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14 *Lead Trial Counsel*  
15 *(additional counsel listed at signature)*

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.  
27

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

**NOTICE OF MOTION AND MOTION  
FOR APPROVAL OF PLAINTIFFS'  
PLANS OF DISTRIBUTION**

Date: September 16, 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 on September 16, 2022, at 1:30 p.m., or as  
3 soon thereafter as the matter may be heard by the Honorable Philip S. Gutierrez in  
4 Courtroom 6A of the above-entitled court, located at 350 West First Street, Los  
5 Angeles, CA 90012-4565, Plaintiffs will and hereby do move the Court, pursuant to  
6 Rule 23 of the Federal Rules of Civil Procedure, for an Order approving the Plan of  
7 Distribution for the Fisher Class (Dkt. 951-1) and the Plan of Distribution for the  
8 Property Class (Dkt. 951-2). This motion is based on the attached supporting  
9 memorandum; the pleadings, papers, and records on file in this action, including  
10 those submitted in support of Plaintiffs' Motion for Preliminary Approval (Dkt.  
11 949) and Motion for Final Approval; any further papers filed in support of this  
12 motion; and arguments of counsel.

13

14 Dated: July 29, 2022

Respectfully submitted,

15

16

By:           /s/Robert J. Nelson          

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

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20 KEITH ANDREWS, an individual, et  
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24 PLAINS ALL AMERICAN  
PIPELINE, L.P., a Delaware limited  
25 partnership, et al.,

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

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

Date: September 16, 2022

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Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

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1 **I. INTRODUCTION**

2 Plaintiffs have reached a proposed Settlement that provides \$184 million to  
3 the Fisher Class, and \$46 million to the Property Class. Dkt. 944-1, Ex. 1. Pursuant  
4 to the Court’s Preliminary Approval Order (Dkt. 949), Plaintiffs filed their Plans of  
5 Distribution for each Class on June 27, 2022 (Dkt. 951), and now file this motion  
6 for approval of each of those Plans. Dkt. 949, Preliminary Approval Order at ¶ 17.

7 Plaintiffs’ proposed Plans of Distribution for the Fisher Class and the  
8 Property Class should each be approved as fair, adequate, and reasonable. They  
9 establish a simple and fair claims process; they are each anchored in Plaintiffs’  
10 experts’ classwide damages models that would have been presented at trial; they  
11 distribute funds based principally on the claimants’ fractional shares of the total  
12 losses; and they treat Class members equitably relative to one another.

13 **II. ARGUMENT**

14 As part of its review of a proposed settlement, the trial court should consider  
15 “the effectiveness of any proposed method of distributing relief to the class,  
16 including the method of processing class-member claims.” Fed. R. Civ. P.  
17 23(e)(2)(C)(ii). “A claims processing method should deter or defeat unjustified  
18 claims, but the court should be alert to whether the claims process is unduly  
19 demanding.” Fed. R. Civ. P. 23(e), 2018 adv. comm. note. The goal is for  
20 settlement funds to be distributed “in as simple and expedient a manner as  
21 possible.” *Hilsley v. Ocean Spray Cranberries, Inc.*, 2020 WL 520616, at \*7 (S.D.  
22 Cal. Jan. 31, 2020) (quoting 4 William B. Rubenstein, *Newberg on Class Actions*  
23 § 13:53 (5th ed. Dec. 2021 update)).

24 Likewise, Rule 23(e)(2)(D) asks whether “the proposal [for distribution  
25 among class members] treats class members equitably relative to each other.”  
26 Relevant considerations may include “whether the apportionment of relief among  
27 class members takes appropriate account of differences among their claims, and  
28 whether the scope of the release may affect class members in different ways that

1 bear on the apportionment of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm.  
2 note.

3 Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds  
4 in a class action under Fed. R. Civ. P. 23 is governed by the same standards of  
5 review applicable to the settlement as a whole – the plan must be fair, reasonable,  
6 and adequate.” *In re Illumina, Inc. Sec. Litig.*, 2021 WL 1017295, at \*4 (S.D. Cal.  
7 Mar. 17, 2021) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284–85  
8 (9th Cir. 1992)). The plan “need only have a reasonable, rational basis, particularly  
9 if recommended by experienced and competent class counsel.” *Jenson v. First Tr.*  
10 *Corp.*, 2008 WL 11338161, at \*9 (C.D. Cal. June 9, 2008) (citation omitted); see  
11 also *In re Lithium Ion Batteries Antitrust Litig.*, 2020 WL 7264559, at \*12 (N.D.  
12 Cal. Dec. 10, 2020).

13 Here, both Plans provide for swift and straightforward claims processes, and  
14 are based upon the damages models Class Counsel and Plaintiffs’ experts  
15 developed over the course of years and were prepared to present at trial. The  
16 distributions are driven by awarding Class Members their proportional share of the  
17 loss as determined through these models, and are supplemented by modest “fixed  
18 share” payments meant to account for discrete issues unique to each Class. Courts  
19 routinely approve plans such as these.

20 **A. The Plans establish a simple and fair claims process.**

21 For both Classes, the claims process is simple, fair, and designed to quickly  
22 distribute Settlement proceeds while weeding out non-Class members.

23 Fisher Class Members must timely submit a claim form to obtain a portion of  
24 the Settlement. Dkt. 951-1 ¶¶ 42, 65. On that claim form, the Fisher claimant must  
25 attest to economic harm from the Spill for each year of the damages period (2015-  
26 2020) for which the claimant seeks recovery. *Id.* ¶¶ 16, 42. For each submitted  
27 claim, the Settlement Administrator will determine a claimant’s class membership  
28 based on California Department of Fish & Wildlife (“CDFW”) landings data. *Id.* ¶¶

1 28, 46, 53. Claimants who satisfy the required criteria will be deemed to be Verified  
2 Claimants by the Settlement Administrator and eligible to receive a recovery.  
3 Fishers and Processors need not submit any additional proof of eligibility, greatly  
4 easing the process for many, if not most, claimants. However, to the extent a  
5 claimant lacks qualifying data in the CDFW records (for example, persons who  
6 served as crew on a fishing boat) the claimant may submit alternate documentation  
7 to the Settlement Administrator to establish Class membership. *Id.* ¶ 47.

8 Likewise, each Property Class Member must submit a claim form to be a  
9 Verified Claimant entitled to a recovery. *Id.* ¶¶ 36, 37, 39, 40. Class Members are  
10 not required to submit individual property records, appraisals, or other valuation  
11 documentation to obtain a recovery, unless necessary to verify identity,  
12 membership in the class, to resolve disputes, or as otherwise requested by the  
13 Settlement Administrator. *Id.* ¶ 39.

14 Under both Plans, once Class membership is established, the claimant is  
15 deemed a Verified Claimant entitled to a portion of the Settlement, as described  
16 further in the Plans and summarized below.

17 **B. The Fisher Plan is fair, reasonable, and adequate.**

18 The Fisher Class is composed of fishers operating in the CDFW fishing  
19 blocks that Plaintiffs allege were oiled by the Spill, and fish processors who re-sold  
20 fish from those blocks. Dkt. 951-1 ¶ 23. At trial, Plaintiffs intended to prove  
21 classwide damages through their expert Dr. Peter Rupert's difference-in-differences  
22 model that calculated the lost catch due to Plains' oil spill, from which Dr. Rupert  
23 then calculated lost profits. Dkt. 724, Pltfs.' Trial Plan at 8-9. Following a favorable  
24 verdict, allocation of classwide damages would follow and be guided principally by  
25 the detailed CDFW landings data. *Id.* at 16.

26 The Plan of Distribution for the Fisher Class is appropriately anchored in this  
27 damages model. First, the Fisher Net Settlement Amount is divided between  
28 Fishers and Processors based on Dr. Rupert's analysis of how profits derived from



1 gross catch are generally distributed in the fishing industry. *Id.* ¶¶ 61-62. Dr.  
2 Rupert’s analysis determined that the Processor Share should be 9.121% of the  
3 Fisher Net Settlement Amount. After allocating to Processors, the remainder of the  
4 Fisher Net Settlement Amount will be distributed between vessel  
5 owners/proprietors (“Vessels”) and Crew. Again, using the industry guidelines  
6 identified by Dr. Rupert, the proportional division of revenue between Vessels and  
7 Crew is 80%-20% with the larger share to Vessels.<sup>1</sup>

8 The Processor Share, Vessel Share, and Crew Share, in turn, are distributed  
9 to claimants using two components, a fixed share and a variable share. *Id.* ¶ 63.  
10 The fixed share will be distributed in equal shares to each Verified Claimant for  
11 each year during which the Claimant attests to have suffered economic harm from  
12 the Spill. The fixed share ensures that all Verified Claimants – who by definition  
13 suffered some measure of harm as a result of the spill – receive meaningful  
14 compensation in exchange for releasing their claims, even if they cannot  
15 demonstrate the full extent of their fishing activity through the CDFW landing  
16 records. *Id.* ¶ 63. Up to 20% of each share pool for Processors, Vessels, and Crew  
17 may be distributed as fixed shares to Verified Claimants in the share pool. Dkt.  
18 951-1 ¶¶ 69 (Processor), 73 (Vessel), 77 (Crew).<sup>2</sup> Courts routinely approve  
19 distribution of settlements (or portions thereof) equally to all eligible claimants,  
20 including those who may have substantive or procedural issues with proving their  
21 claims. *See, e.g., Koenig v. Lime Crime, Inc.*, 2018 WL 11358228, at \*4 (C.D. Cal.  
22 Apr. 2, 2018) (approving a settlement proposing distribution of remaining  
23 settlement funds to eligible claimants who did not submit a valid and timely claim).

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25 \_\_\_\_\_  
26 <sup>1</sup> The effective percentages for Processors, Vessels, and Crew from the Fisher Net  
27 Settlement Fund are: Processor Share (9.121%), Vessel Share (72.703%), and Crew  
28 Share (18.176%).

<sup>2</sup> The Fixed Share in each group will be capped at 20% or \$5,000 per claimant,  
whichever is lower.

1 The variable share will comprise at least 80% of each share pool. The  
2 variable share is essentially proportional to the Verified Claimant’s CDFW landings  
3 data relative to total landings by Verified Claimants in the five years before the spill  
4 (the class definition period) and the five years after the spill (the damages period)  
5 (2010-2020). *Id.* ¶ 70 (Processor), ¶ 74 (Vessel), ¶ 78 (Crew). The variable share  
6 will be calculated by taking the Verified Claimant’s average annual proportional  
7 share of catch value/purchase value in comparison to other Verified Claimants who  
8 submit claims within that share pool (Processor, Vessel, or Crew), for each year  
9 during which class catch is attributed to that license through CDFW records.  
10 Recoveries will be pro rated for claimants who do not claim damages for all five  
11 years (for example, those who left fishing for reasons unrelated to the spill).

12 Courts have consistently found that a plan of distribution that awards  
13 fractional shares is fair, reasonable and adequate. *See, e.g., In re High-Tech Emp.*  
14 *Antitrust Litig.*, 2015 WL 5159441, at \*8 (N.D. Cal. Sept. 2, 2015) (finding a plan  
15 of distribution that provided each class member with a “fractional share” based on  
16 each class member’s total base salary received during the alleged conspiracy period  
17 to be “cost-effective, simple, and fundamentally fair”) (citation omitted); *In re Elec.*  
18 *Carbon Prods. Antitrust Litig.*, 447 F. Supp.2d 389, 404 (D.N.J. 2006) (finding a  
19 pro rata distribution to claimants based on their direct purchases to be “eminently  
20 reasonable and fair to the class members”).

21 While exact recoveries can be calculated only after all claims are submitted,  
22 the Plan includes rough estimates under expected claims rates and other modest  
23 assumptions. Class Counsel estimates median and average recoveries (fixed plus  
24 variable shares) of \$10,000 and \$50,000, respectively, for Processors (Dkt. 951-1 ¶  
25 71), \$30,000 and \$100,000 for Vessels (*id.* ¶ 75), and \$8,000 and \$25,000 for Crew  
26 (*id.* ¶ 80). To the extent any part of the funds remains unclaimed for more than 180  
27 days after distribution by the Claims Administrator, Class Counsel will seek Court  
28 approval for distributing any remainder. Dkt. 951-1 ¶ 87.

1           **C.    The Property Plan is fair, reasonable, and adequate.**

2           The Property Class is comprised of residential properties that front shoreline  
3 allegedly oiled to a degree of light, medium or heavy, based on the analysis of  
4 Plaintiffs’ oil modeling expert Dr. Igor Mezić. Plaintiffs allege that all class  
5 properties suffered a nuisance as a result of this oiling, and that certain properties  
6 suffered a trespass in addition to a nuisance (the “Oiled Properties”). At trial,  
7 Plaintiffs intended to show the value of the lost use of the properties (“Loss of Use  
8 Value”) using a classwide mass appraisal and regression analysis. Dkt. 951-2 ¶ 19.

9           The Property Plan is based upon this damages model. First, the Settlement  
10 Administrator will allocate the available funds between the two groups of  
11 properties, the Oiled Properties and Unoiled Properties. Dkt. 951-2 ¶ 57. The Loss  
12 of Use Value calculations prepared by Plaintiffs’ expert, Landmark Research  
13 Group, found that the Oiled Properties suffered approximately 81.1% of the total  
14 Loss of Use Value, versus 18.9% for the Unoiled Properties. *Id.* The Property Net  
15 Settlement Amount is divided among these two groups accordingly. *Id.*

16           The Oiled Properties’ Share will be divided into a Variable Share  
17 representing 90% of the Pool, and a Fixed Share representing 10% of the Pool. The  
18 Variable Share will be distributed to Verified Claimants in fractional shares, *i.e.*,  
19 comparing each claimant’s Loss of Use Value to that of all Verified Claimants as a  
20 whole. *Id.* ¶ 58. As described above, a distribution based on a fractional share is  
21 reasonable. *High-Tech*, 2015 WL 5159441, at \*8.

22           The 10% fixed share will be distributed in equal shares to Verified Claimants  
23 who sustained either heavy or moderate oiling on their properties, in recognition of  
24 the more severe impacts suffered by these properties, which translates to relatively  
25 stronger trespass claims. Dkt. 951-2 ¶ 58. “It is also reasonable to allocate more of  
26 the settlement to class members with stronger claims on the merits.” *See, e.g.*,  
27 *Jenson*, 2008 WL 11338161, at \*10 (approving distinctions in plan of allocation as  
28 reasonably reflecting likelihood of recovery of subgroups within the class); *In re*

1 *Biolase, Inc. Sec. Litig.*, 2015 WL 12720318, at \*5 (C.D. Cal. Oct. 13, 2015)  
2 (variable pro rata distribution plan based upon relative injuries of class members  
3 approved); *Illumina*, 2021 WL 1017295, at \*5 (“[I]t is reasonable to allocate the  
4 settlement funds to class members based on the extent of their injuries or the  
5 strength of their claims on the merits.”) (citation omitted); *In re Oracle Sec. Litig.*,  
6 1994 WL 502054, at \*2 (N.D. Cal. June 18, 1994) (approving plan “reasonably  
7 calculated to allow class members with more meritorious claims to recover a  
8 correspondingly larger portion of the settlement” based upon class counsel’s  
9 appraisal of relative merits of subgroups).

10 The Unoiiled Properties suffered a nuisance, not a trespass. Accordingly, the  
11 Unoiiled Properties’ Share Pool (18.9%) is distributed proportionally, *i.e.*, based on  
12 each property’s loss of use value relative to all other Verified Claimants. Dkt. 951-2  
13 ¶ 59. As described above, the pro rata distribution according to fractional shares is  
14 reasonable. *High-Tech*, 2015 WL 5159441, at \*8.

15 While exact recoveries can be calculated only after all claims are submitted,  
16 assuming claims are submitted on behalf of every Class property, Class Counsel  
17 estimate a median payment of \$1,550 and average payments of \$3,500. Dkt. 951-2  
18 ¶ 62. To the extent any of the Property funds remain unclaimed for more than 180  
19 days after distribution by the Claims Administrator, Class Counsel will seek Court  
20 approval for distributing any remainder. *Id.* ¶ 68.

21 **III. CONCLUSION**

22 For the reasons stated above, Plaintiffs respectfully request that the Court  
23 approve the Fisher Class Plan of Distribution and the Property Class Plan of  
24 Distribution as fair, adequate, and reasonable.

25  
26 Dated: July 29, 2022

Respectfully submitted,

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By:                   /s/ Robert J. Nelson

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

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

Date: September 16, 2022  
Time: 1:30 p.m.  
Judge: Hon. Philip S. Gutierrez  
Courtroom: 6A



1 Plaintiff have moved for an order approving the Plan of Distribution for the  
2 Fisher Class (Dkt. 951-1) and the Plan of Distribution for the Property Class (Dkt.  
3 951-2). Upon due consideration of the motion and all of the papers, pleadings and  
4 files in this action, and good cause appearing, the Court GRANTS the motion.

5 As part of its review of a proposed settlement, the trial court should consider  
6 “the effectiveness of any proposed method of distributing relief to the class,  
7 including the method of processing class-member claims.” Fed. R. Civ. P.  
8 23(e)(2)(C)(ii). “A claims processing method should deter or defeat unjustified  
9 claims, but the court should be alert to whether the claims process is unduly  
10 demanding.” Fed. R. Civ. P. 23(e), 2018 adv. comm. note. Likewise, Rule  
11 23(e)(2)(D) asks whether “the proposal [for distribution among class members]  
12 treats class members equitably relative to each other.” Relevant considerations may  
13 include “whether the apportionment of relief among class members takes  
14 appropriate account of differences among their claims, and whether the scope of the  
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16 of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note.

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

26 The Court has reviewed the two Plans of Distribution and finds that they  
27 meet the standards for approval. The Plans establish a simple and fair claims  
28 process. The information requested on the claim forms is sufficiently detailed to



1 verify membership in the Classes, but also avoids requiring information that is  
2 burdensome or readily obtained elsewhere, such as landings data from the  
3 California Department of Fishing and Wildlife (CDFW) or individual property  
4 records.

5 The distributions to verified claimants are fair and reasonable and based on  
6 the classwide damages models Plaintiffs intended to present at trial. The Fisher  
7 Plan distributes the Fisher Net Settlement Fund based largely on the claimant’s  
8 proportional share of landings, and also includes a fixed payment distributed  
9 equally to all verified claimants, thus ensuring all claimants receive meaningful  
10 compensation in exchange for releasing their claims. The Property Plan likewise  
11 distributes the Property Net Settlement Fund based on each property’s proportional  
12 loss of use value, supplemented with additional payments for properties with the  
13 most severe oiling.

14 Distribution methods such as these are regularly approved as fair and  
15 reasonable. *Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG (JEMX), 2018 WL  
16 11358228, at \*4 (C.D. Cal. Apr. 2, 2018) (approving payment of equal shares for  
17 portion of settlement); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at  
18 \*8 (N.D. Cal. Sept. 2, 2015) (approving payment based on “fractional share[s]”);  
19 *Jenson, v. First Tr. Corp.*, No. CV 05-3124 ABC (CTX), 2008 WL 11338161, at  
20 \*10 (C.D. Cal. June 9, 2008) (approving distinctions in plan of allocation as  
21 reasonably reflecting likelihood of recovery of subgroups within the class); *In re*  
22 *Biolase, Inc. Sec. Litig.*, No. SA-CV-13-1300-JLS-FFMX, 2015 WL 12720318, at  
23 \*5 (C.D. Cal. Oct. 13, 2015) (variable pro rata distribution plan based upon relative  
24 injuries of class members approved).

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

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**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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HON. PHILIP S. GUTIERREZ  
UNITED STATES JUDGE