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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 MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND PAYMENT OF AN INCENTIVE AWARD; 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

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, Plaintiff Estuardo Ardon ("Plaintiff") will move for an order:

1. Awarding Class Counsel $18.5 million in attorneys' fees and reimbursement of expenses; and

2. Approving the payment of an incentive award to Plaintiff Estuardo Ardon in the amount of $10,000.

This motion is based upon the accompanying Memorandum of Points and Authorities, the Second Amended Settlement Agreement, 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,[1] 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

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

By: _____
FRANCIS M. GREGOREK

[1] 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."

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Class Counsel[2] diligently and skillfully prosecuted this extremely risky case over the course of a decade without compensation or reimbursement of costs to produce the exemplary $92.5 million Settlement Fund. Class Counsel won an uphill battle to obtain a landmark victory in the California Supreme Court, overturning decisions of the trial and appellate courts and establishing a taxpayer's right to file a class claim seeking the refund of taxes alleged to have been improperly collected. Commentators recognized this to be a sea change in the generally accepted interpretation of the law.[3] Based on their skillful analysis and use of the applicable law throughout the case and hard work in discovery, Class Counsel were able to engage in well-informed and exhaustive settlement negotiations with the City of Los Angeles (the "City"), including senior members of the City government. These negotiating sessions, directly between the parties and under the guidance of the Hon. Dickran Tevrizian (Ret.), spanned three years and resulted in a Settlement Fund representing nearly one third (1/3) of the City's publicly acknowledged total potential liability.

In sum,[4] the Settlement entitles Class members to receive up to a *full refund* of the telephone utility users taxes ("UUT") that Plaintiff alleges were improperly collected by the City on telephone service from October 19, 2005 to March 15, 2008 (the "Class Period"). Class members who file claims can receive up to a 100% refund of the UUT they paid on mobile phone service during the Class Period, plus a 70% refund of the UUT they paid on landline service during the Class Period, approximating a full recovery of the damages they would have received if

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[2] Capitalized terms have the meaning ascribed in the Second Amended Settlement Agreement ("SASA"), unless otherwise noted. *See* Joint Declaration of Francis M. Gregorek and Nicholas E. Chimicles in Support of Unopposed Motion for Final Approval of Class Action Settlement, Attorneys' Fees, Reimbursement of Expenses and Payment of an Incentive Award ("Joint Declaration" or "Joint Decl."), Exhibit ("Ex.") A.

[3] *See, e.g.*, Joint Declaration Ex. H (August 4, 2011 *Daily Journal* article, "Do ordinances shield cities from class claims?") ("[T]he *Ardon* decision clarified that [class claims are] permitted in certain cases. 'In our practice, this is really a fundamental shift in court precedent.'")

[4] A comprehensive description of the case, the claims Plaintiff asserted and the Settlement Class Counsel achieved is contained in the Joint Declaration.

Plaintiff had succeeded in certifying a class and prevailing on all of the liability issues at summary judgment or trial.[5]

Class Counsel negotiated a simple and fair claims process providing Class members three options to make claims: (1) standard refund amounts of $50 for mobile service, $30 for landline service, and/or $50 for business landline service with ***no documentary evidence required***;[6] (2) refunds of up to 100% of the tax actually paid on mobile service during the Class Period and 70% of the tax paid on landline service with documentary evidence of the telephone tax paid, such as copies of invoices; and (3) AT&T, Verizon, Sprint, and T-Mobile will search their databases and provide tax payment information for Class members who request and consent to the release of such information to assist Class members in providing documentation of the amounts of UUT they paid.[7] Joint Decl., ¶ 10 and Ex. B.

Furthermore, Class Counsel also negotiated an extremely robust notice program based upon direct mail to virtually every address in the City supplemented by every other media imaginable. Joint Decl., ¶ 45; Declaration of Phil Cooper Re: Notice Procedures ("Cooper Decl."), ¶ 12 and Ex. D. Although it will take months for the Claims Administrator to process all the claims and calculate refunds due, by any measure this Settlement is a success. As of July 1st, 312,116 claims have been filed by Class Members. Cooper Decl., ¶ 28. Of these, 120,828 were submitted online and 191,288 through the mail. *Id*. A preliminary review of the claims received in the mail has revealed claims for standard amounts totaling $10.6 million, 115,533 of the online claims include elections for standard refund amounts totaling $7.3 million. *Id*., ¶¶ 29-30. While it

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[5] Plaintiff did not challenge application of the UUT to charges for purely local telephone service, which applies solely to landline service. In administering a refund of the Federal Excise Tax ("FET"), which was coextensive with the UUT, the Internal Revenue Service determined that approximately 32% of the total FET was attributable to local service and, therefore, properly collected. Joint Decl., ¶ 34 n.6 & Ex. G at 51:4-10. Thus, the Settlement provides for a 70% refund of the total UUT collected on landline service, representing, on average, a full recovery of the improperly collected UUT on landline service.

[6] Ordinarily, taxpayers bear the burden of producing evidence of any tax refund they are due (*see e.g., Dicon Fiberoptics, Inc. v. Franchise Tax Bd*., 53 Cal. 4th 1227, 1236 (2012)), so the fact that taxpayers are receiving refunds without a documentation requirement is a significant achievement.

[7] AT&T, Verizon, and Sprint will provide the UUT data directly to the Claims Administrator. T-Mobile provided data directly to the Class members who called a toll free number and requested it.

is too early to report on the total value of actual refund claims, the Claims Administrator has received dozens of claims submitted by mail with estimated values exceeding $10,000, including claims for $60,000 and $78,000. *Id*., ¶ 29.

Achieving this exemplary Settlement was far from certain. Class Counsel faced a significant risk, *perhaps a likelihood*, that their investment of substantial resources over the course of nearly ten years would be entirely for naught, yet they applied truly exceptional lawyering to overcome the difficult hurdles that lay in their path. Indeed, given the generally accepted understanding that class claims for tax refunds were barred, both the trial court and the Court of Appeals ruled against Plaintiff on the threshold legal issue – *i.e.*, whether class action tax refund claims were permitted under the Government Code. However, Class Counsel stood fast and won a landmark decision before the California Supreme Court which held that California taxpayers have the right to file class action refund claims under the Government Code.[8] *Ardon v. City of Los Angeles*, 52 Cal. 4th 241 (2011). Even then, however, ultimate success was far from certain, as Class Counsel faced the risk that class certification could be denied, or that they could lose some or all of their claims at summary judgment, trial or pursuant to legislative fiat.[9]

Class Counsel now seek an award of $18.5 million, inclusive of fees and expenses, to be paid from the $92.5 million Settlement Fund as compensation for their considerable investment of time and effort and their success in achieving the Settlement. Class Counsel has incurred $691,369.43 in unreimbursed out-of-pocket costs over the ten-year course of this litigation, and has invested a collective lodestar of $11,813,095.75.[10] Joint Decl., ¶ 151; Class Counsel

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[8] Later, in the related case, *McWilliams v. City of Long Beach*, also pending before this Court, Class Counsel won another landmark victory in the Supreme Court of California, holding that local governments cannot adopt ordinances that supersede the procedure specified in the Government Code. *McWilliams v. City of Long Beach*, 56 Cal. 4th 613 (2013).

[9] Class Counsel faced a risk that the decision they won in the California Supreme Court could be legislatively overruled. Those concerns were well-founded. In 2014, a bill was proposed to overrule the *McWilliams* decision (Assembly Bill 59 (2014)), which could have served as precedent for the City to enact retroactive legislation prohibiting the class tax refund claims brought by Plaintiff here. The bill did not pass, however.

[10] Class Counsel has voluntarily excluded from their lodestar hundreds of thousands of dollars reflecting time spent on the California Supreme Court appeal filed by the City seeking to overturn the decision of this court and the Court of Appeals on the City's Motion for Order Compelling the Return of (continued…)

Declarations. Therefore, net of expenses, the requested fee award represents a modest 19% of the Settlement Fund and a multiple of just 1.5 of their lodestar. Class Counsel's request for 19% of the Settlement Fund in attorneys' fees is well below the 25% benchmark for similar cases. Indeed, the City has agreed that Class Counsel deserve, at a minimum, $15 million in fees and expenses.[11] Joint Decl., Ex. A, § X.A. All of the relevant factors demonstrate that an award of $18.5 million for fees and costs is fully warranted here.

Class Counsel also seek an incentive award of $10,000 for Plaintiff Estuardo Ardon, in recognition of his service on behalf of the Class, including producing his personal documents, sitting for a deposition, reviewing filings and discovery responses, overseeing his attorneys, and standing up for the rights of taxpayers, even when doing so brought him receiving unwanted publicity.[12]

II. LEGAL ARGUMENT

There are two generally accepted methods for determining an award of attorneys' fees under California law: (1) the percentage-of-the-recovery method, and (2) the lodestar method. Typically the percentage method is selected when a settlement results in a common fund, and the lodestar method is selected when a settlement does not result in a common fund. In either case, courts will typically refer to the other method as a cross-check to ensure that the fee award is fair. *Roos v. Honeywell Int'l, Inc.*, 241 Cal. App. 4th 1472, 1493 (2015).[13] "The trial court is the best

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(…continued)
Privileged Material and to Disqualify Plaintiff's Counsel of Record. Class Counsel had no choice but to invest that time, but since it occurred after the Settlement Agreement was signed, Class Counsel has voluntarily excluded it. Joint Decl., ¶ 52.

[11] The parties did not discuss attorneys' fees until the end of the final day of mediation, after agreement on all material terms of the Settlement had been reached. Joint Decl., ¶ 31; Declaration of Dickran Tevrizian in Support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement, ¶ 8. The parties continue to negotiate the issue of fees and expenses and may reach an agreement prior to the hearing on this motion.

[12] *See* Ardon Decl., Ex. B (Kerry Cavanaugh, *L.A.'s next hero could also be its next villain*, L.A. DAILY NEWS (August 8, 2011) (stating, "You've probably never heard of Estuardo Ardon, but next year he may just be the most beloved or hated man in the city of Los Angeles."))

[13] The Supreme Court of California recently heard an appeal in *Lafitte v. Robert Half Int'l, Inc.*, No. S222996, 342 P.3d 1232, 184 Cal. Rptr. 3d 78 (2015), in which the Supreme Court characterized the question presented as, "Does *Serrano v. Priest*, 20 Cal. 3d 25 (1977) permit a trial court to anchor its (continued…)

judge of the value of professional services rendered in its court, and while its judgment is subject to our review, [Court of Appeal] will not disturb that determination unless . . . convinced that it is clearly wrong." *Id.* at 743 (internal quotations and citation omitted).

Class Counsel's request for $18.5 million, inclusive of fees and expenses, is appropriate under either the lodestar or percentage-of-recovery standard, particularly given the serious risk of failure and non-payment for nearly 10 years of work that Class Counsel faced in this case, the superb skill they applied in overcoming the legal obstacles to recovery, and the substantial benefits they negotiated for the Class.

A. The Requested Fees Should Be Approved Under the Percentage of the Common Fund Method

The common fund doctrine is generally held applicable "where plaintiffs' efforts have effected the creation or preservation of an identifiable fund of money out of which the fees will be paid." *Jordan v. Dep't of Motor Vehicles*, 100 Cal. App. 4th 431, 446-47 (2002) (citing *Serrano*, 20 Cal. 3d at 37-38). Here, the Settlement resulted in creation of an identifiable $92.5 million fund from which tax refunds, notice and administration costs, attorneys' fees and expenses and any incentive award would be paid.

Although it is possible that the entire $92.5 million Settlement Fund would not be exhausted, and therefore some amount would revert to the City, this does not impact calculation of the relevant common fund amount. In applying the common fund method, attorneys' fees are "calculated on the basis of the ***total fund made available*** rather than the actual payments made to the class." *Lealao v. Beneficial Cal., Inc*., 82 Cal. App. 4th 19, 51 (2000) (emphasis added) (citing *Williams v. MGM-Pathe Commc'ns Co*., 129 F.3d 1026, 1027 (9th Cir. 1997).[14] So, for example,

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(…continued)
calculation of a reasonable attorney's fees award in a class action on a percentage of the common fund recovered?" Although the Court has not issued its ruling as of the time of this writing, the ruling would not be outcome determinative here because the award requested by Class Counsel here easily satisfies both the percentage-of-recovery and lodestar tests.

[14] *See also Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480-81 (1980)) ("attorneys' fees sought under a common fund theory should be assessed against every class members' share, not just the claiming members."); *Estrada v. iYogi, Inc*., No. 2:13-cv-01989 WBS CKD, 2016 U.S. Dist. LEXIS 8947, at *18 (E.D. Cal. Jan. 26, 2016) ("Where there is a claims-made settlement . . . the percentage of the fund approach . . . is based on the total (continued…)

in *Collins v. City of Los Angeles*, 205 Cal. App. 4th 140, 147-48, 158 (2012), the Court included in its common fund valuation for purposes of determining appropriate attorneys' fees the entire value of the judgment, even though a portion of that amount was payable to class members who could not be located and would revert to the City.[15]

Fee awards of 25-30% of a common fund, or more, are customary. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (27.9 percent of the class benefit awarded and noting "[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"); *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) ("25 percent of the total damages fund recovered for the class"); *In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.*, No. 960886, 1998 WL 1031494, at *8-9 (Alameda Cnty. Super. Ct. Oct. 22, 1998) (awarding 30% of fund and citing eleven other awards ranging from 30%-45%).[16] Here, Class Counsel request a modest fee

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(…continued)
money available to class members, not just the money actually claimed."); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *50 (N.D. Cal. Jan 26, 2007) (the court "must award fees as a percentage of the entire fund, or pursuant to the lodestar method, not on the basis of the amount of the fund actually claimed by the class"); *Fernandez v. Victoria Secret Stores, LLC*, No. C-06-04149 MMM (SHx), 2008 U.S. Dist. LEXIS 123546, at *36 n.39 (C.D. Cal. July 21, 2008) ("Use of the 'common fund' concept in a case such as this, where each class member can recover only a finite amount, does not affect the calculation of attorneys' fees even if a portion of the fund is not claimed.").

[15] Moreover, any potential reversion here is tantamount to a *cy pres* distribution. The goal of the Settlement is to pay UUT refunds to Class members, the vast majority of whom are likely still Los Angeles residents. According to US Census migration statistics, in the four year period from 2009 to 2013, only about 3% of Los Angeles County residents migrated outside of Los Angeles County. *See Census Flows Mapper*, UNITED STATES CENSUS BUREAU, http://flowsmapper.geo.census.gov/map.html (last visited June 30, 2016). Thus, a reversion to the City ensures that the Settlement Fund will be used for the benefit of the majority of Class members. Indeed, it is the best possible *cy pres* distribution. Further, Code of Civil Procedure section 384(c) recognizes that, in cases against public entities, a reversion to the public entity satisfies a public purpose.

[16] *See also In re Natural Gas Trust Cases Price Indexing*, JCCP No. 4221/4224/4226/4428, 2006 Cal. Super. LEXIS 1302, at *7 (San Diego Cnty. Super. Ct. Dec. 11, 2006) (fee awards of 25%-30% are "customary" in common-fund cases; awarding $26,699,828.00 of the $92.1 million settlement fund, or 29%); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. EMPIRICAL LEG. STUD. 811, 833 (2010) (analyzing 444 cases between 2006 and 2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent . . . ."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements:* 1993-2008, 7 J. EMPIRICAL LEG. STUD. 248, 262 (2010) (finding a similar range of fee awards).

of 19% of the Settlement Fund, which is below the typical 25-30% and well within the range often approved by courts for similar sized settlements.[17]

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

B. The Requested Fees Should Be Approved Under the Lodestar Method

California courts typically apply the lodestar plus multiplier method as a cross-check on fees calculated under the percent-of-recovery method, or when there is not a common fund capable of valuation with reasonable certainty. *Lealao*, 87 Cal. App. 4th at 37-39, 45-46.

Where the use of the lodestar method is used as a cross-check, the Court is not required to perform an exhaustive cataloguing and review of counsel's hours. *See In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting."). *See also Destefano v. Zynga, Inc.*, No. 12-cv-

[17] *See, e.g.*, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI; MDL No. 1827, 2013 U.S. Dist. LEXIS 6607, at *47 (N.D. Cal. Jan. 14, 2013) (awarding attorneys' fees in an amount equal to 30% of $68 million settlement fund); *Pokorny v. Quixtar, Inc.*, No. C 07-0201 SC, 2013 U.S. Dist. LEXIS 100791, at *5-7 (N.D. Cal. July 18, 2013) (awarding fees equal to 29.5% of $55 million common fund); *In re Broadcom Corp. Secs. Litig.*, No. SACV 01-275 DT (MLGx), 2005 U.S. Dist. LEXIS 41993, at *13 (C.D. Cal. Sept. 12, 2005) (attorneys' fees equal to 25% of $150 million settlement fund); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 & n.6 (9th Cir. 2002) (affirming fee award that was 28% of $97 million fund); *In re Informix Corp. Secs. Litig.*, No. C 97-1289 CRB, 1999 U.S. Dist. LEXIS 23579, at *6 (N.D. Cal. Nov. 23, 1999) (awarding plaintiffs' counsel 30% of $132 million net settlement fund).

04007-JSC, 2016 U.S. Dist. LEXIS 17196, at *66-68 n.11 (N.D. Cal. Feb. 11, 2016) (noting that "the Court may rely on . . . summaries [of hours worked], as actual billing records are unnecessary in the context of assessing the lodestar cross-check.")

1. Class Counsel's Lodestar is Reasonable and Supports the Requested Award

Class Counsel's lodestar of $11,813,095.75 over the course of this ten year litigation is reasonable. The starting point in the lodestar analysis is to discern the prevailing hourly rate for similar work in the pertinent geographic region. *Chodos v. Borman*, 227 Cal. App. 4th 76, 93 (2014) (citing *Serrano v. Unruh*, 32 Cal. 3d 621, 640 n.31 (1982)) (value of attorney services is variously defined as the "'hourly amount to which attorneys of like skill in the area would typically be entitled'") (citation omitted); *PLCM Grp., Inc. v. Drexler*, 22 Cal. 4th 1084, 1094-95 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel).

Class Counsel here are highly-regarded members of the bar with national practices and have successfully brought to bear in this case their extensive experience in class actions and complex litigation. *See* Class Counsel Declarations. Their customary rates used to calculate the lodestar here are squarely in line with prevailing rates in this jurisdiction, are paid by hourly paying clients of their firms, and/or have been approved by other courts. *Id*.

Class Counsel's rates of $550 to $950 for partners, and $435 to $490 for associates, are within the prevailing market rates in the Los Angeles area for attorneys of comparable skill, experience, and reputation.[18] The *National Law Journal* provides 2013 rates reported by Los

[18] The Supreme Court has held that the use of current rates is proper since such rates more adequately compensate for inflation and loss of use of funds. *Mo. v. Jenkins*, 491 U.S. 274, 283-84 (1989). *See also Mackinnon v. Imvu, Inc.*, No. 111-cv-193767, 2016 Cal. Super. LEXIS 175, at *2-3 (Santa Clara Cnty. Super. Ct. Feb. 22, 2016) (citing *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998)) ("[C]urrent rates, rather than historical rates, should be applied in order to compensate for the delay in payment . . . ."); *Wakefield v. Wells Fargo & Co.*, No. 3:13-cv-05053 LB, 2015 U.S. Dist. LEXIS 69233, at *15-16 (N.D. Cal. May 28, 2015) (using current rates is "appropriate given the deferred and contingent nature of counsel's compensation"); *Duran v. United States Bank Nat'l Ass'n*, No. 2001-035537, 2010 Cal. Super. LEXIS 1058, at *49 (Alameda Cnty. Super. Ct. Dec. 16, 2010) ("current rates are the accepted method for accounting for delay in payment when . . . counsel do not seek, and are not being awarded, a lodestar enhancement for delay"); *Chemical Bank v. City of Seattle*, 19 F.3d 1291, 1305 (9th Cir. 1994).

Angeles-based firms as follows:[19]

Firm	Partner Rates	Associate Rates
Irell & Manella	$800- $975	$395- $750
Manatt Phelps	$640 - $795	n/a
O'Melveny & Meyers	$615 -$950	n/a
Jeffer Mangels	$560- $875	n/a
Sheppard Mullin	$490 - $875	$275 - $535

The firms listed above are firms that Class Counsel generally litigate against in their high-stakes, class action practices. *See also Bergstein v. Stroock & Stroock & Lavan*, No. BC483164, 2013 Cal. Super. LEXIS 593, at *12 (L.A. Cnty. Super. Ct. Feb. 14, 2013) (approving rates up to $920 per hour and noting that "in the Los Angeles legal community, attorney billing rates of $1000 per hour and above are no longer unheard of"); *Rodriguez v. Cnty. of Los Angeles*, 96 F. Supp. 3d 1012, 1023 (C.D. Cal. 2014) (approving attorney rates from $500 to $975 in a case against County of Los Angeles); *Blacksher v. United States Sec. Assocs., Inc.*, No. BC348103, 2008 Cal. Super. LEXIS 1464, at *6-7 (L.A. Cnty. Super. Ct. Mar. 7, 2008) (citing The National Law Journal and noting that partner billing rates for Southern California ranged as high as $825.00 in 2008). Likewise, Class Counsel's rates for paralegals, legal assistants, and law clerks, which range from $60 to $335, are reasonable.[20] *See Goldman v. Lifelock, Inc.*, No 115CV276235, 2016 Cal. Super. LEXIS 82, at *6 (Santa Clara Cnty. Super. Ct. Feb. 5, 2016) (approving paralegal rates up to $320 per hour); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098-AB (SHx), 2015 U.S. Dist. LEXIS 54063, at *65 (C.D. Cal. Mar. 24, 2015) (approving paralegal rates of $240 for a paralegal with five years' experience and $345 for a paralegal with 23 years' experience).

Further, Class Counsel's total hours are reasonable. The extensive work performed by Class Counsel, from initial investigation through the appeal in the Supreme Court of California and a separate appeal through the appellate level, use of an expert to understand telephone billing

[19] *See Billing Rates Across the Country*, NAT'L LAW J. (Jan. 13, 2014), http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-theCountry?slreturn=20160307095654.

[20] Only two professionals, Gregory L. Stone and Tony Gjata, exceed this range, with hourly rates of $450 and $355, respectively. Mr. Stone is an in-house financial analyst at Wolf Haldenstein, and Mr. Gjata is a member of Wolf Haldenstein's professional technical staff, providing support on discovery matters.

practices and their linkage to proper taxation of services, time-consuming discovery involving extensive fact finding and negotiation with the telephone service providers, discovery motions involving difficult questions concerning the privacy rights of taxpayers, briefing class certification, and the years-long exhaustive settlement negotiation process, is set forth more fully in the accompanying Joint and Tevrizian Declarations. Suffice it to say here, this was a hard fought litigation against a sophisticated defendant with ample resources that fought every step of the way.

On average, Class Counsel invested approximately 1,700 hours per year in this decade-long litigation. Courts routinely find comparable expenditures of time reasonable in similarly complex litigation. *See, e.g., Skold v. Intel Corp.*, No. 1-05-CV-039231, 2015 Cal. Super. LEXIS 122, at *14-15 (Santa Clara Cnty. Super. Ct. Jan. 28, 2015) (finding that 17,651.2 hours was reasonable for ten years of litigation, especially, "[r]ecognizing the length and complexity of this lawsuit and the amount of work involved over an extended period of time as well as the risks associated with the outcome"); *Duran*, 2010 Cal. Super. LEXIS 1058, at *54 (holding that 14,500 "hours are fully justified by the tremendous burdens of over eight years of intense, bitterly-contested litigation."); *Chemical Bank*, 19 F.3d at 1298 (affirming the district court's decision that 137,000 billable hours was reasonable for a seven-year case).

Each firm here has also submitted a declaration attesting that their reported hours are accurate and were reasonably incurred in connection with the prosecution and settlement of claims and that their firms require their attorneys and other professionals to maintain daily, contemporaneous time records. *See, e.g., Concepcion v. Amscan Holdings, Inc*., 223 Cal. App. 4th 1309, 1324 (2014) ("It is not necessary to provide detailed billing timesheets to support an award of attorney fees under the lodestar method . . . . Declarations of counsel setting forth the reasonable hourly rate, the number of hours worked and the tasks performed are sufficient.") (citing *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 254-55 (2001)); *see also Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) ("An attorney's sworn testimony that, in fact, it took the time claimed '. . . is evidence of considerable weight on the issue of the time required . . .'") (citation omitted; alterations in original).

Class Counsel also anticipates incurring significant additional lodestar going forward. Class Counsel has closely monitored the claims process to date and has been exceedingly proactive in addressing issues and advising and assisting claimants. The process of analyzing claims and the carrier search procedure is anticipated to take at least several months, during which time Class Counsel expects to maintain a high level of oversight and involvement. Therefore, Class Counsel anticipates incurring several hundreds of thousands of dollars of additional lodestar through the conclusion of the claims process.

2. The Requested 1.5 Multiplier is Well-Earned

Class Counsel's "unadorned lodestar reflects the general local hourly rate for a *fee-bearing case*; it does *not* include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider . . . ." *Ketchum*, 24 Cal. 4th 1122 at 1138. Here, Class Counsel requests a total award of $18.5 million for fees and expenses, which equates to a multiple of 1.5 on their lodestar of $11,813,095.75. This multiple is very reasonable here and beneath that generally granted.

To "approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees" (*id.*), courts employ fee enhancements, adjusting the fee "based on consideration of factors specific to the case," *PLCM Grp., Inc.*, 22 Cal. 4th at 1095. Those factors include: (1) the results achieved on behalf of the Class; (2) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (3) the response of the Class to the settlement, including a lack of objections to the settlement terms, and particularly to the fee award; (4) counsel's experience, reputation, and ability; (5) counsel's preclusion from other work; and (6) the contingent nature of the fee award. *See Ketchum*, 24 Cal. 4th at 1132; *Cundiff v. Verizon Cal., Inc.*, 167 Cal. App. 4th 718, 724 n.3 (2008); *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556 (2009). All of these factors weigh in favor of enhancement.

One of the primary fee enhancement factors is contingency risk. In *Ketchum*, the Supreme Court explained that its purpose "is to bring the financial incentives for attorneys enforcing important . . . rights . . . into line with incentives they have to undertake claims for which they are

paid on a fee-for-services basis." *Ketchum*, 24 Cal. 4th at 1132 (citing *Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962)). To achieve this purpose, the "'contingent fee ***must be*** higher than a fee for the same legal services paid as they are performed.'" *Id.* (emphasis added) (citation omitted). The enhancement is "intended to approximate market-level compensation for [the attorney's] services, which [in contingency-fee cases] typically includes a premium for the risk of nonpayment or delay in payment of attorney fees." *Id. See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 579 (2004) ("One of the most common fee enhancers . . . is for contingency risk."); *Greene v. Dillingham Constr. N.A., Inc.*, 101 Cal. App. 4th 418, 428-29 (2002) (trial court erred by refusing to consider contingency risk in awarding fees). Here, Class Counsel litigated for ***10 years*** and incurred over $11 million in lodestar and over $690,000 in out-of-pocket costs, while facing a serious risk that they would never be compensated ***at all***. Indeed, the trial court and Court of Appeal ruled against Plaintiff on the threshold legal issue, denying the right of Plaintiff to bring a class action claim.[21]

There is also no question that the threshold issue was both novel and difficult, and Class Counsel demonstrated utmost skill in persuading the Supreme Court to hear the appeal and in achieving a unanimous reversal.[22] In a similar vein, Class Counsel's experience, reputation, and ability to achieve extraordinary results in class action and complex litigation is second to none (*see* Class Counsel Declarations), and was put to the test in this case by a sophisticated defendant with ample resources. Further, by virtue of their substantial investment of time and resources, Class Counsel were precluded from other work while they fought vigorously for the rights of Los

[21] Plaintiff's pursuit and success in the appeal in the Supreme Court of California established not only the right of the taxpayers here but also the rights of *all* California taxpayers to pursue class refund claims under the Government Code. Courts recognize that "the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work." *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 0801365 CW, 2010 U.S. Dist. LEXIS 49482, at *5 (N.D. Cal. Apr. 22, 2010) (citing *Vizcaino*, 290 F.3d at 1050). Such a practice "encourages the legal profession to assume such a risk and promotes competent representation for plaintiffs who could not otherwise hire an attorney." *In re Nuvelo Sec. Litig.*, No. C 07-04056 CRB, 2011 U.S. Dist. LEXIS 72260, at *9 (N.D. Cal. July 6, 2011).

[22] There were, of course, numerous other pitfalls on the path to success, including class certification and the necessity to prove claims based on highly technical application of tax law to modern telephone service, which required significant discovery into telephone carrier billing practices and data storage.

Angeles tax payers.

The result achieved here also weighs heavily in favor of enhancement. The $92.5 million Settlement Fund is, by the City's own estimation, approximately 1/3 of its total potential liability. *See* Joint Decl., Ex. C. Over 300,000 Los Angeles taxpayers will receive UUT refunds, many without any obligation to provide documentary evidence of the amount of UUT they actually paid, and many Class members will receive refunds of up to 100%. The claims process is simple and fair, and the notice program was extraordinarily robust.[23] The response of the Class members has also been overwhelmingly positive. To date, 312,116 claims have been filed, and only 4 objections have been received. Cooper Decl., ¶¶ 27-28 & Ex. I. Plaintiff believes these four, only one of which deals with the fee application, are easily answered. For efficiency purposes, since the time to object does not expire until July 12, 2016, Plaintiff will respond to these and any other objections in his Reply papers.

Finally, the requested multiple of 1.5 is below multiples commonly awarded to counsel in class action litigation. *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (affirming 2.52 multiplier); *Chavez*, 162 Cal. App. 4th at 66 (affirming 2.5 multiplier); *Wershba, Inc.*, 91 Cal. App. 4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sternwest Corp. v. Ash*, 183 Cal. App. 3d 74, 76 (1986) (remanding for lodestar enhancement of "two, three, four or otherwise"); *In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.*, 1998 WL 1031494, at *10 ("Cases from California and other jurisdictions reflect that multipliers of two or more are commonplace in class actions.").[24]

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[23] In addition to the robust notice program, Class Counsel utilized a team of paralegals and legal assistants to make phones calls to approximately 2,000 of the largest businesses in the Los Angeles area and also sent targeted letters to approximately 30 of the largest Los Angeles area accounting firms to reach their clients. Joint Decl., ¶ 45. Class Counsel also worked with several companies who specialize in tax refund services for their clients, including Think LLP and Diversified Solutions, Inc., to assist them in making claims on behalf of their clients. *Id*.

[24] *See also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) ("'[M]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied'") (quoting Herbert Newberg & Alba Conte, *Newberg on Class Actions*, §14.03, at 14–5 (3d ed. 1992)); *Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 U.S. Dist. LEXIS 115151, at *30 (E.D. Okla. Aug. 16, 2011) (citing a study "reporting average multiplier of 3.89 in survey of 1,120 class action cases"); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (continued…)

The fact that the defendant here is a public entity does not militate against the modest multiplier Class Counsel request. *See Horsford v. Bd. of Trs. of Cal. State Univ.*, 132 Cal. App. 4th 359, 400 (2005) (holding it was an abuse of discretion to deny a positive multiplier based on the public entity status of the defendant where the public entity chooses to defend its conduct through lengthy and complex litigation); *Schmid v. Lovette*, 154 Cal. App. 3d 466, 476 (1984) ("The fact that the fee award must be paid from the limited budget of the district and that the financial burden will therefore fall upon the taxpayers also does not constitute a special circumstance rendering the fee unjust"). As aptly discussed in *Rogel v. Lynwood Redevelopment Agency*:

> In our view, *Serrano III*, *Horsford* and *Schmid* preclude a rule which awards less than the fair market value of attorneys' fees merely because the case was filed against a government agency. We also see a strong public policy against such a rule. Allowing properly documented attorneys' fees to be cut simply because a losing party is a governmental entity would defeat the purpose of the private attorney general doctrine codified in Code of Civil Procedure section 1021.5 and would also incentivize governmental entities to negligently or deliberately run up a claimant's attorneys' fees, without any concern for consequences.

Id., 194 Cal. App. 4th 1319, 1332 (2011). Here, it was the City's choice to engage in lengthy and complex litigation. Therefore, Class Counsel's request for a modest multiple should not be denied merely because the defendant is a government entity. To the contrary, there is ample support for awarding a multiplier in a class action brought against a public defendant. *See Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113, 1123-27 (C.D. Cal. 2008) (a $6.375 million fee, 25% of a $25.65 million fund, was awarded; 5.2 multiplier); *Crommie v. State of Cal., Public Utilities Com'n*, 840 F. Supp. 719, 725-26 (N.D. Cal. 1994) (multiplier of 2.0); *Coalition for Los Angeles Cnty. Planning in the Public Interest v. Bd. of Supervisors*, 76 Cal. App. 3d 241, 251 (1977) (multiplier of 2.0).[25]

(…continued)
("Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."); *Vizcaino*, 290 F.3d at 1051 n.6 (noting that in most cases where the common fund is $50-200 million the multiplier is in the 1.5-3.0 range); *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 742 (3d Cir. 2001) (indicating that lodestar multiplier of 1.35 to 2.99 common in megafunds over $100 million).

[25] As set forth in the SASA, the "Attorneys' Fees and Expense award will be allocated among Class Counsel with the approval of the Class Counsel." Joint Decl., Ex. A, § X.A. Class Counsel have reached (continued…)

C. Class Counsel's Expenses Are Reasonable

Inclusive in their request for a total award of $18.5 million, Class Counsel seek reimbursement of $691,369.43 in unreimbursed expenses. These costs were necessary to the investigation, prosecution, and settlement of this action, and included, *inter alia*, expert witness and consultant fees, transcript fees, necessary travel, and other reasonable expenses. *See* Class Counsel Declarations. Class Counsel also anticipate incurring additional expenses through the end of the claims process, for which Class Counsel will not seek additional reimbursement.

D. The Requested Incentive Award to Plaintiff Is Reasonable

Plaintiff Estuardo Ardon invested significant time and effort in order to vindicate the rights of taxpayers in this case. *See* Ardon Decl., ¶¶ 3-7. Class Counsel requests a $10,000 incentive award for Mr. Ardon, an amount which is commonplace, even in cases lasting for much shorter periods of time and providing less remarkable results than the $92.5 million Settlement Fund. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393-95 (2010) (affirming the trial court's grant of four $10,000 incentive awards from a $21,000,000 settlement fund); *Blacksher*, 2008 Cal. Super. LEXIS 1464, at *10-11 (incentive award of $10,000 was reasonable for assisting in two years of litigation); *Antelope Valley Groundwater Cases v. Diamond Farming Co.*, JCCP No. 4408, Cal. Super. LEXIS 739, at *17 (L.A. Cnty. Super. Ct. Mar. 4, 2011) ($10,000 award); *Eates v. KB Home*, No. RG-08-384954, 2011 Cal. Super. LEXIS 810, at *6-7 (Alameda Cnty. Super. Ct. June 16, 2011) (same).

III. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request an award of $18.5 million, inclusive of attorneys' fees and expenses, and an incentive award of $10,000 to Mr. Ardon, to be paid from the Settlement Fund.

DATED: July 1, 2016 By: _____
FRANCIS M. GREGOREK

(...continued)
agreement among themselves as to the allocation of fees based on their relative contributions to the litigation. Plaintiff Ardon has been informed and consented to the agreement in writing, consistent with California Rules of Professional Conduct, rule 2-200 and California Rules of Court, rule 3.769. *See* Ardon Decl., ¶ 10.

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