

1 Robert J. Nelson (CSB No. 132797)
rnelson@lchb.com
2 LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
3 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
4 Telephone: (415) 956-1000
Facsimile: (415) 956-1008
5

6 Juli E. Farris (CSB No. 141716)
jfarris@kellerrohrback.com
KELLER ROHRBACK L.L.P.
7 801 Garden Street, Suite 301
Santa Barbara, CA 93101
8 Telephone: (805) 456-1496
Facsimile: (805) 456-1497
9

10 A. Barry Cappello (CSB No. 037835)
abc@cappellonoel.com
CAPPELLO & NOEL LLP
11 831 State Street
Santa Barbara, CA 93101-3227
12 Telephone: (805)564-2444
Facsimile: (805)965-5950
13

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' SUPPLEMENTAL
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 and Class Counsel respectfully submit this Supplemental
2 Memorandum to update the Court regarding various matters relating to the
3 Settlement in this action, and file herewith [Amended Proposed] Orders reflecting
4 this update.

5 Regarding their fee request, Class Counsel seek 33% of the Settlement Fund,
6 but the exact dollar amount of the fee request was approximate at the time of the
7 filing of their motion for fees (Dkt. 369 at 1, n. 2 (noting that 33% of the total
8 requested fee award “will be slightly higher than \$23.1 million”)), given that half of
9 the Settlement Fund (\$35 million) had been deposited in an interest-bearing account
10 shortly after the Order Granting Preliminary Settlement Approval in May of 2024,
11 and so had been accruing interest since that time. *Id.* The interest on the Settlement
12 Fund as of September 10, 2024 has now been determined, and the taxes owed by
13 the Fund and due on September 16, 2024 have also been determined. The current
14 amount of the Settlement Fund (after taxes due) equals \$35,357,025.29. The precise
15 dollar amount of the requested fee, or 33 percent of the total Settlement Fund,
16 inclusive of the additional \$35 million Letter of Credit which will be drawn upon in
17 2025, is \$23,217,818. The [Amended Proposed] Order reflects this amount.

18 Regarding the Settlement, there has been some very recent activity involving
19 Class Members opting into and out of the Settlement. Of the 11 valid requests for
20 exclusion, eight (8) have been withdrawn. Dkt. 379, ¶ 7. Additionally, four (4) of
21 the six (6) invalid exclusion requests have been corrected. *Id.* Thus, as of
22 September 12, 2024, there are a total of seven (7) valid requests for exclusion and
23 two (2) invalid requests for exclusion. *Id.*¹

24 For the Court’s convenience, the redlined changes to the originally-filed
25 [Proposed] Orders reflecting the updates described herein and inserting docket
26 numbers where appropriate, are attached hereto as Exhibit 1 (Final Approval of
27 _____

28 ¹ The requests are invalid because the properties are not part of the Class.

1 Settlement), Exhibit 2 (Fees, Expenses and Service Awards), and Exhibit 3 (Plan of
2 Allocation). Clean versions of these [Amended Proposed] Orders are filed
3 concurrently as [Proposed] Orders, and will also be updated through this District’s
4 [Proposed Order] portal for the Court’s convenience. The [Proposed] Final
5 Judgment remains unchanged (but has placeholders for future dates in highlight),
6 but Plaintiffs’ have currently filed it as well for the Court’s convenience.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: September 12, 2024

Respectfully submitted,

By: /s/Robert J. Nelson

Robert J. Nelson (CSB No. 132797)
Nimish Desai (CSB No. 244953)
Wilson M. Dunlavey (CSB No. 307719)
Amelia A. Haselkorn (CSB No. 339633)
LIEFF CABRASER
HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956.1000
Facsimile: (415) 956.1008

Juli E. Farris (CSB No. 141716)
Matthew J. Preusch (CSB No. 298144)
KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
Santa Barbara, CA 93101
Telephone: (805) 456-1496
Facsimile: (805) 456-1497

Lynn Lincoln Sarko (*Pro Hac Vice*)
KELLER ROHRBACK L.L.P.
1201 Third Ave, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Facsimile: (206) 623-3384

A. Barry Cappello (CSB No. 037835)
Leila J. Noël (CSB No. 114307)
Lawrence J. Conlan (CSB No. 221350)
CAPPELLO & NOËL LLP
831 State Street
Santa Barbara, CA 93101-3227
Telephone: (805) 564-2444
Facsimile: (805) 965-5950

Class Counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Wilson Dunlavey, hereby certify that on September 12, 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

EXHIBIT 1

1 Robert J. Nelson (CSB No. 132797)
rnelson@lchb.com
2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
4 Facsimile: (415) 956-1008

5 Juli E. Farris (CSB No. 141716)
jfarris@kellerrohrback.com
6 KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
7 Santa Barbara, CA 93101
Telephone: (805) 456-1496
8 Facsimile: (805) 456-1497

9 A. Barry Cappello (CSB No. 037835)
abc@cappellonoel.com
10 CAPPELLO & NOËL LLP
831 State Street
11 Santa Barbara, CA 93101-3227
Telephone: (805)564-2444
12 Facsimile: (805)965-5950

13 *Class Counsel*
14 *(additional counsel listed at signature)*

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

18 GREY FOX, LLC, et al.

19 Plaintiffs,

20 v.

21 PLAINS ALL AMERICAN
22 PIPELINE, L.P., et al.,

23 Defendants.
24
25
26
27
28

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

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

Date: September 13, 2024

Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

1 WHEREAS, plaintiffs Grey Fox, LLC, MAZ Properties, Inc., Bean Blossom,
2 LLC, Winter Hawk, LLC, Mark Tautrim, Trustee of the Mark Tautrim Revocable
3 Trust, and Denise McNutt, individually and in their representative capacities
4 (“Class Representatives”), and Defendant Pacific Pipeline Company (“PPC”) and
5 Sable Offshore Corp., as successor by merger of Sable Offshore Holdings LLC and
6 Flame Acquisition Corp. (“Sable,” and collectively with PPC, “Settling Parties”),
7 have reached a proposed settlement of the Class claims, which is embodied in the
8 Settlement Agreement filed with the Court;

9 WHEREAS, on May 1, 2024, an Order Granting Preliminary Approval of
10 Proposed Settlement (“Preliminary Approval Order”) was entered by this Court,
11 preliminarily approving the proposed Settlement of this Action pursuant to the
12 terms of the Settlement Agreement and directing that Notice be given to the
13 members of the Settlement Class;

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

23 WHEREAS, a Final Approval Hearing was held on September 13, 2024.
24 Prior to the Final Approval Hearing, proof of completion of Notice was filed with
25 the Court, along with declarations of compliance as prescribed in the Preliminary
26 Approval Order. Class Members were adequately notified of their right to appear at
27 the hearing in support of or in opposition to the proposed Settlement, any
28

1 application for attorneys' fees and expenses, any application for incentive awards,
2 and/or the Plans of Distribution submitted by Class Counsel;

3 WHEREAS, no Class Members have filed objections challenging the fairness
4 of the Settlement, indicating a positive reaction from the Classes and further
5 supporting the reasonableness of the Settlement;

6 WHEREAS, the Class Representatives have applied to the Court for final
7 approval of the proposed Settlement of the Action [\(Dkt. #368\)](#), the terms and
8 conditions of which are set forth in the Settlement Agreement;

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

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

19 2. This Court has personal jurisdiction over Plaintiffs, all Settlement
20 Class Members, and the Settling Parties, and the Court has subject matter
21 jurisdiction to approve and enforce this Settlement and Settlement Agreement and
22 all Exhibits thereto.

23 3. The Court finds that the Notice set forth in Article XI of the Settlement
24 Agreement, detailed in the Notice Plan attached to the Declaration of Gina
25 Intrepido-Bowden of JND Legal Administration, and effectuated pursuant to the
26 Preliminary Approval Order: (a) constitutes the best notice practicable under the
27 circumstances of this Action; (b) constitutes due and sufficient notice to the Classes
28 of the terms of the Settlement Agreement and the Final Approval Hearing; and (c)

1 fully complied with the requirements of the Federal Rules of Civil Procedure, the
2 United States Constitution, and any other applicable law, including the Class
3 Action Fairness Act of 2005, 28 U.S.C. § 1715.

4 4. The Court confirms and finally certifies, for settlement purposes only,
5 the Settlement Class, pursuant to Rules 23(b)(3) and 23(e), consisting of

6 All owners of real property, other than those excluded in Paragraph 3.2 of the
7 Agreement, through which Line 901 and/or Line 903 passes pursuant to
8 Right-of-Way Grants, and the owner(s) of APN No. 133-070-004, for which
9 land rights were initially conveyed via condemnation rather than through a
10 Right-of-Way Grant, other than those Persons excluded in Paragraph 3.2.
11 The real property parcels through which Line 901 and/or Line 903 passes, as
12 described above, are set forth in Exhibit A. For avoidance of doubt, the
13 Settlement Class includes the classes and subclass certified by the Court's
14 January 28, 2020, and November 1, 2023 orders in their entirety, as well as
15 any other Persons (if any such other Persons exist) included in the definition
16 in this Paragraph.

17 The following entities and individuals are excluded from the Settlement
18 Class:

- 19 a. Class Counsel;
- 20 b. Settling Parties and Settling Parties' officers, directors,
21 employees, agents, and representatives;
- 22 c. Settling Parties' Affiliates, and Settling Parties' Affiliates'
23 officers, officers, directors, employees, agents, and representatives;
- 24 d. any fossil fuel company;
- 25 e. any government entity or division; and
- 26 f. the judges who have presided over this Action.

27 5. The final Settlement Class also excludes any members of the
28 provisional Settlement Class who submitted a timely and valid exclusion from the
Settlement in accordance with the Court's Order granting preliminary approval of
the Settlement ([ECF-Dkt. #325](#)).

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

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

14 b. The Court further finds that, for settlement purposes only,
15 the Settlement Class meets the requirements for class certification
16 under Federal Rules of Civil Procedure 23(a) and 23(b)(3).
17 Specifically, the Court finds, for settlement purposes only, that (1) the
18 Settlement Class Members are sufficiently numerous such that joinder
19 is impracticable; (2) there are questions of law and fact common to
20 Settlement Class Members; (3) proposed Settlement Class
21 Representatives’ claims are typical of those of the Settlement Class
22 Members; (4) proposed Settlement Class Representatives and
23 Settlement Class Counsel have fairly and adequately represented the
24 interests of the Settlement Class Members; and (5) the predominance
25 and superiority requirements of Rule 23(b)(3) are satisfied.

26 c. The Court finds that the Settlement was negotiated at
27 arm’s length and was free of collusion. It was negotiated with
28 experienced, adversarial counsel after extensive discovery, and with

1 the aid of neutral, qualified mediators. Further, the attorneys' fees and
2 costs award was the subject of a separate application to the Court.

3 7. The Settlement Agreement and every term and provision thereof are
4 deemed incorporated in this Order and have the full force of an order of this Court.

5 8. Upon the Effective Date, all Class Members, except the seven valid
6 opt outs, have, by operation of this Order, fully, finally and forever released,
7 relinquished, and discharged the Released Parties pursuant to Article VIII of the
8 Settlement Agreement.¹

9 9. This Final Approval Order, the Settlement Agreement, the Settlement
10 that it reflects, and any and all acts, statements, documents or proceedings relating
11 to the Settlement are not, and must not be construed as, or used as, an admission by
12 or against Defendant or Settling Parties of any fault, wrongdoing, or liability on
13 their part, or of the validity of any claim or of the existence or amount of damages.

14 10. The above-captioned Action is dismissed in its entirety with prejudice.
15 Except as otherwise provided in orders separately entered by this Court on ~~any~~
16 Class Counsel's application for attorneys' fees and expenses, ~~any application for and~~
17 service awards, and their motion for approval of the Plan of Allocation ~~submitted~~
18 ~~by Class Counsel~~, the parties will bear their own expenses and attorneys' fees.

19 11. Without affecting the finality of this Order and the accompanying
20 Judgment, the Court reserves jurisdiction over the implementation of the
21 Settlement, including enforcement and administration of the Settlement Agreement,
22 including any releases in connection therewith, and any other matters related or
23 ancillary to the foregoing.

24 12. This order, in conjunction with the orders granting fees, expenses, and
25 services awards, the plan of allocation, and final judgment, close the case.

26

27

28 ¹ A full and complete list of properties by parcel number that ~~those who~~ opted out
of the Settlement is attached to this Order as Exhibit A.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: _____

Hon. Philip S. Gutierrez

EXHIBIT A

OPT OUT LIST

	<u>APN NUMBER</u>	<u>NAME</u>	<u>CITY/STATE</u>
1.	081-150-002	The Land Trust for Santa Barbara County	Santa Barbara, CA
2.	081-150-028	The Land Trust for Santa Barbara County	Santa Barbara, CA
3.	131-200-013	Jack & Shannon Selvidge	Santa Maria, CA
4.	131-200-002	Barak & Alyssa Moffitt Revocable Trust	Santa Maria, CA
5.	131-200-003	Barak & Alyssa Moffitt and Lanny Zamora	Santa Maria, CA
6.	131-200-001	Timothy Bennett	Santa Maria, CA
7.	099-400-017	ZACA Preserve, LLC	Los Olivos, CA

EXHIBIT 2

1 Robert J. Nelson (CSB No. 132797)
rnelson@lchb.com
2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
4 Facsimile: (415) 956-1008

5 Juli E. Farris (CSB No. 141716)
jfarris@kellerrohrback.com
6 KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
7 Santa Barbara, CA 93101
Telephone: (805) 456-1496
8 Facsimile: (805) 456-1497

9 *Class Counsel*

10 A. Barry Cappello (CSB No. 037835)
abc@cappellonoel.com
11 CAPPELLO & NOËL LLP
831 State Street
12 Santa Barbara, CA 93101-3227
Telephone: (805)564-2444
13 Facsimile: (805)965-5950

14 *Lead Trial Counsel*
15 *(additional counsel listed at signature)*

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

18
19 GREY FOX, LLC, et al.

20 Plaintiffs,

21 v.

22 PLAINS ALL AMERICAN
23 PIPELINE, L.P., et al.,

24 Defendants.
25
26
27
28

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

**[AMENDED PROPOSED] ORDER
GRANTING ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS
UNDER RULE 23(H)**

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

1 Before the Court is Plaintiffs’ unopposed motion for attorneys’ fees,
2 expenses, and class representative service awards. [Dkt. #369](#). The Court conducted
3 a fairness hearing on September 13, 2024. Having considered the moving papers
4 and the information provided at the hearing, the Court GRANTS Plaintiffs’ motion.

5 **I. BACKGROUND**

6 This case arises from an oil spill that occurred at Refugio State Beach in
7 Santa Barbara County on May 19, 2015. The facts have been repeatedly recounted
8 in the Court’s prior orders, and the Court will address here only those facts relevant
9 to Plaintiffs’ request for fees, expenses, and service awards.

10 The parties have engaged in over eight years of hard-fought litigation in
11 order to arrive at the \$70 million Settlement before the Court for final approval. *See*
12 *Mot.*; *see also Settlement Agreement*, Dkt. #303-1, Ex. 1 (setting forth the terms of
13 the Settlement). During this time, the parties conducted extensive discovery, which
14 included among other things exchanging more than 1.4 million pages of
15 documents, disclosing 13 experts and producing 21 expert reports, and taking over
16 20 depositions. *See* [#Dkt. 371](#), *Declaration of Robert J. Nelson in Support of Final*
17 *Approval*, (“Nelson Decl.”) ¶¶ 14-6. Plaintiffs also successfully certified a Class,
18 *see* Dkt. 100, which was subsequently amended. *See* Dkt. [\\$#258](#). The Parties filed
19 multiple summary judgment motions. *See, e.g.*, Dkts. [#109](#), 267. Finally, the
20 Settlement was reached only after the parties participated in multiple formal
21 mediations over the course of many years. *See Nelson Decl.* ¶¶ 5-6.

22 Plaintiffs now bring this motion seeking the Court’s approval of the following
23 awards: (1) attorneys’ fees of 33% of the total Settlement, [totaling \\$23,217,818](#); (2)
24 reimbursement of \$1,195,207 in litigation expenses; and (3) three service awards of
25 \$20,000 to Class Representatives, for a total of \$60,000. *See generally* *Mot.*

26 The Court considers each in turn.
27
28

1 **II. ATTORNEYS' FEES**

2 **A. Legal Standard**

3 Awards of attorneys' fees in class action cases are governed by Federal Rule
4 of Civil Procedure 23(h), which provides that, after a class has been certified, the
5 court may award reasonable attorneys' fees and nontaxable costs. *See* Fed. R. Civ.
6 P. 23(h). The court, however, “must carefully assess” the reasonableness of the fee
7 award. *See Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003).

8 Where litigation leads to the creation of a common fund, courts can
9 determine the reasonableness of a request for attorneys' fees using either the
10 percentage-of-recovery method or the lodestar method. *See In re Bluetooth Headset*
11 *Prods. Liab. Litig.*, 654 F.3d 935, 944 45 (9th Cir. 2011) (finding that courts may
12 use either method to gauge the reasonableness of a fee request but encouraging
13 courts to employ a second method as a cross-check after choosing a primary
14 method).

15 Under the percentage-of-recovery method, courts typically use 25% of the
16 fund as a benchmark for a reasonable fee award. *See Id.* at 942. However, the
17 percentage can vary, and courts have awarded more or less than 25% of the fund in
18 attorneys' fees as they deemed appropriate. *See, e.g., Vizcaino v. Microsoft Corp.*,
19 290 F.3d 1043, 1047 (9th Cir. 2002) (noting that courts generally award between 20
20 and 30% of the common fund in attorneys' fees). When assessing the
21 reasonableness of a fee award, courts consider “(1) the results achieved; (2) the risk
22 of litigation; (3) the skill required and the quality of work; (4) the contingent nature
23 of the fee and the financial burden carried by the plaintiffs; and (5) awards made in
24 similar cases.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D.
25 Cal. 2008) (citing *Vizcaino*, 290 F.3d at 1048 50).

26 **B. Discussion**

27 After over eight years of litigation and roughly 17,812.37 hours of work,
28

1 Class Counsel now seek an award of 33% of the \$70 million gross settlement.¹ This
2 amount is a modest departure from the federal benchmark given the circumstances
3 of this case. *See* Mot. at 5:5, 17:12; Nelson Decl. ¶¶ 27-9. As such, the Court
4 applies the percentage-of-recovery method and analyzes Plaintiffs’ fee request
5 under the *Vizcaino* factors.

6 Due to the exceptional circumstances of this case and the Court’s extensive
7 involvement in supervising the last eight years of litigation, the Court diverts from
8 its usual practice and finds it unnecessary to cross-check the reasonableness of the
9 requested award using the lodestar method. *Cf. Fischel v. Equitable Life Assur.*
10 *Soc’y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002) (holding that the district court did
11 not err by using only the lodestar method to calculate fees given that the parties
12 settled early in the litigation).

13 **i. Results Achieved**

14 “The overall result and benefit to the class from the litigation is the most
15 critical factor in granting a fee award.” *In re Omnivision Techs., Inc.*, 559 F. Supp.
16 2d at 1046. “[T]he law appropriately provides for some upward adjustment [from
17 the federal benchmark] where the results achieved are significantly better than the
18 norm.” *Rodman v. Safeway, Inc.*, No. CV 11-3003 JST, 2018 WL 4030558, at *3
19 n.3 (N.D. Cal. Aug. 22, 2018).

20 Here, Class Counsel secured impressive results for the Class. The median
21 payment to each of the ~~183~~ 176 Class Properties will be approximately \$90,000, the
22 average payment will be approximately \$230,000, and the minimum payment will
23 be approximately \$50,150.² Class member recoveries through this Settlement for
24 clarification of easement rights are significantly greater – indeed, often orders of

25 _____
26 ¹ Half of the Settlement proceeds (\$35 million) has been earning interest pursuant to
27 the Settlement. *See* Settlement at pages 41, 45. Accordingly, 33% of the total award
is ~~-\$23,217,818.~~ will be slightly higher than \$23.1 million.

28 ² This number differs from the Settlement, because 7 parcels have opted out from
the Settlement.

1 magnitude greater – than the price the Class members were paid for their original
2 easements when adjusted for inflation. Mot. at 4-5; Nelson Decl. ¶ 8. In short,
3 through this Settlement, Class Counsel has successfully negotiated payments to
4 Class members for clarification for easement rights that far exceed the
5 consideration originally paid for those easements when adjusted for inflation. Mot.
6 at 4, 5:4; *cf. In re Heritage Bond Litig.*, No. 02-ML-1475-DT (RCX), 2005 WL
7 1594389, at *8 (C.D. Cal. June 10, 2005)(awarding 33.33% in fees to counsel
8 where the class recovered 23% of the total net loss after fees were deducted);
9 *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1021, 1023 (E.D. Cal. 2019)
10 (awarding 33.3% of a \$40 million common fund that represented 48% of damages).

11 Not only does the Settlement provide meaningful monetary relief to members
12 of the Class, but the recovery was also obtained in the face of complex and hotly
13 disputed issues that were central to Plaintiffs’ case, including unique contract
14 interpretation issues as well as technical disputes over the meaning of pipeline
15 operation and maintenance. Mot. at 6:14-20. Moreover, there is no supporting
16 precedent for the claim that forms that basis of this Settlement: that the easements
17 had all terminated as a result of the Pipeline shutdown. And there is likewise no
18 direct precedent for the Subclass members’ claim that their easements had all
19 terminated for an additional reason - the automatic termination clauses in the
20 easements. *See* Mot. at 6:8-20; Nelson Decl. ¶ 12; *see also Vizcaino*, 290 F.3d at
21 1048 (affirming the district court's finding that counsel “achieved exceptional
22 results for the class” in the face of difficult facts, “in the absence of supporting
23 precedents,” and despite “[Defendant's] vigorous opposition throughout the
24 litigation”); *Lopez v. Youngblood*, CV-F-07-0474 DLB, 2011 WL 10483569, at *6
25 (E.D. Cal. Sept. 2, 2011)(exceeding the federal benchmark where “[t]he authority
26 upon which Plaintiffs were able to rely was relatively scant”).

27 [Finally, no Class members objected to Class Counsel’s fee request.](#)

28 Accordingly, the Court is persuaded that this factor weighs in favor of an upward

1 departure from the federal benchmark.

2 **ii. Risk of Litigation**

3 In assessing the fairness and reasonableness of an award of attorneys' fees,
4 the risk that further litigation might result in no recovery is a "significant factor." *In*
5 *re Omnivision Techs.*, 559 F. Supp. 2d at 1046-47. As mentioned above, Plaintiffs'
6 case hinged on the resolution of several complex and disputed issues, and a loss at
7 trial or on appeal on any of these issues could have precluded Class recovery in
8 whole or part. *See* Mot. at 7:2-16. This risk is only magnified by the novelty and
9 length of this litigation. Thus, this factor supports the requested fee award of 33%
10 of the common fund.

11 **iii. The Skill Required and the Quality of Work**

12 The Court also considers the skill required to prosecute and manage this
13 litigation, as well as Class Counsel's overall performance. *See In re Omnivision*
14 *Techs.*, 559 F. Supp. 2d at 1047.

15 Having witnessed the complexities of the legal and factual issues at play in
16 this case, the Court finds Class Counsel's litigation efforts notable. For example,
17 Class Counsel successfully certified the Class, and subsequently amended it,
18 despite the lack of precedent to rely upon as to the certification of the class or the
19 underlying claim certified. Nelson Decl. ¶ 12 ("To Class Counsel's knowledge,
20 there is no direct supporting precedent for the claim that forms the basis of this
21 Settlement [or]...certification of the easement class."). Moreover, for much of the
22 litigation, Plains sought to install a second pipeline, asserting that the easements
23 negotiated by Celeron permitted it to install a second pipeline through the Class
24 Properties. Mot. at 7:24-28. Class Counsel fought this project for years, asserting
25 that the easements did not permit the installation of a second pipeline. In the face of
26 spirited opposition by Plaintiffs, including successfully defeating a motion to
27 dismiss and summary judgment on that issue (Dkts. 80, 128), Plains and PPC
28 ultimately abandoned the second pipeline, resulting in a consent decree judgment in
favor of Plaintiffs on those claims. Dkt. #282. When Plains and PPC abandoned the

1 second pipeline, it required Class Counsel to pivot and pursue claim 15, the new
2 claim that the easements had terminated pursuant to common-law abandonment
3 and, as to the Subclass, for the additional reason that the automatic termination
4 provisions in many of the contracts was triggered.

5 These facts, in conjunction with the extensive and technical fact and expert
6 discovery and the many formal daylong mediations, underscore the skill and effort
7 needed to achieve the impressive \$70 million settlement result. *See* Mot. at 8:17-
8 9:5; Nelson Decl. ¶ 5-6. And especially when considering that Defendants were
9 represented by prominent litigation firms, Class Counsel's ability to get the case this
10 far along evinces their high quality of work. *See In re Am. Apparel, Inc. S'holder*
11 *Litig.*, No. CV 10-6352 MMM (JCGx), 2014 WL 10212865, at *22 (C.D. Cal. July
12 28, 2014) (“In addition to the difficulty of the legal and factual issues raised, the
13 court should also consider the quality of opposing counsel as a measure of the skill
14 required to litigate the case successfully.”).

15 As such, this factor, too, weighs in favor of awarding Class Counsel its
16 requested fees.

17 **iv. The Contingent Nature of the Fee and Financial**
Burden Carried by the Plaintiffs

18 An upward departure from the federal benchmark may be warranted when
19 Class Counsel faced the risk of walking away with nothing after investing
20 substantial time and resources in the matter. *See In re Omnivision Techs., Inc.*, 559
21 F. Supp. 2d at 1047 (“The importance of assuring adequate representation for
22 plaintiffs who could not otherwise afford competent attorneys justifies providing
23 those attorneys who do accept matters on a contingent-fee basis a larger fee.”).
24 Here, Class Counsel took this matter on a wholly contingent basis with no
25 guarantee of recovery for over eight years. *See* Nelson Decl. ¶¶ 4, 20 . The Court
26 agrees that the substantial risks borne by Class Counsel in pursuing this class action
27 for over eight years with no guarantee of recovering fees or litigation expenses also
28 militates in favor of finding the requested fee award reasonable.

1 v. **Awards Made in Similar Cases**

2 The requested attorneys' fees are comparable to awards authorized in similar
3 cases. *See, e.g., Williams v. MGM-Pathe Commc'n Co.*, 129 F.3d 1026, 1026 (9th
4 Cir. 1997) (awarding 33% of the \$4.5 million settlement fund); *Wren v. RGIS*
5 *Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *29 (N.D. Cal.
6 Apr. 1, 2011) (finding a 42% fee award appropriate). Moreover, the Court
7 compares the requested award to those from cases that are similar in size,
8 complexity, and duration and concludes that an award of 33% is within the range of
9 reasonableness permitted in this Circuit. *See, e.g., In re Apollo Grp. Inc. Sec. Litig.*,
10 2012 WL 1378677, at *3, *7 (D. Ariz. Apr. 20, 2012) (33.33% of a \$145 million
11 settlement awarded following seven years of litigation “pursued ... despite great
12 risk”); *Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 904, 907 (S.D.
13 Ill. 2012) (33.33% of \$105 million, equivalent to a 1.34 multiplier, in a seven-year
14 long pollution case); *see also In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-*
15 *Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017 WL 6040065, at *5 n.30
16 (N.D. Cal. Dec. 6, 2017) (collecting “mega-fund” cases from around the country,
17 including those awarding fees of one-third the settlement fund).

18 Accordingly, similar cases establish that an upward departure from the
19 federal benchmark is appropriate here.

20 **C. Conclusion**

21 Based on the unique circumstances of this case and because all of the
22 *Vizcaino* factors considered under the percentage-of-recovery method heavily
23 support Class Counsel’s requested fee, the Court forgoes cross-checking the
24 reasonableness of the fee against the lodestar method. Ultimately, the Court is
25 convinced that an award of 33% of the common fund is warranted and reasonable
26 under the circumstances. As such, the Court GRANTS Plaintiffs’ motion for 33%
27 of the gross Settlement -in attorneys' fees, [for a total of \\$23,217,818](#).

28

1 **III. LITIGATION EXPENSES**

2 In class action settlements, “[a]ttorneys may recover their reasonable
3 expenses that would typically be billed to paying clients in non-contingency
4 matters.” *See In re Omnivision Techs.*, 559 F. Supp. 2d at 1048. Here, Class
5 Counsel requests reimbursement of \$1,195,207 in costs and expenses. *See Mot* at
6 16:24-6. This includes expenses that are typically charged to fee-paying clients,
7 including filing fees, expert witness fees, mediation fees, deposition expenses, legal
8 research fees, and copying and postage charges. *See Nelson Decl.* ¶ 28; *Andrews*
9 *Declaration of Juli E. Farris*, Dkt. #956 ¶¶ 18-20; *see also In re Lidoderm Antitrust*
10 *Litig.*, No. 14-md-02521-WHO, 2018 WL 4620695, at *4 (N.D. Cal. Sept. 20,
11 2018) (awarding almost \$4 million in expenses for filing fees, computerized
12 research, copies, postage and messenger services, experts, and case-related travel);
13 *In re NCAA Antitrust Litig.*, 2017 WL 6040065, at *5, *11 (finding expenses of
14 over \$3 million were reasonable given that the matter was litigated for over three
15 years). Given the duration and scope of this litigation, and after reviewing
16 accompanying declarations, the Court is satisfied that the costs are reasonable.
17 [Finally, no Class members objected to Class Counsel’s request for reimbursement](#)
18 [of litigation expenses.](#) Therefore, the Court GRANTS Plaintiffs’ request for costs in
19 the amount of \$1,195,207.

20 **IV. CLASS REPRESENTATIVES’ SERVICE AWARDS**

21 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. W.*
22 *Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). When assessing requests for
23 service awards, courts consider five principal factors:

24 (1) the risk to the class representative in commencing suit, both financial and
25 otherwise; (2) the notoriety and personal difficulties encountered by the class
26 representative; (3) the amount of time and effort spent by the class representative;
27 (4) the duration of the litigation; (5) the personal benefit (or lack thereof) enjoyed
28 by the class representative as a result of the litigation. *Van Vranken v. Atl. Richfield*

1 Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

2 After reviewing the submitted declarations provided by the Class
3 Representatives, *see* Nelson Decl. Exs. 3-5, the Court is satisfied that the requested
4 service awards of \$20,000 each for Mr. Tautrim, Ms. McNutt, and Roger McMullin
5 (on behalf of the Grey Fox entities) are appropriate. Throughout the case's
6 trajectory, each Class Representative, among other things, searched for and
7 provided facts used to compile Plaintiffs' operative complaint, helped Class
8 Counsel analyze claims, and reviewed and approved the settlement. *See Id.* Mr.
9 Tautrim and Ms. McNutt sat for deposition, and three individuals sat for deposition
10 with on behalf of the Grey Fox entities. In short, they each dedicated time and effort
11 to the benefit of the litigation without any assurance of receiving compensation in
12 the immediate or near future, if ever. *See, e.g., Nelson Decl.*, Ex. 3 (Declaration of
13 Mark Tautrim) ¶ 9 ("I estimate that representatives on behalf of the above entites
14 devoted more than 100 hours to the work."); *Id.*, Ex. 5 (Declaration of Roger
15 McMullin) ¶ 9 ("I estimate that representatives on behalf of the above entities
16 devoted more than 130 hours to the work."); *Id.*, Ex. 4 (Declaration of Denise
17 McNutt) ¶ 9 ("I estimate that I devoted more than 80 hours to the work.").

18 Moreover, the Court recognizes that service awards of this size or even larger
19 are common in class action cases. *See Mot.* at 17:13-18:13 (citing cases approving
20 awards of \$20,000 to \$25,000); *see also In re NCAA Antitrust Litig.*, 2017 WL
21 6040065, at *11 & n.69 (finding the requested service awards of \$20,000 for each
22 class representative consistent with service awards in other cases). Finally, the
23 combined service awards represent less than 0.09% of the gross settlement, which
24 is reasonable given the hours expended by the Class Representatives in pursuing
25 class wide relief. *See Edwards v. Chartwell Servs., Inc.*, No. CV 16-9187 PSG
26 (KSx), 2018 WL 10455206, at *1-2, *8 (C.D. Cal. Aug. 27, 2018) (approving a
27 \$10,000 enhancement award, which represented 1.25% of the gross settlement
28 fund, when plaintiff spent approximately 55 hours assisting with the case and risked

1 future job prospects); *Palmer v. Pier 1 Imports*, No. 8:16-cv-01120 JLS (DFMx),
2 2018 WL 8367495, at *6 (C.D. Cal. July 23, 2018) (approving service award
3 representing 3.5% of gross settlement fund when plaintiff spent 20 hours helping
4 with the case and faced employment-related risks).

5 Finally, no Class members objected to Class Counsel’s request for service
6 awards. Accordingly, the Court **GRANTS** Plaintiffs’ request for service awards in
7 the amount of \$20,000 for Class Representatives Mark Tautrim, Denise McNutt,
8 and Roger McMullin (on behalf of the Grey Fox entities), for a total of \$60,000.

9 **V. CONCLUSION**

10 For the foregoing reasons, Plaintiffs’ motion for approval of attorneys’ fees,
11 expenses, and service awards is **GRANTED**. Accordingly, it is **HEREBY**
12 **ORDERED AS FOLLOWS:**

- 13 1. Class Counsel is awarded ~~33% of the total settlement amount in~~
14 ~~attorneys’ fees~~ \$23,217,818 in attorneys’ fees, -and \$1,195,207 in costs;
15 and
- 16 2. Mr. Tautrim, Ms. McNutt are each awarded \$20,000 in service awards
17 and Roger McMullin is awarded \$20,000 on behalf of the Grey Fox
18 entities, for a total of \$60,000.

19 This order, in conjunction with the orders granting final approval of class
20 settlement, the plan of allocation, and final judgment, closes the case.

21 **IT IS SO ORDERED.**

22
23 Dated: _____

24
25
26 _____
27 HON. PHILIP S. GUTIERREZ
28 UNITED STATES JUDGE

EXHIBIT 3

1 Robert J. Nelson (CSB No. 132797)
rnelson@lchb.com
2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
4 Facsimile: (415) 956-1008

5 Juli E. Farris (CSB No. 141716)
jfarris@kellerrohrback.com
6 KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
7 Santa Barbara, CA 93101
Telephone: (805) 456-1496
8 Facsimile: (805) 456-1497

9 A. Barry Cappello (CSB No. 037835)
abc@cappellonoel.com
10 CAPPELLO & NOËL LLP
831 State Street
11 Santa Barbara, CA 93101-3227
Telephone: (805)564-2444
12 Facsimile: (805)965-5950

13 *Class Counsel*
14 *(additional counsel listed at signature)*

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

18 GREY FOX, LLC, et al.

19 Plaintiffs,

20 v.

21 PLAINS ALL AMERICAN
22 PIPELINE, L.P., et al.,

23 Defendants.
24
25
26
27
28

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

**[AMENDED PROPOSED] ORDER
GRANTING PLAINTIFFS' MOTION
FOR APPROVAL OF PLAN OF
ALLOCATION**

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

1 Plaintiffs have moved for an order approving the Plan of Allocation. Dkt.
2 ~~1~~ #370. Upon due consideration of the motion and all of the papers, pleadings
3 and files in this action, and good cause appearing, the Court **GRANTS** the motion.

4 As part of its review of a proposed settlement, the trial court should consider
5 “the effectiveness of any proposed method of distributing relief to the class,
6 including the method of processing class-member claims.” Fed. R. Civ. P.
7 23(e)(2)(C)(ii). “A claims processing method should deter or defeat unjustified
8 claims, but the court should be alert to whether the claims process is unduly
9 demanding.” Fed. R. Civ. P. 23(e), 2018 adv. comm. note. Likewise, Rule
10 23(e)(2)(D) asks whether “the proposal [for distribution among class members]
11 treats class members equitably relative to each other.” Relevant considerations may
12 include “whether the apportionment of relief among class members takes
13 appropriate account of differences among their claims, and whether the scope of the
14 release may affect class members in different ways that bear on the apportionment
15 of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note.

16 Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds
17 in a class action under Fed. R. Civ. P. 23 is governed by the same standards of
18 review applicable to the settlement as a whole – the plan must be fair, reasonable,
19 and adequate.” *In re Illumina, Inc. Sec. Litig.*, No. 3:16-CV-3044-L-MSB, 2021
20 WL 1017295, at *4 (S.D. Cal. Mar. 17, 2021) (citing *Class Pls. v. City of Seattle*,
21 955 F.2d 1268, 1284–85 (9th Cir. 1992)). The plan “need only have a reasonable,
22 rational basis, particularly if recommended by experienced and competent class
23 counsel.” *Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC (CTx), 2008 WL
24 11338161, *9 (C.D. Cal. June 9, 2008) (citation omitted).

25 The Court has reviewed the Plan of Allocation and finds that it meets the
26 standards for approval. First, the Plan pays Class Members directly, obviating the
27 need for a claims process altogether. “[T]he goal of any distribution method is to
28 get as much of the available damages remedy to class members as possible and in

1 as simple and expedient a manner as possible.” *See Hilsley v. Ocean Spray*
2 *Cranberries, Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020) (quoting 4
3 William B. Rubenstein, *Newberg on Class Actions* § 13:53 (5th ed. Dec. 2021
4 update)). The proposed distribution plan is simple and expedient. This strongly
5 supports approval.

6 The Court also finds that the Plan treats Class Members equitably and is fair,
7 reasonable, and adequate. The Plan provides every Class Member with a uniform
8 base payment of \$50,000 and compensates Class Members additionally based on
9 reasonable, equitable, and objective criteria: the repair work on each Class Property
10 (if any); the value of the Class Properties’ easement and severance damages
11 pursuant to expert proof; and the presence, if any, of automatic termination clauses
12 in the easements.

13 Distribution methods such as these are regularly approved as fair and
14 reasonable. *Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG (JEMx), 2018 WL
15 11358228, at *4 (C.D. Cal. Apr. 2, 2018) (approving payment of equal shares for
16 portion of settlement); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at
17 *8 (N.D. Cal. Sept. 2, 2015) (approving payment based on “fractional share[s]”);
18 *Jenson, v. First Tr. Corp.*, 2008 WL 11338161, at *10 (approving distinctions in
19 plan of allocation as reasonably reflecting likelihood of recovery of subgroups
20 within the class); *In re Biolase, Inc. Sec. Litig.*, No. SA-CV-13-1300 JLS (FFMx),
21 2015 WL 12720318, at *5 (C.D. Cal. Oct. 13, 2015) (variable pro rata distribution
22 plan based upon relative injuries of class members approved). Accordingly, this
23 strongly supports approval.

24 Finally, no Class members objected to the Plan of Allocation. This response
25 speaks to the Class members’ support for the Plan of Allocation. *See In re Heritage*
26 *Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *12 (C.D. Cal. June 10,
27 2005); *see also In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod.*
28

1 *Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *3 (N.D. Cal. May
2 10, 2019).

3 Accordingly, the Court finds that the Plan is fair and reasonable and meet the
4 standard for approval under Rule 23(e). Plaintiffs' motion is **GRANTED**.

5 Without affecting the finality of this Order, the Court reserves jurisdiction
6 over the Plan of Allocation and any other matters related or ancillary to the
7 foregoing.

8

9 **IT IS SO ORDERED.**

10

11 Dated: _____

12

13

14

HON. PHILIP S. GUTIERREZ
UNITED STATES JUDGE

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Robert J. Nelson (CSB No. 132797)
rnelson@lchb.com
2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
4 Facsimile: (415) 956-1008

5 Juli E. Farris (CSB No. 141716)
jfarris@kellerrohrback.com
6 KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
7 Santa Barbara, CA 93101
Telephone: (805) 456-1496
8 Facsimile: (805) 456-1497

9 A. Barry Cappello (CSB No. 037835)
abc@cappelloel.com
10 CAPPELLO & NOËL LLP
831 State Street
11 Santa Barbara, CA 93101-3227
Telephone: (805) 564-2444
12 Facsimile: (805) 965-5950

13 *Class Counsel*
14 *(additional counsel listed at signature)*

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

18 GREY FOX, LLC, et al.

19 Plaintiffs,

20 v.

21 PLAINS ALL AMERICAN
22 PIPELINE, L.P., et al.,

23 Defendants.
24

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

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

Date: September 13, 2024

Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

1 WHEREAS, plaintiffs Grey Fox, LLC, MAZ Properties, Inc., Bean Blossom,
2 LLC, Winter Hawk, LLC, Mark Tautrim, Trustee of the Mark Tautrim Revocable
3 Trust, and Denise McNutt, individually and in their representative capacities
4 (“Class Representatives”), and Defendant Pacific Pipeline Company (“PPC”) and
5 Sable Offshore Corp., as successor by merger of Sable Offshore Holdings LLC and
6 Flame Acquisition Corp. (“Sable,” and collectively with PPC, “Settling Parties”),
7 have reached a proposed settlement of the Class claims, which is embodied in the
8 Settlement Agreement filed with the Court;

9 WHEREAS, on May 1, 2024, an Order Granting Preliminary Approval of
10 Proposed Settlement (“Preliminary Approval Order”) was entered by this Court,
11 preliminarily approving the proposed Settlement of this Action pursuant to the
12 terms of the Settlement Agreement and directing that Notice be given to the
13 members of the Settlement Class;

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

23 WHEREAS, a Final Approval Hearing was held on September 13, 2024.
24 Prior to the Final Approval Hearing, proof of completion of Notice was filed with
25 the Court, along with declarations of compliance as prescribed in the Preliminary
26 Approval Order. Class Members were adequately notified of their right to appear at
27 the hearing in support of or in opposition to the proposed Settlement, any
28

1 application for attorneys' fees and expenses, any application for incentive awards,
2 and/or the Plans of Distribution submitted by Class Counsel;

3 WHEREAS, no Class Members have filed objections challenging the fairness
4 of the Settlement, indicating a positive reaction from the Classes and further
5 supporting the reasonableness of the Settlement;

6 WHEREAS, the Class Representatives have applied to the Court for final
7 approval of the proposed Settlement of the Action (Dkt. #368), the terms and
8 conditions of which are set forth in the Settlement Agreement;

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

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

19 2. This Court has personal jurisdiction over Plaintiffs, all Settlement
20 Class Members, and the Settling Parties, and the Court has subject matter
21 jurisdiction to approve and enforce this Settlement and Settlement Agreement and
22 all Exhibits thereto.

23 3. The Court finds that the Notice set forth in Article XI of the Settlement
24 Agreement, detailed in the Notice Plan attached to the Declaration of Gina
25 Intrepido-Bowden of JND Legal Administration, and effectuated pursuant to the
26 Preliminary Approval Order: (a) constitutes the best notice practicable under the
27 circumstances of this Action; (b) constitutes due and sufficient notice to the Classes
28 of the terms of the Settlement Agreement and the Final Approval Hearing; and (c)

1 fully complied with the requirements of the Federal Rules of Civil Procedure, the
2 United States Constitution, and any other applicable law, including the Class
3 Action Fairness Act of 2005, 28 U.S.C. § 1715.

4 4. The Court confirms and finally certifies, for settlement purposes only,
5 the Settlement Class, pursuant to Rules 23(b)(3) and 23(e), consisting of

6 All owners of real property, other than those excluded in Paragraph 3.2 of the
7 Agreement, through which Line 901 and/or Line 903 passes pursuant to
8 Right-of-Way Grants, and the owner(s) of APN No. 133-070-004, for which
9 land rights were initially conveyed via condemnation rather than through a
10 Right-of-Way Grant, other than those Persons excluded in Paragraph 3.2.
11 The real property parcels through which Line 901 and/or Line 903 passes, as
12 described above, are set forth in Exhibit A. For avoidance of doubt, the
13 Settlement Class includes the classes and subclass certified by the Court's
14 January 28, 2020, and November 1, 2023 orders in their entirety, as well as
15 any other Persons (if any such other Persons exist) included in the definition
16 in this Paragraph.

17 The following entities and individuals are excluded from the Settlement
18 Class:

- 19 a. Class Counsel;
- 20 b. Settling Parties and Settling Parties' officers, directors,
21 employees, agents, and representatives;
- 22 c. Settling Parties' Affiliates, and Settling Parties' Affiliates'
23 officers, officers, directors, employees, agents, and representatives;
- 24 d. any fossil fuel company;
- 25 e. any government entity or division; and
- 26 f. the judges who have presided over this Action.

27 5. The final Settlement Class also excludes any members of the
28 provisional Settlement Class who submitted a timely and valid exclusion from the
Settlement in accordance with the Court's Order granting preliminary approval of
the Settlement (Dkt. #325).

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

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

14 b. The Court further finds that, for settlement purposes only,
15 the Settlement Class meets the requirements for class certification
16 under Federal Rules of Civil Procedure 23(a) and 23(b)(3).
17 Specifically, the Court finds, for settlement purposes only, that (1) the
18 Settlement Class Members are sufficiently numerous such that joinder
19 is impracticable; (2) there are questions of law and fact common to
20 Settlement Class Members; (3) proposed Settlement Class
21 Representatives’ claims are typical of those of the Settlement Class
22 Members; (4) proposed Settlement Class Representatives and
23 Settlement Class Counsel have fairly and adequately represented the
24 interests of the Settlement Class Members; and (5) the predominance
25 and superiority requirements of Rule 23(b)(3) are satisfied.

26 c. The Court finds that the Settlement was negotiated at
27 arm’s length and was free of collusion. It was negotiated with
28 experienced, adversarial counsel after extensive discovery, and with

1 the aid of neutral, qualified mediators. Further, the attorneys' fees and
2 costs award was the subject of a separate application to the Court.

3 7. The Settlement Agreement and every term and provision thereof are
4 deemed incorporated in this Order and have the full force of an order of this Court.

5 8. Upon the Effective Date, all Class Members, except the seven valid
6 opt outs, have, by operation of this Order, fully, finally and forever released,
7 relinquished, and discharged the Released Parties pursuant to Article VIII of the
8 Settlement Agreement.¹

9 9. This Final Approval Order, the Settlement Agreement, the Settlement
10 that it reflects, and any and all acts, statements, documents or proceedings relating
11 to the Settlement are not, and must not be construed as, or used as, an admission by
12 or against Defendant or Settling Parties of any fault, wrongdoing, or liability on
13 their part, or of the validity of any claim or of the existence or amount of damages.

14 10. The above-captioned Action is dismissed in its entirety with prejudice.
15 Except as otherwise provided in orders separately entered by this Court on Class
16 Counsel's application for attorneys' fees and expenses, and service awards, and
17 their motion for approval of the Plan of Allocation, the parties will bear their own
18 expenses and attorneys' fees.

19 11. Without affecting the finality of this Order and the accompanying
20 Judgment, the Court reserves jurisdiction over the implementation of the
21 Settlement, including enforcement and administration of the Settlement Agreement,
22 including any releases in connection therewith, and any other matters related or
23 ancillary to the foregoing.

24 12. This order, in conjunction with the orders granting fees, expenses, and
25 services awards, the plan of allocation, and final judgment, close the case.

26

27

28 ¹ A full and complete list of properties by parcel number that opted out of the
Settlement is attached to this Order as Exhibit A.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: _____

Hon. Philip S. Gutierrez

EXHIBIT A

OPT OUT LIST

	<u>APN NUMBER</u>	<u>NAME</u>	<u>CITY/STATE</u>
1.	081-150-002	The Land Trust for Santa Barbara County	Santa Barbara, CA
2.	081-150-028	The Land Trust for Santa Barbara County	Santa Barbara, CA
3.	131-200-013	Jack & Shannon Selvidge	Santa Maria, CA
4.	131-200-002	Barak & Alyssa Moffitt Revocable Trust	Santa Maria, CA
5.	131-200-003	Barak & Alyssa Moffitt and Lanny Zamora	Santa Maria, CA
6.	131-200-001	Timothy Bennett	Santa Maria, CA
7.	099-400-017	ZACA Preserve, LLC	Los Olivos, CA

1 Robert J. Nelson (CSB No. 132797)
rnelson@lchb.com
2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
4 Facsimile: (415) 956-1008

5 Juli E. Farris (CSB No. 141716)
jfarris@kellerrohrback.com
6 KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
7 Santa Barbara, CA 93101
Telephone: (805) 456-1496
8 Facsimile: (805) 456-1497

9 *Class Counsel*

10 A. Barry Cappello (CSB No. 037835)
abc@cappellonoel.com
11 CAPPELLO & NOËL LLP
831 State Street
12 Santa Barbara, CA 93101-3227
Telephone: (805)564-2444
13 Facsimile: (805)965-5950

14 *Lead Trial Counsel*
15 *(additional counsel listed at signature)*

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

18
19 GREY FOX, LLC, et al.

20 Plaintiffs,

21 v.

22 PLAINS ALL AMERICAN
23 PIPELINE, L.P., et al.,

24 Defendants.
25
26
27
28

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

**[AMENDED PROPOSED] ORDER
GRANTING ATTORNEYS' FEES,
EXPENSES, AND SERVICE AWARDS
UNDER RULE 23(H)**

Date: September 13, 2024

Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

1 Before the Court is Plaintiffs’ unopposed motion for attorneys’ fees,
2 expenses, and class representative service awards. Dkt. #369. The Court conducted
3 a fairness hearing on September 13, 2024. Having considered the moving papers
4 and the information provided at the hearing, the Court GRANTS Plaintiffs’ motion.

5 **I. BACKGROUND**

6 This case arises from an oil spill that occurred at Refugio State Beach in
7 Santa Barbara County on May 19, 2015. The facts have been repeatedly recounted
8 in the Court’s prior orders, and the Court will address here only those facts relevant
9 to Plaintiffs’ request for fees, expenses, and service awards.

10 The parties have engaged in over eight years of hard-fought litigation in
11 order to arrive at the \$70 million Settlement before the Court for final approval. *See*
12 *Mot.*; *see also Settlement Agreement*, Dkt. #303-1, Ex. 1 (setting forth the terms of
13 the Settlement). During this time, the parties conducted extensive discovery, which
14 included among other things exchanging more than 1.4 million pages of
15 documents, disclosing 13 experts and producing 21 expert reports, and taking over
16 20 depositions. *See* #Dkt. 371, *Declaration of Robert J. Nelson in Support of Final*
17 *Approval*, (“Nelson Decl.”) ¶¶ 14-6. Plaintiffs also successfully certified a Class,
18 *see* Dkt. 100, which was subsequently amended. *See* Dkt. #258. The Parties filed
19 multiple summary judgment motions. *See, e.g.*, Dkts. #109, 267. Finally, the
20 Settlement was reached only after the parties participated in multiple formal
21 mediations over the course of many years. *See Nelson Decl.* ¶¶ 5-6.

22 Plaintiffs now bring this motion seeking the Court’s approval of the following
23 awards: (1) attorneys’ fees of 33% of the total Settlement, totaling \$23,217,818; (2)
24 reimbursement of \$1,195,207 in litigation expenses; and (3) three service awards of
25 \$20,000 to Class Representatives, for a total of \$60,000. *See generally* *Mot.*

26 The Court considers each in turn.
27
28

1 **II. ATTORNEYS' FEES**

2 **A. Legal Standard**

3 Awards of attorneys' fees in class action cases are governed by Federal Rule
4 of Civil Procedure 23(h), which provides that, after a class has been certified, the
5 court may award reasonable attorneys' fees and nontaxable costs. *See* Fed. R. Civ.
6 P. 23(h). The court, however, “must carefully assess” the reasonableness of the fee
7 award. *See Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003).

8 Where litigation leads to the creation of a common fund, courts can
9 determine the reasonableness of a request for attorneys' fees using either the
10 percentage-of-recovery method or the lodestar method. *See In re Bluetooth Headset*
11 *Prods. Liab. Litig.*, 654 F.3d 935, 944 45 (9th Cir. 2011) (finding that courts may
12 use either method to gauge the reasonableness of a fee request but encouraging
13 courts to employ a second method as a cross-check after choosing a primary
14 method).

15 Under the percentage-of-recovery method, courts typically use 25% of the
16 fund as a benchmark for a reasonable fee award. *See Id.* at 942. However, the
17 percentage can vary, and courts have awarded more or less than 25% of the fund in
18 attorneys' fees as they deemed appropriate. *See, e.g., Vizcaino v. Microsoft Corp.*,
19 290 F.3d 1043, 1047 (9th Cir. 2002) (noting that courts generally award between 20
20 and 30% of the common fund in attorneys' fees). When assessing the
21 reasonableness of a fee award, courts consider “(1) the results achieved; (2) the risk
22 of litigation; (3) the skill required and the quality of work; (4) the contingent nature
23 of the fee and the financial burden carried by the plaintiffs; and (5) awards made in
24 similar cases.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D.
25 Cal. 2008) (citing *Vizcaino*, 290 F.3d at 1048 50).

26 **B. Discussion**

27 After over eight years of litigation and roughly 17,812.37 hours of work,
28

1 Class Counsel now seek an award of 33% of the \$70 million gross settlement.¹ This
2 amount is a modest departure from the federal benchmark given the circumstances
3 of this case. *See* Mot. at 5:5, 17:12; Nelson Decl. ¶¶ 27-9. As such, the Court
4 applies the percentage-of-recovery method and analyzes Plaintiffs’ fee request
5 under the *Vizcaino* factors.

6 Due to the exceptional circumstances of this case and the Court's extensive
7 involvement in supervising the last eight years of litigation, the Court diverts from
8 its usual practice and finds it unnecessary to cross-check the reasonableness of the
9 requested award using the lodestar method. *Cf. Fischel v. Equitable Life Assur.*
10 *Soc’y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002) (holding that the district court did
11 not err by using only the lodestar method to calculate fees given that the parties
12 settled early in the litigation).

13 **i. Results Achieved**

14 “The overall result and benefit to the class from the litigation is the most
15 critical factor in granting a fee award.” *In re Omnivision Techs., Inc.*, 559 F. Supp.
16 2d at 1046. “[T]he law appropriately provides for some upward adjustment [from
17 the federal benchmark] where the results achieved are significantly better than the
18 norm.” *Rodman v. Safeway, Inc.*, No. CV 11-3003 JST, 2018 WL 4030558, at *3
19 n.3 (N.D. Cal. Aug. 22, 2018).

20 Here, Class Counsel secured impressive results for the Class. The median
21 payment to each of the 176 Class Properties will be approximately \$90,000, the
22 average payment will be approximately \$230,000, and the minimum payment will
23 be approximately \$50,150.² Class member recoveries through this Settlement for
24 clarification of easement rights are significantly greater – indeed, often orders of

25 _____
26 ¹ Half of the Settlement proceeds (\$35 million) has been earning interest pursuant to
27 the Settlement. *See* Settlement at pages 41, 45. Accordingly, 33% of the total award
is \$23,217,818.

28 ² This number differs from the Settlement, because 7 parcels have opted out from
the Settlement.

1 magnitude greater – than the price the Class members were paid for their original
2 easements when adjusted for inflation. Mot. at 4-5; Nelson Decl. ¶ 8. In short,
3 through this Settlement, Class Counsel has successfully negotiated payments to
4 Class members for clarification for easement rights that far exceed the
5 consideration originally paid for those easements when adjusted for inflation. Mot.
6 at 4, 5:4; cf. *In re Heritage Bond Litig.*, No. 02-ML-1475-DT (RCX), 2005 WL
7 1594389, at *8 (C.D. Cal. June 10, 2005)(awarding 33.33% in fees to counsel
8 where the class recovered 23% of the total net loss after fees were deducted);
9 *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1021, 1023 (E.D. Cal. 2019)
10 (awarding 33.3% of a \$40 million common fund that represented 48% of damages).

11 Not only does the Settlement provide meaningful monetary relief to members
12 of the Class, but the recovery was also obtained in the face of complex and hotly
13 disputed issues that were central to Plaintiffs’ case, including unique contract
14 interpretation issues as well as technical disputes over the meaning of pipeline
15 operation and maintenance. Mot. at 6:14-20. Moreover, there is no supporting
16 precedent for the claim that forms that basis of this Settlement: that the easements
17 had all terminated as a result of the Pipeline shutdown. And there is likewise no
18 direct precedent for the Subclass members’ claim that their easements had all
19 terminated for an additional reason - the automatic termination clauses in the
20 easements. See Mot. at 6:8-20; Nelson Decl. ¶ 12; see also *Vizcaino*, 290 F.3d at
21 1048 (affirming the district court's finding that counsel “achieved exceptional
22 results for the class” in the face of difficult facts, “in the absence of supporting
23 precedents,” and despite “[Defendant's] vigorous opposition throughout the
24 litigation”); *Lopez v. Youngblood*, CV-F-07-0474 DLB, 2011 WL 10483569, at *6
25 (E.D. Cal. Sept. 2, 2011)(exceeding the federal benchmark where “[t]he authority
26 upon which Plaintiffs were able to rely was relatively scant”).

27 Finally, no Class members objected to Class Counsel’s fee request.
28 Accordingly, the Court is persuaded that this factor weighs in favor of an upward

1 departure from the federal benchmark.

2 **ii. Risk of Litigation**

3 In assessing the fairness and reasonableness of an award of attorneys' fees,
4 the risk that further litigation might result in no recovery is a "significant factor." *In*
5 *re Omnivision Techs.*, 559 F. Supp. 2d at 1046-47. As mentioned above, Plaintiffs'
6 case hinged on the resolution of several complex and disputed issues, and a loss at
7 trial or on appeal on any of these issues could have precluded Class recovery in
8 whole or part. *See* Mot. at 7:2-16. This risk is only magnified by the novelty and
9 length of this litigation. Thus, this factor supports the requested fee award of 33%
10 of the common fund.

11 **iii. The Skill Required and the Quality of Work**

12 The Court also considers the skill required to prosecute and manage this
13 litigation, as well as Class Counsel's overall performance. *See In re Omnivision*
14 *Techs.*, 559 F. Supp. 2d at 1047.

15 Having witnessed the complexities of the legal and factual issues at play in
16 this case, the Court finds Class Counsel's litigation efforts notable. For example,
17 Class Counsel successfully certified the Class, and subsequently amended it,
18 despite the lack of precedent to rely upon as to the certification of the class or the
19 underlying claim certified. Nelson Decl. ¶ 12 ("To Class Counsel's knowledge,
20 there is no direct supporting precedent for the claim that forms the basis of this
21 Settlement [or]...certification of the easement class."). Moreover, for much of the
22 litigation, Plains sought to install a second pipeline, asserting that the easements
23 negotiated by Celeron permitted it to install a second pipeline through the Class
24 Properties. Mot. at 7:24-28. Class Counsel fought this project for years, asserting
25 that the easements did not permit the installation of a second pipeline. In the face of
26 spirited opposition by Plaintiffs, including successfully defeating a motion to
27 dismiss and summary judgment on that issue (Dkts. 80, 128), Plains and PPC
28 ultimately abandoned the second pipeline, resulting in a consent decree judgment in
favor of Plaintiffs on those claims. Dkt. #282. When Plains and PPC abandoned the

1 second pipeline, it required Class Counsel to pivot and pursue claim 15, the new
2 claim that the easements had terminated pursuant to common-law abandonment
3 and, as to the Subclass, for the additional reason that the automatic termination
4 provisions in many of the contracts was triggered.

5 These facts, in conjunction with the extensive and technical fact and expert
6 discovery and the many formal daylong mediations, underscore the skill and effort
7 needed to achieve the impressive \$70 million settlement result. *See* Mot. at 8:17-
8 9:5; Nelson Decl. ¶ 5-6. And especially when considering that Defendants were
9 represented by prominent litigation firms, Class Counsel's ability to get the case this
10 far along evinces their high quality of work. *See In re Am. Apparel, Inc. S'holder*
11 *Litig.*, No. CV 10-6352 MMM (JCGx), 2014 WL 10212865, at *22 (C.D. Cal. July
12 28, 2014) (“In addition to the difficulty of the legal and factual issues raised, the
13 court should also consider the quality of opposing counsel as a measure of the skill
14 required to litigate the case successfully.”).

15 As such, this factor, too, weighs in favor of awarding Class Counsel its
16 requested fees.

17 **iv. The Contingent Nature of the Fee and Financial**
Burden Carried by the Plaintiffs

18 An upward departure from the federal benchmark may be warranted when
19 Class Counsel faced the risk of walking away with nothing after investing
20 substantial time and resources in the matter. *See In re Omnivision Techs., Inc.*, 559
21 F. Supp. 2d at 1047 (“The importance of assuring adequate representation for
22 plaintiffs who could not otherwise afford competent attorneys justifies providing
23 those attorneys who do accept matters on a contingent-fee basis a larger fee.”).
24 Here, Class Counsel took this matter on a wholly contingent basis with no
25 guarantee of recovery for over eight years. *See* Nelson Decl. ¶¶ 4, 20 . The Court
26 agrees that the substantial risks borne by Class Counsel in pursuing this class action
27 for over eight years with no guarantee of recovering fees or litigation expenses also
28 militates in favor of finding the requested fee award reasonable.

1 v. **Awards Made in Similar Cases**

2 The requested attorneys' fees are comparable to awards authorized in similar
3 cases. *See, e.g., Williams v. MGM-Pathe Commc'n Co.*, 129 F.3d 1026, 1026 (9th
4 Cir. 1997) (awarding 33% of the \$4.5 million settlement fund); *Wren v. RGIS*
5 *Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *29 (N.D. Cal.
6 Apr. 1, 2011) (finding a 42% fee award appropriate). Moreover, the Court
7 compares the requested award to those from cases that are similar in size,
8 complexity, and duration and concludes that an award of 33% is within the range of
9 reasonableness permitted in this Circuit. *See, e.g., In re Apollo Grp. Inc. Sec. Litig.*,
10 2012 WL 1378677, at *3, *7 (D. Ariz. Apr. 20, 2012) (33.33% of a \$145 million
11 settlement awarded following seven years of litigation “pursued ... despite great
12 risk”); *Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 904, 907 (S.D.
13 Ill. 2012) (33.33% of \$105 million, equivalent to a 1.34 multiplier, in a seven-year
14 long pollution case); *see also In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-*
15 *Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017 WL 6040065, at *5 n.30
16 (N.D. Cal. Dec. 6, 2017) (collecting “mega-fund” cases from around the country,
17 including those awarding fees of one-third the settlement fund).

18 Accordingly, similar cases establish that an upward departure from the
19 federal benchmark is appropriate here.

20 **C. Conclusion**

21 Based on the unique circumstances of this case and because all of the
22 *Vizcaino* factors considered under the percentage-of-recovery method heavily
23 support Class Counsel’s requested fee, the Court forgoes cross-checking the
24 reasonableness of the fee against the lodestar method. Ultimately, the Court is
25 convinced that an award of 33% of the common fund is warranted and reasonable
26 under the circumstances. As such, the Court GRANTS Plaintiffs’ motion for 33%
27 of the gross Settlement in attorneys' fees, for a total of \$23,217,818.

28

1 **III. LITIGATION EXPENSES**

2 In class action settlements, “[a]ttorneys may recover their reasonable
3 expenses that would typically be billed to paying clients in non-contingency
4 matters.” See *In re Omnivision Techs.*, 559 F. Supp. 2d at 1048. Here, Class
5 Counsel requests reimbursement of \$1,195,207 in costs and expenses. See Mot at
6 16:24-6. This includes expenses that are typically charged to fee-paying clients,
7 including filing fees, expert witness fees, mediation fees, deposition expenses, legal
8 research fees, and copying and postage charges. See Nelson Decl. ¶ 28; *Andrews*
9 Declaration of Juli E. Farris, Dkt. #956 ¶¶ 18-20; see also *In re Lidoderm Antitrust*
10 *Litig.*, No. 14-md-02521-WHO, 2018 WL 4620695, at *4 (N.D. Cal. Sept. 20,
11 2018) (awarding almost \$4 million in expenses for filing fees, computerized
12 research, copies, postage and messenger services, experts, and case-related travel);
13 *In re NCAA Antitrust Litig.*, 2017 WL 6040065, at *5, *11 (finding expenses of
14 over \$3 million were reasonable given that the matter was litigated for over three
15 years). Given the duration and scope of this litigation, and after reviewing
16 accompanying declarations, the Court is satisfied that the costs are reasonable.
17 Finally, no Class members objected to Class Counsel’s request for reimbursement
18 of litigation expenses. Therefore, the Court GRANTS Plaintiffs’ request for costs in
19 the amount of \$1,195,207.

20 **IV. CLASS REPRESENTATIVES’ SERVICE AWARDS**

21 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. W.*
22 *Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). When assessing requests for
23 service awards, courts consider five principal factors:

24 (1) the risk to the class representative in commencing suit, both financial and
25 otherwise; (2) the notoriety and personal difficulties encountered by the class
26 representative; (3) the amount of time and effort spent by the class representative;
27 (4) the duration of the litigation; (5) the personal benefit (or lack thereof) enjoyed
28 by the class representative as a result of the litigation. *Van Vranken v. Atl. Richfield*

1 Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

2 After reviewing the submitted declarations provided by the Class
3 Representatives, *see* Nelson Decl. Exs. 3-5, the Court is satisfied that the requested
4 service awards of \$20,000 each for Mr. Tautrim, Ms. McNutt, and Roger McMullin
5 (on behalf of the Grey Fox entities) are appropriate. Throughout the case's
6 trajectory, each Class Representative, among other things, searched for and
7 provided facts used to compile Plaintiffs' operative complaint, helped Class
8 Counsel analyze claims, and reviewed and approved the settlement. *See Id.* Mr.
9 Tautrim and Ms. McNutt sat for deposition, and three individuals sat for deposition
10 with on behalf of the Grey Fox entities. In short, they each dedicated time and effort
11 to the benefit of the litigation without any assurance of receiving compensation in
12 the immediate or near future, if ever. *See, e.g., Nelson Decl., Ex. 3* (Declaration of
13 Mark Tautrim) ¶ 9 ("I estimate that representatives on behalf of the above entites
14 devoted more than 100 hours to the work."); *Id.*, Ex. 5 (Declaration of Roger
15 McMullin) ¶ 9 ("I estimate that representatives on behalf of the above entities
16 devoted more than 130 hours to the work."); *Id.*, Ex. 4 (Declaration of Denise
17 McNutt) ¶ 9 ("I estimate that I devoted more than 80 hours to the work.").

18 Moreover, the Court recognizes that service awards of this size or even larger
19 are common in class action cases. *See Mot.* at 17:13-18:13 (citing cases approving
20 awards of \$20,000 to \$25,000); *see also In re NCAA Antitrust Litig.*, 2017 WL
21 6040065, at *11 & n.69 (finding the requested service awards of \$20,000 for each
22 class representative consistent with service awards in other cases). Finally, the
23 combined service awards represent less than 0.09% of the gross settlement, which
24 is reasonable given the hours expended by the Class Representatives in pursuing
25 class wide relief. *See Edwards v. Chartwell Servs., Inc.*, No. CV 16-9187 PSG
26 (KSx), 2018 WL 10455206, at *1-2, *8 (C.D. Cal. Aug. 27, 2018) (approving a
27 \$10,000 enhancement award, which represented 1.25% of the gross settlement
28 fund, when plaintiff spent approximately 55 hours assisting with the case and risked

1 future job prospects); *Palmer v. Pier 1 Imports*, No. 8:16-cv-01120 JLS (DFMx),
2 2018 WL 8367495, at *6 (C.D. Cal. July 23, 2018) (approving service award
3 representing 3.5% of gross settlement fund when plaintiff spent 20 hours helping
4 with the case and faced employment-related risks).

5 Finally, no Class members objected to Class Counsel’s request for service
6 awards. Accordingly, the Court **GRANTS** Plaintiffs’ request for service awards in
7 the amount of \$20,000 for Class Representatives Mark Tautrim, Denise McNutt,
8 and Roger McMullin (on behalf of the Grey Fox entities), for a total of \$60,000.

9 **V. CONCLUSION**

10 For the foregoing reasons, Plaintiffs’ motion for approval of attorneys’ fees,
11 expenses, and service awards is **GRANTED**. Accordingly, it is **HEREBY**
12 **ORDERED AS FOLLOWS:**

- 13 1. Class Counsel is awarded \$23,217,818 in attorneys’ fees, and
- 14 \$1,195,207 in costs; and
- 15 2. Mr. Tautrim, Ms. McNutt are each awarded \$20,000 in service awards
- 16 and Roger McMullin is awarded \$20,000 on behalf of the Grey Fox
- 17 entities, for a total of \$60,000.

18 This order, in conjunction with the orders granting final approval of class
19 settlement, the plan of allocation, and final judgment, closes the case.

20 **IT IS SO ORDERED.**

21
22 Dated: _____

23
24
25 _____
26 HON. PHILIP S. GUTIERREZ
27 UNITED STATES JUDGE
28

1 Robert J. Nelson (CSB No. 132797)
rnelson@lchb.com
2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
4 Facsimile: (415) 956-1008

5 Juli E. Farris (CSB No. 141716)
jfarris@kellerrohrback.com
6 KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
7 Santa Barbara, CA 93101
Telephone: (805) 456-1496
8 Facsimile: (805) 456-1497

9 A. Barry Cappello (CSB No. 037835)
abc@cappellonoel.com
10 CAPPELLO & NOËL LLP
831 State Street
11 Santa Barbara, CA 93101-3227
Telephone: (805) 564-2444
12 Facsimile: (805) 965-5950

13 *Class Counsel*
14 *(additional counsel listed at signature)*

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

18 GREY FOX, LLC, et al.

19 Plaintiffs,

20 v.

21 PLAINS ALL AMERICAN
22 PIPELINE, L.P., et al.,

23 Defendants.
24
25
26
27
28

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

**[AMENDED PROPOSED] ORDER
GRANTING PLAINTIFFS' MOTION
FOR APPROVAL OF PLAN OF
ALLOCATION**

Date: September 13, 2024

Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

1 Plaintiffs have moved for an order approving the Plan of Allocation. Dkt.
2 #370. Upon due consideration of the motion and all of the papers, pleadings and
3 files in this action, and good cause appearing, the Court **GRANTS** the motion.

4 As part of its review of a proposed settlement, the trial court should consider
5 “the effectiveness of any proposed method of distributing relief to the class,
6 including the method of processing class-member claims.” Fed. R. Civ. P.
7 23(e)(2)(C)(ii). “A claims processing method should deter or defeat unjustified
8 claims, but the court should be alert to whether the claims process is unduly
9 demanding.” Fed. R. Civ. P. 23(e), 2018 adv. comm. note. Likewise, Rule
10 23(e)(2)(D) asks whether “the proposal [for distribution among class members]
11 treats class members equitably relative to each other.” Relevant considerations may
12 include “whether the apportionment of relief among class members takes
13 appropriate account of differences among their claims, and whether the scope of the
14 release may affect class members in different ways that bear on the apportionment
15 of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note.

16 Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds
17 in a class action under Fed. R. Civ. P. 23 is governed by the same standards of
18 review applicable to the settlement as a whole – the plan must be fair, reasonable,
19 and adequate.” *In re Illumina, Inc. Sec. Litig.*, No. 3:16-CV-3044-L-MSB, 2021
20 WL 1017295, at *4 (S.D. Cal. Mar. 17, 2021) (*citing Class Pls. v. City of Seattle*,
21 955 F.2d 1268, 1284–85 (9th Cir. 1992)). The plan “need only have a reasonable,
22 rational basis, particularly if recommended by experienced and competent class
23 counsel.” *Jenson v. First Tr. Corp.*, No. CV 05-3124 ABC (CTx), 2008 WL
24 11338161, *9 (C.D. Cal. June 9, 2008) (citation omitted).

25 The Court has reviewed the Plan of Allocation and finds that it meets the
26 standards for approval. First, the Plan pays Class Members directly, obviating the
27 need for a claims process altogether. “[T]he goal of any distribution method is to
28 get as much of the available damages remedy to class members as possible and in

1 as simple and expedient a manner as possible.” *See Hilsley v. Ocean Spray*
2 *Cranberries, Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020) (quoting 4
3 William B. Rubenstein, *Newberg on Class Actions* § 13:53 (5th ed. Dec. 2021
4 update)). The proposed distribution plan is simple and expedient. This strongly
5 supports approval.

6 The Court also finds that the Plan treats Class Members equitably and is fair,
7 reasonable, and adequate. The Plan provides every Class Member with a uniform
8 base payment of \$50,000 and compensates Class Members additionally based on
9 reasonable, equitable, and objective criteria: the repair work on each Class Property
10 (if any); the value of the Class Properties’ easement and severance damages
11 pursuant to expert proof; and the presence, if any, of automatic termination clauses
12 in the easements.

13 Distribution methods such as these are regularly approved as fair and
14 reasonable. *Koenig v. Lime Crime, Inc.*, No. CV 16-503 PSG (JEMx), 2018 WL
15 11358228, at *4 (C.D. Cal. Apr. 2, 2018) (approving payment of equal shares for
16 portion of settlement); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at
17 *8 (N.D. Cal. Sept. 2, 2015) (approving payment based on “fractional share[s]”);
18 *Jenson, v. First Tr. Corp.*, 2008 WL 11338161, at *10 (approving distinctions in
19 plan of allocation as reasonably reflecting likelihood of recovery of subgroups
20 within the class); *In re Biolase, Inc. Sec. Litig.*, No. SA-CV-13-1300 JLS (FFMx),
21 2015 WL 12720318, at *5 (C.D. Cal. Oct. 13, 2015) (variable pro rata distribution
22 plan based upon relative injuries of class members approved). Accordingly, this
23 strongly supports approval.

24 Finally, no Class members objected to the Plan of Allocation. This response
25 speaks to the Class members’ support for the Plan of Allocation. *See In re Heritage*
26 *Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *12 (C.D. Cal. June 10,
27 2005); *see also In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod.*
28

1 *Liab. Litig.*, No. MDL 2672 CRB (JSC), 2019 WL 2077847, at *3 (N.D. Cal. May
2 10, 2019).

3 Accordingly, the Court finds that the Plan is fair and reasonable and meet the
4 standard for approval under Rule 23(e). Plaintiffs' motion is **GRANTED**.

5 Without affecting the finality of this Order, the Court reserves jurisdiction
6 over the Plan of Allocation and any other matters related or ancillary to the
7 foregoing.

8

9 **IT IS SO ORDERED.**

10

11 Dated: _____

12

13

14

HON. PHILIP S. GUTIERREZ
UNITED STATES JUDGE

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Robert J. Nelson (CSB No. 132797)
rnelson@lchb.com
2 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
3 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
4 Facsimile: (415) 956-1008

5 Juli E. Farris (CSB No. 141716)
jfarris@kellerrohrback.com
6 KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
7 Santa Barbara, CA 93101
Telephone: (805) 456-1496
8 Facsimile: (805) 456-1497

9 A. Barry Cappello (CSB No. 037835)
abc@cappellonoel.com
10 CAPPELLO & NOEL LLP
831 State Street
11 Santa Barbara, CA 93101-3227
Telephone: (805)564-2444
12 Facsimile: (805)965-5950

13 *Class Counsel*
14 *(additional counsel listed at signature)*

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

18 GREY FOX, LLC, et al.
19 Plaintiffs,
20
21 v.
22 PLAINS ALL AMERICAN
PIPELINE, L.P., et al.,
23 Defendants.
24

Case No. 2:16-cv-03157-PSG-JEM
[PROPOSED] FINAL JUDGMENT
Date: September 13, 2024
Time: 1:30 p.m.
Judge: Hon. Philip S. Gutierrez
Courtroom: 6A

25
26
27
28

1 The Court, having entered on [DATE] a Final Approval Order approving the
2 Settlement between plaintiffs Grey Fox, LLC, MAZ Properties, Inc., Bean Blossom,
3 LLC, Winter Hawk, LLC, Mark Tautrim, Trustee of the Mark Tautrim Revocable
4 Trust, and Denise McNutt, individually and in their representative capacities (“Class
5 Representatives”), and Defendant Pacific Pipeline Company (“PPC”) and Sable
6 Offshore Corp., as successor by merger of Sable Offshore Holdings LLC and Flame
7 Acquisition Corp. (“Sable,” and collectively with PPC, “Settling Parties”), it is
8 hereby ORDERED, ADJUDGED, and DECREED that:

9 1. Judgment is hereby entered in this case as to the Settlement in
10 accordance with the Court’s [DATE] Final Approval Order as to all claims against
11 Defendant in this Action.

12 2. The Settlement and all of its terms, shall have full force and effect. *See*
13 #Dkt. 303-1, Ex. 1.

14 3. This Order approves the Settlement in all respects, including Section IV.
15 B (“Final Order and Judgment”).

16 4. The Parties shall take all actions required of them in the Final Approval
17 Order and the Settlement Agreement.

18 5. The above-captioned action is DISMISSED in its entirety with
19 prejudice.

20 6. Except as otherwise provided in orders separately entered by this Court
21 on the application for attorneys’ fees and expenses and the application for service
22 awards submitted by Class Counsel, the Parties will bear their own expenses and
23 attorneys’ fees.

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

1 8. This document constitutes a final judgment pursuant to Federal Rule of
2 Civil Procedure 54 and a separate document for purposes of Federal Rule of Civil
3 Procedure 58(a).

4

5 DATED: _____

6

7

Hon. Philip S. Gutierrez

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28