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 INDIVIDUAL DEFENDANTS SETTLEMENTS; (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 settlements reached with the remaining Defendants in this Action,[1] Defendants Spyros Gianniotis ("Gianniotis") (Aegean Marine Petroleum Network, Inc.'s ("Aegean" or "Company") former Chief Financial Officer) and Dimitris Melissanidis ("Melissanidis") (Aegean's founder) (together, the "Individual Defendants"), which would fully resolve all remaining claims asserted in this Action.

More specifically, Lead Plaintiff seeks (a) preliminary approval of the proposed settlement with Gianniotis (the "Gianniotis Settlement") and the proposed settlement with Melissanidis (the "Melissanidis Settlement") (collectively, referred to herein as the "Individual Defendants Settlements"); (b) preliminary certification of a Settlement Class applicable to the Individual Defendants Settlements; (c) approval of the form and manner of the notice of the Individual Defendants Settlements and the Claim Form to the Settlement Class; (d) appointment of A.B. Data, Ltd. ("A.B. Data") as the Claims Administrator to administer the notice and claims process; and (e) scheduling of a Final Approval Hearing for the Court to determine whether to approve the Individual Defendants Settlements, the Individual Defendants Plan of Allocation and Lead Counsel's motion for fees and reimbursement of Litigation Expenses.

I. INTRODUCTION

Collectively, these Individual Defendants Settlements provide for the payment of $11,949,999 in cash. The Gianniotis Settlement provides that Gianniotis or his insurers will pay $11 million in cash in exchange for the release of the Gianniotis Released Claims again him and the Gianniotis Released Parties.[2]

[1] All capitalized terms not otherwise defined herein have the same meaning as 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"), a copy of which is attached as Exhibit A-1 to the April 21, 2023 Stipulation and Agreement of Settlement with Spyros Gianniotis (the "Gianniotis Stipulation") and Exhibit A-1 to the April 21, 2023 Stipulation and Agreement of Settlement with Dimitris Melissanidis (the "Melissanidis Stipulation"). The Gianniotis Stipulation and the Melissanidis Stipulation are attached as Exhibit 1 and Exhibit 2, respectively, to the Declaration of Nicole Lavallee ("Lavallee Decl." or "Lavallee Declaration"), filed herewith. Unless otherwise indicated, all paragraph references ("Compl. ¶") refer to the Complaint, all emphasis is added and all alterations, internal quotation marks and citations are omitted.

[2] The Gianniotis Released Parties include Gianniotis, E. Nikolas Tavlarios, John P. Tavlarios, Jonathan McIlroy, Peter C. Georgiopoulos, Yiannis N. Papanicolaou, Konstantinos D. Koutsomitopoulos, George Konomos and Spyridon Fokas, and Aegean and its subsidiaries or affiliates (the "Aegean Entities") and any other present or former officers, directors or employees of the Aegean Entities, and insurers and reinsurers of them, with the express exception of Defendant Melissanidis.

Lavallee Decl. ¶20. The Melissanidis Settlement provides that Melissanidis will pay $949,999 in cash in exchange for a release of the Melissanidis Released Claims against him and the Melissanidis Released Parties.[3] *Id*.

Both settlements were reached after an extensive investigation by Lead Counsel, hotly contested motions to dismiss, the filing of Lead Plaintiff's motion for class certification and substantial discovery. *See* Lavallee Decl. ¶9. Lead Counsel and Lead Plaintiff secured the Individual Defendants Settlements due to their persistent efforts over the course of over four years of litigation, including their efforts in the bankruptcy court, as discussed below. *Id.* ¶¶3-14. Based upon their experience, their evaluation of the strength and weaknesses of the claims, their recognition of the risks and expenses of protracted litigation and collection efforts here, Lead Counsel and Lead Plaintiff believe the proposed Individual Defendants Settlements represent excellent results, are in the best interests of the Settlement Class and warrant the approval of this Court. *Id*. ¶22.

Indeed, the risks and expenses of protracted litigation are particularly heightened here given that the Individual Defendants are individuals residing in Greece and that Aegean, which operated out of Greece, had filed for bankruptcy. Lavallee Decl. ¶¶23, 27. Moreover, even if Lead Plaintiff prevailed at trial, there exists additional risks associated with collecting directly from two foreign individuals who may have limited or inaccessible assets or from the available insurance given potential coverage issues and potential exhaustion of insurance proceeds defending the claims here and/or resolving other claims. *See* Lavallee Decl. ¶¶25-26.

If approved, these Individual Defendants Settlements would bring the total settlements for the Settlement Class to $41,749,999 as the Court previously granted final approval of settlements with PricewaterhouseCoopers Auditing Company S.A. ("PwC Greece") and Deloitte Certified Public Accountants, S.A. ("Deloitte Greece") (the "Auditor Defendants") for an aggregate amount of $29.8 million (the "Auditor Settlements"). Lavallee Decl. ¶¶29, 31; ECF Nos. 402 and 404. As discussed below,

[3] The Melissanidis Released Parties include Melissanidis and his respective present or former spouses, family members, heirs, agents, representatives, employees, executors, estates, administrators, successors and assigns and insurers, in addition to any entity that Melissanidis currently owns or controls either directly or indirectly.

this total recovery represents 11.9% of the maximum Section 10(b) damages in this Action, which far exceeds the median average for percentage recoveries in Private Securities Litigation Reform Act of 1995 ("PSLRA") settlements. Lavallee Decl. ¶30.

The Individual Defendants Settlements are also the result of arm's-length negotiations between highly experienced counsel with the assistance of two mediators. Lead Plaintiffs had two separate full-day mediation sessions before Michelle Yoshida, a respected and nationally recognized mediator, and the Gianniotis Settlement was reached at the end of the second full-day mediation with Ms. Yoshida. Lavallee Decl. ¶¶15-18. Although Lead Plaintiff did not reach a settlement with Melissanidis during these mediations with Ms. Yoshida, it ultimately reached an agreement with the able and significant assistance of Magistrate Judge Stewart D. Aaron, to whom this Court ordered the Action be referred to for the purpose of conducting a settlement conference. *Id.* ¶19.

II. BACKGROUND AND SUMMARY OF CLAIMS

This Action stems from an alleged long-running, multi-faceted fraudulent scheme to steal $300 million from Aegean and to artificially inflate the Company's earnings and revenues by reporting $200 million in worthless accounts receivable (the "Sham Receivables") with four shell companies (the "Shell Companies"), which concealed the theft from the public. *See, e.g.*, Compl. ¶¶126, 148-49.

Indeed, following an internal investigation by new management, Aegean announced on November 2, 2018 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 internal controls over financial reporting

("ICFR") 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. Compl. ¶¶7-8, 26, 27, 477-79. Just days later, on November 6, 2018, Aegean filed Chapter 11 bankruptcy proceedings in the U.S. Bankruptcy Court for the Southern District of New York, Case No. 18-13374 (MEW). Compl. ¶47.[4]

On October 30, 2018, the Court appointed URS as Lead Plaintiff and approved its selection of Berman Tabacco as Lead Counsel. Lavallee Decl. ¶4. On February 1, 2019, Lead Plaintiff filed its Complaint alleging violations of the federal securities laws against Melissanidis, Gianniotis, certain of Aegean's former officers and directors and certain auditors, including PwC Greece and Deloitte Greece. *Id*. ¶6. More specifically, Lead Plaintiff alleged that the Individual Defendants and others violated Sections 10(b), 20(a) and/or 20(b) of the Securities and Exchange Act of 1934 ("Exchange Act") by (a) significantly overstating Aegean's income and revenue; (b) overstating Aegean's assets and the strength of its balance sheet; (c) issuing false and misleading financial statements; (d) misleading investors concerning the adequacy of Aegean's ICFR; (e) misappropriating Company assets; and (f) issuing false and misleading statements in press releases, quarterly conference calls, registration statements for the October 2013 and January 2015 public offerings, and in certifications for the Company's Form 20-Fs, filed with the SEC. *See, e.g.*, Compl. ¶¶5, 310. Further, Lead Plaintiff alleges that the Individual Defendants engaged in illegal insider trading in violation of Section 20A of the Exchange Act.[5] *Id.*

Over the course of several weeks in Spring 2020, the various defendants filed motions to dismiss the Complaint. Lavallee Decl. ¶11; ECF Nos. 180-85, 187-89, 191-201, 210-14, 225-34. Lead Plaintiff filed five responses to these motions on June 30, 2020 and defendants filed their replies on August 20, 2020. Lavallee Decl. ¶11. On March 29, 2021, after full briefing and a hearing, the Court issued its decision on all defendants' motions to dismiss. ECF No. 293. While the Court granted motions to dismiss

[4] *See* Lavallee Decl. ¶8. Since then, Aegean's Litigation Trustee has been pursuing litigation against Melissanidis, who it revealed to be the "Former Affiliate" previously referred to in U.S. Securities and Exchange Commission ("SEC") filings. *Id.*

[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. Compl. ¶47.

for several named defendants, it denied in whole or in part the motions to dismiss filed by the Individual Defendants and the Auditor Defendants. *Id.*; *see also* Lavallee Decl. ¶12. In particular, while the Court dismissed the Rule 10b-5(a) & (c) and Section 20(a) and 20(b) claims against Melissanidis for lack of personal jurisdiction, it upheld the Section 20A insider trading claim. *Id.* Further, the Court upheld all claims alleged against Gianniotis. *See* ECF No. 293 at 135-38.

Since then, Lead Plaintiff has filed its motion for class certification and engaged in substantial discovery, which included two depositions, written discovery and numerous document productions. Lavallee Decl. ¶¶¶9, 14. Further, the Auditor Settlements, comprised of two settlements with PwC Greece and Deloitte Greece totaling $29.8 million, have since been finally approved by the Court. Lavallee Decl. ¶29; ECF Nos. 402 and 404.

Following this extensive discovery, protracted negotiations, including two separate full day mediation sessions as well as telephonic negotiations between the parties, Lead Plaintiff and Gianniotis reached an agreement in principle to settle all claims against Gianniotis as set forth in the Gianniotis Stipulation. Lavallee Decl. ¶¶15-18, 20. Similarly, following protracted negotiations, including two separate full day mediation sessions, telephonic negotiations and a settlement conference with Magistrate Judge Aaron, Lead Plaintiff and Melissanidis reached an agreement in principle to settle all claims against Melissanidis as set forth in the Melissanidis Stipulation. *Id.* ¶¶15-20.

III. PRELIMINARY APPROVAL OF THE INDIVIDUAL DEFENDANTS 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 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). As the Second Circuit has long recognized, the settlement of class actions is favored and encouraged. *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998).

As set forth below, an analysis of the requirements of Rule 23 and the *Grinnell* factors supports preliminary approval of the Individual Defendants 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 Individual Defendants Settlements Under Rule 23(e)(2)

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

As detailed below, Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class during the litigation and throughout the settlement negotiations. *See* Lavallee Decl. ¶¶3-21. 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. *Id.* ¶4. In this capacity, it takes its fiduciary duties seriously and carefully monitors the litigation by working closely with Lead Counsel. *Id.* ¶5. Moreover, staff counsel for URS were in frequent consultation with Lead Counsel at every material step of the settlement negotiations and attended every mediation and settlement conference. *Id.* ¶21.

Lead Plaintiff's claims are typical of the claims of the Settlement Class, and it has no antagonistic interests. *See generally* ECF Nos. 411-13. Indeed, Lead Plaintiff's interest in obtaining the largest possible recovery continues to be aligned with those of all other Settlement Class Members. *Id.* It 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 & Ex. 3.

Moreover, the Settling Parties have been actively litigating this Action since its commencement, during which time Lead Counsel have 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, the United Kingdom and other foreign countries; (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 the firm's 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; (j) the filing of Lead Plaintiff's motion for class certification and defending the deposition of its class certification expert; and (k) substantial discovery. *See, e.g.*, Lavallee Decl. ¶9.

Discovery efforts included, among other things, Lead Plaintiff serving three sets of document requests, one set of interrogatories and 15 subpoenas, engaging in dozens of meet and confers with defendants and third parties and reviewing over 187.052 gigabytes, reflecting 133,842 documents, received in discovery (including substantial productions from Aegean's successor and its Litigation Trustee), some of which are in Greek, deposing one non-party and defending one of its experts' deposition. Lead Plaintiff has also produced 13,800 pages of documents in response to the requests served on it. Lavallee Decl. ¶14.

In addition, and as described in more detail in the Lavallee Declaration, 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 Individual Defendants—and obtained a Court-approved carve-out of the putative class members' claims from the proposed sweeping release language. Lavallee Decl. ¶10. In addition, Lead Counsel also obtained modifications to the plan of reorganization preserving the class's right to assert its claims to the proceeds from the directors and officers ("D&O") policies, which would be applicable to claims against Gianniotis. *Id.* ¶10(a). Ultimately, at Lead Counsel's direction and oversight, bankruptcy counsel successfully: (a) opposed Aegean's efforts through the Aegean Bankruptcy to release all investors' claims under the federal securities laws, which would have included those against non-debtors such as the Individual Defendants; (b) negotiated and ultimately obtained bankruptcy court approval of a complete carve-out of Settlement Class Members' claims from the proposed sweeping release language; (c) obtained modifications to the plan of reorganization, preserving Lead Plaintiff's right to assert its claims to the proceeds from the D&O policies, which insurance would be applicable to claims against certain of Aegean's officers and directors, such as Gianniotis; and (d) preserved the rights of Lead Plaintiff, on behalf of the Settlement Class, to pursue and obtain discovery after confirmation of the Chapter 11 Plan. *Id.* ¶10(c).

The above-described efforts have resulted in total recoveries of over $41.7 million for the Settlement Class, or 11.9% of total Section 10(b) damages, including $11,949,999 from the Individual Defendants. Lavallee Decl. ¶30. This is a significant recovery particularly when compared to the risks

and expenses of likely protracted litigation and collectability challenges even if Lead Plaintiff were to prevail at trial. *Id*. Indeed, as discussed more fully below, each of the Individual Defendants have asserted numerous challenges/affirmative defenses to the merits, potential damages and class certification.

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

Prior to negotiating the Individual Defendants Settlements, Lead Plaintiff and Lead Counsel expended considerable efforts investigating the Individual Defendants' liability, successfully overcame arguments presented in the Individual Defendants' motions to dismiss, engaged in significant discovery and worked with auditing and damages consultants and international law attorneys to develop the claims against the Individual Defendants, which placed them in the best possible position to engage in meaningful settlement discussions with counsel for Gianniotis and Melissanidis. *See* Lavallee Decl. ¶¶9-14. Thus, the Settling Parties were well-equipped to consider the strengths and weaknesses of their positions before negotiating the Individual Defendants Settlements. *See*, *e.g.*, *Schuler v. Medicines Co.*, 2016 WL 3457218, at *7 (D.N.J. 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).

Further, the Individual Defendants Settlements were reached following extensive arm's-length negotiations.

The Gianniotis Settlement was reached after two separate full-day mediation sessions before Michelle Yoshida, a national-recognized mediator with vast experience in mediating PSLRA actions, as well as telephonic negotiations between the parties over the course of eight months. *See* Lavallee Decl. ¶¶15-18, 20.

The Melissanidis Settlement was likewise only reached after extensive arm's-length negotiations, through the mediation sessions before Ms. Yoshida, several informal efforts to resolve the case, several telephonic negotiations overseen by Magistrate Judge Stewart D. Aaron and a settlement conference before Judge Aaron, which ultimately culminated in the acceptance of a mediator's proposal by Judge

Aaron. Lavallee Decl. ¶¶15-17, 19-20.

Finally, as Lead Counsel with decades of experience litigating complex securities class actions, Berman Tabacco's opinion that the settlements are fair and reasonable is entitled to considerable weight. *See* Lavallee Decl. ¶4 & Ex. 3. *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 Individual Defendants were well-represented by nationally recognized counsel with deep experience in securities class action suits.

Thus, the fact that the Individual Defendants Settlements were the result of arm's-length negotiations between counsel with extensive experience in complex securities litigation and reached with the assistance and approval of a mediator and a Magistrate Judge, merits approval.

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 Individual Defendants' total settlement amount ($11,949,999) represents an excellent result for the Members of the Settlement Class given the attendant risks associated with continued litigation and the unique issues stemming from the fact that Aegean is bankrupt, unique issues with insurance coverage and collectability, the fact that many documents and witnesses are located in Greece, the United Kingdom and other foreign countries and the fact that these Individual Defendants Settlements brings the total amount recovered for the class to over $41.7 million.

(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 factor overlaps with 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).

Lead Plaintiff and Lead Counsel have considered the risks of litigating a complex securities class action generally, 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. *Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *10 (S.D.N.Y. Oct. 16, 2019) (complex securities class actions are "notably difficult and notoriously uncertain").

Moreover, while Lead Plaintiff and Lead Counsel believe that the claims asserted against the Individual Defendants have merit, they recognize the particularly heightened risks and challenges to establishing liability against the Individual Defendants and, even if a favorable judgment is obtained, collecting from these foreign individuals.

With respect to the merits, the Individual Defendants have contended in their motions to dismiss and answers, *inter alia*, that Lead Plaintiff cannot establish their liability or damages for a variety of reasons.

In his answers and throughout the litigation, Gianniotis has claimed that he, *inter alia*: (a) had no knowledge of the fraudulent conduct at issue or the red flags pertaining to the fraud; (b) that the Settlement Class's damages resulted from acts or omissions of persons or entities over which Gianniotis had no control; (c) that he acted in good faith and did not act with the requisite intent; and (d) that he did not proximately cause or contribute to any damages and that any damages incurred were caused by intervening acts of others. *See*, *e.g.*, Answer, ECF No. 304 at ¶248; 7th, 8th, 9th, 10th, and 12th Affirm. Defenses). Gianniotis has claimed and/or will also likely claim that Lead Plaintiff cannot prove that he was in any way involved in or knew of the Sham Receivables or the Shell Companies. Lavallee Decl. ¶25. Indeed, Lead Plaintiff assumes Gianniotis will claim that the evidence shows that his responsibilities at Aegean focused on liaising with banks and providing support for capital raises such that the responsibility for Aegean's financial reporting fell almost exclusively to others, such as Aegean's former Comptroller. *Id.* Further, similar to arguments raised by certain other dismissed officer and director

defendants early in the litigation, Lead Plaintiff also assumes Gianniotis will argue that he was entitled to rely on the professional work of Aegean's outside auditors who cleared Aegean's financials during the Class Period. *Id*. Gianniotis will also likely argue that the evidence will show that, in his role as the Company's point person with Aegean's creditors, he honestly portrayed Aegean's financial strength and viability, and candidly assured them that the accounts receivables at issue in this litigation—the Sham Receivables—were not part of the Company's borrowing base—*i.e.*, they were not pledged against the Company's borrowing. *Id*. Indeed, Gianniotis has advanced and is likely to advance arguments that he too was misled and that his reliance on others was reasonable under the circumstances. In addition, Gianniotis is likely to argue that much of Lead Plaintiff's evidence is inadmissible or otherwise relies on documents and witnesses that lack credibility. *Id*. Moreover, issues related to loss causation and damages would come to a battle of experts with all the risks inherent to that.

Melissanidis has claimed, *inter alia*, that he did not use material, non-public information about Aegean in transacting in Aegean stock and that putative class members did not trade contemporaneously with, or in the same securities, as Melissanidis. *See*, *e.g.*, ECF No. 303 at 4th, 5th, and 7th Affirm. Defenses. Melissanidis is also likely to argue that the most damning of Lead Plaintiff's evidence is inadmissible for a variety of reasons, and that Lead Plaintiff cannot show that he owned, controlled or otherwise had any influence over Aegean or the various counterparts that allegedly benefitted from the misappropriation. Lavallee Decl. ¶26. Melissanidis has also argued that he relinquished control and stepped away a management role at Aegean in 2006 and that the Company's public statements implicating him in the fraud represent nothing more than blame shifting for years of internal mismanagement. *See*, *e.g.*, ECF No. 200 at 4-5. He also disputes that the Settlement Class suffered any damages and that even if they did, the amount of such damages related to his alleged insider trading are negligible. *See, e.g*, ECF No. 420 at 3, 7. Melissanidis also opposed class certification, arguing that Lead Plaintiff's proposed Class definition is far too broad to be certified, that much of the proposed Class would not have standing under the recent Supreme Court case *TransUnion LLC v. Ramirez,* 141 S. Ct. 2190 (2021), and that determining each claimant's standing and damages would require a claimant-by-claimant inquiry. *See*, *e.g.*, *id.* at 6-16. As to Lead Plaintiff's allegations that he committed a primary act in violation of the Exchange Act,

Melissanidis has argued that Lead Plaintiff will be unable to show that he was responsible for any of the misstatements made in Aegean's SEC filings, that Lead Plaintiff has no evidence showing the market relied on his alleged wrongdoing and that Lead Plaintiff cannot point to any evidence showing that he controlled or had any influence over Aegean and/or the individuals and entities who allegedly made off with misappropriated Company cash and assets. Lavallee Decl. ¶26.

Lead Plaintiff and Lead Counsel also considered the substantial risks, burdens and expenses involved in further litigation of this Action through trial and appeals against the Individual Defendants, including that, while Lead Plaintiff has obtained, reviewed and analyzed substantial documents, challenges still exist to rendering the evidence admissible at trial given that Aegean was a Greek entity that declared bankruptcy, the documentary evidence includes Greek documents located in Greece, the United Kingdom and other foreign countries, and that many witnesses, including the Individual Defendants, are abroad. Further, Individual Defendants and others have asserted privileges under Europe's recently enacted privacy and security law, the General Data Protection Regulation (GDPR). Lavallee Decl. ¶¶22-24, 27. *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *9 (S.D.N.Y. Nov. 30, 2021) (three-year litigation involving foreign defendant among factors weighing in favor of settlement where "settlement [brought] to a close litigation that could have lasted several more years and costs hundreds of thousands of dollars in attorneys' fees and expenses …"); *In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at *10 (E.D.N.Y. Sept. 18, 2007) (adding to the complexity and weighing in favor of settlement was fact that defendant and companies with which defendant did business under allegedly fraudulent scheme were located overseas); *In re Indep. Energy Holdings PLC, Inc.,* 2003 WL 22244676, at *8 n. 19 (S.D.N.Y. Sept.29, 2003) (serious contingency risk because defendant was a foreign company in receivership at outset of litigation); *Oasmia Pharm.*, 2021 WL 1259559, at *5 (adding to complexity and uncertainty was the fact that the defendant was a foreign company).

Moreover, even if Lead Plaintiff prevailed at trial, there exists significant uncertainty and collection challenges. Since the Individual Defendants are individuals, insurance is typically the main source of collection. However, Melissanidis has consistently maintained that he had no insurance coverage and, as a resident of Greece, there were unique challenges to collectability of any potential

judgment. *Lea*, 2021 WL 5578665, at *12 (among factors favoring settlement were risks of collecting any judgment from a Chinese entity and limited insurance). Moreover, there were unique issues regarding D&O insurance coverage and potential defenses to coverage that further complicated the settlement negotiations with Gianniotis, and there is no indication that he has the assets to satisfy a judgment. *See* Lavallee Decl. ¶26. Indeed, there exists risks regarding the potential exhaustion of insurance proceeds defending the claims and/or resolving third parties claims where there are government investigations and a Litigation Trustee tasked with pursuing claims belonging to Aegean. *In re Am. Bank Note Holographics, Inc*., 127 F. Supp. 2d 418, 424 (S.D.N.Y. 2001) ("The pendency of the bankruptcy … added layers of complexity to an already complex matter . … [The settling defendant]'s bankruptcy meant that others were competing for the same limited pot of assets.").

In addition, settlement negotiations revealed that there were several unique issues regarding D&O insurance coverage and unusual potential defenses to certain coverage that significantly complicated the negotiations with Gianniotis, and there was no indication that he has the assets to satisfy a judgment here. Lavallee Decl. ¶25. *See also Lea*, 2021 WL 5578665, at *9 (weighing in favor of settlement was the fact that most defendants, documents and witnesses were overseas which would make continued litigation "extremely difficult and costly"); *Denney v. Jenkins & Gilchrist,* 2005 WL 388562, at *28 (S.D.N.Y. Feb.18, 2005) (absent class settlement, vast majority of class members would have recovered nothing in light of significant issues regarding defendants' insurance coverage).

Against this backdrop, Lead Plaintiff and Lead Counsel believe that the Individual Defendants Settlements provide a substantial benefit now: namely, the payment of $11,949,999 (less the various deductions described in the Detailed Notice), which adds to the $29.8 million in settlements already collected for the Settlement Class. Lavallee Decl. ¶¶29, 31. Altogether, the settlements in this case total $41,749,999 or 11.9% of total damages, which is particularly significant in comparison with typical securities settlement amounts. *See* Lavallee Decl. ¶30 & Ex. 4, at 9 (Cornerstone Research data showing that the median settlement as a percentage of damages in cases involving accounting issues between 2013 and 2022 was between 5.1% and 7.6%). Moreover, the Second Circuit's median recovery over the period of 2013 to 2022 is 5.0% of damages according to the same report. *Id*. ¶30 & Ex. 4, at 19. Thus, when

compared to the risk that Lead Plaintiff will be able to prevail after trial and appeals and collect upon any judgment, possibly years in the future, the Individual Defendants Settlements are fair, reasonable and adequate. *Id.* ¶30.

(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 Jack Ewashko of A.B. Data, Ltd. Regarding Notice and Administration ("A.B. Data Decl." or "A.B. Data Declaration") (submitted herewith as Lavallee Decl. Ex. 5), the method and effectiveness of the proposed notice and claims administration process meets the dictates of Rule 23(c)(2)(C)(ii). Given that both the Gianniotis and Melissanidis Settlement Classes are identical to the Auditor Settlement Class and the fact that Lead Counsel and the Claims Administrator have already undertaken significant efforts to notify the Settlement Class of the Action via the Auditor Settlements, the notice plan builds upon the extensive efforts previously undertaken to identify and notify the Settlement Class. Lavallee Decl. ¶36; A.B. Data Decl. ¶¶5, 7. It includes direct notice via postcard (the "Postcard Notice") to all those persons who were previously identified as potential Settlement Class Members with respect to the Auditor Settlements, dissemination of the Detailed Notice to A.B. Data's "Nominee List"[6] as well as the publication of the Summary Notice in *Investor's Business Daily*. *See* A.B. Data Decl. ¶8. In addition, the same settlement-specific website used for the Auditor Settlements will be maintained where key documents will be posted, including the Complaint, Individual Defendants Stipulations, Detailed Notice, Claim Form, and the Gianniotis and Melissanidis Preliminary Approval Orders. *Id.* ¶9.

The proposed Postcard Notice, Detailed Notice and Summary Notice were drafted in coordination with A.B. Data, which has substantial experience and expertise related to the form and content of class action notices and in the implementation and management of the claims process in complex class action litigation such as this one. *See* A.B. Data Decl. ¶4. Each of these forms of notice will provide members of the Settlement Class with basic information about the Action and the proposed Individual Defendants

[6] As noted in the A.B. Data Declaration, dissemination of the Detailed Notice will still be sent to A.B. Data's proprietary "Nominee List"—a database containing names and mailing addresses and, in some instances, email addresses, of approximately 4,000 banks, brokers, and other nominees. A.B. Data Decl. ¶¶5, 8, 14-16.

Settlements and explain how to obtain additional information. *See id.* ¶11. In addition, the Summary Notice, once published, is reasonably structured to reach banks, brokers and other nominees, as well as Members of the Settlement Class who may not have received notice in the Auditor Settlements and/or pursuant to the Postcard Notice, to notify them of the existence of the litigation and the Individual Defendants Settlements, and guide them on how to obtain additional information. *See id.* ¶17. While a claim previously submitted in the Auditor Settlements does not need to be re-submitted as it will automatically be considered for recovery in the Individual Defendants Settlements, the Postcard Notice, Detailed Notice and Summary Notice will direct individuals to the Settlement Website to obtain a copy of the Claim Form for any new claims to be submitted in the Individual Defendants Settlements. *See id.* ¶¶13, 20.

Courts have routinely approved notice via postcard in similar circumstances. *See, e.g., In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-MD-2262 (NRB), ECF No. 3578 (S.D.N.Y. Nov. 7, 2022) (preliminarily approving settlement and approving postcard notice); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 183 (S.D.N.Y. 2014) (finding that a postcard notice, which provided the basic settlement information and instructions for settlement class members to access the highly-detailed long notice on the Internet complied with due process); *In re Mutual Funds Inv. Litig.*, 2010 WL 2342413, at *6-7 (D. Md. May 19, 2010) (approving postcard notice); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 973 (N.D. Ill. 2011) (holding that postcard notice was "more than sufficient" despite not providing detailed information about class members' options and deadlines because website and claims administrator via phone did).

The claims process is also effective in that it does not require Settlement Class Members who previously submitted a Claim Form to resubmit, does not require a Class Member to resubmit a request to opt out (but may opt back in for the Individual Defendants Settlements) and provides for one standard Claim Form which requests the information necessary to calculate a claimant's claim amount pursuant to the Individual Defendants Plan of Allocation. A.B. Data Decl. ¶13.

(c) Lead Plaintiff's Proposed Award of Attorneys' Fees and Reimbursement of Litigation Expenses is Reasonable

Pursuant to Rule 23(C)(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 Individual Defendants Settlement Amount plus interest and reimbursement of Litigation Expenses up to $120,000, which will include up to $10,000 pursuant to 15 U.S.C. §78u-4(a)(4). 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. ¶37.

The Court previously allowed Lead Counsel to establish a $500,000 Litigation Expense Fund from the Auditor Settlements to defray some of the expenses for the continued prosecution of the claims against the Individual Defendants. Lavallee Decl. ¶38. Lead Counsel has only used $250,657.58 of this amount so the balance will return to the Settlement Class. *Id*.

Lead Counsel will submit a detailed fee and expense request prior to the deadline for members of the Settlement Class to file objections or requests for exclusion, including a full accounting of the Litigation Expense Fund, well before the Final Approval Hearing.

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").

With respect to the timing of the payment, the Individual Defendants Stipulations provide that any attorneys' fees and expenses awarded shall be paid to Lead Counsel upon execution of the Orders and Final Judgments and order granting such fees and expenses.

(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. Lead Plaintiff has

entered into a separate, standard supplemental agreement with each Individual Defendant. Both agreements specify that if Settlement Class Members opt out of the settlement such that the number of Aegean Securities represented by such opt outs equals or exceeds a certain amount, the Individual Defendant shall have the option to terminate the settlement. *See*, *e.g.*, Lavallee Decl. Ex. 1 (Gianniotis Stipulation), at ¶13.1; *id*. Ex. 2 (Melissanidis Stipulation), at ¶13.1.[7]

Agreements of this sort and keeping them confidential is typical in class settlements and Lead Plaintiff will submit this agreement *in camera.*[8] 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).

The Individual Defendants Plan 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. ¶¶32-34. The Individual Defendants Plan of Allocation was prepared with the assistance of Lead Plaintiff's damages consultant and is 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 Individual Defendants Plan of Allocation apportions the Gianniotis Net Settlement Fund and the Melissanidis Net Settlement Fund equitably among Settlement Class Members who allegedly had claims against the Individual Defendants based on when they purchased, acquired and/or sold Aegean

[7] These separate agreements have no impact on one another. In other words, in a hypothetical situation where there were sufficient opt outs of the Gianniotis settlement to trigger its termination, that would have no impact on the Melissanidis settlement, and vice versa.

[8] *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.*, 2021 WL 1259559, at *7.

Securities, and were created without consideration of Lead Plaintiff's individual transactions. Lavallee Decl. ¶33. This method ensures that Settlement Class Members' recoveries are based upon the relative losses they sustained due to the alleged misconduct by the Individual Defendants, and eligible Settlement Class Members will receive a *pro rata* distribution from the Gianniotis Net Settlement Fund and the Melissanidis 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).

Moreover, the Individual Defendants Plan of Allocation is the same as the one approved by the Court in connection with the Deloitte Greece Settlement. Lavallee Decl. ¶32. Thus, the Court has already ruled that it applies 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 Individual Defendants Settlements

The second *Grinnell* factor—the reaction of the Class—is not yet ripe, as the Individual Defendants Settlements have not yet 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).

In this case, Lead Counsel exhausted considerable resources (i) investigating the claims and defenses at issue, including culling through SEC filings, articles, analysts' reports, filings in domestic and foreign litigation and 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; and (ii) briefing motions and oppositions to motions to dismiss; (iii) filing Lead Plaintiff's class certification motion and the defending the deposition of its class certification expert; and (iv) engaging in substantial discovery, including, among other things, reviewing 187.052 gigabytes, reflecting over 133,842 documents, produced by the parties and nonparties, some of which are in Greek and deposing one non-party. Lavallee Decl. ¶¶9, 14. Further, Lead Counsel consulted with consultants in the fields of accounting, market efficiency, loss causation, damages and international privacy law. *Id*. ¶¶9, 26, 30. Additionally, Lead Counsel has reviewed the insurance policies at issue here. *Id*. ¶25.

Thus, prior to negotiating the Individual Defendants Settlements, Lead Plaintiff and Lead Counsel expended considerable efforts investigating the Individual Defendants' liability by working with accounting consultants, successfully overcame arguments presented in the Individual Defendants' motions to dismiss and worked with damages consultants and international law attorneys both for the purpose of opposing the motion and for the purpose of placing Lead Plaintiff and Lead Counsel in the best possible position to engage in meaningful settlement discussions with counsel for Gianniotis and Melissanidis. *See* Lavallee Decl. ¶¶3-14.

Thus, at the time of the settlement, the parties were well-positioned to weigh the strengths and weaknesses of their respective positions before agreeing to settlement. *See* Lavallee Decl. ¶¶22-31; *Schuler*, 2016 WL 3457218, at *7 ("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).

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 would prevail on its motion 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. Individual Defendants' Ability To Withstand A Greater Judgment

As individuals, it is unclear whether Gianniotis or Melissanidis may be able to withstand a greater judgment and/or whether Lead Plaintiff would be able to collect upon a judgment from either (the seventh *Grinnell* factor). Lavallee Decl. ¶¶25-26. Indeed, as to Gianniotis, there are unique issues regarding D&O insurance coverage and potential defenses to coverage. Lavallee Decl. ¶25; *Denney*, 2005 WL 388562, at *28 (significant issues regarding defendants' insurance coverage favored global settlement). As to Melissanidis, there was no available insurance and there are unique challenges to collectability of any potential judgment again him given his status as a Greek resident.

5. The Individual Defendants 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 settlements. 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.

As it relates to the claims against Gianniotis, Lead Plaintiff's damages consultant estimates that total alleged Section 10(b), 20(a) and 20(b) damages for purchases of the Aegean common stock and notes were approximately $349.6 million for the entire Settlement Class Period and this number could be far less depending on various scenarios. *See* Lavallee Decl. ¶30. Under the well-accepted "loss avoided" and "artificial inflation per share" methods for determining Section 20A damages, Lead Plaintiff's damages consultant determined that that Melissanidis's insider trading profits and, thus, potential 20A damages, could be as high as between $72 million and $98.2 million. *Id*. ¶26. However, Melissanidis has proffered

that 20A damages must be assessed by calculating the losses suffered by the class members and, thus, requires a claimant-by-claimant inquiry which would limit recovery to those class members who held through a partial disclosure as well as traded contemporaneously with Melissanidis, that Lead Plaintiff's proposed model must consider whether class members suffered actual economic damages and that each claimant's damages must be offset by any prior recovery or countervailing gains. *Id.*; ECF No. 420 at 16. Melissanidis has also argued that investors who sold Aegean Securities after the stock price declined but before purported corrective disclosures were made did not suffer losses that are "fairly traceable" to Mr. Melissanidis's alleged wrongdoing and, thus, would not be entitled to any recover under Section 20A. *Id*. at 7-11. If Melissanidis prevailed on this point, the Section 20A damages could be a fraction of what Lead Plaintiff calculated and Settlement Class Members could be "subject to the potentially meritorious defense that [they] suffered [little to] no economic loss attributable to [Melissanidis's] alleged wrongdoing." *See Gordon v. Sonar Cap. Mgmt. LLC*, 92 F. Supp. 3d 193, 205 (S.D.N.Y. 2015).

Therefore, in light of the potential risks, including those noted above with regard to differing damages calculations, collectability, insurance coverage and maintaining a securities fraud case against a foreign defendant for acts that occurred primarily overseas at a now bankrupt company, the $11,949,999 total Individual Defendants Settlement Amount represent two excellent settlements. *See* Lavallee Decl. ¶¶29-31.

Moreover, the $11,949,999, together with the previously approved Auditor Settlements (*see* ECF Nos. 402 and 404), brings the damages recovered for the Settlement Class to approximately $41.7 million or, 11.9%, of total Section 10(b) damages. Lavallee Decl. ¶30. This is well within the reported average 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 2013 and 2022 was between 5.1% and 7.6%. *See id.* & Ex. 4, at 9. Cornerstone Research also estimates that median settlements as a percentage of "simplified tiered damages" in Rule 10b-5 cases since 2013 have ranged between 4.1% and 4.3% for cases with estimated damages of between $250 million to $499 million (*id*. at 6) and that the median settlement dollars for all securities fraud cases from 2018 to 2022 following rulings on motions to dismiss and the

filing of a class certification motion, but before a ruling on class certification, is $17 million. *Id*. at 14. Moreover, the Second Circuit's median recovery over the period of 2013 to 2022 is 5.0% of damages according to the same report. *Id*. at 19.

In sum, the Settling Parties have demonstrated significant uncertainties and risks in continuing this litigation that lean in favor of approving the Individual Defendants Settlements. Thus, the $11,949,999 cash recovery now, bringing the total recovery $41,749,999, weighs in favor of preliminary approval of the Individual Defendants Settlements.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT CLASS FOR THE PURPOSE OF THE PROPOSED INDIVIDUAL DEFENDANTS 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). Significantly, in its Orders and Final Judgments issued in connection with the Auditor Settlements, the Court certified, for settlement purposes, the same Settlement Class Lead Plaintiff seeks to certify here. ECF Nos. 402 and 404. Thus, in the interest of judicial economy, Lead Plaintiff refers the Court to those prior orders and to Lead Plaintiff's moving papers filed in connection with the Auditor Settlements for a detailed account of the arguments supporting certification of the Settlement Class. ECF Nos. 371-72, 375, 402 and 404.

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 Individual Defendants Settlements. *See* Lavallee Decl. ¶¶36-37 & Ex. 5. A.B. Data is the Court approved administrator overseeing the Auditor Settlements. *See* ECF Nos. 361 and 362. 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. ¶4 & Ex A.

Lead Counsel further requests that the Court approve the method of class notice described in the A.B. Data Declaration, which includes, *inter alia*, direct notice to previously identified Settlement Class Members via Postcard Notice, the maintenance of the existing Settlement Website where relevant case and settlement documents will be posted, and the maintenance of the existing toll-free number used to answer Settlement Class Member inquiries. A.B. Data Decl. ¶¶7-22.

Given the Class has already received notice in connection with the Auditor Settlements and the Gianniotis Settlement, Lead Counsel seeks to minimize notice costs to the Settlement Class by utilizing a Postcard Notice where possible, which will provide the basic Settlement information and instructions for Settlement Class Members to access the comprehensive Detailed Notice on the already existing Settlement Website. A.B. Data Decl. ¶11; *see, e.g.*, *Advanced Battery*, 298 F.R.D. at 183 (approving use of postcard notice and collecting cases holding postcard notice was "more than sufficient" under the circumstances). Moreover, in a further effort to reduce costs and reduce the burden on Settlements Class Members, the Individual Defendants Settlements provide that Claims previously submitted in the Auditor Settlements will be accepted here such that no further Claim need be submitted.

As required by the PSLRA, the Detailed 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 Detailed Notice; (e) a brief statement explaining

the reasons why the Settling Parties are proposing the Individual Defendants 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 (Detailed Notice). This information is also provided in a format that is accessible to the reader. In addition, the Detailed Notice advises recipients that they have the right to object to any aspect of the Individual Defendants Settlements, the Individual Defendants Plan of Allocation and/or the application for attorneys' fees and reimbursement of Litigation Expenses. Furthermore, the Detailed Notice provides recipients with the contact information for the Claims Administrator and Lead Counsel. Of significance here, courts in this and other districts have held that providing notice to a settlement class via postcard notice is sufficient so long as it contains basic settlement information and instructions for settlement class members to access the more detailed Long (Detailed) Notice on the settlement website. *See, e.g.*, *Advanced Battery*, 298 F.R.D. at 183; *Mutual Funds Investment*, 2010 WL 2342413, at *6-7 (approving postcard notice); *AT & T*, 789 F. Supp. 2d at 973 (holding that postcard notice was "more than sufficient" despite not providing detailed information about class members' options and deadlines because website and claims administrator via phone did).

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 Gianniotis Preliminary Approval Order and Melissanidis Preliminary Approval Order.

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Dated: April 21, 2023

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**
Notice mailed to the Settlement Class (the "Notice Date")	21 calendar days after the Preliminary Approval Order are entered
Summary Notice published	No later than the Notice Date
Date by which to file final papers in support of the proposed Individual Defendants Settlements, Individual Defendants Plan of Allocation, and the application for attorneys' fees and reimbursement of Litigation Expenses	35 calendar days prior to the Final Approval Hearing
Last day for Settlement Class Members to opt-out or object to the proposed Individual Defendants 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 Individual Defendants Settlements, Individual Defendants Plan of Allocation and/or the application for attorneys' fees and reimbursement of Litigation Expenses	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 Order, or at the Court's earliest convenience thereafter