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14
15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**

19
20 PETER MOSES GUTIERREZ, JR.,
et al.,

21 Plaintiffs,

22 v.

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

24 Defendants.

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

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AND DIRECTION OF NOTICE
UNDER RULE 23(E);
MEMORANDUM OF POINTS AND
AUTHORITIES**

Judge: Hon. David O. Carter
Date: Nov. 16, 2022
Time: 1:00 pm PT
Courtroom: 10A

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 16, 2022, at 1:00 p.m., or as
3 soon thereafter as this matter may be heard, in Courtroom 10A of the United States
4 District Court for the Central District of California, located at 411 West Fourth
5 Street, Santa Ana, California, 92701, Plaintiffs, for themselves and on behalf of all
6 others similarly situated, will move the Court for an order pursuant to Fed. R. Civ.
7 P. 23(e)(1) granting Plaintiffs' Motion for Preliminary Approval of Class Action
8 Settlement and for Direction of Notice Under Rule 23(e).

9 Plaintiffs request that in such order the Court do the following:

- 10 1. Grant preliminary approval of the proposed Settlement Agreement;¹
- 11 2. Appoint Interim Co-Lead Counsel as Interim Settlement Class Counsel
12 pursuant to Fed. R. Civ. P. 23(g);
- 13 3. Approve the proposed notice program in the Settlement, including the
14 proposed forms of notice, and direct that notice be disseminated pursuant
15 to such notice program and Fed. R. Civ. P. 23(e)(1);
- 16 4. Appoint JND Legal Administration as Settlement Administrator and
17 direct JND Legal Administration to carry out the duties and
18 responsibilities of the Settlement Administrator as specified in the
19 Settlement;
- 20 5. Enter a scheduling order consistent with the dates set forth in the below
21 Memorandum; and
- 22 6. Schedule a Fairness Hearing in connection with the final approval of the
23 Settlement pursuant to Fed. R. Civ. P. 23(e)(2).

24 This Motion is based on this Notice of Motion and Motion; the
25 accompanying Memorandum of Points and Authorities; the Settlement, including
26 all exhibits thereto; the Declaration of Lexi J. Hazam ("Hazam Decl."), filed

27 _____
28 ¹ The Settlement is being filed herewith as Ex. 1 to the accompanying Declaration
of Lexi J. Hazam ("Hazam Decl."). Unless otherwise defined herein, all capitalized
terms have the definitions set forth in the Settlement.

1 herewith; the Declaration of notice expert Jennifer Keough filed herewith (“Keough
2 Decl.”); the Declaration of the Hon. Layn R. Phillips filed herewith (“Phillips
3 Decl.”); the arguments of counsel; all papers and records on file in this matter, and
4 such other matters as the Court may consider.

5
6 Dated: October 17, 2022

Respectfully submitted,

7
8 /s/ Wylie Aitken

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 In October 2021, the San Pedro Bay Pipeline ruptured, discharging thousands
4 of gallons of crude oil into Orange County’s coastal waters (the “Oil Spill”). The
5 Oil Spill damaged the local economy’s beaches, harbors, and properties; caused
6 closures to commercial fisheries; and harmed waterfront businesses that depend on
7 the local waters and coastline for their livelihood.

8 After a year of intensive litigation, Plaintiffs and Amplify² have reached an
9 agreement to settle Plaintiffs’ claims on a class-wide basis. Pursuant to the terms of
10 the Settlement Agreement, Amplify will pay a total of \$50 million in non-
11 reversionary common funds to Settlement Class Members. Amplify has also agreed
12 to significant injunctive relief to help prevent future spills, including installation of
13 a new leak detection system, more frequent use of remotely operated vehicles
14 (“ROVs”) to detect pipeline movement and allow rapid reporting of such movement
15 to federal and state authorities, increased staffing on the off-shore platform and
16 control room involved with this Oil Spill, establishment of a one-call alert system to
17 report any threatened release of hazardous or pollutant substances, and more.

18 The proposed Settlement is an excellent result for the proposed Settlement
19 Classes, and readily satisfies the criteria for preliminary settlement approval of
20 being fair, reasonable, and adequate. In particular, the Settlement will provide
21 Orange County businesses and residents with relief rapidly, rather than after years
22 of continued litigation and appeals that would otherwise ensue. It will also permit
23 Plaintiffs and Settlement Class Members to continue seeking further potential relief
24 from the Shipping Defendants³ alleged to have dragged their anchors over the
25

26 _____
27 ² “Amplify” refers collectively to Amplify Energy Corporation, Beta Operating
Company, LLC, and San Pedro Bay Pipeline Company, the three Defendants that
own and operate the San Pedro Bay Pipeline.

28 ³ As of the latest operative complaint, these “Shipping Defendants” are: the *MSC
Danit (in rem)* and its owners and operators MSC Mediterranean Shipping

1 pipeline, causing its later rupture. Relief now also avoids further deterioration of
2 Amplify’s rapidly decreasing insurance funds to pay for its Oil Spill costs.

3 The Settlement is the product of hard-fought, arms-length negotiations
4 between the Parties⁴ with the assistance of experienced and well-respected
5 mediators Hon. Layn Phillips (Ret.) and Hon. Sally Shushan (Ret.). It follows
6 extensive formal discovery and litigation, including significant briefing and
7 argument before this Court and the Court-appointed Special Master Panel,
8 particularly regarding discovery issues and interaction between this case and the
9 related consolidated Limitation Action. In negotiating the Settlement, the Parties
10 and their counsel were well informed about the issues, the strengths and weaknesses
11 of their respective positions, and the risks faced by each side of continued litigation.

12 It should be noted that Class Plaintiffs will continue to vigorously seek
13 substantial recoveries from the Shipping Defendants, whom Plaintiffs allege struck
14 and damaged the San Pedro Pipeline and thereby substantially caused the Oil Spill.

15 Plaintiffs and their undersigned counsel believe the Settlement to be in the
16 best interests of the Settlement Class Members. Plaintiffs therefore respectfully
17 request that the Court preliminarily approve the Settlement, appoint interim Co-
18 Lead Counsel as Settlement Class Counsel, direct that notice be disseminated to the
19 Settlement Classes pursuant to the proposed notice program, schedule a Fairness
20 Hearing, and grant the related relief requested herein.

21 **BACKGROUND**

22 **I. Factual Background**

23 This litigation arises from an oil spill off the Orange County, California
24 coastline that began on October 1, 2021 when the San Pedro Bay Pipeline owned

25 _____
26 Company, Dordellas Finance Corp., Mediterranean Shipping Company S.r.l., and
27 MSC Shipmanagement Limited; and the *M/V Beijing (in rem)* and its owners and
28 operators Capetanissa Martina Corporation, and Costamare Shipping Co. S.A.,
V.Ships Greece Ltd., COSCO Shipping Lines Co. Ltd., and COSCO (Cayman)
Mercury Co. Ltd. Dkt. 454, ¶¶ 33-43.

⁴ Unless otherwise stated, “the Parties” refers collectively to the parties to the
Settlement Agreement: Plaintiffs and Amplify.

1 and operated by Amplify ruptured. At least 25,000 gallons of crude oil were
2 released into the Pacific Ocean, and crude oil from the Oil Spill had washed ashore
3 in Huntington and Newport Beach. The Oil Spill closed hundreds of square miles of
4 marine waters to fishing and dozens of miles of shoreline; clean-up efforts included
5 more than one thousand people and lasted weeks. Dkt. 436-1 ¶¶ 1-3, 5, 8.

6 **II. Procedural Background**

7 **A. Summary of Procedural History**

8 In the days after the Oil Spill in early October 2021, Plaintiffs began filing
9 lawsuits arising from the spill. *See* Dkt. 30 at 2 (listing cases). On December 20,
10 2021, this Court consolidated many of those cases into this lead case, *Gutierrez et*
11 *al. v. Amplify Energy Corp. et al.* and appointed Interim Co-Lead Counsel. Dkt. 38.

12 Plaintiffs filed their Consolidated Amended Complaint on January 28, 2022.
13 Dkt. 102. Plaintiffs brought claims for strict liability under the Lempert-Keene-
14 Seastrand Oil Spill Prevention and Response Act (California Code Section 8670, *et*
15 *seq.*) and the Oil Pollution Act of 1990 (“OPA,” 33 U.S.C. § 2701, *et seq.*), and
16 under common law for ultrahazardous activities, negligence, public nuisance,
17 negligent interference with prospective economic advantage, trespass, continuing
18 private nuisance, and a permanent injunction. Plaintiffs also brought a claim for
19 violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§
20 17200, *et seq.* *See id.*, ¶¶ 153-253. Some of Plaintiffs’ claims were also brought
21 against Shipping Defendants related to two container ships that allegedly struck and
22 dragged the pipeline with their anchors, causing damage that led to the spill.

23 Plaintiffs filed their First Amended Consolidated Amended Complaint on
24 March 21, 2022. Dkt. 148. Amplify moved to dismiss this Complaint on March 23,
25 2022, and Plaintiffs opposed. Dkts. 151, 225. On February 28, 2022, Amplify filed
26 a third-party complaint against the Shipping Defendants as well as Marine
27 Exchange, the entity charged with directing vessel traffic in San Pedro Bay. Dkt.
28 123. On October 3, 2022, the Court denied certain Shipping Defendants’ motions to

1 dismiss Amplify’s complaint for lack of personal jurisdiction. Dkt. 442.

2 On March 31, 2022, certain Shipping Defendants (the “Limitation Action
3 Parties”) filed Complaints for Exoneration from, or Limitation of, Liability under
4 the Limitation of Liability Act of 1851 (46 U.S.C. §§ 30501, *et seq.*). The Court
5 stayed Plaintiffs’ claims against the Limitation Action Parties and consolidated the
6 limitation actions into *In the Matter of the Complaint of Dordellas Finance Corp.,
7 et al.*, No. 2:22-cv-02153-DOC-JDE (the “Limitation Action”).⁵ Dkt. 245.

8 Plaintiffs’ claims against Amplify proceeded. The Court also ordered that discovery
9 be coordinated between this case and the Limitation Action, and set a schedule for
10 Limitation Action notice, claims, and other requirements. *See id.*

11 All Parties stipulated to Plaintiffs filing a Second Amended Consolidated
12 Class Action Complaint, and to Amplify filing a Second Amended Third-Party
13 Complaint, which this Court granted on October 3, 2022. Dkts. 436, 452. Those
14 now-operative complaints were filed on October 4-5, 2022. Dkts. 454, 455.

15 **B. Discovery**

16 Plaintiffs and Amplify have engaged in a significant amount of discovery in
17 the year since this litigation began. As part of the Electronically-Stored Information
18 (“ESI”) protocol (Dkt. 99), the Parties engaged in lengthy negotiations on ESI
19 parameters, including custodians and search terms. Through this process the Parties
20 exchanged dozens of hit reports and brought disputes to the Special Master Panel.
21 Plaintiffs collected 8 GB of data for search and review in response to Amplify’s
22 three sets of requests for production of documents. *See Hazam Decl.*, ¶ 24.

23 Plaintiffs and Amplify have cumulatively reviewed and exchanged more than
24 362,000 documents, including numerous highly technical documents and data sets
25 relating to pipeline integrity. *Id.* ¶ 25. The Parties also negotiated stipulations
26

27 ⁵ On September 8, 2022, the Court lifted the stay to the extent it applied to
28 Plaintiffs’ and Amplify’s claims against V.Ships Greece Ltd. and Costamare
Shipping Company, Shipping Defendants that were not parties to the Limitation
Action. Dkt. 401.

1 related to the removal and preservation of the pipeline (Dkt. 97) and to obtain data
2 from the California Department of Fish and Wildlife (Dkts. 301, 309), both of
3 which involved briefing disputed issues to the Special Master Panel.

4 The Parties prioritized discovery related to damages in advance of the
5 mediation with Hon. Layn Phillips (Ret.) and Hon. Sally Shushan (Ret.). *See*
6 Phillips Decl. Plaintiffs engaged the same experts that survived *Daubert* challenges
7 in *Plains*, including a renowned oil fate expert, an expert in the field of real estate
8 damages, an economist, and a marine scientist, who submitted confidential
9 preliminary reports the mediation to support Plaintiffs' damages. Hazam Decl. ¶ 26.

10 C. Settlement Negotiations

11 The proposed Settlement is the product of hard-fought, arm's length
12 negotiations. On June 2, 2022, the Parties participated in a formal mediation session
13 with Hon. Layn Phillips (Ret.) and Hon. Sally Shushan (Ret.). That session did not
14 result in a settlement. Phillips Decl. ¶ 5. The Parties continued informal
15 negotiations and held telephone conferences over the following months. *Id.* ¶ 6. On
16 August 22, 2022, the mediators made their own proposal, which the Parties
17 accepted on August 23, 2022. *Id.* ¶ 7. On August 24, 2022, Amplify and Plaintiffs
18 informed the Court that they had reached a tentative settlement. *See* Dkt. No. 377.
19 Since reaching an agreement in principle, the Parties have worked diligently to draft
20 the Settlement Agreement, notices, and other settlement exhibits, and to select the
21 proposed Settlement Administrator. Hazam Decl. ¶ 32.

22 SUMMARY OF THE SETTLEMENT TERMS

23 Under the proposed Settlement, Amplify will pay \$34 million to the Fisher
24 Class, \$9 million to the Property Class, and \$7 million to the Waterfront Tourism
25 Class. *See* Settlement at §§ II.16, 28, 41, III. These amounts, together with interest
26 earned thereon, will constitute the Fisher, Property, and Waterfront Tourism Class
27 Common Funds, respectively. *Id.* § II.14, 26, 39. The total combined value of the
28 three Funds is \$50 million. No portion of the combined \$50 million will revert to

1 Amplify, and the \$50 million is in addition to Amplify’s payments made to
2 claimants through the OPA process. After deduction of notice-related costs and any
3 Court-approved attorneys’ fees and costs, and service awards to Class
4 Representatives, the monies will be distributed to the members of the three Classes
5 in accordance with Plans of Distribution which Plaintiffs are entrusted with
6 developing per the Settlement, to be submitted to this Court for review and
7 approval within 30 days of preliminary approval.⁶ Descriptions of the Plans of
8 Distribution are described in Argument § I.C.2.a below.

9 Amplify has also agreed to significant injunctive relief to help prevent and
10 address future spills, both as terms of the proposed Settlement Agreement with
11 Plaintiffs and as conditions of Amplify’s criminal plea agreement with the United
12 States Attorney, the latter of which were spurred in significant part by Plaintiffs’
13 pursuit of civil litigation, and originally sought in Plaintiffs’ complaint. *Compare*
14 Dkt. 148, ¶ 150 (First Amended Consolidated Amended Complaint, listing sought
15 injunctive relief), *with United States v. Amplify Energy Corp.*, No. CR 21-226-DOC
16 (C.D. Cal. Aug. 26, 2022), Dkt. 42, Ex. 1 (injunctive terms of probation in criminal
17 plea agreement).⁷ These injunctive relief measures include installation of a new
18 leak detection system, use of ROVs to detect pipeline movement and rapid
19 reporting of such to federal and state authorities, an increase from one to four in the
20 number of biannual ROV pipeline inspections, revision of oil spill contingency
21 plans and procedures, and employee training on new plans, procedures, and spill
22 reporting. Settlement § IV. On top of those measures, Amplify has agreed with
23 Plaintiffs to injunctive relief beyond that included in the criminal plea, including
24 increased staffing on the offshore platform and control room involved with this Oil
25

26 ⁶ See *Andrews v. Plains All Am. L.P.*, No. 2:15-cv-04113-PSG (C.D. Cal.), Dkt.
27 944-1 Ex. 1 at 17 (Settlement described the same schedule).

28 ⁷ See also Hazam Decl. Ex. 2, Oct. 3, 2022 SMP Hr’g Tr. 22:14-16 (Amplify’s
Counsel noting that Plaintiffs’ Complaint was the “genesis” of the injunctive terms
of criminal plea agreement).

1 Spill, and establishment of a one-call alert system to report any threatened release
2 of hazardous or pollutant substances. *Id.*

3 **OVERVIEW OF THE CLASS SETTLEMENT APPROVAL PROCESS**

4 Class actions “may be settled . . . only with the court’s approval.” Fed. R.
5 Civ. P. 23(e).⁸ The Ninth Circuit has a “strong judicial policy that favors
6 settlements, particularly where complex class action litigation is concerned.” *In re*
7 *Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (citation
8 omitted). Rule 23(e) governs a district court’s analysis of the fairness of a proposed
9 class action settlement. The process for court approval is comprised of two steps:

10 *First*, a court must make a “preliminary fairness determination” that it is
11 likely to “approve the proposal under Rule 23(e)(2).” FRCP 23(e)(1)(B); *In re*
12 *Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 17-
13 MD-02777-EMC, 2019 WL 536661, at *7-8 (N.D. Cal. Feb. 11, 2019). If a court
14 makes this determination, it must direct notice to the proposed settlement class,
15 describing the terms of the proposed settlement and the definition of the class, to
16 give them an opportunity to object to or opt out of the proposed settlement. *See*
17 FRCP 23(c)(2)(B); FRCP 23(e)(1), (5). *Second*, after a fairness hearing, the court
18 may grant final approval to the proposed settlement on a finding that the settlement
19 is fair, reasonable, and adequate. FRCP 23(e)(2). By this motion, Plaintiffs
20 respectfully ask the Court to take the first step and enter an order preliminarily
21 approving the Settlement and directing class notice, pursuant to the parties’
22 proposed notice program, under FRCP 23(e)(1).

23 **LEGAL STANDARD**

24 Rule 23(e) governs a district court’s analysis of the fairness of a proposed
25 class action settlement and creates a multistep process for approval. *First*, the court
26 must make a “preliminary fairness determination” that it is likely to “approve the
27 proposal under Rule 23(e)(2).” FRCP 23(e)(1)(B). *In re Chrysler-Dodge-Jeep*

28 ⁸ All references to “FRCP” or “Rule” refer to the Federal Rules of Civil Procedure.

1 *Ecodiesel Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 17-MD-02777-EMC, 2019
2 WL 536661, at *7-8 (N.D. Cal. Feb. 11, 2019). *Second*, the court must direct notice
3 to the proposed settlement class, describing the terms of the proposed settlement
4 and the definition of the class, to give them an opportunity to object to or (in some
5 cases) to opt out of the proposed settlement. *See* FRCP 23(c)(2)(B); FRCP 23(e)(1),
6 (5). *Third*, after a fairness hearing, the court may grant final approval to the
7 proposed settlement on a finding that the settlement is fair, reasonable, and
8 adequate, and certify the proposed settlement class. *See* FRCP 23(e)(1-2).

9 ARGUMENT

10 **I. The Proposed Settlement is Fair, Reasonable, and Adequate.**

11 A court should preliminarily approve a class settlement if it finds that it is
12 likely to approve the settlement as “fair, reasonable, and adequate.” FRCP
13 23(e)(1)(B)(i); (e)(2). The factors to consider are whether: “(A) the class
14 representatives and class counsel have adequately represented the class; (B) the
15 proposal was negotiated at arms-length; (C) the relief provided for the class is
16 adequate . . . ; and (D) the proposal treats class members equitably relative to each
17 other.” FRCP 23(e)(2).⁹ “[T]he district court must show it has explored
18 comprehensively all Rule 23(e)(2) factors, and must give a reasoned response to all
19 non-frivolous objections.” *In re Apple Inc. Device Performance Litig.*, No. 21-
20 15758, 2022 WL 4492078, at *8 (9th Cir. Sept. 28, 2022) (citation omitted).

21 At the preliminary approval stage, the primary question is simply whether the
22 settlement “is ‘within the range of possible approval’ and whether or not notice
23 should be sent to class members.” *Carter v. Anderson Merchs., LP*, Nos. 08-0025,
24 09-0216, 2010 WL 1946784, at *4 (C.D. Cal. May 11, 2010) (citation omitted). At
25

26 ⁹ The “factors in amended Rule 23(e)(2) generally encompass the list of relevant
27 factors previously identified by the Ninth Circuit.” *Zamora Jordan v. Nationstar*
28 *Mortg., LLC*, No. 2:14-CV-0175-TOR, 2019 WL 1966112, at *2 (E.D. Wash. May
2, 2019); *see also Loomis v. Slendertone Distrib., Inc.*, No. 19-cv-854-MMA, 2021
WL 873340, at *4 n.4 (S.D. Cal. Mar. 9, 2021) (Rule 23(e)(2) “overlap[s]” with
factors Ninth Circuit had previously identified).

1 the same time, “settlement approval requires a higher standard of fairness and a
2 more probing inquiry than may normally be required under Rule 23(e)” if “the
3 parties negotiate a settlement agreement before the class has been certified.” *Roes,*
4 *1–2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019) (citations omitted).

5 **A. Plaintiffs and Interim Co-Lead Counsel Have Adequately**
6 **Represented the Proposed Settlement Classes (Rule 23(e)(2)(A)).**

7 Plaintiffs and Interim Co-Lead Counsel have prosecuted this action on behalf
8 of the proposed Settlement Classes with vigor and dedication for the past year, with
9 the aim of securing substantial and expeditious relief for community members
10 affected by the Oil Spill. *See* Fed. R. Civ. P. 23(e)(2)(A). As discussed above and in
11 the attached declarations, Interim Co-Lead Counsel have thoroughly investigated
12 the factual and legal issues involved, conducted substantial discovery, engaged in
13 extensive motion practice before this Court and the Special Master Panel, and
14 worked with experts to observe pipeline repairs and identify the proposed Classes
15 and assess their damages. *See supra* Background § II. In particular, Plaintiffs have
16 obtained more than 345,000 documents from Amplify, and until reaching the
17 Settlement Agreement had been aggressively pursuing depositions of the key
18 Amplify platform personnel before the Special Master Panel. Hazam Decl., ¶¶ 24-
19 28. Plaintiffs have carefully navigated the complexities of pursuing their claims
20 against Amplify while simultaneously zealously guarding Plaintiffs’ and the
21 proposed Classes’ claims against the Shipping Defendants, both in this Action and
22 in the parallel Limitation Action. *Id.*, ¶ 29.¹⁰

23 Plaintiffs have also been actively engaged in the case—each provided
24 pertinent information about their losses, searched for and provided documents and
25 information in response to Amplify’s written discovery requests and follow-up
26 correspondence, and regularly communicated with their counsel up to and including

27 _____
28 ¹⁰ Amplify has also served substantial discovery on the Plaintiffs, with Plaintiffs
producing more than 17,000 documents in discovery.

1 evaluating and approving the proposed Settlement. *Id.*, ¶ 30.

2 **B. The Settlement Was Negotiated at Arm’s Length (Rule**
3 **23(e)(2)(B)).**

4 The Court must also consider whether “the proposal was negotiated at arm’s
5 length. FRCP 23(e)(2)(B). This “procedural concern[.]” requires the Court to
6 examine “the conduct of the litigation and of the negotiations leading up to the
7 proposed settlement.” Fed. R. Civ. P. 23(e), 2018 adv. comm. note. “[W]hen a
8 settlement precedes class certification, the district court must apply an even higher
9 level of scrutiny . . . to look for and scrutinize any subtle signs that class counsel
10 have allowed pursuit of their own self-interests to infect the negotiations.” *In re*
11 *Apple*, 2022 WL 4492078, at *8 (citation omitted). There is “no better evidence” of
12 “a truly adversarial bargaining process . . . than the presence of a neutral third party
13 mediator.” 4 William B. Rubenstein, *Newberg on Class Actions* § 13:50 (5th ed.
14 Dec. 2021 update) (“*Newberg*”).

15 Here, the Parties engaged in vigorous and contested settlement negotiations
16 with the aid of Hon. Layn Phillips (Ret.) and Hon. Sally Shushan (Ret.), both
17 “neutral and experienced mediators.” *Baker v. SeaWorld Ent., Inc.*, 2020 WL
18 4260712, at *6 (S.D. Cal. July 24, 2020). The Parties’ formal mediation session
19 with the two mediators on June 2, 2022, did not result in a settlement. Hazam Decl.,
20 ¶ 31. The Parties continued informal negotiations and held telephone conferences
21 over the following months, and they were able to agree only when the mediators
22 issued their own mediators’ proposal to resolve the case. *Id.*; Phillips Decl. ¶¶ 7-8.

23 Proposed Settlement Class Counsel will apply for an award of attorneys’ fees
24 “separate from the approval of the Settlement, and neither [Plaintiffs nor Class
25 Counsel] may cancel or terminate the Settlement based on this Court’s or any
26 appellate court’s ruling with respect to attorneys’ fees.” *Cheng Jiangchen v.*
27 *Rentech, Inc.*, No. 17-1490, 2019 WL 5173771, at *6 (C.D. Cal. Oct. 10, 2019).
28 Finally, no portion of the Common Funds will revert to Defendants or their

1 insurers. *See generally In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935
2 (9th Cir. 2011). For these reasons, no signs of collusion are present here.

3 **C. The Relief for the Classes Is Substantial (Rule 23(e)(2)(C)).**

4 The Court must “ensure the relief provided for the class is adequate,” taking
5 into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness
6 of any proposed distribution plan, including the claims process; (iii) the terms of
7 any proposed award of attorney’s fees; and (iv) any agreement made in connection
8 with the proposal, as required under Rule 23(e)(3). FRCP 23(e)(2)(C). These
9 factors support preliminary approval.

10 **1. The Settlement Relief Outweighs the Costs, Risks, and Delay**
11 **of Trial and Appeal (Rule 23(e)(2)(C)(i)).**

12 In order to assess “the costs, risks, and delay of trial and appeal,” Rule
13 23(e)(2)(C)(i), the Court must “evaluate the adequacy of the settlement amount in
14 light of the case’s risks.” *In re Wells Fargo & Co. S’holder Derivative Litig.*, 2019
15 WL 13020734, at *5 (N.D. Cal. May 14, 2019). This requires weighing “[t]he relief
16 that the settlement is expected to provide” against “the strength of the plaintiffs’
17 case [and] the risk, expense, complexity, and likely duration of further litigation.”
18 *Id.* (citations omitted).

19 Here, the non-reversionary \$50 million Settlement provides Settlement Class
20 Members with substantial monetary relief. That monetary relief is augmented by
21 very important and substantial injunctive relief targeted at preventing future oil
22 spills. These include: installation of a new leak detection system, use of ROVs to
23 detect pipeline movement and rapid reporting of such to authorities, an increase
24 from one to four of the number of biannual ROV pipeline inspections, revision of
25 oil spill contingency plans and procedures, and employee training on new plans,
26 procedures, and spill reporting. Settlement § IV.

27 The above injunctive relief is included as an essential term of the Settlement
28 Agreement with the Plaintiffs. These measures are also part of the probation

1 conditions set in Amplify’s criminal plea agreement, which Amplify has
2 acknowledged were included in the plea agreement in substantial part because of
3 Plaintiffs’ litigation seeking similar measures. *See* Hazam Decl. Ex. 2, Oct. 3, 2022
4 SMP Hr’g Tr. 22:10-19 (Amplify’s Counsel noting the injunctive terms of the
5 criminal plea agreement were driven by Plaintiffs’ Complaint); *see also* Dkt. 148,
6 ¶ 150 (Plaintiffs’ March 2021 complaint, listing sought injunctive relief). On top of
7 those measures, Amplify has agreed with Plaintiffs to injunctive relief beyond that
8 in the criminal plea agreement, including increased staffing on the off-shore
9 platform and control room involved with this Oil Spill, and establishment of a one-
10 call alert system to report any threatened release of oil. Settlement § IV.

11 The monetary relief here is a strong result for the Class in light of the costs
12 and risks of delay, particularly given Amplify’s available funds. Amplify has
13 approximately \$200 million in liability insurance coverage for spill-related claims.
14 Hazam Decl. Ex. 3, Oct. 3, 2022 Hr’g Tr. 20:1-7. In Amplify’s Form 10-Q,
15 Amplify disclosed that as of March 31, 2022, and inclusive of cost associated with
16 the temporary repair of the pipeline, Amplify has incurred total aggregate gross
17 costs of \$111.2 million, of which Amplify has received or expects that it is probable
18 that it will receive \$109.0 million in insurance recoveries. Hazam Decl. Ex. 4 at 30-
19 31. This amount does not include any costs related to this settlement or other likely
20 costs covered by insurance. Amplify has also incurred costs since March 31, 2022
21 and expects to update insurance claims-related information in its Form 10-Q for its
22 third quarter filing in early November.

23 The \$50 million total proposed monetary relief thus represents a large portion
24 of the amount of insurance funds that remain available to Amplify to pay
25 claims¹¹—an amount that would only decrease with time as Amplify paid ongoing

26
27 ¹¹ *See also e.g., In re Toys R Us–Del., Inc.–Fair & Accurate Credit Transactions*
28 *Act (FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) (granting final approval to settlement providing 3% of possible recovery (\$391.5 million value on exposure up to \$13.05 billion)); *Reed v. 1–800 Contacts, Inc.*, No. 12–CV–02359 JM, 2014 WL 29011, at *6 (S.D. Cal. Jan. 2, 2014) (granting final approval to

1 litigation and other costs. Given limited insurance funds and the lack of revenue
2 from the pipeline that has been shut down for the past year, Amplify is not likely to
3 have substantial funds outside its insurance to satisfy a jury verdict. And while \$50
4 million is less than the Classes' total losses, Class Members would only receive
5 100% of their damages if they succeeded at every stage of litigation, including
6 appeal—at which point they could still find themselves with no recovery. The “very
7 essence of a settlement is compromise, a yielding of absolutes and an abandoning
8 of highest hopes.” *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 322
9 (N.D. Cal. 2018) (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242
10 (9th Cir. 1998)). *See id.* (“Estimates of what constitutes a fair settlement figure are
11 tempered by factors such as the risk of losing at trial, the expense of litigating the
12 case, and the expected delay in recovery (often measured in years).”) (citation
13 omitted). Plus, Class Members remain free to pursue (and are pursuing) their
14 remaining damages against the Shipping Defendants.

15 The reasonableness of the proposed Settlement is clear in light of the
16 uncertainty of victory and significant delay from continued litigation. If Plaintiffs
17 continue litigating their claims against Amplify, they face the gauntlet of prevailing
18 on class certification, *Daubert*, summary judgment, liability and damages at trial,
19 and inevitable appeal. Each of these would be hotly contested. Amplify would also
20 likely seek to shift liability onto the other defendants in this case.

21 Perhaps most importantly, any victory at trial that survived appeal would be
22 years away. In *Andrews v. Plains All American Pipeline, L.P.* (“*Plains*”), No. 2:15-
23 cv-04113-PSG (C.D. Cal.), a similar class action lawsuit on behalf of businesses
24 and property owners harmed by a Southern California oil spill, the parties litigated
25 for seven years before reaching a settlement before trial. And even if Plaintiffs
26 secured a complete victory at trial on both liability and damages, it is a near

27
28 settlement providing 1.7% of possible recovery (net settlement fund of
\$8,288,719.16, resolving claims worth potentially \$499,420,000)).

1 certainty that Defendants would engage in “vigorous post-trial motion practices . . .
2 and likely appeals to the Ninth Circuit—delaying any recovery for years” more.
3 *Baker*, 2020 WL 4260712, at *7. As explained above, delay here would not only
4 cost the Orange County community time, but potentially money, as continued
5 litigation costs would further diminish Amplify’s available insurance funds. It
6 would also delay Amplify undertaking the additional spill-prevention steps it is
7 taking as the injunctive relief provided in this Settlement.

8 Of course, Class Counsel were prepared to prosecute their clients’ case
9 through all challenges, and believe they can overcome them. Nonetheless, risks
10 remained, and significant delays to recovery would have been inevitable. The
11 proposed Settlement allows the affected Orange County community to obtain
12 recovery now—within a year of the incident that caused their losses—while still
13 pursuing further potential relief against the Shipping Defendants.

14 Experienced counsel’s support for the proposed Settlement also weighs in
15 favor of preliminary approval. *See Cheng Jiangchen*, 2019 WL 5173771, at *6
16 (“The recommendation of experienced counsel carries significant weight in the
17 court’s determination of the reasonableness of the settlement.”) (citation omitted).
18 Class Counsel strongly support the proposed Settlement. *See Hazam Decl.*, ¶¶ 33-
19 34.

20 In summary, the proposed Settlement offers substantial monetary relief plus
21 important spill-prevention injunctive relief, and it avoids the uncertainty and the
22 inevitable years-long delays the Classes would have faced if the case were
23 successfully tried and then appealed. This reality, and the potential risks outlined
24 above, underscore the strength of the proposed Settlement.

25 **2. The Settlement Will Distribute Relief Effectively and**
26 **Equitably to the Classes (Rules 23(e)(2)(C)(ii), 23(e)(2)(D)).**

27 Second, the Court should consider “the effectiveness of any proposed method
28 of distributing relief to the class, including the method of processing class-member

1 claims.” FRCP 23(e)(2)(C)(ii). “A claims processing method should deter
2 or defeat unjustified claims, but the court should be alert to whether the claims
3 process is unduly demanding.” FRCP 23(e), 2018 adv. comm. note. If the
4 Settlement is approved by the Court, Plaintiffs will submit Plans of Distribution to
5 the Court within 30 days of preliminary approval, and also make these distribution
6 plans available on the Settlement website. Hazam Decl., ¶ 9. As a part of the notice
7 plan, Settlement Class Members will be instructed to review the Plans of
8 Distribution on the website, and be afforded the opportunity to do so well before
9 they must decide whether to object to the Settlement.

10 For all Settlement Classes, the Settlement Administrator will determine the
11 amount of each Class Member payment consistent with the Plans of Distribution.
12 To prevent double recovery, awards will be offset by payments Class Members
13 have already received through the OPA claims process.

14 Approval of the Plans of Distribution is meant to be separate and distinct
15 from the Court’s approval of the Settlement Agreement, as it was in the *Plains*
16 settlement. As a result, a Settlement Class Member might object to the Plans of
17 Distribution, and the Settlement could nonetheless become final and effective. This
18 helps ensure that the Settlement becomes final and effective as soon as possible.

19 **a. Summary of Plans of Distribution**

20 These plans will effectively distribute relief to the Classes. *See* FRCP
21 23(e)(2)(C)(ii). In sum, distribution of Settlement relief would be as follows:

22 ***Fisher Class:*** Fisher Class Members will receive checks by mail for amounts
23 calculated based on their damages, using the same methodology (and by the same
24 expert[s]) as recently approved in *Plains*, which involved a similarly defined Fisher
25 Class. *See Plains*, Dkt. 979 (C.D. Cal. Sept. 20, 2022) (order granting motion for
26 approval of plans of distribution) (hereinafter “*Plains* Order Approving Distribution
27 Plans”). Unlike in *Plains*, however, Fisher Class Members will *not* have to file
28 claims—all Fisher Class Members who do not opt out will be sent a check.

1 The Fisher Class distribution will be based upon the pro rata share and value
2 of the catch attributable to each vessel and each fishing license, per landing records
3 from the California Department of Fish and Wildlife (CDFW). The Fisher Class
4 Settlement Fund (net after fees and costs) will be distributed among the Fisher
5 Class Members proportionately, based on these landing records. The Plan will also
6 provide for the distribution of the Fisher Class Settlement Fund to fish processors
7 based upon CDFW landing records. This is the same Fisher Class methodology
8 employed and approved in *Plains*. See *Plains* Order Approving Distribution Plans;
9 *Plains*, Dkt. 951-1 (June 27, 2022) (plan of distribution for *Plains* fisher class).
10 Calculating individualized payment amounts for the Fisher Class is economically
11 and administratively feasible in this case because of the CDFW data.

12 Courts regularly approve settlement distributions varied based on the relative
13 damages of each Class Member. See, e.g., *In re Biolase, Inc. Sec. Litig.*, No. SA-
14 CV-13-1300 JLS, 2015 WL 12720318, at *5 (C.D. Cal. Oct. 13, 2015) (approving
15 variable pro rata distribution plan based upon relative injuries of class members); *In*
16 *re Illumina, Inc. Sec. Litig.*, 2021 WL 1017295, at *4-5 (S.D. Cal. March 17, 2021)
17 (approving plan of distribution that “correlates each Settlement Class members’
18 recovery to . . . each Settlement Class member’s Recognized Loss”).

19 ***Property Class:*** Property Class Members will receive checks by mail for
20 equal portions of the Property Class Settlement Fund (net after fees and costs). As
21 in *Plains*, no Property Class Member will have to prove they had oil on their
22 property. But unlike in *Plains*, Property Class Members will *not* have to file
23 claims—all Property Class Members who do not opt out will be sent a check.

24 The proposed equal distribution to Property Class Members is reasonable,
25 efficient, and equitable. Setting aside oiling or other physical trespass on individual
26 Class Members’ properties, all Property Class Members are similarly situated with
27 regard to the impact of harbor and beach closures, which affected all similarly and
28 for the same periods of time. Moreover, unlike the Fisher Class, the Property Class

1 has no single centralized data source like the CDFW from which to determine each
2 member's proportional share of the aggregate damage. An equal distribution—
3 without claims required—is simpler than the variable property class distribution in
4 *Plains*, which required significant expert costs to calculate the proportional loss of
5 use value of each property and administrative costs to administer a claims process.
6 *See Plains*, Dkt. 951-2 (June 27, 2022) (plan of distribution for *Plains* property
7 class). For the Property Class in this case, such expensive calculation and
8 administration processes would be a larger proportion of a smaller fund, reducing
9 the payments available to all Class Members.

10 Courts regularly approve settlements distributing equal payments from a
11 common fund. *See, e.g., Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG, 2018
12 WL 11358228, at *4 (C.D. Cal. Apr. 2, 2018) (approving payment of equal shares
13 for portion of settlement); *S. California Gas Leak Cases*, No. BC601844, (Cal.
14 Super. Ct. April 29, 2022) (granting final approval to settlement distributing \$40
15 million fund equally to class of property owners affected by gas leak).¹²

16 ***Waterfront Tourism Class:*** Many Waterfront Tourism Class Members, like
17 the Fisher Class, will receive checks by mail based on their share of aggregate
18 damages for their category of business. This is true for charter boats and hotels.

19 For four categories of businesses among the Waterfront Tourism Class—
20 restaurants, retail shops, surf schools, and bait and tackle businesses—Plaintiffs
21 propose a streamlined claims process that would require these entities to submit
22 minimal documentation demonstrating their damages in order to receive a check.
23 Given the variability among these Class Members, it is more economical, efficient,
24 and fair for them to submit their damages than for Plaintiffs to attempt to estimate
25 them. *See, e.g., Roberts v. AT&T Mobility LLC*, No. 15-cv-03418-EMC, Dkt. 215 at

26 ¹² Mot. at 3, *S. California Gas Leak Cases*, No. BC601844, (Cal. Super. Ct. Mar.
27 28, 2022) (available at
28 <https://www.porterranchpropertyclass.com/Docs/Plaintiffs%E2%80%99%20Motion%20for%20Final%20Approval%20of%20Class%20Settlement%20and%20Plaintiffs%E2%80%99%20Motion%20for%20Attorneys%20Fees,%20Lit.pdf>)

1 4 (N.D. Cal. Aug. 20, 2021) (granting final approval to settlement in which one
2 group of class members received automatic payments and another had to submit
3 claim forms); *Patti's Pitas, LLC v. Wells Fargo Merch. Servs., LLC*, No. 1:17-CV-
4 04583 (AKT), 2021 WL 5879167, at *2 (E.D.N.Y. July 22, 2021) (same).

5 After the claims deadline, the Settlement Administrator will calculate the
6 relative shares of damages for these Class Members and distribute awards pro rata.

7 **b. The Plans of Distribution Are Fair, Reasonable, and**
8 **Adequate.**

9 Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds
10 in a class action under [Rule] 23 is governed by the same standards of review
11 applicable to the settlement as a whole—the plan must be fair, reasonable, and
12 adequate.” *In re Illumina*, 2021 WL 1017295, at *4 (S.D. Cal. Mar. 17, 2021)
13 (citation omitted). The plan “need only have a reasonable, rational basis,
14 particularly if recommended by experienced and competent class counsel.” *Jenson*
15 *v. First Tr. Corp.*, 2008 WL 11338161, *9 (C.D. Cal. June 9, 2008).

16 The proposed Plans of Distribution—described in general terms here, with
17 specific details to be provided to the Court with the Plans themselves—readily
18 satisfy Rule 23(e)(2)(c)(ii)’s requirement that settlement funds be distributed “in as
19 simple and expedient a manner as possible.” *Hilsley v. Ocean Spray Cranberries,*
20 *Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020) (quoting *Newberg, supra*,
21 § 13:53). Indeed, the Plans here will be simpler and more expedient than those
22 approved in *Plains* because almost all Class Members (except certain members of
23 the Waterfront Tourism Class as described above (*see* Argument I., C, 2.a, *supra*))
24 will not have to submit claims to receive funds. In addition, no settlement funds
25 will revert to Amplify; after payment of any attorneys’ fees, expenses, service
26 awards, and notice administration, all money will be distributed to Class Members.
27 Settlement § V.3.b. This is a “[s]ignificant[.]” fact that further demonstrates the
28 Settlement’s fairness and effectiveness. *Hilsley*, 2020 WL 520616, at *7.

1 **c. The Plans of Distribution Are Equitable.**

2 The proposed distributions will also “treat[] class members equitably relative
3 to each other.” FRCP 23(e)(2)(D). Relevant considerations include “whether the
4 apportionment of relief among class members takes appropriate account of
5 differences among their claims, and whether the scope of the release may affect
6 class members in different ways that bear on the apportionment of relief.” FRCP
7 23(e)(2), 2018 adv. comm. note. The release in the Settlement affects all Class
8 Members equally. Settlement § VIII.

9 As noted above, the Plans of Distribution apportion relief among each
10 proposed Class equitably, considering the relative harm to each Class Member
11 where feasible, and employing common distribution arrangements well in line with
12 prior settlement approvals in this Circuit. *See Plains*, Order Approving Distribution
13 Plans; *In re Biolase*, 2015 WL 12720318, at *5; *Illumina*, 2021 WL 1017295, at *4-
14 5; *Koenig*, 2018 WL 11358228, at *4. Allocation of funds *between* the three classes
15 is also equitable, reflecting both relative amounts of damages as estimated by expert
16 analysis to date, and likelihood of recovery given relative strength of claims. *See*
17 *Jenson*, 2008 WL 11338161, at *10 (approving distinctions in plan of allocation as
18 reasonably reflecting likelihood of recovery of subgroups within the class). While
19 Plaintiffs believe all three Classes will prevail against the non-Amplify defendants,
20 unlike the Waterfront Tourism Class, the Fisher Class and Property Class to
21 varying degrees benefit from the precedents in *Plains* certifying substantially
22 similar classes, and admitting the testimony of the same experts that Plaintiffs may
23 use here to prove class-wide liability damages for those two classes. *See Plains*,
24 2017 WL 10543402, at *1 (C.D. Cal. Feb. 28, 2017) (certifying fisher class,
25 denying certification of property and tourism classes); *Plains*, Dkt. 454 (C.D. Cal.
26 Apr. 17, 2018) (certifying renewed motion to certify property class); *Plains*, 2020
27 WL 3105425, at *6 (C.D. Cal. Jan. 16, 2020) (denying motion to decertify property
28 class and to exclude fisher and property class experts). The mediators also found

1 that the allocation “fairly divides the Settlement among the three putative classes.”
2 Phillips Decl., ¶¶ 9-11.

3 **d. Plaintiffs Will Request Reasonable Service Awards for**
4 **Class Representatives.**

5 Plaintiffs intend to request service awards of up to \$10,000 each to
6 compensate the Class Representatives for the time and effort they spent pursuing the
7 matter on behalf of the Class, including participating in discovery and settlement.
8 Hazam Decl. ¶¶ 30, 35. Such awards “are fairly typical in class action cases.”
9 *Rodriguez v. W. Publ’g. Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). “So long as they
10 are reasonable, they can be awarded.” *In re Apple*, 2022 WL 4492078, at *13
11 (rejecting objections that service awards were inequitable); *see also Illumina*, 2021
12 WL 1017295, at *8 (granting \$25,000 service award as reasonable). Plaintiffs’
13 motion for an award of attorneys’ fees and service awards will detail this time and
14 effort.

15 **3. Settlement Class Counsel Will Seek Reasonable Attorneys’**
16 **Fees and Expenses (Rule 23(e)(2)(C)(iii)).**

17 The terms of Interim Co-Lead Counsel’s “proposed award of attorney’s fees,
18 including timing of payment,” are also reasonable. *See* FRCP 23(e)(2)(C)(iii).
19 Interim Co-Lead Counsel will move the Court for an award of attorneys’ fees of up
20 to 25% of each Common Fund (or \$12.5 million). “[C]ourts typically calculate 25%
21 of the fund as the ‘benchmark’ for a reasonable fee award.” *In re Bluetooth*, 654
22 F.3d at 942 (citation omitted). Interim Co-Lead Counsel’s fee request will be
23 supported by their lodestar in the matter, and Plaintiffs will provide lodestar and
24 expense figures when they move for attorneys’ fees and costs. Plaintiffs will also
25 seek reimbursement of litigation expenses. Hazam Decl. ¶ 36.

26 Plaintiffs will file their motion for attorneys’ fees and expenses (along with
27 Plaintiffs’ request for service awards) sufficiently in advance of the deadline for
28 Class Members to object to the request. The motion will be available on the
Settlement Website. Class Members will thus have the opportunity to comment on

1 or object to the fee application prior to the hearing on final settlement approval, as
2 the Ninth Circuit and Rule 23(h) require. *See In re Volkswagen “Clean Diesel”*
3 *Mktg., Sales Practices & Prods. Liab. Litig.*, 895 F.3d 597, 614–15 (9th Cir. 2018).

4 As with the Plans of Distribution, Plaintiffs’ request for reasonable attorneys’
5 fees and expenses, and for service awards for the Class Representatives, is meant to
6 be separate and distinct from the Court’s approval of the Settlement Agreement to
7 help ensure that the Settlement becomes final and effective as soon as possible. As
8 a result, a Class member might object regarding attorneys’ fees, expenses, or
9 service awards, and the Settlement could nonetheless become final and effective.

10 **4. No Other Agreements Exist.**

11 Finally, Plaintiffs must identify any agreements “made in connection with the
12 proposal” besides the Settlement itself. FRCP 23(e)(2)(C)(iv), 23(e)(3). Plaintiffs
13 have not entered into any such agreements.

14 **II. The Court Should Certify the Settlement Classes Upon Final Approval.**

15 When a settlement is reached before certification, a court must determine
16 whether to certify the settlement class. *See, e.g., Manual for Compl. Litig.*, § 21.632
17 (4th ed. 2014); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997).
18 Class certification is warranted when the requirements of Rule 23(a) and at least
19 one subsection of Rule 23(b) are satisfied. Certification of the Settlement Class is
20 warranted here. *See Plains*, 2017 WL 10543402, at *20 (C.D. Cal. Feb. 28, 2017)
21 (certifying similar fisher litigation class); *Plains*, 2018 WL 2717833, at *12 (C.D.
22 Cal. Apr. 17, 2018) (certifying similar property litigation class).¹³

23 **A. The Requirements of Rule 23(a) Are Satisfied.**

24 **Numerosity.** Rule 23(a)(1) requires that “the class is so numerous that
25 joinder of all members is impracticable.” FRCP 23(a)(1). This is satisfied here,
26

27 ¹³ The certified classes in *Plains* survived an interlocutory appeal under Rule 23(f)
28 and three motions for decertification. *See Hazam Decl. Ex. 5* (23(f) fisher class
denial); *Ex. 7* (23(f) property class denial); *Exs. 7-11* (orders denying
decertification).

1 because each Class contains over one thousand Class Members. Keough Decl., ¶
2 23.

3 **Commonality.** Rule 23(a)(2) requires that there be one or more questions
4 common to the class. Commonality “does not turn on the number of common
5 questions, but on their relevance to the factual and legal issues at the core of the
6 purported class’ claims.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir.
7 2014). This case raises multiple common questions, including whether Amplify
8 acted negligently in operating and maintaining its Pipeline, and whether Amplify
9 utilized adequate training, staffing and safety measures and systems.

10 **Typicality.** Under Rule 23(a)(3), a plaintiff’s claims are “typical” if they are
11 “reasonably coextensive with those of absent class members; they need not be
12 substantially identical.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014)
13 (citation omitted). Plaintiffs’ claims and those of the Settlement Classes each
14 represents are based on the same course of conduct and the same legal theories.
15 Moreover, the Plaintiffs representing each Settlement Class suffered the same types
16 of alleged harm as the Class Members they seek to represent.

17 **Adequacy of Representation.** Rule 23(a)(4)’s adequacy inquiry asks “(1) do
18 the named plaintiffs and their counsel have any conflicts of interest with other class
19 members and (2) will the named plaintiffs and their counsel prosecute the action
20 vigorously on behalf of the class?” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d
21 1015, 1031 (9th Cir. 2012) (citation omitted). Interim Co-Lead Class Counsel have
22 extensive experience litigating and resolving class actions, and are well qualified to
23 represent the Settlement Classes. *See* Dkt. 38 (appointing Interim Co-Lead Counsel
24 after considering, in part, their “[e]xperience handling class action sand other
25 complex litigation”). Interim Co-Lead Class Counsel have vigorously prosecuted
26 this action on behalf of the Settlement Classes, including engaging in substantial
27 motions practice and extensive investigation and discovery, developing experts,
28 participating in mediation, and negotiating the proposed Settlement. *See supra*

1 Background § II; Argument § I.A. They will continue to protect their interests.

2 Likewise, Plaintiffs have demonstrated their commitment to the Settlement
3 Classes, including by providing pertinent information about their losses, searching
4 for and providing documents and information in response to Amplify’s discovery
5 requests, regularly communicating with their counsel about the case, and reviewing
6 and approving the proposed Settlement. Hazam Decl., ¶¶ 30, 35.

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

10 **B. The Requirements of Rule 23(b)(3) Are Satisfied.**

11 In addition to the requirements of Rule 23(a), at least one of the prongs of
12 Rule 23(b) must be satisfied. Plaintiffs seek certification under Rule 23(b)(3),
13 which requires that “questions of law or fact common to class members
14 predominate over any questions affecting only individual members, and that a class
15 action is superior to other available methods for fairly and efficiently adjudicating
16 the controversy.”

17 **Predominance.** “The predominance inquiry ‘asks whether the common,
18 aggregation-enabling, issues in the case are more prevalent or important than the
19 non-common, aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v.*
20 *Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). The Ninth Circuit
21 favors class treatment of claims stemming from a “common course of conduct,”
22 like those alleged from the Oil Spill in this case. *See In re First All. Mortg. Co.*, 471
23 F.3d 977, 989 (9th Cir. 2006). Common questions predominate here. The
24 Settlement Class Members’ claims all arise under the same laws and the same
25 alleged conduct. The questions that predominate include whether Amplify acted
26 negligently in maintaining and operating its Pipeline, utilized adequate training,
27 staffing, and safety measures and systems; and omitted material facts concerning
28 the safety of the Pipeline. Moreover, under the proposed Settlement, there will not

1 need to be a class trial, meaning there are no potential concerns about any
2 individual issues, if any, creating trial inefficiencies. *See Amchem Prods.*, 521 U.S.
3 at 620 (“Confronted with a request for settlement-only class certification, a district
4 court need not inquire whether the case, if tried, would present intractable
5 management problems ... for the proposal is that there be no trial.”).

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

15 **III. The Proposed Notice Program Complies with Rule 23 and Due Process.**

16 Before a class settlement may be approved, the Court “must direct notice in a
17 reasonable manner to all class members who would be bound by the proposal.”
18 FRCP 23(e)(1)(B). “Notice is satisfactory if it generally describes the terms of the
19 settlement in sufficient detail to alert those with adverse viewpoints to investigate
20 and to come forward and be heard.” *Khoja v. Orexigen Therapeutics, Inc.*, 2021
21 WL 1579251, at *8 (S.D. Cal. Apr. 22, 2021) (quotation marks omitted). “[N]either
22 Rule 23 nor the Due Process Clause requires actual notice to each individual class
23 member.” *In re Apple*, 2022 WL 4492078, at *5 (citation omitted).

24 The proposed notice program here meets the standards of the Federal Rules
25 and Due Process. The notice program includes direct notice via first class mail to all
26 identifiable Class Members; a robust and targeted social media notice campaign; a
27 Settlement Website where Settlement Class Members can view the Settlement, the
28

1 Long-Form Notice, other key case documents, and submit claims electronically;¹⁴
2 and a Toll-Free Number. Pursuant to Rule 23(c)(2)(B), the proposed forms of
3 notice (*see* Keough Decl., Exs. B-J) provide information about the case, the
4 Settlement, and the right and options of Class Members in clear and concise terms.

5 **IV. The Court Should Schedule a Fairness Hearing and Related Dates.**

6 The next steps are to give notice to Class Members, submit the proposed Plan
7 of Distribution for the Court’s review and post it on the Settlement website, allow
8 Class Members to file objections, and hold a Fairness Hearing. The Parties propose
9 the following schedule also set forth in the concurrently filed proposed Order:

10 Last Day for the Plaintiffs to file Plan of Distribution	30 days after Preliminary Approval
11 Notice to be Completed	60 days after Preliminary Approval
12 Last day for Plaintiffs to File motion for Final Approval of Settlement and Approval of Plans of Distribution, and for Interim Co-Lead Counsel to file Application for Fees and Expenses and for Service Awards	70 days after Preliminary Approval
13 Last day to file Objections or Opt-Out Requests	90 days after Preliminary Approval
14 Last day to file replies in support of Final Approval, Plans of Distribution, Attorneys’ Fees and Expenses, and Service Awards	100 days after Preliminary Approval
15 Final Approval Hearing	140 days after Preliminary Approval

16 **CONCLUSION**

17 Plaintiffs respectfully request that the Court: (1) determine under Rule
18 23(e)(1) that it is likely to approve the Settlement and certify the Settlement
19 Classes; (2) appoint Interim Co-Lead Counsel as Interim Settlement Class Counsel
20 to conduct the necessary steps in the Settlement approval process; (3) direct notice
21

22
23
24
25 ¹⁴ As discussed, only restaurants, retail shops, surf schools, and bait and tackle
26 businesses will need to submit claims. Those entities that meet the class definition
27 will receive notice with unique identification numbers that will permit them to
28 access the online claims portal. *See* Keough Decl., ¶ 40. If any such businesses
believe that they are qualifying members of the Waterfront Tourism Class but did
not receive a notice with a unique identification number, the website instructs them
to contact the notice provider to demonstrate eligibility.

1 to the Classes through the proposed notice program; and (4) schedule a Fairness
2 Hearing in connection with the final approval of the Settlement pursuant to Rule
3 23(e)(2).

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Respectfully submitted,

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