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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

) **SECOND AMENDED SETTLEMENT**  
) **AGREEMENT**

) Date Action Filed: December 27, 2006

) Trial Date: None Set

) DEPT: 307

) JUDGE: Hon. Amy D. Hogue

1           WHEREAS, Plaintiff Estuardo Ardon (“Plaintiff”) brought this class action on behalf of  
2 himself and those similarly situated against the City of Los Angeles (the “City”) for allegedly  
3 improper tax collection with respect to the City’s telephone utility users’ tax (“UUT”), as more  
4 fully stated in the action entitled *Ardon v. City of Los Angeles*, Los Angeles Superior Court Case  
5 No. BC363959;

6           WHEREAS, the City denies all of the claims asserted by Plaintiff in his Complaint;

7           WHEREAS, over the more than eight years this action has been pending, the parties to this  
8 Agreement have conducted a thorough examination and investigation of the facts and law relating  
9 to the subject matters set forth in Plaintiff’s Corrected First Amended Class Action Complaint For  
10 Declaratory, Injunctive, Monetary and Other Relief (the “Complaint”) and the claims set forth  
11 therein, including completing substantial discovery, and have engaged in significant motion and  
12 appellate practice, including before the Supreme Court of this State, providing them an informed  
13 view of the strengths and weaknesses of their respective positions;

14           WHEREAS, the parties recognize the risks and costs of prosecuting or defending this  
15 litigation and believe that it is in the parties’ best interests to resolve finally and completely the  
16 claims of the Plaintiff and the Class Members against the City at this time by and through this  
17 Settlement;

18           WHEREAS, it is the intent of this Agreement to ensure that every Class Member is given a  
19 full opportunity to claim and receive a share of the settlement, in accordance with the procedures  
20 described herein, in proportion to the UUT that Plaintiff alleges was improperly collected and paid  
21 by the Class Member within the Class Period;

22           WHEREAS, extended and exhaustive arm’s-length negotiations have been conducted  
23 between Class Counsel and Counsel for the City over the years of the pendency of this action,  
24 including five mediation sessions during the most recent two and a half years under the  
25 supervision of the Hon. Dickran M. Tevrizian (ret.); and

26           WHEREAS, the undersigned parties believe this Agreement offers significant benefits to  
27 the Settlement Class and is fair, reasonable, adequate and in the best interests of all parties,  
28

1 NOW, THEREFORE, the undersigned parties stipulate and agree that all claims of the  
2 Plaintiff and Class Members against the City shall be settled, discharged and resolved on the terms  
3 and conditions set forth below.

4 **I. DEFINITIONS**

5 As used in this document, the following terms shall have the defined meanings set forth  
6 below. Where appropriate, terms used in the singular shall be deemed to include the plural and  
7 vice versa.

8 “Advanced Notice and Administration Expenses” means the Notice and Claims  
9 Administration Expenses to be paid by the City prior to the Final Order and Judgment.

10 “Action” shall mean the action in which Plaintiff has filed a Complaint on behalf of the  
11 taxpayers of the City of Los Angeles entitled *Ardon v. City of Los Angeles*, Los Angeles Superior  
12 Court Case No. BC363959.

13 “Attorneys’ Fees and Expenses” means the settlement amount(s) approved by the Court for  
14 payment to Class Counsel for attorneys’ fees, costs, and litigation expenses.

15 “Authorized Claimant” means a Class Member whose claim has been approved by the  
16 Claims Administrator as provided by the terms of this Agreement and the Final Order and  
17 Judgment of the Court approving the Settlement.

18 “City” or “Defendant” means the City of Los Angeles.

19 “Claim Form” means the claim form, substantially in the form set forth in **Exhibit A** to  
20 this Agreement, which form must be timely and fully completed and submitted by each Class  
21 Member who wishes to receive, and is eligible to receive, payment of settlement benefits under the  
22 terms of this Agreement.

23 “Claims Administrator” means the qualified, third party selected by the Parties and  
24 approved by the Court in the Preliminary Approval Order to administer this Agreement, including  
25 implementing the Notice provisions herein. The Parties agree to recommend that the Court  
26 appoint Gilardi & Co. LLC as Claims Administrator.

27 “Claims Period” shall refer to the time during which Class Members may timely submit  
28 Claim Forms, which shall span from the later of the date of completion of the mailing of the

1 Notice to Class Members or the date of publication following entry of the Preliminary Approval  
2 Order, and end on the 120th day or such day as the Court grants thereafter.

3 “Class Counsel” means the law firms of Wolf Haldenstein Adler Freeman & Herz LLP,  
4 Chimicles & Tikellis LLP, Cuneo Gilbert & Laduca, LLP and Tostrud Law Group, PC.

5 “Class Members” means those persons as defined in “Settlement Class” below.

6 “Class Member Payment Amount” means the amount that will be paid under this  
7 Agreement to each Authorized Claimant after any necessary reallocation and/or proration has been  
8 made, as set forth in section V.B.1., *infra*.

9 “Class Period” means October 19, 2005 through March 15, 2008.

10 “Class Settlement” means the terms of the settlement provided in this Agreement.

11 “Complaint” means Plaintiff’s Corrected First Amended Class Action Complaint For  
12 Declaratory, Injunctive, Monetary And Other Relief Plaintiff, through Class Counsel, filed on  
13 March 29, 2007 in this Action.

14 “Court” means the Superior Court of California, County of Los Angeles.

15 “DWP” means the City of Los Angeles Department of Water and Power.

16 “Effective Date” means the date on which the Settlement and Final Order and Judgment  
17 have become “final” in that all of the following conditions have been satisfied:

18 (1) The Final Order and Judgment has been entered; and

19 (2)(a) If an appeal, review or reconsideration is not sought from the Final Order  
20 and Judgment, the expiration of the time for the filing or noticing of any appeal, petition for  
21 review or motion for reconsideration; or

22 (2)(b) If an appeal, review or reconsideration is sought from the Final Order and  
23 Judgment, the later of (i) the date on which the Final Order and Judgment is affirmed and is no  
24 longer subject to judicial review or, (ii) the date on which the appeal, petition for review or motion  
25 for reconsideration is dismissed or denied and the Final Order is no longer subject to judicial  
26 review.

27 “Final Order and Judgment” means the last of the orders and final judgment of the Court  
28 approving this Agreement, substantially in the form of **Exhibit B**.

1           “Final Settlement Hearing” means the final hearing(s) scheduled by the Court in the  
2 Action, after Notice, to determine whether to finally approve this Agreement, and to consider the  
3 application for an award of Attorneys’ Fees and Expenses, the Plaintiff’s Incentive Award and  
4 related matters.

5           “Kinds of Telephone Service” means the three kinds of telephone service that are the  
6 subject of this Action and for which UUT refunds are to be made under this settlement:

- 7                   a) Residential landline service;
- 8                   b) Business landline service;
- 9                   c) Mobile telephone service.

10           “Lead City Counsel” means Colantuono, Highsmith & Whatley, PC.

11           “Letter to Businesses and Entities of Class Settlement” means the letter to be mailed to  
12 businesses registered with the City of Los Angeles during the Class Period, along with a copy of  
13 the Notice, substantially in the form of **Exhibit D**.

14           “Net Settlement Fund” means the balance of the Settlement Fund remaining to distribute as  
15 Class Member Payment Amounts after payment of all Notice and Claims Administration  
16 Expenses, Attorneys’ Fees and Expenses, and Plaintiff’s Incentive Award.

17           “Notice” means the Court-approved form of notice of this Agreement and class  
18 certification to be mailed to the Settlement Class as provided herein, substantially in the form of  
19 **Exhibit C**.

20           “Notice and Claims Administration Expenses” means all reasonable costs and expenses  
21 incurred or anticipated to be incurred in connection with preparing, printing, mailing and  
22 publishing the Notice, processing claims, and administering this Agreement.

23           “Option 1 NSF” means that 50% portion of the Net Settlement Fund initially allocated to  
24 pay Option 1 claims, as described in sections III.B.2 and V.B., *infra*.

25           “Option 2 NSF” means that 50% portion of the Net Settlement Fund initially allocated to  
26 pay Option 2 claims, as described in sections III.B.3 and V.B., *infra*.

27           “Parties” means the Plaintiff, Estuardo Ardon, and Defendant City.

28           “Plaintiff” means Plaintiff Estuardo Ardon.

1           “Plaintiff’s Incentive Award” means the amount of any incentive award to Plaintiff  
2 approved by the Court.

3           “Plaintiff’s Released Persons” means Plaintiff’s agents, attorneys (including Class  
4 Counsel), accountants, auditors, representatives, brokers, financial or investment advisors,  
5 including their assigns, heirs, executors, trustees, personal representatives, estates, and  
6 administrators.

7           “Preliminary Approval Order” means the order of the Court, substantially in the form of  
8 **Exhibit E** hereto, granting preliminary approval of this Agreement and authorizing the Notice.

9           “Publication Notice” means the Court-approved form of Notice of this Agreement to the  
10 Settlement Class for publication in newspapers and/or periodicals, digital or otherwise,  
11 substantially in the form of **Exhibit F** hereto.

12           “Recognized Claim Amount” means the dollar amount that has been approved by the  
13 Claims Administrator for an Authorized Claimant’s claim pursuant to the terms and procedures  
14 specified in this Agreement.

15           “Related Parties” means all of the City’s past, present, and future, Mayor, council  
16 members, city managers, city clerks, finance directors, employees, agents, attorneys, and all their  
17 respective predecessors and successors in interest and legal representatives.

18           “Released Claims” means and includes any and all claims, demands, rights, damages,  
19 obligations, suits, and causes of action of every nature and description whatsoever, ascertained or  
20 unascertained, suspected or unsuspected, existing or claimed to exist, including both known and  
21 unknown claims of the Plaintiffs and all Class Members that were or could have been brought  
22 against the City and/or its Related Parties, or any of them, during the Class Period, arising from  
23 the facts alleged in the Complaint.

24           “Defendant’s Released Parties” means the City and the Related Parties.

25           “Settlement Agreement” or “Agreement” means this Agreement and the exhibits attached  
26 hereto.

27           “Settlement Class” means all persons, including corporate and non-corporate entities  
28 wherever organized and existing, who paid telephone utility user taxes to the City of Los Angeles

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

13 “Settlement Fund” means Ninety Two Million, Five Hundred Thousand Dollars  
14 (\$92,500,000), which will be the total amount available to be used to pay refunds to the Settlement  
15 Class, Attorneys’ Fees and Expenses, Plaintiff’s Incentive Award and Notice and Claims  
16 Administration Expenses, as approved by the Court and under the terms of this Agreement.

17 “UUT” shall mean the telephone utility users’ tax (former Los Angeles Municipal Code  
18 section 21.1.3, *et seq.*) collected by the City through telephone service providers.

## 19 **II. REQUIRED EVENTS**

20 Promptly after the execution of this Agreement by representatives of both Parties:

### 21 **A. Filing**

22 Plaintiff’s Counsel shall promptly submit this agreement for Preliminary Approval,  
23 thereby notifying the Court that Plaintiff and the City have reached a formal settlement.

### 24 **B. Approval**

25 Lead City Counsel and Class Counsel shall take all necessary steps to obtain judicial  
26 approval of this Agreement and the dismissal with prejudice of the Action. As part of the  
27 approval process, the Parties agree to cooperate and use their best efforts to describe and explain  
28 the benefits of this Agreement to the Settlement Class.

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**C. Motion**

To effectuate the requirements of Paragraph II.A. above Plaintiff’s Counsel shall move for an order in substantially the same form as **Exhibit E** (“Preliminary Approval Order”), which by its terms shall:

1. Preliminarily approve the terms of the Class Settlement;
2. Provisionally certify, for settlement purposes only, this Action as a class action pursuant to California Code of Civil Procedure section 382;
3. Approve the Notice and Publication Notice to be disseminated to the Settlement Class advising them of the Class Settlement and of the Final Settlement Hearing to be held to determine the fairness, reasonableness and adequacy of the Class Settlement;
4. Approve the appointment of the Claims Administrator; and
5. Schedule a hearing to review comments and objections, if any, regarding the Class Settlement and to consider the fairness, reasonableness and adequacy of the Class Settlement and the application for an award of Attorneys’ Fees and Expenses, and to consider whether the Court should issue a Final Order and Judgment approving the Class Settlement, and awarding Attorneys’ Fees and Expenses to Class Counsel and Plaintiff’s Incentive Award, in the Court's discretion.

**D. Efforts**

Plaintiff, the City and their respective counsel will cooperate to undertake all reasonable actions in order to accomplish the events described in this Section II. In the event that the Court fails to grant Preliminary Approval or fails to issue a Final Order and Judgment, Plaintiff, the City and their respective counsel agree to use all reasonable efforts, consistent with this Agreement, to cure any defect identified by the Court, assuming the Parties in good faith believe that the defect is curable.

**E. Final Settlement Hearing**

Upon expiration of the deadline for filing objections and/or requests for exclusion under this Agreement as set forth in the Preliminary Approval Order and Notice, and on the date set forth in the Preliminary Approval Order, a Final Settlement Hearing shall be conducted to determine



1 final approval of the settlement along with the amount properly payable for attorneys' fees, costs  
2 and expenses.

3 **F. Final Order and Judgment**

4 Upon final approval of this Agreement by the Court at or after the Final Settlement  
5 Hearing, the Parties shall present the Final Order and Judgment to the Court for approval and  
6 entry. Class Counsel and Lead City Counsel shall use all reasonable efforts, consistent with this  
7 agreement, to promptly obtain a Final Order and Judgment.

8 **III. SETTLEMENT TERMS**

9 **A. Benefits to Parties**

10 As part of this Settlement, the Class Members shall receive the Settlement Fund as  
11 described more fully below, and the City shall receive the release of claims provided herein and a  
12 dismissal with prejudice of the action.

13 1. Establishment of a Settlement Fund. The City agrees to a Settlement Fund  
14 in the amount of Ninety Two Million, Five Hundred Thousand Dollars (\$92,500,000) to pay all  
15 Class Member Payment Amounts, Notice and Claims Administration Expenses, Plaintiff's  
16 Incentive Award, and Attorneys' Fees and Expenses, as approved by the Court.

17 2. Initial Payment. Within 30 days of entry of the Final Order and Judgment  
18 granting final approval to the settlement, the City shall deposit in a separate escrow account at a  
19 Financial Institution acceptable to all parties in the City of Los Angeles with the signatures of the  
20 Plaintiff's Co-Escrow Agents as defined in paragraph "XA" and counsel for the City of Los  
21 Angeles as co-signatories on the account an initial payment equal to \$50,000,000 (the "Initial  
22 Payment"), minus the amount of any Advanced Notice and Administration Expenses as well as  
23 any counsel fees awarded and payable to Plaintiff's Counsel pursuant to paragraph "X" below  
24 which shall be placed in a separate escrow account as of the date of the Initial Payment.

25 3. Payment of the Balance of the Settlement Fund. The City shall, after  
26 making the Initial Payment, raise whatever funds are necessary to pay the difference between the  
27 Initial Payment and the total amount required to pay all Class Member Payment Amounts, Notice  
28 and Claims Administration Expenses, Attorneys' Fees and Expenses, and Plaintiff's Incentive

1 Award, which total (including the Initial Payment) shall not exceed the Settlement Fund amount.  
2 The parties understand that if the City chooses to raise the additional funds through the issuance of  
3 a Judgment Obligation Bond, then issuing such a Judgment Obligation Bond could take the City  
4 anywhere from 6 to 12 months. The City's responsibility to pay the Settlement Fund is not  
5 contingent on its ability to issue and raise funds through a Judgment Obligation Bond. The City  
6 shall not be required to pay interest on the Settlement Fund.

7 4. Reversion. In the event that the total of all Class Member Payment  
8 Amounts, Notice and Claims Administration Expenses, Attorneys' Fees and Expenses, and  
9 Plaintiff's Incentive Award is less than the Settlement Fund, the difference, and any interest that  
10 may have accrued, shall revert to the City. Such reversion, if any, shall occur within thirty (30)  
11 days after issuance of the checks for the Class Member Payment Amounts, Notice and Claims  
12 Administration Expenses, Attorneys' Fees and Expenses, and Plaintiff's Incentive Award.

13 **B. Claims by Class Members**

14 1. Basic Class Member Information. In order to receive a Class Member  
15 Payment Amount, Class Members must submit a completed Claim Form for consideration and  
16 approval by the Claims Administrator which includes the following required information:  
17 (a) Claimant's name (as well as a contact name for business or entity Class Members);  
18 (b) Claimant's current telephone number for contact purposes, if necessary, by the Claims  
19 Administrator; (c) telephone number(s) for which the refund is claimed; (d) for landline telephone  
20 service claims, the service address, located within the City, for which a refund is claimed; (e) for  
21 mobile telephone service claims, the billing address, located within the City, for which a refund is  
22 claimed; (f) Claimant's current mailing address, if different from the billing/service address; (g)  
23 Claimant's date of birth, unless Claimant is submitting one or more telephone bills, and (h) the  
24 option of refund(s) requested.

25 2. Option 1: Standard Refund Procedure. Class Members shall have the  
26 option of returning the Claim Form with no additional documentation seeking flat Recognized  
27 Claim Amounts of \$30 for residential landline telephone service, \$50 for business landline service,  
28 and/or \$50 for mobile telephone service, subject to the proration procedures referred to in section

1 V.B.1., *infra*. For business Claimants, only businesses that were registered with the City during  
2 the Class Period shall be entitled to claim the business landline Recognized Claim Amount. Class  
3 members may claim more than one flat Recognized Claim Amount for different Kinds of Service  
4 (*e.g.*, one flat amount for landline and one flat amount for mobile), but Class Members cannot  
5 claim more than one flat Recognized Claim Amount for a single Kind of Telephone Service (*e.g.*,  
6 a Class Member may not claim two flat amounts for mobile service).

7 3. Option 2: Full Refund Procedure. Class Members may claim a refund of  
8 the actual UUT paid on long distance and bundled telephone services utilized during the Class  
9 Period by submitting copies of telephone bills showing charges for the UUT, or other  
10 documentary evidence of the UUT paid, from billing periods within the Class Period. The  
11 Recognized Claim Amount for full refund claims of mobile telephone service shall be the sum of  
12 the UUT shown on the bills or other evidence. The Recognized Claim Amount for full refund  
13 claims of residential landline telephone service and for business landline telephone service shall be  
14 70% of the sum of the UUT shown on the bills or other evidence.

15 If the bills include utility user taxes collected from other cities, and the Los Angeles UUT  
16 is not separately stated, the Claims Administrator shall have discretion to determine the  
17 appropriate estimate of the monthly Los Angeles UUT.

18 A Class Member may claim both Option 1 standard refund amounts and Option 2 full  
19 refund amounts for *different* Kinds of Telephone Service (*e.g.*, an Option 1 refund for mobile  
20 telephone service and an Option 2 full refund for landline telephone service), but a Class Member  
21 may not receive both an Option 1 standard rate refund and an Option 2 full refund for the *same*  
22 Kind of Telephone Service (*e.g.*, both an Option 1 standard rate refund and an Option 2 full refund  
23 for mobile telephone services).

24 A Class Member may submit an Option 2 full refund claim for multiple accounts for each  
25 Kind of Telephone Service (*e.g.*, three different mobile phone accounts billed to the same Class  
26 Member) provided the above requirements are met as to each account.

27 Class Members' claims are subject to offset for any UUT refunds previously paid by the  
28 City to that Class Member so that the Class Member does not receive total refunds of UUT that

1 exceed the amount of UUT he, she or it paid for Kinds of Telephone Service utilized during the  
2 Class Period.

3 4. Claimant's Statement. Regardless of the refund option selected, each  
4 Claimant, by submitting a Claim Form, must acknowledge under penalty of perjury (unless  
5 Claimant is submitting at least one copy of her telephone bill during the Class Period reflecting  
6 payment of the UUT) that the information set forth on the Claim Form is accurate to the best of  
7 the Claimant's knowledge and must permit the Claims Administrator, at its discretion, to verify  
8 the information in the Claim Form (or submitted therewith) by requesting information from the  
9 Class Member's telephone service provider. Either party may recommend to the Claims  
10 Administrator such verification.

11 5. As set forth in Section V.B, the Claims Administrator shall determine if  
12 each claim is valid. A Class Member who fails to make a valid Claim for settlement benefits will  
13 not receive any refund.

14 6. In lieu of receiving a Class Member Payment Amount, a Class Member  
15 may opt to have their Class Member Payment Amount donated to one of the following  
16 funds/foundatations by so designating on her claim form:

- 17 a. Greater Los Angeles Zoo Association (GLAZA);
- 18 b. The Library Foundation of Los Angeles;
- 19 c. The Animal Welfare Trust Fund of the City of Los Angeles Animal  
20 Services; or
- 21 d. The Los Angeles Parks Foundation

22 **IV. NOTIFICATION OF SETTLEMENT TO CLASS MEMBERS**

23 **A. Overview**

24 After the issuance of the Preliminary Approval Order, Notice shall be provided to the  
25 members of the Settlement Class as specified herein to inform them of, among other things, class  
26 certification, the terms of this Agreement, their right to submit a claim, the rights that will be  
27 extinguished under the Agreement, and their rights and the processes by which to comment on,  
28 object to, or exclude themselves from the Settlement ("opt-out").

1           **B.       Claims Administrator**

2           Class Counsel and the City shall select a Claims Administrator to be approved by the  
3 Court. The Claims Administrator, with the assistance of DWP with respect to the mailed notice,  
4 shall be responsible for implementing the Notice to the Settlement Class. Dissemination of Notice  
5 to the Settlement Class shall be accomplished by both mailed notice, written in English and  
6 Spanish, and Publication Notice, written in English and Spanish. The Claims Administrator shall  
7 be responsible for, without limitation: (i) arranging for the publication of the Publication Notice  
8 and mailing of the Letter to Businesses and Entities of Class Settlement, the Notice and the Claim  
9 Form to businesses identified by the City and the Notice and Claim Form to all physical addresses  
10 located within the City of Los Angeles to which the DWP delivers invoices for electric service , as  
11 specified in paragraph IV.E. below; (ii) responding to requests for the Notice; (iii) administration  
12 of claims as set forth below; and (iv) operating a toll-free, live telephone support line for Class  
13 Members with customer service representatives fluent in foreign languages, including Spanish.  
14 The Notice shall comply with all applicable requirements of law. Nothing in this Agreement is  
15 intended to prohibit Class Counsel from providing assistance to Class Members during the Claims  
16 Process.

17           The Claims Administrator shall also create a website ([www.LATaxRefund.com](http://www.LATaxRefund.com)) providing  
18 Notice of the information described in Section IV.A. The website shall contain information, court  
19 documents, and claim forms and shall allow Class Members to electronically submit claims,  
20 upload any required documentation under the terms of this Agreement, and make direct email  
21 inquiries. The website shall be in English and Spanish.

22           **C.       Confidentiality**

23           The Claims Administrator (and any person retained by the Claims Administrator) shall  
24 sign a confidentiality agreement in a form agreed to by Class Counsel and the City. The  
25 confidentiality agreement will provide that the Claims Administrator shall treat as confidential the  
26 names, addresses and other information about the specific Class Members supplied by the City,  
27 Class Counsel, the telephone service providers, or by other individuals. The confidentiality  
28

1 agreement will further provide that the Claims Administrator shall use this information only as  
2 required by this Agreement.

3 **D. Publication Notice**

4 Upon issuance of the Preliminary Approval Order, the Claims Administrator shall cause to  
5 be published the Publication Notice in the form approved by the Court in the Preliminary  
6 Approval Order, in one or more editions of the *Los Angeles Times*, *Los Angeles Daily News*, *LA*  
7 *Opinion*, *Impacto USA*, *Unidos*, *Hoy Fin de Semana*, *Contigo*, *El Aviso*, the California state  
8 editions of *Parade* and *People*, and the *Wall Street Journal*. The publication of the Publication  
9 Notice will commence no later than 20 days after entry of the Preliminary Approval Order so as  
10 to provide the best practical notice to the Settlement Class.

11 **E. Individual Notice**

12 Within thirty (30) days of entry of the Preliminary Approval Order, DWP shall provide to  
13 the Claims Administrator a list of all physical addresses located within the City of Los Angeles to  
14 which the DWP delivers invoices for electric service. The Claims Administrator shall complete  
15 the mailing of the Notices and the Claim Form to the addresses on such list no later than fifty-one  
16 (51) days after entry of the Preliminary Approval Order.

17 In addition, within fifty-one (51) days of entry of the Preliminary Approval Order, the  
18 Claims Administrator shall mail the Letter to Businesses and Entities of Class Settlement, the  
19 Notice and the Claim Form to all businesses registered with the City as holding a valid Tax  
20 Registration Certificate during the Class Period. The City shall have the Department responsible  
21 for maintaining the identities of holders of a Tax Registration Certificate deliver to the Claims  
22 Administrator within ten (10) days after the date of the Preliminary Approval Order an electronic  
23 list setting forth the names and addresses of such holders.

24 **F. Reminder Notice**

25 At Class Counsel's discretion, Class Counsel may request that, four weeks before the end  
26 of the Claims Period, the Claims Administrator mail a one-time Reminder Notice postcard to  
27 persons and businesses to whom the Notice and Claim Form were mailed and who have not filed  
28 claims. The Reminder Notice shall include, among other things, information concerning the

1 lawsuit, the deadline for submission of claims, and instructions on how a Claimant may make a  
2 claim.

3 **G. Notification on Websites**

4 The City, Wolf Haldenstein Adler Freeman & Herz LLP and Chimicles & Tikellis LLP  
5 agree to provide notice of this Agreement on their respective websites including a link to the  
6 website established by the Claims Administrator for the submission of claims. This section shall  
7 not be interpreted to limit either party or their counsel's desired graphic, pictorial, or typographical  
8 web design for attracting attention to the Settlement Agreement, its terms, or to the link to the  
9 website created by the Claims Administrator, so long as said design is not misleading about the  
10 terms of this Agreement, and does not act to disparage either Party.

11 **H. Internet Advertising**

12 The Claims Administrator shall also place banner advertisements geo targeted to the Los  
13 Angeles area, and to a lesser extent California and other U.S. IP addresses, via websites and  
14 networks such as Yahoo, AOL, Xaxis, Univision, Facebook and mobile advertising.

15 **I. Joint Press Release**

16 The Parties shall agree to a joint press release in English and Spanish over PR News  
17 Wire's US1 and National Hispanic Newslines and to major local television and newspaper outlets  
18 in Los Angeles County. The cost and administration of issuing this press release shall be borne by  
19 the Settlement Fund. The joint press release shall constitute substantially the same form attached  
20 as **Exhibit G**.

21 **J. Television and Radio**

22 The Claims Administrator shall also place advertisements on television and radio stations  
23 directed towards the Los Angeles region.

24 **K. Outreach Program**

25 Class Counsel may sponsor an outreach program at their own cost to encourage the  
26 submission of claims. Subject to the protective order in place in the case, the City shall provide  
27 Class Counsel access to the list of businesses and entities registered with the City during the Class  
28 Period, as described in section IV.E. above, for such purpose.

1           **L.       Costs of Notice and Administration**

2           Notice costs shall not exceed \$2,600,000 plus the additional cost the Claims Administrator  
3 actually charges to add names to the address list provided by DWP, but such additional cost shall  
4 be capped at \$288,000.00 regardless of the amount actually charged by the Claims Administrator.  
5 The City shall bear all Notice and Administration Expenses regardless of when they occur,  
6 including the Advanced Notice and Administration Expenses which must be paid prior to entry of  
7 the Final Order and Judgment; provided, however, that the amount of all Notice and  
8 Administration Expenses shall be a reduction of the Net Settlement Fund available for  
9 distribution. All Notice and Administration Expenses remain the sole responsibility of the City,  
10 regardless of whether the Settlement Agreement receives final approval. In connection with the  
11 preparation of the Motion for Preliminary Approval, Class Counsel shall provide to counsel for the  
12 City for its comment and input a proposed preliminary notice program that is developed by Class  
13 Counsel and the Claims Administrator for Court approval.

14           **V.       CLAIMS ADMINISTRATION**

15           **A.       Claim Form**

16           Members of the Settlement Class will be directed to submit the completed Claim Form to  
17 the Claims Administrator within one hundred and twenty (120) days of the mailing of the notices  
18 to the Class Members or the date of Publication of the Notice, whichever is later. Class Members  
19 may submit their completed Claim Form within this 120 day period by submitting such completed  
20 Claim Form electronically without signature to the Web Site created by the Claims Administrator,  
21 hand-delivery, fax, or mail. The written Claim Form shall be in English and Spanish. The website  
22 shall also have the electronic version of the Claim Form in English and Spanish as formatted  
23 appropriately. When mailing the Claim Form as described in Section IV.E., the Claims  
24 Administrator shall include with the Claim Form a self-addressed, pre-paid postage envelope in  
25 which the Claim Form may be returned. Claimants who submit Option 1 claims and also provide  
26 a copy of a telephone bill during the Class Period with their Claim form need not acknowledge the  
27 Claim under penalty of perjury.

28



1           **B.       Claims Processing**

2           Class Members must provide the information described in Section III.B.2 and 3 (and as  
3 required for compliance with the selected refund claim options as provided in Section III.B.1-4)  
4 during the Claims Period otherwise the Claim is invalid. The Claims Administrator shall review  
5 the refund information received from the Class Members and shall make a determination as to the  
6 Recognized Claim Amounts for each Authorized Claimant. The Net Settlement Fund shall  
7 initially be allocated 50% to Option 1 Claims (“Option 1 NSF”) and 50% to Option 2 Claims  
8 (“Option 2 NSF”). As soon as practicable after the end of the Claims Period, the Claims  
9 Administrator shall make an estimate as to whether the Option 1 NSF described above is sufficient  
10 to pay the total of all Option 1 Recognized Claim Amounts and whether the Option 2 NSF  
11 described above is sufficient to pay the total of all Option 2 Recognized Claim Amounts.

12                   (a)       If the total of all Option 1 Recognized Claim Amounts is greater than the  
13 Option 1 NSF, and the total of all Option 2 Recognized Claim Amounts is less than the Option 2  
14 NSF, then the Option 2 NSF minus the total of all Option 2 Recognized Claim Amounts shall be  
15 provisionally allocated to the Option 1 NSF to pay Option 1 claims. If after this allocation the  
16 Option 1 NSF is still insufficient to pay all Option 1 Recognized Claim Amounts, Option 1  
17 Recognized Claim Amounts shall be prorated as set forth below.

18                   (b)       If the total of all Option 2 Recognized Claim Amounts is estimated to be  
19 greater than the Option 2 NSF, and the total of all Option 1 Recognized Claim Amounts is less  
20 than the Option 1 NSF, then the Option 1 NSF minus the total of all Option 1 Recognized Claim  
21 Amounts shall be allocated to the Option 2 NSF to pay Option 2 claims. If after this allocation the  
22 Option 2 NSF is still insufficient to pay all Option 2 Recognized Claim Amounts, Option 2  
23 Recognized Claim Amounts shall be prorated as set forth below.

24                   (c)       If the total of all Option 1 Recognized Claim Amounts is greater than the  
25 Option 1 NSF, and the total of all Option 2 Recognized Claim Amounts is greater than the Option  
26 2 NSF, no reallocation shall be made. Proration of the Option 1 Recognized Claim Amounts and  
27 proration of the Option 2 Recognized Claim Amounts shall occur independently, as set forth  
28 below.

1 (d) If the total of all Option 1 Recognized Claim Amounts is less than the  
2 Option 1 NSF, and the total of all Option 2 Recognized Claim Amounts is less than the Option 2  
3 NSF, no reallocation shall be made and no proration shall occur.

4 **1. Class Member Payment Amounts**

5 (a) If after any reallocation has been made, as set forth above, the  
6 Option 1 NSF is sufficient to pay the Option 1 Recognized Claim Amounts and the Option 2 NSF  
7 is sufficient to pay the Option 2 Recognized Claim Amounts, then the Class Member Payment  
8 Amounts shall be each Authorized Claimant's Recognized Claim Amount.

9 (b) If after any necessary reallocation has been made, as set forth above,  
10 the Option 1 NSF is not sufficient to pay all Option 1 Recognized Claim Amounts, then the  
11 Claims Administrator shall make a pro rata adjustment based on each Option 1 Authorized  
12 Claimant's Recognized Claim Amount, and shall issue refund checks payable to Option 1  
13 Claimants in the pro rata amount, using the following formula:

14 Option 1 Pro Rata Adjustment =  $\frac{\text{Option 1 NSF}}{\text{Total Value of all Authorized Claimants' Option 1 Recognized Claim Amounts}}$

15  
16 Option 1 Pro Rata Adjustment x Option 1 Recognized Claim Amount = Class Member Payment For Valid Option 1 Claims

17  
18  
19 (c) If after any necessary reallocation has been made, as set forth above,  
20 the Option 2 NSF is not sufficient to pay all Option 2 Recognized Claim Amounts, then the  
21 Claims Administrator shall make a pro rata adjustment based on each Option 2 Authorized  
22 Claimant's Recognized Claim Amount, and shall issue refund checks payable to Option 2  
23 Claimants in the pro rata amount, using the following formula:

24  
25 Option 2 Pro Rata Adjustment =  $\frac{\text{Option 2 NSF}}{\text{Total Value of all Authorized Claimants' Option 2 Recognized Claim Amounts}}$

26  
27 Option 2 Pro Rata Adjustment x Option 2 Recognized Claim Amount = Class Member Payment for Option 2 Claims

1                                   **2.       Funding the Class Member Payment Amounts**

2           If the total of all Class Member Payment Amounts to be paid is estimated to exceed the  
3 balance of the Initial Payment (after payment of all Notice and Claims Administration Expenses,  
4 Attorneys' Fees and Expenses, and Plaintiff's Incentive Award), then the City shall notify Class  
5 Counsel and the Claims Administrator within fifteen (15) days whether it will issue and cause to  
6 be sold a Judgment Obligation Bond to fund the balance of the Settlement Fund that is due. If the  
7 City elects to issue and sell a Judgment Obligation Bond to fund the balance of the Settlement  
8 Fund, it shall undertake to do so in good faith as soon as practicable and the City shall fund the  
9 remaining balance of the Settlement Fund within thirty (30) days of the completion of the  
10 Judgment Obligation Bond offering. No payment of any Recognized Claim Amounts shall occur  
11 until the additional funds are deposited.

12           The Claims Administrator shall promptly issue checks payable to the Authorized  
13 Claimants in the amount of the Class Member Payment Amounts after the necessary amounts are  
14 fully funded or, if so directed on the Claim Form, shall promptly issue checks to the designated  
15 alternative funds as described in Section III.B.6 above. The balance of the Net Settlement Fund,  
16 including any interest, not used to pay Class Member Payment Amounts (including those amounts  
17 designated to be donated to the alternative funds described in Section III.B.6 above), Notice and  
18 Claims Administration Expenses, Attorneys' Fees and Expenses, and Plaintiff's Incentive Award,  
19 shall revert to the City within thirty (30) days of the issuance of such checks; provided, however,  
20 that the City agrees to pay any disputed claims that are subsequently approved by the Claims  
21 Administrator and/or the Court as well as any further necessary Notice and Administration  
22 Expenses, so long as the total Settlement Fund amount has not been fully exhausted.

23                                   **C.       Deceased Claimants**

24           Claims may be filed by deceased Claimants through representatives of their estate if  
25 appropriate documentation is provided. Any claims paid to a deceased Claimant shall be made  
26 payable to the estate of the deceased Claimant or, in the absence of an estate, to next of kin with  
27 documentation.

1           **D.     Timing and Failure to Timely Return Form**

2           All Claim Forms must be submitted by the postmark date set forth in the Court’s  
3 Preliminary Approval Order and as specified in the Notice. Any Class Member who fails to  
4 submit a Claim Form by such date shall be forever barred from receiving any payment pursuant to  
5 this Agreement, but shall in all other respects be bound by the terms of this Agreement by the  
6 Final Order and Judgment entered in the Action.

7           **E.     Rejected Claims**

8           1.       Claim Forms that do not meet the requirements set forth in this Agreement  
9 and in the Claim Form instructions, including, but not limited to, those that are not signed or  
10 acknowledged under penalty of perjury (unless at least one telephone bill or other proof of UUT  
11 payment during the Class Period is submitted with the Claim Form), do not provide a telephone  
12 billing or service address in the City of Los Angeles, fail to provide a current mailing address, fail  
13 to provide a covered phone number, or do not have the necessary documentation, shall be deemed  
14 deficient.

15           2.       The telephone bills (or other documentary evidence) provided by the Class  
16 Members who submit Option 2 claims shall create a rebuttable presumption that the Claimant paid  
17 the UUT in the amount set forth on the bill or evidence. Any Party may seek to verify any Claim  
18 at such Party’s discretion and expense. Based on such verification or any other relevant  
19 circumstances, any Party may, upon notice to counsel for the opposing Party, recommend to the  
20 Claims Administrator that the claim should be approved or rejected. The Claims Administrator  
21 shall then make its own independent determination at its sole discretion whether to approve or  
22 reject the claim. For Option 1 claims, the City may request that the Claims Administrator conduct  
23 an audit of any or all Option 1 claims, which audit shall be limited to confirming through public  
24 records that the claimant’s name is associated with the billing and/or service address specified in  
25 the claim form during the 2005-2008 time period. Such audit, if requested, shall be conducted by  
26 the Claims Administrator through searches of public records available via Accurint, and the cost  
27 of such searches shall be paid from the Settlement Fund. If the search process locates a public  
28 record indicating that the claiming Class Member’s name was associated with the relevant address

1 at any time during the Class Period, then the Claim shall be approved. If the search process does  
2 not result in a match, the Class Member shall be entitled to provide evidence of their service or  
3 billing address during the Class Period, which could include, without limitation, a copy of a single  
4 bill or account statement, a piece of mail or a magazine mailing label from the Class Period, a  
5 driver's license from the Class Period, or any other proof deemed sufficient by the Claims  
6 Administrator to reflect the association between the Class Member and the relevant service or  
7 billing address during the Class Period. Immediately, but not later than 30 days after receipt of a  
8 Claim Form deemed to be deficient for any reason, the Claims Administrator shall notify the  
9 Claimant (whose Claim Form has been deemed deficient) of the deficiencies and request the  
10 Claimant correct them. If the Claimant has provided an email address, notice of deficiency may  
11 be sent electronically. If the Claimant has not provided an email address, the notice of deficiency  
12 shall be mailed to the Claimant. The Claims Administrator shall provide to Class Counsel and to  
13 Lead City Counsel copies of all rejection notices.

14           3. Any Class Member whose initial Claim Form is rejected or deemed  
15 deficient by the Claims Administrator shall have the right to cure the deficiency within 45 days of  
16 the date the notice of deficiency is sent.

17           4. The Claims Administrator's final determination of the validity of a claim  
18 shall be nonappealable.

19           5. Specific Claim Form Issues:

- 20           a) The Following are examples of deficient Claim Forms requiring  
21 further action:
- 22           i. A Claimant does not sign, unless at least one telephone bill or  
23 other proof of payment of the UUT is submitted with his or her  
24 claim.
  - 25           ii. A Claimant does not provide his or her first and last name  
26 (failure to provide a middle initial is not deficient).
  - 27           iii. A Claimant checks Option 2 but provides improper, or no,  
28 supporting documentation.

1 iv. A Claimant fails to list a service or billing address in Los  
2 Angeles.

3 b) The following are NOT deficiencies requiring further action by the  
4 Claimant. Instead, the Claims Administrator shall follow the  
5 instructions provided:

6 i. If a Claimant fails to provide an email address or does not date  
7 the claim form, these are not deficiencies.

8 ii. If a Claimant fails to check a box under Options 1 or 2 and no  
9 supporting documentation is provided, the Claims Administrator  
10 shall proceed as though the Claimant checked Option 1.

11 iii. If a Claimant fails to check a box under Options 1 or 2 and  
12 supporting documentation is provided, the Claims Administrator  
13 shall proceed as though the Claimant checked the highest Option  
14 level for which the Claimant qualifies.

15 iv. If a Claimant checks both boxes under Options 1 and 2 and does  
16 not provide supporting documentation, the Claims Administrator  
17 shall proceed as though Claimant checked only Option I.

18 v. If a Claimant checks both boxes under Options 1 and 2 and  
19 provides supporting documentation, the Claims Administrator  
20 shall proceed as though the Claimant checked the highest Option  
21 level for which the Claimant qualifies.

22 **F. No Liability for Benefits Determinations**

23 As discussed in Section II.D, *supra*, Class Counsel and the City will cooperate and use all  
24 reasonable efforts to secure a Final Order and Judgment. If, despite the efforts of the Parties, the  
25 Court does not approve and enter the Final Order and Judgment or the Effective Date does not  
26 occur, no payments or distributions of any kind shall be made, except for the Advanced Notice and  
27 Administration Expenses (which are not refundable) and the refundable payment of Court-  
28 awarded Attorneys' Fees And Expenses, as specified in section X herein.

1 No person shall have any claim against the Defendant's Released Parties, the Plaintiffs,  
2 Plaintiff's Released Persons, the Settlement Class, or the Claims Administrator based on any  
3 eligibility determinations made in accordance with this Settlement Agreement.

4 **G. Live Call Center Support**

5 The Claims Administrator shall provide live call center support to Class Members for any  
6 questions that may arise regarding the claims administration process including, but not limited to,  
7 how to fill out and return the Claim Form, what to do in the event the Claim Form is lost, and  
8 general questions about the settlement.

9 **H. Deadline to Cash Checks**

10 Checks mailed to Class Members or to the alternative funds described in Section III.B.6  
11 above shall become void if they are not cashed within 120 days of issuance. The Claims  
12 Administrator shall have the discretion to reissue checks after the deadline to cash checks has  
13 passed if the original check issued to the Claimant has not been cashed and, within 150 days after  
14 the original check was issued, the Claimant certifies in writing that the original check did not  
15 reach her within the 120 day time frame. The amount of any checks that become void may be  
16 used, subject to the agreement of the Parties, to pay claims or any unanticipated Notice and  
17 Administration Expenses, and thereafter shall revert back to the City.

18 **VI. OBJECTIONS AND OPT-OUTS BY CLASS MEMBERS**

19 **A. Objections**

20 Objections by any Class Member to: (a) the proposed settlement contained in the  
21 Settlement Agreement and described in the Notice; (b) the payment of Attorneys' Fees and  
22 Expenses or the Plaintiff's Incentive Award; and/or (c) entry of the Final Order and Judgment  
23 shall be heard, and any papers submitted in support of said objections shall be considered by the  
24 Court, at the Final Settlement Hearing only if, at least thirty (30) calendar days prior to the Final  
25 Settlement Hearing, such Class Member delivers to the Claims Administrator the following:

- 26 1. Notice of his, her or its objection, which shall contain:
- 27 a) A heading referring to this Action;
- 28 b) A statement of the legal and factual bases for the objection;

- c) The objector's name, address, telephone number, and email address;
- d) Copies of phone bills or other evidence of Class membership; and
- e) The signature of the Class Member and his, her or its counsel (if the Class Member is represented by counsel).

2. The Claims Administrator will record the date of receipt of the objection and forward it to both Lead City Counsel and Class Counsel no later than twenty-five (25) days prior to the date of the Final Settlement Hearing. The Claims Administrator will also file the original objections with the Clerk of the Court no later than twenty (20) days prior to the date of the Final Settlement Hearing. A Class Member need not appear, in person or by counsel, at the Final Settlement Hearing in order for his, her or its objection to be considered.

**B. Exclusions/Opt-Outs**

Any Class Member(s) who elect to exclude themselves or "opt out" of this Agreement must file a written request to opt out with the Claims Administrator on or before the date specified in the Preliminary Approval Order. The Claims Administrator will record the date of receipt of the request for opt-out and forward it to both Lead City Counsel and Class Counsel no later than seven (7) business days prior to the date of the Final Settlement Hearing. The Claims Administrator will also file the original requests to opt out with the Clerk of the Court no later than five (5) days prior to the scheduled Final Settlement Hearing date. The Claims Administrator shall retain copies of all written requests for opt out until such time as it has completed its duties and responsibilities under this Agreement. The request to opt out shall be signed by the Class Member, and include his/her/its name, address and telephone number, with a statement that includes the Class Member's desire to opt out of the class action involving the City of Los Angeles's collection of the UUT and provides the telephone numbers of the opt out and address of the opt out during the Class Period.

1. Class Members who opt out of the settlement shall relinquish their rights to benefit under the terms of this Agreement and will not release their claims under Section VII, below. However, Class Members who fail to submit a valid and timely request or exclusion on or before the date specified in the Preliminary Approval Order shall be bound by all of the terms of



1 this Agreement and the Final Order and Judgment, regardless of whether they have otherwise  
2 attempted to request exclusion from the Settlement.

3           2. Any Class Member who submits a timely request for exclusion or opt-out  
4 may not file an objection to the settlement and shall be deemed to have waived any rights or  
5 benefits under this Agreement.

6           **C. Rescission of Opt-Outs**

7           1. The Parties recognize that some Class Members who initially submit a  
8 request to opt out seeking exclusion may, upon further reflection, wish to withdraw or rescind  
9 such opt-out requests. Class Members shall be permitted to withdraw or rescind their opt-out  
10 requests by submitting a “Rescission of Opt-Out” statement to the Claims Administrator that  
11 includes their name, address, and telephone number and a statement indicating a desire to  
12 withdraw the previous request to opt out.

13           2. Class Members submitting such Rescission of Opt-Out statements shall sign  
14 and date the statement and cause it to be delivered to the Claims Administrator no later than the  
15 deadline for the claims filing period specified in the Preliminary Approval Order.

16           3. Class Members may submit a Claim Form along with their rescission of  
17 opt-out statement, provided the Claim Form is submitted within the Claims Period.

18           4. The Claims Administrator shall stamp the date received on the original of  
19 any Rescission of Opt-Out statement and serve copies to Class Counsel and Lead City Counsel no  
20 later than **seven (7) business days after** the deadline for claims filing period specified in the  
21 Preliminary Approval Order, and shall file the date-stamped originals with the Clerk of the Court  
22 promptly thereafter. The Claims Administrator shall retain copies of all Rescission of Opt-Out  
23 statements until such time as the Claims Administrator is relieved of its duties and responsibilities  
24 under this Agreement.

25           **D. List of Opt-Outs**

26           No later than **seven (7) business days after** the deadline for submission of requests for  
27 exclusion or opt-out, the Claims Administrator shall provide to Class Counsel and Lead City  
28 Counsel a complete opt-out list together with copies of the opt-out requests.

1 **VII. RELEASES AND DISMISSAL OF THE ACTION AND JURISDICTION OF THE**  
2 **COURT**

3 **A. Release of Claims by the Plaintiff and the Settlement Class**

4 It is hereby agreed that, upon the Effective Date, Plaintiff and all Class Members and their  
5 executors, estates, predecessors, successors, assigns, agents and representatives, shall be deemed  
6 to have jointly and severally released and forever discharged the City and the Related Parties from  
7 any and all Released Claims, whether known or unknown, arising from the facts alleged in the  
8 Complaint. Class Members provide this release conditioned upon the City's compliance with all  
9 provisions of this Agreement. The Court shall retain jurisdiction to enforce the terms of this  
10 Agreement by any and all means available. All Class Members shall be fully and forever barred  
11 from instituting or prosecuting in any court or tribunal, either directly or indirectly, individually or  
12 representatively, any and all Released Claims against the City or any of the Related Parties.

13 Plaintiff and all Class Members hereby acknowledge and waive the protections afforded by  
14 California Civil Code Section 1542, solely as they relate to the allegations contained in Plaintiffs  
15 Complaint, which provides:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN  
19 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
20 SETTLEMENT WITH THE DEBTOR.

21 Upon entry of the Final Order and Judgment, Defendant shall have fully, finally and  
22 forever released, relinquished and discharged as against Plaintiff and Plaintiff's Released Persons,  
23 all claims arising out of, relating to or in connection with the institution, prosecution, assertion,  
24 defense, settlement or resolution of the Action.

25 **B. Continuing Jurisdiction**

26 Upon entry of the Final Order and Judgment, the Court shall retain jurisdiction over the  
27 Action for the purpose of entering all orders authorized hereunder, that may be necessary to  
28 implement or enforce the provisions of this Agreement. Except as otherwise provided herein, in  
the event that any applications for relief from this Agreement are made, such applications shall be

1 made to the Court. The Parties shall have the right to reduce the settlement to a stipulated  
2 judgment pursuant to California Code of Civil Procedure section 664.6.

3 **C. Exclusive Remedies Under Settlement**

4 Upon the Effective Date: (i) This agreement shall be the exclusive remedy for any and all  
5 Released Claims of Class Members; and (ii) the Defendant's Released Parties shall not be subject  
6 to liability or expense of any kind to any Class Members, who shall be permanently barred and  
7 enjoined from initiating, asserting, or prosecuting against the Defendant's Released Parties in any  
8 federal or state court or tribunal any and all Released Claims other than as provided by this  
9 Agreement.

10 **VIII. EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

11 Subject to Section II.D., in the event (i) the Court does not enter the Preliminary Approval  
12 Order specified in this Agreement, (ii) the Court does not finally approve the settlement as  
13 provided in this Agreement, (iii) the Court does not enter the Final Order and Judgment  
14 substantially as provided in this Agreement, or (iv) the Settlement does not become final for any  
15 other reason, this Agreement shall be null and void and any order or judgment entered by the  
16 Court in furtherance of this settlement shall be vacated nunc pro tunc, in which case the Settling  
17 Parties shall proceed in all respects as if this Agreement had not been executed, and the terms or  
18 fact of this Agreement (as well as the negotiations leading up to the execution of this Agreement)  
19 shall be inadmissible in any proceeding for any purpose. In the event that this Agreement  
20 becomes null and void, any preliminary class certification shall be vacated.

21 **IX. SETTLEMENT NOT EVIDENCE AGAINST THE SETTLING PARTIES**

22 **A. Termination of Settlement Agreement**

23 In the event this Agreement is terminated for any reason: (i) all negotiations, proceedings,  
24 documents prepared and statements made in connection herewith shall be without prejudice to the  
25 Settling Parties, shall not be deemed or construed to be an admission by any Settling Party of any  
26 act, matter or proposition, and shall not be used in any manner or for any purpose in any  
27 subsequent activity in the Action or in any other action or proceeding; and (ii) other than as  
28 expressly preserved by this Settlement Agreement, in the event of its termination, this Agreement

1 shall have no further force and effect with respect to any Settling Party and shall not be used in the  
2 Action or any other proceeding for any purpose.

3 On October 23, 2014, in light of the mediation scheduled for November 7, 2014, the  
4 Parties agreed to toll the running of the five year rule set forth in California Code of Civil  
5 Procedure section 583.310 (the "Five Year Rule") pursuant to California Code of Civil Procedure  
6 section 583.330(a) for as long as it takes for the Court to rule on Plaintiff's Motion for Class  
7 Certification, and, if class certification is granted, for notice to be given to the class pursuant to  
8 said order, and that if the Court denies Plaintiff's Motion for Class Certification, the tolling period  
9 shall end upon entry of the Court's order. The Parties hereby further agree that the Five Year Rule  
10 will continue to be tolled until either the Effective Date or until any order terminating this  
11 Settlement Agreement is final (meaning the date upon which the order terminating the Settlement  
12 Agreement is no longer subject to judicial review of any kind), such that in the event of  
13 termination of this Agreement, the calculation of the five years provided for under the Five Year  
14 Rule will not include the time period between October 23, 2014 and the date of the finality of the  
15 order terminating the Settlement Agreement.

16 **B. The City's Denial of Liability**

17 The City denies all of the claims asserted by Plaintiff in his Complaint. Nothing in this  
18 Agreement may be construed as an admission by any of the Parties of any wrongdoing or breach  
19 of any obligation whatsoever.

20 **X. ATTORNEYS' FEES AND PLAINTIFF'S INCENTIVE AWARD**

21 **A. Class Counsel's Fees and Costs**

22 Class Counsel shall apply for Attorneys' Fees and Expenses not to exceed \$18.5 million of  
23 the Settlement Fund, with such amount to be paid from the Initial Payment. The City reserves the  
24 right to object to the amount of such Attorneys' Fees and Expenses in excess of \$15 million. Any  
25 Attorneys' Fees and Expenses that are awarded by the Court shall be paid into an escrow account  
26 (*i.e.*, the Counsel Fee and Expense Reimbursement Fund) for the benefit of Class Counsel within  
27 five (5) business days after the Court executes an order (or orders) awarding such fees and  
28 expenses. Wolf Haldenstein Adler Freeman & Herz LLP and Chimicles & Tikellis LLP shall

1 serve as Co-Escrow Agents or co-account holders for the Counsel Fee and Expense  
2 Reimbursement Fund. Any withdrawal of some or all of the Attorneys' Fees and Expenses from  
3 the escrow account by Class Counsel prior to the Effective Date must be secured by an acceptable,  
4 irrevocable letter of credit concerning the withdrawer and delivered to Defendant before such  
5 withdrawal is made. The Attorneys' Fees and Expense award will be allocated among Class  
6 Counsel with the approval of the Class Counsel. The City shall have no other responsibility for  
7 the payment of Plaintiff's attorneys' fees or litigation expenses, and the City shall have no  
8 responsibility for the allocation of the Attorneys' Fees and Expense Award among Class Counsel.  
9 In the event that the Effective Date does not occur, or the Judgment or the order making the  
10 Attorneys' Fees and Expenses award is reversed or modified, or the Settlement Agreement is  
11 cancelled or terminated for any other reason, and in the event that the Attorneys' Fees and  
12 Expenses award has been paid to any extent, then Class Counsel shall, within five (5) business  
13 days after receiving notice from the City's Counsel or from a court of appropriate jurisdiction,  
14 refund to the Settlement Fund, as appropriate, the amounts previously paid to the Counsel Fee and  
15 Expense Reimbursement Fund, in an amount consistent with such reversal, modification,  
16 cancellation, or termination. Class Counsel, as a condition of receiving such fees and expenses,  
17 hereby agree that their respective law firms are each unconditionally obligated to make such  
18 refund of fees and expenses received by their respective law firms, and are subject to the  
19 jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

20 **B. Payment to Class Representative**

21 Class Counsel shall apply for a Plaintiff's Incentive Award to be paid to Plaintiff from the  
22 Settlement Fund in recognition of his contribution on behalf of the Class not to exceed \$10,000.  
23 The City reserves the right to object to the amount of the incentive award.

24 **XI. REPRESENTATIONS, WARRANTIES AND COVENANTS**

25 Class Counsel who are signatories hereof represent and warrant that they have the  
26 authority, on behalf of Plaintiff, to execute, deliver, and perform this Agreement, and to  
27 consummate the transactions contemplated hereby. Class Counsel further warrant and represent  
28 that they have authority to seek the dismissal with prejudice of this Action. This Agreement has

1 been duly and validly executed and delivered by Class Counsel and constitutes Plaintiff's legal,  
2 valid and binding obligation. The City represents and warrants that it has authority to execute,  
3 deliver and perform this Agreement and to consummate the transactions contemplated hereby.  
4 The execution, delivery and performance by the City of this Agreement and the consummation by  
5 it of the actions contemplated hereby have been duly authorized by all necessary action on the part  
6 of the City. This Agreement has been duly and validly executed and delivered by the City's  
7 counsel and constitutes the City's legal, valid and binding obligation.

8 **XII. MISCELLANEOUS PROVISIONS**

9 **A. Headings**

10 The headings of the sections and paragraphs of this Agreement are included for  
11 convenience only and shall not be deemed to constitute part of this Agreement or to affect its  
12 construction.

13 **B. Amendments**

14 This Agreement, including all appendices and exhibits attached hereto, may not be  
15 modified or amended except in writing signed by all Parties hereto.

16 **C. Counterparts**

17 This Agreement may be executed in one or more counterparts, each of which shall be  
18 deemed an original but all of which together shall constitute one and the same instrument.

19 **D. Applicable Law**

20 This Agreement shall be governed and construed in accordance with the substantive laws  
21 of the State of California, without giving effect to any of its conflict of law provisions.

22 **E. Costs**

23 Except as specifically provided in this Agreement and as approved by the Court, each  
24 Party shall bear its own costs and attorneys' fees, including taxable court costs.

25 **F. Exhibits**

26 All of the Exhibits to this Agreement are material and integral parts hereof and are fully  
27 incorporated herein by reference. This Agreement and the Exhibits hereto constitute the entire,  
28 fully integrated agreement among the Settling Parties and cancel and supersede all prior written

1 and unwritten agreements and understandings pertaining to the settlement of the Action. The  
2 Parties each covenant and warrant that they have not relied upon any promise, representation or  
3 undertaking not set forth in writing herein to enter into this Agreement.

4 **G. Void Clauses**

5 If any provision, paragraph, section, article, or other portion of this Agreement is found to  
6 be void, all the remaining portions of this Agreement shall remain in effect and be binding upon  
7 the Parties provided that the void provisions were not material. The Court shall make the  
8 determination as to whether the void provisions were material.

9 **H. Timing**

10 The Parties reserve the right, subject to the Court's approval, to request any reasonable  
11 extensions of time that might be necessary to carry out any of the provisions of this Agreement.

12 **I. Notices**

13 Any notice, request or instruction or other document to be given by any Party to this  
14 Agreement to any other Party to this Agreement (other than class notification) shall be in writing  
15 and delivered personally or sent by registered or certified mail, postage prepaid to:

16 Class Counsel:

17 Francis M. Gregorek  
18 Rachele R. Rickert  
19 Marisa C. Livesay  
20 WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP  
21 750 B Street, Suite 2770  
22 San Diego, CA 92101

23 And,

24 Nicholas E. Chimicles  
25 Timothy N. Mathews  
26 CHIMICLES & TIKELLIS LLP  
27 One Haverford Centre  
28 361 West Lancaster Avenue  
Haverford, PA 19041

And,

1 Jonathan W. Cuneo  
2 William Anderson  
3 CUNEO GILBERT & LADUCA, LLP  
4 507 C Street, NE  
5 Washington, DC 20002

6 And,

7 Jon Tostrud  
8 TOSTRUD LAW GROUP, PC  
9 1925 Century Park East, Suite 2125  
10 Los Angeles, CA 90067

11 To Lead City Counsel at:

12 Holly O. Whatley  
13 Leonard P. Aslanian  
14 COLANTUONO, HIGHSMITH &  
15 WHATLEY, PC  
16 300 S. Grand Avenue, Suite 2700 Los Angeles, CA 900710-3137

17 **J. Court Actions**

18 All applications for Court approval or Court orders required or permitted under this  
19 Agreement shall be made with reasonable prior notice to all Parties.

20 **K. Interpretation**

21 The determination of the terms of, and the drafting of, this Agreement including any  
22 Exhibits, has been by mutual agreement after negotiation, with consideration by and participation  
23 of all Parties and their counsel. Because this Agreement was drafted with the participation of all  
24 Parties and their counsel, the presumption that ambiguities shall be construed against the drafter  
25 does not apply. Each of the Parties was represented by competent and effective counsel  
26 throughout the course of settlement negotiations and in the drafting and execution of this  
27 Agreement, and there was no disparity in bargaining power among the Parties to this Agreement.

28 **L. Abeyance**

The parties agree to hold in abeyance all proceedings in the Action, except such  
proceedings as may be necessary to implement and complete this Agreement, pending the Final  
Settlement Hearing to be conducted by the Court. Based on the California Supreme Court's denial



1 of the request to stay the appeal currently pending before it, this section does not apply to the  
2 proceedings before the Supreme Court related to such appeal.

3 **M. Fairness**

4 The parties believe that this Agreement is a fair, adequate and reasonable settlement of the  
5 Action and have arrived at this Agreement through arm's-length negotiations, taking into account  
6 all relevant factors, present and potential.

7 IN WITNESS THEREOF, the Parties by their respective authorized representatives have  
8 executed this Agreement as of the date(s) indicated on the lines below:

9 DATED: August 21, 2015

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
FRANCIS M. GREGOREK  
RACHELE R. RICKERT  
MARISA C. LIVESAY

10  
11  
12  
13 By:   
FRANCIS M. GREGOREK

14 750 B Street, Suite 2770  
15 San Diego, CA 92101  
16 Telephone: 619/239-4599  
Facsimile: 619/234-4599

17 WOLF HALDENSTEIN ADLER  
18 FREEMAN & HERZ LLP  
19 DANIEL W. KRASNER  
20 270 Madison Avenue  
New York, NY 10016  
Telephone: 212/545-4600  
Facsimile: 212/545-4653

21  
22 DATED: August 21, 2015

CHIMICLES & TIKELLIS LLP  
NICHOLAS E. CHIMICLES  
TIMOTHY N. MATHEWS

23  
24 By:   
NICHOLAS E. CHIMICLES

25  
26 One Haverford Centre  
27 361 West Lancaster Avenue  
Haverford, PA 19041  
28 Telephone: 610/642-8500  
Facsimile: 610/649-3633

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DATED: August \_\_\_\_, 2015

CUNEO GILBERT & LADUCA, LLP  
JONATHAN W. CUNEO  
WILLIAM ANDERSON

By:

 by  
\_\_\_\_\_  
JONATHAN W. CUNEO AC

507 C Street, NE  
Washington, DC 20002  
Telephone: 202/789-3960  
Facsimile: 202/789-1813

DATED: August \_\_\_\_, 2015

TOSTRUD LAW GROUP, PC  
JON TOSTRUD

By:

\_\_\_\_\_  
JON TOSTRUD


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

Attorneys for Plaintiff ESTUARDO ARDON

DATED: August 26, 2015

CITY OF LOS ANGELES

By:

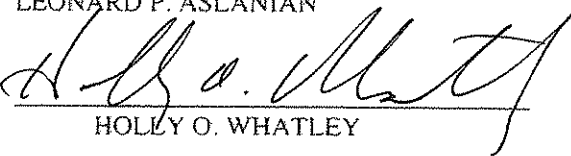
  
\_\_\_\_\_  
ERIC GARCETTI, MAYOR

Approved as to form:

DATED: August 26, 2015

COLANTUONO, HIGHSMITH &  
WHATLEY, PC  
HOLLY O. WHATLEY  
AMY C. SPARROW  
LEONARD P. ASLANIAN

By:

  
\_\_\_\_\_  
HOLLY O. WHATLEY

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DATED: August \_\_, 2015

CUNEO GILBERT & LADUCA, LLP  
JONATHAN W. CUNEO  
WILLIAM ANDERSON

By: \_\_\_\_\_  
JONATHAN W. CUNEO

507 C Street, NE  
Washington, DC 20002  
Telephone: 202/789-3960  
Facsimile: 202/789-1813

DATED: August 20, 2015

TOSTRUD LAW GROUP, PC  
JON TOSTRUD

By:   
JON TOSTRUD

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

Attorneys for Plaintiff ESTUARDO ARDON

DATED: August \_\_, 2015

CITY OF LOS ANGELES

By: \_\_\_\_\_  
ERIC GARCETTI, MAYOR

Approved as to form:

DATED: August \_\_, 2015

COLANTUONO, HIGHSMITH &  
WHATLEY, PC  
HOLLY O. WHATLEY  
AMY C. SPARROW  
LEONARD P. ASLANIAN

By: \_\_\_\_\_  
HOLLY O. WHATLEY

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300 S. Grand Avenue, Suite 2700  
Los Angeles, CA 900710-3137  
Telephone: 213/542-5700  
Facsimile: 213/542-5710

NOREEN S. VINCENT  
OFFICE OF THE CITY ATTORNEY  
BEVERLY A. COOK  
200 N. Main Street, Suite 920  
Los Angeles, CA 90012

Attorneys for Defendant CITY OF LOS ANGELES

21343v17

154440.1

# **EXHIBIT A**



# TELEPHONE USERS TAX REFUND CLAIM FORM

<<Barcode>> <<ClaimID>>  
<<FirstName>> <<LastName>>  
<<Addr1>> <<Addr2>>  
<<City>>, <<State>> <<Zip>>

## 1. Claimant Information

First Name  M.I.  Last Name

Primary Address

Continuation of Primary Address

City  State  Zip Code

Foreign Province  Foreign Postal Code  Foreign Country Name/Abbreviation

Current telephone number (required):  -  -  Date of Birth<sup>1</sup> (required for non-business claims):  /  /

Email Address (optional)<sup>2</sup>

Business Name (required for business claims):

## 2. Telephone Account Information during the Period October 2005-March 2008

For each type of service for which you claim a refund, you must provide your Telephone Service Address within the City of Los Angeles for landlines, and/or your Telephone Billing Address for mobile service within the City of Los Angeles, **during the time period from October 2005 to March 2008.**

Billing/Service Address #1 during October 2005-March 2008 time period (required):

Street Address  Zip Code

Billing/Service Address #2 during October 2005-March 2008 time period (if more than one address during the time period):

Street Address  Zip Code

<sup>1</sup> Date of birth is not required if you submit a copy of a phone bill from the time period October 2005-March 2008.

<sup>2</sup> If you provide an email address we will notify you whether your claim was accepted, update you when checks are mailed, and provide other settlement updates. We will not use your email for any other purpose.



FOR CLAIMS PROCESSING ONLY	OB <input type="text"/>	CB <input type="text"/>	<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B
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c/o Gilardi & Co. LLC

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San Rafael, CA XXXXXX-XXXXX

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UNITED STATES

ACLA I

**BUSINESS REPLY MAIL**

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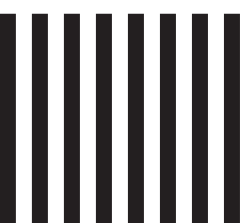
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GILARDI & CO LLC

PO BOX 8060

SAN RAFAEL CA 94912-9960



# **EXHIBIT B**

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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

) **[PROPOSED] ORDER AND JUDGMENT**  
) **GRANTING FINAL APPROVAL OF**  
) **CLASS ACTION SETTLEMENT**

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

) DATE:  
) TIME:  
) DEPT: 307  
) JUDGE: Hon. Amy D. Hogue

**EXBHITIT B**

1 Plaintiff's Motion for an Order Granting Final Approval of Class Action Settlement came  
2 before this Court on \_\_\_\_\_, 201\_. Class Counsel's Motion for an Award of Attorneys' Fees  
3 and Expenses and Payment to the Class Representative also came on for hearing.

4 Estuardo Ardon (the "Class Representative") brought this lawsuit on behalf of himself and  
5 those similarly situated against the City of Los Angeles ("City") based on allegedly illegal and  
6 improper tax collection with respect to the City's Telephone Utility Users' Tax ("UUT"), former  
7 Los Angeles Municipal Code section 21.1.3, *et. seq.*, as applied to mobile/cellular and landline  
8 telephone services. Plaintiff sought a refund of all UUT collected on charges for all telephone  
9 services other than local telephone services. Plaintiff's complaint seeks declaratory and injunctive  
10 relief, and alleges money had and received, and unjust enrichment.

11 The City denies that the tax was collected illegally, denies all of the claims and any  
12 liability or wrongdoing of any kind associated with Plaintiff's claims asserted in his complaint.

13 On \_\_\_\_\_, 2015, this Court entered an Order Preliminarily Approving Class Action  
14 Settlement ("Preliminary Approval Order"), resulting in certification of the following provisional  
15 settlement class:

16 all persons, including corporate and non-corporate entities wherever organized and  
17 existing, who paid telephone utility user taxes to the City of Los Angeles for  
18 residential landline service, business landline service and mobile telephone service  
19 utilized between October 19, 2005 and March 15, 2008, other than purely local  
20 service, teletypewriter exchange service, or long distance telephone service where  
21 the charge varied by both time and distance (the "Settlement Class"). "Purely local  
22 service" means local telephone service provided under a calling plan that does not  
23 include long distance telephone service, or that separately states the charge for local  
24 service on the bill to customers. The Settlement Class does not include prepaid  
25 wireless customers (which includes customers who purchased plans described as  
26 "pay as you go," "pay as you talk," "pay and go wireless," "prepay or burner phone  
27 service" and "no contract service") but does include prepaid wireless service  
28 providers, *i.e.*, those that provide the above services to customers who prepay for  
wireless service. 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.

That order further directed the parties to provide notice to the Class, which informed  
absent Class Members of: (a) the proposed settlement, and the settlement's key terms; (b) the

1 date, time and location of the Final Settlement Hearing; (c) the right of any Class Member to  
2 object to the proposed settlement, and an explanation of the procedures to exercise that right; (d)  
3 the right of any Class Member to exclude themselves from the proposed settlement, and an  
4 explanation of the procedures to exercise that right; and (e) an explanation of the procedures for  
5 Class Members to participate in the proposed settlement.

6 Class Members were provided notice of the Final Settlement Hearing by mail, publication,  
7 press release, television and radio advertising, and through the Claims Administrator's website  
8 and Class Counsel's web sites. [No Class Member filed a notice of intention to appear at the  
9 \_\_\_\_\_, 2015 Final Settlement Hearing pursuant to paragraph 6 of the Court's  
10 Preliminary Approval Order.]

11 The Court, upon notice having been given as required by the Preliminary Approval Order,  
12 and having considered the proposed Settlement Agreement, attached hereto as Exhibit A, as well  
13 as Plaintiffs' Notice of Motion and Motion for Final Approval of the Settlement as provided by  
14 California Rules of Court, Rule 3.769(g) and (h), the memorandum of points and authorities in  
15 support thereof, the declarations in support thereof, relevant law, and the oral argument presented  
16 to the Court, and in recognition of the Court's duty to conduct a fairness hearing as to the good  
17 faith, fairness, adequacy and reasonableness of any proposed settlement,

18 **HEREBY ADJUDGES, ORDERS, AND DECREES** as follows:

19 **I. DEFINITIONS**

20 The capitalized terms used in this Order, if any, shall have the meanings and/or definitions  
21 given to them in the Settlement Agreement, attached hereto as Exhibit A.

22 **II. JURISDICTION**

23 The Parties and the Class Members have submitted to the jurisdiction of this Court for  
24 purposes of the Settlement. The Court has personal jurisdiction over the Parties and the Class  
25 Members and has subject matter jurisdiction to approve the Settlement and to release all claims  
26 and causes of action that are to be released pursuant to the Settlement.

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1 **III. NOTICE TO CLASS MEMBERS**

2 The notice mechanisms implemented pursuant to the Settlement Agreement, which the  
3 Court approved in the Preliminary Approval Order on \_\_\_\_\_, 2015, (i) constitute reasonable  
4 and best practicable notice, in that they are reasonably calculated, under the circumstances, to  
5 apprise putative Class Members of the pendency of the Action, the terms of the Settlement, their  
6 right to object or exclude themselves from the Settlement, their right to appear at the Final  
7 Settlement Hearing, and the fact that a failure to submit a valid and timely request for exclusion  
8 serves to submit the member to the Court’s jurisdiction for settlement purposes; (ii) constitute due,  
9 adequate, and sufficient notice under the requirements of the United States Constitution,  
10 California law and other applicable laws and rules of court. Further, the Court has considered the  
11 Reports and Declarations provided by the Claims Administrator as to the implementation of the  
12 Notice mechanisms and finds that the Notice requirements have been reasonably satisfied.

13 **IV. ORDER GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT**

14 The Court has reviewed the terms of the Settlement Agreement and finds that the  
15 Settlement Agreement is fair, adequate, and reasonable when balanced against the possible  
16 outcome of further litigation relating to class certification, liability, and damages. The Court finds  
17 further that settlement at this time will avoid substantial additional costs and will avoid the delay  
18 and risks presented by continued prosecution of the litigation. The Court also finds that the  
19 Settlement has been reached after significant and extensive arm's-length negotiations between and  
20 among highly-experienced counsel for the parties, with the assistance of an experienced mediator.

21 The Settlement Agreement, Exhibit A, is approved and made a part of this judgment as if  
22 fully set forth herein, and shall have the full force and effect of an order of this Court. The parties  
23 shall consummate the Settlement Agreement according to its terms.

24 Following notice that was sent to each Class Member by first class mail, [no or \_\_\_\_]  
25 Class Member[s] objected to [any of] the terms of the Settlement and only \_\_\_\_\_ Class  
26 Members opted out. Such non-opposition to the Settlement is evidence of the Settlement’s  
27 fairness, adequacy, and reasonableness. Taking into account (1) the value of the Settlement  
28 benefits to the Class Members, (2) the risks inherent in continued litigation, (3) the complexity,

1 expense, and likely duration of the litigation in the absence of settlement, (4) the experience and  
2 views of Class Counsel, and (5) the position reactions of Class Members, the Court finds that the  
3 settlement is fair, adequate, reasonable, and deserves this Court's final approval.

4 The Court therefore hereby orders and declares: (i) the Settlement Agreement is binding  
5 on all Parties and Class Members; (ii) the Settlement Agreement shall be preclusive in all pending  
6 and future lawsuits or other proceedings; and (iii) the Settlement Agreement and this Order shall  
7 have res judicata and preclusive effect in all pending and future lawsuits or other proceedings  
8 maintained by or on behalf of the Class Representative or any other Class Member, as well as each  
9 of their heirs, executors, administrators, successors and assigns. Upon the Effective Date, the  
10 Settlement Agreement shall be the exclusive remedy for any and all Released Claims of  
11 Settlement Class Members.

12 **V. RELEASE**

13 The Court references and confirms that the release in the Settlement Agreement is  
14 approved. As a result, the Released Claims identified in the Settlement Agreement are hereby  
15 dismissed with prejudice against the City and Related Parties. The Court orders that the City and  
16 the Related Parties shall be released and forever discharged from all Released Claims, and  
17 Plaintiff and all Class Members and their heirs, executors, estates, predecessors, successors,  
18 assigns, agents and representatives shall be deemed to have jointly and severally released and  
19 forever discharged the City and the Related Parties from any and all Released Claims, whether  
20 known or unknown, arising from the facts alleged in the Complaint, and shall be fully and forever  
21 barred and enjoined from instituting or prosecuting in any court or tribunal, either directly or  
22 indirectly, individually or representatively, any and all Released Claims against the City or any of  
23 the Related Parties. The Released Claims specifically includes any and all claims, demands,  
24 rights, damages, obligations, suits, and causes of action of every nature and description  
25 whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist,  
26 including both known and unknown claims of the Plaintiff and all Class Members that were or  
27 could have been brought against the City and/or its Related Parties, or any of them, during the  
28 Class Period, arising from the matters alleged in the Complaint.

1 **VI. PLAINTIFF’S REQUEST FOR ATTORNEYS’ FEES AND EXPENSES**

2 Class Counsel have moved for an awards of attorneys’ fees and expenses, notice of which  
3 was given to all Class Members pursuant to the Court’s Preliminary Approval Order of  
4 \_\_\_\_\_, 2015. The Court heard argument regarding Plaintiff’s request for attorneys’ fees  
5 and expenses and a Plaintiff’s incentive award upon duly noticed motion on \_\_\_\_\_, 201\_.  
6 Based upon all papers filed with the Court, oral argument at the hearing on \_\_\_\_\_, 201\_,  
7 the Court’s observation and assessment of the performance of Class Counsel throughout this  
8 litigation, the resulting settlement recovery, and good cause appearing therefor, the Court finds as  
9 follows:

10 In light of the work they performed on the case, the outstanding results they achieved on  
11 behalf of Class Members, the contingent nature of the litigation, the experience and skill Class  
12 Counsel displayed in the litigation, and the preclusion of other employment occasioned by the  
13 hours Class Counsel devoted to this litigation, the risks taken in representing the taxpayers, the  
14 novelty and complexity of the legal issues, the length of the representation, the fact that the Class  
15 Representative did not agree to pay attorneys’ fees if the case had been unsuccessful, this Court  
16 finds that an award of \$ \_\_\_\_\_ in Attorneys’ Fees and Expenses for all past and  
17 remaining work until the completion of this matter in accordance with the terms of the Settlement  
18 Agreement is fair and reasonable.

19 As a cross-check to test the reasonableness of this amount the Court finds that the  
20 \$ \_\_\_\_\_ in lodestar Class Counsel have dedicated to the prosecution of this  
21 action since its inception is reasonable and consistent with the litigation in this case. This Court  
22 further finds that Class Counsel’s hourly rates are reasonable for their skill and the work they  
23 performed. In setting its award of Attorney’s Fees and Expenses, the Court has considered the  
24 following factors: (a) the contingent nature of this action; (b) the experience, reputation and  
25 ability of Class Counsel and the skill they displayed in litigation; (c) the results achieved under the  
26 Settlement; and (d) the preclusion of other employment. (*Glendora Comm. Redev. Agency v.*  
27 *Demeter* (1984) 155 Cal. App. 3d 465, 474-75, 480; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 49.)



1 The Court's application of all of the facts to these factors demonstrates that the award of  
2 fees and costs is eminently reasonable. The award of fees and cost shall be paid from the  
3 Settlement Fund within five (5) business days of the date of this Final Order and Judgment. Such  
4 fees, costs and expenses shall be paid to Wolf Haldenstein Adler Freeman & Herz LLP, who shall  
5 allocate such fees, costs and expenses to other Class Counsel in the Action.

6 **VII. INCENTIVE AWARD TO THE CLASS REPRESENTATIVE**

7 Class Counsel have also moved for an incentive award to the Class Representative, notice  
8 of which was also given to all Class Members pursuant to the Court's Preliminary Approval Order  
9 of \_\_\_\_\_, 2015. Plaintiff seeks a service award for Class Representative Estuardo Ardon  
10 in the amount of \$\_\_\_\_\_. Plaintiff seeks this payment as compensation for the time, effort,  
11 and risk that he spent to enable the Class Members to receive this substantial recovery. The Class  
12 Representative spent substantial amounts of time responding to discovery, producing documents,  
13 and otherwise keeping abreast of developments in case. Additionally, the Class Representative  
14 prepared for and sat for deposition.

15 The Court notes that California and federal courts regularly approve incentive awards to  
16 compensate class representatives for the services they provide to the class, the time and effort they  
17 invest on behalf of others, and the risks that they incur during the course of class action litigation.  
18 Class Representative Estuardo Ardon performed a substantial service to Class Members, including  
19 bringing this action, providing relevant documents and information, and making himself available  
20 to work with Class Counsel throughout the Action. [Although the proposed incentive award was  
21 disclosed to the Settlement Class in the Notice, no Class Member objected to it.] In light of these  
22 facts, the requested service award to the Class Representative is appropriate. For the foregoing  
23 reasons, the Court finds that an incentive awards of \$\_\_\_\_\_ to the Class Representative is  
24 fair and reasonable considering his service to Class Members.

25 \*\*\*\*\*

26 Under California Code of Civil Procedure sections 578, 579, and 664.6, the Court, in the  
27 interests of justice, there being no just reason for delay, expressly directs the Clerk of the Court to  
28 enter this Order and Judgment Granting Final Approval of Class Action Settlement, and hereby

1 decrees, that upon entry, it be deemed as a final judgment with respect to all claims by members of  
2 the Settlement Class against the City and the Released Parties, in accordance with the terms of the  
3 Settlement Agreement.

4 Without affecting the finality of this Order and Judgment Granting Final Approval of Class  
5 Action Settlement, this Court reserves exclusive and continuing jurisdiction over the Settlement  
6 and the Settlement Agreement, including the administration and consummation of the Settlement  
7 Agreement.

8 **IT IS SO ORDERED.**

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\_\_\_\_\_, 201\_

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Hon. Amy D. Hogue  
JUDGE OF THE SUPERIOR COURT

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# **EXHIBIT C**

**INDIVIDUALS AND BUSINESSES MAY CLAIM REFUNDS  
OF TELEPHONE TAXES PAID TO THE CITY OF LOS ANGELES  
BETWEEN OCTOBER 19, 2005 AND MARCH 15, 2008.**

*Ardon v. City of Los Angeles: Judge Amy D. Hogue authorized this notice.*

**SUMMARY OF THE SETTLEMENT**

- The City of Los Angeles (“City”) has agreed to pay up to \$92.5 million to settle a class action lawsuit seeking refunds of taxes collected for telephone services utilized from October 19, 2005 to March 15, 2008 (the “Class Period”). The settlement resolves the lawsuit; it avoids costs and risks from continuing the lawsuit; pays money to Class Members; and releases the City from liability.
- **You must submit a claim by XXX XX, XXXX in order to be eligible to receive a payment.**
- You are eligible to submit a claim if you paid the Los Angeles Telephone Utility Users Tax (called the “UUT”) at any time from October 19, 2005 to March 15, 2008, and have not already been paid a full refund by the City for such UUT, subject to offset for any refunds the City has already paid you. The tax was typically collected by telephone service providers through charges appearing on landline and mobile telephone bills.
- You may claim the following standard refund amounts by completing the claim form and checking the boxes for each kind of service that you paid for telephone bills dated during the time period October 2005-March 2008. No additional documentation is required to claim these amounts:
  - \$50 - Mobile Telephone Service (\*not including prepaid mobile service)
  - \$30 - Residential Landline Service
  - \$50 – Business Landline Service
- In the alternative, for any of the above types of telephone service, you may claim a refund based on the actual UUT that you paid to the City of Los Angeles for telephone services utilized during the October 19, 2005-March 15, 2008 time period by submitting copies of your telephone bills or other proof of the amount of UUT paid.
- Instead of receiving a refund payment, you may choose to have any refund for which you are deemed eligible donated to certain funds that support various City programs.
- The actual amount you receive may vary based on the number of eligible claims received and other factors.
- **This settlement affects your legal rights, regardless of whether you act or don’t act. Please read this notice carefully!**

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

<b>SUBMIT A CLAIM DEADLINE: XXXXXX</b>	You must submit a valid claim form to receive a payment in the mail from this settlement or to direct that such payment be instead donated to one of four designated funds that support City services.
<b>DO NOTHING</b>	You will not receive any payment and any claim you have for a refund will be released and you will no longer have such a claim.
<b>EXCLUDE YOURSELF DEADLINE: XXXXXXXX</b>	Get out of the lawsuit. Get no payment. Keep your right to sue separately with your own lawyer. Exclusion instructions are provided in this notice.
<b>OBJECT DEADLINE: XXXXXXXXXX</b>	You may write to the Court to comment on or detail why you do not like the settlement by following the instructions in this notice.
<b>GO TO A COURT HEARING</b>	You may also ask to speak to the Court about the fairness of the settlement. You do not need to attend the hearing to receive payment. The Final Settlement Hearing is on XXXXX, at XXXXXXXX. If you or your attorney go to the Hearing it will be at your own expense.

- These rights and options—**and the deadlines to exercise them**—are explained further in this notice.
- The judge in charge of this case has given preliminary approval to this settlement, but payments will be made only after the judge gives final approval to the settlement and the settlement becomes effective pursuant to its terms. Please be patient.

## WHAT IS THIS LAWSUIT ABOUT?

The lawsuit, called *Ardon v. City of Los Angeles*, case number BC363959, was filed by a Los Angeles resident who believes that the City improperly required telephone service providers to collect tax on telephone services that were not legally taxable. Specifically, the plaintiff alleges that prior to March 15, 2008, the Los Angeles UUT should have been collected only on local telephone service and long distance service where charges for calls varied by *both* time *and* distance. The plaintiff filed the lawsuit on behalf of himself and all other similarly situated taxpayers. The City denied and continues to deny that the UUT was improperly collected.

## WHY WAS THIS NOTICE ISSUED?

The Court issued this notice because you have a right to know about the proposed class action settlement which the Court has preliminarily approved and your rights and deadlines to act. If the Court grants final approval, and the settlement becomes final pursuant to its terms, valuable cash benefits will be distributed to Class Members who submit approved Claim Forms before **XXXXXXXXXX**.

## AM I A CLASS MEMBER?

The Settlement Class includes:

All persons, including corporate and non-corporate entities wherever organized and existing, who paid telephone utility user taxes to the City of Los Angeles for residential landline service, business landline service and mobile telephone service utilized between October 19, 2001 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"). The Settlement Class does not include prepaid wireless customers (which includes customers who purchased plans described as "pay as you go," "pay as you talk," "pay and go wireless," "prepay or burner phone service" and "no contract service") but does include prepaid wireless service providers, *i.e.*, those that provide the above services to customers who prepay for wireless service. Purely local service means local telephone service provided under a 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.

## WHAT IF I'M NOT SURE WHETHER I'M INCLUDED IN THE SETTLEMENT?

The UUT was typically collected on residential and commercial landlines if the service address of the phone number was within City limits. For mobile service, the UUT was typically collected if the billing address was located within City limits. Mobile service with no billing address (*i.e.*, prepaid mobile service) does not qualify. If you are not sure whether you or your business is included in the Class, you may call the toll-free number 1-855-278-2823. You may also write with questions to the lawyers appointed to represent the members of the class whose contact information is on page 3 of this notice. **DO NOT CALL THE COURT.**

## WHAT DO I HAVE TO DO TO RECEIVE A CASH PAYMENT FROM THE SETTLEMENT FUND?

The person who paid the phone bill must submit a valid claim postmarked by **XXXX** and the claim must be approved by the Claims Administrator. Claims can be completed online at the settlement website, **www.LATaxRefund.com**, or by printing a Claim Form from the settlement website or requesting one from the Claims Administrator and submitting it via U.S. Mail. You can claim a standard refund amount, and you may also provide proof of the tax paid to claim an actual refund amount.

You cannot claim an actual refund amount and a standard refund amount for the same kind of service (*e.g.*, you cannot claim a standard mobile refund and also submit mobile bills for an actual refund amount claim). You may, however, claim the standard refund amount for one kind of service and claim the actual amount for another kind of service (*e.g.*, a standard refund claim for mobile and an actual refund claim for landline). For the standard refund claims, one standard refund will be issued for each account regardless of the number of phones affiliated with that account.

**A. Standard Refund Claims:** You may claim the following standard refund amounts by checking the boxes on the claim form for UUT you paid for each kind of service that you utilized during the time period October 2005-March 2008. No additional documentation is required to claim these amounts:

- \$50 - Mobile Telephone Service<sup>1</sup>
- \$30 - Residential Landline Service
- \$50 - Business Landline Service

<sup>1</sup> Please note: Prepaid mobile telephone service does not qualify for a refund claim.

You can check more than one box if you paid for more than one kind of telephone service (e.g., you can claim mobile and residential landline). For business claimants, only a business that was registered with the City of Los Angeles during the October 2005-March 2008 time period is eligible to claim the business landline service amount.

**B. Actual Amount Refund Claims:** You may also claim a refund based on the actual amount of UUT that you paid to the City of Los Angeles for telephone services utilized during the October 19, 2005-March 15, 2008 time period by submitting copies of your telephone bills or other proof of the amount paid.

You must submit bills or other proof of the amount paid for services utilized during the period October 2005-March 2008 and your Recognized Claim Amount will be based solely on the amount reflected on the proof submitted. For landline service, the Recognized Claim Amount will be 70% of the amount of the UUT paid to the City of Los Angeles. For mobile service the Recognized Claim Amount will be 100% of the amount of the UUT paid to the City of Los Angeles.

### **HOW CAN I DONATE MY REFUND TO SUPPORT CITY SERVICES?**

Instead of receiving a refund check, you may choose to donate any refund for which you are determined eligible to one of the following funds that support various City programs by checking the corresponding box on the claim form you submit:

The Greater Los Angeles Zoo Association  
The Library Foundation of Los Angeles  
The Animal Welfare Trust Fund of the City of Los Angeles Animal Services  
The Los Angeles Parks Foundation

### **HOW MUCH CAN I GET FROM THIS SETTLEMENT?**

The actual amount paid or donated will depend on the number of claims submitted and other factors. Please see the Settlement Agreement available on the Settlement website, [www.LATaxRefund.com](http://www.LATaxRefund.com), for additional information.

### **WHEN WILL I RECEIVE MY CASH PAYMENT?**

Payments cannot be made until the settlement is approved by the Court, becomes final pursuant to its terms, and the claims process and administration process is complete. Please be patient. Status updates will be posted on the settlement website at [www.LATaxRefund.com](http://www.LATaxRefund.com).

### **IF YOU MOVE**

If your claim is approved, your payment will be sent to the address you provide unless you direct that your payment be donated to one of the funds described above.. If you change addresses, you must contact the Claims Administrator at 1-855-278-2823 to report any change of your address. Failure to report a change of address may result in you not receiving the monetary benefits of the settlement.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want a payment from this settlement, and you want to keep the right to sue or continue to sue the City of Los Angeles about the taxes at issue in this lawsuit on your own, then you must exclude yourself by submitting online or by U.S. Mail postmarked no later than **XXXX XX, XXXX** a letter saying that you want to be excluded from the settlement to: *Ardon v. City of Los Angeles, c/o Gilardi & Co. LLC, XXXXXXXXXXXXX*. Be sure to include your name, address, telephone number, and signature. You must also verify that you are a Class Member by providing your telephone number(s) and address(es) during the Class Period.

### **THE LAWYERS REPRESENTING YOU**

The Court has appointed the following Class Counsel to represent the Class:

Francis M. Gregorek  
Rachele R. Rickert  
Marisa C. Livesay  
Wolf Haldenstein Adler Freeman & Herz LLP  
750 B Street, Suite 2770  
San Diego, CA 92101

Jonathan W. Cuneo  
Cuneo Gilbert & Laduca, LLP  
507 C Street, NE  
Washington, DC 20002

Nicholas E. Chimicles  
Timothy N. Mathews  
Chimicles & Tikellis, LLP  
361 West Lancaster Avenue  
Haverford, PA 19041

Jon Tostrud  
Tostrud Law Group PC  
1925 Century Park East, Suite 2125  
Los Angeles, CA 90067

## **ADMINISTRATIVE EXPENSES, ATTORNEYS' FEES AND EXPENSES, AND PLAINTIFF INCENTIVE AWARD**

The Court-appointed lawyers for the Class ("Class Counsel") will ask the Court to approve payment of up to \$5,038,000 in administrative expenses to be paid from the settlement amount to cover the costs of claims processing and administration of the settlement, as well as any notice costs. Class Counsel will also ask the Court to award up to 20% of the settlement amount (or \$18.5 million) for attorneys' fees and reimbursement of their expenses. The City has reserved the right to object to a fee and expense application in excess of \$15 million. Class Counsel undertook the investigation and litigation of this action on a contingent basis. They have litigated this case for over eight years, including successfully overturning a lower court decision on appeal to the Supreme Court of California. They have received no compensation to date, and they have incurred significant out-of-pocket costs that have not been reimbursed. The named plaintiff will also ask the Court for \$10,000 to compensate him for the time and effort he devoted to this case as a Class Representative.

### **OBJECTING TO THE SETTLEMENT**

You may only object if you are a Class member and you do not exclude yourself from the settlement. You can object on your own or you may hire a lawyer. You can tell the Court that you don't agree with the settlement or some part of it by sending a letter to the Claims Administrator so that it is received **on or before xxxxxx, 2015**, saying that you object to the settlement. Your objection must contain all of the following: (1) a heading referring to: *Ardon v. City of Los Angeles*, Case No. BC363959; (2) a statement of the legal and factual bases for your objection; (3) your name, address, telephone number, and email address; (4) copies of telephone bills dated during the Class Period or other evidence of membership in the Class; and (5) your signature and the signature of your counsel (if you are represented by counsel). The Court will consider your objection. If your objection is mailed in time, you do not have to attend the Final Settlement Hearing described below.

Any objection to the Settlement must be served by first class mail, or email, or otherwise delivered to the Claims Administrator so that it is received by **xxxxxxx, 2015**. The Claims Administrator is Ardon v. Los Angeles, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060.

### **THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing at **[TIME]** on **[DATE]**, at **XXXXXXX** to decide whether the proposed settlement is fair and reasonable. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If the Final Settlement Hearing is rescheduled, a notice of the new date or time will be posted on the settlement website, **www.LATaxRefund.com**. After the hearing, the Court will decide whether to approve the settlement. We do not know how long the decision will take. Please be patient.

### **GETTING MORE INFORMATION**

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. All court records in this litigation, including complete copies of the Settlement Agreement, may be examined during regular court hours at the office of the Clerk of the Court, 600 South Commonwealth Avenue, Los Angeles, CA 90005. You can also get a copy of the Settlement Agreement and other important information as well as answers to frequently asked questions by visiting the settlement website at **www.LATaxRefund.com** or by calling the Claims Administrator at 1-855-278-2823 toll free. **DO NOT CONTACT THE COURT DIRECTLY WITH ANY QUESTIONS ABOUT THE SETTLEMENT.**

Mailed by Order of the Court.

DATED: \_\_\_\_\_, 2015

Hon. Amy D. Hogue  
California Superior Court,  
County of Los Angeles County

# **EXHIBIT D**



[GILARDI]  
[contact info]

[Date]

[BUSINESS NAME]  
[address]

Re: NOTICE OF CLASS ACTION SETTLEMENT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
*Ardon v. City of Los Angeles*

To whom it may concern:

According to the records of the City of Los Angeles (the "City"), your business or entity was registered with the City between 2005 and 2008 and may, pursuant to a class action settlement, be entitled to claim a refund of telephone taxes paid to the City.

The settlement permits businesses and individuals that paid telephone Utility Users Taxes ("UUT") to the City for telephone service utilized between October 19, 2005 and March 15, 2008 to submit a claim for a refund of a portion of the UUT. Generally, any business or individual who had a telephone service address in the City for landline telephone service, or a billing address in the City for mobile telephone service, is eligible to make a claim.

There are two options for submitting claims: (1) you may claim a flat refund amount, or, (2) you may claim a refund based on the actual amount of tax paid by submitting copies of bills or other proof of the amount of UUT paid to the City for services utilized between October 19, 2005 and March 15, 2008.

A notice and claim form, as well as a business reply envelope, are enclosed. You can also obtain additional information on the settlement website, [www.LATaxRefund.com](http://www.LATaxRefund.com).

**The deadline to file a claim is \_\_\_\_\_.**

# **EXHIBIT E**

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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,	)	Case No. BC363959
	)	
Plaintiff,	)	<b>SECOND AMENDED [PROPOSED]</b>
	)	<b>ORDER PRELIMINARILY APPROVING</b>
	)	<b>CLASS ACTION SETTLEMENT</b>
v.	)	
	)	Date Action Filed: December 27, 2006
CITY OF LOS ANGELES,	)	Trial Date: None Set
	)	
Defendant.	)	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 modern  
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 Plaintiff's 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)

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

\_\_\_\_\_  
AMY D. HOGUE  
Judge of the Superior Court

21352v11

# **EXHIBIT F**

**NOTICE OF CLASS ACTION SETTLEMENT—SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF LOS ANGELES**

*Ardon v. City of Los Angeles*

**YOU MAY BE ENTITLED TO A CASH TELEPHONE TAX REFUND**

**If you paid for telephone service utilized any time between October 19, 2005 and March 15, 2008, and you had a billing or service address within the City of Los Angeles you may be eligible to receive a refund of telephone tax.**

**WHAT IS THIS LAWSUIT ABOUT?**

This class action lawsuit was filed by a Los Angeles resident seeking refunds of telephone taxes paid to the City of Los Angeles for telephone services utilized between October 19, 2005 and March 15, 2008. The City denied any wrongdoing and still denies any liability in this case. However, the parties have agreed to a settlement that provides for telephone tax refunds to eligible claimants.

**WHO IS ENTITLED TO PAYMENT?**

**You must submit a valid claim by \_\_\_\_\_ to receive payment.** If you paid for landline telephone service with a service address in the City of Los Angeles, or if you paid for a mobile/cellular telephone account\* with a billing address in the City of Los Angeles (\*does not including pre-paid mobile service), and those services were utilized at any time from October 19, 2005 until March 15, 2008, you are entitled to claim a monetary refund for the utility users' tax ("UUT") paid.

To submit a Claim Form, visit the settlement website at [www.LATaxRefund.com](http://www.LATaxRefund.com) or contact the Claims Administrator at 1-888-\_\_\_\_\_ to request one be mailed to you.

**YOUR OPTIONS**

You may take any of the following actions:	
<u><b>If you:</b></u>	<u><b>Then you will:</b></u>
Complete and Submit a valid Claim Form by DEADLINE: _____, 2015	Receive payment in the mail for one or more of the following amounts: <b>\$50 - Mobile Telephone Service;</b> <b>\$30 - Residential Landline Service;</b> <b>\$50 – Business Landline Service; and/or</b> <b>Actual UUT Refund Amount</b> Or you may direct that such a payment be instead donated to one of four designated funds that support City services.
<b>Do Nothing</b>	You do not receive any money from the lawsuit, any claim you have for a refund will be released, and you will no longer have such a claim.
<b>Exclude Yourself</b> DEADLINE: _____, 2015	Get out of the lawsuit. Get no payment. Keep your right to sue separately with your own lawyer.
<b>Object</b> DEADLINE: _____, 2015	Write to the Court about why you do not like the settlement.
<b>Go To A Court Hearing</b>	Ask to speak to the Court about the fairness of the settlement. You do not have to attend the hearing to receive payment. The Final Approval Hearing is on _____, 201_ at _:___ .m. in Department 307, Los Angeles Superior Court, Central Civil West Courthouse

**EXCLUDING YOURSELF**

If you don't want a payment from the settlement, but you want to keep the right to sue the City of Los Angeles on your own over the UUT, then you must exclude yourself from the settlement. To do that, you must submit online at [www.LATaxRefund.com](http://www.LATaxRefund.com) or send in the mail a letter by \_\_\_\_\_, 2015 saying that you want to be excluded from the settlement to: *Ardon v. City of Los Angeles*, c/o \_\_\_\_\_, \_\_\_\_\_. If you ask to be excluded, you cannot object to the settlement and cannot receive payment. You will not be bound by anything that happens in this lawsuit.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the settlement or some part of it. You may only object if you are a Class Member and you do not exclude yourself from the settlement. You can object yourself or hire a lawyer at your own expense. The Court will consider your objection. Your objection must be in writing, and should include your name, address, telephone number, signature, and the reasons you object. You must also provide evidence of membership in the Class, such as a copy of a phone bill from the Class period. If your objection is mailed in time, you do not have to attend the fairness hearing described below. You must mail your written objection before \_\_\_\_\_, 2015 to: *Ardon v. City of Los Angeles*, c/o \_\_\_\_\_.

**WHAT YOU ARE GIVING UP TO RECEIVE PAYMENT**

In exchange for payment of the refund, you are agreeing not to sue the City for any claims that relate to this lawsuit or could have been brought in this lawsuit. Signing the Claim Form will prevent you from being able to sue the City of Los Angeles for any disputes you may have over the UUT collected for telephone services utilized from October 19, 2005 through March 15, 2008.

**THE LAWYERS REPRESENTING YOU**

As a Class Member, you are represented by four law firms:

Francis M. Gregorek Rachele R. Rickert Marisa C. Livesay Wolf Haldenstein Adler Freeman & Herz LLP 750 B Street, Suite 2770 San Diego, CA 92101	Nicholas E. Chimicles Timothy N. Mathews Chimicles & Tikellis LLP One Haverford Centre 361 W. Lancaster Ave. Haverford, PA 19041	Jonathan W. Cuneo William Anderson Cuneo Gilbert & Laduca, LLP 507 C Street, NE Washington, DC 20002	Jon Tostrud Tostrud Law Group, PC 1925 Century Park East, Suite 2125 Los Angeles, CA 90067
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This Publication Notice summarizes the proposed settlement. More details are in the Settlement Agreement. All court records in this litigation, including complete copies of the Settlement Agreement, may be examined during regular court hours at the office of the Clerk of the Court, 600 South Commonwealth Avenue, Los Angeles, CA 90005.

If you have questions about the settlement or this Notice, please contact the Claims Administrator at 1-888-xxx-xxxx or visit [www.LATaxRefund.com](http://www.LATaxRefund.com), or [www.whafh.com](http://www.whafh.com) or [www.chimicles.com](http://www.chimicles.com).

*Do not contact the Court directly with any questions about the settlement.*

# **EXHIBIT G**

## **CITY OF LOS ANGELES TO PROVIDE \$92.5 MILLION REFUND TO TELEPHONE TAXPAYERS**

\_\_\_\_\_, 2015 - A Los Angeles court has approved a \$92.5 million class action settlement for refunds of telephone taxes collected by the City of Los Angeles from October 19, 2005 through March 15, 2008.

All individuals and businesses that paid for landline telephone service with a service address in the City of Los Angeles, or mobile service where the billing address was in the City of Los Angeles, and who paid telephone tax on services utilized between October 19, 2005 through March 15, 2008 are eligible to claim a refund. THE DEADLINE TO FILE A REFUND CLAIM IS \_\_\_\_\_. Claims for telephone tax refunds can be submitted online, at [www.LATaxRefund.com](http://www.LATaxRefund.com), or through the mail. A notice and claim form will also be mailed to current addresses in the City of Los Angeles.

Eligible class members can claim standard refunds of \$30 for residential landline service, \$50 for business landline service, and \$50 for mobile service. Businesses must have been registered with the City during the October 2005 to March 2008 time period can claim the standard business landline refund amount. Class members may claim refunds for both landline and mobile telephone taxes. There is no requirement to submit copies of phone bills to claim the standard amounts.

Class members can also claim a refund based upon the actual amount of telephone tax they paid by submitting copies of their phone bills or other proof of the amount of tax paid to the City of Los Angeles for telephone services utilized during the October 19, 2005 through March 15, 2008 time period.

The lawsuit, *Ardon v. City of Los Angeles*, was brought on behalf of Los Angeles taxpayers by the law offices of Wolf Haldenstein Adler Freeman & Herz LLP, Chemicles & Tikellis LLP, Cuneo Gilbert & Laduca, LLP, And Tostrud Law Group, PC. The City of Los Angeles disputes the claims made in the lawsuit, but believes it is in the best interest of its residents to settle the matter rather than incur further litigation expenses.

For additional information, claim forms and detailed instructions on how to make a claim, go to [LATaxRefund.com](http://LATaxRefund.com) or call (XXXXXXXXXX). Additional help is available at XXXXXXXX. Information is also available at [www.whafh.com](http://www.whafh.com), [www.chemicles.com](http://www.chemicles.com), [city's web site].