UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AEGEAN MARINE PETROLEUM NETWORK, INC. SECURITIES LITIGATION	)	Case No. 1:18-cv-04993 (NRB)
	)	Hon. Naomi Reice Buchwald

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S UNOPPOSED MOTION FOR: (I) PRELIMINARY APPROVAL OF PROPOSED PARTIAL CLASS ACTION SETTLEMENTS WITH PRICEWATERHOUSECOOPERS AUDITING COMPANY S.A. AND DELOITTE CERTIFIED PUBLIC ACCOUNTANTS, S.A.; (II) PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS; AND (III) APPROVAL OF NOTICE TO THE SETTLEMENT CLASS

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Lead Plaintiff Utah Retirement Systems ("Lead Plaintiff" or "URS") respectfully submits this memorandum in support of its motion for preliminary approval of two proposed Partial Settlements[1] it has reached with Aegean Marine Petroleum Network, Inc.'s ("Aegean" or "Company") outside auditors. More specifically, Lead Plaintiff seeks (a) preliminary approval of a proposed partial settlement with PricewaterhouseCoopers Auditing Company S.A. ("PwC Greece") (the "PwC Greece Settlement"); (b) preliminary approval of a proposed partial settlement with Deloitte Certified Public Accountants, S.A. ("Deloitte Greece") (the "Deloitte Greece Settlement"); (c) preliminary certification of one Settlement Class applicable to both Partial Settlements; (d) approval of the form and manner of the joint notice of both Partial Settlements to the Settlement Class; (e) approval of the Claim Form common to both Partial Settlements to be disseminated to the Settlement Class Members; (f) appointment of A.B. Data, Ltd. ("A.B. Data") as the Claims Administrator to administer the notice and claims process; and (g) scheduling of a Final Approval Hearing for the Court to determine whether to approve the PwC Greece Settlement, the Deloitte Greece Settlement, the PwC Greece Plan of Allocation, the Deloitte Greece Plan of Allocation, Lead Counsel's motion for fees and reimbursement of Litigation Expenses and Lead Plaintiff's motion, if any, for the establishment of a Litigation Expense Fund.

Lead Plaintiff had initially filed a motion for preliminary approval of the PwC Greece Settlement on November 9, 2021, which provided, among other things, that distribution of the PwC Greece Settlement Fund and a motion for attorneys' fees and reimbursement of Litigation Expenses would be delayed until a later date, such as when further settlements were reached (ECF Nos. 327-30) (the "Nov. 2021 Motion"). Lavallee Decl. ¶14. Now that a second proposed settlement has been reached, Lead Plaintiff believes that (a) it is ripe to distribute the Partial Settlement Funds after final approval of these Partial Settlements and for Lead Counsel to move for approval of attorneys' fees and reimbursement

[1] All capitalized terms not otherwise defined herein have the same meaning as in the Omnibus Notice, identical copies of which are attached as (a) Exhibit A-1 to the March 22, 2022 Amendment to the PricewaterhouseCoopers Auditing Company S.A. Stipulation and Agreement of Partial Settlement Dated November 9, 2021 ("PwC Greece Stipulation Amendment"); and (b) Exhibit A-1 to the March 24, 2022 Stipulation and Agreement of Partial Settlement with Deloitte Certified Public Accountants, S.A. (the "Deloitte Greece Stipulation"). Copies of the PwC Greece Stipulation Amendment and the Deloitte Greece Stipulation are attached as Exhibits 1 and 3, respectively, to the Declaration of Nicole Lavallee ("Lavallee Decl." or "Lavallee Declaration"), filed herewith. Unless otherwise indicated, all paragraph references ("¶") refer to the Complaint. Unless otherwise indicated, all emphasis is added and all alterations, internal quotation marks and citations are omitted.

of Litigation Expenses when seeking final approval of these Partial Settlements; and (b) it is in the best interests of the Settlement Class to reduce costs by issuing one joint Omnibus Notice and publish one summary notice for both settlements.[2] *Id.* ¶17. Accordingly, this motion supersedes the Nov. 2021 Motion.

I. INTRODUCTION

Lead Plaintiff negotiated the two separate proposed Partial Settlements with two of the four Defendants, PwC Greece and Deloitte Greece (the "Settling Defendants").[3] These Partial Settlements do not affect or compromise the claims against Non-Settling Defendants Melisanidis or Gianniotis. If approved, the two proposed Partial Settlements would provide Settlement Class Members with a substantial, immediate concrete benefit and avoid the protracted risks and uncertainties inherent in complex, securities class action against the Settling Defendants, who reside in Greece. *See* Lavallee Decl. Exs. 1-3.

Specifically, the PwC Greece Settlement provides that PwC Greece will pay $14.9 million and provide certain documents, including audit workpapers, in exchange for the release of "PwC Greece Released Claims" against the "PwC Greece Released Parties," as set forth in the November 9, 2021 Stipulation and Agreement of Partial Settlement (ECF No. 330-1), attached as Exhibit 2 to the Lavallee Declaration and amended by the PwC Greece Stipulation Amendment (collectively referred to as the "PwC Greece Stipulation"). The PwC Greece Released Parties include not only PwC Greece but also PricewaterhouseCoopers International Limited ("PwCIL") and PricewaterhouseCoopers LLP ("PwC US"), both of whom were initially named as defendants but dismissed by Order dated March 29, 2021. ECF No. 293. The Deloitte Greece Settlement provides that Deloitte Greece will pay $14.9 million and provide certain documents, including audit workpapers, in exchange for the release of "Deloitte Greece Released Claims" against the "Deloitte Greece Released Parties," as set forth in the Deloitte Stipulation.[4]

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[2] PwC Greece and Lead Plaintiff executed the PwC Greece Stipulation Amendment to reflect these changes to Exhibits. *Id.*

[3] The current Defendants are Dimitris Melisanidis ("Melisanidis") and Spyros Gianniotis ("Gianniotis"), PwC Greece and Deloitte Greece (collectively, referred to as "Defendants").

[4] The PwC Greece Stipulation and the Deloitte Greece Stipulation are collectively referred to the "Partial Settlement Stipulations."

The Deloitte Greece Released Parties include not only Deloitte Greece but also Deloitte Touche Tohmatsu Limited ("DTTL") and Deloitte & Touche LLP ("Deloitte US"), both of whom were initially named as defendants but dismissed by the March 29, 2021 Order. ECF No. 293.

The Partial Settlements are the result of arm's-length negotiations between highly experienced counsel following an extensive investigation by Lead Counsel, hotly contested motions to dismiss and the commencement of discovery. *See* Lavallee Decl. ¶¶12-16. Lead Plaintiff secured the Partial Settlements due to its persistent efforts over the course of over three years of litigation, as discussed below. Based upon their experience, their evaluation of the facts and the law, their recognition of the substantial amount provided by the Partial Settlements and of the risks and expenses of protracted litigation against the Settling Defendants, Lead Counsel and Lead Plaintiff believe the proposed Partial Settlements represent excellent results, are in the best interests of the Settlement Class and should be preliminarily approved.

II. BACKGROUND AND SUMMARY OF CLAIMS

Lead Plaintiff alleges that Aegean and certain of its insiders engaged in a long-running, multi-faceted fraud whereby they (a) significantly overstated Aegean's income and revenue; (b) overstated Aegean's assets and the strength of its balance sheet; (c) issued false and misleading audited financial statements; (d) misled investors concerning the adequacy of Aegean's internal controls over financial reporting ("ICFR"); and (e) misappropriated Company assets. *See generally* Complaint. Lead Plaintiff further alleges that, as Aegean's outside auditors, the Settling Defendants issued false and misleading audit opinions for inclusion in Aegean's U.S. Securities and Exchange Commission ("SEC") filings during the Settlement Class Period, including allegedly misleading statements that (a) Aegean's financials complied with U.S. Generally Accepted Accounting Principles ("GAAP"); (b) Aegean's ICFR were adequate; and (c) their audits were performed in compliance with Public Company Accounting Oversight Board ("PCAOB") standards. *Id*. § X.

Deloitte Greece served as Aegean's auditor from prior to Aegean's initial public offering in 2005 through June 2016. During the Settlement Class Period, it issued audit opinions for Fiscal Years ("FY") 2013, 2014 and 2015 and reissued its 2015 audit opinion authorizing its inclusion in Aegean's Annual Report on Form 20-F for the FY ended December 31, 2016, filed with the SEC on May 16, 2017. In June

2016, Aegean terminated Deloitte Greece and retained PwC Greece as its outside auditor. PwC Greece issued an audit opinion as to FY 2016 filed on the FY 2016 Form 20-F. *See* ¶¶77, 89, 90, 137, 451-70.

Because of actions undertaken by certain shareholders, Aegean's entire Audit Committee stepped down in May 2018 and the Reconstituted Audit Committee was formed with new, independent directors. ¶¶191-210. Then, on June 4, 2018, Aegean announced that $200 million in accounts receivable had to be written off because the receivables were based on allegedly fraudulent transactions. ¶¶25, 148, 213. Following an internal investigation by the Reconstituted Audit Committee, outside counsel Arnold & Porter Kaye Scholer LLP ("Arnold & Porter"), investigators and retained forensic accountants, Aegean announced on November 2, 2018 that the Reconstituted Audit Committee had determined that: (a) Aegean's financial results were manipulated by improperly booking approximately $200 million in accounts receivables from bogus transactions with four shell companies controlled by former employees or affiliates of Aegean; (b) approximately $300 million in cash and assets had been misappropriated by former affiliates, including through a 2010 contract with OilTank Engineering & Consulting Ltd.; (c) over a dozen Aegean employees were involved in fraudulent accounting entries and fictitious documentation designed to conceal the fraud, including by falsifying and forging bank statements, audit confirmations, contracts, invoices and third-party certifications; (d) the revenues and earnings of Aegean were substantially overstated in the years 2015, 2016 and 2017 and that both year-end and interim financials for these periods should no longer be relied upon and would need to be restated; (e) there were material weaknesses in Aegean's ICRF as of December 31, 2015, 2016 and 2017 and, as such, management's annual report on ICFR as of December 31, 2015 and 2016 included in Aegean's Annual Reports on Form 20-F and in the 2017 interim results should no longer be relied upon and would need to be restated; and (f) the U.S. Department of Justice had issued a grand jury subpoena in connection with suspected felonies. ¶¶7-8, 26, 27, 477-79. On November 6, 2018, Aegean filed Chapter 11 bankruptcy proceedings in the Southern District of New York, Case No. 18-13374 (MEW). ¶47.

On June 5, 2018, an initial complaint was filed against Aegean and certain of its officers and directors in the United States District Court for the Southern District of New York asserting violations of the federal securities laws: *Simco v. Aegean Marine Petroleum Network, Inc., et al.*, No. 1:18-cv-04993-

NRB. ECF No. 1; Lavallee Decl. ¶3. On October 30, 2018, following briefing, the Court appointed URS as Lead Plaintiff and approved its selection of Berman Tabacco as Lead Counsel. ECF No. 69; Lavallee Decl. ¶4. On February 1, 2019, Lead Plaintiff filed its Complaint alleging violations of the federal securities laws against Melisanidis, Gianniotis, certain of Aegean's other officers and directors, PwC Greece, PwCIL, PwC US, Deloitte Greece, DTTL and Deloitte US. ECF No. 81; Lavallee Decl. ¶6.[5]

On March 6, 2020, PwC Greece and Deloitte Greece filed a joint motion to dismiss the Complaint. ECF Nos. 187-88. After full briefing and a hearing, the Court issued its decision denying the joint motion to dismiss on March 29, 2021. ECF No. 293. In the same order, the Court granted motions to dismiss for several other defendants, including PwCIL, PwC US, DTTL and Deloitte US, and denied, in whole or in part, the motions to dismiss filed by Melisanidis and Gianniotis. *Id.*; *see also* Lavallee Decl. ¶¶9-10. Since then, discovery has commenced. *Id.* ¶11.

Following the Court's hearing and order on the motion to dismiss, counsel for Lead Plaintiff began good-faith, arm's-length settlement negotiations with counsel for PwC Greece. *See* Lavallee Decl. ¶12. On August 26, 2021, following numerous rounds of negotiation, Lead Counsel and PwC Greece's Counsel reached an agreement in principle to settle all claims against PwC Greece as set forth in the PwC Greece Stipulation. *Id.* ¶13. On December 22, 2021, again following protracted negotiation, Lead Counsel and Deloitte Greece's Counsel also reached an agreement in principle to settle all claims against Deloitte Greece as set forth in the Deloitte Greece Stipulation. *Id.* ¶¶15-16.

III. PRELIMINARY APPROVAL OF THE PARTIAL SETTLEMENTS IS WARRANTED

A. Standards Governing Approval of Class Action Settlements

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval for the compromise of class actions. On December 1, 2018, Rule 23(e) was amended to specify, among other things, that the focus of a court's preliminary approval evaluation is whether "giving notice [to the class] is justified by the parties' showing that the court *will likely be able to*: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). The factors

[5] While Aegean was initially named as a defendant prior to the filing of Aegean's Chapter 11 petition on November 6, 2018, the filing of that Chapter 11 petition operated as a stay against the continuation of litigation against Aegean. ¶47.

identified by amended Rule 23(e)(2) require the Court to 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.

In determining whether to approve class action settlements, courts in the Second Circuit also consider the following "*Grinnell* factors," many of which overlap with the Rule 23(e)(2) factors:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).[6]

An analysis of the requirements of Rule 23 and the *Grinnell* factors, set forth below, supports preliminary approval of the Partial Settlements here. *See In re Warner Chilcott Ltd. Sec. Litig.*, 2008 WL 5110904, at *2 (S.D.N.Y. Nov. 20, 2008) ("Although a complete analysis of [the *Grinnell*] factors is required for final approval, at the preliminary approval stage, the Court need only find that the proposed settlement fits within the range of possible approval to proceed."); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 2014 WL 6851096, at *2 (S.D.N.Y. Dec. 2, 2014) (Buchwald, J.) ("Preliminary approval is not tantamount to a finding that [a proposed] settlement is fair and reasonable.") (alteration in original).

B. The Court "Will Likely Be Able To" Approve the Proposed Partial Settlements Under Rule 23(e)(2)

1. Lead Plaintiff and Lead Counsel Have Adequately Represented the Settlement Class

As an initial matter and as detailed below, Lead Plaintiff and Lead Counsel have adequately

[6] As courts sitting in the Second Circuit have noted, amended Rule 23(e)(2) added to, but did not displace the *Grinnell* factors. *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *9 (S.D.N.Y. Oct. 16, 2019), *appeal withdrawn sub nom. Tan Chao v. William*, 2020 WL 763277 (2d Cir. Jan. 2, 2020).

represented the Settlement Class during the litigation and throughout negotiations with counsel for PwC Greece and Deloitte Greece. *See* Lavallee Decl. ¶¶3-17, 19-30, 33-38. Lead Plaintiff URS is a public pension fund with over $40 billion in assets under management that is responsible for investing and managing the retirement funds of thousands of public employees throughout the state of Utah. I*d*. ¶4. In this capacity, it takes its fiduciary duties seriously and carefully monitors the litigation by working closely with Lead Counsel. *Id.* ¶5. In particular, staff counsel for URS was intimately involved and in frequent consultation with Lead Counsel at every material step of the settlement negotiations. *Id*. ¶18.

Lead Plaintiff's claims are typical of the claims of the Settlement Class, and they have no antagonist interests. Indeed, Lead Plaintiff's interest in obtaining the largest possible recovery continues to be aligned with those of all other Settlement Class Members. They purchased and held Aegean shares throughout the Settlement Class Period. *See* ECF No. 81-1 at 3-5 (Lead Plaintiff's transactions). Lead Plaintiff also retained counsel who are highly experienced in class action litigation and have decades of experience in litigating securities fraud class actions. Lavallee Decl. ¶¶4, 12, 15, 18 & Ex. 4.

Moreover, the Settling Parties have been actively litigating this Action since its commencement, during which time Lead Counsel has engaged in extensive efforts to prosecute the claims. These efforts included, *inter alia*: (a) research and investigation of the claims, as well as potential issues arising from the fact that Aegean and many of the Defendants and documents were located in Greece; (b) detailed reviews of Aegean's public SEC filings, annual reports, press releases, earnings calls and other publicly available information spanning over a decade; (c) review of analysts' reports and articles relating to Aegean; (d) work with our investigative staff to uncover relevant facts; (e) research and analysis of documents filed in connection with several court cases involving Aegean and/or the Defendants, including various pleadings and discovery filed in the Aegean Bankruptcy proceedings and pleadings filed in cases here in the U.S. and overseas; (f) extensive consultation with forensic accounting consultants; (g) consultation and analysis with damages and international privacy law consultants; (h) extensive briefing to oppose Defendants' motions to dismiss; (i) consultations with Greek counsel; and (j) commencement of discovery. *See, e.g.*, Lavallee Decl. ¶¶3-17. In addition, working with bankruptcy counsel, Lead Counsel opposed the debtor's efforts to release all investors' claims under the federal

securities laws—including those against not just the debtor but also other third parties such as the Settling Defendants—and obtained a Court-approved carve-out of the putative class members' claims from the proposed sweeping release language. *Id.* ¶8.[7]

The result of these efforts is two-fold. First, these Partial Settlements provide for two cash payments totaling $29.8 million, a recovery that will provide significant relief to the Settlement Class when compared to the risks of likely protracted litigation. This is particularly true since the settlements are only partial settlements with two out of four Defendants, are with outside auditors against whom securities fraud claims are particularly challenging and the Settling Defendants claim that Aegean's insiders concealed the fraud from them through the falsification of documents. Second, these Partial Settlements provide for production of important documents, including audit workpapers, as detailed in the Settling Defendants' respective Partial Settlement Stipulations, in a form and manner that renders them authentic business records. *See* PwC Greece Stipulation ¶¶4.5-4.12; Deloitte Greece Stipulation ¶¶4.5-4.12. Thus, Lead Plaintiff and Counsel submit, they have adequately represented the Settlement Class.

2. The Partial Settlements are the Result of Arm's-Length Negotiations Between Counsel with Extensive Complex Securities Litigation Experience

Prior to negotiating the Partial Settlements, Lead Plaintiff and Lead Counsel expended considerable efforts investigating the Settling Defendants' liability as outside auditors by working with accounting consultants, successfully overcame the arguments presented in the Settling Defendants' joint motion to dismiss and worked with damages consultants and international law attorneys both for the purpose of opposing the joint motion and for the purpose of placing Lead Counsel in the best possible position to engage in meaningful settlement discussions with counsel for PwC Greece and Deloitte Greece. *See* Lavallee Decl. ¶¶5-11. Indeed, counsel for the Settling Parties have worked diligently and advocated zealously on behalf of their respective clients since they were first retained. *Id.* Thus, the Settling Parties were well-equipped to consider the strengths and weaknesses of their positions before negotiating the Partial Settlements. *See*, *e.g.*, *Schuler v. Medicines Co.*, 2016 WL 3457218, at *7 (D.N.J.

[7] Working with bankruptcy counsel, Lead Counsel also obtained modifications to the plan of reorganization preserving the class' right to assert its claims to the proceeds from the D&O policies, which would be applicable to claims against certain Non-Settling Defendants, Aegean's officers and directors. Lavallee Decl. ¶8.

June 24, 2016) ("Lead Counsel had ample information to evaluate the prospects for the Class and to assess the fairness of the Settlement" where it had reviewed public information, conducted an extensive investigation, consulted with an expert, drafted the initial and amended complaints and opposed defendants' motion to dismiss).

As Lead Counsel with decades of experience litigating complex securities class actions, Berman Tabacco's judgment that the settlement is fair and reasonable is entitled to considerable weight. *See* Lavallee Decl. ¶¶4, 12, 15 & Ex. 4. *See also Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *6 (S.D.N.Y. Dec. 18, 2019) ("A strong initial presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations, and great weight is accorded to counsel's recommendation."); *Mikhlin v. Oasmia Pharm. AB*, 2021 WL 1259559, at *5 (E.D.N.Y. Jan. 6, 2021) ("A class settlement reached through arm's-length negotiations between experienced, capable counsel knowledgeable in complex class litigation is entitled to a presumption of fairness."). Similarly, the Settling Defendants were well-represented by nationally recognized counsel with deep experience in securities class action suits. Indeed, the negotiation in this case involved several months of direct communication principally between highly experienced securities litigators with decades of experience, namely Joseph J. Tabacco, Jr. of Berman Tabacco on behalf of Lead Plaintiff, Michael Bongiorno of WilmerHale on behalf of PwC Greece and Thomas N. Kidera of Orrick, Herrington & Sutcliffe LLP on behalf of Deloitte Greece. *See id.* Thus, the Partial Settlement Stipulations were the result of arm's-length negotiation between counsel with extensive experience in complex securities litigation.

3. The Relief Provided for the Settlement Class is Adequate

Rule 23(e)(2)(C) of the Federal Rules of Civil Procedure further directs the Court to evaluate whether "the relief provided for the class is adequate." As discussed below, the $29.8 million Partial Settlement Amount ($14.9 million from PwC Greece and $14.9 million from Deloitte Greece) represents excellent results for the members of the Settlement Class, particularly given the attendant risks associated with continued litigation and the unique issues stemming from the fact that Aegean is bankrupt, most of the documents and witnesses are located in Greece, the Partial Settlements are with two outside auditors and there remain two other Defendants against whom further recovery may be obtained.

(a) The Substantial Benefits Weighed Against the Costs, Risks and Delay of Further Litigation Support Preliminary Approval

Rule 23(e)(2) requires the Court to balance the benefits afforded to the Settlement Class—including the immediacy and certainty of a recovery—against the costs, risks and delay of further litigation. This also implicates the first *Grinnell* factor (the complexity, expenses and likely duration of the litigation) and the fourth and fifth *Grinnell* factors (the risks of establishing liability and damages).

While Lead Plaintiff and Lead Counsel believe that the claims asserted against the Settling Defendants have merit, they recognize the risks and challenges to establishing liability against the Settling Defendants, particularly since they are two foreign, outside auditors. Lavallee Decl. ¶¶19-20, 24; *Christine Asia Co.*, 2019 WL 5257534, at *10 ("this case would be particularly onerous and expensive to litigate given that it involves litigating against a foreign defendant."); *In re IMAX Sec. Litig.*, 587 F. Supp. 2d 471, 483 (S.D.N.Y. 2008) (claims against outside auditors are particularly challenging).

Here, the Settling Defendants have contended in their motion to dismiss and answers, *inter alia*, that Lead Plaintiff cannot establish their liability for a variety of reasons: (a) Aegean management was responsible for the preparation of Aegean's financial statements, and that they relied on management's representations; (b) Aegean's management perpetrated and concealed the alleged financial fraud, including from the Settling Defendants, through various means including the falsification of records, which falsification the Company later admitted to (*see, e.g.*, ¶¶477, 479); (c) the red flags alleged in the Complaint were either unknown to them or widely known and insufficient to put them on notice that Aegean was engaged in fraud; (d) they lacked the requisite intent and conducted their audits in accordance with the applicable standards of their profession; and (d) their audit opinions were mere statements of opinion that are only actionable if it is established that they believed that their opinions were false or their statements omitted material information rendering their audits misleading. *See*, *e.g.*, ECF No. 188 at 11-34, 39-40; ECF No. 301 (6th, 8th, 10th, 12th, 17th, 19th-23rd, 34th-36th, 41st, 42nd Affirm. Defenses); ECF No. 302 (1st, 4th, 5th, 7th-8th, 10th, 13th, 15th-18th, 20th, 26th, 27th-30th, 32nd, 36th Affirm. Defenses).

The Settling Defendants also assert that, even if liable, Aegean insiders would be far more liable given that Aegean's records had been falsified and that the Settlement Class relied on the insiders, not the Settling Defendants. ECF No. 301 (19th-21st Affirm. Defenses); ECF 302 (13th 15th-18th, 29th-30th-32nd

Affirm. Defenses). In addition, the Settling Defendants also have contended that all or a portion of the alleged damages to the Settlement Class were caused by factors other than the allegedly false or misleading statements or omissions and that such damages are thus not recoverable. *Id.* Moreover, each of the Settling Defendants has raised arguments specific to themselves. Deloitte Greece has asserted, for example, that many of the alleged red flags only appeared after it audited Aegean's 2015 year-end financials and that it was not liable to investors who purchased Aegean Securities after PwC Greece issued its audit opinion for Aegean's 2016 year-end financials. ECF No. 302 (18th, 30th, 36th Affirm. Defenses). It also would have argued that claims related to purchases prior to the issuance of its audit opinion for FY 2013 were time-barred, thereby limiting the members of the Settlement Class who would be entitled to recovery from them even if deemed liable. ECF No. 302 (27th, 36th Affirm. Defenses). Meanwhile, PwC Greece would have argued that the fraud had been ongoing for years prior to its auditing work for Aegean and, thus, it bore little to no liability. ECF No. 301 (20th, 22nd, 41st-42st Affirm. Defenses).

Lead Plaintiff and Lead Counsel also considered the difficulties in establishing liability against foreign nationals and the substantial risks, burdens and expenses involved in further litigation of this Action through trial and appeals against the Settling Defendants, including challenges (a) gathering documentary evidence, much of which would have been written in Greek and located in Greece; (b) the fact that Defendants and others would have asserted privileges under Europe's recently enacted privacy and security law, the General Data Protection Regulation (GDPR); (c) the costly and time-consuming nature of translating relevant documents obtained in discovery and deposing witnesses abroad, including through the Hague Convention; and (d) the difficulty of enforcing any judgment obtained against foreign defendants. Lavallee Decl. ¶24. Thus, the foreign nature of these proceedings raises an additional barrier not usually confronted in securities litigation with U.S. based companies, defendants and auditors and is an additional "weight on the scale" in favor of approval of the instant motion. *Id.*; *see also id.* ¶¶21-23.

In addition, Lead Plaintiff and Lead Counsel considered the other attendant risks of litigating a complex securities class action, including (a) the possibility that a class may not be certified; (b) a possible adverse judgment; (c) discovery disputes; (d) disputes between experts on complex financial and accounting matters as well as loss causation and damages; (e) a lengthy trial; and (f) appeals. Lavallee

Decl. ¶26. In evaluating the settlement of securities class actions, courts repeatedly recognize that such litigation is complex, uncertain and costly. *Oasmia Pharm.*, 2021 WL 1259559, at *5 ("Class action suits have a well-deserved reputation as being most complex … and securities class actions are notably difficult and notoriously uncertain to litigate.").

Given the foregoing, Lead Plaintiff and Lead Counsel believe that the proposed Partial Settlements are fair, reasonable and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Lead Counsel believe that the Partial Settlements provide a substantial benefit now: namely, the payment of $29.8 million ($14.9 million from each Settling Defendant) (less the various deductions described in the Omnibus Notice), as well as the agreement of the Settling Defendants to provide audit workpapers. Lavallee Decl. ¶27. The Partial Settlement Amount here is particularly significant in comparison with typical auditor settlement amounts. A study of auditor settlements from 1996-2016 found that the mean auditor settlement value was $8.44 million. *See* Colleen Honigsberg, Shivaram Rajgopal & Suraj Srinivasan, *The Changing Landscape of Auditors' Liability*, 63 J.L. & Econ. 367, 387-88 (2020). Thus, when compared to the risk that the claims asserted in the Complaint would produce a similar, smaller or no recovery after summary judgment, trial and appeals, possibly years in the future, the Partial Settlements are adequate. *Id.* ¶28.

(b) The Proposed Notice to and Method of Distributing Relief to Settlement Class Members is Fair and Effective

As set forth in § V, *infra*, and in the Declaration of Eric Schachter of A.B. Data, Ltd. Regarding Notice and Administration ("A.B. Data Decl." or "A.B. Data Declaration") (submitted herewith as Lavallee Decl. Ex. 6), the method and effectiveness of the proposed notice and claims administration process meets the dictates of Rule 23(e)(2)(C)(ii). The notice plan includes direct mail notice to all those who can be identified with reasonable effort supplemented by the publication of the summary notice in *Investor's Business Daily*. *See* A.B. Data Decl. ¶¶5-11. In addition, a settlement-specific website will be created where key documents will be posted, including the Complaint, Partial Settlement Stipulations, Omnibus Notice, Claim Form and the Preliminary Approval Orders. *Id.* ¶12.

The claims process is also effective in that it includes one standard Claim Form which requests

the information necessary to calculate a claimant's claim amount pursuant to both the PwC Greece Plan of Allocation and the Deloitte Greece Plan of Allocation (the "Plans of Allocation"). A.B. Data Decl. ¶3.

The Plans of Allocation will govern how Settlement Class Members' claims will be calculated and, ultimately, how money will be equitably apportioned and distributed to Authorized Claimants. *See* Lavallee Decl. ¶¶34-38. The Plans of Allocation were prepared with the assistance of Lead Plaintiff's damages consultant and are based primarily on the consultant's careful analysis of the amount of artificial inflation in the price of Aegean Securities at various times during the Settlement Class Period. *See id.* The reasons for two separate Plans of Allocation are straightforward and set forth below in § III(B)(4).

(c) Lead Plaintiff's Proposed Award of Attorneys' Fees and Reimbursement of Litigation Expenses and Possible Application for the Establishment of Litigation Expense Fund is Reasonable

Pursuant to Fed. R. Civ. P 23©(2)(C)(iii), the Court must consider the "terms of any proposed award of attorney's fees" as part of its overall analysis of the adequacy of a settlement. Here, Lead Counsel intends to request fees not to exceed 25% of the Partial Settlement Amounts and reimbursement of Litigation Expenses, plus interest on both amounts. Lead Counsel will submit a detailed fee request prior to the deadline for members of the Settlement Class to file objections or requests for exclusion, and well before the Final Approval Hearing. The proposed requested fee is consistent with the fee agreement between Lead Counsel and URS which was entered into at the outset of the litigation. Lavallee Decl. ¶40.

If awarded, this fee request would fall within the range of reasonable attorneys' fees as courts in the Second Circuit routinely award fees of 25% in securities class actions. *See, e.g.*, *In re Signet Jewelers Ltd. Sec. Litig*., 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020) (proposed 25% fees "reasonable in light of the efforts of Plaintiff's Counsel and the risks in the litigation"); *City of Pontiac Gen. Emps.' Ret. Sys. v. Lockheed Martin Corp*., 954 F. Supp. 2d 276, 281 (S.D.N.Y. 2013) ("[A] balancing of all relevant factors only justifies a fee award at the increasingly used benchmark of 25%."); *Christine Asia*, 2019 WL 5257534, at *15 (finding 25% fee "reasonable in light of the work of Plaintiffs' Counsel").

Under the terms of the Partial Settlements and as described in the proposed Omnibus Notice, Lead Counsel ***may*** further request that the Court allow Lead Counsel to draw from the Settlement Fund to defray future Litigation Expenses, including necessary expenses and expert fees, of prosecuting claims

asserted against the Non-Settling Defendants in an amount not to exceed $2 million ("Litigation Expense Fund"). Any amount of the Litigation Expense Fund requested and granted by the Court will be an advance of (and not in addition to) any final expense awarded following resolution of all claims against Non-Settling Defendants. The establishment of a Litigation Expense Fund in connection with a partial settlement of a class action is well accepted by Courts, including courts sitting in the Second Circuit. *See In re WorldCom, Inc. Sec. Litig*., 2004 WL 2591402, at *22 (S.D.N.Y. Nov. 12, 2004) (establishing $5 million fund to finance the continued prosecution against non-settling defendants); *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd*., 2004 WL 1087261, at *9 (S.D.N.Y. May 14, 2004) (establishing litigation fund and ordering that "Lead Counsel is permitted to draw against the Litigation Fund without further order of the Court to pay costs of the continued prosecution of the Action against" non-settling defendants); *In re Cal. Micro Devices Sec. Litig.,* 965 F. Supp. 1327, 1337 (N.D. Cal. 1997) (approving establishment of $1.5 million litigation fund "to pay the costs of pursuing the case against" non-settling defendants, and noting that a litigation fund "would serve the interests of class members"); *Newby v. Enron Corp.*, 394 F.3d 296, 303 (5th Cir. 2004) (upholding district court's creation of a litigation expense fund "as a sound exercise of discretion"). The establishment of the Litigation Expense Fund would be appropriate here due to the considerable added expense of pursuing discovery of the remaining individual defendants, both of whom reside outside the United States, and numerous third-party entities also located primarily in various foreign jurisdictions, which will likely require resort to the Hague Convention. This may also require hiring local attorneys and other experts in these jurisdictions.[8]

(d) There Are No Side Agreements Other Than Regarding Opt Outs

Rule 23(e)(2)(C)(iv) requires that the parties identify any side agreements. The Parties have entered into standard supplemental agreements, which provide that if Settlement Class Members opt out of the Partial Settlements such that the number of Aegean Securities represented by such opt outs equals or exceeds a certain amount, the Settling Defendants shall have the option to terminate the PwC Greece

[8] Because it is unknown whether one or both Partial Settlements will be approved by the Court, each Partial Settlement provides that Lead Plaintiff may request up to $2 million from its Settlement Fund. However, if Lead Counsel requests that a Litigation Expense Fund be established, it will seek no more than $2 million in total for this purpose. Lavallee Decl. ¶41.

Settlement or the Deloitte Greece Settlement, as applicable. PwC Greece Stipulation ¶13.1; Deloitte Greece Stipulation ¶13.1. Agreements of this sort are typical in class settlements and Lead Plaintiff intends to submit this agreement *in camera*.[9] There are no other agreements between the Settling Parties.

4. All Settlement Class Members Are Treated Equitably

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. "The proposed allocation need not meet the standards of scientific precision, and given that qualified counsel endorses the proposed allocation, the allocation need only have a reasonable and rational basis." *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *8 (D.N.J. July 29, 2013).

There are two separate Plans of Allocation here because the PWC Greece Settlement Fund is only for the benefit of Settlement Class Members who purchased shares between May 17, 2017 and November 5, 2018 whereas the Deloitte Greece Settlement Fund is on behalf of all Settlement Class Members. Indeed, because PwC Greece is not alleged to have issued any false or misleading statements until May 16, 2017, there could be no alleged recognized losses attributable to PwC Greece for securities purchased prior to the issuance of PwC Greece's May 16, 2017 audit opinions. By contrast, because Deloitte Greece is alleged to have issued false or misleading statements starting prior to the Settlement Class Period, Settlement Class Members allegedly have recognized losses attributable to Deloitte Greece for Aegean Securities purchased throughout the Settlement Class Period. Accordingly, Settlement Class Members who purchased Aegean Securities before May 17, 2017 will only be entitled to participate in the Deloitte Greece Settlement whereas Settlement Class Members who purchased Aegean Securities after May 16, 2017 will be entitled to participate in both the PwC Greece Settlement and the Deloitte Greece Settlement.

The Plans of Allocation apportion the PwC Greece Net Settlement Fund and the Deloitte Greece Net Settlement Fund equitably among Settlement Class Members who allegedly had claims against each of the Settling Defendants based on when they purchased, acquired and/or sold Aegean Securities, and were created without consideration of Lead Plaintiff's individual transactions. Lavallee Decl. ¶¶34-38.

[9] *See N.Y. State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 240 (E.D. Mich. 2016) ("The opt-out threshold is typically not disclosed and is kept confidential to encourage settlement and discourage third parties from soliciting class members to opt out"), *aff'd sub nom. Marro v. N.Y. State Teachers' Ret. Sys.*, 2017 WL 6398014 (6th Cir. Nov. 27, 2017); *see also Oasmia Pharm. AB*, 2021 WL 1259559, at *7.

This method ensures that Settlement Class Members' recoveries are based upon the relative losses they sustained due to the alleged misconduct by each Settling Defendant, and eligible Settlement Class Members will receive a *pro rata* distribution from the PwC Greece Net Settlement Fund and/or the Deloitte Greece Net Settlement Fund calculated in the same manner such that Lead Plaintiff's claim will not be afforded any preferential treatment. *See In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 246 F.R.D. 156, 170 (S.D.N.Y. 2007) ("A plan of allocation that calls for the pro rata distribution of settlement proceeds on the basis of investment loss is reasonable."); *see also In re Currency Conversion Fee Antitrust Litig.*, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006) (preliminary approval should be granted where "there is no evidence that the proposed settlement accords 'improper[ ] … preferential treatment" to any portion of the class'" (alteration in original); *In re Refco, Inc. Sec. Litig.*, 2010 WL 11586941, at *6 (S.D.N.Y. May 11, 2010) (same).

Thus, the proposed Plans of Allocation apply equitably to all eligible Settlement Class Members.

C. The Remaining *Grinnell* Factors Further Support Preliminary Approval

The totality of the remaining *Grinnell* factors lends further support and, when considered collectively, should be considered dispositive.

1. The Reaction of the Settlement Class to the Partial Settlements

The second *Grinnell* factor—the reaction of the Class—is not yet ripe, as neither Partial Settlement has been presented to the Settlement Class. Neutral factors do not weigh against preliminary approval. *See, In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *5 (S.D.N.Y. Dec. 19, 2014).

2. The Stage of the Proceedings

"The third *Grinnell* factor, 'the stage of the proceedings and the amount of discovery completed,' is intended to assure the Court 'that counsel for plaintiffs have weighed their position based on a full consideration of the possibilities facing them.'" *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004). "Formal discovery is not a prerequisite; the question is whether the parties had adequate information about their claims." *Id.* As demonstrated above, the Settling Parties exhausted considerable resources investigating the claims and defenses at issue, including culling through SEC filings, articles, analysts' reports, filings in domestic and foreign litigation and briefing motions and

oppositions to motions to dismiss. Significantly, Lead Counsel had the benefit of certain results of the investigation by the Reconstituted Audit Committee and information in other foreign litigation regarding the alleged improprieties and actual findings by Aegean's internal investigation overseen by Arnold & Porter. Further, Lead Counsel consulted with experts in the fields of accounting, market efficiency, loss causation, damages and international privacy law. Thus, even though formal discovery had recently commenced at the time the Settling Parties commenced settlement negotiations, the parties were already well-positioned to weigh the strengths and weaknesses of their positions. *See id*; *see also* Lavallee Decl. ¶¶5-11; *In re Johnson & Johnson Derivative Litig.*, 900 F. Supp. 2d 467, 482 (D.N.J. 2012) ("Even settlements reached at a very early stage and prior to formal discovery are appropriate where there is no evidence of collusion and the settlement represents substantial concessions by both parties.").

3. The Risk of Maintaining the Settlement Class Action Through Trial

The sixth *Grinnell* factor requires the Court to consider the risk of maintaining the class action through trial. Though Lead Plaintiff is confident that it will prevail in moving for class certification, this remains a risk that weighs in favor of settlement. *See Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 104 (D.N.J. 2018). Thus, in the present case, where "the Class had yet to be certified and there is no guarantee of success . . . the risks favor settlement." *Id*.

4. Defendants' Ability To Withstand A Greater Judgment

Although PwC Greece and Deloitte Greece may be able to withstand a greater judgment (the seventh *Grinnell* factor), where the other *Grinnell* factors weigh in favor of approval, this factor should not influence the overall conclusion that the settlement is fair, reasonable and adequate. *See, e.g., Hi-Crush Partners*, 2014 WL 7323417, at *9 ("Courts … generally do not find the ability to withstand a greater judgment to be an impediment to settlement when the other factors favor the settlement."). It is noteworthy that even if the Lead Plaintiff succeeded at trial against either or both of the Settling Defendants, it could face further complicated proceedings to enforce a U.S. judgment in Greece.

5. The Partial Settlement Amount is Reasonable Considering The Range of Possible Recoveries

The eighth and ninth *Grinnell* factors support a finding that the Court likely will approve the

settlement. These factors call for the Court to determine "the range of reasonableness of the settlement fund in light of the best possible recovery [and] the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Grinnell*, 495 F.2d at 463.

Here, the two $14.9 million Partial Settlements (totaling $29.8 million) each represent an excellent partial settlement. *See* Lavallee Decl. ¶¶19-32. Here, Lead Plaintiff's damages consultant estimates that total alleged Section 10(b) damages for purchases of the Aegean common stock and notes were approximately $349.6 million for the entire Settlement Class Period. *See id.* ¶29. Thus, the $29.8 million total Partial Settlement Amount, represents approximately 8.5% of the estimated total alleged damages.[10]

These Partial Settlements are well within the reported values for securities fraud class actions. For example, Cornerstone Research's data shows that the median settlement as a percentage of damages in cases involving accounting issues (including GAAP violations, restatements and accounting irregularities) between 2011 and 2020 was between 5.1% and 7.6%. *See* Lavallee Decl. ¶30 & Ex. 5, at 9. Cornerstone Research also estimates that median settlements as a percentage of "simplified tiered damages" in Rule 10b-5 cases since 2011 have ranged between 3.9% and 4.3% for cases with estimated damages of between $250 million to $499 million and that the median settlement dollars for all securities fraud cases from 2016 to 2020 following rulings on motions to dismiss, but before rulings on class certification, is $6.1 million. *Id.* ¶30 & Ex. 5, at 6 & 14. Moreover, the Second Circuit's median recovery is 4.7% of damages according to the same report. *Id.* ¶30 & Ex. 5, at 20. And, given the likelihood that not all Settlement Class Members will file claims, it is likely that Authorized Claimants' actual percentage of recovery will be even higher. Moreover, the Partial Settlements are separate and apart from any judgment or settlement that Lead Plaintiff may achieve with Gianniotis for liability under Section 10(b) or against Gianniotis and Melisanidis for liability under Section 20A for insider trading.

In sum, the Settling Parties have demonstrated significant uncertainties and risks in continuing this litigation that lean in favor of approving the Partial Settlements. Thus, the $29.8 million cash recovery now, particularly when viewed in the context of the risks, costs, delay and uncertainties of further

[10] There also exists distinct damages for insider trading claims against Non-Settling Defendants.

proceedings, weighs in favor of preliminary approval of the Partial Settlements.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT CLASS FOR THE PURPOSE OF THE PROPOSED PARTIAL SETTLEMENTS

To grant preliminary approval of a class settlement, a district court must also determine that the requirements for class certification under Rules 23(a) and (b) are met. *In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 242 (2d Cir. 2012). For that reason, and pursuant to the December 2018 Rule 23(e) amendments, it is proper for the Court to consider, at this stage, if the four prerequisites of Rule 23(a) are met, and the action qualifies under one of Rule 23(b)'s subdivisions (here, Rule 23(b)(3)). *See* Fed. R. Civ. P. 23(e)(1)(B) (requiring court to direct notice to the class if "giving notice is justified by the parties' showing that the court will likely be able to … certify the class for purposes of judgment on the proposal").

The Settlement Class is defined generally as:

> All Persons who purchased or otherwise acquired Aegean Securities (or sold Aegean put options) between February 27, 2014 through November 5, 2018, inclusive (the "Settlement Class Period"), and were allegedly damaged thereby. Excluded from the Settlement Class are: (a) Defendants and any affiliates or subsidiaries of Defendants; (b) Persons who have been dismissed from this Action ("Dismissed Defendants"); (c) present or former officers, directors, partners or controlling persons as of April 30, 2018 of Aegean, its subsidiaries or its affiliates, any Defendant or any Dismissed Defendant, and their immediate family members; (d) the directors' and officers' liability carriers and any affiliates or subsidiaries thereof of any Defendant, Dismissed Defendant or Aegean; (e) any entity in which any Defendant, Dismissed Defendant or Aegean has or has had a controlling interest; and (f) the legal representatives, heirs, estates, agents, successors or assigns of any person or entity described in the preceding categories. Also excluded from the Settlement Class is any Settlement Class Member that validly and timely requests exclusion as approved by the Court.

This definition differs from the class definition in the Complaint (*see* ¶492) in that it (a) specifies that Persons who sold Aegean put options during the Settlement Class Period are included; and (b) clarifies the description of those excluded from the Settlement Class to include only officers, directors, partners or controlling persons of Aegean who held such positions prior to May 1, 2018 in order to account for the fact that new leadership unconnected to the alleged misconduct should not be excluded.

As outlined below, the Settlement Class satisfies the requirements of Rules 23(a) and 23(b)(3).

A. Numerosity

Under Rule 23(a), numerosity requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). In cases like this one involving widely traded instruments, including Aegean common stock which was listed on the New York Stock Exchange, numerosity is readily satisfied. *See Wallace v. IntraLinks*, 302 F.R.D. 310, 315 (S.D.N.Y. 2014) ("common sense assumptions … suffice to demonstrate numerosity"); *see also Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (numerosity presumed if a class has over 40 members); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 299 F. Supp. 3d 430, 460 (S.D.N.Y. 2018) (Buchwald, J.) (same). Furthermore, in securities class actions "relating to publicly owned and nationally listed corporations, the numerosity requirement may be satisfied by a showing that a large number of shares were outstanding and traded during the relevant period." *Puddu v. 6D Glob. Techs., Inc.*, 2021 WL 1910656, at *2 (S.D.N.Y. May 12, 2021).

Lead Plaintiff easily establishes numerosity, as the proposed Settlement Class consists of thousands of members. As of December 31, 2016, the float of Aegean's common stock was 39.40 million shares. *See* ¶493. Thus, joinder of these thousands of Aegean investors would be impractical. *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 69-70 (S.D.N.Y. 2009).

B. Commonality and Typicality

Commonality and typicality are also satisfied.[11] Commonality requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality demands that the class's claims 'depend upon a common contention ... capable of classwide resolution' such that 'its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.'" *Grana y Montero S.A.A.*, 2021 WL 4173684, at *9 (alteration in original) (quoting *Wal-Mart Stores, Inc. v. Duke*s, 564 U.S. 338, 350 (2011)). Courts permissively apply the commonality requirement "in the context of securities fraud litigation" noting that "minor variations in the class members' positions will not suffice to defeat

[11] *See, e.g.*, *In re Grana y Montero S.A.A. Sec. Litig.*, 2021 WL 4173684, at *9 (E.D.N.Y. Aug. 13, 2021) ("The commonality and typicality requirements of Rule 23(a) tend to merge such that similar considerations inform the analysis for both prerequisites."), *report and recommendation adopted*, 2021 WL 4173170 (E.D.N.Y. Sept. 14, 2021).

certification." *In re Facebook, Inc., IPO Sec. & Derivative Litig. (Facebook I)*, 312 F.R.D. 332, 341 (S.D.N.Y. 2015).

Typicality "requires that the claims of the class representatives be typical of those of the class and is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *6D Glob. Techs., Inc.*, 2021 WL 1910656, at *2; *see also Facebook I*, 312 F.R.D. at 343.

In this case, there are clear common questions of law and fact, namely, whether (i) Defendants violated the federal securities laws; (ii) whether Defendants' public statements during the Settlement Class Period misrepresented or omitted material facts; (iii) whether Defendants acted with scienter in issuing false and misleading statements; (iv) whether and to what extent the price of Aegean's Securities were artificially inflated by Defendants' false and misleading statements or omissions; and (v) whether the members of the putative Settlement Class suffered damages and the appropriate measure of those damages. ¶495. Thus, the presence of these common questions of law and fact firmly establishes commonality. *See, e.g.*, *In re Novo Nordisk Sec. Litig*., 2020 WL 502176, at *5 (D.N.J. Jan. 31, 2020) (commonality established where "[c]omplaint alleges a common course of conduct arising from materially false and misleading statements and omissions Defendants made to the investing public").

Likewise, Lead Plaintiff's claims are typical of the class. ¶496. Lead Plaintiff's claims rest on the same course of events, including allegations that (i) Aegean's financial results were manipulated by improperly booking approximately $200 million in accounts receivables from bogus transactions with four shell companies controlled by former employees or affiliates of Aegean; (ii) Aegean's assets and the balance sheet were grossly overstated because approximately $300 million in cash and assets had been misappropriated by former affiliates; (iii) Aegean's 2013 through 2017 financial statements and ICFR statements were materially false, misleading and unreliable; and (iv) as a result, the Settling Defendants' audit opinions regarding their compliance with PCAOB, Aegean's ICFR and the adequacy of Aegean's financial statements were materially misleading. *See* Compl. ¶479 & § X. These allegations are the same for every Settlement Class Member. Thus, each Settlement Class Member's claim arises from the same course of events, and each has identical legal arguments to prove the Settling Defendants' liability.

See Diaz v. FCI Lender Servs., Inc., 2020 WL 4570460, at *2 (S.D.N.Y. Aug. 7, 2020).

C. Adequacy of Representation

Rule 23(a)(4)'s adequacy requirement seeks to ensure that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy is met "if a plaintiff does not have interests antagonistic to those of the class, and if its chosen counsel is qualified, experienced, and able to conduct the litigation." *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 310 F.R.D. 69, 100 (S.D.N.Y. 2015).

Lead Plaintiff meets both prongs of the adequacy requirement here. First, no conflicts of interest exist between either Lead Plaintiff and the Settlement Class Members, or Lead Counsel and the Settlement Class Members. ¶497. Lead Plaintiff and the putative class members share the same interest in holding Defendants accountable for their misconduct, as Lead Plaintiff and the putative class members purchased Aegean Securities and were injured by the same materially false and misleading statements and omissions. *Id.* This identical interest satisfies Rule 23's adequacy requirement. *See Signet Jewelers*, 2020 WL 4196468, at *2 (finding adequacy met where "Lead Plaintiff ha[d] claims that [we]re typical of and coextensive with those of other Class Members and ha[d] no interests antagonistic to those of other Class Members"). Moreover, Lead Plaintiff URS is among the larger public pension systems in the Country and has exhibited, and will continue to exhibit, commendable knowledge and direction of the litigation for the benefit of the Settlement Class. Lavallee Decl. ¶¶4-5. *See Barclays PLC*, 310 F.R.D. at 100 (appointing plaintiffs who "actively supervised and monitored the progress of this litigation, and will continue to actively participate in its prosecution"). Second, counsel for Lead Plaintiff frequently litigate securities fraud matters and have the necessary expertise to identify the underlying wrongdoing, litigate effectively, and negotiate the proposed Partial Settlements. Thus, the adequacy of representation should be unquestioned.

D. Rule 23(b)(3) Factors

Lead Plaintiff seeks class certification for purposes of the Partial Settlements pursuant to Rule 23(b)(3), which requires 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). Both the predominance and superiority requirements are met here.

1. Predominance

Rule 23(b)(3) requires that common questions of law and fact predominate over questions affecting individual class members. Predominance is satisfied "if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Grana y Montero S.A.A.*, 2021 WL 4173684, at *10.

The Second Circuit has recognized that the predominance requirement is "readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Am. Int'l Grp., Inc.*, 689 F.3d at 240. Here, as discussed *supra*, the elements of a Section 10(b) claim Lead Plaintiff must establish are: "(1) a material misrepresentation or omission by the defendant[s]; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 460-61 (2013). Significantly, the Supreme Court has held that because falsity, scienter, materiality and loss causation are common merits issues in a securities fraud class action, proof of those elements is not a prerequisite to class certification. *See id*. 467 ("materiality is a 'common questio[n]' for purposes of Rule 23(b)(3)" and not a prerequisite to class certification) (alteration in original). Thus, the only issues that would be distinct for Lead Plaintiff and each Settlement Class Member would be the amount of damages owed. However, individualized damages determinations alone cannot preclude class certification under the predominance inquiry. *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 408 (2d Cir. 2015); *see also 6D Glob. Techs., Inc.,* 2021 WL 1910656, at *2 ("The focus of the predominance inquiry is on defendants' liability, not on damages."). In sum, predominance is satisfied because liability questions common to the Settlement Class far outweigh any individual issues.

2. Superiority

The Rule 23(b)(3) requirement that a class action must be superior to other available methods of adjudication is met here. *See Refco, Inc.*, 2010 WL 11586941, at *11; *see also Amchem Prods. Inc. v.*

Windsor, 521 U.S. 591, 607 (1997). 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." *Id*. at 620. "Generally, securities actions easily satisfy the superiority requirement because the alternatives are either no recourse for thousands of stockholders or a multiplicity and scattering of suits with the inefficient administration of litigation which follows in its wake." *Gruber v. Gilbertson*, 2019 WL 4439415, at *9 (S.D.N.Y. Sept. 17, 2019), *modified*, 2021 WL 3524089 (S.D.N.Y. Aug. 10, 2021); *see also In re Barrick Gold Sec. Litig.*, 314 F.R.D. 91, 103 (S.D.N.Y. 2016).

This case is no different. As set forth above, the Settlement Class here consists of a large number of geographically dispersed investors whose individual damages would likely be small enough to render individual litigation prohibitively expensive. ¶498. Thus, Class Members are unlikely to litigate on an individual basis. Accordingly, "in light of the efficiencies of class wide adjudication" superiority in this case is easily met. *In re SunEdison, Inc. Sec. Litig.*, 329 F.R.D. 124, 144 (S.D.N.Y. 2019).

V. THE COURT SHOULD APPROVE THE PROPOSED FORM AND METHOD OF CLASS NOTICE AND APPOINT A.B. DATA AS CLAIMS ADMINISTRATOR

Rule 23(e) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [proposed settlement]." Fed. R. Civ. P. 23(e)(1). Generally, notice is reasonable if the average class member understands the terms of the proposed settlement and the options provided to class members thereunder. *In re Stock Exchanges Options Trading Antitrust Litig.*, 2006 WL 3498590, at *6 (S.D.N.Y. Dec. 4, 2006) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 114 (2d Cir. 2005)).

In this case, Lead Counsel requests the Court appoint A.B. Data as Claims Administrator to provide all notices approved by the Court to Settlement Class Members, to process Claim Forms and to administer the Partial Settlements. *See* Lavallee Decl. ¶39 & Ex. 6. As set forth in the A.B. Data Declaration, A.B. Data is a nationally recognized class action claims administrator with decades of experience in securities class action claims administration. A.B. Data Decl. ¶3 & Ex A.

As required by the Private Securities Litigation Reform Act of 1995, the Omnibus Notice

includes: (a) the amount of the settlements proposed for distribution, determined in the aggregate and on an average per share basis; (b) that if the Settling Parties do not agree on the average amount of damages per share recoverable in the event Lead Plaintiff prevailed in the action, a statement from each Settling Party concerning the issue(s) on which the Settling Parties disagree; (c) a statement indicating which parties or counsel intend to apply for an award of fees and costs (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought; (d) the name, telephone number, and address of one or more representatives of counsel for the Settlement Class who will be reasonably available to answer questions concerning any matter contained in the Omnibus Notice; (e) a brief statement explaining the reasons why the Settling Parties are proposing the Partial Settlements; and (f) such other information as may be required by the Court. *See* 15 U.S.C. §78u-4(a)(7)(A)-(F); Lavallee Decl. Exs. 1 & 2, at Ex. A-1 (Omnibus Notice). This information is also provided in a format that is accessible to the reader. In addition, the Omnibus Notice advises recipients that they have the right to object to any aspect of the Partial Settlements, the Plans of Allocation, the application for attorneys' fees and reimbursement of Litigation Expenses and/or any application for the establishment of a Litigation Expense Fund (if any). Furthermore, the Omnibus Notice provides recipients with the contact information for the Claims Administrator and Lead Counsel.

VI. PROPOSED SCHEDULE OF EVENTS

Lead Plaintiff's proposed schedule of events leading to the Final Approval Hearing, as set forth in the Preliminary Approval Orders filed herewith, is set forth in Attachment A hereto.

VII. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court enter the proposed PwC Greece Preliminary Approval Order and the proposed Deloitte Greece Preliminary Approval Order.

Dated: March 24, 2022

Respectfully submitted,

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ATTACHMENT A

Schedule of Events Leading To The Final Approval Hearing,
As Set Forth In The Preliminary Approval Orders Filed Herewith

EVENT	**PROPOSED TIMING**
Omnibus Notice mailed to the Settlement Class (the "Notice Date")	21 calendar days after the Preliminary Approval Orders are entered
Summary Notice published	7 calendar days from the Notice Date
Date by which to file final papers in support of the proposed Partial Settlements, Plans of Allocation, the application for attorneys' fees and reimbursement of Litigation Expenses and/or any application for the establishment of a Litigation Expense Fund (if any)	35 calendar days prior to the Final Approval Hearing
Last day for Settlement Class Members to opt-out or object to the proposed Partial Settlements	21 calendar days prior to the Final Approval Hearing
Date by which to file reply papers in response to objections or comments to the proposed Partial Settlements, Plans of Allocation, the application for attorneys' fees and reimbursement of Litigation Expenses and/or the application for the establishment of a Litigation Expense Fund (if any)	7 calendar days prior to the Settlement Final Approval
Last day for Settlement Class Members to file Proof of Claim and Release Forms	120 days from the Notice Date
Final Approval Hearing Date	No earlier than 100 calendar days after entry of the Preliminary Approval Orders, or at the Court's earliest convenience thereafter