

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 16 2019

BY 
ERIN MUELLER, DEPUTY

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*

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

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

On October 16, 2019, this Court conducted a Fairness Hearing in accordance with its July 23, 2019 Order Preliminarily Approving Class Action Settlement, Provisionally Certifying Settlement Class, and Directing Notice to Class, and heard Petitioner and 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").

Upon reviewing the Final Approval Motion and Fee Motion, and supporting papers and declarations, including the pleadings filed in support of the Motion for Preliminary Approval of Class Action Settlement, and having reviewed and considered the Settlement Agreement; having received no

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

3 1. Unless otherwise defined herein, all capitalized words and terms contained in this
4 Order shall have the same meanings as set forth in the Class Action Settlement Agreement and filed on
5 September 9, 2019 as Exhibit 1 to the Declaration of Eric J. Benink in Support of Petitioner and
6 Plaintiff Christina Lopez-Burton's Motion For Final Approval Of Class Action Settlement (the
7 "Settlement Agreement") (Section II, *Definitions* ¶¶ 2.1.1-2.1.33).

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

10 3. The Court finally certifies, pursuant to California Code of Civil Procedure section
11 382, the following Settlement Class:

12 All persons (which includes entities such as firms, companies, corporations,
13 associations, and public entities) who, between July 24, 2016 and July 23, 2019,
14 were Account Holders, but excluding (a) any officer or council member of the
15 Town; (b) any judge assigned to hear this case; and (c) persons who timely and
properly exclude themselves from the Class as provided in the Agreement.

16 An "Account Holder" means those persons and entities who hold a solid waste /
17 recycling account in the Town of Apple Valley.

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

22 5. With respect to the Settlement Class, the Court finds that: (a) the members of the
23 Settlement Class are so numerous that their joinder is impracticable; (b) there are questions of law and
24 fact common to the Settlement Class which predominate over any individual questions; (c) the claims
25 of the Settlement Class Representatives are typical of the claims of the Settlement Class; and (d) a
26 class action is superior to other available methods for the fair and efficient adjudication of the
27 controversy considering: (i) the interest of the Settlement Class in individually controlling the
28 prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the

1 controversy already commenced by the Settlement Class, (iii) the desirability or understandability of
2 concentrating the litigation of these claims in the particular forum, and (iv) the
3 difficulties likely to be encountered in the management of the action.

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

11 7. No Settlement Class member served an objection to the Settlement or to the Fee
12 Motion.

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

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

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

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

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

11 11. For the reasons set forth in their application for attorneys' fees and reimbursement of
12 expenses, the Court hereby awards Class Counsel attorneys' fees in the amount of \$1,050,000 and
13 reimbursement of expenses in the amount of \$12,994. For the reasons set forth in the Class
14 Representative's request for a service award, the Court hereby awards her \$5,000 as a service award.
15 The foregoing sums shall be paid from the Common Fund in accordance with the Settlement
16 Agreement.

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

19 13. The Class Administrator shall post this Order and Final Judgment on the settlement
20 website, AVTrashSettlement.com, forthwith.

21 14. The Parties shall notify the Court as to how Common Fund monies have been ~~and are~~
22 *no longer monies 7/16/20* being distributed ~~beginning on a date that falls 180 days after the Effective Date, and then 180 days~~
23 ~~thereafter until all monies in the Common Fund have been distributed pursuant to the terms of the~~
24 Settlement Agreement.

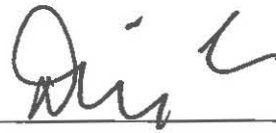
25 15. The Court approves the Claims Administrator's fees associated with the administering
26 the Settlement in the amount of \$4,300. The foregoing sum shall be paid from the Common Fund in
27 accordance with the Settlement Agreement.

1 16. The Court approves the Town's request for reimbursement of the publication costs in
2 the amount of \$1,030.24. The foregoing sum shall be paid from the Common Fund in accordance with
3 the Settlement Agreement.

4 **IT IS SO ORDERED.**

5
6 DATED: _____

7/16/15



Hon. David S. Cohn
JUDGE OF THE SUPERIOR COURT

EXHIBIT A
PERSONS EXCLUDED FROM CLASS

Elena Villegas

Sandra Thomas