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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

14 RICHARDS J. HEUER III, an individual,
15 on behalf of himself and all others similarly
situated,

17 Plaintiff,

18 |

19 MONTEREY PENINSULA WATER
20 MANAGEMENT DISTRICT, a California
public agency; and DOES through 10,

Defendants.

CASE NO. 24 CV002642

Unlimited Jurisdiction

CLASS ACTION

(Case assigned to Hon. Carrie M. Panetta)
Dept 14)

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: December 19, 2025
Time: 8:30 a.m.
Dept. 14

Complaint Filed: June 25, 2024

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

2 PLEASE TAKE NOTICE that on December 19, 2025, at 8:30 a.m., in Department 14 of the
3 Superior Court of the State of California for the County of Monterey, located at the Monterey
4 Courthouse, 1200 Aguajito Road, Monterey, California 93940, the Honorable Carrie M. Panetta
5 presiding, Plaintiff Richards J. Heuer III (“Plaintiff”), on behalf of himself and all others similarly
6 situated, will and hereby does move this Court for an order:

7 1. Granting class certification of the Class, pursuant to Code of Civil Procedure section
8 382;

9 2. Finally approving the CLASS ACTION SETTLEMENT AGREEMENT AND
10 STIPULATION (“Settlement” or “Agreement”);

11 3. Appointing counsel for Plaintiff, Benink & Slavens, LLP and Kearney Littlefield
12 LLP as Class Counsel;

13 4. Appointing Plaintiff Richards J. Heuer III as the Class Representative;

14 6. Entering a Final Judgment; and,

15 7. Without affecting the finality of the final judgment, reserving continuing jurisdiction
16 over the parties for the purposes of implementing, enforcing and/or administering the settlement as
17 set forth in the Agreement or enforcing the terms of the Final Judgment.

18 Good cause exists to grant this Motion because: (1) the Class meets all of the requirements
19 for class certification under Code of Civil Procedure section 382; (2) the Settlement is a fair,
20 adequate, and reasonable compromise of the disputed claims asserted by Plaintiff; (3) Plaintiff and
21 Class Counsel are adequate to represent the Class; and, (4) the notice procedures and related forms
22 comply with California Rules of Court, rule 3.766(d) and this Court’s Order granting preliminary
23 approval of the Settlement, and adequately apprised Class Members of their rights and fully comport
24 with due process.

25 This Motion is made pursuant to rule 3.769 of the California Rules of Court, which require
26 approval by the Court of a class action settlement.

27 This Motion is based on this Notice; the following Memorandum of Points and Authorities;

1 the Declarations of Prescott Littlefield and Eric J. Benink in Support of the Motions for Attorney's
2 Fees, Reimbursement of Expenses and Service Award and Final Approval; the Declaration of Nishil
3 Bali in Support of Final Approval; all the records on file in the action; and any arguments of the
4 parties and counsel presented at the hearing.

5 **PLEASE TAKE FURTHER NOTICE** that, prior to the day of the hearing, any civil,
6 probate or family department may issue a tentative ruling on any law and motion matter, in the
7 sole discretion of the assigned judge. If a tentative ruling is issued, it will be issued in
8 conformance with the tentative ruling procedures set forth in California Rules of Court, rule
9 3.1308(a)(1).

10 Tentative Rulings will be available on the court's website by 3:00 p.m. the court day
11 before the hearing or by telephoning the court at (831) 647-5800 ext. 3040, between 3:00 p.m. and
12 4:00 p.m.

13 The tentative ruling becomes the order of the court, and no hearing is held, unless one of
14 the parties contests the tentative ruling by complying with California Rules of Court 3.1308 and
15 the applicable local rule.

16 If a tentative ruling is not posted, or the tentative ruling directs oral argument, then the
17 parties must appear at the hearing.

18 Those parties wishing to present oral argument must notify all other parties and the Court
19 no later than 4:00 p.m. on the court day prior to the hearing; otherwise, **NO ORAL ARGUMENT**
20 **WILL BE PERMITTED AND THE TENTATIVE RULING WILL BECOME THE ORDER OF**
21 **THE COURT AND THE HEARING VACATED.**

22 You must notify the Court before 4:00 p.m. on the court day before the hearing by
23 emailing TentativeRulings@monterey.courts.ca.gov or by telephoning the Calendar Department at
24 (831) 647-5800 extension 3040.

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KEARNEY LITTLEFIELD, LLP

DATED: November 21, 2025

Prescott W. Littlefield
Attorneys for Plaintiff
RICHARDS J. HEUER III

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1 Plaintiff Richards J. Heuer III (“Plaintiff”), for himself and all others similarly situated,
2 submits the following Memorandum of Points and Authorities in Support of his Motion for Final
3 Approval of Class Action Settlement (“Motion”).

4 **INTRODUCTION**

5 Pursuant to California Rules of Court, rule 3.769, Plaintiff requests that this Court finally
6 approve the class action settlement set forth in the CLASS ACTION SETTLEMENT
7 AGREEMENT AND STIPULATION (“Settlement” or “Agreement”) with the Defendant Monterey
8 Peninsula Water Management District (the “District”). Plaintiff settled this action after litigating a
9 related case against the District through trial, judgment, post-judgment motions and an appeal –
10 *Monterey Peninsula Taxpayers’ Association, Inc. et al. v. the Monterey Peninsula Water*
11 *Management District, et al.*, Monterey County Superior Court Case No. 21CV003066 (the “2021
12 Action”). The 2021 Action challenged the validity of the District’s collection of a charge under
13 District Ordinance No. 152 (the “Water Supply Charge”) simultaneously with a user fee imposed
14 by the District and collected through California-American Water Company, an investor-owned
15 utility (the “User Fee”). The 2021 Action did not seek refunds.

16 On March 2, 2023, this Court entered an Order Granting Petition for Writ of Mandate and
17 Request for Declaratory Relief in the 2021 Action prohibiting the District’s collection of the Water
18 Supply Charge by the amount of the User Fee. The District appealed and the Sixth District affirmed
19 this Court’s judgment on September 11, 2024. The District stopped collecting the Water Supply
20 Charge in Fiscal Year (“FY”) 24-25.¹ Before it was discontinued, the Water Supply Charge was
21 collected via a charge on property owners’ property tax bills, which are due and payable November
22 1 and February 1. (Rev. & Tax Code §§ 2605 [Nov. 1 deadline] & 2606 [Feb. 1 deadline].)

23 After judgment was entered and while the appeal was pending, the parties stipulated that the
24 District would sequester Water Supply Charges collected from June 23, 2023 through remittitur but
25 were unable to reach an agreement on the future disposition of those funds, including whether or
26

27 ¹ The District’s fiscal year runs from July 1 through June 30.
28

1 not the District would refund any sequestered funds. On December 1, 2023, Plaintiff submitted a
2 class-wide government claim under the procedures of the Government Claims Act, Government
3 Code section 910, et seq. The claim sought refunds of the Water Supply Charge on behalf of all
4 property owners in the County of Monterey who paid the Water Supply Charge beginning one year
5 prior.² The District rejected the claim. On June 25, 2024, Plaintiff filed the present action seeking
6 class-wide refunds. This action was stayed pending the outcome of the appeal of the 2021 Action.
7 After the appeal was resolved, the District answered, generally denying Plaintiff's allegations and
8 asserting numerous defenses.

9 Through an arm's length negotiation spanning months, the District and Plaintiff ultimately
10 reached a class-wide settlement. The Court preliminary approved the Settlement on July 1, 2025.
11 The Settlement includes a common fund in the amount of \$3,353,245 ("Settlement Fund") out of
12 which, after fees and expenses are deducted, the District will provide direct refunds to class members
13 without the necessity of a claim. In addition, the District has agreed to forbear from imposing,
14 levying or collecting any new fees or charges that are subject to the procedures and restrictions
15 provided in Proposition 218 through June 30, 2026. Notice has been completed under the terms of
16 the Court's preliminary approval Order. By July 29, 2025, the District completed the mailing of
17 approximately 31,000 notices. Three putative class members opted-out and zero objected.

18 Plaintiff submits that the Settlement is a fair, adequate, and reasonable compromise of the
19 parties' dispute. Plaintiff now requests final certification of the settlement class, appointment of
20 Class Counsel and the Class Representative, and for judgment to be entered consistent with the
21 Settlement. For the following reasons, the Court should grant this motion.

22 THE LITIGATION

23 I. District Ordinance No. 152 and Prior Litigation Between the Parties

24 This Court is no stranger to the underlying merits of Plaintiff's claims. Through the 2021
25 Action, Plaintiff and the Monterey Peninsula Taxpayers' Association, Inc. ("MPTA") sought a writ

26
27 ² Under the Government Claims Act, a claim for non-tort damages must be submitted within one year of
injury. (Gov. Code § 911.2(a).)

1 of mandate and declaratory relief based on allegations that the District was required to sunset the
2 Water Supply Charge to the extent the User Fee was being collected on Cal-Am customer bills.
3 (Declaration of Prescott W. Littlefield in Support of Plaintiff's Motions for Attorney's Fees,
4 Reimbursement of Expenses and Service Award and Final Approval ("Littlefield Decl."), ¶ 3.) On
5 March 3, 2023, this Court entered an Order Granting Petition for Writ of Mandate and Request for
6 Declaratory Relief in the 2021 Action prohibiting collection of the Water Supply Charge by the
7 District by the amount of the User Fee. (*Id.*, ¶ 4.) The District appealed. (*Ibid.*) The parties
8 disagreed whether or not the appeal automatically stayed the judgment. (*Ibid.*) Rather than litigate
9 the issue, the parties stipulated that the District would sequester Water Supply Charges imposed
10 and/or collected from June 23, 2023 and through remittitur. (*Id.*, Exhibit 2.) The stipulation did not
11 include any agreement regarding the disposition of the sequestered funds (e.g., refunds); indeed,
12 the District reserved its right to all defenses to any future refund claim. (*Ibid.*)

13 The District argued in the 2021 Action that the claims asserted therein were required to be
14 brought as challenges to the District's budget-setting decision through the validation statutes,
15 California Code of Civil Procedure section 860 et seq. (*Id.* at ¶ 5.) Although this Court rejected
16 that argument, out of an abundance of caution, Plaintiff and MPTA filed three validation cases
17 challenging the next three yearly budgets set by the District (the "Validation Actions").³ (*Id.*, ¶ 6.)
18 The Validation Actions were stayed as the appeal was litigated. (*Ibid.*) On September 11, 2024,
19 the Sixth District issued its Opinion in the Appeal, affirming the trial court's judgment in the 2021
20 Action (including affirming that the challenge need not have been brought through validation
21 proceedings) and issued its remittitur on November 14, 2024. (*Id.*, ¶ 7.) There is nothing further to
22 litigate in the 2021 Action, and as part of the settlement agreement, the Validation Actions have
23 been dismissed. (*Ibid.*) Thus, this is the last remaining case between the parties regarding
24 Ordinance No. 152 and the Water Supply Charges. (*Ibid.*)

25 _____
26 ³ Each of the three cases were captioned *Monterey Peninsula Taxpayers' Association, Inc. et al. v.*
27 *the Monterey Peninsula Water Management District, et al.*, and filed in the Monterey County
Superior Court, case numbers: 22CV002113, 23CV002453, and 24CV002642.

1 **II. This Action**

2 On December 1, 2023, Plaintiff transmitted a class-wide government claim to the District
3 seeking refunds of the Water Supply Charge on behalf of all property owners in the County of
4 Monterey who had paid the Water Supply Charge. (*Id.*, ¶ 8.) On December 27, 2023, the District
5 rejected the claim. (*Id.*, ¶ 9.) On June 25, 2024, Plaintiff filed the present class action seeking refunds
6 of the Water Supply Charges paid from December 1, 2022 forward. (*Id.*, ¶ 10.) On July 19, 2024,
7 the Parties stipulated to stay this Action until the Sixth District decided the appeal of the 2021
8 Action. (*Id.*, ¶ 11.) Following the remittitur, on January 17, 2025, the District filed its Answer
9 generally denying the allegations and asserting numerous defenses. (*Id.*, ¶ 12.)

10 **III. Settlement Negotiations**

11 With the appeal of the 2021 Action complete and this Court’s judgment affirmed, in October
12 2024, the parties began discussing resolution of the various matters involving the Water Supply
13 Charge. (*Id.*, ¶ 13.) While Class Counsel was of the opinion that the substantive claims at the heart
14 of the present litigation would be decided in favor of Plaintiff and the Class, the District argued,
15 among other things, that the statute of limitations runs from when the District made the formal
16 decision to impose the Water Supply Charge each fiscal year. (*Id.* at ¶ 14.) If true, Plaintiff’s
17 December 1, 2023 government claim would only capture the imposition of the FY 23-24 Water
18 Supply Charges and not those collected in FY 22-23 because the decision to impose the FY 22-23
19 charges occurred in June 2022. (*Ibid.*)

20 The District also indicated that it intended to pursue a replacement Water Supply Charge.
21 (*Id.*, ¶ 15.) Indeed, on November 18, 2024, the District held a board meeting at which it discussed,
22 *inter alia*, the lost revenue from having discontinued the Water Supply Charge and that it “may seek
23 to replace some or all of the lost revenue with a new replacement fee.” (*Id.*, ¶ 15, Exhibit 3 [records
24 from 11/18/24 District board meeting].) At that meeting, the District Board voted 6-0 in favor of
25 hiring a rate consultant (*ibid.*), which is a common first step in a local agency’s implementation of
26 a new Proposition 218 charge. (*Id.*, ¶ 15.)

27 Against this backdrop, the parties negotiated the settlement, which culminated in the long
28

1 form settlement agreement attached. (See Littlefield Decl., Exhibit 1 (the “Settlement” or “SA”)).

2 THE SETTLEMENT

3 The Settlement calls for the Court to certify a Settlement Class defined as follows:

4 All County of Monterey property owners who paid the Water Supply Charge
5 authorized and established by Monterey Peninsula Water Management District
6 Ordinance No. 152 during the Class Period.

7 (SA at ¶ 42.) The Class Period is the period from December 1, 2022 through the date the Court
8 entered the Preliminary Approval Order (July 1, 2025). (Littlefield Decl., ¶¶ 2, [date of Preliminary
9 Approval Order], 10 [class period].) Expressly excluded from the Settlement Class are (a) all
10 persons who timely elect to be excluded from the Settlement Class, and (b) the judge(s) to whom
11 this case is assigned and any immediate family members thereof. (SA, ¶ 42.)

11 I. Monetary Relief

12 The Settlement requires the District to create a Settlement Fund for the benefit of the
13 Settlement Class in the amount of \$3,353,245. (SA, ¶ 43.) \$3,353,245 is the amount the District
14 collected as Water Supply Charges in FY 23-24 (which amount had been sequestered during the
15 pendency of the appeal). (Littlefield Decl., ¶ 16.) Administrative costs, attorneys’ fees and expenses,
16 and a service award to Plaintiff will be deducted from the Settlement Fund, creating a Net Settlement
17 Fund. (SA, ¶¶ 26, 43, 60.)

18 The amount of refunds to be received by each Class Member will be calculated by
19 determining the Net Settlement Fund and distributing that amount pro-rata to Class Members. (See
20 *id.*, ¶ 60.) By way of example, if the Court awards the Class Representative a \$5,000 service award,
21 Class Counsel 16.5% of the common fund as attorneys’ fees, actual litigation expenses not to exceed
22 \$7,500, and \$147,077 to the District for Administrative Expenses (fees and expenses are addressed
23 in the concurrently filed Plaintiff’s Motion for Attorney’s Fees, Reimbursement of Expenses and
24 Service Award (“Fee Motion”)), the net settlement fund would be \$2,640,382.58.

25 This amount would be distributed to each Class Member based on the total Water Supply
26 Charges a Class Member paid for FY 22-23 and 23-24 combined. (See SA, ¶ 60.) The total
27 collections by the District over those two years was \$6,747,590 (\$3,353,245 in FY 23-24 and

1 \$3,394,345 in FY 22-23). (Littlefield Decl., ¶ 16.) According to the District, a typical residential
2 Class Member paid approximately \$55.34 in Water Supply Charges in each of those two years. (See
3 the previously filed Declaration of Nishil Bali in Support of Motion for Preliminary Approval of
4 Class Action Settlement, ¶ 4.) Thus, the refund owed to this “typical” Class Member would be
5 \$43.41 (calculated as $((\$55.34 \times 2) \div \$6,747,590) \times \$2,640,382.58$).

6 **II. Forbearance**

7 The District agrees to forbear until June 30, 2026, from imposing, levying or collecting any
8 fees or charges that are subject to the procedures and restrictions provided in Proposition 218 unless
9 that fee or charge existed as of February 5, 2025. (SA, ¶ 63.) The Water Supply Charge was subject
10 to Proposition 218’s procedures and restrictions. Because the District did not wish to tie its hands
11 in the case of an unforeseen event or emergency, the parties agreed that should the District not
12 forbear, it would, as an alternate form of performance, pay a second refund totaling \$3,400,000. (*Id.*,
13 ¶ 6.) As of the submission of this Motion, the District has not passed an ordinance or resolution
14 seeking to impose a replacement charge.

15 Were the District to impose an exact replacement charge, Class Members would be obligated
16 to pay an additional \$55.34 during FY 25-26 that they will not be paying under the Settlement. It is
17 likely that District would seek much more than a replacement charge in light of inflation, other needs
18 it identified during the 2021 Action, and the fact the Water Supply Charge was enacted in 2012.
19 This brings a combined value of net-refunds and forbearance of at least \$98.65 that the typical Class
20 Member will actually receive, amounting to 89.1% of the Water Supply Charges paid since FY 22-
21 23.

22 **III. Limited Release of Claims**

23 If the Settlement becomes final, Settlement Class Members will release the District from all
24 claims, known or unknown, that were asserted or could have been asserted in the litigation. (SA, ¶¶
25 82-83.) The Released Claims⁴ are tied to “the allegations in the Litigation.” (*Ibid.*)

26 _____
27 ⁴ Any capitalized terms not defined herein, shall have the same meaning as set forth in the Settlement
28 (footnote continued)

1 **IV. Settlement Notices**

2 The parties agreed to administer the Settlement themselves. (SA, ¶ 71.) By July 29, 2025
3 (28 days after preliminary approval was granted), the District disseminated the Summary Notice to
4 30,831 Class Members. (Declaration of Nishil Bali in Support of Final Approval of Class Action
5 Settlement (“Bali Decl.”), filed herewith, ¶ 3.) The Summary Notice directed Class Members to a
6 website www.wsc-settlement.com where a Long Form Notice, the Settlement Agreement, the
7 Court’s preliminary approval order, and Class Counsel’s contact information were posted.
8 (Littlefield Decl., ¶ 19, Ex. 4 [copy of Long Form Notice].) The District has mailing addresses
9 for each parcel that paid the Water Supply Charge during the Class Period. To the extent any
10 notice could not be delivered to a Class Member at that address, either because the Class Member
11 moved or the purported address was unmailable, the District used Smarty Streets to search for
12 correct or forwarding addresses, if available. Smarty Streets is a United States Postal Service
13 CASS-Certified provider. (Bali Decl., ¶ 2.) 11 notices were returned with forwarding addresses
14 and those notices were re-mailed to the forwarding addresses. (*Id.*, ¶ 3.)

15 As of July 17, 2025, the settlement website www.wsc-settlement.com was live and remains
16 live as of the date of submission of this Motion. (Littlefield Decl., ¶ 19.) Once the Court enters an
17 Order fixing the attorneys’ fees and costs, enhancement award to Plaintiff, and administration
18 expenses, the District will be prepared to calculate individual refund amounts and to mail checks
19 pursuant to the Settlement Agreement. (Bali Decl., ¶ 4.) Upon the filing of the present Motion and
20 the concurrently filed Fee Motion, copies of the motions will be uploaded to the website. (Littlefield
21 Decl., ¶ 19.)

22 **V. Only 3 Class Members Opted-Out and ZERO Objected**

23 The Long Form Notice advised that the deadline to opt-out or object was October 14, 2025.
24 (Littlefield Decl., ¶ 19, Ex. 4; see also Preliminary Approval Order at ¶¶ 12 & 13 [fixing both opt-
25 out and objection deadlines at 60 days after notices were mailed].) A total of three putative class
26

27 Agreement.

28

1 members opted-out. (Littlefield Decl., ¶ 25.) The Proposed Final Order and Judgment submitted
2 herewith lists the opt-outs at Exhibit A.

3 In addition to the three opt-outs, counsel received one communication requesting that the
4 Class Member's contact information be updated. (Littlefield Decl., ¶ 26.) That information was
5 passed along to the District, who confirmed the update. (*Ibid.*) **Zero** Class Members objected to the
6 Settlement. (*Id.*, ¶ 27.)

7 **VI. Uncashed Funds and Cy Pres**

8 In Class Counsel's experience, some number of Class Members will fail to cash their
9 settlement checks and some Class Members will have moved and will not be able to be located
10 despite diligent efforts. (Littlefield Decl., ¶ 21.) To maximize the time Class Members have to cash
11 their refund checks, checks shall remain negotiable for one year after issuance. (SA, ¶ 61.) After
12 that year, the checks shall be void, and all funds remaining because of voided checks or because
13 Class Members could not be located shall be paid to the United Way Monterey Country for Cal-
14 Am's Hardship Benefit Program ("United Way").⁵ (*Ibid.*) United Way offers financial assistance to
15 qualified customers of Cal-Am. (See <https://www.unitedwaymcca.org/cal-am-water-partners-united-way-offer-financial-assistance-program>, last visited May 1, 2025.) Thus, no funds will revert
16 to the District. Note that because the District is as a public entity, Code of Civil Procedure section
17 384's reporting requirements do not apply. (See Code Civ. Proc. § 384(c).) Nonetheless, the District
18 will provide a verified statement to Class Counsel identifying the number of checks voided, total
19 dollar amount represented thereby, and total remittance amount to United Way. (SA, ¶ 61.)

21 **ARGUMENT**

22 **I. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and
23 Reasonable Compromise**

24 California courts favor settlement. (See *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d
25 231, 236.) Unlike most settlements, class action settlements involve a court approval process that exists

26
27 ⁵ Cal-Am (short for the California-American Water Company) is the company that provides water service
within the District's jurisdiction. (Littlefield Decl., ¶ 3.)

1 to prevent fraud, collusion, and unfairness to class members. (*Malibu Outrigger Bd. of Governors v.*
2 *Superior Court* (1980) 103 Cal.App.3d 573, 578-579.) For the reasons discussed below, this Court
3 should finally approve the Settlement and enter Judgment.

a. Class Action Settlements Are Subject to Review and Approval.

5 Any settlement of class litigation must be reviewed and approved by the presiding court. (Cal.
6 Rules Ct., rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a
7 subsequent (final) review after notice has been distributed to the class members. The Preliminary
8 Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks
9 *final approval* and the entry of Judgment.

b. The Settlement Is Reasonable

11 The proposed Settlement is reasonable. To evaluate a settlement, the trial court must receive
12 “basic information about the nature and magnitude of the claims in question and the basis for
13 concluding that the consideration being paid for the release of those claims represents a reasonable
14 compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133 (*Kullar*).) Here, the
15 District will refund an amount equal to FY 23-24 Water Supply Charge revenues and will forebear from
16 implementing a replacement charge for more than a year. Altogether, the Settlement provides 100% of
17 the value of the claims alleged in this litigation, half through refunds and half through forbearance.
18 Considering the value Settlement Class Members will receive, the strengths and weaknesses of
19 Plaintiff’s claims, the procedural posture, the risks of the litigation (including the risk of delay arising
20 from any potential appeal), and the fact that these same parties have already litigated – through appeal –
21 the underlying merits of these claims, the Settlement is reasonable.

22 Plaintiff's counsel has substantial experience prosecuting claims alleging the imposition of
23 illegal government fees and taxes. (Littlefield Decl., ¶ 22; Declaration of Eric J. Benink in Support of
24 Plaintiff's Motions for Attorney's Fees, Reimbursement of Expenses and Service Award and Final
25 Approval ("Benink Decl."), filed herewith, ¶ 5, Ex. 2.) While Plaintiff believes in the substantive merits
26 underlying the claim in this case, refund actions in this area are often fraught with complex and
27 uncertain procedural hurdles. (Littlefield Decl., ¶ 23; Benink Decl., ¶ 8.) The District's counsel is

1 highly-experienced in these types of actions and have a long track record of representing government
2 entities at all levels of litigation, including at the California Supreme Court. (Littlefield Decl., ¶ 23.) Any
3 potential defense could result in years of delays. (*Ibid.*) In addition, the District claims that the statute of
4 limitations runs from the date the Water Supply Charge is budgeted. (*Id.*, ¶ 14.) If the District is correct,
5 Class Members would not be entitled to recover any damages arising from the imposition of the Water
6 Supply Charge in FY 22-23. That is because the Water Supply Charge for that fiscal year was approved
7 in June 2022, more than a year before Plaintiff submitted his government claim on December 1, 2023.

8 Plaintiff's Counsel carefully balanced these risks against the immediate and substantial benefits
9 Settlement Class Members will receive from this Settlement. (Littlefield Decl., ¶ 23.) While Plaintiff
10 would have vigorously disputed the District's defenses, the risks posed and attendant delays cannot be
11 ignored when evaluating the appropriateness of the Settlement. More important, the Settlement provides
12 a 100% gross-value in light of the District's agreement to forbear.

13 **c. The Settlement is the Result of Arm's-Length Bargaining**

14 The proposed Settlement is entitled to a presumption of fairness because it was reached
15 following arm's length negotiations after fully litigating the 2021 Action through final judgment.
16 Indeed, counsel spent months negotiating the particulars of this Settlement. (Littlefield Decl., ¶¶ 23-24.)

17 **d. Plaintiff's Counsel Conducted Sufficient Investigation**

18 Given Plaintiff's Counsel's proven familiarity with the substantive issues from the 2021 Action
19 and their extensive experience in fee and tax related litigation and class actions (see Littlefield Decl., ¶¶
20 23-24; Benink Decl., ¶ 5), Plaintiff's Counsel is in an excellent position to judge the strengths and
21 weaknesses of Plaintiff's claims and the value and propriety of the proposed Settlement.

22 **e. Recommendation of Experienced Counsel Favors a Presumption of Fairness**

23 Plaintiff's Counsel, having considered and evaluated, among other things, the relevant legal
24 authorities and evidence to support the claims against the District, the fact that they had prevailed in
25 obtaining and defending the judgment in the 2021 Action, the risk, expense, and duration of continued
26 and protracted litigation here, have concluded that the proposed Settlement is fair, reasonable, and
27 adequate and in the best interest of the Settlement Class. (Littlefield Decl., ¶ 23; Benink Decl., ¶ 10;

1 *Dunk, supra*, 48 Cal.App.4th at p. 1802 [a presumption of fairness exists, among other factors, when
2 counsel is experienced in similar litigation].) Counsel’s experience supports their opinion.

3 **f. The Response of the Class**

4 The low opt-out percent and lack of objectors raise a presumption of fairness. (See *Dunk v. Ford*
5 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 (*Dunk*) [“[A] presumption of fairness exists where ... (4)
6 the percentage of objectors is small.”], citing Newberg on Class Actions at § 11.41, pp. 11-91; see also
7 *Kullar, supra*, 168 Cal.App.4th at p. 128 [same].) Only 0.01% of the Class opted-out and no one
8 objected. The Settlement is thus fair, adequate and reasonable.

9 **g. The District’s Administration Costs are Reasonable**

10 This Court has preliminarily approved the District’s anticipated \$147,077 in costs to administer
11 the Settlement. (See Preliminary Approval Order, ¶ 8.) According to the District, it remains on track to
12 administer the Settlement for the predicted administrative costs. (Compare Bali Decl., ¶ 4 [stating
13 District is on track] and the previously filed Declaration of Nishil Bali in Support of Motion for
14 Preliminary Approval of Class Action Settlement, ¶ 2 [providing breakdown of anticipated
15 administrative costs].) The administrative costs should be finally approved.

16 **II. Consistent with the Court’s Findings at the Time of Preliminary Approval, the Court
17 Should Certify the Class**

18 Under Code of Civil Procedure section 382, class certification is warranted so long as there is a
19 numerous and ascertainable class with a well-defined community of interest and that a “class action
20 proceeding is superior to other means for a fair and efficient adjudication of the litigation.” (See, e.g.,
21 *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332.)

22 “The certification question is ‘essentially a procedural one that does not ask whether an action is
23 legally or factually meritorious.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-440.) The
24 certification question asks whether the theory of recovery advanced by the plaintiff is likely to prove
25 amenable to class treatment. (See, e.g., *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298.)
26 Although certification requirements are intended “to protect the interests of the non-representative class
27 members,” that concern is “protected by the trial court’s fairness review of the settlement.” (*Dunk*,
28

1 *supra*, 48 Cal.App.4th at p. 1807, n. 19.) In view of these standards, ***as discussed more thoroughly as***
2 ***part of the preliminary approval motion***, the Settlement Class should be certified for settlement. Code
3 Civ. Proc. § 382; Cal. Rules Ct., rule 3.769(c).

4 California courts have expressed only two primary requirements for maintaining a class
5 action: (1) an ascertainable class, and (2) a well-defined community of interest among class
6 members. (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 (*Daar*); *B.W.I. Custom Kitchen v.*
7 *Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (*B.W.I.*)) “Reviewing courts consistently
8 look to the allegations of the complaint and the declarations of attorneys representing the plaintiff
9 class to resolve this question (citations omitted).” (*Richmond v. Dart Industries, Inc.*, (1981) 29
10 Cal.3d 462, 478 (*Richmond*).) The “community of interest” requirement embodies three factors:
11 (a) predominant common questions of law or fact; (b) class representatives with claims or defenses
12 typical of the class; and (c) class representatives who can adequately represent the class. (*Id.* at p.
13 470.) The elements of numerosity, typicality, adequacy, superiority, and the predominance of
14 common questions of law and fact have also been expressly adopted by the California Supreme
15 Court for use by trial courts in determining whether the requirements of certification under Code
16 of Civil Procedure section 382 have been met. (*Id.* at p. 473.) Class actions are utilized and
17 encouraged to preclude defendants from avoiding exposure for wrongdoing because individuals
18 may lack the sophistication, financial motivation, or resources to sue. (*Vasquez v. Superior Court*
19 (1971) 4 Cal.3d 800, 808.)

20 **a. The Settlement Class is Sufficiently Numerous**

21 Class certification is appropriate where the class contains so many members that joinder of
22 all would be impracticable. (Cal. Code Civ. Proc. § 382.) There are approximately 31,000 Class
23 Members here. (*See Richmond, supra*, 29 Cal.3d at p. 478 [finding that a proposed class that
24 numbers in the thousands makes joinder impractical].) Accordingly, the Settlement Class is
25 sufficiently numerous.

26 **b. The Settlement Class is Ascertainable**

27 A class is ascertainable where it is defined “in terms of objective characteristics and

1 common transactional facts' that make 'the ultimate identification of class members possible
2 when that identification becomes necessary.'" (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955,
3 961 [disapproving of the previous standard articulated by several courts of appeal], quoting and
4 citing with approval, *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 915.)
5 Here, the Settlement Class definition is objective, identifies all class members as property owners
6 who paid the Water Supply Charge during the Class Period, such that it is not only possible to
7 identify the class, but such members have already been identified from the District's business
8 records. (See the previously filed Declaration of Nishil Bali in Support of Motion for Preliminary
9 Approval of Class Action Settlement, ¶ 3.)

10 **c. Common Issues of Law and Fact Predominate Over Individual Issues**

11 A community of interest exists among class members when common questions
12 predominate over individualized questions. (*Brown v. Regents of University of California* (1984)
13 151 Cal.App.3d 982, 988; *Daar*, 67 Cal.2d at p. 711.) Here, common questions include whether
14 Plaintiff and Class members are entitled to a refund and whether the District's statute of
15 limitations defense will prevail. Accordingly, the Settlement Class satisfies the community of
16 interest requirement.

17 **d. Plaintiff's Claims Are Typical of the Claims of all Class Members**

18 Typicality requires only that the proposed class representative's interests be significantly
19 like those of absent class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47; *B.W.I.*,
20 *supra*, 191 Cal.App.3d at p. 1347; *Daniels v. Centennial Group, Inc.* (1983) 16 Cal.App.4th 467,
21 473 (*Daniels*); *City of San Diego v. Haas* (2012) 207 Cal.App.4th 472, 501.) The claims of each
22 class member need not be identical. (*Daniels*, at p. 473.) Here, Plaintiff's right to a refund is
23 exactly the same as the rights of class members and thus, his claims are typical.

24 **e. Plaintiff Will Fairly and Adequately Protect Settlement Class Interests**

25 To fairly and adequately protect the interests of absent class members of a proposed class,
26 a plaintiff must (a) be represented by counsel qualified to conduct the litigation, and (b) not have
27 interests that are antagonistic to those of the settlement class. (*McGee v. Bank of America* (1976)

1 60 Cal.App.3d 442, 450.)

2 Plaintiff's Counsel easily satisfy the adequacy requirement and should be appointed Class
3 Counsel. In retaining Prescott W. Littlefield of Kearney Littlefield, LLP, and Eric J. Benink of
4 Benink & Slavens, LLP, Plaintiff has employed counsel who are ““qualified, experienced and
5 able to vigorously conduct the proposed litigation on behalf of the class.”” (*In re Quintus Secs.*
6 *Litig.*, (N.D. Cal. 2001) 148 F. Supp. 2d 967, 972; Littlefield Decl., ¶¶ 23-24; Benink Decl., ¶ 5,
7 Ex. 2.) Class Counsel submit that this Court is aware of their qualifications, given this Court’s
8 experience in the 2021 Action.

9 Moreover, Plaintiff has no interests that are antagonistic to the interests of the proposed
10 Settlement Class. (See the previously filed Declaration of Richards J. Heuer III in Support of
11 Motion for Preliminary Approval of Class Action Settlement, ¶ 7.) In fact, to the contrary,
12 Plaintiff’s interests are directly aligned with the interests of members of the proposed Settlement
13 Class as they all paid the dual charges. (*Id.*, ¶ 5.) He is unaware of any conflicts between him and
14 other class members. (*Id.*, ¶ 7.) He understands his obligation as a class representative and is
15 prepared to meet his responsibilities as such. (*Ibid.*)

16 **f. A Class Action is Superior to Other Methods of Adjudication**

17 As previously noted, the express judicial policy of California is to favor the maintenance of
18 class actions. (*Richmond*, 29 Cal.3d at p. 462; *La Sala v. American Sav. & Loan Assn.*, (1971) 5
19 Cal.3d 864, 883). A class action is plainly superior to the other methods available for the fair and
20 efficient adjudication of this controversy. (See, e.g., *Reyes v. San Diego County Bd. of*
21 *Supervisors* (1987) 196 Cal.App.3d 1263, 1270.) The class action device is particularly
22 appropriate when numerous parties suffer injury in small amounts, because individual lawsuits
23 would be uneconomical, and the wrongdoer might otherwise escape liability. (*Daar, supra*, 67
24 Cal.2d at p. 715 [class action allowed to recover taxicab fare overcharges averaging no more than
25 a few dollars per customer].) Here, the individual Settlement Class members have incurred
26 relatively small damages; the typical residential Class Member paid \$110.68 in Water Supply
27 Charges over the two years at issue. (See the previously filed Declaration of Nishil Bali in Support
28

1 of Motion for Preliminary Approval of Class Action Settlement, ¶ 4.) Thus, it would not be
2 economical for class members to pursue their individual claims against the District because the
3 litigation costs would greatly exceed the potential recovery. Additionally, the courts of this state
4 have consistently strived to remove unnecessary barriers to the effective utilization of class action
5 procedures. (*Union Carbide Corp. v. Superior Court* (1984) 36 Cal.3d 15, 21-22.) Meaningful
6 access to the court system and the deterrence of unfair and illegal conduct underlie the superiority
7 of class litigation. (*Daar, supra*, 67 Cal.2d at p. 715; *In Re Tobacco II Cases* (2009) 46 Cal.4th
8 298, 314.) Accordingly, a class action in this instance is superior to other available methods of
9 resolution.

10 **CONCLUSION**

11 The Class meets the requirements for certification; the Settlement bears all requisite indicia of
12 fairness, reasonableness, and adequacy; and the notice procedure and forms complied with rule 3.766
13 and Due Process. Plaintiff respectfully requests that the Court grant this Motion for Final Approval.

14
15 **KEARNEY LITTLEFIELD, LLP**

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17 DATED: November 21, 2025

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