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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MARK COZIAHR, on behalf of himself and all others similarly situated, PLAINTIFF, VS. OTAY WATER DISTRICT; and DOES 1 through 200, inclusive, DEFENDANTS.	Case No. 37-2015-00400000-CU-MC-CTL **CERTIFIED CLASS ACTION** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: July 31, 2026 Time: 9:00 a.m. Dept: C-67 Judge: Hon. Michael T. Smyth

NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on July 31, 2026 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department C-67 of the Superior Court of the State of California, County of San Diego, located at the Hall of Justice, Fourth Floor, 330 W Broadway, San Diego, California 92101, before the Honorable Michael T. Smyth, the Court-appointed Named Plaintiff and proposed Settlement Class Representative Mark Coziahr, on behalf of himself and the putative Settlement Class, will, and hereby does, move this Court for entry of an Order, pursuant to California Rules of Court, rule 3.769:

1. Granting final certification of the Settlement Class;
2. Granting final approval of a non-reversionary settlement in the amount of $12,000,000, to resolve the action (the "Settlement");
3. Finding that notice has been conducted in accordance with the Court-approved notice plan and comports with due process; and
4. Granting awards of attorneys' fees and costs, service awards, and reimbursement of settlement administration costs, because those requests are reasonable and adequately documented.[1]

This motion is based upon this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Settlement Administrator Regarding Class Notice ("RG2 Decl."), Plaintiff's Motion for Preliminary Approval and the declarations submitted in support of Preliminary Approval, Plaintiff's Motion for Attorneys' Fees, Costs and Service Awards and the declarations submitted in support thereof, the concurrently-filed Proposed Order, the pleadings and records on file in this action, and upon any additional evidence and argument that may be presented before or at the hearing of this motion. As the Court set out in the preliminary approval order, Otay will separately substantiate the amount of its settlement administration expenses, which Plaintiff will not oppose so long as they do not exceed $250,000.

[1] Capitalized terms are defined in the Class Action Settlement Agreement and Release (the "Settlement Agreement"), attached as Exhibit 1 to the Declaration of Steven M. Tindall in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Tindall Decl."). Unless otherwise noted, all emphasis is added and all internal citations and quotation marks are omitted.

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INTRODUCTION

This Court, on May 6, 2026, preliminarily certified a settlement class and preliminarily approved a proposed settlement that establishes a non-reversionary $12,000,000 common fund for current and former Otay Water District customers who allege that they were overcharged for their single-family residential water service between July 14, 2014, and December 31, 2022. The Court's order set a claims deadline of forty-five days after the class was notified; because notice was issued on May 19, 2026, the response deadline was July 3, 2026. Notice was completed consistent with the Court-approved notice plan. (See generally RG2 Decl.) Ultimately, that notice was effective. 71,452 class members successfully received email notice, mail notice was sent without return to another 16,111 class members, and publication notice was completed to cover the small slice of class members whose contact information was out-of-date and were not reachable at either their last-known physical address or electronically. (*Id.* at ¶¶ 6-8.) Class members were able to check whether they would be entitled to a refund under the settlement on the settlement website throughout the response period, and for those who were entitled to refunds, notified that the amount of their refund would be based on the refund amount calculated by plaintiff's litigation expert, but ultimately depends on the Court's final approval of the settlement (and any awards of fees, costs, and service awards). (*Id.* at ¶ 9.d.) No class members timely opted out or objected to the settlement. (*Id.* at ¶¶ 12-13.)

Because notice was successfully carried out consistent with the California Rules of Court and due process, the class reacted positively to the settlement, and the settlement overall is fair, reasonable, and adequate, the Court should grant final certification of the settlement class and final approval of the settlement.

BACKGROUND

I. Overview of the Litigation

A. The alleged circumstances that prompted this lawsuit.

Given the stage of this litigation, the Court is familiar with the circumstances that led to this case. (See Plaintiff's Motion for Preliminary Approval of Class Settlement (setting out case background).) The Court of Appeal's published opinion affirming the liability judgment also recounts that history in detail. (*Coziahr v. Otay Water Dist.* (2024) 103 Cal.App.5th 785, 791-94, *review denied* (Oct. 23, 2024).) In short, this case concerns Otay Water District's 2013 and 2017 potable water service ratemakings—which set Otay's single-family residential water rate structures for the class period. Plaintiff alleged (and the trial court found) that Otay's single-family residential water rates were not proportional to the cost of providing water service to class members' parcels. (*Id.* at 791.) Plaintiff sued, alleging that Otay thus violated Section 6(b)(3) of the California Constitution, enacted through Proposition 218. (See *id.*)

The parties reached this settlement on a fully developed record after years of litigation, a full trial, and a full appeal (including a petition for Supreme Court review). The parties mediated this case under the supervision of San Diego Superior Court Judge Herbert B. Hoffman (ret.), who ultimately put forward a mediator's proposal that both parties accepted. The Court preliminarily approved that settlement on May 6, 2026, the parties completed the notice program set out in that order, and the parties now seek final approval.

II. Terms of the Proposed Settlement

A. Proposed Settlement Class

The Court preliminarily certified a settlement class defined as:

> All single-family residential customers of the Otay Water District who received water service between July 14, 2014, and December 31, 2022.

(Order Granting Preliminary Approval at p. 3 ["Approval Order"].)[2] The proposed final settlement class is identical to the class certified by the Court at preliminary approval.

B. Settlement Fund

The proposed settlement provides a $12,000,000 fund. (Settlement § 8.1.) After payment of attorneys' fees and expenses, settlement administration costs, and service awards, the remaining balance will be distributed to all class members owed refunds using actual Otay billing data. (See *id.*; Settlement §§ 9.1-9.12.) The settlement is non-reversionary—if any part of the settlement cannot be feasibly distributed to the class, the Court has approved that any remainder be distributed to the Sierra Club California Water Committee, including the San Diego chapter (and the parties may propose further earmarking). (Approval Order at p. 5.)

Plaintiff has asked the Court for a $5,000 service award from the settlement fund in recognition of

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[2] Excluded from the Class are: officers and directors of Otay Water District, Class Counsel, Judge Michael T. Smyth, and any members of Judge Smyth's immediate family and judicial staff. (Approval Order at p. 3.) Also excluded from the Class are the individuals who timely submitted valid opt-outs by the Response Deadline when the class was originally certified. (*Ibid.*)

Mr. Coziahr's nearly 11-year effort pursuing this case, which ultimately benefited the entire class. (Plaintiff's Motion for Attorneys' Fees, Costs, and Service Award at p. 9.) Counsel have also petitioned the Court for an award of attorneys' fees of 1/3 (33.33%) of the fund ($4,000,000) and reimbursement of $283,069.80 in litigation costs and expenses from the settlement fund. (*Id.* at pp. 2-9.) Although Otay does not oppose these requests, the settlement agreement preserves the Court's supervisory authority to determine the appropriateness of any service award, attorneys' fee or reimbursement of expenses. (Settlement at §§ 10.1, 11.1) Otay will also ask to recover its reasonable Settlement Administration Expenses incurred in administering the Settlement to current customer class members, which expenses are capped at $250,000. (Approval Order at ¶ 15.) Finally, while the Court has already approved RG/2 to disburse up to $62,605 in settlement administration expenses, the Court also set out that RG/2 may identify any "other costs that are reasonably necessary to implement the Notice Plan or administer the Settlement" at the Final Approval stage. (Approval Order at ¶ 14.) In disseminating notice and administering the settlement to date, RG/2 has identified approximately $1,500 in additional expenses (yielding an updated total of $64,105), and Plaintiff asks that the Court approve disbursement of the additional $1,500 to reimburse RG/2 for these reasonable costs as well. (See *ibid.*; RG2 Decl. at ¶ 14.)

C. Release

In exchange for the benefits provided under the Settlement, Plaintiff and settlement class members will release Otay from the claims that were or could have been asserted in this action. (Settlement § 14.) The release is appropriately limited under California law to only those claims that are "based on the identical factual predicate as that underlying the claims in the settled class action." (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) To Plaintiff's knowledge, there are no other cases that might be impacted by the settlement. (Tindall Decl. in Support of Preliminary Approval at ¶ 7.)

D. Notice

Notice was provided to class members consistent with the Court-approved Notice Plan (Approval Order at p. 4), using the email, postcard, and publication notice forms approved by the Court. (See Wickersham Decl. in Support of Plaintiff's Motion for Preliminary Approval (Apr. 2, 2026) at Ex. B; Notice of Submission of Updated Class Notice Forms (May 14, 2026); see generally RG2 Decl.) Beginning May 19, the Settlement Administrator emailed direct notice to all class members with email information (approximately 81% of the class)[3], mailed postcard notice to the remaining class members (approximately 18% of the class)[4], and published notice in the San Diego Union Tribune to cover any class members who may no longer reside at their last-known mailing address. (See RG2 Decl. at ¶¶ 5-13.)

The notice program also included a case-specific webpage to host pleadings, provide case updates, and provide class members with contact information for the settlement administrator, the long-form notice with additional case details, and a portal for class members to check whether their account ID was eligible for a refund under the settlement. (See Declaration of William W. Wickersham in Support of Plaintiff's Motion for Preliminary Approval (Apr. 2, 2026) at Ex. B; Notice of Submission of Updated Class Notice Forms (May 14, 2026); RG2 Decl. ¶¶ 9-11.) The Settlement Administrator also established a toll-free number and post office box allowing class members to call or write for additional information about the Settlement, along with online support. (RG2 Decl. at ¶¶ 10-11.) As of July 3, 2026, 155 phone calls had been received, and the Settlement Administrator further corresponded with class members through email (receiving approximately 64 emails from class members as of July 3, 2026). (*Id.*)

In short, the notice plan was effective. Notice is estimated to have reached 99% of class members. (RG2 Decl. at ¶¶ 3-8.)[5] By the claims deadline, no class members timely submitted opt-out requests or objected to the Settlement.

E. Administration and Plan of Allocation

Class members were not required to submit claim forms to participate in the settlement, as the refund amounts were based on the expert calculation of the refund owed to each unique account ID. All settlement class members who experienced overcharges based on that expert analysis will receive a distribution under the settlement. The amount of the refund to each of those class members will be an equivalent proportion of the refund calculated for their account ID, proportionally reduced to account for the amount of the Settlement Fund available for distribution.

[3] 71,452 divided by 88,283 equals 0.809. (See RG2 Decl. ¶¶ 3, 6, 8.)
[4] 16,111 divided by 88,283 equals 0.183. (See RG2 Decl. ¶¶ 3, 5, 7.)
[5] 720 undeliverable direct notices (433 mailed notice packets and 287 email notices) divided by 88,283 equals 0.008. (See RG2 Decl. ¶¶ 3-8.)

ARGUMENT

I. Certification of the Settlement Class Should be Finalized.

In August 2019, this Court (the Honorable Eddie Sturgeon (Ret.)) certified a litigation class. Then, after the parties agreed to a proposed classwide settlement, the Court granted Plaintiff's motion to preliminarily certify the settlement class based on findings that the settlement and proposed settlement class met the requirements of California Code of Civil Procedure Section 382 and California Rules of Court, rule 3.769. (Approval Order at pp. 3-4.) Since then, nothing has changed, and settlement class certification remains warranted.

II. Final Approval of the Settlement is Warranted.

To approve a class settlement, the court must determine whether the settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Amaro*, *supra*, 69 Cal.App.5th at pp. 534-35.) "The trial court has broad discretion to determine whether the settlement is fair." (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801.) Relevant factors include: "the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Id.*) Ultimately, however, these factors are guideposts: deciding whether a settlement is fair is "an amalgam of delicate balancing, gross approximations and rough justice," that "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties[.]" (*Id.*)

For the reasons the Court set out in granting preliminary approval, (Approval Order at pp. 2-9), and because class members have reacted positively to the settlement, the Court should find that the settlement is fair reasonable, and adequate, and grant final approval.

A. Strength of Plaintiff's Case

The claims at issue here involve Otay's single-family residential water rates from two ratemakings. Liability has already been established and affirmed by the Court of Appeal, along with declaratory and injunctive relief, the availability of a refund, and the fact of damages. (*Coziahr*, *supra*, 103 Cal.App.5th at pp. 793, 819, 826.) All that remains is the amount of the refund owed to class members. (See *id.* at p. 834.)

On remand, Plaintiff retained an expert to perform that calculation. That expert reviewed the decision in *Patz*, reviewed the individual billing records from Otay, and calculated the class refund here using the method described in the *Patz* decision—the only refund method accepted by a Court of Appeal. (Clumpner Report, Ex. Z to Decl. of Rosslyn Hummer in Support of Otay's Motion to Decertify the Class (Aug. 26, 2025) at p. 13.) Within the *Patz* framework, Plaintiff's expert calculated the class refund using two different methods of calculating the "actual cost" comparator uniform rate: one based on Otay's projected usage and revenues (totaling $16,527,400), and one based on Otay's actual usage and revenues (totaling $12,566,698). (*Id.* at p. 5.)[6] Plaintiff's expert also set out two other calculations that arguably diverge from the *Patz* framework, in that these calculations do *not* net out the *total* overcharges and undercharges for the class period. (*Id.*)

Of course, in order to recover any of these refund amounts, Plaintiff would have had to go to trial on remand, prove the amount of the refund, and navigate the Legislature's passage of a new law, Senate Bill 1072, which arguably eliminates direct refund awards. (*Patz*, *supra*, 113 Cal.App.5th at p. 306 [discussing SB 1072].) There were at least three uncertainties that Plaintiff faced on remand.

First, Otay moved to decertify the class, and the Court has yet to rule on the merits of that motion. Plaintiff has explained why, for numerous reasons, Otay's motion is legally and factually incorrect. (See generally Class Plaintiff's Opposition to Motion to Decertify Class Judgment (Oct. 10, 2025).) Nonetheless, if the Court were to decertify the class, class members' ability to proceed to individual refund trials and recover *any* monetary relief would be impacted. (See *id.* at p. 15.)

Second, the Court has not resolved the parties' dispute over the amount of the refund. At each stage of this case, Otay has contested that there is *any* measurable overcharge to class members, and that even under the Court of Appeal's ruling, no class members can show specific overcharges. Plaintiff has put forward a calculation using the *Patz* framework—the only refund method accepted by a Court of Appeal—but this Court has not yet weighed in on the refund amount.

Third, Plaintiff's refund award on remand must grapple with the impact of the Legislature's passage of SB 1072. This new law explicitly takes aim at the class refund awarded in this case, and "requires agencies

[6] The expert also calculated amounts that might be owed to class members if the Court were to apply prejudgment and postjudgment interest at 7%.

to credit refund awards in Proposition 218 cases against future increases in or impositions of the property-related charge[.]" (*Patz*, *supra*, 113 Cal.App.5th at p. 306.) "Thus, the statute does not allow agencies in Proposition 218 cases to pay a refund award as a money judgment, unless a statute explicitly allows the agency to do so." (*Id.*) The legislature itself explained that this law "prevents ratepayers that a court found overpaid for a property-related service from getting a refund" such that "the ratepayers that overpaid would not get their money back." (*Id.* at p. 307.) Indeed, "the statute's legislative history [] shows the statute was enacted with the refund awards in [*Patz*] and in *Coziahr* specifically in mind." (*Id.*)

Plaintiff has resisted application of SB 1072. (See Decert. Opp. at pp. 11-13.) Although the positions of the parties on the application of this new law are untested, it is evident that a loss by the Plaintiff could mean that all class members who were overcharged would no longer "get their money back." (See *Patz*, *supra*, 113 Cal.App.5th at p. 307.) That is a substantial risk for the class in continuing to litigate.

Finally, regardless of how this Court ultimately applied SB 1072 in the remand proceedings, both parties would have a right to appeal that determination, and another trip through the appellate process and potential California Supreme Court review could last years.

For all these reasons, despite the strengths of the case and the success to date, there are real risks to continuing to litigate given the passage of new law. Against those long odds, Plaintiff achieved excellent relief for the class. Overall, then, this factor strongly supports final approval.

B. Risk, Complexity, Costs, and Likely Duration of Further Litigation

Proving the refund amount requires complex expert testimony and the favorable resolution of a novel legal issue—the applicability of SB 1072. Neither party is likely to accept a dispositive, adverse ruling without a further appeal. If this settlement were not approved, it is unlikely that further litigation would lead to a better result. The parties are operating with a fully developed record. Otay knows its exposure, and Plaintiff knows what relief the class seeks. The parties negotiated in full light of those positions, and further litigation is unlikely to change either party's position here. As to class certification, the Court of Appeal's decision in *Patz* squarely answers Otay's class certification challenges here. (Decert. Opp. at pp. 10-11.) Even so, Otay *has* challenged class certification, and would likely do so again on appeal. Even a small risk of decertification weighs in favor of granting settlement approval, as settlement eliminates that risk. (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801; accord *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th

1135, 1152.)

This settlement eliminates these risks and offers certain recovery in the face of an uncertain legal theory. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 745 ("plaintiff faced considerable risk in proceeding to trial, and the class recovery is significant in light of that risk."].) This factor, then, supports settlement approval. (*7-Eleven Owners*, *supra*, 85 Cal.App.4th at p. 1150 ["it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements."].)

C. Amount Offered in Settlement

While the Court should consider the "amount offered in settlement" (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801), "[t]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*7-Eleven Owners*, *supra*, 85 Cal.App.4th at p. 1150.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement…should be disapproved." (*Id.*) So long as the trial court has "an understanding of the amount … in controversy" and the "realistic range of outcomes of the litigation[,]" it need not act as a bean-counter to precisely determine the "maximum value of all claims." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

The $12,000,000 common fund offered in this settlement represents an excellent outcome for the class. The trial court's judgment before the appeal vacated the refund amount awarded the class $18,105,256.60 (with certain increases pending Otay changing the rates). (*Coziahr*, *supra*, 103 Cal.App.5th at p. 793.) $12,000,000 is approximately 66% of that original $18,105,256.60 judgment—providing the class with substantial monetary relief without the risk of further litigation over the refund amount, or years of additional appeals. While courts do not weigh the settlement against some hypothetical possible outcome, there is no question that this settlement is well within the range courts consider fair. (*7-Eleven Owners*, *supra*, 85 Cal.App.4th at p. 1150 [settlement may be fair even if it provides only a "fraction" of the potential recovery]; *Dunk*, *supra*, 48 Cal.App.4th at p. 1802 [coupons of approximately 67% of maximum damages]; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 727 [settlement at "nearly half" maximum claim value].)

The settlement amount here is even more reasonable in light of the fact that the amount was the product of a mediator's proposal following extensive negotiations before a retired Superior Court Judge. (*7-*

Eleven Owners, *supra*, 85 Cal.App.4th at p. 1151 [presumption of fairness where settlement is reached through arms-length bargaining]; *Dunk*, *supra*, 48 Cal.App.4th at pp. 1802-03 [noting that an "independent mediator, a retired superior court judge…recommended the settlement"].)

D. Plan of Allocation

After payment of notice and administration costs and any approved award of attorneys' fees, costs, and service awards, the remaining settlement fund will be distributed to the class (*i.e.*, the "net settlement fund"). Here, the 15,568 class member accounts that experienced overcharges based on the *Patz* methodology will receive payments under the settlement. (See RG2 Decl. at ¶ 15.)

Any residual funds will be distributed on a *cy pres* basis to the Court's approved *cy pres* recipient, the Sierra Club California Water Committee, including the San Diego chapter. (Settlement § 9.9; Approval Order at p. 5.) The parties may additionally propose earmarking of the residual funds before distribution to the *cy pres* recipient. (Approval Order at p. 5.) Class Members who remain customers of Otay Water District will receive bill credits over one year of billing. (Settlement § 9.7.) Class Members who are no longer customers of Otay Water District will be able to select their preferred payment method to receive their refund, including physical checks or electronic payment methods like Venmo, PayPal, or Zelle. (RG2 Decl. at ¶ 15.)

E. Attorneys' Fees and Costs, and Service Awards

As set forth in Plaintiff's Motion for Attorneys' Fees, Costs, and Service Awards, Plaintiff seeks attorneys' fees of $4,000,000, which is 1/3 (33.33%) of the settlement fund. (Plaintiff's Mot. for Attorneys' Fees, Costs, and Service Awards (May 20, 2026) at pp. 2-7.) As to costs and expenses, Plaintiff seeks reimbursement of $283,069.80 in litigation costs (excluding settlement administration costs, discussed below), an amount that is reasonable given the amount of litigation and expert work to date. (*Id.* at pp. 8-9.) Lastly, Plaintiff seeks a service award of $5,000 for the Named Plaintiff. (*Id.* at p. 9.) For all the reasons set out in Plaintiff's Motion, those requests are reasonable and appropriate. A proposed order granting these awards is before the Court, and Plaintiff will provide a combined proposed order granting both Final Approval and awarding these amounts in connection with this Motion.

F. Settlement Administration Expenses

The Court approved the Settlement Administrator's reasonable estimated costs associated with executing the Notice Plan and administering this Settlement: approximately $62,605. (Approval Order at p.

4.) The Court also ordered that, should additional costs prove reasonably necessary to implement the Notice Plan or administer the settlement, the Settlement Administrator may additionally request payment of those costs. (*Id.* at pp. 4-5.) RG/2 has identified certain minimal additional costs that were reasonably necessary to implement the Notice Plan and administer the settlement, including approximately $1,500 to set up the class member refund lookup portal (so that class members could confirm whether they would receive a refund under the Settlement). (See RG2 Decl. ¶ 14.) Those costs are reasonable in light of the work to be completed in effectuating the Notice Plan and administering the Settlement, and Plaintiff requests that the Court approve the Settlement Administrator to disburse the additional $1,500 in Settlement Administration costs from the Settlement Fund (totaling $64,105). Should the Settlement Administrator identify additional costs that are reasonably necessary to effectuate Notice and administer the Settlement, the Settlement Administrator will request approval for payment of those costs separately.

Otay will administer the distribution of bill credits to current customer class members, and the Court approved that Otay may seek approval for repayment of its costs and expenses in doing so, not to exceed $250,000. (Approval Order at p. 5.) Otay will submit the amount of these costs separately, and request the Court approve reimbursement out of the Settlement Fund. (*Id.*)

G. Stage of the Proceedings and Extent of Discovery Completed

In order to settle a class action, the record must be adequate for the parties and the Court "to reach 'an intelligent and objective opinion of the probabilities of success should the claim be litigated' and 'form an educated estimate of the complexity, expense, and likely duration of such litigation[.]'" (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802.) "Of course, such an assessment is nearly assured when all discovery has been completed and the case is ready for trial." (*Ibid.*) Here, the parties settled after nearly 11 years of litigation, full discovery, trials on both liability and remedies, and a full appeal. Both parties and their counsel weighed the risks and benefits of further litigation, and an "independent mediator, a retired superior court judge…with substantial experience and respect in the legal community, recommended the settlement." (*Id.* at pp. 1802-03.) The record here is "ideal…to make a rational and educated determination the settlement [is] fair, adequate and reasonable." (*Id.* at p. 1803.) This factor, then, weighs in favor of granting final approval.

H. Support of Experienced Counsel and Governmental Participant

The support of experienced counsel, after significant discovery and an arm's-length settlement negotiation, gives rise to "a presumption of fairness." (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801; *7-Eleven Owners*, *supra*, 85 Cal.App.4th at p. 1152.) Plaintiff's counsel are experienced in litigating complex class actions. (Tindall Decl. in Support of Preliminary Approval at Ex. 2.) They wholeheartedly endorse the Settlement as fair, reasonable, and adequate, based on their experience and familiarity with the strengths and risks of this case. (*Id.* at ¶ 6.) The Court, then, may credit counsel's recommendation that the Settlement warrants preliminary approval. (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801; *7-Eleven Owners*, *supra*, 85 Cal.App.4th at p. 1152.) Similarly, the Court may credit that a governmental participant—Otay Water District—supports settlement approval. (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801.)

I. Positive Views of Class Members

The Named Plaintiff submitted a declaration supporting the Settlement. (Coziahr Decl. in Support of Preliminary Approval.) Now, with the Response Period passed and class members notified of the Settlement, the Court may also consider the views of other class members. As class members were not required to submit claim forms in this case, the main metric to demonstrate class member support is the amount (or lack thereof) of opt-outs and objections. As of the July 3, 2026 Response Deadline, no class members had opted out, and no class members timely objected to the Settlement. This factor, then, supports final approval as well. (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802 ["a presumption of fairness exists where…the percentage of objectors is small."].)

J. No Signs of Collusion

There are no signs, explicit or implied, of collusion here. First, settlement funds will not revert to Otay under any circumstances. (Settlement §§ 1.27; 8.4.) Settlement funds will be divided among class members in proportion to the amount those class members were overcharged (based on a methodology accepted in *Patz*), so all class members are treated equitably. The named Plaintiff has testified that he understands he is not legally entitled to any benefits other than those available to all settlement class members. (Coziahr Decl. in Support of Preliminary Approval at ¶ 6.) Second, as further set out above, there will not be a disproportionate distribution of the settlement fund to counsel. (*Amaro*, *supra*, 69 Cal.App.5th at p. 545.) "[F]ee awards in class actions average around one-third of the recovery"—the amount Class Counsel requested here, subject to approval by the Court. (*Id.*; Settlement § 11.) There is no sign that fees are being paid in exchange for acceptance of an unfair class settlement. And while Otay agreed not to oppose Plaintiff's fee application, the settlement appropriately preserves the court's supervisory authority to approve any fee award as reasonable and warranted. (*Cho*, *supra*, 177 Cal.App.4th at p. 744 [settlement "required plaintiff to demonstrate to the Court the reasonableness of the fees and costs"].)

Moreover, this settlement was the culmination of protracted discussions between the parties before a former Superior Court Judge. (Hoffman Letter in Support of Preliminary Approval; Settlement § P.) These negotiations culminated in both parties accepting a mediator's proposal—which weighs in favor of finding that the settlement is non-collusive. (Hoffman Letter in Support of Preliminary Approval; Settlement § P; *Dunk*, *supra*, 48 Cal.App.4th at pp. 1802-03.) Lastly, there is no undisclosed agreement made in connection with the settlement proposal. (Settlement §§ 25-26.)

For all these reasons, there are no indications that the settlement is the product of collusion.

* * *

Considering all of these guideposts, the Court should conclude that the class representatives and class counsel have adequately represented the class, that the Settlement was negotiated at arms-length, that the relief provided for the class is adequate, and that the Settlement treats class members equitably relative to each other. Thus, the Court should grant final approval to the Settlement.

III. Notice to the Settlement Class Comported with the California Rules of Court and Due Process

When it granted preliminary approval of the Settlement, the Court ordered a notice program it deemed the best notice practicable under this case's circumstances. (Approval Order at pp. 4-5; *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 981-84 [California courts take a "practical approach" to the form and content of notice, highlighting that notice need only be "*the best practicable*, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"]; Cal. Rules of Court, rule 3.766(f).)

The Settlement Administrator completed the notice program set out in the Court's Order, and that notice program was effective. (See generally RG2 Decl.) Through these efforts, notice reached over 99% of class members, with almost all class members receiving direct notice of the settlement. (Wickersham Decl. at ¶¶ 3-8.) A website, toll-free number, and P.O. box were available for class members to get additional information about the Settlement, along with live support, and an online portal to check whether they would be entitled to a refund under the Settlement. (RG2 Decl. at ¶¶ 9-11; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 58 ["summary notice that directed [] class member[s] wanting more information to a Web site containing a more detailed notice, and providing hyperlinks to that Web site, was a perfectly acceptable manner of giving notice"].)[7] The notice clearly and effectively communicated information about the Settlement. The notice directed readers to the settlement website or toll-free number for more information, and stated all required information without omitting significant facts Class Members' need to understand their rights. Because the notice program was fully and timely carried out as required by the Court, and provides the best notice practicable under the circumstances, the Court should reaffirm its prior holding that the notice program satisfies the requirements of the California Rules of Court and due process.

CONCLUSION

For the reasons set out above, the Court should enter the proposed Final Approval Order, thus finally approving the proposed Settlement; finally certifying the proposed Settlement Class; finally determining that Plaintiff's class notice program was conducted in accordance with the Court-approved notice plan and comports with the California Rules of Court and due process; and finally granting awards of attorneys' fees, litigation expenses, settlement administration expenses, and service awards.

DATED: July 9, 2026

Respectfully submitted,

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[7] Plaintiff's postcard mailed notice included a QR code to access the website.

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PROOF OF SERVICE

I am employed in the county of Alameda, State of California. I am over the age of 18 and not a party to the within action. My business address is: 1111 Broadway, Suite 2100, Oakland, California 94607.

On July 9, 2026, I served a copy of the document(s) described as:

1. **PLAINTIFF'S MOTION FOR FINAL APPROVAL**
2. **PROPOSED ORDER**
3. **PROPOSED JUDGMENT**
4. **DECLARATION OF RG/2 CLAIMS**

on the following interested party(ies) in this action:

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[X] BY ELECTRONIC SERVICE: by submitting an electronic version of the document(s) to One Legal LLC through the user interface at www.onelegal.com.

[X] BY EMAIL: by electronically transmitting PDF versions of above listed documents to the email addresses set forth above on this date.

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

Executed on July 9, 2026, at Oakland, California.

Denise Kwan