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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

[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES, COSTS,
AND SERVICE AWARD

DEPT: C-67

JUDGE: Hon. Michael T. Smyth

COMPLAINT: July 14, 2015

1 **[PROPOSED] ORDER**

2 This matter is before the Court on Plaintiff's motion for final approval of the proposed class
3 action settlement. Plaintiff, individually and on behalf of the proposed settlement class, and Defendant,
4 have entered into a Settlement Agreement and Release that, if approved, would settle this litigation.

5 On May 6, 2026, the Court granted preliminary approval to a \$12,000,000 non-reversionary class
6 action settlement between the Parties in the above-captioned litigation. In approving the motion for
7 preliminary approval, the Court found the proposed Class Notice program to be sufficient under the
8 California Rules of Court and due process. The Court has considered the motions, declarations, any
9 response, and reply, the Settlement Agreement together with all exhibits and attachments thereto, the
10 complete record in this matter, and the briefs and arguments of counsel. Based on the entire record of
11 these proceedings to date, and good cause appearing therefor, IT IS HEREBY ORDERED that:

12 1. Unless otherwise defined herein, all terms that are capitalized herein shall have the same
13 meaning ascribed to those terms in the Settlement Agreement.

14 2. The Court has jurisdiction over this litigation, Plaintiff, Defendant, and Settlement Class
15 Members, and any party to any agreement that is part of or related to the Settlement Agreement.

16 **FINAL APPROVAL**

17 3. The Court has reviewed the terms of the proposed Settlement Agreement, Plaintiff's motion
18 papers and briefs, and the declarations and arguments of counsel. Based on its review of these papers,
19 the Court finds that the Settlement Agreement appears to be the result of serious, informed, non-
20 collusive negotiations conducted with the assistance of former Superior Court Judge Herbert Hoffman.
21 The Court further observes that the Settlement Agreement is the product of almost eleven years of
22 litigation, including full trials on liability and damages, a full appeal, and remand proceedings. The parties
23 have comprehensively developed the record and issues in this case, expert discovery has been exchanged
24 on remand, and the parties and the Court are well familiar with the claims and issues that remain. The
25 terms of the Settlement Agreement do not improperly grant preferential treatment to any individual or
26 segment of the Settlement Class, all distinctions therein are "rationally based on legitimate
27 considerations" and well-supported by the record. (*7-Eleven Owners for Fair Franchising v. Southland*
28 *Corp.* (2000) 85 Cal.App.4th 1135, 1162-63.) The Settlement Agreement does not exhibit any signs of

1 collusion, explicit or implicit, and falls within the range of possible approval as fair, adequate, and
2 reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The Court directs the
3 Settlement's consummation according to its terms.

4 4. The Court therefore GRANTS final approval of the Settlement Agreement and all of the
5 terms and conditions contained therein.

6 **FINAL CERTIFICATION OF SETTLEMENT CLASS**

7 5. Pursuant to California Rules of Court, rule 3.769 and California Code of Civil Procedure,
8 Section 382, the Court certifies, for settlement purposes only, the Settlement Class defined as follows:
9 All single-family residential customers of the Otay Water District who received water service between
10 July 14, 2014, and December 31, 2022.¹

11 6. The Court finds, for settlement purposes only, that the Settlement Class satisfies the
12 requirements of California Code of Civil Procedure, Section 382: the class is ascertainable and numerous,
13 containing approximately 88,283 identified current and former customers of Otay Water District; there
14 are predominant questions of law and fact common to the Settlement Class; the Settlement Class
15 Representative's claims are typical of those of Settlement Class Members; and the Settlement Class
16 Representative and his counsel will fairly and adequately protect the interests of the Settlement Class,
17 such that there is a well-defined community of interest among class members.

18 7. The Court hereby appoints as Settlement Class Representative: Mark Coziahr.

19 8. The Court hereby appoints as Class Counsel: Andre M. Mura, Steven M. Tindall, and Ezekiel
20 S. Wald of Gibbs Mura LLP, and Scott D. Levine, of Scott D. Levine, APC.

21 9. Other than to effectuate and enforce the Settlement of this Action, the certification of the
22 Settlement Class for settlement purposes and all documents related thereto, including the Settlement
23 Agreement and all accompanying exhibits and all orders entered by the Court in connection with the
24 Settlement Agreement, shall not be otherwise admissible as evidence in this Action, and are not intended

25 _____
26 ¹ Excluded from the Class are: officers and directors of Otay Water District, Class Counsel, Judge
27 Michael T. Smyth, and any members of Judge Smyth's immediate family and judicial staff. Also excluded
28 from the Class are individuals who timely submitted valid opt-outs by the Response Deadline when the
class was originally certified.

1 to be used in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum or other
2 proceeding.

3 **NOTICE & ADMINISTRATION**

4 10. Plaintiff implemented the Court-approved Notice Plan. Plaintiff's notice of the Settlement
5 to the Settlement Class constitutes reasonable and the best notice practicable under the circumstances.
6 The notice was reasonably calculated, under the circumstances, to apprise Settlement Class Members of
7 the pendency of the Action, the terms of the proposed Settlement, the right to object to or exclude
8 themselves from the proposed Settlement, and the right to appear at the Final Fairness and Approval
9 Hearing, scheduled for July 31, 2026, at 9:00 a.m. Further, the Notice Plan constituted due, adequate,
10 and sufficient notice to all persons entitled to receive notice, and satisfied due process and provided
11 adequate information to the Settlement Class of all matters relating to the Settlement, and fully satisfied
12 the requirements of California Rules of Court, rule 3.769 and any other applicable state and/or federal
13 laws.

14 11. No individuals timely requested exclusion from the Settlement Class. (Declaration of
15 Settlement Administrator in Support of Plaintiff's Motion for Final Approval ¶ 12.) The Court thus
16 approves the payments provided for in the Settlement Agreement to all Settlement Class members
17 entitled to refunds under the Settlement.

18 12. Without affecting the finality of this Order in any way, this Court hereby retains continuing
19 jurisdiction over:

- 20 a. Implementation of the Settlement and any distribution to members of the
21 Settlement Class pursuant to further orders of this Court;
- 22 b. Disposition of the Settlement Funds;
- 23 c. All matters relating to the interpretation, administration, implementation, and
24 enforcement of the Settlement Agreement;
- 25 d. This Action until Final Judgment hereby has become effective and each and
26 every act agreed to be performed by the parties all have been performed pursuant
27 to the Settlement Agreement;
- 28 e. Hearing and ruling on any matters relating to the plan of allocation of settlement

proceeds; and

f. All parties to the Action and Releasing Parties, for the purpose of enforcing and administering the Settlement and the mutual releases and other documents contemplated by, or executed in connection with the Agreement.

13. The Court hereby immediately dismisses with prejudice all individual and class claims asserted in the Action and rules that no costs or fees be assessed on any Party beyond the attorneys' fees and expenses provided for herein, in the Court's Order granting attorneys' fees, costs, and service awards, and in the Final Judgment. Plaintiff and each of the Participating Settlement Class Members are hereby and forever barred from commencing or continuing any action, cause of action or claim including, without limitation, by way of third-party claim, cross-claim or counterclaim, against Otay Water District in respect of any of the Released Claims as defined in the Settlement Agreement. Upon entry of this Order, Plaintiff and each of the Participating Settlement Class Members shall be deemed to have released the Plaintiff's Released Parties, as set forth in the Settlement Agreement.

14. The Court finds, pursuant to Rule 3.769(h), that a Final Judgment of Dismissal with prejudice as to Otay Water District ("Judgment") shall be entered forthwith, and further finds that there is no just reason for delay in the entry of the Judgment, as Final Judgment, in accordance with the Settlement Agreement. Plaintiff will submit for the Court's approval and entry a proposed Final Judgment.

15. Except as to any individual claim of those Persons who have validly and timely requested exclusion from the Class, all Released Parties and Releasors are bound by this Order, the Final Judgment, and the Settlement Agreement, including the release provisions and the covenants not to sue.

16. Upon entry of this Order, the Releasors: (a) shall be deemed to have hereby fully and irrevocably waived, released, relinquished, and discharged all Released Claims against the Released Parties, regardless of whether such Releasors executes and delivers a proof of claim; (b) shall be forever enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (c) agree and covenant not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

1 17. This Order shall not affect, in any way, the right of the Plaintiff or Class Members to pursue
2 claims, if any, outside the scope of the Released Claims.

3 **SETTLEMENT ADMINISTRATION EXPENSES**

4 18. Based on Plaintiff's motion and supporting declarations, the Court finds that the Settlement
5 Administrator (RG/2) incurred additional reasonable, adequately documented costs in connection with
6 notice and settlement administration, and hereby GRANTS reimbursement of additional settlement
7 administration expenses of \$1,500 (for a total of \$64,105), which shall be paid from the Settlement Fund.
8 Plaintiff's request for reimbursement of settlement administration expenses, in light of all of the facts,
9 is fair and reasonable, and the settlement administration expenses are adequately documented.

10 19. Defendant shall disburse \$1,500 (in addition to the previously approved \$62,605) to the
11 Qualified Settlement Fund within 14 days of this Order to reimburse the settlement administrator for
12 its reasonable costs of settlement administration, as those costs are incurred. The Settlement
13 Administrator is approved to disburse the additional \$1,500 from the Qualified Settlement Fund to
14 reimburse itself for its reasonable costs of settlement administration, for a total of \$64,105.

15 20. Based on Otay Water District's response and supporting declaration, the Court finds that
16 Otay incurred reasonable, adequately documented costs in connection with administering the
17 distribution of settlement payments to current customer class members through rolling bill credits, and
18 hereby GRANTS reimbursement of Otay's settlement administration expenses of \$_____,
19 which shall be deducted from the Settlement Fund. Otay's request for reimbursement of settlement
20 administration expenses, in light of all of the facts, is fair and reasonable, and the settlement
21 administration expenses are adequately documented.

22 **ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

23 21. The Court, having considered Plaintiff's Motion for Attorneys' Fees, Costs, and Service
24 Award, and supporting documents, concludes that an award of attorneys' fees and reimbursement of
25 certain litigation costs to Plaintiff to be paid from the Settlement Fund are appropriate under the Court's
26 equitable discretion. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503.) Plaintiff provided
27 notice of the Motion to potential settlement class members in the class notice, at least forty-five days in
28 advance of the Response Deadline.

22. Based on Plaintiff's Motion, the Court awards attorneys' fees using the percentage-of-the-recovery method out of the Settlement Fund. (*Laffitte, supra*, 1 Cal.5th at p. 503.) The Court GRANTS an award of reasonable attorneys' fees to Plaintiff in the amount of \$4,000,000 from the Settlement Fund (1/3 of the Settlement Fund). Based on the Court's review of the record and the filings in this action, Class Counsel are experienced in class actions, and did exceptional work in this challenging case that lasted nearly eleven years, including both a full bifurcated trial and appeal. Having considered the results obtained, the risks, the secondary benefits of the settlement, the market rate in the particular field of law, the burdens class counsel experienced, and the fact that the fee was contingent, Plaintiff's request for attorneys' fees, in light of all of the facts and the results achieved, is fair and reasonable. (*Laffitte, supra*, 1 Cal.5th at p. 503; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." [Citation].]; *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 545 [same]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 [same].) Further, an award of 1/3 of the Settlement Fund reflects a lodestar multiplier of approximately 1.54x, consistent with fee awards in comparable class actions. (*Laffitte, supra*, 1 Cal.5th at p. 488 [multiplier of 2.03 to 2.13]; *Chavez, supra*, 162 Cal.App.4th at p. 66 [2.5x multiplier]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["Multipliers can range from 2 to 4 or even higher."] disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

23. Likewise, based on Plaintiff's Motion and supporting documents, the Court finds that Plaintiff incurred reasonable, adequately documented litigation costs and hereby GRANTS reimbursement of litigation costs in the cumulative amount of \$283,069.80, which shall be disbursed from the Settlement Fund. Plaintiff's request for reimbursement of litigation expenses in this case that was litigated through trial and an appeal, in light of all of the facts, is fair and reasonable, and the litigation expenses are adequately documented.

24. The Court also authorizes the class representative (Mark Coziahr) to be awarded \$5,000 as a service award for his participation in this litigation over approximately eleven years, which shall be disbursed from the Settlement Fund. Plaintiff's request for a service award, in light of all of the facts, is appropriate under these circumstances.

1 25. The foregoing amounts—\$4,000,000 in attorneys’ fees, \$283,069.80 in cumulative litigation
2 costs, \$1,500 in additional administration expenses, and \$5,000 as a service award payment to the class
3 representative—shall be disbursed by Defendant to the Settlement Administrator within 14 days of this
4 Order. (Settlement § 8.4.)

5 26. The Settlement Administrator is directed to finalize the calculations of the direct payments
6 to former customer class members (the “Settlement Payment”) pursuant to the terms of the Settlement,
7 and provide the updated amount of these payments to Otay Water District within 7 days of this Order.
8 (Settlement § 8.4.) Otay will disburse the Settlement Payment to the Settlement Administrator, as set
9 out in the Settlement, within 14 days of this Order. (Settlement § 8.4.)

10 27. The Settlement Administrator will effectuate the distribution of the former customer class
11 member settlement payments, attorneys’ fees and costs, litigation expenses, and service awards as set
12 out in the Settlement, according to its terms. (Settlement §§ 8-11.) The Settlement Administrator is
13 directed to disburse the awarded attorneys’ fees and expenses from the Settlement Fund to an account(s)
14 that Class Counsel designates within 30 days of this Order.

15 28. Otay is directed to effectuate the distribution of the current customer class member
16 settlement payments as set out in the Settlement, according to its terms. (Settlement § 9.)

17 29. After distribution to class members, remaining funds, if any, shall be subject to a *cy pres*
18 distribution to the Sierra Club, California Water Committee, including the San Diego chapter. The Sierra
19 Club is an appropriate *cy pres* recipient for any remainder funds here, and a *cy pres* distribution to the
20 Sierra Club furthers the underlying goals of this litigation. The Settlement Administrator shall inform
21 the parties of the amount, if any, of the remaining funds following distribution to class members, and
22 the parties may request the Settlement Administrator complete earmarking of any remainder funds prior
23 to completing the *cy pres* distribution.

24 For the reasons discussed above, the Court GRANTS Plaintiff’s Motion for Final Approval.

25 **IT IS SO ORDERED.**

26
27 Dated: _____

By: _____

Hon. Michael T. Smyth
Judge of the Superior Court