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 COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Pursuant to Federal Rules of Civil Procedure 23(h) and the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4), Lead Counsel Berman Tabacco respectfully submits this Memorandum of Law in Support of its Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses[1] ("Fee and Expense Application").

I. INTRODUCTION

Lead Counsel and Lead Plaintiff Utah Retirement Systems ("URS") have achieved excellent settlements with Spyros Gianniotis ("Gianniotis") and Dimitris Melissanidis ("Melissanidis") (collectively, the "Individual Defendants") that together provide $11,949,999 for the Settlement Class, which, with the previously approved settlements with the Auditor Defendants, brings the total recovery for the Settlement Class to $41,749,999.[2]

Lead Counsel respectfully applies for (a) an award of attorneys' fees in the amount of 25% of the Gross Settlement Funds,[3] for a total of $2,987,499.75, plus interest, and reimbursement of $78,308.88 in expenses that were and will be reasonably and necessarily incurred by Lead Counsel in prosecuting this Action against the Individual Defendants on behalf of the Settlement Class after June 30, 2022 and for travel, lodging and meal expenses since inception;[4] and (b) an award to Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4) in the amount of $5,000.

This is Lead Counsel's second Fee and Expense Application filed in the Action. On September 14, 2022, in connection with the final approval of settlements reached with PricewaterhouseCoopers Auditing Company S.A. ("PwC Greece") and Deloitte Certified Public Accountants, S.A. ("Deloitte

[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 Plans of Allocation and Motion For Approval of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Detailed Notice") (ECF No. 438-6), or in the supporting Declaration of Nicole Lavallee ("Lavallee Decl." or "Lavallee Declaration"), filed contemporaneously herewith. Unless otherwise indicated, all emphasis is added and all alterations, internal quotation marks and citations are omitted.

[2] A motion for final approval of these Individual Defendants Settlements is being filed concurrently herewith.

[3] The "Gross 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").

[4] Lead Counsel had stated in its fee motion for the Auditor Settlements (defined below) that it would wait to seek reimbursement of such expenses until a later settlement. ECF No. 374 at 22; Lavallee Decl. ¶¶112, 114.

Greece") (the "Auditor Settlements"), the Court awarded Lead Counsel and Lead Plaintiff its requested fees and expenses covering the period of inception to June 30, 2022. ECF No. 403. The present motion seeks an award of attorneys' fees for the period of July 1, 2022 to August 31, 2023 and the reimbursement of litigation expenses that were or will be incurred after June 30, 2022 as well as expenses for travel, lodging and meals from inception.

The Court's previous fee award represented 25% of the Auditor Settlements and, if granted, the present motion and request for 25% of the Individual Defendants Settlement Funds would result in a 25% fee award of the global amounts achieved in all the settlements. This amount is well within the range of fees awarded by district courts throughout the Second Circuit and would properly compensate counsel for its efforts prosecuting and resolving the claims in this Action and furthers an essential purpose of the federal securities laws.

The requested fee and expense award here is fair and reasonable. The prosecution of this Action has been undertaken on an entirely contingent basis and Lead Counsel has incurred $5,741,241.50 of lodestar from July 1, 2022 through August 31, 2023. The requested percentage is fully consistent with the fee percentages awarded in comparable complex securities class actions cases and results in a negative multiplier of 0.52 for the requested period, and an overall negative multiplier of 0.68 as applied to the cumulative lodestar calculated from inception to August 31, 2023. The requested fee is also reasonable given Lead Counsel's efforts, the magnitude and complexities of this Action, the litigation risks in bringing and prosecuting this complex Action and the result achieved. Since June 30, 2022, Lead Counsel has incurred $75,944.24 in expenses and estimates that it will incur an additional $2,364.64 in expenses from the time the present motion is filed on September 14, 2023 to November 2023. Lavallee Decl. ¶¶13, 103, 107, 111-117 & Ex. 1-2.[5] The expenses incurred are the typical expenses normally expended in litigation and reimbursed from common funds.

Importantly, Lead Counsel's fee request is based on an ex-ante fee agreement negotiated by

[5] Moreover, Lead Counsel also spent $256,110.33 in expenses out of the Litigation Expense Account established by Court order on Sept. 14, 2022 (ECF No. 403 at 4, ¶11) and Lead Counsel previously reported these expenditures *in camera* on Jan. 31, 2023 and April 27, 2023 (ECF Nos. 424 & 440). The balance of that $500,000 plus all interest incurred ($10,386.53) has been returned 50/50 to each of the Auditor Settlement Funds. Lavallee Decl. ¶119 & Ex. 3.

Lead Plaintiff, a sophisticated institutional investor with experience negotiating fees with counsel and evaluating fee requests. URS is the public pension system for Utah public employees and retirees and is responsible for managing over $50 billion in assets. Having expended significant time overseeing this litigation and Lead Counsel's efforts from July 1, 2022 to August 31. 2023, URS has endorsed the requested fee as fair and reasonable.[6] Moreover, the reaction of the Settlement Class to date has been overwhelmingly positive.

Relatedly, given URS's extensive efforts overseeing this Action on behalf of the Settlement Class (*see* Lead Plaintiff Decl. ¶¶4-6) from July 1 2022 to August 31, 2023, the requested award of $5,000.00 to reimburse Lead Plaintiff for its additional costs and expenses in prosecuting this Action since June 30, 2022 on behalf of the Settlement Class is entirely reasonable and appropriate pursuant to 15 U.S.C. § 78u-4(a)(4).

II. PRELIMINARY STATEMENT

Lead Counsel has vigorously prosecuted this Action, which was plagued with unique challenges. Since inception, Lead Counsel's efforts have included, *inter alia*, (a) research and investigation of the claims; (b) detailed reviews of Aegean's public U.S. Securities and Exchange Commission ("SEC") filings, annual reports, press releases, earnings calls, analyst reports, articles and other publicly available information spanning over a decade; (c) work with investigative staff to uncover relevant facts and witnesses; (d) research of legal issues and analysis of documents filed in connection with several court cases involving Aegean and/or some of the defendants, including a significant volume of pleadings and discovery filed in the Aegean Bankruptcy and in cases brought in the United States and overseas by the Litigation Trustee in the Aegean Bankruptcy;[7] (e) consultation with forensic accounting/auditing consultants, international privacy law consultant and foreign counsel on various matters; (f) preparation of a comprehensive Consolidated Class Action Complaint

[6] *See* Declaration of Kevin Catlett on behalf of URS ("Lead Plaintiff Decl." or "Lead Plaintiff Declaration") (submitted herewith as Ex. 5 to the Lavallee Decl.), at ¶¶4, 8.

[7] The Chapter 11 plan established a Litigation Trust to pursue claims belonging to Aegean's bankruptcy estate against various potential wrongdoers on behalf of the estate.

("Complaint" or "Compl.") (ECF No. 81) and service of said Complaint on defendants, including through international service of process; (g) retention and work with Lowenstein Sandler LLP ("Lowenstein" or "Bankruptcy Counsel") to protect the Settlement Class's claims, including those against the Individual Defendants; (h) research and evaluation of potential issues arising from the fact that Aegean and many of the witnesses, including the Individual Defendants, and documents were located in foreign countries; (i) extensive briefing to oppose defendants' motions to dismiss; (j) settlement negotiations with PwC Greece and Deloitte Greece (the "Auditor Defendants"), drafting settlement papers and obtaining final approval of the Auditor Settlements; (k) issuance of discovery requests to the Individual Defendants and review of their responses and objections; (l) extensive meet and confer sessions with counsel for the Individual Defendants regarding their responses and objections to Lead Plaintiff's discovery; (m) responding to Gianniotis's request for production of documents and meeting and conferring with his counsel about the same; (n) review and production of 17,263 pages of Lead Plaintiff's documents; (o) issuance of 15 subpoenas to non-parties and engaging in dozens of meet and confers regarding their objections and the scope of their productions; (p) review of the auditor workpapers related to Aegean (q) review and analysis of over 187.052 gigabytes of documents received in discovery (including substantial productions from Aegean's successor and its Litigation Trustee), some of which are in Greek; (r) deposing a key non-party; (s) preparing Lead Plaintiff's motion for class certification and revised motion for class certification and defending its expert's deposition; (t) attendance at two mediations and a settlement conference; (u) negotiating and preparing the Settlement Agreements with the Individual Defendants and the papers in support of approval of same; and (v) work with the Claims Administrator to provide notice of the Individual Defendants Settlements to Settlement Class Members. *See* Lavallee Decl. ¶¶8, 10, 23-73, 104.

As to Lead Counsel's efforts from July 1, 2022 through August 31, 2023 in particular, these included, *inter alia*, (a) meet and confers with counsel for the Individual Defendants regarding the parties' discovery requests; (b) numerous meet and confers with counsel for subpoenaed non-parties to discuss their objections and the scope and manner of their productions; (c) the issuance of interrogatories to Melissanidis; (d) the issuance of two additional non-party subpoenas and two

Freedom of Information Act (or "FOIA") requests to the SEC and U.S. Department of Justice ("DOJ") and meet and confers related to these additional requests; (e) the review and production of documents in response to Gianniotis's document requests; (f) the review and analysis of a significant number of the 187.052 gigabytes of documents produced in the Action; (g) the taking of a key non-party, Rule 30(b)6) deposition; (h) further consultation and analysis with Lead Plaintiff's forensic auditing, damages and international privacy law consultants and foreign counsel on various matters; (i) the preparation of Lead Plaintiff's motion for class certification and revised motion for class certification and related preparation and defense of Lead Plaintiff's expert; (j) significant preparation for and attendance at the second mediation and a settlement conference; (k) negotiating and preparing the instant Individual Defendants Settlement Agreements and the papers in support of approval of same; and (l) work with the Court-appointed Claims Administrator in connection with the Auditor Settlements and to provide notice of the Individual Defendants Settlements to Settlement Class Members. *See* Lavallee Decl. ¶¶8, 10, 43-51, 58-73, 104.

Indeed, the Individual Defendants Settlements were reached only after substantial discovery and several depositions, the filing of motions for class certification and an opposition thereto, prolonged settlement discussions and two mediation sessions before Michelle Yoshida, a nationally recognized mediator, and discussions and a settlement conference with Magistrate Judge Stewart D. Aaron. Lavallee Decl. ¶¶8, 10, 40-51, 64-73, 104. After the agreements in principle were reached, the Settling Parties diligently negotiated and prepared settlement papers and Lead Counsel worked with a damages consultant on the plan for allocating the two Individual Defendants Net Settlement Funds. *Id*. ¶¶70, 72, 86. The Court granted preliminary approval of the Individual Defendants Settlements on June 1, 2023 and the Individual Defendants Settlement Funds were deposited into an escrow account on June 27, 2023, July 6, 2023 and July 7, 2023. *Id*. ¶73.

Lead Counsel respectfully refers the Court to the Lavallee Declaration for a description of the history of the Action (*see* Lavallee Decl. ¶¶22-73); the nature of the claims (*id.* ¶25); the negotiations leading to the Individual Defendants Settlements (*id.* ¶¶10, 64-73); the risks and uncertainties of continued litigation, particularly as against foreign defendants and because Aegean is in bankruptcy

(*id.* ¶¶7, 9, 74-84); and a description of the services counsel provided for the benefit of the Settlement Class, including efforts before the Bankruptcy Court (*id.* ¶¶8, 10, 30-35).

III. ARGUMENT

A. Lead Counsel is Entitled to an Award of Attorneys' Fees Under the Common Fund Doctrine

It is well-settled that an attorney who pursues a lawsuit that succeeds in the creation of a common fund for the benefit of a class is entitled to receive attorneys' fees from the common fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"). *See also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) (the common fund doctrine "prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost").

Courts have further recognized that, in addition to providing just compensation, awards of reasonable attorneys' fees from a common fund should ensure that "competent counsel continue[s] to be willing to undertake risky, complex, and novel litigation." *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 198 n.64 (S.D.N.Y. 2005); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."). Compensating plaintiffs' counsel for the risks they face is crucial, because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005). Moreover, the Supreme Court has emphasized that "meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 478 (2013); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

To assess the reasonableness of attorneys' fees under the common fund doctrine, courts apply

the "lodestar" method or the "percentage of the fund" method. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). However, "[t]he trend in this [Second] Circuit is toward the percentage method." *Id.*; *see also Lea v. Tal Educ. Grp.*, No. 18-CV-5480 (KHP), 2021 WL 5578665, at *11 (S.D.N.Y. Nov. 30, 2021). This method is particularly efficient from a public policy standpoint for rewarding the work of class counsel and does not waste judicial resources analyzing thousands of hours worked where counsel obtained a superior result. *See In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *16 (S.D.N.Y. July 27, 2007) ("From a public policy perspective, the percentage method is the most efficient means of compensating the work of class action attorneys." (citing *In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1296, 1306 (E.D.N.Y. 1985) (criticizing lodestar approach as tending to "encourage excess discovery, delays and late settlements, while it discourages rapid, efficient and cheaper resolution of litigation"))). The percentage-of-the-recovery method is particularly appropriate in PSLRA cases given that it comports with the express language of the statute. *See* 15 U.S.C. § 78u-4(a)(6) ("Total attorneys' fees and expenses … shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."); *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-CV-07192-CM, 2019 WL 6889901, at *15 (S.D.N.Y. Dec. 18, 2019) ("Congress plainly contemplated that percentage-of-recovery would be the primary measure of attorneys' fees awards in federal securities class actions."). Accordingly, this Court should use the percentage-of-recovery method to determine the reasonableness of the fee request here. Nevertheless, applying either test, the requested fee of 25% of the Individual Defendants Settlement Funds is entirely reasonable.

1. The *Goldberger* Factors Confirm that the Requested 25% Fee is Fair and Reasonable

In *Goldberger*, the Second Circuit set forth the following criteria for courts in this Circuit to consider when analyzing fee applications in a common fund case: (a) the magnitude and complexities of the action; (b) the litigation risks involved; (c) the quality of class counsel's representation; (d) the size of the requested fee in relation to the recoveries obtained; (e) the time and labor expended by class counsel; and (f) public policy considerations. 209 F.3d at 50. In addition, "courts in the Second Circuit

consider the reaction of the Class to the fee request in deciding how large a fee to award." *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (CM), 2015 WL 10847814, at *23 (S.D.N.Y. Sept. 9, 2015). As set forth below, consideration of the *Goldberger* factors demonstrates the reasonableness of Lead Counsel's present fee request.

(a) The Magnitude and Complexities of the Action Support the Requested Fee

The first *Goldberger* factor—the magnitude and complexities of the litigation—supports the fee request. As multiple courts have recognized, "[c]lass action suits have a well-deserved reputation as being most complex, and securities class actions are notably difficult and notoriously uncertain to litigate." *Lea*, 2021 WL 5578665, at *9; *Fogarazzo v. Lehman Bros., Inc.*, No. 03 Civ. 5194 SAS, 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("securities actions are highly complex"); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV- 3400 (CM) (PED), 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (securities class actions are "notably difficult and notoriously uncertain"). In addition, as detailed below, the magnitude and complexities of this Action were heightened by factors specific to the Action and stemming from the bankruptcy.

(1) Magnitude and Complexities Due to Foreign Defendants And Destruction of Evidence

As detailed in the Lavallee Declaration and the final approval brief filed concurrently herewith, this Action raised additional challenges specific to the claims alleged generally and particularly as to the Individual Defendants. *See* Lavallee Decl. ¶¶74-84, 109.

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. While new management determined that fraud had occurred, it also acknowledged that this fraud was both concealed and that individuals with administrator access attempted to access and permanently delete internal Aegean documents. Lavallee Decl. ¶18. Moreover, since many of the named defendants, including both of the Individual Defendants, were Greek residents and Aegean's

headquarters was located in Greece, there were significant challenges related to the efforts and costs of obtaining evidence to prove this action including challenges (a) gathering documentary evidence, much of which would have been written in Greek and located in Greece, or otherwise in Luxembourg, Cyprus or the Marshall Islands, countries where the Litigation Trustee has instituted proceedings and/or where Aegean-related witnesses and entities are believed to be domiciled; (b) rendering admissible the documentary evidence Lead Plaintiff has received thus far in the litigation, given their and witnesses origin in Greece and other countries throughout Europe and Asia and given that Aegean filed for bankruptcy protection; (c) the fact that the Individual Defendants and others are likely to assert privileges under Europe's recently enacted privacy and security law, the General Data Protection Regulation (or GDPR); (d) regarding the costly and time-consuming work of translating relevant documents obtained in discovery and deposing witnesses abroad, including through the Hague Convention;[8] and (e) the difficulty of enforcing any judgment obtained against foreign defendants. Lavallee Decl. ¶¶75, 78, 109.

Moreover, while Lead Plaintiff believes that its claims against the Individual Defendants are meritorious, it recognizes that there are significant risks to the Settlement Class. *See, e.g.*, *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM, 2014 WL 7323417, at *16 (S.D.N.Y. Dec. 19, 2014) (noting that "nearly 48% of all securities class actions have been dismissed on motions prior to trial, while plaintiffs who succeeded at trial have found their judgments overturned on post-trial motions or appeal"). Indeed, as discussed more fully in Section III.A.(b), below, 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 addition, even if Lead Plaintiff defeated summary judgment motions filed by the Individual Defendants and was successful against the Individual Defendants at trial, Lead Plaintiff's efforts in establishing its claims would not, in all likelihood, end with a judgment at trial but would continue through one or more levels of appellate

[8] *See, e.g., Rabbi Jacob Joseph Sch. v. Allied Irish Banks, P.L.C.*, No. 11-CV-05801 (DLI)(VVP), 2012 WL 3746220, at *7 (E.D.N.Y. Aug. 27, 2012) ("Courts in the Second Circuit have widely recognized that obtaining evidence through the Hague Convention and letters rogatory are cumbersome and inefficient, and hardly make litigation in the United States convenient.").

review. And, in complex litigation such as this, "even a victory at trial does not guarantee recovery." *FLAG Telecom*, 2010 WL 4537550, at *27. Indeed, as discussed below, there are unique collection risks here.

(2) Magnitude and Complexities Added by the Aegean Bankruptcy

From the outset, Lead Plaintiff and Lead Counsel were mindful of the impact Aegean's Bankruptcy could have on the successful prosecution of the alleged claims and the ultimate recovery for the class. Indeed, Aegean, which filed for bankruptcy protection within days of Lead Plaintiff and Lead Counsel being appointed, could not be named as a defendant in this Action by virtue of the automatic stay in bankruptcy. Lavallee Decl. at 9 n.5.

The Aegean Bankruptcy, which involved numerous subsidiaries and related companies, added to the complexity of obtaining a recovery for the Settlement Class in several ways. Lavallee Decl. ¶¶30-35, 76, 78, 109. First, the Aegean Bankruptcy created hurdles to gathering and establishing documents as business records and to introducing such documents into evidence. Second, Aegean was no longer a source of recovery and there were multiple parties potentially seeking recovery from Defendants and from any directors & officers ("D&O") insurance.

Finally, Lead Counsel, working with Bankruptcy Counsel, had to monitor the Aegean Bankruptcy and take a number of proactive steps to protect the interests of the Settlement Class from significant risks stemming from the Aegean Bankruptcy. Lavallee Decl. ¶¶30-35.[9] Among other things, Aegean included a third-party release (the "Third-Party Release") as part of its initially proposed plan of reorganization (the "Chapter 11 Plan") that would have stripped Lead Plaintiff and the proposed class of their likely only source of compensation—the instant Action. Lavallee Decl. ¶32; *see also* Etkin Decl. ¶¶5-9.[10]

[9] In light of the complexities introduced by the Aegean Bankruptcy, Lead Counsel retained counsel specializing in bankruptcy litigation to monitor Aegean's bankruptcy proceedings and assist Lead Counsel in protecting the interests of class members before the Bankruptcy Court. Lavallee Decl. ¶30.

[10] "Etkin Decl." refers to the Declaration of Michael S. Etkin in Support of Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses in connection with the Auditor Settlements (ECF No. 375-4).

To protect the interests of the class, Lead Counsel and Bankruptcy Counsel filed a lengthy objection to approval of the disclosure statement and vote solicitation procedures for Aegean's proposed plan on numerous grounds, which included objecting to the legal permissibility of the Third-Party Release and explicitly preserving any available rights to insurance proceeds for the class. Ultimately, Lead Counsel, through Bankruptcy Counsel successfully: (a) opposed Aegean's efforts during the bankruptcy proceedings to release all investors' claims under the federal securities laws, which would have included those against Aegean's former employees, affiliates, members, officers, directors and consultants, such as the Individual Defendants; (b) negotiated and ultimately obtained Bankruptcy Court approval of a complete carve-out of the 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 is 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. Lavallee Decl. ¶¶34-35; Etkin Decl. ¶¶10-19.

Accordingly, the magnitude and complexities specific and general to this Action support the conclusion that the requested fee is fair and reasonable.

(b) The Litigation Risks Support the Requested Fee

The second factor—the risks of the litigation—is often considered the most important *Goldberger* factor. *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG)(RER), 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010); *see also McDaniel v. Cty. of Schenectady*, 595 F.3d 411, 424 (2d Cir. 2010) ("[t]he level of risk associated with litigation . . . is 'perhaps the foremost factor' to be considered in assessing the propriety of a multiplier").

As the Second Circuit has long recognized:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974), *abrogated by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

The contingency risk here was very significant and fully supports the requested fee. Lead Counsel undertook this Action on a strictly contingent basis and prosecuted the claims with no guarantee of compensation or recovery of any litigation expenses. *See In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) (class counsel not only undertook risks of litigation but advanced its own funds and financed the litigation); *Lea*, 2021 WL 5578665, at *12 ("The Second Circuit has recognized that risk is inherently associated with a case undertaken on a contingent fee basis."). Although Lead Counsel worked diligently and succeeded in developing a compelling case sufficient to influence the Individual Defendants' decision to resolve the case, Lead Counsel and Lead Plaintiff recognized from the outset of this Action that there were significant uncertainties and risks concerning proof of liability and damages, collection and potential affirmative defenses to the Individual Defendants. *See* Lavallee Decl. ¶¶74-84, 109.

Each of the complexities described in Section III.A.1.(a) above added to the risk of this Action. For example, courts in this District have recognized the unique risks of continued litigation are heightened when a bankruptcy proceeding is pending. *See, e.g., Knox v. John Varvatos Enters. Inc.*, 520 F. Supp. 3d 331, 352 (S.D.N.Y. 2021) (approving plaintiffs motion for attorney's fees because, *inter alia*, "plaintiffs' counsel expended many hundreds of hours" litigating the action despite being informed that the defendant company was "on the verge of bankruptcy"), *aff'd sub nom. Chaparro v. John Varvatos Enters., Inc.*, No. 21-446-CV, 2021 WL 5121140 (2d Cir. Nov. 4, 2021); *Siler v. Landry's Seafood House-N.C., Inc.*, No. 13-CV-587 RLE, 2014 WL 2945796, at *10 (S.D.N.Y. June 30, 2014) (approving motion for attorneys' fees when "Class Counsel faced the general risk of recovery, namely, non-collection because of potential bankruptcy"); *see also In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 427 (S.D.N.Y. 2001) (noting the "risks, burdens and uncertainties of continued litigation … particularly true in light of the substantial risk of possible non-collectability of any judgment posed by … bankruptcy, … weakened financial condition, and the possible negation of certain Individual Defendants' insurance coverage").

In addition, courts recognize that the risks of litigation are compounded when defendants are foreign entities as this raises numerous challenges noted above. *See, e.g., Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd. (A.C.L.N.)*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *2 (S.D.N.Y. May 14, 2004) (approving fees and settlement where "[m]any of the defendants, witnesses and documents are beyond the subpoena power of the Court and many relevant documents have been seized by foreign government authorities and may not be available"); *Lea*, 2021 WL 5578665, at *9 (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.*, No. CV-02-1510-CPS-SMG, 2007 WL 2743675, at *10 (E.D.N.Y. Sept. 18, 2007) (adding to the complexity and weighing in favor of settlement was the fact that defendant and companies with which defendant did business under allegedly fraudulent scheme were located overseas); *In re Indep. Energy Holdings PLC, Inc.*, No. 00-Civ.-6689-SAS, 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); *Mikhlin v. Oasmia Pharm. AB*, No. 19-CV-4349-NGG-RER, 2021 WL 1259559, at *5 (E.D.N.Y. Jan. 6, 2021) (adding to complexity and uncertainty was the fact that the defendant was a foreign company). Despite these risks, even after obtaining excellent recoveries from the Auditor Defendants, Lead Counsel continued to prosecute the case against Gianniotis and sought the Court's assistance in compelling Melissanidis to mediation to resolve this Action efficiently and effectively.

Moreover, as to the merits, 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 them. Indeed, 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.

Throughout the litigation, Gianniotis has claimed that, *inter alia*: (a) he 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 would 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. ¶76. Indeed, Lead Plaintiff assumes Gianniotis would 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 would argue that he was entitled to rely on the professional work of Aegean's outside auditors who opined on Aegean's financials during the Class Period. *Id.* Gianniotis would also likely argue that the evidence would 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 as collateral against the Company's borrowing. *Id.* Indeed, Gianniotis has advanced 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, contested issues related to loss causation and damages would come to a battle of experts with all the risks inherent to that. *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-CV-06728-CM-SDA, 2020 WL 4196468, at *11 (S.D.N.Y. July 21, 2020) ("There is no way to predict with any certainty which expert's opinions the jury would have accepted.").

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 would also likely argue that certain damning evidence cited in

Aegean's outside counsel's presentation to the government is inadmissible hearsay, 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. ¶77. Melissanidis has also argued that he relinquished control and stepped away from 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. 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.*, ECF No. 200 at 6-16. As to Lead Plaintiff's allegations that Melissanidis committed a primary act in violation of the Securities Exchange Act of 1934, 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. ¶77.

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 has no insurance coverage and, as a Greece resident, there were unique challenges to collectability of any potential judgment. Lavallee Decl. ¶77; *Lea*, 2021 WL 5578665, at *12 (among factors favoring settlement were risks of collecting any judgment from a Chinese defendant 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. ¶76; *see also Denney v. Jenkins & Gilchrist,* 250 F.R.D. 317, 352 (S.D.N.Y. 2005) (absent class settlement, vast majority of class members would have

recovered nothing in light of significant issues regarding defendants' insurance coverage), *aff'd in part, vacated in part, remanded sub nom. Denney v. Deutsche Bank AG*, 443 F.3d 253 (2d Cir. 2006). Indeed, risks exist regarding the potential exhaustion of insurance proceeds through defense of these claims and/or though the defense and/or resolution of third-party claims, particularly as there are government investigations and a Litigation Trustee tasked with pursuing claims belonging to Aegean. Lavallee Decl. ¶78; *see also Lea*, 2021 WL 5578665, at *12; *see also Am. Bank*, 127 F. Supp. 2d at 424 ("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.").

Thus, the significant litigation risks undertaken by Lead Counsel support the requested fee.

(c) The Quality of Lead Counsel's Representation Supports the Requested Fee

The quality of representation is another important factor that supports the reasonableness of the requested fee. As noted above, Lead Counsel achieved significant settlements in this Action despite the fact that securities fraud claims against the Individual Defendants are challenging, and the fact that certain risks and complexities specific to this Action—including the pending Aegean Bankruptcy and the foreign nature of the proceedings—posed additional road-blocks to obtaining a successful result for the Settlement Class. *Wal-Mart*, 396 F.3d at 117 ("Of course, 'the quality of representation is best measured by results.'").

Moreover, the "skill and prior experience" of counsel in the field is relevant to determining fair compensation. *Teachers' Ret. Sys. of La. v. A.C.L.N. Ltd.*, No. 01-cv-11814 (MP), 2004 WL 1087261, at *6 (S.D.N.Y. May 14, 2004). Lead Counsel has many years of experience in complex federal civil litigation, particularly in the prosecution of securities and other class actions. Lavallee Decl. ¶¶104-105 & Ex. 4

The quality of opposing counsel is also important in evaluating the services rendered by Lead Counsel. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was

necessary to achieve the Settlement."). Here, the Individual Defendants were represented by very skilled attorneys at Morvillo Abramowitz Grand Iason & Anello PC on behalf of Gianniotis, and Boies Schiller Flexner LLP on behalf of Melissanidis. *See* Lavallee Decl. ¶71. These attorneys zealously fought Lead Plaintiff's claims but, notwithstanding this formidable opposition, Lead Counsel was nonetheless able to develop Lead Plaintiff's case so as to resolve the litigation on terms highly favorable to the Settlement Class. *Id.*

(d) The Requested Fee is Reasonable in Relation to the Total Settlement Amount

The requested 25% fee award is well within the range of percentage fees that courts in the Second Circuit have awarded in comparable complex cases. *See, e.g.*, *In re BHP Billiton Limited Sec. Litig.*, No. 1:16-cv-01445-NRB (S.D.N.Y. Apr. 10, 2019), ECF No. 139 (awarding attorneys' fees of 30% of $50 million settlement); *In re Intercept Pharms., Inc. Sec. Litig.*, No. 1:14-cv-01123-NRB (S.D.N.Y. Sept. 10, 2016), ECF No. 136 (awarding 28.63% of $55 million settlement); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33-1/3% of $586 million settlement fund); *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249-50 (2d Cir. 2007) (affirming award of 30% of $42.5 million settlement fund); *In re Facebook, Inc., IPO Sec. & Deriv. Litig.*, 343 F. Supp. 3d 394, 418 (S.D.N.Y. 2018) (approving 25% of $35 million settlement fund); *In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528-SAS, 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of $27 million settlement); *Lea*, 2021 WL 5578665, at *12 (awarding one-third of $7.5 million settlement and noting that one-third "is a percent that has been approved as reasonable in this Circuit"). Moreover, as discussed below, the fee request is also reasonable under the lodestar methodology as it represents a negative multiplier.

(e) Time and Labor Expended by Lead Counsel Support the Requested Fee

As detailed in the Lavallee Declaration at ¶¶102-103, 106-118 & Exs. 1-2, Lead Counsel has devoted substantial time (9,607.45 hours), expenses ($75,944.24) and effort to the prosecution of the

claims against the Individual Defendants since July 1, 2022 as well as travel, lodging and meals expenses from inception. Lead Counsel also estimates that it will incur an additional $2,364.64 in expenses from the time this motion is filed on September 14, 2023 through November 2023, following the Effective Date of these Settlements. Indeed, the magnitude, complexity and unique risks here required Lead Counsel to expend considerable efforts. *Id.* ¶¶74-84, 109. Moreover, as relevant to this motion, discovery efforts since July 1, 2022 included, among other things, extensive meet and confer sessions with the Individual Defendants regarding the parties' discovery requests and with numerous nonparties regarding Lead Plaintiff's subpoenas; the review and production of Lead Plaintiff's documents in response to Gianniotis's document requests; the issuance of subpoenas to two non-parties; the issuance of updated FOIA requests to the SEC and DOJ; the issuance of interrogatories to Melissanidis; significant review of the over 187.052 gigabytes of documents produced in response to Lead Plaintiff's requests (including review of the substantial productions from Aegean's successor and its Litigation Trustee); deposing one non-party and defending its expert's deposition. *Id.* ¶104. Since July 1, 2022, Lead Counsel pushed forward through class certification briefing and the defense of the deposition of Lead Plaintiffs' expert, participated in intensive negotiations and prepared for and attended multiple rounds of alternative dispute resolution sessions—which included considerations of the risks and challenges to the continued prosecution of this Action. *Id.* Once each Individual Defendant Settlement was reached, Lead Counsel negotiated settlement papers and worked with its Claims Administrator to ensure that notice of these settlements was properly given to the Settlement Class Members. Lavallee Decl. ¶¶70, 72, 91-101. Moreover, Lead Counsel and Lead Plaintiff have and will expend considerable effort and expense to work with the Claims Administrator on administering these settlements.

The fact that Lead Counsel's extensive efforts were undertaken on a contingent basis in a case with heightened challenges to establishing liability and collecting from foreign defendants as well as increased expenses strongly supports the requested fee.

(f) Public Policy Considerations Further Support the Fee Request

Courts in the Second Circuit have held that "public policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *FLAG Telecom*, 2010 WL 4537550, at *29; *Lea*, 2021 WL 5578665, at *13. In fact, public policy supports granting attorneys' fees that are sufficient to encourage plaintiffs' counsel to bring securities class actions, which are recognized to be a most effective weapon in the enforcement of the securities laws. *See Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002) ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *In re Priceline.com, Inc. Sec. Litig.*, No. 00-CV-1884 (AVC), 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) ("The award of the percentage requested here will encourage enforcement of the securities laws and support attorneys' decisions to take these types of cases on a contingent fee basis."); *Amgen*, 568 U.S. at 478 (private actions to enforce are an essential supplement).

The policy considerations in favor of the fee and expense requests are particularly important here given that this Action appears to be Aegean's shareholders' only hope of obtaining any compensation for their losses against the Individual Defendants and given Lead Counsel's efforts in the Aegean Bankruptcy to preserve the Class members' claims and access to insurance.

(g) Lead Plaintiff's Approval of the Fee Request and the Reaction of the Settlement Class to Date Supports the Requested Fee

As a sophisticated institutional investor, Lead Plaintiff URS was substantially involved in the prosecution of the Action and had direct involvement from its commencement through the negotiations of the Individual Defendants Settlements. Lavallee Decl. ¶¶120-122; Lead Plaintiff Decl. ¶¶1-4. At the commencement of the case, Lead Plaintiff negotiated a retainer agreement with Lead Counsel and the 25% fee requested here comports with this retainer agreement. *See* Lead Plaintiff Decl. ¶8. After having been actively involved in overseeing the prosecution of the case and the settlement negotiations and as part of its diligent involvement acting as a fiduciary for the Settlement Class in the Action, Lead Plaintiff has reviewed and approved the requested fee as fair, reasonable and necessary to the successful prosecution and resolution of this Action, thus warranting Court approval. *See* Lavallee

Decl. ¶¶118, 123; Lead Plaintiff Decl. ¶8. In reaching this conclusion, Lead Plaintiff considered factors such as work performed by Lead Counsel and the substantial recovery obtained, given the complexities and risks here. *Id*.

Lead Plaintiff's approval of Lead Counsel's fee request should be given significant weight. *See In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 272 (S.D.N.Y. 2012) ("When class counsel in a securities lawsuit have negotiated an arm's-length agreement with a sophisticated lead plaintiff possessing a large stake in the litigation, and when that lead plaintiff endorses the application following close supervision of the litigation, the court should give the terms of that agreement great weight."); *Comverse Tech.*, 2010 WL 2653354, at *4 ("The fact that this fee request is the product of arm's-length negotiation between Lead Counsel and the lead plaintiff is significant."); *EVCI Career Colls.*, 2007 WL 2230177, at *16 (public policy considerations support fee awards in cases in which large public pension funds, serving as lead plaintiffs, "conscientiously" supervise the work of lead counsel, and give their endorsement to the fee request); *WorldCom*, 388 F. Supp. 2d at 356 ("[W]hen class counsel in a securities lawsuit have negotiated an arm's-length agreement with a sophisticated lead plaintiff possessing a large stake in the litigation, and when that lead plaintiff endorses the application following close supervision of the litigation, the court should give the terms of that agreement great weight."). Indeed, courts in this District have stated that "courts should accord a *presumption of reasonableness* to any fee request submitted pursuant to a retainer agreement that was entered into between a properly-selected lead plaintiff and a properly-selected lead counsel." *EVCI Career Colls.*, 2007 WL 2230177, at *16 n.4 (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001)); *see also Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *8 (S.D.N.Y. Aug. 18, 2017) ("[T]his Court finds no reason to deny the presumption of correctness to the fee agreement between Lead Counsel and Lead Plaintiff.").

The reaction of the Settlement Class also supports the requested fee. While the time to object to the Fee and Expense Application or request exclusion does not expire until September 28, 2023, to date, the Claims Administrator has received only one request for exclusion and no objections. Lavallee Decl. ¶101. Lead Plaintiff will any other requests for exclusion and/or objections, should they arise,

in its reply papers which are due October 10, 2023.

2. A Lodestar Cross-Check Supports the Requested Fee

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit permits district courts to "cross-check" the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50 (for a cross check performed, the hours documented "need not be exhaustively scrutinized by the district court…. Instead, the reasonableness of the claimed lodestar can be tested by the Court's familiarity with the case").

In cases like this, fees representing multiples of the lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See, e.g.*, *FLAG Telecom*, 2010 WL 4537550, at *26 ("Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.").[11]

However, just as with the Auditor Settlements, Lead Counsel seeks no multiplier here. The Lavallee Declaration contains the lodestar calculation and summary details for Lead Counsel. *See* Lavallee Decl. ¶¶102-103, 106-118 & Ex. 1. From July 1, 2022 through August 31, 2023, Lead Counsel expended 9,607.45 hours of attorney and professional support staff time in the prosecution of this Action for the benefit of the Settlement Class. *See id.* These hours have been multiplied by the current hourly rates[12] of the attorneys and professional support staff who worked on the Action to arrive at the lodestar amount of $5,741,241.50 for the period of July 1, 2022 to August 31, 2023. *See id.*[13] Bankruptcy Counsel also incurred an additional $15,429.00 in fees since June 30, 2022. Lavallee Decl. ¶103.

[11] In fact, in complex contingent litigation, lodestar multipliers between 2 and 5 are commonly awarded as reasonable. *See Wal-Mart*, 396 F.3d at 123 (multiplier of 3.5); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (multiplier of 5.3).

[12] The Supreme Court and courts in this Circuit approve the use of current hourly rates to calculate the lodestar figure as a means of compensating for the delay in receiving payment, inflation and the loss of interest. *See Mo. v. Jenkins by Agyei*, 491 U.S. 274, 284 (1989). The legal background and experience of Berman Tabacco's attorneys and staff support the hourly rates submitted and are consistent with market rates accepted by courts. Lavallee Decl. ¶104 & Ex. 4.

[13] This lodestar includes work performed related to the final approval and administration of the Auditor Settlements, but not work performed in the preparation of the present motion. Lavallee Decl. ¶107.

Since the 25% fee request represents a negative multiplier (0.52 for the requested period of July 1, 2022 to August 31, 2023 and 0.68 from inception to August 31, 2023), the lodestar cross check fully supports a finding that the requested fees are reasonable. Lavallee Decl. ¶¶13, 102-103, 111. *See, e.g., In re NTL, Inc. Sec. Litig.*, No. 02-cv-3013, 2007 WL 1294377, at *8 (S.D.N.Y. May 2, 2007) (negative lodestar multiplier indicates the fee was "reasonable because it will not bring a windfall to co-lead plaintiffs' counsel"); *Marsh*, 265 F.R.D. at 146 (fee request was significantly less than the lodestar, "which strongly suggests that the requested fee is reasonable").

B. Lead Counsel's Litigation Expenses Are Reasonable and Should Be Reimbursed

Lead Counsel also respectfully request the reimbursement of $78,308.88 in litigation expenses that Lead Counsel advanced and will continue to advance in connection with the prosecution and resolution of this Action for the period beginning on July 1, 2022, as well as reimbursement of monies expended for travel, lodging and meals from inception. Lead counsel expressly stated in its Fee and Expense Application for the Auditor Settlements that it would wait to seek reimbursement of such expenses until a later settlement. ECF No. 374 at 22; Lavallee Decl. ¶¶112, 114. All these expenses, which are summarized by category in the Lavallee Declaration, were and will continue to be reasonably necessary for the prosecution of this Action and may be properly recovered by counsel. Lavallee Decl. ¶¶112-117 & Ex. 2. These expenses include consultant/expert fees and expenses, online factual and legal research expenses, among other litigation expenses. Lavallee Decl. ¶¶115-116. They also include expenses for Lead Plaintiff's document repository, which houses all documents produced in the Action, including for an additional three months until a decision on final approval of the Individual Defendants Settlements, and known delivery charges associated with the filing of these final approval motions. *Id.* All the expenses sought by Lead Counsel in the present motion are the type that are necessarily incurred in litigation and routinely charged to clients billed by the hour. It is well recognized that such expenses are reasonable. *See, e.g.*, *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (attorneys should be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to

their clients, as long as they were 'incidental and necessary to the representation'"); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.").

These expenses are distinct from the expenses paid from the Litigation Expense Fund. In connection with the Auditor Settlements, the Court approved Lead Plaintiff's request for the establishment of a Litigation Expense Fund of $500,000 for the continued prosecution of the case against the Individual Defendants ($250,000 from the PwC Greece settlement fund and $250,000 from the Deloitte Greece settlement fund). Lead Counsel exhausted $256,110.33 of this Court-awarded amount and has returned a balance (including interest) of $243,889. 67 plus $10,386.53 in interest to the Auditor Settlements Funds on a 50-50 basis between the PwC Greece settlement fund and the Deloitte Greece settlement fund.[14] Lavallee Decl. ¶119.

The Court-approved notices informed potential Settlement Class Members that Lead Plaintiff would seek reimbursement of up to $120,000 for Lead Counsel's out-of-pocket expenses. *See* A.B. Data Decl. Ex. B.[15] To date, there have been no objections to the maximum expense amount. A.B. Data Decl. ¶18. Moreover, Lead Plaintiff supports the reimbursement of expenses incurred by counsel as fair, reasonable and necessary to the successful prosecution and resolution of this Action. *See* Lead Plaintiff Decl. ¶8.

C. Lead Plaintiff Should Be Reimbursed for Its Reasonable Costs and Expenses Under 15 U.S.C. § 78u-4(a)(4)

Lead Counsel also seeks reimbursement of $5,000 in costs and expenses directly incurred by Lead Plaintiff in connection with its representation of the Settlement Class. Pursuant to the PSLRA, an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). The request here is only for the reimbursement of some of the time spent

[14] Attached as Exhibit 3 to the Lavallee Declaration is a chart identifying the expenses paid from the Litigation Expense Fund, information which were previously submitted in two quarterly reports filed *in camera* with the Court.

[15] "A.B. Data Decl." refers to the Declaration of Jack Ewashko Regarding Mailing of Notice and Publication of Summary Notice (submitted herewith as Ex. 6 to the Lavallee Decl.).

by URS since July 1, 2022 in connection with its service as the Court-appointed Lead Plaintiff and would be in addition to the $10,000 amount that was previously awarded by the Court in connection with the Auditor Settlements for its time spent on the litigation prior to July 1, 2022. *See* Lavallee Decl. ¶¶120-122; Lead Plaintiff Decl. ¶¶4-6. ECF No. 403.

As detailed in the Lavallee Declaration, URS took an active role in the leadership of this Action and has been fully committed to pursuing this Action as a fiduciary for the class. Lavallee Decl. ¶121. *See also* Lead Plaintiff Decl. ¶¶4-5. Throughout the litigation, URS communicated regularly with Lead Counsel regarding litigation strategy and developments, and reviewed pleadings and the Court's orders related to the same. Since July 1, 2022 in particular, URS has spent substantial amount time collecting and reviewing documents for production to the Individual Defendants and reviewing proposed class certification filings, opposition papers and expert materials in connection with the motions to certify the Settlement Class. Lead Plaintiff Decl. ¶¶4-5. During that same period, Lead Plaintiff also actively strategized with Lead Counsel as to the continued prosecution of this Action, participated in multiple settlement negotiations and attended the second mediation and the settlement conference with Magistrate Judge Aaron. *Id*. Lead Plaintiff dedicated significant employee time and resources in these efforts that otherwise would have been devoted to their regular duties at URS. *Id*. ¶5.

Courts routinely approve similar or greater awards to reimburse lead plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(4). *See, e.g.*, *In re Intercept Pharms., Inc. Sec. Lit*., No. 1:14-cv-01123-NRB (S.D.N.Y. Oct. 20, 2016), ECF No. 141 (awarding over $12,000 in reimbursement of expenses to plaintiffs); *Signet*, 2020 WL 4196468, at *23-24 (awarding $25,410 in reimbursement expenses to Lead Plaintiff "based on a conservative estimate of the amount of time expended in connection with the [a]ction"); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding over $214,000 to lead plaintiffs noting that their efforts were "precisely the types of activities that support awarding reimbursement of expenses to class representatives"); *In re Veeco Instruments Inc. Sec. Litig*., No. 05 MDL 01695CM, 2007 WL 4115808, at *12 (S.D.N.Y. Nov. 7, 2007) (awarding institutional lead plaintiff over $16,000).

Moreover, the Detailed and Postcard Notices advised potential Settlement Class Members that, in addition to seeking fees and reimbursement of its own expenses, Lead Counsel may seek reimbursement of the Lead Plaintiffs' expenses. *See* A.B. Data Decl. Exs. A & B. To date, there have been no objections to an expense reimbursement award to URS. *See* A.B. Data Decl. ¶18.

IV. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request that the Court (a) award attorneys' fees in the amount of 25% of the Gross Settlement Funds plus interest; and (b) approve the reimbursement of $78,308.88 of Lead Counsel's expenses, plus an award of $5,000 to Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4).

Dated: September 14, 2023

Respectfully submitted,

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