IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE GWG HOLDINGS, INC. SECURITIES LITIGATION	§	**Civil Action No. 3:22-cv-00410-B**
	§	
	§	
	§	**CLASS ACTION**
	§	
	§	
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	§	
This Document Relates To: All Actions	§	
	§	

LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENTS

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In accordance with Local Civil Rule 7.1(i), Lead Plaintiff submits an Appendix ("App.") with materials that he relies on in support of his Motion for Final Approval of Settlements and Motion for Award of Attorneys' Fees and Expenses. When citing these materials in his brief, Lead Plaintiff uses the original pagination. For ease of reference, the table below also shows the beginning "App." page number as stamped on each document.

EXHIBIT	DOCUMENT	PAGES
	Declaration of Daniel C. Girard in Support of Lead Plaintiff's Motion for Final Approval of Settlements and Motion for Award of Attorneys' Fees and Expenses, dated December 8, 2025	App. 2-33
1	Summary of Counsel's Lodestar and Expenses	App. 34-35
1A	Declaration of Daniel C. Girard on Behalf of Girard Sharp LLP in Support of Lead Plaintiff's Motion for Award of Attorneys' Fees and Expenses, dated December 8, 2025	App. 36-46
1B	Declaration of Paul D. Malmfeldt on Behalf of Malmfeldt Law Group P.C. in Support of Lead Plaintiff's Motion for Award of Attorneys' Fees and Expenses, dated December 5, 2025	App. 47-55
1C	Declaration of Douglas Mannal in Support of Lead Plaintiff's Motion for Final Approval of Settlements and Motion for Award of Attorneys' Fees and Expenses, dated December 8, 2025	App. 56-66
1D	Declaration of Clay Mahaffey in Support of Lead Plaintiff's Motion for Award of Attorneys' Fees and Expenses, dated December 7, 2025	App. 67-71
2	Declaration of Royal Furgeson, dated November 7, 2025	App. 72-79
3	Declaration of Justin R. Hughes Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, dated December 5, 2025	App. 80-110

I. INTRODUCTION

The Court previously granted preliminary approval of two settlements totaling $50,950,000 to resolve this Class Action[1] alleging that over $350 million of GWG's L Bonds were sold pursuant to a false and misleading Registration Statement. The first settlement, which provides for a $450,000 payment, will resolve claims against the regional accounting firm Whitley Penn LLP. The Court granted preliminary approval of the Whitley Penn settlement on December 12, 2024 ("Whitley Penn Settlement"). The second settlement, which provides for a payment of at least $50,500,000, will resolve claims against the remaining defendants ("D&O Defendants"). The Court granted preliminary approval of the D&O Defendants settlement on September 25, 2025 ("D&O Settlement" and together with the Whitley Penn Settlement, the "Settlements"). The settling defendants have timely paid the required amounts to fund the Settlements.

The Settlements are the product of a detailed prefiling investigation, review and analysis of voluminous non-public documents, consultations with forensic accounting and corporate finance experts, and several years of litigation. The Whitley Penn Settlement was reached with the assistance of the Court-appointed mediator, Judge Royal Furgeson, a veteran District Court judge. The D&O Settlement is the product of a last-ditch mediators' proposal made by Judge Furgeson and David Murphy, an additional mediator appointed by the Court at the request of the parties, who assisted with insurance matters. The alternative to the D&O Settlement is the exhaustion of all remaining insurance and by all appearances, no recovery at all. The alternative to the Whitley Penn Settlement will be a pitched battle over the sufficiency of the complaint under the restrictive legal standard set forth in *Omnicare, Inc. v. Laborers Dist. Council Const. Indus.*

[1] All capitalized terms not otherwise defined herein have the same meanings as set forth in the Settlement Agreement, dated March 6, 2025. *See* Doc 144-1 at pp. 6-52 of 148.

Pension Fund, 575 U.S. 175 (2015), followed by years of litigation, with a favorable outcome far from certain.

Following the Court's preliminary approval of the D&O Settlement and approval of the notices to Class Members, the Court-approved Noticing Agent carried out the notice program, in accordance with the Court's Preliminary Approval Order (Doc. 157), beginning on October 20, 2025. Class Members have been notified of the Settlements by mail, email, and publication notice, and the notices and important documents were timely posted to the Settlement Website. Though several Class Members have contacted Girard Sharp LLP and Malmfeldt Law Group P.C. ("Class Counsel") with inquiries about Class membership, address changes, or other administrative matters, to this point, none has expressed opposition to the Settlements or requested exclusion. There is simply no reason to doubt the Court's preliminary conclusion that the Settlements are fair, reasonable, and adequate, in the best interest of Class Members, and deserving of final approval.

For the reasons set forth in more detail below, Lead Plaintiff respectfully requests that the Court grant final approval and enter judgment, concluding this litigation and clearing the way for investors to receive their payments.

II. BACKGROUND AND PROCEDURAL HISTORY

A. The *Bayati* Action.

On February 18, 2022, plaintiffs Bayati and Kamalvand initiated the *Bayati* Action under the securities laws on behalf of a putative class of investors who purchased or otherwise acquired L Bonds pursuant to the 2020 Registration Statement, against GWG and certain of its (then) current and former directors and officers. Doc. 1; Declaration of Daniel C. Girard in Support of Lead Plaintiff's Motion for Final Approval of Settlements and Motion for Award of Attorneys' Fees and Expenses, dated December 8, 2025 ("Girard Decl."), ¶ 3 (App. 6-7). The complaint ("Initial Complaint") alleged that GWG issued L Bonds pursuant to the Registration Statement

filed March 30, 2020, amended on May 15, 2020, and declared effective on June 3, 2020. Plaintiffs sought relief under Sections 11, 12(a)(2) and 15 of the Securities Act, alleging that GWG's business was destined to collapse, in part because L Bond proceeds were being applied through a series of complicated transfers to pay off purported indebtedness of GWG's Chairman of the Board. *See* Doc. 1, ¶¶ 6, 49-54. Plaintiffs alleged the Chairman was improperly funneling cash from GWG to a network of personal trusts. *See* Girard Decl., ¶ 5 (App. 7-8).

B. GWG's Bankruptcy, Appointment of Lead Plaintiffs and Lead Counsel, and Continued Investigation.

On April 20, 2022, GWG and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas. *See* Doc. 33. Under 11 U.S.C. section 362(a)(1), Debtors' bankruptcy filings operated as an automatic stay as to GWG. *See* Doc. 35. On May 9, 2022, Moore and Horton were appointed by the U.S. Trustee to GWG's Official Committee of Bondholders ("Bondholders' Committee"). Girard Decl., ¶ 13 (App. 9-10). Pursuant to an agreement dated May 13, 2022, Moore and Horton, in association with Class Counsel, retained Kramer Levin Naftalis & Frankel LLP ("Kramer"),[2] to represent them on matters related to the Bankruptcy Case, including in their capacities as members of the Bondholders' Committee. *Id.*, ¶ 14 (App. 10).

Pursuant to stipulation, the Court extended the stay on May 12, 2022 to non-debtor parties. Doc. 42. On August 5, 2022, the Court appointed Moore and Horton to serve as lead

[2] The Kramer engagement was led by attorney Douglas Mannal. Due to Mr. Mannal's change of partnerships, Class Counsel, Moore, and Horton subsequently ended the retention of Kramer and engaged Dechert LLP ("Dechert"), and later ended the retention of Dechert and engaged Morrison & Foerster LLP (collectively, "Bankruptcy Counsel").

plaintiffs,[3] and approved their selection of Girard Sharp and Malmfeldt Law Group as lead plaintiffs' counsel pursuant to 15 U.S.C. § 77z-1(a)(3)(B)(v). Doc. 51. From May 2022 through September 2023, the litigation remained stayed pending the occurrence of the effective date of the Second Amended Joint Chapter 11 Plan (the "Plan") confirmed by the Bankruptcy Court.

Class Counsel continued investigating GWG's accounting of revenue, expense, goodwill, and other matters. To assist in their investigation, Class Counsel retained Hemming Morse LLP, an expert forensic accounting firm, and Dodge Consulting Group LLC, a firm specializing in corporate due diligence and finance. Girard Decl., ¶ 19 (App. 11-12). Concurrently, during the period between July 2022 and January 2023, Bankruptcy Counsel worked closely with Moore and Horton in their roles as Bondholders' Committee members and analyzed thousands of pages of non-public documents in connection with the Bankruptcy Case. *See* Declaration of Douglas Mannal in Support of Lead Plaintiff's Motion for Final Approval of Settlements and Motion for Award of Attorneys' Fees and Expenses, dated December 8, 2025 ("Mannal Decl."), ¶ 4 (App. 59).

On May 26, 2023, following Class Counsel's further research and conferences with their retained accounting experts, Lead Plaintiffs commenced the *Horton* Action, naming as defendants Whitley Penn, Ben, Heppner, Cangany, Hicks, Lockhart, and Schnitzer. *Horton* Action, Doc. 1. In the *Horton* Action, Lead Plaintiffs alleged violations of Section 11 of the Securities Act against Whitley Penn, and violations of Section 11, among other violations of the Securities Act, against the remaining defendants. *Id.*

[3] On July 17, 2024, then-Lead Plaintiff Thomas Horton dismissed his claims under Fed. R. Civ. P. 41(a)(1)(A)(i). Doc. 126. References to "Lead Plaintiffs" herein refer to Moore and Horton acting as lead plaintiffs before Horton's dismissal; references to "Lead Plaintiff" refer solely to Moore.

On June 20, 2023, the Bankruptcy Court entered an Order confirming the Plan, which became effective on August 1, 2023. Girard Decl., ¶ 29 (App. 15). The Plan preserves valuable causes of action of the Debtors against third parties, including the D&O Defendants. The Plan also provides for the formation of the Litigation Trust, the appointment of Michael I. Goldberg as Trustee, and the creation of the separate Wind Down Trust to receive and distribute payments to estate creditors. *Id*. (App. 15). L Bondholders make up over 95% of GWG creditors.

C. The Court's Ruling on the Motions to Dismiss.

On September 12, 2023, upon Lead Plaintiffs' motion, the Court entered an order lifting the Bankruptcy Stay, and consolidating the *Bayati* and *Horton* Actions. Docs. 60-62. On October 2, 2023, following a series of procedural steps to join Whitley Penn and other defendants, Lead Plaintiffs filed a Consolidated Class Action Complaint ("CAC"). Doc. 63. On November 7, 2023, and January 4, 2024, Defendants filed six separate motions to dismiss the CAC under Rule 12(b)(6). Docs. 68, 89-91, 94-95. Defendants argued, among other things, that Lead Plaintiffs inadequately alleged that their purchases could be traced to the Registration Statement, that Lead Plaintiffs' claims were subject to the Rule 9(b) pleading standard, that the alleged false statements were immaterial, that the alleged false statements were matters of opinion, that Lead Plaintiffs' claims were subject to a "negative causation" defense, and that Lead Plaintiffs failed to allege "control person" liability under Section 15 of the Securities Act.

On February 20, 2024, Lead Plaintiffs filed an omnibus opposition to defendants' motions to dismiss, which addressed the motions to dismiss filed by all defendants except Whitley Penn. Doc. 100. In their brief, Lead Plaintiffs challenged D&O Defendants' arguments by responding, among other things, that (i) the CAC adequately pled facts demonstrating why each alleged misstatement and omission was materially false or misleading; (ii) Lead Plaintiffs'

claims are not subject to a heightened pleading standard; and (iii) defendants' generalized risk disclosures do not immunize their misleading representations and omissions of material fact. *Id.*

On October 24, 2024, the Court entered an order granting the D&O Defendants' motions to dismiss on the basis that the CAC did not adequately plead that Lead Plaintiff's L Bonds are traceable to the 2020 Registration Statement. Doc. 129. On November 14, 2024, Lead Plaintiff filed his First Amended Consolidated Class Action Complaint. Doc. 131. The amendment details the Lead Plaintiff's alleged direct purchase from GWG of L Bonds during the class period, *i.e.*, the period between June 3, 2020 and April 16, 2021 ("Class Period"). *Id.*, ¶¶ 133-48.

D. Formation of Litigation Trust and Coordination with Trust Counsel.

The Litigation Trustee retained Reid Collins & Tsai LLP as Trust Counsel. In August 2023, Class Counsel entered into a Common Interest Agreement and Joint Prosecution Agreement with Trust Counsel. Girard Decl., ¶ 30 (App. 15). Pursuant to the agreements, Class Counsel received access to over 120,000 non-public documents. *Id.*, ¶ 33 (App. 15). Between September 2023 and July 2024, Class Counsel reviewed, analyzed, and coded relevant documents from the production. *Id.*, ¶ 34 (App. 15).

E. Mediation, Coordination with Trust Action, and Agreement-In-Principle Regarding Settlements.

Following an initial exploratory mediation with Judge Furgeson on June 6, 2023, *id.*, ¶ 27 (App. 14), the parties mediated again on August 30, 2023, with Class Counsel, Trust Counsel, and defense representatives. *Id.*, ¶ 31 (App. 15). Although the parties were unable to reach a settlement, negotiations continued. *Id.* (App. 15). Among the complicating factors were certain defendants' opposition to any settlement and plaintiffs' insistence on reserving certain claims relating to allegedly inadequate disclosures or improper funds transfers, and ongoing government investigations. *See* Declaration of Royal Furgeson, dated November 7, 2025 ("Furgeson Decl."),

¶ 19 (App. 77). It became apparent from the outset that any meaningful resolution would need to resolve both the Class Action and the Trust Action.

In February 2024, Class Counsel and Whitley Penn's counsel, with the assistance of Judge Furgeson, exchanged settlement proposals and counterproposals regarding a potential settlement of the claims against Whitley Penn. Girard Decl., ¶ 38 (App. 16). On March 6, 2024, following the parties' negotiations, Lead Plaintiffs and Whitley Penn agreed in principle to resolve the claims asserted against Whitley Penn for $450,000. *Id.*, ¶ 2, 39 (App. 6, 17). The parties executed the Whitley Penn Settlement agreement on July 17, 2024 ("Whitley Penn Settlement Agreement").

On April 19, 2024, the Trustee commenced the Trust Action in the Bankruptcy Court and filed a lengthy adversary complaint asserting claims against many of the same parties named in the Class Action. Girard Decl., ¶ 40 (App. 17); Trust Action, Doc. 1. In response, defendants in the Trust Action filed nine separate motions to dismiss the complaint. Trust Action, Docs. 61-62, 101, 104, 110-11, 113-14, 117. The Trust responded on November 25, 2024. *Id.*, Doc. 132.

On May 24, 2024, Class Counsel filed an agreed motion to appoint David Murphy as co-mediator. Doc. 115. Between August 2024 and December 2024, the parties continued negotiations through the mediators, with virtual sessions, teleconferences, emails, and the exchange of proposals and counterproposals regarding the terms of a potential settlement. Girard Decl., ¶ 47 (App. 18).

Faced with an apparently irreconcilable impasse, the mediators made a final proposal on November 24, 2024. On December 16, 2024, Lead Plaintiff, Trustee, and the D&O Defendants (and other Released Defendants Releasees) reached an agreement-in-principle regarding the terms of a settlement for the Class Action and Trust Action. Furgeson Decl., ¶ 17 (App. 76). On

March 6, 2025, the parties executed the Settlement Agreement, which reflects the parties' final and binding agreement to settle class and estate claims against Released Defendants Releasees. *See* Doc. 144-1 at pp. 6-52 of 148.

III. THE SETTLEMENTS

A. Settlement Consideration.

As set forth in the D&O Settlement agreement dated March 6, 2025 ("D&O Settlement Agreement"), the D&O Settlement provides for a cash payment of at least fifty million, five hundred thousand dollars ($50,500,000). In addition to finally resolving this case, the D&O Settlement resolves the claims against Persons covered by the applicable D&O Policies that the Trustee has asserted in the Trust Action. The D&O Settlement will exhaust the remaining limits under the D&O Policies, less a reserve to cover the costs of documenting the D&O Settlement and obtaining the necessary Court approvals as well as coverage available to the Insureds in connection with certain pending or threatened legal matters.[4] Unused policy proceeds in excess of $250,000 will be contributed to the D&O Settlement fund as additional settlement consideration. The D&O Settlement also reserves certain Litigation Trust claims for recovery of allegedly improper fund transfers, and bondholders' claims against investment brokers who solicited sales of L Bonds.

The Net Settlement Fund will be distributed to holders of Allowed Claims under the Plan in accordance with the Confirmation Order. In the interests of efficiency and minimizing the costs of distribution, Lead Plaintiff proposes that the Whitley Penn Settlement fund, less any fees and costs approved by the Court, be added to the Net Settlement Fund. Together, these

[4] As of the first week of December 2024, the estimated amount remaining under the applicable D&O Policies above the Settlement Amount was in the range of approximately $27-30 million. Any defense costs incurred by insured parties since that time will reduce that reserve.

Settlements will return on the order of 13% of best-case recoverable damages in the Class Action, as determined in consultation with Lead Plaintiff's damages expert. *See* Girard Decl., ¶¶ 25, 54 (App. 14, 20). For the reasons discussed below, these Settlements represent the best result possible under the circumstances, and represent a fair, reasonable and adequate resolution of sharply disputed claims.

B. Notice Was Carried Out in Accordance With the Court's Order.

The Court's order preliminarily approving the D&O Settlement charges Stretto, Inc., the Noticing Agent retained by the Wind Down Trust, with responsibility for disseminating the Class Notice. Doc. 157, ¶ 8. In accordance with the Order, the Noticing Agent mailed the Class Notice, via first-class mail, to holders of Allowed Claims, emailed the Class Notice to all email addresses associated with L Bond investors in the Wind Down Trustee's records, caused the Summary Notice to be published in *Investor's Business Daily* on October 20, 2025 and published the Summary Notice over *PR Newswire* on October 20, 2025. *See* Declaration of Justin Hughes Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, dated December 5, 2025 ("Hughes Decl."), ¶¶ 5-6, 9. (App. 82-83). L Bondholders have contacted Class Counsel and Stretto to verify their eligibility, their addresses, and asked about the timing of distributions. Hughes Decl., ¶ 11; Girard Decl., ¶ 85 (App. 31, 84).

IV. ARGUMENT

A. The Settlements Warrant Final Approval Under Rule 23(e).

"To grant final approval of a class action settlement, the Court must also ensure that the settlement satisfies the requirements of Rule 23(e)." *Burnett v. CallCore Media, Inc.*, 2024 WL 3166453, at *3 (S.D. Tex. June 25, 2024). Rule 23(e) requires the Court to consider (1) notice to the Class; (2) if the settlement is fair, reasonable, and adequate; (3) the existence of any side

agreements; and (4) objections from Class Members. *Merrell v. 1st Lake Properties*, 2025 WL 3250873, at *5 (E.D. La. Nov. 21, 2025).

1. The Notice Program Satisfies Rule 23(e) and Due Process.

The Court must consider whether notice in this case "was reasonable and provided due process under Rule 23(e)(1)." *Merrell*, 2025 WL 3250873, at *5; *see, e.g.¸ McCumber v. Invitation Homes, Inc.*, 2024 WL 4183526, at *1 (N.D. Tex. July 30, 2024) (Boyle, J.) (first considering whether notice was disseminated based on the Court's preliminary approval order),

Notice was provided in accordance with the Court's Preliminary Approval Order, including through mail, email and publication. *See* Hughes Decl., ¶¶ 5-11 (App. 82-84). In short, Class Members received notice in plain and easily understood terms about the nature of the claims in this case, the effect of the potential Settlements, the date of the fairness hearing, and their right to object and opt out. *See Armstrong v. Kimberly-Clark Corp.*, 2024 WL 1123034, at *3 (N.D. Tex. Mar. 14, 2024). Thus, the Class received the "best notice practicable under the circumstances." *Burnett*, 2024 WL 3166453, at *3 (quotation marks and citation omitted).

2. The Settlements Are Fair, Reasonable, and Adequate.

In determining whether the Settlements are fair, reasonable, and adequate. Federal Rule of Civil Procedure 23(e) provides that a Court should consider whether:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The Fifth Circuit has also established a six-pronged test, which includes certain factors that overlap with the Rule 23(e)(2) factors, to be applied to the approval of class settlements:

> (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members.

Reed v. Gen. Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983); *Harrell v. WebTPA Empl. Servs., LLC*, 2025 WL 2412849, at *4 (N.D. Tex. June 5, 2025) (courts in the Fifth Circuit consider Rule 23(e)(2) requirements as informed by the *Reed* factors).

a. Lead Plaintiff and Class Counsel Have Adequately Represented the Class.

Rule 23(e)(2) requires the Court to consider whether Lead Plaintiff and Class Counsel have adequately represented the Class. As this Court has found, "Lead Plaintiff and Class Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class." Doc. 139 at 4.

Lead Plaintiff has frequently consulted with Class Counsel on strategy and case developments. *See* Doc. 128 at p. 99 of 106. He also demonstrated his commitment to the Class by serving on the Official Bondholder Committee, devoting many hours to committee meetings and consultation with Bankruptcy Counsel. *Id.* at p. 100 of 106. Moore's claims are typical of other Class members' claims and he has no conflict of interests with other members of the Class. *See* Doc. 139 at 4. Class Counsel have likewise adequately represented the Class, as the record demonstrates. *See* Girard Decl., § II (App. 6-19). They have dedicated themselves to this case since 2022, and had a well-developed understanding of the strengths and weaknesses of the claims at the times the Settlements were reached. Accordingly, this factor supports final approval of the Settlements.

b. The Settlements Are the Product of Arm's-Length Negotiations Between Experienced Counsel.

Rule 23(e)(2)(B) and the first *Reed* factor also support final approval. As Judge Furgeson has attested, "the arguments and positions asserted by all involved [during settlement discussions] were the products of detailed analysis and hard work," and "while professional, the discussions were highly adversarial." Furgeson Decl., ¶ 20 (App. 77). The years of litigation confirm that the settlement "is not the product of collusion, but rather the ultimate result of arms'-length negotiations." *Daugherty v. Credit Bureau Servs. Ass'n*, 2025 WL 1618354, at *2 (S.D. Tex. June 6, 2025); *see Schwartz v. TXU Corp.*, 2005 WL 3148350, at *21 (N.D. Tex. Nov. 8, 2005) (that "settlement was the result of intense, arms-length negotiations between the parties," supported approval); *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 146 (E.D. La. 2013) (finding that the "nearly year-long arm's-length negotiation process" supported approval of the settlement).

c. The Relief Provided to the Class Is Adequate in Light of the Costs, Significant Risks, and Delay of Trial and Appeal.

Rule 23(e)(2)(C)(i) requires the relief provided under the Settlements to be adequate, considering the costs, risks and delay of trial and appeal. The Fifth Circuit's third and fifth *Reed* factors similarly call for assessment of the probability of success on the merits as well as the complexity, expense and likely duration of the litigation. 703 F.2d at 172. The proposed Settlements satisfy these factors as well.

(i) Risks in Proving Liability and Damages, and in Certifying a Class.

As the Fifth Circuit has recognized, securities class actions carry significant risk from the plaintiffs' perspective, "[t]o be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action."

Alaska Elec. Pension Fund v. Flowserve Corp., 572 F.3d 221, 235 (5th Cir. 2009). Lead Plaintiff and his counsel acknowledge significant barriers to prevailing in this action through trial.

Defendants have adamantly denied liability throughout the Class Action and would continue to do so absent the Settlements. For example, Whitley Penn raised substantial defenses under *Omnicare*, 575 U.S. 175 at 185-193. Under the standards set forth in the Supreme Court's *Omnicare* decision, in order to establish liability under Section 11, Lead Plaintiff would be required to prove either that Whitley Penn was subjectively aware that its audit opinion was incorrect or that Whitely Penn omitted material facts from its opinion that "conflict with what a reasonable investor would take from the [opinion] itself." *Id.* at 185-186, 188.

Since *Omnicare*, Section 11 claims against public auditors have encountered rough sledding. *See Johnson v. CBD Energy Ltd.*, 2016 WL 3654657, at *10-11 (S.D. Tex. July 6, 2016) (holding that audit report and statements therein were pure statements of opinion subject to the *Omnicare* framework); *Plaisance v. Schiller*, 2019 WL 1205628, at *9-13 (S.D. Tex. Mar. 14, 2019) (finding auditor's statement that company "maintained effective internal control over its financial reporting" to be a statement of opinion under *Omnicare*); *Querub v. Hong Kong*, 649 F. App'x 55, 58 (2d Cir. 2016) (similar); *Hunt v. Price Waterhouse Coopers,* 2025 WL 3137726, at *10 (9th Cir. Nov. 10, 2025) (similar).

Likewise, the D&O Defendants have asserted numerous defenses to Lead Plaintiff's claims. For example, D&O Defendants argue that Lead Plaintiff cannot establish statutory standing under Section 11 as to himself or the members of the Class. While Class Counsel believe the First Amended Complaint adequately pleads standing as to Lead Plaintiff, making the same showing as to all members of the Class, particularly those who acquired their bonds indirectly from GWG, through broker dealers, and hold their securities in "street name," could be

challenging under the legal standard adopted by the Court in its ruling on the motions to dismiss. Moreover, D&O Defendants argue that Lead Plaintiff has failed to plead any false statement or omission, that their statements are non-actionable statements of opinion, that the lengthy offering materials disclosed all the relevant facts, and that their "negative causation" defense will be fatal to Lead Plaintiff's claims. Class Counsel believe they have put forward persuasive answers to each of these arguments, but acknowledge the profusion of unfavorable case law and inherent uncertainty in litigation of securities claims. *See, e.g.*, *In re Kosmos Energy Ltd. Sec. Litig.*, 299 F.R.D. 133, 135 (N.D. Tex. 2014) (denying class certification of Securities Act claims) (Boyle, J.); *In re Mylan N.V. Sec. Litig.*, 2023 WL 2711552 (S.D.N.Y. Mar. 30, 2023) (defendants prevailing at summary judgment in securities class action); *In re Tesla Inc., Sec. Litig.*, 2023 WL 4032010 (N.D. Cal. June 14, 2023) (defense verdict in securities class action notwithstanding the court's previous finding that defendants' statements were false).

The Court previously dismissed Lead Plaintiff's CAC. Doc. 129. Even if the Court were to deny the D&O Defendants' eventual motions to dismiss, motions for summary judgment, and the Court were to grant Lead Plaintiff's eventual motion for class certification, the D&O Defendants would likely seek an interlocutory appeal or move to decertify the class prior to trial. *See* Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment."); *McNamara v. Felderhof*, 410 F.3d 277, 280 n.8 (5th Cir. 2005) (noting a district court can reconsider or modify its class certification order).

Further, Lead Plaintiff faced the risk that he would be unable to collect any eventual judgment from the D&O Defendants. The D&O Settlement will exhaust the D&O Defendants' remaining insurance. Continued litigation of this case would have resulted in the depletion of the D&O Defendants' insurance coverage under the applicable D&O Policies. *See* Furgeson Decl.,

¶¶ 15, 21 (App. 76, 78). GWG, the issuer of the securities, has been released from all claims under the terms of the Plan. The Department of Justice is seeking forfeiture of assets derived from proceeds traceable to the allegedly improper transfers. The remaining defendants are either incapable of paying a substantial judgment or hold their wealth in non-party entities. *See* Girard Decl., ¶¶ 56-58 (App. 21-22). Homestead exemptions also limit recovery prospects. *See* Tex. Const. Art. 16 §§ 50, 51; Tex. Prop. Code §§ 41.001, 42.001.

For all these reasons, absent the Settlements, there is a very real risk that Class Members will recover nothing at all. Lead Plaintiff and Class Counsel believe that the Settlements—which provide immediate and certain payments totaling $50.95 million without exposing Class Members to the risk, expense, and delay of continued litigation—represent the best result possible given all the relevant circumstances. Accordingly, this factor supports final approval of the Settlements.

(ii) The Complexity, Expense, and Likely Duration of the Class Action.

For similar reasons, the complexity, expense and likely duration of further litigation (the third and fifth *Reed* factors) provide additional grounds for Class Counsel's recommendation that the Court approve the Settlements. *See In re Dell Inc., Sec. Litig.*, 2010 WL 2371834, at *7 (W.D. Tex. June 11, 2010) (acknowledging that "[s]ecurities litigation on the whole is 'notoriously difficult and unpredictable' . . . . Thus the complexity, expense, and likely duration of the suit weighs in favor of approval of the settlement."), *aff'd*, 669 F.3d 632 (5th Cir. 2012). Continued litigation would require resources disproportionate to the prospects for recovery, consume years as the parties complete briefing and discovery, class certification, a Rule 23(f) petition if successful on class certification and, if the certification order survives, trial and appeals. Moreover, continued litigation would exhaust the D&O Defendants' insurance

proceeds, "further reducing available settlement funds and complicating if not preventing entirely the resolution of these cases." Furgeson Decl., ¶ 21 (App. 78); *see Klein v. O'Neal*, 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010) ("When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually agreeable settlement is strengthened.").

d. The Range of Possible Recovery.

Rule 23(e)(2)(C)(i) asks the Court to consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal," and the fifth *Reed* factor similarly considers "whether the terms of the settlement 'fall within *a reasonable range of recovery*, given the likelihood of the plaintiffs' success on the merits.'" *Billitteri v. Sec. Am., Inc.*, 2011 WL 3586217, at *12 (N.D. Tex. Aug. 4, 2011) (emphasis in original). In assessing the reasonableness of a proposed settlement under both these analyses, the inquiry "should contrast settlement rewards with likely rewards if [the] case goes to trial." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 239 (5th Cir. 1982).

Here, the Settlements are well within the range of reasonableness, particularly given the multiple risks associated with further litigation of the Class Action. Class Counsel did not assert claims on behalf of those bondholders who purchased their bonds under registration statements predating the 2020 Registration Statement, because they believe those claims were not viable. As to those who purchased under the 2020 Registration Statement, Lead Plaintiff believes that maximum potential damages for the Class's claims are in the range of $336 million to $394 million, a fraction of total bondholders losses. *See* Girard Decl., ¶¶ 25, 54 (App. 14, 20).[5]

[5] The Trustee has provided a $300 million to $500 million cumulative range of maximum damages for Trust Action claims against all potential defendants. *In re GWG Holdings, Inc., et al.*, No. 22-90032 (Bankr. S.D. Tex.), Doc. 2582 at 7. This range includes damages associated

The Settlements ($50.95 million) accordingly represent approximately 13% to 15% of the likely maximum damages on the bondholders' securities claims, a favorable result, considering the risks and collectability challenges. *See, e.g.*, *In re Apache Corp. Sec. Litig.*, 2024 WL 4881432, at *6 (S.D. Tex. Nov. 25, 2024) (approving class action settlement representing "approximately 4.4% of the potential estimated damages for the class period"); *Celeste Neely*, 2022 WL 17736350, at *2 (E.D. Tex. Dec. 16, 2022) (approving settlement as fair, reasonable and adequate where "class settlement value represents 7.61% of the maximum possible damages that could have been recovered at trial"); *Okla. Firefighters Pension & Ret. Sys. v. Six Flags Ent. Corp.*, 2025 U.S. Dist. LEXIS 20010 (N.D. Tex. Jan. 28, 2025) (finally approving settlement representing approximately 8.5% to 10.8% of the likely maximum achievable damages); *In re Fed. Nat'l Mortg. Ass'n Sec., Derivative, & "ERISA" Litig.*, 4 F. Supp. 3d 94, 103 (D.D.C. 2013) (settlement approximating "4-8% of the 'best case scenario' potential recovery" deemed reasonable); *In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) (noting that the average settlements in securities class actions "have ranged from 3% to 7% of the class").

e. The Opinions of Class Counsel, Lead Plaintiff, and the Class.

The sixth *Reed* factor also weighs in favor of final approval of the Settlements. After years of litigation and investigation, consultation with accounting experts, review of non-public documents received from the Trustee, and hard-fought settlement negotiations, Lead Plaintiff and Class Counsel recommend approval of the Settlements. *See Daugherty*, 2025 WL 1618354, at *4 (according "great weight" to opinion of "highly experienced" counsel); *Marcus v. J.C.*

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with claims unrelated to those asserted in the Class Action including damages associated with the costs of the bankruptcy. This range also includes damages associated with claims against other parties, including a law firm that represented GWG in connection with its L Bond offerings, which entered a separate $30 million settlement with the Trustee. *Id.*, Doc. 2703 at p. 6 of 47.

Penney Co., Inc., 2017 WL 6590976, at *3 (E.D. Tex. Dec. 18, 2017) ("Significant weight is given to the opinion of class counsel concerning whether the settlement is in the best interest of the class and the court is not to substitute its own judgment for that of counsel."), *R&R adopted*, 2018 WL 307024 (E.D. Tex. Jan. 4, 2018).

3. The Settlements Satisfy the Remaining Rule 23(e)(2) Factors.

a. Attorneys' Fees.

The D&O Settlement Agreement and Whitley Penn Settlement Agreement provide that Class Counsel may seek Court approval for an award of attorneys' fees and reimbursement of expenses. Doc. 144-1 at pp. 35-37 of 148; Doc. 128 at pp. 21-23 of 106. As set forth in Lead Plaintiff's contemporaneously filed Motion for Award of Attorneys' Fees and Expenses, Class Counsel's request is fair and reasonable and in line with other securities class action settlements approved in the Fifth Circuit.

b. Supplemental Agreements.

Rule 23(e)(3) requires disclosure of any agreements "made in connection" with the Settlements. Fed. R. Civ. P. 23(e)(3). As set out in the D&O Settlement Agreement (Doc. 144-1 at p. 39 of 148), and in the memorandum in support of Lead Plaintiffs' motion for preliminary approval (Doc. 144, § IV.B.3.b), the parties have agreed to a Supplemental Opt-Out Contingency Agreement that gives the D&O Defendants the right to terminate the D&O Settlement in the event the number of Class opt-outs reaches a certain threshold.

There are no other separate agreements made in connection with the D&O Settlement or the Whitley Penn Settlement. Girard Decl., ¶¶ 60, 65 (App. 22, 24).

c. Class Members Are Treated Equitably Under the Proposed Distribution Plan.

Finally, the Court must consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). "Assessment of a plan of allocation of settlement proceeds in a class action . . . is governed by the same standards of review applicable to the settlement as a whole—the plan must be fair, adequate and reasonable." *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, 2015 WL 965693, at *15 (W.D. La. Mar. 3, 2015) (quotation marks and citation omitted). "The district court has broad discretion with regard to the allocation of a class action settlement." *J.C. Penney*, 2017 WL 6590976, at *5.

First, distribution of the Net Settlement Fund *pro rata* is equitable because distributing the fund in accordance with the respective losses suffered by bondholders recognizes that the degree of harm varies according to the amount invested, less any return on investment. *See Neely*, 2022 WL 17736350, at *5 (noting that a *pro rata* distribution "is common in securities class actions"); *Stott v. Cap. Fin. Servs., Inc.*, 277 F.R.D. 316, 328 (N.D. Tex. 2011).

Second, the proposal to distribute the entire $50,950,000, less court-approved deductions, to the broader group of holders of Allowed Claims in the Bankruptcy Case is also fair, reasonable and based on rational considerations. *See Neely*, 2022 WL 17736350, at *5 ("When an allocation plan is formulated by competent and experienced counsel, it will generally be upheld if it is supported by a reasonable, rational basis.") (quotation marks and citation omitted); *see also In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 2008 WL 4178151, at *5 (S.D. Tex. Sept. 8, 2008) (a distribution plan may take into "consideration the unique facts and circumstances of this litigation[.]"). As Judge Furgeson observed, "there was virtually no prospect of resolution unless both the Class Action and Trust Action were resolved concurrently." Furgeson Decl., ¶ 15 (App. 76). But if Class Counsel and Trust Counsel held out

to maximize their respective shares of the remaining proceeds of the D&O Policies, settlement negotiations would stalemate while the remaining insurance continued to decline. "If the Class Action and Trust Action insisted on competing against each other for… insurance proceeds…each faced the possibility of winning a pyrrhic victory as the available insurance declined." *Id.* (App. 76).

Further, in Judge Furgeson's opinion, absent an agreement to "distribute the recovery to all bondholders . . . the mediation would have failed and there would be no settlement." *Id.*, ¶ 22 (App. 78). Considering the limited amount of insurance remaining, and the fact that losses greatly exceed any plausible recovery, jeopardizing the prospect of returning *something* to investors, even if minor, in the hopes of extracting an additional cent or fraction thereof for Class Members, many of whom also invested in non-Class Period L Bonds, would elevate formalism over common sense. The L Bondholders are similarly situated as a practical matter, and pitting one group against another will accomplish little. *See* Girard Decl., ¶¶ 67-69 (App. 24-25); *cf. In re Oil Spill by Oil Rig Deepwater Horizon*, 910 F. Supp. 2d 891 (E.D. La. 2012) (quoting *In re Cendant Corp. Sec. Litig.,* 404, F.3d 173, 202 (3d Cir. 2005)) ("Subclassing can create a 'Balkanization' of the class action and present a huge obstacle to settlement if each subclass has an incentive to hold out for more money."); *see also Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (district courts have the discretion to treat "all class members as falling within a single class for purposes of a fund allocation" and noting that the "potential Balkanization of the class action" can create "a huge obstacle to settlement if each subclass has an incentive to hold out for more money").

Under these circumstances, it is fair and reasonable to make a *pro rata* distribution of the Net Settlement Fund to the broader group of holders of Allowed Claims in accordance with the Confirmation Order entered in the related Bankruptcy Case.

B. The Class Should Be Certified for Settlement Purposes.

The Court should finally certify the Class for settlement purposes because the requirements of Rule 23(a) and Rule 23(b)(3) are met, as summarized below. Because the Court has already found that the Class satisfies the requirements of Rules 23(a) and (b)(3) in granting preliminary approval of the D&O Settlement and Whitley Penn Settlement, Lead Plaintiff will only briefly discuss each factor. Doc. 139, ¶ 6; Doc. 157, ¶ 3; *see Burnett*, 2024 WL 3166453, at *2 ("There have been no developments in this case since this Court's Order granting preliminary approval that warrant this Court deviating from its previous findings.").

1. The Requirements of Rule 23(a) Are Satisfied.

a. The Class Is Sufficiently Numerous.

Numerosity is satisfied because the Court has found that "the members of the Settlement Class are so numerous that their joinder in the Consolidated Action would be impracticable." Doc. 139 at 4; *see* Fed. R. Civ. P. 23(a)(1).

b. Commonality Is Met.

"To satisfy the commonality requirement under Rule 23(a)(2), class members must raise at least one contention that is central to the validity of each class member's claims." *In re Deepwater Horizon*, 739 F.3d 790, 810 (5th Cir. 2014). Here, "there are questions of law and fact common to the Settlement Class which predominate over any individual questions[.]" Doc. 139 at 4.

c. Typicality Is Met.

Typicality under Rule 23(a)(3) requires the class representative's claims to "have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality." *Angell v. GEICO Advantage Ins. Co.*, 67 F.4th 727, 736 (5th Cir. 2023) (quoting *Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002)). "[T]he claims of Lead Plaintiff in the Consolidated Action are typical of the claims of the Settlement Class[.]" Doc. 139 at 4.

d. Plaintiff and His Counsel Adequately Represent the Class.

Rule 23(a)(4)'s adequacy prong requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). As this Court has found, "Lead Plaintiff and Class Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class." Doc. 139 at 4.

2. The Requirements of Rule 23(b)(3) Are Met.

Under Rule 23(b)(3), certification is appropriate where "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); *see Kostka v. Dickey's Barbecue Restaurants, Inc.*, 2022 WL 16821685, at *8-9 (N.D. Tex. Oct. 14, 2022) (addressing predominance requirement); *Wilson v. Frontier Commc'ns Parent, Inc.*, 2025 WL 2421373, at *5 (N.D. Tex. June 20, 2025) (quoting *Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 746 (E.D. Tex. 2007)) ("The superiority requirement is met 'when individual suits would be wasteful, duplicative, present managerial difficulty, and would be adverse to judicial economy.'"). The proposed Class satisfies the predominance and superiority requirements.

a. Common Issues Predominate.

Predominance exists when plaintiff's claims "depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means 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." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Importantly, when "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Here, the claims of Lead Plaintiff and all other Class Members turn on the central question of whether the Registration Statement contained materially false statements and omissions in violation of Section 11 of the Securities Act. For this reason, common issues predominate for purposes of settlement. *See* Doc. 139 at 4 (finding that common issues predominate); *see also In re Reliant Sec. Litig.*, 2005 WL 8152605, at *9 (S.D. Tex. Feb. 18, 2005) ("[T]he Court finds that the major issues in this case, as in most Section 11 cases, include whether material misrepresentations and/or omissions were made in the registration statement . . . and whether Defendants are liable . . . ."); *Prause v. TechnipFMC, PLC*, 2020 WL 3549686, at *7 (S.D. Tex. Mar. 9, 2020) (finding predominance met with respect to Section 11 claims); *Schwartz*, 2005 WL 3148350, at *15 (finding predominance met in securities class action settlement).

Thus, pursuant to Rule 23(b)(3), the proposed Class is "sufficiently cohesive to warrant adjudication by representation" and predominance is established. *In re Cobalt Int'l Energy, Inc. Sec. Litig.*, 2017 WL 2608243, at *4 (S.D. Tex. June 15, 2017) (quoting *Amchem*, 521 U.S. at 623).

b. A Class Action Is Superior.

"Because this is a proposed settlement class, issues relating to the manageability of a class trial are irrelevant." *Kostka*, 2022 WL 16821685, at *8 (citation omitted). In this case, "a class action is superior to other available methods for the fair and efficient adjudication of the Consolidated Action." Doc. 139 at 4.

V. CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Court approve the proposed Settlements and Distribution Plan as fair, reasonable, and adequate, and grant final certification of the Class for settlement purposes.

Dated: December 8, 2025

/s/ Daniel C. Girard

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(a), I hereby certify that this motion has been agreed to after conferences with counsel for defendants regarding the relief requested herein.

/s/ Daniel C. Girard
Daniel C. Girard

CERTIFICATE OF SERVICE

This is to certify that on December 8, 2025, I have filed the above and foregoing on the Court's CM/ECF electronic filing system, and that by virtue of this filing, all attorneys of record will be served electronically with true and exact copies of this filing.

/s/ Daniel C. Girard
Daniel C. Girard