

**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

**REPLY MEMORANDUM OF LAW IN FURTHER 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**

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Named Plaintiff and Court-appointed Class Representative Dan Kohl (“Plaintiff”), on behalf of himself and the certified Class, and Lead Counsel Levi & Korsinsky, LLP (“Levi & Korsinsky” or “Lead Counsel”) respectfully submit this memorandum of law in further support of Plaintiff’s final approval motion and Lead Counsel’s fee and expense motion.¹

I. BACKGROUND AND THE NOTICE PROGRAM

On December 4, 2023, the Court entered its Preliminary Approval Order, which preliminarily approved the proposed \$24.6 million all-cash Settlement, and directed that Notice regarding the Settlement and related matters be issued to the Class Members. Pursuant to that Order, the Claims Administrator, A.B. Data, Ld. (“A.B. Data”) implemented the comprehensive Court-approved Notice Plan by, *inter alia*:

- (i) Mailing the Court-approved individual “Notice” (which contained detailed information concerning the Settlement, Plan of Allocation, Lead Counsel’s requested attorneys’ fees and reimbursement of expenses, and Class Members’ rights to “opt out” or object) to 20,969 potential Class Members or their “broker nominees”;
- (ii) publicly posting copies of the Notice, a copy of the full Stipulation of Settlement, the preliminary approval papers, and various other case-related documents, at www.LomaNegraSecuritiesLitigation.com (the “Settlement Website”); and
- (iii) publishing the Court-approved Summary Notice over *PRNewswire* on December 29, 2023 (which Summary Notice also advised potential Settlement Class Members

¹Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation of Settlement ([NYSCEF No. 244](#)), or in the 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 (“Hopkins Aff.”) ([NYSCEF No. 257](#)).

of the Settlement, and further directed them to the individual Notice and the Settlement Website for more detailed information).

See accompanying Supplemental Affirmation of Ann Cavanaugh Regarding Class Notice and Report on Objections and Requests for Exclusion Received, dated April 2, 2024 (“Suppl. Cavanaugh Affirm.”), ¶¶3-5.²

Plaintiff’s and Lead Counsel’s opening papers have addressed the primary factors that support approval of the Settlement, the Plan of Allocation, the fee and expense application, and the requested service award. However, now that the March 20, 2024 deadline for Class Members to submit any requests for exclusion or objections has passed,³ it is appropriate to update the Court as to one relevant factor – the “reaction of the Class.” Here, although 20,969 Notices were mailed to potential Settlement Class Members pursuant to the Court’s comprehensive Notice Plan, *no objections* have been received by counsel for any party or filed with the Court, or by the Claims Administration. See Supplemental Hopkins Affirmation,³ ¶3; Supp. Cavanaugh Affirm., ¶9.

In addition, while the Claims Administrator had received three (3) requests for exclusion during the class certification Notice Procedure from individual investors, no additional requests for exclusion have been received by the Claims Administrator from the Notice Plan implemented in connection with the Settlement. See Supp. Cavanaugh Affirm., ¶¶7-8. As noted by the Claims Administrator, the three requests for exclusion that were received during the Class Notice Procedure represent 222,849 shares; and one of them, representing 220,849 shares, was by Sergio

² See also the initial Affirmation of Ann Cavanaugh Regarding Class Notice and Report on Objections and Requests for Exclusion Received, dated March 5, 2024 ([NYSCEF No. 264](#)) (the “Initial Cavanaugh Aff.”), ¶¶12-13.

³ Supplemental Affirmation of Shannon L. Hopkins in Further 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, dated April 3, 2024, and submitted herewith.

Damian Faifman (*see* [NYSCEF No. 169](#), at 24), who is the CEO of Loma and a named Defendant in this Action and, thus, does not fall within the Class definition. *See* Supp. Cavanaugh Affirm., ¶8 and Ex. A thereto.

II. THE CLASS' REACTION STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION

Courts consider the Class's reaction when assessing a proposed settlement and the absence of any objections, as here, is a major factor that weighs heavily in granting final approval. *See* [Pressner v. MortgageIT Holdings, Inc.](#), No. 602472/2006, 2007 WL 1794935, at *2 (Sup. Ct., N.Y. Cty. May 29, 2007) (approving settlement "since there has been no objection to the propose[d] settlement"); *see also* [Fiala v. Metro. Life Ins. Co., Inc.](#), 899 N.Y.S.2d 531, 539 (Sup. Ct., N.Y. Cty. 2010) (where "only 5 objections were forthcoming," finding "that the settlement is fair, reasonable and adequate"); [Rodriquez v. It's Just Lunch Int'l](#), No. 07-CV-09227, 2020 WL 1030983, at *4 (S.D.N.Y. Mar. 2, 2020) ("[T]he extremely low number of objectors as a percentage of the Classes strongly supports approval of the Settlement."); [In re Signet Jewelers Ltd. Sec. Litig.](#), No. 16-CV-06728, 2020 WL 4196468, at *6 (S.D.N.Y. July 21, 2020) ("[t]he absence of any objections and the small number of requests for exclusion support a finding that the Settlement is fair, reasonable, and adequate"); [DeLeon v. Wells Fargo Bank, N.A.](#), No. 12-CV-4464, 2015 WL 2255394, at *4 (S.D.N.Y. May 7, 2015) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.") (internal quotations omitted); [Roth v. Phoenix Companies, Inc.](#), 50 N.Y.S.3d 835, 838 (Sup. Ct., N.Y. Cty. 2017) (granting final approval and finding the settlement in the best interest of the corporation "because no class member objected"); [In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.](#), 909 F. Supp. 2d 259, 266 (S.D.N.Y. 2012); [In re Marsh ERISA Litig.](#), 265 F.R.D. 128, 139 (S.D.N.Y. 2010) ("The lack of any objections [to the settlement] from Class members is an extremely strong indication that

the Settlement is fair.”). Here, not a single Class Member objected to the Settlement; and there were no opt-outs directed to the Settlement (and only two apparent Class Members opted out at the class certification stage). This is strong evidence that the Settlement is fair, adequate, and reasonable.

Similarly, there have been no objections to the Plan of Allocation. This provides further support for the final approval of Settlement. *See, e.g., Signet Jewelers*, 2020 WL 4196468, at *6 (absence of objections and small number of opt-outs “also supports approval of the Plan of Allocation”); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“[N]ot one class member has objected to the Plan of Allocation which was fully explained in the Notice of Settlement sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation.”); *Maley v. Del Glob. Techs.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (lack of objection to the Plan of Allocation, despite distribution of “more than 2,000 notices,” supported approval).

III. THE CLASS’ REACTION ALSO PROVIDES SUPPORT FOR APPROVAL OF LEAD COUNSEL’S FEE AND EXPENSE APPLICATION

The lack of any objections to Lead Counsel’s requested one-third attorneys’ fee and reimbursement of \$240,088.20 in litigation expenses also provides strong support for finding that these requests are fair and reasonable. *See, e.g., Signet Jewelers*, 2020 WL 4196468, at *21 (“The absence of any objections to the requested attorneys’ fees and Litigation Expenses supports a finding that the request is fair and reasonable.”); *Vaccaro v. New Source Energy Partners L.P.*, No. 15-CV-8954, 2017 WL 6398636, at *8 (S.D.N.Y. Dec. 14, 2017) (“The fact that no class members have explicitly objected to these attorneys’ fees supports their award.”); *Asare v. Change Grp. New York, Inc.*, No. 12-CV-3371, 2013 WL 6144764, at *16 (S.D.N.Y. Nov. 18, 2013) (“not one potential class member has made an objection, a factor held by courts as supporting approval

of an attorneys' fees award"). This factor is particularly compelling here because (a) the Notice expressly advised Class Members and nominees that Lead Counsel would seek a one-third fee award (*see* [Initial Cavanaugh Aff., Ex. A, Notice at 9](#)) and (b) copies of all papers filed in support of Lead Counsel's fee and expense application were (as the Notice advised they would be) posted on the Settlement Website once they were filed (*see* Suppl. Cavanaugh Decl., ¶5).

Moreover, although the Notice advised that Lead Counsel would seek reimbursement of up to \$250,000 in expenses ([Initial Cavanaugh Affirm., supra, Ex. A, Notice at 9](#)), Lead Counsel seek reimbursement of \$240,088.20 in expenses. Therefore, the lack of objections to \$250,000 in expenses supports approval of counsel's request for reimbursement of a *lesser* amount. *See, e.g., Signet Jewelers, 2020 WL 4196468, at *21* ("absence of any objections to the requested ... Litigation Expenses supports a finding that the request is fair and reasonable.").

Further, the lack of any objections to the requested \$10,000 service award for Plaintiff also supports a finding that that request is similarly reasonable. [Hernandez v. Merrill Lynch & Co., Inc., No. 11-CV-8472, 2013 WL 1209563, at *2, *10 \(S.D.N.Y. Mar. 21, 2013\)](#) (in the absence of any objections from class members, Court allocated seven class representatives \$91,500 in "reasonable service awards").

IV. CONCLUSION

For the foregoing reasons, and the reasons set forth in Plaintiff's and Lead Counsel's opening papers, it is respectfully requested that this Court grant final approval of the Settlement, the Plan of Allocation and the request for attorneys' fees and reimbursement of expenses, and

award to Plaintiff. A copy of the proposed Order Granting Final Approval of Class Action Settlement is submitted herewith as Exhibit A to the Supplemental Hopkins Affirmation.⁴

DATED: April 3, 2024

Respectfully submitted,

LEVI & KORSINSKY, LLP

/s/ Shannon L. Hopkins

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*Lead Counsel for the Class and Attorneys for
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⁴ The proposed Order Granting Final Approval of Class Action Settlement, attached as Exhibit A to the Supplemental Hopkins Affirmation, is identical to the proposed Order Granting Final Approval of Class Action Settlement, attached as Exhibit B to the Affirmation of Shannon L. Hopkins in Support of Preliminary Approval, ([NYSCEF No. 249](#)), filed on October 11, 2023, except for the insertion of the date of entry of the Preliminary Approval Order on page 1, and the removal of the “Exhibit” legend on the cover page.

PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing reply memorandum of law 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 1655 words.

DATED: April 3, 2024

Respectfully submitted,

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