

Eric J. Benink, Esq., State Bar No. 187434  
eric@beninkslavens.com  
Vincent D. Slavens, Esq., State Bar No. 217132  
vince@beninkslavens.com  
BENINK & SLAVENS, LLP.  
550 West C Street, Suite 530  
San Diego, CA 92101  
Tel: 619-369-5252  
Fax: 619-369-5253

Thomas A. Kearney, State Bar No. 90045  
tak@kearneylittlefield.com  
Prescott W. Littlefield, State Bar No. 259049  
pwl@kearneylittlefield.com  
KEARNEY LITTLEFIELD, LLP  
3436 N. Verdugo Rd., Ste. 230  
Glendale, California 91208  
Tel: 213-473-1900  
Fax: 213-473-1919

Attorneys for Petitioner and Plaintiff

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

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

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No.: CIVDS1725027

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

**DECLARATION OF ERIC J. BENINK IN  
SUPPORT OF PLAINTIFF AND  
PETITIONER CHRISTINA LOPEZ-  
BURTON'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Petition/Complaint Filed: December 20, 2017

DATE: October 16, 2019  
TIME: 8:30 a.m.  
DEPT: S26

I, Eric J. Benink, declare as follows:

1. I am a partner at Benink & Slavens, LLP f/k/a Krause, Kalfayan, Benink & Slavens, LLP and am one of the attorneys representing Plaintiff and Petitioner Christina Lopez-Burton ("Burton") and the Settlement Class in the above-entitled action. I have been directly

involved in every stage of the prosecution of this Action since its inception. I have personal knowledge of the facts stated below and if called upon, I could and would testify competently thereto.

2. On December 20, 2017, Burton filed this action as a Verified Petition for Writ of Mandate and Complaint against the Town of Apple Valley ("Town") on behalf of a class of solid waste ratepayers ("Petition" or "Action"). The Action alleges that the Town solid waste<sup>1</sup> (trash) collection fees and charges<sup>2</sup> violate Proposition 218 because they exceed the cost of providing solid waste services and a portion of fees were transferred to the Town's General Fund and used for general governmental purposes. (See Cal. Const., art. XIII D, § 6, subd. (b)(1)(2) and (5).) Central to the dispute is the Town's embedding of an 18% "franchise fee" in the rates.

3. My co-counsel Prescott W. Littlefield and I have conducted extensive formal discovery in the Action including: propounding to the Town of Apple Valley ("Town") Requests for Production of Documents (two sets), Special Interrogatories (two sets), Requests for Admission, and Form Interrogatories; reviewing 8,000+ pages of documents produced by the Town; subpoenaing and reviewing documents from third-party Burrtec Waste Industries ("Burrtec") (1,600+ pages); deposing third-party witness Richard Nino from Burrtec, third-party witness Marc Puckett (former Town Finance Director) and a PMQ for the Town, Kofi Antobam, on 18 separate topics; and reviewing and analyzing the Town's expert report and declaration regarding the value of the "franchise fee." We have requested and received information directly from the Town's attorneys as well to better understand and corroborate various aspects of the issues raised herein. I previously represented my law firm as a plaintiff in a Public Records Act lawsuit against the Town to obtain utility-related documents including documents pertaining to the franchise fee at issue herein (that lawsuit was successful).

4. Our investigation has revealed that the Town has transferred or budgeted to transfer \$6,021,653 as "franchise fees" in Fiscal Year 16-17 through Fiscal Year 18-19. It has also transferred or budgeted to transfer \$3,251,429 as administrative overhead in Fiscal Year 16-17 through Fiscal Year 18-19. However, Burton does not claim that all of the administrative overhead

---

<sup>1</sup> At issue are both solid waste and *recycling* fees and charges, but for brevity's sake, only the term "solid waste" is used herein.

<sup>2</sup> "Fees" and "charges" are used interchangeably herein.

1 transfers are improper. In her Petition, she raised specific issues regarding a portion of the General  
2 Gov't Services budget: expenses related to the Town's golf course and parks and recreation  
3 department. In Fiscal Year 16-17, the Town budgeted the Solid Waste Fund to (indirectly) pay golf  
4 course and parks and recreation department costs totaling \$286,744 (of the \$2,076,309 *budgeted* to be  
5 transferred in total or ~14%.) But the Town only actually transferred \$789,489 that year. The Town  
6 transferred \$1,672,540 in Fiscal Year 17-18, but there is no cost allocation plan identifying how these  
7 funds were allocated. In Fiscal Year 18-19, the Town budgeted \$789,000 in total, but again there is  
8 no cost allocation plan identifying how these funds were allocated.

9 5. The Action was bifurcated into a liability phase and damage phase. The Court  
10 scheduled the liability phase for hearing on April 18, 2019. On February 17, 2019, Burton filed an  
11 Opening Brief and supporting evidence. On March 20, 2019, the Town filed its Opposition Brief and  
12 supporting evidence.

13 6. Meanwhile, the parties participated in two separate mediations with the Hon.  
14 Jeffrey King (Ret.) on February 28, 2019 and March 22, 2019. The settlement negotiations during  
15 each mediation session was adversarial and at arm's length. Participating on Plaintiff's side were  
16 Prescott Littlefield and me. Burton participated in the first mediation session by telephone as she was  
17 recovering from pneumonia and in the second mediation session in person. On the Town's side, the  
18 Town's outside counsel Richard Egger and Town Manager Doug Robertson participated in both  
19 sessions. The parties reached a settlement in principle during the March 22, 2019 mediation session.  
20 The parties stipulated to vacating the writ petition hearing so that they could formalize and seek  
21 Court approval of the settlement. The proposed settlement required subsequent Town Council  
22 approval, which I understand was given during a closed session on March 26, 2019. Between March  
23 26, 2019 and June 25, 2019, the parties negotiated and drafted the terms of the formal Settlement  
24 Agreement (and its exhibits), which was executed on June 27, 2019 and submitted (but not filed) with  
25 the Court on June 28, 2019. Attached hereto as **Exhibit 1** is a true and correct copy of the fully  
26 executed Settlement Agreement.

27 7. In the Settlement, the Town agreed to create a Common Fund in the amount of  
28 \$3,150,000 and agreed to freeze its rates through 2021. During settlement negotiations, the Town

1 informed me that it had planned to raise rates by 4-5% each year over the next few years. An  
2 increase of 5% in each of the next two years would result in additional charges of \$567,750 in year 1  
3 and \$1,135,000 in year two. (The projected solid waste fees in Fiscal Year 2018-2019 was budgeted  
4 to be \$11,355,000.) Given that, I estimate that freezing rates results in additional savings to the  
5 existing ratepayers of as much as \$1,700,000.

6 8. On July 23, 2019, the Court held a hearing on the motion for preliminary approval  
7 and ruled that the Settlement was preliminarily approved. That same date, the Court entered an Order  
8 Preliminarily Approving Class Action Settlement Agreement, Provisionally Certified Class, and  
9 Directing Notice to Class ("Prelim. Order"). On August 2, 2019 the Claims Administrator (Phoenix  
10 Settlement Administrators) launched a website at AVTrashSettlement.com and included the Court-  
11 Approved Long Form Notice on the home page, together with links to the Settlement Agreement, the  
12 motion for preliminary approval and all supporting papers, the Prelim. Order, the Claim Form, the  
13 Objection Form, and the Request for Exclusion Form. This motion and the motion for attorney's fees  
14 and all supporting papers will be published on the website on September 9, 2019. It is my  
15 understanding that the Town caused the Court-Approved Publication Notice to be published in the  
16 *San Bernardino Sun* on August 2 and 9, 2019. It is my further understanding that on August 9, 2019,  
17 the Town mailed the Court-Approved Summary Notice to Class Members. In my experience, this  
18 notice program is consistent with notice given in other similar class actions I have handled, and is the  
19 best notice practicable under the circumstances.

20 9. The amount of the Settlement is more than reasonable, particularly in light of the  
21 significant risks that the Class could get nothing or substantially less. Indeed, this novel case brings  
22 uncertainty and the probable risk of extended delay because the losing party is likely to appeal any  
23 adverse ruling. I am not aware of any case where a court has adjudicated the legality of a franchise  
24 fee embedded in property-related rates imposed directly by a local agency. I am confident about  
25 Burton's legal position, but Proposition 218 and 26 cases have been hotly litigated in the Court of  
26 Appeal and the California Supreme Court. I am aware that the landscape can change and has  
27 changed suddenly and unexpectedly in this area. I view appellate proceedings as a detriment to  
28 ratepayers because it deprives them of immediate and substantial benefits. *The Jacks v. City of Santa*

1 *Barbara* case, for example, was originally filed in the trial court in 2011 and after remand by the  
2 California Supreme Court, judgment was just recently entered (in the City's favor).

3         10.         With regard to administrative overhead issues, the Town argued in its Opposition  
4 Brief to Burton's Opening Brief that it makes these transfers "because the Solid Waste Fund does not  
5 exclusively support operation of the Town's multi-million dollar solid waste and recycling service  
6 program" and "operation of the solid waste program requires basic operational tools and support staff  
7 including accounting software and payment for services..." It claims that it previously prepared its  
8 own cost allocation plans, but in 2016, a third party, Cost Recovery Specialist, prepared a draft cost  
9 allocation plan that it has used as a reference point for transfers in Fiscal Years 16-17 through 18-19.  
10 It argues the courts have recognized that "some fees are not easily correlated to a specific,  
11 ascertainable cost" and "[c]ourts afford agencies a reasonable degree of flexibility to apportion the  
12 costs of regulatory programs in a variety of reasonable financing schemes." (See Opposition Brief,  
13 filed March 20, 2019, pp. 19-22.) It relies on a case, *Moore v. City of Lemon Grove*, which is a  
14 published appellate case wherein I represented a sewer ratepayer and lost. Thus, I have firsthand  
15 knowledge of the flexibility that courts have sometimes afforded the government when calculating  
16 reimbursements.

17         11.         We are also mindful of the Town's size as well. The Town's General Fund budget  
18 is approximately \$32 million and the Solid Waste Fund's budget is approximately \$11.2 million. If  
19 Burton prevailed on all issues, it could be extremely disruptive to the Town's ability to deliver other  
20 services which is not an outcome Burton desires.

21         12.         Even if this Court were to agree with Burton that a franchise fee imposed directly  
22 by a local government is not a cost of providing service under article XIII D, section 6, the Town has  
23 adduced evidence through its expert that it incurs costs in the form of a deferred maintenance impact  
24 of \$1.9 million per year that is nearly the amount of the annual franchise fee. (See Declaration of  
25 Bradford Thompson in Support of Town of Apple Valley's Opposition to Opening Brief, filed March  
26 20, 2019, ¶ 16.) If this argument succeeded, Class Members would be entitled to a tiny fraction of  
27 the damages sought.

28 ///

13. As further described in my declaration in support of Burton's Motion for Attorney's Fees, Reimbursement of Expenses and Service Award, filed herewith, my firm and I have extensive experience representing ratepayers and taxpayers in Proposition 26 and Proposition 218 cases. I estimate that over the past two years, 90% of our cases have involved Proposition 26 and Proposition 218 issues. In 2018, I was appointed co-lead class counsel in *Eck v. City of Los Angeles* (BC577028) which provided a settlement of \$52 million (common fund) and \$241 million in future savings for Los Angeles Department of Water and Power electric customers based on alleged violations of Proposition 26 and Proposition 218.

14. My firm has years of experience prosecuting all aspects of Proposition 218 and Proposition 26 cases, both individual and class action, at the trial court level and on appeal. Based on this experience, I have a deep appreciation for the risks and range of possible outcomes for the Class in this matter. In light of the novel issues raised herein, the uncertainty of the outcome, the possibility that the Court would find the Town's cost allocation methods sufficient, in whole or in part, and the probable risks of delay following a litigated judgment, I believe that the proposed Settlement which requires the Town to establish a \$3,150,000 Common Fund and freeze rates until July 1, 2021 is an excellent result, and is fair, adequate and reasonable and in the best interest of Class, and should be finally approved.

15. As of the date of this declaration, we had not received any objections to the Settlement and only one request for exclusion, albeit the deadline for both is September 23, 2019. We will address any objections that we may receive through a separate filing on October 8, 2019, as ordered by the Court. (See Prelim. Order, ¶ 19.)

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

Executed on September 9, 2019 in San Diego, CA.

Eric J. Benink

# EXHIBIT 1

COPY

RECEIVED

JUN 28 2019

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

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

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

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No.: CIVDS1725027

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

**CLASS ACTION SETTLEMENT  
AGREEMENT**

**[CLASS ACTION]**



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6  
7

## 8

9  
10  
11  
12

13  
14  
15  
16

17  
18

19  
20  
21  
22  
23

24  
2526  
27

28

1 in principle, subject to Town Council approval; on March 26, 2019, Town Council approved the  
2 proposed settlement.

3 H. Whereas, the proposed settlement was the result of extensive arm's length  
4 settlement negotiations and discussions between the Parties and their respective counsel with the  
5 assistance of the Mediator.

6 I. Whereas, the Parties wish to resolve all disputes between them and a class of solid  
7 waste and recycling customers (as defined herein) arising out of, or relating to, the facts and  
8 circumstances giving rise to the Lawsuit or arising out of, or relating to, allegations that the rates,  
9 fees, and charges imposed pursuant to the 2014 Resolution violate Proposition 218 or Proposition  
10 26.

11 NOW, THEREFORE, in consideration of the covenants contained herein, and for other  
12 good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties  
13 agree as follows:

## 14 **AGREEMENT**

### 15 **1. RECITALS.**

16 1.1 The aforementioned Recitals are material terms and conditions of this Agreement.

### 17 **2. DEFINITIONS.**

18 2.1. As used in this Agreement and the exhibits attached hereto (which are an integral  
19 and material part of this Agreement and incorporated in their entirety herein by reference), the  
20 following terms have the following meanings, unless this Agreement specifically provides  
21 otherwise. The plural of any defined term includes the singular, and the singular of any defined  
22 term includes the plural, as the case may be:

23 2.1.1. "Action" and "Lawsuit" shall mean the class action lawsuit presently captioned as  
24 *Christina Lopez-Burton, et al. v. Town of Apple Valley*, filed in the Superior Court of California for  
25 the County of San Bernardino, Case No. Case No. CIVDS1725027.

26 2.1.2. "Agreement" or "Settlement Agreement" means this Settlement Agreement and the  
27 exhibits attached hereto or incorporated herein, including any subsequent amendments and any  
28 exhibits to such amendments.

1           2.1.3. “Account Holders” means those persons and entities who hold a solid waste /  
2 recycling account in the Town of Apple Valley.

3           2.1.4. “Attorneys’ Fees and Expenses” means such funds as may be approved and awarded  
4 by the Court to Class Counsel to compensate them for conferring the benefits upon the Class under  
5 this Settlement Agreement and for their professional time, fees, costs, advances and expenses  
6 incurred in connection with the Action and the Agreement.

7           2.1.5. “Class” or “Settlement Class” means all persons (which includes entities such as  
8 firms, companies, corporations, associations, and public entities) who, between July 24, 2016 and  
9 the date Preliminary Approval Order is entered, were Account Holders, but excluding (a) any  
10 officer or council member of the Town; (b) any judge assigned to hear this case; and (c) persons  
11 who timely and properly exclude themselves from the Class as provided in this Agreement.

12           2.1.5.a. “Class Period” shall mean July 24, 2016 through the date the Preliminary Approval  
13 Order is entered, inclusive.

14           2.1.6. “Class Claim” shall mean the administrative claims filed with the Town on or about  
15 July 24, 2017 and October 13, 2017 by Burton on behalf of herself and all others similarly situated,  
16 alleging violations of Proposition 218 and/or Proposition 26 and seeking a refund of alleged  
17 overcharges.

18           2.1.6.a. “Claim Form” shall mean the form that certain Class Members who are no longer  
19 Account Holders as of the Exclusion Deadline may submit to the Claims Administrator in the form  
20 attached hereto as **Exhibit H**.

21           2.1.6.b. “Claims Administrator” shall mean Phoenix Class Action Administration  
22 Solutions, or if not approved by the Court, any other qualified third party administrator and agent  
23 agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval  
24 Order to receive objections, opt-out notices, and to process claims for refunds of Class Members  
25 who are not Account Holders as described more fully in Paragraph 6.1.2.

26           2.1.7. “Class Counsel” means Eric J. Benink, Esq. of Benink & Slavens, LLP. and  
27 Prescott Littlefield, Esq. of Kearney Littlefield, LLP.  
28

1           2.1.8. “Class Member” or “Settlement Class Member” means any member of the Class  
2 who does not timely and properly exclude themselves from the Class as provided in this Agreement.

3           2.1.9. “Class Notice” or “Settlement Class Notice” means the Summary Notice,  
4 Publication Notice, and Long Form Notice.

5           2.1.10. “Class Representative” means Petitioner/Plaintiff Christina Lopez-Burton.

6           2.1.11. “Common Fund” means the sum of Three Million One Hundred Fifty Thousand  
7 Dollars (\$3,150,000) that the Town has agreed to pay to settle this matter pursuant to the terms and  
8 conditions set forth herein.

9           2.1.12. “Court” means the Superior Court of the State of California for the County of San  
10 Bernardino.

11           2.1.13. “Defendant” or “Town” means the Respondent/Defendant Town of Apple Valley.

12           2.1.14. “Distribution Plan” means the manner by which the Net Common Fund will be  
13 distributed to the Class as set forth in Paragraph 6.1.3 below.

14           2.1.15. “Effective Date” means 30 calendar days from the date on which the Court enters  
15 the Final Order and/or Final Judgment in this Action.

16           2.1.16. “Exclusion Deadline” means the date that falls on the day that is 45 calendar days  
17 after the Notice Date.

18           2.1.17. “Fairness Hearing” means the hearing that is to take place after the entry of the  
19 Preliminary Approval Order, the Notice Date, the Exclusion Deadline, and the Objection Deadline  
20 for purposes of: (a) entering the Final Order and Final Judgment; (b) determining whether the  
21 Settlement should be approved as fair, reasonable, and adequate; (c) ruling upon an application for  
22 Service Award by the Class Representative; (d) ruling upon an application by Class Counsel for  
23 Attorneys’ Fees and Expenses; and (e) entering any final order awarding Attorneys’ Fees and  
24 Expenses and Service Awards.

25           2.1.18. “Final Order and Final Judgment” means the Court’s order and judgment finally  
26 approving the Settlement, substantially in the form attached hereto as **Exhibit E**.

27           2.1.19. “Long Form Notice” means the notice of the proposed class action that shall be  
28 posted on a website in the form attached hereto as **Exhibit C**.

1           2.1.20. “Net Common Fund” means the Common Fund less (i) any Service Award awarded  
2 by the Court, (ii) any Attorneys’ Fees and Expenses awarded by the Court, (iii) costs of publication  
3 as awarded by the Court, and (iv) any administration expenses for the administration of the  
4 Settlement by the Claims Administrator approved by the Court.

5           2.1.21. “Notice Date” means the date upon which the Summary Notice is mailed.

6           2.1.22. “Objection Deadline” means the date that falls on the day that is 45 calendar days  
7 after the Notice Date.

8           2.1.23. “Objection Form” means the form that Class Members may submit to lodge  
9 objections to the proposed Settlement Agreement, Service Award, and Attorney’s Fees and  
10 Expenses substantially in the form attached hereto as **Exhibit F**.

11           2.1.24. “Opt-Out Form” means the form that Class Members may submit to request  
12 exclusion from the Class substantially in the form attached hereto as **Exhibit G**.

13           2.1.25. “Petitioner” or “Plaintiff” shall mean Christina Lopez-Burton.

14           2.1.26. “Preliminary Approval Date” means the date the Court issues the Preliminary  
15 Approval Order.

16           2.1.27. “Preliminary Approval Order” means the order preliminarily approving the  
17 Settlement and proposed Class Notice, substantially in the form attached hereto as **Exhibit A**.

18           2.1.28. “Publication Notice” means the notice of the proposed class action settlement to be  
19 published for two consecutive weeks in the San Bernardino Sun in form attached hereto as **Exhibit**  
20 **D**.

21           2.1.29. “Release” means the release and waiver set forth in Section 10 of this Agreement  
22 and in the Final Order and Final Judgment.

23           2.1.30. “Released Claims” means any claims that were asserted, or that could reasonably  
24 have been asserted in the Action against the Released Parties as more fully described in Paragraph  
25 10.2.

26           2.1.31. “Released Parties” or “Released Party” means the Town and all of its employees,  
27 council members, officers, and agents (“Releasees”).  
28

1           2.1.32. “Service Award” means such funds as may be awarded by the Court to the Class  
2 Representative in recognition of her time, effort, and service to the Class expended in pursuing the  
3 Action and in fulfilling her obligations and responsibilities as the Class Representative.

4           2.1.33. “Summary Notice” means the summary notice of the proposed class action  
5 settlement, substantially in the form attached hereto as **Exhibit B** which shall be disseminated by  
6 the Town via U.S. Mail.

7       **3. CONTINGENT SETTLEMENT**

8           3.1     This Settlement is contingent upon final approval by the Court.

9       **4. COMPROMISE OF DISPUTED ISSUES**

10          4.1.    This Settlement represents the compromise of highly-contested issues in the  
11 Lawsuit. The Town has vigorously denied and continues to dispute all of the claims and contentions  
12 alleged in the Lawsuit, and deny any and all allegations of wrongdoing, fault, liability or damage  
13 of any kind to Plaintiff and the putative class. The Town further denies that it acted improperly or  
14 wrongfully in any way, and believes that the Lawsuit has no merit.

15          4.2.    The Town has considered the risks and potential costs of continued litigation of the  
16 Action, on the one hand, and the benefits of the proposed settlement, on the other hand, and desires  
17 to settle the Lawsuit and upon the terms and conditions set forth in this Agreement.

18          4.3.    The Town has agreed to class action treatment of the claims alleged in the Lawsuit  
19 solely for the purpose of compromising and settling those claims on a class basis as set forth herein.

20          4.4.    The Parties recognize that there exists substantial and significant risks regarding  
21 their claims, defenses, and/or the ability of the Class to recover and/or collect any settlement or  
22 judgment from the Town, among other things, and therefore agree to the terms of this Settlement  
23 Agreement to resolve this hard-fought, highly-disputed Action in light of the risks and uncertainties  
24 faced by the Plaintiff, the Class, and the Town.

25          4.5.    The Settlement was the result of extensive arm’s length settlement negotiations and  
26 discussions between the Parties and their respective counsel with the assistance the Mediator over  
27 two separate mediation sessions.

28       **5. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

1           5.1. The Parties agree and stipulate that for settlement purposes only the Action can and  
2 should be certified as a class action pursuant to California Code of Civil Procedure Section 382 et  
3 seq.

4           5.2. For purposes of settlement only, the Parties agree to seek provisional certification  
5 of the Class defined as “all persons (which includes entities such as firms, companies, corporations,  
6 associations, and public entities) who, between July 24, 2016 and the date the Preliminary Approval  
7 Order is entered, were Account Holders, but excluding (a) any officers and council members of the  
8 Town; (b) any judge assigned to hear this case; and (c) persons who timely and properly exclude  
9 themselves from the Class as provided in this Agreement” (the “Class”).

10           5.3. The Parties further agree that the Court should make preliminary findings and enter  
11 the Preliminary Approval Order (substantially in the form attached at Exhibit A) granting  
12 provisional certification of the Class subject to final findings and ratification in the Final Order and  
13 Final Judgment, and appointing Burton as the Class Representative and Class Counsel as counsel  
14 for the Class.

15           5.4. The Town does not consent to certification of the Class for any purpose other than  
16 to effectuate the Settlement of the Action and Class Claim. The Town’s agreement to certification  
17 of the Settlement Class is for settlement purposes only and does not constitute an admission of  
18 wrongdoing, fault, liability, or damage of any kind to Burton or any of the putative Class Members.

19           5.5. If this Agreement is terminated pursuant to its terms and/or not finally approved for  
20 any reason, the order certifying the Class for purposes of effectuating this Agreement, and all  
21 preliminary and/or final findings regarding that class certification order, shall be automatically  
22 vacated upon notice of the same to the Court, the Action and Class Claim shall proceed as though  
23 the Settlement Class had never been certified pursuant to this Agreement and such findings had  
24 never been made.

25       **6. SETTLEMENT CONSIDERATION.**

26           6.1. In consideration of the entry of the Final Judgment and Final Order in the Action and  
27 the Release of the Released Claims (as set forth in Section 10 below), the Town will provide the  
28 following consideration and payments to the Class:

1           6.1.1   **Common Fund**

2   Upon entry of the Preliminary Approval Order, the Town shall establish a Common Fund in the  
3   amount of Three Million One Hundred Fifty Thousand Dollars (\$3,150,000) for purposes of  
4   effectuating this Settlement. Within three (3) court days of the Effective Date, the Town shall  
5   distribute the Common Fund as follows:

6           6.1.1.1. First, to the Claims Administrator for services rendered in connection with  
7   its duties herein;

8           6.1.1.2   Second, to the Class Representative in the amount approved as the Service  
9   Award by the Court in the Final Order.

10          6.1.1.2.   Third, to Class Counsel in the amount approved as Attorneys' Fees and  
11   Expenses ordered by the Court after the Fairness Hearing.

12          6.1.1.3.   Fourth, to the Town for the costs of Publication Notice sought by the Town  
13   pursuant to Paragraph 7.1. and approved by the Court.

14          6.1.1.4.   Fifth, the balance ("Net Common Fund") according to the Claims  
15   Procedure and Distribution Plan set forth in Paragraphs 6.1.2 and 6.1.3 below.

16           6.1.2   **Claims Procedure**

17          6.1.2.1 Any Class Member who was an Account Holder during the Class Period,  
18   but is no longer an Account Holder as of the Exclusion Deadline, may submit a Claim Form to the  
19   Claims Administrator , in the form attached hereto as Exhibit H. If the same person/entity closes  
20   an account and opens a new account (i.e. at a new address), said person/entity shall not permitted  
21   to submit a Claim Form.

22          6.1.2.2. The Claim Form must be mailed to the Claims Administrator at the address  
23   provided on the Claim Form, and postmarked by the Exclusion Deadline. Within ten (10) days  
24   after the Exclusion Deadline, the Claims Administrator shall transmit said Claim Forms to the  
25   Town.

26          6.1.2.3 For each Class Member described in Paragraph 6.1.2.1 who returns a timely  
27   and completed Claim Form, the Town shall verify whether the Class Member (a) was in fact was  
28   an Account Holder during the Class Period and (b) is no longer an Account Holder as of the



1 Exclusion Deadline. For each valid claim, the Town shall calculate a refund amount (“Refund  
2 Amount”) for the Class Member. The Refund Amount shall be paid out of the Net Common Fund  
3 and shall be the amount that a customer in the same rate code is estimated to receive as a credit in  
4 the first thirty-one (31) day period under Paragraph 6.1.3.1 of the Distribution Plan multiplied by  
5 each month the Account Holder held an account during the Class Period, up to a maximum of  
6 eighteen (18) months. The Town shall distribute to the Claims Administrator, the amount  
7 representing the total of all Refund Amounts, which shall be deposited into a Qualified Settlement  
8 Fund within the meaning of Treasury Regulation Section 1.468B-1 administered by the Settlement  
9 Administrator. Thereafter, the Claims Administrator shall distribute the Refund Amounts to said  
10 Class Members.

11 **6.1.3. Distribution Plan**

12 6.1.3.1. After the refunds are deducted, the balance of the Net Common Fund shall  
13 be distributed by the Town to Account Holders as credits on trash / recycling bills beginning in the  
14 second billing cycle following the Effective Date through June 30, 2021. The amount of the credit  
15 per month to each Account Holder shall be:

16 
$$(A / B) * (C / D)$$

17 by reference to the following:

18 A = Net Common Fund balance

19 B = Number of billing cycles beginning and inclusive of the second  
20 billing cycle following Effective Date through June 30, 2021.

21 C = The amount that the Account Holder was billed in May 2019.

22 D = The total amount all Account Holders were billed in May 2019.

23  
24 6.1.3.2. The entirety of the balance of Net Common Fund (i.e. after refunds are  
25 deducted) shall be distributed to the Account Holders. To effectuate this goal, the Town shall, on  
26 or before May 1, 2021, calculate the amount remaining to be credited as of May 1, 2021. The  
27 Town shall distribute all such remaining credits to each Account Holder before June 30, 2021 as  
28 follows:

1 Remaining Credits \* (C / D)

2 6.1.4 **Rate Freeze**

3 The Town shall not increase any of the rates, fees, or charges established via the  
4 2014 Resolution until at least July 1, 2021 except otherwise required (or mandated) by law.

5 **7. NOTICE OF SETTLEMENT**

6 7.1 Upon the Court's entry of the Preliminary Approval Order, the  
7 Town shall, at its own expense, (a) within ten (10) calendar days, mail to all of its current trash and  
8 recycling customers at the property address that receives such trash and recycling service, a  
9 Summary Notice substantially in the form attached hereto as Exhibit B, which shall reference a  
10 website in which Class Members may obtain further detailed information about the proposed  
11 settlement; and (b) within ten (10) days, cause to be published in the San Bernardino Sun, a  
12 Publication Notice substantially in the form attached hereto as Exhibit D on two dates which are  
13 seven (7) days apart. The Town shall be reimbursed for expenses incurred in publishing the Notice  
14 as authorized by the Court and shall submit an application for payment of said expenses out of the  
15 Settlement Fund not less than five (5) court days prior to the Fairness Hearing.

16 7.2 The Claims Administrator shall, no later than ten (10) calendar days of the Court  
17 entering the Preliminary Approval Order, cause a website to be created and published on the  
18 Internet that shall include a Long Form Notice substantially in the form attached hereto as Exhibit  
19 C, together with a copy of this Agreement, Objection Form substantially in the form attached hereto  
20 as Exhibit F, Opt-Out Form substantially in the form attached hereto as Exhibit G, the Claim Form  
21 substantially in the form attached hereto as Exhibit H, and the Preliminary Approval Order. The  
22 website shall be updated with Class Counsel's application for Attorney's Fees and Expenses, the  
23 Motion for Final Approval of Settlement, and with any other information as required by the Court  
24 in its Preliminary Approval Order or as agreed to by the Parties. The Claims Administrator may  
25 request reimbursement of those expenses out of the Settlement Fund.

26 7.3 The Parties and/or their respective Counsel shall file an affidavit of compliance with  
27 these notice requirements no later than five (5) court days prior to the Fairness Hearing.  
28

1     **8.     REQUESTS FOR EXCLUSION**

2             8.1.     Any potential Class Member who wishes to be excluded from the Class must: (1)  
3     mail a completed Opt-Out Form attached hereto as Exhibit G to the Class Counsel at the address  
4     provided in the Class Notices, postmarked by the Exclusion Deadline ordered by the Court in the  
5     Preliminary Approval Order which shall state that he or she wants to be excluded from the Class,  
6     not participate in the Settlement, not receive any Settlement benefits, not be bound by the terms of  
7     Settlement, and otherwise comply with the terms stated in the Preliminary Approval Order.

8             8.2.     A list reflecting all requests for exclusion shall be filed with the Court by Class  
9     Counsel, via declaration, no later than five (5) court days before the Fairness Hearing.

10            8.3.     If a potential Class Member files a request for exclusion, he or she may not file an  
11     objection under Section 9 of this Agreement.

12            8.4.     If any potential Class Member files a timely request for exclusion, he/she will not  
13     be a member of the Class, will not release any released claims pursuant to this Settlement or be  
14     subject to the release, and will reserve all released claims he or she may have.

15            8.5.     Any potential Class Member who does not file a timely written request for exclusion  
16     as provided in this Section 8 shall be deemed to be a Class Member bound by all subsequent  
17     proceedings, orders and judgments, including, but not limited to, the Release, Final Order and Final  
18     Judgment in the Action.

19     **9.     OBJECTIONS TO THE SETTLEMENT**

20            9.1.     Any Class Member who has not filed a timely a written request for exclusion and  
21     who wishes to object to the fairness, reasonableness, or adequacy of this Agreement, to the award  
22     of Attorneys' Fees and Expenses, or the Service Awards to the Class Representative, must mail to  
23     Class Counsel and to Defendant's Counsel, and file with the Court, postmarked before midnight on  
24     the Objection Deadline, a completed Objection Form, in the form attached hereto as Exhibit F,  
25     which shall include: (a) full name of Objector; (b) mailing address of Objector; (c) the property  
26     address where the Objector has received trash and/or recycling service; (d) the specific reason(s),  
27     if any, for the objection, including any legal support the Class Member wishes to bring to the  
28

1 Court's attention; and (e) the identification of any other objections that the Class Member or the  
2 Class Member's counsel has made during the past five (5) years.

3 9.2. Any Class Member who files and serves a written objection, as described in the  
4 preceding Paragraph 9.1 of this Agreement, may, but is not required to, appear at the Fairness  
5 Hearing, either in person or through personal counsel hired at the Class Member's own expense, to  
6 object to the fairness, reasonableness, or adequacy of this Agreement, the award of Attorneys' Fees  
7 and Expenses, or Service Awards to the Class Representative.

8 9.3 Class Members or their attorneys who intend to make an appearance at the Fairness  
9 Hearing must deliver a notice of intention to appear to Class Counsel identified in the Class Notice  
10 and to Defendant's counsel, and file said notice with the Court, on or before the Objection Deadline.  
11 The notice of intention to appear must include copies of any papers, exhibits, or other evidence that  
12 the objecting Class Member (or the objecting Class Member's counsel) will present to the Court in  
13 connection with the Fairness Hearing.

14 9.4. Any Class Member who fails to comply with the provisions of Paragraphs 9.1 to 9.3  
15 of this Agreement shall be deemed to have waived and forfeited any and all rights he or she may  
16 have to appear separately and/or to object at or during the Fairness Hearing or in any other  
17 proceeding in this Action, and shall be bound by all terms of this Agreement and by all proceedings,  
18 orders and judgments, including, but not limited to, the Release, the Final Order, and the Final  
19 Judgment in the Action.

20 9.5. The exclusive means for objecting to this Settlement shall be through the provisions  
21 of Paragraphs 9.1 to 9.3 of this Agreement.

22 9.6. Any Class Member who objects to the Settlement shall be entitled to all benefits of  
23 the Settlement if this Agreement and the terms contained herein are approved, as long as the  
24 objecting Class Member complies with all requirements of this Agreement applicable to Class  
25 Members. Similarly, such objecting Class Member shall be bound by all the terms of this  
26 Agreement, including the Release.

1     **10.     RELEASE**

2             10.1.   The Parties agree to the following release and waiver, which shall take effect upon  
3     the Effective Date.

4             10.2.   In consideration for the Settlement, Burton and each Class Member, on behalf of  
5     themselves and their heirs, executors, administrators, assigns, agents, servants, representatives,  
6     predecessors, and successors (hereafter collectively “Releasors”) fully release and discharge the  
7     Town and all of its employees, council members, officers, and agents (“Releasees”) from all rights,  
8     claims, and actions they and any of the Releasors now have, or may have in the future, against the  
9     Releasees arising out of, or relating to, the facts and circumstances giving rise to the Lawsuit or  
10    Claim, or arising out of, or relating to, claims that the rates, fees and charges adopted via through  
11    Resolution No. 2014-33 violate Proposition 218 and/or Proposition 26. For the sake of clarity, this  
12    release does not extend to trash and recycling rates, fees, and charges that the Town adopts in the  
13    future.

14            10.3.   Except as otherwise provided in this Agreement, the release contained herein and  
15    made by this Agreement is full and complete, and Burton and each Class Member specifically  
16    agrees to waive the provisions of Civil Code § 1542 which provides that:

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

22            Burton and each Class Member specifically acknowledges the effect of such a waiver and this  
23    Agreement shall act as a release of all such claims, whether such claims are currently known,  
24    unknown, foreseen or unforeseen.

25            10.4   Nothing in this Release shall preclude any action to enforce the terms of the  
26    Agreement, including participation in any of the processes detailed herein. Any motion or  
27    proceeding to enforce the terms of the Settlement Agreement, in whole or in part, shall be before  
28    the Court, which shall retain jurisdiction over the matter for such purposes.

1           10.5. Burton and Class Counsel hereby agree and acknowledge that the provisions of this  
2 Release together constitute an essential and material term of the Agreement and shall be included  
3 in any Final Order and Final Judgment entered by the Court.

4           10.6. Persons who are not Class Members, or Class Members who timely exclude  
5 themselves from the Class in the manner set forth in Section 8 of this Agreement, release no claims,  
6 and any and all claims of such persons are reserved and unaffected by this Settlement.

7  
8       **11. MODIFICATION OR TERMINATION OF THIS AGREEMENT**

9           11.1 The terms and provisions of this Agreement may be amended, modified, or  
10 expanded by written agreement of the Parties and approval of the Court; provided, however, that  
11 after entry of the Final Order and Final Judgment, the Parties may by written agreement effect such  
12 amendments, modifications, or expansions of this Agreement and its implementing documents  
13 (including all exhibits hereto) without further notice to the Class or approval by the Court if such  
14 changes are consistent with the Court's Final Order and Final Judgment and do not limit the rights  
15 of Class Members under this Agreement.

16           11.2. In the event the terms or conditions of this Settlement Agreement, other than terms  
17 pertaining to the Attorneys' Fees and Expenses and/or Service Awards, are materially modified by  
18 any court, either party in its sole discretion to be exercised within fourteen (14) calendar days after  
19 such a material modification may declare this Settlement Agreement null and void.

20           11.3. In the event that the Court refuses or fails to give final approval to the Proposed  
21 Settlement, or if a party exercises his/its option to withdraw from and terminate this Settlement  
22 Agreement as provided for in Paragraph 11.2, then the Settlement proposed herein shall become  
23 null and void (with the exception of Paragraph 11.4 herein) and shall have no force or effect, the  
24 Parties and the Class shall not be bound by this Agreement, and the Action shall proceed as though  
25 the Class had never been certified and Defendant may assert any and all objections to class  
26 certification. The Parties agree to meet and confer if the Settlement Agreement is terminated or  
27 not approved to determine how to proceed with the litigation, including setting of a new briefing  
28 schedule and hearing date.

1           11.4. Notwithstanding the foregoing, if this Settlement Agreement is not approved by the  
2 Court, or the Settlement herein is declared null and void, Class Members, Plaintiff, and Class  
3 Counsel shall not in any way be responsible or liable for any costs of notice incurred by the Town  
4 associated with this Settlement and the Town shall likewise not be responsible or liable in any way  
5 for any costs of notice incurred by Class Members, Plaintiffs or Class Counsel associated with the  
6 Settlement.

7       **12. REVIEW, APPROVAL AND RELATED ORDERS**

8           12.1 As soon as is practicable following the signing of this Settlement Agreement, Class  
9 Counsel shall apply to the Court for entry of the Preliminary Approval Order (substantially in the  
10 form attached as Exhibit A), for the purpose of, among other things:

11           12.1.1. Approving the Class Notice, substantially in the form set forth at  
12 Exhibits B, C, and D, the Objection Form substantially in the form set forth at Exhibit F, and the  
13 Opt-Out Form substantially in the form set forth at Exhibit G;

14           12.1.2. Finding that the requirements for provisional certification of the Class have been  
15 satisfied, appointing Burton as the representatives of the Class and Class Counsel as counsel for  
16 the Class, and preliminarily approving the Settlement as being within the range of reasonableness  
17 such that the Class Notice should be provided pursuant to this Agreement;

18           12.1.3. Scheduling the Fairness Hearing on a date ordered by the Court, provided in the  
19 Preliminary Approval Order, and in compliance with applicable law, to determine whether the  
20 Settlement should be approved as fair, reasonable, and adequate, and to determine whether a Final  
21 Order and Final Judgment should be entered;

22           12.1.4. Determining that the notice of the Settlement and of the Fairness Hearing, as set  
23 forth in this Agreement, complies with all legal requirements, including but not limited to the Due  
24 Process Clause of the United States Constitution; Preliminarily approving the form of the Final  
25 Order and Final Judgment;

26           12.1.5. Directing that Class Notice shall be given to the Class as provided in Section 7 of  
27 this Agreement;  
28

1           12.1.6. Providing that any objections by any Class Member to the certification of the Class  
2 and the proposed Settlement contained in this Agreement, and/or the entry of the Final Order and  
3 Final Judgment, shall be heard and any papers submitted in support of said objections shall be  
4 considered by the Court at the Fairness Hearing only if, on or before the date(s) specified in the  
5 Class Notice and Preliminary Approval Order, such objector submits to the Court a written  
6 objection, and otherwise complies with the requirements in Section 9 of this Agreement;

7           12.1.7. Establishing dates by which the Parties shall file and serve all papers in support of  
8 the application for final approval of the Settlement and in response to any valid and timely  
9 objections;

10          12.1.8. Providing that all Class Members will be bound by the Final Order and Final  
11 Judgment unless such Class Members timely file valid written requests for exclusion or opt out in  
12 accordance with this Settlement and the Class Notice;

13          12.1.9. Providing that Class Members wishing to exclude themselves from the Settlement  
14 will have until the date specified in the Class Notice and the Preliminary Approval Order to submit  
15 a valid written request for exclusion or opt out to the Settlement Administrator;

16          12.1.10. Providing a procedure for Class Members to request exclusion or opt out from the  
17 Settlement;

18          12.1.11. Directing the Parties, pursuant to the terms and conditions of this Agreement, to  
19 take all necessary and appropriate steps to establish the means necessary to implement the  
20 Settlement;

21          12.1.12. Pending the Fairness Hearing, staying all proceedings in the Action, other than  
22 proceedings necessary to carry out or enforce the terms and conditions of this Agreement and the  
23 Preliminary Approval Order;

24          12.1.13. Adopt all deadlines set forth herein; and

25          12.1.14. Issue other related orders to effectuate the preliminary approval of the Agreement.

26          12.2. Following the entry of the Preliminary Approval Order, Class Notice shall be  
27 given in the manner directed and approved by the Court.  
28



1           12.3.     Class counsel will move for final approval and file such motion fourteen (14) days  
2 before the Fairness Hearing. The Parties may file responses to any objections not less than five (5)  
3 court days before Fairness Hearing.

4           12.4.     At the Fairness Hearing, the Parties shall seek to obtain from the Court a Final  
5 Order and Final Judgment. The Final Order and Final Judgment shall, among other things:

6           12.4.1.   Find that the Court has jurisdiction over Plaintiff and all Class Members and that  
7 venue is proper;

8           12.4.2.   Finally approve the Agreement and Settlement, pursuant to California Code of  
9 Civil Procedure Sections 382 et seq, as fair, adequate and reasonable to the Class;

10          12.4.3.   Finally certify the Class for settlement purposes only pursuant to California Code  
11 of Civil Procedure Section 382 et seq. and appoint the Plaintiff as Class Representative and Class  
12 Counsel as counsel for the Class;

13          12.4.4.   Find that the Class Notice and the Notice Plan comply with all laws, including,  
14 but not limited to, the Due Process Clause of the United States Constitution;

15          12.4.5.   Preserve all claims of persons not within the Settlement Class definition as well  
16 as those who have timely excluded themselves from the Settlement Class;

17          12.4.6.   Adjudicate any objections that have been presented to the Settlement;

18          12.4.7.   Incorporate the Release set forth in the Agreement and make the Release effective  
19 as of the date of the Final Order and Final Judgment;

20          12.4.8.   Award Service Awards and Attorneys' Fees and Expenses in amounts deemed  
21 fair, adequate and reasonable in the circumstances;

22          12.4.9.   Authorize the Parties to implement the terms of the Agreement;

23          12.4.10. Retain jurisdiction relating to the administration, consummation, enforcement, and  
24 interpretation of the Agreement, the Final Order and Final Judgment, and for any other necessary  
25 purpose; and,

26          12.4.11. Issue related Orders necessary to effectuate the final approval of the Agreement  
27 and its implementation.  
28

1     **13.     SERVICE AWARD**

2           13.1. In recognition of the time and effort the representative Plaintiff expended in  
3 pursuing this action and in fulfilling her obligations and responsibilities as a class representative,  
4 and of the benefits conferred on all Class Members by the Settlement, Class Counsel may ask the  
5 Court for the payment of a Service Award from the Common Fund to the Class Representative.

6           13.2. It is Class Counsel's intention to apply to the Court for payment of a Service Award  
7 in an amount not to exceed Five Thousand Five Hundred Dollars (\$5,000.00). Defendant will not  
8 object to the object to a Service Award of \$5,000.00 or less to the Class Representative. No amount  
9 has been guaranteed or promised to Plaintiff or Class Representative.

10          13.3. The Court shall determine the final amount of any Service Award to the Class  
11 Representative, in its discretion, based on the request filed by or on behalf of the Class  
12 Representative.

13          13.4. The Class Representative acknowledges that she (i) supports the Settlement as fair,  
14 adequate and reasonable to the Class, whether or not the Court appoints her a Class Representative  
15 or awards her any Service Award; (ii) has not asserted any individual, non-class claims against any  
16 Defendant in the operative complaint; (iii) has not entered into any separate settlement agreement  
17 with Defendant; (iv) has not received any additional consideration from any Defendant that other  
18 Class Members are not in a position to receive should this settlement be approved, other than the  
19 Service Award, which the Court may, in its discretion, award to Class Representatives; and (v) has  
20 reviewed and considered this Agreement.

21          13.5. The ability of a Class Representative to apply to the Court for a Service Award is  
22 not conditioned on her support of the Settlement.

23     **14.     REQUEST FOR ATTORNEYS' FEES & EXPENSES**

24          14.1 Class Counsel will make an application to the Court for an award of Attorneys' Fees  
25 and Expenses.

26          14.2 It is Class Counsel's intention to apply to the Court for payment of Attorneys' Fees  
27 and reimbursement of expense to be paid from the Common Fund in an amount not to exceed thirty-  
28 three percent (33%) of the amount of the Common Fund.

1           14.3    This Settlement is inclusive of attorney's fees, expenses and costs.

2           14.4.   Any Attorneys' Fees and Expenses awarded by the Court shall be deducted from the  
3 Common Fund. Such payment will be in lieu of statutory fees Plaintiff and/or her attorneys might  
4 otherwise have been entitled to recover from the Town

5           14.5.   The Attorney's Fees and Expenses award amount shall be inclusive of all attorneys'  
6 fees, costs, advances and expenses incurred by Class Members, the Class Representative, or Class  
7 Counsel to be paid by the Town and/or the Common Fund. Plaintiff and Class Counsel agree that  
8 the Town shall not pay, or be obligated to pay, in excess of any Court award of Attorneys' Fees  
9 and Expenses, and that in no event shall the Town be obligated to pay any amount in excess of the  
10 Common Fund.

11          14.6.   The procedure for and the allowance or disallowance by the Court of any application  
12 for attorneys' fees, costs, expenses, or reimbursement to be paid to Class Counsel are not part of  
13 the settlement of the Released Claims as set forth in this Settlement, and are to be considered by  
14 the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy  
15 of the settlement of the Released Claims as set forth herein. Any such separate order, finding,  
16 ruling, holding, or proceeding relating to any such applications for attorneys' fees and expenses, or  
17 any separate appeal from any separate order, finding, ruling, holding, or proceeding relating to them  
18 or reversal or modification of them, shall not operate to terminate or cancel this Settlement  
19 Agreement or otherwise affect or delay the finality of the Final Order and Final Judgment or the  
20 Settlement.

21          14.7.   Any application for Attorneys' Fees and Expenses or for a Class Representative  
22 Service Award shall be filed fourteen (14) days prior to the Objection and Exclusion Deadline.  
23 Updated or supplemental petition(s) by those making initial timely petitions only, limited to  
24 reporting new and additional professional time and expenses incurred in relation to the Settlement  
25 and claims administration process after the filing of the initial petition, shall be permitted to be filed  
26 after that date to ensure that the new professional time, costs and expenses on a going-forward basis  
27 in this Action are fairly accounted for by the Court and remain compensable, subject to the Court's  
28 approval.

1     **15.     GENERAL MATTERS AND RESERVATIONS**

2           15.1.   Each Party to this Agreement hereby represents and warrants that no other Party,  
3     and no other person, has made any statement or representation to him or it other than as is set forth  
4     in this Agreement and each Party has not relied upon any statement, representation, or promise of  
5     any other Party or person in executing this Agreement in making the settlement provided for herein.

6           15.2.   Each Party specifically acknowledges this Agreement, except as provided herein,  
7     supersedes any prior agreement between the Parties, whether written or oral, and this Agreement  
8     constitutes the entire, integrated understanding of the Parties. This Agreement may only be  
9     amended by a writing signed by all Parties. The Parties reserve the right, subject to the Court's  
10    approval, to agree to any reasonable extensions of time that might be necessary to carry out any of  
11    the provisions of this Agreement.

12          15.3.   The Class, Class Representative, Class Counsel, Defendant and/or Defendant's  
13    Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor  
14    shall they argue that any particular provision should be construed against its drafter. All Parties  
15    agree that this Agreement was drafted by counsel for the Parties during extensive arms' length  
16    negotiations. No parole or other evidence may be offered to explain, construe, contradict, or clarify  
17    its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement  
18    was made or executed.

19          15.4.   The Parties expressly acknowledge and agree that this Agreement and its exhibits,  
20    along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence,  
21    constitute an offer of compromise and a compromise within the meaning of California Evidence  
22    Code Section 1152. In no event shall this Agreement, any of its provisions or any negotiations,  
23    statements or court proceedings relating to its provisions in any way be construed as, offered as,  
24    received as, used as, or deemed to be evidence of any kind in the Action or in any other action or  
25    proceeding, except in a proceeding to enforce this Agreement. Without limiting the foregoing,  
26    neither this Agreement nor any related negotiations, statements, or court proceedings shall be  
27    construed as, offered as, received as, used as, or deemed to be evidence of, an admission or  
28    concession of any liability or wrongdoing whatsoever on the part of the Released Parties, Plaintiff,

1 or the Class or as a waiver by the Released Parties, Plaintiff or the Class of any applicable  
2 privileges, claims or defenses.

3 15.5. Each Party hereby represents and warrants she or it has not previously assigned or  
4 transferred, or purported to assign or transfer, any of the indebtedness, rights, claims, causes of  
5 action, or obligations disposed of by this Agreement.

6 15.6. This Agreement shall in all respects be interpreted, enforced and governed  
7 exclusively by and under the laws of the State of California. Should any dispute arise concerning  
8 the enforcement or interpretation of this Agreement, the Parties agree that jurisdiction and venue  
9 of such dispute shall reside exclusively in the Superior Court for the County of San Bernardino.  
10 The Parties further agree that this Agreement shall be enforceable under Code of Civil Procedure  
11 §664.6, and that the Court shall have jurisdiction over the Parties and over this Agreement for that  
12 purpose.

13 15.7. This Agreement has been negotiated by and between parties of equal bargaining  
14 power, each represented or having the opportunity to be represented by independent counsel, and  
15 each has contributed to its drafting and it is not to be construed in favor of or against any Party  
16 hereto.

17 15.8. If any provision of this Agreement is found to be illegal or invalid, such provision  
18 shall be severed and such illegality or invalidity shall remain in full force and effect if the Parties  
19 so mutually agree in writing.

20 15.9. This Agreement affects the settlement and release of claims which are denied and  
21 contested, and nothing contained in this Agreement shall be construed as an admission by any of  
22 the Parties of any liability asserted in the Lawsuit or the Claim. The Parties further agree and  
23 acknowledge that this Agreement is intended to resolve differences between the Parties with respect  
24 to the Lawsuit and the Claim.

25 15.10. Each Party to this Agreement agrees to act in good faith and to do any and all acts,  
26 and execute any and all documents, reasonably necessary to implement the terms of this Agreement  
27 and promptly complete the settlement as contemplated herein.  
28

1 15.11. Whenever this Agreement requires or contemplates that one of the Parties shall or  
2 may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding  
3 Saturdays, Sundays and Federal Holidays) express delivery service as follows:

4  
5 *Upon Class Counsel:*

6 BENINK & SLAVENS, LLP  
7 Eric J. Benink, Esq.  
8 550 West C Street, Suite 530  
9 San Diego, California 92101  
10 Email: eric@beninkslavens.com

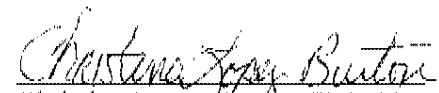
11 *Upon Defense Counsel:*

12 BEST BEST & KRIEGER, LLP  
13 Richard Egger, Esq.  
14 2855 E. Guasti Road  
15 Suite 400  
16 Ontario, CA 91761  
17 Email: richard.egger@bbklaw.com

18 15.12. Upon compliance with the terms hereof, the Parties agree to execute and deliver all  
19 documents necessary to effectuate the purposes of this Agreement.

20 15.13. This Agreement may be signed in counterpart original, including  
21 facsimile/electronic signatures, each of which shall be deemed an original, and shall be deemed  
22 duly executed upon the signing of a counterpart by all Parties.

23 DATED: 6-25-19

  
Christina Lopez-Burton, Plaintiff

24  
25 DATED: \_\_\_\_\_

Town of Apple Valley

26 BY: \_\_\_\_\_

27 ITS: \_\_\_\_\_  
28

1 15.11. Whenever this Agreement requires or contemplates that one of the Parties shall or  
2 may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding  
3 Saturdays, Sundays and Federal Holidays) express delivery service as follows:

4  
5 *Upon Class Counsel:*

6 BENINK & SLAVENS, LLP  
7 Eric J. Benink, Esq.  
8 550 West C Street, Suite 530  
9 San Diego, California 92101  
10 Email: eric@beninkslavens.com

11 *Upon Defense Counsel:*

12 BEST BEST & KRIEGER, LLP  
13 Richard Egger, Esq.  
14 2855 E. Guasti Road  
15 Suite 400  
16 Ontario, CA 91761  
17 Email: richard.egger@bbklaw.com

18 15.12. Upon compliance with the terms hereof, the Parties agree to execute and deliver all  
19 documents necessary to effectuate the purposes of this Agreement.

20 15.13. This Agreement may be signed in counterpart original, including  
21 facsimile/electronic signatures, each of which shall be deemed an original, and shall be deemed  
22 duly executed upon the signing of a counterpart by all Parties.

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

Christina Lopez-Burton, Plaintiff

24  
25 DATED: 4/27/19

Town of Apple Valley

26 BY: [Signature]

27 ITS: Town Manager

**EXHIBIT A**  
**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,**  
**PROVISIONALLY CERTIFYING SETTLEMENT CLASS, AND DIRECTING NOTICE TO CLASS**



1  
2  
3  
4  
5  
6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN BERNARDINO

10 CHRISTINA LOPEZ-BURTON, an  
11 individual, on behalf of herself and all others  
12 similarly situated,

13 Petitioner and Plaintiff,

14 v.

15 TOWN OF APPLE VALLEY, a general law  
16 city; and DOES 1-10,

17 Respondents and Defendants.  
18  
19

Case No.: CIVDS1725027

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

**[PROPOSED] ORDER PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT, PROVISIONALLY  
CERTIFYING SETTLEMENT CLASS,  
AND DIRECTING NOTICE TO CLASS**

DATE:  
TIME:  
DEPT:

20 On \_\_\_\_\_ (month) \_\_\_\_ (day), 2019, this Court heard Plaintiff Christina Lopez-  
21 Burton's ("Plaintiff's") motion for preliminary approval of class settlement and provisional class  
22 certification under California Rule of Court 3.769(c) and (d). This Court reviewed the motion,  
23 including the Class Action Settlement Agreement (the "Agreement" or "Settlement") filed on  
24 \_\_\_\_\_. Based on this review and the findings below, the Court finds good cause to  
25 GRANT the motion.

26 **FINDINGS:**

27 1. Unless otherwise specified, defined terms in this Order Preliminarily Approving  
28 Class Action Settlement and Provisionally Certifying Settlement Class, and Directing Notice to the

1 Class ("Order") have the same definitions as the terms in the Agreement.

2       **2.**       The Agreement falls within the range of possible approval as fair, adequate, and  
3 reasonable and in the best interests of the absent class members.

4       **3.**       The Court finds that (a) the Summary Notice, Long Form Notice, and Publication  
5 Notice attached to the Agreement as Exhibits B, C, and D respectively constitute the best notice  
6 practicable under the circumstances, (b) constitute valid, due, and sufficient notice to all members  
7 of the Class, and (c) comply fully with the requirements of California Code of Civil Procedure  
8 section 382, California Rules of Court 3.766 and 3.769, the California and United States  
9 Constitutions, and other applicable law. The Summary Notice, Long Form Notice, and Publication  
10 Notice are attached hereto as **Exhibits A, B, and C** respectively and incorporated herein by  
11 reference.

12       **4.**       For settlement purposes only, the Court finds the Class is so numerous that joinder  
13 of all Class Members is impracticable, Plaintiff's claims are typical of those of the Class, there are  
14 questions of law and fact common to the Class and such common questions predominate over any  
15 questions affecting only individual members of the Class, and Class certification is superior to other  
16 available methods for the fair and efficient adjudication of the controversy.

17 **IT IS ORDERED THAT:**

18       **5.       Settlement Approval.** The Settlement is preliminarily approved.

19       **6.       Class Notice.** The form and manner of notice as set forth in paragraph 7 of the  
20 Agreement and as reflected in the Summary Notice, Long Form Notice, and Publication Notice  
21 (Exhibits A, B, and C hereto) are approved. The parties and the Claims Administrator are directed  
22 to provide notice in accordance with paragraph 7 of the Agreement.

23       **7.       Provisional Certification.** The Class is provisionally certified, for settlement  
24 purposes only, as follows:

25       All persons (which includes entities such as firms, companies, corporations,  
26 associations, and public entities) who, between July 24, 2016 and the date this Order  
27 is entered, were Account Holders, but excluding (a) any officer or council member  
28 of the Town; (b) any judge assigned to hear this case; and (c) persons who timely  
and properly exclude themselves from the Class as provided in this Agreement.

1           **8. Appointment of Class Representative and Class Counsel.** Plaintiff Christina  
2 Lopez-Burton is conditionally certified as the class representative. Eric J. Benink, Esq. of Benink  
3 & Slavens, LLP. and Prescott Littlefield, Esq. of Kearney Littlefield, LLP are conditionally  
4 appointed as Class Counsel. The Court finds Plaintiff and Class Counsel will fairly and adequately  
5 protect the interests of the Class.

6           **9. Claims Administrator.** Phoenix Class Action Administration Solutions is  
7 approved as the Claims Administrator to create a settlement website at AVTrashSettlement.com,  
8 and to process and pay claims as provided for under paragraph 6.1.2 of the Agreement. The Claims  
9 Administrator may establish a Qualified Settlement Fund within the meaning of Treasury  
10 Regulation Section 1.468B-1 and shall comply with the terms and conditions of the Agreement in  
11 carrying out its duties pursuant to the Agreement. Pursuant to paragraph 6.1.1 of the Agreement,  
12 the Claims Administrator shall be paid its fees and costs from the Common Fund which it estimates  
13 to be \$xxxxx. No later than five (5) days prior to the Fairness Hearing, the Claims Administrator  
14 shall file with the Court, a statement of its fees and costs, together with an estimate of future  
15 expenses for which it seeks to be paid.

16           **10. Provision of Class Notice.** The Town shall notify the Class of the Settlement in the  
17 manner specified under Paragraph 7.1 of the Agreement. The Town and the Claims Administrator  
18 shall file a declaration describing their compliance with paragraph 7 of the Agreement not less than  
19 five (5) court days prior to the Fairness Hearing. The Town may submit an application for payment  
20 of the publication expenses out of the Settlement Fund not less than five (5) court days prior to the  
21 Fairness Hearing.

22           **11. Objection to Settlement.** Class Members who have not submitted a timely and  
23 valid written exclusion and who desire to object to the Agreement shall mail such objection to the  
24 Court, Class Counsel and the Town's Counsel no later than forty-five (45) calendar days after the  
25 Summary Notice is mailed. The mailing date is deemed to be the date the objection is deposited in  
26 the U.S. Mail as evidenced by the postmark. Written objections shall be on the form attached to the  
27 Agreement at Exhibit F and must include (a) full name of Objector; (b) mailing address of Objector;  
28 (c) the property address where the Objector has received trash and/or recycling service; (d) the

specific reason(s), if any, for the objection, including any legal support the Class Member wishes to bring to the Court's attention; and (e) the identification of any other objections that the Class Member or the Class Member's counsel has made during the past five (5) years.

**12. Appearance at Fairness Hearing.** Class Members have the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Agreement, the award of attorneys' fees and costs, or to the incentive awards to the Class Representative. However, Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must inform the Parties and the Court no later than forty five (45) calendar days after the Summary Notice is mailed by indicating on the Objection Form, whether they intend to appear.

**13. Failure to Object to Agreement.** Class Members who fail to object to the Agreement in the manner specified above will: (1) be deemed to have waived their right to object to the Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Agreement; and (3) not be entitled to speak at the Fairness Hearing.

**14. Requesting Exclusion.** Class Members who desire to be excluded from the Agreement must mail to Class Counsel the Opt-Out Form attached to the Agreement at Exhibit G. The request for exclusion must be postmarked no later than forty-five (45) calendar days after the Summary Notice is mailed. If a Class Member mails a Claim Form and a request for exclusion, the request for exclusion will be deemed invalid. Class Counsel shall provide a list of all persons who have timely requested to be excluded to the Town and to the Court not less than five (5) court days before the Fairness Hearing.

**15. Claim Form.** Class Members who are no longer Account Holders as of the date forty-five (45) calendar days after the Summary Notice is mailed and wish to receive a refund, must submit a complete and valid Claim Form to the Claims Administrator no later than forty-five (45) calendar days after the Summary Notice is mailed. Those eligible Class Members who mail valid, timely Claim Forms, in the form attached as Exhibit H to the Agreement, will be eligible to participate in the Settlement as stated in the Agreement at Paragraph 6.1.2.3. The Claim Form is

1 attached hereto as **Exhibit D** and incorporated herein by reference.

2       **16. Termination.** If the Agreement terminates for any reason, the following will occur:  
3 (a) this Order and all of its provisions will be vacated, including, but not limited to, vacating  
4 conditional certification of the Class, conditional appointment of Plaintiff as class representative,  
5 and conditional appointment of Plaintiff's Counsel as Class Counsel; (b) the Action will revert to  
6 the status that existed before the Plaintiff filed her motion for approval of the Preliminary Approval  
7 Order; and (c) no term or draft of the Agreement, or any part of the Parties' settlement discussions,  
8 negotiations or documentation will have any effect or be admissible into evidence for any purpose  
9 in the Action or any other proceeding. This Order will not waive or otherwise impact the Parties'  
10 rights or arguments

11       **17. No Admissions.** Nothing in this Order is, or may be construed as, an admission or  
12 concession on any point of fact or law by or against any Party.

13       **18. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and deadlines  
14 are stayed and suspended until further notice from the Court, except for such actions as are  
15 necessary to implement the Agreement and this Order.

16       **19. Fairness Hearing.** On \_\_\_\_\_, at \_\_\_\_\_, this Court will hold a Fairness  
17 Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and  
18 adequate. All papers supporting Plaintiff's request for attorneys' fees and reimbursement of  
19 expenses, and Class Representative's service awards must be filed no later than fourteen (14)  
20 calendar days before the deadline for Class Members to object to the Agreement. All papers  
21 supporting final approval of the Agreement must be filed no later than fourteen (14) calendar days  
22 before the deadline for Class Members to object to the Agreement. Any responses to objections  
23 must be filed no less than five (5) court days before the Fairness Hearing. Based on the date of this  
24 Order and the date of the Fairness Hearing, the following are the certain associated dates in this  
25 Agreement:

26 ///

27 ///

28 ///

Event	Timing	Date
Last day for the Town to send the Summary Notice, for the Town to cause the Publication Notice to be published in the San Bernardino Sun on two dates which are seven (7) days apart; Last day for Claims Administrator to establish a Settlement Website	10 days after entry of this Order	
Last day for Class Members to mail a claim, request exclusion or object to the Agreement	45 days after Summary Notice is mailed	
Last day for Class Counsel to move for Attorneys' Fees and Expenses or for a Class Representative Service Award	14 days prior to the date for exclusion or objection	
Last day for Parties to file briefs in support of the Final Order and Judgment	14 days prior to the date for exclusion or objection	
Last day to file an affidavit of compliance with all notice requirements	5 court days before Fairness Hearing	
Last day for Claims Administrator to file a statement of its fees and costs	5 court days before Fairness Hearing	
Last day for Town to file an application for reimbursement of publication notice	5 court days before Fairness Hearing	
Last day to file response to objections	5 court days before Fairness Hearing	

This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the updated hearing date shall be posted on the settlement website as soon as practicable but, other than the website posting, the Parties will not be required to provide any additional notice to Class Members.

**IT IS SO ORDERED.**

DATED \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT



**EXHIBIT B**  
**SUMMARY NOTICE**



**If Between July 24, 2016 And [Date], You Had A Solid Waste/Recycling Account With The Town Of Apple Valley, A Legal Settlement Will Affect Your Rights.**

A settlement has been proposed in a class action lawsuit against the Town of Apple Valley. If you had a solid waste/recycling account between July 24, 2016 and [DATE], the settlement will affect your legal rights.

**What relief does the Settlement provide?** The settlement provides for monthly credits to your future solid waste/recycling

*A court authorized this Notice. It is not a solicitation from a lawyer.*

bills for a period of approximately 20 months. You do not need to do anything to receive this value. More details about the terms of the settlement can be found at the settlement website:

[www.AVTrashSettlement.com](http://www.AVTrashSettlement.com)

**What are my options?** If you don't want to be legally bound by the Settlement, you must exclude yourself by **Exclusion Deadline**. If you exclude yourself, you will not participate in the settlement. If you stay in the settlement, you may object to it by **Exclusion Deadline**. The detailed notice available at the website explains how to request exclusion or object. The Court will hold a hearing on \_\_\_\_\_ at \_\_\_\_\_ to consider whether to approve the Settlement. Visit the settlement website for further information.

*A court authorized this Notice. It is not a solicitation from a lawyer.*

**EXHIBIT C**  
**LONG FORM NOTICE**

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

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

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No.: CIVDS1725027

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

**IF BETWEEN JULY 24, 2016 AND [PRELIMINARY APPROVAL  
ORDER], YOU HAD A SOLID WASTE/RECYCLING ACCOUNT  
WITH THE TOWN OF APPLE VALLEY, A LEGAL SETTLEMENT  
WILL AFFECT YOUR RIGHTS.**

***A CALIFORNIA COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A  
LAWYER.***

A settlement (the "Settlement") has been proposed in the class action lawsuit referenced above pending in the Superior Court of the State of California in the County of San Bernardino (the "Action"). If the Court gives final approval to the Settlement, The Town of Apple Valley (the "Town") will provide rate credits to current solid waste/recycling customers on their bills, and allow former customers to submit a claim for a refund, subject to the additional conditions explained in this notice.

Your legal rights are affected whether you act or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
REMAIN IN THE SETTLEMENT CLASS	<p><b>CURRENT CUSTOMERS</b></p> <p>If you are a solid waste/recycling customer as of [Exclusion Deadline], <b>no action is required</b>. You will receive an automatic credit on your trash bill through June 2021. The amount of the credit depends on the type of rate you pay. Some of the common rates and the projected credits are set forth in Section 7 below.</p>	<p><b>NO ACTION REQUIRED</b></p> <p>Deadline: _____</p>
	<p><b>FORMER CUSTOMERS</b></p> <p>If you are not a solid waste/recycling customers as of [Exclusion Deadline], you can submit a claim form to receive a lump sum refund. An estimate of the refund amount is described in Section 7 below.</p> <p>Visit the Settlement website located at <a href="http://www.AVTrashSettlement.com">www.AVTrashSettlement.com</a> to obtain a Claim Form.</p>	
EXCLUDE YOURSELF	<p>If you exclude yourself from the Settlement, you will not receive any value from the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against the Town regarding the allegations in the Action ever again.</p>	<p>Deadline: _____</p>
OBJECT	<p>You may write to the Court about why you object to (i.e., don't like) the terms of the Settlement or Class Counsel's application for attorney's fees and reimbursement of expenses and think it shouldn't be approved. Submitting an objection does not exclude you from the Settlement and if the Court approves the Settlement, you will still be bound by its terms.</p>	<p>Deadline: _____</p>

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
<b>GO TO THE “FAIRNESS HEARING”</b>	The Court will hold a “Fairness Hearing” to consider the Settlement, Class Counsel’s request for attorneys’ fees and reimbursement of expenses for the attorneys who brought the Action, and the Representative Plaintiff’s request for a service award for bringing the Action.	Hearing Date and Time: _____
	You may, but are not required to, attend or speak at the Fairness Hearing. If you intend to speak at the Fairness Hearing, you must indicate your intent to do so on the Objection Form (see Section 15 below.)	Deadline: _____

These rights and options—**and the deadlines to exercise them**—are explained in more detail below.

The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement.

## WHAT THIS NOTICE CONTAINS

### BACKGROUND INFORMATION..... ##

1. Why did I get a notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?
5. How do I know if I am part of the Settlement?
6. I’m still not sure if I am included.

### THE PROPOSED SETTLEMENT ..... ##

7. What relief does the Settlement provide to the Class Members?

### HOW TO REQUEST A REFUND FOR FORMER CUSTOMERS – SUBMITTING A CLAIM FORM ..... ##

8. How can I get a refund?
9. When will I get my refund?

### THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF.. ##

10. Do I have a lawyer in this case?
11. How will the lawyers be paid?
12. Will the Representative Plaintiff receive any compensation for her efforts in bringing this Action?

**DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS..... ##**

13. What am I giving up to obtain relief under the Settlement?

**HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT ..... ##**

14. How do I exclude myself from the Settlement?

**HOW TO OBJECT TO THE SETTLEMENT ..... ##**

15. How do I tell the Court that I disagree with the Settlement?
16. What is the difference between excluding myself and objecting to the Settlement?

**FAIRNESS HEARING..... ##**

17. What is the Fairness Hearing?
18. When and where is the Fairness Hearing?
19. May I speak at the hearing?

**ADDITIONAL INFORMATION ..... ##**

20. How do I get more information?
21. What if my address or other information has changed or changes after I submit a Claim Form?

## **BACKGROUND INFORMATION**

### **1. *Why did I get a notice?***

You received a notice because a Settlement has been reached in this Action. According to the Town's records you might be a member of the Settlement Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement (which defines certain capitalized terms used in this Notice), see Section 20 below.

## **2. *What is this lawsuit about?***

On December 20, 2017, Plaintiff Christina Lopez-Burton (the “Representative Plaintiff”) filed a lawsuit against the Town on behalf of herself and all others similarly situated. The lawsuit alleges that the Town’s rates for solid waste/recycling violate California Constitution article XIII D, because the rates include amounts that are cannot be legally charged for solid waste/recycling fees. A copy of the lawsuit can be found [HERE](#) or at [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com).

The Town denies each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. The Town further denies that any Class Member is entitled to any relief and, other than for settlement purposes, that this Action is appropriate for certification as a class action.

**The issuance of this Notice is not an expression of the Court’s opinion on the merits or the lack of merits of the Representative Plaintiff’s claims in the Action.**

## **3. *Why is this a class action?***

In a class action lawsuit, one or more people called “Representative Plaintiff(s)” (in this Action, Christina Lopez-Burton) sue on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The party sued in this case – the Town of Apple Valley – is called the Defendant.

## **4. *Why is there a Settlement?***

The Representative Plaintiff has made claims against the Town. The Town denies it has done anything wrong or illegal and admits no liability. The Court has **not** decided that the Representative Plaintiff or the Town should win this Action. Instead, both sides agreed to the Settlement to avoid the cost, risks, and delay of continued litigation.



## **5. *How do I know if I am part of the Settlement?***

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement:

All persons (which includes entities such as firms, companies, corporations, associations, and public entities) who, between July 24, 2016 and [PRELIMINARY APPROVAL ORDER], were Account Holders, but excluding (a) any officer or council member of the Town; (b) any judge assigned to hear this case; and (c) persons who timely and properly exclude themselves from the Class as provided in this Agreement.

An Account Holder means a person or entity (i.e. business) who holds a solid waste / recycling account in the Town of Apple Valley.

## **6. *I'm still not sure if I am included.***

If you are still not sure whether you are included in the Settlement, you may contact the Town at [REDACTED]

# **THE PROPOSED SETTLEMENT**

## **7. *What relief does the Settlement provide to the Class Members?***

The Town has agreed to create a Common Fund in the gross amount of Three Million One Hundred Fifty Thousand and no cents (\$3,150,000.00) that will be used to pay all administration and publication notice costs, attorney's fees and expenses to Class Counsel, and a service award to the Representative Plaintiff. All such fees and costs must be approved by the Court. Administration costs are estimated to be \$7,873. The costs of publication are estimated to be \$1,478. Class Counsel intends to request attorneys' fees in the amount of \$1,050,000 and reimbursement of expenses in the amount of approximately \$12,994. The Representative Plaintiff intends to request \$5,000 as a service award. If the Court approves the requested fees and reimbursement of expenses, the balance of the Common Fund ("Net Common Fund") will be approximately \$2,072,656.

The Net Common Fund will be distributed to former solid waste / recycling customers who no longer hold an account as of [Exclusion Deadline] if they submit a timely claim form. The balance of the Net Settlement Fund will be distributed as automatic credits to current solid waste / recycling customers on their monthly or bi-monthly bills beginning approximately [Two months after Fairness Hearing] through June 2021.

The amount of the monthly credit depends on the number of claims by former customers and the billing rate for the type of service you receive. The parties estimate that the monthly credits will be roughly 10% of your trash and recycling fees. The most common services and the monthly credits for those services are estimated as follows:

### **Residential Services**

Residential 40 Gallon Trash Barrels	\$2.30 monthly credit
Residential 60 Gallon Trash Barrels	\$2.43 monthly credit
Residential 95 Gallon Trash Barrels	\$2.67 monthly credit

### **Commercial Services / Multifamily Services**

1.5 yard Trash Bin 1x per week	\$6.37 monthly credit
2 yard trash bin 1x per week	\$8.43 monthly credit
3 yard trash bin 1x per week	\$12.55 monthly credit
3 yard trash bin 2x per week	\$24.91 monthly credit

Former customers who submit valid and timely claims will receive a refund check in the amount similar current customers will receive as a monthly credit [see above] multiplied by the number of months the former customer had an account during the Class Period July 24, 2016 through **[Prelim Order]** up to a maximum of 18 months.

PLEASE NOTE THAT THE SETTLEMENT REQUIRES THAT THE ENTIRETY OF THE NET COMMON FUND BE DISTRIBUTED BY JUNE 30, 2021.

In addition to these payments, the Town has agreed to not increase its solid waste and recycling collection fees and charges as established in its 2014 Rate Resolution until July 1, 2021

## **HOW TO OBTAIN A REFUND – SUBMITTING A CLAIM FORM**

### **8. *How do I get a Refund?***

If you are a Class Member and you are a solid waste/recycling customer after **[Exclusion Deadline]**, your credits will be **automatically** applied to your bills. You need not take further action

If you are a Class Member and you are no longer a solid waste/recycling customer as of **[Exclusion Deadline]**, you must submit a completed Claim Form in order to receive the benefits of this Settlement. A Claim Form is available [HERE](#) or at the

website [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com). Read the instructions carefully, fill out the form, and postmark it by \_\_\_\_\_.

#### **9. When will I get my Settlement?**

As described in Sections 17 and 18, the Court will hold a hearing on \_\_\_\_\_ at \_\_\_\_\_, to decide whether to approve the Settlement. You can continue to monitor the progress of the case at the website [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com).

Assuming that the Court approves the Settlement on \_\_\_\_\_, refunds for former customers are expected to be mailed no later than [35 days after Fairness Hearing], and the monthly bill credits for current customer should begin being applied by [two months after Fairness Hearing] and will continue until June 2021.

### **THE LAWYERS REPRESENTING THE CLASS AND REPRESENTATIVE PLAINTIFF**

#### **10. Do I have a lawyer in this case?**

The Court has ordered Eric J. Benink, Esq. of Benink & Slavens, LLP and Prescott Littlefield, Esq. of Kearney Littlefield, LLP (collectively "Class Counsel") to represent the interests of the Class. Their contact information is below. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

CLASS COUNSEL	
BENINK & SLAVENS, LLP Eric J. Benink, Esq. 550 West C Street, Suite 530 San Diego, California 92101 (619) 369-5252(ph) eric@beninkslavens.com	KEARNEY LITTLEFIELD, LLP. Prescott W. Littlefield, Esq. 3436 N. Verdugo Rd. Suite 230 Glendale, CA 91208 (213) 374-1900 (ph) pwl@kearneylittlefield.com

#### **11. How will the lawyers be paid?**

Class Counsel will apply for attorneys' fees and costs, subject to Court approval. Class Counsel expect to apply for \$1,050,000 in attorneys' fees and \$12,994 in costs. Class Counsel will file with the Court their motion for award of attorneys' fees and reimbursement of expenses and Class Representative's service award no later than xxx. After that date, you may view the motion at [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com). You will not be required to pay any attorneys' fees or costs directly, as they will be

payable from the Settlement Fund paid by the Town. Please see paragraph 14 of the Settlement Agreement, available [HERE](#), for additional details.

**12. *Will the Representative Plaintiff receive any compensation for her efforts in bringing this Action?***

Christina Lopez-Burton, the Representative Plaintiff, will request a service award of up to \$5,000 for her services as class representatives and her efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the class representative and that amount will be paid from the Settlement Fund.

**DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS**

**13. *What am I giving up to obtain relief under the Settlement?***

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against the Town that formed the basis of this Action. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against the Town regarding the claims in the Action. The entirety of the release from the Settlement to which you will be subject is as follows:

In consideration for the Settlement, Burton and each Class Member, on behalf of themselves and their heirs, executors, administrators, assigns, agents, servants, representatives, predecessors, and successors (hereafter collectively "Releasors") fully release and discharge the Town and all of its employees, council members, officers, and agents ("Releasees") from all rights, claims, and actions they and any of the Releasors now have, or may have in the future, against the Releasees arising out of, or relating to, the facts and circumstances giving rise to the Lawsuit or Claim, or arising out of, or relating to, claims that the rates, fees and charges adopted via through Resolution No. 2014-33 violate Proposition 218 and/or Proposition 26. For the sake of clarity, this release does not extend to trash and recycling rates, fees, and charges that the Town adopts in the future.

Except as otherwise provided in this Agreement, the release contained herein and made by this Agreement is full and complete, and Burton and each Class Member specifically agrees to waive the provisions of Civil Code § 1542 which provides that:

**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.**

Burton and each Class Member specifically acknowledges the effect of such a waiver and this Agreement shall act as a release of all such claims, whether such claims are currently known, unknown, foreseen or unforeseen.

## HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

### 14. *How do I exclude myself from the Settlement?*

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send the Opt-Out Form available [HERE](#) or at [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com), postmarked no later than **Exclusion Deadline** to Class Counsel at:

CLASS COUNSEL
BENINK & SLAVENS, LLP Eric J. Benink, Esq. 550 West C Street, Suite 530 San Diego, California 92101

If you timely request exclusion from the Class, you will be excluded from the Class, you will not receive credits or a refund under the Settlement, you will not be bound by the judgment entered in the Action, and you will not be precluded from prosecuting any timely, individual claim against the Town based on the conduct complained of in the Action.

## HOW TO OBJECT TO THE SETTLEMENT

### 15. *How do I tell the Court that I disagree with the Settlement?*

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel's request for an award of attorneys' fees and reimbursement of expenses, and service awards to the Representative Plaintiff.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement, Class Counsel's request for attorney's fees and reimbursement of expenses, or the Representative Plaintiff's request for a service award, you must file a written

objection with the Court and serve on Class Counsel and Defense Counsel at the addresses set forth below no later than (*i.e.*, postmarked by) **Exclusion Deadline**.

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court Superior Court of the State of California, County of San Bernardino Department S26 247 West Third Street San Bernardino, California 92415	BENINK & SLAVENS, LLP Eric J. Benink, Esq. 550 West C Street, Suite 530 San Diego, California 92101	BEST BEST & KRIEGER, LLP Richard Egger, Esq. 2855 E. Guasti Road Suite 400 Ontario, CA 91761

Any written objections must be made on the Objection Form, available [HERE](#) or at [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com). You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney's fees and costs.

Class Members have the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement, the award of attorneys' fees and costs, or the proposed service awards to the Class Representative. However, Class Members (with or without their attorneys) intending to make an appearance at the Fairness Hearing must so inform the Parties and the Court on or before **Exclusion Deadline** by indicating such on the Objection Form.

**16. *What is the difference between excluding myself and objecting to the Settlement?***

Objecting is simply telling the Court that you disagree with something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**FAIRNESS HEARING**

**17. *What is the Fairness Hearing?***

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. You may attend, but you do not have to. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and

reimbursement of expenses to Class Counsel; and to consider the request for service award to the Representative Plaintiff. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness.

#### **18. *When and where is the Fairness Hearing?***

On \_\_\_\_\_, \_\_\_\_ at \_\_\_\_\_ (Pacific), a hearing will be held on the fairness of the proposed Settlement. The hearing will take place before the Honorable David Cohen in Department S26 of the San Bernardino Justice Center, Superior Court for the State of California, San Bernardino County, located at 247 West Third Street, San Bernardino, CA 92415. The hearing may be postponed to a different date or time or location without notice. Please check [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com) for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

#### **19. *May I speak at the hearing?***

At the Fairness Hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. As described above in Section 15, you may speak at the Fairness Hearing only if you have indicated your intention to do so on the Objection Form.

If you have requested exclusion from the Settlement, you may not speak at the hearing.

### **ADDITIONAL INFORMATION**

#### **20. *How do I get more information?***

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and reimbursement of expenses, and the Class Representative's request for a service award, and the operative complaint filed in the Action, please visit: [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com). Alternatively, you may view the complete file at the Clerk of the Court's office at 247 West Third Street, San Bernardino, CA 92415. The Clerk will tell you how to obtain the file for inspection and copying at your own expense. Please note that the description of this Action is general and does not cover all of the issues and proceedings that have occurred.

**21. *What if my address or other information has changed or changes after I submit a Claim Form?***

It is your responsibility to inform the Claims Administrator of your updated information. You may do so at the address below:

Town of Apple Valley Trash Settlement  
P.O. Box 7208  
Orange, CA 92867

\*\*\*\*

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE, DEFENDANT, OR DEFENDANT'S COUNSEL.**



**EXHIBIT D**  
**PUBLICATION NOTICE**

**TO ALL PERSONS WHO, BETWEEN JULY 24, 2016 AND [PRELIMINARY APPROVAL DATE], HAD A SOLID WASTE/RECYCLING ACCOUNT WITH THE TOWN OF APPLE VALLEY, A LEGAL SETTLEMENT WILL AFFECT YOUR RIGHTS.**

**What is the purpose of this notice?** A settlement ("Settlement") has been proposed in a class action lawsuit pending in the San Bernardino County Superior Court ("Court") titled *Christina Lopez-Burton v. Town of Apple Valley*. ("Action"). The purpose of this notice is to inform you of the Action and the Settlement so that you may decide what steps to take in relation to it.

**What is the Action about?** Plaintiff Christina Lopez-Burton alleges that the Town of Apple Valley's (the "Town's") rates for solid waste (trash)/recycling violate California Constitution article XIII D, because the rates include amounts that cannot be legally charged for solid waste/recycling fees. The Town denies wrongdoing and liability and both sides disagree on how much, if anything, the Class could have recovered after trial. **No court has decided which side is right. But both sides agreed to provide benefits to Town solid waste/recycling customers and resolve the case.**

**Am I a Class Member?** You are a "Class Member" if you fall into the following definition:

**The Class:** All persons (which includes entities such as firms, companies, corporations, associations, and public entities) who, between July 24, 2016 and [PRELIMINARY APPROVAL DATE], were Account Holders, but excluding (a) any officer or council member of the Town; (b) any judge assigned to hear this case; and (c) persons who timely and properly exclude themselves from the Class as provided in this Agreement.

An Account Holder is a person or entity (i.e. business) that held a solid waste/recycling account in the Town of Apple Valley.

**What relief does the Settlement provide?** The Town has agreed to fund a Common Fund in the gross amount of Three Million One Hundred Fifty Thousand and no cents (\$3,150,000.00) that will be used to pay all fees and costs approved by the Court, and the remainder of which will be automatically distributed through monthly bill credits to current trash/solid waste customers as of [Exclusion Deadline]. Former solid waste/recycling customers who no longer hold an account as of [Exclusion Deadline] can submit a claim to obtain a refund of a portion of the fees they paid during the Class Period, which will also be paid from the Common Fund.

If you are a former customers and wish to receive a refund, you must submit a claim form which you may obtain at [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com), or by contacting the Claims Administrator at (800) 523-5773 or Town of Apple Valley Trash Settlement, P.O. Box 7208 Orange, CA 92867. The deadline to submit a Claim Form is [Exclusion Deadline].

**What are my other options?** If you don't want to be legally bound by the Settlement, you must exclude yourself by [Exclusion Deadline] or you won't be able to sue the Town about the legal claims in the Action ever again. If you exclude yourself, you cannot receive any credits or a refund from this Settlement. If you stay in the Settlement, you may object to it by [Exclusion Deadline]. A detailed notice available at [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com) explains how to request exclusion or object. The Court will hold a hearing on \_\_\_\_\_ at \_\_\_\_\_ to consider whether to approve the Settlement and a request by the attorneys representing all Class Members (Eric J. Benink, Esq. of Benink & Slavens, LLP. and Prescott Littlefield, Esq. of Kearney Littlefield, LLP) for \$1,050,000 in attorneys' fees and \$12,993.47 in reimbursement of expenses, and for the class representative's request for \$5,000 as a service award. These amounts shall be paid from the Common Fund. You may ask to appear at the hearing, but you don't have to.

**More information?** For further information about the Settlement, to view the Settlement Agreement and related court documents, and to learn more about how to exercise your various options under the Settlement, including objecting and opting-out, visit [www.AVTrashSettlement.com](http://www.AVTrashSettlement.com). You may also contact the Claims Administrator at (800) 523-5773 or Town of Apple Valley Trash Settlement, P.O. Box 7208 Orange, CA 92867.

**EXHIBIT E**  
**FINAL ORDER AND FINAL JUDGMENT**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Case No.: CIVDS1725027

11  
12  
13  
14  
15  
16  
17  
18

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL OF SETTLEMENT AND  
AWARDING ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES, AND  
SERVICE AWARD**

14

DATE:  
TIME:  
DEPT:

17  
18  
19

20  
21  
22  
23  
24  
25

26  
27  
28

proper objections, and good cause appearing thereon, the Court makes the following findings and determinations, and ORDERS as follows:

1. Unless otherwise defined herein, all capitalized words and terms contained in this Order shall have the same meanings as set forth in the Class Action Settlement Agreement and filed on XXXXX (the "Settlement Agreement") (Section II, *Definitions* ¶¶ 2.1.1-2.1.33).

2. The Court has continuing and exclusive jurisdiction over the Settlement and all Parties hereto for the purpose of construing, enforcing and administering the Settlement Agreement.

3. The Court finally certifies, pursuant to California Code of Civil Procedure section 382, the following Settlement Class:

All persons (which includes entities such as firms, companies, corporations, associations, and public entities) who, between July 24, 2016 and the date this Order is entered, were Account Holders, but excluding (a) any officer or council member of the Town; (b) any judge assigned to hear this case; and (c) persons who timely and properly exclude themselves from the Class as provided in this Agreement.

4. Plaintiff Christina Lopez-Burton is certified as the class representative. Eric J. Benink, Esq. of Benink & Slavens, LLP and Prescott Littlefield, Esq. of Kearney Littlefield, LLP are appointed as Class Counsel. The Court finds Plaintiff and Class Counsel fairly and adequately protected the interests of the Class.

5. With respect to the Settlement Class, the Court finds that: (a) the members of the Settlement Class are so numerous that their joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class; and (d) for purposes of settlement, a class action is superior to other available methods for the fair and efficient adjudication of the controversy considering: (i) the interest of the Settlement Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by the Settlement Class, (iii) the desirability or understandability of concentrating the litigation of these claims in the particular forum, and (iv) the difficulties likely to be encountered in the management of the action.

1           6.       Class Notice to the Settlement Class was provided in accordance with the Preliminary  
2 Approval Order and satisfied the requirements of due process, California Code of Civil Procedure  
3 section 382 and Rule 3.766 of the California Rules of Court and (a) provided the best notice  
4 practicable, and (b) was reasonably calculated under the circumstances to apprise Settlement Class  
5 Members of the pendency of the Action, the terms of the Settlement, their right to appear at the  
6 Fairness Hearing, their right to object to the Settlement, and their right to exclude themselves from the  
7 Settlement.

8           7.       The objections to the Settlement and the objections to the Fee Motion are without  
9 merit and are overruled.

10          8.       The Settlement Agreement was arrived at following serious, informed, adversarial,  
11 and arm's length negotiations conducted in good faith by counsel for the parties facilitated by an  
12 experienced mediator and is supported by the majority of the members of the Settlement Class. This  
13 Court hereby finally approves the Settlement as fair, adequate, reasonable, and in the best interests of  
14 the Settlement Class.

15          9.       Upon the Effective Date of this Order, in consideration for the Settlement, Plaintiff  
16 and each Class Member, on behalf of themselves and their heirs, executors, administrators,  
17 assigns, agents, servants, representatives, predecessors, and successors (hereafter collectively  
18 "Releasors") fully release and discharge the Town and all of its employees, council members,  
19 officers, and agents ("Releasees") from all rights, claims, and actions they and any of the  
20 Releasors now have, or may have in the future, against the Releasees arising out of, or relating to,  
21 the facts and circumstances giving rise to the Lawsuit or Claim, or arising out of, or relating to,  
22 claims that the rates, fees and charges adopted via through Resolution No. 2014-33 violate  
23 Proposition 218 and/or Proposition 26. For the sake of clarity, this release does not extend to  
24 trash and recycling rates, fees, and charges that the Town adopts in the future.

25           Except as otherwise provided in the Agreement, the release contained herein and made by  
26 the Agreement is full and complete, and Plaintiff and each Class Member specifically agrees to  
27 waive the provisions of Civil Code § 1542 which provides that:

28 ///

**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.**

10. Persons who timely and properly excluded themselves, as set forth in Exhibit A, attached hereto, are not Class Members and not bound by this Final Order or by the Final Judgment or the Release.

11. For the reasons set forth in their application for attorneys' fees and reimbursement of expenses, the Court hereby awards Class Counsel attorneys' fees in the amount of \$\_\_\_\_\_ and reimbursement of expenses in the amount of \$\_\_\_\_\_. For the reasons set forth in the Class Representative's request for a service award, the Court hereby awards her \$\_\_\_\_\_ as a service award. The foregoing sums shall be paid from the Common Fund in accordance with the Settlement Agreement.

12. The Parties are authorized and ordered to implement the terms of the Settlement Agreement.

13. The Class Administrator shall post this Order and Final Judgment on the settlement website, [AVTrashSettlement.com](http://AVTrashSettlement.com), forthwith.

14. The Parties shall notify the Court as to how Common Fund monies have been and are being distributed beginning on a date that falls 180 days after the Effective Date, and then 180 days thereafter until all monies in the Common Fund have been distributed pursuant to the terms of the Settlement Agreement.

15. The Court approves the Claims Administrator's fees associated with the administering the Settlement in the amount of \$\_\_\_\_\_. The foregoing sum shall be paid from the Common Fund in accordance with the Settlement Agreement.

**IT IS SO ORDERED.**

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

JUDGE OF THE SUPERIOR COURT

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

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No.: CIVDS1725027

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

**[PROPOSED] FINAL JUDGMENT**

DATE:  
TIME:  
DEPT:

Whereas, this matter came before the Court for hearing on \_\_\_\_\_ (month) \_\_\_\_  
(day), 2019 (“Fairness Hearing”) in accordance with this Court’s xxxx, 2019 Order Preliminarily  
Approving Class Action Settlement, Provisionally Certifying Settlement Class, and Directing  
Notice to Class Order Granting and on Plaintiff Christina Lopez-Burton’s (“Plaintiff’s”) motion for  
final approval of class settlement (“Final Approval Motion”) and motion for award of attorneys’  
fees and reimbursement of expenses and payment of service award (“Fee Motion”).

Whereas, having considered all papers filed in this action, oral arguments of counsel in this  
action and those person appearing at the Fairness Hearing, and otherwise being fully informed, and good  
cause appearing thereon,



1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

2 1. Unless otherwise defined herein, all capitalized words and terms contained in this  
3 Order shall have the same meanings as set forth in the Class Action Settlement Agreement and filed  
4 on XXXXX (the "Settlement Agreement") (Section II, *Definitions* ¶¶ 2.1.1-2.1.33).

5 2. This Court has jurisdiction over the subject matter of the Action, this litigation, and  
6 over all Parties to the Action, including all Settlement Class Members.

7 3. The Settlement Class is hereby certified pursuant to California Code of Civil  
8 Procedure Section 382 as follows:

9  
10 All persons (which includes entities such as firms, companies, corporations,  
11 associations, and public entities) who, between July 24, 2016 and the date this  
12 Order is entered, were Account Holders, but excluding (a) any officer or council  
13 member of the Town; (b) any judge assigned to hear this case; and (c) persons who  
timely and properly exclude themselves from the Class as provided in this  
Agreement.

14 4. Persons who timely and properly excluded themselves, as set forth in Exhibit A,  
15 attached hereto, are not Class Members and not bound by this Final Judgment.

16 5. This Court hereby enters Judgment in accordance with, and subject to, the terms set  
17 forth in the Order Granting Final Approval of Settlement, and the Representative Plaintiff and the  
18 Class Members shall take nothing except as provided in the Settlement.

19 6. The Parties shall take all steps necessary and appropriate to provide Class Members  
20 with the benefits to which they are entitled under the terms of the Settlement and pursuant to the  
21 Orders of the Court.

22 7. The Court hereby approves the Settlement and finds that it is, in all respects, fair,  
23 reasonable, and adequate to the Settlement Class.

24 8. The Court finds that the Settlement is fair and equitable to the Settlement Class  
25 Representative Plaintiff, Settlement Class Members and Defendants, and the parties to the Settlement  
26 are hereby directed to perform its terms

27 9. Upon the Effective Date of the Settlement, each and every released claim of each and  
28 every Settlement Class Member and the Class Representative are and shall be deemed to be

1 conclusively released as against the Releasees, pursuant to the terms and conditions of the Release as  
2 set forth in paragraph 10 of the Settlement Agreement.

3 10. The Class Notices disseminated pursuant to paragraph 7 of the Settlement Agreement  
4 and by this Court's Order Preliminarily Approving Settlement on XXXXX was the best notice  
5 practicable under the circumstances. The Class Notice provided due and adequate notice of those  
6 proceedings and of the matters set forth therein, including the proposed Settlement, to all Persons  
7 entitled to such notice, and the Class Notice fully satisfied the requirements of California law and the  
8 requirements of due process.

9 11. The Class Representative shall be awarded \$ \_\_\_\_\_ as a service award in  
10 her capacity as the Representative Plaintiff in the Action. Such funds shall be paid from the Common  
11 Fund in accordance with the Settlement Agreement.

12 12. Class Counsel shall be awarded \$ \_\_\_\_\_ in attorneys' fees and  
13 \$ \_\_\_\_\_ in expenses, which amount is approved as fair and reasonable, in  
14 accordance with the terms of the Settlement. Such sums shall be paid from the Common Fund in  
15 accordance with the Settlement Agreement.

16 13. The Claims Administrator's fees associated with the administering the Settlement in  
17 the amount of \$ \_\_\_\_\_ are approved. The foregoing sum shall be paid from the  
18 Common Fund in accordance with the Settlement Agreement.

19 14. Pursuant to California Code of Civil Procedure section 664.6 and Rule 3.769(h) of the  
20 California Rules of Court, the Court reserves exclusive and continuing jurisdiction over this Action,  
21 the Plaintiff, the Class Members, and Defendant for purposes of administering, consummating,  
22 enforcing, and interpreting the Settlement Agreement, the Final Judgment, and for any other  
23 necessary purpose, and to issue related orders necessary to effectuate the final approval of the  
24 Settlement Agreement.

25 ///

26 ///

27 ///

28 ///

1           15.     This document shall constitute a Judgment for purposes of California Rule of Court  
2 3.769(h). The Court is directed to enter this Final Judgment forthwith.

3  
4 **IT IS SO ORDERED.**

5  
6  
7 DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

**EXHIBIT F**  
**OBJECTION FORM**

## OBJECTION FORM

*Lopez-Burton, et. al. v. Town of Apple Valley*  
Case No. CIVDS1725027

**MUST BE POSTMARKED BY XXXXXX**  
**AND SENT TO EACH OF THE FOLLOWING**

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court Superior Court of the State of California, County of San Bernardino Department S26 247 West Third Street San Bernardino, California 92415	BENINK & SLAVENS, LLP Eric J. Benink, Esq. 550 West C Street, Suite 530 San Diego, California 92101	BEST BEST & KRIEGER, LLP Richard Egger, Esq. 2855 E. Guasti Road Suite 400 Ontario, CA 91761

**NAME:**

\_\_\_\_\_

**MAILING ADDRESS:**

\_\_\_\_\_  
(Where you wish to be contacted.)

**PHONE NUMBER:**

\_\_\_\_\_  
(Optional)

**EMAIL ADDRESS:**

\_\_\_\_\_  
(Optional)

**PROPERTY ADDRESS:**

\_\_\_\_\_  
(Where you received trash / recycling services.)

**DO YOU INTEND TO APPEAR AT THE FAIRNESS HEARING?**

\_\_\_\_\_

**OBJECTION(S) INCLUDING LEGAL AUTHORITY:**

---

---

---

---

**ATTACH PAGES IF NECESSARY. YOU MAY SUBMIT ANY EVIDENCE IN SUPPORT OF YOUR OBJECTION AS WELL.**

**MY ATTORNEY AND/OR I HAVE OBJECTED TO THE FOLLOWING CLASS ACTIONS DURING THE PAST FIVE YEARS (State name of case and court where case was pending.)**

---

---

---

*(Date)*

---

*(Signature)*

**EXHIBIT G**  
**Opt-Out Form**

**REQUEST FOR EXCLUSION**

***Lopez-Burton, et. al. v. Town of Apple Valley***  
**Case No. CIVDS1725027**

**MUST BE POSTMARKED BY XXXXXX**  
**AND SENT TO THE FOLLOWING**

**Eric J. Benink, Esq.**  
**Benink & Slavens, LLP**  
**550 West C Street, Suite 530**  
**San Diego, CA 92101**  
**Class Counsel**

**NAME:** \_\_\_\_\_

**MAILING ADDRESS:**

\_\_\_\_\_  
(Where you wish to be contacted.)

**PROPERTY ADDRESS:**

\_\_\_\_\_  
Where I received solid waste / recycling services in the Town of Apple Valley

I wish to be excluded from the Class and do not wish to participate in the Settlement in the above-referenced case. I understand that I will not receive any Settlement benefits nor will I be bound by the terms of the Settlement.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)



**EXHIBIT H**  
**CLAIM FORM**

**CLAIM FORM**

***Lopez-Burton, et. al. v. Town of Apple Valley***  
**Case No. CIVDS1725027**

**MUST BE POSTMARKED BY XXXXXX**  
**AND SENT TO:**

**TOWN OF APPLE VALLEY TRASH SETTLEMENT**  
**P.O. BOX 7208**  
**ORANGE, CA 92867**

**PERSONAL INFORMATION.** Please legibly print or type the following information requested below. *This information will be used to deliver your refund check and communicate with you if any problems arise with your claim.*

Name (first, middle, and last): \_\_\_\_\_

Current Mailing Street Address: \_\_\_\_\_

City, State, and ZIP code: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone Number: (\_\_\_\_\_) \_\_\_\_\_

Account Number (if known) \_\_\_\_\_

**CONFIRMATION OF ELIGIBILITY FOR REFUND.**

- ☐ I declare that I was a customer of the Town of Apple Valley's solid waste/recycling service between the dates of July 24, 2016 and [Exclusion Deadline], and that I will no longer be a customer of Apple Valley's solid waste/recycling service as of [Exclusion Deadline]

My service address where I received solid waste / recycling service  
was: \_\_\_\_\_

*The Claims Administrator and/or the Town will verify your claim.*

**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.**

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_