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11 Attorneys for Petitioner and Plaintiff

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SAN BERNARDINO

14 CHRISTINA LOPEZ-BURTON, an individual,  
15 on behalf of herself and all others similarly  
situated,

16 Petitioner and Plaintiff,  
17 v.

18 TOWN OF APPLE VALLEY, a general law  
19 city; and DOES 1-10,

20 Respondents and Defendants.

Case No.: CIVDS1725027

*Assigned for all purposes to Hon. David S. Cohn*

**PETITIONER AND PLAINTIFF CHRISTINA  
LOPEZ-BURTON'S NOTICE OF MOTION  
AND MOTION FOR ATTORNEY'S FEES,  
REIMBURSEMENT OF EXPENSES AND  
SERVICE AWARD; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
THEREOF**

Petition/Complaint Filed: December 20, 2017

DATE: October 16, 2019  
TIME: 8:30 a.m.  
DEPT: 26

1 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on October 16, 2019, at 8:30 a.m., in Department S26 of the  
3 Superior Court of the State of California for the County of San Bernardino, located at the San  
4 Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415, the Honorable  
5 David Cohn presiding, Petitioner and Plaintiff Christina Lopez-Burton (“Burton”), on behalf of herself  
6 and the provisionally certified class, will move and hereby does move this Court, in conjunction with  
7 her motion for final approval of class action settlement pursuant to California Rules of Court, rule  
8 3.769, for an award of attorney’s fees and reimbursement of expenses to Class Counsel and for a  
9 service award to Burton.

10 Specifically, Burton will request, and hereby does request, that the Court enter an order (a)  
11 awarding Class Counsel attorney’s fees in the amount of \$1,050,000 and reimbursement of expenses in  
12 the amount of \$12,994, for a total of \$1,062,994 and (b) awarding Burton a \$5,000 Service Award. All  
13 such awards are to be paid from the \$3,150,000 Common Fund.

14 This motion is made on the grounds that the requested fees and awards are reasonable and in  
15 accordance with California law.

16 This motion is based on this notice of motion, the points and authorities attached hereto; the  
17 Declaration of Eric J. Benink, filed herewith; the Declaration of Prescott W. Littlefield, filed herewith;  
18 the Declaration of Christina Lopez-Burton, filed herewith; the concurrently filed motion for final  
19 approval of class action settlement (and supporting papers and evidence); the complete records and  
20 files in this action, and any arguments the Court may hear at the hearing.

21  
22 DATED: September 9, 2019

BENINK & SLAVENS, LLP.

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24   
25 \_\_\_\_\_  
Eric J. Benink Esq.  
Attorneys for Petitioner / Plaintiff  
Christina Lopez-Burton

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On June 27, 2019, Petitioner and Plaintiff Christina Lopez-Burton (“Burton”) and Defendant  
4 the Town of Apple Valley (“Town”) executed a Class Action Settlement Agreement (“Settlement” or  
5 “Settlement Agreement”). On July 23, 2019, the Court preliminarily approved the Settlement and  
6 ordered Class Counsel to file a motion for attorney’s fees and service award, along with the motion for  
7 final approval no later than September 9, 2019. The procedural history of this case, the factual  
8 allegations giving rise to this action, and the terms of the Settlement are described in the motion for  
9 preliminary approval, previously filed, and in the motion for final approval being filed concurrently  
10 with this motion. The Settlement Agreement was submitted to the Court on June 28, 2019 and is  
11 attached as Exhibit 1 to the declaration of Eric J. Benink in support of the motion for final approval.

12 Burton respectfully moves this Court for an award of attorney’s fees of \$1,050,000 and  
13 reimbursement of expenses of \$12,994 to Class Counsel, and for a service award for class  
14 representative Christina Lopez-Burton in the amount of \$5,000, all of which are to be paid out of the  
15 Common Fund. As explained further below, the attorney’s fees sought are appropriate under the  
16 prevailing percentage of fund method of awarding attorney’s fees. The requested fee is further  
17 supported by a cross-check using the lodestar-multiplier method; the expenses were reasonably  
18 incurred in the prosecution of this case; and the \$5,000 service award is reasonable in light of Burton’s  
19 participation in this matter.

20 **THE COMMON FUND**

21 The Settlement establishes a \$3,150,000 common fund (“Common Fund”) for the benefit of a  
22 class of Town solid waste service customers. After attorney’s fees and expenses, a service award, class  
23 notice and administration expenses are deducted, the balance (“Net Common Fund”) will be distributed  
24 as cash refunds to the Town’s former solid waste service customers who submit a timely and proper  
25 claim, and to current customers as automatic credits on their solid waste service bills. The entirety of  
26 the Net Common Fund will be distributed to Class Members -- there is no residual.

1 **ARGUMENT**

2 **I. THE AMOUNT OF ATTORNEY’S FEES SOUGHT IS REASONABLE**

3 Class Counsel seeks an award of attorney’s fees of \$1,050,000<sup>1</sup> which is 1/3 (i.e.,  
4 approximately 33%) of the Common Fund. There are two recognized approaches to awarding fees: the  
5 percentage-of-benefit and the lodestar-multiplier method. No matter which method is used, “ [t]he  
6 ultimate goal ... is the award of a ‘reasonable’ fee to compensate counsel for their efforts, irrespective  
7 of the method of calculation.” [Citations.]” (*Apple Computer, Inc. v. Superior Court* (2005) 126  
8 Cal.App.4th 1253, 1270.) The amount of fees to be awarded is within the trial court’s discretion and  
9 the value of legal services performed is a matter in which the court has its own expertise. (*Golba v.*  
10 *Dick’s Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1270.)

11 As explained below, an award of \$1,050,000 is appropriate under either the percentage-of-  
12 benefit or the lodestar method.

13 **A. Percentage-of-benefit method**

14 Where, as here, Burton’s lawsuit has conferred substantial direct benefits on a class of persons,  
15 the Court should endeavor to award fees in “an amount reasonably related to the benefits conferred by  
16 the litigation.” (*Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 996; see also  
17 *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d at p. 945 [“[s]o long as the costs  
18 [i.e. fees] bear a reasonable relation to the benefits, the ‘involuntary client’ who retains a substantial  
19 gain from the litigation will generally have no just cause to complain.”].) As such, a court may award  
20 attorneys’ fees on a percentage of the benefit basis, which more accurately ties the amount awarded to  
21 the value of benefits conferred.

22 Although counsel’s lodestar may be used to cross-check the amount awarded, a court may in its  
23 discretion rely *solely* on the percentage of the benefit method to award attorneys’ fees in a class action.  
24 (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503 [“when class action litigation  
25 establishes a monetary fund for the benefit of class members, and the trial court in its equitable powers  
26 awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by

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27 <sup>1</sup> Class Counsel have agreed to split fees awarded 50% to Benink & Slavens, LLP and 50% to  
28 Kearney Littlefield, LLP. This fee-split agreement was disclosed to Burton and she provided her  
written consent. (Benink Decl., ¶ 11.)

1 choosing an appropriate percentage of the fund created.”.] The Supreme Court emphasized that,  
2 while it makes sense for a trial court to cross-check the percentage of the fund award against the  
3 attorneys’ lodestar, the lodestar method “does not override the trial court’s primary determination of  
4 the fee as a percentage of the common fund and thus does not impose an absolute maximum or  
5 minimum on the potential fee award.” (*Laffitte, supra*, 1 Cal. 5th at p. 505.) The Supreme Court  
6 further explained that the advantages of the percentage of the recovery method – including the relative  
7 ease of calculation, alignment of incentives between counsel and the benefiting class, and better  
8 approximation of market conditions in a contingency case – make the percentage method a “valuable  
9 tool.” (*Id.* at p. 503.)

10 The amount requested here, equal to approximately 33% of the Common Fund, is reasonable  
11 and consistent with awards in similar cases. Indeed, in representative actions, such as this, attorneys’  
12 fees are regularly awarded in the range of 25%-33% of the benefit conferred. For example, in *Laffitte*  
13 the Supreme Court affirmed a fee equal to 33% of the settlement fund. (*Id.* at p. 485; see also *Chavez*  
14 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [noting “[e]mpirical studies show that, regardless  
15 whether the percentage method or the lodestar method is used, fee awards in class actions average  
16 around one-third of the recovery”] [emphasis added].)<sup>2</sup>

17 Class Members will each substantially benefit by the terms of the Settlement based on a defined  
18 and clearly traceable monetary basis. An award representing 33% of the Common Fund is appropriate.

19 **B. Lodestar-Cross-Check Supports Requested 33% Fee**

20 Applying the lodestar cross-check on the requested attorney’s fee confirms that the amount of  
21 the fee is reasonable. Under the lodestar-multiplier method the fee is calculated “by multiplying the  
22 number of hours reasonably expended by counsel by a reasonable hourly rate” and then increasing or  
23

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24 <sup>2</sup> A non-exhaustive list of other cases awarding a percentage of the common fund of one-third or  
25 more include: *Laffitte*, 1 Cal.5th at 506 (affirming 1/3 fee); *Ethridge v. Universal Health Servs.* (L.A.  
26 Cty. Super. Ct. (“LASC”)) No. BC391958 (33% award); *Magee v. Am. Residential Servs. LLC*  
27 (LASC); No. BC423798 (33% award); *Blue v. Coldwell Banker Residential Brokerage Co.* (LASC)  
28 No. BC417335 (33% award); *Silva v. Catholic Mortuary Servs., Inc.* (LASC) No. BC408054 (33%  
award); *Mares v. BFS Retail & Comm. Operations LLC* (LASC) No. BC375967 (33% award); *Blair*  
*v. Jo-Ann Stores, Inc.* (LASC) No. BC394795 (33% award); *Kenemixay v. Nordstroms, Inc.* (LASC)  
No. BC318850 (50% award); *Barrett v. The St. John Companies* (LASC) No. BC354278 (33%  
award); *Clymer and Benton v. Candle Acquisition Co.* (LASC) No. BC328765 (33% award).

1 decreasing that amount by applying a positive or negative multiplier “to take into account a variety of  
2 other factors, including the quality of the representation, the novelty and complexity of the issues, the  
3 results obtained, and the contingent risk presented.” (*Laffitte, supra*, 1 Cal.5th at p. 489.) The Court  
4 can then cross-check the fee amount determined whether, under the prevailing percentage of the fund  
5 method, the requested attorney’s fee is not out of the bounds of reason. As explained below, the  
6 requested fee amount equal to 33% of the common fund is reasonable when cross-checked using the  
7 lodestar multiplier analysis.

8 Here, Class Counsel have maintained contemporaneous time records and have only billed time  
9 necessary to successfully prosecute the case. (Declaration of Eric J. Benink in Support of Petitioner  
10 and Plaintiff Christina Lopez-Burton’s Motion For Attorney’s Fees, Reimbursement of Expenses, and  
11 Service Award (“Benink Decl.”), filed herewith, ¶ 2; Declaration of Prescott W. Littlefield in Support  
12 of Petitioner and Plaintiff Christina Lopez-Burton’s Motion For Attorney’s Fees, Reimbursement Of  
13 Expenses, and Service Award (“Littlefield Decl.”), filed herewith, ¶ 2.) The attorneys have spent  
14 649.8 hours prosecuting this action through September 4, 2019 and estimate they will expend *at least*  
15 another 25 hours preparing the motion for final approval, responding to questions from class members,  
16 addressing any objections received, preparing for and attending the fairness hearing, and coordinating  
17 with the Claims Administrator and the Town regarding the distribution of funds. (Benink Decl., ¶¶ 3-4;  
18 Littlefield Decl., ¶ 3.) Thus, the total anticipated time spent on this matter, excluding preparation of  
19 this application for attorney’s fees, is expected to total **674.8 hours** (649.8 + 25 = 674.8). The  
20 attorneys have each submitted their firm’s time records. (Benink Decl., ¶ 3, Ex. 1; Littlefield Decl., ¶  
21 3, Ex. 1.)

22 The work sought to be compensated includes, but is not limited to: reviewing and analyzing the  
23 Town’s rate structure, resolutions and regulations, preparing the writ petition; preparing and serving  
24 written discovery and responses to discovery, taking depositions of the Town and third-parties;  
25 reviewing the nearly 10,000 pages of documents obtained in discovery; preparing an opening brief on  
26 the writ petition and reviewing and analyzing the Town’s opposition brief; preparing a mediation brief  
27 and attending two separate mediation sessions; negotiating and corresponding with Town’s counsel on  
28 various settlement issues; preparing numerous drafts of the settlement agreement and exhibits;

1 preparing a motion for preliminary approval of settlement; attending a preliminarily approval hearing;  
2 coordinating the implementation of notice program; drafting motion for final approval; and retaining  
3 and coordinating with the claims administrator. These hours do not include time spent preparing this  
4 attorney's fee motion. (Benink Decl., ¶¶ 3-4; Littlefield Decl., ¶ 3.)

5 Class Counsel seeks hourly rates of \$650 for a total lodestar of \$438,620 (674.8 hours x \$650).  
6 (Benink Decl., ¶ 5.) Generally, a reasonable hourly fee is the prevailing market rate for attorneys in the  
7 community. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [“[w]e remarked that the reasonable  
8 value of attorney services is variously defined as the hourly amount to which attorneys of like skill in  
9 the areas would typically be entitled.”] [internal quotations and citations omitted]; see also *Children's*  
10 *Hosp. & Med. Ctr. v. Bontá* (2002) 97 Cal.App.4th 740, 783 [affirming rates that were “within the  
11 range of reasonable rates charged by and judicially awarded comparable attorneys for comparable  
12 work”]; *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632 [holding courts may  
13 consider factors such as attorney's skill and experience, the nature of the work performed, the relevant  
14 area of expertise, and the attorneys' customary billing rates]; *Syers Properties III, Inc. v. Rankin* (2014)  
15 226 Cal.App.4th 691, 701 (*Syers*) citing Pearl, Cal. Attorney Fee Awards, (Cont.Ed.Bar 3d ed.  
16 (Mar.2014 updated), § 9.114, pp. 9-98) [holding market rate is generally based on the rates prevalent in  
17 the community where the court is located].) Although the prevailing plaintiff has the burden of proving  
18 the reasonable hourly rate in determining the appropriate lodestar, the moving party may satisfy its  
19 burden through its own affidavits, without additional evidence and the court may consider the  
20 attorney's skill as reflected in the quality of the work, as well as the attorney's reputation and status.  
21 (*MBNA America Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 13.)

22 An hourly rate of \$650 is eminently fair and reasonable, especially in light of Class Counsel's  
23 special expertise in Proposition 218 cases. Benink has been practicing for 22 years in the area of  
24 complex litigation, including consumer protection, securities, Proposition 218 and 26 litigation, both on  
25 behalf of individuals and as class actions. He has been appointed by the Superior Court of California  
26 as a Receiver in securities fraud cases five times, and has been retained and has testified as a securities  
27 law expert. He has prosecuted at least 20 cases against public entities for violations of Proposition 218.  
28 He was named to the *Super Lawyers* list from 2014 through 2019. (Benink Decl., ¶ 5, Ex. 2.)

1 Littlefield has been practicing for nearly 11 years in the area of complex litigation, including consumer  
2 protection, unfair competition, Chapter 11 reorganizations, Proposition 218 litigation, both on behalf of  
3 individuals and as class actions. (Littlefield Decl., ¶¶ 4-14.) He has named a *Super Lawyers* “Rising  
4 Star” from 2016-2019. In 2017, he and his firm tried a class action to verdict in Los Angeles County  
5 Superior Court. (Littlefield Decl., ¶¶ 15-16.) Slavens is a partner at Benink & Slavens, has been  
6 practicing for nearly 18 years, and likewise devotes a substantial portion of his practice to Proposition  
7 218. (Benink Decl., ¶ 5.) Benink recently successfully defended an appeal of a judgment he  
8 successfully obtained against the City of Glendale in a Proposition 218 case alleging Glendale’s water  
9 rates failed to comply with Proposition 218; Glendale *voluntarily* agreed to pay an attorney’s fee award  
10 at \$600 per hour after that victory. Also this year, the City of Sacramento also agreed to pay him a  
11 \$600 hourly rate, plus a multiplier in two separate Proposition 218 cases (one post-ruling on the writ  
12 petition and one at an early stage of litigation.) (Benink Decl., ¶ 6.) And in February of 2018, the  
13 superior court in *Eck v. City of Los Angeles, et al.*, a Proposition 218/26 class action, awarded Eric Benink’s  
14 firm attorney’s fees in connection with a class action settlement using an hourly rate of \$650 (Benink) and  
15 \$625 (Slavens). (*Id.*) Littlefield has recently been approved an hourly rate of \$550 in various counties  
16 based on consumer protection litigation, including *Press et al. v. J. Crew Group, Inc. et al.*, Ventura  
17 County Superior Court Case and *Ramos v. PVH Corporation*, Sacramento County Superior Court.  
18 (Littlefield Decl., ¶ 19.)

19 Courts will typically review hourly rates of similar attorneys in the community to assist in  
20 ascertaining an appropriate rate. In Los Angeles, the average hourly rates for partners and associates is  
21 \$685 to \$890 per hour and \$415-\$535 per hour respectively. (See *Blue Growth Holdings, Ltd. v.*  
22 *Mainstreet Limited Ventures, LLC* (N.D. Cal, July 16, 2014) DV 13-1452 CRB, 2014 WL 3518885 at  
23 \*3, n. 8 (*citing* National Law Journal Study).) The Laffey Matrix, published by the Department of  
24 Justice, is another objective source for attorney rates used in the District of Columbia. (See *In re HPL*  
25 *Technologies, Inc. Securities Lit.* (N.D. Cal. 2005) 366 F.Supp.2d 912, 921; *see also Nemecek & Cole*  
26 *v. Horn* (2012) 208 Cal.App.4th 641, 650-51; *Syers, supra*, 226 Cal.App.4th at p. 702.) Because the  
27 rates published in the Laffey Matrix are for the District of Columbia area, a “locality adjustment”  
28 should be employed. (See *HPL Technologies, Inc., supra*, 36 F.Supp.2d 922 [using salary pay



1 differentials within federal court system to yield 9% upward adjustment for Bay Area.] For the period  
2 June 1, 2016 through May 31, 2017, the hourly rate published in the Laffey Matrix for attorneys  
3 practicing 21-30 years (Benink) is \$572; for attorneys practicing 16-20 years (Slavens) is \$544; for  
4 attorneys practicing 11-15 years (Littlefield) is \$491. (Benink Decl., ¶ 8, Ex. 3.) The 2019 locality pay  
5 differential for the District of Columbia area is 29.32%, while the one for Los Angeles-Long Beach is  
6 31.47%, which equates to Los Angeles-Long Beach being 7.3% higher than the District of Columbia's  
7 pay differential ((31.47-29.32)/29.32). (Benink Decl., ¶ 8, Ex. 4.) A 7.3% upward adjustment would  
8 make the hourly rate approximately \$614 for persons practicing in Los Angeles (the closest county  
9 with available data) with the same amount of experience as Benink and \$583 for persons with the same  
10 amount of experience as Slavens and \$527 for persons with the same amount of experience as  
11 Littlefield.

12 Thus, between the National Law Journal Study, the Laffey Matrix, the actual hourly rates  
13 awarded to Class Counsel in other similar class actions, and in light of the unique skills and experience  
14 that Class Counsel brought to this case, an hourly rate of \$650 is within the range of reasonableness.  
15 (See *Building a Better Redondo Beach, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852,  
16 871-872 [noting counsel's special expertise in environmental, land use, and administrative law];  
17 *Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661-662 [noting counsel's particular trial experience];  
18 *Utility Reform Network v. PUC* (2008) 166 Cal.App.4th 522, 537 [noting attorneys' federal trial and  
19 appellate litigation experience].)

20 Counsel's base lodestar is only the starting point in cross-checking the percentage of the fund  
21 method. As explained above, the Court may adjust the lodestar amount based on factors discussed  
22 above, including the contingent nature of the litigation, the novelty and complexity of the issues, the  
23 skill and expertise of counsel, and the extent that the litigation precluded other employment. (*Laffitte*,  
24 *supra*, 1 Cal.5th at p. 489; *Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 448; *Ketchum, supra*, 24  
25 Cal.4th at pp. 1131-32; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d. 311, 322; *Serrano v. Priest* (1977)  
26 20 Cal.3d. 25, 48-49.) With regard to the contingent risk assumed by counsel, the  
27 California Supreme Court has explained:  
28

1 The economic rationale for fee enhancement in contingency cases has been  
2 explained as follows: “A contingent fee must be higher than a fee for the same legal  
3 services paid as they are performed. The contingent fee compensates the lawyer not  
4 only for the legal services he renders but for the loan of those services. The implicit  
5 interest rate on such a loan is higher because the risk of default (the loss of the case,  
6 which cancels the debt of the client to the lawyer) is much higher than that of  
7 conventional loans.” (Posner, *Economic Analysis of Law* (4th ed.1992) pp. 534,  
8 567.) “A lawyer who both bears the risk of not being paid and provides legal  
9 services is not receiving the fair market value of his work if he is paid only for the  
10 second of these functions. If he is paid no more, competent counsel will be reluctant  
11 to accept fee award cases.” (Leubsdorf, *The Contingency Factor in Attorney Fee  
12 Awards* (1981) 90 Yale L.J., 473, 480. . .)

13  
14 (*Ketchum, supra*, 24 Cal.4th at p. 1133; see also *Rade v. Thrasher* (1962) 57 Cal.2d 244, 253 (“[a]  
15 contingent fee contract, since it involves a gamble on the result, may properly provide for a larger  
16 compensation than would otherwise be reasonable.”) [citation omitted]; see also *Salton Bay Marina,  
17 Inc. v. Imperial Irrig. Dist.* (1985) 172 Cal.App.3d 914, 955 [“difficulty or contingent nature of the  
18 litigation is a relevant factor in determining a reasonable attorney fee award”].)

19 Here, Class Counsel undertook significant risk and aggressively pursued this case without  
20 payment for at least 22 months (by the time this motion is heard), and without knowing whether they  
21 would ever be paid. (Benink Decl., ¶ 9.) Class Counsel was also prepared to defend or pursue an  
22 appeal if necessary; appellate practice is common in Proposition 218 cases and class actions. (*Id.*) The  
23 issues raised in this case are complex and required attorneys with substantial expertise in Proposition  
24 218 matters who could discern whether the Town was liable under Proposition 218 due to its practice  
25 of including a franchise fee surcharge in its rates. (*Id.*) That issue had *never* been addressed by a court  
26 before to Class Counsel’s knowledge. The successful prosecution of this case also required a thorough  
27 analysis of the actions the Town had undertaken to set rates, a creative analysis of the case based on  
28 other Proposition 218 jurisprudence, a review of technical documents the Town drafted and relied upon  
in setting those rates, and an understanding and analysis of the Town’s defenses in this case. (*Id.*)  
Indeed, this was a unique and novel case that presented potential risks not typical of the average case.  
(*Id.*) Class Counsel also funded the litigation costs of approximately \$12,994 without any assurance  
they would be repaid. (*Id.*, ¶ 10, Ex. 5; Littlefield Decl., ¶ 22, Ex. 2.)

Considering the above factors, a cross-check of Class Counsel’s request of 33% of the Common  
Fund results in a modest 2.39 multiplier ( $\$1,050,000/\$438,620 = 2.39$ ) on their lodestar. “Multipliers

1 can range from 2 to 4 or even higher.” (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 255;  
2 see also *Natural Gas Anti-Trust Cases, I, II, III & IV* (Cal. Super. Ct Dec. 11, 2006) No 4221, 4228,  
3 4224, 4226, 2006 WL 5377849 at \* 4 [“This Court and numerous cases have applied multipliers of  
4 between 4 and 12 to counsel’s lodestar in awarding fees.”]; *Cates v. Chiang* (2013) 213 Cal.App.4th  
5 791 [affirming 1.85 multiplier against California Controller except as to “fees on fees.”].)

6 Thus, the requested attorney’s fee of \$1,050,000 is reasonable and should be granted.

## 7 **II. REQUEST FOR REIMBURSEMENT OF EXPENSES IS REASONABLE**

8 Attorneys in a class action may be reimbursed for costs incurred “in the ordinary course of  
9 prosecuting [a] case.” (*California Indirect Purchaser X-Ray Film Antitrust Lit.* (Oct. 22, 1998) 1998  
10 WL 1031494, at \*11.) Class Counsel seek reimbursement of litigation expenses in the amount of  
11 \$12,994. Those expenses include, *inter alia*, filing and Court Call fees, courier/messenger fees,  
12 postage, copy and printing costs, mediation fees, and travel expenses. (Benink Decl., ¶ 10, Ex. 5;  
13 Littlefield Decl., ¶ 22, Ex. 2.) All such expenses were reasonably incurred in furtherance of this  
14 litigation. (Benink Decl., ¶ 10, Ex. 5; Littlefield Decl., ¶ 22, Ex. 2.)

## 15 **III. SERVICE AWARD FOR PLAINTIFF IS REASONABLE**

16 In recognition of her time and effort expended pursuing this action and fulfilling her obligations  
17 and responsibilities as a class representative, and in light of the substantial benefits conferred on all  
18 Class Members as a result of her efforts, the parties agreed that Class Counsel may ask that the Court  
19 award Burton a service award to be paid from the Common Fund. (SA, ¶ 13.1.) The Town agreed not  
20 to object to a service award of \$5,000 or less. (SA, ¶ 13.2.)

21 Service awards are “fairly typical” in class action cases. (See *In re Cellphone Fee Termination*  
22 *Cases* (2010) 186 Cal.App.4th 1380, 1393 as modified (July 27, 2010) (*In re Cellphone Fee*) [citations  
23 omitted]; see also Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group  
24 2009) ¶ 14:146.10, p. 14–88.) These awards “are discretionary, [citation], and are intended to  
25 compensate class representatives for work done on behalf of the class, to make up for financial or  
26 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act  
27 as a private attorney general.” (*In re Cellphone Fee, supra*, 186 Cal.App.4th at pp. 1393-1394 [citing  
28 *Rodriquez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958].) “[C]riteria courts may  
consider in determining whether to make an incentive award include: 1) the risk to the class

1 representative in commencing suit, both financial and otherwise; 2) the notoriety and personal  
2 difficulties encountered by the class representative; 3) the amount of time and effort spent by the class  
3 representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by  
4 the class representative as a result of the litigation. [Citation.]” (*In re Cellphone Fee, supra*, 186 Cal.  
5 App.4th at pp. 1394–95.)

6 Since filing this action in 2017, Burton has been intimately involved in this litigation. For  
7 example, she reviewed the government claim forms which were submitted to the Town prior to filing  
8 suit; she reviewed and verified the petition for writ of mandate and complaint filed on her behalf; she  
9 closely monitored the progress of the case, including by regularly communicating with Class Counsel;  
10 she reviewed discovery responses and documents produced by the Town; she reviewed deposition  
11 transcripts; she reviewed her opening brief on petition for writ of mandate and supporting evidence and  
12 reviewed the Town’s response. In addition, Burton reviewed her mediation brief and, although she was  
13 unable to attend in person, she participated by phone at the first mediation in this case on February 28,  
14 2019; she personally attended the second mediation on March 22, 2019. She estimates she spent 50  
15 hours working in support of this case. (See Declaration of Plaintiff Christina Lopez-Burton in Support  
16 of Motion for Attorney’s Fees, Reimbursement of Expenses and Service Awards, ¶¶ 3-5.) A modest  
\$5,000 incentive award is appropriate.

### 17 CONCLUSION

18 For each of the foregoing reasons, Plaintiff respectfully requests an award of attorney’s fees in  
19 the amount of \$1,050,000, reimbursement of expenses in the amount of \$12,994, and a service award in  
20 the amount of \$5,000.

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22 DATED: September 9, 2019

BENINK & SLAVENS, LLP.

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Eric J. Benink Esq.  
Attorneys for Petitioner / Plaintiff  
Christina Lopez-Burton