SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

In re DOUYU INTERNATIONAL HOLDINGS LIMITED SECURITIES LITIGATION	Index No. 651703/2020 Part 53
	Hon. Andrew Borrok, J.S.C.
This Document Relates To: THE CONSOLIDATED ACTION.	Motion Seq. No. 009 CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; (2) PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES; AND (3) NAMED PLAINTIFFS' REQUESTS FOR SERVICE AWARDS

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STATUTES, RULES AND REGULATIONS

Pursuant to CPLR Article 9, Plaintiffs (consisting of State Plaintiffs Marcus Chelf and Pavel Kovalenko in this State Action, together with Federal Plaintiffs Li Yunyan and Heng Huang in the related Federal Action) and their respective counsel ("Plaintiffs' Counsel") respectfully submit this brief in support of (1) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, (2) Plaintiffs' Counsel's Application for Attorneys' Fees and Expenses, and (3) Named Plaintiffs' Requests for Service Awards (the "Fee and Expense Application").[1]

The proposed Settlement's terms are set forth in the Stipulation of Settlement (the "Stipulation") filed with the Court on June 8, 2022 (NYSCEF No. 155).

INTRODUCTION

After more than two years of litigation, the settling parties in this Action – and in the substantively similar securities action brought on behalf of the same Class in the related Federal Action – have agreed to settle, on a global basis, all claims asserted against all Defendants in both Actions for $15,000,000 in cash. The State Action alleges that Defendants violated federal securities laws by making misrepresentations and/or omissions of material fact in the Offering Materials for DouYu's July 2019 IPO concerning, *inter alia*, (1) the plans of Tencent Holdings Limited ("Tencent") to invest at least $1 billion in a competing Chinese live-streaming company ("Kuaishou"), and the risk that this investment would enable Kuaishou to encroach upon DouYu's streaming business; (2) DouYu's lucrative "Lucky Draw" feature, including the feature's non-compliance with Chinese law and DouYu's resulting plans to materially modify or eliminate it; and (3) DouYu's decelerating revenue growth in the face of increased competition. The Federal Action alleged much of the same misconduct, and that Defendants also misrepresented and/or

[1] Unless otherwise indicated herein: (1) all capitalized terms have the meanings set forth in the Stipulation; and (2) in quoted material, all citations and internal quotation marks are omitted and all emphasis is added.

omitted material facts concerning the ability of users to transfer "Yuchi" (DouYu's virtual gaming currency), and concealed DouYu's own transactions in so-called "virtual gifts" in order to improperly increase its reported revenues.[2] Both Actions allege that Defendants' misstatements and omissions artificially inflated the price of DouYu ADSs during the Class Period. Defendants have denied all allegations of wrongdoing.

The proposed $15 million Settlement was reached only after vigorously contested motion-to-dismiss practice, an appeal to the Appellate Division, the commencement of document discovery in this Action, and protracted arm's-length settlement negotiations overseen by a highly experienced mediator, Robert Meyer, Esq., of JAMS (the "Mediator"). Plaintiffs and their counsel respectfully submit that the Settlement represents an excellent recovery in the face of ***very*** substantial litigation risk. Moreover, although individual "Notice Packets" have been mailed to over 14,900 potential Settlement Class Members or their nominees, to date ***no*** objections (or even "opt-out" requests) have been received. *See* accompanying Affidavit of Ross D. Murray [of the Gilardi claims administration firm] Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Aff."), ¶¶11, 16-17.

For these and the other reasons detailed herein, the Settlement easily meets the CPLR's standards for approval. The proposed Plan of Allocation ("POA"), designed by Plaintiffs' damages consultant, provides for a customary *pro rata* distribution of the Net Settlement proceeds to Settlement Class Members, and should also be approved.

[2] After being advised of the Settlement, the Federal Court dismissed the Federal Action without prejudice, and further directed that its dismissal be automatically converted to a dismissal ***with*** prejudice if and when ***this*** Court's approval of the Settlement becomes final and non-appealable. *See* Stipulation and Order entered March 14, 2022 (Federal Action ECF 171).

Plaintiffs' Counsel also respectfully submit that they have fully earned an attorneys' fee of one-third (33-1/3%) of the Settlement Amount. As detailed below, State Lead Counsel diligently pursued this Action, beginning with a comprehensive fact investigation and continuing through, *inter alia*: the preparation of their detailed Consolidated Complaint (NYSCEF No. 15); the full briefing of (and defeating of) the Settling Defendants' motions to dismiss this Action; the commencement of fact discovery and State Lead Counsel's review of meaningful document discovery from defendant DouYu and the various Underwriter Defendants; the litigation of numerous contested discovery disputes; the briefing of class certification; the briefing of defendant DouYu's interlocutory appeal of this Court's MTD Order; the retention of and consultation with damages experts; and the preparation of comprehensive mediation briefs and related materials on both liability and damages issues. In addition, State Lead Counsel diligently pursued service of additional defendant Tencent, and had fully briefed Tencent's separate motion to dismiss when the Settlement was reached. Similarly, Federal Lead Counsel also conducted their own independent and comprehensive fact investigation, prepared and filed their own initial and amended complaints, and fully briefed the separate motions to dismiss filed in the Federal Action. As a result of the State and Federal Lead Counsel's hard work – and their joining forces during the mediation process to present a "united front" on behalf of the common Class that they represented – these counsel, with the Mediator's assistance, successfully negotiated an excellent $15 million global settlement of all claims asserted in both Actions. *See* accompanying Joint Affirmation of Mark T. Millkey, William C. Fredericks, and Brian Calandra, dated October 27, 2022 in support of final approval and the Fee and Expense Application ("Joint Aff."), ¶¶35-41.

In total, over the last two and half years, Plaintiffs' Counsel have spent over 6,970 hours, with a "lodestar" value of $5,896,888.85 – all on a ***fully contingent*** fee basis – pursuing the claims

at issue. *Id.*, ¶¶70-79. The requested 33-1/3% fee is well within the range of percentage-based fees awarded in other securities class actions, and is also merited by the other relevant factors customarily considered by New York courts, including a "lodestar crosscheck." Indeed, the requested one-third fee ($5 million), if awarded in full, would represent a ***negative*** multiplier of 0.85 of counsel's combined $5,896,888.85 lodestar – an exceedingly reasonable fee for a case in which an above-average result was achieved in the face of above-average litigation risks.

Plaintiffs' Counsel's request for litigation expenses in the amount of $183,276.63 should also be granted because it seeks payment for expenses (such as electronic research costs, expert fees, investigator fees and mediation costs) that are routinely reimbursed in common fund cases.

Finally, each Plaintiff's request for a relatively modest $5,000 award for their service to the Settlement Class is fully merited, and should also be approved.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs respectfully refer the Court to the accompanying Joint Affirmation for a detailed discussion of the history of the Actions, the extensive work performed by Plaintiffs' Counsel, the risks of continued litigation, and the negotiations under the independent Mediator's auspices that led to the Settlement. Joint Aff., ¶¶11-42.

ARGUMENT

I. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND SHOULD BE APPROVED

New York courts strongly favor settlements as a matter of public policy. *IDT Corp. v. Tyco Grp., S.A.R.L.*, 13 N.Y.3d 209, 213 (2009) ("[s]tipulations of settlement are judicially favored and may not be lightly set aside"). "Strong policy considerations favor" settlements because "[a] negotiated compromise of a dispute avoids potentially costly, time-consuming litigation and preserves scarce judicial resources; courts could not function if every dispute devolved into a lawsuit." *Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375, 383 (1993); *accord* *Wal-*

Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116 (2d Cir. 2005) (citing "strong judicial policy" favoring settlements).

When considering whether to finally approve a class-action settlement, New York courts focus on "the fairness of the settlement, its adequacy, its reasonableness, and the best interests of the class members." *Hosue v. Calypso St. Barth, Inc.*, 2017 WL 4011213, at *2 (Sup. Ct. N.Y. Cnty. Sept. 12, 2017). Specifically, New York courts consider: (i) the likelihood that plaintiffs will succeed on the merits; (ii) the extent of support from the parties; (iii) counsel's judgment; (iv) the presence of good-faith bargaining; and (v) the complexity of the legal and factual issues. *See Fernandez v. Legends Hosp., LLC*, 2015 WL 3932897, at *2 (Sup. Ct. N.Y. Cnty. June 22, 2015). In addition, in analyzing the likelihood of success on the merits, courts have noted that finding "adequacy" involves "balancing the value of [a] settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 73 (2d Dep't 2006).

These factors, commonly referred to as the "*Colt* factors" (after *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154 (1st Dep't 1990)), all strongly favor approval here.

A. *Colt* Factor One: Likelihood of Success on the Merits and Amount Recovered in Light of Litigation Risks

Litigation Risk. When assessing a proposed class-action settlement, courts first consider the plaintiffs' likelihood of ultimate success on the merits. *Gordon v. Verizon Comm'cns*, 148 A.D.3d 146, 162 (1st Dep't 2017); *Colt*, 155 A.D.2d at 160. As a general matter, securities actions are "notoriously complex and difficult to prove," *In re Bayer AG Sec. Litig.*, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008); *see also In re Dozier Fin., Inc.*, 2018 WL 4599860, at *3 (D.S.C. Sept. 6, 2018), *report adopted*, 2019 WL 1075072 (D.S.C. Mar. 7, 2019) (collecting cases finding

that "securities [cases] . . . are neither straightforward nor routine") – and this case was no exception.

First, although this Court had denied DouYu and the Underwriter Defendants' motions to dismiss the State Action, those Defendants had filed an interlocutory appeal, which was fully briefed at the time the Settlement was reached. With respect to Plaintiffs' central claim, on appeal the Settling Defendants renewed their arguments that Plaintiffs did not adequately allege DouYu's advance knowledge of any likely Tencent/Kuaishou transaction – and that, even if DouYu had such knowledge, it had no legal duty to disclose Tencent's non-public (and as-yet unfinalized) plans to finance Kuaishou. Moreover, as to Plaintiffs' "Lucky Draw"-related claims, Defendants' appeal renewed their argument that DouYu's IPO Offering Materials adequately warned investors of the risk that Chinese authorities would require DouYu to terminate or significantly modify this profitable feature, thereby insulating all Defendants from liability on this issue. Joint Aff., ¶¶19, 22. In short, although Plaintiffs believed that this Court's MTD Order denying dismissal would be upheld, reversal by the Appellate Division remained a risk.[3]

Second, and assuming that State Plaintiffs survived Defendants' appeal (and/or that Federal Plaintiffs survived the pending motions to dismiss in the Federal Action), all Plaintiffs recognized that actually ***proving*** the necessary facts would be challenging, and that surviving summary judgment was not assured. For example, Plaintiffs' ability to obtain potentially vital deposition discovery was uncertain, as virtually all relevant witnesses are located in the People's Republic of China (which does not permit depositions to be taken within its borders). Moreover,

[3] As of the Settlement, the Federal Action had yet to survive a motion to dismiss, and was thus subject to all of the same dismissal arguments that Defendants raised here. Indeed, the Federal Action also faced higher federal pleading burdens to avoid dismissal, and thus faced even greater risks than this case.

Plaintiffs' ability to obtain document (let alone deposition) discovery from relevant third parties – such as Kuaishou – was also doubtful. In sum, the risk of being unable to collect relevant evidence was far greater here than in cases where all relevant witnesses and documents are located in the United States (or at least in countries that are more willing to assist foreign litigants than China).

Third, even if Plaintiffs prevailed on liability, Defendants had colorable arguments that only a fraction of the Class's alleged damages were actually caused by the alleged misstatements and omissions at issue. Causation issues all too frequently come down to inherently unpredictable "battles of the experts," and an adverse result could have easily gutted the value of Plaintiffs' otherwise meritorious claims. *See, e.g.*, *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) ("In [a] 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited [and] which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors . . . ."); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 161-62 (S.D.N.Y. 2011) (approving settlement where litigation risk included credible causation defenses).

Fourth, even if Plaintiffs survived summary judgment and prevailed across the board on liability, causation, and damages issues at trial, there would still be no assurance that a favorable jury verdict would survive Defendants' inevitable post-trial motions and appeals.

Finally, because DouYu is a Chinese-based company and appears to have no significant assets in the U.S. (or elsewhere outside of China), and because DouYu and its officers have only limited insurance available, collectability issues were a major additional risk. For example, the U.S. and China have no treaties providing for enforcement of judgments rendered in each other's courts. And though collectability is not an issue as to the Underwriters, those Defendants (unlike

DouYu) would have been able to assert a "due diligence" defense by arguing that they reasonably relied on DouYu's assurances with regard to any allegedly misstated or omitted matters.[4]

In short, at all times, this was a ***very*** high-risk case.

Adequacy of Settlement in Light of Litigation Risk. In assessing "adequacy," courts also weigh settlements "against the present value of the anticipated recovery following a trial[,] [as] discounted for the inherent risks of litigation." *Klein*, 28 A.D.3d at 73.

Here, the proposed Settlement represents between 10% and 20% of Plaintiffs' expert's estimates of the Settlement Class's maximum reasonably recoverable damages of $75 to $150 million (estimates which took into account, *inter alia*, the Defendants' causation-related arguments). However, even if one compares the proposed Settlement – $15 million – to Plaintiffs' maximum ***theoretically*** recoverable damages (which are as high as $210 to $225 million), the Settlement would still result in the recovery of roughly 6% to 7% of investor losses – a decidedly superior percentage compared to most securities settlements. For example, NERA Economic Consulting recently reported that, between 2012 and 2021, the median securities class action settlement equated to 2.3% of maximum damages in cases involving estimated investor losses between $200 and $399 million. J. McIntosh & S. Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*, NERA Econ. Consulting at 23 (Jan. 25, 2022) (available at https://www.nera.com/content/dam/nera/publications/2022/PUB_2021_Full-Year_Trends_

[4] Before the Settlement was reached, Plaintiffs had succeeded in serving defendant Tencent in China via the Hague Convention. Although Tencent has subsidiaries with assets located in the U.S., it has consistently maintained that Tencent itself it is not subject to *in personam* jurisdiction in this country – and its fully briefed motion to dismiss on jurisdictional grounds was pending when the Settlement was reached. Tencent also had at least colorable arguments that, as only a minority shareholder of DouYu, it lacked the requisite "control" over DouYu to be held secondarily liable for DouYu's alleged securities-law violations.

012022.pdf). The settlement here ($15 million) also compares favorably to the median settlement (approximately $8 million) observed for all securities class action settlements in 2021.[5]

Accordingly, published data further confirms that the Settlement represents an excellent result when compared to other securities settlements from the last decade.

B. *Colt* Factors Two Through Four: Extent of Support from the Parties, Judgment of Counsel, and Presence of Good-Faith Bargaining

Colt factors two through four also strongly support approval. First, the Settlement has the support of all Parties, as evidenced by the Stipulation filed June 8, 2022 (NYSCEF No. 155) and Plaintiffs' affirmations in support of the Settlement.[6] Moreover, in this context, courts also consider the reaction of absent class members – and minimal objections are indicative of a class's approval of a proposed settlement. *See, e.g.*, *Pressner v. MortgageIT Holdings, Inc.*, 2007 WL 1794935, at *2 (Sup. Ct. N.Y. Cnty. May 29, 2007) (approving settlement where there were no objections to proposed settlement). Here, although the Court-established November 10, 2022 deadline for filing objections has not yet passed, ***no*** objections to any aspect of the Settlement have been submitted to date. Joint Aff., ¶44; Murray Aff., ¶17.[7]

Second, Plaintiffs' Counsel strongly believe that the proposed Settlement is fair, reasonable, and adequate, particularly given the risks, costs, and uncertainties of continued litigation. Joint Aff., ¶¶45-50; *supra* §I.A. New York courts give counsel's views regarding

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[5] *See also* L. Bulan & L. Simmons, *Securities Class Action Settlements: 2021 Year in Review*, Cornerstone Research at 1 (2022) (available at https://securities.stanford.edu/research-reports/1996-2021/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf) (finding median securities class action settlement in 2021 was $8.3 million).

[6] *See* respective affirmations/affidavits of named plaintiffs Marcus Chelf (¶7), Pavel Kovalenko (¶8), Li Yunyan (¶6), and Heng Huang (¶6) in support of final approval and the Fee and Expense Application.

[7] Should any objections be filed after the date of this brief, Plaintiffs will address them on reply.

settlement considerable weight, *see* *MortgageIT*, 2007 WL 1794935, at *2, and it is respectfully submitted that the combined experience and expertise of the Lead Counsel firms here make this factor weigh even more heavily in favor of approval.

Third, the Settlement is the product of protracted, good-faith negotiations overseen by a mediator – Robert Meyer – with extensive experience in mediating securities and other complex class actions. *See* Joint Aff., ¶¶35-38. Indeed, the facts here plainly reflect an arm's-length mediation process, as both sides continued to press the litigation until a binding MOU to settle both Actions was actually signed. For example, while negotiations continued on a separate track, the parties in the State Action continued to brief both the Settling Defendants' interlocutory appeal and class certification, while also pursuing discovery – and parties in the Federal Action proceeded with briefing on motions to dismiss in that case. And far from reaching a quick settlement at the opening mediation session held in September 2021, it was not until early January 2022, after the parties had appeared to be at an impasse, that the Settlement was reached upon Mr. Meyer's making his "mediator's proposal," which all parties ultimately accepted. *Id.*, ¶38. Nor can it be seriously doubted that all parties were at all times represented by highly experienced counsel. *Id.*, ¶¶66-67. Thus, the "good-faith negotiation factor" also strongly supports approval of the Settlement. *See* *Gordon*, 148 A.D.3d at 157 (courts will presume that negotiations were conducted at arm's-length and in good faith absent contrary evidence).[8]

C. *Colt Factor* Five: Complexity and Nature of Case

Finally, courts look to the complexity and nature of the case (which is closely related to Plaintiffs' likelihood of success). *See* *Saska v. Metro. Museum of Art*, 54 N.Y.S.3d 566, 570 (Sup.

[8] That the Settlement was reached only after meaningful document discovery had commenced also further supports approval. *Fiala v. Metro. Life Ins. Co., Inc.*, 899 N.Y.S.2d 531, 538 (Sup. Ct. N.Y. Cnty. 2010).

Ct. N.Y. Cnty. 2017) (evaluating the first and fifth *Colt* factors together in granting final approval); *City Trading Fund v. Nye*, 72 N.Y.S.3d 371, 393 (Sup. Ct. N.Y. Cnty. 2018) (same).

As noted above, courts have recognized the "notorious complexity" of securities class action litigation. *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014). The instant case, for example, involved DouYu's susceptibility to possible competitors (such as Kuaishou) in the rapidly developing "e-gaming" industry; the "concreteness" of non-final deal discussions between Chinese entities; the regulatory risks posed to DouYu's business model by Chinese authorities; and how such diverse factors allegedly impacted the price of DouYu ADSs – objects which would all have likely required specialized testimony from industry experts and damages analysts. Joint Aff., ¶¶13-14, 46-47. The numerous factual and legal complexities of both Actions – as compounded by the procedural complications inherent in pursuing claims against a Chinese company – presented undeniable challenges (and risks) for Plaintiffs. *Id.*, ¶¶45-50. By contrast, the Settlement will result in the certainty of an immediate, valuable $15 million "bird in the hand," thereby avoiding further costly litigation and eliminating the very real risk that even years of additional litigation might produce only a lesser recovery – or no recovery at all. Accordingly, this factor also strongly supports approval.

II. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE

The proposed POA was set forth in full in the Notice sent to Settlement Class Members. *See* Murray Aff., Ex. A [the Notice] at 9-12. The customary standard for approving a POA is the same as for a settlement, namely it must be fair and adequate. A proposed "allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005); *accord In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014).

Lead Counsel developed the POA in close consultation with their damages consultant, using allocation methodologies routinely applied in securities cases of this type. Joint Aff., ¶¶57-58. Specifically, the POA is based on declines in the price of DouYu ADSs that occurred following partial corrective disclosures in July, August, and October of 2019, and in January 2020, which in turn reduced the amount of artificial inflation in the ADS's price that had allegedly been caused by the alleged misstatements and omissions at issue. *Id.*, ¶58; Notice at 9-10. The lack of any objections to date to the POA further supports its approval. *See, e.g.*, *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002).

III. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

For purposes of settlement, Plaintiffs seek certification of the Settlement Class, which consists of all persons or entities who purchased or otherwise acquired DouYu ADSs between July 16, 2019 (the date of DouYu's IPO), and January 21, 2020, inclusive. Stipulation, §1.46. Securities cases, which typically have similar class definitions, are "particularly appropriate" for class certification. *Pruitt v. Rockefeller Ctr. Props., Inc.*, 167 A.D.2d 14, 21 (1st Dep't 1991); *see also Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.*, 301 F.R.D. 116, 130 (S.D.N.Y. 2014) (courts "have frequently held that 'suits alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act are "especially amenable" to class certification'").

This Court preliminarily certified the Settlement Class in its Preliminary Approval Order, NYSCEF No. 154, ¶1, and nothing has changed since it did so. As all required elements of CPLR 901 and 902 are satisfied, the Court should confirm its prior certification ruling.

A. The Settlement Class Easily Satisfies CPLR 901

CPLR 901 requires that the elements of numerosity, predominating common issues, typicality, adequacy, and superiority are satisfied.

Numerosity: Defendants issued roughly 67 million shares in the IPO, which were bought by tens of thousands of investors. Joint Aff., ¶12. As joinder of all parties would plainly be "impractical," CPLR 901(1)'s numerosity requirement is satisfied. *Compare Borden v. 400 E. 55th St. Assocs., L.P.*, 24 N.Y.3d 382, 399 (2014) (classes with as few as 18 members may satisfy numerosity); *Pa. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014) ("Numerosity is presumed for classes larger than forty members.").

Commonality: Because (as here) Securities Act claims turn on "the truth or falsity of the prospectus' statements," "common questions of law and fact . . . predominate over individual issues." *Pruitt*, 167 A.D.2d at 21; *see also Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 84 (2d Cir. 2015) (commonality "is satisfied if there is a common issue that 'drive[s] the resolution of the litigation' such that 'determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke'"). Here, all Settlement Class Members' claims turn on a common set of alleged material misstatements and omissions in DouYu's Offering Materials.

Typicality: Plaintiffs' Securities Act claims are typical of the claims of other Settlement Class Members as they all relate to the same circumstances – namely, the issuance of the same materially false and misleading IPO Offering Materials – and are also based on the same legal theories as those of the other Settlement Class Members. Accordingly, CPLR 901(3)'s typicality requirement is met. *In re SunEdison, Inc. Sec. Litig.*, 329 F.R.D. 124, 141 (S.D.N.Y. 2019); *Pruitt*, 167 A.D.2d at 22 (typicality requirement met in Securities Act cases because "plaintiff's claims are identical to those of the other [class] members").

Adequacy: Plaintiffs have "fairly and adequately protect[ed] the interest of the class," as shown by (a) their selection of highly experienced counsel and (b) their willingness to devote

significant time to working on matters related to this case, from reviewing pleadings to periodically consulting with their counsel on litigation and settlement matters. *See* Joint Aff., ¶75; Chelf Aff., ¶¶5-6; Kovalenko Aff., ¶¶2-4; Yunyan Aff., ¶¶4-5; Huang Aff., ¶¶4-5). Moreover, Plaintiffs' Counsel are unaware of any conflicts between any Plaintiffs and any Settlement Class Members. Accordingly, CPLR 901(4)'s adequacy requirements are easily satisfied. *See Pruitt*, 167 A.D.2d at 24.

Superiority: It would be prohibitively costly to require individual Settlement Class Members, many of whom can safely be assumed to have suffered comparatively modest losses, to litigate their own individual claims. Proceeding by class action is thus a far more efficient mechanism to resolve their claims. *See Stecko v. RLI Ins. Co.*, 121 A.D.3d 542, 543 (1st Dep't 2014) (class action was "superior vehicle . . . since the damages allegedly suffered by an individual class member are likely to be insignificant, and the costs of prosecuting individual actions would result in the class members having no realistic day in court"); *SunEdison*, 329 F.R.D. at 144 ("Generally, securities actions 'easily satisfy' the superiority requirement" because "the alternatives are either no recourse for thousands of stockholders" or "a multiplicity and scattering of suits with the inefficient administration of litigation"). CPLR 901(5)'s superiority requirements are thus met.

B. CPLR 902's Discretionary Factors Also Support Certification

The five discretionary CPLR 902 factors also support certification. Factors one (the interest of class members in individually prosecuting their claims), two ([in]efficiency of multiple actions), four (desirability of concentrating claims in the particular forum), and five (difficulty of managing class-wide action), are substantively identical to CPLR 901's commonality, typicality, and superiority factors. As discussed above, these factors are equally well-satisfied for CPLR 902 purposes. *Nawrocki v. Proto Constr. & Dev. Corp.*, 2010 WL 1531428, at *5 (Sup. Ct. N.Y. Cnty.

Apr. 7, 2010), *aff'd*, 82 A.D.3d 534 (1st Dep't 2011) (describing CPLR 902 factors as '"implicit in CPLR 901'").

If anything, factor three (the extent and nature of any parallel litigation already commenced) also supports approval, as the Settlement will resolve ***all*** litigation arising out of the controversy at issue by resolving both the State ***and*** Federal Actions on a global basis. *Id.*

Finally, this Court's expertise in adjudicating business disputes within its jurisdiction also reinforces a "factor four" finding that this Court is a plainly appropriate forum for this dispute.

The relevant CPLR 901 and 902 factors thus support final certification of the Settlement Class.

IV. THE COURT SHOULD APPROVE THE FEE AND EXPENSE APPLICATION

A. Plaintiffs' Counsel's Fee Request

Courts have long recognized that attorneys who obtain a common fund recovery for a class are entitled to an award of fees and expenses from that fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Fernandez*, 2015 WL 3932897, at *5 (successful attorneys in common fund class action settlements should generally be awarded percentage of recovery). When awarding attorneys' fees from a common fund, both state and federal courts in New York favor awarding percentage-based fees, as doing so "aligns the interests of class counsel with those of the class." *Hayes v. Harmony Gold Mining Co.*, 509 F. App'x 21, 24 (2d Cir. 2013); *see also* fn. 9 below (citing New York state court cases).

Plaintiffs' Counsel, pursuant to CPLR 909, respectfully submit that their work in the State and Federal Actions fully merits a total aggregate fee award of one-third of the Settlement Fund, or $5 million. Not only is such an award consistent with awards in similar cases by New York

state and federal courts,[9] but it is also fully justified by each of the relevant "*Fiala* factors" that New York courts consider when evaluating fee requests.

Importantly, as discussed below, the reasonableness of the requested fee is also ***strongly*** confirmed by application of a "lodestar crosscheck," which courts across the country routinely use to assess the reasonability of a given fee request. Significantly, the requested 33-1/3% fee here would equate to a fee of $5 million – which is ***less than*** the combined $5,896,888.85 lodestar value of the 6,970.04 hours of time expended by all Plaintiffs' Counsel on behalf of the Settlement Class, and equates to a negative "lodestar multiplier" of 0.85. Given that lodestar multipliers of as high as 3x or 4x are not uncommon in fully contingent cases such as this, a negative lodestar multiplier strongly supports the conclusion that the requested 1/3 fee is fair and reasonable – particularly where, as here, Plaintiffs' Counsel have achieved a decidedly superior result. *See, e.g.*, *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *23 (S.D.N.Y. Mar. 24, 2014) (multiples "between 3 and 4.5" are "common"); *Lopez v. Fashion Nova*, 2021 WL 4896288, at *3 (S.D.N.Y. Oct. 19, 2021) ("In this Circuit, '[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.'").

B. The *Fiala* Factors Support the Reasonableness of the Requested Fee

The Court in *Fiala*, 899 N.Y.S.2d at 540, sets forth a series of factors that New York courts consider when determining whether a requested percentage fee is reasonable: (i) the risks of the

[9] *In re Everquote, Inc. Sec. Litig.*, No. 651177/2019, NYSCEF No. 132 at 9 (Sup. Ct. N.Y. Cnty. June 11, 2020) (awarding one-third fee, plus expenses); *Fernandez*, 2015 WL 3932897, at *6-*7 (awarding one-third fee, plus expenses); *Lopez v. Dinex Grp., LLC*, 2015 WL 5882842, at *5-*8 (Sup. Ct. N.Y. Cnty. Oct. 6, 2015) (awarding one-third fee, plus expenses); *Charles v. Avis Budget Car Rental, LLC*, 2017 WL 6539280, at *4-*5 (Sup. Ct. N.Y. Cnty. Dec. 21, 2017) (awarding fee of 33%, plus expenses); *In re China MediaExpress Holdings, Inc.*, 2015 WL 13639423, at *1 (S.D.N.Y. Sept. 18, 2015) (awarding one-third fee, plus expenses); *Landmen Partners Inc. v. Blackstone Grp. L.P.*, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding one-third fee, plus expenses).

litigation; (ii) whether counsel had the benefit of a prior judgment; (iii) the standing at the bar of plaintiffs' and defendants' counsel; (iv) the magnitude and complexity of the action and the responsibilities undertaken; (v) the amount recovered; (vi) what reasonable counsel would charge in comparable circumstances; and (vii) the work performed. An eighth factor, the lodestar crosscheck, is also arguably inherent in considering the amount of "work performed" factor. Here, all of these factors support the requested fee.

1. Litigation Risk

This action, like virtually every securities class case, involved ***very*** significant litigation risk for the reasons already discussed in detail above at §I.A and Joint Aff., ¶¶45-50.

Significantly, unlike Defendants' counsel, Plaintiffs' Counsel also litigated this matter on a ***fully contingent*** basis, and thus risked receiving ***nothing*** had Defendants prevailed. As case law makes clear, the risk of recovering nothing in securities class actions is all too real, as even the most skilled and diligent contingent-fee counsel – even in cases where they have achieved initial successes – can fail to recover anything in securities actions after committing literally years to litigating them. *See*, *e.g.*, *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment for defendants after eight years of litigation, resulting in plaintiffs' counsel (Robbins Geller) receiving no reimbursement of $7 million in expenses, and no fee on over 100,000 hours with lodestar value of $40 million); *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 730 (11th Cir. 2012) (overturning jury verdict for plaintiffs).

2. [Non-]Existence of Prior Favorable Judgment

The respective Lead Counsel also investigated, brought, and litigated this Action and the Federal Action, respectively, ***without the benefit of any prior findings of liability against any***

Defendant, or even a parallel regulatory investigation concerning the issues raised by Plaintiffs' claims. Joint Aff., ¶45. Thus, this factor also supports the requested fee.

3. Counsel's Standing in the Securities Bar

Each Lead Counsel firm (Scott+Scott, Robbins Geller, and Pomerantz) is highly experienced in securities litigation. *See* firm resumes available at www.scott-scott.com, www.rgrdlaw.com, and www.pomlaw.com, respectively; *see also* Joint Aff., ¶66. Lead Counsel also respectfully submit that their skill and experience were key factors in obtaining such a strong result for the Settlement Class. Moreover, *Fiala* factor three indicates that Lead Counsel's success should also be evaluated in light of the quality of opposing counsel – which were led here by three pre-eminent firms, Davis Polk & Wardwell LLP (for DouYu), O'Melveny & Meyers LLP (for the Underwriters), and K&L Gates LLP (for the Cogency Defendants), which vigorously pressed their clients' defenses. That Lead Counsel were able to obtain a $15 million Settlement in this challenging litigation, and against such formidable opposition, further supports the requested fee.

4. Magnitude and Complexity of the Actions

For all of the same reasons that the "litigation risk" and "complexity" factors strongly support approval of the Settlement (*see supra*, §I.A, I.C; Joint Aff., ¶¶45-50), these factors also weigh in favor of approving a one-third fee.

5. Amount Recovered

As discussed above at §I.A, published data confirm that the proposed $15 million Settlement represents an excellent recovery when compared to other securities class actions involving similar estimated recoverable damages. And the recovery is particularly commendable where, as here, Plaintiffs brought securities class actions against a China-based corporate defendant, which involved heightened procedural problems and collectability issues. Indeed, whether compared to all recent securities class actions generally (median settlement value of $8

million), or judged on the basis of investor losses recovered (median 2.3%), Plaintiffs' Counsel respectfully submit that the proposed Settlement represents a superior result in the face of above-average risk.

Accordingly, this factor also strongly supports the requested fee.

6. Fees Charged or Awarded in Comparable Cases

A court-awarded fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *See* *Mo. v. Jenkins by Agyei*, 491 U.S. 274, 285-86 (1989). If this were a non-class action, the customary contingent fee arrangement would be in the range of one-third of the recovery. *See* *Blum v. Stenson*, 465 U.S. 886, 903 n.* (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring). Moreover, as noted in fn. 9 above, both state and federal courts in New York (and indeed across the country) frequently award percentage-based fees of 33-1/3% (or more) in other securities actions that have settled for comparable amounts. Accordingly, because the requested fee is well within the "range of reasonableness," this factor also supports the fee request.

7. Work Performed

As stated in the Joint Affirmation and accompanying affidavits, Plaintiffs' Counsel spent over 6,970 hours and $5,896,888.85 in lodestar litigating the State and Federal Actions, from pre-filing investigation, through motions to dismiss, an interlocutory appeal, and into discovery (in the State Action) – culminating in protracted settlement negotiations. Joint Aff., ¶60. Accordingly, this factor also supports the requested fee.

C. The Reasonableness of the Requested 33-1/3% Fee Is Strongly Confirmed By a "Lodestar Crosscheck"

As noted earlier, courts may confirm the reasonableness of a requested percentage-based fee by performing a "lodestar crosscheck." To calculate the relevant lodestar, a court takes the hours billed by each timekeeper (attorney or para-professional) and multiplies them by that timekeeper's current hourly rate, which, added together, yields counsel's overall lodestar. *Ousmane v. N.Y.C.*, 2009 WL 722294, at *9 (Sup. Ct. N.Y. Cnty. Mar. 17, 2009). The Court then cross-checks the effective dollar value of the requested percentage-based fee against counsel's lodestar to determine whether the requested fee would result in an unreasonably high "multiplier" on counsel's lodestar. *Clemons v. A.C.I. Found., Ltd.*, 2017 WL 1968654, at *5 (Sup. Ct. N.Y. Cnty. May 12, 2017); *Ryan v. Volume Servs. Am.*, 2013 WL 12147011, at *4-*5 (Sup. Ct. N.Y. Cnty. Mar. 7, 2013).

Plaintiffs' Lead Counsel alone devoted a total of 6,464.89 hours to the investigation, litigation, and ultimate resolution of the State and Federal Actions over more than two years. The value of that time results in a total aggregate lodestar – among Plaintiffs' Lead Counsel only – of $5,571,169.85. *See* Joint Aff., ¶72. Because the requested 33-1/3% fee equates to $5 million, Plaintiffs' Counsel's requested fee represents a ***negative*** "lodestar multiplier" of only 0.90 on their aggregate lodestar – a number that would be even lower if the lodestar of ***all*** Plaintiffs' Counsel were included. *Taft v. Ackermans*, 2007 WL 414493, at *11 (S.D.N.Y. Jan. 31, 2007) (describing 1.44x multiplier as "modest in relation to lodestar multipliers frequently used in this district").[10]

[10] Plaintiffs' Lead Counsel note that their lodestar does ***not*** include any time for work performed after August 8, 2022, including time spent on preparing the materials in support of final approval of the Settlement – nor will it include the "[additional] time that they will be required to spend administering the settlement going forward." *Fernandez*, 2015 WL 3932897, at *6.

Given that both state and federal courts in New York routinely award percentage-based awards that result in "positive" multipliers of two to four times (or more) the value of counsel's lodestar, *a fortiori* a percentage-based award that, as here, results in a ***negative*** multiplier of 0.85 on Plaintiffs' Counsel's lodestar is plainly reasonable. *See, e.g.*, *Taft*, 2007 WL 414493, *supra* at *11 (describing 1.44 multiplier as "modest"); *In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474, 497 (S.D.N.Y. 2017), *aff'd sub nom*. *Fresno Cnty. Emps.' Ret. Ass'n v. Isaacson/Weaver Family Tr.*, 925 F.3d 63 (2d Cir. 2019) (lodestar crosscheck multiplier of 1.39x "is at the lower range of comparable awards"); *see also In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors"); *Shapiro*, 2014 WL 1224666, at *24 (describing significantly higher multipliers of 3 to 4.5 as "common").

In sum, all of the foregoing *Fiala* factors strongly support the requested one-third fee.[11]

D. Plaintiffs' Counsel's Expenses Were Reasonably Incurred and Necessary to the Prosecution of The Actions

Plaintiffs' Counsel request payment of $183,276.63 in total litigation charges and expenses. These consist primarily of the costs of hiring an investigation firm, retaining industry and damages experts, legal and factual research, service fees, and the Mediator's fees – all of which were reasonably necessary to Plaintiffs' successful efforts to reach the global settlement in the

[11] Courts also frequently consider the reaction of the class and the views of the named plaintiffs. *See, e.g.*, *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *6 (S.D.N.Y. July 21, 2020); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 266 (S.D.N.Y. 2012). Here, all of the named Plaintiffs support the requested fee. *See* Joint Aff., ¶60; Chelf Aff., ¶8; Kovalenko Aff., ¶7; Yunyan Aff., ¶8; Huang Aff., ¶8. Additionally, although the November 10, 2022 deadline for objections as not yet passed, to date no objections to Lead Counsel's requested 33-1/3% fee (which was disclosed in the Notice) have been received. Joint Aff., ¶44; Murray Aff., ¶17.

Actions. *See* Joint Aff., ¶¶82-84; *see also* *Lopez*, 2015 WL 5882842, at *8 ("Courts typically allow counsel to recover their reasonable out-of-pocket expenses."); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced.").

Moreover, the Notice informed potential Settlement Class Members that Plaintiffs' Counsel would seek up to $200,000 in expenses. To date, no objections to this amount have been received. *See* Joint Aff., ¶44; Murray Aff., ¶17. Since the amount of expenses for which counsel now actually seeks payment ($183,276.63) is significantly ***less*** than what was estimated in the Notice, the lack of objections also supports counsel's expense request.

E. The Requested $5,000 Awards to Each Named Plaintiff Are Reasonable

As set forth in the respective Plaintiffs' affidavits/affirmations, each took their fiduciary role as a plaintiff seriously by, *inter alia*, reviewing pleadings and briefs, regularly consulting with Plaintiffs' Counsel regarding both litigation and settlement matters and, in the case of the State Plaintiffs, responding to discovery requests, participating in class certification proceedings, and, in the case of State Plaintiff Chelf, sitting for a deposition. Joint Aff., ¶75; Chelf Aff., ¶¶5-6; Kovalenko Aff., ¶¶2-4; Yunyan Aff., ¶¶4-5; Huang Aff., ¶¶4-5. Without the Plaintiffs' efforts in commencing and prosecuting this action, there would be no recovery, and the requested awards are relatively modest. *Compare*, *e.g.*, *Charles*, 2017 WL 6539280, at *2-*3, *5 (awarding $10,000); *Lopez*, 2015 WL 5882842, at *3-*4, *8 (awarding $20,000); *see also* *Hosue*, 2017 WL 4011213, at *3, *6 (awarding $5,000). In addition, no objections to the aggregate awards from any Settlement Class Members have been received to date. Accordingly, the requested awards should also be approved.

CONCLUSION

For the reasons described above and in the accompanying affirmations/affidavits submitted herewith, Plaintiffs respectfully ask the Court to (a) approve the Settlement and Plan of Allocation as fair, adequate, and reasonable; (b) confirm its prior order certifying the Settlement Class; (c) grant Plaintiffs' Counsel's application for an award of attorneys' fees (covering all Plaintiffs' Counsel) equal to 33-1/3% of the Settlement Fund, plus $183,276.63 in expenses (with interest earned on both amounts until paid at the same rate as earned on the Settlement Fund from the date it was funded), and (d) award $5,000 to each named Plaintiff for his or her service to the Settlement Class.

DATED: October 27, 2022

Respectfully submitted,

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PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing memorandum of law was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

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