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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 KEITH ANDREWS, an individual, et
al.,

19
20 Plaintiffs,

21 v.

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

24 Defendants.
25
26

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

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

Date: September 20, 2022
Time: 1:30 p.m.
Judge: Hon. Philip S. Gutierrez
Courtroom: 6A

1 **I. INTRODUCTION**

2 Plaintiffs respectfully submit this supplemental memorandum in support of
3 the Plans of Distribution for the Fisher Class and the Property Class. Dkt. 949 ¶ 17.

4 As described in Plaintiffs’ opening memorandum in support of the Plans of
5 Distribution, each of the proposed Plans of Distribution should be approved as fair,
6 adequate, and reasonable. Following the Notice to the Classes, it is clear that Class
7 members overwhelmingly agree. There were no objections to the Fisher Plan of
8 Distribution. A single objection regarding the Property Plan of Distribution was
9 received by Class Counsel, based on a misunderstanding of the Property Plan of
10 Distribution, as discussed below.¹ Because the objection is based on a mistaken
11 assumption, it should be overruled.

12 The lack of objections to the proposed Settlement and Plans of Distribution
13 indicates Class member support for the Plans, which the Court should approve.

14 **II. ARGUMENT**

15 **A. A small number of objections to the Plans of Distribution strongly**
16 **favours their approval.**

17 “[T]he lack of objectors to the plan[s] of allocation” suggest that they are
18 “fair and adequate.” *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL
19 1594403, at *12 (C.D. Cal. June 10, 2005); *see also In re Volkswagen “Clean*
20 *Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019
21 WL 2077847, at *3 (N.D. Cal. May 10, 2019) (“The small number of objections
22 and opt outs supports that the settlement and plan of allocation are fair, reasonable,
23 and adequate.”). Here, there are no objections to the Fisher Plan, and only one to
24 the Property Plan, providing strong evidence that they are fair and adequate.

25 The sole objection to the Property Plan of Distribution should be overruled.
26 First, the objection is very narrow. The Class member does not criticize the

27 _____
28 ¹ Plaintiffs understand that this objection was filed under seal as ECF No. 969. *See*
Supplemental Declaration of Robert J. Nelson ¶ 7.

1 substance of the Plan, such as how the Plan distributes funds based on loss of use
2 and classification of degrees of oiling. The Class member objects only to the
3 classification of *her* oiled property as “Moderate” rather than “Heavy.” Objection,
4 ECF No. 969. This complaint does not bear on the propriety of the Plan as a whole.
5 *Cf. Jenson v. First Tr. Corp.*, CV 05-3124 ABC (CTx), 2008 WL 11338161, at *8
6 (C.D. Cal. June 9, 2008) (“[B]ecause the Court finds the Settlement terms
7 reasonable for all of the reasons discussed herein, an objection by one member to
8 how those terms apply to her particular situation is overruled.”).

9 Second, the objection is based on the incorrect assumption that “Moderate”
10 properties (those along moderately oiled beaches) were treated differently from
11 those classified as “Heavy” (those that front heavily oiled beaches). In reality,
12 claimants with properties in *either* of these oiling categories are eligible for the
13 additional “Fixed Share.” *See* Dkt. 951-2 ¶¶ 58, 62. The objector’s Variable Share
14 will be calculated in the same manner as for all Class Members: based on her
15 property’s loss of use value amount, as determined by Plaintiffs’ experts. *See* Dkt.
16 951-2 ¶¶ 19, 58. Thus, there would be no change in the objector’s award even if her
17 property was classified as having sustained “heavy” rather than “moderate” oiling,
18 as she requests.

19 In sum, both Plans of Distribution are fair, adequate, and reasonable, and
20 drew virtually no objections from the Class members. Not a single Fisher Class
21 member objected, and the single objection to the Property Plan of Distribution is
22 based on a misunderstanding of the Plan. *Cf. Jenson*, 2008 WL 11338161, at *10
23 (“A single objection should not impede a Plan of Allocation” that is otherwise “in
24 the best interests of the Class and Subclass overall.”).

25 **B. The Court will retain jurisdiction of the Plans of Distribution after**
26 **Settlement approval.**

27 Plaintiffs also note that under Rule 23, and the terms of the Settlement itself,
28 approval of the Settlement does not hinge on approval of the Plans of Distribution.

1 2 McLAUGHLIN ON CLASS ACTIONS (16th ed.) § 6:23 (“[C]ourt approval of a
2 settlement as fair, reasonable and adequate is conceptually distinct from the
3 approval of a proposed plan of allocation . . . [and] courts frequently approve them
4 separately.”); MANUAL COMPLEX LITIGATION (4th ed.) § 21.312 (“Often . . . the
5 details of allocation and distribution are not established until after the settlement is
6 approved.”); *see also In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420
7 YGR (DMR), 2020 WL 7264559, at *25 (N.D. Cal. Dec. 10, 2020), *appeal*
8 *dismissed in part*, No. 21-15120, 2021 WL 6751856 (9th Cir. Dec. 17, 2021) (“The
9 Court has discretion to determine an appropriate plan of allocation without setting
10 aside its orders or judgments granting final approval of the settlements themselves .
11 . . .”). That distinction is true here, where the Settlement Agreement negotiated by
12 the Parties affirms that the Settlement is separate from the Plan of Distribution.

13 Finally, because this Court retains jurisdiction over the Settlement throughout
14 the claims process (*see* Amended Proposed Order Granting Final Approval of the
15 Proposed Settlement ¶ 10), approval of the Plans of Distribution at this juncture
16 does not prevent the Court from addressing issues with individual claims such as
17 this, as the process unfolds. *See In re Amgen Inc. Sec. Litig.*, No. CV 7-2536 PSG
18 (PLAx), 2016 WL 10571773, at *6 (C.D. Cal. Oct. 25, 2016) (“[T]he Court, by
19 virtue of this Order, retains jurisdiction over the settlement and all matters relating
20 to the litigation. . . . These processes ensure that the Court will have adequate
21 oversight of the distribution process.”). Class Counsel and/or the Settlement
22 Administrator will continue to update the Court as needed during the claims and
23 distribution process, to support the Court’s ongoing oversight. Dkts. 951-1 ¶ 88;
24 951-2 ¶ 69.

25 **III. CONCLUSION**

26 For the reasons stated above and in their initial memorandum in support of
27 the proposed Plans of Distribution, Plaintiffs respectfully request that the Court
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1 grant their motion for approval of the Fisher Class Plan of Distribution and the
2 Property Class Plan of Distribution as fair, adequate, and reasonable.²

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Dated: September 2, 2022

Respectfully submitted,

By: /s/ Robert J. Nelson

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Class Counsel

28 ² Plaintiffs have attached an updated proposed order to describe Class Notice and
the response of Class members.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KEITH ANDREWS, an individual,
TIFFANI ANDREWS, an individual.
BACIU FAMILY LLC, a California
limited liability company, ROBERT
BOYDSTON, an individual,
MORGAN CASTAGNOLA, an
individual, THE EAGLE FLEET, LLC,
a California limited liability company,
ZACHARY FRAZIER, an individual,
MIKE GANDALL, an individual,
ALEXANDRA B. GEREMIA, as
Trustee for the Alexandra Geremia
Family Trust dated 8/5/1998, JIM
GUELKER, an individual, JACQUES
HABRA, an individual, MARK
KIRKHART, an individual, MARY
KIRKHART, an individual, RICHARD
LILYGREN, an individual, HWA
HONG MUH, an individual, OCEAN
ANGEL IV, LLC, a California limited
liability company, PACIFIC RIM
FISHERIES, INC, a California
corporation, SARAH RATHBONE, an
individual, COMMUNITY SEAFOOD
LLC, a California limited liability
company, SANTA BARBARA UNI,
INC., a California corporation,
SOUTHERN CAL SEAFOOD, INC., a
California corporation, TRACTIDE
MARINE CORP., a California
corporation, WEI INTERNATIONAL
TRADING INC., a California
corporation and STEPHEN WILSON,
an individual, individually and on
behalf of others similarly situated,

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

[Consolidated with Case Nos. 2:15-cv-04573-PSG (JEMx), 2:15-cv-04759-PSG (JEMx), 2:15-cv-04989-PSG (JEMx), 2:15-cv-05118-PSG (JEMx), 2:15-cv-07051-PSG (JEMx)]

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

Judge: Hon. Philip S. Gutierrez
Courtroom: 6A

1	Plaintiffs,
2	v.
3	PLAINS ALL AMERICAN PIPELINE, L.P., a Delaware limited partnership, and PLAINS PIPELINE, L.P., a Texas limited partnership, and JOHN DOES 1 through 10,
4	
5	
6	
7	Defendants.

8 Plaintiffs have moved for an order approving the Plan of Distribution for the
 9 Fisher Class (Dkt. 951-1) and the Plan of Distribution for the Property Class (Dkt.
 10 951-2). Upon due consideration of the motion and all of the papers, pleadings and
 11 files in this action, and good cause appearing, the Court GRANTS the motion.

12 As part of its review of a proposed settlement, the trial court should consider
 13 “the effectiveness of any proposed method of distributing relief to the class,
 14 including the method of processing class-member claims.” Fed. R. Civ. P.
 15 23(e)(2)(C)(ii). “A claims processing method should deter or defeat unjustified
 16 claims, but the court should be alert to whether the claims process is unduly
 17 demanding.” Fed. R. Civ. P. 23(e), 2018 adv. comm. note. Likewise, Rule
 18 23(e)(2)(D) asks whether “the proposal [for distribution among class members]
 19 treats class members equitably relative to each other.” Relevant considerations may
 20 include “whether the apportionment of relief among class members takes
 21 appropriate account of differences among their claims, and whether the scope of the
 22 release may affect class members in different ways that bear on the apportionment
 23 of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note.

24 Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds
 25 in a class action under Fed. R. Civ. P. 23 is governed by the same standards of
 26 review applicable to the settlement as a whole – the plan must be fair, reasonable,
 27 and adequate.” *In re Illumina, Inc. Sec. Litig.*, No. 3:16-CV-3044-L-MSB, 2021
 28 WL 1017295, at *4 (S.D. Cal. Mar. 17, 2021) (citing *Class Pls. v. City of Seattle*,

1 955 F.2d 1268, 1284–85 (9th Cir. 1992)). The plan “need only have a reasonable,
2 rational basis, particularly if recommended by experienced and competent class
3 counsel.” *Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC (CTx), 2008 WL
4 11338161, *9 (C.D. Cal. June 9, 2008) (citation omitted).

5 The Court has reviewed the two Plans of Distribution and finds that they
6 meet the standards for approval. The Plans establish a simple and fair claims
7 process. The information requested on the claim forms is sufficiently detailed to
8 verify membership in the Classes, but also avoids requiring information that is
9 burdensome or readily obtained elsewhere, such as landings data from the
10 California Department of Fishing and Wildlife (CDFW) or individual property
11 records.

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

21 Distribution methods such as these are regularly approved as fair and
22 reasonable. *Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG (JEMx), 2018 WL
23 11358228, at *4 (C.D. Cal. Apr. 2, 2018) (approving payment of equal shares for
24 portion of settlement); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at
25 *8 (N.D. Cal. Sept. 2, 2015) (approving payment based on “fractional share[s]”);
26 *Jenson, v. First Tr. Corp.*, 2008 WL 11338161, at *10 (approving distinctions in
27 plan of allocation as reasonably reflecting likelihood of recovery of subgroups
28 within the class); *In re Biolase, Inc. Sec. Litig.*, No. SA-CV-13-1300 JLS (FFMx),

1 2015 WL 12720318, at *5 (C.D. Cal. Oct. 13, 2015) (variable pro rata distribution
2 plan based upon relative injuries of class members approved).

3 No Class members objected to the Fisher Plan of Distribution and only one
4 objection to the Property Plan of Distribution was submitted. This response speaks
5 to the Class members' support for the Plans of Distribution. *See In re Heritage*
6 *Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *12 (C.D. Cal. June 10,
7 2005); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod.*
8 *Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *3 (N.D. Cal. May
9 10, 2019). The lone objector to the Property Plan argues that her property should
10 have been classified as having sustained "heavy" rather than "moderate" oiling. The
11 Court concludes that this single objection does not counsel against approval of the
12 Plan. First, the objection applies only to the oiling classification of this one Class
13 member's property, and does not argue that the Plan is otherwise unfair or flawed.
14 Second, the reclassification of this property as heavy would have no effect on the
15 amount of this Class member's award because "Verified Claimants who sustained
16 *either* heavy or moderate oiling on their properties" are eligible to receive "[t]he
17 10% fixed share." Dkt. 953 at 6 (citing Dkt. 951-2 ¶ 58). The Court therefore
18 overrules this objection.

19 Accordingly, the Court finds that the Fisher and Property Plans are fair and
20 reasonable and meet the standard for approval under Rule 23(e). Plaintiffs' motion
21 is GRANTED. Without affecting the finality of this Order, the Court reserves
22 jurisdiction over the Plans of Distribution and any other matters related or ancillary
23 to the foregoing.

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IT IS SO ORDERED.

Dated: _____

HON. PHILIP S. GUTIERREZ
UNITED STATES JUDGE