



1 Michael N. Feuer (SBN 111529)
City Attorney
2 Joseph A. Brajevich (SBN 156144)
General Counsel, Department of Water and Power
3 Eskel H. Solomon (SBN 101386)
Assistant City Attorney
4 Los Angeles City Attorney's Office
111 N. Hope Street, Room 340
5 Los Angeles, California 90012

6 Angela C. Agrusa (SBN 131337)
aagrusa@linerlaw.com
7 Maribeth Annaguey (SBN 228431)
mannaguey@linerlaw.com
8 LINER LLP
1100 Glendon Avenue, 14th Floor
9 Los Angeles, CA 90024.3518
Telephone: (310) 500-3500
10 Facsimile: (310) 500-3501

11 Attorneys for Defendant
THE CITY OF LOS ANGELES

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST
15

16 YAAR KIMHI; TAHL BECKERMAN
MEGERDICHIAN; YELENA NOVAK,
17 individually, and on behalf of all others
similarly situated,

18 Plaintiffs,

19 vs.

20 THE CITY OF LOS ANGELES, and DOES 1
21 through 10, inclusive,

22 Defendants.
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Case No. BC536272

[Related to Case Nos: BC565618 (Lead),
BC577267, BC568722, BC571664)

[CLASS ACTION]

Assigned for All Purposes to the
Hon. Elihu M. Berle, Dept. 323

**NOTICE OF ENTRY OF ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND
DIRECTING DISSEMINATION OF
CLASS NOTICE**

Action Filed: February 13, 2014
Trial Date: None Set

LINER^{LLP}
1100 Glendon Avenue | 14th Floor
Los Angeles, CA 90024.3518

COPY

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 30, 2016, the Honorable Elihu M. Berle
3 entered the attached Order Granting Preliminary Approval of Class Action Settlement and
4 Directing Dissemination of Class Notice ("Order"). (See the Court's Order attached hereto as
5 Exhibit "A.")

6
7 Dated: January 5, 2017

LINER LLP

8
9 By: 

10 Maribeth Annaguey
11 Attorneys for Defendant THE CITY OF LOS
12 ANGELES

LINER^{LLP}
1100 Glendon Avenue | 14th Floor
Los Angeles, CA 90024-3518

EXHIBIT A

DEC 30 2016

Sherri R. Carter, Executive Officer/Clerk

By Kelly Jameson, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

YAAR KIMHI; TAHL BECKERMAN
MEGERDICHIAN; YELENA NOVAK,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

THE CITY OF LOS ANGELES, and DOES 1
through 10, inclusive,

Defendants.

Case No. BC536272
[Related to Case Nos: BC565618 (Lead),
BC577267, BC568722, BC571664)
[CLASS ACTION]

[Assigned for All Purposes to the Hon. Elihu
M. Berle, Dept. 323].

**[PROPOSED]
ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
DIRECTING DISSEMINATION OF
CLASS NOTICE**

Date: December 30, 2016
Time: 9:00 a.m.
Dept.: 323

Action Filed: February 13, 2014
Trial Date: None Set

1 WHEREAS, plaintiff Antwon Jones ("Plaintiff"), moved this Court for an Order,
2 pursuant to California Code of Civil Procedure § 382 ("Section 382") and California Civil Code §
3 1781 ("Section 1781"), seeking preliminary approval of a class action settlement, and directing
4 the dissemination of class notice (the "Motion"); and

5 WHEREAS, plaintiffs Yaar Kimhi, Tahl Beckerman Megerdichian and Yelena Novak (the
6 "Solar Plaintiffs") join Plaintiff in this request;

7 WHEREAS, defendant the City of Los Angeles, by and through the Los Angeles
8 Department of Power and Water ("LADWP") and DOES 1 through 50, inclusive (collectively,
9 "Defendant") joins Plaintiff in seeking this same relief; and

10 WHEREAS, the Court reviewed the submissions of the Parties, held hearings on
11 September 11, 2015, November 3, 2015, December 21, 2015 and November 18, 2016 (the
12 "Preliminary Approval Hearing"), and found that the Parties are entitled to the relief they seek;

13 IT IS ORDERED that the Motion is GRANTED, subject to the following terms and
14 conditions:

15 1. The related actions, *Jones v. City of Los Angeles*, Case No. BC577267, *Bransford,*
16 *et al. v. City of Los Angeles*, Case No. BC565618, *Fontaine v. City of Los Angeles, et al.*, Case No.
17 BC571664, *Kimhi v. City of Los Angeles*, Case No. BC536272 (collectively, the "Action") are
18 consolidated for all purposes.

19 2. This Court has both subject matter jurisdiction and personal jurisdiction as to the
20 Action and all Parties.

21 3. The proposed Settlement set forth in the Revised Class Action Settlement
22 Agreement and Limited Release dated November 9, 2016 (the "Settlement Agreement") is
23 preliminarily approved.

24 4. Based upon the submissions of the Parties, and for purposes of this Settlement only,
25 the Court conditionally makes the following findings:

26 a. The members of the Settlement Class are so numerous as to make joinder
27 impracticable.

28 b. There are questions of law and fact common to the Settlement Class, and such

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questions predominate over any questions affecting only individual Settlement Class Members for purposes of the Settlement.

- c. Plaintiff Jones' claims and the defenses thereto are typical of the claims of the Settlement Class Members and the defenses thereto for purposes of the Settlement.
- d. Plaintiff Kimhi's claims and the defenses thereto are typical of the claims of the Solar Subclass Members and the defenses thereto for purposes of the Settlement.
- e. Plaintiff and his counsel have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Settlement Class Members with respect to the Settlement.
- f. The proposed Settlement is superior to all other available methods for fairly and efficiently resolving this Action.
- g. Accordingly, for settlement purposes only, the Court conditionally certifies a Settlement Class comprised of

All LADWP customers who were over-charged for electric, water, sewage or sanitation services between the dates of September 3, 2013 and the present, and who are entitled to credits or refunds for electric, water, sewage or sanitation services and/or for participation in the LADWP's solar incentive program from February 13, 2010.

Expressly excluded from the Settlement Class are the Judge to whom this case is assigned, any members of the Judge's immediate family, and counsel of record in this action.

5. This matter is preliminarily certified as a class action for settlement purposes only, pursuant to Section 382, Section 1781 and Rule 3.769(c) and (d) of the California Rules of Court. If the Court does not finally approve the Settlement, Defendant retains the right to assert that this Action may not be certified as a class action for liability purposes, and no Party shall rely on this preliminary approval as support for the certification of a class in this or any other action.

6. The Court hereby appoints: (i) Antwon Jones as representative of the Settlement Class and (ii) Yaar Kimhi as the representative of the Solar Subclass.

7. Jack Landskroner of Landskroner Grieco Merriman, LLC is appointed as Class Counsel.

1 8. Michael J. Libman of the Law Offices of Michael J. Libman is appointed Liaison
2 Counsel.

3 9. Kurtzman Carson Consultants, LLC is appointed to serve as Claims Administrator.

4 10. Paul Bender of Paul Bender Consulting is appointed to serve as the CC&B System
5 Monitoring Expert.

6 11. Barbara R. Barkovich, Ph.D of the firm of Barkovich & Yap, Inc. is appointed to
7 serve as Special Master.

8 12. The Settlement Agreement shall be used for settlement purposes only. The fact of,
9 or any provision contained in, the Settlement Agreement or any action taken pursuant to it shall not
10 constitute an admission of the validity of any claim or any factual allegation that was or could have
11 been made by Plaintiff and members of the Settlement Class in the present action or of any
12 wrongdoing or liability of any kind on the part of Defendant. The Settlement Agreement shall not
13 be offered or be admissible in evidence by or against Defendant (or any Released Parties as
14 defined in the Settlement Agreement) or cited or referred to in any other action or proceeding,
15 except (a) in any action or proceeding brought by or against the Parties to enforce or otherwise
16 implement the terms of the Settlement Agreement, or (b) in any action involving Plaintiff, or
17 members of Settlement Class, in which the allegations are based on the same factual bases and
18 allegations set forth in this case, to support a defense of res judicata, collateral estoppel, release,
19 waiver or other theory of claim preclusion, issue preclusion, or similar defense.

20 13. A final hearing (the "Final Approval Hearing") shall be held before this Court on
21 July 7, 2017 at 9:00 a.m., to determine whether (a) this Action meets each of the prerequisites for
22 class certification set forth in Section 382 and Section 1781, and may properly be maintained as a
23 class action on behalf of the Settlement Class; (b) the Settlement Agreement should receive final
24 approval as fair, reasonable, adequate, and is in the best interests of the Settlement Class in light of
25 any objections presented by Settlement Class Members and the Parties' responses to any such
26 objections; (c) an order granting final approval of the Settlement Agreement and entering final
27 judgment, as provided in the Settlement Agreement, should be entered; and (d) the applications of
28 Class Counsel for the payment of attorneys' fees and expenses, and service awards are reasonable
and should be approved. The Final Approval Hearing may be postponed, adjourned or continued

1 by further order of this Court, without further notice to the Parties or the Settlement Class
2 Members.

3 14. Settlement Class Members or their counsel who wish to appear at the Final
4 Approval Hearing must make such request by notifying the Clerk of the Court and the Parties'
5 respective counsel in writing at the following addresses:

6 **Plaintiff's Counsel**

7 Jack Landskroner, Esq.
8 LANDSKRONER GRIECO MERRIMAN, LLC
9 1360 W 9th Street, #200
10 Cleveland, OH 44113

11 **Defendant's Counsel**

12 Maribeth Annaguey, Esq.
13 LINER LLP
14 1100 Glendon Avenue, 14th Floor
15 Los Angeles, California 90024

16 Any such request must be filed with the Clerk of the Court and received by the Parties'
17 respective counsel no later than June 5, 2017 and must state the name, address and telephone
18 number and LADWP account number of the Settlement Class Member, as well as the name,
19 address and telephone number of the person who will appear on his or her behalf.

20 15. Any person included within the Settlement Class who wishes to be excluded from
21 membership in the Settlement Class must do so in writing by mailing a written request for
22 exclusion to the Claims Administrator at LADWP Billing Settlement Claims Administrator, P.O.
23 Box 43449, Providence, Rhode Island 02940-3449 by no later than June 5, 2017. The request
24 must: (i) clearly express the Settlement Class Member's desire to be excluded or to "opt out" from
25 the Settlement Class; (ii) include the Settlement Class Member's name, address and telephone
26 number, LADWP account number and, if represented by counsel, counsel's name, address and
27 telephone number; and (iii) be signed by the Settlement Class Member.

- 28
- a. If a Settlement Class Member has multiple LADWP accounts and wishes to be excluded from membership in the Settlement Class, the Settlement Class Member must submit a request for exclusion for each separate account.
 - b. Any Person who is a member of the Settlement Class who wishes to be excluded from the Settlement Class can only opt out for him or herself, and cannot opt out for any other Person. Nor can any Person who is a Settlement Class Member

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authorize any other Person to opt out on his or her behalf.

c. Any Settlement Class Member who has filed an objection to the fairness, reasonableness or adequacy of the proposed Settlement shall be deemed not to have opted out of the Settlement Class pursuant to this paragraph. However, in the event that a Settlement Class Member makes a submission to the Court and the Parties that appears to assert both an objection to the fairness, reasonableness or adequacy of the proposed Settlement, and a statement of intent to opt out of the Settlement Class, such submission shall be treated as a statement of intent to opt out of the Settlement Class, but not an objection.

16. Any Settlement Class Member who has not timely mailed a written request for exclusion from the Settlement Class may object to the fairness, reasonableness or adequacy of the proposed Settlement. Each Settlement Class Member who wishes to object to any term of this agreement must do so in writing by mailing a written objection, to the Claims Administrator at LADWP Billing Settlement Claims Administrator, P.O. Box 43449, Providence, Rhode Island 02940-3449 by no later than June 5, 2017. Any such objection must: (i) state, in detail, the legal and factual ground(s) for the objection; (ii) include the Settlement Class Members name, address and telephone number and LADWP account number, and, if represented by counsel, counsel's name, address and telephone number; and (iii) be signed by the Settlement Class Member.

a. Settlement Class Members may object either on their own, or through an attorney hired at their own expense. If the objecting Settlement Class Member hires an attorney to represent him or her, that attorney must file with the Court and serve upon the Parties' respective counsel at the addresses set forth in Paragraph 14 herein, a notice of appearance no later than June 5, 2017.

17. The Court finds that the form, manner and content of the Class Notice will provide the best notice practicable to the Settlement Class under the circumstances and constitute valid, due, and sufficient notice to all Settlement Class Members, fully complying with California Code of Civil Procedure § 382, California Code of Civil Procedure § 1781, the Constitution of the State of California, the Constitution of the United States, and other applicable law. All costs incurred in connection with the preparation and dissemination of any notices to the Settlement Class shall be borne by Defendant.

18. Not later than April 4, 2017, Defendant shall cause Class Notice to be disseminated as follows:

- 1 i. direct Mailed Class Notice to all those customers of LADWP for
2 which Defendant has street addresses and with whom Defendant
3 routinely communicates via United States First Class Mail pursuant
4 to customers' instructions;
- 5 ii. direct Emailed Class Notice to all those customers of LADWP for
6 which Defendant has email addresses and with whom Defendant
7 routinely communicates via email pursuant to customers'
8 instructions;
- 9 iii. publication of a summary Class Notice in *The Los Angeles Times*
10 and *La Opinion*;
- 11 iv. establishment of a Settlement website by the Claims Administrator;
12 and
- 13 v. publication notice on LADWP's website.

14 19. The Parties shall file and serve papers in support of final approval of the Settlement
15 and/or Class Counsel's application for an award of attorneys' fees, costs and litigation expenses,
16 and reimbursement awards for Plaintiffs' expenses by May 5, 2017.

17 20. Class Counsel shall file any applications for an award of attorneys' fees, costs and
18 litigation expenses, and reimbursement awards for Plaintiff's expenses by May 5, 2017.

19 21. Class Counsel shall file a single memorandum of law that addresses: (i) arguments
20 in favor of final approval of the Settlement; and (ii) Class Counsel's application for an award of
21 attorneys' fees, costs and litigation expenses, and service awards for Plaintiff's efforts and
22 expenses. Such memorandum of law shall not exceed 50 pages in length.

23 22. The Parties shall file and serve replies to objections by no later than June 26, 2017.

24 23. The Final Approval Hearing shall be held on July 7, 2017 at 9:00 a.m. in
25 Department 323.

26 24. If the proposed Settlement is finally approved, the Court shall enter a separate order
27 finally approving the Settlement and entering judgment. Such order and judgment shall be fully
28 binding with respect to all members of the Settlement Class.

29 25. Pending further orders by this Court, all proceedings in this Action or Actions –
30 other than proceedings pursuant to this Order – shall be stayed and all members of the Settlement
31 Class who do not request exclusion from the Settlement Class in the manner required by this Order
32 shall be enjoined from commencing or prosecuting any action, suit, proceeding, claim, or cause of
33 action (except those based on or relating to personal injury or wrongful death), in any jurisdiction

1 or court against Defendant relating to or arising out of the subject matter of this action.

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DATED: December 30, 2016.

SO ORDERED:

ELIHU M. BERLE

Hon. Elihu M. Berle

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1100 Glendon Avenue, 14th Floor, Los Angeles, CA 90024.3518.

On January 5, 2017, I served true copies of the following document(s) described as **NOTICE OF ENTRY OF ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND DIRECTING DISSEMINATION OF CLASS NOTICE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically served the document(s) described above via File & ServeXpress, on the recipients designated on the Transaction Receipt located on the File & ServeXpress website (<https://secure.fileandservexpress.com>) pursuant to the Court Order establishing the case website and authorizing service of documents.

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

Executed on January 5, 2017, at Los Angeles, California.



Elsa Critser

SERVICE LIST

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Attorneys for Plaintiffs Sharon Bransford, Steven Shrager and Rachel Tash, Individually and on behalf of all others similarly situated

Timothy G. Blood, Esq.
Leslie E. Hurst, Esq.
Blood Hurst & O'Reardon, LLP
701 B Street, Suite 1700
San Diego, California 92101
Telephone: (619) 338-1100
[Case No.: BC565618]

Attorneys for Plaintiff Daniel Morski, individually, and on behalf of all others similarly situated

Alan Himmelfarb, Esq.
The Law Offices of Alan Himmelfarb
80 West Sierra Madre Boulevard, #304
Sierra Madre, California 91024
Telephone: (626) 325-3104
[Case No. BC568722]

Attorneys for Plaintiff Antwon Jones, on behalf of himself, and all other similarly situated

Michael J. Libman, Esq.
Law Offices of Michael J. Libman
18321 Ventura Boulevard, Suite 700
Tarzana, California 91356
Telephone: (818) 995-7300
[Case No. BC577267]

Attorneys for Plaintiff Hayley Fontaine

David E. Bower, Esq.
Bower Law Group PC
600 Corporate Pointe, Suite 1170
Culver City, California 90230
Telephone: (213) 446-6652
[Case No. BC571664]

Attorneys for Plaintiffs Sharon Bransford, Steven Shrager and Rachel Tash, Individually and on behalf of all others similarly situated

Lee Jackson, Esq.
Gillian L. Wade, Esq.
Marc A. Castaneda, Esq.
Milstein, Adelman, Jackson, Fairchild & Wade, LLP
10250 Constellation Boulevard, 14th Floor
Los Angeles, CA 90067
Telephone: (310) 396-9600
[Case No.: BC565618]

Attorneys for Plaintiff Daniel Morski, individually, and on behalf of all others similarly situated

Gary Luckenbacher, Esq.
Sheri Manning, Esq.
Manning Manning & Luckenbacher
21731 Ventura Boulevard, Suite 390
Woodland Hills, California 91364
Telephone: (818) 883-8000
[Case No. BC568722]

Attorneys for Plaintiff Antwon Jones, on behalf of himself, and all other similarly situated

Jack Landskroner, Esq.
Drew Legando, Esq.
Landskroner Grieco Merriman LLC
1360 West 9th Street, Suite 200
Cleveland, Ohio 44113
Telephone: (216) 522-9000
Facsimile: (216) 522-9007
[Case No. BC577267]

Attorneys for Plaintiff Hayley Fontaine

Barbara A. Rohr, Esq.
Faruqi & Farqui, LLP
10866 Wilshire Boulevard, Suite 1470
Los Angeles, CA 90024
Telephone: (424) 256-2884
[Case No. BC571664]

- 1 *Attorney for Plaintiff City of Los Angeles*
Paul R. Kiesel, Esq.
- 2 Kiesel Law LLP
8648 Wilshire Boulevard
- 3 Beverly Hills, California 90211-2910
Telephone: (310) 854-4444
- 4 **[BC574690]**
- 5
- 6 *Attorneys for Defendants*
Pricewaterhousecoopers LLP
- 7 Maurice Suh, Esq.
Gibson Dunn
- 8 333 South Grand Avenue
Los Angeles, California 90071-3197
- 9 Telephone: (213) 229-7260
Facsimile: (213) 229-6260
- 10 **[Case BC574690]**
- 11 *Attorneys for Plaintiff Yaar Kimhi, Tahl*
Beckerman Megerdichian, Yelena Novak,
12 *individually, and on behalf of all others*
similarly situated
- 13 André E. Jardini, Esq.
K.L. Myles, Esq.
- 14 Knapp, Petersen & Clarke
550 North Brand Boulevard, Suite 1500
- 15 Glendale, CA 91203-1922
Telephone: (818) 547-1922
- 16 Facsimile: (818) 547-5329
[Case No. BC536272]
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- Attorneys for Plaintiff City of Los Angeles*
Paul O. Paradis (admitted pro hac vice)
- Gina M. Tufaro
Paradis Law Group, PLLC
570 Seventh Avenue, 20th Flr.
New York, New York 10018
Telephone: (212) 986-4500
Facsimile: (212) 986-4501
[BC574690]
- Attorneys for Defendants*
Pricewaterhousecoopers LLP
- Daniel J. Thomasch, Esq.
Gibson Dunn
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-3800
Facsimile: (212) 351-6200
[Case BC574690]