UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(AMENDED)

CIVIL MINUTES – GENERAL

Case No.	LA CV23-04900 JAK (BFMx)	Date	October 9, 2024
Title	Larry Bergmann v. GDS Holdings Limited, et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

T. Jackson	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs: Not Present	Attorneys Present for Defendants: Not Present

Proceedings: **(IN CHAMBERS) ORDER RE PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION (DKT. 49)**

I. Introduction

On June 21, 2023, Plaintiff Larry Bergmann ("Plaintiff") filed this putative class action against Defendants GDS Holdings Limited ("GDS"), William Wei Huang ("Huang"), and Daniel Newman ("Newman") (collectively, "Defendants"). Dkt. 1. The complaint alleges two causes of action: (i) a violation of Section 10(b) of the federal Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder by the SEC; and (ii) a violation of Section 20(a) of the Exchange Act. Dkt. 1 ¶¶ 36–50.

On October 23, 2023, KNA Family, LLC was named lead Plaintiff, and The Rosen Law Firm, P.A. ("The Rosen Law Firm") was named Lead Counsel. Dkt. 41.

On December 18, 2023, Plaintiffs KNA Family, LLC and Larry Bergmann (collectively, "Plaintiffs") filed the First Amended Complaint ("FAC"), which is the operative one. Dkt. 48. The FAC advances the same two causes of action as advanced in the original complaint. *Id.* ¶¶ 105–118. The claims arise from allegedly misleading statements or omissions by Defendants regarding undisclosed transactions by Huang that would cause a decrease in his ownership status such that control of GDS would be changed. *See id.* ¶¶ 1–8.

On February 5, 2024, GDS filed a motion to dismiss the FAC. Dkt. 49. On March 4, 2024, Plaintiffs filed an opposition to the motion. Dkt. 52.

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On March 12, 2024, a joint stipulation was filed to continue the hearing on the motion to dismiss because the Parties had agreed to participate in a private mediation on April 19, 2024. Dkt. 53 at 2.

On March 18, 2024, GDS filed its reply in support of the motion to dismiss. Dkt. 55.

On May 3, 2024, Plaintiffs filed a status report stating that as a result of the mediation and subsequent continued negotiations guided by the neutral, the parties had reached an agreement in principle to resolve all of Plaintiffs' claims. Dkt. 56 at 2.

On June 17, 2024, Plaintiffs filed the following: (i) a Settlement Agreement between them and Defendants (Dkt. 60); (ii) a Motion for Settlement Approval of Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion" (Dkt. 61)); (iii) a Memorandum in Support of the Motion (Dkt. 62); and (iv) the Declaration of Laurence M. Rosen in support of the Motion, as well as exhibits related to the request for an award of attorney's fees (Dkt. 63).

On August 26, 2024, a hearing on the Motion was held. The matter was to be taken under submission upon the submission of supplemental briefing and supporting evidence. Dkt. 72. On September 5, 2024, Plaintiffs made those filings. Dkts. 73, 73-1, 73-2.

For the reasons stated in this Order, the Motion is **GRANTED** as to conditional class certification and as to preliminary approval of the Settlement Agreement, and is **GRANTED IN PART** as to the requests for preliminary approvals of incentive awards to the two Plaintiffs and the request for an award of attorney's fees.

II. Factual Background

A. The Parties

It is alleged that Lead Plaintiff KNA Family LLC purchased American Depositary Shares ("ADS" or "ADSs") of GDS between July 13, 2020, and April 3, 2023 (the "Class Period"). FAC ¶¶ 14, 1.

It is alleged that named plaintiff Larry Bergmann purchased GDS's ADS during the Class Period. *Id.* ¶ 15.

Plaintiffs bring this action individually and on behalf of themselves and on behalf of all persons and entities that purchased the publicly traded ADS during the Class Period. *Id.* ¶ 1. The following are excluded from the Class: (a) persons who suffered no compensable losses; and (b) Defendants; the present and former officers and directors of the Company at all relevant times; members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which any of the Defendants, or any person excluded under this subsection (b), has or had a majority ownership interest at any time. *Id.* ¶ 1 n.1.

It is alleged that GDS is incorporated in the Cayman Islands. *Id.* ¶ 16. It is alleged that its principal place of business is in China. *Id.* It is alleged that GDS's ADS trade on the NASDAQ Global Market exchange under the ticker symbol "GDS." *Id.* It is alleged that each of GDS's ADS represents eight of GDS's Class A ordinary shares, which trades on the Stock Exchange of Hong Kong Limited. *Id.*

It is alleged that Huang founded GDS in 2001, and has served as its CEO since 2002. *Id.* ¶ 18. It is alleged that Huang is the Chairman of the Board of Directors of FDS, and serves on the Compensation Committee, Nominating and Corporate Governance Committee, and Executive Committee of the Company's Board of Directors. *Id.* It is alleged that during the Class Period, Huang's total beneficial ownership of GDS's stock was approximately 5.4%–5.6%. *Id.* ¶ 3. It is alleged that Huang is described as a "Controlling Shareholder" of GDS in GDS's SEC filings, as that term is defined in the Hong Kong exchange's Listing Rules. *Id.* ¶ 20. It is alleged that at all relevant times, Huang owned 100% of GDS's Class B ordinary shares. *Id.*

It is alleged that Newman has served as GDS's Chief Financial Officer since 2011, after having served as an advisor to GDS from 2009 to 2011. *Id.* ¶ 19.

B. Allegations in the First Amended Complaint

The FAC alleges that all Defendants violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated by the SEC. FAC ¶¶ 105–113. The FAC alleges that Huang and Newman violated Section 20(a) of the Exchange Act. *Id.* ¶¶ 114–118.

It is alleged that, between May 2020 and June 2022, Huang entered into variable prepaid forward contracts ("VPFCs") under which he received upfront cash payments in exchange for agreeing to sell over half his stock holdings between March and December 2023. *Id.* ¶ 4. It is alleged that, upon settling these transactions, Huang's beneficial ownership interest would decrease below 5%, which would trigger a series of significant adverse events, including a change of control over the company. *Id.* ¶¶ 4, 5. It is alleged that Huang's VPFC transactions would have been viewed by a reasonable investor as having significantly altered the total mix of information made available about GDS. *Id.* ¶ 52. It is alleged that during the Class Period, Defendants made several SEC filings that failed to disclose the VPFC transactions and claimed they were "not aware of any arrangement that may, at a subsequent date, result in a change of control of our company." *Id.* ¶¶ 56–78. It is alleged that the investors finally learned about Huang's VPFC transactions in April 2023 when the transactions were disclosed in GDS's 2022 20-F form. *Id.* ¶¶ 7, 79–81. It is alleged that the price of GDS ADS fell in total by $1.40 per share, or 7%, by the end of the day following the new disclosure concerning Huang's VPFC transactions, and that the price decline was due in part to the disclosure. *Id.* ¶¶ 82–83.

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1. 10(b) and 10(b)-5 Claim

It is alleged that all Defendants individually and in concert, directly or indirectly, disseminated or approved misleading statements regarding Huang's VPFC transactions that Defendants knew or recklessly disregarded as misleading. FAC ¶¶ 80, 107. It is alleged that Defendants failed to disclose material facts regarding Huang's VPFC transactions necessary to make the statements made, in light of the circumstances under which they were made, not misleading. *Id.* ¶ 107.

It is alleged that Defendants acted with scienter because they knew or recklessly disregarded that the public statements issued or disseminated in the name of GDS were misleading, knew that such statements would be issued or disseminated to the investing public, and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements. *Id.* ¶ 108.

It is alleged that Huang and Newman participated in the fraudulent scheme because of their receipt of information reflecting the true facts about GDS, their control over, and/or receipt and/or modification of GDS's materially misleading statements, and/or their associations with GDS, which made them privy to confidential proprietary information concerning GDS. *Id.* ¶ 108. It is alleged that Huang and Newman had knowledge of the material facts omitted from the statements and intended to deceive Plaintiffs and the other Class members, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements to members of the investing public, including Plaintiffs and the Class. *Id.* ¶ 109.

It is alleged that as a result of the aforementioned behavior, the market price of GDS's ADS was artificially inflated during the Class Period. *Id.* ¶ 110. It is alleged that Plaintiffs and Class Members, unaware of the falsity of Defendants' statements, relied on the statements and/or the integrity of the market price of GDS's ADS during the Class Period in purchasing GDS's ADS. *Id.* It is alleged that had Plaintiffs and Class Members been aware of the artificial inflation, they would not have purchased GDS's ADS at the artificially inflated prices, or at all. *Id.* ¶ 111. It is alleged that Plaintiffs and Class Members consequently suffered damages. *Id.* ¶ 112.

2. 20(a) claim

It is alleged that during the during the Class Period, Huang and Newman participated in the operation and management of GDS, and conducted and participated, directly and indirectly, in the conduct of GDS's business affairs. FAC ¶ 115. It is alleged that as the CEO and CFO, respectively, each knew that material information was omitted from GDS's misleading statements. *Id.* It is alleged that as officers of a publicly owned company, they had a duty to disseminate accurate and truthful information with respect to GDS's financial condition, and to correct promptly any public statements issued by GDS that had become materially false or misleading. *Id.* ¶ 116.

It is alleged that their positions of control and authority as senior officers allowed Huang and Newman to control the contents of the various reports, press releases and public filings that GDS disseminated in the marketplace during the Class Period. *Id.* ¶ 117. It is alleged that throughout the Class Period, they exercised their power and authority to cause GDS to engage in the wrongful acts alleged. *Id.* It is alleged that Huang and Newman were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. *Id.* In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of GDS's ADS. *Id.*

III. Summary of Settlement Agreement and Notice

A. Class Definition

The Settlement Agreement defines the "Settlement Class" as follows:

> [A]ll persons all persons or entities who purchased the publicly traded American Depositary Shares ("ADS") of GDS between July 13, 2020 and April 3, 2023, both dates inclusive. Excluded from the Settlement Class are: (a) persons who suffered no compensable losses; (b) Defendants; the present and former officers and directors of GDS at all relevant times; members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which GDS, or any person excluded under this subsection (b), has or had a majority ownership interest at any time; and (c) GDS's employee retirement plan(s) and/or benefit plan(s) including their participants and/or beneficiaries to the extent they purchased GDS ADS through any such plan(s). Also excluded from the Settlement Class are those persons or entities who file valid and timely requests for exclusion in accordance with the Preliminary Approval Order.

Dkt. 60 at 10 ¶ 1.34.

Accordingly, the period from July 13, 2020 to April 3, 2023, both dates inclusive, is defined as the "Class Period. *Id.* at 11 ¶ 1.36.

B. Net Settlement Fund and Deductions

1. Settlement Fund

The Settlement Agreement provides for the payment by GDS of a gross "Settlement Amount" of $3,000,000.00. Dkt. 60 at 11–12 ¶ 2.1. The Settlement Agreement defines the "Settlement Fund" as "all funds transferred to the Escrow Account or Escrow Agent pursuant to this Stipulation and any interest or other income earned thereon." *Id.* at 11 ¶ 1.37.

2. Deductions from Gross Settlement Amount

a) Overview

The "Net Settlement Fund" is defined as the Gross Settlement Fund less the dollar amounts of each of the following:

- The Fee and Expense Awards
- Administrative Costs
- Taxes and Tax Expenses
- Any award to Plaintiffs
- Other fees and expenses authorized by the Court.

Dkt. 60 at 7 ¶ 1.19.

Chart A		
Description of Amount	**Amount**	**Percent**
Gross Settlement Amount	**$ 3,000,000.00**	**100%**
Lead Counsel Fees Payment	$ (900,000.00)	30%
Lead Counsel Litigation Expenses	$ (55,000.00)	1.83%
Additional Counsel Fees Payment	$ (55,118.50)	1.84%
Additional Counsel Litigation Expenses	$ (493.03)	0.016%
Administrative Costs	$ (300,000.00)[1]	10%
Award to Plaintiffs	$ (6,000.00)	0.2%
Net Settlement Amount	**$ 1,683,388.47**	**43.89%**

The Settlement Agreement does not set a numerical or percentage limit on any of these deductions. This chart uses the estimates provided from the Long Notice. Dkt. 60-2, Ex. A-1 at 3.

b) Fee and Expense Awards

The Settlement Agreement does not provide for an award of attorney's fees limited to any specific percentage. *See* Dkt. 60 at 23–25 ¶ 8 ("GDS shall take no position with respect to the

[1] This number is potentially higher as the Settlement Agreement does not limit Administrative Costs to $300,000. After the Effective Date, any additional amounts may be transferred that are reasonable and necessary and without Court approval. *See* Dkt. 60 at 13–14 ¶ 3.4.

Fee and Expense Application."). Rather, the Agreement provides that Lead Counsel may submit an application or applications ("Fee and Expense Application") for distributions from the Gross Settlement Fund to Lead Counsel for a Fee and Expense Award consisting of an award of attorney's fees and reimbursement of actual costs and expenses. *Id.* at 23 ¶ 8.1. In the Long Notice, Plaintiffs' Lead Counsel states that it intends to seek a fee award of 30% of the Settlement Amount, or $900,000. Dkt. 60-2, Ex. A-1 at 3. It also states that Lead Counsel intends to ask for reimbursement of litigation expenses of no more than $55,000. *Id.* The Rosen Law Firm's submitted expense report details $38,193.42 in expenses. Dkt. 63-4, Ex. D at 2.

The law firm Glancy, Prongay, & Murray LLP acted as additional counsel and intends to seek a fee of $55,118.50 and reimbursement of $493.03 in expenses. Dkt. 63-6, Ex. F at 3. This information is not included in the Notice.

c) Administrative Costs

The Settlement Agreement defines Administrative Costs as follows:

> [A]ll costs and expenses associated with providing notice of the Settlement to the Settlement Class and otherwise administering or carrying out the terms of the Settlement. Such costs may include, without limitation: escrow agent costs, the costs of publishing and disseminating the Notice, the costs of printing and mailing the Notice and Proof of Claim, as directed by the Court, and the costs of allocating and distributing the Net Settlement Fund to the Authorized Claimants. Such costs do not include legal fees.

Dkt. 60 at 5 ¶ 1.2.

There is no proposed maximum deduction of Administrative Costs from the Settlement Amount. *See id.* at 13–14 ¶ 3.4. Prior to the Effective Date, the Settlement Agreement permits Lead Counsel to direct the Escrow Agent to disburse up to $300,000 from the Gross Settlement Fund to pay Administrative Costs. *Id.* at 13 ¶ 3.4. Plaintiffs state that the $300,000 is comprised of the $227,000 fee to the chosen Settlement Administrator, Strategic Claims Services, and $73,000 in expenses. Dkt. 73-1 ¶ 9. After the Effective Date, "additional amounts may be transferred from the Gross Settlement Fund to pay for any reasonable and necessary administrative Costs without further order of the Court." *See id.* at 13–14 ¶ 3.4. The Effective Date is defined as the date upon which the last in time of the following event occurs:

> (a) The Court has entered the Preliminary Approval Order attached hereto as Exhibit A or an order containing materially the same terms;
> (b) The Court has finally approved the Settlement, following notice to the Settlement Class and the Settlement Hearing, and has entered the Final Judgment;
> (c) The Action has been dismissed with prejudice; and

(d) The Final Judgment has become Final as defined in ¶ 1.15.

Id. at 27 ¶ 10.5.

d) Taxes and Tax Expenses

The Settlement Agreement states that "[a]ll taxes . . . and all expenses and costs incurred in connection with the operation and implementation of" tax expenses shall be paid out of the Gross Settlement Fund "as appropriate." Dkt. 60 at 14–15 ¶ 4.1(b).

e) Any award to Plaintiffs

The Settlement Agreement provides that Lead Counsel may submit a Fee and Expense Application for an award to Plaintiffs as payment to reimburse them of their time, expenses, and connection with this case. Dkt. 60 at 23 ¶ 8.1. It states that any award to Plaintiffs must be paid solely from the Gross Settlement Fund and shall reduce the settlement consideration paid to the Settlement Class. *Id.* at 24 ¶ 8.4. The Long Notice states that Lead Counsel intends to ask for an award to Plaintiffs that is not more than $6,000 in total. Dkt. 60-2, Ex. A-1 at 3.

f) Other fees and expenses authorized by the Court

The Settlement Agreement does not provide details as to this category of potential deductions from the Gross Settlement Fund. *See* Dkt. 60 at 7 ¶ 1.19.

3. Calculation of Individual Class Payments

The Settlement Agreement does not provide any formula for calculating individual class payments. The Long Notice, however, explains that the Claims Administrator will determine each Settlement Class Member's *pro rata* share of the Net Settlement Fund based upon each Settlement Class Member's valid "Recognized Loss." Dkt. 60-2, Ex. A-1 at 9. The Recognized loss formula "is not intended to be . . . an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. *Id.* Rather, "[t]he Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Class Members with valid claims." *Id.*

The basis for calculating Recognized Loss is detailed in the Long Notice. Dkt. 60-2, Ex. A-1 at 9–12. The Long Notice states that payment pursuant to the Plan of Allocation approved by the Court "shall be conclusive against all Claimants" and an option to challenge the *pro rata* determination is not provided. *Id.* at 13.

C. Notice and Payment Plan

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1. In General

The Settlement Agreement provides that "[a]s soon as practicable after execution of this Stipulation," Plaintiffs shall move for approval for the mailing and dissemination of notice, substantially in the form of Exhibits A-1, A-2, and A-3. Dkt. 60 at 15–16 ¶ 5.1.

Copies of the proposed Long Notice, Proof of Claim and Release Form, and Summary Notice are attached to the Settlement Agreement. Dkt. 60-2, Ex. A-1; Dkt. 60-3, Ex. A-2; Dkt. 60-4, Ex. A-3.

Notice is the responsibility of Lead Counsel. Dkt. 60 at 16 ¶ 5.3. To assist in the dissemination of notice, GDS will provide to Lead Counsel customary information reasonably available to GDS concerning the identity of Settlement Class Members ("Settlement Class Information"). *Id.* at 16 ¶ 5.4. The Agreement provides that GDS shall supply this information to Lead Counsel or the Claims Administrator, at no cost to Plaintiffs, the Settlement Class, Lead Counsel, or the Claims Administrator, within 15 Business Days after an order of preliminary approval of the Settlement. *Id.*

The Administrator will rely on e-mail, direct mail, its own website, and publication procedures to contact and identify potential Class Members. Dkt. 73-1 at 4 ¶ 3. The Administrator will provide direct mail to more than 2,300 financial institutions and follow-up with potential Settlement Class Members by e-mail. *Id.* The Administrator will also provide publication notice twice in the GlobeNewswire, a national newswire, and once in the Investors' Business Daily. *Id*. Further, notice will be sent to Depositor Trust Company ("DTC") for publication on its Legal Notice System. *Id*.

The Settlement Agreement provides that, no later than 10 days following the filing of this Stipulation with the Court, GDS shall serve, or cause to be served, the notice required under the Class Action Fairness Act of 2005 ("CAFA"). Dkt. 60 at 17 ¶ 5.5. No later than 21 days following the filing of this Stipulation with the Court, GDS is required to file with the Court an affidavit or declaration regarding its compliance with the CAFA notice requirements. *Id.* The required declaration was timely filed. *See* Dkt. 65.

2. Contents of the Proposed Notice

The Proposed Notice (the "Long Notice") is entitled "NOTICE OF PENDENCY AND PROPOSED SETTLEMENT CLASS ACTION." Dkt. 60-2, Ex. A-1 at 3. It provides an overview of lawsuit, the Class Settlement, and estimates for the share of the payment that an individual would receive based upon a formula for calculating recognized loss. *Id.* at 3–17. It describes the legal rights of Class Members, including how they may object and the process for opting-out should they wish to be excluded. *Id.* at 4, 14–18. It does not describe a process for those who would like to challenge the calculation of their recognized loss. *Id.* at 10–13. It does state the

process by which payments will be distributed, but does not provide a timeline for such payments. *Id.* at 13–14. It also includes information about the Final Approval Hearing and states that the person who receives the Notice may attend that hearing at his/her own expense. *Id.* at 17–18. Finally, it includes contact information for those who wish to receive more information. *Id.* at 4–5.

3. Opt-outs and Objections

The release in the Settlement Agreement does not apply to any Settlement Class Members who timely and validly exclude themselves from the Settlement Class. Dkt. 60 at 18 ¶ 6.1. To opt out of the Settlement, Class Members must mail a letter that (a) clearly states his or her name, address, phone number, and e-mail contact information (if any) and states that he or she "request[s] to be excluded from the Settlement Class *in Bergmann v. GDS Holdings Limited, et al.*, Case No. 2:23-cv-04900 (C.D. Cal.);" (B) states the date, number of shares and dollar amount of each GDS ADS purchased during the Settlement Class Period, and any sale transactions; and (C) states the number of shares of GDS ADS held as of the opening of trading on July 13, 2020 and the close of trading on June 30, 2023. Dkt. 60-2, Ex. A-1 at 14. Each exclusion request is valid only if submitted with documentary proof of the following: (i) each purchase, and, if applicable, sale transaction of GDS ADS during the Settlement Class Period; and (ii) status as a beneficial owner of the GDS ADS. *Id.* Each request must be signed and submitted by the Class Member under penalty of perjury, and each exclusion request must be received no later than an unspecified date to a specified address. *Id.* at 14–15. Exclusion by phone or email is not valid. *Id.* at 15.

Class Members may object to any part of the Settlement, the Plan of Allocation, Lead Counsel's motion for attorney's fees and expenses, or application for an Award to Plaintiffs by mailing a letter stating the objection regarding *Bergmann v. GDS Holdings Limited, et al.*, Case No. 2:23-cv-04900 (C.D. Cal.). Dkt. 60-2, Ex. A-1 at 16. An objection must include the following: (1) the Class Member's name, address, telephone number; (2) a list of all purchases and sales of GDS ADS during the Settlement Class Period in order to show membership in the Settlement Class; (3) all grounds for the objection, including any legal support; (4) the name, address and telephone number of all counsel, if any, who are representing the objector; and (5) the number of times the objector and/or his/her counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case *Id.* An objector is not required to attend the Settlement Hearing. *Id.*

Alternatively, Class Members may appear (or hire an attorney to appear) to present objections at the Settlement Hearing, and instructions are provided for objectors who wish to be heard at the hearing. Dkt. 60-2, Ex. A-1 at 16–17.

D. Release of Claims

The Settlement Agreement defines "Released Claims" as follows:

> [A]ny and all Claims and Unknown Claims that have been or could have been asserted or could in the future be asserted in any forum by or on behalf of any of the Releasing Parties, in any capacity, whether known or unknown, whether foreign or domestic, whether arising under federal, state, common, or foreign law, whether based on statements or omissions made directly to individual persons or broadly to the market, which arise out of, are based upon, or relate in any way to the purchase, acquisition, sale, or disposition of any GDS ADS during the Settlement Class Period, including but not limited to any claims alleged in the Action and any claims related to the allegations, facts, transactions, events, matters, occurrences, acts, disclosures, representations, omissions, failures to act, filings, publications, or presentations involved, related to, set forth, alleged or referred to in the Action. Notwithstanding the foregoing, "Released Claims" does not include claims to enforce the terms of this Stipulation or orders or judgments issued by the Court in connection with this Settlement.

Dkt. 60 at 9 ¶ 1.29.

The Settlement Agreement defines "Released Parties" as follows:

> Defendants and each and all of their respective Related Parties, their respective families, parent entities, associates, affiliates or subsidiaries, and each and all of their respective past, present or future officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, insurers, co-insurers and reinsurers, heirs, executors, general or limited partners or partnerships, personal or legal representatives, estates, administrators, predecessors, successors and assigns.

Id. at 9–10 ¶ 1.30.

The Settlement Agreement provides that consideration of the full and final release, settlement, and discharge of all Released Claims against the Released Parties is payment of the Settlement Amount into the Escrow Account within 10 business days after the later of receiving payment instructions from Lead Counsel or entry of the Preliminary Approval Order. *Id.* at 11–12 ¶ 2.1.

The Agreement further provides that Settlement Class Members will have no recourse as to the Released Parties with respect to any claims they may have that arise from any failure on the notice process. *Id.* at 16 ¶ 5.3. However, the Administrator will attempt to cure any issues with respect to claims. Dkt. 73-1 ¶ 13.

IV. Analysis

A. Class Certification

1. Legal Standards

The first step in considering whether preliminary approval of the Settlement Agreement should be granted is to determine whether a class can be certified. "[T]he Ninth Circuit has taught that a district court should not avoid its responsibility to conduct a rigorous analysis because certification is conditional: Conditional certification is not a means whereby the District Court can avoid deciding whether, at that time, the requirements of the Rule have been substantially met." *Arabian v. Sony Elecs., Inc.*, No. 05-CV-1741 WQH (NLS), 2007 WL 627977, at *2 n.3 (S.D. Cal. Feb. 22, 2007) (quoting *In re Hotel Tel. Charges*, 500 F.2d 86, 90 (9th Cir. 1974)). "When, as here, the parties have entered into a settlement agreement before the district court certifies the class, reviewing courts 'must pay "undiluted, even heightened, attention" to class certification requirements.'" *Staton v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

That the parties have reached a settlement "is relevant to a class certification." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619 (1997). Consequently, when

> [c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial. But other specifications of the Rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620 (internal citations omitted).

"In the context of a request for settlement-only class certification, the protection of absentee class members takes on heightened importance." *Gallego v. Northland Grp. Inc.*, 814 F.3d 123, 129 (2d Cir. 2016) (citing *Amchem Prods.*, 521 U.S. at 620).

The first step for assessing potential class certification is to determine whether the proposed class meets each of the requirements of Fed. R. Civ. P. 23(a). *Dukes*, 564 U.S. at 350–51; *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). These are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Fed. R. Civ. P. 23(a)(1)–(4).

Further, "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350 (emphasis in original). If these four prerequisites are met, the proposed class must meet one of the requirements of Fed. R. Civ. P. 23(b). *Valentino v. Carter-Wallace, Inc*., 97 F.3d 1227, 1234 (9th Cir. 1996). Plaintiffs rely on Rule 23(b)(3). *See* Dkt. 49 at 32. It provides, in relevant part, that a class proceeding "may be maintained" if "questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

2. Application

a) Rule 23(a) Requirements

(1) Numerosity

Rule 23(a)(1) requires that a class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). " '[I]mpracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (quoting *Advert. Specialty Nat'l Ass'n v. FTC*, 238 F.2d 108, 119 (1st Cir. 1956)). Although there is no specific numeric requirement, courts generally have found that a class of at least 40 members is sufficient. *See Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010); *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009).

It is alleged that there are hundreds or thousands of Class Members. FAC ¶ 94. This allegation is based on the fact that millions of shares of GDS's ADS were traded publicly during the Class Period on the NASDAQ. *Id.* In securities fraud cases involving nationally traded stocks and ADSs where "the exact size of the proposed class is unknown, but general knowledge and common sense indicate it is large, the numerosity requirement is satisfied." *Vinh Nguyen v. Radient Pharms. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012) (quotation omitted). Accordingly, the numerosity requirement is satisfied.

(2) Commonality

Rule 23(a)(2) provides that a class may be certified only if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality requires a showing that the "class members 'have suffered the same injury,'" *Dukes*, 564 U.S. at 349–50 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)), and "does not mean merely that they have all suffered a violation of the same provision of law." *Id.* at 350. The class claims must "depend on a common contention" that is "of such a nature that it is capable of classwide resolution—which

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.*

"Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule." *Hanlon*, 150 F.3d at 1019. In assessing commonality, "even a single common question will do." *Dukes*, 564 U.S. at 359 (internal quotation marks omitted). In general, the commonality element is satisfied where the action challenges "a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005).

The claims of the Proposed Settlement Class Members raise common questions of fact regarding to Defendants' actions with respect to Huang's VPFC transactions. The claims also present common questions of law, *e.g.*, whether Defendants' omissions of information as to Huang's VPFC transactions were misleading. Therefore, the commonality requirement is satisfied.

(3) Typicality

The "representative claims are 'typical' if they are reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. Representative claims "need not be substantially identical." *Id.* The test for typicality is whether "other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon*, 976 F.2d at 508 (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). Like commonality, typicality is construed permissively. *Hanlon*, 150 F. 3d at 1020. The commonality and typicality requirements of Rule 23(a) tend to merge. *Dukes*, 564 U.S. at 349 n.5.

Plaintiffs allege that they purchased GDS ADSs during the Settlement Class Period and suffered significant losses as a result of Defendants' misleading statements and omissions. FAC ¶ 92. Because Plaintiffs allege that they have been harmed by the same conduct that allegedly injured the Settlement Class as a whole, typicality is met.

(4) Adequacy of Lead Plaintiffs and Class Counsel

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). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." *Ellis v. Costco*

Wholesale Corp., 657 F.3d 970, 985 (9th Cir. 2011). "Adequacy of representation also depends on the qualifications of counsel." *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018) (citing *In re N. Dist. of Cal., Dalkon Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982), *abrogated on other grounds by Valentino*, 97 F.3d 1227 (9th Cir. 1996)). "[T]he named representative's attorney [must] be qualified, experienced, and generally capable to conduct the litigation . . . ." *Id.* (quoting *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1323 (9th Cir.), *vacated on other grounds by* 459 U.S. 810 (1982)).

There is no showing that Plaintiffs or Plaintiffs' counsel have any conflicts of interest with any Class Members. Both Lead Plaintiffs have signed under penalty certifications pursuant to the Private Securities Litigation Reform Act of 1995 that they reviewed the Complaint and are willing to represent the Class. Dkts. 1-1, 27-2.

Plaintiffs' counsel has extensive experience in securities class action litigation. Lead Counsel, Laurence M. Rosen, the managing partner at Rosen Law Firm, worked in general securities and commercial litigation in New York with two law firms before founding The Rosen Law Firm to represent investors exclusively in securities class actions and derivative litigation. Dkt. 63-5, Ex. E at 2. Phillip Kim, an attorney with The Rosen Law Firm, served as Assistant Corporation Counsel for the City of New York in the Special Federal Litigation Division, where he defended a number of class action lawsuits, litigated numerous individual actions, and participated in more than seven trials. *Id.* at 3. The Rosen Law Firm has been lead counsel in numerous successful securities lawsuits, and presently is lead counsel in more than 50 cases. *Id.* at 11–22.

Glancy, Prongay, & Murray LLP, which acted as additional counsel for Plaintiffs, is also well-qualified to represent a class in a securities class action. GPM has been Lead Counsel or Co-Lead Counsel in at least 30 securities class action cases. 63-6, Ex. F at 8–11.

For the foregoing reasons, the adequacy requirement is met for the purposes of conditional certification of the Class.

b) Rule 23(b)(3) Requirements

(1) Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. at 623. The predominance analysis assumes that the Rule 23(a)(2) commonality requirement has already been established, *Hanlon*, 150 F.3d at 1022, and "focuses on whether the 'common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication,' " *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir. 2019) (quoting *Hanlon*, 150 F.3d at 1022). "An individual question is one where 'members of a proposed class will need to present evidence that varies from member to member,' while a

common question is one where 'the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.' " *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting 2 William Rubenstein, *Newberg on Class Actions* § 4:50, at 196–97 (5th ed. 2012)). Where the issues of a case "require the separate adjudication of each class member's individual claim or defense, a Rule 23(b)(3) action would be inappropriate." *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1778 at 535–39 (2d ed. 1986)).

"Predominance is not, however, a matter of nose-counting. Rather, more important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016) (internal citations omitted). "Therefore, even if just one common question predominates, 'the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately.'" *In re Hyundai*, 926 F.3d at 557–58 (quoting *Tyson Foods, Inc.*, 577 U.S. at 453).

Further, the requirements of Fed. R. Civ. P. 23(b)(3) "must be considered in light of the reason for which certification is sought—litigation or settlement . . . ." *Id.* at 558. A class may be certifiable for settlement even though it "may not be certifiable for litigation" where "the settlement obviates the need to litigate individualized issues that would make a trial unmanageable." *Id.*

Plaintiffs' claims turn on questions that apply to the entire Class. These include whether Defendants' statements were false or misleading and carried out with the requisite scienter. Where the "critical questions" are "what Defendants said, what they knew, what they may have withheld, and with what intent they acted are central to all class members' claims," predominance will be found. *In re Cooper*, 254 F.R.D. at 640. Indeed, in the securities class-action context, "questions of whether Defendants knowingly or recklessly made material misstatements or omissions (scienter, falsity, and materiality) and whether the alleged fraud's revelation caused [a defendant]'s stock to decline (loss causation) involve common questions that predominate over individualized ones." *Lamartina v. VMware, Inc.*, No. 5:20-cv-02182-EJD, 2024 WL 3286059, at *5 (N.D. Cal. July 2, 2024) Accordingly, the predominance requirement is satisfied.

(2) Superiority

Rule 23(b)(3) requires a showing that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This issue is evaluated by considering the following factors: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the

desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.*

"[C]ourts have consistently embraced the class action device as a superior method of adjudicating federal securities fraud claims." *Ansell v. Laikin*, No. CV 10-9292 PA (AGRx), 2012 WL 13034812, at *6 (C.D. Cal. July 11, 2012). The benefits of resolving the claims at issue through a class action are substantial. Individual prosecution of Plaintiffs' claims would be impractical "because the cost of litigating a single case would likely exceed the potential return." *In re Brazilian Blowout Litigation*, Case No. CV10- 8452-JFW (MANx), 2011 WL 10962891, at *9 (C.D. Cal. Apr. 12, 2011). There is no showing of any other litigation between Class Members and GDS. *See* Dkt. 62 at 15 ("No Settlement Class Members have brought separate claims, which would likely be consolidated into this Action."). Moreover, nothing in the record suggests that the management of this action will present unique or difficult issues. For these reasons, the class action is superior to any other method for fairly and efficiently adjudicating this controversy.

For these reasons, the factors presented by Fed. R. Civ. P. 23(b)(3) support certification of a settlement class as the superior means to resolve this action.

B. Preliminary Approval of the Settlement Agreement

1. Legal Standards

Fed. R. Civ. P. 23(e) requires a two-step process in considering whether to approve the settlement of a class action. First, a court must make a preliminary determination whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (quoting *Staton*, 327 F.3d at 952). In the second step, which occurs after preliminary approval, notification to class members, and the compilation of information as to any objections by class members, a court determines whether final approval of the settlement should be granted. *See, e.g.*, *id.*

At the preliminary stage, "the settlement need only be *potentially fair*." *Id.* This is due, in part, to the policy preference for settlement, particularly in the context of complex class action litigation. *See Officers for Just. v. Civ. Serv. Comm'n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation . . . .").

As the Ninth Circuit has explained:

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of

> fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Id.

Notwithstanding the foregoing rules, "[w]here . . . the parties negotiate a settlement agreement before the class has been certified, 'settlement approval requires a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e).' " *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019) (quoting *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012)). "Specifically, 'such [settlement] agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair.' " *Id.* at 1048–49 (quoting *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). This scrutiny "is warranted 'to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent.' " *Id.* at 1049 (quoting *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

In evaluating fairness, a court must consider "the fairness of a settlement as a whole, rather than assessing its individual components." *Lane*, 696 F.3d at 818–19. A court is to consider and evaluate several factors as part of its assessment of a proposed settlement. The following non-exclusive factors, which originally were described in *Hanlon*, are among those that may be considered during both the preliminary and final approval processes:

> (1) the strength of the plaintiff's case;
> (2) the risk, expense, complexity, and likely duration of further litigation;
> (3) the amount offered in settlement;
> (4) the extent of discovery completed and the stage of the proceedings;
> (5) the experience and views of counsel;
> (6) any evidence of collusion between the parties; and
> (7) the reaction of the class members to the proposed settlement.

See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458–60 (9th Cir. 2000).

Amended Fed. R. Civ. P. 23(e) provides further guidance as to the requisite considerations in evaluating whether a proposed settlement is fair, reasonable and adequate. It provides that a court is to consider whether:

> (A) the class representatives and [Plaintiff's] counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:

(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);[2] and
(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The factors set forth in Fed. R. Civ. P. 23(e) distill the considerations historically used by federal courts to evaluate class action settlements. *See* Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment. As the comments of the Advisory Committee explain, "[t]he goal of [the] amendment [was] not to displace any factor" that would have been relevant prior to the amendment, but rather to address inconsistent "vocabulary" that had arisen among the circuits and "to focus the court and the lawyers on the core concerns" of the fairness inquiry. *Id.*

2. Application

a) Whether the Class Representatives and Plaintiffs' Counsel Have Adequately Represented the Putative Class

For the reasons stated above, Plaintiffs and counsel have adequately represented the Class in this proceeding. Plaintiffs and counsel are well-qualified to continue to do so. Their respective financial interests are consistent with doing so, and their decisions will be subject to ongoing judicial review in connection with any final approval process. Therefore, this factor weighs in favor of approval.

b) Whether the Settlement was Negotiated at Arms' Length

Courts evaluate the settlement process as well as the terms to which the parties have agreed to ensure that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (quoting *Hanlon v. Chrysler Corp.*,150 F.3d 1011, 1027 (9th Cir. 1998)). The Ninth Circuit has noted that the "potential for collusion reaches its apex pre-class certification because, among other things, (1) the court has not yet approved class counsel, who would owe a fiduciary duty to the class members; and (2) plaintiffs' counsel has not yet devoted substantial time and money to the case, and may be willing to cut a quick deal at the expense of class members' interests." *Briseno v. Henderson*, 998 F.3d 1014, 1024 (9th Cir. 2021). Obvious deficiencies in a

[2] Fed. R. Civ. P. 23(e)(3) provides that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal."

settlement agreement may include "any subtle signs that class counsel have allowed pursuit of their own self-interests to infect the negotiations." *McKinney-Drobnis v. Oreshack*, 16 F.4th 594 (9th Cir. 2021) (quoting *Roes, 1-2 v. SFBSC Mgmt.*, LLC, 944 F.3d 1035, 1043 (9th Cir. 2019)).

Three factors may raise concerns of collusion: (1) "when counsel receive[s] a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded"; (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds"; and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011) (internal quotation marks and citations omitted).

The first factor and second factor are intertwined here. Due to the clear-sailing arrangement and the Administrative Costs provision, Plaintiffs' counsel could potentially be disproportionately compensated.[3] The Settlement Agreement states that "GDS shall take no position with respect to the Fee and Expense Application. Lead Counsel's application for an award of attorney's fees or litigation expenses is not the subject of any agreement between GDS and Plaintiffs other than what is set forth in this Stipulation." Dkt. 60 at 23 ¶ 8.1. A defendant's agreement not to challenge a request for an award of attorney's fees may be appropriate where "it does not impact the substantive benefits offered to the class." *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-CV-09405-CAS, 2014 WL 439006, at *10 (C.D. Cal. Jan. 30, 2014); *see also Roberts v. Electrolux Home Prod.*, Inc., No. CV13-2339-CAS VBKX, 2014 WL 4568632, at *14 (C.D. Cal. Sept. 11, 2014) (finding no collusion because the settlement did not involve a common fund split between relief and fees where the attorney's fee award would reduce any benefits received by the class); *Schuchardt v. L. Off. of Rory W. Clark*, No. 15-CV-01329-JSC, 2016 WL 232435, at *9 (N.D. Cal. Jan. 20, 2016) (same). Here, the attorney's fees will be paid from the Gross Settlement Fund. Dkt. 60 at 7 ¶ 1.19. Accordingly, their amount will affect the financial relief for individual class members. *Id.* at 8 ¶ 1.25. This promise "increases the likelihood that class counsel will have bargained away something of value to the class." *Zwicky v. Diamond Resorts Mgmt. Inc.*, 343 F.R.D. 101, 122 (D. Ariz. 2022) (quoting *In re Bluetooth*, 654 F.3d at 942). However, this is a common practice and is not a per se basis for finding collusion.

The Administrative Costs provision allows for unchecked distribution of funds to Lead Counsel without court approval. It states that prior to the Effective Date, the Escrow Agent may, at the direction of Lead Counsel, disburse up to $300,000 from the Gross Settlement Fund to pay Administrative Costs. Dkt. 60 at 13 ¶ 3.4. Moreover, after the Effective Date, "*additional* amounts may be transferred from the Gross Settlement Fund to pay for any reasonable and necessary administrative Costs *without further order of the Court*." *Id.* at 13–14 ¶ 3.4 (emphases

[3] "A clear-sailing agreement is a provision sometimes included in class action settlements in which the defendant promises not to contest the amount of attorney's fees so long as it falls beneath a negotiated cap." *In re Home Depot Inc.*, 931 F.3d 1065, 1081 n.14 (11th Cir. 2019).

added). Thus, the Administrative Costs provision permits Lead Counsel to collect a substantial amount from the Gross Settlement Fund without Court approval.

These issues are offset by the third factor. No amount in the Settlement Fund will revert back to Defendants. Dkt. 73-1 ¶ 15. A settlement agreement that contains a clear sailing agreement may be approved when the defendants have no reversionary interest in the settlement amount. Agreement. *See, e.g.*, *Ramirez v. Merrill Gardens, LLC*, No. 1:22-CV-00542-SAB, 2024 WL 3011142, at *24 (E.D. Cal. June 11, 2024). Further, the amount of the attorney's fee award is subject to review by the Court.

Moreover, approximately, $1,683,388.47 or 43.89% of the Settlement Fund is to be allocated to Class Members. *See, supra* at 6, Chart A. Class counsel expects to seek fees of 31.84% of the Settlement Fund. *Id.* This amount is not so disproportionate to the total recover to suggest collusion. Further, the estimated amount of the fee award is discussed below and will be re-evaluated in connection with a motion for final approval.

A consideration of the foregoing factors shows that Lead Counsel adequately represented the interests of all Class Members in negotiating the terms of the Settlement Agreement.

c) Whether the Relief Provided for the Class is Adequate

As noted, the Settlement Agreement provides for the payment by GDS of a gross Settlement Amount of $3,000,000.00. Dkt. 60 at 11–12 ¶ 2.1. The Settlement Agreement requires that GDS deposit the $3,000,000 into an escrow account, to be managed by an Escrow Agent who is to invest the funds into short term instruments backed by the full faith and credit of the federal government or fully insured by the federal government. *Id.* at 13 ¶ 3.2. Deductions are summarized in this chart prior, which was also included in the earlier discussion, as to the calculation of the Net Settlement Amount to be allocated among Class Members:

Description of Amount	**Amount**	**Percent**
Gross Settlement Amount	**$ 3,000,000.00**	**100%**
Lead Counsel Fees Payment	$ (900,000.00)	30%
Lead Counsel's Litigation Expenses	$ (55,000.00)	1.83%
Additional Counsel Fees Payment	$ (55,118.50)	1.84%
Additional Counsel Litigation Expenses	$ (493.03)	0.016%
Administrative Costs	$	10%

	(300,000.00)[4]	
Award to Plaintiffs	$ (6,000.00)	0.2%
Net Settlement Amount	**$ 1,683,388.47**	**43.89%**

Because the Settlement Agreement does not set a numerical or percentage limit on any of these deductions, estimates provided by the Long Notice were used. Dkt. 60-2, Ex. A-1 at 3.

(1) Strength of Plaintiffs' Claims, and the Costs, Risks, and Delays of Trial and Appeal

It is "well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Officers for Just. v. Civ. Serv. Comm'n of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (citation omitted). "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id*. at 625 (citation omitted). "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware*, Inc. – Fair & Accurate Credit Transactions Act (FACTA) Litig., 295 F.R.D. 438, 453 (C.D. Cal. 2014); *see also Rodriguez*, 563 F.3d at 965 ("In reality, parties, counsel, mediators, and district judges naturally arrive at a reasonable range for settlements by considering the likelihood of a plaintiffs' or defense verdict, the potential recovery, and the chances of obtaining it, discounted to the present value."). Moreover, Plaintiffs' securities claims are "highly complex . . . difficult and notoriously uncertain." *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) (quotation omitted).

Plaintiffs' counsel retained an expert to calculate Defendants' maximum financial exposure based on the claims. Dkt. 73-2. Under the two-trader model, Plaintiffs estimate $48.9 million in damages. *Id.* at 3. Under the one-trader model, Plaintiffs estimate $53.6 million in damages. *Id.* The Settlement Amount of $3,000,000 represents approximately 6% of the maximum estimated damages.

Plaintiffs have provided a sufficient basis to show that the Settlement Amount represents adequate consideration. This results from viewing the risks associated with litigating the claims, including the Defendants' defenses and the amount of evidence in China, presenting additional costs and discovery concerns. Dkt. 62 at 19–22. It is also supported by the risk as to whether Plaintiffs can establish loss causation and damages. *Id.*; *see In re Stable Rd. Acquisition Corp.*, No. 2:21-CV-5744-JFW(SHKx), 2024 WL 3643393, at *6 (C.D. Cal. Apr. 23, 2024).

[4] This number could be higher because the Settlement Agreement does not limit Administrative Costs to $300,000. After the Effective Date, any additional amounts may be transferred that are reasonable and necessary. *See* Dkt. 60 at 13-14 ¶ 3.4.

Based on the foregoing, given the costs, risks, and delays of trial and appeal, the Settlement Amount is appropriate when balanced with the strength of Plaintiffs' claims.

(2) Effectiveness of Any Proposed Method of Distributing Relief to the Class

The proposed method of notice and distributing relief to the Class is fair and reasonable.

Notice is the sole responsibility of Lead Counsel. Dkt. 60 at 16 ¶ 5.3. The Settlement Agreement provides that "[a]s soon as practicable after execution of this Stipulation," Plaintiffs shall move for approval for the mailing and dissemination of notice, substantially in the form of Exhibits A-1, A-2, and A-3. *Id.* at 15–16 ¶ 5.1.

To assist in dissemination of notice, GDS will provide to Lead Counsel "customary information reasonably available" to GDS concerning the identity of Settlement Class Members ("Settlement Class Information"). Dkt. 60 at 16 ¶ 5.4. The Settlement Agreement provides that GDS shall provide the Settlement Class Information to Lead Counsel or the Claims Administrator, at no cost to Plaintiffs, the Settlement Class, Lead Counsel, or the Claims Administrator, within 15 Business Days after the issuance of an order granting preliminary approval of the Settlement, and will do so in electronic form as is reasonably available to GDS. *Id.*

The proposed Notice Plan includes the following: (1) emailing links to the Long Notice and Claim Form to Settlement Class Members who can be identified with reasonable effort; (2) posting the Long Notice, Claim Form, and Settlement Agreement on a website maintained by SCS (www.strategicclaims.net/GDS); and (3) allowing Settlement Class Members to submit their claims electronically on the Settlement website. Dkt. 62 at 28. Moreover, the Administrator will provide direct mail to more than 2,300 financial institutions and follow-up with potential Settlement Class Members with e-mail. Dkt. 73-1 ¶ 3.

The Administrator will also provide publication notice twice in the *GlobeNewswire*, a national newswire, and once in the *Investors' Business Daily*. Dkt. 73-1 ¶ 3. Notice will also be sent to *Depositor Trust Company* ("DTC") for publication on its Legal Notice System. *Id*. Because a majority of Class Members will be beneficial purchasers who hold their securities in "street name," the Administrator will use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons and entities that purchased or acquired GDS ADS during the Class Period as record owners but not as beneficial owners. *Id.* ¶ 4.

As explained above, most of the contents of the Long Notice are adequate, *i.e.* the explanation of Class Members' rights, the description the litigation, and relevant contact information. However, certain issues are presented as to the appropriateness of the Long Notice.

First, the Long Notice omits the proposed deduction of Administrative Costs. As noted above, the Administrative Cost provision in the Settlement Agreement that states that $300,000 may be disbursed for Administrative Costs, and potentially more. Dkt. 60 at 13 ¶ 3.4. Despite the material effect this may have on payments to the Class, the Long Notice omits this provision, and instead only provides notice of the amounts Lead Counsel expects to ask for with regard to attorney's fees, litigation expenses, and Plaintiffs' awards. Dkt. 60-2, Ex. A-1 at 3.

Second, the notice of deductions also omits GMP's intent to request of a fee of $55,118.50 and reimbursement of $493.03. Dkt. 63-6, Ex. F at 3. These are not substantial amounts in light of the Gross Settlement Amount.

Third, distribution of relief requires that Class Members file a claim. According to the Long Notice, in order to receive any relief, a Class Member "must" opt-in payment by sending in a form either electronically on the Settlement website (www.strategicclaims.net/GDS) or by mail. Dkt. 60-2, Ex. A-1 at 13–14. Neither the Settlement Agreement nor Long Notice provides any deadline by which payments must be made to Class Members. Although this will impose a burden on Class Members, it is not an unreasonable one given that each must provide information as to his, her or its transactions that warrant relief.

Notwithstanding the foregoing issues, the proposed method of distributing relief to the Class is adequate.

(3) Terms of Any Proposed Award of Attorney's Fees

As already noted, the Settlement Agreement does not include any terms placing a ceiling on the amount of fees that may be paid to Class Counsel. The Settlement Agreement provides that attorney's fees and expenses will be in the amounts approved by the Court. Dkt. 60 at 24 ¶ 8.2. Further, estimated amounts are provided based on a percentage of the Gross Settlement Amount. Similarly, the Long Notice states that Lead Counsel intends to seek approval of a fee award of up to 30% of the Gross Settlement Amount*, i.e.,* $900,000. Dkt. 60-2, Ex. A-1 at 3. Lead Counsel also provides a lodestar calculation, which is discussed below. Additional counsel GPM intends to seek a fee award of $55,118.50 and reimbursement of costs of $493.03. Dkt. 63-6, Ex. F at 3.

The reasonableness of attorney's fees and litigation costs submitted in connection with the Motion are addressed below. Under the Settlement Agreement, any fees and costs not awarded will revert to the Net Settlement Fund. Dkt. 73 ¶¶ 9–12. This supports approval of the Settlement Agreement.

(4) Any Other Agreements Made in Connection with the Proposal

The parties have executed a supplemental agreement providing that if enough Settlement Class Members opt out such that the number of shares they held reaches a certain threshold, GDS may terminate the Settlement. Dkt. 60 at 26–27 ¶ 10.3. The Settlement Agreement states that in order to avoid incentivizing Class Members to opt out solely to leverage favorable individual settlements, this supplemental agreement will remain confidential, and not be filed with the Court unless a dispute arises as to its interpretation or application, or as otherwise directed by the Court. *Id.* The existence of such a provision does not alone render a settlement agreement unfair. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015). However, courts usually have access to some of the terms to decide whether the supplemental agreement is fair. *See, e.g.*, *Hefler*, 2018 WL 4207245, at *11 ("Having reviewed the supplemental agreement under seal, the Court concludes that the termination provision is fair and reasonable."); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 948 (finding the matter moot for other reasons but stating that "[o]nly the exact threshold" of the opt-out agreement was kept confidential). Moreover, the reasons for confidentiality provided by Plaintiffs do not support the conclusion that the supplemental agreement be kept confidential to the Court. Accordingly, the agreement shall be filed under seal for review by the Court in connection with the Motion.

d) Whether the Proposal Treats Putative Class Members Equitably Relative to Each Other

The Settlement Agreement does not include a requirement that Class Members be treated equitably relative to each other. Rather, it expressly states that neither the parties nor their counsel are responsible for the administration of the Settlement Fund, the Plan of Allocation, the determination, administration, or payment of any claims asserted against the Settlement Fund. Dkt. 60 at 23 ¶ 7.9. The Agreement also states that "[n]o Person shall have any claims against . . . the Claims Administrator . . . based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or orders of the Court." *Id.* at 21 ¶ 7.3. The Long Notice, however, provides a fair and equitable method for calculating loss, which is then awarded on *pro rata* basis based on the expert opinions that have been provided. Dkt. 60-2, Ex. A-1 at 10–12; Dkt. 73-2. This proportional method is equitable and supports preliminary approval.

C. Incentive Awards

1. Legal Standards

"[N]amed plaintiffs . . . are eligible for reasonable incentive payments." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). To determine the reasonableness of incentive awards, the following factors may be considered:

1) The risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class

representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

2. Application

No evidence has been provided directly by either of the Plaintiffs as to the amount of time that each spent on this litigation or the work that each performed in conjunction with counsel. The Declaration of Laurence M. Rosen states that he conferred with both Plaintiffs and that each performed several tasks, including reviewing significant pleadings, evaluating and approving the Settlement, and communicating with counsel. Dkt. 63 ¶ 15. Lead Plaintiff KNA Family LLC estimates that its representatives have spent approximately ten hours on this case, and Plaintiff Larry Bergmann estimates that he has spent approximately seven hours. *Id.*

The Settlement Agreement provides that Lead Counsel may submit a Fee and Expense Application for an award to Plaintiffs as payment to reimburse them of their time and expenses and connection with this case. Dkt. 60 at 23 ¶ 8.1. It states that any award to Plaintiffs must be paid solely from the Gross Settlement Fund and shall reduce the settlement consideration paid to the Settlement Class. *Id.* at 24 ¶ 8.4. The Long Notice states that Lead Counsel intends to seek an award to Plaintiffs that is not more than $6,000 in total. Dkt. 60-2, Ex. A-1 at 3.

Assuming that the time estimates are accurate, if a combined award of $6,000 were requested and allocated in proportion to the time worked, it would result in an allocation of approximately 60% of the award to KNA Family LLC, *i.e.,* $3,600, and approximately 40% to Larry Berman, *i.e.,* $2,400. This would result in an hourly rate of $360 to KNA Family LLC, and an hourly rate of $343 to Larry Berman. There is no evidence to support this level of compensation. Accordingly, for purposes of preliminary approval, an incentive award in the range of $800 to $2000 is approved as to KNA Family LLC, and an award in the range of $560 to $1,400 is approved as to Larry Berman. In support of the motion for final approval, admissible evidence shall be presented in support of the proposed awards to these Plaintiffs.

D. Attorney's Fees

1. Legal Standards

Attorney's fees and costs "may be awarded . . . where so authorized by law or the parties' agreement." *In re Bluetooth Headset Prods.*, 654 F.3d at 941 (citing Fed. R. Civ. P. 23(h)). However, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *Id.* "If fees are unreasonably high, the likelihood is that the defendant obtained an economically beneficial

concession with regard to the merits provisions, in the form of lower monetary payments to class members or less injunctive relief for the class than could otherwise have [been] obtained." *Staton*, 327 F.3d at 964. Thus, a district court must "assure itself that the fees awarded in the agreement were not unreasonably high, so as to ensure that the class members' interests were not compromised in favor of those of class counsel." *Id.* at 965.

District courts have discretion to use the lodestar method and/or the percentage method to evaluate the reasonableness of a request for an award of attorney's fees in a class action. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010). A court may also choose one method and then perform a cross-check with the other. *See, e.g.*, *Staton*, 327 F.3d at 973.

When using the percentage method, a court examines what percentage of the total recovery is allocated to attorney's fees. The Ninth Circuit applies a "benchmark award" of 25%. *Id.* at 968. However, awards that deviate from the benchmark have been approved. *See Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989) ("Ordinarily, . . . fee awards [in common fund cases] range from 20 percent to 30 percent of the fund created."); *Schroeder v. Envoy Air*, *Inc.*, No. CV-16-4911-MWF (KSx), 2019 WL 2000578, at *7 (C.D. Cal. May 6, 2019) ("[T]he 'benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors,'" including "'(1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases.'") (citation omitted).

"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 Headset Prods.*, 654 F.3d at 941 (citation omitted). After the lodestar amount is determined, a trial court "may adjust the lodestar upward or downward using a 'multiplier' based on factors not subsumed in the initial calculation of the lodestar." *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). Such factors "'includ[e] the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.'" *Stetson v. Grissom*, 821 F.3d 1157, 1166–67 (9th Cir. 2016) (quoting *In re Bluetooth Headset Prods.*, 654 F.3d at 941–42). As noted, the lodestar calculation can also serve as a cross-check as to the reasonableness of the amount requested under the percentage method.

2. Application

a) Percentage Approach

The proposed request for an award of $900,000 in attorney's fees to The Rosen Law Firm represents 30% of the Gross Settlement Amount. This would exceed the 25% "benchmark award" used by the Ninth Circuit, without taking into account the separate amount sought by Glancy, Prongay, & Murray LLP. However, as noted, an upward adjustment from the benchmark may be warranted in light of the results achieved, the risks of litigation, non-monetary benefits conferred by the litigation, customary fees in similar cases, the contingent nature of the fee, the burden carried by counsel, or the reasonable expectations of counsel. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002).

Plaintiffs contend that an upward departure is warranted because in similar cases such percentages were applied. Dkt. 62 at 23–24 (citing *Mego*, 213 F.3d at 463; *Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *10 (C.D. Cal. Oct. 10, 2019; *In re Audioeye, Inc., Sec. Litig.*, 2017 WL 5514690, at *4 (D. Ariz. May 8, 2017)). Moreover, once an order awarding attorney's fees is issued following the hearing for final approval, Lead Counsel will not seek additional compensation for future services performed not included in their lodestar. Dkt. 62 at 23 n.5. Neither these cases, which are factually distinguishable, nor the waiver of seeking additional compensation, is sufficient to warrant an upward departure in this action.

The Gross Settlement Amount is $3,000,000, which represents 6.13% of the amount estimated by Plaintiffs' damages expert. Dkt. 73-2. One court approved a securities class settlement amount that was 4.5% of the estimated damages, in part because the defendant was a Chinese company, which would have made conducting discovery difficult. *In re LJ Int'l, Inc. Sec. Litig.*, No. CV0706076GAFJWJX, 2009 WL 10669955, at *4 (C.D. Cal. Oct. 19, 2009). There would be similar limitations in this action if it were to proceed with more discovery. This is a factor that has been considered.

In light of the foregoing, whether an upward departure of from the 25% benchmark is justified will turn on the analysis of the lodestar cross check. The overall issue is also reserved for de novo review in connection with the motion for final approval.

a) Lodestar Crosscheck

The following tables summarize the evidence as to hourly rates and hours worked submitted by Plaintiffs' counsel for each attorney, and also has estimates for future work that will be necessary in connection with the completion of the settlement process, including a motion for final approval:

The Rosen Law Firm

Attorney	Hourly Rate	Hours	Fees
Phillip Kim 2024	$1,150.00	20.5	$23,575.00

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(Attorney – Partner at The Rosen Law Firm)			
Phillip Kim 2023 (Attorney – Partner at The Rosen Law Firm)	$975.00	20.1	$19,597.50
Joshua Baker 2024 (Attorney – Counsel at The Rosen Law Firm)	$850.00	140.3	$119,255.00
Joshua Baker 2023 (Attorney – Counsel at The Rosen Law Firm)	$725.00	91.9	$66,627.50
Erica Stone 2024 (Attorney – Counsel at The Rosen Law Firm)	$850.00	5.6	$4,760.00
Erica Stone 2023 (Attorney – Counsel at The Rosen Law Firm)	$800.00	0.6	$480.00
Henry Bloxenheim 2024 (Attorney – Associate at The Rosen Law Group)	$450.00	15.1	$6,795.00
Ryan Hedrick 2024 (Attorney – Associate at The Rosen Law Firm)	$600.00	14.6	$8,760.00
Ran Hedrick 2023 (Attorney – Associate at The Rosen Law Firm)	$550.00	3.1	$1,705.00
Ian McDowell 2023 (Attorney – Associate at the Rosen Law Group)	$500.00	6.2	$3,100.00
Total Lodestar		**318.0**	**$254,655.00**

Dkt. 63-1, Ex. A.

Glancy, Prongay, & Murray LLP

Attorney	Hourly Rate	Hours	Fees

Ex Kano Sams (Attorney – Partner at Glancy, Prongay, & Murray, LLP)	$1,125.00	42.4	$47,812.50
Harry Kharadijan (Senior Paralegal at Glancy, Prongay, & Murray, LLP)	$350.00	7.0	$2,450.00
Alexia Shiri (Paralegal at Glancy, Prongay, & Murray, LLP)	$350.00	0.3	$105.00
John D. Belanger (Research Analyst at Glancy, Prongay, & Murray, LLP)	$365.00	8.4	$3,066.00
Gabrielle Zavaleta (Research Analyst at Glancy, Prongay, & Murray LLP)	$350.00	4.6	$1,610.00
Karla Vazquez (Admin Clerk at Glancy, Prongay, & Murray LLP)	$150.00	0.5	$75.00
Total Paralegal		20.8	$7,306.00
Total Lodestar		63.2	$55,118.50

Dkt. 63-6, Ex. F.

The combined lodestar amount for the two law firms (**$**254,655.00 + $55,118.50) is $309,773.50. This amount is substantially less than the proposed award of $900,000*, i.e.,* 30% of the Gross Settlement Amount of $3,000,000 to The Rosen Law Firm, and $55,118.50 to Glancy, Prongay, & Murray LLP.

(1) Whether the Rates Claimed Are Reasonable

Laurence Rosen has filed a declaration in support of the anticipated motion for an award of attorney's fees of 30% of the Gross Settlement Amount to the Rosen Law Firm. Dkt. 63. He describes the work that counsel has performed in this action, including a factual investigation, the preparation of the initial complaint and the FAC and preparing the opposition GDS's motion to dismiss. *Id.* at 2. He also provides some limited information as to the reasonableness of the hourly rates. *Id.* at 3. It includes the statement that his law firm's hourly rates "are set based on a periodic analysis of rates used by firms performing comparable work and that have been approved by courts. *Id.* at 3.

As co-counsel, Ex Kano S. Sams II has provided a declaration in support of the request for preliminary approval of the anticipated motion for an award of attorney's fees of $55,118.50 from the Gross Settlement Amount to Glancy Prongay & Murray LLP. Dkt. 63-3, Ex. F. The declaration provided lodestar data as to the work performed by this firm. *Id.* at 1. As to his hourly rate, which is the only one used in the lodestar analysis for an attorney, and the hourly rates for the paralegals, research analysts, and administrative clerk, he declares that they "are consistent with hourly rates submitted by the Firm in other securities class action litigation. The Firm's rates are set based on periodic analysis of rates charged by firms performing comparable work both on the plaintiff and defense side." *Id.* at 2.

For The Rosen Law Firm, the hourly rates are in a range between $550 to $1,150. For the Glancy, Prongay, & Murray LLP, the hourly rate of $1,125 is applied as to Sams. The hourly rates as to the paralegals, research analysts, and administrative clerk, range from $150 to $365.

Based on a review of the evidence submitted with respect to the experience of attorneys, paralegals, research analysts and the administrative clerk who worked on this matter, which included and the aforementioned conclusory statements in the Rosen Declaration and the Sams Declaration, more information is needed to make a final assessment of the rates used by each law firm. However, in light of the evidence that has been submitted as well as the experience of the Court with hourly rates that are charged by attorneys and supporting staff members performing similar work, a range of hourly rates for each attorney and staff member has been applied for purposes of assessing the fee request in connection with the preliminary approval sought by the Motion.

(2) Whether the Hours Charged are Reasonable

As required by the Standing Order, Plaintiff's counsel have provided several tables summarizing the hours worked on this matter. Dkt. 63 (and accompanying attachments). Based on a review of the evidence submitted with respect to the work performed in this matter, issues are raised about the number of hours spent on certain tasks. As noted, there are also issues raised as the reasonableness of hourly rates. Accordingly, in the following tables, adjustments are made with respect to the time spent on certain tasks, as well as the hourly rates. This analysis results in a range for the lodestar analysis, with a final determination of the hourly rates reserved until the request for a fee award of 30% of the Gross Settlement Amount is assessed in connection with the anticipated motion for final approval. As part of that motion, Plaintiffs' counsel shall submit any additional, available evidence as to the reasonableness of the hourly rates applied by their respective law firms. No further evidence is required as to the time spent on each of the tasks identified in the following tables.

Based on a review the present evidence, certain exclusions and downward adjustments to the time charges, are warranted with respect to the Motion. These adjustments result in a reduction to the proposed lodestar by an amount between $51,657.50 and $70,670.00, *i.e.,* from

$254,655.00 to an amount between $183,985.00 and $202,997.50 for The Rosen Law Firm, and a reduction to the proposed lodestar by an amount between $7,306.00 and $12,618.50, *i.e.,* from $55,118.50 to between $42,500.00 and $47,812.50 for Glancy, Prongay, & Murray LLP. These adjustments are reflected in the following tables, which are based on those submitted by Plaintiffs' Counsel. *See* Dkt. 63-2 (The Rosen Law Firm table); Dkt. 63-6 at 41, 42 (Glancy, Prongay, & Murray LLP tables).

Table 1: The Rosen Law Firm Dkt. 63-2

Task 1: Initial Investigation, Complaint, and Case Filing

Attorney	Rate	Adjusted Rate Range	Hours	Adjusted Hours	Fee
Phillip Kim (2023) Attorney – Partner	$975.00	$900.00–$975.00	3.1	3.1	$2,790.00–$3,022.50
Ian McDowell (2023) Attorney – Associate	$500.00	$400.00–$500.00	2.9	2.9	$1,160.00–$1,450.00
Fee Requested for Task 1			**6.0**	**6.0**	**$3,950.00–$4,472.50**

Task 2: Lead Plaintiff Motion and Appointment

Attorney	Rate	Adjusted Rate	Hours	Adjusted Hours	Fee
Phillip Kim (2023) Attorney – Partner	$975.00	$900.00–$975.00	7.5	7.5	$6,750–$7,312.50
Erica Stone (2023) Attorney – Counsel	$800.00	$750.00–$800.00	0.3	0	0
Ryan Hedrick (2023) Attorney – Associate	$550.00	$500.00–$550.00	0.6	0	0

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Ian McDowell (2023) Attorney – Associate	$500.00	$400.00–$500.00	3.3	3.3	$1,320.00–$1,650.00
Fee Requested for Task 2			**11.7**	**10.8**	**$8,070.00–$8,962.50**
Task 3: Amended Complaint and Investigation					
Attorney	**Rate**	**Adjusted Rate**	**Hours**	**Adjusted Hours**	**Fee**
Phillip Kim (2023) Attorney – Partner	$975.00	$900.00–$975.00	5.4	5.4	$4,860.00–$5,265.00
Joshua Baker (2023) Attorney – Associate	$725.00	$675.00–$725.00	86.1	75.0	$50,625.00–$54,375.00
Fee Requested for Task 3			**91.5**	**80.4**	**$55,485.00–$59,640.00**
Task 4: Motion to Dismiss					
Attorney	**Rate**	**Adjusted Rate**	**Hours**	**Adjusted Hours**	**Fee**
Phillip Kim (2024) Attorney – Partner	$1,150.00	$975.00–$1,150.00	0.3	0	0
Joshua Baker (2024) Attorney – Counsel	$850.00	$725.00–$800.00	101.5	70.0	$50,750.00–$56,000.00
Fee Requested for Task 4			**101.8**	**70.0**	**$50,750.00–$56,000.00**
Task 5: Order to Show Cause					
Attorney	**Rate**	**Adjusted Rate**	**Hours**	**Adjusted Hours**	**Fee**

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Phillip Kim (2023) Attorney – Partner	$975.00	$900.00–$975.00	0.4	0	0
Joshua Baker (2023) Attorney – Associate	$725.00	$675.00–$725.00	2.9	2.0	$1,350.00–$1,450.00
Erica Stone (2023) Attorney – Counsel	$800.00	$750.00–$800.00	0.3	0	0
Fee Requested for Task 5			**3.6**	**2.0**	**$1,350.00–$1,450.00**
Task 6: Mediation					
Attorney	**Rate**	**Adjusted Rate**	**Hours**	**Adjusted Hours**	**Fee**
Phillip Kim (2024) Attorney – Partner	$1,150.00	$975.00–$1,150.00	10.2	10.2	$9,945.00–$11,730.00
Joshua Baker (2024) Attorney – Counsel	$850.00	$725.00–$800.00	20.9	20.9	$15,152.50–$16,720.00
Fee Requested for Task 6			**31.1**	**31.1**	**$25,097.50–$28,450.00**
Task 7: Settlement Agreement Negotiation and Drafting					
Attorney	**Rate**	**Adjusted Rate**	**Hours**	**Adjusted Hours**	**Fee**
Phillip Kim (2024) Attorney – Partner	$1,150.00	$975.00–$1,150.00	4.3	4.3	$4,192.50–$4,945.00

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Phillip Kim (2023) Attorney – Partner	$975.00	$900.00–$975.00	1.0	1.0	$900.00–$975.00
Joshua Baker (2024) Attorney – Counsel	$850.00	$725.00–$800.00	15.0	10.0	$7,250.00–$8,000.00
Joshua Baker (2023) Attorney – Associate	$725.00	675.00–$725.00	0.5	0	0
Erica Stone (2024) Attorney – Counsel	$850.00	$800.00	4.1	4.1	$3,280.00
Ryan Hedrick (2024) Attorney – Associate	$600.00	$550.00–$650.00	14.6	10.0	$5,500.00–$6,500.00
Henry Bloxenheim (2024) Attorney – Associate	$450.00	$400.00–$450.00	15.1	10.0	$4,000.00–$4,500.00
Fee Requested for Task 7			**54.6**	**39.4**	**$25,122.50–$28,200.00**
Task 8: Miscellaneous Court Filings and Administration					
Attorney	**Rate**	**Adjusted Rate**	**Hours**	**Adjusted Hours**	**Fee**
Phillip Kim (2024) Attorney – Partner	$1,150.00	$975.00–$1,150.00	5.7	5.7	$5,557.50–$6,555.00
Phillip Kim (2023) Attorney – Partner	$975.00	$900.00–$975.00	2.7	2.7	$2,430.00–$2,632.50
Joshua Baker (2024) Attorney – Counsel	$850.00	$725.00–$800.00	2.9	2.9	$2,102.50–$2,320.00

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Joshua Baker (2023) Attorney – Associate	$725.00	$675.00–$725.00	2.4	2.4	$1,620.00–$1,740.00
Erica Stone (2024) Attorney – Counsel	$850.00	$800.00	1.5	1.5	$1,200.00
Ryan Hedrick (2023) Attorney – Associate	$550.00	$500.00–$550.00	2.5	2.5	$1,250.00–$1,375.00
Fee Requested for Task 8			**17.7**	17.7	**$14,160.00–$15,822.50**
Total for All Tasks				**257.4**	**$183,985.00–$202,997.50**

Table 2: Glancy, Prongay, LLP Dkt. 63-6 at 41, 42					
Task 1: Research and Drafting Inserts on Scienter for Opposition to Motion to Dismiss					
Attorney	**Rate**	**Adjusted Rate**	**Hours**	**Adjusted Hours**	**Fee**
Ex Kano S. Sams II Attorney – Partner	$1,125.00	$1,000.00–$1,125.00	28.5	28.5	$28,500.00–$32,062.50
Fee Requested for Task 1				**28.5**	**$28,500.00–$32,062.50**
Task 2: Prepared First Draft of Mediation Statement					
Attorney	**Rate**	**Adjusted Rate**	**Hours**	**Adjusted Hours**	**Fee**
Ex Kano S. Sams II Attorney – Partner	$1,125.00	$1,000.00–$1,125.00	14	14	$14,000.00–$15,750.00
Fee Requested for Task 2				**14**	**$14,000.00–$15,750.00**
Total for All Tasks				**42.5**	**$42,500.00–$47,812.50**

Based on the present evidence, an upward departure from the 25% benchmark award, which is

applied by the Ninth Circuit, is not justified. The 25% benchmark here is $750,000. The cross-check results in a lodestar range between $183,985.00 and $202,997.50 for The Rosen Law Firm, and between $42,500.00 and $47,812.50 for Glancy, Prongay, & Murray LLP. Applying the upper end of the range*, i.e.,* $202,997.50 for the Rosen Law Firm would result in a multiplier of 4.43 to reach the $900,000 award that it seeks as lead counsel. This large a multiplier has not been justified by the present evidence. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). Nor is there a sufficient evidentiary basis to add an amount from the range that has been calculated for the lodestar amount for Glancy, Prongay, & Murray LLP. Instead, taking into account the foregoing analysis, as well as the risks assumed by counsel and the substantial Gross Settlement Amount of $3,000,000, a total, combined fee award of $750,000 is preliminarily approved for the Rosen Law Firm and Glancy, Prongay, & Murray LLP. This is the 25% benchmark that has been adopted by the Ninth Circuit. The preliminary approval of this total amount allocates between $42,500 and $55,118.50 to Glancy, Prongay, & Murray LLP.

This issue will be reviewed *de novo* in connection with the motion for final approval, based on any new evidence that is presented as to the basis for a higher award, including as to whether the benchmark calculations should be increased, and whether there have been any objections by members of the Class. The amount to be allocated to Glancy, Prongay, & Murray LLP will be part of this *de novo* review.

E. Litigation Costs

The Long Notice states that Lead Counsel will seek reimbursement of litigation expenses of no more than $55,000. Dkt. 60-2, Ex. A-1 at 3. The Rosen Law Firm has submitted a spreadsheet detailing the $38,193.42 of costs presently incurred. Dkt. 63-4, Ex. D at 2.

GPM will seek reimbursement of $493.03, which is supported by a spreadsheet that identifies each expense. Dkt. 63-6, Ex. F at 3, 6.

The costs are reasonable. Therefore, awards of litigation costs of $38,193.42 to The Rosen Law Firm and $493 to GPM are preliminarily approved. Counsel may request an additional award for any costs incurred between the time of filing the Motion and the time of the hearing on the anticipated motion for final approval.

F. Administrative Costs

The Settlement Agreement defines Administrative Costs:

> [A]ll costs and expenses associated with providing notice of the Settlement to the Settlement Class and otherwise administering or carrying out the terms of the Settlement. Such costs may include, without limitation: escrow agent costs, the costs of publishing and disseminating the Notice, the costs of printing and mailing the Notice and

> Proof of Claim, as directed by the Court, and the costs of allocating and distributing the Net Settlement Fund to the Authorized Claimants. Such costs do not include legal fees.

Dkt. 60 at 5 ¶ 1.2.

There is no proposed maximum deduction of Administrative Costs from the Gross Settlement Amount. *See id.* at 13–14 ¶ 3.4. Prior to the Effective Date, the Settlement Agreement permits Lead Counsel to direct the Escrow Agent to disburse up to $300,000 from the Gross Settlement Fund to pay Administrative Costs. *Id.* at 13 ¶ 3.4. This includes the fees of Strategic Claims Services, which is the proposed Administrator, of $227,000 and expenses of $73,000. Dkt. 73-1 ¶ 9. Strategic Claims Services has stated that these estimated expenses are reasonable "to the value of the settlement, and consistent with those incurred in other securities settlements of similar size and complexity." *Id.* After the Effective Date, "additional amounts may be transferred from the Settlement Fund to pay for any reasonable and necessary administrative Costs without further order of the Court." *See* Dkt. 60 at 13–14 ¶ 3.4.

The costs submitted are reasonable. Therefore, awards of administrative costs of $300,000 are preliminarily approved.

G. Appointment of Settlement Administrator

The Settlement Agreement provides that the parties have jointly selected Strategic Claims Services as the Settlement Administrator. Dkt. 60 at 6 ¶ 1.8. As noted above, the fees for Strategic Claims will total $227,000. Dkt. 73-1 ¶ 9. Strategic Claims Services will do the following: (1) assist in preparing the Plan of Allocation; (2) assist in preparing the long-form Notice and Summary Notice; (3) notify Nominees of the appropriate manner to provide the notice to potential Settlement Class Members who are beneficial holders; (4) set-up a Settlement Class database, phone system and frequently asked questions protocol; (5) set up a website to provide electronic claims filing, which will also host copies of the Complaint, Settlement documents, relevant Court orders and all other pertinent information for Settlement Class Members; (6) publish a Summary Notice two times in the GlobeNewswire and once in the Investors' Business Daily; (7) review and process all opt-out and objection requests; (8) process claims including handling cures and rejections; (9) update the Settlement Class database; to include updated contact information and other updated information regarding Settlement Class Members; (10) handle and respond to all phone call questions from Class Members; (11) respond to all other questions via e-mails, letters and other correspondence from Settlement Class Members; (12) set up escrow accounts and handle all banking matters related to the administration process; (13) cut, mail and process distribution checks; (14) process all undeliverable check mailings and re-mail checks if forwarding addresses are provided for all distributions; (15) undeliverable check mailings and re-mail if updated addresses are provided for all distributions; (16) re-issue checks for lost checks, changes in name, death of Settlement Class Members, or other valid changes requiring a new check subject to verification by SCS;

(17) send out second notices for un-cashed checks for each of the distributions (18) perform monthly bank reconciliations and handling of all other post distribution matters; (19) provide accounting and periodic status reports; (20) prepare declarations as required by the Court throughout the administrative process; (21) obtain an employer identification number and prepare and file federal and state income tax returns; (22) provide status reports to counsel; and (23) monitor and track all un-cashed checks. *Id.* ¶ 10.

Based on a review of the evidence as to the present services of Strategic Claims Services, and its experience in this role, a payment of $227,000 is preliminarily approved, with a final determination of the amount to be made based on the evidence presented in support of the anticipated motion for final approval.

H. Class Notice

1. Legal Standards

Rule 23(e)(1)(B) requires that a court "direct notice in a reasonable manner to all class members who would be bound by" a proposed class settlement. Fed. R. Civ. P. 23(e)(1)(B). Notice is satisfactory if it "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

2. Application

As stated, the Proposed Notice summarizes the terms of the Settlement Agreement. It provides an overview of how payments are calculated, how to claim relief, and information about a website and other contact information for the Settlement Administrator or Class Counsel. It also instructs Class Members how to file objections or to opt out of the settlement. The Proposed Notice satisfies the requirements of Rule 23(3)(1)(B). Accordingly, it is approved.

V. Conclusion

For the reasons stated in this Order, the Motion is **GRANTED IN PART**. A Final Approval Hearing is set for February 10, 2025, at 8:30 a.m., with any change to that time to be stated when the final calendar for that date is issued. The following dates are adopted for the steps prior to the hearing on the anticipated motion for final approval:

Event	Date
Settlement Administrator to email the Class Notice to the Settlement Class Members no	November 4, 2024

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(AMENDED)

CIVIL MINUTES – GENERAL

Case No.	LA CV23-04900 JAK (BFMx)	Date	October 9, 2024
Title	Larry Bergmann v. GDS Holdings Limited, et al.		

later than	
Deadline for posting the Stipulation, Preliminary Approval Order, Long Notice, and Claim Form on the Settlement Website	October 23, 2024
Deadline for publication of the Summary Notice	November 13, 2024
Deadline for Plaintiffs to file papers in support of the Settlement, the Plan, and motion for attorneys' fees and expenses	December 30, 2025
Deadline for Class Members to submit disputes, request exclusion from, or object to the Settlement	January 6, 2025
Deadline for Plaintiffs to file Motion for Final Approval of Class Action Settlement, Motion for Attorneys' Fees and Costs:	December 30, 2024
Deadline for the Submission of Claims by Potential Settlement Class Members	January 13, 2025
Deadline for any Opposition to Motion for Final Approval of Class Action Settlement, Motion for Attorneys' Fees and Costs	January 15, 2025
Deadline for any Reply to Motion for Final Approval of Class Action Settlement, Motion for Attorneys' Fees and Costs	January 22, 2025
Final Approval Hearing	February 10, 2025 at 8:30 a.m., with the final time to be set when the calendar for that date issues

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Initials of Preparer TJ