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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**

20 PETER MOSES GUTIERREZ, JR.,
21 *et al.*,

22 Plaintiffs,

23 v.

24 AMPLIFY ENERGY CORP., *et al.*,

25 Defendants.

Case No. 8:21-CV-01628-DOC(JDEx)

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
PLANS OF DISTRIBUTION**

Date: September 14, 2023
Time: 8:30 a.m.
Judge: David O. Carter
Room: 10A

1 **I. INTRODUCTION**

2 Plaintiffs respectfully submit this supplemental memorandum in support of
3 the Plans of Distribution for the Fisher Class, Property Class, and Waterfront
4 Tourism Class. Dkts. 752, 760.

5 As described in Plaintiffs' opening memorandum in support of the Plans of
6 Distribution (Dkt. 760), each of the proposed Plans of Distribution should be
7 approved as fair, adequate, and reasonable. Following the Notice to the Classes, it is
8 clear that Class members overwhelmingly agree. There were no objections to any of
9 the Plans of Distributions. *See* Dkt. 773-2 ¶ 15. The lack of objections to the
10 proposed Settlement and Plans of Distribution indicates Class member support for
11 the Plans, which the Court should approve.

12 **II. ARGUMENT**

13 **A. The lack of objections to the Plans of Distribution strongly favors**
14 **their approval.**

15 “[T]he lack of objectors to the plan[s] of allocation” suggest that they are
16 “fair and adequate.” *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL
17 1594403, at *12 (C.D. Cal. June 10, 2005); *cf. In re Volkswagen “Clean Diesel”*
18 *Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL
19 2077847, at *3 (N.D. Cal. May 10, 2019) (“The small number of objections and opt
20 outs supports that the settlement and plan of allocation are fair, reasonable, and
21 adequate.”).

22 Here, there are no objections to the Plans, *see* Dkt. 773-2 ¶ 15, providing
23 strong evidence that they are fair and adequate.

24 **B. The Court will retain jurisdiction of the Plans of Distribution after**
25 **Settlement approval.**

26 Plaintiffs also note that under Rule 23, and the terms of the Settlement itself,
27 approval of the Settlement does not hinge on approval of the Plans of Distribution.
28 2 MCLAUGHLIN ON CLASS ACTIONS (16th ed.) § 6:23 (“[C]ourt approval of a
settlement as fair, reasonable and adequate is conceptually distinct from the

1 approval of a proposed plan of allocation . . . [and] courts frequently approve them
2 separately.”); MANUAL COMPLEX LITIGATION (4th ed.) § 21.312 (“Often . . . the
3 details of allocation and distribution are not established until after the settlement is
4 approved.”); *see also In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420
5 YGR (DMR), 2020 WL 7264559, at *25 (N.D. Cal. Dec. 10, 2020), *appeal*
6 *dismissed in part*, No. 21-15120, 2021 WL 6751856 (9th Cir. Dec. 17, 2021) (“The
7 Court has discretion to determine an appropriate plan of allocation without setting
8 aside its orders or judgments granting final approval of the settlements
9 themselves . . .”). That distinction is true here, where the Settlement Agreement
10 negotiated by the Parties affirms that the Settlement is separate from the Plan of
11 Distribution. Finally, because this Court retains jurisdiction over the Settlement
12 throughout the claims process (*see* Dkt. 773-1 at 5), approval of the Plans of
13 Distribution at this juncture does not prevent the Court from addressing issues with
14 individual claims as the process unfolds. *See In re Amgen Inc. Sec. Litig.*, No. CV
15 7-2536 PSG (PLAx), 2016 WL 10571773, at *6 (C.D. Cal. Oct. 25, 2016) (“[T]he
16 Court, by virtue of this Order, retains jurisdiction over the settlement and all
17 matters relating to the litigation. . . . These processes ensure that the Court will have
18 adequate oversight of the distribution process.”). Class Counsel and/or the
19 Settlement Administrator will continue to update the Court as needed during the
20 claims and distribution process, to support the Court’s ongoing oversight.

21 **III. CONCLUSION**

22 For the reasons stated above and in their initial memorandum in support of
23 the proposed Plans of Distribution, Plaintiffs respectfully request that the Court
24 grant their motion for approval of the Plans of Distribution as fair, adequate, and
25 reasonable.¹

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28 ¹ Plaintiffs have attached an updated proposed order to include the response of
Class members.

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Dated: August 28, 2023

Respectfully submitted,

/s/ Lexi J. Hazam

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

PETER MOSES GUTIERREZ, JR.,
et al.,

Plaintiffs,

v.

AMPLIFY ENERGY CORP., *et al.*,

Defendants.

Case No. 8:21-CV-01628-DOC(JDEx)

**[AM. PROPOSED] ORDER
GRANTING PLAINTIFFS' MOTION
FOR APPROVAL OF PLAINTIFFS'
PLANS OF DISTRIBUTION**

Date: September 14, 2023
Time: 8:30 a.m.
Judge: David O. Carter
Room: 10A

1 Plaintiffs have moved for an order approving the Plans of Distribution for the
2 Fisher Class (Dkt. 752-1), Property Class (Dkt. 752-2), and the Waterfront Tourism
3 Class (Dkt. 752-3). Upon due consideration of the motion and all of the papers,
4 pleadings and files in this action, and good cause appearing, the Court GRANTS
5 the motion.

6 As part of its review of a proposed settlement, the trial court should consider
7 “the effectiveness of any proposed method of distributing relief to the class,
8 including the method of processing class-member claims.” Fed. R. Civ. P.
9 23(e)(2)(C)(ii). Likewise, Rule 23(e)(2)(D) asks whether “the proposal [for
10 distribution among class members] treats class members equitably relative to each
11 other.” Relevant considerations may include “whether the apportionment of relief
12 among class members takes appropriate account of differences among their claims,
13 and whether the scope of the release may affect class members in different ways
14 that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm.
15 note.

16 Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds
17 in a class action under Fed. R. Civ. P. 23 is governed by the same standards of
18 review applicable to the settlement as a whole – the plan must be fair, reasonable,
19 and adequate.” *In re Illumina, Inc. Sec. Litig.*, No. 3:16-CV-3044-L-MSB, 2021
20 WL 1017295, at *4 (S.D. Cal. Mar. 17, 2021) (*citing Class Pls. v. City of Seattle*,
21 955 F.2d 1268, 1284–85 (9th Cir. 1992)). The plan “need only have a reasonable,
22 rational basis, particularly if recommended by experienced and competent class
23 counsel.” *Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC (CTX), 2008 WL
24 11338161, *9 (C.D. Cal. June 9, 2008) (citation omitted).

25 The Court has reviewed the Plans of Distribution and finds that they meet the
26 standards for approval. The Plans establish a simple and fair distribution process.
27 All identifiable Class Members that do not opt out will be sent a check, obviating
28 the need for a claims process entirely.

1 The Fisher Plan awards Class Members their pro rata share of the settlement,
2 and the Property Plan awards Class Members equal shares. The Waterfront Tourism
3 Plan awards pro rata shares to Class Members in business categories for which pro
4 rata shares of losses can be estimated. For Waterfront Tourism Class Members in
5 business categories for which pro rata shares cannot be reasonably estimated, the
6 Waterfront Tourism Plan awards equal shares of estimated losses for each of those
7 business categories. Distribution methods such as these are regularly approved as
8 fair and reasonable. *Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG (JEMX),
9 2018 WL 11358228, at *4 (C.D. Cal. Apr. 2, 2018) (approving payment of equal
10 shares for portion of settlement); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL
11 5159441, at *8 (N.D. Cal. Sept. 2, 2015) (approving payment based on “fractional
12 share[s]”); *Jenson*, 2008 WL 11338161, at *10 (approving distinctions in plan of
13 allocation as reasonably reflecting likelihood of recovery of subgroups within the
14 class); *In re Biolase, Inc. Sec. Litig.*, No. SA-CV-13-1300-JLS-FFMX, 2015 WL
15 12720318, at *5 (C.D. Cal. Oct. 13, 2015) (variable pro rata distribution plan based
16 upon relative injuries of class members approved).

17 No Class members objected to any of the Plans of Distribution. This response
18 speaks to the Class members’ support for the Plans of Distribution. *See In re*
19 *Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *12 (C.D. Cal.
20 June 10, 2005); *see also In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., &*
21 *Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *3 (N.D. Cal.
22 May 10, 2019).

23 This Court approved substantially similar Plans of Distribution in the
24 settlement with the Amplify defendants. *See* Dkt. 727 (order approving Amplify
25 Plans of Distribution); Dkt. 739-3 (Tr. of Apr. 24, 2023 Hr’g at 4:10-7:1)
26 (describing Amplify Plans of Distribution as “extraordinarily well-thought-out”).
27 No class members there—the exact same Class Members here—objected to the
28 Amplify Plans of Distribution. *Id.* at 3.

1 The two differences between the Plans of Distribution here and those
2 approved in the Amplify settlement both benefit Class Members: (a) no payments
3 will be offset by prior payments received under the Oil Pollution Act, and (b) no
4 Waterfront Tourism Class Members will need to submit claims to receive
5 payments. *See* Dkt. 752-3 (proposed Plan of Distribution for Waterfront Tourism
6 Class).

7 Accordingly, the Court finds that the Fisher, Property, and Waterfront
8 Tourism Plans are fair and reasonable and meet the standard for approval under
9 Rule 23(e). Plaintiffs’ motion is GRANTED.

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IT IS SO ORDERED.

Dated: _____

Hon. David O. Carter