

1 ZIMMERMAN REED, LLP  
2 CHRISTOPHER P. RIDOUT (SBN 143931)  
3 [christopher.ridout@zimmreed.com](mailto:christopher.ridout@zimmreed.com)  
4 CALEB MARKER (SBN 269721)  
5 [caleb.marker@zimmreed.com](mailto:caleb.marker@zimmreed.com)  
2381 Rosecrans Avenue, Suite 328  
Manhattan Beach, CA 90245  
Tel: (877) 500-8780; Fax: (877) 500-8781

6 KRAUSE, KALFAYAN, BENINK &  
7 SLAVENS, LLP  
8 ERIC J. BENINK (SBN 187434)  
9 [eric@kkbs-law.com](mailto:eric@kkbs-law.com)  
10 VINCENT D. SLAVENS (SBN 217132)  
11 [vslavens@kkbs-law.com](mailto:vslavens@kkbs-law.com)  
550 West C Street, Suite 530  
San Diego, CA 92101  
Tel: (619) 232-0331; Fax: (619) 232-4019

AHDOOT & WOLFSON, PC  
ROBERT R. AHDOOT (SBN 172098)  
[rahdoot@ahdootwolfson.com](mailto:rahdoot@ahdootwolfson.com)  
TINA WOLFSON (SBN 174806)  
[twolfson@ahdootwolfson.com](mailto:twolfson@ahdootwolfson.com)  
THEODORE W. MAYA (SBN 223242)  
[tmaya@ahdoowolfson.com](mailto:tmaya@ahdoowolfson.com)  
10728 Lindbrook Drive  
Los Angeles, California 90024  
Tel: (310) 474-9111; Fax: (310) 474-8585

11 *Attorneys for Plaintiffs*

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  
16 LE-ROY, individually and on behalf of all others  
similarly situated,

17 Plaintiffs,

18 v.

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

21 Defendants.  
22  
23  
24  
25  
26  
27  
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Case No.: BC577028 (Lead)  
Consolidated with Case No.: BS153395 &  
Case No.: BC583788

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

**DECLARATION OF ERIC J. BENINK IN  
SUPPORT OF FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
MOTION FOR ATTORNEYS' FEES &  
REIMBURSEMENT OF EXPENSES AND  
PAYMENT OF SERVICE AWARDS**

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

Initial Complaint Filed: January 29, 2015

[Filed Concurrently with Motions for Final  
Approval of Class Action Settlement and for  
Attorneys' Fees & Expenses and Service  
Awards]

1 I, Eric J. Benink, declare as follows:

2 1. I am one of the attorneys for Plaintiffs and was provisionally designated as one of  
3 the Class Counsel in the above-entitled action. I am a partner at my law firm Krause Kalfayan  
4 Benink & Slavens, LLP, a member of the California State Bar, and have been duly admitted to  
5 practice law in California since 1997. I submit this declaration in support of Plaintiffs' Motion for  
6 Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees and  
7 Expenses and Service Awards. I have personal knowledge of the facts stated below and if called  
8 upon, I could and would testify competently thereto.

9 2. I have been intimately involved in all aspects of this litigation since its inception. I  
10 have observed the work of the other attorneys who have worked on this action, including my  
11 partner Vincent Slavens; co-Class Counsel Robert Ahdoot and Christopher Ridout; and Walter  
12 McNeill and his associates (referred hereto together as "Plaintiffs' Counsel").

13 3. On January 29, 2015 Plaintiff Tyler Chapman filed the first of three complaints  
14 against Defendants<sup>1</sup> alleging violations of Proposition 218 and 26, *Chapman v. The City of Los*  
15 *Angeles, et al.* Case No. BS153395. On April 1, 2015, my client Patrick Eck filed *Eck v. City of*  
16 *Los Angeles, et. al.*, Case No. BC577028. On June 2, 2015, Brendan Eisen filed *Eisan v. City of*  
17 *Los Angeles, et. al.*, Case No. BC583788. The Court later consolidated these case into this single  
18 action.

19 4. Prior to filing the *Eck* case, my firm conducted an extensive investigation of  
20 LADWP's electricity rate making methods and various practices, analyzed the applicable law –  
21 which is and was in a state of flux – and reviewed and analyzed complex documents including the  
22 various Rate Ordinances in effect.

23 5. As explained in the Motion for Final Approval, filed concurrently herewith,  
24 LADWP electricity ratepayers are currently subject to the 2008 and 2016 Rate Ordinances. The  
25

26 \_\_\_\_\_  
27 <sup>1</sup> Unless defined herein, capitalized terms have the same meaning assigned to them in the  
28 Amended Class Action Settlement and Stipulation, Section II entitled "Definitions," filed August  
31, 2017.

1 2016 Ordinance replaced and superseded the 2012 Ordinance effective April 15, 2016. Each of  
2 these Ordinances embodied rate schedules that utilized “base rates” and “pass through charges”  
3 and complex rate adjustment formulas. Plaintiffs’ counsel carefully reviewed those Ordinances,  
4 and various City Charter provisions (and their predecessors) to understand the interplay between  
5 them and the manner by which the alleged illegal tax was incorporated into each. Plaintiffs’  
6 Counsel also prepared and filed class claims in compliance with the Government Claims Act.

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

14         7. Plaintiffs’ Counsel monitored the City’s 2016 Ordinance rate-making process  
15 which included review of LADWP’s slideshow presentations, Energy and Environment  
16 Committee actions, Office of Public Accountability (“OPA”) (i.e. ratepayer advocate)  
17 documents, a voluminous Power System Rate Action Report dated July 2015 which included a  
18 Proposed Rate Plan, a Cost of Service Study, and detailed financial projections for the electric  
19 utility. Plaintiffs’ Counsel also prepared protest letters and presented them in person at a  
20 LADWP Board of Commissioners meeting and at a City Council meeting.

21         8. After a stipulated briefing schedule, Defendants filed a Motion for Judgment on  
22 the Pleadings, which Plaintiffs’ Counsel opposed. Plaintiffs’ Opposition was based on extensive  
23 research into the City’s arguments and Public Utility Code (“PUC”) §10004.5. Thereafter, after  
24 oral argument, the Court granted the Defendants’ Motion ruling PUC §10004.5 bars the claims  
25 alleged in the Action, but provided Plaintiffs an opportunity to amend. After again complying  
26 with the Government Claims Act by transmitting new claim letters to the City, Plaintiffs’  
27 Counsel filed an Amended Class Action Complaint in July 2016.  
28

1           9.       Plaintiffs’ Counsel engaged in significant and extensive fact and expert discovery.  
2 Plaintiffs served (person most knowledgeable) deposition notices to Defendants on numerous  
3 topics, Form Interrogatories, Special Interrogatories, and Requests for Production of Documents,  
4 to which the City served initial and supplemental written responses. Plaintiffs’ Counsel  
5 conducted an exhaustive review of thousands of pages of documents, including voluminous  
6 public records and City / LADWP financial statements, projections, and disclosures concerning  
7 electricity rates, the costs related to providing electricity to LADWP customers, ratemaking  
8 documents including the Power Action Report, and the terms and legislative history of the  
9 various rate ordinances and transfer ordinances at issue. Due to the complexities presented, the  
10 Parties engaged in numerous in-person and telephonic meet-and-confer sessions, which resulted  
11 in both amended discovery responses (which included important admissions from the  
12 Defendants), as well as an exchange of informal discovery (which was later confirmed in detail)  
13 relating to the nature, methodology and amounts of revenue subject to City transfer under the  
14 2008 Rate Ordinance, 2012 Rate Ordinance, and 2016 Rate Ordinance.

15           10.       Plaintiffs’ Counsel also studied and reviewed the historic processes and  
16 mechanisms that the City utilized to calculate the transfer of surplus power revenues going back  
17 to Fiscal Year 2007-2008. They studied and reviewed memos detailing the Power System City  
18 Transfer Calculations, Board Approval Letters, DWP Resolutions, City Ordinances,  
19 Comprehensive Annual Financial Reports (“CAFRS”) and public comments.

20           11.       Our investigation did not end there. In order to better understand the dynamics  
21 within the City related to the transfers, Plaintiffs’ Counsel inspected and analyzed issues  
22 regarding a 2009 request by the LADWP to modify a rate component, the Energy Cap  
23 Adjustment Factor (“ECAF”), and the subsequent dispute between LADWP and the City  
24 Council in 2010 regarding the transfers of electric fee revenue to the City’s Reserve Fund.  
25 Materials reviewed included 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 Counsel also studied how those disputes may have led the City to initiate two ballot measures in  
28

1 March 2011: Charter Amendment J that approved a revision to Section 344 of the City Charter  
2 (the transfer provision) and Charter Amendment I that created the Office of Public  
3 Accountability (OPA) which serves as an independent watchdog to scrutinize water and electric  
4 rates.

5 12. Other litigation related work performed by Counsel has included: meetings,  
6 emails, and phone calls between co-counsel and with defense counsel; preparing privileged  
7 memoranda; communicating with the Class Representatives; preparing case management  
8 statements and attending case management hearings.

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

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

1 sides. Moreover, the Parties meticulously negotiated, with consultation of the Settlement  
2 Administrator's notice experts, the language of the notice forms and the methodology of the  
3 Notice Plan. All the while, at every step, the City Attorney's Office had to coordinate with  
4 multiple stakeholders within the City which further complicated the process.

5 15. At the same time Class Counsel conducted confirmatory discovery to ensure that  
6 the terms of the Settlement were fair, reasonable and adequate and based on correct assumptions  
7 and facts. Creating mechanisms to carry out the objective of the settlement was incredibly time-  
8 consuming and required countless revisions and dozens of calls or in-person meetings with  
9 various departments of the City Attorney's Office and LADWP officers.

10 16. In this effort, Class Counsel retained a former LADWP executive, Gregory Black,  
11 as a consulting expert, to assist them with this work. With the consultation of this expert, Class  
12 Counsel conducted the painstaking confirmatory discovery process upon which the entire  
13 settlement was contingent. Understanding the settlement benefits to ratepayers was essential.  
14 Class Counsel carefully reviewed and studied financial projections prepared by the LADWP to  
15 ascertain how much ratepayers would save if the 8% alleged illegal tax was eliminated from the  
16 2016 Ordinance. Specifically, by analyzing the relevant documents, conducting numerous  
17 interviews with LADWP employees and taking the deposition of LADWP's CFO, Jeffery  
18 Peltola, Plaintiffs were able to confirm, *inter alia*, (a) the amounts (i) collected under the 2016  
19 Ordinance prior to the Date of Cessation and (ii) of the future tax savings; and (b) the  
20 mechanisms by which (i) the refund / credit provisions would be implemented, (ii) the future tax  
21 savings of Settlement's terms would be conferred, and (iii) the authentications / audits would be  
22 performed to ensure correct distribution of the benefits of the Settlement. To accomplish this,  
23 Plaintiffs' Counsel achieved an in-depth understanding of the complicated Rate Ordinances at  
24 issue and the minutia of LADWP's financial projection processes. In doing so, Class Counsel  
25 participated in every detail of the matters set forth in the Declaration of Greg Black lodged  
26 herewith.  
27

28 17. At all times during the months-long settlement discussions, the negotiations were

1 at arms' length. Furthermore, it was always Plaintiffs and Class Counsel's primary goal to  
2 achieve the maximum substantive relief possible for the Class.

3 18. As the Court was made aware, on September 21, 2016 a class action lawsuit was  
4 filed against all of the members of the Board of the LADWP, Mayor Garcetti, and all members  
5 of the City Council, individually, entitled *Abcarian, et al. v. Levine, et. al.*, United States District  
6 Court, Central District of California, Case No. 16-cv-07106 FMO (JPRx) ("*Abcarian*").  
7 *Abcarian* did not name the City or LADWP as a defendant. Instead, it contends the individual  
8 City official defendants committed fraud and RICO violations, *inter alia*, with respect to the  
9 transfers at issue in this case. The *Abcarian* Plaintiffs are represented by the well-known  
10 Yagman & Reichman firm.

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

16 20. On November 14, 2017, the *Abcarian* plaintiffs filed a "Motion for Preliminary  
17 Injunction, Enjoining and/or Staying State Court Action, *Eyk v. City of Los Angeles*" (sic). (*Id.*  
18 ECF No. 14-17, 26, 28-29.) Class Counsel appeared in the case on November 21, 2016, and filed  
19 an Opposition to the Motion to Enjoin or Stay this Action. (*Id.*, ECF No. 39-47.) The City also  
20 opposed this Motion and the *Abcarian* Plaintiffs filed a Reply. (*Id.* ECF No. 48-49.) The U.S.  
21 District Court denied the Motion to stay this matter and, in turn, stayed the *Abcarian* matter  
22 "pending resolution of Eck." (*Id.* ECF No. 50.) Thereafter, the *Abcarian* Plaintiffs mounted an  
23 unsuccessful appeal to the Ninth Circuit challenging the stay imposed in their action. Class  
24 Counsel continued to monitor the filings in the Ninth Circuit and observed the oral argument on-  
25 line. After the Ninth Circuit affirmed the *Abcarian* stay, the *Abcarian* Plaintiffs filed a Motion to  
26 Lift the Stay which is currently under submission. (*Id.* ECF No. 69.) Thus, Class Counsel also  
27 expended substantial time and resource on the *Abcarian* litigation.  
28

1           21.     After the lengthy process that led to finalization of the Settlement, much work  
2 remained for Class Counsel. Class Counsel prepared and filed the Motion for Preliminary  
3 Approval, which included voluminous supporting documents, declarations, and exhibits. Then,  
4 after the Court’s comments to the original Settlement, the Parties negotiated an Amended  
5 Settlement Agreement, redrafted notice documents, filed another round of voluminous  
6 documents which included the Amended Settlement and its exhibits, a supplement to the  
7 Preliminary Approval Motion, and declaration in support with numerous exhibits. As the Court  
8 is aware, Class Counsel appeared at the hearing and argued in support of preliminary approval,  
9 which the Court ultimately granted.

10           22.     After the Court preliminarily approved the Settlement, Class Counsel worked  
11 closely with the Settlement Administrator to supervise dissemination of notice to Class  
12 Members. These efforts included review and drafting of the language and format of the website,  
13 the script for the automated response to the toll-free number, the format of the Summary Notice,  
14 monitoring exclusion requests and objections, and responding to hundreds of Class Members  
15 inquiries regarding the Settlement. This work continues at the time of this filing.

16           23.     At all times Class Counsel coordinated their efforts to be efficient as practicable  
17 and to avoid duplication of efforts.

18           24.     In addition to state courts, I am admitted to practice law before the following  
19 federal courts: United States District Court for the Southern, Central, and Northern Districts of  
20 California; and the United States Court of Appeals for the Ninth Circuit.

21           25.     I have never faced any disciplinary action or received any sanction from a state  
22 bar association for misconduct or an ethical violation.

23           26.     My firm’s involvement in this matter has included, but has not been limited to,  
24 the following tasks:

25                 a.     Conducting pre-suit and continuing investigation into the claims contained in  
26 the operative complaint, and reviewing numerous documents relating to Defendants;

27                 b.     Strategizing case theories with co-counsel;  
28

- 1 c. Meeting and conferring with co-counsel on an ongoing basis;
- 2 d. Meeting and conferring with opposing counsel on an ongoing basis;
- 3 e. Discussing case matters with the named plaintiffs Patrick Eck and Justin  
4 Kristopher Le-Roy;
- 5 f. Participating in the drafting and reviewing of numerous pleadings and  
6 settlement documents as well as performing requisite legal research;
- 7 g. Preparing protest letters to the LADWP and City Council and attending a  
8 LADWP hearing in person to protest together with attorney Walter McNeill;
- 9 h. Preparing an opposition to the motion for judgment on the pleadings and  
10 arguing that motion at the hearing;
- 11 i. Participating in the drafting and review of Form Interrogatories, Requests for  
12 Admission, Special Interrogatories and Requests for Production of Documents;
- 13 j. Preparing for and participating in numerous in-person and telephonic meet-and-  
14 confers regarding discovery responses;
- 15 k. Monitoring developments in the area of Proposition 218 and 26 and cases based  
16 thereon;
- 17 l. Preparing for, attending, and participating in numerous hearings before this  
18 Court;
- 19 m. Preparing for and participating in an in-person mediation session before the  
20 Honorable Carl J. West (Ret.) and numerous telephone conferences relating thereto;
- 21 n. Retaining and conferring with expert witness Mr. Greg Black, and addressing  
22 discovery matters and document review pertinent to his declaration filed with this Court;
- 23 o. Participating in and handling settlement negotiations both at JAMS and  
24 thereafter with Defendants and Defendants' counsel;
- 25 p. Participating in the drafting and review of confirmatory discovery after a  
26 tentative settlement was reached;
- 27 q. Preparing for and taking the deposition of LADWP CFO Jeffrey Peltola; and  
28

1           r.       Reviewing Defendants’ voluminous documentation regarding the nature,  
2 methodology, and amounts of revenue subject to the City Transfer under the 2008 Rate Ordinance, 2012  
3 Rate Ordinance, and 2016 Rate Ordinance, voluminous documentation regarding the methods and  
4 calculations used by the LADWP to set Power Rates to its customers, disputes between LADWP and  
5 the City regarding transfers, the rate-making process with respect to the 2016 Ordinance, and relevant  
6 financial records, and discussing their significance with Mr. Black and co-counsel.

7           27.     I believe that hourly rates for my partner Vincent Slavens and myself at \$625 and  
8 \$650 respectively in this matter are reasonable based on our years of experience, qualifications,  
9 and my understanding of rates for attorneys with class action experience and similar  
10 qualifications in the Southern California region. I have been practicing law for 20 years in the  
11 area of complex litigation, including in the area of consumer protection, securities, Proposition  
12 218 and 26, and class actions. Mr. Slavens has been practicing for 16 years and has similar  
13 experience. Attached hereto as **Exhibit A** is our Firm Résumé which sets forth out firm’s and  
14 our attorney’s experiences, qualifications, and background in the area of class actions and  
15 Proposition 26 and Proposition 218 litigation. Many of the cases we have prosecuted have been  
16 similar to the present matter in that they involved hidden surcharges in electricity or other utility  
17 fees. I have prosecuted at least 20 Proposition 218 or 26 cases including a class action against  
18 the City of San Diego that recovered \$40 million for sewer ratepayers. I was named to the Super  
19 Lawyers list from 2014 through 2017. On September 18, 2017, the Superior Court of California  
20 for the County of Riverside recently granted my firm’s fee application in its entirety in a  
21 Proposition 218 class action that included a lodestar that we presented to the Court with a \$600  
22 hourly rate for Mr. Slavens and me. (*Milo v. Coachella Valley Water District*, Riverside  
23 Superior Court, Case No. PSC1600403). In many of our Proposition 218 cases, we negotiate  
24 fees with government defendants after settlement or upon favorable adjudications. Earlier this  
25 year, we negotiated a \$600 hourly rate with the City of Glendale following this Court’s granting  
26 of a writ petition in a non-class action Proposition 218 water fee case. (*Glendale Coalition for  
27 Better Government v. City of Glendale*, Los Angeles Superior Court, Case No. BS153253). I  
28

1 believe our combined, unique expertise both in the area of class actions and in Proposition  
2 218/26 fee/tax litigation warrants a \$625 and \$650 hourly rate for Mr. Slavens and myself,  
3 respectively and is in line with attorneys with similar qualifications.

4 28. Our firm practice is, and was during all times in this case, to maintain  
5 contemporaneous time records for the legal work we perform. This means that we record our  
6 time while the work is being performed or as soon as it is practicable to do so. We record our  
7 time in a program called TimeSlips at 1/10 hour intervals. I have personally reviewed the  
8 detailed time records recorded in TimeSlips on a monthly basis. The time records reflect time  
9 that was necessary and reasonable for the prosecution of this matter. The total amount of  
10 professional fees billed through November 15, 2017 is \$566,892.50. The following chart  
11 reflects the number of hours expended by Vincent Slavens and myself through November 15,  
12 2017 as reflected in TimeSlips:

<b>NAME</b>	<b>POSITION</b>	<b>EXPERIENCE</b>	<b>BILLING RATE</b>	<b>HOURS BILLED</b>
Eric J. Benink	Partner	20 years	\$650	683.2
Vincent D. Slavens	Partner	16 Years	\$625	196.5
<b>TOTAL</b>				879.7

21  
22 29. The following chart is a categorization of expenses that my firm reasonably  
23 incurred in the prosecution of this action. I have excluded copy, scanning and printing costs  
24 incurred in-house, legal research charges (i.e. Westlaw), and meal expenses from this chart.

<b>CATEGORY</b>	<b>AMOUNT</b>
Case Anywhere Fees	\$ 1,176.40

Courier and Attorney Service Charges	\$ 398.22
Court Call Charges	\$ 86.00
Court Filing/Fax Filing Fees / Jury Deposit	\$ 1,756.75
Travel Expenses (Hotel, Mileage, Parking)	\$ 2,283.73
Deposition Transcript Costs	\$ 1,077.05
<b>TOTAL</b>	<b>\$6,778.15</b>

30. To date, Class Counsel have yet to be reimbursed for their time and expenses generated in performing all of the professional work done in this case. Class Counsel's professional fees are totally contingent and depend on a fee and expense award by this Court.

31. I have reviewed the Declaration of Christopher P. Ridout in Support of Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Reimbursement of Expenses and Payment of Service Awards, filed herewith. I declare that paragraphs 2 and 4 through 30 of his declaration are true and correct.

32. I believe that the Settlement reached in this Action presents terms that are fair, reasonable, and adequate. It is my opinion and judgment that the proposed Settlement achieves an excellent outcome for the Class in light of the risks of litigation, is in the best interest of the Class, and should be approved by the Court.

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

Executed on December 6, 2017 in San Diego, CA.



Eric J. Benink

**EXHIBIT A**

## **KRAUSE, KALFAYAN, BENINK & SLAVENS, LLP**

[www.kkbs-law.com](http://www.kkbs-law.com)

KRAUSE, KALFAYAN, BENINK & SLAVENS, LLP (“Krause Kalfayan”) is a leading San Diego-based plaintiffs class-action law firm. Krause Kalfayan, Benink & Slavens, LLP (formerly Krause & Kalfayan) represents individuals, businesses, and institutional investors in complex civil litigation in the areas of securities, antitrust, consumer fraud, partnership and business law. Although the firm handles both individual and class action litigation, it has a substantial reputation as a class action firm and has been at the forefront of multi-million dollar cases against some of the most powerful companies in the world. Krause Kalfayan has obtained numerous significant settlements or judgments for individuals and businesses in California and the United States. In recent years, the firm has expanded its practice representing utility ratepayers and taxpayers in challenges to local governments’ failure to comply with Proposition 218 and Proposition 26.

### **RALPH B. KALFAYAN**

Ralph B. Kalfayan received a Bachelor of Science degree in Accounting from the University of San Diego in 1982. He was a member of the honors fraternity Beta Alpha Psi on campus and graduated with honors in his major. He received his Juris Doctor degree in 1985, and his Master of Laws degree with an emphasis in intellectual property in 2012 from University of San Diego School of Law.

Upon graduation, Mr. Kalfayan was employed for three years with the international firm of Arthur Andersen & Co. Mr. Kalfayan worked in the tax department, where he provided tax consulting and tax compliance work and in the audit department, where he reviewed financial statements and helped issue audit opinions.

In 1988, Mr. Kalfayan joined the law firm of Borton, Petrini & Conron, where he became a partner in 1991. Mr. Kalfayan specialized in business litigation and transactional matters including real estate transactions, general commercial transactions, corporate work, partnership work, tax litigation or consulting work, contract disputes, and large acquisition work. Mr. Kalfayan also handled a number of civil trials before a jury and several major appeals. In August 1993, Mr. Kalfayan became Of Counsel at the Law Offices of James C. Krause, and in January 1994, he became a member of Krause & Kalfayan.

Mr. Kalfayan has proven himself as a successful litigator. He was on the Executive Committee in the matter of *In re Dynamic Random Access Memory (DRAM)*, Master File No. M-02-1486-PJH, MDL No. 1486, United States District Court Northern District of California, Oakland Division, which was an indirect purchaser case under the antitrust laws, and settled for over \$300 million; *In re Korean Airlines Co. Ltd Antitrust Litigation*, Master File No. CV 07-05107, MDL No. 1891, United States District Court Central District of California, Western Division, which was a direct purchaser case under the antitrust laws, and settled for over \$85 million; *In re Wholesale Electricity Cases I and II*, JCCP 4204, San Diego County Superior Court, which was an indirect purchaser case under the antitrust laws, and settled in amount in excess of \$200 million; *In re Natural Gas Anti-Trust Cases I, II, III, IV & V*, San Diego Superior Court, JCCP Nos. 4221, 4224, 4226, 4228, and which resulted in settlements of \$159 million for plaintiffs. In addition, Mr. Kalfayan successfully obtained a jury verdict in *Emma R. Carbonell, MD, et al. v. Kern Medical Services, Inc., et al.*, in the amount of \$1,504,594.30. He achieved a settlement in the amount of \$1 million in the case of *Gordon Giles v. Weiss Family Trust, et al.*, and achieved a settlement in the amount of \$625,000 in *Sylvia Ortega v. La Estrella Night Club, et al.*, He also reached a settlement in the amount of \$4.5 million in *Doe v. Roes*. Finally, he also

achieved a settlement of \$500,000 in *Stewart v GOGO, Inc. Antitrust Litigation*, US District Court Northern District of California, Case No. 3:12-cv-5164-EMC.

Mr. Kalfayan currently works on numerous class actions, including: *In re Antelope Valley Groundwater Litigation*, JCCP 4408, Los Angeles County Superior Court Case Number BC 391869, representing over 70,000 non-pumping landowners in the largest groundwater adjudication in the State of California where the water rights were valued at over one billion dollars; *In Re Cipro I and II*, JCCP 4154 and 4220, in San Diego County Superior Court, where the case was successfully argued before the California Supreme Court, resulting in a published opinion which set the standard for pay-for-delay cases under the Cartwright Act for the State of California, and resulted in a partial settlement with one defendant in the amount of \$74,000,000; *In re Allergan*, Civil Case Number 15-307, United States District Court, Central District of California Southern Division; *In re Lithium Batteries*, Case No. C12-6492 EMC, United States District Court Northern District of California; *In re Processed Egg Indirect Purchaser Antitrust Litigation*, United States District Court Eastern District of Pennsylvania, MDL 2002; and, *Dang v National Football League Indirect Purchaser Antitrust litigation*, United States District Court Northern District of California, Case No. 5:12-cv-5481-EJD.

Among the articles Mr. Kalfayan has authored are: Ensuring Access to Affordable Medication: The Supreme Court's Opinion in F.T.C. v. Actavis, Inc. (Summer 2013) in *Competition: The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California* Vol. 22, No. 2; Buying a Business (April 15, 1993) in *Business and Industry News* Vol. 3, No. 2; Building a Business: Tools for the Entrepreneur (August 1, 1993) In *Business & Industry News* Vol. 3, Number 9; Reducing your Property Taxes in the San Diego Business and tax forecast magazine, December 1991. Seminars conducted by Mr. Kalfayan include: California Sales & Use

Tax, Lorman Education Services, December 5, 1991; Business and Finance Conference at Jack Murphy Stadium, December 5, 1990; Estate Planning with Prudential Bache, Spring of 1990.

ERIC J. BENINK

Mr. Benink was admitted to the California bar in 1997. He received a Bachelor of Business Administration degree from the University of Massachusetts - Amherst in 1992 and a joint Juris Doctor and Master of Business Administration degree from the University of San Diego in 1996.

In 1997, Mr. Benink began working in the Enforcement Division of the Department of Corporations (now the Department of Business Oversight), California's securities, commodities, franchise; and finance and mortgage lender regulator. He investigated dozens of illegal stock offerings, private placement frauds, illicit brokerage practices, and Ponzi schemes; and brought civil and administrative actions against the perpetrators. He also worked closely with criminal agencies in their prosecution of violators of laws under the jurisdiction of the Department.

In 2002, Mr. Benink joined Krause & Kalfayan as an associate and in 2005, became a partner in the firm, which was renamed Krause Kalfayan Benink & Slavens, LLP. He represents consumers, businesses and shareholders in securities, consumer fraud, business litigation, in actions in state and federal court. He has prosecuted consumer and business litigation cases against Wells Fargo Bank, Sprint, Ticketmaster, Fleet Bank, and Apple Computer. He has represented hedge funds in securities actions.

Mr. Benink is the author of *The Model State Commodities Code, A Regulator's Perspective*, published in the Law Enforcement Reporter, Winter 1999. He has testified as a securities expert witness for the San Diego District Attorney's Office and has been appointed by the California Superior Court as a receiver in five securities fraud cases. Mr. Benink is a member of the San Diego County Bar Association, the Consumer Attorneys of San Diego, a graduate of LEAD San

Diego, and former President of the Old Mission Rotary Club (2009 - 2010) and current member. He is a member of the Board of Directors for the George G. Glenner Alzheimer's Centers, Inc. He has been a contributor to the *Trial Bar News*, a publication of the Consumer Attorneys of San Diego. He was named a *Super Lawyer* by Super Lawyers magazine in 2014 - 2017. He has presented Proposition 218 to civic organizations.

Mr. Benink acted as lead counsel in *Shames v. City of San Diego*, (San Diego Superior Court, Case No. GIC 831539), a class action that recovered \$40 million for residential sewer customers for violations of Proposition 218. He has also prosecuted numerous class actions cases, including but not limited to: *Soto v. STI Prepaid, LLC* (San Diego Superior Court, Case No. GIC868083) (violation of prepaid calling card statute); *Neborsky v. Redem Technologies, Inc.* (San Diego Superior Court, Case No. GIC GIC804280) (securities fraud); *Milne v. Ticket Innovations, Inc.* (breach of fiduciary duty to shareholders) (Los Angeles Superior Court, Case No. BC 311258); *Ruffalo v. En Pointe Technologies, Inc.* (United States District Court, Southern District of California, Case No. 3:01-cv-00205 BEN-AJB) (federal securities fraud); *Rivera v. Sprint International Communications Corp.*, (San Diego Superior Court, Case No. GIC799868) (international phone over charges); and *Horn v. Commercial Lending Capital, Inc.*, (Riverside Superior Court, Case No. RIC10019819) (illegal lender advance fees).

He also represents ratepayers and taxpayers in cases alleging illegal utility fees and taxes imposed by local government in violation of Proposition 218 and Proposition 26. Some of the cases he has prosecuted and/or is currently prosecuting include:

*Milo v. Coachella Valley Water District*, Riverside Superior Court, Case No. PSC1600403 (class action obtaining \$2 million in water fee credits based on violations of Prop. 218);

*Glendale Coalition for Better Government v. City of Glendale*, Los Angeles Superior Court, Case No. BS153253 (obtained writ of mandate re: City's water rate structure for violation of Prop. 218);

*Hobbs, et al. v. Modesto*, Stanislaus Superior Court Case No. 2019186 (class action alleging illegal taxes disguised as electric rates);

*Mahon, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2015-00014540 (KKBS appointed co-lead counsel in class action alleging illegal taxes disguised as electric franchise fees);

*Ruskey v. Goleta Water District*, Santa Barbara Superior Court, Case No. 15CV02359 (challenging failure to provide Proposition 218 notice to water customers);

*Lejins v. City of Long Beach*, Los Angeles Superior Court Case No. BS165724 (settlement providing \$12 million in return of transfers of water and sewer fees from City's general fund);

*Rooney v. City of Pasadena*, Los Angeles Superior Court Case No. BS145352 (challenging transfers to City's general fund (settlement restoring \$7.2 million));

*Moreno v. City of Riverside*, Riverside Superior Court Case No. RCI 1210249 (challenging water fee transfers to City's general fund (settlement restoring \$10 million));

*Spencer v. City of Burbank*, Los Angeles Superior Court Case No. BS145021 (challenging transfers to City's general fund (settlement restoring \$1.5 million));

*Jackson, et al. v. City of Lincoln*, Placer County Superior Court, Case No. SCV0039384 (class action alleging illegal water rate structure);

*Spencer v. City of Burbank*, Los Angeles Superior Court, Case No. BS162779 (obtained writ of mandate ordering City to cease imposition of 6.5% surcharge embedded in electric rates)

*Sacramento Taxpayers Assoc. v. Carmichael Park District*, Sacramento Superior Court, Case No. 34-2014-80001869-CU-WM-GDS (challenging legality of property assessments); and *Pearson v. Rodeo Hercules Fire Protection Dist.*, Contra Costa Superior Court Case No. MSN14-1137 (challenge legality of fire assessments).

VINCENT D. SLAVENS

Partner Vincent D. Slavens is a litigation attorney who practices in the areas of securities, business/contracts, consumer, antitrust and municipal litigation. Mr. Slavens was admitted to the California Bar in 2001. He received his Bachelor of Arts degree in Corporate Finance from San Diego State University in 1994 and graduated with honors (*magna cum laude*) from California Western School of Law in 2001. Prior to law school, he worked as a licensed investment broker for a number of years. During law school, Mr. Slavens became a member of the California Western School of Law, Law Review. In 2001, he joined Krause & Kalfayan as an associate attorney and has put his securities experience to use in securities litigation, including arbitration matters with the National Association of Securities Dealers (NASD), now FINRA. In 2005, he became a partner in the firm, which was renamed Krause Kalfayan Benink & Slavens, LLP.

For the past sixteen years, Mr. Slavens has successfully represented investors, businesses, ratepayers and consumers in a variety of matters ranging from individual actions to complex class actions. He has successfully defended individuals and corporations against multi-million dollar claims involving complex issues. Through his creative litigation and trial tactics, Mr. Slavens has participated in the recovery of tens of millions of dollars for the benefit of his clients and class members. Mr. Slavens has extensive experience litigating individual and class actions in federal and state court, and arbitrating claims before AAA, FINRA and other arbitration forums. Some of Mr. Slavens' successes include obtaining a jury verdict exonerating his clients of all liability in a

complex multimillion dollar case alleging fraud and negligence. After a 25-day jury trial and four days of deliberations, the jury returned a unanimous verdict in favor of Mr. Slavens' clients.

Mr. Slavens has acted as counsel in securities class actions such as *Glea F. Bobbs v. Southern Pacific Equities, LLC*, involving a multi-million Ponzi scheme. He also handled an arbitration on behalf of nearly 20 investors in *Larner, et al v. Wedbush Morgan Securities, et al* (alleging misrepresentations and violation of securities laws).

Mr. Slavens also represents ratepayers and taxpayers in cases alleging illegal utility fees and taxes imposed by local government in violation of Proposition 218 and Proposition 26. Some of the cases he has prosecuted and/or is currently prosecuting include:

*Hobbs, et al. v. Modesto*, Stanislaus Superior Court Case No. 2019186 (KKBS appointed co-lead counsel in class action alleging illegal taxes disguised as electric rates);

*Mahon, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2015-00014540 (KKBS appointed co-lead counsel in class action alleging illegal taxes disguised as electric franchise fees);

*Rooney v. City of Pasadena*, Los Angeles Superior Court Case No. BS145352 (challenging transfers to City's general fund (settlement restoring \$7.2 million));

*Spencer v. City of Burbank*, Los Angeles Superior Court Case No. BS145021 (challenging transfers to City's general fund (settlement restoring \$1.5 million));

*Wilson v. City of Anaheim*, Orange County Superior Court Case No. 30-2012-00614517 (alleging City's transfer of funds from utilities to general fund violates Proposition 218 – settlement halting transfers (unless voters approve) and restoring \$3 million);

*Palmer v. City of Anaheim*, Orange County Superior Court Case No. 30-2017-00938646 (alleging City's electric utility rates impose a tax in violation of Proposition 26);

*Green v. City of Palo Alto*, Santa Clara County Superior Court Case No. 16CV300760 (KKBS appointed co-lead counsel in case alleging City's electric utility rates impose a tax in violation of Proposition 26);

*Beyls v. City of Yorba Linda*, Orange County Superior Court Case No. 30-2015-00815529 (challenging validity of special assessments pursuant to Proposition 218 – currently on appeal);

*Wyatt v. City of Sacramento*, Sacramento County Superior Court Case No. 16CV300760 (alleging City's transfer of funds from utilities to general fund violates Proposition 218);

*Komesar v. City of Pasadena*, Los Angeles Superior Court Case No. BC677632 (alleging City's electric utility rates impose a tax in violation of Proposition 26); and

*Pearson v. Rodeo Hercules Fire Protection Dist.*, Contra Costa Superior Court Case No. MSN14-1137 (challenge legality of fire assessments - settled).

Mr. Slavens has also been active in the legal community by volunteering with the volunteer lawyers program, where he participated as a panelist on issues relating to the brokerage industry and corporate scandals; and has provided substantial *pro bono* services to a local non-profit organization. He has also written an article on whistle blower standing under the RICO statutes, and an article titled "[They Heard It Through The Grapevine](#)" accepted for publication in Trial Bar News.

#### SARAH B. ABSHEAR

Sarah B. Abshear is an associate with Krause Kalfayan. She received her juris doctorate from Columbia Law School in 2009, where she was a Harlan Fiske Stone Scholar, an academic honor awarded in recognition of superior performance. In 2006, Ms. Abshear graduated *summa cum laude* from the University of Kentucky with a Bachelor of Arts degree in Political Science and a minor in History. Ms. Abshear was admitted to the state bars of California and New York in

2010. Ms. Abshear is also admitted to practice before the United States Court of Appeals for the Ninth Circuit; the United States District Courts for the Southern, Central, and Northern Districts of California; and the United States District Courts for the Southern and Eastern Districts of New York.

From 2009-2012, Ms. Abshear worked as an attorney for Dewey & LeBoeuf, LLP, after clerking for the firm as a summer associate in 2008. For the first two years of her tenure at Dewey, Ms. Abshear participated in the firm's fellowship program, acting as a staff attorney for the American Civil Liberties Union of San Diego & Imperial Counties. At the ACLU, Ms. Abshear's practice consisted of civil rights litigation and advocacy, with a focus on the First Amendment.

Ms. Abshear returned to the New York office of Dewey & LeBoeuf in 2011 as a litigation associate. In 2012, she was one of approximately 60 litigators to leave Dewey and join the litigation department of the New York office of Winston & Strawn, LLP. Ms. Abshear's work at Dewey & LeBoeuf and Winston & Strawn focused on complex commercial litigation and antitrust cases, including class actions, sports litigation, insurance and reinsurance contract disputes between sophisticated parties, and internal and government investigations.

Ms. Abshear joined the Mogin Law Firm in 2014, where her practice focused on complex business litigation and class actions, including antitrust, unfair competition, and consumer protection cases. She subsequently went to work for Buchanan, Ingersoll, & Rooney, LLP, where her practice focused on general civil litigation, including business disputes, contract law, water rights, trade secrets, and employment law.

Ms. Abshear joined Krause, Kalfayan, Benink & Slavens as an associate attorney in February 2017. Her practice focuses on complex commercial litigation, class actions, and antitrust. Ms. Abshear has experience with a broad range of litigation across multiple industries, in both

federal and state courts. She has handled all stages of case development, from initial claim assessment to post-trial motions and appeals. Ms. Abshear's clients have included Fortune 500 companies, small businesses, classes of plaintiffs, individual plaintiffs and defendants, and government entities. Representative cases include:

- *Kleen Products, LLC v. International Paper, Inc.* (N.D. Ill.) – Represented Plaintiff Class of direct purchasers in suit brought against price-fixing cartel of containerboard producers.
- *Roos v. Honeywell, International, Inc.* (Cal.) – Represented Respondent Class Plaintiffs in appeal of class action settlement by Appellant Objectors.
- Defended corporation and subsidiaries in multidistrict and related putative class actions involving alleged violations of antitrust and consumer protection statutes. Also represented corporation and subsidiaries in relation to investigation and settlement with the United States Department of Justice.
- *7 West 57th Street Realty Company, LLC v. CitiGroup, Inc.* (S.D.N.Y.) – Represented Plaintiff 7 West 57th Street Realty Company in suit brought against Defendant banks for manipulation of U.S. Dollar LIBOR.
- *Saubers v. Kashi Company* (S.D. Cal.) – Represented Plaintiff Class of purchasers in suit brought against Defendant Kashi for misleading consumers with deceptive labelling.
- *Glick v. Bankers Life & Casualty Insurance Company* – Defended insurance company in putative class action regarding allegedly delayed/denied premium payments and “modal premium” claims, the latter of which were summarily rejected on a motion to dismiss.
- *Aqua Clear Water Treatment v. Senior Operations* (Cal.) – Represented aerospace company in breach of contract case brought by its water treatment servicer for nonpayment of contract, including filing cross-complaint regarding breach of contract and fraud to ultimately resolve case with joint dismissal of claims.
- *Stemage Skin Care, LLC v. NuGene International, Inc. et al.* (C.D. Cal.) – Represented skin care company in case alleging competing company interfered with contract of brand ambassador and infringed copyright.
- *NDO America, Inc. v. Ozburn-Hessey Logistics, LLC, et al.* (Cal.) – Represented company in suit alleging theft of trade secrets and solicitation of personnel in violation of non-compete clause.
- *City of Carlsbad and Carlsbad Municipal Water District v. California State Water and Resources Control Board* (Cal.) – Represented City of Carlsbad in action to establish its water rights and SWRCB's lack of authority to regulate water at issue.

Ms. Abshear is involved in the local community. She is a member of the San Diego Leadership Alliance (SDLA) and a SDLA 2016 Leadership Institute Fellow, where she participated in training in civic engagement, public speaking, fundraising, communications, public policy, campaigns, and organizing. She is a member of the Lawyers Club of San Diego, where she participates on the Annual Dinner Committee, helps plan events, and writes articles for the monthly newsletter. She is also a member of the San Diego County Bar Association and Federal Bar Association.

#### BENJAMIN T. BENUMOF

Benjamin ("Ben") T. Benumof is the Founder of GEO-LAW.COM and is Special Counsel to Krause Kalfayan Benink & Slavens, LLP in San Diego, California.

From investigating catastrophic landslides and coastal erosion in California, to mapping and mitigating active lava flows in Hawaii, to surveying for priceless ancient artifacts off the coasts of Costa Rica and Peru, to litigating complex land use, water law, and Proposition 218 matters in State and Federal court, Dr. Benumof has always been very passionate about his work.

As a Ph.D. geologist and an attorney sought out for his land use, coastal, water law, and Proposition 218 expertise, Dr. Benumof specializes in what he has coined "GEO-LAW" – a multidisciplinary practice integrating law, policy, business and the earth sciences in eight (8) core specialty areas of practice, including:

- Land Use
- Water Law
- Geology & Geologic Hazards
- Coastal
- Real Estate
- Construction
- Proposition 218

- Architecture / Engineering

Dr. Benumof has extensive expertise and experience in the full spectrum of “GEO-LAW” matters, from project due diligence and planning, to contract negotiation and formation, to project advocacy and entitlement, to bench and jury trials, arbitrations, mediations and appellate work in State and Federal courts, and before a multitude of public and private Agencies, Boards, and Commissions. In addition, as the lead trial and appellate attorney for the successful Petitioner in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493 and co-lead trial attorney for the successful Petitioner in *Glendale Coalition for Better Government v. City of Glendale* (2017) (Los Angeles Superior Court, Case No. BS153253), Dr. Benumof is a noted Proposition 218 expert.

Dr. Benumof is a member of the State Bar of California, an Adjunct Professor in the Construction Engineering and Civil Engineering Departments at Cal Poly Pomona, and a member of the Association of Engineering & Environmental Geologists. He holds a Juris Doctorate from the University of San Diego School of Law, a Ph.D. in Earth Sciences (Engineering Geology) from the University of California, Santa Cruz, and Bachelor's degrees in Geological Sciences (B.S.) and Geography (B.A.) from the University of California, Santa Barbara. He is also the author of numerous peer-reviewed legal and scientific papers, patent and trademark applications, geologic reports, guidebooks, and maps.