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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

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 13, 2024

Time: 1:30 p.m.

Judge: Hon. Philip S. Gutierrez

Courtroom: 6A

1 TO ALL THE PARTIES AND TO THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 13, 2024, at 1:30 p.m., or as
3 soon thereafter as the matter may be heard by the Honorable Philip S. Gutierrez in
4 Courtroom 6A of the above-entitled court, located at 350 West First Street, Los
5 Angeles, CA 90012-4565, Plaintiffs will and hereby do move the Court, pursuant to
6 Rule 23 of the Federal Rules of Civil Procedure, for an Order:

- 7 A. Granting final approval of the proposed Settlement;
8 B. Certifying the Class for settlement purposes; and
9 C. Finding that notice to the Class was directed and completed in a
10 reasonable manner.

11 This motion is based on the attached supporting memorandum; the pleadings,
12 papers, and records on file in this action, including Plaintiffs' Motion for
13 Preliminary Approval (Dkt. 303); any further papers filed in support of this motion;
14 and arguments of counsel in support of the motion.

15 Dated: August 9, 2024

Respectfully submitted,

16

17

By: /s/Robert J. Nelson

18

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

16 GREY FOX, LLC, et al.

17 Plaintiffs,

18 v.

19 PLAINS ALL AMERICAN
20 PIPELINE, L.P., et al.,
21 Defendants.

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

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

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

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INTRODUCTION

1
2 On May 1, 2024, this Court granted preliminary approval to a proposed
3 settlement valued at \$70 million. Dkt. 325.¹ Pursuant to that order, Plaintiffs now
4 file three motions to complete the approval process.²

5 In this motion, Plaintiffs seek final approval of the Settlement. The
6 Settlement satisfies all the applicable requirements of Rule 23 and is fair, adequate,
7 and reasonable. It was reached after considerable discovery and motion practice
8 before this Court, and with the aid of three experienced mediators who oversaw
9 hard-fought negotiations over the course of many years. The Settlement represents
10 a substantial benefit to the Class, which includes 86 separate landowners of record.
11 Some of these class members own several Class Properties. Each of the 183 Class
12 Properties will be allocated at least \$50,000, with expected median payments of
13 approximately \$90,000 and average payments of \$230,000, net of all anticipated
14 fees and costs. In addition, the Settlement ensures that grantees of the pipeline
15 easements at issue in this action cannot build a second pipeline without first
16 obtaining new easements, brings clarity to easement terms, and adds and reinforces
17 important safety commitments regarding the maintenance and use of the pipeline.
18 This impressive result heads off the unpredictable risks of continued litigation –
19 risks that are amplified in this case given its complexity and novelty.

20 Accordingly, Plaintiffs respectfully request that this Court grant final
21 approval to the Settlement.
22
23
24

25 ¹ The Settlement Agreement (the “Settlement”) is Exhibit 1 to Dkt. 303-1. Unless
26 otherwise specified, capitalized terms herein refer to and have the same meaning as
in the Settlement.

27 ² Along with this motion for final settlement approval, Plaintiffs have also filed a
28 motion to approve the Plan of Allocation and a third motion seeking an award of
attorneys’ fees and costs, and service awards to Class Representatives.

1 **BACKGROUND**

2 This litigation involves the Las Flores Pipeline System (the “Pipeline”) and
3 the 183 land parcels through which it runs by way of easements or right-of-way
4 grants. Dkt. 108-1 ¶ 152. The Pipeline ruptured in Santa Barbara County on May
5 19, 2015, spilling oil onto private property, Refugio State Beach, and into the
6 Pacific Ocean. Dkt. 108-1 ¶¶ 1, 11.³ One year after the oil spill, the Pipeline and
7 Hazardous Materials Safety Administration (“PHMSA”) concluded that the cause
8 of the rupture was integrity management failures by its owner, Plains Pipeline.⁴

9 The Pipeline was shut down following the oil spill, and PHMSA ordered that
10 it remain out of operation unless and until Plains took the necessary steps required
11 to operate it safely.⁵ This directive was reinforced in the Federal Consent Decree
12 signed by Plains and numerous regulatory bodies. *See* Settlement (Dkt. 303-1, Ex.
13 1), Consent Decree (*id.*, Ex. G at 91, App’x D ¶¶ 1.a, 1.e).⁶ To date, the government
14 has not re-authorized the operation of the Pipeline.

15 **I. Procedural Background**

16 In the original Complaint dated May 2016, Plaintiffs alleged that the existing
17 rights-of-way did not permit the extensive repair work Plains was preparing to
18 perform. Dkt. 1 ¶ 8. Later, in August 2017, Plains filed an application to replace the
19
20

21 ³ The Pipeline was formerly known as Line 901 and Line 903.

22 ⁴ PHMSA Failure Investigation Report at 14-17, available at
23 https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/PHMSA_Failure_Investigation_Report_Plains_Pipeline_LP_Line_901_Public.pdf (last visited April. 5,
24 2024).

25 ⁵ *See* PHMSA Am. No. 3 to the Corrective Action Order (June 16, 2016) at 2-3,
26 available at
27 https://primis.phmsa.dot.gov/comm/reports/enforce/documents/520155011H/520155011H_Amendment%20No.%203%20to%20the%20Corrective%20Action%20Order_061620116.pdf (last visited April. 5, 2024).

28 ⁶ Consent Decree, *United States v. Plains All Am. Pipeline, L.P.*, No. 20-cv-2415 (C.D. Cal. Mar. 13, 2020), Dkt. 6-1.

1 Pipeline outright.⁷ Plaintiffs then amended their complaint to challenge Plains’ right
2 to install a second pipeline. Dkt. 71 ¶ 21.

3 In 2019, Plains moved to dismiss all of Plaintiffs’ claims, which this Court
4 largely denied. Dkt. 80 (dismissing two of thirteen claims).

5 In January 2020, the Court granted class certification of Plaintiffs’
6 declaratory relief claims under Rule 23(b)(2) seeking confirmation that the
7 easements are limited to one Pipeline (Claims 1, 10), and that the proposed work to
8 replace the Pipeline would overburden the existing easements (Claim 2). Dkt. 100.

9 In March 2020, Plaintiffs amended the Complaint by stipulation to make
10 some clarifications and add Claim 15, alleging the Easements had terminated. Dkt.
11 105 (stipulation), 108-1 (Corrected Second Amended Complaint). Certain Plaintiffs
12 also brought individual claims unique to their properties (Claims 11–14). *See* Dkt.
13 108-1 ¶¶ 250–84.⁸

14 In October 2022, Plains sold the Pipeline to an Exxon subsidiary, Defendant
15 PPC. In August 2023, PPC then moved to dismiss certain claims of Plaintiffs. This
16 Court denied PPC’s motion. Dkt. 248.

17 In November 2023, pursuant to Plaintiffs’ motion, this Court amended the
18 certification order, certifying the same Rule 23(b)(2) class for Claim 15 but
19 substituting “PPC” for “Plains” given the sale to PPC. Dkt. 258. Additionally, this
20 Court certified an Automatic Termination Clause (“ATC”) Subclass, as this group
21 had an additional argument for termination based on these clauses in certain
22 easements. *Id.* at 18 (certifying ATC Subclass inclusive of landowners with rights-
23 of-way that automatically terminate for failure to ‘operate,’ ‘maintain,’ and/or ‘use’
24 the pipeline”).

25
26 ⁷ “901/903 Replacement Pipeline Project,” Case Nos. 17DVP-00000-00010;
27 17CUP-00000-00027; 17DRP-00000-00002; 17CDP-00000-00060, available at:
28 <https://www.countyofsb.org/3801/901903-Replacement-Pipeline-Project> (last
accessed Sept. 12, 2023).

⁸ Those claims have been resolved. *See* Dkt. 367.

1 In February 2024, PPC finalized an agreement with Sable, which now owns
2 the Pipeline through its ownership of PPC. Sable and PPC are the Settling Parties to
3 the Settlement Agreement, and Sable is responsible for paying the \$70 million
4 Settlement Fund.

5 **II. Discovery**

6 The case has required extensive discovery. Plaintiffs have propounded
7 document requests, interrogatories, and requests for admission on both Plains and
8 PPC. Dkt. 303-1 ¶ 6. Plains and PPC, in turn, served voluminous discovery on all
9 Class Representatives. Each Class Representative responded to all document
10 requests, preserved, collected, and produced documents, and sat for deposition. *Id.*
11 ¶ 11.⁹

12 All told, the parties collectively produced over 1.4 million pages of
13 documents (inclusive of documents from the parallel *Andrews* action deemed
14 produced in this action) and there were over twenty depositions taken before the
15 close of fact discovery. *Id.* ¶ 6.

16 This extensive fact discovery informed the expert work in this case. Expert
17 discovery commenced prior to the sale of the Pipeline to PPC and PPC's joinder to
18 the case as a Defendant. At that time, Plaintiffs retained four testifying experts who
19 each submitted expert reports. *Id.* ¶ 7. For its part, Plains submitted seven expert
20 reports. *Id.* After PPC was joined to the action as a Defendant, this Court adjusted
21 the expert discovery schedule as to the claims PPC assumed. Dkt. 228. Thereafter,
22 Plaintiffs submitted three more expert reports and three rebuttal reports regarding
23 the PPC claims. PPC retained two testifying experts who each submitted a report
24 and a rebuttal report. Dkt. 303-1 ¶ 8. Each of these experts were deposed. *Id.*

25
26
27
28 ⁹ Certain Plaintiffs are entities rather than persons. For those Plaintiffs, various
individuals were deposed.

1 **III. Summary Judgment and Consent Order**

2 On April 9, 2020, Plains filed a motion for partial summary judgment on
3 Plaintiffs’ certified claims, which Plaintiffs opposed with extensive evidence. Dkts.
4 109, 118–124-11. The Court denied Plains’ motion. Dkt. 128.

5 In 2023, after seven years of litigation, PPC withdrew its applications to
6 replace the Pipeline and agreed that it would not construct a replacement pipeline
7 without securing new permanent easements. Accordingly, the Court granted
8 Judgment in Plaintiffs’ favor on Claims One, Two, Three, and Ten. Dkt. 282.

9 That same year, PPC filed another motion for partial summary judgment, this
10 time as to the remaining certified claim, Claim 15. Dkt. 267. Plaintiffs had prepared
11 a final draft of their opposition, but given the parties’ advanced settlement
12 discussions, the Parties agreed to hold the motion in abeyance. Dkt. 298.

13 **IV. Mediation and Settlement**

14 The proposed Settlement is the product of arm’s length negotiations
15 spanning many years. *See* concurrently-filed Declaration of Robert J. Nelson
16 (“Nelson Decl.”), ¶ 5. Plaintiffs attempted to resolve this case relatively early on
17 but to no avail. *Id.* Plaintiffs and Plains met for a two-day, in-person mediation
18 session with mediators the Hon. Layn Phillips (Ret.) and Robert Fairbank on
19 October 5 and 6, 2016. Dkt. 64; Nelson Decl. ¶ 5. That mediation effort continued
20 through 2018 and included several additional day-long sessions with Mr. Fairbank.
21 *Id.*

22 Years later, Plaintiffs and PPC participated in a mediation of the PPC Claims
23 on July 20, 2023, overseen by Robert A. Meyer, Esq. of JAMS. Dkt. 243; Nelson
24 Decl. ¶ 6. The parties did not reach agreement at that mediation either, but made
25 some progress. *Id.* The parties, including Sable, continued to negotiate intensively
26 over the next six months to reach agreement on the key deal points, and traded draft
27 term sheets. *Id.* The parties continued to negotiate numerous material terms and the
28

1 full Agreement (with exhibits) was finally executed on March 26, 2024. *See* Dkt.
2 297.

3 This Court granted preliminary approval of the Settlement on May 1, 2024.
4 Dkt. 325. Following preliminary approval, Plaintiffs worked with the Notice and
5 Settlement Administrator to execute the notice plan. *See* Dkt. 365. Per the notice,
6 class members could object to the Settlement no later than Monday, August 19,
7 2024. *Id.*, Ex. B at 2. Neither the Settlement Administrator nor Class Counsel is
8 aware of any objections to the proposed Settlement.

9 **SUMMARY OF SETTLEMENT TERMS**

10 The proposed Settlement delivers significant value to Settlement Class
11 members: (i) \$70 million in non-reversionary cash compensation which, less fees,
12 costs, and expenses, will be available to Settlement Class members through direct
13 payments without the need for a claims process; (ii) the automatic recording of the
14 Easement Notice on the Class Properties, bringing resolution and clarity to the
15 scope of the right-of-way grants on the Class Properties, while permitting the
16 Settling Parties to make repairs to restart the Pipeline; (iii) a commitment by
17 Settling Parties to maintain and operate the Pipeline pursuant to the previously
18 negotiated Consent Decree to which Plains was a party, including use of any safety
19 technologies required by the decree; and (iv) a commitment by Settling Parties to
20 make reasonable efforts to pursue regulatory approval of the installation of
21 automatic shutoff valves. Settlement ¶ 5.2; Dkt. 303-1, Ex. G.

22 No portion of the \$70 million will revert to Defendants. After deduction of
23 notice-related costs and any Court-approved award of attorneys' fees,
24 reimbursement of litigation expenses, and service awards to Class Representatives,
25 all of the remaining monies will be distributed to the Class members in accordance
26 with Plaintiffs' Plan of Allocation. *See* Dkt. 303-1, Ex. 4.

27 The \$70 million Settlement Fund will be funded in two payments. Pursuant
28 to the Settlement, Sable has already paid \$35 million into an interest-earning

1 Qualified Settlement Fund, which will be available for payment to Class members
2 upon the Court’s final approval of the Settlement and expiration of the deadline for
3 appeals. Sable has also provided the Settlement Class a Letter of Credit for an
4 additional \$35 million. The Letter of Credit can be drawn upon the earlier of (a)
5 one-hundred and eighty-two calendar days following the restart of the Pipeline, (b)
6 the date Sable pays ExxonMobil under the terms of its Purchase Agreement to
7 restart of the Pipeline, or (c) in no event later than June 30, 2025 (the “Final
8 Payment”). The Letter of Credit has been issued by a federally-insured bank to
9 ensure its security. A second payment will therefore be made to Class members
10 once the Letter of Credit is drawn upon, which will be no later than June 30, 2025.

11 **ARGUMENT**

12 **I. The Settlement Class should be certified for settlement purposes.**

13 As the Court concluded in granting preliminary approval and directing notice
14 to the Settlement Class, “the Settlement Class, as defined[], meets the requirements
15 for class certification under Federal Rules of Civil Procedure 23(a) and 23(b)(3).”
16 Dkt. 325 ¶ 6. This remains true, and the Settlement Class should be certified.

17 Plaintiffs note, as they did in their Motion for Preliminary Approval (Dkt.
18 303 at p. 18-19), that the proposed Settlement resolves claims on behalf of the
19 members of the previously-certified class (Dkt. 100), so the Settlement Class could
20 be considered a litigation class, obviating the need for a specific finding that the
21 Settlement Class meets the requirements of Rules 23(a). *See* Dkt. 303 at p. 18-19
22 (citing authority for same). But as Plaintiffs also noted therein, the parties “slightly
23 altered the definition of the Settlement Class” (*id.*), so Plaintiffs request the Court
24 certify the proposed Settlement Class for settlement purposes only pursuant to Rule
25 23(e).

26 **A. The Rule 23(a) factors are readily satisfied.**

27 **Numerosity.** The proposed Settlement Class is functionally identical to the
28 Class the Court previously certified. Dkts. 100 at 11; 258 at 12. It still consists of

1 183 Class Properties owned by 86 class members, which meets the numerosity
2 requirement. *See* Fed. R. Civ. P. 23(a)(1); *Rannis v. Recchia*, 380 F. App'x 646,
3 650 (9th Cir. 2010) (When the number of class members exceeds 40, the
4 numerosity requirement is generally met.). Moreover, the Settlement Class is
5 clearly ascertainable because property ownership is readily known through
6 governmental records, and thus it is administratively feasible “to ascertain whether
7 an individual is a member.” *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319
8 (C.D. Cal. 1998).

9 **Commonality.** “Federal Rule of Civil Procedure 23(a)(2) conditions class
10 certification on demonstrating that members of the proposed class share common
11 ‘questions of law or fact.’” *Stockwell v. City & Cnty. of S.F.*, 749 F.3d 1107, 1111
12 (9th Cir. 2014). As Plaintiffs explained in their Motion for Preliminary Approval,
13 the same common questions of fact and law the Court previously identified in
14 certifying the Class for litigation still unify the Settlement Class, including whether
15 grantees failed to operate, use, and/or maintain the Pipeline, and if so, for how long;
16 whether the easements have terminated or been abandoned under California law;
17 and whether the right-of-way grants permit the installation of a second pipeline.

18 **Typicality.** For similar reasons, Plaintiffs’ claims remain coextensive with
19 those of the absent Settlement Class members, and Rule 23(a)(3)’s typicality
20 requirement is satisfied. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th
21 Cir. 1998). Like the absent Settlement Class members, the Pipeline runs through
22 each of the Class Representatives’ properties and was installed on Plaintiffs’
23 properties according to the right-of-way grants. As such, typicality is still met.

24 **Adequacy.** Rule 23(a)(4)’s adequacy requirement is met where, as here, “the
25 representative parties will fairly and adequately protect the interests of the class.”
26 Fed. R. Civ. P. 23(a)(4). The Class Representatives seek efficient administration of
27 the Settlement, and have reviewed and uniformly endorse the terms of the
28 Settlement. Nelson Decl. ¶ 31; *id.* Ex. 3-5 (Class Representative Declarations

1 stating same). Further, Class Counsel are highly experienced and have been found
2 adequate by this Court in this action. Dkt. 100 at 13. In short, nothing has changed
3 since the Court determined that the “proposed Settlement Class Representatives and
4 proposed Settlement Class Counsel have adequately represented, and will continue
5 to adequately represent, the Settlement Class.” Dkt. 325 ¶ 5c. Adequacy is met.

6 **B. The Settlement Class satisfies Rule 23(b)(3).**

7 Rule 23(b)(3) requires that “questions of law or fact common to class
8 members predominate over any questions affecting only individual members.” Fed.
9 R. Civ. P. 23(b)(3). Here, “common questions present a significant aspect of the
10 case and they can be resolved for all members of the class in a single adjudication,”
11 and, therefore, “there is clear justification for handling [and resolving] the dispute
12 on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022
13 (citation omitted). As Plaintiffs noted in their Motion for Preliminary Approval, the
14 common language in the easements paired with the common course of conduct by
15 Plains and its successors is central to Plaintiffs’ certified claim. Common, unifying
16 questions include, for example: whether Plains’ failure to maintain and operate the
17 Pipeline caused the right-of-way grants to terminate; whether Plains’ conduct
18 constituted an intent to abandon the easements; and if the right-of-way grants are
19 enforceable. Predominance is met.

20 Rule 23(b)(3) also requires that “a class action is superior to other available
21 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P.
22 23(b)(3). Here, class treatment is far superior to the litigation of 86 or 183
23 individual claims. Additionally, the monetary recoveries achieved by the Class
24 through this Settlement could only be obtained through a successful declaratory
25 relief action followed by individual condemnation proceedings, a process that
26 would take many years. Further, the potential for inconsistent rulings and results,
27 especially given the issues surrounding the interpretation of these contracts from the
28 1980s, favor class-wide resolution over other means of adjudication. Here, the

1 proposed Settlement resolves the Settlement Class’s claims all at once. Thus,
2 superiority is readily met.

3 * * *

4 Because the Settlement Class meets all relevant requirements of Rule 23(a)
5 and Rule 23(b), Plaintiffs request that the Court certify the Class for settlement
6 purposes.

7 **II. The Settlement is fair, reasonable, and adequate.**

8 A court may approve the parties’ settlement after it determines that it is “fair,
9 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Rule 23 sets out the “primary
10 procedural considerations and substantive qualities that should always matter to the
11 decision whether to approve the proposal.” Fed. R. Civ. P. 23(e)(2), 2018 adv.
12 comm. note. These include whether “(A) the class representatives and class counsel
13 have adequately represented the class; (B) the proposal was negotiated at arms-
14 length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal
15 treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2).¹⁰
16 The proposed Settlement readily satisfies these criteria.

17 **A. Plaintiffs and Class Counsel have and will continue to zealously**
18 **represent the Class.**

19 The Court must first consider whether “the class representatives and class
20 counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). This
21 analysis includes “the nature and amount of discovery” undertaken. Fed. R. Civ. P.

22
23 ¹⁰ The Rule substantively tracks the Ninth Circuit’s test for evaluating a
24 settlement’s fairness. *Loomis v. Slendertone Distrib., Inc.*, 2021 WL 873340, at *4
25 n.4 (S.D. Cal. Mar. 9, 2021). Plaintiffs’ analysis accounts for the Ninth Circuit’s
26 factors and discusses them where applicable. Those factors are: “[1] the strength of
27 the plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further
28 litigation; [3] the risk of maintaining class action status throughout the trial; [4] the
amount offered in settlement; [5] the extent of discovery completed and the stage of
the proceedings; [6] the experience and views of counsel; [7] the presence of a
governmental participant; and [8] the reaction of the class members to the proposed
settlement.” *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020)
(citation omitted).

1 23(e), 2018 adv. comm. note; *see also* 4 William B. Rubenstein, *Newberg on Class*
2 *Actions* § 13:49 (5th ed. Dec. 2021 update) (“*Newberg*”).

3 As detailed above and in the Motion for Preliminary Approval, Class
4 Counsel aggressively pursued fact and expert discovery, defeated motions to
5 dismiss and for summary judgment, obtained class certification, successfully
6 pivoted to modify the Class to guard against PPC’s new pipeline repair strategy,
7 obtained a Consent Judgment against the plan to replace the pipeline, and engaged
8 in formal mediation. *See Valenzuela v. Walt Disney Parks & Resorts U.S., Inc.*,
9 2019 WL 8647819, at *6 (C.D. Cal. Nov. 4, 2019); *Hefler v. Wells Fargo & Co.*,
10 2018 WL 6619983, at *6 (N.D. Cal. Dec. 18, 2018) (finding adequacy met where
11 class counsel “vigorously prosecuted this action through dispositive motion
12 practice, extensive initial discovery, and formal mediation”).

13 The Class Representatives were actively engaged in this case from inception
14 and remain so—each produced numerous documents, sat for a deposition, prepared
15 declarations, and regularly communicated with Class Counsel up to and including
16 evaluating and approving the proposed Settlement. Nelson Decl. ¶¶ 13-4, 31, Exs.
17 3-6 thereto.

18 **B. The Settlement is the result of arm’s-length negotiations.**

19 The Court must also consider whether “the [settlement] proposal was
20 negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). This “procedural
21 concern[]” requires the Court to examine “the conduct of the litigation and of the
22 negotiations leading up to the proposed settlement.” Fed. R. Civ. P. 23(e), 2018
23 adv. comm. note. There is “no better evidence” of “a truly adversarial bargaining
24 process . . . than the presence of a neutral third party mediator.” *Newberg, supra*,
25 § 13:50.

26 Here, the parties engaged in vigorous and contested settlement negotiations
27 over many years with the aid of Hon. Layn Phillips (Ret.), Robert Fairbank, and
28 then Robert A. Meyer, Esq., who are all “neutral and experienced mediators.”

1 *Baker v. SeaWorld Entm't, Inc.*, 2020 WL 4260712, at *6 (S.D. Cal. July 24, 2020);
2 *Soto v. Diakon Logistics (Del.), Inc.*, 2015 WL 13344896, at *3 (S.D. Cal. Feb. 5,
3 2015); Nelson Decl. ¶¶ 5-6.

4 Nor does the Settlement contain any signs of collusion. *See generally In re*
5 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011). First, the case
6 did not settle after an initial effort at mediation, and then a two year long mediation
7 effort, and even as a result of the 2023 mediation with Robert Meyer. Nelson Decl.
8 ¶¶ 5-6. Plaintiffs continued to press their claims until they were able to obtain an
9 economic amount that they believed would fairly and even generously compensate
10 all class members. Also, Class Counsel will apply for a fee award which will be
11 “separate from the approval of the Settlement, and neither [Plaintiffs nor Class
12 Counsel] may cancel or terminate the Settlement based on this Court’s or any
13 appellate court’s ruling with respect to attorneys’ fees.” *Cheng Jiangchen v.*
14 *Rentech, Inc.*, 2019 WL 5173771, at *6 (C.D. Cal. Oct. 10, 2019). In addition, there
15 is no “clear sailing” arrangement whereby the Settling Parties have agreed in
16 advance not to oppose Class Counsel’s request for fees. Finally, no portion of the
17 common fund will revert to the Settling Parties or their insurers.

18 In summary, this Settlement is the result of strenuous, years-long and arm’s-
19 length negotiations with three experienced mediators, informed by many years of
20 hard-fought litigation.

21 **C. The Settlement provides adequate relief in exchange for the**
22 **compromise of claims.**

23 The Court must ensure “the relief provided for the class is adequate,” taking
24 into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness
25 of any proposed allocation plan, including the claims process; (iii) the terms of any
26 proposed award of attorneys’ fees; and (iv) any agreement made in connection with
27 the proposal, as required under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C). These
28 factors overwhelmingly support final approval here.

1 **1. The Settlement relief outweighs the costs, risks, and delay of**
2 **trial and appeal.**

3 Rule 23(e)(2)(C)(i) requires that the Court “evaluate the adequacy of the
4 settlement in light of the case’s risks.” *In re Wells Fargo & Co. S’holder Derivative*
5 *Litig.*, 2019 WL 13020734, at *5 (N.D. Cal. May 14, 2019). This requires weighing
6 “[t]he relief that the settlement is expected to provide” against “the strength of the
7 plaintiffs’ case [and] the risk, expense, complexity, and likely duration of further
8 litigation.” *Id.* (internal cites and quotes omitted).

9 Here, the Settlement provides significant monetary compensation to the Class
10 and other important relief. As detailed in Plaintiffs’ Motion for Preliminary
11 Approval, the \$70 million Settlement represents a substantial economic benefit to
12 the Class, which includes only 86 separate landowners of record. Moreover, each
13 Class Property, of which there are 183, will be allocated at least \$50,150, with
14 expected median payments of approximately \$90,000 and average payments of
15 \$230,000 per Class Property, net of all anticipated fees and costs. These large
16 payments are especially notable given that the Pipeline is already on each Class
17 Property. In addition, the Settlement ensures that grantees cannot build a second
18 pipeline without first obtaining new easements, brings clarity to the easement
19 terms, and adds and reinforces important safety commitments.

20 The Settlement is also impressive in light of the substantial litigation risks the
21 Class faced during eight years of litigation. Plains and then PPC vigorously
22 contested their rights under the easements, which turned on novel contract
23 interpretation issues as well as technical disputes over the meaning of pipeline
24 “operation and maintenance.” Indeed, PPC filed a motion for summary judgment on
25 Claim 15 (Dkt. 267), arguing that none of the easements had terminated, relying
26 upon expert proof on these very topics. PPC also raised arguments regarding
27 forum-selection clauses and notice-and-cure provisions present in certain
28

1 easements. Finally, even if Plaintiffs had prevailed through trial, Defendants could
2 have appealed, delaying a conclusive liability finding potentially for years.

3 Importantly, even assuming a win on liability, Plaintiffs’ lawsuit for
4 declaratory relief would have been no guarantee of damages, which instead would
5 have likely depended on follow-on negotiations or condemnation proceedings.
6 Assuming the class members got that far, they would have faced stiff challenges to
7 their valuations, because establishing the scope of severance damages for a property
8 where a pipeline already exists (and is largely underground) would be both novel
9 and difficult.

10 While Class Counsel were prepared to prosecute the case despite these
11 challenges, as they have repeatedly done in the face of other case-dispositive
12 challenges, PPC’s success on any one of these issues could have undermined the
13 viability or worth of Plaintiffs’ case. In light of the myriad challenges and years of
14 delay the Class members would have each faced in obtaining their claimed
15 damages—essentially requiring them to run the table on complex issues of contract
16 interpretation through trial and appeal, and then potentially also condemnation
17 proceedings to follow—the Settlement marks an extraordinary achievement.

18 Finally, experienced counsel’s support for the proposed Settlement also
19 weighs in favor of final approval. *See Cheng Jiangchen*, 2019 WL 5173771, at *6
20 (“The recommendation of experienced counsel carries significant weight in the
21 court’s determination of the reasonableness of the settlement.”) (citation omitted).
22 This is especially true given that extensive discovery and motion practice allowed
23 both sides to gain “a good understanding of the strengths and weaknesses of their
24 respective cases,” reinforcing “that the settlement’s value is based [on] . . . adequate
25 information.” 4 *Newberg & Rubenstein on Class Actions* (6th ed.), § 13:49.
26 Discovery closed over a year ago. Dkt. 228 (closing discovery on June 30, 2023).
27 There is no question that this case is now “fully mature.” Nelson Decl. ¶ 9. This
28 “full discovery demonstrates that the parties have litigated the case in an adversarial

1 manner and is, therefore, an indirect indicator that a settlement is not collusive but
2 arms-length.” 4 *Newberg & Rubenstein on Class Actions* (6th ed.), § 13:49 (citing
3 cases). With a deep understanding of the strength and weaknesses of their case,
4 Class Counsel strongly support the proposed Settlement. *See* Nelson Decl. ¶ 9. As
5 regards the second installment of payment through the Letter of Credit, this was the
6 only way that Class members could receive a significant additional payment from a
7 newly organized company, Sable, with little capitalization and substantial lending
8 obligations to PPC and ExxonMobil.

9 In summary, the proposed Settlement offers impressive monetary relief and
10 avoids the substantial risk and years-long delays required for a successful trial
11 verdict and defense on appeal, and follow on condemnation proceedings. This
12 reality, and the potential risks outlined above, underscore the strength of the
13 Settlement.

14 **2. Payment to Class Members is straightforward.**

15 Rule 23(e)(2)(C)(ii) also requires the Court to consider “the effectiveness of
16 any proposed method of distributing relief to the class, including the method of
17 processing class-member claims.” As detailed in Plaintiffs’ Plan of Allocation and
18 explained in Plaintiffs’ Motion for Preliminary Approval, the Parties designed an
19 extremely simple administration process designed to expedite payments: Class
20 Members will be issued checks directly by mail, in two tranches based on when the
21 Letter of Credit can be drawn upon, obviating the need for a questionnaire and
22 thereby streamlining the claims process significantly.

23 **3. Plaintiffs seek reasonable attorneys’ fees and expenses.**

24 The Court should also evaluate Class Counsel’s “proposed award of
25 attorney’s fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(C)(iii).
26 Plaintiffs have separately filed a motion in support of their requested fees and costs
27 award. As explained in that motion, the requested fee is reasonable and represents a
28

1 modest and reasonable multiplier on Class Counsel’s lodestar. Class Counsel’s fee
2 request is independent of this final approval motion.

3 **4. Plaintiffs have identified the existence of side agreements.**

4 Finally, Plaintiffs must identify any agreements “made in connection with the
5 proposal.” Fed. R. Civ. P. 23(e)(3); *see* Fed. R. Civ. P. 23(e)(2)(C)(iv). This
6 provision is aimed at “related undertakings that, although seemingly separate, may
7 have influenced the terms of the settlement by trading away possible advantages for
8 the class in return for advantages for others.” Fed. R. Civ. P. 23(e)(2), 2003 adv.
9 comm. note.

10 Plaintiffs have entered into two side agreements with the Settling Parties
11 which Plaintiffs filed along with the Settlement. First, the Parties entered into a
12 Restoration Side Letter, obligating the Settling Parties to restore any property
13 subject to repair work. Dkt. 303-1, Ex. 2. Second, the Parties entered into a side
14 agreement that gives the Settling Parties the right, but not the obligation, to
15 terminate the Settlement in the event that a certain portion of the Class delivers
16 timely and valid requests for exclusion. *See* Dkt. 301 (App. for Leave to File Side
17 Letter Under Seal); Dkt. 303-1 ¶ 4 (noting that Opt-Out Threshold Side Letter
18 would be lodged under seal); *id.*, Ex. 3 (Letter).

19 “Courts generally approve settlement that contain blow up provisions”
20 because they encourage settlement and have no legitimate bearing on a class
21 member’s decision to opt out or object. Newberg and Rubenstein on Class Actions
22 § 13:6 (6th ed.) (citing cases). *See also* *Spann v. J.C. Penney Corp.*, 314 F.R.D.
23 312, 329 (C.D. Cal. 2016) (“[T]he opt-out threshold ‘is typically not disclosed and
24 is kept confidential to encourage settlement and discourage third parties from
25 soliciting class members to opt out.’”) (quoting *In re HealthSouth Corp. Securities*
26 *Litig.*, 334 Fed. Appx. 248, 250 n.4 (11th Cir. 2009) (citing a line of cases holding
27 the same)); *Friedman v. Guthy-Renker, LLC*, No. 14-06009, 2016 WL 5402170, at
28 *3 (C.D. Cal. Sept. 26, 2016) (concurring “with the numerous other courts that have

1 held that the opt-out threshold should be kept confidential”); *Burch v. Qwest Corp.*,
2 2012 WL 12978329, at *1 (D. Minn. 2012) (finding a sealed blow up provision
3 appropriate because the terms of such a provision have no legitimate bearing on a
4 class member’s decision to opt-out of the settlement or object, and sealing
5 encourages settlement and discourages third-party solicitation to gain leverage in
6 allocation of the settlement proceeds) (internal citation omitted).

7 Plaintiffs have properly identified the Settlement Agreement and the
8 existence of side agreements, so this factor also supports approval.

9 **D. The Settlement treats Class Members equitably.**

10 The Court should consider “the effectiveness of any proposed method of
11 distributing relief to the class, including the method of processing class-member
12 claims.” Fed. R. Civ. P. 23(e)(2)(C)(ii). In addition, the final Rule 23(e)(2) factor
13 asks whether “the proposal treats class members equitably relative to each other.”
14 Fed. R. Civ. P. 23(e)(2)(D).

15 Both factors are readily met here. *First*, as described above and in Plaintiffs’
16 Motion for Preliminary Approval and Plan of Allocation, Class members will not
17 need fill out a questionnaire and essentially will be issued checks directly by mail,
18 based on information currently available regarding their easement and property.
19 *Second*, the Settlement Plan of Allocation treats class members equitably relative to
20 one another. As described above and in Plaintiffs’ Motion for Preliminary Approval
21 and Plan of Allocation, the monies will be allocated per property based on fair and
22 transparent criteria: the scope of any repair work to the property, the relative value
23 of each property’s easement and attendant severance damage, as calculated by
24 experienced experts, and the strengths of Class Member claims. *In re Illumina, Inc.*
25 *Sec. Litig.*, 2021 WL 1017295, at *5 (S.D. Cal. Mar. 17, 2021) (“[I]t is reasonable
26 to allocate the settlement funds to class members based on the extent of their
27 injuries or the strength of their claims on the merits.”) (citation omitted).

1 In addition to their allocations, Court-appointed Class Representatives have
2 requested service awards. The Grey Fox entities – Grey Fox LLC, MAZ Properties,
3 Inc., Bean Blossom LLC, and Winter Hawk LLC – request a cumulative award of
4 \$20,000 to compensate them for the time and effort they spent over the many years
5 of litigation pursuing the matter on behalf of the Class, including participating in
6 discovery and settlement. *See* Nelson Decl., Ex. 5 (McMullin Decl.). The other
7 Class Representatives, Mark Tautrim and Denise McNutt, request \$20,000 each for
8 their work on behalf of the Class. They each sat for deposition, and each followed
9 the case throughout this lengthy litigation and also reviewed and approved the
10 proposed Settlement. Nelson Decl. ¶¶ 30-1; Ex. 3 (Tautrim Decl.); Ex. 4 (McNutt
11 Decl.). Service awards “are fairly typical in class action cases.” *Rodriguez v. W.*
12 *Pub. Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). *See also Illumina*, 2021 WL
13 1017295, at *8 (granting \$25,000 service award); *In re Wells Fargo & Co. S’holder*
14 *Derivative Litig.*, 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020) (granting \$25,000
15 service awards).

16 Finally, no settlement funds will revert to the defendants, a “[s]ignificant[]”
17 fact that further demonstrates the Settlement’s fairness and effectiveness. *Hilsley v.*
18 *Ocean Spray Cranberries, Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020).
19 For all of these reasons, the Settlement treats Class Members equitably and relief
20 will be delivered effectively o the Class.

21 Class members appear to overwhelmingly support the Settlement. Indeed, at
22 the time of this writing, no Class Member has objected to the Settlement and only a
23 minimal number of Class Members have sought to be excluded. Once the Notice
24 Program concludes and the relevant deadlines have passed, Class Counsel will
25 provide a full accounting of all valid exclusions and any objections.

26 **III. The Notice Plan has been successfully implemented.**

27 Class actions brought under Rule 23(b)(3) must satisfy the notice provisions
28 of Rule 23(c)(2), and upon preliminary approval of the settlement, “[t]he court must

1 direct notice in a reasonable manner to all class members who would be bound by
2 the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2) prescribes the “best notice
3 that is practicable under the circumstances, including individual notice to all
4 members who can be identified through reasonable effort.” Fed. R. Civ. P.
5 23(c)(2)(B).

6 In granting preliminary approval to the Settlement, this Court held that the
7 Notice Plan “constitutes due, adequate, and sufficient notice,” is “reasonably
8 calculated, under the circumstances, to apprise the Settlement Class of the pendency
9 of this litigation and of their right[s],” and “meets all applicable law[s], including
10 the requirements of the Federal Rules of Civil Procedure and the United States
11 Constitution.” Dkt. 325 ¶¶ 13-6 (approving plan).

12 The Notices included all the information required under Rule 23(c)(2)(B):
13 they informed Class Members of the nature of the action, the class definition, the
14 class claims, that a Class Member may enter an appearance through an attorney,
15 that a class member may opt out, and that a class member may object, and the
16 binding effect of final approval if they do not opt out. *See* Declaration of Gina
17 Intrepido-Bowden, Dkt. 365, Exs. A-D.

18 The Notices have been delivered in a manner that satisfies both Rule 23 and
19 due process. *See* Declaration of Gina Intrepido-Bowden, Dkt. 365 (detailing
20 compliance with notice program); *see also* Nelson Decl. Ex. 6 (concurrently-filed
21 Declaration of Intrepido-Bowden) ¶ 14 (opining that “[T]he Notice Program has
22 been successfully implemented pursuant to the Settlement Agreement and this
23 Court’s Preliminary Approval Order.”). Direct notice was individually mailed to all
24 known Settlement Class Members via U.S. Mail and email notice for whom such
25 addresses were available and was supplemented by an extensive digital notice
26 program, which included publication notices in three area newspapers that included
27 a QR code with a direct link to the Settlement Class website, and banner
28 advertisements that ran in a popular local online newspaper and its eNewsletter,

1 totaling 168,422 digital impressions. Dkt. 365 ¶¶ 11-3 (direct notice), ¶¶ 17-20
2 (publication notice). The Notices direct Class Members to the case website, where
3 they can view the entire Settlement, the long-form Class Notice, the Plan of
4 Allocation, and other key case documents. The website also directs inquiries to an
5 email address and toll-free number where Class Members can get additional
6 information and communicate directly with the Settlement Administrator. *Id.*

7 In short, the Notice Plan has been implemented consistent with this Court's
8 order approving it.

9 **CONCLUSION**

10 For all the reasons stated above, the Settlement provides outstanding
11 monetary relief for Class Members and satisfies Rule 23. Accordingly, Plaintiffs
12 respectfully request that the Court grant final approval to the Settlement.

13
14 Dated: August 9, 2024

Respectfully submitted,

15 By: /s/Robert J. Nelson

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CERTIFICATE OF SERVICE

I, Wilson Dunlavey, hereby certify that on August 9, 2024, I caused to be electronically filed the Motion for Final Approval of Class Action Settlement 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