

**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 KLE CZ,
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

**[REDACTED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, the Parties agreed, subject to Court approval following Notice to the Settlement Class and a hearing, to settle and dismiss with prejudice the Litigation upon the terms and conditions set forth in the Stipulation of Settlement, dated October 11, 2023 (the “Stipulation”);¹ and

WHEREAS, on December 4, 2023, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice (the “Preliminary Approval Order”), which preliminarily approved the Settlement and approved the form and manner of Notice to the Settlement Class of the Settlement; and said Notice having been made, and the Settlement Hearing having been held;

NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and proceedings herein, and it appearing to the Court upon examination that the Settlement is fair, reasonable, and adequate, and upon a Settlement Hearing having been held after Notice to the Settlement Class of the Settlement to determine if the Settlement is fair, reasonable, and adequate and whether the Judgment should be entered in the Litigation after the full Settlement Amount of \$24.6 million has been deposited in full into the Escrow Account;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

- A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.
- B. This Court has jurisdiction over the subject matter of the Litigation and over all of the Parties and all Settlement Class Members for purposes of the Settlement.

¹ All capitalized terms, unless otherwise defined herein, shall have the same meanings as set forth in the Stipulation. As used herein, the term “Parties” mean Plaintiff Dan Kohl (“Plaintiff”), on behalf of himself and the Settlement Class, and Defendants Loma Negra Compañía Industrial Argentina S.A. (“Loma” or the “Company”), Bradesco Securities Inc., Citigroup Global Markets Inc., HSBC Securities (USA) Inc., Itaú BBA USA Securities, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Morgan Stanley & Co. LLC (collectively, “Defendants”).

C. The form, content, and method of dissemination of Notice given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual Notice to all Settlement Class Members who could be identified through reasonable effort.

D. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of § 904 of the New York Civil Practice Law and Rules (“CPLR”), due process, and all other applicable laws and rules. Such Notice advised Settlement Class Members of the Settlement and of their right to object thereto, and a full and fair opportunity was accorded to Settlement Class Members to be heard with respect to the Settlement. Thus, it is further determined that all Settlement Class Members are bound by this Order and will be bound by any Judgment entered in the Litigation.

E. Consistent with the Court’s December 2, 2021 Order certifying the class in this Litigation (NYSCEF Doc. No. 147), the Settlement Class consists of all Persons and entities who purchased or otherwise acquired Loma’s American Depository Shares pursuant and/or traceable to the Registration Statement and Prospectus incorporated therein, as amended, issued by Loma in connection with its November 2017 Initial Public Offering. Excluded from the Settlement Class are: (a) Defendants; (b) the individuals originally named as defendants in the Litigation and members of their immediate families; (c) the respective parents and subsidiaries of Loma and the Underwriter Defendants; (d) the officers and directors of Loma and the Underwriter Defendants and their immediate families, (e) any entity in which any Defendant has or had a direct or indirect majority ownership interest; and (f) the legal representatives, heirs, successors, or assigns of any such excluded party. Notwithstanding any aforementioned exclusions from the definition of

“Settlement Class,” Investment Vehicles shall not be excluded from the Settlement Class. Also excluded from the Settlement Class is any Person who would otherwise be a Member of the Settlement Class, but who validly and timely has submitted, or submits, a Request for Exclusion in accordance with the requirements set by the Court. The Court’s December 2, 2021 Order also appointed Plaintiff as representative of the Settlement Class and Levi & Korsinsky, LLP, as counsel for the Settlement Class. NYSCEF Doc. No. 147 at p.2.

F. The Settlement, as set forth in the Stipulation, is fair, reasonable, and adequate.

Among other things:

(i) The Settlement was negotiated at arm’s-length by Plaintiff on behalf of the Settlement Class and by Defendants, all of whom were represented by highly experienced and skilled counsel. The Litigation settled only after, among other things: (1) a mediation conducted by an experienced mediator who was familiar with the Litigation; (2) the exchange between Plaintiff and Defendants of detailed mediation statements before the mediation that highlighted the factual and legal issues in dispute; (3) Plaintiff’s Counsel’s extensive investigation, which included, among other things, a review of Loma’s press releases, U.S. Securities and Exchange Commission filings, analyst reports, media reports, and other publicly disclosed reports and information about the Defendants; (4) the drafting and submission of detailed complaints; (5) motion practice directed to the complaints; (6) a ruling of the Appellate Division on Defendants’ appeal of their motion dismiss Plaintiff’s second amended complaint, modifying in part the Court’s order denying in part and granting in part said motion; (7) issuance of orders granting certification of the Settlement Class and denying of Defendants’ motion for summary judgment based primarily on the issue of causation; (8) the Appellate Division’s affirmance of said orders; (9) Plaintiff’s

consultation with industry and damages experts; and (10) written and document discovery from Loma and the Underwriter Defendants. Accordingly, both Plaintiff and the Defendants were well-positioned to evaluate the settlement value of the Litigation. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the Settlement had not been achieved, both Plaintiff and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiff's or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the Settlement.

G. Plaintiff and Lead Counsel have fairly and adequately represented the interests of Settlement Class Members in connection with the Settlement.

H. The Court has considered all objections submitted (if any).

I. Plaintiff, all Settlement Class Members, and Defendants are hereby bound by the terms of the Settlement, as set forth in the Stipulation.

J. If the full Settlement Amount has not been paid into the Escrow Account within six months of this Order, the parties shall provide the Court with an update on the status of the Settlement payment.

K. Immediately after the full \$24.6 million Settlement Amount has been deposited into the Escrow Account, (i) Judgment substantially in the form attached as Exhibit C to the Stipulation should be entered in the Litigation, (ii) the Litigation and all of the claims asserted against Defendants in the Litigation by Plaintiff should be dismissed with prejudice, and (iii) all Released Plaintiff Parties and Released Defendant Parties, as defined in the Stipulation, should be released in accordance with and as defined in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Settlement on the terms set forth in the Stipulation is finally approved as fair, reasonable, and adequate. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

2. All Settlement Class Members who have not objected to the Settlement in the manner provided in the Notice are deemed to have waived any objections by appeal, collateral attack, or otherwise. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided pursuant thereto, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

3. All Settlement Class Members who have failed to properly submit Requests for Exclusion (*i.e.*, requests to “opt-out”) from the Settlement Class are bound by the terms and conditions of the Stipulation and this Order.

4. Neither the Stipulation nor Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or Settlement, nor this Order:

(a) shall be offered or received against any Defendant as evidence of, or evidence in support of, a presumption, concession, or admission by any Defendant of the truth of any allegations by Plaintiff or any Settlement Class Member or the validity of any claim that has been, or could have been, asserted in the Litigation, or the deficiency of any defense that has been, or could have been, asserted in the Litigation or in any other litigation;

(b) shall be offered or received against Defendants as evidence of, or evidence in support of, a presumption, concession, or admission with respect to any liability,

negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(c) shall be construed as or received in evidence as an admission, concession, or presumption against Plaintiff or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit;

(d) shall be construed against Defendants, Plaintiff, or the Settlement Class as evidence of a presumption, concession, or admission that the Settlement Amount represents an amount that could be, or would have been, recovered after trial or in any proceeding other than the Settlement, or that any damages potentially recoverable in the Litigation would have exceeded or would have been less than the Settlement Amount;

(e) notwithstanding any of the foregoing, Defendants and any other Released Defendant Parties may file the Stipulation and/or this Order in any action that has been or may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, statute of limitations, statute of repose, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

5. The Court hereby finds and concludes that due and adequate Notice was directed to all Persons who are Settlement Class Members, advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Settlement Class Members to be heard with respect to the Plan of Allocation.

6. The Court hereby finds that the Plan of Allocation is fair and reasonable, and the Claims Administrator is directed to administer the Settlement in accordance with the Stipulation.

Any subsequent order or proceeding relating to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate the Settlement or affect or delay the Effective Date or the effectiveness or finality of this Order or any Judgment entered in this Litigation and the release of the Released Claims.

7. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice sent to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among Settlement Class Members, with due consideration having been given to administrative convenience and necessity.

8. Nothing in the Settlement restricts the ability of any Party to advocate in favor of or against the applicability of any offset to any claims asserted in any other action based on any amount paid to Authorized Claimants through the Settlement.

9. The Court hereby finds that Plaintiff's Counsel may, in its discretion, provide for two distributions of the Settlement Fund in accordance with and subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

10. The Court has considered objections submitted (if any) and hereby overrules them.

11. The Court hereby awards Plaintiffs' Counsel attorneys' fees of $33\frac{1}{3}\%$ of the Settlement Amount, plus Plaintiffs' Counsel's expenses in the amount of \$^{240,088.20}_____ (the "Fee and Expense Award"), together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the

contingent nature of the Litigation and substantial risks of non-recovery, time and effort involved, and result obtained for the Settlement Class.

12. The Fee and Expense Award and interest earned thereon shall be paid to Plaintiffs' Counsel from the Settlement Fund immediately upon award, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

13. Plaintiff Dan Kohl is awarded \$10,000. Such payment is appropriate considering his active participation as a named Plaintiff and representative of the Settlement Class in the Litigation, as attested to by his declaration submitted to the Court. Such payment is to be made from the Settlement Fund after the Final Approval Order becomes Final, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

14. Any subsequent order or proceeding relating to the Fee and Expense Award and/or the Plaintiff Award, or any appeal from any order relating thereto or reversal or modification thereof, shall not affect this Court's conclusion that the Settlement is fair and adequate or operate to terminate the Settlement or affect or delay the Effective Date or the effectiveness or finality of the Judgment and the release of the Released Class Claims and the Released Defendants' Claims.

15. In the event that the Stipulation is terminated in accordance with its terms: (a) this Order shall be rendered null and void and shall be vacated *nunc pro tunc*; (b) the Litigation shall proceed as provided in the Stipulation; and (c) the fact of the Settlement shall not be admissible in any trial of the Litigation, and Plaintiff and Defendants shall not be prejudiced in any way from the negotiation, fact or terms of the Settlement.

16. The Court finds that during the course of the Litigation, the Parties and their respective counsel at all times complied with the requirements of Title 22 of the New York Codes, Rules and Regulation, §130-1, and all other similar rules and statutes.

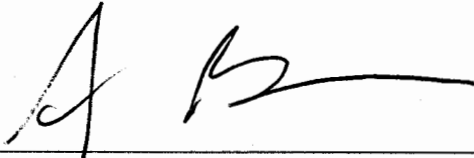
17. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time and such other amendments or modifications to the Stipulation necessary to carry out any of its provisions, provided that such extensions, amendments, or modifications do not materially alter the rights of any Party under the Stipulation.

18. Lead Counsel shall, promptly after receipt in full of the Settlement Amount into the Escrow Account, advise the Court of such receipt and request that the Court enter Judgment in the Litigation substantially in the form attached as Exhibit C to the Stipulation.

19. This Court retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) enforcement of the terms of the Settlement and this Order, including payment of the Settlement Amount into the Escrow Account and all releases; (c) disposition of the Settlement Fund; (d) hearing and determining applications for attorneys' fees, interest, and expenses in the Litigation; (e) all Parties hereto for the purpose of construing, enforcing, and administering the Stipulation and (f) entry of Judgment, substantially in the form attached as Exhibit C to the Stipulation, following payment in full of the Settlement Amount into the Escrow Account.

IT IS SO ORDERED.

DATED: APRIL 10, 2024


 THE HONORABLE ANDREW BORROK, J.S.C.
HON. ANDREW BORROK
 J.S.C.