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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN DIEGO**

16 MARK COZIAHR, on behalf of himself and
17 all others similarly situated,

18 **PLAINTIFF,**

19 **VS.**

20 OTAY WATER DISTRICT; and DOES 1
21 through 200, inclusive,

22 **DEFENDANTS.**

Case No. 37-2015-00400000-CU-MC-CTL

CERTIFIED CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR ATTORNEY'S FEES, COSTS,
AND SERVICE AWARD; 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

1 **NOTICE OF MOTION AND MOTION**

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

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

- 9 1. Awarding attorneys' fees to Class Counsel in the amount of \$4,000,000, based on an award
10 of 33.33% of the monetary relief that the settlement confers;
- 11 2. Reimbursing Class Counsel for litigation costs and expenses in the amount of \$239,356.03,
12 because such costs are documented and reasonable; and
- 13 3. Awarding a service payment to Plaintiff Coziahr in the amount of \$5,000, because such an
14 award is appropriate under the circumstances.

15 This motion is unopposed and is based upon this Notice of Motion, the attached Memorandum of
16 Points and Authorities, the Declaration of Steven Tindall ("Counsel Decl.") and the exhibit to that
17 declaration, the concurrently-filed Proposed Order, the pleadings and records on file in this action, and upon
18 any additional evidence and argument that may be presented before or at the hearing of this motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This case is about the constitutionality of Otay Water District’s single-family residential water rates.
4 Nearly eleven years after this case was filed in July 2015, the Court granted preliminary approval to a
5 \$12,000,000 class settlement providing monetary relief for current and former Otay Water District customers
6 who were overcharged for their residential water service over an eight-year period. The settlement provides
7 meaningful monetary relief to those class members overcharged, while all class members have also benefited
8 from the injunctive relief awarded at trial. This settlement—reached only after a full bifurcated trial, a
9 contested appeal, and a petition to the California Supreme Court—provides class members with
10 approximately 66% of the original \$18,105,256.60 judgment, a significant result that gives class members real,
11 meaningful relief, while avoiding the substantial investment of time, expense, and risk that would attend
12 continued litigation over the complex legal issues that remain in this case.

13 Plaintiff and Class Counsel worked diligently on this case for over a decade. Plaintiff devoted more
14 than a decade of his time and effort as a class representative. Class Counsel, for its part, assumed financial
15 risks in prosecuting this case and worked hard to achieve comprehensive benefits for the class. The size of
16 the settlement fund compares very favorably to comparable cases, and it was no small feat to achieve a fund
17 of this size given the legal challenges facing class members. Put in context, then, the fund is substantial—and
18 a significant achievement.

19 The results achieved over the course of eleven years of litigation—through a trial and subsequent
20 appeal—and settlement efforts merit an award of attorneys’ fees to Class Counsel in the amount of
21 \$4,000,000. That award constitutes one-third of the monetary benefits that the settlement confers, even
22 without considering the substantial non-monetary benefits from this litigation. Counsel should also be
23 reimbursed for litigation costs in the amount of \$283,069.80,¹ because those costs are adequately documented
24 and reasonable. And finally, it is appropriate under the circumstances to award the class representative \$5,000
25 for his contributions to this case.

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27
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¹ The Court separately approved the Settlement Administrator’s reimbursement of reasonable settlement administration expenses, up to \$62,605 as those costs are incurred, in its Order granting Preliminary Approval. (Order Granting Preliminary Approval at ¶ 14, May 6, 2026.)

1 **ARGUMENT**

2 **I. Attorneys' Fees**

3 “[W]hen class action litigation establishes a monetary fund for the benefit of the class members, . . . the
4 trial court in its equitable powers [may] award[] class counsel a fee out of that fund, [and] may determine the
5 amount of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Laffitte v. Robert Half*
6 *Internat. Inc.* (2016) 1 Cal.5th 480, 503.) While it is not required to do so, the court may also choose to “double
7 check the reasonableness of the percentage fee through a lodestar calculation.” (*Id.* at p. 504.) “[T]he goal
8 under either the percentage or lodestar approach [is] the award of a reasonable fee to compensate counsel
9 for their efforts.” (*Ibid.*) When used as a cross-check, the lodestar method “does not override the trial court’s
10 primary determination of the fee as a percentage of the common fund and thus does not impose an absolute
11 maximum or minimum on the potential fee award. If the multiplier calculated by means of a lodestar cross-
12 check is extraordinarily high or low, the trial court should consider whether the percentage used should be
13 adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily
14 required to make such an adjustment.” (*Id.* at p. 505.) In evaluating whether a fee award is reasonable, the
15 trial court may (but is not required) to consider the “risks and potential value of the litigation; . . . contingency
16 [of the fee], novelty and difficulty [of the case] together with the skill shown by counsel, the number of hours
17 worked and the asserted hourly rates[.]” (*Id.* at p. 504.)

18 As described more fully below, Plaintiff’s attorneys’ fee request is reasonable under both methods of
19 determination.

20 **A. Class Counsel’s Request for Attorneys’ Fees is Reasonable as a Percentage of the \$12**
21 **Million Fund.**

22 Class counsel respectfully requests \$4,000,000 in attorneys’ fees, which is one-third of the \$12,000,000
23 monetary fund. This request is in line with fee awards in California class actions. (See *Laffitte, supra*, 1 Cal.5th
24 at p. 487-88 [affirming fee award equal to one-third of a class settlement, and noting that Court of Appeal
25 held that “an award of one-third the common fund was in the range set by other class action lawsuits”];
26 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn. 13 [“Empirical studies show that, regardless
27 whether the percentage method or the lodestar method is used, fee awards in class actions average around
28 one-third of the recovery.” [Citation].]; *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521,

1 545 [same]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 [same].)

2 The average one-third fee award is reasonable and justified here, where the parties have settled at a
3 far later stage in the litigation than the vast majority of class action settlements—that is, after more than a
4 decade of litigation, a full trial on the merits, a full appeal, and a petition for Supreme Court review. Each of
5 the discretionary factors the court may consider further confirm the reasonableness of the fee request here.

6 **1. Results Achieved, Skill Required and Quality of Work, and Litigation Risk.**

7 Consider first the factors that assess how the relief in this settlement compares to the obstacles
8 counsel faced: the results achieved by class counsel, the complexity of the case, and the litigation risks
9 assumed. By any measure, the results achieved here are favorable. As the Court found at preliminary approval,
10 the \$12 million non-reversionary settlement is reasonable and a “fair resolution” of “this long-litigated
11 case[.]” (Tentative Ruling (Apr. 24, 2026).) And as set out in Plaintiffs’ motion for preliminary approval, the
12 results compare favorably to the original verdict after trial in this litigation (66% of the original \$18,105,256.60
13 judgment) and comparable cases (the City of San Juan Capistrano settled a similar case regarding tiered water
14 rates for \$4.1 million).²

15 These results were not easily achieved. Otay Water District was well represented throughout this
16 litigation, and its legal defenses were formidable, including because the California Legislature enacted a new
17 law arguably seeking to prevent monetary relief in this very case. (*Patz v. City of San Diego* (2025) 113
18 Cal.App.5th 225, 306 [discussing legislature’s passage of Senate Bill 1072, adding section 53758.5 to the
19 Government Code, which “does not allow agencies in Proposition 218 cases to pay a refund award as a
20 money judgment, unless a statute explicitly allows the agency to do so”], reh’g denied (Aug. 14, 2025), as
21 modified (Aug. 27, 2025), review denied (Oct. 29, 2025).) Even so, Class Counsel secured important rulings
22 at various stages of the case, through diligence and skill. This includes the original liability trial, which
23 addressed complex legal issues about the applicability of Proposition 218 to Otay customers’ tiered water
24 rates; the appeal, where Plaintiff successfully defended the trial court’s original ruling in favor of the class;
25 the petition for Supreme Court review, which was denied; and significant victories in discovery motion
26 practice. In sum, counsel developed, briefed, and argued complex and novel issues of law, at trial and appeal,
27

28 ² See Meghann M. Cuniff, *San Juan Capistrano to pay \$4.1 million to refund customers for illegal water rates*,
The Orange County Register (June 18, 2015), <https://perma.cc/M57G-PL95>.

1 achieving excellent outcomes from the class through hard work and skill.

2 Counsel also navigated a complex discovery process involving substantial fact and expert discovery.
3 Over nearly eleven years, counsel secured the extensive administrative record regarding Otay's two
4 challenged ratemakings, its billing records for all customers across the eight-year class period, took two
5 depositions of Otay Water District through its persons most knowledgeable, and deposed Otay's expert
6 witness on liability. On remand from the Court of Appeal, Otay also served written discovery on Plaintiff,
7 which counsel opposed in front of this Court, and sought to depose Plaintiff's experts in the original trial
8 proceedings, including through motion practice in Georgia state court. In sum, the parties and the Named
9 Plaintiff expended significant time and resources pursuing this complicated litigation through California's
10 trial and appellate courts over the last ten years.

11 Overall, the case had considerable risk because the legal issues were complex and uncertain. The
12 procedural history of this case itself evidences this—and proceeding to a second trial post-remand, and an
13 inevitable second appeal—would risk the class recovering nothing after this long and multi-faceted legal
14 process. Despite these risks, counsel negotiated a strong result for the class—substantial monetary benefits
15 and a trial injunction that benefited all class members—a result that reflects favorably on them, particularly
16 when compared to the results in similar cases.

17 In all, these considerations amply support an award at the standard one-third fee amount.

18 **2. Contingent Nature of the Fee.**

19 California courts recognize that attorneys' contingency risk can be an appropriate consideration in
20 evaluating the reasonableness of a fee award. (E.g., *Laffitte, supra*, 1 Cal.5th at p. 498 fn. 7, 501, 504.) Class
21 Counsel undertook this case on a contingent basis, incurring a total of \$283,069.80 in out-of-pocket costs
22 and billing (collectively) 3,607.5 hours, resulting in a lodestar of \$2,605,660.50—fully aware of the possibility
23 that they could receive no compensation for their efforts and no recoupment of expenses. In fact, while a
24 contingency practice is always somewhat risky, here the risk that counsel would receive no recovery was
25 enhanced by the complex and novel nature of the case. This factor, then, supports an award of the 1/3
26 benchmark fee amount.

27 **3. Lodestar Cross-Check.**

28 Courts may—but are not required to—cross-check the reasonableness of a percentage fee award by

1 reviewing counsels’ lodestar calculations. (*Laffitte, supra*, 1 Cal.5th at p. 505 [if conducted, lodestar cross-check
 2 “does not impose an absolute maximum or minimum on the potential fee award.”].) Because the cross-check
 3 serves as a discretionary data point to evaluate the percentage fee award, the trial court need not “exhaustively
 4 scrutinize[]...detailed time summaries...[w]here the lodestar method is used as a cross-check”—instead, the
 5 court may review summaries of “overall time spent” in service of the ultimate goal of identifying whether
 6 the fee is reasonable. (*Ibid.*) “If the multiplier calculated by means of a lodestar cross-check is extraordinarily
 7 high or low, the trial court should consider whether the percentage used should be adjusted so as to bring
 8 the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an
 9 adjustment.” (*Ibid.*)

10 Counsel here spent more than 3,607.5 hours litigating this case. The hourly billing rates for partners
 11 and associates are set forth in the accompanying declaration and range from \$340 to \$1,130. (See Counsel
 12 Decl. at ¶ 10.) The declaration, moreover, provides examples of similar class actions in which counsel’s rates
 13 were accepted as reasonable. (*Id.*) Given counsel’s experience, work, and the complex nature of this case,
 14 counsel’s rates here are reasonable. (See *id.* at ¶¶ 3-11.) Much the same for the amount of time expended on
 15 this long-lasting litigation. Counsel provides a declaration memorializing the number of hours expended by
 16 attorneys and staff on this long-running litigation. (Counsel Decl. at ¶ 10.) Most of the hours billed were
 17 spent completing legal research regarding the claims and evidence needed to prove them; drafting
 18 memoranda and briefs; reading, reviewing, and contextualizing documentary evidence; working with experts;
 19 and litigating both the trial and appeal of this case. There was also time spent negotiating the settlement and
 20 drafting the settlement and approval papers. (See *id.*) Counsel’s declaration also includes a breakdown per
 21 timekeeper per law firm, as well as tables demonstrating the years of practice and billing rates of attorneys
 22 and staff at these law firms. (Counsel Decl. at ¶ 10.)

Timekeeper	Title (Firm)	Years of Practice	Rate	Hours	Lodestar
Gibboney, Kyla	Associate (Gibbs Mura)	12	\$665	344	\$228,760

1	Mura, Andre	Partner (Gibbs Mura)	22	\$1100	448.6	\$493,460
2						
3	Tindall, Steven	Partner (Gibbs Mura)	30	\$1,130	460.6	\$520,478
4						
5	Wald, Zeke	Associate (Gibbs Mura)	5	\$585	1228.8	\$718,848
6						
7	Corbitt, Caroline	Associate (Gibbs Mura)	11	\$365	131.8	\$48,107
8						
9	Jensen, Hanne	Associate (Gibbs Mura)	6	\$635	78.1	\$49,593.50
10						
11	Howarter, Shane	Associate (Gibbs Mura)	10	\$340	57.1	\$19,414
12						
13	Katz, Anna	Associate (Gibbs Mura)	3	\$400	52.7	\$21,080
14						
15	Gibbs Mura LLP Subtotal:				2801.7	\$2,099,740.50
16	Hubinger, David	Associate (Scott D. Levine, APC)	7	\$450	8.2	\$3,690
17						
18	Hoong, Ken	Associate (Scott D. Levine, APC)	7	\$450	308.4	\$138,780
19						
20	Sells, Kristen	Associate (Scott D. Levine, APC)	3	\$450	0.1	\$45
21						
22	Malik, Mubarak	Associate (Scott D. Levine, APC)	8	\$450	11.4	\$5,130
23						
24	Levine, Scott	Partner (Scott D. Levine, APC)	35	\$750	477.7	\$358,275
25						
26	Scott D. Levine, APC Subtotal:				805.8	\$505,920
27	Total:				3,607.5	\$2,605,660.50
28						

1 The requested fee of \$4,000,000 represents a reasonable multiplier of 1.54 of Class Counsel’s lodestar.
2 (See Counsel Decl. at ¶ 10.)³ Even if class counsel were to make arbitrary reductions, such as an across-the-
3 board 5% (1.62x multiplier) or 10% (1.71x multiplier) reduction to the lodestar, the multiplier here would
4 still be well within the range of reasonableness. (*Laffitte, supra*, 1 Cal.5th at p. 488 [multiplier of 2.03 to 2.13];
5 *Chavez, supra*, 162 Cal.App.4th at p. 66 [2.5x multiplier]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
6 224, 255 [“Multipliers can range from 2 to 4 or even higher.”] disapproved of on other grounds by *Hernandez*
7 *v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

8 Given the quality of counsel’s work over more than a decade of litigation and the results achieved in
9 these circumstances, the lodestar comparison easily supports the reasonableness of the requested fee award.
10 (*Laffitte, supra*, 1 Cal.5th at p. 488; *Chavez, supra*, 162 Cal.App.4th at p. 66; *Wershba, supra*, 91 Cal.App.4th at p.
11 255.)

12 **II. Administration Expenses**

13 Under the Settlement Agreement, Settlement Administrator RG/2 will be provided payment for its
14 services out of the settlement fund. RG/2 will administer notice of the settlement to the class, class member
15 communications (including any requests for exclusion, objections, or comments), and administer payment to
16 former customer class members, who cannot be compensated via bill credits. The Court has approved RG/2
17 to disburse payment from the settlement fund to cover its estimated costs of completing these activities: up
18 to \$62,605. (Order Granting Preliminary Approval at ¶ 14.) Should additional administration expenses
19 become reasonably necessary to implement the notice plan or administer the settlement, RG/2 will request
20 reimbursement of those expenses from the Court at the Final Approval stage. (*Id.*)⁴ Otay will administer bill
21 credit payments to current customer class members and will substantiate its request for reimbursement of
22 those expenses separately, not to exceed \$250,000. (*Id.* at ¶ 15.)

23 **III. Litigation Costs**

24 “The common fund doctrine permits ‘a party preserving or recovering a fund for the benefit of others
25 in addition to himself, to recover his *costs, including his attorneys’ fees*, from the fund or property itself ...” (*Leiper*

26 ³ \$4,000,000 divided by \$2,605,660.50 equals 1.54.

27 ⁴ For example, RG/2 has identified approximately \$1,500 in additional expenses associated with
28 administering the Settlement for which Plaintiff will request reimbursement in connection with the motion
for Final Approval.

1 *v. Gallegos* (2021) 69 Cal.App.5th 284, 297.) “[E]ligibility to recover costs excluding attorney fees is not
 2 dependent on eligibility to recover attorney fees.” (*Ibid.*) The award of costs “under the common fund
 3 doctrine is a matter within the trial court’s sound discretion.” (*Ibid.*) Here, Class Counsel respectfully request
 4 that the Court approve the reimbursement of \$283,069.80 in litigation expenses and costs, which were carried
 5 by Gibbs Mura LLP in the amount of \$231,607.11; and Scott D. Levine APC in the amount of \$51,462.69.
 6 (Counsel Decl. at ¶¶ 11-12.)

7 The breakdown of those costs by category are:⁵

Total Accounting	Expenses
Georgia Discovery Dispute	\$16,933.42
Experts/Consultants	\$167,467.50
Filing Fees	\$5,695.05
Copying	\$2,226.37
Litigation Support	\$4,093.25
Mediation	\$18,480.00
Miscellaneous	\$2,678.69
Research	\$13,391.89
Transcripts	\$15,886.80
Travel	\$12,193.96
Litigation Class Notice	\$22,062.00
Court Fees	\$1,960.87
Total	\$283,069.80

19 The categories of costs are as follows.

20 The Georgia Discovery Dispute costs are the costs Plaintiff incurred in opposing Otay’s effort to
 21 take discovery in Georgia state court from Plaintiff’s previous litigation expert, Robert Rosenkoetter. Expert
 22 costs include the expenses associated with Plaintiff’s experts for pretrial and trial purposes (including Dave
 23 Vondle and Robert Rosenkoetter) and for remand purposes (including Greg Clumpner). These experts have
 24 decades of experience in utility ratemaking and water ratemaking specifically and were a core component of
 25 Plaintiff’s liability and damages cases, both at the trial stage and on remand. Filing fees, transcripts, litigation
 26 support, and court fees include fees associated with filing documents in this Court and before the Court of
 27 Appeal, receiving documents from this Court and the Court of Appeal, making virtual appearances, serving

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⁵ Additional cost details are available upon the Court’s request.

1 case documents and providing courtesy copies, and similar expenses. Mediation fees include costs associated
2 with the parties' mediation efforts, including the parties' mediation in front of the Hon. Herbert Hoffman
3 (ret.) which culminated in the mediator's proposal forming the basis for the class settlement. Research
4 expenses include the costs associated with specific case research for this litigation. Travel covers flights, meals
5 (while traveling), parking, hotels, and related costs for case-specific travel, such as for in-person court
6 appearances. Class notice includes the costs attendant to notifying the certified litigation class of the trial
7 court's class certification ruling. And miscellaneous covers the small set of costs that did not fit into these
8 other categories, including postage and delivery fees, the purchase of case-related records, non-travel meals
9 during case work, and CourtCall fees.

10 Accordingly, Class Counsel respectfully request reimbursement of the foregoing costs, which are
11 reasonable and adequately documented.

12 **IV. Class Representative Service Awards**

13 Courts have discretion to award service payments to class representatives to "compensate[them] for
14 the expense or risk they have incurred in conferring a benefit on other members of the class." (*Cellphone*
15 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394, as modified (July 27, 2010).) "[C]riteria courts may
16 consider in determining whether to make an incentive award include: 1) the risk to the class representative
17 in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by
18 the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of
19 the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of
20 the litigation. [Citation.]" (*Id.* at pp. 1394-95.)

21 Here, Plaintiff seeks Court approval of a service award of \$5,000. (Settlement § 10.) This amount is
22 an appropriate enhancement because Mr. Coziahr actively participated in the litigation for nearly eleven years,
23 working with counsel to prepare the complaint, reviewing case documents and keeping up to date on the
24 proceedings, reviewing and executing discovery responses, and diligently pursuing relief on behalf of the
25 class. (*Cellphone Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1394-95 [affirming \$10,000 service award
26 per representative].)

27 Accordingly, a service award of \$5,000 is an appropriate enhancement in this case.
28

1 **CONCLUSION**

2 For the reasons just discussed, the Court should grant Plaintiff's motion for attorneys' fees, costs,
3 and service awards in full.

4
5 DATED: May 20, 2026

6 Respectfully submitted,

7 
8 _____

9 **GIBBS MURA LLP**

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26 *Attorneys for Plaintiff and the Certified Class*
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28

1 **PROOF OF SERVICE**

2 I am employed in the county of Alameda, State of California. I am over the age of 18 and not a
3 party to the within action. My business address is: 1111 Broadway, Suite 2100, Oakland, California 94608.

4 On May 20, 2026, I served a copy of the document(s) described as:

- 5 **1. PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR ATTORNEY’S FEES, COSTS, AND SERVICE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
- 6 **2. DECLARATION OF STEVEN M. TINDALL IN SUPPORT OF PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES, COSTS, AND SERVICE AWARD**
- 7 **3. [PROPOSED] ORDER GRANTING ATTORNEYS’ FEES, COSTS, AND SERVICE AWARD**

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

9
10 Jack M. Sleeth, Jr.
11 Daniel Shinoff
12 Paul Vincent Carelli
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Attorneys for Defendant

- 26 BY ELECTRONIC SERVICE: by submitting an electronic version of the document(s) to One Legal LLC through the user interface at www.onelegal.com.
- 27 BY EMAIL: by electronically transmitting PDF versions of above listed documents to the email addresses set forth above on this date.

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

2 Executed on May 20, 2026, at Oakland, California.

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4 _____
Denise Kwan

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