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Class Counsel

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GREY FOX, LLC, et al.

Plaintiffs,

v.

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

Defendants.

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

NOTICE OF MOTION AND MOTION FOR 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

TO ALL THE PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 13, 2022, at 1:30 p.m., or as soon thereafter as the matter may be heard by the Honorable Philip S. Gutierrez in Courtroom 6A of the above-entitled court, located at 350 West First Street, Los Angeles, CA 90012-4565, Plaintiffs will and hereby do move the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an Order:

A. Approving the request for attorneys' fees to Class Counsel in the amount 33% of the Settlement Fund;

B. Approve reimbursement of litigation expenses of $1,195,207 and

C. Approve service awards of $20,000 each to compensate two Class Representatives, and $20,000 in total to compensate the four entity Class Representatives, for a total of $60,000.

This motion is based on the attached supporting memorandum; the accompanying declarations and exhibits; the pleadings, papers, and records on file in this action, including those submitted in support of Plaintiffs' Motion for Final Approval; any further papers filed in support of this motion; and arguments of counsel in support of the motion.

Dated: August 9, 2024

Respectfully submitted,

By: */s/Robert J. Nelson*

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GREY FOX, LLC, et al.

Plaintiffs,

v.

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

Defendants.

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

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS UNDER RULE 23(H)

Date: September 13, 2024
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INTRODUCTION

Class Counsel were able to achieve a $70 million Settlement on behalf of 86 landowners, an extraordinary result.[1] After eight years of litigation, Class Counsel now move the Court for an attorneys' fees award of 33% of the interest-bearing, non-reversionary Settlement Fund, or approximately $23.1 million.[2] This request, though upwards of the 25 percent "benchmark," "falls within the 30 to 33 percent range allowed in common fund cases," *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 2017 WL 4685536, at *7 (C.D. Cal. May 8, 2017) (Gutierrez, J.), and is strongly supported by each of the factors to be considered under Ninth Circuit law.

First, the Settlement recovery provides significant monetary relief to the Class and important safeguards to help ensure that the Pipeline is restored using the best available technologies and re-opened and maintained in a manner designed to prevent future ruptures and spills. *Second*, the Class would have faced serious litigation risks and delays had they continued to litigate against PPC, which mounted a spirited defense and is represented by sophisticated and experienced counsel. Even had Plaintiffs run the table in this litigation, they would have had to engage in follow-on condemnation proceedings to receive any monies, an effort that could easily take several years. *Third*, Class Counsel applied their own considerable experience and skill in litigating this unique and unprecedented case. *Fourth*, Class Counsel pursued this case over eight years purely on contingency and thus endured substantial risk. *Fifth*, the requested 33% fee request compares well with similar settlements, meaning, those with a similar litigation history and complexity, as well as settlement size. When cases are as heavily litigated as this

[1] All capitalized terms used herein have the meaning set forth in the Class Action Settlement Agreement ("Settlement Agreement" or "Settlement") (Dkt. 303-1, Exhibit 1), unless otherwise indicated.

[2] Half of the Settlement proceeds ($35 million) has been earning interest pursuant to the Settlement. *See* Settlement at 41, 45. Accordingly, 33% of the total award will be slightly higher than $23.1 million.

one – not to mention yielding so successful of a result – courts will award fees up to one-third of the common fund.

Finally, the requested 33% fee results in a multiplier of only 1.62 which is at the lower end of the range considered presumptively reasonable in this Circuit. In sum, given the quality of the Settlement and the substantial risks undertaken by Class Counsel, an award of 33 percent of the Fund is appropriate.

In addition to attorneys' fees, Class Counsel also respectfully request that the Court award reimbursement of $1,195,207 in litigation expenses, all of which were reasonably incurred and necessary for the prosecution of the case. Finally, the Class Representatives seek a total of $60,000 in service awards in recognition of their time and effort on behalf of the Class. For these reasons and as detailed more fully below, Plaintiffs respectfully request this Court grants its motion for attorneys' fees, expenses, and service awards.

BACKGROUND

Plaintiffs have also detailed the extensive history of this litigation in their accompanying motion for final approval. In the interest of efficiency, Class Counsel will not repeat that history here, but rather incorporate it by reference. In sum, this litigation was hotly contested for many years, involved countless complex and highly technical factual disputes as well as cutting-edge legal arguments, and settled shortly before trial.

LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 23(h), courts may award reasonable attorneys' fees to class counsel. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). "The court, however, 'must carefully assess' the reasonableness of the fee award." *Andrews v. Plains All Am. Pipeline L.P.*, No. 15-CV-154113 (PSG), 2022 WL 4453864, at *1 (C.D. Cal. Sept. 20,

2022) (Gutierrez, J.) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003).

"Under the percentage-of-recovery method, courts typically use 25% of the fund as a benchmark for a reasonable fee award. However, the percentage can vary, and courts have awarded more or less than 25% of the fund in attorneys' fees as they deemed appropriate." *Id*. (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). "When assessing the reasonableness of a fee award, courts consider '(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases.'" *Id*. (citing *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008)).

While courts sometimes cross-check the reasonableness of the requested fee award using the lodestar method, this Court has found that "unnecessary" where it "is extensive[ly] involved[] in supervising the last seven years of litigation[.]" *Andrews v. Plains All Am. Pipeline L.P.*, No. 15-CV-4113 (PSG), 2022 WL 4453864, at *2 (C.D. Cal. Sept. 20, 2022) (citing *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002)).

ARGUMENT

I. CLASS COUNSEL'S REQUESTED FEE IS FAIR AND REASONABLE.

As detailed below, each of the relevant factors strongly supports Class Counsel's 33% fee request. Additionally, and as demonstrated by the lodestar cross-check, the requested award would not constitute a windfall to Class Counsel. The requested fee would constitute a modest lodestar multiplier of 1.62.

Any attorneys' fees and reimbursement of reasonable expenses granted by the Court will be paid from the Settlement Fund. *See* Settlement Agreement ¶ 7.1. Fees will be paid in two installments, the second installment being when the Plaintiffs can draw upon the Letter of Credit. Dkt. 303-1, Exhibit 4 (Plan of

Allocation) ¶ 39.

1. Class Counsel obtained an exceptional result for the Class.

The benefit Class Counsel secured for the Class is the single most important factor in evaluating the reasonableness of a requested fee. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). Courts recognize that "the law appropriately provides for some upward adjustment [from the 25 percent benchmark] where the results achieved are significantly better than the norm." *Rodman v. Safeway, Inc.*, 2018 WL 4030558, at *3 n.3 (N.D. Cal. Aug. 22, 2018).

That is precisely the case here. As detailed in the accompanying motions for final settlement approval and the plan of allocation, the class-wide Settlement will result in meaningful payments to all Class Members. In sum, Class Counsel estimates the median payment to each of the 183 Class Properties will be approximately $90,000, the average payment will be $230,000, and the minimum payment will be $50,150. *See* concurrently-filed Motion for Final Approval of Settlement and Motion for Approval of Plan of Allocation. Given that there are only 86 separate landowners of record, such that some Class Members own multiple Class Properties, the payments on average will be significantly higher.

The original easement grantor, Celeron, negotiated easement rights in 1988. Class Members and their predecessors negotiated easements for as little as $10; named Plaintiff Mark Tautrim was paid $100 for the original easement on his property. *See* Dkt. 107-3, at 1 (Tautrim Easement); *see also* concurrently-filed Declaration of Robert J. Nelson in Support of Motions for Final Approval, Plan of Allocation, and Attorneys' Fees and Costs ("Nelson Decl.") ¶ 8. Adjusted for inflation, the grantee paid $26.56 for the easement rights on many Class Properties, and $265.81 for easement rights to the Tautrim property.[3] Through this Settlement,

[3] https://www.romeconomics.com/calculator/inflation/100/1988#:~:text=To%20calculate%20inflation%2C%20we%20divide,by%20the%20amount%20in%201988.&t

however, each Class Property stands to be compensated ***at least*** $50,000 for those same easement rights and added safeguards. Such recoveries – orders of magnitude greater than the original consideration paid for many easements – is extraordinary by any measure.[4]

Courts have repeatedly approved percentage fees at or near one-third when counsel achieved results that are arguably less impressive than those here. *See In re Heritage Bond Litig. ("Heritage I")*, 2005 WL 1594389 (C.D. Cal. June 10, 2005) (awarding 33.33% of $27.8 million in fees to counsel that recovered 36% of the class's total net loss); *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at *9-12 (C.D. Cal. Nov. 18, 2014) (awarding one-third in fees when the common fund represented 36% of damages); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1021, 1023 (E.D. Cal. 2019) (awarding 33.3% of a $40 million common fund that represented 48% of damages); *Syed v. M-I, L.L.C.*, 2017 WL 3190341, at *4, *6-8 (E.D. Cal. July 26, 2017) (awarding one-third in fees where the common fund represented 35% of damages); *Richardson v. THD At-Home Servs., Inc.*, 2016 WL 1366952, at *12 (E.D. Cal. Apr. 6, 2016) (awarding 30% of the gross fund amount as attorneys' fees where per-class member damages awards were "substantial," averaging over $5,000); *cf. In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467 (S.D.N.Y. 2009) (awarding 33.33% of $510.3 million when class members were estimated to recover only about 2% of their damages).

For the above reasons, this factor weighs heavily in favor of Class Counsel's request.

ext=This%20can%20be%20rounded%20to,worth%20about%20%24266%20in%202024; https://www.in2013dollars.com/us/inflation/1988?amount=10

[4] The median price paid by Celeron for Class Properties' easements is $450 and the average is $8,853.01. Accordingly, all Class Properties receive substantially more than the inflation-adjusted price they were paid for their easements when first negotiated.

2. This litigation was extremely risky.

"In assessing the fairness and reasonableness of an award of attorneys' fees, the risk that further litigation might result in no recovery is a 'significant factor.'" *Andrews*, 2022 WL 4453864, at *3 (C.D. Cal. Sept. 20, 2022) (Gutierrez, J.) (citing *In re Omnivision Techs*., 559 F. Supp. 2d at 1046-47).

As the above cases demonstrate, on the strength of the result alone, the Court would be well within its discretion to award the requested 33% fee. However, the request has even stronger support here because Class Counsel achieved these impressive results in the face of an extremely difficult and challenging case.

As discussed in Plaintiffs' preliminary approval motion, there is no supporting precedent for the claim that forms the basis of this Settlement: that the easements had all terminated as a result of the Pipeline shutdown. And there is likewise no direct precedent for the Subclass members' claim that their easements had all terminated for an additional reason - the automatic termination clauses in the easements.

For their part, PPC and Plains vigorously contested their rights under the easements, which turned on unique contract interpretation issues as well as technical disputes over the meaning of pipeline operation and maintenance. Indeed, PPC filed a motion for summary judgment on Claim 15 (Dkt. 267), arguing that none of the easements had terminated, relying upon complex expert proof on these very topics. PPC also raised arguments regarding forum-selection clauses and notice-and-cure provisions present in certain easements.

Even assuming a win on liability, Plaintiffs' lawsuit for declaratory relief would have been no guarantee of achieving economic damages, which instead would have likely depended on follow-on negotiations or condemnation proceedings. Assuming the Class members got that far, they would have faced stiff challenges to their valuations, because establishing the scope of severance damages for a property where a pipeline already exists (and is largely underground and for

many out of sight) is both novel and difficult.

With the risks of continued litigation and appeal in mind, the Settlement is all the more impressive and worthy of a high percentage fee. *Vizcaino*, 290 F.3d at 1048 (affirming the district court's finding that counsel "achieved exceptional results for the class" despite "the absence of supporting precedents," in the face of difficult facts, and "against [Defendant]'s vigorous opposition throughout the litigation") (citation omitted); *Lopez v. Youngblood*, 2011 WL 10483569, at *6-7 (E.D. Cal. Sept. 2, 2011) (exceeding the benchmark where "[t]he authority upon which Plaintiffs were able to rely was relatively scant," but "[d]espite these obstacles, Plaintiffs' counsel succeeded in obtaining a favorable determination from this Court, and succeeded in reaching a mediated settlement").

For these reasons, this second factor also strongly favors Class Counsel's request.

3. The Settlement resulted from Class Counsel's skilled and zealous representation in this complex litigation.

Courts also consider the skill required to prosecute and manage litigation, as well as Class Counsel's overall performance. *Andrews*, No. 15-CV-4113PSG, 2022 WL 4453864, at *3 (C.D. Cal. Sept. 20, 2022) (Gutierrez, J.) (citing *In re Omnivision Techs.*, 559 F. Supp. 2d at 1047).

Courts recognize that higher percentages are warranted where Class Counsel achieve a positive result in a complex case. *Id*. (awarding 32%); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (33% fee "justified because of the complexity of the issues and the risks"); *In re Heritage Bond Litig. ("Heritage II")*, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) (same).

For much of the litigation, Plains sought to install a second pipeline, asserting that the easements negotiated by Celeron permitted it to install a second pipeline through the Class Properties. Had Plains and PPC succeeded in their plan to install a second pipeline, Class Members would have been subjected to a massive

and highly disruptive construction project on their properties with zero compensation.

Plaintiffs and Class Counsel fought this project for years. Many of their claims (One, Two, Three, and Ten) were for declaratory and injunctive relief that the easements did not permit a second pipeline without adequate compensation. Class Counsel defeated a motion to dismiss these claims (*see* Dkt. 80) and summary judgment on Claims One, Two, and Ten (*see* Dkt. 128). Plains (and later PPC) abandoned this project. Accordingly, the Court entered a consent judgment in favor of Plaintiffs on the claims involving the installation of a second pipeline, providing Plaintiffs "with the relief they sought in Claims One, Two, Three, and Ten." *See* Dkt. 282 at 3 (Consent Judgment in favor of Plaintiffs on claims One, Two, Three, and Ten).

However, when Plains and PPC abandoned the second pipeline, it required Class Counsel to pivot and to aggressively pursue claim 15, the new claim that the easements had terminated pursuant to common-law abandonment and, as to the Subclass, for the additional reason that the automatic termination provisions in many of the contracts was triggered. This case therefore required that Class Counsel react and respond in real time to events on the ground.

The case also required extensive discovery. All told, the parties collectively produced over 1.4 million pages of documents (inclusive of documents from the parallel *Andrews* action deemed produced in this action) and took and defended over twenty depositions. Dkt. 301-1 ¶ 6. The careful review of the documents produced in discovery informed the expert work in this case. Expert discovery commenced prior to the sale of the Pipeline to PPC and PPC's joinder to the case as a Defendant. Prior to PPC's joinder as a Defendant, Plaintiffs retained four testifying experts who each submitted expert reports. *Id.* ¶ 7. Plains submitted seven expert reports. *Id.* After PPC was joined to the action, this Court adjusted the expert discovery schedule as to the claims PPC assumed. Dkt. 228. Thereafter, Plaintiffs

submitted three expert reports and three rebuttal reports regarding the PPC claims. PPC retained two testifying experts who each submitted a report and a rebuttal report. Dkt. 301-1 ¶ 8. Each of Plaintiffs' experts were deposed, and each of Defendants' experts were deposed. *Id.* Courts do not hesitate to award large percentage fees when Class Counsel take on such a significant litigation effort. *See Heritage II*, 2005 WL 1594403, at *7 (one-third fee where counsel had "reviewed approximately 1.1 million pages of documents produced by various defendants").

Legally, the certification of the Class and Subclass was novel, which also supports a higher percentage fee. *See In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *12 (N.D. Cal. Aug. 17, 2018) (awarding 27% of the $115 million settlement where "class certification was not guaranteed, in part because Plaintiffs had a scarcity of precedent to draw on"). While Class Counsel are confident in the propriety of class treatment for both the Class and Subclass, it is noteworthy that there is no direct precedent for an easement class under California law and no precedent for the legal theory advanced here: that the easements had all terminated as a result of the pipeline's corrosion and shut down.

Finally, Class Counsel successfully handled this protracted litigation against companies with significant financial and legal resources, and represented by two prominent litigation firms – Munger, Tolls & Olson LLP and O'Melveny & Myers LLP – over the long arc of this litigation. "In addition to the difficulty of the legal and factual issues raised, the court should also consider the quality of opposing counsel as a measure of the skill required to litigate the case successfully." *In re Am. Apparel, Inc. S'holder Litig.*, 2014 WL 10212865, at *22 (C.D. Cal. July 28, 2014); *see, e.g.*, *In re Apple*, 2021 WL 1022866, at *6 ("Class Counsel faced a company with significant financial and legal resources," that "was represented in this case by two national, highly respected law firms, . . . which weighs in favor of a fee award.").

The skill required to litigate this action, the novelty of the issues involved,

and the significant financial and legal resources of the Defendants, weigh in favor of Class Counsel's request.

4. This was a very risky case to litigate on contingency.

"An upward departure from the federal benchmark may be warranted when Class Counsel faced the risk of walking away with nothing after investing substantial time and resources in the matter. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047 ('The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee.')." *Andrews*, No. 15-CV-154113 PSG, 2022 WL 4453864, at *3 (C.D. Cal. Sept. 20, 2022).

It is difficult to overstate the risks Class Counsel bore to achieve this result. There was not even a cause of action for economic damages on behalf of the Class. Yet Class Counsel took the case purely on contingency, devoting tens of thousands of hours and advancing over a millions dollars in litigation expenses, all with no guarantee of reimbursement. In so doing, Class Counsel "turn[ed] down opportunities to work on other cases to devote the appropriate amount of time, resources, and energy necessary to responsibly handle this complex case." *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 1047834, at *3 (N.D. Cal. Mar. 17, 2017). This factor strongly supports Class Counsel's request.

This risk was of course increased by the length and novelty of the litigation, as summarized above and in the Background section of Plaintiffs' concurrently-filed Motion for Final Approval. That Plaintiffs did not even have a cause of action that would entitle the Class to economic damages also reflects the incredible risks undertaken. Given the outsized risks borne by Class Counsel for eight years in pursuing this novel and complex class action, the requested 33% fee is justified. *Cf. In re Cathode Ray Tube Antitrust Litig.*, 2017 WL 11679811, at *2 (N.D. Cal. June

8, 2017) (awarding class counsel 30% of the $84.75 million settlement in "a contested and well-litigated case where a substantial jury award was by no means assured"); *Pac. Enters.*, 47 F.3d at 379 (33% of the common fund as attorneys' fees was justified because of the complexity of the issues and the risks); *Andrews*, No. CV154113PSGJEMX, 2022 WL 4453864, at *3 (C.D. Cal. Sept. 20, 2022) (approving 32% request).

5. Class Counsel's requested fee percentage is in line with similar cases.

A court should also consider fee awards from similar cases. *Vizcaino*, 290 F.3d at 1049-50. This Court has recognized that a requested percentage that "falls within the 30 to 33 percent range allowed in common fund cases" generally favors the award. *Flo & Eddie*, 2017 WL 4685536, at *7 (citing numerous cases granting fee awards above the 25 percent benchmark); *see also In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *4 (N.D. Cal. Sept. 20, 2018) ("[A] fee award of one-third is within the range of awards in this Circuit."). Further, courts not infrequently award fees of about one-third in cases as large as (or even larger than) this one.[5]

To the extent a court compares a proposed settlement to others, the comparison should take into account the complexity, duration, and amount of work that class counsel dedicated to the litigation. *See Heritage II*, 2005 WL 1594403, at

[5] *In re: Syngenta AG MIR 162 Corn Litig.*, 357 F.Supp.3d 1094, 1110 (D. Kan. 2018) (33 1/3% of $1.5 billion); *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *6 (D. Kan. July 29, 2016) (33.33% of $835 million); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (33% of $510 million); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10, *14 (D.D.C. July 16, 2001) (34% of $359 million); *Hale v. State Farm*, No. 12-00660-DRH-SCW, 2018 WL 6606079, at *13 (S.D. Ill. Dec. 16, 2018) (33.33% of $250 million); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340-SLR, 2009 WL 10744518, at *5 (D. Del. Apr. 23, 2009) (33% of $250 million); *In re Relafen Antitrust Litig.*, No. 01-12239, Dkt. 297 (D. Mass. Apr. 9, 2004) (33% of $175 million); *In re Combustion Inc.*, 968 F. Supp. 1116, 1142 (W.D. La. 1997) (36% of $127 million); *In re Lithium Ion Batteries Antitrust Litig.*, 2020 WL 7264559, at *6 (N.D. Cal. Dec. 10, 2020) (awarding "just under 30%" of the $113.45 million fund).

*9; *Vizcaino*, 290 F.3d at 1048 ("Selection of the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case."). The size of the fund is one of these circumstances but is not controlling; in fact, the Ninth Circuit has repeatedly rejected a sliding-scale rule regarding the size of a settlement fund in relation to the percentage of attorneys' fees that may be awarded. *In re Optical Disk Drive Prod. Antitrust Litig.*, 959 F.3d 922, 933 (9th Cir. 2020).

Here, the requested 33% award falls within the range approved in this Circuit, and is also reasonable when compared to fees awarded in similar settlements – those of comparable settlement value, litigation history, and complexity. For example, in *In re Apollo Grp. Inc. Sec. Litig.*, the parties settled for $145 million after seven years of litigation. *In re Apollo Grp. Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at *3,*7 (D. Ariz. Apr. 20, 2012). Considering that the case was heavily litigated, and that class counsel had "pursued the litigation despite great risk" and expended an "exceptional amount of time and money," the court awarded class counsel a 33.33% fee, which amounted to a 1.74 multiplier. *Id.* at *7.

Apollo is not an outlier. Courts regularly grant high percentage awards under similar circumstances. *See Lidoderm*, 2018 WL 4620695, at *1 (awarding 1/3 of $105 million, resulting in a 1.37 multiplier, after several years of risky litigation); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-MD-1827 SI, 2011 WL 7575003, at *1 (N.D. Cal. Dec. 27, 2011) (30% of $405 million settlement after six years of litigation "involving complex and difficult issues of fact and law"); *Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 904, 907 (S.D. Ill. 2012) (33.33% of $105 million, equivalent to a 1.34 multiplier, in a seven-year long pollution case); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350 (E.D. Pa. June 2, 2004), *amended*, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (30% of $202.5 million settlement, a 2.66 multiplier, following six years of risky litigation);

Andrews, No. 15-CV-4113 PSG, 2022 WL 4453864, at *3 (C.D. Cal. Sept. 20, 2022) (approving 32% request).

Thus, the requested 33% award is consistent with fee awards in class action cases generally, and in cases of similar size and complexity. This factor clearly supports Class Counsel's request.

6. A lodestar cross-check confirms that the requested fees are reasonable.

Courts sometimes employ a "streamlined" lodestar analysis to "cross-check" the reasonableness of a requested award. *Vizcaino*, 290 F.3d at 1050. "[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award." *Id*. "The aim is to do rough justice, not to achieve auditing perfection." *In re Apple*, 2021 WL 1022866, at *7 (citation omitted); *see also In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) (cross-check does not require "mathematical precision [or] bean-counting"). Courts, including this one, sometimes forego conducting a cross-check where the *Vizcaino* factors are met. *See Andrews v. Plains All Am. Pipeline L.P.*, No. CV154113PSGJEMX, 2022 WL 4453864, at *4 (C.D. Cal. Sept. 20, 2022) ("Based on the unique circumstances of this case and because all of the *Vizcaino* factors considered under the percentage-of-recovery method heavily support Plaintiffs' requested fee, the Court forgoes cross-checking the reasonableness of the fee against the lodestar method.").

Just as in *Andrews*, Plaintiffs submit that a lodestar cross-check is unnecessary here, given the Court's significant involvement in this case over the last eight years and the unique circumstances of this case.[6]

Should the Court choose to conduct a lodestar cross-check, doing so supports the award. In the Ninth Circuit, a multiplier ranging from 1.0 to 4.0 is considered

[6] Plaintiffs have concurrently filed a [proposed] Order that reflects this Court's analysis in its Order in *Andrews* granting Plaintiffs' request for a 32% fee and foregoing a lodestar cross check.

"presumptively acceptable." *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014); *Vizcaino*, 290 F.3d at 1051 n.6 (finding most multipliers range from 1.0–4.0). In cases that result in larger settlement funds, courts tend to accept an even higher range of multipliers. *Urethane*, 2016 WL 4060156, at *7; *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 768 F. App'x 651, 653 (9th Cir. 2019) (approving 3.66 multiplier in $200 million settlement).

Here, the lodestar cross-check reveals that the requested fee is eminently reasonable: the resulting multiplier is on the low end of the acceptable range, and is especially low when compared to other large and successful settlements. *First*, as detailed in the accompanying Nelson Declaration, Class Counsel devoted a substantial number of hours to this eight-year, complex class action case that settled shortly before trial. Nelson Decl. ¶¶ 4, 31. Class Counsel were careful and thorough, but also tried to coordinate their efforts to gain efficiencies. *Id.* ¶¶ 18-9, 22. Moreover, Class Counsel separated out the time spent on behalf of the individual claims in the Complaint to ensure that the time submitted reflects only time spent on behalf of the Class. *Id.* ¶ 21. Indeed, given how heavily litigated the case was, and that it settled shortly before trial, the number of hours expended compares well to other large cases, and is evidence of Class Counsel's efforts at coordination. *Cf. In re Apple*, 2021 WL 1022866, at *4-5, *8 (approximately 70,000 hours were "reasonable and necessary" in three-year litigation that settled before summary judgment); *TFT-LCD*, 2011 WL 7575003, at *1 (250,000 hours of work in complex antitrust class action).

Second, Class Counsel's rates are consistent with market rates in their area. Nelson Decl. ¶ 23; Farris Decl. ¶ 11; Cappello Decl. ¶ 11; *see also Dickey v. Advanced Micro Devices, Inc.*, 2020 WL 870928, at *8 (N.D. Cal. Feb. 21, 2020) (approving rates between $275 and $1,000 for attorneys); *Lidoderm*, 2018 WL 4620695, at *2 (approving rates between $300 and $1,050). Other courts have recently affirmed the rates of several of the Class Counsel firms. Nelson Decl. ¶ 24;

Farris Decl. ¶¶ 12-13. *See also* Cappello Decl. ¶¶ 12-13. With some limited exceptions, Class Counsel's rates are in line with the *2023 Real Rate Report: The Industry's Leading Analysis of Law Firm Rates, Trends, and Practices* ("Real Rate Report").[7] The Real Rate Report provides Los Angeles[8] rates of $431 to $880 for litigation associates (first to third quartile), $525 to $1,159 for partners (first to third quartile), and a median rate of $263 for paralegals. Real Rate Report at 9, 16.[9] Similarly, Class Counsel's rates align with Plains' counsel in this matter, per a 2020 bankruptcy court petition shows its 2019 billing rates for partners ranging from $860 to $1,421.32.[10]

The resulting lodestar of $14,267,222.50 yields a modest multiplier of 1.62 for work performed to date. That multiplier will only decrease as Class Counsel continue to work on the approval and implementation of this proposed Settlement. Nelson Decl. ¶¶ 27, 29. Despite the quality of the result, and the substantial effort and resources Class Counsel devoted to achieving that result, the lodestar multiplier is at the lower end of the "presumptively acceptable range of 1.0-4.0" in this Circuit. *Dyer*, 303 F.R.D. at 334; *see also Vizcaino*, 290 F.3d at 1051 n.6 (approving 3.65 multiplier); *Flo & Eddie*, 2017 WL 4685536, at *9 (approving

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[7] *See* Nelson Decl., ¶ 23; *see also id*., Ex. 7, p. 16.

[8] The relevant community is that in which the Court sits. *See Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995).

[9] While the Real Rate Report does not provide data for professional litigation support staff, courts in the Ninth Circuit district have approved Lieff Cabraser's litigation support rates up to $485/per hour. *See, e.g., Ramirez v. Trans Union, LLC*, No. 12-cv-00632-JSC, 2022 WL 17722395, at *9 (N.D. Cal. Dec. 15, 2022) (approving hourly rates including $485-$455 for 'litigation support' and paralegals"); *Brown v. DIRECTV, LLC*, No. 2:13-cv-01170-DMG (Ex), Dkts. 529, 538 (C.D. Cal. Oct. 14, 2022) (Hutchinson declaration listing Lieff Cabraser hourly rates, including $485/hour for litigation support personnel, and order approving fees).

[10] *See* Final Fee Application of Munger, Tolles & Olson LLP for Compensation for Services and Reimbursement of Expenses as Attorneys to the Debtors and Debtors in Possession for Certain Matters from January 29, 2019 through July 1, 2020, *In re PG&E Corporation*, No. 19-30088, Dkt. Nos. 8943, 8943-4 (N.D. Bankr. Cal. Aug. 31, 2020).

multiplier of up to 2.5). *See also In re Apple*, 2021 WL 1022866, at *8 (N.D. Cal. Mar. 17, 2021) (awarding $80,600,000, for a 2.232 multiplier).

Academic analyses of class action fees also demonstrate the propriety of Class Counsel's fee request here. For example, the Eisenberg-Miller 2017 study, for example, found an average multiplier of 2.72 in cases between 2009-2013 valued at over $67.5 million. Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorney's Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 967 (2017).

Class Counsel's requested multiplier of 1.62 (at maximum) is relatively modest, and significantly below the average multiplier awarded in comparably valued cases. This factor strongly supports Class Counsel's requested 33% fee, and demonstrates that such a fee will not result in a "windfall" to Class Counsel.

Class Counsel will agree to be paid one half of their fee award upon final approval of the proposed Settlement, and the other half of their fee award when the Class is able to draw upon the $35 million Letter of Credit, likely in 2025.

II. CLASS COUNSEL'S EXPENSES ARE REASONABLE AND APPROPRIATE.

Class Counsel may "recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." *Brown v. CVS Pharmacy, Inc.*, 2017 WL 3494297, at *9 (C.D. Cal. Apr. 24, 2017) (citation omitted); *see also Staton*, 327 F.3d at 974; Fed. R. Civ. P. 23(h). This includes expenses that are reasonable, necessary, and directly related to the litigation. *See Willner v. Manpower Inc.*, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015).

Here, the Class Counsel firms established a joint cost fund to manage the bulk of the hard costs incurred, such as for depositions, transcripts, expert fees, and mediation expenses. Farris Decl. ¶¶ 19-20. Combined with each firm's held costs, the total costs for which Class Counsel seek reimbursement is $1,195,207. Nelson Decl. ¶ 29. These costs benefited the Class and are commensurate with the stakes, complexity, novelty, and intensity of this particular litigation. As indicated in the

accompanying declarations, Class Counsel expended costs on the typical categories, *e.g.*, experts, depositions, document management systems, fees, and necessary travel, in addition to soft costs attributable to the litigation. Nelson Decl. ¶ 28, Ex. 2; Farris Decl. ¶ 18, Ex. 3, Ex. 4; Cappello Decl. ¶ 19, Ex. 3, Ex. 4. While this lengthy and highly technical case was expensive to prosecute, "Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent." *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014).

Especially given the risk and duration of the litigation, Class Counsel expended only that which they believed was necessary to advance the interests of the Class. The requested costs are reasonable and should be reimbursed.

III. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE AND WELL-DESERVED.

In addition to any settlement distributions they receive, the Court-appointed Class Representatives request service awards totaling $60,000 to compensate them for the time and effort they spent pursuing this matter on behalf of the Class. Individual Class Representatives Mark Tautrim and Denise McNutt each request $20,000. The other Class Representatives – Grey Fox LLC, MAZ Properties, Inc., Bean Blossom LLC, and Winter Hawk, LLC – collectively request $20,000. These entities are related (MAZ Properties, Inc., is the corporate parent of the other entities) and there was some overlap among these entities as Class Representatives on behalf of the Class.

Courts have discretion to approve service awards based on the amount of time and effort spent, the duration of the litigation, and the personal benefit (or lack thereof) as a result of the litigation. *See, e.g., Van Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). Each of the Class Representatives searched for and provided facts used to compile the Second Amended Complaint, helped Class Counsel analyze claims, followed the case throughout its eight year trajectory, and

reviewed and approved the proposed Settlement. Mr. Tautrim, Ms. McNutt, and Mr. McMullin on behalf of the entity Class Representatives have each have submitted declarations further explaining the time and effort they expended to benefit the Class. Nelson Decl., Exs. 3-5. Mr. Tautrim and Ms. McNutt were deposed, and three individuals representing the entity Class Representatives were deposed regarding the Class claims. *Id.*, Ex. 3 ¶ 8, Ex. 4 ¶ 8, Ex. 5 ¶ 8. The Class Representatives, for example, devoted more than 300 hours on this litigation on behalf of absent class members. *Id.*, Ex. 3 ¶ 9 (over 100 hours); Ex. 4 ¶ 9 (more than 80 hours); Ex. 5 ¶ 9 (more than 130 hours).

Service awards of this size or even larger "are fairly typical in class action cases," and should be approved here. *See, e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009); *see also Wells Fargo*, 445 F. Supp. 3d at 534 (granting $25,000 service awards to each institutional investor plaintiff); *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *11 (N.D. Cal. Dec. 6, 2017), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (awarding each of the four class representatives $20,000 service awards); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) (collecting Ninth Circuit cases with service awards of $20,000 or higher). Moreover, a $20,000 service award to each of the six Class Representatives amounts to a total payment $60,000, or less than 0.09% percent of the gross Settlement amount. This is well within the range the Ninth Circuit has found reasonable. *Staton*, 327 F.3d at 976-77.

CONCLUSION

Class Counsel have dedicated their considerable time, skills, and resources to achieve an exceptional result in this complex, novel, and lengthy class action. Class Counsel respectfully submit that the Court approve their requested fee award of 33% of the $70 million Settlement Fund and a modest 1.62 lodestar multiplier. Further, Class Counsel respectfully request that the Court approve reimbursement

of $1,195,207 in expenses, which were reasonably incurred in the prosecution of this case, and service awards of $60,000.

Dated: August 9, 2024

Respectfully submitted,

By: */s/Robert J. Nelson*

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Class Counsel

CERTIFICATE OF SERVICE

I, Wilson Dunlavey, hereby certify that on August 9, 2024, I caused to be electronically filed Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards 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 Dunlavey
Wilson Dunlavey