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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEILA LINDERMAN, on behalf of herself, and all others similarly situated,

Plaintiff,

v.

CITY OF LOS ANGELES, and DOES 1 through 100,

Defendants.

SHEILA LINDERMAN, on behalf of herself, and all others similarly situated,

Petitioner,

v.

CITY OF LOS ANGELES, and DOES 1 through 100,

Respondents.

Case No. BC650785
(Consolidated with Case No. BS168155)

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS

Date: **February 26, 2020**
Time: **11:00 a.m.**
Judge: **Hon. Amy D. Hogue**
Dept.: **7 (Spring Street Courthouse)**

Complaint filed: *February 15, 2017*
Trial Date: *None set*

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I. INTRODUCTION

This case arises from Plaintiff Sheila Linderman and Charles Mayrsohn ("Plaintiffs") allegation that the City of Los Angeles (the "City") imposes an annual regulatory fee imposed on its residents for the operation of a burglar alarm under the Los Angeles Municipal Code ("LAMC") that is in contravention of the law. Specifically, Plaintiffs contend the City charges an annual regulatory fee established under LAMC Section 103.12 for a permit for an Alarm System under LAMC Section 103.206 ("Alarm Permit"). Pursuant to the California Constitution article XIII C, any charge by the City that exceeds the City's "reasonable regulatory costs" in issuing Alarm Permits is a tax and must be approved before the fees can be enacted. This case challenged the City's fees for Alarm Permits, claiming that the fees amounted to unlawful taxes and that the City owed refunds to permit holders for the excess charges.

The City denied and vehemently fought Plaintiffs' claims. Nevertheless, following more than three (3) years of contentious litigation – involving extensive discovery and motion practice – the Parties reached the First Amended Settlement Agreement which was preliminarily approved by this Court on October 1, 2019 as fair, adequate, and reasonable.

Plaintiffs now move for attorneys' fees in the amount of $991,667.00, which is equal to one-third of the Gross Settlement Fund of $2,975,000.00 and for unreimbursed litigation costs in the amount of $25,579.48.

The requested attorneys' fees are reasonable and consistent with the prevailing California practice of awarding attorneys' fees in the amount of one-third of a common fund. Under the common fund doctrine, litigation costs are shared by beneficiaries of the litigation, which incentivizes competent counsel to handle complex contingency cases and as a matter of equity. Because none of the Class Members have paid fees to Class Counsel for their efforts during the litigation, equity dictates that they pay a fair and reasonable fee for the valuable benefits obtained and not less than if they had hired private counsel to litigate their cases individually.

Plaintiffs also move for Incentive Awards of $5,000 to each Plaintiff for their services on behalf of the Settlement Class and the risks undertaken by them by agreeing to serve as the Class Representatives.

II. PROCEDURAL HISTORY

A. Procedural History

On August 17, 2016, Sheila Linderman ("Plaintiff") presented to the City a class-wide Government Claim pursuant to Government Code section 910, claiming overcharges on Alarm Permits. On February 15, 2017, Plaintiff filed a class action entitled *Linderman v. City of Los Angeles, et al.*, Case No. BC650785. *See* Declaration of Prescott W. Littlefield in Support of Motion for Attorneys' Fees, Costs, and Incentive Awards ("Littlefield Decl.") at ¶2. At the same time, Plaintiff filed a Petition for Writ of Mandate in the Superior Court of the State of California for the County of Los Angeles captioned *Linderman v. City of Los Angeles, et al.*, Case No. BS168155. *Id.*

Thereafter, on or about April 19, 2017, Plaintiff filed a Notice of Related Case to coordinate her class action complaint (Case No. BC650785) with her Petition for Writ of Mandate (Case No. BS168155). On or about July 10, 2017, the Court entered an order relating Case No. BS168155 and Case No. BC650785. *Id*. at ¶3. On August 30, 2017, Plaintiff filed a motion to consolidate the Writ and Class claims. On October 13, 2017, the Court entered an Order consolidating the two cases. *Id*.

On or about June 22, 2018, Plaintiff filed a Motion for Class Certification and, on July 27, 2018, the City filed its Opposition. *See* Littlefield Decl. at ¶4. Due to issues raised in the City's Opposition, the Parties agreed to withdraw Plaintiff's Motion for Class Certification without prejudice so as to permit Plaintiff Linderman to re-file at a subsequent date. *Id*.

Notwithstanding the agreement that class certification could be re-filed, Plaintiff Linderman and the City disagreed regarding whether or not she could add an additional named plaintiff – Charles Mayrsohn. So, on September 20, 2018, Plaintiff filed a Motion to Amend the Complaint, which the City aggressively opposed. On November 9, 2018, the Court granted Plaintiff's Motion to Amend, and on November 16, 2018, Plaintiff filed a Second Amended Verified Petition and Complaint ("SAC") adding Mr. Mayrsohn as a Plaintiff. *See* Littlefield Decl. at ¶5.

/ / /

1 Following the filing of the SAC, the City and Class Counsel met and conferred regarding
2 the City's intent to demur on two grounds: (1) that the City claimed certain allegations were
3 ambiguously pled in the SAC; and (2) that the SAC was legally deficient for failure to follow the
4 Government Claims procedures under statutory and case law. *Id*. at ¶6. The Parties agreed to allow
5 Plaintiffs to amend the SAC to address the claimed ambiguities, but the City's larger concern,
6 compliance with Government Code Section 910 *et seq.* remained at issue. On February 20, 2019,
7 the City demurred to Plaintiffs' Third Amended Verified Writ of Mandate and Complaint. *Id*.

8 **B. Discovery and Investigation**

9 Given this Action proceeded against a "local public entity" as defined in Government Code
10 section 905, prior to filing this Action, Plaintiff Linderman had to present a claim to the City
11 pursuant to Government Code section 910 *et seq.* Also unique to governmental entities, a
12 substantial amount of information regarding City decisions, especially City Council decisions, is
13 available online and accessible to the public. Through the City Clerk's online portal, substantial
14 pre-litigation research was conducted into how the City determined its permit fees. *See* Littlefield
15 Decl. at ¶7.

16 For example, paragraphs 11-60 of Plaintiff Linderman's original Writ and Complaint
17 address information obtained from searches of the City's archived documents. *Id*. Finally, unlike
18 a typical class complaint, which can be pled on information and belief, this case involved a Writ of
19 Mandate, which required verification by Plaintiff Linderman, further underscoring the need for
20 pre-suit investigation.

21 Shortly after the Writ and Class Action were filed, Plaintiff Linderman served her first set
22 of requests for production of documents on the City, resulting in the City's production of
23 documents in early May 2017. *See* Littlefield Decl. at ¶8. The documents produced included an
24 updated cost analyses done by the City, changing the numbers and costs that had previously been
25 identified through background investigation. *Id*.

26 Two (2) weeks after the City's first document production, the City's counsel sent a letter
27 advising that based on the City's newly produced permit calculations, Plaintiff Linderman's claim
28 was no longer being conducted "in good faith," and that as a result, the City would prevail and

seek its attorney fees for the bad faith maintenance of litigation against a governmental entity under Code of Civil Procedure 1038. *See* Littlefield Decl. at ¶9. Threats notwithstanding, Plaintiff Linderman continued to compare the City's new documentation with the previous documents and to analyze the costs, staffing, and fee levels, and continued to believe in the merits of the case. *Id*.

This case centered on the City's Police Commission reports and the City's amendments thereto. Plaintiff ultimately served numerous rounds of Requests for Production of Documents, Special Interrogatories, and Requests for Admissions, and ultimately received three different cost calculations performed by the City. *See* Littlefield Decl. at ¶10. Through these requests, Plaintiff not only received the City's permit cost calculations, but also received several job descriptions, time-in-motion studies, staffing diagrams, and Cost Allocation Plans ("CAPs"). *Id*.

Having received all of these documents, Plaintiff noticed the deposition of the City's Persons Most Qualified, ultimately deposing three (3) different witnesses to assess the accuracy of the City's calculations, including the Police Commission's Executive Director, the Senior Management Analyst in charge of the Alarm Division, and the management analyst who prepared the cost-of-service analysis for the fees. *See* Littlefield Decl. at ¶11.

Following the conclusion of these depositions, Class Counsel and the City exchanged letters expressing their views on the value of the case and settlement potential. *Id*. at ¶12. It was determined at that time that there was little to no chance of resolution based on the Parties' disparate views of the value and merits of the case. *Id*.

After the foregoing discovery was completed, Plaintiff moved for class certification. *See* Littlefield Decl. at ¶13. It was not until Plaintiff Linderman received the City's opposition that her and Class Counsel became aware that Plaintiff Linderman had only paid the fee that corresponded with an "original" permit under LAMC Section 103.12, and because she did not timely pay the annual renewal fee and, therefore, she paid a different permit fee under the LAMC. *Id*.

At this point, Plaintiff and the City disagreed regarding whether or not Plaintiff Linderman's claims covered both original and annual renewal fees for Alarm Permits, whether or not the writ and class claims covered both of these fees, whether or not a new class representative needed to be added to represent renewal fees, and whether or not Linderman could adequately

represent a class of both original and renewal permittees. *Id*. at ¶14.

In particular, the City argued Plaintiff Linderman lacked standing to challenge the annual renewal fee and that her government claim could not equitably toll class claims for absent class members under the Government Claims Act. Notwithstanding the City's objections and arguments, Linderman sought and obtained Court approval to amend the operative Complaint to add Plaintiff Mayrsohn, which the City subsequently challenged by demurrer. *Id*. at ¶15.

C. Mediation

On March 1, 2019, Plaintiffs and the City attended mediation before the Honorable Dickran Tevrizian (Ret.) of JAMS. *See* Littlefield Decl. at ¶16. At the mediation, the Parties reached an agreement as to all material terms memorialized in the Amended Settlement Agreement. *Id*. After the mediation, the City sought and obtained the necessary approvals for the Parties to seek Court approval of the Amended Settlement Agreement. *Id*.

D. The Settlement

The Amended Settlement Agreement resolves all claims of Plaintiffs and the proposed Class against the City related to the alleged overcharging and the rates set for the regulatory fees for Alarm Permits under LAMC Section 103.12. A summary of the terms of the Amended Settlement Agreement are as follows:

Class Definition – The Class is defined as follows: "all persons and entities who, between the period of August 15, 2015 and the Preliminary Approval Date, paid an Alarm Permit Fee under LAMC Section 103.12 to the City. Specifically excluded from the Class are: (a) council members of the City, the mayor of the City, and Commissioners of the City's Police Commission; (b) any judge assigned to hear this Action; (c) and persons or entities who properly exclude themselves from the Class as provided in this Agreement." *See* Amended Agreement at ¶12.

Class Benefit – The Net Settlement Fund shall be distributed in the form of a one-time, non-transferable Fee Adjustment Credit toward the Annual Renewal Fee for an Alarm System permit for the 2021 calendar year for the benefit of the Class. The amount of the Fee Adjustment Credit is dependent on the amount of the Net Settlement Fund, but it is estimated that the Fee Adjustment Credit will equal approximately Twelve Dollars ($12.00) on a per permit, *pro rata*

1 basis for the Class. *See* Amended Agreement at ¶60. The Fee Adjustment Credit will be applied
2 toward the Reduced Alarm Permit Fee discussed below.
3 The Settlement Agreement also provides prospective relief for the class for the next three
4 years. The City has agreed to reduce the existing fees for Alarm Permits under LAMC Section
5 103.12 by $5.00 in what is defined as the Reduced Alarm Permit Fee. *See id*. at ¶61. Specifically,
6 for Alarm Permits issued for calendar years 2020, 2021, and 2022, the Reduced Alarm Permit Fee
7 would be as follows: the City's original fee and change of location fee would reduced from $48 to
8 $43 and the City annual renewal fee would be reduced from $31 to $26. *Id.* at ¶61(a). In addition,
9 within 60 days after the Effective Date of the Settlement Agreement, the City would enact an
10 ordinance amending LAMC Section 103.12 to reflect the new rate scheduled for the Reduced
11 Alarm Permit Fee described above, which is referred to as the "Alarm Permit Fee Ordinance" in
12 the Settlement Agreement. *See id*. at ¶61(b).
13 The Settlement is ***non-reversionary***, and the total amount of the Net Settlement Fund will
14 be paid on a *pro rata* basis to Class members in the form of the Fee Adjustment Credits. *See id*. at
15 ¶26 and ¶60.
16 **Release of Claims** – Each Class Member shall fully release the City and the Released
17 Parties as follows:
18 All claims, demands, actions, and/or causes of actions of whatever kind or nature,
19 in law or in equity, including damages, costs, expenses, penalties, expert fees, and attorneys' fees that were asserted in the Action or that could have reasonably been
20 alleged or asserted in the Action by the Releasing Parties against the Released Parties arising out of or related to the Action, including without limitation any
21 allegations, events, transactions, acts, omissions, matters, or occurrences related to the Alarm Permit Fee or payments of the Alarm Permit Fee before the Preliminary
22 Approval Date and, as of the Effective Date, the reasonableness, validity, basis, and/or constitutionality under Article XIII C of the California Constitution of the
23 Reduced Alarm Permit Fee under this Agreement and/or the Alarm Permit Fee Ordinance.
24 *Id*. at ¶41.
25 **E. Preliminary Approval of the Settlement**
26 On October 1, 2019, Class Counsel and the City attended a hearing before this Court on
27 Plaintiffs' Motion for Preliminary Approval. *See* Littlefield Decl. at ¶17. At the conclusion of the
28 hearing, the Court entered an Order Granting Preliminary Approval and ordered that Notice be

issued to the Class in accordance with the Amended Settlement. *Id*.

III. THE COURT SHOULD AWARD CLASS COUNSEL $991,667.00 IN FEES

Plaintiffs move for an award of attorneys' fees in the amount of $ 991,667.00, or one-third of the Gross Settlement Fund of $2,975,000. Such a request is supported by California law under the common fund doctrine. The common fund doctrine is applicable where, as here, attorneys have been instrumental in creating a settlement fund that benefits all class members. As held in *Laffitte v. Robert Half Int'l Inc.*, (2016) 1 Cal. 5th 480, 503 ("*Laffitte II*"):

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

In *Laffitte II,* a unanimous California Supreme Court explained that the common fund approach is "a valuable tool" for courts to utilize when a common fund is created. *Id.* at 503. The percentage method has "recognized advantages" over the lodestar-multiplier method, "including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." *Id.*

The California Supreme Court, in *Laffitte II*, further explained that a common fund fee award "distributes the cost of hiring an attorney among all the parties benefited," which is why it "has sometimes been referred to as 'fee spreading.'" *Id*. at 489. In other words, the common fund doctrine "rest[s] squarely on the principle of avoiding unjust enrichment…attorney fees awarded under this doctrine are not assessed directly against the losing party (fee shifting), but come out of the fund established by the litigation, so that the beneficiaries of the litigation…bear this cost (fee spreading)." *Lealao v. Beneficial Cal. Inc.*, (2000) 82 Cal. App. 4th 19, 27. The common-fund method is preferred by most jurisdictions because it focuses on the total benefit conferred on the class resulting from the efforts of counsel. *Id*. at 48.

Thus, in light of the advantages of the common fund method, the California Supreme Court, in *Laffitte II*, expressly and conclusively held that a trial court may calculate attorneys' fees as a percentage of the common fund and that such a method is not only proper, but preferable.

A. California State and Federal Courts Routinely Award Fees in the Amount of One-Third of the Common Fund

California state and federal courts, including the complex division of this Court[2], routinely award attorneys' fees equaling one-third of the common fund. *See, e.g., Laffitte v. Robert Half Int'l Inc.*, (2014) 231 Cal.App.4th 860, 871 ("*Laffitte I*")("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"); *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66 at n.11 (accord); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study,* J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte II* affirmed a fee award representing 33 1/3 percent of the fund. *See Laffitte II*, 1 Cal. 5th at 506.

A fee award in the amount of one-third of the common fund is also reasonable because it best reflects the market rate for contingency fees. *See Lealao*, 82 Cal. App. 4th at 47 ("attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace"). The negotiated fees reflect the market rate for fees in two (2) ways.

First, fees representing one-third of the recovery reflect the rate negotiated in "typical contingency fee agreements [which] provide that class counsel will recover 33% if the case is

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[2] *See Rickerd v. OneWest Resources, LLC,* No. BC562538 (Los Angeles County Superior Court January 13, 2017; Judge Jones) (awarding one-third in fees); *The Children s Place Retail Stores Wage & Hour Cases,* No. JCCP4790 (Los Angeles County Superior Court Sept. 1, 2016; Judge Freeman) (awarding one-third in fees); *Restoration Hardware Wage and Hour Cases,* No. JCCP4794 (Los Angeles County Superior Court April 28, 2016; Judge Highberger) (awarding 35% of the gross settlement fund in fees); *Valdez v. Kevin Jewelers,* No. 502920 (Los Angeles County Superior Court Sept. 24, 2015; Judge Wiley, Jr.) (awarding fees in the amount of one-third of a reversionary gross settlement fund); *Hoagland v. Brooks Brothers Group Inc.,* No. BC511534 (Los Angeles County Superior Court July 20, 2015; Judge Johnson) (awarding fees in the amount of one-third of the gross settlement fund); *Parra v. Aero Port Services, Inc.,* No. BC483451 (Los Angeles County Superior Court April 20, 2015; Judge Johnson) (awarding fees in the amount of one-third of a reversionary gross settlement fund); *Chavez v. Vallarta Food Enterprises, Inc.,* BC490630 (Los Angeles County Superior Court Nov. 10, 2014; Judge Highberger) (awarding fees in the amount of one-third of a reversionary gross settlement fund); *Sanchez v. Shakey's USA, Inc.,* No. BC424205 (Los Angeles County Superior Court Aug. 14, 2014; Judge Hogue) (awarding fees in the amount of one-third of a reversionary gross settlement fund); *Coleman v. Estes Express Lines Inc.,* No. BC429042 (Los Angeles County Superior Court Oct. 3, 2013; Judge Freeman) (awarding fees in the amount of one-third of a reversionary gross settlement fund).

resolved before trial and 40% if the case is tried." *Fernandez v. Victoria Secret Stores LLC*, (C.D. Cal. 2008) 2008 U.S. Dist. LEXIS 123546, at *55-57 (citing an academic study collecting contingency fee agreements and finding that a fee award constituting 34% of the fund is reasonable on that basis). Because the negotiated fee structure mimics the marketplace, it is reasonable and should be approved.

Second, courts have recognized that the negotiated fee is the best indication of the market price for fees. In a common fund case, the object "is to give the lawyer what he would have gotten in the way of a fee in an arm's-length negotiation, had one been feasible." *In re Cont'll Ill. Sec. Litig.*, (7th Cir. 1992) 962 F.2d 566, 568. Judge Posner, in *Cont'll Ill. Sec. Litig.*, reasoned that the negotiated fee reflects a market-based price because it encompasses each parties' best estimate and view as to the value of the legal services and what the court might have awarded if the matter had been litigated. *Id.* For this reason, courts generally defer to the parties regarding the reasonableness of the negotiated attorneys' fees. Indeed, because "the parties are compromising to avoid litigation," the court **"***need not inquire into the reasonableness of the fees at even the high end* with precisely the same level of scrutiny as when the fee amount is litigated." *Laguna v. Coverall No. Am.*, (9th Cir. 2014) 753 F.3d 918, 922 (emphasis added).

Stated differently, while the Court must conduct an independent inquiry into the reasonableness of fee request, it should give substantial weight the Parties' agreement on fees, which is the product of negotiations in the legal marketplace. For the foregoing reasons, the amount of negotiated fees here – one-third of the overall settlement value – is reasonable.

B. The Reasonableness of the Percentage-Based Fee Award Is Supported By Other Factors

In considering the reasonableness of the fees requested under the percentage method, California court may also consider the following factors: (1) the results achieved on behalf of the Class; (2) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (3) the response of the Class to the settlement, including a lack of objections to the settlement terms, and particularly to the fee award; (4) counsel's experience, reputation, and ability; (5) counsel's preclusion from other work; and (6) the contingent nature of the fee award.

See Laffitte II, 1 Cal. 5th at 504-05 (holding that the court may consider various factors in determining the reasonableness of the fees); *see also Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1139 (applying these factors in considering a fee award under the lodestar-multiplier method).

1. *The Requested Attorneys' Fees Are Supported by the Results Achieved*

Courts may assess the reasonableness of the percentage-based award by examining the results achieved on behalf of the Class. Here, Class Counsel negotiated a total cash settlement value of $2,975,000.00. However, this amount does not take into consideration (as the Court should when assessing the reasonableness of the current fee request), that the Amended Settlement provides further value in the form of prospective relief for the Class for the next three (3) years.

Specifically, the City has agreed to reduce the existing fees for Alarm Permits under LAMC Section 103.12 by $5.00. *See* Amended Settlement at Section VI, ¶61. Indeed, for Alarm Permits issued for calendar years 2020, 2021, and 2022, the Reduced Alarm Permit Fee would be as follows: the City's original fee and change of location fee would reduced from $48 to $43 and the City annual renewal fee would be reduced from $31 to $26. *Id.* at ¶61(a). Based on the number of individuals estimated to benefit from these reductions (115,000 individuals per year for three (3) years), the Class will receive a non-cash benefit of approximately $1,725,000 in addition to the $2,975,000 Gross Settlement Fund. Class Counsel submits the requested fee award of $991,667.00, is exceedingly reasonable given the cash component and prospective relief, collectively, provide an overall benefit to the Class of approximately $4,700,000. Thus, the requested fee award of $991,667.00 is approximately 21% of the total value to be received by the Class. *See* Littlefield Decl. at ¶18.

2. *Class Counsel Litigated this Case on a Purely Contingent Basis*

Providing attorneys who represent clients under contingent-fee agreements with a larger fee than the market-value of their services helps to assure adequate representation for plaintiffs unable to afford the services of accomplished attorneys at their current hourly rates. *Graham v. DaimlerChrysler Corp.*, (2004) 34 Cal. 4th 553, 580 ("[A] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."). In *Ketchum,* the California Supreme Court

instructed courts to adjust fee compensation to ensure that the fees account for contingency risk:

> A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Ketchum, 24 Cal. 4th at 1132-33.

A fee award that adjusts for contingent risk "constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous." *Id*. at 1138. The contingent risk factor is the single most important enhancement factor under California law even for actions where statutory fees are available. *See Horsford v. Board of Trustees of Calif. State Univ.*, (2005) 132 Cal.App.4th 359, 399 (reversing a trial court order for failure to consider contingent risk). The main criterion for risk is that of a *complete loss,* which would leave counsel unable to recover fees. *See Graham*, 34 Cal. 4th at 583 (explaining that a multiplier corresponds to risk of loss, with the risk of not being the successful party ranking highest). This risk is particularly acute for contingency fee attorneys because they "must use savings or incur debt to keep their offices afloat and their families fed during the years-long litigation." *Horsford*, 132 Cal. App. 4th at 400.

Despite considerable challenges associated with contingent litigation, Class Counsel was able to obtain a $2,975,000 settlement for the Class. The requested fee is thus fair and reasonable.

3. *The Requested Fees is Supported by the Complexity of the Litigation*

In advance of mediation, Class Counsel evaluated the claims in light of the risks of continued litigation in order to determine a reasonable range of class relief. Although Class Counsel believed in the strength of the class claims, they also recognize that if the litigation had continued, Plaintiffs may well have encountered significant legal and factual hurdles that could have prevented the Class from obtaining any recovery whatsoever. *See* Littlefield Decl. at ¶19.

Specifically, Class Counsel, perhaps some of the most experienced attorneys in the State of California with regard to Constitutional tax litigation, is unaware of a single reported case addressing fees under article XIII C, section 1(e)(3). The closest analogue is the May 2018 decision by the Supreme Court in *California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1048, which addressed Proposition 26's modifications to article XIII A,

section 3(b)(3), which impacts the State's ability to impose fees, and limits regulatory fees to fees "imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits ... and the administrative enforcement and adjudication thereof." *Id.* at ¶20.

The City argued (and would continue to contend absent a settlement), that *California Building Industries* would preclude any potential recovery for the Class in this action if the case were litigated on the merits. Specifically, the City argued and contends that the California Supreme Court held that "a regulatory fee, to survive as a fee, does not require a precise cost-fee ratio." *Id.* at 1052. In its holding, the Supreme Court recognized that "regulatory fees, unlike other types of user fees, often are not easily correlated to a specific ascertainable cost" and therefore "an inherent component of reasonableness in this context is flexibility." *Id.* In *California Building Industries*, the Court found that a difference between permit fee revenues and expenditures ranging from $1.1M to $5.2M did not constitute a "tax" under Proposition 26 and were reasonable under "the flexible standard that applies to regulatory fees." *Id.* at 1053. The City contends that reasonable and flexible standard would apply even if the Alarm Permit Fees at issue were not an exact cost-fee ratio, as Plaintiffs allege. *See* Littlefield Decl. at ¶21.

Importantly, while Plaintiffs vigorously disputed the City's interpretation of *California Building Association*, for purposes of assessing litigation risks and benefits of settlement, Plaintiffs recognize the Supreme Court's analysis of article XIII A stated that fees must not exceed "the reasonable costs of the **permit** **program**" not the reasonable costs of the "issuing of permits." *Id.* at 1050 (emphasis added). This language used by the Court as well as the language the City identified above created the potential for the City to argue that its Alarm Permit fees cover the cost of issuing the permits, and also costs incurred for the whole "permit program" – including costs involving sworn LAPD officers, which would significantly increase the "cost" to the City of the permits. Plaintiffs contend that such an expansion of *California Building Industry Association* would be inappropriate (and subject to reversal on appeal. Nevertheless, Plaintiffs faced a meaningful litigation risk that substantial costs (i.e. the cost of LAPD responses to all alarms) may be credited against the fees for the permit program. *See* Littlefield Decl. at ¶22.

In addition, the City also claimed that even if *California Building Association* was not dispositive on the merits, that California Government Code Section 66016 would preclude any recovery other than a prospective adjustment in future fees. Government Code Section 66016(a) states, in relevant part, that if "fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess." Specifically, the City argued that the ordinances amending LAMC Section 103.12 were enacted pursuant to provisions in the section of the Government Code and cited to language in *County of Orange v Barrett American, Inc.*, in which the court held that: "The purpose of section 66016, subdivision (a) was to prevent a local agency from imposing fees that were unrelated to the services provided. *See* Littlefield Decl. at ¶23.

To this end, the Legislature directed an agency that collected fee revenue in excess of the cost of related services to use the surplus to reduce those same fees, not use the surplus for general revenue expenses." *County of Orange v Barrett American, Inc.*, (2007) 150 Cal. App. 4th 420, 433. Based on this precedent, the City contends that even if its revenues exceeded actual costs, Section 66016(a) mandates that the City must use that surplus, in lieu of fee revenue, to cover future expenses. Plaintiffs dispute that Government Code Section 66016 applies here, but for purposes of settlement, acknowledge that the City's arguments created some risks on Plaintiff's potential recovery at trial. *See* Littlefield Decl. at ¶24.

In sum, the risks in litigation this case were substantial and, as can be seen from the single example above, the issues were extremely difficult and complex. Indeed, the issues presented in this case are not the type any attorney – even a seasoned class action attorney – could successfully litigate. Rather, this case required Class Counsel's substantial knowledge of these complex issues which very few lawyers possess. *See* Littlefield Decl. at ¶25.

4. *The Fee is Supported by Counsel's Experience, Reputation, and Skill*

The "skill and experience of the attorneys and nature of work performed" are also evaluated under California law in connection with a fee motion. *Northwest Energetic Services, LLC v. Cal. Franchise Tax Bd.*, (2008)159 Cal. App. 4th 841, 880. Class Counsel – Kearney Littlefield, LLP and Stonebarger Law, APC – are experienced class action attorneys and have been

routinely recognized for their excellence in prosecuting class action matters such as this. *See* Littlefield Decl. at Exh. 'A'; *see also* Declaration of Richard D. Lambert in Support of Motion for Attorneys' Fees, Costs, and Incentive Awards ("Lambert Decl.") at Exh. 'A'.

IV. A LODESTAR CROSS-CHECK CONFIRMS THE REQUESTED FEE OF $991,667 IS FAIR AND REASONABLE

The trial court may use an abbreviated lodestar "cross-check" for common fund awards if the court considers it useful. *Laffitte II*, 1 Cal. 5th at 504-05. However, under *Laffitte II,* the lodestar-multiplier cross-check is not meant to displace the percentage analysis, but rather to act as a backstop. Indeed, the California Supreme Court expressly instructed that "the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the fee award." *Id*. at 505.

Critically, in *Laffitte II*, the California Supreme Court emphasized that only where the "multiplier calculated by means of a lodestar cross-check is ***extraordinarily high or low*****"** should the court "consider whether the percentage should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* (emphasis added). Accordingly, when the cross-check multiplier is within a normal range, the lodestar-cross check does not provide a basis for a court to reduce the fee award. Furthermore, in conducting a lodestar cross-check, the court is not "required to closely scrutinize each claimed attorney-hour." *Id*. An evaluation may be done by reviewing "counsel declarations summarizing overall time spent." *Id.*

In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by plaintiffs' counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, (2009) 175 Cal. App. 4th 545, 556-57. To determine whether the requested rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region. *PLCM Group v. Drexler*, (2000) 22 Cal. 4th 1084, 1096-97 (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel).

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A. Class Counsel's Declared Hours Are Reasonable

Under California law, every hour reasonably spent on the Plaintiffs' case is compensable: "[a]bsent special circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for all the hours reasonably spent, including those relating solely to the fee." *Ketchum*, 24 Cal. 4th at 1133. Hours are reasonable if "at the time rendered, [they] would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest." *Moore v. Jas. H. Matthews & Co.*, (9th Cir. 1982) 682 F.2d 830, 839.

In determining the reasonableness of the hours expended, "the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Kerkeles v. City of San Jose*, (2015) 243 Cal.App.4th 88(*quoting Moreno v. City of Sacramento*, (9th Cir. 2008) 534 F.3d 1106, 1112).

Counsel has spent more than 800 attorney hours (not counting the time involved with the final approval motion and travel time associated therewith) in the prosecution of this Action. These hours are justified by the course of this litigation and by the results obtained. In light of the time required to litigate this case and overcome the procedural, evidentiary and legal hurdles placed in their way, Class Counsel's time reflects a level of efficiency and economy well within acceptable bounds. *See* Littlefield Decl. at ¶¶26-27; *see* Lambert Decl. at ¶4-5; *see* Declaration of Michael J. Zimmerman in Support of Motion for Attorneys' Fees, Costs, and Incentive Awards ("Zuckerman Decl.") at ¶4.

Declarations by counsel as to time spent are sufficient. *See Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 255 ("Plaintiff's attorneys submitted declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case…California law permits fee awards in the absence of detailed time sheets."); *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, 1810 (a "lodestar calculation could be based on counsel's estimate of time spent"). "An experienced trial judge is in a position to assess the value of the professional services rendered in his or her court." *Wershba*, 91 Cal.App.4th at 255.

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Here, though, Class Counsel has submitted their billing records under seal for the Court's review. *See* Littlefield Decl. at ¶¶26-27; *see* Lambert Decl. at ¶5. Following its review, Class Counsel submits that the Court will determine the total hours expended on this case as reasonable and necessary given its duration and complexity.

B. Class Counsel's Hourly Rates are Reasonable and Have Been Approved

The hourly rates used in calculating the lodestar portion of a reasonable attorney's fee must be based on the hourly rates charged by private attorneys of comparable experience, expertise, and reputation for comparable work. *Serrano v. Unruh*, (1982) 32 Cal.3d 621; *PLCM Group, Inc. v. Drexler*, (2000) 22 Cal.4th 1084; *Graham*, 34 Cal.4th at 556; *Children's Hospital and Medical Center v. Bonta*, (2002) 97 Cal.App.4th 740.

The rates claimed are reasonable so long as they are within the range of hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Ketchum*, 24 Cal. 4th at 1133; *Children's Hospital*, 97 Cal.App.4th at 783 (affirming rates that were "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work"). A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc.*, 22 Cal.4th at 1095. The court may consider other factors when determining reasonable hourly rates, e.g., the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol,* (1998) 61 Cal.App.4th 629, 632. Class Counsel's skill and experience justify the requested rates.

Given their expertise and skill, Class Counsel's rates are within the range of rates charged by similarly experienced and qualified attorneys, and have been approved by Courts throughout California, including this Court. *See* Littlefield Decl. at ¶26; *see* Lambert Decl. at ¶4; *see* Zuckerman Decl. at ¶¶2-3. This is significant, as prior determinations of counsel's rates are strong evidence of their reasonableness. *See Margolin v. Regional Planning Commission*, (1982) 134 Cal.App.3d 999, 1005.

Class Counsel commands a high hourly rate due to their success in class actions and are held in very high regard by the legal community. This case was complex and difficult – made

more so by the evolving legal landscape in this area of law – not one that any lawyer could litigate, but a highly specialized area of law requiring highly skilled, experienced, and competent lawyers.

Class Counsel calculated their lodestar using a billing rate of $900 per hour for Thomas A. Kearney (42.1 hours), a partner at Kearney Littlefield, LLP (*see* Littlefield Decl. at ¶26), $650.00 per hour for Prescott W. Littlefield (584 hours) (*see* Littlefield Decl. at ¶26), a partner at Kearney Littlefield, LLP, $595.00 per hour for Richard D. Lambert (164 hours) (*see* Lambert Decl. at ¶4), a partner at Stonebarger Law, APC, and $500 per hour for Michael J. Zuckerman (26 hours) (*see* Zuckerman Decl. at ¶4). Class Counsel has set its rates to reflect the current market rates by attorneys of comparable experience, expertise, and reputation for comparable work and request that the Court so find.

C. The Application of an Upward Multiplier in This Action is Reasonable and Warranted Given the Complexity of the Issues and Skill Shown by Class Counsel

Once the lodestar is calculated, it may be enhanced with a multiplier. *Wershba*, 91 Cal.App.4th at 254. The objective of any multiplier is to provide lawyers involved in public interest litigation with a financial incentive. *Ketchum*, 24 Cal.4th at 1133; *see also Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322 (purpose of multiplier is to "reflect the broad impact of the results obtained and to compensate for the high quality of work performed and the contingencies involved in undertaking this litigation."). "If this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." *In re Washington Public Power Supply System Sec. Litig.*, (9th Cir. 1994) 19 F.3d 1291, 1300.

Only when courts properly compensate experienced and able counsel for successful results, such as those here, can they assure the continuing effectiveness of the remedies available through class actions. To accomplish this objective, the fee award must be large enough "to entice counsel to undertake difficult public interest cases." *San Bernardino Valley Audubon Society v. County of San Bernardino*, (1984) 155 Cal.App.3d 738, 755.

Multiplying the total hours billed by Class Counsel to the litigation by their reasonable hourly rates yields a lodestar of $528,070. *See* Littlefield Decl. at ¶26; Lambert Decl. at ¶4;

Zuckerman Decl. at ¶4. Applying a modest 1.88 multiplier to that lodestar yields the requested fees. A 1.88 multiplier is not "extraordinarily high," but well within a normal range that precludes a reduction of fees based on the lodestar cross-check. *See Wershba*, 91 Cal. App. 4th at 255 (observing that multipliers "can range from 2 to 4 or even higher."); *Vizcaino v. Microsoft Corp.*, (9th Cir. 2002) 290 F.3d 1043, 1047 (affirming fees where the cross-check multiplier is 3.65 after examining a comprehensive study of fees awarded by the percentage method); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1170 (C.D. Cal. 2010) (observing that "multipliers may range from 1.2 to 4 or even higher").[4]

Laffitte II itself affirmed a fee award that applied a 2.13 multiplier on a lodestar cross-check, where fees were awarded as one-third of the common fund. *See Laffitte II*, 1 Cal. 5th at 487; *see Spann v. J. C. Penney Corp.,* (C.D Cal. 2016) 2016 WL 5844606, at *14 (finding that a 3.07 multiplier is "well within the range for reasonable multipliers" under *Laffitte II).* The lodestar cross-check thus confirms the reasonableness of the percentage-based fee request in this case.

If necessary, applying a multiplier in this case is more than reasonable in light of: (1) the great risk Class Counsel took in litigating this case on an entirely contingent basis; (2) the substantial outlay of time and costs; (3) the consistently evolving case law under the claims alleged; (4) the exceptional results; and (5) the long delay in being compensated.

V. THE REQUESTED LITIGATION COSTS ARE REASONABLE

Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution before trial. To date these out-of-pocket costs are $25,579.48, to date. *See* Littlefield Decl. at ¶22; Lambert Decl. at ¶7. This amount includes the costs associated with filing fees, travel, court reporter fees, mediation fees, and postage fees, among others. *See* Littlefield Decl. at ¶22; Lambert Decl. at ¶7.

VI. THE INCENTIVE ENHANCEMENT PAYMENTS ARE REASONABLE

[4] Both California state and federal courts have consistently awarded fees within that range. *See, e.g., Sutter Health Uninsured Pricing Cases*, (2009) 171 Cal. App. 4th 495, 512 (2009)(applying a 2.52 multiplier on a lodestar cross-check); *Chavez*, 162 Cal. App. 4th at 66 (applying a 2.5 multiplier in a consumer class action); *Willner v. Manpower Inc.,* (N.D. Cal. June 2015) 2015 WL 3863625, at *7 (approving a 2.10 multiplier); *Dyer v. Wells Fargo Bank, N.A.*, (N.D. Cal. 2014) 303 F.R.D. 326, 334 (approving attorneys' fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.,* (N.D. Cal. 2013) 2013 WL 496358, at *5 (approving a multiplier of 2.76).

Each Class Representative requests a $5,000.00 incentive payment to compensate them for their services as Class Representatives. These requests are expected as courts routinely approve such payments to compensate plaintiffs for services provided and risks incurred as a result of brining class actions and those they are also exposed to during litigation. As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.'" *Cellphone Termination*, (2010) 186 Cal.App.4th 1380, 1394. Importantly, such payments "are fairly typical in class action cases." *Id*.

After initiating their respective cases, each Class Representative actively participated in the litigation. For instance, each Class Representative spent time participating in interviews, meetings and telephone consultations with Class Counsel. *See* Declaration of Sheila Linderman in Support of Motion for Attorneys' Fees, Costs, and Incentive Award ("Linderman Decl.") at ¶2; *see* Declaration of Charles Mayrsohn in Support of Motion for Attorneys' Fees, Costs, and Incentive Award ("Mayrsohn Decl.") at ¶2. Each Class Representative also spent time gathering information in support of their respective claims, responding to inquiries from Class counsel, assisting with discovery, and continuing to monitor the progress of this case. *See* Linderman Decl. at ¶2; *see* Mayrsohn Decl. at ¶2.

Each Class Representative also risked a potential judgment entered against them if this case had been unsuccessful. *See* Linderman Decl. at ¶¶4-5; *see* Mayrsohn Decl. at ¶¶4-5. In class action losses, the class representatives are deemed the losing party and are thus liable for the prevailing party's costs. *Earley v. Superior Court*, (2000) 79 Cal.App.4th 1420, 1433-34. Few are willing to undertake that risk, particularly given the substantial judgments entered against class representatives. *In re Tobacco Cases II*, (2015) 240 Cal.App.4th 779, 805-07 (upholding a defendant's cost award against the class representative in her personal capacity in the amount of $764,552.73); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95398 (named plaintiff assessed costs of $56,788). In fact, the *Whiteway* court summed up the substantial risks associated with agreeing to act as a class representative:

> '[T]he class representatives' dilemma – they must balance the risk of liability against their potential recovery . . . . While imposition of the entire cost burden on the named plaintiffs may have a chilling effect on the willingness of plaintiffs to bring class action suits, this effect easily may be outweighed by the potential recovery. All potential litigants must weigh costs of suit against likelihood of success and possible recovery before deciding to file suit. Those who choose to take the risks of litigation should be the ones to bear the costs when they are unsuccessful [citation omitted].

Whiteway, 2007 U.S. Dist. LEXIS 95398 at *6. The risk of having to cover the costs of the City, alone, is sufficient to support payments of $5,000.00 to each Class Representative.

In agreeing to pursue this case on behalf of the Class, each Plaintiff gave up the ability to seek much quicker resolutions of their claims. The Class Representatives could have brought an individual action that in all likelihood would have resulted in settlement, or a judgment that would not have taken near the duration of this case. Likewise, as part of the Amended Settlement, each Class Representative signed general release of all claims against the City. *See* Amended Settlement at ¶89. No other Class Member was required to give up their other rights to participate in the Amended Settlement. These personal sacrifices should be rewarded, and the requested incentive award of $5,000 for each Class Representative should be granted.

VII. CONCLUSION

The requested attorneys' fees and costs award were earned by competent, qualified Class Counsel. The amount sought is fair and reasonable in light of the risks involved and benefits achieved. Likewise, the incentive awards are warranted in light of the risks and burdens borne by them through this litigation. As such, Class Counsel and the Class Representatives respectfully request the Court grant this Motion.

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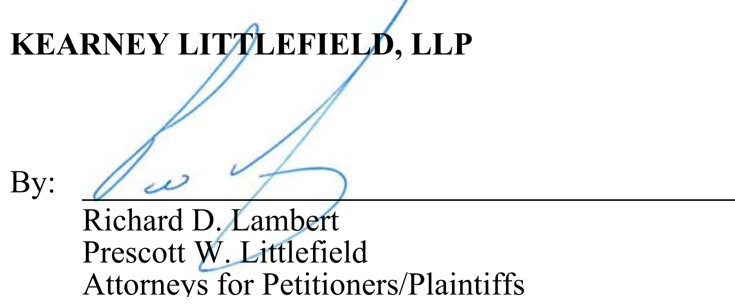
DATED: December 5, 2019

Respectfully submitted,

STONEBARGER LAW, APC

KEARNEY LITTLEFIELD, LLP



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