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

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

19 PLAINTIFF,

20 VS.

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

23 DEFENDANTS.

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

CERTIFIED CLASS ACTION

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: April 24, 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 April 24, 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, pursuant to California Rules of Court, rule 3.769:

- 9 1. Certifying this Action as a class action for the purposes of settlement;
- 10 2. Granting preliminary approval of a non-reversionary settlement in the amount of
11 \$12,000,000, to resolve the action (the “Settlement”);
- 12 3. Approving the form and substance of the proposed Notice of Proposed Settlement of Class
13 Action (“Class Notice”), the manner and timing of disseminating notice to the Class (the
14 “Notice Plan”), and the selection of RG/2 Claims (“RG2”) as Settlement Administrator;
- 15 4. Setting deadlines for Class Members to exercise their rights in connection with the proposed
16 Settlement; and
- 17 5. Scheduling a hearing date for final approval of the Settlement and Plan of Allocation and
18 application(s) for attorneys’ fees and expenses (“Fairness Hearing”).¹

19 This motion is based upon this Notice of Motion, the attached Memorandum of Points and
20 Authorities, the Tindall Declaration and the exhibits to that declaration, the Declaration of William W.
21 Wickersham of RG2 Claims (“RG2 Decl.”) and the exhibits to that declaration,² the Declaration of Mark
22 Coziahr (“Coziahr Decl.”), the Letter from the Honorable Herbert B. Hoffman (ret.) (“Hoffman Letter”),
23 the concurrently-filed Proposed Order, the pleadings and records on file in this action, and upon any
24 additional evidence and argument that may be presented before or at the hearing of this motion.

25 _____
26 ¹ Capitalized terms are defined in the Class Action Settlement Agreement and Release (the
27 “Settlement Agreement”), attached as Exhibit 1 to the Declaration of Steven M. Tindall in Support of
28 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.

² These include: RG2’s firm resume; the Class Notice(s); and the Exclusion Form.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiff seeks preliminary approval of a proposed \$12,000,000 settlement agreement that provides
4 monetary relief for current and former Otay Water District customers who allege that they were overcharged
5 for their single-family residential water service between July 14, 2014, and December 31, 2022. The
6 settlement, negotiated at arm’s length and under the supervision of a retired Superior Court judge, after nearly
7 11 years of litigation (including a trial and appeal), would end this litigation against Otay Water District and
8 provide meaningful monetary relief to class members who allege that they were overcharged for their
9 residential water service, according to a damages methodology based on a methodology that was approved
10 by the Court of Appeal in *Patz v. City of San Diego* (2025) 113 Cal.App.5th 225, 299-301, *reh’g denied* (Aug. 14,
11 2025), *as modified* (Aug. 27, 2025), *review denied* (Oct. 29, 2025). Plaintiff and class counsel are proud to present
12 this settlement to the Court, which provides current and former Otay water customers who allege that they
13 were overcharged based on the *Patz* methodology with meaningful financial relief, while all class members
14 have benefited from the injunctive relief recovered at trial, “order[ing Otay] to impose new water rates[,]”
15 which it did effective January 1, 2023. (Judgment at ¶ 10.)

16 **BACKGROUND**

17 **I. Overview of the Litigation**

18 **A. The alleged circumstances that prompted this lawsuit.**

19 Given the stage of this litigation, the Court is familiar with the circumstances that led to this case.
20 (See Plaintiff’s Opposition to Motion to Decertify Class Judgment (“Decert. Opp.”) at 3-4 (Oct. 10, 2025)
21 (setting out case background).) The Court of Appeal’s published opinion affirming the liability judgment also
22 recounts that history in detail. (*Coziabr v. Otay Water Dist.* (2024) 103 Cal.App.5th 785, 791-94, *review denied*
23 (Oct. 23, 2024).) In short, this case concerns Otay Water District’s 2013 and 2017 water ratemakings—which
24 set Otay’s single-family residential water rate structures for the class period. Plaintiff alleged (and the trial
25 court found) that Otay’s single-family residential water rates were not proportional to the cost of providing
26 water service to class members. (*Id.* at 791.) Plaintiff brought this case, alleging that Otay thus violated Section
27 6(b)(3) of the California Constitution, enacted through Proposition 218. (See *id.*)
28

1 **B. A brief procedural history.**

2 Mr. Coziahr filed this lawsuit in July 2015, along with Plaintiffs Daniel Patz and Joan Mann Chesner,
3 who resided in other parts of San Diego County. (*Coziahr, supra*, 103 Cal.App.5th at p. 792 n.5.) Mr. Coziahr’s
4 case was severed, the other plaintiffs proceeded against the City of San Diego in *Patz*, and Mr. Coziahr
5 continued in this litigation against Otay. (See *id.* at pp. 792-94.) In July 2019, Plaintiff moved for class
6 certification, which Otay did not oppose and which the trial court granted. (*Id.*) The case proceeded to trial,
7 with the trial court issuing its Phase I statement of decision on liability in March 2021 and its Phase II
8 statement of decision on remedies in June 2022 (See *id.*)

9 The parties proceeded to post-trial briefing, and both parties appealed. (See *id.*) Plaintiff appealed the
10 trial court’s application of a deduction to account for class member “undercharges” in calculating the refund
11 amount. (See *id.* at pp. 827-28.) Otay appealed the judgment in full. (See *id.* at p. 791.) The Court of Appeal
12 published its decision on July 15, 2024, “affirm[ing] the judgment as to liability, the availability and existence
13 of damages, and the trial court’s inclusion of all charges in the damages calculation. However, [the Court of
14 Appeal] conclude[d] the court’s calculations were unreasonable, and remand[ed] for a new trial on the refund
15 amount” using “actual water unit data” instead of estimated data. (*Id.* at pp. 791, 832-34.) The Supreme Court
16 denied review on October 23, 2024, and the remittitur was filed in this Court on October 28, 2024.

17 On November 3, 2025, the parties notified the Court of a settlement in principle. The negotiations
18 that led to the agreement included a full-day in-person mediation under the supervision of San Diego
19 Superior Court Judge Herbert B. Hoffman (ret.), in San Diego. (Hoffman Letter.) Those negotiations
20 culminated in a mediator’s proposal that both parties accepted. (*Id.*)

21 **II. Terms of the Proposed Settlement**

22 **A. Proposed Settlement Class**

23 The proposed settlement class is defined as:

24
25 All single-family residential customers of the Otay Water District who received water service
26 between July 14, 2014, and December 31, 2022.
27
28

1 (Tindall Decl., Ex. 1 (“Settlement”), § 1.20.)³ This class definition is materially identical to the certified
2 litigation class, adding only an end date to the class period based on Otay’s post-judgment change to the
3 water rates. (See *Coziahr, supra*, 103 Cal.App.5th at pp. 792-93.) This narrow revision makes no substantive
4 change to the class makeup; it simply recognizes the time that the challenged ratemakings were operative.

5 At the time class notice was originally distributed, the litigation class included 66,078 individuals.
6 (Settlement, § 5.1.) Because notice was sent out while Otay’s challenged rates were still in effect, other
7 customers also moved into Otay’s service area while the class period remained open, yielding a final class
8 size for the full period of approximately 88,283 class members. (Settlement, §§ 5.1, 6.1.)

9 **B. Settlement Fund**

10 The proposed settlement provides a \$12,000,000 fund. (Settlement § 8.1.) After payment of attorneys’
11 fees and expenses, settlement administration costs, and service awards, the remaining balance will be
12 distributed to all class members owed refunds using actual Otay billing data. (See *id.*; Settlement §§ 9.1-9.12.)
13 The settlement is non-reversionary—if any part of the settlement cannot be feasibly distributed to the class,
14 the parties will propose a *cy pres* recipient(s) for Court approval. (*Id.* § 8.4.)

15 Plaintiff will ask the Court for a \$5,000 service award from the settlement fund in recognition of Mr.
16 Coziahr’s nearly 11-year effort pursuing this case, which ultimately benefited the entire class. (*Id.* at § 10.1.)
17 Counsel will also petition the Court for an award of attorneys’ fees of 33.33% of the fund (\$4,000,000) and
18 reimbursement of litigation costs and expenses capped at \$350,000 from the settlement fund. (*Id.* at § 11.1.)
19 Otay will also ask to recover its reasonable Settlement Administration Expenses incurred in administering
20 the Settlement to current customer class members, which expenses are capped at \$250,000. (*Id.* at § 4.5.)
21 Although Otay does not oppose these requests, the settlement agreement preserves the Court’s supervisory
22 authority to determine the appropriateness of any service award, attorneys’ fee or reimbursement of expenses.
23 (*Id.* at §§ 10.1, 11.1)

24 **C. Release**

25 In exchange for the benefits provided under the Settlement, Plaintiff and settlement class members
26

27 ³ Excluded from the Class are: officers and directors of Otay Water District, Class Counsel, Judge
28 Michael T. Smyth, and any members of Judge Smyth’s immediate family and judicial staff. (Settlement at §
1.20.) Also excluded from the Class are the nineteen individuals who timely submitted valid opt-outs by the
Response Deadline when the class was originally certified. (See Settlement at § 6.1.)

1 will release Otay from the claims that were or could have been asserted in this action. (Settlement § 14.) The
2 release is appropriately limited under California law to only those claims that are “based on the identical
3 factual predicate as that underlying the claims in the settled class action.” (*Amaro v. Anaheim Arena Management,*
4 *LLC* (2021) 69 Cal.App.5th 521, 537.) To Plaintiff’s knowledge, there are no other cases that might be
5 impacted by the settlement. (Tindall Decl. at ¶ 7.)

6 **D. Notice**

7 The Settlement proposes direct notice to all class members, using the most up-to-date contact
8 information available for class members. (Settlement, §§ 5.1-5.4.) To the extent class members have available
9 e-mail addresses, the Settlement Administrator will provide e-mail notice directly to those class members,
10 with physical mail for those class members who do not have digital contact information stored, and
11 publication notice to cover those who may no longer have access to their prior contact information. (See *id.*)
12 The settlement administrator will also maintain a case website with a long-form notice, pleadings, case
13 updates, contact information for the settlement administrator, and other important information. The notice
14 and notice plan is further described below in Section IV, and in the RG2 Declaration.

15 **E. Administration and Plan of Allocation**

16 The Settlement provides that payment will issue after finality to class members who experienced
17 overcharges under the methodology proposed by the Class’s expert witness, Greg Clumpner. (Settlement, §
18 9.5.) Class members do not need to submit claim forms to receive their payments. For class members who
19 remain customers of Otay Water District, Otay will provide these customers with bill credits on their regular
20 water bills. (Settlement, § 9.3.) Former customers will simply have to validate that the Settlement
21 Administrator has the correct contact information in order to receive their payments. The proposed notice
22 directs class members to the settlement website, where they can find updated information about the case.
23 (RG2 Decl. at Ex. B.) The Settlement also provides that the Settlement Administrator will disseminate the
24 notice and implement the Settlement, and it provides procedures for exclusion from the settlement class or
25 to comment on or opt out of the settlement class.

26 Deadlines for these events and the final approval hearing are proposed as follows:

Event	Date
Otay’s Notice of Non-Opposition	April 11, 2026

1	Plaintiff's Reply Supporting Preliminary Approval	April 17, 2026
2	Preliminary Approval Hearing	April 24, 2026
3	Notice to the Class Begins	14 days after Order on Preliminary Approval
4	Plaintiff's Motion for Service Award, Attorneys' Fees and Costs	14 days after Order on Preliminary Approval
5		
6	Response Deadline for Class Members to Opt-Out of the Settlement, or Object	56 days after Order on Preliminary Approval
7		
8	Responses to Objections Due	70 days after Order on Preliminary Approval
9	Plaintiff's Motion for Final Approval	16 court days prior to Final Approval Hearing
10	Final Approval Hearing	_____ (at least 90 days after Order on Preliminary Approval)
11		

ARGUMENT

To approve a class settlement, a court must determine that the settlement is “fair, adequate, and reasonable.” (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117 [quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800]). The first step is to consider whether to certify the settlement class and preliminarily approve the proposed settlement. Next is to disseminate notice of the proposed settlement to the class members, and finally, to hold a final approval hearing. Plaintiff respectfully requests that the Court begin this process by certifying the proposed settlement class, granting preliminary approval of the proposed settlement, and directing that notice be provided.

I. Certification of the Settlement Class is Appropriate.

Although the parties have settled, the Court must still certify that the class satisfies Code of Civil Procedure Section 382. (Cal. Rules of Court, rule 3.769.) Section 382 requires (1) an ascertainable class; (2) numerosity; (3) typicality; (4) adequacy; and (5) predominant common questions of law or fact. (*Dunk, supra*, 48 Cal.App.4th at p. 1806; Cal. Code. Civ. Proc., § 382.)

Here, this Court has already found that the requirements for class certification have been met and has already certified Plaintiff's claims. The Settlement Class Plaintiff seeks to certify here is materially identical to the certified litigation class, and the Court's analysis applies with equal force. (*See* Background, II.A.) The

1 Court should certify the settlement class for settlement purposes under Section 382, as it did before.

2 **A. The settlement class is ascertainable and numerous.**

3 The Court already found that the class was ascertainable and numerous. The single change to set an
4 end-date for the proposed settlement class definition in no way alters that analysis. The proposed settlement
5 class includes approximately 88,283 Otay Water District customers, all of whom are identified in Otay’s
6 records with contact information, and 66,078 of which already received notice at the class certification stage.
7 (Settlement § 6.1.) There is no question that the proposed settlement class here is sufficiently numerous and
8 ascertainable. (*Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1533 [ascertainability is “to
9 ensure notice to potential class members”]; *Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228
10 Cal.App.4th 1213, 1223 (“There is no set number required to maintain a class action...”)).

11 **B. The settlement class has a well-defined community of interest.**

12 The Court also concluded that the litigation class had a well-defined community of interest. Here
13 too, nothing has changed that might impact the court’s prior analysis. (*Brinker Restaurant Corp. v. Superior Court*
14 (2012) 53 Cal.4th 1004, 1021 [“ultimate question” posed by predominance is whether those issues that may
15 be jointly tried are “substantial” enough that a class action would benefit the court and class members].)

16 This case was centrally focused on changing Otay’s unconstitutional water rate structure—a structure
17 that all class members were subject to, in the same ways. All of those class members received the benefit of
18 an order to change those rates, and under this settlement, those class members who were *also* overcharged
19 will also receive compensation for those overcharges. Nothing about that inquiry varies class member to
20 class member. (*Patz*, *supra*, 113 Cal.App.5th at p. 293 [affirming certification of materially identical class].)

21 Similarly, Mr. Coziahr, who has diligently represented the class for more than a decade, is an adequate
22 representative with typical claims here. (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99
23 [class representative need only be similarly situated to class members].) And Mr. Coziahr’s counsel have
24 vigorously litigated this case on behalf of the class, dedicated considerable time and resources to this case
25 over the last decade, and demonstrated the necessary skill and expertise to adequately represent the class,
26 including trying the case to a successful liability ruling that was upheld on appeal.

27 Finally, as the trial court found before, proceeding as a class is superior to the alternatives. Plaintiff’s
28 expert has already prepared calculations of every class member’s refund, using the same data, and following

1 the same framework accepted by the Court of Appeal in *Patz*. There would be no benefit to litigants or the
2 court to sever the uniform consideration of that evidence into identical mini-trials for each class member—
3 particularly since the case has already been tried and is currently in a settlement posture. (*Richmond v. Dart*
4 *Industries, Inc.* (1981) 29 Cal.3d 462, 469 [“the class suit both eliminates the possibility of repetitious litigation
5 and provides small claimants with a method of obtaining redress[.]”].)

6 For all these reasons, the proposed settlement class merits preliminary certification.

7 **II. Preliminary Approval of the Settlement is Warranted.**

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

19 **A. Strength of Plaintiff’s Case**

20 The claims at issue here involve Otay’s single-family residential water rates from two ratemakings.
21 Liability has already been established and affirmed by the Court of Appeal, along with declaratory and
22 injunctive relief, the availability of a refund, and the fact of damages. (*Coziabr, supra*, 103 Cal.App.5th at pp.
23 793, 819, 826.) All that remains is the amount of the refund owed to class members. (See *id.* at p. 834.)

24 On remand, Plaintiff retained an expert to perform that calculation. That expert reviewed the decision
25 in *Patz*, reviewed the individual billing records from Otay, and calculated the class refund here using the
26 method described in the *Patz* decision—the only refund method accepted by a Court of Appeal. (Clumpner
27 Report, Ex. Z to Decl. of Rosslyn Hummer in Support of Otay’s Motion to Decertify the Class (Aug. 26,
28 2025) at p. 13.) Within the *Patz* framework, Plaintiff’s expert calculated the class refund using two different

1 methods of calculating the “actual cost” comparator uniform rate: one based on Otay’s projected usage and
2 revenues (totaling \$16,527,400), and one based on Otay’s actual usage and revenues (totaling \$12,566,698).
3 (*Id.* at p. 5.) Plaintiff’s expert also set out two calculations that arguably diverge from the *Patz* framework, in
4 that these calculations do *not* net out the *total* overcharges and undercharges for the class period. (*Id.*)

5 Of course, in order to recover any of these refund amounts, Plaintiff would have had to go to trial
6 on remand, prove the amount of the refund, and navigate the Legislature’s passage of a new law, Senate Bill
7 1072, which arguably eliminates direct refund awards. (*Patz*, *supra*, 113 Cal.App.5th at p. 306 [discussing SB
8 1072].) There were at least three uncertainties that Plaintiff faced on remand.

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

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

19 *Third*, Plaintiff’s refund award on remand must grapple with the impact of the Legislature’s passage
20 of SB 1072. This new law explicitly takes aim at the class refund awarded in this case, and “requires agencies
21 to credit refund awards in Proposition 218 cases against future increases in or impositions of the property-
22 related charge[.]” (*Patz*, *supra*, 113 Cal.App.5th at p. 306.) “Thus, the statute does not allow agencies in
23 Proposition 218 cases to pay a refund award as a money judgment, unless a statute explicitly allows the agency
24 to do so.” (*Id.*) The legislature itself explained that this law “prevents ratepayers that a court found overpaid
25 for a property-related service from getting a refund” such that “the ratepayers that overpaid would not get
26 their money back.” (*Id.* at p. 307.) Indeed, “the statute’s legislative history [] shows the statute was enacted
27 with the refund awards in [*Patz*] and in *Coziabr* specifically in mind.” (*Id.*)

28 Plaintiff has resisted application of SB 1072. (See Decert. Opp. at pp. 11-13.) Although the positions

1 of the parties on the application of this new law are untested, it is evident that a loss by the Plaintiff could
2 mean that all class members who were overcharged would no longer “get their money back.” (See *Patz*, *supra*,
3 113 Cal.App.5th at p. 307.). That is a substantial risk for the class in continuing to litigate.

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

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

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

11 Proving the refund amount requires complex expert testimony and the favorable resolution of a novel
12 legal issue—the applicability of SB 1072. Neither party is likely to accept a dispositive, adverse ruling without
13 a further appeal. If this settlement were not approved, it is unlikely that further litigation would lead to a
14 better result. The parties are operating with a fully developed record. Otay knows its exposure, and Plaintiff
15 knows what relief the class seeks. The parties negotiated in full light of those positions, and further litigation
16 is unlikely to change either party’s position here. As to class certification, the Court of Appeal’s decision in
17 *Patz* squarely answers Otay’s class certification challenges here. (Decert. Opp. at pp. 10-11.) Even so, Otay
18 *has* challenged class certification, and would likely do so again on appeal. Even a small risk of decertification
19 weighs in favor of granting settlement approval, as settlement eliminates that risk. (*Dunk*, *supra*, 48 Cal.4th at
20 p. 1801; accord *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152.)

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

27 **C. Amount Offered in Settlement**

28 While the Court should consider the “amount offered in settlement” (*Dunk*, *supra*, 48 Cal.App.4th at

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

8 The \$12,000,000 common fund offered in this settlement represents an excellent outcome for the
9 class. The trial court’s judgment before the appeal vacated the refund amount awarded the class
10 \$18,105,256.60 (with certain increases pending Otay changing the rates). (*Coziabr, supra*, 103 Cal.App.5th at
11 p. 793.) \$12,000,000 is approximately 66% of that original \$18,105,256.60 judgment—providing the class
12 with substantial monetary relief without the risk of further litigation over the refund amount, or years of
13 additional appeals. While courts do not weigh the settlement against some hypothetical possible outcome,
14 there is no question that this settlement is well within the range courts consider fair. (*7-Eleven Owners, supra*,
15 85 Cal.App.4th at p. 1150 [settlement may be fair even if it provides only a “fraction” of the potential
16 recovery]; *Dunk, supra*, 48 Cal.App.4th at p. 1802 [coupons of approximately 67% of maximum damages]; *In*
17 *re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 727 [settlement at “nearly half” maximum claim value].)

18 The settlement amount here is even more reasonable in light of the fact that the amount was the
19 product of a mediator’s proposal following extensive negotiations before a retired Superior Court Judge. (*7-*
20 *Eleven Owners, supra*, 85 Cal.App.4th at p. 1151 [presumption of fairness where settlement is reached through
21 arms-length bargaining]; *Dunk, supra*, 48 Cal.App.4th at pp. 1802-03 [noting that “independent mediator, a
22 retired superior court judge...recommended the settlement”].)

23 **D. Plan of Allocation**

24 Plaintiff plans to allocate the net settlement fund on a proportional basis to all class members who
25 were overcharged for water service based on the framework approved in *Patz*. (Settlement § 9.) Using this
26 methodology, the approximately 15,500 class members entitled to refunds will receive proportional payments
27 based on the refund they would be owed under that methodology (with proportional deductions to account
28 for the amount available for distribution in the net settlement fund). (See Settlement § 9.) The notice explains

1 that class members may be entitled to monetary relief, explains to class members that a precise estimate of
2 the amount they can expect to recover is not yet possible, and directs class members to the class website for
3 more information. (RG2 Decl. at Ex. B.) Any residual funds will be distributed on a *cy pres* basis. (Settlement
4 § 9.9.) Class Members who remain customers of Otay Water District will receive bill credits over one year of
5 billing. (Settlement § 9.7.) Class Members who are no longer customers of Otay Water District will be able
6 to select their preferred payment method. (RG2 Decl. ¶ 19.)

7 **E. Attorneys’ Fees and Costs, and Service Awards**

8 Plaintiff will submit a request for fees and costs two weeks after preliminary approval. Plaintiff will
9 seek attorneys’ fees of 33.33% of the settlement fund. (Settlement § 11.) That fee request is reasonable and
10 justified here based on the exceptional results obtained for the class and the complexity and risk attendant to
11 this hard-fought litigation that Plaintiff’s Counsel litigated all the way through to trial and appeal. (*Laffitte v.*
12 *Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503 [affirming 33% award]; *Lealao v. Beneficial California, Inc.*
13 (2000) 82 Cal.App.4th 19, 31-32 [percentage fee award appropriate so long as “benefits received by the class,
14 or the range thereof, can be monetized without undue speculation”]; *Consumer Privacy Cases* (2009) 175
15 Cal.App.4th 545, 558 n.13 [“fee awards in class actions average around one-third of the recovery.”].)

16 Given the significant work necessary to litigate this case and secure a positive result for the class, the
17 fee request will also be well within a reasonable multiplier range. (*Lafitte, supra*, 1 Cal.5th at p. 505 [courts may
18 analyze a lodestar “cross-check” to “focus on the general question of whether the fee award appropriately
19 reflects the degree of time and effort expended by the attorneys.”].) Plaintiff will also seek an award of costs
20 and expenses up to \$350,000—an amount that is reasonable in light of the decade-plus litigation involving
21 significant expert testimony, along with settlement administration expenses.⁴ (Settlement §§ 11-12.)

22 The Settlement Administrator has provided its estimated costs associated with executing this Notice
23 Plan and administering this Settlement: approximately \$62,605. (RG2 Decl. at ¶ 5.) Those costs are reasonable
24 in light of the work to be completed in effectuating the Notice Plan and administering the Settlement, and
25 Plaintiff requests that the Court approve the Settlement Administrator to disburse those costs from the

26 ⁴ Otay will administer the payments to current customer class members through bill credits, and
27 submit its reasonable expenses, not to exceed \$250,000, to the Court for approval as settlement
28 administration expenses. (Settlement § 4.5.) RG2 will administer the notice to the class and payments for
former customer class members, and Plaintiff here requests the Court’s approval for payment of those
reasonable settlement administration expenses. (Settlement §§ 4, 12.2.)

1 Settlement Fund as those costs are incurred. Should the Settlement Administrator identify additional costs
2 that are reasonably necessary to effectuate Notice and administer the Settlement, the Settlement
3 Administrator will request approval for payment of those costs separately.

4 Lastly, Plaintiff seeks Court approval of a service award of \$5,000. (Settlement § 10.) This
5 enhancement is appropriate because Mr. Coziahr has actively prosecuted this class action for nearly 11 years,
6 participated in discovery, and dedicated his own time and resources to the case. (*Cellphone Termination Fee*
7 *Cases* (2010) 186 Cal.App.4th 1380, 1394-95 [affirming service awards of \$10,000 per representative], *as*
8 *modified* (July 27, 2010); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.)

9 **F. Stage of the Proceedings and Extent of Discovery Completed**

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

20 **G. Support of Experienced Counsel and Governmental Participant**

21 The support of experienced counsel, after significant discovery and an arm’s-length settlement
22 negotiation, gives rise to “a presumption of fairness.” (*Dunk, supra*, 48 Cal.App.4th at p. 1801; *7-Eleven Owners,*
23 *supra*, 85 Cal.App.4th at p. 1152.) Plaintiff’s counsel are experienced in litigating complex class actions,
24 including class actions against municipalities and local government entities. (Tindall Decl. at Ex. 2.) They
25 wholeheartedly endorse the Settlement as fair, reasonable, and adequate, based on their experience and
26 familiarity with the strengths and risks of this case. (*Id.* at ¶ 6.) The Court, then, may credit counsel’s
27 recommendation that the Settlement warrants preliminary approval. (*Dunk, supra*, 48 Cal.App.4th at p. 1801;
28 *7-Eleven Owners, supra*, 85 Cal.App.4th at p. 1152.) Similarly, the Court may credit that a governmental

1 participant—Otay Water District—supports settlement approval. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.)

2 **H. Positive Views of Class Members**

3 The Named Plaintiff submitted a declaration supporting the Settlement. (Coziahr Decl.) The Court
4 may take the views of other class members into account as they become known, following notice to the class.

5 **I. No Signs of Collusion**

6 There are no signs, explicit or subtle, of collusion here. First, settlement funds will not revert to Otay
7 under any circumstances. (Settlement §§ 1.27; 8.4.) Settlement funds will be divided among class members in
8 proportion to the amount those class members were overcharged (based on a methodology accepted in *Patz*),
9 so all class members are treated equitably. The named Plaintiff has testified that he understands he is not
10 legally entitled to any benefits other than those available to all settlement class members. (Coziahr Decl. at ¶
11 6.) Second, as further set out above, there will not be a disproportionate distribution of the settlement fund
12 to counsel. (*Amaro, supra*, 69 Cal.App.5th at p. 545.) “[F]ee awards in class actions average around one-third
13 of the recovery”—the amount Class Counsel will request here, subject to approval by the Court. (*Id.*;
14 Settlement § 11.) There is no sign that fees are being paid in exchange for acceptance of an unfair class
15 settlement. And while Otay agreed not to oppose Plaintiff’s fee application, the settlement appropriately
16 preserves the court’s supervisory authority to approve any fee award as reasonable and warranted. (*Cho, supra*,
17 177 Cal.App.4th at p. 744 [settlement “required plaintiff to demonstrate to the Court the reasonableness of
18 the fees and costs”].)

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

24 Considering all of these guideposts, the Court should preliminarily conclude that the proposed
25 settlement is fair, reasonable, and adequate, and likely to receive final approval.

26 **III. Approval of the Proposed Settlement Administrator**

27 Plaintiff proposes, and Otay does not oppose, the appointment of RG2 as settlement administrator.
28 RG2 has served effectively as the class notice administrator and remained in contact with class members

1 throughout this litigation, making it well-positioned to administer the settlement here. (Settlement § 5.)

2 RG2 has estimated the cost of administering the Settlement here as \$62,605. (RG2 Decl. ¶ 5.) Plaintiff
3 solicited bids from numerous potential administrators, carefully reviewed and compared those bids, and
4 selected RG2 as the best suited to administer the settlement here, including based on the estimated costs.
5 (Tindall Decl. ¶ 8.) These costs are reasonable in relation to the value of the settlement, and will be paid, with
6 the approval of the Court, out of the settlement fund as they are incurred.

7 **IV. Preliminary Approval of Class Notice Form and Method**

8 Under rule 3.769(e), “[i]f the court grants preliminary approval, its order must include the time, date,
9 and place of the final approval hearing; the notice to be given to the class; and any other matters deemed
10 necessary for the proper conduct of the hearing.” “The notice must contain an explanation of the proposed
11 settlement and procedures for class members to follow in filing written objections to it and arranging to
12 appear at the settlement hearing and state any objections to the proposed settlement.” (Cal. Rules of Court,
13 rule 3.769, subd. (f).) California courts take a “practical approach” to the form and content of notice,
14 highlighting that notice need only be “*the best practicable*, ‘reasonably calculated, under all the circumstances,
15 to apprise interested parties of the pendency of the action and afford them an opportunity to present their
16 objections.’” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 981-84; Cal. Rules of Court, rule 3.766(f).)

17 The Settlement contemplates direct notice to class members, using the most recent contact
18 information in Defendant’s records. (Settlement § 5.) Otay provided the settlement administrator with
19 contact information (email or physical address) for all class members. (RG2 Decl. ¶¶ 7-11.) The Settlement
20 Administrator will notify all class members with digital contact information through direct digital notice,
21 notify class members who only have physical mailing information through direct mail, and complete
22 publication notice in case some class members *both* lack any digital contact information *and* moved from their
23 on-file mailing address. (*Id.*)

24 In the modern world, electronic notice is often the best notice practicable under the circumstances.
25 (*Cellphone Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1392 [“[u]sing the capability of the Internet in
26 [this] fashion was a sensible and efficient way of providing notice, especially compared to the
27 alternative...mailing out a lengthy legalistic document that few class members would have been able to plow
28 through.”].) “The trial court ‘has virtually complete discretion as to the manner of giving notice to class

1 members”—and use of a mix of digital notice, publication notice, a settlement website, and, if necessary,
2 limited mailers can be a “perfectly acceptable” manner of notice under the circumstances. (See *id.* at p. 1391.)

3 The form of notice is similarly appropriate. The notices include the required information about the
4 settlement, how to object or opt out, and the procedures for final approval in plain language. (Cal. Rules of
5 Court, rule 3.769, subd. (f).) The proposed class notices were created using templates that were designed by
6 a California non-profit, the Impact Fund, with input from judges and practitioners across the country.
7 Plaintiff’s proposed notice is easy to read, easy to understand, uses bold color and text to direct class
8 members’ attention, and contains all required information. (RG2 Decl. at Ex. 2.) Courts across California
9 have approved notices based on the same templates in other recent class actions. (E.g., *Mata v. Digital*
10 *Recognition Network* (San Diego Sup. Ct.) No. 37-2021-00023321-CU-MC-CTL (Wohlfeil, J.); *Pham v. WoodTech*
11 (Alameda Cty. Super. Ct.) No. 22-CV-011080 (Seligman, J).) This Court should find, as those courts did,
12 that Plaintiff’s proposed form of notice satisfies due process and the California Rules of Court, and direct
13 the parties and RG2 to proceed with noticing settlement class members.

14 CONCLUSION

15 For the reasons set out above, the Court should certify the proposed Settlement Class for settlement
16 purposes, grant preliminary approval to the proposed class settlement, appoint RG2 as settlement
17 administrator, direct notice to the class, set deadlines for class members to exercise their rights in connection
18 with the proposed Settlement, and schedule a Final Approval Hearing.

19
20 DATED: March 31, 2026

Respectfully submitted,

21 /s/ Andre M. Mura

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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 March 31, 2026, I served a copy of the document(s) described as:

- 5 **1. PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL**
- 6 **2. PROPOSED ORDER**
- 7 **3. DECLARATION OF STEVEN M. TINDALL**
- 8 **4. DECLARATION OF WILLIAM W. WICKERSHAM**
- 9 **5. DECLARATION OF MARK COZIAHR**
- 10 **6. LETTER FROM HON. HERBERT HOFFMAN (RET.)**

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

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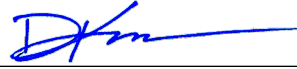
Attorneys for Defendant

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

27 [X] BY EMAIL: by electronically transmitting PDF versions of above listed documents to the
28 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 March 31, 2026, at Oakland, California.

3 

4 _____
Denise Kwan

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