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the Settlement Class
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 SAUNDRA CARTER, et al.,

13 Plaintiffs.

14 vs.

15 CITY OF LOS ANGELES,

16 Defendants.
17

18
19 NICOLE FAHMIE,

20 Plaintiff.

21 vs.

22 CITY OF LOS ANGELES, et al.,

23 Defendants.
24

LEAD CASE NO. BC363305

[Consolidated Case No. BC381773]

HON. JOHN S. WILEY, JR.

**PLAINTIFF FAHMIE'S MOTION FOR
AWARD OF ATTORNEYS' FEES;
REIMBURSEMENT OF EXPENSES;
AND AWARD OF PLAINTIFF
INCENTIVE AWARD**

[Filed concurrently with Plaintiff Fahmie's
Memorandum of Points and Authorities in
Support of Motion for Award of Attorneys'
Fees; Reimbursement of Expenses; and
Award of Plaintiff Incentive Award; and
the Declaration of Mike Arias in Support of
Plaintiff Fahmie's Motion for Award of
Attorneys' Fees; Reimbursement of
Expenses; and Award of Plaintiff Incentive
Award.]

Hearing

Date: February 28, 2012

Time: 8:30 a.m.

Dept.: 311
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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on February 28, 2012 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 311 of the above entitled Court, located at 600 South Commonwealth Avenue, Los Angeles, CA 90005, Plaintiff Nicole Fahmie ("Fahmie") will, and hereby does, move for an award of attorneys fees, reimbursement of expenses, and an award of Plaintiff incentive award.

Plaintiff Fahmie seeks an order: (i) awarding Arias Ozzello & Gignac LLP \$1,230,954.00 in attorneys' fees and; (ii) awarding Arias Ozzello & Gignac LLP \$6,746.29 in reasonable expenses that it has incurred during the prosecution of this action; and (iii) awarding Plaintiff Fahmie, as a Class Representative, an incentive award of \$5,000.00.

This Motion is made on the grounds that Plaintiff Fahmie's request for attorneys' fees, reimbursement of costs incurred in prosecuting this case, and the incentive award for the Fahmie are patently fair, objectively reasonable and appropriate in light of the significant results obtained on behalf of the Class and will in no way diminish the benefits provided to the Class.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Mike Arias, Esq., the attached exhibits, the complete records and file in this action, and upon any other such oral or documentary evidence as may be presented prior to or at the hearing of this motion..

Dated: February 2, 2012

ARIAS OZZELLO & GIGNAC LLP

By: 
Mike Arias
Mikael H. Stahle
Alfredo Torrijos

*Attorneys for Plaintiff Fahmie and
the Settlement Class*

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

12 SAUNDRA CARTER, et al.,
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14 vs.

15 CITY OF LOS ANGELES,
16 Defendants.

19 NICOLE FAHMIE,
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INCENTIVE AWARD**

[Filed concurrently with Plaintiff Fahmie's
Motion for Award of Attorneys' Fees;
Reimbursement of Expenses; and Award of
Plaintiff Incentive Award; and the
Declaration of Mike Arias in Support of
Plaintiff Fahmie's Motion for Award of
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Award.]

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1 **I. INTRODUCTION**

2 Through this motion Counsel for Plaintiff Nicole Fahmie and the Settlement Class
 3 (“Fahmie Counsel”) seek an award of attorneys’ fees and costs for their efforts in
 4 prosecuting and obtaining the class settlement that was granted final approval by the
 5 Court on January 11, 2012.

6 The settlement obtained herein directly and specifically addresses the needs of the
 7 Settlement Class and does so in a practical and workable way.¹ Pursuant to the
 8 settlement agreement, Defendant City of Los Angeles (the City) has agreed to spend up
 9 to \$83,500,000.00 over the next twenty years in order to address the claims asserted in
 10 this litigation. Specifically, the City has agreed to: (1) spend up to \$3.5 million to
 11 remediate up to 1,000 curbs on a “super priority” basis over the next year, based on a
 12 Claims Administrator’s determination of the most worthy claimants and curb locations;
 13 and (2) spend \$80 million during the subsequent 20 years on curb ramp construction that
 14 focuses both on ramping curbs in the most heavily-traveled sections of the City and in
 15 less-traveled areas where residents have identified a particular need for curb ramp
 16 construction. Under any measure, the results obtained on behalf of the Settlement Class
 17 are substantial.

18 Given the legal work done by experienced Fahmie Counsel on behalf of the
 19 Settlement Class, and the extraordinary results obtained, it is submitted that the request
 20 for \$1,230,954.00 in attorneys’ fees is both fair and reasonable. The requested fees
 21 correspond to a multiplier of 4.0 based on the lodestar of \$307,738.50 incurred to date by
 22

23 ¹ The certified settlement class is defined as: “All persons (including, without limitation,
 24 residents of the City and visitors of the City) with any Disability who, at any time prior to April
 25 25, 2011 through the Term of this Settlement Agreement, (i) accessed or attempted to access a
 26 sidewalk, intersection, crosswalk, street or other pedestrian pathway located in the City but were
 27 impaired or unable to do so due to (a) the lack of a curb ramp or curb cut, or (b) a curb cut that
 28 was damaged, deficient, in need of repair, or otherwise in a condition not suitable or sufficient
 for use, or (ii) allege that they would have accessed or attempted to access a sidewalk,
 intersection, crosswalk, street or other pedestrian pathway located in the City but for allegedly
 being denied such access due to (a) the lack of a curb ramp or curb cut, or (b) a curb ramp or
 curb cut that was damaged, deficient, in need of repair, or otherwise in a condition not suitable or
 sufficient for use.” [See, Settlement Agreement and Release of Claims, § II, ¶ LL.]

1 Fahmie Counsel. The requested fees represent a tiny fraction of the total relief that will
 2 be provided to the Class pursuant to the Settlement Agreement. The fact that Fahmie
 3 Counsel was able to obtain these significant results for the Settlement Class in an
 4 efficient and cost-effective manner warrants the application of a 4.0 multiplier.

5 Accordingly, Arias Ozzello & Gignac LLP respectfully requests the award of
 6 attorneys’ fees in the amount of \$1,230,954.00 and the reimbursement of \$6,746.29 in
 7 reasonable litigation expenses. This amount falls within the norm for attorneys’ fees in
 8 class actions, and is justified both by the extraordinary results for the Class and the speed
 9 with which recovery was obtained. In addition, Fahmie Counsel seeks an incentive
 10 payment of \$5,000.00 for the class representative, Nicole Fahmie, who contributed
 11 significant assistance to the litigation process and the prosecution of this case. Because
 12 these requests are objectively reasonable and plainly appropriate, Plaintiff Fahmie and
 13 Fahmie Counsel respectfully request that they be approved in all respects.

14
 15 **II. FAHMIE COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS’**
 16 **FEES AND REIMBURSEMENT OF EXPENSES**

17 Attorney fees under the private attorney general statute (Code Civ. Proc., §
 18 1021.5) are recoverable (1) by a successful party, (2) in an action that has resulted in the
 19 enforcement of an important right affecting the public interest, (3) if a significant benefit
 20 has been conferred on the general public or a large class of persons, and (4) the necessity
 21 and financial burden of private enforcement are such as to make the award appropriate.
 22 The statute’s purpose is to encourage public interest litigation that might otherwise be too
 23 costly to pursue. (*Families Unafraid to Uphold Rural El Dorado County v. Board of*
 24 *Supervisors* (2000) 79 Cal.App.4th 505, 511.)

25 Plaintiffs are prevailing parties when they achieve a change in the legal
 26 relationship between the parties through a judgment or a judicially enforceable
 27 settlement. Courts “have taken a broad, pragmatic view of what constitutes a ‘successful
 28 party.’ ” (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 , 579.) A

1 “successful” party means a “prevailing” party (id. at 570), and “ ‘ “plaintiffs may be
2 considered ‘prevailing parties’ for attorney’s fees purposes if they succeed on any
3 significant issue in litigation which achieves some of the benefit the parties sought in
4 bringing suit.’”” (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292.)

5 Moreover, courts regard a defendant’s voluntary compliance, by settlement or
6 otherwise, as an acknowledgement of the merits sufficient to warrant treatment of a
7 plaintiff as a prevailing party. “In short, there is substantial support, both old and new,
8 federal and state,” for a costs award, in the court’s discretion, “to the plaintiff whose suit
9 prompts the defendant to provide the relief plaintiff seeks.” (*Buckhannon Board And*
10 *Care Home, Inc. v. West Virginia Dept. of Health and Human Resources* (2001) 532 U.S.
11 598, 121 S.Ct. 1835, 1855.) Similarly, the California Court of Appeal upheld an attorney
12 fee award because the plaintiffs were successful in conferring a substantial benefit by
13 stating: “[i]t was not significant that the “benefits” found were achieved by settlement of
14 plaintiffs’ action rather than by final judgment.” (*Westside Community for Independent*
15 *Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352, quoting *Fletcher v. A.J. Industries*
16 (1968) 266 Cal.App.2d 313, 325.)

17 Here, Fahmie Counsel has obtained a settlement where the City has agreed to
18 undertake substantial – and expensive – construction to address the fundamental needs of
19 most class members both efficiently and pragmatically. In so doing, Fahmie Counsel
20 achieved the direct and stated purpose of this litigation. Accordingly, Fahmie Counsel is
21 entitled to an award of attorneys’ fees and reimbursement of expenses.

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1 **III. AN AWARD OF \$1,230,954 IN ATTORNEYS’ FEE TO FAHMIE**
 2 **COUNSEL IS PATENTLY FAIR, OBJECTIVELY REASONABLE AND**
 3 **APPROPRIATE IN LIGHT OF THE RESULTS OBTAINED ON BEHALF**
 4 **OF THE CLASS**

5 In California, the substantial benefit rule provides that an award of attorneys’ fees
 6 is justified when a party, proceeding in a representative capacity, obtains a result which
 7 creates a “substantial benefit” of a pecuniary or non-pecuniary nature. (*Robbins v.*
 8 *Alibrandi* (2005) 127 Cal.App.4th 438, 448; *Serrano v. Priest* (1977) 20 Cal.3d 25, 38
 9 (*Serrano III*.) In determining the amount of attorneys’ fees to award, the court’s
 10 objective should be to set the fees at a level that will approximate what the market would
 11 set. (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 49-50 [a fee award should
 12 approximate a “percentage fee [] freely negotiated in comparable litigation.”].)

13 The primary method for establishing the amount of “reasonable” attorneys’ fees to
 14 be awarded is with the lodestar method. (*Thayer v. Wells Fargo Bank* (2001) 92
 15 Cal.App.4th 819, 833.) Under this approach, “[t]he lodestar (or touchstone) is produced
 16 by multiplying the number of hours reasonably expended by counsel by a reasonable
 17 hourly rate.” (*Lealao*, 82 Cal.App.4th at 26.) Once the court has fixed the lodestar, it
 18 may increase or decrease that amount by applying a positive or negative “multiplier to
 19 take into account a variety of other factors, including the quality of the representation, the
 20 novelty and complexity of the issues, the results obtained and the contingent risk
 21 presented.” (*Id.*; see also *Serrano III*, 20 Cal.3d at 48-49; *Ramos v. Countrywide Home*
 22 *Loans, Inc.* (2000) 82 Cal.App.4th 615, 622; *Beasley v. Wells FargoBank* (1991) 235
 23 Cal.App.3d 1407, 1418 [multipliers are used to compensate counsel for the risk of loss,
 24 and to encourage counsel to undertake actions that benefit the public interest].) In
 25 addition, “[u]nder certain circumstances, a lodestar calculation may be enhanced on the
 26 basis of a percentage-of-the-benefit analysis.” (*Thayer*, 92 Cal.App.4th at 833.)
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 28

A. Fahmie Counsel’s Lodestar Is Reasonable

Fahmie Counsel’s lodestar through the date of this application is \$307,738.50, calculated as follows:

Name	Rate	Hours	Total
Mike Arias	\$675.00	296.92	\$ 200,421.00
Mark A. Ozzello	\$675.00	7.00	\$ 4,725.00
J. Paul Gignac	\$675.00	1.70	\$ 1,147.50
Arnold Wang	\$575.00	0.90	\$ 517.50
Mikael Stahle	\$500.00	128.60	\$ 64,300.00
Denis M. Delja	\$425.00	0.20	\$ 85.00
Alfredo Torrijos	\$450.00	26.70	\$ 12,015.00
Mark J. Bloom	\$300.00	5.80	\$ 1,740.00
Stephanie C. Lai	\$275.00	40.20	\$ 11,055.00
Rolando Gutierrez	\$250.00	37.10	\$ 9,275.00
Law Clerks & Paralegals	\$175.00	5.60	\$ 980.00
Legal Administrators	\$150.00	9.20	\$ 1,380.00
Document Clerks	\$ 50.00	1.95	\$ 97.50
Total:		561.87	\$ 307,738.50

[Arias Decl., ¶ 19.]

A reasonable hourly rate for attorney work to be used in calculating the lodestar is the reasonable local market rate for the attorneys or comparable attorneys. (*City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 82.) A court may use current as opposed to past rates to compensate the attorneys for delay in receiving payment for their services. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 583.) The hourly rates requested by Fahmie Counsel are reasonable based on current prevailing local market rates for comparable legal services and have been approved by courts in numerous other class actions. [Arias Decl., ¶¶ 21-23.]

B. A 4.0 Multiplier Is Appropriate In This Case

Once the court determines the “lodestar” amount of fees reasonably incurred, it must next decide whether the award should be augmented based on a “multiplier.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1137-1139.) The factors to consider include: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in

1 presenting them; (3) the extent to which the nature of the litigation precluded other
 2 employment by the attorneys; and (4) the contingent nature of the fee award. (*Graham*,
 3 *supra*, 34 Cal.4th at 579.)

4 There is, however, no hard-and-fast rule limiting the factors that may justify an
 5 exercise of judicial discretion to increase a lodestar calculation. (*Thayer v. Wells Fargo*
 6 *Bank, supra*, 92 Cal.App.4th at 834; *Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4th
 7 924, 947.) Instead, the goal is to arrive at an award “based on consideration of factors
 8 specific to the case, in order to fix the fee at the fair market value for the legal services
 9 provided.” (*PLMC Group Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

10 California courts have repeatedly held that in class actions multipliers of 4.0 and
 11 even higher are reasonable and often applied. (*Pellegrino v. Robert Half Intern., Inc.*
 12 (2010) 182 Cal.App.4th 278 [in class actions “reasonable multipliers of 2.0 to 4.0 are
 13 often applied”]; *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 [remanding case
 14 for a lodestar enhancement of “two, three, four or otherwise”]; *Wershba v. Apple*
 15 *Computer* (2001) 91 Cal.App.4th 224, 255 [“multipliers can range from 2 to 4 or even
 16 higher”]; *Glendora Community Redevelopment Agency v. Demeter* (1984) 155
 17 Cal.App.3d 465, 479-80 [approving a fee award representing a multiplier of 12].)

18 Fahmie Counsel submits that a 4.0 multiplier is appropriate in light of the results
 19 obtained on behalf of the Settlement Class, the efficiency and skill with which those
 20 results were obtained and the risks that Fahmie Counsel undertook in order to pursue this
 21 litigation.

22 1. *Fahmie Counsel Obtained Substantial Benefits for the Settlement*
 23 *Class.*

24 Fahmie Counsel achieved an excellent settlement in this litigation that addresses
 25 the needs of the Class in a fair, efficient and pragmatic way. Pursuant to the Settlement
 26 Agreement, the City has agreed to spend up to \$83,500,000.00 over the next twenty years
 27 in order to address the claims asserted in this litigation. Specifically, the City has agreed
 28 to: (1) spend up to \$3.5 million to remediate up to 1,000 curbs on a “super priority” basis

1 over the next year, based on a Claims Administrator’s determination of the most worthy
 2 claimants and curb locations; and (2) spend \$80 million during the subsequent 20 years
 3 on curb ramp construction that focuses both on ramping curbs in the most heavily-
 4 traveled sections of the City and in less-traveled areas where residents have identified a
 5 particular need for curb ramp construction.

6 The results obtained for the Settlement Class are significant. More importantly,
 7 the Settlement provides those results to the Class *now* – without the delay of continued
 8 litigation or the risk of adverse rulings. The claims asserted on behalf of the Class in this
 9 litigation were both difficult and unsettled, making the concomitant risks of significant
 10 delay or outright failure very real. In light of these risks, the results obtained for the
 11 Class are patently substantial, warranting the 4.0 multiplier sought by Fahmie Counsel.

12 2. Fahmie Counsel Obtained Substantial Results for the Class
 13 Efficiently and Skillfully.

14 Fahmie Counsel represented the Settlement Class with creativity, skill and
 15 ingenuity. A measure of the skill employed by Fahmie Counsel is not only reflected by
 16 the results achieved on behalf of the Class but is also established by the fact that these
 17 results were achieved against a defendant that was represented by able counsel who
 18 fought hard on all fronts. (*Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d
 19 999, 1004 [the quality of opposing counsel is a factor to be considered in evaluating the
 20 work performed by class counsel].) The fact that Fahmie Counsel was able to achieve a
 21 significant settlement for the Class efficiently with a relatively modest lodestar was due
 22 to principally to Fahmie Counsel’s litigation skill and experience.

23 Fahmie Counsel are experienced class action litigators. [Arias Decl., ¶¶ 10-17.] In
 24 this litigation, Fahmie Counsel conducted an extensive factual investigation, discovery,
 25 and the analysis of thousands of pages of documents. Importantly, it was Fahmie
 26 Counsel which spearheaded and directed – on behalf of the plaintiffs for *both*
 27 consolidated actions – the mediations and protracted negotiations which ultimately
 28 resulted in the settlement of this case. From the outset, Fahmie Counsel litigated this

1 action vigorously, skillfully and efficiently – all of which ultimately maximized the
 2 recovery for the benefit of the Class. As a result of Fahmie Counsel’s skill and diligence,
 3 an excellent settlement result has been reached for the Class. The quality of the work,
 4 and the efficiency and dedication with which it was performed, should be rewarded.

5 The efficiency with which Fahmie Counsel was able to achieve the benefits
 6 provided to the Settlement Class cannot be overstated. By focusing its skill and energy
 7 on obtaining a concrete, workable and creative resolution that directly addressed the
 8 needs of the Settlement Class, Fahmie Counsel was able to keep its lodestar extremely
 9 low in relation to the benefits obtained on behalf of the Settlement Class. Indeed, as
 10 shown below, Fahmie Counsel’s lodestar as a percentage of the present value of the
 11 benefits provided to the Settlement Class is only 0.82%.

12 Fahmie Counsel certainly could have insisted on continuing to litigate with
 13 numerous depositions and class certification motion practice to increase its lodestar.
 14 Likewise, Fahmie Counsel could have easily increased its lodestar by attending numerous
 15 “site inspections” of curb locations, assigning multiple attorneys to prepare for and attend
 16 mediations, review documents, as well as draft pleadings and settlement documents.
 17 Fahmie Counsel did none of that and instead focused on working creatively to obtain
 18 substantive results for the Class. Counsel should be rewarded for its efficiency – and the
 19 concomitant savings to the judicial system – by the application of a 4.0 multiplier.

20 Unless multipliers are provided to reflect the size of the class recovery when
 21 counsel agree to settle early and without undue litigation, there will be “a disincentive to
 22 settle promptly inherent in the lodestar methodology. Considering that our Supreme
 23 Court has placed an extraordinarily high value on settlement, it would seem counsel
 24 should be rewarded, not punished, for helping to achieve that goal, as in federal courts.”
 25 (*Lealao, supra*, 82 Cal.App.4th at 52, citing *Merola v. Atlantic Richfield Company* (3d
 26 Cir. 1975) 515 F.2d 165, 168 [lodestar-multiplier the requested multiplier is fair approach
 27 “permits the court to recognize and reward achievements of a particularly resourceful
 28 attorney who secures a substantial benefit for his clients with a minimum of time

1 invested”]; *Bowling v. Pfizer, Inc.* (S.D. Ohio 1996) 922 F.Supp. 1261, 1282-1283 [case
 2 settled “in swift and efficient fashion”]; *Arenson v. Board of Trade of City of Chicago*
 3 (N.D. Ill. 1974) 372 F.Supp. 1349, 1358 [awarding a fee of four times the normal hourly
 4 rate on ground that, if the case had not settled and gone to verdict, “there is no doubt that
 5 the number of hours of lawyer’s time expended would be more than quadruple the
 6 number of hours expended to date.”].)

7 In *Thayer v. Wells Fargo Bank, supra*, the court noted that “[t]he California cases
 8 appear to incorporate the ‘results obtained’ factor into the ‘quality’ factor: i.e., high-
 9 quality work may produce greater results in less time than would work of average quality,
 10 thus justifying a multiplier.” (*Id.*, 92 Cal.App.4th at 838.) Here, Fahmie Counsel was
 11 remarkably efficient, expending only 545.12 hours of attorney time to achieve an
 12 important and significant settlement. [Arias Decl., ¶ 19.] The results achieved by Fahmie
 13 Counsel and the efficiency with which those results were achieved patently justify the 4.0
 14 multiplier sought here.

15 3. *Fahmie Counsel Bore Significant Risk in Pursuing This*
 16 *Litigation.*

17 In determining the reasonableness of the fee requested, the Court should not only
 18 consider the substantial recovery obtained for the Settlement Class, but also the risks
 19 taken by Fahmie Counsel in pursuing this litigation. As the Court eloquently delineated
 20 in its Order Granting Final Approval, there were numerous components of this case that
 21 were subject to substantial arguments by the City. Application of a multiplier is
 22 warranted by the risks Fahmie Counsel bore in prosecuting this case. (*Serrano III, supra*,
 23 20 Cal.3d at 49 [listing contingent risk and foregone employment opportunities as factors
 24 to be considered in lodestar multipliers].)

25 The California Supreme Court has explained that “[a] contingent fee must be
 26 higher than a fee for the same legal services paid as they are performed. The contingent
 27 fee compensates the lawyer not only for the legal services he renders but for the loan of
 28 those services. The implicit interest rate on such a loan is higher because the risk of

1 default (the loss of the case, which cancels the debt of the client to the lawyer) is much
 2 higher than that of conventional loans. A lawyer who both bears the risk of not being
 3 paid and provides legal services is not receiving the fair market value of his work if he is
 4 paid only for the second of these functions. If he is paid no more, competent counsel will
 5 be reluctant to accept fee award cases.” (*Ketchum, supra*, 24 Cal.4th at 1132-33; see also
 6 *Cazares v. Saenz* (1989) 208 Cal.App.3d 279, 288. [“In addition to compensation for the
 7 legal services rendered, there is a *raison d’etre* for the contingent fee: the contingency.
 8 The lawyer on a contingent fee contract receives nothing unless the plaintiff obtains a
 9 recovery. Thus, in theory, a contingent fee in a case with a 50 percent chance of success
 10 should be twice the amount of a non-contingent fee for the same case.”].)

11 From the initiation of this case, Fahmie Counsel undertook considerable risk.
 12 There are significant issues regarding the legal viability of Plaintiffs’ claims, including
 13 whether the ADA provides Plaintiffs with a private right of action and whether the
 14 statutory damages claims pursuant to the Unruh Civil Rights Act applies to the City. In
 15 the face of this uncertainty, Fahmie Counsel nonetheless agreed to undertake this
 16 litigation on a wholly contingent basis, initiating complex, expensive and lengthy
 17 litigation, with no guarantee of compensation for the significant amount of time, money
 18 and effort that Counsel was prepared to and did invest to prosecute this case. Fahmie
 19 Counsel dedicated important resources of attorneys and other personnel to this action and
 20 paid out-of-pocket expenses necessary to prosecute the case, further supporting the fees
 21 requested.

22 Fahmie Counsel are experienced class action attorneys with active (and
 23 successful) class action practices. The risks counsel undertook were not only real, but the
 24 resources Fahmie Counsel dedicated to this action that could easily have been devoted to
 25 other cases. [Arias Decl., ¶¶ 7-9.] Nonetheless, Fahmie Counsel had their most
 26 experienced litigators prosecute this case. Indeed, the vast majority of the time dedicated
 27 to this case by Fahmie Counsel was by Mike Arias, the firm’s senior and managing
 28 partner. [Arias Decl., ¶ 19.] Fahmie Counsel’s willingness to devote it best and most

1 talented resources to this litigation not only demonstrates the seriousness and importance
 2 of this litigation to Counsel, but also explains Counsel’s efficiency in obtaining the
 3 significant results achieved for the Settlement Class.

4 Accordingly, Fahmie Counsels’ contingency risk, together with the excellent
 5 result that has been achieved on behalf of the Class, supports the requested fees.

6
 7 **IV. CROSS-CHECKING USING THE PERCENTAGE OF FUND METHOD**
 8 **CONFIRMS THAT THE ATTORNEYS’ FEES REQUESTED BY FAHMIE**
 9 **COUNSEL IS REASONABLE**

10 California courts are expressly authorized to award attorneys’ fees so as “to ensure
 11 that the fee awarded is within the range of fees freely negotiated in the legal marketplace
 12 in comparable litigation.” (*Lealao, supra*, 82 Cal.App.4th at 50.) As *Lealao* explained, in
 13 a representative action, courts must consider the amount of attorney fees typically
 14 negotiated in comparable litigation:

15 Given the unique reliance of our legal system on private
 16 litigants to enforce substantive provisions of law through
 17 class and derivative actions, attorneys providing the essential
 18 enforcement services must be provided incentives roughly
 19 comparable to those negotiated in the private bargaining that
 20 takes place in the legal marketplace, as it will otherwise be
 21 economic for defendants to increase injurious behavior. It
 22 has therefore been urged (most persistently by Judge Richard
 23 Posner) that in defining a “reasonable fee” in such
 24 representative actions the law should “mimic the market.”

25 (*Id.* at 47.)

26 As long as the recovery provided to the class can be “monetized with a reasonably
 27 degree of certainty,” courts may “cross-check” the reasonableness of a fee determined
 28 through the lodestar method by comparing that fee against what might be awarded as a

1 “percentage of recovery.” (*Lealao, supra*, 82 Cal.App.4th at 39, 49-50.) The use of a
 2 cross-check allows a court to confirm that it is setting fees which “mimic the market.”
 3 (*Id.* at 39-40 [“in cases in which the value of the class recovery can be monetized with a
 4 reasonable degree of certainty and it is not otherwise inappropriate, a trial court has
 5 discretion to adjust the basic lodestar through the application of a positive or negative
 6 multiplier where necessary to ensure that the fee awarded is within the range of fees
 7 freely negotiated in the legal marketplace in comparable litigation.”].)

8 The use of a cross-check is especially important so as to insure that the fee award
 9 takes into account the results obtained for the class and protects against penalizing class
 10 counsel for obtaining significant results in an efficient and timely manner. (*In re*
 11 *Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378 [percentage of
 12 benefit approach is preferred to ensure “proportionality, predictability and protection of
 13 the class,” while ignoring that approach “encourages abuses such as unjustified work and
 14 protracting the litigation.”]; *Lealao*, 82 Cal.App.4th at 48 [“Courts agree that, because,
 15 the percentage-of-the benefit approach ‘is result-oriented rather than process-oriented, it
 16 better approximates the workings of the ‘marketplace’ than the lodestar approach.”].)

17 The Settlement Agreement requires the City to spend up to \$3.5 million this year
 18 installing or repairing curb ramps in response to claims submitted by Class Members.
 19 The Settlement Agreement additionally requires the City to spend up to \$4 million per
 20 year (subject to the availability of funding from designated sources) during the
 21 subsequent 20 years to repair or install curb cuts or curb ramps. Thus, pursuant to the
 22 Settlement Agreement the City has agreed to spend up to \$83.5 million over the next 20
 23 years to address the claims raised in this litigation. Even at a high discount rate of 10%,
 24 the present value of this series of payments is over \$37.5 million. [Arias Decl., ¶ 6.] The
 25 table below presents the range of attorney’s fees based on different percentages of this
 26 present value:

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Present Value of Benefit	Percentage	Fee
\$37,554,254.88	35%	\$13,143,989.21
\$37,554,254.88	30%	\$11,266,276.46
\$37,554,254.88	25%	\$9,388,563.72
\$37,554,254.88	20%	\$7,510,850.98
\$37,554,254.88	15%	\$5,633,138.23
\$37,554,254.88	10%	\$3,755,425.49
\$37,554,254.88	5%	\$1,877,712.74

Courts applying the percentage-of-the-benefit approach have typically awarded fees in a range from 20 to 30 percent and sometimes higher. (*See, Six Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311; *Paul, Johnson, Alston & Hunt v. Grauly* (9th Cir. 1989) 886 F.2d 268, 273 [“25 percent has been a proper benchmark figure . . . and any modification should be accompanied by a reasonable explanation of why the benchmark is unreasonable under the circumstances.”]); *In re Activision Sec. Litig.*, 723 F.Supp. at 1378 [setting 30 percent as fee for all future class action common-fund cases in that court].) These ranges mirror what is usually contracted by counsel and their clients in the free market, where contingent fee arrangements typically range from 25% to 40% of the plaintiff’s recovery.

The attorneys’ fees of \$1,230,954.00 sought by Fahmie Counsel represent only 3.28% of the benefit to the Settlement Class. Fahmie Counsel’s lodestar of \$307,738.50 is just 0.82% of the benefit to the Settlement Class. Clearly, there is huge disparity between the results obtained for the Settlement Class and the lodestar that Fahmie Class expended in order to obtain those results. This fact alone warrants a significant upward adjustment to the lodestar multiplier.

Awarding Fahmie Counsel just 10% of the fund would require the application of a 12.2 multiplier. Instead, Fahmie Counsel seeks a 4.0 multiplier. This discount is exacerbated further by the fact that here the awarded attorneys’ fees are not paid by the Class and will have no impact on the Class benefit.

1 In a traditional common fund recovery, an awarded attorney fee is withdrawn from
 2 the fund before claims are paid to class members, thus reducing the amount available to
 3 the class. Here, however, the fee requested by Fahmie Counsel will in no way reduce the
 4 amount available for payment to the Settlement Class. Rather, the fees are paid
 5 separately from the class benefit. Such an arrangement is further reason to support the
 6 requested award of fees.

7 Accordingly, Fahmie’s Counsel’s request for an award of \$1,230,954.00 in
 8 attorneys’ fees, based on a 4.0 multiplier is wholly reasonable in light of the results
 9 obtained for the Settlement Class.

10

11 **V. FAHMIE COUNSEL SHOULD BE REIMBURSED FOR THEIR**
 12 **REASONABLE COSTS INCURRED IN PROSECUTING THIS ACTION**

13 Fahmie Counsel also request that they be reimbursed for \$6,746.29 in expenses
 14 reasonably incurred in prosecuting this action. The expenses incurred are itemized in the
 15 Arias Declaration. [Arias Decl., ¶ 24.]

16 Counsel is typically entitled to reimbursement of all reasonable out-of-pocket
 17 expenses and costs in prosecution of the claims of a class and in obtaining a settlement.
 18 (*Vincent v. Hughes Air West* (9th Cir. 1977) 557 F.2d 759, 769.) In *Serrano III*, for
 19 example, the Supreme Court advised that reimbursement of costs in a common fund is
 20 “grounded in ‘the historic power of equity to permit the trustee of a fund or property, or a
 21 party preserving or recovering a fund for the benefit of others in addition to himself, to
 22 recover his costs, including his attorneys’ fees, from the fund or property’.” (*Serrano III*,
 23 20 Cal.3d at 35, citing *Alyeska Pipeline Co. v. Wilderness Society* (1995) 421 U.S. 240,
 24 257.)

25 Expenses that are of the type normally charged to hourly paying clients are
 26 reimbursable. (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [recovery of “those
 27 out-of-pocket expenses that ‘would normally be charged to a fee paying client’” are
 28 reimbursable].) Here, Class Counsel seeks reimbursement for computer assisted legal

1 research, travel costs, photocopies, postage and filing fees. [Arias Decl., ¶¶ 24-26.] All
2 of these charges are commonly accepted as reimbursable.

3 Class Counsel therefore respectfully request that this Court order reimbursement
4 of their costs in the aggregate amount of \$6,746.29.

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6 **VI. A \$5,000 INCENTIVE PAYMENT TO PLAINTIFF NICOLE FAHMIE, AS**
7 **PROVIDED FOR IN THE SETTLEMENT AGREEMENT, IS**
8 **WARRANTED**

9 Settlements in class actions may grant incentive awards to the named plaintiff in
10 recognition of her efforts on the class’s behalf. Here, the Settlement Agreement provides
11 that, “[t]he City agrees to pay each of the Named Plaintiffs the sum of Five Thousand
12 Dollars (\$5,000.00).” [Settlement Agreement, § III, ¶ 19(b).] Pursuant to the Settlement
13 Agreement, Fahmie Counsel are hereby applying to the Court for permission to make an
14 incentive payment of \$5,000 to Plaintiff Nicole Fahmie.

15 “Because a named plaintiff is an essential ingredient of any class action, an
16 incentive award is appropriate if it is necessary to induce an individual to participate in
17 the suit.” (*Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016.) “Since without a named
18 plaintiff there can be no class action, such compensation as may be necessary to induce
19 him to participate in the suit could be thought the equivalent of the lawyers’ non-legal but
20 essential case-specific expenses, such as long-distance phone calls, which are
21 reimbursable.” (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 966.)

22 In the context of this action, Plaintiff Nicole Fahmie’s \$5,000 incentive payment is
23 fair and reasonable. (*See In re Mego Fin. Corp Sec. Litig.* (9th Cir. 2000) 213 F.3d 454,
24 463 [awarding the named plaintiff \$5,000 involving a class of 5,400 people and a total
25 recovery of \$1.725 million].)

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VII. CONCLUSION

For all the foregoing reasons, Plaintiff Fahmie respectfully requests that the Court issue an order: (1) awarding Arias Ozzello & Gignac LLP attorneys' fees in the amount of \$1,230,954.00; (2) reimbursing Arias Ozzello & Gignac LLP the reasonably incurred costs of \$6,746.29; and (3) awarding an incentive payment to Plaintiff Nicole Fahmie in the amount of \$5,000.00.

Dated: February 2, 2012

ARIAS OZZELLO & GIGNAC LLP

By: _____

Mike Arias
Mikael H. Stahle
Alfredo Torrijos

*Attorneys for Plaintiff Fahmie and
the Settlement Class*