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Clerk of the Superior Court
By A. Villasenor ,Deputy Clerk

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Attorneys for Plaintiff Coziahr and the Certified Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

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

18 PLAINTIFF,

19 vs.

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

22 DEFENDANTS.

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

CERTIFIED CLASS ACTION

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL

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 preliminary approval of the proposed
3 class action settlement. Plaintiff, individually and on behalf of the proposed settlement class, and
4 Defendant, have entered into a Settlement Agreement and Release that, if approved, would settle this
5 litigation.

6 Having considered the motion, any response, and reply, the Settlement Agreement together with
7 all exhibits and attachments thereto, the complete record in this matter, and the briefs and arguments
8 of counsel, IT IS HEREBY ORDERED that:

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

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

13 **PRELIMINARY APPROVAL**

14 3. The Court has reviewed the terms of the proposed Settlement Agreement, Plaintiff’s motion
15 papers and briefs, and the declarations and arguments of counsel. Based on its review of these papers,
16 the Court finds that the Settlement Agreement appears to be the result of serious, informed, non-
17 collusive negotiations conducted with the assistance of former Superior Court Judge Herbert Hoffman.
18 The Court further observes that the Settlement Agreement is the product of almost eleven years of
19 litigation, including full trials on liability and damages, a full appeal, and remand proceedings. The parties
20 have comprehensively developed the record and issues in this case, expert discovery has been exchanged
21 on remand, and the parties and the Court are well familiar with the claims and issues that remain. The
22 terms of the Settlement Agreement do not improperly grant preferential treatment to any individual or
23 segment of the Settlement Class, all distinctions therein are “rationally based on legitimate
24 considerations” and well-supported by the record. (*7-Eleven Owners for Fair Franchising v. Southland*
25 *Corp.* (2000) 85 Cal.App.4th 1135, 1162-63.) The Settlement Agreement does not exhibit any signs of
26 collusion, explicit or implicit, and falls within the range of possible approval as fair, adequate, and
27 reasonable, and thus likely to gain final approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1784,
28 1800.)

1 Agreement and all accompanying exhibits and all orders entered by the Court in connection with the
2 Settlement Agreement, shall not be otherwise admissible as evidence in this Action, and are not intended
3 to be used in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum or other
4 proceeding.

5 **NOTICE & ADMINISTRATION**

6 11. Pursuant to the Settlement Agreement, the Parties have designated RG/2 Claims as the
7 Settlement Administrator, and the Court approves this designation, as noted below. The Settlement
8 Administrator shall perform all the duties of the Settlement Administrator set forth in the Settlement
9 Agreement.

10 12. The Court finds that the Notice and Notice Plan set forth in the Settlement Agreement and
11 the Declaration of William Wickersham, which includes direct notice to class members through
12 electronic communication (email) and mail (for those without email information), along with publication
13 notice and a public website, satisfy the requirements of Due Process and the California Rules of Court,
14 and provides the best notice practicable under the circumstances. The Notice and Notice Plan are
15 reasonably calculated to apprise the Settlement Class Members of the nature of this litigation, the scope
16 of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members
17 to object to the Settlement Agreement or exclude themselves from the Settlement Class (and the process
18 for doing so), and of the Final Approval Hearing. The Court therefore approves the Notice and Notice
19 Plan, appoints RG/2 (“Settlement Administrator”) to serve as the Settlement Administrator, and directs
20 the Parties and the Settlement Administrator to proceed with providing notice to Settlement Class
21 Members pursuant to the terms of the Settlement Agreement and this Order.

22 13. Under the terms of the Settlement Agreement, the Settlement Administrator shall begin
23 disseminating the Notice and implement the Notice Plan within fourteen (14) days of this Order.

24 14. The Settlement Administrator has estimated that it will incur costs of \$62,605 to disseminate
25 the Notice and implement the Notice Plan, along with administering the Settlement. These costs are
26 reasonable in light of the Settlement, and the Settlement Administrator is approved to disburse costs up
27 to that amount for payment of those expenses as they are incurred. Should the Settlement Administrator
28 identify other costs that are reasonably necessary to implement the Notice Plan or administer the

1 Settlement, the Settlement Administrator may separately request payment of those costs as they are
2 incurred.

3 15. Defendant will administer the payment of bill credits to current customers. Defendant may
4 seek approval for repayment of its costs and expenses for its administration of credits to current
5 customers, not to exceed \$250,000, as approved by the Court.

6 16. The Settlement Administrator is authorized to establish the Settlement Fund under 26 C.F.R.
7 §§ 1.468B-1(d)(1) for federal tax purposes. The Settlement Fund shall be a court-approved Qualified
8 Settlement Fund (“QSF”) for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. Otay Water
9 District shall be the “transferor” to the QSF within the meaning of Section 1.468B-1(d)(1) of the
10 Treasury Regulations with respect to the Settlement Fund. The Settlement Administrator shall be the
11 “administrator” of the QSF within the meaning of Section 1.468B-2(k)(3) of the Treasury Regulations,
12 responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF,
13 paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable
14 information reporting or tax withholding requirements imposed by Section 1.468B-2(1)(2) of the
15 Treasury Regulations or any other applicable law on or with respect to the QSF. Otay Water District
16 shall provide to the Settlement Administrator any documentation reasonably requested by the
17 Settlement Administrator that is required to obtain QSF status for the Settlement Fund pursuant to
18 Treas. Reg. § 1.468B-1. All taxes on income or interest generated by the Settlement Fund, if any, shall
19 be paid out of the Settlement Fund.

20 17. After distribution to class members, remaining funds, if any, shall be subject to a *cy pres*
21 distribution. The parties have proposed the *cy pres* recipient for any remainder funds be the Sierra Club
22 California Water Committee, including the San Diego chapter, and may additionally propose earmarking
23 of any remainder funds prior to distribution. The Sierra Club is an appropriate *cy pres* recipient for any
24 remainder funds here, and the Court approves the selection of the Sierra Club California Water
25 Committee, specifically including the San Diego chapter of the Water Committee as an appropriate
26 beneficiary of the remainder funds, if any, following distribution to the class.

27 **EXCLUSION & OBJECTIONS**

28 18. Settlement Class Members who wish to opt out and exclude themselves from the Settlement

1 Class may do so by notifying the Settlement Administrator in writing, received no later than 45 days
2 after the date notice is sent. Class Members may not exclude themselves by telephone or by email.

3 19. To be valid, each Request for Exclusion must:

- 4 a. The Settlement Class Member's full name and mailing address, telephone
5 number, and/or email address;
- 6 b. Include the statement, "I wish to exclude myself from the Settlement Class and
7 do not wish to participate in the settlement in *Coziahr v. Otay Water District*,
8 No. 37-2015-00400000," or substantially similar clear and unambiguous
9 language;
- 10 c. The Settlement Class Member's handwritten or electronically imaged written
11 (e.g., "DocuSign") signature. An attorney's signature, the signature of anyone
12 else acting on behalf of the Settlement Class Member, or a typed signature, is
13 not sufficient. "Mass" or "class" requests for exclusion made on behalf of
14 multiple persons or classes of persons will be deemed invalid.

15 20. All Settlement Class Members who do not opt out and exclude themselves shall be bound
16 by the terms of the Settlement Agreement upon entry of the Final Approval Order and Judgment.

17 21. Settlement Class Members who wish to object to the Settlement may do so by submitting a
18 written objection to the Court within 45 calendar days after the date notice is sent, in accordance with
19 the procedures outlined in the Notice. Any Settlement Class Member wishing to comment on or object
20 to the Settlement may do so by mailing a written objection to the Court that is received within 45
21 calendar days after the date notice is sent, or by filing a comment or objection on the docket in this
22 Action within 45 calendar days after the date notice is sent.

23 22. The written objection must contain the following:

- 24 a. The name or case number of this lawsuit, *Coziahr v. Otay Water District*, No. 37-
25 2015-00400000;
- 26 b. The objector's/commenter's full name, the objector's/commenter's address
27 where they receive water service from Otay Water District, the name of the
28 property owner for the address where the objector/commenter receives water

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- service from Otay Water District if the objector/commenter is not the property owner, and the objector’s/commenter’s email address or telephone number;
- c. All reasons for the objection or comment, stated with specificity;
- d. If the objector or commenter intends to personally appear and/or testify at the Final Fairness and Approval Hearing, a statement identifying that the objector or commenter intends to personally appear and/or testify at that Hearing;
- e. The name and contact information of any and all attorneys representing, advising, or assisting the commenter or objector;
- f. For each attorney representing, advising, or assisting the objector, a statement identifying every objection the attorney has filed to any other class action settlements in the last five years;
- g. Whether any attorney will appear on the objector’s or commenter’s behalf at the Final Fairness and Approval Hearing, and if so the name and law firm of that attorney;
- h. Copies of any exhibits the objector intends to submit into evidence at the Final Fairness and Approval Hearing; and
- i. The objector’s handwritten or electronically imaged written (e.g. “DocuSign”) signature. An attorney’s signature, or a typed signature, is not sufficient.

23. Any Settlement Class Member who does not timely submit a written objection in accordance with these procedures and the procedures detailed in the Notice and Settlement Agreement shall be deemed to have waived any objection, shall not be permitted to object to the Settlement, and shall be precluded from seeking any review of the Settlement Agreement and/or the Final Approval Order and Judgment by appeal or other means.

FINAL APPROVAL HEARING & SCHEDULE

24. The Court will hold a Final Approval Hearing on July 31, 2026, at 9:00 a.m., in Department 67, Central Hall of Justice, 330 West Broadway, San Diego, California 92101. The hearing will also be available online on Microsoft Teams, with information to access that hearing available at: <https://www.sdcourt.ca.gov/sdcourt/civil2/civivicvirtualhearings>.

1 25. At the Final Approval Hearing, the Court will consider whether: (a) the Settlement is fair,
2 adequate, and reasonable; (b) the Settlement Class should be finally certified; (c) a final judgment should
3 be entered; (d) Class Counsel's motion for attorneys' fees and costs should be granted; and (e) the
4 Incentive Payment for the Settlement Class Representative should be awarded.

5 26. The Court reserves the right to continue the date of the Final Approval hearing without
6 further notice to Settlement Class Members other than notice on the Court's docket.

7 27. The Parties shall adhere to the following schedule unless otherwise directed by the Court:

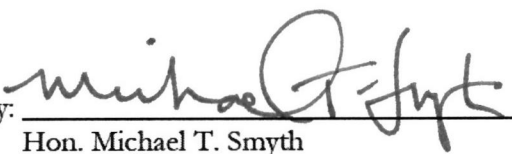
Event	Date
Notice to the Class Begins	14 days after Order on Preliminary Approval
Deadline for Class Counsel to File Motion for Service Award, Attorneys' Fees and Costs	14 days after Order on Preliminary Approval
Response Deadline for Class Members to Opt-Out of the Settlement, or Object	45 days after the date notice is sent
Responses to Objections Due	14 days after the Response Deadline
Deadline for Class Counsel to File Motion for Final Approval	16 court days prior to Final Approval Hearing
Final Approval Hearing	July 31, 2026

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18 28. In the event that the Settlement Agreement is terminated pursuant to the terms of the
19 Settlement Agreement, (a) the Settlement Agreement and this Order shall become void, shall have no
20 further force or effect, and shall not be used in any Action or any other proceedings for any purpose
21 other than as may be necessary to enforce the terms of the Settlement Agreement that survive
22 termination.

23 For the reasons discussed above, the Court GRANTS Plaintiff's Motion for Preliminary
24 Approval.

25 **IT IS SO ORDERED.**

26 Dated: May 6, 2026

27 By: 
28 Hon. Michael T. Smyth
Judge of the Superior Court