

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

**Weining Hu v. Eli Baker, et al.; Eric Bowers, et al. v. Jason Kelly, et
al.**

Hu · No. 4:23-cv-02077-KAW; 4:23-cv-05396-KAW · Decided December 19, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
WEINING HU, Case No. 4:23-cv-02077-KAW 8 Plaintiff, ORDER GRANTING FINAL
APPROVAL OF SETTLEMENT AND 9 v. AWARD OF ATTORNEYS' FEES AND COSTS 10
ELI BAKER, et al., Re: Dkt. No. 79 11 Defendants. 12 ERIC BOWERS, et al., Case No. 4:23-cv-
05396-KAW 13 Plaintiffs, Re: Dkt. No. 68 14 v. 15 JASON KELLY, et al., 16 Defendants.

17 18 On November 3, 2025, Plaintiffs Weining Hu and Eric Bowers filed unopposed motions 19
for final approval of class action settlement and for an award of attorneys' fees, litigation expenses
20 and services awards. 1 21 On December 18, 2025, the Court held a fairness hearing, and
having carefully considered 22 the briefs, argument of counsel, and all matters presented to the
Court, hereby GRANTS 23 Plaintiffs' motions as set forth below.

24 25 26 27 1 Plaintiffs filed identical motions in both cases, so all references to docket entries in
connection 1 I. BACKGROUND 2 A. Factual Background 3 These cases are shareholder
derivative actions related to Bernstein v. Ginkgo Bioworks 4 Holdings, Inc., No. 21-cv-08943-
KAW ("Securities Action").

In the Derivative Actions, Plaintiffs 5 asserted claims for violations of the Securities Exchange Act
of 1934 (the "Exchange Act"), 6 breaches of fiduciary duty, the aiding and abetting thereof, and
related stockholder causes of 7 action under Delaware law against the Individual Defendants2 –
directors, officers, or controlling 8 shareholders of Ginkgo and Soaring Eagle – in connection
with, inter alia, the Individual 9 Defendants' (i) alleged material misstatements and omissions
about the Company's revenue and 10 sources of revenue; and (ii) other alleged misconduct in
connection with the Merger that formed 11 Ginkgo.

(Hu Compl., Dkt. No. 1 ¶¶ 47-99.) 12 The factual and procedural background is more fully
described in the Court's prior order 13 approving Plaintiffs' motion for preliminary approval of
settlement. (Dkt. No. 77.) In sum, the 14 crux of the dispute is whether the Individual Defendants
— directors, officers, or controlling 15 shareholders of Ginkgo and its predecessor, a special
purpose acquisition corporation ("SPAC") 16 named Soaring Eagle — breached their fiduciary

duties to the shareholders and committed 17 violations of law related to the Merger that formed Ginkgo.

18 B. Relevant Procedural Background 19 In addition to the two federal derivative actions in this district, there is a consolidated 20 derivative action in Delaware Chancery Court with plaintiffs Dylan Newman and Shlomo 21 Moskowitz (Moskowitz Action). Ultimately, all three cases were resolved by the global settlement 22 agreement in the Northern District cases.

The material terms include that the Individual 23 Defendants pay \$4.125 million to Ginkgo, terminate certain contracts, and implement governance 24 reforms and enhanced oversight. (Stipulation and Agreement of Settlement, “Stipulation,” Dkt. 25 No. 69-2 ¶¶ 2.2-2.5.) Additionally, subject to court approval, the Settling Parties negotiated the 26 2 The Individual Defendants are Eli Baker, Arie Beldegrun, Marijn Dekkers, Scott M. Delman, 27 Mark Dmytruk, Christian Henry, Jason Kelly, Reshma Kewalramani, Isaac Lee, Timothy 1 payment of attorneys’ fees and costs in the amount of \$2,750,000 to be paid by Ginkgo.

2 (Stipulation ¶ 3.1.) The \$8,000 in service awards, or \$2,000 each, which includes Mssrs. Newman 3 and Moskowitz in the Delaware Chancery Action, if approved, will be paid from Plaintiffs’ 4 Counsel’s attorneys’ fees award. (Stipulation ¶ 3.3.) 5 On August 21, 2025, the Court granted preliminary approval of the settlement. (Dkt. No. 6 77.) At this same time, and for settlement purposes only, the Court approved certification of a 7 provisional Settlement Class and the notice plan, appointed Dr. Hu and Mr. Bowers and Lead 8 Plaintiffs, and Bottini & Bottini, Inc. as Plaintiffs’ Counsel.

Id. at 16. 9 On November 3, 2025, Plaintiffs filed an unopposed motion for final approval of 10 settlement and for an award of attorneys’ fees, litigation expenses and service awards. (Pls.’ Mot. 11 for Final Approval, “Pls.’ Mot.,” Dkt. No. 79.)

On December 10, 2025, Plaintiffs filed a notice of 12 non-objection in support of the motion, which indicated that no objections to the settlement had 13 been filed or served even though institutional investors hold more than 60% of outstanding shares. 14 (Dkt. No. 82 at 1-2.) 15 II. LEGAL STANDARD 16 Pursuant to Federal Rule of Civil Procedure 23.1, “[a] derivative action may be settled, 17 voluntarily dismissed, or compromised only with the court’s approval.” Fed.

R. Civ. P. 23.1(c). 18 Rule 23, in turn, “governs a district court’s analysis of the fairness of a settlement of a shareholder 19 derivative action.” In re Hewlett-Packard Co. S’holder Derivative Litig., No. 12-cv-06003-CRB, 20 2015 WL 1153864, at *3 (N.D. Cal. Mar. 13, 2015); see also In re Cadence Design Sys., Inc. Sec. 21 Litig., No. 08-cv-4966 SC, 2011 WL 13156644, at *2 (N.D.

Cal. Aug. 26, 2011) (“Within the 22 Ninth Circuit, Rule 23’s requirements for approval of class action settlements apply to proposed 23 settlements of derivative actions.” (citing In re Pac. Enters. Sec. Litig., 47 F.3d 373, 377 (9th Cir. 24 1995))).

Accordingly, “[c]ourts considering settlements of derivative actions have generally found 25 ‘[c]ases involving dismissal or compromise under Rule 23(e) of nonderivative cases... relevant by 26 analogy.’ Lloyd v. Gupta, No. 15-cv-04183-MEJ, 2016 WL 3951652, at *4 (N.D. Cal. July 22, 27 2016) (second and third alterations in original) (quoting 7C Charles A. Wright & Arthur R. Miller, 1 judicial policy” that favors the settlement of class actions.

Class Plaintiffs v. City of Seattle, 955 2 F.2d 1268, 1276 (9th Cir. 1992). 3 Rule 23 requires courts to follow a two-step process in evaluating a class action or 4 derivative action settlement. First, the parties must show “that the court will likely be able to... (i) 5 approve the proposal under Rule 23(e)(2).” Fed. R. Civ. P. 23(e)(1)(B).

In other words, a court 6 must make a preliminary determination that the settlement “is fair, reasonable, and adequate” 7 when considering the factors set out in Rule 23(e)(2). Fed. R. Civ. P. 23(e)(2). The court’s task at 8 the preliminary approval stage is to determine whether the settlement falls “within the range of 9 possible approval.” In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D.

Cal. 2007) 10 (citation omitted). “The initial decision to approve or reject a settlement proposal is committed to 11 the sound discretion of the trial judge.” City of Seattle, 955 F.2d at 1276 (citation omitted). 12 Second, if the court preliminarily approves a derivative action settlement, notice “must be 13 given to shareholders or members in the manner that the court orders.” Fed.

R. Civ. P. 23.1(c). 14 The court must then hold a hearing to make a final determination whether the settlement is “fair, 15 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). 16 The proposed settlement need not be ideal, but it must be fair and free of collusion, 17 consistent with counsel’s fiduciary obligations to the class. Hanlon v. Chrysler Corp., 150 F.3d 18 1011, 1027 (9th Cir.

1998) (“Settlement is the offspring of compromise; the question we address is 19 not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate 20 and free from collusion.”). To assess a settlement proposal, courts must balance a number of 21 factors: 22 [T]he strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class 23 action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; 24 the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed 25 settlement.

26 Id. at 1026 (citations omitted). The proposed settlement must be “taken as a whole, rather than the 27 individual component parts,” in the examination for overall fairness. Id. Courts do not have the 1 entirety.” Id. (citation omitted). 2 III. DISCUSSION 3 For the reasons set forth below, the Court will grant final approval of the settlement. 4 A. Adequacy of the Notice and Administrator’s

Costs 5 Rule 23.1(c) requires that notice of the Settlement “must be given to shareholders or 6 members in the manner that the court orders.” Fed.

R. Civ. P. 23.1(c). In determining the 7 appropriate notice method, “the Court considers whether such notice would be sufficient to reach 8 the majority of interested stockholders.” *Bushansky v. Armacost*, No. 12-cv-01597-JST, 2014 WL 9 2905143, at *6 (N.D. Cal. June 25, 2014). 10 The Court approved the parties’ proposed notice plan when it granted preliminary 11 approval, which required Ginkgo to (1) post the Long Form Notice on Ginkgo’s Investor Relations 12 webpage with the Stipulation of Settlement (and exhibits thereto) and maintain these documents 13 until after the Final Approval Hearing, (2) publish via GlobeNewswire or similar wire service with 14 a link to its Investor Relations webpage and the Stipulation (and exhibits thereto), and (3) file a 15 Form 8-K with the U.S. Securities and Exchange Commission.

(Dkt. No. 77 at 14-15, 17.) Ginkgo 16 disseminated Notice in accordance with the Preliminary Approval Order, and no objections were 17 received. (Pls.’ Mot. at 23 (citing Joint Decl. ¶ 120); Pls.’ Notice of Non-Objection, Dkt. No. 82 at 18 1 (explaining notice procedures and representing that no objections were made as of the December 19 10, 2025).) 20 Ginkgo has tens of thousands of shareholders, hundreds of sophisticated institutional 21 holders, and more than 50 million shares outstanding.

(Joint Decl. ¶ 121.) Ginkgo’s institutional 22 holders, which have the highest incentive and ability to object where they deem fit, include 23 BlackRock, Inc. and the Vanguard Group, Inc. which collectively own more than 11% of Ginkgo 24 common stock, or more than 5 million shares. (Id.; Pls.’ Mot. at 23.)

The lack of any shareholder 25 objection, including from institutional holders, weighs heavily in favor of approval. In re 26 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (only three of thousands of 27 shareholders objected “raises a strong presumption that the terms of a proposed class settlement 1 Since the parties adhered to the previously-approved notice plan, the Court finds that 2 notice was sufficiently provided to shareholders.

See *Bushansky v. Armacost*, No. 12-cv-01597- 3 JST, 2014 WL 2905143, at *6 (N.D. Cal. June 25, 2014). 4 B. Approval of Settlement 5 With the exception of the reaction of shareholders, the Court analyzed the necessary 6 factors and found the Settlement to be fair, adequate, and reasonable when it granted preliminary 7 approval. (Dkt. No. 77 at 9-12.) 8 The Court finds no reason to alter this conclusion now that shareholders have been given 9 notice and an opportunity to be heard.

No shareholder objected to the Settlement. (Pls.’ Notice of 10 Non-Objection at 1.) “[T]he absence of a large number of objections to a proposed class action 11 settlement raises a strong presumption that the terms of a proposed class settlement action are 12 favorable to the class

members.” In *re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (citation omitted); see also *Churchill Vill., LLC v. Gen.*

Elec., 361 F.3d 566, 577 (9th Cir. 2004) (holding that approval of a settlement that received 45 objections (0.05%) and 500 opt- 15 outs (0.56%) out of 90,000 class members was proper). Courts reviewing settlements of 16 shareholder derivative suits have applied the same presumption.

In *re Wells Fargo & Co. S'holder 17 Derivative Litig.*, 445 F. Supp. 3d 508, 518 (N.D. Cal. 2020), *aff'd*, 845 F. App'x 563 (9th Cir. 18 2021) (citation omitted). That presumption is given even more weight where “not one 19 sophisticated institutional investor objected to the Proposed Settlement.” In *re Facebook, Inc.*, 20 IPO Sec. & Derivative Litig., 343 F.Supp.3d 394, 410 (S.D.N.Y.

2018); see also In *re Linerboard 21 Antitrust Litig.*, 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004). 22 After reviewing the required factors, the Court continues to find the Settlement to be fair, 23 reasonable, and adequate, such that final approval is warranted. 24 // 25 C. Attorneys’ Fees and Costs 26 “Under both Delaware and federal law, a court may grant fees and expenses to derivative 27 counsel when the derivative suit creates a common fund or confers a substantial corporate 1 Auto-Lite Co., 396 U.S. 375, 396, 90 S.Ct.

616, 24 L.Ed.2d 593 (1970); *Lewis v. Anderson*, 692 2 F.2d 1267, 1270 (9th Cir. 1982). “[W]here the litigation results in a ‘common fund’ that benefits 3 the general class of shareholders, courts may allocate a percentage of the total fund as the fee 4 award,” In *re Oracle Sec. Litig.*, 852 F. Supp. at 1449, “in lieu of the often more time-consuming 5 task of calculating the lodestar,” In *re Bluetooth Headset Prods.*

Liab. Litig., 654 F.3d 935, 942 6 (9th Cir. 2011). 7 The Ninth Circuit has set the “benchmark for an attorneys’ fee award in a successful class 8 action [at] twenty-five percent of the entire common fund.” *Williams v. MGM-Pathe Commc'ns 9 Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). It has applied the same standard in derivative 10 settlements.

In *re Pac. Enters. Sec. Litig.*, 47 F.3d at 379. Under this approach, courts generally 11 start with the 25 percent benchmark and adjust upward or downward depending on: 12 [T]he extent to which class counsel “achieved exceptional results for the class,” whether the case was risky for class counsel, whether 13 counsel's performance “generated benefits beyond the cash... fund,” the market rate for the particular field of law (in some circumstances), 14 the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was 15 handled on a contingency basis.

16 In *re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (quoting *Vizcaino 17 v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002)). 18 Here, the Settling

Parties agreed that Ginkgo would pay Plaintiffs' Counsel attorneys' fees 19 and costs in the amount of \$2,750,000, which exceeds the benchmark award of 25%. (Pls.' Mot. at 20 17.)

The fee negotiations were based on the value of the Settlement to Ginkgo at an estimated \$7- 21 8 million, the quality of Plaintiffs' Counsel's advocacy, role, and the risks assumed in securing the 22 benefits of the settlement, and the range of fee and expense amounts approved in similar derivative 23 actions. (Pls.' Mot. at 17 (citing Joint Decl. ¶ 102); Joint Decl. ¶ 105.)

More importantly, the fee 24 negotiations occurred only after the parties reached an agreement on the substantive terms of the 25 Settlement. (Joint Decl. ¶ 101.) The fact that the fees were negotiated after the parties agreed to 26 the material terms, weighs in favor of the reasonableness of the fees and warrants deference to the 27 parties' agreement. See *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 1 Moreover, the Court recognizes that courts routinely deviate from the 25% benchmark 2 when counsel secures both monetary and non-monetary (e.g. corporate governance) recoveries.

3 See, e.g., *In re Atmel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 WL 9525643, at *12 4 (N.D. Cal. Mar. 31, 2010) (approving 51% of monetary component and overruling an objection 5 that the requested fee was unreasonable because it exceeded the Ninth Circuit's 25% benchmark, 6 finding it "reasonable in light of the overall benefit of the Settlement to Atmel and its 7 shareholders"); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 8 4820784, at *4-5 (N.D.

Cal. Nov. 5, 2008) (approving 61% of monetary component where 9 settlement included money and corporate governance reforms). 10 Finally, as with the Settlement itself, "the lack of objections from institutional investors 11 'who presumably had the means, the motive, and the sophistication to raise objections' weighs in 12 favor of approval of the fee request." *In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. 13 Supp. 3d 508, 532–33 (N.D.

Cal. 2020), *aff'd*, 845 F. App'x 563 (9th Cir. 2021) (quoting *In re 14 Bisys Sec. Litig.*, No. 04 CIV. 3840(JSR), 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007)). 15 Based on the relevant legal authority, and for the reasons set forth above, the Court finds 16 that the corporate governance reforms confer substantial financial benefit to Ginkgo, such that a 17 deviation from the 25% benchmark is appropriate.

Thus, the Court awards Plaintiffs' Counsel 18 attorneys' fees and costs in the amount of \$2,750,000. 19 D. Plaintiffs' Request for Service Awards 20 Finally, Plaintiffs moves for an incentive award in the amount of \$8,000— to be split 21 evenly between Dr. Hu and Mssrs. Bowers, Newman, and Moskowitz—and paid out of Plaintiffs' 22 Counsel's attorney's fee award.

(Pls.' Mot. at 25.) The Ninth Circuit has recognized that service 23 awards to named plaintiffs in a class action are permissible and do not necessarily render a 24 settlement unfair or unreasonable.

See, e.g., *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 25 (9th Cir. 2009). Derivative plaintiffs may likewise merit compensation “for work done on behalf 26 of the [shareholders].” *Id.*; see also *In re Galena Biopharma*, 2016 WL 3457165, at *12 27 (approving incentive award to derivative action lead plaintiffs).

In this district, the presumptively 1 *EMC*, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012) (collecting cases). 2 Thus, the Court finds the \$2,000 Service Awards to be presumptively reasonable, and 3 awards \$2,000 each to Dr. Hu and Msrs. Bowers, Newman, and Moskowitz, which shall be paid 4 from Plaintiffs’ Counsel’s fee award. 5 IV. CONCLUSION 6 For the reasons set forth above, Plaintiffs’ motion for final approval of the derivative 7 settlement is GRANTED, and, as set forth in the Stipulation of Settlement, the Court awards 8 || \$2,750,000.00 in attorneys’ fees and costs to Plaintiffs’ Counsel, and it approves \$8,000 in service 9 awards—to be split evenly between Dr. Hu and Msrs.

Bowers, Newman, and Moskowitz—to be 10 || paid out of Plaintiffs’ Counsel’s fee award. 11 Additionally, the Court retains jurisdiction over this action for the purposes of supervising 12 || G) the implementation of the Settlement; and (ii) the Settling Parties for the purpose of construing, 5 13 enforcing, and administering the Stipulation and the Settlement, including, if necessary, setting 14 aside and vacating this Judgment, on motion of a party, to the extent consistent with and in 3 15 accordance with the Stipulation if the Effective Date fails to occur in accordance with the 16 Stipulation.

3 17 The Clerk shall close the case, and the Court will enter separate judgment. 1g IT IS SO ORDERED. 19 Dated: December 19, 2025 20 Kew A. WESTMORE Unitet States Magistrate Judge 22 23 24 25 26 27 28