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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

GEOFFREY FRANK, et al.,

Plaintiffs,

v.

CITY OF PASADENA,

Defendant.

CASE NO. BC666535

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS ARISING OUT OF CLASS ACTION SETTLEMENT WITH CITY OF PASADENA; MEMORANDUM OF LAW IN SUPPORT THEREOF

[Declaration of Michael Bruce Abelson filed concurrently herewith]

Matter to be Heard

Date: November 19, 2021
Time: 11:00 a.m.
Place: Department 10

Case Filed: June 26, 2017
Assigned to: William F. Highberger (Dept. 10)

TO THIS HONORABLE COURT, TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 19, 2021 at 11:00 a.m. in Department 10 of the above-captioned Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Geoffrey Frank, Devin Swanson, and Babak Zahabizadeh, on behalf of themselves and all others similarly situated (collectively, "Plaintiffs") will and hereby do jointly move this Court for an award of attorneys' fees, costs, and incentive awards for Plaintiffs in recognition of their service as class representatives.

Specifically, Plaintiffs request this Court enter orders:

1. Awarding attorneys' fees to Class Counsel, Halpern May Ybarra Gelberg LLP ("HMYG"), of no less than $750,000, as compensation for their prosecution of this action;
2. Awarding costs to Class Counsel, HMYG, in an amount of no less than $ 26,481, as recompense for sums advanced in support of their prosecution of this action;
3. Awarding incentive awards to Plaintiffs' Class Representatives, Geoffrey Frank, Devin Swanson and Babak Zahabizadeh of no less than $2,500 apiece (total $7,500) for their service on behalf of the Class; and
4. Requiring Defendant Pasadena to pay Plaintiffs' Counsel HMYG all sums awarded here as Attorneys' Fees, Costs and Incentive Awards (for conveyance to Class Representatives) within 30 days of entry of this Court's Order finally approving the parties' settlement.

Plaintiffs requested relief is based on this Notice of Motion and Motion, the Revised Settlement Agreement, the accompanying Memorandum of Law and Declaration of Michael Bruce Abelson in support thereof (inclusive of the Declarations of Class Representatives), the pleadings and other papers on file in the case, and upon such other oral and documentary evidence as may be presented at the hearing of this Motion.

Respectfully Submitted,

Dated: October 25, 2021

HAPERN MAY YBARRA GELBERG LLP

By: /s/ Michael Bruce Abelson
Michael Bruce Abelson
Vincent H. Herron
Marc D. Halpern
Attorneys for Plaintiffs
GEOFFREY FRANK, DEVIN SWANSON and BABAK ZAHABIZADEH, and ALL OTHERS SIMILARLY-SITUATED

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I.
INTRODUCTION

After nearly five years of (often contentious) litigation with the City of Pasadena, peace has prevailed. By way of reforms detailed in the Revised Settlement Agreement, those who park in Pasadena have reclaimed their streets. Class Representatives' willingness to stand-up to the City – together with the skill, tenacity and hard work of their counsel – has resulted in a comprehensive overhaul of Pasadena's Pay & Display parking system and a tempering of the City's aggressive enforcement system. Due directly to Plaintiffs' efforts, Pasadena's parking system is poised to become fairer, more transparent, and more responsive to the constituency it serves. Moreover, reforms arising out of this class litigation have both simplified and streamlined citizens' ability to secure relief when the City's parking systems fail to adjust to changing times.

Achieving this victory took patience, skill and perseverance. As discussed below, Pasadena stubbornly resisted Plaintiffs' efforts at reform. Worse, it did so knowing, full well, that the City's Pay & Display parking regime was illegal. Indeed, internal City communications prove that, by 2017, the City was aware its parking code was deficient, and that the City had been illegally collecting fees and fines for many years. In fact, the City was so concerned that it hurried to amend its parking code to fix such deficiencies. But when Plaintiffs presented their claim on this exact issue, the City rejected it. Due directly to the City's posturing – and deadlines imposed by the Tort Claims Act – Plaintiffs *had* to timely sue to prevent the City from evading responsibility for its wrongs. So, Plaintiffs sued.

What followed was a long and involved path that, finally, has ended in settlement. Enroute to resolution, Plaintiffs grappled with a demurrer, written discovery, oral depositions, a protective order, two (extensive) summary judgment hearings and two separate mediations. Throughout it all, Pasadena proved to be an aggressive and engaged opponent. As the record reflects, Pasadena never rolled over and Plaintiffs' gains were hard won.

So be it. The case is now over and – despite Pasadena's denial of liability – the parking reforms Plaintiffs secured via settlement reflect a clear "win" for the people. Improper tickets are to be voided and, among the many fixes to be implemented, Pay & Display meters are to be synchronized with officers' enforcement tools; grace periods are to be doubled; and paid parking time is made explicitly transferable throughout the City. Additionally, the City has agreed in the settlement to extend the protections of successful ticket reversals to all impacted parkers – not just to individual contestants who prevail on their challenges.

To be sure, none of this came easy or free. During the four and a half years of this litigation, Plaintiffs have incurred more than $800,000 in attorney time alone. At the second mediation, Plaintiffs agreed to limit their fee award to $750,000, and the City has previously agreed that sum is reasonable. The City has also agreed that it would be reasonable to award the Class Representatives $2,500 each for their efforts on behalf of the class and the public at large. Finally, the City has affirmatively agreed to reimburse Plaintiffs $26,481 in statutorily-recoverable costs.

As discussed below, Plaintiffs seek these exact sums. Their attorneys' fees request for $750,000 is supported by a straight-forward lodestar calculation. The time incurred is well-documented in Counsels' contemporaneous time records (submitted for inspection); moreover, the hourly rate charged and applied by Counsel ($795-800/hour) is well-recognized as "reasonable" in the Los Angeles legal marketplace for attorneys of Counsels' experience, skill and training. In seeking the requested sums, a modest (1.5x) multiplier is also sought, but solely as a backstop to unanticipated offsets/adjustments resulting in a lodestar below $750,000.[1] For their part, the Class Representatives have also done their part to secure the settlement benefits obtained here. Investing substantial time and energy to support the Class and to consult with Counsel the (three) $2,500 Incentive Awards requested here are reasonable and well-justified.

[1] To be absolutely clear, Plaintiffs stand by their commitment to cap their fee recovery here at $750,000, irrespective of whether that sum results from an unadorned lodestar analysis or a reduced lodestar base that is subsequently enhanced by a multiplier.

II.
DISCUSSION

A. Background to Plaintiffs' Attorneys' Fee Request

The history of this litigation is well-known to this Court and is documented in the parties' prior pleadings, incorporated here by reference. Notwithstanding this history, the following overview is offered to help the Court better understand both the legal complexities of this action and – as a prelude to settlement – the efforts required to counteract the City's aggressive defense.

1. Case History, Counsel's Efforts and Attendant Results

Plaintiffs' underlying action asserts that – for decades – Pasadena improperly collected parking fees and fines in connection with an invalid "Pay & Display" parking system.[2] See generally, Abelson Decl., ¶ 2 & Ex. A (Plaintiffs' Complaint). Specifically, Plaintiffs assert the City's "Pay & Display" kiosks did not to comport with the Pasadena's own definition of a "parking meter" which, as codified, authorized only the use of devices that (a) *timed* individualized parking transactions and, (b) *displayed* a sign, signal or flag to evidence the expiration of paid time. See Pasadena Municipal Code ("PMC") § 10.08.075. Because the City's Pay & Display kiosks failed to satisfy either legislative criterion, its parking code violated California law *requiring* cities' implementation of valid parking legislation *before* charging parking fees and/or collecting fines. See Cal. Veh. Code § 22508; see also Abelson Decl., ¶ 2 & Ex. A at ¶¶ 19-25.

In addition to the City's defective parking code, Pasadena's enforcement of its Pay & Display system was also seen as downright abusive. See id., ¶ 2 & Ex. A at ¶¶ 12, 26-28. As alleged, Pasadena's enforcement officers would "lie in wait" to issue citations, and often "jumped the gun" to write parking tickets, effectively shaving time from unexpired parking permits. Thus, issued citations were not only illegal, but also unfair. See id. As Plaintiffs

[2] Pursuant to the City's Pay & Display system, drivers are required to purchase from a kiosk a time-stamped paper permit, reflecting a future time when paid parking expires. These permits are displayed on drivers' dashboards for examination by parking enforcement officers who issue $45+ tickets when permitted time is exceeded. During the Class Period, Pasadena collected millions of dollars in parking fees and fines.

asserted, the City's (unauthorized) Pay & Display system helped facilitate such wrongful practices.[3]

To address the City's legislative failings and improper enforcement tactics, Plaintiffs requested Pasadena suspend its Pay & Display system and refund all sums wrongfully collected. On January 18, 2017, Plaintiffs formally made claim on the City ("Plaintiffs' Claim"). See id., ¶ 4 & Ex. C (Initial Demand Letter); id., ¶ 5 & Ex. D (Amended Demand Letter). Although no response was immediately received, Pasadena's "legislative wheels" began to turn.

Less than a week after Plaintiffs' Claim was presented to the City, Pasadena's City Council instructed its City's Attorney to quickly draft amendments to its parking code, aimed at legitimizing the City's "new parking technology," including its Pay & Display meters – i.e., the precise problem Plaintiffs had identified. After language was formulated to fix the City's defalcation, Pasadena's City Attorney then urged the Council to "promptly" take-up the matter, inasmuch as Pay & Display technology "was already in operation in the City." See id., ¶ 6 & Ex. E (Feb. 6, 2017 – City of Pasadena Ordinance Fact Sheet). The timing of all this is important, because it demonstrates the City *knew* that Plaintiffs' Claim was valid when it was presented to the City for relief. Despite this, Pasadena blithely rejected Plaintiffs' Claim – a *fact* the City now concedes in the Revised Settlement Agreement (see id., ¶ 7 & Ex. F (Revised Settlement Agreement at Recital B) ("The City rejected Plaintiffs Claim but, soon thereafter, amended parking provisions of its municipal code *to address Plaintiffs' Claim* and to make its provisions conform to the realities of the Pay & Display system the City had been using for more than a

[3] Discovery proved out this theory. John Hamblen (the City's parking manager) testified in deposition that clocks used in Pay & Display kiosks were not synchronized to City-issued smart phones used by enforcement officers to determine permit expiration. In other words, because the Pay & Display kiosk timed nothing, and officers' smartphones tied back to an unrelated City clock, decisions regarding the expiration of paid parking time were being made by wholly unrelated timers. See Abelson Decl., ¶ 3 & Ex. B (Hamblen Depo.) Tr. at 9:11-23 (witness identification); 10:16-25 (witness employment as City Parking Manager); 31:17-33:20 (Pay & Display kiosks print permits reflecting end of paid parking time); 34:13-25:12 (enforcement of Pay & Display system – cellphone with official time not tied to kiosk printing permit – no synchronicity); 35:24-26:12 (cellphone tied to City clock, not kiosk printing permit); 41:16-42:15 (kiosk just prints permits).

decade.") (italics supplied)). By rejecting Plaintiffs' Claim, Pasadena (falsely) asserted no wrong had existed, and no relief was warranted.

To get the City's attention (and to satisfy deadlines imposed by California's Tort Claims Act), Plaintiffs were required to file this lawsuit in July 2017, seeking class action status for their claims. To delay would allow the City to escape responsibility for its gamesmanship.

In response, the City doubled down on its denial. Rather than simply admit that it recognized problems with its Pay & Display regime – and expedited legislation to redress regulatory aspects of Plaintiffs' Claim – Pasadena demurred to Plaintiffs' entire action. See generally, Abelson Decl., ¶ 8 & Ex. G (Pasadena's Demurrer to Plaintiffs' Complaint). Ultimately, the City's gambit failed; Plaintiffs' refund claims survived demurrer. Despite this, Pasadena made no attempt to resolve this matter efficiently, or economically. Instead, the City pressed onward, and sought permission to file a summary judgment motion.

Here, again, timing becomes important. For when Plaintiffs sought discovery as part of the summary judgment process, the City grudgingly participated. Objections and disputes were commonplace. Pasadena even filed a motion for a protective order to avoid inquiry into the City's abusive, enforcement practices. See generally, Abelson Decl., ¶ 9 & Ex. H (Pasadena's Protective Order Motion). That overture was denied, in part, because aspects of Plaintiffs' discovery proved to be reasonable. Nevertheless, the City evaded large swaths of inquiry by arguing strenuously (and successfully) that no discovery should be allowed outside of the summary judgment issue it had framed, i.e., the legality of Pasadena's Pay & Display kiosks as authorized "parking meters" . See id., Ex. H -9, 12-14 (Protective Order Motion); id., at ¶ 10 & Ex. I (Hearing Transcript) at Tr. 4:16-6:23; id., at ¶ 11 & Ex. J (Notice of Ruling).

Months later, this Court would issue a tentative ruling making clear that that the City's motion for summary judgment would fail.[4] However, rather than finally concede that Plaintiffs' claims had merit, the City tried to withdraw its motion. In so doing, Pasadena wholly ignored the fact that the City had previously prevented Plaintiffs' discovery based on the summary

[4] See Abelson Decl., ¶ 12 & Ex. K (Mar. 11, 2020 - Tentative Ruling).

judgment process it had agreed to pursue. See generally, id., at ¶ 13 & Ex. L (Pasadena's Opposition to Plaintiffs' Objection). Worse, the City's attempted withdrawal sought to reinstate Fireside Bank protections Pasadena had waived. See id., ¶ 13, Ex. L at 2, 10-11. The purpose? To enable the City to attack class certification *before* it lost on the merits. Unsurprisingly, Plaintiffs objected to the City's tactics. Subsequent briefing explored the propriety of Pasadena's attempted withdrawal in the face of an adverse tentative ruling. Yet before Plaintiffs' objection could be resolved, the parties agreed to mediation and, ultimately, settled their dispute. [5]

To be clear, the purpose of this recap is not to open old wounds or chastise the City for its sharp practices. Rather, its purpose is to demonstrate to the Court that the fees Plaintiffs incurred prosecuting this "parking action" were the direct result of Pasadena's repeated refusal to deal, straight-up, with Plaintiffs' claims – claims that the City *knew* were righteous, and which the City had moved to correct back in 2017.

Yet despite such obstacles, Plaintiffs endured. By and through the parties' settlement, Plaintiffs have achieved true systemic reform of Pasadena's parking and enforcement systems. Per the Revised Settlement Agreement, Pay & Display Meters are to be synchronized with tools/smartphones carried by enforcement officers, and any citations issued by unsynchronized meters are to be automatically voided. See Abelson Decl., ¶ 7 & Ex. F at ¶ 2.3. Additionally, Plaintiffs' efforts have resulted in the following (substantial) class benefits:[6]

- **Grace Periods.** Doubling from 5 to 10 minutes Pay & Display kiosks' "Grace Period" (the additional time following expiration of a customers' paid parking time, during which no citation shall issue), as well as verification of time expiration plus Grace Periods at the specific kiosk issuing time-stamped permits. See id. at ¶ 2.2;

[5] Critically, if the City had successfully withdrawn its motion, Pasadena would have (improperly) delayed Plaintiffs' prosecution of this action by months, prevented Plaintiffs' legitimate discovery into the City's enforcement practices, and wasted the time/resources of Plaintiffs and this Court in a summary judgment process that was never finalized.

[6] Although parts of the parties' Revised Settlement Agreement are subject to a "Best Efforts" provision (see Abelson Decl., ¶ 7 & Ex. F (Revised Settlement Agreement) at ¶ 3.3), the systemic reforms listed there are *not* so limited. Rather, the City is obligated to implement the agreed reforms in compliance with their specific provisions.

- **Unused Parking Meter Time**. Transfer and use of unexpired Pay & Display permits anywhere in the City of Pasadena, including use at electronic/gray-poled parking meters. Paper permits and free-standing kiosks shall each carry signage advising purchasers of time portability. See id. at ¶ 2.4;

- **Mobile Software Application**. Operation, at cost, of consumer-friendly mobile parking payment software and systems that enable patrons to manage parking time by, among other things, remotely adding payments to extend time via their phones rather than requiring returning to their vehicles. See id. at ¶ 2.5;

- **Dismissal of Unpaid Citations**. Dismissal of 4,202 unpaid Pay & Display parking citations issued during the Class Period, represented to be valued at $218,203.30, inclusive of late fees. See id. at ¶ 2.7; see also Abelson Decl., ¶ 14 & Ex. M at 9 (Pasadena Response to Plaintiffs' Special Interrogatories – Set 2 – Response to Special Interrogatory #13);

- **Citation/Review Training of City Officials**. Yearly training of City parking staff and parking administrative hearing officers on the citation appeal process set forth in Cal. Veh. Code § 40215. See id. at ¶ 2.1;

- **Enforcement Officers Training**. Ongoing advisement and annual training of City enforcement officers on policies and procedures set forth in the parties' Revised Settlement Agreement re: changes to the operation and enforcement of Pasadena's parking program. See id. at ¶ 2.7;

- **Extension of Citation Reversal Precedent to Non-Parties.** Ongoing affirmative obligations by City staff to investigate the bases for individual ticket reversals (resulting from hearing officers' decisions and courts judgments) and to unilaterally implement – on behalf of *all* similarly-situated consumers – systemic corrections *without* the need for further, individualized challenges on the same basis. See id. at ¶ 2.1.

This latter reform – extending reversal precedent to non-parties – is particularly important to the settlement and its valuation, inasmuch as it negates an important protection governmental entities enjoy to avoid the precedential effect of successful parking challenges, due to their status as "limited civil proceedings." See e.g., Cal. Civ. Proc. Code § 85(c)(21) (parking appeals deemed limited civil proceedings); id., § 99 (no collateral estoppel effect of limited civil proceedings beyond immediate parties). Per the Revised Settlement Agreement, Pasadena has agreed to deny itself such cover and, instead, it has bound itself to affirmatively investigate all citation reversals to determine whether systemic changes are appropriate and, if so, to implement corrections for the benefit *all* parkers, not just for prevailing contestants. Counsel is unaware of

any California city that has agreed to limit its rights in such a dramatic fashion. See Abelson Decl., ¶ 15.

To be sure, achieving such results required substantial time, care and attention. As reflected in Counsels' contemporaneous billing records (see id., at ¶ 16 & Ex. N (AHH billing records); id. at ¶ 17 & Ex. O (HMYG billing records)), this action was prosecuted, not as a run-of-the-mill parking ticket case, but as a civil rights matter. See Abelson Decl., ¶ 19(a); cf. City of Lafayette v. County of Contra Costa, 91 Cal. App. 3d 749, 753 (1979) ("The streets of a city belong to the people of the state, and the use thereof is an *inalienable right* of every citizen") (emphasis supplied); see also Abelson Decl., ¶ 7 & Ex. F at 1 (Revised Settlement Agreement, Recital F – settlement seeks to "redress alleged problems with the City's enforcement of its Pay & Display parking system.").

Moreover, those same billing records demonstrate that – throughout the course of this litigation – Counsel has been called upon not only *as attorneys*, but also *as public historians* (for purposes of researching the legislative nature, extent, and operation of Pasadena's parking system dating back to its beginning in 1993); *as engineers* (for purposes of exploring the dynamics, mechanics, and functionality of the City's Pay & Display kiosks); and *as experts in the field of parking policy* (for purposes of crafting reforms for the systemic overhaul of a City parking system serving Pasadena's population of approximately 140,000 people). See Abelson Decl., ¶ 19(b). Over the course of this action, Counsel has studied thousands of pages of documents produced by Pasadena; sent (and reviewed) several rounds of written discovery (RFPs, Special Interrogatories, RFAs); deposed city officials; fended-off a protective order motion; (twice) prepared and (once) argued for summary judgment; and worked to prevent Defendants' withdrawal from that very same MSJ process after this Court issued its adverse tentative ruling See id. at ¶ 19(c). Additionally, Counsel has attended all hearings, participated in two comprehensive mediations, and drafted all substantive pleadings – including *joint* pleadings and related stipulations – necessary for the preliminary and final approval of the Revised Settlement Agreement. See id., at ¶ 19(d). As part of the approval process, Counsel has

also incurred time for ensuring proper implementation of this Court's notice procedures, as well as time for two collateral proceedings following Preliminary Approval. [7] See id. at ¶ 19(f).

2. The Parties' Agreement Regarding Fees, Costs and Incentive Awards

During the course of this litigation, the parties engaged in two different mediations. The first (unsuccessful) engagement took place in March 2019 before Judge Enrique Romero. The second (successful) mediation was conducted on August 30, 2020 over "Zoom" with Judge Peter D. Lichtman (Ret.), formerly a member of this Court's Complex Civil Litigation Program and previous head of the LASC's Settlement Program. See id., ¶ 20. There, the parties reached a settlement in principle. In lieu of refunds, Pasadena agreed to a wide range of systemic reforms, designed to make the City's parking system simpler, fairer, and more transparent. See id.

After that resolution was achieved, Judge Lichtman assisted the parties to reach a separate agreement regarding attorneys' fees, costs, and incentive awards. See id., ¶ 21. Following back-and-forth negotiations (with Judge Lichtman tempering the parties' views), it was agreed that Pasadena would not object to Plaintiffs' request of "no more than $750,000" in attorneys' fees for their work in this action. See id. ¶ 21(a). As to recompense for the Class Representatives, Pasadena also agreed not to object to Incentive Awards of no more than $2,500 apiece for each Class Representative – a total of $7,500. See id. at ¶ 21(b). It was agreed Plaintiffs would make application to the Court for such sums. Separately, the City also agreed to pay (without the necessity of Plaintiffs' application) Plaintiffs' share of mediation costs for two prior sessions, plus all verifiable statutory costs occurred in connection with this action. See id.

[7] Notwithstanding the parties' August 2020 agreement to settle, documenting the specifics of Pasadena's parking reforms took several months of intensive and protracted negotiations. See Abelson Decl., ¶ 19(e). Indeed, the parties sought several extensions of the Court's OSC deadline re: settlement before a written agreement was reached. In March 2021, the parties filed a joint motion seeking approval of their settlement. An initial hearing resulted in further changes to the parties' agreement based on the Court's guidance. On July 6, 2021, this Court granted Preliminary Approval of the parties' Revised Settlement Agreement. Additional time (and hearings) were then required to implement the Court's Notice procedures. See id. at ¶ 19(f). To take stock here: By the time final approval is attained, the settlement process will have encompassed nearly 15 full months.

at ¶ 21(c). Those costs, as now agreed, total $26,481. See id. & Ex. CC (email confirmation of parties' cost agreement).

B. This Court Should Approve Requested Attorneys' Fees of $750,000.

1. Pasadena Has Agreed an Award of $750,000 is Fair and Reasonable

As the United States Supreme Court has recognized, parties to a class action may negotiate not only the settlement of an underlying action, but also the payment of attorneys' fees. See Evans v. Jeff D., 475 U.S. 717, 734, 734-35, 738 n.30 (1986). In fact, the Court has been quite emphatic in its support for such arrangements, holding that negotiated, agreed-upon attorneys' fee provisions are the ideal toward which parties should strive. See Hensley v. Eckerhart, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle on the amount of a fee."). To that end, the Court stressed that trial courts have "a responsibility to encourage agreement" on such fees. See Blum v. Stevenson, 465 U.S. 886, 902 n.19 (1984).

Here, the City of Pasadena has agreed not to oppose Plaintiffs' request for (up to) $750,000 in attorneys' fees for work incurred in connection with the instant action. See Revised Settlement Agreement at ¶ 3.6. Yet more to the point, the City has also affirmatively *agreed* that any such request by Plaintiffs would be (and is) both fair and reasonable recompense for Counsels' professional efforts in this case. See *Joint* Motion for Preliminary Approval at pp. 12-14. In reaching this fee arrangement (and in the City's making of its subsequent affirmations supporting Plaintiffs' fee request), Pasadena both represented itself and was further represented by skilled, outside counsel in the guise of the Kutak Rock firm. Indeed, such counsel have litigated on the defense side for many years, and are well-aware of the fees paid in similar type actions. That being so, this Court (although not bound by the City's agreement and "reasonableness" endorsement) should take Pasadena's public proclamation into account when determining that Plaintiffs' fee request of $750,000 is fair, reasonable, and the product of a good faith, arms-length negotiation.

2. The Requested Fee is Reasonable Under the Lodestar Method.

Pasadena's endorsement aside, Plaintiffs' $750,000 fees request is well-justified under an unadorned, lodestar analysis. Pursuant to that formulation, the base fee to be recovered (or "lodestar") is computed by multiplying the number of hours reasonably incurred in the litigation by each attorney's reasonable hourly rates. See Serrano v. Priest, 20 Cal. 3d 25, 48-49 (1977).

To prosecute this action and achieve settlement, Counsel has expended more than 1,000 attorney hours (excluding paralegal, administrative and other time) spread over four and a half years. To be exact, the hourly total here is actually 1,045 hours; the lodestar value of that time is $832,871, based on hourly rates of $795-800/hour.[8] See Abelson Decl., ¶ 18. Accordingly, Plaintiffs' requested fee of $750,00 is actually *less* than what a straight-forward lodestar analysis would yield for all compensable time. Despite this, Counsel notes, "a deal is a deal" and it does not seek additional fees exceeding the parties' rate cap of $750,000. See id. That negotiation and implementation of the final settlement took longer (and cost more) than Counsel anticipated is secondary to the fact that it was done right. Moreover, as discussed below, the time and rate for all such work undertaken by Counsel was reasonable and should be approved.

a) Counsels' Hourly Rates are Reasonable

Pursuant to the lodestar method, reasonable hourly rates are determined by "prevailing market rates in the relevant community," which is to say, the rates lawyers of comparable skill, experience and reputation command in the relevant community. See Blum v. Stenson, 465 U.S. 886, 895, 895 n.11 (1984). In the normal course, reasonable hourly rates are based on each attorney's current hourly rates which, in the case of a contingency matter (as here), factors in the time value of money. See Vizcaino, 290 F.3d at 1051 (calculating fees at current hourly rates "compensate[s] for the delay in receipt of payment"); In Re Wash. Pub. Power Supply Sys. Sec. Litig., ("WPPS"), 19 F.3d 1291, 1305 (9th Cir. 1994) ("The district court has discretion to compensate delay in payment in one of two ways: (1) by applying the attorneys' current rates to all hours billed during the litigation; or (2) by using the attorneys' historical rates and adding a

[8] See Abelson Decl., ¶ 16 & Ex. N (AHH Total Hours – 625.80 @$795/hour) + id., ¶ 17 & Ex. O (HMYG Total Hours – 419.2 @ $800/hour).

prime rate enhancement.") The relevant community is where the trial court sits, in this case, Southern California, See Schwarz v. Sec'y of Health & Hum. Servs., 73 F.3d 895, 906 (9th Cir. 1995). Stated otherwise, Counsel's current rates are to be deemed reasonable if they are in line with the prevailing rates for other attorneys practicing in Los Angeles, California.

To justify/support the reasonableness of an attorneys' rate, that attorneys' actual billing rate for similar work is presumptively appropriate. See People Who Care v. Rockford Bd. of Educ., 90 F.3d 1307, 1310 (7th Cir. 1996). Declarations by counsel are sufficient to evidence their reasonable hourly rates. See e.g., Wershba, 91 Cal. App. 4th at 254-55. Mathis v. Spears, 857 F.2d 749, 755-56 (Fed. Cir 1988). Counsel's request satisfies these criteria.

As set forth in the accompanying Abelson Declaration and attached billing records, Class Counsel calculated its lodestar using a billing rate of $795/hour for the first two and a half years of this action's pendency. See Abelson Decl., ¶ 16 & Ex. N. Effective January 1, 2020, that hourly rate increased by $5/hour to $800/hour. See id., ¶ 17 & Ex. O.

Moreover, Counsels' $795/800 rate is well in line with rates prevailing in Southern California for similar services of lawyers of comparable skill and reputation. While the Court likely knows this based on its own experience adjudicating fee requests, further proof/support can be derived from the recently-filed (June 28, 2021) declaration of Richard M. Pearl, in support of the fee application in Pillow, et al. v. Pepperdine Univ., Los Angeles Superior Court Case No. 19STCV33162 (Hogue, J., presiding). See generally, Abelson Decl., ¶ 22 & Ex. P. There, Mr. Pearl – an avowed expert in California attorneys' fees and fee awards – overviews prevailing Southern California rates for attorneys similar to Messrs. Abelson and Herron, i.e., former Latham & Watkins partners, who have practiced 34 and 27, years, respectively, in the area of complex litigation. See Abelson Decl., ¶ 23-26 & Ex. Q (Abelson Bio); id., ¶ 23 & Ex. R (Herron Bio).

On this latter point, there should be no misunderstanding: This is a complex case. Notwithstanding the seemingly mundane field of parking enforcement, merely accessing the Court here necessitated Counsels' mastery of several rarely-travelled procedural paths, implicating the intricacies of the parking litigation process (See Cal. Veh. Code § 40200, et seq.);

the complexities of the California Government Tort Claims procedures (Cal. Govt. Code § 900, et seq.); and, ultimately, the strictures and requirements of California class action claim prosecution. Class action status became particularly important here, because the City took the position in its initial demurrer that California's Vehicle Code failed to provide a private right of action for Plaintiffs' claims and, even if it did, any causes of action had to be exclusively adjudicated within Cal. Veh. Code §40200's administrative framework which, Pasadena said, Plaintiffs had failed to pursue and/or exhaust. See Abelson Decl., ¶ 8 & Ex. G (Pasadena's Demurrer) at 6-7 (no right of action under Cal. Veh. Code §22508(a)); at 8-11 (failure to exhaust administrative and judicial remedies of Cal Veh. Code § 40200). This strategy ultimately failed, as the Court upheld the vitality of Plaintiffs' refund claims against the City's challenge.

Counsels' $795/800/hourly rate is also well-supported in orders from other complex cases from the Los Angeles Superior Court. For example:

- Lavinsky v. City of Los Angeles, Los Angeles Superior Court Case No. BC542245, was a class action challenge to LA City's natural gas tax. The Court there found rates of $850/hour and $800/hour were reasonable for attorneys with 25 and 29 of experience, respectively. See Abelson Decl., ¶ 28 & Ex. T at 10-11. (Thereafter, the Court applied a 3.84 lodestar multiplier);
- In Moinuddin, et al. v. Cal. Dep't of Transp., Los Angeles Superior Court Case No. BC656161 (Aug. 13, 2019), a FEHA case, the court approved an $850/hourly rate for a 1994 law school graduate. See id., ¶ 29 & Ex. U at 4;
- In Hadsell v. City of Baldwin Park, Los Angeles Superior Court Case No. BC548602, the (June 25, 2019) the court's fee order approved a $1,100 hourly rate to be reasonable for attorneys with 1987 and 1990 graduation dates (and then applied a 1.5 multiplier). See id., ¶ 30 & Ex. V at 2;
- In Pinter-Brown v. UCLA, Los Angeles Superior Court Case No. BC624838, another FEHA action, the fee order (Aug. 3, 2018), held that a $1,100 rate was reasonable for a 1990 Cal Bar admittee. See id., ¶ 31 & Ex. W at 18, 20;

To further assist the Court in its undertaking, reference is made to Exhibit B of Mr. Pearl's Declaration in the Pepperdine matter. See id., ¶ 22 & Ex. P (Pearl Decl.), Ex. B at 1-24. There, Mr. Pearl sets forth the hourly rates of numerous Los Angeles area law firms, derived from (what he attests are) court filings, depositions, surveys, and other reliable sources. Comparatively speaking, the $795/800 hourly rates Counsel seeks here are well in line with those numbers. They are also well-aligned with the Wolter Kluwer rate survey (see id., Ex. P (Pearl Decl.), Ex. C) which demonstrates that Third Quarter 2018 rates charged by "litigation" attorneys in Los Angeles were $908/hour for partners and, for attorneys with 21 years or more of experience (like Plaintiffs' Counsel) the 2018 rate was $960/hour. Notably, Mr. Pearl also states "most Los Angeles Area firms have raised rates by at least 15-25%" since the Wolter Kluwer 2018 rate survey.[9] See Abelson Decl., ¶ id., & Ex. P (Pearl Decl.) at ¶ 18.

b) The Total Number of Hours Billed is Reasonable

Plaintiffs' counsel spent more than 1,000 attorney hours prosecuting this action.[10] As set forth above, this serious effort was needed not only because the case was complex, but also because Pasadena chose the most aggressive litigation strategy at every step in the process. A cursory review of this action's docket shows this to be true. Nevertheless, if the Court wants to review the time spent on any particular task, Counsel has submitted its detailed billing records, to demonstrate both the nature and extent of work completed. Such time records, of course, are not necessary to support fee awards in class action matters. See Concepcion v. Amscan Holdings, Inc., 223 Cal. App. 4th 1309, 1324 (2014) ("Declarations of counsel setting forth the reasonable hourly rate, the number of hours worked and the tasks performed are sufficient."); see also Wershba, 91 Cal. App. 4th 255 ("California case law permits fee awards in the absence of

[9] Exhibit D to Mr. Pearl's Declaration also attaches a 2018 Peer Monitoring Public Rate Survey that supports the view that the $800/hourly rate of Plaintiffs' Counsel is well-within the range of other skilled attorneys practicing in the Los Angeles area firms. See Abelson Decl., ¶ 22 & Ex. P (Pearl Decl.) at ¶17, Ex. D (California Rate (June-December 2018)).

[10] Plaintiffs also incurred paralegal and other compensable time. But since Plaintiffs hourly fees are already above the $750,000 cap agreed by the parties, only the time of Messrs. Abelson and Herron is presented here for evaluation.

detailed time sheets"). But Counsel takes this additional step in case the Court has any questions at all.

To be sure, Plaintiffs' time records show all 1,000+ hours were legitimately incurred, and were consistent with the prosecution of a complex action, litigated against a tenacious adversary, over four and half years. And because Pasadena never "rolled over" or capitulated, Counsel was required to be on its (professional) "toes," to diligently litigate this case, and to continuously take meaningful action to bring this matter to a successful resolution. This included fending-off Pasadena's attack upon the original pleadings, undertaking written discovery and depositions, opposing summary judgment, and holding the City to account when it sought to unilaterally escape this Court's adverse tentative ruling. Throughout it all, Counsel has worn numerous "hats" including lawyer, historian, engineer, and experts in the area of parking enforcement and legislation.

Finally, Counsels' time records demonstrate that all recoverable legal work here was done by Messrs. Abelson and Herro. This, against no less than five different attorneys from both Kutak Rock and the City of Pasadena. Plaintiffs' lean staffing not only promoted case efficiency, but also avoided the need to educate (and re-educate) new attorneys with each new issue and event. Responsibility here was always clearly-defined, and case messaging remained consistent because all critical tasks were consolidated under two primary authorities.

As matters stand, Counsel expects to spend an addition 10+ hours of work/time to prepare for the Final Approval Hearing and to undertake other tasks incidental to approval of the final settlement. See Abelson Decl., ¶ 19(g). As such, the total number of hours worked will actually be greater than the historical hours reflected in the billing records submitted for the Court's review. As is self-obvious, Counsel is committed to seeing this done.

3. A "Protective" Multiplier of 1.5x is Sought (And Would Be Appropriate) Only If There is a Reduction in Time and/or Rates Submitted

Class action fee awards, of course, often include a "multiplier" on lodestar amounts to enhance Plaintiffs' recovery, to recognize the risks taken, and the results achieved.[11] Here,

[11] See Serrano 20 Cal. 3d at 49; see also Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1051-54 (9th Cir. 2002) (approving multiplier of 3.65 and citing survey of class action settlements from

however, Counsel has previously advised the Court that no multiplier would be sought. See Abelson Decl., ¶ 32 & Ex. X (Hearing Transcript) at Tr. 10:1-11. Such a position was based on the belief that Plaintiffs' unadorned lodestar amount is reasonable, and because Plaintiffs agreed to limit its fee request to $750,000. See id., ¶ 33. Thus, if this Court accepts Counsel's lodestar (which will be more than $800,000), no multiplier is sought. The Court can stop reading right now. *If, however*, the Court makes any downward adjustments to Plaintiffs' billing rate or time submitted, then Counsel requests that the Court apply a multiplier (up to 1.5x) so that the final fee award will, nonetheless, total $750,000.

Such a multiplier would be well-justified here, given both the contingent basis of this action, and the results obtained for the public. See Abelson Decl., ¶ 34. As California's Supreme Court has noted, "[u]nder our precedents, the unadorned lodestar reflects the general local hourly rate for a *fee-bearing case;* it does *not* include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider under *Serrano III*." See Ketchum, 24 Cal. 4th at 1138 (emphasis in original). Some of the (non-exclusive) factors courts consider when applying a multiplier include: (1) the results obtained by the settlement; (2) benefits to the public; (3) the contingent nature of the work; (4) the novelty and difficulty of questions involved; and (5) the skill of Plaintiffs' Counsel in obtaining that result.[12] See e.g., Serrano, 20 Cal. 3d at 49.

Each of these factors weigh in favor of a "protective" multiplier.

1996-2001, overviewing multipliers ranging from 1.0 to 8.5); Wershba v. Apple Comput., Inc., 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher"). This enhancement takes place because "the unadorned lodestar reflects the general local hourly rate for a *fee-bearing case*; it does *not* include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider." Ketchum v. Moses, 24 Cal. 4th 1122, 1138 (2001) (italics in original).

[12] Such non-duplicative factors are not "carved . . .into concrete," and the trial court may consider other relevant factors when making awards. See Lealao v. Beneficial Cal., Inc., 82 Cal. App. 4th 19, 40 (2000). Indeed, the trial court "ha[s] wide latitude in assessing the value of the attorneys' services." Id. at 41 (*citing* Flannery v. Cal. Highway Patrol, 61 Cal. App. 4th 629, 639 (1998).

a) The Results Obtained and Benefits Conferred on the Public

Courts recognize that the result achieved is the most important factor to be considered in making a fee award. See Hensley, 461 U.S. at 436 ("[t]he most critical factor is the degree of success obtained."). Here, Plaintiffs' settlement resulted in a comprehensive, structural overhaul of a parking system that the City had long resisted. As a direct result of Plaintiffs' suit, Pasadena will now redress its (many) abusive parking practices by synchronizing its Pay & Display meters, by making parking time transferrable across the City, by doubling grace periods and, most dramatically, by extending the results of systemic citation reversal to all users. To borrow a baseball metaphor, Plaintiffs result here is a "home run." The outcome obtained will not only benefit the Class Members, but also the public in general. And the changes to be implemented by Pasadena will be present each and every time a car is parked within the City's Pay & Display parking zones. For many years to come.

Settlement achieves all this now, without the risk of continued litigation. The result is an exceptional one, and (more than) justifies a multiplier, if necessary. See Chavez v. Netflix, Inc., 162 Cal. App. 4th 43, 61 (2008) (for multiplier purposes, "success" takes various forms, including changes in company policy, the absolute size of the class of persons eligible for the benefit, and the of interest to the class members are other factors that may be considered in awarding a multiplier); see Lealao, 82 Cal. App. 4th at 40-41 (multiplier proper where settlement benefits "significant number of persons beyond the class.").

b) The Novelty and Difficulty of the Questions Involved

This Court need only revisit Pasadena's demurrer to remind itself this case was both novel (parking meters!) *and* difficult. The seemingly simple world of parking meters and ticket enforcement gave rise to a multitude of technical and procedural issues bearing on a fundamental right in California – citizens' unfettered access to their streets. See City of Lafayette v. County of Contra Costa, 91 Cal. App. 3d 749, 753 (1979). Sticky procedural issues were also ever-present, as Plaintiffs' ability to prosecute their action necessitated navigation of Torts Claims procedures, mastering nuances of ticket litigation/jurisdiction, and satisfying requirements necessary to obtain and maintain class action status. That Counsel successfully worked their

way through this legal thicket and emerged successful, bespeaks the level of talent, care and proficiency needed to support any multiplier.

c) The Contingent Nature of the Risk

That Plaintiffs' case was risky is beyond debate. Proof positive of this conclusion derives from the fact that two different jurists reached completely opposite outcomes regarding this action's central question – the legality of Pasadena's Pay & Display kiosks. Judge Buckley (tentatively) found they were proper; Judge Highberger held otherwise. Given such conflicting results, either party here could have dug-in and waited for the Court of Appeals to break this impasse. Instead, Counsel used its time and skills to negotiate extensive structural and other settlement benefits in the face of a most uncertain future.

Yet risk did not end there. Even if Judge Highberger's (tentative) ruling became final, Pasadena signaled that it would seek to challenge the propriety of Plaintiffs' standing and, by extension, the bases of class certification. This followed from Pasadena's assertion that Plaintiffs' "Test Case" was premised on an improper, voluntary payment. See Abelson Decl., at ¶ 8 & Ex. G at 14-15 (Pasadena Demurrer). Although Plaintiffs stood ready to repulse this attack, likewise, they recognized that no result is ever guaranteed, and that risk is endemic in all litigation.[13]

Given all this, California's Supreme Court rightly recognized that "[t]he adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or the delay in payment of attorney fees." Ketchum, 24 Cal. 4th at 1138.

[13] As the Court is doubtlessly aware, many class actions do not result in compensation for plaintiff's counsel because of the denial of class certification, the granting of summary judgment for defendants, verdicts for defendants at trial or even reversals on appeal after plaintiffs succeed at trial. The risks inherent in this case – and the possibility that that Counsel would not be paid – were ever-present and very real.

Stated otherwise, a litigation's risk is a significant factor courts weigh in enhancing a lodestar. See Vizcaino, 290 F.3d at 1048-49, 1051. The Ninth Circuit has even found that is an abuse of discretion to deny a "risk multiplier" in cases of uncertain or risky litigation. See WPPS, 19 F.3d at 1302. (trial court abused discretion by failing to apply risk multiplier where case was "fraught with risk and recovery was far from certain"). This is not surprising. For absent consideration of an action's risks and uncertainties, the incentive for prosecuting such suits would be lacking, and a major weapon for reforming public policies would be blunted, if not entirely eliminated. In this regard, a risk multiplier to the base lodestar appropriately rewards attorneys for accepting the of potential of non-payment by paying them a premium over their normal hourly rates for successful contingency cases. Indeed, it functions as a legitimate means of assuring competent representation for plaintiffs who could not otherwise afford to pay an attorneys' hourly rate, regardless of outcome.

Here, Counsel undertook to prosecute this litigation on a contingent basis, with no guarantee that their fees would ever be recovered. See Abelson Decl. ¶ 34. If Pasadena were entirely successful, Counsel would receive no compensation for its efforts. See id. Despite this, Counsel pressed forward. In undertaking this responsibility, Counsel was obligated to assure that sufficient attorney resources were dedicated to the prosecution of this litigation (including its foregoing other paying work), and that funds were available to compensate staff and pay out-of-pocket expenses – all for many years. See id. Such factors justify a modest multiplier, if needed, to ensure that Counsel's recovery here is no less than the $750,000 sum requested.

d) Skill of Class Counsel

The skill, diligence and tenacity displayed by Counsel was largely responsible for the outstanding result reached here. To be sure, Pasadena was represented by talented outside attorneys plus additional, skilled counsel from the City of Pasadena, well-versed in the intricacies of municipal law and funded with extensive governmental resources. In opposition stood a team of two – Messrs. Abelson and Herron. Despite these odds, Counsel was able to negotiate a significant settlement here, and displayed true creativity by crafting a resolution that both restructures Pasadena's parking system *and* benefits the public for years to come. Such

quality, efficiency, and dedication should be both recognized and rewarded with a 1.5x multiplier (again, only, if necessary, to ensure that the final attorney fee award does not fall below the $750,000 "cap" Pasadena endorsed as reasonable).

e) Conclusion

Although Counsel believes – consistent with their tendered billing records – that their rate and time are both reasonable, it recognizes that, for whatever reason, the Court may choose to adjust the sums submitted. Were that to occur, request is made that the foregoing factors be reviewed and the Court – rather than reconsider its adjustments – apply an appropriate multiplier (up to 1.5x) to the adjusted lodestar, such that the final result meets (but does not exceed) the parties' $750,000 fee cap. For the reasons noted above, such a "protective" multiplier would be both justified and proper,

4. There is no Objection to Counsels' Request Fee Award

As set forth in both the Publication Notice and the Full Class Notice, the nature and extend of Counsel's fee request has been made known to the Class and others. Despite this, no objections have been filed as to any aspect of the settlement, including Counsels' ability to seek (as it does here) up to $750,00 in attorneys' fees. See Abelson Decl., ¶ 38 & Ex. BB (Fait Decl.). Given the absence of objection, it may be presumed that the sum sought ($750,000) is acceptable to the Class and the public for services rendered on their behalf.

5. The Court Should Approve Requested Expenses

By way of settlement, Pasadena has affirmatively agreed to pay Plaintiffs' statutorily incurred fees, as well as Plaintiffs' share of mediation costs for sessions with Judges Romero (Ret.) and Lichtman (Ret.). See Abelson Decl., ¶ 7 & Ex. F at ¶ 3.7. (Revised Settlement Agreement). By way of separate discission, and upon provision of documentary and other proof, the City and Counsel have agreed that the correct sum for cost recovery is $26,481. See id., ¶ 21(c) & Ex. CC (emails confirming cost recovery amount) . Counsel has agreed to accept this amount. See id. Expenses comprising Plaintiffs' recoverable costs include, among other things, transcription charges, filing fees, delivery charges for court runs, CaseAnywhere costs and filing charges, and amounts paid for ADR services. See id. Although the Revised Settlement

Agreement provides that no court order is required for the City's payment of this sum (see id. at ¶ 7 & Ex. F ¶ 3.7 (Attorneys Costs)), this Court's "endorsement" and order is invited, consistent with the principle that Counsel should recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." See Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994).

6. Class Representatives' Requested Incentive Awards Are Reasonable and Proper

Service awards for class representatives "are fairly typical in class action cases, are intended to compensate class representatives for work done on behalf of the class . . . and, sometimes, to recognize their willingness to act as a private attorney general." See Cellphone Termination Fee Cases, 186 Cal. App. 4th 1380, 1393-94 (2010) (*citing* Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 958-59 (9th Cir. 2009). Factors a court considers when deciding to approve incentive awards include: "1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representatives; 3) the amount of time and effort spent by the class representatives; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." See Cellphone Termination Fee Cases, 186 Cal. App. 4th at 1394-95 (internal citations and quotation marks omitted).

As set forth in their respective declarations, all three Class Representatives devoted significant time and effort to the successful prosecution of this case which, as noted, has been pending for nearly five years. Indeed, Plaintiffs' efforts here date back all the way to January 2017, when they sought to engage the City to voluntarily change its practices. See Abelson Decl., ¶ 2 & Ex. A (Plaintiffs' Complaint) at Ex. A (Initial Claim to City); Ex. D (Amended Claim to City).

From the very start, Class Representative saw this action as a matter of principle and a reaction to the City's abusive parking enforcement practices, "hardened by Pasadena's legislative gamesmanship following its receipt of Plaintiffs' [claim] notice." See Abelson Decl., ¶ 2 & Ex. A at ¶¶ 11-12. In addition to ensuring they satisfied all conditions necessary to comply with Cal.

Govt. Code § 900, et seq (Claims Against Public Entities), Plaintiffs Representatives protected their status as qualified class representatives, they each provided information necessary to the underlying complaint, and they reviewed substantive motions, including papers filed in connection with summary judgment proceedings, the (original) settlement agreement, the Revised Settlement Agreement; and motions for preliminary and final approval of the Revised Settlement. Likewise, they have reviewed (and approved) a draft of this Attorneys' Fee request. Over the course of many years' time, all three representatives have consulted with Counsel on their obligations as class representatives, and they have actively participated in both telephone discussions and in-person meetings touching upon topics such as factual background/details/information, case status, litigation strategies, and settlement. See Abelson Decl., ¶ 35 & Ex. Y (Frank Decl. at ¶ 5); id., ¶ 36 & Ex. Z (Swanson Decl.) at ¶ 6; id. at ¶ 37 & Ex. AA (Zahabizadeh Decl.) at ¶ 6.

Indeed, the Class Representatives here each agreed to undertake such tasks without any promise of recompense, for the benefit the Class in specific, and the public, in general. Other than the incentive awards sought here, the Class Representatives will receive exactly the same benefits accorded the Class by way of the Revised Settlement. Nothing more. And while the Representatives have not secured any additional "upside," they most assuredly have exposed themselves to potential downside risks. To be sure, each has risked a potential judgment if this case had been unsuccessful. In class action losses, class representatives are deemed the losing party, liable for the prevailing party's costs. See Earley v. Superior Court, 79 Cal. App. 4th 1420, 1433-34 (2000). Few individuals are willing to undertake such a risk, particularly since courts have entered judgments against class representatives. See In Re Tobacco Cases II, 240 Cal. App. 4th 779, 805-07 (2015) (upholding cost award in favor of defendant against class representative in her personal capacity in the amount of $764,552.73).

Despite such perils, the Class Representatives did not blink. They stepped to the mark. Undaunted, they undertook their representative responsibilities willingly, irrespective of the fact that serving as plaintiffs could negatively impact their dealings with the City of Pasadena, bring

them unwanted, negative attention, or impair their credit. See id., ¶¶ 35-37 & Exs. Y (Frank Decl.) at ¶ 6; Ex. Z (Swanson Decl.) at ¶ 7 & Ex. AA (Zahabizadeh Decl.) at ¶ 7.

The modest incentive awards sought here – $2,500 for each Class Representative – are consistent with awards regularly approved in class action settlements, and are appropriate given the Representatives' vital role in this proceeding. To be sure, courts routinely grant service awards in similar amounts or higher. See e.g., Cellphone Termination Fee Cases, 86 Cal. App. 4th at 1393, 1395 (finding no abuse of discretion in $10,000 award to each of four class representatives); Morey v. Louis Vuitton North America, Inc., 2014 WL 109194 (S.D. Cal. Jan. 9, 2014) ($5,000 incentive award in Beverly Song settlement); Williams v. Costco Wholesale Corp., 2010 WL 2721452 at *7 (S.D. Cal. July 7, 2010) ($5,000 incentive award in antitrust case settled for $440,000); Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, 186 Cal. App. 4th 399, 412 (2010) (holding $5,000 award fair, reasonable, and appropriate); Garner v. State Farm Mut. Auto. Ins. Co., No. CV 08 1365 CW (EMC), 2010 WL 1687832 at *17, n.8 (N.D. Cal, April 22, 2010) ("Numerous Courts in the Ninth Circuit and elsewhere have approved incentive awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class").

Given their perseverance and self-sacrifice, $2,500 requested service awards for each Class Representatives here – Messrs. Frank awards, Swanson and Zahabizadeh – should be deemed reasonable, proper and approved.

III.
CONCLUSION

For all the foregoing reasons, Plaintiffs and their counsel respectfully request this Court enter orders: approving an attorneys' fee award of $750,000; approving incentive awards to each Plaintiffs of $2,500, and confirming the City's agreed commitment to pay $26,481 in costs.

Further, request is made, consistent with the Revised Settlement Agreement ¶¶ 3.5-3.7, that Pasadena be ordered to pay all approved sums within 30 days of entry of the Court's Final Approval Order.

Dated: October 25, 2021

HALPERN MAY YBARRA GELBERG LLP

By: */s/ Michael Bruce Abelson*
Michael Bruce Abelson
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GEOFFREY FRANK, DEVIN SWANSON and BABAK ZAHABIZADEH, and ALL OTHERS SIMILARILY-SITUATED

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Geoffrey Frank, and all others similarly-situated, et al. v. City of Pasadena

LASC Case No. BC666535

I am over the age of 18 and not a party to the within action; I am employed by Halpern May Ybarra Gelberg LLP in the County of Los Angeles at 550 South Hope Street, Suite 2330, Los Angeles, California 90071.

On October 25, 2021, I served the document below described as:

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS ARISING OUT OF CLASS ACTION SETTLEMENT WITH CITY OF PASADENA; MEMORANDUM OF LAW IN SUPPORT THEREOF

The document was served by the following means:

× **BY ELECTRONIC TRANSMISSION** Per the stipulated agreement between counsel, delineated in the Joint Initial Status Conference Class Action Response Statement of September 15, 2017 for electronic service via repository *Case Anywhere*, I transmitted the document described above to *Case Anywhere* for electronic service on the parties in listed below.

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

Executed on October 25, 2021 at Glendale, California.

Soonja Bin