relief, issued on behalf of the Class, is necessary to modify the alleged practices and policies of Smithtown’s Section 8 Voucher Program so that the Program does not have a racially discriminatory impact on potential

and actual minority applicants. This relief is also appropriate in light of the alleged long-standing and ongoing nature of the discriminatory practices and policies at issue.

Finally, class-wide adjudication of the asserted claims would be “efficient,” “manageable,” and “achiev[e] an appreciable measure of judicial economy.” *Id.* The injunctive and declaratory relief sought relies on the same set of facts and conduct applicable to the entire Class. Thus, determining those claims on a class-wide basis would be vastly preferable to determining approximately 550 potential, separate actions. Moreover, maintaining this lawsuit as a class action would be manageable, in large part because of the power and ability given to courts by Rule 23 in managing the conduct of class action litigation. *See Robinson*, 267 F.3d at 167-68 (discussing procedural options available to courts in managing Rule 23(b)(2) classes).

For the aforementioned reasons, certification of a Rule 23(b)(2) class is appropriate.

C. Alternatively, Certification of a Class Under Rule 23(b)(3) is Appropriate

While this case satisfies all the requirements for class certification under Rule 23(b)(2), and is most appropriately certifiable as a (b)(2) class, certification is also appropriate under Rule 23(b)(3). *Guardians Ass’n of N.Y. City Police Department v. Civil Serv. Commission*, 431 F. Supp. 526, 533 n.6 (S.D.N.Y. 1977) (noting that where a class may be certified under either Rule 23(b)(2) or Rule 23(b)(3), “it is preferable to certify the class under (b)(2) since the availability of the right to opt out in a (b)(3) class action would unnecessarily complicate matters where injunctive relief is called for.”); *see*

also Ste. Marie v. Eastern Railroad Assoc., 72 F.R.D. 443, 450 n.2 (S.D.N.Y. 1976) (same).

Rule 23(b)(3) certification is proper where “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). “Common issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues.” *Coco v. Inc. Village of Belle Terre*, 233 F.R.D. 109, 115 (E.D.N.Y. 2005) (citing *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 139 (2d Cir. 2001). The predominance inquiry “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation,” *Moore v. PaineWebber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002), and “all factual or legal issues that are common to the class inform the analysis.” *In re Nassau County Strip Search Cases*, 461 F.3d 219, 227 (2d Cir. 2006).

Here, questions common to the Proposed Class predominate over any individual claims. The core issue is whether Smithtown exercised racially discriminatory practices and policies, specifically the residency preference, in administering the Section 8 Voucher Program that prevented minority applicants from having the opportunity to receive vouchers. An order granting the remedial terms of the Proposed Settlement would benefit every Class member. In addition, throughout the course of the case, all the Plaintiffs have relied – and would continue to rely – on the same proof to establish the existence and legality of Smithtown’s preference.

To certify a class under Rule 23(b)(3), the Court must also find that a class action is “superior to other methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). The Advisory Committee Notes identify four factors to consider under the superiority analysis: (i) interest in controlling individual prosecutions; (ii) existence of other related litigation; (iii) desirability of forum; and (iv) manageability. Fed. R. Civ. P. 23(b)(3). Each of these factors points to certification under Rule 23(b)(3).

First, the interest of individual members of the Class in controlling the litigation is small given the relatively small size of potential damages, see Plan of Allocation attached hereto as Exhibit A, and the likelihood that individual Class members would pursue their claims in the absence of certification. Second, at this time, Plaintiffs are not aware of any other related litigation. Third, since this case involves the actions taken by the Town of Smithtown, and the Court’s familiarity with the facts of this case, this judicial district presents an ideal forum for resolution of these issues. Finally, given the large number of potential plaintiffs and the commonality of their claims, certifying the Class will allow a more efficient adjudication of the controversy than individual adjudications would permit. If class certification were denied, individual-by-individual litigation of the issue of the Town’s liability would impose significant costs and burdens on all involved.

For these reasons, certification under Rule 23(b)(3) is also warranted.

III. THE PROPOSED NOTICE IS ADEQUATE

Notice of the proposed settlement of a class action in which a class has not previously been certified must satisfy the requirements of Rule 23(c)(2), as well as the requirements of Rule 23(e). *See Parker v. Time Warner Ent. Co. L.P.*, 239 F.R.D. 318,

330 (E.D.N.Y. 2007). Rule 23(c)(2)(A) states that in Rule 23(b)(2) classes, “the court may direct appropriate notice to the class.”¹¹ See *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 515, n. 19 (S.D.N.Y. 1996) (“Notice under Rule 23(b)(2) is flexible, and may consist entirely of published notice in appropriate circumstances.”). Rule 23(e)(1) requires that a court “must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement.” The test is whether the means of notice is “‘reasonably calculated, under all the circumstances, to inform [potential class members] of the pendency of the class action’ and their right to be excluded from it. *Weinberger v. Kendrick*, 698 F.2d 61, 71 (2d Cir. 1982) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Ordinarily, this requirement is satisfied through “notice by first class mail” to each individual “identifiable through reasonable effort.” *Barone v. Safway Steel Products Inc.*, No. CV-03-4258, 2005 LEXIS 17645 at *18 (E.D.N.Y. Aug. 23, 2005) (citing *Peters v. Nat’l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992)).

Berdon Claims Administration LLC has been retained to act as a Claims Administrator and assist in the procedures for notifying Class members of this Settlement. As detailed in the Proposed Settlement, the proposed Notice, attached as Exhibit C¹² will be mailed to Smithtown Section 8 applicants who can be identified based on Smithtown’s waitlist and the database maintained by Plaintiffs’ counsel. It is

¹¹ In the alternative, Rule 23(c)(2)(B) states that in Rule 23(b)(3) classes, “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” This Rule is satisfied because all individuals whose names appear on the 2002 and 2006 waitlist will receive mailed notice, regardless of race or whether an updated address is available for them.

¹² This notice has changed slightly from the form appended to the Stipulation of Settlement.

anticipated that all approximately 550 Proposed Class members will be mailed the Proposed Notice of the Settlement.

The class-wide Notice here is comprehensive: it accurately summarizes the provision of the Settlement Agreement and informs Class members of their right to object. In addition to being mailed to the addresses of identifiable Class members, the Notice will be mailed to the entire 2002 and 2006 Smithtown Section 8 Voucher Program waitlist. The Summary Notice, attached as Exhibit D, will be circulated to dozens of outreach organizations and available on two Web sites.¹³ In addition, a toll-free number will be established so Class members can learn more about the Settlement.

Plaintiffs submit that the proposed Notice program fulfills the requirements of due process by alerting and informing those Members of the Class who can be identified through reasonable efforts of: (a) the terms of the Settlement; (b) the opportunity to exclude oneself or object to the Settlement; and (c) the opportunity to appear and be heard regarding any facet of the proposed Settlement at the final fairness hearing. *See* MANUAL FOR COMPLEX LITIGATION (Third), § 41.43 (1995); NEWBERG ON CLASS ACTIONS § 8.34 (Alba Conte & Herbert Newberg eds. 4th ed. 2002). Consequently, the Proposed Notice easily satisfies the requirements of Rule 23 and should be approved.

¹³ Because of the economic circumstances of members of the proposed class, the combination of direct mailings, delivery to outreach offices and informal dissemination in the community appear best suited to achieving actual notice to the maximum number of class members. It is respectfully submitted that notice by publication is unlikely to increase significantly the likelihood of actual notice being received by class members.

CONCLUSION

The Proposed Settlement and Plan of Allocation is fair, reasonable and adequate and provides significant value to Proposed Class members. The Notice provisions are comprehensive, and the claims process simple. For the foregoing reasons, Plaintiffs respectfully request that: (i) the Settlement be preliminarily approved,¹⁴ (ii) the Settlement Class be preliminarily certified, (iii) the form and manner of giving notice to the Settlement Class be approved, and (iv) a hearing date and time to consider final approval of the Settlement be scheduled.

Dated: May 6, 2009

Respectfully submitted,

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¹⁴ The updated Preliminary Order for Approval of Settlement of Class Action is attached hereto as Exhibit E.