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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

Case Assigned for All Purposes to:  
Judge Hon. William Highberger (Dept. 10)

Case Filed: June 26, 2017

Trial Date: None Set

**CLASS ACTION**

**JOINT NOTICE OF MOTION AND  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT;  
MEMORANDUM OF LAW IN SUPPORT  
THEREOF**

*[Declaration of Michael Bruce Abelson;  
[Proposed] Order; and [Proposed] Judgment  
filed concurrently herewith]*

**Matter to be Heard**

Date: November 19, 2021

Time: 11:00 a.m.

Place: Department 10



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

3 **PLEASE TAKE NOTICE** that on November 19, 2021 at 11:00 a.m. in Department 10  
4 of the above-captioned Court, located at 312 North Spring Street, Los Angeles, California  
5 90012, Plaintiffs Geoffrey Frank, Devin Swanson, and Babak Zahabizadeh, on behalf of  
6 themselves and all others similarly situated (collectively, “Plaintiffs”) *and* Defendant City of  
7 Pasadena (“Defendant,” “City.” or “Pasadena”), will and hereby do *jointly* move this Court for  
8 final approval of the parties’ class action settlement (“Joint Motion”). Specifically, the parties  
9 request the Court enter Orders: (1) Granting Final Approval; (2) Making Final Certification of  
10 the Settlement Class; (3) Appointing Plaintiffs as Class Representatives, who were previously  
11 appointed in the Court’s Order Granting Preliminary Approval (“the PA Order”);  
12 (4) Appointing as Class Counsel, Plaintiffs’ Counsel who were previously approved in the PA  
13 Order; and (5) Entering Judgment including, among other things, an award of attorneys’ fees,  
14 costs and incentive awards, consistent with Plaintiffs’ separately filed Motion for Class Action  
15 Attorneys’ Fees, Costs and Incentive Awards (“Plaintiffs’ Award Motion”).

16 This Joint Motion is made pursuant to California Code of Civil Procedure § 382 and  
17 California Rule of Court 3.760, *et seq.*, and is based on this Joint Notice of Motion and Motion,  
18 the accompanying Memorandum of Law, Plaintiffs’ Award Motion, the Declarations of  
19 Michael Bruce Abelson (“Abelson Decl.”), filed concurrently with this Joint Motion and

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1 Plaintiffs' Award Motion, the pleadings and other papers on file in the case, and upon such  
2 other oral and documentary evidence as may be presented at the hearing of this Joint Moti

3 Respectfully submitted,

4 Dated: October 25, 2021

**HALPERN MAY YBARRA GELBERG LLP**

6 By: /s/ Michael Bruce Abelson

7 Michael Bruce Abelson

Vincent H. Herron

8 Attorneys for Plaintiffs

GEOFFREY FRANK, DEVIN SWANSON and

9 BABAK ZAHABIZADEH, and ALL OTHERS

10 SIMILARLY-SITUATED

11 Dated: October 25, 2021

**KUTAK ROCK LLP**

14 By: /s/ Edwin J. Richards

15 Edwin J. Richards

Antoinette P. Hewitt

16 Michael Beal Bagneris, City Attorney

Javan N. Rad, Chief Assistant City Attorney

17 Attorneys for Defendant

18 CITY OF PASADENA

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1 MEMORANDUM OF LAW

2 I.  
3 INTRODUCTION

4 After nearly five years of litigation, two separate mediations, and months of painstaking  
5 negotiations, Plaintiffs Geoffrey Frank, Devin Swanson, and Babak Zahabizadeh (“Plaintiffs”),  
6 on behalf of themselves and others similarly situated, and Defendant City of Pasadena (“City or  
7 “Pasadena”) respectfully seek final approval of the parties’ Revised Settlement Agreement.<sup>1</sup> If  
8 finally approved, the Revised Settlement Agreement will resolve all claims asserted in the  
9 lawsuit against Defendant Pasadena and provide substantial relief to thousands of individuals  
10 who park in the City. The terms of the Revised Settlement Agreement – consisting of systemic  
11 reforms – is well within the range of reasonableness and consistent with applicable case law  
12 supporting approval. See generally, Abelson Decl., ¶ 2 & Ex. A (Revised Settlement  
13 Agreement). Indeed, given the significant risks the parties faced in the event of continued  
14 litigation (highlighted by the fact of two separate jurists reaching opposite conclusions in  
15 response to the parties’ summary judgment motion), the Revised Settlement Agreement  
16 presented here reflects an outstanding result for the Settlement Class. Specifically, it provides  
17 for the synchronization of City Pay & Display kiosks with enforcement officers’ timing tools, the  
18 voiding of citations issued pursuant to unsynchronized kiosks (see id., at ¶ 2.3  
19 (Synchronization)) and other wide-ranging benefits, including:

- 20 • **Grace Periods.** Doubling from 5 to 10 minutes Pay & Display kiosks’ “Grace  
21 Period” (the additional time following expiration of a customers’ paid parking  
22 time, during which no citation shall issue), as well as verification of time  
23 expiration plus Grace Periods at the specific kiosk issuing time-stamped  
24 permits. See id., at ¶ 2.2;
- 25 • **Unused Parking Meter Time.** Transfer and use of unexpired Pay & Display  
26 permits anywhere in the City of Pasadena, including use at electronic/gray-  
27 poled parking meters. Paper permits and free-standing kiosks shall each carry  
28 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

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<sup>1</sup> Unless otherwise specifically defined herein, all capitalized terms have the same meaning(s) as those set forth in the parties’ Revised Settlement Agreement.

1 parking time by, among other things, remotely adding payments to extend time  
2 via their phones rather than requiring returning to their vehicles. See id., at  
3 ¶ 2.5

- 4 • **Dismissal of Unpaid Citations.** Dismissal of 4,202 unpaid Pay & Display  
5 parking citations issued during the Class Period, represented to be valued at  
6 \$218,302.30, inclusive of late fees. See id. at ¶ 2.7; see also Abelson Decl., ¶ 3  
7 & Ex. B at 9 (Pasadena Response to Plaintiffs’ Special Interrogatories – Set 2  
8 – Response to Special Interrogatory #13);
- 9 • **Extension of Citation Reversal Precedent to Non-Parties.** Ongoing  
10 affirmative obligations by City staff to investigate the bases for individual  
11 ticket reversals (resulting from hearing officers’ decisions and courts  
12 judgments) and to unilaterally implement – on behalf of *all* similarly-situated  
13 consumers – systemic corrections *without* the need for further, individualized  
14 challenges on the same basis. See Abelson Decl., ¶ 2 & Ex. A at ¶ 2.1;
- 15 • **Citation/Review Training of City Officials.** Yearly training of City parking  
16 staff and parking administrative hearing officers on the citation appeal process  
17 set forth in Cal. Veh. Code § 40215. See id. at ¶ 2.1
- 18 • **Enforcement Officers Training.** Ongoing advisement and annual training of  
19 City enforcement officers on policies and procedures set forth in the parties’  
20 Revised Settlement Agreement re: changes to the operation and enforcement  
21 of Pasadena’s parking program. See id. at ¶ 2.7.

22 Given all this, the parties’ *jointly* request the Court enter orders: (1) Granting Final  
23 Approval; (2) Making Final Certification of the Settlement Class; (3) Appointing Plaintiffs as  
24 Class Representatives, who were previously appointed in the Court’s Order Granting Preliminary  
25 Approval (“the PA Order”); (4) Appointing as Class Counsel, Plaintiffs’ Counsel who were  
26 previously approved in the PA Order; and (5) Entering Judgment including, among other things,  
27 an award of attorneys’ fees, costs and incentive awards, consistent with Plaintiffs’ separately  
28 filed Motion for Class Action Attorneys’ Fees and Incentive Awards (“Plaintiffs Award  
Motion”).

## 29 II.

### 30 **THE UNDERLYING ACTION AND ITS PROPOSED RESOLUTION**

#### 31 A. Case Background and Procedural History

32 Plaintiffs filed their class action complaint on July 7, 2018. There, they alleged that – for  
33 decades – Pasadena had improperly collected parking fees and fines in connection with an



1 invalid “Pay & Display” parking system.<sup>2</sup> See generally, Abelson Decl., ¶ 4 & Ex. C (Plaintiffs’  
2 Complaint). Specifically, Plaintiffs asserted that the City’s “Pay & Display” meters failed to  
3 comport with the City’s own, 1993 definition of a “parking meter” which, as codified, authorized  
4 only the use of a device which (a) *timed* individualized parking transactions and, (b) *displayed* a  
5 sign, signal or flag to evidence the expiration of paid time. See Pasadena Municipal Code  
6 (“PMC”) § 10.08.075; see id., Ex. C at ¶ 22. As Plaintiffs contended, the City’s Pay & Display  
7 kiosks did not satisfy either of these dispositive legislative criteria, and thus violated California  
8 law *requiring* cities’ implementation of valid parking legislation *before* lawfully charging  
9 parking fees and/or collecting fines. See Cal. Veh. Code § 22508; see also Abelson Decl., ¶ 4 &  
10 Ex. C at ¶¶ 19-25.

11 Atop this asserted legislative violation, Plaintiffs also alleged that Pasadena’s entire  
12 parking system had run amok since the City’s introduction of its Pay & Display system – a  
13 situation that had also drawn scrutiny from various civic observers. See e.g., id., at ¶ 5 & Ex. D  
14 (J. Henry “Why You Better Pay Your Parking Tickets in Pasadena,” *Pasadena Star News*, Aug. 28,  
15 2017) (“Pasadena is notorious for its parking tickets. The City issued 195,000 tickets – more than  
16 one per resident – between April 2014 and April 2015. Most of the citations come from expired  
17 meters and cars parked overnight without a permit.”).

18 In compliance with California’s Government Code, Plaintiffs initially brought their  
19 concerns directly to the City for action (“Plaintiffs’ Claim”). See id., ¶ 6 & Ex. E. Prior to  
20 doing so, Messrs. Swanson and Zahabizadeh each paid Pay & Display parking fees for the right  
21 to park on Pasadena’s streets. See id., ¶ 4 & Ex. C (Complaint) at ¶¶ 15-16. For his part, Mr.  
22 Frank paid to park, but also incurred (and paid) a parking citation when (according to the City)  
23 he exceeded the stated time on his Pay & Display permit. See id., at ¶ 14. In January 2017,  
24 Plaintiffs formally requested the City suspend its Pay & Display system, and they demanded the

25 \_\_\_\_\_  
26 <sup>2</sup> Pursuant to the City’s Pay & Display system, drivers are required to purchase a time-stamped  
27 paper permit from a kiosk located in the proximity of the driver’s parked vehicle. Permits,  
28 reflecting a future time when paid parking expires, are displayed on drivers’ dashboards for  
examination by enforcement officers who, when permitted time is exceeded, write citations for  
overtime parking. During the class period, parking rates, sold in hourly increments, ranged from  
75 cents to one dollar. Overtime parking citations can incur fines exceeding \$45 per violation.

1 refund of all fees and fines wrongfully collected from parkers. The City rejected Plaintiffs’  
2 Claim but, later, amended “parking meter” (and other) related definitions in its municipal code to  
3 directly address Plaintiffs’ Claim. See id., at ¶ 2 & Ex. A at 1 (Revised Settlement Agreement –  
4 Recital B). Plaintiffs then sued.

5 By its terms, Plaintiffs’ complaint sought class action status for all individuals and  
6 entities who paid a parking fee and/or received a parking citation at a Pay & Display Meter  
7 during the putative class period January 18, 2016 to April 3, 2017. See id., at ¶ 4 & Ex. C at  
8 ¶ 12(a) (fees); ¶ 12(b) (fines). As to both classes, relief sought included refunds of improperly  
9 collected fees/fines and a judicial declaration that the City’s “parking meter” legislation did not  
10 authorize the use of Pay & Display kiosks, rendering the sums charged improper. See id. at ¶¶ 1-  
11 46, 52-56 (fees); ¶¶ 1-46, 62-66 (fines).

12 On January 16, 2018, the Court (Wiley, J.) sustained the City’s demurrer (without leave  
13 to amend) regarding Plaintiffs’ request for declaratory relief. According to the Court, the  
14 statute’s amendment by the City (following Plaintiffs’ Claim) rendered any declaration moot.  
15 The law had already changed. The case proceeded forward on Plaintiffs’ remaining, refund  
16 claims. See id., Abelson Decl., ¶ 7 & Ex. F (Demurrer Order). At the Court’s suggestion, the  
17 parties then stipulated to a summary judgment procedure designed to resolve this action’s central  
18 legal contention, to wit: *Whether the City’s Pay & Display kiosks satisfied the City’s 1993*  
19 *“parking meter” definition.* As a prelude to the motion’s hearing, Plaintiffs sought (and  
20 received) extensive discovery. See id., ¶ 8.

21 The resulting MSJ proceeding played-out over several months, and resulted in two  
22 hearings that reached diametrically opposite outcomes. On July 16, 2019, Judge Buckley (who  
23 succeeded Judge Wiley) issued a tentative ruling holding that the City’s kiosks did comport with  
24 Pasadena’s “parking meter” definition. See Abelson Decl., ¶ 9 & Ex. G (Buckley Tentative).  
25 Yet before that decision became final, Judge Buckley recused himself and vacated his tentative  
26 order. Thereafter, the motion was reassigned to this Court (Highberger, J.). On March 12, 2020,  
27 the parties’ motion was scheduled for re-hearing. Prior to formal argument, this Court issued its  
28 own tentative ruling, holding – contrary to Judge Buckley’s assessment – the City’s kiosks did

1 not comport with the City’s “parking meter” definition. See id., ¶ 10 & Ex. H (Highberger  
2 Tentative). Despite this ruling, the matter remained unresolved. Prior to the motion’s hearing,  
3 the City attempted to withdraw its pleading. Plaintiffs objected but, before the Court could  
4 resolve that objection, the parties agreed to mediate their dispute. See id., ¶ 11.

5 **B. The Parties’ Settlement**

6 **1. Settlement Negotiations and Preliminary Approval**

7 On August 30, 2020, the parties conducted a “Zoom” mediation with Judge Peter D.  
8 Lichtman (Ret.), formerly a member of this Court’s Complex Civil Litigation Program and  
9 previous head of the LASC’s Settlement Program. See id., ¶ 12. Following a full day of  
10 negotiation, the parties reached a settlement in principle, designed to resolve their dispute. Key  
11 to the parties’ resolution was the understanding that, in lieu of a class refund, Pasadena would:  
12 (1) synchronize Pay & Display kiosks with timing mechanisms used by its enforcement officers,  
13 revisit and recalibrate such synchronization on a monthly basis, and void citations issued by  
14 kiosks which had not been synchronized within the prior 30 days. See id.; see also Abelson  
15 Decl., ¶ 2 & Ex. A at ¶ 2.3 (Synchronization); *and* (2) Implement comprehensive parking  
16 reforms throughout the City of Pasadena aimed at achieving fairness, uniformity, and enhanced  
17 user experiences. See Abelson Decl., ¶ 2 & Ex. A at ¶¶ 2.2, 2.4-2.5.

18 Arriving at the specifics for this latter (systemic) goal was not easy. Over the course of  
19 several months’ time, the parties’ engaged in (often contentious) negotiations ultimately reaching  
20 agreement. See Abelson Decl., ¶ 12. Once terms were finalized among counsel, the proposed  
21 agreement was submitted to the City and to Plaintiffs, who each independently reviewed, edited,  
22 and commented upon the proposed accord. See id. On December 14, 2020, Pasadena’s City  
23 Council approved the proposed settlement. See id. A second (and final) approval was given by  
24 the City and Plaintiffs after this Court suggested additional, structural changes to the parties’  
25 agreement to convert it to a “no opt-out” settlement (the “Revised Settlement Agreement”). See  
26 id., ¶¶ 2(b), 12 & Ex. A at ¶ 3.10. That Revised Settlement Agreement was endorsed by this  
27 Court at a Preliminary Approval Hearing on July 6, 2021. See id., ¶ 14 & Ex. I (Notice of Entry  
28 of Preliminary Approval Order).

1           **2. Summary of Benefits to the Class Members**

2           As detailed more specifically in the parties' Revised Settlement Agreement, Plaintiffs  
3 have agreed to forego refunds from the City in consideration of Pasadena's monthly  
4 synchronization (and monitoring) of its Pay & Display meters, voiding tickets issued by  
5 unsynchronized kiosks (see id., ¶ 2 & Ex. A at ¶ 2.3 (Synchronization)) as well as the following  
6 systemic reforms to Pasadena's parking program:

- 7           • **Grace Periods.** Doubling from 5 to 10 minutes Pay & Display kiosks' "Grace  
8 Period" (the additional time following expiration of a customers' paid parking  
9 time, during which no citation shall issue), as well as verification of time  
10 expiration plus Grace Periods at the specific kiosk issuing time-stamped  
11 permits. See id., at ¶ 2.2;
- 12           • **Unused Parking Meter Time.** Transfer and use of unexpired Pay & Display  
13 permits anywhere in the City of Pasadena, including use at electronic/gray-  
14 poled parking meters. Paper permits and free-standing kiosks shall each carry  
15 signage advising purchasers of time portability. See id. at ¶ 2.4;
- 16           • **Mobile Software Application.** Operation, at cost, of consumer-friendly  
17 mobile parking payment software and systems that enable patrons to manage  
18 parking time by, among other things, remotely adding payments to extend time  
19 via their phones rather than requiring returning to their vehicles. See id. at  
20 ¶ 2.5
- 21           • **Dismissal of Unpaid Citations.** Dismissal of 4,202 unpaid Pay & Display  
22 parking citations issued during the Class Period, represented to be valued at  
23 \$218,302.30, inclusive of late fees. See id. at ¶ 2.7; see also Abelson Decl., ¶ 3  
24 & Ex. B at 9 (Pasadena Response to Plaintiffs' Special Interrogatories – Set 2  
25 – Response to Special Interrogatory #13);
- 26           • **Extension of Citation Reversal Precedent to Non-Parties.** Ongoing  
27 affirmative obligations by City staff to investigate the bases for individual  
28 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 Abelson Decl., ¶ 2 & Ex. A at ¶ 2.1;
- **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.

1 As the Revised Settlement Agreement is structured, Class Members are not required to file any  
2 type of claim form and – because the City is not required to reimburse any fees or fines paid –  
3 there is no reversionary interest/payment to be accounted for here. See Abelson Decl., ¶ 2(a).  
4 Moreover, given that the resolution here is a “no opt-out” settlement, putative Class Members  
5 may **not** exclude themselves from the Settlement Class and will be fully and finally bound by the  
6 terms of the Revised Settlement Agreement upon Final Approval. See id., ¶ 2(b).

7 **3. Release of Claims**

8 In exchange for the benefits described, Class Members will provide a release tailored to  
9 the specific allegations at issue in this action. Specifically, the release includes “all claims  
10 . . . arising from the facts alleged in the Lawsuit.” See id. at ¶ 2 & Ex. A (Revised Settlement  
11 Agreement) at ¶ 4.2. For their part, the Named Plaintiffs will provide a general release of all  
12 claims pursuant to Cal. Civ. Code § 1542. See id.

13 **4. Notices of Settlement**

14 Per the parties’ Revised Settlement Agreement — and as authorized by the Court’s PA  
15 Order – KCC was preliminarily approved as this action’s Settlement Administrator on July 6,  
16 2021. Taking account of various events subsequent to this Court’s PA Order, and as agreed in  
17 the parties’ September 15, 2021 Order and Joint Stipulation Modifying Class Notice Procedures,  
18 the City, working with KCC, gave Publication Notice. See Abelson Decl., ¶ 15 & Ex. J  
19 (Fait/KCC Decl.– Publication Notice). Pursuant to that same Order and Joint Stipulation, the  
20 City determined that it was unable to locate reliable information to make a mailing of Full Class  
21 Notice. See Abelson Decl., ¶ 16 & Ex. K at ¶ 6 (Hamblen / City Decl. – Full Class Notice).  
22 Nevertheless, Full Class Notice – in both English and Spanish – was posted to KCC’s settlement-  
23 related website ([www.frankclassactionsettlement.com](http://www.frankclassactionsettlement.com)) and on the City of Pasadena’s internal,  
24 parking services site ([www.cityofpasadena.net/transportation/parking-info/](http://www.cityofpasadena.net/transportation/parking-info/)), effective August 13,  
25 2021. See Abelson Decl., ¶ 17 & Ex. J at ¶ 3; Abelson Decl., ¶¶ 17-18 & Ex. L (KCC site), Ex.  
26 M (Transportation Department site). Subsequently, those same notices – in both English and  
27 Spanish – were posted to the City of Pasadena’s homepage ([www.cityofpasadena.net](http://www.cityofpasadena.net)), effective  
28 August 19, 2021. See Abelson Decl., ¶ 19 & Ex. N. Since their initial postings on the Internet,

1 each of the referenced Notices have remained “up” and available for public viewing through the  
2 time of this filing. See id., ¶ 15 & Ex. J at ¶ 3; see also Abelson Decl., ¶¶ 17-19.

3 In response to the notices given, the Settlement Administrator reports no objections to the  
4 parties’ proposed settlement. See Abelson Decl., ¶ 15 & Ex. J at ¶ 4.

5 **III.**  
6 **FINAL APPROVAL OF THE REVISED SETTLEMENT SHOULD BE GRANTED**

7 **A. Standards for Final Approval**

8 Public policy generally favors the compromise of complex class action litigation. See 7-  
9 Eleven Owners For Fair Franchising v. Southland Corp., 85 Cal. App. 4th 1135, 1151 (2000)  
10 (“voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is  
11 especially true in complex class action litigation.”) (*quoting* Officers for Justice v. Civil Serv.  
12 Comm’n, 688 F.2d 615, 625 (9th Cir. 1982)). Class action settlement approval occurs in two  
13 steps: *First*, an early (preliminary) review by the trial court; and, *second*, a subsequent (final)  
14 review after notice has been distributed to the Class Members for their comments and/or  
15 objections. See Cal. R. Ct. 3.769. As the record here reflects, this Court granted preliminary  
16 approval of the parties’ Revised Settlement Agreement on July 6, 2021 and, thereafter, notice  
17 was given as set forth in the parties’ various, sworn declarations. The parties now seek Final  
18 Approval.

19 As to Final Approval, “the trial court has broad powers to determine whether a proposed  
20 settlement in a class action is fair.” Mallick v. Superior Ct., 89 Cal. App. 3d 434, 438 (1979).  
21 While the burden is on the proponent of the settlement to demonstrate that it is fair and  
22 reasonable, “a presumption of fairness” is held to exist when: “(1) the settlement is reached  
23 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel  
24 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
25 percentage of objectors is small.” Wershba v. Apple Comput., Inc., 91 Cal. App. 4th 224, 245  
26 (2001) (*citing* Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1802 (1996)). See also Newberg  
27 on Class Actions § 11.26 (4th ed. 2002) (Newberg) (“[w]here the settlement terms are fair and  
28

1 reasonable, the settlement is presumptively valid, subject only to objections that may be raised at  
2 the final hearing.”).

3 **B. All Relevant Factors Favor Final Approval of the Revised Settlement**

4 ***1. A Presumption of Fairness Applies to the Revised Settlement***

5 As discussed in the parties’ Joint Motion for Preliminary Approval and here, again, the  
6 Revised Settlement is presumptively fair, inasmuch as it is the result of arm’s-length negotiation;  
7 investigation and discovery in the underlying action has been sufficient to permit counsel and the  
8 Court to act intelligently in evaluating the Revised Settlement; and Class Counsel are  
9 experienced in similar, complex litigation. Further elaboration follows:

10 *First*, the Settlement was reached via arm’s-length negotiations following two separate  
11 mediations. An (unsuccessful) mediation in March 2019 before Hon. Enrique Romero (Ret.),  
12 and a second (successful) mediation before Hon. Peter D. Lichtman (Ret.). See Abelson Decl., ¶  
13 13(a). Both mediators helped manage the parties’ expectations and provided useful, neutral  
14 analysis of the parties’ respective claims and defenses. See id.; see also In re Bluetooth Headset  
15 Prods. Liab. Litig., 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is factor  
16 weighing in favor of finding no collusion); In re Apple Comput., Inc. Derivative Litig. No. C 06-  
17 4128 JF (HRL), 2008 WL 4820784 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs  
18 considerably against any inference of a collusive settlement); D’Amato v. Deutsche Bank, 236  
19 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement in pre-certification settlement negotiations  
20 helps to ensure that the proceedings were free of collusion and undue pressure); Villegas v. J.P.  
21 Morgan Chase & Co., No. CV 09-00261 SBA (EMC), 2012 WL 5878390 \*6 (N.D. Cal. Nov. 21,  
22 2012) (participation in mediation “tends to support the conclusion that the settlement was not  
23 collusive); Ogbuehi v. Comcast of Cal./Colo./Fla./Or., Inc., 303 F.R.D. 337, 350 (E.D. Cal.  
24 2014) (participation in mediation ‘tends to support the conclusion that the settlement is not  
25 collusive).

26 At all times, the Parties were adversarial and non-collusive in their negotiations and  
27 approach to settlement. See Abelson Decl., ¶ 13(b). For, indeed, even after a settlement in  
28 principle was achieved at the parties’ second mediation, a lengthy series of discussions ensued

1 over the precise (systemic) terms to be implemented by the City of Pasadena. See id. As this  
2 Court is aware, this “unsettled state” caused the parties to seek several extensions of the Court’s  
3 OSC re: Settlement as they worked through specific parking reforms that, ultimately, resulted in  
4 the comprehensive agreement now presented to the Court. See id.

5 *Second*, Plaintiffs’ Counsel is well-informed regarding their case, its value, and the merits  
6 of settlement versus continued litigation. By and through the discovery process, the City  
7 produced more than 4,300 pages of documents reflecting, among other things, the legislative  
8 history of the City’ parking systems and attendant legislation dating back to 1993; technical  
9 manuals detailing the “innards and operation” of the City’s Pay & Display kiosks; and copies of  
10 administrative challenges, lawsuits, and communications questioning the legality of the City’s  
11 Pay & Display parking system. The City also responded to 20 Special Interrogatories; 13  
12 Requests for Admission; and produced for deposition two key City officials – Fred Dock  
13 (Director, Pasadena Department of Transportation) and Jon Hamblen (Pasadena’s Parking  
14 Manager). See id., ¶¶ 8(a)-(d). For his part, Mr. Hamblen was also deposed as the City’s PMK  
15 regarding a variety of parking-related issues, including its history, the operation of the  
16 Pasadena’s Pay & Display systems, and its enforcement. See id., ¶ 8(d). All this evidence was  
17 marshalled in support of a stipulated summary judgment process – that was twice presented for  
18 hearing – and which further clarified both the issues and law bearing on the parties’ substantive  
19 claims and defenses. Notably, the evidence and arguments supporting the parties’ stipulated  
20 summary judgment motion were evaluated at two different times, by two different jurists, who  
21 reached diametrically opposite conclusions regarding this action’s central/dispositive issue – the  
22 legality of Pasadena’s Pay & Display kiosks. That being so, it is hard to conceive of a situation  
23 (short of a formal appeal) where the substantive merits of an action have received broader  
24 scrutiny, or which more clearly validate the reasonableness of a structural-type settlement  
25 presented here. As this Court observed in its opening remarks at the Preliminary Approval  
26 Hearing on June 14th, “[s]o any case where two different judges look to the basic facts and have  
27 contrary conclusions as to legality is the kind of case that cries out for settlement. I’m glad the  
28 case has settled.” See id., ¶ 20 & Ex. O (Hearing Transcript) at 1:17-20.



1            *Third*, Plaintiffs’ Counsel is (more than) experienced in complex litigation, in general,  
2 and, in parking litigation, in particular. Messrs. Abelson and Herron were both litigation partners  
3 at Latham & Watkins LLP (Los Angeles) before forming their own law firm (Abelson | Herron  
4 LLP) in 2005 that, ultimately, filed this action. See id., ¶ 21(a) & Ex. P (Abelson Bio); id.,  
5 ¶ 21(b) & Ex. Q (Herron Bio). Today, both attorneys – following decades of complex, legal  
6 practice – hold the title of *Partner Emeritus* at Halpern May Ybarra Gelberg LLP. See id., ¶ 21.  
7 For his part, Mr. Abelson brought suit (in his individual capacity and separate from this class  
8 action litigation) in 2016 challenging the legality of Pasadena’s Pay & Display parking system  
9 and, there, successfully overturned his own parking ticket which contributed to the City revising  
10 its parking legislation. See id., ¶¶ 22-24 & Ex. B at 5 (Pasadena Response to Plaintiffs’ Special  
11 Interrogatories – Set 2 – Response to Special Interrogatory #5). Opposite Plaintiffs is Defense  
12 Counsel at Kutak Rock – a firm well-versed in the area municipal law, having successfully  
13 defended Pasadena and other municipalities in various class action litigations. Additionally,  
14 attorneys from the City of Pasadena itself – an entity that regularly defends itself against class  
15 related litigation – actively participated in the City’s defense here as attorneys of record. In  
16 reaching this settlement, counsel on both sides relied on their substantial litigation experience  
17 and conducted analyses of the legal and factual issues arising out of this case.

18            **2.        *Additional Cross-Checks Confirm the Revised Settlement is Fair, Adequate, and***  
19            ***Reasonable for Purposes of Final Approval***

20            Although an initial presumption of fairness exists here, the Court is not required to  
21 simply “rubber stamp” a settlement presented for final approval. See Kullar v. Foot Locker  
22 Retail, Inc., 168 Cal. App. 4th 116, 130 (2008). Rather, “to protect the interests of absent class  
23 members, the court must independently and objectively analyze the evidence and circumstances  
24 before it in order to determine whether the settlement is in the best interests of those whose  
25 claims will be extinguished.” See id. Factors relevant to the court’s determination include “the  
26 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,  
27 the risk of maintaining class action status through trial, the amount offered in settlement, the  
28 extent of discovery completed and stage of the proceedings, the experience and views of counsel,

1 the presence of a governmental participant, and the reaction of the class members to the proposed  
2 settlement.” Id. at 128 (*citing Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)).  
3 “Th[is] list of factors is not exclusive, and the court is free to engage in a balancing and weighing  
4 of factors depending on the circumstance of each case.” See id. That being so, all of the relevant  
5 information here points toward Final Approval.

6 **a) *The Nature and Extent of the Settlement Consideration is***  
7 ***Significant***

8 To be sure, the Revised Settlement, as proposed, achieves the central goal of this  
9 litigation – holding Pasadena to account for perceived problems in its Pay & Display parking  
10 system. Importantly, the Revised Settlement also recognizes that – according to Pasadena – the  
11 cost of its processing refunds would *far* exceed amounts returned to individual class members.  
12 See Abelson Decl., ¶ 2 & Ex. A at ¶ 3.1 (Revised Settlement Agreement - Testimony). See also  
13 Abelson Decl., ¶ 16 & Ex. K (Hamblen / City Decl.) at ¶¶ 2-5. As the City previously averred,  
14 and as was discussed extensively at the September 13, 2021 Status Conference, approximately  
15 1.5 million Pay & Display transactions took place during the Class Period, and the cost of  
16 refunding challenged fees (\$2,422,406.30) and fines (\$1,236,318.63) would be prohibitive,  
17 inasmuch as identification of class members for refund purposes would necessitate “reverse  
18 engineering” credit card records, cross-matching of DMV plate information, and use of other  
19 information protected by privacy and security protocols that are not within the City’s possession  
20 of control. See Abelson Decl., at ¶ 25 & Ex. R (Joint Initial Status Conference Class Action  
21 Response Statement) at ¶¶ 5, 9 (refund information to be obtained would be “subject to  
22 California Law enforcement Telecommunications System (“CLETS”) and the Criminal Justice  
23 Information Services (“CJIS”) policies, procedures and practices”); see also id., at ¶ 26 & Ex. S  
24 at 4 (City’s Response to Plaintiffs’ Special Interrogatories – Set One at – Special Interrogatory  
25 Responses #1 & #2 (fees and fines collected)). Despite the fact that refunds will not be issued as  
26 part of the Revised Settlement, the comprehensive, structural changes the City has committed to  
27 make will result in benefits *for years to come*. Whether considered individually or collectively,  
28 they are worth many multiples of any 75¢ parking fee (or even the \$48 citation penalty)

1 individual parkers incurred during the time the City operated its (unreformed) Pay & Display  
2 system.

3           Additionally, the Revised Settlement presented here reflects the strength of Plaintiffs’  
4 case on the merits, and the likelihood that Plaintiffs would have been able to certify a litigation  
5 class, maintain certification through trial, and prevail on its claims. Yet while Plaintiffs believe  
6 in the strength of their case, they also recognize that litigation is uncertain, as demonstrated by  
7 the fact that two different jurists – looking at *exactly* the same issues, evidence, and arguments in  
8 the parties’ stipulated MSJ – reached completely opposite conclusions regarding the legality of  
9 the City’s Pay & Display kiosks as “parking meters.” By contrast, compromise of claims in  
10 exchange for the Revised Settlement’s certain, substantial, and long-term benefits reflects a  
11 (more than) reasonable outcome here. Furthermore, the settlement achieved here is the best  
12 possible result that could be obtained given the fact that, financially, many municipalities are  
13 dealing with the fallout of a global pandemic. Stated otherwise, the relatively small sums that  
14 would be refunded to any individual class member – even without reduction for a “settlement  
15 discount” – are far exceeded by class members’ interest in assuring that, going forward, the  
16 City’s reformed Pay & Display parking system will be operated in a manner that is fair and  
17 transparent.

18           To be sure, none of this is meant to minimize the fact that the settlement here is  
19 substantial: Pay & Display meters will be calibrated monthly, and citations issued from non-  
20 compliant kiosks will be deemed void. See Abelson Decl., ¶ 2 & Ex. A (Revised Settlement  
21 Agreement) at ¶ 2.3. All unpaid Pay & Display tickets issued during the Class Period – several  
22 hundred thousand dollars’ worth – are being automatically voided. See id. at ¶ 2.6. Grace  
23 Periods (tantamount to additional free parking) will be doubled from 5 to 10 minutes before Pay  
24 & Display citations may be issued and, even then, enforcement officers are first required to  
25 confirm time expirations at issuing kiosks before writing a citation. See id. at ¶2.2. Unused Pay  
26 & Display parking time is to be freely transferable throughout the City of Pasadena (even at  
27 gray-poled meters), and consumers will be advised of this fact on both kiosks issuing permits and  
28 on permits themselves. See id. at ¶ 2.4. City and parking enforcement officials will be trained

1 regarding these new procedures (id. at ¶ 2.7), City staff will receive supplemental citation  
2 training on a yearly basis and, perhaps most dramatically, the City has agreed to affirmatively  
3 investigate citation reversals and voluntarily implement systemic changes impacting all impacted  
4 parkers. See id. at ¶ 2.1

5 To Plaintiffs, the importance of this last concession is paramount. As noted in the  
6 Preliminary Approval Motion, the City (any city, actually) is not collaterally estopped by  
7 decisions of its hearing officers and or the courts who routinely reverse parking citations based  
8 individual contestants' challenges. See e.g., Cal. Civ. Proc. Code § 85(c)(21) (parking appeals  
9 deemed limited civil proceedings); § 99 (no collateral estoppel effect of limited civil proceedings  
10 beyond immediate parties). However, per the Revised Settlement Agreement, Pasadena has  
11 agreed to step back from protections afforded by § 99 and, instead, to assume affirmative  
12 obligations to investigate all such reversals to determine whether systemic changes are  
13 appropriate and, if so, to implement necessary corrections for the benefit all parkers – not just for  
14 prevailing contestants on a one-time basis. Given the settlement's structure, this concession  
15 alone will save individual parkers countless hours of time and frustration by obviating their need  
16 to repeatedly contest improper citations, to prosecute duplicative appeals or, in extreme cases, to  
17 file “copycat” actions in Superior Court to secure similar relief. Going forward, systemic  
18 changes will now flow to all parkers, on a dynamic basis, and in real time.

19 ***b) Continued Litigation is Likely to be Complex, Expensive, and***  
20 ***Risky***

21 Given the opposite outcomes resulting from the parties' stipulated MSJ, settlement here is  
22 the only logical result. Conversely, the only certain outcome of continued litigation between  
23 Plaintiffs and the City will be the expenditure (and waste) of time and resources by the parties,  
24 this Court and, ultimately, an appellate court. For given the summary judgment's “split decision,”  
25 it is a virtual certainty that the nonprevailing (losing) party here would seek further review, thus  
26 adding years more life to an action that has already consumed almost five years' time.

27 And for what?  
28

1 Damages to be recovered by individual litigants (if they be recovered at all) are less than  
2 a dollar in the case of fee payors. As to those who paid citations of \$45 or more, the value of  
3 those dollars – many years down the line and discounted by the very real of possibly of  
4 ultimately receiving nothing – are far outweighed by the certainty of locking-in relief today.  
5 Tangible relief. Relief that will be received not just once, but multiple times in any given day.  
6 Over the course of many years. In fact, each and every time an individual makes use of  
7 Pasadena’s newly reformed parking systems. Moreover, some of the relief found in the Revised  
8 Settlement Agreement has no expiration date and is untethered to the City’s Pay & Display  
9 systems, e.g., Pasadena’s obligation to investigate citation reversals and apply systemic reforms  
10 beyond successful contestants. Indeed, such reforms are quite valuable, and will endure long  
11 after Pasadena’s Pay & Display kiosks are relegated to the (proverbial) “dustbin of history.”

12 ***c) The Experience and Views of Counsel Favor Settlement***

13 Settlement here is supported by counsel for *both* Plaintiffs and Defendants. Hence, this  
14 Joint Motion for Approval. Notwithstanding any prior animus, counsel have put aside  
15 differences and, as professionals, each has come to see the Revised Settlement as fair,  
16 reasonable, adequate and in the best interests of the Settlement Class as a whole. See Dunk, 48  
17 Cal. App. 4th at 1802 (the opinion of experienced counsel supporting the settlement is entitled to  
18 considerable weight and supports final approval).

19 ***d) The Settlement Enjoys Overwhelming Class Support***

20 As of the October 20, 2021 deadline, no objections have been received to the parties’  
21 proposed settlement. See Abelson Decl., ¶ 15 & Ex. J at ¶ 4. Suffice it to say that the complete  
22 absence of any opposition, objection, or other challenge to the settlement and/or its specific  
23 reforms strongly supports a finding that the Revised Settlement Agreement is fair, adequate and  
24 reasonable.  
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1           **C.       The Court Should Certify the Settlement Class**

2           The parties stipulated and agreed to certification of the Settlement Class,<sup>3</sup> the Court  
3 conditionally certified it, and the Court should now certify it for Final Approval. As previously  
4 noted, the Settlement Class is *numerous*. Pasadena’s discovery responses indicate the City  
5 issued 37,908 Pay & Display citations during the Class Period. See Abelson Decl., ¶ 3 & Ex. B  
6 at 13-14 (Pasadena Response to Plaintiffs’ Special Interrogatories – Set 2 – Response to Special  
7 Interrogatory #17, explaining denial of Plaintiffs’ RFA #8). As to the fee payors, the City has  
8 represented that “approximately 1.5 million ‘Pay & Display’ transactions were made via coins,  
9 credit cards, and/or debit cards” during the Class Period. See id., ¶ 25 & Ex. R at ¶ 5 (Joint  
10 Initial Status Conference Class Action Response Statement). The Settlement Class is also  
11 *ascertainable*: DMV data, credit card information, and data from California Law Enforcement  
12 Telecommunications System (“CLETS”) and the Criminal Justice Information Services (“CJIS”)  
13 could be used to reconstruct the names and contact information for class members whose  
14 vehicles were issued citations – albeit at a great cost to the City in terms of hours spent and  
15 financial outlays. See id., Ex. R at ¶ 9. In the case of fee payor (except for those who paid cash)  
16 credit card and credit card information available to the City from its third-party sources can, with  
17 difficulty, be used to identify Class Members. See id., Ex. R at ¶¶ 5, 9. Nevertheless, the  
18 ascertainability criteria is met here even if class members cannot be individually identified. See  
19 Daar v. Yellow Cab Co., 67 Cal. 2d 695, 706 (1967) (class action upheld on behalf of several  
20 thousand unidentified customers of taxicab company to recover fare overcharges over a four-year  
21 period); see also Lazar v. Hertz Corp., 143 Cal. App. 3d 128, 138 (1983) (all persons who rented  
22 cars from Hertz in California – potentially 5 million customers – held an ascertainable class);  
23 Aguirre v. Amscan Holdings, Inc., 234 Cal. App. 4th 1290, 1301 (2015) (plaintiff need not  
24 identify, much less locate, individual class members to establish the existence of an ascertainable  
25 class); see also Noel v. Thrifty Payless, Inc., 7 Cal. 5th 955, 985-87 (2019).

26  
27  
28 <sup>3</sup> See [Proposed] Order and Joint Stipulation Re: Class Certification for Settlement Purposes,  
filed Mar. 23, 2021.

1           Additionally, *community of interest* requirements are met. Class-wide issues predominate  
2 over individual concerns (see e.g., Sav-On Drug Stores, Inc. v. Superior Ct., 34 Cal. 4th 319, 327  
3 (2004)), including the critical/dispositive issue of whether (or not) the City’s Pay & Display  
4 kiosks satisfied the City’s 1993 definition of a “parking meter.” Here, Class Representatives  
5 were subject to the very same (allegedly) unlawful practice as Class Members generally, i.e.,  
6 they were charged fees and paid fines in Pasadena’s Pay & Display parking system. As such,  
7 they have no conflict(s) of interest with the Settlement Class. As noted above, Class Counsel  
8 have significant experience in complex court actions, including (in the case of Mr. Abelson)  
9 parking litigation. Finally, class treatment is superior to any other form of judicial disposition,  
10 because the claims of Class Members are all identical, are based on the same common, core facts  
11 (the legality of Pasadena’s Pay & Display system), and involve only a modest amount of  
12 damages. In the case of fee payors, a dollar or less, per parking transaction. In the case of  
13 citation payors, approximately \$48 or less, per ticket. In either case, though, damages here are  
14 sufficiently small to make individual litigation both impractical and inefficient. (Indeed, they are  
15 small claims matters, at best.) As such, adjudication of this proceeding as a class action makes  
16 complete sense and is proper, inasmuch as certification will achieve economies of time, effort,  
17 and expense, and promote uniformity of results.

#### 18   IV. 19   CONCLUSION

20           The Revised Settlement proposed here is fair to the Class, provides substantial societal  
21 benefits to Class Members, and was reached through arms-length negotiations assisted by an  
22 experienced, neutral mediator. As demonstrated above, the Revised Settlement readily meets  
23 (and ultimately exceeds) the requirements for Final Approval. Accordingly, Plaintiffs and  
24 Defendants jointly request the Court enter orders that: (1) Grant Final Approval; (2) Certify the  
25 Settlement Class; (3) Appoint Plaintiffs as Class Representatives; (4) Appoint Plaintiffs’  
26 Counsel as Class Counsel; and (5) Enter Judgment including, among other things, an award of  
27 attorneys’ fees and incentive awards consistent with Plaintiffs’ separately-filed Motion for Class  
28 Action Attorneys’ Fees, Costs and Incentive Awards.

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Dated: October 25, 2021

**Respectfully Submitted,**

**HAPERN MAY YBARRA GELBERG LLP**

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

Dated: October 25, 2021

**KUTAK ROCK LLP**

By: /s/ Edwin J. Richards  
Edwin J. Richards  
Antoinette P. Hewitt  
Michael Beal Bagneris, City Attorney  
Javan N. Rad, Chief Assistant City Attorney  
Attorneys for Defendant  
CITY OF PASADENA





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**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:

**JOINT NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT; 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.

Edwin J. Richards, Esq.  
Antoinette P. Hewitt, Esq.  
KUTAK ROCK LLP

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*Counsel for Defendant*  
CITY OF PASADENA

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