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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**

19
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: April 24, 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. Dkt. 664.

5 As described in Plaintiffs’ opening memorandum in support of the Plans of
6 Distribution, each of the proposed Plans of Distribution should be approved as fair,
7 adequate, and reasonable. Following the Notice to the Classes, it is clear that Class
8 members overwhelmingly agree. There were no objections to any of the Plans of
9 Distributions. The lack of objections to the proposed Settlement and Plans of
10 Distribution indicates Class member support for the Plans, which the Court should
11 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); *see also In re Volkswagen “Clean*
18 *Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019
19 WL 2077847, at *3 (N.D. Cal. May 10, 2019) (“The small number of objections
20 and opt outs supports that the settlement and plan of allocation are fair, reasonable,
21 and adequate.”).

22 Here, there are no objections to the Plans, providing strong evidence that they
23 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 themselves .
 9 . . .”). That distinction is true here, where the Settlement Agreement negotiated by
 10 the Parties affirms that the Settlement is separate from the Plan of Distribution.
 11 Finally, because this Court retains jurisdiction over the Settlement throughout the
 12 claims process (*see* Amended Proposed Order Granting Final Approval of the
 13 Proposed Settlement ¶ 10), approval of the Plans of Distribution at this juncture
 14 does not prevent the Court from addressing issues with individual claims as the
 15 process unfolds. *See In re Amgen Inc. Sec. Litig.*, No. CV 7-2536 PSG (PLAx),
 16 2016 WL 10571773, at *6 (C.D. Cal. Oct. 25, 2016) (“[T]he Court, by virtue of this
 17 Order, retains jurisdiction over the settlement and all matters relating to the
 18 litigation. . . . These processes ensure that the Court will have adequate oversight of
 19 the distribution process.”). Class Counsel and/or the Settlement Administrator will
 20 continue to update the Court as needed during the claims and distribution process,
 21 to support the Court’s ongoing oversight.

22 **III. CONCLUSION**

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

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¹ Plaintiffs have attached an updated proposed order to describe Class Notice and

1 Dated: February 24, 2023

Respectfully submitted,

2 /s/ Lexi J. Hazam

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the response of Class members.

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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)

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

Date: April 24, 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. 621-1), Property Class (Dkt. 621-2), and the Waterfront Tourism
3 Class (Dkt. 621-3). 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). “A claims processing method should deter or defeat unjustified
10 claims, but the court should be alert to whether the claims process is unduly
11 demanding.” Fed. R. Civ. P. 23(e), 2018 adv. comm. note. Likewise, Rule
12 23(e)(2)(D) asks whether “the proposal [for distribution among class members]
13 treats class members equitably relative to each other.” Relevant considerations may
14 include “whether the apportionment of relief among class members takes
15 appropriate account of differences among their claims, and whether the scope of the
16 release may affect class members in different ways that bear on the apportionment
17 of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note.

18 Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds
19 in a class action under Fed. R. Civ. P. 23 is governed by the same standards of
20 review applicable to the settlement as a whole – the plan must be fair, reasonable,
21 and adequate.” *In re Illumina, Inc. Sec. Litig.*, No. 3:16-CV-3044-L-MSB, 2021
22 WL 1017295, at *4 (S.D. Cal. Mar. 17, 2021) (*citing Class Pls. v. City of Seattle*,
23 955 F.2d 1268, 1284–85 (9th Cir. 1992)). The plan “need only have a reasonable,
24 rational basis, particularly if recommended by experienced and competent class
25 counsel.” *Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC (CTX), 2008 WL
26 11338161, *9 (C.D. Cal. June 9, 2008) (citation omitted).

27 The Court has reviewed the Plans of Distribution and finds that they meet the
28 standards for approval. The Plans establish a simple and fair distribution process.

1 The Fisher Plan and Property Plan will issue checks directly to Class Members,
2 obviating the need for a claims process entirely. Certain Waterfront Tourism Class
3 Members will similarly not need to submit claims at all, and will be issued checks
4 directly. For those Waterfront Tourism Class Members who do need to submit
5 claims forms, the requirement documentation is minimal and flexible, and the
6 Claims Form is easily understandable.

7 The Fisher Plan and Waterfront Tourism Plan awards Class Members their
8 pro rata share of the settlement, and the Property Plan awards Class Members equal
9 shares. Distribution methods such as these are regularly approved as fair and
10 reasonable. *Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG (JEMX), 2018 WL
11 11358228, at *4 (C.D. Cal. Apr. 2, 2018) (approving payment of equal shares for
12 portion of settlement); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at
13 *8 (N.D. Cal. Sept. 2, 2015) (approving payment based on “fractional share[s]”);
14 *Jenson*, 2008 WL 11338161, at *10 (approving distinctions in plan of allocation as
15 reasonably reflecting likelihood of recovery of subgroups within the class); *In re*
16 *Biolase, Inc. Sec. Litig.*, No. SA-CV-13-1300-JLS-FFMX, 2015 WL 12720318, at
17 *5 (C.D. Cal. Oct. 13, 2015) (variable pro rata distribution plan based upon relative
18 injuries of class members approved).

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

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

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IT IS SO ORDERED.

Dated: _____

Hon. David O. Carter