

# SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and among the Glendale Coalition for Better Government, Inc. (“Coalition”), William A. Taliaferro (“Taliaferro”), and the City of Glendale (“City”). The Coalition, Taliaferro, and the City are referred to herein collectively as “Parties.” The Parties enter into this Agreement based on the understandings set forth in the following recitals, each of which they affirm to be true and correct.

## RECITALS

A. The City operates Glendale Water and Power (“GWP”), a public utility that provides water service to approximately 192,000 customers. The City adopted rates for GWP’s water service through Resolution No. 14-130 on August 5, 2014 (the “2014 Rates”).

B. The 2014 Rates divided the City’s water customers into four customer classes: Single-Family Residential, Multi-Family Residential, Commercial, and Irrigation.

C. The 2014 Rates included water accounts associated with the City within the Commercial customer class.

D. Within the residential classes, the 2014 Rates allocated costs of service among different volumes, or tiers, of consumption — four tiers for the Single-Family Residential class, and two tiers for the Multi-Family Residential class.

E. In January 2015, the Coalition filed *Glendale Coalition for Better Government, Inc. v. City of Glendale*, Los Angeles Superior Court Case No. BS153253 (*Coalition v. Glendale*) to challenge the 2014 Rates. Inter alia, the Coalition argued that water accounts associated with the City should not be included in the Commercial customer class (the “Misclassification Claim”), and that the City improperly allocated costs associated with base or average consumption among the residential tiers (the “Base Costs Claim”).

F. The trial court entered judgment in *Coalition v. Glendale* on February 22, 2017 (the “Judgment”), finding in favor of the Coalition on both the Misclassification Claim and the Base Costs Claim, and finding in favor of the City on an issue not relevant to this Agreement. The Coalition and the City stipulated to an attorney’s fee award of \$396,855 and the Judgment was amended accordingly.

G. The City appealed the Judgment, and the Coalition cross-appealed from the Judgment, which appeals were heard by the California Court of Appeal, Second

District, as Case No. B282410. However, the City did not appeal the Judgment's ruling on the Misclassification Claim.

H. In an unpublished decision, the Court of Appeal affirmed the trial court's decision on the Base Costs Claim. (*Glendale Coalition for Better Government, Inc. v. City of Glendale* (B282410, Dec. 27, 2018) 2018 WL 6804360.)

I. While the appeal in *Coalition v. Glendale* was pending, on February 20, 2018, Taliaferro filed *Taliaferro v. City of Glendale*, Los Angeles Superior Court Case No. BC695324 (*Taliaferro v. Glendale*), seeking refunds of the 2014 Rates based on the Judgment. Taliaferro filed *Taliaferro v. Glendale* on behalf of both himself and a putative class of City water customers.

J. On March 28, 2018, the Court in *Taliaferro v. Glendale* stayed that action pursuant to the stipulation between the City and Taliaferro pending final resolution of *Coalition v. Glendale*.

K. In light of the stay in *Taliaferro v. Glendale*, the City has yet to respond to the complaint and Taliaferro has yet to seek class certification.

L. Both *Coalition v. Glendale* and *Taliaferro v. Glendale* remain pending in the Superior Court as of the date of this Agreement.

M. The Parties desire to fully and finally resolve the Coalition's and Taliaferro's respective claims against the City in *Coalition v. Glendale* and *Taliaferro v. Glendale* on the terms and conditions set forth below.

THEREFORE, in consideration of the promises, covenants, warranties, and representations set forth below, the Parties agree as follows:

## **ARTICLE I DEFINITIONS**

1.1. "HCF" is a unit of volume, meaning "hundred cubic feet" or approximately 748 gallons.

1.2. "SFR Customer" means any person who paid the 2014 Rates assigned to the Single-Family Residential customer class.

1.3. "Total SFR Tier 4 Usage" means consumption in HCF within the fourth and highest consumption tier the 2014 Rates defined for the Single-Family Residential customer class during the period from October 20, 2016 through June 30, 2018.

1.4. “MFR Customer” means any person who paid the 2014 Rates assigned to the Multi-Family Residential customer class.

1.5. “Total MFR Tier 2 Usage” means consumption in HCF within the second and highest consumption tier the 2014 Rates defined for the Multi-Family Residential customer class during the period from October 20, 2016 through June 30, 2018.

1.6. “City Accounts” refers to all GWP water accounts associated with the City of Glendale, including accounts associated with GWP’s electric utility, but excluding any accounts associated with service GWP’s water utility provides to itself.

## **ARTICLE II SETTLEMENT OF BASE COSTS CLAIM**

2.1. **Credits for SFR Customers for Total SFR Tier 4 Usage.** For each SFR Customer with an active water account with GWP as of May 31, 2019, the City shall calculate a credit equal to \$0.52 times Total SFR Tier 4 Usage. Beginning with water bills the City issues on and after August 1, 2019, the City shall lower the charge to each SFR Customer by an amount equal to that SFR Customer’s credit. If the credit is equal to or exceeds the amount an SFR Customer owes for a given billing period, the SFR Customer shall owe nothing for that billing period, and the City shall deduct the amount that customer would have owed from his or her credit. Any remaining credit shall carry over and apply the same way to future water bills until it is exhausted.

2.2. **Credits for MFR Customers for Total MFR Tier 2 Usage.** For each MFR Customer with an active water account with GWP as of May 31, 2019, the City shall calculate a credit equal to \$0.05 times Total MFR Tier 2 Usage. Beginning with water bills the City issues on and after August 1, 2019, the City shall lower the charge to each MFR Customer by an amount equal to that MFR Customer’s credit. If the credit is equal to or exceeds the amount an MFR Customer owes for a given billing period, the MFR Customer shall owe nothing for that billing period, and the City shall deduct the amount that customer would have owed from his or her credit. Any remaining credit shall carry over and apply the same way to future water bills until it is exhausted.

### **2.3. Refunds for Those Entitled to Credits But for Account Closure.**

2.3.1. The City shall reasonably estimate Total SFR Tier 4 Usage by SFR Customers who do not have an active water account with GWP as of May 31, 2019, and Total MFR Tier 2 Usage by MFR Customers who do not have an active water account with GWP as of May 31, 2019, and shall calculate the total credits those customers would be entitled to under paragraph 2.1 or 2.2, as appropriate. The City shall then set

aside an amount equal to those credits (the “Redemption Fund”) from the GWP Water Enterprise Fund for distribution in accordance with paragraph 2.3.2.

2.3.2. Any SFR Customer who does not have an active water account with GWP as of May 31, 2019, or who closes his or her account before receiving the full credit described in paragraph 2.1, may receive a cash refund from the Redemption Fund in the amount for which the SFR Customer would otherwise have received a credit under paragraph 2.1 but for the account closure. Any MFR Customer who does not have an active water account with GWP as of May 31, 2019, or who closes his or her account before receiving the full credit described in paragraph 2.2, may also receive a cash refund from the Redemption Fund in the amount for which the MFR Customer would otherwise have received a credit under paragraph 2.2 but for the account closure.

2.3.3. The City shall make a form available on its website for customers to apply for the refunds under paragraph 2.3.2 above, and that form shall be designed so a reasonable member of the public can fill it out on his or her own. The deadline to submit this form to the City shall not be earlier than May 1, 2020. After the deadline to apply for this cash refund expires, the City shall return any funds remaining in the Redemption Fund to the GWP Water Enterprise Fund.

2.3.4. The City shall publish a prominent notice about the opportunity for refunds provided by paragraph 2.3 in at least two separate editions of its “City Connection” newsletter.

2.4. **Source of Credits and Refunds.** All credits and refunds described in paragraphs 2.1 through 2.3 shall be paid from the GWP Water Enterprise Fund’s reserves.

### **ARTICLE III SETTLEMENT OF MISCLASSIFICATION CLAIM**

3.1. The City shall calculate total water consumption in HCF by City Accounts from October 20, 2016 through June 30, 2018. The City shall multiply this figure by \$3.33.

3.2. The City shall determine the actual amount City Accounts paid for water from October 20, 2016 through June 30, 2018.

3.3. The City shall subtract the figure it calculated in paragraph 3.2 from the figure it calculated in paragraph 3.1. This is the “undercharge” for the Misclassification Claim. The City represents that this figure is approximately \$55,000. Within 90 days after *Taliaferro v. Glendale* is dismissed as contemplated in paragraph 4.2 below, the City

shall transfer an amount equal to the undercharge to the GWP Water Enterprise Fund. The GWP Electric Enterprise Fund shall contribute its proportionate share of the difference between the figure calculated in paragraph 3.2 and the figure calculated in paragraph 3.1.

#### **ARTICLE IV OTHER SETTLEMENT TERMS**

4.1. Resolution of *Coalition v. Glendale*:

4.1.1. Within five court days after this Agreement is fully executed, the City and the Coalition shall stipulate to entry of an amended judgment *Coalition v. Glendale* as modified by the Court of Appeal's decision in *Glendale Coalition for Better Government, Inc. v. City of Glendale* (B282410, Dec. 27, 2018) 2018 WL 6804360 in the form attached hereto as **Exhibit A**.

4.1.2. Within 30 days of service of Notice of Entry of the amended judgment under paragraph 4.1.1, the City shall file a return to the writ the trial court issued in *Coalition v. Glendale*, attesting to its compliance with the judgment.

4.2. Resolution of *Taliaferro v. Glendale*:

4.2.1. Within five court days after this Agreement is fully executed, Taliaferro shall dismiss *Taliaferro v. Glendale* with prejudice as to himself and without prejudice as to the putative class under California Rules of Court, rule 3.770, by filing the stipulation and supporting declaration attached as **Exhibit B**. Taliaferro agrees to execute a joint motion to dismiss or orally move to dismiss pursuant to the terms of this section if the Court requires the Parties to do so to effectuate the dismissal.

4.2.2. In support of the dismissal, the City or its attorneys shall submit a declaration in the form attached hereto as **Exhibit C** attesting to the accuracy of the City's consumption levels for Total SFR Tier 4 Usage, Total MFR Tier 2 Usage, and total water consumption by City Accounts from October 20, 2016 through June 30, 2018.

4.3. Within thirty calendar days after service of both (1) Notice of Entry of Dismissal upon the City in *Taliaferro v. Glendale* under paragraph 4.2, and (2) Notice of Entry of the amended judgment in *Coalition v. Glendale* under paragraph 4.1, the City shall pay \$550,000 payable to the law firm Krause, Kalfayan, Benink & Slavens, LLP, as compensation for Taliaferro and the Coalition's reasonable fees and in connection with *Taliaferro v. Glendale* and *Coalition v. Glendale* and \$2,466.29 in previously-awarded costs in *Coalition v. Glendale*. If the Court fails to enter an amended judgment in *Coalition v. Glendale* in the form proposed by the parties, the parties shall use their best efforts to

accomplish its objective by other means, which shall not relieve the City of its payment obligation.

4.4. Within 60 days after all credits, refunds, and interfund transfers have been completed under paragraphs 2.1, 2.2, 2.3, and 3.3, the City shall execute a declaration certifying compliance with this Agreement and stating the total amounts credited, refunded, and transferred. The City shall send this declaration to Eric J. Benink and Benjamin T. Benumof, Krause, Kalfayan, Benink & Slavens, LLP, counsel of record for both the Coalition and Taliaferro.

## **ARTICLE V GENERAL PROVISIONS**

5.1. The Coalition and Taliaferro hereby generally release and forever discharge the City and its assigns, successors-in-interest, officers, employees, partners, employers, agents, servants, accountants, attorneys, insurers, sureties, representatives, and all other persons acting for or on its behalf, past and present, of and from any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, cost or expense, including attorney fees and costs of any kind or nature, whatsoever, past or present, ascertained or unascertained, whether or not now known, suspected or claimed, against the City relating to or arising out of *Coalition v. Glendale, Taliaferro v. Glendale*, and the 2014 Rates, with the exception of the representations, agreements, covenants, promises and consideration set forth in this Agreement. The Coalition and Taliaferro expressly waive any claim that the City's compliance with this Agreement is insufficient to comply with the Judgment, as modified by *Glendale Coalition for Better Government, Inc. v. City of Glendale* (B282410, Dec. 27, 2018) 2018 WL 6804360.

5.2. The Coalition and Taliaferro expressly waive any rights or benefits available under Section 1542 of the California Civil Code, which provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

The Coalition and Taliaferro understand that this Agreement is a full and final settlement and release applying to all unknown and unanticipated damages arising out of the acts or omissions related to or arising out of *Coalition v. Glendale, Taliaferro v. Glendale*, the facts alleged in each therein, and the 2014 Rates as well as to those not now known or disclosed. The Coalition and Taliaferro understand and acknowledge the

significance and consequence of the specific waiver of Civil Code Section 1542 and hereby assume full responsibility for any injury, loss, damage or liability that may hereafter be incurred for any reason or in any way related to *Coalition v. Glendale* or *Taliaferro v. Glendale*.

5.3. This Agreement reflects the compromise and settlement of disputed claims between and among the Parties. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, any allegations of wrongdoing) by any person unless otherwise provided in a final non-appealable judgment, and shall not be offered or received in evidence or requested in discovery in any action or proceeding as evidence of an admission or concession, unless such point of fact or law is established in a final non-appealable judgment in *Coalition v. Glendale* or *Taliaferro v. Glendale*.

5.4. The Parties individually and collectively declare and represent that no promises, inducement, or other agreements not expressly contained herein have been made with regard to this settlement, and that this Agreement contains the entire agreement between the Parties, and the terms of this Agreement are contractual and not mere recitals.

5.5. This Agreement shall inure to the benefit of each Party to *Coalition v. Glendale* and *Taliaferro v. Glendale* and shall further inure to the benefit and bind each Party, their predecessors, successors, subsidiaries, affiliates, representatives, heirs, assigns, agents, partners, officers, directors, employees, and personal representatives, past, present, and future.

5.6. Each Party represents and acknowledges that each of them has been represented by counsel with respect to this Agreement and any and all matters covered by or related to such Agreement. Each Party represents and acknowledges that it has been fully advised by its counsel with respect to all rights that are affected and/or waived by this Agreement.

5.7. This Agreement contains the entire agreement between the Parties regarding the matter set forth herein and may not be altered, amended, or modified in any respect, except by a writing duly executed by all Parties. All prior agreements and understandings, oral agreements, and writings regarding the matters set forth herein are expressly superseded hereby and are of no further force or effect.

5.8. Each Party represents and warrants that he or it read, knows, and understands the contents hereof, has executed this Agreement voluntarily, and has not

been influenced by any person, persons or attorney acting on behalf of any other Party, and understands that after signing this Agreement, each Party cannot proceed against the other on account of any of the matters described herein.

5.9. The Parties agree to bear their own attorney fees and costs, except as provided in paragraph 4.3, and that no further attorney fees or costs are owed among them, in connection with *Coalition v. Glendale* and *Taliaferro v. Glendale* or the negotiation, preparation and execution of this Agreement.

5.10. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

5.11. The Parties shall each be deemed to have participated in drafting this Agreement, and it shall not be construed against each or any of them.

5.12. If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

5.13. This Agreement may be executed in counterparts and, as so executed, shall constitute an agreement that shall be binding upon all Parties hereto, notwithstanding that the signatures of all Parties and/or their designated representatives do not appear on the same page. This Agreement may be transmitted by facsimile or other electronic means and the reproduction of signatures by facsimile or other electronic means will be treated as binding as if originals.

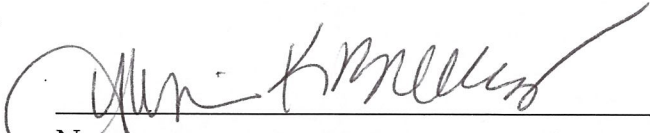
5.14. Each person who executes this Agreement on behalf of a corporation, partnership, joint venture, unincorporated association, trust or other entity represents and warrants to each Party hereto that he or she has the authority of the shareholders, members, trustee(s) or beneficiaries of said entity to do so, and agrees to indemnify and hold harmless each other Party from any claim that such authority did not exist.

5.15. The Parties covenant and agree to take such further actions and/or to execute, acknowledge, and deliver such additional documents as may be reasonably required to implement the terms and conditions of this Agreement. The Parties below named have executed this Agreement as of the date and year appearing adjacent to the signatures of the Parties as set forth below.

*[Signatures on following page]*



CITY OF GLENDALE

  
\_\_\_\_\_

Name: Yasmin K. Beers  
Title: City Manager

Date: 6/3/19

APPROVED AS TO FORM

  
\_\_\_\_\_

CITY ATTORNEY

DATE 6/3/19

GLENDALE COALITION FOR BETTER GOVERNMENT, INC.

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM A. TALIAFERRO

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
David J. Ruderman  
Attorney for City of Glendale

Date: \_\_\_\_\_

\_\_\_\_\_  
Benjamin T. Benumof  
Attorney for Glendale Coalition for Better  
Government & William A. Taliaferro


Date: \_\_\_\_\_

CITY OF GLENDALE

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

GLENDALE COALITION FOR BETTER GOVERNMENT, INC.

  
\_\_\_\_\_  
Name: FRANK GALLO  
Title: PRESIDENT CLBG

Date: 5-30-14

  
\_\_\_\_\_  
WILLIAM A. TALIAFERRO

Date: 5-30-14

Approved as to form:

\_\_\_\_\_  
David J. Ruderman  
Attorney for City of Glendale

Date: \_\_\_\_\_

\_\_\_\_\_  
Benjamin T. Benumof  
Attorney for Glendale Coalition for Better  
Government & William A. Taliaferro

Date: \_\_\_\_\_

CITY OF GLENDALE

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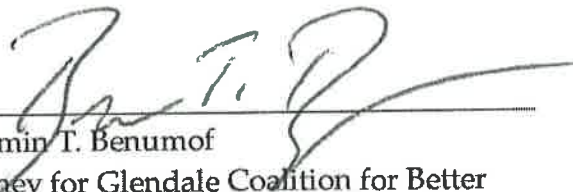
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WILLIAM A. TALIAFERRO

Date: \_\_\_\_\_

Approved as to form:

  
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David J. Ruderman  
Attorney for City of Glendale

Date: 6/3/2019

  
\_\_\_\_\_  
Benjamin T. Benumof  
Attorney for Glendale Coalition for Better  
Government & William A. Taliaferro

Date: 5/31/2019

# **EXHIBIT A**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE**

GLENDALE COALITION FOR BETTER  
GOVERNMENT, INC., a California non-profit  
public interest corporation,

Petitioners/Plaintiffs,

v.

CITY OF GLENDALE, a California public  
agency; and DOES 1 through 25, inclusive,

Respondents/Defendants.

**CASE NO. BS153253**  
*Unlimited Jurisdiction*

(Case assigned to Hon. James C. Chalfant)

**[PROPOSED] FINAL JUDGMENT AFTER  
REMITTITUR**

Complaint Filed:            January 9, 2015

1 The above-entitled matter came on regularly for trial and hearing on Petitioner/Plaintiff  
2 Glendale Coalition for Better Government, Inc.'s ("Coalition") writ petition on January 19 and  
3 January 24, 2017, in Department 85 of the above-entitled Court, before the Honorable James C.  
4 Chalfant, judge presiding, sitting without a jury. The Coalition was represented by Benjamin T.  
5 Benumof, Ph.D., Esq. and Eric J. Benink, Esq. of Krause, Kalfayan, Benink & Slavens, LLP.  
6 Respondent/Defendant City of Glendale ("City") was represented by Michael G. Colantuono, Esq.  
7 of Colantuono, Highsmith & Whatley, PC.

8 The Court having carefully reviewed and considered the Administrative Record, the  
9 pleadings, matters subject to judicial notice, all other papers admitted into evidence, and the  
10 arguments of counsel, and for the reasons set forth in the Court's fourteen page January 19, 2017  
11 tentative ruling which the Court adopted as its statement of decision, as modified in part on the oral  
12 record at the January 19 and 24, 2017 hearing, issued judgment in this matter on February 22, 2017.

13 After appeal and cross-appeal by the parties, the Court of Appeal issued an unpublished  
14 decision in this action on December 27, 2018, affirming the portion of the judgment invalidating the  
15 City's variable rates for residential customers and reversing the portion of the judgment invalidating  
16 the public fire protection fee as a component of fixed rates. On March 14, 2019, the Clerk of the  
17 Court of Appeal issued a remittitur in this action.

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19 The Court hereby ORDERS, ADJUDGES, and DECLARES as follows:

20 1. Judgment is entered in favor of the Coalition and against the City as set forth in this  
21 Court's fourteen (14) page Statement of Decision, as modified in part on the oral record at the  
22 January 19 and 24, 2017 hearings, and as further modified by the Court of Appeal's December 27,  
23 2018 unpublished opinion.

24 2. The writ of mandate previously issued March 1, 2017 is hereby amended to direct the  
25 City to abandon and/or invalidate the City's water rate structure adopted August 5, 2014 for  
26 violating Proposition 218 as it pertains to (a) single family residential customer base rates, and (b)  
27 the collapse of the City of Glendale and Public Authority accounts into the commercial category.  
28

1           3.    The Coalition’s first and second causes of action for declaratory and injunctive relief  
2 are rendered moot by the issuance of this Court’s writ of mandate.

3           4.    The Coalition shall recover costs, as ordered by the Court, in the amount of \$2,466.29.

4           5.    Attorneys’ fees are awarded to the Coalition and against the City of Glendale pursuant  
5 to a settlement agreement in the amount of \$550,000.

6           6.    The Court retains jurisdiction over the parties and this action to enforce the judgment, to  
7 adjudicate disputes regarding compliance with the writ of mandate, and to hear post-judgment  
8 motions, including a motion for attorney’s fees.

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DATED: \_\_\_\_\_

By: \_\_\_\_\_

Hon. James C. Chalfant  
Judge of the Superior Court

# **EXHIBIT B**



1 Benjamin T. Benumof, PhD., Esq. SBN 227340  
[ben@kkbs-law.com](mailto:ben@kkbs-law.com)  
2 Eric J. Benink, Esq., SBN 187434  
[eric@kkbs-law.com](mailto:eric@kkbs-law.com)  
3 KRAUSE, KALFAYAN, BENINK & SLAVENS, LLP  
4 550 West C Street, Suite 530  
San Diego, CA 92101  
(619) 232-0331 (ph)  
(619) 232-4019 (fax)  
5 Attorneys for Plaintiff  
6 WILLIAM A. TALIAFERRO

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 WILLIAM A. TALIAFERRO, an individual, ) Case No.: BC695324  
11 Plaintiff, )  
12 v. ) *Assigned for all purposes to Honorable Amy*  
13 CITY OF GLENDALE, a California public ) *D. Hogue, Dept. 7*  
agency; and DOES 1 through 10, inclusive, )  
14 Defendant. ) **STIPULATION FOR DISMISSAL OF**  
15 ) **CLASS ACTION; [PROPOSED] ORDER**  
16 ) **THEREON**  
17 ) [CLASS ACTION]

18  
19 IT IS HEREBY STIPULATED by and between plaintiff William Taliaferro (“Plaintiff”)  
20 and defendant City of Glendale (“City”) through their respective attorneys of record that:

- 21 1. The Court shall dismiss this entire action with prejudice as to Plaintiff and without  
22 prejudice as to the putative class, and  
23 2. Each side shall bear his/its own attorney’s fees and costs except as provided in the  
24 Settlement Agreement between the parties attached as Exhibit A to the Declaration of  
25 Eric J. Benink filed concurrently herewith.

26 SO STIPULATED.  
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DATED: May \_\_, 2019

**KRAUSE KALFAYAN BENINK &  
SLAVENS, LLP.**

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ERIC J BENINK  
Attorney for Plaintiff  
WILLIAM A. TALIAFERRO

DATED: May \_\_, 2019

**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**

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MICHAEL G. COLANTUONO  
DAVID J. RUDERMAN  
JON R. di CRISTINA  
Attorneys for Defendant  
CITY OF GLENDALE

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**[PROPOSED] ORDER**

Upon reviewing the foregoing stipulation and the Declaration of Eric J. Benink in Support of Request for Dismissal, submitted herewith, and good cause appearing thereon, IT IS HEREBY ORDERED THAT:

1. This entire action is hereby dismissed **with** prejudice as to Plaintiff William A. Taliaferro and **without** prejudice as to the putative class; and

2. Each side shall bear his/its own attorney’s fees and costs except as provided in the Settlement Agreement between the parties attached as Exhibit A to the Declaration of Eric J. Benink filed concurrently herewith.

SO ORDERED.

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Hon. Amy D. Hogue  
Judge of the Superior Court

1 Benjamin T. Benumof, PhD., Esq. SBN 227340  
[ben@kkbs-law.com](mailto:ben@kkbs-law.com)  
2 Eric J. Benink, Esq., SBN 187434  
[eric@kkbs-law.com](mailto:eric@kkbs-law.com)  
3 KRAUSE, KALFAYAN, BENINK & SLAVENS, LLP  
4 550 West C Street, Suite 530  
San Diego, CA 92101  
(619) 232-0331 (ph)  
5 (619) 232-4019 (fax)

6 Attorneys for Plaintiff  
WILLIAM A. TALIAFERRO

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 WILLIAM A. TALIAFERRO, an individual,	)	Case No.: BC695324
11 Plaintiff,	)	<i>Assigned for all purposes to Honorable Amy</i>
12 v.	)	<i>D. Hogue, Dept. 7</i>
13 CITY OF GLENDALE, a California public	)	<b>DECLARATION OF ERIC J. BENINK IN</b>
14 agency; and DOES 1 through 10, inclusive,	)	<b>SUPPORT OF REQUEST FOR</b>
15 Defendant.	)	<b>DISMISSAL PURSUANT TO C.R.C. 3.770</b>
	)	[CLASS ACTION]
	)	Date: February 19, 2019
	)	Time: 10:00 a.m.
	)	Dept.: 7

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19 I, Eric J. Benink, declare as follows:

20 1. I am one of the attorneys for Plaintiff William A. Taliaferro in the above-entitled  
21 action. I have personal knowledge of the facts stated below and if called upon, I could and would  
22 testify competently thereto. I make this declaration pursuant to California Rules of Court, rule  
23 3.770.

24 2. The City operates Glendale Water and Power (“GWP”), a public utility that provides  
25 water service to approximately 192,000 customers. The City adopted rates for GWP’s water  
26 service through Resolution No. 14-130 on August 5, 2014 (the “2014 Rates”).

27 3. In January 2015, the Glendale Coalition for Better Government (“GCBG”) filed  
28 *Glendale Coalition for Better Government, Inc. v. City of Glendale*, Los Angeles Superior Court

1 Case No. BS153253 (*Coalition v. Glendale*) to challenge the 2014 Rates. On February 22, 2017,  
2 the trial court entered judgment in *Coalition v. Glendale*, partially invalidating the 2014 Rates.  
3 That case need not seek refunds for ratepayers and the judgment did not command the City to  
4 provide refunds. The parties stipulated to an attorney’s fee award in the amount of \$396,855  
5 which was reflected in an amended judgment. The City appealed the judgment and GCBG cross-  
6 appealed.

7 4. While the appeal in *Coalition v. Glendale* was pending, Plaintiff initiated this action  
8 on behalf of himself and similarly-situated City of Glendale water customers as a putative class  
9 action seeking refunds of the 2014 Rates to the extent they were deemed illegal under *Coalition v.*  
10 *Glendale*.

11 5. On December 27, 2018, the Court of Appeal in an unpublished decision affirmed in  
12 part and reversed in part the judgment in *Coalition v. Glendale*. (*Glendale Coalition for Better*  
13 *Government, Inc. v. City of Glendale* (B282410, Dec. 27, 2018) 2018 WL 6804360.)

14 6. In light of the Court of Appeal’s decision, the parties to this action and *Coalition v.*  
15 *Glendale* have agreed to a settlement that provides Plaintiff and the putative class the relief to  
16 which Plaintiff contends he and it are entitled. The City has agreed to provide credits to current  
17 water customers directly on their water bills without any action on their part and to make  
18 available refunds to former water customers who paid the 2014 Rates invalidated by *Coalition v.*  
19 *Glendale* for the period October 20, 2016 through June 30, 2018. This period begins on October  
20 20, 2016 because Taliaferro presented a claim for refund with the City on October 20, 2017 and  
21 the Government Claims Act limits claims to one year prior to presentation of a claim. (See Gov.  
22 Code § 911.2, subd. (a).) The class period ends on June 30, 2018 because the City adopted new  
23 rates effective July 1, 2018.

24 7. The City has also agreed to transfer funds to the GWP Water Enterprise Fund equal  
25 to the approximate amount the City was undercharged based on the 2014 Rates’ inclusion of City  
26 accounts within the commercial classification. The GWP Electric Enterprise Fund shall contribute  
27 its proportionate share to the GWP Water Enterprise Fund as well.  
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8. The City has agreed, as part of the settlement, to provide a declaration attesting to its compliance with the agreement after credits and refunds are made which shall state the total amounts credited and refunded.

9. The City has also agreed, as part of the settlement, to pay attorney’s fees incurred in two cases in the negotiated amount of \$550,000 and the previously-awarded costs in *Coalition v. Glendale* in the amount of \$2,466.29.

10. A true and correct copy of the Settlement Agreement between Plaintiff, GCBG, and the City is attached hereto as Exhibit A.

11. In light of the agreement described above, Plaintiff has agreed to dismiss his claims with prejudice and the claims of the putative class **without** prejudice, as set forth in the stipulation for dismissal submitted herewith. The putative class has not been notified of this action. No other consideration, direct or indirect, has been given in exchange for the agreement to request this dismissal.

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

Executed in San Diego, California, on May \_\_, 2019.

\_\_\_\_\_  
Eric J. Benink

# **EXHIBIT C**

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Government Code § 6103**

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12 Attorneys for Respondent and Defendant  
13 CITY OF GLENDALE

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE**

17 GLENDALE COALITION FOR BETTER  
18 GOVERNMENT, INC., a California non-profit  
public interest corporation,

19  
20 Petitioners/Plaintiffs,

21 v.

22 CITY OF GLENDALE, a California public  
23 agency; and DOES 1 through 25, inclusive,

24 Respondents/Defendants.  
25  
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**CASE NO. BS153253**  
*Unlimited Jurisdiction*

(Case assigned to Hon. James C. Chalfant)

**DECLARATION OF GLENDALE WATER  
AND POWER GENERAL MANAGER  
STEPHEN M. ZURN IN SUPPORT OF  
SETTLEMENT AGREEMENT**

Complaint Filed: January 9, 2015

Dept.: 85



1 I, STEPHEN M. ZURN, declare and state as follows:

2 1. I am General Manager of Glendale Water and Power and an employee of the City of  
3 Glendale (“City”), Respondent in the above-entitled action. I make this declaration in support of the  
4 Settlement Agreement between the City, Petitioner Coalition for Better Government, and William A.  
5 Taliaferro, Petitioner in *Taliaferro v. City of Glendale*, Los Angeles Superior Court Case No.  
6 BC695324. Unless otherwise stated, the facts set forth herein are true of my own personal  
7 knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

8 2. Glendale Water and Power (“GWP”) maintains a database that includes account  
9 numbers for each customer of the water utility and, for each billing period, the corresponding total  
10 volume of water used and the total charge levied each account. This database is updated each billing  
11 cycle and is audited annually.

12 3. To determine the size of the credits or refunds to which certain water customers will  
13 be entitled under the Settlement Agreement executed in this action, GWP used data from its database  
14 described in paragraph 2 for the water utility to identify all single-family residential (SFR) accounts  
15 that used water in Tier 4 and all multi-family residential (MFR) accounts that used water in Tier 2  
16 from October 20, 2016 through June 30, 2018 (“Claiming Period”). The total SFR Tier 4  
17 consumption in the Claiming Period is approximately 620,993 hundred cubic feet (“hcf”). The total  
18 MFR Tier 2 consumption in the Claiming Period is approximately 2,011,018 hcf.

19 4. To determine the interfund transfer amounts under the Settlement Agreement, GWP  
20 also used data from the database described in paragraph 2 to identify the volume and amount levied  
21 for City accounts during the Claiming Period. The total consumption by City accounts in the  
22 Claiming Period is approximately 283,567 hcf.

23 5. The consumption levels GWP used to make the determinations described in  
24 paragraphs 3 and 4 are accurate to the best of my actual knowledge.

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26 I declare under penalty of perjury under the laws of the State of California that the foregoing  
27 is true and correct.  
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Executed on May \_\_, 2019 at Glendale, California.

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STEPHEN M. ZURN

**Colantuono, Highsmith & Whatley, PC**  
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PASADENA, CA 91101-2109