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

HOWARD JARVIS TAXPAYERS ASSN.; )  
LINNEA WARREN; THOMAS WOLFE; )  
EDWARD HENRY; AND ALL OTHERS )  
SIMILARLY SITUATED, )  
Plaintiffs, )  
v. )  
CITY OF PASADENA, )  
Defendant. )

Case No. BC550394

**POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION FOR ATTORNEY FEES**

Date: October 11, 2018  
Time: 11:00 a.m.  
Dept: 6

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I

SUMMARY OF THE LITIGATION

1  
2  
3 Plaintiffs filed this class action to challenge the rates charged by the City of Pasadena  
4 for water service to customers who are not residents of the City.

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

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

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

19 The "D&C Charge" (also known as 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 sought a ruling that the challenged Area B rates are excessive and  
14 disproportionate under Article XIII D. It also sought 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 a Cost of Service and Rate Design study performed by an independent consultant, Red Oak  
18 Engineering, which concluded that Area A customers have a superior right to receive the City's  
19 less expensive source of water (*i.e.*, groundwater) and that Area A customers are entitled to  
20 a rate of return as investors or owners of the water system infrastructure. The City's expert  
21 witnesses also opined that the City's 25% surcharge conformed to industry practice. The City  
22 argues therefore that its rates fully comply with Proposition 218 and no adjustment, refund or  
23 other relief is warranted.

24 II

25 COUNSEL'S INVESTMENT IN THE CASE

26 Plaintiffs' counsel, Howard Jarvis Taxpayers Foundation ("HJTF"), has litigated this case  
27 completely *pro bono*. Not only has it provided free legal counsel, it also covered all costs and  
28 travel expenses. (Bittle Dec. at 2:5.)

1 The case has been in litigation for more than four years. During that time, HJTF did the  
2 initial work-up of the case and filed a complaint, obtained the Court's certification of a class,  
3 provided notice to the class, and a report to the Court. HJTF prepared for and participated in  
4 three mandated, but unsuccessful, judicial mediations. HJTF responded to a combined 97  
5 interrogatories, requests for admission and requests for production of document propounded  
6 by the City. HJTF propounded its own 108 interrogatories, requests for admission and requests  
7 for production, the latter of which produced 5,576 pages of documents that HJTF read and  
8 catalogued. HJTF deposed the City's Person Most Knowledgeable and both of the City's  
9 designated expert witnesses, questioning them extensively about the City's water system, the  
10 history of the City's water rights, the documents produced, the expert witness reports, and other  
11 documents and expert testimony that HJTF unearthed through its own investigations. HJTF  
12 also hired and met with two experts of its own, and defended the City's depositions of these  
13 experts and two of the three named plaintiffs. Finally, HJTF filed a 29-page Trial Brief,  
14 subpoenaed witnesses, lodged a massive joint compendium of evidentiary exhibits, and spent  
15 weeks preparing for trial. (Bittle Dec. at 2:13.)

16 On the eve of trial, HJTF presented a settlement offer to the City which proposed terms  
17 for resolving the water rate dispute. It did not propose an amount of attorney fees. The City  
18 accepted the offer, and the parties asked the Court to take the trial off calendar. The parties  
19 subsequently discussed attorney fees and reached agreement on those as well. (Bittle Dec.  
20 at 3:2.)

21 III

22 SUMMARY OF THE SETTLEMENT

23 The settlement contains the following terms:

24 1. ***Equalization of D&C Charge and Commodity Rates.*** Within one year of final  
25 approval by the Superior Court: After compliance with Proposition 218's notice and protest  
26 procedure, the Pasadena City Council shall vote on adjustments to its water rates that eliminate  
27 the 25% differential in its D&C Charge and its Commodity Rates for Areas A and B. The City  
28 thereafter shall not adopt a rate differential or surcharge unless the rationale for such



1 differential or surcharge is applied consistently to each pressure zone and identifiable customer  
2 class throughout both Area A and Area B. For example, if the differential or surcharge is based  
3 on pumping costs, then the City shall set rates based on pumping costs for each pressure zone  
4 and identifiable customer class in both Area A and Area B. If the differential or surcharge is  
5 based on peaking factors, then the City shall set rates based on peaking factors for each  
6 pressure zone and identifiable customer class in both Area A and Area B. The City shall not  
7 base any differential or surcharge on a theory that Area A customers have a superior right to  
8 receive groundwater, or that Area A customers are entitled to a rate of return as investors or  
9 owners of infrastructure.

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

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

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

22       5.       **No Incentive Payments.** Plaintiffs will not seek any incentive payments to the  
23 named plaintiffs in their capacities as representatives of the class.

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

27       7.       **Notice.** The City shall, at its expense, retain a neutral third party to notify the  
28 class of this settlement, receive objections and elections to opt-out, and produce a report of the

1 results for the Court.

2 8. **Agreement Void.** If the Court disapproves this settlement or if the City Council  
3 does not adopt rates as set forth above that eliminate the differential in the Commodity Charge  
4 and D&C Charge for Areas A and B, and that base the CIC Charge on the variation in projected  
5 costs of capital improvements to serve Area B, limited to bona fide costs that the City would  
6 not otherwise incur but for the fact that such improvements are located in unincorporated  
7 County of Los Angeles, then this settlement is void, and a new trial date shall be set at the  
8 earliest convenience.

9 A copy of the complete settlement agreement is attached as Exhibit A.

10 IV

11 AN AWARD OF ATTORNEY FEES IS PROPER

12 Section 1021.5 of the Code of Civil Procedure is a codification of the private attorney  
13 general doctrine and provides that a court may award attorney fees to a successful litigant in  
14 any action that has enforced an important right affecting the public interest if (1) a significant  
15 benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a  
16 large class of persons, (2) the necessity and financial burden of private enforcement are such  
17 as to make the award appropriate, and (3) the fees should not, in the interest of justice, be paid  
18 out of the recovery, if any.

19 The private attorney general doctrine “is designed to encourage private enforcement of  
20 important public rights and to ensure aggrieved citizens access to the judicial process.” (*Bell*  
21 *v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 690; *Olney v. Municipal Court* (1982)  
22 133 Cal.App.3d 455, 463.)

23 The doctrine “rests upon the recognition that ... without some mechanism authorizing  
24 the award of attorney fees, private actions to enforce such important public policies will as a  
25 practical matter frequently be infeasible.” (*Families Unafraid to Uphold Rural El Dorado County*  
26 *v. Board of Supervisors* (2000) 79 Cal.App.4th 505, 511; *Feminist Women’s Health Center v.*  
27 *Blythe* (1993) 17 Cal.App.4th 1543, 1561.)

28 The fact that plaintiffs were represented without charge by attorneys for the Howard

1 Jarvis Taxpayers Foundation is not a defense to a motion for fees under Section 1021.5. To  
2 the contrary, cases where a party is represented *pro bono* because his case presents an  
3 important issue of public interest are the classic justification for the private attorney general  
4 doctrine. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 47; *Crawford v. Bd. of Education* (1988) 200  
5 Cal.App.3d 1397, 1405.)

6 Because violations of public rights are often suffered in common by the general public,  
7 the amount that any one individual has at stake may be insufficient to warrant the cost of  
8 litigation. Such violations would therefore go unchecked but for public interest suits such as  
9 the one at bar. (*Rogel v. Lynwood Redevelopment Agency* (2011) 194 Cal.App.4th 1319,  
10 1332-33; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) “The award of substantial attorney’s fees  
11 to public interest litigants and their attorneys (whether private attorneys acting *pro bono publico*  
12 or members of ‘public interest’ law firms) who are successful in such cases encourages the  
13 representation of deserving interests and worthy causes.” (*Serrano v. Priest*, 20 Cal.3d at 44  
14 (quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 27)); *In re*  
15 *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1217-18; *County of Colusa v. Cal. Wildlife*  
16 *Conservation Bd.* (2006) 145 Cal.App.4th 637, 647; *Folsom v. Butte County Assn. of Govts.*  
17 (1982) 32 Cal.3d 668, 683 n.27; *Save El Toro Assn. v. Days* (1979) 98 Cal.App.3d 544, 552.)

18 **A. This Action has Enforced an Important Right Affecting the Public Interest**

19 The elements of Section 1021.5 are clearly met in this case. First, the action “has  
20 resulted in the enforcement of an important right affecting the public interest.” (Code of Civ.  
21 Proc. § 1021.5.) “The critical fact [establishing the propriety of an award] is the impact of the  
22 action, not the manner of its resolution. If the impact has been the “enforcement of an  
23 important right affecting the public interest” and a consequent conferral of a “significant benefit  
24 on the general public or a large class of persons,” a section 1021.5 award is not barred  
25 because the case ... was settled before trial.” (*Planned Parenthood v. Aakhus* (1993) 14  
26 Cal.App.4th 162, 174 (quoting *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d  
27 668, 685).)

28 Turning to the case at bar, it is fundamental to American democracy that government

1 at all levels derives its power from, and is therefore subject to, the people it serves. “All political  
2 power is inherent in the people. Government is instituted [by them] and they have the right to  
3 alter or reform it when the public good may require.” (Cal. Const., art. II, § 1; *DeVita v. County*  
4 *of Napa* (1995), 9 Cal.4th 763, 775.)

5 This right of the people of California “to alter or reform” their government is exercised  
6 through the initiative power. “Declaring it ‘the duty of the courts to jealously guard this right of  
7 the people,’ the courts have described the initiative as ‘one of the most precious rights of our  
8 democratic process.’” (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695 (quoting *Associated*  
9 *Homebuilders v. City of Livermore* (1976) 18 Cal.3d 582, 591).)

10 Proposition 218 was a statewide voter initiative that amended the California Constitution  
11 to add articles XIII C and XIII D. Article XIII D, among other things, exerted controls over  
12 “property related” public agency fees, including fees charged for water service. (Cal. Const.,  
13 art. XIII D, § 6; *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 217.) It  
14 prohibits charging fees for water service that exceed the agency’s cost of providing service, and  
15 requires that fees charged to a parcel be proportional to the cost of the service attributable to  
16 that parcel. (Cal. Const., art. XIII D, § 6(b).)

17 For over a century California courts have recognized that access to water is not a luxury  
18 or an option, but is a necessity. “To quench thirst and for household purposes, water is  
19 absolutely indispensable. In civilized life ... these wants must be supplied, or both man and  
20 beast will perish.” (*Lux v. Haggin* (1886) 69 Cal. 255, 406.) “Few if any commodities are more  
21 essential to life or more certain to be consumed by every citizen than drinking water.” (*National*  
22 *Paint & Coatings Assn. v. State of Cal.* (1997) 58 Cal.App.4th 753, 762.)

23 Accordingly, when a governmental agency, such as the City here, monopolizes the  
24 provision of water, the price that the City charges for this indispensable resource is of vital  
25 concern to every customer – especially those on low or fixed incomes – because every  
26 customer has no choice but to pay what the City demands, even if it means sacrificing other  
27 important budget items such as heat and air conditioning, home security or telephone service.

28 This action rectified 25% and 35% mark-ups in the price charged to nonresidents for

1 water, and enforced the cost-of-service and proportionality controls that the people’s initiative,  
2 Proposition 218, added to our constitution. By so doing, it clearly “enforced an important right  
3 affecting the public interest.” (Code of Civ. Proc. § 1021.5.) The first element of Section  
4 1021.5 is therefore satisfied.

5 **B. A Significant Benefit was Conferred on a Large Class of Persons**

6 The second factor in an award of fees is that “a significant benefit, whether pecuniary  
7 or nonpecuniary, has been conferred on the general public or a large class of persons.” (Code  
8 of Civ. Proc. § 1021.5(a).)

9 The benefitted class in this case is large. It is the entire nonresident customer base of  
10 the City of Pasadena’s water department, consisting of approximately 6,500 accounts serving  
11 over 25,000 people. (Joint Supplemental Brief in Support of Preliminary Approval of Settlement  
12 at 4:15.)

13 The settlement confers a significant pecuniary benefit on the class. The City estimates  
14 that, once the 25% surcharges on the commodity and D&C charges are eliminated, the  
15 nonresident Area B customers will save over \$1.1 million annually into the future indefinitely.  
16 (*Id.* at 4:27.) That doesn’t even count the savings that will come from recalculating the CIC  
17 charge. Although each customer’s bill will differ depending on usage, on average Area B  
18 customers are expected to pay about \$200 less for water each year. Thus, the second element  
19 of Section 1021.5 is satisfied.

20 **C. The Necessity and Burden of Private Enforcement Make an Award Proper**

21 The third factor in an award of fees is that “the necessity and financial burden of private  
22 enforcement are such as to make the award appropriate.” (Code of Civ. Proc. § 1021.5(b).)  
23 The first half of this requirement (the *necessity* of private enforcement) “has to do with the  
24 *absence of a public advocate.*” (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1299  
25 (emphasis in original).) The *Drew* case was a validation action brought by the City of  
26 Sacramento seeking to validate a special tax assessment for school construction. The Court  
27 of Appeal observed that “[n]ecessity of private enforcement’ looks to the adequacy of *public*  
28 enforcement and seeks economic equalization of representation in cases where private

1 enforcement is necessary. ... In this case there is no public attorney general available to litigate  
2 the issue of the validity of the assessment. ... The City is ill-suited for the role because it  
3 advocates an outcome contrary to the claimed public interest.” (*Id.*, 207 Cal.App.3d at 1299.)  
4 The Court found that private enforcement was therefore necessary and thus an award of fees  
5 was appropriate.

6 The same is true in the case at bar. There was no government attorney to defend the  
7 rights of Pasadena’s nonresident water customers. The City’s attorney was an advocate  
8 against them in this case. As the Supreme Court recently stated in *In re Conservatorship of*  
9 *Whitley* (2010) 50 Cal.4th 1206, “[i]nasmuch as the present action proceeded against the only  
10 governmental agencies that bear responsibility for the [matter challenged], the necessity of  
11 private, as compared to public, enforcement becomes clear.” (*Whitley*, 50 Cal.4th at 1215  
12 (quoting *Woodland Hills Residents Assn. v. City of Los Angeles* (1979) 23 Cal.3d 917, 941).

13 As to the second half of the requirement (the *burden* of private enforcement): “[A]n  
14 award is appropriate where the cost of the legal victory transcends the claimant’s personal  
15 interest; in other words, where the burden of pursuing the litigation is out of proportion to the  
16 plaintiff’s individual stake in the matter.” (*Bell v. Vista Unified School Dist.*, 82 Cal.App.4th at  
17 690-91; *Families Unafraid*, 79 Cal.App.4th at 513; *Woodland Hills*, 23 Cal.3d at 941.)

18 The plaintiff’s “personal interest” or “individual stake” is his *financial* interest. “[A] strong  
19 nonfinancial motivation does not change or alleviate the ‘financial burden’ that a litigant bears.  
20 Only offsetting pecuniary gains can do that.” (*Whitley*, 50 Cal.4th at 1217.)

21 Here, the individually named plaintiffs who represented the class had too little at stake  
22 to warrant hiring private counsel. As mentioned above, the average Area B customer has been  
23 overcharged about \$200 per year. If plaintiffs had to hire private counsel to bring this case,  
24 their annual overcharge would not even pay for one hour of an attorney’s time. Without the *pro*  
25 *bono* representation provided by HJTF, plaintiffs’ rights would have gone forever violated.

26 As for HJTF, its tremendous cost to litigate this case obviously “transcends [its] personal  
27 interest” since it is not even a customer of the City of Pasadena. The only way in which HJTF  
28 will recover its investment is through this Court approving the attorney fee award contained in

1 the parties' settlement agreement. Thus, the fourth element of Section 1021.5 is met.

2 **D. The Fees Cannot be Paid Out of any Recovery**

3 The final criteria, that "the fees should not, in the interest of justice, be paid out of the  
4 recovery, if any" (Code of Civ. Proc. § 1021.5(c)), is satisfied by the fact that, as part of the  
5 bargain negotiated in settlement, plaintiffs waived their five-year claim to refunds. The  
6 settlement, although a victory for the class, has therefore not resulted in the recovery or  
7 creation of any fund from which HJTF's legal fees could be paid. (See *Abouab v. City and*  
8 *County of San Francisco* (2006) 141 Cal.App.4th 643, 662.)

9 Thus, all of the elements for an award of attorney fees under the private attorney  
10 general doctrine are present. An award of fees to compensate HJTF for its *pro bono*  
11 representation in bringing this case is therefore authorized by Section 1021.5, and it would be  
12 an abuse of discretion not to grant it. (*Families Unafraid*, 79 Cal.App.4th at 518; *SC*  
13 *Manufactured Homes, Inc. v. Canyon View Estates, Inc.* (2007) 148 Cal.App.4th 663, 673.)  
14 "Although section 1021.5 is phrased in permissive terms (the court 'may' award), the discretion  
15 to deny fees to a party that meets its terms is quite limited. The Supreme Court in *Serrano v.*  
16 *Unruh* (1982) 32 Cal.3d 621, 633, noted that the private attorney general theory, from which  
17 section 1021.5 derives, requires a full fee award 'unless special circumstances would render  
18 such an award unjust.'" (*Lyons v. Chinese Hosp. Assn.* (2006) 136 Cal.App.4th 1331, 1344  
19 (quoting Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 2d ed.2005) § 4.42, p. 132).)

20 V

21 **THE AMOUNT AGREED TO IS REASONABLE**

22 "Two primary methods of determining a reasonable attorney fee in class action litigation  
23 have emerged and been elaborated in recent decades. The percentage method calculates the  
24 fee as a percentage share of a recovered common fund or the monetary value of plaintiffs'  
25 recovery. The lodestar method, or more accurately the lodestar-multiplier method, calculates  
26 the fee 'by multiplying the number of hours reasonably expended by counsel by a reasonable  
27 hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by  
28 applying a positive or negative "multiplier" to take into account a variety of other factors,

1 including the quality of the representation, the novelty and complexity of the issues, the results  
2 obtained, and the contingent risk presented.” (*Laffitte v. Robert Half Internat. Inc.* (2016) 1  
3 Cal.5th 480, 489 (quoting *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26). See  
4 also *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558; *Chavez v. Netflix, Inc.* (2008)  
5 162 Cal.App.4th 43, 63; *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253,  
6 1270; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.)

7 In cases that have not resulted in the recovery or creation of a common fund, the  
8 starting point of a fee award is the time spent, multiplied by a reasonable hourly rate for the  
9 attorneys involved in the presentation of the case. (*Serrano v. Unruh* (1982) 32 Cal.3d 621,  
10 639 n.28; *Serrano v. Priest*, 20 Cal.3d at 48.) This starting point is known as the “lodestar”  
11 figure. (*Press v. Lucky Stores* (1983) 34 Cal.3d 311, 321-22; *Serrano v. Priest*, 20 Cal.3d at  
12 49.)

13 In the case at bar, Timothy Bittle worked approximately 671 hours on the case to date  
14 (Bittle Dec. at 2:13), and estimates that he will work approximately 10 additional hours  
15 attending the Final Fairness Hearing and an unknown number of additional hours responding  
16 to any objections that may arise at that hearing, then implementing and overseeing the City’s  
17 implementation of the settlement. (Bittle Dec. at 3:16.) Jonathan Coupal worked approximately  
18 9 hours on the case. (Coupal Dec. at 2:10.) Laura Murray worked approximately 12 hours on  
19 the case. (Murray Dec. at 2:10.)

20 A reasonable hourly rate for Mr. Bittle and Mr. Coupal is \$700 per hour. (Miethke Dec.  
21 at 2:16; Hiltachk Dec. at 3:8. See also Dec. of Richard Pearl, a published expert on attorney  
22 fee awards, [http://www.knappsettlement.com/DocumentHandler.ashx?DocPath=/Documents/  
23 Declaration\\_of\\_Jason\\_H\\_Kim\\_ISO\\_Plaintiff\\_s\\_Motion\\_for\\_Approval\\_of\\_Attorneys\\_Fees\\_and\\_  
24 Costs\\_and\\_Class\\_Rep\\_Service\\_Award\\_Exhibit\\_3.pdf](http://www.knappsettlement.com/DocumentHandler.ashx?DocPath=/Documents/Declaration_of_Jason_H_Kim_ISO_Plaintiff_s_Motion_for_Approval_of_Attorneys_Fees_and_Costs_and_Class_Rep_Service_Award_Exhibit_3.pdf).) A reasonable hourly rate for Ms.  
25 Murray is \$400 per hour. (Bittle Dec. at 3:14, 21; Miethke Dec. at 2:20; Pearl Dec.)

26 The lodestar, then, for Mr. Bittle is \$476,700, plus the unknown additional time he may  
27 work responding to any objections that may arise at the hearing, then implementing and  
28 overseeing the City’s implementation of the settlement. The lodestar for Mr. Coupal is \$6,300.



1 The lodestar for Ms. Murray is \$4,800. The sum of all three (not counting Mr. Bittle's additional  
2 future hours) totals \$487,800.

3 Because "the fundamental objective of the private attorney general doctrine of attorney  
4 fees is 'to encourage suits effectuating a strong public policy by awarding substantial attorney's  
5 fees ... to those who successfully bring such suits'" (*Conservatorship of Whitley*, 50 Cal.4th at  
6 1217-18 (quoting *Serrano v. Priest*, 20 Cal.3d at 43)), the lodestar is usually increased by the  
7 application of a "multiplier" to take into consideration various factors articulated by the California  
8 Supreme Court as warranting augmentation of the basic fee. (*Press v. Lucky Stores*, 34 Cal.3d  
9 at 322; *Serrano v. Priest*, 20 Cal.3d at 49.)

10 Factors that the court may properly consider include: (1) the novelty and difficulty of the  
11 questions involved and the skill displayed in presenting them; (2) the extent to which the nature  
12 of the litigation precluded other employment by the attorneys; (3) the contingent nature of a  
13 Section 1021.5 fee award; (4) the fact that the attorneys in question otherwise receive only  
14 charitable funding for bringing lawsuits of the character involved; (5) the amount involved; and  
15 (6) the success or failure and other circumstances of the case. (See *Serrano v. Priest*, 20  
16 Cal.3d at 49.)

17 In this case, factors 1, 3, 4, 5 and 6 weigh in favor of applying a multiplier. As to Factor  
18 1, this case required experience in the esoteric law and practice related to Proposition 218 and  
19 class actions. This case also required counsel to become educated in the design and function  
20 of public water systems, the history surrounding the adjudication of Pasadena's groundwater  
21 rights, and the history surrounding the acquisition and construction of Pasadena's water storage  
22 and delivery infrastructure.

23 Regarding Factors 3 and 4, the Howard Jarvis Taxpayers Foundation survives on only  
24 the \$15 annual dues and charitable donations of members of the Howard Jarvis Taxpayers  
25 Association. In any case it undertakes, reimbursement for its attorneys' time is entirely  
26 contingent upon an award under Section 1021.5 because it is prohibited by the Internal  
27 Revenue Code from charging its clients any fees.

28 Factor 6 is also entitled to weight in this case. Given the undeniable value of affordable

1 water and of the enforcement of constitutional protections enacted by the people's initiative  
2 power, coupled with the fact that HJTF negotiated not only an end to the 25% surcharges  
3 challenged by its complaint, but also to the arbitrary 35% CIC surcharge that was *not* a subject  
4 of the complaint, the settlement in this case was clearly a success for plaintiffs.

5 The above factors by themselves support a fee enhancement. (*Lealao v. Beneficial*  
6 *California, Inc.*, 82 Cal.App.4th at 45; *City of Oakland v. Oakland Raiders* (1988) 203  
7 Cal.App.3d 78, 83; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 628.)

8 The final factor to consider is Factor 5 – the amount involved. This factor goes to what  
9 courts call the “percentage cross-check.” As mentioned at the outset of this argument heading,  
10 there are two methods of determining a reasonable attorney fee in class action litigation. The  
11 percentage method calculates the fee as a percentage of the monetary value of plaintiffs’  
12 recovery. The lodestar method calculates the fee by applying a reasonable hourly rate to the  
13 number of hours expended by counsel, then enhancing that amount by a multiplier based on  
14 the factors discussed above. Although 1021.5 cases begin with the lodestar method, the  
15 lodestar amount is then “cross-checked” against the amount that would be awarded under the  
16 percentage method to ensure that counsel is adequately compensated.

17 “At this point, the percentage-based fee will typically be larger than the  
18 lodestar-based fee. Assuming that one expects rough parity between the results  
19 of the percentage method and the lodestar method, the difference between the  
20 two computed fees will be attributable solely to a multiplier that has yet to be  
21 applied. Stated another way, the ratio of the percentage-based fee to the  
22 lodestar-based fee implies a multiplier, and that implied multiplier can be  
23 evaluated for reasonableness. If the implied multiplier is reasonable, then the  
24 cross-check confirms the reasonableness of the [award].” (*Laffitte v. Robert Half*  
25 *Internat. Inc.* (2016) 1 Cal.5th 480, 496 (quoting Walker & Horwich, *The Ethical*  
26 *Imperative of a Lodestar Cross-check*, 18 *Geo. J. Legal Ethics* 1453, 1463).)

27 In the case at bar, the settlement has resulted in annual savings to the class exceeding \$1.1  
28 million annually for the future, not counting the savings attributable to recalculation of the CIC

1 charge. (Joint Supplemental Brief in Support of Preliminary Approval of Settlement at 4:27.)  
2 Extrapolating out only ten years, the value of the settlement – not counting reduction of the CIC  
3 charge – is over \$11 million. Although the case did not go to trial, it was ready for trial.  
4 Applying a conservative 25% fee as a percentage of the value of the recovery, HJTF would be  
5 entitled to a fee of \$2,750,000. Assuming the difference between the percentage outcome and  
6 the lodestar (a difference of \$2,250,000) is “attributable solely to a multiplier that has yet to be  
7 applied” (*Laffitte*, 1 Cal.5th at 496), the cross-check suggests a multiplier of 5.5.

8 The amount agreed to as part of the settlement herein (\$485,000) is *less* than the  
9 lodestar total by itself, without any multiplier. It is therefore eminently reasonable, in fact less  
10 than reasonable, and therefore should be approved by the Court.

11 CONCLUSION

12 For all of the foregoing reasons, plaintiffs respectfully request an award of attorney fees  
13 from defendant City of Pasadena in the amount of \$485,000.

14 DATED: August 14, 2018.

15 Respectfully submitted,

16 TREVOR A. GRIMM  
17 JONATHAN M. COUPAL  
18 TIMOTHY A. BITTLE

19   
20 \_\_\_\_\_  
21 TIMOTHY A. BITTLE  
22 Counsel for Plaintiffs  
23  
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26  
27  
28

# 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, and Thomas Wolfe, 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 and Edward Henry 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 and Edward Henry 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' and Edward Henry's 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. Edward Henry has since deceased and the Court on May 22, 2018 found that because the Plaintiffs identified above continue to serve as class representatives and named plaintiffs and because no incentive award will be sought by any class representative, Mr. Henry need not execute this settlement agreement for it to be effective and binding.

I. 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 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 Section, "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 Section 2.8 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, and Thomas Wolfe, 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 2.8 and ending sixty (60) calendar days thereafter.

1.21. “Settlement” means the settlement of the Lawsuit and related claims and Released Claims in accordance with the terms of this Agreement.

1.22. “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.

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

**1.24.** 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 adjusting water rates to eliminate any differential between Areas A and B in its D&C charge and Commodity rate schedules, so that the D&C charge and Commodity rate schedules for Area A customers are the same as the D&C charge and Commodity rate schedules for Area B. If the differential is so 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. However, the City solely retains its adjudicated groundwater pumping rights, and these groundwater rights are not affected by this settlement.

**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 2.1 and 2.2, or only considers such rates without adopting them, then this Agreement is void and the matter will return to court for a trial, and Plaintiffs’ attorneys will not be entitled to the attorneys’ fees and expenses noted below.



**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 adoption of the City's new water rates consistent with Sections 2.1 and 2.2. Class Counsel's attorneys' fees will not be paid if the City does not adopt new water rates or if the adopted rates do not comply with the conditions in Sections 2.1 and 2.2.

**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 at the Fairness Hearing. Any papers submitted in support of said objections shall be considered by the Court, at the Fairness Hearing if, at least thirty (30) calendar days before the Fairness Hearing, such Class Member postmarks 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 postmark 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 Fairness Hearing. A Class Member need not appear, in person or by counsel, at the Fairness Hearing in order for his, her or its objection to be considered, and a Class Member need not file an objection to participate in 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 at least thirty (30) calendar days before the Fairness Hearing and as specified in the Preliminary Approval Order. The Settlement Administrator will record the date of postmark 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 Fairness 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 2.3 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.

Named Plaintiffs, but not other 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, Plaintiffs shall have fully, finally and forever released, relinquished and discharged as against City and City'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 Sections.

**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 effect.

**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 section, 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: 5-23-18

HOWARD JARVIS TAXPAYERS  
ASSOCIATION

Tim Bittle

By: Timothy A. Bittle

Its: Director of Legal Affairs

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

LINNEA WARREN

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

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

THOMAS WOLFE

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

Approved as to form:  
TIMOTHY A. BITTLE  
HOWARD JARVIS TAXPAYERS FOUNDATION

Tim Bittle  
ATTORNEYS FOR PLAINTIFFS

Date: 5-23-18

IN WITNESS WHEREOF, the parties hereto have so AGREED.

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

**HOWARD JARVIS TAXPAYERS  
ASSOCIATION**

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

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

Dated: 5/23/2018

**LINNEA WARREN**

  
LINNEA WARREN, Plaintiff

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

**THOMAS WOLFE**

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

Approved as to form:  
TIMOTHY A. BITTLE  
HOWARD JARVIS TAXPAYERS FOUNDATION

\_\_\_\_\_  
ATTORNEYS FOR PLAINTIFFS

Date: \_\_\_\_\_



IN WITNESS WHEREOF, the parties hereto have so AGREED.

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

**HOWARD JARVIS TAXPAYERS  
ASSOCIATION**

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

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

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

**LINNEA WARREN**

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

Dated: 5/23/2018

**THOMAS WOLFE**

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

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

**EDWARD HENRY**

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

Approved as to form:  
TIMOTHY A. BITTLE  
HOWARD JARVIS TAXPAYERS FOUNDATION

\_\_\_\_\_  
ATTORNEYS FOR PLAINTIFFS

Date: \_\_\_\_\_

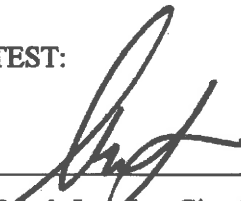
Dated: 5/29/18

CITY OF PASADENA



By: Steven Mermell, City Manager

ATTEST:




By: Mark Jonasky, City Clerk

Date: 5/29/18

Approved as to form:  
HOLLY O. WHATLEY  
COLANTUONO, HIGHSMITH & WHATLEY, PC

  
ATTORNEYS FOR DEFENDANT

Date: 5/28/2018

APPROVED AS TO FORM:  
This 29 day of 5, 2018  
By   
Chief Assistant City Attorney