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Superior Court of California  
County of Los Angeles

**MAY 23 2019**

**Sherri R. Carter, Executive Officer/Clerk  
By: Pedro Martinez, Deputy**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, SPRING STREET**

**Colantuono, Highsmith & Whatley, PC**  
790 E. COLORADO BOULEVARD, SUITE 850  
PASADENA, CA 91101-2109

HOWARD JARVIS TAXPAYERS ASSN.;  
LINNEA WARREN; THOMAS WOLFE;  
EDWARD HENRY; AND ALL OTHERS  
SIMILARLY STITUTED,

Plaintiffs,

v.

CITY OF PASADENA,

Defendant.

**CASE NO. BC550394**  
*Unlimited Jurisdiction*

(Case assigned to Hon. Elihu M. Berle)

CLASS ACTION

~~PROPOSED~~ JUDGMENT

Complaint Filed: July 21, 2014

1 In July 2014, Plaintiffs Howard Jarvis Taxpayers Association, Linnea Warren, Thomas  
2 Wolfe, and Edward Henry (collectively, “Plaintiffs”) filed the instant class action to challenge water  
3 rates imposed by Defendant City of Pasadena (“City”). In 2018, Plaintiffs and the City reached an  
4 agreement to settle this dispute — in sum, Plaintiffs agreed not to pursue their claims further if the  
5 City amended its rates in accordance with specified terms (the “Settlement Agreement”).

6 On January 31, 2019, this Court entered an order granting final approval of the Settlement  
7 Agreement, overruling the one objection thereto. The Court further defined the Settlement Class as  
8 “all persons who currently are or formerly were property owners and tenants whose owned or rented  
9 real property is located outside the boundary of the territory incorporated as the City of Pasadena,  
10 whose owned or rented real property receives water service from the City of Pasadena, who are  
11 subject to the water rates applicable to customers outside the City’s incorporated territory, who have  
12 paid said rates and charges at any time since March 24, 2013, and who have not opted out of the  
13 settlement.” Eight persons have opted out of the settlement: Henrietta Burton, Enrique Castaneda,  
14 Rosie Curiel, Yong Ae Kim, Aurelio Medina, Jan Taimoor, Lilit Terzyan, and Shing Wong.

15 On May 20, 2019, the City adopted an ordinance amending its water rates in accordance with  
16 the Settlement Agreement, such ordinance to be effective June 1, 2019.

17 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

18 1. Plaintiffs shall take nothing from Defendant City of Pasadena except as expressly set  
19 forth in the Settlement Agreement this Court approved on January 31, 2019.

20 2. For the reasons stated in the Preliminary Approval Order dated June 20, 2018 and the  
21 Final Approval Order dated January 31, 2019, the Court finds and determines that notice procedures  
22 afforded adequate protections to the Settlement Class, that the terms of the Settlement are fair,  
23 reasonable and adequate to the Settlement Class and to each Settlement Class member, and that the  
24 Settlement is ordered finally approved. The Court grants class certification for purposes of  
25 settlement and grants final approval of the settlement as fair, adequate and reasonable.

26 3. The Court hereby enters FINAL JUDGMENT in this case in accordance with the terms  
27 of the Settlement Agreement (attached as Exhibit 1), the Preliminary Approval Order dated June 20,  
28 2018 and the Final Approval Order dated January 31, 2019, all of which are incorporated herein.

Colantuono, Highsmith & Whatley, P.C.  
790 E. COLORADO BOULEVARD, SUITE 850  
PASADENA, CA 91101-2109

1 Upon the Effective Date, as defined in the Settlement Agreement, the Plaintiffs and all members of  
2 the Settlement Class except those individuals who opted out of the settlement and who are listed  
3 above, shall have, by operation of this Judgment, fully, finally and forever released, relinquished and  
4 discharged Defendant from all claims as defined by the terms of the Settlement Agreement. Upon  
5 the Effective Date, Plaintiff and members of the Settlement Class shall be and are hereby  
6 permanently barred and enjoined from instituting or prosecuting any and all claims released under  
7 the terms of the Settlement Agreement.

8 4. The motion for payment of attorneys' fees and expenses is GRANTED. The Court  
9 awards fees and costs combined to Class Counsel in the amount of \$ 485,000.00, to be  
10 delivered within ~~ten~~ <sup>fifteen (15)</sup> days after entry of this Judgment.

11 5. As set forth in the Final Approval Order, all objections are overruled.

12 6. This Judgment does not apply to the eight persons, named above, who timely requested  
13 exclusion from the Settlement Class.

14 7. The Court directs the Clerk of the Court to enter this Judgment, and the Court hereby  
15 decrees that, upon entry, this is deemed a final Judgment with respect to all claims by members of  
16 the Settlement Class against the City, in accordance with the terms of the Settlement Agreement.  
17 (Cal. Rules of Court, rule 3.769(h).)

18 8. The Court references and confirms that the release in the Settlement Agreement is  
19 approved. The Court orders that upon the Effective Date, Plaintiff and all Class Members and their  
20 executors, estates, predecessors, successors, assigns, agents and representatives, shall be deemed to  
21 have jointly and severally released and forever discharged the City and the Related Parties, as  
22 defined in the Settlement Agreement, from any and all Released Claims, whether known or  
23 unknown, arising from the facts alleged in the Complaint plus those arising from the thirty-five  
24 percent (35%) CIC differential charged to customers in Area B. All Class Members shall be fully  
25 and forever barred from instituting or prosecuting in any court or tribunal, either directly or  
26 indirectly, individually or representatively, any and all Released Claims against the City or any of  
27 the Related Parties. "Released Claims" means and includes any and all claims, demands, rights,  
28 damages, obligations, suits, and causes of action of every nature and description whatsoever,

1 ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including both  
2 known and unknown claims of the Plaintiffs and all Class Members, that were or could have been  
3 brought against the City and/or its Related Parties, or any of them, during the Class Period, arising  
4 from the facts alleged in the Complaint and also including claims arising from the thirty-five percent  
5 (35%) CIC differential charged to the City's water customers in Area B.

6 9. Without affecting the finality of this Judgment, the Court reserves exclusive and  
7 continuing jurisdiction over the parties to enforce the terms of the Settlement Agreement, as  
8 necessary. (Cal. Rules of Court, rule 3.769(h).)

9 10. Notice shall be given to the Settlement Class by posting this Judgment on the website  
10 www.howardjarvisvcityofpasadena.com.

11 IT IS SO ORDERED.

12  
13 DATED: May 23, 2019

**ELIHU M. BERLE**

14 By: \_\_\_\_\_  
15 Hon. Elihu M. Berle  
16 Judge of the Superior Court

# EXHIBIT 1

## 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: \_\_\_\_\_

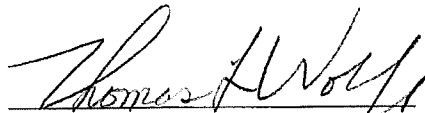
Dated: \_\_\_\_\_

**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

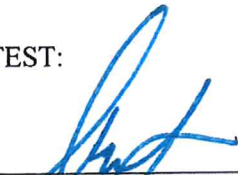
Date: \_\_\_\_\_

Dated: 5/29/18

CITY OF PASADENA



By: Steven Mermell, City Manager

ATTEST:  



By: Mark Jonsky, 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

**PROOF OF SERVICE**

*Howard Jarvis Taxpayers Assn., et al. v. City of Pasadena*

Case No. BC550394

I, Shoeba Hassan, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101-2109. My email address is: shassan@chwlaw.us On May 22, 2019, I served the document(s) described as [PROPOSED] JUDGMENT on the interested parties in this action addressed as follows:

**PLEASE SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on May 22, 2019, from the court authorized e-filing service at CaseHomePage. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **May 22, 2019**, at Los Angeles, California.

  
\_\_\_\_\_  
Shoeba Hassan

Colantuono, Highsmith & Whatley, PC  
790 E. COLORADO BOULEVARD, SUITE 850  
PASADENA, CA 91101-2109

**SERVICE LIST**

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

<p>Jonathan M. Coupal, Esq. Trevor A. Grimm, Esq. Timothy A. Bittle, Esq. Laura E. Murray, Esq. <b>HOWARD JARVIS TAXPAYERS FOUNDATION</b> 921 Eleventh Street, Suite 1201 Sacramento, CA 95814 Tel: (916) 444-9950 E-mail: <a href="mailto:Tgrimm.kg@gmail.com">Tgrimm.kg@gmail.com</a> <a href="mailto:tim@hjta.org">tim@hjta.org</a> <a href="mailto:ryan@hjta.org">ryan@hjta.org</a></p>	<p><i>Attorneys for Plaintiffs, HOWARD JARVIS TAXPAYERS ASSOCIATION; LINNEA WARREN; THOMAS WOLFE; EDWARD HENRY; AND ALL OTHERS SIMILARLY SITUATED</i></p>
<p>Michele Beal Bagneris, Esq. <b>CITY OF PASADENA</b> 100 North Garfield Avenue, Suite N210 Pasadena, CA 91109 Tel: (626) 744-4141 Fax: (626) 744-4190 E-mail: <a href="mailto:mbagneris@ci.pasadena.ca.us">mbagneris@ci.pasadena.ca.us</a></p>	<p><i>Counsel for Defendant, CITY OF PASADENA</i></p>

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