

Exhibit 23

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ALTIMEO ASSET MANAGEMENT & ODS
CAPITAL LLC,

Plaintiff,

v.

19 Civ. 10067 (PAE)

QIHOO 360 TECHNOLOGY, ET AL.,

Hearing

Defendant.

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New York, N.Y.
August 1, 2024
2:35 p.m.

Before:

HON. PAUL A. ENGELMAYER,

District Judge

APPEARANCES

POMERANTZ LLP
Attorneys for Plaintiff

BY: MICHAEL GRUNFELD

-and-

LABATON KELLER SUCHAROW LLP
Attorneys for Plaintiff

BY: JAKE BISSELL-LINSK

LATHAM & WATKINS LLP
Attorneys for Defendant

BY: HANYU XIE

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1 (Case called)

2 MR. GRUNFELD: Michael Grunfeld from Pomerantz on
3 behalf of the plaintiffs Altimeo Asset Management, ODS Capital,
4 and the proposed settlement class. Good afternoon, your Honor.

5 THE COURT: Good afternoon, Mr. Grunfeld.

6 MR. BISSELL-LINSK: Jake Bissell-Linsk from Labaton,
7 and Mike will be presenting for the plaintiffs.

8 THE COURT: Very good. Good afternoon,
9 Mr. Bissell-Linsk. You may be seated.

10 And who do I have from the defense?

11 MS. XIE: Good afternoon, your Honor. Iris Xie from
12 Latham on behalf of the defendants Qihoo 360 Technology,
13 Mr. Zhou, and Mr. Eric Chen.

14 THE COURT: Very good. Good afternoon to you. You
15 may all be seated.

16 MS. XIE: Thank you.

17 THE COURT: We're here for the class settlement
18 approval hearing. To begin with, I want to thank really
19 plaintiffs' counsel for very thorough, excellent, detailed
20 submissions that really covered all the angles here and made my
21 process of assessing the issues here considerably easier. It's
22 a really professional and sharp job, and I'm grateful to you
23 for it.

24 I have a number of questions in the nature, though,
25 more of housekeeping and somewhat less relating to the

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1 fundamentals. I was assisted here by the fact that counsel,
2 after you filed the preliminary approval papers and after I
3 identified by order questions for you, you gave me very
4 thoughtful answers to what struck me as the more consequential
5 questions. And having gotten those answers, I'm left with only
6 a small bore questions for you now.

7 So let me begin. To begin with, I'm going to make a
8 record that there are no objectors here. Indeed, there's
9 nobody here. So, for the record, I noted from the filings that
10 there had not been any objectors, but it's also the case that
11 I've had class action fairness hearings at which,
12 notwithstanding the deadline having passed for objectors,
13 people show up. The courtroom, aside from my staff, is empty.

14 And counsel have also represented that nobody sought
15 to opt out. Am I correct that that remains the case, that you
16 have not been communicated as of now by anybody an intention,
17 timely or not, to object or opt out?

18 MR. GRUNFELD: That's right, your Honor.

19 THE COURT: Very good. Let me then pursue that
20 subject a little farther.

21 From the point at which any notice was given of a
22 potential settlement, did you have any communications with any
23 punitive member of the settlement class? Did anyone even reach
24 out with questions?

25 MR. GRUNFELD: Your Honor, we've received several

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1 e-mails from claimants with just questions about their claims
2 that either included the claims administrator on the
3 correspondence, or that we passed along to the claims
4 administrator, those were along the lines of technical
5 questions about how they can file their claim. Nothing
6 substantive about the settlement.

7 THE COURT: About how many people even fell into that
8 category?

9 MR. GRUNFELD: I don't have the figures off the top of
10 my head, but I would estimate between five and ten, and then
11 separate from that, the claims administrator has been receiving
12 claims in the ordinary course.

13 THE COURT: To your knowledge, either communications
14 with the plaintiff's counsel or the claims administrator, were
15 there any communications that went beyond the administrative
16 and the technical?

17 MR. GRUNFELD: No, not that I know of, your Honor.

18 THE COURT: Is there any reason, even secondhand, to
19 impute to any member of the settlement class any stated
20 concerns about the settlement here?

21 MR. GRUNFELD: Plaintiffs' counsel have not heard of
22 any concerns about the settlement.

23 THE COURT: Let me turn to defense counsel.

24 MS. XIE: Yes, your Honor.

25 THE COURT: Same questions, and I'll ask you to move

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1 the microphone close. Yeah.

2 Have you had any contact with members of the
3 settlement class?

4 MS. XIE: We have not, your Honor.

5 THE COURT: Nobody has reached out to you at all?

6 MS. XIE: No one has.

7 THE COURT: And secondhand, any basis for intuiting
8 any skepticism, questions, anything by any member of the
9 settlement class?

10 MS. XIE: We have not received any.

11 THE COURT: Okay. All right. Very good.

12 Let me come back to plaintiffs' counsel. I'm eager to
13 understand a little more about the class. In the case in which
14 you have a Fortune 500 issue or whatnot, some assumptions can
15 be made about who constitutes the class. And it will usually
16 be big pension funds that own index funds or things of that
17 nature, or other people who own index funds. This is a
18 somewhat quirky security. It's ADS as opposed to the dominant
19 security, where here those are traded on a foreign exchange.
20 Who are in general the sorts of people who own these ADSs?

21 MR. GRUNFELD: I don't know specifically, your Honor,
22 because we don't have that information. But from the limited
23 information that I do know, I know the lead plaintiffs in this
24 case are institutional investors. I believe that the -- some
25 of the queries we got that I referenced earlier were from

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1 individual retail investors. The only other information that I
2 could add to that is that I would think that the securities
3 here would fall somewhere in between what your Honor was
4 referencing, because Qihoo was a multibillion dollar market cap
5 company, so it's not like it was an unknown company. But also,
6 because the case arose out of the going private transaction,
7 there's also specific cadre of investors that will often buy
8 securities of companies that are specifically subject to
9 pending mergers. So my assumption would be investors that look
10 to securities in that context would also be a large part of the
11 class here.

12 THE COURT: Help me with that latter point just
13 because I'm not sure I'm fully understanding. What's the niche
14 that such a person is in? In other words, it's somebody who
15 was buying precisely because there's an announcement of a take
16 private coming?

17 MR. GRUNFELD: Right, and that's right, your Honor.
18 And also that was actually part of the claims here because the
19 theory of loss causation that was upheld for the seller class
20 here was specifically that the alleged misrepresentations were
21 alleged to have misrepresented the public about the likelihood
22 of the merger closing. And had the public known the true
23 likelihood, there would have been a narrower spread between the
24 trading price and the merger price. So it's investors that are
25 looking to capitalize on that spread will often be involved in

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1 these types of securities.

2 THE COURT: But the people who are buying in the short
3 term while the tender offer is out there, in other words, this
4 is a particular class of people that's really buying not
5 because of a long term belief in the company so much as a
6 strategic sense that there's opportunity here perhaps because
7 the price -- the merger will go through and I'll make the quick
8 delta, that sort of thing.

9 MR. GRUNFELD: It could be both, your Honor, because
10 there's also a chance that if the company -- this is true for
11 Qihoo, but more generally, if a company is grossly undervalued
12 and a merger -- could be that the merger will fail and then the
13 price could go towards the fair value outside of the merger
14 context.

15 THE COURT: Right. Right. Right. Okay. That's very
16 interesting. But do you have an understanding of whether
17 independent of people who are last minute buyers, that the
18 tracking stock, the ADS, was part of mutual funds? Is there
19 some -- because it's an ADS, it's not clear to me whether
20 there's an index fund dimension that would lead people to have
21 a stake in this or whether you would have to be in effect
22 buying it on an individualized basis.

23 MR. GRUNFELD: I'm not aware of any index funds that
24 the stock was a part of.

25 THE COURT: Got it. So related question to all that,

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1 which was the \$10 cut off. Under the distribution plan, my
2 understanding is that if I'm a member of the class, but my
3 aggregate damages, putting together my damages as a seller
4 shareholder or a tenderer shareholder, if it all rolls up
5 together and I'm entitled to less than \$10, that wouldn't be
6 paid to me, correct?

7 MR. GRUNFELD: That's right, your Honor. And that's a
8 standard provision in these types of settlements, and it's
9 partly because of the administrative costs associated with the
10 settlement make it not so feasible to pay claims of that de
11 minimis size, so those funds can instead go to shareholders
12 that have more significant claims.

13 THE COURT: Right. Right. I mean, you're skipping
14 the mailing and the production apparatus and all that.
15 Understood.

16 The question is I'm trying to figure out whether given
17 what's known about the investor class here, the members of the
18 class, whether that is likely to knock out a lot of people. Is
19 this the sort of stock where, to your knowledge, there are
20 people, a lot of people out there, who have tiny holdings such
21 that the \$10 threshold is going to exclude a number of people
22 from any recovery?

23 MR. GRUNFELD: I don't know, your Honor. But I would
24 suspect that while I'm sure there will be some people that
25 would have claims whose value comes under \$10, there will be

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1 many claimants for whom that will not be the case.
2 Particularly because the settlement includes shareholders that
3 could trade the stock multiple times over the class period.
4 And so there's the opportunity for the same claimant to have
5 many trades within the class period.

6 One other detail to add is that while the claims
7 process is still ongoing, is we don't have final claims data
8 yet. From what we know from the claims administrator, there's
9 roughly 850 claims so far with a very large number of shares,
10 which suggests that the settlement fund is very likely, if not
11 even higher probability, to be exhausted by the claims, but
12 that it will also be spread out over --

13 THE COURT: Right.

14 MR. GRUNFELD: -- a number of claims that will come to
15 over \$10 per claim.

16 THE COURT: In other words, what you're saying to me
17 is we're not really at risk here of failing to use up the
18 settlement fund?

19 MR. GRUNFELD: I think that's extremely unlikely.

20 THE COURT: Yeah. I assumed as much given the
21 2.5 percent payout. I mean, that seemed to me highly unlikely
22 that with a number of large claims you would get there in a
23 hurry.

24 Where I'm going is I'm just trying to figure out what
25 the profile would be of somebody who was excluded on account of

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1 the \$10 cut off.

2 Take, for example, a tenderer shareholder. You know,
3 the gap between the trading price and the tender price is not
4 that large, but it's not nothing. I assume if you so much as
5 had three or four shares, by definition, you would clear the
6 \$10 cutoff, right?

7 MR. GRUNFELD: That's right. And we defined the
8 damages for the tenderer shareholders as not based on the
9 trading price, but based on what under the theory of the
10 tenderer shareholders --

11 THE COURT: Right.

12 MR. GRUNFELD: -- was the fair value, which was
13 multiple times the tender price.

14 THE COURT: Right, but if the seller shareholders were
15 per share, it would be somewhat less.

16 MR. GRUNFELD: That's right. But if a seller
17 shareholder sold a lot of shares, then that would all
18 aggregate.

19 THE COURT: Right. So with the seller shareholders,
20 is it safe to say as long as you had three, four, five shares,
21 you are almost certainly clearing the \$10 stated value of your
22 claim, even if your claimant, and point of fact, given the pro
23 rata mechanism, will turn out to be worth less?

24 MR. GRUNFELD: That's right, your Honor.

25 THE COURT: So the \$10 captures the stated value of

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1 your claim, not what the payout would be after the pro rata
2 exercise?

3 MR. GRUNFELD: Oh, I misunderstood. I would need to
4 look to be sure. But I think that the \$10 refers to the amount
5 that will actually --

6 THE COURT: Be paid.

7 MR. GRUNFELD: Be paid out. So you're right that it
8 will depend on the pro rata share.

9 THE COURT: So if in theory, you know, the number of
10 claims that were put in was five times the value of the net
11 settlement fund for that class of shares, you would more or
12 less have to have a stated claim worth \$50 to get a payout?

13 MR. GRUNFELD: That's right, your Honor.

14 THE COURT: But even as to that, you're not really
15 excluding people with a terribly consequential holding because,
16 even for the seller shareholders, you probably need -- what's
17 the delta? It's in the 70s to \$80 you're talking about.
18 Seven, ten shares and you're going to get your stated payout up
19 to 50, right?

20 MR. GRUNFELD: That's right.

21 THE COURT: Very helpful. Let me make sure I just
22 understand the non-reversionary mechanism here. That was
23 obviously welcome to -- I'll just say it's always important to
24 have a non-reversionary settlement to make sure that the
25 defense is really paying what they claim to be paying.

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1 Just walk me through mechanically the sequence of
2 events that will play out with the different branches of the
3 decision tree in terms of a second round of distribution. Just
4 walk me through from start to finish how that works.

5 MR. GRUNFELD: Well, the initial distribution should
6 cover the -- should really exhaust the claims. The second
7 round of the distribution generally comes into play if there's
8 a certain amount left over after the initial distribution,
9 because, for example, rounding on the pro rata basis, so
10 there's a certain amount of funds left. And then the claims
11 administrator will look and see is that amount of funds left
12 enough to do a second distribution. And this is because --

13 THE COURT: Is it -- I thought it was more because
14 people don't cash their checks?

15 MR. GRUNFELD: That's another possibility.

16 THE COURT: But putting that aside, where that would
17 be an obvious explanation for a potential need for a second
18 round, what's the scenario other than that where there's a
19 potential second round?

20 MR. GRUNFELD: So what I had in mind is that the
21 claims are paid on a pro rata basis, and so it's possible that
22 in that pro rata calculation, because it's done to be equal
23 among similarly situated class members, there could be some
24 amount of funds left over that -- what wasn't possible to
25 distribute evenly to the class members. Although that does --

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1 THE COURT: I don't understand that. I thought before
2 you would be paying even the first part out, you would be
3 trying to -- understanding the 75 and 25 percent allocations to
4 the respective subclasses, I would have thought that you would
5 have been fine tuning the proportionate payout to the
6 relationship of claims made to funds available. And so if
7 everyone cashed their check, you would be within small number
8 of dollars of the full amount to be paid.

9 MR. GRUNFELD: I think that's actually right, your
10 Honor. I think, I mean, in my experience from other
11 settlements, when there's funds left in the settlement account
12 after the initial distribution, it is such a small amount that
13 it doesn't actually make sense to do a second distribution.

14 So I think what you're describing is correct and that
15 the more likely scenario of there being a significant amount of
16 funds would be if claimants do not cash their checks.

17 THE COURT: Is there any difference in the likelihood,
18 as you see it, that the seller shareholders as opposed to the
19 tenderer shareholders will not make claims or not make
20 substantial enough claims to reach the stated amount for that
21 class? The amount of money set aside for that class.

22 MR. GRUNFELD: I would expect that both will exhaust
23 the portion of the settlement funds that are allocated to them,
24 because on the one hand there are fewer shares eligible for the
25 tenderer shareholder class because it's limited to each share

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1 that was tendered one time. Whereas, for the seller
2 shareholders, it's multiple times that number of shares that
3 could have been traded over the course of the class period.

4 But on the other -- on the flip side, you have a
5 smaller amount of funds allocated to the tenderer shareholders.
6 So while it's a smaller class side, it's also a smaller amount
7 of funds that is being allocated to them.

8 THE COURT: In other words, just predictively, would
9 you assume that either subclass would be more likely to be
10 incited to participate?

11 MR. GRUNFELD: I don't think -- I don't have any
12 reason to think that would be the case. And the lead
13 plaintiffs are a good example of that because both lead
14 plaintiffs are part of both subclasses. So I don't have any
15 reason to think that there's a large number of investors that
16 are part of one, but not the other subclass.

17 THE COURT: So that led me to this question: Why
18 would a rational investor be part of both classes? Wouldn't,
19 once you're in that chute where you're in the period where the
20 tender offer is out there, wouldn't a rational investor make a
21 call himself or herself as to which the more economically
22 sensible call is, tenderer or not? Why would an investor do
23 some of each?

24 MR. GRUNFELD: I can't say for sure, your Honor. But
25 one factor to consider is as you get closer to the time of the

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1 merger closing, it becomes more likely that it will close, and
2 so there's less uncertainty involved in continuing to hold the
3 shares through the closing. And so it could be that earlier in
4 time, you might say I don't know what's going to happen here, I
5 want to sell my shares. And as you get later on, you say oh,
6 it's just a week until it closes, I'll capture that even if
7 it's a minimal spread between now and the closing.

8 THE COURT: Got it. Coming back to the allocation.
9 You had said to me that you've already gotten a number of
10 applications, a number of people have put in for their
11 recovery. Is that usual that that happens before the approval
12 hearing?

13 MR. GRUNFELD: Yes. So from talking to the claims
14 administrator here and also from experience in other cases,
15 claimants put in claims because if they want to recover from
16 the settlement, then they might not want to wait until the last
17 minute. It's obviously dependent on whether the settlement is
18 granted final approval. But it's also the claims
19 administrator's experience and my experience as well that a
20 disproportionate number of claims will come in very close to or
21 at the deadline for claims filing.

22 THE COURT: Which is when again?

23 MR. GRUNFELD: August 8, a week from today.

24 THE COURT: Okay. All right. And are you already at
25 the level where the claims made exceed the net settlement value

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1 for -- or even the gross settlement value for each of the two
2 subclasses?

3 MR. GRUNFELD: We don't know that because the claims
4 administrator still needs to run the formula, which they don't
5 typically do until after all claims are in. But based on what
6 they have told us about the number of shares that are covered
7 by the claims that have come in already, which is I think they
8 said several hundred million shares are covered by the claims,
9 that would suggest that it will be exhausted and that number
10 will go up as we get closer to the deadline.

11 THE COURT: That sure does. In the improbable event
12 that money were left over, because there weren't enough claims
13 or not enough people cashed their checks or there's a small
14 amount of money left over where it doesn't pay for the postage,
15 it was going to go to a side priority organization. Just
16 briefly tell me about that organization.

17 MR. GRUNFELD: I want to check to make sure I'm
18 getting the name right, but I believe it's the -- I want to
19 check to make sure.

20 THE COURT: Take your time.

21 MR. GRUNFELD: Your Honor, I'm having trouble finding
22 it in the papers and I don't remember the specific name, but I
23 do know that it's consumer protection organization that we've
24 referenced in prior settlements and that has been approved by
25 courts in the past.

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1 THE COURT: Very good. Are all the individual
2 defendants covered by the settlement? At some point, and
3 forgive me, this is just a lapse of my memory, somebody hadn't
4 been served at some point. I just want to make sure that I
5 understand the coverage here.

6 MR. GRUNFELD: That's -- yes, your Honor. So
7 defendant Qi was -- did not appear in the case and so was not
8 represented. And so in the settlement papers, we
9 differentiated into fine terms between defendants and settling
10 defendants. So the settling defendants are the defendants
11 other than defendant Qi because he wasn't represented by
12 defense counsel, but the settlement does release him from
13 claims, so there wouldn't be any further litigation against him
14 either.

15 THE COURT: Is he contributing to the settlement fund?

16 MR. GRUNFELD: He's not, as far as I know, but also,
17 as far as I know, the settlement fund is on behalf of all
18 defendants. I don't know specifically which defendant of the
19 settling defendants are contributing to it.

20 THE COURT: Right. I mean, I guess the question would
21 be he didn't appear, didn't participate in the litigation, that
22 doesn't prevent him from settling. But, to your knowledge,
23 he's not a party to the settlement agreement but is a
24 beneficiary of it in getting the claims against him dismissed
25 with prejudice. How does that happen? Just curious.

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1 MR. GRUNFELD: Well, as a practical matter, my sense
2 is that the settlement is a contract and the settlement class
3 has the power to release certain claims. And the claims
4 against him are certainly a core part of the case. And so it
5 would be within the power of the settlement class --

6 THE COURT: Oh, no question. The question is from
7 your perspective why you're giving him something from arguably
8 nothing.

9 MR. GRUNFELD: Right. So I was going to get to that
10 as well. Which is that I do know that this was specifically
11 negotiated for in the settlement, I remember in the mediation
12 and the subsequent correspondence, it was discussed with
13 defense counsel about whether or not he would be included. And
14 when we -- plaintiffs' counsel determined that the settlement
15 amount was fair and reasonable, it was specifically accounting
16 for the fact that he would be included in the settlement.

17 THE COURT: Got it. In other words, from your
18 perspective, at least it's possible that had he not been
19 included, defendants would have offered marginally less money?

20 MR. GRUNFELD: I think it's likely that had he not
21 been included, the difference would have been more than
22 marginal. And it's very likely the settlement wouldn't have
23 happened at all had plaintiffs insisted on him not being
24 included in the settlement.

25 THE COURT: Right. In other words, the defendants'

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1 goal here, much as they had an interest in including the
2 tenderer shareholders, is just to get maximal piece.

3 MR. GRUNFELD: That's right, your Honor. And I mean,
4 I can only speculate as to this. But I would imagine that the
5 individual defendants that were in the case have some level of
6 personal relationship with defendant Qi, and so it was in their
7 interest to have the case against him resolved as well. And I
8 also don't think that the claims against him were any stronger
9 than were the claims against defendant Zhou, who was the CEO of
10 the company and the leader of the buyer group.

11 THE COURT: How often is it, just in your experience,
12 that a settlement runs to the benefit of a named but
13 non-appearing defendant?

14 MR. GRUNFELD: I don't think I've experienced it
15 before, but it does strike me as something that would occur
16 more in the context of dealing with foreign defendants where
17 it's easier for them to evade appearing in the case.

18 THE COURT: Right. Okay. Very interesting. Very
19 helpful. Let me ask defense counsel a few questions.

20 MS. XIE: Yes, your Honor.

21 THE COURT: First of all, thank you.

22 MR. GRUNFELD: Thank you, your Honor.

23 THE COURT: Starting where we left off, anything you
24 want to add by way of explanation of defendant Qi? And forgive
25 me for not pronouncing it the same as plaintiffs did, but I'm

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1 using the phonetic as it presents to me.

2 Any incite as to why he didn't appear but wants the
3 benefit of the settlement? How does that all come to pass?

4 MS. XIE: Yes, your Honor. Happy to address that. So
5 first off, to our knowledge, Mr. Qi did not contribute to the
6 settlement fund. It entirely came from our clients, so the
7 company, Mr. Zhou, and Mr. Chen. And from our client's
8 perspective, it's exactly as your Honor described, our clients
9 are willing and prepared to enter into the settlement for
10 finality and closure. So they would like that this entire
11 lawsuit and claims against this company arising from the events
12 described in the complaint would be settled once and for all.

13 THE COURT: But, look, one way to look at it is all
14 the other defendants were served, appeared, put themselves at
15 risk for going to be deposed if it had come to pass. And this
16 other defendant doesn't participate and now gets to free ride.
17 It may have no bearing on any relevant factor for me, but it's
18 hard not to alert to that as odd.

19 Why are the other defendants willing to, in effect,
20 underwrite immunizing the defendant who didn't participate in
21 the defense expose himself?

22 MS. XIE: Of course. Sure, your Honor. I think from
23 our clients' perspective, again, they would prefer closure and
24 finality. And to the extent that the lawsuit proceeds, even
25 after the settlement with them, and proceeds against Mr. Qi,

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1 the allegations in the complaint would be still subject to
2 discovery and further dispute, and the company could become a
3 third party in future discovery efforts. And the company would
4 like to shield itself from all that.

5 THE COURT: I see. In other words, even if the
6 company had been dismissed with prejudice, that wouldn't spare
7 it the transaction costs of the ongoing litigation?

8 MS. XIE: Yes, your Honor.

9 THE COURT: Okay. Is Mr. Qi still associated with the
10 company?

11 MS. XIE: He is not anymore. And to our knowledge,
12 the company is not in contact with him.

13 THE COURT: Well, I mean, for him I guess I would say
14 nice work if you can get it, but I think I'd understand why the
15 company might do that. It is anomalous. Is this, in your
16 experience, have you seen this fact pattern before?

17 MS. XIE: I personally have not. But I understand
18 that in our colleague's experience there are settlements that
19 involved parties, individual defendants in particular, that
20 have not appeared in the case.

21 THE COURT: Okay.

22 MS. XIE: In global settlements.

23 THE COURT: From the defense perspective, the tenderer
24 shareholders were out and the seller shareholders, although
25 surviving, had a host of hurdles to clear here before actually

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1 getting money in their pockets. Why did you settle?

2 MS. XIE: Yes, your Honor. It is certainly our
3 position still that defendants would have strong arguments to
4 dismiss, to seek the dismissal of the remaining claims brought
5 on behalf of the sellers. And still, there would be a long
6 road towards summary judgment. There would be class
7 certification, discovery, expert discovery, and all that. And
8 I believe plaintiff has also indicated their intention to seek
9 an appeal of the already dismissed claims.

10 THE COURT: Though they could not appeal until the
11 litigation as to the seller shareholders had run its course.

12 MS. XIE: That's exactly right. But from our clients'
13 perspective, they would prefer finality and closure. The
14 litigation has already been ongoing for over five years and
15 they are at a point where they're willing to reach into a
16 settlement and resolve this lawsuit.

17 THE COURT: Is that because the transaction costs of
18 the litigation looking forward were so high that it potentially
19 would have approached the amount of the settlement?

20 MS. XIE: That's a good question, your Honor. I would
21 like to think further about that and couldn't speak
22 definitively in terms of putting a monetary value to it. But
23 litigation certainly has been costly and burdensome from the
24 company's perspective. And not just limited to monetary value,
25 but also reputational risk associated with a foreign company.

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1 And also potentially foreign discovery where the vast majority
2 of the witnesses and documents would be located in China, it
3 would also impose a burden on the company moving forward in
4 terms of its ongoing business. So I believe that's also a
5 major consideration in our clients' --

6 THE COURT: How much document discovery did you do?
7 How much documents did you produce to the plaintiffs?

8 MS. XIE: Your Honor, I do not have the number
9 offhandedly, but if it would be helpful, we would be happy to
10 disclose to the Court.

11 THE COURT: No, no, I'm trying to just for the purpose
12 of this discussion. My understanding has been that there had
13 been document demands made, and that the plaintiffs produced a
14 couple thousand pages. But I did not get a sense and I
15 couldn't find anywhere in the papers the suggestion that the
16 corporate defendant made much of a production. That
17 essentially the settlement occurred early in the process of
18 talking about discovery parameters and, therefore, even written
19 discovery, there wasn't much that went from the defense to the
20 plaintiffs; is that accurate?

21 MS. XIE: I believe that is accurate, your Honor. I
22 would need to check my record, but that was exactly right.
23 When we settled it was at the beginning of discovery period.
24 Defendants were certainly in the process -- I believe we were
25 still in the process of meeting and conferring with plaintiffs

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1 on the discovery requests and are getting -- were getting ready
2 to produce documents.

3 THE COURT: So then thinking about transaction costs
4 for you, assuming there hadn't been a settlement, describe for
5 me what the burdens would have been like for your client in
6 particular, the institutional client, both as to document and
7 deposition discovery and expert discovery.

8 MS. XIE: Yes, of course. From the corporate
9 defendant's perspective, it would involve search, locate,
10 search, and reveal documents associated with the transactions
11 and the events described in the complaint. Our understanding
12 is that the vast majority of that documents are stored in the
13 company's server physically located in China and the key
14 witnesses are all located in China. So making them available
15 for potential depositions and discovery efforts would be quite
16 burdensome on the company.

17 THE COURT: Were you in a position to estimate, even
18 at a ballpark level, the volume of outgoing documents you would
19 have had to produce making reasonable assumptions about how
20 meeting and conferring would have ended?

21 MS. XIE: Yes, I would estimate in the volume of
22 hundreds of thousands of pages at the very least.

23 THE COURT: And as to depositions, ballpark, do you
24 have a sense of how many percipient witnesses there were from
25 within the company or its affiliates that would have had some

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1 hand in the events that were being said by the plaintiffs to be
2 important here?

3 MS. XIE: Yes, your Honor. To start, there would be
4 the individual defendants who are a party to the litigation and
5 would have to produce testimony, and then there are also the
6 rest of the board and potentially other employees and officers
7 and executives were involved in the negotiation of the process
8 of the merger.

9 THE COURT: So, what? 15 or 20 potential depositions;
10 is that a fair ballpark to assume?

11 MS. XIE: Yes, your Honor. I believe that's a fair
12 estimate.

13 THE COURT: All right. The plaintiffs are seeking a
14 one-third fee here. Did the defendants negotiate about that?

15 MS. XIE: Your Honor, we did not, and our clients do
16 not take a position on the plaintiffs' counsel's request for
17 fee.

18 THE COURT: Do you ever pay out -- are you aware of
19 cases where more than a third in securities class actions gets
20 paid as a fee?

21 MS. XIE: Your Honor, I personally am not aware of any
22 such examples, but I will confess that I have limited
23 experience in securities litigation settlements.

24 THE COURT: Fair enough. So the defense outline
25 doesn't take a position on what the reasonable fee percentage

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1 is?

2 MS. XIE: That's right, your Honor.

3 THE COURT: Why not?

4 MS. XIE: We believe that is an issue within
5 plaintiffs and plaintiffs' counsel purview and it doesn't -- it
6 isn't a concern or consideration from defendants' side in
7 entering into the settlement.

8 THE COURT: But understand the problem with defense
9 saying we don't care is that it means that on that aspect of
10 the analysis here the Court has no benefit of the adversary
11 system. I have to rely on my review of the case law and my, by
12 now, considerable experience doing this, my prior experience in
13 private practice. But at the end of the day, the adversary
14 system, which is usually the best gauge, breaks down in this
15 area because -- and you're not the first and won't be the
16 last -- defense counsel at this point chooses to say all we
17 care about is the bottom line, how it gets carved up as between
18 the lawyers and the clients, we don't care about.

19 But it deprives the Court of the considerable insight
20 that the defendants might have.

21 MS. XIE: I appreciate that, your Honor. Thank you.
22 Like your Honor described, my understanding is that it is very
23 typical and a common position for defense counsel to take in
24 class action settlements. And one consideration that may be
25 relevant is that even without the benefit of the adversarial

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1 system, I believe that plaintiffs or members of the class could
2 have potentially advised the Court of their position in terms
3 of a share of the entire settlement fund as to be attributed to
4 plaintiffs' counsel.

5 THE COURT: In your experience, have you ever seen a
6 named plaintiff fight before a Court with the lawyer as to the
7 percentage that the lawyer would get from the fund?

8 MS. XIE: I have not, your Honor.

9 THE COURT: Nor have I. And they are the last people
10 who might, in part because the lawyer is endorsed sometimes a
11 hefty named plaintiff fee for them.

12 The point is, structurally here, we have a breakdown
13 in the adversary system as to this discrete issue. There is
14 nobody here who, in reality, is incited to get up and say
15 that's too much. Now, you might get objectors. Once in a blue
16 moon, you do. I've had it.

17 MR. GRUNFELD: Your Honor, if I could speak to that
18 one.

19 THE COURT: Yeah, when I'm done with the defense
20 counsel. But, look, I'm making the point. I certainly agree
21 with you that defense counsel never seems to fight this issue.
22 But it basically means that, but for the happenstance of an
23 objector, somebody who wants to take the time to scrap about
24 this, we never get that even when the request is clearly
25 excessive. It just doesn't happen. And I'm just putting the

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1 word out there, as one lonely District Judge, that that's a
2 regrettable feature of practice in this area. That I've got an
3 excellent set of lawyers at both tables, but on this one issue,
4 the defense takes the view I don't want to rock the boat. I
5 don't want to annoy plaintiffs' counsel. It's easier to get to
6 yes. I'm not going to address that issue.

7 But it leaves the Court with what amounts to a
8 one-party presentation. And even, frankly, an objection by a
9 lone objector or two is very rare. And I've been at this now
10 on the bench for 13 years. It's very rare that that objection,
11 beyond claiming greed by the lawyers, is going to have a
12 nuanced approach that canvasses like cases or anything like
13 that.

14 The practical effective, although this is the
15 adversary system, is ill-matched to this particular
16 determination. So I'm putting that out there so that next time
17 your firm is before me or before a colleague, you'll remember
18 that a judge would have preferred that defense counsel make
19 that argument.

20 So with that, I'm directing you, what's the argument
21 you would make, if you had to, as to why the fee here should be
22 something other than one-third?

23 MS. XIE: Yes, your Honor. First of all, thank you
24 for the observation and the comments, which we will certainly
25 take into consideration and appreciate and incorporate into our

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1 future practice.

2 THE COURT: Are you prepared to just articulate as a
3 thoughtful counsel why what amounts to -- one-third is
4 generally the maximalist fee. It's not literally so. But
5 we've all been doing this for a while. And, in practice, that
6 is in general what the recovery tops out at, save the very rare
7 case.

8 Is there an argument in this case why the fee should
9 be something less?

10 MS. XIE: Your Honor, I would like to answer that
11 question more thoughtfully and perhaps with a benefit and with
12 the Court's permission if it would be helpful, we're happy to
13 put in a written submission.

14 THE COURT: No. I'm resolving this today.

15 MS. XIE: Yes, standing here today, and just thinking
16 based on the facts and circumstances that I know, it does
17 appear to me that this distribution seemed fair, and it would
18 be difficult to make an argument to say that it's excessive
19 given how long this litigation has been ongoing and the
20 complexity of the issues and the --

21 THE COURT: I'm sorry. You're telling me it would be
22 difficult to come up with an argument, or you're choosing not
23 to make one? You're having difficulty coming up with an
24 argument -- if you were in law school and I said make the
25 argument, would you really say it's difficult to come up with

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1 one?

2 MS. XIE: No. Sorry, your Honor. No. I am simply
3 trying to assess the facts based on what I know in terms of a
4 fee and argument for the amount of the fee that is sought here.

5 And also, due to the fact that I do have limited
6 experience in settlement in class securities, class actions.
7 But as your Honor described, a 30 percent seems to be the upper
8 boundary of the permissible legal fees in the settlement
9 agreements and tend to be rare. But this case does seem to
10 fall on a spectrum of more complex and sophisticated argument
11 and issues here, including novel legal issues here.

12 THE COURT: Okay. Thank you.

13 MS. XIE: Thank you, your Honor.

14 THE COURT: Mr. Grunfeld, you wanted to say something?

15 MR. GRUNFELD: Yes. Thank you, your Honor. I just
16 wanted to point out that there are in fact several avenues
17 where objections to fees can be made. As your Honor noted, a
18 class member can file an objection, and that does happen
19 occasionally.

20 THE COURT: But, as you know, the pro se objection by
21 the class member plaintiff tends to be considerably less
22 tutored than one that I may have gotten from Latham and
23 Watkins.

24 MR. GRUNFELD: They're not always pro se. I've seen
25 fee objections that are represented by purportedly public

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1 interest organizations.

2 THE COURT: Yeah.

3 MR. GRUNFELD: That take interest in these types of
4 things. And I also wanted to add that what you don't see on
5 the docket, a named plaintiff disputing the fee request, that's
6 because plaintiffs' counsel, myself and my colleague, discussed
7 with our clients, the lead plaintiffs, before we make the fee
8 application.

9 And so we don't always request a third. And sometimes
10 when requests are made for less than a third, that's as a
11 result of input from the lead plaintiffs. So we do think that
12 the fee request here is particularly appropriate based on the
13 complexity of the case and the work and the results.

14 THE COURT: Have you, in your considerable experience,
15 had a case where in the settlement posture the defense disputes
16 before the Court the fee request by plaintiffs' counsel?

17 MR. GRUNFELD: I have had that, your Honor.

18 THE COURT: What's the posture that tends to produce
19 that?

20 MR. GRUNFELD: I had a recent case that was in the
21 Eastern District of New York that was a class action and it
22 settled pretty far along in the case after class certification,
23 towards the end of merits discovery. And it seemed like it was
24 either the defense counsel or the defendant wanting to take a
25 principled position of what they thought fees should be. It

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1 wasn't necessarily specific to that -- the details of that
2 case.

3 THE COURT: But, I mean, is it because in effect the
4 parties had been at striking blows for a while and there was
5 some holdover from that that led defense counsel to fight you
6 on fees or something else? I'm just trying to understand what
7 the structural features would be that would bring a defense
8 lawyer, get them to stand up and say, no, that's too much.

9 MR. GRUNFELD: So all I know for a fact is the
10 arguments that defense counsel made in that case. And I
11 believe in that case, we requested a third, and defense counsel
12 was arguing for something -- I don't remember the specific
13 number, but it was a small reduction that they were arguing
14 for. And if I remember correctly, I think that the defendant
15 in that case had made similar arguments in other cases. So my
16 sense was this was sort of the position of the defendant in
17 that case to argue against.

18 THE COURT: In other words, the defendant, as opposed
19 to defense counsel, had a longer term view of the matter?

20 MR. GRUNFELD: That's right, your Honor.

21 THE COURT: All right. Very helpful.

22 Anything further from you?

23 MR. GRUNFELD: No, your Honor.

24 THE COURT: Anything further from the defense?

25 MS. XIE: No, your Honor. Thank you.

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1 THE COURT: All right. I have a bench ruling. This
2 will take a little while.

3 This is a securities class action brought under the
4 Securities Exchange Act of 1934. The lead plaintiffs are
5 Altimeo Asset Management and ODS Capital LLC. This lawsuit was
6 filed in 2019 against internet company Qihoo 360 Technology Co.
7 Ltd., and three executives, Hongyi Zhou, Eric X. Chen, and
8 Xiangdong Qi, to whom I will refer collectively as the
9 "individual defendants." Plaintiffs brought claims against all
10 defendants under Section 10(b) of the Exchange Act and the
11 SEC'S implementing Rule 10b-5. They also brought claims
12 against the individual defendants under Section 20(a) for
13 control person liability and under Section 20A for insider
14 trading.

15 In essence, plaintiffs contend that the defendants
16 schemed to depress the trading of Qihoo's stock. That stock
17 included, as relevant in this U.S. lawsuit, American Depository
18 Shares, or ADSs, which traded on a domestic change. Defendants
19 did so, plaintiffs allege, to induce Qihoo shareholders to
20 agree to pay an unfairly low price when the defendants took the
21 company private in 2016 in a transaction I will call the
22 "Go-Private Merger" or the "Merger." Plaintiffs allege that
23 the scheme involved making materially false and misleading
24 statements tending to depress the price of Qihoo shares. Most
25 centrally, defendants are alleged to have concealed a plan to

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1 relist Qihoo on another stock exchange after completion of the
2 Merger. Defendants are also alleged to have dissembled about
3 the fairness of the Merger terms, the reasons for the Merger,
4 and strategic alternatives to it.

5 This case has a substantial history. In 2020, this
6 Court granted Qihoo's motion to dismiss; in 2021, the Second
7 Circuit reinstated a portion of plaintiffs' claims, relating to
8 the theory of a concealed plaintiff to relist; and in 2023,
9 this Court, on Zhou's motion to dismiss, sustained the claims
10 of so-called Seller Shareholders while dismissing the claims of
11 so-called Tenderer Shareholders based on an inability to
12 non-speculatively establish loss causation. After those
13 rulings, the parties agreed to a proposed class settlement.
14 The Court, after posing and receiving responses to factual
15 questions about the allocation and tabulation of the
16 settlement, preliminarily approved it and scheduled today's
17 hearing. This bench ruling resolves plaintiffs' motion to
18 approve the proposed settlement, see Dkt. 229, and their motion
19 for an award of fees and costs to counsel and service fees for
20 the lead plaintiffs, see Dkt. 231.

21 I will not be issuing a written decision. Instead, I
22 will issue a bottom-line order reflecting the fact that the
23 motions were resolved, substantially for the reasons set forth
24 on the record today. And, of course, I will issue the orders
25 substantively providing for the relief at issue. So, if the

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1 content of what I say is important to you, you will need to
2 order the transcript of this conference.

3 I will begin with a motion to approve the proposed
4 class settlement.

5 I'll begin by reviewing the proposed settlement. It
6 would resolve all claims. The gross settlement amount is
7 \$29.75 million plus accruing interest, minus attorneys' fees,
8 expenses, service fees to the lead plaintiffs, notice and
9 administration expenses, and taxes on interest.

10 The \$29.75 million settlement fund would be broken
11 into two sub-funds. Sub-Fund 1 allocates 75 percent of the net
12 settlement fund to the Seller Shareholders – the shareholders
13 who sold Qihoo shares before the Go-Private Merger closed.
14 Sub-Fund 2 allocates the remaining 25 percent to Tenderer
15 Shareholders – shareholders that tendered, canceled or
16 exchanged shares in the Go-Private Merger. The differential
17 allocation reflects factors including the fact that the Court
18 had dismissed claims of the tenderer shareholders.

19 The claims administrator will determine each
20 authorized claimant's share of the net settlement fund based
21 upon the following allocation formulas.

22 For Sub-Fund 1, the claims administrator will
23 calculate a "seller loss amount" for each Qihoo ADS or Class A
24 ordinary share sold during the class period that a claimant
25 lists in a submitted "proof of clam" form and for which

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1 adequate documentation is submitted. The seller loss amount
2 for ADSs will be calculated as the Merger consideration price
3 of \$77 per ADS minus the price at which the claimant's ADS was
4 sold. The seller loss amount for Class A ordinary shares will
5 be calculated as the Merger consideration price of \$51.33 per
6 Class A ordinary share minus the price at which the claimant's
7 share was sold. A claimant's seller loss amount will then be
8 aggregated in a figure called the claimant's "recognized seller
9 claim." The claims administrator will allocate to each
10 claimant a *pro rata* share of sub-fund 1 based on the proportion
11 of the claimant's recognized seller claim to the total
12 recognized seller claims for all authorized claimants.

13 For Sub-Fund 2, much the same, the claims
14 administrator will calculate a "Merger Consideration Amount"
15 for each Qihoo ADS or Class A ordinary share tendered,
16 canceled, or exchanged in the merger that a claimant lists in a
17 submitted proof of claim form, again, subject to adequate
18 documentation. The Merger Consideration amounts to \$385 per
19 ADS, and \$265.65 per Class A ordinary share. A claimant's
20 Merger Consideration Amount will similarly be aggregated in a
21 figure called the claimant's "Recognized Merger Claim." The
22 claims administrator will allocate to each claimant a *pro rata*
23 share of Sub-Fund 2 based on the proportion of the claimant's
24 Recognized Seller Claim to the total Recognized Seller Claims
25 for all authorized claimants.

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1 A claimant's *pro rata* share of each Sub-Fund will be
2 combined to determine the claimant's total distribution amount.
3 No distribution will be made to a claimant who would receive
4 less than \$10. If the settlement fund is sufficient to pay
5 100 percent of the Recognized Seller Claims in Sub-Fund 1, any
6 excess amount will be applied proportionally to claims in
7 Sub-Fund 2 and vice versa. If there's any remaining balance in
8 the Settlement Fund after at least six months from the date of
9 initial distribution, the claims administrator must, if
10 feasible and economical, redistribute such balance among
11 claimants who have cashed their checks in an equitable and
12 economic fashion. If it is no longer feasible or economical to
13 do so, any remaining balance will be contributed to the
14 Investor Protection Trust -- that's the name we were trying to
15 remember -- or another private, nonprofit, non-sectarian
16 501(c)(3) organization designated by lead plaintiffs and
17 approved by the Court.

18 The settlement terms resulted from a full day
19 mediation held on September 28, 2023, with former United States
20 District Judge Layn R. Phillips. Ensuing discussions yielded
21 an agreement in principle. On December 21, 2023, the parties
22 memorialized the settlement terms in a term sheet. On
23 February 12, 2024, the parties executed a stipulation of
24 settlement, and moved for preliminary approval. On March 12,
25 2024, the Court, after receiving a response to inquiries it had

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1 posed by order to counsel, granted preliminary approval.

2 Thereafter, class counsel and the claims
3 administrator, Angeion, disseminated notices to potential
4 members of the settlement class by U.S. mail and publication.
5 As of July 25, 2024, a total of 27,542 potential settlement
6 class members had been notified by mail. The administrator
7 also posted copies of the notice and claim form online on the
8 settlement website. On April 9, 2024, a summary of the notice
9 was published in *The Wall Street Journal* and transmitted over
10 *PR Newswire*. The notice stated that the deadline to request
11 exclusion or to file objections was July 5, 2024. To date, no
12 requests for exclusion nor objections have been received.

13 I will now turn to the motion to approve the
14 settlement.

15 Under Rule 23(e)(2), a court may approve a proposed
16 settlement "only after a hearing and only on finding that is
17 fair, reasonable, and adequate." Per a 2018 amendment to the
18 rule, the Court, in making this determination, must consider
19 whether:

20 (A) the class representatives and class counsel have
21 adequately represented the class;

22 (B) the proposal was negotiated at arm's length;

23 (C) the relief provided for the class is adequate,
24 taking into account:

25 (i) the costs, risks, and delay of trial and appeal;

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1 (ii) the effectiveness of any proposed method of
2 distributing relief to the class, including the method of
3 processing class member claims;

4 (iii) the terms of any proposed award of attorneys'
5 fees, including timing of payment; and

6 (iv) any agreement required to be identified under
7 Rule 23(e) (3); and finally

8 (D) the proposal must treat class members equitably
9 relative to each other.

10 So factors (A) and (B) are procedural in nature. They
11 focus on the conduct of the litigation and the negotiations
12 leading to the proposed settlement. Factors (C) and (D) are
13 substantive and focus on the relief the settlement is expected
14 to provide to class members.

15 The Rule 23(e) factors largely track some of the nine
16 factors in the test that has long been applied in this circuit
17 for settlement approval. That test derives from the Circuit's
18 decision in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448,
19 463, (2d Cir. 1974). The *Grinnell* factors are:

20 (1) the complexity, expense and likely duration of the
21 litigation; (2) the reaction of the class to the settlement;
22 (3) the stage of the proceedings and the amount of discovery
23 completed; (4) the risks of establishing liability; (5) the
24 risks of establishing damages; (6) the risks of maintaining the
25 class action through the trial; (7) the ability of the

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1 defendants to withstand a greater judgment; (8) the range of
2 reasonableness of the settlement fund in light of the best
3 possible recovery; (9) the range of reasonableness of the
4 settlement fund to a possible recovery in light of all the
5 attendant risks of litigation.

6 *Id.* approval is subject to the Court's broad
7 discretion, which should "be exercised in light of the general
8 judicial policy favoring settlement." I'm citing this Court's
9 decision in *Hart v. RCI Hosp. Holdings, Inc.*, 2015 WL 557713 at
10 *6 (S.D.N.Y. Sept. 22, 2015) (citations omitted).

11 So I will begin with Rule 23(e)(2) factors.

12 Under subpart A, concerning adequacy of
13 representation, the Court must consider whether the lead
14 plaintiffs' interests are antagonistic to the interest of other
15 class members and whether the lead plaintiffs' attorneys are
16 qualified, experienced, and able to conduct the litigation.

17 Here, lead plaintiffs' interests are aligned with
18 members of the proposed settlement class. The class
19 encompasses both seller and tenderer shareholders. Lead
20 plaintiffs Altimeo and ODS each belong to both subclasses, in
21 that each sold Qihoo securities during the class period and
22 also tendered Qihoo securities in exchange for Merger
23 consideration. Their claims thus rise or fall in unison with
24 those of the overall class, giving lead plaintiffs an "interest
25 in vigorously pursuing the claims of the class." Citing *In re*

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1 *GSE Bonds Antitrust Litig.*, 414 F.Supp. 3d 686, 692 (S.D.N.Y.
2 2019) (internal citation omitted). Lead plaintiffs thus share
3 with the settlement class the objective of maximizing recovery.
4 See *In re Glob. Crossing Sec. & ERISA Litig.* 225 F.R.D. 436,
5 453 (S.D.N.Y. 2004). Lead plaintiffs, the Court finds, are
6 well-positioned to adequately represent the class.

7 Class counsel have also demonstrated that they are
8 "qualified, experienced, and generally able to conduct the
9 litigation." Citing again *In re Glob. Crossing*, 225 F.R.D. 453.
10 They have extensive expertise and experience in securities
11 litigation. They have worked diligently in this case,
12 including resuscitating the case on appeal, resulting in
13 favorable results for their clients.

14 This factor thus favors approval.

15 Next, under subpart B of Rule 23(e)(2), I must find,
16 and I do find, that the settlement was negotiated at arm's
17 length.

18 Before commencing settlement negotiations, class
19 counsel had investigated and vigorously prosecuted the case.
20 Counsel briefed the initial motion to dismiss before this
21 Court, and on appeal in the Second Circuit, briefed Zhou's
22 later motion to dismiss before this Court, moved for class
23 certification, and consulted with loss causation and damages
24 experts. As to settlement, counsel participated in the
25 mediation and exchanged written statements and exhibits with

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1 defense counsel about liability and damages, leading to the
2 settlement in principle.

3 These circumstances bespeak a procedurally fair and
4 arm's length settlement process. It favors settlement
5 approval.

6 Turning now to subpart C of Rule 23(e)(2), in
7 assessing whether the settlement provides adequate relief, the
8 Court must consider, as I mentioned earlier, the four factors.
9 And I find that all four sub factors weigh in favor of
10 approval.

11 First, in evaluating the possible costs, risks and
12 delay of trial and appeal, "courts may need to forecast the
13 likely range of possible class-wide recoveries and the
14 likelihood of success in obtaining such results." *In re Payment*
15 *Card Interchange Fee & Merch Disc. Antitrust Litig.*, 330 F.R.D.
16 11, 36 (E.D.N.Y 2019). This inquiry overlaps with four of the
17 *Grinnell* factors: The first, fourth, fifth, and sixth. See
18 *GSE Bonds Antitrust Litig.*, 414 F.Supp 3d 686 at 693.

19 Securities class actions are "notably difficult and
20 notoriously uncertain to litigate," citing *In re Bear Stearns*
21 *Companies, Inc. Sec. Derivative & ERISA Litig.*, 909 F.Supp 2d
22 259, 266 (S.D.N.Y. 2012). Settlements in these cases are
23 generally favored because they result in "substantial and
24 tangible present recovery, without the attendant risk and delay
25 of trial," Cites *Skyes v. Harris* 2016 WL 3030156 at *12

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1 (S.D.N.Y. May 24, 2016).

2 That is absolutely the case here. Continued
3 litigation would have been time-consuming, expensive, and would
4 have entailed briefing and resolving complex legal and factual
5 issues. The class's ability to recover was uncertain, to say
6 the least. It would have required securing class
7 certification, undertaking potentially extensive fact and
8 expert discovery, litigating summary judgment, and perhaps
9 Daubert motions, and, if those hurdles were cleared, prevailing
10 at trial and on appeal, and then recovering from parties
11 abroad. The road ahead was long, expensive, and uncertain.

12 To elaborate a bit on the formidable hurdles
13 plaintiffs faced, discovery stood to be complex and costly,
14 particularly with records and witnesses located in China.
15 Establishing both class certification and loss causation
16 presented significant challenges, well beyond those presented
17 by garden-variety securities litigation class actions. That is
18 because of the unusual factual posture of the case, in that
19 plaintiffs effectively challenged the terms of a Go-Private
20 transaction, as opposed to the typical case of challenging
21 false or misleading statements made by an ongoing public
22 company that lends to loss causation as measured by a drop in a
23 stock's trading price. Indeed, as of settlement, the claims of
24 the Tenderer Shareholders had been dismissed based on
25 plaintiffs' inability to establish loss causation. For that

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1 subset of the class to have had any chance of recovery,
2 plaintiffs' counsel would have had to resuscitate those claims
3 on appeal. That was improbable for the reasons I gave in my
4 decision applying loss-causation doctrine to the Tenderer
5 Shareholders' conjectural theories of loss.

6 Plaintiffs thus faced substantial and unusual barriers
7 in establishing liability, damages, and maintaining the class
8 action through trial. Seeing the case to completion, let alone
9 collection of damages, would have been time consuming and
10 risky, and expensive. This Rule 23(e) factor, and the
11 associated Grinnell factors, all favor of approving the nearly
12 \$30 million settlement, which puts money in the hands of the
13 class that it was quite uncertain otherwise to receive.

14 Next, the Court examines "the method of processing
15 class-member claims." The plan of allocation and
16 claims-processing method must be fair and adequate. It
17 requires "a reasonable, rational basis, particularly if
18 recommended by experienced and competent class counsel," see *In*
19 *re Bear Stearns Companies*, 909 F.Supp. 2d at 270, but it "need
20 not be perfect," citing *Payment Card Interchange Fee Litig.*,
21 330 F.R.D. at 40.

22 The plan here, developed by experienced counsel with
23 the assistance of damages consultants, is sensible and
24 thoughtful and favors approval. The plan has separate formulas
25 for Tenderer and Seller Shareholders, giving due weight to

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1 factors including the Court's dismissal of the claims brought
2 by the former, plus of course the scale of the potential claims
3 in each category. The plan is commendable in various respects,
4 including its use of an experienced claims administrator,
5 giving claimants an opportunity to cure any deficiencies with
6 their initial submissions, and providing for a potential second
7 round of distributions if material funds are leftover after the
8 first round. The Court finds the formulas and method for
9 processing claims fair and reasonable. I particularly valued
10 counsel's thoughtful answers to the questions that I posed
11 about allocation methodology in the order I issued after
12 receiving the application for preliminary approval. The terms
13 of the settlement, I find, are reasonably designed to ensure
14 "the equitable and timely distribution of the settlement fund
15 without burdening the process in a way that will unduly waste
16 the fund." Citing *In re Credit Default Swaps Antitrust Litig.*,
17 13 Misc. 2476, 2016 WL 2731524 at *4 (S.D.N.Y. 2016).

18 Next as to the factor of attorneys' fees, it requires
19 courts to examine "the terms of any proposed award of
20 attorneys' fees, including timing of payment." The Court will
21 address fees later, in explaining why a substantial award is
22 merited. The award of fees, whose amount here will be within
23 the range of customary fee awards, is consistent with
24 settlement approval.

25 The final component under subpart C of Rule 23(e) (2)

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1 requires the Court to consider "any agreement made in
2 connection with the proposal." Here, the parties entered into
3 a confidential agreement that sets out certain conditions under
4 which defendants could terminate the settlement if class
5 members who collectively purchased more than a specific amount
6 of Qihoo's securities opt out from the settlement. That
7 agreement is moot, as there have been no timely requests for
8 exclusion, and thus does not provide an obstacle to class
9 settlement.

10 Turning finally to subpart D of Rule 23(e)(2), it
11 requires that courts assess whether "the proposal treats class
12 members equitably relative to each other." The allocation
13 formula takes appropriate account of the differences among the
14 claims of seller and tenderer shareholders. And it rightly
15 provides for a *pro rata* distribution of authorized claims.
16 That distribution model is equitable. See e.g., *Payment Card*
17 *Interchange Fee Litig.*, 330 F.R.D. at 47; and see also this
18 Court's decision in *Meredith Corp. v. SESAC*, 87 F.Supp 3d 650,
19 667 (S.D.N.Y. 2015), which upheld a *pro rata* allocation plan as
20 equitable and having "the benefit of simplicity."

21 In sum, I find that all four Rule 23(e)(2) factors to
22 favor settlement approval.

23 I'm now going to turn to the *Grinnell* factors. My
24 discussion of Rule 23(e)(2) covered four of those nine so this
25 discussion addresses the other five.

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1 First, as to the reaction of the class to the
2 settlement, under *Grinnell*, the "reaction of the class to the
3 settlement is perhaps the single most significant factor to be
4 weighed in considering its adequacy." See *Maley v. Del Glob.*
5 *Techs. Corp.*, 186 F.Supp. 2d 358, 362, (S.D.N.Y. 2002).

6 Strikingly here, there were zero requests for exclusion and
7 zero objections. This factor strongly supports approval.

8 Second, as to the stage of the proceedings and the
9 amount of discovery completed, the relevant inquiry is "whether
10 the plaintiffs have obtained a sufficient understanding of the
11 case to gauge the strengths and weaknesses of their claims and
12 the adequacy of the settlement." *In re AOL Time Warner Inc.*,
13 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006). This case was
14 at a relatively advanced stage. There had been significant
15 motions practice, class certification briefing had been filed,
16 the parties had engaged in a bit of written discovery,
17 plaintiffs had gotten some third-party discovery, and I
18 understand that plaintiffs may have gotten at least some
19 insights from the related appraisal action in the Cayman
20 Islands. All this put plaintiffs in an informed position to
21 evaluate potential settlement terms. This factor also supports
22 approval.

23 Third, as to defendant's ability to withstand a
24 greater judgment, this factor does not affirmatively favor the
25 settlement. Defendants could likely withstand a greater

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1 judgment than the \$29.75 million they will pay. But, as
2 plaintiffs note, the location of Qihoo, Zhou, and Qi in China
3 could have made collecting on a litigated judgment at trial
4 difficult. Indeed, because Qi did not appear, plaintiffs would
5 have had to collect overseas on a default judgment entered
6 here, which might have presented distinct difficulties. In all
7 events, as a matter of law, even if defendants could ultimately
8 withstand a greater judgment, this fact alone does not "suggest
9 that the settlement is unfair." *In re Austrian & German Bank*
10 *Holocaust Litig.*, 80 F.Supp. 2d 164, 178 n.9 (S.D.N.Y. 2000),
11 *aff'd*, 236 F.2d 78, (2d Cir. 2001).

12 Finally, the last two *Grinnell* factors assess the
13 range of reasonableness of the settlement fund in light of the
14 best possible recovery and the attendant risk of litigation.
15 The issue is not whether the settlement represents the best
16 possible recovery, but how it measures up in light of the
17 strength and weaknesses of the case. The Court must "consider
18 and weigh the nature of the claim, the possible defenses, the
19 situation of the parties, and the exercise of business judgment
20 in determining whether the proposed settlement is reasonable."
21 *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550,
22 at *20 (SDNY Nov. 8, 2010). The Court need only find that the
23 settlement falls within the "range of reasonableness." *Newman*
24 *v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). I find that to be
25 so here.

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1 Had a class been certified and plaintiffs' run the
2 table and prevailed on all liability and damages theories, the
3 maximum damages are estimated at around \$909.81 million. The
4 settlement here thus represents a recovery of about
5 2.45 percent. To be sure, that percentage is numerically
6 underwhelming. We have all seen securities settlements with
7 much higher percentage recoveries. But there are also lower
8 settlements. According to Exhibit 2 to Mr. Grunfeld's
9 declaration, at page 26, the median recovery for all securities
10 class actions settled in 2023 is 1.8 percent of estimated
11 damages. And the settlement needs to be evaluated in light of
12 the degree of difficulty. There were huge obstacles to
13 securing any such recovery, for the reasons I've given,
14 including challenges with class certification, establishing
15 liability, establishing damages, and recovering on a judgment.
16 There is every possibility that a certified class, or
17 individual plaintiffs if no class were certified, would have
18 come up empty. Considering these obstacles, the Court finds
19 the \$29.75 million settlement within the "range of
20 reasonableness." This factor, on balance, favors settlement
21 approval.

22 Therefore, after considering the Rule 23(e)(2) and
23 Grinnell factors, the Court finds that the proposed settlement
24 is fair, adequate, and reasonable. I approve it.

25 I turn next to class certification. When I

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1 preliminarily approved the settlement on March 12, I found it
2 likely that I would certify the settlement class under Rules
3 23(a) and (b)(3). See Dkt. 228. Plaintiffs now seek final
4 certification. I adopt by reference plaintiffs' arguments in
5 support of certification, including their memorandum in support
6 of preliminary approval, at Dkt. 223, pages 19-23. There have
7 not been any intervening developments weakening the force of
8 those arguments. There is valid certifiable settlement class
9 here. The numerosity requirement is met, as reflected in the
10 more than 27,542 notices to potential class members, and the
11 absence of any objections reinforces that the class and Seller
12 and Tenderer Shareholder subclasses have been properly drawn.
13 I approve the motion to certify that class.

14 We're now going to take a ten-minute comfort break and
15 I will pivot at that point to the discussion of the fee
16 application.

17 (Recess)

18 THE COURT: Picking up where we left off, I will now
19 turn to the motion to approve attorneys' fees and costs and
20 lead plaintiffs' service award.

21 The class has been ably represented by lead counsel
22 Pomerantz LLP, assisted by Labaton Keller Sucharow LLP. I will
23 collectively refer to them as "class counsel." Class counsel
24 have applied for an award of attorneys' fees of one-third,
25 33.33 percent, of the \$29.75 million settlement fund, net of

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1 litigation costs and expenses and service awards, or as
2 calculated \$9,915,675. Counsel separately seek recovery of
3 \$662,654.21 in out-of-pocket costs. Class counsel represent
4 that its "lodestar," as of June 20, 2024 -- the product of
5 their reported hours worked times their reported regularly
6 hourly rates -- is \$3,377,423.

7 For reasons that I will discuss in just a moment, the
8 Court grants lead counsel's motion for a generous award of
9 attorneys' fees, but the award will be of a sum modestly lower
10 than the one requested. A substantial fee award, in addition
11 to an award to enable class counsel to recoup their
12 out-of-pocket expenses, is well-deserved in this case. But I'm
13 not going to award the full fee request of \$9,915,675 or
14 one-third of the settlement. Instead, guided by precedent, my
15 experience, and a close examination of the circumstances here,
16 I am going to award fees that amount to 25 percent of the
17 estimated \$29.75 million cash settlement fund. This translates
18 into a fee of award of \$7,437,500.

19 As the Supreme Court long ago recognized, a lawyer who
20 "recovers a common fund for the benefit of persons other than
21 himself or his client is entitled to a reasonable attorney's
22 fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444
23 U.S. 472, 478 (1980). It is for the Court to determine the
24 reasonable fee. It should go without saying that the fact that
25 defense counsel has not opposed a fee proposed by class counsel

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1 does not speak at all to whether that fee is reasonable. If
2 the fee comes out of the common fund, it is of no economic
3 consequence to the defense whether the fee award represents
4 1 percent or 33 percent of that fund. Inherent at this stage
5 of class action proceedings is a risk that counsel will reach
6 an agreement in which defense counsel, to secure an overall
7 settlement that affords the defense closure on a class-wide
8 basis, will not oppose an outsized request for attorneys' fee.
9 Because the adversary system does not provide a meaningful
10 check, or really any check at this point in the process, it
11 falls on the Court to critically examine the reasonableness of
12 plaintiffs' counsels' requested fee award, and to protect the
13 class against a request for an unnecessarily large fee.

14 In the Second Circuit, district courts may employ a
15 percent-of-the-fund method when awarding fees in common fund
16 cases. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43,
17 47, (2d Cir. 2000); *see also In re Marsh & McLennan Cos., Inc.*,
18 *Sec. Litig.*, 2009 WL 5178546, at *14 (S.D.N.Y. Dec. 23, 2009),
19 which observed that "the percentage method continues to be the
20 trend of district courts in this Circuit and has been adopted
21 in the vast majority of circuits." However, the Second Circuit
22 also advises district courts to cross-check a percent fee
23 against class counsel's "lodestar." *See Goldberger*, 209, F.3d
24 at 50.

25 Regardless of the method used, attorneys' fees may not

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1 exceed what is reasonable under the circumstances. *Id.* at 47.
2 In assessing reasonableness, the Court considers the six
3 *Goldberger* factors. These are:

4 (1) the time and labor expended by counsel; (2) the
5 magnitude and complexities of the litigation; (3) the risk of
6 the litigation; (4) the quality of representation; (5) the
7 requested fee in relation to the settlement; and (6) public
8 policy considerations.

9 I will review these factors in turn, while using the
10 lodestar analysis as a cross-check. Overwhelmingly, I am in
11 agreement with class counsel that all six factors support a
12 substantial fee award. My modest reduction in the proposed
13 attorneys' fee award from 33.3 percent to 25 percent of the
14 settlement fund is guided largely by the lodestar cross-check,
15 and is also supported by the monetary interest of the class.
16 Insofar as the gross settlement amount before the fee and other
17 deductions starts at less than 2.5 percent of what plaintiffs
18 could have recovered had they prevailed, the class has an
19 obvious interest in not unduly reducing its recovery further.

20 As to the time and labor expended by counsel. First
21 factor, class counsel represent that they put significant time
22 and effort -- more than 4,339.81 hours -- into litigating the
23 action. Counsel, among other actions, obtained appointment of
24 lead plaintiff and counsel, investigated potential claims,
25 briefed the initial motion to dismiss, successfully appealed to

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1 secure reinstatement of some theories of fraud, briefed Zhou's
2 motion to dismiss, moved for class certification, participated
3 in settlement negotiations, created a plan of allocation,
4 drafted submissions in support of preliminary approval,
5 responded to the questions the Court posed about the proposed
6 settlement, oversaw the notice process, and drafted the present
7 motion for final approval and supporting documents. Counsel
8 vigorously and effectively prosecuted this case. And so this
9 factor thus favors a substantial fee award.

10 The lodestar cross-check, however, exists to assure a
11 degree of proportionality between the fee award and the amount
12 of hours worked. Counsel that have done good work, even really
13 good work, are not automatically entitled to the fee they
14 request. And counsel here are seeking a fee equating to
15 one-third of the settlement award. Based on the Court's
16 experience, a one-third fee is at the very upper end of fee
17 awards in this district in securities fraud cases measured by
18 the percentage-of-the fund award.

19 The lodestar analysis cross-check here supports a
20 modest reduction from the requested award. That methodology
21 entails multiplying the hours counsel claim to have worked on
22 this matter by counsel's claimed billing rates, which counsel
23 represent today range from for associates \$425 to \$950 and from
24 \$750 to \$1,325 for partners. Those figures yield a lodestar of
25 \$3,377,423. Compared against that lodestar, counsel's proposal

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1 to take a one-third fee award of more than \$9.9 million would
2 mean a lodestar multiplier of 2.94. In other words, counsel
3 here are seeking a fee that is nearly three times the amount of
4 money counsel would have made had they billed on an hourly
5 basis at the very substantial billing rates counsel use,
6 including \$950 for associates.

7 It is of course not at all uncommon for fees to be
8 awarded that reflect multiples of plaintiffs' counsel's
9 lodestar, as this Court has repeatedly recognized in approving
10 fee awards for class counsel in prior common fund cases. See,
11 for example, *Hart* 2015, WL 5577713, at *14. The practice of
12 paying above the lodestar reflects the reality that plaintiffs'
13 counsel, lacking a paying client, takes a risk in taking on
14 such representation. And that is widely understood to justify
15 a lodestar multiplier above 1.0. I find that logic valid. But
16 the higher the multiple of counsels' lodestar that is sought by
17 way of a fee, the greater the justification there must be.
18 Here, counsel's work is claimed to translate into under
19 \$3.4 million in fees. Counsel, in seeking close to \$10 million
20 in fees, propose to be paid \$2.94 for every \$1 of work measured
21 at their usual billing rate. Or to go back to the associate
22 who pays \$950, just one moment, to yield a lodestar of
23 approximately \$2,800 for the \$950 hours worked by that
24 associate. That's what you're asking. Almost three times
25 multiplier is not in my judgment defensible here.

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1 A 25 percent fee award on the other hand I can find
2 defensible. It would amount to a \$7,437,500 attorneys' fee,
3 nearly \$7.5 million. That is amply sufficient, amply
4 sufficient, to compensate class counsel for the time they have
5 spent litigating the case on behalf of their clients. But it
6 yields a more restrained lodestar multiplier of 2.2. Drawing
7 on my experience and my research into awards issued by my
8 colleagues, a 25 percent fee award of \$7.5 million comfortably
9 aligns, more comfortably aligns indeed with the range of
10 attorneys' fees awarded in securities fund class actions. Here
11 are just a few examples. In *In re Merrill Lynch & Co.*, 2007 WL
12 313474, at *24, Judge Keenan awarded attorneys' fees
13 representing 22.5 percent of the settlement fund, equating to a
14 1.95 lodestar multiplier; *In re Telik Inc. Sec. Litig.*, 576
15 F.Supp.2d 570, 590 (S.D.N.Y. 2008) future Chief Judge McMahon
16 awarded attorneys' fees representing 25 percent of the
17 settlement fund, equating to a 1.6 lodestar multiplier; and in
18 *Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *19 (S.D.N.Y.
19 Oct. 16, 2019), Chief Judge McMahon awarded attorneys' fees
20 representing 25 percent of the settlement fund, equating to a
21 lodestar multiplier of 2.15, and described such an award as
22 well within the range commonly awarded in security class
23 actions of this complexity and magnitude.

24 Turning to complexity and magnitude, and I'll turn to
25 that factor now, courts in this district repeatedly recognize

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1 securities fraud class action litigation in general as complex.
2 See, for example, *AOL Time Warner*, 2006, WL 903236, at *8. And
3 this action presented case-specific challenges for counsel,
4 because of its international dimension, and because of the fact
5 pattern, which is unusual, of a company going private, which
6 complicated loss-causation and damages analysis.

7 On the other hand, there were obvious respects in
8 which this case was of lesser magnitude and complexity. The
9 events at issue in the end involved a discreet transaction, the
10 Go-Private merger, which played out over a compact period of
11 time. And the theory of plausible fraud liability is winnowed
12 on district and appellate review, was narrow too, and not
13 complex. It centered on the claim that insiders concealed a
14 plan to later relist the company. That presents a simpler and
15 more compact liability narrative by far than do many securities
16 fraud cases, where establishing liability may require a much
17 deeper dive into subjects like accounting, and a deep dive into
18 numerous areas of complex company economics. The Court is also
19 mindful that the case never really reached active discovery,
20 just a bit occurred. It settled after effectively written
21 demands for discovery had been made, but not after much
22 discovery occurred. So unlike many securities class actions,
23 which are more complex and settle deep into discovery or on the
24 brink of summary judgment motions practice, this case did not
25 require plaintiffs' counsel to undertake very much of that

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1 work. The scale of the class was also relatively modest from a
2 managerial perspective. It encompassed some 28,000 members, in
3 contrast to cases that have had half a million or more class
4 members, and which potentially thereby present greater
5 organizational challenges for counsel. See, for example, *Marsh*
6 & *McLennan*, 2009 WL 5178546, at *21, which involves some
7 596,000 notices being mailed to class members; or the *Merrill*
8 *Lynch* case, 249 F.R.D. 124, 130 (S.D.N.Y. 2008), in which more
9 than 604,000 notices were mailed. These factors considered
10 together provide important perspective. They support the
11 modest downward reduction from plaintiffs' counsel's maximalist
12 fee award.

13 Defense counsel, that's what I meant by if you can
14 make the argument. I think you could have made that argument.
15 It's sitting right out there to be made. Next time a judge
16 asks you to make the argument, please take a stab at doing so.

17 MS. XIE: Yes, your Honor. Thank you.

18 THE COURT: Okay.

19 Third, risk of litigation. The Court considers the
20 risks of litigation, which is also an important factor in
21 determining a reasonable fee award. Once a case has cleared a
22 motion to dismiss, as courts in it district have recognized,
23 "the risk of achieving no recovery at all in a securities class
24 action suit has become quite small." *In re Citigroup Inc. Bond*
25 *Litig.*, 988 F.Supp. 2d 371, 379 (S.D.N.Y. 2013). On the other

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1 hand, in an important respect, this case was more difficult
2 than some. In some securities class actions, plaintiffs'
3 counsel's task is made easier by proceeding events that signal,
4 if not establish, liability – a restatement by the company of
5 its earnings, perhaps, or regulatory actions by the SEC or a
6 prosecutor. In these circumstances, the case law has sometimes
7 likened follow-on private litigants to jackals to a lion's
8 kill. See, for example, *Hart*, 220 WL 5645984, at *10 (S.D.N.Y.
9 Sept. 22, 2020), in which Judge Pauley made that point. Here,
10 in contrast, plaintiffs' counsel were authors of their success
11 and did not rely on the work of others. That favors a
12 substantial fee, consistent with a fee equating to more than
13 two times the lodestar, 2.2 times to be more precise, that the
14 Court will award.

15 Fourth, I consider the quality of representation. "To
16 evaluate the quality of representation, courts in the Second
17 Circuit review the recovery obtained and the backgrounds of the
18 lawyers involved in the lawsuit." *Marsh & McLennan Sec.*
19 *Litig.*, 2009 WL 5178546, at *19. The recovery here, as noted,
20 was substantial. Although it represented only approximately
21 2.45 percent of the theoretical maximum recovery, there were,
22 as I said, good reasons for that discount, and the figure is
23 within the mainstream of recoveries in securities class
24 actions. As to the lawyers' backgrounds, plaintiffs' counsel
25 here are credentialed, experienced, and skilled. And they

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1 performed commensurately with their impressive advance
2 billing – their qualifications and expertise. The high quality
3 of counsel's work justifies a substantial fee, consistent with
4 a lodestar multiplier that the award will reflect.

5 Fifth, the Court reviews the requested fee in relation
6 to the overall size of the settlement "to ensure that the
7 percentage awarded does not constitute a windfall." *Beckman v.*
8 *Key Bank*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013). In support of
9 the one-third fee request, counsel pointed to two securities
10 class actions of roughly comparable size awarding such a fee.
11 The range of comparators, however, is broader than those two
12 cases. And as I have noted, with few exceptions, a 33.33
13 percent fee tops out the awards in class actions of this kind.
14 As plaintiffs' counsel's own submissions show, an empirical
15 review by NERA of securities class action litigation in 2023
16 found that plaintiffs' attorneys' fee awards, including
17 expenses, comprised roughly 24.9 percent of the aggregate
18 settlement value. Citing here the Grunfeld declaration,
19 Exhibit 2 at 31. So a 25 percent fee, before costs, falls
20 squarely within the mainstream of securities class action fees
21 approved in this district. See, for example, *Telik*, 576
22 F.Supp. 2d at 593, awarding a 25 percent fee; *Merrill Lynch*,
23 249 F.R.D. at 136, awarding a 22.5 percent fee; *In re Facebook*
24 343, F.Supp. 3d, 394, 415 (S.D.N.Y. 2018), *aff'd* 826
25 Federal.App'x 40 (2d Cir. 2020), awarding a 25 percent fee; and

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1 *Bear Stearns*, 909 F.Supp. 2d at 271-272, awarding a 12 percent
2 fee, and noting that that fee was "well below the 17-25 percent
3 awarded in securities class actions and comparable cases in the
4 Second Circuit." Having given considerable thought to the
5 matter, exercising its discretion, and drawing on its knowledge
6 and experience, and its review of comparator cases, the Court
7 awards a 25 percent fee here, which the Court finds consonant
8 with like cases and the assembled facts.

9 Finally, the Court considers public policy
10 considerations. "A strong public policy concern exists for
11 awarding firms for bringing successful securities litigation."
12 *In re Telik*, 576 F.Supp 2d at 593. Attorneys' fees should be
13 substantial enough to "provide lawyers with sufficient
14 incentive to bring common fund cases that serve the public
15 interest." *Goldberger*, 909 F.3d at 51. If attorneys' fees are
16 routinely set too low, it may create poor incentives to
17 bringing large class action cases. At the same time, courts
18 must also "guard against providing a monetary windfall to class
19 counsel to the detriment of the potential class." Citing Judge
20 Kaplan's decision in *In re NTL Inc. Sec. Litig.*, 2007 WL
21 1294377, at *8 (SDNY May 2, 2007).

22 The 25 percent fee award here strikes the appropriate
23 balance between these considerations. It amply incents counsel
24 to take on such cases, by awarding them materially more than
25 twice the fee they would have received had they billed by the

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1 hour. Any argument by counsel that a lodestar, that would
2 reward a high billing associate at \$2,850 -- excuse me, at 2.2
3 times \$950. One moment. Which translates to close to \$2,100
4 an hour as a billing rate for an associate, any argument that
5 that is insufficient incentive for a lawyer to bring a class
6 action would be laughable. It would be risible. At the same
7 time, a 25 percent fee, helps protect the absent class by
8 preserving a greater portion of the settlement funds relevant
9 to 33.3 percent fee to compensate the class for the damages the
10 plaintiffs' counsel claimed that their clients suffered.

11 Bottom line, for the foregoing reasons, the Court
12 grants class counsel's attorneys' fees in the amount of
13 \$7,437,500, which represents 25 percent of the gross settlement
14 award.

15 Turning to costs, class counsel request a
16 reimbursement of costs incurred in the amount of 662,654.21.
17 These costs reflect, among many things, expert and consultant
18 fees, costs incurred in investigating claims, and mediation
19 fees. These expenses I find were all reasonably and actually
20 incurred. I grant this request.

21 Class counsel also requests a service award of \$60,000
22 for each of the two lead plaintiffs, Altimeo and ODS, to
23 compensate them for the time and effort they expended on behalf
24 of the class. Such awards are common in class action cases to
25 compensate class representatives for their time and effort in

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1 representing the class. An award of this nature is merited
2 here. Counsel represent that the two lead plaintiffs provided
3 important services, took an active role in the litigation over
4 the past five years, regularly consulted with class counsel
5 regarding progress and strategy, conferred with counsel about
6 mediation and settlement, evaluated and approved the proposed
7 settlement and plan of allocation, and provided access to their
8 trading data and records. Collectively, Altimeo and ODS
9 estimate that their staff members spent close to 375 hours on
10 this litigation.

11 Ordinarily, I would say that \$60,000 award for each of
12 two class plaintiffs significantly exceeds that which is
13 routinely awarded. On the other hand, so too does the
14 estimated time worked of 375 hours, and by a good amount.
15 Given the representation that lead plaintiffs played a
16 longstanding, deep involvement, I have no basis to discredit
17 the factual representations. I do find that a service award as
18 requested of \$60,000 to each plaintiff is warranted to
19 compensate them for their time and commitment, and to encourage
20 future such service by future named plaintiffs. I therefore
21 approve that award.

22 Therein ends the ruling.

23 And I will issue on the docket, an award, essentially
24 a line with the proposed final judgment that counsel have given
25 me, but plugging in the numbers that I have announced today.

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1 With that, let me go around the horn. Is there
2 anything further from plaintiffs?

3 MR. GRUNFELD: No, your Honor. Thank you.

4 THE COURT: Anything further from the defense?

5 MS. XIE: No, your Honor. Thank you.

6 THE COURT: Look, before we adjourn, let me again
7 thank counsel. It's been a pleasure to have all of you in
8 front of me. It's been quite engaging and interesting to
9 engage with somewhat unusual problems presented particularly at
10 the loss-causation stage of the case, and I really value the
11 excellent lawyering I received. I thank you for it.

12 Be well. Have a good rest of summer, everyone. Thank
13 you.

14 (Adjourned)

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