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14 *Class Counsel*

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

17 GREY FOX, LLC, et al.
18 Plaintiffs,
19 v.
20 PLAINS ALL AMERICAN
21 PIPELINE, L.P., et al.,
22 Defendants.

Case No. 2:16-cv-03157-PSG-JEM

**PLAINTIFFS' OMNIBUS REPLY
MEMORANDUM IN SUPPORT OF
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
MOTION FOR FEES, EXPENSES,
AND SERVICES AWARDS, AND
MOTION TO APPROVE THE PLAN
OF ALLOCATION**

Date: September 13, 2024
Time: 1:30 pm
Judge: Hon. Philip S. Gutierrez
Courtroom: 6A

1 Plaintiffs respectfully submit this memorandum in support of the three
2 pending motions involving the class action Settlement with Sable and PPC: the
3 motion for final approval of the proposed Settlement (Dkt. 368); the motion to
4 approve the proposed Plan of Allocation (Dkt. 370); and Class Counsel’s motion
5 for fees, expenses, and service awards (Dkt. 369). As detailed below, after the
6 successful completion of the Notice Program, not a single Class Member has filed
7 an objection to the Settlement, the Plan of Allocation, or Class Counsel’s motion
8 for fees, expenses and service awards.

9 As set out in Plaintiffs’ Memorandum in Support of Motion for Final
10 Approval (Dkt. 368), the \$70 million, non-reversionary Settlement is fair, adequate,
11 and reasonable, and should be approved pursuant to Fed. R. Civ. P. 23(e). The
12 Settlement was reached only after almost nine years of litigation and considerable
13 discovery and motion practice, and with the aid of experienced mediators who
14 oversaw several mediation sessions over the course of several years. The proposed
15 Settlement represents a substantial a benefit to the Class. Each of the 183 Class
16 Properties will be allocated at least \$50,000, with expected median payments of
17 approximately \$90,000 and average payments of \$230,000, net of all anticipated
18 fees and costs. In addition, the Settlement ensures that grantees of the pipeline
19 easements at issue in this action cannot build a second pipeline without first
20 obtaining new easements, brings clarity to easement terms, and adds and reinforces
21 important safety commitments regarding the maintenance and use of the repaired
22 pipeline.

23 Plaintiffs’ proposed Plan of Allocation is similarly fair and reasonable, and is
24 designed to compensate Class Members quickly and easily. The Settlement
25 provides for an already-funded Temporary Construction Easement Fund of
26 \$2,000,000 to compensate Settlement Class Members for ongoing Property Access
27 and Pipeline Repair work, which would be payable to Class Members prior to the
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1 effective date of the Settlement. As to the amounts owing to each Property under
2 the Settlement, the Plan determines the compensation based on expert evidence
3 regarding Class Properties’ damages and the nature of the specific easement
4 applicable to the Property. The Plan moreover proposes sending awards to Class
5 Members directly, obviating the need for a claims process. Dkt. 370 at 2-4. This
6 will ensure that the administration process is expeditious, and will result in timely
7 payments to all Class Members.

8 Finally, as set out in Plaintiffs’ motion for fees, costs, and expenses, Class
9 Counsel’s requested fee of 33% is fair and reasonable here, given the exceptional
10 results obtained for the Class, the riskiness of this novel litigation, Class Counsel’s
11 skilled and zealous representation on behalf of the Class, the contingent nature of
12 this case, the length of this almost nine-year litigation, and the fees awarded in
13 similar cases. Moreover, a lodestar cross-check would constitute a relatively modest
14 lodestar multiplier of 1.62, further underscoring the reasonableness of Class
15 Counsel’s request. Dkt. 369 at 3, 15. Class Counsel’s request for reimbursement of
16 approximately \$1.2 million in costs is similarly reasonable, and commensurate with
17 the stakes, complexity, novelty, and intensity of this litigation. *Id.* at 16. Class
18 Counsel’s request for service awards totaling \$60,000 for the six Class
19 Representatives is likewise reasonable, given the time and efforts the Class
20 Representatives spent on behalf of the Class in this hard-fought litigation. *Id.* at 16-
21 17.

22 The Court-approved Notice plan was “successfully implemented” pursuant to
23 this Court’s prior order.¹ The Notice included individual mailed notice
24 supplemented by a robust email notice and a targeted publication notice. All Notice
25 materials directed Class Members to the Settlement website, which was updated in
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27 ¹ See Dkt. 371-6 (“Intrepid-Bowden Supp. Decl.”), describing the implementation
28 of the Court-ordered Notice Program, including JND’s follow-up on undeliverable
direct mail notices, email notice, and publication notice.

1 real time with all relevant filings in this action, including the Settlement, the
2 motions for preliminary and final approval, the motion for fees, costs, and service
3 awards, the Plan of Allocation and the motion for approval of it, and relevant
4 Declarations in support of those motions.² Accordingly, Class Members have been
5 well apprised of their rights and the deadlines in this action.

6 Class Members' response to the proposed Settlement, Plan of Allocation, and
7 Class Counsel's request for fees, costs, and service awards, strongly support the
8 Settlement, the Plan, and the fee request. Not a single Class Member has objected to
9 the proposed Settlement, the Plan of Allocation, or Class Counsel's request for fees,
10 costs, and service awards. The absence of any objections strongly supports approval
11 of the three motions. "It is established that the absence of a large number of
12 objections to a proposed class action settlement raises a strong presumption that the
13 terms of a proposed class settlement action are favorable to the class members."
14 *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal.
15 2004); *see also Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir.
16 2004) (affirming approval of settlement where 45 of 90,000 class members objected
17 to the settlement and 500 class members opted out); *Smith v. Experian Info. Sols.,*
18 *Inc.*, No. SACV 17-00629-CJC (AFMx), 2020 WL 6689209, at *4 (C.D. Cal. Nov.
19 9, 2020). The absence of any objections is especially meaningful here, given that
20 many Class members have substantial recoveries at stake and therefore have more
21 incentive to make any objections known. *See* 4 NEWBERG AND RUBENSTEIN ON
22 CLASS ACTIONS § 13:58 (6th ed.).³

23 For the reasons stated above and in their initial memoranda in support of the
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25 ² *See* <https://www.lasflorespipelinesystemsettlement.com/documents> (Settlement
website).

26 ³ Five Class Members, accounting for 11 out of the 183 Class Properties, have
27 submitted timely and valid exclusion requests. A 6% opt-out rate in this action is
28 understandable, given that the Class Properties are owned by a mix of individual,
corporate, and non-profit entities that have different interests. Class Counsel will
apprise the Court of any changes to this statistic prior to the Fairness Hearing.

1 motions for final approval of the Settlement, the Plan of Allocation, and fees, costs,
2 and service awards, Plaintiffs and Class Counsel respectfully request that the Court
3 approve the Settlement and Plan of Allocation, and grant their motion for fees,
4 costs, and service awards.

5
6 Dated: August 29, 2024

Respectfully submitted,

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8 By: /s/Robert J. Nelson

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CERTIFICATE OF SERVICE

I, Wilson Dunlavey, hereby certify that on August 29, 2024, I caused to be electronically filed the Plaintiffs’ Supplemental Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement, Motion for Fees, Expenses, and Services Awards, and Motion to Approve of Plan of Allocation with the Clerk of the United States District Court for the Central District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Wilson M. Dunlavey