

1 FRANCIS M. GREGOREK (144785)  
2 RACHELE R. RICKERT (190634)  
3 MARISA C. LIVESAY (223247)  
4 WOLF HALDENSTEIN ADLER  
5 FREEMAN & HERZ LLP  
6 Symphony Towers  
7 750 B Street, Suite 2770  
8 San Diego, CA 92101  
9 Telephone: 619/239-4599  
10 Facsimile: 619/234-4599

11 DANIEL W. KRASNER (*pro hac vice*)  
12 WOLF HALDENSTEIN ADLER  
13 FREEMAN & HERZ LLP  
14 270 Madison Avenue  
15 New York, NY 10016  
16 Telephone: 212/545-4600  
17 Facsimile: 212/545-4653

18 JON TOSTRUD (199502)  
19 TOSTRUD LAW GROUP, PC  
20 1925 Century Park East, Suite 2125  
21 Los Angeles, CA 90067  
22 Telephone: 310/278-2600  
23 Facsimile: 310/278-2640

NICHOLAS E. CHIMICLES (*pro hac vice*)  
TIMOTHY N. MATHEWS (*pro hac vice*)  
CHIMICLES & TIKELLIS LLP  
One Haverford Centre  
361 West Lancaster Avenue  
Haverford, PA 19041  
Telephone: 610/642-8500  
Facsimile: 610/649-3633

Attorneys for Plaintiff

[Additional Counsel Appear On Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ESTUARDO ARDON, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

CITY OF LOS ANGELES,

Defendant.

) Case No. BC363959

) **PLAINTIFF'S NOTICE OF MOTION AND**  
) **UNOPPOSED MOTION FOR FINAL**  
) **APPROVAL OF CLASS ACTION**  
) **SETTLEMENT; MEMORANDUM OF**  
) **POINTS AND AUTHORITIES**

) Date Action Filed: December 27, 2006

) Trial Date: None Set

) DATE: August 11, 2016

) TIME: 10:00 a.m.

) DEPT: 307

) JUDGE: Hon. Amy D. Hogue

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on August 11, 2016 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 307 of the Superior Court of California, County of Los Angeles, located at 600 S. Commonwealth Avenue, Los Angeles, California, Representative Plaintiff Estuardo Ardon (“Plaintiff”) will move this Court without opposition for a judgment and an order finally approving the settlement in this action, finally certifying the preliminarily approved Settlement Class, and dismissing this action according to the terms of the settlement.

This unopposed motion is made pursuant to California Code of Civil Procedure (“CCP”) section 382 and California Rules of Court, rule 3.760, *et seq.* on the grounds that the proposed settlement is fair, reasonable, and adequate.

This motion is based upon the accompanying Memorandum of Points and Authorities, the Second Amended Settlement Agreement and the amendment thereto, the Declaration of Estuardo Ardon, the Joint Declaration of Francis M. Gregorek and Nicholas E. Chimicles, the Declaration of Phil Cooper, the Declaration of Hon. Dickran Tevrizian (Ret.), the Declaration of Francis M. Gregorek on behalf of Wolf Haldenstein Adler Freeman & Herz LLP in Support of Plaintiff’s Application for Attorneys’ Fees and Reimbursement of Litigation Expenses, the Declaration of Timothy N. Mathews on behalf of Chimicles & Tikellis LLP in Support of Plaintiff’s Application for Attorneys’ Fees and Reimbursement of Litigation Expenses, the Declaration of Jon Tostrud on behalf of Tostrud Law Group, PC in Support of Plaintiff’s Application for Attorneys’ Fees and Reimbursement of Litigation Expenses, the Declaration of Jon Cuneo on behalf of Cuneo Gilbert & Laduca, LLP in Support of Plaintiff’s Application for Attorneys’ Fees and Reimbursement of Litigation Expenses,<sup>1</sup> all files and records in this action, and any argument and evidence which may be presented at the hearing on this motion.

DATED: July 1, 2016

By:

  
FRANCIS M. GREGOREK

<sup>1</sup> The individual declarations of Francis M. Gregorek, Timothy N. Mathews, Jon Tostrud and Jon Cuneo on behalf of their respective firms are collectively referred to herein and in the following Memorandum of Points and Authorities as the “Class Counsel Declarations.”

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
FRANCIS M. GREGOREK  
RACHELE R. RICKERT  
MARISA C. LIVESAY  
750 B Street, Suite 2770  
San Diego, CA 92101  
Telephone: 619/239-4599  
Facsimile: 619/234-4599

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
DANIEL W. KRASNER  
270 Madison Avenue  
New York, NY 10016  
Telephone: 212/545-4600  
Facsimile: 212/545-4653

CHIMICLES & TIKELLIS LLP  
NICHOLAS E. CHIMICLES  
TIMOTHY N. MATHEWS  
One Haverford Centre  
361 West Lancaster Avenue  
Haverford, PA 19041  
Telephone: 610/642-8500  
Facsimile: 610/649-3633

CUNEO GILBERT & LADUCA, LLP  
JONATHAN W. CUNEO  
WILLIAM ANDERSON  
507 C Street, NE  
Washington, DC 20002  
Telephone: 202/789-3960  
Facsimile: 202/789-1813

TOSTRUD LAW GROUP, PC  
JON TOSTRUD  
1925 Century Park East, Suite 2125  
Los Angeles, CA 90067  
Telephone: 310/278-2600  
Facsimile: 310/278-2640

Attorneys for Plaintiff

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PAGE**

I. INTRODUCTION ..... 1

II. BACKGROUND ..... 2

III. SETTLEMENT TERMS ..... 5

A. Monetary Relief to Settlement Class Members..... 5

B. The Release is Narrowly Tailored to the Claims ..... 8

C. Donation Option for Class Members ..... 8

D. Requested Attorneys’ Fees and Costs and Incentive Award..... 8

IV. METHODS AND REACH OF NOTICE AND ADMINISTRATION COSTS ..... 8

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND  
THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT ..... 9

A. Standards for Final Approval of Settlement..... 9

B. The Settlement is Fair, Adequate and Reasonable ..... 10

1. The Strength of Plaintiffs’ Case Balanced Against The  
Amount Offered in Settlement Favors Approval ..... 10

2. The Risk, Expense, Complexity and Likely Duration of the  
Litigation Would Be Considerable Were the Action to Proceed  
Against the City..... 11

3. The Risk of Maintaining Class Action Status Through Trial  
Favors Final Approval..... 12

4. The Recommendation of Experienced Counsel Favor Approval..... 12

5. Presence of a Governmental Participant Favors Approval ..... 12

VI. THE NOTICE TO CLASS MEMBERS WAS ADEQUATE ..... 12

VII. THE SETTLEMENT CLASS SHOULD BE CERTIFIED ..... 13

A. An Ascertainable Settlement Class Exists and Is Numerous ..... 13

B. There is a Community of Interest..... 13

C. A Class Action is Superior ..... 15

VIII. CONCLUSION ..... 15

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PAGES**

**Cases**

*7-Eleven Owners for Fair Franchising v. Southland Corp.*,  
85 Cal. App. 4th 1135 (2000)..... 11

*Archer v. United Rentals, Inc.*,  
195 Cal. App. 4th 807 (2011)..... 13

*Ardon v. City of Los Angeles*,  
174 Cal. App. 4th 369 (2009)..... 3

*Ardon v. City of Los Angeles*,  
52 Cal. 4th 241 (2011)..... 3, 15

*Chavez v. Netflix*,  
162 Cal. App. 4th 43 (2008)..... 9, 12

*City of San Jose v. Superior Court*,  
12 Cal. 3d 447 (1974)..... 14

*Daar v. Yellow Cab Co.*,  
67 Cal. 2d 695 (1967)..... 13, 15

*Destefano v. Zynga, Inc.*,  
No. 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS  
17196 (N.D. Cal. Feb. 11, 2016)..... 10

*Dicon Fiberoptics, Inc. v. Franchise Tax Bd.*,  
53 Cal. 4th 1227 (2012)..... 2

*Dunk v. Ford Motor Co.*,  
48 Cal. App. 4th 1794 (1996)..... 9

*Eisen v. Carlisle & Jacquelin*,  
417 U.S. 156 (1974)..... 12

*Global Minerals & Metals Corp. v. Superior Court*,  
113 Cal. App. 4th 836 (2003)..... 13

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

*In re Omnivision Techs., Inc.*,  
559 F. Supp. 2d 1036 (N.D. Cal. 2007) ..... 10

*Kullar v. Foot Locker Retail, Inc.*,  
168 Cal. App. 4th 116 (2008)..... 9

*Linder v. Thrifty Oil Co.*,  
23 Cal. 4th 429 (2000)..... 14

1	<i>Luckey v. Superior Court</i> , 228 Cal. App. 4th 81 (2014).....	13
2	<i>McGhee v. Bank of Am.</i> , 60 Cal. App. 3d 442 (1976).....	14
3		
4	<i>Rebney v. Wells Fargo Bank</i> , 220 Cal. App. 3d 1117 (1990).....	10
5		
6	<i>Richmond v. Dart Indus., Inc.</i> , 29 Cal. 3d 462 (1981).....	13, 14, 15
7	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	15
8	<i>Touhey v. United States</i> , No. EDCV 08-01418-VAP (RCx), 2011 U.S. Dist. LEXIS 81308 (C.D. Cal. July 25, 2011).....	12
9		
10	<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971).....	14, 15
11		
12	<i>Washington Mut. Bank, FA v. Superior Court</i> , 24 Cal. 4th 906 (2001).....	14
13		
14	<i>Weinstat v. Dentsply Int'l, Inc.</i> , 180 Cal. App. 4th 1213 (2010).....	12
15	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001).....	10

**Statutes**

17	Government Code § 900.....	3
18		
19	LAMC § 21.1.3.....	14
20		
21	U.S.C. § 4251.....	3

**Rules**

22	CCP	
23	§ 382.....	13
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This class action against the City of Los Angeles (the “City”) arises from the City’s  
4 collection of telephone utility users taxes (“UUT”) from October 19, 2005 through March 15,  
5 2008 (the “Class Period”) on telephone services allegedly not taxable under the City’s UUT  
6 ordinance. After nearly ten years of hard-fought litigation, including Class Counsel’s obtaining  
7 from the California Supreme Court a ground-breaking decision recognizing the right of taxpayers  
8 to file a class claim for the refund of taxes alleged to have been improperly collected, and after  
9 exhaustive arm’s-length negotiations over the course of three-and-a-half years guided by the  
10 Honorable Dickran Tevrizian (Ret.), Plaintiff and the City seek final approval of their Second  
11 Amended Settlement Agreement (“SASA”). Joint Declaration of Francis M. Gregorek and  
12 Nicholas E. Chemicles in Support of Motion for Final Approval of Class Action Settlement,  
13 Attorneys’ Fees, Reimbursement of Expenses and Payment of an Incentive Award (the “Joint  
14 Decl.”), Exhibit A.<sup>2</sup>

15 The City has agreed to pay up to \$92,500,000 (the “Settlement Fund”) to settle this  
16 litigation representing, by the City’s estimation, nearly one third (1/3) of its maximum liability.  
17 Joint Decl., Ex. A, § III.A.1 & Ex. C. The Settlement Fund will provide UUT refunds to the  
18 Settlement Class and also payment of Settlement notice and administration costs, including the  
19 carriers’ costs of retrieving and providing UUT data, Plaintiff’s attorneys’ fees and costs, and an  
20 incentive award to Plaintiff. *Id.*, Ex. A, § III.A.1 & Ex. B.

21 The Settlement is an outstanding result. Class Members<sup>3</sup> can receive up to a *full recovery*

22 <sup>2</sup> This Court preliminarily approved the Settlement on September 8, 2015, and set a Final Fairness  
23 Hearing for February 25, 2016. *See* Joint Decl., Ex. E (Second Amended Order Preliminarily Approving  
24 Class Action Settlement, dated September 8, 2015 (hereafter referred to as the “Order.”)) The Final  
25 Fairness Hearing date was adjourned to August 11, 2016 to accommodate additional methods and time for  
the filing of claims by Class Members as set forth herein.

26 <sup>3</sup> In its Order, this Court conditionally certified a Settlement Class (or the “Class”) of:  
27 all persons, including corporate and noncorporate entities wherever organized and existing, who  
28 paid telephone utility user taxes to the City of Los Angeles on the Kinds of Telephone Service  
utilized between October 19, 2005 and March 15, 2008, other than purely local service,  
teletypewriter exchange service, or long distance telephone service where the charge varied by  
both time and distance. The Settlement Class does not include prepaid mobile customers (which  
(continued...)

1 of the amount of the UUT that Plaintiff challenged as improperly collected by submitting  
2 documentary evidence of the amount of UUT paid, or by providing consent for their telephone  
3 providers to provide that information to the Claims Administrator. *Id.*, Ex. A, § III.B.3 & Ex. B.  
4 Class Members can also receive refunds of \$30 for landline, \$50 for business landline, and/or \$50  
5 for mobile service, without providing any documentation (*id.*, Ex. A, § III.B.2), a significant  
6 achievement since taxpayers ordinarily bear the burden of producing evidence of any tax refund  
7 claimed due. *See e.g., Dicon Fiberoptics, Inc. v. Franchise Tax Bd.*, 53 Cal. 4th 1227, 1236  
8 (2012).

9 The parties urge the Court to grant the Settlement final approval as fair, reasonable, and  
10 adequate. Class Members will receive immediate relief in the form of refunds rather than  
11 experience years of further delays as the litigation and inevitable appeals unfold. Plaintiff also  
12 respectfully requests that the Court finally certify the Settlement Class, since the Settlement Class  
13 is ascertainable and there is a well-defined community of interest in the material questions of law  
14 and fact providing the gravamen of this action. Class treatment is the superior method of  
15 adjudication and in the best interests of the parties and this Court.

16 **II. BACKGROUND**

17 A comprehensive description of Plaintiff’s claims and a procedural history of the case is  
18 contained in the Joint Declaration, filed concurrently herewith. In sum, the City’s UUT ordinance,  
19 as implemented in 1967, collected a 10% tax on amounts paid for *all* telephone services used by  
20  
21

22 \_\_\_\_\_  
23 (...continued)

24 includes customers who purchased plans described as ‘pay as you go,’ ‘pay as you talk,’ ‘pay and  
25 go wireless,’ ‘prepay or burner phone service’ and ‘no contract service’) but does include prepaid  
26 mobile telephone service providers, *i.e.*, those that provide the above services to customers who  
27 prepay for wireless service. “Purely local service” means local telephone service provided under a  
28 calling plan that does not include long distance telephone service, or that separately states the  
charge for local service on the bill to customers. The Settlement Class does not include any  
person, including corporate and non-corporate entities wherever organized and existing, to whom  
the City has already paid a full refund of UUT paid for services utilized during the Class Period.

Joint Decl., Ex. E at 1-2.



1 every person located within the City. ¶¶ 1, 26.<sup>4</sup> However, the UUT expressly excluded from  
2 taxation amounts paid for telephone services not taxable under the Federal Excise Tax (“FET”), 26  
3 U.S.C. § 4251. ¶ 28. Therefore, Plaintiff contends that telephone services not subject to the tax  
4 imposed by the FET were not subject to the UUT.

5 On October 19, 2006, Plaintiff filed an administrative class claim with the City pursuant to  
6 Government Code § 900, *et seq.* for refund of the improperly collected taxes, which the City  
7 denied on December 7, 2006. Joint Decl., ¶ 12. On December 27, 2006, Plaintiff filed this class  
8 action. Subsequently, on January 9, 2007, the City purported to amend the UUT by ordinance  
9 adopted by the City Council, without voter approval, to eliminate reference to the FET. *Id.*, ¶ 16.  
10 Therefore, on March 27, 2007, Plaintiff filed an amended complaint, adding a claim for  
11 declaratory relief regarding unconstitutional amendment of the UUT in violation of Proposition  
12 218. ¶¶ 87- 95. On May 2, 2007, the City filed a demurrer claiming, among other things, that  
13 Plaintiff’s class claim was invalid. On July 6, 2007, this Court sustained in part, and overruled in  
14 part, the City’s demurrer without leave to amend. The Court held, *inter alia*, that Plaintiff could  
15 not assert a class claim for a tax refund.<sup>5</sup> Joint Decl., ¶ 17.

16 The Second District Court of Appeal, by a 2 to 1 opinion, affirmed this Court’s decision.  
17 *Ardon v. City of Los Angeles*, 174 Cal. App. 4th 369 (2009). However, Plaintiff successfully  
18 petitioned the California Supreme Court seeking review and, on July 25, 2011, the Court  
19 unanimously ruled in Plaintiff’s favor, reversing the Court of Appeal and holding that “[c]lass  
20 claims for tax refunds against a local governmental entity are permissible under [Government  
21 Code] section 910 in the absence of a specific tax refund procedure set forth in an applicable  
22 governing claims statute.” *Ardon v. City of Los Angeles*, 52 Cal. 4th 241, 253 (2011).

23 Class Counsel engaged in substantial party, third-party, and expert discovery. For  
24 example, Plaintiff took extensive third-party discovery sending document preservation demands to

---

25 <sup>4</sup> All paragraph references (“¶”), unless otherwise specified, are to Plaintiff’s Corrected First  
26 Amended Class Action Complaint for Declaratory, Injunctive, Monetary and Other Relief, filed March 29,  
27 2007 (the “Complaint”).

28 <sup>5</sup> Subsequent to the Court’s ruling, on February 5, 2008, voters approved Measure S, amending the  
City’s UUT and removing any reference to the FET, effective March 15, 2008. Joint Decl., ¶ 17.

1 roughly 200 service providers and issuing subpoenas for production of documents to 20 major  
2 third party telephone service providers (and their affiliates) that had remitted UUT to the City.  
3 Joint Decl., ¶ 22. Aided by Plaintiff's expert, Class Counsel then reviewed the thousands of pages  
4 of remittance records, billing data, record retention policies and other documents produced by  
5 each third party in response to Plaintiff's subpoenas. *Id.* The third party discovery from the  
6 telephone service providers alone involved protracted meet-and-confer conferences and  
7 negotiations lasting two years. *Id.* In addition, when the City refused to provide Plaintiff with  
8 relevant UUT remittance data, Plaintiff moved to compel their production, which this Court  
9 granted after a hearing and two rounds of supplemental briefing by the parties involving  
10 substantial issues of potential taxpayer privacy rights. *Id.*, ¶ 21.

11 Plaintiff filed his motion for class certification on May 1, 2014, along with supporting  
12 declarations from several third-party telephone service providers and an expert on telephone  
13 services and economics. Joint Decl., ¶ 26. The City thereafter deposed many of the service  
14 provider declarants, Plaintiff Ardon, and Plaintiff's expert and filed its opposition brief, along with  
15 supporting declarations, some from telephone service providers, on September 12, 2014. *Id.*  
16 Plaintiffs filed a reply on October 14, 2014. *Id.*

17 The hearing on the motion for class certification was adjourned at the request of the parties  
18 to allow the parties time to participate in further mediation sessions, attempting to build upon the  
19 previous unsuccessful sessions conducted on June 6 and July 25, 2012, and the information  
20 derived from the substantial discovery and motion practice since then. Joint Decl., ¶ 26. The  
21 parties met on November 7, 2014, again before Judge Tevrizian and, at this session, the parties  
22 agreed to a settlement in principle and thereafter executed a term sheet reflecting the settlement on  
23 December 22, 2014. *Id.*, ¶ 30. The parties needed two additional Settlement Agreement drafting  
24 sessions before Judge Tevrizian on May 18, 2015 and June 1, 2015 before being able to finalize a  
25 Settlement Agreement on July 22, 2015, and this Court granted preliminary approval on  
26 September 8, 2015. *Id.*

27 After notice went out to the Class, the parties learned that some Class Members were having  
28 difficulty obtaining Class Period phone records. Joint Decl., ¶¶ 10, 48. Plaintiff issued new

1 deposition subpoenas on December 3rd and 9th, 2015 to the persons most knowledgeable at  
2 AT&T Corp., AT&T Mobility LLC, Nextel of California, Inc., Sprint Communications Co., L.P.,  
3 Sprint Spectrum, Verizon Wireless LLC, Verizon California, Inc., and T-Mobile USAE Inc. to  
4 discover information concerning the companies' ability to provide UUT payment data and the cost  
5 to them of retrieving it. *Id.*, ¶ 10. On January 15, 2016, the parties stipulated to extend the claims  
6 deadline by 90 days (from to February 20, 2016 to May 20, 2016) to allow Class Members more  
7 time to locate records and to facilitate the parties' efforts to resolve the record retrieval issues with  
8 the telephone carriers. *See* Joint Decl., Ex. D. The objection and exclusion deadlines were also  
9 extended and the Final Fairness Hearing was continued to August 11, 2016. *Id.* Ultimately,  
10 AT&T, Verizon and Sprint companies agreed to retrieve UUT payment data of those Class  
11 Members who requested and consented to the retrieval, and T-Mobile agreed to mail Class Period  
12 UUT payment data to those current or former T-Mobile customers who called a toll-free number  
13 and requested it. On April 28, 2016, the parties stipulated to an amended claiming process and to  
14 further extend the claiming deadline by an additional 30 days, to June 19th. *See* Joint Decl., Ex.  
15 B. Supplemental notice was then sent by mail to Class Members and posted on the Settlement  
16 website advising them of the new claiming procedures and deadlines. *See*  
17 <https://www.LATaxRefund.com>.

18 As a result, the claiming period was 240 days, twice as long as initially agreed to and  
19 approved by the Court.

### 20 **III. SETTLEMENT TERMS**

#### 21 **A. Monetary Relief to Settlement Class Members**

22 The City has committed to pay up to \$92.5 million into a Settlement Fund. Joint Decl.,  
23 Ex. A, § III.A.1. Pursuant to the SASA, the City has advanced the funds necessary to pay the costs  
24 of notice and preliminary administration. *Id.*, § IV.L.; Cooper Decl., ¶ 32.

25 Within 30 days of entry of judgment and an order of this Court granting final approval of  
26 the Settlement, the City will deposit an initial payment equal to \$50 million (the "Initial  
27 Payment"), minus the amount of any costs of notice and preliminary administration it has already  
28 paid, into a separate account. Joint Decl., Ex. A, §§ III.A.2, V.B.2. At the end of the claims

1 period and as soon as practicable, the City may raise through issuance of a Judgment Obligation  
2 Bond (“JOB”) or otherwise whatever funds are necessary to pay the difference between the Initial  
3 Payment and the total amount required to pay all claims, costs of notice and claims administration,  
4 attorneys’ fees and expenses and Plaintiff’s incentive award, which total is not to exceed \$92.5  
5 million with the remainder (if any) reverting to the City. *Id.*, §§ I at 6, III.A.1, III.A.4. Issuance  
6 of the JOB could take some time, but the City’s responsibility to pay the Settlement Fund is not  
7 contingent on its ability to issue a JOB. *Id.*, §§ III.A.2, 3.

8 Three types of telephone services are included in the Settlement: (1) residential landline  
9 services; (2) business landline services; and (3) mobile telephone services. For each type of  
10 service utilized during the Class Period, Class Members have the option of claiming: (1) a  
11 standard amount; or (2) with submission of telephone bills or other proof of payment of the UUT,  
12 a refund based on the total, actual UUT paid. *Id.*, § III.B.<sup>6</sup> Under the first claiming option  
13 (“Option 1”), the standard Recognized Claim Amounts are \$30 for residential landline telephone  
14 service, \$50 for business landline service, and \$50 for mobile telephone service. *Id.* Under the  
15 second claiming option (“Option 2”), AT&T, Verizon, Sprint, and T-Mobile will search their  
16 databases and provide tax payment information for Class Members who request and consent to the  
17 release of such information to assist Class Members in providing documentation of the amounts of  
18 UUT they paid. Joint Decl., ¶ 10 & Ex. B. The Recognized Claim Amount under Option 2 for  
19 mobile telephone service is the sum of all UUT shown on the bills or other form of proof, and for  
20 residential landline and business landline telephone service the Recognized Claim Amount is 70%  
21 of the sum of the UUT shown on the bills or other form of proof.<sup>7</sup> *Id.*, Ex. A, § III.B.3.

22 <sup>6</sup> Class Members do not have to elect the same claiming option for all types of telephone services.  
23 For example, if they paid for mobile telephone service and residential landline service during the Class  
24 Period, but do not have phone bills for their landline service, they can claim under the first option for  
landline service and the second option for mobile telephone service.

25 <sup>7</sup> Charges for purely local landline service were properly taxed under the UUT. In administering a  
26 refund of the Federal Excise Tax (“FET”), which was coextensive with the UUT, the IRS determined that  
27 approximately 32% of the total FET was attributable to local service and, therefore, properly collected.  
28 Joint Decl., ¶ 34 n.10 & Ex. F. Further, although Plaintiff disputes this, the City has argued that “bundled”  
landline service, where long distance and local service are charged together, was properly taxed.  
Accordingly, the parties negotiated that the recognized claim amount for Option 2 landline service would  
be 70% of the total UUT paid to allow for taxes on purely local service.

1 Documentation for the second option is required in order to prevent the filing of fraudulent claims.  
2 The amounts for all claims are subject to proration if claims exceed the settlement amount. *Id.*,  
3 Ex. A, § V.B.1.

4 The Net Settlement Fund will initially be allocated 50% to Option 1 Claims (“Option 1  
5 NSF”) and 50% to Option 2 Claims (“Option 2 NSF”). *Id.*, § V.B. If the total of all Option 1  
6 Recognized Claim Amounts is greater than the Option 1 NSF, and the total of all Option 2  
7 Recognized Claim Amounts is less than the Option 2 NSF, then the remaining funds in the Option  
8 2 NSF shall be used to pay Option 1 claims. The reverse is also true. If the total of all Option 2  
9 Recognized Claim Amounts exceeds the Option 2 NSF while the total of all Option 1 Recognized  
10 Claim Amounts is less than the Option 1 NSF, the excess from the Option 1 NSF will be used to  
11 pay Option 2 claims. *Id.*, § V.B.1.

12 The Claims Administrator reports that as of July 1, 2016 the number of claims submitted is  
13 312,116. Cooper Decl., ¶ 28. Class Members were also provided with an opportunity to opt out  
14 of, or object to, the Settlement. In order to opt out of the Settlement, Class Members need only  
15 file with the Claims Administrator, on or before July 28, 2016, a signed, written request to opt out  
16 that including the Class Member’s name, address and telephone number and Class Period address  
17 and telephone number(s). Joint Decl., Ex. A, § VI.B. To date, the Claims Administrator has only  
18 received 19 requests for exclusion. Cooper Decl., ¶ 25 and Ex. H thereto. Class Members who  
19 opt out may not file objections to the Settlement but, should they change their mind, do have the  
20 opportunity to rescind their opt-out during the claims period. Joint Decl., Ex. A, § VI.C. To date,  
21 the Claims Administrator has received no requests to rescind. Cooper Decl., ¶ 26.

22 Class Members who wish to object to the Settlement, the payment of attorneys’ fees and  
23 expenses or payment of the Plaintiff’s incentive award are required to submit their objections and  
24 documentation showing their standing to object to be heard at the Final Settlement Hearing.  
25 Objectors are required to file notice of their objections with the Court and deliver copies to Lead  
26 Counsel for the City, Class Counsel and the Claims Administrator at by July 12, 2016. Joint  
27 Decl., ¶ 38 & Ex. D at 2. To date, Counsel and the Claims Administrator have only received 4  
28 objections. Cooper Decl., ¶ 27 & Ex. I; Joint Decl., ¶ 38. Plaintiff believes these four are easily

1 answered. For efficiency purposes, since the time to object does not expire until July 12, 2016,  
2 Plaintiff will respond to these and any other objections in his Reply papers.

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

4 “[T]he release language is proper as it is limited in scope and time and the Civil Code  
5 § 1542 waiver is tethered to the ‘Released Claims.’” Joint Decl., Ex. E (Order), § D.3. The Class  
6 Members will release claims — ascertained or unascertained, suspected or unsuspected, existing  
7 or claimed to exist, including both known and unknown claims — against the City “that were or  
8 could have been brought against the City and/or its Related Parties, or any of them, during the  
9 Class Period, arising from the facts alleged in the Complaint.” *Id.*, Ex. A, §§ I, VII.A.

10 **C. Donation Option for Class Members**

11 Pursuant to the SASA, Class Members had the option of donating their refund payments to  
12 the Greater Los Angeles Zoo Association, Library Foundation of Los Angeles, Animal Welfare  
13 Trust Fund of the City of Los Angeles Animal Services, or Los Angeles Parks Foundation. Joint  
14 Decl., Ex. A, § III.B.6.

15 **D. Requested Attorneys’ Fees and Costs and Incentive Award**

16 Class Counsel, in Plaintiff’s Motion for Award of Attorneys’ Fees, Reimbursement of  
17 Expenses and Payment of an Incentive Award, filed concurrently herewith, have applied for  
18 attorneys’ fees and expenses not to exceed 20% of the Settlement Fund (or \$18.5 million). The  
19 City has agreed not to object to attorney’s fees and expenses up to the amount of \$15 million (or  
20 about 16.2% of the Settlement Fund), but the City reserves the right to object to attorneys’ fees  
21 and expenses in excess of \$15 million. *Id.*, § X.A. The parties continue to negotiate the issue of  
22 fees and expenses, however, and may reach an agreement prior to the hearing on this motion.

23 Moreover, also addressed in the motion filed concurrently herewith is Class Counsel’s  
24 application for an Incentive Award of \$10,000 to be paid to Plaintiff from the Settlement Fund in  
25 recognition of his contributions on behalf of the Class. The City has reserved the right to object to  
26 the amount of the incentive award. *Id.*, § X.B.

27 **IV. METHODS AND REACH OF NOTICE AND ADMINISTRATION COSTS**

28 Notice was given as directed in the Order to reach “as many class members as is  
practicable” and was extraordinarily robust, covering virtually every medium imaginable

1 including, for example, 1.8 million pieces of direct mail, television ads on five different stations,  
2 140 radio ads, publication in 11 major news publications, 16.9 million online impressions, and  
3 even roughly 2,000 direct telephone calls made to major businesses in the Los Angeles area,  
4 posting on the Claims Administrator, City, Wolf Haldenstein and Chimicles websites, and a joint  
5 press release by the parties in English and Spanish. Joint Decl., Ex. E (Order), § D.5.a.; Cooper  
6 Decl., ¶¶ 12, 22 & Ex. D; Joint Decl., ¶ 45. The Claims Administrator estimates that this notice  
7 campaign reached more than 90% of the Class Members. Cooper Decl., ¶ 22. Notice of final  
8 judgment entered in this case will be posted on the Settlement website. *See* Cal. Rules of Court  
9 (“CRC”), rule 3.771(b).

10 The City has already paid notice and administration costs to the Claims Administrator of  
11 \$2,114,359.91. Cooper Decl., ¶ 32. The Claims Administrator has incurred additional notice and  
12 administration costs that have not yet been reimbursed, and it will incur future costs. *Id.*  
13 Additionally, as part of the May 2, 2016 stipulation and order, the Court approved an amendment  
14 to the SASA to include reimbursing telephone service providers for the costs of retrieving and  
15 providing Class Member UUT payment records to the Claims Administrator or to the Class  
16 Member directly (in the case of T-Mobile), which are anticipated not to exceed a total of  
17 \$1,110,000. Joint Decl., Ex. B at 2.

18 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND THE**  
19 **COURT SHOULD FINALLY APPROVE THE SETTLEMENT**

20 **A. Standards for Final Approval of Settlement**

21 A class action settlement should be approved where the court finds it is fair, adequate, and  
22 reasonable to the class members. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128,  
23 133 (2008). Moreover, a class action settlement is presumed to be fair if: (1) it is “reached  
24 through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel  
25 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
26 percentage of objectors is small.” *Chavez v. Netflix*, 162 Cal. App. 4th 43, 52 (2008) (quoting  
27 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996)).

28 This Court has already found that the parties reached the Settlement through arm’s-length  
negotiations “including [five] mediation sessions before Judge Tevrizian (ret.)” Joint Decl., Ex. E

1 (Order), § D.1.a. Moreover, the Settlement came only after “extensive law and motion practice . .  
2 . . as well as numerous rounds of discovery between the parties, third party discovery, and  
3 depositions of telephone service providers.” *Id.*, § D.1.b. “Additionally, Plaintiff retained an  
4 expert who analyzed sample phone bills and UUT remittance data.” *Id.* Furthermore, this Court  
5 has recognized that the “four law firms representing Plaintiff in this action have vast experience in  
6 class action litigation.” *Id.*, § D.1.c. Finally, the percentage of objectors is extremely small. Only  
7 4 objections have been received so far. Cooper Decl., ¶ 27 & Ex. I. This amounts to only  
8 approximately .0002% of the Class. Further, only 19 Class Members timely filed exclusion  
9 requests following notice of this proposed Settlement. *Id.*, ¶ 25 & Ex. H. Therefore, the  
10 Settlement is entitled to a presumption of fairness.

11 **B. The Settlement is Fair, Adequate and Reasonable**

12 **1. The Strength of Plaintiffs’ Case Balanced Against The Amount  
13 Offered in Settlement Favors Approval**

14 The \$92.5 million Settlement Fund represents a significant recovery for the Class and  
15 represents thirty-one percent (31%) of the maximum liability of \$300 million estimated by the  
16 City in its public financial disclosures—an excellent result. Joint Decl., Ex. C. “A settlement  
17 need not obtain 100 percent of the damages sought in order to be fair and reasonable.” *Wershba v.*  
18 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001). *See also, e.g., Rebney v. Wells Fargo*  
19 *Bank*, 220 Cal. App. 3d 1117, 1139 (1990) (settlements found to be fair and reasonable even  
20 though monetary relief provided was “relatively paltry”).<sup>8</sup>

21 The Claims Administrator reports that it has received 312,116 claims to date. Cooper  
22 Decl., ¶ 28. With approximately 1.8 million members of the Class, this equates to an approximate  
23 claims rate of 17.3%. Of these 312,116 claims, 120,828 were submitted online and 191,288

---

24 <sup>8</sup> *See also In re Celera Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 U.S. Dist. LEXIS 42228, at  
25 \*15-16 (N.D. Cal. Mar. 31, 2015) (granting final approval on a settlement fund which represented 17  
26 percent of the plaintiff’s total estimated damages); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,  
27 1042 (N.D. Cal. 2007) (granting final approval of a settlement fund where the gross class recovery was 9  
28 percent of maximum potential recovery); *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 U.S. Dist.  
LEXIS 17196, at \*37-38 (N.D. Cal. Feb. 11, 2016) (finding “that the \$23 million offered in settlement is  
reasonable” where it represented “approximately 14 percent of likely recoverable aggregate damages at  
trial . . .”).



1 through the mail. *Id.* A preliminary review of the claims received in the mail has revealed claims  
2 for standard amounts totaling \$10.6 million, and 115,533 of the online claims include elections for  
3 standard refund amounts totaling \$7.3 million. *Id.*, ¶¶ 29-30. While it is too early to report on the  
4 total value of actual refund claims, the Claims Administrator has received dozens of claims  
5 submitted by mail with estimated values exceeding \$10,000, including claims for \$60,000 and  
6 \$78,000. *Id.*, ¶ 29.<sup>9</sup>

7                   **2. The Risk, Expense, Complexity and Likely Duration of the**  
8                   **Litigation Would Be Considerable Were the Action to Proceed**  
9                   **Against the City**

9           The benefits of this Settlement must also be balanced against the risk, expense, and  
10 complexity of further litigation for both parties. *7-Eleven Owners for Fair Franchising v.*  
11 *Southland Corp.*, 85 Cal. App. 4th 1135, 1152 (2000). Although Plaintiff is prepared to proceed  
12 with the hearing on his fully briefed motion for class certification and to file a motion for  
13 summary adjudication should the Settlement not be approved, further litigation would produce  
14 additional time-consuming and expensive law and motion proceedings, as well as a potential trial.  
15 Moreover, given the past history of appellate proceedings in this action, including intervention  
16 twice by the California Supreme Court, there is also the likelihood that any decisions at class  
17 certification, summary judgment and/or trial would be appealed. Against these risks and the  
18 possibility of many more years of delay, the Settlement provides taxpayers with an opportunity to  
19 claim as expeditiously as possible refunds of all UUT unlawfully collected from them during the  
20 Class Period. Since this case is already ten years old, further delay is likely to significantly reduce  
21 the number of Class Members filing claims because many Class Members will have moved out of  
22 the Los Angeles area and consequently will either not receive notice or, even if they do, will be  
23 less likely to file claims or go to the trouble of getting their UUT information from a former  
24 provider in a different location from where they currently live. Others may not remember their  
25 phone numbers from years ago and not be able to file claims. Balancing these considerations

---

27 <sup>9</sup> Plaintiff will update the Court in his Reply papers with any new information on the number and/or  
28 amount of claims.

1 supports approval of the Settlement because it reflects a well-reasoned resolution of this action,  
2 benefitting the Class and the administration of justice.

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

5 The City has vigorously opposed Plaintiff's attempts to have the class certified and would  
6 continue to do so absent the Settlement. As this Court recognized in its Order, "Even if a class is  
7 certified, there is always a risk of decertification." Joint Decl., Ex. E, § D.2.c. (citing *Weinstat v.*  
8 *Dentsply Int'l, Inc.*, 180 Cal. App. 4th 1213, 1226 (2010)). As discussed above, it is also likely  
9 given the history of this action that any class certification decision would be appealed absent the  
10 Settlement.

11 **4. The Recommendation of Experienced Counsel Favor Approval**

12 In determining whether a proposed settlement is fair, reasonable, and adequate the  
13 California courts value highly the opinion of counsel that are experienced in the type of litigation  
14 being settled. *See, e.g., Chavez*, 162 Cal. App. 4th at 53. This Court has recognized Class  
15 Counsel to have extensive experience litigating class actions. Joint Decl., Ex. E (Order),  
16 § D.4.b.iv. Based upon Class Counsel's substantial experience and their receipt of thorough  
17 discovery, extensive litigation and exhaustive negotiations directly with the City and under the  
18 guidance of a mediator, the Hon. Dickran Tevrizian (Ret.), they believe the Settlement is fair,  
19 reasonable, and adequate and in the best interest of the Class Members. Joint Decl., ¶¶ 11, 39-41.

20 **5. Presence of a Governmental Participant Favors Approval**

21 The fact that the defendant in this case is a governmental entity weighs in favor of  
22 approval. Joint Decl., Ex. E (Order), § D.2.g; *see also Touhey v. United States*, No. EDCV 08-  
23 01418-VAP (RCx), 2011 U.S. Dist. LEXIS 81308, at \*20-21 (C.D. Cal. July 25, 2011) (fact that  
24 defendants "are the government" weighed "in favor of final approval.")

25 **VI. THE NOTICE TO CLASS MEMBERS WAS ADEQUATE**

26 Due process requires that reasonable notice of the settlement be given to all potential class  
27 members. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Moreover, "notice of the  
28 final approval hearing must be given to the class members in the manner specified by the court."  
CRC, rule 3.769(f). The notice methods utilized here complied with the direction of the Order.

1 Notice was conveyed through a broad, multi-layered, multimedia program. Cooper Decl., ¶ 12 &  
2 Ex. D. Consequently, the Settlement meets the requirements for reasonable notice in order to  
3 obtain final approval.

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

5 This Court’s Order conditionally certified the Settlement Class. The Court should now  
6 finally certify the Settlement Class for purposes of this Settlement.

7 CRC, rule 3.769 sets forth the procedure to be followed when a class action is  
8 provisionally settled prior to class certification. Certification and settlement approval occur  
9 simultaneously. *See also Luckey v. Superior Court*, 228 Cal. App. 4th 81, 93 (2014). There are  
10 two requirements to certify a class: (1) the class must be ascertainable; and (2) there must be a  
11 well-defined community of interest in the questions of law and fact involved affecting the parties  
12 to be represented. *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704 (1967). California courts apply a  
13 “lesser standard of scrutiny” to certification of settlement classes. *Global Minerals & Metals*  
14 *Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003). Each of the criteria for class  
15 certification is clearly satisfied in this case.

16 **A. An Ascertainable Settlement Class Exists and Is Numerous**

17 The Class is defined by objective characteristics and common transactional facts, *i.e.*, all  
18 persons who have paid the UUT on specific telephone services. Therefore, Class Members are  
19 readily ascertainable. *Archer v. United Rentals, Inc.*, 195 Cal. App. 4th 807, 828 (2011).  
20 Moreover, certification of a class is appropriate when “the parties are numerous, and it is  
21 impracticable to bring them all before the court.” CCP § 382; *see also Richmond v. Dart Indus.,*  
22 *Inc.*, 29 Cal. 3d 462, 470 (1981). Here, during the Class Period, there were an estimated 1.3  
23 million households in the City and 569,000 businesses registered with the City, most of which are  
24 likely members of the Class as a result of their telephone usage, making it impracticable to bring  
25 them all before the Court.

26 **B. There is a Community of Interest**

27 “The community of interest requirement involves three factors: ‘(1) predominant common  
28 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and  
(3) class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23

1 Cal. 4th 429, 435 (2000).

2 The first factor means that it would be more efficient to jointly try the issues in the action,  
3 rather than requiring “each member . . . to individually litigate numerous and substantial questions  
4 to determine his or her right to recover following the class judgment . . . .” *Washington Mut.*  
5 *Bank, FA v. Superior Court*, 24 Cal. 4th 906, 913 (2001), accord *City of San Jose v. Superior*  
6 *Court*, 12 Cal. 3d 447, 460 (1974). All Class Members were subject to the UUT pursuant to the  
7 Los Angeles Municipal Code (“LAMC”) during the Class Period. See former LAMC § 21.1.3.  
8 As a result, Plaintiff’s allegations involve questions of law and fact common to the Class that  
9 predominate over any questions which may affect individual Class Members.

10 The second factor, typicality, requires only that the named plaintiff’s interests in the action  
11 be similar to those of other class members. *Richmond*, 29 Cal. 3d at 470-75; *Vasquez v. Superior*  
12 *Court*, 4 Cal. 3d 800, 811 (1971). Plaintiff Ardon is a resident of the City of Los Angeles, was a  
13 customer of Verizon Wireless during the Class Period, and paid the UUT imposed by the City on  
14 mobile telephone services he purchased. Declaration of Estuardo Ardon (“Ardon Decl.”), ¶ 2.  
15 Therefore, Plaintiff, like the Class, paid the UUT on services that were not taxable and is entitled  
16 to a refund.

17 With respect to the third factor, the representative plaintiff must adequately protect the  
18 interests of the class: (1) there must be no disabling conflict of interest between the class  
19 representative and the class; and (2) the class representative must be represented by counsel who  
20 are competent and experienced in the kind of litigation to be undertaken. *McGhee v. Bank of Am.*,  
21 60 Cal. App. 3d 442, 450 (1976); See also *Richmond*, 29 Cal. 3d at 478. During the nearly ten  
22 years that this action has been pending, Estuardo Ardon has clearly demonstrated his ability and  
23 his willingness to vigorously prosecute this action. See Ardon Decl., ¶ 3. Plaintiff’s claims  
24 present no possibility of a conflict with the interests of other Class Members because he and the  
25 members of the Class seek the same thing — refund of the UUT wrongfully collected.

26 Moreover, the Order finds that Class Counsel “have demonstrated that they are more than  
27 adequate.” Joint Decl., (Order), § D.4.b.iv.; see also, *Richmond*, 29 Cal. 3d at 479 (counsel  
28 adequate where they had “substantial experience in class action litigation”). Class Counsel have

1 diligently litigated this case throughout the nearly ten years it has been pending and in the course  
2 of that effort secured a unanimous decision before the California Supreme Court reversing the  
3 decisions of both trial and appellate courts in order to establish the legal right to file a class claim  
4 for the refund of improperly collected taxes, without which this action could not have proceeded.  
5 *Ardon v. City of Los Angeles*, 52 Cal. 4th 241 (2011). Furthermore, Class Counsel have  
6 successfully prosecuted numerous class actions across the country in both state and federal courts  
7 in recent years, recovering billions of dollars for injured class members. See Class Counsel  
8 Declarations.

9 **C. A Class Action is Superior**

10 The California Supreme Court has consistently recognized that class actions provide  
11 accessible judicial review and deter unfair and illegal conduct and are therefore favored in  
12 California. See *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 340 (2004);  
13 *Richmond*, 29 Cal. 3d at 474; *Vasquez*, 4 Cal. 3d at 807-08; *Daar*, 67 Cal. 2d at 715. Here,  
14 “[g]iven the relatively small size of the individual claims a class action provides the only realistic  
15 means of recovery.” Joint Decl., Ex. E (Order), § D.4.b.v. No one could justify the effort and  
16 expense involved in trying to establish a practice of illegal taxation, nor would any attorney take  
17 such a case, when the amount at stake for any one individual, for example, is at the very most in  
18 the hundreds of dollars. Moreover, even if some of the business claims are large enough to justify  
19 individual litigation, an overwhelming majority of the class would have no realistic means of  
20 recovery absent a class action.

21 **VIII. CONCLUSION**

22 Because the Settlement is fair, reasonable, and adequate, the Court should grant the  
23 Settlement final approval.

24 DATED: July 1, 2016

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP

25 By:   
26 FRANCIS M. GREGOREK

27 FRANCIS M. GREGOREK  
28 RACHELE R. RICKERT  
MARISA C. LIVESAY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

750 B Street, Suite 2770  
San Diego, CA 92101  
Telephone: 619/239-4599  
Facsimile: 619/234-4599

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
DANIEL W. KRASNER  
270 Madison Avenue  
New York, NY 10016  
Telephone: 212/545-4600  
Facsimile: 212/545-4653

CHIMICLES & TIKELLIS LLP  
NICHOLAS E. CHIMICLES  
TIMOTHY N. MATHEWS  
One Haverford Centre  
361 West Lancaster Avenue  
Haverford, PA 19041  
Telephone: 610/642-8500  
Facsimile: 610/649-3633

CUNEO GILBERT & LADUCA, LLP  
JONATHAN W. CUNEO  
WILLIAM ANDERSON  
507 C Street, NE  
Washington, DC 20002  
Telephone: 202/789-3960  
Facsimile: 202/789-1813

TOSTRUD LAW GROUP, PC  
JON TOSTRUD  
1925 Century Park East, Suite 2125  
Los Angeles, CA 90067  
Telephone: 310/278-2600  
Facsimile: 310/278-2640

Attorneys for Plaintiff

CITY OF LA:22962v4