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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**

**~~PROPOSED~~ ORDER GRANTING
PRELIMINARY SETTLEMENT APPROVAL**

DATE: July 31, 2026

TIME: 9:00 a.m.

DEPT: C-67

JUDGE: Hon. Michael T. Smyth

COMPLAINT: July 14, 2015

FILED
San Diego Superior Court

JUL 31 2026

Clerk of the Superior Court
By: H. Chavarin, Deputy

1 **[PROPOSED] ORDER**

2 This matter is before the Court on Plaintiffs' motion for preliminary approval of the proposed
3 class action settlement. Plaintiffs, 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, Plaintiffs, 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, Plaintiffs' 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 a petition for Supreme Court
20 review. The parties have comprehensively developed the record and issues in this case, there is a
21 published Court of Appeal opinion affirming the judgment with directions, and the parties and the Court
22 are well familiar with the claims and issues that remain. The terms of the Settlement Agreement do not
23 improperly grant preferential treatment to any individual or segment of the Settlement Class, all
24 distinctions therein are "rationally based on legitimate considerations" and well-supported by the record.
25 (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1162-63.) The
26 Settlement Agreement does not exhibit any signs of collusion, explicit or implicit, and falls within the
27 range of possible approval as fair, adequate, and reasonable, and thus likely to gain final approval. (*Dunk*
28 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.)

1 4. The Court therefore GRANTS preliminary approval of the Settlement Agreement and all of
2 the terms and conditions contained therein.

3 **PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

4 5. Pursuant to California Rules of Court, rule 3.769 and California Code of Civil Procedure,
5 Section 382, the Court preliminarily certifies, for settlement purposes only, the Settlement Class defined
6 as follows: All single-family residential customers of the City of San Diego who received water service
7 between August 14, 2014, and December 1, 2023.¹

8 6. The Court preliminarily finds, for settlement purposes only, that the Settlement Class
9 satisfies the requirements of California Code of Civil Procedure, Section 382: the class is ascertainable
10 and numerous, containing approximately 436,069 identified current and former customers of the City
11 of San Diego; there are predominant questions of law and fact common to the Settlement Class; the
12 Settlement Class Representatives' claims are typical of those of Settlement Class Members; and the
13 Settlement Class Representatives and their counsel will fairly and adequately protect the interests of the
14 Settlement Class, such that there is a well-defined community of interest among class members.

15 7. The Court hereby appoints as Settlement Class Representatives: Daniel Patz, and Joan Mann
16 Chesner.

17 8. The Court hereby appoints as Class Counsel: Gibbs Mura LLP and Berding & Weil, LLP.

18 9. If for any reason this Court does not finally approve the Settlement Agreement, or if the
19 Date of Finality as defined in the Agreement does not occur, the conditional certification of the
20 Settlement Class shall be deemed null and void without further action by this Court or any of the Parties.
21 In such circumstances, each Party shall retain all of its respective currently existing rights to appeal the
22 grant of class certification in this litigation or in any other litigation on any other grounds.

23 10. Other than to effectuate and enforce the Settlement of this Action, the certification of the
24 Settlement Class for settlement purposes and all documents related thereto, including the Settlement
25

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

1 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 CPT Group 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 CPT Group, which includes direct notice to class members through electronic
12 communication (email) and mail (for those without email information), along with publication notice
13 and a public website, satisfy the requirements of Due Process and the California Rules of Court, and
14 provides the best notice practicable under the circumstances. The Notice and Notice Plan are reasonably
15 calculated to apprise the Settlement Class Members of the nature of this litigation, the scope of the
16 Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to
17 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 CPT Group ("Settlement Administrator") to serve as the Settlement Administrator, and
20 directs the Parties and the Settlement Administrator to proceed with providing notice to Settlement
21 Class 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) calendar days of this
24 Order.

25 14. The Settlement Administrator has estimated that it will incur costs of \$199,000 to
26 disseminate the Notice and implement the Notice Plan, along with administering the Settlement. These
27 costs are reasonable in light of the Settlement, and the Settlement Administrator is approved to disburse
28 costs up to that amount for payment of those expenses as they are incurred. Should the Settlement

1 Administrator identify other costs that are reasonably necessary to implement the Notice Plan or
2 administer the Settlement, the Settlement Administrator may separately request payment of those costs
3 as they are incurred.

4 15. The Settlement Administrator is authorized to establish the Settlement Fund under 26 C.F.R.
5 §§ 1.468B-1(d)(1) for federal tax purposes. The Settlement Fund shall be a court-approved Qualified
6 Settlement Fund (“QSF”) for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. The City of San
7 Diego shall be the “transferor” to the QSF within the meaning of Section 1.468B-1(d)(1) of the Treasury
8 Regulations with respect to the Settlement Fund. The Settlement Administrator shall be the
9 “administrator” of the QSF within the meaning of Section 1.468B-2(k)(3) of the Treasury Regulations,
10 responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF,
11 paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable
12 information reporting or tax withholding requirements imposed by Section 1.468B-2(1)(2) of the
13 Treasury Regulations or any other applicable law on or with respect to the QSF. The City of San Diego
14 shall provide to the Settlement Administrator any documentation reasonably requested by the
15 Settlement Administrator that is required to obtain QSF status for the Settlement Fund pursuant to
16 Treas. Reg. § 1.468B-1. All taxes on income or interest generated by the Settlement Fund, if any, shall
17 be paid out of the Settlement Fund.

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

25 **EXCLUSION & OBJECTIONS**

26 17. Settlement Class Members who wish to opt out and exclude themselves from the Settlement
27 Class may do so by notifying the Settlement Administrator in writing, received no later than 45 calendar
28 days after the date notice is sent. Class Members may not exclude themselves by telephone.

1 18. To be valid, each Request for Exclusion must include:

- 2 a. The Settlement Class Member's full name and mailing address, telephone
3 number, and/or email address;
- 4 b. The statement, "I wish to exclude myself from the Settlement Class and do not
5 wish to participate in the settlement in *Patz v. City of San Diego*, No. 37-2015-
6 00023413," or substantially similar clear and unambiguous language;
- 7 c. The Settlement Class Member's handwritten or electronically imaged written
8 (e.g., "DocuSign") signature. An attorney's signature, the signature of anyone
9 else acting on behalf of the Settlement Class Member, or a typed signature, is
10 not sufficient. "Mass" or "class" requests for exclusion made on behalf of
11 multiple persons or classes of persons will be deemed invalid.

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

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

20 21. The written objection must contain the following:

- 21 a. The name or case number of this lawsuit, *Patz v. City of San Diego*, No. 37-2015-
22 00023413;
- 23 b. The objector's/commenter's full name, the objector's/commenter's address
24 where they receive water service from the City of San Diego, the name of the
25 property owner for the address where the objector/commenter receives water
26 service from the City of San Diego if the objector/commenter is not the
27 property owner, and the objector's/commenter's email address or telephone
28 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.

22. 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

23. The Court will hold a Final Approval Hearing on Dec 11, 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/civilvirtualhearings>.

24. At the Final Approval Hearing, the Court will consider whether: (a) the Settlement is fair, adequate, and reasonable; (b) the Settlement Class should be finally certified; (c) a final judgment should

1 be entered; (d) Class Counsel's motion for attorneys' fees and costs should be granted; and (e) the
2 Incentive Payment for the Settlement Class Representative should be awarded.

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

5 26. The Parties shall adhere to the following schedule unless otherwise directed by the Court:

Event	Date
Notice to the Class Begins	14 calendar days after Order on Preliminary Approval
Deadline for Class Counsel to File 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 calendar days after the date notice is sent)
Responses to Objections Due	16 court days prior to Final Approval Hearing
Deadline for Class Counsel to File Motion for Final Approval	16 court days prior to Final Approval Hearing
Final Approval Hearing	<u>12/11/24</u> , (or another date that is convenient for the Court and falls at least 90 days after Order on Preliminary Approval)

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

1 For the reasons discussed above, the Court GRANTS Plaintiffs' Motion for Preliminary
2 Approval.

3 **IT IS SO ORDERED.**

4
5 Dated: July 31, 2026

By: Michael T. Smyth

Hon. Michael T. Smyth
Judge of the Superior Court