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

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

21 **Plaintiffs,**

22 v.

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

24 **Defendants.**
25
26
27
28

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

**NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: September 14, 2023
Time: 8:30 a.m.
Judge: David O. Carter
Room: 10A

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

2 PLEASE TAKE NOTICE that on September 14, 2023, at 8:30 a.m., or as
3 soon thereafter as the matter may be heard by the Honorable David O. Carter in
4 Courtroom 10A of the above-entitled court, located at 411 West Fourth Street,
5 Santa Ana, CA 92701, Plaintiffs will and hereby do move the Court, pursuant to
6 Rule 23 of the Federal Rules of Civil Procedure, for an Order:

- 7 A. Granting final approval of the proposed Settlement (Dkt. 739-2);
8 B. Appointing Settlement Class Counsel and Class Representatives under
9 Fed. R. Civ. P. 23(g)(1); and
10 C. Finding that notice to the Classes was directed and completed in a
11 reasonable manner.

12 This motion is based on the attached supporting memorandum; the
13 accompany declarations and exhibits; the pleadings, papers, and records on file in
14 this action, including Plaintiffs' Motion for Preliminary Approval (Dkt. 739); any
15 further papers filed in support of this motion; and arguments of counsel.

16 Dated: July 31, 2023

17 Respectfully submitted,

18 /s/ Lexi J. Hazam
Lexi J. Hazam

19 /s/ Wylie A. Aitken
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20 /s/ Stephen G. Larson
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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**

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

22 Plaintiffs,

23 v.

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

25 Defendants.

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

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: September 14, 2023
Time: 8:30 a.m.
Judge: David O. Carter
Room: 10A

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INTRODUCTION

After over a year of hard-fought litigation, Plaintiffs and Interim Settlement Class Counsel secured a Settlement on behalf of fishers, real property owners and lessees, and waterfront tourism entities with the Shipping Defendants.¹ The Settlement is an excellent outcome. It provides a non-reversionary fund of \$45 million to compensate Settlement Class Members, inclusive of attorneys’ fees and costs, to add to the \$50 million fund achieved for the same Class Members through the Amplify settlement. Pursuant to the Court’s order preliminarily approving the Settlement (Dkt. 751), Plaintiffs now file three motions to complete the approval process.²

Through this motion, Plaintiffs seek final approval of the Settlement. *First*, each proposed Settlement Class should be certified, because each proposed Settlement Class satisfies the requirements for class certification under Fed. R. Civ. P. 23(3) and 23(b)(3) for the same reasons this Court found in granting Preliminary Approval. *Second*, the Settlement readily satisfies the “fair, adequate, and reasonable” settlement approval standard of Rule 23 for the same reasons this Court found in granting Preliminary Approval. The Settlement was the product of hard-fought and arm’s-length negotiation after significant discovery, and was facilitated with the aid of experienced mediators, including the Hon. Layne R. Phillips, who fully endorses the Settlement in all respects. *See generally* Phillips Decl. The Settlement heads off the unpredictable risks of continued litigation, including the Limitation Action trial regarding exoneration or limitation of liability, class

¹ The “Shipping Defendants” are: Capetanissa Maritime Corporation, Costamare Shipping Co., S.A., V.Ships Greece Ltd., and the *M/V Beijing* (collectively, “Capetanissa”) and Dordellas Finance Corp., MSC Mediterranean Shipping Co. SA, Mediterranean Shipping Co. S.r.l., MSC Shipmanagement Ltd., and *MSC Danit* (collectively, “Dordellas”). *See* Settlement Agreement (Dkt. 739-2, ¶ 1). Capitalized terms have the definitions set forth in the Settlement Agreement.

² In addition to this motion for final approval, Plaintiffs have concurrently filed a motion to approve the Plans of Distribution, and a motion to award fees, costs, and Class Representative service awards.

1 certification and whether a class claim is permissible in a Limitation Action,
2 summary judgment, trial, and appeal—risks that are heightened in this case given
3 its complexity and scope. *See id.* ¶ 13. Settlement Class Members will receive
4 significant compensation quickly, benefitting from settlement implementation work
5 already completed for the similar Amplify settlement.

6 Plaintiffs thus respectfully request that the Court certify the Settlement
7 Classes and grant final approval to the Settlement.

8 **BACKGROUND**

9 **I. Factual Background**

10 Class Plaintiffs allege that in January 2021, two container ships, the *M/V*
11 *Beijing* and *M/V MSC Danit* (the “Ships”), struck and dragged their anchors over
12 Amplify’s San Pedro Bay Pipeline (the “Pipeline”), moving a 4,000-foot section of
13 the Pipeline out of alignment by more than 100 feet. Plaintiffs allege that the Ships’
14 owners and operators neglected to inform Amplify or relevant government
15 authorities about the anchor strikes prior to October 2021, when damage from those
16 strikes caused the Pipeline to rupture and discharge thousands of gallons of crude
17 oil into Orange County’s coastal waters. The spill soiled beaches and coastal
18 properties, closed commercial fisheries, and harmed waterfront tourism businesses.

19 **II. Procedural Background**

20 **A. Litigation Summary**

21 This litigation involves two related actions: (1) *Gutierrez et al. v. Amplify*
22 *Energy Corp. et al.*, 8:21-cv-01628-DOC-JDE (“*Gutierrez*”) and (2) *In the Matter*
23 *of the Complaint of Dordellas Finance Corp. Owner and MSC Mediterranean*
24 *Shipping Company S.A., Owner pro hac vice*, No. 2:22-cv-02153-DOC-JDE (C.D.
25 Cal.) (“*Limitation Action*”).

26 **1. Initiation of the Litigation and Complaints**

27 Shortly after the Oil Spill in early October 2021, Plaintiffs filed lawsuits
28 arising from the spill. *See* Dkt. 30 at 2 (listing cases). On December 20, 2021, this

1 Court consolidated many of those cases into this lead case, *Gutierrez*, and
2 appointed Interim Co-Lead Counsel. Dkt. 38.

3 Plaintiffs filed their Consolidated Amended Complaint on January 28, 2022,
4 Dkt. 102, and their First Amended Consolidated Amended Complaint on March 21,
5 2022, Dkt. 148. Soon thereafter, the *MSC Danit*'s owner and owner *pro hac vice*,
6 Dordellas Finance Corp. and MSC Mediterranean Shipping Co. SA, and the
7 *Beijing*'s owner, Capetanissa Maritime Corporation (collectively "Shipowners"),
8 filed petitions under the Limitation of Liability Act of 1851, 46 U.S.C. §§ 30502, *et*
9 *seq.* (the "Limitation Act"), seeking exoneration from or limitation of liability. *See*
10 *Limitation Action Dkt. No. 1*; *see also In re the Matter of the Complaint of*
11 *Capetanissa Maritime Corporation*, No. 2:22-cv-03462-DOC-JDE (C.D. Cal.) ("*In*
12 *re Capetanissa*").

13 2. Litigation on Impact of Limitation Action on *Gutierrez*

14 The Shipowners sought to stay Plaintiffs' claims in *Gutierrez* until the
15 Shipowners' potential exoneration or limitation was resolved under the Limitation
16 Act. *See Limitation Action Dkt. 1*; *In re Capetanissa*, Dkt. 1. Plaintiffs argued that
17 their claims against Amplify and the Shipping Defendants should proceed in
18 *Gutierrez*. Dkts. 224, 232. Plaintiffs also asserted that any stay should apply only to
19 claims against the Shipowners and no other Defendants, and that Plaintiffs should
20 be able to proceed with a class claim within the Limitation Action. Dkts. 224, 232.

21 On May 25, 2022, the Court permitted Plaintiffs' claims against the non-
22 Shipowner Defendants, including Amplify and certain Shipping Defendants, to
23 proceed in *Gutierrez*, and stayed Plaintiffs' claims against the Shipowners in
24 *Gutierrez* until the Shipowners' Limitation Action claims were resolved.³ Dkt. 245.
25 Plaintiffs then filed a class claim on behalf of the putative Settlement Classes
26 against the Shipowners in the Limitation Action, as well as an Answer asserting the

27 ³ When it became apparent neither V.Ships Greece Ltd. nor Costamare Shipping
28 Company were a vessel owner, Plaintiffs successfully moved to lift the stay against
them. Dkts. 383, 396, 401.

1 Shipowners were not entitled to exoneration or limitation of liability. Limitation
2 Action Dkts. 29, 166, 167, 171.

3 **3. Plaintiffs' Settlement with Amplify**

4 On August 24, 2022, Plaintiffs and Amplify informed the Court they had
5 reached an agreement to settle Plaintiffs' claims against Amplify. Dkt. 377. This
6 Court granted final approval to the Amplify settlement on April 24, 2023. Dkt. 728.

7 After reaching the proposed settlement with Amplify, Plaintiffs focused all
8 their litigation efforts on the Shipping Defendants, and the significant merits-related
9 hours and expenditures by Plaintiffs since then have related solely to pursuing their
10 claims against the Shipping Defendants. *See* Declaration of Lexi J. Hazam in
11 Support of Final Approval ("Hazam Decl.," filed concurrently herewith), ¶ 16.

12 **4. Litigation Against Shipping Defendants in *Gutierrez***

13 Plaintiffs filed their now-operative Second Amended Consolidated Class
14 Action Complaint on October 4, 2022. Dkt. 454. The Shipping Defendants filed
15 three motions to dismiss. Dkts. 467, 470, 494. Plaintiffs opposed (Dkts. 491, 537).
16 Defendants replied, and the Court heard argument at an all-day hearing on
17 December 5, 2022. These motions were still pending at the time the Parties settled.

18 **5. Litigation Against Shipping Defendants in Limitation Action**

19 The Parties also engaged in significant motion practice related to the
20 Limitation Action. Shipowners moved to strike or dismiss Plaintiffs' class claim,
21 arguing that class allegations cannot be maintained within a limitation action.
22 Limitation Action Dkts. 47, 48. Plaintiffs opposed, Limitation Action Dkt. 66, and
23 the Parties argued the motion over the course of a two-day hearing on August 24
24 and 25, 2022.

25 Plaintiffs also filed an objection to the Shipowners' planned Limitation
26 Action notice arguing it was insufficient to inform Class Members of the Limitation
27 Action's potential impact on their rights. Limitation Action Dkt. 24. Shipowners
28 moved to strike the objection, Limitation Action Dkts. 30, 33, which Plaintiffs

1 opposed, Limitation Action Dkt. 44. The Court denied the Shipowners' motion to
2 strike and ordered supplemental notice to cure the deficiencies noted in Plaintiffs'
3 objection. Limitation Action Dkt. 113. The Court further directed the Parties to
4 confer on the form of the supplemental notice and raise any disputes with the
5 Special Master Panel. *Id.* The Parties made numerous submissions to the Special
6 Master Panel regarding the proper form of supplemental notice, in which Plaintiffs
7 successfully argued for direct notice to identifiable putative class members,
8 extending the claim filing period, and a short form claim to streamline the claim
9 filing process. *See* Limitation Action Dkts. 131, 132.

10 **6. Litigation Regarding Limitation Trial**

11 The Parties submitted detailed briefing on the scope of the Limitation Action
12 trial, in which Plaintiffs successfully advocated for a narrow trial focused on
13 exoneration and limitation. *See* Limitation Action Dkts. 208, 224, 235.

14 **B. Discovery**

15 Plaintiffs and the Shipping Defendants have engaged in a significant amount
16 of discovery in the year and a half since this litigation began in both actions.
17 Plaintiffs propounded a total of 94 requests for production on the Shipping
18 Defendants, along with three sets of requests for admission. Declaration of Hazam
19 Decl., ¶ 14. Each Plaintiff timely responded to the Shipping Defendants' two sets of
20 requests for production, two sets of interrogatories, and Capetanissa's requests for
21 admission. *Id.* Plaintiffs also briefed (and in some cases argued) numerous
22 discovery disputes with the Shipping Defendants before the Special Master Panel,
23 including disputes regarding the Shipping Defendants' pace and schedule of
24 production, whether Plaintiffs and other parties would be permitted to propound
25 discovery relating to the Shipping Defendants' Limitation Action claims against
26 one another, and the location and timing of depositions. *Id.* ¶¶ 16-17.

27 The Class Representatives collected 8 GB of data for search and review
28 responsive to the Shipping Defendants' requests. *Id.* ¶ 15. Plaintiffs obtained and

1 reviewed more than 180,000 documents, including numerous highly technical
2 documents relating to ship engineering and navigation. *Id.* Plaintiffs cross-noticed
3 and participated in the depositions of more than 40 witnesses around the world,
4 including at ports of call in Europe. *Id.* Plaintiffs also participated in inspections of
5 the *M/V Beijing*, the oil platform that controlled the pipeline at the location and time
6 of the spill, and the pipeline during its removal. *Id.* Leading up to the deadline for
7 expert reports, Plaintiffs also developed several maritime experts and worked with
8 various liability experts. *Id.*

9 As to damages, Plaintiffs engaged some of the same experts that survived
10 *Daubert* challenges in *Andrews v. Plains All American Pipeline, L.P.*, No. 2:15-cv-
11 04113-PSG (C.D. Cal.), a similar class action on behalf of businesses and property
12 owners harmed by a Southern California oil spill. *Id.* ¶ 22. These experts include an
13 expert in the field of real estate damages, an economist, and a marine scientist, who
14 submitted confidential preliminary reports for purposes of mediation to support
15 Plaintiffs' claims and damages. *Id.*

16 As a result of this extensive liability and damages work conducted by the
17 Plaintiffs and the Ships, the Parties were well-placed to evaluate the strengths and
18 weaknesses of their positions and the adequacy of the proposed Settlement. *Id.* at ¶
19 23. The advanced stage of discovery crystallized liability issues in the mediation
20 sessions with the Hon. Layn Phillips (Ret.) and Hon. Sally Shushan (Ret.). *See*
21 *generally* Phillips Decl.

22 **C. Settlement Negotiations**

23 The proposed Settlement is the product of hard-fought, arm's length
24 negotiations. On June 2, 2022, the Parties participated in a formal mediation session
25 with Hon. Layn Phillips (Ret.) and Hon. Sally Shushan (Ret.). That session did not
26 result in a settlement. Phillips Decl. ¶¶ 5-7. The Parties continued informal
27 negotiations and held telephone conferences over the following months. *Id.* ¶ 8. On
28 November 14, 2022, the Parties again engaged in an all-day mediation session. *Id.* ¶

1 9. There, too, the Parties were unable to come to an agreement. *Id.* Following that
2 mediation session, the Parties continued their informal negotiations with the
3 mediators. *Id.* On February 5, 2023, the mediators made a mediator’s proposal,
4 which the Parties accepted on February 8, 2023. *Id.* ¶ 10.

5 After reaching an agreement in principle, the Parties worked diligently to
6 draft the Settlement Agreement, notices, and other settlement exhibits. Hazam Decl.
7 ¶ 5. This Court granted preliminary approval to the Shipping Defendants settlement
8 on June 15, 2023. Dkts. 750, 751. Since then, Interim Settlement Class Counsel has
9 worked with the Settlement Administrator to assist with sending notice and
10 administering the settlement. Hazam Decl. ¶ 5.

11 **D. Summary of Settlements Terms**

12 Under the proposed Settlement, the Shipping Defendants will pay \$45
13 million total, with \$30.6 million paid to the Fisher Class, \$8.1 million to the
14 Property Class, and \$6.3 million to the Waterfront Tourism Class. *See* Settlement at
15 §§ II.16, 28, 41, III. These amounts, together with interest earned thereon, will
16 constitute the Fisher, Property, and Waterfront Tourism Class Common Funds,
17 respectively. *Id.* § II.14, 26, 39. No portion of the combined \$45 million will revert
18 to the Shipping Defendants. After deduction of notice-related costs and any Court-
19 approved award of attorneys’ fees, reimbursement of litigation expenses, and
20 service awards to Class Representatives, all of the remaining monies will be
21 distributed to the Class members in accordance with Plaintiffs’ proposed Plans of
22 Distribution, which were filed with the Court on June 26, 2023. Dkt. 752.
23 Alongside this motion, Plaintiffs have filed a separate motion for approval of the
24 Plans of Distribution.

25 **E. The Notice Program**

26 Following preliminary approval, the Parties worked with the respected notice
27 provider and settlement administrator JND to successfully roll out the Court-
28 approved Notice Program. JND reports that the Notice Program is on track to reach

1 “virtually all” Class Members. Declaration of Gretchen Eoff (“Eoff Decl.” filed
2 concurrently herewith), ¶ 4. To date, and in compliance with this Court’s order
3 granting Preliminary Approval, JND has sent thousands of individual notices by
4 mail and email to individual Class members. *Id.* ¶¶ 5-13. Also per Court order, JND
5 supplemented this direct effort with supplemental forms of notice, including a
6 substantial digital notice effort, which included a targeted state-of-the-art social
7 media outreach campaign in which the digital ads link directly to the dedicated
8 Settlement Website (www.OCOilSpillSettlement.com) where Class Members can
9 review the notices, read FAQs, apprise themselves of key dates, and contact the
10 Settlement Administrator directly should they have any additional questions. *Id.*
11 ¶¶ 16-29. To maximize the success of the Settlement Program, Interim Settlement
12 Class Counsel will continue to confer with JND regarding appropriate additional
13 outreach.

14 **III. ARGUMENT**

15 **A. The Settlement Classes Satisfy All Requirements of Rule 23 and** 16 **Should Be Certified.**

17 As the Court concluded in granting preliminary approval and directing notice
18 to the Classes, “the proposed Settlement Classes, as defined in the Settlement
19 Agreement, likely meet the requirements for class certification under Fed. R. Civ.
20 P. 23(a) and 23(b)(3).” Dkt. 599 ¶ 2. This remains true, and the Settlement Classes
21 should be certified.

22 **1. Rule 23(a)(1): The Class Is Sufficiently Numerous.**

23 Rule 23(a)(1) is satisfied where, as here, “the class is so numerous that
24 joinder of all class members is impracticable.” Fed. R. Civ. P. 23(a)(1). Numerosity
25 is generally met when the class exceeds forty members. *See, e.g., Slaven v. BP Am.,*
26 *Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000). Here each Class contains hundreds or
27 thousands of Class Members. *See* Declaration of Gretchen Eoff (concurrently filed),
28

1 ¶¶ 5-7.⁴ The size of the Settlement Class renders joinder impracticable. *See*
2 *Palmer v. Stassinios*, 233 F.R.D. 546, 549 (N.D. Cal. 2006) (“Joinder of 1,000 or
3 more co-plaintiffs is clearly impractical.”). Numerosity is easily satisfied here.

4 **2. Rule 23(a)(2): The Class Claims Present Common Questions**
5 **of Law and Fact.**

6 Rule 23(a)(2) requires that there be one or more questions common to the
7 class. Commonality “does not turn on the number of common questions, but on
8 their relevance to the factual and legal issues at the core of the purported class’
9 claims.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). “Even a
10 single question of law or fact common to the members of the class will satisfy the
11 commonality requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369
12 (2011) (internal quotation omitted).

13 As Plaintiffs explained in their motion for preliminary approval, this case
14 raises multiple common questions, including whether the Shipping Defendants
15 acted negligently in operating and maintaining their vessels, and whether the
16 Shipping Defendants’ conduct caused the Oil Spill. These common questions will,
17 in turn, generate common answers “apt to drive the resolution of the litigation” for
18 the Settlement Classes. *See Dukes*, 564 U.S. at 350. For these reasons, commonality
19 is readily satisfied.

20 **3. Rule 23(a)(3): The Settlement Class Representatives’ Claims**
21 **Are Typical of Other Class Members’ Claims.**

22 Under Rule 23(a)(3), a plaintiff’s claims are “typical” if they are “reasonably
23 coextensive with those of absent class members; they need not be substantially
24 identical.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (citation omitted).

25 _____
26 ⁴ As explained in JND’s declaration, JND determined through analysis of detailed
27 records of the California Department of Fish & Wildlife (“CDFW”) that the number
28 of Fisher Class Members is 642, fewer than previously identified based on more
generalized CDFW data. JND sent notice of the Shipping Defendant settlement to
Fisher Class Members identified in the detailed CDFW data. The hundreds of
Fisher Class Members easily satisfy the numerosity requirement. *See Slavin*, 190
F.R.D. at 654.

1 “Like the commonality requirement, the typicality requirement is ‘permissive’”
2 *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

4 Plaintiffs’ claims and those of the Settlement Classes each represents are
5 based on the same course of conduct and the same legal theories. Moreover, the
6 Plaintiffs representing each Settlement Class suffered the same types of alleged
7 harm as the Class Members they seek to represent. For these reasons, the Settlement
8 Class Representatives’ claims are typical.

9 **4. Rule 23(a)(4): The Settlement Class Representatives and**
10 **Class Counsel Have Protected and Will Protect the Interests**
11 **of the Class.**

12 Rule 23(a)(4)’s adequacy inquiry asks “(1) do the named plaintiffs and their
13 counsel have any conflicts of interest with other class members and (2) will the
14 named plaintiffs and their counsel prosecute the action vigorously on behalf of the
15 class?” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012)
16 (citation omitted). Interim Settlement Class Counsel have extensive experience
17 litigating and resolving class actions, and are well qualified to represent the
18 Settlement Classes. *See* Dkt. 38 (appointing Interim Settlement Class Counsel as
19 Interim Co-Lead Counsel at the litigation’s inception after considering, in part, their
20 “[e]xperience handing class actions and other complex litigation”); Dkt. 739-3 (Tr.
21 of Apr. 24, 2023 Hr’g) at 7:11-13, 21-22 (“This Court has been, let’s say,
22 impressed with the fact that all counsel . . . have been extraordinarily diligent”;
23 “I’m extremely complimentary towards all counsel in this matter”). As described
24 above, Interim Settlement Class Counsel have vigorously prosecuted this action on
25 behalf of the Settlement Classes, including engaging in substantial motion practice
26 and extensive investigation and discovery, developing experts, participating in
27 mediation, and negotiating the proposed Settlement. They will continue to protect
28 the Classes’ interests.

Plaintiffs have similarly demonstrated their commitment to the Settlement

1 Classes, including by providing pertinent information about their losses, searching
2 for and providing documents and information in response to Amplify’s discovery
3 requests, regularly communicating with their counsel about the case, and reviewing
4 and approving the proposed Settlement. *See, e.g.*, Hazam Decl. ¶¶ 41-44.

5 Finally, Plaintiffs and Interim Settlement Class Counsel’s interests are
6 aligned with and not antagonistic to the interests of the Settlement Classes, with
7 whom they share an interest in obtaining relief from the Shipping Defendants for
8 the alleged violations.

9 **5. Rule 23(b)(3)—Predominance: Common Issues of Law and**
10 **Fact Predominate.**

11 “The predominance inquiry ‘asks whether the common, aggregation-
12 enabling, issues in the case are more prevalent or important than the non-common,
13 aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S.
14 Ct. 1036, 1045 (2016) (citation omitted). The Ninth Circuit favors class treatment
15 of claims stemming from a “common course of conduct,” like those alleged from
16 the Oil Spill in this case. *See In re First All. Mortg. Co.*, 471 F.3d 977, 989 (9th Cir.
17 2006).

18 Common questions predominate here. The Settlement Class Members’
19 claims all arise under the same laws and the same alleged conduct. The questions
20 that predominate include whether the Shipping Defendants acted negligently in
21 operating and maintaining their vessels, and whether the Shipping Defendants’
22 conduct caused the Oil Spill. Moreover, under the proposed Settlement, there will
23 not need to be a class trial, meaning there are no potential concerns about individual
24 issues, if any, creating trial inefficiencies. *See Amchem Prods., Inc. v. Windsor*, 521
25 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class
26 certification, a district court need not inquire whether the case, if tried, would
27 present intractable management problems . . . for the proposal is that there be no
28 trial.”).

1 **6. Rule 23(b)(3)—Superiority: Class Treatment Is Superior to**
2 **Other Available Methods for the Resolution of This Case.**

3 Rule 23(b)(3)'s superiority inquiry calls for a comparative analysis of
4 whether a class action is "superior to other available methods for the fair and
5 efficient adjudication of the controversy." *Id.* at 615; *see also Wolin v. Jaguar Land*
6 *Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) ("The purpose of the
7 superiority requirement is to assure that the class action is the most efficient and
8 effective means of resolving the controversy."). Class treatment is superior to other
9 methods for the resolution of this case, particularly given the relatively small
10 amounts of alleged damages for each individual Class Member. Moreover,
11 Settlement Class Members remain free to exclude themselves if they wish to do so.
12 Superiority is met here, and Rule 23(e)(1)(B)(ii) is satisfied.

13 ***

14 The Settlement Classes meet all relevant requirements of Rule 23(a) and (b).
15 Plaintiffs thus request that the Court confirm the certification of the Settlement
16 Classes and the appointment of the Settlement Class Representatives.

17 **B. The Settlement Is Fair, Reasonable, and Adequate.**

18 A court may approve the parties' settlement after it determines that it is "fair,
19 reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Rule 23 sets out the "primary
20 procedural considerations and substantive qualities that should always matter to the
21 decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2), 2018 adv.
22 comm. note. These include whether "(A) the class representatives and class counsel
23 have adequately represented the class; (B) the proposal was negotiated at arm's
24 length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal
25 treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2).⁵

26 ⁵ The Rule substantively tracks the Ninth Circuit's test for evaluating a settlement's
27 fairness. *Loomis v. Slendertone Distrib., Inc.*, 2021 WL 873340, at *4 n.4 (S.D. Cal.
28 Mar. 9, 2021). Plaintiffs' analysis accounts for the Ninth Circuit's factors and
discusses them where applicable. Those factors are: "[1] the strength of the
plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further
litigation; [3] the risk of maintaining class action status throughout the trial; [4] the

1 The proposed Settlement readily satisfies these criteria.

2 **1. Rule 23(e)(2)(A): Class Counsel and the Representatives of**
3 **the Settlement Classes Have Zealously Represented the**
4 **Classes and Will Continue to Do So.**

5 The Court considers whether “the class representatives and class counsel
6 have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). This analysis
7 includes “the nature and amount of discovery” undertaken in the case. Fed. R. Civ.
8 P. 23(e), 2018 adv. comm. note; *see also* 4 William B. Rubenstein, *Newberg on*
9 *Class Actions* § 13:49 (5th ed. Dec. 2021 update) (“*Newberg*”).

10 As detailed above, Interim Settlement Class Counsel undertook significant
11 efforts to investigate and refine the Class claims. Interim Settlement Class Counsel
12 engaged in significant discovery, including litigating multiple discovery disputes
13 before the SMP; engaged in robust Rule 12 motion practice; and conducted
14 extensive litigation to protect the Classes’ claims in the Limitation Action. This
15 process fleshed out the strengths and vulnerabilities of Plaintiffs’ claims. Class
16 Counsel were therefore well-positioned to evaluate the case and to negotiate a fair
17 and reasonable Settlement. *See Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D.
18 Cal. 2014). They have done so.

19 The Settlement Class Representatives are also actively engaged. Each was
20 consulted on the terms of the Settlement and has expressed their support and
21 continued willingness to protect the Class until the Settlement is approved and its
22 administration completed. Hazam Decl. ¶ 44.

23 The Settlement Classes remain well represented by experienced Counsel and
24 engaged Settlement Class Representatives.

25
26
27 amount offered in settlement; [5] the extent of discovery completed and the stage of
28 the proceedings; [6] the experience and views of counsel; [7] the presence of a
governmental participant; and [8] the reaction of the class members to the proposed
settlement.” *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020)
(citation omitted).

1 **2. Rule 23(e)(2)(B): The Settlement Is the Product of Good**
2 **Faith, Informed, and Arm’s-Length Negotiations.**

3 The Court must also consider whether “the [settlement] proposal was
4 negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). This “procedural
5 concern[]” requires the Court to examine “the conduct of the litigation and of the
6 negotiations leading up to the proposed settlement.” Fed. R. Civ. P. 23(e), 2018
7 adv. comm. note. There is “no better evidence” of “a truly adversarial bargaining
8 process . . . than the presence of a neutral third party mediator.” *Newberg, supra*,
9 § 13:50.

10 Here, the parties engaged in vigorous and contested settlement negotiations
11 with the aid of Hon. Layne Phillips (Ret.), a “neutral, experienced mediator[].” *See*
12 *Hillson v. Kelly Servs. Inc.*, 2017 WL 279814, at *6 (E.D. Mich. Jan. 23, 2017).
13 The mediation efforts spanned months and included a two full-day mediation
14 sessions before the Hon. Layne Phillips (Ret.), along with the Hon. Sally Shushan
15 (Ret.). The Hon. Layne Phillips “strongly support[s] the Court’s approval of the
16 Settlement in all respects.” Dkt. 739-4 ¶ 13.

17 Nor does the Agreement contain any signs of collusion. *See generally In re*
18 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011). Class Counsel
19 has applied for an award of attorneys’ fees of 25 percent of the three Common
20 Funds. This award will be “separate from the approval of the Settlement, and
21 neither [Plaintiffs nor Class Counsel] may cancel or terminate the Settlement based
22 on this Court’s or any appellate court’s ruling with respect to attorneys’ fees.”
23 *Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *6 (C.D. Cal. Oct. 10,
24 2019). Finally, no portion of the Common Funds will revert to the Shipping
25 Defendants.

26 In summary, this Settlement is the result of strenuous and informed arm’s
27 length settlement negotiations.
28

1 **3. Rule 23(e)(2)(C): The Settlement Provides Adequate Relief**
2 **in Exchange for the Compromise of Claims.**

3 The Court must ensure “the relief provided for the class is adequate,” taking
4 into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness
5 of any proposed distribution plan, including the claims process; (iii) the terms of
6 any proposed award of attorney’s fees; and (iv) any agreement made in connection
7 with the proposal, as required under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C).
8 These factors overwhelmingly support preliminary approval. Avoiding years of
9 additional, risky litigation in exchange for immediate and significant cash payments
10 is a principled compromise that works to the clear benefit of the Classes in this
11 case. *See* Fed. R. Civ. P. 23(e)(2)(C).

12 **a. The Settlement Relief Outweighs the Costs, Risks, and**
13 **Delay of Trial and Appeal.**

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

20 Here, the non-reversionary \$45 million Settlement provides Settlement Class
21 Members with substantial monetary relief. When viewed in combination with the
22 \$50 million monetary relief sought in the settlement against Amplify, the \$95
23 million result in under two years is extraordinary. The combined \$95 million
24 represents a substantial portion of the Classes’ estimated damages. *See* Phillips
25 Decl. at ¶ 13. Courts routinely approve settlements that achieve significantly less.
26 *See also e.g., In re Toys R Us–Del., Inc.–Fair & Accurate Credit Transactions Act*
27 *(FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) (granting final approval
28 to settlement providing 3% of possible recovery (\$391.5 million value on exposure
up to \$13.05 billion)); *Reed v. 1–800 Contacts, Inc.*, No. 12–CV–02359 JM, 2014

1 WL 29011, at *6 (S.D. Cal. Jan. 2, 2014) (granting final approval to settlement
2 providing 1.7% of possible recovery (net settlement fund of \$8,288,719.16,
3 resolving claims worth potentially \$499,420,000). Class Members would only
4 receive 100% of their damages if they succeed at every stage of litigation, including
5 lengthy appeal, at which point they could still end up with no recovery. The “very
6 essence of a settlement is compromise, a yielding of absolutes and an abandoning
7 of highest hopes.” *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 322
8 (N.D. Cal. 2018) (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242
9 (9th Cir. 1998)); *see also id.* (“Estimates of what constitutes a fair settlement figure
10 are tempered by factors such as the risk of losing at trial, the expense of litigating
11 the case, and the expected delay in recovery (often measured in years).”).

12 The reasonableness of the proposed Settlement is clear in light of the
13 uncertainty of victory and significant delay from continued litigation. Class
14 Plaintiffs litigated this case nearly to the Limitation Act trial, which would have
15 determined whether the Ships were at least partly liable for the Oil Spill, and if so
16 whether their liability should be limited pursuant to the Limitation Act. If the Ships
17 had proven at that trial that they were not liable for the Oil Spill, or that their
18 damages should be limited, Class Plaintiffs would have either recovered nothing or
19 potentially significantly less than their full damages—especially considering that
20 Amplify would have also claimed very significant damages in any concursus
21 related to any limited funds identified in the Limitation Action. If the Court had
22 granted limitation, Plaintiffs also faced the challenge of demonstrating that a class
23 claim was proper in a Limitation Action—which the Shipping Defendants had
24 strenuously opposed and which this Court had not yet decided.

25 Even in the best case scenario for Class Plaintiffs—if the Court denied
26 exoneration and limitation, dismissed the Limitation Action, and the parties
27 litigated fully in *Gutierrez*—Class Plaintiffs would still face the gauntlet of
28 prevailing on class certification, *Daubert*, summary judgment, liability and

1 damages at trial, and inevitable appeal. Each of these would be hotly contested. The
2 Shipping Defendants would also likely seek to shift liability onto Amplify.

3 Perhaps most importantly, any victory at trial that survived appeal would be
4 years away. In *Andrews v. Plains All American Pipeline, L.P.* (“*Plains*”), No. 2:15-
5 cv-04113-PSG (C.D. Cal.), a similar class action lawsuit on behalf of businesses
6 and property owners harmed by a Southern California oil spill, the parties litigated
7 for over seven years before reaching a settlement shortly before trial. Even if
8 Plaintiffs secured a complete victory at trial on both liability and damages, it is a
9 near certainty that Defendants would engage in “vigorous post-trial motion
10 practices . . . and likely appeals to the Ninth Circuit—delaying any recovery for
11 years” more. *Baker*, 2020 WL 4260712, at *7.

12 Of course, Class Counsel were prepared to prosecute their clients’ case
13 through all challenges, and believe they can overcome them. Nonetheless, risks
14 remained, and significant delays to recovery would have been inevitable. The
15 proposed Settlement allows the affected Orange County community to obtain
16 recovery now—within about two years of the incident that caused their losses.

17 Experienced counsel’s support for the proposed Settlement also weighs in
18 favor of preliminary approval. *See Cheng Jiangchen*, 2019 WL 5173771, at *6
19 (“The recommendation of experienced counsel carries significant weight in the
20 court’s determination of the reasonableness of the settlement.”) (citation omitted).
21 Class Counsel strongly support the Settlement. *See Hazam Decl.*, ¶ 7.

22 In summary, the proposed Settlement offers substantial monetary relief, and
23 it avoids the uncertainty and the inevitable years-long delays the Classes would
24 have faced if Class Plaintiffs were successful in the Limitation Action trial *and* a
25 *Gutierrez* trial and then appeal. This reality, and the potential risks outlined above,
26 underscore the strength of the proposed Settlement.

1 **b. Payment to Class Members Is Straightforward and**
2 **User-Friendly.**

3 In determining whether relief is adequate, Rule 23(e)(2)(C)(ii) requires the
4 Court to consider “the effectiveness of any proposed method of distributing relief to
5 the class, including the method of processing class-member claims.” As detailed in
6 Plaintiffs’ proposed Plans of Distribution (Dkts. 752-1, 752-2, 753-3) and explained
7 in Plaintiffs’ Motion for Preliminary Approval (Dkt. 739 at 16-20) and Plaintiffs’
8 concurrently filed Motion for Approval of Plaintiffs’ Plans of Distribution, the
9 Parties designed an extraordinarily simple administration process. For all three
10 Classes, Class Members will be issued checks directly by mail, obviating the need
11 for a claims process altogether. Each member of the Settlement Classes will receive
12 their pro rata share of the settlement directly by mailed check. Courts regularly
13 approve such distribution plans. *See, e.g., In re High-Tech Emp. Antitrust Litig.*,
14 2015 WL 5159441, at *8 (N.D. Cal. Sept. 2, 2015) (finding a plan of distribution
15 that provided each class member with a “fractional share” to be “cost-effective,
16 simple, and fundamentally fair”) (citation omitted). *See also In re Elec. Carbon*
17 *Prods. Antitrust Litig.*, 447 F. Supp.2d 389, 404 (D.N.J. 2006) (approving pro rata
18 distribution to claimants based on their direct purchases as “eminently reasonable
19 and fair to the class members”); *In re Illumina, Inc. Sec. Litig.*, 2021 WL 1017295,
20 at *5 (S.D. Cal. Mar. 17, 2021) (“[I]t is reasonable to allocate the settlement funds
21 to class members based on the extent of their injuries or the strength of their claims
22 on the merits.”) (citation omitted).

23 The Plans are substantially similar to those approved in the Amplify
24 Settlement. *See* Dkt. 727 (order approving Amplify Plans of Distribution); Dkt.
25 739-3 (Tr. of Apr. 24, 2023 Hr’g at 4:10-7:1) (describing Amplify Plans of
26 Distribution as “extraordinarily well-thought-out”). The two differences between
27 the Plans of Distribution here and those approved in the Amplify settlement both
28 benefit Class Members: (a) no payments will be offset by prior payments received

1 under the Oil Pollution Act, and (b) no Waterfront Tourism Class Members will
2 need to submit claims to receive payments. *See* Dkt. 752-3 (proposed Plan of
3 Distribution for Waterfront Tourism Class). The calculation of awards for each
4 Class Member will match the methodologies approved in the Amplify settlement,
5 *see id.*, with the exception of the Waterfront Tourism Class Members who
6 previously had to file claims, who now will receive equal portions of the damages
7 allocated to their business category. *See id.* ¶ 37.

8 The proposed method of distribution relief to the Classes is effective and
9 supports approval of the Settlement.

10 **c. Plaintiffs Seek Reasonable Attorneys’ Fees and**
11 **Expenses.**

12 The Court should also evaluate Class Counsel’s “proposed award of
13 attorney’s fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(iii).
14 Plaintiffs have separately filed a motion in support of their requested fees and costs
15 award. As explained in that motion, the requested fee of 25 percent is
16 presumptively reasonable and represents a modest multiplier on Class Counsel’s
17 lodestar. The fee request is independent of this final approval motion.

18 **d. No Other Agreements Exist.**

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

25 **4. Rule 23(e)(2)(D): The Settlement Treats Class Members**
26 **Equitably Relative to Each Other.**

27 The Court should consider “the effectiveness of any proposed method of
28 distributing relief to the class, including the method of processing class-member
claims.” Fed. R. Civ. P. 23(e)(2)(C)(ii). In addition, the final Rule 23(e)(2) factor

1 asks whether “the proposal treats class members equitably relative to each other.”
2 Fed. R. Civ. P. 23(e)(2)(D).

3 Both factors are readily met here. The Plans are described in detail in the
4 concurrently filed Motion for Approval of Plaintiffs’ Plans of Distribution. In sum,
5 relief to all Class Members will be automatic, requiring no claims process at all.

6 The Plans of Distribution apportion relief among each Class equitably,
7 considering the relative harm to each Class Member where feasible, and employing
8 common distribution arrangements well in line with prior settlement approvals in
9 this Circuit. *See* Dkt. 727 (approving Amplify Plans of Distribution and citing
10 cases); *Andrews et al. v. Plains et al.*, 15-cv-04113-PSG-JEM (C.D. Cal. Sept. 20,
11 2022) (Gutierrez, J.) Dkt. 979 (order approving Distribution Plans); *In re Biolase,*
12 *Inc. Sec. Litig.*, 2015 WL 12720318, at *5 (C.D. Cal. Oct. 13, 2015); *Illumina*, 2021
13 WL 1017295, at *4- 5; *Koenig v. Lime Crime, Inc.*, 2018 WL 11358228, at *4
14 (C.D. Cal. Apr. 2, 2018).

15 Allocation of funds *between* the Classes is also equitable, reflecting both
16 relative amounts of damages as estimated by expert analysis to date, and likelihood
17 of recovery given relative strength of claims. *See Jenson, v. First Tr. Corp.*, 2008
18 WL 11338161, at *10 (C.D. Cal. June 9, 2008) (approving distinctions in plan of
19 allocation as reasonably reflecting likelihood of recovery of subgroups within the
20 class). While Plaintiffs believe all three Classes will prevail, the Fisher Class and
21 Property Class (unlike the Waterfront Tourism Class) benefit from the precedents in
22 *Plains* certifying substantially similar classes, and admitting the testimony of the
23 same experts that Plaintiffs may use here to prove class-wide liability damages for
24 those two classes. *See Plains*, 2017 WL 10543402, at *1 (C.D. Cal. Feb. 28, 2017)
25 (certifying fisher class, denying certification of property and tourism classes);
26 *Plains*, Dkt. 454 (C.D. Cal. Apr. 17, 2018) (certifying renewed motion to certify
27 property class); *Plains*, 2020 WL 3105425, at *6 (C.D. Cal. Jan. 16, 2020) (denying
28 motion to decertify property class and to exclude fisher and property class experts).

1 The mediators also found that the allocation “fairly divides the Settlement among
2 the three putative classes.” Phillips Decl., ¶ 13.

3 In addition to their distributions, the Court-appointed Class Representatives
4 have requested service awards of \$7,500 to compensate them for the time and effort
5 they spent pursuing the matter on behalf of the Class, including participating in
6 discovery and settlement. These service awards are appropriate for the reasons
7 explained in the concurrently filed Motion for Attorneys’ Fees, Expenses, and
8 Service Awards Under Rule 23(H). Each of these Class Representatives followed
9 the case throughout and reviewed and approved the proposed Settlement. Hazam
10 Decl., ¶¶ 41-44. Such service awards “are fairly typical in class action cases.”
11 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009); *see also In re*
12 *High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at
13 *17 (N.D. Cal. Sept. 2, 2015) (awarding \$80,000–\$120,000 to each class
14 representative on top of \$20,000 awarded to each for prior settlements). The service
15 awards do not raise any equitable concerns about the Settlement itself. *Fleming v.*
16 *Impax Labs. Inc.*, 2021 WL 5447008, at *10 (N.D. Cal. Nov. 22, 2021) (service
17 awards “are not per se unreasonable” and “this factor weighs in favor of []
18 approval”); *see Loomis*, 2021 WL 873340, at *8 (granting final approval to
19 settlement with service award for lead plaintiff); *In re Extreme Networks, Inc. Sec.*
20 *Litig.*, 2019 WL 3290770, at *8 (N.D. Cal. Jul. 22, 2018) (same).

21 Finally, no settlement funds will revert to Defendants, a “[s]ignificant[]” fact
22 that further demonstrates the Settlement’s fairness and effectiveness. *Hilsley v.*
23 *Ocean Spray Cranberries, Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020).⁶

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25
26 ⁶ Approval of the Settlement Agreement is meant to be separate and distinct from
27 the Court’s approval of the Plans of Distribution as well as Class Counsel’s request
28 for attorneys’ fees and costs. The purpose of this provision is to protect the Class
and to help ensure that the Settlement becomes final and effective as soon as
possible.

1 **C. The Court-Approved Notice Program Complies with Rule 23(b)(3)**
2 **and Rule 23(c)(2)(B).**

3 Class actions brought under Rule 23(b)(3) must satisfy the notice provisions
4 of Rule 23(c)(2), and upon preliminary approval of the settlement, “[t]he court must
5 direct notice in a reasonable manner to all class members who would be bound by
6 the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2) prescribes the “best notice
7 that is practicable under the circumstances, including individual notice to all
8 members who can be identified through reasonable effort.” Fed. R. Civ. P.
9 23(c)(2)(B).

10 In granting preliminary approval to the Settlement, this Court held that the
11 Notice Plan submitted in support of preliminary approval “constitutes the best
12 notice practicable under the circumstances,” satisfies due process, and “complies
13 fully” with the Federal Rules of Civil Procedure.” Dkt. 751 ¶ 9; *see also* Dkt. 739-
14 5, ¶ 48 (notice provider attesting that “the proposed Notice Plan provides the best
15 notice practicable under the circumstances [and] is consistent with the requirements
16 of Rule 23” and “similar court-approved best notice practicable notice programs”).
17 The Notice Plan here closely tracks the one previously approved by this Court and
18 administered by Court-appointed Settlement Administrator JND for the Amplify
19 settlement.

20 As explained in the concurrently filed declaration of Gretchen Eoff, Senior
21 Vice President of Operations at JND, the notices were delivered in a manner that
22 satisfies both Rule 23 and due process. Direct notice was individually mailed to all
23 known Settlement Class Members via U.S. Mail, and notice was also emailed to the
24 Fisher Class Members for whom addresses were available. Eoff Decl., ¶¶ 9-15.
25 These already robust mailing and emailing efforts were supplemented by an
26 extensive and state-of-the-art digital notice program, which included a targeted
27 social media notice effort (*id.*, ¶¶ 16-22), internet search effort (*id.* ¶¶ 23-24), and
28 earned media effort (*id.*, ¶¶ 25-26). Class Members were directed to the case

1 website, where they can view the entire Settlement, the long-form Class Notices,
2 the Plans of Distribution, and other key case documents. *Id.* ¶¶ 27-29. The website
3 also directs inquiries to a toll-free number where Class Members can get additional
4 information and communicate directly with the Settlement Administrator. *Id.* ¶¶ 30-
5 31.

6 The notice provider believes that the roll-out of the Notice Program “is
7 providing the best notice practicable under the circumstances of this Settlement,”
8 that the notice statistics to date “reinforce the fact that the Notice program is broad
9 in scope and designed to reach the greatest practicable number of Settlement Class
10 Members.” *Id.* ¶ 34.

11 **IV. CONCLUSION**

12 As set forth above, the Settlement Agreement resolves this litigation by
13 providing substantial monetary relief for Class Members. All of the factors and
14 considerations set forth in Rule 23 for final approval have been met. Plaintiffs
15 respectfully request that the Court grant their motion for final approval of the
16 proposed Settlement.

17
18 Dated: July 31, 2023

Respectfully submitted,

19 /s/ Lexi J. Hazam

20 Lexi J. Hazam

21 /s/ Wylie A. Aitken

22 Wylie A. Aitken

23 /s/ Stephen G. Larson

24 Stephen G. Larson
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

PETER MOSES GUTIERREZ, JR.,
et al.,

Plaintiffs,

v.

AMPLIFY ENERGY CORP., *et al.*,

Defendants.

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

**[AMENDED PROPOSED] ORDER
GRANTING FINAL APPROVAL OF
PROPOSED SETTLEMENT**

Hon. David O. Carter

WHEREAS, Plaintiffs John Pedicini And Marysue Pedicini, individually and as Trustees of the T & G Trust; Rajasekaran Wickramasekaran and Chandralekha Wickramasekaran, individually and as Trustees of the Wickramasekaran Family Trust; Donald C. Brockman, individually and as Trustee of the Donald C. Brockman Trust; Heidi M. Jacques, individually and as Trustee of the Heidi M. Brockman Trust; LBC Seafood, Inc.; Quality Sea Food Inc.; Beyond Business Incorporated, d/b/a Big Fish Bait & Tackle; Josh Hernandez; John Crowe; Banzai Surf Company, LLC; Davey’s Locker Sportfishing, Inc.; East Meets West Excursions; Bongos Sportfishing LLC; Bongos III Sportfishing LLC; and Tyler Wayman (“Plaintiffs”) and Defendants Capetanissa Maritime Corporation, Costamare Shipping Co., S.A., V.Ships Greece Ltd., *M/V Beijing* (collectively, the “Beijing Defendants”), Dordellas Finance Corp., MSC Mediterranean Shipping Co.

1 SA, Mediterranean Shipping Co. S.r.l., MSC Shipmanagement Ltd., and *MSC*
2 *Danit* (collectively, the “Dordellas Defendants”) (all together, the “Shipping
3 Defendants”) have entered into a Proposed Class Settlement Agreement and
4 Release, filed with the Court on May 15, 2023 (“Settlement Agreement”);

5 WHEREAS, on June 15, 2023, an Order Granting Preliminary Approval of
6 Proposed Settlement was entered by this Court, and on June 16, 2023, an Amended
7 Order Granting Preliminary Approval of Proposed Settlement (“Preliminary
8 Approval Order”) was entered by this Court, preliminarily approving the proposed
9 Settlement of this Action pursuant to the terms of the Settlement Agreement and
10 directing that Notice be given to the members of the Settlement Classes;

11 WHEREAS, pursuant to the Settlement Agreement, Settlement Class
12 Members have been provided with Notice informing them of the terms of the
13 proposed Settlement and of a Final Approval Hearing to, *inter alia*: (a) determine
14 whether the proposed Settlement should be finally approved as fair, reasonable, and
15 adequate so that the Final Approval Order and Judgment should be entered;
16 (b) consider any timely objections to this Settlement and the Parties’ responses to
17 such objections; (c) rule on any application for attorneys’ fees and expenses;
18 (d) rule on any application for service awards; and (e) determine whether the Plans
19 of Distribution submitted by Class Counsel should be approved;

20 WHEREAS, a Final Approval Hearing was held on September 14, 2023.
21 Prior to the Final Approval Hearing, proof of completion of Notice was filed with
22 the Court. Settlement Class Members were adequately notified of their right to
23 appear at the hearing in support of or in opposition to the proposed Settlement, any
24 application for attorneys’ fees and expenses, any application for service awards,
25 and/or the Plans of Distribution submitted by Class Counsel;

26 WHEREAS, Plaintiffs as representatives of the Settlement Classes have
27 applied to the Court for final approval of the proposed Settlement, the terms and
28 conditions of which are set forth in the Settlement Agreement;

1 NOW, THEREFORE, the Court having read and considered the Settlement
2 Agreement and accompanying exhibits and the Motion For Final Settlement
3 Approval, having heard any objectors or their counsel appearing at the Final
4 Approval Hearing, having reviewed all of the submissions presented with respect to
5 the proposed Settlement, and having determined that the Settlement is fair,
6 adequate, and reasonable and in the best interests of the Class Members; it is hereby
7 ORDERED, ADJUDGED and DECREED THAT:

8 The capitalized terms used in this Order Granting Final Approval of
9 Proposed Settlement have the same meaning as defined in the Settlement
10 Agreement.

11 The Court has jurisdiction over the subject matter of this Action and over all
12 claims raised therein and all Parties thereto, including the Settlement Classes.

13 The Court finds that the Notice set forth in the Settlement Agreement,
14 detailed in the Notice Plan attached to the Declaration of Gina Intrepido-Bowden of
15 JND Legal Administration, and effectuated pursuant to the Preliminary Approval
16 Order: (a) constitutes the best notice practicable under the circumstances of this
17 Action; (b) constitutes due and sufficient notice to the Classes of the terms of the
18 Settlement Agreement and the Final Approval Hearing; and (c) fully complies with
19 the requirements of the Federal Rules of Civil Procedure, the United States
20 Constitution, and any other applicable law, including the Class Action Fairness Act
21 of 2005, 28 U.S.C. § 1715.

22 Based on the papers filed with the Court and the presentations made to the
23 Court at the hearing, the Court now gives final approval to the Settlement and finds
24 that the Settlement is fair, reasonable, and adequate, and in the best interests of the
25 Settlement Class Members. The Court has specifically considered the factors
26 relevant to class settlement approval. *See, e.g.,* Fed. R. Civ. P. 23(e); *Churchill*
27 *Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566 (9th Cir. 2004); *In re Bluetooth Headset*
28 *Products Liability Litig.*, 654 F.3d 935 (9th Cir. 2011).

1 Among the factors supporting the Court’s determination are: the significant
2 relief provided to Settlement Class Members; the risks of ongoing litigation, trial,
3 and appeal; the risk of maintaining class action status through trial and appeal; the
4 extensive discovery to date; and the positive reaction of Settlement Class Members.

5 Class certification remains appropriate for the reasons set out in the Court’s
6 Order Preliminarily Approving the Settlement. Further, the Settlement Class
7 Representatives have adequately represented the Settlement Classes.

8 The Settlement was negotiated at arm’s length and was free of collusion, as
9 particularly evidenced by the involvement of Judge Layn Phillips (Ret.) and Judge
10 Sally Shushan (Ret.), highly qualified mediators. It was negotiated with
11 experienced, adversarial counsel after extensive discovery, and with the aid of
12 neutral, qualified mediators. Further, the attorneys’ fees and costs award was the
13 subject of a separate application to the Court.

14 The Court has considered and hereby overrules any objections to the
15 Settlement.

16 The Settlement Agreement and every term and provision thereof are deemed
17 incorporated in this Order and have the full force of an order of this Court.

18 Upon the Effective Date, all Settlement Class Members have, by operation of
19 this Order, fully, finally and forever released, relinquished, and discharged the
20 Released Parties pursuant to the Settlement Agreement.

21 Upon the Effective Date, Settlement Class Members, and their successors,
22 assigns, parents, subsidiaries, affiliates or agents of any of them, are permanently
23 barred and enjoined from commencing or continuing any action or proceeding in
24 any court or tribunal asserting any claims released under the Settlement Agreement.

25 This Final Approval Order, the Settlement Agreement, the Settlement that it
26 reflects, and any and all acts, statements, documents or proceedings relating to the
27 Settlement are not, and must not be construed as, or used as, an admission by or
28 against the Shipping Defendants of any fault, wrongdoing, or liability on their part,

1 or of the validity of any claim or of the existence or amount of damages.

2 Plaintiffs' and the Settlement Classes' Claims against the Shipping
3 Defendants are hereby dismissed with prejudice. Plaintiffs' Claims against any
4 other Released Parties are also hereby dismissed with prejudice, including COSCO
5 Shipping Lines Co., Ltd., COSCO (Cayman) Mercury Co., Ltd. and Marine
6 Exchange of Los Angeles-Long Beach Harbor dba Marine Exchange of Southern
7 California. Except as otherwise provided in orders separately entered by this Court
8 on any application for attorneys' fees and expenses, any application for service
9 awards, and the Plans of Distribution submitted by Class Counsel, the parties will
10 bear their own expenses and attorneys' fees.

11 Without affecting the finality of this Order and the accompanying Judgment,
12 the Court reserves jurisdiction over the implementation of the Settlement, and over
13 enforcement and administration of the Settlement Agreement, including any
14 releases in connection therewith, and any other matters related or ancillary to the
15 foregoing.

16 IT IS SO ORDERED.

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18 DATED: _____

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Hon. David O. Carter

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

PETER MOSES GUTIERREZ, JR., et
al.,

 Plaintiffs,

 vs.

AMPLIFY ENERGY
CORPORATION, et al.,

 Defendants/Third-Party
 Plaintiffs.

Case No. 8:21-cv-01628-DOC-JDE
Case No. 2:22-cv-02153-DOC-JDE
Case No. 2:22-mc-00213-DOC

Judge: Hon. David O. Carter

In the Matter of the Complaint of
DORDELLAS FINANCE CORP.,
Owner, and MSC MEDITERRANEAN
SHIPPING COMPANY S.A., Owner
pro hac vice, of the Motor Vessel MSC
DANIT, and its engines, tackle, apparel,
and appurtenances,

 and

CAPETANISSA MARITIME
CORPORATION, Owner of the Motor
Vessel BEIJING, and her engines,
tackle, apparel, and appurtenances.

**[AMENDED PROPOSED] FINAL
JUDGMENT AS TO
CAPETANISSA MARITIME
CORPORATION, COSTAMARE
SHIPPING CO., S.A., V. SHIPS
GREECE LTD., M/V BEIJING,
DORDELLAS FINANCE CORP.,
MSC MEDITERRANEAN
SHIPPING CO. SA,
MEDITERRANEAN SHIPPING
CO. S.R.L., MSC
SHIPMANAGEMENT LTD., AND
MSC DANIT**

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The Court having entered on _____, 2023 a Final Approval Order approving the Settlement between Plaintiffs John Pedicini and Marysue Pedicini, individually and as Trustees of the T & G Trust; Rajasekaran Wickramasekaran and Chandralekha Wickramasekaran, individually and as Trustees of the Wickramasekaran Family Trust; Donald C. Brockman, individually and as Trustee of the Donald C. Brockman Trust; Heidi M. Jacques, individually and as Trustee of the Heidi M. Brockman Trust; LBC Seafood, Inc.; Quality Sea Food Inc.; Beyond Business Incorporated, d/b/a Big Fish Bait & Tackle; Josh Hernandez; John Crowe; Banzai Surf Company, LLC; Davey’s Locker Sportfishing, Inc.; East Meets West Excursions; Bongos Sportfishing LLC; Bongos III Sportfishing LLC; and Tyler Wayman (“Plaintiffs”) and Defendants Capetanissa Maritime Corporation, Costamare Shipping Co., S.A., V.Ships Greece Ltd., *M/V Beijing*, Dordellas Finance Corp., MSC Mediterranean Shipping Co. SA, Mediterranean Shipping Co. S.r.l., MSC Shipmanagement Ltd., and *MSC Danit* (collectively “Shipping Defendants”), it is hereby ORDERED, ADJUDGED, and DECREED that:

Judgment is hereby entered in these cases as to Plaintiffs’ and the Settlement Classes’ class and individual claims in accordance with the Court’s _____, 2023 Final Approval Order as to all claims against Shipping Defendants in these Actions: *Gutierrez, et al., v. Amplify Energy Corp., Beta Operating Company, LLC and San Pedro Bay Pipeline Company*, Case No. SA 21-CV-01628-DOC-JDE (C.D. Cal.) and *In the Matter of the Complaint of Dordellas Finance Corp., et al.*, Case No. 22-CV-02153-DOC-JDE; *In re the Matter of the Complaint of Capetanissa Maritime Corporation*, Case No. 22-CV-03462-DOC-JDE, which have been consolidated under Case No. 22-CV-02153; and *In re Claim Forms In the Matter of the Complaint of Dordellas Finance Corp, Owner and MSC Mediterranean Shipping Company*, Case No. 2:22-mc-00213-DOC.

1 Plaintiffs' and the Settlement Classes' class and individual claims in these
2 Actions against Shipping Defendants are hereby DISMISSED with prejudice.

3 Plaintiffs' and the Settlement Classes' class and individual claims in these
4 Actions against other Released Parties, including COSCO Shipping Lines Co. Ltd.,
5 COSCO (Cayman) Mercury Co., Ltd. and Marine Exchange of Los Angeles-Long
6 Beach Harbor dba Marine Exchange of Southern California, are also hereby
7 DISMISSED with prejudice.

8 The Parties shall take all actions required of them by the Final Approval
9 Order and the Settlement Agreement.

10 Except as otherwise provided in orders separately entered by this Court on
11 any application for attorneys' fees and expenses, any application for service awards,
12 and the Plans of Distribution submitted by Class Counsel, the Parties will bear their
13 own expenses and attorneys' fees.

14 Without affecting the finality of this Judgment and related Orders, the Court
15 reserves jurisdiction over the implementation of the Settlement, and over the
16 enforcement and administration of the Settlement Agreement, including any
17 releases in connection therewith, and any other matters related or ancillary to the
18 foregoing.

19 This document constitutes a final judgment pursuant to Federal Rule of Civil
20 Procedure 54 and a separate document for purposes of Federal Rule of Civil
21 Procedure 58(a).

22 IT IS SO ORDERED.

23 DATED:

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Hon. David O. Carter