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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ADAM HOFFMAN, and SAMUEL JASON, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

CITY OF LOS ANGELES,

Defendant.

Case No. BC672326

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION OF JONATHAN M. ROTTER CONCURRENTLY FILED HEREWITH

Judge Stuart M. Rice

Date of Hearing: December 20, 2023
Time: 10:30 a.m.
Dept: SSC-1
Action Filed: August 15, 2017

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I. INTRODUCTION[1]

Plaintiffs Adam Hoffman and Samuel Jason respectfully request that the Court finally approve this Settlement, which achieves an excellent result for the Class. Together, as of the final approval hearing, the monetary and injunctive benefits of the Settlement provide a ***minimum*** value of approximately $74.6 million to the Class, as the new DWCF methodology has already been implemented, resulting in an estimated $11.4 million in savings for the 2022-2023 fiscal year and ongoing savings for the 2023-2024 fiscal year. The Parties have complied with the Court's June 12, 2023, Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order"), and the reaction of the Class has been overwhelmingly positive. Notice was successfully disseminated to 99% of the 795,846 potential Settlement Class Members, and only three people requested exclusion and one person objected.

The overwhelming support for the Settlement is unsurprising given that the non-reversionary $57.5 million Settlement Fund recovers approximately 82% of all alleged overpayments, and the significant non-monetary remedial relief achieved by the Settlement will prevent residential sewer service overcharges into the future. In addition to changing the DWCF methodology to prevent sewer service overcharges into the future, the Settlement provides significant additional injunctive relief.

The Settlement provides comprehensive, significant, and immediate benefits to the Class, and is an outstanding result, particularly given the serious and numerous risks and delay of continued litigation. The Court should grant final approval of the Settlement.

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[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the First Amended Class Action Settlement Agreement and Stipulation dated May 30, 2023 ("Stipulation"), attached as Ex. 1 to the Supplemental Declaration of Jonathan M. Rotter in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Supp. Rotter Decl."), filed on May 30, 2023.

Unless otherwise indicated, all internal citations and quotations are omitted, and "¶_" references are to the Declaration of Jonathan M. Rotter in Support of: (1) Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement; and (2) Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses and Class Representative Service Awards ("Rotter Declaration," or "Rotter Decl.").

II. SUMMARY OF THE LITIGATION

The Rotter Declaration is an integral part of this submission. For the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the procedural and factual history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation. ¶¶2-24.[2]

III. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT

Pursuant to Cal. Rule of Ct. 3.769, the review and approval of a class action settlement consists of three steps: (1) preliminary approval of the proposed settlement after submission of a written motion; (2) dissemination of notice of the settlement to all class members; and (3) a final settlement approval hearing, where evidence and argument concerning the fairness, adequacy, and the reasonableness of the settlement can be presented and class members can be heard. "The trial court possesses a broad discretion to determine the fairness of the settlement." *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. In considering the approval of a settlement, a court does not "have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute." *Id.*

A. The Settlement Is Entitled To A Presumption Of Fairness

"[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *7-Eleven Owners,* 85 Cal.App.4th at 1146.

1. The Settlement Was The Result Of Arm's-Length Negotiations

In assessing whether a settlement was the result of arm's-length bargaining, a court "undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator[.]" *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th

[2] Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses and Class Representative Service Awards ("Fee Motion") addresses the following items on the LASC Final Approval of Class Action Settlement Checklist: "ATTORNEY FEES," "COSTS," and "INCENTIVE PAYMENTS." To avoid repeating the same information here, Plaintiffs respectfully refer the Court to the Fee Motion with respect to those items.

116, 129. After nearly six and a half years of litigation, which included extensive discovery, two demurrers, summary judgment, a multi-day bench trial, and the assistance of an experienced mediator, the Court should have no doubt that the Settlement was the result of arm's-length negotiations between experienced counsel. ¶¶2-15.

After Plaintiffs prevailed on their claims regarding the lawfulness of the DWCF and Prop. 218's procedural requirements at trial, and after significant additional discovery had been conducted on Plaintiffs' remaining claims, on January 31, 2022, the Parties participated in a full day of mediation before the Hon. Charles McCoy, Jr. (Ret.) of JAMS, former Presiding Judge of the Los Angeles Superior Court and founder and Supervising Judge of the Complex Litigation Courts in Los Angeles. ¶14. Judge McCoy is a highly respected mediator with substantial experience mediating complex cases. *Id.* The Parties did not reach an agreement at mediation, but continued to negotiate with the assistance of Judge McCoy throughout February and March of 2022, and reached an agreement in principle to settle the Action on April 13, 2022. ¶15. Thereafter, the Parties negotiated the long-form settlement agreement, and exhibits. *Id.*; *see Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802-03 (court properly approved settlement where "[t]he case was over three years old when it settled. Extensive discovery and pretrial litigation, including a demurrer and motion for summary judgment, had been conducted …. The independent mediator … with substantial experience … recommended the settlement.").

2. The Parties Have Conducted Sufficient Investigation And Discovery

The Parties conducted significant investigation and discovery in the Action. Before the Phase 1 trial, Plaintiffs took seven depositions of Defendant's current and former employees involved in setting the DWCF; served and obtained responses to eleven sets of requests for production plus a supplemental request; served and obtained responses to four sets of interrogatories; served and obtained responses to two sets of requests for admission; obtained through production, investigation, and Public Records Act requests approximately 1.8 million pages of documents; and responded to two sets of requests for production, two sets of form interrogatories, one set of special interrogatories and two sets of requests for admission propounded by Defendant. ¶10; *see Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52-53 (court approved settlement where "extensive" discovery, which included "written discovery,

document production, and depositions of key Netflix employees[]", had been conducted). Plaintiffs also retained an expert with over four decades of experience in hydrology and environmental engineering to assist in analyzing the City's DWCF methodology, reviewing the evidence obtained in discovery, and to design an appropriate methodology of calculating the DWCF. ¶10.

Following trial, and until the Parties reached a settlement in principle in April 2022, the Parties continued to engage in discovery on Plaintiffs' claims for violations of Prop. 218's substantive requirements. ¶¶12-13. During this time, Plaintiffs took the depositions of four individuals designated by the City as its persons most knowledgeable on a variety of topics and obtained thousands of additional pages of documents from the City. *Id.* Plaintiffs also retained accounting experts to assist in the review of the highly technical financial evidence obtained in discovery on these claims. *Id.*

In connection with the Parties' mediation, the Parties extensively briefed issues regarding class certification and damages. ¶15. They exchanged briefs, and provided their positions to the mediator, who assisted the Parties in debating the strengths and weaknesses of their respective positions. *Id*. In sum, the Parties conducted sufficient discovery and investigation to "allow counsel and the court to act intelligently." *See Dunk,* 48 Cal.App.4th at 1802.

3. Plaintiffs' Counsel Is Experienced In Similar Litigation

As detailed in the Rotter Decl., Ex. 7-C, Plaintiffs' Counsel ("GPM") have extensive experience litigating class actions and other complex matters in state and federal courts throughout the country and have recovered billions of dollars for injured consumers, shareholders, and employees.

B. <u>The Settlement Is Fair, Reasonable, And Adequate</u>

In evaluating the reasonableness of a settlement, a court should consider "the strength of plaintiffs' 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." *Kullar*, 168 Cal.App.4th at 128.

1. The Strength Of Plaintiffs' Case Balanced Against The Amount Offered In Settlement Favors Approval

In assessing this factor, the Court is to assess whether the relief offered is reasonable in light of Plaintiffs' case. *See Kullar,* 168 Cal.App.4th at 129. The Settlement provides substantial monetary and non-monetary remedial relief to the Class.

The Value of the Monetary Relief: Assuming the Class prevailed on all its monetary claims, the Court certified the Class as requested, and the Court fully accepted Plaintiffs' damages theory, the total damages, based on data disclosed in the LADWP 2020 Urban Water Management Plan, would be $70.5 million. ¶26. Under these circumstances, the $57.5 Settlement Amount equates to a recovery of approximately 82%. *Id.* Plaintiffs' Counsel cannot provide individual figures for each specific Class Member's monetary recovery because the benefits depend on a number of factors, such as the years in which the Class Member was an LADWP sewer service customer, the amount of sewer service charges paid (which was also the primary factor in the amount of damages experienced by each Class Member), the amount of attorneys' fees and litigation expenses awarded by the Court, and the pro rata nature of the distribution. *See* Nordskog Decl., ¶27. Based on the Claims Administrator's preliminary review of the overcharges of Current Customer Class Members and valid claims submitted by Former Customer Class Members, the estimated average gross monetary recovery to each Class Member before any deductions for attorney's fees, reimbursement of expenses and any tax liability associated with the fund is $107. *Id*. Plaintiffs' Counsel will provide updated figures in their reply brief after the Claims Administrator has processed the claims.

The Value of the Non-Monetary Relief: As a result of this Action, the City also agreed to change the way that it determines the DWCF. ¶28. Accordingly, starting in the 2022-2023 fiscal year, the City began implementing a methodology based on the model used by Plaintiffs' expert at trial. *Id.* This new methodology will prevent DWCF overcharges in the future and constitutes a 100% recovery rate from FY 2022-2023 forward that, based on historical charges within the Settlement Class period, averages $11.4 million per year. ¶¶28, 30. Together, as of the final approval hearing, the monetary and injunctive benefits of the Settlement provide a *minimum* value of approximately $74.6 million to the

Class, as the new DWCF methodology has already been implemented, resulting in an estimated $11.4 million in savings for the 2022-2023 fiscal year and ongoing savings for the 2023-2024 fiscal year. ¶30.

Additionally, the City has agreed to abide by specific timelines for returning related costs overpayments to the SCM Fund. ¶29. The City will perform the related costs reconciliation and return any monies due under the reconciliation to the SCM Fund as soon as reasonably practicable after the close of each fiscal year. *Id.* The reconciliation will be performed for all departments receiving over $2 million annually in related costs from the SCM Fund. *Id.* The City will include pension contributions in the overpayment reconciliation and ensure that rebates from the Los Angeles City Employees Retirement System are allocated back to the SCM Fund in proportion to the SCM Fund's pension contribution expenditures. *Id.* For each of the three fiscal years following the Effective Date of the Settlement, the City will provide a declaration under penalty of perjury at the end of each fiscal year to Plaintiffs' Counsel, by no later than January 31, confirming that it has complied with each of the provisions of the Non-Monetary Remedial Relief. *Id.*

2. The Risks, Expenses, Complexity, And Duration Of Further Litigation

The Court is to balance the benefits of the Settlement against the risks, expense, complexity and duration of further litigation. *See 7-Eleven Owners*, 85 Cal.App.4th at 1152. While Plaintiffs and their counsel strongly believe in the merits of their case, they also recognize the inherent, significant risks of continued litigation and recognize the benefits of the Class receiving a benefit promptly as opposed to risking an unfavorable decision on class certification, at further phases of trial, or on an appeal that could take years to resolve.

There are significant risks inherent in bringing cases against governmental entities, such as the City. *See, e.g., Jordan v. California Dept. of Motor Vehicles* (1999) 75 Cal.App.4th 449 (affirming finding that smog impact fee violated the commerce clause, but reversing order that required DMV to file refund claims on behalf of victims of unconstitutional fee, thereby depriving the majority of payers the opportunity for a refund); *McCabe v. Snyder* (1999) 75 Cal.App.4th 337 (denying plaintiff access to names and addresses of payors of unconstitutional DMV fee so that she could file a class refund claim on their behalf and, among other things, prevent the tolling of the statute of limitations); *Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 442-43 (affirming decision vacating

arbitration attorneys' fee award following commerce clause violation on public policy grounds despite agreement with the DMV that provided "This award shall be binding on all parties, and there is no right of appeal, collateral attack, or other review."). In the *Woosley v. State of California* litigation, what started as a seemingly straightforward class action case against the DMV for a refund of vehicle fees spawned over three decades of litigation, and after plaintiffs' counsel expended more than 25,000 hours on the case, finally resulted in the DMV issuing refunds to class members. *See* Gordon Dillow, *32-year DMV battle finally ends*, ORANGE COUNTY REGISTER, June 17, 2008, https://www.ocregister.com/2008/06/17/32-year-dmv-battle-finally-ends/ (Rotter Decl., Ex. 4). And, as indicated in a subsequent unpublished opinion in the *Woosley* matter, the State of California contested attorney's fees for more than a dozen years. *See Woosley v. State* (Cal. Ct. App., Apr. 24, 2017, No. B261454) 2017 WL 1437287, at *1 ("In this appeal, we again take up issues presented by litigation that has persevered for nearly 40 years.").

While Plaintiffs prevailed at the first phase of trial on the issues of the lawfulness of the DWCF under the LAMC/Rules & Regs. and Prop. 218's procedural requirements, the City asserted that the Court's ruling in favor of Plaintiffs was vulnerable on appeal on multiple grounds, including that the DWCF was not a "fee" or "charge" pursuant to Prop. 218. ¶21. Without settlement, there was a risk that the City would have appealed the Court's ruling on the first phase of trial, and the outcome of any appeal would have been uncertain and could have taken years to resolve. *Id.*

Further, while Plaintiffs believed they had strong support for their claims for violations of Prop. 218's substantive requirements, the City would have continued to take the position that it did not engage in such violations and that Plaintiffs' claims were barred for failure to comply with the Government Claims Act. ¶22. While the outcome of the second phase of trial and potential appeals on these issues was uncertain, there can be no doubt that continued litigation would have been time consuming, complex, and costly.

Plaintiffs' Counsel also bore the risk that no recovery would be achieved. From the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever. Plaintiffs' Counsel know from personal experience that despite the most vigorous and competent of

efforts, success in contingent litigation is never assured. For example, GPM lost a six-week antitrust jury trial in the Northern District of California after five years of litigation, which included many overseas depositions, the expenditure of millions of dollars of attorney and paralegal time, and the expenditure of more than a million dollars in hard costs. *See In re: Korean Ramen Antitrust Litigation*, Case No. 3:13-cv-04115 (N.D. Cal.); ¶24. In a securities fraud class action GPM filed in 2016, GPM conducted extensive motion practice and discovery for several years, including expert discovery involving computer programing and large dataset analysis; the court denied class certification in 2021, which GPM appealed unsuccessfully, and then GPM lost on a renewed motion for class certification; the case ultimately closed in 2023. *See Crago v. Charles Schwab & Co., Inc.*, Case No. 3:16-cv-03938-RS (N.D. Cal.); ¶24. GPM also litigated a securities class action in the Southern District of New York for approximately five years, and after surviving a motion to dismiss, successfully obtaining class certification and undertaking significant discovery efforts, which included depositions throughout the U.S. and in the U.K. and substantial document review, summary judgment was entered for defendants, and the judgment was affirmed on alternative grounds on appeal to the Second Circuit. *Gross v. GFI Grp., Inc.* (2d Cir. 2019) 784 F. App'x 27, 29; ¶24. Put another way, complex litigation is uncertain, and success in cases like this one is never guaranteed.

3. The Risks Of Achieving And Maintaining Class Action Status

Absent settlement, Defendant would have opposed class certification on the ground that Health & Saf. Code § 5472 barred Plaintiffs from recovering class-wide monetary damages. Specifically, the City maintained that to obtain a refund of sewer fees, a fee payer must follow the procedures under Health & Saf. Code § 5472, which require a challenger to individually pay the fees under protest before initiating a lawsuit, and as such, Plaintiffs could not seek refunds on behalf of a class of other residential sewer customers. ¶23. California courts have reached different conclusions on similar questions regarding class-wide refunds on utility overcharges, with some concluding that Health & Saf. Code § 5472 bars class-wide refunds for overcharges. *See, e.g., Los Altos Golf and Country Club v. Cnty. Of Santa Clara* (2008) 165 Cal.App.4th 198, 205 (sustaining, based on Health & Saf. Code § 5472, demurrer to sewer charge refund class action); *cf. Cnty. of Los Angeles v. Super. Ct.* (2008) 159

Cal.App.4th 353, 357 (in case not involving Health & Saf. Code § 5472 declining "to follow overbroad language in other Court of Appeal opinions stating that class action claims are not allowed in any tax refund litigation.").

And in fact, in two recent cases decided after settlement was reached here, Defendant ***won*** the argument that Health & Saf. Code § 5472 barred Plaintiffs from recovering class-wide monetary damages. *Mollner v. City of Los Angeles*, No. 22STCV32888, slip op. (Los Angeles Cnty. Sup. Ct. Aug. 29, 2023) (¶23); *Dreher v. City of Los Angeles Dept. of Water and Power*, No. 19STCV07272, slip op. at p.61 (Los Angeles Super. Ct. Mar. 17, 2023) (¶23). As shown by the City's subsequent victory in those other cases, Defendant's class certification arguments were serious, and if they had prevailed, Plaintiffs and the Class might have recovered far less, or nothing at all. *Id.* As such, there was a very real risk that absent settlement, Plaintiffs would not have been able to recover monetary damages on a class-wide basis. Further, even if Plaintiffs had succeeded in certifying a class, there is always a risk of decertification. *See, e.g., In re Omnivision Tech., Inc.* (N.D. Cal. 2008) 559 F. Supp. 2d 1036, 1041 (even if a class is certified, "there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class.").[3]

In light of the risks of continued litigation—including the risks that Plaintiffs would not be able to recover monetary relief on a class-wide basis—the Settlement is fair, reasonable, adequate, and represents an excellent result.

4. The Extent Of Discovery And Stage Of Proceedings

The Settlement was reached only after the Parties conducted an extensive amount of discovery, and following several pleading challenges, summary judgment, and a bench trial (¶¶2-13). Accordingly, this factor supports final approval.

[3] "California courts may look to federal authority for guidance on matters involving class action procedures. 'When there is no relevant California precedent on point regarding attorney fees in class actions, federal precedent should be consulted.'" *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1392 n.18 (cleaned up) quoting *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 38.

5. The Experience And Views Of Counsel Further Support Settlement

Plaintiffs' Counsel has extensive complex litigation experience (*see* Rotter Decl., Ex. 7-C). Likewise, Defendant's Counsel has considerable experience defending class action cases brought against governmental agencies and entities for alleged utility overcharges and improper taxes. That the Settlement was negotiated by experienced counsel with a well-developed understanding of the strengths and weaknesses of the Action gained from almost six and a half years of hard-fought litigation weighs in favor of final approval. *See Chavez,* 162 Cal.App.4th at 53 (that class counsel and defendant's counsel "both had substantial experience litigating consumer class actions and other complex cases[]" supported approval).

6. Presence Of A Governmental Participant

Defendant in this case is a governmental entity, which also weighs in favor of approval. *See Kullar,* 168 Cal.App.4th at 128.

IV. THE SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

The Court's Preliminary Approval Order certified the Settlement Class for settlement purposes only under Cal. Code of Civ. Proc. § 382 and Cal. Rules of Ct. 3.765 and 3.769. There have been no changes to alter the propriety of class certification for settlement purposes. Thus, for the reasons stated in Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Plaintiffs respectfully request that the Court affirm its determinations in the Preliminary Approval Order certifying the Settlement Class under Cal. Code of Civ. Proc. § 382 and Cal. Rules of Ct. 3.765 and 3.769.

V. THE NOTICE PROGRAM SATISFIES DUE PROCESS AND WAS EXECUTED IN ACCORDANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER

Due process requires that reasonable notice of the settlement be given to all potential class members. *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 177. Here, the notice program[4] satisfied due process, complied with the requirements of Cal. Rule of Ct. 3.766(d), and complied with the Court's Preliminary Approval Order.

[4] Stipulation, ¶¶21-22; Declaration of Eric Nordskog Regarding Notice Plan, ¶¶7-14 (attached as Ex. 3 to the Declaration of Jonathan M. Rotter in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement).

Notice was conveyed through a broad, multi-layered, multimedia program. The Court's Preliminary Approval Order (¶7) set forth the procedure and date by which Class Members could opt-out of the Settlement or object to the Settlement or the Fee Motion. This information was provided to Class Members via the Notice and is posted on the case specific settlement website (www.lasewerchargesettlement.com (the "Settlement Website")). Rotter Decl., Ex. 1 ("Nordskog Decl."), ¶13. The opt-out date and an explanation of how to get additional information on requesting exclusion or objecting is also contained in the Postcard Notice and Email Notice that were disseminated in accordance with the Court-approved Notice Plan. *See* Nordskog Decl., ¶¶6-7. As such, the Settlement meets the requirement for reasonable notice in order to obtain final approval. Once granted by the Court, notice of final judgment will be given to the Settlement Class via an update to the Settlement Website. Nordskog Decl., ¶31. A banner update will be posted prominently on the home page of the site and the order will be posted to the Court documents section of the site for review. *Id.*

At the time of preliminary approval, records from the City indicated that the Class consisted of an estimated 715,000 members. Supp. Rotter Decl., ¶5. Subsequently, on July 3, 2023, the City produced a data file to the Claims Administrator which contained the contact information for 795,846 prospective Settlement Class Members. Nordskog Decl., ¶4. The Claims Administrator successfully disseminated notice to 99% of the potential Settlement Class Members. Nordskog Decl., ¶11. 527,594, or approximately 66%, of the 795,846 potential Settlement Class Members are Current Customer Class Members who did not have to submit claims or take any action to qualify for a payment because the City already has their contact information and checks will be mailed to them. Nordskog Decl., ¶¶5, 21. 268,252, or approximately 34%, of the 795,846 potential Settlement Class Members are Former Customer Class Members who were required to submit Claim Forms because the City does not have their contact information, their current addresses need to be confirmed, and certain information is needed to prevent fraud. *Id.,* ¶¶5, 22.

To encourage as high a rate of claim submission as possible, the initial claims filing deadline was extended by over a month, from September 24, 2023, to October 31, 2023. Nordskog Decl., ¶23. Further, during the week of October 17, 2023, through October 23, 2023, the Claims Administrator

caused over 4 million impressions to be delivered to targeted Spanish-speaking populations in the City through various digital ads. Nordskog Decl., ¶12. Of the 268,252 Former Customer Class Members, to date, 9,759 have submitted a claim form, which represents a 3.6% claims rate. Nordskog Decl., ¶24. Among other possible reasons, the transient nature of the Former Customer Class Members, and the fact that many Former Customer Class Members' contact information was from as long ago as 2016, may have resulted in fewer Former Customer Class Members being reachable or responsive. *Id.* Still, the claims rate for the Former Customer Class Members is in line with claims rates commonly approved in consumer class actions and is within the range of what the Claims Administrator has experienced in other consumer cases. *See id.*; *Munday v. Navy Fed. Credit Union* (C.D. Cal. Sept. 15, 2016) 2016 WL 7655807, at *8 n.1 ("The prevailing rule of thumb with respect to consumer class actions is [a claims rate of] 3-5 percent."). Indeed, "[c]ourts around the country have approved settlements where the claims rate was less than one percent." *See Pollard v. Remington Arms Co., LLC* (W.D. Mo. 2017) 320 F.R.D. 198, 214, aff'd (8th Cir. 2018) 896 F.3d 900 (citing cases and finally approving settlement of consumer class action where claims rate was less than 1%); *In re Apple iPhone 4 Products Liability Litig.* (N.D. Cal., Aug. 10, 2012, No. 5:10-MD-2188 RMW) 2012 WL 3283432, at *1 (finally approving consumer class action settlement with claims rate between 0.16% and 0.28% of the class).

VI. THE POSITIVE REACTION OF THE CLASS SUPPORTS FINAL APPROVAL

The objection and opt-out deadline is November 29, 2023. Nordskog Decl., ¶17. As of the date of this filing, there has only been one objection and three requests for exclusion. *Id.* The miniscule percentage of Class Members objecting (0.000001%) indicates overwhelming support for the Settlement and strongly favors its approval. *7-Eleven Owners,* 85 Cal.App.4th at 1152-53 (one factors that "lead[s] to a presumption the settlement was fair" is that only "a small percentage of objectors" come forward; 9 objections out of 5,454 noticed class members represented "overwhelming positive" response); *Nat'l Rural Teleocmms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 529 ("It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.");

4 NEWBERG ON CLASS ACTIONS, § 11:48 ("Courts have taken the position that one indication of the fairness of a settlement is the lack or small number of objections [citations omitted]").

VII. THE ONE OBJECTION IS WITHOUT MERIT AND SHOULD BE OVERRULED

The sole objection as of the date of this filing (Rotter Decl., Ex. 1-G) was made by an individual named Steven Littaua. Mr. Littaua objects on the grounds that Class Members cannot estimate their Distribution Amount upfront and that Authorized Claimants whose Distribution Amount is less than $10 will not receive a payment. *Id.* While Plaintiffs' Counsel appreciate the objector's thoughts, the objection is meritless and should be overruled.

With respect to the objector's criticism that Class Members cannot estimate their Distribution Amounts upfront, "it is not at all unusual for class members not to know the amounts they will be receiving until after final approval." *See In re Sprint Corp. ERISA Litig.* (D. Kan. 2006) 443 F.Supp.2d 1249, 1262. Where the notice provided to the class sets forth the formula by which class member awards will be calculated, such as the Notice here did, such objections should be overruled. *See id.* ("Notice provided to the class is adequate where it sets forth the formula for distributing the settlement fund among the class members."); *Nat'l Treasury Employees Union v. U.S.* (Fed. Cl. 2002) 54 Fed.Cl. 791, 806 ("Here, the notice provided to the class was clearly adequate. It sets forth the aggregate amount to be paid to the class, the formula for distributing that amount among the class members, and the class members' due process rights."); *Jones v. Dominion Transmission, Inc.* (S.D.W. Va., Jan. 30, 2009, No. 2:06-CV-00671) 2009 WL 10705321, at *6 (approving settlement and overruling objection that class members "do not know the … dollar amount that is being considered" for their individual settlement awards). The fact that Settlement Class Members who paid more in Sewer Service Charges will receive larger refunds than those who paid less is inherent in the nature of a refund action, and is not a defect.

Further, with respect to the objector's criticism of the $10 minimum payment threshold, courts commonly approve minimum payment thresholds of $10 or more. Indeed, minimal payment thresholds benefit the Class as a whole by eliminating payments to claimants for whom the cost of processing claims, printing and mailing checks and related follow up would be disproportionate in relation to the value of their claim. *See* Nordskog Decl., ¶20; *see, e.g., Sullivan v. DB Investments, Inc.* (3d Cir. 2011)

667 F.3d 273, 328-30 (court did not abuse its discretion in finally approving class action settlement and overruling objections to minimum $10 claim payment); *In re Gilat Satellite Networks, Ltd.* (E.D.N.Y., Apr. 19, 2007, No. CV-02-1510 CPS) 2007 WL 1191048, at *9 ("*de minimus* thresholds for payable claims are beneficial to the class as a whole since they save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs and courts have frequently approved such thresholds, often at $10."); *Mehling v. New York Life Ins. Co.* (E.D. Pa. 2008) 248 F.R.D. 455, 463 (approving settlement plan with $50 minimum payment). And significantly, regardless of individual monetary recovery, ***all*** Class Members will benefit from the substantial non-monetary remedial benefits of the Settlement, which include a change to the DWCF calculation that will prevent overcharges to Class Members going forward and the timely return of funds to the SCM Fund. *See Sullivan,* 667 F.3d at 328-30 (overruling objections to minimum claim payment threshold and noting "the injunctive relief offered by the settlement … is intended to benefit all class members regardless of individual monetary recovery.").

VIII. ***CY PRES***

The proposed *cy pres* recipients Los Angeles Waterkeeper and Heal the Bay are appropriate because, as described in further detail in their respective declarations. *See* Rotter Decl., Exs. 8 & 9. Los Angeles Waterkeeper works to improve the City's wastewater collection system and Heal the Bay works to keep the coastal waters and watersheds in the Los Angeles area safe and healthy. *Id.* None of the Plaintiffs or their counsel have any interests or involvement in the governance or work of the *cy pres* recipients. *See* ¶56 and Rotter Decl., Exs. 2 at ¶12, 3 at ¶8, 10, 11, & 12.

IX. CONCLUSION

For all the forgoing reasons, Plaintiffs respectfully request the Court grant their motion.

DATED: November 15, 2023

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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On November 15, 2023, I served true and correct copies of the foregoing document, by posting the document electronically to One Legal File&Serve, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 15, 2023, at Los Angeles, California.

s/ Jonathan M. Rotter
Jonathan M. Rotter