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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

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

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF PLAN OF
ALLOCATION**

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, 2022, 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 approving the
7 [Proposed] Plan of Allocation (Dkt. 3031-1, Ex. 4). This motion is based on the
8 attached supporting memorandum; the pleadings, papers, and records on file in this
9 action, including those submitted in support of Plaintiffs' Motion for Preliminary
10 Approval (Dkt. 303) and Motion for Final Approval; any further papers filed in
11 support of this motion; and arguments of counsel in support of these motions.

12 Dated: August 9, 2024

Respectfully submitted,

13
14 By: /s/Robert J. Nelson

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14 *(additional counsel listed at signature)*

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' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
APPROVAL OF THE PLAN OF
ALLOCATION**

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

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1 **INTRODUCTION**

2 Plaintiffs have reached a proposed Settlement that provides \$70 million, plus
3 interest accrued, to resolve all outstanding class claims in this litigation. Dkt. 303-1,
4 Ex. 1 (Settlement). Plaintiffs filed their [Proposed] Plan of Allocation (the “Plan”)
5 on April 9, 2024 (Dkt. 303-1 Ex. 4). Plaintiffs now file this motion in support of an
6 order approving the Plan.

7 The Plan is straightforward. The 183 Class Properties, their addresses, and
8 their owners are known. Each Property has been allocated a share of the net
9 settlement based on objective criteria: *first*, the scope of any repair work on the
10 Class property; *second*, the value of each Property’s pipeline easement and
11 attendant severance damages, as calculated by experienced real estate appraisers
12 who have analyzed and evaluated the value of the Class Properties; and *third*, the
13 presence of automatic termination clauses in their easements, which indicates the
14 relative strength of their legal claims.

15 Because each Property’s allocation share of the net settlement has been
16 determined and the 183 Class Properties (and their owners) are known, Class
17 members need not submit any information or proof of ownership to verify their
18 entitlement to the proceeds. There will not be a questionnaire requiring
19 administrative review. As a result, settlement checks will be mailed directly to
20 Class members, largely obviating the need for a claims process.

21 For these reasons, and as set forth below, the Plan of Allocation is fair and
22 reasonable and treats each Class Property and Class member equitably relative to
23 one another. The Plan should be approved.

24 **ARGUMENT**

25 As part of its review of a proposed settlement, the trial court should consider
26 “the effectiveness of any proposed method of distributing relief to the class,
27 including the method of processing class-member claims.” Fed. R. Civ. P.
28 23(e)(2)(C)(ii). “[T]he goal of any distribution method is to get as much of the

1 available damages remedy to class members as possible and in as simple and
2 expedient a manner as possible.” *See Hilsley v. Ocean Spray Cranberries, Inc.*,
3 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020) (quoting 4 William B.
4 Rubenstein, *Newberg on Class Actions* § 13:53 (5th ed. Dec. 2021 update)).

5 Likewise, Rule 23(e)(2)(D) asks whether “the proposal [for distribution
6 among class members] treats class members equitably relative to each other.”
7 Relevant considerations may include “whether the apportionment of relief among
8 class members takes appropriate account of differences among their claims, and
9 whether the scope of the release may affect class members in different ways that
10 bear on the apportionment of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm.
11 note.

12 Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds
13 in a class action under Fed. R. Civ. P. 23 is governed by the same standards of
14 review applicable to the settlement as a whole – the plan must be fair, reasonable,
15 and adequate.” *In re Illumina, Inc. Sec. Litig.*, 2021 WL 1017295, at *4 (S.D. Cal.
16 Mar. 17, 2021) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284–85
17 (9th Cir. 1992)). The plan “need only have a reasonable, rational basis, particularly
18 if recommended by experienced and competent class counsel.” *Jenson v. First Tr.*
19 *Corp.*, 2008 WL 11338161, at *9 (C.D. Cal. June 9, 2008) (citation omitted); *see*
20 *also In re Lithium Ion Batteries Antitrust Litig.*, 2020 WL 7264559, at *12 (N.D.
21 Cal. Dec. 10, 2020).

22 **I. The Plan pays Class members directly.**

23 The Plan provides relief simply, fairly, and quickly. Class members will be
24 issued checks directly, thereby eliminating the need for a questionnaire and
25 complex claims process. Plaintiffs’ real property expert, Landmark Research
26 Group, has identified the owners and addresses of all Class Properties. Each Class
27 Property’s share of the net settlement will be distributed directly to the owner(s) of
28 each Class Property. Accordingly, the funds will be distributed “in as simple and

1 expedient a manner as possible.” *Hilsley*, 2020 WL 520616, at *7 (S.D. Cal. Jan.
2 31, 2020) (quoting 4 William B. Rubenstein, *Newberg on Class Actions* § 13:53
3 (5th ed. Dec. 2021 update)).

4 **II. The Plan treats Class members equitably and is fair, reasonable and**
5 **adequate.**

6 The Class is composed of 183 Class Properties through which the Las Flores
7 Pipeline travels pursuant to easements. These Class Properties are owned by 86
8 landowner Class members. As detailed below, the Settlement Agreement and Plan
9 of Allocation allocates the Settlement Fund based on the access (if any) required to
10 repair the Pipeline on Class Properties, whether the Class Properties’ easements
11 contain an automatic termination clause, and the relative value of the Class
12 Properties’ severance and permanent easement damages.

13 *First*, both the Agreement and Plan establish a Temporary Construction
14 Easement (“TCE”) Fund to compensate Settlement Class Members for Property
15 access and Pipeline repair work, which will also include any valve-related
16 construction that Sable needs to complete prior to the Settlement’s Effective Date.
17 Sable has provided their current work plan to Class Counsel and has agreed to
18 update the plan if the work plan evolves. The Settlement Administrator, in
19 consultation with Class Counsel, shall distribute payments from the TCE Fund (up
20 to \$2,000,000). Should timely compensation require the distribution of more than
21 \$2 million prior to the Effective Date, the Plan calls for the parties to work in good
22 faith to consider increases to that allocation accordingly.

23 *Second*, each Class Property will be allocated a Base Payment of \$50,000.

24 *Third*, Class Properties with automatic termination clauses (ATCs) will
25 receive their *pro rata* share of the ATC Fund, which is valued at one-third of the
26 Net Settlement Fund. The purpose of this allocation is to account for the fact that
27 this subset of Class Properties have an additional legal claim as compared to non-
28 ATC Class Properties. Properties with ATC clauses are members of both the Class

1 (all Class Properties) and the Subclass (ATC Properties). “It is [] reasonable to
2 allocate more of the settlement to class members with stronger claims on the
3 merits.” *See, e.g., Jenson*, 2008 WL 11338161, at *10 (approving distinctions in
4 plan of allocation as reasonably reflecting likelihood of recovery of subgroups
5 within the class); *In re Biolase, Inc. Sec. Litig.*, 2015 WL 12720318, at *5 (C.D.
6 Cal. Oct. 13, 2015) (variable *pro rata* allocation plan based upon relative injuries of
7 class members approved); *Illumina*, 2021 WL 1017295, at *5 (“[I]t is reasonable to
8 allocate the settlement funds to class members based on the extent of their injuries
9 or the strength of their claims on the merits.”) (citation omitted); *In re Oracle Sec.*
10 *Litig.*, 1994 WL 502054, at *2 (N.D. Cal. June 18, 1994) (approving plan
11 “reasonably calculated to allow class members with more meritorious claims to
12 recover a correspondingly larger portion of the settlement” based upon class
13 counsel’s appraisal of relative merits of subgroups).

14 *Fourth*, each Property (ATC and non-ATC alike) will receive its *pro rata*
15 share of the remaining Net Settlement Funds. These *pro rata* shares are measured
16 by the Class Properties’ permanent easement¹ and severance damages,² as
17 calculated by Plaintiffs’ expert real estate appraisers, in conjunction with property
18 values negotiated with experts engaged by Defendants, and thus are tied to the
19 monetary recovery that could have been available to Class Members had they
20 succeeded in terminating the existing easements and requiring the Pipeline owner to
21 purchase new easements. Courts have consistently found that a plan of allocation
22 that awards fractional shares is fair, reasonable and adequate. *See, e.g., In re High-*

24 ¹ Each Class Property’s permanent easement value is the product of the price per
25 acre value for its category, the area of its permanent easement, and a factor of 90%,
which reflects the ability to use the easement area.

26 ² Severance damages are the damages to the remainder of the property as a result of
27 the taking from the easement. Plaintiffs’ experts used a uniform, Class-wide
28 severance percentage, except an enhanced percentage will be applied to Properties
that will receive new above-ground valve stations and whose rights-of-way do not
already permit such structures to be built.

1 *Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at *8 (N.D. Cal. Sept. 2, 2015)
2 (finding a plan of allocation that provided each class member with a “fractional
3 share” based on each class member’s total base salary received during the alleged
4 conspiracy period to be “cost-effective, simple, and fundamentally fair”) (citation
5 omitted); *In re Elec. Carbon Prods. Antitrust Litig.*, 447 F. Supp.2d 389, 404
6 (D.N.J. 2006) (finding a *pro rata* allocation to claimants based on their direct
7 purchases to be “eminently reasonable and fair to the class members”).

8 The end result is excellent: Class Counsel estimate that the per-Property
9 Allocation Shares will be at least \$50,150, with an estimated median payment of
10 approximately \$90,000 and an estimated average payment of \$230,000. These
11 figures, in turn, reflect the broad range of property values within the Class. In sum,
12 the Plan uses fair criteria to equitably apportion Settlement Class Member
13 payments.

14 **CONCLUSION**

15 For the reasons stated above, Plaintiffs respectfully request that the Court
16 approve the Plan of Allocation. The Plan is anchored in expert proof, treats all
17 Class Properties and Class Members reasonably with respect to one another, and
18 avoids the need for a questionnaire that would unnecessarily slow the claims
19 administration process.

20
21 Dated: August 9, 2024

Respectfully submitted,

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23 By: /s/Robert J. Nelson

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CERTIFICATE OF SERVICE

I, Wilson M. Dunlavey, hereby certify that on August 9, 2024, I caused to be electronically filed the Notice of Motion and Motion for Approval 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
Wilson M. Dunlavey