

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 INDIVIDUAL DEFENDANTS SETTLEMENTS; (II) FINAL CERTIFICATION OF THE SETTLEMENT CLASS; AND (III) FINAL APPROVAL OF THE PROPOSED INDIVIDUAL DEFENDANTS PLAN OF ALLOCATION; AND (B) LEAD COUNSEL’S MOTION FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

In accordance with the Court’s June 1, 2023 Preliminary Approval Orders (ECF Nos. 446-47), 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 Proposed Individual Defendants Settlements; (II) Final Certification of Settlement Class; and (III) Final Approval of The Proposed Individual Defendants Plan of Allocation (ECF Nos. 449-450, 453-456) (the “Final Approval Motion”).¹ Lead Counsel also submit this reply in further support of Lead Counsel’s Motion For Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF Nos. 451-453, 457) (the “Fee and Expense Application,” together with the Final Approval Motion, the “Motions”).

¹ All capitalized terms not otherwise defined herein have the same meaning as in the in the Notice of (I) Pendency of Class Action and Proposed Individual Defendants Settlements; and (II) Final Approval Hearing For The Individual Defendants Settlements, the Individual Defendants Plan of Allocation and Motion For Approval of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Detailed Notice”) (ECF No. 438-6).

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 \$11,949,999 combined Individual Defendants Settlements, the Plan of Allocation, the request for attorneys' fees, reimbursement of Litigation Expenses and an award to Lead Plaintiff URS pursuant to 15 U.S.C. § 78u-4(a)(4). There are no objections to any aspect of the Individual Defendants Settlements, no opposition to the Motions and there has been only one request for exclusion received specific to the Individual Defendants Settlements and one request for exclusion received related to the Auditors Settlements, putting the total requests for exclusion at only two (2) Settlement Class Members.² Accordingly, for the reasons set forth herein and in the Motions and supporting papers filed therewith on September 14, 2023 (*see* ECF Nos. 449-457, the "Opening Papers"), (i) the Individual Defendants Settlements and the corresponding Individual Defendants Plan 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 and an award to URS should be approved.

In accordance with the Preliminary Approval Orders, the Court-appointed Claims Administrator, A.B. Data Ltd. ("A.B. Data"), disseminated 40,678 copies of the Postcard Notice

² As stated in the Detailed Notice (at 2), requests for exclusion previously submitted for the Auditor Settlements will be automatically considered to be requests for exclusion to the Individual Defendants Settlements unless a Claim Form is submitted for the Individual Defendants Settlements. The individual who submitted a request for exclusion from the Auditors Settlement did not submit a claim form for the Individual Defendants Settlement and, thus, will also be excluded from the Individual Defendants Settlements. Lead Plaintiff will submit to the Court a revised [Proposed] Final Judgment and Order of Dismissal with Prejudice Regarding Spyros Gianniotis and a revised [Proposed] Final Judgment and Order of Dismissal with Prejudice Regarding Dimitris Melissanidis that will each include, as Exhibits thereto, a list of the two individuals to be excluded from these settlements and will also indicate that there have been no objections to the settlements.

and Detailed Notice to potential Settlement Class Members or their nominees.³ The Postcard Notice and the Detailed Notice informed recipients of, among other things, the essential terms of the Individual Defendants Settlements, including the Individual Defendants Settlement consideration, the deadlines to object, request exclusion or submit a claim form, and Lead Counsel’s intent to apply to the Court for attorneys’ fees not to exceed 25% of the Gross Individual Defendants Settlement Funds.⁴ The Detailed Notice further informed recipients of the Individual Defendants Plan of Allocation and Lead Counsel’s intent seek reimbursement of Litigation Expenses not to exceed \$120,000 (inclusive of a reimbursement of URS’s expenses). In addition, the Detailed Notice—along with copies of the Opening Papers—was made available on the case-specific website established for the Individual Defendants 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. ¶¶12, 14. Lead Counsel has also been informed that Individual 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 Postcard Notice, Summary Notice and Detailed Notice and on the settlement website, the deadline for objections and requests for exclusion was September 28, 2023. In response to the extensive, Court-approved

³ See Supplemental Declaration of Jack Ewashko Regarding (A) Mailing of Notice and Claim Form; and (B) Report on Requests for Exclusions and Objections, filed herewith (“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 September 14, 2023 (ECF No. 453-6) (“A.B. Data Decl.”), ¶¶4-11.

⁴ The “Gross Individual Defendants Settlement Funds” refers to the \$11,949,999 settlements, including the \$11 million settlement with Gianniotis (the “Gianniotis Settlement” or “Gianniotis Settlement Fund”) and the \$949,999 settlement with Melissanidis (the “Melissanidis Settlement” or “Melissanidis Settlement Fund”).

program for providing notice to the Settlement Class, *not a single member of the Settlement Class has objected to any aspect of the Individual Defendants Settlements, the Individual Defendants Plan of Allocation, the requested attorneys' fees and reimbursement of Litigation Expenses of the requested reimbursement to Lead Plaintiff*. Further, there has been only one request for exclusion specific to the Individual Defendants Settlements submitted by an individual claiming to be a member of the Settlement Class (*see* Suppl. A.B. Data Decl. ¶8) and one request for exclusion received related to the Auditors Settlements, putting the total requests for exclusion at only two (2) Settlement Class Members. Neither of these exclusion requests were from institutional investors and they represent a total of 13,300 shares, or, approximately 0.00030% of the more than 45 million average shares of Aegean common stock outstanding during the Settlement Class Period.

The Settlement Class's reaction is powerful evidence that confirms the fairness, adequacy and reasonableness of the Individual Defendants Settlements, the Plan of Allocation and 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).

II. ARGUMENT

A. The Reaction of the Settlement Class Strongly Supports Approval of the Individual Defendants Settlements and the Individual Defendants Plan of Allocation

The reaction of a class to a settlement is an important factor in assessing the fairness and adequacy of the Individual Defendants 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 Individual Defendants 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”) (citation omitted); *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 Individual Defendants 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 there are only two requests for exclusion following the mailing of 40,678 Postcard Notices and Detailed Notices and the publication of the Summary Notice further supports approval of the Individual Defendants 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.”).⁵

The absence of objections to the proposed allocation of settlement proceeds similarly warrants final approval of the Individual Defendants Plan 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 Individual Defendants Plan of Allocation.

⁵ As detailed in the Supplemental A.B. Data Declaration (at ¶8), Lead Plaintiff previously received one (1) request for exclusion in connection with the Auditors Settlement. Because that individual did not submit a Claim Form in connection with the Individual Defendants Settlements, he will also be excluded from the Individual Defendants Settlements.

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

As is true with the Individual Defendants 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 and award to Lead Plaintiff. 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 and an award to Lead Plaintiff 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 Individual Defendants Settlements totaling \$11,949,990; (ii) the Individual Defendants Plan of Allocation; (iii) Lead Counsel’s request for attorneys’ fees representing 25% of the \$11,949,999 Gross Settlement Funds, reimbursement of Litigation Expenses of \$78,308.88 and an award to Lead Plaintiff in the amount of \$5,000 pursuant to 15 U.S.C. § 78u-4(a)(4).

Dated: October 10, 2023

Respectfully submitted,

BERMAN TABACCO

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