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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF LOS ANGELES**

22 PATRICK ECK, TYLER CHAPMAN,
23 BRENDAN EISAN, JUSTIN KRISTOPHER
24 LE-ROY, individually and on behalf of all others
25 similarly situated,

26 Plaintiffs,

27 v.

28 CITY OF LOS ANGELES, THE LOS
ANGELES DEPARTMENT OF WATER AND
POWER, LOS ANGELES DEPARTMENT OF
WATER AND POWER BOARD OF
COMMISSIONERS, and DOES 1 through 10,

Defendants.

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

Assigned to the Honorable Ann I. Jones

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES AND
PAYMENT OF SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: February 14, 2018
Time: 9:00 A.M.
Place: Dept. 308

Initial Complaint Filed: January 29, 2015

[Filed concurrently with Motion for Final Approval of Class Action Settlement and Declarations of Christopher P. Ridout, Robert R. Ahdoot, Eric J. Benink, Patrick Eck, Tyler Chapman, Brendan Eisan, Justin Kristopher Le-Roy and Richard M. Pearl]

1 **NOTICE OF MOTION**

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

3 **PLEASE TAKE NOTICE** that on February 14, 2018 at 9:00 a.m., in Department 308 of the
4 above-captioned Court before the Honorable Ann I. Jones, Plaintiffs Patrick Eck, Tyler Chapman,
5 Brendan Eisan, and Justin Kristopher Le-Roy (collectively, "Plaintiffs") will and hereby do move for:
6 (a) an Order awarding Class Counsel attorneys' fees in the amount of \$15,000,000, approximately 5%
7 of the Settlement's total monetary value of \$295 million or 29% of the \$52 million cash common fund,
8 and reimbursement of litigation expenses in the amount of \$79,836.02; and (b) Service Awards of
9 \$5,000 for each of the four Class Representatives. This motion is made on the grounds that the
10 requested fees and awards are reasonable and in accordance with California law.

11 This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and
12 Authorities attached hereto; the concurrently filed Declarations of Christopher P. Ridout, Robert R.
13 Ahdoot, Eric J. Benink, Walter P. McNeill, Steven Lowe, and Richard M. Pearl filed herewith; the
14 Amended Class Action Settlement and Stipulation (the "Settlement Agreement") previously filed with
15 the Court; the [Proposed] Final Order and Final Judgment; all papers filed in support of Plaintiffs'
16 Motion for Final Approval; the argument of counsel; all papers and records on file in this matter; and
17 such other matters as the Court may consider.

18 Respectfully submitted,

19 ZIMMERMAN REED, LLP

20 

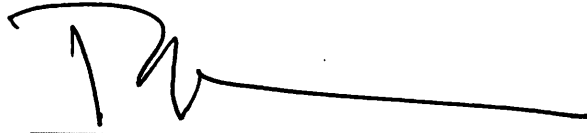
21 Dated: December 6, 2017

22 By:

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AHDOOT & WOLFSON, PC

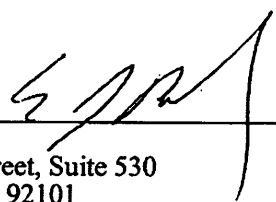


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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Over the course of nearly three years, Class Counsel¹ have tirelessly prosecuted Plaintiffs’
4 claims in this matter. The evaluation and investigation of Plaintiffs’ claims required Class Counsel to
5 immerse themselves in the esoteric world of municipal electric utility rate-making and analyze
6 numerous complex documents including Rate Ordinances and Transfer Ordinances (and the legislative
7 materials pertaining to them), rate-making documents like the Power System Rate Action Report - July
8 2015, and Comprehensive Annual Financial Reports (“CAFRs”). To help navigate through this
9 difficult subject matter, Class Counsel consulted with an expert and reviewed and analyzed documents
10 spanning years of City of Los Angeles (“City”) / LADWP practices. Not only was this work necessary
11 in order to fully evaluate Plaintiffs’ claims and litigate its merits, but it was also critical to negotiating
12 the terms and structure of the Settlement in a manner that fulfilled its intended objectives. After a
13 robust period of litigation, the Parties commenced discussion regarding a possible resolution. This led
14 to painstaking and complicated negotiations that spanned over a year, especially in light of the
15 complex issues and the fact the City Attorney’s Office had to coordinate with multiple stakeholders
16 within the City at each step. These efforts have been in addition to, *inter alia*, researching the claims,
17 drafting the complaints and amended complaints, propounding discovery, meeting and conferring on
18 discovery disputes, protesting the 2016 Rate Ordinance, opposing a motion for judgment on the
19 pleadings, mediating the case with the Honorable Carl J. West (Ret.) of JAMS, deposing, meeting
20 with, and interviewing various LADWP employees and executives, and keeping abreast of Proposition
21 218 and 26 issues and emerging law. In total, Class Counsel and their co-counsel have devoted 3,841
22 hours to investigation, prosecution, and settlement of this litigation.

23 Class Counsel’s efforts have delivered a remarkable \$295 million in credits and direct savings
24 to LADWP Retail Customers through Fiscal Year (“FY”) 2019-2020 (“19-20”). Specifically, the
25 Settlement: (i) recoups 100% of an 8% surcharge imposed on LADWP electricity customers pursuant

26 _____
27 ¹ Unless otherwise defined, all capitalized terms herein shall have the same meaning as defined
28 in the Amended Class Action Settlement and Stipulation filed with the Court on August 31, 2017
 (“Settlement Agreement”).

1 to the City’s 2016 Rate Ordinance, which the Plaintiffs allege is an illegal tax that violates Proposition
2 26 and Proposition 218, and permanently enjoins the future imposition of the 8% surcharge on that
3 ordinance, resulting in savings of approximately \$243 million through FY 19-20 to the Class
4 Members; (ii) establishes an interest bearing non-reversionary \$52 million cash Settlement Fund that
5 was established on October 20, 2017 (the Settlement Fund will be used to refund LADWP customers
6 after deduction of a \$650,000 payment to non-profit organizations, Settlement Administration
7 Expenses, attorneys’ fees and expenses awarded by the Court, and any Court awarded service awards
8 to the Class Representatives); (iii) enjoins future transfers of electric service revenue obtained pursuant
9 to the City’s 2016 electric rate ordinance; (iv) permanently limits transfer of future electric service
10 revenue obtained pursuant to the City’s 2008 electric rate ordinance to 8%; and (v) imposes certain
11 audit and verification requirements to ensure compliance with the terms of the Settlement. Thus, the
12 total monetary value of the Settlement is \$295 million. Moreover, the Settlement will provide further
13 substantial and direct financial benefit after FY 19-20 in the event the 2016 Rate Ordinance continues
14 to be in effect because the LADWP Retail Customers will continue to realize the 8% reduction in
15 amounts collected under the 2016 Rate Ordinance.

16 Given that the Court granted Defendants’ Motion for Judgment on the Pleadings (with leave to
17 amend), and ruled that Public Utilities Code (“PUC”) §10004.5 applies to the claims in this action,
18 these amounts represent all of the damages available at trial, which would entail significant litigation
19 risks and the possibility of a smaller recovery – or no recovery at all.

20 The spectacular result here would not have been possible but for Class Counsel’s extensive
21 investigative efforts and vigorous prosecution of this matter. The requested fee award of \$15,000,000
22 represents 5% of the Settlement’s \$295 million total monetary value and 29%² of the \$52 million cash
23 common fund, which is well within range of what courts have found to be reasonable in California.
24 (*See generally*, Declaration of Richard M. Pearl (“Pearl Decl.”), filed concurrently herewith.)³ For the

25 _____
26 ² These 5% and 29% figures are rounded numbers. The exact percentages of Plaintiffs’ fee
request are 5.08% of the Settlement’s total monetary value and 28.85% of the cash common fund.

27 ³ Mr. Pearl is the pre-eminent attorneys’ fees expert in California. Class Counsel do not seek
reimbursement of any fees charged by Mr. Pearl.
28

1 foregoing reasons and others set forth below, Class Counsel respectfully request that the Court grant
2 this motion for attorneys’ fees and reimbursement of expenses, and grant service awards to the
3 Plaintiffs to compensate them for their commitment and efforts on behalf of the Class Members.

4 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS**

5 **A. Class Counsel Conducted Extensive Factual and Legal Investigation, Consolidated**
6 **the Actions, Performed Discovery and Obtained Valuable Information, and**
7 **Diligently Litigated the Case**

8 Nearly three years ago, the first of three complaints was filed against Defendants, alleging
9 violations of Proposition 218 and 26.⁴ Prior to filing, Class Counsel and co-plaintiffs’ counsel
10 independently conducted an extensive investigation LADWP’s electricity rate making methods, and
11 various practices, analyzed the applicable law – which is and was in a state of flux,⁵ and reviewed and
12 analyzed thousands of complex documents including the various Rate Ordinances in effect.

13 (Declaration of Christopher P. Ridout (“Ridout Decl.”) ¶13; Declaration of Robert R. Ahdoot
14 (“Ahdoot Decl.”) ¶¶7, 11, 20; Declaration of Eric J. Benink (“Benink Decl.”) ¶4 (the Ridout, Ahdoot,
and Benink Declarations are filed concurrently herewith).)

15 As explained in the Motion for Final Approval, filed concurrently herewith, LADWP
16 electricity ratepayers are currently subject to the 2008 and 2016 Rate Ordinances. (Ridout Decl. ¶13;
17 Ahdoot Decl. ¶9; Benink Decl. ¶5.) The 2016 Ordinance replaced and superseded the 2012 Ordinance
18 effective April 15, 2016. (Ridout Decl. ¶13; Ahdoot Decl. ¶9; Benink Decl. ¶5.) Each of these
19 Ordinances embodied rate schedules that utilized “base rates” and “pass through charges” and
20 complex rate adjustment formulas. (Ridout Decl. ¶13; Ahdoot Decl. ¶10; Benink Decl. ¶5.) Class
21 Counsel carefully reviewed those Ordinances, various City Charter provisions (and their predecessors)
22 to understand the interplay between them and the manner by which the alleged illegal tax was

23 _____
24 ⁴ The Plaintiffs separately filed three complaints: *Chapman v. The City of Los Angeles, et al.*,
25 Case No. BS 153395 (“*Chapman*”); *Eck v. The City of Los Angeles, et al.*, Case No. BC 577028
26 (“*Eck*”); and *Eisan v. The City of Los Angeles, et al.*, Case No. BC 583788 (“*Eisan*”).

27 ⁵ Class Counsel have also kept abreast of various litigations against other municipalities, as they
28 relate to issues germane to this litigation, the entire time this matter has been pending before this
Court. Specifically, Class Counsel have researched other Proposition 218 and 26 cases throughout the
state and kept abreast of opinions and decisions that could impact issues in this action. (Ridout Decl.
¶2; Ahdoot Decl. ¶7.)

1 incorporated into each. Class Counsel also prepared and filed class claims in compliance with the
2 Government Claims Act. (Ridout Decl. ¶13; Ahdoot Decl. ¶12; Benink Decl. ¶5.)

3 After the filing of the Complaints, the five separate law firms that comprise Plaintiffs' Counsel
4 cooperated in organizing themselves into a working structure to effectively and efficiently prosecute
5 the claims on behalf of Plaintiffs and the proposed Class. (Ridout Decl. ¶14; Ahdoot Decl. ¶13;
6 Benink Decl. ¶6.) This effort resulted in the filing of a Consolidated Class Action Complaint in
7 October, 2015. (Ridout Decl. ¶14; Ahdoot Decl. ¶13; Benink Decl. ¶6.) Class Counsel also
8 negotiated and filed a Stipulated Protective Order at that time. (Ahdoot Decl. ¶13; Benink Decl. ¶6.)
9 Plaintiffs also served the first round discovery in this matter, to which Defendants provided
10 substantive responses in December 2015. (Ridout Decl. ¶14; Ahdoot Decl. ¶14; Benink Decl. ¶6.)

11 Class Counsel also monitored the City's 2016 Ordinance rate-making process which included
12 review of LADWP's slideshow presentations, Energy and Environment Committee actions, Office of
13 Public Accountability ("OPA") (*i.e.* ratepayer advocate) documents, a voluminous Power System Rate
14 Action Report dated July 2015 which included a Proposed Rate Plan, a Cost of Service Study, and
15 detailed financial projections for the electric utility. (Ridout Decl. ¶2; Ahdoot Decl. ¶15; Benink Decl.
16 ¶7.) Class Counsel and co-plaintiffs' counsel prepared protest letters and presented them in person at a
17 LADWP Board of Commissioners meeting and at a City Council meeting. (Ridout Decl. ¶15; Ahdoot
18 Decl. ¶16; Benink Decl. ¶7.)

19 After a stipulated briefing schedule, Defendants filed a Motion for Judgment on the Pleadings,
20 which Class Counsel opposed. Plaintiffs' Opposition was based on extensive research into the City's
21 arguments and PUC §10004.5. (Ridout Decl. ¶16; Ahdoot Decl. ¶17; Benink Decl. ¶8.) After oral
22 argument, the Court granted the Defendants' Motion ruling that PUC §10004.5 bars the claims alleged
23 in the Action, but provided Plaintiffs an opportunity to amend. (Ridout Decl. ¶16; Ahdoot Decl. ¶18;
24 Benink Decl. ¶8.) After again complying with the Government Claims Act by transmitting new claim
25 letters to the City, Class Counsel filed an Amended Class Action Complaint in July 2016. (Ahdoot
26 Decl. ¶19; Benink ¶8.)

27 Class Counsel engaged in significant and extensive fact and expert discovery. Plaintiffs served
28 (person most qualified) deposition notices to Defendants on numerous topics, Form Interrogatories,

1 Special Interrogatories, and Requests for Production of Documents, to which the City served initial
2 and supplemental written responses. (Ridout Decl. ¶17; Ahdoot Decl. ¶20; Benink Decl. ¶9.) Class
3 Counsel conducted an exhaustive review of tens of thousands of pages of documents, including
4 voluminous public records and City / LADWP financial statements, projections, and disclosures
5 concerning electricity rates, the costs related to providing electricity to LADWP customers,
6 ratemaking documents including the Power Action Report, and the terms and legislative history of the
7 various rate ordinances and transfer ordinances at issue. (Ridout Decl. ¶17; Ahdoot Decl. ¶20; Benink
8 Decl. ¶9.) Due to the complexities presented, the Parties engaged in numerous in-person and
9 telephonic meet-and-confer sessions, which resulted in both amended discovery responses (which
10 included important admissions from the Defendants), as well as an exchange of informal discovery
11 (which was later confirmed in detail) relating to the nature, methodology, and amounts of revenue
12 subject to City transfer under the 2008 Rate Ordinance, 2012 Rate Ordinance, and 2016 Rate
13 Ordinance. (Ridout Decl. ¶17; Ahdoot Decl. ¶22; Benink Decl. ¶9.)

14 Class Counsel also studied and reviewed the historic processes and mechanisms that the City
15 utilized to calculate the transfer of surplus power revenues going back to FY 2007-2008. (Ridout Decl.
16 ¶18; Ahdoot Decl. ¶23; Benink Decl. ¶10.) They studied and reviewed memoranda detailing the
17 Power System City Transfer Calculations, Board Approval Letters, DWP Resolutions, City
18 Ordinances, Comprehensive Annual Financial Reports (“CAFRS”), and public comments. (Ridout
19 Decl. ¶18; Ahdoot Decl. ¶23; Benink Decl. ¶10.)

20 Class Counsel’s investigation did not end there. In order to better understand the dynamics
21 within the City related to the transfer, Class Counsel inspected and analyzed issues regarding a 2009
22 request by the LADWP to modify a rate component, the Energy Cap Adjustment Factor (“ECAF”),
23 and the subsequent dispute between LADWP and the City Council in 2010 regarding the transfers of
24 electric fee revenue to the City’s Reserve Fund. (Ridout Decl. ¶19; Ahdoot Decl. ¶24; Benink Decl.
25 ¶11.) Class Counsel reviewed memos exchanged within the City and a report issued by third-party
26 consultant, Crowe Horwath, regarding the feasibility for the transfer of surplus power revenues.
27 (Ridout Decl. ¶19; Ahdoot Decl. ¶25; Benink Decl. ¶11.) Counsel also studied how those disputes
28 may have led the City to initiate two ballot measures in March 2011: Charter Amendment J that

1 approved a revision to Section 344 of the City Charter (the transfer provision), and Charter
2 Amendment I that created the Office of Public Accountability (OPA) which serves as an independent
3 watchdog to scrutinize water and electric rates. (Ridout Decl. ¶19; Ahdoot Decl. ¶26; Benink Decl.
4 ¶11.)

5 Other litigation related work performed by Counsel has included, *inter alia*: meetings, emails,
6 and phone calls between co-counsel and with defense counsel; preparing privileged memoranda;
7 communicating with the Class Representatives; and preparing case management statements and
8 attending case management hearings. (Ridout Decl. ¶20; Ahdoot Decl. ¶27; Benink Decl. ¶12.)

9 **B. Class Counsel Engaged in Arm’s Length and Settlement Negotiations For Over a**
10 **Year**

11 Following the Court’s granting of Defendants’ Motion for Judgment on the Pleadings, the
12 Parties began to explore the possibility of a settlement. The Parties engaged in exhaustive, informed,
13 and arm’s-length negotiations that lasted well over a year. After preliminary discussions, the Parties
14 agreed to mediate the matter with the Honorable Carl J. West (Ret.) of JAMS (Judge West previously
15 served on the Los Angeles County Superior Court’s Complex Litigation Program, where he presided
16 over thousands of class and mass tort actions). In preparation for the mediation, the Plaintiffs
17 submitted a lengthy and in-depth mediation brief detailing the merits of Plaintiffs’ claims and of class
18 certification, and of the potential damages in this matter. The June 20, 2016 full-day mediation with
19 Judge West was not immediately successful. It took numerous further discussions and negotiations,
20 with the mediator and City Attorney’s Office, to finally agree on the terms of a settlement in principle.
21 (*See generally* Ridout Decl. ¶¶26-28; Ahdoot Decl. ¶29; Benink Decl. Decl. ¶13.)

22 Although the parties reached an agreement in principle, many of the details of the Settlement
23 remained unresolved or in dispute. Over the next several months, the Parties worked diligently and
24 expended a substantial amount of time in an effort to finalize the terms of a written settlement
25 agreement and ancillary documents and the plan for Class Notice. These negotiations continued to be
26 difficult, and involved detailed lengthy repeated discussions regarding virtually every provision of the
27 Settlement Agreement and its many exhibits, including, *inter alia*, the structure of the Settlement
28 itself, the refund / credit process, and the Settlement’s verification processes. Indeed, it took herculean

1 efforts to negotiate a structure and terms and draft language satisfactory to both sides. Moreover, the
2 Parties meticulously negotiated, with consultation of the Settlement Administrator’s notice experts, the
3 language of the notice forms and the methodology of the Notice Plan. All the while, at every step, the
4 City Attorney’s Office had to coordinate with multiple stakeholders within the City, which further
5 complicated the process. (*See generally* Ridout Decl. ¶¶26-28; Ahdoot Decl. ¶31; Benink Decl. ¶14.)

6 At the same time, Class Counsel conducted confirmatory discovery to ensure that the terms of
7 the Settlement were fair, reasonable, and adequate and based on correct assumptions and facts.
8 Creating mechanisms to carry out the objective of the Settlement was incredibly time-consuming and
9 required countless revisions and dozens of calls and in-person meetings with various departments of
10 the City Attorney’s Office and LADWP officers. (*See generally* Ridout Decl. ¶21; Ahdoot Decl. ¶32;
11 Benink Decl. ¶15.)

12 Class Counsel retained a retired LADWP executive, Gregory Black, as a consulting expert, to
13 assist them with this work. (*See* Declaration of Greg Black (filed on June 6, 2017), lodged
14 concurrently herewith for the Court’s convenience) ¶¶1-3, Ex A for a description of Mr. Black’s
15 qualifications; Ridout Decl. ¶22; Ahdoot Decl. ¶33; Benink Decl. ¶16.) With the consultation of this
16 expert, Class Counsel conducted the painstaking confirmatory discovery process upon which the entire
17 settlement was contingent. Understanding the settlement benefits to ratepayers was essential. Class
18 Counsel carefully reviewed and studied financial projections prepared by the LADWP to ascertain
19 how much ratepayers would save if the 8% alleged illegal tax was eliminated from the 2016
20 Ordinance. Specifically, by analyzing the relevant documents, conducting numerous interviews with
21 LADWP employees and taking the deposition of LADWP’s CFO, Jeffery Peltola, Class Counsel was
22 able to confirm, *inter alia*: (i) the amounts collected under the 2016 Ordinance prior to the Date of
23 Cessation and of the future tax savings; and (ii) the mechanisms by which the refund / credit
24 provisions would be implemented, the future tax savings of Settlement’s terms would be conferred,
25 and the authentications / audits would be performed to ensure correct distribution of the benefits of the
26 Settlement. To accomplish this, Class Counsel had to achieve an in-depth understanding of the
27
28

1 complicated Rate Ordinances at issue and the minutiae of LADWP’s financing processes.⁶ In doing
2 so, Class Counsel participated in every detail of the matters set forth in the Declaration of Greg Black.
3 (*See generally* Ridout Decl. ¶¶22-24; Ahdoot Decl. ¶33; Benink Decl. ¶16.)

4 At all times during the months-long settlement discussions, the negotiations were at arm’s
5 length. Furthermore, it was always Plaintiffs’ and Class Counsel’s primary goal to achieve the
6 maximum substantive relief possible for the Class. (*See generally* Ridout Decl. ¶26; Ahdoot Decl.
7 ¶73; Benink Decl. ¶17.)

8 C. The *Abcarian* Action

9 As the Court was made aware, on September 21, 2016, a class action lawsuit was filed against
10 all of the members of the Board of the LADWP, Mayor Garcetti, and all members of the City Council,
11 individually, entitled *Abcarian, et al. v. Levine, et. al.*, United States District Court, Central District of
12 California, Case No. 16-cv-07106 FMO (JPRx) (“*Abcarian*”). *Abcarian* did not name the City or
13 LADWP as defendants. Instead, it contends the individual City official defendants committed fraud
14 and RICO violations, *inter alia*, with respect to the transfers at issue in this case. The *Abcarian*
15 Plaintiffs are represented by the well-known Yagman & Reichman firm. (*See generally* Ahdoot Decl.
16 ¶¶34-41, Ex B, *Abcarian* Complaint.)

17 Through their on-going monitoring of proceedings that may relate to this Action, Class
18 Counsel became aware of this Action two days after it was filed and thereafter began to monitor and
19 review the pleadings filed therein (*i.e.*, a Motion for Preliminary Injunction filed by the Plaintiffs and
20 oppositions thereto (*Abcarian*, ECF Nos. 10-17, 23-25) and a Motion to Dismiss or to Stay
21 Proceedings by the Defendants (*Id.* ECF Nos. 15-17, 26, 28-29, 32-33).

22 On November 14, 2017, the *Abcarian* plaintiffs filed a “Motion for Preliminary Injunction,
23 Enjoining and/or Staying State Court Action, *Eck v. City of Los Angeles*” (*sic*). (*Id.* ECF No. 14-17,

24 _____
25 ⁶ Such *minutiae* include but were not limited to LADWP’s methodology and process regarding
26 power rates and projected revenues, LADWP’s costs of providing electrical service, amounts of
27 revenue subject to transfer to the City under the 2008, 2012 and 2016 Rate Ordinances; analysis of the
28 employment of Pass-Through Charges associated with the 2008 Rate Ordinance (ECA, RCAF, ESA
and REA) and 2016 Rate Ordinance (the VEA, the CRPSEA, the VRPSEA, and the IRCA); and
analysis of past and proposed LADWP Board of Approval Letters, “Financial Case” models. (Ridout
Decl. ¶22, Ahdoot Decl. ¶33.)

1 26, 28-29; Ahdoot Decl. ¶36, Ex C, *Abcarian* Motion for Preliminary Injunction.) Class Counsel
2 appeared in the case on November 21, 2016, and filed an Opposition to the Motion to Enjoin or Stay
3 this Action. (*Id.* ECF No. 39-47; Ahdoot Decl. ¶37, Ex D, Opposition to *Abcarian* Motion for
4 Preliminary Injunction.) The City also opposed this Motion and the *Abcarian* Plaintiffs filed a Reply.
5 (*Id.* ECF No. 48-49; Ahdoot Decl. ¶38.) The Federal Court denied the Motion to stay this matter and,
6 in turn, stayed the *Abcarian* matter “pending resolution in Eck.” (*Id.* ECF No. 50.) Thereafter, the
7 *Abcarian* Plaintiffs mounted an unsuccessful appeal to the Ninth Circuit challenging the stay imposed
8 in their action. Class Counsel continued to monitor the filings in the Ninth Circuit and observed the
9 oral argument on-line. (Ahdoot Decl. ¶40; Benink Decl. ¶20.) After the Ninth Circuit affirmed the
10 *Abcarian* stay, the Plaintiffs filed a Motion to Lift the Stay which is currently under submission. (*Id.*
11 ECF No. 69.) Thus, Class Counsel also expended substantial time and resources on the *Abcarian*
12 litigation. (Ahdoot Decl. ¶41; Benink Decl. ¶20.)

13 **D. Preliminary Approval**

14 After the lengthy process that led to finalization of the Settlement, Class Counsel prepared and
15 filed the Motion for Preliminary Approval, which included voluminous supporting documents,
16 declarations, and exhibits. (Ridout Decl. ¶29; Ahdoot Decl. ¶49; Benink Decl. ¶21.) Then, after the
17 Court’s comments to the original Settlement, the Parties negotiated an Amended Settlement
18 Agreement, redrafted notice documents, filed another round of voluminous documents which included
19 the Amended Settlement and its exhibits, a supplement to the Preliminary Approval Motion, and
20 declaration in support with numerous exhibits. (Ahdoot Decl. ¶50; Benink Decl. ¶21.) As the Court is
21 aware, Class Counsel appeared at the hearing and argued in support of preliminary approval, which the
22 Court ultimately granted. (Ahdoot Decl. ¶51; Benink Decl. ¶21.)

23 **E. Supervision of Settlement Notice and Responding to Class Member Inquiries**

24 After the Court preliminarily approved the Settlement, Class Counsel worked closely with the
25 Settlement Administrator to supervise dissemination of notice to Class Members. These efforts included
26 review and drafting of the language and format of the website, the script for the automated response to
27 the toll-free number, the format of the Summary Notice, monitoring exclusion requests and objections,
28 and responding to hundreds of Class Members inquiries regarding the Settlement. This work continues

1 at the time of this filing. (*See generally* Ahdoot Decl. ¶52; Benink Decl. ¶22.)

2 **F. Class Counsel Achieved a Superb Result for the Class**

3 As noted above and as explained in greater detail in the Motion for Final Approval, the City will
4 provide \$295 million in total monetary value by reducing amounts charged to LADWP Retail Customers
5 by \$243 million through FY 19-20, and paying an additional \$52 million in cash into the Settlement
6 Fund—in addition to other significant non-monetary relief in the form of various injunctive and
7 intangible benefits that, if included in this analysis, substantially increase the Settlement’s value.

8 The Settlement recovers all damages available to the Class (both monetary and injunctive)
9 under the 2016 Rate Ordinance, and permanently enjoins the allegedly wrongful conduct with respect
10 to this Ordinance. (*See generally*, Motion For Final Approval of Class Action Settlement, filed
11 concurrently herewith, Sec.VI.B.1.)⁷

12 **G. Defendants’ Agreement Regarding Fees**

13 As required by the California Rules of Court, Rule 3.796(b), Class Counsel hereby discloses
14 that Defendants have agreed to not oppose any fee request in the amount of \$10 million or less.
15 (Settlement Agreement, ¶109.) In addition, Class Counsel have agreed to not seek an award for
16 attorneys’ fees and expenses in excess of \$15,080,000. (*Id.*)

17 **III. LEGAL ARGUMENT**

18 **A. Standard of Review**

19 Any ruling on the award of attorneys’ fees will be reviewed “on an abuse of discretion
20 standard. ‘The experienced trial judge is the best judge of the value of professional services rendered
21 in his court, and while his judgment is of course subject to review, it will not be disturbed unless the
22 appellate court is convinced that it is clearly wrong.’ ... ‘Fees approved by the trial court are presumed
23 to be reasonable, and the objectors must show error in the award.’” *Laffitte v. Robert Half*
24 *International Inc.* (2016) 1 Cal.5th 480, 488 (citations omitted).

25
26 _____
27 ⁷ The Settlement represents all of the damages that would be available at trial in light of the fact
28 that the Court ruled that PUC §10004.5 governs the claims in the action. (*See generally*, Motion For
Final Approval of Class Action Settlement, filed concurrently herewith, Sec.VI.B.1.)

1 There are two generally accepted methods for determining an award of attorneys’ fees under
2 California law: (1) the percentage-of-the-recovery method; and (2) the lodestar-multiplier method.
3 Typically, the percentage method is selected when a settlement, like the one at issue here, results in a
4 common fund.

5 As discussed below, Class Counsel’s fee request for \$15,000,000, plus unreimbursed expenses
6 of \$79,836.02, is appropriate under both the percentage-of-recovery standard and the lodestar method,
7 particularly given the \$295 million total monetary value of the Settlement, the serious risk of failure
8 and non-payment after nearly the three years of work that Class Counsel devoted to this case, the
9 superb skill Class Counsel applied in achieving settlement, and the substantial benefits Class Counsel
10 negotiated for the Class.

11 **B. The Requested Fees Are Reasonable Under the Percentage of the Common Fund**
12 **Method**

13 In 2016, the California Supreme Court held that an award of attorney’s fees may be based
14 *solely* on a percentage of the common fund created. *See Laffitte*, 1 Cal. 5th at 503 (“when class action
15 litigation establishes a monetary fund for the benefit of class members, and the trial court in its
16 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a
17 reasonable fee by choosing an appropriate percentage of the fund created.”). The common fund
18 doctrine is generally held applicable “where plaintiffs’ efforts have effected the creation or
19 preservation of an identifiable fund of money out of which the fees will be paid.” *Jordan v. Dep’t of*
20 *Motor Vehicles* (2002) 100 Cal.App.4th 431, 446-47 (citing *Serrano v. Priest* (1977) 20 Cal.3d 25, 37-
21 38). As the *Laffitte* Court explained, the advantages of the percentage method—including the relative
22 ease of calculation, alignment of incentives between counsel and the class, a better approximation of
23 market conditions in a contingency case, and the encouragement it provides counsel to seek an early
24 settlement and avoid unnecessarily prolonging the litigation—make the percentage method a “valuable
25 tool.” *Laffitte*, 1 Cal.5th at 503; *see generally* Pearl Decl. ¶¶21-23.)

26 According to Richard M. Pearl, an oft-cited and renowned authority, author and lecturer on
27 California attorneys’ fees who reviewed Class Counsel’s fee request in this matter, the percentage-of-
28 the-fund method is the better method to use in common fund cases, like this one, unless special

1 circumstances counsel otherwise (*e.g.*, the settlement calls for non-monetary relief that is more
2 substantial than the monetary relief but the non-monetary relief cannot be fairly valued).” (Pearl Decl.
3 ¶¶21 and ¶¶8-18, Ex A (experience).)⁸

4 When applying a percentage-of-the-fund methodology in a common fund case, it is not unusual
5 for a court to award fees of 30% of the common fund amount or higher. Pearl Decl. ¶¶24-41 (“A 29%
6 fee also is squarely in line with the range of reasonable attorneys’ fees awarded in other similar cases
7 in California and across the nation.”); *In re Natural Gas Trust Cases Price Indexing* (San Diego Cnty.
8 Super. Ct. Dec. 11, 2006) JCCP No. 4221/4224/4226/4428, 2006 Cal. Super. LEXIS 1302, at *7 (fee
9 awards of 25%-30% are “customary” in common-fund cases; awarding 29% of the \$92.1 million
10 settlement fund); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (awarding fees of 27.9%
11 and noting “[e]mpirical studies show that, regardless whether the percentage method or the lodestar
12 method is used, fee awards in class actions average around one-third of the recovery”); *In re Cal.*
13 *Indirect Purchaser X-Ray Film Antitrust Litig.* (Alameda Cnty. Super. Ct. Oct. 22, 1998) No. 960886,
14 1998 WL 1031494, at *8-9 (awarding 30% of fund and citing eleven other awards ranging from 30%-
15 45%); *see also* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee*
16 *Award*, 7 J. EMPIRICAL LEG. STUD. 811, 833 (2010) (analyzing 444 cases between 2006 and 2007 and
17 concluding that “[m]ost fee awards were between 25 percent and 35 percent”); Theodore
18 Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*,
19 7 J. EMPIRICAL LEG. STUD. 248, 262 (2010) (finding a similar range of fee awards).⁹

20 _____
21 ⁸ The percentage method is particularly appropriate in contingency litigation, as it “provides a
22 credible measure of the market value of the legal services provided” (which almost always involves
23 percentage fee agreements). *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 49. The
24 percentage method encourages the successful attorney to accept the contingency risk and delay in
25 payment, the importance of which California decisions have repeatedly emphasized. *See, e.g.*,
26 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136 (“lawyers generally will not provide legal
27 representation on a contingent basis unless they receive a premium for taking that risk”) (internal
28 quotations and citation omitted); *Lealao*, 82 Cal.App.4th at 47 (“attorneys providing the essential
enforcement services must be provided incentives roughly comparable to those negotiated in the
private . . . legal marketplace, as it will otherwise be economic for defendants to increase injurious
behavior”); *Melendres v. City of Los Angeles* (1975) 45 Cal.App.3d 267, 273 (“There must always be
a flavor of generosity in the awards . . . in order that an appetite for efforts may be stimulated.”).

⁹ A non-exhaustive list of other cases awarding a percentage of the common fund of one-third or
more include: *Laffitte*, 1 Cal.5th at 506 (affirming 1/3 fee); *Ethridge v. Universal Health Servs.* (L.A.
Cty. Super. Ct. (“LASC”)) No. BC391958 (33% award); *Magee v. Am. Residential Servs. LLC* (LASC)

1 Here, the percentage-of-the-fund method is most appropriate because the Settlement resulted in
2 creation of an identifiable non-reversionary \$52 million cash common fund from which tax refunds,
3 notice and administration costs, attorneys' fees and expenses and any incentive award would be paid.
4 See also Pearl Decl., ¶21 (“[I]t is my opinion that the percentage-of-the-fund is the better method to be
5 used in this common fund case.” (emphasis added)) Class Counsel’s request is reasonable as the fee
6 requested represents 5% of the Settlement’s total monetary value or 29% of the cash common fund,
7 which is lower than the typical 30% award and well within the range often approved by courts for
8 similar sized settlements. (See generally Pearl Decl. ¶¶24-41.)

9 The fee requested also reflects a fair approximation of the probable terms of a contingent fee
10 contract negotiated in private litigation. See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th
11 545, 557 (a common fund fee award should be “within the range of fees freely negotiated in the legal
12 marketplace in comparable litigation”); see also Lester Brickman, *ABA Regulation of Contingency
13 Fees: Money Talks, Ethics Walks*, 65 FORDHAM L. REV. 247, 248 (1996) (noting that “standard

14 No. BC423798 (33% award); *Blue v. Coldwell Banker Residential Brokerage Co.* (LASC) No.
15 BC417335 (33% award); *Silva v. Catholic Mortuary Servs., Inc.* (LASC) No. BC408054 (33% award);
16 *Mares v. BFS Retail & Comm. Operations LLC* (LASC) No. BC375967 (33% award); *Blair v. Jo-Ann
17 Stores, Inc.* (LASC) No. BC394795 (33% award); *Kenemixay v. Nordstroms, Inc.* (LASC) No.
18 BC318850 (50% award); *Barrett v. The St. John Companies* (LASC) No. BC354278 (33% award);
19 *Clymer and Benton v. Candle Acquisition Co.* (LASC) No. BC328765 (33% award); *Dunlap v. Bank of
20 America, N.A.* (LASC) No. BC328934 (33% award); *Case v. Toyohara America Inc.* (LASC) No.
21 BC328111 (33% award); *Sunio v. Marsh USA, Inc.* (LASC) No. BC328782 (33% award); *Chalmers v.
22 Elecs. Boutique* (LASC) No. BC306571 (33% award); *Crandall v. U-Haul Int’l, Inc.* (LASC) No.
23 BC178775 (40% award); *In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.* (Alameda Cnty.
24 Super. Ct. Oct. 22, 1998) No. 960886, 1998 WL 1031494, at *9 (setting forth a survey of awards
25 approved by trial courts in common fund cases, including *In re Milk Antitrust Litig.* (LASC 1998) No.
26 BC070061 (33-1/3% award); *In re Facsimile Paper Antitrust Litig.* (San Francisco Cty. Super. Ct.
27 (“SFSC”) 1997) Nos. 963598, 964899, and 967137 (33-1/3% fee award); *In re Liquid Carbon Dioxide
28 Cases* (San Diego Cty. Super. Ct. (“SDSC”) 1996) J.C.C.P. 3012 (33-1/3% award); *In re Cal. Indirect-
Purchaser Plasticware Antitrust Litig.* (SFSC 1995) Nos. 961814, 963201, and 963590 (33-1/3% fee
award); *Abzug v. Kerkorian* (LASC 1990) CA-000981 (45% fee award); *Haitz v. Meyer* (Alameda Cty.
Super. Ct. 1990) No. 572968-3 (45% fee award); *Steiner v. Whittacker Corp.* (LASC 1989) CA
000817 (35% fee award); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 U.S.
Dist. LEXIS 6607, at *47 (N.D. Cal. Jan. 14, 2013) (awarding attorneys’ fees in an amount equal to
30% of \$68 million settlement fund); *Pokorny v. Quixtar, Inc.*, No. C 07-0201 SC, 2013 U.S. Dist.
LEXIS 100791, at *5-7 (N.D. Cal. July 18, 2013) (awarding fees equal to 29.5% of \$55 million
common fund); *Castaneda v. Burger King Corp.*, No. 08-cv-4262-WHA, 2010 WL 2735091, at *5
(N.D. Cal. Jul. 12, 2010) (awarding 33%); *Antonopulos v. N. Am. Thoroughbreds, Inc.*, No. 87-
0979G(CM), 1991 WL 427893, at *4 (S.D. Cal. May 6, 1991) (awarding one-third); *In Re Public Serv.
Co. of New Mexico*, No. 91-0536M, 1992 WL 278452, at *12 (S.D. Cal. July 28, 1992) (awarding one-
third)].

1 contingency fees” are “usually thirty-three percent to forty percent of gross recoveries” [emphasis
2 omitted]; *Fernandez v. Victoria Secret Stores, LLC*, No. 06-cv-4149-MMM-SH, 2008 WL 8150856,
3 at *16 n.59 (C.D. Cal. July 21, 2008) (citing study showing that in some jurisdictions, standard
4 contingency fee rates are 33% if the case settles before trial, 40% if a trial commences, and 50% if trial
5 is completed). “It is indisputable that if Class Counsel had been able to negotiate a fee directly with
6 the class members, a 29% contingent fee would have been eminently reasonable, if not low, for a case
7 this complex and difficult.” (Pearl Decl. ¶¶42-45.)

8 **C. The Lodestar Method Confirms the Reasonableness of Class Counsel’s Requested**
9 **Fees**

10 The lodestar-multiplier method calculates the fee by multiplying the number of hours expended
11 by counsel by an hourly rate and then increasing or decreasing that amount by applying a positive or
12 negative multiplier. *Laffitte, supra*, 1 Cal.5th at 489. While it may be used as a cross-check on the
13 percentage of recovery method, it “does not override the trial court’s primary determination of the fee
14 as percentage of the common fund and thus does not impose an absolute maximum or minimum on the
15 potential fee award. . . . [I]t is not likely to radically alter the incentives created by a court’s use of the
16 percentage method.” *Id.* at 505.

17 Class Counsel’s combined lodestar of \$2,587,672.10 to date, prior to the filing of this motion,
18 confirms that the requested fee of 5% of the total \$295 million value of the Settlement / 29% of the \$52
19 million cash common fund is reasonable, as it reflects a 5.80 multiplier, which is appropriate in this
20 case when taking into account factors such as the “quality of the representation, the novelty and
21 complexity of the issues, the results obtained, and the contingent risk presented.” *Id.* at 489; *see* Pearl
22 Decl., ¶¶47-52 (“In summary, a 5.8 lodestar multiplier is well-supported and reasonable in this case
23 and fully supports a fee award of 5% of the Settlement’s total monetary value or 29% of the cash
24 common fund.”)

25 **1. Class Counsel’s Rates Are Reasonable**

26 In calculating a lodestar, the court first examines the prevailing hourly rate for similar work in
27 the pertinent geographic region. *Chodos v. Borman* (2014) 227 Cal.App.4th 76, 93 (citing *Serrano v.*
28 *Unruh* (1982) 32 Cal.3d 621, 640 n.31) (value of attorney services is variously defined as the “hourly

1 amount to which attorneys of like skill in the area would typically be entitled”) (citation omitted);
2 *PLCM Grp., Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-95 (using prevailing hourly rate in
3 community for comparable legal services even though party used in-house counsel).

4 Moreover, while use of the lodestar method may be employed as a cross-check, the Court is not
5 required to perform an exhaustive cataloguing and review of counsel’s hours. *Laffitte*, Cal.5d at 505
6 (“trial courts ... have generally not been required to closely scrutinize each claimed attorney-hour, but
7 have instead used information attorney time spent to ‘focus on the general question of whether the fee
8 award appropriately reflects the degree of time and effort expended by the attorneys.’”) citing
9 *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (where used as a mere cross-check,
10 the hours documented by counsel need not be exhaustively scrutinized by the district court); *In re*
11 *Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d 283, 342 (3d Cir. 1998)
12 (agreeing with district court that “detailed time summaries were unnecessary where, as here, it was
13 merely using the lodestar calculation to double check its fee award”); *Barbosa v. Cargill Meat*
14 *Solutions Corp.*, 297 F.R.D. 431, 451 (E.D. Cal. 2013) (“Where the lodestar method is used as a cross-
15 check to the percentage method, it can be performed with a less exhaustive cataloguing and review of
16 counsel’s hours.”); *see also, In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) (“The
17 lodestar cross-check calculation need entail neither mathematical precision nor bean-counting.”) If this
18 Honorable Court deems it necessary, however, Class Counsel’s contemporaneous billing records will
19 be made available, for *in camera* review, upon the Court’s request.¹⁰

20 Class Counsel include highly-regarded members of the bar with national practices and have
21 successfully brought to bear in this case their extensive experience in class actions and complex
22 litigation. (Ridout Decl. ¶¶31-52; Ahdoot Decl., ¶¶2-5, Ex A; Benink Decl. ¶27, Ex A.) Their
23 customary rates used to calculate the lodestar here are squarely in line with prevailing rates in this
24 jurisdiction, are paid by hourly paying clients of their firms, and/or have been approved by other
25

26 ¹⁰ Under California law, this Court may award attorneys’ fees without the attorneys’ timesheets.
27 *Concepcion v. Amscan Holdings* (2014) 223 Cal.App.4th 1309, 1324; *Raining Data v. Barrenchea*
28 (2009) 175 Cal.App.4th 1363, 1375-76 (“[t]he law is clear, however, that an award of attorney fees
may be based on counsel’s declarations, without production of detailed time records”).

1 courts. (Ahdoot Decl., ¶¶59-60; Benink Decl. ¶27.) Class Counsel’s rates are within the prevailing
 2 market rates in the geographical area for attorneys of comparable skill, experience, and reputation.¹¹
 3 (Pearl Decl. ¶¶56-62, 57 (“In my opinion, these hourly rates are well within the range of rates charged
 4 by comparably qualified Los Angeles area attorneys for comparably complex work.”) Moreover, these
 5 rates have been reviewed and deemed reasonable by Richard Pearl. (*Id.* at ¶62 (“Class Counsel’s rates
 6 are well within the range of non-contingent rates charged by comparably qualified attorneys for
 7 reasonably similar work.”))

8 **2. Class Counsel’s Lodestar Is Reasonable**

9 As explained in further detail above, and in the declarations of Christopher P. Ridout, Robert R.
 10 Ahdoot, and Eric J. Benink Decl., Class Counsel expended significant time litigating this case and
 11 securing the Settlement for the Class. The total lodestar of these five firms, to date, equals
 12 \$2,587,672.10.¹² The following charts summarize the lodestar by each firm:

Firm	Hours	Lodestar
Zimmerman Reed, LLP	1,242.3	\$945,852.50
Ahdoot & Wolfson, PC	996.4	\$732,042.00
Krause, Kalfayan, Benink & Slavens, LLP	879.0	\$566,450.00
McNeill Law Offices	511.5	\$242,187.60
Lowe & LeFan	212.0	\$101,140.00
Totals	3,841.2	\$2,587,672.10

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 14
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 16
 17
 18 (Ridout Decl. ¶¶53-55; Ahdoot Decl. ¶¶53-55; Benink Decl. ¶¶28-29.)

19 Class Counsel have submitted a declaration for their firms attesting that their reported hours are
 20 accurate and were reasonably incurred in connection with the prosecution and settlement of claims and
 21 that their firms require their attorneys and other professionals to maintain daily, contemporaneous time
 22 records. *Concepcion*, 223 Cal.App.4th at 1324 (“It is not necessary to provide detailed billing

23 ¹¹ Further, the rates are well within the range of rates awarded in class action litigation in
 24 Southern California. *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, &*
 25 *Prods. Liab. Litig.*, No. 8:10-ml-2151-JVS-FMO, 2013 U.S. Dist. Lexis 123298 (C.D. Cal. July 24,
 26 2013) (approving rate of \$950); *Banas v. Volcano Corp.*, 47 5 F. Supp. 3d 957 (N.D. Cal. 2014)
 (approving 2014 rate of \$1,095); *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-2509-LHK,
 2015 U.S. Dist. LEXIS 118052 (N.D. Cal. Sept. 2, 2015) (approving rates of \$975 an hour.)

27 ¹² These amounts will increase given the future work still needed to complete the Settlement
 28 process and gain final approval. In addition, should a Class Member file an objection or appeal the
 final order, Class Counsel will have to spend significant additional time addressing those matters.

1 timesheets to support an award of attorney fees under the lodestar method Declarations of counsel
2 setting forth the reasonable hourly rate, the number of hours worked and the tasks performed are
3 sufficient.”) (citing *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 254-55); *see also*
4 *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) (“An attorney’s sworn testimony
5 that, in fact, it took the time claimed ‘. . . is evidence of considerable weight on the issue of the time
6 required’”) (citation omitted; alterations in original).

7 These declarations set forth the hours of work and billing rates used to calculate the lodestars
8 above and describe how Class Counsel and their staffs have devoted a total of 3,841.2 hours to this
9 litigation, and have a total lodestar to approximately \$2,587,672.10. (Ridout Decl. ¶¶53-55; Ahdoot
10 Decl. ¶¶53-55; Benink Decl. ¶¶28-29.) All of this time was reasonable and necessary for the
11 prosecution of this action. (Pearl Decl. ¶¶53-55, 55 (“Based on that review, Class Counsel’s hours
12 appear to be consistent with the number of hours I would expect to have been spent in a case of this
13 duration, intensity, and complexity.”) Class Counsel took meaningful steps to ensure the efficiency of
14 their work and avoided duplication of efforts. (Ridout Decl. ¶53; Ahdoot Decl. ¶¶6, 13, 54, 58;
15 Benink Decl. ¶¶6, 23.)

16 Further, these amounts do not include the additional time that Class Counsel will have to spend
17 going forward in obtaining approval of and executing the Settlement, and additional work on any
18 appeal if necessary. Class Counsel will also expend additional time and effort monitoring the audits
19 and future credits implemented by LADWP going forward which Class Counsel anticipate will take at
20 least several months. (*See* Settlement Agreement, Ex B.) Class Counsel expect to maintain a high
21 level of oversight and involvement in this process; therefore, Class Counsel anticipate incurring
22 significant additional lodestar in the future. (Ahdoot Decl. ¶53.)

23 **3. The Requested 5.80 Multiplier Is Justified**

24 Class Counsel’s “unadorned lodestar reflects the general local hourly rate for a *fee-bearing*
25 *case*; it does *not* include any compensation for contingent risk, extraordinary skill, or any other factors
26 a trial court may consider” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138. To “approximate
27 market-level compensation for such services, which typically includes a premium for the risk of
28 nonpayment or delay in payment of attorney fees” (*id.*), courts employ fee enhancements, adjusting the

1 fee “based on consideration of factors specific to the case.” *PLCM Grp., Inc. v. Drexler* (2000) 22
2 Cal.4th 1084, 1095. Those factors include: (1) the results achieved on behalf of the Class; (2) the
3 novelty and difficulty of the questions involved and the skill displayed in presenting them; (3) the
4 response of the Class to the settlement, including a lack of objections to the settlement terms, and
5 particularly to the fee award; (4) counsel’s experience, reputation, and ability; (5) counsel’s preclusion
6 from other work; and (6) the contingent nature of the fee award. *See Ketchum*, 24 Cal. 4th at 1132;
7 *Cundiff v. Verizon Cal., Inc.* (2008) 167 Cal.App.4th 718, 724 n.3; *Consumer Privacy Cases*, 175
8 Cal.App.4th at 556. All of these factors weigh in favor of enhancement.

9 One of the primary fee enhancement factors is contingency risk. In *Ketchum*, the Supreme
10 Court explained that its purpose “is to bring the financial incentives for attorneys enforcing important .
11 . . . rights . . . into line with incentives they have to undertake claims for which they are paid on a fee-
12 for-services basis.” *Ketchum*, 24 Cal. 4th at 1132 (citation omitted). To achieve this purpose, the
13 “contingent fee *must be* higher than a fee for the same legal services paid as they are performed.” *Id.*
14 (emphasis added; citation omitted). The enhancement is “intended to approximate market-level
15 compensation for [the attorney’s] services, which [in contingency-fee cases] typically includes a
16 premium for the risk of nonpayment or delay in payment of attorney fees.” *Id.*; *Graham v.*
17 *DaimlerChrysler Corp.*, 34 Cal. 4th 553, 579 (2004) (“One of the most common fee enhancers . . . is
18 for contingency risk.”); *Greene v. Dillingham Constr. N.A., Inc.* (2002) 101 Cal.App.4th 418, 428-29
19 (trial court erred by refusing to consider contingency risk in awarding fees).

20 Class Counsel request a total award of \$15,000,000 for fees, which equates to a multiple of
21 5.80 on their lodestar, and reimbursement of \$79,836.02 in expenses.¹³ (Pearl Decl., ¶¶33-36, 48, 52
22 (“a 5.8 lodestar multiplier is well-supported and reasonable in this case and fully supports a fee award
23 of 5% of the Settlement’s total monetary value or 29% of the cash common fund.”)) Class Counsel
24 litigated for nearly three years and incurred a lodestar of \$2,587,672.10 and nearly \$80,000 in out-of-

25 _____
26 ¹³ Class Counsel have reached agreement among themselves as to the allocation of fees based on
27 their relative contributions to the litigation. All of the Plaintiffs have been informed and consented to
28 the agreement in writing, consistent with California Rules of Professional Conduct, rule 2-200 and
California Rules of Court, rule 3.769. (Ahdoot Decl. ¶66.)

1 pocket costs, while facing a serious risk that they would never be compensated *at all*. Class Counsel’s
2 experience, reputation, and ability to achieve the extraordinary results in class action and complex
3 litigation are evident (Pearl Decl. ¶¶30-32; *see also e.g.* Ahdoot Decl., Benink Decl., and Ridout
4 Decl.), and Class Counsel’s skill was put to the test in this case by a sophisticated defendant with
5 ample resources. Further, by virtue of their substantial investment of time and resources in the face of
6 substantial risk, Class Counsel were precluded from other work while they fought for the rights of Los
7 Angeles electricity customers. (Ridout Decl. ¶54; Ahdoot Decl. ¶56.)

8 The result achieved here also weighs heavily in favor of enhancement. Class Counsel obtained
9 *every* measure of damage available after the Court’s ruling barred claims based on the 2008 and 2012
10 Rate Ordinances. Thus, in light of the ruling, the terms of the Settlement are incredibly favorable,
11 providing approximately \$295 million in total monetary value, through Fiscal Year (“FY”) 2019-2020
12 (“19-20”), in refunds and direct savings to LADWP Retail Customers. The Settlement recoups 100%
13 of an 8% surcharge already collected by the City pursuant to the 2016 Rate Ordinance and permanently
14 enjoins the future imposition of the 8% surcharge on that ordinance, resulting in savings of
15 approximately \$243 million through FY 19-20 to the Class Members. The Settlement further
16 established an interest bearing \$52 million cash non-reversionary Settlement Fund, even before final
17 approval, and provides other unquantifiable injunctive relief. These amounts represent a significant
18 portion, if not all, of the damages available at trial. The claims process is simple and fair, and the
19 notice program was extraordinarily robust, and the response of the Class members has also been
20 overwhelmingly positive. Thus, The request multiplier is justified when taking into account the total
21 \$295 million monetary value of the Settlement.¹⁴

22
23 ¹⁴ In addition, the fact that the defendant here is a public entity has no bearing on the multiplier
24 requested by Class Counsel. *See Horsford v. Bd. of Trs. of Cal. State Univ.* (2005) 132 Cal.App.4th
25 359, 400 (holding it was an abuse of discretion to deny a positive multiplier based on the public entity
26 status of the defendant where the public entity chooses to defend its conduct through lengthy and
27 complex litigation); *Schmid v. Lovette* (1984) 154 Cal.App.3d 466, 476 (“The fact that the fee award
28 must be paid from the limited budget of the district and that the financial burden will therefore fall
upon the taxpayers also does not constitute a special circumstance rendering the fee unjust”). Indeed,
there is ample support for awarding a multiplier in a class action brought against a public defendant.
See Craft v. Cty. of San Bernardino, 624 F. Supp. 2d 1113, 1123-27 (C.D. Cal. 2008) (a \$6.375
million fee, 25% of a \$25.65 million fund, was awarded; 5.2 multiplier).

1 Finally, the requested multiplier of 5.80 is within the range of multiples commonly awarded to
2 counsel in class action litigation. *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4
3 or even higher.”); *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 (remanding for lodestar
4 enhancement of “two, three, four or otherwise”); *In re Cal. Indirect Purchaser X-Ray Film Antitrust*
5 *Litig.* (Alameda Cty. Super. Ct. Oct. 22, 1998) No. 960886, 1998 WL 1031494, at *10 (“Cases from
6 California and other jurisdictions reflect that multipliers of two or more are commonplace in class
7 actions.”).¹⁵

8 **D. Class Counsel’s Expenses Are Reasonable**

9 Attorneys in a class action may be reimbursed for reasonable costs incurred. *California Indirect*
10 *Purchaser X-Ray Film Antitrust Litig.*, 1998 WL 1031494, at *11. Class Counsel request
11 reimbursement for reasonable expenses incurred in litigating this matter. These costs were necessary

12 _____
13 ¹⁵ See also *Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (25% of
14 the fund award resulted in multiplier of approximately 5.2 and “ample authority for such awards
15 resulting in multipliers in this range or higher”); *In Re Merry-Go-Round Enterprise, Inc.*, 244 B.R. 327
16 (D. Md. 2000) (40% award for \$71 million fund awarded, resulting in a cross-check multiplier of
17 19.6); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. A 03-4578, 2005 WL 1213926
18 (E.D. Pa. May 19, 2005) (\$100 Million class fund in antitrust case, with an award of 20% of the fund,
19 which amounted to a multiplier of 15.6); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706 (E.D. Pa.
20 2001) (in \$193 Million fund, Class Counsel awarded fee of 25% of fund, which amounted to \$48
21 Million and represented a multiplier of 4.5-8.5, which the court described as “handsome but
22 “unquestionably reasonable”); *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001)
23 (5.7% of \$341,500,000 settlement awarded, resulting in multiplier of 7); *In re Rite Aid Corp. Sec.*
24 *Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005) (25% of \$126,800,000 fund awarded; multiplier of 6.96); *In*
25 *Re IDB Communication Group, Inc., Sec. Litig.*, No. 94-3618 (C.D. Cal. Jan. 17, 1997) (Hupp, J.),
26 cited at 19 Class Action Reports 472-73 (1996) (16.5% of \$83 Million fund awarded; multiplier of
27 6.2); *In re RJR Nabisco, Inc. Sec. Litig.*, No. 88-cv-7905, 1992 WL 210138 (S.D.N.Y. Aug. 24, 1992)
28 (25% of \$72.5 Million fee awarded; multiplier of 6); *In re Charter Commc’ns, Inc., Sec. Litig.*, No. 02-
cv-1186-CAS, 2005 WL 4045741, at *18 (E.D. Mo. June 30, 2005) (20% of fund awarded in recovery
of \$146,250,000, multiplier of 5.61); *Roberts v. Texaco, Inc.*, 979 F.Supp. 185, 197 (S.D.N.Y. 1997)
(fee award of approximately 16.7% of the fund, multiplier of 5.5, plus fund set aside to compensate for
post-settlement work); *Di Giacomo v. Plains All Am. Pipeline*, Nos. H-99-4137, H-99-4212, 2001 WL
34633373, at *31 (S.D. Tex. Dec. 18, 2001) (awarding 30% of \$29.5 Million fund; multiplier of 5.3);
In re Beverly Hills Fire Litig., 639 F. Supp. 915 (E.D. Ky. 1986) (fee of \$4,121,926 in settlement of
\$14 Million; multiplier of 5 for lead counsel); *Kuhnlein v. Dep’t of Revenue*, 662 So. 2d 309, 315 (Fla.
1995) (class fund award of 10% of \$188,100,000, resulting in multiplier of approximately 15, reduced
by Fla. Supreme Court to multiplier of 5 times lodestar, because lodestar was proper method under
Florida law); *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980 (D. Minn.
2005) (25% of \$80M settlement; multiplier of 4.7); *Wilson v. Bank of Am. Natl. Trust & Savs. Assn.*
(Cal. Super. Ct. Sept. 16, 1982) No. 643872 (multiplier of 10 times then hourly rate of \$150), cited in
Newberg, 14:6, p. 578 (the 25% is substantially below the average class fund fee); *Cosgrove v.*
Sullivan, 759 F. Supp. 166, 167 n.1 (S.D.N.Y. 1991) (1% of \$100 Million right to Medicare
reimbursement awarded, resulting in multiplier of 8.74). (Emphasis added.)

1 to the investigation, prosecution, and settlement of this action. (Ridout Decl. ¶55; Ahdoot Decl. ¶67;
 2 Benink Decl. ¶28.) Class Counsel also anticipate incurring additional expenses through the end of the
 3 claims process, for which Class Counsel will not seek additional reimbursement. To date, Class
 4 Counsel’s reasonable expenses are as follows:

Description	Amount
Attorney Service and Filing	\$5,716.32
Case Anywhere	\$4,115.60
Courtcall	\$344.40
Experts	\$53,095.00
Lasc Website Fee	\$28.00
Mediation Fees	\$4,850.00
Messenger	\$449.28
Outside Vendor Printing	\$781.63
Pacer	\$56.40
Parking	\$412.45
Postage	\$90.31
Transcripts	\$1,202.51
Travel	\$8,694.12
Total	\$79,836.02

15 (Ridout Decl. ¶55; Ahdoot Decl. ¶67; Benink Decl. ¶29.) Plaintiffs therefore request reimbursement
 16 from the common fund for out-of-pocket expenses incurred by Class Counsel during this litigation, in
 17 the amount of \$79,836.02. The majority of these costs are attributable to professional fees paid by
 18 Counsel to the Mediator and Experts. These, as well as the other categories of costs incurred by Class
 19 Counsel (filing fees, court report transcript fees, and travel costs, among others), are the common
 20 types of costs regularly billed to paying clients and recoverable in cases where statutory cost-shifting
 21 provisions are available, as they are here. These costs and expenses are fully documented and
 22 reasonable. (Ridout Decl. ¶55; Ahdoot Decl. ¶67; Benink Decl. ¶29.) Materials documenting these
 23 expenses are available for *in camera* review upon the Court’s request.

24 **E. The Requested Service Awards to Plaintiffs Are Reasonable**

25 Service awards are “fairly typical” in class action cases. *See In re Cellphone Fee Termination*
 26 *Cases* (2010) 186 Cal.App.4th 1380, 1393; *see also* Weil & Brown, CAL. PRACTICE GUIDE: CIVIL
 27 PROCEDURE BEFORE TRIAL (The Rutter Group 2009) ¶ 14:146.10, p. 14–88 (“Since without a named
 28 plaintiff there can be no class action, such compensation as may be necessary to induce him to

1 participate in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-
2 specific expenses, such as long-distance phone calls, which are reimbursable.”). These awards “are
3 discretionary, and are intended to compensate class representatives for work done on behalf of the
4 class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
5 to recognize their willingness to act as a private attorney general.” *Cellphone Fee Termination Cases*,
6 186 Cal.App.4th at 1393-94 (citing *Rodriquez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir.
7 2009)).

8 The named Plaintiffs here invested significant time and effort in order to vindicate the rights of
9 Lo Angeles electricity customers. (*See generally* Declarations of Patrick Eck, Tyler Chapman,
10 Brendan Eisan, and Justin Kristopher Le-Roy, filed concurrently herewith.) Class Counsel request a
11 \$5,000 service award for each Class Representative, an amount which is commonplace, even in cases
12 resolved in much shorter periods of time and providing less remarkable results than the \$52 million
13 Settlement Fund and the total settlement value of \$295 million. *See Cellphone Fee Termination Cases*,
14 186 Cal.App.4th at 1393-95 (affirming the trial court’s grant of four \$10,000 incentive awards for a
15 \$21,000,000 settlement fund); *Blacksher*, 2008 Cal. Super. LEXIS 1464, at *10-11 (incentive award of
16 \$10,000 was reasonable for assisting in two years of litigation); *Antelope Valley Groundwater Cases v.*
17 *Diamond Farming Co.* (L.A. Cty. Super. Ct. Mar. 4, 2011) JCCP No. 4408, 2011 Cal. Super. LEXIS
18 739, at *17 (\$10,000 award); *Eates v. KB Home* (Alameda Cty. Super. Ct. June 16, 2011) No. RG-08-
19 384954, 2011 Cal. Super. LEXIS 810, at *6-7 (\$10,000 award).



20 **IV. CONCLUSION**

21 For the foregoing reasons, Class Counsel respectfully request an award of \$15 million for
22 attorneys’ fees, reimbursement of \$79,836.02 in expenses, and Service Awards of \$5,000 each to
23 Patrick Eck, Tyler Chapman, Brendan Eisan, and Justin Kristopher Le-Roy, to be paid from the
24 Settlement Fund.


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Respectfully submitted,
ZIMMERMAN REED, LLP

Dated: December 6, 2017

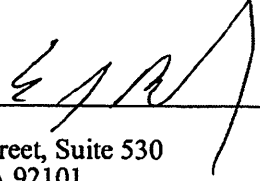
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