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25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26
27 IN AND FOR THE COUNTY OF LOS ANGELES
28

29 WILLY GRANADOS, on behalf of himself)
30 and all others similarly situated,)
31 Plaintiff,)
32 v.)
33 COUNTY OF LOS ANGELES,)
34 Defendant.)

Case No. BC361470
**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**
DATE: October 29, 2018
TIME: 9:00 a.m.
DEPT: SS17
JUDGE: Hon. Maren E. Nelson

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 29, 2018 at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, in Department SS17 of the Superior Court of California, County of Los
4 Angeles, located at 312 North Spring Street, Los Angeles, California, Plaintiff Willy Granados
5 (“Class Representative” or “Plaintiff”) will move this Court, without opposition, for a judgment
6 and an order finally approving the settlement in this action, finally certifying the preliminarily
7 approved Class, and dismissing this action according to the terms of the settlement.

8 This motion is made pursuant to California Code of Civil Procedure (“CCP”) section 382
9 and California Rules of Court, rule 3.760, *et seq.* on the grounds that the proposed settlement is
10 fair, reasonable, and adequate.

11 This motion is based upon: the accompanying Memorandum of Points and Authorities; the
12 Settlement Agreement and the exhibits thereto; the Declaration of Willy Granados; the Joint
13 Declaration of Rachele R. Byrd and Timothy N. Mathews; the Declaration of Jennifer M. Keough
14 Regarding Notice and Claims Administration; the Declaration of Hon. Dickran Tevrizian (Ret.);
15 all files and records in this action, and any argument and evidence which may be presented at the
16 hearing on this motion.

17 DATED: October 4, 2018

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This class action against the County of Los Angeles (the “County”) arises from the
4 County’s collection of telephone utility users’ taxes (“TUT”) from August 25, 2005 through
5 November 4, 2008 (the “Class Period”) on telephone services allegedly not taxable under the
6 County’s TUT ordinance. After more than a decade of hard-fought litigation, including an appeal
7 to the Court of Appeal, and extensive arm’s-length negotiations before the Honorable Dickran
8 Tevrizian (Ret.), Plaintiff and the County seek final approval of their Settlement Agreement
9 (“SA”). Joint Declaration of Rachele R. Byrd and Timothy N. Mathews in Support of: (1)
10 Motion for Final Approval of Class Action Settlement; and (2) Motion for Attorneys’ Fees,
11 Reimbursement of Expenses and Payment of an Incentive Award (the “Joint Decl.”), Exhibit A.¹

12 The County has agreed to pay up to \$16,900,000 (the “Settlement Fund”) to settle this
13 litigation. Joint Decl., Ex. A, § III.A.1. The Settlement Fund² will provide TUT refunds to the
14 Class and also payment of Settlement notice and administration costs, including certain telephone
15 carriers’ costs of retrieving and providing TUT data, Plaintiff’s attorneys’ fees and costs, and an
16 incentive award to Plaintiff. *Id.*, Ex. A, § III.A.1.

17 The Settlement is an outstanding result. Class Members³ can receive up to a **full recovery**
18 of the amount of the TUT that Plaintiff challenged as improperly collected by submitting
19 documentary evidence of the amount of TUT paid, or by providing consent for certain of their
20 telephone providers to provide that information to the Claims Administrator. *Id.*, Ex. A, § III.B.3.
21 Class Members can also receive refunds of \$27.50 for landline, \$46 for business landline, and/or
22 \$46 for mobile service, without providing any documentation (*id.*, Ex. A, § III.B.2), a significant

23 _____
24 ¹ This Court preliminarily approved the Settlement on March 28, 2018, and set a Final
25 Fairness Hearing for October 29, 2108. *See* Joint Decl., Ex. C (Order Granting Motion for
26 Preliminary Approval of Class Action Settlement, dated March 28, 2018 (hereafter referred to as
27 the “Order”)).

26 ² Capitalized terms have the meaning ascribed in the SA, unless otherwise noted. *See* Joint
27 Decl., Ex. A.

28 ³ On May 23, 2017, the Court granted the motion and certified the Class, as defined in the
Order. *See* Joint Decl., Ex. A at 3.

1 achievement since taxpayers ordinarily bear the burden of producing evidence of any tax refund
2 claimed due. *See, e.g., Dicon Fiberoptics, Inc. v. Franchise Tax Bd.*, 53 Cal. 4th 1227, 1236
3 (2012).⁴

4 The parties urge the Court to grant the Settlement final approval as fair, reasonable, and
5 adequate. Class Members will receive immediate relief in the form of refunds rather than
6 experience years of further delays as the litigation and inevitable appeals unfold. Plaintiff also
7 respectfully requests that the Court finally certify the Class.

8 **II. BACKGROUND**

9 A comprehensive description of Plaintiff's claims and a procedural history of the case are
10 contained in the Joint Declaration, filed concurrently herewith. In sum, the County's TUT
11 ordinance collected a 5% tax on amounts paid for *all* telephone services used by every person
12 located within the unincorporated areas of the County. ¶¶ 1, 22.⁵ However, the TUT expressly
13 excluded from taxation amounts paid for telephone services not taxable under the Federal Excise
14 Tax ("FET"), 26 U.S.C. § 4251. ¶ 24. Therefore, Plaintiff contends that telephone services not
15 subject to the tax imposed by the FET were not subject to the TUT.

16 On August 25, 2006, Plaintiff submitted an administrative class claim with the County
17 pursuant to Government Code § 900, *et seq.* for refund of the improperly collected taxes. ¶ 62;
18 Joint Decl., ¶ 10. The County never responded to Plaintiff's claim. *Id.*

19 On November 6, 2006, Plaintiff filed this class action. On January 3, 2007, the County
20 filed a demurrer claiming, among other things, that Plaintiff's class claim was invalid. *Id.*, ¶ 14.
21 This Court sustained the County's demurrer, holding, *inter alia*, that Plaintiff could not assert a
22
23

24 ⁴ A Class Member's Recognized Claim Amount will be offset by the amount of any TUT
25 refund it previously received from the settlement of a case titled, *Oronoz v. County of Los Angeles*,
26 L.A. Super. Ct., No. BC334027, which also provided some refunds of TUT (and other utility
27 users' taxes) based upon a settlement of different claims. SA, § III.B.5.

28 ⁵ All paragraph references ("¶"), unless otherwise specified, are to Plaintiff's Class Action
Complaint for Declaratory, Injunctive, Monetary and Other Relief, filed November 6, 2006 (the
"Complaint").

1 class claim for a tax refund. *Id.*⁶

2 Plaintiff appealed and the briefing on appeal was completed on June 20, 2008, but the
3 Court of Appeal stayed the appeal on August 20, 2008, pending a ruling by the Court of Appeal in
4 a related case, *Ardon v. City of Los Angeles*, No. BC363959. In *Ardon*, this Court also sustained
5 in part a demurrer by the defendant, City of Los Angeles, on the grounds that the plaintiff's class
6 claim for tax refunds was invalid. *Id.*, ¶ 14. On May 28, 2009, the Court of Appeal affirmed this
7 Court's decision in *Ardon*. *Ardon v. City of Los Angeles*, 174 Cal. App. 4th 369 (2009). However,
8 on July 25, 2011, the California Supreme Court unanimously ruled in Plaintiff Ardon's favor,
9 reversing the judgment of the Court of Appeal, and holding that "[c]lass claims for tax refunds
10 against a local governmental entity are permissible under [Government Code] section 910 in the
11 absence of a specific tax refund procedure set forth in an applicable governing claims statute."
12 *Ardon v. City of Los Angeles*, 52 Cal. 4th 241, 253 (2011). Then, on March 28, 2012, the Court of
13 Appeal reversed in part this Court's granting of the County's demurrer in this case. *Granados v.*
14 *Cnty. of Los Angeles*, No. B200812, 2012 Cal. App. Unpub. LEXIS 2399 (2d App. Dist. Mar. 28,
15 2012).⁷

16 The City of Long Beach in another related case, *McWilliams v. City of Long Beach*, then
17 filed a Petition for Review with the California Supreme Court on April 30, 2012 (Case No.
18 S202037), arguing that the case raised a pressing question expressly reserved in the Supreme
19 Court's decision in *Ardon*, 52 Cal. 4th at 246, n.2, namely whether the Government Claims Act
20 preempts local claiming requirements stated in city charters and county ordinances. The City of
21 Long Beach contended that it had a claiming ordinance that qualified as a "statute" under
22 Government Code section 905(a) and that the ordinance prohibited the filing of class claims. The

23 _____
24 ⁶ Subsequent to the Court's ruling, voters approved an amendment to the County's TUT
25 ordinance which removed any reference to the FET, effective November 4, 2008. This date marks
26 the end of the Class Period. Joint Decl. at 4, n.7.

27 ⁷ The reversal was only in part because Plaintiff conceded that his fourth cause of action for
28 violation of due process and fifth cause of action for writ of mandate were moot because he had an
adequate "post-deprivation" remedy in light of *Ardon*, namely a class claim for a tax refund. "The
trial court therefore correctly sustained the County's demurrer to these causes of action." *Id.* at
*10.

1 Supreme Court granted the City’s petition on July 11, 2012. On April 25, 2013, the Supreme
2 Court affirmed the judgment of the Court of Appeal in full, *McWilliams v. City of Long Beach*, 56
3 Cal. 4th 613 (2013), holding that “the applicable definition of ‘statute’ in section 905, subdivision
4 (a) is that set forth in section 811.8, which excludes local charter provisions and ordinances.” *Id.*
5 at 626.

6 Settlement was reached here only after extensive discovery was conducted by the parties in
7 this and in the related cases, *Ardon* and *McWilliams*. In this case, Plaintiff served the County with
8 two sets of requests for production of documents, one in 2007 before the Court granted the
9 County’s demurrer and Plaintiff appealed, and the other in 2017. The County refused to produce
10 any documents in 2007, and in 2017 it produced data sufficient to show how much TUT each
11 telephone service provider remitted to the County during the Class Period. Plaintiff also
12 propounded, and the County responded to, requests for admission and special interrogatories. The
13 County also took Plaintiff’s deposition. Joint Decl., ¶ 23.

14 Plaintiff also served subpoenas for the production of business records on numerous third-
15 party telephone service providers as well as Rust Consulting and the Internal Revenue Service.
16 Pursuant to these subpoenas, Rust Consulting, Sprint and AT&T produced documents and T-
17 Mobile executed a declaration. This action settled only after the County and third parties
18 produced documents, the County responded to written discovery, and the County took Plaintiff’s
19 deposition. Class Counsel also had the benefit of the thousands of pages of documents produced
20 in the related *Ardon* and *McWilliams* cases by the same telephone service providers who collected
21 the TUT and remitted it to the County in this case.

22 Upon remand, Plaintiff served a settlement demand upon the County and the County, after
23 purportedly considering the demand for several months, rejected it. But then, on December 16,
24 2016, the County filed a motion to dismiss this action pursuant to Code of Civil Procedure,
25 sections 583.310 and 583.420 (the “five year rule”). After extensive briefing, this Court denied
26 the County’s motion to dismiss on April 11, 2017. Joint Decl., ¶ 18.

27 Plaintiff filed his motion for class certification on February 21, 2017, and on May 23,
28 2017, after denying Defendant’s five-year-rule motion, and over Defendant’s strenuous objection,

1 the Court granted the motion and certified the Class. The County filed a Petition for Writ of
2 Mandate in July, 2017, requesting interlocutory review of the Court’s order certifying the class,
3 and the Court of Appeal denied the Petition on August 24, 2017. On April 6, 2017, Plaintiff filed
4 a motion for summary judgment or, in the alternative, summary adjudication; that motion is still
5 pending. Joint Decl., ¶ 19.

6 On September 13, 2017, the parties participated in a mediation session before Judge
7 Tevrizian (Ret.) where they agreed to a settlement amount. *Id.*, ¶ 20. Resolving all material
8 terms, however, required lengthy additional negotiations. *Id.* The parties subsequently exchanged
9 multiple drafts of the Agreement via email and discussed some of the terms over the telephone on
10 numerous occasions. On March 6, 2018, the parties executed the Settlement Agreement and
11 Plaintiff filed a motion for preliminary approval of the Settlement. *Id.* On March 28, 2018, this
12 Court granted preliminary approval to the Settlement. *Id.*, Ex. A.

13 **III. SETTLEMENT TERMS**

14 **A. Monetary Relief to Class Members**

15 The County has committed to pay up to \$16.9 million to settle this action (the “Settlement
16 Fund Amount”). Joint Decl., Ex. A, § III.A.1. This amount represents approximately 25-28% of
17 the TUT it unlawfully collected during the Class Period. *Id.*, § III.A.⁸ Pursuant to the SA, the
18 County has advanced the funds necessary to pay the costs of notice and preliminary
19 administration. *Id.*, § IV.L.; Declaration of Jennifer M. Keough Regarding Notice and Claims
20 Administration (“Keough Decl.”), ¶ 30.

21 Within 30 days of entry of judgment and an order of this Court granting final approval of
22 the Settlement, the County will allocate the Settlement Fund Amount into a separate County
23 account (the “Settlement Fund Account”). Joint Decl., Ex. A, § III.A.1. Within 21 days of

24 _____
25 ⁸ According to documents produced by the County in discovery, the County collected
26 approximately \$89 million in TUT during the 39-month Class Period. Accounting for the lawful
27 taxation of local-only telephone services, Plaintiff estimates that approximately \$70-77 of the \$89
28 million was unlawfully collected. After subtracting the \$9.2 million already refunded through the
Oronoz settlement, the total unreimbursed damages here are approximately \$60-\$68 million. Joint
Decl., ¶ 38.

1 receiving notice from the Claims Administrator of the amount needed to pay all Class Member
2 Payment Amounts, the County shall draw that amount from the Settlement Fund Account and pay
3 it directly to the Claims Administrator. *Id.*

4 Three types of telephone services are included in the Settlement: (1) residential landline
5 services; (2) business landline services; and (3) mobile telephone services. For each type of
6 service utilized during the Class Period, Class Members have the option of claiming: (1) a
7 standard amount; or (2) with submission of telephone bills or other proof of payment of the TUT,
8 a refund based on the total, actual TUT paid. *Id.*, § III.B.⁹

9 Class Members have several options to submit claims. For each type of service utilized
10 during the Class Period (mobile, residential landline, and/or business landline), Class Members
11 have the option of claiming: (1) a standard refund amount, with no required documentation; (2) a
12 refund based on the total, actual TUT paid during the Class Period, with submission of telephone
13 bills or other proof of payment of the TUT, such as data provided by their telephone service
14 provider; or (3) a refund based on the TUT reflected in a sample of more recent telephone bills if
15 the Class member is unable to locate Class Period bills.¹⁰

16 Under the first claiming option (“Option 1”), the standard Recognized Claim Amounts are
17 \$27.50 for residential landline telephone service, \$46.00 for business landline service, and/or
18 \$46.00 for mobile telephone service. *Id.*, § III.B.2.

19 Under the second claiming option (“Option 2”), for mobile service, the Recognized Claim
20 Amount will be based on 100% of the TUT shown on the documentation, and for landline
21 telephone service the Recognized Claim Amount will be based on 70% of the sum of the TUT
22 shown on the bills or other form of proof.¹¹ *Id.*, § III.B.4. Class Members using this Option can

23 _____
24 ⁹ Class Members do not have to elect the same claiming option for all types of telephone
25 services. For example, if they paid for mobile telephone service and residential landline service
26 during the Class Period, but do not have phone bills for their landline service, they can claim
27 under the first option for landline service and the second option for mobile telephone service.

28 ¹⁰ The amounts for all claims are subject to proration if claims exceed the settlement amount.
Joint Decl., Ex. A, § V.B.2.

¹¹ Charges for purely local service were properly taxed under the TUT. Further, although
Plaintiff disputes this, the City has argued that “bundled” landline service, where long distance
(continued...)

1 submit all of their Class Period bills, or they can submit a sample of bills from the Class Period,
2 and their Recognized Claim Amount will be based on the average monthly TUT reflected,
3 multiplied by the number of months in the Class Period. In order to claim a refund for the full
4 Class Period using the sampling method, Class Members must submit at least three sample bills
5 from each full calendar year in the Class Period (2006, 2007, and 2008), and at least one bill from
6 the August 2005 to December 2005 time period, for a total of ten. *Id.*, § III.B.3.b.

7 Furthermore, the parties worked with certain of the major carriers and came to agreement
8 on a process by which the Class Members are able to request that the carriers search for their Class
9 Period TUT payment data. Verizon¹² and Sprint will provide TUT data directly to the Claims
10 Administrator for Class Members who provide consent, and T-Mobile provided such data directly
11 to Class Members who requested it via a dedicated email address or telephone number. *Id.*, §
12 III.B.3.a.i.&ii. The parties have agreed that the costs of data retrieval by Sprint, Verizon, and T-
13 Mobile shall be paid as part of Notice and Administration Expenses. *Id.*, § III.B.3.a.iii.

14 Finally, under the third claiming option (“Option 3”), Class Members who are unable to
15 submit bills from the Class Period can submit a sample of at least 10 more recent bills reflecting
16 payment of the TUT. *Id.*, § III.B.3.b. In order to submit a claim under this Option 3, Class
17 Members must affirm on the Claim Form that they have made good faith efforts to locate copies of
18 bills from the Class Period but have been unable to do so, and that, to the best of the Class
19 Member’s knowledge, his/her/its telephone usage during the Class Period was substantially
20 similar to, or greater than, the telephone usage reflected in the copies of bills being submitted. *Id.*
21 In order to utilize this sampling method, Class Members must submit at least ten bills from four
22 different calendar years (*e.g.*, 3 bills from 2014, three bills from 2015, three bills from 2016, and
23 one from 2017). *Id.*

24 _____
(...continued)

25 and local service are charged together, was properly taxed. Accordingly, the parties negotiated
26 that the recognized claim amount for Option 2 landline service would be 70% of the total TUT
27 paid. Joint Decl., Ex. A, § III.B.4.

28 ¹² Due to availability of data, the Verizon data searches will be limited to accounts with
Verizon Wireless, MCI Communication Services, Inc., and MCImetro Access Transmission
Services LLC d/b/a Verizon Access Transmission Services.

1 Class Members had 120 days to submit their claims, or until September 15, 2018. Joint
2 Decl., Ex. A, § V.A.; *id.*, Ex. C at 32. In addition to the robust notice program, Class Counsel
3 sponsored an outreach program at their own cost to encourage the submission of claims, especially
4 by potentially large TUT taxpayers that could be identified, such as businesses that would be
5 expected to have high volume telephone usage. *Id.*, § IV.K; Joint Decl., ¶ 43.

6 The Claims Administrator reports that as of October 2, 2018 the number of claims
7 submitted is 63,420. Keough Decl., ¶ 20.¹³ Class Members were also provided with an
8 opportunity to opt out of, or object to, the Settlement. In order to opt out of the Settlement, on or
9 before October 15, 2018, Class Members needed only file with the Claims Administrator a signed,
10 written request to opt out that included the Class Member's name, address and telephone number
11 and an address and telephone number(s) associated with the Class Period. Joint Decl., Ex. A, §
12 VI.B. To date, the Claims Administrator has received only one request for exclusion. Keough
13 Decl., ¶ 28 & Ex. F thereto. Class Members who opt out may not file objections to the Settlement
14 but, should they change their mind, do have the opportunity to rescind their opt-out during the
15 claims period. Joint Decl., Ex. A, § VI.C. To date, the Claims Administrator has received no
16 requests to rescind. Keough Decl., ¶ 29.

17 Class Members who wish to object to the Settlement, the payment of attorneys' fees and
18 expenses or payment of the Plaintiff's incentive award were required to submit their objections
19 and documentation showing their standing to object to the Claims Administrator by September 28,
20 2018. Joint Decl., Ex. C at 35. To date, Class Counsel and the Claims Administrator have
21 received only 2 objections. Keough Decl., ¶ 27 & Ex. E thereto. Plaintiff believes these
22 objections are easily answered. Plaintiff will respond to the objections in a separate filing by the
23 reply brief due date.

24 **B. The Release is Narrowly Tailored to the Claims**

25 The Court preliminarily found that the "class release is appropriately tethered to the
26 pleading and limited to the relevant time period." Joint Decl., Ex. C at 25. The Class Members

27 _____
28 ¹³ 469 of the claims are late claims.

1 will release claims — ascertained or unascertained, suspected or unsuspected, existing or claimed
2 to exist, including both known and unknown claims — against the County “that were or could
3 have been brought against the County and/or its Related Parties, or any of them, during the Class
4 Period, arising from the facts alleged in the Complaint.” *Id.*, Ex. A, §§ I, VII.A.

5 **C. Requested Attorneys’ Fees and Costs and Incentive Award**

6 As agreed to in the Settlement Agreement, in Plaintiff’s Motion for Award of Attorneys’
7 Fees, Reimbursement of Expenses and Payment of an Incentive Award, filed concurrently
8 herewith, Class Counsel have applied for 23.7% of the Settlement Fund in attorneys’ fees, or
9 \$4,000,000, and expenses of \$90,368.41. Joint Decl., Ex. A, § X.A. Also addressed in the motion
10 filed concurrently herewith is Plaintiff’s application for an Incentive Award of \$10,000 to be paid
11 to Plaintiff from the Settlement Fund Amount in recognition of his contributions on behalf of the
12 Class. The County has reserved the right to comment to the Court on Class counsel’s fee
13 application, and has agreed not to oppose Plaintiff’s request for a \$10,000 incentive award. *Id.*, §
14 X.A. & B.

15 **IV. METHODS AND REACH OF NOTICE AND NOTICE AND CLAIMS
16 ADMINISTRATION COSTS**

17 Notice was given as directed in the Order to reach as many Class Members as possible and
18 was extraordinarily robust, covering virtually every medium imaginable including, for example,
19 458,434 pieces of direct mail (Keough Decl., ¶¶ 6, 8), reminder postcards (*id.*, ¶ 19), television ads
20 on 11 different stations for a total of 548 commercials (*id.*, Ex. D), radio ads on 4 different stations
21 for a total of 571 commercials (*id.*), publication in 13 major news and magazine publications (*id.*),
22 a press release in English and Spanish (*id.*), over 70 million online impressions (*id.*), even roughly
23 3,000 direct telephone calls made to major businesses in the Los Angeles County area (Joint Decl.,
24 ¶ 41), and postings on the Wolf Haldenstein and Chimicles websites. (*id.*). The Claims
25 Administrator estimates that this notice campaign reached well over 90% of the Class Members.
26 Keough Decl., ¶ 12. Notice of final judgment entered in this case will be posted on the Settlement
27 website. *See* Cal. Rules of Court (“CRC”), rule 3.771(b).

28 The County has already paid notice and administration costs to the Claims Administrator
of \$1,197,854.05. Keough Decl., ¶ 30. The Claims Administrator has incurred additional notice

1 and administration costs that have not yet been reimbursed, and it will incur future costs. *Id.*
2 Additionally, certain telephone service providers will be reimbursed for the costs of retrieving and
3 providing Class Member TUT payment records to the Claims Administrator or to the Class
4 Members directly (in the case of T-Mobile). Joint Decl., Ex. A at § III.B.3.a.iii. Total Notice and
5 Administration Expenses are not to exceed \$1,750,000. *Id.*, § IV.L.

6 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND**
7 **THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT**

8 **A. Standards for Final Approval of Settlement**

9 A class action settlement should be approved where the court finds it is fair, adequate, and
10 reasonable to the class members. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128,
11 133 (2008). Moreover, a class action settlement is presumed to be fair if: (1) it is “reached
12 through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel
13 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
14 percentage of objectors is small.” *Chavez v. Netflix*, 162 Cal. App. 4th 43, 52 (2008) (quoting
15 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996)).

16 This Court has already found that the parties reached the Settlement through arm’s-length
17 bargaining including participation “in an all-day mediation session before Judge Tevrizian (Ret.)
18 where they agreed to a settlement in principle.” Joint Decl., Ex. C, § D.1.a. Moreover,
19 investigation and discovery were “sufficient to allow counsel and the court to act intelligently.”
20 *Id.*, § D.1.b. Furthermore, this Court has recognized that “Class Counsel has experience litigating
21 complex class actions in state and federal courts.” *Id.*, § D.1.c. Finally, the percentage of
22 objectors is extremely small. Only two objections have been received to date out of the more than
23 458,000 notices sent to potential Class Members. Keough Decl., ¶¶ 6, 27 & Ex. E. This amounts
24 to only approximately 0.00044% of the Class. Further, only one Class Member timely filed an
25 exclusion request following notice of this proposed Settlement. *Id.*, ¶ 28 & Ex. F. Therefore, the
26 Settlement is entitled to a presumption of fairness.

1 **B. The Settlement is Fair, Adequate and Reasonable**

2 **1. The Strength of Plaintiffs’ Case Balanced Against the Amount**
3 **Offered in Settlement Favors Approval**

4 The \$16.9 million Settlement Fund Amount represents a significant recovery for the Class
5 and represents approximately 25-28% of the TUT the County unlawfully collected during the
6 Class Period—an excellent result. Joint Decl., ¶ 38. “A settlement need not obtain 100 percent of
7 the damages sought in order to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal.
8 App. 4th 224, 250 (2001). *See also, e.g., Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117,
9 1139 (1990) (settlements found to be fair and reasonable even though monetary relief provided
was “relatively paltry”).¹⁴

10 The Claims Administrator reports that it has received 63,420 claims to date. Keough
11 Decl., ¶ 20. With approximately 458,000 members of the Class, this equates to an approximate
12 claims rate of 14%, which exceeds the number of claims the Claims Administrator expected to
13 receive and is similar to the typical claims rates seen in these types of settlements. *Id.* Of these
14 63,420 claims, 61,992 are standard refund claims, of which 50,090 were submitted online and
15 11,903 were submitted via mail. *Id.*, ¶ 22. Also, 11,954 of the claims were actual amount refund
16 claims, of which 1,719 were submitted online and 10,235 were submitted via mail. *Id.*, ¶ 23.
17 Many of the actual amount claims were submitted with substantial documentation. For example,
18 of the mailed claims, 64 were submitted with over 100 pages of supporting documentation,
19 including a claim with more than 900 pages. *Id.* Finally, the Claims Administrator has identified
20 9,350 claims that give consent for carriers to search for and provide it with TUT data. *Id.*, ¶ 24.

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24 ¹⁴ *See also In re Celera Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 U.S. Dist. LEXIS
25 157408, at *18-19 (N.D. Cal. Nov. 20, 2015) (granting final approval on a settlement fund which
26 represented 17% of the plaintiff’s total estimated damages); *In re Omnivision Techs., Inc.*, 559 F.
27 Supp. 2d 1036, 1042 (N.D. Cal. 2007) (granting final approval of a settlement fund where the
28 gross class recovery was 9% of maximum potential recovery); *Destefano v. Zynga, Inc.*, No. 12-
cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196, at *37-38 (N.D. Cal. Feb. 11, 2016) (finding “that
the \$23 million offered in settlement is reasonable” where it represented “approximately 14
percent of likely recoverable aggregate damages at trial . . .”).

1 **2. The Risk, Expense, Complexity and Likely Duration of the**
2 **Litigation Would Be Considerable Were the Action to Proceed**
3 **Against the County**

4 The benefits of this Settlement must also be balanced against the risk, expense, and
5 complexity of further litigation for both parties. *7-Eleven Owners for Fair Franchising v.*
6 *Southland Corp.*, 85 Cal. App. 4th 1135, 1152 (2000). Although Plaintiff is prepared to proceed
7 with his motion for summary judgment or, in the alternative, summary adjudication should the
8 Settlement not be approved, further litigation would produce additional time-consuming and
9 expensive law and motion proceedings, as well as a potential trial. Moreover, given the past
10 history of appellate proceedings in this action, there is also the likelihood that any decisions at
11 class certification, summary judgment and/or trial would be appealed. Against these risks and the
12 possibility of many more years of delay, the Settlement provides taxpayers with an opportunity to
13 claim as expeditiously as possible refunds of all TUT unlawfully collected from them during the
14 Class Period. Since this case is already nearly twelve years old, further delay is likely to further
15 reduce the number of Class Members filing claims because many Class Members will have moved
16 out of the County and consequently will either not receive notice or, even if they do, will be less
17 likely to file claims or go to the trouble of getting their TUT information from a former provider in
18 a different location from where they currently live. Others may not remember their phone
19 numbers from years ago and not be able to file claims. Balancing these considerations supports
20 approval of the Settlement because it reflects a well-reasoned resolution of this action, benefitting
21 the Class and the administration of justice.

22 **3. The Risk of Maintaining Class Action Status through Trial**
23 **Favors Final Approval**

24 The County vigorously opposed Plaintiff’s attempts to have the class certified. As this
25 Court recognized in its Order, “there is always a risk of decertification.” Joint Decl., Ex. C, §
26 D.2.b. (citing *Weinstat v. Dentsply Int’l, Inc.*, 180 Cal. App. 4th 1213, 1226 (2010)). As discussed
27 above, it is also likely, given the history of this action, that, absent the Settlement, the County
28 would appeal this Court’s order granting class certification after entry of any judgment in
Plaintiff’s favor.

1 **4. The Recommendation of Experienced Counsel Favors Approval**

2 In determining whether a proposed settlement is fair, reasonable, and adequate the
3 California courts value highly the opinion of counsel that are experienced in the type of litigation
4 being settled. *See, e.g., Chavez*, 162 Cal. App. 4th at 53. This Court has recognized Class
5 Counsel to have extensive experience litigating class actions. Joint Decl., Ex. C,
6 § D.2.f. Based upon Class Counsel’s substantial experience and their receipt of thorough
7 discovery, extensive litigation and exhaustive negotiations directly with the County and under the
8 guidance of a mediator, the Hon. Dickran Tevrizian (Ret.), they believe the Settlement is fair,
9 reasonable, and adequate and in the best interest of the Class Members. Joint Decl., ¶ 9.

10 **5. Presence of a Governmental Participant Favors Approval**

11 The fact that the defendant in this case is a governmental entity and endorses the settlement
12 weighs in favor of approval. Joint Decl., Ex. C, § D.2.g; *see also Touhey v. United States*, No.
13 EDCV 08-01418-VAP (RCx), 2011 U.S. Dist. LEXIS 81308, at *20-21 (C.D. Cal. July 25, 2011)
14 (fact that defendants “are the government” weighed “in favor of final approval”).

15 **VI. THE NOTICE TO CLASS MEMBERS WAS ADEQUATE**

16 Due process requires that reasonable notice of the settlement be given to all potential class
17 members. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Moreover, “notice of the
18 final approval hearing must be given to the class members in the manner specified by the court.”
19 CRC, rule 3.769(f). The notice methods utilized here complied with the direction of the Order.
20 Notice was conveyed through a broad, multi-layered, multimedia program. Keough Decl.,
21 ¶¶ 8-19. Consequently, the Settlement meets the requirements for reasonable notice in order to
22 obtain final approval.

23 **VII. CONCLUSION**

24 We submit that the Settlement is fair, reasonable, and adequate and urge the Court to grant
25 the Settlement final approval.

26 DATED: October 4, 2018

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