

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

DAN KOHL, *et al.*,

Plaintiff,

v.

LOMA NEGRA COMPANIA INDUSTRIAL  
ARGENTINA SOCIEDAD ANONIMA, LOMA  
NEGRA HOLDING GMBH, SERGIO FAIFMAN,  
MARCO GRADIN, RICARDO FONSECA DE  
MENDONÇA LIMA, LUIZ AUGUSTO KLECZ,  
PAULO DINIZ, CARLOS BOERO HUGHES,  
DIANA MONDINO, SERGIO DANIEL  
ALONSO, BRADESCO SECURITIES INC.,  
CITIGROUP GLOBAL MARKETS INC., HSBC  
SECURITIES (USA) INC., ITAU BBA USA  
SECURITIES, INC., MERRILL LYNCH,  
PIERCE, FENNER & SMITH INCORPORATED  
AND MORGAN STANLEY & CO. LLC,

Defendants.

Index No. 653114/2018  
Part 53

Hon. Andrew Borrok

Motion Sequence No. 8

CLASS ACTION

**AFFIRMATION OF SHANNON L. HOPKINS IN SUPPORT OF:  
(1) PLAINTIFF’S MOTION FOR FINAL APPROVAL OF THE SETTLEMENT  
AND APPROVAL OF THE PLAN OF ALLOCATION; AND (2) LEAD COUNSEL’S  
MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES  
AND AWARD TO PLAINTIFF**

I, SHANNON L. HOPKINS, hereby affirm as follows:

1. I am an attorney duly licensed to practice law in the State of New York and a partner in the law firm of Levi & Korsinsky, LLP (“Levi & Korsinsky”). Levi & Korsinsky is the Court-appointed Lead Counsel on behalf of Plaintiff and Court-appointed Class representative Dan Kohl

(“Lead Plaintiff” or “Plaintiff”) and the certified Class in the above-captioned action (the “Action”).<sup>1</sup>

2. I submit this affirmation in support of: (i) Plaintiff’s Motion for Final Approval of the Settlement and Approval of the Plan of Allocation; and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Expenses and Award to Plaintiff. Unless otherwise indicated, I have personal knowledge of the matters set forth herein based on my extensive participation in the prosecution and settlement of the claims asserted in the Action and my supervision of those working at my direction. If called upon by the Court, I could and would competently testify that the following facts are true and correct.

## **I. INTRODUCTION**

3. After over four years of hard-fought litigation, Plaintiff and Lead Counsel have succeeded in obtaining a substantial recovery for the Class of \$24,600,000 in cash.

4. I respectfully submit that the Settlement is an excellent result for the Class. As explained in the accompanying memorandum in support of final approval of the proposed Settlement, despite significant risks, Plaintiff and Lead Counsel have achieved a well above-average recovery of investor losses for a case of this type based on objective data. Assuming Plaintiff proved all liability issues at trial and on appeal, Plaintiff’s expert estimated that maximum statutory damages were approximately \$331.9 million, but that reasonably recoverable damages were ultimately approximately \$107.9 million, after removing the impact of stock price declines unrelated to the alleged misstatements. Accordingly, the \$24.6 million Settlement represents a recovery in this complex, high-risk and transnational case, of approximately 7.41% of Plaintiff’s perfect-scenario maximum statutory damages, and 22.8% of Plaintiff’s best estimate of

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<sup>1</sup> Capitalized terms not otherwise defined herein have the same meanings as in the Stipulation of Settlement (“Stipulation”), filed October 11, 2023. [NYSCEF No. 244](#).

realistically recoverable damages (assuming success on all disputed merits issues). This compares very favorably to settlements in other securities class action cases brought under Section 11 of the Securities Act of 1933 (“Securities Act”). For example, recent research shows that in Section 11 cases like this, the median settlement as a percentage of estimated damages in 2022 and 2021 (the last years for which there is complete data) were 4.7% and 4.4% respectively. Further, the total median settlement amount in 2022 for class claims brought solely under the Securities Act was \$7.0 million, about 70% less than the result achieved here. *See* L. Bulan and L. Simmons, [Securities Class Action Settlements – 2022 Review and Analysis, CORNERSTONE RESEARCH, at 7 \(2023\)](#).

5. As described further below, the Settlement was reached after more than four years of hard-fought litigation, and extensive arm’s-length settlement discussions facilitated by a highly experienced mediator, David Murphy, Esq. (the “Mediator”), of Phillips ADR, one of the top dispute resolution firms in the country specializing in complex litigation. The Settlement has the full support of the Lead Plaintiff. *See* Affirmation of Plaintiff and Class Representative Dan Kohl in Support of Final Settlement Approval (“Kohl Aff.”), ¶¶10-13.

6. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice (“Preliminary Approval Order”), dated November 30, 2023 and entered December 4, 2023 ([NYSCEF No. 254](#)), and the Decision+Order thereon ([NYSCEF No. 253](#)), the Notice and the Proof of Claim form (the “Notice Packet”) were mailed to potential Class Members who could be identified with reasonable effort; the Notice Packet was posted on a dedicated Settlement website at [www.LomaNegraSecuritiesLitigation.com](http://www.LomaNegraSecuritiesLitigation.com); and the Summary Notice was published once over *PR Newswire*, a national newswire service. *See* Affirmation of Ann Cavanaugh Regarding Class

Notice and Report on Objections and Requests for Exclusion Received (“Cavanaugh Aff.”), submitted herewith.

7. Plaintiff also seeks approval of the proposed Plan of Allocation, which is consistent with allocation plans that courts have approved in similar cases. The Plan of Allocation was developed by Plaintiff’s damages expert and provides for the fair and equitable distribution of the Net Settlement Fund to Class Members who submit valid Claim Forms.

8. Lead Counsel seeks an award of attorneys’ fees of one-third (33 1/3%) of the Settlement Amount (or \$8,200,000) plus their litigation expenses of \$240,088.20,<sup>2</sup> and an award to Plaintiff and Class Representative Dan Kohl of \$10,000. As discussed below, such amounts were disclosed in the Settlement Notice, and Lead Counsel’s requested fee amounts to a modest 1.108 multiple of Lead Counsel’s “lodestar” (*i.e.*, Lead Counsel’s hourly rates multiplied by the hours spent successfully prosecuting this Action).

9. The Court-ordered deadline for filing objections to the Settlement or “opting-out” of the Class is March 20, 2024. To date, no objections to any aspect of the Settlement or Lead Counsel’s request for fees, expenses and an award to Plaintiff have been received.<sup>3</sup>

10. For the reasons set forth below and in the accompanying memorandum and supporting exhibits, Plaintiff and Lead Counsel respectfully submit that the Settlement and requested fees and expenses are fair, reasonable and adequate and should be approved.

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<sup>2</sup> See accompanying Affirmation of Shannon L. Hopkins Filed on Behalf of Levi & Korsinsky, LLP in Support of Application for Award of Attorneys’ Fees and Expenses (“Levi & Korsinsky Aff.”), ¶¶4-7. Lead Counsel will forego interest on any fee and expense award so that all interest on the Settlement Fund will go to the Class.

<sup>3</sup> Three requests for exclusion were received in response to the Notice of Pendency mailed January 31, 2022, but none have been received to date after the mailing of the current Notice. Cavanaugh Aff. ¶16. Of those three, one was by Sergio Faifman (*see* [NYSCEF No. 169](#), at 24), Loma’s CEO and a named Defendant, who is thus not part of the Class. Plaintiff will address any objection(s) and/or request(s) for exclusion in a supplemental submission to the Court by April 3, 2024.

## II. BACKGROUND

### A. The IPO

11. On November 2, 2017, Defendant Loma Negra Compañía Industrial Argentina Societa Anónima (“Loma” or the “Company”), a major Argentina-based cement supplier, sold over \$1 billion of American Depositary Shares (“ADSs”) in an Initial Public Offering (“IPO”) on the New York Stock Exchange. Plaintiff alleged that the Offering Documents for the IPO contained materially false and misleading statements and omissions in violation of §§11 and 15 of the Securities Act. *See* Second Amended Class Action Complaint (“SAC” or “Complaint”). [NYSCEF No. 29](#).

12. The alleged false statements relate to two issues: (i) bribery and other corruption-related wrongdoing by Loma’s parent, Camargo Corrêa S.A. (“Camargo”) (n/k/a Mover Participações S.A.), and Camargo’s subsidiary, Construções e Comércio Camargo Corrêa S.A. (“CCCC”); and (ii) the Argentine government’s cutbacks of funding for public works, from which Loma derived substantial revenues. As to the first, Plaintiff alleged that the Offering Documents misleadingly reassured investors, in the wake of recent bribery scandals in South America, that CCCC had conducted internal investigations and had “not identified evidence of any wrongdoing by CCCC,” but failed to disclose that CCCC (and Camargo) had procured the massive Bicentenario water treatment plant project in Argentina, for which Loma was to supply one million cubic feet of cement, by means of bribery and sham bidding (the “Car Wash Statements”). As to the second category of statements, Plaintiff alleged that Loma touted the “compelling opportunity” created by Argentina’s “announced infrastructure investment plans,” but failed to disclose that such purported opportunities would not come to fruition because the government’s spending on such projects had already been cut (the “Demand Statements”).

13. Plaintiff alleged statutory damages as a result of the 35% decline from Loma's IPO ADS price of \$19 per ADS, to \$12.36 per ADS on June 21, 2018, the date suit was filed.

**B. History of the Litigation and Work Performed**

14. Plaintiff filed the initial complaint on June 21, 2018, against Loma and the Underwriter Defendants.<sup>4</sup> Plaintiff filed amended complaints on September 21, 2018, and January 18, 2019. The amended complaints asserted the same causes of action as the initial complaint but included additional factual allegations and theories of liability.

15. Lead Counsel undertook an extensive investigation before filing the initial complaint and the two amended complaints. Lead Counsel's investigation included:

- hiring an investigator/research firm to conduct a detailed investigation in Argentina, including outreach to government and private sector human and documentary sources, research concerning the Argentine economy, and investigation of Loma's filings in Argentina;
- researching and thoroughly reviewing Loma's filings with the SEC, and review of certain of Loma's filings with regulators in South America;
- researching and thoroughly reviewing English, Spanish and Portuguese-language analyst reports and news stories concerning Loma, and its affiliates including Camargo;
- researching and thoroughly reviewing English, Spanish and Portuguese-language transcripts of press conferences, analyst conference calls, and industry conferences concerning Loma and certain of its affiliates, including Camargo;

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<sup>4</sup> The initial complaint also named as defendants Loma Negra Holding GmbH and various Loma-affiliated individual defendants. These persons, who were based outside the United States, were not served and have not appeared in the Action. Pursuant to the terms of the Stipulation, the claims against these persons related to this Action will be released if the Settlement is approved.

- hiring a damages expert to assess damages incurred by the Class as a result of Defendants' alleged material misrepresentations and omissions and causation.

16. Lead Counsel also researched the legal precedents concerning Plaintiff's claims. These efforts culminated in the filing of Plaintiff's Amended Class Action Complaint ("Amended Complaint") on September 21, 2018 ([NYSCEF No. 15](#)).

17. On November 20, 2018, Defendants filed a motion to dismiss the Amended Complaint ([NYSCEF Nos. 22-25](#)).

18. On January 18, 2019, pursuant to stipulation, Plaintiff filed his Second Amended Complaint, which added new allegations regarding alleged bribery by Camargo and CCCC, which gradually came to light in a series of articles published (in Spanish) in Argentina beginning in late summer/early fall 2018. *See, e.g.*, [NYSCEF No. 29](#), ¶¶169-81.

19. On March 13, 2019, Defendants filed a motion to dismiss Plaintiff's Second Amended Complaint, arguing, *inter alia*, that (i) Plaintiff had not alleged Loma *itself* committed any act of bribery; (ii) Plaintiff failed to allege that Loma knew about that bribery, had made any material misstatements or violated any duty to disclose the bribery, or that any bribery by its affiliate would be material to Loma or its shareholders; (iii) Defendants' statements about cement demand were not misleading because they disclosed that demand was in part tied to the level of government projects, Loma could not predict the level of demand or government action, and that they were "forward-looking statements" protected by "safe harbor" provisions of the Private Securities Litigation Reform Act, 15 U.S.C. §77z-2; and (iv) Plaintiff's claims also failed under Item 303 and 503 of SEC Regulation S-K, and the control person liability provisions of Section 15. [NYSCEF No. 35](#).

20. After full briefing and a hearing held November 26, 2019 and various submissions of supplemental authority, on October 22, 2020, Justice Schechter granted Defendants' motion in part and denied it in part, holding that Plaintiff had adequately alleged Loma's disclosures omitted information concerning investigations into bribery and kickback schemes involving its corporate affiliates; and risks concerning cement demand. [NYSCEF No. 58](#). However, the Court dismissed claims based on Defendants' statements touting Loma's competitive strengths and advantages. *Id.*

21. Thereafter, the Parties commenced fact discovery.

22. On November 17, 2020, Defendants filed a Notice of Appeal of the Court's motion to dismiss Order.

23. On December 18, 2020, Plaintiff served his Notice for Discovery and Inspection to Loma, containing 117 documents requests, and a Notice for Discovery and Inspection to the Underwriter Defendants, containing 110 document requests. Plaintiff concurrently served Requests for Admissions on Loma and the Underwriter Defendants, as well as his First Set of Interrogatories to Loma, and First Set of Interrogatories to the Underwriter Defendants.

24. Also on December 18, 2020, Defendants served their First Set of Requests for Production to Lead Plaintiff, containing 24 document requests, and their First Set of Interrogatories to Lead Plaintiff.

25. Additionally, on December 18, 2020, Loma and the Underwriter Defendants filed separate Answers to the Second Amended Complaint, which Plaintiff analyzed.

26. On January 11, 2021, while Defendants' appeal was pending, Plaintiff moved for class certification.

27. On February 2, 2021, Defendants filed their opening Joint Brief in their appeal of the motion to dismiss decision before the Appellate Division.



28. On February 12, 2021, Defendants served their Responses and Objections to each of Plaintiff's discovery requests, including Plaintiff's requests for production of documents, interrogatories, and requests for admission. The same day, Plaintiff served his Responses and Objections to the document requests and interrogatories served by Defendants.

29. During January and February, 2022, the Parties negotiated a protective order which the Court entered on February 25, 2022.

30. On April 7, 2022, Plaintiff Dan Kohl sat for a more than five-hour deposition taken by Defendants' counsel.

31. On June 1, 2021, after full briefing on Defendants' appeal and oral argument, the Appellate Division "[a]ffirmed as modified" the Court's decision on the motion to dismiss. [\*Kohl v. Loma Negra Compañía Indus. Arg. S.A.\*, 195 AD3d 414 \(1st Dep't 2021\)](#). The Appellate Court dismissed Plaintiff's claims based on allegations that Loma failed to disclose certain pre-IPO law enforcement raids and/or inquests against executives of related corporate entities, and dismissed the allegations under SEC Regulation S-K. However, the Appellate Division affirmed Plaintiff's core allegations and allowed Plaintiff's Action to proceed on the allegations that Loma misled investors concerning (i) its corporate affiliate's involvement in corruption in Argentina, and (ii) market demand for its products and services due to public works cutbacks. *Id.* at 415-16.

32. On June 3, 2021, Defendants filed a cross-motion for summary judgment, arguing that Plaintiff's losses were not caused by Defendants, because (i) Plaintiff failed to allege any corrective disclosure during the period from January 5, 2018 when he bought Loma ADSs, to May 24, 2018 when he sold them, and (ii) Defendants' disclosures were not sufficiently related to the alleged misstatements or omissions to be "corrective."

33. After full briefing and extensive oral argument on both motions, on November 16, 2021, Judge Schechter granted Plaintiff's motion for class certification and denied Defendants' motion for summary judgment from the bench, and later entered orders thereon. [NYSCEF Nos. 146-47.](#)

34. Over the summer and into the fall of 2021, the Parties negotiated an ESI protocol and engaged in extensive and contentious negotiations regarding Plaintiff's documents requests and interrogatories, the search protocol, search terms and custodians, the scope of relevance, the impact of the Appellate Division's ruling on the appeal of the Defendants' motion to dismiss as it applied to the scope of production, and the relevant time period for the requests. Ultimately, Plaintiff's sought Court intervention on several issues during November and December 2021 in a series of email correspondence, letters and a presentation to the Court. Additionally, numerous iterations of search terms were exchanged, complicated by the unique requirements of the software vendor used in Argentina for Loma's production, and the fact that the search terms needed to be translated into, and run in, Spanish and Portuguese, in addition to the original English.

35. On December 28, 2021, Justice Schechter issued an Order ruling in Plaintiff's favor on certain disputed discovery issues (including that Defendants were not to unilaterally determine the relevance of document hits), and for Defendants on others. [NYSCEF No. 156.](#)

36. On December 31, 2021, Defendants filed another Notice of Appeal, this time with respect to the Court's order granting Plaintiff's motion for class certification and denying Defendants' cross-motion for summary judgment.

37. On January 6, 2022, this case was reassigned to Justice Andrew Borrok.

38. On January 31, 2022, pursuant to Justice Schechter's order granting class certification, Plaintiff, having retained A.B. Data, Ltd. ("A.B. Data") after competitive bidding,

caused the mailing by A.B. Data of a Notice of Pendency of Class Action to all potential Class Members, based on data supplied by Defendants.

39. Notwithstanding Justice Schechter's December 28, 2021 Order concerning the discovery protocol, the Parties continued to have discovery disputes, including with respect to the interpretation of said Order, the manner of Loma's review and production, search terms and custodians, and the relevant time period. The Parties continued to meet-and-confer and sought Court intervention on various issues. After argument on those issues, on July 12, 2022 the Court issued an Order interpreting Justice Schechter's December 28, 2021 Order and establishing a protocol governing the resolution of further disputes about the scope of Loma's review and production. [NYSCEF No. 172](#).

40. Meanwhile, Loma and the Underwriter Defendants began document production on a rolling basis in the second half of 2022. In all, Defendants produced over 750,000 pages of documents, many of which were in Spanish or Portuguese and required translation. Plaintiff devoted substantial time, effort and resources to reviewing and analyzing these documents.

41. Plaintiff also served third party discovery, including on UBS Securities LLC, and its analyst.

42. In addition, throughout this time, Plaintiff sought discovery from sources outside the formal discovery process, including retaining Argentine consultants, attorneys and investigators, to help them in their investigation. As a result of their investigation and these consultants' assistance, Lead Counsel were able to conduct interviews of multiple sources in Argentina about the alleged bribery scandals and public works issues, including interviews of journalists who had reported on the bribery scandals. Lead Counsel also retained consultants who

were able to obtain and translate files from related cases in Brazil. This information further informed Lead Counsel's evaluation of the strengths and weaknesses of the case.

43. On June 30, 2022, Defendants filed their Joint Brief appealing the Court's Order granting Plaintiff's motion for class certification and denying Defendants' cross-motion for summary judgment. [\*Kohl v. Loma Negra Compañía Indus. Arg. S.A.\*, 2022-00008, NYSCEF No. 7.](#)

44. Plaintiff filed his Opposition on September 2, 2022, and on September 23, 2022, Defendants filed their Reply. On October 26, 2022, the First Department held oral argument on Defendants' appeal.

**C. The Mediation, Continued Litigation, and Settlement Negotiations**

45. While discovery was proceeding, but before depositions of Argentina-based witnesses commenced, and while Defendants' second appeal was being briefed, the Parties agreed that it may be productive to engage a mediator to explore the possibility of resolving the Action. To that end, the Parties engaged Mr. Murphy, a nationally recognized mediator who has successfully mediated numerous Securities Act cases involving IPOs.

46. After exchanging extensive mediation statements, on July 20, 2022, the Parties attended a formal, full-day mediation attended by counsel for the Parties, and representatives of Loma's director and officer ("D&O") insurers.

47. Despite negotiating in good faith, the Parties were unable to reach an agreement. However, the Mediator continued to work with the Parties following the Mediation toward a possible resolution.

48. Meanwhile, Plaintiff continued to press forward with discovery, and review documents produced by Defendants.

49. On September 30, 2022, Plaintiff filed a proposed Order to Show Cause seeking the issuance of Letters of Request to the central authorities of Brazil, Argentina and Mexico, to obtain documentary and testimonial evidence from seven non-parties, under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. This Court granted the Order to Show Cause ([NYSCEF No. 177](#)) and scheduled a hearing thereon for December 16, 2022.

50. On October 14, 2022, Plaintiff filed another proposed Order to Show Cause to Compel Discovery from Defendant Loma Negra and Arthur Badin, General Counsel of Camargo, as a person knowledgeable about CCCC's purported investigation into wrongdoing. [NYSCEF Nos. 179-197](#). The Court granted that Order to Show Cause, setting the hearing for December 16, 2022 also. [NYSCEF No. 199](#).

51. On November 17, 2022, after full briefing and oral argument, the Appellate Division affirmed Justice Schecter's Order granting Plaintiff's motion for class certification and denying Defendants' cross-motion for summary judgment. [Kohl v. Loma Negra Compañía Indus. Argentina S.A., 210 AD3d 533 \(1st Dep't 2022\)](#).

52. On November 18, 2022, Plaintiff filed another proposed Order to Show Cause for Issuance of Letters of Request to the central authority in Argentina, to obtain documentary and testimonial evidence from two non-party individuals involved in the Argentine government's decisions to curtail spending on public works projects. [NYSCEF No. 229-38](#). The Court granted this Order to Show Cause and set it for hearing on the same December 16, 2022 date. [NYSCEF No. 240](#).

53. Also on November 18, 2022, Plaintiffs sent Defendants their preliminary list of fifteen (15) deponents requesting available dates and locations for such depositions. A majority of these deponents or likely corporate designees were located outside the United States.

54. On December 1, 2022, following the Appellate Division's decision on Defendants' second appeal, and as the various Orders to Show Cause were set for hearing, and the stage was set for foreign document and deposition discovery, the Parties agreed in principle to resolve the Litigation, for a total consideration of \$24.6 million in cash, subject to the execution of a Stipulation and customary documentation and releases.

**D. Settlement Documentation and Resolution of Settlement Funding Issues**

55. In February 2023, while the Parties were negotiating the Settlement documents, Defendants' counsel indicated there were complications with funding the Settlement through traditional means in light of currency restrictions recently implemented in Argentina due to the country's economic crisis, which required the input of Argentinian lawyers and sign-off from Defendants' Argentinian D&O insurance carriers and their counsel.

56. After months of discussions regarding a workable solution, on October 11, 2023, Loma's counsel indicated that all relevant insurers had signed all documents necessary for Loma to proceed with executing the Stipulation, and the Parties executed the Stipulation that same day. Also on October 11, 2023, Plaintiff filed an Order to Show Cause why an order should not be issued: preliminary approving the Stipulation; entering the proposed Preliminary Approval Order and approving the proposed Notice, proposed Summary Notice, and proposed Proof of Claim and Release form; ordering dissemination of the Notice and Summary Notice; and setting the date and time for a Settlement Hearing at which the Court will consider whether the Settlement should be finally approved. [NYSCEF Nos. 242-50](#).

57. As a result of the compromises necessitated by Argentina's restrictions on transferring currency outside the country, and the different workarounds that were ultimately approved by the three insurance carriers (each of whom was situated differently, in part due to

their corporate structures), and Loma, the funding of the Settlement will occur in two stages, as described in the Notice and the Stipulation, ¶¶[2.7-2.8](#). In short, \$18.6 million of the \$24.6 million total Settlement Amount was to be funded by two of the insurance carriers and Loma forthwith, and those funds have already been received into the Settlement Fund escrow account and are earning interest. Under the terms of the Stipulation, the remaining \$6.0 million is to be funded no later than 365 days from the date the Stipulation was signed, or October 11, 2024. *See id.* Due to the costs of Settlement administration and distribution, there will be only *one* distribution of the Net Settlement Fund once all funds are received into the Settlement Fund. Since A.B. Data estimates the claims evaluation, allocation and administration process will last past October 2024 given the large size of the Offering, Plaintiff does not foresee any delay in the distribution of the Settlement proceeds to Class Members even if the Settlement is not fully funded until October 11, 2024. Accordingly, Plaintiff has submitted a proposed Final Approval Order to be entered after the Settlement Hearing ([NYSCEF No. 249](#)), which will be resubmitted by April 3, 2024), and a proposed Final Judgment ([NYSCEF No. 250](#)), which will be resubmitted after the last payment into the Settlement Fund is received.

### III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

#### A. Settlement Approval Proceedings

58. On October 17, 2023, this Court issued the Order to Show Cause setting a hearing date of November 30, 2023 to consider preliminary approval. [NYSCEF No. 251](#). After that videoconference hearing, the Court signed the Preliminary Approval Order, which was entered on December 4, 2023. [NYSCEF Nos. 254](#).

59. Consistent with the Preliminary Approval Order, on December 21, 2023, Lead Counsel, through the Court-appointed Claims Administrator, A.B. Data, implemented a

comprehensive Court-approved notice program giving notice to Class Members by mail and publication. Cavanaugh Aff. ¶¶3-12, Ex. A-B. The Summary Notice was published on December 29, 2023, and the Notice has been, and continues to be, posted on [www.LomaNegraSecuritiesLitigation.com](http://www.LomaNegraSecuritiesLitigation.com), along with other Settlement-related documents. *Id.*, ¶¶12-13, Ex. B. The Notice contained the information necessary for Class Members to evaluate the benefits of the Settlement, and directions for Class Members wishing to: a) exclude themselves from the Settlement; b) object to the Settlement, Plan of Allocation, or the fee application; c) file a Proof of Claim; or d) attend the Settlement Hearing.

60. While the March 20, 2024 deadline for objections has not yet passed, to date, there have been no objections filed to any aspect of the Settlement.

**B. Plaintiff's Likelihood of Success and the Complexity of the Action**

61. While Plaintiff believes his claims have merit, if a Settlement had not been achieved, Plaintiff still faced numerous hurdles in establishing liability and damages, and success was far from guaranteed.

62. For example, Plaintiff's theory of the case centered on being able to prove that bribery occurred at one of Loma's foreign affiliates (CCCC), not Loma itself, which required Plaintiff to rely heavily on foreign discovery to prove his claims. Plaintiff faced significant risk of not being able to obtain such discovery, which is not subject to the same protections for evidence preservation as in the U.S. Plaintiff's ability to prove liability also hinged, in part, on the outcome of criminal cases pending in Argentina, which were moving very slowly through the Argentine courts and could have ended in acquittals, as well as Plaintiff's ability to show Loma was informed by CCCC that its internal investigations had, indeed, turned up evidence of wrongdoing. Thus, even if CCCC had committed such wrongdoing, but its internal investigation did not reveal it, or



if CCCC told Loma there had been no such wrongdoing, Loma may have been found to have reasonably relied on CCCC's representations, in which case arguably its Prospectus representations would not have been false.

63. Additionally, Defendants interpreted the Appellate Division's ruling on the motion to dismiss appeal to require a "determination" of wrongdoing by a court or similar tribunal, and because there was only a Judicial Charging Document, rather than a conclusive verdict, regarding the Bicentenario-related bribery allegations at the time of the IPO, if Defendants' interpretation were ultimately adopted by the Court or jury, they would likely be found not liable.

64. As to the "Demand Statements" allegations, discovery had yet to show when the Argentine government made cuts to planned public works projects, when they communicated this to Loma, or how material those cuts were to Loma's sales.

65. As noted, at the time of Settlement, Plaintiff had several requests pending for issuance of Letters Rogatory to Argentina, Brazil and Mexico, and assuming this Court granted Plaintiff's motions, it was not clear whether those countries' central authorities would grant Plaintiff's requests for documents and testimony, and in what limited form. Regardless, the scope of such foreign discovery would be far more limited than in the U.S., which could have significantly hampered Plaintiff's case and may have taken years to obtain.

66. Moreover, Defendants vehemently argued that the price of Loma ADSs declined as a result of the overall economic downturn in Argentina – and not due to the revelation of the alleged undisclosed facts.

67. In sum, there is no assurance that the Class would have recovered an amount equal to, let alone greater than, the Settlement Amount. Plaintiff also faced the real risk that an Argentine court would not enforce a U.S. judgment and, even if it did, that Argentine currency controls would

not have allowed the transfer of funds out of Argentina. Moreover, had the jury agreed with Defendants on either liability or damages, the Class would have ended up with little or no recovery. Thus, the Settlement is particularly strong when considered against the risks of continued litigation.

68. In negotiating the Settlement, Plaintiff and Lead Counsel considered, *inter alia*: (a) the substantial and expeditious cash benefit to Class Members under the Settlement; (b) the uncertainties of pursuing discovery in Argentina, Brazil and Mexico through Letters Rogatory, and of taking depositions of witnesses most of whom are located abroad and speak Portuguese or Spanish, and are subject to foreign jurisdictions' limitations on discovery; (c) the expense and time required in prosecuting the Action to trial, particularly given that Loma is headquartered in Argentina (and Camargo in Brazil); (d) the probability that Defendants would move again for summary judgment after the close of discovery, leading to a "battle of the experts" on loss causation, materiality, and damages issues, as well as the possibility that Defendants would move to de-certify the Class; (e) the difficulties and risks involved in proving such issues at trial, particularly given the importance of expert opinion evidence; (f) the likelihood that Defendants would file post-verdict motions and appeals if Plaintiff succeeded at trial; and (g) the risk that Plaintiff would be unable to enforce a judgment in Argentina.

### **C. Lead Counsel's Judgment Supports the Settlement**

69. Given the stage of the proceedings at which the Settlement was reached, after over four years of litigation, the near-completion and review of Defendants' document production, and informal investigation and discovery, Lead Counsel had a strong understanding of the strengths and weaknesses of the Class's claims.

70. The Settlement was only reached after:

- an extensive factual investigation, as described above;
- consulting with damages experts;
- extensive legal research in preparing the complaints and opposing Defendants' motion to dismiss and for summary judgment and appeals therefrom;
- review and analysis of over 750,000 pages of documents produced by Defendants;
- continuing informal investigation, including journalist interviews and monitoring of developments in Argentine legal proceedings;
- a comprehensive formal mediation process; and
- extended settlement negotiations, including overcoming obstacles posed by Argentina's currency restrictions.

71. Based on all of the foregoing, Lead Counsel has concluded that the Settlement is fair, reasonable and adequate to Class Members.

**D. The Settlement Was the Result of Arm's-Length Negotiations by Experienced Counsel Facilitated by a Nationally Recognized Mediator**

72. In evaluating whether a settlement is fair, courts consider whether the settlement was the product of an arm's-length negotiation, including whether a neutral mediator was involved.

73. Settlement discussions began before the July 20, 2022 full-day mediation, and negotiations continued for several months thereafter, with the substantial assistance of an experienced Mediator. The Parties' negotiations over the terms of the Stipulation and related exhibits, particularly the complicated payment provisions here, were also aided by the Mediator's input and took some eight months to conclude.

74. The fact that this Action was hard-fought at every stage by experienced counsel and the Settlement was overseen by a highly respected and experienced Mediator strongly weighs in favor of Settlement approval.

#### IV. THE PLAN OF ALLOCATION IS CUSTOMARY, FAIR AND REASONABLE

75. To receive a distribution from the Net Settlement Fund, Class Members must submit a Proof of Claim form. The Claim Form was mailed with the Notice and is available on the Settlement website. The Claims Administrator will review the Claim forms and supporting documents submitted, provide an opportunity to cure any deficiencies, and mail or wire Class Members their *pro rata* share of the Net Settlement Fund in accordance with the proposed Plan of Allocation.<sup>5</sup>

76. The proposed Plan of Allocation was formulated by Lead Counsel in consultation with Plaintiff's damages consultant. The Plan of Allocation follows the statutory framework in [15 U.S.C. §77k\(e\)](#), and is similar to plans approved in other Securities Act cases.

77. Specifically, the POA is (a) based on the decline in the value of Loma ADSs shares following the gradual disclosure of the truth concerning the alleged corruption-related wrongdoing at CCCC, and the Argentine government's cutbacks in public works projects impacting Loma's cement demand (which in turn reduced the amount of artificial inflation in the ADS prices allegedly caused by the misstatements and omissions), while also (b) taking into account the Section 11(e) statutory damages formula. Eligible Class Members will receive a *pro rata* share of the Net Settlement Fund, in proportion to their losses. The proposed POA will therefore result in a fair and equitable distribution of the Net Settlement Fund and should be approved.

78. The POA was detailed in the Notice distributed to Class Members. Cavanaugh Aff., Ex. A, Notice at 5-7. To date, no objections to it have been received.

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<sup>5</sup> To receive a distribution, the Authorized Claimant's payment amount must be \$10.00 or more. See Cavanaugh Aff., Ex. A, Notice at 6.

**V. LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFF**

**A. The Requested Fee is Reasonable Under the Factors Considered by New York Courts**

79. As described in the accompanying brief, courts have long recognized that attorneys who achieve a benefit for class members are entitled to compensation. Here, Lead Counsel seeks an attorneys' fees award of one-third of the Settlement for the 11,073.35 hours they devoted to this Action. *See* Levi & Korsinsky Aff., ¶4 and Exs. A-B. The request is consistent with the amount stated in the Notice and is fully supported by Plaintiff. *See* Cavanaugh Aff., Ex. A, Notice at 9; Kohl Aff., ¶11. Lead Counsel believes such a fee is reasonable and appropriate in light of the result obtained, the resources expended in prosecuting the Action, and the inherent risk of nonpayment from representing the Class on a contingent basis.

80. New York courts analyzing attorneys' fee requests consider a number of factors, including: (i) the risks of the action; (ii) whether counsel had the benefit of a prior judgment; (iii) counsel's experience; (iv) the magnitude and complexity of the action; (v) the amount recovered for the class; and (vi) the work done by counsel. *See, e.g., Fiala v. Metro. Life Ins. Co.*, 899 NYS2d 531, 540 (Sup. Ct., NY Cty. 2010). Another factor, the "lodestar cross-check," noted above, is also arguably inherent in considering the amount of work performed factor.

**1. The Risks of the Action**

81. The specific risks Plaintiff faced in proving the Class claims, along with the risks of proceeding to trial, are detailed above at ¶¶61-68. Moreover, Lead Counsel, who worked on a contingent basis for over four years, bore the risk that *no* recovery would be achieved. Lead Counsel understood that they were embarking on a complex, expensive, risky, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and

money the case would require. That risk was particularly pronounced here given the absence of any regulatory investigation of Loma or earnings restatement, and the fact that much of the discovery had to be obtained from Argentina or Brazil (and largely in Spanish or Portuguese). Even getting a recovery out of Argentina was fraught with risk given the onerous currency restrictions, which seriously threatened to topple the Settlement altogether even after an agreement-in-principle had been reached.

## **2. Lead Counsel Did Not Have the Benefit of Prior Favorable Judgment**

82. This Action was the only case filed in state court arising from the allegedly false and misleading Offering Documents. One other action with overlapping allegations was filed in federal court five months *after* this Action but was dismissed at the pleading stage (before Plaintiff's Complaint was sustained). [\*Karolyi v. Loma Negra Compania Indus. Arg. Sociedad Anonima\*, 613 F. Supp.3d 795 \(S.D.N.Y. 2020\)](#). This, alone, attests to Lead Counsel's skill, effectiveness, and value added on behalf of the Class.

83. Moreover, to the extent the criminal investigations in Argentina were related, they were still moving at a snail's pace with no end in sight and uncertain results. Lead Counsel was thus required to develop the facts and legal theories here principally based on their own efforts.

## **3. Lead Counsel Is Highly Experienced in Securities Class Actions**

84. Lead Counsel has a significant history of achieving successful results in securities class actions. See [NYSCEF 76](#); Levi & Korsinsky Aff. Ex. D (firm resume). Moreover, Levi & Korsinsky vigorously prosecuted this Action and employed its substantial experience to secure an outstanding result for the Class here.

85. Defendants were represented by skillful and experienced counsel, White & Case LLP and Shearman & Sterling LLP. Defense Counsel presented a thorough and aggressive

defense, and challenged Lead Counsel at every turn in the Action, including through two appeals and numerous discovery disputes.

86. The Settlement is a direct result of Lead Counsel's tireless efforts in the prosecution of the Action as well as its attorneys' reputation for being aggressive and skillful practitioners.

#### **4. The Magnitude and Complexity of the Action**

87. As noted in the accompanying brief, courts recognize that securities class actions are notoriously complex. This Action is no exception. *See supra*, ¶¶11-68.

88. The magnitude of the Action was likewise significant as the potential damages ranged well over a hundred million dollars and implicated a major Argentine industrial manufacturer and its Brazilian conglomerate parent – among the largest companies in South America – and a sprawling alleged corruption-related scandal there. Accordingly, Loma and its affiliates threw extensive resources at defending this case. Lead Counsel's ability nonetheless to resolve the Action on such favorable terms further supports the requested fee.

#### **5. The Amount Recovered**

89. The Settlement Amount supports Lead Counsel's requested fee, especially given Defendants' vehement position that the Class was entitled to *no* damages, or, at best, limited damages. Moreover, Plaintiff's consultant estimated reasonably recoverable damages of approximately \$107,862,619. Based on this estimate, the Settlement represents a 22.8% recovery, well above the average recovery in similar cases.

#### **6. The Work Done by Lead Counsel**

90. Since June 2018, Lead Counsel has expended substantial time and effort prosecuting the Action and negotiating the Settlement. *See supra*, ¶¶14-57 and Levi & Korsinsky Aff. Further, Lead Counsel's efforts did not end after the agreement-in-principle was reached.

Lead Counsel drafted all the Settlement papers, worked with Defendants' counsel, the Mediator and Loma's insurance carriers to resolve the Settlement payment provision issues, obtained preliminary approval of the Settlement, and (although not seeking compensation therefor) will continue to work through the final approval hearing until any appeals have been exhausted, all payments are made, and will continue to oversee the Claims Administrator's work. The extensive and effective work done by Lead Counsel supports the requested fees.

**7. The Reasonableness of the Requested Fee is Confirmed by a "Lodestar Crosscheck"**

91. As reflected above and in the Levi & Korsinsky Aff. and accompanying exhibits, Lead Counsel spent approximately 11,073 hours and \$7,400,360.50 in lodestar litigating this Action. Levi & Korsinsky Aff. ¶¶4-5 and Exs. A-B. This represents a slight multiplier of only 1.108 to Lead Counsel's time. Both the amount of work Lead Counsel performed, as well its quality as evidenced by the favorable Settlement, support the requested fee.

**B. The Requested Expenses are Fair and Reasonable**

92. Lead Counsel seeks an award of \$240,088.20 in litigation expenses. Levi & Korsinsky Aff. ¶7 & Ex. C. The requested expenses reflect typical expenditures incurred in the course of litigation, such as the costs of expert-consultants, investigators, translation, document hosting platforms, mediation fees, filing and expedited mail delivery.

93. Lead Counsel believes that all these expenses were reasonable and necessary for the successful prosecution of the Action. The Notice disseminated to Class Members stated that Lead Counsel would seek reimbursement of litigation expenses in an amount not to exceed \$250,000. Cavanaugh Aff., Ex. A, Notice at 9. To date, no objection to that amount has been filed or received.



**C. Plaintiff's Requested Service Award Is Reasonable**

94. Lead Plaintiff has requested a modest service award of \$10,000 for his time and effort prosecuting the Action on behalf of the Settlement Class.

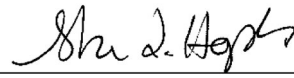
95. As discussed in Plaintiff's supporting Affidavit, Plaintiff Kohl has diligently fulfilled his fiduciary obligations to the Class. Among other things, he is the only Plaintiff who stepped forward to initiate this Action, he produced documents and sat for an extensive deposition at which he proved to be a very eloquent spokesperson for the Class, and despite Defendants' pointed challenges, was appointed as Class Representative, which appointment was upheld by the Appellate Division. *See* Kohl Aff., ¶¶2-13. In the face of Defendants' aggressive challenges, Plaintiff's efforts and persistence in assisting and supervising Lead Counsel required him to devote considerable time and resources to this Action and were of great benefit to Lead Counsel and the Class. Were it not for his efforts, this Action would not have been initiated or maintained, and the Class would have obtained no recovery.

**VI. CONCLUSION**

96. In light of the significant recovery for the Class and the substantial risks posed by this Litigation, Lead Counsel respectfully submits that the Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate. In addition, Lead Counsel respectfully submits that the Court should award attorneys' fees in the amount of \$8.2 million, or one-third of the Settlement Amount, plus \$240,088.20 in expenses, and an award of \$10,000 to Plaintiff in connection with his representation of the Class.

I affirm under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Executed this 6th day of March, 2024, at Stamford, Connecticut.



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Shannon L. Hopkins

**PRINTING SPECIFICATIONS STATEMENT**

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing affirmation was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman  
Point Size: 12  
Line Spacing: Double

2. The total number of words in the memorandum, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 6,942 words.

DATED: March 6, 2024

Respectfully submitted,

**LEVI & KORSINSKY, LLP**

/s/ Shannon L. Hopkins

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