

**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

Motion Sequence No. 8

CLASS ACTION

**AFFIRMATION OF DAN KOHL 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, DAN KOHL, hereby affirm as follows:

1. I am the Plaintiff and Court-appointed Class representative (“Lead Plaintiff” or “Plaintiff”) in the above-captioned action (the “Action”). I submit this Affidavit 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 have personal knowledge of the factual matters set forth in this Affirmation as I have

been directly involved in monitoring and overseeing the prosecution and settlement of this Action, and could and would testify competently thereto if asked.

2. After my personal investigation, and consultation with my attorneys, Levi & Korsinsky, LLP, and overseeing their investigation, I authorized the preparation and filing of the initial complaint on behalf of myself and the putative class in this Action, on June 21, 2018 ([NYSCEF No. 2](#)). I was the only named plaintiff who filed a complaint in this Action, and was appointed the sole Class Representative by Justice Schechter by Order dated December 2, 2021 ([NYSCEF No. 147](#)), which appointment was upheld on appeal by the New York Appellate Division, First Department. [Kohl v. Loma Negra Compañia Indus. Argentina S.A., 210 A.D.3d 533 \(1st Dep't 2022\)](#).

3. Over the course of the litigation of this Action, and in fulfillment of my responsibilities as the sole named Plaintiff and Court-appointed Class Representative, and on behalf of all members of the Settlement Class, I diligently undertook to perform my role in pursuit of a favorable resolution of this litigation. In this connection, I incurred approximately 74.5 hours over more than five years carrying out my duties as a representative of the Class by, *inter alia*: (i) researching, collecting and reviewing documents relevant to the claims in this Action, including identifying facts that were available to me when purchasing shares of Loma in the IPO; (ii) conferring with counsel concerning the issues and strategy in the Action; (iii) reviewing and/or providing comments on court filings in the Action, including the initial complaint, amended complaint, second amended complaint, motion to dismiss briefing, briefing of Defendants' appeal therefrom, class certification and summary judgment briefing, briefing of Defendants' appeal from the class certification/summary judgment decision, and relevant orders in the litigation, and providing supporting affidavits; (iv) conferring with counsel and reviewing periodic reports

concerning the work being done and the status of the Action, and discussing with counsel the retention of experts and consultants; (v) attending multiple preparation sessions for, and appearing for, a comprehensive deposition, via Zoom; (vi) conferring with counsel regarding the discovery in this Action; (vii) responding to discovery requests, including interrogatories and requests for production; and (viii) conferring with counsel with respect to the settlement efforts, mediation, and ultimate settlement of the Action.

4. I regularly conferred with my attorneys to discuss the status of my case, offer my input, and assist in gathering the evidence necessary to prosecute the Class's claims. During our many conversations, and partly in response to my questions, my attorneys educated me about the phases of class action litigation, the strategies for prosecuting each phase, and the risks associated with executing those strategies.

5. Prior to the filing of the initial and amended complaints, my attorneys provided me with a draft of the class action complaints for my review and approval. I closely reviewed the complaints to ensure accuracy and completeness, and my attorneys filed the complaints only after I approved their content. Following the filing of my initial and the amended complaints, I worked closely with my attorneys on the litigation. I also reviewed and discussed with my attorneys Defendants' twenty-four (24) document requests addressed to me, as well as Defendants' interrogatories; searched for and produced for responsive documents; researched the answers to the interrogatories; discussed my responses to these discovery requests with counsel; and reviewed and approved the responses that were served on Defendants.

6. The Defendants took my deposition on April 7, 2022, for more than five hours. Prior to my deposition, I met over Zoom several times with my attorneys to prepare for the

deposition and to learn more about the deposition process. Following my deposition, I reviewed the deposition transcript to ensure that my testimony was properly and accurately recorded.

7. I also worked closely with my attorneys in preparing my motion for class certification, for which I provided an affidavit in support, which was submitted to the Court on January 11, 2021 ([NYSCEF No. 75](#)).

8. As the sole named plaintiff and proposed class representative, and later as the Court-appointed Class Representative, my understanding was that I must act in the best interests of the Class, *i.e.*, those individuals or entities who purchased or otherwise acquired Loma's American Depository Shares ("ADSs") in or traceable to its November 2017, Initial Public Offering, and I believe I have done so to the best of my ability.

9. Further, I remained on-call to assist my attorneys during settlement negotiations and the mediation, and I have reviewed the terms of the proposed Settlement. My attorneys explained the specifics of how the Settlement would work and I accepted the settlement offer only after I had spent enough time evaluating the proposed outcome to assure that it was fair. I was also kept abreast of the additional negotiations concerning the scope of the releases in the Settlement, as well as the issues related to payment of insurance proceeds out of Argentina due to the currency restrictions in place there (meaning that \$6.0 million of the \$24.6 million Settlement compensation will not be funded until October 11, 2024), prior to the execution of the final Settlement Stipulation.

10. Based on my involvement throughout the prosecution and resolution of the Action, my attorneys' evaluation and recommendation, and my own review, I believe the Settlement is fair and reasonable and adequately compensates the Class. I also believe that the proposed Settlement represents a favorable recovery for the Class especially in light of the risks of continued litigation

in this Action, including foreign discovery and anticipated renewed motions for summary judgment, trial, as well as continued currency risks in Argentina. Therefore, I endorse the approval of the Settlement. I also support the proposed Plan of Allocation described in the Notice disseminated to Class members, as it is designed to compensate Class Members on a *pro rata* basis in proportion to their losses.

11. I believe Lead Counsel's request for an award of attorneys' fees in the amount of one-third (33 1/3%) of the Settlement Fund is fair and reasonable. I have evaluated counsel's fee request by considering the amount of work they have performed on behalf of the Settlement Class over the past more-than five years, the complexity of the litigation, and the recovery obtained relative to the overall realistic recoverable damages. I further believe that the litigation expenses for which reimbursement is requested are reasonable and represent costs and expenses necessary for the prosecution and resolution of this complex securities class action.

12. I have not received, and have not been promised or offered, any financial incentive or compensation for serving as a Plaintiff or Class Representative in the Action. I understand, however, that courts may authorize an award to a representative serving on behalf of the Class directly relating to their representation of the Class, and that the grant of such an award is entirely in the discretion of the Court. It is also my understanding that the Class was given notice of the request to seek an award of up to \$10,000 for my efforts as named Plaintiff and Class Representative in bringing and prosecuting the Action. In view of my initiative in bringing the first and only complaint filed in this Action on behalf of the Class, the time and effort I have spent on the various tasks and responsibilities summarized above, and my zeal for obtaining the best possible recovery on behalf the Class, I respectfully request the above-noted Plaintiff's service award.

13. In sum, I have been deeply involved throughout the prosecution and settlement of the claims in this Action, strongly endorse the Settlement as fair, reasonable and adequate, and believe that it represents a significant recovery for the Class when weighed against the potential risks of continued litigation. I respectfully request that the Court approve Plaintiff's motion for final approval of the proposed Settlement, and Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses, including my request for a plaintiff's service award for my initiative, time and effort spent on this case as a named Plaintiff and Court-appointed Class Representative on behalf of the Class of purchasers of Loma ADSs.

I affirm this 1st day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true and correct to the best of my knowledge, and I understand that this document may be filed in an action or proceeding in a court of law.



Dan Kohl

**PRINTING SPECIFICATIONS STATEMENT**

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing affidavit 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 1505 words.

DATED: March 6, 2024

Respectfully submitted,

**LEVI & KORSINSKY, LLP**

/s/ Shannon L. Hopkins  
LEVI & KORSINSKY, LLP  
Shannon L. Hopkins  
Andrew E. Lencyk  
33 Whitehall St., 17<sup>th</sup> Floor  
New York, NY 10004  
Telephone: (212) 363-7500

*Lead Counsel for the Class and Attorneys for  
Plaintiff Dan Kohl*