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Interim Settlement Class Counsel

[Additional Counsel Appear on Signature Page]

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)

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: April 24, 2023
Time: 8:30 a.m.
Judge: David O. Carter
Room: 10A

TO ALL THE PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 24, 2023, at 8:30 a.m., or as soon thereafter as the matter may be heard by the Honorable David O. Carter in Courtroom 10A of the above-entitled court, located at 411 West Fourth Street, Santa Ana, CA 92701, Plaintiffs will and hereby do move the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an Order:

A. Granting final approval of the proposed Settlement;

B. Appointing Settlement Class Counsel and Class Representatives under Fed. R. Civ. P. 23(g)(1); and

C. Finding that notice to the Classes was directed and completed in a reasonable manner.

This motion is based on the attached supporting memorandum; the accompany declarations and exhibits; the pleadings, papers, and records on file in this action, including Plaintiffs' Motion for Preliminary Approval (Dkt. 599); any further papers filed in support of this motion; and arguments of counsel.

Dated: January 25, 2023

Respectfully submitted,

/s/ Lexi J. Hazam
Lexi J. Hazam

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/s/ Stephen G. Larson
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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)

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: April 24, 2023
Time: 8:30 a.m.
Judge: David O. Carter
Room: 10A

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I. INTRODUCTION

After over a year of hard-fought litigation, Plaintiffs and Interim Settlement Class Counsel secured a Settlement on behalf of fishers, real property owners and lessees, and waterfront tourism entities with the Amplify Defendants.[1] The Settlement is an excellent outcome. It provides a non-reversionary fund of $50 million to compensate Settlement Class Members, inclusive of attorneys' fees and costs, and important injunctive relief to prevent future oil spills. Pursuant to the Court's order preliminarily approving the Settlement (Dkt. 599), Plaintiffs now file three motions to complete the approval process.[2]

Through this motion, Plaintiffs seek final approval of the Settlement. *First*, each proposed Settlement Class should be certified, because each proposed Settlement Class satisfies the requirements for class certification under Fed. R. Civ. P. 23(3) and 23(b)(3) for the same reasons this Court found in granting Preliminary Approval. *Second*, the Settlement readily satisfies the "fair, adequate, and reasonable" settlement approval standard of Rule 23 for the same reasons this Court found in granting Preliminary Approval. The Settlement was the product of hard-fought and arm's-length negotiation after significant discovery, and was facilitated with the aid of experienced mediators, including the Hon. Layne R. Phillips, who fully endorses the Settlement in all respects. *See* Dkt. 476-2 (Decl. of Layne R. Phillips). The Settlement heads off the unpredictable risks of continued litigation, including class certification, summary judgment, trial, and appeal – risks that are heightened in this case given its complexity and scope, and Amplify's available insurance and financial position. *Id*. ¶ 11. Settlement Class Members will receive

[1] The "Amplify Defendants" or "Amplify" refers to Amplify Energy Corporation, Beta Operating Company, LLC, and San Pedro Bay Pipeline Company. *See* Settlement Agreement (Dkt. 476-4) § I ¶ 1. Unless otherwise specified, capitalized terms herein refer to and have the same meaning as in the Settlement.

[2] In addition to this motion for final approval, Plaintiffs have concurrently filed a motion to approve the Plans of Distribution, and a motion to award fees, costs, and Class Representative service awards.

significant compensation quickly, while litigation continues against the Shipping Defendants.[3]

Plaintiffs thus respectfully request that the Court certify the Settlement Classes and grant final approval to the Settlement.

II. BACKGROUND AND PROCEDURAL HISTORY

This litigation arises from an oil spill in the San Pedro Bay on or around October 1, 2021. Amplify owns and operates an offshore 17.5-mile-long crude oil pipeline that transports crude oil from an offshore oil platform, also owned and operated by Amplify, to the Port of Long Beach. When the pipeline ruptured, oil spilled into the Pacific Ocean and spread along the coast of Orange County. Dkt. 454 ¶¶ 1, 2, 4.

A. Investigation and Consolidation

In the aftermath of the oil spill, and as early as October 4, 2021, certain plaintiffs filed the first of many class action complaints against Amplify. On December 20, 2021, this Court consolidated many of the cases into this lead case, *Gutierrez, et al. v. Amplify Energy, et al*., and administratively closed all related cases. *See* Dkt. 38. The Court invited attorneys to apply for leadership positions on behalf of plaintiffs and, after briefing and oral presentations to the Court, appointed Wiley Aitken of Aitken* Aitken* Cohn, Stephen Larson of Larson LLP, and Lexi Hazam of Lieff Cabraser Heimann & Bernstein LLP as Interim Lead Co-Counsel. *Id*. at 3.[4]

Pursuant to that same order, Interim Co-Lead Counsel filed a consolidated amended class action complaint in early 2022 (Dkt. 102). The 82-page complaint contained detailed factual allegations against Amplify and the Shipping Defendants, and was the result of putative Class Representatives' and Interim Co-Lead

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[3] *See* Settlement, § I ¶ 37 (defining Shipping Defendants).

[4] As described below, the Court has since appointed Interim Co-Lead Counsel Interim Class Settlement Counsel. Plaintiffs use these titles interchangeably. Dkt. 599 ¶ 4.

Counsel's highly intensive investigation of the oil spill. Plaintiffs have twice-amended their Complaint to expand and refine their allegations and claims in this fast-paced and highly complex litigation. Plaintiffs' operative pleading in this lead case is now the 110-page Second Amended Consolidated Complaint ("SAC"), filed on October 4, 2022. Dkt. 454.

Plaintiffs brought claims against the Amplify Defendants for strict liability under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (California Code Section 8670, *et seq.*) and the Oil Pollution Act of 1990 (33 U.S.C. Section 2701, *et seq*.), and under the common law for ultrahazardous activities. Plaintiffs also brought common law claims against the Amplify Defendants for negligence, public nuisance, negligent interference with prospective economic advantage, trespass, and continuing private nuisance. Finally, Plaintiffs brought a claim for violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq*. Dkt. 454, ¶¶ 236-347.

B. Discovery

The volume and pace of the discovery conducted in this case to date has been very substantial. Immediately following their appointment, Interim Co-Lead Counsel negotiated search protocols with Amplify to facilitate discovery. This process involved lengthy negotiations on ESI parameters, including custodians, search terms, and non-custodial data sources. After these months-long negotiations, Plaintiffs and Amplify agreed to a 21-page Document and Electronically Stored Information Production Protocol (Dkts. 96 (Stipulation), 99 (Order)) and a protocol for removing and preserving of portions of the damaged pipeline (Dkts. 119 (Amended Stipulation), 121 (Order).

These agreements set into motion rapid-fire, highly-technical, and voluminous discovery. In response to document requests served by Amplify on the putative Settlement Class Representatives, Plaintiffs collected 8 GB of data for search and review. Dkt. 476-3 (Hazam Decl. in support of Preliminary Approval

("Hazam Prelim. Decl.")) ¶ 24. Plaintiffs also supplemented their Rule 26(a) initial disclosures in January 2022, and subsequently amended these disclosures in February 2022.

For their part, Plaintiffs served voluminous sets of document requests on Amplify, in response to which it produced over 362,000 documents. *Id*. ¶ 25. Interim Settlement Class Counsel was charged with comprehensively reviewing and analyzing Amplify's documents, which required substantial time by counsel and consultation with experts and consultants. *Id*. ¶ 14. These documents included highly technical topics such as Shoreline Cleanup Assessment Technique data relating to oil fate and data sets related to pipeline integrity. *Id*. ¶ 25.

Finally, discovery efforts were highly contentious throughout, and were successful only due to Class Counsel's dogged meet and confer efforts, closely negotiated stipulations and informal agreements, and litigation of multiple discovery disputes.

C. Discovery Disputes

The Parties brought many disputes before the Special Master Panel ("SMP") appointed by the Court to oversee discovery. Dkt. 38, § IV. Among these disputes was a dispute regarding the release of California Department Fish and Wildlife ("CDFW") historical fishing data. The Parties briefed and argued the scope of the data to be released before the SMP. The SMP issued an order, which prompted the parties to stipulate to the release of certain CDFW data. Dkts. 301, 309.

The Parties also briefed and argued the scope of the releases Amplify executed with claimants in its claim process pursuant to the Oil Pollution Act before the SMP. As a result, Amplify modified the form and scope of its releases.

In response to Plaintiffs' allegations in their First Amended Consolidated Complaint, Amplify filed a comprehensive motion to dismiss addressing numerous and complex issues, including, for example: the preemption of Plaintiffs' state law claims; the applicability of maritime law to Plaintiffs' claims; the applicability of,

and compliance with, the Oil Pollution Act's presentment requirements; the permissible categories of damages recoverable through the Oil Pollution Act; and various doctrines of California law, including the economic loss rule. Dkt. 151. Plaintiffs then researched, drafted, and filed an opposition brief challenging each of these arguments, and Amplify lodged a reply in support. Dkts. 225, and 250. Those briefs reveal the strengths of Plaintiffs' claims, but also the risks Plaintiffs faced in advancing them.

In this context, and after detailed briefing, the parties agreed to commence settlement negotiations in earnest.

D. Mediation and Settlement

In advance of the mediation, Plaintiffs and Amplify prioritized discovery related to damages. Plaintiffs engaged some of the same experts that survived *Daubert* challenges in similar litigation, *Andrews v. Plains All American Pipeline*, L.P., No. 2:15-cv-04113-PSG (C.D. Cal.), a similar class action lawsuit on behalf of businesses and property owners harmed by the Refugio oil spill. These experts include a renowned oil fate and transport expert, an expert in the field of real estate damages, an economist, and a marine scientist, who submitted confidential preliminary reports for purposes of the mediation to support Plaintiffs' claims and damages. *See* Hazam Prelim. Decl. ¶ 26. The Parties exchanged and submitted detailed mediation statements addressing liability and damages, including expert reports and rebuttal reports. *See* Dkt. 476-2 (Phillips Decl.) ¶ 5. As the mediators recognized, substantial work went into mediation preparation, and the mediation itself involved complex issues that required significant analysis. *Id.* ¶¶ 5, 9.

E. Summary of Settlements Terms

Under the proposed Settlement, Amplify will pay $34 million to the Fisher Class. The Fisher Class Settlement Amount, together with interest earned thereon, will constitute the Fisher Class Common Fund. Separately, Amplify will pay $9 million to the Property Class. The Property Class Settlement Amount, together with

interest thereon, will constitute the Property Class Common Fund. Separately, Amplify will pay $7 million to the Waterfront Tourism Class. The total combined value of the three Funds is $50 million. No portion of the combined $50 million will revert to the Amplify Defendants. After deduction of notice-related costs and any Court-approved award of attorneys' fees, reimbursement of litigation expenses, and service awards to Class Representatives, all of the remaining monies will be distributed to the Class members in accordance with Plaintiffs' proposed Plans of Distribution, which were filed with the Court on December 16, 2022. Dkt. 621. Alongside this motion, Plaintiffs have filed a separate motion for approval of the Plans of Distribution.

F. The Notice Program

Following preliminary approval, the Parties worked with the respected notice provider and settlement administrator JND to successfully roll out the Court-approved Notice Program. JND reports that the Notice Program is on track to reach "virtually all" Class Members. Declaration of Gretchen Eoff ("Eoff Decl."), Dkt. 652, ¶ 4. To date, and in compliance with this Court's order granting Preliminary Approval, JND has sent thousands of individual notices by mail and thousands more by email to individual Class members. *Id*. ¶¶ 5-7. Also per Court order, JND supplemented this direct effort with supplemental forms of notice, including a substantial digital notice effort, which included a targeted state-of-the-art social media outreach campaign in which the digital ads link directly to the dedicated Settlement Website (www.OCOilSpillSettlement.com) where Class Members can review the notices, read FAQs, apprise themselves of key dates, and contact the Settlement Administrator directly should they have any additional questions. JND reports highly "encouraging" signs of the Classes' engagement with the ongoing program. *Id*. ¶ 38. To maximize the success of the Settlement Program, Interim Settlement Counsel will continue to confer with JND regarding appropriate additional outreach.

III. ARGUMENT

A. The Settlement Classes satisfy all requirements of Rule 23 and should be certified.

As the Court concluded in granting preliminary approval and directing notice to the Classes, "the proposed Settlement Classes, as defined in the Settlement Agreement, likely meet the requirements for class certification under Fed. R. Civ. P. 23(a) and 23(b)(3)." Dkt. 599 ¶ 2. This remains true, and the Settlement Classes should be certified.

1. Rule 23(a)(1): The Class is sufficiently numerous.

Rule 23(a)(1) is satisfied where, as here, "the class is so numerous that joinder of all class members is impracticable." Fed. R. Civ. P. 23(a)(1). Numerosity is generally met when the class exceeds forty members. *See, e.g.*, *Slaven v. BP Am., Inc*., 190 F.R.D. 649, 654 (C.D. Cal. 2000). It is undisputed that each Class contains over one thousand Class Members. *See* Declaration of Jennifer Keough ("Keough Decl."), Dkt. 476-15, ¶ 23. Moreover, the size of the Settlement Class renders joinder impracticable. *See Palmer v. Stassinos*, 233 F.R.D. 546, 549 (N.D. Cal. 2006) ("Joinder of 1,000 or more co-plaintiffs is clearly impractical."). Numerosity is easily satisfied here.

2. Rule 23(a)(2): The Class Claims present common questions of law and fact.

Rule 23(a)(2) requires that there be one or more questions common to the class. Commonality "does not turn on the number of common questions, but on their relevance to the factual and legal issues at the core of the purported class' claims." *Jimenez v. Allstate Ins*. Co., 765 F.3d 1161, 1165 (9th Cir. 2014). "Even a single question of law or fact common to the members of the class will satisfy the commonality requirement." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011) (internal quotation omitted).

As Plaintiffs explained in their motion for preliminary approval, this case

raises multiple common questions, including whether Amplify acted negligently in operating and maintaining its Pipeline, and whether Amplify utilized adequate training, staffing, and safety measures and systems. These common questions will, in turn, generate common answers "apt to drive the resolution of the litigation" for the Settlement Classes. *See Dukes*, 564 U.S. at 350. For these reasons, commonality is readily satisfied.

3. Rule 23(a)(3): The Settlement Class Representatives' claims are typical of other Class members' claims.

Under Rule 23(a)(3), a plaintiff's claims are "typical" if they are "reasonably coextensive with those of absent class members; they need not be substantially identical." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (citation omitted). "Like the commonality requirement, the typicality requirement is 'permissive' and requires only that the representative's claims are 'reasonably co-extensive with those of absent class members; they need not be substantially identical.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Plaintiffs' claims and those of the Settlement Classes each represents are based on the same course of conduct and the same legal theories. Moreover, the Plaintiffs representing each Settlement Class suffered the same types of alleged harm as the Class Members they seek to represent. For these reasons, the Settlement Class Representatives' claims are typical.

4. Rule 23(a)(4): The Settlement Class Representatives and Class Counsel have and will protect the interests of the Class.

Rule 23(a)(4)'s adequacy inquiry asks "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (citation omitted). Interim Settlement Class Counsel have extensive experience

litigating and resolving class actions, and are well qualified to represent the Settlement Classes. *See* Dkt. 38 (appointing Interim Settlement Class Counsel as Interim Co-Lead Counsel at the litigation's inception after considering, in part, their "[e]xperience handing class actions and other complex litigation"). As described above, Interim Settlement Class Counsel have vigorously prosecuted this action on behalf of the Settlement Classes, including engaging in substantial motion practice and extensive investigation and discovery, developing experts, participating in mediation, and negotiating the proposed Settlement. They will continue to protect the Classes' interests.

Plaintiffs have similarly demonstrated their commitment to the Settlement Classes, including by providing pertinent information about their losses, searching for and providing documents and information in response to Amplify's discovery requests, regularly communicating with their counsel about the case, and reviewing and approving the proposed Settlement. *See, e.g.*, Hazam Prelim. Decl. ¶¶ 30, 35.

Finally, Plaintiffs and Interim Settlement Class Counsel's interests are aligned with and not antagonistic to the interests of the Settlement Classes, with whom they share an interest in obtaining relief from Amplify for the alleged violations.

5. Rule 23(b)(3)—Predominance: Common issues of law and fact predominate.

"The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). The Ninth Circuit favors class treatment of claims stemming from a "common course of conduct," like those alleged from the Oil Spill in this case. *See In re First All. Mortg. Co.*, 471 F.3d 977, 989 (9th Cir. 2006).

Common questions predominate here. The Settlement Class Members'

claims all arise under the same laws and the same alleged conduct. The questions that predominate include whether Amplify acted negligently in maintaining and operating its Pipeline, utilized adequate training, staffing, and safety measures and systems; and omitted material facts concerning the safety of the Pipeline. Moreover, under the proposed Settlement, there will not need to be a class trial, meaning there are no potential concerns about individual issues, if any, creating trial inefficiencies. *See Amchem Prods.*, Inc. v. Windsor, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.").

6. Rule 23(b)(3)—Superiority: Class treatment is superior to other available methods for the resolution of this case.

Rule 23(b)(3)'s superiority inquiry calls for a comparative analysis of whether a class action is "superior to other available methods for the fair and efficient adjudication of the controversy." *Id*. at 615; *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) ("The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy."). Class treatment is superior to other methods for the resolution of this case, particularly given the relatively small amounts of alleged damages for each individual Class Member. Moreover, Settlement Class Members remain free to exclude themselves if they wish to do so. Superiority is met here, and Rule 23(e)(1)(B)(ii) is satisfied.

***

The Settlement Classes meet all relevant requirements of Rule 23(a) and (b). Plaintiffs thus request that the Court confirm the certification of the Settlement Classes and the appointment of the Settlement Class Representatives.

B. The Settlement is fair, reasonable, and adequate.

A court may approve the parties' settlement after it determines that it is "fair,

reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Rule 23 sets out the "primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note. These include whether "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2).[5] The proposed Settlement readily satisfies these criteria.

1. Rule 23(e)(2)(A): Class Counsel and the Representatives of the Settlement Classes have and will continue to zealously represent the Classes.

The Court must first consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). This analysis includes "the nature and amount of discovery" undertaken in the case. Fed. R. Civ. P. 23(e), 2018 adv. comm. note; *see also* 4 William B. Rubenstein, *Newberg on Class Actions* § 13:49 (5th ed. Dec. 2021 update) ("*Newberg*").

As detailed above, Interim Settlement Class Counsel undertook significant efforts to investigate and refine the Class claims. Interim Settlement Class Counsel engaged in significant discovery, including litigating multiple discovery disputes before the SMP, and also engaged in robust Rule 12 motion practice, a process that fleshed out the strengths and vulnerabilities of Plaintiffs' claims. Class Counsel were therefore well-positioned to evaluate the case and to negotiate a fair and

[5] The Rule substantively tracks the Ninth Circuit's test for evaluating a settlement's fairness. *Loomis v. Slendertone Distrib., Inc.*, 2021 WL 873340, at *4 n.4 (S.D. Cal. Mar. 9, 2021). Plaintiffs' analysis accounts for the Ninth Circuit's factors and discusses them where applicable. Those factors are: "[1] the strength of the plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement." *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020) (citation omitted).

reasonable Settlement. *See Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014). They have done so.

The Settlement Class Representatives are also actively engaged. Each was consulted on the terms of the Settlement and has expressed their support and continued willingness to protect the Class until the Settlement is approved and its administration completed. *See* Hazam Decl. ¶¶ 39-40.

The Settlement Classes remain well represented by experienced Counsel and engaged Settlement Class Representatives.

2. Rule 23(e)(2)(B): The Settlement is the product of good faith, informed, and arm's-length negotiations.

The Court must also consider whether "the [settlement] proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). This "procedural concern[]" requires the Court to examine "the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e), 2018 adv. comm. note. There is "no better evidence" of "a truly adversarial bargaining process . . . than the presence of a neutral third party mediator." *Newberg, supra*, § 13:50.

Here, the parties engaged in vigorous and contested settlement negotiations with the aid of Hon. Layne Phillips (Ret.), a "neutral, experienced mediator[]." *See Hillson v. Kelly Servs. Inc.*, 2017 WL 279814, at *6 (E.D. Mich. Jan. 23, 2017). The mediation efforts spanned months and included a full-day mediation session before the Hon. Layne Phillips (Ret.), along with the Hon. Sally Shushan (Ret.). The Hon. Layne Phillips "strongly support[s] the Court's approval of the Settlement in all respects." Dkt. 476-2 ¶ 11.

Nor does the Agreement contain any signs of collusion. *See generally In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011). Class Counsel has applied for an award of attorneys' fees of 25 percent of the three Common Funds. This award will be "separate from the approval of the Settlement, and

neither [Plaintiffs nor Class Counsel] may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees." *Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *6 (C.D. Cal. Oct. 10, 2019). Finally, no portion of the Common Funds will revert to Defendants or their insurers.

In summary, this Settlement is the result of strenuous and informed arm's length settlement negotiations.

3. Rule 23(e)(2)(C): The Settlement provides adequate relief in exchange for the compromise of claims.

The Court must ensure "the relief provided for the class is adequate," taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed distribution plan, including the claims process; (iii) the terms of any proposed award of attorney's fees; and (iv) any agreement made in connection with the proposal, as required under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C). These factors overwhelmingly support preliminary approval. Avoiding years of additional, risky litigation in exchange for immediate and significant cash payments is a principled compromise that works to the clear benefit of the Classes in this case. *See* Fed. R. Civ. P. 23(e)(2)(C).

a. The Settlement relief outweighs the costs, risks, and delay of trial and appeal.

Rule 23(e)(2)(C)(i) requires that the Court "evaluate the adequacy of the settlement amount in light of the case's risks." *In re Wells Fargo & Co. S'holder Derivative Litig.*, 2019 WL 13020734, at *5 (N.D. Cal. May 14, 2019). This requires weighing "[t]he relief that the settlement is expected to provide" against "the strength of the plaintiffs' case [and] the risk, expense, complexity, and likely duration of further litigation." *Id*. (internal cites and quotes omitted).

Here, the Settlement provides significant monetary compensation to Class Members along with meaningful injunctive relief. As detailed in Plaintiffs' Motion

for Preliminary Approval and their concurrently filed Motion for Fees, Costs, and Service Awards, the Settlement represents a large portion of the insurance funds that remain available to Amplify to pay claims—an amount that is only decreasing with time as Amplify pays ongoing clean-up, litigation and other costs. Dkt. 476 at 12-13. It has the full endorsement of an experienced mediator, the Hon. Layne R. Phillips, for similar reasons. *See also* Dkt. 476-2, ¶ 11 (Decl. of Layne R. Phillips) ("I believe that the Settlement represents a recovery and outcome that is reasonable and fair for the settlement classes …. I further believe it was in the best interests of the parties that they avoid the burdens and risks associated with taking a case of this size and complexity to trial, particularly given Amplify's available insurance and financial position. I strongly support the Court's approval of the Settlement in all respects.").

The Settlement also delivers important injunctive relief to help prevent and address future spills, including the installation of a new leak detection system, the use of ROVs to detect pipeline movement and rapid reporting of such to authorities, an increase of the number of biannual ROV pipeline inspections, revision of oil spill contingency plans and procedures, employee training on new plans, procedures, and spill reporting, increased staffing on the offshore platform and control room involved with this Oil Spill, and the establishment of a one-call alert system to report any threatened release of hazardous or pollutant substances. *See* Dkt. 476 at 6.[6]

These recoveries are all the more impressive when weighed against the serious risks of ongoing litigation. Amplify's negligence and punitive damage exposure was hotly contested and turned on technical issues regarding Amplify's integrity management of its pipeline and its handling of the spill. Plaintiffs contended that Amplify was negligent in waiting hours to turn off its pipeline, but

[6] Some of these measures mirror the relief included in its criminal plea, which were spurred in significant part by Plaintiffs' pursuit of civil litigation, and originally sought in Plaintiffs' Complaint. *See* Dkt. 476 at 6 (comparing complaint and plea).

Amplify and Plaintiffs have also alleged that two container ships caused the spill by dragging anchor along the pipeline months before the rupture.

In addition, Amplify moved to dismiss all of Plaintiffs' claims, arguing that Plaintiffs' claims were preempted or not legally cognizable based on the facts alleged. Moreover, Amplify intended to challenge class certification and liability. Even if Amplify lost on its efforts to defeat the case outright (through its motion to dismiss, inevitable summary judgment motions, or a defense verdict on liability), it was prepared to aggressively challenge Plaintiffs' damages claims. Had Plaintiffs secured a *complete* victory at trial (both on liability and damages), Defendants undoubtedly would have engaged in "vigorous post-trial motion practice[s]…and likely appeals to the Ninth Circuit—delaying any recovery for years." *Baker* v. *SeaWorld Entertainment, Inc.*, 2020 WL 4260712, at *7 (S.D. Cal. July 24, 2020). Of course, Class Counsel were prepared to defend the Classes' case against each of these challenges. Nonetheless, risks remained, and significant and painful delays to recovery would have been inevitable.

The proposed Settlement eliminates all of this risk and expense, cuts through the delay, and provides immediate and significant compensation to the Class. This factor strongly favors final approval. *See Nobles v. MBNA Corp.*, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) ("The risks and certainty of recovery in continued litigation are factors for the Court to balance in determining whether the Settlement is fair.") (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000); *Kim v. Space Pencil, Inc.*, 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012) ("The substantial and immediate relief provided to the Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk of continued litigation, trial, and appeal, as well as the financial wherewithal of the defendant.").

Finally, experienced counsel's support for the proposed Settlement also weighs in favor of final approval. *See Cheng Jiangchen*, 2019 WL 5173771, at *6

("The recommendation of experienced counsel carries significant weight in the court's determination of the reasonableness of the settlement.") (citation omitted). This is especially true given that considerable discovery and motion practice allowed both sides to gain "a good understanding of the strengths and weaknesses of their respective cases," reinforcing "that the settlement's value is based on…adequate information." *Newberg*, *supra*, § 13:49. Here, Class Counsel strongly support the proposed Settlement. *See* Hazam Decl., ¶¶ 6-7; Larson Decl., ¶¶ 4-5; Atiken Decl., ¶¶ 4-5.

In summary, the proposed Settlement offers impressive monetary relief and avoids the substantial risk and years-long delays required for a successful trial verdict and defense on appeal. This reality, and the potential risks outlined above, underscore the strength of the proposed Settlement.

b. Payment to Class Members is straightforward and user-friendly.

In determining whether relief is adequate, Rule 23(e)(2)(C)(ii) requires the Court to consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." As detailed in Plaintiffs' proposed Plans of Distribution and explained in Plaintiffs' Motion for Preliminary Approval, the Parties designed an extraordinarily simple administration process. For the Fisher Class and Real Property Class, Class Members will be issued checks directly by mail, obviating the need for a claims process altogether. The same is true for certain members of the Waterfront Tourism Class, including whale-watching cruises, sunset cruises, party boats, six-pack charters, other luxury boat rentals and charters, and hotels.

For other members of the Waterfront Tourism Class, such as restaurants, retail shops, bait and tackle shops, and surf schools, Plaintiffs and the Claims Administrator have developed a streamlined claims process that can be accomplished online at www.OCOilSpillSettlement.com, or through the mail. The

only documentation required for individuals is a copy of their tax return. Claims for businesses are similarly straightforward: businesses must only provide documentation demonstrating their revenue, however that information is kept in the ordinary course of business, for July 2021 through December 2021.

In sum, each member of the Settlement Classes will receive their pro rata share of the settlement either directly or through a streamlined and user-friendly claims process. Courts regularly approve such distribution plans. *See, e.g.*, *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at *8 (N.D. Cal. Sept. 2, 2015) (finding a plan of distribution that provided each class member with a "fractional share" to be "cost-effective, simple, and fundamentally fair") (citation omitted). *See also In re Elec. Carbon Prods. Antitrust Litig.*, 447 F. Supp.2d 389, 404 (D.N.J. 2006) (approving pro rata distribution to claimants based on their direct purchases as "eminently reasonable and fair to the class members"); *In re Illumina, Inc. Sec. Litig.*, 2021 WL 1017295, at *5 (S.D. Cal. Mar. 17, 2021) ("[I]t is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits.") (citation omitted).

c. Plaintiffs seek reasonable attorneys' fees and expenses.

The Court should also evaluate Class Counsel's "proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Plaintiffs have separately filed a motion in support of their requested fees and costs award. As explained in that motion, the requested fee of 25 percent is presumptively reasonable and represents a modest multiplier on Class Counsel's lodestar. The fee request is independent of this final approval motion.

d. No other agreements exist.

Finally, Plaintiffs must identify any agreements "made in connection with the proposal." Fed. R. Civ. P. 23(e)(3); *see* Fed. R. Civ. P. 23(e)(2)(C)(iv). This provision is aimed at "related undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for

the class in return for advantages for others." Fed. R. Civ. P. 23(e)(2), 2003 adv. comm. note. Plaintiffs have not entered into any such agreements.

4. Rule 23(e)(2)(D): The Settlement treats Class Members equitably relative to each other.

The Court should consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). In addition, the final Rule 23(e)(2) factor asks whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D).

Both factors are readily met here. The Plans are described in detail in the concurrently filed Motion for Approval of Plaintiffs' Plans of Distribution. In sum, relief to Fisher Class members, Property Class members, and some Waterfront Tourism members will be automatic, requiring no claims process at all. For members of the Waterfront Tourism Class for whom a claim is necessary, the claim forms require minimal documentation. Approval of the Settlement Agreement is meant to be separate and distinct from the Court's approval of the Plans of Distribution as well as Class Counsel's request for attorneys' fees and costs. The purpose of this provision is to protect the Class and to help ensure that the Settlement becomes final and effective as soon as possible.

The Plans of Distribution apportion relief among each Class equitably, considering the relative harm to each Class Member where feasible, and employing common distribution arrangements well in line with prior settlement approvals in this Circuit. *See Andrews et al. v. Plains et al*, 15-cv-04113-PSG-JEM (C.D. Cal. Sept. 20, 2022) (Gutierrez, J.) Dkt. 979 (order approving Distribution Plans); *In re Biolase, Inc. Sec. Litig.*, 2015 WL 12720318, at *5 (C.D. Cal. Oct. 13, 2015); *Illumina*, 2021 WL 1017295, at *4- 5; *Koenig v. Lime Crime, Inc.*, 2018 WL 11358228, at *4 (C.D. Cal. Apr. 2, 2018). Allocation of funds *between* the Classes is also equitable, reflecting both relative amounts of damages as estimated by expert

analysis to date, and likelihood of recovery given relative strength of claims. *See Jenson, v. First Tr. Corp*., 2008 WL 11338161, at *10 (C.D. Cal. June 9, 2008) (approving distinctions in plan of allocation as reasonably reflecting likelihood of recovery of subgroups within the class). While Plaintiffs believe all three Classes will prevail against the non-Amplify defendants, unlike the Waterfront Tourism Class, the Fisher Class and Property Class to varying degrees benefit from the precedents in *Plains* certifying substantially similar classes, and admitting the testimony of the same experts that Plaintiffs may use here to prove class-wide liability damages for those two classes. *See Andrews v. Plains All Am. Pipeline, L.P*., 2017 WL 10543402, at *1 (C.D. Cal. Feb. 28, 2017) (certifying fisher class, denying certification of property and tourism classes); *Andrews v. Plains All Am. Pipeline, L.P*., No. 15-CV-4113-PSG, Dkt. 454 (C.D. Cal. Apr. 17, 2018) (certifying renewed motion to certify property class); *Andrews v. Plains All Am. Pipeline, L.P*., 2020 WL 3105425, at *6 (C.D. Cal. Jan. 16, 2020) (denying motion to decertify property class and to exclude fisher and property class experts). The mediators also found that the allocation "fairly divides the Settlement among the three putative classes." Phillips Decl., ¶¶ 9-11.

In addition to their distributions, the Court-appointed Class Representatives have requested service awards of $10,000 to compensate them for the time and effort they spent pursing the matter on behalf of the Class, including participating in discovery and settlement. Each of these Class Representatives also followed the case throughout and reviewed and approved the proposed Settlement. Hazam Decl., ¶¶ 30; *see also id*., Exs. 3-16 (Class Representative Declarations). Such service awards "are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 958 (9th Cir. 2009). *See also Illumina*, 2021 WL 1017295, at *8 (granting $25,000 service award); *In re Wells Fargo & Co. S'holder Derivative Litig*., 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020) (granting $25,000 service awards to each institutional investor plaintiff). The service awards do not raise any equitable

concerns about the Settlement itself. *Fleming v. Impax Labs. Inc.*, 2021 WL 5447008, at *10 (N.D. Cal. Nov. 22, 2021) (service awards "are not per se unreasonable" and "this factor weighs in favor of [] approval"); *see Loomis*, 2021 WL 873340, at *8 (granting final approval to settlement with service award for lead plaintiff); *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *8 (N.D. Cal. Jul. 22, 2018) (same).

Finally, no settlement funds will revert to Defendants, a "[s]ignificant[]" fact that further demonstrates the Settlement's fairness and effectiveness. *Hilsley v. Ocean Spray Cranberries, Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020).

C. The Court-approved notice program complies with Rule 23(b)(3) and Rule 23(c)(2)(B).

Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of Rule 23(c)(2), and upon preliminary approval of the settlement, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2) prescribes the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

In granting preliminary approval to the Settlement, this Court held that the Notice Plan submitted in support of preliminary approval "constitutes the best notice practicable under the circumstances," satisfies due process, and "complies fully" with the Federal Rules of Civil Procedure." Dkt. 599 ¶ 9; *see also* Dkt. 476-15, ¶ 45 (notice provider attesting that "the proposed Notice Plan provides the best notice practicable under the circumstances [and] is consistent with the requirements of Rule 23" and "similar court-approved best notice practicable notice programs").

The notices were delivered in a manner that satisfies both Rule 23 and due process. *See generally*, Eoff Decl., Dkt. 652 (detailing compliance with the notice program). Direct notice was individually mailed to all known Settlement Class

Members via U.S. Mail, and notice was also emailed to the Fisher Class Members for whom addresses were available. *Id*. ¶¶ 8, 10, 14, 20. These already robust mailing and emailing efforts were supplemental by an extensive and state-of-the-art digital notice program, which included a targeted social media notice effort (*id*., ¶¶ 21-27), internet search effort (*id*. 28-29), and earned media effort (*id*., ¶¶ 30-31). Class Members were directed to the case website, where they can view the entire Settlement, the long-form Class Notices, the Plans of Distribution, and other key case documents, including the claim form. The website also directs inquiries to a toll-free number where Class Members can get additional information and communicate directly with the Settlement Administrator. *Id*. ¶ 32.

The notice provider believes that the roll-out of the Notice Program "is providing the best notice practicable under the circumstances of this case," that the notice statistics to date "reinforce the fact that the notice program is broad in scope," and finds the level of engagement with the ongoing notice program "encouraging." *Id*. ¶ 38.

IV. CONCLUSION

As set forth above, the Settlement Agreement resolves this litigation by providing substantial monetary relief for Class Members, and important injunctive relief. All of the factors and considerations set forth in Rule 23 for final approval have been met. Plaintiffs respectfully request that the Court grant their motion for final approval of the proposed Settlement.

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Respectfully submitted,

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