

EXHIBIT 1

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14 *and the Proposed Classes*

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

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

21 Plaintiffs,

22 v.

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

24 Defendants.

Case No. 8:21-CV-01628-DOC(JDEx)
[PROPOSED] PLAN OF
DISTRIBUTION FOR THE FISHER
CLASS

1 **I. BACKGROUND**

2 1. This document describes the Plan of Distribution for the Fisher Class
3 (“Fisher Plan” or “Distribution Plan”). The Fisher Plan shall govern the distribution
4 of the Settlement funds provided for the Fisher Class in accordance with the
5 Settlement Agreement executed on May 3, 2023, between Plaintiffs and the
6 Shipping Defendants in the above-captioned case (“Settlement Agreement” or
7 “Settlement”).¹ This Settlement relates to an oil spill in October 2021 from the
8 P00547 Pipeline in San Pedro Bay that Plaintiffs allege caused damage to
9 commercial fishers and processors (“Oil Spill” or “Spill”). Settlement Agreement,
10 Article I.37. The Settlement Agreement is attached as Exhibit 1 to the Declaration
11 of Lexi J. Hazam in Support of Plaintiffs’ Motion for Preliminary Approval [Dkt.
12 739-2].

13 2. The Settlement Agreement provides that the Shipping Defendants shall
14 pay \$30.6 million to the Fisher Class (the “Fisher Class Settlement Amount”), in
15 exchange for a full release of claims alleged on behalf of the Fisher Class in this
16 litigation. Settlement Agreement, Articles I.18, III.

17 3. The Fisher Class Common Fund shall be administered by the
18 Settlement Administrator. The Settlement provides that the Settlement
19 Administrator shall disburse funds from the Fisher Class Common Fund pursuant to
20 the terms of the Settlement Agreement and in accordance with the orders of the
21 Court. Settlement Agreement, Article III.

22 4. The Settlement Agreement also directs that Class Counsel shall
23 propose a method for distributing the Fisher Class Common Fund to members of
24

25 ¹ “Shipping Defendants” refers to the “Defendants” defined in the Settlement
26 Agreement: Capetanissa Maritime Corporation, Costamare Shipping Co., S.A.,
27 V.Ships Greece Ltd., the M/V Beijing, Dordellas Finance Corp., MSC
28 Mediterranean Shipping Co. SA, Mediterranean Shipping Co. S.r.l., MSC
Shipmanagement Ltd., and MSC Danit.

1 the Fisher Class before Class Members must decide whether to object to the
2 Settlement. The Parties further agreed that “the rulings of the Court regarding the
3 Plans of Distribution, and any claim or dispute relating thereto, will be considered
4 by the Court separately from the approval of the Settlement Agreement,” and that
5 Final Approval of the Settlement is not contingent upon resolution of any appeals,
6 modifications, or reversal of orders regarding the Plan of Distribution. Settlement
7 Agreement, Articles IV.1, IV.2.

8 5. The Distribution Plan utilizes California Department of Fish and
9 Wildlife (“CDFW”) landings receipt records previously obtained by Class Counsel
10 to identify Fisher Class members and establish each individual fisher’s pro-rata
11 share of the Settlement, based upon their fishing activity before and after the Spill.

12 6. As set forth in Article IV.3 of the Settlement Agreement, portions of
13 the Settlement Fund shall be used to pay certain costs and fees prior to determining
14 a net amount that is available for distribution to class members, to include:

- 15 a. Fees and Costs Awards, subject to Court approval;
- 16 b. Service Awards to Class Representatives, subject to Court
17 approval; and
- 18 c. Costs of Notice and administration of the Settlement, including
19 fees and expenses of the Settlement Administrator, costs of generating and mailing
20 checks, fees, and costs of escrow, if any.

21 7. The net amount available for distribution will depend upon the amount
22 of costs deducted for items listed above. The mechanics of the Distribution Plan are
23 not dependent upon the amount available for distribution.

24 **II. DEFINITIONS**

25 8. The capitalized terms used in this Plan of Distribution for the Fisher
26 Class have the same meaning as defined in the Settlement Agreement [Dkt. 739-2]
27 and Amended Order Granting Preliminary Approval of the Proposed Settlement
28 [Dkt. 751] unless otherwise indicated.

1 9. “CDFW” means the California Department of Fish and Wildlife.

2 10. “CDFW Landing Records” means the landings receipt data provided
3 by the California Department of Fish and Wildlife for the period of 2016-2021,
4 consistent with the definition of the Commercial Fishing Class as defined in
5 Plaintiffs’ Second Amended Consolidated Class Action Complaint [Dkt. 454].

6 11. “Class Catch” are landings reflected in the CDFW Landing Records,
7 during the period from October 2, 2016 through December 31, 2021 (before and
8 after the Spill), from blocks that are identified in the Fisher Class Definition, for the
9 purpose of determining the Settlement distribution.

10 12. “Damage Period” means the period after the Spill, from October 2,
11 2021, through December 31, 2021, used to determine Distribution Shares.

12 13. “Distribution Plan” means the process and procedures established by
13 this Plan as effectuated by the Settlement Administrator.

14 14. “Distribution Share” means the share allocated to each license or
15 vessel based on fishing or purchasing activity reflected in the CDFW Landing
16 Records during the Damage Period.

17 15. “Fisher,” unless otherwise noted, refers to each member of the Fisher
18 Class who holds a Commercial Fishing License and has any of the Qualifying
19 Catch attributable to their license. When used to modify another defined term,
20 Fisher refers to all members of the Fisher Class to whom the defined term applies.

21 16. “Fisher Class” or “Fisher Class Definition” means the definition of the
22 Commercial Fishing Class as defined in Plaintiffs’ Second Amended Consolidated
23 Class Action Complaint [Dkt. 454] (defined as the Fisher Class in the Settlement
24 Agreement):

25 Persons or entities who owned or worked on a
26 commercial fishing vessel docked in Newport Harbor or
27 Dana Point Harbor as of October 2, 2021, and/or who
28 landed seafood within the California Department of Fish

1 & Wildlife fishing blocks 718-720, 737-741, 756-761,
2 801-806, and 821-827 between October 2, 2016 and
3 October 2, 2021, and were in operation as of October 2,
4 2021, as well as those persons and businesses who
5 purchased and resold commercial seafood so landed, at
6 the retail or wholesale level, that were in operation as of
7 October 2, 2021.²

8 17. “Fisher Net Settlement Fund” means the amount available for
9 distribution to the Fisher Class, after deduction of the Fees and Costs Awards,
10 Service Awards, and administrative costs, as contemplated by the Settlement
11 Agreement, subject to Court approval.

12 18. “Preliminary Approval Order” means the Order entered by this Court
13 on June 16, 2023 [Dkt. 751], which directs the procedures and schedule for
14 approval of the Settlement, including submission of this Distribution Plan.

15 19. “Processor,” unless otherwise noted, refers to each member of the
16 Fisher Class who holds a CDFW Fishing Business License. When used to modify
17 another defined term, Processor refers to all Processor members of the Fisher Class
18 to whom the defined term applies.

19 20. “Qualifying Catch” refers to the total landings from all Fisher Class
20 Members reflected in the CDFW Landing Records from the relevant fishing blocks
21 identified in the Fisher Class Definition, during the period from October 2, 2016
22 through October 2, 2021 (before the Spill).

23 _____
24 ² Excluded from the Fisher Class are: (1) Defendants, any entity or division in
25 which Defendants have a controlling interest, and their legal representatives,
26 officers, directors, employees, assigns and successors; (2) the judge to whom this
27 case is assigned, the judge’s staff, and any member of the judge’s immediate
28 family, and (3) all employees of the law firms representing Plaintiffs and the
Putative Class Members. Those who timely opt out of the Fisher Class will also be
excluded.

1 21. “Recovery” is the net distribution attributed to a Fisher by the
2 Settlement Administrator, reflecting the Distribution Share, less any necessary
3 adjustments or deductions.

4 22. “Release” means the release of claims reflected in the Settlement
5 Agreement. Settlement Agreement, Article VII.

6 23. “Settlement Administration” means actions carried out by JND Legal
7 Administration in its capacity as Settlement Administrator.

8 24. “Settlement Administrator” means JND Legal Administration, the
9 administrator selected by Class Counsel and appointed by this Court [Dkt. 751 at
10 ¶ 8].

11 25. “Settlement Agreement,” “Settlement,” or “Agreement” means the
12 Settlement Agreement executed on May 3, 2023 and attached as Exhibit 1 to the
13 Declaration of Lexi J. Hazam in Support of Plaintiffs’ Motion for Preliminary
14 Approval [Dkt. 739-2].

15 26. “Settlement Website” means the dedicated website maintained by the
16 Settlement Administrator at www.OCOilSpillSettlement.com.

17 27. “Spill” means the October 2021 oil spill from the P00547 Pipeline in
18 San Pedro Bay that Plaintiffs allege caused damage to commercial fishers and
19 processors.

20 28. “Vessel,” unless otherwise noted, refers to each member of the Fisher
21 Class who holds a CDFW Vessel ID. When used to modify another defined term,
22 Vessel refers to all Vessel ID holders of the Fisher Class to whom the defined term
23 applies.

24 **III. DISTRIBUTION PLAN**

25 29. Subject to Court approval, the Fisher Net Settlement Fund will be paid
26 to Fishers, Processors, and Vessels.

27 30. The Distribution Plan utilizes CDFW Landing Records previously
28 obtained by Class Counsel to identify Fisher Class members and establish each

1 Fisher Class member’s share of the Settlement, based upon their fishing activity
2 before and after the Spill.

3 31. The Settlement Administrator will rely on CDFW landing and
4 licensing records to identify Fisher Class members and determine Distribution
5 Shares and eligibility. This information has already been obtained from the CDFW.

6 32. The Settlement Administrator may, at its discretion and in consultation
7 with Class Counsel, or as directed by the Court, implement additional procedures to
8 protect the Settlement and Distribution.

9 33. The Fisher Class Definition requires a determination that the Fisher is
10 “in operation as of October 2, 2021” [Dkt. 454 at 77]. The Settlement Administrator
11 will presume that any Fisher for whom the CDFW Landing Records reflects any
12 catch or sales of catch in the twelve months before or two months after October 2,
13 2021 was “in operation as of October 2, 2021.”

14 34. Within 30 days of this Court’s order granting final approval, the
15 Settlement Administrator shall calculate the amount available for Distribution by
16 deducting the cost of Court-approved Notice, Settlement Administration and other
17 expenses, as well as approved attorneys’ Fees and Costs Awards and Service
18 Awards. The remaining balance available for Distribution will then be allocated as
19 follows.

20 35. To calculate each Fisher, Processor, and Vessel’s pro-rata share of the
21 Fisher Net Settlement Fund (the “Recovery”), the Settlement Administrator will
22 first allocate the available funds between Fishers and Vessels on the one hand, and
23 Processors on the other, consistent with the method determined by Dr. Peter Rupert,
24 the economic expert retained by the Plaintiffs to calculate damages alleged by the
25 Fisher Class in the Plains oil spill litigation, [see *Andrews et al v. Plains et al*, 15-
26 CV-04113, Dkt. 951-1, ¶ 61]. Dr. Rupert’s analysis indicates that based on industry
27 guidelines Processors retain as profit approximately 10% of gross catch amounts.
28 Accordingly, the Settlement Administrator will allocate 10% of the Fisher Net

1 Settlement Amount to the Processors. *Id.*

2 36. After allocating to Processors, the remainder of the Fisher Net
3 Settlement will be distributed between Vessels and Fishers. Again, using the
4 industry guidelines identified by Dr. Rupert in the Plains oil spill litigation, the
5 conventional proportional division of revenue between Vessels and Fishers is
6 80%/20% with the larger share to Vessels [*see id.*, ¶ 62]. Accordingly, after
7 deducting the Processor Share, the Settlement Administrator will allocate 80% of
8 the remainder of the Fisher Net Settlement Funds as the Vessel Share and 20% as
9 the Fisher Share.

10 37. Each entity or individual's pro-rata share of the Processor Share,
11 Vessel Share, and/or Fisher Share is calculated by taking the Processor, Vessel, or
12 Fisher's average annual proportional share of the Qualifying Catch in comparison
13 to other Processors, Vessels, and Fishers within that category (Processor, Vessel or
14 Fisher), for each year during which Class Catch is attributed to the license.

15 38. Recoveries will be issued by check to the Processor, Vessel, or Fisher
16 that corresponds to the CDFW license. To the extent that any Processor, Vessel, or
17 Fisher has side agreements with other individuals or entities that guarantee those
18 individuals or entities a proportion of recovery, Processors, Vessels, and Fishers are
19 responsible for upholding their side agreements.

20 39. Putative Fisher Class members who do not receive direct notice, or
21 who do not have Class Catch attributable to their CDFW license, can reach out to
22 the Settlement Administrator before the Court grants final approval, in which case
23 the Settlement Administrator shall confer with Class Counsel in good faith to
24 determine eligibility and compensation under the Settlement. The Settlement
25 website will direct these Fisher Class members to contact the Settlement
26 Administrator.

27 40. All settlement checks issued shall be void if not cashed within 180
28 calendar days of their date of issue and shall contain a legend to that effect.

1 Approximately 60 days after the mailing of settlement checks the Settlement
2 Administrator shall confer with Class Counsel and together determine whether it is
3 appropriate to mail a reminder postcard to each Fisher Class member who has not
4 yet cashed a settlement check.

5 41. To the extent that any part of the Fisher Settlement Fund remains
6 uncashed more than 180 days after the Settlement Administrator has distributed
7 funds to all eligible Processors, Vessels, and Fishers, Class Counsel will seek Court
8 approval for distributing the remainder of the Fisher Net Settlement Fund. The
9 Settlement Administrator will follow the directions approved by the Court.

10 **IV. COURT AUTHORITY AND REVIEW**

11 42. All proceedings with respect to Settlement administration,
12 determination of each putative Fisher Class member’s eligibility and Recovery (if
13 any), the distribution of funds, and the determination of all controversies relating
14 thereto, including disputed questions of law and fact, shall be subject to the
15 continuing jurisdiction of the Court. All Fisher Class members expressly waive trial
16 by jury (to the extent any such right may exist) and any right of appeal or review
17 with respect to the Court’s determinations on such issues.

18 43. Pursuant to the Settlement, “Defendants shall not have any
19 responsibility, authority, or liability whatsoever for the selection of the Settlement
20 Administrator, the administration of the Settlement, the Plans of Distribution,
21 receiving and responding to any inquiries from Putative Class Members, or
22 disbursement of the Common Funds.” Settlement Agreement, Article V.1.

23 Dated: June 26, 2023

24 /s/ Wylie A. Aitken
25 Wylie A. Aitken

26 /s/ Lexi J. Hazam
27 Lexi J. Hazam

28 /s/ Stephen G. Larson
Stephen G. Larson

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