

1 Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement came before
2 this Court on _____, 2018. Class Counsel's Motion for an Award of Attorneys' Fees,
3 Reimbursement of Expenses and Payment of an Incentive Award also came on for hearing.

4 John W. McWilliams brought this lawsuit on behalf of himself and those similarly situated
5 against the City of Long Beach ("City") based on allegedly illegal and improper tax collection
6 with respect to the City's Telephone Utility Users' Tax ("UUT"), former Long Beach Municipal
7 Code section 3.68.050(a), as applied to mobile/cellular and landline telephone services. Plaintiff
8 John W. McWilliams sought a refund of all UUT collected on charges for all telephone services
9 other than local telephone services. Plaintiff's complaint seeks declaratory and injunctive relief,
10 and alleges money had and received and unjust enrichment.

11 In order to preserve his claims and ensure continuation of this lawsuit in the event of his
12 death, on June 4, 2014, Mr. McWilliams created the John W. McWilliams Telephone Tax Claim
13 Living Trust and transferred all of his rights and claims in connection with the lawsuit to the Trust.
14 Mr. McWilliams appointed as trustee Joseph Henschman of Tax Foundation, a non-profit tax
15 policy research organization based in Washington, D.C. Mr. McWilliams passed away on
16 December 30, 2015. In connection with the settlement, the parties stipulated to substitute Joseph
17 Henschman, Trustee of the John W. McWilliams Telephone Tax Claim Living Trust, as the named
18 plaintiff, and this Court approved of the substitution on March 6, 2018.

19 The City denies that the tax was collected illegally, denies all of the claims and any
20 liability or wrongdoing of any kind associated with Plaintiff's claims asserted in his complaint.

21 On March 28, 2018, this Court entered an Order Preliminarily Approving Class Action
22 Settlement (the "Preliminary Approval Order"), resulting in certification of the following
23 provisional Settlement Class:

24 [A]ll persons, including corporate and non-corporate entities wherever organized
25 and existing, who paid telephone utility user taxes to the City of Long Beach on the
26 Kinds of Telephone Service utilized between August 11, 2005 and December 19,
27 2008, other than purely local service, teletypewriter exchange service, or long
28 distance telephone service where the charge varied by both time and distance.

1 “Kinds of Telephone Service” means the three kinds of telephone service that are
2 the subject of this Action and for which UUT refunds are to be made under this
3 settlement: a) Residential landline service; b) Business landline service; and c)
4 Mobile telephone service.

5 “Purely local service” means local telephone service provided under a calling plan
6 that does not include long distance telephone service or local telephone service
7 where the charges for that service are separately stated on the bill to customers.

8 The Settlement Class does not include prepaid mobile customers (which includes
9 customers who purchased plans described as “pay as you go,” “pay as you talk,”
10 “pay and go wireless,” “prepay or burner phone service” and “no contract service”)
11 but does include prepaid mobile telephone service providers, i.e., those that provide
12 the above services to customers who prepay for wireless service. The Settlement
13 Class does not include any person, including corporate and non-corporate entities
14 wherever organized and existing, to whom the City has already paid a full refund of
15 UUT paid for services utilized during the Class Period.

16 The “Class Period” is from August 11, 2005 to December 19, 2008.

17 That order further directed the parties to provide notice to the Class, which informed
18 absent Class Members of: (i) the proposed settlement, and the settlement’s key terms; (ii) the
19 date, time and location of the Final Settlement Hearing; (iii) the right of any Class Member to
20 object to the proposed settlement, and an explanation of the procedures to exercise that right;
21 (iv) the right of any Class Member to exclude themselves from the proposed settlement, and an
22 explanation of the procedures to exercise that right; and (v) an explanation of the procedures for
23 Class Members to participate in the proposed settlement.

24 Class Members were provided notice of the Final Settlement Hearing by mail, publication,
25 press release, television and radio advertising, and through the Claims Administrator’s website
26 and Class Counsel’s websites.

27 The Court, upon notice having been given as required by the Preliminary Approval Order,
28 and having considered the proposed Second Amended Settlement Agreement as well as Plaintiffs’
Notice of Motion and Unopposed Motion for Final Approval of Class Action Settlement as
provided by California Rules of Court, rule 3.769(g), the memorandum of points and authorities in
support thereof, the declarations in support thereof, relevant law, the objections received and the

1 oral argument presented to the Court, and in recognition of the Court’s duty to conduct a fairness
2 hearing as to the good faith, fairness, adequacy and reasonableness of any proposed settlement,

3 **HEREBY ADJUDGES, ORDERS, AND DECREES** as follows:

4 **I. DEFINITIONS**

5 The capitalized terms used in this Order, if any, shall have the meanings and/or definitions
6 given to them in the Second Amended Settlement Agreement.

7 **II. JURISDICTION**

8 The Parties and the Class Members have submitted to the jurisdiction of this Court for
9 purposes of the Settlement. The Court has personal jurisdiction over the Parties and the Class
10 Members and has subject matter jurisdiction to approve the Settlement and to release all claims
11 and causes of action that are to be released pursuant to the Settlement.

12 **III. CERTIFICATION OF THE SETTLEMENT CLASS**

13 Because the Settlement Class is ascertainable and there is a well-defined community of
14 interest in the material questions of law and fact providing the gravamen of this action, and
15 because class treatment is the superior method of adjudication and in the best interests of the
16 parties and this Court, the Settlement Class is hereby certified.

17 **IV. NOTICE TO CLASS MEMBERS AND NOTICE AND ADMINISTRATION COSTS**

18 The notice mechanisms implemented pursuant to the Second Amended Settlement
19 Agreement, which the Court approved in the Preliminary Approval Order on March 28, 2018:

20 (i) constitute reasonable and best practicable notice, in that they are reasonably calculated, under
21 the circumstances, to apprise putative Class Members of the pendency of the Action, the terms of
22 the Settlement, their right to object or exclude themselves from the Settlement, their right to
23 appear at the Final Settlement Hearing, and the fact that a failure to submit a valid and timely
24 request for exclusion serves to submit the member to the Court’s jurisdiction for settlement
25 purposes; and (ii) constitute due, adequate, and sufficient notice under the requirements of the
26 United States Constitution, California law and other applicable laws and rules of court. Further,
27 the Court has considered the declarations and exhibits thereto provided by the Claims
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1 Administrator as to the implementation of the Notice mechanisms and finds that the Notice
2 requirements have been reasonably satisfied.

3 The Claims Administrator shall be paid \$_____ from the Settlement Fund for
4 its costs incurred for notice and administration.

5 The telephone service providers retrieving UUT payment data shall be reimbursed for their
6 costs of retrieving such data out of the Settlement Fund.

7 **V. ORDER GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT**

8 The Court has reviewed the terms of the Second Amended Settlement Agreement and finds
9 that the Second Amended Settlement Agreement is fair, adequate, and reasonable when balanced
10 against the possible outcome of further litigation relating to class certification, liability, and
11 damages. The Court finds further that settlement at this time will avoid substantial additional costs
12 and will avoid the delay and risks presented by continued prosecution of the litigation. The Court
13 also finds that the Settlement has been reached after significant and extensive arm's-length
14 negotiations between and among highly-experienced counsel for the parties, with the assistance of
15 an experienced mediator.

16 The Second Amended Settlement Agreement is approved and made a part of this order as
17 if fully set forth herein, and shall have the full force and effect of an order of this Court. The
18 parties shall consummate the Second Amended Settlement Agreement according to its terms.

19 Following notice that was sent to each Class Member by first class mail, 2 Class Members
20 objected to the terms of the Settlement and only 9 Class Members opted out. Such negligible
21 opposition to the Settlement is evidence of the Settlement's fairness, adequacy, and
22 reasonableness. Taking into account: (i) the value of the Settlement benefits to the Class
23 Members; (ii) the risks inherent in continued litigation; (iii) the complexity, expense, and likely
24 duration of the litigation in the absence of settlement; (iv) the experience and views of Class
25 Counsel; and (v) the reactions of Class Members, the Court finds that the settlement is fair,
26 adequate, reasonable, and deserves this Court's final approval.

27 The Court therefore hereby orders and declares: (i) the Second Amended Settlement
28 Agreement is binding on all Parties and Class Members; (ii) the Second Amended Settlement

1 Agreement shall be preclusive in all pending and future lawsuits or other proceedings; and (iii) the
2 Second Amended Settlement Agreement and this Order shall have res judicata and preclusive
3 effect in all pending and future lawsuits or other proceedings maintained by or on behalf of any
4 Class Member, as well as each of their heirs, executors, administrators, successors and assigns.
5 Upon the Effective Date, the Second Amended Settlement Agreement shall be the exclusive
6 remedy for any and all Released Claims of Settlement Class Members.

7 **VI. RELEASE**

8 The Court references and confirms that the release in the Second Amended Settlement
9 Agreement is approved. The Court orders that the City and the Related Parties shall be released
10 and forever discharged from all Released Claims, and Plaintiff and all Class Members and their
11 heirs, executors, estates, predecessors, successors, assigns, agents and representatives shall be
12 deemed to have jointly and severally released and forever discharged the City and the Related
13 Parties from any and all Released Claims, whether known or unknown, arising from the facts
14 alleged in the Complaint, and shall be fully and forever barred and enjoined from instituting or
15 prosecuting in any court or tribunal, either directly or indirectly, individually or representatively,
16 any and all Released Claims against the City or any of the Related Parties. The Released Claims
17 specifically include any and all claims, demands, rights, damages, obligations, suits, and causes of
18 action of every nature and description whatsoever, ascertained or unascertained, suspected or
19 unsuspected, existing or claimed to exist, including both known and unknown claims of the
20 Plaintiff and all Class Members that were or could have been brought against the City and/or its
21 Related Parties, or any of them, during the Class Period, arising from the matters alleged in the
22 Complaint.

23 **VII. PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES AND EXPENSES**

24 Class Counsel have moved for an award of attorneys' fees and expenses, notice of which
25 was given to all Class Members pursuant to the Court's Preliminary Approval Order of March 28,
26 2018. The Court heard argument regarding Plaintiff's request for attorneys' fees and expenses and
27 a Plaintiff's incentive award upon duly noticed motion on _____, 2018. Based upon all
28 papers filed with the Court, oral argument at the hearing on _____, 2018, the Court's

1 observation and assessment of the performance of Class Counsel throughout this litigation, the
2 resulting settlement recovery, and good cause appearing therefor, the Court finds as follows:

3 In light of the work they performed on the case, the outstanding results they achieved on
4 behalf of Class Members, the contingent nature of the litigation, the experience and skill Class
5 Counsel displayed in the litigation, the preclusion of other employment occasioned by the hours
6 Class Counsel devoted to this litigation, the risks taken in representing the taxpayers, the novelty
7 and complexity of the legal issues, the length of the representation, and the fact that the Plaintiff
8 did not agree to pay attorneys' fees if the case had been unsuccessful, this Court finds that an
9 award of \$_____ in attorneys' fees and \$ _____ in expenses for all past and
10 remaining work until the completion of this matter in accordance with the terms of the Second
11 Amended Settlement Agreement is fair and reasonable.

12 As a cross-check to test the reasonableness of this amount the Court finds that the
13 \$_____ in lodestar Class Counsel have dedicated to the prosecution of this action since its
14 inception is reasonable and consistent with the litigation in this case. This Court further finds that
15 Class Counsel's hourly rates are reasonable for their skill and the work they performed. In setting
16 its award of Attorney's Fees and Expenses, the Court has considered the following factors: (i) the
17 contingent nature of this action; (ii) the experience, reputation and ability of Class Counsel and the
18 skill they displayed in litigation; (iii) the results achieved under the Settlement; and (iv) the
19 preclusion of other employment. *See Glendora Cmty. Redevelopment Agency v. Demeter*, 155
20 Cal. App. 3d 465, 474-75, 480 (1984); *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977).

21 The Court's application of all of the facts to these factors demonstrates that the award of
22 fees and costs is eminently reasonable. The award of fees and cost shall be paid from the
23 Settlement Fund within five (5) business days of the date of this Order. Such fees, costs and
24 expenses shall be paid to Wolf Haldenstein Adler Freeman & Herz LLP and Chimicles & Tikellis
25 LLP, who shall allocate such fees, costs and expenses to other Class Counsel in the Action.

26 **VIII. INCENTIVE AWARD TO THE CLASS REPRESENTATIVE**

27 Class Counsel have also moved for an incentive award to the Class Representative, notice
28 of which was also given to all Class Members pursuant to the Court's Preliminary Approval Order

1 of March 28, 2018. Plaintiff seeks a service award for the Class Representative in the amount of
2 \$6,000. In support of this request, Plaintiff asserts that Mr. McWilliams expended considerable
3 time and effort, from 2006 through 2015, pursuing the claims on behalf of himself and the Class
4 Members, including responding to discovery, producing documents, overseeing the litigation and
5 approving the key terms of the settlement reached during mediations. Moreover, knowing that his
6 health was failing, in June 2014, Mr. McWilliams created the Trust to ensure that his claims, and
7 the claims of other Class Members, would be preserved and pursued upon his death. Mr.
8 McWilliams designated Tax Foundation, a non-profit tax policy research organization, as
9 successor beneficiary of the Trust, and appointed Joseph Henschman, Vice President of Legal &
10 State Projects at the Tax Foundation, to serve as Trustee of the Trust. Until he passed away, Mr.
11 McWilliams oversaw the litigation and approved the material terms of the settlement, and since
12 the creation of the Trust Mr. Henschman has also held a supervisory role and approved the
13 Settlement on behalf of the Trust. Thus, Mr. McWilliams and Mr. Henschman as Trustee expended
14 considerable effort to ensure that Mr. McWilliams' claims on behalf of himself and all Class
15 Members would survive his death. Plaintiff seeks the modest \$6,000 payment as compensation
16 for the time, effort, and risk that Mr. McWilliams and the Trustee spent to enable the Class
17 Members to receive this substantial recovery. This modest incentive will inure to the benefit of
18 Tax Foundation, as beneficiary of the Trust.

19 The Court notes that California and federal courts regularly approve incentive awards to
20 compensate class representatives for the services they provide to the class, the time and effort they
21 invest on behalf of others, and the risks that they incur during the course of class action litigation.
22 Plaintiff John W. McWilliams and Mr. Henschman as Trustee performed a substantial service to
23 Class Members, including bringing this action, providing relevant documents and information, and
24 making themselves available to work with Class Counsel throughout the Action. Prior to his
25 death, Mr. McWilliams approved the core terms of the Settlement reached during mediations, and
26 the Trustee likewise performed a substantial service to Class Members by working with Class
27 Counsel as the Settlement terms were finalized. Although the proposed incentive award was
28 disclosed to the Settlement Class in the Notice, no Class Member objected to it. In light of these

1 facts, the requested service award to the Class Representative is appropriate. For the foregoing
2 reasons, the Court finds that an incentive award of \$_____ to the Class Representative is
3 fair and reasonable considering his service to Class Members.

4 The Court hereby sets a non-appearance date for the submission of a final accounting on
5 _____. Class Counsel is ordered to submit to the Court a final accounting report
6 on or before that date.

7 **IT IS SO ORDERED.**

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10 _____, 2018

HON. MAREN E. NELSON
JUDGE OF THE SUPERIOR COURT

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