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

18  
19 KEITH ANDREWS, an individual, et  
20 al.,

21 Plaintiffs,

22 v.

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

26 Defendants.  
27  
28

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

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

Date: September 16, 2022  
Time: 1:30 p.m.  
Judge: Hon. Philip S. Gutierrez  
Courtroom: 6A

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

2 PLEASE TAKE NOTICE that on September 16, 2022, at 1:30 p.m., or as  
3 soon thereafter as the matter may be heard by the Honorable Philip S. Gutierrez in  
4 Courtroom 6A of the above-entitled court, located at 350 West First Street, Los  
5 Angeles, CA 90012-4565, 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;  
8 B. Confirming certification of the litigation classes for purposes of  
9 Settlement, including the Court's prior appointment of Class  
10 Representatives and Class Counsel; and  
11 C. Finding that notice to the Classes was directed and completed in a  
12 reasonable manner.

13 This motion is based on the attached supporting memorandum; the  
14 accompany declarations and exhibits; the pleadings, papers, and records on file in  
15 this action, including Plaintiffs' Motion for Preliminary Approval (Dkt. 949); any  
16 further papers filed in support of this motion; and arguments of counsel.

17 Dated: July 29, 2022

Respectfully submitted,

18

19

By:           /s/Robert J. Nelson          

20

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18 KEITH ANDREWS, an individual, et  
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22 PLAINS ALL AMERICAN  
23 PIPELINE, L.P., a Delaware limited  
24 partnership, et al.,

25 Defendants.  
26

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

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

Date: September 16, 2022

Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

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1  
2 **I. INTRODUCTION**

3 After nearly seven years of hard-fought litigation, Plaintiffs secured an  
4 outstanding Settlement of \$184 million for the Fisher Class and \$46 million for the  
5 Property Class, inclusive of attorneys’ fees and costs.<sup>1</sup> Pursuant to the Court’s order  
6 preliminarily approving the Settlement (Dkt. 949), Plaintiffs now file three motions  
7 to complete the approval process.<sup>2</sup>

8 In this motion, Plaintiffs seek final approval of the Settlement, which readily  
9 satisfies the “fair, adequate, and reasonable” settlement approval standard of Rule  
10 23. The Settlement was reached after an extraordinary degree of discovery and  
11 motion practice, and with the aid of experienced mediators who oversaw hard  
12 fought negotiations over the course of many years. The Settlement represents a  
13 substantial and impressive percentage of the Classes’ maximum recoverable  
14 damages, and it heads off the unpredictable risks of trial and appeals – risks that are  
15 amplified in this case given its complexity, novelty, and scale.

16 **II. BACKGROUND**

17 This litigation arises from an oil spill at Refugio State Beach in Santa  
18 Barbara County on May 19, 2015. Defendants owned and operated an onshore  
19 pipeline that runs along the coast. When the pipeline ruptured, oil spilled into the  
20 Pacific Ocean, and spread along the coast of Santa Barbara County, Ventura  
21 County, and Los Angeles County. Dkt. 88 ¶¶ 1, 2.

22  
23  
24  
25 <sup>1</sup> The Settlement Agreement (the “Settlement”) is Exhibit 1 to the previously filed  
26 Declaration of Robert J. Nelson in Support of Preliminary Settlement Approval  
27 (“Nelson Decl.”). Dkt. 944-1, Ex. 1. Unless otherwise specified, capitalized terms  
28 herein refer to and have the same meaning as in the Settlement.

<sup>2</sup> 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           **A.    Investigation and Consolidation**

2           In the aftermath of the oil spill, and as early as June 1, 2015, certain plaintiffs  
3 filed the first of several class action complaints. On November 9, 2015, this Court  
4 consolidated many of the cases into this lead case, *Andrews, et al. v. Plains All*  
5 *American Pipeline, L.P. et al.*, and administratively closed all other related cases.  
6 See Dkt. 40. The operative pleading in this lead case is now the Second Amended  
7 Complaint (“SAC”), filed on April 6, 2016. Dkt. 88.

8           Plaintiffs brought claims for strict liability under the Lempert-Keene-  
9 Seastrand Oil Spill Prevention and Response Act (California Code Section 8670, *et*  
10 *seq.*) and under the common law for ultrahazardous activities. Plaintiffs also  
11 brought common law claims for negligence, public nuisance, negligent interference  
12 with prospective economic advantage, trespass, continuing private nuisance, and a  
13 permanent injunction. Finally, Plaintiffs brought a claim for violation of  
14 California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* Dkt.  
15 88 ¶¶ 261-359.

16           **B.    Discovery**

17           This case involved an extraordinary amount of discovery. There were  
18 approximately 360,000 documents produced by the parties and third parties,  
19 totaling over 1.5 million pages, including numerous highly technical documents and  
20 data sets relating to pipeline integrity, spill volume, and fish landings. Nelson Decl.,  
21 ¶ 11. Among the document productions were over 7,000 documents (36,000 pages)  
22 produced by Plaintiffs, including financially sensitive documents that required  
23 careful pre-production review by Class Counsel. *Id.* ¶ 13.

24           The case required extensive expert discovery, as Class Counsel had to  
25 support class certification and merits arguments for two distinct classes. The parties  
26 disclosed a total of 27 subject matter experts across highly technical concepts,  
27 including integrity management, spill volume, control room operations, oil  
28 transport and oil fate, marine biology, lost fish catch regression analyses, fisher

1 industry accounting and lost profits, real estate appraisal and mass appraisal  
2 techniques, and lost rental value damages. *Id.* ¶ 15. Together, these experts  
3 produced and served approximately 52 reports, inclusive of declarations submitted  
4 in connection with key motions, such as class certification and summary judgment.  
5 *Id.* ¶ 16. The parties took over 100 depositions in this matter, inclusive of 46 expert  
6 depositions. *Id.* ¶ 18.

7 Finally, discovery efforts were highly contentious throughout, and were  
8 successful only due to Class Counsel’s dogged meet and confer efforts, closely  
9 negotiated stipulations and informal agreements, and motions to compel. *Id.* ¶ 11.

10 **C. Class Certification**

11 **1. Fisher Class**

12 On August 22, 2016, Plaintiffs moved to certify a Class of fishers and fish  
13 processors impacted by Plains’ spill, supported by reports from five experts. Dkt.  
14 123. Plains deposed each Class representative, deposed each Plaintiffs’ expert (and  
15 moved to strike three of them), and submitted nine expert reports in support of its  
16 opposition to class certification. After extensive briefing and oral argument, on  
17 February 28, 2017, this Court certified a Fisher and Fish Industry Class based on  
18 Plaintiffs’ experts’ initial estimates of where the oil traveled and which fishing  
19 blocks were impacted. Dkt. 257.

20 Following two years of additional fact and expert discovery, on August 31,  
21 2019, Plaintiffs sought to amend the Fisher Class definition to conform it to the  
22 evidence of the fishing blocks most impacted by the oil spill, supported by amended  
23 reports from two of their experts. Dkt. 531. Plains again deposed Plaintiffs’ experts,  
24 moved to strike their reports, and opposed certification, serving amended reports  
25 from two of its own experts. Dkt. 545. Following voluminous briefing, this Court  
26 granted Plaintiffs’ motion to amend the Fisher Class, certified the Fisher Class  
27  
28

1 under Plaintiffs’ proposed amended definition, and denied Plains’ *ex parte*  
2 application to strike the reports of Plaintiffs’ experts. Dkt. 577.<sup>3</sup>

3 Following that order, Plains petitioned the Ninth Circuit Court of Appeals to  
4 review the certification decision pursuant to Fed. R. Civ. P. 23(f). Plaintiffs  
5 opposed, and the Ninth Circuit denied the petition. *See Andrews, et al., v. Plains All*  
6 *American Pipeline, et. al*, Case No. 19-80167, Dkt. 3 (July 27, 2020).

7 Plains moved to decertify the Fisher Class no less than three times. Plains  
8 moved to decertify the original Fisher Class and moved to exclude the opinions of  
9 two of Plaintiffs’ experts, filing three expert reports in support of that motion. Dkts.  
10 566, 567, 568. Plaintiffs opposed (Dkts. 595-597), and this Court denied Plains’  
11 motion as moot after it granted certification of the amended Fisher Class in January  
12 2020. Dkt. 630. Plains then filed a decertification motion as to the amended Fisher  
13 Class in 2020, along with a motion to strike the expert reports of Plaintiffs’  
14 economics expert Dr. Peter Rupert and Plaintiffs’ marine biology expert Dr. Hunter  
15 Lenihan. Dkts. 647, 649. After extensive briefing and oral argument, the Court  
16 issued an order denying Plains’ motion to decertify and motion to strike. Dkts. 668-  
17 670, 714. In June 2021, Plains filed a third motion to decertify the Fisher Class,  
18 which this Court also denied. Dkt. 874.

---

19  
20  
21 <sup>3</sup> The amended and operative definition is: “All persons and businesses (Fishers)  
22 who owned or worked on a vessel that was in operation as of May 19, 2015 and  
23 that: (1) landed any commercial seafood in California Department of Fish and  
24 Wildlife (“CDFW”) fishing blocks 654, 655, or 656; or (2) landed any commercial  
25 seafood, except groundfish or highly migratory species (as defined by the CDFW  
26 and the Pacific Fishery Management Council), in CDFW fishing blocks 651-656,  
27 664-670, 678-686, 701-707, 718-726, 739-746, 760-765, or 806-809; from May 19,  
28 2010 to May 19, 2015, inclusive; and All persons and businesses (Processors) in  
operation as of May 19, 2015 who purchased such commercial seafood directly  
from the Fishers and re-sold it at the retail or wholesale level. Excluded from the  
proposed Class are: (1) Defendants, any entity or division in which Defendants  
have a controlling interest, and their legal representatives, 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) businesses  
that contract directly with Plains for use of the Pipeline.” *Id.* at 3.

1 As recently as April 2022, after the Court denied Plains' motion to exclude  
2 Dr. Rupert's supplemental damages report regarding post-2017 damages, Plains  
3 advised that it intended to seek a six month extension of the June 2022 trial date in  
4 order to re-depose each of the Class Representatives, Dr. Rupert, and Dr. Lenihan;  
5 submit additional supplemental and rebuttal reports from its own experts;  
6 potentially file renewed motion to strike testimony of Plaintiffs' experts; and to  
7 again seek to decertify the Fisher Class. Dkt. 939.

## 8 **2. Property Class**

9 On March 5, 2018, Plaintiffs moved to certify a Property Class, based on  
10 their experts' analyses of where Plains' oil traveled and which coastal properties  
11 were impacted. Dkt. 428-1. Plains opposed, submitting reports from three of its  
12 own experts in support of its opposition, and moved to strike Plaintiffs' two expert  
13 reports. Dkts. 430, 440. On April 17, 2018, this Court granted Plaintiffs' motion for  
14 certification of the Property Class and denied Plains' motions to strike. Dkt. 454.

15 Plains petitioned the Ninth Circuit Court of Appeals pursuant to Fed. R. Civ.  
16 P. 23(f), Plaintiffs opposed, and the Ninth Circuit denied the petition. *See Andrews,*  
17 *et al., v. Plains All American Pipeline, et al*, Case No. 18-80054, Dkt. 4 (June 27,  
18 2018).

19 The Property Class was also subject to three decertification motions. Plains  
20 filed its first motion to decertify in October 2019 (Dkt. 555-1), and another round of  
21 motions to exclude the reports of Dr. Igor Mezić and Plaintiffs' real estate  
22 economist expert Dr. Randall Bell. Dkt. 556-1 (Mezić), Dkt. 557-1 (Bell). Plaintiffs  
23 opposed, and this Court denied Plains' motion to decertify and denied Plains'  
24 motions to strike the reports of these experts. Dkt. 624. In 2020, Plains again moved  
25 to decertify the Property Class, which Plaintiffs opposed, and this Court denied.  
26 Dkts. 663, 718, 720. A year later, in June 2021, Plains filed a third motion to  
27 decertify the Property Class, which this Court denied. Dkt. 874.

28

1           **D.    Summary Judgment**

2           Plains also filed multiple summary judgment motions. As to the Fisher Class,  
3           Plains moved for summary judgment in 2019. Dkt. 646. After extensive briefing,  
4           with thousands of pages of documents in support of and in opposition to the  
5           motion, and lengthy oral argument, the Court denied Plains’ motion for summary  
6           judgment in large part. Dkt. 714.<sup>4</sup>

7           As to the Property Class, Plains moved for summary judgment on October  
8           21, 2019. Dkt. 554. After Plaintiffs opposed and Plains replied, the Court ordered  
9           supplemental briefing, which both parties submitted. Dkts. 635, 636. After  
10          additional oral argument, the Court issued an order on March 17, 2020, largely  
11          denying Plains’ motion. Dkt. 720.<sup>5</sup>

12          In June 2020, Plains moved for reconsideration of the Court’s summary  
13          judgment order. Plaintiffs opposed, and the Court denied Plains’ motion. Dkt. 720.

14           **E.    Trial Plan**

15          Many of these class certification and summary judgment issues came to a  
16          head yet again in the parties’ briefing related to the trial plan. The parties submitted  
17          starkly opposed trial plans, with Plaintiffs seeking to implement the aggregate,  
18          classwide damages models used to support class certification, and Plains insisting  
19          on a trial with highly individualized and Class member-specific evidence. *See* Dkts.  
20          637 (joint trial plan submission); 724 and 754 (Plaintiffs’ Trial Plan submissions);  
21          725 and 753 (Plains’ Trial Plan submissions). Plaintiffs succeeded on this motion as  
22

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23          <sup>4</sup> The Court granted summary judgment against a subset of the Fisher Class, the fish  
24          processors, as to their ultrahazardous liability, negligence, and public nuisance  
25          claims. *Id.* at 19.

26          <sup>5</sup> The Court granted summary judgment only as to certain claims for certain groups  
27          within the Property Class. The Court dismissed the trespass claims for the Unoiled  
28          Properties, because the Court held that the group of properties did not suffer  
29          physical oiling and could not state a trespass claim. The Court similarly granted  
30          Plains’ motion for summary judgment as to negligent interference with prospective  
31          economic advantage, violation of the UCL, and a permanent injunction, following  
32          Plaintiffs’ concessions on these claims. *Id.* at 16.

1 well, and defeated Plains’ effort to certify the resulting trial plan order for  
2 interlocutory appeal. Dkts. 911, 928.

3 **F. Trial Preparation**

4 This case was originally set to go to trial in September of 2020. The parties  
5 had prepared the case for trial, exchanging witness lists, a joint exhibit list with  
6 4,705 entries, jury instructions, deposition designations and counter-designations,  
7 and contentions of law and fact. The parties also fully briefed 16 motions in limine  
8 and, as noted above, submitted multiple briefs regarding the trial plan.

9 The trial was postponed because of the COVID pandemic and was then re-set  
10 for June 2, 2022. This Court subsequently ruled on all 16 motions in limine and  
11 numerous other motions, including motions to amend the witness and exhibit lists,  
12 motions to submit additional supplemental expert reports and to strike other reports.  
13 *See, e.g.*, Dkts. 891-900 (orders on motions in limine), Dkts. 857, 867 (order on  
14 amending witness list and exhibits for trial). As noted above, the Court also adopted  
15 Plaintiffs’ proposed trial plan over Plains’ opposition. Dkt. 911.

16 In sum, this case was fully mature at the time the parties reached the  
17 proposed Settlement. Plaintiffs were prepared to try the case, and the case was  
18 ready for trial. As a result of the many years of litigation, there should be no doubt  
19 that Plaintiffs – and the Court – are fully equipped to evaluate the strengths and  
20 weaknesses of the case and the adequacy of the proposed Settlement.

21 **G. Mediation and Settlement**

22 The proposed Settlement is the product of arm’s length negotiations. The  
23 parties and their counsel participated in three formal full-day mediations over the  
24 course of three years with Judge Daniel Weinstein (Ret.) and Robert Meyer of  
25 JAMS, in addition to informal negotiations and innumerable telephone conferences  
26 over this same time. The first two mediations were in the fall of 2019 and the fall of  
27 2020, respectively. The third mediation took place on March 22, 2022, after which  
28 the parties still had not reached agreement. On April 13, 2022, the mediators

1 submitted a so-called mediator’s proposal that both parties ultimately accepted.  
2 After reaching an agreement in principle, the parties worked diligently to draft the  
3 Settlement Agreement, notices, and other settlement exhibits, and to select the  
4 proposed Settlement Administrator. Nelson Decl., ¶ 5. Following preliminary  
5 approval, Plaintiffs worked with the Administrator to execute the notice plan, and  
6 prepared the Plans of Distribution and associated claims documents. *Id.*

7 **III. SUMMARY OF SETTLEMENT TERMS**

8 Under the proposed Settlement, Plains will pay \$184 million to the Fisher  
9 Class. The Fisher Class Settlement Amount, together with interest earned thereon,  
10 will constitute the Fisher Class Common Fund. Separately, Plains will pay \$46  
11 million to the Property Class. The Property Class Settlement Amount, together with  
12 interest thereon, will constitute the Property Class Common Fund. The total  
13 combined value of the two Funds is \$230 million. No portion of the combined \$230  
14 million will revert to Defendants. After deduction of notice-related costs and any  
15 Court-approved award of attorneys’ fees, reimbursement of litigation expenses, and  
16 service awards to Class Representatives, all of the remaining monies will be  
17 distributed to the Class members in accordance with Plaintiffs’ proposed Plans of  
18 Distribution, which were filed with the Court on June 27, 2022. Dkt. 951.  
19 Alongside this motion, Plaintiffs have filed a separate motion for approval of the  
20 Plans of Distribution.

21 **IV. ARGUMENT**

22 **A. The proposed Settlement is fair, reasonable, and adequate.**

23 A court may approve the parties’ settlement after it determines that it is “fair,  
24 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Rule 23 sets out the “primary  
25 procedural considerations and substantive qualities that should always matter to the  
26 decision whether to approve the proposal.” Fed. R. Civ. P. 23(e)(2), 2018 adv.  
27 comm. note. These include whether “(A) the class representatives and class counsel  
28 have adequately represented the class; (B) the proposal was negotiated at arms-

1 length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal  
2 treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2).<sup>6</sup> The  
3 proposed Settlement readily satisfies these criteria.

4 **1. Plaintiffs and Class Counsel have vigorously represented the**  
5 **Classes.**

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

11 At the outset, the Rule 23(e)(2)(A) “analysis is redundant of the requirements  
12 of Rule 23(a)(4) and Rule 23(g).” *Hudson v. Libre Tech. Inc.*, 2020 WL 2467060, at  
13 \*5 (S.D. Cal. May 13, 2020) (Curiel, J.) (quotes omitted). Because the Court has  
14 already appointed Class Representatives and Class Counsel (Dkts. 257, 454, 577),  
15 “the adequacy factor under Rule 23(e)(2)(A) is also met.” *Id.*

16 The Court’s prior findings remains true, and this factor is easily satisfied  
17 even if it is evaluated anew. As detailed in § III, *supra*, Class Counsel aggressively  
18 pursued fact and expert discovery, obtained and repeatedly defended class  
19 certification, defeated summary judgment motions, and prevailed on a hotly-  
20 contested trial plan. *See Valenzuela v. Walt Disney Parks & Resorts U.S., Inc.*, 2019  
21 WL 8647819, at \*6 (C.D. Cal. Nov. 4, 2019); *Hefler v. Wells Fargo & Co.*, 2018

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22  
23 <sup>6</sup> The Rule substantively tracks the Ninth Circuit’s test for evaluating a settlement’s  
24 fairness. *Loomis v. Slendertone Distrib., Inc.*, 2021 WL 873340, at \*4 n.4 (S.D.  
25 Cal. Mar. 9, 2021). Plaintiffs’ analysis accounts for the Ninth Circuit’s factors and  
26 discusses them where applicable. Those factors are: “[1] the strength of the  
27 plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further  
28 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the  
amount offered in settlement; [5] the extent of discovery completed and the stage of  
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 WL 6619983, at \*6 (N.D. Cal. Dec. 18, 2018) (class counsel “vigorously  
2 prosecuted this action through dispositive motion practice, extensive initial  
3 discovery, and formal mediation”).

4 The Class Representatives were also actively engaged in the case—each  
5 produced numerous documents, sat for a deposition, prepared declarations, and  
6 regularly communicated with Class Counsel up to and including evaluating and  
7 approving the proposed Settlement. Nelson Decl., ¶ 14, 35, Exs. 3-16.

8 **2. The Settlement is the result of arm’s length negotiations.**

9 The Court must also consider whether “the [settlement] proposal was  
10 negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). This “procedural  
11 concern[]” requires the Court to examine “the conduct of the litigation and of the  
12 negotiations leading up to the proposed settlement.” Fed. R. Civ. P. 23(e), 2018  
13 adv. comm. note. There is “no better evidence” of “a truly adversarial bargaining  
14 process . . . than the presence of a neutral third party mediator.” *Newberg, supra*,  
15 § 13:50.

16 Here, the parties engaged in vigorous and contested settlement negotiations  
17 with the aid of Hon. Daniel Weinstein (Ret.) and Robert A. Meyer, Esq., both  
18 “neutral and experienced mediators.” *Baker v. SeaWorld Entm’t, Inc.*, 2020 WL  
19 4260712, at \*6 (S.D. Cal. July 24, 2020). The mediation efforts spanned three  
20 years, punctuated by three all-day mediation sessions. With Judge Weinstein and  
21 Mr. Meyer’s assistance, the parties separately negotiated the Fisher Class  
22 Settlement Amount and the Property Class Settlement Amount, and were only able  
23 to agree when the mediators finally issued their own “mediators’ proposal” as to  
24 each Class to resolve the case. Nelson Decl., ¶ 5.

25 Nor does the Agreement contain any signs of collusion. *See generally In re*  
26 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011). Class Counsel  
27 has applied for an award of attorneys’ fees of 32 percent of both Common Funds.  
28 This award will be “separate from the approval of the Settlement, and neither

1 [Plaintiffs nor Class Counsel] may cancel or terminate the Settlement based on this  
2 Court’s or any appellate court’s ruling with respect to attorneys’ fees.” *Cheng*  
3 *Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at \*6 (C.D. Cal. Oct. 10, 2019). In  
4 addition, there is no “clear sailing” arrangement whereby Plains has agreed in  
5 advance not to oppose Class Counsel’s request for fees. Finally, no portion of the  
6 Common Funds will revert to Defendants or their insurers.

7 In summary, this Settlement is the result of strenuous, arm’s length  
8 settlement negotiations informed by nearly seven years of hard-fought litigation,  
9 and the Settlement was finally reached on the eve of trial.

10 **3. The Settlement relief is outstanding.**

11 The Court must ensure “the relief provided for the class is adequate,” taking  
12 into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness  
13 of any proposed distribution plan, including the claims process; (iii) the terms of  
14 any proposed award of attorney’s fees; and (iv) any agreement made in connection  
15 with the proposal, as required under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C).  
16 These factors overwhelmingly support preliminary approval.

17 **a. The Settlement relief outweighs the costs, risks, and**  
18 **delay of trial and appeal.**

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

25 Here, the \$46 million Property Class settlement represents over half of  
26 maximum compensatory damages, and the \$184 million Fisher Class settlement is  
27 over 90 percent of the claimed damages through 2017, and approximately 36% of  
28

1 its damages through 2020.<sup>7</sup> Dkt. 929-2, Ex. B at p.9, ¶ 19.<sup>8</sup> In light of the myriad  
2 challenges and years of delay the Classes would have each faced in obtaining their  
3 maximum claimed damages – essentially requiring them to run the table on  
4 complex issues of liability, injury, damages, and class certification at trial and all  
5 the way through appeal – the Settlement represents an exceptional result for both  
6 Classes. *Cf. In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)  
7 (recovery of “roughly one-sixth of the potential recovery” was not unfair or  
8 inadequate in light of “the difficulties in proving the case”); *In re Critical*  
9 *Path, Inc.*, 2002 WL 32627559, at \*5 (N.D. Cal. June 18, 2002) (8.75% of  
10 damages); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at \*12  
11 (S.D.N.Y. July 21, 2020) (14% of damages).

12 These recoveries are all the more impressive when weighed against the  
13 serious risks of ongoing litigation. Plains’ negligence and punitive damage  
14 exposure was hotly contested and turned on technical issues regarding Plains’  
15 integrity management of its pipeline and its handling of the spill. Plaintiffs, through  
16 their experts, contended that Plains should have known about the pipeline’s  
17 corrosion years before it ruptured, including through inspections performed in 2007  
18 and 2012. However, in the view of Plains and its experts, Plains acted reasonably  
19 by performing in-line inspections and repairs.

20 As important, Plains also submitted expert opinions that the spill volume was a  
21 fraction of what Plaintiffs’ asserted. If credited, those opinions could have harmed  
22 the liability case and substantially limited the scope of damages for both Classes.

23 In addition, Plains intended to continue its attack on class certification. In the  
24 weeks prior to the parties reaching this Settlement, Plains previewed its requests for  
25

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26 <sup>7</sup> In April 2022, just before reaching the Settlement, the damages period was  
27 extended to 2020 when the Court denied Plains’ motion to strike Dr. Rupert’s  
supplemental report regarding damages from 2018-2020. Dkt. 929 at 5-6; Dkt. 937.

28 <sup>8</sup> Even with fees deducted, the Property Class recovers 35% of its damages, and the  
Fisher Class recovers 65% of damages through 2017, or 25% through 2020.

1 re-depositions of Class Representatives and Plaintiffs’ experts. Plains also sought to  
2 renew *Daubert* motions, and to pursue renewed decertification motions, as well as a  
3 request to delay the trial by another six months. Dkt. 939.

4 Even if Plains lost on its efforts to defeat the case outright (through  
5 decertification or a defense verdict on liability), it was prepared to aggressively  
6 challenge Plaintiffs’ damages models, as evidenced by the many summary  
7 judgment and *Daubert* motions referenced above. Thus, Plains’ expert contended  
8 that even if the Fisher Class won on liability, its *maximum* damages were \$71.3  
9 million. Dkt. 872-11 at 9-10. The \$184 million settlement far exceeds that amount.  
10 For the Property Class, Plains argued against any and all damages based on alleged  
11 ongoing use of beaches. Given that Plaintiffs may have secured only a partial  
12 victory at trial – liability with less than desired damages – the Settlement value is  
13 especially impressive. *Cf. Signet*, 2020 WL 4196468, at \*12 (“Defendants’ experts  
14 contend that, even if Lead Plaintiff successfully established liability on all claims,  
15 damages would be no more than \$130 million—an amount that is substantially less  
16 than the proposed Settlement.”).

17 Had Plaintiffs secured a *complete* victory at trial (both on liability and  
18 damages), Defendants undoubtedly would have engaged in “vigorous post-trial  
19 motion practices...and likely appeals to the Ninth Circuit—delaying any recovery  
20 for years.” *Baker*, 2020 WL 4260712, at \*7. Plains has arguably preserved all of its  
21 myriad arguments for appeal, which would therefore likely include a broad attack  
22 on every aspect of this lengthy litigation. Of course, Class Counsel were prepared to  
23 defend their clients’ case against each of these challenges, just as they have  
24 repeatedly done in the face of the dozen or more case-dispositive challenges to date.  
25 Nonetheless, risks remained, and significant and painful delays to recovery would  
26 have been inevitable.<sup>9</sup>

27 \_\_\_\_\_  
28 <sup>9</sup> This case could very well have ended up at the United States Supreme Court,  
adding additional years of delay. For example, Plains continued to argue that the

1 Finally, experienced counsel’s support for the proposed Settlement also  
2 weighs in favor of final approval. *See Cheng Jiangchen*, 2019 WL 5173771, at \*6  
3 (“The recommendation of experienced counsel carries significant weight in the  
4 court’s determination of the reasonableness of the settlement.”) (citation omitted).  
5 This is especially true given that extensive discovery and motion practice allowed  
6 both sides to gain “a good understanding of the strengths and weaknesses of their  
7 respective cases,” reinforcing “that the settlement’s value is based on...adequate  
8 information.” *Newberg, supra*, § 13:49. Here, Class Counsel strongly support the  
9 proposed Settlement. *See* Nelson Decl., ¶¶ 2-7; Farris Decl., ¶ 4; Noël Decl., ¶ 4;  
10 Audet Decl., ¶ 9.

11 In summary, the proposed Settlement offers impressive monetary relief and  
12 avoids the substantial risk and years-long delays required for a successful trial  
13 verdict and defense on appeal. This reality, and the potential risks outlined above,  
14 underscore the strength of the proposed Settlement.

15 **b. Plaintiffs seek reasonable attorneys’ fees and expenses.**

16 The Court should also evaluate Class Counsel’s “proposed award of  
17 attorney’s fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(iii).  
18 Plaintiffs have separately filed a motion in support of their requested fees and costs  
19 award. As explained in that motion, the requested fee is reasonable and represents a  
20 modest multiplier on Class Counsel’s lodestar. The fee request is independent of  
21 this final approval motion, and payment to Class Counsel is made only once there is  
22 a grant of final settlement approval. Dkt. 944-1, Ex. A at pp.3, 10-11.

23  
24  
25 Court did not evaluate the number of class members who suffered injury, and could  
26 not do so on the basis of Plaintiffs’ evidence. While the Ninth Circuit recently held  
27 that a court need not determine what percentage of class members suffered injury in  
28 order to certify a class, *see Olean Wholesale Grocery Cooperative, Inc. v. Bumble  
Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022), the dissent in that case asserts that  
the circuits are split on this issue. The propriety of certification here could  
conceivably have led to Supreme Court review.

1                                    **c.     No other agreements exist.**

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

8                                    **4.     The Settlement will effectively distribute relief to the classes**  
9                                    **and treats class members equitably relative to each other.**

10                                    The Court should consider “the effectiveness of any proposed method of  
11 distributing relief to the class, including the method of processing class-member  
12 claims.” Fed. R. Civ. P. 23(e)(2)(C)(ii). In addition, the final Rule 23(e)(2) factor  
13 asks whether “the proposal treats class members equitably relative to each other.”  
14 Fed. R. Civ. P. 23(e)(2)(D).

15                                    Both factors are readily met here.<sup>10</sup> The Settlement and accompanying Plans  
16 of Distribution provide for straightforward claims processes that minimize the  
17 burdens on claimants while ensuring that only harmed Class members recover. The  
18 payments to Verified Claimants (i.e., those whose claim forms establish Class  
19 membership) are anchored in the very damages models Class Counsel and  
20 Plaintiffs’ experts developed over the course of years and were prepared to present  
21 at trial. The distributions are driven by awarding Class Members their proportional  
22 share of the loss as determined through these models, and are supplemented by  
23 modest “fixed share” payments meant to account for discrete issues unique to each  
24 Class, while also ensuring that all Verified Claimants receive meaningful payments

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25 <sup>10</sup> The Plans are described in further detail in the concurrently filed Motion for  
26 Approval of Plaintiffs’ Plans of Distribution. Approval of the Settlement  
27 Agreement is meant to be separate and distinct from the Court’s approval of the  
28 Plans of Distribution as well as Class Counsel’s request for attorneys’ fees and  
costs. Dkt. 944-1, Ex. A at p.3. 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 in exchange for releasing their claims against Defendants. Plans of distribution such  
2 as these are routinely approved by courts. *See, e.g., In re High-Tech Emp. Antitrust*  
3 *Litig.*, 2015 WL 5159441, at \*8 (N.D. Cal. Sept. 2, 2015) (finding a plan of  
4 distribution that provided each class member with a “fractional share” to be “cost-  
5 effective, simple, and fundamentally fair”) (citation omitted). *See also In re Elec.*  
6 *Carbon Prods. Antitrust Litig.*, 447 F. Supp.2d 389, 404 (D.N.J. 2006) (approving  
7 pro rata distribution to claimants based on their direct purchases as “eminently  
8 reasonable and fair to the class members”); *In re Illumina, Inc. Sec. Litig.*, 2021 WL  
9 1017295, at \*5 (S.D. Cal. Mar. 17, 2021) (“[I]t is reasonable to allocate the  
10 settlement funds to class members based on the extent of their injuries or the  
11 strength of their claims on the merits.”) (citation omitted).

12 In addition to their distributions, the Court-appointed Class Representatives  
13 have requested service awards of \$15,000 to compensate them for the time and  
14 effort they spent pursuing the matter on behalf of the Class, including participating in  
15 discovery and settlement. Each of these Class Representatives sat for deposition,  
16 and each followed the case throughout this lengthy litigation and also reviewed and  
17 approved the proposed Settlement. Nelson Decl., ¶¶ 14, 35; *see also id.*, Exs. 3-16  
18 (Class Representative declarations); Farris Decl., ¶ 25; Noël Decl., ¶ 19. Such  
19 service awards “are fairly typical in class action cases.” *Rodriguez v. W. Pub.*  
20 *Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). *See also Illumina*, 2021 WL 1017295, at  
21 \*8 (granting \$25,000 service award); *In re Wells Fargo & Co. S’holder Derivative*  
22 *Litig.*, 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020) (granting \$25,000 service awards  
23 to each institutional investor plaintiff). The service awards do not raise any  
24 equitable concerns about the Settlement itself. *Fleming v. Impax Labs. Inc.*, 2021  
25 WL 5447008, at \*10 (N.D. Cal. Nov. 22, 2021) (service awards “are not per se  
26 unreasonable” and “this factor weighs in favor of preliminary approval”); *see*  
27 *Loomis*, 2021 WL 873340, at \*8 (granting final approval to settlement with service  
28

1 award for lead plaintiff); *In re Extreme Networks Inc. Sec. Litig.*, 2019 WL  
2 3290770, at \*8 (N.D. Cal. Jul. 22, 2018) (same).

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

6 **B. Plaintiffs have provided adequate notice under Rule 23(b)(3) and**  
7 **Rule 23(c)(2)(B)**

8 Class actions brought under Rule 23(b)(3) must satisfy the notice provisions  
9 of Rule 23(c)(2), and upon preliminary approval of the settlement, “[t]he court must  
10 direct notice in a reasonable manner to all class members who would be bound by  
11 the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2) prescribes the “best notice  
12 that is practicable under the circumstances, including individual notice to all  
13 members who can be identified through reasonable effort.” Fed. R. Civ. P.  
14 23(c)(2)(B).

15 Here, the settlement notice program is based largely on the Court-approved  
16 notice plans Class Counsel implemented following the certification of the Classes.  
17 Accordingly, the notice program is reasonable for the same reasons. *See* Dkt. 710  
18 (Order finding the Fisher Class Plan of Notice reasonable and approving same);  
19 Dkt. 463 (Order finding the Property Class Plan of Notice reasonable and  
20 approving same). The accompanying declaration by the Settlement Administrator  
21 details compliance with the notice program. *See generally* Keough Decl.

22 The Notices included all the information required under Rule 23(c)(2)(B):  
23 they informed Class Members of the nature of the action, the class definition, the  
24 class claims, that a Class Member may enter an appearance through an attorney,  
25 and the binding effect of final approval. Keough Decl., Exs. B-E. In addition, the  
26 prior litigation class notices indicated that the Court will grant timely exclusion  
27 requests, and the time and manner for requesting exclusion.  
28



1 The notices were delivered in a manner that satisfies both Rule 23 and due  
2 process. It included direct notice to all known Settlement Class Members via U.S.  
3 Mail and email notice to the Fisher Class Members for whom addresses were  
4 available, and was supplemented by robust publication notice. Keogh Decl., ¶¶ 6-12  
5 (direct notice), 13-18 (publication notice). The notices direct Class Members to the  
6 case website, where they can view the entire Settlement, the long-form Class  
7 Notice, the Plans of Distribution, and other key case documents, including the  
8 claim forms. The website also directs inquiries to a toll-free number where Class  
9 Members can get additional information and communicate directly with the  
10 Settlement Administrator. *Id.* ¶ 19.

11 Importantly, as a result of the prior Court-approved notice, Class members  
12 were afforded an opportunity to opt out of the Classes, so their due process rights  
13 have been protected. *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1305-06  
14 (S.D. Cal. 2017), *aff'd*, 881 F.3d 1111 (9th Cir. 2018). Class members who did not  
15 previously opt out remain members of their respective Class, and no further opt out  
16 opportunity is warranted. *Id.* (holding that a second opt-out period was not  
17 necessary to protect absent class members’ due process rights, and permitting a  
18 second opt out would be contrary to the policy of encouraging settlement).

19 **C. The Court already certified the Classes.**

20 The Settlement resolves claims on behalf of the previously-certified Classes.  
21 *See* Dkts. 257, 454, 577; Settlement Article VII, 2. As a result, the Court “does not  
22 need to re-certify [the Class] for settlement purposes.” *Newberg, supra*, § 13:18;  
23 *accord ODonnell v. Harris County*, 2019 WL 4224040, at \*7 (S.D. Tex. Sept. 5,  
24 2019). Because “the proposed settlement [does not] call[] for any change in the  
25 class certified, or of the claims, defenses, or issues regarding which certification  
26 was granted” (Fed. R. Civ. P. 23(e)(1), 2018 adv. comm. note; *ODonnell*, 2019 WL  
27 4224040, at \*7), the Court need not take any further action under Rule 23(e)(1).  
28 *See, e.g., Hawkins v. Kroger Co.*, 2021 WL 2780647, at \*2–3 (S.D. Cal. July 2,

1 2021) (granting preliminary approval to previously certified class); *ODonnell*, 2019  
2 WL 4224040, at \*7 (same). Even if the Court were to evaluate the issue anew, class  
3 certification remains appropriate for all the reasons set out in the Court’s prior  
4 orders. *See* § II.C., *supra*.

5 **V. CONCLUSION**

6 For all the reasons stated above, the Settlement Agreement resolves this  
7 litigation by providing outstanding monetary relief for Class Members. All of the  
8 factors and considerations set forth in Rule 23 for final approval have been met.  
9 Plaintiffs respectfully request that the Court grant their motion for final approval of  
10 the proposed Settlement.

11  
12 Dated: July 29, 2022

Respectfully submitted,

13 By:           /s/Robert J. Nelson          

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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

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

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

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

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

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Plaintiffs,

vs.

PLAINS ALL AMERICAN PIPELINE,  
L.P., a Delaware limited partnership,  
and PLAINS PIPELINE, L.P., a Texas  
limited partnership, and JOHN DOES 1  
through 10,

Defendants.

1 WHEREAS, plaintiffs Keith Andrews, Tiffani Andrews, Morgan Castagnola,  
2 Mike Gandall, Hwa Hong Muh, Ocean Angel IV LLC, Pacific Rim Fisheries, Inc.,  
3 Sarah Rathbone, Community Seafood LLC, Santa Barbara Uni, Inc., Southern Cal  
4 Seafood, Inc., Wei International Trading, Inc., individually and in their  
5 representative capacities (“Fisher Class Representatives”), and Defendants Plains  
6 All American Pipeline, L.P. and Plains Pipeline, L.P. (collectively “Plains” or  
7 “Defendants”) have reached a proposed settlement of the Fisher Class claims, which  
8 is embodied in the Settlement Agreement filed with the Court;

9 WHEREAS, plaintiffs Baci Family LLC, Alexandra B. Geremia, Jacques  
10 Habra, Mark Kirkhart, and Mary Kirkhart (“Property Class Representatives”), and  
11 Plains have reached a proposed settlement of the Property Class claims, which is  
12 embodied in the Settlement Agreement filed with the Court;

13 WHEREAS, on May 25, 2022, an Order Granting Preliminary Approval of  
14 Proposed Settlement (“Preliminary Approval Order”) was entered by this Court,  
15 preliminarily approving the proposed Settlement of this Action pursuant to the terms  
16 of the Settlement Agreement and directing that Notice be given to the members of  
17 the Settlement Classes;

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

27 WHEREAS, a Final Approval Hearing was held on September 16, 2022.  
28 Prior to the Final Approval Hearing, proof of completion of Notice was filed with

1 the Court, along with declarations of compliance as prescribed in the Preliminary  
2 Approval Order. Class Members were adequately notified of their right to appear at  
3 the hearing in support of or in opposition to the proposed Settlement, any  
4 application for attorneys' fees and expenses, any application for incentive awards,  
5 and/or the Plans of Distribution submitted by Class Counsel;

6 WHEREAS, the Fisher Class Representatives and the Property Class  
7 Representatives have applied to the Court for final approval of the proposed  
8 Settlement of the Action, the terms and conditions of which are set forth in the  
9 Settlement Agreement;

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

17 1. The capitalized terms used in this Order Granting Final Approval of  
18 Proposed Settlement have the same meaning as defined in the Settlement  
19 Agreement.

20 2. The Court has jurisdiction over the subject matter of this Action and  
21 over all claims raised therein and all Parties thereto, including the Classes.

22 3. The Court finds that the Notice set forth in Article V of the Settlement  
23 Agreement, detailed in the Notice Plan attached to the Declaration of Jennifer  
24 Keough of JND Legal Administration, and effectuated pursuant to the Preliminary  
25 Approval Order: (a) constitutes the best notice practicable under the circumstances  
26 of this Action; (b) constitutes due and sufficient notice to the Classes of the terms of  
27 the Settlement Agreement and the Final Approval Hearing; and (c) fully complied  
28 with the requirements of the Federal Rules of Civil Procedure, the United States

1 Constitution, and any other applicable law, including the Class Action Fairness Act  
2 of 2005, 28 U.S.C. § 1715.

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

10 a. Among the factors supporting the Court’s determination are: the  
11 significant relief provided to Class Members; the risks of ongoing  
12 litigation, trial, and appeal; the risk of maintaining class action status  
13 through trial and appeal; the extensive discovery to date; and the  
14 positive reaction of Class Members.

15 b. Class certification remains appropriate for the reasons set out in  
16 the Court’s prior orders certifying the Fisher Class and Property  
17 Classes. Further, the Fisher Class Representatives and the Property  
18 Class Representatives, and Class Counsel have adequately represented  
19 the classes.

20 c. The Settlement was negotiated at arm’s length and was free of  
21 collusion. It was negotiated with experienced, adversarial counsel after  
22 extensive discovery, and with the aid of neutral, qualified mediators.  
23 Further, the attorneys’ fees and costs award was the subject of a  
24 separate application to the Court.

25 d. The Court has considered and hereby overrules all objections to  
26 the Settlement.

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



1           6. Upon the Effective Date, all Class Members have, by operation of this  
2 Order, fully, finally and forever released, relinquished, and discharged the Released  
3 Parties pursuant to Article VII of the Settlement Agreement.

4           7. Upon the Effective Date, Class Members, and their successors, assigns,  
5 parents, subsidiaries, affiliates or agents of any of them, are permanently barred and  
6 enjoined from commencing or continuing any action or proceeding in any court or  
7 tribunal asserting any claims released under the Settlement Agreement, including  
8 any claims for criminal restitution in *People v. Plains All Am. Pipeline, L.P.*, No.  
9 1495091 (Cal. Superior Ct.) and writ relief sought in *Victim Restitution Claimants v.*  
10 *Superior Court of the County of Santa Barbara*, No. B317229 (Cal. Ct. of Appeal),  
11 and from accepting payment of any Restitution Award in *People v. Plains All Am.*  
12 *Pipeline, L.P.*, No. 1495091 (Cal. Superior Ct.).

13           8. This Final Approval Order, the Settlement Agreement, the Settlement  
14 that it reflects, and any and all acts, statements, documents or proceedings relating to  
15 the Settlement are not, and must not be construed as, or used as, an admission by or  
16 against Defendants of any fault, wrongdoing, or liability on their part, or of the  
17 validity of any claim or of the existence or amount of damages.

18           9. The above-captioned Action is dismissed in its entirety with prejudice.  
19 Except as otherwise provided in orders separately entered by this Court on any  
20 application for attorneys' fees and expenses, any application for incentive awards,  
21 and the Plans of Distribution submitted by Class Counsel, the parties will bear their  
22 own expenses and attorneys' fees.

23           10. Without affecting the finality of this Order and the accompanying  
24 Judgment, the Court reserves jurisdiction over the implementation of the Settlement,  
25 including enforcement and administration of the Settlement Agreement, including  
26 any releases in connection therewith, and any other matters related or ancillary to  
27 the foregoing.

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IT IS SO ORDERED.

DATED: \_\_\_\_\_

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Hon. Philip S. Gutierrez