

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE AEGEAN MARINE  
PETROLEUM NETWORK, INC.  
SECURITIES LITIGATION

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) Case No. 1:18-cv-04993 (NRB)  
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) Hon. Naomi Reice Buchwald  
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**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF (A) 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; AND (B) LEAD COUNSEL’S MOTION FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION EXPENSES AND THE ESTABLISHMENT OF A LITIGATION EXPENSE FUND**

In accordance with the Court’s June 3, 2022 Preliminary Approval Orders (ECF Nos. 361-62, the “Preliminary Approval Orders”), Lead Plaintiff Utah Retirement Systems (“URS” or “Lead Plaintiff”), on behalf of itself and the Settlement Class, respectfully submits this reply memorandum of law in further 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 (ECF Nos. 371-72, 375, the “Final Approval Motion”).<sup>1</sup> Lead Counsel also submit this reply in further support of Lead

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<sup>1</sup> 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). Unless otherwise indicated, all emphasis is added and all alterations, footnotes, internal quotation marks and citations are omitted.

Counsel's Motion For Attorneys' Fees and Reimbursement of Litigation Expenses and The Establishment of a Litigation Expense Fund (ECF Nos. 373-75, the "Fee and Expense Application," together with the Final Approval Motion, the "Motions").

## I. PRELIMINARY STATEMENT

Lead Plaintiff and Lead Counsel are pleased to advise the Court that there has been a resoundingly positive reaction from the Settlement Class to the proposed \$29.8 million combined Partial Settlements, the Plans of Allocation, the request for attorneys' fees, reimbursement of Litigation Expenses, an award to Lead Plaintiff URS pursuant to 15 U.S.C. § 78u-4(a)(4), and the establishment of a Litigation Expense Fund. There are no objections to any aspect of the Partial Settlements and no opposition to the Motions, and there has been only one request for exclusion received.<sup>2</sup> Accordingly, for the reasons set forth herein and in the Motions and supporting papers filed therewith on August 9-10, 2022 (*see* ECF Nos. 371-75, 378-79; 382-83, the "Opening Papers"), (i) the Partial Settlements and the corresponding Plans of Allocation should be approved as "fair, reasonable, and adequate" under Fed. R. Civ. P. 23(e); and (ii) Lead Counsel's request for attorneys' fees, Litigation Expenses, an award to URS, and the establishment of a Litigation Expense Fund should be approved.

In accordance with the Preliminary Approval Orders, the Court-appointed Claims Administrator, A.B. Data Ltd. ("A.B. Data"), disseminated 42,253 copies of the Omnibus Notice and Claim Form ("Notice Packet") to potential Settlement Class Members or their nominees.<sup>3</sup>

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<sup>2</sup> Attached as **Exhibit 1** is the list of exclusion requests to be attached to each of the final judgments regarding the Settling Defendants. *See* ¶3 of the [Proposed] Final Judgment with Prejudice Regarding PricewaterhouseCoopers Auditing Company S.A. (ECF No. 382), and ¶3 of the [Proposed] Final Judgment with Prejudice Regarding Deloitte Certified Public Accountants, S.A. (ECF No. 383), each stating, "A copy of the valid exclusions is attached hereto as **Exhibit 1**."

<sup>3</sup> *See* Supplemental Declaration of Jack Ewashko Regarding (A) Mailing of Notice and Claim

The Omnibus Notice informed recipients of, among other things, the essential terms of the Partial Settlements, the Plans of Allocation, Lead Counsel’s intent to apply to the Court for attorneys’ fees not to exceed 25% of the gross Settlement Funds and reimbursement of Litigation Expenses not to exceed \$380,000 (inclusive of a reimbursement of URS’s expenses), as well as the establishment of the Litigation Expense Fund not to exceed \$2,000,000. In addition, the Omnibus Notice—along with copies of the Opening Papers—was made available on the case-specific website established for the Partial Settlements, <http://www.AegeanSecuritiesLitigation.com>, and the Summary Notice was published in *Investor’s Business Daily* and transmitted over the *PR Newswire*. See Suppl. A.B. Data Decl. ¶7; see also A.B. Data Decl. ¶¶15, 17. Lead Counsel has also been informed that Settling Defendants have completed service on the appropriate federal and state government officials of all notices required under the Class Action Fairness Act, 28 U.S.C. § 1715, in accordance with the Preliminary Approval Orders.

Pursuant to the Preliminary Approval Orders, and as stated in the Omnibus Notice and on the Partial Settlement website, the deadline for objections and requests for exclusion was August 23, 2022. In response to the extensive, Court-approved program for providing notice to the Settlement Class, ***not a single member of the Settlement Class has objected to any aspect of the Partial Settlements, the Plans of Allocation, the requested attorneys’ fees and reimbursement of Litigation Expenses, the requested reimbursement to Lead Plaintiff, or the request for the Establishment of a Litigation Expense Fund.*** Further, there has been only one

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Form; and (B) Report on Requests for Exclusion, filed on September 2, 2022 (ECF No. 391), (“Suppl. A.B. Data Decl.” or “Supplemental A.B. Data Declaration”), ¶¶3-6. See also Declaration of Jack Ewashko Regarding Mailing of Notice and Publication of Summary Notice, filed August 9, 2022 (ECF No. 375-6) (“A.B. Data Decl.”), ¶¶6-14.

request for exclusion submitted by an individual claiming to be a member of the Settlement Class (see Suppl. A.B. Data Decl. ¶8).

The Settlement Class's reaction is powerful evidence that confirms the fairness, adequacy and reasonableness of the Partial Settlements, the Plans of Allocation, Lead Counsel's request for attorneys' fees and reimbursement of Litigation Expenses (inclusive of an award to Lead Plaintiff reflecting a reimbursement of Lead Plaintiff's expenses) and Lead Counsel's request for the establishment of a Litigation Expense Fund.

## II. ARGUMENT

### A. The Reaction of the Settlement Class Strongly Supports Approval of the Partial Settlements and the Plans of Allocation

The reaction of a class to a settlement is an important factor in assessing the fairness and adequacy of the Partial Settlements. See *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) (listing the second “Grinnell factor”), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). Here, the absence of *any* objections from Settlement Class Members strongly supports a finding that the Partial Settlements are fair, reasonable and adequate. See, e.g., *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-CV-06728-CM-SDA, 2020 WL 4196468, at \*6 (S.D.N.Y. July 21, 2020) (“The absence of any objections and the small number of requests for exclusion support a finding that the Settlement is fair, reasonable, and adequate.”); *In re Virtus Inv. Partners, Inc. Sec. Litig.*, No. 15-cv-1249, 2018 WL 6333657, at \*2 (S.D.N.Y. Dec. 4, 2018) (“the absence of objections by the class is extraordinarily positive and weighs in favor of settlement”); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 176 (S.D.N.Y. 2014) (“The absence of ... objections and minimal investors electing to opt out of the Settlement provides evidence of Class members' approval of the terms of the Settlement.”).

Moreover, in the context of a securities class action settlement, the absence of objections from institutional investors that have ample means and incentive to object to a settlement they believe is unsatisfactory is further evidence of the Partial Settlements' fairness. *See, e.g., Signet Jewelers*, 2020 WL 4196468, at \*6 (“It is significant that no institutional investors ... have objected to the Settlement. Institutional investors are often sophisticated and possess the incentive and ability to object. Accordingly, the absence of objections by these sophisticated class members is further evidence of the fairness 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) (the lack of objections from institutional investors supported approval of settlement); *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 156 (S.D.N.Y. 2013) (the reaction of the class supported the settlement where “not one of the objections or requests for exclusion was submitted by an institutional investor”).

Likewise, the fact that only one request for exclusion was received from Settlement Class Members following the mailing of 42,253 Notice Packets to potential Settlement Class Members and the publication of the Summary Notice further supports approval of the Partial Settlements and satisfies the second *Grinnell* factor. *See, e.g., In re Citigroup Inc. Sec. Litig.*, No. 09 Civ. 7359 SHS, 2014 WL 2112136, at \*3 (S.D.N.Y. May 20, 2014) (“Out of 7,409 class members to whom notice of this settlement was sent, not a single one objected and only one requested exclusion. This positive reaction weighs heavily in favor of approval of the settlement.”); *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 DAB, 2011 WL 1899715, at \*4 (S.D.N.Y. May 13, 2011) (“The Court finds that the reaction of the class to the settlement has been positive. Over 15,900 Notice and Proof of Claim packets were mailed to the Class Members .... No objections were filed, and only one request for exclusion was received.”)

The absence of objections to the proposed allocation of settlement proceeds similarly warrants final approval of the Plans of Allocation. *See, e.g., Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (“[T]he favorable reaction of the Class supports approval of the proposed Plan of Allocation. As noted above, no Class member has objected to the Plan of Allocation, although more than 2,000 notices have been distributed.”); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at \*14 (S.D.N.Y. Nov. 7, 2007) (“[N]ot one class member has objected to the Plan of Allocation which was fully explained in the Notice of Settlement sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation.”). The Settlement Class’s reaction here therefore provides additional strong support for final approval of the Plans of Allocation.

**B. The Settlement Class’s Reaction Also Strongly Supports Approval of Lead Counsel’s Fee and Expense Application**

As is true with the Settlement, *not a single* Settlement Class Member has objected to Lead Counsel’s Fee and Expense Application, which includes the requested attorneys’ fees, reimbursement of Litigation Expenses, award to Lead Plaintiff, and the request for the establishment of a Litigation Expense Fund. The fact that there are no objections is strong evidence that the requested amount of fees and expenses, as well as the request for the establishment of a litigation expense fund, is reasonable. *See e.g., Vaccaro v. New Source Energy Partners L.P.*, No. 15 CV 8954 (KMW), 2017 WL 6398636, at \*8 (S.D.N.Y. Dec. 14, 2017) (“The fact that no class members have explicitly objected to these attorneys’ fees supports their award.”); *In re Banco Bradesco S.A. Sec. Litig.*, No. 1:16-CV-04155 (GHW), 2019 WL 6114713, at \*2 (S.D.N.Y. Nov. 18, 2019) (awarding attorneys’ fees and expenses due in part to the fact that “[n]ot a single Settlement Class Member has objected to the requested award of attorneys’ fees or Litigation Expenses”). Lead Counsel’s request for attorneys’ fees, for reimbursement of

Litigation Expenses, an award to Lead Plaintiff, and for the establishment of a Litigation Expense Fund should therefore be granted.

### III. CONCLUSION

For the reasons set forth above and as set forth in greater detail in the Opening Papers, Lead Plaintiff and Lead Counsel respectfully request that the Court grant the Motions and approve: (i) the Partial Settlements totaling \$29.8 million; (ii) the Plans of Allocation; (iii) Lead Counsel's request for attorneys' fees representing 25% of the \$29.8 million Gross Settlement Funds, reimbursement of Litigation Expenses of \$350,318.76 and an award to Lead Plaintiff in the amount of \$10,000 pursuant to 15 U.S.C. § 78u-4(a)(4); and (iv) the establishment of a Litigation Expense Fund in the amount of \$500,000.

Dated: September 6, 2022

Respectfully submitted,

**BERMAN TABACCO**

By: /s/ Nicole Lavallee  
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**Exhibit 1**

*In Re Aegean Marine Petroleum Network, Inc. Securities Litigation*, No. 1:18-cv-04993 -NRB

Opt-Outs/Exclusions

<b><u>Name</u></b>
James Edward Green