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Attorney for Plaintiffs

**IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

| | | |
|---|---|-----------------------------------|
| TERRY HOUSER, TERRY ODEGARD, |) | |
| THOMAS ZURBUCHEN, ROGER WEBB, on |) | Case No. DV 18-0778 |
| behalf of themselves and all others similarly |) | |
| situated, |) | Judge Mike Salvagni |
| |) | |
| Plaintiffs, |) | PLAINTIFFS' MOTION FOR |
| |) | ATTORNEY FEES AND EXPENSES |
| v. |) | |
| |) | |
| CITY OF BILLINGS, |) | |
| |) | |
| Defendant. |) | |

Plaintiffs hereby move this Court for the following:

- An award of \$900,000 for attorney fees;
- Reimbursement of costs and expenses of \$25,000
- A Service Award of \$2,000 for each of the following, Plaintiff Terry Odegard, Plaintiff Roger Webb, Plaintiff Tom Zurbuchen, and Plaintiff Susan McDaniel, with the amount of the service awards being deducted from Class Counsel's fee award.

The motion is supported by the contemporaneously filed Brief in Support, exhibits attached to the Brief, and documents contained in this Court's file. Pursuant to the Settlement Agreement between the parties, the City has agreed not to oppose this motion. Doc. 284, Exhibit 1, p. 4

DATED: July 31, 2023

Respectfully submitted,
Monforton Law Offices, PLLC

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Matthew G. Monforton, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to the following on 07-31-2023:

Bryce Anthony Burke (Attorney)
27 N 27th Street
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Billings MT 59103-2559
Representing: City Of Billings
Service Method: eService

Doug James (Attorney)
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Representing: Intervenor Class Representatives
Service Method: eService

Electronically Signed By: Matthew G. Monforton
Dated: 07-31-2023

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| behalf of themselves and all others similarly |) | |
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| Plaintiffs, |) | BRIEF IN SUPPORT OF PLAINTIFFS' |
| |) | MOTION FOR ATTORNEY FEES AND |
| v. |) | EXPENSES |
| |) | |
| CITY OF BILLINGS, |) | |
| |) | |
| Defendant. |) | |

INTRODUCTION

In August 2017, a group of Billings ratepayers asked the undersigned attorney to send a letter on their behalf to the Billings City Attorney inquiring about the City’s “franchise fees.” **Exhibit 1, ¶ 3.** These fees were, in reality, sales taxes imposed upon customers who purchased water, wastewater service, and solid waste disposal service from the City. The City’s attorney failed to explain coherently why the “franchise fees” were valid under Montana law, which prohibits all local sales taxes with certain, well-defined exceptions not applicable to this case. Mont. Code Ann. § 7-1-112(1).

Several months of negotiations between the ratepayers and the City failed to resolve the matter. The residents then filed a class action lawsuit in May 2018. During the next five years of litigation, the case endured the deaths of three of its Class Representatives, severance into two parallel class actions, delays due to COVID, and assigned to five different judges. During that time, the parties fully briefed an interlocutory appeal by the City, one of the two Class Counsel

attorneys left the case after being nominated for lieutenant governor, putative intervenors attempted to oust Class Counsel and the Class Representatives after they had worked on the case for three years, ten summary judgment motions were filed and fully briefed, and two unsuccessful court-ordered mediations (and several more informal ones) were held.

Despite these challenges, the surviving Class Representatives and remaining Class Counsel successfully parried the City's many attacks on this lawsuit and achieved an excellent result: a \$3.6 million settlement to be disbursed in the form of tax rebates to City ratepayers as well as a permanent injunction protecting them from future assessments of sales taxes on utilities. The Class Representatives now move for a fee award of 25% of the settlement (\$900,000.00) and \$25,000 for costs and expenses. As shown below, the requested fees, costs, and expenses were reasonably and necessarily incurred.

BACKGROUND FACTS

The City provides water, wastewater, and solid waste disposal services directly to its customers. Doc. 39 (City Answer to 1st Amended Comp.), ¶¶ 30-32. It requires residents to obtain these utilities from the City. Doc 197.002, Exhibit B, City Water Rule 4-7; Exhibit C (Billings Mun. Code § 21-214).

The City Council approved a resolution imposing a 4% franchise fee "across-the-board to all water/wastewater rates, fees and charges" to be "shown separately on the utility bills" effective July 1, 1992. Doc. 197.002, Exhibit E. It also began applying a 4% "franchise fee" to solid waste disposal ratepayers in 1992. Doc. 44, ¶ 3. The City raised the "fees" for solid waste disposal to 5% in 2004. Doc. 44, ¶ 7.

Several of the Plaintiffs protested for *decades* against the City's imposition of the "franchise fees." Doc. 55, Ex. A at 7; see also **Exhibit 2** (Hearing Testimony of Sen. Roger Webb), pp. 106:16–107:10. Over the years, several City Council members also objected to the "fees." Councilmember Dan Farmer denounced the "fees" as "a very regressive sales tax" because "it hurts the little guy on a fixed income and the elderly." Doc. 197 Exhibit D, p. 8. He also noted that it was "fundamentally dishonest to go around the [City] Charter." Doc. 197.002, Exhibit D, p. 8. Other citizens present at the 1992 City Council hearing in which the "fees" were enacted pointed out that "new names, buzz words, still add up to more money from the same

source, the taxpayer” and “you can call it a canary tax, because I think it’s for the birds.” Doc. 197.002, Exhibit D, p. 6.

Several City officials also voiced disagreements with the “franchise fees.” Public Works Director David Mumford expressed his concerns as far back as 2004, Doc. 197.002, Exhibit A, p. 62:3-6, and as recently as January 2016, when he informed the City Administrator of the following:

I have discussed with legal staff in the past my concern that the State Supreme Court ruling that the Franchise Fee is a tax as currently implemented. The Court ruling clearly states that there must be a nexus between how the fee is used to what you are being assessed for. By assessing the fee on customers for the use of [rights-of-way] and using the revenues for General Fund obligations would not appear consistent with Court ruling.

Doc. 197.002, Exhibit A, 60:25-61:15.

Jennifer Duray, the Finance Manager for the City’s Public Works Department, also expressed concerns. Doc. 197.002, Exhibit F, pp. 62:7-64:21. In May 2017, Duray told then-City Administrator Christina Volek of a customer insisting the “franchise fees” were illegal and threatening to seek an attorney, to which Volek replied, “This is just what we feared.” Doc. 197.002, Exhibit F, pp. 66:2-67:5.

On August 3, 2017, Class Counsel began formally advocating for a group of ratepayers who would later become the Class Representatives in this case. **Exhibit 3.** No change occurred in the City policy regarding the “fees,” so the Class Representatives filed suit on May 18, 2018. Doc. 1. The City ceased collecting franchise fees in response to the filing of the complaint. Doc. 197.002, Exhibit G, pp. 70-74.

The District Court granted class certification on April 10, 2019, but severed from this case all ratepayers who resided in homes subject to a subdivision improvement agreement (SIA). Doc. 74. The City responded by filing an interlocutory appeal. Another consequence of the certification order was that Susan and Gary McDaniel filed a separate class action in October 2019 on behalf of City residents living in neighborhoods governed by SIAs.

After the Montana Supreme Court upheld the class certification ruling, a group of putative intervenors unsuccessfully attempted to oust Class Counsel and the Class Representatives from the case. Doc. 230. After another year and a half of litigation, the parties reached a tentative settlement in October 2022. Doc. 271. The City agreed to pay \$3.6 million

in the form of tax rebates to customers who had paid franchise fees between February 2015 and June 2018. Doc. 284, Exhibit 1, p. 2. The City also agreed not to appeal the Court's order enjoining the City from reimposing its illegal sales taxes. Doc. 284, Exhibit 1, p. 2. Pursuant to the Settlement Agreement and the joint motion of the parties, the Court amended the class definitions on March 31, 2023, to include in this action the claims of the SIA residents in the *McDaniel* matter. Doc 290.

Plaintiffs now seek an award of fees of \$900,000 (25% of the settlement fund), plus costs and expenses of \$25,000 needed to achieve this successful outcome. As shown below, this request is both reasonable and fair.

ARGUMENT

Rule 23(h) provides that, in a certified class action, “the court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Attorney fees in class action suits can be calculated using either (1) the lodestar method, which involves multiplying the number of hours reasonably spent on the case by an appropriate hourly rate, or (2) the percentage method, which authorizes fees to be paid from a percentage of a common fund. *Gendron v. Mont. Univ. Sys.*, 2020 MT 82, ¶ 12, 399 Mont. 470, 461 P.3d 115.

Courts usually use the percentage method to calculate attorney fees when a class action lawsuit produces a common fund. *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“[t]he percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (“[u]se of the percentage method in common fund cases appears to be dominant”); *Vizcaino v. Microsoft Corp.*, 209 F.3d 1043, 1050 (“the primary basis of the fee award remains the percentage method...”). Reliance upon the percentage method in class actions producing a common fund has several benefits:

Where both the class and its attorneys are paid in cash, this task [of awarding fees] is fairly effortless. The district court can assess the relative value of the attorneys’ fees and the class relief simply by comparing the amount of cash paid to the attorneys with the amount of cash paid to the class. The more valuable the class recovery, the greater the fees award.

In re HP Inkjet Printer Litig. 716 F.3d 1173, 1178 (9th Cir. 2013). Because the percentage method relies on incentives that promote efficiency and yokes together the interests of the class and its attorneys, it has been described as “self-regulatory” and “self-policing” and frees the courts to do other business. Coffee, John C. Jr., *Understanding the Plaintiff’s Attorney: The Implications of Economic Theory for Private Enforcement of Law through Class and Derivative Actions*, 86 Colum. L. Rev. 669, 724-25 (1986).

Given that the proposed settlement will result in a \$3.6 million common fund, a percentage-based award is appropriate for this case. In *Gendron*, the Montana Supreme Court listed the following factors for courts to consider in calculating a percentage-based fee award in class action lawsuits: (1) The novelty and difficulty of the legal and factual issues involved; (2) The time and labor required to perform the legal service properly; (3) The character and importance of the litigation; (4) The result secured by the attorney; (5) The experience, skill, and reputation of the attorney; (6) The fees customarily charged for similar legal services at the time and place where the services were rendered; (7) the ability of the client to pay for the legal services rendered; and (8) the risk of no recovery. *Gendron*, ¶ 14. All of these factors support a 25% fee award.

(1) This Case Has Been Filled with Novel and Difficult Issues.

The first factor for the Court to consider is the novelty and difficulty of the legal and factual issues involved in the case. *Gendron*, ¶ 14. This case was chock-full of difficult and thorny legal issues, many of them issues of first impression in Montana:

- The applicability of the tax procedures in Title 15 of the Montana Code Annotated to the City’s “franchise fees”;
- Multiple statute-of-limitations issues, including whether water is a “good” under the U.C.C., thereby limiting the limitations period for water class members to four years rather than eight years;
- Whether water class members were required under the U.C.C. (specifically, Mont. Code Ann. § 30-2-607(3)(a)) to give notice to the City before filing suit;
- Whether class members were required to comply with Montana’s municipal claim presentation statute, (Mont. Code Ann. § 7-6-4301) before filing suit;
- Whether the Voluntary Payment Doctrine is a viable defense in Montana.

Along with difficult legal issues, this case has presented several difficult factual issues. This included years of litigation over the nature of the “franchise fees,” *i.e.*, whether they were sales taxes, fees, charges, costs, etc.

The case also included questions as to whether some residents might have waived their right to seek relief. Some of the City's residential ratepayers lived in homes with subdivision improvement agreements (SIAs), and some did not. The Court agreed with the City early in the case that "the differences in contract law, real estate law, applicable statutes, and notice generally make the SIA claims uncommon and untypical." Doc. 123 at 4-5. Therefore, the Court excluded SIA residents from the *Houser* matter, thereby necessitating the filing of a parallel class action lawsuit in October 2019 by the McDaniel plaintiffs, who represented the SIA residents. While Class Counsel and Class Representatives ultimately prevailed on the issue of whether SIA residents and non-SIA residents had common claims, the pendency of parallel class actions injected an enormous amount of complexity into the litigation of both cases. This, in turn, created several other issues, such as the length of the tolling period that could be claimed by SIA residents. Complicating matters further was that the City's billing software did not distinguish between SIA residents and non-SIA residents. Doc. 184, Exhibit C, pp. 7-9.

The difficulty of a case can also be measured by its undesirability from the perspective of attorneys asked to take on the case. This Court may properly consider that in calculating fees. *State Dept. of Health and Social Services v. Okuley*, 214 P.3d 247, 255 (Alaska 2009) ("We have encouraged courts to consider the potential difficulty of attracting capable counsel" in determining the compensable value of counsel's services and proper fee awards."); *Been v. O.K. Indus., Inc.* 2011 WL 4478766, at *10 (E.D. Okla. Aug. 16, 2011).

Several of the Class Representatives sought representation from lawyers around the state before contacting Class Counsel. **Exhibit 4** (Houser Depo.) at 12-13, 88-89, 93; **Exhibit 5** (Zurbuchen Depo.) at 53-57. As Plaintiff Houser stated, "I called a whole bunch of attorneys and told them what [City officials] were doing, and they told me it was crooked"). **Exhibit 4** at 93. Yet none of these lawyers took the case. One obvious explanation is that most lawyers recognize the adage that "you can't beat City Hall" or, at least, that doing so requires an enormous amount of time and resources. By contrast, Class Counsel stepped up to the plate when the Class Representatives called them and agreed to take on this enormously large case on contingency when nobody else would. This fact weighs heavily in favor of granting this fee motion.

(2) Time and labor required to perform the legal service properly.

Class Counsel filed the complaint in this matter on May 18, 2018, and this case is now entering its sixth year. Class Counsel had been representing the Class Representatives well before that date. These efforts included the preparation of a letter sent from Class Counsel on August 3, 2017, to then-City Attorney Brent Brooks inquiring on behalf of Plaintiff Terry Houser as to the legality of the City's "franchise fees." **Exhibit 3.**

This led to more correspondence between the parties in the fall of 2017, a face-to-face conference between Class Counsel and the City's attorneys, and a tolling agreement between the parties. **Exhibit 1, ¶ 6.** After continued efforts by Class Counsel, City residents, and the City failed to achieve a resolution, Class Counsel filed the complaint in this matter in May 2018 and filed the complaint in the *McDaniel* matter on October 9, 2019. The docket for the *Houser* case currently reflects 320 separate filings. The docket in the *McDaniel* case reflects 150 separate filings.

There has been a significant amount of discovery in this case (and in the *McDaniel* case). The parties have exchanged over 87,000 pages of documentation and have responded to multiple sets of written discovery requests, including 240 requests for admissions, 96 interrogatories, and 215 requests for the production of documents. **Exhibit 1, ¶ 7.**

Class Counsel has taken or defended numerous depositions, including the following individuals:

- Bruce McCandless, former City Administrator;
- David Mumford, former Director of Public Works;
- Jennifer Duray, former Finance Director of the Department of Public Works;
- Patrick Weber, the former Finance Director for the City of Billings;
- Plaintiff Terry Houser;
- Plaintiff Terry Odegard;
- Plaintiff Thomas Zurbuchen;
- Mae Woo, former Plaintiff;
- Plaintiff Roger Webb;
- Plaintiff Clayton Fiscus;
- Gary McDaniel, former Plaintiff; and

- Plaintiff Susan McDaniel.

Exhibit 1, ¶ 8.

In addition to the foregoing depositions, there have been several court hearings where Class Counsel made several substantive arguments and presented live testimony and other evidence, including the testimony of Plaintiff Terry Odegard, Plaintiff Thomas Zurbuchen, Plaintiff Roger Webb, and also prepared substantial cross-examinations of putative intervenors Andrew Billstein and Jacob Troyer. **Exhibit 1, ¶ 9.**

This testimony is in addition to affidavit testimony from multiple individuals, including:

- Denise R. Bohlman, City Clerk;
- Jennifer Duray, former Finance Director for the Public Works Department;
- David Mumford, former Public Works Director;
- Bruce McCandless, former City Administrator for the City of Billings;
- Chuck Tooley, former Mayor of the City of Billings;
- Brett Rutherford, former Yellowstone County Elections Administrator;
- Chris Hertz, Public Works Department Engineer III;
- Tom Hanel, former Mayor of the City of Billings.

Exhibit 1, ¶ 10.

There has been a considerable number of fully briefed motions in this matter. Dispositive motions filed by the City include a motion to dismiss, a motion for judgment on the pleadings, and *eight* motions for summary judgment. The Class Representatives filed two summary judgment motions. And along with the usual procedural motions filed by the parties throughout the pendency of this case, the parties also filed and fully briefed numerous motions specifically tailored to class action lawsuits, such as motions for class certification, modification of class definitions, and approval of notices. Class Counsel also successfully defended the Court's class certification order during interlocutory appellate proceedings that resulted in a published decision by the Montana Supreme Court. *Houser v. City of Billings*, 2020 MT 51, 399 Mont. 140, 458 P.3d 1031.

Class Counsel has also spent considerable time administering the settlement, including overseeing the distribution of notices to class members as well as fielding over one hundred telephone calls and countless emails from class members concerning the settlement. **Exhibit 1, ¶ 11.** More work remains to be done, including additional communications with class members

before the deadline on August 31, 2023, to object or opt-out. And there is a potential for additional appellate proceedings after the Court conducts its final approval hearing in November 2023.

The time spent (thus far) by Class Counsel on this matter, both before and after the May 2018 filing of the complaint is 1,906 hours (678 hours of work performed by Attorney Kristen Juras and 1,228 performed by Attorney Matthew Monforton). **Exhibit 1, ¶ 12.** The number of hours devoted by Class Counsel was reasonable and necessary in light of all the activity that has occurred in this matter since August 2017.

(3) The Character and Importance of this Litigation.

The character of this litigation supports Class Counsel’s fee request because the action vindicated important rights granted to Class Members under state law. Montana law protects its citizens from the imposition of sales taxes by municipalities. The authority to enact a local sales tax is one that must be “specifically delegated” to local governments by the Legislature. Mont. Code Ann. § 7-1-112(1). The Legislature never authorized the City’s “franchise fees.”

The City’s policy of taxing necessities such as water, wastewater, and garbage service impacted working-class and low-income residents the hardest. Taxing necessities “is regressive because lower-income people must spend a larger share of their income on these necessities.” *Characteristics of an Effective Tax System*, Oklahoma Policy Institute, <<https://okpolicy.org/resources/online-budget-guide/revenues/an-overview-of-our-tax-system/characteristics-of-an-effective-tax-system/>>. States imposing sales taxes, therefore, seek to avoid taxing necessities. See, e.g., Kirk J. Stark, *The Uneasy Case for Extending the Sales Tax to Services*, 30 FLA. ST. U. L. REV., 435, 450 (2003) (“Most states exempt from the sales tax base various basic necessities of life”). For over 25 years, however, the City violated this principle by collecting regressive “franchise fees.”

Besides vindicating important rights under Montana law, this litigation has been of utmost importance to City residents because the City left them no alternatives. Several of the Plaintiffs had protested to the City for *decades* about the franchise fees, to no avail. Doc. 55, Ex. A at 7; see also **Exhibit 2**, 106:16–107:10. This class action lawsuit was the only means available for the Class Representatives to protect their rights and those of their fellow residents throughout Billings.

This case is critically important to the Class Members. It is also broadly important to ensure that municipalities are not rewarded for illegally circumventing the Legislature's protections against local sales taxes. Besides benefitting Class Members, payment of the tax refunds by the City will also send a message to other Montana municipalities that revenue increases must be sought lawfully rather than by imposing illegal sales taxes with deceptive labels such as "franchise fees."

(4) Class Counsel Secured an Excellent Result

There are several, significant benefits that class members will derive from this settlement. The most obvious benefit is the \$3.6 million settlement fund that the City has agreed to create and which will be disbursed to class members as tax rebates after expenses are paid.

Another significant benefit of this settlement is that it locks in this Court's ruling enjoining the City from ever again imposing sales taxes upon its ratepayers. *Staton v. Boeing*, 327 F.3d 938, 974 (9th Cir. 2003) ("where the value to individual class members of benefits deriving from injunctive relief can be accurately ascertained may courts include such relief as part of the value of a common fund for purposes of applying the percentage method of determining fees."). Class Counsel successfully persuaded the Court to issue an injunction stating as follows: "Defendant City of Billings, its officers, agents, servants, employees, or persons in active concert with any of them, are ENJOINED from imposing these illegal sales taxes in the future on Plaintiffs." *McDaniel* Doc. 102 at 2. The Settlement Agreement includes a waiver of the City's right to appeal this Court's Judgment in *McDaniel*. Doc 284, Exhibit 1 at p. 2. This injunction will protect City ratepayers from paying \$2.5 million each year in illegal sales taxes.¹

The Settlement Agreement (1) provides tax rebates to City ratepayers and (2) eliminates the City's ability to appeal and challenge the ruling on the legality of the "franchise fees." These two components significantly benefit the Class Members. Any appeal would cause uncertainty and the risk of the Montana Supreme Court reversing this Court's decision. Even if the ruling

¹ It should also be noted that the City ceased collecting "franchise fees" in June 2018 as a direct result of Class Counsel filing this suit in May 2018. This resulted in savings by City ratepayers of over \$10 million in "franchise fee" collections between June 2018 and late 2022 when the parties reached a tentative settlement.

was affirmed, the appeal would still take significant additional time and result in the accumulation of more attorney fees – fees that would indirectly be borne by the class members that remain citizens and taxpayers of the City. The Settlement Agreement very much advances the interests of Class Members.

(5) The Experience, Skill, and Reputation of the Attorneys Are Substantial

The attorneys who represented the Class Members in this matter have the experience, skill, and reputation that warrant the fee award being requested. Matthew Monforton has been representing the Class Representatives since August 2017. Kristen Juras represented the Class Representatives until she moved to withdraw from the case as a result of being nominated by the Republican Party for the office of lieutenant governor on June 2, 2020. Doc. 163 at 2. Their qualifications and attributes are highlighted below:

Matthew Monforton

Mr. Monforton graduated in 1991 from Claremont McKenna College (1991) with a B.A. degree, and from UCLA School of Law in 1994 with a J.D. degree. He was in private practice in Newport Beach, California from 1995 to 1996. **Exhibit 1, ¶ 13.**

In 1997, he joined the Los Angeles County District Attorney's Office as a Deputy District Attorney and prosecuted cases for that office from 1997 to 2006. During that time, Monforton tried 25 misdemeanor and felony cases to a jury. From May 2000 until he left the DA's Office in January 2006, he was assigned to the Office's Appellate Division. While there, he handled over 40 cases before the Appellate Department of the Superior Court, the California Court of Appeal, and the California Supreme Court. He also handled many of the federal habeas petitions in federal district court in which the Los Angeles County Sheriff was the responding party. He also represented Los Angeles County before the Ninth Circuit Court of Appeals in several federal habeas cases that were appealed either by the petitioner or the County. **Exhibit 1, ¶ 14.**

After leaving the DA's Office in 2006, Mr. Monforton went into private practice in Montana. He has handled numerous civil cases in the federal and state district courts of Montana. His appellate experience includes briefing and arguing cases resulting in 8 published opinions by the Ninth Circuit, 4 published opinions by the Montana Supreme Court, 1 published

opinion by the California Supreme Court, and 7 published opinions by the California Court of Appeal. This does not include dozens of appeals resulting in unpublished decisions. **Exhibit 1, ¶ 15.**

In January 2011, U.S. District Judge Otis Wright granted Mr. Monforton's motion to certify a class consisting of several hundred of his former colleagues in the District Attorney's office who were challenging the anti-union activities perpetrated by Los Angeles County. See order granting class certification in *Association of Deputy District Attorneys v. County of Los Angeles, et al.*, (C.D. Cal. Case No. CV 09-7931 ODW (SSx) (filed 1/24/2011)). The case resulted in a settlement and injunctive relief for the class - specifically, the District Attorney was enjoined from engaging in anti-union retaliatory actions while he remained in office. **Exhibit 1, ¶ 16.**

Kristen Juras²

Ms. Juras graduated magna cum laude from the University of Georgia School of Law in June 1982. She was admitted to the State Bar of Georgia in 1982, the State Bar of Oklahoma in 1984, and the Montana State Bar in 1989. She was also admitted to practice in the federal courts in 1982 and the U.S. Tax Court in 1983.

In 1991, she was awarded an AV (preeminent) rating by Martindale Hubbell, a national directory of attorneys. From 1982-1994 and 1996-2016, she practiced law as a member of several law firms. From 1994 to 1996 she served as general counsel to a publicly traded corporation. She practiced as a sole practitioner from 2016 until mid-2020, when she was nominated to be Lieutenant Governor of Montana. She was subsequently elected to that office in November 2020.

Ms. Juras has represented many taxpayers in administrative and judicial proceedings challenging taxes assessed by local governments, including *Woith v. Cascade County Treasurer*, 262 Mont. 170, 864 P.2d 752 (1993), and a taxpayer class action lawsuit filed against Montana School District 13G and the Hill County Treasurer. She has also assisted as defense counsel in class action litigation and other complex litigation matters, including *Crop Growers Corporation*

² An affidavit by Ms. Juras detailing her experience can be found at Doc. 38, Exhibit 3.

Sec. Litig., CV-95-58- GF-PGH (D. Mont. 1995) and *Butte Mining PLC v. Smith*, 15 F. Supp. 2d 965 (D. Mont. 1992).

Since August 2000, Ms. Juras has been a professor at the University of Montana School of Law, where she taught contracts, taxation, agricultural law, wills and trusts, international law, and business-related classes. She has co-authored several textbooks, including *Sales and Leases: A Problem-based Approach* (eLangdell 2016). She has written and presented numerous articles on a wide variety of contract and tax issues at continuing legal education seminars. She has served as the chair of the Business, Estates, Trust, Tax, and Real Property Section of the Montana State Bar and as the chair of its legislative committee. Since 1989, she has been regularly involved, on behalf of the Section, in reviewing, drafting, and testifying regarding proposed Montana legislation, including state and local taxation. She was elected in 1999 to the national American College of Tax Counsel, a national group of tax attorneys selected through a rigorous screening process, and in 2015 was elected to the national American College of Real Estate Lawyers.

Mr. Monforton's three decades of experience, and Ms. Juras' four decades of experience, as well as their skills and reputations, strongly support this fee motion.

(6) The fees customarily charged for similar legal services at the time and place where the services were rendered.

The percentage of the settlement requested by Class Counsel as a fee award in this matter is *lower* than is typical for class action settlements in Montana that result in the creation of a common fund. A fee award of one-third (33%) of the settlement fund is typical in Montana. See, e.g., *Henderson v. Kalispell Regional Healthcare*, 8th Jud. Dist. Ct. Cause No. CDV- 19-0761 (1/3 of \$4.2 million common fund awarded as a fee); *Sones v. Rimrock Engineering, Inc.*, 13th Jud. Dist. Ct. Cause No. DV 19-0575 (awarding 1/3 of \$3.45 million common fund as a fee); *Hageman v. AT&T Mobility*, D. Mont. No. CV-13-50-DLC-RWA (award of 1/3 of \$45 million fund as a reasonable fee). The 25% award requested by Class Counsel is entirely reasonable.

(7) The Ability of the Client to Pay for the Legal Services Rendered.

A class action “allows the representative party to conserve the judiciary and the similarly-situated parties’ resources by permitting the single litigation of common issues of fact and law.” *Knudsen v. University of Montana*, 2019 MT 175, ¶ 7, 396 Mont. 443, 445 P.3d 834. Such efficiency was necessary for this case to be adjudicated. The Class Members in this case consist mostly of residential ratepayers living in the City. Many of them are middle-income and/or working-class residents. And the average amount of “franchise fees” they paid each month was approximately \$3.04. Doc. 38 at 24 n.11.

Given the complex legal issues in this case, it would have been virtually impossible for City residents to litigate against the City on an individual basis. They would not have been able to pay for years of litigation costs to vindicate their rights against the City. The cases would most likely not be brought because the net recovery to the Plaintiffs would not be worth the expense. This factor tips sharply in favor of Class Counsel’s fee request.

(8) This Case Involved a Substantial Risk of No Recovery.

Class Counsel has represented City residents in this matter since August 2017 and agreed to do so on contingency. **Exhibit 1, ¶ 17.** Class Counsel faced numerous risks of dismissal of this case during the next six years. The City steadfastly denied liability and has at all times been represented by highly competent counsel. The City filed a motion to dismiss, a motion for judgment on the pleadings, and *eight* summary judgment motions. The City successfully prevailed on three of the five causes of action brought by Class Members. And the remaining claims were subject to pending summary judgment motions filed by the City. And there was always a risk that the City could have defeated a motion for class certification, been granted summary judgment, or achieved a verdict in its favor at trial. As explained earlier, several issues of first impression were present in this case. Absent a settlement, the City could appeal any favorable judgment the Class Representatives could secure at trial. Any unfavorable outcome at any stage in the proceedings would likely have resulted in no recovery.

In assessing risk, the Court is entitled to consider not only the circumstances of the case but also the circumstances of Class Counsel in representing the Class Members, such as the size of the firm, in determining the level of risk for Class Counsel. *Pennsylvania v. Delaware Valley*

Citizens' Council for Clean Air, 483 U.S. 711, 750 (1987) (“[C]ontingent litigation may pose greater risks to a small firm or a solo practitioner because the risk of nonpayment may not be offset so easily by the presence of paying work.”); *Davis v. Mutual Life Ins. Co.*, 6 F.3d 367, 382 (6th Cir. 1993) (“[T]he maintenance of comparatively large pieces of litigation prevents small firms from diversifying risk by taking on additional clients ...”); *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at *10 (C.D. Cal. Nov. 18, 2014) (noting that class members were represented by two law firms with fewer than 15 attorneys in awarding 1/3 fee award to class counsel).

This case was filed by Kristen Juras and Matthew Monforton, two sole practitioners who worked as co-counsel. Doc. 1. After Ms. Juras received the Republican nomination in the summer of 2020, she withdrew from this matter, Doc. 163 at 2. Mr. Monforton has represented the Plaintiffs in both this matter and the *McDaniel* case from 2020 until the present day. These matters took up a substantial amount of his time when he had co-counsel. **Exhibit 1, ¶ 18.** They took up even more time when he was the sole attorney representing the plaintiffs in *Houser* and *McDaniel* from 2020 onwards. As a result, Mr. Monforton was required to turn down other work throughout the years. **Exhibit 1, ¶ 19.** The Court is entitled to consider all of this in reviewing the Class Counsel’s fee request.

II. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees.

In class action lawsuits in which class counsel seeks a percentage-based award, courts often compare the value of (1) the requested percentage award with (2) the value that would be obtained by a lodestar calculation. *5 Newberg on Class Actions*, § 15.87 (6th ed.); *Laffitte v. Robert Half Internat’l, Inc.*, 376 P.3d 672, 681-82 (Cal. 2016) (“empirical studies show the percentage method with a lodestar cross-check is the most prevalent form of fee method in practice.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d at 294, 305 (3d Cir. 2005) (“we have suggested it is ‘sensible’ for district courts to ‘cross-check’ the percentage fee award against the ‘lodestar’ method.”); *In re Bluetooth*, 654 F.3d at 944 (Ninth Circuit has “encouraged courts to guard against an unreasonable result by cross-checking their calculations against a second method.”); *Manual for Complex Litigation (Fourth)* § 14.122 (2004) (“The lodestar is ... useful as a cross-check on the percentage method.”); *Gendron*, ¶ 17 (endorsing district court’s use of a percentage-based calculation to cross-check its lodestar calculation). Such cross-checks

yield a figure reflecting the extent to which the proposed percentage award is a positive or negative multiple of class counsel's lodestar – often referred to as the “multiplier.”

The purpose of a multiplier is to “account for the risk Class Counsel assumes when they take on a contingent-fee case.” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 265 (N.D. Cal. 2015), quoting *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013). The vast majority of multipliers in class action lawsuits fall within a range of 1.0 to 4.0, with a bare majority falling between 1.5 and 3.0. *Vizcaino*, 209 F.3d at 1051 n.6. Thus, for example, if attorneys obtained a \$30 million settlement, sought a fee award of one-third of the settlement fund (\$10 million), and had a lodestar of \$4 million, the multiplier would be 2.5. This would fall within the range of most class-action settlements involving common funds. *Id.*

Class counsel representing their clients on contingency are entitled to have such risks accounted for in their awards:

A contingent fee must be higher than a fee for the same legal services paid as or after they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is high because the risk of default (the loss of the case, which cancels the client's debt to the lawyer) is much higher than in the case of conventional loans, and the total amount of interest is large not only because the interest rate is high but because the loan may be outstanding for years – and with no periodic part payment, a device for reducing the risk borne by the ordinary lender.

5 *Newberg on Class Actions*, § 15.87 (6th ed.), quoting Richard A. Posner, *Economic Analysis of Law* 783 (8th ed. 2011). Indeed, it can be an abuse of discretion to refuse to include a risk multiplier in fee calculations. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F. 1291, 1302 (9th Cir. 1994). The application of a lodestar cross-check to this case reveals the following:

Attorney Hours

Class Counsel has, thus far, devoted 1906 hours to this case. **Exhibit 1, ¶ 12.** This is a very reasonable number of hours for a class action lawsuit now entering its sixth year that was aggressively defended by highly experienced defense counsel. And it does not count the many more hours that Class Counsel will be required to devote to the continued administration of the settlement, preparation for and attendance at the final approval hearing in November 2023, and the potential appeals by objectors.

Billing Rate

A court should look to the “prevailing market rate in the community” to compute the lodestar amount. *Gonzales v. City of Maywood*, 729 F.3d 1196, 1206 (9th Cir. 2013). The forum in which the district court sits represents the relevant community to determine a reasonable hourly rate. *Id.* (citations omitted). Within the community, a court should consider the “experience, skill, and reputation of the attorney.” *Id.* Satisfactory evidence of prevailing market rates includes rate determinations in other cases and affidavits that establish customary or prevailing fees of counsel. *Id.* at 1207; *Chalmers v. Los Angeles*, 796 F.2d 1205, 1214-15 (9th Cir. 1986).

Montana courts have found \$275 to \$375 to be a reasonable billing rate, particularly for complex civil cases. *Gendron v. Mont. Univ. Sys.*, 2020 MT 82, 399 Mont. 470, 461 P.3d 115, 118; see also *Wigton v. State Farm Fire and Casualty Company*, CV-20-98-DWM (Doc. No. 66) (awarding counsels \$350 and \$300 an hour in a fee-shifting case involving an insurance dispute). Indeed, hourly rates of \$350 have been held reasonable on multiple occasions in Montana courts dating back to 2014. See *King v. Geico Ins. Co.*, Case No. CV-12-92- BLG-RWA, Order, May 5, 2014 (D. Mont. 2014); *Wooten v. BNSF Ry. Co.*, 387 F.Supp.3d 1078 (D. Mont. 2019); *All. for Wild Rockies v. Savage*, Cause No. 15-54-M-DLC, Order, July 22, 2019 (D. Mont. 2019). In *Gregory v. Montana*, Case No. CV-20-51-GF-BMM (D. Mont. Aug. 3, 2022), plaintiffs’ counsel requested a \$250 billing rate. The Court agreed because “the requested hourly rate of \$250 in this case is significantly lower than rates this District and other courts in Montana have determined as reasonable.” *Id.* The undersigned notes that his billing rate for work in federal courts has been \$300 per hour since 2020. **Exhibit, ¶ 20.**

Both of the Plaintiff attorneys in this matter have decades of experience practicing law. This includes prior experience litigating class action lawsuits and other complex civil cases. For purposes of calculating the lodestar cross-check in this matter, Class Counsel will apply a billing rate of \$275 per hour, which is lower than rates in most other recent Montana cases. The results in a lodestar of \$524,150. Comparing this figure to the \$900,000 award requested under the percentage method results in a multiplier of 1.7, well within the normal range of 1.5 to 3.0. Therefore, the lodestar cross-check confirms the reasonableness of the Class Counsel’s requested award of \$900,000.

III. The Court Should Grant Reimbursement of Reasonable Litigation Costs and Expenses

Along with attorney fees, M. R. Civ. P. 23 further provides for reimbursement of incurred costs and expenses to Class Counsel from a common fund settlement. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (citation omitted) (“An attorney is entitled to “recover as part of the award of attorney fees those out-of-pocket expenses that would normally be charged to a fee-paying client.”).

Class Counsel has incurred \$25,674.81 in costs and expenses in pursuing relief for City ratepayers (\$21,678.75 incurred by Attorney Monforton and \$3,996.06 incurred by Attorney Juras). A true and accurate list of these costs and expenses is attached as **Exhibit 6**. All of these costs and expenses were necessarily incurred and are reasonably requested.

The Settlement Agreement provides that Class Counsel may seek up to \$25,000 in costs and expenses. Doc. 284, Exhibit 1, p. 6. As a result, Class Counsel is reducing the request for costs and expenses from \$25,674.81 to \$25,000.00.

IV. The Court Should Approve Service Awards for the Class Representative

Service awards to class representatives are typical in class action cases and 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. 4 Newberg on Class Actions, §11.38 (4th ed). Service awards are generally sought after a settlement or verdict has been achieved. *Rodriguez v West Publishing*, 563 F.3d 948, 958 (9th Cir. 2009).

Class Counsel requests that the four Class Representatives receive Service Awards of \$2,000 each (for a total of \$8,000) in recognition of their services in this case. The Settlement would not have been possible without the time and effort of each of the Class Representatives, who stepped forward on behalf of other Class Members, accepting the risk of negative publicity and the responsibility of cooperating in the litigation. Without their investment of time, and their courage to step forward and vindicate the Class Members’ rights, Billings ratepayers would not have obtained the substantial relief offered by the Settlement. *Id.*

It should be noted that service awards are not referenced in the Settlement Agreement due to Class Counsel’s neglect in suggesting them during negotiations with the City. Thus, if the Court is inclined to grant the requested service awards, it should do so by deducting the amount

awarded to the Class Representatives from Class Counsel's fee award rather than from funds to be disbursed to Class Members.³

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request the following from the Court:

- An award of \$900,000 for attorney fees;
- Reimbursement of costs and expenses of \$25,000
- A Service Award of \$2,000 for each of the following, Plaintiff Terry Odegard, Plaintiff Roger Webb, Plaintiff Tom Zurbuchen, and Plaintiff Susan McDaniel, with the amount of the service awards being deducted from Class Counsel's fees.

DATED: July 31, 2023

Respectfully submitted,

Monforton Law Offices, PLLC

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document will be served upon the City's counsel via the Court's electronic filing system.

DATED: July 31, 2023

Respectfully submitted,

Monforton Law Offices, PLLC

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorneys for Plaintiff

³ The City has been informed of this request and does not object to it.

TABLE OF EXHIBITS

Exhibit 1: Declaration of Counsel

Exhibit 2: Transcript of Hearing Held on April 27, 2021

Exhibit 3: Letter from Matthew Monforton to City Attorney Brent Brooks dated August 3, 2017

Exhibit 4: Deposition of Terry Houser

Exhibit 5: Deposition of Tom Zurbuchen

Exhibit 6: Expenses incurred by Matthew Monforton and Kristen Juras

EXHIBIT 1

Matthew G. Monforton (Montana Bar # 5245)
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
Email: matthewmonforton@yahoo.com

Attorney for Plaintiffs

**IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

| | | |
|---|---|-------------------------------|
| TERRY HOUSER, TERRY ODEGARD, |) | |
| THOMAS ZURBUCHEN, ROGER WEBB, on |) | Case No. DV 18-0778 |
| behalf of themselves and all others similarly |) | |
| situated, |) | Judge Mike Salvagni |
| |) | |
| Plaintiffs, |) | DECLARATION OF COUNSEL |
| |) | |
| v. |) | |
| |) | |
| CITY OF BILLINGS, |) | |
| |) | |
| Defendant. |) | |

I, Matthew G. Monforton, declare under oath as follows:

1. I am the attorney of record for Plaintiffs in the instant matter. I am licensed to practice before the courts of Montana. I have personal and firsthand knowledge of the facts stated in this declaration and could testify to them as a witness at a trial or hearing.
2. Attached to this filing as Exhibit 2 is a true and correct copy of portions of the transcript of a hearing held in this Court on April 27, 2021 – specifically, testimony given by Plaintiff Roger Webb.
3. Attached to this filing as Exhibit 3 is a true and correct copy of a letter I wrote on behalf of City ratepayers on August 3, 2017, to the City Attorney inquiring about the legality of the City's "franchise fees."

4. Attached to this filing as Exhibit 4 is a true and correct copy of portions of the transcript of Plaintiff Terry Houser's deposition.
5. Attached to this filing as Exhibit 5 is a true and correct copy of portions of the transcript of Plaintiff Tom Zurbuchen deposition.
6. After I sent the letter to the City on August 3, 2017, we engaged in negotiations with the City to resolve this matter. This included the execution of a tolling agreement with the City. These negotiations failed, resulting in a complaint being filed against the City on May 18, 2023.
7. There has been significant discovery in this case (and in the *McDaniel* case). The parties have exchanged over 87,000 pages of documentation and have responded to multiple sets of written discovery requests, including 240 requests for admissions, 96 interrogatories, and 215 requests for the production of documents.
8. Class Counsel has taken or defended numerous depositions, including the following individuals:
 - Bruce McCandless, former City Administrator;
 - David Mumford, former Director of Public Works;
 - Jennifer Duray, former Finance Director of the Department of Public Works;
 - Patrick Weber, the former Finance Director for the City of Billings;
 - Plaintiff Terry Houser;
 - Plaintiff Terry Odegard;
 - Plaintiff Thomas Zurbuchen;
 - Mae Woo, former Plaintiff;
 - Plaintiff Roger Webb;
 - Plaintiff Clayton Fiscus;

- Gary McDaniel, former Plaintiff; and
 - Plaintiff Susan McDaniel.
9. In addition to the foregoing depositions, there have been several court hearings where Class Counsel made substantial argument and presented live testimony and other evidence, including the testimony of Plaintiff Terry Odegard, Plaintiff Thomas Zurbuchen, Plaintiff Roger Webb, and also prepared substantial cross-examinations of putative intervenors Andrew Billstein and Jacob Troyer.
10. This testimony is in addition to affidavit testimony from multiple individuals, including:
- Denise R. Bohlman, City Clerk;
 - Jennifer Duray, former Finance Director for the Public Works Department;
 - David Mumford, former Public Works Director;
 - Bruce McCandless, former City Administrator for the City of Billings;
 - Chuck Tooley, former Mayor of the City of Billings;
 - Brett Rutherford, former Yellowstone County Elections Administrator;
 - Chris Hertz, Public Works Department Engineer III;
 - Tom Hanel, former Mayor of the City of Billings.
11. I have also spent considerable time administering the settlement, including overseeing the distribution of notices to class members as well as fielding over one hundred telephone calls and countless emails from class members concerning the settlement.
12. The time spent (thus far) by Class Counsel on this matter, both before and after the May 2018 filing of the complaint is 1,906 hours (678 hours performed by Attorney Kristen Juras and 1,228 hours performed by me).
13. I graduated in 1991 from Claremont McKenna College (1991) with a B.A. degree, and from UCLA School of Law in 1994 with a J.D. degree. I was in private practice in Newport Beach, California from 1995 to 1996.

14. In 1997, I joined the Los Angeles County District Attorney's Office as a Deputy District Attorney and prosecuted cases for that office from 1997 to 2006. During that time, I tried 25 misdemeanor and felony cases to a jury. From May 2000 until I left the DA's Office in January 2006, I was assigned to the Office's Appellate Division. While there, I handled over 40 cases before the Appellate Department of the Superior Court, the California Court of Appeal, and the California Supreme Court. I also handled many of the federal habeas petitions in federal district court in which the Los Angeles County Sheriff was the responding party. I also represented Los Angeles County before the Ninth Circuit Court of Appeals in several federal habeas cases that were appealed either by the petitioner or the County.
15. After leaving the DA's Office in 2006, I went into private practice in Montana. I handled numerous civil cases in the federal and state district courts of Montana. My appellate experience includes briefing and arguing cases resulting in 8 published opinions by the Ninth Circuit, 4 published opinions by the Montana Supreme Court, 1 published opinion by the California Supreme Court, and 7 published opinions by the California Court of Appeal. This does not include dozens of appeals resulting in unpublished decisions.
16. In January 2011, U.S. District Judge Otis Wright granted my motion to certify a class consisting of several hundred of my former colleagues in the District Attorney's office who were challenging the anti-union activities perpetrated by Los Angeles County. See order granting class certification in *Association of Deputy District Attorneys v. County of Los Angeles, et al.*, (C.D. Cal. Case No. CV 09-7931 ODW (SSx) (filed 1/24/2011)). The case resulted in a settlement and injunctive relief for the class - specifically, the District Attorney was enjoined from engaging in anti-union retaliatory actions while he remained in office.
17. When I agreed to represent the Class Representatives in this matter, I did so on a contingency basis.

18. The Houser and McDaniel matters have taken up a substantial amount of my time, especially after the summer of 2020 when my co-counsel withdrew.

19. As a result, I was required to turn down other work throughout the years.

20. My billing rate for work in federal courts has been \$300 per hour since 2020.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Bozeman, Montana on July 31, 2023.


Matthew G. Monforton
Declarant

EXHIBIT 2

1

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

GARY McDANIEL, et al., Cause No. DV 19-1444-OC

Plaintiffs,

-vs-

CITY OF BILLINGS - PUBLIC
WORKS,

Defendant.

TERRY HOUSER, et al. Cause No. DV 18-0778

Plaintiffs,

-vs-

City of Billings,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Taken at Yellowstone County
Courthouse
217 N. 27th Street
Billings, Montana
April 27, 2021

Before the HONORABLE MICHAEL SALVAGNI, Judge Presiding

APPEARANCES:

For the Plaintiffs: MATTHEW MONFORTON
Attorney at Law
22 Kelly Court
Bozeman, Montana 59718

For the Defendant: DOUG JAMES
MOULTON BELLINGHAM
Attorneys at Law
PO Box 2559
Billings, Montana 59103

APPEARANCES CONTINUED

1 any personal knowledge of whether Mr. Billstein and
2 Mr. Troyer have requested copies of the City's
3 proposed settlement agreement?

4 A. No, sir.

5 MR. HEENAN: No further questions. Thank
6 you.

7 THE COURT: Mr. Monforton?

8 MR. MONFORTON: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MONFORTON:

11 Q. Senator Webb, when did you first move to
12 Billings?

13 A. 1990.

14 Q. So you've lived here about 30, 31 years?

15 A. Yes, sir.

16 Q. Was there a time when you started
17 complaining or protesting about the franchise fees?

18 A. Approximately 1995, '96.

19 Q. And who did you make those protests to?

20 A. We would call the Public Works department.

21 Q. How often did you make those calls?

22 A. Probably four or five times a year.

23 Q. And how many years did this go on?

24 A. Seems like forever.

25 Q. Can you give us an estimate?

1 A. Fifteen, twenty.

2 Q. Fifteen or twenty years?

3 A. Yes, sir.

4 Q. Did you ever get any positive response or
5 positive feedback from anyone at the City?

6 A. No positive at all.

7 Q. What would they tell you when you would
8 complain about the franchise fees?

9 A. It was required to be paid or they would
10 discontinue service.

11 Q. Why did you become a Class representative
12 in this case, Senator?

13 A. We have a situation here where individuals
14 have taken it upon themselves for a period of
15 26 years to basically steal about \$50 million, and I
16 want to help try to make that right to where it
17 doesn't happen again.

18 Q. Both for you and for the other ratepayers?

19 A. Everybody else in the Class.

20 Q. What kind of things have you done as a
21 Class representative in this case?

22 A. I've been involved in discovery, read the
23 documents as far as motions, we all attended the
24 Court-mandated litigation and mediation.

25 Q. Did you participate in informal settlement

EXHIBIT 3

MONFORTON LAW OFFICES, PLLC

Matthew G. Monforton
Licensed in Montana and California

A PROFESSIONAL LIMITED LIABILITY COMPANY
32 KELLY COURT
BOZEMAN, MONTANA 59718

TELEPHONE: (406) 570-2949
FACSIMILE: (406) 551-6919
E-MAIL: matthewmonforton@yahoo.com

August 3, 2017

Brent Brooks
Billings City Attorney's Office
210 N. 27th Street
Billings, MT 59101

Via U.S. Mail & email: brooks@ci.billings.mt.us

Re: Billing City Council Resolution 17-10639

Dear Mr. Brooks:

I am writing to you on behalf of Billings resident Terry Houser. My client is concerned about the 4% "franchise fee" the City imposes upon customers who use its water and wastewater services.

We recognize that the City has statutory discretion in establishing rates and charges for these services. § 69-7-101, MCA. These rates and charges must, however, be "reasonable and just." *Id.*

As you are aware, the Montana Supreme Court declared the imposition of the City's 4% franchise fee upon cable utilities to be an unlawful tax. *Montana-Dakota Utils. Co. v. City of Billings*, 2003 MT 332, ¶ 35, 318 Mont. 407, 80 P.3d 1247.

My client would like to know how the imposition of the City's 4% franchise fee directly upon customers can be reasonable and just under § 69-7-101, MCA, if imposing it upon customers indirectly via a non-municipal utility would constitute an unlawful tax. If you could let us know, we'd greatly appreciate it.

Please feel free to contact me at your convenience regarding this issue.

Very truly yours,



Matthew G. Monforton

MGM:dm

EXHIBIT 4

*Terry Houser, et al. v
City of Billings*

*Terry Houser
August 6, 2019*

*Charles Fisher Court Reporting
442 East Mendenhall
Bozeman, MT 59715
(406) 587-9016
maindesk@fishercourtreporting.com*



Min-U-Script® with Word Index

1 administrator. I go over information that's on the
2 internet.

3 **Q. Okay. So what have you done in the last**
4 **week to prepare for your deposition today?**

5 A. I've just gone over a lot of records that
6 I've kept.

7 **Q. And can you tell me what records you**
8 **reviewed?**

9 A. There's water bills, there's -- good
10 grief, all kinds of things. The public works
11 financial records, statements that were made at city
12 council. I have listened -- gone over them. Not
13 much else to do.

14 **Q. Have you reviewed any of the pleadings in**
15 **this case?**

16 A. What do you mean?

17 **Q. Any of the legal documents that have been**
18 **filed with the court?**

19 A. I have read some.

20 **Q. And have you reviewed any of the**
21 **depositions that have been taken in this case?**

22 A. I've listened to most of them.

23 **Q. And which ones have you listened to?**

24 A. The ones the City brought in:
25 McCandless, Jennifer, and, oh, what's that auditor's

1 A. I've got lots of things for the
2 deposition today.

3 **Q. What did you receive for the deposition**
4 **today to review?**

5 A. Well, the wastewater monthly volume
6 charges for one. What else do I have? I have all
7 kinds of things. The filings from district court.

8 **Q. Anything in particular? Can you tell me**
9 **what those are called?**

10 A. 13th Judicial District Court, Yellowstone
11 County.

12 **Q. And on the right-hand side of the page,**
13 **what's the title of the documents?**

14 A. Plaintiff's Supplemental Response to the
15 City of Billings First -- however you say that word
16 -- and Production Requests.

17 **Q. Okay. Anything else?**

18 A. Well, just notes I've taken.

19 **Q. Okay. Are you from Billings originally?**

20 A. Born and raised.

21 **Q. And which high school did you go to?**

22 A. Senior High.

23 **Q. And when did you graduate?**

24 A. '68.

25 **Q. Have you ever testified at trial?**

1 name? Him. Mae Woo. Roger, I listened to most of
2 it yesterday.

3 **Q. How much time did you spend in the last**
4 **week preparing for your deposition today?**

5 A. Maybe an hour a day.

6 **Q. And did you meet with anyone to prepare**
7 **for today's deposition?**

8 A. Somewhat.

9 **Q. And who did you meet with?**

10 A. Well, I've got attorneys.

11 **Q. Okay. You met with Ms. Juras and**
12 **Mr. Monforton?**

13 A. Yes.

14 **Q. And when did you meet with them?**

15 A. Well, this morning a little bit,
16 yesterday.

17 **Q. Okay. How much time did you spend**
18 **meeting with them?**

19 A. Maybe 10, 15 minutes.

20 **Q. Okay. Did your attorneys give you**
21 **anything to read to prepare for today?**

22 A. They have sent me documents which I
23 usually print out.

24 **Q. Anything specifically for the deposition**
25 **today?**

1 A. Yes.

2 **Q. Where was that?**

3 A. San Diego, Billings.

4 **Q. And you testified at a trial in the**
5 **Billings case as well?**

6 A. Yes.

7 **Q. And did that settle during trial or after**
8 **trial?**

9 A. Just before.

10 **Q. Just before trial. Okay.**

11 **Have you ever been an expert witness?**

12 A. No.

13 **Q. Have you ever discussed the franchise**
14 **fees with any attorney other than Ms. Juras or**
15 **Mr. Monforton?**

16 A. We tried.

17 **Q. And who did you try?**

18 A. There's a list of about probably 500.

19 **Q. And did you contact those 500?**

20 A. Oh, at least, yes.

21 **Q. And can you tell me some of who you**
22 **contacted?**

23 A. Anybody listed in the phone book except
24 you.

25 **Q. Okay. And how did you contact them?**

1 A. By phone.
 2 **Q. And when did you do that?**
 3 A. I'm not quite sure of the date. It took
 4 several weeks.
 5 **Q. Was this before this lawsuit was filed?**
 6 A. Yes.
 7 **Q. Who was making these calls?**
 8 A. I was.
 9 **Q. And were you using the phone book to find**
 10 **the attorneys, or how were you identifying them?**
 11 A. Phone book, internet, suggestions from
 12 other people.
 13 **Q. Can you remember the names of any of the**
 14 **attorneys that you contacted?**
 15 A. No.
 16 **Q. And why didn't you hire any of those**
 17 **attorneys?**
 18 A. You know, I really don't know.
 19 **Q. Were they not interested in the case**
 20 **or --**
 21 A. They knew it was a case. I don't know
 22 what was going through their mind at the time.
 23 **Q. Okay. Did you meet with any of those**
 24 **attorneys?**
 25 A. No.

1 **Q. So it was just a phone call?**
 2 A. (No response.)
 3 **THE COURT REPORTER:** I didn't get your answer.
 4 **THE WITNESS:** Oh, I'm sorry.
 5 No, I didn't meet with any of them.
 6 **Q. (By Mr. James) Why are you suing the**
 7 **City of Billings?**
 8 A. Well, they deceived us. They put an
 9 unlawful sales tax on our water, and they need to be
 10 stopped -- they needed to be stopped. They admitted
 11 it.
 12 **Q. Anything else?**
 13 A. Well, they need to do what's -- we have
 14 rules and regulations, and they didn't follow them.
 15 **Q. What do you believe that the City did**
 16 **that was wrong?**
 17 A. They put a 4 percent sales tax on our
 18 water that didn't even go into the water department.
 19 It went into the general fund. They put a 4 percent
 20 sales tax on our wastewater. They put a 5 percent
 21 sales tax on our garbage. Didn't even go into the
 22 general fund, but yet the water department collected
 23 it.
 24 **Q. And this happened in 1992; is that**
 25 **correct?**

1 A. It's been happening for years.
 2 **Q. Have you paid for these fees all along?**
 3 A. Under protest.
 4 **Q. And did you write "under protest" on your**
 5 **checks?**
 6 A. I pay with a debit card that's on file.
 7 **Q. And when you say you paid it under**
 8 **protest, how would the City know you were paying**
 9 **under protest?**
 10 A. I called Jennifer -- well, I called
 11 Jennifer -- well, first I called city council people
 12 that testified at city council that it was an
 13 unlawful sales tax on our water.
 14 So, therefore, I called him, spoke with
 15 him, and then another person that was on that city
 16 council that agreed with it said the same thing.
 17 And so then I got this letter in the mail
 18 from the water department and it says that
 19 they've -- want to put this -- that they want to
 20 raise our rates basically is what it says.
 21 **Q. Who did you talk to on city council about**
 22 **the franchise fees?**
 23 A. Larry Brewster's one.
 24 **Q. Anyone else?**
 25 A. Chris Friedel.

1 **Q. Anyone else?**
 2 A. I spoke with the city administrator.
 3 **Q. Which one?**
 4 A. I spoke with the mayor --
 5 Tina Volek.
 6 **Q. And which mayor?**
 7 A. Who was our last mayor?
 8 **MS. ZURBUCHEN:** Tom Hanel.
 9 **THE WITNESS:** Who?
 10 **MS ZURBUCHEN:** Tom Hanel.
 11 **THE WITNESS:** Oh, yeah, Tom Hanel. He didn't care.
 12 **Q. (By Mr. James) So did Larry Brewster**
 13 **agree with your position?**
 14 A. Absolutely. And he said so at the city
 15 council meetings.
 16 **Q. And how about Council Member Friedel?**
 17 A. Yes.
 18 **Q. And how about City Administrator Volek?**
 19 A. She said they needed the money. They
 20 wanted the money.
 21 **Q. And how about Mr. Hanel?**
 22 A. He didn't care. He didn't even return my
 23 phone calls.
 24 **Q. And you said that the City admitted that**
 25 **it imposed an illegal tax; is that correct?**

1 **Q. Would you agree that the City of Billings**
2 **has never had a franchise?**

3 **MS. JURAS:** Objection, that's overly broad. Could
4 you rephrase it to limit it to water.

5 **Q. (By Mr. James) Just limit it to water.**
6 **Would you agree that the City of Billings has never**
7 **had a franchise related to water service?**

8 A. Not to water. Not that I know of unless
9 they just made one up.

10 **Q. And would you agree that the City of**
11 **Billings has never had a franchise with respect to**
12 **wastewater treatment services?**

13 A. Not that I'm aware of.

14 **Q. And would you agree that the City of**
15 **Billings has never had a franchise with respect to**
16 **solid waste disposal services?**

17 A. The same answer, not aware. They may
18 claim they do, but they don't.

19 **Q. Do you know if the City claims there's a**
20 **franchise?**

21 A. I have no idea. They claim a lot of
22 things, don't they.

23 **Q. Like what?**

24 A. I don't know. They claim that this is a
25 legal fee when it's a sales fee on our -- a sales

1 tax on our water supply, for goodness' sakes. Don't
2 they realize how detrimental that is to a lot of
3 people? Just like our city administrators says,
4 "You would have no idea how many people are without
5 water because they can't pay their water bill." And
6 yet they slapped an illegal sales tax on it, for
7 goodness' sakes. You shouldn't take our water
8 supply and hold it hostage like that.

9 **Q. Do you know why the fee was called a**
10 **"franchise fee"?**

11 A. Probably to hide it. They couldn't put
12 it -- well, let's pay this sales tax or this illegal
13 sales tax because that's what it is.

14 **Q. Do you think that the City was trying to**
15 **intentionally hide the sales tax in 1992 and then**
16 **call it a "franchise fee"?**

17 A. I think they were deceiving the public,
18 the ratepayers.

19 **Q. Do you think that was intentional?**

20 A. Yes.

21 **Q. And do you have any personal knowledge of**
22 **that, or is that just your opinion?**

23 A. Well, that's my opinion.

24 **Q. Okay. Do you have any personal knowledge**
25 **of that?**

1 A. Well, they didn't come out and admit it
2 to my knowledge. Did they?

3 **Q. Have you done any research on sales**
4 **taxes?**

5 A. I know -- no, I don't want anything to do
6 with them. You like them? Nobody likes sales tax.

7 **Q. So you're opposed to sales tax?**

8 A. I am.

9 **Q. Are you opposed to all sales taxes?**

10 A. Especially when it's on our water supply
11 and it's not even used for water.

12 **Q. So would that be a "yes," you're opposed**
13 **to all sales taxes?**

14 A. I lean that way.

15 **Q. Weren't the franchise fees good for the**
16 **City of Billings and its residents?**

17 **MS. JURAS:** Objection, there's no foundation for that
18 question. It's speculative.

19 **THE WITNESS:** It wasn't good for me and I'm a
20 ratepayer. How could it possibly be good for people? You
21 add it onto their water bill with this illegal sales tax
22 and you just kept flaunting it and making people pay it or
23 you'd shut their water off. You're holding us hostage
24 with no way to get out of it.

25 **Q. (By Mr. James) So you waited from 1992**

1 **until 2018 to sue the City of Billings.**

2 **Why did you wait so long?**

3 A. There's several factors in that.

4 **Q. Okay. What are they?**

5 A. Well, I've talked to other people. For
6 one thing, when I did do it the city administrator
7 said, "Sue us." She said, "Sue us. I don't care,
8 sue us, if you don't like it."

9 Well, what are you going to do?

10 And there's been other people who tried
11 to contact lawyers over the years. I know who they
12 are and I know I've talked to them. You know, I
13 know what's going on.

14 **Q. So which city administrators said, "Sue**
15 **us"?**

16 A. Tina Volek.

17 **Q. And when did she tell you that?**

18 A. It was probably in '17.

19 **Q. Okay. And who has tried to contact**
20 **lawyers before?**

21 A. A lot of people.

22 **Q. Who?**

23 A. Well, you've seen several of them in
24 here. Lots of friends of mine, lots of people I
25 know, but people didn't want to get involved.

1 **Q. So can you give me the names of the**
2 **people who were trying to find attorneys to attack**
3 **the franchise fees before?**

4 A. Attack the franchise fees, we're
5 attacking us. The city council, the city
6 administrators were throwing that at us. We had to
7 defend ourselves on this case. And you know what,
8 we're right.

9 **Q. So who was it that was looking for an**
10 **attorney before this?**

11 A. Okay. You've got Clayton Fiscus, you
12 know him.

13 **Q. Okay.**

14 A. And you've got Tom, you know him. And
15 other people. There's been others. I don't know
16 who they all are.

17 **Q. So you're referring to Tom Zurbuchen?**

18 A. Yes.

19 **Q. And you're aware that they have both**
20 **looked for attorneys prior to this?**

21 A. Over the years, yes.

22 **Q. To challenge the legality of the**
23 **franchise fees?**

24 A. Yes.

25 **Q. And you talked to other people as well**

1 **that you don't remember that have done the same?**

2 A. I've talked to people over the years.
3 Everybody knows it's a crooked deal what they were
4 doing, pulling a fast one on us. Somebody had to
5 get busy and stop them or expose them for what they
6 were doing.

7 **Q. So why did you wait 26 years?**

8 A. Well, it probably took me that long to
9 get my head in the game here. This is a game
10 they've been playing, ripping us off for millions
11 and millions. It may only be a few dollars on your
12 water bill, but it's millions of dollars.

13 Now, they don't know what they're going
14 to do because the franchise fee is gone. Well, why
15 did they take the franchise fee off if they knew it
16 was legal and it was all right, but all of a sudden
17 they went in and had their little conversation that
18 said, "Let's get rid of it so we don't get sued
19 anymore." Well, they already did the damage.

20 **Q. So you've been upset about the franchise**
21 **fees for a long time, correct?**

22 A. Well, a lot of people have, yes, I'm one
23 of them.

24 **Q. And when you say a lot of people, is that**
25 **most people?**

1 A. Anyone I explain to them. "Look at your
2 water bill. Do you know that you're" --

3 There was one person I came across that
4 said, "Oh, that's not that much."

5 Well, it is when they're collecting
6 millions every year from all these people, taking
7 advantage of these people that are working hard to
8 pay their bills.

9 And here they are, "Oh, let's slither
10 this on them. We can get some more money this way."

11 And they used the water department to
12 collect it and then put it in their slush fund, and
13 we have no accountability of what they even do with
14 it. It has nothing to do with water, but they're
15 using that venue to go in through and collect the
16 system. I don't know, do they have a list of all
17 the residents? I guess that's what it is.

18 But if you don't pay it, your water will
19 be shut off. Yet it has nothing to do with public
20 utilities.

21 **Q. Have you ever explained the franchise fee**
22 **to anybody who supported or defended the fee?**

23 A. We've talked amongst ourselves, yeah.
24 I'm not trying to explain anything to anybody. The
25 evidence is right there.

1 **Q. Okay. No, what I'm asking you is: Have**
2 **you ever spoken to anybody and explained the**
3 **franchise fee to them where they disagreed with you**
4 **and thought the franchise fees was legal?**

5 A. I've changed a lot of people's minds just
6 by opening their eyes, yes.

7 **Q. Listen to my question, please.**

8 **When you have explained the franchise fee**
9 **to other people, has anyone disagreed with you and**
10 **said the franchise fee fees were legal?**

11 A. The city council, members of the city
12 council, and I can't tell you which ones, but yes.

13 **Q. Anyone other than the city council**
14 **members ever defend the legality of the franchise**
15 **fees?**

16 A. Not even the city administrator.

17 **Q. So when you've talked to other people,**
18 **would it be fair to say that virtually everyone**
19 **you've explained this to has agreed that the**
20 **franchise fees are illegal?**

21 A. Once they've realize what they've been
22 doing, yes.

23 **Q. Have you consulted anyone about whether**
24 **or not the franchise fees were sales taxes?**

25 A. Have I consulted anybody?

1 Q. Yes.
 2 A. Well, I talked to my attorneys.
 3 Q. Other than your attorneys?
 4 A. Who else is better?
 5 Q. I'm asking prior to that. Did you
 6 consult with anyone?
 7 A. I may have. I don't know. I don't
 8 recall.
 9 Q. Do you recall ever discussing it with an
 10 accountant or an attorney?
 11 A. I called a whole bunch of attorneys and
 12 told them what they were doing, and they told me it
 13 was crooked.
 14 Q. The attorneys told you it was crooked?
 15 A. Well, good grief. Anybody that opens
 16 their eyes knows it's crooked. What they're doing
 17 is illegal. Shame on them. They need -- of course
 18 they're trying to pull a fast one on us, and they've
 19 done it for years. And they collect millions and
 20 millions and millions of dollars, and it's unfair to
 21 the ratepayers. They already pay a high enough bill
 22 without adding this on, and it doesn't even have
 23 anything to do with our bill.
 24 Q. So has the City of Billings been pulling
 25 a fast one since 1992?

1 A. Oh, at least.
 2 Q. And has the City of Billings been crooked
 3 since at least 1992?
 4 A. Probably.
 5 Q. In your opinion?
 6 A. In my opinion. You have to watch them
 7 all.
 8 Q. And has the City of Billings been unfair
 9 since 1992?
 10 A. In my opinion, yes.
 11 Q. And so is it your opinion that with
 12 respect to the franchise fees, that since 1992, the
 13 City's been pulling a fast one, it's been crooked,
 14 and it's been unfair?
 15 MS. JURAS: Objection, asked and answered. She
 16 answered all of those.
 17 THE WITNESS: I already answered those. Yep. Yes.
 18 Don't you agree? No? I bet you do agree. You just don't
 19 want to say it.
 20 Q. (By Mr. James) I don't agree.
 21 A. You don't?
 22 Q. I don't.
 23 A. Well, you've been putting your head in a
 24 bag somewhere.
 25 Q. Do you know how you determined whether or

1 not the charges, the cost of municipal services is
 2 reasonable and just?
 3 A. I'm not complaining about my services. I
 4 think -- I have to trust them on something.
 5 Q. Are you complaining about the cost of
 6 water service?
 7 A. No.
 8 Q. Are you complaining about the cost of
 9 wastewater service?
 10 A. No.
 11 Q. Are you complaining about the cost of
 12 solid waste disposal service?
 13 A. No.
 14 Q. Are you complaining about the way the
 15 City determines how those -- let me rephrase it.
 16 Are you complaining about the way the
 17 City decides what the cost of those services should
 18 be?
 19 A. You know, I have to trust them on
 20 something. I watch how they do it.
 21 Q. So would your answer be "no"?
 22 A. I'm not complaining. Maybe that's my
 23 next venture. I do think they waste a lot of water.
 24 Q. Are you aware that the City of Billings
 25 proposed a mediation conference with the plaintiffs

1 in October of 2018?
 2 A. Did anything come of it?
 3 Q. I'm just asking if you are aware of it.
 4 A. I was aware a little bit of it, yeah.
 5 Q. Okay. And were you aware that the City
 6 was prepared to meet with the plaintiffs and mediate
 7 this case?
 8 MS. JURAS: Objection, that's speculative. Those
 9 facts aren't in the record.
 10 THE WITNESS: I never heard about that one.
 11 Q. (By Mr. James) Are you aware that the
 12 mayor and city council members and the city
 13 administrator were prepared to sit down with you and
 14 the other plaintiffs and a mediator and mediate this
 15 case in October of 2018?
 16 MS. JURAS: Objection, lack of foundation,
 17 speculative.
 18 THE WITNESS: I don't know what they were up to.
 19 Q. (By Mr. James) Are you aware that a
 20 Great Falls attorney by the name of Gary Zadick had
 21 agreed to serve as the mediator in this case to try
 22 and help us settle it?
 23 MS. JURAS: Objection, lack of foundation.
 24 THE WITNESS: No idea.
 25 Q. (By Mr. James) Are you aware that a few

EXHIBIT 5

*Terry Houser, et al. v
City of Billings*

*Thomas Zurbuchen
August 07, 2019*

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1 case, been denied. They said they couldn't. They
2 agreed it was illegal. I mean, when the subject
3 comes up, it comes up. And when you talk about the
4 City, that's one of the first things that's there is
5 how they illegally tax us and how they are nothing
6 but tax-and-spenditis-diseased people. That's all
7 that comes up. I don't know anybody that thinks the
8 City has anything but tax-and-spenditis. I really
9 don't.

10 **Q. So you mentioned that you talked to some**
11 **lawyers. When were you talking to lawyers other**
12 **than Mr. Monforton and Ms. Juras?**

13 A. For years, ever since I had to pay the
14 franchise fee, I've talked to lawyers about it.
15 I've talked to lawyers about removing property
16 rights. I've always wanted to build a garage, but
17 for me to build a garage, I got to give up my
18 property owner rights.

19 **Q. So if I understand your testimony**
20 **correctly, somewhere around 2006, you first started**
21 **talking to lawyers about the illegality of the**
22 **franchise fee?**

23 A. Maybe sooner. It didn't apply to me. I
24 got the same thing from lawyers like with removing
25 my property owner's rights. What is your -- what is

1 your monetary value that's being taken from you?
2 When you can't put a dollar and cent to it, what do
3 you do with it? When your dollar and cent is
4 insignificant and I hadn't lost anything on the
5 franchise fee, what are you going to sue over? I
6 haven't paid it. When you haven't built a garage,
7 what's your monetary loss for having to build curb
8 and gutter and sidewalk? Well, I haven't build it.
9 I don't know how much it cost. It's doggoned
10 expensive. What are you losing physically?

11 It's hard to put a number on it, so
12 lawyers wouldn't talk to me. I mean, that was their
13 story.

14 **Q. So starting when you first reached out to**
15 **try and hire a lawyer about the franchise fees, did**
16 **you try to hire just one lawyer or was it several**
17 **lawyers who turned you down?**

18 A. Several. I spoke with Martha Sheehy and
19 she agreed with me. I spoke to Rindal; Lee, I
20 believe his name is. He agreed with me and wouldn't
21 take the case. I would read in the paper where
22 somebody was suing the Billings -- there was a law
23 firm in Great Falls that was suing the City. I
24 can't remember what over years ago. I called them.
25 Again, "We're busy. We agree with you, but you

1 don't really have a case on yourself."

2 I never considered class action. I
3 didn't understand it. I didn't find these guys.
4 Apparently, I was dealing with the bottom of the
5 barrel and had overlooked the top of the barrel for
6 lawyers.

7 **Q. So you mentioned Martha Sheehy, Lee**
8 **Rindal, a Great Falls law firm. Is there any other**
9 **firm that you --**

10 A. There was one in Butte. I can't remember
11 the names of them here in town that I talked with,
12 but I got the same response from them.

13 **Q. Did you meet with Martha Sheehy**
14 **face-to-face?**

15 A. I talked to her on the telephone.

16 **Q. And how about Lee Rindal?**

17 A. I've met Lee. Lee's represented me and
18 my son, and Lee's done things for me, and I'm
19 positive we discussed it in his office.

20 **Q. And how about the Great Falls law firm?**

21 A. That was -- all the rest were telephone.
22 Lee, I know -- I'm positive I spoke to Lee
23 face-to-face. The rest were telephone.

24 **Q. Were there other firms that you contacted**
25 **that you don't remember?**

1 A. Oh, yes, but I can't tell you how many.
2 Again, you get the same the response, so all of a
3 sudden you've got to find something different.
4 You've got to take a different approach.

5 **Q. So how much time did you spend trying to**
6 **find a lawyer to represent you against the City on**
7 **the franchise fees?**

8 A. I don't know. Quite a little. Quite a
9 little.

10 **Q. You were serious about this?**

11 A. Yes.

12 **Q. And did any of these attorneys have**
13 **recommendations for you on other attorneys you might**
14 **contact?**

15 A. No. That was the sad part. No. You
16 could ask them and, "No, I don't." And that's all I
17 could get. They were sympathetic, but they were
18 definitely all hands off.

19 **Q. So roughly do you recall when you**
20 **contacted Martha Sheehy?**

21 A. No. I don't.

22 **Q. Would it have been before 2010?**

23 A. I'm sure, but -- I'm sorry, I don't
24 have -- I'm 70 years old. I got dementia, I'm sure,
25 because everything that happened more than five

1 minutes ago, I just kind of forget. I can't
 2 remember worth a darn.
 3 **Q. That's perfectly all right. How about**
 4 **Lee Rindal? Do you remember when you talked with**
 5 **him about the franchise fees?**
 6 A. Oh, I used Lee early 2000s twice. Again,
 7 before 2005 or '06. The last time I used Lee was
 8 before 2010. So I haven't -- I didn't even know Lee
 9 quit being a lawyer until I needed a lawyer to
 10 probate my mother's estate, and that's when I found
 11 out Lee wasn't even in the business anymore.
 12 **Q. And I was very sorry to hear about your**
 13 **mother. Condolences.**
 14 A. She lived to be a hundred. She had a
 15 fantastic life. So it's kind of a blessing that she
 16 did get to pass.
 17 **Q. Do you recall roughly when you would have**
 18 **called the Great Falls and Butte law firms?**
 19 A. Oh, it wasn't that long after I talked
 20 with Lee that I talked to one of those out of town.
 21 The other one -- I can't remember which one was
 22 first. It was just too long ago.
 23 **Q. Probably before 2010?**
 24 A. Probably on both, yeah. You're bringing
 25 back some memory.

1 **Q. Did you ever talk to an accountant about**
 2 **the franchise fees?**
 3 A. I don't think so. I hired accountants to
 4 do accounting for me, and I don't believe so. I
 5 used my accountants for personal accounting, not for
 6 other things.
 7 **Q. Have you ever talked to anyone who's a**
 8 **tax expert about franchise fees?**
 9 A. No. Again, I've talked with tax experts
 10 for my own taxes. I've hired numerous tax
 11 consultants to review my taxes for me, but it's
 12 personal taxes; it wasn't city taxes.
 13 **Q. Do you know when the City stopped**
 14 **charging the franchise fee?**
 15 A. July 1, 2018.
 16 **Q. Do you know why the City stopped charging**
 17 **franchise fees?**
 18 A. No, and I would love to know exactly why
 19 they quit.
 20 **Q. Have you ever complained to anyone about**
 21 **the cost of utility service from the City of**
 22 **Billings?**
 23 A. Yes, the City.
 24 **Q. Okay. And when have you complained?**
 25 A. During work sessions, maybe even at a

1 rate hearing. I'm not positive on the rate hearing,
 2 but I know I've complained at work sessions and such
 3 that their rates are unfair.
 4 **Q. And what makes their rates unfair?**
 5 A. Numerous things. The water and sewer and
 6 garbage, all three, the City doesn't pay. So I'm
 7 paying their share. I'm overcharged.
 8 For garbage it's arbitrary and
 9 capricious. It has nothing to do with the amount of
 10 garbage you produce. I live on a street with an
 11 alley. I have an alley behind my house. My garbage
 12 is in the alley. I put my garbage out. They come
 13 every week and pick it up. Maybe once every three
 14 or four weeks, they'll pick up the excess, the
 15 loose. If I wanted a green barrel to participate in
 16 the recycling, I'd have to take it out front and on
 17 Tuesday. My regular garbage day is on Wednesday.
 18 The green barrel won't be picked up if I leave it in
 19 the alley. I don't have my room on my property for
 20 garbage. That's what I have an alley for so I don't
 21 get the green barrel.
 22 Across the street, those people do not
 23 have an alley. They get three trucks every week to
 24 pick up their trash. I get one, maybe two in a
 25 month. That's totally inadequate and unfair. I'm

1 subsidizing the garbage collection across the street
 2 with their three trucks and my one each week. So
 3 that's arbitrary and capricious. That's not a
 4 charge for service. That should be a tax for
 5 service and it should be on my property tax.
 6 **Q. Do you watch the city council meetings on**
 7 **television?**
 8 A. When I'm not present most of the time,
 9 yes.
 10 **Q. And how about the work sessions?**
 11 A. Yes, now that they're on TV.
 12 **Q. And do you read about the city council**
 13 **meetings in the Billings Gazette?**
 14 A. I used to when I got the Gazette.
 15 **Q. Do you look at it online now?**
 16 A. The what?
 17 **Q. The Billings Gazette?**
 18 A. When I don't get it, yeah.
 19 **Q. When you paid the franchise fees, did you**
 20 **ever pay them under protest?**
 21 A. There's no mechanism by which to pay them
 22 under protest that I'm aware of.
 23 **Q. Did you ever send the City a written**
 24 **notice that it was breaching its contract with you**
 25 **by charging you franchise fees?**

EXHIBIT 6

Expenses by Matter
 Period: 01/01/1990-07/30/2023

| Date Status | Timekeeper | Transaction Type Description | Amount |
|----------------------|------------|---|--------|
| Matter 44-1 | | Terry Houser Billings Franchise Fee | |
| 09/28/17 Released | MGM | Expense Mileage to Billings and back for meeting with Kristen and clients | 165.00 |
| 09/29/17 Released | MGM | Expense Hotel for meeting in Billings with clients | 94.63 |
| 12/11/17 Released | MGM | Expense Mileage to Billings and back for meeting with J. Fehr and meeting with clients | 165.00 |
| 05/16/18 Released | MGM | Expense Filing fee for complaint | 120.00 |
| 06/28/18 Released | MGM | Expense Postage for mailing copies of Pltfs' Resp to Mtn for Judicial Notice | 4.73 |
| 06/28/18 Released | MGM | Expense Photocopies of Pltfs Resp to Mtn for Judicial Notice (76 pages x \$.15 per page) | 11.40 |
| 07/10/18 Released | MGM | Expense Hotel for meeting with clients and morning appearance before Judge Harris | 92.97 |
| 07/10/18 Released | MGM | Expense Mileage to Billings | 165.00 |
| 07/10/18 Released | MGM | Expense Dinner | 14.79 |
| 07/11/18 Released | MGM | Expense Breakfast | 10.48 |
| 07/17/18 Released | MGM | Expense Postage for Pltfs' 1st Set of Discovery Requests | 2.47 |
| 07/17/18 Released | MGM | Expense Photocopying re Pltfs 1st Set of Disc Requests (46 pages x \$.15) | 6.90 |
| 07/31/18 | MGM | Expense | 8.10 |

Expenses by Matter
 Period: 01/01/1990-07/30/2023

| Date Status | Timekeeper | Transaction Type Description | Amount |
|-------------------|------------|---|--------|
| Released | | Photocopies of discovery responses (54 pages x \$.15) | |
| 07/31/18 Released | MGM | Expense Thumbdrive for transmission of documents produced in discovery | 5.00 |
| 07/31/18 Released | MGM | Expense Postage for documents produced in discovery | 3.10 |
| 09/21/18 Released | MGM | Expense Photocopying of 1st Amd Complaint and Objections for service upon the City (61 pages x \$.15 per page) | 9.15 |
| 09/21/18 Released | MGM | Expense Postage for 1st Amd CP and Objections | 3.10 |
| 10/04/18 Released | MGM | Expense Postage for mailing class certification motion | 6.70 |
| 10/04/18 Released | MGM | Expense Yellowstone County fee for electronic filing of class certification motion | 38.50 |
| 10/05/18 Released | MGM | Expense Photocopies of class cert motion and exhibits (77 pages x \$.15 per page) | 11.55 |
| 11/26/18 Released | MGM | Expense Electronic filing fee for reply brief | 11.50 |
| 12/11/18 Released | MGM | Expense Breakfast | 2.50 |
| 01/28/19 Released | MGM | Expense Fiscus deposition transcript | 905.35 |
| 04/22/19 Released | MGM | Expense Mileage to Billings and back | 165.00 |
| 04/22/19 Released | MGM | Expense Hotel in Billings for 4/22 & 4/23 for depositions | 153.62 |
| 04/22/19 Released | MGM | Expense Dinner | 15.18 |

Expenses by Matter

Period: 01/01/1990-07/30/2023

Page 3
07/30/23

| Date Status | Timekeeper | Transaction Type Description | Amount |
|----------------------|------------|---|--------|
| 04/23/19 Released | MGM | Expense Lunch | 15.00 |
| 04/23/19 Released | MGM | Expense Dinner | 15.13 |
| 05/01/19 Released | MGM | Expense Fee for electronic filing fee of mtn for protective order | 40.50 |
| 05/01/19 Released | MGM | Expense Postage for service of Mtn for Prot Order | 7.35 |
| 05/10/19 Released | MGM | Expense Photocopies of Statement of Undisputed Facts to Judge Pinski & Moulton Bellingham (158 pages x \$.15) | 23.70 |
| 05/10/19 Released | MGM | Expense Postage for Stment of Disputed Facts to Judge Pinski & Moulton | 15.05 |
| 05/10/19 Released | MGM | Expense Yellowstone Dist Ct electronic filing fee for Obj to Statement of Uncontroverted facts | 99.50 |
| 05/28/19 Released | MGM | Expense Payment to Fisher Court Reporting for transcript of Woo Deposition | 666.20 |
| 05/30/19 Released | MGM | Expense Photocopies of resp to City's partial msj re water contracts (140 pages x .15) | 21.00 |
| 05/30/19 Released | MGM | Expense Postage for copies of resp brf to City's partial msj to court and Mouton Bellingham | 5.30 |
| 06/04/19 Released | MGM | Expense Photocopies of reply re Woo Deposition (30 pages x .15) | 4.50 |
| 06/27/19 Released | MGM | Expense Photocopies of court filings and service copies (98 pages x \$.15) | 14.70 |
| 06/27/19 Released | MGM | Expense Postage for mailing of court filings and service copies | 4.55 |

Expenses by Matter

Period: 01/01/1990-07/30/2023

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07/30/23

| Date Status | Timekeeper | Transaction Type Description | Amount |
|----------------------|------------|---|----------|
| 08/26/19 Released | MGM | Expense Payment to Fisher Court Reporting for deposition transcripts | 1,468.10 |
| 09/16/19 Released | MGM | Expense Preparation and shipping of briefs and appendix to Montana Supreme Court | 350.37 |
| 10/14/19 Released | MGM | Expense Mileage to Billings for conference with clients (150 miles each way x \$.55 per mile) | 165.00 |
| 04/10/20 Released | MGM | Expense Postage for mailing brief to City | 3.21 |
| 05/01/20 Released | MGM | Expense Postage for briefs to the City | 3.20 |
| 05/12/20 Released | MGM | Expense Dinner | 18.00 |
| 05/13/20 Released | MGM | Expense Hotel | 120.79 |
| 05/13/20 Released | MGM | Expense Dinner | 15.67 |
| 05/13/20 Released | MGM | Expense Fuel for rental car | 24.68 |
| 05/13/20 Released | MGM | Expense Rental car charges | 84.65 |
| 05/21/20 Released | MGM | Expense Cost of conference room for mediation held on May 13 | 152.14 |
| 06/12/20 Released | MGM | Expense Payment to Jonathan McDonald for mediator fees | 3,473.53 |
| 03/10/21 Released | MGM | Expense Photocopies of motions for service on City (116 pages x \$.15 per page) and postage (\$4.40) | 21.80 |
| 04/22/21 | MGM | Expense | 1,049.10 |

Expenses by Matter

Period: 01/01/1990-07/30/2023

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07/30/23

| Date Status | Timekeeper | Transaction Type Description | Amount |
|----------------------|------------|---|--------|
| Released | | McDaniel depositions | |
| 04/22/21 Released | MGM | Expense Yellowstone Dist Ct e-filing fee | 25.11 |
| 04/23/21 Released | MGM | Expense Postage for reply brief | 2.60 |
| 04/23/21 Released | MGM | Expense Yellowstone Dist Ct filing fee | 25.11 |
| 04/26/21 Released | MGM | Expense Conference room for clients for preparation for testimony during hearing scheduled for 4/17 | 125.00 |
| 04/27/21 Released | MGM | Expense Mileage to and from Billings for hearing on 4/27 | 165.00 |
| 04/27/21 Released | MGM | Expense Hotel room for hearing on 4/27 | 184.52 |
| 04/27/21 Released | MGM | Expense Dinner in Billings | 20.66 |
| 05/10/21 Released | MGM | Expense Check to Jan Berry for transcript of hearing on April 27, 2021 | 800.00 |
| 05/18/21 Released | MGM | Expense Postage for MSJ reply brief (SIAs) | 3.40 |
| 05/18/21 Released | MGM | Expense Copying of MSJ reply brief (SIAs) | 8.40 |
| 05/19/21 Released | MGM | Expense Postage for Rule 11 motion to Heenan | 3.20 |
| 05/19/21 Released | MGM | Expense Copying of Rule 11 motion to Heenan | 10.35 |
| 06/21/21 Released | MGM | Expense E-filing fee in Yellowstone District Court | 44.00 |
| 10/19/21 | MGM | Expense | 171.94 |

Expenses by Matter
 Period: 01/01/1990-07/30/2023

| Date Status | Timekeeper | Transaction Type Description | Amount |
|-----------------------------|------------|--|---------------------|
| Released | | Hotel room in Billings | |
| 10/19/21 Released | MGM | Expense Car rental to Billings | 39.67 |
| 10/19/21 Released | MGM | Expense Lunch in Billings | 27.65 |
| 10/20/21 Released | MGM | Expense Fuel for rental car | 35.83 |
| 10/21/21 Released | MGM | Expense Payment to Chris Belback for transcript of court hearing held on 10/19/21 | 350.00 |
| 04/29/22 Released | MGM | Expense Deposit for Simpluris | 1,000.00 |
| 10/07/22 Released | MGM | Expense Plaintiffs' share of mediator fees paid to Jonathan McDonald | 5,517.91 |
| 10/19/22 Released | MGM | Expense Fee for conference room for September mediation (1/2 of cost) | 151.55 |
| 12/08/22 Released | MGM | Expense Roundtrip mileage to Billings (300 miles x .625/mile) | 187.50 |
| 12/08/22 Released | MGM | Expense Fee for conference room at Billings Hotel & Convention Center | 125.00 |
| 12/08/22 Released | MGM | Expense Lunch in Billings after client conference | 22.66 |
| 01/17/23 Released | MGM | Expense Check to Jonathan McDonald for mediator fees | 2,557.25 |
| Matter 44-1 | | 78 transactions | Expenses: 21,678.75 |
| 78 transactions 1 matter | | | Expenses: 21,678.75 |

| | | | |
|----|----------|--|-------------|
| 40 | | | |
| 41 | | Costs | |
| 42 | 5/16/18 | Filing Fee (reimbursed from trust account) | \$ 120.00 |
| 43 | | Reimburse Filing Fee from trust funds | \$ (120.00) |
| 44 | 7/11/18 | Copies - FedEx Office | \$ 4.68 |
| 45 | 7/10/18 | Conference room | \$ 50.00 |
| 46 | 8/2/18 | Laura Welker Consulting | \$ 231.25 |
| 47 | 8/30/18 | State Law Library legis. History research | \$ 60.00 |
| 48 | 9/5/18 | Yellowstone Co Clerk of Court efile fees | \$ 6.00 |
| 49 | 11/7/18 | State Law Library immunity research | \$ 60.00 |
| 50 | 11/14/19 | Postage | \$ 8.94 |
| 51 | 12/4/18 | Postage | \$ 7.04 |
| 52 | 12/8/18 | Postage | \$ 7.70 |
| 53 | 4/10/19 | Yellowstone Co Clerk of Court efile fees | \$ 2.00 |
| 54 | 4/19/19 | UPS Store copies depositions | \$ 72.00 |
| 55 | 4/19/19 | UPS Store copies depositions | \$ 33.28 |
| 56 | 4/20/19 | UPS Store copies depositions | \$ 31.60 |
| 57 | 4/21/19 | Lodging in Billings | \$ 259.59 |
| 58 | 4/22/19 | Copies - FedEx Office | \$ 115.00 |
| 59 | 4/22/19 | Lunch-depositions | \$ 32.50 |
| 60 | 4/24/19 | parking-depositions | \$ 4.00 |
| 61 | 5/7/19 | Graf Reporting depositions | \$ 2,442.00 |
| 62 | 5/10/19 | Copies UPS Store | \$ 18.75 |
| 63 | 5/10/19 | Postage | \$ 8.30 |
| 64 | 5/19/19 | UPS Store copies MSJ | \$ 17.60 |
| 65 | 5/19/19 | Postage MSJ | \$ 24.90 |
| 66 | 21-Jun | Copies UPS Store | \$3.15 |
| 67 | 6/28/19 | Copies UPS Store | \$1.89 |
| 68 | 4/10/20 | Copies UPS Store (104 @ \$.05 each) | \$ 5.20 |
| 69 | 4/10/20 | Postage | \$6.00 |
| 70 | 5/5/20 | Copies UPS Store | \$58.24 |
| 71 | 5/6/20 | Copies UPS store (475 @ \$.05) | \$23.75 |
| 72 | 5/6/20 | UPS delivery mediation brochure | \$16.44 |
| | | Conference room for client pre-mediation | |
| 73 | 5/12/20 | conference | \$100.00 |
| 74 | 5/12/20 | Hotel | \$103.26 |
| 75 | 5/13/20 | Lunch for mediation | \$ 85.00 |
| 76 | 5/13/20 | Hotel | \$96.00 |
| 77 | | | \$ 3,996.06 |

CERTIFICATE OF SERVICE

I, Matthew G. Monforton, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 07-31-2023:

Bryce Anthony Burke (Attorney)
27 N 27th Street
Suite 1900
PO Box 2559
Billings MT 59103-2559
Representing: City Of Billings
Service Method: eService

Doug James (Attorney)
1570 Westridge Circle
1570 Westridge Circle
Billings MT 59102
Representing: City Of Billings
Service Method: eService

John C. Heenan (Attorney)
1631 Zimmerman Trail, Suite 1
Billings MT 59102
Representing: Intervenor Class Representatives
Service Method: eService

Electronically Signed By: Matthew G. Monforton
Dated: 07-31-2023