

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-03157 PSG (JEMx)	Date	September 17, 2024
Title	Grey Fox, LLC, <i>et al.</i> v. Plains All-American Pipeline, L.P., <i>et al.</i>		

Present: The Honorable	Philip S. Gutierrez, United States District Judge		
	Derek Davis		Not Reported
	Deputy Clerk		Court Reporter
Attorneys Present for Plaintiff(s):		Attorneys Present for Defendant(s):	
	Not Present		Not Present

**Proceedings (In Chambers): Order GRANTING Plaintiffs’ motion for attorneys’ fees, expenses, and service awards**

Before the Court is Plaintiffs’ unopposed motion for attorneys’ fees, expenses, and class representative service awards. *See generally* Dkt. # 369 (“*Mot.*”). The Court conducted a fairness hearing on September 13, 2024. Having considered the moving papers and the information provided at the hearing, the Court **GRANTS** Plaintiffs’ motion.

I. Background

This case originates from the May 19, 2015 rupture of the Las Flores Pipeline System (“The Pipeline”) in Santa Barbara County, California. The facts have been repeatedly described in the Court’s prior orders, so the Court will address here only the facts relevant to Plaintiffs’ request for attorneys’ fees, expenses, and service awards.

The parties engaged in over eight years of intense litigation in order to achieve the \$70 million settlement currently before the Court for final approval. *See generally Mot.*; Dkt. # 368 (“*Final Approval Mot.*”). During this time, the parties have conducted extensive discovery. The parties exchanged 1,403,036 pages of documents (a number that includes documents in the parallel litigation, *Andrews v. Plains All Am. Pipeline L.P.*, No. CV 15-4113 PSG (JEMx)), retained over ten experts, submitted over twenty expert reports, and took over twenty depositions. *See* Dkt. # 371 (“*Nelson Decl.*”), ¶¶ 13–16. The parties also engaged in significant briefing, including filing multiple summary judgment motions. *See, e.g.*, Dkts. # 109, 251, 267, 307.

The parties’ negotiation efforts lasted years. The parties first attempted to mediate in October 2016 with Hon. Layn Phillips (Ret.) and Robert Fairbank. *Nelson Decl.* ¶ 5. That mediation involved “several day-long sessions.” *Id.* These day-long sessions spanned through

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2018. *Id.* In 2023, the parties began another mediation effort with Robert A. Meyer, Esq. of JAMS. *Id.* ¶ 6. The parties noted progress but did not reach a settlement in 2023. *Id.* Over the course of months, the parties continued negotiations, eventually reaching agreement on key points. *Id.* Finally, on March 26, 2024—only about a month before trial (set for May 9, 2024)—the parties finalized a settlement agreement. *Id.* ¶¶ 4, 17.

After almost a decade of hard-fought litigation, Plaintiffs now bring this motion seeking the Court’s approval for the following: (1) an attorneys’ fees award of 33% of the total settlement amount, totaling \$23,217,818 in attorneys’ fees, (2) reimbursement of \$1,195,207 in expenses incurred throughout the litigation of this case, and (3) service awards totaling \$60,000.

II. Attorneys’ Fees

A. Legal Standard

Federal Rule of Civil Procedure (“Rule”) 23(h) governs awards of attorneys’ fees in class action cases. Per Rule 23(h), after a class has been certified, the court may award reasonable attorneys’ fees and nontaxable costs. Fed. R. Civ. P. 23(h). The court “must carefully assess” the reasonableness of the fee award. *See Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). Where litigation leads to the creation of a common fund, courts may determine the reasonableness of a request for attorneys’ fees using either the percentage-of-recovery method or the lodestar method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944–45 (9th Cir. 2011) (deciding courts may use either method to gauge reasonableness while recommending courts cross-check their calculations against a second method).

B. Discussion

After eight years of litigation and 17,812.37 hours of legal work, Class Counsel asks the Court to award 33% of the interest-bearing, non-reversionary \$70 million settlement, or approximately \$23 million in attorneys’ fees.<sup>1</sup> *Mot.* 2–3. The Court will first analyze the reasonableness of this request under the percentage-of-recovery method and then cross-check it against the lodestar method.

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<sup>1</sup> Since half of the settlement amount (\$35 million) has been earning interest pursuant to the settlement, 33% of the total award is \$23,217,818. Dkt. # 380, 2:5–17.

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*i. Percentage-of-Recovery Method*

Under the percentage-of-recovery method, courts typically use 25% of the settlement fund as a benchmark for a reasonable fee award. *In re Bluetooth*, 654 F.3d at 942. However, the percentage may vary, and courts have awarded more or less than 25% as they have deemed appropriate. *See, e.g., Vizcaino*, 290 F.3d 1043, 1047 (9th Cir. 2002) (noting courts generally award between 20% and 30% of the common fund in attorneys' fees). When assessing the reasonableness of fee awards under the percentage-of-recovery method, courts consider the following factors: "(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." *In re Omnivision Techs, Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citing *Vizcaino*, 290 F.3d at 1048–50).

*a. Results Achieved*

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

Here, Class Counsel has secured meaningful payments for all Class Members. The settlement will deliver \$70 million in non-reversionary cash compensation that (less costs, fees, and expenses) will be available to settlement Class Members through direct payments. *See Final Approval Mot.* 6. The Class includes 86 separate landowners of record, with some of the Class Members owning several Class Properties. *Mot.* 4. Class Counsel estimates the median payment to each of the 183 Class Properties will be approximately \$90,000. *Id.* The average payment will be \$230,000, with a minimum payment of \$50,150. *Id.* To provide context, Class Counsel notes that these payments are particularly notable as the Pipeline is already located on each Class Property and, adjusting for inflation, the grantee originally paid as little as \$26.56 for easement rights on many of the Class Properties. *Mot.* 4.

The settlement also provides for more than just cash compensation. The settlement "ensures that grantees cannot build a second pipeline without first obtaining new easements, brings clarity to the easement terms, and adds and reinforces important safety commitments." *Final Approval Mot.* 13:12–19; Dkt. # 303-1.

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Notably, no Class Member has filed an objection to this settlement—or to the attorneys’ fees request—suggesting a positive reaction to Class Counsel’s work. *See* Dkt. # 379, ¶ 6; *Gutierrez v. Amplify Energy Corp.*, No. 8:21-CV-01628 DOC (JDEx), 2023 WL 6370233, at \*4 (C.D. Cal. Sept. 14, 2023) (“The lack of objections to the Settlement and to Class Counsel’s request for fees provides a compelling argument that the results obtained are meaningful to the Class and that Class members appreciate the Class Counsel’s work achieving them.”).

The Court finds that the results achieved by Class Counsel support the requested attorneys’ fee.

*b. Risk of Litigation*

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.” *In re Omnivision*, 559 F. Supp. 2d at 1046–47.

In this litigation, Plaintiffs faced significant risk, particularly in grappling with unprecedented issues. For example, as Class Counsel references in its motion, Plaintiffs could not lean on supporting precedent for their central claim that the Pipeline shutdown had terminated all easements. *Mot.* 6. Similarly, the subclass members lacked direct precedent for the claim that their easements had all terminated due to automatic termination clauses. *Id.*

Plus, even if Plaintiffs secured victory on liability, Plaintiffs’ lawsuit—seeking declaratory relief—could not guarantee economic damages for Class Members. *Id.* Class Counsel assumes that a trial would have led to follow-on negotiations or condemnation proceedings, during which counsel would have faced an uphill battle establishing severance damages for a property where a pipeline already exists. *Id.*

Accordingly, the risk factor in this case supports a fee award of 33%.

*c. Skill of Counsel*

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

The Court has observed the complexities of this case unfold over the past eight years and has watched Class Counsel litigate admirably at each step. For example, Plaintiffs, for years, fought the installation of a second pipeline, which Class Members worried would have

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unleashed “a massive and highly disruptive construction project” without compensation. *Mot.* 8. Plaintiffs’ Claims One, Two, Three, and Ten sought declaratory and injunctive relief that the preexisting easements did not permit a second pipeline without adequate compensation. *Id.* In 2019, Class Counsel defeated a motion to dismiss these claims related to the second pipeline. *See* Dkt. # 86 (denying Defendants’ motion to dismiss on eleven claims while granting Defendants’ motion on three claims). And in 2020, Class Counsel defeated Defendants’ partial summary judgment motion on these claims. *See generally* Dkt. # 128. Defendants eventually abandoned the effort, and the Court entered a consent judgment in favor of Plaintiffs’ Claims One, Two, Three, and Ten. *See generally* Dkt. # 282.

This lawsuit also required Class Counsel to manage extensive fact and expert discovery. For instance, the parties produced over 1.4 million pages of documents (including documents from a parallel lawsuit deemed produced in this action) and sat for over twenty depositions. *See Mot.* 8. Prior to PPC’s joinder as a Defendant, Plaintiffs retained four testifying experts, who each submitted reports, and Plains submitted seven expert reports. *Mot.* 4. After PPC joined the action, Plaintiffs submitted three expert reports and three rebuttal reports. *Mot.* 8–9. The parties deposed all experts in the case. *Mot.* 9.

The Court also recognizes that, at each phase of this litigation, Class Counsel faced companies with significant financial and legal resources, represented by two prominent and highly respected law firms: Munger, Tolles & Olson LLP and O’Melveny & Myers LLP. *See In re Am. Apparel, Inc. S’holder Litig.*, No. CV 10-6352 MMM (JCGx), 2014 WL 10212865, at \*22 (C.D. Cal. July 28, 2014) (“[T]he court should also consider the quality of opposing counsel as a measure of the skill required to litigate the case successfully.”).

For many reasons, Class Counsel showcased skill that would warrant the requested attorneys’ fees.

*d. Contingent Nature of the Fee*

“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 than if they were billing by the hour or on a flat fee.” *In re Omnivision*, 559 F. Supp. 2d at 1047.

Class Counsel conducted this case on a purely contingency basis and thereby declined “other work in order to handle this complex matter with no guarantee of recovery.” *Nelson Decl.* 5; *Farris Decl.* 1; *Cappello Decl.* 1. Plus, as Class Counsel points out, the risk associated

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with this case’s contingency nature was only amplified by the case’s lack of cause of action for economic damages. *See Mot.* 10 (“It is difficult to overstate the risks Class Counsel bore to achieve this result.”).

Again, this factor leans in favor of granting Class Counsel’s requested fees.

*e. Awards in Similar Cases*

In applying the percentage-of-recovery method, a court should assess fee awards in similar cases. *See Vizcaino*, 290 F.3d at 1049–50. Courts have found that “a fee award of one-third” falls “within the range of awards in this Circuit.” *See In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at \*1, 4 (N.D. Cal. 2018) (awarding \$34,916,000, or 33%, in attorneys’ fees).

Specifically, the Court finds that the 33% award requested here aligns with cases of similar complexity and lengthy litigation history. *See Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011) (finding an attorneys’ fees award of \$11 million, or 42% of the settlement amount, to be “appropriate and reasonable” in a four-year litigation); *Andrews*, No. CV 15-4113 PSG (JEMx), 2022 WL 4453864 (C.D. Cal. Sept. 20, 2022) (granting attorneys’ fees award of \$73.6 million, or 32% of the \$230 million gross settlement amount, in a parallel seven-year litigation); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 2017 WL 4685536 (awarding 30% of total settlement amount in attorneys’ fees in a three-year class action); *In re Apollo Grp. Inc. Sec. Litig.*, No. CV 04-2147 PHX (JAT), 2012 WL 1378677, at \*7, 9 (D. Ariz. Apr. 20, 2012) (awarding attorneys’ fees of \$48,404,581.50, which was 33.33% of the Common Fund, after “seven years of litigation”); *see also Gutierrez*, 2023 WL 6370233, at \*1, 9 (awarding 25% of the \$45 million settlement amount, or \$11.25 million, in an oil spill case that lasted only two years).

Accordingly, similar cases support an upward departure from the federal benchmark in this case.

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ii. *Lodestar Cross-Check*

“The lodestar method is a way for the Court to cross-check the reasonableness of a fee award.” *Gutierrez*, 2023 WL 6370233, at \*6; *see Vizcaino*, 290 F.3d at 1050 (“Calculation of the lodestar, which measures the lawyers’ investment of time in the litigation, provides a check on the reasonableness of the percentage award.”). “The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.” *In re Bluetooth*, 654 F.3d at 941.

In cases where attorney investment of time was “minimal,” the lodestar analysis “may convince a court that a lower percentage is reasonable.” *Vizcaino*, 290 F.3d at 1050. On the other hand, when the “litigation has been protracted,” lodestar may suggest “a higher percentage.” *Id.*

The Court has reviewed the timekeeping charts Class Counsel provided, which list each attorney’s name, title, number of hours worked on this litigation, and hourly rate. *See generally* Dkts. # 371-1, 372-3, 373-3. Lief Cabraser Heimann & Bernstein LLP has partners with hourly rates in the range of \$745 to \$1,380, associates in the range of \$345 to \$720, and paralegals/research staff in the range of \$345 to \$535. Dkt. # 371-1. Keller Rohrback LLP lists hourly rates ranging from \$780 to \$1,450 for partners, \$430 to \$650 for associates, and \$380 to \$440 for paralegals. Dkt. # 372-3. Cappello & Noël LLP records hourly rates ranging from \$925 to \$1,450 for partners, \$300 to \$875 for associates, and \$175 to \$325 for paralegals and other litigation support staff. Dkt. # 373-3.

In measuring “the reasonableness of these hourly rates in the Central District of California,” the Court has found the 2023 Real Rate Report to be “a useful guidepost.” *See Rolex Watch USA Inc. v. Zeotec Diamonds Inc.*, No. CV 02-1089 PSG (VBKx), 2021 WL 4786889, at \*3 (C.D. Cal. Aug. 24, 2021) (collecting cases relying on the Real Rate Report). The Real Rate Report identifies attorney rates by location, experience, firm size, areas of expertise and industry, as well as specific practice areas, and is based on actual legal billing, matter information, and paid and processed invoices. *Id.* For litigation hourly rates in Los Angeles, the Real Rate Report documents a range of \$525 (first quartile) to \$1,159 (third quartile) for partners and \$431 (first quartile) to \$880 (third quartile) for associates. *See 2023 Real Rate Report* 16.

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Thus, with few exceptions, Class Counsels' hourly rates fall within the Real Report. Indeed, out of the over thirty attorneys who worked on this case, the Court only counts four attorneys whose rates slightly exceed the third quartile listed in the Real Rate Report. *See* Dkts. # 371-1, 372-3, 373-3. One of those attorneys is a managing partner. *See* Dkt. 373-3.

As to paralegals and other litigation support staff, the Real Rate Report provides a general median rate (\$263), not a rate specific to Los Angeles. *See Real Rate Report* 9, 16. Nonetheless, upon review of case law, the Court finds that Class Counsel's litigation support team generally falls within acceptable rates. *See Ramirez v. Trans Union, LLC*, 2022 WL 17722395, at \*9 (N.D. Cal. Dec. 15, 2022) (finding rates of "\$485-\$455 for 'litigation support' and paralegals" to be generally reasonable); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at \*5-6 (N.D. Cal. Mar. 17, 2017) (granting motion for attorneys' fees that included paralegal rates of \$80 to \$490 per hour).

In total, Class Counsel has dedicated 17,812.37 hours to this litigation.<sup>2</sup> *See* Dkts. # 371-1, 372-3, 373-3. Based on the hourly rates of each attorney, Class Counsel's total lodestar would calculate to \$14,267,222.50. *Id.* In requesting approximately \$23,217,818 million, Class Counsel requests a multiplier of 1.63—which falls at the lower end of the Ninth Circuit's "presumptively acceptable range of 1.0-4.0." *See Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (citing *Vizcaino*, 290 F.3d at 1051 (upholding a 3.65 multiplier)); *Gutierrez*, 2023 WL 6370233, at \*7 (referring to a multiplier of 2.23 as "modest").

The Court's lodestar cross-check further supports the granting of Class Counsel's requested attorneys' fees.

### III. Class Counsel Expenses

"Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." *In re Omnivision*, 559 F. Supp. 2d at 1048 (citing *Harris v. Marhoefer*, 24 F. 3d 16, 19 (9th Cir. 1994)). Here, Class Counsel requests \$1,195,207 and provides records documenting the categories of costs, which span from computer-based research charges to travel expenses to expert witness fees. *See* Dkts. # 371-2, 372-3, 372-4, 373-3.

<sup>2</sup> Class Counsel has represented to the Court that it omitted time entries attributed exclusively to individual claims in this litigation, time entries from timekeepers with fewer than ten hours on the case, and certain additional time entries as a matter of billing judgment. Dkt. # 371, 5:26-6:3; Dkt. # 372 ¶ 6; Dkt. # 373 ¶ 6.



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After reviewing the attorney declarations and accompanying exhibits, the Court is satisfied that these costs are reasonable and that these types of expenses are routinely billed to paying clients in non-contingency cases. *See In re Lidoderm*, 2018 WL 4620695, at \*4 (granting reimbursement of \$3,948,188 in expenses).

IV. Service Awards

“Incentive awards are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). “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).” *Gutierrez*, 2023 WL 6370233, at \*8 (citing *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)).

The Court-appointed Class Representatives request service awards totaling \$60,000. *Mot.* 17. Mark Tautrim (“Mr. Tautrim”), an individual class representative, requests \$20,000. Mr. Tautrim has actively participated in this lawsuit since 2017. Dkt. # 371-3, ¶ 5. Among other tasks, Mr. Tautrim has sat for deposition, reviewed documents, and supplied facts to aid Class Counsel in the drafting of the complaint. Dkt. # 371-3, ¶ 5–9. Mr. Tautrim estimates he has dedicated over 100 hours of work on behalf of the Class. Dkt. # 371-3, ¶ 9.

Similarly, Individual Class Representative Denise McNutt (“Ms. McNutt”) requests \$20,000. Ms. McNutt submitted a declaration outlining the more than 80 hours devoted to the litigation since 2018, which included providing counsel with documents, reviewing documents, and sitting for deposition. *See* Dkt. 371-4, ¶¶ 4–9.

In addition, Grey Fox LLC, MAZ Properties, Inc., Bean Blossom LLC, and Winter Hawk, LLC (together, “Plaintiff Entities”) collectively request \$20,000 to be awarded to Roger McMullin (“Mr. McMullin”) on their behalf.<sup>3</sup> *See Mot.* 17. Since 2016, the Plaintiff Entities have devoted approximately 130 hours to the litigation, including meetings with counsel, various depositions, as well as analysis of documents and strategy. *See generally* Dkt. # 371-5.

After reviewing the submitted declarations, the Court is satisfied that the requested service awards are appropriate. *See Garner v. State Farm Mut. Auto. Ins.*, 2010 WL 1687832, at \*17 n. 8 (N.D. Cal. Apr. 22, 2010) (“Numerous courts in the Ninth Circuit and elsewhere have

<sup>3</sup> Roger McMullin is the Manager of Grey Fox, LLC, Bean Blossom, LLC, and Winter Hawk, LLC. Dkt. # 371-5 ¶ 1. He is also the Chief Executive Officer and Secretary of MAZ Properties, Inc. *Id.*

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approved incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class.”); *Van Vranken*, 901 F. Supp. at 300 (finding a \$50,000 incentive award for the named class representative to be reasonable under the circumstances).

V. Conclusion

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

- i. Class Counsel is awarded 33% of the total settlement amount in attorneys’ fees and \$1,195,207 in costs.
- ii. Mr. Tautrim, Ms. McNutt, and Mr. McMullin are each awarded \$20,000 in service awards.

This order, in conjunction with the orders granting final approval of the class settlement and the plans for distribution, closes the case.

**IT IS SO ORDERED.**