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*others similarly situated*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SANTA CLARA**

17 MIRIAM GREEN, on behalf of herself, and all  
18 others similarly situated,

19 Petitioner and Plaintiff,

20 v.

21 CITY OF PALO ALTO, and DOES 1 through  
22 100,

23 Respondents and Defendants.

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Case No.: 16CV300760 (Lead)  
Consolidated with Case No. 18CV336237

*Assigned for all purposes to the Hon. Sunil R. Kulkarni*

**CLASS ACTION**

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

Hearing Date: December 21, 2023  
Time: 1:30 p.m.  
Dept.: 1

[Filed concurrently with notice of motion,  
declarations of Prescott W. Littlefield, Vincent  
D. Slavens, and Miriam Green; Compendium  
of Previously Submitted Attorney  
Declarations]

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1 Petitioner and Plaintiff Miriam Green (“Petitioner” or “Green”) moves the court for an order  
2 awarding Class Counsel attorneys’ fees and reimbursement of litigation costs, and awarding Green  
3 an incentive award for her role as class representative, as follows:

#### 4 INTRODUCTION

5 This motion should be familiar because the court has *previously* awarded Class Counsel  
6 attorneys’ fees of \$3,154,627.50 in a **contested** fee motion<sup>1</sup> (representing 25% of the judgment  
7 amount of \$12,618,510.00, with a 3.68 lodestar cross-check multiplier), ordered reimbursement of  
8 litigation and notice costs, and awarded Green an incentive award. This motion tracks the court’s  
9 reasoning from its prior ruling.

10 With respect to attorneys’ fees, Class Counsel seeks a percentage of the settlement fund. In  
11 addition to the amount this court previously approved, Class Counsel requests compensation for  
12 substantial additional time spent in post-judgment litigation, the initiation of appeals, and the  
13 successful settlement of this litigation, culminating in a much larger class recovery of \$17,337,111.  
14 On par with the court’s prior award, the requested attorneys’ fee *and* litigation costs together do not  
15 exceed 25% of the common settlement fund. Class Counsel’s lodestar cross-check multiplier of 3.26  
16 is significantly lower than the multiplier the court previously approved. This time, the City has  
17 agreed not to oppose the requested attorneys’ fee.

18 The requested attorneys’ fee of \$4,319,720.10 (24.91% of the common fund) is well-  
19 deserved. Over a period of nearly seven years, Class Counsel have dedicated 1,645.2 hours *and*  
20 *counting* diligently litigating this case. They secured a significant judgment, opposed post-judgment  
21 motions, engaged in the appellate process, negotiated the settlement, took the laboring oar in drafting  
22 the settlement agreement, and successfully secured preliminary approval of the settlement, **all**  
23 without having received payment. Class Counsel achieved a remarkable settlement that, if approved,  
24 will benefit the class by millions of dollars **more** than the judgment amount.

25 Class Counsel also requests reimbursement of litigation and judgment class notice costs

26  
27 <sup>1</sup> A copy of the court’s May 14, 2021 “Order Concerning Petitioner/Plaintiff Miriam Green’s Motion  
28 for Attorneys’ Fees, Costs, and Incentive Award” (“May 14, 2021 Fee Order”) is attached as Exhibit  
A to the Declaration of Vincent D. Slavens in Support of Motion for Attorneys’ Fees, Costs, and  
Incentive Award (“Slavens Decl.”), filed concurrently herewith.

1 totaling \$14,557.65. Such costs were reasonably necessary to litigate this class action. Class Counsel  
2 further believes a modest increase in the incentive award to \$7,500 is just, fair, and reasonable given  
3 the additional time and effort expended by Petitioner since the previous application; Petitioner’s  
4 participation and input has been invaluable, and she deserves recognition.

### 5 **PROCEDURAL HISTORY**

6 On October 6, 2016, Petitioner filed this class action against the City seeking refunds of  
7 illegal taxes. Petitioner alleged the City’s utility rates are taxes imposed without voter approval in  
8 violation of article<sup>2</sup> XIII C (the “2016 Action”). The City denied the allegations. (Slavens Decl. at  
9 ¶¶ 4-5.)

10 During the pendency of this action, *Citizens for Fair REU Rates v. City of Redding* (2018)  
11 6 Cal.5th 1 (*Redding*) was awaiting California Supreme Court review. Because *Redding* involved  
12 Proposition 26 issues relevant to this action and the City agreed the class should be certified, the  
13 parties submitted a stipulation to certify the 2016 Action as a class action and stay further proceedings  
14 until *Redding* was decided. The court agreed and granted the parties’ requests. (Slavens Decl., ¶ 7.)

15 On October 9, 2018, Petitioner filed a second class action challenging the City’s utility rates  
16 adopted on June 11, 2018 (“2018 Action”). After issuance of the *Redding* opinion, on February 13,  
17 2019, the court lifted the stay and agreed to consolidate the 2016 and 2018 Actions (the  
18 “Consolidated Action”). The court deferred class notice. (Slavens Decl., ¶ 7.)

19 On February 27, 2019, Green filed a consolidated class action pleading. On March 28,  
20 2019, the City answered. The court bifurcated the merits hearing into two phases – (Phase I) the  
21 liability phase and (Phase II) the remedies phase. The court scheduled Phase I to be heard on  
22 September 18, 2019, with Phase II to be scheduled later if needed. (Slavens Decl., ¶ 10.) In  
23 preparation for the Phase I hearing, Class Counsel reviewed the City’s finances and rate setting  
24 proceedings and engaged in in-depth research and evaluation of the many complex legal issues  
25 presented. The City certified an administrative record consisting of 8,755 pages of documents,  
26 including complex financial reports. The task of reviewing and interpreting the record to present it

27 \_\_\_\_\_  
28 <sup>2</sup> References and citations to “article” and “art.” shall refer to an article of the Constitution of the State of California.

1 to the court in a concise and understandable form was tedious and time consuming, especially  
2 because Class Counsel could not depose City staff. (Slavens Decl., ¶ 6.)

3 Petitioner filed her opening brief for Phase I on July 10, 2019. Class Counsel spent  
4 significant time meeting and conferring and drafting Petitioner’s opening brief. The brief addressed  
5 a host of complex and thorny legal and factual issues and presented a financial analysis of the City’s  
6 utility rates. The City filed its opposition brief on August 12, 2019. Class Counsel spent significant  
7 time reviewing, evaluating, and debating the City’s opposition brief and drafted a reply brief.  
8 Petitioner filed her reply brief on August 30, 2019, refuting each of the City’s arguments. Once the  
9 parties fully briefed the issues for Phase I, the court continued the hearing and asked the parties to  
10 meet and confer on certain issues before appearing to argue. On October 9, 2019, the court held a  
11 half-day hearing on liability. The court ordered supplemental briefing on issues pertaining to the  
12 administrative record. The parties complied. (Slavens Decl., ¶¶ 11-12.) On January 21, 2020, the  
13 court issued its Statement of Decision for Phase I. (Judgment, Exhibit 2.) It held that the City’s  
14 “electric rates are not taxes under *Redding*, but that the challenged gas rates are to the extent [the  
15 City’s general fund transfer] and/or market-based rental charges were passed through to ratepayers.”  
16 (*Id.* at 27:27-28:3.) The case proceeded to Phase II – remedies. (Slavens Decl., ¶ 12.)

17 For Phase II, the court set the hearing for September 23, 2020. Phase II was particularly  
18 difficult and complex. The parties attempted to meet and confer to arrive a damages figure, but the  
19 City consistently asserted that it owed nothing to the class. Thus, the City filed its opening brief on  
20 July 31, 2020. Consistent with its stated position, the City concluded that it owed zero dollars in  
21 damages. In response, Petitioner presented an in-depth financial analysis of the refunds owed in a  
22 manner designed to reflect the court’s reasoning in Phase I. Petitioner concluded that the City owed  
23 \$12,618,510 to the gas customer classes. The parties appeared and argued their respective positions  
24 at the hearing. (Slavens Decl., ¶ 13.) On October 27, 2020, the court issued a Statement of Decision  
25 for Phase II. (Judgment - Exhibit 3.) The court held that the City was liable for refunds totaling  
26 \$12,618,510. (*Id.* at 27:13-18.)

27 On March 11, 2021, Petitioner filed a motion for attorneys’ fees equal to one-third of the  
28 \$12,618,510 judgment; she also sought costs and an incentive award. The City opposed Petitioner’s



1 fee motion, hiring an expert witness to refute Class Counsel’s hourly rates and hours spent on the  
2 case. (Slavens Decl. at ¶ 17.) On May 14, 2021, while the court found that the hours spent and  
3 requested hourly rates were reasonable and granted Petitioner’s motion, it reduced the attorneys’ fees  
4 award to \$3,154,627.50 (25% of the judgment/3.68 lodestar multiplier). The court further approved  
5 the reimbursement of Petitioner’s class notice costs of \$6,960 and anticipated class claims  
6 administration costs of \$25,000. It granted Green’s request for a \$5,000 incentive award. (May 14,  
7 2021 Fee Order at p. 8)

8 On June 25, 2021, the court entered judgment against the City regarding its gas rates and  
9 for the City regarding its electric rates. (See Judgment.) The court clerk issued a Peremptory Writ of  
10 Mandate on August 17, 2021. (Slavens Decl. ¶ 19.) On July 9, 2021, the City moved for an order  
11 for new trial and to vacate the judgment, which Petitioner vigorously opposed. On July 27, 2021, the  
12 City filed a “notice of election” to satisfy the judgment over 10 years, which Petitioner again  
13 opposed. On September 7, 2021, the court denied the City’s new trial motion and granted the City’s  
14 election but modified the “election,” requiring the City to pay the Judgment within two years.  
15 (Slavens Decl. ¶¶ 20-22.)

16 On September 21, 2021, the City filed a notice of appeal and Petitioner later cross-appealed.  
17 Within months, the parties began discussing a possible settlement of the case. After initial settlement  
18 discussions, the parties agreed to participate in the Court of Appeal’s mediation program. The Court  
19 of Appeal appointed Mr. Bob Blum to mediate the parties’ dispute. (Slavens Decl. ¶¶ 24-25.) On  
20 April 13, 2022, the parties reached an agreement in principle to, not only settle the pending gas utility  
21 claims, but also the tolled claims for rates set after the Judgment Class period.<sup>3</sup> (*Id.* at ¶ 25.) The  
22 parties finalized the written settlement agreement in September 2022. (*Id.* at ¶ 26; SA.)

23 Upon executing the agreement, the parties filed a joint motion for stipulated reversal of the  
24 Judgment to return the case to this court for consideration of settlement approval. The Court of  
25 Appeal granted the motion and remittitur issued on March 27, 2023. Petitioner filed an amended

26 \_\_\_\_\_  
27 <sup>3</sup> The Judgment applied to gas rates set in 2012, 2016 and 2018. (Slavens Decl. at ¶ 28.) But on June  
28 17, 2019, June 22, 2020 and July 21, 2021 the City approved new gas rates. (*Ibid.*) Rather than  
further complicate this action, the parties tolled the statute of limitations on all claims relating to  
these new rates until after the 2016 Action. (*Ibid.*) These claims are included in the Settlement.

1 petition and complaint after securing leave of court. On April 19, 2023, the City answered. (Slavens  
2 Decl. at ¶¶ 27-29.) On July 5, 2023, the court granted Petitioner’s motion for preliminary approval  
3 of the settlement and scheduled a final fairness hearing for December 21, 2023; the court scheduled  
4 Petitioners’ motion for attorneys’ fees, costs and incentive award for the same date. (Slavens Decl.  
5 at ¶¶ 30-31.)

## 6 ARGUMENT

### 7 **I. CONSISTENT WITH ITS PRIOR ATTORNEYS’ FEES ORDER, THE COURT** 8 **SHOULD AWARD CLASS COUNSEL ATTORNEYS’ FEES EQUAL TO 24.9%** 9 **OF THE COMMON SETTLEMENT FUND**

10 While the general American rule is that parties to lawsuits must bear the cost of their own  
11 attorneys, California recognizes an exception to the general rule when a party recovers or preserves  
12 monetary funds on behalf of others. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480,  
13 488-489 (“*Laffitte*”).) The United States Supreme Court approved this “common fund” approach in  
14 *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, recognizing that “a lawyer who recovers a common  
15 fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s  
16 fee from the fund as a whole,” and that those who benefit from a lawsuit “without contributing to its  
17 cost are unjustly enriched at the successful litigant’s expense.” (*Id.* at p. 478.) This approach allows  
18 the court to prevent such inequity by “assessing attorney’s fees against the entire fund, thus spreading  
19 fees proportionately among those benefited by the suit.” (*Ibid.*) As the California Supreme Court  
20 held in *Laffitte*:

21 We join the overwhelming majority of federal and state courts in holding that when  
22 class action litigation establishes a monetary fund for the benefit of the class  
23 members, and the trial court in its equitable powers awards class counsel a fee out  
24 of that fund, the court may determine the amount of a reasonable fee by choosing an  
25 appropriate percentage of the fund created.

26 (*Laffitte, supra*, 1 Cal. 5th at p. 503.) In *Laffitte*, a unanimous Supreme Court explained that the  
27 common fund approach is “a valuable tool” for courts to utilize when a common fund is created.  
28 (*Ibid.*) The percentage method has “recognized advantages” over the lodestar-multiplier method,  
“including relative ease of calculation, alignment of incentives between counsel and the class, a  
better approximation of market conditions in a contingency case, and the encouragement it provides  
counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” (*Ibid.*)

1 Here, Class Counsel has skillfully and diligently secured a common settlement fund in the  
2 amount of \$17,337,111 for the benefit of thousands of utility customers. For their efforts, Petitioner  
3 requests that the court award Class Counsel attorneys' fees in the amount of \$4,319,720.10, which  
4 is 24.9% of the common settlement fund (the other 0.1% being costs). Such a request is not only  
5 reasonable and supported by law but is consistent with this court's previous order awarding Class  
6 Counsel 25% of the judgment amount. (May 14, 2021 Fee Order at 4:11-16.)

7 **A. Courts Routinely Award Fees That Exceed the Percentage Sought by Class**  
8 **Counsel**

9 State courts in California routinely award attorney's fees above the percentage Petitioner  
10 requests here. (See, e.g., *Laffitte, supra*, 1 Cal.5th at pp. 485 [upholding an award of attorneys' fee  
11 equal to one-third of a class action settlement; *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66  
12 at n.11.) Moreover, attorneys' fees equal to 25% of the class recovery is below the rate negotiated  
13 in "typical contingency fee agreements [which] provide that class counsel will recover 33% if the  
14 case is resolved before trial and 40% if the case is tried." (*Fernandez v. Victoria Secret Stores LLC*,  
15 (C.D. Cal., July 21, 2008) 2008 WL 8150856, at \*16, n. 59 [citing an academic study collecting  
16 contingency fee agreements and finding that a fee award constituting 34% of the fund is reasonable  
17 on that basis]; see also *In Re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [affirming  
18 attorneys' fee of 33% of the recovery]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266  
19 F.R.D. 482, 492 [citing to five federal district courts decisions approving attorney fee awards ranging  
20 from 30% to 33% in class actions].) Because the requested attorneys' fee is below typical market  
21 rates, it is reasonable and should be approved.

22 While the court must conduct an independent inquiry into the reasonableness of the fee  
23 request, a 24.9% fee award is reasonable because Class Counsel took substantial risk litigating this  
24 case through judgment without payment or having any assurance they would be paid.

25 **B. The Requested Attorneys' Fee Is Supported By Other Factors**

26 In *Laffitte, supra*, our Supreme Court explained that the percentage-of-the-fund method of  
27 awarding attorney's fees is a "valuable tool that should not be denied our trial courts." (*Laffitte*,  
28 *supra*, 1 Cal.5th at p. 503.) *Laffitte* affirmed the trial court's decision to approve a one-third

1 attorneys' fee award, with the trial court having supplemented its own familiarity with the case "by  
2 obtaining additional information from class counsel on the risks and potential value of the litigation;  
3 the court carefully considered that information on contingency, novelty and difficulty together with  
4 the skill shown by counsel, the number of hours worked and the asserted hourly rates, which the  
5 court found were not overstated." (*Id.* at p. 504.) Here, these factors strongly weigh in favor of  
6 awarding attorneys' fees equal to 24.9% of the Settlement fund.

7 **1. The Requested Attorneys' Fee is Strongly Supported by the Results**  
8 **Achieved Compared to the Potential Value of the Case**

9 Courts may assess the reasonableness of a percentage-based award by examining the results  
10 achieved for the settlement class. Here, Class Counsel achieved a remarkable benefit for the class by  
11 securing a settlement of \$17,377,111, well above the original judgment amount. The Settlement  
12 amount is an impressive 80% of the maximum potential recovery had Petitioner succeeded on all gas  
13 rate claims, including the Tolled Claims, after years of additional litigation, appeals and uncertainty.  
14 (Slavens Decl. at ¶ 25.) Such an achievement is rare.

15 **2. Class Counsel Litigated this Case on a Purely Contingent Basis**

16 Where, as here, attorneys represent a class on a contingency fee basis, courts typically  
17 enhance the attorneys' lodestar in recognition of the risks taken and to ensure adequate representation  
18 for plaintiffs unable to afford the services of accomplished attorneys. (*Graham v. DaimlerChrysler*  
19 *Corp.* (2004) 34 Cal.4th 553, 580 ("*Graham*").) In *Ketchum*, the California Supreme Court instructed  
20 courts to adjust fee compensation to account for contingency risk:

21 'A lawyer who both bears the risk of not being paid and provides legal services is  
22 not receiving the fair market value of his work if he is paid only for the second of  
23 these functions. If he is paid no more, competent counsel will be reluctant to accept  
24 fee award cases.'

25 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133 ("*Ketchum*") [quoting Leubsdorf, *The*  
26 *Contingency Factor in Attorney Fee Awards* (1981) 90 Yale L.J. 473, 480].) A fee award that adjusts  
27 for contingent risk "constitutes earned compensation; unlike a windfall, it is neither unexpected nor  
28 fortuitous." (*Id.* at p. 1138.) The contingent risk factor is the single most important enhancement  
factor under California law even for actions where statutory fees are available. (See *Horsford v.*

1 *Board of Trustees of Calif. State Univ.* (2005) 132 Cal.App.4th 359, 399.) The main criterion for  
2 risk is that of a complete loss, which would leave counsel unable to recover fees after spending  
3 hundreds of hours litigating a case, while foregoing other opportunities. (See *Graham*, 34 Cal. 4th at  
4 p. 583.)

5 Here, Class Counsel has spent 1,645.2 hours and counting litigating this case over a period  
6 of nearly seven years through two trial phases, entry of judgment, post-judgment motions and the  
7 initiation of the appeals process without compensation and without any assurance they ever would  
8 be compensated. Such enormous risk justifies an enhanced attorneys' fee award.

### 9 3. The Requested Fee Reflects the Novelty and Complexity of the Case

10 This case involved novel questions of fact and law, was litigated through a bifurcated trial  
11 with multiple days of argument and resulted in a judgment against the City. And the case did not  
12 end there. Indeed, Class Counsel had to oppose the City's multiple post-judgment motions and begin  
13 the process of defending the case on appeal. The settlement of this action will "bring to a conclusion  
14 one of the most complex lawsuits in the city's recent history..." according to reporter Gennady  
15 Sheyner of Palo Alto Weekly.<sup>4</sup>

16 That this case was complex and novel is self-evident. Were the law well developed there  
17 would have been no reason to stay this case pending the *Redding* decision. While *Redding* resolved  
18 some questions under Proposition 26, it left many unanswered. Indeed, Proposition 26 was passed  
19 relatively recently in 2010 and there remain many open questions about its application. Here, the  
20 parties were left to develop arguments in this novel area of law, in particular on the question of  
21 damages. As the City stated in the first sentence of its opening brief at Phase II, "Proposition 26 and  
22 the authorities interpreting it provide little guidance for the Court and the parties on appropriate  
23 remedies...." Many issues continue to work their way through the appellate courts, with new case  
24 law arriving each year that may significantly impact Petitioner's claims. In the face of such  
25 exceptional risks, Class Counsel skillfully secured a \$17.3 million settlement for the benefit of  
26 thousands of Palo Alto gas utility customers.

27  
28 <sup>4</sup> See [www.paloaltoonline.com/news/2022/09/06/palo-alto-reaches-settlement-in-suit-over-gas-transfers](http://www.paloaltoonline.com/news/2022/09/06/palo-alto-reaches-settlement-in-suit-over-gas-transfers), last visited on November 30, 2022.

1                   **4. The Fee is Supported by Counsel’s Experience, Reputation, and Skill**

2           Class Counsel are experienced class action attorneys with extensive knowledge and  
3           experience in Propositions 218 and 26 matters. (See Declaration of Prescott W. Littlefield in Support  
4           of Petitioners’ Motion for Attorneys’ Fees at ¶ 17; see also Slavens Decl. at ¶ 36 & Ex. E.) Indeed,  
5           Judge Walsh commended the fine work and professionalism on behalf of all attorneys working on  
6           this matter. (Littlefield Decl. at ¶ 17.) The impressive results achieved strongly demonstrate the  
7           experience and skill of Class Counsel.

8           **II. LODESTAR CROSS-CHECK CONFIRMS THE REQUESTED ATTORNEYS’**  
9           **FEE IS FAIR AND REASONABLE**

10           A trial court may use a lodestar multiplier cross-check for common fund awards if the court  
11           considers it useful. (*Laffitte, supra*, 1 Cal.5th at pp. 504-505.) However, under *Laffitte*, such cross-  
12           checks are not meant to displace the percentage analysis, but rather to act as a backstop. “[T]he  
13           lodestar calculation, when used in this manner, does not override the trial court’s primary  
14           determination of the fee as a percentage of the common fund and thus does not impose an absolute  
15           maximum or minimum on the fee award.” (*Id.* at p. 505.) Critically, *Laffitte* emphasized that *only*  
16           *where* the “multiplier calculated by means of a lodestar cross-check is extraordinarily high or low”  
17           should the court “consider whether the percentage should be adjusted so as to bring the imputed  
18           multiplier within a justifiable range.” (*Ibid.* [emphasis added].) Furthermore, in conducting a  
19           lodestar cross-check, the court is not “required to closely scrutinize each claimed attorney-hour.”  
20           (*Ibid.*) An evaluation may be done by reviewing “counsel declarations summarizing overall time  
21           spent.” (*Ibid.*)

22           In conducting a lodestar cross-check, courts first determine a lodestar value by multiplying  
23           the time class counsel reasonably spent prosecuting the case by a reasonable hourly rate. (*In re*  
24           *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-57.) As discussed next, Class Counsel’s  
25           hourly rates and hours billed are reasonable and support the requested 24.9% attorneys’ fee award.

26           **A. Class Counsel’s Declared Hours Are Reasonable**

27           “Absent special circumstances rendering the award unjust, an attorney fee award should  
28           ordinarily include compensation for all the hours reasonably spent, including those relating solely to

1 the fee.” (*Ketchum, supra*, 24 Cal.4th at p. 1133.) Hours are reasonable if “at the time rendered,  
2 [they] would have been undertaken by a reasonable and prudent lawyer to advance or protect his  
3 client’s interest.” (*Twin City Sportservice, Inc. v. Charles O. Finley & Co., Inc.* (9th Cir. 1982) 676  
4 F.2d 1291, 1313.) “[T]he court should defer to the winning lawyer’s professional judgment as to  
5 how much time he was required to spend on the case; after all, he won, and might not have, had he  
6 been more of a slacker.” (*Kerkeles v. City of San Jose* (2015) 243 Cal.App.4th 88 [quoting *Moreno*  
7 *v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112].)

8           Declarations by counsel as to time spent are sufficient evidence in support of a requested  
9 attorneys’ fee. (See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254-255  
10 (“*Wershba*”)[disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4  
11 Cal.5th 260]; “An experienced trial judge is in a position to assess the value of the professional  
12 services rendered in his or her court.” (*Wershba, supra*, 91 Cal.App.4th at p. 255.)

13           Here, Class Counsel have submitted detailed declarations and their billing records for  
14 review, including declarations previously filed in support of Petitioner’s prior motion for attorneys’  
15 fees filed on March 11, 2021 which formed the basis for the court’s prior attorneys’ fee award.<sup>5</sup> Class  
16 Counsel has spent more than 1,645 hours prosecuting this action. Specifically, Class Counsel  
17 handled every aspect of this complex class action through two phases of trial, judgment, multiple  
18 post-judgment motions, class notice, the initiation of appeals, settlement negotiations and mediation,  
19 preparation and negotiation of a fifty-one page class action settlement agreement (excluding  
20 exhibits), facilitation of the return of the case back to this court, preparation and filing of an amended  
21 petition and complaint, preparation and filing of a motion for preliminary approval, and attendance  
22 at all required court hearings. Considering the time required to litigate this case and overcome the  
23 procedural, evidentiary and legal hurdles placed in their way, Class Counsel’s time reflects a level  
24 of efficiency and economy well within acceptable bounds. Indeed, the court has already accepted  
25 Class Counsel’s declared hours in connection with the attorneys’ fees awarded following entry of

26 \_\_\_\_\_  
27 <sup>5</sup> See Exhibit A to each of Petitioner’s Counsel’s declarations filed on March 11, 2021 in support of  
28 Petitioner’s previous Motion for Attorney’s fees, including declarations from Petitioner’s attorneys  
Prescott W. Littlefield, Vincent D. Slavens, Moris Davidovitz, Roland R. Stevens, Gene J.  
Stonebarger and Richard D. Lambert, each of which is attached to the Compendium of Previously  
Submitted Attorney Declarations (“Compendium of Declarations”) filed herewith.

1 judgment. (May 14, 2021 Fee Order, 7:1-11 [holding that “the hours expended and hourly rates [are]  
2 reasonable...”].) The additional time Class Counsel has spent on this matter is well within reason.  
3 (See e.g. Littlefield Decl. at Ex. B; see Slavens Decl. at ¶¶ 18-34, Ex. D.)

4 **B. Class Counsel’s Hourly Rates are Reasonable**

5 The hourly rates used in calculating the lodestar portion of a reasonable attorneys’ fee must  
6 be based on hourly rates charged by private attorneys of comparable experience, expertise, and  
7 reputation for comparable work. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 643-644; *PLCM Group,*  
8 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096 (“*PLCM Group*”); *Graham, supra*, 34 Cal.4th at  
9 pp. 578-579; *Children’s Hospital and Medical Center v. Bonta*, (2002) 97 Cal.App.4th 740, 783  
10 (“*Children’s Hospital*”).) The rates claimed are reasonable so long as they are within the range of  
11 hourly rates charged by attorneys of comparable experience, reputation, and ability for similar  
12 litigation in the locale. (*Ketchum, supra*, 24 Cal.4th at p. 1133; *Children’s Hospital* at p. 783  
13 [affirming rates that were “within the range of reasonable rates charged by and judicially awarded  
14 comparable attorneys for comparable work”].) A reasonable hourly rate is the prevailing rate  
15 charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group* at p.  
16 1095.) The court may consider other factors when determining reasonable hourly rates, e.g., the  
17 attorney’s skill and experience, the nature of the work performed, the relevant area of expertise and  
18 the attorney’s customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61  
19 Cal.App.4th 629, 644, n. 6.) In addition, the court may rely on its own knowledge and familiarity  
20 with the legal market in setting a reasonable hourly rate. (*Heritage Pacific Financial, LLC v. Monroy*  
21 (2013) 215 Cal.App.4th 972, 1009.)

22 Here, this court has previously approved the hourly rates Class Counsel proposes here, with  
23 the sole exception of Littlefield’s billing rate increasing from \$700 in 2021 to \$750. (May 14, 2021  
24 Fee Order, 7:1-11.) Class Counsel’s skill and experience justify the requested rates. (See Section  
25 III(B)(4), *supra*.) In addition, this court is familiar with the Bay Area market for attorneys’ fees (*id.*  
26 at 7:9-11), and the amounts requested are consistent with the market rates. Given their expertise and  
27 skill, the court should approve their requested hourly rates attached to the compendium of  
28 declarations filed on March 11, 2021, submitted herewith, as follows:



**Table 1: Pre-Judgment Attorneys' Fees**

Attorney	Hours	Rate	Lodestar
Vincent D. Slavens	537.3	\$850	\$456,705
Eric Benink	9.7	\$850	\$8,245
Prescott W. Littlefield	289.2	\$700	\$202,440
Roland Stevens	138.8	\$850	\$117,980
Moris Davidovitz	44.8	\$700	\$31,360
Gene Stonebarger	12.2	\$850	\$10,370
Richard D. Lambert	42.2	\$700	\$29,540
<b>Totals:</b>	<b>1,074.2</b>		<b>\$856,640</b>

(See Compendium of Declarations; see also May 14, 2021 Fee Order at 7:3 [“the Court finds the hours expended and hourly rates to be reasonable”].)

Since the court entered judgment in 2021, Class Counsel have dedicated substantially more hours to extensive post-judgment litigation, appellate work and work relating to negotiating and drafting the settlement, returning the case to the trial court to consider settlement approval, amending the petition and complaint, securing preliminary approval of the settlement, and ensuring proper notice to the class, as detailed below:

**Table 2: Post-Judgment Attorneys' Fees**

Attorney	Hours	Rate	Lodestar
Vincent D. Slavens	398.6	\$850	\$338,810
Prescott W. Littlefield	172.4	\$750	\$129,300
<b>Totals:</b>	<b>571</b>		<b>\$486,110</b>

(Slavens Decl. ¶ 3 & Ex. D; Littlefield Decl. ¶ 3, Ex. B.) In total, between the hours already found reasonable and the hours dedicated since then, Class Counsel’s total lodestar is \$1,324,750.00.

**C. The Lodestar Multiplier, which is Below What This Court Previously Approved, Supports a 24.9% Attorneys’ Fee Award**

Once the lodestar is calculated, it may be enhanced with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at p. 254.) The objective of a multiplier is to incentivize lawyers involved in public interest litigation. (*Ketchum, supra*, 24 Cal.4th at pp. 1132-1133.) “If this ‘bonus’ methodology

1 did not exist, very few lawyers could take on the representation of a class client given the investment  
2 of substantial time, effort, and money, especially in light of the risks of recovering nothing.” (*In re*  
3 *Washington Public Power Supply System Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1300 [quoting  
4 *Behrens v. Wometco Enterprises, Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 548, aff’d sub nom. (11th  
5 Cir. 1990) 899 F.2d 21].) Only when courts properly compensate experienced counsel for successful  
6 results, such as those here, can they assure the continuing effectiveness of class actions. To  
7 accomplish this objective, the fee award must be large enough “to entice competent counsel to  
8 undertake difficult public interest cases.” (*Margolin v. Regional Planning Com.* (1982) 134  
9 Cal.App.3d 999, 1004.)

10 As shown above, multiplying the total hours billed by Class Counsel by their reasonable  
11 hourly rates yields a lodestar of \$1,324,750. (See Tables 1 and 2, *supra*.) In its prior order awarding  
12 attorneys’ fees at the time of judgment, the court applied a 3.68 multiplier to Class Counsel’s lodestar  
13 to arrive at a total attorneys’ fee awarded of \$3,154,627.50. (May 14, 2021 Fee Order at 5:8-10.)  
14 Class Counsel’s requested fee divided by their current lodestar results in a multiplier of 3.26, well  
15 below what this court previously approved.

16 The requested lodestar multiplier is well within a normal range for a lodestar cross-check.  
17 (See *Wershba, supra*, 91 Cal.App.4th at 255 [observing that multipliers “can range from 2 to 4 or  
18 even higher.”]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 [affirming fees  
19 where the cross-check multiplier is 3.65 after examining a comprehensive study of fees awarded by  
20 the percentage method]; *Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F.Supp.2d 1160,  
21 1170.)

22 Applying a multiplier in this case is more than reasonable considering: (1) the great risk  
23 Class Counsel took in litigating this case on an entirely contingent basis; (2) the substantial outlay of  
24 time; (3) the complex and consistently evolving case law under the claims alleged; (4) the exceptional  
25 results; and (5) the long delay in being compensated.

### 26 **III. THE REQUESTED LITIGATION AND NOTICE COSTS ARE REASONABLE**

27 Class Counsel seeks reimbursement of \$7,597.65 in litigation costs and \$6,960 judgment  
28 class notice costs. The costs consist of the following:

**Table 3: Litigation and Judgment Class Notice Costs**

Filing and Motion Fees:	\$2,140.06
Service of Process	\$65.00
Court Reporter Fees	\$1,542.22
Fees for Electronic Filing or Service	\$1,564.04
Court Call and Remote Appearance Fees	\$1,204.00
Meals and Travel Expense	\$1,082.33
Judgment Class Notice Costs	\$6,960.00
<b>Total Costs:</b>	<b>\$14,557.65</b>

The judgment class notice costs were previously approved by the court in 2021 to be paid out of the judgment common fund; the remaining costs were submitted in a memorandum of costs and included in the prior judgment without objection from the City. (See Littlefield Decl. ¶ 24; Slavens Decl. ¶ 20, Ex. B; May 14, 2021 Fee Order; Judgment.)

**IV. THE REQUESTED INCENTIVE AWARD IS REASONABLE**

Petitioner requests a \$7,500 incentive award as compensation for her service as Class Representative. Courts routinely approve such payments to compensate class representatives for services provided and risks faced as a named party to a class actions. Incentive awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” (*Cellphone Termination Fee Cases*, (2010) 186 Cal.App.4th 1380, 1393-1394 [quoting *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959].) In addition to the risk and expenses incurred, courts may also consider the notoriety and personal difficulties encountered by the class representative due to the litigation. (See *Van Vranken v. Atl. Richfield* (N.D. Cal. 1995) 901 F.Supp. 294, 299.)

Because this case was brought as a writ of mandate as well as a class action, Petitioner had to publicly verify the initial and subsequent complaints under penalty of perjury. This required a detailed review of all allegations within the complaints and extensive discussions with class counsel prior to verification. To be sure, Petitioner has been closely involved in this action and responsive

1 to counsel’s inquiries, taking an active interest in the case. (Littlefield Decl. ¶ 25; see also  
2 Declaration of Miriam Green in Support of Motion for Attorneys’ Fees, Costs, and Incentive Award  
3 (“Green Decl.”).) Petitioner spent at least 20 hours communicating with counsel about this case prior  
4 to the initial judgment, including at the initiation of the lawsuit, through all major developments, and  
5 through judgment. (Green Decl. ¶ 3.) Even after judgment was entered, Petitioner remained  
6 intimately involved with the litigation, attended the mediation on appeal, and has been in contact  
7 throughout the settlement and notice procedure. (*Id.* at ¶ 5) Petitioner has been one of the most  
8 engaged class representatives Class Counsel has represented. (Littlefield Decl. ¶ 25.) Increasing the  
9 previous enhancement award from \$5,000 to \$7,500 is quite appropriate for Petitioner’s efforts in  
10 this matter.

### 11 CONCLUSION

12 The requested attorneys’ fee of \$4,319,720.10 (representing 24.9% of the settlement fund  
13 and a lodestar multiplier of 3.26) has been earned by competent, qualified Class Counsel. The amount  
14 sought is fair and reasonable considering the risks involved and benefits achieved, as well as the time  
15 spent vigorously litigating this hotly contested case through judgment, post-judgment and on appeal,  
16 and throughout the lengthy settlement process. The requested reimbursement of litigation and class  
17 notice costs of \$14,557.65 is fair and reasonable considering this multi-year, complex class litigation.  
18 Likewise, the requested \$7,500 incentive award is warranted considering the risks and burdens borne  
19 by Petitioner, as the appointed Class Representative, in this litigation. As such, Class Counsel and  
20 the Class Representative respectfully request the court grant this Motion and order payment of  
21 attorneys’ fees, costs, and incentive award from the common settlement fund in accordance with the  
22 terms of the Settlement Agreement.

23 DATED: September 21, 2023

Respectfully submitted,

24 KEARNEY LITTLEFIELD, LLP

25  
26 By:

  
\_\_\_\_\_  
Prescott W. Littlefield  
Attorneys for Petitioner/Plaintiff