

1 Beau R. Burbidge (SBN 267267)
2 WALKER, HAMILTON & KEARNS, LLP
3 50 Francisco Street, Ste. 460
4 San Francisco, CA 94133
5 Telephone: (415) 986-3339
6 Facsimile: (415) 986-1618
7 Email: beau@whk-law.com

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 2/21/2023
By /s/ Vanessa Jimenez
Deputy Clerk

8 Attorneys for Plaintiffs and Petitioners

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SAN MATEO**

11 BRAD BARUH, KATHY BARUH,
12 CHARLES BOLTON, ELDRIDGE GRAY,
13 JOHN LOCKTON, DAVID MARQUARDT,
14 PAUL ROCHESTER, ARTHUR
15 STROMBERG, CHARLES SYERS,
16 individually and on behalf of all others
17 similarly situated,

18 Plaintiffs and Petitioners,

19 v.

20 TOWN OF HILLSBOROUGH and DOES 1-
21 100, inclusive,

22 Defendants and Respondents.

Case No. 16CIV02284

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARD**

Date: March 20, 2023

Time: 3:00 p.m.

Dept.: Hon. V. Raymond Swope

Dept. 23

TABLE OF CONTENTS

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

I. INTRODUCTION..... 1

II. THE SETTLEMENT FUND..... 1

III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE..... 2

A. The Percentage-of-Benefit Method Supports an Approximately One-Third Fee..... 2

B. A Lodestar-Cross-Check Supports A One-Third Fee Without Any Multiplier. 4

IV. REQUEST FOR REIMBURSEMENT OF EXPENSES IS REASONABLE..... 10

V. SERVICE AWARDS FOR PLAINTIFFS ARE REASONABLE 10

VI. CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases

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

also Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43 3

also Nemecek & Cole v. Horn (2012) 208 Cal.App.4th 641 7

Apple Computer, Inc. v. Superior Court (2005) 126 Cal.App.4th 1253 2

Brinker v. Normandin’s, Case No. 14-cv-03007-EJD, 2017 WL 713554, at *2 (N.D. Cal. Feb. 23, 2017)..... 7

Building a Better Redondo Beach, Inc. v. City of Redondo Beach (2012) 203 Cal.App.4th 852 8

Carlotti v. ASUS Computer Int’l, No. 18-cv-03369-DMR, 2020 WL 3414653, at *5 (N.D. Cal. June 22, 2020) 7

Cates v. Chiang (2013) 213 Cal.App.4th 791 9

Children’s Hosp. & Med. Ctr. v. Bontá (2002) 97 Cal.App.4th 740 6

Flannery v. California Highway Patrol (1998) 61 Cal.App.4th 629 6

Franchek v. Workrite Ergonomics, LLC, No. 16CV02789JSWDMR, 2022 WL 3137928, at *4 (N.D. Cal. May 9, 2022)..... 7

Friends of “B” Street v. City of Hayward (1980) 106 Cal.App.3d 988..... 2

Golba v. Dick’s Sporting Goods, Inc. (2015) 238 Cal.App.4th 1251 2

In re Cellphone Fee Termination Cases (2010) 186 Cal.App.4th 1380 10, 11

In re HPL Technologies, Inc. Securities Lit. 366 F.Supp.2d 912, 921 (N.D. Cal. 2005)..... 7, 8

In re Vitamin Cases, No. 301803, 2004 WL 5137597, at *16 (Cal. Super. Ct. Apr. 12, 2004) 10

In re Warner Communications Securities Litigation (S.D.N.Y.1985) 618 F.Supp. 735, aff’d 798 F.2d 35 (2d Cir.1986) 10

In re Wells Fargo & Co. Shareholder Derivative Litig., 445 F.Supp.3d 508, 527 & n.10 (N.D. Cal. 2020)..... 7

Ketchum v. Moses (2001) 24 Cal.4th 1122 6, 8

Laffitte v. Robert Half Intern. Inc. (2016) 1 Cal.5th 480 2, 3, 4, 8

Loretz v. Regal Stone, Ltd., 756 F.Supp.2d 1203 7

MBNA America Bank, N.A. v. Gorman (2006) 147 Cal.App.4th Supp. 1 6

Natural Gas Anti-Trust Cases, I, II, III & IV (Cal. Super. Ct Dec. 11, 2006) No 4221, 4228, 4224, 4226, 2006 WL 5377849 9

Press v. Lucky Stores, Inc. (1983) 34 Cal.3d. 311 8

1	<i>Rade v. Thrasher</i> (1962) 57 Cal.2d 244	8
2	<i>Robbins v. Alibrandi</i> (2005) 127 Cal.App.4th 438	8
3	<i>Rodriquez v. West Publishing Corp.</i> (9th Cir. 2009) 563 F.3d 948	11
4	<i>Russell v. Foglio</i> (2008) 160 Cal.App.4th 653.....	8
5	<i>Salton Bay Marina, Inc. v. Imperial Irrig. Dist.</i> (1985) 172 Cal.App.3d 914	9
6	<i>Serrano v. Priest</i> (1977) 20 Cal.3d. 25	8
7	<i>Syers Properties III, Inc. v. Rankin</i> (2014) 226 Cal.App.4th 691	6, 7
8	<i>Utility Reform Network v. PUC</i> (2008) 166 Cal.App.4th 522	8
9	<i>Vasquez v. Libre by Nexus, Inc.</i> , No. 17-CV-00755 CW, 2023 WL 360242, at *13 (N.D. Cal. Jan. 23, 2023).....	7
10	<i>Wershba v. Apple Computer</i> (2001) 91 Cal.App.4th 224	9
11	<i>Woodland Hills Residents Assn., Inc. v. City Council</i> (1979) 23 Cal.3d at p. 945	2
12	<u>Treatises</u>	
13	Conte, Attorney Fee Awards, § 2.08 at 50-51 (2d ed.1977)	10
14	Pearl, Cal. Attorney Fee Awards, (Cont.Ed.Bar 3d ed. (Mar.2014 updated), § 9.114.....	6
15	Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2009) ¶ 14:146.10.....	11
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 This motion is filed in conjunction with Plaintiffs’ Motion for Final Approval of
3 Settlement. In the supporting papers for that motion, an overview of the case, comprehensive
4 chronology of the litigation, and review of the settlement is provided for the Court’s review, and
5 that discussion is also incorporated here. By this motion, Plaintiffs respectfully move this Court
6 for an award of attorneys’ fees of \$400,000, reimbursement of expenses of \$10,982.09 to Class
7 Counsel, and for service awards for Plaintiffs as follows: \$8,000.00 to John Lockton, \$8,000.00 to
8 David Marquardt, \$5,000.00 to Charles Syers, \$5,000.00 to Charles Bolton, and \$5,000.00 to Paul
9 Rochester. The foregoing shall be paid from the Settlement Fund in accordance with the
10 Settlement Agreement. As explained herein, the attorneys’ fees sought are appropriate under the
11 prevailing percentage of fund method of awarding attorneys’ fees. The requested fee is further
12 supported by a cross-check using the lodestar-multiplier method. The expenses were reasonably
13 incurred in the prosecution of this case; and the service awards are reasonable in light of Plaintiffs’
14 participation in this case through its long six-year course.

15 **II. THE SETTLEMENT FUND**

16 The Settlement in this case established a Settlement Fund in the amount of \$1,229,329,
17 funded by Defendant Town of Hillsborough (the “Town”). This fund consists of \$779,329.00
18 designated to customer refunds (based on opt-outs received, the amount of refunds will be
19 \$771,386.38, with the remaining \$7,942.62 of unpaid refunds going towards the fund for the fund
20 for the *cy pres* recipient) and an additional \$450,000.00 for Plaintiffs’ attorneys’ fees, costs, and
21 Class Representative Service awards as may be awarded by the Court. (*See* Burbidge Decl., Exh.
22 1 (Settlement Agreement (“SA”), ¶¶ 6.2, 13-14).) This additional payment by the Town
23 represents a true benefit of the Settlement. Rather than attorneys’ fees being deducted from the
24 total settlement fund, and thus reducing customers’ refunds, those fees and costs are being paid in
25 addition to and on top of full refunds for customers. Additionally, there is no residual that will go
26 back to the Town—any unclaimed and/or unpaid funds will go to a *cy pres* recipient to be
27 approved by the Court.

28 ///

1 **III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE**

2 Class Counsel seeks an award of attorney's fees of \$400,000.00, which is just less than
3 one-third the Settlement Fund (32.54%, to be precise). There are two recognized approaches to
4 awarding fees: the percentage-of-benefit and the lodestar-multiplier method. No matter which
5 method is used, " '[t]he ultimate goal ... is the award of a 'reasonable' fee to compensate counsel
6 for their efforts, irrespective of the method of calculation.' [Citations.]" *Apple Computer, Inc. v.*
7 *Superior Court* (2005) 126 Cal.App.4th 1253, 1270. The amount of fees to be awarded is within
8 the trial court's discretion and the value of legal services performed is a matter in which the court
9 has its own expertise. *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1270.
10 As explained below, an award of \$400,000 is appropriate under either the percentage-of-benefit or
11 the lodestar method.

12 **A. The Percentage-of-Benefit Method Supports an Approximately One-Third**
13 **Fee.**

14 Where, as here, Plaintiffs' lawsuit has conferred substantial direct benefits on a class of
15 persons, the Court should endeavor to award fees in "an amount reasonably related to the benefits
16 conferred by the litigation." *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d
17 988, 996; *see also Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d at p. 945
18 ("[s]o long as the costs [i.e. fees] bear a reasonable relation to the benefits, the 'involuntary client'
19 who retains a substantial gain from the litigation will generally have no just cause to complain.").
20 As such, a court may award attorneys' fees on a percentage of the benefit basis, which more
21 accurately ties the amount awarded to the value of benefits conferred. Although counsel's lodestar
22 may be used to cross-check the amount awarded, a court may in its discretion rely solely on the
23 percentage of the benefit method to award attorneys' fees in a class action. *See Laffitte v. Robert*
24 *Half Intern. Inc.* (2016) 1 Cal.5th 480, 503 ("when class action litigation establishes a monetary
25 fund for the benefit of class members, and the trial court in its equitable powers awards class
26 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing
27 an appropriate percentage of the fund created."). The Supreme Court emphasized that, while it
28 makes sense for a trial court to cross-check the percentage of the fund award against the attorneys'

1 lodestar, the lodestar method “does not override the trial court’s primary determination of the fee
2 as a percentage of the common fund and thus does not impose an absolute maximum or minimum
3 on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at p. 505. The Supreme Court further
4 explained that the advantages of the percentage of the recovery method – including the relative
5 ease of calculation, alignment of incentives between counsel and the benefiting class, and better
6 approximation of market conditions in a contingency case – make the percentage method a
7 “valuable tool.” *Id.* at 503. The amount requested here, approximately 33% of the Settlement
8 Fund, is reasonable and consistent with awards in similar cases. Indeed, in representative actions,
9 such as this, attorneys’ fees are regularly awarded in the range of 33% of the benefit conferred.
10 For example, in *Laffitte*, the Supreme Court affirmed a fee equal to 33% of the settlement fund.
11 *Id.* at 485; *see also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 (noting
12 “[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is
13 used, fee awards in class actions average around one-third of the recovery”).¹

14 Here, as fully discussed in Plaintiff’s Motion for Final Approval of Class Action
15 Settlement, there has been great success in providing notice to Class Members and there have been
16 very few opt-outs from the Class. Thus, the vast majority of the refunds negotiated by the
17 settlement will be paid to Class Members (99.45%). This is a highly successful Settlement that
18 will benefit the overwhelming majority of Class Members. An award representing approximately
19 33% of the Settlement Fund is appropriate.

20 ///

21 _____

22 ¹ This has been the case in other Proposition 218 litigation as well. *See Lopez-Burton v.*
23 *Town of Apple Valley*, San Bernardino Superior Court, Case No. CIVDS1725027, Court Order of
24 October 16, 2019, granting Final Approval of Settlement and awarding counsel fees of
25 \$1,050,000, one-third of the common fund. A non-exhaustive list of other cases awarding a
26 percentage of the common fund of one-third or more include: *Ethridge v. Universal Health Servs.*,
27 L.A. Cty. Super. Ct. (“LASC”) No. BC391958 (33% award); *Magee v. Am. Residential Servs.*
28 *LLC*, (LASC No. BC423798 (33% award); *Blue v. Coldwell Banker Residential Brokerage Co.*,
LASC No. BC417335 (33% award); *Silva v. Catholic Mortuary Servs., Inc.*, LASC No.
BC408054 (33% award); *Mares v. BFS Retail & Comm. Operations LLC*, LASC No. BC375967
(33% award); *Blair v. Jo-Ann Stores, Inc.*, LASC No. BC394795 (33% award); *Kenemixay v.*
Nordstroms, Inc., LASC No. BC318850 (50% award); *Barrett v. The St. John Companies*, LASC
No. BC354278 (33% award); *Clymer and Benton v. Candle Acquisition Co.*, LASC No.
BC328765 (33% award).

1 **B. A Lodestar-Cross-Check Supports A One-Third Fee Without Any Multiplier.**

2 Applying the lodestar cross-check on the requested attorneys’ fee confirms that the amount
3 of the fee is eminently reasonable, if not outright low. Under the lodestar-multiplier method the
4 fee is calculated “by multiplying the number of hours reasonably expended by counsel by a
5 reasonable hourly rate” and then increasing or decreasing that amount by applying a positive or
6 negative multiplier “to take into account a variety of other factors, including the quality of the
7 representation, the novelty and complexity of the issues, the results obtained, and the contingent
8 risk presented.” *Laffitte, supra*, 1 Cal.5th at p. 489. The Court can then cross-check the fee
9 amount to determine whether, under the prevailing percentage of the fund method, the requested
10 attorneys’ fee is not out of the bounds of reason. As explained below, the requested fee amount of
11 approximately 33% of the Settlement Fund is eminently reasonable when cross-checked using the
12 lodestar multiplier analysis.

13 Here, lead class counsel Beau R. Burbidge has maintained contemporaneous time records
14 and has only entered time necessary to successfully prosecute the case. (Declaration of Beau R.
15 Burbidge, filed herewith, ¶ 37, **Exh. 6**.) Additionally, Mr. Burbidge and other class counsel
16 Walter H Walker, III, and Peter J. Koenig, have expended significant amounts of time in
17 prosecution of this case that has not been entered into the time records. As plaintiffs’ attorneys
18 who do not commonly have to track time, much of the time spent on this case went unrecorded.
19 This unrecorded time is nevertheless estimated to be over 100 hours of work. (Burbidge Decl., ¶
20 38.)

21 Counting just the recorded time, the attorneys have spent 864.1 hours prosecuting this
22 action through the present date and estimate they will expend at least another 25 hours preparing
23 for and attending the fairness hearing, coordinating with the Claims Administrator and the Town
24 regarding the distribution of funds, and filing distribution confirmation paperwork with the Court.
25 (Burbidge Decl., ¶ 39.) Thus, the total anticipated time spent on this matter, excluding preparation
26 of this application for attorney’s fees, is expected to total 889.1 hours (864.1 + 25 = 889.1).
27 Attorney Burbidge has submitted his time records as **Exhibit 6** to his declaration. (Burbidge
28 Decl., ¶ 37, **Ex. 6**.)

1 The work sought to be compensated includes, but is not limited to: reviewing and
 2 analyzing the Town’s rate structure, resolutions and regulations, preparing the writ petition;
 3 assisting in the determining the scope of the Town’s administrative record and then reviewing an
 4 analyzing the many volumes and many thousands of pages of that record; preparing and serving
 5 written discovery; preparing an opening brief on the writ petition and reviewing and analyzing the
 6 Town’s opposition brief; revising and expanding the briefing on liability to include argument on
 7 remedies; drafting and revising briefing on the motion for class certification, reviewing the
 8 opposition brief to the motion, preparing a reply brief, attending the hearing on class certification,
 9 preparing supplemental briefing on class certification, and revising and editing the proposed order
 10 on class certification; preparing a settlement conference brief and then a mediation brief, and
 11 attending both a mandatory settlement conference and a mediation; negotiating and corresponding
 12 with Town’s counsel on various settlement issues; preparing numerous drafts of the settlement
 13 agreement and exhibits; preparing a motion for preliminary approval of settlement; attending a
 14 preliminarily approval hearing; coordinating the implementation of notice program; drafting
 15 motion for final approval; and retaining and coordinating with the claims administrator. These
 16 hours do not include time spent preparing this attorney’s fee motion. (Burbidge Decl., ¶¶ 4-21,
 17 40.)

18 As this litigation is now in its sixth year, Class Counsel seeks a blended hourly rate of
 19 \$450 for the first several years of this litigation and a rate of \$500 for the latter years. (Burbidge
 20 Decl., ¶ 41.) This reflects changes in counsel’s billing rate, which has risen over time. At these
 21 blended rates, the total lodestar is calculated as follows:

Time Period	Hourly Rate	Hours Expended	Total Amount
2016 - 2018	\$450	327.3	\$147,285.00
2019 – Present	\$500	536.8	\$268,400.00
To be Incurred	\$500	25.0	\$12,500.00
TOTAL		889.1	\$428,185.00

28 (Burbidge Decl., ¶ 43.)

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

18 The requested hourly rates of \$450 and \$500 are eminently fair and reasonable, especially
19 in light of Class Counsel’s special expertise in difficult plaintiff’s cases, complex and class action
20 cases, and Proposition 218 cases. As outlined more fully in his declaration, Attorney Burbidge
21 has been practicing now for nearly 15 years, and much of his career has been dedicated to
22 difficult, complex plaintiff’s cases. This includes other Proposition 218 cases, which have
23 comprised a significant amount of Mr. Burbidge’s practice for the past seven years. (Burbidge
24 Decl., ¶¶ 44-54.)²

25
26
27 ² Although Attorneys Walker and Koenig have expended time in pursuit of this case, Plaintiffs do
28 not seek to include that time as part of this lodestar check because that time was not documented
contemporaneously. Nevertheless, if that time were included in the lodestar calculation, the
amount would increase substantially.

1 Courts will typically review hourly rates of similar attorneys in the community to assist in
2 ascertaining an appropriate rate. In the Bay Area, as of 2023, hourly rates for partners and
3 associates of over \$800 and \$500, respectively, have been awarded. *See Vasquez v. Libre by*
4 *Nexus, Inc.*, No. 17-CV-00755 CW, 2023 WL 360242, at *13 (N.D. Cal. Jan. 23, 2023) (granting
5 rates of \$829 and \$508 to Oakland-based class action attorneys)³; *see also, e.g., Franchek v.*
6 *Workrite Ergonomics, LLC*, No. 16CV02789JSWDMR, 2022 WL 3137928, at *4 (N.D. Cal. May
7 9, 2022), report and recommendation adopted, No. 16-CV-02789-JSW, 2022 WL 3137918 (N.D.
8 Cal. May 31, 2022) (awarding Bay Area attorneys in *qui tam* action \$919 and \$850); *Carlotti v.*
9 *ASUS Computer Int'l*, No. 18-cv-03369-DMR, 2020 WL 3414653, at *5 (N.D. Cal. June 22, 2020)
10 (approving hourly rates ranging from \$950 to \$1,025 for partners representing consumers in class
11 action settlement and citing cases approving these rates); *In re Wells Fargo & Co. Shareholder*
12 *Derivative Litig.*, 445 F.Supp.3d 508, 527 & n.10 (N.D. Cal. 2020) (approving hourly rates for
13 full-time staff (non-contract) attorneys ranging from \$560 to \$1,075 for partners or “of counsel”
14 attorneys, \$250 to \$660 for associates, and \$365 to \$420 for staff or project attorneys); *Loretz v.*
15 *Regal Stone, Ltd.*, 756 F.Supp.2d 1203, 1211 (N.D. Cal. 2010) (approving \$775 for partner and up
16 to \$900 for senior attorney at firm representing a putative class of commercial fishermen twelve
17 years ago).

18 The Laffey Matrix, published by the Department of Justice, is another objective source for
19 attorney rates used in the District of Columbia. *See In re HPL Technologies, Inc. Securities Lit.*
20 366 F.Supp.2d 912, 921 (N.D. Cal. 2005); *see also Nemecek & Cole v. Horn* (2012) 208
21 Cal.App.4th 641, 650-51; *Syers, supra*, 226 Cal.App.4th at p. 702. Because the rates published in
22 the Laffey Matrix are for the District of Columbia area, a “locality adjustment” should be
23 employed. *See HPL Technologies, Inc., supra*, 36 F.Supp.2d 922 (using salary pay differentials
24 within federal court system to yield 9% upward adjustment for Bay Area); *see also, Brinker v.*
25 *Normandin’s*, Case No. 14-cv-03007-EJD, 2017 WL 713554, at *2 (N.D. Cal. Feb. 23, 2017).

26

27
28 ³ Incidentally, attorney Annick Persinger, who was awarded \$829 per hour in that case, has a
similar background to attorney Burbidge but is a year his junior.

1 For the period of this litigation, the hourly rates published in the Laffey Matrix for
2 attorneys of Mr. Burbidge’s experience start from \$421 (for a 4-7 year attorney in 2016) to \$829
3 (for an 11-19 year attorney in 2023). The locality pay differential using the 9% cited in the *HPL*
4 *Technologies case, supra*, yields rates of \$459 to \$904 per hour. (Burbidge Decl., ¶ 42.) Mr.
5 Burbidge’s lodestar hourly rates are on the very low end of this matrix.

6 Thus, between recent fee awards in the Bay Area, the Laffey Matrix, the actual hourly rate
7 of Class Counsel, and in light of the unique skills and experience that Class Counsel brought to
8 this case, an hourly rates of \$450 and \$500 are within the range of reasonableness. *See Building a*
9 *Better Redondo Beach, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 871-872
10 (noting counsel’s special expertise in environmental, land use, and administrative law); *Russell v.*
11 *Foglio* (2008) 160 Cal.App.4th 653, 661-662 (noting counsel’s particular trial experience); *Utility*
12 *Reform Network v. PUC* (2008) 166 Cal.App.4th 522, 537 (noting attorneys’ federal trial and
13 appellate litigation experience).

14 Counsel’s base lodestar is only the starting point in cross-checking the percentage of the
15 fund method. As explained above, the Court may adjust the lodestar amount based on factors
16 discussed above, including the contingent nature of the litigation, the novelty and complexity of
17 the issues, the skill and expertise of counsel, and the extent that the litigation precluded other
18 employment. *Laffitte, supra*, 1 Cal.5th at p. 489; *Robbins v. Alibrandi* (2005) 127 Cal.App.4th
19 438, 448; *Ketchum, supra*, 24 Cal.4th at pp. 1131-32; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d.
20 311, 322; *Serrano v. Priest* (1977) 20 Cal.3d. 25, 48-49.) With regard to the contingent risk
21 assumed by counsel, the California Supreme Court has explained:

22 The economic rationale for fee enhancement in contingency cases
23 has been explained as follows: “A contingent fee must be higher
24 than a fee for the same legal services paid as they are performed.
25 The contingent fee compensates the lawyer not only for the legal
26 services he renders but for the loan of those services. The implicit
27 interest rate on such a loan is higher because the risk of default (the
28 loss of the case, which cancels the debt of the client to the lawyer)
is much higher than that of conventional loans.” (Posner,
Economic, Analysis of Law (4th ed.1992) pp. 534, 567.) “A
lawyer who both bears the risk of not being paid and provides legal
services is not receiving the fair market value of his work if he is
paid only for the second of these functions. If he is paid no more,
competent counsel will be reluctant to accept fee award cases.”

(Leubsdorf, *The Contingency Factor in Attorney Fee Awards*
(1981) 90 Yale L.J., 473, 480. . .)

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

Here, Class Counsel undertook significant risk and aggressively pursued this case without payment for nearly six years and without knowing whether they would ever be paid. (Burbidge Decl., ¶ 54.) Even by the standards of slow-moving Proposition 218 and class action cases, this case has been pending for a very long time. Class Counsel was also prepared to defend or pursue an appeal if necessary; appellate practice is common in Proposition 218 cases and class actions. (*Id.*) The issues raised in this case are complex and required attorneys with substantial expertise in Proposition 218 matters who could discern whether the Town was liable under Proposition 218. (*Id.*) The successful prosecution of this case also required a thorough analysis of the actions the Town had undertaken to set rates, a creative analysis of the case based on other Proposition 218 jurisprudence, a review of technical documents the Town drafted and relied upon in setting those rates, and an understanding and analysis of the Town’s defenses in this case. (*Id.*) Indeed, this was a unique and novel case that presented potential risks not typical of the average case. (*Id.*) Class Counsel also funded the litigation costs of \$10,982.09 without any assurance they would be repaid. (*Id.*, at ¶ 55, Ex. 7.)

Considering the above factors, a cross-check of Class Counsel’s request of approximately 33% of the Settlement Fund results in an actual reduction of the lodestar by 6.5% (The lodestar being \$428,185 and the requested fees being \$400,000). In other words, in a case in which many attorneys would very justifiably request a multiplier applied to their lodestar, class counsel here seeks modest fees reflecting a reduction on the actual lodestar.

Nevertheless, the legal justification and reasoning for giving multipliers still applies here and provides even more justification for why the fees sought here are eminently reasonable.

“Multipliers can range from 2 to 4 or even higher.” *Wershba v. Apple Computer* (2001) 91

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

6 Thus, the fact that counsel here requests no such modifier, and in fact requests a fee
7 demonstrating a reduction in the lodestar, despite the difficulty of the case and the risks involved,
8 is further proof of the reasonable of the fee request.

9 **IV. REQUEST FOR REIMBURSEMENT OF EXPENSES IS REASONABLE**

10 Attorneys in a class action may be reimbursed for costs incurred “in the ordinary course of
11 prosecuting [a] case.” *California Indirect Purchaser X-Ray Film Antitrust Lit.* (Oct. 22, 1998)
12 1998 WL 1031494, at *11.) And courts have noted that “the prevailing view is that expenses are
13 awarded in addition to the fee percentage.” *In re Vitamin Cases*, No. 301803, 2004 WL 5137597,
14 at *16 (Cal. Super. Ct. Apr. 12, 2004) (citing *Conte, Attorney Fee Awards*, § 2.08 at 50-51 (2d
15 ed.1977); *see In re Warner Communications Securities Litigation* (S.D.N.Y.1985) 618 F.Supp.
16 735, *aff’d* 798 F.2d 35 (2d Cir.1986).) Here, Class Counsel seeks reimbursement of litigation
17 expenses in the amount of \$10,982.09. Those expenses include, *inter alia*, filing and Court Call
18 fees, courier/messenger fees, postage, copy and printing costs, mediation fees, and travel expenses.
19 (Burbidge Decl., ¶ 55, **Exh. 7**.) All such expenses were reasonably incurred in furtherance of this
20 litigation. (*Id.*)

21 **V. SERVICE AWARDS FOR PLAINTIFFS ARE REASONABLE**

22 In recognition of their time and effort expended pursuing this action over its nearly-six-
23 year course and for ably fulfilling their obligations and responsibilities as a class representatives,
24 and in light of the substantial benefits conferred on all Class Members as a result of their efforts
25 and commitment to the case, the parties have agreed that Class Counsel may ask that the Court
26 award each Class Representative a service award to be paid from the Settlement Fund. (*See*
27 *Burbidge Decl., Exh. 1* (Settlement Agreement, ¶ 13).) The Town agreed not to object to service
28 awards as follows: \$8,000.00 to John Lockton, \$8,000.00 to David Marquardt, \$5,000.00 to

1 Charles Syers, \$5,000.00 to Charles Bolton, and \$5,000.00 to Paul Rochester. (*See id.*)

2 Service awards are “fairly typical” in class action cases. *See In re Cellphone Fee*
3 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1393 as modified (July 27, 2010) (*In re*
4 *Cellphone Fee*) [citations omitted]; *see also* Weil & Brown, Cal. Practice Guide: Civil Procedure
5 Before Trial (The Rutter Group 2009) ¶ 14:146.10, p. 14–88.) These awards “are discretionary,
6 [citation], and are intended to compensate class representatives for work done on behalf of the
7 class, to make up for financial or reputational risk undertaken in bringing the action, and,
8 sometimes, to recognize their willingness to act as a private attorney general.” *In re Cellphone*
9 *Fee, supra*, 186 Cal.App.4th at pp. 1393-1394 (*citing Rodriguez v. West Publishing Corp.* (9th
10 Cir. 2009) 563 F.3d 948, 958.) “[C]riteria courts may consider in determining whether to make an
11 incentive award include: (1) the risk to the class representative in commencing suit, both financial
12 and otherwise; (2) the notoriety and personal difficulties encountered by the class representative;
13 (3) the amount of time and effort spent by the class representative; (4) the duration of the
14 litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a
15 result of the litigation.” *In re Cellphone Fee, supra* 186 Cal.App.4th at 1394-95 (citation omitted).

16 Since filing this action in 2016, Plaintiffs have been intimately involved in this litigation,
17 and they have remained involved for nearly six long years (even when other putative class
18 representatives passed away or had to dismiss their claims due to illness). For example, these
19 class representatives have been active participants in Town council meetings, advocating for legal
20 water rates for both years before this case was filed and for the years of its pendency. In support
21 of this case, they located counsel who had worked on Proposition 218 cases before and convinced
22 them to consider and then take on this case. They then assisted in gathering and reviewing
23 documents regarding the Town’s water rates in order to assist and educate counsel on the history
24 of those rates and the process. They worked to educate and recruit other potential class
25 representatives, and they fielded questions and facilitated discussions about the lawsuit with class
26 members. They attended both the mandatory settlement conference in the case and the mediation,
27 in addition to attending numerous hearings that have occurred over the years. They have met with
28 counsel to discuss the case and develop strategies, dedicating numerous hours of their time over

1 the years. They have reviewed significant briefs and assisted in editing them prior to their filing.
2 They have extensively reviewed the Town's administrative record and assisted in pulling relevant
3 documents from that record. They have assisted in developing and drafting discovery on the
4 Town. And they have been intimately involved with the settlement process, of course, assisting
5 with the settlement itself and the supporting paperwork (including this motion). All told, these
6 Class Representatives have been more involved and contributed more to this lawsuit than most
7 plaintiffs do. (See Declarations of Lockton, Marquardt, Syers, Bolton, and Rochester, filed
8 herewith.)

9 They estimate they have spent approximately 400 collective hours working in support of
10 this case. The modest incentive award is appropriate compensation for their dedication and efforts
11 in pursuit of this case.

12 **VI. CONCLUSION**

13 For the foregoing reasons, Plaintiffs respectfully request that this Court issue an order
14 awarding attorneys' fees of \$400,000 and reimbursement of expenses of \$10,982.09 to Class
15 Counsel, and for service awards for Plaintiffs as follows: \$8,000.00 to John Lockton, \$8,000.00 to
16 David Marquardt, \$5,000.00 to Charles Syers, \$5,000.00 to Charles Bolton, and \$5,000.00 to Paul
17 Rochester.

18
19 DATED: February 21, 2023

WALKER, HAMILTON & KEARNS, LLP

20
21 By: Beau R. Burbidge
22 Beau R. Burbidge
23 Attorneys for Plaintiffs
24
25
26
27
28

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

PROOF OF SERVICE

Baruh, et al. v Town of Hillsborough
San Mateo County Superior Court Case No. 16CIV02284

My business address is 50 Francisco Street, Suite 460, San Francisco, California 94133. I am employed in the County of San Francisco, where this mailing occurs. I am over the age of 18 years and not a party to the within cause. On the date set forth below, I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARD

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as listed below.

[X] [X] BY ELECTRONIC SERVICE – E-MAIL On **February 21, 2023**, based on an agreement or stipulation of the parties to accept electronic service and/or CCP §1010.6(e), I caused said document(s) to be sent via electronic mail to the email addresses listed below from my email address: serena@whk-law.com.

Harriet A. Steiner, Esq. James Gilpin, Esq. Christopher Diaz, Esq. BEST BEST & KRIEGER LLP 500 Capitol Mall, Suite 1700 Sacramento, CA 95814 Tel: (916) 325-4000 Fax: (916) 325-4010 <i>Attorneys for Defendant Town of Hillsborough</i>	harriet.steiner@bbklaw.com James.Gilpin@bbklaw.com Christopher.Diaz@bbklaw.com Jannine.South@bbklaw.com
---	--

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **February 21, 2023** at San Francisco, California.

By: *Serena L. Broussard*
Serena L. Broussard