

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 12/06/2019

TIME: 09:00:00 AM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Patricia Ashworth

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: M. Micone

CASE NO: **37-2015-00023413-CU-MC-CTL** CASE INIT.DATE: 07/14/2015

CASE TITLE: **Mark Coziahr vs Otay Water District [E-File]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Daniel Patz

CAUSAL DOCUMENT/DATE FILED: Motion - Other to define class period as commencing August 21 2014, 10/31/2019

APPEARANCES

Prior to calendar call, the City of San Diego submits on the Court's tentative ruling.

There are no appearances by any party.

The Court confirms the tentative ruling as follows:

TENTATIVE RULING

Plaintiffs Daniel Patz and Joan Mann Chesner's motion to define the class period as commencing August 21, 2014 is granted. The class shall be defined as "All single-family residential customers of the City San Diego who received water service after August 21, 2014."

As previously noted by the court in the August 16, 2018 minute order, plaintiffs are challenging a uniform policy both in this suit, and the severed action *Coziahr v. Otay Water District*. As to the declaratory relief cause of action, plaintiffs seeks a declaration the overall water rate structure operates as an illegal tax, fee, or charge in violation of article XIII D of the California Constitution and that the revenues defendant derives from its water rates exceed the funds required to provide the property related service, in violation of article XIII D, section 6, subdivision (b)(l).

Notwithstanding defendant's position that plaintiffs are challenging the rate of the increase, plaintiffs are primarily challenging the method of assessment. Similar to *Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, plaintiffs' fifth amended complaint ("5AC") alleges defendant imposed disproportionate fees for water service. (5AC, ¶¶23-24; 31, 37.) As the court stated in *Plantier*: Plaintiffs' complaint here turns on the substantive proportionality requirement of article XIII D, section 6, subdivision (b)(3), italicized above...

The proportionality requirement concerns the *method* used to allocate a property-related service's aggregate cost among fee payors. It is separate from an agency's obligation not to collect more revenue than necessary to provide that service to all identified parcels. (See art. XIII D, § 6, subd. (b)(1).) Plaintiffs' complaint here is that the EDU assignment method does not properly allocate costs among

parcels served. (*Id.* at 381–382, emphasis original.)

Like *Plantier*, "even if the District had considered the substance of plaintiffs' proportionality objection and concluded it had merit, the District would not have been able to address the matter in the context of the pending Proposition 218 hearing." (*Id.* at 384.) If a valid methodological challenge were raised, the most an agency could do is formulate a new fee proposal to resolve the challenge and initiate a Proposition 218 hearing to consider *that* proposal. (*Ibid.*)

Plaintiffs were not required to participate in the Proposition 218 hearing. The class period shall be one year prior to Patz filing his administrative claim. Accordingly, plaintiff's motion is granted.

Eddie C. Sturgeon

Judge Eddie C Sturgeon