UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

DR. KEVIN DOUGLAS, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PLDT INC., MANUEL V. PANGILINAN, ALFRED S. PANLILIO, ANNABELLE L. CHUA, MARILYN A. VICTORIO-AQUINO, MA. LOURDES C. RAUSA-CHAN, GIL SAMSON D. GARCIA, JUNE CHERYL A. CABAL-REVILLA, and JANE BASAS,

Defendants.

Case No.: CV 23-00885-CJC (MAAx)

ORDER GRANTING LEAD PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [Dkt. 54]

I. INTRODUCTION

This is a putative securities class action against Defendants PLDT Inc. and various of its board members and executives, Manuel V. Pangilinan, Alfred S. Panlilio, Annabelle L. Chua, Marilyn A. Victorio-Aquino, Ma. Lourdes C. Rausa-Chan, Gil

Samson D. Garcia, June Cheryl A. Cabal-Revilla, and Jane Basas. (Dkt. 1 [Complaint].) Lead Plaintiff Dr. Kevin Douglas alleges all Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and the individual defendants violated Section 20(a) of the Exchange Act. (Dkt. 33 [First Amended Complaint, hereinafter "FAC"] ¶¶ 429–37.) After Defendants filed a motion to dismiss, (Dkt. 46), the parties "participated in a rigorous mediation session" before Jed D. Melnick Esq. of JAMS and "reached an agreement in principle to settle the Action for $3 million in cash." (Dkt. 54 [hereinafter "Mot."] at 2.) The parties have now finalized a proposed settlement agreement (the "Settlement"). Before the Court is Lead Plaintiff's unopposed motion for preliminary approval of the Settlement. For the following reasons, the motion is **GRANTED**.[1]

II. BACKGROUND

A. Factual and Procedural Background

In April 2023, the Court appointed Dr. Kevin Douglas as Lead Plaintiff and approved his selection of Levi & Korsinsky, LLP as Lead Counsel. (Dkt. 24.) Lead Counsel conducted a thorough investigation of the claims and facts underlying this action, reviewing and analyzing documents including PLDT's public filings with the SEC and the Philippine Stock Exchange, Inc., Defendants' other public statements in quarterly press releases, earning call transcripts, and presentations, reports of securities and financial analysts, news articles, and other commentary and analysis concerning PLDT and the industry in which it operates, and pertinent court filings. (FAC ¶ 2; Mot. at 5.) Lead Counsel also interviewed PLDT employees to obtain first-hand accounts of

[1] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for March 18, 2023, is hereby vacated and removed from the calendar.

Defendants' alleged misconduct. (Mot. at 5.) Based on that investigation, Lead Counsel filed a 204-page FAC alleging that Defendants "failed to monitor and oversee PLDT's multi-year, PHP 330 billion (USD $6 billion) capital expansion plan, which resulted in a massive, PHP 48 billion budget overrun and PHP 50 billion asset write-off." (FAC ¶ 4.)

Specifically, PLDT describes itself as one of the leading telecommunications and digital services providers in the Philippines. (*Id.* ¶¶ 5, 22, 36.) For a long time, the only major players in the Philippine phone and internet industry were PLDT and its competitor, Globe Telecom, Inc. ("Globe"). (*Id.* ¶ 6.) In 2019, with PLDT and Globe apparently providing unsatisfactory internet service, Philippine President Rodrigo Duterte implemented regulations allowing foreign competitors to enter the Philippines telecommunications market. (*Id.* ¶ 7.) On July 8, 2019, President Duterte announced the entry of competitor Mislatel Consortium, a group formed by China Telecommunications Corporation and later rebranded as DITO Telecommunity ("DITO").

The competitive pressure led Defendants to approve "an aggressive, PHP 330 billion capital budget to upgrade and expand PLDT's network and assets that would occur over a four-year period from 2019 to 2022." (*Id.* ¶ 8.) Unfortunately, "Defendants then went on a massive spending spree without ensuring PLDT obtained the proper approvals and documentation for expenditures or that the Company stayed within the Board-approved annual budget. Defendants also failed to monitor the progress of PLDT's construction projects, resulting in the over-ordering of millions of dollars of equipment that was just sitting idle in warehouses and not generating revenue for the Company. Further, as Defendants admitted at the end of the Class Period, the PHP 48 billion budget overrun was comprised of 'undocumented' purchases orders that were not recorded in PLDT's accounting records, requiring PLDT to have to 'reconstruct the books' to reconcile its inventory and vendor payments." (*Id.*)

"Despite lacking any internal controls over capital spending, Defendants falsely told the market that PLDT maintained adequate controls over its financial reporting and reported understated capital spending figures [or 'capital expenditures' or 'capex'] to investors every quarter during the Class Period, without having any idea whether those figures were accurate (they were not) or how they compared to budget." (*Id.* ¶ 9.) Whereas PLDT reported capital spending of PHP 330.8 billion between 2019 and 2022, they revealed on December 19, 2022, when that it actually spent PHP 379 billion—a capital budget overrun of PHP 48 billion (USD 866 million) or approximately 13%. (*Id.* ¶ 10.) Defendants stated that the budget overrun was due to "weaknesses" in PLDT's internal controls and "undocumented" purchases. (*Id.*) When this news broke, PLDT's American Depository Shares ("ADS") price declined $6.35 per ADS, or 24%, from a closing price of $26.81 per ADS on December 16, 2022 to a closing price of $20.46 per ADS on December 19, 2022 on unusually high trading volume. (*Id.* ¶ 11.)

During a December 21, 2022 Special Call to address the budget overrun (the "Special Call"), Defendant Pangilinan stated PLDT overspent on its capital budget because "we were remiss" in not tracking or monitoring PLDT's capital spending and, as a result, and had significant discrepancies between its SAP system and its accounting records, requiring several months for PLDT to "reconstruct the books" so it could "really reconcile" its records with those of vendors to determine where the equipment was located and whether PLDT had paid for it. (*Id.* ¶¶ 12, 118.) Defendants further admitted during the Special Call that they recklessly disregarded whether the amount of PLDT's capital spending was accurate or whether it was in line with the budget before blindly reporting capital spending to investors every quarter. (*Id.* ¶ 13.) Someone on the Special Call stated, "So we should head on about the accumulated CapEx and unfortunately, that was not reported to us. Maybe we should have asked that certain statement, because every year, I think when we report to you, we tell you what the CapEx for the year was actually spent, right?" (*Id.*)

Due to PLDT's "reckless lack of controls," it "had to record an unprecedented $50 million charge in Q4 2022 for accelerated depreciation of assets sitting idle in the warehouses for months (or years), many of which needed to be written down or off completely as obsolete"—"double the depreciation expense the Company recorded in 2021." (*Id.* ¶ 14.) It also had to hire "consultants to fix its internal control processes" and "renegotiate prior deals with vendors to manage cash flows, thereby putting a strain on vendor relationships." (*Id.*) As a result, Plaintiff alleges he and the putative class suffered damages. (*Id.* ¶ 16.)

In October 2023, Defendants filed a motion to dismiss the FAC, arguing he fails to sufficiently allege a material misrepresentation or omission, scienter, and loss causation; that his claims against the individual defendants are improperly group pled; and that his Section 20(a) claims fail as a matter of law. (Dkts. 46–47.) The hearing on Defendants' motion was noticed for January 29, 2024. (Dkt. 46.) On November 17, 2023, the parties participated in a "rigorous" mediation before Jed D. Melnick, Esq., of JAMS with the benefit of "extensive mediation briefs." (Mot. at 1, 2.) At the mediation, the parties reached an agreement in principle to settle for $3 million. (*Id.* at 2.) They later finalized the details and drafted a formal agreement. (*Id.* at 3.)

B. Proposed Settlement Terms

Under the Settlement, Defendants will pay $3 million. (Dkt. 54-7 [Settlement Agreement, hereinafter "SA"] ¶¶ 1.35, 2.2.) In return, class members will dismiss with prejudice and release all claims arising out of or concerning acquisition of PLDT ADS. (*Id.* at ¶¶ 1.29, 4.1–4.3.) Everyone who files a valid claim will receive a *pro rata* share of the Net Settlement Fund, which consists of the $3 million minus attorney fees awarded, administration costs, taxes and tax expenses, and any other Court-approved deductions. (*Id.* ¶¶ 1.20, 5.8.) The shares will be distributed based on class members' "Recognized

Loss," which "will depend upon several factors, including when PLDT ADS were purchased or otherwise acquired during the Class Period (i.e., January 1, 2019 through December 21, 2022, inclusive) and in what amounts, and whether such ADS were sold and, if sold, when and for what amounts." (Dkt. 54-9 at 15.)

III. DISCUSSION

In deciding whether to grant preliminary approval of the Settlement, the Court reviews (1) the requirements for provisional class certification, (2) the fairness of the Settlement, including attorney fees, (3) the adequacy of the proposed notice, and (4) the appointment of a settlement administrator.

A. Class Certification

Lead Plaintiff seeks to certify a class of "all persons or entities who purchased or otherwise acquired PLDT ADS during the period from January 1, 2019, through December 21, 2022, inclusive." (Mot. at 16.) When a plaintiff seeks provisional class certification for settlement purposes, a court must ensure Federal Rule of Civil Procedure 23(a)'s four requirement and at least one of Rule 23(b)'s requirements are met. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Staton v. Boeing Co*., 327 F.3d 938, 952–53 (9th Cir. 2003).

1. Rule 23(a) Requirements

Under Rule 23(a), the plaintiff must show that the class is sufficiently numerous, that there are questions of law or fact common to the class, that the claims or defenses of the representative parties are typical of those of the class, and that the class representatives will fairly and adequately protect the class's interests.

a. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." *Id.* 23(a)(1). "No exact numerical cut-off is required; rather, the specific facts of each case must be considered." *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009) (citing *Gen. Tel. Co. of Nw., Inc. v. EEOC.*, 446 U.S. 318, 330 (1980)). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members." *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590, 602–03 (C.D. Cal. 2015); *see Tait v. BSH Home Appliances Corp.,* 289 F.R.D. 466, 473–74 (C.D. Cal. 2012).

The proposed class meets the numerosity requirement. Since PLDT's ADS traded on the New York Stock Exchange and throughout the class period there were between 16.4 million and 19.2 million PLDT ADSs outstanding, the Court may easily infer that more than forty people are part of the class. (Mot. at 16); *see In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. at 634 ("The Court certainly may infer that, when a corporation has millions of shares trading on a national exchange, more than 40 individuals purchased stock over the course of more than a year."); *Ansell v. Laikin*, 2012 WL 13034812, at *4 (C.D. Cal. July 11, 2012) (similar). Indeed, it is much more likely that thousands of people bought PLDT ADS during the class period. *See In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. at 634. Such a large class size would make joinder impracticable, and proceeding as a class would promote the efficiency and economy of this action. *See id.*; *Ansell*, 2012 WL 13034812, at *4.

b. Common Questions of Law and Fact

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The plaintiff must "demonstrate that the class members

'have suffered the same injury,'" which "does not mean merely that they have all suffered a violation of the same provision of law." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). Rather, the plaintiff's claim must depend on a "common contention" that is capable of class-wide resolution. *Id.* This means "that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.*

Lead Plaintiff asserts that commonality is satisfied because there are common questions of both law and fact, including "(a) whether Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; (b) whether the Individual Defendants violated Sections 20(a) of the Exchange Act; (c) whether Defendants acted with the requisite scienter; and (d) whether the Class Members have sustained damages and, if so, the proper measure of such damages." (Mot. at 17.) The Court agrees. *See Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975) (finding commonality satisfied in securities class action and explaining, "[c]onfronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest in determining whether a defendant's course of conduct is in its broad outlines actionable"); *Ansell*, 2012 WL 13034812, at *4 (finding common questions in securities class action including "whether Defendants violated the federal securities laws; [] whether Defendants omitted material facts about National Lampoon to the investing public during the Class Period and whether Defendants manipulated the price of National Lampoon securities; [] the extent to which members of the Settlement Class sustained damages and the proper measure of damages[; . . .] whether Defendants knew their statements were false and misleading, and whether the price of National Lampoon's securities were artificially inflated"); *M & M Hart Living Tr. v. Glob. Eagle Ent., Inc.*, 2018 WL 11471777, at *3 (C.D. Cal. Nov. 2, 2018) (similar).

c. Typicality

Rule 23(a)(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Representative claims are "typical" if they are "reasonably co-extensive with those of absent class members; they need not be substantially identical." *Castillo v. Bank of America, NA*, 980 F.3d 723, 725 (9th Cir. 2020) (citation omitted). Here, Lead Plaintiff asserts that, like all other class members, he was injured by "Defendants' alleged fraudulent conduct concerning PLDT's capital expenditure overruns and internal controls" and that his "claims are therefore predicated on the same or similar legal theories as those of the other Class Members" and will involve similar proof. (Mot. at 17–18.) Lead Plaintiff's claims are "reasonably co-extensive" with those of the class. *Castillo*, 980 F.3d at 725.

d. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This factor requires (1) a lack of conflicts of interest between the proposed class and the proposed representative plaintiffs and (2) representation by qualified and competent counsel that will prosecute the action vigorously on behalf of the class. *See Staton*, 327 F.3d at 957. The focus in the context of a class action settlement is on ensuring that there is no collusion between the defendant, class counsel, and the class representatives pursuing their own interests at the expense of the interests of the class. *See id.* at 958 n.12.

There is no evidence of a conflict of interest between Lead Plaintiff and the class. His claims are identical to those of the other class members, and he has every incentive to vigorously pursue those claims. Nor is there any evidence that Lead Counsel—who are

active practitioners experienced in complex securities litigation—will not adequately represent or protect the interests of the class. (*See* Mot. at 18–19.)

2. Rule 23(b) Requirements

In addition to the requirements of Rule 23(a), Lead Plaintiff must satisfy the requirements of Rule 23(b), which requires a showing that the action falls within one of the three authorized categories. *See id.* 23(b)(3). Here, Lead Plaintiff seeks certification under Rule 23(b)(3), which allows certification when (1) questions of law or fact common to class members predominate over questions affecting only individual members and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *See id.*; (Mot. at 19).

a. Predominance

Although the predominance requirement overlaps with Rule 23(a)(2)'s commonality requirement, it is a more demanding inquiry. *See Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013). That is, the "main concern in the predominance inquiry . . . [is] the balance between individual and common issues." *Mevorah v. Wells Fargo Home Mortg.* (*In re Wells Fargo Home Mortg. Overtime Pay Litig.*), 571 F.3d 953, 959 (9th Cir. 2009). The plaintiff must show that "questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013).

Here, common questions—including whether Defendants misled investors in representing that PLDT maintained adequate internal controls over its financial reporting and by reporting material understated capital expenditure spending figures without

knowing whether those figures were accurate or how they compared with the Company's budget, and whether Defendants engaged in a scheme to defraud, acted knowingly or with deliberate recklessness, or caused damages to the class—predominate over any individual issues. Indeed, courts often find predominance in similar securities class actions. *See, e.g.*, *In re Cooper Companies*, 254 F.R.D. at 640 (finding predominance when "the critical questions of what Defendants said, what they knew, what they may have withheld, and with what intent they acted, are central to all class members' claims" whereas "[i]ssues such as certain members' damages, timing of sales and purchases, or standing to file suit, do not have the same primacy" and "[t]he class members in this case have more issues keeping them together than driving them apart"); *Mandalevy v. BofI Holding, Inc.*, 2022 WL 4474263, at *5 (S.D. Cal. Sept. 26, 2022) (finding predominance of common questions of "whether Defendants violated securities laws, whether they acted with the requisite scienter, and whether Defendants' conduct caused damages to Lead Plaintiff and the Settlement Class"); *Kendall v. Odonate Therapeutics, Inc.*, 2022 WL 1997530, at *4 (S.D. Cal. June 6, 2022) ("A single adjudication will resolve the central issue of the case of whether Defendants violated Section 10(b) and 20(a) of the Exchange Act and Rule 10b-5, and there does not appear to be individualized issues that would preclude a finding of predominance."). The Court finds the putative class is "sufficiently cohesive" and that common questions predominate.

b. Superiority

Class actions certified under Rule 23(b)(3) must also be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Courts consider four nonexclusive factors in evaluating whether a class action is the superior method for adjudicating a plaintiff's claims: (1) the interest of each class member in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already commenced by or

against the class, (3) the desirability of concentrating the litigation of the claims in the particular forum, and (4) the difficulties likely to be encountered in the management of a class action. *See id.*

In this case, proceeding as a class is superior to other methods of resolving the claims. A class action may be superior when "classwide litigation of common issues will reduce litigation costs and promote greater efficiency." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). A class action may also be superior when "no realistic alternative" to a class action exists. *Id*. at 1235. Given the common issues presented by all class members, adjudicating these claims on an individual basis for likely thousands of potential plaintiffs would be not only inefficient but also unrealistic. Indeed, the Ninth Circuit has recognized that class actions are a superior method of prosecuting securities fraud class actions. *Blackie*, 524 F.2d at 903 ("The availability of the class action to redress such frauds has been consistently upheld, in large part because of the substantial role that the deterrent effect of class actions plays in accomplishing the objectives of the securities laws.") (citation omitted); *see Ansell*, 2012 WL 13034812, at *6 ("Indeed, courts have consistently embraced the class action device as a superior method of adjudicating federal securities fraud claims.").

Accordingly, Lead Plaintiff has satisfied the requirements of Rules 23(a) and 23(b)(3). The Court **GRANTS** provisional class certification for settlement purposes.

B. Fairness of the Proposed Settlement

Although there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), a settlement of class claims requires court approval. Fed. R. Civ. P. 23(e). This is because "[i]ncentives inhere in class-action settlement

negotiations that can, unless checked through careful district court review of the resulting settlement, result in a decree in which the rights of class members, including the named plaintiffs, may not be given due regard by the negotiating parties." *Staton*, 327 F.3d at 959 (cleaned up).

Rule 23(e) governs class action settlement approval. Courts may approve class action settlements only when they are "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). They must consider whether (A) the class representatives and class counsel have adequately represented the class, (B) the proposal was negotiated at arm's length, (C) the relief provided for the class is adequate, and (D) the proposal treats class members equitably relative to each other. *Id.* 23(e)(2)(A–D).

1. Plaintiffs' and Class Counsel's Adequacy

As stated in the Court's analysis of the Rule 23(a) factors, Lead Plaintiff and Lead Counsel have adequately represented the class. There is no evidence of a conflict of interest between Lead Plaintiff and the other members of the class. Lead Plaintiff's claims are the same as those of the other class members, and he has every incentive to vigorously pursue those claims. *See Mild v. PPG Indus., Inc.*, 2019 WL 3345714, at *3 (C.D. Cal. July 25, 2019) ("Because Plaintiff's claims are typical of and coextensive with the claims of the Settlement Class, his interest in obtaining the largest possible recovery is aligned with the interests of the rest of the Settlement Class members."). Lead Counsel is likewise adequate. They are active practitioners who are experienced in securities class actions. (*See* Dkt. 31-5 [Lead Counsel's Resume); Dkt. 61 [Order Appointing Lead Counsel].) And they "have vigorously prosecuted the Settlement Class's claims by expending significant time and effort on the case," *Mild*, 2019 WL 3345714, at *3, including by conducting extensive investigation, preparing a thorough mediation brief,

retaining experts to assess loss causation and damages, and participating in a vigorous private mediation that culminated in the Settlement, (Mot. at 5–6).

2. Arm's Length Negotiations

The Settlement appears to be the result of arms-length negotiations between the parties. The negotiations occurred before a neutral private mediator who is "an experienced complex business litigation mediator who has resolved over 1,000 disputes in his career." *Brightk Consulting Inc. v. BMW of N. Am., LLC*, 2023 WL 2347446, at *6 (C.D. Cal. Jan. 3, 2023); *see Hashemi v. Bosley, Inc.*, 2022 WL 2155117, at *6 (C.D. Cal. Feb. 22, 2022) ("The parties extensively negotiated the Settlement over several months prior to mediation and ultimately reached a final agreement only after arms-length negotiations before mediator Mr. Picker."); *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (explaining that although the "mere presence of a neutral mediator . . . is not on its own dispositive," it is "a factor weighing in favor of a finding of non-collusiveness"). And the negotiations occurred between experienced counsel. *See Nguyen v. Radient Pharms. Corp.*, 2014 WL 1802293, at *3 (C.D. Cal. May 6, 2014) ("The fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight.") (cleaned up). Moreover, the Settlement does not appear to have any of the "'subtle signs' of collusion" that courts must police. *See Roes, 1-2 v. SFBSC Mgmt.*, LLC, 944 F.3d 1035, 1048 (9th Cir. 2019). It does not have a clear sailing agreement or a reverter provision, and class counsel will only seek a 25% benchmark fee award. (Mot. at 11, 13.)

3. Adequacy of Class Relief

In determining whether the class's relief is "adequate," courts consider "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of

distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." *Id.* 23(e)(2)(C).[2] At this stage, it appears the Settlement's relief is adequate.

a. Costs, Risks, and Delay of Trial and Appeal

The $3 million Settlement reflects a substantial outcome for class members and presents a fair compromise given the costs, risks, and delay of trial and appeal. Although litigation had not progressed far in this case, the parties had the benefit of the previously described investigation, experience, and motion practice. With that information, the parties were able to realistically value the scope of Defendants' potential liability and assess the costs, risks, and delay of moving forward with class certification, motion practice, and trial. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (explaining that approving the settlement is favored when the "parties have sufficient information to make an informed decision about settlement") (cleaned up).

Those costs and risks are not insignificant. Courts have repeatedly recognized that securities litigation presents complex legal issues and problems of proof. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *13 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020) ("Courts have recognized that, in general, securities actions are highly complex and that securities class litigation is notably

[2] Before Congress codified these factors in 2018, courts applied the following factors in determining whether a settlement was fair, reasonable, and adequate: "[1] the strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further 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." *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019); *Staton*, 327 F.3d at 959. The Court still considers these factors to the extent they shed light on the Rule 23(e) inquiry.

difficult and notoriously uncertain.") (quotation omitted); *In re Zynga Inc. Sec. Litig.*, 2015 WL 6471171, at *9 (N.D. Cal. Oct. 27, 2015) ("In any securities litigation case, it is difficult for plaintiff to prove loss causation and damages at trial.") (cleaned up); *Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12129279, at *5 (C.D. Cal. Mar. 13, 2013) ("Courts experienced with securities fraud litigation routinely recognize that securities class actions present hurdles to proving liability that are difficult for plaintiffs to clear.") (cleaned up); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1172 (S.D. Cal. 2007) ("The Court also recognizes that the issues of scienter and causation are complex and difficult to establish at trial."). Notably, in this case "Defendants advanced several credible arguments disputing both liability and damages," including that "their Class Period misstatements were not misleading," "that they could not be liable for misleading statements that were mere opinions that investors do not rely on or were forward-looking projection statements and thus, protected by safe harbor provisions," and "that Lead Plaintiff had not plausibly alleged Defendants acted with scienter because allegations of, inter alia, general motive relating to routine corporate objectives without personal benefit through insider trading, and mere access to information without reference to the contents of specific reports are insufficient to allege a strong inference that Defendants knew their statements were misleading or that Defendants were deliberately reckless in making those statements." (Mot. at 8–9.) Each of these would have presented significant obstacles to Lead Plaintiff and the class' success at summary judgment and trial.

Because this case is in the beginning stages, substantial litigation costs would be required to take this case to trial. "Numerous depositions and document and other written discovery would be required if the case continued." *Farrar v. Workhorse Grp., Inc.*, 2023 WL 5505981, at *7 (C.D. Cal. July 24, 2023). "Extensive and expensive expert discovery would also be necessary." *Id.* And there would be significant costs and risks associated with class certification, summary judgment, and trial. *See In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007)

("Additional consideration of increased expenses of fact and expert discovery and the inherent risks of proceeding to summary judgment, trial and appeal also support the settlement."); *In re Netflix Privacy Litig.*, 2013 WL 1120801, at *6 (N.D. Cal. Mar. 18, 2013) ("The notion that a district court could decertify a class at any time is one that weighs in favor of settlement." (citation omitted)). Even if Plaintiffs were able to certify a class, there would also be a risk that the Court could later decertify the class. *See In re Netflix Privacy Litig.*, 2013 WL 1120801, at *6 (N.D. Cal. Mar. 18, 2013) ("The notion that a district court could decertify a class at any time is one that weighs in favor of settlement."). These considerations weigh heavily in favor of approving the Settlement. *See Rodriguez*, 563 F.3d at 966; *Curtis-Bauer v. Morgan Stanley & Co., Inc.*, 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008) ("Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain, and substantial recovery for the Plaintiff class."). Finally, even if Plaintiffs could secure a better result than the Settlement represents at trial, any result obtained after additional litigation or trial would take significantly longer and there is a risk that Plaintiffs could have received much less, or nothing at all. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041–42 (N.D. Cal. 2008) (discussing how a class action settlement offered an "immediate and certain award" in light of significant obstacles posed through continued litigation).

The Settlement eliminates these costs and risks "by ensuring [c]lass [m]embers a recovery that is 'certain and immediate, eliminating the risk that class members would be left without any recovery . . . at all.'" *Graves v. United Indus. Corp.*, No. 17-cv-06983, 2020 WL 953210, at *7 (C.D. Cal. Feb. 24, 2020) (last alteration in original) (citation omitted); *see also In re Cobra Sexual Energy Sales Pracs. Litig.*, No. 13-cv-05942, 2021 WL 4535790, at *6 (C.D. Cal. Apr. 7, 2021). The elimination of these costs and risks strongly suggests the adequacy of the Settlement.

The Settlement also appears reasonable when considering these costs and risks in the context of Lead Plaintiff's potential recovery. After consulting with a damages consultant, Lead Counsel believes a successful verdict on all claims could result in aggregated damages as high as $19.5 million. (Mot. at 7.) The settlement here reflects an approximately 15.4% recovery on that $19.5 million. (Dkt. 54-2 [Declaration of David C. Jaynes] ¶ 13.) This is an exceptional result. Indeed, courts routinely conclude that securities class action settlements with a far lower percentage recovery are fair and adequate. *See, e.g.*, *In re Broadcom Corp. Sec. Litig.*, 2005 WL 8153007, at *6 (C.D. Cal. Sept. 14, 2005) (approving settlement representing 2.7% of damages and finding such percentage was "not [ ] inconsistent with the average recovery in securities class action[s]"); *In re LJ Int'l, Inc. Sec. Litig.*, 2009 WL 10669955, at *4 (C.D. Cal. Oct. 19, 2009) (approving settlement with recovery of 4.5% of maximum damages).

b. Effectiveness of Proposed Method of Distributing Relief

"Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims." Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment. "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." *Id.*

Here, the relief distribution is straightforward. Class members will be able to easily complete and submit a claim form with information necessary to calculate their claim. (Mot. at 11.) The claims administrator will then process claims and distribute the settlement fund (minus fees, administrative costs, and any other Court-approved deductions) to class members depending on "when PLDT ADS were purchased or otherwise acquired," "in what amounts, and whether such ADS were sold and, if sold,

when and for what amounts." (Dkt. 54-9 at 15.) This procedure for filing claims is not unduly demanding.

c. Attorney Fee Award

The next factor in the adequacy analysis consists of "the terms of any proposed award of attorney's fees." Fed. R. Civ. P. 23(e)(2)(iii). Central to this analysis is the extent to which the fee is "disproportionate." *See Bluetooth*, 654 F.3d at 947. Ordinarily, "25% of the fund [i]s the 'benchmark' for a reasonable fee award." *Id.* at 942–43. In deciding whether "'special circumstances' justify[ ] a departure" from the benchmark, *id.* at 942, courts typically 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 plaintiff, and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). In addition to proportionality, courts must scrutinize an agreement for any "clear sailing arrangement, under which the defendant agrees not to challenge a request for an agreed-upon attorney's fee," and any "'kicker' or 'reverter' clause that returns unawarded fees to the defendant, rather than the class." *Briseño v. ConAgra Foods, Inc.*, 998 F.3d 1014, 1023 (9th Cir. 2021) (cleaned up). The amended Rule 23(e) also instructs courts to consider the "timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Even though greater skepticism is appropriate in settlements reached before formal class certification, "courts should [not] unnecessarily meddle in class settlements negotiated by the parties." *Briseño*, 998 F.3d at 1027; *see also Staton*, 327 F.3d at 952 ("Judicial review . . . takes place in the shadow of the reality that rejection of a settlement creates not only delay but also a state of uncertainty on all sides, with whatever gains were potentially achieved for the putative class put at risk.").

Lead Counsel intends to seek a fee award not to exceed 25% of the $3 million settlement fund, or $750,000, which they represent will be less than the amount of their lodestar, which currently totals about $899,000. (Mot. at 11.) As noted, Lead Counsel achieved a significant result for the class and has ably litigated this case. There are no subtle signs of collusion in the Settlement. Subject to additional briefing at the final approval stage, the Court tentatively approves a 25% benchmark fee award in this case.

d. Any Agreement Made in Connection with the Proposal

A court must also consider whether there is "any agreement required to be identified under Rule 23(e)(3)," Fed. R. Civ. P. 23(e)(2)(C)(iv)—that is, "any agreement made in connection with the proposal," *id.* 23(e)(3). The Settlement identifies a Supplemental Agreement, which allows Defendants to terminate the Settlement if the number of class members who opt out equals or exceeds a certain threshold. (Mot. at 12.) To protect the settlement class, the specific terms of the Supplemental Agreement are confidential "to prevent third parties from utilizing it for the improper purpose of obstructing the settlement and obtaining higher payouts." *Thomas v. MagnaChip Semiconductor Corp.*, 2017 WL 4750628, at *5 (N.D. Cal. Oct. 20, 2017). "This type of agreement is common in securities fraud actions and does not weigh against preliminary approval." *Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *7 (C.D. Cal. Oct. 10, 2019) (citing *In re Carrier IQ, Inc., Consumer Privacy Litig.*, 2016 WL 4474366, at *5 (N.D. Cal. Aug. 25, 2016) (observing that the court was not troubled by the opt out deal between the parties)).

4. Equitable Class Member Treatment

The final Rule 23(e) factor is the extent that class members are treated "equitably relative to each another." Fed. R. Civ. P. 23(e)(2)(D). "Matters of concern could include

whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." *See* Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment.

The Settlement's "Plan of Allocation provides formulas for calculating the recognized claim of each Class Member, based on each such Class Member's purchases or acquisitions of PLDT ADS during the Class Period and if or when they sold." (Mot. at 13; *see id.* at 23; Dkt. 54-9 at 15 ["The calculation of Recognized Loss will depend upon several factors, including when PLDT ADS were purchased or otherwise acquired during the Class Period (i.e., January 1, 2019 through December 21, 2022, inclusive) and in what amounts, and whether such ADS were sold and, if sold, when and for what amounts."].) Treating class members differently based on the amount of securities purchased, when the securities were purchased, and when and whether the securities were sold, is appropriate and reasonable. *See Nguyen*, 2014 WL 1802293, at *5 ("A settlement in a securities class action case can be reasonable if it fairly treats class members by awarding a pro rata share to every Authorized Claimant, but also sensibly makes interclass distinctions based upon, *inter alia,* the relative strengths and weaknesses of class members' individual claims and the timing of purchases of the securities at issue.") (internal quotation omitted). The release is also the same for all class members. The Court preliminarily approves the proposed Plan of Allocation and preliminarily determines that the Settlement treats class members equitably.

5. Incentive Awards

Lead Counsel also "intends to seek an award of up to $5,000 for Lead Plaintiff." (Mot. at 12.) Incentive awards are payments to class representatives for their service to the class in bringing the lawsuit. *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157,

1163 (9th Cir. 2013). Courts routinely approve this type of award to compensate representative plaintiffs for the services they provide and the risks they incur during class action litigation. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 499 (E.D. Cal. 2010). Incentive awards in this district typically range from $3,000 to $5,000. *See In re Toys R Us-Del., Inc.-Fair & Accurate Credit Transactions Act Litig.*, 295 F.R.D. 438, 470 (C.D. Cal. 2014) (collecting cases). A $5,000 payment is "presumptively reasonable." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015). When evaluating the reasonableness of incentive awards, courts consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions," and the time the plaintiff spent pursing the litigation. *Staton*, 327 F.3d at 977.

At this stage, the proposed incentive award of $5,000 for Lead Plaintiff appears reasonable and appropriate for Lead Plaintiff's work reviewing pleadings, Defendants' motion to dismiss briefing, and material prepared in connection with the mediation, reviewing news and information about PLDT, conferring with Lead Counsel on legal strategy, case status, settlement negotiations, and other issues, and evaluating and approving Defendants' mediation settlement offer. (Mot. at 12); *see Bellinghausen*, 306 F.R.D. at 266.

In sum, based on the Rule 23(e)(2) factors, the Court preliminarily concludes that the Settlement is "fair, reasonable, and adequate."

C. Proposed Class Notice Program

For class actions certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual

notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e)(1) also requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." *Id.* 23(e)(1)(B). When a court is presented with class notice pursuant to a settlement, the class certification notice and the notice of settlement may be combined in the same notice.

The Court finds that the proposed manner of notice is adequate. Lead Plaintiff proposes the class receive notice by direct email or mail and also by publication on a national business newswire service. (Mot. at 21.) Courts routinely approve similar notice programs. *See, e.g.*, *McCrary v. Elations Co., LLC*, 2016 WL 769703, at *7 (C.D. Cal. Feb. 25, 2016) (finding on final approval that notice complied with Rule 23 requirements when it was sent directly by mail or email and also published in print and online); *Shvager v. ViaSat, Inc.*, 2014 WL 12585790, at *5 (C.D. Cal. Mar. 10, 2014) (similar).

The form of notice also meets the requirements of Rule 23(c)(2)(B). Notice to class members must "clearly and concisely state in plain, easily understood language: (i) the nature of the action[,] (ii) the definition of the class certified[,] (iii) the class claims, issues, or defenses[,] (iv) that a class member may enter an appearance through an attorney if the member so desires[,] (v) that the court will exclude from the class any member who requests exclusion[,] (vi) the time and manner for requesting exclusion[,] and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B). The proposed notice contains this information. (Mot. at 21–22; Dkts. 54-11–54-12.)

D. Settlement Administrator

Finally, Lead Plaintiff asks the Court to appoint Strategic Claims Services ("Strategic Claims") as the claims administrator. (Mot. at 24.) Strategic Claims has extensive experience administering class action settlements. (*See* Dkt. 54-3 [Declaration of Paul Mulholland, Strategic Claims' President]); *Hardy v. Embark Tech., Inc.*, 2023 WL 6276728, at *3 (N.D. Cal. Sept. 26, 2023) ("SCS has extensive experience providing notice in securities class action settlements."). And federal courts routinely approve Strategic Claims as class action settlement administrator. *See, e.g.*, *Hardy*, 2023 WL 6276728, at *3; *M & M Hart Living Tr.*, 2018 WL 11471777, at *7; *In re GTT Commc'ns, Inc. Sec. Litig.*, 2021 WL 6618727, at *3 (C.D. Cal. Dec. 6, 2021). The Court appoints Strategic Claims as settlement administrator.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Lead Plaintiff's motion for preliminary approval of the Settlement and **ORDERS** the following:

A. The Court appoints Lead Plaintiff, Dr. Kevin Douglas, as Class Representative.
B. The Court appoints Lead Counsel, Levi & Korsinsky, LLP, as Class Counsel for settlement purposes.
C. The Court appoints Strategic Claims as the Settlement Administrator.
D. The Court preliminarily approves the Settlement, subject to further consideration of the terms and conditions of the settlement set forth therein at a Final Approval Hearing.
E. The Court approves the form of the notice and directs the parties and the Settlement Administrator to carry out their obligations under this Order and the Settlement.

F. The Court sets the Final Approval Hearing for **August 5, 2024 at 1:30 p.m.**

DATED: March 6, 2024

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE