

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES EVERETT HUNT, et al.,

Plaintiffs,

v.

BLOOM ENERGY CORPORATION, et al.,

Defendants.

Case No. [19-cv-02935-HSG](#)

**ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL**

Re: Dkt. No. 237

Pending before the Court is Plaintiffs’ motion for preliminary approval of class action settlement. *See* Dkt. No. 237. The Court held a hearing on the motion on October 5, 2023. For the reasons detailed below, the Court **GRANTS** the motion.

**I. BACKGROUND**

**A. Factual Allegations**

Lead Plaintiff James Everett Hunt and Plaintiffs Juan Rodriguez, Kurt Voutaz, Joel White, Andrew Austin, and Ryan Fishman purchased shares of Defendant Bloom Energy Corporation’s common stock either (1) when Bloom went public through an Initial Public Offering (“IPO”) on July 25, 2018; or (2) on the public market between July 25, 2018, and March 31, 2020. *See* Dkt. No. 237-10, Ex. C (“CSAC”) at ¶¶ 1–2, 8–14, 50–51.<sup>1</sup> Plaintiffs brought this action against Bloom and certain of its officers and directors, as well as its underwriters and auditors, regarding alleged misrepresentations and omissions in Bloom’s IPO Registration Statement. *See id.* at ¶¶ 3, 52. Plaintiffs alleged that the Registration Statement misrepresented and failed to disclose, *inter*

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<sup>1</sup> As part of the settlement, the parties have agreed to file a corrected version of the second amended complaint that conforms the end of the Class Period from February 12, 2020, to March 31, 2020, the date of the last corrective disclosure. *See* Dkt. No. 237-1 at ¶ 23.

1 *alia*, (1) that Bloom was already facing significant construction delays that were interfering with  
 2 its installations; and (2) issues regarding the efficiency of its Energy Server technology (*i.e.*, the  
 3 rate at which fuel is converted into electricity). *See id.* at ¶¶ 3, 53–104, 137–417. Based on these  
 4 allegations, Plaintiffs asserted violations of the federal securities laws under Sections 11 and 15 of  
 5 the Securities Act of 1933; Sections 10(b) and 20(a) of the Securities Exchange Act of 1934; and  
 6 SEC Rule 10b-5. *See id.* at ¶¶ 105–136, 499–514.

### 7 **B. Procedural History**

8 Defendants brought three motions to dismiss the second amended complaint. In  
 9 September 2021, the Court granted in part and denied in part the motions. *See* Dkt. No. 157. As  
 10 relevant to the proposed settlement, the Court (1) dismissed the Section 10(b) claims in their  
 11 entirety; (2) dismissed all the claims against PricewaterhouseCoopers (“PwC”), Bloom’s  
 12 independent auditor; and (3) dismissed the Section 11 claims against all remaining Defendants as  
 13 to all but two challenged statements. *See id.* Plaintiffs chose not to amend, Dkt. No. 159 at 3, and  
 14 the only claims that remain are those under Section 11 regarding the alleged misrepresentations  
 15 about construction delays and the efficiency of Bloom’s Energy Servers. *Id.*

16 Plaintiffs subsequently moved for entry of judgment under Federal Rule of Civil Procedure  
 17 54(b) regarding the accounting-based claims against PwC and the other Defendants. Dkt. No.  
 18 160. The Court denied this motion. *See* Dkt. No. 167. Plaintiffs then requested that the Court  
 19 certify the motion to dismiss order relating to the Section 11 accounting claims for interlocutory  
 20 appeal under 28 U.S.C. § 1292(b). *See* Dkt. No. 170. The Court also denied this motion. Dkt.  
 21 No. 188. The parties—except PwC—therefore continued to engage in discovery, brief class  
 22 certification, and discuss the possibility of settlement. *See* Porritt Decl. at ¶¶ 4, 16–19.

### 23 **C. Settlement Agreement**

24 In December 2022, the remaining parties<sup>2</sup> participated in mediation with Phillips ADR  
 25 mediator Michelle Yoshida. *See* Dkt. No. 237 at 1, 4–5. Ms. Yoshida made a mediator’s proposal

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26  
 27 <sup>2</sup> The proposed settlement does not involve PwC since the claims against it have already been  
 28 dismissed in their entirety. Plaintiffs have reserved the right to pursue the accounting claims  
 against PwC on appeal. *See* Dkt. No. 237 at 9; *see also* Porritt Decl. at ¶ 6. The Court’s later  
 references in this order to “parties,” therefore, does not include PwC unless explicitly stated.

1 that the parties accepted. Dkt. No. 237-1 (“Porritt Decl.”) at ¶ 20. The parties ultimately entered  
 2 into a stipulation and agreement of settlement, fully executed in June 2023. *See* Dkt. No. 273-3,  
 3 Ex. 1 (“SA”). The key terms are as follows:

4 Class Definition: The Settlement Class is defined as “all Persons and entities that  
 5 purchased or otherwise acquired Bloom Energy Corporation’s publicly traded common stock  
 6 either (i) pursuant and/or traceable to the Registration Statement for Bloom’s IPO or (ii) on the  
 7 open market between July 25, 2018, and March 31, 2020, and were damaged thereby.” SA at  
 8 § 1.51.

9 Settlement Benefits: Defendant will make a \$3,000,000 non-reversionary payment. SA  
 10 §§ 1.50, 1.53, 2.1–2.3. The settlement fund includes notice and administration expenses, taxes  
 11 and tax expenses, Court-approved attorneys’ fees and costs, any award to Plaintiffs as allowed  
 12 under the Private Securities Litigation Reform Act of 1995 (“PSLRA”), and any other Court-  
 13 approved fees or expenses. *Id.* §§ 1.5, 1.29, 2.2, 7.2–7.3. Payments to class members will be  
 14 distributed per the allocation plan on a pro rata basis. *Id.* §§ 6.1–6.2. Each class member must  
 15 submit a proof of claim and release form to the Claims Administrator to be eligible for payment.  
 16 *Id.* §§ 1.6, 1.40; *see also* Dkt. No. 237-6, Ex. A-2 (Claim Form). Payments will be calculated  
 17 based on the “recognized loss” for each share, using a method that accounts for that portion of the  
 18 losses on Class Period purchases of Bloom shares that can be fairly attributed to the alleged  
 19 misconduct in the CSAC. SA § 1.42, 4.1; *see also* Dkt. No. 237-5, Ex. A-1 at 13–18 (Plan of  
 20 Allocation).

21 Cy Pres Distribution: Defendants will not have a reversionary interest in the settlement  
 22 fund if there is a balance remaining after distribution. SA § 4.15. Instead, additional distributions  
 23 will be made to authorized claimants. *Id.* Any remaining balance six months after such re-  
 24 distribution will be donated to the Bay Area Financial Education Foundation. *See* Dkt. No. 242.

25 Release: All Settlement Class Members will release Defendants and their subsidiaries  
 26 from:

27 any and all claims, rights, demands, obligations, damages, actions or  
 28 causes of action, or liabilities whatsoever, of every nature and  
 description, including both known claims and Unknown Claims, that

1 have been or could have been asserted in this Action, or any other  
 2 action arising under the federal securities laws, that (a) arise out of,  
 3 are based upon, or relate in any way to any of the allegations, acts,  
 4 transactions, facts, events, matters, occurrences, representations or  
 5 omissions involved, set forth, alleged or referred to in this Action,  
 6 or which could have been alleged in this Action, or (b) arise out of,  
 7 are based upon, or relate in any way to the purchase, acquisition, sale,  
 8 disposition, or holding of any Bloom securities acquired pursuant  
 9 and/or traceable to Bloom’s July 24, 2018 IPO Registration Statement  
 10 or on the open market between July 25, 2018 and March 31, 2020,  
 11 provided, however, that the following are expressly excluded from  
 12 the definition of Released Claims: all claims that have been or may  
 13 in the future be brought against PwC. In addition, “Released Claims”  
 14 does not include any claims to enforce any of the terms of this  
 15 Stipulation.

16 SA § 1.44.

17 Attorneys’ Fees and Costs: Class Counsel will file an application for attorneys’ fees not to  
 18 exceed 33% of the Settlement Fund, or \$990,000. SA at §§ 1.20, 7.2

19 Opt-Out Procedure: Any class member who wishes to opt out of the Settlement must  
 20 submit a timely request for exclusion. SA §§ 8.1–8.2. The timing for opt outs and objections to  
 21 the Settlement will be set at least 45 days after the filing of the motion for attorneys’ fees in a  
 22 separate scheduling order. *Id.*; *see also* Section VI below. Defendants retain the right to withdraw  
 23 if the number of opt-outs reaches an agreed-upon threshold. *Id.* § 1.32. The threshold is set out in  
 24 a confidential supplemental agreement. *Id.*

## 25 **II. PROVISIONAL CLASS CERTIFICATION**

26 The plaintiff bears the burden of showing by a preponderance of the evidence that class  
 27 certification is appropriate under Federal Rule of Civil Procedure 23. *Wal-Mart Stores, Inc. v.*  
 28 *Dukes*, 564 U.S. 338, 350–51 (2011). Class certification is a two-step process. *First*, a plaintiff  
 must establish that each of the four requirements of Rule 23(a) is met: numerosity, commonality,  
 typicality, and adequacy of representation. *Id.* at 349. *Second*, it must establish that at least one of  
 the bases for certification under Rule 23(b) is met. Where, as here, a plaintiff seeks to certify a  
 class under Rule 23(b)(3), it must show that “questions of law or fact common to class members  
 predominate over any questions affecting only individual members, and that a class action is  
 superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed.  
 R. Civ. P. 23(b)(3).

1 “The criteria for class certification are applied differently in litigation classes and  
2 settlement classes.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019)  
3 (“*Hyundai IP*”). When deciding whether to certify a litigation class, a district court must consider  
4 manageability at trial. *Id.* However, this concern is not present in certifying a settlement class.  
5 *Id.* at 556–57. In deciding whether to certify a settlement class, a district court “must give  
6 heightened attention to the definition of the class or subclasses.” *Id.* at 557.

7 **A. Rule 23(a) Certification**

8 The Court finds that all the requirements of Rule 23(a) are met:

- 9 • **Numerosity.** Plaintiffs estimate that there were 20.7 million shares of Bloom  
10 common stock sold during Bloom’s IPO, and 71.1 million damaged shares in the  
11 Settlement Class. *See* Dkt. No. 237 at 19; *see also* CSAC at ¶¶ 2, 51. They  
12 anticipate mailing notice to approximately 100,000 potential class members. *See*  
13 Dkt. No. 237-16 at ¶ 22. Although the exact number of class members is unknown  
14 at this time, joinder of the tens of thousands of estimated class members would be  
15 impracticable.
- 16 • **Commonality.** Common questions of law and fact include whether (1) statements  
17 in the Registration Statement misrepresented material facts about Bloom; (2) the  
18 price of Bloom common stock was artificially inflated during the Class Period; and  
19 (3) members of the Class have sustained damages and the proper measure of such  
20 damages. *See* Dkt. No. 237 at 19.
- 21 • **Typicality.** Plaintiffs’ claims are both factually and legally similar to those of the  
22 putative class because they allege that, like the other class members, they purchased  
23 Bloom common stock at prices that were inflated because Defendants made false  
24 and materially misleading statements in the Registration Statement during the Class  
25 Period. *See id.* at 20.
- 26 • **Adequacy of Representation.** The Court is unaware of any actual conflicts of  
27 interest in this matter and no evidence in the record suggests that either Plaintiffs or  
28 counsel have a conflict with other class members. Plaintiffs’ counsel has been

1 appointed class counsel in numerous federal and state class actions. *See* Porritt  
2 Decl. at ¶¶ 39–40; Dkt. No. 183-8, Ex. 7. The Court finds that proposed class  
3 counsel and Plaintiffs have prosecuted this action vigorously on behalf of the class  
4 to date, and will continue to do so.

5 **B. Rule 23(b)(3) Certification**

6 The Court also finds that the predominance and superiority requirements of Rule 23(b)(3)  
7 are met:

- 8 • **Predominance.** The Court concludes that for purposes of settlement, common  
9 questions predominate here because the same operative facts apply to each  
10 proposed class member: each class member purchased and/or acquired Bloom  
11 common stock during the Class Period and suffered losses in their shares' value as  
12 a result of prices that first were artificially inflated based on Defendants' alleged  
13 misrepresentations and omissions, then dropped once the truth about the existence  
14 and scale of construction delays affecting Bloom's business and the efficiency of  
15 its Energy Server technology was later revealed. Although the class members will  
16 need to rely upon individual evidence to some extent to calculate their individual  
17 damages, the "mere fact that there might be differences in damage calculations is  
18 not sufficient to defeat class certification." *Hyundai II*, 926 F.3d at 560 (quotations  
19 omitted).
- 20 • **Superiority.** A class action enables the most efficient use of Court and attorney  
21 resources and reduces costs to the class members by allocating costs among them.  
22 Further, this forum is appropriate, and there are no obvious difficulties in managing  
23 this class action.

24 **C. Class Representative and Class Counsel**

25 Because the Court finds that Plaintiffs meet the commonality, typicality, and adequacy  
26 requirements of Rule 23(a), the Court appoints them as class representatives. When a court  
27 certifies a class, it must also appoint class counsel. Fed. R. Civ. P. 23(c)(1)(B). Counsel have  
28 investigated and litigated this case throughout its existence and have submitted declarations

1 detailing their expertise in representing plaintiffs in class action suits, especially securities class  
2 actions. *See* Porritt Decl. at ¶¶ 39–40; Dkt. No. 183-8, Ex. 7. Accordingly, the Court appoints  
3 Levi & Korsinsky LLP as Class Counsel. *See* Fed. R. Civ. P. 23(g)(1)(A) (listing factors courts  
4 must consider when appointing class counsel).

### 5 **III. PRELIMINARY SETTLEMENT APPROVAL**

6 Finding that provisional class certification is appropriate, the Court considers whether it  
7 should preliminarily approve the parties’ class action settlement.

#### 8 **A. Legal Standard**

9 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses of a  
10 certified class—or a class proposed to be certified for purposes of settlement—may be settled . . .  
11 only with the court’s approval.” Fed. R. Civ. P. 23(e). “The purpose of Rule 23(e) is to protect  
12 the unnamed members of the class from unjust or unfair settlements affecting their rights.” *In re*  
13 *Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). Accordingly, before a district court  
14 approves a class action settlement, it must conclude that the settlement is “fundamentally fair,  
15 adequate and reasonable.” *In re Heritage Bond Litig.*, 546 F.3d 667, 674–75 (9th Cir. 2008).

16 Where the parties reach a class action settlement prior to class certification, district courts  
17 apply “a higher standard of fairness and a more probing inquiry than may normally be required  
18 under Rule 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012) (quotations omitted).  
19 Such settlement agreements ““must withstand an even higher level of scrutiny for evidence of  
20 collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing  
21 the court’s approval as fair.”” *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048–49 (9th Cir.  
22 2019) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). A  
23 more “exacting review is warranted to ensure that class representatives and their counsel do not  
24 secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a  
25 duty to represent.” *Id.* (quotations omitted).

26 Courts may preliminarily approve a settlement and notice plan to the class if the proposed  
27 settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) does  
28 not grant improper preferential treatment to class representatives or other segments of the class;

1 (3) falls within the range of possible approval; and (4) has no obvious deficiencies. *In re Lenovo*  
2 *Adware Litig.*, No. 15-MD-02624-HSG, 2018 WL 6099948, at \*7 (N.D. Cal. Nov. 21, 2018)  
3 (citation omitted). Courts lack the authority, however, to “delete, modify or substitute certain  
4 provisions. The settlement must stand or fall in its entirety.” *Hanlon*, 150 F.3d at 1026.

5 **B. Analysis**

6 **i. Evidence of Conflicts and Signs of Collusion**

7 The first factor the Court considers is whether there is evidence of collusion or other  
8 conflicts of interest. *See Roes*, 944 F.3d at 1049. The Ninth Circuit has directed district courts to  
9 look for “subtle signs of collusion,” which include whether counsel will receive a disproportionate  
10 distribution of the settlement, whether the parties negotiate a “‘clear sailing’ arrangement (*i.e.*, an  
11 arrangement where defendant will not object to a certain fee request by class counsel),” and  
12 whether the parties agree to a reverter that returns unclaimed funds to the defendant. *Id.*

13 **a. Clear Sailing Provision**

14 Here, the Settlement Agreement contains a clear sailing arrangement, which states that  
15 Defendants will not oppose Plaintiffs’ motion for attorneys’ fees and costs. *See SA* § 7.4 The  
16 Ninth Circuit has noted that clear sailing arrangements are “important warning signs of collusion,”  
17 because “[t]he very existence of a clear sailing provision increases the likelihood that class  
18 counsel will have bargained away something of value to the class.” *Roes*, 944 F.3d at 1051  
19 (quoting *In re Bluetooth*, 654 F.3d at 948). Accordingly, when confronted with a clear sailing  
20 provision, the district court has a heightened duty to “scrutinize closely the relationship between  
21 attorneys’ fees and benefit to the class, being careful to avoid awarding ‘unreasonably high’ fees  
22 simply because they are uncontested.” *Id.* (quotations omitted). The Ninth Circuit has recently  
23 emphasized that “[t]he touchstone for determining the reasonableness of attorneys’ fees in a class  
24 action is the benefit to the class.” *Lowery v. Rhapsody Int’l, Inc.*, 69 F.4th 994, 997 (9th Cir.  
25 2023).

26 When deciding to award attorney’s fees and costs, the Court has discretion in a common  
27 fund case to choose either (1) the lodestar method or (2) the percentage-of-the-fund. *Vizcaino v.*  
28 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Under the percentage-of-recovery method,



1 twenty-five percent of a common fund is the benchmark for attorneys’ fees award. *See, e.g., In re*  
 2 *Bluetooth Headset*, 654 F.3d at 942 (“[C]ourts typically calculate 25% of the fund as the  
 3 ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any  
 4 ‘special circumstances’ justifying a departure.”). Even if the Court were to award the requested  
 5 33% of the fund (or \$990,000) in attorneys’ fees, however, the majority of the monetary settlement  
 6 will still be distributed to class members. *See Lowery*, 69 F.4th at 997 (“Except in extraordinary  
 7 cases, a fee award should not exceed the value that the litigation provided to the class.”). But in  
 8 any event, the Court is cognizant of its obligations to review class fee awards with particular rigor,  
 9 and at the final approval stage will carefully scrutinize the circumstances and determine what  
 10 attorneys’ fee awards is appropriate in this case. At this stage, the Court does not find that the  
 11 clear sailing provision weighs against preliminary approval.<sup>3</sup>

12 **b. *Cy Pres* Distribution**

13 The Court must also evaluate whether the parties’ proposed *cy pres* recipient is  
 14 appropriate. A *cy pres* award must qualify as “the next best distribution” to giving the funds to  
 15 class members. *Dennis*, 697 F.3d at 865. “Not just any worthy recipient can qualify as an  
 16 appropriate *cy pres* beneficiary,” and there must be a “driving nexus between the plaintiff class  
 17 and the *cy pres* beneficiaries.” *Id.* (quotation omitted). That is to say, a *cy pres* award must be  
 18 “guided by (1) the objectives of the underlying statute(s) and (2) the interests of the silent class  
 19 members, and must not benefit a group too remote from the plaintiff class.” *Id.* (quotation  
 20 omitted). A *cy pres* distribution is not appropriate if there is “no reasonable certainty that any  
 21 class member would benefit from it.” *Id.* (quotation omitted).

22 Here, the parties have selected the Bay Area Financial Education Foundation as its *cy pres*  
 23 recipient. *See* Dkt. No. 242. The Bay Area Financial Education Foundation is a nonprofit  
 24 organization devoted to providing financial education for Title I schools, low to moderate income  
 25 communities, at-risk youth, and organizations that support BIPOC students. *Id.* at 2. For  
 26

27 \_\_\_\_\_  
 28 <sup>3</sup> To the extent Plaintiffs’ counsel suggests that it is entitled to attorneys’ fees in the amount of  
 \$990,000, *see* Dkt. No. 237 at 15–17, the Court need not—and does not—decide that issue now.  
 Preliminary approval is not an endorsement or pre-approval of any future fee request.

1 example, its curriculum includes the “basics of investing,” which provides “an understanding of  
2 the value of investing early and regularly, different investment strategies and the costs and benefits  
3 of each, compound interest, stocks and bonds, risk vs. return, asset allocation, passive vs. active  
4 investing and target date funds.” *Id.*

5 The Court preliminarily finds that the Bay Area Financial Education Foundation shares the  
6 interests of the class members in educating and protecting the investing public. Accordingly, the  
7 Court preliminarily finds that there is a sufficient nexus between the *cy pres* recipient and the  
8 Settlement Class.

9 **ii. Preferential Treatment**

10 The Court next considers whether the settlement agreement provides preferential treatment  
11 to any class member. The Ninth Circuit has instructed that district courts must be “particularly  
12 vigilant” for signs that counsel have allowed the “self-interests” of “certain class members to  
13 infect negotiations.” *In re Bluetooth*, 654 F.3d at 947. For that reason, courts in this district have  
14 consistently stated that preliminary approval of a class action settlement is inappropriate where the  
15 proposed agreement “improperly grant[s] preferential treatment to class representatives.” *Lenovo*,  
16 2018 WL 6099948, at \*8 (quotations omitted).

17 Although the settlement agreement authorizes Plaintiffs to seek an “award” for their role in  
18 this lawsuit, as well as any reasonable costs and expenses related to the representation of Class  
19 Members, the Court will ultimately determine whether they are entitled to such an award and the  
20 reasonableness of the amount requested. *See SA §§ 1.7, 1.20, 7.3.*

21 The PSLRA generally prohibits incentive or service awards to class representatives.  
22 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 960, n.4 (9th Cir. 2009) (citing 15 U.S.C. § 78u-  
23 4(a)(2)(A)(vi)). Plaintiffs are not precluded, however, from seeking an award of “reasonable costs  
24 and expenses (including lost wages) directly relating to the representation of the class.” *Id.* § 78u-  
25 4(4). Plaintiffs will need to provide “meaningful evidence demonstrating that the requested  
26 amounts represent actual costs and expenses incurred directly as a result of the litigation.” *See In*  
27 *re Twitter Inc. Sec. Litig.*, No. 16-CV-05314-JST, 2022 WL 17248110, at \*2 (N.D. Cal. Nov. 21,  
28 2022) (quotation omitted). The Court will consider the evidence presented in Plaintiffs’ motion

1 and evaluate the reasonableness of any award request. Because Plaintiffs’ intent to seek  
2 reasonable costs and expenses is not per se unreasonable, the Court finds that this factor weighs in  
3 favor of preliminary approval.

4 Further, the settlement agreement does not single out any segment of the class for  
5 favorable treatment. Each authorized claimant will receive a pro rata distribution of the  
6 Settlement Fund in proportion to their potential damages based on the allocation plan. *See* Porritt  
7 Decl. at ¶¶ 35–36.

8 **iii. Settlement within Range of Possible Approval**

9 The Court also generally considers whether the settlement is within the range of possible  
10 approval. To evaluate whether the settlement amount is adequate, “courts primarily consider  
11 plaintiffs’ expected recovery balanced against the value of the settlement offer.” *Lenovo*, 2018  
12 WL 6099948, at \*8. This requires the Court to evaluate the strength of Plaintiffs’ case.

13 First, the Court notes that the \$3 million settlement amount was the mediator’s  
14 recommendation. *See* Porritt Decl. at ¶ 20. Plaintiffs and counsel, with the aid of damages  
15 experts, estimated the maximum recovery at trial to be approximately \$57.8 million for the two  
16 surviving corrective disclosures. *See* Dkt. No. 237 at 10–13. Counsel further explains that it  
17 would have been difficult to obtain this amount at trial given Defendants’ “substantial defenses.”  
18 *Id.* at 10. For example, Defendants would have argued that at the time of the IPO they could not  
19 have foreseen that construction delays would have caused Bloom to miss its third-quarter  
20 guidance. *Id.* Defendants also would have offered lay and expert testimony attesting to the  
21 efficiency of the Energy Servers. *Id.* Additionally, Defendants would have attempted to establish  
22 that damages for any of the alleged misstatements were minimal because Bloom’s stock *rose* the  
23 day after Bloom’s missed guidance was leaked to the market and only fell \$.88 after information  
24 about the efficiency of the Energy Servers was disclosed. *Id.* at 11.

25 The Settlement Agreement provides for approximately 5.2% of the maximum estimated  
26 recovery for the remaining claims. *Id.* at 12. Even considering the possible estimated recovery for  
27 *all* claims initially alleged against Defendants, Counsel estimates that the Settlement Agreement  
28 represents approximately 1.8% of the maximum estimated recovery. *Id.* The Court finds that this

1 is not outside the range of a reasonable recovery, particularly given the risks that Plaintiffs would  
 2 face if they continued to litigate this action through trial.<sup>4</sup> *See, e.g., In re Lyft, Inc. Sec. Litig.*, No.  
 3 19-CV-02690-HSG, 2022 WL 17740302, at \*6 (N.D. Cal. Dec. 16, 2022).

4 Further, the scope of the proposed release does not push this settlement outside the range  
 5 of possible approval for purposes of preliminary settlement. The release, although broad, is  
 6 consistent with Ninth Circuit law and the identical factual predicate rule, and further underscores  
 7 the adequacy of the settlement. *See Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“A  
 8 settlement agreement may preclude a party from bringing a related claim in the future even though  
 9 the claim was not presented and might not have been presentable in the class action, but only  
 10 where the released claim is based on the identical factual predicate as that underlying the claims in  
 11 the settled class action.”) (quotation omitted).

12 In sum, the Court finds that this settlement is well within the range of possible approval.

13 **iv. Fairness of Supplemental Agreement**

14 The Court must also review the fairness of the parties’ confidential supplemental  
 15 agreement. *See* SA § 1.32. The existence of a termination option triggered by the number of class  
 16 members who opt out of the Settlement does not by itself render the Settlement unfair. *See, e.g.,*  
 17 *Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 6619983, at \*7 (N.D. Cal. Dec.  
 18 18, 2018). Here, the parties filed the supplemental agreement provisionally under seal. *See* Dkt.  
 19 No. 244-3, Ex. 3. Having reviewed the supplemental agreement, the Court concludes that the  
 20 termination provision does not preclude preliminary approval.

21 **v. Obvious Deficiencies**

22 The Court also considers whether there are obvious deficiencies in the settlement  
 23 agreement. The Court finds no obvious deficiencies, and therefore finds that this factor weighs in  
 24 favor of preliminary approval.

25 \* \* \*

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 27  
 28 <sup>4</sup> *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2021 Review and Analysis*, Cornerstone Research (2022), available at <https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf>.

1 Having weighed the relevant factors, the Court preliminarily finds that the settlement  
2 agreement is fair, reasonable, and adequate, and **GRANTS** preliminary approval. The Court  
3 **DIRECTS** the parties to include both a joint proposed order and a joint proposed judgment when  
4 submitting their motion for final approval.

#### 5 **IV. PROPOSED PLAN OF ALLOCATION**

6 The Court also must preliminarily approve the Plan of Allocation. Such a distribution plan  
7 is governed by the same legal standards that apply to the approval of a settlement: the plan must  
8 be fair, reasonable, and adequate. *See, e.g., In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d  
9 1152, 1154 (N.D. Cal. 2001). “A settlement in a securities class action case can be reasonable if it  
10 fairly treats class members by awarding a pro rata share to every Authorized Claimant, but also  
11 sensibly makes interclass distinctions based upon, inter alia, the relative strengths and weaknesses  
12 of class members’ individual claims and the timing of purchases of the securities at issue.” *Vinh*  
13 *Nguyen v. Radiant Pharms. Corp.*, No. 11-cv-00406, 2014 WL 1802293, at \*5 (C.D. Cal. May 6,  
14 2014) (quotation omitted).

15 The Plan of Allocation here uses a “recognized loss” value that tailors the recovery of each  
16 class member to the timing of any sales or purchases of Bloom common stock relative to periods  
17 of alleged artificial inflation and corrective disclosures, as well as the number of shares at issue in  
18 each Class Member’s claim. *See* SA § 1.42, 4.1; *see also* Dkt. No. 237-5, Ex. A-1 at 13–18 (Plan  
19 of Allocation). The Settlement Fund will thus be distributed on a pro rata basis according to each  
20 Class Member’s recognized loss. The Court preliminarily approves the allocation plan.

#### 21 **V. PROPOSED CLASS NOTICE PLAN**

22 For Rule 23(b)(3) class actions, “the court must direct to the class members the best notice  
23 that is practicable under the circumstances, including individual notice to all members who can be  
24 identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The notice may be sent by  
25 “United States mail, electronic means, or other appropriate means.” *Id.* Individual notice must be  
26 sent to all class members “whose names and addresses may be ascertained through reasonable  
27 effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The notice must clearly and  
28 concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members[.]

Fed. R. Civ. P. 23(c)(2)(B). In addition, the PSLRA requires that notice include (1) “[t]he amount of the settlement . . . determined in the aggregate and on an average per share basis,” (2) “the average amount of [the] potential damages per share,” (3) a statement of any fees or costs that counsel intends to seek from the settlement fund, (4) class counsel’s contact information, and (5) “[a] brief statement explaining the reasons why the parties are proposing the settlement.” 15 U.S.C. § 78u-4(a)(7).

The parties have agreed that a third-party settlement administrator, Epiq Class Action and Claims Solutions, Inc., will send class notice via first-class mail to those Class Members who may be identified through reasonable efforts. Direct mail notification will be provided to all Class Members identified by Bloom, as well as to thousands of financial institutions, including brokerage firms, banks, and other third-party nominees, that regularly monitor proposed securities class action settlements. *See* Dkt. No. 237-16 (“Webb Decl.”) at ¶¶ 11–13. All persons and entities identified as potential Class Members will be sent the Settlement Notice Postcard, which directs the recipient to a settlement website to find additional information regarding the Settlement Agreement and process. *Id.* Epiq will also publish the notice on the DTC Legal Notice System (“LENS”). *Id.* at ¶ 15. LENS allows participating banks and brokers to review the Settlement Notice Package and directly contact Epiq to obtain copies of the Settlement Notice Postcard for their clients who may be Class Members. *Id.* at ¶¶ 15–16. The Court finds that the proposed notice process is “reasonably calculated, under all the circumstances, to apprise all class members of the proposed settlement.” *Roes*, 944 F.3d at 1045 (quotation omitted).

The Court has also carefully reviewed the proposed notice, as revised, and is satisfied that it meets the requirements of the PSLRA and the Federal Rule of Civil Procedure 23(c)(2)(B). *See*

1 Dkt. No. 237-5, Ex. A-1 (Notice); Dkt. No. 237-7, Ex. A-3 (Summary Notice); Dkt. No. 237-8,  
2 Ex. A-4 (Postcard Notice). The notice clearly describes the nature of the case, the settlement, and  
3 the available options, including how to opt out of or object to the Settlement Agreement. *Id.* The  
4 notice also informs class members that Class Counsel will file a motion with the Court for  
5 attorneys’ fees and costs.

6 To enable class members to review the motion for attorneys’ fees and any request for an  
7 award to Plaintiffs, Class Counsel shall include language in the notice, including the Postcard  
8 Notice: (1) indicating the deadline for filing the attorneys’ fees motion and request for an award  
9 to Plaintiffs; (2) specifically stating the deadline for any Class Member to object to these motions;  
10 and (3) informing class members how to access the motion and supporting materials. *See In re*  
11 *Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993–94 (9th Cir. 2010) (holding that under  
12 Rule 23(h), class members must be given a full and fair opportunity to examine and object to  
13 attorneys’ fees motion).

14 The Court therefore finds that with these changes, the content of the proposed notice  
15 provides sufficient information about the case and thus conforms with due process requirements.  
16 *See Hyundai II*, 926 F.3d at 567 (“Notice is satisfactory if it generally describes the terms of the  
17 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come  
18 forward and be heard.” (quotation omitted)).

19 **VI. CONCLUSION**

20 The Court **GRANTS** the motion for preliminary approval. Dkt. No. 237. The parties are  
21 **DIRECTED** to meet and confer and stipulate to a schedule of dates for each event listed below,  
22 which shall also be submitted to the Court within seven days of the date of this Order:

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United States District Court  
Northern District of California


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Event	Date
Deadline for Settlement Administrator to mail notice to all putative Class Members	
Filing deadline for attorneys' fees and costs motion	
Filing deadline for incentive payment motion	
Deadline for Class Members to opt-out or object to settlement and/or application for attorneys' fees and costs and incentive payment, at least 45 days after the filing of the motion for attorneys' fees and incentive payments	
Filing deadline for final approval motion	
Final fairness hearing and hearing on motions	

The parties are further **DIRECTED** to implement the proposed class notice plan with the edits identified above.

**IT IS SO ORDERED.**

Dated: 10/31/2023

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge