

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LARRY BERGMANN, Individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

GDS HOLDINGS LIMITED,  
WILLIAM WEI HUANG, and DANIEL  
NEWMAN,

Defendants.

Case No. 2:23-cv-04900-JAK-BFM

Hon. John A. Kronstadt

CLASS ACTION

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement dated as of June 14, 2024 (together with all Exhibits hereto, “Stipulation”), which is entered into, by and through their undersigned attorneys, between (i) Lead Plaintiff KNA Family LLC and named Plaintiff Larry Bergmann (“Plaintiffs”), on behalf of themselves and the Settlement Class (as defined herein) and (ii) Defendant GDS Holdings Limited (“GDS,” and together with Plaintiffs, the “Parties”), states all of the terms of the settlement and resolution of this matter by the Parties, and is intended by the Parties to fully and finally compromise, settle, release, resolve, remise, discharge, and dismiss with prejudice the Released Claims (as defined herein) against the Released Parties (as defined herein) for the consideration specified, as set forth below.

Throughout this Stipulation, all terms used with initial capitalization, but not immediately defined, shall have the meanings ascribed to them in Paragraph 1 below.

1 **WHEREAS:**

2 **A. Litigation History**

3 On June 21, 2023, Larry Bergmann filed the action styled as *Bergmann v.*  
4 *GDS Holdings Limited, et al.*, 2:23-cv-04900 (C.D. Cal.) (the “Action”), alleging  
5 violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934  
6 (“Exchange Act”) by Defendants GDS, William Wei Huang, and Daniel Newman.  
7 Dkt. No. 1.

8 On August 21, 2023, KNA Family LLC (“KNA Family”) and two other  
9 movants filed motions seeking appointment as lead plaintiff of the Action and  
10 approval of their respective counsel as lead counsel. Dkt. Nos. 23, 25, and 29. On  
11 October 23, 2023, the Court appointed KNA Family as Lead Plaintiff and The  
12 Rosen Law Firm, P.A. as Lead Counsel. Dkt. No. 41.

13 On December 18, 2023, Plaintiffs filed the operative Amended Class Action  
14 Complaint (“Complaint”). Dkt. No. 48. GDS moved to dismiss the Complaint on  
15 February 5, 2024. Dkt. No. 49. Plaintiffs filed their opposition to GDS’s motion to  
16 dismiss on March 4, 2024, and GDS filed its reply in support of its motion on March  
17 18, 2024. Dkt. Nos. 52 and 55.

18 On March 12, 2024, the Parties entered a joint stipulation informing the Court  
19 that they had agreed to participate in a private mediation and requesting that the  
20 hearing on GDS’s motion to dismiss be continued pending the mediation. Dkt. No.  
21 53. On March 13, 2024, the Court approved, in part, the joint stipulation, continuing  
22 the hearing to June 3, 2024 and ordering the Parties to file a joint status report within  
23 14 days after completing the mediation. Dkt. No. 54.

24 On May 3, 2024, the Parties notified the Court that they had reached a  
25 settlement in principle, requested that the hearing on GDS’s motion to dismiss be  
26 vacated and the motion withdrawn without prejudice, and proposed that Plaintiffs  
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1 would move for preliminary approval of the proposed Settlement on or by June 17,  
2 2024. Dkt. No. 56.

3 **B. Mediation and Settlement**

4 As the Parties briefed GDS's motion to dismiss, they began in parallel to  
5 discuss the prospect of resolving the Action through a private mediation. They  
6 engaged Jed Melnick, Esq. of JAMS, a well-respected mediator with experience  
7 mediating complex securities class actions such as this Action. Prior to the  
8 mediation, the Parties exchanged detailed mediation statements.

9 The Parties attended a mediation with Mr. Melnick on April 19, 2024. The  
10 Parties were unable to reach a resolution at the mediation but continued their  
11 negotiations through Mr. Melnick over the subsequent two weeks. After continued  
12 discussions, the Parties each accepted a mediator's proposal from Mr. Melnick to  
13 settle the Action in principle for the Settlement Amount.

14 This Stipulation memorializes the agreement between the Parties to fully and  
15 finally settle the Action and to fully release all Released Claims against the Released  
16 Parties with prejudice in return for the consideration specified herein.

17 **C. GDS's Denial of Wrongdoing and Liability**

18 Throughout this Action, GDS has denied, and continues to deny, any and all  
19 allegations of fault, liability, wrongdoing, or damages whatsoever arising out of any  
20 of the conduct, statements, acts, or omissions alleged, or that could have been  
21 alleged, in the Action. GDS has denied, and continues to deny, the allegations that  
22 Plaintiffs or any Settlement Class Member have suffered damages or were harmed  
23 by any of the conduct alleged in the Action or that could have been alleged as part  
24 of the Action. In addition, GDS maintains that it has meritorious defenses to all  
25 claims in the Action. GDS continues to believe the claims asserted against it in the  
26 Action are without merit and has agreed to enter into the Settlement set forth in this  
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1 Stipulation solely to avoid the expense, distraction, time and uncertainty associated  
2 with the Action.

3 GDS has concluded that it is desirable that the Action be fully and finally  
4 settled in the manner and upon the terms and conditions set forth in this Stipulation.  
5 GDS has also taken into account the risks inherent in any litigation, especially in  
6 complex cases such as this Action. GDS has therefore determined that it is desirable  
7 and beneficial that the Action be settled in the manner and upon the terms and  
8 conditions set forth in this Stipulation.

9 **D. Plaintiffs' Claims and Benefits of Settlement**

10 Plaintiffs believe that the claims they asserted in the Action on their own  
11 behalf and on behalf of the putative Class have merit. Plaintiffs, however, recognize  
12 and acknowledge the expense and length of continued proceedings necessary to  
13 prosecute the Action against GDS (and the other named Defendants, who Plaintiffs  
14 were attempting to serve through the appropriate international channels) through  
15 trial and appeals. Plaintiffs have also taken into account the uncertain outcome and  
16 the inherent risks of this and any complex class litigation. In particular, Plaintiffs  
17 have considered the early procedural posture in this Action, and that even if they  
18 were successful in defeating GDS's motion to dismiss the Complaint, inherent  
19 problems of proof and possible defenses to the federal securities law violations  
20 asserted in the Action pose formidable hurdles to a more successful resolution.  
21 Plaintiffs have determined, therefore, that the Settlement set forth in this Stipulation  
22 is fair, adequate, reasonable, and in the best interests of the Settlement Class.

23 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**  
24 by and among Plaintiffs (on behalf of themselves and each of the Settlement Class  
25 Members) and GDS, by and through their respective undersigned counsel, that,  
26 subject to the approval of the Court, in consideration of the benefits flowing to the  
27 Parties from the Settlement set forth herein, the Action shall be dismissed with  
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1 prejudice and the Released Claims shall be finally and fully released as against the  
2 Released Parties, upon and subject to the terms and conditions of this Stipulation,  
3 as follows:

4 **1. Definitions**

5 In addition to the terms defined above, the following capitalized terms, used  
6 in this Stipulation, shall have the meanings specified below:

7 **1.1.** “Action” means the putative class action captioned *Bergmann*  
8 *v. GDS Holdings Limited, et al.*, 2:23-cv-04900-JAK-BFM (C.D. Cal.).

9 **1.2.** “Administrative Costs” means all costs and expenses associated  
10 with providing notice of the Settlement to the Settlement Class and otherwise  
11 administering or carrying out the terms of the Settlement. Such costs may include,  
12 without limitation: escrow agent costs, the costs of publishing and disseminating  
13 the Notice, the costs of printing and mailing the Notice and Proof of Claim, as  
14 directed by the Court, and the costs of allocating and distributing the Net Settlement  
15 Fund to the Authorized Claimants. Such costs do not include legal fees.

16 **1.3.** “Authorized Claimant” means any Settlement Class Member  
17 who is a Claimant and whose claim for recovery has been allowed pursuant to the  
18 terms of this Stipulation, the exhibits hereto, and any order of the Court.

19 **1.4.** “Award to Plaintiffs” means the requested reimbursement to  
20 Plaintiffs for their reasonable costs and expenses directly related to Plaintiffs’  
21 representation of the Settlement Class in the Action.

22 **1.5.** “Business Day” means any day except Saturday, Sunday, or any  
23 legal holiday as defined by Federal Rule of Civil Procedure 6(a)(6).

24 **1.6.** “Claimant” means any Settlement Class Member who files a  
25 Proof of Claim in such form and manner, and within such time, as the Court shall  
26 permit.

1           **1.7.** “Claims” means any and all manner of claims, debts, demands,  
2 controversies, obligations, losses, costs, interest, penalties, fees, expenses, rights,  
3 duties, judgments, sums of money, suits, contracts, agreements, promises, damages,  
4 causes of action and liabilities, of every nature and description in law or equity  
5 (including, but not limited to, any claims for damages, whether compensatory,  
6 special, incidental, consequential, punitive, exemplary or otherwise, injunctive  
7 relief, declaratory relief, recession or recessionary damages, interest, attorneys’  
8 fees, expert or consulting fees, costs, or expenses), accrued or unaccrued, known or  
9 unknown, arising under federal, state, common, administrative, or foreign law, or  
10 any other law, rule, or regulation.

11           **1.8.** “Claims Administrator” means Strategic Claims Services,  
12 which shall administer the Settlement.

13           **1.9.** “Court” means the United States District Court for the Central  
14 District of California, or if this Action is transferred to another court, the transferee  
15 court.

16           **1.10.** “Defendants” means GDS Holdings Limited, William Wei  
17 Huang, and Daniel Newman.

18           **1.11.** “Defense Counsel” means Simpson Thacher & Bartlett LLP.

19           **1.12.** “Escrow Account” means an interest-bearing escrow account  
20 established by the Escrow Agent at The Huntington National Bank. The Escrow  
21 Account shall be managed by the Escrow Agent, subject to the Court’s supervisory  
22 authority, for the benefit of Plaintiffs and the Settlement Class in accordance with  
23 the terms of the Stipulation and any order of the Court, provided that, unless this  
24 Stipulation otherwise permits, no amount shall be withdrawn from the Escrow  
25 Account prior to the Effective Date absent written approval of GDS or its counsel,  
26 or an order of the Court after notice to GDS.

1                   **1.13.** “Escrow Agent” means The Huntington National Bank. The  
2 Escrow Agent shall perform the duties set forth in this Stipulation and any order of  
3 the Court.

4                   **1.14.** “Effective Date” shall have the meaning set forth in ¶10.5 of this  
5 Stipulation.

6                   **1.15.** “Final” when referring to the Final Judgment means exhaustion  
7 of all possible appeals, meaning (i) if no appeal or request for review is filed, the  
8 day after the date of expiration of any time for appeal or review of the Final  
9 Judgment, and (ii) if an appeal or request for review is filed, the day after the date  
10 the appeal or request for review is dismissed, or the Final Judgment is upheld on  
11 appeal or review in all material respects, and is not subject to further review on  
12 appeal or by *certiorari* or otherwise; provided, however, that any dispute or appeals  
13 relating solely to the amount, payment or allocation of attorneys’ fees and expenses  
14 or the Plan of Allocation shall have no effect on finality for purposes of determining  
15 the date on which the Final Judgment becomes Final.

16                   **1.16.** “Final Judgment” means the order and judgment to be entered  
17 by the Court finally approving the Settlement, materially in the form attached hereto  
18 as Exhibit B.

19                   **1.17.** “Lead Counsel” means The Rosen Law Firm, P.A.

20                   **1.18.** “Long Notice” means the Notice of Pendency and Proposed  
21 Settlement of Class Action, substantially in the form attached hereto as Exhibit A-  
22 1.

23                   **1.19.** “Net Settlement Fund” means the Settlement Fund, less: (i) the  
24 Fee and Expense Awards; (ii) Administrative Costs; (iii) Taxes and Tax Expenses;  
25 (iv) any Award to Plaintiffs; and (v) other fees and expenses authorized by the  
26 Court.



1                   **1.20.** “Notice” means collectively, the Long Notice and the Summary  
2 Notice, which are to be made available to Settlement Class Members substantially  
3 in the forms attached hereto as Exhibits A-1 and A-3, respectively, on the Claims  
4 Administrator’s website and/or mailed to Settlement Class Members.

5                   **1.21.** “Party” means any one of, and “Parties” means all of, GDS and  
6 Plaintiffs (individually and on behalf of the Settlement Class).

7                   **1.22.** “Person” means an individual, corporation, fund, limited  
8 liability corporation, professional corporation, limited liability partnership,  
9 partnership, limited partnership, association, joint stock company, estate, legal  
10 representative, trust, unincorporated association, government or any political  
11 subdivision or agency thereof, and any business or legal entity and their spouses,  
12 heirs, predecessors, successors, representatives, or assigns.

13                   **1.23.** “Plaintiffs” means Lead Plaintiff KNA Family LLC and named  
14 Plaintiff Larry Bergmann.

15                   **1.24.** “Plaintiffs’ Counsel” means Lead Counsel and Additional  
16 Counsel Glancy Prongay & Murray LLP and The Schall Law Firm.

17                   **1.25.** “Plan of Allocation” means a plan or formula for allocating the  
18 Settlement Fund to Authorized Claimants after payment of Administrative Costs,  
19 Taxes and Tax Expenses, and such attorneys’ fees, costs, and expenses as may be  
20 awarded by the Court. The Plan of Allocation is not a condition to the effectiveness  
21 of this Stipulation, and the Released Parties shall have no responsibility or liability,  
22 with respect thereto.

23                   **1.26.** “Preliminary Approval Order” means an order preliminarily  
24 approving the Settlement and directing notice thereof to the Settlement Class,  
25 substantially in the form of the proposed order attached hereto as Exhibit A.



1                   **1.27.** “Proof of Claim” means the Proof of Claim and Release Form  
2 to be submitted by Claimants, substantially in the form attached hereto as Exhibit  
3 A-2.

4                   **1.28.** “Related Parties” means, with respect to each Released Party,  
5 the immediate family members, employees, officers, directors, attorneys, legal  
6 representatives, insurers, reinsurers, and agents of each of them, and any person or  
7 entity which is or was related to or affiliated with any Released Party or in which  
8 any Released Party has a controlling interest, and their present and former parents,  
9 subsidiaries, variable interest entities, divisions, affiliates, employees, officers,  
10 directors, attorneys, legal representatives, insurers, reinsurers, and agents, and the  
11 predecessors, heirs, administrators, successors and assigns of the foregoing.

12                   **1.29.** “Released Claims” means and includes any and all Claims and  
13 Unknown Claims that have been or could have been asserted or could in the future  
14 be asserted in any forum by or on behalf of any of the Releasing Parties, in any  
15 capacity, whether known or unknown, whether foreign or domestic, whether arising  
16 under federal, state, common, or foreign law, whether based on statements or  
17 omissions made directly to individual persons or broadly to the market, which arise  
18 out of, are based upon, or relate in any way to the purchase, acquisition, sale, or  
19 disposition of any GDS ADS during the Settlement Class Period, including but not  
20 limited to any claims alleged in the Action and any claims related to the allegations,  
21 facts, transactions, events, matters, occurrences, acts, disclosures, representations,  
22 omissions, failures to act, filings, publications, or presentations involved, related to,  
23 set forth, alleged or referred to in the Action. Notwithstanding the foregoing,  
24 “Released Claims” does not include claims to enforce the terms of this Stipulation  
25 or orders or judgments issued by the Court in connection with this Settlement.

26                   **1.30.** “Released Parties” means Defendants and each and all of their  
27 respective Related Parties, their respective families, parent entities, associates,  
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1 affiliates or subsidiaries, and each and all of their respective past, present or future  
2 officers, directors, stockholders, agents, representatives, employees, attorneys,  
3 financial or investment advisors, advisors, insurers, co-insurers and reinsurers,  
4 heirs, executors, general or limited partners or partnerships, personal or legal  
5 representatives, estates, administrators, predecessors, successors and assigns.

6 **1.31.** “Releasing Parties” means Plaintiffs, each and every Settlement  
7 Class Member and each of their respective parent entities, associates, affiliates,  
8 subsidiaries, predecessors, successors, assigns, attorneys, immediate family  
9 members, heirs, representatives, administrators, executors, devisees, legatees, and  
10 estates, whether or not they object to the Settlement set forth in this Stipulation, and  
11 whether or not they make a claim for payment from the Net Settlement Fund.

12 **1.32.** “Settlement” means the settlement contemplated by this  
13 Stipulation.

14 **1.33.** “Settlement Amount” means U.S. three million dollars  
15 (\$3,000,000.00).

16 **1.34.** “Settlement Class” means all persons or entities who purchased  
17 the publicly traded American Depositary Shares (“ADS”) of GDS between July 13,  
18 2020 and April 3, 2023, both dates inclusive. Excluded from the Settlement Class  
19 are: (a) persons who suffered no compensable losses; (b) Defendants; the present  
20 and former officers and directors of GDS at all relevant times; members of their  
21 immediate families and their legal representatives, heirs, successors, or assigns, and  
22 any entity in which GDS, or any person excluded under this subsection (b), has or  
23 had a majority ownership interest at any time; and (c) GDS’s employee retirement  
24 plan(s) and/or benefit plan(s) including their participants and/or beneficiaries to the  
25 extent they purchased GDS ADS through any such plan(s). Also excluded from the  
26 Settlement Class are those persons or entities who file valid and timely requests for  
27 exclusion in accordance with the Preliminary Approval Order.  
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1                   **1.35.** “Settlement Class Member” means any one of, and “Settlement  
2 Class Members” means all of, the members of the Settlement Class.

3                   **1.36.** “Settlement Class Period” means the period from July 13, 2020  
4 and April 3, 2023, both dates inclusive.

5                   **1.37.** “Settlement Fund” means all funds transferred to the Escrow  
6 Account or Escrow Agent pursuant to this Stipulation and any interest or other  
7 income earned thereon.

8                   **1.38.** “Settlement Hearing” means the hearing at or after which the  
9 Court will make a final decision pursuant to Rule 23 of the Federal Rules of Civil  
10 Procedure as to whether the Settlement contained in the Stipulation is fair,  
11 reasonable and adequate, and therefore, should receive final approval from the  
12 Court.

13                   **1.39.** “Summary Notice” means the Summary Notice of Pendency  
14 and Proposed Class Action Settlement that the Claims Administrator will cause to  
15 be published, substantially in the form attached hereto as Exhibit A-3.

16                   **1.40.** “Unknown Claims” means all Claims of every nature and  
17 description which Plaintiffs or any Settlement Class Member do not know or  
18 suspect to exist in their favor at the time of the release of the Released Parties which,  
19 if known by them, might have affected their decision with respect to the settlement  
20 with and release of the Released Parties, including without limitation any decision  
21 not to opt-out or object to this Settlement.

22                   **2.     The Settlement Consideration**

23                   **2.1.** In consideration of the full and final release, settlement, and  
24 discharge of all Released Claims against the Released Parties:

25                   (a) Within 5 Business Days after the entry of the Preliminary  
26 Approval Order, Lead Counsel shall provide GDS’s counsel with  
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1 complete and accurate payment instructions and a W-9 for the  
2 Settlement Fund and Escrow Account.

3 **(b)** Within 10 Business Days after the later of: (i) receiving payment  
4 instructions from Lead Counsel, or (ii) entry of the Preliminary  
5 Approval Order, GDS shall pay, or cause to be paid, for the benefit of  
6 the Settlement Class, \$3,000,000 cash into the Escrow Account.

7 **2.2.** The obligations incurred pursuant to this Agreement shall be in  
8 full and final disposition and settlement of all Released Claims. Plaintiffs and  
9 Settlement Class Members shall look solely to the Settlement Fund as full, final,  
10 and complete satisfaction of all Released Claims. Under no circumstances will  
11 Defendants be required to pay, or cause payment of, more than the Settlement  
12 Amount pursuant to this Stipulation or the Settlement for any reason whatsoever,  
13 including, without limitation, as Administrative Costs, as compensation to any  
14 Settlement Class Member, as payment of Plaintiffs' or any Settlement Class  
15 Member's attorneys' fees and expenses, or in payment of any fees, expenses, costs,  
16 liability, losses, Taxes, or damages whatsoever alleged or incurred by Plaintiffs, any  
17 Settlement Class Member or Lead Counsel, including but not limited to their  
18 attorneys, experts, advisors, agents, or representatives. Any agreement between or  
19 among Plaintiffs' Counsel to divide fees, expenses, costs or interest shall be  
20 between or among such Plaintiffs' Counsel only, and Defendants and their Related  
21 Persons shall have no responsibility for or liability with respect to any allocation  
22 between or among Plaintiffs' Counsel, or with respect to any payment to any  
23 Plaintiffs' Counsel, of any fees, expenses, costs or interest.

24 **3. Handling and Disbursement of Funds by the Escrow Agent**

25 **3.1.** No monies will be disbursed from the Settlement Fund prior to  
26 the Effective Date except:

27 **(a)** As provided in ¶3.4 below;  
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- 1 (b) As provided in ¶8.2 below;
- 2 (c) As provided in ¶10.10 below, if applicable; and
- 3 (d) To pay Taxes and Tax Expenses (as defined in ¶4.1
- 4 below). Taxes and Tax Expenses shall be paid out of the Settlement Fund and shall
- 5 be considered to be a cost of administration of the Settlement and shall be timely
- 6 paid by the Escrow Agent without prior Order of the Court.

7 **3.2.** The Escrow Agent shall invest the Settlement Fund in short term

8 instruments backed by the full faith and credit of the United States Government or

9 fully insured by the United States Government or an agency thereof and shall

10 reinvest the proceeds of these instruments as they mature in similar instruments at

11 their then-current market rates. The Escrow Agent shall bear all responsibility and

12 liability for managing the Escrow Account and cannot assign or delegate its

13 responsibilities without approval of the Parties. GDS, its counsel, its insurers, and

14 the other Released Parties shall have no responsibility for, interest in, or any liability

15 whatsoever with respect to any investment or management decisions executed by

16 the Escrow Agent. The Settlement Fund shall bear all risks related to the

17 investments of the Settlement Amount in accordance with the guidelines set forth

18 in this ¶3.2.

19 **3.3.** The Escrow Agent shall not disburse the Settlement Fund except

20 as provided in this Stipulation, by an order of the Court, or with the written

21 agreement of GDS.

22 **3.4.** At any time after the Court grants preliminary approval of the

23 Settlement, the Escrow Agent may, without further approval from GDS or the

24 Court, disburse at the direction of Lead Counsel up to \$300,000 from the Settlement

25 Fund prior to the Effective Date to pay Administrative Costs. After the Effective

26 Date, additional amounts may be transferred from the Settlement Fund to pay for

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1 any reasonable and necessary Administrative Costs without further order of the  
2 Court.

#### 3 **4. Taxes**

4 **4.1.** The Parties agree to treat the Settlement Fund as being at all  
5 times a “qualified settlement fund” within the meaning of Treasury Regulation  
6 § 1.468B-1. In addition, Lead Counsel shall timely make, or cause to be made via  
7 the Escrow Agent, such elections as necessary or advisable to carry out the  
8 provisions of this ¶4.1, including the “relation-back election” (as defined in  
9 Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections  
10 shall be made in compliance with the procedures and requirements contained in  
11 such regulations. It shall be the responsibility of Lead Counsel to timely and  
12 properly prepare and deliver the necessary documentation for signature by all  
13 necessary parties, and thereafter to cause the appropriate filing to occur. Upon  
14 written request, the Released Parties will timely provide to Lead Counsel the  
15 statement described in Treasury Regulation § 1.468B-3(e).

16 **(a)** For purposes of § 1.468B of the Internal Revenue Code of 1986,  
17 as amended, and Treasury Regulation § 1.468B-2(k)(3) promulgated thereunder,  
18 the “administrator” shall be Lead Counsel. Lead Counsel shall timely and properly  
19 file, or cause to be filed via the Escrow Agent, all informational and other tax returns  
20 necessary or advisable with respect to the Settlement Fund (including without  
21 limitation the returns described in Treasury Regulation § 1.468B-2(k)). Such returns  
22 (as well as the election described in this ¶4.1) shall be consistent with this ¶4.1 and  
23 in all events shall reflect that all Taxes (including any estimated Taxes, interest or  
24 penalties) on the income earned by the Settlement Fund shall be paid out of the  
25 Settlement Fund.

26 **(b)** All Taxes (including any estimated Taxes, interest or penalties)  
27 arising with respect to the income earned by the Settlement Fund, including any  
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taxes or tax detriments that may be imposed upon the Released Parties with respect to (i) any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes and (ii) the payment or reimbursement by the Settlement Fund of any taxes or tax detriments described in clause (i) (“Taxes”), and all expenses and costs incurred in connection with the operation and implementation of this ¶4.1 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses or penalties relating to filing (or failing to file) the returns described in this ¶4.1) (“Tax Expenses”), shall be paid out of the Settlement Fund, as appropriate. The Released Parties shall have no liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid out of the Settlement Fund without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be withheld under Treasury Regulation § 1.468B-2(1)(2)). The Released Parties shall have no responsibility for, interest in, or any liability whatsoever with respect to the acts or omissions of Lead Counsel or the Escrow Agent with respect to the foregoing provided in this ¶4.1. The Parties agree to cooperate with each other, and their tax attorneys and accountants, to the extent reasonably necessary to carry out the provisions of this ¶4.1.

## **5. Preliminary Approval Order and Settlement Hearing**

**5.1.** As soon as practicable after execution of this Stipulation, Plaintiffs shall submit this Stipulation and its exhibits to the Court and shall move for preliminary approval of the Settlement set forth in this Stipulation, entry of a



1 preliminary approval order substantially in the form of Exhibit A, and approval for  
2 the mailing and dissemination of notice, substantially in the form of Exhibits A-1,  
3 A-2, and A-3. The Long Notice (Exhibit A-1) shall include the general terms of the  
4 Settlement and the provisions of the Plan of Allocation, and shall set forth the  
5 procedure by which recipients of the Notice may object to the Settlement or the  
6 Plan of Allocation or request to be excluded from the Settlement Class. The date  
7 and time of the Settlement Hearing shall be added to the Notice before it is mailed  
8 or otherwise provided to Settlement Class Members.

9           **5.2.** At the time of the submission described in ¶5.1 hereof,  
10 Plaintiffs shall request that, after the Notice is provided, the Court hold the  
11 Settlement Hearing and (i) approve the Settlement as set forth herein, and (ii) enter  
12 a final order and judgment substantially in the form of Exhibit B hereto, as promptly  
13 after the Settlement Hearing as possible.

14           **5.3.** It shall be Lead Counsel's sole responsibility to disseminate the  
15 Notice to the Settlement Class in accordance with this Stipulation and as ordered  
16 by the Court. Defendants shall not bear any cost or responsibility for the Notice,  
17 the administration, or the allocation of the settlement amount among Settlement  
18 Class Members. Settlement Class Members shall have no recourse as to the  
19 Released Parties with respect to any claims they may have that arise from any  
20 failure of the notice process.

21           **5.4.** To assist in dissemination of notice, GDS will provide to Lead  
22 Counsel customary information reasonably available to GDS concerning the  
23 identity of Settlement Class Members ("Settlement Class Information"). GDS shall  
24 provide such information to Lead Counsel or the Claims Administrator, at no cost  
25 to Plaintiffs, the Settlement Class, Lead Counsel, or the Claims Administrator,  
26 within 15 Business Days after the Court signs an order preliminarily approving the  
27 Settlement, in electronic form as is reasonably available to GDS. The Parties  
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1 acknowledge that any information GDS provides to Lead Counsel or the Claims  
 2 Administrator pursuant to this ¶5.4 shall be treated as confidential and will be used  
 3 by Lead Counsel and/or the Claims Administrator solely to deliver the Notice  
 4 and/or implement the Settlement, including the Plan of Allocation.

5 **5.5.** No later than 10 days following the filing of this Stipulation with  
 6 the Court, GDS shall serve, or cause to be served, the notice required under the  
 7 Class Action Fairness Act of 2005 (“CAFA”). No later than 21 days following the  
 8 filing of this Stipulation with the Court, Defendant shall file with the Court an  
 9 affidavit or declaration regarding its compliance with the CAFA notice  
 10 requirements.

## 11 **6. Releases and Covenants Not to Sue**

12 **6.1.** Upon the Effective Date, the Releasing Parties, regardless of  
 13 whether any such Releasing Party ever seeks or obtains by any means, including  
 14 without limitation by submitting a Proof of Claim, any disbursement from the  
 15 Settlement Fund, shall be deemed to have, and by operation of the Final Judgment  
 16 shall have, fully, finally, and forever released, relinquished, and discharged all  
 17 Released Claims against the Released Parties and shall have covenanted not to sue  
 18 the Released Parties with respect to all such Released Claims, and shall be  
 19 permanently barred and enjoined from asserting, commencing, prosecuting,  
 20 instituting, assisting, instigating, or in any way participating in the commencement  
 21 or prosecution of any action or other proceeding, in any forum, asserting any  
 22 Released Claim, in any capacity, against any of the Released Parties, and agree and  
 23 covenant not to sue any of the Released Parties on the basis of the Released Claims  
 24 or to assist any third party in commencing or maintaining any suit against the  
 25 Released Parties related to any Released Claims, whether or not such Settlement  
 26 Class Member executes and delivers a Proof of Claim form, seeks or obtains a  
 27 distribution from the Settlement Fund, is entitled to receive a distribution under the  
 28

1 Plan of Allocation approved by the Court, or has objected to any aspect of the  
2 Stipulation or the Settlement, the Plan of Allocation, or Lead Counsel's application  
3 for an award of attorneys' fees or expenses. For the avoidance of doubt, all  
4 Released Parties are released from any and all claims for contribution or indemnity,  
5 as would otherwise be allowed by Section 21D of the Exchange Act, 15 U.S.C.  
6 §78u-4(f)(7). Nothing contained herein shall, however, bar the Releasing Parties  
7 from bringing any action or claim to enforce the terms of this Stipulation or the  
8 Final Judgment. Nor shall anything contained herein limit or release any claims  
9 Defendants may have with regard to insurance coverage that may be available to  
10 them under any applicable policy. This release shall not apply to any Settlement  
11 Class Members who timely and validly exclude themselves from the Settlement  
12 Class.

13 **6.2.** With respect to any and all Released Claims, the Parties  
14 stipulate and agree that, upon the Effective Date, the Releasing Parties shall  
15 expressly waive, shall be deemed to have waived, and by operation of the Final  
16 Judgment shall have waived, the provisions, rights, and benefits of California Civil  
17 Code § 1542, which provides:

18 A general release does not extend to claims that the  
19 creditor or releasing party does not know or suspect to  
20 exist in his or her favor at the time of executing the release  
21 and that, if known by him or her, would have materially  
22 affected his or her settlement with the debtor or released  
23 party.

24 With respect to any and all Released Claims, the Releasing Parties shall expressly  
25 waive, shall be deemed to have waived, and by operation of the Final Judgment  
26 shall have waived, any and all provisions, rights and benefits conferred by any law  
27 of any state, territory, foreign country or principle of common law, which is similar,  
28 comparable or equivalent to California Civil Code § 1542. The Releasing Parties

1 may hereafter discover facts in addition to or different from those which they now  
2 know or believe to be true with respect to the Released Claims, but the Releasing  
3 Parties shall expressly, fully, finally, and forever settle and release, and upon the  
4 Effective Date, shall be deemed to have, and by operation of the Final Judgment  
5 shall have, fully, finally, and forever settled and released, any and all Released  
6 Claims, known or unknown, suspected or unsuspected, contingent or  
7 noncontingent, whether or not concealed or hidden, which now exist, or heretofore  
8 have existed, upon any theory of law or equity now existing or coming into  
9 existence in the future, including, but not limited to, conduct which is negligent,  
10 intentional, with or without malice, or a breach of fiduciary duty, law or rule,  
11 without regard to the subsequent discovery or existence of such different or  
12 additional facts. The Releasing Parties acknowledge, and shall be deemed by  
13 operation of the Final Judgment to have acknowledged, that the foregoing waiver  
14 was separately bargained for and a key element of the Settlement of which this  
15 release is a part.

16           **6.3.** Upon the Effective Date, the Released Parties shall be deemed  
17 to have, and by operation of the Final Judgment shall have, fully, finally, and  
18 forever released, relinquished, and discharged all claims they may have against the  
19 Releasing Parties, including Settlement Class Members and Plaintiffs' Counsel,  
20 related to the prosecution of the Action or any other known or unknown counter-  
21 claim related thereto and shall have covenanted not to sue the Releasing Parties,  
22 including Settlement Class Members and Plaintiffs' Counsel, with respect to any  
23 counter claim, claim, or sanction related to the Released Claims, and shall be  
24 permanently barred and enjoined from asserting, commencing, prosecuting,  
25 instituting, assisting, instigating, or in any way participating in the commencement  
26 or prosecution of any action or other proceeding, in any forum, asserting any such  
27 claim, in any capacity, against any of the Releasing Parties, including Settlement  
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Class Members and Plaintiffs' Counsel, and agree and covenant not to sue any of the Releasing Parties, including Settlement Class Members and Plaintiffs' Counsel, on the basis of any such claim or to assist any third party in commencing or maintaining any suit against the Releasing Parties related to any such claim. Nothing contained herein shall, however, bar the Released Parties from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment.

**6.4.** The releases provided in this Stipulation shall become effective immediately upon occurrence of the Effective Date without the need for any further action, notice, condition, or event. The Releasing Parties shall be deemed to acknowledge that, as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and shall be permanent, absolute, and unconditional.

**7. Administration and Calculation Of Claims, Final Awards And Supervision And Distribution Of The Settlement Fund**

**7.1.** Under the supervision of Lead Counsel, acting on behalf of the Settlement Class, and subject to such supervision and direction of the Court as circumstances may require, the Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund (as defined below) to Authorized Claimants. After the Effective Date, Lead Counsel shall apply to the Court, on notice to the Parties, for the Settlement Fund Distribution Order.

**7.2.** The Settlement Fund shall be applied as follows:

- (a) To pay the Taxes and Tax Expenses described in ¶4.1 above;
- (b) To pay Administrative Costs;

1 (c) To pay Lead Counsel's attorneys' fees and expenses, and  
 2 payments to Plaintiffs for reimbursement of their time and expenses ("Fee and  
 3 Expense Award"), to the extent allowed by the Court; and

4 (d) To distribute the balance of the Settlement Fund, that is,  
 5 the Settlement Fund less the items set forth in ¶¶7.2(a)-(c) hereof, plus all accrued  
 6 interest ("Net Settlement Fund") to the Authorized Claimants as allowed by this  
 7 Stipulation, the Plan of Allocation, or the Court.

8 **7.3.** Upon and after the Effective Date, the Net Settlement Fund shall  
 9 be distributed to Authorized Claimants in accordance with the terms of the Plan of  
 10 Allocation set forth in the Notice and any orders of the Court. No Person shall have  
 11 any claims against Lead Counsel, the Claims Administrator, or any other agent  
 12 designated by Lead Counsel based on distribution determinations or claim  
 13 rejections made substantially in accordance with this Stipulation and the Settlement  
 14 contained herein, the Plan of Allocation, or orders of the Court. Lead Counsel shall  
 15 have the right, but not the obligation, to waive what it deems to be formal or  
 16 technical defects in any Proofs of Claim filed, where doing so is in the interest of  
 17 achieving substantial justice.

18 **7.4.** This is not a claims-made settlement, and if all conditions of the  
 19 Stipulation are satisfied and the Final Judgment becomes Final, no portion of the  
 20 Settlement Fund will be returned to GDS. GDS, its counsel, its insurers, and the  
 21 other Released Parties shall have no responsibility for, involvement in, interest in,  
 22 or liability whatsoever with respect to the investment or distribution of the Net  
 23 Settlement Fund, the Plan of Allocation, the determination, administration, or  
 24 calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any  
 25 losses incurred in connection therewith. In no instance shall GDS be required to pay  
 26 any amount other than as specified in ¶2.1.

1           **7.5.** The Claims Administrator shall administer the Settlement  
2 subject to the jurisdiction of the Court and pursuant to this Stipulation and the Plan  
3 of Allocation. Plaintiffs and Lead Counsel shall be solely responsible for  
4 formulation of the Plan of Allocation. It is understood and agreed by the Parties that  
5 any proposed Plan of Allocation of the Net Settlement Fund including, but not  
6 limited to, any adjustments to an Authorized Claimant's claim set forth therein, is  
7 not a condition of this Stipulation and is to be considered by the Court separately  
8 from the Court's consideration of the fairness, reasonableness, and adequacy of the  
9 Settlement. Any order or proceedings relating to the Plan of Allocation, or any  
10 appeal from any order relating thereto or reversal or modification thereof, shall not  
11 operate to modify, terminate or cancel this Stipulation, or affect or delay the finality  
12 of the Final Judgment and the releases contained therein, or any other orders entered  
13 pursuant to this Stipulation.

14           **7.6.** Each Claimant shall be deemed to have submitted to the  
15 jurisdiction of the Court with respect to the Claimant's claim, and the claim will be  
16 subject to investigation and discovery under the Federal Rules of Civil Procedure,  
17 provided that such investigation and discovery shall be limited to that Claimant's  
18 status as a Settlement Class Member and the validity of the amount of the  
19 Claimant's claim. No discovery shall be allowed on the merits of the Action or  
20 Settlement in conjunction with the processing of the Proofs of Claim.

21           **7.7.** Payment pursuant to this Stipulation shall be deemed final and  
22 conclusive against all Claimants. All Claimants whose claims are not approved by  
23 the Court shall be barred from participating in the distribution from the Net  
24 Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation  
25 and the Settlement, including the terms of the Final Judgment to be entered in this  
26 Action and the releases provided for herein, and will be barred from bringing any  
27 action against the Released Parties concerning the Released Claims.  
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1           **7.8.** All proceedings with respect to the administration, processing,  
 2 and determination of claims and all controversies relating thereto, including  
 3 disputed questions of law and fact with respect to the validity of claims, shall be  
 4 subject to the jurisdiction of this Court, but shall not delay or affect the finality of  
 5 the Final Judgment.

6           **7.9.** Neither the Parties nor their counsel shall have any  
 7 responsibility for or liability whatsoever with respect to: (i) any act, omission, or  
 8 determination of the Escrow Agent or the Claims Administrator, or any of their  
 9 respective designees or agents, in connection with the administration of the  
 10 Settlement Fund or otherwise; (ii) the Plan of Allocation; (iii) the determination,  
 11 administration, calculation, or payment of any claims asserted against the  
 12 Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the  
 13 Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or  
 14 costs incurred in connection with the taxation of the Settlement Fund or the filing  
 15 of any returns.

16           **8. Lead Counsel’s Attorneys’ Fees and Reimbursement of Expenses**

17           **8.1.** Lead Counsel may submit an application or applications (“Fee  
 18 and Expense Application”) for distributions from the Settlement Fund to Lead  
 19 Counsel for a Fee and Expense Award consisting of: (i) an award of attorneys’ fees  
 20 from the Settlement Fund; (ii) reimbursement of actual costs and expenses,  
 21 including the fees and expenses of any experts or consultants, incurred in  
 22 connection with prosecuting the Action; and (iii) an Award to Plaintiffs as payment  
 23 to Plaintiffs for reimbursement of their time and expenses in connection with the  
 24 Action. GDS shall take no position with respect to the Fee and Expense  
 25 Application. Lead Counsel’s application for an award of attorneys’ fees or litigation  
 26 expenses is not the subject of any agreement between GDS and Plaintiffs other than  
 27 what is set forth in this Stipulation.  
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1           **8.2.** Any attorneys' fees and expenses awarded to Lead Counsel by  
2 the Court shall be paid to Lead Counsel from the Escrow Account within five  
3 Business Days of the date the Court enters an order approving the Fee and Expense  
4 Award, notwithstanding the existence of any timely filed objections to any Fee and  
5 Expense Award, or potential for appeal therefrom, or collateral attack on the  
6 Settlement or any part thereof, and subject to Lead Counsel's obligation to make  
7 appropriate refunds or repayments to the Settlement Fund, plus interest earned  
8 thereon, within 10 Business Days if and when the Settlement is terminated in  
9 accordance with its terms or, as a result of any appeal and/or further proceedings on  
10 remand, or successful collateral attack, the Fee and Expense Award is reduced.

11           **8.3.** The procedure for, and allowance or disallowance by the Court  
12 of, the Fee and Expense Application are not conditions of the Settlement set forth  
13 in this Stipulation and are to be considered by the Court separately from the Court's  
14 consideration of the fairness, reasonableness, and adequacy of the Settlement. Any  
15 order or proceeding relating to the Fee and Expense Application, or any objection  
16 to, motion regarding, or appeal from any order or proceeding relating thereto or  
17 reversal or modification thereof, shall not operate to modify, terminate or cancel  
18 this Stipulation, or affect or delay the finality of the Final Judgment or the releases  
19 contained therein or any other orders entered pursuant to this Stipulation.

20           **8.4.** Any Fee and Expense Award paid to Lead Counsel or Award to  
21 Plaintiffs shall be paid solely from the Settlement Fund and shall reduce the  
22 settlement consideration paid to the Settlement Class accordingly. GDS shall not  
23 have any responsibility for payment of Lead Counsel's attorneys' fees and expenses  
24 or other award to Plaintiffs beyond the obligation of GDS to fund, or cause to be  
25 funded, the Settlement Amount as set forth in ¶2.1 above. The Released Parties shall  
26 have no responsibility for, and no liability whatsoever with respect to, any payments  
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1 to Lead Counsel, Plaintiffs, the Settlement Class and/or any other Person who  
2 receives payment from the Settlement Fund.

### 3 **9. Class Certification**

4 **9.1.** The Parties agree that the Court should certify the Settlement  
5 Class for purposes of this Settlement only. For purposes of this Settlement only, in  
6 connection with the Final Judgment, GDS consents to (i) the appointment of  
7 Plaintiffs as class representatives, (ii) the appointment of Lead Counsel as class  
8 counsel, and (iii) the certification of the Settlement Class pursuant to Rules 23(a)  
9 and (b)(3) of the Federal Rules of Civil Procedure.

10 **9.2.** In the event that the Final Judgment does not become Final or  
11 the Settlement fails to become effective for any reason, the Settlement Class shall  
12 be decertified without prejudice, and the Parties shall revert to their pre-settlement  
13 positions.

### 14 **10. Conditions of Settlement, Effect of Disapproval, Cancellation or** 15 **Termination**

16 **10.1.** Plaintiffs, on behalf of the Settlement Class, and GDS shall each  
17 have the right to terminate the Settlement and Stipulation by providing written  
18 notice of their election to do so (“Termination Notice”) to all other Parties within  
19 30 calendar days of:

20 (a) entry of a final, non-appealable Court order declining to  
21 enter the Preliminary Approval Order in all material respects;

22 (b) entry of a final, non-appealable Court order refusing to  
23 approve this Stipulation in all material respects;

24 (c) entry of a final, non-appealable Court order declining to  
25 enter the Final Judgment in all material respects, provided, however, that this  
26 Settlement is expressly not conditioned on the Court’s approval of the proposed  
27 Plan of Allocation, nor on the Court’s approval of Lead Counsel’s application for  
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attorneys' fees or expenses, nor on the Court's approval of any award to Plaintiffs for its reasonable costs and expenses, and any change in the Judgment relating to these items shall not be considered a material change;

(d) entry of a final, non-appealable Court order refusing to dismiss the Action with prejudice; or

(e) entry of a final, non-appealable order by which the Final Judgment is modified or reversed in any material respect by any appeal or review.

**10.2.** If the Settlement Amount is not paid into the Escrow Account in accordance with ¶2.1 of this Stipulation, then Plaintiffs, on behalf of the Settlement Class, shall have the right to: (a) terminate the Settlement and Stipulation by providing written notice to GDS at any time prior to the Court's entry of the Final Judgment, provided that Plaintiffs shall not have the right to terminate the Settlement and Stipulation if the Settlement Amount is paid into the Escrow Account within 10 Business Days of such written notice; or (b) enforce the terms of the Settlement and this Stipulation and seek a judgment effecting the terms herein.

**10.3.** If, prior to the Settlement Hearing, persons who otherwise would be Settlement Class Members have filed with the Court valid and timely requests for exclusion from the Settlement Class in accordance with the provision of the Preliminary Approval Order and the Notice, and such persons in the aggregate have purchased GDS ADS in an amount that equals or exceeds the sum specified in a separate supplemental agreement between the Parties ("Supplemental Agreement"), GDS shall have the option, but not the obligation, to terminate this Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Parties agree that disclosure of the terms of the Supplemental Agreement may cause irreparable harm to Defendants, and therefore that the Supplemental Agreement will not be filed with any Court unless a dispute arises as

1 to its interpretation or application, or as otherwise ordered by the Court, nor shall  
 2 the Supplemental Agreement otherwise be disclosed by Plaintiffs unless ordered by  
 3 the Court. If a dispute arises among the Parties concerning its interpretation or  
 4 application, the Parties will take reasonable steps to assure the Supplemental  
 5 Agreement is filed under seal or submitted for *in camera* review, subject to the  
 6 Court's approval and direction. The Parties will file a statement identifying the  
 7 existence of the Supplemental Agreement pursuant to Federal Rule of Civil  
 8 Procedure 23(e)(3). Copies of all requests for exclusion received, together with  
 9 copies of all revocations of request for exclusion (if any), shall be delivered to  
 10 GDS's counsel within 5 days of receipt thereof.

11 **10.4.** If any Party engages in a material breach of the terms hereof,  
 12 any other Party, provided that it is in substantial compliance with the terms of this  
 13 Stipulation, may terminate this Stipulation on notice to all the Parties.

14 **10.5.** The Effective Date of this Stipulation shall not occur unless and  
 15 until each of the following events occurs, and it shall be the date upon which the  
 16 last in time of the following events occurs:

17 (a) The Court has entered the Preliminary Approval Order  
 18 attached hereto as Exhibit A or an order containing materially the same terms;

19 (b) The Court has finally approved the Settlement, following  
 20 notice to the Settlement Class and the Settlement Hearing, and has entered the Final  
 21 Judgment;

22 (c) The Action has been dismissed with prejudice; and

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

24 **10.6.** Upon the occurrence of the Effective Date, any and all interest  
 25 or right of GDS in or to the Settlement Fund shall be absolutely and forever  
 26 extinguished, except as set forth in this Stipulation.

1           **10.7.** In the event that some or all of the conditions specified in ¶10.5  
2 above are not met, the Parties may agree in writing nevertheless to proceed with  
3 this Stipulation and Settlement. However, none of the Parties, or any of them, shall  
4 have any obligation whatsoever to proceed under any terms other than those  
5 provided for and agreed herein.

6           **10.8.** In the event the Stipulation shall terminate, or be canceled, or  
7 shall not become effective for any reason, the Parties and the Released Parties shall  
8 be restored to their respective positions in the Action immediately prior to June 17,  
9 2024, and they shall proceed in all respects as if the Stipulation had not been  
10 executed and the related orders had not been entered, and in that event all of their  
11 respective claims and defenses as to any issue in the Action shall be preserved  
12 without prejudice.

13           **10.9.** In the event that the Stipulation is not approved by the Court or  
14 the Settlement set forth in this Stipulation is terminated or fails to become effective  
15 in accordance with its terms, the terms and provisions of this Stipulation, except as  
16 otherwise provided herein, shall have no further force and effect with respect to the  
17 Parties or the Released Parties and shall not be used in the Action or in any other  
18 proceeding for any purpose, and any judgment or order entered by the Court in  
19 accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro*  
20 *tunc*.

21           **10.10.** In the event the Stipulation shall be terminated, or be canceled,  
22 or is incapable of becoming effective for any reason, within 10 Business Days after  
23 the occurrence of such event, the Settlement Fund (less taxes already paid and any  
24 Administrative Costs which have already been disbursed) shall be refunded by the  
25 Escrow Agent to GDS or such entity as GDS directs, as applicable, plus accrued  
26 interest attributable to that amount, by check or wire transfer pursuant to written  
27 instructions from GDS's counsel. At the request of GDS, the Escrow Agent or its  
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1 designee shall apply for any tax refund owed on the Settlement Fund and pay the  
 2 proceeds, after deduction of any fees or expenses incurred in connection with such  
 3 application(s) for refund, to GDS or such entity as GDS directs, as applicable,  
 4 pursuant to written direction from GDS.

5 **10.11.** No order of the Court or modification or reversal on appeal of  
 6 any order of the Court or motion for reconsideration, appeal, petition for a writ of  
 7 *certiorari* or its equivalent concerning the Plan of Allocation or the Fee and Expense  
 8 Application shall in any way delay or preclude the Effective Date or constitute  
 9 grounds for cancellation or termination of the Stipulation.

10 **11. No Admission of Liability or Wrongdoing**

11 **11.1.** The Parties covenant and agree that neither this Stipulation,  
 12 whether or not consummated, (nor the Settlement contained therein), nor any of its  
 13 terms and provisions, nor any of the negotiations, documents, or proceedings  
 14 connected with them, is evidence, or an admission or concession by any Party or  
 15 their counsel, any Settlement Class Member, or any of the Released Parties, of any  
 16 fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or  
 17 asserted or could have been alleged or asserted in the Action, or any other actions  
 18 or proceedings, or as to the validity or merit of any of the claims or defenses alleged  
 19 or asserted in any such action or proceeding. This Stipulation is not a finding or  
 20 evidence of the validity or invalidity of any claims or defenses alleged or asserted  
 21 or could have been alleged or asserted in the Action, any wrongdoing by any Party,  
 22 Settlement Class Member, or any of the Released Parties, or any damages or injury  
 23 to any Party, Settlement Class Member, or any Released Parties. Neither this  
 24 Stipulation, nor any of the terms and provisions of this Stipulation, nor any of the  
 25 negotiations or proceedings in connection therewith, nor any of the documents or  
 26 statements referred to herein or therein, nor the Settlement, nor the fact of the  
 27 Settlement, nor the Settlement proceedings, nor any statement in connection  
 28



1 therewith, (a) shall (i) be argued to be, used or construed as, offered or received in  
2 evidence as, or otherwise constitute an admission, concession, presumption, proof,  
3 evidence, or a finding of any, liability, fault, wrongdoing, injury or damages, or of  
4 any wrongful conduct, acts or omissions on the part of any Released Party, or of  
5 any infirmity of any defense, or of any damages to Plaintiffs or any other Settlement  
6 Class Member, or (ii) otherwise be used to create or give rise to any inference or  
7 presumption against any of the Released Parties concerning any fact or any  
8 purported liability, fault, or wrongdoing of the Released Parties or any injury or  
9 damages to any person or entity, or (b) shall otherwise be admissible, referred to or  
10 used in any proceeding of any nature, for any purpose whatsoever, other than such  
11 proceedings as may be necessary to effectuate the provisions of this Stipulation;  
12 provided, however, that this Stipulation, the documents related hereto, or the Final  
13 Judgment may be introduced in any proceeding, whether in the Court or otherwise,  
14 as may be necessary to enforce the Settlement or Final Judgment, to effectuate the  
15 liability protection granted them hereunder, to support a defense or counterclaim  
16 based on principles of *res judicata*, collateral estoppel, release, good faith  
17 settlement, judgment bar or reduction, offset or any other theory of claim preclusion  
18 or issue preclusion or similar defense or counterclaim, or as otherwise required by  
19 law.

20 **11.2.** Nothing in this Stipulation constitutes or reflects a waiver or  
21 release of any rights or claims of GDS against its insurers or its insurers'  
22 subsidiaries, predecessors, successors, assigns, affiliates, or representatives.  
23 Nothing in this Stipulation constitutes or reflects a waiver or release of any rights  
24 or claims relating to indemnification, advancement, or any undertakings by an  
25 indemnified party to repay amounts advanced or paid by way of indemnification or  
26 otherwise.

1           **12. Miscellaneous Provisions**

2           **12.1.** Except in the event of the provision of a Termination Notice  
3 pursuant to ¶10 of this Stipulation, the Parties shall take all actions necessary to  
4 consummate this agreement and agree to cooperate with each other to the extent  
5 reasonably necessary to effectuate and implement all terms and conditions of the  
6 Stipulation.

7           **12.2.** The Parties and their counsel represent that they will not  
8 encourage or otherwise influence (or seek to influence) in any way whatsoever any  
9 Settlement Class Members to request exclusion from, or object to, the Settlement.

10           **12.3.** Each of the attorneys executing this Stipulation, any of its  
11 exhibits, or any related settlement documents on behalf of any Party hereto hereby  
12 warrants and represents that he or she has been duly empowered and authorized to  
13 do so by the Party he or she represents.

14           **12.4.** Plaintiffs and Plaintiffs' Counsel represent and warrant that  
15 Plaintiffs are Settlement Class Members and none of Plaintiffs' claims or causes of  
16 action against Defendants in the Action, or referred to in this Stipulation, or that  
17 could have been alleged against Defendants in the Action have been assigned,  
18 encumbered or in any manner transferred in whole or in part.

19           **12.5.** This Stipulation constitutes the entire agreement between the  
20 Parties related to the Settlement and supersedes any prior agreements. No  
21 representations, warranties, promises, inducements or other statements have been  
22 made to or relied upon by any Party concerning this Stipulation, other than the  
23 representations, warranties and covenants expressly set forth herein. Plaintiffs, on  
24 behalf of themselves and the Settlement Class, acknowledge and agree that any and  
25 all other representations and warranties of any kind or nature, express or implied,  
26 are specifically disclaimed and were not relied upon in connection with this  
27 Stipulation. In entering this Stipulation, the Parties relied solely upon their own  
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1 knowledge and investigation. Except as otherwise provided herein, each Party shall  
2 bear his, her, or its own costs.

3 **12.6.** This Stipulation may not be modified or amended, nor may any  
4 of its provisions be waived, except by a writing signed by all Parties or their counsel  
5 or their respective successors in interest.

6 **12.7.** This Stipulation shall be binding upon, and shall inure to the  
7 benefit of, the Parties and their respective agents, successors, executors, heirs, and  
8 assigns.

9 **12.8.** The Released Parties who do not appear on the signature lines  
10 below are acknowledged and agreed to be third party beneficiaries of this  
11 Stipulation and Settlement.

12 **12.9.** The headings herein are used for the purpose of convenience  
13 only and are not meant to have legal effect.

14 **12.10.** This Stipulation may be executed in any number of counterparts  
15 by any of the signatories hereto and the transmission of an original signature page  
16 electronically (including by facsimile or portable document format) shall constitute  
17 valid execution of the Stipulation as if all signatories hereto had executed the same  
18 document. Copies of this Stipulation executed in counterpart shall constitute one  
19 agreement.

20 **12.11.** This Stipulation, the Settlement, and any and all disputes arising  
21 out of or relating in any way to this Stipulation, whether in contract, tort or  
22 otherwise, shall be governed by and construed in accordance with the laws of the  
23 State of California without regard to conflict of laws principles.

24 **12.12.** Any claim or dispute among the Parties arising out of, relating  
25 to, or in connection with the interpretation or implementation of the terms of the  
26 Stipulation prior to submission to the Court shall be resolved by the mediator Jed  
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1 Melnick, Esq. of JAMS, acting as arbitrator, whose determinations shall be binding  
2 and non-appealable.

3 **12.13.** The Court shall retain jurisdiction with respect to the  
4 implementation and enforcement of the terms of this Stipulation, and all Parties  
5 hereto submit to the jurisdiction of the Court for purposes of implementing and  
6 enforcing the Settlement embodied in this Stipulation.

7 **12.14.** The Stipulation shall not be construed more strictly against one  
8 Party than another merely by virtue of the fact that it, or any part of it, may have  
9 been prepared by counsel for one of the Parties, it being recognized that it is the  
10 result of arm's-length negotiations between the Parties, and all Parties have  
11 contributed substantially and materially to the preparation of this Stipulation.

12 **12.15.** Plaintiffs, Lead Counsel, and the attorneys, staff, experts, and  
13 consultants assisting them in this Action agree that (a) they will not intentionally  
14 assist or cooperate with any person or entity in the pursuit of legal action related to  
15 the Released Claims against the Released Parties, (b) they will not intentionally  
16 assist or cooperate with any person or entity seeking to publicly disparage or  
17 economically harm the Released Parties with respect to any matter relating to the  
18 subject matter this Action, (c) they will not discuss any confidential matters related  
19 to this Action or the Settlement with anyone, and (d) they will not make any  
20 accusations of wrongful or actionable conduct by any party concerning the  
21 prosecution, defense, and resolution of the Action, and shall not otherwise suggest  
22 that the settlement embodied in this Stipulation constitutes an admission of any  
23 claim or defense alleged. The Parties reserve their right to rebut, in a manner that  
24 such party determines to be appropriate, any contention made in any public forum  
25 regarding the Action, including that the Action was brought or defended in bad faith  
26 or without a reasonable basis.

1           **12.16.** All agreements by, between or among the Parties, their counsel  
2 and their other advisors as to the confidentiality of information exchanged between  
3 or among them shall remain in full force and effect, and shall survive the execution  
4 and any termination of this Stipulation and the final consummation of the  
5 Settlement, if finally consummated, without regard to any of the conditions of the  
6 Settlement.

7           **12.17.** The Parties shall not assert or pursue any action, claim or rights  
8 that any Party violated any provision of Rule 11 of the Federal Rules of Civil  
9 Procedure and/or the Private Securities Litigation Reform Act of 1995 in  
10 connection with the Action, the Settlement, or the Stipulation. The Parties agree  
11 that the Action was resolved in good faith following arm's-length bargaining, in  
12 full compliance with applicable requirements of good faith litigation under the  
13 Exchange Act, Rule 11 of the Federal Rules of Civil Procedure, and/or the Private  
14 Securities Litigation Reform Act of 1995.

15           **12.18.** Any failure by any of the Parties to insist upon the strict  
16 performance by any other Party of any of the provisions of the Stipulation shall not  
17 be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding  
18 such failure, shall have the right thereafter to insist upon the strict performance of  
19 any and all of the provisions of this Stipulation to be performed by the other Parties  
20 to this Stipulation.

21           **12.19.** The waiver, express or implied, by any Party of any breach or  
22 default by any other Party in the performance of such Party of its obligations under  
23 the Stipulation shall not be deemed or construed to be a waiver of any other breach,  
24 whether prior, subsequent, or contemporaneous, under this Stipulation.

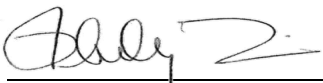
25           **12.20.** The Parties reserve the right, subject to the Court's approval, to  
26 make any reasonable extensions of time that might be necessary to carry out any of  
27 the provisions of this Stipulation.  
28

1           **12.21.** Whether or not this Stipulation is approved by the Court and  
2 whether or not the settlement embodied in this Stipulation is consummated, the  
3 Parties and their counsel shall use their best efforts to keep all negotiations,  
4 discussions, acts performed, agreements, drafts, documents signed and proceedings  
5 had in connection with this Stipulation confidential. Notwithstanding the foregoing,  
6 the Parties agree that this Stipulation may be filed publicly as part of any motion  
7 for preliminary or final approval of the settlement.

8           **IN WITNESS WHEREOF**, the Parties have executed this Stipulation by  
9 their undersigned counsel effective as of the date set forth below.

10  
11       Dated: June 14, 2024

**THE ROSEN LAW FIRM, P.A.**

12           By:   
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14           355 South Grand Avenue, Suite 2450  
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\**pro hac vice* application forthcoming

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Dated: June 14, 2024

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*Counsel for Defendant GDS Holdings  
Limited*

# EXHIBIT A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LARRY BERGMANN, Individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

GDS HOLDINGS LIMITED,  
WILLIAM WEI HUANG, and DANIEL  
NEWMAN,

Defendants.

Case No. 2:23-cv-04900-JAK-BFM

Hon. John A. Kronstadt

CLASS ACTION

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, Lead Plaintiff KNA Family LLC and named Plaintiff Larry Bergmann ("Plaintiffs"), individually and on behalf of the Settlement Class, and Defendant GDS Holdings Limited, ("GDS," the "Company," or "Defendant," and together with Plaintiffs, the "Parties"), have entered into the Stipulation of Settlement, dated June 14, 2024 ("Stipulation"), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement of the class action pending before the Court entitled *Bergmann v. GDS Holdings Limited, et al.*, Case No. 2:23-cv-04900 (C.D. Cal.) ("Action"); and the Court having read and considered the Stipulation and the exhibits thereto and submissions made relating thereto, and finding that substantial and sufficient

1 grounds exist for entering this Order; and the Parties having consented to the entry  
2 of this Order;

3 NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_ day of  
4 \_\_\_\_\_, 2024, that:

5 1. Capitalized terms used herein have the meanings set forth in the  
6 Stipulation.

7 2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil  
8 Procedure and for the purposes of the Settlement only, the Action is hereby  
9 preliminarily certified as a class action on behalf of all persons or entities who  
10 purchased the publicly traded American Depositary Shares (“ADS”) of GDS  
11 between July 13, 2020 and April 3, 2023, both dates inclusive. Excluded from the  
12 Settlement Class are: (a) persons who suffered no compensable losses; (b)  
13 Defendant; the present and former officers and directors of GDS at all relevant  
14 times; members of their immediate families and their legal representatives, heirs,  
15 successors, or assigns, and any entity in which Defendant, or any person excluded  
16 under this subsection (b), has or had a majority ownership interest at any time; (c)  
17 GDS’s employee retirement plan(s) and/or benefit plan(s) including their  
18 participants and/or beneficiaries to the extent they purchased GDS ADS through  
19 any such plan(s); and (d) persons or entities who file valid and timely requests for  
20 exclusion from the Settlement Class in accordance with this Order.

21 3. This Court finds, preliminarily and for purposes of this Settlement  
22 only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the  
23 Federal Rules of Civil Procedure have been satisfied in that: (a) the number of  
24 Settlement Class Members is so numerous that joinder of all members of the  
25 Settlement Class is impracticable; (b) there are questions of law and fact common  
26 to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the  
27 Settlement Class they seek to represent; (d) Plaintiffs fairly and adequately  
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1 represent the interests of the Settlement Class; (e) questions of law and fact common  
2 to the Settlement Class predominate over any questions affecting only individual  
3 members of the Settlement Class; and (f) a class action is superior to other available  
4 methods for the fair and efficient adjudication of the Action.

5 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure,  
6 preliminarily and for the purposes of this Settlement only, Plaintiffs are certified as  
7 the class representatives on behalf of the Settlement Class (“Class Representatives”)  
8 and Lead Counsel, previously selected by Lead Plaintiff and approved by this Court,  
9 is hereby appointed as Class Counsel for the Settlement Class (“Class Counsel”).

10 5. The Court finds that (a) the Stipulation resulted from good faith, arm’s-  
11 length negotiations, and (b) the Stipulation is sufficiently fair, reasonable, and  
12 adequate to the Settlement Class Members to warrant providing notice of the  
13 Settlement to Settlement Class Members and holding a Settlement Hearing.

14 6. The Court therefore preliminarily approves the Settlement, subject to  
15 further consideration at a hearing (“Settlement Hearing”) pursuant to Federal Rule  
16 of Civil Procedure 23(e), which is hereby scheduled to be held before the Court on  
17 \_\_\_\_\_, 2024 at \_\_:\_\_ \_\_.m. PT, and may be conducted via telephonic or  
18 videoconference means at the Court’s direction, for the following purposes:

19 (a) to determine finally whether the applicable prerequisites for  
20 class action treatment under Federal Rules of Civil Procedure 23(a) and (b) are  
21 satisfied;

22 (b) to determine finally whether the Settlement is fair, reasonable,  
23 and adequate, and should be approved by the Court;

24 (c) to determine finally whether the Final Judgment, substantially  
25 in the form of Exhibit B to the Stipulation, should be entered, dismissing the Action  
26 on the merits and with prejudice, and to determine whether the release by the  
27 Releasing Parties of the Released Claims against the Released Parties, as set forth  
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1 in the Stipulation, should be ordered, along with a permanent injunction barring  
2 efforts to prosecute or attempt to prosecute any Released Claims extinguished by  
3 the release against any of the Released Parties, as also set forth in the Stipulation;

4 (d) to determine finally whether the proposed Plan of Allocation for  
5 the distribution of the Net Settlement Fund is fair and reasonable and should be  
6 approved by the Court;

7 (e) to consider the application of Class Counsel for an award of  
8 attorneys' fees and expenses and award to Class Representatives;

9 (f) to consider Settlement Class Members' objections to the  
10 Settlement, if any, whether submitted previously in writing or presented orally at  
11 the Settlement Hearing by Settlement Class Members (or by counsel on their  
12 behalf); and

13 (g) to rule upon such other matters as the Court may deem  
14 appropriate.

15 7. The Court reserves the right to adjourn the Settlement Hearing to a  
16 later date and to approve the Settlement with or without modification and with or  
17 without further notice other than entry of an Order on the Court's docket. The Court  
18 may decide to hold the Settlement Hearing telephonically or by other virtual means  
19 without further notice. The Court further reserves the right to enter its Final  
20 Judgment approving the Settlement and dismissing the Action, on the merits and  
21 with prejudice, regardless of whether it has approved the Plan of Allocation or  
22 awarded attorneys' fees and expenses.

23 8. The Court reserves the right to approve the Settlement with such  
24 modifications as may be agreed upon or consented to by the Parties and without  
25 further notice to the Settlement Class where to do so would not impair Settlement  
26 Class Members' rights in a manner inconsistent with Rule 23, other applicable rules  
27 or regulations, or due process of law.  
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1           9.     The Court approves the form, substance, and requirements of (a) the  
2 Long Notice, (b) the Proof of Claim, and (c) the Summary Notice, all of which are  
3 exhibits to the Stipulation.

4           10.    Class Counsel, on behalf of Plaintiffs, has the authority to enter into  
5 the Settlement on behalf of the Settlement Class and has the authority to act on  
6 behalf of the Settlement Class with respect to all acts or consents required by or that  
7 may be given pursuant to the Stipulation or such other acts that are reasonably  
8 necessary to consummate the Settlement.

9           11.    Strategic Claims Services is appointed and approved as the Claims  
10 Administrator to supervise and administer the notice procedure as well as the  
11 processing of claims.

12           12.    The Escrow Agent may, at any time after entry of this Order and  
13 without further approval from Defendant or the Court, disburse at the direction of  
14 Class Counsel up to \$300,000 from the Settlement Fund prior to the Effective Date  
15 to pay reasonable Administrative Costs, provided, however, that in the event the  
16 Stipulation shall be terminated, or be canceled, or is incapable of becoming  
17 effective for any reason, within 10 Business Days after the occurrence of such event,  
18 the Settlement Fund (less taxes already paid and any Administrative Costs which  
19 have already been disbursed) shall be refunded by the Escrow Agent to GDS or  
20 such entity as GDS directs, as applicable, plus accrued interest attributable to that  
21 amount, by check or wire transfer pursuant to written instructions from GDS's  
22 counsel. At the request of GDS, the Escrow Agent or its designee shall apply for  
23 any tax refund owed on the Settlement Fund and pay the proceeds, after deduction  
24 of any fees or expenses incurred in connection with such application(s) for refund,  
25 to GDS or such entity as GDS directs, as applicable, pursuant to written direction  
26 from GDS.



1           13. After the Effective Date, additional amounts may be transferred from  
2 the Settlement Fund to pay for any reasonable and necessary Administrative Costs  
3 without further order of the Court, subject to the conditions set forth in ¶12.

4           14. No later than 15 Business Days after the date of this Order, GDS shall  
5 provide and/or cause its transfer agent to provide to Class Counsel customary  
6 information reasonably available to GDS concerning the identity of Settlement  
7 Class Members (“Settlement Class Information”) in a usable electronic format as is  
8 reasonably available to GDS. This information will be kept confidential and not  
9 used for any purpose other than to provide the notice contemplated by this Order.

10           15. Within 20 Business Days of the entry of this Order, Class Counsel,  
11 through the Claims Administrator, shall email links to the location of the Long  
12 Notice and Proof of Claim, substantially in the form annexed to the Stipulation as  
13 Exhibit A-1 and Exhibit A-2, to Settlement Class Members for whom the Claims  
14 Administrator is able to obtain email addresses.

15           16. Class Counsel, through the Claims Administrator, shall make all  
16 reasonable efforts to give notice to nominees or custodians who held GDS ADS  
17 during the Settlement Class Period as record owners but not as beneficial owners.  
18 Such nominees or custodians shall, within 10 days of receipt of the notice, either:  
19 (i) request links to the location of the Long Notice and Proof of Claim and email  
20 the links to each beneficial owner for whom they are nominee or custodian within  
21 ten days after receipt thereof; or (ii) provide the Claims Administrator with lists of  
22 the names and last known email addresses of such beneficial owners, in which event  
23 the Claims Administrator shall promptly email links to the location of the Long  
24 Notice and Proof of Claim to those beneficial owners for whom a valid email  
25 address is available. Nominees or custodians who email links to the Long Notice  
26 and Proof of Claim shall send a written certification to the Claims Administrator  
27 confirming that the emailing has been made as directed. The Claims Administrator  
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1 shall, if requested, reimburse nominees or custodians out of the Settlement Fund  
2 solely for their reasonable out-of-pocket expenses incurred in providing email  
3 notice to beneficial owners, which expenses would not have been incurred except  
4 for the providing names and email addresses, of up to \$0.02 per email address  
5 provided to the Claims Administrator; or up to \$0.02 per email notice sent, and  
6 subject to further order of this Court with respect to any dispute concerning such  
7 reimbursement.

8 17. Class Counsel shall, at least seven days before the Final Approval  
9 Hearing, serve upon counsel for Defendant and file with the Court proof of the  
10 emailing of the links to the location of the Long Notice and Proof of Claim as  
11 required by this Order.

12 18. Within 16 days of the entry of this Order, Class Counsel, through the  
13 Claims Administrator, shall cause the Stipulation and its exhibits, this Order, and a  
14 copy of the Long Notice and Proof of Claim to be posted on the Claims  
15 Administrator's website.

16 19. Class Counsel, through the Claims Administrator, shall cause the  
17 Summary Notice to be published electronically twice on the *GlobeNewswire* and in  
18 print once in the *Investor's Business Daily* within 10 days after emailing links to  
19 the location of the Long Notice and Proof of Claim. Class Counsel shall, at least  
20 seven days before the Settlement Hearing, serve upon counsel for Defendant and  
21 file with the Court proof of publication of the Summary Notice.

22 20. The forms and methods set forth herein of notifying the Settlement  
23 Class Members of the Settlement and its terms and conditions meet the  
24 requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and  
25 Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7),  
26 as amended by the Private Securities Litigation Reform Act of 1995; constitute the  
27 best notice practicable under the circumstances; and constitute due and sufficient  
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1 notice to all persons and entities entitled thereto. No Settlement Class Member will  
2 be relieved from the terms and conditions of the Settlement, including the releases  
3 provided for therein, based upon the contention or proof that such Settlement Class  
4 Member failed to receive actual or adequate notice.

5 21. In order to be entitled to participate in recovery from the Net  
6 Settlement Fund after the Effective Date, each Settlement Class Member shall take  
7 the following action and be subject to the following conditions:

8 (a) A properly completed and executed Proof of Claim must be  
9 submitted to the Claims Administrator: (a) electronically through the Claims  
10 Administrator's website, [www.strategicclaims.net/GDS](http://www.strategicclaims.net/GDS), by 11:59 p.m. EST  
11 on \_\_\_\_\_, 2024; or (b) at the Post Office Box indicated in the Notice,  
12 postmarked no later than \_\_\_\_\_, 2024 (30 days prior to the Final  
13 Approval Hearing). Such deadline may be further extended by Order of the  
14 Court. Each Proof of Claim shall be deemed to have been submitted when:  
15 (a) the claim receives a confirmation notice from the Claims Administrator  
16 for electronic submissions; or (b) legibly postmarked (if properly addressed  
17 and mailed by first class mail) provided such Proof of Claim is actually sent  
18 on or before the claims filing deadline. Any Proof of Claim submitted in any  
19 other manner shall be deemed to have been submitted when it was actually  
20 received by the Claims Administrator at the address designated in the Notice.

21 (b) The Proof of Claim submitted by each Settlement Class Member  
22 must satisfy the following conditions: (i) it must be properly completed,  
23 signed and submitted in a timely manner in accordance with the provisions  
24 of the preceding subparagraph; (ii) it must be accompanied by adequate  
25 supporting documentation for the transactions reported therein, in the form  
26 of broker confirmation slips, broker account statements, an authorized  
27 statement from the broker containing the transactional information found in  
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1 a broker confirmation slip, or such other documentation as is deemed  
2 adequate by the Claims Administrator or Class Counsel; (iii) if the person  
3 executing the Proof of Claim is acting in a representative capacity, a  
4 certification of their current authority to act on behalf of the Settlement Class  
5 Member must be provided with the Proof of Claim; and (iv) the Proof of  
6 Claim must be complete and contain no material deletions or modifications  
7 of any of the printed matter contained therein and must be signed under  
8 penalty of perjury.

9 (c) Once the Claims Administrator has considered a timely  
10 submitted Proof of Claim, it shall determine whether such claim is valid,  
11 deficient, or rejected. For each claim determined to be either deficient or  
12 rejected, the Claims Administrator shall send a deficiency letter or rejection  
13 letter as appropriate, describing the basis on which the claim was so  
14 determined. Persons who timely submit a Proof of Claim that is deficient or  
15 otherwise rejected shall be afforded a reasonable time (at least 10 days) to  
16 cure such deficiency, if it shall appear that such deficiency may be cured. If  
17 any Claimant whose claim has been rejected in whole or in part wishes to  
18 contest such rejection, the Claimant must, within 10 days after the date of  
19 mailing of the notice, serve upon the Claims Administrator a notice and  
20 statement of reasons indicating the Claimant's ground for contesting the  
21 rejection along with any supporting documentation, and requesting a review  
22 thereof by the Court. If an issue concerning a claim cannot be otherwise  
23 resolved, Class Counsel shall thereafter present the request for review to the  
24 Court.

25 (d) As part of the Proof of Claim, each Settlement Class Member  
26 shall submit to the jurisdiction of the Court with respect to the claim  
27 submitted, and shall, upon the Effective Date, release all claims as provided  
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1 in the Stipulation. No discovery shall be allowed on the merits of the Action  
2 or the Settlement in connection with processing of the Proof of Claim, nor  
3 shall any discovery from or of any Defendant be allowed on any topic.

4 22. All Settlement Class Members who do not submit valid and timely  
5 Proofs of Claim will be forever barred from receiving any payments from the Net  
6 Settlement Fund but will in all other respects be subject to and bound by the  
7 provisions of the Stipulation and the Judgment, if entered.

8 23. Settlement Class Members shall be bound by all determinations and  
9 judgments in the Action whether favorable or unfavorable, unless such Persons  
10 request exclusion from the Settlement Class in a timely and proper manner, as  
11 hereinafter provided. A Settlement Class Member wishing to make such request for  
12 exclusion from the Settlement shall mail it, in written form, by first class mail,  
13 postage prepaid, or otherwise deliver it, so that it is received no later than  
14 \_\_\_\_\_, 2024 (21 days prior to the Final Approval Hearing) (“Exclusion  
15 Deadline”), to the address listed in the Long Notice. In order to be valid, such  
16 request for exclusion must (A) indicate the name, address, phone number and e-  
17 mail contact information (if any) of the Person seeking exclusion, and state that the  
18 sender specifically “requests to be excluded from the Settlement of *Bergmann v.*  
19 *GDS Holdings Limited, et al.*, Case No. 2:23-cv-04900 (C.D. Cal.)” and (B) state  
20 the date, number of shares, and dollar amount of each purchase of GDS ADS and,  
21 if applicable, each sale during the Settlement Class Period, as well as the number  
22 of GDS ADS held by the Person as of the opening and closing of the Settlement  
23 Class Period. In order to be valid, such request for exclusion must be submitted with  
24 documentary proof: (i) of each purchase and, if applicable, sale transaction of GDS  
25 ADS during the Settlement Class Period; and (ii) demonstrating the Person’s status  
26 as a beneficial owner of the GDS ADS. Any such request for exclusion must be  
27 signed and submitted by the beneficial owner under penalty of perjury. The request  
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1 for exclusion shall not be effective unless it provides the required information, is  
2 legible, and is made within the time stated above, or the exclusion is otherwise  
3 accepted by the Court. Class Counsel may contact any Person filing a request for  
4 exclusion, or their attorney if one is designated, to discuss the request for exclusion.

5 24. The Claims Administrator shall provide all requests for exclusion and  
6 supporting documentation submitted therewith (including untimely requests and  
7 revocations of requests) to counsel for the Parties as soon as possible and no later  
8 than the Exclusion Deadline or upon the receipt thereof (if later than the Exclusion  
9 Deadline). The Settlement Class will not include any Person who delivers a valid  
10 and timely request for exclusion that has not been thereafter revoked.

11 25. Any Person that submits a request for exclusion may thereafter submit  
12 to the Claims Administrator a written revocation of that request for exclusion,  
13 provided that it is received no later than two Business Days before the Final  
14 Approval Hearing, in which event that Person will be included in the Settlement  
15 Class.

16 26. All Persons who submit a valid, timely and unrevoked request for  
17 exclusion will be forever barred from receiving any payments from the Net  
18 Settlement Fund.

19 27. The Court will consider comments and/or objections to the Settlement,  
20 the Plan of Allocation, or the Fee and Expense Application, provided, however, that  
21 no Settlement Class Member or other Person shall be heard or entitled to contest  
22 the approval of the terms and conditions of the proposed Settlement, the Plan of  
23 Allocation, or the Fee and Expense Application, or any other order relating thereto,  
24 unless, at least 21 days prior to the Settlement Hearing Date, that Person has: (a)  
25 filed said objections, papers, and briefs, and proof of service upon counsel identified  
26 below with the Clerk of the Court, U.S. District Court, Central District of California,  
27 First Street Federal Courthouse, 350 W. First Street, Suite 4311, Los Angeles,  
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California 90012; and (b) served copies of any objections, papers and briefs on each of the following counsel:

CLASS COUNSEL:  
THE ROSEN LAW FIRM, P.A.  
Phillip Kim  
275 Madison Avenue, 40<sup>th</sup> Floor  
New York, NY 10016

COUNSEL FOR DEFENDANT:  
SIMPSON THACHER & BARTLETT  
LLP  
Alan C. Turner  
425 Lexington Avenue  
New York, New York 10017

28. To be valid, any such objection must contain the Settlement Class Member's: (1) name, address, and 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 known to the Settlement Class Member and/or their counsel; (4) the name, address and telephone number of all counsel who represent the Settlement Class Member, including former or current counsel who may be entitled to compensation in connection with the objection; and (5) the number of times the Settlement Class Member and/or their counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, 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. Attendance at the Final Approval Hearing is not necessary, but Persons wishing to be heard orally in opposition to the approval of the Stipulation, the Plan of Allocation, and/or the Fee and Expense Application are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and instructions pertinent to the submission of a written objection) that they intend to appear at the Final Approval Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Final Approval Hearing. Settlement Class



1 Members do not need to appear at the Final Approval Hearing or take any other  
2 action to indicate their approval.

3 29. Any Settlement Class Member who does not object in the manner  
4 prescribed above shall be deemed to have waived all such objections and shall  
5 forever be foreclosed from making any objection to the fairness, adequacy, or  
6 reasonableness of the Settlement, the Judgment to be entered approving the  
7 Settlement, the Plan of Allocation, and/or the Fee and Expense Application, unless  
8 otherwise ordered by the Court; shall be bound by all the terms and provisions of  
9 the Stipulation and by all proceedings, orders and judgments in the Action; and shall  
10 also be foreclosed from appealing from any judgment or order entered in this  
11 Action.

12 30. All papers in support of the Settlement, the Plan of Allocation, and/or  
13 the Fee and Expense Application shall be filed and served no later than 28 days  
14 before the Final Approval Hearing.

15 31. Any submissions filed in response to any objections or in further  
16 support of the Settlement, the Plan of Allocation, and/or the Fee and Expense  
17 Application shall be filed no later than 14 days prior to the Final Approval Hearing.

18 32. Defendant, its counsel, and other Released Parties shall have no  
19 responsibility for, or liability with respect to, the Plan of Allocation or any  
20 application for attorneys' fees and interest, or expenses or payments to the Class  
21 Representatives submitted by Class Counsel, and such matters will be considered  
22 separately from the fairness, reasonableness, and adequacy of the Settlement.

23 33. Pending final determination of whether the Settlement should be  
24 approved, all Releasing Parties shall be enjoined from commencing, prosecuting,  
25 or attempting to prosecute any Released Claims against any Released Party in any  
26 court or tribunal or proceeding. Unless and until the Stipulation is cancelled and  
27 terminated pursuant to the Stipulation, all proceedings in the Action, other than such  
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1 proceedings as may be necessary to carry out the terms and conditions of the  
2 Stipulation, are hereby stayed and suspended until further order of the Court.

3 34. All funds held by the Escrow Agent shall be deemed and considered  
4 to be in the custody of the Court, and shall remain subject to the jurisdiction of the  
5 Court, until such time as such funds shall be distributed or returned pursuant to the  
6 Stipulation and Plan of Allocation and/or further order(s) of the Court.

7 35. Neither the Stipulation, nor any of its terms or provisions, nor any of  
8 the negotiations or proceedings connected with it, shall be construed as an  
9 admission or concession by Defendant, its counsel, or any of the other Released  
10 Parties of the truth of any of the allegations in the Action, or of any liability, fault,  
11 or wrongdoing of any kind and shall not be construed as, or deemed to be evidence  
12 of, or an admission or concession that Class Representatives or any Settlement Class  
13 Members directly have suffered any damages, harm, or loss. Further, neither the  
14 Stipulation, nor any of its terms or provisions, nor any of the negotiations or  
15 proceedings connected with it, nor this Order shall be construed as an admission or  
16 concession by Class Representatives of the validity of any factual or legal defense  
17 or of the infirmity of any of the claims or facts alleged in the Action.

18 36. In the event the Settlement is not consummated in accordance with the  
19 terms of the Stipulation, then the Stipulation and this Order (including any  
20 amendment(s) thereof, and except as expressly provided in the Stipulation or by  
21 order of the Court) shall be null and void, of no further force or effect, and without  
22 prejudice to any Party, and may not be introduced as evidence or used in any action  
23 or proceeding by any Person against the Parties or the Released Parties, and each  
24 Party shall be restored to his, her, or its respective litigation positions as they existed  
25 prior to June 17, 2024, pursuant to the terms of the Stipulation.

26 37. The Court retains exclusive jurisdiction over the Action to consider all  
27 further matters arising out of, or relating to, the Stipulation, including by way of  
28

1 illustration and not limitation, any dispute concerning any Proof of Claim submitted  
2 and any future requests by one or more of the Parties that the Judgment, the releases  
3 and/or the permanent injunction set forth in the Stipulation be enforced.  
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5  
6 Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
7 HON. JOHN A. KRONSTADT  
8 UNITED STATES DISTRICT JUDGE  
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# EXHIBIT A-1

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LARRY BERGMANN, Individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

GDS HOLDINGS LIMITED,  
WILLIAM WEI HUANG, and DANIEL  
NEWMAN,

Defendants.

Case No. 2:23-cv-04900-JAK-BFM

Hon. John A. Kronstadt

**NOTICE OF PENDENCY AND PROPOSED  
SETTLEMENT OF CLASS ACTION**

If you purchased GDS Holdings Limited (“GDS”) American Depositary Shares (“ADS”) during the period between July 13, 2020 and April 3, 2023, both dates inclusive (“Settlement Class Period”), you could get a payment from a proposed class action settlement (“Settlement”).

*Under law, a federal court has authorized this Notice. This is not attorney advertising.*

- If approved by the Court, the Settlement will provide \$3,000,000 (“Settlement Amount”), plus interest as it accrues, minus attorneys’ fees, costs, administrative expenses, and net of any taxes on interest, to pay claims of investors who purchased GDS ADS during the Settlement Class Period.
- The approximate recovery, after deduction of attorneys’ fees and expenses approved by the Court, is an average of \$0.04 per damaged GDS ADS. This estimate is based on the assumptions set forth in the following two paragraphs. Your actual recovery, if any, will depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold GDS ADS, the purchase and sale prices, and the total number and amount of claims filed.
- Attorneys for Plaintiffs (“Lead Counsel”) intend to ask the Court to award them fees of up to 30% of the Settlement Amount, or \$900,000, reimbursement of litigation expenses of no more than \$55,000, and an award to Plaintiffs not to exceed \$6,000 in total. Collectively, the attorneys’ fees and expenses and award to Plaintiffs are estimated to average \$0.02 per damaged GDS ADS. If approved by the Court, these amounts will be paid from the Settlement Fund.
- The Settlement represents an estimated average recovery of \$0.06 per damaged GDS ADS for the approximately 49.4 million damaged ADS during the Settlement Class Period. ADS may have been traded more than once during the Settlement Class Period. This estimate solely reflects the average recovery per damaged share of GDS ADS. The indicated average recovery per share will be the total average recovery for all purchasers of that share. This is not an estimate of the actual recovery per share you should expect. Your actual recovery will

depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold ADS GDS, and the total number of claims filed.

- The Settlement resolves the Action concerning whether Defendants GDS, William Wei Huang, and Daniel Newman violated the federal securities laws by making misrepresentations and/or omissions of material fact in various filings with the U.S. Securities and Exchange Commission or in other public statements to investors. Defendant GDS denies each and every claim and contention alleged in the Action and denies any misconduct or wrongdoing whatsoever, including by any of GDS's officers, directors, or employees.
- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on this claim. Therefore, you should read this Notice carefully.

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<b>SUBMIT A CLAIM FORM NO LATER THAN _____, 2024</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF NO LATER THAN _____, 2024</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendants about the legal claims in this case.
<b>OBJECT NO LATER THAN _____, 2024</b>	Write to the Court and explain why you object to the Settlement.
<b>GO TO A HEARING ON _____, 2024</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights.

## INQUIRIES

**Please do not contact the Court regarding this Notice.** All inquiries concerning this Notice, the Proof of Claim and Release Form ("Proof of Claim"), or any other questions by Settlement Class Members should be directed to:



1 2 3 4 5 6 7 8	<p>GDS Holdings Limited Securities Litigation c/o Strategic Claims Services P.O. Box 230 600 N. Jackson St., Ste. 205 Media, PA 19063 Tel: 866-274-4004 Fax: 610-565-7985 Email: info@strategicclaims.net</p>	<p>OR</p>	<p>Phillip Kim THE ROSEN LAW FIRM, P.A. 275 Madison Avenue, 40<sup>th</sup> Floor New York, NY 10016 Tel: 212-686-1060 Fax: 212-202-3827 Email: philkim@rosenlegal.com</p>
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### DEFINITIONS

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation of Settlement, dated June 14, 2024 (“Stipulation”).

## COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT

### 1. Why did I get this Notice?

You or someone in your family may have purchased GDS ADS between July 13, 2020 and April 3, 2023, both dates inclusive.

### 2. What is this lawsuit about?

The case is known as *Bergmann v. GDS Holdings Limited, et al.*, Case No. 2:23-cv-04900-JAK-BFM (C.D. Cal.) (“Action”). The Action is pending in the United States District Court for the Central District of California.

The Action involves Plaintiffs’ allegations that Defendants violated the federal securities laws by making false and misleading statements in GDS’s filings with the U.S. Securities and Exchange Commission or other public statements to investors concerning, among other things, certain variable prepaid forward contracts entered into by GDS’s CEO, William Wei Huang. The Complaint asserts that the alleged misrepresentations and omissions artificially inflated the price of GDS ADS, and that the price of the ADS dropped in response to certain subsequent disclosures. Defendant GDS has denied and continues to deny the allegations in the Complaint and all charges of wrongdoing or liability against GDS or any of its officers, directors, or employees. The Settlement shall in no event be construed as, or deemed to be evidence of, an admission or concession by Defendants with respect to any claim or any fault or wrongdoing or damage to the Settlement Class Members or any other person. The Settlement resolves all of the claims in the Action, as well as certain other claims or potential claims.

### 3. Why is this a class action?

In a class action, one or more persons and/or entities, called plaintiffs, sue on behalf of all persons and/or entities who have similar claims. All of these persons and/or entities are referred to collectively as a class, and these individual persons and/or entities are known as class members. One court resolves all of the issues for all class members, except for those class members who exclude themselves from the class.

1 **4. Why is there a Settlement?**

2 Plaintiffs and Defendant GDS do not agree regarding the merits of Plaintiffs'  
3 allegations and Defendant's defenses with respect to liability or the amount of  
4 damages per share, if any, that would be recoverable if Plaintiffs were to prevail  
5 at trial on each claim. The issues on which Plaintiffs and Defendant disagree  
6 include: (1) whether Defendants made any statements or omissions that were  
7 materially false or misleading or otherwise actionable under federal securities  
8 law; (2) whether any Defendants acted with scienter; (3) to the extent any  
9 statements or omissions were materially false or misleading, whether any  
subsequent disclosures corrected any prior false or misleading statements or  
omissions by Defendants; (4) the causes of the loss in the value of the stock; and  
(5) the amount of damages, if any, that could be recovered at trial.

10 This matter has not gone to trial. Instead, Plaintiffs and Defendant GDS have  
11 agreed to settle the case. Plaintiffs and Lead Counsel believe the Settlement is  
12 best for all Settlement Class Members because of the risks associated with  
13 continued litigation and the nature of the defenses Defendant GDS would raise.  
14 Among the reasons that Plaintiffs and Lead Counsel believe the Settlement is  
15 fair is the fact that there is uncertainty about whether they will prevail on  
16 Defendant GDS's motion to dismiss, whether they would be able to prevail on a  
17 motion for class certification, whether they would be able to prove their claims  
18 at trial, and whether they will be able to prove that the alleged misstatements and  
19 omissions actually caused the Settlement Class any damages, and the amount of  
20 damages, if any.

21 Even if Plaintiffs were to win at trial, and also prevail on any appeal brought by  
22 Defendant GDS, Plaintiffs might not be able to collect some, or all, of any  
23 judgment the class would be awarded. Moreover, litigation of this type is usually  
24 expensive, and it appears that, even if Plaintiffs' allegations were eventually  
25 found to be true, the total amount of damages to which Settlement Class  
26 Members would be entitled could be substantially reduced.

27 **5. How do I know if I am part of the Settlement?**

28 The Settlement Class consists of those Persons who purchased GDS ADS  
between July 13, 2020 and April 3, 2023, both dates inclusive.

1 **6. Are there exceptions to being included?**

2 Yes. Excluded from the Settlement Class are: (a) persons who suffered no  
3 compensable losses; (b) Defendant GDS; the present and former officers and  
4 directors of GDS at all relevant times; members of their immediate families and  
5 their legal representatives, heirs, successors, or assigns, and any entity in which  
6 Defendant, or any person excluded under this subsection (b), has or had a  
7 majority ownership interest at any time; and (c) GDS's employee retirement  
8 plan(s) and/or benefit plan(s) including their participants and/or beneficiaries to  
9 the extent they purchased GDS ADS through any such plan(s). Also excluded  
10 from the Settlement Class are those persons or entities who file valid and timely  
11 requests for exclusion from the Settlement Class.

12 **7. I am still not sure whether I am included.**

13 If you are still not sure whether you are included, you can ask for free help. For  
14 more information, you can contact the Claims Administrator, Strategic Claims  
15 Services, by phone at (866) 274-4004 or by facsimile at (610) 565-7985, visit  
16 the website [www.strategicclaims.net/GDS](http://www.strategicclaims.net/GDS), or fill out and return the Proof of  
17 Claim and Release Form described in Question 9, to see if you qualify.

18 **8. What does the Settlement provide?**

19 **a. What is the Settlement Fund?**

20 The proposed Settlement provides that Defendant GDS pay \$3,000,000 into a  
21 Settlement Fund. The Settlement is subject to Court approval. Also, subject to  
22 the Court's approval, a portion of the Settlement Fund will be used to pay  
23 attorneys' fees and reasonable litigation expenses to Lead Counsel and any  
24 Award to Plaintiffs. A portion of the Settlement Fund also will be used to pay  
25 taxes due on interest earned by the Settlement Fund, if necessary, and the costs  
26 of the claims administration, including the costs of printing and mailing this  
27 Notice and the costs of publishing notice. After the foregoing deductions from  
28 the Settlement Fund have been made, the amount remaining ("Net Settlement  
Fund") will be distributed according to the Plan of Allocation to be approved by  
the Court to Settlement Class Members who submit timely, valid Proofs of  
Claim.

1       **b.      What can you expect to receive under the proposed Settlement?**

2       Your share of the Net Settlement Fund will or may depend on: (i) the number of  
3       claims filed; (ii) the dates you purchased and sold GDS ADS; (iii) the prices of  
4       your purchases and sales; (iv) the amount of administrative costs, including the  
5       costs of notice; and (v) the amounts awarded by the Court to Lead Counsel for  
6       attorneys' fees, costs, and expenses and any awards to Plaintiffs.

7       The Claims Administrator will determine each Settlement Class Member's *pro*  
8       *rata* share of the Net Settlement Fund based upon each Settlement Class  
9       Member's valid "Recognized Loss." The Recognized Loss formula is not  
10      intended to be an estimate of the amount that a Settlement Class Member might  
11      have been able to recover after a trial; it also is not an estimate of the amount  
12      that will be paid to Authorized Claimants pursuant to the Settlement. The  
13      Recognized Loss formula is the basis upon which the Net Settlement Fund will  
14      be proportionately allocated to the Settlement Class Members with valid claims.

15      The Net Settlement Fund will be distributed to Settlement Class Members who  
16      submit a Proof of Claim and whose claims for recovery are allowed by the  
17      Claims Administrator pursuant to the terms of the Stipulation or by order of the  
18      Court under the below Plan of Allocation ("Authorized Claimants"), which  
19      reflects Plaintiffs' contention that because of the alleged misrepresentations  
20      made by Defendants, the prices of GDS ADS were artificially inflated during  
21      the relevant period and that certain subsequent disclosures caused changes in the  
22      inflated price of GDS ADS. Defendant GDS has denied these allegations.

23                               **PROPOSED PLAN OF ALLOCATION**

24      The Plan of Allocation is a matter separate and apart from the proposed  
25      Settlement, and any decision by the Court concerning the Plan of Allocation shall  
26      not affect the validity or finality of the proposed Settlement. The Court may  
27      approve the Plan of Allocation with or without modifications agreed to among  
28      the Parties, or another plan of allocation, without further notice to Class  
29      Members. Any orders regarding a modification of the Plan of Allocation will be  
30      posted to the Claims Administrator's website: [www.strategicclaims.net/GDS](http://www.strategicclaims.net/GDS).

31      To the extent there are sufficient funds in the Net Settlement Fund, each  
32      Authorized Claimant will receive an amount equal to the Authorized Claimant's  
33      Recognized Loss and subject to the provisions in the preceding paragraph. If,  
34      however, the amount in the Net Settlement Fund is not sufficient to permit

1 payment of the total Recognized Loss of each Authorized Claimant, then each  
2 Authorized Claimant shall be paid the percentage of the Net Settlement Fund  
3 that each Authorized Claimant's Recognized Loss bears to the total Recognized  
4 Losses of all Authorized Claimants and subject to the provisions in the preceding  
5 paragraph (*i.e.*, "*pro rata* share"). No distribution will be made on a claim where  
6 the potential distribution amount is less than ten dollars (\$10.00) in cash.

7 If any funds remain in the Net Settlement Fund by reason of uncashed checks,  
8 or otherwise, after the Claims Administrator has made reasonable and diligent  
9 efforts to have Authorized Claimants who are entitled to participate in the  
10 distribution of the Net Settlement Fund cash their distribution checks, then any  
11 balance remaining in the Net Settlement Fund six months after the initial  
12 distribution of such funds shall be used: (i) first, to pay any amounts mistakenly  
13 omitted from the initial distribution to Authorized Claimants; (ii) second, to pay  
14 any additional Administrative Costs incurred in administering the Settlement;  
15 and (iii) finally, to make a second distribution to Authorized Claimants who  
16 cashed their checks from the initial distribution and who would receive at least  
17 \$10.00 from such second distribution, after payment of the estimated costs or  
18 fees to be incurred in administering the Net Settlement Fund and in making this  
19 second distribution, if such second distribution is economically feasible. Six  
20 months after such second distribution, if undertaken, or if such second  
21 distribution is not undertaken, any funds shall remain in the Net Settlement Fund  
22 after the Claims Administrator has made reasonable and diligent efforts to have  
23 Authorized Claimants who are entitled to participate in this Settlement cash their  
24 checks, any funds remaining in the Net Settlement Fund shall be donated to a  
25 non-profit charitable organization(s) selected by Lead Counsel.

26 **THE BASIS FOR CALCULATING YOUR RECOGNIZED LOSS:**

27 Each Authorized Claimant shall be allocated a *pro rata* share of the Net  
28 Settlement Fund based on their Recognized Loss as compared to the total Recognized  
Losses of all Authorized Claimants. Recognized Losses will be calculated as follows:

Recognized Loss for the Company's ADS purchased during the Settlement Class  
Period shall be calculated as follows:

- A. For shares purchased and sold during the Settlement Class Period,  
the Recognized Loss per share shall be zero.



B. For shares purchased during the Settlement Class Period and sold on April 4, 2023, the Recognized Loss shall be the *lesser* of: (1) \$.66 per share<sup>1</sup>; or (2) the difference between the purchase price per share minus the sales price per share.

C. For shares purchased during the Settlement Class Period and sold during the period April 5, 2023 through July 3, 2023, inclusive, the Recognized Loss shall be the *lesser* of: (1) \$1.01 per share; or (2) the difference between the purchase price per share and the average closing ADS price as of date of sale provided in Table B below.

D. For shares purchased during the Settlement Class Period and retained as of the close of trading on July 3, 2023, the Recognized Loss shall be the *lesser* of: (1) the \$1.01 inflation per share; or (2) the purchase price per share minus \$13.10 per share<sup>2</sup>.

INFLATION TABLE A	
ADS Purchased During the Settlement Class Period	
<u>Period</u>	<u>Inflation</u>
July 13, 2020 to April 3, 2023, inclusive	\$1.01 per share
April 4, 2023	\$.35 per share
After April 4, 2023	\$0.00 per share

**Table B**

<u>Date</u>	<u>Closing Price</u>	<u>Average Closing Price</u>	<u>Date</u>	<u>Closing Price</u>	<u>Average Closing Price</u>
4/5/2023	\$17.24	\$17.24	5/19/2023		
4/6/2023	\$17.84	\$17.54	5/22/2023	\$10.71	\$14.54
4/10/2023	\$17.27	\$17.45	5/23/2023	\$10.50	\$14.42
4/11/2023	\$17.93	\$17.57	5/24/2023	\$10.29	\$14.30
4/12/2023	\$16.46	\$17.35	5/25/2023	\$10.21	\$14.19
4/13/2023	\$16.93	\$17.28	5/26/2023	\$10.16	\$14.08

<sup>1</sup> As noted in Table A above, \$.66 per share inflation represents the difference between the \$1.01 inflation per share during the Settlement Class Period and the \$.35 inflation per share on April 4, 2023.

<sup>2</sup> Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated.” \$13.10 per share was the mean (average) daily closing trading price of the Company’s ADS during the 90-day period beginning on April 5, 2023 through and including July 3, 2023.



1	4/14/2023	\$16.62	\$17.18	5/30/2023	\$10.00	\$13.97
2	4/17/2023	\$17.16	\$17.18	5/31/2023	\$9.76	\$13.86
3	4/18/2023	\$17.66	\$17.23	6/1/2023	\$10.34	\$13.77
4	4/19/2023	\$16.85	\$17.20	6/2/2023	\$11.06	\$13.71
5	4/20/2023	\$16.36	\$17.12	6/5/2023	\$10.84	\$13.64
6	4/21/2023	\$16.09	\$17.03	6/6/2023	\$11.19	\$13.58
7	4/24/2023	\$15.70	\$16.93	6/7/2023	\$11.53	\$13.54
8	4/25/2023	\$14.81	\$16.78	6/8/2023	\$11.40	\$13.49
9	4/26/2023	\$14.91	\$16.66	6/9/2023	\$11.35	\$13.44
10	4/27/2023	\$15.51	\$16.58	6/12/2023	\$11.97	\$13.41
11	4/28/2023	\$15.53	\$16.52	6/13/2023	\$13.01	\$13.40
12	5/1/2023	\$15.41	\$16.46	6/14/2023	\$13.47	\$13.40
13	5/2/2023	\$13.80	\$16.32	6/15/2023	\$13.60	\$13.41
14	5/3/2023	\$13.72	\$16.19	6/16/2023	\$13.34	\$13.41
15	5/4/2023	\$14.11	\$16.09	6/20/2023	\$12.39	\$13.39
16	5/5/2023	\$14.74	\$16.03	6/21/2023	\$11.94	\$13.36
17	5/8/2023	\$14.74	\$15.97	6/22/2023	\$11.87	\$13.33
18	5/9/2023	\$13.75	\$15.88	6/23/2023	\$11.38	\$13.30
19	5/10/2023	\$12.87	\$15.76	6/26/2023	\$11.42	\$13.26
20	5/11/2023	\$11.47	\$15.60	6/27/2023	\$11.72	\$13.24
21	5/12/2023	\$11.01	\$15.43	6/28/2023	\$11.25	\$13.20
22	5/15/2023	\$11.57	\$15.29	6/29/2023	\$10.92	\$13.16
23	5/16/2023	\$10.40	\$15.12	6/30/2023	\$10.99	\$13.13
24	5/17/2023	\$10.22	\$14.96	7/3/2023	\$11.35	\$13.10
25	5/18/2023	\$10.20	\$14.80			

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For purposes of calculating your Recognized Loss, the date of purchase or sale is the “contract” or “trade” date and not the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of GDS ADS shall not be deemed a purchase or sale of shares for the calculation of an Authorized Claimant’s Recognized Loss. The covering purchase of a short sale is not an eligible purchase.

For purposes of calculating your Recognized Loss, all purchases and sales shall be matched on a First In First Out (“FIFO”) basis in chronological order. Therefore, on the Proof of Claim enclosed with this Notice, you must provide all your purchases of GDS ADS during the period from July 13, 2020 through and including July 3, 2023.

1 Payment pursuant to the Plan of Allocation approved by the Court shall be  
2 conclusive against all Claimants. No person shall have any claim against  
3 Defendant GDS, GDS's Counsel, Plaintiffs, Lead Counsel or the Claims  
4 Administrator or other agent designated by Lead Counsel based on the  
5 distributions made substantially in accordance with the Stipulation and the  
6 Settlement contained therein, the Plan of Allocation, or further orders of the  
7 Court. Each Claimant shall be deemed to have submitted to the jurisdiction of  
8 the Court with respect to the Claimant's Proof of Claim. All persons involved in  
9 the review, verification, calculation, tabulation, or any other aspect of the  
10 processing of the claims submitted in connection with the Settlement, or  
11 otherwise involved in the administration or taxation of the Settlement Fund or  
12 the Net Settlement Fund shall be released and discharged from any and all claims  
13 arising out of such involvement, and all Settlement Class Members, whether or  
14 not they are to receive payment from the Net Settlement Fund, will be barred  
15 from making any further claim against the Net Settlement Fund beyond the  
16 amount allocated to them as provided in any distribution orders entered by the  
17 Court.

13 **9. How can I get a payment?**

14 To qualify for a payment, you must send in a form entitled "Proof of Claim and  
15 Release Form." This form is attached to this Notice. You may also obtain this  
16 form on the Settlement website at [www.strategicclaims.net/GDS](http://www.strategicclaims.net/GDS). Read the  
17 instructions carefully, fill out the form, sign it in the location indicated. The  
18 Proof of Claim and Release Form may be completed in two ways: (1) by  
19 completing and submitting it electronically at [www.strategicclaims.net/GDS](http://www.strategicclaims.net/GDS) by  
20 11:59 p.m. EST on \_\_\_\_\_, 2024; or (2) by mailing the claim form together  
21 with all documentation requested in the form, postmarked no later than  
22 \_\_\_\_\_, 2024, to the Claims Administrator at:

21 GDS Holdings Limited Securities Litigation  
22 c/o Strategic Claims Services  
23 600 N. Jackson St., Ste. 205  
24 P.O. Box 230  
25 Media, PA 19063  
26 Fax: 610-565-7985  
27 info@strategicclaims.net  
28

1 The Claims Administrator will process your claim and determine whether you  
2 are an Authorized Claimant.

3 **10. What am I giving up to get a payment or stay in the Class?**

4 Unless you exclude yourself from the Settlement Class by the \_\_\_\_\_, 2024  
5 deadline, you will remain a member of the Settlement Class and will be bound  
6 by the release of claims against the Defendants and other Released Parties if the  
7 Settlement is approved. That means you and all other Settlement Class Members  
8 and each of their respective parent entities, associates, affiliates, subsidiaries,  
9 predecessors, successors, assigns, attorneys, immediate family members, heirs,  
10 representatives, administrators, executors, devisees, legatees, and estates will  
11 release (agreeing never to sue, continue to sue, or be part of any other lawsuit)  
12 as against the Defendants and other Released Parties any and all claims which  
13 arise out of, are based upon or relate in any way to the purchase of GDS ADS  
14 during the Settlement Class Period. It means that all of the Court's orders will  
15 apply to you and legally bind you. That means you will accept a share of the Net  
16 Settlement Fund as the sole compensation for any losses you suffered in the  
17 purchase or sale of GDS ADS during the Settlement Class Period. The specific  
18 terms of the release are included in the Stipulation.

16 **11. How do I exclude myself from the Settlement?**

17 If you do not want to receive a payment from this Settlement, and you want to  
18 keep any right you may have to sue or continue to sue Defendants or other  
19 Released Parties on your own about the claims being released in this Settlement,  
20 then you must take steps to exclude yourself from the Settlement. To exclude  
21 yourself from the Settlement, you must mail a letter that (A) clearly indicates  
22 your name, address, phone number and e-mail contact information (if any) and  
23 states that you "request to be excluded from the Settlement Class in *Bergmann*  
24 *v. GDS Holdings Limited, et al.*, Case No. 2:23-cv-04900 (C.D. Cal.);" (B) states  
25 the date, number of shares and dollar amount of each GDS ADS purchase during  
26 the Settlement Class Period, and any sale transactions; and (C) states the number  
27 of shares of GDS ADS held by you as of the opening of trading on July 13, 2020  
28 and the close of trading on June 30, 2023. To be valid, such request for exclusion  
must be submitted with documentary proof (i) of each purchase and, if  
applicable, sale transaction of GDS ADS during the Settlement Class Period, and  
(ii) demonstrating your status as a beneficial owner of the GDS ADS. Any such  
request for exclusion must be signed and submitted by you, as the beneficial

owner, under penalty of perjury. You must mail your exclusion request, to be received no later than \_\_\_\_\_, 2024, to the Claims Administrator at the following address:

GDS Holdings Limited Securities Litigation  
c/o Strategic Claims Services  
600 N. Jackson St., Ste. 205  
P.O. Box 230  
Media, PA 19063

You cannot exclude yourself by telephone or by e-mail.

If you properly exclude yourself, you will not receive a payment from the Net Settlement Fund, you cannot object to the Settlement, and you will not be legally bound by the Final Judgment in this case.

**12. If I do not exclude myself, can I sue the Defendants for the same thing later?**

No. Unless you followed the procedure outlined in this Notice and the Court's Preliminary Approval Order to exclude yourself, you give up any right to sue the Defendants or other Released Parties for the claims being released in this Settlement. If you have a pending lawsuit related to any Released Claims, speak to your lawyer in that case immediately, since you must exclude yourself from this Settlement Class to continue your own lawsuit.

**13. Do I have a lawyer in this case?**

The Court appointed The Rosen Law Firm, P.A. as Lead Counsel to represent you and the other Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense. Contact information for The Rosen Law Firm, P.A. is provided above.

**14. How will the lawyers be paid?**

Lead Counsel have expended considerable time litigating this action on a contingent fee basis and have paid for the expenses of the case themselves. They have not been paid attorneys' fees or reimbursed for their expenses in advance

1 of this Settlement. Lead Counsel have done so with the expectation that, if they  
2 are successful in recovering money for the Settlement Class, they will receive  
3 attorneys' fees and be reimbursed for their litigation expenses from the  
4 Settlement Fund, as is customary in this type of litigation. Lead Counsel will not  
5 receive attorneys' fees or be reimbursed for their litigation expenses except from  
6 the Settlement Fund. Therefore, Lead Counsel will file a motion asking the Court  
7 at the Settlement Hearing to make an award of attorneys' fees in an amount not  
8 to exceed 30% of the Settlement Fund, or \$900,000, for reimbursement of  
9 reasonable litigation expenses not to exceed \$55,000, and an Award to Plaintiffs  
in an amount not to exceed \$6,000 in total. The Court may award less than these  
amounts. Any amounts awarded by the Court will come out of the Settlement  
Fund.

10 **15. How do I tell the Court that I object to the Settlement?**

11 You can tell the Court you do not agree with the Settlement, any part of the  
12 Settlement, the Plan of Allocation, Lead Counsel's motion for attorneys' fees  
13 and expenses, or application for an Award to Plaintiffs, and that you think the  
14 Court should not approve any or all of the foregoing, by mailing a letter stating  
15 that you object to the Settlement in the matter of as *Bergmann v. GDS Holdings*  
16 *Limited, et al.*, Case No. 2:23-cv-04900 (C.D. Cal.). Be sure to include (1) your  
17 name, address, and telephone number; (2) a list of all purchases and sales of GDS  
18 ADS during the Settlement Class Period in order to show membership in the  
19 Settlement Class; (3) all grounds for the objection, including any legal support  
20 known to you or your counsel; (4) the name, address and telephone number of  
21 all counsel, if any, who represent you; and (5) the number of times you and/or  
22 your counsel has filed an objection to a class action settlement in the last five  
23 years, the nature of each such objection in each case, the jurisdiction in each  
24 case, and the name of the issuer of the security or seller of the product or service  
25 at issue in each case. Attendance at the Settlement Hearing is not necessary.  
26 Objectors wishing to be heard orally at the Settlement Hearing are required to  
27 indicate in their written objection (or in a separate writing that is submitted in  
28 accordance with the deadline and after instruction pertinent to the submission of  
a written objection) that they intend to appear at the Settlement Hearing and  
identify any witnesses they may call to testify or exhibits they intend to introduce  
into evidence at the Settlement Hearing. Be sure to serve copies of any  
objections, papers and briefs to **each** of the addresses listed below, to be received  
no later than \_\_\_\_\_, 2024:

Clerk of the Court  
United States District Court  
Central District of California  
First Street Federal Courthouse  
350 W. First Street, Suite 4311  
Los Angeles, CA 90012

LEAD COUNSEL:  
THE ROSEN LAW FIRM, P.A.  
Phillip Kim  
275 Madison Avenue, 40<sup>th</sup> Floor  
New York, NY 10016

COUNSEL FOR DEFENDANT GDS:  
SIMPSON THACHER & BARTLETT  
LLP  
Alan C. Turner  
425 Lexington Avenue  
New York, NY 10017

**16. What is the difference between objecting and requesting exclusion?**

Objecting is simply telling the Court you do not like something about the Settlement or some portion thereof. You can object only if you stay in the Settlement Class. Requesting exclusion is telling the Court you do not want to be part of the Settlement Class and Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer concerns you. If you stay in the Settlement Class and object, but your objection is overruled, you will not be allowed a second opportunity to exclude yourself.

**17. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Settlement Hearing on \_\_\_\_\_, 2024, at \_\_:\_\_.m. PT, at the U.S. District Court, Central District of California, First Street Federal Courthouse, 350 W. First Street, Courtroom 10C, Los Angeles, CA 90012, or by telephonic or videoconference means as directed by the Court.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and whether to approve the Settlement. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing. The Court may also decide whether to approve the Plan of Allocation, as well as how much to pay Lead Counsel for attorneys' fees and expenses and how much to award to Plaintiffs.

1 **18. Do I have to come to the hearing?**

2 No. Lead Counsel will answer any questions the Court may have. However, you  
3 are welcome to attend at your own expense. If you send an objection, you do not  
4 have to come to Court to talk about it. As long as you mail your written objection  
5 on time, the Court will consider it.

6 **19. What happens if I do nothing at all?**

7 If you do nothing, you will not receive a payment from the Settlement. However,  
8 unless you exclude yourself, you will not be able to start a lawsuit, continue with  
9 a lawsuit, or be part of any other lawsuit against Defendants or the Released  
10 Parties about the Released Claims (as defined in the Stipulation) ever again.

11  
12 DATED: \_\_\_\_\_, 2024

13 BY ORDER OF THE UNITED STATES  
14 DISTRICT COURT FOR THE CENTRAL  
15 DISTRICT OF CALIFORNIA  
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# EXHIBIT A-2

## PROOF OF CLAIM AND RELEASE FORM

Deadline for Submission: \_\_\_\_\_

IF YOU PURCHASED THE PUBLICLY-TRADED AMERICAN DEPOSITARY SHARES (“ADS”) of GDS HOLDINGS LIMITED (“GDS”) BETWEEN JULY 13, 2020 AND APRIL 3, 2023, BOTH DATES INCLUSIVE (“SETTLEMENT CLASS PERIOD”), YOU ARE A “SETTLEMENT CLASS MEMBER” AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS. (EXCLUDED FROM THE SETTLEMENT CLASS ARE DEFENDANT, THE PRESENT AND FORMER OFFICERS AND DIRECTORS OF GDS AT ALL RELEVANT TIMES, THE IMMEDIATE FAMILY MEMBERS, LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS OR ASSIGNS OF SUCH EXCLUDED PERSONS, ANY ENTITY IN WHICH ANY EXCLUDED PERSON HAS OR HAD A MAJORITY OWNERSHIP INTEREST AT ANY TIME, AND 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 ARE THOSE WHO VALIDLY OPT-OUT, AND THOSE WITH NO COMPENSATORY LOSSES).

IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT A PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM”) IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS. YOU CAN COMPLETE AND SUBMIT THE ELECTRONIC VERSION OF THIS PROOF OF CLAIM BY 11:59 P.M. EST ON \_\_\_\_\_, 2024 AT [WWW.STRATEGICCLAIMS.NET/GDS](http://WWW.STRATEGICCLAIMS.NET/GDS).

IF YOU DO NOT COMPLETE AND SUBMIT AN ELECTRONIC VERSION OF THIS PROOF OF CLAIM, YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND MAIL IT BY FIRST CLASS MAIL, POSTMARKED NO LATER THAN \_\_\_\_\_, 2024 TO STRATEGIC CLAIMS SERVICES, THE CLAIMS ADMINISTRATOR, AT THE FOLLOWING ADDRESS:

GDS Holdings Limited Securities Litigation  
c/o Strategic Claims Services  
600 N. Jackson St., Ste. 205  
P.O. Box 230  
Media, PA 19063  
Tel.: 866-274-4004  
Fax: 610-565-7985  
[info@strategicclaims.net](mailto:info@strategicclaims.net)

YOUR FAILURE TO SUBMIT YOUR CLAIM BY \_\_\_\_\_, 2024 WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOU FROM RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS ACTION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR COUNSEL, AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR. IF YOU ARE A SETTLEMENT CLASS MEMBER AND DO NOT SUBMIT A PROPER PROOF OF CLAIM, YOU WILL NOT SHARE IN THE SETTLEMENT, BUT YOU NEVERTHELESS WILL BE BOUND BY THE FINAL JUDGMENT OF THE COURT UNLESS YOU EXCLUDE YOURSELF.

EXHIBIT A-2

SUBMISSION OF A PROOF OF CLAIM DOES NOT ASSURE THAT YOU WILL SHARE IN THE PROCEEDS OF THE SETTLEMENT.

**CLAIMANT'S STATEMENT**

1. I (we) purchased the publicly-traded American Depositary Shares ("ADS") of GDS Holdings Limited ("GDS") during the Settlement Class Period. (Do not submit this Proof of Claim if you did not purchase GDS ADS during the Settlement Class Period.)
2. By submitting this Proof of Claim, I (we) state that I (we) believe in good faith that I am (we are) a Settlement Class Member(s) as defined above or am (are) acting for such person(s); that I am (we are) not a Defendant(s) in the Action or anyone excluded from the Settlement Class; that I (we) have read and understand the Notice of Pendency and Proposed Settlement of Class Action ("Notice"); that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund; that I (we) elect to participate in the proposed Settlement; and that I (we) have not filed a request for exclusion. (If you are acting in a representative capacity on behalf of a Settlement Class Member [e.g., as an executor, administrator, trustee, or other representative], you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)
3. I (we) consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim. I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Settlement Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim.
4. I (we) have set forth where requested below all relevant information with respect to each purchase of GDS ADS during the Settlement Class Period, and each sale, if any, of the same. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.
5. I (we) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase and sale of GDS ADS listed below in support of my (our) claim. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER OR TAX ADVISOR BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)
6. I (we) understand that the information contained in this Proof of Claim is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your Recognized Loss. In some cases, the Claims Administrator may condition acceptance of the claim upon the production of additional information, including, where applicable, information concerning transactions in any derivative securities, such as options.)
7. Upon the occurrence of the Court's approval of the Settlement, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates (or, if I am (we are) submitting this Proof of Claim on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates) of each of the "Released Parties" of all "Released Claims" as those terms are defined in the Stipulation of Settlement, dated June 14, 2024 ("Stipulation").

8. Upon the occurrence of the Court's approval of the Settlement, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a covenant by me (us) and my (our) parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates (or, if I am (we are) submitting this Proof of Claim on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates) to permanently refrain from prosecuting or attempting to prosecute any Released Claims against any of the Released Parties.
9. "Released Parties" has the meaning defined in the Stipulation.
10. "Released Claims" has the meaning defined in the Stipulation.
11. "Unknown Claims" has the meaning defined in the Stipulation.
12. I (we) agree and acknowledge that I (we) may hereafter discover facts in addition to or different from those which I (we) now know or believe to be true with respect to the Released Claims, but I (we) agree and acknowledge that, upon the Effective Date as defined in the Stipulation, I (we) shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of fiduciary duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. I (we) agree and acknowledge that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.
13. NOTICE REGARDING INSTITUTIONAL FILERS: Representatives with the authority to file on behalf of (a) accounts of multiple Persons and/or (b) institutional accounts with large numbers of transactions ("Representative Filers") must submit information regarding their clients' transactions in the approved electronic spreadsheet format, which is available by request to the Claims Administrator at [efile@strategicclaims.net](mailto:efile@strategicclaims.net) or by visiting the website [www.strategicclaims.net/institutional-filers/](http://www.strategicclaims.net/institutional-filers/). One spreadsheet may contain the information for multiple Persons and institutional accounts who constitute distinct legal entities ("Legal Entities"), but all Representative Filers MUST also submit a manually signed Proof of Claim and Release Form, as well as proof of authority to file (see Item 2 of the Claimant's Statement) along with the electronic spreadsheet. The transactions and holdings in GDS ADS should be reported in the electronic file so that each resulting Claim corresponds to a single Legal Entity, regardless of the number of individually managed accounts the Legal Entity has, as only one Claim will be processed per Legal Entity (e.g. a Representative Filer reporting the transactions for a fund with multiple sub-accounts should report one total holding at the start of the Settlement Class Period, one total holding at the end of the Settlement Class Period, and a single set of transactions that includes all transactions made by the Legal Entity across their sub-accounts; this would constitute and be processed as a single Claim). The Claims Administrator reserves the right to combine a Legal Entity's accounts into a single Claim prior to processing in the event that a Legal Entity's accounts are divided across multiple Claims when submitted by the Representative Filer. The Claims Administrator also reserves the right to request additional documentary proof regarding a Legal Entity's transactions and holdings in GDS ADS prove and accurately process the Claim. No claims submitted in electronic spreadsheet format will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgment of receipt and acceptance of electronically submitted data.
14. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Proof of Claim and Release Form hosted at

www.strategicclaims.net/GDS. If you are not acting as a Representative Filer, you do not need to contact the Claims Administrator prior to filing; you will receive an automated e-mail confirming receipt once your Proof of Claim and Release Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Claims Administrator at info@strategicclaims.net or (866) 274-4004. If you are not a Representative Filer, but your claim contains a large number of transactions, the Claims Administrator may request that you also submit an electronic spreadsheet showing your transactions to accompany your Proof of Claim and Release Form.

15. In order to provide accurate claims processing you must provide all transactions in GDS ADS between July 13, 2020 and June 30, 2023, both dates inclusive.

# **I. CLAIMANT INFORMATION**

Beneficial Owner Name:		
Record Owner Name:		
Address:		
City	State	ZIP
Foreign Province	Foreign Country	
Day Phone	Evening Phone	
Email		
Social Security Number (for individuals):	OR	Taxpayer Identification Number (for estates, trusts, corporations, etc.):

## **II. SCHEDULE OF TRANSACTIONS IN GDS HOLDINGS LIMITED AMERICAN DEPOSITARY SHARES**

### **Beginning Holdings:**

- A. State the total number of American Depositary Shares ("ADS") of GDS Holdings Limited ("GDS") held at the close of trading on July 12, 2020 \_\_\_\_\_  
(*must be documented*). If none, write "zero" or "0."

### **Purchases:**

- B. Separately list each and every purchase of GDS ADS between July 13, 2020 and June 30, 2023, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of ADS Purchased	Price per ADS	Total Cost (Excluding Commissions, Taxes, and Fees)

### **Sales:**

- C. Separately list each and every sale of GDS ADS between July 13, 2020 and June 30, 2023, both dates inclusive, and provide the following information (*must be documented*):



Trade Date (List Chronologically) (Month/Day/Year)	Number of ADS Sold	Price per ADS	Amount Received (Excluding Commissions, Taxes, and Fees)

**Ending Holdings:**

D. State the total number of GDS ADS held at the close of trading on \_\_\_\_\_  
June 30, 2023 (*must be documented*).

If additional space is needed, attach separate, numbered sheets, giving all required information, substantially in the same format, and print your name and Social Security or Taxpayer Identification number at the top of each sheet.

**III. SUBSTITUTE FORM W-9**

Request for Taxpayer Identification Number:

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service ("I.R.S.") requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

Social Security Number (for individuals)	or	Taxpayer Identification Number (for estates, trusts, corporations, etc.)

**IV. CERTIFICATION**

I (We) submit this Proof of Claim under the terms of the Stipulation and Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Central District of California with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the release and covenant not to sue set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in this Action. I (We) have not submitted any other claim covering the same purchases or sales of GDS ADS during the Settlement Class Period and know of no other Person having done so on my (our) behalf.

I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code because: (a) I am (We are) exempt from backup withholding; or (b) I (We) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the I.R.S. that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

UNDER THE PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES, I (WE) CERTIFY THAT ALL OF THE INFORMATION I (WE) PROVIDED ON THIS PROOF OF CLAIM AND RELEASE FORM IS TRUE, CORRECT AND COMPLETE.

Signature of Claimant (If this claim is being made on behalf of Joint Claimants, then each must sign):

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Capacity of person(s) signing, e.g. beneficial purchaser(s), executor, administrator, trustee, etc.)  
☐ Check here if proof of authority to file is enclosed.  
(See Item 2 under Claimant's Statement)

Date: \_\_\_\_\_

THIS PROOF OF CLAIM AND RELEASE FORM MUST BE SUBMITTED ONLINE AT [WWW.STRATEGICCLAIMS.NET/GDS](http://WWW.STRATEGICCLAIMS.NET/GDS) NO LATER THAN 11:59 P.M. ON \_\_\_\_\_, 2024, OR POSTMARKED NO LATER THAN \_\_\_\_\_, 2024 AND MUST BE MAILED TO:

GDS Holdings Limited Securities Litigation  
c/o Strategic Claims Services  
600 N. Jackson St., Ste. 205  
P.O. Box 230  
Media, PA 19063  
Tel.: 866-274-4004  
Fax: 610-565-7985  
[info@strategicclaims.net](mailto:info@strategicclaims.net)

A Proof of Claim received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by \_\_\_\_\_, 2024 and if a postmark is indicated on the envelope and it is mailed first class and addressed in accordance with the above instructions. In all other cases, a Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to process fully all of the Proofs of Claim and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and tabulate each Proof of Claim. Please notify the Claims Administrator of any change of address.

#### REMINDER CHECKLIST

- Please be sure to sign this Proof of Claim on page 8. If this Proof of Claim is submitted on behalf of joint claimants, then both claimants must sign.
- Please remember to attach supporting documents. Do NOT send any stock certificates. Keep copies of everything you submit.
- Do NOT use highlighter on the Proof of Claim or any supporting documents.
- If you move or change your address, telephone number or email address, please submit the new information to the Claims Administrator, as well as any other information that will assist us in contacting you. NOTE: Failure to submit updated information to the Claims Administrator may result in the Claims Administrator's inability to contact you regarding issues with your claim or to deliver payment to you.

# EXHIBIT A-3

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 LARRY BERGMANN, Individually  
12 and on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 v.

16 GDS HOLDINGS LIMITED,  
17 WILLIAM WEI HUANG, and DANIEL  
18 NEWMAN,

19 Defendants.  
20

Case No. 2:23-cv-04900-JAK-BFM

Hon. John A. Kronstadt

CLASS ACTION

21 **SUMMARY NOTICE OF PENDENCY AND**  
22 **PROPOSED CLASS ACTION SETTLEMENT**  
23  
24  
25  
26  
27  
28

**TO: ALL PERSONS WHO PURCHASED THE PUBLICLY-TRADED AMERICAN DEPOSITORY SHARES (“ADS”) OF GDS HOLDINGS LIMITED (“GDS”) FROM JULY 13, 2020 THROUGH APRIL 3, 2023, BOTH DATES INCLUSIVE.**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Central District of California, that a hearing will be held on \_\_\_\_\_, 2024, at \_:\_ .m. PT before the Honorable John A. Kronstadt, United States District Judge of the United States District Court for the Central District of California, First Street Federal Courthouse, 350 W. First Street, Courtroom 10C, Los Angeles, CA 90012, or by telephonic or videoconference means as directed by the Court, for the purpose of determining:

(1) whether the proposed Settlement of the claims in the above-captioned Action for consideration including the sum of \$3,000,000 (“Settlement Amount”) should be approved by the Court as fair, reasonable, and adequate;

(2) whether the proposed plan to distribute the Settlement proceeds is fair, reasonable, and adequate;

(3) whether the application of Lead Counsel for an award of attorneys’ fees of up to 30% of the Settlement Amount, reimbursement of expenses of not more than \$55,000, and an award of no more than \$6,000 in total, to Plaintiffs should be approved; and

(4) whether this Action should be dismissed with prejudice as set forth in the Stipulation of Settlement, dated June 14, 2024 (“Stipulation”).

If you purchased GDS ADS during the period from July 13, 2020 through April 3, 2023, both dates inclusive (“Settlement Class Period”), your rights may be affected by this Settlement, including the release and extinguishment of claims you may possess relating to your ownership interest in GDS ADS.

You may obtain copies of a detailed Notice of Pendency and Proposed Settlement of Class Action (“Long Notice”) and the Proof of Claim and Release Form

1 (“Proof of Claim”), by writing to or calling GDS Holdings Limited Securities  
2 Litigation, c/o Strategic Claims Services, 600 N. Jackson St., Ste. 205, P.O. Box 230,  
3 Media, PA 19063; (Tel) (866) 274-4004; (Fax) (610) 565-7985;  
4 info@strategicclaims.net, or going to the website, www.strategicclaims.net/GDS. If  
5 you are a member of the Settlement Class, in order to share in the distribution of the  
6 Net Settlement Fund, you must submit a properly completed Proof of Claim  
7 electronically or postmarked no later than \_\_\_\_\_, 2024, to the Claims  
8 Administrator, establishing that you are entitled to recovery. Unless you submit a  
9 written exclusion request, you will be bound by any judgment rendered in the Action  
10 whether or not you make a claim.

11 If you desire to be excluded from the Settlement Class, you must submit a request  
12 for exclusion in the manner and form explained in the Long Notice to the Claims  
13 Administrator so that it is received no later than \_\_\_\_\_, 2024. All members  
14 of the Settlement Class who have not requested exclusion from the Settlement Class  
15 will be bound by any judgment entered in the Action.

16 Any objection to the Settlement, Plan of Allocation, or Lead Counsel’s request  
17 for an award of attorneys’ fees and reimbursement of expenses and an award to  
18 Plaintiffs must be in the manner and form explained in the Long Notice and received  
19 no later than \_\_\_\_\_, 2024, by each of the following:

20  
21 Clerk of the Court  
22 United States District Court  
23 Central District of California  
24 First Street Federal Courthouse  
25 350 W. First Street, Suite 4311  
26 Los Angeles, CA 90012  
27  
28



LEAD COUNSEL:  
THE ROSEN LAW FIRM, P.A.  
Phillip Kim  
275 Madison Avenue, 40<sup>th</sup> Floor  
New York, NY 10016

COUNSEL FOR DEFENDANT:  
SIMPSON THACHER & BARTLETT  
LLP  
Alan C. Turner  
425 Lexington Avenue  
New York, NY 10017

If you have any questions about the Settlement, you may call or write to Lead Counsel:

THE ROSEN LAW FIRM, P.A.  
Phillip Kim  
275 Madison Avenue, 40th Floor  
New York, NY 10016  
Tel: 212-686-1060

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE  
REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
BY ORDER OF THE UNITED  
STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF  
CALIFORNIA

# EXHIBIT B

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LARRY BERGMANN, Individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

GDS HOLDINGS LIMITED,  
WILLIAM WEI HUANG, and DANIEL  
NEWMAN,

Defendants.

Case No. 2:23-cv-04900-JAK-BFM

Hon. John A. Kronstadt

CLASS ACTION

**[PROPOSED] ORDER AND FINAL JUDGMENT**

On the \_\_\_\_ day of \_\_\_\_\_, 2024, a hearing having been held before  
this Court to determine: (1) whether the terms and conditions of the Stipulation of  
Settlement dated June 14, 2024 (“Stipulation”) are fair, reasonable and adequate for  
the settlement of all claims asserted by the Settlement Class against Defendant (as  
defined in the Stipulation), including the release of the Released Claims against the  
Released Parties, and should be approved; (2) whether judgment should be entered  
dismissing this Action with prejudice; (3) whether to approve the proposed Plan of  
Allocation as a fair and reasonable method to allocate the Net Settlement Fund  
among Settlement Class Members; (4) whether and in what amount to award Lead  
Counsel as fees and reimbursement of expenses; and (5) whether and in what  
amount to approve an award to the Plaintiffs; and

1 The Court having considered all matters submitted to it at the hearing and  
2 otherwise; and

3 It appearing in the record that the Notice substantially in the form approved  
4 by the Court in the Court's Order Granting Plaintiffs' Motion for Preliminary  
5 Approval of Class Action Settlement, dated \_\_\_\_\_, 2024 ("Preliminary  
6 Approval Order") was disseminated to all reasonably identifiable Settlement Class  
7 Members and posted to the website of the Claims Administrator, both in accordance  
8 with the Preliminary Approval Order and the specifications of the Court; and

9 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND  
10 DECREED THAT:

11 1. All capitalized terms used herein have the same meanings as set forth  
12 and defined in the Stipulation.

13 2. For purposes of this Settlement, the Court has jurisdiction over the  
14 subject matter of the Action, Plaintiffs, all Settlement Class Members, and  
15 Defendant.

16 3. The Court finds that, for settlement purposes only, the prerequisites for  
17 a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure  
18 have been satisfied in that: (a) the number of Settlement Class Members is so  
19 numerous that joinder of all members thereof is impracticable; (b) there are  
20 questions of law and fact common to the Settlement Class; (c) Plaintiffs' claims are  
21 typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs  
22 fairly and adequately represent the interests of the Settlement Class; (e) questions  
23 of law and fact common to the members of the Settlement Class predominate over  
24 any questions affecting only individual members of the Settlement Class; and (f) a  
25 class action is superior to other available methods for the fair and efficient  
26 adjudication of this Action. The Settlement Class is being certified for settlement  
27 purposes only.  
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1           4.     The Court hereby finally certifies this action as a class action for  
2 purposes of the Settlement, pursuant to Rule 23(a) and (b)(3) of the Federal Rules  
3 of Civil Procedure, on behalf of all persons or entities who purchased the publicly  
4 traded American Depository Shares (“ADS”) of GDS Holdings Limited (“GDS”)  
5 between July 13, 2020 and April 3, 2023, both dates inclusive (“Settlement Class  
6 Period”), except that excluded from the Settlement Class are: (a) persons who  
7 suffered no compensable losses; (b) Defendant; the present and former officers and  
8 directors of GDS at all relevant times; members of their immediate families and  
9 their legal representatives, heirs, successors, or assigns, and any entity in which  
10 Defendant, or any person excluded under this subsection (b), has or had a majority  
11 ownership interest at any time; and (c) GDS’s employee retirement plan(s) and/or  
12 benefit plan(s) including their participants and/or beneficiaries to the extent they  
13 purchased GDS ADS through any such plan(s). Also excluded from the Settlement  
14 Class are Persons who filed valid and timely requests for exclusion from the  
15 Settlement Class in accordance with the Preliminary Approval Order, as listed on  
16 Schedule A to this Final Judgment. Pursuant to Rule 23 of the Federal Rules of Civil  
17 Procedure, Plaintiffs are certified as the class representatives on behalf of the  
18 Settlement Class (“Class Representatives”) and Lead Counsel previously selected  
19 by Lead Plaintiff and appointed by the Court are hereby appointed as Class Counsel  
20 for the Settlement Class (“Class Counsel”).

21           5.     In accordance with the Court’s Preliminary Approval Order, the Court  
22 hereby finds that the forms and methods of notifying the Settlement Class of the  
23 Settlement and its terms and conditions met the requirements of due process, Rule  
24 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange  
25 Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation  
26 Reform Act of 1995; constituted the best notice practicable under the  
27 circumstances; and constituted due and sufficient notice of these proceedings and  
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1 the matters set forth herein, including the Settlement and Plan of Allocation, to all  
2 persons and entities entitled to such notice. No Settlement Class Member is relieved  
3 from the terms and conditions of the Settlement, including the releases provided for  
4 in the Stipulation, based upon the contention or proof that such Settlement Class  
5 Member failed to receive actual or adequate notice. A full opportunity has been  
6 offered to the Settlement Class Members to object to the proposed Settlement and  
7 to participate in the hearing thereon. Thus, it is hereby determined that all  
8 Settlement Class Members are bound by this Final Judgment except those persons  
9 listed on Schedule A to this Final Judgment.

10 6. The Settlement is approved as fair, reasonable and adequate, and in the  
11 best interests of the Settlement Class. This Court further finds that the Settlement  
12 set forth in the Stipulation is the result of good faith, arm's-length negotiations  
13 between experienced counsel representing the interests of Class Representatives,  
14 Settlement Class Members, and Defendant. The Parties are directed to consummate  
15 the Settlement in accordance with the terms and provisions of the Stipulation.

16 7. The Action and all claims contained therein, as well as all of the  
17 Released Claims, are dismissed with prejudice as against all Defendants. The  
18 Parties are to bear their own costs, except as otherwise provided in the Settlement  
19 Stipulation.

20 8. Upon the Effective Date, the Releasing Parties, on behalf of  
21 themselves, their successors and assigns, and any other Person claiming (now or in  
22 the future) through or on behalf of them, regardless of whether any such Releasing  
23 Party ever seeks or obtains by any means, including without limitation by  
24 submitting a Proof of Claim, any disbursement from the Settlement Fund, shall be  
25 deemed to have, and by operation of this Final Judgment shall have, fully, finally,  
26 and forever compromised, settled, resolved, released, relinquished, waived,  
27 dismissed and discharged all Released Claims against the Released Parties and shall  
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1 have covenanted not to sue the Released Parties with respect to any and all Released  
2 Claims, and shall be permanently barred and enjoined from asserting, commencing,  
3 prosecuting, instituting, assisting, instigating, or in any way participating in the  
4 commencement or prosecution of any action or other proceeding, in any forum,  
5 asserting any Released Claim, in any capacity, against any of the Released Parties.  
6 For the avoidance of doubt, Defendants, including William Wei Huang and Daniel  
7 Newman, are released from any and all claims for contribution or indemnity, as  
8 would otherwise be allowed by Section 21D of the Exchange Act, 15 U.S.C. §78u-  
9 4(f)(7). Nothing contained herein shall, however, bar the Releasing Parties from  
10 bringing any action or claim to enforce the terms of the Stipulation or this Final  
11 Judgment. Nor shall anything contained herein limit or release any claims  
12 Defendant may have with regard to insurance coverage that may be available to it  
13 under any applicable policy. This release shall not apply to any Settlement Class  
14 Members who timely and properly exclude themselves from the Settlement Class.

15 9. With respect to any and all Released Claims, the Releasing Parties  
16 shall waive, shall be deemed to have waived, and by operation of this Final  
17 Judgment shall have waived, the provisions, rights, and benefits of California Civil  
18 Code § 1542, which provides:

19 A general release does not extend to claims that the  
20 creditor or releasing party does not know or suspect to  
21 exist in his or her favor at the time of executing the release  
22 and that, if known by him or her, would have materially  
23 affected his or her settlement with the debtor or released  
party.

24 10. With respect to any and all Released Claims, the Releasing Parties  
25 shall waive, shall be deemed to have waived, and by operation of this Final  
26 Judgment shall have waived, any and all provisions, rights and benefits conferred  
27 by any law of any state, territory, foreign country or principle of common law,  
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1 which is similar, comparable or equivalent to California Civil Code § 1542. The  
2 Releasing Parties may hereafter discover facts in addition to or different from those  
3 which they now know or believes to be true with respect to the Released Claims,  
4 but the Releasing Parties, upon the Effective Date, shall be deemed to have, and by  
5 operation of this Final Judgment shall have, fully, finally and forever settled and  
6 released, any and all Released Claims, known or unknown, suspected or  
7 unsuspected, contingent or non-contingent, whether or not concealed or hidden,  
8 which now exist, or heretofore have existed, upon any theory of law or equity now  
9 existing or coming into existence in the future, including, but not limited to, conduct  
10 which is negligent, intentional, with or without malice, or a breach of fiduciary duty,  
11 law or rule, without regard to the subsequent discovery or existence of such  
12 different or additional facts. The Releasing Parties acknowledge and the Settlement  
13 Class Members shall be deemed by operation of this Final Judgment to have  
14 acknowledged, that the foregoing waiver was separately bargained for and a key  
15 element of the Settlement.

16 11. Upon the Effective Date, the Released Parties shall be deemed to have,  
17 and by operation of the Final Judgment shall have, fully, finally, and forever  
18 released, relinquished, and discharged all claims they may have against the  
19 Releasing Parties related to the Releasing Parties' prosecution of the Action or any  
20 other known or unknown counter-claim related thereto and shall have covenanted  
21 not to sue the Releasing Parties with respect to any counter claim, claim, or sanction  
22 related to the Released Claims, and shall be permanently barred and enjoined from  
23 asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way  
24 participating in the commencement or prosecution of any action or other  
25 proceeding, in any forum, asserting any such claim, in any capacity, against any of  
26 the Releasing Parties. Nothing contained herein shall, however, bar the Released  
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1 Parties from bringing any action or claim to enforce the terms of this Stipulation or  
2 the Final Judgment.

3 12. The Court finds that all Parties and their counsel have complied with  
4 all requirements of Rule 11 of the Federal Rules of Civil Procedure and the Private  
5 Securities Litigation Record Act of 1995 as to all proceedings herein.

6 13. Neither this Final Judgment, the Stipulation (nor the Settlement  
7 contained therein), nor any of its terms and provisions, nor any of the negotiations,  
8 documents or proceedings connected with them is evidence, or an admission or  
9 concession by any Party or their counsel, any Settlement Class Member, or any of  
10 the Released Parties, of any fault, liability or wrongdoing whatsoever, as to any  
11 facts or claims alleged or asserted in the Action or could have been alleged or  
12 asserted, or any other actions or proceedings, or as to the validity or merit of any of  
13 the claims or defenses alleged or asserted or could have been alleged or asserted in  
14 any such action or proceeding. This Final Judgment is not a finding or evidence of  
15 the validity or invalidity of any claims or defenses in the Action, any wrongdoing  
16 by any Party, Settlement Class Member, or any of the Released Parties, or any  
17 damages or injury to any Party, Settlement Class Member, or any Released Parties.  
18 Neither this Final Judgment, the Stipulation (nor the Settlement contained therein),  
19 nor any of its terms and provisions, nor any of the negotiations, documents or  
20 proceedings connected with therewith (a) shall (i) be argued to be, used or construed  
21 as, offered or received in evidence as, or otherwise constitute an admission,  
22 concession, presumption, proof, evidence, or a finding of any, liability, fault,  
23 wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on  
24 the part of any Released Party, or of any infirmity of any defense, or of any damages  
25 to Class Representatives or any other Settlement Class Member, or (ii) otherwise  
26 be used to create or give rise to any inference or presumption against any of the  
27 Released Parties concerning any fact or any purported liability, fault, or wrongdoing  
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1 of the Released Parties or any injury or damages to any person or entity, or (b) shall  
2 otherwise be admissible, referred to or used in any proceeding of any nature, for  
3 any purpose whatsoever; provided, however, that this Final Judgment, the  
4 Stipulation, or the documents related thereto may be introduced in any proceeding,  
5 whether in the Court or otherwise, as may be necessary to enforce the Settlement or  
6 Final Judgment, to effectuate the liability protection granted them hereunder, to  
7 support a defense or counterclaim based on principles of *res judicata*, collateral  
8 estoppel, release, good faith settlement, judgment bar or reduction, offset or any  
9 other theory of claim preclusion or issue preclusion or similar defense or  
10 counterclaim or as otherwise required by law.

11 14. Except as otherwise provided herein or in the Stipulation, all funds  
12 held by the Escrow Agent shall be deemed to be in *custodia legis* and shall remain  
13 subject to the jurisdiction of the Court until such time as the funds are distributed  
14 or returned pursuant to the Stipulation and/or further order of the Court.

15 15. Exclusive jurisdiction is hereby retained over the Parties and the  
16 Settlement Class Members for all matters relating to the Action, including the  
17 administration, interpretation, effectuation or enforcement of the Stipulation and  
18 this Final Judgment, and including any application for fees and expenses incurred  
19 in connection with administering and distributing the Settlement Fund to the  
20 Settlement Class Members.

21 16. Without further order of the Court, Defendant and Class  
22 Representatives may agree to reasonable extensions of time to carry out any of the  
23 provisions of the Stipulation.

24 17. There is no just reason for delay in the entry of this Final Judgment  
25 and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule  
26 54(b) of the Federal Rules of Civil Procedure.

1           18. The finality of this Final Judgment shall not be affected, in any  
2 manner, by rulings that the Court makes herein on the proposed Plan of Allocation  
3 or Class Counsel's application for an award of attorneys' fees and expenses or an  
4 award to Class Representatives.

5           19. The Court hereby finds that the proposed Plan of Allocation is a fair  
6 and reasonable method to allocate the Net Settlement Fund among Settlement Class  
7 Members, and Class Counsel and the Claims Administrator are directed to  
8 administer the Plan of Allocation in accordance with its terms and the terms of the  
9 Stipulation.

10           20. Class Counsel are hereby awarded \_\_\_\_\_% of the Settlement  
11 Amount, or \$\_\_\_\_\_, in fees, which the Court finds to be fair and reasonable,  
12 and \$\_\_\_\_\_ in reimbursement of out-of-pocket expenses. Class  
13 Representatives are hereby awarded \$\_\_\_\_\_ each, which the Court finds  
14 to be fair and reasonable. Defendant and the Released Parties shall have no  
15 responsibility for, and no liability whatsoever with respect to, any payments to Class  
16 Counsel, Class Representatives, the Settlement Class and/or any other Person who  
17 receives payment from the Settlement Fund.

18           21. In the event the Settlement is not consummated in accordance with the  
19 terms of the Stipulation, then the Stipulation and this Final Judgment (including any  
20 amendment(s) thereof, and except as expressly provided in the Stipulation or by  
21 order of the Court) shall be shall have no further force and effect with respect to the  
22 Parties and shall not be used in the Action or in any other proceeding for any  
23 purpose, and any judgment or order entered by the Court in accordance with the  
24 terms of this Stipulation shall be treated as vacated, *nunc pro tunc*. and each Party  
25 shall be restored to his, her or its respective litigation positions as they existed prior  
26 to June 17, 2024, pursuant to the terms of the Stipulation.

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Dated: \_\_\_\_\_, 2024

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HON. JOHN A. KRONSTADT  
UNITED STATES DISTRICT JUDGE

**Schedule A**

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