

## SETTLEMENT AGREEMENT

The undersigned Parties hereby stipulate and agree, subject to the approval of the Court pursuant to Federal Rule of Civil Procedure 23(e), that this Action, as defined herein below, shall be settled pursuant to the terms and conditions set forth in this Settlement Agreement.

### ARTICLE I – RECITALS

1. WHEREAS, Plains All American Pipeline, L.P. and Plains Pipeline, L.P. (collectively, “Defendants” or “Plains”) are the defendants in this Action;
2. WHEREAS, named plaintiffs and Fisher Class Representatives in this Action are Keith Andrews, Tiffani Andrews, Morgan Castagnola, Mike Gandall, Hwa Hong Muh, Ocean Angel IV LLC, Pacific Rim Fisheries, Inc., Sarah Rathbone, Community Seafood LLC, Santa Barbara Uni, Inc., Southern Cal Seafood, Inc., and Wei International Trading, Inc.;
3. WHEREAS, named plaintiffs and Property Class Representatives in this Action are Baci Family LLC, Alexandra B. Geremia, Jacques Habra, Mark Kirkhart, and Mary Kirkhart;
4. WHEREAS, the Fisher Class Representatives allege that an oil spill on May 19, 2015 from Plains’ Line 901 pipeline in Santa Barbara County caused damage to commercial fishers, and seek to recover on behalf of themselves and a class of similarly situated persons;
5. WHEREAS, the Property Class Representatives allege that an oil spill on May 19, 2015 from Plains’ Line 901 pipeline in Santa Barbara County caused damage to their properties, and seek to recover on behalf of themselves and a class of similarly situated persons;
6. WHEREAS, on February 28, 2017, the Court certified the Fisher Class, and on November 22, 2019, the Court approved an amendment to the definition of the Fisher Class;
7. WHEREAS, on April 17, 2018, the Court certified the Property Class;

8. WHEREAS, the Parties have had a full and fair opportunity to evaluate the strengths and weaknesses of their respective positions, as the litigation has spanned seven years and included motions to dismiss, production of more than 360,000 documents in discovery, over 100 depositions, exchange of more than 50 expert reports, motions to exclude experts, nine motions related to class certification, decertification, and amendment, motions for summary judgment, 16 motions *in limine*, exchange of trial witness lists and exhibit lists, and more;

9. WHEREAS, the Parties engaged in multiple mediation sessions with mediators Robert A. Meyer, Esq., and Hon. Daniel Weinstein (Ret.), most recently on March 22, 2022;

10. WHEREAS, this Agreement shall not apply to the claims of any plaintiffs in *Peter Trejo, et al. v. Plains All American Pipeline, L.P., et al.*, 20-CV-01872 (Geck, J.) (Cal. Super. Ct., Cnty. of Santa Barbara); *Jeffrey Bowen, et al., v. Plains All American Pipeline, L.P., et al.*, 20-CV-01873 (Geck, J.) (Cal. Super. Ct., Cnty. of Santa Barbara); or to claims of any plaintiffs or class members in *Grey Fox, LLC et al. v. Plains All American Pipeline, L.P., et al.*, 16-CV-3157 PSG (JEMx) (C.D. Cal.), including but not limited to the individual claims asserted in those cases;

11. NOW, THEREFORE, the Parties stipulate and agree that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement; for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; and subject to the approval of the Court, this Action shall be fully and finally settled and dismissed with prejudice under the following terms and conditions:

## **ARTICLE II – DEFINITIONS**

As used in this Settlement Agreement and its exhibits, the terms set forth below shall have the following meanings. The singular includes the plural and vice versa.

1. “Action” means the action styled *Andrews et al. v. Plains All American Pipeline, L.P. et al.*, No. CV 15-4113-PSG (JEMx), pending in the U.S. District Court for the Central District of California.

2. “CAFA Notice” means the notice intended to comply with the requirements imposed by the Class Action Fairness Act, 28 U.S.C. § 1715, as described in Article V.3.

3. “Class” means the Fisher Class and Property Class.

4. “Class Counsel” means the law firms of Lief Cabraser Heimann & Bernstein, LLP, Keller Rohrback L.L.P., Cappello & Noël, LLP and Audet & Partners, LLP.

5. “Class Members” means all of the individuals or businesses belonging to the Fisher Class and/or Property Class.

6. “Class Representatives” means the Fisher Class Representatives and Property Class Representatives.

7. “Common Funds” means the Fisher Class Common Fund and the Property Class Common Fund.

8. “Court” means the U.S. District Court for the Central District of California.

9. “Defendants” means Plains All American Pipeline, L.P., and Plains Pipeline, L.P.

10. “Effective Date” means the date on which the Court’s Final Approval Order is Final.

11. “Fees and Costs” means all fees and costs as described in Article IV.3.a.

12. “Final” means that the Final Approval Order has been entered on the docket in the Action, and (a) the time to appeal from such order has expired and no appeal has been timely filed; or, (b) if such an appeal has been filed, it has been resolved finally and has resulted in an affirmance of the Final Approval Order; or (c) the Court, following the resolution of the appeal,

enters a further order or orders approving settlement on the terms set forth herein, and either the time to appeal from such further order or orders has expired and no further appeal has been taken from such order(s) or any such appeal results in affirmation of such order(s). Neither the pendency of the Court's consideration of the Plans of Distribution, any application for attorneys' fees and costs, or any application for service awards, nor any appeals from the Court's order(s) approving those matters, nor the pendency of the implementation of the Plans of Distribution, shall in any way delay or preclude the Final Approval Order from becoming Final.

13. "Final Approval Hearing" means the hearing scheduled to take place after the entry of the Preliminary Approval Order, at which the Court shall, *inter alia*: (a) determine whether to grant final approval to this Settlement Agreement; (b) consider any timely objections to this Settlement and the Parties' responses to such objections; (c) rule on any application for attorneys' fees and costs; (d) rule on any application for service awards; and (e) determine whether or not to adopt the Plans of Distribution.

14. "Final Approval Order" means the order, substantially in the form of Exhibit B attached hereto, in which the Court, *inter alia*, grants final approval of this Settlement Agreement.

15. "Final Judgment" means a final judgment and dismissal of the Action with prejudice substantially in the form set forth in Exhibit C.

16. "Fisher Class" means the class defined by the Court as follows: "All persons and businesses (Fishers) who owned or worked on a vessel that was in operation as of May 19, 2015 and that: (1) landed any commercial seafood in California Department of Fish and Wildlife ("CDFW") fishing blocks 654, 655, or 656; or (2) landed any commercial seafood, except groundfish or highly migratory species (as defined by the CDFW and the Pacific Fishery

Management Council), in CDFW fishing blocks 651-656, 664-670, 678-686, 701-707, 718-726, 739-746, 760-765, or 806-809; from May 19, 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 Subclass 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.” Those who timely opted out of the Fisher Class, as specified on a list Class Counsel will file with the Court, are not participating in this Settlement and are not bound by the terms of this Settlement Agreement.

17. “Fisher Class Common Fund” means the fund administered by the Settlement Administrator consisting of the Fisher Class Settlement Amount (plus any interest earned on escrowed funds as described in Article III).

18. “Fisher Class Representatives” means Keith Andrews, Tiffani Andrews, Morgan Castagnola, Mike Gandall, Hwa Hong Muh, Ocean Angel IV LLC, Pacific Rim Fisheries, Inc., Sarah Rathbone, Community Seafood LLC, Santa Barbara Uni, Inc., Southern Cal Seafood, Inc., and Wei International Trading, Inc.

19. “Fisher Class Settlement Amount” means U.S. \$184 million (\$184,000,000.00) for the benefit of the Fisher Class.

20. “Mail Notice” means notice of this Settlement by U.S. mail, email, or postcard, substantially in the form approved by the Court in its Preliminary Approval Order.

21. “Notice” means Mail Notice, Publication Notice, and CAFA Notice.

22. “Parties” means Class Representatives, on behalf of themselves and all Class Members, and Defendants.

23. “Preliminary Approval Order” means the order, substantially in the form of Exhibit A attached hereto, in which the Court, *inter alia*, grants its preliminary approval of this Settlement Agreement, authorizes dissemination of Mail Notice and Publication Notice to the Classes, including publication of the Notice and relevant settlement documents on a website, and appoints the Settlement Administrator.

24. “Plains” means Plains All American Pipeline, L.P., and Plains Pipeline, L.P.

25. “Plans of Distribution” means plans proposed by Class Counsel for the distribution of the Common Funds to Class Members.

26. “Property Class” means the class defined by the Court as follows: “Residential beachfront properties on a beach and residential properties with a private easement to a beach (collectively “Included Properties”) where oil from the 2015 Santa Barbara oil spill washed up, and where the oiling was categorized as Heavy, Moderate or Light, as identified in Exhibit A to Plaintiffs’ renewed motion [ECF 300-3, Ex. 14 of the Action]. 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; and (2) the judge to whom this case is assigned, the judge’s staff, and any member of the judge’s immediate family.” Those who timely opted out of the Property Class, as specified on a list Class Counsel will file with the Court, are not participating in this Settlement and are not bound by the terms of this Settlement Agreement. The Property Class identification list available at ECF 300-3, Ex. 14 of the Action will be identified in the Mail Notice and Publication Notice and made available on a dedicated website, or as the Court directs in its Preliminary Approval Order.

27. “Property Class Common Fund” means the fund administered by the Settlement Administrator consisting of the Property Class Settlement Amount (plus any interest earned on escrowed funds as described in Article III).

28. “Property Class Representatives” means Baci Family LLC, Alexandra B. Geremia, Jacques Habra, Mark Kirkhart, and Mary Kirkhart.

29. “Property Class Settlement Amount” means U.S. \$46 million (\$46,000,000.00) for the benefit of the Property Class.

30. “Publication Notice” means notice of this Settlement by publication, substantially in the form approved by the Court in its Preliminary Approval Order.

31. “Refugio Incident” means the release of crude oil from Plains’ Line 901 pipeline in Santa Barbara County, California on or about May 19, 2015.

32. “Released Parties” means (a) Defendants; (b) Defendants’ counsel, experts, consultants, and vendors; (c) Defendants’ past, present, and future direct and indirect owners, parents, subsidiaries, and other affiliates; (d) Defendants’ successors and predecessors and their past, present, and future direct and indirect owners, parents, subsidiaries, and other affiliates; and (e) for each of the foregoing, each of their past, present, or future officers, directors, shareholders, owners, employees, representatives, agents, principals, partners, members, insurers, administrators, legatees, executors, heirs, estates, predecessors, successors, or assigns.

33. “Restitution Award” means any award to the Classes or individual Class Members in *People v. Plains All American Pipeline, L.P.*, No. 1495091 (Cal. Superior Ct.).

34. “Settlement Administrator” means the person or entity appointed by the Court to administer the settlement.

35. “Settlement Agreement,” “Settlement,” or “Agreement” means this Stipulation and Settlement Agreement, including any attached exhibits.

### **ARTICLE III – COMMON FUND**

In consideration of a full, complete, and final settlement of this Action, dismissal of the Action with prejudice, and the releases below, and subject to the Court’s approval, the Parties agree to the following relief:

If no appeal of the Court’s Final Approval Order is timely filed, within 5 days of the Effective Date or within 35 days of the date of entry of the Final Judgment (whichever is later), Plains shall pay the Fisher Class Settlement Amount into the Fisher Class Common Fund, and shall pay the Property Class Settlement Amount into the Property Class Common Fund. Both the Fisher Class Common Fund and the Property Class Common Fund shall be administered by the Settlement Administrator.

If an appeal of the Court’s Final Approval Order is timely filed, the Parties will establish an escrow account into which Plains will pay the Fisher Class Settlement Amount and the Property Class Settlement Amount within 35 days of the entry of the Final Judgment. The costs and fees of the escrow shall be paid from the amounts in the escrow account. The escrowed funds shall be invested in short-term U.S. Treasuries. If the appeal results in termination of this Settlement Agreement under Article VI.5, the escrowed funds, including any interest earned, shall be returned to Plains. If the appeal does not result in termination of the Settlement Agreement under Article VI.5, the escrowed funds, including any interest earned, shall be paid into the Fisher Class Common Fund and the Property Class Common Fund within 10 days of the Effective Date.



The Settlement Administrator shall disburse funds from the Fisher Class Common Fund and the Property Class Common Fund pursuant to the terms of this Settlement Agreement and in accordance with the orders of the Court.

In no event shall Defendants' monetary liability under this Settlement Agreement exceed the sum of the Fisher Class Settlement Amount and the Property Class Settlement Amount, i.e., U.S. \$230 million (\$230,000,000.00), as described in this Article.

#### **ARTICLE IV – DISTRIBUTION OF THE COMMON FUND**

##### **1. Plans of Distribution**

Class Counsel shall propose Plans of Distribution setting forth proposed methods of distributing the Common Fund to members of the Fisher Class and Property Class. Class Counsel will file a motion for Court approval of the Plans of Distribution at the same time that they seek Final Settlement Approval. The Plans of Distribution shall be made known to Class Members in advance of when Class Members must decide whether to object to the Settlement.

##### **2. Effect on Settlement**

Class Counsel will ask the Court to approve the Settlement Agreement pursuant to a motion that will be filed separately from any motion for approval of the Plans of Distribution. The Parties agree that the rulings of the Court regarding the Plans of Distribution, and any claim or dispute relating thereto, will be considered by the Court separately from the approval of the Settlement Agreement and any determinations in that regard will be embodied in a separate order. Any appeals from an order approving the Plans of Distribution, and any modifications or reversals of such order, shall not modify, reverse, terminate, or cancel the Settlement Agreement, increase or affect Defendants' monetary liability, affect the releases, or affect the finality of the order approving the Settlement Agreement.

3. Distribution of the Common Fund

a. Fees and Costs

The Fisher Class Common Fund and the Property Class Common Fund will be used to pay all fees and costs that have been or may be incurred by Class Counsel or the Class Representatives in connection with the Action, and all fees and costs that have been or may be incurred by Class Counsel in connection with the implementation of the Settlement, including but not limited to: any attorneys' fees as approved by the Court, any litigation expenses as approved by the Court, any service awards to be paid to Class Representatives as approved by the Court, all fees and expenses of the Settlement Administrator, any costs of Notice, any costs of generating and mailing any checks to be issued as part of this Settlement, any other administrative fees or costs, any taxes, any fees and costs of escrow that may be established pursuant to Article III, and any other fees and costs approved by the Court.

The fees and costs as awarded by the Court ("Fees and Costs Award"), shall be paid only from the Fisher Class Common Fund and the Property Class Common Fund. The Fees and Costs Award shall not be paid from any escrowed funds described in Article III unless and until the escrowed funds are paid into the Fisher Class Common Fund and the Property Class Common Fund as described in that Article. Subject to the approval of the Court, the Fees and Costs Award shall be paid to Class Counsel within 10 days after the later of the date (A) the funds are paid into the Common Fund and (b) an order awarding Plaintiffs' counsel Fees and Costs Award is entered, notwithstanding the existence of any timely filed objections to or appeals regarding the Plans of Distribution or the Fees and Costs Award.

In the event the order making the Fees and Costs Award is reversed or modified, or the Settlement Agreement is canceled or terminated for any other reason, and such reversal,

modification, cancellation or termination becomes Final and not subject to review, and in the event that the Fees and Costs Award has been paid to any extent, then Class Counsel who received any portion of the Fees and Costs Award shall be obligated, within ten (10) calendar days from receiving notice from Plains, to refund to the Common Funds such Fees and Costs previously paid to them from the Common Funds, plus interest thereon at the same rate as earned on the Common Funds in an amount consistent with such reversal or modification. Each Class Counsel law firm receiving Fees and Costs, as a condition of receiving the Fees and Costs Award, agrees to the jurisdiction of the Court for the purpose of enforcing this provision, and each are severally liable and responsible for any required payment.

b. Distributions to Class Members

Net of Fees and Costs, the Common Fund shall be distributed to individual Class Members according to the Plans of Distribution. The amount each Class Member receives from the Common Fund shall represent the full amount of each Class Member's claimed losses and full compensation for those claimed losses.

**ARTICLE V – NOTICE AND SETTLEMENT ADMINISTRATION**

1. Settlement Administrator

As part of the Preliminary Approval Order, Class Counsel shall seek appointment of a Settlement Administrator. The Settlement Administrator shall administer the Settlement according to the terms of this Settlement Agreement and orders of the Court. Defendants shall not have any responsibility, authority, or liability whatsoever for the selection of the Settlement Administrator, the administration of the Settlement, the Plans of Distribution, receiving and responding to any inquiries from Class Members, or disbursement of the Common Funds, and except for their payment of the Common Funds as set forth in Article III Defendants shall have

no liability whatsoever to any person or entity, including, but not limited to, Class Representatives, any other Class Members, or Class Counsel in connection with the foregoing.

2. Notice to Class Members

In accordance with the terms of the Preliminary Approval Order to be entered by the Court, Class Counsel shall cause the Settlement Administrator to issue notice to potential Class Members by Mail Notice and Publication Notice. The costs of Notice, including Mail Notice, Publication Notice, and CAFA Notice, including costs to enable the Settlement Administrator to begin its work, shall be paid initially by Plains. The Costs of Mail Notice, Publication Notice and CAFA Notice shall be deducted from the amounts that Plains pays into the Common Funds or into escrow such that the Notice costs are effectively paid from the Fisher Class Settlement Amount and the Property Class Settlement Amount. Plains will deduct the costs of Mail Notice and Publication Notice from the Fisher Class Settlement Amount and the Property Class Settlement amount, respectively, according to the costs of Notice attributable to each Class. Plains shall deduct the costs of CAFA Notice and any other costs of notice attributable to both Classes in proportion to the allocation of the settlement amount to each Class (i.e. 80% of the costs will be deducted from the Fisher Class Settlement Amount and 20% of the costs will be deducted from the Property Class Settlement Amount). These monies are not subject to reimbursement to Plains if this Settlement Agreement is terminated pursuant to Article VI.5.

The Parties agree, and the Preliminary Approval Order shall state, that compliance with the procedures described in this Article is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Classes of the terms of the Settlement Agreement and the Final Approval Hearing, and shall satisfy the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

3. CAFA Notice

Within 10 days of the filing of this Settlement Agreement and the motion for preliminary approval of the Settlement, Plains shall provide CAFA Notice as required under 28 U.S.C. § 1715. CAFA Notice shall be provided to the Attorney General of the United States, the California Public Utilities Commission, the California Department of Forestry and Fire Protection Office of the State Fire Marshal, the California Department of Fish and Wildlife Office of Spill Prevention and Response, and the Attorneys General of each state in which Class Members reside. CAFA Notice shall be mailed, can be in an electronic or disc format, and shall include to the extent then available and feasible: (1) the complaint, and all amended complaints, in the Action; (2) the motion for preliminary approval of the Settlement, which shall include the proposed Final Approval Hearing date and shall confirm that there are no additional agreements among the Parties not reflected in the Settlement; (3) the proposed Mail Notice and Publication Notice and a statement that Class Members have no right to request exclusion from the Settlement; (4) this Settlement Agreement; (5) the size of the Common Funds, (6) a reasonable estimate of the total number of Class Members and the number of Class Members residing in each State, and (7) a summary of the factors to be included in the forthcoming Plans of Distribution and the URL where the Plans will be posted. Within seven (7) days of the full execution of this Agreement, Class Counsel, acting on behalf of the Class Representatives, shall provide Plains any available information regarding items (6) and (7). Plains shall include such information in the CAFA Notice, attributing it to Class Counsel and without independent investigation or warranty. Upon completion of CAFA notice, Plains shall file a declaration with the Court so certifying.

The Parties agree that this CAFA Notice shall be sufficient to satisfy the terms of 28 U.S.C. § 1715.

**ARTICLE VI – COURT APPROVAL OF SETTLEMENT**

1. Preliminary Approval

As soon as practicable after the full execution of this Settlement Agreement, Class Counsel, acting on behalf of the Class Representatives, shall apply for entry of the Preliminary Approval Order in the form of Exhibit A hereto. Plains will not oppose but does not endorse or approve the content of the motion for Preliminary Approval or the content of the Preliminary Approval Order. The Preliminary Approval Order shall include provisions: (a) preliminarily approving this Settlement and finding this Settlement sufficiently fair, reasonable and adequate to allow Mail Notice and Publication Notice to be disseminated; (b) approving the form, content, and manner of the Mail Notice and Publication Notice; (c) setting a schedule for proceedings with respect to final approval of this Settlement; (d) immediately staying the Action, other than such proceedings as are related to this Settlement; and (e) issuing an injunction against any actions by Class Members to pursue claims released under this Settlement Agreement, pending final approval of the Settlement Agreement.

Promptly after the Court enters the Preliminary Approval Order, the Parties will jointly notify the California Court of Appeal in *Victim Restitution Claimants v. Superior Court of the County of Santa Barbara*, Case No. B317229 (Cal. Court of Appeal) and *People v. Plains All American Pipeline, L.P.*, Case No. B315256 (Cal. Court of Appeal), of the preliminary approval of this Settlement. The joint notice shall state that, upon the Effective Date of the Settlement, the members of the Fisher and Property Classes (referred to as the “Fisher Claimants” and “Real Property Claimants” before the Court of Appeal) will release and withdraw the criminal restitution claims presently before the Court of Appeal, but that the Settlement has no bearing on

the claims of the Oil Industry Claimants. The Parties further agree that each will request that the Court of Appeal modify the briefing schedule to defer briefing of the appeal and resolution of the claims brought on behalf of the Fisher Claimants and Real Property Claimants, once the Preliminary Approval Order is entered, unless the Settlement is terminated pursuant to Article VI.5.

2. Objections to Settlement

Any Class Member wishing to object to or to oppose the approval of (a) this Settlement Agreement, (b) the Plans of Distribution, (c) any application for attorneys' fees and expenses, and/or (d) any application for service awards, shall file a written objection with the Court and serve it on the Parties no more than 21 days after the Motion for Final Approval is filed by Class Counsel.

Any written objection must include (1) the objecting Class Member's name, address, and telephone number; (2) proof of class membership, including, for the Fisher Class members, documents such as landing records or receipts; (3) a statement that the objector is objecting to the proposed Settlement, the Plan of Distribution, or the application for attorneys' fees and costs in this Action; (4) a statement of the factual and legal reasons for the objection and whether it applies only to the objector, to a subset of the Class, or the entire Class; (5) identify all class actions to which the objector has previously objected; (6) the name and contact information of any and all lawyers representing, advising, or in any way assisting the objector in connection with such objection; (7) copies of all documents that the objector wishes to submit in support of their position; and (8) the objector's signature. Any Class Member that fails to file a timely written objection that meets the requirements of this Article VI.2 shall have no right to file an appeal relating to the approval of this Settlement.

3. Motion for Final Approval and Response to Objections

The Class Representatives, acting through Class Counsel, will file with the Court their motion for final settlement approval on a date that is no later than 45 days before the date of the Final Approval Hearing, and no sooner than 5 days after Mail Notice and Publication Notice are completed. The Class Representatives, acting through Class Counsel, will file with the Court a supplemental brief in support of final settlement approval that responds to any objections no later than 14 days before the date of the Final Approval Hearing. Plains will not oppose but does not endorse or approve the content of the motion for final settlement approval.

4. Final Approval Hearing

The Parties shall request that the Court, on the date set forth in the Preliminary Approval Order or on such other date that the Court may set, conduct a Final Approval Hearing to, *inter alia*: (a) determine whether to grant final approval to this Settlement Agreement; (b) consider any timely objections to this Settlement and the responses to such objections; (c) rule on any application for attorneys' fees and costs; (d) rule on any application for service awards; and (e) determine whether or not to adopt the Plans of Distribution. At the Final Approval Hearing, the Class Representatives, acting through Class Counsel, shall ask the Court to give final approval to this Settlement Agreement. If the Court grants final approval to this Settlement Agreement, the Class Representatives, acting through Class Counsel, shall ask the Court to enter a Final Approval Order, substantially in the form of Exhibit B attached hereto, which, *inter alia*, approves this Settlement Agreement, authorizes entry of a final judgment, and dismisses the Action with prejudice. Plains does not endorse or approve the content of the proposed Final Approval Order. The Class Representatives, acting through Class Counsel, also shall ask the



Court to enter a Final Judgment separately from the Final Approval Order, substantially in the form of Exhibit C attached hereto.

5. Disapproval, Cancellation, Termination, or Nullification of Settlement

Each party shall have the right to terminate this Settlement Agreement if either (i) the Court denies preliminary approval or final approval of this Settlement Agreement; or (ii) the Final Approval Order does not become Final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving Settlement on the terms set forth herein. If a Party elects to terminate this Agreement under this paragraph, that Party must provide written notice to the other Parties' counsel within 30 days of the occurrence of the condition permitting termination. However, a Party may elect to terminate this Settlement Agreement only after it uses its best efforts in good faith to resolve the issue(s) that are the subject of the reason for disapproval of the Settlement.

If this Settlement Agreement is terminated pursuant to its terms, then: (i) this Settlement Agreement shall be rendered null and void; (ii) this Settlement Agreement and all negotiations and proceedings relating hereto shall be of no force or effect, and without prejudice to the rights of the Parties; (iii) all Parties shall be deemed to have reverted to their respective status in the Action as of the date and time immediately preceding the execution of this Settlement Agreement; and (iv) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed, and specifically reserve their rights, in the event the Settlement Agreement is terminated, to make all arguments regarding class certification that were available at the time immediately preceding the execution of this Settlement Agreement. Upon termination of this Settlement Agreement, the Parties shall not seek to recover from one

another any costs incurred in connection with this Settlement including, but not limited to, any amounts paid out for Notice and amounts paid or due to the Settlement Administrator for its settlement administration services.

## **ARTICLE VII – RELEASES UPON EFFECTIVE DATE**

### **1. Binding and Exclusive Nature of Settlement Agreement**

On the Effective Date, the Parties and each and every Class Member shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, or other claim of any kind or nature whatsoever may be pursued by Class Representatives or Class Members against any Released Parties for any property damage or any economic losses of any kind or nature whatsoever arising out of or relating to the Refugio Incident.

### **2. Releases**

On the Effective Date, Class Representatives and Class Members shall be deemed to have, and by operation of this Agreement shall have, fully, finally and forever released, relinquished and discharged the Released Parties from any and all claims of any kind or nature whatsoever for any property damage or any economic losses of any kind or nature whatsoever arising out of or relating to the Refugio Incident.

### **3. Waiver of Unknown Claims**

On the Effective Date, Class Representatives and Class Members shall be deemed to have, and by operation of this Agreement shall have, with respect to the subject matter of the Action, expressly waived the benefits of any statutory provisions or common law rule that provides, in substance or effect, that a general release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected its settlement with any other party. In particular, but

without limitation, Class Representatives and Class Members waive the provisions of California Civil Code § 1542 (or any like or similar statute or common law doctrine), and do so understanding the significance of that waiver. Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

4. Agreement Not to Pursue Criminal Restitution

Upon the Effective Date, the Classes and each and every Class Member knowingly and voluntarily waive any rights they may have to any Restitution Award under the California Constitution, statutes, or otherwise; agree not to pursue criminal restitution in *People v. Plains All American Pipeline, L.P.*, No. 1495091 (Cal. Superior Ct.); and shall withdraw all restitution claims for themselves and for the Fisher Class and Property Class, including the petition for writ of mandate pending in *Victim Restitution Claimants v. Superior Court of the County of Santa Barbara*, Case No. B317229 (Cal. Court of Appeal) insofar as it addresses the restitution claims of the Fisher Class and Property Class. The Classes and each and every Class Member agree that they will not accept any payment of any Restitution Award in *People v. Plains All American Pipeline, L.P.*, No. 1495091 (Cal. Superior Ct.); they will not seek to execute, enforce, or collect upon any judgment or any portion of any judgment for any such Restitution Award; and, in the event any Class or Class Member is paid any Restitution Award by Plains, they will make a simultaneous payment to Plains in the equivalent amount of Plains' payment. The Classes and each and every Class Member acknowledge that Plains' payment as specified in Article III is deemed to be full compensation for their claims, including any claim that has been made or

could be made for restitution in *People v. Plains All American Pipeline, L.P.*, No. 1495091 (Cal. Superior Ct.).

5. Assumption of Risk

In entering into this Settlement Agreement, each of the Parties assumes the risk of any mistake of fact or law. If either Party should later discover that any fact which the Party relied upon in entering into this Agreement is not true, or that the Party's understanding of the facts or law was incorrect, the Party shall not be entitled to modify, reform, or set aside this Settlement Agreement, in whole or in part, by reason thereof.

**ARTICLE VIII – LIMITATIONS ON USE OF SETTLEMENT AGREEMENT**

1. No Admission

This Settlement reflects a compromise of disputed claims and defenses, and neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiations or proceedings constitutes an admission with respect to the merits of the claims and defenses alleged in this Action, the validity (or lack thereof) of any claims that could have been asserted by any of the Class Members in the Action, or the liability of Defendants in the Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action.

2. Limitations on Use

This Agreement shall not be used, offered, or received into evidence in the Action, or in any other action or proceeding, for any purpose other than to enforce, to construe, or to finalize the terms of the Settlement Agreement and/or to obtain the preliminary and final approval by the Court of the terms of the Settlement Agreement, provided, however, that this Agreement may be used as Defendants see fit in any action, proceeding, or communications involving their insurance providers, and nothing in or relating to this Agreement shall be construed as limiting in

any respect any rights or claims that any Defendants may have with respect to any insurance or insurance providers.

## **ARTICLE IX – MISCELLANEOUS PROVISIONS**

### 1. Cooperation

The Parties and their counsel agree to support approval of this Settlement by the Court and to take all reasonable and lawful actions necessary to obtain such approval.

### 2. No Assignment

Each party represents, covenants, and warrants that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, cause of action, or rights that they herein release.

### 3. Binding on Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

### 4. Captions

Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

### 5. Effect of Release on Class Members

The Notice will advise all Class Members of the binding nature of the Release and of the remainder of this Agreement, and entry of the Final Approval Order shall have the same force and effect as if each Class Member executed this Agreement.

### 6. Construction

The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties, and that this Agreement

shall not be construed in favor of or against any Party by reason of the extent to which any Party, or their counsel, participated in the drafting of this Agreement.

7. Counterparts

This Agreement and any amendments hereto may be executed in one or more counterparts, and either Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and each of which counterparts taken together shall constitute but one and the same instrument. A facsimile, verified electronic signature (such as DocuSign), or PDF signature shall be deemed an original for all purposes.

8. Governing Law

Construction and interpretation of this Settlement Agreement shall be determined in accordance with the laws of the State of California, without regard to the choice-of-law principles thereof.

9. Integration Clause

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth in this Agreement. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Agreement may not be changed, altered or modified, except in a writing signed by the Parties; if any such change, alteration or modification of the Agreement is material, it must also be approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

10. Jurisdiction

The Court shall retain jurisdiction, after entry of the Final Approval Order, with respect to enforcement of the terms of this Settlement, and all Parties and Class Members submit to the exclusive jurisdiction of the Court with respect to the enforcement of this Settlement and any dispute with respect thereto.

11. No Collateral Attack

This Agreement shall not be subject to collateral attack by any Class Member at any time on or after the Effective Date. Such prohibited collateral attacks shall include, but shall not be limited to, claims that the payment to a Class Member was improperly calculated or that a Class Member failed to receive timely notice of the Settlement Agreement.

12. Parties' Authority

The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions hereof.

13. Receipt of Advice of Counsel

The Parties acknowledge, agree, and specifically warrant to each other that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Settlement, and fully understand its legal effect.

14. Waiver of Compliance

Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon compliance with any representation, warranty,

covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.



**Signature Pages Omitted**