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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DANIEL PATZ, JOAN MANN CHESNER, *ET AL.*, PLAINTIFF, V. CITY OF SAN DIEGO, DEFENDANT.	**Case No. 37-2015-00023413-CU-MC-CTL** **CERTIFIED CLASS ACTION** **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: July 31, 2026 Time: 9:00 a.m. Dept: C-67 Judge: Hon. Michael T. Smyth

NOTICE OF MOTION AND MOTION

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

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

1. Certifying this Action as a class action for the purposes of settlement;
2. Granting preliminary approval of a non-reversionary settlement in the amount of $40,000,000, to resolve the action (the "Settlement");
3. Approving the form and substance of the proposed Notice of Proposed Settlement of Class Action ("Class Notice"), the manner and timing of disseminating notice to the Class (the "Notice Plan"), and the selection of CPT Group ("CPT") as Settlement Administrator;
4. Setting deadlines for Class Members to exercise their rights in connection with the proposed Settlement; and
5. Scheduling a hearing date for final approval of the Settlement and Plan of Allocation and application(s) for attorneys' fees and expenses ("Fairness Hearing").[1]

This motion is based upon this Notice of Motion, the attached Memorandum of Points and Authorities, the Tindall Declaration and the exhibits to that declaration, the Declaration of Carole Thompson of CPT Group ("CPT Decl.") and the exhibits to that declaration,[2] the Declarations of Daniel Patz ("Patz Decl.") and Joan Chesner ("Chesner Decl."), the Letter from the Honorable Herbert B. Hoffman (ret.) ("Hoffman Letter"), the concurrently-filed Proposed Order, the pleadings and records on file in this action, and upon any additional evidence and argument that may be presented before or at the hearing of this motion.

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

[2] These include: CPT Group's firm resume; the Class Notice(s); and the Exclusion Form.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs seek preliminary approval of a proposed settlement agreement that provides monetary relief for current and former San Diego water customers who were overcharged for their single-family residential water service between August 14, 2014, and December 1, 2023. The settlement, negotiated at arm's length and under the supervision of a retired Superior Court judge, after nearly 11 years of litigation (including a trial and appeal), would end this litigation against the City of San Diego and provide meaningful monetary relief to class members who were overcharged for their residential water service according to the damages calculation the Court of Appeal affirmed in this case. (*Patz v. City of San Diego* (2025) 113 Cal.App.5th 225, 299-301, *reh'g denied* (Aug. 14, 2025)*, as modified* (Aug. 27, 2025)*, review denied* (Oct. 29, 2025).)

Plaintiff and class counsel are proud to present this settlement to the Court. Along with the companion case *Coziahr v. Otay Water District* (originally filed with this case as part of the same litigation, before being severed and proceeding separately), this case was among the ***first*** to award a refund to water customers who prove Section 6(b)(3) overcharges at trial. After the class prevailed at trial, the California legislature enacted a law—Government Code section 53758.5 (S.B. 1072), eff. Jan. 1, 2025—that targets these sort of cases. Indeed, this very case was the impetus for these new laws, according to the legislative history. S.B. 1072 seeks to "prevent[] ratepayers that a court found overpaid for a property-related service from getting a refund." (*Patz, supra*, 113 Cal.App.5th at p. 307.) If this law were applied to this case, as San Diego has argued, then arguably no class member would be entitled to a direct refund for overcharges. Instead, this settlement provides class members with approximately 50% of the judgment value they originally recovered at trial, before this new law was passed**.** The settlement thus delivers a substantial benefit to any class member who was overcharged based on the damages methodology the Court of Appeal affirmed here.

In the face of these challenges, this settlement provides current and former San Diego water customers who were overcharged with meaningful financial relief, while all class members have benefited from the injunctive relief recovered at trial, "order[ing the City] to impose new water rates[,]" which it did effective December 1, 2023. (Judgment at ¶ 10.)

BACKGROUND

I. Overview of the Litigation

A. The alleged circumstances that prompted this lawsuit.

Given the stage of this litigation, the Court is familiar with the circumstances that led to this case. The Court of Appeal's published opinion affirming the judgment also recounts that history in detail. (*Patz*, *supra*, 113 Cal.App.5th at pp. 238-49.) In short, this case concerns the City of San Diego's 2013 and 2015 water ratemakings—which set San Diego's single-family residential water rate structures for the class period. Plaintiffs alleged (and the trial court found) that San Diego's single-family residential water rates were not proportional to the cost of providing water service to class members. (*Id.* at p. 247.) Plaintiffs brought this case, alleging that San Diego thus violated Section 6(b)(3) of the California Constitution. (See *id.*)

B. A brief procedural history.

Plaintiffs filed this lawsuit in July 2015, along with Mark Coziahr (plaintiff in *Coziahr v. Otay Water District*). (*Id.* at p. 247.) Mr. Coziahr's case was severed, and Plaintiffs proceeded against the City of San Diego in this litigation. (See *id.*) In June 2019, the trial court certified Plaintiffs' suit as a class action by "all single-family residential customers of the City of San Diego who received water service after August 21, 2014." (*Id.*) The case proceeded to trial, with the trial court issuing its Phase I statement of decision on liability in September 2021 and its Judgment in March 2022, awarding a refund to class members who were overcharged from "August 14, 2014 through March 31, 2022" with monthly increases to account for continuing overcharges pending the City's adoption of constitutional rates. (See *id.*)

Both parties appealed. (See *id.*) Plaintiff appealed the trial court's application of a deduction to account for class member "undercharges" in calculating the refund amount. (See *id.* at pp. 298-99.) San Diego appealed the judgment in full. (See *id.* at p. 249.) The Court of Appeal published its decision on July 30, 2025, "affirm[ing the judgment] with directions…[for] the trial court…to amend the judgment to allow City to satisfy the refund award pursuant to Government Code section 53758.5." (*Id.* at pp. 310-11.) The Supreme Court denied review on October 29, 2025.

On April 28, 2026, the parties notified the Court of a settlement in principle. The negotiations that led to the agreement included a full-day in-person mediation under the supervision of San Diego Superior Court Judge Herbert B. Hoffman (ret.), in San Diego. (See Hoffman Letter.) Those negotiations culminated

in a mediator's proposal that both parties accepted. (*Id.*)

II. Terms of the Proposed Settlement

A. Proposed Settlement Class

The proposed settlement class is defined as:

> All single-family residential customers of the City of San Diego who received water service between August 14, 2014, and December 1, 2023.

(Tindall Decl., Ex. 1 ("Settlement"), § 1.20.)[3] This class definition is materially identical to the certified litigation class, changing only the class period to cover the refund period in the Judgment, ending on the effective date of San Diego's post-judgment change to the water rates. (See *Patz*, *supra*, 113 Cal.App.5th at p. 247.)[4] This narrow revision makes no substantive change to the class makeup; it simply recognizes the time that the challenged ratemakings were operative.

At the time class notice was originally distributed, the litigation class included 319,485 individuals. (Settlement, § 5.1.) Because notice was sent out while San Diego's challenged rates were still in effect, other customers also moved into the service area while the class period remained open, yielding a final class size for the full period of approximately 436,069 class members. (Settlement, §§ 5.1, 6.1.)

B. Settlement Fund

The proposed settlement provides a $40,000,000 fund. (Settlement § 8.1.) After payment of attorneys' fees and expenses, settlement administration costs, and service awards, the remaining balance will be distributed to all class members owed refunds under the calculation method affirmed by the Court of Appeal. (See *id.*; Settlement §§ 9.1-9.2.) The settlement is non-reversionary—if any part of the settlement cannot be feasibly distributed to the class, the parties propose that the residual be distributed to the Sierra Club, California Water Committee, including the San Diego chapter, as a *cy pres* recipient. (*Id.* § 9.6.) The Sierra

[3] Excluded from the Class are: officers and directors of the City of San Diego, Class Counsel, Judge Michael T. Smyth, and any members of Judge Smyth's immediate family and judicial staff. Also excluded from the Class are individuals who timely submitted valid opt-outs by the Response Deadline when the class was originally certified. (See Settlement at § 1.20.)

[4] While the trial court's original class certification order used a start date of August 21, 2014, the Court updated the class period to begin August 14, 2014 at the liability stage, which is the date both parties used for the refund calculations and the date for the class period in the Judgment. The parties agree that August 14, 2014 is the correct start date for the settlement class period.

Club is an appropriate *cy pres* recipient in this litigation. The organization, and specifically the California Water Committee, work on water conservation issues, promote water justice for disadvantaged communities, and educate consumers on water markets and water pricing; efforts that collectively "further the purposes of the underlying cause[] of action" in this litigation. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722.) This Court approved the Sierra Club as the *cy pres* recipient for any residual funds in the companion *Coziahr* litigation, and the Sierra Club is an appropriate *cy pres* beneficiary here for the same reasons.

Plaintiffs will ask the Court to award $7,500 to each of the Named Plaintiffs, as a service award from the settlement fund in recognition of the Plaintiffs' nearly 11-year effort pursuing this case, which ultimately benefited the entire class. (*Id.* at § 10.1.) Counsel will also petition the Court for an award of attorneys' fees of 1/3 (33.33%) of the fund ($13,333,333.33) and reimbursement of litigation costs and expenses from the settlement fund. (*Id.* at § 11.1.) Although San Diego does not oppose either request, the settlement agreement preserves the Court's supervisory authority to determine the appropriateness of any service award, attorneys' fee or reimbursement of expenses. (*Id.* at §§ 10.1, 11.1)

C. Release

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

D. Notice

The Settlement proposes direct notice to all class members, using the most up-to-date contact information available for class members. (Settlement, §§ 5.1-5.3.) To the extent class members have e-mail information available, the Settlement Administrator will provide e-mail notice directly to those class members, with mailed postcard notice for those class members who do not have digital contact information stored, and publication notice to cover those who may no longer have access to their prior contact information. (See *id.*; CPT Decl. at ¶¶ 10-12.) The settlement administrator will also maintain a case website with a long-form notice, pleadings, case updates, contact information for the settlement administrator, and

other important information. (CPT Decl. at ¶¶ 10-15.) The notice and notice plan is further described below in Section IV, and in the CPT Declaration.

E. Administration and Plan of Allocation

The Settlement provides that payment will issue after finality to class members who experienced overcharges under the refund model affirmed by the Court of Appeal. (Settlement, §§ 9.1, 9.2.) Class members do not need to submit claim forms to receive their payments, they will simply have to validate that the Settlement Administrator has the correct contact information (and select their preferred payment method) in order to receive their payments. The proposed notice directs class members to the settlement website, where they can find updated information about the case. (CPT Decl. at Ex. B.) The Settlement also provides that the Settlement Administrator will disseminate the notice and implement the Settlement, and it provides procedures for exclusion from the settlement class or to comment on or opt out of the settlement class.

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

Event	Date
Preliminary Approval Hearing	July 31, 2026
Notice to the Class Begins	14 calendar days after Order on Preliminary Approval
Plaintiff's Motion for Service Award, Attorneys' Fees and Costs	14 calendar days after Order on Preliminary Approval
Response Deadline for Class Members to Opt-Out of the Settlement, or Object	59 calendar days after Order on Preliminary Approval (45 days following notice)
Responses to Objections Due	16 court days prior to Final Approval Hearing
Plaintiff's Motion for Final Approval	16 court days prior to Final Approval Hearing
Final Approval Hearing	November 6, 2026 (or another date that is convenient for the Court and falls at least 90 days after Order on Preliminary Approval)

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, 1801].). 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 Plaintiffs' claims. The Settlement Class Plaintiffs seek 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 Court should certify the settlement class for settlement purposes under Section 382, as it did before.

A. The settlement class is ascertainable and numerous.

The Court already found that the class was ascertainable and numerous, and the Court of Appeal affirmed. (*Patz*, *supra*, 113 Cal.App.5th at pp. 288-98.) The single non-substantive change to the proposed settlement class definition in no way alters that analysis. The proposed settlement class includes approximately 436,069 San Diego customers, all of whom are identified in San Diego's records, and 319,485 of which already received notice at the class certification stage. (Settlement § 6.1.) There is no question that the proposed settlement class here is sufficiently numerous and ascertainable. (*Patz*, *supra*, 113 Cal.App.5th at pp. 288-98; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1533 [ascertainability is "to ensure notice to potential class members"]; *Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223 ["There is no set number required to maintain a class action…"'].)

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

The Court also concluded that the litigation class had a well-defined community of interest. Here too, nothing has changed that might impact the court's prior analysis. (*Patz*, *supra*, 113 Cal.App.5th at p. 292

["Substantial evidence supports the trial court's finding that one classwide issue predominated among all proposed class members"]; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 ["ultimate question" posed by predominance is whether those issues that may be jointly tried are "substantial" enough that a class action would benefit the court and class members].)

This case was centrally focused on changing San Diego's unconstitutional water rate structure—a structure that all class members were subject to, in the same ways. (*Patz*, *supra*, 113 Cal.App.5th at p. 292.) All of those class members received the benefit of an order to change those rates, and under this settlement, those class members who were *also* overcharged will also receive compensation for those overcharges. Nothing about that inquiry varies class member to class member. (*Id.* at pp. 292-93.)

Similarly, Daniel Patz and Joan Chesner, who have diligently represented the class for more than a decade, are adequate representatives with typical claims here. (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99 [class representative need only be similarly situated to class members].) And Plaintiffs' counsel have vigorously litigated this case on behalf of the class, dedicated considerable time and resources to this case over the last decade, and demonstrated the necessary skill and expertise to adequately represent the class, including trying the case to a successful verdict that was upheld on appeal.

Finally, as the trial court found before, proceeding as a class is superior to the alternatives. Defendant's expert has already prepared calculations of every class member's refund, using the same data, and that calculation was affirmed by the Court of Appeal. (*Patz*, *supra*, 113 Cal.App.5th at p. 310 ["neither party has shown that the *amount* of the refund award is in error."].) Plaintiffs retained that expert to update his calculations through the close of the class period in connection with the settlement, so that all class members are covered by the calculation. (Settlement § 9.2.) There would be no benefit to litigants or the court to sever the uniform consideration of that evidence into identical mini-trials for each class member—particularly since the case has already been tried and is currently in a settlement posture. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469 ["the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress[.]"].)

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

II. Preliminary Approval of the Settlement is Warranted.

"The trial court has broad discretion to determine whether the settlement is fair." (*Dunk*, *supra*, 48

Cal.App.4th at p. 1801.) Relevant factors include: "the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Id.*) Ultimately, however, these factors are guideposts: deciding whether a settlement is fair is "an amalgam of delicate balancing, gross approximations and rough justice," that "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties[.]" (*Id.*)

A. Strength of Plaintiff's Case

The claims at issue here involve San Diego's single-family residential water rates from two ratemakings. Liability has already been established and affirmed by the Court of Appeal, along with declaratory and injunctive relief, and the refund owed. (*Patz, supra*, 113 Cal.App.5th at pp. 310-11 ["The March 30, 2022 judgment is affirmed with directions."].) All that remains is how Government Code section 53758.5 applies to that refund. (See *ibid.* ["On remand, the trial court is directed to amend the judgment to allow City to satisfy the refund award pursuant to Government Code section 53758.5."].)

While narrow, that direction poses no small risk to the class. The *amount* of Plaintiff's refund award was set, but *how* that refund ultimately makes its way to the class—indeed, even *whether* the refund makes its way to the class, poses legal risk after the Legislature's passage of SB 1072. This new law explicitly takes aim at the class refund awarded in this case, and "requires agencies to credit refund awards in Proposition 218 cases against future increases in or impositions of the property-related charge[.]" (*Patz, supra*, 113 Cal.App.5th at p. 306.) "Thus, the statute does not allow agencies in Proposition 218 cases to pay a refund award as a money judgment, unless a statute explicitly allows the agency to do so." (*Id.*) The legislature itself explained that this law "prevents ratepayers that a court found overpaid for a property-related service from getting a refund" such that "the ratepayers that overpaid would not get their money back." (*Id.* at p. 307.) Indeed, "the statute's legislative history [] shows the statute was enacted with the refund awards in this case and in *Coziahr* specifically in mind." (*Id.*)

This Court has not yet resolved how this new law would apply to the class refund, but it is evident that a loss by the Plaintiff could mean that all class members who were overcharged would no longer "get

their money back." (*Patz*, *supra*, 113 Cal.App.5th at p. 307.). That is a substantial risk for the class in continuing to litigate.

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

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

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

Distributing the refund award to class members requires the favorable resolution of a novel legal issue—the applicability of SB 1072. Neither party is likely to accept a dispositive, adverse ruling without a further appeal. If this settlement were not approved, it is unlikely that further litigation would lead to a better result. The parties are operating with a fully developed record. Both parties know the amount of the refund, and the issues that remain on remand. The parties negotiated in full light of those positions, and further litigation is unlikely to change either party's position here. This settlement eliminates these risks and offers "certain recovery in the face of an uncertain legal theory." (*Harbour v. California Health & Wellness Plan*, 2024 WL 171192, at *4 (N.D. Cal. Jan. 16, 2024); *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 745 ["plaintiff faced considerable risk in proceeding to trial, and the class recovery is significant in light of that risk."].) This factor, then, supports settlement approval. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 ["it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements."].)

C. Amount Offered in Settlement

While the Court should consider the "amount offered in settlement" (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801), "[t]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*7-Eleven Owners*, *supra*, 85 Cal.App.4th at p. 1150.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement…should be disapproved." (*Id.*) So long as the trial court has "an

understanding of the amount … in controversy" and the "realistic range of outcomes of the litigation[,]" it need not act as a bean-counter to precisely determine the "maximum value of all claims." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

The $40,000,000 common fund offered in this settlement represents an excellent outcome for the class. Compared to the $79,541,880 Judgment, the Settlement represents approximately 50% of the Class's potential recovery following remand.[5] While courts do not weigh the settlement against some hypothetical possible outcome, there is no question that this settlement is well within the range courts consider fair. (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 727 [settlement at "nearly half" maximum claim value]; *7-Eleven Owners*, *supra*, 85 Cal.App.4th at p. 1150 [settlement may be fair even if it provides only a "fraction" of the potential recovery]; *Dunk*, *supra*, 48 Cal.App.4th at p. 1802 [coupons of approximately 67% of maximum damages].) The settlement amount here is even more reasonable in light of the fact that the amount was the product of a mediator's proposal following extensive negotiations before a retired Superior Court Judge. (Hoffman Letter; *7-Eleven Owners*, *supra*, 85 Cal.App.4th at p. 1151 [presumption of fairness where settlement is reached through arms-length bargaining]; *Dunk*, *supra*, 48 Cal.App.4th at pp. 1802-03 [noting that "independent mediator, a retired superior court judge…recommended the settlement"].)

D. Plan of Allocation

Plaintiff plans to allocate the net settlement fund on a proportional basis to all class members who were overcharged for water service based on the expert refund calculation approved by the Court of Appeal in this case. (Settlement § 9.) The parties retained the same expert whose calculations were affirmed by the Court of Appeal as the basis for the refund amount in the judgment, and that expert updated the calculation for each class member through the full class period. Under the Settlement, the approximately 62,654 class members entitled to refunds based on that calculation will receive proportional payments based on the refund they would be owed under that calculation (with proportional deductions to account for the amount available for distribution in the net settlement fund). (See Settlement § 9.) The notice explains that class members may be entitled to monetary relief, explains to class members that a precise estimate of the amount they can expect to recover is not yet possible, and directs class members to the class website for more information. (CPT Decl. at Ex. B.) Class members who are eligible for refund awards may select their preferred payment method

[5] $40,000,000 divided by $79,541,880 equals 0.503.

following Final Approval. (*Id.*) Any residual funds will be distributed on a *cy pres* basis. (Settlement § 9.6.)

E. Attorneys' Fees and Costs, and Service Awards

Plaintiff will submit a request for fees and costs two weeks after preliminary approval. Plaintiff will seek attorneys' fees of 1/3 (33.33%) of the settlement fund. (Settlement § 11.) That fee request is reasonable and justified here based on the exceptional results obtained for the class and the complexity and risk attendant to this hard-fought litigation that Plaintiffs' Counsel litigated all the way through to trial and appeal. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503 [affirming 33% award]; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 31-32 [percentage fee award appropriate so long as "benefits received by the class, or the range thereof, can be monetized without undue speculation"]; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 ["fee awards in class actions average around one-third of the recovery."].)

Given the significant work necessary to litigate this case and secure a positive result for the class, the fee request will also be well within a reasonable multiplier range. (*Lafitte*, *supra*, 1 Cal.5th at p. 505 [courts may analyze a lodestar "cross-check" to "focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys."].) Plaintiff will also seek an award of costs and expenses not to exceed $500,000—an amount that is reasonable in light of the decade-plus litigation involving significant expert testimony, along with settlement administration expenses. (Settlement §§ 11-12.)

The Settlement Administrator has provided its estimated costs associated with executing this Notice Plan and administering this Settlement: approximately $199,000. (CPT Decl. at ¶ 17.) Those costs are reasonable in light of the work to be completed in effectuating the Notice Plan and administering the Settlement, and Plaintiffs request that the Court approve the Settlement Administrator to disburse those costs from the Settlement Fund as those costs are incurred. Should the Settlement Administrator identify additional costs that are reasonably necessary to effectuate Notice and administer the Settlement, the Settlement Administrator will request approval for payment of those costs separately.

Lastly, Plaintiffs seek Court approval of a service award of $7,500 to Plaintiff Daniel Patz and a service award of $7,500 to Plaintiff Joan Chesner. (Settlement § 10.) This enhancement is appropriate because the Plaintiffs have actively prosecuted this class action for nearly 11 years, participated in substantial discovery (including a deposition), and dedicated their own time and resources to the case. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-95 [affirming service awards of $10,000 per representative], *as*

modified (July 27, 2010); *Munoz, supra,* 186 Cal.App.4th at p. 412.)

F. Stage of the Proceedings and Extent of Discovery Completed

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

G. Support of Experienced Counsel and Governmental Participant

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

H. Positive Views of Class Members

The Named Plaintiffs submitted declarations supporting the Settlement. (Patz Decl.; Chesner Decl.) The Court may take the views of other class members into account as they become known, following notice to the class.

I. No Signs of Collusion

There are no signs, explicit or subtle, of collusion here. First, settlement funds will not revert to San Diego under any circumstances. (Settlement §§ 1.26; 8.4.) Settlement funds will be divided among class

members in proportion to the amount those class members were overcharged, so all class members are treated equitably. The named Plaintiffs have testified that they understand they are not legally entitled to any benefits other than those available to all settlement class members. (Patz Decl. at ¶ 6; Chesner Decl. at ¶ 6.) Second, as further set out above, there will not be a disproportionate distribution of the settlement fund to counsel. (*Amaro*, *supra*, 69 Cal.App.5th at p. 545.) "[F]ee awards in class actions average around one-third of the recovery"—the amount Class Counsel will request here, subject to approval by the Court. (*Id.*; Settlement § 11.) There is no sign that fees are being paid in exchange for acceptance of an unfair class settlement. And while San Diego agreed not to oppose Plaintiffs' fee application, the settlement appropriately preserves the court's supervisory authority to approve any fee award as reasonable and warranted. (*Cho*, *supra*, 177 Cal.App.4th at p. 744 [settlement "required plaintiff to demonstrate to the Court the reasonableness of the fees and costs"].)

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

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

III. Approval of the Proposed Settlement Administrator

Plaintiff proposes, and San Diego does not oppose, the appointment of CPT Group as settlement administrator. CPT has served effectively as the class notice administrator and remained in contact with class members throughout this litigation, making it well-positioned to administer the settlement here. (Settlement § 5.) CPT has estimated the cost of administering the Settlement here as $199,000. (CPT Decl. ¶ 17.) Plaintiff solicited bids from numerous potential administrators, carefully reviewed and compared those bids, and selected CPT Group as the best suited to administer the settlement here, including based on the estimated costs. (Tindall Decl. ¶ 8.) These costs are reasonable in relation to the value of the settlement, and will be paid, with the approval of the Court, out of the settlement fund as they are incurred.

IV. Preliminary Approval of Class Notice Form and Method

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

The Settlement contemplates direct notice to class members, using the most recent contact information in Defendant's records. (Settlement § 5.) San Diego provided the settlement administrator with contact information (email or physical address) for class members. (CPT Decl. ¶¶ 10-13.) The Settlement Administrator will notify all class members with digital contact information through direct email notice, notify class members who only have physical mailing information through mail, and complete publication notice in case some class members *both* lack any digital contact information *and* moved from their on-file mailing address. (*Id.*) Each of these notices is attached the Settlement Administrator's declaration, and an additional long-form notice will be available on the settlement website with more information for class members. (*Id.* at ¶¶ 10-15.)

In the modern world, electronic notice is often the best notice practicable under the circumstances. (*Cellphone Termination Fee Cases*, *supra*, 186 Cal.App.4th at p. 1392 ["[u]sing the capability of the Internet in [this] fashion was a sensible and efficient way of providing notice, especially compared to the alternative…mailing out a lengthy legalistic document that few class members would have been able to plow through."].) "The trial court 'has virtually complete discretion as to the manner of giving notice to class members'"—and use of a mix of digital notice, publication notice, a settlement website, and, if necessary, limited mailers can be a "perfectly acceptable" manner of notice under the circumstances. (See *id.* at p. 1391.)

The form of notice is similarly appropriate. The notices include the required information about the settlement, how to object or opt out, and the procedures for final approval in plain language. (Cal. Rules of

Court, rule 3.769, subd. (f).) The proposed class notices were created using templates that were designed by a California non-profit, the Impact Fund, with input from judges and practitioners across the country. Plaintiff's proposed notice is easy to read, easy to understand, uses bold color and text to direct class members' attention, and contains all required information. (CPT Decl. at Ex. B.) The notices prominently direct class members to the settlement website (including hyperlinks and QR codes), where class members can review the long-form notice, receive updates on the case status, and learn more about the settlement. Courts across California have approved notices based on the same templates in other recent class actions, including this Court in the companion *Coziahr* litigation. (E.g., *Coziahr v. Otay Water District* (San Diego Sup. Ct.) No. 37-2015-0040000 (Smyth, J.); *Mata v. Digital Recognition Network* (San Diego Sup. Ct.) No. 37-2021-00023321-CU-MC-CTL (Wohlfeil, J.); *Pham v. WoodTech* (Alameda Cty. Super. Ct.) No. 22-CV-011080 (Seligman, J.).) This Court should find, as those courts did, that Plaintiffs' proposed form of notice satisfies due process and the California Rules of Court, and direct the parties and CPT Group to proceed with noticing settlement class members.

CONCLUSION

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

DATED:

Respectfully submitted,

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PROOF OF SERVICE

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

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

1. **Plaintiffs' Motion for Preliminary Approval;**
2. **Declaration of Steven Tindall in Support of Plaintiffs' Motion for Preliminary Approval;**
3. **Letter from Honorable Herbert Hoffman (Ret.);**
4. **Declaration of CPT Group;**
5. **Declaration of Joan Chesner;**
6. **Declaration of Daniel Patz;**
7. **Proposed Order Granting Preliminary Approval;**

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

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

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

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

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



Denise Kwan