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14 Attorneys for Plaintiff Eileen Staats, on behalf of
15 herself, and all others similarly situated (“the Class”)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

EILEEN A. STAATS, on behalf of herself and
all others similarly situated,

Plaintiffs,

v.

CITY OF PALO ALTO; and DOES 1 through
100, inclusive,

Defendants.

Case No. 115-CV-284956
Assigned for all Purposes to Hon. Sunil R.
Kulkarni

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR AWARD OF
ATTORNEYS’ FEES, REIMBURSEMENT
OF EXPENSES AND PAYMENT OF AN
INCENTIVE AWARD; MEMORANDUM
OF POINTS AND AUTHORITIES**

Action Filed: August 17, 2015

Hearing Date: September 2, 2021

Time: 1:30 p.m.

Department: 1

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 2, 2021 at 1:30 p.m. or as soon thereafter
3 as the matter may be heard, in Department 1 of the Superior Court of California, County of Santa
4 Clara, located at 191 North First Street, San Jose, California 95113, Plaintiff Eileen Staats
5 (“Plaintiff”) on behalf of herself and all other members of the Class, will move without
6 opposition for an order seeking:

7
8 1. Awarding Class Counsel \$425,000 in attorneys’ fees and reimbursement of
expenses and costs; and

9 2. Approving the payment of an incentive award to Plaintiff Eileen Staats in the
10 amount of \$10,000.

11 This unopposed motion is based upon the accompanying Memorandum of Points and
12 Authorities, the settlement agreement between the parties (“Settlement Agreement”), the
13 declarations of Alexandra T. Steele, Stephen Schultz, Thomas Slovak, John A. Girardi, Eileen
14 Staats, Jennifer Keough of JND Legal Services, and William Fitzsimmons, all files and records in
15 this action, and any argument and evidence which may be presented at the hearing on this motion.
16

17 **STEELE COOPER LAW**

18 Dated: August 11, 2021

19 By:



20 ALEXANDRA T. STEELE

21
22 Dated: August 11, 2021

23 **SLOVAK, BARON, EMPEY, MURPHY
& PINKNEY, LLP**

24
25 By:



26 STEPHEN J. SCHULTZ

27 Attorneys for Plaintiff and the Class
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Class Counsel diligently prosecuted this extremely risky case over the course of seven
4 years without compensation or reimbursement of costs. After substantial investigation, analysis,
5 discovery, and motion practice (including prevailing on class certification), Class Counsel was
6 able to engage in well informed and exhaustive settlement negotiations with the City Palo Alto
7 (the “City”). These negotiating sessions, directly between the parties and under the guidance of
8 the Hon. Bonnie Sabraw (Ret.), spanned over a year and resulted in a Settlement Fund
9 representing more than a third of the City’s acknowledged total potential liability.

10 In sum, the Settlement entitles Class members to receive a refund of the telephone utility
11 users taxes (“UUT”) that Plaintiff alleges were improperly collected by the City on telephone
12 service from December 24, 2013 to December 14, 2014 (the “Class Period”).

13 Class Counsel negotiated a simple and fair claims process for Class members. The
14 Settlement is an outstanding result for the Settlement Class. The City has agreed to pay
15 \$1,275,00.00 (the “Settlement Fund”) to settle this litigation, representing approximately 29.5-
16 44.3% of the UUT it unlawfully collected during the Class Period. Class members are able to
17 submit claims for each telephone line they had during the Class Period, with graduated payments
18 depending upon the number of qualifying phone lines held by each Claimant.

19 Furthermore, Class Counsel negotiated a robust notice program based upon direct mail to
20 virtually over 85,000 residential and business addresses in the City and supplemented this Notice
21 using every other media imaginable. Declaration of Jennifer Keough (“Keough Decl.”) ¶¶4-15).
22 Although it will take additional time for the Claims Administration process to complete, by any
23 measure, this Settlement is a success. As of August 5, 2021, 1415 claims have been filed by Class
24 members with another twenty-five days left in the claims period. (Keough Decl. ¶18). Zero
25 objections have been received. (*Id.*).

26 Achieving this exemplary Settlement was far from certain. Class Counsel faced a

27 ///

1 significant risk, *perhaps a likelihood*, that their investment of substantial resources over the
2 course of nearly seven years would be entirely for naught. Yet Class Counsel worked hard to
3 overcome the difficult hurdles, including several challenges to the Plaintiff's claims at every
4 stage, and ultimately prevailing on Class Certification.

5 This case was hard-fought, and the settlement process fastidious. Class Counsel now seeks
6 an award of \$425,000, inclusive of fees, costs and an incentive award to Plaintiff to be paid from
7 the Settlement Fund as compensation for the considerable investment of time and effort in
8 obtaining this successful Settlement. Class Counsel has incurred over \$88,000 in unreimbursed
9 out-of-pocket expenses over the seven-year course of this litigation and has invested a collective
10 lodestar of \$369,740. Therefore, net of expenses, the requested fee award represents a modest
11 15.3% of the Settlement Fund with no lodestar multiplier. Class Counsel's request for 15.3% of
12 the Settlement Fund in attorneys' fees is well below the 25% benchmark for similar cases.
13 Further, the City does not oppose Class Counsel's request. All of the relevant factors demonstrate
14 that an award of \$425,000 inclusive of fees and costs is fully warranted here.

15 Class Counsel also seeks an incentive award of \$10,000 for Plaintiff Eileen Staats, in
16 recognition of her service on behalf of the Class, including producing her personal documents,
17 sitting for deposition, reviewing filings, discovery responses, overseeing her attorneys, and
18 standing up for the rights of taxpayers, even when doing so brought her unwanted publicity. For
19 these reasons, the Court should grant this motion in its entirety.

20 **II. LEGAL ARGUMENT**

21 There are two generally accepted methods for determining an award of attorneys' fees
22 under California law: (1) the percentage-of-the-recovery method, and (2) the lodestar method.
23 Typically, the percentage method is selected when a settlement results in a common fund, and the
24 lodestar method is selected when a settlement does not result in a common fund. In either case,
25 courts will typically refer to the other method as a cross-check to ensure that the fee award is fair.
26 *Roos v. Honeywell Int'l, Inc.* (2015) 241 Cal. App. 4th 1472, 1493 (disapproved on other
27 grounds). Class Counsel here easily satisfies both the percentage-of-recovery and lodestar tests.

1 Class Counsel’s request for \$425,000, inclusive of fees and expenses, is appropriate under either
2 the lodestar or percentage-of-recovery standard, particularly given the serious risk of failure and
3 non-payment for nearly seven years of work that Class Counsel faced in this case, the skill they
4 applied in overcoming the legal obstacles to recovery, and the substantial benefits they negotiated
5 for the Class.

6 **A. The Requested Fees Should Be Approved Under the Percentage of the**
7 **Common Fund Method**

8 The common fund doctrine is generally held applicable “where plaintiffs’ efforts have
9 effected the creation or preservation of an identifiable fund of money out of which the fees will be
10 paid.” *Jordan v. Dep’t of Motor Vehicles* (2002) 100 Cal. App. 4th 431, 446-47 (citing *Serrano v.*
11 *Priest* (1977) 20 Cal. 3d at 37-38). Here, the Settlement resulted in creation of an identifiable
12 \$1.275 million fund from which tax refunds, notice and administration costs, attorneys’ fees and
13 expenses and any incentive award would be paid.

14 Although it is possible that the entire \$1.275 million Settlement Fund would not be
15 exhausted, and therefore some amount would revert to the City, this does not impact calculation
16 of the relevant common fund amount. In applying the common fund method, attorneys’ fees are
17 “calculated on the basis of the ***total fund made available*** rather than the actual payments made to
18 the class.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 51 (emphasis added) (citing
19 *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997)).¹ For example, in
20 *Collins v. City of Los Angeles*, 205 Cal. App. 4th 140, 147-48, 158 (2012), the Court included in
21

22 ¹ See also *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)
23 (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480-81 (1980)) (“attorneys’ fees sought under a
24 common fund theory should be assessed against every class members’ share, not just the claiming
25 members.”); *Estrada v. iYogi, Inc.*, No. 2:13-cv-01989 WBS CKD, 2016 U.S. Dist. LEXIS 8947,
26 at *18 (E.D. Cal. Jan. 26, 2016) (“Where there is a claims-made settlement . . . the percentage of
27 the fund approach . . . is based on the total money available to class members, not just the money
28 actually claimed.”); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS
8476, at *50 (N.D. Cal. Jan. 26, 2007) (the court “must award fees as a percentage of the entire
fund, or pursuant to the lodestar method, not on the basis of the amount of the fund actually
claimed by the class”); *Fernandez v. Victoria Secret Stores, LLC*, No. C-06- 04149 MMM (SHx),
2008 U.S. Dist. LEXIS 123546, at *36 n.39 (C.D. Cal. July 21, 2008) (“Use of the ‘common

1 its common fund valuation for purposes of determining appropriate attorneys' fees the entire
2 value of the judgment, even though a portion of that amount was payable to class members who
3 could not be located and would revert to the City.²

4 Fee awards of 25-30% of a common fund, or more, are customary. *See, e.g., Chavez v.*
5 *Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11 (27.9 percent of the class benefit awarded and
6 noting “[e]mpirical studies show that, regardless whether the percentage method or the lodestar
7 method is used, fee awards in class actions average around one-third of the recovery”); *Bell v.*
8 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726 (“25 percent of the total damages fund
9 recovered for the class”); *In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.*, No. 960886,
10 1998 WL 1031494, at 8-9 (Alameda Cnty. Super. Ct. Oct. 22, 1998) (awarding 30% of fund and
11 citing eleven other awards ranging from 30%-45%).³ Here, Class Counsel requests a modest fee
12 of 15.3% of the Settlement Fund, which is below the typical 25-30% and well within the range
13 often approved by courts for similar sized settlements.⁴

14 _____
15 fund' concept in a case such as this, where each class member can recover only a finite amount,
16 does not affect the calculation of attorneys' fees even if a portion of the fund is not claimed.”).

17 ² Moreover, any potential reversion here is tantamount to a *cy pres* distribution. The goal of the
18 Settlement is to pay UUT refunds to Class members, the vast majority of whom are still Palo Alto
19 residents. Thus, a reversion to the City ensures that the Settlement Fund will be used for the
20 benefit of the majority of Class members who live or run businesses in Palo Alto and who will
21 receive the benefit of funds collected by the City. Indeed, it is the best possible *cy pres*
22 distribution. Further, Code of Civil Procedure section 384(c) recognizes that, in cases against
23 public entities, a reversion to the public entity satisfies a public purpose.

24 ³ *See also In re Natural Gas Trust Cases Price Indexing*, JCCP No. 4221/4224/4226/4428, 2006
25 Cal. Super. LEXIS 1302, at *7 (San Diego Cnty. Super. Ct. Dec. 11, 2006) (fee awards of 25%-
26 30% are “customary” in common-fund cases; awarding \$26,699,828.00 of the \$92.1 million
27 settlement fund, or 29%); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements*
28 *and Their Fee Award*, 7 J. EMPIRICAL LEG. STUD. 811, 833 (2010) (analyzing 444 cases
between 2006 and 2007 and concluding that “[m]ost fee awards were between 25 percent and 35
percent”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class*
Action Settlements: 1993-2008, 7 J. EMPIRICAL LEG. STUD. 248, 262 (2010) (finding a similar
range of fee awards).

⁴ *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI; MDL No. 1827, 2013
U.S. Dist. LEXIS 6607, at *47 (N.D. Cal. Jan. 14, 2013) (awarding attorneys' fees in an amount
equal to 30% of \$68 million settlement fund); *Pokorny v. Quixtar, Inc.*, No. C 07-0201 SC, 2013
U.S. Dist. LEXIS 100791, at *5-7 (N.D. Cal. July 18, 2013) (awarding fees equal to 29.5% of \$55
million common fund); *In re Broadcom Corp. Secs. Litig.*, No. SACV 01-275 DT (MLGx), 2005
U.S. Dist. LEXIS 41993, at *13 (C.D. Cal. Sept. 12, 2005) (attorneys' fees equal to 25% of \$150

1 The percentage method is appropriate here, as it “provides a credible measure of the
2 market value of the legal services provided” in contingency litigation (which almost always
3 involves percentage fee agreements). *Lealao*, 82 Cal. App. 4th at 49. The percentage method
4 encourages the successful attorney to accept the contingency risk and delay in payment, the
5 importance of which California decisions have repeatedly emphasized. *See, e.g., Ketchum v.*
6 *Moses* (2001) 24 Cal. 4th 1122, 1136 (“lawyers generally will not provide legal representation on
7 a contingent basis unless they receive a premium for taking that risk”) (internal quotations and
8 citation omitted); *Lealao*, 82 Cal. App. 4th at 47 (“attorneys providing the essential enforcement
9 services must be provided incentives roughly comparable to those negotiated in the private . . .
10 legal marketplace, as it will otherwise be economic for defendants to increase injurious
11 behavior”); *Melendres v. Los Angeles* (1975) 45 Cal. App. 3d 267, 273 (“There must always be a
12 flavor of generosity in the awards . . . in order that an appetite for efforts may be stimulated.”).

13 **B. The Requested Fees Should Be Approved Under the Lodestar Method**

14 California courts typically apply the lodestar plus multiplier method as a cross-check on
15 fees calculated under the percent-of-recovery method, or when there is not a common fund
16 capable of valuation with reasonable certainty. *Lealao*, 87 Cal. App. 4th at 37-39, 45-46; *Lafitte v.*
17 *Robert HalfIntern. Inc.* (2016) 1 Cal.5th 480, 504. Where the use of the lodestar method is used
18 as a cross-check, the Court is not required to perform an exhaustive cataloging and review of
19 counsel’s hours.⁵ *See In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) (“The
20 lodestar cross-check calculation need entail neither mathematical precision nor bean-counting.”);
21 *See also Destefano v. Zynga, Inc.*, No. 12-cv- 04007-JSC, 2016 U.S. Dist. LEXIS 17196, at *66-
22 68 n.11 (N.D. Cal. Feb. 11, 2016) (noting that “the Court may rely on . . . summaries [of hours
23 worked], as actual billing records are unnecessary in the context of assessing the lodestar cross-
24 check.”)

25 _____
26 million settlement fund); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 & n.6 (9th Cir.
2002) (affirming fee award that was 28% of \$97 million fund.

27 ⁵ The Court preliminarily approved Counsel’s request for attorneys’ fees but reserved the right for
28 further, more in-depth review upon Counsel’s formal motion, requesting that Counsel submit
Lodestar information for cross-check reference. (Preliminary Approval Order pp. 7-8).

1 **1. Class Counsel’s Lodestar is Reasonable and Supports the Requested**
2 **Award**

3 Class Counsel’s lodestar of \$369,740 over the course of this seven-year litigation is
4 reasonable. The starting point in the lodestar analysis is to discern the prevailing hourly rate for
5 similar work in the pertinent geographic region. *Chodos v. Borman* (2014) 227 Cal. App. 4th 76,
6 93 (citing *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 640 n.31) (value of attorney services is
7 variously defined as the “hourly amount to which attorneys of like skill in the area would
8 typically be entitled”) (citation omitted); *PLCM Grp., Inc. v. Drexler* (2000) 22 Cal. 4th 1084,
9 1094-95 (using prevailing hourly rate in community for comparable legal services even though
10 party used in-house counsel).

11 Class Counsel here are highly-regarded members of the bar with substantial practices and
12 have brought their extensive experience in class actions and complex litigation to this case. *See*
13 *Class Counsel Declarations*. The rates used to calculate the lodestar here are squarely in line with
14 prevailing rates in this jurisdiction, are paid by hourly paying clients of their firms, and/or have
15 been approved by other courts. *Id.* Class Counsel’s rates of \$500 to \$750 for partners, and \$350
16 for associates, are within the prevailing market rates in California and Los Angeles for attorneys
17 of comparable skill, experience, and reputation. These hourly rates are commensurate with the
18 market rate for fees according to the Laffey Matrix, a court approved and adopted survey of
19 attorney hourly rates. Attached hereto as Exhibit 1 to Steele’s declaration is the current version of
20 the Laffey Matrix.⁶

21 _____
22 ⁶ Since the hourly rates in the Laffey Matrix were established for D.C. Lawyers, these rates
23 should be adjusted upward 4.6% to reflect the current rates typical of attorneys litigating within
24 California. *See In re Chiron Corp. Securities Litigation*, 2007 WL 4249902, at *6 (N.D. Cal.,
25 Nov. 30, 2007) (“Adjusting the Laffey matrix figures accordingly will yield appropriate rates for
26 the respective geographical regions: ... +4.6% for Los Angeles.”). While the Ninth Circuit’s
27 cautions about relying on the *Laffey* Matrix, the Central District of California has recognized the
28 relevance of the *Laffey* Matrix in weighing the reasonableness of rates. *See Sinith v. Cty. of*
Riverside, No. EDCV16227JGBKKX, 2019 WL 4187381, at *3 (C.D. Cal. June 17,
2019) (finding the *Laffey* matrix admissible because “the Ninth Circuit’s discussion of the *Laffey*
Matrix affects the weight the Court will accord the matrix. Because the *Laffey* matrix has some
tendency to make it more probable that Plaintiffs counsel’s hourly rates are in line with those
prevailing in the community, it is relevant.” *See* Fed. R. Evid. 401; *Blum v. Stenson* (1984) 465

1 Thomas Slovak, Stephen Schultz and John Girardi have all been practicing for more than
2 thirty years. Mr. Slovak and Mr. Schultz bill at an hourly rate of \$550 per hour. Mr. Girardi's
3 hourly rate is \$750. Alexandra Steele began working on this litigation as a second-year attorney
4 and is now an eight-year attorney and owner of her own law firm. Ms. Steele's hourly rate began
5 at \$300 per hour and most recently, she was granted \$550 per hour for work conducted in the case
6 of *Vannini v. Playhouse Nightclub et al.*, Los Angeles Superior Court Case Number BC720104.
7 The experience of three of the four main attorneys working on the matter could garner a billing
8 rate of more than nine hundred dollars per hour given their years of experience.⁷ If the Court were
9 to grant a multiplier of even 1.5, Class Counsel's lodestar would be \$554,610 which is
10 significantly greater than the \$425,000 amount requested (of which \$219,155.92 are costs). The
11 fee request, after costs and Plaintiff's incentive award, is \$195,844.08 amounting to 15.3% of the
12 total settlement fund and represents a significant haircut on Class Counsel's hourly rate.

13 Further, Class Counsel's total hours are reasonable. The extensive work performed by
14 Class Counsel, from initial investigation through settlement, the use of an expert to understand
15 telephone billing practices and their linkage to proper taxation of services, time-consuming
16 discovery involving extensive fact-finding and negotiation with the telephone service providers,

17 U.S. 886, 895 n.11. California state courts have also relied on the *Laffey* Matrix in assessing
18 hourly rates. "One well-established objective source for rates that vary by experience is
19 the *Laffey* matrix." *In Re HPL Technologies, Inc. Securities Litigation*, 366 F.Supp.2d 912, 921
20 (N.D. Cal. 2005) (Confirming use of the *Laffey* Matrix adjusted to account for locality pay
differentials); *Rubalcaba v. Albertson's, LLC*, No. BC528755, 2017 WL 4330597, at *4 (Cal.
Super. Ct. May 25, 2017) (reversed on other grounds).

21 ⁷ Class Counsels' rates are further supported by other court's determinations regarding
22 appropriate hourly rates. *Bergstein v. Stroock & Stroock & Lavan*, No. BC483164, 2013 Cal.
23 Super. LEXIS 593, at *12 (L.A. Cnty. Super. Ct. Feb. 14, 2013) (approving rates up to \$920 per
24 hour and noting that "in the Los Angeles legal community, attorney billing rates of \$1000 per
25 hour and above are no longer unheard of"); *Rodriguez v. Cnty. of Los Angeles*, 96 F. Supp. 3d
26 1012, 1023 (C.D. Cal. 2014) (approving attorney rates from \$500 to \$975 in a case against
27 County of Los Angeles); Likewise, Class Counsel's rates for paralegals, legal assistants, and law
28 clerks, which range from \$60 to \$335, are reasonable. *See Goldman v. Lifelock, Inc.*, No
115CV276235, 2016 Cal. Super. LEXIS 82, at *6 (Santa Clara Cnty. Super. Ct. Feb. 5, 2016)
(approving paralegal rates up to \$320 per hour); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-
07098-AB (SHx), 2015 U.S. Dist. LEXIS 54063, at *65 (C.D. Cal. Mar. 24, 2015) (approving
paralegal rates of \$240 for a paralegal with five years' experience and \$345 for a paralegal with
23 years' experience).

1 discovery questions involving difficult questions concerning the privacy rights of taxpayers,
2 briefing judgment on the pleadings, class certification, summary adjudication and the exhaustive
3 settlement negotiation process, is set forth more fully in the accompanying declarations by Class
4 Counsel. Suffice it to say, this was a hard-fought litigation against a sophisticated defendant with
5 ample resources that fought every step of the way.

6 On average, Class Counsel invested approximately 1000 hours in this seven-year
7 litigation. Courts routinely find comparable expenditures of time reasonable in similarly complex
8 litigation. *See, e.g., Skold v. Intel Corp.*, No. 1-05-CV-039231, 2015 Cal. Super. LEXIS 122, at
9 *14-15 (Santa Clara Cnty. Super. Ct. Jan. 28, 2015) (finding that 17,651.2 hours was reasonable
10 for ten years of litigation, especially, “[r]ecognizing the length and complexity of this lawsuit and
11 the amount of work involved over an extended period of time as well as the risks associated with
12 the outcome”); *Duran v. United States Bank Nat’l Ass’n*, No. 2001-035537, 2010 Cal. Super.
13 LEXIS 1058, at *54 (Alameda Cnty. Super. Ct. Dec. 16, 2010) (holding that 14,500 “hours are
14 fully justified by the tremendous burdens of over eight years of intense, bitterly contested
15 litigation.”).

16 Each firm here has also submitted a declaration attesting that their reported hours are
17 accurate and were reasonably incurred in connection with the prosecution and settlement of
18 claims. *See, e.g., Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal. App. 4th 1309, 1324 (“It
19 is not necessary to provide detailed billing timesheets to support an award of attorney fees under
20 the lodestar method Declarations of counsel setting forth the reasonable hourly rate, the
21 number of hours worked and the tasks performed are sufficient.”) (citing *Wershba v. Apple
22 Computer* (2001) 91 Cal. App. 4th 224, 254-55); *see also Blackwell v. Foley*, 724 F. Supp. 2d
23 1068, 1081 (N.D. Cal. 2010) (“An attorney’s sworn testimony that, in fact, it took the time
24 claimed ‘. . . is evidence of considerable weight on the issue of the time required’”) (citation
25 omitted; alterations in original).

26 Class Counsel also anticipates incurring additional lodestar going forward. Class Counsel
27 has closely monitored the claims process to date and has been proactive in addressing issues and
28

1 advising and assisting claimants. The process of analyzing claims is anticipated to take at least
2 several months, during which time Class Counsel expects to maintain a high level of oversight
3 and involvement

4 Finally, Class Counsel are not requesting a lodestar multiplier (though arguably this case
5 would merit at least a 1.5 multiplier given the risk, duration, and complexity of the case).⁸ Thus,
6 Class Counsels' fee request is more than reasonable.

7 **2. The Costs Are Reasonable**

8 Inclusive in their request for a total award of \$425,000, Class Counsel seek
9 reimbursement of \$88,717.42 of which is in unreimbursed out-of-pocket expenses and
10 \$130,438.50 expenses to be paid directly from the Settlement Fund. These costs were necessary
11 to the investigation, prosecution, and settlement of this action, and included, *inter alia*, expert
12 witness and consultant fees, attorney service fees, transcript fees, necessary travel to and from
13 Palo Alto from Los Angeles for hearings and depositions, the cost of sending notice (direct mail,
14 publication notice, and administration of that process) after class certification, Plaintiff's share of
15 the administration of the case by JND and other reasonable expenses. *See* Class Counsel
16 Declarations filed concurrently herewith. Class Counsel also anticipate incurring additional
17 expenses through the end of the claims process, including JND's additional fees associated with
18 the Claims Administration.

19 **C. The Requested Incentive Award to Plaintiff Is Reasonable**

20 Plaintiff Eileen Staats invested significant time and effort in order to vindicate the rights
21

22 ⁸ To "approximate market-level compensation for such services, which typically includes a
23 premium for the risk of nonpayment or delay in payment of attorney fees" (*id.*), courts employ fee
24 enhancements, adjusting the fee "based on consideration of factors specific to the case," *PLCM*
25 *Grp., Inc.*, 22 Cal. 4th at 1095. Those factors include: (1) the results achieved on behalf of the
26 Class; (2) the novelty and difficulty of the questions involved and the skill displayed in presenting
27 them; (3) the response of the Class to the settlement, including a lack of objections to the
28 settlement terms, and particularly to the fee award; (4) counsel's experience, reputation, and
ability; (5) counsel's preclusion from other work; and (6) the contingent nature of the fee award.
See Ketchum, 24 Cal. 4th at 1132; *Cundiff v. Verizon Cal., Inc.* (2008) 167 Cal. App. 4th 718, 724
n.3; *Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 556 (2009). (Multipliers can range
from 2 to 4 or even higher.)

1 of taxpayers in this case. *See* Staats Decl. ¶¶ 4-11. Plaintiff's efforts include producing her
2 personal documents, sitting for deposition, reviewing filings, discovery responses, overseeing her
3 attorneys, and standing up for the rights of taxpayers, even when doing so brought her unwanted
4 publicity. *Id.* Class Counsel requests a \$10,000 incentive award for Ms. Staats, an amount which
5 is commonplace, even in cases lasting for much shorter periods of time and providing less
6 remarkable results of the instant Settlement Fund. *Blacksher v. United States Sec. Assocs., Inc.*,
7 No. BC348103, 2008 Cal. Super. LEXIS 1464, at *6-7 (L.A. Cnty. Super. Ct. Mar. 7, 2008)
8 (incentive award of \$10,000 was reasonable for assisting in two years of litigation); *Antelope*
9 *Valley Groundwater Cases v. Diamond Farming Co.*, JCCP No. 4408, Cal. Super. LEXIS 739, at
10 *17 (L.A. Cnty. Super. Ct. May 4, 2011) (\$10,000 award); *Bates v. KB Home*, No. RG-08-
11 384954, 2011 Cal. Super. LEXIS 810, at *6-7 (Alameda Cnty. Super. Ct. June 16, 2011).

12 III. CONCLUSION

13 For the foregoing reasons, Class Counsel respectfully request an award of \$425,000,
14 inclusive of attorneys' fees and expenses, and an incentive award of \$10,000 to Ms. Staats, to be
15 paid from the Settlement Fund.

16
17
18 Dated: August 11, 2021

STEELE COOPER LAW

19
20 By: 

ALEXANDRA T. STEELE
Attorney for Plaintiff and the Class

21
22
23 Dated: August 11, 2021

**SLOVAK, BARON, EMPEY, MURPHY
& PINKNEY, LLP**

24
25
26 By: 

STEPHEN J. SCHULTZ
Attorneys for Plaintiff and the Class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 175 S. El Molino Ave., Suite 9, Pasadena, CA 91101.

On August 11, 2021, I served true copies of the following document(s) described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND PAYMENT OF AN INCENTIVE AWARD** on the interested parties in this action as follows:

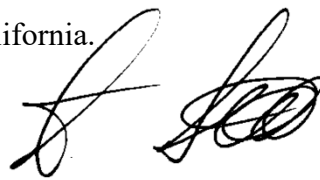
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XX BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address alex@steelecooperlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on August 11, 2021, at Pasadena, California.



Alexandra T. Steele