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CENTRAL DISTRICT OF CALIFORNIA

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

[Consolidated with Case Nos. 2:15-CV- 04573 PSG (JEMx), 2:15-CV-4759 PSG (JEMx), 2:15-CV-4989 PSG (JEMx), 2:15-CV-05118 PSG (JEMx), 2:15-CV- 07051- PSG (JEMx)]

PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Date: November 7, 2016
Time: 1:30 p.m.
Courtroom: Hon. Philip S. Gutierrez

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,

Plaintiffs,

v.

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

Defendants.

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I. INTRODUCTION

A pipeline owned by Plains All American, L.P. and Plains Pipeline, L.P. ("Defendants") ruptured on the morning of May 19, 2015. The resultant discharge of thousands of gallons of crude oil and other toxic chemicals caused significant environmental and property damage, and, as a direct consequence, economic harm to members of the proposed Class. Later investigation revealed what Defendants knew or should have known all along: the pipeline was highly corroded at the time of the spill and structurally unfit to transport crude oil.

The Supreme Court has acknowledged that single incident environmental disasters may be proper candidates for class certification in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997), affirmed as unremarkable the class action trial of actual and punitive damages claims arising from the Exxon Valdez oil spill in *Exxon Shipping Co. v. Baker*, 128 S. Ct. 499 (2007), and, more recently, denied review of challenges to the Rule 23(b)(3) class action settlement of both economic and medical claims arising from the Deepwater Horizon Oil Spill. *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, 910 F. Supp. 2d 891, 926 (E.D. La. 2012), *aff'd sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014), *cert denied*, 135 S. Ct. 754 (2014). This is because the heart of each class member's complaint—the single disaster—is common to all class members.

Indeed, all claims in this action arise from Defendants' negligent (and possibly criminal[1]) discharge of oil and chemicals into the Pacific Ocean. Neither the facts of this spill nor its cause should be in dispute. As required by law, Plains has already acknowledged that the spill occurred and that it is the responsible party. Dkt. 97, at ¶¶ 264, 267. Plaintiffs, whose jobs, livelihoods, or properties have been harmed by the oil spill and resulting closure of Plains' pipeline, are all victims of

[1] On May 16, 2016, a California grand jury indicted Plains on 46 criminal charges, including four felony charges, arising from Plains' conduct in connection with the oil spill and its aftermath.

circumstances through no fault of their own and are entitled to compensation for their losses resulting from Plains' failures.

By this motion, and consistent with what courts have done when confronted with class claims arising from oil spills, from Exxon Valdez to Deepwater Horizon, Plaintiffs respectfully move the Court for an order certifying this case as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3). The proposed Class members' claims not only share a common nexus of fact relating to Defendants' ruptured pipeline and resulting oil spill, they are governed by a common body of law. In such circumstances, a single classwide trial to resolve the overarching common questions of law and fact is manifestly appropriate.

The proposed Class includes individuals and businesses harmed by virtue of the ruptured pipeline. Plaintiffs propose four subclasses: 1) the fisher and fish industry subclass, which includes commercial fishers and fish sellers affected by the closure of fish areas in the Pacific Ocean and damage to those fisheries; 2) the property owner subclass, which includes those Class members who own or lease ocean-proximity property impacted by the oil from the spill and who, as a result, lost the use and enjoyment of their properties; 3) the oil industry subclass, which includes oil workers and oil supply businesses dependent on Plains' pipeline for their commercial livelihood; and 4) the business tourism subclass, which includes businesses that lost revenue because of reduced tourism caused by the oil spill.

Not only has Plains acknowledged its responsibility for the oil spill, Plains has also acknowledged that several of these categories of individuals and businesses may have been harmed by the spill and are entitled to "reimbursement" for, *inter alia*: 1) lost profit, earnings, or wages; 2) tourism-based business losses; 3) natural resource-based income losses; 4) losses to "[c]ommercial fishermen and related businesses"; and 5) damages to coast properties.[2]

[2] *See* Plains Line 901 Information Center, available at: http://www.plainsline901response.com/go/survey/7266/24766/ (last visited

Footnote continued on next page

As set forth below, the legitimate private interests of the litigants, the institutional interests of this Court in judicial economy and efficient case management, and the public interest in courts that function with consistency and impartiality, all support the class action mechanism as superior relative to the alternatives available under the Federal Rules "for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

II. BACKGROUND

Defendants own and control Lines 901 and 903 ("the Pipeline") in Santa Barbara County, which transport crude oil and other toxic chemicals from offshore oil platforms off the coast of Santa Barbara to inland California. Line 901 is a 10-mile long, 24-inch wide oil pipeline that runs along the edge of the Pacific Ocean in Santa Barbara County. It distributes all of its crude oil to Line 903, a 30-inch pipeline that transports the crude oil 128 miles north and east to refineries in Southern California. Both are currently "intrastate hazardous liquid pipelines" subject to state regulatory and enforcement jurisdiction.[3]

On the morning of May 19, 2015, the Pipeline along Line 901 ruptured on private property near Refugio State Beach in Santa Barbara County, spilling oil and other toxic chemicals onto the beach and into the Pacific Ocean.[4] Beaches and fertile fishing grounds, including a variety of shellfish and fishing operations, were forced to close, oil production offshore was shut down indefinitely, tourists were

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Footnote continued from previous page

August 22, 2016), Ex. 23 to the Declaration of Robert J. Nelson in Support of Class Certification ("Nelson Decl."). Unless otherwise noted, numbered exhibits referred to throughout this memorandum are attached to the Nelson Declaration.

[3] Letter from Zach Barrett, Office of Pipeline Safety, U.S. Dept. of Transportation, to Bob Gorham, Pipeline Safety Division, California State Fire Marshall (May 18, 2016), Ex. 24.

[4] The owner of the property on which the Pipeline rupture occurred has brought its own action against Defendants, also pending in this Court. *Grey Fox LLC, et al. v. Plains All American Pipeline, L.B. et al*, 2:16-cv-03157-PSG-JEM. Plaintiffs in that action are represented by undersigned counsel, and efforts to resolve that action are in progress. *Id*. at Dkt. 33.

discouraged from visiting the area, and coastal private properties and businesses were damaged, all as a direct result of the spill.

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") concluded in a 510-page Failure Investigation Report that external corrosion that thinned the Pipeline wall to bursting caused the spill.[5] PHMSA concluded that Plains ineffectively protected the Pipeline against external corrosion, failed to detect and mitigate the corrosion, and failed to timely detect and respond to the rupture. *Id.* at 3. PHMSA also concluded that Plains improperly failed to report four smaller oil spills meeting PHMSA reportable criteria at pump stations on the Pipeline prior to the May 19, 2015 spill. *Id.* at 5. Plains was aware of extensive corrosion of the Pipeline, knew how to address it, but simply failed to do so adequately.

These waters serve as the backbone of the local economy. Tourists came to these beaches to enjoy the unspoiled sand and water, and many businesses depend on tourists. Fishers support themselves and their families by harvesting fish, squid, and shellfish from these waters, and processors of seafood rely on the fishermen and their catch. The properties along the Central Coast of California are highly valuable. The property owners and tourists enjoy the sand and water, direct access to fishing, surfing, kayaking and other activities that support the local economy. The oil fields in these waters also provide many local jobs for workers in offshore and onshore oil and gas operations; these workers' jobs depend on a properly maintained and functioning Pipeline to transport crude oil throughout California. Both Line 901 and a part of Line 903 have been closed since the spill, idling hundreds of oil platform workers and others dependent on a functioning Pipeline for their livelihood.

[5] Failure Investigation Report, U.S. Department of Transportation, PHMSA, (May 2016), Ex. 25 (appendices omitted for brevity).

III. LEGAL STANDARDS GOVERNING CLASS CERTIFICATION

Class certification is proper if Plaintiffs satisfy the requirements of Rule 23(a) and also one of the prongs of Rule 23(b). *Amchem*, 521 U.S. at 613-14. Courts often also require that the proposed class be ascertainable. *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 13-5693 PSG (RZX), 2015 WL 4776932, at *6 (C.D. Cal. May 27, 2015) (internal citations omitted); *Deepwater Horizon*, 910 F. Supp. 2d at 911.

The class mechanism of Rule 23 exists to facilitate the efficient administration of justice and provide remedies to those for whom individual actions are not feasible. The "very core" of the justification for a class action is offering a path to relief for otherwise uneconomical claims. *Amchem*, 521 U.S. at 617; *see also Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981) ("[C]lass actions serve an important function in our system of civil justice.").

District courts have broad discretion in managing litigation and Rule 23(d) further empowers them to do so. Fed. R. Civ. P. 23(d)(1)(A) (authorizing a court to issue orders that "determine the course of proceedings or prescribe measures to prevent undue repetition or complication. . . ."). Courts also have the inherent power to subclass to better manage litigation. *Marisol A. v. Guiliana*, 26 F. 3d 372, 379 (2d Cir. 1997) (noting that subclasses might help "spar[e] the parties from directionless and haphazard discovery" and subclassing may foster a "more orderly trial").

IV. THE PROPOSED CLASS AND SUBCLASSES

Plaintiffs, on behalf of themselves and all others similarly situated, move the Court for certification of a Class pursuant to Fed. R. Civ. P. 23, consisting of the following subclasses:

Fisher and fish industry damage subclass:

"Persons or entities who owned or worked on a vessel that landed seafood within the California Department of Fish & Wildlife fishing blocks 651 to 657, 664

to 671, 681 to 683, as well as persons or entities who owned or worked on a vessel that landed groundfish, including but not limited to sablefish, halibut and rockfish, in fishing blocks 631 to 633, 637 to 639, 643 to 645, 658 to 659, and 684 to 690, between May 19, 2010 and May 19, 2015 and were in operation as of May 19, 2015, as well as those persons and businesses who purchased and re-sold commercial seafood so landed, at the retail or wholesale level, that were in operation as of May 19, 2015."

Property owner and lessee damage subclass:

"Persons or entities owning or leasing real property on the California coast within .50 miles of, or with deeded access to, the Pacific Ocean between Point Conception in Santa Barbara County and the eastern border of Malibu, California as of May 19, 2015."

Oil industry damage subclass:

"Persons or entities who worked on or supported the oil platforms off the Santa Barbara coast, and whose jobs or businesses were dependent, in whole or in part, upon the functionality of Plains' Pipeline as of May 19, 2015."

Business tourism damage subclass:

"Businesses in operation on May 19, 2015 that provided services such as attracting, transporting, accommodating, or catering to the needs or wants of persons traveling to, or staying in, places outside their home community, located from the south coast of Santa Barbara County (from Gaviota to the eastern Santa Barbara County line) to the coastal zone of Ventura County (defined as the beach-harbor-seaport area from the western Ventura County line to Point Mugu)."

"Excluded from the 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."

V. ARGUMENT

A. The proposed Class and subclasses satisfy the requirements of Rule 23(a).

Class certification is appropriate when each of the requisites of Rule 23(a) is met.

1. The proposed Class and subclasses are so numerous that joinder is impracticable.

Rule 23(a)(1) requires that the proposed Class be "so numerous that joinder of all members is impracticable." When the number of class members exceeds 40, the numerosity requirement is generally met. *See In re Cooper Co. Inc., Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009); *Jordan v. Cnty. of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982). Here, no less than 25 Plaintiffs are named in the Complaint, all of whom seek appointment as Class representatives. Each proposed subclass likely includes well more than a hundred members, based upon the number of fishers, coastal properties, tourist businesses, and workers directly affected by the Pipeline rupture and oil spill. For example, hundreds of oil platform workers alone have been out of work because of the spill and subsequent closure of the Pipeline. *See* Lilygren Decl., Ex. 14, at ¶ 5. Numerosity is readily satisfied here.

2. There are common questions of law and fact.

Federal Rule of Civil Procedure 23(a)(2) requires "questions of fact and law which are common to the class." The commonality requirement is a threshold, and less demanding than Rule 23(b)(3)'s "predominance" requirement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The Ninth Circuit has recognized that "commonality requires that the Class members' claims 'depend upon a common contention' such that 'determination of its truth or falsity will resolve an issue that is central to the validity of each claim in one stroke.'" *Mazza v. Am. Honda Motor Co., Inc.*, 666 F. 3d 581, 588 (9th Cir. 2012) (quoting *Wal-Mart*

Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011)) (internal alteration omitted). Stated differently, "the key inquiry is not whether the plaintiffs have raised common questions, 'even in droves,' but rather, whether class treatment will 'generate common answers apt to drive the resolution of the litigation.'" *Abdullah v. U.S. Sec. Assocs., Inc*., 731 F.3d 952, 957 (9th Cir. 2013) (quoting *Wal-Mart*, 131 S. Ct. at 2551)). Commonality does not mean that every question of law or fact must be common to the Class; rather, "all that Rule 23(a)(2) requires is a single significant question of law or fact." *Id*. (internal quotations and citations omitted).

This single disaster case arises from a common course of conduct and presents a number of common questions of fact and law, each of which meet or surpass the threshold commonality requirement. The events giving rise to the Pipeline rupture, and Defendants' knowledge and conduct as it relates to the rupture, are the single set of facts from which all class claims arise, and certainly common answers to the critical liability questions will drive the resolution of the litigation. Further, all questions will be determined under the same state law, i.e., California, thereby facilitating adjudication of the issues.

Plaintiffs have alleged numerous common issues of fact and law that are common to all claims such as: (1) whether Plains is a "responsible party" under the Lempert-Keene-Seastrand Oil Spill Prevention Act; (2) whether the mixture of toxic chemicals and liquid Plains' transported through its Pipeline constitutes oil under Lempert-Keene; (3) whether Plains' transportation of oil in its Pipeline constitutes an ultrahazardous activity; and, most critically, (4) whether Plains acted negligently, recklessly, and/or maliciously with regard to the design, inspection, repair, and/or maintenance of the Pipeline. Complaint, Dkt. 88 at ¶ 254. In short, each Class member's claims stem from "standardized conduct"—specifically, the conduct by Defendants that led to the failure of the Pipeline and oil spill—and questions and answers regarding Defendants' resulting liability—will be common to the Class. Commonality under Rule 23(a)(2) is readily satisfied.

3. Plaintiffs' claims are typical of the Class and subclasses they seek to represent.

Typicality under Rule 23(a)(3) is directed to ensuring that plaintiffs are proper parties to proceed with the suit. The test is "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985). That said, "[t]ypicality refers to the nature of the claim or defense of the class representative," and less so, "the specific facts from which it arose or the relief sought." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation omitted). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020.

a. Fisher and fish industry subclass.

Twelve of the representative Plaintiffs seek to represent the fisher and fish industry subclass. For example, Class representatives Keith and Tiffani Andrews fish sea cucumbers; Plaintiff Morgan Castagnola fishes shrimp and halibut; the Eagle Fleet LLC fishes black cod and halibut; Mike Gandall fishes rock crab and California spiny lobster; and Ocean Angel IV, LLC fishes squid.[6] All of these species of fish are common among regional fishers. Declaration of Hunter Lenihan, Ph.D. ("Lenihan Decl.") at ¶¶ 14-15, 18. Each of these proposed Class representatives is a Central Coast-based fisher, and each lost income as a result of the spill because the spill forced closure of important fishing areas and caused the death of fish and the food chain fish depend on.[7] This subclass is defined to include those fishers who fish in those California Department of Fish and Game fishing

[6] Andrews Decl., Ex. 1, at ¶¶ 1-3; Castagnola Decl., Ex. 5, at ¶ 4; Gandall Decl., Ex. 7, at ¶ 2; Nguyen Decl., Ex. 17, at ¶ 3; Tibbles Decl., Ex. 20, at ¶ 1.

[7] *Id.*; Andrews Decl., Ex. 1, at ¶¶ 1-2, 10-13; Castagnola Decl., Ex. 5, at ¶¶ 1, 4-8; Gandall Decl., Ex. 7, at ¶ 4; Nguyen Decl., Ex. 17, at ¶¶ 1,3-5; Tibbles Decl., Ex. 20, at ¶¶ 1, 7-16.

blocks known to have been exposed to oil from the spill and where fish will be impacted in the long term. Lenihan Decl., at ¶¶ 19, 25-27; *see also* Declaration of Igor Mezic, Ph.D. ("Mezic Decl."), at ¶¶ 34-35.

This subclass also encompasses individuals and companies that purchase seafood fished along the Central Coast for processing or resale. Plaintiffs Ocean Angel IV, LLC, Pacific Rim Fisheries, Inc., Community Seafood LLC (owned by Plaintiff Sarah Rathbone), Hwa Hong Muh (who operates Mu's Seafood, Co.), Santa Barbara Uni, Inc., Southern Cal Seafood, Inc., and Wei International Trading, Inc. have claims typical of this subclass.[8] Like the fishers, these companies lost income as a result of the oil spill because the fisheries on which the fishers relied for their catch were closed or had diminished supply, and faced reputational impacts. *See* Lenihan Decl., at ¶¶ 10, 18-19, 25-28.

b. Real property subclass.

This subclass is defined to include real property owners and lessees of property located on the California Coast between Point Conception in Santa Barbara County and the eastern border of the City of Malibu. *See* Declaration of Randall Bell, Ph.D. ("Bell Decl."), at ¶ 31. Plaintiffs the Baciu Family LLC, Alexandra Geremia, Jacques Habra, and Mark and Mary Kirkhart all own or rent properties along this part of coast.[9] Like their neighbors, these individuals were unable to enjoy their properties and residences after the spill when oil washed up onto their properties or nearby beaches, and they suffered the trespass and nuisance of the spill and clean-up activities, all of which impacted their use and enjoyment of

[8] *See, e.g.*, Muh Decl., Ex. 16, at ¶ 5 (spill made it more difficult to find sea cucumbers to process, fishermen could not find sea cucumbers, and customers questioned quality of Santa Barbara sea cucumbers); *see also* Baez Decl., Ex. 2, at ¶¶ 6-10; Guglielmo Decl., Ex 10, at ¶¶ 7-8; Rathbone Decl., Ex. 19, at ¶¶ 5-8; Zhuang Decl., Ex. 23, at ¶¶ 5-7.

[9] *See, e.g.*, MacLeod Decl., Ex. 15, at ¶ 1; Geremia Decl., Ex. 8, at ¶ 1; Habra Decl., Ex. 11, at ¶ 1; Kirkhart Decl., Ex. 13, at ¶ 1.

their properties.[10] The injuries of these Plaintiffs are typical of those subclass members who lost the use and enjoyment of their properties in the aftermath of the spill. *See* Bell Decl., at ¶ 18.

c. Oil industry subclass.

This subclass includes oil industry workers whose jobs were dependent on the functionality of the Pipeline. Plaintiffs Robert Boydston, Zachary Frazier, Richard Lilygren, and Stephan Wilson are oil platform workers who, like others in this subclass, were laid off as a result of the oil spill and Pipeline closure.[11]

This subclass also includes employees of companies that supply the oil platforms. For example, Plaintiff Jim Guelker was the chief engineer on a supply vessel that provides large offshore service vessels to the energy industry; he was laid off when his company lost its contract to supply the offshore platforms that were shut down as a result of the Line 901 spill and subsequent closure of the pipeline. Guelker Decl., Ex. 9, at ¶¶ 1-7. Plaintiff TracTide Marine Corp. provided marine fuels to oil drilling platform supply and crew vessels and lost significant revenues because the offshore drilling platforms it supplies have been unable to operate. Belchere Decl., Ex. 3, at ¶¶ 1-4. These Plaintiffs' injuries are typical of other employees and businesses in the oil and gas industry dependent on the Pipeline, and have lost business or have been laid off as the result of Plains' failure to safely maintain and operate its Pipeline, resulting in the May 19, 2015 rupture.

d. Business tourism subclass.

The business tourism subclass consists of businesses in Santa Barbara and Ventura Counties that are dependent on ocean recreational activities and/or tourism.

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[10] *See*, *e.g.*, Geremia Decl., Ex. 8, at ¶ 3 ("There were globs of oil in front of my house."); Habra Decl., Ex. 11, at ¶¶ 2-4 ("After the spill, the property was also dirtier and really unsuitable for enjoyment."); Kirkhart Decl., Ex. 13, at ¶ 2-4 ("Oil tarballs and oil sheen bombarded our property."); MacLeod Decl., Ex. 15, at ¶¶ 2-4 ("[There was] a steady influx of tarballs and oil sheen.").

[11] *See* Boydston Decl., Ex. 4, at ¶¶ 1-2, 8; Frazier Decl., Ex. 6, at ¶¶ 1-5; Lilygren Decl., Ex. 14, at ¶¶ 1-4; Wilson Decl., Ex. 21, at ¶¶ 1, 4-7.

These entities lost revenues as a result of the oil spill. For example, Plaintiffs Captain Jack's Santa Barbara Tours, LLC and iSurf, LLC are Santa Barbara-based tourist businesses that offer kayaking, surfing, sailing, beach, wine-tasting, and horseback tours, in the affected area, including tours at Refugio State Beach, precisely where the oil from the ruptured Pipeline entered the ocean. *See, e.g.*, Hicks Decl., Ex. 12, at ¶¶ 1-5; Parenteau Decl., Ex. 18, at ¶¶ 1-6. After the spill, tours were cancelled, customers chose other destinations, and Santa Barbara businesses lost money. *See, e.g.*, Hicks Decl., Ex. 12, at ¶¶ 8-9; Parenteau Decl., Ex. 18, at ¶ 6. Their injuries and damages are similar in nature to those of other businesses that depend upon tourism for their business. Hicks Decl., Ex. 12, at ¶ 10. *See* Declaration of Steve Roberts ("Roberts Decl."), at ¶¶ 25-33.

4. Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

Rule 23(a)(4) requires that the Class representatives "will fairly and adequately protect the interests of the class." The adequacy requirement "tends to merge" with the commonality and typicality requirements, which "serve as guideposts for determining whether" a class action is "economical and whether the named plaintiff's claim[s] and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Amchem*, 521 U.S. at 626, n.20 (citations omitted). The adequacy inquiry turns on: (1) whether the named plaintiffs and Class counsel have any conflicts of interest with other class members; and (2) whether the representative plaintiffs and Class counsel can vigorously prosecute the action on behalf of the Class. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011). Courts have interpreted this test to encompass a number of factors, including "the qualifications of counsel for the representatives, an absence of antagonism between counsel and Class members, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive." *Brown v. Ticor Title Ins.*, 982 F.2d 386, 390 (9th Cir.

1992) (internal quotation omitted).

Plaintiffs are all adequate representatives of the proposed Class and subclasses. As discussed above, their claims are typical of each of the subclasses they seek to represent, and they have volunteered to represent the subclass because of their commitment to pursuing this litigation.[12] There are no conflicts among them. They are a cohesive group because they all seek damages from Plains that, although differing in amount and extent, share the same cause, raise the same liability questions, and will be decided by the same answers regarding Plains' alleged misconduct.

Class counsel are committed to vigorously prosecuting this litigation. Counsel have the resources and experience to achieve the best possible result for the Class and have been actively engaged in pursing these claims even prior to their appointment as Interim Class Counsel. Dkt. 40. Plaintiffs and their counsel now respectfully request that the Court appoint the following firms as Class Counsel pursuant to Rule 23(g): Robert J. Nelson and the firm of Lieff, Cabraser, Heimann & Bernstein, LLP; Lynn Sarko, Juli Farris and the firm of Keller Rohrback L.L.P.; A. Barry Cappello and the firm Cappello & Noël; and William M. Audet and the firm Audet & Partners. These firms meet the requirements for appointment under the considerations delineated in Rule 23(g)(1)(A)(i)-(iv).[13] *See* Dkt. 33. The adequacy requirement of Rule 23(a)(4) is also met.

As a result, each of Rule 23(a)'s requirements are satisfied.

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[12] *See*, *e.g.*, Andrews Depo., Ex. 27, at 112, ¶¶ 10-15, Baez Decl., Ex. 2, at ¶ 10; Belchere Decl., Ex. 3, at ¶¶ 10-11; Boydston Decl., Ex. 4, at ¶¶ 14; Castagnola Decl., Ex. 5, at ¶ 11; Frazier Decl., Ex. 6, at ¶ 11; Geremia Decl., Ex. 8, at ¶ 7; Guelker Decl., Ex. 9, at ¶ 15; Habra Decl., Ex. 11, at ¶ 13; Kirkhart Decl., Ex. 13, at ¶ 16; Lilygren Decl., Ex. 14, at ¶ 8; MacLeod Decl., Ex. 15, at ¶ 11; Muh Decl., Ex. 16, at ¶ 7; Nguyen Decl., Ex. 17, at ¶ 11; Parenteau Decl., Ex. 18, at ¶¶ 8-9; Wilson Decl., Ex. 21, at ¶¶ 15; Zhuang Decl., Ex. 22, at ¶ 9.

[13] Plaintiffs do not seek the appointment of the Kazerouni firm, previously appointed as Interim Class Counsel, as Class Counsel, because that firm has not performed any work on the case since its appointment as Interim Class Counsel.

B. The proposed Class satisfies the requirements of 23(b)(3) predominance and superiority.

Plaintiffs seek certification under Rule 23(b)(3), which requires that "[q]uestions of law or fact common to members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). Plaintiffs satisfy both the predominance and superiority requirements.

1. Questions of law or fact common to Class members predominate over any questions affecting only individual members.

a. Plaintiffs' substantive claims can be proven on a common basis.

Here, as in so many environmental cases, "[c]ommon issues of liability, causation, and remedies not only predominate but overwhelm individualized issues." *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio, 1991). *See also Deepwater Horizon*, 910 F. Supp. 2d at 922 ("This case arises from the blowout of one well, on one date, and the discharge of oil from one location. It is therefore clear that the vast majority of the contested factual questions are common to all class members and that the case includes a number of issues whose resolution 'will resolve an issue that is central to the validity of each one of the class member's claims in one stroke.'"); *Turner v. Murphy Oil USA, Inc.*, 234 F.R.D. 597, 606 (E.D. La. 2006) (rejecting defendant's argument in oil spill cases that "oil did not spread uniformly throughout the affected area" where "the central factual basis for all of Plaintiffs' claims is the leak itself—how it occurred, and where the oil went. There is a large area of factual overlap in the Plaintiffs' causes of action").[14]

[14] *See also In re Exxon Valdez*, 296 F. Supp. 2d 1071, 1084 (D. Alaska 2004), *vacated and remanded sub nom. In re Exxon Valdez*, 472 F.3d 600 (9th Cir. 2006), *opinion amended and superseded on denial of reh'g*, 490 F.3d 1066 (9th Cir. 2007),

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As in *Deepwater Horizon*, and *Turner*, and *Exxon Valdez* before them, all of the key factual questions in this litigation are common among members of the Class. The liability facts focus exclusively on the conduct of Defendants, the owners and operators of the Pipeline that ruptured and caused Plaintiffs' injuries. Plains' conduct in allegedly failing to properly maintain, repair, replace, and safeguard the Pipeline, are all questions common to all class members.[15]

Evidence pertaining to Plaintiffs' claims of negligence, gross negligence, UCL, negligent interference with prospective economic advantage, Lempert-Keene, and strict liability will be common to all Class and subclass members. That common proof, including evidence regarding Defendants' conduct and the history of operations of the Pipeline, is identical for all Class members. Thus, "[a]bsent class treatment . . . each individual plaintiff will present the same or essentially the same arguments and evidence (including expert testimony) on these numerous complicated issues." *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096, 1130 (2003). If this Class is not certified, many claimants would effectively be precluded from vindicating their rights because it would be economically

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vacated sub nom. Exxon Shipping Co. v. Baker, 554 U.S. 471 (2008) (damages awarded to a class of "all persons or entities who possess or have asserted claims for punitive damages against Exxon and/or Exxon Shipping which arise from or relate in any way to the grounding of the EXXON VALDEZ or the resulting oil spill.").

[15] Similarly, numerous courts have granted certification of a plaintiff class in cases involving toxic leaks and harm to nearby property interests. *See Wehner v. Syntex Corp.*, 117 F.R.D. 641, 643 (N.D. Cal. 1987) (damage resulting from a chemical manufacturer); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1144 (8th Cir. 1999) (property pollution as a result of an underground oil seepage); *Cook v. Rockwell Int'l Corp.*, 151 F.R.D. 378, 388 (D. Colo. 1993) (damage from leaked radioactive and non-radioactive substances); *Boggs*, 141 F.R.D. at 67 (S.D. Ohio 1991) (property damage in area surrounding uranium plant); *Sterling v. Velsicol Chemical Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988) (water contamination of nearby residential properties due to chemicals from landfill); *Olden v. LaFarge Corp.*, 203 F.R.D. 254, 271 (E.D. Mich. 2001) (property damage caused by toxic pollutants arising from cement manufacturing plant), *aff'd*, 383 F.3d 495, 508-10 (6th Cir. 2004).

prohibitive for them to proceed; and those who could afford to bring individual suits would be compelled to prove the same liability facts in court again and again.

The property subclass claims of trespass and nuisance are also suitable for class treatment. Like most states, California evaluates private nuisance claims based on whether the claimed interference is unreasonable, such as would be offensive or inconvenient to the normal person and public nuisance based on interference with the rights of the community at large. *Monks v. City of Rancho Palos Verdes*, 167 Cal. App. 4th 263, 302 (2008). Because these claims turn on an objective measure of how a defendant's conduct impacted the class, they also lend themselves to class treatment. *See O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 331-32 (C.D. Cal. 1998) (holding that whether defendants' alleged activities constituted a nuisance was common to all members of the property class even if damages may vary for each individual class member); *Rowe v. E.I. DuPont De Nemours & Co.*, 262 F.R.D. 451, 462 (D.N.J. 2009) ("Plaintiff's private nuisance claim is appropriate for class treatment. The issues relating to this claim turn on the conduct of Defendant and the objective perception of a 'normal person' in the community rather than the conduct and perceptions of the individual class members."); *Collins v. Olin Corp.*, 248 F.R.D. 95, 104-05 (D. Conn. 2008) ("the nuisance claims are class-wide issues, and whether the interference was unreasonable or not can also be readily addressed at the damages phase.").

Similarly, under California law, a trespass is the unauthorized entry upon the real property of another, regardless of the degree of force used or the amount of damage resulting from the trespass. *In re Burbank Envtl. Litig.*, 42 F. Supp. 2d 976, 983-84 (C.D. Cal. 1998). This unauthorized entry can include intangibles, such as dust, fumes, or vapors. *Kornoff v. Kingsburg Cotton Oil Co.*, 45 Cal. 2d 265, 266 (1955). The claims for trespass and nuisance of the property damage subclass are also amenable to class suit.

b. Purported variations in impact due to the spill do not defeat certification.

At its core, the predominance inquiry focuses on the relationship between common and individual issues. "When common issues present a significant aspect of the case and it can be resolved for all members of the Class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." 7A Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1778 (3d ed. 2016).

Defendants will likely assert that "varying" impacts of the oil spill among the Class members defeat predominance. However, such an argument misunderstands the legal inquiry and the nature of Plaintiffs' claims. As Justice Souter explained in response to an identical argument: "If that were the law, the point of the Rule 23(b)(3) provision for class treatment would be blunted beyond utility, as every plaintiff must show specific entitlement to recovery, and still Rule 23 has to be read to authorize class actions in some set of cases where seriatim litigation would promise such modest recoveries as to be economically impracticable." *Gintis v. Bouchard Transport.*, 596 F.3d 64, 66-67 (1st Cir. 2010) (Souter, J., sitting by designation).

Further, in environmental cases, "Plaintiffs do not need to identify each person affected by the release of gasoline or pinpoint the exact number of people in the class. Indeed, it would be impossible for Plaintiffs to do so at this [class certification] stage because such an identification will necessitate findings of fact that the jury must resolve (e.g., where did the gasoline go after it was released?)." *In re Methyl Tertiary Butyl Ether,* 241 F.R.D. 435, 443 (S.D.N.Y. 2007) ("*MTBE II*"). *See also Bentley v. Honeywell Int'l,* 223 F.R.D. 471, 479 (S.D. Ohio 2004) (factual disputes about the area of impact go to the merits and not the propriety of certification); *Turner*, 234 F.R.D. at 606 (E.D. La. 2006) (certification not threatened by fact that "the oil did not spread uniformly throughout the affected

area" and "different homes in the area received differing degrees, if any, of oil contamination."); *Ponca Tribe of Indians of Oklahoma v. Continental Carbon Co.*, No. 05-445, 2007 WL 28243, *2 (W.D. Okla. Jan. 3, 2007) (issue at class certification stage is if there is "at least some pollution" to justify the class boundaries, not the "extent of the injury" or damages); *Muniz v. Rexnord Corp.*, No. 04-C-2405, 2005 WL 1243428, *2-3 (N.D. Ill. Feb. 10, 2005) (citing *Mejdrech v. The Lockformer Co.*, No. 01-C-6107, 2002 WL 1838141 (N.D. Ill. Aug. 12, 2002), *aff'd*, 319 F.3d 910 (7th Cir. 2003)); *Collins v. Olin Corp.*, 248 F.R.D. 95, 106 (D. Conn. 2008) (extent of area impacted is a factual issue to be determined on class-wide basis).

c. The fact that a damages inquiry would be individualized or may differ among the Class or subclasses does not defeat predominance in light of the core common issues that are appropriate for classwide treatment.

The amount of damages to which a class member is entitled often involves an individual question and does not defeat class action treatment. *In re China Intelligent Lighting & Elecs., Inc. Secs. Litig.*, No. 11-2768, 2013 WL 5789237, at *6 (C.D. Cal. Oct. 25, 2013) (Gutierrez, J.) ("Each member of the Class will suffer different damages…However, the amount of damages is *invariably* an individual question and does not defeat class action treatment.") (emphasis in original) (internal citations omitted); *see also Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513-14 (9th Cir. 2013) (citing *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F. 3d 1087, 1094 (9th Cir. 2010) ("In this circuit, however, damages calculations alone cannot defeat certification"); *Gaudin v. Saxon Mortgage Services, Inc.*, 297 F.R.D. 417 (N.D. Cal. 2013) (certifying a class of California mortgage borrowers with differences in individual damages because plaintiff presented a manageable way to calculate damages across the entire class); *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 986-88 (9th Cir. 2014), *cert. denied*, 136 S. Ct. 2410 (2016); *Deepwater Horizon*, 910 F. Supp. 2d at 925-26 ("Courts have repeatedly rejected

the argument that different damages calculations for each class member defeats class certification.").[16]

Deepwater Horizon also demonstrates why individualized damage calculations do not defeat predominance. In holding that the predominance requirement was met, the district court concluded that damages could be fairly calculated through various methodologies or formulaic calculations, despite, for example, "the extent to which the Deepwater Horizon incident versus other factors caused a decline in the income of an individual or a business." *Deepwater Horizon*, 910 F. Supp. 2d at 924.[17]

Plaintiffs rely on economist Steve Roberts, founder of Veritas Forensic Accounting & Economics, who has proposed a damage model to analyze losses to various Class members, including the oil industry subclass, *see* Roberts Decl., at ¶¶ 14-17, the fisher and fish industry subclass, *id*. at ¶¶ 18-24, and the tourist business subclass. *Id.* at ¶¶ 25-33. Although Mr. Roberts proposes different damage methodologies for each group, each approach is based on standard accounting principles and time-tested formulas. *Id*. at ¶¶ 5-6, 11-13. In preparing his analysis, Mr. Roberts relied upon the work of Dr. Igor Mezic, Ph.D., Plaintiffs' oil modeling expert, Hunter Lenihan, Ph.D., Plaintiffs' fisheries expert, and Don Deaver, Plaintiffs' oil pipeline expert. *See* Roberts Decl., at 8, n. 4, ¶¶ 23i and 25.

Regarding the property subclass, appraisal expert Randall Bell has proposed

[16] *See also Bell Atlantic Corp. v. AT&T Corp.*, 339 F.3d 294, 306 (5th Cir. 2003) (recognizing that "[e]ven wide disparity among class members as to the amount of damages suffered does not necessarily mean that class certification is inappropriate."); *Allapattah Servs. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. 2003) ("[N]umerous courts have recognized that the presence of individualized damages issues does not prevent a finding that the common issues in the case predominate").

[17] Courts have numerous options available in the class certification context to address differing damages between class members. *See, e.g., Vaquero v. Ashley Furniture Indus.*, No. 13-56606, 2016 WL 3190862, *4 (9th Cir. June 8, 2016) (noting that the court could use individual claim forms or the appointment of a special master to address damages); *Gaudin*, 297 F.R.D. at 417 (indicating that courts can bifurcate damages).

a damage methodology based on the property's proximity to the ocean, and a valuation of the rental value of the loss of enjoyment of valuable ocean amenities. *See* Bell Decl., at ¶¶ 20-24. The property subclass is defined by Dr. Bell to include only the coastal properties that fit specific parameters he identifies, based in part on on Dr. Mezic's oil modeling analysis. *Id.*

The viability of mass appraisal techniques and other economic models advanced by Plaintiffs to assess damages create yet another predominantly common question. In *Gintis*, for example, Justice Souter, in a case involving property damage arising from a petrochemical spill, reasoned as follows: "Plaintiffs have offered affidavits of their expert economist in support of a class-wide methodology for appraising damages depending on severity and duration of contamination. [Defendant's] effort to discredit this approach apparently portends a fight over admissibility and weight that would be identical in at least a high proportion of cases if tried individually." *Gintis*, 596 F.3d, at 67 (1st Cir. 2010) (Souter, J., sitting by designation) (reversing and remanding order denying class certification). Similarly in *Turner*, 234 F.R.D. 597 (E.D. La. 2006), involving property damage following an oil spill, the court explained that though some "individualized inquiry" would be warranted, plaintiffs also proffered evidence that "certain elements of their alleged damages may be assessed on a class-wide basis." *Id.* at 607 n.5. Plaintiffs' property damage expert, Randal Bell, has done precisely the same. Bell Declaration, at ¶¶ 45-57, 60.[18]

2. <u>A class action is superior to any other available methods for fairly and efficiently adjudicating this controversy.</u>

Certification is appropriate if the Court finds that the "class action is superior to other available methods for the fair and efficient adjudication of the

[18] The OPA claims process, as flawed as it was, demonstrates that Class members who suffered different damages—whether by a local hotel, fisher, or restaurant—were able to produce sufficient indicia of loss, including fish tickets, tax and business records to enable a damage calculation to be made.

controversy." Fed. R. Civ. P. 23(b)(3). Under Rule 23(b)(3), the relevant factors are: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action. *Id.*

Although superiority is a distinct issue, it nevertheless is influenced by considerations relevant to the predominance inquiry. *Gintis,* 596 F.3d at 67-68. Claims that "go to the very reason for Rule 23(b)(3)," i.e., claims of modest value unlikely to be pursued due to the burden and expense of litigation, are more likely to meet this criteria. *Id.* at 67-68 (given claims valued at $12,000 to $39,000, victims of oil pollution could likely not "sensibly litigate on their own…especially with the prospect of expert testimony required.").

Here, too, a class action is likely the only viable option for almost all Class members because, in light of the complexity and costs of environmental litigation, individual cases will be cost-prohibitive for most Class members. Class actions alleviate this risk by permitting "the Plaintiffs to pool claims which would be uneconomical to litigate individually," and without this mechanism, "most of the Plaintiffs would have no realistic day in court." *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 809 (1985).

The 23(b)(3) superiority factors weigh strongly in favor of certification, for a number of reasons. First, given that litigation would not be feasible absent the class mechanism because many claims are not of substantial value, the Class members have minimal interest in individually controlling the prosecution or defense of separate actions. Second, while there are a small handful of individual suits arising out of the Pipeline rupture pending, including two by the oil company Venoco, the majority of the putative Class members must rely on this action as their best means

of access to counsel and formal adjudication of their claims; they simply could not afford to bring suit or retain counsel for even-handed bargaining. Third, Plaintiffs' claims are best heard in a single forum. *See*, *e.g.*, *In re China*, 2013 WL 5789237, at *6 (Gutierrez, J.) ("In the Court's view, it would be desirable to concentrate the litigation of claims related to the [issue] in one forum."). Fourth, there will be no unique or significant difficulties in the management of this action. In this regard, it is important that one state's law will be applied to all Class members and common issues of law and fact predominate, making trial of the claims relatively straightforward. Finally, notice to the Class is also manageable, according to Plaintiffs' notice provider expert Shannon Wheatman, Ph.D. of Kinsella Media, who has analyzed notice issues pertaining to the Class. *See* Declaration of Shannon Wheatman ("Wheatman Decl."), at ¶¶ 12-17.

Plains in response may argue that its OPA claims process is the superior method to compensate Class members. This Court has already noted the flaws in that process. *See* Dkt. 76. Additionally, Plains has rejected many claims, including the claims of several proposed Class representatives.[19] Plains has paid some claimants partial damages. *See, e.g.* Castagnola Decl., Ex. 5, at ¶ 9. Further, Plains has not conducted any analysis of long term damage to fisheries, and will not attempt to calculate future damages for fishers. *See* Gandall Decl., Ex 7, at ¶ 11. Nor has Plains paid property owners or lessees for the loss of use and enjoyment of their properties due to the spill.

According to Judge Posner, it "makes good sense" to certify "mass tort case[s]" where there are genuinely common issues, issues identical across claimants, where the accuracy of the resolution is unlikely to be enhanced by repeated proceedings, and decide common issues in "one fell swoop" while leaving the remaining claimant-specific issues to individual follow-on proceedings.

[19] *See, e.g.*, Belchere Decl., Ex. 3, at ¶ 8; Boydston Decl., Ex. 4, at ¶ 9; Guelker Decl., Ex. 9, at ¶ 9; Lilygren Decl., Ex. 14, at ¶ 6.

Mejdrech, 319 F. 3d 910 (Posner, J.).

C. Class certification is also appropriate under Rule 23(b)(2).

Plaintiffs also seek certification under Rule 23(b)(2) for purposes of injunctive relief, which requires Plaintiffs to show that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." A plaintiff need only show cohesiveness of the class claims. *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). The court must "look at whether class members seek uniform relief from a practice applicable to all of them." *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010). "The fact that some class members may have suffered no injury or different injuries from the challenged practice does not prevent the class from meeting the requirements of Rule 23(b)(2)." *Id*. The key is that "a single injunction or declaratory judgment would provide relief to each member of the class." *Wang v. Chinese Daily News*, 737 F.3d 538, 544 (9th Cir. 2013). *See also Bentley*, 223 F.R.D. at 486 (certifying a Rule 23(b)(2) class to stop manufacturer from releasing dangerous chemicals into the city's water supply).

Plaintiffs allege that Plains acted on grounds that apply generally to the Class by operating the Pipeline without adequate safety mechanisms and without adequate monitoring to avoid an environmental disaster. For example, Don Deaver, Plaintiffs' pipeline expert, has concluded that the rupture was a direct result of Plains' deficient management and maintenance of Line 901, which Plains operated beyond its reasonable service limit. Declaration of Royce Don Deaver ("Deaver Decl."), at ¶¶ 3, 33-40. Here, a single result could provide relief to every member of the Class—*i.e.*, an injunction ordering Plains to replace and/or repair, operate, and maintain the Pipeline using best available technologies, consistent with the requirements of the PSA and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

D. Plaintiffs have proposed an objective and reasonable Class definition.

Courts in the Central District of California hold that a class is ascertainable so long as it can be identified "by reference to objective criteria." *Flo & Eddie, Inc.*, 2015 WL 4776932, at *6 (citations omitted). Adequately demonstrating that class members *can* be identified is sufficient. In the Ninth Circuit, "it is enough that the class definition describes 'a set of common characteristics sufficient to allow' a prospective plaintiff to 'identify himself or herself as having a right to recover based on the description.'" *See McCrary v. Elations Co., LLC*, No. 13-00242, 2014 WL 1779243, at *8 (C.D. Cal. Jan. 13, 2014) (citation and internal quotations omitted).

In *Deepwater Horizon*, for example, the district court approved the class definition where the class was geographically circumscribed to include those persons and businesses from certain states and specified counties, the definition did not require the Court to delve into the merits or any person's subjective mental state, certain businesses were expressly excluded, only individuals or businesses experiencing specified categories of damages were class members, and the class definition was based on criteria such as where a person resided, worked, received an offer to work, or owned property; or where an entity owned, operated, or leased a physical facility, or employed full time workers. 910 F. Supp. 2d at 914.[20]

As in *Deepwater Horizon*, the proposed Class definition here does not require delving into these merits or any person's subjective mental state. The subclass definitions are based on objective criteria, a circumscribed geographic area, and a set of common characteristics sufficient to allow a prospective plaintiff to identify himself or herself as being inside or outside the Class. *See* Wheatman

[20] A copy of the class definition in *Deepwater Horizon* is attached hereto as Appendix A of Ex. 26 to Nelson Declaration. Exhibit 26 is the Order and Judgment Granting Final Approval of Economic and Property Damages Settlement and Confirming Certification of the Economic and Property Damages Settlement Class.

Decl., ¶¶ 11, 16. For example, those who take fish from certain areas, those who own or lease properties in certain areas, those who worked for businesses that used the Pipeline to conduct business, and those businesses that cater to tourism on May 19, 2015 are Class members, easily identified. This is sufficient.

VI. CONCLUSION

Plaintiffs respectfully request that this Court grant their motion for class certification and enter an order certifying the Class and subclasses proposed, appointing the moving Plaintiffs as Class representatives, and appointing Class Counsel. Plaintiffs will promptly submit a proposed Notice Plan subsequent to an order certifying the Class.

Dated: August 22, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert J. Nelson, hereby certify that on August 22, 2016, I electronically filed Plaintiffs' **MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** with the Clerk of the United States District Court for the Central District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Robert J. Nelson
Robert J. Nelson