



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE PUDA COAL SECURITIES INC.  
et al. LITIGATION

CASE NO: 1:11-CV-2598 (DLC)

**PROPOSED ORDER PRELIMINARILY APPROVING PROPOSED  
PARTIAL SETTLEMENT**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Puda Coal Securities Inc., et al. Litigation*, Case No. 1:11-CV-2598 (DLC) (S.D.N.Y.) (the “Action”);

WHEREAS Lead Plaintiffs Salomón Querub, Howard Pritchard and Hotel Ventures LLC (collectively, “Lead Plaintiffs”), on behalf of themselves, the Additional Named Plaintiffs and the class of Persons defined below, and Defendant Macquarie Capital (USA) Inc. (“Macquarie,” and together with the Plaintiffs, the “Settling Parties”) have determined to settle all claims asserted against Macquarie in this Action on the terms and conditions set forth in the Stipulation and Agreement of Settlement, dated October 16, 2015 (the “Stipulation”), subject to the approval of this Court (the “Settlement”);

WHEREAS, the Settling Parties have made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Stipulation and allowing and providing for notice to the Settlement Class Members as more fully described herein; and

WHEREAS, the Court is familiar with the record in the Action, having read and considered: (a) the Second Consolidated Amended and Supplemental Complaint for Violations of the Federal Securities Laws, filed in this Action on April 21, 2014; and (b) the Stipulation and the exhibits attached thereto;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order hereby incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation (certain of which are repeated herein for ease of reference only).

2. **Preliminary Approval of Proposed Settlement** – The Court hereby preliminarily approves the proposed Settlement, embodied in the Stipulation, as being fair, reasonable and adequate and in the best interests of the Settlement Class, subject to further consideration at a hearing to be conducted as described below.

3. **Class Certification** – The Court hereby preliminarily certifies, for purposes of this Settlement only, pursuant to Rules 23(a), 23(b)(3) and 23(c)(1)(C) of the Federal Rules of Civil Procedure, a Settlement Class consisting of all Persons who during the period beginning on December 8, 2010 through and including April 11, 2011: (a) purchased or otherwise acquired Puda common stock; (b) purchased or otherwise acquired call options on Puda common stock; and/or (c) sold or otherwise disposed of put options on Puda common stock. Excluded from the Settlement Class are: (a) the Defendants; (b) any Person who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of any Defendant during the Settlement Class Period; (c) members of the Defendants' immediate families; (d) any Person in which any Defendant has a Controlling Interest; and (e) the legal representatives, heirs, estates, administrators, predecessors, successors or assigns of any of the foregoing excluded Persons. Also excluded from the Settlement Class is any Person who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth herein and in the Notice.

4. Pursuant to Rule 23, and for the purposes of the Settlement only, the Court preliminarily certifies Lead Plaintiffs as the class representatives for the Settlement Class and appoints Co-Lead Counsel The Rosen Law Firm, P.A., and Glancy Prongay & Murray LLP as counsel to the Settlement Class. Co-Lead Counsel is authorized to act on behalf of the Settlement Class with respect to all acts required by, or that may be undertaken pursuant to, the Stipulation or such other acts as are reasonably necessary to consummate the proposed Settlement.

5. With respect to the Settlement Class, the Court preliminarily finds, solely for purposes of the Settlement, that the prerequisites for a class action under Rules 23(a) and (b)(3) have been satisfied.

6. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on \_\_\_\_\_, at \_\_\_\_:\_\_\_\_.m. in Courtroom 15B of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007, for the following purposes: (a) to determine whether to grant final certification of the Action as a class action solely for purposes of the Settlement, pursuant to Rule 23; (b) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation (including the Releases set forth therein) is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court; (c) to determine whether a Final Order and Judgment substantially in the form attached to the Stipulation as Exhibit B should be entered dismissing the Action with prejudice against Macquarie; (d) to determine whether the motion for an award of attorneys’ fees and reimbursement of Litigation Expenses to Plaintiffs’ Counsel (and for a Reimbursement Award to Lead Plaintiffs) should be approved; (e) to determine whether the proposed Plan of Allocation for distribution of the proceeds of the Settlement should be

approved as fair and reasonable; and (f) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Settlement Class Members as set forth in Paragraph 11 of this Order. At the Settlement Hearing, the Court will also independently consider the settlements reached by Brean Murray, Carret & Co. (“Brean”) with Lead Plaintiffs (the “Brean Settlement”) and Defendants Lawrence Wizer and C. Mark Tang (the “U.S. Directors”) with Plaintiffs pursuant to a separate Stipulation and Agreement of Settlement dated December 1, 2015 (the “U.S. Directors Stipulation”), which settlements shall be considered separately from the determination as to the fairness, reasonableness and adequacy of the Settlement between Macquarie and Plaintiffs and any proceedings or orders (including any appeals therefrom) relating solely to the Brean and/or U.S. Directors Settlements, or any reversal or modification thereof, shall not: (a) operate to terminate, modify or cancel the Settlement or Stipulation; and/or (b) affect or delay the validity, effectiveness or finality of the Settlement or the Final Order and Judgment (if entered by the Court).

7. Co-Lead Counsel shall file and serve papers in support of final approval of the proposed Settlement, the proposed Plan of Allocation, and the application for an award of attorneys’ fees and reimbursement of Litigation Expenses (and a Reimbursement Award to Lead Plaintiffs) no later than thirty (30) calendar days prior to the Settlement Hearing. Any objections to the Settlement, Plan of Allocation and/or the application for an award of attorney’s fees and reimbursement of Litigation Expenses shall be filed and served no later than twenty-one (21) calendar days prior to the Settlement Hearing. If reply papers are necessary, they are to be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

8. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications that the Settling Parties may agree to, if appropriate, without further notice to the Settlement Class.

9. The Plan of Allocation and the application for an award of attorneys' fees and reimbursement of Litigation Expenses to Plaintiffs' Counsel (and for a Reimbursement Award to Lead Plaintiffs) will be considered separately from the determination as to the fairness, reasonableness and adequacy of the Settlement. At or after the Settlement Hearing, the Court will determine whether Lead Plaintiffs' proposed Plan of Allocation should be approved and whether (and if so, the amount of) attorneys' fees and Litigation Expenses that should be awarded to Plaintiffs' Counsel. Any appeal from any orders relating solely to the Plan of Allocation or solely to Lead Plaintiffs' application for an award of attorneys' fees and reimbursement of Litigation Expenses (or for a Reimbursement Award), or any reversal or modification thereof, shall not operate to terminate, modify or cancel the Settlement or Stipulation, or affect or delay the validity, effectiveness or finality of the Settlement or Final Order and Judgment (if entered by the Court). No Released Defendant Person shall have any responsibility for, or liability whatsoever with respect to, the Plan of Allocation or any application for an award of attorneys' fees or reimbursement of Litigation Expenses to Plaintiffs' Counsel (or for a Reimbursement Award to Lead Plaintiffs).

10. If the Settlement is approved at the Settlement Hearing and becomes effective, all Settlement Class Members (who do not properly exclude themselves therefrom) will be bound by the proposed Settlement provided for in the Stipulation and by all judgments, orders and determinations of the Court affecting the Settlement Class Members, including, without limitation, the Releases provided for thereunder regardless of whether or not a Settlement Class

Member seeks or obtains any distribution or payment from the Net Settlement Fund or is eligible to receive a distribution or payment under the proposed Plan of Allocation.

11. **Retention of Claims Administrator and Manner of Notice** – Co-Lead Counsel is hereby authorized to retain Epiq Systems, Inc. (the “Claims Administrator”) to supervise and administer the notice procedures as well as the processing of claims as more fully set forth below and in the Stipulation. Notice of the Settlement and the Settlement Hearing shall be given by Co-Lead Counsel as follows:

(a) not later than fourteen (14) business days after entry of this Preliminary Approval Order (the “Notice Date”), the Claims Administrator shall cause a copy of the Joint Notice (“Joint Notice”) and the Proof of Claim Form, substantially in the form attached to Plaintiffs’ Renewed Notice of Motion and Motion for Preliminary Approval of Class Action, respectively, to be mailed by first-class mail to all Settlement Class Members who can be identified with reasonable effort;

(b) not later than ten (10) business days after the Notice Date (the “Publication Notice Date”), the Claims Administrator shall cause the Summary Notice, substantially in the form attached to the Joint Notice, to be published once in the national edition of *Investors’ Business Daily* and once over the PR Newswire; and

(c) not later than three (3) business days after the Notice Date, the Joint Notice, the Summary Notice, the Stipulation and the Proof of Claim Form shall be placed on the website created for the Settlement by the Claims Administrator as well as Co-Lead Counsel’s websites.

12. Not later than twenty-one (21) calendar days prior to the Settlement Hearing, Co-Lead Counsel shall serve on Macquarie’s Counsel and file with the Court proof by affidavit or

declaration of such mailing and publishing. Such proof shall include proof of any notice to beneficial owners under Paragraph 14 herein.

13. **Approval of Form and Content of Notice** – The Court: (a) approves the form of the Joint Notice, the Proof of Claim Form and the Summary Notice attached to the attached to Plaintiffs’ Renewed Notice of Motion and Motion for Preliminary Approval of Class Action Settlements as Exhibit 4;<sup>9</sup> and (b) finds that the procedures outlined in Paragraph 11 of this Order constitute: (i) the best notice reasonably practicable under the circumstances; (ii) notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Releases contained therein), the application for an award of attorneys’ fees and reimbursement of Litigation Expenses to Plaintiffs’ Counsel (and for a Reimbursement Award to Lead Plaintiffs), the Plan of Allocation as well as the Settlement Class Members’ rights to object to the proposed Settlement, exclude themselves from the Settlement Class and appear at the Settlement Hearing; (iii) due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (iv) sufficient and adequate notice that satisfies in all respects the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4, et seq.) (the “PSLRA”), and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Joint Notice and Summary Notice before they are mailed and published, respectively.

14. **Nominee Procedures** – The Claims Administrator shall use reasonable efforts to give notice to brokers and other nominees (each, a “Nominee”) who purchased or acquired Puda common stock between December 8, 2010 and April 11, 2011 for the benefit of another Person.



These brokers and nominees are directed to forward the Joint Notice and Proof of Claim Form to all such beneficial owners post-marked within ten (10) calendar days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) calendar days of receipt thereof, in which event the Claims Administrator shall promptly mail the Joint Notice and Proof of Claim Form to such beneficial owners. If a Nominee elects to send the Joint Notice to beneficial owners, the Nominee shall send a statement to the Claims Administrator confirming that the mailing was made as directed along with a list of names and addresses of each such Person to whom the mailing was made.

15. Upon full compliance with this Order, including the timely mailing of the Joint Notice to beneficial owners, such Nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by Nominees in compliance with the terms of this Order shall be paid from the Settlement Fund in accordance with the provisions of the Stipulation, subject to further order of the Court with respect to any disputes concerning such compensation.

16. **Appearance and Objections to the Proposed Settlement, the Plan of Allocation and/or the Motion for Attorneys' Fees and Reimbursement of Litigation Expenses to Plaintiffs' Counsel** – Any Settlement Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice, by filing with the Clerk of Court ~~and delivering a notice of appearance to both Co-Lead Counsel and~~ <sup>de</sup> ~~Maequarie's Counsel (as listed in the Joint Notice) such that it is received no later than twenty-~~ ~~one (21) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct.~~ <sup>2</sup>



Any Settlement Class Member who does not enter an appearance will be represented by Lead Plaintiffs and Co-Lead Counsel.

17. Any member of the Settlement Class who does not request exclusion from the Settlement Class may file a written objection to the proposed Settlement, the Plan of Allocation and/or the motion for attorneys' fees and reimbursement of Litigation Expenses to Plaintiffs' Counsel (and for a Reimbursement Award to Lead Plaintiffs) and appear and show cause, if that Person has any cause, as to why any or all of those matters should not be approved. No Settlement Class Member, however, shall be heard or entitled to contest the approval of any of these matters unless that Person has filed written objections with the Court and served copies of such objections in the manner provided in the Joint Notice ~~such that it is received no later than~~ *de* ~~twenty-one (21) calendar days prior to the Settlement Hearing on:~~ *de*

*de*  
Greg A. Danilow  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
(212) 310-8000 (Telephone)  
(212) 310-8007 (Fax)

*de*  
Laurence Rosen  
The Rosen Law Firm, P.A.  
275 Madison Avenue, 34th Floor  
New York, NY 10016  
(212) 686-1060 (Telephone)  
(212) 202-3827 (Fax)

Lionel Glancy  
Glancy Prongay & Murray LLP  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
(310) 201-9150 (Telephone)  
(310) 201-9160 (Fax)

18. Any objections, filings or other submissions by an objecting Settlement Class Member must comply with the procedures, requirements and timing set forth in the Joint Notice,

including without limitation: (a) a statement of that Settling Class Member's objection; (ii) the specific reasons, if any, for each objection, including the legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) documents sufficient to show the number of shares of Puda common stock purchased and sold, as well as the dates and prices of each such purchase and sale. By filing a notice of objection, a Settlement Class Member shall be deemed to have submitted to the jurisdiction of the Court with respect to their objection or request to be heard, the subject matter of the Settlement, and enforcement as to its terms (including, but not limited to, the Releases).

19. Any member of the Settlement Class who does not make his, her or its objection in the manner provided herein and in the Joint Notice shall: (a) have and be deemed to have waived and forfeited any and all rights that Person may otherwise have to object to the Settlement, the Plan of Allocation and/or any award of attorneys' fees and reimbursement of Litigation Expenses to Plaintiffs' Counsel; (b) forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Final Order and Judgment to be entered approving the Settlement, the fairness and reasonableness of the Plan of Allocation, the attorneys' fees and Litigation Expenses requested or awarded to Plaintiffs' Counsel and the Reimbursement Award application or award; (c) be bound by all of the terms of the Stipulation and by all proceedings, orders and judgments entered by the Court in the Action, including the Final Order and Judgment; and (d) have and be deemed to have waived their right to be, and otherwise be forever barred from being heard with respect to any matters concerning the Settlement.

20. **Claims Process** – Class Members who wish to participate in the Settlement and receive a distribution from the proceeds of the Settlement maintained in the Settlement Fund

must complete and submit a Proof of Claim Form in accordance with the instructions contained therein and in the Joint Notice. Unless the Court orders otherwise, all Proof of Claim Forms must be postmarked no later than seventy-five (75) calendar days after the Notice Date. Notwithstanding the foregoing, Co-Lead Counsel may, at their discretion, accept for processing late claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Class. By submitting a Proof of Claim Form, a Person shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its claim and the subject matter of the Settlement.

21. Any Settlement Class Member that does not timely and validly submit a Proof of Claim Form or whose claim is not approved by the Court shall: (a) be deemed to have waived his, her or its right to share in the Net Settlement Fund; (b) forever be barred from participating in any distributions therefrom; (c) be bound by the provisions of the Stipulation and the Settlement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Final Order and Judgment and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) be barred from commencing, maintaining or prosecuting any of the Released Plaintiff Claims against each and all of the Released Defendant Persons, as more fully described in the Joint Notice.

22. **Exclusion from the Class** – Any Settlement Class Member who wishes to exclude himself, herself or itself from the Settlement Class shall request exclusion in writing within the time and in the manner set forth in the Joint Notice. Any such request for exclusion shall be mailed or delivered such that it is received no later than fourteen (14) calendar days prior to the Settlement Hearing by the Claims Administrator, as provided in the Joint Notice. Unless the Court orders otherwise, no request for exclusion shall be valid unless it is made within the

time provided and in the manner specified in the Joint Notice and contains the information required therein. Any request for exclusion that does not comply with the prerequisites for exclusion will be invalid.

23. Any Person who timely and validly requests exclusion in compliance with the terms stated in this Order and the Joint Notice, and is excluded from the Settlement Class, shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement, shall have no right to object to the Settlement, the Plan of Allocation and/or the motion for attorneys' fees and reimbursement of Litigation Expenses (and for a Reimbursement Award), and shall have no rights under the Settlement (including the right to participate in the distribution of the Net Settlement Fund). Only Settlement Class Members and Plaintiffs' Counsel shall have any right to seek a distribution from the Net Settlement Fund, unless otherwise ordered by the Court or provided in the Stipulation.

24. Any Settlement Class Member who does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order and the Joint Notice shall: (a) be deemed to have waived his, her or its right to be excluded from the Settlement; (b) be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) be bound by all proceedings, determinations, orders and judgments in the Action relating to the proposed Settlement, including, but not limited to, the Final Order and Judgment (if entered by the Court) and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) be barred from commencing, maintaining or prosecuting any of the Released Plaintiff Claims against any or all of the Released Defendant Persons, as more fully described in the Joint Notice.

25. Co-Lead Counsel shall cause to be provided to Macquarie's Counsel copies of all timely requests for exclusion within three (3) business days of their receipt of the request.

26. **Stay** – Until otherwise ordered by the Court, the Court stays all proceedings in the Action involving Macquarie, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation, the Settlement and any order of the Court relating thereto. All hearings, deadlines, motions and other proceedings in this Action as they pertain to Macquarie, except the Settlement Hearing, are hereby taken off the calendar. This stay does not impact any claims that Plaintiffs and the Settlement Class are pursuing against any of the Non-Settling Defendants. Pending final determination of whether the Settlement should be approved, Settling Plaintiffs and the other Settlement Class Members, and anyone who acts or purports to act on their behalf, shall not institute, commence, or prosecute any action that asserts any of the Released Plaintiff Claims against any of the Released Defendant Persons.

27. **Fees and Expenses** – All reasonable costs incurred in identifying and notifying Settlement Class Members, as well as in administering the Settlement Fund, shall be paid as set forth in the Stipulation. Immediately, after payment of the Settlement Fund to the Escrow Account, but before the Effective Date, Co-Lead Counsel may use up to \$100,000 of the Settlement fund to pay Notice and Administrative Costs reasonably, necessarily and actually incurred without further approval of Macquarie or order of the Court. If the Settlement is terminated pursuant to the terms of the Stipulation, all Notice and Administrative Costs properly paid or incurred, shall not be returned to Macquarie.

28. **Settlement Fund** – The contents of the Settlement Fund held by Huntington National Bank (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until

such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court. Other than as expressly provided for herein or in the Stipulation, there shall be no distributions or payments from the Settlement Fund prior to the Effective Date.

29. **Taxes** – Co-Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting forms for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

30. **Termination of Settlement** – If the Stipulation is terminated, the Settlement is not approved or the Effective Date does not otherwise occur: (a) the Settlement and the Stipulation shall be null and void and without prejudice to, or force and effect to or upon, the rights of the Settling Parties, and none of their terms shall be effective or enforceable (except for this Paragraph and those provisions identified in Paragraph 9.6 of the Stipulation); (b) Section 10 of the Stipulation shall govern the use of this Order, the Settlement and the Stipulation thereafter, including, among other things, that they shall not be used against any of the Settling Parties and are not admissible in any trial of the Action or any other proceeding; (c) the Settling Parties shall be deemed to have reverted to their respective litigation positions in the Action immediately prior to September 30, 2015; and (d) except as otherwise expressly provided in the Stipulation, the Settling Parties shall proceed in all respects as if the Stipulation and any orders related to the Settlement had not been entered.

31. **Retention of Jurisdiction** – The Court retains jurisdiction to consider all further applications arising out of the proposed Settlement.

*So ordered.*  
*Yunus Ak*  
*2/19/16*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_.

---

The Honorable Denise L. Cote  
United States District Judge