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11 *Attorneys for Plaintiffs and Putative Class*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 PATRICK ECK, TYLER CHAPMAN,  
15 BRENDAN EISAN, JUSTIN KRISTOPHER  
LE-ROY, individually and on behalf of all others  
16 similarly situated,

17 Plaintiffs,

18 v.

19 CITY OF LOS ANGELES, THE LOS  
20 ANGELES DEPARTMENT OF WATER AND  
POWER, LOS ANGELES DEPARTMENT OF  
21 WATER AND POWER BOARD OF  
22 COMMISSIONERS, and DOES 1 through 10,

23 Defendants.

Case No.: BC577028 (Lead)  
Consolidated with Case No.: BS153395 &  
Case No.: BC583788

*Assigned for all purposes to the  
Honorable Ann I. Jones*

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: February 14, 2018  
Time: 9:00 a.m.  
Place: Dept. 308

Initial Complaint Filed: January 29, 2015

[Filed concurrently with Motion for Attorneys' Fees and Reimbursement of Expenses and Payment of Service Awards and Declarations of Patrick Eck, Tyler Chapman, Brendan Eisan, Justin Kristopher Le-Roy, Ryanne Cozzi, Christopher P. Ridout, Robert R. Ahdoot, and Eric J. Benink]

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on February 14, 2018 in Department 308 of the Los Angeles  
3 County Superior Court, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los  
4 Angeles, CA 90005-1221, Plaintiffs Patrick Eck, Brendan Eisan, Tyler Chapman, and Justin  
5 Kristopher Le-Roy, on behalf of themselves and the Settlement Class, will move and do hereby  
6 move this Court, pursuant to California Rules of Court, Rule 3.769 *et seq.*, and California Code of  
7 Civil Procedure § 382, for an order finally approving the class action Amended Settlement  
8 Agreement and Stipulation (the “Settlement”) filed on August 31, 2017, finally certifying the  
9 preliminarily approved Class, and entering the Final Order and Final Judgment attached as Exhibit  
10 “A” to the Settlement. Specifically, Plaintiffs seek a final order and judgment that, *inter alia*: (i)  
11 finally approves the proposed Settlement; (ii) certifies the Settlement Class; and (iii) finds that the  
12 Class Notice constituted the best practicable notice and was provided in accordance with the  
13 Court’s September 14, 2017 Order Granting Motion for Preliminary Approval of Class Action  
14 Settlement (“Preliminary Approval Order”) and Settlement (Plaintiffs also request an award of  
15 Attorneys’ Fees and Expenses, and Service Awards as set forth in the concurrently-filed Motion for  
16 Attorneys’ Fees and Reimbursement of Expenses and Payment of Service Awards (“Motion for  
17 Attorneys’ Fees & Expenses and Payment of Service Awards”).

18 This motion is made on the grounds that the proposed Settlement is fair, reasonable, and  
19 adequate and that class notice has been provided in compliance with the Court’s Preliminary  
20 Approval Order and the terms of the Settlement.

21 The Settlement provides approximately \$295 million, through Fiscal Year (“FY”) 2019-  
22 2020 (“19-20”), in refunds and direct savings to LADWP Retail Customers. The Settlement, *inter*  
23 *alia*: (i) recoups 100% of an 8% surcharge on Los Angeles Department of Water and Power  
24 (“LADWP”) electricity customers pursuant to the City’s 2016 electric rate ordinance (“2016 Rate  
25 Ordinance”), which the Plaintiffs allege is an illegal tax that violates Proposition 26 and Proposition  
26 218, by (a) permanently enjoining the future imposition of the 8% surcharge on that ordinance,  
27 resulting in savings of approximately \$243 million through FY 19-20 to the Class Members, and (b)  
28 establishing an interest bearing \$52 million cash Settlement Fund to refund customers the 8%

1 surcharge on the 2016 Rate Ordinance that was charged to customers from April 15, 2016 to June  
2 30, 2017 (the Settlement Fund will be used to refund LADWP customers after deduction of a  
3 \$650 000 payment to non-profit organizations, settlement notice and administration expenses,  
4 attorneys' fees and expenses, and class representative service awards); (ii) enjoins future transfers  
5 of electric service revenue obtained pursuant to the City's 2016 electric rate ordinance; (iii)  
6 permanently limits transfer of future electric service revenue obtained pursuant to the City's 2008  
7 electric rate ordinance to 8%; and (iv) imposes certain audit and verification requirements to ensure  
8 compliance with the terms of the Settlement. Moreover, the Settlement will provide further  
9 substantial and direct financial benefit after FY 19-20 in the event the 2016 Rate Ordinance  
10 continues to be in effect because the LADWP Retail Customers will continue to realize the 8%  
11 reduction in amounts collected under the 2016 Rate Ordinance.

12 This Settlement was reached after extensive negotiation and mediation with the Hon. Carl J.  
13 West (Ret.), a former Judge of the California Superior Court who presided over numerous class  
14 actions at the Court's Complex Civil Litigation Division and is an experienced and well-respected  
15 class action mediator at JAMS in Los Angeles. The results achieved by this Settlement are in the  
16 best interests of the Settlement Class because this Settlement provides not only economic recovery  
17 for the Class, but also significant injunctive relief that directly benefits the Class Members.

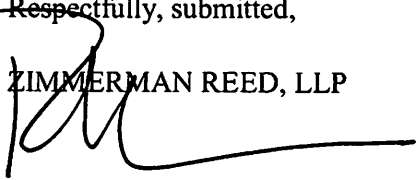
18 This application is based upon this notice of motion, the Settlement, and all exhibits thereto,  
19 the memorandum of points and authorities in support of this motion, the declarations and exhibits  
20 filed in support of this motion and in support of Plaintiffs' Motion for Preliminary Approval of  
21 Class Action Settlement, all other pleadings and records on file in this action, and the presentations  
22 of counsel.

23 Respectfully, submitted,

24 ZIMMERMAN REED, LLP

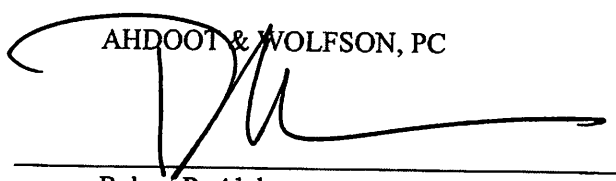
25 Dated: December 6, 2017

By:

  
\_\_\_\_\_  
Christopher P. Ridout  
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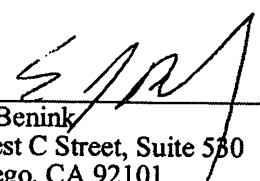
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**TABLE OF CONTENTS**

	<b>Page</b>
1	
2	
3	I. INTRODUCTION ..... 1
4	II. SUMMARY OF THE LITIGATION ..... 2
5	A. Background ..... 2
6	1. Electrical Power Rates in the City of Los Angeles ..... 2
7	2. Propositions 26 and 218 ..... 4
8	B. Plaintiffs’ Allegations and Procedural History ..... 5
9	C. Discovery ..... 6
10	D. Settlement Negotiations ..... 8
11	III. THE PROPOSED SETTLEMENT ..... 8
12	A. The Benefits of the Monetary Relief Settlement ..... 9
13	1. Settlement Consideration ..... 9
14	a. Transfers of 2016 Rate Ordinance Revenue Has Ceased ..... 9
15	b. Transfers of 2008 Rate Ordinance Revenue Are Capped ..... 9
16	c. Settlement Fund of \$52 Million ..... 9
17	d. Compensation While 2016 Rate Ordinance Is in Effect (\$243
18	Million Through Fiscal Year 2019-2020) ..... 11
19	e. Confirmation of Defendants’ Settlement Obligations ..... 11
20	f. Payment to Non-Profit Recipients ..... 12
21	B. The Release is Narrowly Tailored to the Claims ..... 12
22	C. Requested Attorneys’ Fees, Expenses, and Service Awards ..... 12
23	IV. PRELIMINARY APPROVAL ..... 13
24	V. METHOD OF NOTICE AND ADMINISTRATION COSTS ..... 13
25	VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND THE COURT
26	SHOULD FINALLY APPROVE THE SETTLEMENT ..... 13
27	A. The Settlement Is Presumptively Fair ..... 14
28	B. The Settlement Is Fair, Adequate, and Reasonable ..... 16

**TABLE OF CONTENTS**

(continued)

**Page**

1			
2			
3	1.	The Strength of Plaintiffs’ Case Balanced Against the Amount Offered in	
4		Settlement Favors Final Approval .....	16
5	2.	The Strength of Plaintiffs’ Case Compared to the Risk, Expense, Complexity,	
6		and Likely Duration of Further Litigation Favors Final Approval .....	16
7	3.	The Risk of Maintaining Class Action Status Through Trial Favors Final	
8		Approval .....	18
9	4.	The Extent of Discovery Completed Favors Final Approval .....	18
10	5.	The Experience and Views of Counsel Favors Final Approval.....	18
11	6.	Presence of A Governmental Participant Favors Final Approval.....	19
12	C.	The <i>Cy Pres</i> Provisions Are Appropriate .....	19
13	VII.	THE SETTLEMENT CLASS SHOULD BE CERTIFIED .....	21
14	A.	The Class Is Sufficiently Numerous .....	21
15	B.	The Class Is Ascertainable.....	22
16	C.	Common Issues of Law and Fact Predominate Over Individual Issues .....	22
17	D.	Plaintiffs’ Claims Are Typical.....	23
18	E.	Plaintiffs Have Protected, and Will Continue to Protect, the Interests of the	
19		Settlement Class.....	23
20	F.	A Class Action Is Superior to Other Methods of Adjudication .....	24
21	VIII.	THE NOTICE PLAN SATISFIES DUE PROCESS AND WAS EXECUTED IN	
22		ACCORDANCE WITH THE COURT’S ORDER .....	24
23	IX.	CONCLUSION.....	25
24			
25			
26			
27			
28			

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 ..... 17, 25

*Aguirre v. Amscan Holdings, Inc.* (2015) 234 Cal.App.4th 1290..... 22

*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1345..... 21, 23

*Barboza v. W. Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540..... 23

*Brooktrails Twp. Cmty. Servs. Dist. v. Bd. of Supervisors of Mendocino City* (2013) 218  
Cal.App.4th 195 ..... 17

*Brown v. Regents of University of California* (1984) 151 Cal.App.3d 982..... 22

*Bruno v. Super. Ct.* (1981) 127 Cal.App.3d 120..... 19, 20

*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193 ..... 22

*Cal. Chamber of Commerce v. State Air Res. Board* (2017) 10 Cal.App.5th 604..... 17

*Cal. Pub. Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150 ..... 17

*Cartt v. Superior Court* (1975) 42 Cal.App.3d 960 ..... 24

*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380..... 14

*Chavez v. Netflix* (2008) 162 Cal.App.4th 43 ..... 14

*City of San Diego v. Haas* (2012) 207 Cal.App.4th 472..... 23

*Clark v. American Residential Services LLC*, (2009) 175 Cal.App.4th 785 ..... 15

*Classen v. Weller* (1983) 145 Cal.App.3d 27 ..... 23

*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695 ..... 19, 21, 22, 24

*Daniels v. Centennial Group, Inc.* (1983) 16 Cal.App.4th 467 ..... 23

*Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196 (N.D. Cal. Feb. 11,  
2016)..... 16

*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 ..... 14

*Home Sav. & Loan Ass'n v. Sup. Ct.* (1975) 42 Cal.App.3d 1006 ..... 24

*In re Celera Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 U.S. Dist. LEXIS 42228 (N.D. Cal.  
Mar. 31, 2015)..... 16

**TABLE OF AUTHORITIES**

(continued)

**Page**

1  
2  
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4 *In re Quintus Secs. Litig.*, 148 F. Supp. 2d 967 (N.D. Cal. 2001) ..... 23  
5 *In Re Tobacco II Cases* (2009) 46 Cal.4th 298..... 24  
6 *J.J. v. City. of San Diego* (2014) 223 Cal.App.4th 1214 ..... 17  
7 *La Sala v. American Savings & Loan Assn.* (1971) 5 Cal.3d 864 ..... 21, 24  
8 *McGee v. Bank of Am.* (1976) 60 Cal.App.3d 442 ..... 23  
9 *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117..... 16  
10 *Reyes v. Bd. of Supervisors of San Diego Cty.* (1987) 196 Cal.App.3d 1263 ..... 22, 24  
11 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462..... 21, 22, 24  
12 *Stambaugh v. Sup. Ct.* (1976) 62 Cal.App.3d 231 ..... 14  
13 *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460 ..... 19, 20, 21  
14 *Stern v. AT&T Mobility Corp.*, No. 05-cv-8842-CAS-CT, 2008 U.S. Dist. Lexis 110305 (C.D. Cal.  
15 Aug. 22, 2008)..... 22  
16 *Touhey v. United States*, No. 08-cv-1418-VAP-RC, 2011 U.S. Dist. Lexis 81308 (C.D. Cal., July  
17 25, 2011)..... 19  
18 *Union Carbide Corp. v. Super. Ct.* (1984) 36 Cal.3d 15 ..... 24  
19 *Vasquez v. Super. Ct.* (1971) 4 Cal.3d 800 ..... 21

**STATUTES**

20  
21 Cal. Civ. Code §1542..... 12  
22 Cal. Code Civ. Proc. §382 ..... 21  
23 Cal. Gov’t Code § 53722 ..... 5  
24 Cal. Gov’t Code § 53723 ..... 5  
25 Cal. Gov’t Code § 911.2 ..... 17  
26 Cal. Pub. Util. Code §10004.5 ..... 2, 6, 17  
27 Los Angeles City Charter §302..... 4  
28 Los Angeles City Charter §344..... 4, 9



**TABLE OF AUTHORITIES**

(continued)

**Page**

Los Angeles City Charter §676..... 7

Los Angeles City Charter §679..... 4

**RULES**

Cal. Rules of Court, Rule 3.766..... 24, 25

Cal. Rules of Court, Rule 3.769 ..... 14

Cal. Rules of Court, Rule 3.771 ..... 13

**TREATISES**

Newberg on Class Actions §10.17 (4th ed. 2002) ..... 20

**CONSTITUTIONAL PROVISIONS**

Cal. Const., art. XIII C, § 1 ..... 4, 5

Cal. Const., art. XIII C, § 2..... 5

1 **I. INTRODUCTION**

2 Plaintiffs<sup>1</sup> hereby respectfully submit for the Court’s final approval, with the consent of the  
3 City of Los Angeles (“City”) and the Los Angeles Department of Water and Power (“LADWP”)  
4 (collectively, “Defendants”), a class action settlement that results in substantial injunctive relief, and  
5 an estimated \$295 million in monetary benefit to City’s electricity customers through Fiscal Year  
6 2019-2020 (“FY 19-20”), possibly more.

7 This case concerns Defendants’ practice of transferring LADWP electricity revenue to the  
8 City. Plaintiffs allege that Defendants charge 8% more for electricity than the cost of providing  
9 electric service—a tax under California law—in order to create a “surplus” to transfer to the City’s  
10 Reserve Fund. Plaintiffs allege that this practice is illegal under Propositions 26 and 218 because  
11 voters did not approve the imposition of this tax. Plaintiffs seek refunds of all such taxes collected,  
12 and injunctive and declaratory relief to compel Defendants to comply with Propositions 26 and 218.

13 After lengthy negotiations, the Parties reached the agreement reflected in the Amended  
14 Class Action Settlement Agreement and Stipulation (“Settlement” or “SA”). The Settlement is an  
15 outstanding result. Under its terms, which are described in greater detail *infra*, the Defendants will:

16 (i) deduct 8% from the amounts otherwise charged for electricity pursuant to the City’s  
17 2016 Rate Ordinance. This provision confers an estimated \$243 million of benefit to Class  
18 Members through FY 19-20, and possibly more if the 2016 Rate Ordinance remains in effect after  
19 FY 19-20;

20 (ii) refrain from transferring, to any City account, any funds derived from the sale of  
21 electricity to Retail Customers under the 2016 Rate Ordinance;

22 (iii) refrain from transferring to any City account more than 8% of the Retail Operating  
23 Revenues (of the prior fiscal year) billed to Retail Customers under the 2008 and 2012 Rate  
24 Ordinances; and

25 (iv) establish a Settlement Fund in the amount of \$52 million in cash (representing the  
26 8% surcharge collected under the 2016 Rate Ordinance through June 30, 2017), which shall be used

27 \_\_\_\_\_  
28 <sup>1</sup> Unless defined herein, capitalized terms have the same meaning assigned to them in the Settlement, Section II entitled “Definitions.”

1 to provide automatic refunds to LADWP Refund Customers (after deduction of a \$650,000 payment  
2 to Non-Profit Recipients, Administration Expenses, Service Awards, and Attorneys' Fees and  
3 Expenses); and

4 (v) verify performance of Defendants' financial obligations under the Settlement by way  
5 of the Audits already performed every year on the LADWP Power System and other verifications.

6 Given that the Court granted Defendants' motion for judgment on the pleadings (with leave  
7 to amend), and ruled that Public Utilities Code section 10004.5 applies to the claims in this action,  
8 these amounts represent all of the damages available at trial, which would entail significant  
9 litigation risks and the possibility of a smaller or no recovery.

10 The Settlement Administrator, Kurtzman Carson Consultants, LLC ("KCC") performed the  
11 Notice Program as ordered by the Court. As described below, KCC mailed a direct notice to Class  
12 Members, conducted publication and internet advertising, established a toll-free number, and  
13 launched the Settlement website, [www.lacitytransfersettlement.com](http://www.lacitytransfersettlement.com).

14 Accordingly, with Defendants' approval, Plaintiffs submit this motion seeking an order (i)  
15 finally approving the terms of the Settlement; (ii) finally certifying the Class defined as: all persons  
16 and entities who, between January 29, 2012 and September 14, 2017, held a Retail Customer  
17 Account with the LADWP in which there was a charge for electricity; and (iii) finding that Class  
18 Notice constituted the best practicable notice and was provided in accordance with the Preliminary  
19 Approval Order and Settlement.

## 20 **II. SUMMARY OF THE LITIGATION**

### 21 **A. Background**

#### 22 **1. Electrical Power Rates in the City of Los Angeles**

23 Originally operating as the private Los Angeles City Water Company, the City acquired  
24 LADWP in 1902 to provide water to residents and businesses, and later started delivering electricity  
25 in 1917. (Declaration of Greg Black in Support of Plaintiffs' Motion for Preliminary Approval of  
26 Class Action Settlement previously filed on June 6, 2017, and lodged concurrently herewith for the  
27 Court's convenience ("Black Decl.") ¶6.) LADWP is the largest combined municipal utility in the  
28 United States, providing water and power service to millions of City residents and businesses. (*Id.*)

1 The rates for electrical power currently are imposed on Retail Customers through two separate City  
2 Ordinances: City Ordinance No. 180127 (the “2008 Rate Ordinance”) and City Ordinance No.  
3 184133<sup>2</sup> (the “2016 Rate Ordinance”). (*Id.* ¶7; *see also*, Declaration of Christopher P. Ridout  
4 (“Ridout Decl.”), filed concurrently herewith, Exs. A (2008 Rate Ordinance) and B (2016 Rate  
5 Ordinance).)<sup>3</sup> Rates under the 2008 Rate Ordinance were capped on November 2, 2010, while the  
6 rates under the 2016 Rate Ordinance are subject to a schedule of rate increases through FY 19-20.  
7 (Black Decl. ¶17; Ridout Decl. Ex. B.)

8 Power rates are supposed to recover the annual costs and expenses incurred by the LADWP  
9 in providing electricity services to its customers. The total electricity rates charged to Retail  
10 Customers consist of two components: a “Base Rate” and “Pass-Through Charges.” Base Rates are  
11 designed recover costs over which the LADWP typically has some measure of control, such as  
12 Customer Service, Human Resources, Information Technology, and Financial Service costs. (Black  
13 Decl. ¶11.) Pass-Through Charges are designed to recover specific expenses that may fluctuate  
14 during the fiscal year and, thus, periodically are adjusted. (*Id.* ¶12.) Pass-Through Charges are  
15 adjusted through the adoption of LADWP Board Resolutions based on information submitted and  
16 analyzed by LADWP staff members as set forth in Board Letter Approvals.<sup>4</sup> (*Id.* ¶¶8, 13.)

---

17 <sup>2</sup> The 2016 Rate Ordinance was enacted in March 2016, effective April 15, 2016. It replaced  
18 and superseded a previous electrical power rate ordinance, City Ordinance No. 182273 (the “2012  
19 Rate Ordinance”), but left the terms of 2008 Rate Ordinance in effect. (Black Decl. ¶7.) Prior to  
20 the enactment of the 2016 Rate Ordinance, the rates for electrical power were imposed through the  
21 2008 and 2012 Rate Ordinances. (*Id.*; Ridout Decl. Ex. C (2012 Rate Ordinance).)

22 <sup>3</sup> In short, the 2008 and 2016 Rate Ordinances set out dozens of separate and specific rate  
23 schedules for different types of customers (*e.g.*, residential, multi-family residential, commercial,  
24 *etc.*). (Ridout Decl. ¶6.) These rate schedules generally can be grouped into six categories: (i)  
25 twelve separate rate schedules for residential and commercial rates (under which the vast majority  
26 of customers are billed), (ii) eight commercial contract rates, (iii) four separate rates for customers  
27 with on-site generation, (iv) eight rates for street lighting, (iv) two rates for the Port of Los Angeles,  
28 and (v) five service rate riders that encourage conservation and promote business. (*Id.*)

29 <sup>4</sup> Recently, for example, LADWP staff presented Board Letter Approvals recommending  
30 reductions to the “Composite ECA (ECA, VEA, CRPSEA and VRPSEA)” and “RCA (RCA and  
31 iRCA)” pass through charges. (Black Decl. ¶13 & Exs. F & G.) The Pass-Through Charges in the  
32 2008 Rate Ordinance are referred to as the Energy Cost Adjustment Factor (“ECA”), Reliability  
33 Cost Adjustment Factor (“RCAF”), Energy Subsidy Adjustment (“ESA”) and Renewable Energy  
34 Adjustment (“REA”). (*Id.* at ¶12). Pass-Through Charges in the 2016 Rate Ordinance are the  
35 Variable Energy Adjustment Factor (“VEA”), Capped Renewable Portfolio Standard Adjustment

1 Beyond recovering the annual costs and expenses incurred in connection with providing  
2 electric service, Defendants built into the 2008 and 2016 rates an additional 8% to create a “surplus”  
3 for transfer to the City’s Reserve Fund.<sup>5</sup>

4 **2. Propositions 26 and 218**

5 Proposition 218, approved by California voters in 1996, added articles XIII C and XIII D to  
6 the California Constitution. Article XIII C provides that local taxes may be imposed only if  
7 approved by voters—but did not define the word “tax.” Proposition 26, passed in 2010, amended  
8 article XIII C to provide an express, broad definition for the word “tax.” Specifically, under Article  
9 XIII C, section 1 subdivision (e), “‘tax’ means any levy, charge, or exaction of any kind imposed by  
10 a local government,” unless that “levy, charge, or exaction” fits into one of seven exceptions.  
11 Under one exception, a “charge imposed for a specific government service or product provided  
12 directly to the payor that is not provided to those not charged, and which does not exceed the  
13 reasonable costs to the local government of providing the service or product,” is not a “tax”  
14 requiring voter approval. (Cal. Const., art. XIII C, §1, subd. (e)(2).) Thus, since Proposition 26 was  
15 enacted, the State Constitution defines “taxes” to include any “charge imposed for a specific  
16 government service”—such as electricity—if that charge “exceed[s] the reasonable costs to the

17 Factor (“CRPSEA”), Variable Renewable Portfolio Adjustment Factor (“VRPSEA”), and  
18 Incremental Reliability Cost Adjustment Factor (“ICRA”). (*Id.*)

19 <sup>5</sup> Section 679(b) of the City Charter states that “[a]ll revenue from every source collected by  
20 the department in connection with its possession, management and control of the Power Assets of  
21 the City shall be deposited in the City Treasury to the credit of the Power Revenue Fund.” (City  
22 Charter §679 (b), Ridout Decl. Ex F.) Section 679(c) provides that money in the Power Revenue  
23 Fund may be expended only for certain enumerated purposes, including, *e.g.*, “Operation and  
24 Maintenance” of the Power Assets, “Development of [Power] Assets,” and “General Fund  
25 Transfers . . . as provided in Section 344.” (*Id.* at subds. (c)(1)-(9).) The City Charter defines  
26 “surplus” in the Power Revenue Fund, and anticipates transfers of those surpluses to the City’s  
27 Reserve Fund. (City Charter §344, Ridout Decl. Ex G.) Specifically, “[t]he Council may, by  
28 ordinance, direct that surplus money in . . . the Power Revenue Fund . . . be transferred to the  
Reserve Fund with the consent of the board in charge of the fund, but not otherwise.” (*Id.* at subd.  
(a).) While the General Fund is “established as a medium of control of and accounting for  
municipal activities” and is comprised of “[a]ll revenues and receipts which are not by law or  
Charter pledged or encumbered for special purposes[,]” the Reserve Fund includes “funding for  
unanticipated expenditures and revenue shortfalls in the City’s General Fund.” (Ridout Decl. Ex H,  
City Charter §302(a)-(b).) The City did not contend that General Fund or Reserve Fund were used  
to pay costs related to electricity service. (Ridout Decl. ¶12.)

1 local government of providing the service.” (*Id.*) A local government can no longer “impose,  
2 extend, or increase any” such tax unless it “is submitted to the electorate and approved by a  
3 majority vote.” (*Id.* §2, subd. (b); *see also* Cal. Gov’t Code §53723 (same).) As a result, if an  
4 electricity charge exceeds the reasonable cost of service, the excess revenue is deemed a tax that  
5 must be approved by the electorate.

6 **B. Plaintiffs’ Allegations and Procedural History**

7 On January 29, 2015, Plaintiff Tyler Chapman filed a Petition for Writ of Mandate and  
8 Complaint in the Superior Court of the State of California for the County of Los Angeles captioned  
9 *Chapman v. The City of Los Angeles, et al.*, Case No. BS153395. On April 1, 2015, Plaintiff  
10 Patrick Eck filed a class action case captioned *Eck v. City of Los Angeles, et al.*, Case No.  
11 BC577028. On June 2, 2015, Brendan Eisan filed a class action complaint captioned *Eisan v. City*  
12 *of Los Angeles, et al.*, Case No. BC583788. On June 23, 2015, the Court entered an order finding  
13 the three cases to be related within the meaning of Los Angeles Superior Court Rule 3.3(f). At the  
14 August 25, 2015 Initial Status Conference, the Court consolidated all three matters under the lead  
15 case *Eck*. At all times, Plaintiffs’ Counsel in all the related actions worked cooperatively and  
16 coordinated their efforts with regard to the prosecution of this case.

17 On September 22, 2015, Plaintiffs filed a Consolidated Class Action Complaint (“CAC”).  
18 The CAC alleged, *inter alia*, that electricity-derived revenue collected in the Power Revenue Fund  
19 was regularly transferred to the City’s Reserve Fund. Plaintiffs alleged that the LADWP’s power  
20 rates and charges that fund the transfers are, by definition, unrelated to the cost of generating or  
21 transmitting power. (CAC ¶30.) They alleged Defendants’ conduct violated the California  
22 Constitution (Cal. Const., art. XIII C, § 2 subs. (b) and (d) (Proposition 218)) which prohibits  
23 Defendants from imposing, extending, or increasing any general or special tax unless it is approved  
24 by the voters, and Government Code sections 53722 and 53723. (CAC ¶¶ 55, 60.) Plaintiffs sought  
25 a refund of these taxes, as well as declaratory and injunctive relief.

26 On October 21, 2015, Defendants filed an Answer to the CAC generally denying the  
27 allegations. On February 22, 2016, Defendants filed a motion for judgment on the pleadings, which  
28 Plaintiffs opposed. At an April 25, 2016 hearing before the Honorable Jane Johnson, the Court

1 granted that motion, holding that Plaintiffs’ claims were subject to the 120-day limitations period  
2 set forth in California Public Utilities Code section 10004.5. The Court gave Plaintiffs leave to  
3 amend to allege claims based on the 2016 Rate Ordinance, which took effect April 15, 2016, and to  
4 allege, *inter alia*, that Plaintiffs’ claims did not begin to run until the City adopted an ordinance  
5 transferring funds from the LADWP to the City. (Ridout Decl. ¶16, Ex. I, Notice of Ruling on  
6 Defendants’ Motion for Judgment on the Pleadings at 8-16.)

7 On July 1, 2016, Plaintiffs filed a First Amended Consolidated Complaint (“FAC”). The  
8 FAC included allegations regarding the recently-adopted 2016 Rate Ordinance. (FAC ¶18.)  
9 Plaintiffs allege Defendants impose on all LADWP customers an amount that Defendants know  
10 exceeds the cost of providing electricity service. (FAC ¶21.) Moreover, Plaintiffs allege that, from  
11 April 11, 2011 to April 21, 2016, annual transfers from the Power Revenue Fund to the Reserve  
12 Fund represented 8% of electric operating revenues. (FAC ¶¶24-25.) Notwithstanding the  
13 California Constitution, voters never approved the imposition of an 8% surcharge on all electricity  
14 rates to fund transfers to the Reserve Fund. (FAC ¶¶22, 24, 27.) Plaintiffs seek refunds for  
15 ratepayers and injunctive and declaratory relief. (FAC, Prayer for Relief.)<sup>6</sup>

16 **C. Discovery**

17 Plaintiffs engaged in significant and extensive fact and expert discovery. (Ridout Decl.  
18 ¶¶14, 17.) Plaintiffs served Form Interrogatories, Special Interrogatories, Requests for Production  
19 of Documents, to which the City served initial and supplemental written responses. (*Id.*) Plaintiffs  
20 served deposition notices to Defendants on numerous topics. Plaintiffs conducted an exhaustive  
21 review of thousands of pages of documents, including voluminous public records and City /  
22 LADWP financial statements, projections, and disclosures concerning electricity rates, the costs  
23 related to providing electricity to LADWP customers, disputes between the City and LADWP over  
24 the transfers and over adjustments to the ECAF, ratemaking documents including the Power Action  
25 Report, and the terms and legislative history of the various rate ordinances and transfer ordinances

26 \_\_\_\_\_  
27 <sup>6</sup> A more detailed account of the procedural history of this matter is set forth in Plaintiffs’  
28 Motion for Attorneys’ Fees & Expenses and Payment of Service Awards, filed concurrently  
herewith.

1 at issue. (*Id.*) Moreover, Plaintiffs attended public hearings at the LADWP Board meeting and City  
2 Council meeting regarding the adoption of 2016 Rate Ordinance, and prepared protest letters that  
3 were presented in person. (*Id.*) Due to the complexities presented, the Parties engaged in numerous  
4 in-person and telephonic meet-and-confer sessions, which resulted in both amended discovery  
5 responses, as well as an exchange of informal discovery relating to the nature, methodology and  
6 amounts of revenue transferred under the 2008 Rate Ordinance, 2012 Rate Ordinance and 2016  
7 Rate Ordinance. (*Id.*)

8         Discovery efforts did not end upon tentative settlement of this matter. In fact, settlement  
9 was expressly contingent upon the completion of a robust course of confirmatory discovery. (*Id.*  
10 ¶21.) Confirmatory discovery included a person most qualified deposition (given by LADWP chief  
11 financial officer Jeffrey Peltola) relating to: (i) the 2008 Rate Ordinance; (ii) the 2012 Rate  
12 Ordinance; (iii) the 2016 Rate Ordinance; (iv) the billing procedures and customer data and revenue  
13 generated pursuant to the 2008 Rate Ordinance; (v) the gross operating revenues generated pursuant  
14 to the 2008, 2012, and 2016 Rate Ordinances; (vi) the transfer of funds from the Power Revenue  
15 Fund to the Reserve Fund; (vii) the process and methodology of setting future power rates through  
16 the Board Letter Approval process, required by City Charter §676, described *supra*; and (viii) the  
17 process and methodology of determining projections of revenues for future fiscal periods. (*Id.*)  
18 Plaintiffs also conducted several detailed interviews of various LADWP officials regarding these  
19 subjects at issue in the deposition notices. (*Id.*) Finally, the City produced further voluminous  
20 documents in response to another set of Requests for Production, which the Plaintiffs also reviewed  
21 and analyzed. (*Id.*)

22         Plaintiffs also consulted with various Los Angeles electric power rate advocates and other  
23 experts. Notably, Plaintiffs retained an experienced industry consultant and former LADWP 26-  
24 year employee and finance executive, Gregory Black. (*Id.* ¶22; *see also* Black Decl. ¶¶2-3  
25 (describing Mr. Black’s extensive experience).) Mr. Black assisted with the analysis of the  
26 applicable electric power rates and rate categories; LADWP’s methodology and process regarding  
27 power rates and projected revenues, LADWP’s costs of providing electrical service, amounts of  
28 revenue subject to transfer to the City under the 2008, 2012 and 2016 Rate Ordinances; and analysis



1 of Pass-Through Charges associated with the 2008 Rate Ordinance (ECA, RCAF, ESA and REA)  
2 and the 2016 Rate Ordinance (the VEA, the CRPSEA, the VRPSEA, and the IRCA). (Ridout Decl.  
3 ¶22.) Mr. Black also assisted in and conducted interviews of various LADWP executives regarding  
4 these subject matters. (*Id.*)

#### 5 **D. Settlement Negotiations**

6 The Parties engaged in exhaustive, informed, and arm's-length negotiations that lasted well  
7 over a year. (Ridout Decl. ¶26.) On June 20, 2016, after extensive pre-mediation settlement  
8 discussions and negotiation which involved in-person meetings between counsel as well as many  
9 telephonic conferences, the Parties engaged in mediation before the Honorable Carl J. West (Ret.) at  
10 JAMS to determine if a fair compromise and settlement could be reached considering all applicable  
11 and relevant factors and risks. (*Id.*) Judge West is an experienced class action mediator and former  
12 Judge in the complex case department at the Los Angeles Superior Court. (*Id.*) Although the  
13 matter did not resolve at the in-person mediation, numerous other settlement discussions, both in-  
14 person and telephonic, occurred, all under the supervision of Judge West. (*Id.*) As a result of these  
15 extensive arms-length negotiations, the Parties were able to reach the Settlement now before the  
16 Court.

### 17 **III. THE PROPOSED SETTLEMENT**

18 Subject to this Court's final approval, the Settlement Agreement will resolve the class  
19 claims of Plaintiffs and all members of the Settlement Class who do not opt-out. The Parties have  
20 agreed and stipulated that the following Class can be certified for settlement purposes:

21 All persons and entities who, between January 29, 2012 and September 14, 2017  
22 (the Preliminary Approval Date) held a Retail Customer Account<sup>7</sup> with the  
23 LADWP in which there was a charge for electricity.<sup>8</sup>

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24 <sup>7</sup> "Retail Customer" means a customer to whom LADWP supplies electric service pursuant to  
25 the 2008 Rate Ordinance and the 2016 Rate Ordinance, or supplied electric service to pursuant to  
26 the 2012 Rate Ordinance. (SA ¶42.) "Retail Customer Account" means an account maintained by  
27 LADWP to record amounts owed by a Retail Customer for ongoing electric service supplied by  
28 LADWP to a particular service address. (*Id.* ¶43.)

<sup>8</sup> Specifically excluded from the Class are: (a) any officers, council members of the City, and  
Commissioners of the Los Angeles Department of Water and Power; (b) any judge assigned to hear

1 (SA ¶10.)

2 **A. The Benefits of the Settlement**

3 **1. Settlement Consideration**

4 The Settlement Agreement provides substantial automatic benefits to Class Members valued  
5 at an estimated \$295 million through FY 19-20 in consideration for the Release. (SA Sec. VI, ¶¶60-  
6 64; Black Decl. ¶15-18.)

7 **a. Transfers of 2016 Rate Ordinance Revenue Has Ceased**

8 Pursuant to the terms of the Settlement Agreement, Defendants have agreed not to transfer,  
9 to any City account, any funds derived from the sale of electricity to Retail Customers pursuant to  
10 the 2016 Rate Ordinance. (SA ¶61.)

11 **b. Transfers of 2008 Rate Ordinance Revenue Are Capped**

12 Defendants shall not transfer to any City account more than 8% of the Retail Operating  
13 Revenues (for the prior Fiscal Year) billed to Retail Customers pursuant to the 2008 Rate Ordinance  
14 and the 2012 Rate Ordinance. (SA ¶61.) This is meaningful because under City Charter § 344(b),  
15 the City has discretion to transfer more — there is no fixed amount. (Ridout Decl. Ex. G, City  
16 Charter § 344.) According to Defendants, the only limitations on transfers are that they may not  
17 exceed the prior fiscal year’s net income and no transfer may result in the prior fiscal year’s surplus  
18 being less than 33.3% of LADWP’s total indebtedness. (Black Decl. ¶20, Ex. H at 14.) In FY 15-  
19 16, for example, the City could have transferred an additional \$35.2 million beyond the 8% it  
20 transferred. (*Id.*)

21 **c. Settlement Fund of \$52 Million**

22 Pursuant to the terms of the Settlement Agreement, Defendants deposited \$52 million into  
23 a separate interest-bearing bank account (“Settlement Fund”) administered by KCC. (SA ¶62;  
24 Declaration of Ryanne Cozzi, filed concurrently herewith ¶4.) As of November 30, 2017, after one  
25 month and 10-days, the interest earned on the account was \$20,944.18. (*Id.*) The \$52 million cash  
26 amount is the City’s best estimate of the 8% surcharge on the 2016 Rate Ordinance from April 15,

27 \_\_\_\_\_  
28 this case; and (c) persons or entities who timely and properly exclude themselves from the Class as  
provided in this Agreement.

1 2016 (its effective date) through June 30, 2017, which is date the City began deducting 8% from the  
2 amounts otherwise charged pursuant to the 2016 Rate Ordinance, *i.e.*, the Date of Cessation.<sup>9</sup> (SA  
3 ¶¶60, 62(a)(ii); Ridout Decl. ¶28.) Subject to Court approval, after the Effective Date, KCC shall  
4 pay \$650,000 to the non-profit organization(s) designated by Plaintiffs, and the Administration  
5 Expenses, Service Awards, and Attorneys’ Fees and Expenses awarded by the Court. (SA  
6 ¶¶62(c)(i)-(ii).)

7 The remaining Net Settlement Fund will be automatically returned to the LADWP Refund  
8 Customers using the LADWP’s existing internal systems and processes at no cost to the Class. (SA  
9 ¶¶63-64.) Specifically, the Net Settlement Fund will be credited to the LADWP Refund  
10 Customers<sup>10</sup> over a 12-month period (the Refund Period) based on the given customer’s electricity  
11 usage. (SA ¶¶62(c)(iii) to (iv); Black Decl. ¶19.)<sup>11</sup>

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15 <sup>9</sup> Defendants shall “true up” this estimate to ensure that the actual amount collected is  
16 refunded to Retail Customers, using the first yearly Audit of the LADWP (currently performed by  
KPMG) after the Date of Cessation. (SA ¶62(a)(vii)-(ix).)

17 <sup>10</sup> LADWP Refund Customers are all Retail Customers holding a Retail Customer Account  
18 during the Refund Period. (SA ¶26.) LADWP Refund Customers will not include all Class  
19 Members, as some Class Members will no longer be Retail Customers. (*see e.g.* Ridout Decl. ¶25.)  
The vast majority of the Class Members, however, will be the LADWP Refund Customers. (*Id.*)

20 <sup>11</sup> Within ninety (90) calendar days following the public disclosure of the first Audit of  
21 LADWP’s financials after the Date of Cessation and before the credits begin, Defendants are  
22 required to provide Class Counsel with documents and evidence sufficient to demonstrate the actual  
23 amount of the Settlement Fund (as opposed to the estimated \$52 million). (SA ¶ 62(a)(vii).) Any  
24 discrepancy as between the two requires an adjustment to the amount of Settlement Fund. (SA ¶  
25 62(a)(viii) and (ix).) Further, at the conclusion of the Refund Period, Defendants are required to  
26 reconcile the amounts actually credited during the Refund Period and the actual Settlement Fund  
27 amount. (SA ¶ 62(c)(iv)(4).) If the actual amount is more than One Hundred Thousand Dollars and  
28 No Cents (*i.e.* the credited amounts based on a \$52 Settlement Fund was too low), then Defendants  
shall return the difference to the Class Members as credits in the same manner described above.  
(*Id.*) If the difference is less than One Hundred Thousand Dollars and No Cents (\$100,000), the  
amount shall be paid to the Non-Profit Recipients. (*Id.*) If the credited amount was too high, the  
Class Members retain such amounts. (*Id.*) Thus, no portion of the Net Settlement Fund reverts to  
Defendants. Finally, Defendants will only be provided the Net Settlement Funds from the Escrow,  
within 90 days after each quarterly period, during the Refund Period, in the amount of the credits  
*actually* provided LADWP Retail Customers. (*Id.* 62(c)(iv)(3).)

1                                    **d.        Compensation While 2016 Rate Ordinance Is in Effect (\$243**  
2                                    **Million Through Fiscal Year 2019-2020)**

3                                    Beginning on the Date of Cessation (July 1, 2017), and continuing until the 2016 Rate  
4 Ordinance is no longer in effect, Defendants will automatically deduct 8% from the amounts  
5 otherwise charged to all Retail Customers under the 2016 Rate Ordinance. (SA ¶60.) This 8%  
6 deduction will grow over time because total revenue from the 2016 Rate Ordinance is forecasted to  
7 grow significantly over the next four fiscal years. (Black Decl. ¶16.) The projected monetary  
8 benefits to the Class from this component of the Settlement total \$243 million through FY 19-20.  
9 (*Id.* ¶17.) Like the Net Settlement Fund, this ongoing monetary benefit will be provided to Retail  
10 Customers through LADWP’s already existing internal systems and processes at no cost to the  
11 Class. (SA ¶¶63-64.)

12                                    **e.        Confirmation of Defendants’ Settlement Obligations**

13                                    The Settlement requires Defendants to confirm that they have performed their obligations  
14 thereunder. With regard to the prohibition on transfers (*i.e.*, the 8% cap on 2008 Rate Ordinance  
15 revenue and elimination of transfers on 2016 Rate Ordinance revenue), Defendants are required to  
16 (a) cause the persons or entities conducting LADWP’s Audits (currently performed by KPMG) to  
17 identify in the Audit, the retail operating revenue generated from the 2008 Rate Ordinance and  
18 from the 2016 Rate Ordinance, (b) provide to Class Counsel evidence and documents  
19 demonstrating that Defendants complied with these prohibitions, and (c) provide a statement  
20 setting forth the exact amount of the 2016 Ordinance – Settlement Reduction in each fiscal year.  
21 (SA¶¶61(b)-(c).) With this information, Class Counsel and members of the public will be able to  
22 confirm that future transfers (which are approved through ordinance) comply with these  
23 obligations.

24                                    With regard to the amount of the Settlement Fund, Defendants are required to provide Class  
25 Counsel with documents and evidence sufficient to demonstrate the actual amount of the  
26 Settlement Fund and to include a detailed methodology by which the Year End Settlement Fund  
27 Balance was calculated. (SA¶62(a)(vii).) With regard to the distribution of the Settlement Fund,  
28 Defendants are required to provide to Class Counsel and the Settlement Administrator, the total

1 amount of the Net Settlement Fund actually credited, the kWh Credit, and other facts to  
2 substantiate the total amount credited. (SA ¶62(c)(iv)( 3).)

3 **f. Payment to Non-Profit Recipients**

4 As discussed further in Section VI.C. below, attrition rates of Retail Customers reveal that  
5 some Class Members may not be Retail Customers after the Effective Date. For example,  
6 approximately 144,509 Class Member service agreements were closed during the Class Period.  
7 (Ridout Decl. ¶25.) These Class Members would not necessarily receive the automatic benefits of  
8 the Settlement. Accordingly, the Settlement provides for a payment of \$650,000 to be distributed to  
9 certain Non-Profit Recipients designated by Plaintiffs. (SA ¶62(b).) Plaintiffs designated The  
10 Alliance for Children’s Rights and Westwood Recreation Complex, (doing business as Friends of  
11 Los Angeles), both of whom have a nexus with the Class and whose work will directly benefit Class  
12 Members. (Plaintiffs’ Designation of Non-Profit Recipients filed on June 6, 2017, concurrently  
13 lodged herewith for the Court’s convenience; *see also, infra*, §VI.C.)

14 **B. The Release is Narrowly Tailored to the Claims**

15 If the Court grants final approval of the Settlement, Class Members will release Defendants  
16 of all claims, known or unknown, that were asserted or could have been asserted in the litigation  
17 arising during the period between January 29, 2012 and the date on which the Court gives final  
18 approval. (SA ¶¶39-41, Sec. XI ¶¶85-95.) There is no Civil Code §1542 waiver.<sup>12</sup>

19 **C. Requested Attorneys’ Fees and Expenses and Plaintiffs’ Service Awards**

20 Class Counsel, in Plaintiff’s Motion for Award of Attorneys’ Fees and Reimbursement of

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21 <sup>12</sup> After Notice was disseminated to the Class, the City agreed to add the following carve out to  
22 the release language: “Specifically exempted from the scope of the Release in this Action are the  
23 claims asserted in the Second Amended Complaint and Verified Petition for Writ of Mandate filed  
24 on or about June 15, 2015, in *Morski v. The Los Angeles Department of Water & Power*, Los  
25 Angeles Superior Court Case No. BC 568722 (the "*Morski Action*"), and the claims asserted in the  
26 Third Amended Complaint and Verified Petition for Writ of Mandate filed on or about November  
27 10, 2016, in *Macias v. The Los Angeles Department of Water and Power*, Los Angeles Superior  
28 Court Case No. BC594049 (the "*Macias Action*"). This exemption is agreed to with the express  
understanding that the *Morski* and *Macias Actions* do not assert claims that: (1) LADWP's 2008,  
2012, and 2016 Rate Ordinances violate Article XIII-C of the California Constitution; or (2) the  
City's transfer of funds from the LADWP to the City under Section 344 of the City Charter violates  
Article XIII-C of the California Constitution.” This language will appear in the [Proposed] Final  
Order and Final Judgment submitted to the Court.

1 Expenses and Payment of Service Awards, filed concurrently herewith, have applied for attorneys’  
2 fees and expenses not to exceed \$15 million (5% of the Settlement total monetary value of \$295  
3 million or 29% of the cash common fund). The City has agreed not to oppose a request for  
4 attorneys’ fees and expenses up to the amount of \$10 million, but the City reserves the right to  
5 oppose a request for attorneys’ fees and expenses in excess of \$10 million. (*Id.* ¶109.) The parties  
6 continue to negotiate the issue of fees and expenses, however, and may reach an agreement prior to  
7 the hearing on this motion.

8 Moreover, also addressed in the motion filed concurrently herewith is Class Counsel’s  
9 application for Service Awards of \$5,000 to be paid to each Plaintiff in recognition of their  
10 contributions on behalf of the Class.

11 **IV. PRELIMINARY APPROVAL**

12 On September 14, 2017, this Court conditionally and preliminarily approved the Settlement,  
13 entered the Preliminary Approval Order, directed notice to the Settlement Class Members, and  
14 scheduled a hearing on final approval on February 14, 2018. Pursuant to the Preliminary Approval  
15 Order, Settlement Class Members have until December 27, 2017 to object to or opt-out of the  
16 Settlement. Plaintiffs may file replies/responses to objections and supplemental papers on or before  
17 January 22, 2018. (*See generally* Preliminary Approval Order.)

18 **V. METHOD OF NOTICE AND ADMINISTRATION COSTS**

19 Notice was given as directed in the Order to reach “as many class members as is  
20 practicable” and was robust, covering a number of mediums including, direct mail with follow up  
21 email and physical mailing to initial undeliverable envelopes, print publications, an internet  
22 campaign, and a settlement website. (Cozzi Decl. ¶¶3, 5-8, 12.) The Settlement Administrator  
23 estimates that the notice program reached more than 90% of the Class Members. (*Id.* at ¶12.)  
24 Notice of the final judgment entered in this case will be posted on the Settlement website. *See*  
25 California Rules of Court (“CRC”), rule 3.771(b). The Settlement Administrator has charged notice  
26 and administration costs of \$920,493 to date. (*Id.* at ¶13.)  
27  
28

1 **VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND THE**  
2 **COURT SHOULD FINALLY APPROVE THE SETTLEMENT**

3 CRC 3.769(g) provides that “[b]efore final approval, the court must conduct an inquiry into  
4 the fairness of the proposed settlement.” CRC 3.769(g). To be approved, a class action settlement  
5 must be “fair, adequate, and reasonable” and fall within the “range of approval.” *Dunk v. Ford*  
6 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A court’s analysis of a settlement should be  
7 conducted in light of the favorable view of settling disputes. *Stambaugh v. Sup. Ct.* (1976) 62  
8 Cal.App.3d 231, 236.

9 This is particularly the case in class actions where substantial resources will be conserved by  
10 avoiding litigation: “In reviewing the fairness of a class action settlement [d]ue regard . . . should be  
11 given to what is otherwise a private consensual agreement between the parties. The inquiry must be  
12 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of  
13 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,  
14 taken as a whole, is fair, reasonable and adequate to all concerned.” *Cellphone Termination Fee*  
15 *Cases* (2010) 186 Cal.App.4th 1380, 1389 (internal quotations and citation omitted).

16 A class action settlement is presumed to be fair if: (1) it is “reached through arm’s length  
17 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
18 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is  
19 small.” *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 52 (quoting *Dunk*, 48 Cal.App.4th at 1802).

20 Beyond determining whether a settlement is entitled to a presumption of fairness, a court  
21 must further consider factors such as: (1) the strength of plaintiffs’ claims, (2) the risk and expense  
22 of further litigation, (3) the risk of maintaining class status through trial, (4) the amount offered in  
23 settlement, (5) the extent of discovery completed, (6) the experience and views of counsel and (7)  
24 the presence of a government participant (the “*Dunk* Factors”). *Dunk*, 48 Cal.App.4th at 1801. As  
25 demonstrated herein, the Settlement is entitled to a presumption of fairness. Furthermore, the  
26 Settlement satisfies the *Dunk* Factors. Accordingly, final approval is warranted.

27 **A. The Settlement Is Presumptively Fair**

28 The Settlement is presumptively fair. *First*, the Settlement was reached following protracted  
arm’s-length negotiations, that spanned over a year, and included mediation with Judge West (Ret.)

1 and numerous telephonic and in-person conferences amongst counsel and before Judge West (Ret.).  
2 (Ridout Decl. ¶26.) Moreover, Judge West oversaw the entire process. *Clark v. American*  
3 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 800 (“The court undoubtedly should give  
4 considerable weight to the competency and integrity of counsel and the involvement of a neutral  
5 mediator in assuring itself that a settlement agreement represents an arm’s-length transaction  
6 entered without self-dealing or other potential misconduct.”) (internal quotations and citation  
7 omitted).

8 *Second*, as described above and in the Motion for Attorneys’ Fees & Expenses and Payment  
9 of Service Awards, Class Counsel engaged in (i) significant legal and factual investigation; (ii)  
10 extensive discovery, consultation with experts, and deposition and interviews of a number of  
11 LADWP officers; and (iii) reviewed and analyzed voluminous data and documents. Class Counsel  
12 was thus well able to judge the strengths and weaknesses of Plaintiffs’ claims and Defendants’  
13 defenses. (Ridout Decl. ¶¶4-30.)

14 *Third*, each of the Class Counsel have decades of experience and success in class action  
15 litigation. Class Counsel have worked on large, complex class action cases for decades, with a  
16 particular focus on consumer protection, and have also litigated and have extensive experience in  
17 Proposition 218/26 litigation and other tax payer rights cases. (Ridout Decl. ¶31-52, Exs J, L & M;  
18 Declaration of Robert R. Ahdoot (“Ahdoot Decl.”) ¶¶2-5, Ex A; Declaration of Eric J. Benink  
19 (“Benink Decl.”) ¶¶24-25, 27, Ex A (the Ahdoot and Benink Declarations are filed concurrently  
20 herewith).) Indeed, as a result, Class Counsel obtained a Settlement that requires Defendants, *inter*  
21 *alia*, to no longer charge the allegedly illegal 8% surcharge that was to be collected through the  
22 2016 Rate Ordinance, and to credit the allegedly illegal 8% surcharge that actually was charged  
23 between April 15, 2016 and the Date of Cessation (*i.e.*, July 1, 2017). (SA ¶¶63-64, ¶60; Black  
24 Decl. ¶¶16-17.) Thus, Plaintiffs achieved a complete victory with regard to the claims based on the  
25 2016 Rate Ordinance, the only claim allowed after the Court’s ruling on the Motion for Judgment  
26 on the Pleadings.

27 *Fourth*, the percentage of objectors (to date) relative to the size of the Class is incredibly  
28 small. As of December 4, 2017 (with an objection deadline of December 27, 2017) only 13 people



1 have objected. There is a presumption that the Settlement is fair, adequate and reasonable.

2 **B. The Settlement Is Fair, Adequate, and Reasonable**

3 In addition to the presumption of fairness, the Settlement also satisfies the *Dunk* Factors and  
4 thus warrants final approval.

5 **1. The Strength of Plaintiffs’ Case Balanced Against the Amount Offered**  
6 **in Settlement Favors Approval**

7 The at least \$295 million Settlement represents a significant recovery for the Class and  
8 represents 100% of the maximum liability in light of the Court’s ruling on the Motion for Judgment  
9 on the Pleadings – an excellent result. Nonetheless, “[a] settlement need not obtain 100 percent of  
10 the damages sought in order to be fair and reasonable.” *Wershba v. Apple Computer, Inc.* (2001) 91  
11 Cal.App.4th 224, 250; *see also, e.g., Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117,  
12 1139 (settlements found to be fair and reasonable even though monetary relief provided was  
13 “relatively paltry”).<sup>13</sup>

14 Given the large value of the Settlement, the strengths and weaknesses of Plaintiffs’ claims  
15 (discussed below), the procedural posture, the risks of the litigation, and the fact that this hard-  
16 fought, complex litigation has been pending for approximately three years, the Settlement is well  
17 within the range of reasonableness. As noted above, the City will, *inter alia*, reduce amounts  
18 charged to LADWP Retail Customers by \$243,000,000 through FY 19-20, and will pay \$52 million  
19 into the Settlement Fund. In addition, the Settlement requires various injunctive and intangible  
20 benefits that, if included in this analysis, substantially increase the Settlement’s value.

21 The Settlement recovers all damages available to the Class (both monetary and injunctive)

22  
23 <sup>13</sup> *See also In re Celera Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 U.S. Dist. LEXIS  
24 42228, at \*15-16 (N.D. Cal. Mar. 31, 2015) (granting final approval on a settlement fund which  
25 represented 17 percent of the plaintiff’s total estimated damages); *In re Omnivision Techs., Inc.*, 559  
26 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) (granting final approval of a settlement fund where the  
27 gross class recovery was 9 percent of maximum potential recovery); *Destefano v. Zynga, Inc.*, No.  
28 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196, at \*37-38 (N.D. Cal. Feb. 11, 2016) (finding “that  
the \$23 million offered in settlement is reasonable” where it represented “approximately 14 percent  
of likely recoverable aggregate damages at trial . . .”).

1 under the 2016 Rate Ordinance, and permanently enjoins the allegedly wrongful conduct with  
2 respect to this Ordinance. This compromise is eminently fair, adequate and reasonable, even  
3 compared against the hypothetical total maximum cash recovery of \$1.44 Billion (Ridout Decl.  
4 ¶24), as of FY 16-17 that would be available if challenges to the 2008 and 2012 Rate Ordinances  
5 were considered timely (under Public Utilities Code §10004.5), not barred (by the contention that  
6 Proposition 26 is not retroactive), and not limited to the period beginning January 30, 2014 (*see*  
7 Gov't Code §911.2).

8 **2. The Strength of Plaintiff's Case Compared to the Risk, Expense,**  
9 **Complexity, and Likely Duration of Further Litigation Favors Final**  
10 **Approval.**

11 The benefits of this Settlement must also be balanced against the risk, expense, and  
12 complexity of further litigation for both parties. *7-Eleven Owners for Fair Franchising v.*  
13 *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152. Plaintiffs face significant risk in continuing  
14 the litigation.

15 *First*, the Court previously granted Defendants' Motion for Judgment on the Pleadings and  
16 specifically ruled that California Public Utilities Code §10004.5 applies to Plaintiffs' claims. Under  
17 that ruling, Plaintiffs are not entitled to any recovery or remedy from the 2008 and 2012 Rate  
18 Ordinances. *Second*, Defendants are likely to argue that Proposition 26 does not place any  
19 limitations on rates enacted prior to its enactment (*i.e.*, the 2008 Rate Ordinance). Indeed, the  
20 California Court of Appeal has ruled that Proposition 26 has no retroactive application. *See e.g.*,  
21 *Brooktrails Twp. Cmty. Servs. Dist. v. Bd. of Supervisors of Mendocino City* (2013) 218  
22 Cal.App.4th 195, 207, *as modified* (July 24, 2013); *Cal. Chamber of Commerce v. State Air Res.*  
23 *Board* (2017) 10 Cal.App.5th 604, 633; *Cal. Pub. Records Research, Inc. v. County of Yolo* (2016)  
24 4 Cal.App.5th 150, 187. *Third*, Defendants will likely contend that Plaintiffs' monetary claims are  
25 subject to the Government Claims Act (Gov't Code § 911.2), which requires a claim for damages  
26 against the government to be presented within one year of accrual. *See e.g.*, *J.J. v. City of San*  
27 *Diego* (2014) 223 Cal.App.4th 1214, 1219, *as modified on denial of reh'g* (Mar. 7, 2014) ("Timely  
28 claim presentation is not merely a procedural requirement, but is a condition precedent to the  
claimant's ability to maintain an action against the public entity.") Thus, Plaintiffs' claims could be

1 limited to the period beginning one year prior to the date the first government claim was filed by  
2 Plaintiffs: January 30, 2015.

3 Each of these defenses was carefully considered by Class Counsel. Although Class Counsel  
4 is prepared to proceed with the hearing on his fully briefed motion for class certification and to file  
5 a motion for summary adjudication should the Settlement not be approved, further litigation would  
6 produce additional time-consuming and expensive law and motion proceedings, including likely  
7 motions from the City, as well as a potential trial. Moreover, on any given issue in this litigation  
8 the likelihood of protracted appellate proceedings is high. Against these risks and the possibility of  
9 many more years of delay, the Settlement provides taxpayers with an opportunity to benefit from  
10 the Settlement as expeditiously as possible. Balancing considerations such as the fact that this case  
11 is already three years old, that further delay causes continuing damages in the form of additional  
12 taxes, and that the case faces considerable risk if it were to proceed in litigation, against the superior  
13 terms of the Settlement, supports final approval because it reflects a well-reasoned resolution of this  
14 action that benefits the Class.

15 **3. The Risk of Maintaining Class Action Status Through Trial Favors Final**  
16 **Approval**

17 Although Plaintiffs believe that this case can be certified as a class action, as set forth below,  
18 Plaintiffs recognize that Defendants intended to zealously oppose class certification. Even if  
19 Plaintiffs prevailed at trial, Defendants would have likely appealed this Court's class certification  
20 decision and judgment at trial. While Plaintiffs are confident that this action could be properly  
21 maintained as a class action, these risks of maintaining class action status through trial weigh in  
22 favor of final approval of the settlement.

23 **4. The Extent of Discovery Completed Favors Final Approval**

24 As discussed above, Class Counsel, independently, and in conjunction with a consultant, Mr.  
25 Black, conducted sufficient investigation, written discovery and confirmatory discovery to conclude  
26 that the Settlement is in the best interests of the Settlement Class.

27 **5. The Experience and Views of Counsel Favors Final Approval**

28 As discussed above, Plaintiffs' Counsel believe that this Settlement is fair and reasonable

1 and, under the circumstances, represents the best possible recovery for the Settlement Class. (*Id.*)

2 **6. Presence of A Governmental Participant Favors Final Approval**

3 Finally, the fact that Defendants are governmental entities weighs in favor of final approval.  
4 *Touhey v. United States*, No. 08-cv-1418-VAP-RC, 2011 U.S. Dist. Lexis 81308, at \*\*20-21 (C.D.  
5 Cal., July 25, 2011) (fact that defendants “are the government” weighed “in favor of final  
6 approval.”)

7 Based on the foregoing, the Settlement satisfies the *Dunk* Factors and, therefore,  
8 demonstrates that final approval is warranted.

9 **C. The *Cy Pres* Provisions are Appropriate**

10 Discovery obtained by Class Counsel indicates that, of the approximate 1,473,137 service  
11 agreements under which electric service was provided to Class Members, approximately 144,509  
12 service agreements have been terminated as of April 30, 2017. (Ridout Decl. ¶25.) This includes  
13 Class Members who presumably moved or died or terminated service for any number of reasons,  
14 with two caveats: (1) because this number only tracks service agreements that were terminated,  
15 some of these people may have moved within the City, and thus, will benefit from the Settlement;  
16 and (2) some people may have multiple service agreements with the City (someone who owns two  
17 houses, for example), so if they cancelled just one service agreement, but retained others, then they  
18 will also benefit from the Settlement. Finally, some 53,375 of these accounts have outstanding  
19 balances that total \$27,623,634.58; thus, more than 33% of these class members owe LADWP  
20 money in an amount that is, on average, far greater than the benefit they would be due. (*Id.*) In  
21 consideration for the release of such Class Members’ claims, and after lengthy negotiation with the  
22 supervision of Judge West, a payment of \$650,000 will be made to the following non-profit  
23 organizations, designated by Plaintiffs pending approval by this Court: The Alliance for Children’s  
24 Rights; and Westwood Recreation Complex, doing business as Friends of Los Angeles.

25 *Cy pres* or fluid recovery in class actions was pioneered in California state courts. *See Daar*  
26 *v. Yellow Cab Co.* (1967) 67 Cal.2d 695; *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460; *Bruno v.*  
27 *Super. Ct.* (1981) 127 Cal.App.3d 120.

28 The theory underlying fluid class recovery is that since each class member cannot be

1 compensated exactly for the damage he or she suffered, the best alternative is to pay  
2 damages in a way that benefits as many of the class members as possible and in the  
3 approximate proportion that each member has been damaged, even though, most  
probably, some injured class members will receive no compensation and some people  
not in the class will benefit from the distribution.

4 (*Bruno*, 127 Cal.App.3d at 123-24.) Courts employ *cy pres* principles to distribute class damages or  
5 settlement funds for the indirect benefit of the class where actual distribution to class members is  
6 not feasible. (3 Alba Conte, Herbert B. 8 II Newberg, NEWBERG ON CLASS ACTIONS §10.17, at 514-  
7 21 (4th ed. 2002).) Generally, the funds are paid to a third party such as a charitable organization or  
8 agency for use for designated purposes. (*Id.*)

9 Compensation in this manner provides for substantial “‘correlation’ or ‘overlap’ between the  
10 injured class of persons and the class to be benefited” (*Levi Strauss & Co.*, 41 Cal.3d at 479) and  
11 effectuates “the purposes of the substantive law” (*Id.* at 475), as described below. In sum, the relief,  
12 including both the monetary and the non-monetary aspects, being provided by the Settlement  
13 addresses, arguably, in the most direct fashion, the concerns raised by the allegations in the  
14 Complaint with the LADWP and electricity rates.

15 Both of these non-profit organizations meet these requirements. (Declaration of Janis Spire  
16 (“Spire Decl.”); Declaration of Geralyn Goodman (“Goodman Decl.”).)<sup>14</sup> For example, the  
17 Alliance for Children’s Rights (“the Alliance”) dedicates its resources to support foster youth and  
18 their families facing utility shut-off for not making a given payment (that includes the alleged illegal  
19 tax). (Spire Decl., ¶3.) Specifically, the Alliance’s advocacy includes helping foster youth who live  
20 independently and foster families obtain utility discounts to which they may be eligible, and  
21 advocating the LADWP to recognize temporary hardships and establish payment plans to prevent  
22 disruption of services, among other utility related advocacies. (*Id.* at ¶¶3, 7.) Friends of Los  
23 Angeles (“FOLA”) advocates providing alternative energy sources to public parks throughout the  
24 City of Los Angeles to reduce/offset utility costs, as well as providing backup systems at fire  
25 stations throughout the City of Los Angeles. (Goodman Decl., ¶¶7-8.) Thus, there exists a nexus

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26  
27 <sup>14</sup> The Spire Decl. and Goodman Decl. were previously filed in support of Plaintiffs’ Motion  
28 for Preliminary Approval of Class Action Settlement on June 6, 2017 and are lodged concurrently  
with the filing of this Motion, for the Court’s convenience.

1 between the Class and the Alliance and FOLA, respectively. Indeed, each of these proposed *cy pres*  
2 recipients advocate utility related activities that benefit communities of the City of Los Angeles.

3 **VII. THE SETTLEMENT CLASS SHOULD BE CERTIFIED**

4 The Code of Civil Procedure provides that “when the question is one of a common or  
5 general interest, of many persons, or when the parties are numerous, and it is impracticable to bring  
6 them all before the court, one or more may sue or defend for benefit of all.” Cal. Code Civ. Proc.  
7 §382. Indeed, the express judicial policy of California is to favor the maintenance of class actions.  
8 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 473 (“This state has a public policy which  
9 encourages the use of the class action device.”). California also has a long-standing commitment to  
10 using the class action device to further consumer protection. *State v. Levi Strauss & Co.*, 41 Cal.3d  
11 at 471 (The consumer class action is an essential tool for the protection of consumers against  
12 exploitative business practices.”); *La Sala v. American Savings & Loan Assn.* (1971) 5 Cal.3d 864,  
13 875-76. Any doubt as to the appropriateness of class treatment must be resolved in favor of  
14 certification, subject to later modification. *Richmond*, 29 Cal.3d at 473-75.

15 California courts have expressed two primary requirements for maintaining a California  
16 class action: (1) an ascertainable class, and (2) a well-defined community of interest among the  
17 class members. *Daar*, 67 Cal.2d at 704; *B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1345, 1347.  
18 “Reviewing courts consistently look to the allegations of the complaint and the declarations of  
19 attorneys representing the plaintiff class to resolve this question.” *Richmond*, 29 Cal.3d at 478  
20 (citations omitted). The “community of interest” requirement embodies three factors: (a)  
21 predominant common questions of law or fact; (b) class representatives with claims or defenses  
22 typical of the class; and (c) class representatives who can adequately represent the class. *Id.* at 470.  
23 Class actions are utilized because individual victims may lack the sophistication, financial  
24 motivation or resources to sue on their own. *Vasquez v. Super. Ct.* (1971) 4 Cal.3d 800, 808.

25 **A. The Class Is Sufficiently Numerous**

26 Class certification is appropriate where the class contains so many members that joinder of  
27 all would be impracticable. Cal. Code Civ. Proc. §382. Here, the Settlement Class consists of  
28 people and entities holding approximately 1,473,137 service agreements with LADWP, clearly

1 meeting the numerosity requirement. Ridout Decl. ¶25; *see also Richmond*, 29 Cal.3d at 478  
2 (finding that a proposed class that numbers in the thousands makes joinder impractical); *Stern v.*  
3 *AT&T Mobility Corp.*, No. 05-cv-8842-CAS-CT, 2008 U.S. Dist. Lexis 110305, at \*14 (C.D. Cal.  
4 Aug. 22, 2008) (numerosity requirement generally satisfied with more than forty class members).

5 **B. The Class Is Ascertainable**

6 Courts determine whether a class is ascertainable by examining (1) the class definition, (2)  
7 the size of the class, and (3) the means available for identifying class members. *Reyes v. Bd. of*  
8 *Supervisors of San Diego Cty.* (1987) 196 Cal.App.3d 1263, 1271; *Aguirre v. Amscan Holdings,*  
9 *Inc.* (2015) 234 Cal.App.4th 1290, 1297; *see also Daar*, 67 Cal.2d at 706 (“Class members are  
10 ascertainable where they may be readily identified without unreasonable expense or time by  
11 reference to official records.”); *Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193,  
12 1206. Here, the class definition is objective. The Settlement Class is ascertainable because its  
13 members may be identified through LADWP customer records. (SA ¶68(a).) Further, LADWP has  
14 contact information for members of the Settlement Class. (*Id.*)

15 **C. Common Issues of Law and Fact Predominate Over Individual Issues**

16 Each member of the proposed class is a victim of a common course of conduct. A  
17 community of interests exists among class members when common questions predominate over  
18 individualized questions. *Brown v. Regents of University of California* (1984) 151 Cal.App.3d 982,  
19 988; *Daar*, 67 Cal.2d at 711. Here, common questions predominate, including:

- 20 a. Whether the City charges fees, rates, and charges in an amount that exceeds the cost  
21 of providing power services;
- 22 b. Whether the amount of the overcharge is a “tax” as defined by Proposition 26;
- 23 c. Whether Defendants are charging and collecting an unlawful tax in violation of  
24 Proposition 218;
- 25 d. Whether voters approved the tax;
- 26 e. Whether Plaintiffs and Class members are entitled to a refund;
- 27 f. Whether Plaintiffs and Class members are entitled to declaratory relief; and
- 28 g. Whether Plaintiffs and Class members are entitled to an order enjoining Defendants

1 from continuing to collect a surcharge.

2 **D. Plaintiffs' Claims Are Typical**

3 Typicality requires only that the proposed class representative's interests be significantly  
4 similar to those of the other class members of the proposed class. *Classen v. Weller* (1983) 145  
5 Cal.App.3d 27, 46-47; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d at 1347;  
6 *Daniels v. Centennial Group, Inc.* (1983) 16 Cal.App.4th 467, 473; *City of San Diego v. Haas*  
7 (2012) 207 Cal.App.4th 472, 501. The claims of each class member need not be identical. *Daniels*,  
8 16 Cal.App.4th at 473. It is sufficient that the representative is similarly situated, so that he or she  
9 will have the motive to litigate on behalf of all class members. *See Classen v. Weller* (1983) 145  
10 Cal.App.3d 27, 46. "We know that it has never been the law in California that the class  
11 representative must have *identical* interest with the class members." *Id.* Plaintiffs satisfy the  
12 typicality requirement because their injuries, like other Class members', arise out of Defendants'  
13 imposition, increase, and extension of taxes without voter approval in violation of the California  
14 Constitution and the California Government Code.

15 **E. Plaintiffs Have Protected, and Will Continue to Protect, the Interests of the**  
16 **Settlement Class**

17 In order to fairly and adequately protect the class, a plaintiff must (1) be represented by  
18 counsel qualified to conduct the litigation, and (2) not have interests that are antagonistic to those of  
19 the settlement class. *McGee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *see also Barboza v. W.*  
20 *Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.

21 First, the Court has already appointed Class Counsel. In retaining Christopher P. Ridout of  
22 Zimmerman Reed, LLP, Robert R. Ahdoot and Tina Wolfson of Ahdoot & Wolfson, PC, and Eric J.  
23 Benink of Krause, Kalfayan, Benink & Slavens, LLP, Plaintiffs have employed counsel who are  
24 "qualified, experienced and able to vigorously conduct the proposed litigation on behalf of the  
25 class." *In re Quintus Secs. Litig.*, 148 F. Supp. 2d 967, 972 (N.D. Cal. 2001).

26 Second, Plaintiffs have no interests that are antagonistic to the interests of the Class. To the  
27 contrary, Plaintiffs' interests are directly aligned with the interests of members of the Class as they  
28 are all LADWP Retail Customers.



1           **F.       A Class Action Is Superior to Other Methods of Adjudication**

2           As previously noted, the express judicial policy of California is to favor the maintenance of  
3 class actions. *Richmond*, 29 Cal.3d at 462; *La Sala*, 5 Cal.3d at 883. A class action is plainly  
4 superior to the other methods available for the fair and efficient adjudication of this controversy.  
5 *Reyes*, 196 Cal.App.3d at 1270. The class action device is particularly appropriate when numerous  
6 parties suffer injury in small amounts, because individual lawsuits would be uneconomical and the  
7 wrongdoer might otherwise escape liability. *Daar*, 67 Cal.2d at 715 (class action allowed to  
8 recover taxicab fare overcharges averaging no more than a few dollars per customer). Here,  
9 individual Settlement Class Members have incurred relatively small damages. It would not be  
10 economical to pursue their claims on an individual basis because litigation costs would greatly  
11 exceed the potential recovery. California courts strive to remove unnecessary barriers to the  
12 effective utilization of class action procedures. *Union Carbide Corp. v. Super. Ct.* (1984) 36 Cal.3d  
13 15, 21-22. Meaningful access to the court system and the deterrence of unfair and illegal conduct  
14 underlie the superiority of class litigation. *Daar*, 67 Cal.2d at 715; *In Re Tobacco II Cases* (2009)  
15 46 Cal.4th 298, 314. Accordingly, a class action in this instance is superior to other available  
16 methods of resolution.

17           **VIII. THE NOTICE PLAN SATISFIES DUE PROCESS AND WAS EXECUTED IN**  
18           **ACCORDANCE WITH THE COURT’S ORDER**

19           If a class action is to be effective, “members of the class must receive the ‘best notice  
20 practicable under the circumstances, including individual notice to all members who can be  
21 identified through reasonable effort.’” *Home Sav. & Loan Ass’n v. Sup. Ct.* (1975) 42 Cal.App.3d  
22 1006, 1012. The standard in California for class notice is whether notice has “a reasonable chance  
23 of reaching a substantial percentage of the class members.” *Wershba*, 91 Cal.App.4th at 251 (citing  
24 *Cartt v. Superior Court* (1975) 42 Cal.App.3d 960, 974); *see also* CRC 3.766(e). And, in deciding  
25 on the appropriateness of class notice, a court must consider the factors set forth in CRC 3.766(e):  
26 “(1) the interests of the class; (2) the type of relief requested; (3) the stake of the individual class  
27 members; (4) the cost of notifying class members; (5) the resources of the parties; (6) the possible  
28 prejudice to the class members who do not receive notice; and (7) the res judicata effect on class

1 members.” Finally, the trial court “has virtually complete discretion as to the manner of giving  
2 notice to class members.” *7-Eleven Owners for Fair Franchising*, 85 Cal.App.4th at 1164 (citation  
3 omitted).

4 Here, the manner of notice included mailing a Summary Notice directly to Class Members at  
5 their last known address; print advertising; Internet advertising; and the launching of a website at  
6 lacitytransfersettlement.com that published a Long Form Notice. (*See generally* Cozzi Decl.). The  
7 parties and the Settlement Administrator believe that this Notice Plan provided meaningful notice,  
8 was the best notice practicable under the circumstances, and satisfied California law and due  
9 process requirements. *See Wershba*, 91 Cal.App.4th at 251; *see generally*, SA ¶¶65-70; *see also* SA  
10 Ex. C ¶¶36-37. The Court’s Preliminary Approval Order ruled that the manner of the Class Notice  
11 “will provide the best notice practicable to the Class under the circumstances, constitutes valid, due  
12 and sufficient notice to all Class Members, and fully complies with California Code of Civil  
13 Procedure 382, California Code of Civil Procedure section 1781, the Constitution of the State of  
14 California, the Constitution of the United States, and other applicable law.” (Preliminary Approval  
15 Order ¶ 8.)

16 The form of the notices also satisfied CRC 3.766(d) and was approved by the Court.  
17 (Preliminary Approval Order ¶ 8, Ex. B, E, F, and G.) The notice forms contained a short, plain  
18 statement of the background of the action and the Settlement, described the relief outlined in the  
19 Settlement, informed Class Members of their rights to exclude themselves or object, and informed  
20 Class Members that any Final Order and Judgment entered in the Action, whether favorable or  
21 unfavorable to the Class, would be binding on all Class Members who have not been excluded from  
22 the Class, even if they have objected. The Settlement Administrator, KCC, has fully complied with  
23 the notice requirements and deadlines as set forth in the Court’s Preliminary Approval Order. (*See*  
24 *generally* Cozzi Decl.)

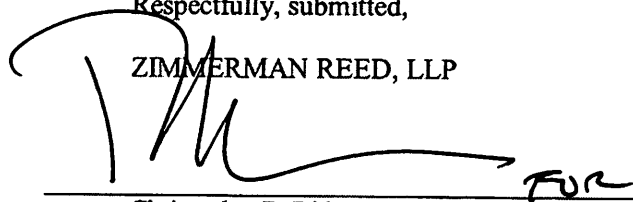
## 25 **IX. CONCLUSION**

26 In consideration of the foregoing, Plaintiffs respectfully request that this Court enter an  
27 order: (i) finally approving the Settlement; (ii) certifying the Settlement Class; and (iii) finding that  
28 the Class Notice constituted the best practicable notice.

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Respectfully, submitted,

ZIMMERMAN REED, LLP

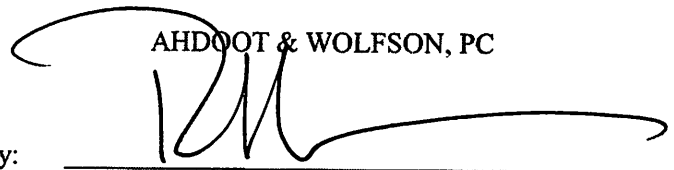


Dated: December 6, 2017

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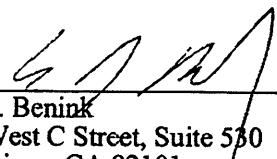


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