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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14

15 MARK WILLITS, JUDY GRIFFIN,  
BRENT PILGREEN, and COMMUNITIES  
16 ACTIVELY LIVING INDEPENDENT &  
FREE (“CALIF”), on behalf of themselves  
17 and all others similarly situated,

18 Plaintiffs,

19 vs.

20 CITY OF LOS ANGELES, a public entity,

21 Defendant.  
22  
23  
24

Case No.: CV 10-05782 CBM (RZx)

**CLASS ACTION**

**NOTICE OF JOINT MOTION AND  
MOTION FOR ORDER:**

- (1) GRANTING PRELIMINARY APPROVAL OF SETTLEMENT;**
- (2) GRANTING CERTIFICATION OF SETTLEMENT CLASS;**
- (3) DIRECTING NOTICE TO THE CLASS; AND (4) SETTING DATE FOR FAIRNESS HEARING**

**AND MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF**

Date: January 12, 2016  
Time: 10:00 a.m.  
Place: Courtroom 2, 2nd Floor

Hon. Consuelo B. Marshall

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1 **JOINT NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on January 12, 2016, at 10:00 a.m. or as soon  
3 thereafter as the matter may be heard, in Courtroom 2 of the United States District Court  
4 of the Central District of California, located at 312 North Spring Street, Los Angeles,  
5 California, Plaintiffs Mark Willits, Judy Griffin, Brent Pilgreen and Communities  
6 Actively Living Independent and Free (“CALIF”), on behalf of themselves and all  
7 others similarly situated (“Plaintiffs”) and Defendant City of Los Angeles (“the City”)   
8 will jointly move, and hereby do move, this Court for the relief as follows:

- 9 1. To preliminarily approve the Settlement Agreement and Release of Claims (the  
10 “Agreement”) between Plaintiffs and the City;  
11 2. To certify under Fed. R. Civ. P. 23(a) & (b)(2), for settlement purposes only, a  
12 settlement class defined as follows:

13 All persons (including, without limitation, residents of and visitors to the  
14 City) with any Mobility Disability, who, at any time from the beginning of  
15 time through the term of this Settlement Agreement (as set forth in Section  
16 8 below): (i) accessed or attempted to access a Pedestrian Facility located  
17 in the City but were impaired or unable to do so due to any barrier or  
18 condition rendering such Pedestrian Facility not suitable or sufficient for  
19 use; or (ii) allege that they would have accessed or attempted to access a  
Pedestrian Facility located in the City but for allegedly being denied such  
access due to any barrier or condition rendering such Pedestrian Facility  
not suitable or sufficient for use.

- 20 3. The parties also move the Court to appoint the named Plaintiffs as Settlement  
21 Class Representatives and Plaintiffs’ attorneys as Settlement Class Counsel;  
22 4. To approve the proposed notice to be distributed to Class Members under Fed. R.  
23 Civ. P. 23(c)(2) and (e)(1);  
24 5. To set a fairness hearing consistent with the time frame set forth in this Motion;  
25 and  
26 6. To issue findings as part of the Final Approval and in response to the Parties’  
27 joint request, as follows:  
28

- 1 (i) The City’s implementation of the Settlement Agreement assures that the
- 2 City’s Pedestrian Facilities, when viewed in their entirety, are readily
- 3 accessible to and usable by individuals with Mobility Disabilities.
- 4 (ii) The Settlement Agreement sets forth a reasonable time period and
- 5 reasonable expenditures of funding for making necessary improvements to
- 6 assure that the City’s Pedestrian Facilities, when viewed in their entirety,
- 7 are readily accessible to and usable by individuals with Mobility
- 8 Disabilities.
- 9 (iii) There is no evidence before the District Court that the City has
- 10 intentionally discriminated or acted with deliberate indifference against
- 11 individuals with Mobility Disabilities.
- 12 (iv) The City’s compliance with and implementation of the Settlement
- 13 Agreement are sufficient to satisfy the City’s legal obligations to provide
- 14 Program Access to its Pedestrian Facilities, when viewed in their entirety,
- 15 for individuals with Mobility Disabilities.

16 This Motion is based on this Joint Notice of Motion and Motion, the attached  
 17 Memorandum of Points and Authorities, the Declaration of Guy B. Wallace in Support  
 18 thereof, the pleadings and papers filed in this case, and any oral argument this Court  
 19 permits.

20  
 21 DATED: January 8, 2016

Respectfully submitted,

SCHNEIDER WALLACE  
 COTTRELL KONECKY  
 WOTKYNS, LLP

25 By:           /s/Guy B. Wallace            
 26 Guy B. Wallace  
 27 Counsel for Plaintiffs

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LOZANO SMITH, LLP

DATED: January 8, 2016

By: /s/ Kevin E. Gilbert  
Kevin E. Gilbert  
Counsel for Defendant  
CITY OF LOS ANGELES

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1 **I. INTRODUCTION**

2 The proposed Settlement Agreement and Release of Claims (“Settlement” or  
3 “Settlement Agreement”) provides extensive injunctive relief to an estimated class of  
4 280,000 people with mobility disabilities in the City of Los Angeles while eliminating  
5 the risk of duplicative litigation. The proposed Settlement requires the City of Los  
6 Angeles (“the City”) to expend in excess of \$1.367 billion over 30 years to make its  
7 public sidewalk and crosswalk system accessible to persons with mobility disabilities.  
8 It will require the City to install, repair, and upgrade curb ramps; repair sidewalks and  
9 walkways damaged by tree roots; repair broken or uneven pavement; correct non-  
10 compliant cross-slopes in sidewalks; install tree gates and missing utility covers; and  
11 remediate other inaccessible conditions. The proposed Settlement will also permit Class  
12 Members to submit requests for access repairs such as curb ramp installations and tree  
13 root fixes at specific locations, which the City will use its best efforts to remediate  
14 within 120 days of receiving the request. In addition, the proposed Settlement calls for  
15 the hiring of an ADA Coordinator for the Pedestrian Right of Way, and includes  
16 effective reporting, monitoring and dispute resolution mechanisms.

17 The proposed Settlement follows five years of contested litigation, including  
18 extensive discovery and motion practice. The parties reached the Settlement after eight  
19 formal mediation sessions under the supervision of the Honorable Edward A. Infante  
20 (Ret.) and the Honorable Dickran Tevrizian (Ret.) and numerous in-person and  
21 telephone negotiations between counsel and key City officials.

22 The proposed Settlement Agreement is fair, adequate and reasonable, and  
23 satisfies all of the criteria for preliminary settlement approval under Rule 23 of the  
24 Federal Rules of Civil Procedure. Accordingly, the parties ask that the Court: (i)  
25 preliminarily approve the Settlement; (ii) certify the proposed Settlement Class and  
26 appoint the named Plaintiffs as Settlement Class Representatives and Plaintiffs’  
27 attorneys as Settlement Class Counsel; (iii) approve the proposed form of the class  
28 notice and distribution plan; and (iv) set a fairness hearing.

1 **II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY**

2 **A. The *Willits* Action**

3 On August 4, 2010, Plaintiffs commenced a class action against the City of Los  
4 Angeles alleging claims under the Americans with Disabilities Act (“ADA”), Section  
5 504 of the Rehabilitation Act (“Section 504”), California Government Code §§ 11135 *et*  
6 *seq.*, California Civil Code §§ 51 *et seq.*, California Government Code §§ 4450 *et seq.*,  
7 and California Civil Code §§ 54 *et seq.* *See* Complt.; Dkt. No. 1. On December 10,  
8 2010, this Court ordered Plaintiffs’ claims under California law dismissed, without  
9 prejudice, to be pursued in state court. *See* Dec. 10, 2010 Order; Dkt. No. 57.

10 **B. The Related State Court Complaints**

11 On December 12, 2006, Sandra Carter commenced an action against the City in  
12 the Superior Court of the State of California for the County of Los Angeles, Case No.  
13 BC 363305. On December 5, 2007, Nicole Fahmie also commenced a class action  
14 against the City in the Superior Court, Case No. BC 381773. On January 27, 2011, the  
15 Superior Court consolidated the actions under Case No. BC 363305 (“*Carter/Fahmie*”).

16 On December 8, 2008, Victor Pineda, Anatoli Ilyashov and CALIF commenced  
17 an action against the City and various individual defendants in the Superior Court,  
18 *Victor Pineda, et al v. City of Los Angeles*, Case No. BC 403327. In the complaint, the  
19 Pineda plaintiffs alleged claims under the ADA, Section 504, California Government  
20 Code §§ 11135 *et seq.*, and California Civil Code §§ 51 *et seq.*

21 On March 15, 2011, following this Court’s dismissal of the California law claims,  
22 the *Willits* Plaintiffs commenced an action against the City in the Superior Court, *Griffin*  
23 *v. City of Los Angeles*, Case No. BC 457403. The *Willits* plaintiffs alleged claims under  
24 California Government Code §§ 11135 *et seq.*, California Civil Code §§ 51 *et seq.*, and  
25 California Government Code §§ 4450 *et seq.*

26 **C. Class Certification**

27 On January 3, 2011, this Court granted Plaintiffs’ motion for class certification  
28 pursuant to Federal Rules of Civil Procedure 23(b)(2), certifying the following class of

1 persons for declaratory and injunctive relief only: “All persons with mobility  
2 disabilities who have been denied access to pedestrian rights of way in the City of Los  
3 Angeles as a result of Defendants’ policies and practices with regard to its pedestrian  
4 rights of way and disability access.” *Willits v. City of Los Angeles*, No. CV 10-05782  
5 CBM (RZx), 2011 WL 7767305, at \*5 (C.D. Cal. Jan. 3, 2011). This Court appointed  
6 Schneider Wallace Cottrell Konecky Wotkyns, LLP and Disability Rights Legal Center  
7 as Class Counsel and appointed Mark Willits, Judy Griffin, Brent Pilgreen and CALIF  
8 as class representatives. *Id.* Subsequently, this Court appointed the law firm of  
9 Goldstein, Borgen, Dardarian & Ho and the Legal Aid Society-Employment Law Center  
10 as additional Class Counsel. *See* Dkt. No. 177.

#### 11 **D. Discovery**

12 The parties have propounded and responded to extensive discovery regarding the  
13 accessibility of the City’s pedestrian rights of way and the City’s efforts to comply with  
14 the ADA and Section 504 since their implementation in 1992 and 1977 respectively.  
15 Altogether, the parties propounded over 200 interrogatories, exchanged over 4 million  
16 pages of documents, and engaged in more than 35 days of deposition. *See* Declaration  
17 of Guy B. Wallace in Support of Joint Motion for Preliminary Approval (“Wallace  
18 Decl.”) at ¶¶ 16-17. Among many other witnesses, Class Counsel deposed the City’s  
19 Chief Administrative Officer, the ADA Coordinator, the ADA Compliance Officer, the  
20 City’s Chief Architect, and the officials in the Bureau of Engineering and the Bureau of  
21 Street Services with responsibility for disability access compliance.

22 Moreover, Plaintiffs’ access experts conducted extensive site inspections at  
23 representative locations throughout the City’s fifteen council districts and in  
24 neighborhoods across greater Los Angeles. In addition to site inspections by disability  
25 access experts, Class Counsel also sent an investigator to photograph the condition of  
26 hundreds of the City’s sidewalk segments. Wallace Decl. ¶ 22.

27 The parties filed at least nine discovery-related motions and appeared in multiple  
28 discovery-related hearings before the Special Master for discovery, Magistrate Judge

1 James Larson (Ret.). *Id.* at ¶ 18. (See Dkt. Nos. 67, 84, 95, 197, 199, 222, 223, 224,  
2 227.)

3 It is Defendant’s position that despite this extensive discovery, Plaintiffs did not  
4 identify any evidence to suggest that the City had intentionally discriminated against or  
5 shown deliberate indifference to individuals with mobility disabilities. Likewise, the  
6 District Court made no findings of any liability or wrongdoing by the City in the *Willits*  
7 Action. In addition, the District Court made no findings that the City, with respect to  
8 any Pedestrian Facilities located in the City: (i) acted intentionally to discriminate  
9 against persons with disabilities; (ii) acted with reckless disregard of the rights of  
10 persons with disabilities; or (iii) acted in any manner that would support a finding that  
11 the City is liable for damages under Title II of the ADA, Section 504 of the  
12 Rehabilitation Act, or otherwise.

13 **E. Motion Practice**

14 The parties engaged in extensive motion practice through the pendency of this  
15 matter (*see* Wallace Decl. ¶¶ 23-24), including but not limited to the following: On  
16 November 28, 2012, Plaintiffs filed a motion for partial summary judgment on the issue  
17 of whether an undue hardship defense existed under Section 504. This Court granted  
18 Plaintiffs’ motion on February 25, 2013, and its decision was subsequently certified for  
19 interlocutory appeal by the Ninth Circuit. Dkt. No. 212. The matter was fully briefed  
20 and oral argument was scheduled before the Ninth Circuit at the time that the parties  
21 reached the proposed settlement. Wallace Decl. ¶ 24.

22 **F. Background to the Proposed Class Settlement**

23 Since August 18, 2013, the parties have participated in good faith negotiations,  
24 under the supervision of the Hon. Dickran Tevrizian (Ret.) and the Hon. Edward A.  
25 Infante (Ret.) of the Judicial Arbitration and Mediation Service (“JAMS”). In total, the  
26 parties engaged in eight full-day mediation sessions between August 18, 2013 and  
27 December 19, 2014. Wallace Decl. ¶ 27.

28

1 Between these mediation sessions, select counsel for the parties and/or key City  
2 officials, including but not limited to City Administrative Officer Miguel Santana, met  
3 directly to engage in further negotiations. Wallace Decl. ¶ 28. These negotiations were  
4 intensive and ultimately successful in resolving this action. *Id.* at ¶¶ 27-30.

5 **III. SUMMARY OF PROPOSED SETTLEMENT**

6 The proposed settlement, attached as Exhibit A to this Motion, includes the  
7 following terms which were agreed to by the parties and incorporated herein.

8 **A. Certification of the Settlement Class**

9 The parties stipulate to a Settlement Class for injunctive relief under Rules 23(a)  
10 & (b)(2) of the Federal Rules of Civil Procedure, defined as:

11 All persons (including, without limitation, residents of and visitors to the City)  
12 with any Mobility Disability, who, at any time from the beginning of time  
13 through the term of this Settlement Agreement (i) accessed or attempted to access  
14 a Pedestrian Facility located in the City but were impaired or unable to do so due  
15 to any barrier or condition rendering such Pedestrian Facility not suitable or  
16 sufficient for use; or (ii) allege that they would have accessed or attempted to  
17 access a Pedestrian Facility located in the City but for allegedly being denied such  
18 access due to any barrier or condition rendering such Pedestrian Facility not  
19 suitable or sufficient for use.

20 Settlement at Part II(U). As a practical matter, the Settlement Class does not expand the  
21 class membership or legal claims previously certified by the Court, but rather clarifies  
22 the class definition. As a Rule 23(b)(2) class, no Class Member may opt out of any  
23 provisions of the Settlement. *See* Settlement at § 6.4.

24 **B. Injunctive Relief**

25 **1. Annual Commitment for Program Access Improvements**

26 Commencing on the date that judgment in this case becomes final, the City will  
27 expend a total of \$1,367,142,684 over a 30-year period to remediate access barriers in  
28 existing pedestrian facilities. *See* Settlement at § 12.2. The City's Annual Commitment  
for these "Program Access Improvements" starts with an initial Annual Commitment of  
\$31,000,000 during each of the first five years of the Settlement, and rises incrementally  
at five-year intervals, concluding with an Annual Commitment of \$63,169,615 during  
the final five years of the Settlement. *Id.* If the City expends more or less than the



1 required annual amount during any year, the amount will be credited or utilized in  
2 subsequent years. *See* Settlement at § 12.6.

3 The costs associated with any sidewalks or curb ramps that must be installed or  
4 remediated to be brought into compliance with disability access standards due to the  
5 resurfacing of certain streets or roadways, street widening or widening of other  
6 roadways and alleys, the creation of a new street or reconstruction of an existing street,  
7 the construction of a new City building, park or similar major facility or site, sewer or  
8 storm drain installations or repairs, or bus pad installation or repairs, typically do not  
9 count towards the \$1,367,142,684 sum to be expended on access work under the  
10 Settlement, as they would be required in any event by the new construction and  
11 alterations requirements of the ADA. *See* Settlement at § 12.5; 28 C.F.R. § 35.151.  
12 Rather, the costs related to improvements in the pedestrian right-of-way for new  
13 construction and alterations are to be borne by the City independent of the sums  
14 included in the Settlement Agreement for Program Access Improvements.

15 **2. The Program Access Improvements Required by the Settlement**

16 The City's Annual Commitment will be used for the following:

- 17 (a) Installation of missing curb ramps;
- 18 (b) Repair of damage caused by tree roots to sidewalk or walkways  
19 surfaces;
- 20 (c) Upgrading of existing curb ramps;
- 21 (d) Repair of broken and/or uneven pavement in the pedestrian rights of  
22 way (including utility covers and repair covers) deeper and/or wider than 1/2 inch;
- 23 (e) Repair of vertical or horizontal displacement or upheaval of the  
24 sidewalk or crosswalk surface greater than 1/2 inch (including sidewalk flags, curbs and  
25 utility covers);
- 26 (f) Correction of non-compliant cross-slopes in sidewalks or sections of  
27 sidewalks;
- 28

1 (g) Removal of protruding and overhanging objects and/or obstructions that  
2 narrow pedestrian rights of way to less than 4 feet of accessible width;

3 (h) Widening of pedestrian rights of way and sections thereof to provide 4  
4 feet of accessible width;

5 (i) Providing 4 feet of clearance to the entrances of public bus shelters;

6 (j) Repair of excessive gutter slopes at the bottom of curb ramps leading  
7 into crosswalks;

8 (k) Elimination of curb ramp lips on curb ramps;

9 (l) Installation of accessible tree grates, or other compliant remediation,  
10 where such grates are missing from tree wells;

11 (m) Installation of missing utility covers where such covers are missing  
12 from sidewalks, crosswalks or pathways; and

13 (n) Remediation of other non-compliant conditions.

14 *See* Settlement at § 12.4.

15 The proposed Settlement tracks the priorities for barrier removal set forth in the  
16 ADA Title II regulations at 28 C.F.R. § 35.150(d)(2). *See* Settlement at § 12.7. Such  
17 priorities include, *inter alia*, the City's government offices and facilities, transportation  
18 corridors, hospitals and commercial and business zones. *Id.* The parties have also  
19 agreed that certain circumstances may call for exemptions from repairs including third-  
20 party control of various locations, technical infeasibilities, or other circumstances such  
21 as a force majeure that is outside of the City's control. *See* Settlement at § 12.10.

### 22 **3. The Settlement's Accessibility Standards**

23 Any work the City undertakes as part of the Settlement -- including remediation  
24 and all future construction and alteration work -- will comply with the accessibility  
25 standards set forth in the 2010 ADA Standards for Accessible Design or the then-current  
26 iteration of Title 24 of the California Building Code, whichever provides greater  
27 protection or access to persons with Mobility Disabilities. *See* Settlement at § 12.9.  
28 The City has also agreed to comply with any new standards established by federal or

1 California law or legal precedent that apply to the pedestrian rights of way referenced in  
2 the Agreement. *Id.*

3 **4. The Settlement’s Access and Construction Database**

4 Under the Settlement, the City will create and maintain a database containing the  
5 following information: a listing and map of the installation, remediation, and  
6 improvements of curb ramps and Pedestrian Facilities completed during the prior two  
7 fiscal years; a list and map of the pending or completed access requests submitted to the  
8 City during the prior two fiscal years; a list and map of locations about which the City  
9 received grievances or complaints during the prior two fiscal years; the amount of the  
10 Annual Commitment funds expended during the prior two fiscal years; and a list of City  
11 resurfacing or repaving projects involving alterations or improvements to pedestrian  
12 pathways, and significant construction projects involving the same by entities other than  
13 the City. *See* Settlement at § 14.1. This information, over time, may help class  
14 members to identify accessible routes within the City’s pedestrian rights of way.

15 The database will be made available to the public in electronic and hard copy  
16 formats. The information contained in the database will be made available to the public  
17 upon request in the form of printed maps as well as appropriate alternative formats,  
18 including foreign languages, Braille, large print, and accessible electronic formats for  
19 individuals with visual impairments. *See* Settlement at § 14.2.

20 **5. The Settlement’s Access Request Program**

21 The City will provide an “Access Request Program,” which will facilitate Class  
22 Members’ and their representatives’ ability to submit telephonic, e-mail, standard mail  
23 or online requests to the City for specific access repairs such as the installation of curb  
24 ramps, the repair of sidewalks due to tree root damage, and the elimination of curb ramp  
25 lips on curb ramps. *See* Settlement at § 12.8. The City must respond to such requests  
26 by acknowledging the receipt of a request within ten days, and by using best efforts to  
27 investigate a request within 30 days and fulfill the request within 120 days, to the extent  
28 feasible. *See* Settlement at § 12.8(g).

1 The parties have agreed that 20% of the City’s Annual Commitment for the first  
2 year of the Settlement will be used for the Access Request Program, and that the  
3 allocation in subsequent years will be determined through a good-faith meet and confer  
4 process. *See* Settlement at § 12.5(b).

5 **6. The ADA Coordinator for the Pedestrian Right of Way**

6 The City will hire an ADA Coordinator for the Pedestrian Right of Way  
7 (“Coordinator”) who is a licensed architect or registered civil engineer with experience  
8 in evaluating, or assisting public entities in evaluating, the accessibility of facilities  
9 under Title II of the ADA, who is knowledgeable in current federal and state  
10 accessibility standards, and who has a minimum of three years’ experience in providing  
11 ADA services related to accessible facilities. *See* Settlement at § 15.1.

12 For the first five years of the Settlement, the Coordinator will provide semi-  
13 annual written reports on the City’s compliance efforts, including a detailed list of the  
14 access work completed since the last report, the status of any scheduled improvements,  
15 a description of any previously scheduled improvements that have not been completed  
16 and an explanation as to why, a list of any Class Members’ Access Requests and the  
17 City’s responses thereto, a list of the grievances or complaints received through the  
18 Grievance system and the City’s responses thereto, the amount of Annual Commitment  
19 funds expended since the last report, and a list of any City new construction or  
20 alterations projects resulting in improvements to the pedestrian right of way since the  
21 last report. *See* Settlement at § 15.4. Thereafter the City will provide one such written  
22 report per year. *Id.* The Coordinator will also provide accessibility training to City  
23 personnel, and will conduct field spot checks to verify whether the City’s access work is  
24 in compliance with the Agreement. *See* Settlement at § 15.5.

25 Furthermore, the Coordinator will receive and respond to reasonable inquiries and  
26 complaints from Class Members regarding access barriers. The Coordinator will  
27 recommend the adoption or modification of the City’s policies and procedures  
28 concerning access barriers, maintenance of accessible paths of travel, and the provision

1 of appropriate signage at construction sites and directions to alternative, accessible  
2 routes. *See* Settlement at § 15.6.

3 **C. Monitoring**

4 The City will implement a policy and procedure for Class Members to submit,  
5 and for the City to respond to, grievances or complaints about the pedestrian rights of  
6 way. *See* Settlement at § 17. Class Counsel may conduct semi-annual inspections of:  
7 (i) any drawings or designs prepared by or for the City for Program Access  
8 Improvements concerning the pedestrian right of way; and (ii) the Pedestrian Facilities  
9 for purposes of monitoring the City's compliance with this Settlement during the first  
10 five years of the Agreement and annual inspections for the remainder of the Settlement  
11 term. *See* Settlement at § 18.1.

12 The parties also agreed to meet semi-annually during the first five years of the  
13 Settlement and, thereafter, annually at the request of Class Counsel to discuss and  
14 resolve disputes, if any such arise, regarding the City's implementation of the  
15 Settlement. *See* Settlement at § 16. Class Counsel will be compensated from the  
16 Annual Commitment for reasonable and necessary monitoring subject to maximum  
17 hourly rates and an annual cap which varies during the Settlement term, but at no time  
18 exceeds \$250,000 annually. *See* Settlement at §§ 18.2, 18.3.

19 **D. Dispute Resolution**

20 Enforcement of the proposed Agreement will be subject to the continuing  
21 jurisdiction of this Court. Prior to seeking Court enforcement, the parties will meet-and-  
22 confer to discuss and resolve any dispute that arises regarding compliance with the  
23 Agreement. *See* Settlement at § 19.1. If, within 30 days, the parties are still unable to  
24 resolve the dispute through the meet-and-confer process, they will engage in mediation  
25 with a mediator jointly selected by the parties, or, in the event that the parties cannot  
26 reach an agreement as to a mediator, by the Court. *See* Settlement at § 19.2. If the  
27 parties are still unable to resolve a dispute, any Party may make a motion to the District  
28 Court to enforce the Settlement and resolve the dispute. *See* Settlement at § 19.3. Any

1 award of reasonable attorneys' fees and costs in connection with dispute resolution will  
2 be awarded to Class Counsel in accordance with the standards set forth in existing ADA  
3 precedent as to prevailing party status. Any fees and costs awarded to Class Counsel  
4 will be paid through the City's Annual Commitment, except the Court may order the  
5 City to pay such attorneys' fees and costs separately if the Court determines that City's  
6 position with respect to such motion was without any substantial legal basis. *Id.*

7 **E. Service Awards to the Named Plaintiffs**

8 For services rendered on behalf of the Settlement Class, the City will pay \$5,000  
9 each to Class Representatives Mark Willits, Judy Griffin, and Brent Pilgreen, and  
10 \$25,000 to CALIF. *See* Settlement at § 20. These service awards will not come out of  
11 the \$1.367 billion allocated for program access improvements, but will instead be paid  
12 separately by the City. All of the named Plaintiffs were deposed in this action, as was  
13 Ms. Navarro, the Executive Director of CALIF. Each of the Plaintiffs provided  
14 responses to the City's extensive written discovery requests, and they participated in the  
15 negotiations that resulted in this proposed Settlement. Wallace Decl. ¶¶ 55-56. The  
16 named Plaintiffs have also entered into separate settlements of their individual cases for  
17 money damages. *Id.* at ¶ 54.

18 **F. The Release of Claims and Dismissal of Actions**

19 In exchange for the injunctive relief proposed in the Settlement Agreement,  
20 Plaintiffs and the Settlement Class Members agree to release any claims for injunctive,  
21 declaratory or non-monetary relief against the City of Los Angeles that were brought,  
22 could have been brought, or could be brought now or in the future by the Class  
23 Members under any Accessibility Laws related to access to the City's Pedestrian  
24 Facilities by persons with Mobility Disabilities at any time before the commencement of  
25 the Compliance Period. *See* Settlement at § 9.1. Upon the entry of Judgment, Plaintiffs  
26 release the City from any and all future claims that could be or are brought by the Class  
27 Members under any Accessibility Laws related to access to the City's Pedestrian  
28 Facilities to persons with Mobility Disabilities at any time during the Compliance

1 Period. *See* Settlement at § 9.3. The release will not apply to claims relating to  
2 enforcement of the Settlement Agreement that might arise during the thirty-year  
3 Compliance Period. *Id.* The proposed class release will not release any Class  
4 Member’s claims for damages or other monetary relief. Wallace Decl. ¶ 53.

5 As part of the Final Approval determination, the Parties request that the Court  
6 issue findings as follows:

7 (i) The City’s implementation of the Settlement Agreement assures that the  
8 City’s Pedestrian Facilities, when viewed in their entirety, are readily accessible to and  
9 usable by individuals with Mobility Disabilities.

10 (ii) The Settlement Agreement sets forth a reasonable time period and  
11 reasonable expenditures of funding for making necessary improvements to assure that  
12 the City’s Pedestrian Facilities, when viewed in their entirety, are readily accessible to  
13 and usable by individuals with Mobility Disabilities.

14 (iii) There is no evidence before the District Court that the City has  
15 intentionally discriminated or acted with deliberate indifference against individuals with  
16 Mobility Disabilities.

17 (iv) The City’s compliance with and implementation of the Settlement  
18 Agreement are sufficient to satisfy the City’s legal obligations to provide Program  
19 Access to its Pedestrian Facilities, when viewed in their entirety, for individuals with  
20 Mobility Disabilities. *See* Settlement at Part III(3).

21 **G. Reasonable Attorneys’ Fees, Costs and Expenses**

22 The parties engaged in a separate mediation session before Judge Tevrizian and  
23 Magistrate Judge Infante in an effort to reach agreement as to the amount of attorneys’  
24 fees, costs and expenses to be paid by the City as part of the Settlement. This mediation  
25 took place in December 2014 after all major injunctive relief issues were resolved  
26 between the parties. Wallace Decl. ¶¶ 29-30. The proposed Settlement provides that  
27 Class Counsel will apply to the Court for an award of reasonable attorneys’ fees in the  
28 amount of \$13,300,000 and out-of-pocket litigation costs and expenses in the amount of

1 \$1,700,000. *See* Settlement at § 21. Like the Class Representatives’ service awards,  
2 Class Counsel’s attorneys’ fees, expenses, and costs will not be paid from the \$1.367  
3 billion allocated for remediating existing Pedestrian Facilities, but will instead be paid  
4 separately by the City.

5 The proposed award of fees includes a modest lodestar multiplier of  
6 approximately 1.3 for which Class Counsel are eligible under California law. Class  
7 Counsel will move for an award of reasonable attorneys’ fees, costs and expenses  
8 pursuant to Rule 23(h) on a schedule to be set by the Court. The Wallace Declaration  
9 provides a discussion of Class Counsel’s lodestar, the work performed in this matter, the  
10 rates sought, and the costs and expenses incurred, all of which were reasonable and  
11 consistent with applicable legal standards. *See* Wallace Decl. at ¶¶ 58-113. The City  
12 does not make any representations as to the reasonableness or necessity for said fees,  
13 but instead confirms that any such fees are subject to the limits negotiated by and  
14 between the parties. *See* Settlement at § 21.

#### 15 **IV. LEGAL ARGUMENT**

##### 16 **A. Class Certification Has Already Been Granted and Remains** 17 **Appropriate**

18 Under Rule 23(a) of the Federal Rules of Civil Procedure, a class must meet four  
19 requirements for certification: (1) numerosity; (2) commonality; (3) typicality; and (4)  
20 adequacy of representation. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th  
21 Cir. 1998). The Court previously certified a class in its January 3, 2011 Order  
22 consisting of “All persons with mobility disabilities who have been denied access to  
23 pedestrian rights of way in the City of Los Angeles as a result of Defendant’s policies  
24 and practices with regard to its pedestrian rights of way and disability access.” In doing  
25 so, the Court engaged in an analysis of the Rule 23(a) requirements. *Willits*, 2011 WL  
26 7767305, at \*\*2-4.

27 Nothing in the class definition set forth in the proposed Agreement has changed  
28 the class in any significant way that would impact the satisfaction of Rule 23(a)



1 requirements. The Settlement Agreement defines the settlement class as:

2 All persons (including, without limitation, residents of and visitors to the City)  
3 with any Mobility Disability, who, at any time from the beginning of time  
4 through the term of this Settlement Agreement: (i) accessed or attempted to  
5 access a Pedestrian Facility located in the City but were impaired or unable to do  
6 so due to any barrier or condition rendering such Pedestrian Facility not suitable  
or sufficient for use; or (ii) allege that they would have accessed or attempted to  
access a Pedestrian Facility located in the City but for allegedly being denied such  
access due to any barrier or condition rendering such Pedestrian Facility not  
suitable or sufficient for use.

7 *See* Settlement at Part II (U).

8 The proposed Settlement Class continues to meet the requirements of numerosity,  
9 commonality, typicality and adequacy of representation. This Court previously found  
10 that the requirements of numerosity, commonality, typicality and adequacy of  
11 representation were satisfied. *Willits*, 2011 WL 7767305, at \*\*2-4.

12 In addition, the Settlement Class is still comprised of persons with mobility  
13 disabilities who seek indivisible injunctive relief on behalf of the class as a whole. The  
14 Supreme Court has held that such civil rights class actions are particularly well-suited  
15 for certification under Rule 23(b)(2). *See Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct.  
16 2541, 2557-58 (2011). Thus, the parties respectfully request that the Court certify the  
17 class for settlement purposes under Rule 23(b)(2).

18 **1. This Court Should Appoint the Named Plaintiffs As Class**  
19 **Representatives to Represent the Settlement Class**

20 Rule 23 requires that “the representative parties fairly and adequately protect the  
21 interests of the class.” Fed. R. Civ. P. 23(a)(4). To satisfy this element, Plaintiffs must  
22 establish that that they do not have a conflict of interest. *See, e.g., Turcios v. Carma*  
23 *Labs., Inc.*, 296 F.R.D. 638, 648 (C.D. Cal. 2014) (citing *Lerwill v. Inflight Motion*  
24 *Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)). Here, there is no conflict of interest  
25 between the named Plaintiffs and the proposed Settlement Class. Furthermore, the  
26 named Plaintiffs have ably prosecuted the interests of the class since the commencement  
27 of this action five years ago. *See* Wallace Decl. at ¶¶ 55-56. As this Court previously  
28 found in its Order granting class certification, the named Plaintiffs satisfy the adequacy

1 requirement, and they should be appointed as class representatives of the proposed  
2 Settlement Class. *Willits*, 2011 WL 7767305, at \*4.

3 **2. This Court Should Appoint Class Counsel to Represent the**  
4 **Settlement Class**

5 Plaintiffs' counsel meet the adequacy requirement under Rule 23. *Id.*; Dkt. No.  
6 177. Plaintiffs' counsel have investigated, evaluated, prosecuted and negotiated the  
7 potential claims underlying this case with competence, tenacity, and integrity. Wallace  
8 Decl. at ¶¶ 3-30; 61-69. Plaintiffs' counsel have extensive experience in disability class  
9 actions and the law applicable to this case. Plaintiffs' counsel have also invested  
10 substantial resources in this case to protect the interests of the class. Wallace Decl. at  
11 ¶¶ 3-30; 61-69; 112. Thus, this Court should appoint Plaintiffs' attorneys as Class  
12 Counsel to represent the Settlement Class pursuant to Rule 23(g).

13 **B. The Proposed Settlement Agreement is Fair and Reasonable and**  
14 **Should be Granted Preliminary Approval**

15 Judicial proceedings under Rule 23 have led to a defined three-step procedure for  
16 approval of class action settlements:

- 17 (1) Certification of a settlement class and preliminary approval of the proposed  
18 settlement after submission to the Court of a motion for preliminary approval.  
19 (2) Dissemination of notice of the proposed settlement to the affected class  
20 members.  
21 (3) A formal fairness hearing, or final settlement approval hearing, at which class  
22 members may be heard regarding the settlement, and at which evidence and  
23 argument concerning fairness, adequacy, and reasonableness of the settlement  
24 are presented.

25 Federal Judicial Center, *Manual for Complex Litigation* (4th ed. 2004), §§ 21.63, et seq.  
26 (“*Manual 4th*”). This procedure safeguards class members' procedural due process  
27 rights and enables the Court to fulfill its role as the guardian of class interests. *See*  
28 *Newberg on Class Actions*, § 11.22, et seq. (4th ed. 2002) (“*Newberg*”).

1 The law favors the compromise and settlement of class-action suits. *See, e.g.,*  
2 *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs*  
3 *v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv.*  
4 *Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). The Ninth Circuit recognizes the  
5 “overriding public interest in settling and quieting litigation ... particularly ... in class  
6 action suits ...” *Van Brokhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see*  
7 *also Weeks v. Kellogg Co.*, 2013 WL 6531177, at \*10 (C.D. Cal. Nov. 23, 2013)  
8 (quoting *In re Synacor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008)) (“[T]here is  
9 a strong judicial policy that favors settlements, particularly where complex class action  
10 litigation is concerned.”).

11 “[T]he decision to approve or reject a settlement is committed to the sound  
12 discretion of the trial judge because he is exposed to the litigants and their strategies,  
13 positions, and proof.” *Hanlon*, 150 F.3d at 1026 (internal citations and quotations  
14 omitted). In exercising such discretion, the Court should give “proper deference to the  
15 private consensual decision of the parties ... [T]he court’s intrusion upon what is  
16 otherwise a private consensual agreement negotiated between the parties to a lawsuit  
17 must be limited to the extent necessary to reach a reasoned judgment that the agreement  
18 is not the product of fraud or overreaching by, or collusion between, the negotiating  
19 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
20 concerned.” *Id.* at 1027 (internal citations omitted); Fed. R. Civ. P. 23(e).

21 This determination involves a balancing of several factors, including: “the  
22 strength of plaintiffs’ case; the risk, expense, complexity, and likely duration of further  
23 litigation; the risk of maintaining class action status throughout the trial; the amount  
24 offered in settlement; the extent of discovery completed, and the stage of the  
25 proceedings; the experience and views of counsel; the presence of a governmental  
26 participant; and the reaction of the class members to the proposed settlement.” *True v.*  
27 *Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010) (quoting *Class*  
28 *Plaintiffs*, 955 F.2d at 1291).

1 At the preliminary approval stage, the Court need only find that the proposed  
2 settlement is within the “range of reasonableness” such that dissemination of notice to  
3 the class, and the scheduling of a fairness hearing, are appropriate. 4 *Newberg* § 11.25;  
4 *see also True*, 749 F. Supp. 2d at 1063; *Carter v. Anderson Merchandisers, LP*, 2010  
5 WL 144067, at \*4 (C.D. Cal. Jan. 7, 2010); *In re Tableware Antitrust Litig.*, 484 F.  
6 Supp. 2d 1078, 1079-80 (N.D. Cal. 2007). Preliminary approval of a proposed class  
7 action settlement is appropriate where: “[T]he proposed settlement appears to be the  
8 product of serious, informed, non-collusive negotiations, has no obvious deficiencies,  
9 does not improperly grant preferential treatment to class representatives or segments of  
10 the class, and falls within the range of possible approval[.]” *In re Tableware Antitrust*  
11 *Litig.*, 484 F. Supp. 2d at 1079; *Manual 4th* § 21.62 (preliminary approval involves an  
12 “initial evaluation” of the reasonableness and adequacy of settlement; reasonableness  
13 turns on “analysis of the class allegations and claims and the responsiveness of the  
14 settlement to those claims” while adequacy involves a “comparison of the relief granted  
15 to what class members might have obtained without using the class action process”).

16 For several reasons, the proposed Settlement clearly meets the requirements for  
17 preliminary approval.

### 18 **1. The Settlement Is Entitled to a Presumption of Fairness**

19 Where a settlement is the product of arms-length negotiations conducted by  
20 experienced class counsel, the Court begins its analysis with a presumption that the  
21 settlement is fair and reasonable. *See* 4 *Newberg* § 11.41; *see also Fernandez v.*  
22 *Victoria Secret Stores, LLC*, 2008 WL 8150856, at \*4 (C.D. Cal. July 21, 2008); *Nat’l*  
23 *Rural Telecomm’s Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).  
24 Thus, at this stage, so long as the settlement falls into the range of possible approval—  
25 giving deference to the result of the parties arm’s-length negotiations and the judgment  
26 of experienced counsel following sufficient investigation and discovery—the  
27 presumption applies and the settlement should be preliminarily approved.  
28

1 First, the Settlement was reached after settlement negotiations supervised by two  
2 experienced JAMS mediators, Judge Dickran M. Tevrizian (Ret.) and Magistrate Judge  
3 Edward A. Infante (Ret.). The parties participated in eight days of formal mediations  
4 supervised by the mediators, as well as many additional informal settlement meetings  
5 directly between select counsel for the parties. Wallace Decl. at ¶¶ 27-28. Both  
6 mediators recommended that the parties accept the Settlement. *Id.* at ¶ 117.

7 Second, Class Counsel here have extensive experience litigating and settling  
8 disability rights class actions and other complex matters. Wallace Decl. ¶¶ 3-10. They  
9 have investigated the factual and legal issues raised in this case, and diligently litigated  
10 the class members' claims for five years. Wallace Decl. ¶¶ 11-30; 61-69. As noted  
11 above, extensive discovery and motion practice has allowed the parties to assess the  
12 strengths and weaknesses of the claims herein and the benefits of the proposed  
13 Settlement. *Id.* These and other proceedings in the case produced a thorough vetting  
14 (pre-settlement) of the factual and legal bases for Plaintiffs' claims and the key defenses  
15 to those claims. Accordingly, the fact that qualified and well-informed counsel endorse  
16 the proposed Settlement as being fair, reasonable, and adequate weighs heavily in favor  
17 of approval. *See True*, 749 F. Supp. 2d at 1078-79; *Nat'l Rural Telecomm's Coop.*, 221  
18 F.R.D. at 528.

19 **2. The Settlement Is Fair Given the Settlement Benefits and the**  
20 **Risks Associated with Continued Litigation**

21 Even without a presumption of fairness, the very substantial benefits provided by  
22 the proposed Settlement clearly warrant preliminary approval.

23 **a. The Settlement will Result in Substantial Benefits to the**  
24 **Class**

25 Under the Agreement, the City will expend \$1,367,142,684 in injunctive relief to  
26 remove existing disability access barriers in the City's pedestrian rights of way, and to  
27 expend additional resources to ensure that new construction and alterations in the  
28 pedestrian right of way are performed in accordance with applicable disability access

1 standards, thereby conferring a substantial benefit on class members. According to the  
2 available information prepared by City officials, the City's sidewalk system requires an  
3 estimated \$1.5 billion in repairs (Wallace Decl. ¶ 21; Exh. G), which includes the  
4 estimated cost not only to provide increased program access to the City's pedestrian  
5 right of way, but also to improve other accessibility features which may be beyond the  
6 scope of the disability access laws. Thus, the proposed Settlement will provide  
7 injunctive relief that is reasonably calculated to effectuate the repairs necessary to make  
8 the City's pedestrian rights of way accessible to persons with mobility disabilities. This  
9 is an excellent result for the Plaintiff class, and it is doubtful that this Court would order  
10 greater relief. Wallace Decl. ¶ 116. Even if Plaintiffs were able to obtain greater relief  
11 after a trial on the merits, the inherent risks of litigation, and the protracted delays  
12 associated with trial and the inevitable appeals thereafter, weigh heavily in favor of the  
13 very substantial relief guaranteed to the class members by the proposed Settlement on a  
14 much faster time frame. *See Nat'l Rural Telecomm's Coop.*, 221 F.R.D. at 526 (“In  
15 most situations, unless the settlement is clearly inadequate, its acceptance and approval  
16 are preferable to lengthy and expensive litigation with uncertain results.”) (quoting  
17 *Newberg* § 11:50 at 155).

18 Moreover, even if the proposed Settlement amount were less than the potential  
19 maximum relief that could be obtained at trial, this would not weigh against settlement  
20 approval. A proposed settlement is not to be measured against a hypothetical ideal  
21 result that might have been achieved. *See, e.g., In re Heritage Bond Litig.*, 2005 WL  
22 1594403, at \* 2 (C.D. Cal. June 10, 2005) (quoting *Officers for Justice*, 688 F.2d at 625)  
23 (a proposed settlement should not “be judged against a hypothetical or speculative  
24 measure of what might have been achieved”); *Nat'l Rural Telecomm's Coop.*, 221  
25 F.R.D. at 527 (“[I]t is well-settled law that a proposed settlement may be acceptable  
26 even though it amounts to only a fraction of the potential recovery that might be  
27 available to the class members at trial.”).

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**b. The Litigation Risks Support Preliminary Approval**

The potential risks attending further litigation support preliminary approval. Courts have long recognized the inherent risks and “vagaries of litigation,” and emphasized the comparative benefits of “immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation.” *Nat’l Rural Telecomm’s Coop.*, 221 F.R.D. at 526. Proceeding to trial (and the inevitable appeals) could add four years or more to the resolution of this case, which has already been pending for over five years. Given the importance of the accessibility of the City’s pedestrian rights of way to the class members lives, the potential for years of delayed recovery is a significant concern. Considered against the risks of continued litigation, and the importance of the accessibility of the pedestrian rights of way to the Class Members, the totality of relief provided under the proposed Settlement is more than adequate and well within the range of reasonableness. Wallace Decl. ¶¶ 116-22.

**3. The Service Awards to the Class Representatives Are Fair and Reasonable and Routinely Approved**

Under the proposed Settlement, service awards of \$5,000 will be paid to named Plaintiffs Mark Willits, Judy Griffin, and Brent Pilgreen, and a service award of \$25,000 will be paid to named Plaintiff CALIF. *See* Settlement at § 20. These service awards are nominal, and will not be paid from the \$1.36 billion allocated for injunctive relief to remediate existing Pedestrian Facilities.

It is Plaintiffs’ position herein that the named plaintiffs in class action litigation are eligible for reasonable service awards. Service awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *see also Weeks*, 2013 WL 6531177, at \*34. The factors courts use in determining whether to authorize a service award include: “‘1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the

1 notoriety and personal difficulties encountered by the class representative; 3) the  
2 amount of time and effort spent by the class representatives; 4) the duration of the  
3 litigation[;] and 5) the personal benefit (or lack thereof) enjoyed by the class  
4 representative as a result of the litigation.” *Weeks*, 2013 WL 6531177, at \*35 (quoting  
5 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)).

6 Plaintiffs contend that the amounts requested here are reasonable and within the  
7 range approved by the Ninth Circuit and other district courts. *See, e.g., In re Online*  
8 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015) (approving service  
9 awards and stating “The incentive awards are \$5,000, an amount we said was reasonable  
10 in *Staton*.”) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 976-77 (9th Cir. 2003)); *In re*  
11 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving \$5,000  
12 incentive award); *Weeks*, 2013 WL 6531177, at \*35-37 (“An incentive award of \$5,000  
13 per class representative is in line with other awards approved in this circuit.”); *Alberto v.*  
14 *GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal. 2008) (“Courts have generally found that  
15 \$5,000 incentive payments are reasonable.”).

16 All of the above factors support the service awards requested here. The relatively  
17 small service awards are intended to compensate the named Plaintiffs for the important  
18 role they played for the benefit of the class, and the substantial time, effort, and risks  
19 they undertook to secure the result obtained on behalf of the class. In agreeing to serve  
20 as class representatives, they accepted the responsibility of representing the interests of  
21 all class members. Wallace Decl. ¶¶ 55-56. They provided information during lengthy  
22 interviews, responded to extensive written discovery, provided documents, identified  
23 witnesses, assisted Class Counsel in preparing for depositions and in seeking discovery,  
24 and prepared for and sat for their own depositions. *Id.* They also assisted in preparing  
25 and evaluating the case for mediation, and in the settlement process itself. *Id.*

26 The named Plaintiffs have also entered into settlements of their separate  
27 individual cases for money damages against the City. *Id.* at ¶ 54.

28 //



1                   **4. The Court Should Preliminarily Approve Class Counsel’s**  
2                   **Attorneys’ Fees and Costs Because They Are Reasonable**

3                   Plaintiffs believe that the amounts proposed in the Settlement regarding  
4 attorneys’ fees and reimbursement of litigation costs and expenses fall within an  
5 acceptable range. A plaintiff prevails for purposes of a fee award, if she “has succeeded  
6 on ‘any significant issue in litigation which achieve[d] some of the benefit the parties  
7 sought in bringing suit.’” *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489  
8 U.S. 782, 791-792 (1989) (internal citation omitted); *Hensley v. Eckerhart*, 461 U.S.  
9 424, 433 (1983) (same). A plaintiff is a prevailing party where she obtains a successful  
10 settlement. *See Farrar v. Hobby*, 506 U.S. 103, 111 (1992). Here, Plaintiffs claim that  
11 they are entitled to recover their reasonable attorneys’ fees, costs and litigation expenses  
12 because they obtained a successful settlement.

13                   Class Counsel seek \$13,300,000 for a reasonable award of attorneys’ fees and  
14 \$1,700,000 for costs and litigation expenses advanced by Counsel. This fee amount is  
15 reasonable based on the lodestar method plus a multiplier of approximately 1.3.  
16 Wallace Decl. ¶¶ 58-113. To date, Class Counsel have incurred over \$9,866,151.62 in  
17 attorneys’ fees and advanced \$1,728,329.40 in litigation costs and expenses.  
18 *Id.* at ¶¶ 112-13.

19                   As discussed in the Wallace Declaration, Counsel’s rates fall within the market  
20 range for attorneys with reasonably comparable skill, experience and background and  
21 who perform similar services in this district. *Camacho v. Bridgeport Fin., Inc.*, 523  
22 F.3d 973, 979 (9th Cir. 2008). Counsel’s hours are also reasonable and reflect the  
23 exercise of billing judgment, including the elimination of over 1,647 hours, and a  
24 reduction of claimed fees in excess of \$574,347.95. Wallace Decl. ¶ 113. Plaintiffs’  
25 costs and expenses were likewise reasonably incurred and necessary to the litigation.  
26 The City does not make any representations as to the reasonableness or necessity for  
27 said fees, but instead confirms that any such fees are subject to the limits negotiated by  
28 and between the parties. *See Settlement at § 21.*

1           Moreover, attorneys' fees, costs and expenses were negotiated by the parties only  
2 after the class injunctive relief and service payments were negotiated. Wallace Decl. at  
3 ¶¶ 29-30; *see Manual 4th* § 21.7 at 335 (separate negotiation of the class settlement  
4 before an agreement on fees is generally preferable). Like the Class Representatives'  
5 service awards, Class Counsel's attorneys' fees, costs and expenses will not be paid  
6 from the \$1.367 billion Program Access Improvement fund, but will instead be paid  
7 separately by the City. *See Settlement* at § 21.

8           The Ninth Circuit has repeatedly held that district courts should cross-check a  
9 claimed fee against a second method of fee calculation, such as the "percentage of  
10 recovery" method or the lodestar method used above. *See, e.g., In re Online DVD-*  
11 *Rental Antitrust Lit.*, 779 F.3d at 949 ("One way that a court may demonstrate that its  
12 use of a particular method or the amount awarded is reasonable is by conducting a  
13 cross-check using the other method."); *In re Bluetooth Headset Prods. Liability Litig.*,  
14 654 F.3d 935, 944-45 (9th Cir. 2011).

15           Cross-checked against a "percentage of the fund" or "percentage of the recovery"  
16 method, the anticipated request for an award of fees, costs and expenses represents  
17 approximately 1.6% of the Settlement Fund. The Ninth Circuit has repeatedly held that  
18 25% is the "benchmark" for a reasonable fee award from a quantifiable settlement fund.  
19 *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002); *Hanlon*,  
20 150 F.3d at 1029 (affirming fee award and stating "The fee award of \$5.2 million  
21 represents roughly 4.5% of this 'common fund', significantly less than the 25%  
22 commonly used under *Six Mexican Workers*."); *Six (6) Mexican Workers v. Ariz. Citrus*  
23 *Growers*, 904 F.3d 1301, 1311 (9th Cir. 1990). Accordingly, when considered under  
24 both the lodestar and percentage of the fund methods, Class Counsel's fees and costs are  
25 reasonable under applicable law.

26           Accordingly, the Court should preliminarily approve Class Counsel's requested  
27 fees, costs and expenses. Plaintiffs will provide further detail regarding the requested  
28 award in their Motion for fees, costs and expenses pursuant to F.R.C.P. 23(h).

1           **C.     The Proposed Notice Satisfies Due Process and Should be Approved**

2           Rule 23(e) of the Federal Rules of Civil Procedure provides that “notice of the  
3 proposed dismissal or compromise shall be given to all members of the class in a  
4 manner that the court directs.” Due process requires that interested parties be provided  
5 with notice reasonably calculated under the circumstances to apprise them of the  
6 pendency of the action and afford them an opportunity to present their objections.  
7 *Mullane v. Cent. Hanover Bank & Trust Co.*, 330 U.S. 306, 314 (1950). Notice is  
8 satisfactory “if it generally describes the terms of the settlement in sufficient detail to  
9 alert those with adverse viewpoints to investigate and to come forward and be heard.”  
10 *Churchill Vill.*, 361 F.3d at 575 (internal citations omitted). Additionally, notice must  
11 be reasonably calculated to reach interested parties. *Mullane*, 339 U.S. at 318.

12           The notice standard is easily satisfied here. First, the proposed notice clearly and  
13 concisely informs the Class Members of the relevant aspects of the litigation and the  
14 Settlement, including: (i) a brief statement of the *Willits* action, the settlement embodied  
15 and the claims released by the Settlement Class; (ii) the date and time of the hearing on  
16 final approval; (iii) the deadline and process for submitting objections to the proposed  
17 Agreement; and (iv) the web page, address, and telephone and fax numbers that may be  
18 used to obtain a copy of the notice of Settlement in English, Spanish, or alternative  
19 accessible formats for individuals with visual impairments. *See* Settlement § 6.5 &  
20 Exhibit B.

21           The proposed Settlement sets forth the following distribution plan: Within forty-  
22 five (45) days after this Court issues its Order on preliminary approval, the City shall  
23 publish the notice of Settlement for four (4) consecutive weeks in the *Los Angeles Times*  
24 and *The Los Angeles Daily News* in English and in *La Opinion* in Spanish. Within  
25 twenty (20) days after the Court issues its Order on preliminary approval, the City will  
26 post the notice in English, Spanish and an accessible electronic format, on the City’s  
27 official website, on the Bureau of Street Services’ official website, and on the  
28 Department of Disability’s official website, and the notice will remain posted for four

1 (4) consecutive weeks. Also within ten (10) days after this Court issues its Order on  
2 preliminary approval, Class Counsel will establish a website and publish the notice of  
3 Settlement in English, Spanish and an accessible electronic format for individuals with  
4 visual impairments. Class Counsel will also provide the notice of Settlement to a  
5 minimum of ten disability rights organizations that will in turn, promptly provide the  
6 notice of settlement to people with disabilities who reside in Los Angeles. *See*  
7 Settlement, Exhibit F for list of organizations.

8 The parties have developed this proposed distribution plan taking into account the  
9 breadth and magnitude of the Class. Distribution of the notice through publication in  
10 multiple local newspapers and posting on multiple accessible websites, coupled with  
11 facilitating the direct mailing or emailing of the notice to individual Class Members by  
12 those organizations that serve them, will ensure that the notice reaches the maximum  
13 number of Class Members in the most efficient and cost-effective manner. The proposed  
14 form of notice and the proposed distribution plan will fairly apprise Class Members of  
15 the Settlement and their options with respect thereto, and fully satisfies due process  
16 requirements for a Rule 23(b)(2) settlement class with no opt out rights. Accordingly,  
17 this Court should approve the proposed notice and direct that it be distributed.

18 **D. The Court Should Approve the Proposed Scheduling Order Including**  
19 **Setting a Date for the Fairness Hearing**

20 Once the Court grants preliminary approval and notice is provided, the Court  
21 conducts a “fairness hearing,” at which all interested parties are afforded an opportunity  
22 to be heard. At such a hearing, the Court conducts a substantive evaluation of the  
23 proposed settlement to determine whether it is “fundamentally fair, adequate, and  
24 reasonable.” *See, e.g., Officers for Justice*, 688 F.2d at 625; *In re Oracle Sec. Litig.*,  
25 829 F. Supp. 1176, 1179 (N.D. Cal. 1993).

26 The parties propose the following schedule:  
27  
28

1	Publication of Settlement Notice for four consecutive weeks in The Los Angeles Times, The Los Angeles Daily News, and La Opinion	To be completed within 45 days after entry of Order granting preliminary approval
2		
3	Posting of Settlement Notice on the City's official website	Within 20 days after entry of Order granting preliminary approval
4		
5	Provision of Settlement Notice to organizations listed on Exhibit F to the proposed Agreement	Within 10 days after entry of Order granting preliminary approval
6		
7	Establishment of website by Class Counsel electronically publishing notice	Within 10 days after entry of Order granting preliminary approval
8		
9	Deadline for Plaintiffs to file Motion for Attorneys' Fees and Costs	Within 10 days after entry of Order granting preliminary approval
10		
11	Deadline for objections by Class Members	Within 45 days after notice to the Settlement Class.
12		
13	Deadline for Class Counsel and/or the City to respond to any timely-filed objections	5 days before Final Approval Hearing
14		
15	Final Approval Hearing	To be determined by the Court

**V. CONCLUSION**

For the foregoing reasons, the parties respectfully request that this Court: (1) grant preliminary approval of the Settlement Agreement and Release of Claims; (2) certify the proposed Settlement Class and appoint named Plaintiffs and their counsel as proper representatives of the Settlement Class; (3) approve and direct the publication of the class notice proposed by the Parties; (4) schedule a fairness hearing for final approval of the Settlement; and (5) authorize the issuance of the requested findings set forth in Section III.F., above, as part of the Final Approval process.

DATED: January 8, 2016

Respectfully submitted,

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WOTKYNS, LLP

By: /s/Guy B. Wallace  
Guy B. Wallace  
Counsel for Plaintiffs

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