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

18 STACE CHEVEREZ, individually and on
behalf of others similarly situated,

19 Plaintiffs,

20 v.

21 PLAINS ALL AMERICAN PIPELINE,
L.P., a Delaware limited partnership,
22 PLAINS PIPELINE, L.P., a Texas limited
partnership, and JOHN DOES 1 through
23 10,

24 Defendants.

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)]

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR AN ORDER
LIMITING DEFENDANTS'
COMMUNICATIONS WITH
PLAINTIFFS AND CLASS MEMBERS
AND FOR OTHER RELIEF
PURSUANT TO FED. R. CIV. P. 23(D)**

Date: February 29, 2016
Time: 1:30 PM
Location: Roybal, Courtroom 880
Judge: Hon. Philip S. Gutierrez

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NOTICE OF MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 29, 2016 at 1:30 p.m., or as soon thereafter as this matter may be heard, in Courtroom 880 of this Court, in the Edward R. Roybal Federal Building and United States Courthouse, located at 255 East Temple Street, Los Angeles, California 90012, Plaintiffs, for themselves and on behalf of a putative nationwide class of persons or entities that claim losses or damages as a result of Defendants’ May 19, 2015 oil spill, will seek an order from the Court pursuant to Federal Rule of Civil Procedure 23(d) and applicable law prohibiting Defendants Plains All American Pipeline, L.P. and Plains Pipeline, L.P., and John Does 1 through 10 (collectively “Plains”) from attempting to obtain improper releases from Plaintiffs and putative class members, and invalidating the releases Plains has already obtained from its misleading communications; directing Plains to produce the releases it has obtained; prohibiting further misleading communications with Plaintiffs and putative class members about the oil spill that is the subject matter of this Action; requiring Plains to issue corrective notices to all putative class members; and for other relief detailed herein relating to Plains’ misleading communications with putative class members.

This Motion for an Order Pursuant to Fed. R. Civ. P. 23(d) shall be based on this Notice, the Memorandum of Points and Authorities set forth below, the Declarations of Robert Nelson, Matthew Preusch, and Mike Gandall, as well as the pleadings, records, and files in this Action, and such other further evidence and argument as may be presented prior to and at the time of the hearing.

///
///

1 This motion is made following conference of the parties' respective counsel
2 of record as provided under L.R. 7-3, which took place between July and December
3 2015.

4 DATED this 16th day of December, 2015.

5 **KELLER ROHRBACK L.L.P.**

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I. INTRODUCTION

1
2 Plaintiffs, for themselves and on behalf of the putative class, seek an order
3 under Federal Rule of Civil Procedure 23(d) and applicable law prohibiting
4 Defendants Plains All American Pipeline, L.P., Plains Pipeline, L.P., and John
5 Does 1 through 10 (collectively “Plains” or “Defendants”) from attempting to
6 obtain improper releases from Plaintiffs and putative class members, and
7 invalidating the releases Plains has already obtained from its misleading
8 communications; directing Plains to produce the releases it has obtained;
9 prohibiting further misleading communications with Plaintiffs and putative class
10 members about the oil spill that is the subject matter of this Action; requiring Plains
11 to issue corrective notices to all putative class members; and for other relief detailed
12 herein relating to Plains’ misleading communications with putative class members.

13 For months, Defendants and their agents have pursued a campaign of phone
14 calls, letters, newspaper advertisements, Internet “pop-ups,” and other media in an
15 effort to persuade victims of the Plains Oil Spill, including named Plaintiffs and
16 putative class members in this litigation, to settle with Defendants in exchange for a
17 full release of their existing and future rights. Using the Oil Pollution Act of 1990,
18 33 U.S.C. §§ 2701-2720 (“OPA”) as a stalking horse, the Defendants have
19 attempted and continue to attempt to improperly mislead the victims of the oil spill
20 and to obtain broad releases from class members as a precondition to obtaining any
21 payments mandated by Congress under OPA.

22 While Defendants’ advertisements say Plains is “committed to doing the
23 right thing,” Plains’ communications do not tell the whole story. As discussed more
24 fully below, the OPA was enacted to provide for immediate, unconditioned
25 payments to victims impacted by an oil spill. In this case, Plaintiffs have learned
26 that Defendants are now using the mandate of OPA to circumvent Rule 23 and at
27 the same time, require class members to waive future claims. Plains’
28

1 communications fail to inform putative class members the OPA does not require an
2 oil spill victim to release all rights in order to obtain the monetary relief Plains
3 offers under that law, or that this putative class action exists as a vehicle to protect
4 such rights, despite Class Counsel's repeated requests that Defendants do so.

5 To protect oil spill victims from Plains' campaign of soliciting overbroad
6 releases and to prevent Defendants from continuing their *ex parte* misleading
7 communications with putative class members, Plaintiffs ask the Court for an order
8 prohibiting Defendants from communicating with the named Plaintiffs directly or
9 indirectly from now on, or from communicating misleadingly with members of the
10 putative class, including by failing to convey to putative class members the full
11 context of the waiver and release that Plains now requires, or the existence of this
12 pending class action. Where Defendants have already provided misleading
13 communications to the putative class, Plaintiffs ask that Defendants be required to
14 issue corrective notices that provide the full context, including the existence and
15 nature of this Action.

16 Further, Plaintiffs ask the Court to invalidate the releases Plains has obtained
17 based on misleading communications, to the extent the releases purport to
18 immunize Plains from paying full compensation to injured class members. Finally,
19 Plaintiffs seek discovery of any releases of claims Plains has obtained (or will
20 obtain) from putative class members, including settlement agreements and records
21 of communications made to such individuals in the context of discussing and
22 negotiating such releases.

23 The Court's intervention is necessary at this point to protect the putative class
24 members' rights while this Action proceeds, preserve the status quo, and correct the
25 record. Plaintiffs have conducted numerous meet and confers and efforts to reach
26 resolution of the issue, but have been unable to reach an agreement with
27 Defendants. Accordingly, this motion seeks immediate relief as outlined above.

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II. STATEMENT OF FACTS

A. The Line 901 Oil Spill Class Action

After the May 19, 2015 oil spill from Line 901, an oil pipeline owned and operated by Defendants in Santa Barbara County, a number of class action complaints were filed in this Court. Those now consolidated Actions allege that Line 901 ruptured, discharging more than 140,000 gallons of crude oil. Much of that oil flowed into the Pacific Ocean at Refugio State Beach, coating the shoreline and floating out to sea. As a result, oil stuck to rocks, sand, wild animals, and marine life; created an oil slick that stretched for miles; contaminated several State Marine Conservation Areas; invaded coastal private properties; forced the closure of beaches, fishing grounds, and a variety of shellfish and fishing operations; and left many in the region's oil services industry without work.

This Action alleges that Defendants failed to prevent the May 19 oil spill by inadequately designing and maintaining Line 901 to make it less susceptible to corrosion and rupture, and that Plains failed to promptly respond to the spill. As the result of Defendants' inadequate maintenance, Line 901 was and is severely corroded. Defendants were aware of this extensive corrosion, having repaired three parts of Line 901 adjacent to the rupture before the oil spill. Indeed, Defendants have a lengthy history of pipeline safety and maintenance lapses and have been cited for more than 175 such violations since 2006. In fact, since the May 19 Refugio disaster, Plains' pipelines have ruptured again, as recently as October 28, 2015, releasing more than 1,400 gallons of oil and water in Orange County, California.¹

Defendants acknowledge their responsibility for the May 19 oil spill. On June 26, 2015, Patrick Hodgins, Defendant Plains All American Pipeline's Senior

¹ Louis Casiano Jr. & Alyssa Duranty, ORANGE COUNTY REGISTER, *Cypress leak spilled about 1,400 gallons of oil, water mixture* (Oct. 29, 2012), available at <http://www.ocregister.com/articles/oil-689600-public-avenue.html>.

1 Director of Safety and Security, testified before the California State Senate Select
2 Committee and the California Assembly Committee on Natural Resources on the
3 Refugio Oil Spill on behalf of Defendants that, “we fully recognize that we are the
4 responsible party.”²

5 Yet their actions to date make clear that Plains intends little more than lip-
6 service and Band-Aids when it comes to restoring the environmental health of
7 Santa Barbara County and the economic injuries of residents, workers, and small
8 businesses there and elsewhere who are victims of the spill. This Action therefore
9 seeks relief on behalf of a proposed class of persons or entities that claim losses or
10 damages now or in the future as a result of Plains’ May 19 oil spill. The Action
11 requests monetary and injunctive relief, including injunctive relief to protect the
12 class from suffering further economic losses, to protect the public health and
13 welfare, and to remediate the environmental harm caused by the spill.

14 **B. Defendants’ Communication With a Named Plaintiff is Improper And
15 Reveals Plains’ Misleading Campaign.**

16 Mike Gandall is one of the named Plaintiffs in Plaintiffs’ Consolidated
17 Amended Class Action Complaint dated September 21, 2015. Plaintiff Gandall
18 fishes for a variety of species, including rock crab and California spiny lobster,
19 almost exclusively in the areas closed as a result of the May 19 oil spill for which
20 Defendants are responsible. *See* Declaration of Mike Gandall in Support of
21 Plaintiffs’ Rule 23 Motion (“Gandall Decl.”) filed herewith at ¶ 2.

22 On or about September 27, 2015, approximately one week after Plaintiffs’
23 filed their Consolidated Amended Class Action Complaint, Plaintiff Gandall
24 received an unsolicited call on his cell phone from an individual who identified
25 himself as an agent of Plains All American Pipeline, L.P. *Id.* at ¶¶ 3-4. This

26 _____
27 ² Prepared Oral Testimony of Patrick Hodgins (June 26, 2015), *available at*
28 <http://www.plainsline901response.com/go/doc/7266/2552586/Prepared-Oral-Testimony-of-Patrick-Hodgins-June-26-2015>.

1 individual stated that he was calling because Plaintiff Gandall had not filed a claim
2 with Defendants. *Id.* at ¶ 4. Moreover, Plaintiff Gandall has received multiple
3 unsolicited letters from or on behalf of Defendants instructing him to submit a
4 claim to Defendants and requesting information regarding his damages. *Id.* at ¶¶ 6-
5 8, Exs. 1, 2. One of these letters even misleadingly indicates that a claim *had*
6 *already been filed* on behalf of Mr. Gandall, although he has never filed such a
7 claim. *Id.* at ¶ 6, Ex. 2 (“As of the date of this correspondence we have not received
8 any documentation to support the claim you submitted.”). In all of these *ex parte*
9 communications, Plains made no mention of the proceedings in this Court,
10 provided no information regarding the rights of spill victims to participate in the
11 class action proceeding, and gave no indication that the person should seek advice
12 from any attorney(s). Gandall Decl. ¶ 6.

13 Plains’ inappropriate contact with Plaintiff Gandall appears to be part of a
14 larger attempt to mislead class members regarding the nature of the OPA process
15 and the existence of the class action or other rights. *See* Declaration of Matthew J.
16 Preusch in Support of Plaintiffs’ Rule 23 Motion (“Preusch Decl.”) filed herewith
17 at Exs. 1-4. The Defendants’ ‘open’ communications with the community are no
18 better. For example, on Sunday, September 27, 2015, Defendants placed a full-page
19 advertisement in the *Santa Barbara News-Press* that purports to advertise their
20 claims process, urging potential class members to “CALL THE CLAIMS LINE” or
21 “VISIT PLAINS RESPONSE SITE.” Preusch Decl., Ex. 1. Likewise, on Thursday,
22 October 29, 2015, Defendants placed a half page advertisement in the *Santa*
23 *Barbara Independent* that advertised their OPA claims process in the same manner.
24 Preusch Decl., Ex. 2. Those advertisements made no mention of this litigation, or of
25 the individual’s right to obtain compensation through other means, or need to seek
26 advice of counsel before making a decision on how to proceed. *Id.* at Exs. 1-2. Nor
27 do they adequately describe the manner in which Plains will accept, process, and
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1 pay claims. Plains continues to place such misleading advertisements, both in the
2 printed press and online. *Id.* at Exs. 2-4, 7. Defendants also advertise their claims
3 process through a website set up for this purpose,
4 www.plainsline901response.com.³

5 Finally, and most troublingly, Defendants are clearly attempting to induce
6 putative class members to “resolve” all of their current and future claims against
7 Defendants by way of a “release” that seeks to prohibit those class members from
8 seeking any remedy for as-yet-unknown future damages. Preusch Decl., Ex. 6.
9 Although Plains claims that the settlements they have offered and continue to offer
10 are consistent with OPA, the scope of the purported release would extinguish all
11 rights, something that is contrary to the plain meaning of OPA; Plains cannot
12 require a class member to release all claims for past and future damages as a
13 condition of receiving any payments mandated by OPA, as explained in greater
14 detail below. In short, despite the class action proceedings and the limited scope of
15 the OPA process in an oil spill, the Defendants seek to extinguish the claims of the
16 class members and circumvent this Court’s jurisdiction.

17 **C. The Meet and Confer Process**

18 Plaintiffs had hoped to reach an agreement with Plains’ counsel to govern
19 communications with putative class members. *See generally* Declaration of Robert
20 J. Nelson in Support of Plaintiffs’ Rule 23 Motion (“Nelson Decl.”) filed herewith.
21 Beginning in July 2015, Plaintiffs’ counsel contacted Plains’ counsel to express
22 Class Counsel’s concern that Plains or its agents were communicating in a
23 potentially misleading way with members of the putative class and seeking releases.
24 *Id.* at 4. Over several months, counsel for the parties exchanged proposed
25 stipulations to govern those communications. *Id.* at 5-6. Unfortunately, Plains’

26 ³ In an effort to counter some of Plains misleading communications, Plaintiffs’
27 counsel has begun placing advertisements in some local publications. *See* Preusch
28 Decl., Ex. 10.

1 misleading communications continued throughout the discussions, and the parties
2 have not been able to reach an agreement, prompting this motion.

3 **III. SUMMARY OF RELIEF SOUGHT**

4 To ensure that putative class members receive complete and accurate
5 information about the full nature of their injuries and damages, as well as the full
6 scope of requested relief, Plaintiffs seek an order pursuant to Fed. R. Civ. P. 23(d):

7 (1) nullifying releases Plains has obtained that prevent class members from
8 seeking full compensation from Plains;

9 (2) requiring Plains to provide to Plaintiffs a list of all class members who
10 have signed a release and copies of any documents sent to or from the class
11 members by Plains or its agents, including settlement agreements where
12 applicable and records of communications made to such individuals;

13 (3) directing Plains to send corrective communications to putative class
14 members with the above information;

15 (4) prohibiting any misleading communications with members of the
16 proposed class by requiring Plains to inform putative class members in any
17 written communication about the pendency of this litigation, the nature of the
18 litigation and the claims sought, and their right to contact class counsel or an
19 attorney of their choosing; and

20 (5) prohibiting Defendants from any communications with any of the named
21 Plaintiffs.

22 **IV. ARGUMENT**

23 This Court has both the authority and the duty to impose limited restrictions
24 on Defendants' communications with putative class members under Rule 23(d) and
25 to invalidate releases Plains has obtained based on misleading communications.
26 Those steps are necessary here because Plains has made and continues to make
27 misleading communications to members of the putative class, communications that
28

1 fail to inform them of this Action and the nature and strength of claims alleged, and
2 do not adequately or accurately inform putative class members about their rights or
3 their options for protecting those rights. Defendants' apparent goal is to use that
4 information vacuum to induce class members to compromise their claims or
5 otherwise opt-out of the pending Action, without Court supervision or oversight.
6 For those reasons, this Court should protect putative class members and the class
7 action process by ordering the limited, proportionate relief Plaintiffs request.

8 **A. This Court Has Broad Authority to Oversee this Putative Class Action
9 by Restricting Communications with Class Members.**

10 Rule 23(d) provides that “[i]n conducting an action under this rule, the court
11 may issue orders that . . . impose conditions on the representative parties.” Fed. R.
12 Civ. P. 23(d). Among the stated purposes of this Rule is “to protect class members
13 and fairly conduct the action.” Fed. R. Civ. P. 23(d)(1)(B). Under this Rule, “a
14 district court has both the duty and the broad authority to exercise control over a
15 class action and to enter appropriate orders governing the conduct of counsel and
16 parties.” *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981).

17 The “long-established law” that justifies court intervention where defendants
18 provide false, misleading, or incomplete communications protects the fairness of
19 the litigation process. *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the
20 Gulf of Mexico, on Apr. 20, 2010*, No. 10-md-02179, 2011 WL 323866, at *6-7
21 (E.D. La. Feb. 2, 2011) (“*Deepwater Horizon*”) (citing *In re Sch. Asbestos Litig.*,
22 842 F.2d 671, 680 (3d Cir. 1988); see also NEWBERG ON CLASS ACTIONS § 9:7 (5th
23 ed.) (“NEWBERG”) (“[C]ourts will restrict defendant communications with putative
24 class members in two sets of circumstances: after a finding of either misleading,
25 deceptive, or coercive communications or a finding of communications that
26 undermine the class action by convincing potential class members to avoid the
27 representative suit.”). Courts exercise their authority in such circumstances because
28 “[m]isleading communications to class members concerning the litigation pose a

1 serious threat to the fairness of the litigation process, the adequacy of representation
2 and the administration of justice generally.” *In re Sch. Asbestos Litig.*, 842 F.2d at
3 680 (holding that, under *Gulf Oil*, a district court has broad powers to regulate class
4 member communications, particularly those that seek to influence a class member’s
5 choice of remedy).

6 In California, District Courts restrict even pre-certification contact with class
7 members or putative class members where a defendant’s communications are
8 misleading or improper. *Camp v. Alexander*, 300 F.R.D. 617, 621 (N.D. Cal. 2014);
9 *see also Quezada v. Schneider Logistics Transloading & Dist.*, No. CV 12-2188
10 CAS DTBX, 2013 WL 1296761, at *4 (C.D. Cal. Mar. 25, 2013) (“[A] limitation
11 on pre-certification communications is appropriate when misleading, coercive, or
12 improper communications have taken place.”); *Castaneda v. Burger King Corp.*,
13 No. C 08-4262 WHA (JL), 2009 WL 2382688, at *6 (N.D. Cal. July 31, 2009)
14 (citing *Parks v. Eastwood Ins. Servs., Inc.*, 235 F. Supp. 2d 1082, 1084 (C.D. Cal.
15 2002)); *Mevorah v. Wells Fargo Home Mortg., Inc.*, No. C 05-1175 MHP, 2005
16 WL 4813532, at *3 (N.D. Cal. Nov. 17, 2005) (same). For example, in *Pollar v.*
17 *Judson Steel Corp.*, a plaintiff requested an order restricting the defendant’s
18 publication of a notice regarding the subject matter of the suit. No. C 82-6833
19 MHP, 1984 WL 161273, at *1 (N.D. Cal. Feb. 3, 1984). The court granted the
20 application because the notice, among other things, did “not disclose the pendency
21 or scope of this class action lawsuit nor [did] it provide the identity of class
22 counsel[.]” *Id.*

23 In addition, where a party has already provided misleading information to
24 putative class members, a court “can order a corrective action[.]” *Gonzalez v.*
25 *Preferred Freezer Servs. LBF, LLC*, No. CV 12-03467-ODW FMOX, 2012 WL
26 4466605, at *1 (C.D. Cal. Sept. 27, 2012). The court’s ruling in *Cnty. of Santa*
27 *Clara v. Astra USA, Inc.*, No. C 05-03740WHA, 2010 WL 2724512 (N.D. Cal. July
28

1 8, 2010), provides guidance on that issue. There, the defendant sent letters to the
2 putative class members that included a release form. The court found corrective
3 notice was necessary because the letters did not include “a summary of the
4 plaintiffs’ complaint, ... an explanation of the claims of the plaintiffs, the plaintiffs’
5 counsel’s contact information, or the current status of the case.” *Id.* at *4.

6 An order that limits or conditions communications with class members
7 “should be based on a clear record and specific findings that reflect a weighing of
8 the need for a limitation and the potential interference with the rights of the
9 parties.” *Gulf Oil Co.*, 452 U.S. at 101.

10 **B. OPA May Not Be Used by Defendants to Require Class Members to
11 Release All Potential Claims.**

11 Plaintiffs do not dispute that, under OPA, a defendant that is deemed a
12 responsible party for an oil spill may communicate with putative class members.
13 But what Congress envisioned in OPA and what Plains is doing are not the same.
14 OPA was enacted to supplement existing law by expanding the remedies available
15 to oil spill victims, not as a shield for Plains to limit its liability. This Court should
16 not allow Plains to use OPA as “cover” to disseminate misleading information and
17 as a platform to extinguish class members’ rights to full compensation.

18 Congress enacted OPA following the Exxon Valdez oil spill in Alaska’s
19 Prince William Sound. One purpose of the law was to provide relief under the
20 federal statutory scheme in existence at the time to any claimant who suffered
21 economic loss “resulting from” or “due to” an oil spill, without limits as to whether
22 the claimant suffered physical damage. *See generally In re Oil Spill by the Oil Rig*
23 *Deepwater Horizon in the Gulf of Mexico, on Apr. 20, 2010*, 808 F. Supp. 2d 943,
24 958-59 (E.D. La. 2011). Another critical purpose of OPA was to give short-term
25 relief to an area damaged by an oil spill by providing a quick infusion of cash to the
26 affected community. OPA therefore has procedures for a responsible party to pay
27 claimants “interim, short-term damages.” 33 U.S.C. § 2705.
28

1 These “interim, short-term” payments are not intended to foreclose an injured
2 person’s right to full compensation for injuries caused by an oil spill. The statute
3 provides that the payment of “short-term damages representing less than the full
4 amount of damages to which the claimant ultimately may be entitled *shall not*
5 *preclude recovery by the claimant for damages not reflected in the paid or settled*
6 *partial claim.*” 33 U.S.C. § 2705(a) (emphasis added). As noted in another section
7 of OPA, when a responsible party makes a payment to a claims for interim
8 damages, “[p]ayment of such a claim *shall not foreclose a claimant’s right to*
9 *recovery of all damages* to which the claimant otherwise is entitled under this Act
10 *or under any other law.*” 33 U.S.C. § 2715(b)(2) (emphases added).

11 To publicize the claims process, OPA also requires that a responsible party
12 “shall advertise . . . the procedures by which claims may be presented,” and it
13 requires that those advertisements “state that a claimant may present a claim for
14 interim, short-term damages representing less than the full amount of damages to
15 which the claimant ultimately may be entitled and *that payment of such a claim*
16 *shall not preclude recovery for damages not reflected in the paid or settled partial*
17 *claim.*” 33 U.S.C. § 2714(b) (emphasis added).

18 In this case, as explained below, Plains has ignored OPA’s requirements in
19 its advertisements, and, more importantly, in the broad release it is now using,
20 despite Plaintiffs’ objections. Because Plains’ claims process violates the text and
21 purpose of OPA, and Plains has refused to correct its conduct, this Court should
22 intervene.

23 **C. The Record Supports an Order Restricting Plains’ Communications**
 with Plaintiffs and Putative Class Members

24 **1. Plains Has Repeatedly Made and Continues To Make Misleading**
 Communications That Jeopardize Putative Class Members’ Rights

25 Plains’ phone calls, letters, advertisements, and other communications are
26 improper and misleading in many respects.
27
28

1 First, Defendants have directly—and repeatedly—communicated with a
2 represented party as to matters at issue in this litigation. Plains’ “intentional and
3 unauthorized communication between a defendant and a named class action
4 plaintiff”—namely, the telephone call on or around September 27, 2015 to Plaintiff
5 Gandall—raises “serious concerns[.]” Ruling on Pls.’ Appl. for a TRO at 4,
6 *Crosson v. Volkswagen Group of Am., Inc.*, No. CV 15-7475-GW (C.D. Cal. Oct. 6,
7 2015), Dkt. No. 33.⁴

8 Second, Plains’ communications appear to be misleading attempts to coax
9 Plaintiff Gandall and putative class members toward one particular “remedy”—the
10 remedy selected by Defendants—without first advising putative class members of
11 the full extent of their rights and potential claims, as well as the range of remedies
12 that might be appropriate to address those harms. For example, Plains’ release form
13 requires a victim to “RELEASE, ACQUIT and FOREVER DISCHARGE Plains of
14 all Claims related to the above-described Injuries[.]” including “past, present, or
15 future, known or unknown[.]” Preusch Decl., Ex. 6. That global release runs
16 contrary to OPA’s purpose of providing short-term cash to injured parties while
17 preserving their rights to full compensation at a later date, and neglects to inform
18 claimants of their rights to seek additional damages. In addition, the letters Plains
19 has sent to Plaintiff Gandall and presumably to putative class members, as well as
20 Plains’ ongoing advertising campaign, are misleading because they wholly omit
21 any reference to the pending class action litigation against Defendants regarding the
22 May 19 oil spill. *See Friedman v. Intervet Inc.*, 730 F. Supp. 2d 758, 762-63 (N.D.
23 Ohio 2010) (“A defendant’s failure to mention even an uncertified class action in
24

25 ⁴ At least one court has concluded that communications with putative class
26 members raises the same concerns as communications with named parties. *See*
27 *Dondore v. NGK Metals Corp.*, 152 F. Supp. 2d 662, 666 (E.D. Pa. 2001) *on*
28 *recons.*, No. CIV. A. 00-1966, 2001 WL 516635 (E.D. Pa. May 16, 2001) (“The
‘truly representative’ nature of a class action suit affords its putative members
certain rights and protections including, we believe, the protections contained in
Rule 4.2 of the Rules of Professional Conduct.”).

1 securing settlements or releases from putative class members may be
2 ‘misleading.’”).

3 The above examples are based on only the sample of Plains’ communications
4 provided in the documents supporting this motion. Plains has not provided
5 Plaintiffs’ counsel with information regarding this issue, but based on the limited
6 information Plaintiffs’ counsel has been able to obtain, it appears Plains is in a race
7 to obtain as many improper releases as possible while it simultaneously seeks to
8 stay this Action. Indeed, Counsel for Plains has represented to this Court that it has
9 already obtained and processed hundreds of claims, and is accelerating its process
10 of seeking releases from putative class members. *See* Joint Rule 26(f) Report, ECF
11 No. 42 at 8, 22-23; Tr. of Hr’g on Status Conference, Nov. 9 2015. This Court’s
12 intervention is urgently needed to protect putative class members’ rights.

13 **2. Plains’ Actions Interfere With and Harm the Class Action Process.**

14 Plains’ communications appear to be designed to induce putative class
15 members to settle with Defendants and essentially “opt-out” of the pending Action,
16 without first providing them with complete and accurate information, and without
17 court oversight. A complete and accurate release would inform putative class
18 members of their right to accept payment under OPA without relinquishing all
19 potential claims, that a class action has been filed to protect their rights, and that
20 they have a right to make an individual decision and seek advice of counsel before
21 relinquishing all potential claims. Without that information concerning their rights,
22 Plains’ settlement letters and release forms do not provide the “necessary context to
23 allow potential class members to make informed decisions between individual and
24 collective litigation.” NEWBERG § 9:7. Without the Court’s intervention, Plains will
25 succeed in eviscerating the rights of putative class members and eliminating their
26 remedies under Federal Rule 23.

1 While class settlements are generally encouraged, “public policy demands
2 that potential plaintiffs receive appropriate notice before entering into any release
3 agreement.” *Gonzalez*, 2012WL 4466605, at *1; *see also* MANUAL FOR COMPLEX
4 LITIGATION (Fourth Ed. 2007) § 21.12 at 336 (questioning propriety of defendants
5 seeking releases without providing information about pending class action)
6 NEWBERG § 9:7 (“Courts are wary . . . of communications—frequently in the form
7 of settlement attempts—that fail to convey the necessary context to allow potential
8 class members to make informed decisions between individual and collective
9 litigation[.]”). The class action process is inherently undermined when absent class
10 members are solicited by defendants *ex parte* and encouraged to essentially opt-out
11 of an action. *See Camp*, 300 F.R.D. at 626 (“Obtaining opt-out forms *ex parte* at
12 this stage of the litigation—before a class has been certified by the Court—
13 unquestionably frustrates the purposes of Rule 23.”); *see also, e.g., Cnty. of Santa*
14 *Clara*, 2010 WL 2724512 at *5-6 (invalidating releases obtained through
15 misleading *ex parte* communications with putative class members, before class
16 certification). To protect that process, courts use their authority under Rule 23 to
17 regulate “communications that are likely to interfere with the proper administration
18 of a class action or may impair the rights of members of the class.” 2 MCLAUGHLIN
19 ON CLASS ACTIONS § 11:1 (11th ed.).

20 United States District Judge Carl Barbier was faced with a strikingly similar
21 situation during the *Deepwater Horizon* litigation. In that case, plaintiffs—victims
22 of the 2010 oil spill that followed the explosion of BP’s offshore oil rig—
23 challenged the communications pursuant to OPA made by BP’s claims agent,
24 Kenneth Feinberg. Pl’s Mem. Supp. Mot. Supervise Ex Parte Communications 24,
25 Dec. 21, 2010, ECF No. 912-1. The district court held that, while BP was bound by
26 OPA to administer claims, its communications and proffered release through Mr.
27 Feinberg were false and misleading because, among other things, BP and its agent
28

1 failed to identify the existence of litigation or explain that the claimants were
2 putative class members. *Deepwater Horizon*, 2011 WL 323866, at *6-8.

3 The court recognized that if “potential class members have received
4 inaccurate, confusing or misleading communications, the Court may take action to
5 cure the mis-communication and to prevent similar problems in the future.” *Id.* at
6 *6. The court therefore took action: it ordered that “BP, through its agents[,]”
7 refrain from contacting any claimant “they know or reasonably should know is
8 represented by counsel,” and “[b]egin any communication with a putative class
9 member with the statement that the individual has a right to consult with an
10 attorney of his/her choosing prior to accepting any settlement or signing a release of
11 legal rights[,]” among other prohibitions. *Id.* at *7; *see also* 2 MCLAUGHLIN ON
12 CLASS ACTIONS § 11:1 (11th ed.) (recommending that defendants include in any
13 submission to putative class members a letter describing the lawsuit and the
14 complaint); *Turner v. Murphy Oil USA, Inc.*, No. 05-4206, (E.D. La. Nov. 14,
15 2005), Dkt. No. 39, Order and Reasons, at 8 (ordering that defendants “begin any
16 communication with a putative class member with the statement that the individual
17 has a right to consult with an attorney prior to any settlement or waiver of legal
18 rights”).

19 Similarly, as Judge Wright explained in the *Gonzalez* case, a state
20 employment law collective action, pre-certification communications with putative
21 class members are generally permitted, but there is the risk that “a defendant could
22 mislead putative class members through ‘omissions and failure to provide enough
23 information, which can include the failure to append the plaintiffs’ complaint to a
24 settlement offer.” 2012 WL 4466605, at *1 (quoting *Cnty. of Santa Clara*, 2010
25 WL 2724512, at *3). There, the court found that the release form defendant
26 provided to the putative class members was misleading because it did not include
27 adequate information about the pending case, it did not attach the complaint, and it
28

1 did not include the contact information for plaintiff's counsel. *Id.* It therefore
2 "misleadingly failed to provide the potential plaintiffs with adequate notice of this
3 case in order to make an informed decision regarding waiver of their rights." *Id.*

4 In this Action, Plains' communications suffer from the same and additional
5 defects as those in *Gonzalez, Santa Clara, and Deepwater Horizon*. Plains'
6 communications include none of the prophylactic language the *Deepwater Horizon*
7 court ordered BP's agent to provide in *Deepwater Horizon* to remedy the very
8 abuses Plains is guilty of here. The releases, letters, claim forms, websites,
9 advertisements, and other communications Plains is providing do not mention this
10 Action, they do not attach the complaint, they do not provide contact information
11 for Plaintiffs' counsel, and they do not begin by communicating to putative class
12 members with a statement that they have a right to consult with an attorney of their
13 own choosing prior to accepting a settlement or signing a release of legal rights.

14 Plains' communications with putative class members also do not contain the
15 simple prophylactic language the court ordered BP's agent in *Deepwater Horizon*
16 to include to prevent false and misleading communications, namely informing
17 individuals that they have the right to talk to an attorney before signing a release.
18 *See Preusch Decl., Ex. 6.* Indeed, given the misleading language Plains uses, it
19 might appear to putative class members that the claims information coming from
20 Plains is related to the pending class action, and they could inadvertently extinguish
21 their rights while they believe they are filing a claim in the context of the class
22 action. *See Deepwater Horizon, 2011 WL 323866, at *12* (noting how nature of
23 claims process there has "led to confusion and misunderstanding by claimants,
24 especially those who are unrepresented by their own counsel").⁵

25
26 _____
27 ⁵ Plains will likely argue that it *must* communicate with class members pursuant to a
28 claims process under OPA. BP made the same argument. As in *Deepwater Horizon*, that does not justify Plains' misleading communications and overreaching releases; indeed, there is no justification for either. Whether or not

1 The release form Plains is using does not even include the minimal
2 cautionary language that BP’s agent utilized in the original release in *Deepwater*
3 *Horizon* and that the court held was insufficient to protect plaintiffs from
4 inaccurate, confusing, or misleading communications. *Deepwater Horizon*, 2011
5 WL 323866, at *6. There, the release informed claimants that “if a claimant has an
6 attorney, he or she should confer with the attorney before submitting a . . . claim or
7 signing a release” and “claimants have the right to be represented by lawyers of
8 their own choosing[.]” *Id.* at *4; *see also Turner*, No. 05-4206, Dkt. No. 39 at 11
9 (ordering in an oil spill class action that defendant’s “Settlement and Release
10 Agreement should contain a statement that the individual signing the agreement
11 should seek independent legal advice prior to any settlement or waiver of his or her
12 legal rights”).

13 Without that basic information or those sensible protections, putative class
14 members cannot make an informed decision regarding waiver of their rights. In the
15 future, Plains’ communications with class members must notify them of the
16 pending Action, provide them a means to learn fully about the nature and strength
17 of the Action’s pending claims, and limit the scope of any release.

18 **D. This Court Should Invalidate Plains’ Improperly Obtained Releases**

19 The releases Plains has obtained from putative class members based on
20 misleading information should be invalidated. Courts resort to that remedy in cases
21 like this, and nothing in OPA supports Plains’ efforts to evade full responsibility for
22 the damages it owes to putative class members.

23 **1. This Court Has the Authority to Invalidate Prior Releases.**

24 Where misleading communications have allowed defendants to improperly
25 obtain settlement releases, courts may order that such releases be invalidated. *See*
26 NEWBERG § 9:7 (noting that one of the remedies available to courts where improper

27 OPA affects the claims asserted in this case—it does not—Plains must be required
28 to communicate in a non-misleading way with putative class members.

1 communications have been made, though “severe,” is “the invalidation of
2 improperly obtained materials or advantages, such as declarations, settlement
3 agreements, or other contract provisions”) (citing *Santa Clara*, 2010 WL 2724512).

4 Using that authority, the court in *Santa Clara* held invalid a settlement
5 release obtained through defendant’s misleading communications. 2010 WL
6 2724512, at *6. The communications at issue were misleading because defendant
7 “omitted material information,” in that the communications “did not contain the
8 complaint . . . , did not describe the claims, did not contain the current status of the
9 case, did not provide contact information for the plaintiffs’ attorneys,” and
10 “offer[ed] a potentially much decreased settlement.” *Id.* Invalidating the releases
11 did not undermine the settlement or allow for “double-dipping” by claimants
12 because the court ordered “[a]ny checks cashed will be deducted from any recovery
13 obtained . . . by the recipients.” *Id.*

14 Similarly, in a recent order, the court in *Slavkov v. Fast Water Heater*
15 *Partners I, LP*, held invalid settlement releases that were improperly obtained by
16 defendants. No. 14-CV-04324-JST, 2015 WL 6674575, at *7 (N.D. Cal. Nov. 2,
17 2015). In *Slavkov*, although the communications at issue were made in the context
18 of an employer-employee relationship, the court found that the communications
19 were misleading because they “confusingly suggest[ed]” that absent class members
20 “could not contact Plaintiffs’ counsel,” and also failed to mention that certain
21 claims could be released without judicial approval, creating “‘potential
22 interference’ with the rights of the putative class that require[d] judicial intervention
23 under Rule 23(d).” *Id.* at *7.

24 Numerous courts have similarly invalidated opt-out declarations that have
25 resulted from misleading communications. *See, e.g., Camp*, 300 F.R.D. at 625
26 (holding invalid opt-out declarations where “no explanation of Plaintiffs’ claims,
27 copy of the complaint, or contact information for Plaintiffs’ counsel was included”
28

1 in the communications at issue); *Guifu Li v. A Perfect Day Franchise, Inc.*, 270
2 F.R.D. 509, 518 (N.D. Cal. 2010) (ordering the invalidation of opt-out forms and
3 requiring the issuance of a corrective notice, where the opt-out forms had been
4 signed in misleading and “inherently coercive” meetings); *Kleiner v. First Nat’l*
5 *Bank of Atl.*, 751 F.2d 1193, 1203 (11th Cir. 1985) (affirming the trial court’s
6 “ample discretion” under Rule 23 to ban defendant from “[u]nsupervised, unilateral
7 communications with the plaintiff class” in an attempt to obtain opt-outs, reasoning
8 that such attempts “sabotage the goal of informed consent by urging exclusion on
9 the basis of a one-sided presentation of the facts, without opportunity for rebuttal,”
10 and vacating as moot the trial court’s order that all exclusion requests received
11 pursuant to such efforts be voidable).

12 It is well within this Court’s authority to invalidate the settlement releases
13 obtained by Plains through its misleading and incomplete communications to
14 putative class members. This remedy is warranted in light of Plains’ misleading
15 attempts to obtain settlement releases from putative class members, while
16 concealing the very existence of this Action, and is necessary to remedy the harm
17 caused by such communications to putative class members who have signed such
18 releases without being informed of their rights.

19 **2. The OPA Claims Process Does Not Mandate Such Broad Releases**

20 Any release that requires spill victims to release all claims against Plains in
21 exchange for immediate payment is inconsistent with OPA and invalid.

22 As a threshold matter, the “OPA” claims process Plains is touting is not even
23 compliant with statutory requirements. For example, the full- and half-page
24 advertisements Plains has been running for months do not disclose that an injured
25 party may make a claim for interim damages and that payment of such a claim
26 “shall not preclude recovery for damages not reflected in the paid or settled partial
27 claim.” 33 U.S.C. § 2714(b) (emphasis added). *Cf.* Preusch Decl., Exs. 1-4, 7. Such
28

1 opaque advertisements and guidance do not adequately inform potential claimants
2 of their actual rights under OPA.⁶ And if a claimant sees those misleading
3 advertisements and contacts Plains, Plains then requires the claimant to sign a
4 release of *all* potential claims, in exchange for compensation of only short-term
5 losses; *i.e.*, “sustained during the six months following” the spill, unlike the claims
6 process that followed the Deepwater Horizon disaster in 2010.⁷

7 Plains’ purported “OPA” process also has some of the same flaws as the
8 claims process that followed the crash of the *Cosco Busan* and subsequent oil spill
9 in San Francisco Bay in 2007. In the litigation that followed that spill, the
10 defendant’s claim form also included a broad release, so United States District
11 Judge Samuel Conti ordered the defendants to inform claimants who had signed the
12 defendant’s so-called Prepayment Advance Form that “by signing a release form,
13 claimants have in no manner waived or prejudiced their right to join any lawsuit or
14 class action against Defendants for the oil spill damages resulting from the crash of
15 the *Cosco Busan*[.]” *Chelsea, LLC v. Regal Stone, Ltd.*, No. 07-5800 SC (N.D. Cal.
16 May 4, 2008), ECF No. 12, Order re: Defs.’ Communication, at 2. The court also
17 ordered defendants to amend their release form “so that it clearly states that

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19
20 ⁶ Plains might also have failed to comply with the requirements of the Lempert-
21 Keene-Seastrand Oil Spill and Response Act, which requires responsible parties to
22 “immediately, widely advertise the manner in which it shall accept and pay
claims.” Cal Gov’t Code § 8670.51.1(a)(1).

23 ⁷ BDO CONSULTING, INDEPENDENT EVALUATION OF THE GULF COAST CLAIMS
24 FACILITY REPORT OF FINDINGS & OBSERVATIONS TO THE U.S. DEPARTMENT OF
25 JUSTICE 29 (June 5, 2012), *available at*
26 [http://www.justice.gov/sites/default/files/opa/legacy/2012/06/06/gccf-rpt-find-
obs.pdf](http://www.justice.gov/sites/default/files/opa/legacy/2012/06/06/gccf-rpt-find-obs.pdf); *see also id.* at 29-30 (“A claimant who received a payment during Phase I
27 was not required to execute a release and covenant not to sue BP or any other
28 party; and loss calculations were not decreased by any amounts received from the
BP-operated facility.”).

1 acceptance of any payment is without prejudice to pursuit of any legal action in a
2 court of law, or join any class action concerning this matter.” *Id.*

3 In sum, the process Plains has been using to obtain releases from putative
4 class members is flawed, and it includes none of the safeguards courts have found
5 appropriate in similar contexts. Plains cannot therefore rely on its misuse of OPA—
6 a statute intended to aid victims of an oil spill—as a shield to protect it from the full
7 liability state law imposes as a result of Plains’ oil spill.

8 The release and communications here are far more troubling than those the
9 court accepted in *Deepwater Horizon*. See *In re Oil Spill by the Oil Rig Deepwater*
10 *Horizon in the Gulf of Mexico*, 808 F. Supp. 2d at 966-67. In *Deepwater Horizon*,
11 the BP releases plaintiffs sought to nullify were more limited and already included
12 court-ordered language advising class members of their rights. See, *supra*, Part
13 IV.C.2. Specifically, the court-corrected “Quick Payment Claim Form” that BP’s
14 agent provided to claimants in that litigation, unlike the release Plains’ agent has
15 used, provided that a claimant “may pursue other means of compensation. If you
16 want to file a lawsuit regarding the Incident . . . do not sign this release.” Preusch
17 Decl., Ex. 9 at 1. That form also advised the claimant to consult with an attorney, if
18 they had one, before signing the release. *Id.* Plains’ release does not include those
19 caveats. In short, BP apparently obtained releases in the context of a court-approved
20 OPA process and based on court-approved communications. Plains’ program falls
21 far short of those standards applied in BP.⁸

22 Plains has been using misleading communications to coax putative class
23 members into signing overly broad releases. Those releases threaten class members’
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⁸ Furthermore, that district court’s one paragraph analysis did not discuss the statutory text before concluding that OPA does “not clearly prohibit” the use of waivers and releases by responsible parties. *Id.*

1 rights and the integrity of the class action process. This Court should invalidate
2 them to the extent they purport to limit class members’ full rights.

3 **E. Defendants Must Disclose the Releases They Have Obtained and Related**
4 **Information.**

5 Where Defendants have obtained releases based on misleading information,
6 it is appropriate for the Court to order Defendants to disclose those releases as well
7 as a list of putative class members Plains has sought releases from.

8 Given Plains’ months-long campaign to solicit releases from putative class
9 members—all done without providing any notice of this Action—Plaintiffs must be
10 able to review the releases Plains has obtained to determine whether and to what
11 extent Defendants have been successful in their apparent attempts to obtain such
12 releases in a misleading manner. That information is necessary so that Plaintiffs
13 may “correct the damage wrought by [Plains’] misleading, unilateral
14 communications.” *See Gonzalez*, 2012WL 4466605, at *2; *see also Pollar*, 1984
15 WL 161273, at *1 (ordering defendants to promptly turn over all claim forms and
16 written communications from class members they have received to class counsel”
17 where the defendants provided a notice that could “seriously prejudice the rights of
18 the absent class members by failing to disclose the existence of the class case and
19 by causing confusion concerning their rights”). Because Plains has refused to
20 accurately inform putative class members, Class Counsel ought to be able to
21 identify those individuals to ensure that they are provided with complete and
22 accurate information.

23 Plaintiffs are not seeking full-blown discovery through this motion. Rather,
24 Plaintiffs request an order narrowly tailored to the harms that Defendants have
25 created through their misleading communications, information that bears directly
26 on future class certification and other issues.
27
28

1 **F. The Requested Order Is Narrowly Tailored To Address Defendants’**
2 **Misleading Communications, and Protects the Rights of the Parties to**
3 **This Action**

4 This requested order is narrowly tailored to address the harms caused by the
5 misleading communications and unfair releases that Defendants have made to
6 Plaintiffs and members of the putative class, and to prohibit any further misconduct.

7 Plaintiffs are not requesting that the Court “ban” Plains from communicating
8 with putative class members. Rather, under Plaintiffs’ requested order, Defendants
9 would remain free to communicate with Plaintiffs through their counsel, and would
10 remain free to communicate with putative class members, provided that such
11 communications are not misleading. Plaintiffs ask only that Defendants
12 simultaneously provide accurate and adequate information to such individuals, in
13 the form of a one or two sentence script during each communication summarizing
14 this action and providing contact information for class counsel, so that putative
15 class members have sufficient information with which to evaluate their legal rights.
16 That would preserve Defendants’ right to any legitimate commercial speech,
17 foreclosing only Defendants’ apparent attempts to obtain releases from Plaintiffs
18 and putative class members in a misleading manner.

19 Given the incomplete and misleading communications Defendants have
20 *already* made to potential class members, the requirement that this Court require
21 such a script and review and approve the proposed language before it is
22 implemented is not unreasonably burdensome. Further, to the extent that
23 Defendants would be required to issue corrective communications, such
24 communications would only be required to the extent that Defendants have chosen
25 to make misleading communications in the past.

26 Nor would the requested order impinge on the OPA process by prohibiting
27 Defendants from obtaining *limited* releases in exchange for the early payments
28 OPA contemplates. Plaintiffs are also not asking this Court to completely nullify

1 the private settlements Plains has reached with putative class members, or to restrict
2 future settlements. Rather, Plaintiffs only ask that the court nullify the releases
3 Plains has obtained based on providing inaccurate information, to the extent those
4 releases purport to absolve claims of the *full* liability it bears under state statutory
5 and common law to the victims of the Line 901 oil spill.

6 **V. CONCLUSION**

7 Plaintiffs respectfully request that the Court exercise its authority and duty to
8 protect the rights of putative class members by issuing the proposed order lodged
9 herewith.

10 Dated: December 16, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elizabeth Gibson, hereby certify that on this 16th day of December, 2015, I electronically filed Plaintiffs’ **NOTICE OF MOTION AND MOTION FOR AN ORDER LIMITING DEFENDANTS’ COMMUNICATIONS WITH PLAINTIFFS AND CLASS MEMBERS AND FOR OTHER RELIEF PURSUANT TO FED. R. CIV. P. 23(D)** 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 counsel of record.

/s/ Elizabeth E. Gibson
Elizabeth E. Gibson, Legal Assistant

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16 *Interim Co-Lead Class Counsel for*
17 *Plaintiffs*

Lead Trial Counsel for Plaintiffs

**Additional Counsel for Plaintiffs on
Signature Page*

18
19 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

20 STACE CHEVEREZ, individually
and on behalf of others similarly
21 situated,
22 Plaintiffs,

23 v.

24 PLAINS ALL AMERICAN
PIPELINE, L.P., a Delaware limited
partnership, PLAINS PIPELINE,
25 L.P., a Texas limited partnership, and
26 JOHN DOES 1 through 10,
27 Defendants.

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)]

CLASS ACTION

**DECLARATION OF ROBERT J.
NELSON IN SUPPORT OF
PLAINTIFFS' RULE 23 MOTION**

Date: February 29, 2015
Time: 1:30 PM
Location: Roybal, Courtroom 880
Judge: Hon. Philip S. Gutierrez

1 Robert L. Lieff (CSB No. 037568)
Elizabeth J. Cabraser (CSB No. 083151)
2 Robert J. Nelson (CSB No. 132797)
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Lead Trial Counsel for Plaintiffs

16 *Interim Co-Lead Class Counsel for
17 Plaintiffs*

**Additional Counsel for Plaintiffs on
Signature Page*

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 STACE CHEVEREZ, individually
and on behalf of others similarly
21 situated,

22 Plaintiffs,

23 v.

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

26 Defendants.

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)]

CLASS ACTION

**DECLARATION OF MATTHEW J.
PREUSCH IN SUPPORT OF
PLAINTIFFS' RULE 23 MOTION**

Date: February 29, 2015
Time: 1:30 PM
Location: Roybal, Courtroom 880
Judge: Hon. Philip S. Gutierrez

1 I, Matthew J. Preusch, declare as follows:

2 1. I am an associate at Keller Rohrback L.L.P. in Santa Barbara,
3 California. I make this Declaration of my own personal knowledge, and, if called
4 to do so, I could testify competently to the matters stated herein.

5 2. I am a counsel of record in this matter, and I submit this declaration in
6 support of Plaintiffs' Motion for a Preliminary Injunction and Memorandum in
7 Support Thereof ("Motion").

8 3. On Sunday, September 27, 2015, Defendants placed a full page
9 advertisement in the *Santa Barbara News-Press* newspaper that advertised their
10 claims process to putative class members. A true and correct copy of that
11 advertisement is attached as Exhibit 1 to this declaration. This advertisement
12 encourages putative class members to "CALL THE CLAIMS LINE" or "VISIT
13 PLAINS RESPONSE SITE," and fails to include any mention of or reference to
14 this Action. I have observed the same or similar advertisements in other editions of
15 the *News-Press*.

16 4. On Thursday, October 29, 2015, Defendants placed a half page
17 advertisement in the *Santa Barbara Independent* newspaper that advertised their
18 claims process to putative class members. A true and correct copy of that
19 advertisement is attached as Exhibit 2 to this declaration. The advertisement
20 encourages putative class members to "CALL THE CLAIMS LINE" or "VISIT
21 PLAINS RESPONSE SITE," and fails to include any mention of or reference to
22 this Action. I have observed the same or similar advertisement in other editions of
23 the *Independent*.

24 5. On Wednesday, September 30, 2015, while I was using the Internet
25 Explorer web browser, several "pop-up" advertisements appeared in that browser
26 advertising Defendants' claims process. True and correct copies of those
27 advertisements are attached as Exhibits 3 and 4 to this declaration. Neither of these
28 advertisements includes any mention of or reference to this Action. I have observed

1 advertising Defendants' claims process. True and correct copies of those
2 advertisements are attached as Exhibits 3 and 4 to this declaration. Neither of these
3 advertisements includes any mention of or reference to this Action. I have observed
4 similar pop-up advertisements at other times.

5 6. Clicking on those pop-up advertisements on September 30, 2015,
6 directed my browser to Defendants' oil spill response website:
7 <http://www.plainsline901response.com>. On this website, I clicked on the link for
8 "Claims Information," which directed me to a page titled "Survey: Claim Initiation
9 Form," a true and correct copy of which is attached as Exhibit 5 to this declaration.
10 This Claim Initiation Form provides that "[o]nce approved, valid claims are paid in
11 conjunction with receiving a completed release or interim release settlement
12 agreement." This form does not request information as to whether an individual is
13 represented by counsel, nor does it include any mention of or reference to this
14 Action.

15 7. On June 29, 2015, I received a copy of a Settlement Form from a
16 putative class member, a copy of which is attached as Exhibit 6. Pursuant to the
17 request of the putative class member, identifying information has been redacted
18 from this document. This form does not include any mention of or reference to this
19 Action, and provides that in consideration for a payment by plains, the "Payee does
20 hereby RELEASE, ACQUIT and FOREVER DISCHARGE Plains of all Claims
21 related to the above-described injuries."

22 8. On November 3, 2015, I visited the website of the *Santa Barbara*
23 *Independent*, at <http://www.independent.com>. On the home page of this website, I
24 viewed an additional online advertisement by Defendants, a true and correct copy
25 of which is attached as Exhibit 7 to this declaration. That advertisement does not
26 include any mention of or reference to this Action.

27 9. Clicking on the advertisement in Exhibit 7 directed my web browser to
28 <http://www.plainsline901response.com/go/doc/7266/2547486/>, a true and correct

EXHIBIT 1

Was your *business* or *income* affected by the recent oil spill?



We remain committed to doing the right thing.



PLAINS
ALL AMERICAN
PIPELINE, L.P.

Plains All American Pipeline deeply regrets if this accidental release has had an impact on you or your business.

Plains is committed to making the appropriate financial reparations for any verified damages or losses directly caused by the spill.

Doing the right thing means ensuring every individual and business that have been affected by the unfortunate accident have the opportunity to file a claim for losses related to the incident.



HOW TO FILE A CLAIM

CALL THE CLAIMS LINE



866.753.3619

OR VISIT PLAINS RESPONSE SITE



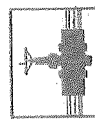
PlainsLine901Response.com

CLAIMS MAY INCLUDE

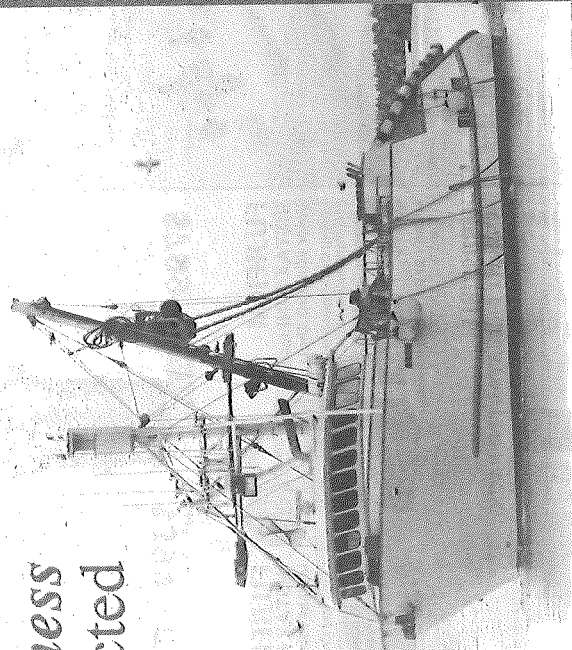
- Those who have lost profits or had their earnings directly affected because the incident damaged or impaired their business or the business where they work.
- Tourism-based businesses, and those who receive wages from such businesses.
- Those who make a living from natural resources that were lost or damaged due to the release.
- Commercial fishermen and related businesses.
- Individuals who were injured.
- Individuals and businesses whose property was damaged or destroyed.
- Those who have homes or boats on affected beaches.

EXHIBIT 2

Was your *business* or *income* affected by the recent oil spill?



PLAINS
ALL AMERICAN
PIPELINE, L.P.



WE REMAIN COMMITTED TO DOING THE RIGHT THING.

Plains All American Pipeline deeply regrets if this accidental release has had an impact on you or your business. Plains is committed to making the appropriate financial reparations for any verified damages or losses directly caused by the spill.

Doing the right thing means ensuring every individual and business that have been affected by the unfortunate accident have the opportunity to file a claim for losses related to the incident.

HOW TO FILE A CLAIM

CLAIMS MAY INCLUDE

- Those who have lost profits or had their earnings directly affected because the incident damaged or impaired their business or the business where they work.
- Tourism-based businesses, and those who receive wages from such businesses.
- Those who make a living from natural resources that were lost or damaged due to the release.
- Commercial fishermen and related businesses.
- Individuals who were injured.
- Individuals and businesses whose property was damaged or destroyed.
- Those who have homes or boats on affected beaches.

CALL THE CLAIMS LINE



866.753.3619

OR VISIT PLAINS RESPONSE SITE



PlainsLine901Response.com

EXHIBIT 3

We remain committed to
doing the right thing.

LEARN MORE
& FILE A CLAIM



EXHIBIT 4

Was your *business* or *income* affected by the recent Oil Spill?

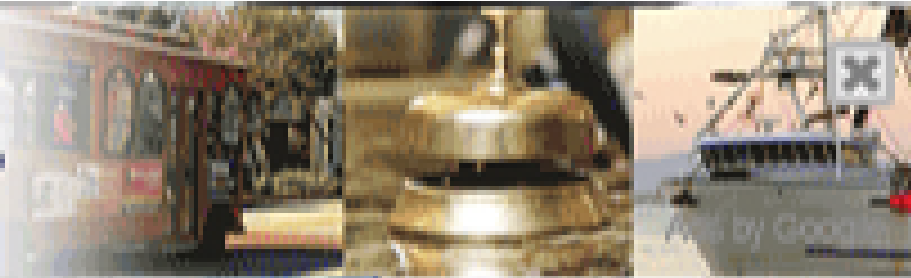


EXHIBIT 5

Was your business or income affected by the recent oil spill?

We remain committed to doing the right thing.

Plains All American Pipeline deeply regrets if this accidental release has had an impact on you or your business. Plains is committed to making the appropriate financial reparations for any verified damages or losses directly caused by the spill.


Doing the right thing means ensuring every individual or business that has been affected by the unfortunate accident have the opportunity to file a claim for losses related to the incident.

Claims for reimbursement may include:

- Those who have lost profits or had their earnings directly affected because the incident damaged or impaired their business or the business where they work
- Tourism-based businesses and those who receive wages from such businesses
- Those who make a living from natural resources that were lost or damaged due to the release
- Commercial fishermen and related businesses
- Individuals who were injured
- Individuals and businesses whose property was damaged or destroyed
- Those who have homes or boats on affected beaches

If you feel you have been impacted by the Line 901 crude oil release,
you can initiate the claims process in one of two ways:

 By Phone: Call the claims line: 866-753-3619

 Online: Complete the web form below, and a claims representative will contact you within two business days.

What you can expect once you have initiated a claim:

1. Once you have initiated the claims process either online, by mail or by phone, it will be assigned to a claims representative.
2. The claims representative will contact you to schedule a call.
3. During the call, the claims representative will discuss your circumstances and request any additional detail that is needed to initiate the claim.
4. The representative will request that you provide receipts or other support to substantiate your claim. Any exceptions will be made on a case by case basis.
5. Once approved, valid claims are paid in conjunction with receiving a completed release or interim release settlement agreement.
6. Payments are typically made within 10 business days following the submission of all documentation.

Once a claim is submitted, it will be reviewed by a claims representative who will make the appropriate judgement on how to proceed with the claim. Every claim that is submitted will be reviewed but not all will be accepted.

Claim Initiation Form

Marked * fields are required

Name: *

Street Address: *

City:

State:

Zip: *

Home Phone #: *

Cell Phone #:

E-mail Address: *

Did you previously submit a claim form to Plains? *

- Yes
 No

If yes, did you receive a Claim Number?

- Yes
 No

If you did receive a Claims Number, please provide it here:

If no, what type of claim are you submitting?

- Bodily Injury
 Business Interruption
 Loss of Income
 Lost Wages
 Property Damage

Corporate Headquarters: 333 Clay Street, Suite 1600, Houston, TX 77002 - phone: 713-646-4100
(tel:+7136464100)

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Download Plug-Ins (<http://help.piersystem.com/go/doc/1610/324340/>)

EXHIBIT 6

CLAIM # [REDACTED]

SETTLEMENT AGREEMENT AND RELEASE

This Full Release and Settlement Agreement ("Release") is effective [REDACTED], 2015, from [REDACTED] whose address is [REDACTED], hereinafter referred to collectively as "Payee," whether one or more, in favor of Plains Pipeline, L.P. whose address is 333 Clay St, Suite 1600, Houston, Texas 77002, and its agents, claims adjusters, servants, employees, officers, owners, directors, legal representatives, insurers, indemnitors, guarantors, successors, assigns, including the parent entities, subsidiaries and affiliated entities of Plains Pipeline, L.P. (all of whom are intended to be specifically named or otherwise specifically identified herein) (hereinafter referred to as "Plains").

WHEREAS, an accidental crude oil leak from a pipeline owned by Plains in the vicinity of El Refugio State Park in Santa Barbara County, California known as Line 901, occurred on or about May 19, 2015 (hereinafter referred to as the "Event") allegedly caused damages or injuries (collectively, "Injuries") to the Payee named herein generally described as:

[REDACTED]

The above-described Injuries may result in claims, demands, or causes of action ("Claims") against Plains. Neither the fact of this Release or anything in it shall be construed as an admission by Plains of any liability for the Injuries. To avoid litigation, Plains desires to settle with Payee for any and all Claims in connection with the Injuries, including but not limited to, personal injury, property damage, loss of use of Payee's property, and every other type of damage, or claim for restitution that could be asserted by Payee against Plains.

NOW THEREFORE in consideration of the payment of [REDACTED] and no/100 Dollars (\$ [REDACTED]) by Plains to the Payee, the receipt of which is hereby acknowledged and confessed each Payee does hereby RELEASE, ACQUIT and FOREVER DISCHARGE Plains of all Claims related to the above-described Injuries.

Payee stipulates and agrees that the consideration stated herein is contractual and is not a mere recital.

Payee represents and warrants to Plains that prior to executing this Release, the Claims have not been assigned, in whole or part, to any third party. Payee does hereby release Plains and its respective agents, employees, officers, and directors for the above-referenced Injuries Payee may have suffered related to the above-described Event.

Payee accepts the above-stated consideration in full satisfaction of any injuries or damages (past, present or future, known or unknown) that they allege to have suffered related to the Injuries herein described.

Payee in executing this Release, has relied solely upon its own knowledge and information and has not been influenced by nor relied upon any representations, made by or on behalf of Plains or any of its agents or representatives.

[REDACTED]

This Release shall be construed in accordance with, and be governed by, the laws of the State of California, and the Parties hereby irrevocably agree to the exclusive jurisdiction of the courts located in the Central District of the Superior Court of the State of California for the County of Los Angeles.

The Payee certifies and affirms that the Payee has read the claim and knows the contents thereof; that the claim is true and correct; and that the Payee is the owner of the said claim and the person entitled to receive the money and the property set forth in said claim.

In witness whereof this Release is executed on the date indicated beneath each Payee's name.

PAYEE:

WITNESS:

_____, 2015

_____, 2015

_____, 2015

_____, 2015

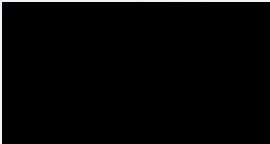


EXHIBIT 7

**We remain committed
to doing the right thing.**

**LEARN MORE
& FILE A CLAIM**



PLAINS
ALL AMERICAN
PIPELINE, L.P.

EXHIBIT 8



Plains Line 901 Information Center

Ask a Question

Claims Information

- Home
- News and Info
- Joint Information Center
- Receive Updates
- Claims
- Contact Us
- Site Map



On May 19, Plains All American Pipeline became aware of a crude oil release from its 24-inch pipeline - Line 901 - from Las Flores to Gaviota, located in Santa Barbara County, Calif. From the day of the incident, there has been an unified effort from federal, state and local officials along with Plains to mitigate the impact of the release on the environment and the community. More than 95 percent of shoreline cleanup is complete, and all beaches are open to the public. This website provides Plains...

[Read More »](#)

File a Claim

Plains All American Pipeline deeply regrets if this accidental release has had an impact on you or your business. If you would like to file a claim please click 'learn more' below.

[Learn More »](#)



Incident News & Updates

[view all »](#)

- September 25, 2015
September 25, 2015 - Plains Line 901 Incident Response Update
- July 13, 2015
July 13, 2015 - Plains Line 901 Incident Response Update
- July 6, 2015
July 6, 2015 - Line 901 Incident Update
- July 20, 2015

Recovery Q&As

[view all »](#)

- June 17, 2015
Release - What happened?
- June 17, 2015
Cause - How did this happen?
- June 17, 2015
Affected pipe - What will happen to the affected pipe?
- June 17, 2015
Recovery - When will the recovery be complete?

Fact Sheets & Presentations

[view all »](#)

- August 7, 2015
Excerpt From PAA's Anticipated 10Q Disclosure Regarding Line 901
- June 24, 2015
Plains Pipeline Response to 6-11-15 Capps Letter
- June 24, 2015
Plains Pipeline Response to 6-5-15 Congressional Letter

A Letter from Greg Armstrong, CEO of Plains

Line 901 Claims Information

Photo Gallery

Line 901 Incident News and Updates

EXHIBIT 9

Name:	Case 2:10-md-02179-CJE-SS Document 983-1	SSN or EIN:	#1210	Filed 01/10/11	Page 63 of 116
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**GCCF
2000-Q1**

**GULF COAST CLAIMS FACILITY
QUICK PAYMENT FINAL CLAIM FORM
(For Individual Claimants)**

FINAL PAYMENT AMOUNT	\$5,000
-----------------------------	----------------

**D. Important Information About the Attached Release and Covenant Not to Sue;
Acknowledgement and Election to Receive a \$5,000 Quick Payment**

The attached Release and Covenant Not to Sue ("Release") is a binding legal document. By signing this document, you are forever waiving and releasing all claims that you may have against BP or any other party other than claims for Bodily Injury (including claims alleging a mental health injury) ("Bodily Injury") or by shareholders of BP or other Released Parties for alleged violations of Securities laws ("Securities Claim") in connection with the April 20, 2010 blowout of the Macondo Well, the sinking of Transocean's Deepwater Horizon drilling rig, and the subsequent oil Spill in the Gulf of Mexico (the "Incident").

You are under no obligation to accept the final payment offered to you by the Gulf Coast Claims Facility. You are free to reject the final payment offered by the Gulf Coast Claims Facility and to pursue other means of compensation. If you want to file a lawsuit regarding the Incident or make a claim against the Oil Spill Liability Trust Fund, do not sign this Release.

By signing the attached Release, you are forever giving up and discharging any rights which you may have for any costs, damages or other relief related to or arising from the Incident (excepting claims for Bodily Injury or Securities Claim), even if you are not currently aware of such costs or damages and even if such costs or damages arise in the future (i.e., additional oil impacts) or do not manifest themselves until the future.

By signing the attached Release, you acknowledge that you have read and understand the terms of the Release, and that you execute the release voluntarily and without being pressured or influenced by, and without relying upon, any statement or representation made by any person acting on behalf of BP or any other released party. **If you are represented by an attorney in connection with your Claim, confer with your attorney before submitting this Claim and signing this Release.**

The Quick Pay option is intended to provide an expedited settlement mechanism for those claimants who believe that the amount offered by the Quick Pay fully and fairly resolves their claim. Do not select the Quick Pay option if you believe you have a claim in an amount greater than the Quick Pay amount. If you elect the Quick Pay amount, you will not be permitted to later seek additional amounts.

If you are married, both you and your spouse must sign the Release. You and your spouse should not sign the Release unless you both intend to release all claims.

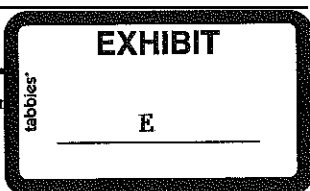
Claimant acknowledges that claimant has read and understands the information in this Section D. Claimant elects to receive a \$5,000 Quick Payment as a final settlement of all claims against any party in connection with the Incident (other than claims for Bodily Injury or Securities Claim.)

Claimant consents to the use and disclosure by the GCCF and those assisting the GCCF of any information that it believes necessary and/or helpful to process claimant's claim for compensation and payment including any legitimate business purposes associated with administering the GCCF and providing adequate documentation for insurance coverage of responsible parties, and/or as otherwise required by law, regulation or judicial process.

Signature of Claimant _____
Date

I acknowledge that I have read and understand the information in this Section D. I consent to the claimant's election to receive a \$5,000 Quick Payment as a final settlement of all claims of claimant against any party in connection with the Incident (other than claims for Bodily Injury or Securities Claim.)

Spousal signature (if applicable) _____
Date



Name:	Case 2:10-md-02179-CJB-SS Document 983-1	Filed 01/10/11	Page 64 of 116
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RELEASE AND COVENANT NOT TO SUE

FINAL PAYMENT AMOUNT	\$5,000
-----------------------------	----------------

1. In consideration of payment in the amount of \$5,000, Claimant hereby releases and forever discharges, and covenants not to sue BP Exploration & Production Inc. ("BP") and the other Released Parties, including but not limited to the parties listed in Attachment A to this Release, for any losses, damages, costs, expenses, injuries, claims, causes of actions, liabilities, or other relief that Claimant has or may have, whether known or unknown, whether present or future, whether direct or indirect, whether legal or equitable, arising from or relating in any way to the April 20, 2010 blowout of the Macondo Well, the sinking of Transocean's Deepwater Horizon drilling rig, and the subsequent oil spill in the Gulf of Mexico (the "Incident") (collectively, "Claims"), provided however that this Release does not apply to claims (i) for bodily injury (including claims alleging a mental health injury) ("Bodily Injury") or (ii) by shareholders of BP or other Released Parties for alleged violations of securities laws ("Securities Claim").
2. Claimant also, on behalf of Claimant's spouse, heirs, beneficiaries, agents, estates, executors, administrators, personal representatives, subsidiaries, parents, affiliates, partners, limited partners, members, joint venturers, shareholders, predecessors, successors, assigns, insurers, and attorneys (collectively, "Affiliates"), hereby releases and forever discharges, and covenants not to sue BP and the other Released Parties for any Claims released by Claimant pursuant to Paragraph 1 above. With regard to an insurer of the Claimant, notwithstanding anything to the contrary in the foregoing, the execution of this Release by Claimant shall not release the claims of an insurer of Claimant if and only if the Claimant has disclosed in writing on Claimant's Full Review Final Claim Form for Final Payment or Emergency Advance Payment Claim Form submitted to the Gulf Coast Claims Facility the fact of a payment, and the amount of the payment, by the insurer to Claimant.
3. This Release applies to all Claims regardless of the legal or equitable theory (including legal and equitable theories under federal, state, local, and international law, and including without limitation statutory law, regulation, common law, maritime law, strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, and all other legal and equitable theories), whether existing now or arising in the future, arising out of or in any way relating to the Incident, provided however that this Release does not apply to claims for Bodily Injury or Securities Claim.
4. Released Parties means anyone who is or could be responsible or liable in any way for the Incident or any damages related thereto, whether a person, company or governmental entity, including (but not limited to) BP, other potentially responsible or liable parties, including but not limited to the parties listed in Attachment A to this Release, the federal Oil Spill Liability Trust Fund and any state or local fund, and each of their respective Affiliates as defined above.
5. Claimant represents and warrants that Claimant (i) has authority to execute this Release; and (ii) has not sold or otherwise transferred or assigned any of the Claims, or any interests in such Claims.
6. Claimant represents and warrants that Claimant has not received any payment from any insurer or other party (other than BP or the GCCF) in connection with the Incident, other than payments disclosed on the Full Review Final Claim Form for Final Payment. However, the representation and warranty contained in this section (6) is not applicable to a Claimant electing to submit a Quick Payment Final Claim Form and receive a Quick Payment.
7. Claimant will dismiss with prejudice within 10 days of executing this Release any litigation concerning the Incident (other than litigation alleging only Bodily Injury or Securities Claim) filed by or on behalf of Claimant against BP or any other Released Parties. Claimant also will withdraw (the obligation to withdraw is satisfied by affirmatively declining to participate if and when the Claimant receives any communication giving Claimant the option of participating or not participating in a class action or similar procedural device) from any existing and will not join any new class actions or similar procedural devices concerning or relating to the Incident (other than class actions or similar procedural devices alleging only Bodily Injury or Securities Claim).
8. This Release is not intended to prevent any of the Released Parties from exercising their respective rights of contribution, subrogation, or indemnity under the Oil Pollution Act of 1990 ("OPA") or any other law. As this Release is fully and completely resolving, together with all other Claims, Claimant's claim under OPA, BP is hereby subrogated to any and all rights that Claimant has arising from the Incident.
9. The payment to Claimant is made without any admission of liability or wrongdoing, or any acknowledgment that the law recognizes any allegation referenced herein, by BP or any other Released Party.
10. The provisions of this Release and all questions with respect to the construction and enforcement thereof and the rights and liabilities hereto shall be governed by, and construed and enforced in accordance with, the laws of the state of residence of the Claimant at the time of signing this Release without regard to conflicts of laws principles.
11. This Release supersedes any and all other agreements, written or oral, between BP and Claimant with respect to such subject matter of this Release.
12. If there is no signature on the line below for Claimant's Spouse, Claimant represents and warrants that Claimant is not married.

Name:	Case 2:10-md-02179-CJB-SS Document 963-1	SSN or EIN:	#1282	Filed 01/10/11	Page 65 of 116
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RELEASE AND COVENANT NOT TO SUE

FINAL PAYMENT AMOUNT	\$5,000
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Release and Covenant Not to Sue – Signature by the Claimant

As the Claimant set forth in Section B of the attached Quick Payment Final Claim, I am signing this Release and Covenant Not to Sue:

Signature:	
Printed Name:	
Date:	(Month/Day/Year): ____/____/____

Release and Covenant Not to Sue – Signature by the Claimant’s Spouse (if applicable)

As the spouse of the individual signing above, I am signing this Release and Covenant Not to Sue:

Signature:	
Printed Name:	
Date:	(Month/Day/Year): ____/____/____

PAYMENT INSTRUCTIONS

Indicate either a wire transfer or check payment by checking the appropriate box below and completing the corresponding details. **Payments will be reduced as necessary to satisfy legally authorized garnishments, liens or similar forms of attachments that have been presented to the GCCF.** The GCCF will report annually to federal and state taxing authorities, using a form 1099 or state form equivalent, for certain payments made. The GCCF will send you a copy of that form, but cannot give you tax advice regarding any payment issued to you. You should consult with your own tax advisor to determine the impact of any payment you receive from the GCCF on your individual tax situation.

<input type="checkbox"/>	Wire the payment to the following account:		
	Bank Name		
	Bank Mailing Address		
	Bank Telephone Number		
	Bank Account Name:		
	<i>If the Account Name for your bank account differs from your name, please also explain the reason for the difference.</i>		
	Bank ABA/Routing Number:	Bank Account Number:	
<input type="checkbox"/>	Mail a check to the following address:		
	Street		
	City	State	Zip Code
	Parish/County	Country	

Attachment A

Aerotek, Inc.
Ameri-Force, Inc.
Anadarko Petroleum Company
Anadarko Petroleum Corporation
Anadarko E&P Company LP
Art Catering, Inc.
Ashland
BJ Services Company, USA
BP America Inc.
BP America Production Company
BP Company North America Inc.
BP Corporation North America Inc.
BP Corporation North America Inc. Savings Plan Investment Oversight Committee
BP Energy Company
BP Exploration (Alaska) Inc.
BP Global Special Products (America) Inc.
BP Holdings North America Limited
BP plc
BP Products North America Inc.
Brett Robinson Gulf Corporation
Cameron Corporation
Cameron International Corporation f/k/a Cooper Cameron Corporation
Cameron International Corporation d/b/a/ Cameron Systems Corporation
Center for Toxicology and Environmental Health L.L.C.
Chouest Shorebase Services, LLC
Clean Harbors
Core 4 Kebawk, LLC
Crowder/Gulf Joint Venture
Crowder Gulf Disaster Recovery
Diamond Offshore Company
DOF Subsea USA, Inc.
Drill-Quip, Inc.
Entrix, Inc.
Environmental Standards
EPS Corporation
ERG
ES&H Environmental Services
ESIS, Inc.
Exponent
Global Diving & Salvage, Inc.
Gulf Offshore Logistics, LLC
Gulf Offshore Logistics International, LLC
Halliburton Energy Services, Inc.
Halliburton Company
Hamilton Eng.
Hepaco
Hilcorp Energy Company
Hyundai Heavy Industries Co. Ltd, Inc.
Hyundai Motor Company
In Rem Vessels
Island Ventures II
Jupiter Insurance Limited
LaBorde Marine Services, LLC
Lloyd's of London
Marine Spill Response Corporation
MEG Energy Corp
M-I L.L.C.
M-I Drilling Fluids L.L.C.
M-I Swaco
Miller Environmental Group, Inc.

Mitsui & Co. (USA), Inc.
Mitsui & Co. Ltd.
Mitsui Oil Exploration Co. Ltd.
Moran Environmental Recovery, LLC
MOEX Offshore 2007 LLC
Moex USA Corporation
MV Monica Ann
MV Pat Tilman
MV Damon B. Bankston
MV Max Chouest
MV Ocean Interventions
MV C. Express
MV Joe Griffin
MV Mr. Sidney
MV Hilda Lab
MV Sailfish
MV Seacor Washington
MV Seacor Vanguard
Nalco Holding Company
Nalco Finance Holdings LLC
Nalco Finance Holdings Inc.
Nalco Holdings LLC
Nalco Company
Nautical Ventures, LLC
Nautical Solutions, LLC
O'Brien's Response Management, Inc.
Ocean Runner, Inc.
Oceaneering International, Inc.
Offshore Cleaning Systems L.L.C. Offshore Service Vessels, LLC
Offshore Inland Marine & Oilfield Services, Inc.
Ranger Offshore, Inc.
Reel Pipe, LLC
Schlumberger, Ltd.
Seacor Marine, LLC
Seacor Marine, Inc.
Seacor Marine International, Inc.
Siemens Financial, Inc.
Seafairer Boat, LLC
State Street Bank and Trust Company
Subsea 7 LLC
The Response Group, Inc.
TestAmerica, Inc.,
Tiburon Divers, Inc.
Tidewater Marine LLC
Tiger Safety, LLC
TL Wallace
Transocean Inc.
Transocean Deepwater, Inc.
Transocean Drilling (U.S.A.) Inc.
Transocean Enterprise Inc.
Transocean Holdings Inc.
Transocean Holdings LLC
Transocean Ltd.
Transocean Offshore Deepwater Drilling, Inc.
Transocean Offshore USA, Inc.
Triton Asset Leasing GmbH
Triton Hungary Asset Management KFT
Triton Hungary Asset Management Limited Liability Company
USES/Construct Corps
Weatherford International Ltd.
Weatherford U.S. L.P
Worley Catastrophe Services, LLC
Worley Catastrophe Response, LLC

EXHIBIT 10

Plains Oil Spill: Know Your Legal Rights

Plains is running advertisements to entice oil spill victims to sign settlements that may not fully compensate them.

The long-term effects of the spill are still being determined.



Get Legal Advice Before Signing Anything!

- Class action litigation is pending that will protect victims of the Plains oil spill.
- We represent oil workers, fishermen, fish processors, tourism companies, landowners and anyone whose livelihood or property Plains has harmed.
- We are committed to protecting the rights of our clients.

Goals of the Lawsuit

- Avoid future spills by ensuring that Plains operates its pipelines in a safe manner.
- Make certain that all victims are fully compensated.

For more information contact:

A. Barry Cappello
Cappello & Noël LLP
info@cappellonoel.com
(805) 564-2444

Robert J. Nelson
Lieff Cabraser Heimann Bernstein
rnelson@lchb.com
(415) 956-1000

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William Audet
Audet & Partners
waudet@audetlaw.com
(415) 568-2555

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4 San Francisco, CA 94111-3339
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5 Facsimile: 415.956.1008

6 Lynn Lincoln Sarko
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(Admitted Pro Hac Vice)
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15 Facsimile: (805) 456-1497

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Facsimile: (805)965-5950

Lead Trial Counsel for Plaintiffs

16 *Interim Co-Lead Class Counsel for*
17 *Plaintiffs*

**Additional Counsel for Plaintiffs on*
Signature Page

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 STACE CHEVEREZ, individually and
on behalf of others similarly situated,

21 Plaintiffs,

22 v.

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

26 Defendants.

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)]

CLASS ACTION

DECLARATION OF MIKE GANDALL IN SUPPORT OF PLAINTIFFS' RULE 23 MOTION

Date: February 29, 2015
Time: 1:30 PM
Location: Roybal, Courtroom 880
Judge: Hon. Philip S. Gutierrez

1 I, Mike Gandall, declare as follows:

2 1. I am a resident of Goleta, Santa Barbara County, California, and one of
3 the named plaintiffs in this case. I make this Declaration based on my own personal
4 knowledge, and if called to do so, I could testify competently to the matters stated
5 herein.
6

7 2. I fish for a variety of species including rock crab and California spiny
8 lobster, and I fish for those species almost exclusively in the areas closed by Plains'
9 oil spill.
10

11 3. On or about Sunday, September 27, I received a call on my cell phone
12 while fishing on my boat, the Kono. I do not know how the person got my cell
13 phone number.
14

15 4. The person identified himself as an agent of Plains All American, and
16 said he was calling because I had not filed a claim with Plains.
17

18 5. That individual did not mention this litigation, and I informed him that
19 I was represented by Daniel Mensher of Keller Rohrback L.L.P. He asked for Mr.
20 Mensher's phone number, but because I was fishing at the time I was not able to
21 provide it to him.
22

23 6. I have never filed a claim with Plains or its claims processor.
24 Nonetheless, I have received multiple letters from Plains, none of which mention
25 this litigation.
26
27
28

EXHIBIT 1

Commercial Fisherman Claim Documentation Instructions:

In order to facilitate the documentation and evaluation of claims for lost income from commercial fishermen, we have put together a simple two-part application.

Part one is the Fisherman Information Form.

Part two is the Information Request Form from the California Department of Fish and Wildlife.

1. Please fill out the top portion with your Name, Vessel or Fish Business ID# and/or your Commercial Fishing License ID#. (We are requesting 2010-2015)
2. At the bottom sign and date the form and then fill out the contact info. (Name of requester, Mailing Address, Phone, Fax and Email)
3. Check the box for method of delivery. (Fax, Mail, Email)
4. Return the form via instructions at the bottom of the form (email, fax or mail)

Once you have received the report, return it to us along with copies of ALL recent Landing Receipts not captured in the report. (Everything from the last Landing Receipt on the report to the present day)

If you have not done so already, please include copies of your Commercial Fishing License, Boat Registration, and a copy of your driver's license for identification purposes.

You may also submit any other documentation that you feel supports your claim.

Once all of the information is received we will analyze and get back to you promptly to seek to resolve your claim. If we have additional questions or need additional documentation we will notify you.

Return all forms to one of the following:

Email: jk1c.Efax@worleyco.com

Fax: 1-866-753-3619

Mail: Plains Pipeline Claims
P.O. Box 1148
Hammond, LA 70404

Plains Pipeline Refugio Incident Fisherman Claim Information Form

Name: _____

Address: _____

City/State/Zip: _____

Phone: () _____ - _____

Alt Phone: () _____ - _____

Email (optional): _____

Vessel Name: _____

Registration #: _____

Vessel Type: _____

Home Port: _____

Check one:

Captain Deck hand Diver

California Commercial Fishing License Numbers:

1. _____ Species or type: _____

2. _____ Species or type: _____

3. _____ Species or type: _____

4. _____ Species or type: _____

5. _____ Species or type: _____

Are you represented by an attorney? Yes No

If yes, what is your attorney's name and phone # : _____

What do you claim to be the dollar amount of your loss as a result of the fisheries closure? \$ _____

By signing claimant affirms and attests that all information above is correct to the best of the claimant's knowledge.

Signature: _____ Date: _____



**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INFORMATION REQUEST FORM
FOR COMMERCIAL LANDING/CPFV LOGBOOK INFORMATION**

I, _____, request that the Dept. of Fish & Wildlife provide me with the following information.
(Name)

Part I - Fish Landing Receipt Records - I request fish landing receipt records for:

*Fish and Wildlife Vessel or Fish Business ID# _____ Commercial Fishing License ID # L _____
Please list/check years: 2010, 2012, 2013, 2014, 2015 Please list/check years: 2010, 2011, 2012, 2013, 2014, 2015

<input type="checkbox"/>]1970	<input type="checkbox"/>]1977	<input type="checkbox"/>]1984	<input type="checkbox"/>]1991	<input type="checkbox"/>]1998	<input type="checkbox"/>]2005	<input checked="" type="checkbox"/>]2012	<input type="checkbox"/>]1987	<input type="checkbox"/>]1994	<input type="checkbox"/>]2001	<input type="checkbox"/>]2008	<input checked="" type="checkbox"/>]2015
<input type="checkbox"/>]1971	<input type="checkbox"/>]1978	<input type="checkbox"/>]1985	<input type="checkbox"/>]1992	<input type="checkbox"/>]1999	<input type="checkbox"/>]2006	<input checked="" type="checkbox"/>]2013	<input type="checkbox"/>]1988	<input type="checkbox"/>]1995	<input type="checkbox"/>]2002	<input type="checkbox"/>]2009	
<input type="checkbox"/>]1972	<input type="checkbox"/>]1979	<input type="checkbox"/>]1986	<input type="checkbox"/>]1993	<input type="checkbox"/>]2000	<input type="checkbox"/>]2007	<input checked="" type="checkbox"/>]2014	<input type="checkbox"/>]1989	<input type="checkbox"/>]1996	<input type="checkbox"/>]2003	<input checked="" type="checkbox"/>]2010	
<input type="checkbox"/>]1973	<input type="checkbox"/>]1980	<input type="checkbox"/>]1987	<input type="checkbox"/>]1994	<input type="checkbox"/>]2001	<input type="checkbox"/>]2008	<input checked="" type="checkbox"/>]2015	<input type="checkbox"/>]1990	<input type="checkbox"/>]1997	<input type="checkbox"/>]2004	<input checked="" type="checkbox"/>]2011	
<input type="checkbox"/>]1974	<input type="checkbox"/>]1981	<input type="checkbox"/>]1988	<input type="checkbox"/>]1995	<input type="checkbox"/>]2002	<input type="checkbox"/>]2009		<input type="checkbox"/>]1991	<input type="checkbox"/>]1998	<input type="checkbox"/>]2005	<input checked="" type="checkbox"/>]2012	
<input type="checkbox"/>]1975	<input type="checkbox"/>]1982	<input type="checkbox"/>]1989	<input type="checkbox"/>]1996	<input type="checkbox"/>]2003	<input checked="" type="checkbox"/>]2010		<input type="checkbox"/>]1992	<input type="checkbox"/>]1999	<input type="checkbox"/>]2006	<input checked="" type="checkbox"/>]2013	
<input type="checkbox"/>]1976	<input type="checkbox"/>]1983	<input type="checkbox"/>]1990	<input type="checkbox"/>]1997	<input type="checkbox"/>]2004	<input checked="" type="checkbox"/>]2011		<input type="checkbox"/>]1993	<input type="checkbox"/>]2000	<input type="checkbox"/>]2007	<input checked="" type="checkbox"/>]2014	

Reason for requesting records: Plains Pipeline Claim

Landing/Log ID Information is confidential and released only according to applicable policy, regulations and/or laws.

Part II & *Custom Reports-(years from 1970) Include fields:]Year]Port]Origin]Species
] I prefer my records be provided in spreadsheet format.]Pounds]Value]Gear]Condition]Use
Reports - List Species and Year (s): List Origin and Year (s):

Species (1) _____ (2) _____ (3) _____ Origin (1) _____ (2) _____ (3) _____
 Year(s) (1) _____ (2) _____ (3) _____ Year(s) (1) _____ (2) _____ (3) _____
 * for Custom reports indicate F& W Name and ID number Origin = block/catch area number

Part III - Commercial Passenger Fishing Vessel (CPFV) Log Book Records - I request a copy of the CPFV records for

*Fish and Wildlife Vessel ID # _____ Please list/check years: _____
]2015]2014]2013]2012]2011]2010]2009]2008]2007]2006
Landing/Log ID Information is confidential and released only according to applicable policy, regulations and/or laws.

Part IV - California Commercial Landings (Bulletin Tables 7 through 21-years from 1970):

Total Tables Ordered: _____

List Table # (s) _____ List Year(s) _____

Signature of requester: _____ Date: _____

Contact Information

Please print neatly - Name of requester: _____

(Mailing Address- number & Street/or P.O.B.)

(City and State)

(Zip Code)

(Area Code & Telephone Number)

(Fax Number)

(E-mail)

Information Delivery Preference:] Fax] Mail] E-mail

Return form to: California Department of Fish and Wildlife, 4665 Lampson Avenue, Suite C, Los Alamitos, CA 90720

For questions regarding information requests, contact: Jana Robertson (562)342-7126 Fax (562)342-7137 E-mail:

jana.robertson@wildlife.ca.gov

*For fisherman license/commercial vessel registration verification, contact: Dept. of Fish & Wildlife, License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834 - Ph: (916) 928-5822 FAX: (916) 419-7586 inforeqstform 1/15

EXHIBIT 2



New Orleans Office

303 Timber Creek
Hammond, La. 70403
Phone - 24 Hours
(985) 542-2364
Fax: 888-889-2197

August 17, 2015

Mike Gandall
7620 Cathedral Oaks Rd #3
Goleta, Ca 93117

Regarding: CL 3386E Line 901
File Number: 080167411
Claimant: Mike Gandall

Dear: Mr. Mike Gandall,

I am in receipt of the above captioned file involving your commercial fishing claim.

We have attempted to contact you to determine if you are pursuing your claim. As of the date of this correspondence we have not received any documentation to support the claim you submitted.

I am holding my file in an open status and await word from you as to how you wish to proceed. If you wish to pursue the claim, please contact me immediately at 866-753-3619.

Sincerely,

Patrick Levy
Senior Claim Representative

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

STACE CHEVEREZ, 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.

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)]

CLASS ACTION

**[PROPOSED] ORDER
GRANTING PLAINTIFFS' RULE
23 MOTION**

**Date: February 29, 2016
Time: 1:30 PM
Location: Roybal, Courtroom 880
Judge: Hon. Philip S. Gutierrez**

[PROPOSED] ORDER

1
2 After full consideration by this Court of Plaintiffs’ Motion for an Order
3 Limiting Defendants’ Communications with Plaintiffs and Class Members and for
4 Other Relief Pursuant to Fed. R. Civ. P. 23(d), Memorandum in Support Thereof,
5 supporting papers, the parties’ oral arguments, and other facts and law pertaining
6 thereto in the record, the Court FINDS and ORDERS as follows:

7 Plaintiffs’ Motion for an Order Limiting Defendants’ Communications with
8 Plaintiffs and Class Members and for Other Relief Pursuant to Fed. R. Civ. P. 23(d)
9 is hereby **GRANTED**.

10 This Court finds that Defendants have provided incomplete and misleading
11 communications to putative class members and that the releases obtained by Plains
12 are inappropriate to the extent that they purport to immunize Plains from paying full
13 compensation to putative class members or prohibit them from participating in this
14 above-referenced case (“Action”).

15 Having reviewed the facts and law presented by the parties in this case, the
16 Court concludes that intervention is necessary pursuant to Rule 23 to protect class
17 members’ rights while this Action proceeds, preserve the status quo, and correct the
18 record. Therefore,

19 1. Defendants Plains All American Pipeline, L.P., Plains Pipeline, L.P.,
20 (collectively “Plains”) and Plains’ agents are prohibited from seeking releases of
21 any and all statutory and common law claims of putative class members as part of
22 the claims process Plains is administering pursuant to the Oil Pollution Act of 1990,
23 33 U.S.C. §§ 2701-2720 (“OPA”) during the pendency of this case.

24 2. Any release form Plains provides to potential claimants through its
25 claims process shall clearly state that “acceptance of payment is without prejudice
26 to: the claimant’s ability to (1) pursue full compensation for injuries caused by the
27 oil spill from Line 901, and (2) pursue legal action in a court of law or join any
28 class action regarding this matter.

1 3. All releases obtained by Defendants to date are hereby nullified and
2 invalidated to the extent that they purport to immunize Plains from paying
3 additional compensation to putative class members or prohibit putative class
4 members from participating in this Action.

5 4. For those class members who have already received payments from
6 Plains through the Oil Pollution Act, any recovery obtained as part of this Action
7 shall be reduced to the extent necessary to avoid double recovery.

8 5. Defendants are ordered, within 10 days from the date of this Order, to
9 produce a list of all putative class members who have signed settlement releases,
10 records of all communications with putative class members, and copies of any
11 documents sent between putative class members and Plains or its agents, including
12 settlement releases it has obtained from putative class members.

13 6. Defendants are ordered to provide accurate information in their
14 communications or correspondence with putative class members, including letters,
15 e-mails or advertisements, and provide a single representative copy of each
16 communication to class counsel. Each such communication must include, at
17 minimum:

- 18 a. The nature and pendency of this litigation, the claims, the
19 requested relief, how to learn more about this Action, and
20 contact information for class counsel;
- 21 b. The rights of putative class members to participate in this Action
22 or to obtain compensation and relief through other means;
- 23 c. The rights of putative class members to contact class counsel or
24 to seek advice of an attorney of their choosing before making a
25 decision; and
- 26 d. An adequate description of the manner in which Plains accepts,
27 processes, and pays claims.
- 28

