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Superior Court of California
County of Los Angeles

SEP 08 2015

Shorri R. Carter, Executive Officer/Clerk
By: Martha Cervantes, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

RECEIVED
AUG 27 2015
BY: S. Amador

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

Plaintiff,

v.

CITY OF LOS ANGELES,

Defendant.

Case No. BC363959

**SECOND AMENDED ~~(PROPOSED)~~
ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Date Action Filed: December 27, 2006
Trial Date: None Set

DATE: August 13, 2015
TIME: 9:00 a.m.
DEPT: 307
JUDGE: Hon. Amy D. Hogue

I. BACKGROUND

In this class action lawsuit, Plaintiff Estuardo Ardon ("Plaintiff"), alleges that Defendant City of Los Angeles ("Defendant" or "City") improperly collected a tax for telephone service, and seeks a refund of such taxes. This tax, referred to by the parties as a telephone utility users tax, or

1 UUT, is a 10% tax on amounts paid for interstate, intrastate, and international calls, teletypewriter
2 exchange services, and cellular telephone services. (Corrected First Amended Complaint, ¶¶ 1,
3 26.) The UUT expressly excludes amounts paid for telephone services not taxable under the
4 Federal Excise Tax, which only applies to teletypewriter exchange services, local telephone
5 service, and toll telephone services defined as long distance services where calls are charged by
6 both time and distance, and Wide Area Telephone Service. (Id. at 3, 28, 36.) As most modem
7 telephone services do not fall under any of these categories they are not subject to the Federal
8 Excise Tax. (Id. at ¶¶ 4, 5, 40, 42.)

9 • Plaintiff, after presenting a claim with the City for a refund of improperly collected taxes,
10 filed this class action lawsuit alleging claims for declaratory and injunctive relief, money had and
11 received, and unjust enrichment. This lawsuit has a long and complicated procedural history,
12 including appellate review, which is not fully recounted here. Following remand from the
13 California Supreme Court, the parties participated in informal settlement meetings, and six
14 mediation sessions before the Honorable Dickran Tevrizian (ret.), ultimately resulting in a written
15 agreement on July 22, 2015.

16 A copy of the Settlement Agreement is attached as Exhibit 1 to the motion. At the time of
17 the hearing on this motion, Counsel filed an Amended Settlement Agreement. It has not yet been
18 executed by Defendant, but according to Defendant's counsel a fully executed version will be
19 presented to the Court as soon as practically possible and before notice goes out to the class.
20 (Declaration of Holly O. Whatley, ¶ 2.) Now before the Court is Plaintiffs motion for preliminary
21 approval of this settlement. The Court's Tentative Ruling was to grant this motion contingent
22 upon (1) presentation of a fully executed copy of the Settlement Agreement, and (2) revisions to
23 the Settlement Agreement and the Class Notice set forth in the Tentative Ruling. The parties have
24 submitted a Second Amended Settlement Agreement and with an amended the Class Notice and
25 Publication Notice appended thereto.

26 **II. DISCUSSION**

27 **A. SETTLEMENT CLASS DEFINITION**

28 The proposed Settlement Class is defined as: "all persons, including corporate and

1 noncorporate entities wherever organized and existing, who paid telephone utility user taxes to the
2 City of Los Angeles on the Kinds of Telephone Service utilized between October 19, 2005 and
3 March 15, 2008, other than purely local service, teletypewriter exchange service, or long distance
4 telephone service where the charge varied by both time and distance. The Settlement Class does
5 not include prepaid mobile customers (which includes customers who purchased plans described
6 as 'pay as you go,' 'pay as you talk,' 'pay and go wireless,' 'prepay or burner phone service' and
7 'no contract service') but does include prepaid mobile telephone service providers, *i.e.*, those that
8 provide the above services to customers who prepay for wireless service. "Purely local service"
9 means local telephone service provided under a calling plan that does not include long distance
10 telephone service, or that separately states the charge for local service on the bill to customers.
11 The Settlement Class does not include any person, including corporate and non-corporate entities
12 wherever organized and existing, to whom the City has already paid a full refund of UUT paid for
13 services utilized during the Class Period." (Second Amended Settlement Agreement, 5:27-6:12.)

14 **B. TERMS OF SETTLEMENT AGREEMENT**

15 The essential terms of the Second Amended Settlement Agreement are as follows:

- 16 ■ City agrees to establish a Settlement Fund of \$92,500,000 to pay all Class Member
17 Payment Amounts, Notice and Claims Administration Expenses, Plaintiffs Incentive
18 Award, and Attorney's Fees and Expenses as approved by the Court. (§ III.A.1)
- 19 ■ Within 30 days of the Final Order and Judgment, the City will deposit \$50,000,000
20 ("Initial Payment") into an escrow account, minus the amount of Advanced Notice and
21 Administration Expenses and attorney fees (awarded pursuant to § X), which will be
22 placed in a separate escrow account as of the date of the Initial Payment. (§ III.A.2)
- 23 ■ Thereafter, the City will raise whatever funds are necessary to pay the difference between
24 the Initial Payment and the total amount payable to all Class Members, Notice and Claims
25 Administration expenses, Attorneys' Fees and Expenses, Plaintiffs Incentive A ward,
26 which all together will not exceed the Settlement Fund. The parties understand that if the
27 City chooses to raise the additional funds through issuance of a Judgment Obligation Bond
28 it could take 6 – 12 months. (§ III.A.3)

- 1 ▪ In the event that the total of all Class Member Payments, Notice and Claims
2 Administration Expenses, Attorneys' Fees and Expenses, and Plaintiff's Incentive Award
3 is less than the Settlement Fund, the difference and any interest that may have accrued, will
4 revert to the City within 30 days after issuance of all checks. (§ III.A.4)
- 5 ▪ Class Members must submit a Claim Form for consideration and approval by the Claims
6 Administrator, which includes the Claimant's name (plus contact information for business
7 or entity Class Members), Claimant's current telephone number, telephone number for
8 which the refund is claimed, for landline claims, the service address (located within the
9 City), for mobile telephone claims, the billing address (located within the City), Claimant's
10 mailing address, Claimant's date of birth (unless Claimant is submitting one or more
11 telephone bills), and the option of refund requested. (§ III.B.1)
- 12 ▪ Class Members have the option of claiming a standard amount or the total amount paid,
13 upon presentation of such proof. The Standard Refund (Option 1) is \$30 for residential
14 landline telephone service, \$50 for business landline service and/or \$50 for mobile
15 telephone service. (§ III.B.2) The Full Refund (Option 2) requires the submission of
16 copies of telephone bill showing the charges for UUT paid. (§ III.B.3) For Full Refund
17 claims, residential landline telephone claims will receive 70% and business landline
18 telephone service claims will receive 70%. (Ibid.) Class Members may claim both Option
19 1 and Option 2 refunds for different kinds of service. (Ibid.)
- 20 ▪ Regardless of refund option, a Claim Form must be submitted and must be acknowledged
21 under penalty of perjury unless at least one copy of a telephone bill reflecting payment of
22 the UUT during the Class Period is submitted. (§ III.B.4) The Claims Administrator, at its
23 discretion, is permitted to verify information in the Claim Form. (Ibid.) The Claims
24 Administrator will determine if each claim is valid. (§ III.B.S)
- 25 ▪ Claim Forms must be submitted to the Claims Administrator within 120 days of mailing of
26 the notices or the publication of notices, whichever is later. (§ V.A) Checks mailed to
27 Class Members will be void if not cashed in 120 days of issuance. The Claims
28 Administrator will have the discretion to reissue checks after the deadline if the City, Class

1 Counsel, and the Claims Administrator, the following: (1) notice of his or her objection
2 containing a heading referring to this action, a statement of the legal and factual bases for
3 the objection, the objector's name, address, telephone number and email address, copies of
4 phone bill or other evidence of Class membership, the signature of the Class Member or
5 his or her counsel, and a statement agreement to be subject to the jurisdiction of the Court
6 and discovery, including a deposition; and (2) if applicable, the objection shall contain
7 notice of his or her intention to appear at the Final Settlement Claimant certifies in writing
8 that the original check did not reach her within the 120 day timeframe. (§ V.H.)

9 ■ The cost of claims administration for giving notice to the class will not exceed \$2,888,000.
10 At the time of the hearing on this motion, counsel explained that the claims administrator
11 will have to take on the task of giving notice to class members because the DWP is
12 unwilling to do so based on concerns about privacy interests of its customers. (§ IV.L.)
13 Defendant will bear this cost. (Ibid.)

14 ■ Objections will only be considered if, at least 30 days prior to the Final Settlement
15 Hearing, the Class Member delivers to the Claims Administrator notice of his or her
16 objection containing a heading referring to this action, a statement of the legal and factual
17 bases for the objection, the objector's name, address, telephone number and email address,
18 copies of phone bill or other evidence of Class membership, and the signature of the Class
19 Member or his or her counsel. (§ VI.A.)

20 ■ Any Class Member who elects to opt out must file a written opt out with the Claims
21 Administrator on or before the date specified in the Preliminary Approval Order. The
22 Claims Administrator will forward this information to Lead Counsel and Class Counsel
23 within seven business days of the final hearing date, and will file the original request to opt
24 out with the Court no later than five days prior to the Final Settlement Hearing. (§ VI.B.)

25 **C. SETTLEMENT STANDARDS AND PROCEDURE**

26 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise of an
27 entire class action, or of a cause of action in a class action, or as to a party, requires the approval of
28 the court after hearing." "Any party to a settlement agreement may serve and file a written notice

1 of motion for preliminary approval of the settlement. The settlement agreement and proposed
2 notice to class members must be filed with the motion, and the proposed order must be lodged
3 with the motion.” See CRC rule 3.769(c).

4 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in order
5 to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action.
6 The purpose of the requirement [of court review] is the protection of those class members,
7 including the named plaintiffs, whose rights may not have been given due regard by the
8 negotiating parties.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006)
9 141 Cal. App.4th 46, 60 (internal quotation marks omitted); *Wershba v. Apple Computer, Inc.*
10 (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”): Court needs to “scrutinize the proposed settlement
11 agreement to the extent necessary to reach a reasoned judgment that the agreement is not the
12 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
13 settlement, taken as a whole, is fair, reasonable and adequate to all concerned,” internal quotation
14 marks omitted.) “The burden is on the proponent of the settlement to show that it is fair and
15 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is reached
16 through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel
17 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
18 percentage of objectors is small.” (*Wershba* at 245, citing *Dunk v. Ford Motor Co.* (1996) 48
19 Cal.App.4th 1794, 1802 (“*Dunk*”).) Notwithstanding an initial presumption of fairness, “the court
20 should not give rubber-stamp approval.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
21 Cal.App.4th 116 (“*Kullar*”). “Rather, to protect the interests of absent class members, the court
22 must independently and objectively analyze the evidence and circumstances before it in order to
23 determine whether the settlement is in the best interests of those whose claims will be
24 extinguished.” *Id.* In that determination, the court should consider factors such as “the strength of
25 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
26 maintaining class action status through trial, the amount offered in settlement, the extent of
27 discovery completed and stage of the proceedings, the experience and views of counsel, the
28 presence of a governmental participant, and the reaction of the class members to the proposed

1 settlement.” Id. at 128. “Th[is] list of factors is not exclusive and the court is free to engage in a
2 balancing and weighing of factors depending on the circumstances of each case.” (*Wershba* at
3 245.) “A settlement need not obtain 100 percent of the damages sought in order to be fair and
4 reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if ‘the
5 relief afforded by the proposed settlement is substantially narrower than it would be if the suits
6 were to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest
7 may indeed be served by a voluntary settlement in which each side gives ground in the interest of
8 avoiding litigation.’” (Id. at 250.)

9 **D. ANALYSIS OF SETTLEMENT AGREEMENT**

10 1. **Does a presumption of fairness exist?**

- 11 a. Was the settlement reached through arm’s-length bargaining? Yes. The
12 settlement in this action resulted only after years of negotiations, seven
13 formal settlement discussions, and six mediation sessions before Judge
14 Tevrizian (ret.). (Declaration of Rachele R. Rickert, ¶ 19.)
- 15 b. Were investigation and discovery sufficient to allow counsel and the court
16 to act intelligently? Yes. This litigation has been the subject of extensive
17 law and motion practice (Id. at ¶¶ 7-11), as well as numerous rounds of
18 discovery between the parties, third party discovery, and depositions of
19 telephone service providers. (Id. at ¶¶ 13, 14, 16, 17.) Additionally,
20 Plaintiff retained an expert who analyzed sample phone bills and UUT
21 remittance data. (Id. at ¶ 15.)
- 22 c. Is counsel experienced in similar litigation? Yes. The four law firms
23 representing Plaintiff in this action have vast experience in class action
24 litigation. (Id. at ¶ 38, and Exhibits D, E, F and G.)
- 25 d. What percentage of the class has objected? This cannot be determined until
26 the fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure
27 Before Trial (The Rutter Group 2014) ¶ 14:139.18: “Should the court
28 receive objections to the proposed settlement, it will consider and either

1 sustain or overrule them at the fairness hearing.”)

2 **CONCLUSION:** The settlement is entitled to a presumption of fairness.

3 2. **Is the settlement fair, adequate, and reasonable?**

4 a. **Strength of Plaintiffs’ case.** “The most important factor is the strength of
5 the case for plaintiffs on the merits, balanced against the amount offered in
6 settlement.” (*Kullar* at 130.) The City believes its potential liability for this
7 case would not exceed \$300 million. (Rickert Declaration, ¶ 25, and Exhibit
8 A.) The \$92,500,000 Settlement Amount represents 31% of the City's
9 estimated maximum liability. This settlement will provide compensation to
10 (potentially) more than 2 million Class Members, and is within the ballpark
11 of reasonableness. (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974)
12 495 F.2d 448, 455; settlement amounted to 12% of the plaintiffs’ potential
13 recovery.)

14 b. **Risk, expense, complexity and likely duration of further litigation.** In
15 agreeing to this settlement, Plaintiff has taken into consideration the need
16 for continued law and motion practice, including Plaintiffs motion for class
17 certification and Plaintiff’s motion for summary judgment. Plaintiff has also
18 had to weigh Defendant’s defenses (that the UUT ordinance adopted the
19 IRS's interpretation of the Federal Excise Tax at the time and that the IRS's
20 later reversal of its position did not require Defendant to reverse its
21 interpretation of its ordinance; that bundled services were taxable during the
22 Class Period because the federal authorities on which Plaintiff relies address
23 only long distance telephone services; that individualized issues
24 predominate and would defeat Plaintiffs motion for class certification), the
25 reality that litigation is uncertain, and the likelihood of appeal. (Rickert
26 Declaration, ¶ 30.)

27 c. **Risk of maintaining class action status through trial.** Even if a class is
28 certified, there is always a risk of decertification. (*Weinstat v. Dentsply*

1 *Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226: “Our Supreme Court has
2 recognized that trial courts should retain some flexibility in conducting
3 class actions, which means, under suitable circumstances, entertaining
4 successive motions on certification if the court subsequently discovers that
5 the propriety of a class action is not appropriate.”)

- 6 d. Amount offered in settlement. Defendant has offered to settle for
7 \$92,500,000. Class Counsel anticipates that the claims rate will be between
8 20 and 30%. (Rickert Declaration, ¶ 28.) Based on information provided by
9 Plaintiffs expert, it is expected that Class Members choosing Option 2 will
10 receive refunds, on average, of \$60 for landlines and \$145 for mobile
11 telephone services. (Motion at 8:5-9.) Based on Class Counsel's
12 investigation, some entities paid more than \$290,000 in UUT during the
13 Class Period. (Motion at 8: 14-15.)
- 14 e. Extent of discovery completed and stage of the proceedings. As discussed
15 above, at the time of the settlement, Plaintiffs had conducted extensive
16 discovery.
- 17 f. Experience and views of counsel. All four law firms representing Plaintiff
18 have extensive experience in class action litigation. (Rickert Declaration, ¶
19 38, and Exhibits D, E, F and G.)
- 20 g. Presence of a governmental participant. Defendant is a government entity,
21 which weighs in favor of approval.
- 22 h. Reaction of the class members to the proposed settlement. The class
23 members’ reactions will not be known until they receive notice and are
24 afforded an opportunity to opt out or object. This factor becomes relevant
25 during the fairness hearing.

26 CONCLUSION: The settlement can be preliminarily deemed “fair, adequate, and
27 reasonable.”

1 3. **Scope of release**

2 The term “Released Claims” means “any and all claims, demands, rights, damages,
3 obligations, suits, and causes of action of every nature and description whatsoever, ascertained or
4 unascertained, suspected or unsuspected, existing or claimed to exist, including both known and
5 unknown claims of the Plaintiffs and all Class Members that were or could have been brought
6 against the City and/or its Related parties, or any of them, during the Class period, arising from the
7 facts alleged in the Complaint.” (Second Amended Settlement Agreement, 5:18-23.)
8 “Complaint” is defined as Plaintiff’s Corrected First Amended Class Action Complaint For
9 Declaratory, Injunctive, Monetary and Other Relief.” (Id., 3:11-13.)

10 Upon the Effective Date, Plaintiff and all Class Members (and their executors, assigns,
11 etc.) will be deemed to have jointly and severally released and forever discharged the City and
12 Related Parties from any and all Released Claims, whether known or unknown, arising from the
13 facts alleged in the Complaint. The release is conditioned on the City’s compliance with the
14 provisions of the Second Amended Settlement Agreement, which the Court will retain jurisdiction
15 to enforce. Plaintiff and Class Members waive the protections of Civil Code § 1542 solely as to
16 the allegations contained in Plaintiff’s Complaint. (§ VII.A.)

17 The release language is proper as it is limited in scope and time and the Civil Code § 1542
18 waiver is tethered to the “Released Claims.”

19 4. **May conditional class certification be granted?**

20 a. Standards

21 A detailed analysis of the elements required for class certification is not required, but it is
22 advisable to review each element when a class is being conditionally certified. (*Amchem*
23 *Products, Inc. v. Winsor* (1997) 521 U.S. 591,620, 622-627.) The trial court can appropriately
24 utilize a different standard to determine the propriety of a settlement class as opposed to a
25 litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.
26 (*Dunk* at 1807, FN 19.) Finally, the Court is under no “ironclad requirement” to conduct an
27 evidentiary hearing to consider whether the prerequisites for class certification have been satisfied.
28 (*Wershba* at 240.)

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b. Analysis

i. Numerosity. There are approximately 1.6 million residents of Los Angeles and approximately 569,000 businesses registered with the City during the Class Period, most of which are likely members of the Class. (Motion at 16:10-13.) The numerosity requirement has been met. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934, stating that “[n]o set number is required as a matter of law for the maintenance of a class action” and citing examples wherein classes of as little as 10 [*Bowles v. Superior Court* (1955) 44 Cal.2d 574] and 28 [*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017] were upheld).

ii. Ascertainability. The class is defined by objective characteristics and common transactional facts (all persons who paid the UUT during the Class Period). The class definition is “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.)

iii. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common 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.* (2000) 23 Cal.4th 429, 435.) Here, all Class Members were subject to the UUT, and therefore common questions of fact and law predominate. Second, Plaintiff is a resident of the City, was a customer of Verizon Wireless, and paid the UUT imposed by the City; his claim is typical of the Class. Plaintiff has already demonstrated his willingness to prosecute this action on behalf of the Class during the eight years this case has

1 been pending, and he has no conflict with the Class. (Motion at
2 16:20-17: 19.)

3 iv. Adequacy of class counsel. As indicated above, the four law firms
4 representing Plaintiff have demonstrated that they are more than
5 adequate.

6 v. Superiority. Given the relatively small size of the individual claims
7 a class action provides the only realistic means of recovery.

8 **CONCLUSION:** The class may be conditionally certified since the prerequisites of class
9 certification have been satisfied.

10 5. **Is the notice proper?**

11 a. Method of class notice.

12 Several methods will be utilized to provide notice to the class. The parties have
13 agreed to utilize the services of Gilardi & Co., LLC ("Gilardi") to handle the notice and claims
14 administration process, as it successfully handled a similar telephone utility user tax refund action
15 in San Diego County. (Motion at 18:23-28.) Gilardi also provided the lowest bid. (Rickert
16 Declaration, ¶ 34.)

17 ▪ The Claims Administrator will be responsible for implementing the Notice to the
18 Settlement Class in both English and Spanish, by mail and by publication. The
19 Claims Administrator will also create a website (www.LATaxRefund.com) and
20 operate a toll-free, live telephone support line. (Second Amended Settlement
21 Agreement, § IV.B.)

22 ▪ The Notice and Claim Form will be mailed to all physical addresses to which the
23 City delivers invoices and to all businesses registered with the City during the Class
24 Period. (Second Amended Settlement Agreement, §IV.E.) At Class Counsel's
25 discretion, reminder postcards may be mailed out four weeks before the end of the
26 Claims Period. (§ IV.F.)

27 ▪ Notice will be published in one or more editions of the *Los Angeles Times*, *Los*
28 *Angeles Daily News*, *LA Opinion*, *Impacto USA*, *Unidos*, *Hoy Fin de Semana*,

1 *Contigo, El Aviso*, the California state editions of *Parade* and *People*, and the *Wall*
2 *Street Journal* (Id. at § IV.D.)

- 3 ■ The City and two of the law firms representing Plaintiff will provide notice on their
4 respective websites, including a link to the website operated by the Claims
5 Administrator. (§ IV.G.)
- 6 ■ The Claims Administrator will place banner advertisements on websites and
7 networks such as Yahoo, AOL, Xaxis, Univision, Facebook and mobile
8 advertising. (§ IV.H.)
- 9 ■ The parties will issue a joint press release in both English and Spanish. (§ IV.I.)
- 10 ■ The Claims Administrator will place advertisements on television and radio.
11 (§ IV.J.)
- 12 ■ Class Counsel may sponsor an outreach program at their cost to encourage
13 submission of claims and, subject to the protective order in place in this case, the
14 City will provide Class Counsel access to the list of businesses and entities
15 registered with the City during the Class Period, for this purpose. (§ IV.K.)

16 b. Content of class notice.

17 The proposed Class Notices are attached to the motion. Exhibit C is a copy of the
18 proposed notice that will be mailed, along with a copy of the envelope. As amended, this notice is
19 acceptable. Exhibit A is a copy of the Claim Form. It appears to be acceptable. Exhibit D is a
20 proposed letter that will go out to business owners, and it is acceptable as well. Exhibit F is a
21 copy of the proposed publication notice. As amended, it is acceptable. Exhibit G is a copy of the
22 joint press release. It is acceptable.

23 All in all, these notice procedures are acceptable as they are aimed at reaching as many
24 class members as is practicable.

25 c. Cost of class notice.

26 As indicated above, notice costs are estimated to be \$2,888,000. (Second Amended
27 Settlement Agreement, § IV.L.) Prior to the time of the final fairness hearing, the Claims
28 Administrator must submit a declaration attesting to the total costs incurred and anticipated to be

1 incurred to finalize the settlement for approval by the Court.

2 6. **Donation Option for Class Members**

3 In the revised settlement agreement presented by counsel at the time of the hearing, there is
4 a provision permitting class members to donate payments to the Greater Los Angeles Zoo
5 Association, Library Foundation of Los Angeles, Animal Welfare Trust Fund of the City of Los
6 Angeles Animal Services or Los Angeles Parks Foundation.

7 7. **Attorneys' Fees and Costs**

8 CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into
9 with respect to the payment of attorney fees or the submission of an application for the approval of
10 attorney fees must be set forth in full in any application for approval of the dismissal or settlement
11 of an action that has been certified as a class action."

12 Ultimately, the award of attorney fees is made by the court at the fairness hearing, using
13 the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.
14 4th 1084, 1095-1 096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-
15 626; *Ketchum III v. Moses* (2000) 24 Cal. 4th 1122, 1132-1136.) Despite any agreement by the
16 parties to the contrary, "the court ha[s] an independent right and responsibility to review the
17 attorney fee provision of the settlement agreement and award only so much as it determined
18 reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th
19 123, 128.)

20 The Second Amended Settlement Agreement provides that Class Counsel will apply for a
21 recovery of fees and costs in the amount of \$18.5 million (20% of the Settlement Amount), and
22 that the City reserves the right to object to any amount in excess of \$15 million. (Second
23 Amended Settlement Agreement, § X.A.) Class Counsel must provide the court with billing
24 information so that it can properly apply the lodestar method, and must indicate what multiplier (if
25 applicable) is being sought. Class Counsel should also be prepared to justify the costs sought by
26 detailing how they were incurred. Class Counsel presents evidence that Plaintiff agreed in writing
27 to fee-splitting between counsel. (Rickert Declaration, ¶ 37.)

28 The issue of fees and costs will be decided at the time of Final Approval.

1 8. **Enhancement Award to Class Representatives**

2 The Second Amended Settlement Agreement provides for an enhancement award of to
3 \$10,000 to the Class Representative. (Second Amended Settlement Agreement, § X.B.) In
4 connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting
5 to why he should be entitled to an enhancement award in the proposed amount. Trial courts
6 should not sanction enhancement awards of thousands of dollars with “nothing more than pro
7 forma claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’
8 Significantly more specificity, in the form of quantification of time and effort expended on the
9 litigation, and in the form of reasoned explanation of financial or other risks incurred by the
10 named plaintiffs, is required in order for the trial court to conclude that an enhancement was
11 ‘necessary to induce [the named plaintiff] to participate in the suit ’” (*Clark v. American*
12 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, citing *Matter of Continental*
13 *Illinois Securities Litigation* (7th Cir. 1992) 962, F.2d 566, 571.)

14 The Court will decide the issue of the enhancement award at the time of final approval.

15 **III. CONCLUSION AND ORDER**

16 **A. ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL:**

17 The Court hereby:

- 18 1. Grants preliminary approval of the settlement as fair, adequate, and
19 reasonable;
- 20 2. Grants conditional class certification;
- 21 3. Appoints Estuardo Ardon as Class Representative;
- 22 4. Appoints Wolf Haldenstein Adler Freeman & Herz, LLP (San Diego office
23 and New York office); Tostrud Law Group, PC; Cuneo Gilbert & LaDuca,
24 LLP; and Chimicles & Tikellis, LLP, as Class Counsel;
- 25 5. Appoints Gilardi & Co., LLC as Claims Administrator;
- 26 6. Approves the proposed notice plan; and
- 27 7. Approves the proposed schedule of settlement proceedings.

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B. SCHEDULE OF SETTLEMENT PROCEEDINGS

- Preliminary approval hearing: August 13, 2015
- Deadline for claims administrator to complete the mailing and commence publication of notices: No later than 51 days after entry of this order.
- Claims Period begins the later of the completion of mailing or the date of commencement of publication.
- Deadline for class members to submit a claim form is 120 days after the Claims Period begins.
- Deadline for objections is 30 days before the final approval hearing date.
- Deadline to opt out is 10 business days before the final approval hearing date.
- Deadline for class counsel to file a motion for final approval: January 15, 2016 (at least 40 days prior to final fairness hearing).
- Final fairness hearing: February 25, 2016 at 11:00 a.m.

DATED: 9/8/15

AMY D. HOGUE, JUDGE

AMY D. HOGUE
Judge of the Superior Court

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