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

19
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' SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

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

1 Plaintiffs respectfully submit this supplemental memorandum in support of
2 their motion for final approval of the proposed Settlement. Dkt. 755. As set out in
3 Plaintiffs’ initial memorandum, the \$45 million, non-reversionary Settlement before
4 the Court is fair, adequate, and reasonable, and should be finally approved pursuant
5 to Fed. R. Civ. P. 23(e). The Settlement was the product of hard fought and arm’s-
6 length negotiation after significant discovery, and was facilitated
7 with the aid of experienced mediators, including the Hon. Layne R. Phillips, who
8 fully endorses the Settlement in all respects. *See* Dkt. 739-4 (Decl. of Layne R.
9 Phillips). The Settlement heads off the unpredictable risks of continued litigation,
10 including the Limitation of Liability Act trial and related issues, class certification,
11 summary judgment, trial, and appeal—risks that are heightened in this case given
12 its complexity and scope. *Id.* ¶ 11.

13 Class members’ response to the proposed Settlement indicates that they agree
14 with this assessment. After implementation of a rigorous Class Notice plan that
15 included individual mailed notice to thousands of Fisher, Property, and Waterfront
16 Tourism Class members, supplemented by extensive published notice and a
17 rigorous social media effort, not a single Class member has objected to the
18 proposed Settlement. *See* Ex. A, Supplemental Declaration of Gretchen Eoff (“Eoff
19 Supp. Decl.”), ¶ 15. The absence of objections, after a robust notice program,
20 further supports final approval here.¹ “It is established that the absence of a large
21 number of objections to a proposed class action settlement raises a strong
22 presumption that the terms of a proposed class settlement action are favorable to the
23 class members.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
24 529 (C.D. Cal. 2004); *see also Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 577
25 (9th Cir. 2004) (affirming district court’s approval of settlement where 45 of 90,000

26 ¹ *See* Dkt. 739-5, Declaration of Gina Intrepido-Bowden ¶ 21, 38. The
27 contemporaneously filed Eoff Supp. Decl. describes the Administrator’s efforts
28 since May 16, 2023, including following up on undeliverable direct mail notices,
fielding inquiries through the website and toll-free number, and otherwise
administering the Settlement.

1 class members objected to the settlement); *Smith v. Experian Info. Sols., Inc.*, No.
2 SACV 17-00629-CJC (AFMx), 2020 WL 6689209, at *4 (C.D. Cal. Nov. 9, 2020).
3 The absence of objections is especially meaningful given that many Class members
4 have substantial recoveries at stake and therefore have more incentive to make any
5 objections known. *See* 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:58
6 (6th ed.).

7 Furthermore, only one entity sought to exclude itself from the Settlement.
8 *See* Ex. A, Eoff Suppl. Decl., ¶ 16. The extremely low number of exclusion
9 requests further supports the Settlement’s approval. *Churchill Vill., LLC v. Gen.*
10 *Elec.*, 361 F.3d 566, 577 (9th Cir. 2004).

11 For the reasons stated above and in their initial memorandum in support of
12 final settlement approval, Plaintiffs respectfully request that the Court grant their
13 motion for final approval of the proposed Settlement as fair, adequate, and
14 reasonable.²

15 Dated: August 28, 2023

16 Respectfully submitted,

17 /s/ Lexi J. Hazam

18 Lexi J. Hazam

19 Lexi J. Hazam, State Bar No. 224457
20 *lhazam@lchb.com*

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28 ² Plaintiffs attach a second amended proposed order to address the lack of
objections.

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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)
**[SECOND 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, Plaintiffs as representatives of the Settlement Classes have
21 applied to the Court for final approval of the proposed Settlement, the terms and
22 conditions of which are set forth in the Settlement Agreement;

23 WHEREAS, no Class Members have filed objections challenging the fairness
24 of the Settlement, indicating a positive reaction from the Classes and further
25 supporting the reasonableness of the Settlement;

26 WHEREAS, a Final Approval Hearing was held on September 14, 2023.
27 Prior to the Final Approval Hearing, proof of completion of Notice was filed with
28 the Court. Settlement Class Members were adequately notified of their right to

1 appear at the hearing in support of or in opposition to the proposed Settlement, any
2 application for attorneys' fees and expenses, any application for service awards,
3 and/or the Plans of Distribution submitted by Class Counsel;

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

11 The capitalized terms used in this Order Granting Final Approval of
12 Proposed Settlement have the same meaning as defined in the Settlement
13 Agreement.

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

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

25 Based on the papers filed with the Court and the presentations made to the
26 Court at the hearing, the Court now gives final approval to the Settlement and finds
27 that the Settlement is fair, reasonable, and adequate, and in the best interests of the
28 Settlement Class Members. The Court has specifically considered the factors

1 relevant to class settlement approval. *See, e.g.*, Fed. R. Civ. P. 23(e); *Churchill*
2 *Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566 (9th Cir. 2004); *In re Bluetooth Headset*
3 *Products Liability Litig.*, 654 F.3d 935 (9th Cir. 2011).

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

8 Class certification remains appropriate for the reasons set out in the Court's
9 Order Preliminarily Approving the Settlement. Further, the Settlement Class
10 Representatives have adequately represented the Settlement Classes.

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

17 No objections to the Settlement were filed by the August 21, 2023 deadline.
18 The Court has considered and hereby overrules any objections to the Settlement
19 brought to its attention since that date.

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

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

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

1 This Final Approval Order, the Settlement Agreement, the Settlement that it
2 reflects, and any and all acts, statements, documents or proceedings relating to the
3 Settlement are not, and must not be construed as, or used as, an admission by or
4 against the Shipping Defendants of any fault, wrongdoing, or liability on their part,
5 or of the validity of any claim or of the existence or amount of damages.

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

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

20 IT IS SO ORDERED.

21 DATED: _____
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25 Hon. David O. Carter
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EXHIBIT A

1
2 **UNITED STATES DISTRICT COURT**
3 **CENTRAL DISTRICT OF CALIFORNIA**
4 **SOUTHERN DIVISION**

5 PETER MOSES GUTIERREZ, JR., *et*
6 *al.*,

7 Plaintiffs,

8 vs.

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

10
11 Defendants.

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

**SUPPLEMENTAL DECLARATION
OF GRETCHEN EOFF REGARDING
CLASS NOTICE PLAN
IMPLEMENTATION AND
SETTLEMENT ADMINISTRATION
STATUS**

Honorable David O. Carter

12
13 I, Gretchen Eoff, declare and state as follows:

14 1. I am a Senior Vice President of Operations at JND Legal Administration
15 LLC (“JND”). The following statements are based on my personal knowledge and
16 information provided to me by other JND employees working under my supervision
17 and, if called on to do so, I could and would testify competently thereto.

18 2. JND previously filed a Declaration Regarding Proposed Shipping
19 Defendants Settlement Notice Plan (“Intrepido-Bowden Declaration”) filed May 15,
20 2023, ECF No. 739-5,¹ and a Declaration Regarding Class Notice Plan Implementation
21 (“Notice Declaration”) filed July 31, 2023, ECF No. 761. This Supplemental Declaration
22 is being filed to further update the Court regarding Notice Plan implementation and
23 Settlement Administration status.

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26 ¹ All capitalized terms not defined herein have the meanings given to them in the Intrepido-
27 Bowden Declaration and the Notice Declaration, unless otherwise indicated.

DIRECT MAIL NOTICE

1
2 3. As of August 25, 2023, 104 Waterfront Tourism Postcard Notices have
3 been returned to JND as undeliverable with no forwarding address. 1 Waterfront
4 Tourism Postcard Notice was returned to JND as undeliverable with an updated mailing
5 address and was remailed to that updated address. 4 Waterfront Tourism Postcard
6 Notices were forwarded to an updated address by the USPS. JND performed advanced
7 address research for the undeliverable Notices without updated addresses and remailed
8 1 Waterfront Tourism Postcard Notice to an updated address.

9 4. As of August 25, 2023, 22 Fisher Postcard Notices have been returned to
10 JND as undeliverable with no forwarding address. JND performed advanced address
11 research for the undeliverable Notices and remailed 5 Fisher Postcard Notices to
12 updated addresses.

13 5. As of August 25, 2023, 785 Real Property Postcard Notices have been
14 returned to JND as undeliverable with no forwarding address. 12 Real Property
15 Postcard Notices were returned to JND as undeliverable with an updated mailing
16 address and were remailed to those updated addresses. 114 Real Property Postcard
17 Notices were forwarded to an updated address by the USPS. JND performed advanced
18 address research for the undeliverable Notices without updated addresses and remailed
19 23 Real Property Postcard Notices to updated addresses.

20 6. As of August 25, 2023, of the 1,332 Waterfront Tourism Postcard Notices
21 mailed, 1,229 or 92% were deemed delivered and 103 or 8% deemed undeliverable. Of
22 the 642 Fisher Postcard Notices mailed, 625 or 97% were deemed delivered and 17 or
23 3% deemed undeliverable. Of the 10,156 unique addresses identified in the Real
24 Property Notice List, 9,394 or 92% were deemed delivered and 762 or 8% were deemed
25 undeliverable. The Federal Judicial Center’s *Judges’ Class Action Notice and Claims*
26 *Process Checklist and Plain Language Guide* (“FJC Checklist”) considers a Notice Plan
27

1 with a high reach (above 70%) effective. This distribution rate is therefore consistent
2 with typical benchmarks for successful notice programs.

3 7. Per Paragraph 27 of the Intrepido-Bowden Declaration, JND will continue
4 to track all notices returned undeliverable by the USPS and will promptly re-mail
5 notices that are returned with a forwarding address. In addition, JND will continue to
6 take reasonable efforts to research and determine if it is possible to reach a Class
7 Member for whom a notice is returned without a forwarding address, either by mailing
8 to a more recent mailing address or using available advanced address search tools to
9 identify a new mailing address by which the potential Class Member may be reached.

10 **DIGITAL NOTICE EFFORT**

11 8. Per Paragraph 17 of the Notice Declaration, a total of 3,943,209 digital
12 impressions and 84,146 e-Newsletter sends were delivered to the Fisher Class, 143,209
13 more impressions and 14,146 more sends than originally planned.

14 9. Per Paragraph 18 of the Notice Declaration, JND also over-delivered total
15 impressions to the Real Property and Water Tourism Classes. A total of 4,931,659
16 digital impressions were delivered to the Real Property and Waterfront Tourism Classes
17 (i.e., Adults 25+ in Huntington Beach, Newport Beach, Dana Point, and Laguna),
18 931,659 more impressions than originally planned.

19 **INTERNET SEARCH EFFORT**

20 10. Per Paragraph 23 of the Notice Declaration, the internet search effort ran
21 from July 10, 2023 through July 23, 2023 serving 617 digital impressions.

22 **EARNED MEDIA**

23 11. Per Paragraph 25 of the Notice Declaration, an exact match of the earned
24 media was picked up 326 times with a potential audience of 120 million.
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1 18. JND will continue to administer the Settlement through all phases of
2 Settlement Administration, as required by the Settlement Agreement, Amended
3 Preliminary Approval Order, and pursuant to any future Orders of this Court.

4 I declare under the penalty of perjury pursuant to the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed on August 28, 2023 at Seattle, Washington.

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9 GRETCHEN EOFF

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EXHIBIT A



**ORANGE COUNTY OIL SPILL SHIPPING DEFENDANT SETTLEMENT
(USDC CENTRAL DISTRICT OF CALIFORNIA, CASE NO. 8:21-CV-01628-DOC-JDE)**

INVALID EXCLUSIONS

	<u>JND ID NUMBER</u>	<u>NAME</u>	<u>CITY/STATE</u>	<u>POSTMARK DATE</u>	<u>STATUS</u>	<u>SIGNATURE TYPE</u>	<u>LAW FIRM SUBMITTING</u>	<u>REASON DEFECTIVE</u>
1.	DWNR5XL9F	Pacific Airshow	Huntington Beach, CA	8/21/2023	Invalid	Wet	Robinson Calcagnie, Inc.	Inadequate Statement; No valid mailing address (attorney address provided); No valid telephone number (attorney telephone number provided); Invalid signature (attorney signed).