

EXHIBIT 3

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

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

21 Plaintiffs,

22 v.

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

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

**[PROPOSED] PLAN OF
DISTRIBUTION FOR THE
WATERFRONT TOURISM CLASS**

1 **I. BACKGROUND**

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

13 2. The Settlement Agreement provides that the Shipping Defendants shall
14 pay \$6.3 million to the Waterfront Tourism Class (the “Waterfront Tourism Class
15 Settlement Amount”), in exchange for a full release of claims alleged on behalf of
16 the Waterfront Tourism Class in this litigation. Settlement Agreement, Articles
17 I.43, III.

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

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

1 4. The Settlement Agreement also directs that Class Counsel shall
2 propose a method for distributing the Waterfront Tourism Class Common Fund to
3 members of the Waterfront Tourism Class before Class Members must decide
4 whether to object to the Settlement. The Parties further agreed that “the rulings of
5 the Court regarding the Plans of Distribution, and any claim or dispute relating
6 thereto, will be considered by the Court separately from the approval of the
7 Settlement Agreement,” and that Final Approval of the Settlement is not contingent
8 upon resolution of any appeals, modifications, or reversal of orders regarding the
9 Plan of Distribution. Settlement Agreement, Articles IV.1; IV.2.

10 5. The Distribution Plan utilizes records and information previously
11 obtained by Class Counsel and the Settlement Administrator, as well as information
12 gathered related to the separate settlement with the Amplify defendants, to identify
13 Waterfront Tourism Class members. This information will also be used to
14 determine individual members’ pro-rata share of the Settlement, as described
15 below.

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

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

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

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1 **II. DEFINITIONS**

2 8. The capitalized terms used in this Plan of Distribution for the
3 Waterfront Tourism Class have the same meaning as defined in the Settlement
4 Agreement [Dkt. 739-2] and Amended Order Granting Preliminary Approval of the
5 Proposed Settlement [Dkt. 751] unless otherwise indicated.

6 9. “Damages Period” means the period after the Spill, from October 2,
7 2021, through December 31, 2021.

8 10. “Distribution Plan” means the process and procedures established by
9 this Plan as effectuated by the Settlement Administrator.

10 11. “Distribution Share” means the share allocated to each eligible
11 Waterfront Tourism Class Member.

12 12. “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 13. “Recovery” is the net distribution attributed to a Waterfront Tourism
16 Class Member by the Settlement Administrator, reflecting the Distribution Share,
17 less any necessary adjustments or deductions.

18 14. “Release” means the release of claims reflected in the Settlement
19 Agreement. Settlement Agreement, Article VII.

20 15. “Settlement Administration” means actions carried out by JND Legal
21 Administration in its capacity as Settlement Administrator.

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

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

1 18. “Settlement Website” means the dedicated website maintained by the
2 Settlement Administrator at www.OCOilSpillSettlement.com.

3 19. “Spill” means the October 2021 oil spill from the P00547 Pipeline in
4 San Pedro Bay that Plaintiffs allege caused damage to waterfront tourism
5 businesses.

6 20. “Waterfront Tourism Class” or “Waterfront Tourism Class
7 Definition” means the definition of the Class as defined in Plaintiffs’ Second
8 Amended Consolidated Class Action Complaint [Dkt. 454]:

9 Persons or entities in operation between October 2, 2021,
10 and December 31, 2021, who: (a) owned or worked on a
11 sea vessel engaged in the business of ocean water tourism
12 (including sport fishing, sea life observation, and leisure
13 cruising) and accessed the water between the San Gabriel
14 River and San Juan Creek in Dana Point; or (b) owned
15 businesses that offered surfing, paddle boarding,
16 recreational fishing, and/or other beach or ocean
17 equipment rentals and/or lessons or activities; sold food or
18 beverages; sold fishing bait or equipment, swimwear or
19 surfing apparel, and/or other retail goods; or provided
20 visitor accommodations south of the San Gabriel River,
21 north of the San Juan Creek, and west of: (1) Highway 1
22 in Seal Beach; (2) Orange Avenue and Pacific View
23 Avenue in Huntington Beach; and (3) Highway 1 south of
24 Huntington Beach.²

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26 ² Excluded from the proposed Classes are: (1) Defendants, any entity or division in
27 which Defendants have a controlling interest, and their legal representatives,
28 officers, directors, employees, assigns and successors; (2) the judge to whom this
case is assigned, the judge’s staff, and any member of the judge’s immediate
family, and (3) all employees of the law firms representing Plaintiffs and the

1 21. “Waterfront Tourism Class Member” means a business that meets the
2 Waterfront Tourism Class Definition, as determined by the Settlement
3 Administrator.

4 22. “Waterfront Tourism Net Settlement Fund” means the amount
5 available for distribution to the Waterfront Tourism Class, after deduction of the
6 Fees and Costs Awards, Service Awards, and administrative costs, as contemplated
7 by the Settlement Agreement, subject to Court approval.

8 **III. DISTRIBUTION PLAN OVERVIEW**

9 23. Subject to Court approval, the Waterfront Tourism Net Settlement
10 Fund will be paid to Waterfront Tourism Class Members.

11 24. The Distribution Plan utilizes records and information previously
12 obtained by Class Counsel and the Settlement Administrator, as well as information
13 gathered related to the separate settlement with the Amplify defendants, to identify
14 Waterfront Tourism Class Members. This information will also be used to
15 determine each Waterfront Tourism Class Member’s share of the Settlement, as
16 described below.

17 25. The Distribution Plan is intended to be user-friendly. Waterfront
18 Tourism Class Members will not have to submit claims because their distribution
19 will be determined through publicly available information, as described below.

20 26. If an individual believes that they or their business is a Waterfront
21 Tourism Class Member but did not receive a notice, they may contact the
22 Settlement Administrator to determine their eligibility. If the Settlement
23 Administrator determines that an individual or business is a Waterfront Tourism
24 Class Member, that individual or business will be entitled to a payment as a
25 Waterfront Tourism Class member.

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28 Putative Class Members. Those who timely opt out of the Waterfront Tourism
Class will also be excluded.

1 27. The Settlement Administrator will rely on publicly available records,
2 as well as information gathered related to the separate settlement with the Amplify
3 defendants, to identify Waterfront Tourism Class members and determine
4 Distribution Shares and eligibility.

5 **IV. DETERMINATION OF SETTLEMENT PROCEEDS**

6 28. Within 30 days of this Court’s order granting final approval, the
7 Settlement Administrator shall calculate the amount available for Distribution by
8 deducting the cost of Court-approved Notice, Settlement Administration and other
9 expenses, as well as approved attorneys’ Fees and Costs and Service Awards. The
10 remaining balance available for Distribution (the “Net Waterfront Tourism
11 Distribution Balance”) will then be allocated as follows.

12 29. Class Counsel identified ten categories of businesses that could include
13 entities within the Waterfront Tourism Class. They are (1) marina or “landing”
14 operations servicing fishing and sightseeing vessels, (2) whale and/or dolphin
15 watch vessels and sunset cruise vessels, (3) vessels providing sportfishing
16 operations (with more than 6 passengers and requiring a Coast Guard Certification
17 of Inspection), (4) “six-pack” fishing vessels offering charters for 6 or fewer
18 anglers, (5) bait and tackle shops, (6) surf schools, (7) leisure boat rentals/charters,
19 (8) hotel and lodging accommodations, (9) food and beverage establishments, and
20 (10) retail establishments within the Waterfront Tourism Class Definition.

21 30. The total estimated lost profits of each Waterfront Tourism business
22 category during the Damages Period was calculated by examining financial
23 information provided by the Settlement Class Representatives combined with
24 publicly available research such as advertised vessels and capacity (“seats”),
25 reported hotel occupancy and average daily room rates, and consumer spending
26 research conducted for local municipalities. By adding up the estimated lost profits
27 of each category, the total estimated lost profits for the Waterfront Tourism Class
28 has been determined.

1 31. Accordingly, the pro rata share of the Settlement funds allocated to
2 each category has been determined by taking each category’s estimated lost profits
3 as a percentage of the total estimated lost profits of the entire Waterfront Tourism
4 Class (the “Percentage Category Share”).

5 32. The Percentage Category Share for each category will be multiplied by
6 the Net Waterfront Tourism Distribution Balance to determine the total amount to
7 be disbursed to each category of the Waterfront Tourism Class, resulting in the
8 “Category Distribution Balance” for each category.

9 33. The Settlement Administrator has identified the total number of
10 businesses in each category. These numbers will be supplemented if the Settlement
11 Administrator identifies any additional members of the Waterfront Tourism Class,
12 including if such class members contact the Settlement Administrator and are
13 determined to be eligible.

14 34. Putative Waterfront Tourism Class members who do not receive direct
15 notice, or who do not fit into an enumerated category, can reach out to the
16 Settlement Administrator before the Court grants final approval, in which case the
17 Settlement Administrator shall confer with Class Counsel in good faith to
18 determine eligibility and compensation under the Settlement. The Settlement
19 Website will direct such members to contact the Settlement Administrator.

20 35. For entities engaged in whale and/or dolphin watching/sunset cruising,
21 sportfishing operations, “six-pack” fishing, leisure boat rentals/charters, and hotel
22 and lodging accommodations, the allocation of Settlement funds within these
23 categories will be determined by calculating each entity’s pro-rata share of the total
24 number of seats (for boats) or rooms (for hotels) multiplied by the Category
25 Distribution Balance for each respective category.

26 36. The Settlement Administrator will determine whether any marina or
27 landing entity is a member of the Waterfront Tourism Class and not already
28 covered by another business category above, in which case an award will be

1 determined based on a percentage of the funds allocated to the entities being
2 serviced through such marina or landing entity. Marinas may be contacted directly
3 by the Settlement Administrator to confirm membership and percentage payable, if
4 any.

5 37. Surf schools, food and beverage entities, bait and tackle shops, and
6 other retail establishments within the Waterfront Tourism Class Definition will
7 receive equal shares of the Category Distribution Balance for each respective
8 category.

9 38. Recoveries will be issued by check. To the extent that any Waterfront
10 Tourism Class Member has side agreements with other individuals or entities that
11 guarantee those individuals or entities a proportion of recovery, Waterfront Tourism
12 Class Members are responsible for upholding their side agreements.

13 39. All settlement checks issued shall be void if not cashed within 180
14 calendar days of their date of issue and shall contain a legend to that effect.
15 Approximately 60 days after the mailing of settlement checks the Settlement
16 Administrator shall confer with Class Counsel and together determine whether it is
17 appropriate to mail a reminder postcard to each Waterfront Tourism Class member
18 who has not yet cashed a settlement check.

19 40. To the extent that any part of the Waterfront Tourism Settlement Fund
20 remains uncashed more than 180 days after the Settlement Administrator has
21 distributed funds to all eligible Waterfront Tourism Class Members, Class Counsel
22 will seek Court approval for distributing the remainder of the Waterfront Tourism
23 Net Settlement Fund. The Settlement Administrator will follow the directions
24 approved by the Court.

25 **V. COURT AUTHORITY AND REVIEW**

26 41. All proceedings with respect to Settlement administration,
27 determination of each putative Waterfront Tourism Class member's eligibility and
28 Recovery (if any), the distribution of funds, and the determination of all

1 controversies relating thereto, including disputed questions of law and fact, shall be
2 subject to the continuing jurisdiction of the Court. All Waterfront Tourism Class
3 members expressly waive trial by jury (to the extent any such right may exist) and
4 any right of appeal or review with respect to the Court’s determinations on such
5 issues.

6 42. Pursuant to the Settlement, “Defendants shall not have any
7 responsibility, authority, or liability whatsoever for the selection of the Settlement
8 Administrator, the administration of the Settlement, the Plans of Distribution,
9 receiving and responding to any inquiries from Putative Class Members, or
10 disbursement of the Common Funds.” Settlement Agreement, Article V.1.

11 Dated: June 26, 2023

12 */s/ Wylie A. Aitken*
Wylie A. Aitken

13 */s/ Lexi J. Hazam*
Lexi J. Hazam

14 */s/ Stephen G. Larson*
15 Stephen G. Larson

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