

1 JONATHAN M. COUPAL, State Bar No. 107815  
TREVOR A. GRIMM, State Bar No. 34258  
2 TIMOTHY A. BITTLE, State Bar No. 112300  
LAURA E. MURRAY, State Bar No. 255855  
3 Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
4 Sacramento, CA 95814  
Phone: (916) 444-9950  
5 Fax: (916) 444-9823  
Email: tim@hjta.org

6 Attorneys for Plaintiffs  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10

11 HOWARD JARVIS TAXPAYERS ASSN.; )  
LINNEA WARREN; THOMAS WOLFE; )  
12 EDWARD HENRY; AND ALL OTHERS )  
SIMILARLY SITUATED, )

13 Plaintiffs,  
14

15 v.

16 CITY OF PASADENA,  
17 Defendant.

Case No. BC550394

**NOTICE AND UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT, AND POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: March 27, 2018  
Time: 10:00 a.m.  
Dept: 323

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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on March 27, 2018, at 10:00 a.m., in Department 323 of  
3 the Superior Court for Los Angeles County, located at 600 South Commonwealth Ave., Los  
4 Angeles, California, plaintiffs will and hereby do move, without opposition, for an order granting:

- 5 1. Preliminary approval of the proposed settlement of this action;  
6 2. Approval of a proposed Notice of Settlement to the plaintiff class; and  
7 3. The date and time of a hearing for final approval.

8 This motion is made pursuant to Rules of Court, Rule 3.769 and the case law  
9 interpreting it on the grounds that the proposed settlement was reached through arm's length  
10 negotiation, is reasonable and fair to the plaintiff class, and is preferable to trial.

11 The motion is based on this notice, the supporting memorandum of points and  
12 authorities, the supporting declaration of Timothy Bittle, any matter that may be judicially  
13 noticed, and the arguments of counsel at the hearing.

14 DATED: February 27, 2018.

Respectfully submitted,

15 JONATHAN M. COUPAL  
16 TREVOR A. GRIMM  
17 TIMOTHY A. BITTLE  
18 LAURA E. MURRAY



19 TIMOTHY A. BITTLE  
20 Attorneys for Plaintiffs  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I

3 SUMMARY OF THE LITIGATION

4 Plaintiffs filed this class action to challenge the rates charged by the City of Pasadena  
5 for water service to customers who are not residents of the City.

6 On June 18, 2015, this Court certified the class as follows: “Property owners and tenants  
7 whose owned or rented real property is located outside the boundary of territory incorporated  
8 as the City of Pasadena, whose owned or rented real property receives water service from the  
9 City of Pasadena, who are subject to the water rates and charges challenged herein, and who  
10 have paid said rates and charges at any time since March 24, 2013.”

11 The City refers to its in-city residents as “Area A,” and its outside customers as “Area  
12 B.” There are three components to every customer’s water bill: (1) a “Capital Improvements  
13 Charge (hereafter “CIC Charge”), (2) a “Distribution and Customer Charge” (hereafter “D&C  
14 Charge”) and (3) a “Commodity Charge.”

15 The “Capital Improvements Charge” covers the cost of capital improvements to the  
16 City’s water distribution system. The City currently charges Area B customers thirty-five  
17 percent (35%) more than Area A customers for the CIC. Although the parties disagree as to  
18 the propriety of the 35% differential, the Complaint did not challenge the CIC differential.

19 The “D&C Charge” (sometimes called a “meter charge”) is a fixed amount each billing  
20 period, based on the property’s potential demand for water as determined by its meter size.  
21 The City currently charges Area B customers twenty-five percent (25%) more than Area A  
22 customers for the D&C Charge.

23 The “Commodity Charge” is a variable amount each billing period, based on the quantity  
24 of water actually delivered to the service address during the billing period. The Commodity  
25 Charge is tiered so that the price per unit of water increases as one’s water use increases. The  
26 City currently charges Area B customers twenty-five percent (25%) more than Area A  
27 customers for each tier of the Commodity Charge.

28 Plaintiffs brought this action alleging that the 25% surcharge added to Area B’s

1 Commodity Charge and D&C Charge is arbitrary, not based on actual differences in the cost  
2 to serve Area B because the City's cost to provide water service is not substantially different  
3 from one side of the City's boundary line to the other. Plaintiffs argued that the 25% surcharge  
4 violates Proposition 218's cost-of-service and proportionality requirements.

5 Proposition 218 added Article XIII D to the California Constitution in 1996. Section 6 of  
6 that article governs fees and charges for property related services, including water rates.  
7 (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 217.) Section 6(b)  
8 provides that "[a] fee or charge shall not be extended, imposed, or increased by any agency  
9 unless it meets all of the following requirements: (1) Revenues derived from the fee or charge  
10 shall not exceed the funds required to provide the property related service. ... (3) The amount  
11 of a fee or charge imposed upon any parcel or person as an incident of property ownership  
12 shall not exceed the proportional cost of the service attributable to the parcel."

13 Plaintiffs' complaint seeks a ruling that the challenged Area B rates are excessive and  
14 disproportionate under Article XIII D. It also seeks a refund of the alleged overcharges from  
15 March 24, 2013, to the date refunds are paid.

16 Defendant City of Pasadena disagrees with plaintiffs and asserts that its rates are based  
17 on actual differences in the cost to serve Area B as determined by a Cost of Service and Rate  
18 Design study performed by an independent consultant, Red Oak Engineering, and more  
19 recently confirmed by an expert witness, Greg Clumpner of NBS Consulting. The resulting  
20 rates, the City argues, fully comply with Proposition 218; therefore no adjustment, refund or  
21 other relief is warranted.

## 22 II

### 23 SUMMARY OF THE SETTLEMENT

24 The plaintiff class representatives, and the Pasadena City Council at a regularly  
25 scheduled and noticed meeting on December 4, 2017, have agreed to the following terms of  
26 settlement:

27 1. **Equalization of D&C Charge and Commodity Rates.** Within one year of final  
28 approval by the Superior Court: After compliance with Proposition 218 and public notice



1 requirements, the Pasadena City Council shall consider adjustments to water rates that  
2 eliminate the 25% differential in its D&C Charge and its Commodity Rates for Areas A and B.  
3 The City thereafter shall not adopt a rate differential or surcharge unless the rationale for such  
4 differential or surcharge is applied consistently to each pressure zone and identifiable customer  
5 class throughout both Area A and Area B. For example, if the differential or surcharge is based  
6 on pumping costs, then the City shall set rates based on pumping costs for each pressure zone  
7 and identifiable customer class in both Area A and Area B. If the differential or surcharge is  
8 based on peaking factors, then the City shall set rates based on peaking factors for each  
9 pressure zone and identifiable customer class in both Area A and Area B. The City shall not  
10 base any differential or surcharge on a theory that Area A customers have a superior right to  
11 receive groundwater, or that Area A customers are entitled to a rate of return as investors or  
12 owners of infrastructure.

13       2.     **CIC Differential.** Within the same one year described above, the differential  
14 between the Area A and Area B Capital Improvements Charge (if any) shall be calculated so  
15 that the differential is based upon the variation in projected costs of capital improvements to  
16 serve Area B, as supported by a cost analysis and the Water System Capital Improvement  
17 Plan in compliance with Proposition 218. Projected costs to be included in any Area B CIC  
18 differential are limited to those bona fide costs that the City would not otherwise incur when it  
19 makes capital improvements but for the fact that such improvements are located in  
20 unincorporated County of Los Angeles.

21       3.     **Future Rate Challenges.** Plaintiffs are free to challenge future rates,  
22 differentials or surcharges (if any).

23       4.     **No Refunds.** Plaintiffs waive their claim for refunds.

24       5.     **No Incentive Payments.** Plaintiffs will not seek any incentive payments to the  
25 named Plaintiffs in their capacities as representatives of the Class.

26       6.     **Attorney Fees and Costs.** The City shall pay plaintiffs' counsel, Howard Jarvis  
27 Taxpayers Foundation, attorney fees and costs in the amount of \$485,000, subject to approval  
28 by the Court.



1 ACTIONS, § 13:14 at 319 (5th ed. 2014).) To determine whether the proposed settlement is  
2 within the range of reasonableness, courts generally consider the same factors that will be  
3 more carefully scrutinized later at the fairness hearing for final approval. (Cabraser, *supra*, §  
4 14.02 at 14-3; *In re Traffic Executive Assn.-Eastern Railroads* (2d Cir. 1980) 627 F.2d 631, 634  
5 (preliminary approval “is at most a determination that there is what might be termed ‘probable  
6 cause’ to submit the proposal to class members and hold a full-scale hearing as to its  
7 fairness”).) In sum, the trial court must determine that the settlement is not the product of fraud  
8 or collusion, and that the settlement is fair and reasonable to all concerned. (*Reed v. United*  
9 *Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Nordstrom Com. Cases* (2010) 186  
10 Cal.App.4th 576, 581.)

11 “[A] presumption of fairness exists where: (1) the settlement is reached through  
12 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the  
13 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage  
14 of objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.)  
15 The fourth factor is inapplicable at this early stage because the class has yet to receive notice,  
16 but under the other three factors, the proposed settlement here is entitled to the presumption  
17 of fairness.

18 A. *The Settlement is Not the Product of Fraud or Collusion, but of Arm’s-Length Bargaining*

19 To guard against fraud or collusion, the court must satisfy itself that the parties are  
20 adverse and that the settlement was negotiated at arm’s length. (*Carter v. City of Los Angeles*  
21 (2014) 224 Cal.App.4th 808, 820; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)  
22 That test is met here. The plaintiffs are customers of the defendant City of Pasadena. They  
23 were alleging that the City overcharges them and were seeking a rate adjustment and refunds.  
24 The City’s interest in defending its rates was not limited to just avoiding the payment of refunds.  
25 It also wanted to protect its residents from the rate increase that would be necessary to  
26 compensate for the loss of revenue if its nonresident customers prevailed in their challenge to  
27 the 25% surcharge. Neither party had anything to gain by surrendering to the other party.

28 Moreover, the settlement followed three formal sessions of arm’s-length negotiations

1 that were unsuccessful before the parties were able to reach agreement just before trial.  
2 Specifically, on April 14, 2015, the parties attended a full-day mediation conducted by the Hon.  
3 George P. Schiavelli (ret.). (Bittle Dec. at 2:8.) That mediation was unsuccessful. (*Id.*) This  
4 Court then ordered the parties to a settlement conference with Judge Helen I. Bendix, the first  
5 session of which occurred on December 16, 2015. That session was unsuccessful, but the  
6 parties returned for a second session on March 16, 2016, which was also unsuccessful. (Bittle  
7 Dec. at 2:10.) Those efforts, with respected judicial neutrals, spanned almost one year and  
8 evidence the arm's-length negotiations the parties engaged in from the start of the litigation,  
9 which supports finding the settlement is the product of good faith and extensive negotiations.  
10 (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52-53.)

11 Further, one of the named plaintiffs, the Howard Jarvis Taxpayers Association (“HJTA”),  
12 has as one of its stated core missions to act as a “watchdog” to protect California taxpayers.  
13 Thus, unlike the more common class action where the plaintiffs are exclusively private  
14 individuals represented by class counsel who does nothing other than class actions, here one  
15 of the named plaintiffs is a non-profit association whose motivation is not driven solely by  
16 attorney fees for class counsel and an incentive award to the named plaintiffs. Rather, HJTA  
17 has every incentive to achieve what it assesses as meaningful relief for taxpayers as distinct  
18 from a quick payday for its attorneys or the named representatives. The parties did not begin  
19 negotiating the dollar amount of attorney fees until after the other settlement terms had been  
20 accepted and reduced to writing. (Bittle Dec. at 2:23.) And notably, none of the named class  
21 representatives will be seeking an incentive award as part of the settlement, further  
22 emphasizing the settlement is driven by the results gained for the class. Thus, the proposed  
23 settlement is a financial compromise on both sides in that plaintiffs are giving up their refunds  
24 and the City must pay for a new rate study. The class, however, will see the indefinite  
25 elimination of the 25% differential based on residency and a limit on the costs that can be used  
26 as a basis for any CIC differential. Clearly, then, the parties' interests are adverse and the  
27 proposed settlement was the product of arm's length bargaining.

28 ///

1 *B. Discovery Was Sufficient for Counsel to Act Intelligently*

2 The next factor in applying the presumption of fairness is whether sufficient investigation  
3 and discovery were conducted to enable the parties and their counsel to make an informed  
4 settlement decision. Here, there has been more than adequate investigation and discovery.  
5 (*Chavez*, 162 Cal. App. 4th at 53 (characterizing as “extensive” discovery which included  
6 “written discovery, document production, and depositions of key Netflix employees”).) Here,  
7 the City deposed two of the three named plaintiffs, as well as both of the plaintiffs’ designated  
8 expert witnesses. (Bittle Dec. at 2:13.) Plaintiffs deposed the City’s Person Most Knowledge-  
9 able on numerous topics and also deposed both of the City’s designated expert witnesses.  
10 (Bittle Dec. at 2:14.) In response to written discovery requests from the plaintiffs, the City  
11 produced 5,576 pages of documents and responded to a combined total of 108 interrogatories,  
12 requests for admission and requests for production. In response to written discovery requests  
13 from the City, plaintiffs responded to a combined 97 interrogatories, requests for admission and  
14 requests for production. Additionally, both sides filed trial briefs and a joint exhibit list, and  
15 were ready for trial. This discovery and investigation is sufficient to allow the parties and this  
16 Court to act intelligently.

17 *C. Counsel is Experienced in Similar Litigation*

18 The third factor in applying the presumption of fairness is whether counsel has  
19 experience in similar litigation. Here, counsel for both parties have relevant experience. The  
20 City’s lawyer, Holly Whatley, is a partner in the law firm Colantuono, Highsmith & Whatley,  
21 which are recognized experts in Proposition 218 matters. Plaintiffs’ counsel, Timothy Bittle, is  
22 the Director of Legal Affairs for the Howard Jarvis Taxpayers Association, which authored and  
23 sponsored Proposition 218. Both attorneys have litigated class actions, and both were aware  
24 of the strength of their opponent’s case when they recommended this settlement to their clients.  
25 (Bittle Dec. at 2:7, 3:5.)

26 *D. The Proposed Settlement is Fair, Adequate and Reasonable*

27 The preceding discussion demonstrates that the proposed settlement is entitled to a  
28 presumption that it is fair and reasonable because it was negotiated at arm’s length by

1 experienced counsel who knew the facts. Other factors buttress this presumption, “such as the  
2 strength of plaintiffs’ case ... the amount offered in settlement ... [and] the presence of a  
3 governmental participant.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-  
4 45 (internal quotations and citations omitted).)

5 1. The Strength of Plaintiffs’ Case

6 To determine whether a settlement is fair to the class and warrants approval, courts  
7 assess whether the relief offered by the settlement is reasonable in light of the strength of  
8 plaintiff’s case. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App.4th 116, 130.) Though  
9 plaintiffs remain confident that they could prevail at trial, the City would no doubt argue that the  
10 lower cost water it produces pursuant to the City’s adjudicated groundwater rights in the  
11 Raymond Basin should be reserved for those customers within City boundaries as a matter of  
12 water law and, as a result, the 25% differential in the commodity rate for Area B customers is  
13 justified. Further, the City would argue that its costs to serve customers in a jurisdiction it does  
14 not control – unincorporated Los Angeles County – including permit costs, County standards  
15 for equipment and capacity, and relocation demands are higher than the costs to serve  
16 customers inside the City. The City would also likely argue that serving customers at higher  
17 elevations in Area B justifies the rate differential.

18 Plaintiffs have responsive arguments to the City’s defenses, but the outcome at trial is  
19 uncertain. If the City were to prevail on any of its theories, the class might obtain little or  
20 nothing from the litigation. The proposed settlement offers both sides certainty and eliminates  
21 the risk of an adverse judgment at trial.

22 2. The Amount Offered in Settlement

23 The elimination of the 25% Commodity and D&C differential is estimated to benefit the  
24 class on average approximately \$1.1 million annually into the future indefinitely. Moreover, in  
25 plaintiffs’ eyes, they will no longer be discriminated against based on their residency. Added  
26 to this is the agreement related to the 35% Capital Improvements Charge differential which,  
27 because it was not challenged in Plaintiffs’ Complaint, is relief that a victory at trial would not  
28 have attained. In an effort to avoid a potential second suit challenging the CIC differential, the

1 Parties included it in the proposed settlement to resolve all water rate claims and to bring  
2 finality to the issue. This result is more than reasonable.

3 3. Presence of a Governmental Participant

4 The defendant is a governmental entity, which weighs in favor of approval. (See *Touhey*  
5 *v. United States* (C.D. Cal. July 25, 2011) No. EDCV 08-01418-VAP (RCx), 2011 U.S. Dist.  
6 LEXIS 81308, at \*20-21 (fact that defendants “are the government” weighed “in favor of final  
7 approval”).)

8 4. The Opinion of Experienced Class Counsel

9 California courts also value highly the opinion of counsel experienced in the type of  
10 litigation being settled. (See, e.g., *Chavez*, 162 Cal. App. 4th at 53.) Here, Class Counsel has  
11 extensive experience litigating Proposition 218 cases, including other related tax refund actions.  
12 (Bittle Dec. at 3:11.) Based upon Class Counsel’s substantial experience in the Proposition  
13 218 field, he believes the present settlement is fair, reasonable and adequate and in the best  
14 interest of the Class members. (*Id.* at 3:13.)

15 E. The Scope of the Release is Proper

16 The release must be broad enough to achieve its purpose – *i.e.*, releasing claims that  
17 the parties are agreeing to settle, in order to prevent unfairly exposing a party to continuing  
18 litigation over the same subject matter. (*Villacres v. ABM Industries, Inc.* (2010) 189 Cal. App.  
19 4th 562, 589.) The release in the Settlement achieves a proper balance by being limited to  
20 claims “that were or could have been brought against the City and/or its Related Parties, or any  
21 of them, during the Class Period, arising from the facts alleged in the Complaint” and includes  
22 a waiver of “the protections afforded by California Civil Code section 1542, solely as they relate  
23 to the allegations contained in Plaintiff’s Complaint, and those related to the CIC differential,  
24 which was not originally pleaded, but which the parties have agreed to settle.”

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V.

CONDITIONAL CERTIFICATION OF THE CLASS  
FOR SETTLEMENT PURPOSES IS APPROPRIATE  
AS ALL REQUIRED ELEMENTS ARE MET

As noted above, the Petition challenges the D&C Charge and the Commodity Charge, but not the CIC. Therefore, when this Court certified the Class, the CIC was not a part of the case. The parties desire to include the CIC in the settlement so as to resolve all issues related to the Area B rates and avoid further litigation. The membership of the class as certified does not change with the addition of the CIC to the charges being resolved. All customers in Area B were billed for CIC, just as they were for the D&C Charge and Commodity Charge.

Thus, expanding the settlement to encompass the CIC claims does not destroy any findings this court already made regarding the class treatment of the claims related to the D&C and Commodity Charges. Such a settlement class (1) remains ascertainable; and (2) a well-defined community of interest in the questions of law and fact exists. (See *Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704.)

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

This Court already determined the class members are readily ascertainable. The Class as certified are property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the water rates, and are charged the D&C Charge and Commodity Charge. Those same customers also are charged the CIC. Therefore, the proposed settlement class definition, remains “precise, objective and presently ascertainable.” (*Archer v. United Rentals, Inc.* (2011) 195 Cal. App. 4th 807, 828 [internal quotations and citation omitted].) The Class is defined by objective characteristics and common transactional facts, i.e., all persons who have paid the D&C Charge, Commodity Charge, and CIC for water service.

B. *There is a 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



1 the class; and (3) class representatives who can adequately represent the class.” (*Linder v.*  
2 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435.) The first factor means that it would be more  
3 efficient to jointly try the issues in the action, rather than requiring “each member ... to  
4 individually litigate numerous and substantial questions to determine his or her right to recover  
5 following the class judgment ....” (*Washington Mutual Bank, FA v. Superior Court* (2001) 24  
6 Cal. 4th 906, 913.) Here, all Class members are billed at the same rate, which is higher than  
7 the rates for Area A customers. All members of the Class have paid the subject charges.  
8 Further, there are common questions of fact as to whether the City's cost to provide water  
9 service is substantially different from one side of the City's boundary line to the other, including  
10 for the CIC.

11 The second factor, typicality, requires only that the named plaintiff's interests in the  
12 action be similar to those of other Class members. (*Vasquez v. Superior Court* (1971) 4 Cal.  
13 3d 800, 811.) Plaintiff Wolfe lives outside the boundaries of the City in a single family home,  
14 and Plaintiff Warren did as well during most of the Class Period. They received water service  
15 from the City during all or a portion of the Class Period, and, like the Class, paid the higher fees  
16 for water service.

17 As for the last factor, the representative plaintiff must adequately protect the interests  
18 of the Class. Adequacy of representation consists of two components: (1) there must be no  
19 disabling conflict of interest between the class representative and the class; and (2) the class  
20 representative must be represented by counsel who are competent and experienced in the kind  
21 of litigation to be undertaken. (*McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450.)  
22 As with the ascertainably factor, adding the CIC to the scope of the settlement does not impact  
23 this Court's earlier determination that these factors were satisfied.

24 C. *A Class Action is Superior*

25 Also relevant is whether a class action is the superior method of adjudication.  
26 (*Schneider v. Vennard* (1983) 183 Cal.App.3d 1340, 1347.) This Court has already determined  
27 class treatment is superior. Adding CIC to the scope of the settlement capitalizes on that  
28 superiority to resolve a dispute over the CIC which class plaintiffs originally did not include in

1 their complaint but which they later concluded they should have. Including the CIC in the  
2 settlement class will avoid further class litigation and resolves all three rate component disputes  
3 in one action.

4 VI.

5 THE PROPOSED CLASS NOTICE IS PROPER

6 If a trial court grants preliminary approval, it must also specify the form of notice to be  
7 given to the class members. (*McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450-51;  
8 see also Cal. Rules Ct., Rule 3.769(e), (f).) The class notice should give “sufficient information  
9 to allow each class member to decide whether to accept the benefit he or she would receive  
10 under the settlement, or to opt out and pursue his or her own claim. [Citation.] No more than  
11 that is required.” (*Chavez*, 162 Cal. App. 4th at 56.) The proposed class notice meets these  
12 requirements.

13 A. *The Proposed Claims Administrator is Competent*

14 The parties have agreed to remain with the same claims administrator that this Court  
15 appointed following class certification, Gilardi & Co LLC. Gilardi & Co LLC is now known as  
16 KCC, LLC. KCC proved itself competent in connection with the class certification. KCC will  
17 oversee the notice program, record and retain any opt-outs or objections, and produce a final  
18 report. As the monetary relief is prospective only, the claims administrator will not need to  
19 process claims or refunds. The City will bear the costs of the claims administration and notice  
20 program.

21 B. *Method of Notification*

22 The agreed-upon notice method will be identical to that ordered and approved by the  
23 Court when it certified the class. The notice will consist of mailed notice directly to existing  
24 water customers and, where the City has a forwarding address, former water customers of the  
25 City. Notice will also be published in the Pasadena Star News. Notice will also be posted on  
26 the existing web site for this case at [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com). These methods  
27 of providing the class with notice of the settlement fully comply with the requirements of due  
28 process and the requirements of California Rules of Court, Rule 3.766(e), and constitute the

1 best notice practicable under the circumstances.

2 C. Notice Contents

3 “The notice given to the class must fairly apprise the class members of the terms of the  
4 proposed compromise and of the options open to dissenting class members.” (*Trotsky v. Los*  
5 *Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal. App. 3d 134, 151-152.) The proposed notice  
6 agreed to by the parties satisfies this standard. Attached hereto as Exhibit B are true and  
7 correct copies of the proposed Mailed Notice and Published Notice that will be provided to the  
8 class. The objection and opt-out requirements are clearly stated in the notices. They also  
9 describe the case, including the basic contentions and denials of the parties, state that the  
10 judgment will bind members who do not request exclusion, and state that class members who  
11 do not exclude themselves may enter an appearance through counsel. The notices therefore  
12 comply with the requirements of California Rules of Court, Rule 3.766(d).

13 D. The Cost of Notice

14 The City has agreed to pay for the notice program, the primary costs of which are the  
15 postage to give direct notice by mail to all existing Area B water customers and those former  
16 customers for whom the City has addresses. The Class will not bear these costs.

17 VII.

18 THE REQUESTED ATTORNEYS FEES AND COSTS ARE REASONABLE

19 Though class counsel will move for attorney fees at the time it moves for final approval  
20 of the settlement, the requested fees are fair. As noted above, the parties did not begin  
21 negotiating the dollar amount of an attorney fee award until after the other settlement terms had  
22 been accepted and reduced to writing. (Bittle Dec. at 2:23.) The settlement provides that Class  
23 Counsel will apply for an award of fees and costs not to exceed \$485,000, subject to court  
24 approval. The three attorneys who worked on plaintiffs’ case kept daily, contemporaneous  
25 records of their time spent on this case. (*Id.* at 2:25.) Plaintiffs presented to the City the  
26 number of hours each attorney recorded and a requested hourly rate for each attorney. They  
27 did not seek a multiplier. The City accepted the number of hours, but asked that the hourly rate  
28 of the two most experienced attorneys, including lead counsel, be reduced by \$100/hour.

1 Plaintiffs accepted the City's counter-offer. (*Id.* at 2:28.) If the case had gone to trial and the  
2 court had awarded refunds, plaintiffs would have sought a fee based on a percentage of the  
3 fund from which refunds would be paid. (*Lealao v. Beneficial California, Inc.* (2000) 82  
4 Cal.App.4th 19, 27; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1422-23;  
5 *Serrano v. Priest* (1977) 20 Cal.3d 25, 35.) That fee amount would have been significantly  
6 greater than the hourly compensation agreed to here.

7 CONCLUSION

8 For all of the foregoing reasons, plaintiffs request preliminary approval of the proposed  
9 settlement (Ex. A), approval of the form of class notice (Ex. B), and entry of the [Proposed]  
10 Order with dates inserted for the filing and hearing of the motion for final approval.

11 DATED: February 27, 2018.

Respectfully submitted,

12 JONATHAN M. COUPAL  
13 TREVOR A. GRIMM  
14 TIMOTHY A. BITTLE  
15 LAURA E. MURRAY

16   
17 \_\_\_\_\_  
18 TIMOTHY A. BITTLE  
19 Counsel for Petitioners  
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# Exhibit A

## SETTLEMENT AGREEMENT AND RELEASE

**THIS SETTLEMENT AGREEMENT AND RELEASE** (the “Agreement”) is entered into by the Howard Jarvis Taxpayers Association, a California nonprofit corporation, Linnea Warren, an individual, Thomas Wolfe, an individual, Edward Henry, an individual, (collectively, “Plaintiffs”), individually and in their capacities as class representatives, and the City of Pasadena, a California municipal corporation (“City”).

### RECITALS

**A.** City operates Pasadena Water & Power (“PWP”), which provides water service to both the City’s residents and to certain areas outside the City’s boundaries.

**B.** The City’s water rates consist of three primary components: (1) a distribution and customer charge (“D&C”), (2) a commodity rate; and, (3) a capital improvements charge (“CIC”).

**C.** For customers outside the City’s boundaries, the City imposes a 25% surcharge on both the D&C charge and the commodity rate.

**D.** On March 24, 2014, Plaintiffs submitted a Claim for Refund to the City Clerk on behalf of all property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the D&C charges and commodity rates and who have paid such rates and charges at any time since March 24, 2013. The Claim for Refund was denied by operation of law pursuant to Government Code section 911.6(c).

**E.** On July 1, 2014, Plaintiffs filed suit against the City in *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles Superior Court Case No. BC550394 (the “Lawsuit”). The Lawsuit challenges the D&C charge and the commodity rate, but not the CIC, and includes causes of action for declaratory relief and refund.

**F.** On January 29, 2015, Plaintiffs moved to certify a class action against the City, and on July 10, 2015, the Court granted the Plaintiffs’ class certification motion. Trial was set for November 6, 2017.

**G.** The parties have reached a tentative agreement whereby Plaintiffs will waive their claim for water service charge refunds if the City agrees to take steps to equalize certain water rates for customers of PWP inside and outside the City’s boundaries and to limit the projected costs that can be included in any differential in the CIC charged to customers of PWP outside the City’s boundaries

**H.** Accordingly, it is now the intention of the parties and the objective of this Agreement to settle and dispose of, fully and completely and forever, any and all claims and causes of action in the Lawsuit.

**1. DEFINITIONS.** This Section includes definitions that are defined as follows:

**1.1.** “Area A” means the water service territory of PWP that is within the City of Pasadena’s incorporated territory.

**1.2.** “Area B” means the water service territory of PWP that is outside the City of Pasadena’s incorporated territory.

**1.3.** “Class” or “Class Member” means all persons who currently or formerly are property owners and tenants whose owned or rented real property is located outside the boundary of the territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the D&C charges and commodity rates water rates applicable to customers outside the City’s incorporated territory, and who have paid said rates and charges at any time since March 24, 2013.

**1.4.** “Class Period” means March 24, 2013 through the effective date of the revised water rates that may be adopted pursuant to Section 2.1 below.

**1.5.** “Class Counsel” or “Plaintiffs’ Counsel” means the Howard Jarvis Taxpayers Foundation.

**1.6.** “Court” means the Superior Court of California for the County of Los Angeles.

**1.7.** “City” means the City of Pasadena.

**1.8.** “City’s Counsel” means the law firm Colantuono, Highsmith & Whatley, PC.

**1.9.** “Effective Date” means the date on which the Final Approval Order has been entered and has become final. For the purposes of this paragraph, “final” means (a) if no objection is raised to the proposed settlement at the Fairness Hearing, the date on which the Final Approval Order is entered; or (b) if any objections are raised to the proposed settlement at the Fairness Hearing, the latest of (i) the expiration date of the time for filing notice of any appeal from the Final Approval Order, (ii) the date of final affirmance of any appeal of the Final Approval Order, (iii) the expiration of the time for, or the denial of, a petition for writ of certiorari to review the Final Approval Order or, if certiorari is granted, the date of final affirmance of the Final Approval Order following review pursuant to that grant; or (iv) the date of final dismissal of any appeal from the Final Approval Order or the final dismissal of any proceeding on certiorari to review the Final Approval Order.

**1.10.** “Fairness Hearing” means the hearing at which the Court decides whether to approve this Agreement as fair, reasonable, and adequate.

**1.11.** “Final Approval Order” means an order by the Court finally approving the Settlement and entering a judgment thereon.

**1.12.** “Full Class Notice” means the full legal notice of the terms of the proposed

Settlement, as approved by Plaintiffs' Counsel, City's Counsel, and the Court, to be provided to Class Members pursuant to Paragraph 2.5 of this Agreement and attached hereto as **Exhibit B**, or such other form to which the parties mutually agree, in writing, as it may be approved by order of the Court.

**1.13.** "Lawsuit" means *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles Superior Court Case No. BC550394.

**1.14.** "PWP" means Pasadena Water & Power, a municipal utility operated by the City.

**1.15.** "Plaintiffs" means the Howard Jarvis Taxpayers Association, a California nonprofit corporation, Linnea Warren, an individual, Thomas Wolfe, an individual, Edward Henry, an individual, in their individual capacities and in their capacities as representatives of the Class.

**1.16.** "Preliminary Approval Order" means a Court order substantially in the form of **Exhibit A** hereto, preliminarily approving the proposed Settlement in accordance with the terms of this Agreement, providing for notice of the proposed Settlement to Class Members by means of the Full Class Notice, and setting the date of the Fairness Hearing.

**1.17.** "Publication Notice" means the Court-approved form of Notice of this Agreement to the Settlement Class for publication in the Pasadena Star News or as otherwise ordered by the Court substantially in the form of **Exhibit C** hereto.

**1.18.** "Related Parties" means all of the City's past, present, and future Mayor, council members, city managers, city clerks, finance directors, employees, agents, attorneys, and all their respective predecessors and successors in interest and legal representatives.

**1.19.** "Released Claims" means and includes any and all claims, demands, rights, damages, obligations, suits, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including both known and unknown claims of the Plaintiffs and all Class Members, that were or could have been brought against the City and/or its Related Parties, or any of them, during the Class Period, arising from the facts alleged in the Complaint and also including claims arising from the thirty-five percent (35%) CIC differential charged to the City's water customers in Area B.

**1.20.** "Response Period" means the time period commencing with the City's mailing of the Full Class Notice under section 2.5 and ending forty-five (45) calendar days thereafter.

**1.19** "Settlement" means the settlement of the Lawsuit and related claims and Released Claims in accordance with the terms of this Agreement.

**1.20** "Settlement Administrator" means the qualified, third party selected by the Parties and approved by the Court in the Preliminary Approval Order to administer this Agreement. The Parties agree to recommend that the Court appoint KCC, LLC, formerly known as "Gilardi & Co., LLC", as Settlement Administrator and the City shall pay all costs and reasonable expenses of the Settlement Administrator, as additional consideration for this Agreement.



**1.21** “Settlement Class” means all property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the D&C charges, the CIC and commodity rates imposed on customers in Area B and who have paid said rates and charges at any time since March 24, 2013.”

**1.22** The term “Settlement Class Member” means an individual Class Member who has not excluded himself or herself from the Settlement.

## **2. SETTLEMENT TERMS.**

**2.1 Equalization of D&C Charge and Commodity Rates.** No later than one year after the Final Approval Order and in compliance with Proposition 218 and applicable public notice and protest hearing requirements, the City Council shall consider adjustment to water rates that eliminate the 25% differential in its D&C charge and Commodity rates imposed on customers in Area B. If the 25% differential is eliminated, the City thereafter shall not adopt a rate differential or surcharge for its D&C charge and Commodity rates unless the rationale for such differential or surcharge is applied consistently to each pressure zone and identifiable customer class throughout both Area A and Area B. For example, if the differential or surcharge is based on pumping costs, then the City shall set rates based on pumping costs for each pressure zone and identifiable customer class in both Area A and Area B. If the differential or surcharge is based on peaking factors, then the City shall set rates based on peaking factors for each pressure zone and identifiable customer class in both Area A and Area B. The City shall not base any differential or surcharge on a theory that Area A customers have a superior right to receive groundwater, or that Area A customers are entitled to a rate of return as investors or owners of infrastructure.

**2.2 CIC Differential.** Within the same one year described in Section 2.1, the differential between the Area A and Area B Capital Improvements Charge (if any) shall be calculated so that the differential is based upon the variation in projected costs of capital improvements to serve Area B, as supported by a cost analysis and the Water System Capital Improvement Plan in compliance with Proposition 218. Projected costs to be included in any Area B CIC differential are limited to those bona fide costs that the City would not otherwise incur when it makes capital improvements but for the fact that such improvements are located in unincorporated County of Los Angeles.

**2.3 Agreement Void.** If the City Council does not approve rates within the one year period in the manner described in Sections do not 2.1 and 2.2, then this Agreement is void and the matter returns to court for a trial.

**2.4 Future Rate Challenges.** Plaintiffs are free to challenge future rates, differentials or surcharges (if any).

**2.5 No Refunds.** Plaintiffs waive any right to and will not seek distribution of refunds to the Class.

**2.6 No Incentive Payments.** The named Plaintiffs will not seek any incentive payments to Plaintiffs in their capacities as representatives of the Class.

**2.7 Attorneys' Fees and Costs.** City will not object to Class Counsel's claim for fees and costs in any amount not to exceed in total \$485,000, subject to the Court's approval following a noticed motion. City shall pay this amount or any lesser amount otherwise ordered by the Court within ten (10) days of the Effective Date.

**2.8 Notice.** Subject to Court approval, within thirty (30) days after entry of the Preliminary Approval Order, the City, or at its direction the Settlement Administrator, shall issue the Full Class Notice via, i) a separate mailing from the Settlement Administrator to the City's current customers who are Class Members and (ii) a mailing to former customers who are Class Members at the addresses for those former customers last known to the City. The Full Class Notice shall be substantially in the form attached hereto as **Exhibit B**. The Settlement Administrator, shall publish in the Pasadena Star News the Publication Notice substantially in the form attached hereto as **Exhibit C**. Such publication shall be in such form, size, manner and prominence as class action notices of this type are customarily published within Los Angeles County and in no event shall be less than one-half page in length.

**2.9 Objections to the Settlement.** Objections by any Class Member to: (a) the proposed settlement contained in the Settlement Agreement and described in the Notice; (b) the payment of Attorneys' Fees and Expenses; and/or (c) entry of the Final Order and the Final Judgment shall be heard, and any papers submitted in support of said objections shall be considered by the Court, at the Final Settlement Hearing only if, at least thirty (30) calendar days before the Final Settlement Hearing, such Class Member delivers to the Settlement Administrator, at an address to be specified by the Settlement Administrator, the following:

- (a) Notice of his, her or its objection, which shall contain:
  - (i) A heading referring to this Action;
  - (ii) A statement of the legal and factual bases for the objection;
  - (iii) The objector's name, address, telephone number, and email address;
  - (iv) Copies of at least one water bill or other evidence of Class membership; and
  - (v) The signature of the Class Member and his, her or its counsel (if the Class Member is represented by counsel).

(b) The Settlement Administrator will record the date of receipt of the objection and forward it to both Lead City Counsel and Class Counsel no later than three (3) business days after receipt. The Settlement Administrator will also file the original objections with the Clerk of the Court no later than twenty (20) days before 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. Only Class Members who timely submit an objection may speak at the Fairness Hearing.

**2.10 Exclusion from the Settlement Class.** Any Class Member who does not want to be bound by this Agreement, and who thus wishes to be excluded from the Settlement, must submit a written request to opt out with the Settlement Administrator on or before the date specified in the Preliminary Approval Order. The Settlement 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 three (3) business days after receipt. The Settlement Administrator will also file the original requests to opt out with the Clerk of the Court no later than twenty (20) days before the scheduled Final Settlement Hearing date. The Settlement Administrator shall retain copies of all written requests to 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, telephone number and Pasadena Water and Power customer account number, if known, with a statement that includes the Class Member's desire to opt out of the class action involving the City of Pasadena's water rates charged to customers outside its incorporated territory. The opt-out request may be, but is not required to be, submitted on the form included in the Full Class Notice.

(a) 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 3.2, 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 this Agreement and the Final Order and the Final Judgment, regardless of whether they have otherwise attempted to request exclusion from the Settlement.

(b) Any Class Member who submits a timely request for exclusion or opt-out may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Agreement.

**2.11 Excessive Opt-Out Rate.** If the number of Class Members who opt out exceeds one and one-half (1.5) percent of the Full Class Notice forms mailed by the Settlement Administrator, the City shall have the option to declare the Settlement void and to rescind its agreement. The City shall notify Class Counsel and the Court in writing no later than twenty days (20) before the Fairness Hearing if it intends to invoke its option to rescind the Settlement under this Section.

**2.12 Costs of Notice and Administration.** The City shall bear all notice and Settlement administration expenses regardless of when they are incurred. All notice and Settlement administration expenses remain the sole responsibility of the City, regardless of whether the Court enters the Final Approval Order. However, if the Agreement is deemed void pursuant to Section 2.2 above and the City prevails at trial, it is entitled to seek to recover such costs upon noticed motion to the Court.

**2.13 Final Approval Order.** At least twenty court days before the Fairness Hearing, Plaintiffs shall move the Court for a Final Approval Order. At the same time, Plaintiffs' Counsel shall file with the Court a complete list of all Class Members who have submitted valid and timely requests for exclusion from the Settlement.

**2.14 Action Status If Settlement Not Approved.** This Agreement is being entered into for settlement purposes only. If the Court does not approve the Settlement or enter the Final Approval Order for any reason, or if the Effective Date does not occur for any reason, then this Agreement will be deemed null and void *ab initio*. In that event (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, (b) the Lawsuit will revert to the status that existed before the Agreement's execution date, (c) no term or draft of this Agreement, or any part of the parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence, for any purpose, in the Lawsuit or any other proceeding, other than a proceeding to enforce this Agreement or involving any other dispute arising out of or relating to this Agreement.

### **3. JUDGMENT AND RELEASES.**

**3.1 Judgment and Enforcement.** Pursuant to California Rules of Court, Rule 3.769(h), the Parties agree that should the Court grant final approval of the proposed settlement and enter judgment, the judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of the judgment. In the event of a dispute arising out of or relating to this Agreement or its interpretation, breach or enforcement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, as awarded by the Court.

**3.2 Release of Claims by the Plaintiff and the Settlement Class.** It is hereby agreed that, upon the Effective Date, Plaintiffs and all Class Members and their executors, estates, predecessors, successors, assigns, agents and representatives, shall be deemed to have jointly and severally released and forever discharged the City and the Related Parties from any and all Released Claims, whether known or unknown, arising from the facts alleged in the Complaint plus those arising from the thirty-five percent (35%) CIC differential charged to customers in Area B. Class Members provide this release conditioned upon the City's compliance with all provisions of this Agreement. The Court shall retain jurisdiction to enforce the terms of this Agreement by any and all means available. All Class Members shall be fully and forever barred from instituting or prosecuting in any court or tribunal, either directly or indirectly, individually or representatively, any and all Released Claims against the City or any of the Related Parties.

Plaintiff and all Class Members hereby acknowledge and waive the protections afforded by California Civil Code Section 1542, solely as they relate to the allegations contained in Plaintiff's Complaint and relating to the CIC differential, which provides:

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

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

This Release shall be void and of no force and effect if the water rates ultimately adopted by the City as set forth in Sections 2.1 and 2.2 do not comply with the conditions in those paragraphs.

**4. ADDITIONAL PROVISIONS.**

**4.1 Confidentiality.** To protect the private information of the City’s utility customers, any data regarding the names and addresses of Pasadena Water and Power’s current or former customers is subject to the protective order entered in this case on September 25, 2015, which is attached hereto as **Exhibit D**. The Settlement Administrator shall treat as confidential the names, addresses, and other information about the specific Class Members supplied by the City or City’s Counsel and shall use this information only as required by this Agreement.

**4.2 Notices.** Any notice, request, or instruction or other document to be given by any party to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid to:

City’s Counsel: Holly O. Whatley  
Shareholder  
Colantuono, Highsmith & Whatley, P.C.  
790 East Colorado Boulevard, Suite 850  
Pasadena, California 91101

With Copy To: Michele Beal Bagneris  
City Attorney  
City of Pasadena  
100 North Garfield Avenue, Suite N210  
Pasadena, California 91109

Class Counsel: Jonathan M. Coupal  
Timothy Bittle  
Howard Jarvis Taxpayers Association  
921 Eleventh Street, Suite 1201  
Sacramento, California 95814

**4.3 No Admission of Liability.** This Agreement reflects the compromise and settlement of disputed claims among the parties. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, any allegations of wrongdoing or any matters regarding class certification) by any person, including the City, and shall not be offered or received in evidence or requested in discovery in this Lawsuit or any other action or proceeding as evidence of an admission or concession.

**4.4 Change of Time Periods.** All time periods and dates described in this Agreement are subject to the Court’s approval. These time periods and dates may be changed by the Court or by the parties’ written agreement without notice to the Class Members.

**4.5 Real Parties in Interest.** In executing this Agreement, the parties warrant and represent that neither the claims asserted in this Lawsuit, nor any part of these claims, have been assigned, granted or transferred in any way to any other person, firm or entity.

**4.6 Voluntary Agreement.** The parties executed this Agreement voluntarily and without duress or undue influence.

**4.7 Binding on Successors.** This Agreement binds and benefits the parties' respective successors, assigns, legatees, heirs, executors, administrators, and personal representatives.

**4.8 Parties Represented by Counsel.** The parties acknowledge that (a) they have been represented by independent counsel of their own choosing during the negotiation of this Settlement and the preparation of this Agreement, (b) they have read this Agreement and are fully aware of its contents, and (c) their respective counsel fully explained to them the Agreement and its legal effect.

**4.9 Authorization.** Each party warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Agreement and, further, that each party is fully entitled and duly authorized to give this complete and final release and discharge.

**4.10 Entire Agreement.** This Agreement and attached exhibits contain the entire agreement between the parties and constitute the complete, final and exclusive embodiment of their agreement with respect to the Action and supersede all prior proposals, negotiations, agreements and understandings concerning the subject matter of this Agreement. This Agreement is executed without reliance on any promise, representation or warranty by any party or any party's representative other than those expressly set forth in this Agreement.

**4.11 Construction and Interpretation.** Neither party nor any of the parties' respective attorneys will be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement in any judicial or other proceeding that may arise between them. This Agreement has been, and must be construed to have been, drafted by all the parties to it, so that any rule that construes ambiguities against the drafter will have no force or affect.

**4.12 Headings.** The various headings used in this Agreement are solely for the parties' convenience and may not be used to interpret this Agreement. The headings do not define, limit, extend or describe the parties' intent or the scope of this Agreement.

**4.13 Exhibits.** The exhibits to this Agreement are integral parts of the Agreement and Settlement and are incorporated into this Agreement.

**4.14 Modifications and Amendments.** No amendment, change or modification to this Agreement will be valid unless in writing signed by the parties or their counsel.

**4.15 Governing Law.** This Settlement Agreement shall be governed by, interpreted under, and enforced in accordance with the internal, substantive laws of the State of California, without giving effect to that State's choice of law principles.

**4.16 Further Assurances.** The parties must execute and deliver any additional papers, documents and other assurances, and must do any other acts reasonably necessary to perform their obligations under this Agreement and to carry out this Agreement's expressed intent.

**4.17 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceedings that may be instituted, prosecuted or attempted in breach of or contrary to this Agreement.

**4.18 Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

**4.19 Recitals.** The Recitals are incorporated by this reference and are part of the Agreement.

**4.20 Severability.** Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, the remaining Agreement will remain valid and enforceable.

**4.21 Inadmissibility.** This Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Notwithstanding the foregoing, however, this Agreement shall be admissible in any court, tribunal or proceeding arising out of or relating to any dispute arising out of or relating to this Agreement or its interpretation, breach or enforcement.

**4.22 No Conflict Intended.** Any inconsistency between this Agreement and any exhibits will be resolved in favor of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have so AGREED.

Dated: \_\_\_\_\_

**HOWARD JARVIS TAXPAYERS  
ASSOCIATION**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**LINNEA WARREN**

\_\_\_\_\_  
LINNEA WARREN, Plaintiff

Dated: \_\_\_\_\_

**THOMAS WOLFE**

\_\_\_\_\_  
THOMAS WOLFE, Plaintiff

Dated: \_\_\_\_\_

**EDWARD HENRY**

\_\_\_\_\_  
EDWARD HENRY, Plaintiff

Dated: \_\_\_\_\_

**CITY OF PASADENA**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_



# Exhibit B

## **LEGAL NOTICE OF CLASS ACTION SETTLEMENT**

PLEASE CAREFULLY READ THIS ENTIRE NOTICE. IF YOU ARE OR WERE A CUSTOMER OF PASADENA WATER & POWER, YOUR RIGHTS MAY BE AFFECTED

You are receiving this notice by Order of the Los Angeles County Superior Court.

This is not a solicitation from a lawyer. This is not a communication from the City of Pasadena.

IF YOU RECEIVED WATER SERVICE FROM THE CITY OF PASADENA ON PROPERTY LOCATED OUTSIDE CITY LIMITS AT ANY TIME SINCE MARCH 24, 2013, YOUR RIGHTS MAY BE AFFECTED BY THIS CASE.

### **SUMMARY OF SETTLEMENT**

- Within one year of the court's approval of the settlement and following preparation of a water rate study, the City will consider eliminating the existing twenty-five percent (25%) surcharge imposed on customers of Pasadena Water and Power (PWP) who reside outside the City of Pasadena for Commodity and Distribution & Customer (D&C) charges.
- Within that same one year, the City will consider a Capital Improvements Charge (CIC) differential, if any, imposed on customers of PWP who reside outside the City of Pasadena to be calculated based on bona fide projected costs that the City would not otherwise incur when it makes capital improvements but for the fact such improvements are located in unincorporated County of Los Angeles.
- The City Council's consideration of these rate changes will take place after the required public notice, hearing and protest procedures required by Proposition 218.
- If the approved rates: 1) Do not eliminate the existing twenty-five percent (25%) surcharge imposed on customers of PWP who reside outside the City of Pasadena for Commodity and D&C charges following the Proposition 218 public notice procedure or 2) calculate the CIC differential based on costs other than the the bona fide projected costs that the City would not otherwise incur when it makes capital improvements but for the fact such improvements are located in unincorporated County of Los Angeles, then the settlement will be void and the matter will return to court for trial.
- If the approved rates do eliminate the twenty-five percent (25%) surcharge, the City agrees it will not adopt a rate differential for Commodity or D&C charges unless the rationale for the differential applies consistently to customer classes without regard to whether the customers are located inside or outside the City limits. The City also agrees not to base any differential on the theory that inside City customers have superior rights to the City's adjudicated groundwater rights.

- Plaintiffs are free to challenge future rates, differentials or surcharges, if any.
- Plaintiffs waive their claim to any past refunds.
- **This settlement affects your legal rights, regardless of whether you act or don't act. Please read this notice carefully!**

### **WHAT THE LAWSUIT IS ABOUT**

The Lawsuit, *Howard Jarvis Taxpayers Association et al v. City of Pasadena* (Los Angeles Superior Court Case No. BC 550394) was filed by Howard Jarvis Taxpayers Association, Linnea Warren, Thomas Wolfe and Edward Henry (“Plaintiffs”) to challenge twenty-five percent (25%) surcharge imposed on the Commodity and D&C rates charged by the City of Pasadena for water service to customers who are not residents of the City. Plaintiffs alleged that the 25% surcharge was excessive under Article XIII D of the California Constitution (Proposition 218). Plaintiffs filed the lawsuit on behalf of themselves and all other similarly situated taxpayers. Plaintiffs also seek a refund of the alleged overcharges from March 24, 2013, to the date refunds are paid. Plaintiffs did not originally challenge the thirty-five (35%) surcharge imposed on the CIC charged to customers who are not residents of the City, but after the lawsuit was filed, Plaintiffs alleged that the 35% CIC surcharge was excessive under Proposition 218.

The City of Pasadena disagrees with the Plaintiffs and asserts that its rates comply with Proposition 218 and therefore no refund or other relief is warranted.

The Court has not decided who is right.

### **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, the settlement becomes final pursuant to its terms.

### **AM I A CLASS MEMBER?**

The Settlement Class includes:

Property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the water rates and charges [applicable to non-residents], and who have paid said rates and charges at any time since March 24, 2013.

## WHAT ARE YOUR OPTIONS IN THIS SETTLEMENT?

You may exercise one of three options: (1) do nothing and be bound by the terms of the settlement, (2) exclude yourself from the settlement, or (3) object to the settlement. If you would like to exclude yourself from the settlement, you must do so by [DATE], 2018. If you stay in the Class, you may, but are not required to, file written objections to the settlement by [DATE], 2018.

On [DATE] at [TIME], the court will hold a Final Settlement Hearing to consider whether to issue final approval of the settlement and requested attorneys' fees and expenses of up to \$485,000. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If you object by the deadline, you must appear at the Final Settlement Hearing. If you do not object to the settlement, you need not appear. If the Final Settlement Hearing is rescheduled, a notice of the new date or time will be posted on the settlement website.

## WHAT DO I HAVE TO DO TO RECEIVE THE BENEFITS OF THE SETTLEMENT?

You do not need to submit a claim or any paperwork to receive the settlement benefits. If following the Proposition 218 public notice, hearing and protest procedures, the City Council eliminates the 25% surcharge on the Commodity and D&C charges and also limits any CIC differential to the costs described above you will receive the benefit of lowered water rates indefinitely.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to participate in the settlement, and you want to keep the right to sue or continue to sue the City of Pasadena about the water charges at issue in this lawsuit on your own, then you must exclude yourself by submitting online at [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com) no later than XXXXXX XX, 2018 or by U.S. Mail postmarked no later than XXXXXX XX, 2018 a completed Opt-Out Form. If you timely opt-out, you will not be legally bound by the settlement or any judgment in this action and you can independently pursue whatever claims you believe you may have outside of the Case.

To pursue your claims separately against the District, you may have to comply with the California Governmental Claims Act (Cal. Gov. Code §§ 900 *et seq* and/or 940 *et seq.*) The Governmental Claim Act has certain timing requirements that could eliminate or reduce the amount you may recover.

## 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, 2018, saying that you object to the settlement. Your objection must contain all of the following: (1) a heading referring to: *Howard*

*Jarvis Taxpayers Association et al v. City of Pasadena* (Los Angeles Superior Court Case No. BC 550394); (2) a statement of the legal and factual bases for your objection; (3) your name, address, telephone number, and email address; (4) copies of water 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 xxxxxxxx, 2018. The Claims Administrator is KCC, LLC, XXXXXXXXX.

### THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing at [TIME] on [DATE], at XXXXXXXX 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.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.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 by visiting the settlement website at [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com). **DO NOT CONTACT THE COURT DIRECTLY WITH ANY QUESTIONS ABOUT THE SETTLEMENT.**

### THE LAWYERS REPRESENTING YOU

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

Timothy A. Bittle  
Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814

[Date]

The Honorable Elihu M. Berle  
Judge of the Superior Court, Dept. 323  
Los Angeles County

**OPT-OUT FORM**

IF YOU WISH TO BE EXCLUDED FROM THE CLASS SETTLEMENT, YOU MUST EITHER COMPLETE, SIGN AND RETURN THIS FORM NO LATER THAN XXXXXX, 2018, OR VISIT THE WEB SITE AT WWW.HOWARDJARVISVCITYOFPASADENA.COM AND FOLLOW THE INSTRUCTIONS TO OPT-OUT ONLINE NO LATER THAN XXXXXX, 2018

I hereby assert my right to be excluded from the settlement class in *Howard Jarvis Taxpayers Association, et al., v. City of Pasadena*, Los Angeles County Superior Court Case No. BC550394.

Print Name: .....

Address Line 1: .....

Address Line 2: .....

Pasadena Water & Power Account Number: .....

Date: .....

Signature: .....

Return this form by mail to: *HJTA v. City of Pasadena*, c/o KCC, LLC, [INSERT ADDRESS]

# **LEGAL NOTICE OF CLASS ACTION SETTLEMENT**

## **IF YOU ARE OR WERE A CUSTOMER OF PASADENA WATER & POWER, YOUR RIGHTS MAY BE AFFECTED**

A class action settlement may affect you if you received water service from Pasadena Water & Power (“PWP”) on property located outside the jurisdictional limits of the City of Pasadena (“City”) at any time since March 24, 2013 to the present. If you qualify, you may exercise one of three options: (1) do nothing and be bound by the terms of the settlement, (2) exclude yourself from the settlement, or (3) object to the settlement. The Los Angeles County Superior Court has given preliminary approval to this settlement and will have a final hearing on [DATE], 2018 to consider whether to approve the settlement.

## **ARE YOU A MEMBER OF THE AFFECTED CLASS?**

You are a member of the class if both of the following are true:

- (1) You own or rent real property located outside the boundaries of the City which receives water service from Pasadena Water & Power, and
- (2) You are subject to and have paid water rates and charges applicable to non-residents at any time since March 24, 2013.

## **WHAT IS THIS CLASS ACTION CASE ABOUT?**

The Howard Jarvis Taxpayers Association, Linnea Warren, Thomas Wolfe, and Edward Henry (“Plaintiffs”) filed a class action lawsuit titled *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles County Superior Court Case No. BC550394. The Plaintiffs challenge both the Commodity and Distribution & Customer (“D&C) rates charged for water service by the City’s water utility, PWP, as excessive under Article XIID of the California Constitution (Proposition 218) as to those customers who reside outside the City. The Commodity and D&C charges to customer who reside outside the City are 25% higher than the charges to customers who reside inside the City. The Capital Improvements Charges (CIC) to customer who reside outside the City are 35% higher than the CIC imposed on customers who reside inside the City. The City denies the rates were unlawful under Proposition 218. The Court has not decided who is right.

## **WHAT IS THE SETTLEMENT AGREEMENT?**

A settlement agreement is a way for parties to avoid or limit the cost of and unpredictability of litigation. The parties in this case have agreed to enter into a settlement agreement whereby the

Plaintiffs waive their claim for water service charge refunds if following the public notice and hearing procedure required by Proposition 218 the City agrees to: 1) Eliminate the 25% rate differential between customers of Pasadena Water & Power inside and outside the City's limits for Commodity and D&C rates; and, 2) limit any CIC differential imposed on customers who reside outside the City to be calculated based on bona fide projected costs that the City would not otherwise incur when it makes capital improvements but for the fact such improvements are located in unincorporated County of Los Angeles. The settlement agreement binds all members of the class and may bar future claims against the City.

## **WHAT ARE YOUR OPTIONS IN THIS SETTLEMENT?**

You may exercise one of three options: (1) do nothing and be bound by the terms of the settlement, (2) exclude yourself from the settlement, or (3) object to the settlement. If you would like to exclude yourself from the settlement, you must do so by **[DATE], 2018**. If you stay in the Class, you may, but are not required to, file written objections to the settlement by **[DATE], 2018**. The notice on the settlement website, [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com) describes how to exclude yourself or object.

On **[DATE]** at **[TIME]**, the court will hold a Final Settlement Hearing to consider whether to issue final approval of the settlement and requested attorneys' fees and expenses of up to **[\$AMOUNT]**. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If you object by the deadline, you must appear at the Final Settlement Hearing. If you do not object to the settlement, you need not appear. If the Final Settlement Hearing is rescheduled, a notice of the new date or time will be posted on the settlement website.

## **HOW CAN YOU GET MORE INFORMATION?**

The pleadings and all other records of this litigation may be examined and copied any time during regular office hours at the office of the Clerk of the Court.

For more detail, please visit [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com) or call toll-free: **[NUMBER]**. To update your contact information, please contact the claims administrator via the website.

**[NUMBER]**

**[www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com)**



1 **PROOF OF SERVICE**

2 **Howard Jarvis Taxpayers Assn., et al. v. City of Pasadena**  
3 **Case No. BC550394**

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4  
5 I, Lorice Strem, declare:

6 I am employed in the County of Sacramento, California. I am over the age of 18  
7 years, and not a party to the within action. My business address is: 921 11th Street, Suite  
8 1201, Sacramento, California 95814.

9 Pursuant to the Court's Order Authorizing Electronic Service of Documents dated  
10 November 13, 2014, I electronically transmitted the following document in a PDF or word  
11 processing format to those persons listed below at the respective electronic mailbox  
12 addresses using CaseHomePage in accordance with the Cal. Rules of Court, Rule 2.251(g):

13 **NOTICE AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF**  
14 **CLASS ACTION SETTLEMENT, AND POINTS AND AUTHORITIES IN SUPPORT**  
15 **THEREOF**

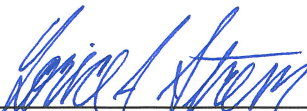
16 Holly O. Whatley  
17 Colantuono, Highsmith & Whatley, PC  
18 790 E. Colorado Blvd., Suite 850  
19 Pasadena, CA 91101  
hwhatley@chwlaw.us  
Counsel for Defendant City of Pasadena

Michele Beal Bagneris  
City of Pasadena  
100 North Garfield Avenue, Suite N210  
Pasadena, CA 91109  
mbagneris@ci.pasadena.ca.us  
Counsel for Defendant City of Pasadena

20 I declare under penalty of perjury under the laws of the State of California that the  
21 above is true and correct. Service was instituted on the date listed below.

22 DATED: February 27, 2018

SIGNED:

23  
24   
25 \_\_\_\_\_  
26 Lorice A. Strem  
27  
28