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 MOTION FOR: (I) FINAL APPROVAL OF THE PROPOSED PARTIAL CLASS ACTION SETTLEMENTS WITH PRICEWATERHOUSECOOPERS AUDITING COMPANY S.A. AND DELOITTE CERTIFIED PUBLIC ACCOUNTANTS, S.A.; (II) FINAL CERTIFICATION OF THE SETTLEMENT CLASS; AND (III) FINAL APPROVAL OF THE PROPOSED PLANS OF ALLOCATION

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Lead Plaintiff Utah Retirement Systems ("Lead Plaintiff" or "URS"), a more than $40 billion public pension system that provides retirement and insurance benefits to over 240,000 current or retired Utah public employees, respectfully submits this memorandum in support of its motion for (i) final approval of a proposed partial settlement with PricewaterhouseCoopers Auditing Company S.A. ("PwC Greece") (the "PwC Greece Settlement"); (ii) final approval of a proposed partial settlement with Deloitte Certified Public Accountants, S.A. ("Deloitte Greece") (the "Deloitte Greece Settlement"); (iii) final certification of the Settlement Class;[1] and (iv) final approval of the proposed Plans of Allocation.

I. INTRODUCTION

Lead Plaintiff and Lead Counsel have achieved Partial Settlements with PwC Greece and Deloitte Greece (the "Settling Defendants") that provide for a $29.8 million cash payment ($14.9 million from each Settling Defendant) and the production of certain documents, including audit workpapers, that Lead Plaintiff anticipates using during the remainder of the litigation. This is an excellent recovery for the Settlement Class from Aegean's two independent auditors, particularly given the unique risks present here. Indeed, the $29.8 million recovery represents approximately 8.5% of the total damages estimated by Lead Plaintiffs' damages consultant, which is on the higher range of reported values for securities fraud class action settlements.

The Partial Settlements are the product of three years of hard-fought litigation, and resulted from intensive, arm's-length negotiations among highly experienced securities litigators on both sides. In addition, the parties reached the Partial Settlements at a stage in the litigation by which Lead Plaintiff and Lead Counsel had developed a thorough understanding of the strengths and

[1] All capitalized terms not otherwise defined herein have the same meaning as in the Notice of (I) Pendency of Class Action and Proposed Partial Settlements; and (II) Final Approval Hearing For The Partial Settlements, Plans of Allocation, Motion For Approval of Attorneys' Fees and Reimbursement of Litigation Expenses and Application For The Establishment of a Litigation Expense Fund (the "Omnibus Notice") (ECF No. 359-1), or in the supporting Declaration of Nicole Lavallee ("Lavallee Decl." or "Lavallee Declaration"), filed contemporaneously herewith. Unless otherwise indicated, all emphasis is added and all alterations, footnotes, internal quotation marks and citations are omitted.

weaknesses of the claims and defenses in the Action, and were reached due to their vigorous efforts over the course of the litigation.

In particular, Lead Counsel exhausted considerable resources investigating and litigating the claims and defenses at issue, including (a) conducting detailed reviews of Aegean's public U.S. Securities and Exchange Commission ("SEC") filings, annual reports, press releases, earnings calls and other publicly available information spanning over a decade; (b) reviewing analysts' reports and articles relating to Aegean; (c) working with investigative staff to uncover relevant facts and witnesses; (d) researching of the applicable law with respect to the alleged claims and the potential defenses thereto, including issues stemming from the fact that some Defendants were located outside the U.S.; (e) researching legal issues and analyzing documents filed in connection with several court cases involving Aegean and/or some of the Company Defendants, including a substantial volume of pleadings and discovery filed in the Aegean Bankruptcy Action[2] and pleadings filed in the U.S. and overseas by the Litigation Trustee appointed pursuant to Aegean's chapter 11 plan of reorganization; (f) working extensively with forensic auditing consultants regarding the alleged accounting fraud as well as the alleged liability of the Settling Defendants in issuing their audit opinions; (g) working with Bankruptcy Counsel to protect the Settlement Class's claims by, among other things, successfully opposing Aegean's efforts to release, through its Bankruptcy Action, the Settlement Class Members' federal securities claims alleged herein—including those against third parties such as the Settling Defendants—by negotiating and ultimately obtaining Bankruptcy Court approval of a complete carve-out of the Settlement Class Members' claims from the proposed sweeping release language; (h) conducting consultations and analysis with damages consultants; (i) consulting with international privacy law consultants; (j) preparing extensive briefing to oppose Defendants' motions to dismiss; (k) consulting with foreign counsel; and (l) commencing formal discovery. Lavallee Decl. ¶8.

[2] Five months after the first complaint was filed in this Action, Aegean filed proceedings under Chapter 11 of the U.S. Bankruptcy Code. Lavallee Decl. ¶¶22, 24.

Lead Plaintiff and Lead Counsel also weighed the substantial risks and uncertainties of continued litigation against the Settling Defendants, each of which support a finding that the Partial Settlements are fair, reasonable and adequate. Among these risks are the considerable difficulties in litigating and establishing liability against foreign nationals, as well as refuting the Settling Defendants' vigorously asserted arguments and affirmative defenses raised in their motions to dismiss and in their answers, *inter alia*, (a) that Aegean management was responsible for the preparation of the Company's financial statements and that they, as independent auditors, relied on management's representations; (b) that the Company's management perpetrated and concealed the alleged financial fraud, including from the Settling Defendants, through various means including the falsification of records (indeed, the Company later conceded that its officers and employees falsified records as part of the fraud); (c) that the red flags alleged in the Complaint were either unknown to them or widely known and insufficient to put them on notice that the Company was engaged in fraud; (d) that the Settling Defendants lacked the requisite scienter or that they conducted their audits in accordance with the applicable standards of their profession; (e) that their audit opinions were mere statements of opinion that are only actionable if Lead Plaintiff establishes that Settling Defendants believed that their opinions were false or omitted material information about their audits; and (f) that, even if the Settling Defendants are partially liable, the Company Defendants would be far more liable, particularly given the admission of fraud by the Company. Moreover, each Settling Defendant raised defenses specific to it. Deloitte Greece contends that, because many of the alleged red flags only appeared after it audited the Company's 2015 year-end financials, Lead Plaintiff cannot establish that it acted with scienter. It would further contend that, even assuming Lead Plaintiff establishes that it acted with scienter, it is not liable to investors who purchased Aegean Securities after PwC Greece issued its audit opinion for Aegean's 2016 year-end financials because PwC Greece's audit constituted an intervening act. Meanwhile, PwC Greece contends that the fraud had been ongoing for years prior to its auditing work for Aegean and, thus, it bore little to no liability for the alleged fraud. Lavallee Decl. ¶¶64-68.

The $29.8 million Partial Settlements avoid these risks and provide an immediate and very substantial financial benefit for the Settlement Class. Accordingly, while Lead Counsel believes that the Settlement Class had strong claims, Lead Counsel also recognizes that the Settlement Class would have faced significant risks in overcoming these obstacles, establishing all the elements of Lead Plaintiff's claims against the Settling Defendants and that, even if it were to establish liability against the Settling Defendants, these defendants may only be found liable for a portion of any damages awarded. Lavallee Decl. ¶¶70-71, 75-76.

In light of the significant obstacles to recovery, and the substantial time and expense that continued litigation against these Settling Defendants would require, Lead Counsel respectfully submits that the Partial Settlements are an outstanding result for the Settlement Class and provide a fair and reasonable resolution of the claims against the Settling Defendants.

Moreover, Lead Plaintiff, a highly sophisticated institutional investor that has been involved in and provided oversight throughout the litigation, strongly supports the Partial Settlements as fair, reasonable and adequate. *See* Declaration of Kevin Catlett on Behalf of URS ("Lead Plaintiff Decl." or "Lead Plaintiff Declaration") (submitted herewith as Ex. 5 to the Lavallee Decl.), at ¶7. Further confirming the fairness, reasonableness and adequacy of the Partial Settlements is the fact that, to date, no Settlement Class Member has raised any objection to the Partial Settlements and no Settlement Class Member has requested exclusion.

II. SUMMARY OF CLAIMS

This securities class action arises out of an alleged financial fraud at Aegean, an international marine fuel logistics company founded in 1995 by Defendant Dimitris Melissanidis, and certain of its former officers and directors. Lead Plaintiff alleges that Aegean and certain Non-Settling Defendants engaged in a long-running, multi-faceted fraudulent scheme through which they (a) significantly overstated the Company's income and revenue; (b) overstated the Company's assets and the strength of its balance sheet; (c) misled investors concerning the adequacy of the Company's internal controls over financial reporting ("ICFR"); and (d) misappropriated Company

assets. Lead Plaintiff further alleges that certain Non-Settling Defendants engaged in illegal insider trading.

Lead Plaintiff further alleges that the Class Period audit opinions issued by the Settling Defendants—PwC Greece and Deloitte Greece—who each served as the Company's principal independent auditor at varying times—were materially false and misleading. Deloitte Greece, who had been Aegean's auditor since prior to its 2005 IPO, issued unqualified or "clean" audit opinions that Aegean's year-end financial statements were fairly presented in accordance with U.S. Generally Accepted Accounting Principles ("GAAP") as to the years 2013, 2014 and 2015, that Aegean's ICFR were effective in 2013 and 2015, and consented to the reissuance of its 2015 audit opinions in Aegean's Annual Report for the fiscal year ended December 31, 2016. PwC Greece, who became Aegean's auditor in 2016, several years after the start of the Settlement Class Period, issued its first and only audit opinion representing that Aegean's ICFR were adequate and that its 2016 year-end financial statements complied with GAAP on May 16, 2017.

The Lavallee Declaration, filed concurrently herewith, further details the factual and procedural background of this case and the events that led to the Partial Settlements. *See* Lavallee Decl. ¶¶18-63. For the sake of brevity, those facts will not be recited here.

III. ARGUMENT

A. The Proposed Partial Settlements Are Fair, Reasonable and Adequate Under The Applicable Legal Standards, and Should Therefore Be Approved

1. The Standard For Evaluating Class Action Settlements

Under Rule 23(e) of the Federal Rules of Civil Procedure, a class action settlement should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Courts in the Second Circuit realize the "strong judicial policy in favor of settlements, particularly in the class action context." *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803 (2d Cir. 2009) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)).

The standards governing approval of class action settlements are well established in this Circuit. In *City of Detroit v. Grinnell Corp*., the U.S. Court of Appeals for the Second Circuit held that the following were factors to be considered in evaluating a class action settlement:

> (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.[3]

Further, on December 1, 2018, Rule 23 (e)(2) was amended to identify the following factors for the Court to consider, many of which overlap with the *Grinnell* factors:

> (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.

Importantly, in deciding whether a settlement merits approval, "not every factor must weigh in favor of the settlement, 'rather the court should consider the totality of these factors in light of the particular circumstances.'" *Lea v. Tal Educ. Grp*., No. 18-CV-5480 (KHP), 2021 WL 5578665, at *8 (S.D.N.Y. Nov. 30, 2021). Further, when weighing these factors, a court "should not attempt to approximate a litigated determination of the merits of the case lest the process of determining whether to approve a settlement simply substitute one complex, time consuming and expensive litigation for another." *In re Marsh & McLennan Cos., Inc. Sec. Litig*., No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *4 (S.D.N.Y. Dec. 23, 2009) (quoting *White v. First Am. Registry,*

[3] *City of Detroit v. Grinnell Corp. (Grinnell)*, 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); *see also Belton v. GE Capital Consumer Lending, Inc*., No. 21-CV-9492 (CM), 2022 WL 407404, at *4 (S.D.N.Y. Feb. 10, 2022) (same); *Emeterio v. A&P Rest. Corp*., No. 20-CV-970 (KHP), 2022 WL 274007, at *6 (S.D.N.Y. Jan. 26, 2022) (same).

Inc., No. 04 Civ. 1611 (LAK), 2007 WL 703926, at *2 (S.D.N.Y. Mar. 7, 2007) (Kaplan, J.)).

Here, the Partial Settlements clearly satisfy the criteria for approval articulated by the Second Circuit in *Grinnell* and in Rule 23 of the Federal Rules of Civil Procedure.

2. Application of the *Grinnell* Factors Supports Final Approval

a) Factor 1—The Complexity, Expense and Likely Duration of The Action Favor Final Approval of The Partial Settlements

This factor satisfies both *Grinnell*'s Factor 1 and Factor C of the amended Rule 23(e)(2) factors. By their nature, securities class actions are difficult and notoriously uncertain. *See*, *e.g.*, *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999) (district courts in this Circuit "have long recognized" that securities class actions are "notably difficult and notoriously uncertain"). Because it is "common knowledge that class action suits have a well-deserved reputation as being most complex," courts acknowledge the "overriding public interest in favor of settlement" of class actions. *In re Milken & Assocs. Sec. Litig.*, 150 F.R.D. 46, 53 n.6 (S.D.N.Y. 1993) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). Indeed, as one court noted, "[c]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006); *see also Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331 (CM)(MHD), 2014 WL 1224666, at *8 (S.D.N.Y. Mar. 24, 2014).

Beyond the complexities inherent in securities litigation generally, there are challenges unique to litigating the claims against the Settling Defendants. *See* Lavallee Decl. ¶¶64-76. Even assuming Lead Plaintiff establishes that financial fraud occurred at Aegean and that Aegean's ICFR were ineffective, it would still face the additional challenges regarding (i) the extent to which the Settling Defendants' audit opinions contained false and misleading statements regarding Aegean's financial statements' compliance with GAAP, the effectiveness of Aegean's ICFR and, importantly, the Settling Defendants' compliance with the Public Company Accounting Oversight Board's ("PCAOB") professional auditing standards; (ii) whether, and the extent to which, the red flags alleged in the Complaint, would have placed a reasonable auditor on notice that Aegean was

engaged in wrongdoing to the detriment of its investors; and (iii) whether the Settling Defendants acted with the requisite scienter in certifying Aegean's financial statements and the effectiveness of its internal controls. *Id*. ¶66.

In addition, issues such as the extent to which certain transactions should have been flagged by auditors as fraudulent, and the extent to which the Settling Defendants adequately adhered to or applied auditing standards, among others, would be proven primarily through expert testimony, which means that fact discovery would have been followed by very extensive expert discovery. Lavallee Decl. ¶69. Indeed, much of the proof would be made through opinions by industry experts on compliance with auditing standards and procedures. This type of proof would have resulted in a prolonged "battle of the experts" during expert discovery, summary judgment and trial. Accordingly, discovery regarding the Settling Defendants' conduct was likely to be intense and complex, and further litigation would therefore have necessitated an additional substantial investment of time and money. *See Hicks v. Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("The issues presented in the litigation…are complex and highly disputed. Further litigation would necessarily involve further costs; justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action.").

Moreover, as discussed in Section III.A.2.d(1), below, the fact that Aegean was headquartered in Greece with its accounting functions in Greece, that Greek documents will need to be translated, and that the Settling Defendants and many other witnesses who can speak to the auditors' role are in Greece all mean that continued litigation will require more time and expense than typical in most traditional securities fraud cases. *See, e.g., In re Gilat Satellite Networks, Ltd*., No. CV-02-1510 CPS SMG, 2007 WL 2743675, at *10 (E.D.N.Y. Sept. 18, 2007) ("In this case, the costs of litigating are anticipated to be significant, since extensive discovery remains to be completed and since both [defendant company] and the companies with which [defendant] did business under the allegedly fraudulent scheme are located overseas, which will increase the cost and complexity of discovery.'"); *Christine Asia Co., Ltd. v. Yun Ma*, No. 1:15-md-02631 (CM) (SDA), 2019 WL 5257534, at *10 (S.D.N.Y. Oct. 16, 2019) ("this case would be particularly

onerous and expensive to litigate given that it involves litigating against a foreign defendant").

By settling the claims against the Settling Defendants' at this juncture, Lead Plaintiff has forestalled substantial, continued and uncertain litigation against the Settling Defendants and assured the Settlement Class of a tangible recovery now, rather than the high uncertainty, risk and expense associated with continued and protracted litigation, trial and appeals. Thus, this factor weighs in favor of the Partial Settlements.

b) Factor 2—The Settlement Class's Reaction To The Partial Settlements Favors Final Approval

The reaction of the Settlement Class to the Partial Settlements is a significant factor to be weighed in considering its adequacy. *See Shapiro*, 2014 WL 1224666, at *9 ("A small number of objections are convincing evidence of strong support by class members."); *Maley v. Del Global Techs. Corp*., 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002).[4]

Here, the reaction of the Settlement Class to date strongly indicates the fairness of the Partial Settlements. Pursuant to the Court's June 3, 2022 Preliminary Approval Orders (ECF Nos. 361-62), a total of 41,879 copies of the Omnibus Notice and Claim Form ("Notice Packet") were mailed to potential Settlement Class Members, banks, brokerage houses and nominees, and the Summary Notice was published in *Investor's Business Daily* and *PRNewswire* on June 27, 2022. *See* Declaration of Jack Ewashko Regarding Mailing of Notice and Publication of Summary Notice ("A.B. Data Decl." or "A.B. Data Declaration") (submitted herewith as Lavallee Decl. Ex. 6), at ¶¶2-15. Moreover, Notice Packets were distributed via the Depository Trust Company's Electronic Legal Notice System and the Omnibus Notice, Summary Notice and other relevant documents were posted on the website of the Claims Administrator. *Id.* ¶¶8, 10, 17.

While the August 23, 2022 deadline set by the Court for Settlement Class Members to exclude themselves or object to the Partial Settlements has not yet passed, to date there have been

[4] *See also In re Citigroup, Inc. Sec, Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) ("A favorable reception by the class constitutes 'strong evidence' that a proposed settlement is fair."); *In re Am. Bank Note Holographics, Inc., Sec. Litig.*, 127 F. Supp. 2d 418, 425 (S.D.N.Y. 2001); *n re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004)).

no requests for exclusion nor have there been any objections to the Partial Settlements. A.B. Data Decl. ¶21. Lead Plaintiff will file reply papers with the Court on September 6, 2022 to address any timely objections or requests for exclusion, if any.

c) Factor 3—The Stage of The Proceedings and The Amount of Information Reviewed and Analyzed Favor Final Approval of The Partial Settlements

The third factor inquires "'whether the parties had adequate information about their claims,' such that their counsel can intelligently evaluate 'the merits of [p]laintiff's claims, the strengths of the defenses asserted by [d]efendants, and the value of [p]laintiffs' causes of action for purposes of settlement.'" *In re IMAX Sec. Litig. (IMAX II)*, 283 F.R.D. 178, 190 (S.D.N.Y. 2012) (alteration in original). *See also Maley*, 186 F. Supp. 2d at 363 (to satisfy this factor, the parties need not have even engaged in formal or extensive discovery).

Lead Plaintiff and Lead Counsel had a clear understanding of the strengths and weaknesses of the case when they negotiated the Partial Settlements. As noted above, the Partial Settlements came about after several years of litigation, during which the parties expended substantial effort and resources analyzing and litigating many of the key factual and legal issues in the case, developing the factual record, working with auditing and damages consultants, conferring with foreign counsel on issues regarding prosecuting the claims against foreign defendants and the General Data Protection Regulation (the "GDPR"), briefing nine separate motions to dismiss, and commencing discovery, among other things. *See, e.g.*, Lavallee Decl. ¶¶7-8, 24-62.

As a result of these litigation efforts, Lead Plaintiff and Lead Counsel became very familiar with the Settling Defendants' defenses and the procedural challenges, and "obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006).

Given this, Lead Counsel's opinion that the Partial Settlements are fair, reasonable and adequate is entitled to "great weight." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125

(S.D.N.Y.), *aff'd*, 117 F.3d 721 (2d Cir. 1997). *See also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 0165 (CM), 2007 WL 4115809, at *12 (S.D.N.Y. Nov. 7, 2007); *IMAX II*, 283 F.R.D. at 190 ("indeed, formal discovery need not have necessarily been undertaken yet by the parties"); *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12 Civ. 8557 (CM), 2014 WL 7323417, at *7 (S.D.N.Y. Dec. 19, 2014) ("to satisfy this factor, [the] parties need not have even engaged in formal or extensive discovery" (quoting *Maley*, 186 F. Supp. 2d at 363)).

d) Factors 4 and 5—The Risks of Establishing Liability and Damages Favor Final Approval of The Partial Settlements

Grinnell holds that, in assessing the fairness, reasonableness and adequacy of a settlement, courts should consider such factors as the "risks of establishing liability" and "the risks of establishing damages." 495 F.2d at 463. This factor overlaps with Factor C of the Amended Rule 23(e)(2) factors. While Lead Plaintiff and Lead Counsel believe that the claims asserted against the Settling Defendants are meritorious, they also recognize that there were considerable risks in pursuing the Action against the Settling Defendants that could have led to a substantially smaller recovery or no recovery at all for the Settlement Class. Lavallee Decl. ¶¶64-72.

These risks were heightened here as to the Settling Defendants. The Settling Defendants could avail themselves of a number of defenses detailed below, which, if successful, would eliminate or severely curtail the claims of the Settlement Class. These risk factors support final approval of the Partial Settlements. Lavallee Decl. ¶¶64-72.

(1) The Risks of Establishing Liability

Settling-Defendants-Specific Liability Hurdles. Despite the strengths of Lead Plaintiff's case, there remained numerous hurdles to establishing liability. In particular, the Settling Defendants contended in their motions to dismiss and answers, *inter alia*, that Lead Plaintiff cannot establish their liability for a variety of reasons including the following: (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; (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) the Settling Defendants 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 Lead Plaintiff were to establish that they believed that their opinions were false or their statements omitted material information rendering their audits misleading. *See* Lavallee Decl. ¶66.

Indeed, it is well-recognized that it is challenging to prevail on securities fraud claims against outside auditors. *In re IMAX Sec. Litig. (IMAX I)*, 587 F. Supp. 2d 471, 483 (S.D.N.Y. 2008) (noting challenging nature of claims against outside auditors); *see also In re Parmalat Sec. Litig.*, No. 04-md-00030-LAK, slip op. at 2 (S.D.N.Y. Mar. 11, 2010), ECF No. 1106 (noting "complex factual and legal issues" in a partial settlement with an outside auditor, and adding that "[h]ad Plaintiffs' Counsel not achieved the Settlements there would remain a significant risk that plaintiffs and the Settlement Class may have recovered less or nothing from the Auditor Defendants").

Risks Involved with Expert Testimony. As noted, several accounting issues central to the claims alleged in the Complaint, including the extent to which certain transactions should have been flagged by auditors as fraudulent, and the extent to which the Settling Defendants adhered to or adequately applied auditing standards, among other issues, would have required the retention of experts by the Settling Parties to resolve. Further, in support of class certification, Lead Plaintiff would be obliged to submit extensive briefing, deposition testimony, documentary evidence and an expert declaration that Aegean securities traded in an efficient market during the Settlement Class Period, thus supporting the presumption of reliance and hence, predominance. The presentation of such potentially complex and lengthy expert testimony to the jury would inevitably raise uncertainties and unpredictable outcomes. *See*, *e.g.*, *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM)(PED), 2010 WL 4537550, at *18 (S.D.N.Y. Nov. 8, 2010) ("The jury's verdict … would … depend on its reaction to the complex testimony of experts, a reaction

that is inherently uncertain and unpredictable."); *Maley*, 186 F. Supp. 2d at 365 (there was a risk that a "jury could be swayed by experts for the Defendants"); *Am. Bank Note Holographics*, 127 F. Supp. 2d at 426-27 ("[i]n such a battle, Plaintiffs' Counsel recognize the possibility that a jury could be swayed by experts for Defendants").

Liability Hurdles Related to Litigation Against Foreign Defendants. 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, or otherwise in Luxembourg, Cyprus or the Marshall Islands, countries where the Litigation Trustee has instituted proceedings and/or where Aegean-related entities are believed to be domiciled; (b) the fact that Defendants and others are likely to assert privileges under Europe's recently enacted privacy and security law, the GDPR; (c) regarding the costly and time-consuming work 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. ¶71. Thus, the foreign nature of these proceedings raises an additional level of risk not usually confronted in securities litigation with U.S. based companies, defendants and auditors. As such, these factors are an additional "weight on the scale" in favor of approval of the instant motion. *Id.*; *see also id.* ¶72.

Other Liability Hurdles Inherent In Complex Securities Class Actions. 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, auditing and accounting matters as well as loss causation and damages; (e) a lengthy trial; and (f) appeals. Lavallee Decl. ¶73. In evaluating the settlement of securities class actions, courts repeatedly recognize that such litigation is complex, uncertain and costly. *Mikhlin v. Oasmia Pharm. AB*, No. 19-CV-4349 (NGG) (RER), 2021 WL 1259559, at *5 (E.D.N.Y. Jan. 6, 2021).

(2) The Risks of Establishing Damages

Proof of damages is a complex matter that requires expert testimony and can be fraught with risk. Each of the Defendants will no doubt challenge Lead Plaintiff's damages methodology and argue, among other things, that any damages were caused by factors other than the allegedly misleading statements and thus not recoverable.

Establishing damages as to the Settling Defendants would have been even more risky. The Settling Defendants had a series of defenses to reduce or eliminate damages, even if Plaintiffs were able to prove their liability. Significantly, the Settling Defendants asserted 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. Lavallee Decl. ¶67. Accordingly, the Settling Defendants would argue that any judgment obtained at trial against them must be reduced pursuant to the proportional liability provisions of the federal securities laws. *Id*. ¶70. *See* 15 U.S.C. § 78u-4(f)(2)(B). The Settling Defendants would try and assign all or most of the fault by way of a special verdict to others, such as Aegean and its officers and directors, who they contend were fully responsible for any untrue statements and omissions. *Id*. If successful, these defenses could substantially reduce any recovery against the Settling Defendants.

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 issued its opinion on 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. Lavallee Decl. ¶68. 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. *Id*. 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 for any damages suffered. *Id*.

Moreover, resolution of these damages issues would inevitably have involved various

"battles of the experts," with the concomitant risk that the jury could credit the Settling Defendants' experts over Lead Plaintiff's experts. Lavallee Decl. ¶69. Courts have recognized that when parties will likely rely on significant expert testimony and analysis, including as to damages, settlement is favored. *See Park v. The Thompson Corp.*, No. 05 Civ. 2931 (WHP), 2008 WL 4684232, at *4 (S.D.N.Y. Oct. 22, 2008) (significant expert testimony and analysis required to prove damages weighed in favor of settlement).[5]

Given the foregoing, and particularly 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, against these Settling Defendants, 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. Lavallee Decl. ¶¶75-76.

e) Factor 6—The Risk of Maintaining The Action As A Class Action Through Trial Favors Final Approval of The Partial Settlements

This factor, which also overlaps with Factor C of the Amended Rule 23(e)(2) factors, weighs in favor of final approval. While Lead Plaintiff believes that it will prevail in moving for class certification, this nonetheless 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*. In addition, even post-certification, there is also a risk of decertification. *See Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification."). Accordingly, Lead Plaintiff acknowledges the ongoing risks in maintaining the Action as a class action and that the Partial Settlements dispense with this uncertainty, at least as to these Settling Defendants.

[5] *See also Am. Bank Note Holographics*, 127 F. Supp. 2d at 426-27 ("In such a battle, Plaintiffs' Counsel recognize the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount of Plaintiffs' losses."); *PaineWebber*, 171 F.R.D. at 129 ("damages are a matter for the jury, whose determinations can never be predicted with certainty").

f) Factor 7—The Settling Defendants' Ability To Withstand A Greater Judgment Favor Final Approval

While the Settling Defendants may be able withstand a higher judgment than the amount of the Partial Settlements, this factor is generally not determinative when other factors weigh in favor of approval, as they do here. *Shapiro*, 2014 WL 1224666, at *11 ("[A] defendant is not required to 'empty its coffers' before a settlement can be found adequate." (quoting *In re Sony SXRD Rear Projection Television Class Action Litig.*, No. 06 Civ. 5173, 2008 WL 1956267, at *8 (S.D.N.Y. May 1, 2008))); *Citigroup*, 965 F. Supp. 2d at 384 ("[W]hile the defendants' ability to pay more suggests a settlement might be unfair, 'this factor, standing alone, does not suggest that the settlement is unfair.'"); *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.").

In addition, success at trial could entail further complex proceedings to enforce a U.S. judgment in Greece since these Settling Defendants are Greek auditors and residents, and the U.S.-based firms of PricewaterhouseCoopers LLP ("PwC US") and Deloitte & Touche LLP ("Deloitte US") have steadfastly denied control over or liability for the Settling Defendants. Lavallee Decl. ¶72. Specifically, in their joint memorandum of law in support of their motions to dismiss, Deloitte US and PwC US each argued that they are legally separate and independent entities from the other entities within the international network of companies sharing their respective brand names, and that they are liable only for their own acts or omissions. ECF No. 184 at 3-4. Thus, on balance, this factor weighs in favor of final approval.

g) Factors 8 And 9—The Range of Reasonableness of The Partial Settlement Funds In Light of The Best Possible Recovery and All The Attendant Risks of Litigation Supports Final Approval

The last two *Grinnell* factors require that courts consider the range of reasonableness of the settlement fund in light of (i) the best possible recovery; and (ii) litigation risks. *Grinnell*, 495 F.2d at 463. The question for the Court is not whether the settlements represent the best possible recovery, but how the settlements relate to the strengths and weaknesses of the case. In making this assessment, the court must "consider and weigh the nature of the claim, the possible defenses,

the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable." *Id.* at 462. Courts agree that the determination of a "reasonable" settlement "is not susceptible of a mathematical equation yielding a particularized sum." *PaineWebber*, 171 F.R.D. at 130. Rather, "in any case there is a range of reasonableness with respect to a settlement." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

Here, the two $14.9 million Partial Settlements (totaling $29.8 million) are an excellent partial settlement, representing approximately 8.5% of the estimated total alleged damages. Lavallee Decl. ¶78. A review of data from Cornerstone Research demonstrates that these Partial Settlements are well within the reported values for securities fraud class actions. For instance, the median settlement as a percentage of damages in cases involving accounting issues (including GAAP violations, restatements and accounting irregularities) between 2012 and 2021 was between 5.2% and 7.2%. *See* Lavallee Decl. ¶79 & Ex. 7, at 9. Median settlements in securities fraud cases since 2012 as a percentage of "simplified tiered damages" have ranged between 4.1% and 4.9% for cases in a comparable range of estimated damages. In addition, the median settlement dollars for all from 2017 to 2021 following rulings on motions to dismiss, but before rulings on class certification, is $4.8 million. *Id*. ¶79 & Ex. 7, at 6 & 14. Moreover, the Second Circuit's median recovery is 5.1% of damages. *Id*. ¶79 & Ex. 7, at 19. Further, 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 with Aegean's former independent auditors only. They do not include recovery from any judgment or settlement that Lead Plaintiff may achieve for the remaining insider trading claims against Non-Settling Defendants Dimitris Melissanidis and Spyros Gianniotis, or for the Section 10(b) and 20(a) claims against Gianniotis. Under the terms of the Settlement Agreements, the Settling Defendants will provide certain documents that Lead Plaintiff anticipates using during the remainder of the litigation. Lavallee Decl. ¶¶4, 56, 59, 75.

In light of the substantial uncertainties and risks presented by this litigation, the Partial

Settlements here are well within the range of reasonableness, and this factor weighs in favor of final approval of the Partial Settlements.

3. Application of The Remaining Requirements of Amended Rule 23(e)(2) Supports Final Approval

a) Factor A—Lead Plaintiff and Lead Counsel Have Adequately Represented The Settlement Class

As explained above and in the Lavallee Declaration and the Lead Plaintiff Declaration, during the course of this Action, Lead Plaintiff and Lead Counsel have represented the Settlement Class's interests with great care and perseverance. Lead Counsel exhausted considerable resources investigating the claims and defenses at issue, culling through SEC filings, articles, analysts' reports, filings in domestic and foreign litigation, and briefing motions and oppositions to motions to dismiss. With the able assistance of Bankruptcy Counsel, Lead Counsel and Lead Plaintiff also protected the interests of the Settlement Class Members in the Bankruptcy Action. Lavallee Decl. ¶¶31-36. In addition, Lead Plaintiff provided substantial assistance to Lead Counsel throughout the Action, keeping itself informed of developments over the course of the Action, including with respect to investigation, litigation strategy, and settlement negotiations, and searching for and producing responsive documents. *See* Lavallee Decl. ¶¶116-18; Lead Plaintiff Decl. ¶¶4-6. This factor favors final approval.

b) Factor B—The Partial Settlements Were Reached After Arm's-Length Negotiations Between Experienced Securities Litigators and Are Procedurally Fair

A strong initial presumption of fairness attaches to a proposed settlement if it is reached as a result of arm's-length negotiations between experienced counsel. *See*; *Shapiro*, 2014 WL 1224666 at *7 ("A class action settlement is entitled to a presumption of fairness when it is the product of extensive arm's-length negotiations." (citing 4 A. Conte, H.B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002)); *Padro v. Astrue*, No. 11-CV-1788 (CBA)(RLM), 2013 WL 5719076, at *3 (E.D.N.Y. Oct. 18, 2013) ("Where the integrity of the negotiation process is preserved, a strong initial presumption of fairness attaches to the proposed settlement.").

Lead Counsel, Berman Tabacco, has decades of experience litigating securities class

actions, is intimately familiar with the facts in the case, and has extensive experience prosecuting comparable securities class actions. *See* Lavallee Decl. ¶101 & Ex. 3. The Settling Defendants were similarly well-represented by nationally recognized counsel with deep experience in securities class action suits.

The Partial Settlements are a product of informed arm's-length negotiations, which were conducted over 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* Lavallee Decl. ¶¶54-63.

Accordingly, there can be no dispute that the Partial Settlements were the result of arm's-length negotiations between experienced counsel well-versed in the strengths and weaknesses of the claims. *See Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 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."); *Oasmia Pharm.*, 2021 WL 1259559, at *5 ("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.").

Moreover, these Partial Settlements are "entitled to an even greater presumption of reasonableness" because it was achieved "under the supervision and with the endorsement of a sophisticated institutional investor." *Veeco*, 2007 WL 4115809, at *5 ("Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement."); *see also In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007) (same).

Lead Plaintiff agrees that these Partial Settlements, which include the Settling Defendants' agreement to produce certain documents such as audit workpapers, provide an immediate and

substantial benefit to Settlement Class Members, and outweigh the benefits of continued litigation against these Settling Defendants. Lavallee Decl. ¶¶75-76; Lead Plaintiff Decl. ¶7. Lead Plaintiff devoted significant time overseeing this litigation, consulted with Lead Counsel on all significant issues, and was therefore well informed and familiar with the risks and challenges of continued prosecution of this case when it approved the Partial Settlements. Lavallee Decl. ¶117-18; Lead Plaintiff Decl. ¶¶5-7.

c) Factor C—The Relief Provided For The Settlement Class Is Adequate Taking Into Account All Factors

This factor overlaps with the first, fourth, fifth and sixth *Grinnell* factors. The Partial Settlements are beneficial in the context of the costs, risks and delays associated with continued litigation. As shown above, compared to the many risks of continued litigation against the Settling Defendants, the Partial Settlements provide for an immediate cash recovery of $29.8 million to the Settlement Class as well as the production of certain documents, including audit workpapers, in a form and manner that renders them authentic business records—benefits that provide very real value to the Settlement Class.

Moreover, for the reasons provided below (*see infra* Section III.B. & III.C.) and in the A.B. Data Declaration, at ¶¶2-17 & Exs. A-D, both the method of distributing relief to the Settlement Class and the method of processing Settlement Class Member claims are fair and reasonable. In addition, for the reasons provided in the accompanying Fee and Expense Application, the terms of Lead Counsel's proposed award of attorney's fees are in accordance with those in comparable securities class action cases and are likewise fair and reasonable. It is also reasonable to award counsel its fees for these Partial Settlements given that the Partial Settlements provide that these Settlement Funds will be distributed to the Settlement Class upon final approval and claims administration. *See, e.g., Athale v. Sinotech Energy Ltd.*, No. 11 Civ. 05831 (AJN), 2013 WL 11310686, at *9 (S.D.N.Y. Sept. 4, 2013) (approving attorneys' fees for partial settlement); *Laydon v. Mizuho Bank, Ltd. et al.*, No. 1:12-cv-03419-GBD-SLC (S.D.N.Y. Nov. 10, 2016) (same); *In Re: Libor-Based Fin. Instruments Antitrust Litig.*, No. 1:11-md-02262-NRB (S.D.N.Y. Aug. 14,

2018) (same); *Sullivan v. Barclays PLC, et al.*, No. 1:13-cv-02811-PKC (S.D.N.Y. May 18, 2018) (same); *In re Akazoo S.A. Sec. Litig.*, No. 1:20-cv-01900 (E.D.N.Y. Sept. 10, 2021) (same).

Amended Rule 23(e)(3) provides that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the [settlement] proposal," and amended Rule 23(e)(2)(C)(iv) provides for the disclosure of any such agreement. The Settling Parties have entered into standard supplemental agreements, which permit the Settling Defendants to terminate their respective Partial Settlements if Settlement Class Members representing a certain threshold of Aegean Securities opt out from Partial Settlement(s). PwC Greece Stipulation ¶13.1 (ECF No. 351-2); Deloitte Greece Stipulation ¶13.1 (ECF No. 351-3). Moreover, as noted above, to date, there have been no objections to any aspect of the Partial Settlements nor have there been any requests for exclusion or opt outs.

d) Factor D—The Proposed Methods of Distributing The Partial Settlements To Settlement Class Members Are Fair And Reasonable

The proposed methods of distributing the Partial Settlements to Settlement Class Members, as set forth in the Plans of Allocation, treat Settlement Class Members equitably, and are fair and reasonable for the reasons provided below (*see infra* Section III.B.).

* * *

Based on the foregoing, and taken as a whole, consideration of the *Grinnell* and Rule 23 factors supports a finding that the Partial Settlements are fair, reasonable and adequate. Accordingly, Lead Counsel respectfully requests that the Court grant final approval.

B. The Plans of Allocation Are Fair And Reasonable and Should Be Approved

A "plan of allocation is subject to the same test of fairness, reasonableness, and adequacy as the settlement itself." *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 157-58 (S.D.N.Y. 2013). In determining the reasonableness and fairness of a plan of allocation, "courts look primarily to the opinion of counsel." *In re Facebook, Inc., IPO Sec. & Deriv. Litig.*, 343 F. Supp. 3d 394, 414 (S.D.N.Y. 2018) (quoting *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163

(S.D.N.Y. 2011)), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020). "[I]f recommended by experienced and competent class counsel," the formula established for allocation "need only have a reasonable, rational basis." *In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 270 (S.D.N.Y. 2012) (quoting *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005)).

Generally, a plan of allocation that calls for the *pro rata* distribution of settlement proceeds based on investment loss is presumptively reasonable. *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 135 (S.D.N.Y. 2008). Here, the proposed Plans of Allocation, which were developed with the assistance of Lead Plaintiff's damages consultant, provide a fair and reasonable method to distribute each Net Settlement Fund to Authorized Claimants on a *pro rata* basis, based on the relative size of their recognized claims and taking into account when they purchased, acquired and/or sold Aegean Securities. *See* Lavallee Decl. ¶¶84-88.

In developing the Plans of Allocation, Lead Plaintiff's consultant was also careful to account for the differences between when each of the Settling Defendants allegedly made materially misleading statements to the Settlement Class Members which dictates whether the Settlement Class Members have a claim against the specific Settling Defendant. Lavallee Decl. ¶¶83-88. It is for this reason that there are two distinct Plans of Allocation, one for each Settlement Fund. Thus, in order to have a "Recognized Loss Amount" under the PwC Greece Plan of Allocation for the PwC Greece Settlement, Aegean Securities must have been purchased or otherwise acquired after PwC Greece issued an Audit Opinion on Aegean (May 16, 2017) and held through the issuance of at least one corrective disclosure. Meanwhile, because Deloitte Greece had issued Audit Opinions from prior to the Settlement Class Period through the last Form 20-F, all Settlement Class Members are entitled to claim a "Recognized Loss Amount" under the Deloitte Greece Plan of Allocation for the Deloitte Greece Settlement if they held Aegean Securities through the issuance of at least one corrective disclosure. *Id.*

The Plans of Allocation were fully referenced as available at www.AegeanSecuritiesLitigation.com in the Court-approved Omnibus Notice. To date, there have

been no objections to the Plans of Allocation. *See* Lavallee Decl. ¶98; A.B. Data Decl. ¶21.

For these reasons, the Plans of Allocation ensure that the Net Settlement Funds will be fairly and equitably distributed to those who have losses consistent with the statutory damage framework of the federal securities laws and should be approved.

C. Notice To The Settlement Class Satisfied Rule 23, The PSLRA and Due Process and Was Reasonable

In accordance with the Court's Preliminary Approval Orders, beginning on June 24, 2022, the Court-appointed Claims Administrator, A.B. Data, Ltd. ("A.B. Data" or "Claims Administrator"), caused a total of 41,879 copies of the Notice Packet to be mailed by first-class mail to potential Settlement Class Members who could be identified through reasonable effort. A.B. Data Decl. ¶¶2-14. A.B. Data identified potential class members first through its use of a proprietary database it maintains with names and addresses of the largest and most common banks, brokers, and other nominees (the "Record Holder Mailing Database"). This database permits the identification of beneficial owners whose securities were purchased and held by brokerage firms, banks, institutions, and other third-party nominees in the name of the respective nominees, on behalf of the beneficial owners. At the time of the initial mailing, the Record Holder Mailing Database contained 4,099 mailing records. *Id*. ¶4. Second, A.B. Data also mailed the Notice Packet to the 47 Depository Trust Participants associated with Aegean 4.25% Convertible Unsecured Senior Notes due 12/15/2021 issued 12/19/2016 and Aegean 4.00% Convertible Unsecured Senior Notes due 11/1/2018 issued 10/23/2013. *Id*. ¶¶5-6. Third, A.B. Data mailed the Notice Packet to all registered holders of Aegean Securities during the Settlement Class Period, as identified by Aegean's transfer agent pursuant to a subpoena issued by Lead Counsel. *Id.* ¶11. Fourth, A.B. Data mailed the Notice Packet to all potential Settlement Class Members identified by nominees. *Id.* ¶13.

In addition, on June 27, 2022, the Claims Administrator caused the Summary Notice to be published in *Investor's Business Daily* and transmitted over *PR Newswire.* A.B. Data Decl. ¶¶15 & Exs. C-D. The Claims Administrator also caused the Notice Packet to be distributed via the

Depository Trust Company's Electronic Legal Notice System. *Id.* ¶¶8, 10. In coordination with Lead Counsel, A.B. Data established a settlement website, which is accessible 24 hours a day, 7 days a week, where Settlement Class Members can access the Omnibus Notice and Claim Form, the settlement stipulations, court filings and other relevant information about the Partial Settlements and the Action. *Id.* at ¶17.

This combination of individual first-class mailed notice to all Settlement Class Members who could be identified with reasonable effort, supplemented by notice in a widely circulated publication, transmitted over a newswire and set forth on an internet website, is "the best notice … practicable under the circumstances, " thereby satisfying the due process requirements of Rule 23(c)(2)(B). *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974).

Indeed, notice to the Settlement Class Members satisfies Rule 23(e)(1) because it was provided in a "reasonable manner—*i.e.*, it "fairly apprise[d] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal- Mart*, 396 F.3d at 114 (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982)). The Court-approved Omnibus Notice includes all the information required by Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure and the PSLRA, 15 U.S.C. § 78u-4(a)(7), including: (i) the consideration provided by the Partial Settlements; (ii) a description of the amount of the Partial Settlements proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis; (iii) a statement of the potential outcome of the case, including that the Settling Parties disagree as to the amount of damages and a statement of Lead Plaintiff's estimated average amount of recovery per share; (iv) a statement of attorneys' fees or costs sought; (v) identification and contact information for Lead Counsel; (vi) a description of the reasons for the Partial Settlements; (vii) an explanation of the rights of Settlement Class Members to participate in the Partial Settlements, object to any aspect of the Partial Settlements, the Plans of Allocation and/or the fee and expense application, or exclude themselves from the Partial Settlements; (viii) the dates and deadlines for certain Partial Settlement-related events; (ix) a reference to the Plans of Allocation posted at www.AegeanSecuritiesLitigation.com and the

rational for the Plans of Allocation; (x) an explanation how to submit Claim Forms, object or opt out of the Partial Settlements and the timing needed to do so; and (xi) a statement that the Claims Administrator will maintain a toll-free number to answer questions as well as maintain a website where, among other things, key pleadings in this case may be viewed. *See* A.B. Data Decl. Ex. A; Lavallee Decl. ¶96. The Omnibus Notice specifically informed recipients that Lead Counsel intended to apply for an award of attorneys' fees not to exceed twenty-five percent (25%) of the Partial Settlement Amount and for reimbursement of litigation expenses in an amount not to exceed $380,000.00. *Id.*

D. Class Certification Remains Appropriate

In presenting the proposed Partial Settlements to the Court for preliminary approval and approval of class-wide notice, Lead Plaintiff requested that the Court (i) conditionally certify the Settlement Class so that notice of the proposed Partial Settlements, the Final Approval Hearing and the rights of Settlement Class Members to request exclusion, object or submit Proof of Claims could be issued; and (ii) appoint Lead Plaintiff and Lead Counsel as class representative and class counsel, respectively. ECF No. 350. In its Preliminary Approval Orders, the Court granted these requests. ECF Nos. 361-62.

Nothing has changed to alter the propriety of the Court's orders regarding certification of a Settlement Class and, for the reasons stated in the Lead Plaintiff's memorandum of law in support of its motion for preliminary approval of the proposed Partial Settlements (ECF No. 350), Lead Plaintiff requests that the Court: (i) finally certify the Settlement Class for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (ii) appoint Lead Plaintiff as Settlement Class Representative; and (iii) appoint Lead Counsel as Settlement Class Counsel.

IV. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court approve the proposed Partial Settlements and the Plans of Allocation as fair, reasonable and adequate and finally certify the Settlement Class.

Dated: August 9, 2022

Respectfully submitted,

BERMAN TABACCO

By: */s/ Nicole Lavallee*
Nicole Lavallee (admitted *pro hac vice*)

Joseph J. Tabacco, Jr. (JT1994)
Christopher T. Heffelfinger (admitted *pro hac vice*)
Kristin Moody (admitted *pro hac vice*)
A. Chowning Poppler (admitted *pro hac vice*)
Jeffrey Rocha (admitted *pro hac vice*)
Danielle Smith (*pro hac vice* pending)
425 California Street, Suite 2300
San Francisco, CA 94104
Telephone: (415) 433-3200
Facsimile: (415) 433-6382
Email: jtabacco@bermantabacco.com
nlavallee@bermantabacco.com
cheffelfinger@bermantabacco.com
kmoody@bermantabacco.com
cpoppler@bermantabacco.com
jrocha@bermantabacco.com
dsmith@bermantabacco.com

Counsel for Lead Plaintiff Utah Retirement Systems