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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

19 KEITH ANDREWS, an individual, et
20 al.,

21 Plaintiffs,

22 v.

23 PLAINS ALL AMERICAN
24 PIPELINE, L.P., a Delaware limited
25 partnership, et al.,

26 Defendants.

Case No. 2:15-cv-04113-PSG-JEMx

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
DIRECTION OF NOTICE UNDER
RULE 23(E)**

Date: June 10, 2022

Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

1 TO ALL THE PARTIES AND TO THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that the Honorable Philip S. Gutierrez, in
3 Courtroom 6A of the United States District Court, Central District of California,
4 located at 350 West 1st Street, Los Angeles, CA 90012-4565, has specially set a
5 hearing on June 10, 2022, at 1:30 p.m. for Plaintiffs' Motion for Preliminary
6 Approval of Class Action Settlement and for Direction of Notice Under Rule 23(e),
7 unless the Court elects to decide this unopposed motion without a hearing.
8 Plaintiffs, by and through their attorneys of record, will move and hereby do move
9 the Court for an order pursuant to Fed. R. Civ. P. 23(e) (1) granting Plaintiffs'
10 Motion for Preliminary Approval of Class Action Settlement and for Direction of
11 Notice Under Rule 23(e). Plaintiffs request that in this order the Court do the
12 following:

- 13
- 14 A. Grant preliminary approval of the proposed Settlement;
 - 15 B. Approve the proposed notice program in the Settlement,
16 including the proposed forms of notice, and direct that notice be
17 disseminated pursuant to such notice program and Fed. R. Civ.
18 P. 23(e)(1);
 - 19 C. Appoint JND Legal Administration as Settlement Administrator
20 and direct JND Legal Administration to carry out the duties and
21 responsibilities of the Settlement Administrator as specified in
22 the Settlement;
 - 23 D. Enter a scheduling order consistent with the dates set forth in the
24 below Memorandum.
25
26

27 This Motion is based on this Notice of Motion and Motion; the
28 accompanying Memorandum of Points and Authorities; the Settlement, including

1 all exhibits thereto; the Declaration of Robert J. Nelson In Support of Preliminary
2 Settlement Approval filed herewith; the Declaration of Jennifer Keough In Support
3 of Motion for Preliminary Approval of Class Action Settlement and Direction of
4 Notice under Rule 23(e) filed herewith; the arguments of counsel; all papers and
5 records on file in this matter, and such other matters as the Court may consider.

6
7
8 Dated: May 13, 2022

Respectfully submitted,

9 LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP

10
11 By: Robert J. Nelson
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22 PLAINS ALL AMERICAN
23 PIPELINE, L.P., a Delaware limited
partnership, et al.,

24
25 Defendants.

Case No. 2:15-cv-04113-PSG-JEMx

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

Date: June 10, 2022

Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

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INTRODUCTION

1
2 After seven years of hard-fought litigation, Plaintiffs now move the Court to
3 approve a proposed Settlement of \$184 million for the Fisher Class and \$46 million
4 for the Property Class, inclusive of attorneys’ fees and costs.¹ The proposed
5 Settlement is an exceptional achievement for each Class, and readily satisfies the
6 fair, reasonable, and adequate criteria for preliminary settlement approval. The
7 proposed Settlement represents a substantial percentage of the Plaintiffs’
8 recoverable damages, even assuming a successful trial and appeals – which was by
9 no means a certainty given the complexity and scale of this litigation.

10 This Settlement is informed by an extraordinary degree of discovery and
11 motion practice. The Parties hired no fewer than 17 substantive experts who
12 exchanged more than 50 expert reports, document discovery resulted in the
13 production of over 1.5 million pages of documents, and more than 100 depositions
14 were taken. Plaintiffs’ claims survived a motion to dismiss and two motions for
15 summary judgment. Plaintiffs successfully certified two Rule 23(b)(3) classes,
16 including the Fisher Class and the Property Class. These certifications also survived
17 multiple motions for decertification and several Rule 23(f) petitions to the Ninth
18 Circuit. In addition, the case was ready for trial in advance of the June 2022 trial
19 date. Witness and exhibit lists had been exchanged, jury instructions prepared, and
20 motions in limine ruled upon.

21 As a result, Plaintiffs are well-positioned to evaluate the strengths and
22 weaknesses of their case, as well as the proposed Settlement. Notwithstanding their
23 confidence in the merits of their claims, Plaintiffs recognize the challenges of
24 proving their claims at trial, the uncertainty of what amounts the jury would award

25
26 _____
27 ¹ The Settlement Agreement (the “Settlement”) is Exhibit 1 to the concurrently filed
28 Declaration of Robert J. Nelson In Support of Preliminary Settlement Approval
 (“Nelson Decl.”). Unless otherwise specified, capitalized terms herein refer to and
 have the same meaning as in the Settlement.

1 even if Plaintiffs prevail on liability, and the risk and potential for delay associated
2 with preserving any favorable trial verdict and damage award on appeal.

3 Plaintiffs are also mindful that the oil spill occurred seven years ago, on May
4 19, 2015. Class members already have waited a substantial time to recover any
5 monies, and any appeal of a successful trial verdict could potentially add several
6 years before awards could be distributed. This proposed Settlement—which is the
7 product of extensive, arm’s length negotiations overseen by experienced and
8 accomplished mediators Honorable Daniel Weinstein (Ret.) and Robert A. Meyer
9 of JAMS—ensures substantial and meaningful relief for the Class Members once
10 the Settlement is finally approved.

11 For the reasons set forth herein, Plaintiffs respectfully request that the Court
12 find that the Settlement satisfies Rule 23(e)’s standard for preliminary approval,
13 approve notice to each of the Classes, and set a schedule for final settlement
14 approval.

15 **BACKGROUND**

16 **I. Factual Background**

17 This litigation arises from an oil spill that occurred at Refugio State Beach in
18 Santa Barbara County on May 19, 2015. Defendants owned and operated an
19 onshore pipeline that runs along the coast near Santa Barbara. When the onshore
20 pipeline ruptured, oil from the pipeline spilled into the Pacific Ocean, and spread
21 along the coast of Santa Barbara County, Ventura County, and Los Angeles
22 County. Dkt. 88 ¶¶ 1, 2.

23 **II. Procedural Background**

24 **A. Investigation and Consolidation**

25 In the aftermath of the oil spill, and as early as June 1, 2015, certain plaintiffs
26 filed the first of several class action complaints. On November 9, 2015, this Court
27 consolidated many of the cases into this lead case, *Andrews et al. v. Plains All*
28 *American Pipeline, L.P. et al.*, and administratively closed all other related cases.

1 See Dkt. 40. The operative pleading in this lead case is now the Second Amended
2 Complaint (“SAC”), filed on April 6, 2016. Dkt. 88.

3 Plaintiffs brought claims for strict liability under the Lempert-Keene-
4 Seastrand Oil Spill Prevention and Response Act (California Code Section 8670, *et*
5 *seq.*) and under the common law for ultrahazardous activities. Plaintiffs also
6 brought common law claims for negligence, public nuisance, negligent interference
7 with prospective economic advantage, trespass, continuing private nuisance, and a
8 permanent injunction. Finally, Plaintiffs brought a claim for violation of
9 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* See
10 Dkt. 88 ¶¶ 261-359.

11 **B. Discovery**

12 By any measure, an extraordinary amount of discovery was conducted in this
13 action. Inclusive of third party discovery, the parties obtained and exchanged more
14 than 360,000 documents totaling over 1.5 million pages, including numerous highly
15 technical documents and data sets relating to pipeline integrity. Nelson Decl. ¶ 3.
16 The parties disclosed a total of 17 experts who produced 52 reports. *Id.*, ¶ 4. Each
17 expert was deposed at least once, and many were deposed multiple times; for
18 example, Plaintiffs’ oil transport expert Dr. Igor Mezić, was deposed four times.
19 *Id.*, ¶ 5. Plains also filed well over a dozen motions to strike Plaintiffs’ experts’
20 reports throughout the long life of this litigation. *Id.*, ¶ 6.

21 The parties also took more than 100 depositions. *Id.*, ¶ 7. In addition to the
22 depositions of the experts described above, all 14 Class Representatives sat for day-
23 long depositions prior to class certification, and Plaintiffs deposed 28 current and
24 former Plains employees. *Id.*, ¶¶ 8-9.

25 **C. Class Certification**

26 **1. Fisher Class**

27 On August 22, 2016, Plaintiffs moved to certify a Class of fishers and fish
28 processors impacted by Plains’ spill, supported by reports from five experts. Dkt.

1 123. Plains deposed each Class representative, deposed each Plaintiffs' expert (and
2 moved to strike three of them), and submitted nine expert reports in support of its
3 opposition. After extensive briefing and oral argument, on February 28, 2017, this
4 Court certified a Fisher and Fish Industry Class based on initial estimates of where
5 the oil traveled and which fishing blocks were impacted. Dkt. 257.

6 Following two years of additional fact and expert discovery, on August 31,
7 2019, Plaintiffs sought to amend the Fisher Class definition to conform to the
8 evidence of the fishing blocks actually impacted by the oil spill, supported by
9 amended reports from two of their experts. Dkt. 531. Plains again deposed
10 Plaintiffs' experts, moved to strike their reports, and opposed certification, serving
11 amended reports from two of its own experts. Dkt. 545. Following voluminous
12 briefing, this Court granted Plaintiffs' motion to amend the Fisher Class, certified
13 the Fisher Class under Plaintiffs' proposed amended definition, and denied Plains'
14 *ex parte* application to strike the reports of Plaintiffs' experts. Dkt. 577.²

15 Following that order, Plains petitioned the Ninth Circuit Court of Appeals to
16 review the certification decision pursuant to Fed. R. Civ. P. 23(f). Plaintiffs
17 opposed, and the Ninth Circuit denied the petition. *See Andrews et. al., v. Plains All*
18 *American Pipeline, et. al*, Case No. 19-80167, Dkt. 3 (July 27, 2020).

20 ² The amended and operative definition is: "All persons and businesses (Fishers)
21 who owned or worked on a vessel that was in operation as of May 19, 2015 and
22 that: (1) landed any commercial seafood in California Department of Fish and
23 Wildlife ("CDFW") fishing blocks 654, 655, or 656; or (2) landed any commercial
24 seafood, except groundfish or highly migratory species (as defined by the CDFW
25 and the Pacific Fishery Management Council), in CDFW fishing blocks 651-656,
26 664-670, 678-686, 701-707, 718-726, 739-746, 760-765, or 806-809; from May 19,
27 2010 to May 19, 2015, inclusive; and All persons and businesses (Processors) in
28 operation as of May 19, 2015 who purchased such commercial seafood directly
from the Fishers and re-sold it at the retail or wholesale level. Excluded from the
proposed Class are: (1) Defendants, any entity or division in which Defendants
have a controlling interest, and their legal representatives, officers, directors,
employees, assigns and successors; (2) the judge to whom this case is assigned, the
judge's staff, and any member of the judge's immediate family, and (3) businesses
that contract directly with Plains for use of the Pipeline." *Id.* at 3.

1 Plains moved to decertify the Fisher Class no less than three times. Plains
2 moved to decertify the original Fisher Class and moved to exclude the opinions of
3 two of Plaintiffs' experts, filing three expert reports in support of that motion. Dkts.
4 566, 567, 568. Plaintiffs opposed (Dkts. 595-597), and this Court denied Plains'
5 motion as moot after it granted certification of the amended Fisher Class in January
6 2020. Dkt. 630. Plains then filed a decertification motion as to the amended Fisher
7 Class in 2020, along with a motion to strike the expert reports of Plaintiffs'
8 economics expert Dr. Peter Rupert and Plaintiffs' fish toxicity expert Dr. Hunter
9 Lenihan. Dkts. 647, 649. Plaintiffs opposed. Dkts. 668-670. After extensive
10 briefing and oral argument, the Court issued an order denying Plains' motion to
11 decertify and motion to strike. Dkt. 714. In June 2021, Plains filed a third motion to
12 decertify the Fisher Class, which this Court also denied. Dkt. 874.

13 In recent weeks, after its most recent motion to exclude testimony of Dr.
14 Rupert regarding damages after 2017 was denied, Plains advised that it intended to
15 seek a six month extension of the June 2022 trial date in order to re-depose each of
16 the Class Representatives, as well as Drs. Rupert and Lenihan, to submit additional
17 supplemental and rebuttal reports from its own experts, and to potentially file
18 renewed motion to strike testimony of Plaintiffs' experts, and to again seek to
19 decertify the Fisher Class. Dkt. 939.

20 **2. Property Class**

21 On March 5, 2018, Plaintiffs moved to certify a Property Class, based on
22 their experts' analyses of where Plains' oil traveled and which coastal properties
23 were impacted. Dkt. 428-1. Plains opposed, submitting reports from three of its
24 own experts in support of its opposition, and moved to strike Plaintiffs' two expert
25 reports. Dkts. 430, 440. On April 17, 2018, this Court granted Plaintiffs' motion for
26 certification of the Property Class and denied Plains' motions to strike. Dkt. 454.

27 Plains petitioned the Ninth Circuit Court of Appeals pursuant to Fed. R. Civ.
28 P. 23(f), Plaintiffs opposed, and the Ninth Circuit denied the petition. *See Andrews*

1 *et. al., v. Plains All American Pipeline, et. al*, Case No. 18-80054, Dkt. 4 (June 27,
2 2018).

3 Like the Fisher Class, the Property Class was subject to three decertification
4 motions. Plains filed its first motion to decertify in October, 2019 (Dkt. 555-1), and
5 another round of motions to exclude the reports of Dr. Igor Mezić and Plaintiffs'
6 real estate economist expert Dr. Randall Bell. Dkt. 556-1 (Mezić), Dkt. 557-1
7 (Bell). Plaintiffs opposed, and this Court denied Plains' motion to decertify and
8 denied Plains' motions to strike the reports of these experts. Dkt. 624. In 2020,
9 Plains again moved to decertify the Property Class, which Plaintiffs opposed, and
10 this Court denied. Dkts. 663, 718, 720. A year later, in June 2021, Plains filed a
11 third motion to decertify the Property Class, which this Court denied. Dkt. 874.

12 **D. Summary Judgment**

13 Plains also filed multiple summary judgment motions. As to the Fisher Class,
14 Plains moved for summary judgment in 2019. Dkt. 646. After extensive briefing,
15 with thousands of pages of documents in support of and in opposition to the
16 motion, and lengthy oral argument, the Court denied Plains' motion for summary
17 judgment in large part. Dkt. 714.³

18 As to the Property Class, Plains moved for summary judgment on October
19 21, 2019. Dkt. 554. After Plaintiffs opposed and Plains replied, the Court ordered
20 supplemental briefing, which both Parties submitted. Dkts. 635, 636. After
21 additional oral argument, the Court issued an order on March 17, 2020, largely
22 denying Plains' motion. Dkt. 720.⁴

23 _____
24 ³ The Court granted summary judgment against a subset of the Fisher Class, the fish
25 processors, as to their ultrahazardous liability, negligence, and public nuisance
claims. *Id.* at 19.

26 ⁴ The Court granted summary judgment only as to certain claims for certain groups
27 within the Property Class. The Court dismissed the trespass claims for the Unoiled
28 Properties, because the Court held that the group of properties did not suffer
physical oiling and could not state a trespass claim. The Court similarly granted
Plains' motion for summary judgment as to negligent interference with prospective
economic advantage, violation of the UCL, and a permanent injunction, following

1 In June 2020, Plains moved for reconsideration of the Court’s summary
2 judgment order. Plaintiffs opposed, and the Court denied Plains’ motion. Dkt. 720.

3 **E. Trial Preparation**

4 This case was originally set to go to trial in September of 2020. The Parties
5 had prepared the case for trial, exchanging witness lists, a joint exhibit list with
6 4,705 entries, jury instructions, deposition designations, and contentions of law and
7 fact. The Parties also fully briefed 16 motions in limine and submitted multiple
8 briefs regarding the trial plan.

9 The trial was postponed because of the COVID pandemic and was then re-set
10 for June 2, 2022. This Court has since ruled on all 16 motions in limine and
11 numerous other motions, including motions to amend witness and exhibit lists,
12 motions to submit additional supplemental expert reports and to strike other reports.
13 *See, e.g.*, Dkts. 891-900 (orders on motions in limine), Dkts. 857, 867 (order on
14 amending witness list and exhibits for trial). The Court also adopted Plaintiffs’
15 proposed trial plan over Plains’ opposition. Dkt. 911.

16 In sum, to say this case was mature at the time the Parties reached the
17 proposed Settlement is an understatement. Plaintiffs were fully prepared to try the
18 case, and the case was ready for trial. There should be no doubt that Plaintiffs and
19 the Court are fully able to evaluate the case and the adequacy of the proposed
20 Settlement.

21 **F. Mediation and Settlement**

22 The proposed Settlement is the product of arm’s length negotiations. The
23 parties and their counsel participated in three formal full-day mediations over the
24 course of three years with Judge Daniel Weinstein (Ret.) and Robert Meyer of
25 JAMS, in addition to informal negotiations and innumerable telephone conferences
26 over this same time. The first mediation was held in the fall of 2019. The second
27 mediation was held in the fall of 2020. The third full-day mediation took place on

28 _____
Plaintiffs’ concessions on these claims. *Id.* at 16.

1 March 22, 2022, after which the Parties still had not reached agreement. On April
2 13, 2022, the mediators submitted a so-called mediator’s proposal that both Parties
3 ultimately accepted. Since reaching an agreement in principle, the parties have
4 worked diligently to draft the Settlement Agreement, notices, and other settlement
5 exhibits, and to select the proposed Settlement Administrator. Nelson Decl. ¶ 10.

6 **III. Summary of Settlement Terms**

7 Under the proposed Settlement, Plains will pay \$184 million to the Fisher
8 Class. The Fisher Class Settlement Amount, together with interest earned thereon,
9 will constitute the Fisher Class Common Fund. Separately, Plains will pay \$46
10 million to the Property Class. The Property Class Settlement Amount, together with
11 interest thereon, will constitute the Property Class Common Fund. The total
12 combined value of the two Funds is \$230 million. No portion of the combined \$230
13 million will revert to Defendants. After deduction of notice-related costs and any
14 Court-approved award of attorneys’ fees, reimbursement of litigation expenses, and
15 service awards to Class Representatives, the monies will be distributed to the Class
16 members in accordance with plans of distribution to be submitted to, and approved
17 by, the Court (the “Net Settlement Fund(s)”).

18 Per the Settlement Agreement, Plaintiffs are entrusted with developing Plans
19 of Distribution for each Common Fund, to be submitted to this Court for review
20 and approval within 30 days of preliminary approval. Descriptions of the Plans of
21 Distribution are described in Part I.C.2 below.

22 **LEGAL STANDARD FOR PRELIMINARY APPROVAL**
23 **AND DECISION TO GIVE NOTICE**

24 Class actions “may be settled . . . only with the court’s approval.” Fed. R.
25 Civ. P. 23(e). The Ninth Circuit has a “strong judicial policy . . . favor[ing]
26 settlements, particularly where complex class action litigation is concerned.” *In re*
27 *Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (citation
28

1 omitted). Rule 23(e) governs a district court’s analysis of the fairness of a proposed
2 class action settlement and creates a multistep process for approval:

3 *First*, the court must make a “preliminary fairness determination” that it is
4 likely to “approve the proposal under Rule 23(e)(2).” Fed. R. Civ. P. 23(e)(1)(B). *In*
5 *re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prod. Liab. Litig.*, No.
6 17-MD-02777-EMC, 2019 WL 536661, at *7-8 (N.D. Cal. Feb. 11, 2019). *Second*,
7 the court must direct notice to the proposed settlement class, describing the terms of
8 the proposed settlement and the definition of the class, to give them an opportunity
9 to object to or (in some cases) to opt out of the proposed settlement.⁵ *See* Fed. R.
10 Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). *Third*, after a fairness hearing, the
11 court may grant final approval to the proposed settlement on a finding that the
12 settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2).

13 ARGUMENT

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

15 A court should preliminarily approve a settlement and direct notice to the
16 class if it finds that it is likely to approve the settlement as “fair, reasonable, and
17 adequate.” Fed. R. Civ. P. 23(e)(1)(B)(i); (e)(2). Rule 23 sets out the “primary
18 procedural considerations and substantive qualities that should always matter to the
19 decision whether to approve the proposal.” Fed. R. Civ. P. 23(e)(2), 2018 adv.
20 comm. note. These include whether “(A) the class representatives and class counsel
21 have adequately represented the class; (B) the proposal was negotiated at arms-
22 length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal
23 treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2).⁶
24 The proposed Settlement readily satisfies these criteria.

25 _____
26 ⁵ As discussed below, because class members have already been notified of the
27 Court’s certification and given the opportunity to opt out, no further opt-outs should
28 be permitted in this case. *See* Argument III, *infra*.

⁶ The amended Rule 23(e)(2) was not intended “to displace any factor” courts have
articulated as relevant to the decision whether to approve a class settlement as fair

1 **A. Plaintiffs and Class Counsel Have Adequately Represented the**
2 **Classes.**

3 The Court must first consider whether “the class representatives and class
4 counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). This
5 analysis includes “the nature and amount of discovery” undertaken in the case.
6 Fed. R. Civ. P. 23(e), 2018 adv. comm. note.

7 The Class Representatives and Class Counsel have prosecuted this action on
8 behalf of the Classes with vigor and dedication for seven years, such that this factor
9 is readily satisfied. *See* Fed. R. Civ. P. 23(e)(2)(A); 4 William B. Rubenstein,
10 *Newberg on Class Actions* § 13:49 (5th ed. Dec. 2021 update) (“*Newberg*”). As
11 detailed in § II.B., *supra*, Class Counsel aggressively pursued fact and expert
12 discovery, obtaining more than one million pages of documents, preparing and
13 defending numerous experts, and closely scrutinizing Plaintiffs’ expert proof. Class
14 Counsel also managed the extensive motion practice required by this case: they
15 successfully certified both Classes and defeated Rule 23(f) petitions and three
16 motions for decertification as to each Class; defeated summary judgment motions,
17 supported by thousands of pages of documentation; and defeated countless other
18 motions for reconsideration and motions to strike Plaintiffs’ experts over this
19 lengthy litigation. *See also Valenzuela v. Walt Disney Parks & Resorts U.S., Inc.*,

20
21 and adequate. Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note. In the Ninth
22 Circuit, these factors are: “[1] the strength of the plaintiffs’ case; [2] the risk,
23 expense, complexity, and likely duration of further litigation; [3] the risk of
24 maintaining class action status throughout the trial; [4] the amount offered in
25 settlement; [5] the extent of discovery completed and the stage of the proceedings;
26 [6] the experience and views of counsel; [7] the presence of a governmental
27 participant; and [8] the reaction of the class members to the proposed settlement.”
28 *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020) (citation omitted).
The amended Rule 23(e)(2) “overlap[s]” with and “substantively track[s]” 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); *Greer v. Dick’s*
Sporting Goods, Inc., 2020 WL 5535399, at *2 (E.D. Cal. Sept. 15, 2020). As
such, Plaintiffs’ analysis of Rule 23(e)(2) accounts for the Ninth Circuit’s factors
and discusses them where applicable.

1 2019 WL 8647819, at *6 (C.D. Cal. Nov. 4, 2019); *Hefler v. Wells Fargo & Co.*,
2 2018 WL 6619983, at *8 (N.D. Cal. Dec. 18, 2018) (class counsel “vigorously
3 prosecuted this action through dispositive motion practice, extensive initial
4 discovery, and formal mediation”).

5 The Class Representatives were also actively engaged in the case—each
6 produced numerous documents, sat for a deposition, and regularly communicated
7 with Class Counsel up to and including evaluating and approving the proposed
8 Settlement. Nelson Decl., ¶ 8.

9 Finally, the Rule 23(e)(2)(A) “analysis is redundant of the requirements of
10 Rule 23(a)(4) and Rule 23(g),” *Hudson v. Libre Tech. Inc.*, 2020 WL 2467060, at
11 *5 (S.D. Cal. May 13, 2020) (Curiel, J.) (quotation marks omitted), which this
12 Court previously held were satisfied in certifying both Classes, appointing Plaintiffs
13 as Class Representatives, and appointing Lieff Cabraser, Keller Rohrback, Cappello
14 & Noël, and Audet & Partners as Class Counsel. *See* Dkts. 257, 454, 577. It follows
15 from these prior rulings that “the adequacy factor under Rule 23(e)(2)(A) is also
16 met.” *Hudson*, 2020 WL 2467060, at *5.

17 **B. The Settlement Is the Result of Arm’s Length Negotiations.**

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

24 Here, the parties engaged in vigorous and contested settlement negotiations
25 with the aid of Hon. Daniel Weinstein (Ret.) and Robert A. Meyer, Esq., both
26 “neutral and experienced mediators.” *Baker v. SeaWorld Ent., Inc.*, 2020 WL
27 4260712, at *6 (S.D. Cal. July 24, 2020); *Soto v. Diakon Logistics (Del.), Inc.*, 2015
28 WL 13344896, at *3 (S.D. Cal. Feb. 5, 2015). The mediation efforts spanned three

1 years, punctuated by three all-day mediation sessions. Nelson Decl. ¶ 11. With
2 Judge Weinstein and Mr. Meyer’s assistance, the Parties separately negotiated the
3 Fisher Class Settlement Amount and the Property Class Settlement Amount, and
4 were only able to agree when the mediators finally issued their own “mediators’
5 proposal” as to each Class to resolve the case. *Id.*, ¶ 12.

6 Class Counsel will apply for an award of attorneys’ fees of up to 33 percent
7 of both Common Funds. This award will be “separate from the approval of the
8 Settlement, and neither [Plaintiffs nor Class Counsel] may cancel or terminate the
9 Settlement based on this Court’s or any appellate court’s ruling with respect to
10 attorneys’ fees.” *Cheng Jiangchen v. Rentech, Inc.*, No. 17-1490, 2019 WL
11 5173771, at *6 (C.D. Cal. Oct. 10, 2019). In addition, there is no “clear sailing”
12 arrangement whereby Plains has agreed in advance not to oppose Class Counsel’s
13 request for fees. Finally, no portion of the Common Funds will revert to Defendants
14 or their insurers. *See generally In re Bluetooth Headset Prods. Liab. Litig.*, 654
15 F.3d 935 (9th Cir. 2011). For these reasons, no signs of collusion are present here.
16 *Id.*

17 In summary, this Settlement is the result of strenuous, arm’s length
18 settlement negotiations, after years of hard-fought litigation.

19 **C. The Relief for the Classes is Substantial.**

20 The Court must “ensure the relief provided for the class is adequate,” taking
21 into account (1) the costs, risks, and delay of trial and appeal; (2) the effectiveness
22 of any proposed distribution plan, including the claims process; (3) the terms of any
23 proposed award of attorney’s fees; and (4) any agreement made in connection with
24 the proposal, as required under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C). These
25 factors also overwhelmingly support preliminary approval.
26
27
28

1 **1. The Settlement Relief Outweighs the Costs, Risks, and Delay**
2 **of Trial and Appeal.**

3 In order to assess “the costs, risks, and delay of trial and appeal,” Fed. R.
4 Civ. P. 23(e)(2)(C)(i), the Court must “evaluate the adequacy of the settlement in
5 light of the case’s risks.” *In re Wells Fargo & Co. S’holder Derivative Litig.*, 2019
6 WL 13020734, at *5 (N.D. Cal. May 14, 2019). This requires weighing “[t]he
7 relief that the settlement is expected to provide” against “the strength of the
8 plaintiffs’ case[and] the risk, expense, complexity, and likely duration of further
9 litigation.” *Id.* (alteration adopted) (first quoting Fed. R. Civ. P. 23(e)(2), 2018
10 adv. comm. note; and then quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
11 (9th Cir. 1998)).

12 Here, the \$46 million Property Class settlement represents over half of
13 claimed compensatory damages, and the \$184 million Fisher Class settlement is
14 nearly 100 percent of the claimed damages through 2017 and more than one-third
15 of the total amount of claimed compensatory damages once the damages period was
16 extended to 2020. Dkt. 929 at 5-6. In light of the myriad challenges and years of
17 delay the Classes would have each faced in obtaining their maximum claimed
18 damages – essentially requiring them to run the table on complex issues of liability,
19 injury, damages, and class certification at trial and all the way through appeal – the
20 Settlement represents an exceptional result for these Classes.

21 For both Classes, Plains’ liability for negligence and any possible punitive
22 damage exposure was hotly contested and turned on technical issues regarding
23 Plains’ integrity management of its pipeline. Plaintiffs, through their experts,
24 contended that Plains should have known about the pipeline’s corrosion years
25 before it ruptured, including through inspections performed in 2007 and 2012.
26 However, in the view of Plains and its experts, Plains acted reasonably by
27 performing in-line inspections and the required digs and repairs.
28

1 Apart from Plains’ conduct, the Classes also faced arguments from Plains on
2 both liability and damages proof. As reflected in Plains’ many *Daubert* and
3 summary judgment motions, Plains submitted expert opinions that the spill volume
4 was a fraction of what Plaintiffs’ asserted, which, if credited, potentially could have
5 adversely impacted the liability case and limited the scope of damages for the
6 Property Class. This spill volume dispute similarly could have affected liability and
7 damages for the Fisher Class. Plains also attacked the Fisher Class damages model
8 itself, focusing on confounding factors and the purported impact of the individual
9 business decisions of Fisher Class members. Plains also made clear that it would
10 use these same factual disputes to continue its attack on class certification, which it
11 intended to bring yet again in these proceedings. In recent weeks, Plains previewed
12 its requests for re-depositions of Class Representatives and Plaintiffs’ experts,
13 renewed *Daubert* motions, renewed decertification motions, and a request to delay
14 the trial by another six months. Dkt. 939.

15 Had Plaintiffs secured a complete victory at trial (both on liability and
16 damages), it is a near certainty that Defendants would have engaged in “vigorous
17 post-trial motion practices . . . and likely appeals to the Ninth Circuit—delaying any
18 recovery for years.” *Baker*, 2020 WL 4260712, at *7. Plains has arguably preserved
19 all of its myriad arguments for appeal, which would therefore likely include a broad
20 attack on every aspect of this seven-year-long litigation. Of course, Class Counsel
21 were prepared to defend their clients’ case against each of these challenges, just as
22 they have repeatedly done in the face of the dozen or more case-dispositive
23 challenges to date. Nonetheless, risks remained, and significant and painful delays
24 to recovery would have been inevitable.⁷

25 ⁷ This case could very well have ended up at the Supreme Court, adding additional
26 years of delay to an already seven-year-old case. For example, Plains continued to
27 argue that the Court did not evaluate the number of class members who suffered
28 injury, and could not do so on the basis of Plaintiffs’ evidence. While the Ninth
Circuit recently held that a court need not determine what percentage of class
members suffered injury in order to certify a class, *see Olean Wholesale Grocery*

1 Finally, experienced counsel’s support for the proposed Settlement also
2 weighs in favor of preliminary approval. *See Cheng Jiangchen*, 2019 WL 5173771,
3 at *6 (“The recommendation of experienced counsel carries significant weight in
4 the court’s determination of the reasonableness of the settlement.” (citation
5 omitted)). This is especially true given that extensive discovery and motion practice
6 allowed both sides to gain “a good understanding of the strengths and weaknesses
7 of their respective cases,” reinforcing “that the settlement’s value is based on . . .
8 adequate information.” *Newberg, supra*, § 13:49. Here, Class Counsel strongly
9 support the proposed Settlement. *See generally* Nelson Decl., ¶¶ 19-20.

10 In summary, the proposed Settlement offers substantial monetary relief and
11 simultaneously avoids the inevitable years-long delays the Classes would have
12 suffered if the case were successfully tried and then appealed. This reality, and the
13 potential risks outlined above underscore the strength of the proposed Settlement.

14 **2. The Settlement Will Effectively Distribute Relief to the**
15 **Classes.**

16 Second, the Court should consider “the effectiveness of any proposed method
17 of distributing relief to the class, including the method of processing class-member
18 claims.” Fed. R. Civ. P. 23(e)(2)(C)(ii). “A claims processing method should deter
19 or defeat unjustified claims, but the court should be alert to whether the claims
20 process is unduly demanding.” Fed. R. Civ. P. 23(e), 2018 adv. comm. note. If the
21 Settlement is approved by the Court, the Fisher Class and Property Class Common
22 Funds will be distributed to eligible Class Members who timely submit valid Claim
23 Forms in accordance with the Court-approved Plans of Distribution. Claim Forms
24 will be available to Class Members both on the settlement website and by calling
25 the Settlement Administrator to request a Claim Form. Class Members who do not
26

27 _____
28 *Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022), the dissent in
that case asserts that the circuits are split on this issue. Thus, the propriety of
certification here could conceivably have led to U.S. Supreme Court review.

1 timely submit valid Claim Forms will not share in the Common Funds, but will
2 otherwise be bound by the Settlement.

3 Plaintiffs will submit Plans of Distribution to the Court within 30 days, and
4 summarize their key features below. Once the plans are submitted, they will be
5 posted on the case website, www.PlainsOilSpill.com. As a part of the notice plan,
6 Class members will be instructed to review the Plans of Distribution on the case
7 website. Class members will be afforded the opportunity to review these plans well
8 before they must decide whether to object to the Settlement.

9 ***Fisher Class.*** As to the Fisher Class, the Plan of Distribution is based upon
10 the pro rata share and value of the catch attributable to each vessel and each fishing
11 license, based on landing records from the California Department of Fish and
12 Wildlife (CDFW). The Fisher Class Net Settlement Fund will be distributed among
13 the Fisher Class Members proportionately, based on these landing records. The
14 Plan also provides for the distribution of the Net Settlement Fund to fish processors
15 based on the proportional share and value of fish purchased by each processor,
16 based upon CDFW landing records.

17 After receiving the Claim Forms, the Settlement Administrator will
18 determine whether Class Members are qualified to receive money, as well as the
19 amount of any such distribution. The Settlement Administrator will be tasked with
20 ensuring that all Settlement proceeds from the Fisher Net Settlement Fund are
21 distributed consistent with the Plan of Distribution. Claimants will have the
22 opportunity to object to their award, which will ultimately be subject to the Court's
23 review pursuant to the Court's continuing jurisdiction over the Settlement of this
24 action.

25 ***Property Class.*** As to the Property Class, Plaintiffs' expert Dr. Igor Mezić's
26 oil transport model along with Dr. Bell's analysis projects that approximately 3,000
27 coastal properties experienced oiling. For these properties, Dr. Mezić's model
28 determined that these properties experienced of heavy, moderate, and light oiling

1 according to NOAA categories for a specific number of days. *Id.*, ¶ 13. There are
2 also coastal properties that did not directly experience oiling, but were adjacent to
3 beaches that Dr. Mezić’s projects did experience oiling. *Id.*, ¶ 14. As with the
4 coastal oiled properties, Dr. Mezić’s model determined what degree of, and how
5 many days of oiling these beaches experienced according to the same NOAA
6 categories. Accordingly, Plaintiffs can determine which properties were adjacent to
7 heavily oiled, moderately oiled, or lightly oiled beaches on which days.

8 Plaintiffs’ damages expert Dr. Randall Bell has determined the value of the
9 beach amenity—the premium paid to live on the beach—for each class property,
10 and the value of the loss of use of the beach amenity due to oiling, through a
11 regression analysis.

12 The Plan of Distribution for the Property Class Net Settlement Fund will
13 consider the value of the property’s beachfront premium and the number of days
14 and the level of oiling in allocating the award to each Class member. The Plan of
15 Distribution will value more highly the losses to those properties that experienced
16 oiling, and, of those properties that experienced oiling, will value more highly the
17 properties that experienced heavier oiling.

18 As with the Fisher Class, the Settlement Administrator shall have the primary
19 task of determining whether Class Members are qualified to receive money as well
20 as the amount of any such distribution from the Property Class Net Settlement Fund
21 to Class Members, subject to the Court’s ultimate review.

22 Even as described in these general terms, the proposed Plans of Distribution
23 readily satisfy Rule 23(e)(2)(c)(ii)’s requirement that settlement funds be
24 distributed “in as simple and expedient a manner as possible.” *Hilsley v. Ocean*
25 *Spray Cranberries, Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020) (quoting
26 *Newberg, supra*, § 13:53). In addition, no settlement funds will revert to
27 Defendants; after payment of attorneys’ fees, expenses, service awards, and notice
28 administration, all money will be distributed to Class Members. Settlement

1 Agreement, IV. b. This is a “[s]ignificant[]” fact that further demonstrates the
2 Settlement’s fairness and effectiveness. *Hilsley*, 2020 WL 520616, at *7.

3 **3. Plaintiffs’ Counsel Will Seek Reasonable Attorneys’ Fees**
4 **and Expenses.**

5 The terms of Class Counsel’s “proposed award of attorney’s fees, including
6 timing of payment,” are also reasonable. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). Class
7 Counsel will move the Court for an award of attorneys’ fees of up to 33% of both
8 Common Funds (approximately \$75,900,000), plus costs of no more than \$6.5
9 million. “Courts typically calculate 25% of the fund as the ‘benchmark’ for a
10 reasonable fee award,” but are empowered to adjust the award where there is an
11 “adequate explanation in the record of any ‘special circumstances,’” such as
12 “exceptional results for the class,” the “absence of supporting precedents,” and the
13 risk undertaken by Class Counsel. *Compare In re Bluetooth Headset Prod. Liab.*
14 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *Vizcaino v. Microsoft Corp.*, 290 F.3d
15 1043, 1048 (9th Cir. 2002). Courts in the Ninth Circuit “routinely” award fees that
16 exceed the 25 percent benchmark where these factors are present. *Beaver v.*
17 *Tarsadia Hotels*, 2017 WL 4310707, at *10 (S.D. Cal. Sept. 28, 2017); *Victor*
18 *Lopez v. The GEO Group, Inc., et al.*, 14-CV-6639 (C.D. Cal. April 25, 2016)
19 (Gutierrez, J.) (awarding fee award of 33% of total recovery); *In re Pac. Enters.*
20 *Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming fee award of 33% of total
21 recovery).

22 As noted, Class Counsel will seek a fee no greater than 33 percent of the
23 recovery, given the exceptional results obtained for the Classes, the absence of
24 supporting precedents in this type of litigation, and the risks undertaken by Class
25 Counsel over the last seven years. Class Counsel’s actual fee request, whatever it is,
26 will be supported by Class Counsel’s lodestar in the matter, which is currently
27 estimated to equal approximately \$58 million. Nelson Decl. ¶ 15.⁸ Were Class
28

⁸ These lodestar and expense figures are subject to the firms’ continuing review.

1 Counsel to seek a 33 percent fee, Class Counsel would recover a 1.3 multiplier on
2 their lodestar based on current estimates, and that multiplier will reduce over time
3 as Class Counsel oversee the settlement approval and administration process.
4 Multipliers of two or more are not uncommon. *See, e.g., Retta v. Millennium Prod.,*
5 *Inc.*, No. CV15-1801 PSG AJWX, 2017 WL 5479637, at *13 (C.D. Cal. Aug. 22,
6 2017) (Gutierrez, J.) (approving a 3.5 multiplier, and citing cases where multipliers
7 of 6.85, 3.65, and 4.3 were found to be reasonable). Class Counsel will also seek
8 reimbursement of litigation expenses of up to \$6.5 million, which includes, among
9 other things, expert witness costs, deposition costs, and previous class notice costs.
10 Nelson Decl. ¶ 16.

11 Class Counsel will file their fee and expense application (along with
12 Plaintiffs' request for service awards, discussed below) sufficiently in advance of
13 the deadline for Class Members to object to the request. Class Members will thus
14 have the opportunity to comment on or object to the fee application prior to the
15 hearing on final settlement approval, as the Ninth Circuit and Rule 23(h) require.
16 *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices & Prods. Liab. Litig.*,
17 895 F.3d 597, 614–15 (9th Cir. 2018).

18 **4. The Settlement Agreement is Distinct from the Plans of**
19 **Distribution and Class Counsel's Request for Fees and**
20 **Expenses.**

21 Approval of the Settlement Agreement is meant to be separate and distinct
22 from the Court's approval of the Plans of Distribution as well as Class Counsel's
23 request for attorneys' fees and costs. As a result, a Class member might object to
24 the Plans of Distribution or to Class Counsel's request for fees, or to the service
25 awards to Class Representatives, and still the Settlement could nonetheless become
26 final and effective. The purpose of this is to protect the Class and to help ensure that
27 the Settlement becomes final and effective as soon as possible.

28 Nelson Decl. ¶ 15. Class Counsel will provide final lodestar and expense figures
when they move for attorneys' fees and costs.

1 **5. No Other Agreements Exist.**

2 Finally, Plaintiffs must identify any agreements “made in connection with the
3 proposal.” Fed. R. Civ. P. 23(e)(3); *see* Fed. R. Civ. P. 23(e)(2)(C)(iv). This
4 provision is aimed at “related undertakings that, although seemingly separate, may
5 have influenced the terms of the settlement by trading away possible advantages for
6 the class in return for advantages for others.” Fed. R. Civ. P. 23(e)(2), 2003 adv.
7 comm. note. Plaintiffs have not entered into any such agreements.

8 **D. The Proposal Treats Class Members Equitably Relative to Each**
9 **Other.**

10 The final Rule 23(e)(2) factor asks whether “the proposal treats class
11 members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Relevant
12 considerations may include “whether the apportionment of relief among class
13 members takes appropriate account of differences among their claims, and whether
14 the scope of the release may affect class members in different ways that bear on the
15 apportionment of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note.

16 **1. The Proposed Plans of Distribution are Equitable.**

17 As noted, Plaintiffs will submit two Plans of Distribution to the Court
18 detailing how the monies will be distributed to the Class Members. While the plans
19 are still being fine-tuned, the disbursement of the awards to both Classes will be
20 based on transparent and objective criteria that reflect the Class members’
21 recognized losses. *In re Illumina, Inc. Sec. Litig.*, 2021 WL 1017295, at *4–5 (S.D.
22 Cal. March 17, 2021) (approving plan of distribution that “correlates each
23 Settlement Class members’ recovery to . . . each Settlement Class member’s
24 Recognized Loss”). As to the Fisher Class, the awards will be based on fish catch
25 as measured by CDFW records; as to the Property Class, the awards will be based
26 on how heavily and for how long each claimant’s beachfront was impacted by oil.

27
28

1 **2. Plaintiffs Will Request a Service Award for Class**
2 **Representatives.**

3 Plaintiffs will request service awards of up to \$15,000 to compensate the
4 Class Representatives for the time and effort they spent pursuing the matter on behalf
5 of the Class, including participating in discovery and settlement. Nelson Decl. ¶ 17.
6 Such awards “are fairly typical in class action cases.” *Rodriguez v. W. Pub. Corp.*,
7 563 F.3d 948, 958 (9th Cir. 2009). *See also Illumina*, 2021 WL 1017295, at *8
8 (granting \$25,000 service award); *In re Wells Fargo & Co. S’holder Derivative*
9 *Litig.*, 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020) (granting \$25,000 service awards
10 to each institutional investor plaintiff). The anticipated service awards do not raise
11 any equitable concerns about the Settlement itself. *Fleming v. Impax Lab’s Inc.*,
12 2021 WL 5447008, at *10 (N.D. Cal. Nov. 22, 2021) (service awards “are not per
13 se unreasonable” and “this factor weighs in favor of preliminary approval”); *see*
14 *Loomis*, 2021 WL 873340, at *8 (granting final approval to settlement with service
15 award for lead plaintiff); *In re Extreme Networks Inc. Sec. Litig.*, 2019 WL
16 3290770, at *8 (N.D. Cal. Jul. 22, 2018) (same).

17 **II. The Court Already Certified the Classes.**

18 The Settlement resolves claims on behalf of the previously-certified Classes.
19 *See* Dkts. 257, 454, 577; Settlement Article VII, 2. As a result, the Court “does not
20 need to re-certify [the Class] for settlement purposes.” *Newberg, supra*, § 13:18;
21 *accord ODonnell v. Harris County*, 2019 WL 4224040, at *7 (S.D. Tex. Sept. 5,
22 2019). Because “the proposed settlement [does not] call[] for any change in the
23 class certified, or of the claims, defenses, or issues regarding which certification
24 was granted,” Fed. R. Civ. P. 23(e)(1), 2018 adv. comm. note; *ODonnell*, 2019 WL
25 4224040, at *7, the Court need not take any further action under Rule 23(e)(1).
26 *See, e.g., Hawkins v. Kroger Co.*, 2021 WL 2780647, at *2–3 (S.D. Cal. July 2,
27 2021) (granting preliminary approval to previously certified class); *ODonnell*, 2019
28 WL 4224040, at *7 (same).

1 **III. The Proposed Settlement Administrator Should Be Appointed and the**
2 **Proposed Notice Plan Approved.**

3 Plaintiffs propose that the Court appoint JND Legal Administration (“JND”)
4 to be the Settlement Administrator. Before deciding to recommend JND as
5 Settlement Administrator, Class Counsel sought bids from several leading class
6 action settlement administration firms and notice providers. *See* Nelson Decl., ¶ 21.
7 Counsel reviewed the bids and selected JND based on JND’s track record in large
8 class action settlements, including, among many other cases, the Deepwater
9 Horizon settlement. JND’s qualifications are set forth in the Declaration of Jennifer
10 Keough in Support of Motion for Preliminary Approval of Class Action Settlement
11 and Direction of Notice under Rule 23(e) (“Keough Decl.”), as well as in Exhibit A
12 to the Keough Declaration, which includes the firm’s resume. In addition to having
13 a track record of success and experience in handling similar types of claims, JND’s
14 bid to perform the notice and to serve as settlement administrator was competitive
15 economically with the other bids, in the mid-range of the bids. Nelson Decl., ¶ 22.

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 Fed. R. Civ. P. 23(e)(1)(B). “Notice is satisfactory if it generally describes the
19 terms of the settlement in sufficient detail to alert those with adverse viewpoints to
20 investigate and to come forward and be heard.” *Khoja v. Orexigen Therapeutics,*
21 *Inc.*, 2021 WL 1579251, at *8 (S.D. Cal. Apr. 22, 2021) (quotation marks omitted);
22 *see also* Fed. R. Civ. P. 23(c)(2)(b) (describing “the best notice that is practicable
23 under the circumstances”).

24 The proposed notice program here is described in detail in the concurrently-
25 filed Keough Declaration, and is based largely on the notice program Class Counsel
26 previously implemented following the certification of the Classes. Accordingly, the
27 notice program is reasonable here for the same reasons. *See* Dkt. 710 (Order finding
28

1 the Fisher Class Plan of Notice reasonable and approving same); Dkt. 463 (Order
2 finding the Property Class Plan of Notice reasonable and approving same).

3 As set forth in the Keough Declaration, the notice program includes direct
4 notice to all known Settlement Class Members via U.S. Mail, which directs Class
5 Members to the case website where Class Members can view the Settlement, the
6 long-form Class Notice, and other key case documents. The direct notice and the
7 website also direct Class Members to a Toll-Free Number where Class Members
8 can get additional information and communicate directly with the Settlement
9 Administrator, as well as with Class Counsel. Moreover, the proposed forms of
10 notice (*see* Keough Decl., Exs. B - E) inform Class Members, in clear and concise
11 terms, about the nature of this case, the Settlement, and their rights. The Court
12 should approve the proposed notice program.

13 As a result of the prior Court-approved notice, Class members were afforded
14 an opportunity to opt out of the Classes, so their due process rights have been
15 protected. *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1305-06 (S.D. Cal.
16 2017), *aff'd*, 881 F.3d 1111 (9th Cir. 2018). Accordingly, class members who did
17 not opt out remain members of the Classes, and no further opt out opportunity is
18 warranted. *Id.* (holding that a second opt-out period was not necessary to protect
19 absent class members' due process rights, and permitting it would be contrary to the
20 policy of encouraging settlement).

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

22 The next steps in the settlement approval process are to notify Class
23 Members of the proposed Settlement, submit the proposed plan of distribution for
24 the Court's review, post that plan of distribution on the case website, then allow
25 Class Members to file comments or objections, and hold a Fairness Hearing.
26 Assuming the Court were to sign the Preliminary Approval Order on June 10, 2022,
27 the Parties propose the following schedule:⁹

28 ⁹ In the event the Court signs the Preliminary Approval Order before June 10, 2022,

1	Last Day for the Plaintiffs to file Plan of Distribution	July 10, 2022 (30 days after Preliminary Approval)
2	Notice to be Completed	August 9, 2022 (60 days after Preliminary Approval)
3	Last day for Plaintiffs to File motion for Final Approval of Settlement and Approval of Plans of Distribution, and for Class Counsel to file Application for Fees and Expenses and for Service Awards	August 12, 2022
4	Last day to file Objections	September 2, 2022
5	Last day to file replies in support of Final Approval, Plans of Distribution, Attorneys' Fees and Expenses, and Service Awards	September 16, 2022
6	Final Approval Hearing	September 30, 2022

11 These dates are set forth in the proposed Order, attached as Exhibit A to the
12 Settlement.

13 **CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that the Court:

- 15 A. Grant preliminary approval of the proposed Settlement;
- 16 B. Approve the proposed notice program in the Settlement,
17 including the proposed forms of notice, and direct that notice be
18 disseminated pursuant to such notice program and Fed. R. Civ.
19 P. 23(e)(1);
- 20 C. Appoint JND Legal Administration as Settlement Administrator
21 and direct LND Legal Administration to carry out the duties and
22 responsibilities of the Settlement Administrator specified in the
23 Settlement;
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27 _____
28 each of these dates can be moved up accordingly. For example, if the Court were to sign the Preliminary Approval Order by May 20, 2022, each of the dates could be moved up by 21 days.

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D. Enter a scheduling order consistent with the dates set forth above.

Dated: May 13, 2022

Respectfully submitted,

By: /s/Robert J. Nelson
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