UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANCO BRADESCO S.A. SECURITIES LITIGATION	Civil Case No. 1:16-cv-04155 (GHW) ECF CASE

NOTICE OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND CERTIFICATION OF SETTLEMENT CLASS TO EFFECTUATE THE SETTLEMENT

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 23(e) and this Court's Order Preliminarily Approving Settlement and Providing for Notice entered July 24, 2019 (ECF No. 197), and upon (i) the Declaration of Johnston de F. Whitman, Jr. in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class to Effectuate the Settlement; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses and the exhibits thereto; (ii) the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class to Effectuate the Settlement; and (iii) all other papers and proceedings herein, Court-appointed Lead Plaintiff Public Employees' Retirement System of Mississippi ("Lead Plaintiff"), on behalf of itself and the Settlement Class, will and does hereby move this Court, before the Honorable Gregory H. Woods, on November 13, 2019 at 4:15 p.m., in Courtroom 12C of the Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY 10007, or at such other location and time as set by the Court, for entry of a Judgment approving the proposed Settlement as fair, reasonable, and adequate and certifying the Settlement Class for purposes of effectuating the Settlement and for entry of an Order approving the proposed Plan of Allocation as fair, reasonable, and adequate. A

proposed Judgment and Order granting the requested relief will be submitted with Lead Plaintiff's reply submissions after the deadline for objecting to the Settlement and requesting exclusion from the Settlement Class has passed.

Dated: October 8, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

/s/ Johnston de F. Whitman, Jr.
Johnston de F. Whitman, Jr.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANCO BRADESCO S.A. SECURITIES LITIGATION	Civil Case No. 1:16-cv-04155 (GHW) ECF CASE

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND CERTIFICATION OF SETTLEMENT CLASS TO EFFECTUATE THE SETTLEMENT

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Court-appointed Lead Plaintiff Public Employees' Retirement System of Mississippi ("MPERS" or "Lead Plaintiff") respectfully submits this memorandum of law in support of its motion pursuant to Federal Rule of Civil Procedure ("Rule") 23, requesting: (1) final approval of the proposed settlement of the above-captioned action ("Settlement"); (2) approval of the proposed plan for allocating the net proceeds of the Settlement ("Plan of Allocation" or "Plan"); and (3) certification of the Settlement Class for purposes of effectuating the Settlement.[1]

I. PRELIMINARY STATEMENT

Subject to this Court's final approval, Lead Plaintiff, through its counsel, has negotiated a Settlement of $14,500,000 in cash in exchange for the dismissal of all claims brought in this Action and a full release of claims against defendants Banco Bradesco S.A. ("Bradesco" or the "Company"), Luiz Carlos Trabuco Cappi ("Trabuco"), and Luiz Carlos Angelotti ("Angelotti") (collectively, "Defendants")[2] and the other Defendant Releasees. The Settlement is an excellent result for the Settlement Class, providing a significant and certain recovery in a case that presented numerous hurdles and risks. The Settlement represents a substantial portion of the Settlement Class's damages, as estimated by Lead Plaintiff's damages consultant—i.e., between

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[1] Capitalized terms not defined herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated July 1, 2019 (ECF No. 189-1) ("Stipulation") or in the Declaration of Johnston de F. Whitman, Jr. in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class to Effectuate the Settlement; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses ("Whitman Declaration" or "Whitman Decl."), filed herewith. Citations to "¶ __" herein refer to paragraphs in the Whitman Declaration and citations to "Ex. __" herein refer to exhibits to the Whitman Declaration.

[2] In instances where the term "defendants" is not capitalized herein, it refers to all defendants (i.e., Bradesco, Trabuco, Angelotti, and Domingos Figueiredo de Abreu ("Abreu")) and in instances where the term "Defendants" is capitalized, it refers to the settling defendants (i.e., Bradesco, Trabuco, and Angelotti). Similarly, in instances where the term "parties" is not capitalized, it refers to Lead Plaintiff, Bradesco, Trabuco, Angelotti, and Abreu and in instances where the term "Parties" is capitalized, it refers to Lead Plaintiff, Bradesco, Trabuco, and Angelotti.

approximately 8% and 11% of aggregate damages based on Lead Plaintiff's ability to prove damages for *all* four corrective disclosures alleged in the Action ($130 million to $179.1 million), and between approximately 22% and 42% of a more conservative damages estimate that takes into account certain hurdles to establishing damages and loss causation at summary judgment and/or trial ($34.3 million to $65.5 million). Under either scenario, the percentage recovery range is considerably greater than the median recoveries obtained in recent securities class actions in which similar damages amounts were at issue.[3]

As described below and in the Whitman Declaration, Lead Plaintiff and its counsel were well-informed of the strengths and weaknesses of the case based on their extensive prosecution of the claims asserted in the Action and the Parties' arm's-length negotiations facilitated by an experienced mediator.[4] While Lead Plaintiff believes that its claims are meritorious, it also recognizes that, in the absence of a settlement, it faced substantial risks to obtaining any recovery for the Settlement Class—let alone a recovery greater than the Settlement Amount.

In reaching the Settlement, Lead Plaintiff and Lead Counsel carefully considered the risks of continued litigation. Notably, at the time the Settlement was reached, the Parties were preparing for an evidentiary hearing to inform the Court's decision on a critical motion—Lead Plaintiff's

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[3] *See also* Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*, NERA Economic Consulting, Jan. 29, 2019, https://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf, at 35 (finding median settlement between 1996 and 2018 in securities cases with investor losses between $20 million and $49 million recovered 8.4% of investor losses; between $50 million and $99 million recovered 4.7% of investor losses and between $100 million and $199 million recovered 3.1% of investor losses).

[4] The Whitman Declaration is an integral part of this submission and, for the sake of brevity in this Memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the nature of the claims asserted (¶¶ 13-23); the procedural history of the Action (¶¶ 24-107); the Settlement negotiations (¶¶ 108-14); the risks of continued litigation (¶¶ 118-36); the terms of the Plan of Allocation (¶¶ 142-49); and the notice program (¶¶ 137-41).

class certification motion (ECF Nos. 137-38) ("Motion to Certify"). In their opposition to the motion, Defendants advanced multiple arguments in an effort to rebut the fraud-on-the-market presumption of reliance in this case which, if successful, could have significantly narrowed the Settlement Class Period or precluded class certification altogether. Through the Settlement, Lead Plaintiff was able to avoid a possible adverse ruling on its Motion to Certify (as well as further litigation risks), while recovering a substantial portion of the Settlement Class's damages.

Moreover, had it succeeded on its Motion to Certify, Lead Plaintiff would have faced significant risks to advancing the Settlement Class's claims at summary judgment and trial. Throughout the Action, Defendants maintained a series of defenses that, if successful, could have undercut Lead Plaintiff's ability to defeat a motion for summary judgment and/or secure a meaningful recovery, or even any recovery at all, on behalf the Settlement Class at trial. For example, Defendants strenuously argued that they did not act with the requisite scienter in making the alleged false or misleading statements at issue in this Action and that Lead Plaintiff would be unable to prove that these statements were anything more than immaterial puffery. ¶¶ 122-30. While Lead Plaintiff successfully opposed these arguments at the pleading stage, it would have faced a heavier burden at summary judgment and trial. Relatedly, Defendants would have continued to assert that Lead Plaintiff would be unable to prove that the price declines in Bradesco PADS on the alleged corrective disclosure dates were statically significant or were caused by the revelation of any relevant truth related to their alleged fraud for purposes of establishing loss causation. ¶¶ 131-36. These risks, and others, underscore the adequacy of the Settlement.

On July 24, 2019, the Court preliminarily approved the Settlement, and provisionally certified the Settlement Class for purposes of effectuating the Settlement (ECF No. 197) ("Preliminary Approval Order"). By the same Order, the Court approved the process by which

Settlement Class Members would receive notice of the Settlement and submit claims, objections, or requests for exclusion. While the deadline to submit objections and requests for exclusion from the Settlement Class has not yet passed, to date, no Settlement Class Member has objected to the Settlement or the Plan of Allocation (¶¶ 12, 141, 149), and not one request for exclusion from the Settlement Class has been received. *See* Declaration of Ed Barrero ("Barrero Decl.") on behalf of Epiq Class Action & Claims Solutions, Inc. ("Epiq") (Ex. 3 to the Whitman Decl.), ¶ 25.[5]

For these reasons, Lead Plaintiff submits that the Settlement readily meets the standards for final approval under Rule 23, and is a fair, reasonable, and adequate result for the Settlement Class. Accordingly, Lead Plaintiff respectfully requests that the Court grant final approval of the Settlement. Lead Plaintiff also respectfully submits that the proposed Plan of Allocation is a fair and reasonable method for distributing the Net Settlement Fund and should be approved. Lastly, Lead Plaintiff requests that the Court finally certify the Settlement Class for purposes of effectuating the Settlement pursuant to Rules 23(a) and (b)(3), as nothing has changed to alter the propriety of the Court's provisional certification of the Settlement Class in its Preliminary Approval Order. *See* ECF No. 197, ¶¶ 2-4.[6]

II. THE SETTLEMENT WARRANTS APPROVAL

A. The Settlement Meets the Standards for Final Approval Under Rule 23(e)

Rule 23(e) provides that a class action settlement must be presented to a court for approval. A court may approve the settlement "only after a hearing and only on finding that it is fair,

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[5] Pursuant to the Preliminary Approval Order, requests for exclusion and objections must be received by October 23, 2019. Should any requests for exclusion or objections be received after the date of this Memorandum, Lead Counsel will address them in its reply submissions to be filed on or before November 6, 2019.

[6] Lead Plaintiff's Preliminary Approval Motion (ECF Nos. 187-89), and the reasons supporting certification of the Settlement Class set forth therein, are incorporated herein by reference.

reasonable, and adequate[.]" Fed. R. Civ. P. 23(e)(2). This determination entails scrutiny of both the procedural and substantive aspects of the proposed settlement. *See In re Virtus Inv. Partners, Inc. Sec. Litig.*, 2018 WL 6333657, at *1 (S.D.N.Y. Dec. 4, 2018) ("[T]he settlement must be both procedurally and substantively fair.").[7]

"The procedural and substantive fairness of a settlement should be examined in light of the strong judicial policy in favor of settlement[ ] of class action suits." *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) ("We are mindful of the strong judicial policy in favor of settlements, particularly in the class action context."). Moreover, absent fraud or collusion, a court "should be hesitant to substitute its judgment for that of the parties who negotiated the settlement." *City of Providence v. Aéropostale, Inc.*, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

Rule 23(e)(2) provides that a court should determine if a proposed settlement is "fair, reasonable, and adequate" after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's-length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and

[7] Unless otherwise noted, all internal quotation marks and citations are omitted.

(D) the proposal treats class members equitably relative to each other.

See Fed. R. Civ. P. 23(e)(2). Consistent with these factors, courts in the Second Circuit have long considered the following factors set forth in *City of Detroit v. Grinnell Corp.* in evaluating proposed class action settlements:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *see also In re Facebook, Inc., IPO Sec. & Deriv. Litig.*, 343 F. Supp. 3d 394, 409 (S.D.N.Y. 2018) (conducting *Grinnell* analysis in approving settlement).[8] In deciding whether to approve a settlement, however, a court "should not attempt to approximate a litigated determination of the merits of the case lest the process of determining whether to approve a settlement simply substitute one complex, time consuming and expensive litigation for another." *White v. First Am. Registry, Inc.*, 2007 WL 703926, at *2 (S.D.N.Y. Mar. 7, 2007).

A discussion of the fairness, reasonableness, and adequacy of the Settlement principally in relation to the four Rule 23(e)(2) factors, as well as the application of the non-duplicative *Grinnell* factors, is set forth below. *See* Fed. R. Civ. P. 23(e)(2) advisory committee note to 2018 amendments (Rule 23(e)(2) factors are not intended to "displace" any factor previously adopted by a court of appeals, but "rather to focus the court and the lawyers on the core concerns of

[8] "In finding that a settlement is fair, not every factor must weigh in favor of settlement, rather the court should consider the totality of these factors in light of the particular circumstances." *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004).

procedure and substance that should guide the decision whether to approve the proposal"); *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) ("The Court understands the new Rule 23(e) factors to add to, rather than displace, the *Grinnell* factors."). As demonstrated herein, the Settlement readily satisfies each of the Rule 23(e)(2) and *Grinnell* factors, meets the favored public policy goal of resolving class action claims, and warrants this Court's final approval.

B. Lead Plaintiff and Lead Counsel Have Adequately Represented the Settlement Class

In determining whether to approve a class action settlement, the court should consider whether "class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A); *see generally In re Barrick Gold Sec. Litig.*, 314 F.R.D. 91, 99 (S.D.N.Y. 2016) ("the adequacy requirement entails inquiry as to whether: (1) plaintiffs' interests are antagonistic to the interest of other members of the class and (2) plaintiffs' attorneys are qualified, experienced and able to conduct the litigation").

Here, Lead Plaintiff has adequately represented the Settlement Class. Throughout the Action, Lead Plaintiff monitored and engaged in the prosecution of the Settlement Class's claims—communicating with Lead Counsel on litigation strategy and case developments and reviewing significant Court filings. *See* Declaration of Jacqueline Ray, Esq. ("Ray Decl.") on behalf of MPERS (Ex. 1 to the Whitman Decl.), ¶¶ 5-6. In connection with discovery, Lead Plaintiff performed searches for documents responsive to Defendants' discovery requests, producing more than 6,600 pages of documents, and two representatives for MPERS—a Special Assistant Attorney General for the State of Mississippi and MPERS's Chief Investment Officer (at the time)—prepared and sat for depositions in furtherance of the Motion to Certify. *Id.*, at ¶ 7; *see also* ¶¶ 80-87. Lead Plaintiff also conferred with counsel during the Parties' settlement

discussions and a representative from the Mississippi Attorney General's office attended the April 2019 mediation. Ex. 1, ¶ 8. Further, Lead Plaintiff—an investor who purchased Bradesco PADS during the Settlement Class Period at alleged artificially inflated prices and suffered damages when the truth was disclosed—has claims that are typical of and coexistent with those of other Settlement Class Members, and has no interests antagonistic to the interests of the Settlement Class. On the contrary, Lead Plaintiff, like the rest of the Settlement Class has an interest in obtaining the largest possible recovery from Defendants. *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members.").

Likewise, Lead Counsel has also adequately represented the Settlement Class. As detailed in the Whitman Declaration, Lead Counsel actively litigated this Action for three years, undertaking a substantial investigation, followed by hard-fought motion practice, hotly-contested discovery, and arm's-length settlement negotiations. ¶¶ 25-116. With the knowledge gleaned from these efforts as well as its experience in the field of securities litigation generally (*see* Ex. 4-3), Lead Counsel carefully considered the strengths and weaknesses of the claims asserted and the risks of further litigation when determining whether to resolve the Action. Lead Counsel firmly believes that the Settlement represents an excellent recovery in the best interests of the Settlement Class. *See Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014) (counsel "experience[d] in prosecuting complex class actions, strongly believe the Settlement is in the best interests of the Class, an opinion which is entitled to great weight").

C. The Settlement Was Negotiated at Arm's Length With the Assistance of an Experienced Mediator

Rule 23(e)(2)(B) supports final approval because the Settlement was reached at a formal mediation with Jed D. Melnick, Esq. of JAMS and the Weinstein Melnick Team. ¶¶ 108-12. *See*

Yang v. Focus Media Holding Ltd., 2014 WL 4401280, at *5 (S.D.N.Y. Sept. 4, 2014) ("The participation of this highly qualified mediator strongly supports a finding that negotiations were conducted at arm's length and without collusion."); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. 2011) (the fact that "settlement was the product of prolonged, arms-length negotiation, including as facilitated by a respected mediator" established that it was "procedurally fair"). Even after agreeing to the material terms of the Settlement set forth in the April 19, 2019 Term Sheet, the Parties spent additional weeks negotiating the specific terms of the Stipulation. ¶¶ 113-14. Where, as here, a settlement agreement is the product of noncollusive, arm's-length negotiations, courts have afforded it a presumption of fairness. *See Facebook*, 343 F. Supp. 3d at 408 ("When a settlement is the product of arms-length negotiations between experienced, capable counsel after meaningful discovery, it is afforded a presumption of fairness, adequacy, and reasonableness."); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). The Court can thus take comfort that the Settlement Class's interests were protected throughout the negotiations that led to the Settlement.

D. The Relief that the Settlement Provides for the Settlement Class Is Adequate, Taking into Account the Costs, Risks, and Delay of Further Litigation and Other Relevant Factors

1. The Complexity, Expense, and Likely Duration of the Litigation

Rule 23(e)(2)(C)(i) and the first *Grinnell* factor support final approval of the Settlement, as courts consistently recognize that the expense, complexity, and possible duration of the litigation are key factors in evaluating the reasonableness of a settlement. *See In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006) ("Class action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation."); *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 155 (S.D.N.Y. 2013) ("[T]he more complex, expensive, and time consuming the future litigation, the

more beneficial settlement becomes as a matter of efficiency to the parties and to the Court."). "Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015).

As discussed in the Whitman Declaration and below, the continued litigation of this Action presented numerous risks to Lead Plaintiff's ability to establish liability and damages. ¶¶ 118-36. Continuing to prosecute the Action through the evidentiary hearing and oral argument on the Motion to Certify, the completion of discovery, summary judgment motions, trial and the inevitable post-trial appeals would have imposed substantial additional costs on the Settlement Class and would have resulted in extended delays before any recovery could be achieved. *See Payment Card Interchange*, 330 F.R.D. at 36 ("Settlement is favored if settlement results in substantial and tangible present recovery, without the attendant risk and delay of trial."); *see also generally In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *3 (C.D. Cal. Oct. 25, 2016) ("A trial of a complex, fact-intensive case like this could have taken weeks, and the likely appeals of rulings on summary judgment and at trial could have added years to the litigation."). In contrast, the Settlement avoids the risk, expense, and delay of continued litigation while providing an immediate and substantial recovery for the Settlement Class.

2. The Risks of Continued Litigation

In assessing the fairness, reasonableness, and adequacy of a settlement, a court should also consider the "risks of establishing liability," "the risks of establishing damages," and "the risks of maintaining the class action through the trial." *Grinnell*, 495 F.2d at 463. In this assessment, "the Court [is not required] to adjudicate the disputed issues or decide unsettled questions; rather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *Payment Card Interchange*, 330 F.R.D. at 36-37. Here, Lead Plaintiff faced

significant risks to achieving a better result for the Settlement Class through continued litigation. *See generally Global Crossing*, 225 F.R.D. at 459 ("Courts approve settlements where plaintiffs would have faced significant legal and factual obstacles to proving their case.").

a. Risks to Establishing Liability and Damages

Although this Court sustained, in part, Lead Plaintiff's claims at the pleading stage, Lead Plaintiff and its counsel recognized that there were many factors that rendered the outcome of continued litigation and ultimately a trial in this Action uncertain. If the Action had continued, Lead Plaintiff faced risks to proving both Defendants' liability and the Settlement Class's full amount of damages.

First, Lead Plaintiffs faced significant challenges to proving that Defendants made the alleged misrepresentations (discussed directly below) with the requisite intent—i.e., scienter. *See, e.g., Fishoff v. Coty Inc.*, 2010 WL 305358, at *2 (S.D.N.Y. Jan. 25, 2010), *aff'd*, 634 F.3d 647 (2d Cir. 2011) ("[T]he element of scienter is often the most difficult and controversial aspect of a securities fraud claim."); *Kalnit v. Eichler*, 99 F. Supp. 2d 327, 345 (S.D.N.Y. 2000), *aff'd*, 264 F.3d 131 (2d Cir. 2001) (same). At a minimum, Lead Plaintiff would have had to demonstrate that Defendants were reckless in issuing the false and misleading statements and omissions at issue in the Action. Defendants would have argued however, as they did throughout the Action, that Lead Plaintiff had no direct evidence and only insufficient circumstantial evidence, suggesting that Defendants' statements about Bradesco's code of ethics and anti-corruption measures made in SEC filings on August 8, 2014, April 30, 2015, and April 15, 2016 were recklessly made. ¶ 122. More specifically, Defendants would have argued that no regulator in the United States—including the SEC's Foreign Corrupt Practices Act Unit, which closed its investigation into the alleged Brazilian tax bribery scheme without commencing an enforcement action—found that Bradesco or any of the other Defendants had engaged in wrongdoing. In addition, although Defendants'

efforts to convince this Court that the Brazilian court's dismissal of criminal charges against Defendant Trabuco was relevant to determining whether Lead Plaintiff adequately alleged scienter were unavailing at the pleading stage, this Court noted that "the Brazilian court's decision may be relevant at the evidentiary stage of this proceeding." ¶ 123. Defendants would also have continued to emphasize that the alleged 2014 scheme to pay bribes to CARF officials was never consummated, and that the mere fact that meetings with Brazilian tax officials *occurred* was not proof that Defendants acted with scienter or that Bradesco personnel knowingly took any steps to formalize arrangements or enter into any agreements to pay bribes. ¶ 125.

Second, the risks that Lead Plaintiff faced in proving scienter in connection with the alleged misstatements about Bradesco's code of ethics and anti-corruption policies applied equally to Lead Plaintiff's ability to prove that such statements were materially false or misleading. In this regard, the primary basis upon which Lead Plaintiff alleged that these statements were false or misleading was that the statements were made at the very same time that Bradesco personnel, including Defendants Trabuco and Angelotti, were allegedly offering and/or negotiating bribe payments to Brazilian tax officials—conduct that directly violated Bradesco's code of ethics and anti-corruption policies. If, however, Lead Plaintiff was unable to obtain sufficient admissible evidence to demonstrate that Defendants knowingly or recklessly negotiated and/or offered bribe payments in exchange for tax benefits flowing to Bradesco, then Lead Plaintiff would have been unlikely to prove that Defendants' statements about Bradesco's code of ethics and anti-corruption policies were materially false or misleading. ¶ 128.

In addition, Defendants also vigorously contended that the majority of the statements at issue in the Action were immaterial puffery. ¶ 129. Although the Court did not accept this contention at the pleading stage, in its September 29, 2017 Opinion and Order on Defendants'

motion to dismiss, the Court noted that the context in which Defendants made the alleged misstatements concerning Bradesco's code of ethics and anticorruption policies "persuades the Court that they are not to be treated as immaterial as matter of law at this stage of the litigation" and a risk existed that a jury could find such context less compelling when weighing all of the admissible evidence and making a determination as to whether these misstatements would be materially misleading to a reasonable investor. ¶¶ 129-30.

Finally, Lead Plaintiff also faced formidable challenges with respect to proving loss causation and damages. ¶¶ 131-36. Defendants would certainly have continued to assert at summary judgment and/or at trial that Lead Plaintiff would be unable to link the alleged false or misleading statements to the price declines in Bradesco PADS at issue in the Action. ¶ 133. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear the burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'"). Defendants would have argued, as they did in opposing the Motion to Certify, that the alleged misrepresentations and omissions did not impact (or artificially inflate) the price of Bradesco PADS at the time they were made and that the price declines in Bradesco PADS following the alleged corrective disclosures on March 26, 2015, May 20, 2015, May 31, 2016 and July 27, 2016 could not, therefore, have removed any inflation attributable to the alleged fraud. ¶ 133.

More specifically, in opposing the Motion to Certify, Defendants argued that the price declines in Bradesco PADS following the alleged corrective disclosures on March 26, 2015, May 20, 2015, and July 27, 2016 were not statistically significant when examined under an appropriate methodology and that the price decline following the May 31, 2016 disclosure, while statistically significant, was not attributable to a correction of the alleged misstatements but rather a reaction to the uncertainty concerning Defendant Trabuco's future tenure with Bradesco in light of the

criminal charges announced against him that day. ¶ 134. *See Richman v. Goldman Sachs Grp., Inc.*, 868 F. Supp. 2d 261, 282 (S.D.N.Y. 2012) ("[a] decline in stock price following a public announcement of 'bad news' does not, by itself, demonstrate loss causation"). Resolution of these issues would have hinged upon extensive expert discovery and testimony. Thus, "establishing damages at trial would lead to a battle of experts . . . with no guarantee whom the jury would believe." *In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001); *see also In re Bear Stearns Cos. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) ("When the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured.").

b. Risks to Maintaining the Class Action Through Trial

Lead Plaintiff's Motion to Certify was pending when the Settlement was reached. In opposing this motion, Defendants advanced multiple arguments in an effort to rebut the fraud-on-the-market presumption of reliance. If successful, Defendants' arguments that the alleged misrepresentations and omissions did not actually affect the price of Bradesco PADS could have considerably narrowed the Settlement Class Period and/or given rise to individualized issues of reliance, which would likely have precluded class certification. ¶ 120. Although Lead Plaintiff believes the Court would have granted the Motion to Certify, the Settlement removes any uncertainty and eliminates the risk that any certified class might have been decertified either before or during trial. *See* Fed. R. Civ. P. 23(c)(1)(C); *Annunziato v. Collecto, Inc.*, 293 F.R.D. 329, 340 (E.D.N.Y. 2013) ("[U]nder rule 23, district courts have the power to amend class definitions or decertify classes as necessary.") (alterations in original); *Shapiro*, 2014 WL 1224666, at *11 ("The possibility of decertification . . . favors settlement.").

3. The Reaction of the Settlement Class to Date

The class's reaction to a proposed settlement is an important factor to be weighed in considering its fairness and adequacy. *See, e.g., Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy."); *Bear Stearns*, 909 F. Supp. 2d at 266-67. In accordance with the Preliminary Approval Order, as of October 7, 2019, Epiq had mailed more than 47,300 Postcard Notices to prospective Settlement Class Members and nominees,[9] and published the Summary Notice in *Investor's Business Daily* and over *PR Newswire* on August 26, 2019. Ex. 3, ¶¶ 16, 17 & Exs. A & C. As stated in the both the Postcard and Summary Notices, additional information about the Action and the Settlement can be found on the website created for the Settlement, www.BancoBradescoSecuritiesLitigation.com. Ex. 3, ¶¶ 21-22. Although the deadline for Settlement Class Members to object to the Settlement, or request exclusion from the Settlement Class, has not yet passed, to date, there have been no objections of any kind (¶¶ 12, 141), and not one request for exclusion. Ex. 3, ¶ 25.[10]

4. Stage of the Proceedings and Amount of Discovery Completed

The third *Grinnell* factor considers "the stage of the proceedings and the amount of discovery completed" in determining the fairness, reasonableness, and adequacy of a settlement. *Grinnell*, 495 F.2d at 463. For this factor, "the question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs'

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[9] Epiq also has mailed a total of 1,562 copies of the Notice and Claim Form (together, the "Notice Packet") to nominees and Settlement Class Members (upon request). Ex. 3, ¶ 16.

[10] Any objections or requests for exclusion received after the date of this Memorandum will be addressed in Lead Plaintiff's reply submissions to be filed with the Court on or before November 6, 2019.

causes of action for purposes of settlement." *In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *4 (S.D.N.Y. Nov. 9, 2015), *aff'd*, 674 F. App'x 37 (2d Cir. 2016).

As detailed in the Whitman Declaration, during the course of this Action, Lead Plaintiff, through its counsel, spent significant time and resources analyzing and litigating the legal and factual issues of this case, including: (i) conducting an extensive legal and factual investigation into the Settlement Class's claims; (ii) drafting the detailed Amended Complaint; (iii) opposing Defendants' motion to dismiss; (iv) engaging in hotly-contested discovery, which included numerous negotiations with Defendants regarding the scope and volume of discovery; (v) seeking documents from multiple Brazilian authorities and entities by means of Court-authorized Letters of Request pursuant to the Hague Convention; (vi) retaining an economic expert in connection with class certification proceedings; (vii) briefing the Motion to Certify and a related motion for leave to add Boilermaker-Blacksmith as an additional class representative; (viii) defending depositions of the proposed class representatives; (ix) deposing Defendants' class certification expert and defending the deposition of Lead Plaintiff's class certification expert; (x) commencing preparation for a two-day evidentiary hearing and oral argument related to class certification; and (xi) engaging in hard-fought, arm's-length negotiations facilitated by Jed D. Melnick, Esq., including pre-mediation briefing and expert damages analyses. ¶¶ 6, 24-112.

Based upon these efforts, Lead Counsel had sufficient familiarity with the issues in the case, as well as a firm understanding of the strengths and weaknesses of Lead Plaintiff's claims and Defendants' defenses. Accordingly, Lead Plaintiff and Lead Counsel had the requisite information at the time of settlement to make an informed decision about the relative benefits of litigating versus settling the Action and "developed an informed basis from which to negotiate a reasonable compromise." *Global Crossing*, 225 F.R.D. at 459; *see also Facebook*, 343 F. Supp.

3d at 412 (finding support for settlement where plaintiffs and their counsel had a "sufficient understanding of the case to gauge the strengths and weaknesses of their claims as well as the adequacy of the settlement").

5. Ability of Defendants to Withstand a Greater Judgment

Although there is nothing to suggest that Bradesco would be unable to withstand a greater judgment than the Settlement Amount, "a defendant is not required to empty its coffers before a settlement can be found adequate." *Shapiro*, 2014 WL 1224666, at *11. Further, Defendants' financial wherewithal "do[es] not ameliorate the force of the other *Grinnell* factors, which lead to the conclusion that the settlement is fair, reasonable and adequate." *Id.*; *see also Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 178 (W.D.N.Y. 2011) (assigning "relatively little weight to th[is] factor" because "it is more important to assess the judgment in light of plaintiffs' claims and the other factors").

6. The Range of Reasonableness of the Settlement Amount in Light of the Best Possible Recovery and the Risks of Litigation

The final two *Grinnell* factors—the reasonableness of the settlement in light of the best possible recovery and the risks of litigation—also weigh in favor of approving the Settlement. As the Second Circuit has explained, there is "a range of reasonableness with respect to a settlement" that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *see also Payment Card Interchange*, 330 F.R.D. at 48 (in considering a settlement's reasonableness, "a court must compare the terms of the compromise with the likely rewards of litigation"); *Shapiro*, 2014 WL 1224666, at *11 (recognizing "that the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes"). A fairness determination turns not on a "mathematical equation yielding a particularized sum . . . .

but rather . . . [on] the strengths and weaknesses of the plaintiffs' case." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 130 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). The $14.5 million cash Settlement meets this threshold.

Here, had Lead Plaintiff overcome all of the obstacles to establishing liability, loss causation, and damages as noted above, Lead Plaintiff's damages consultant estimates that the Settlement Class's aggregate damages would range from $130 million to $179.1 million. ¶ 154. Defendants would be expected to argue that damages were truly zero and, at a minimum, were far less than the $130 million to $179.1 million range after accounting for certain loss causation issues. In recognition of the hurdles to establishing damages and the possibility of losing certain corrective disclosures, Lead Plaintiff's damages consultant estimates that damages more conservatively range from $34.4 million to $65.5 million. Under this scenario, the $14.5 million Settlement represents between approximately 22% and 42% of the Settlement Class's damages. *Id.* This result far exceeds the median recovery as a percentage of damages in recent securities class action settlements, which, for the years 1996 through 2018, was 8.4% in cases with investor losses between $20 million and $49 million, 4.7% in cases with investor losses between $50 million and $99 million, and 3.1% in cases with investor losses between $100 million and $199 million.[11]

In comparison, if the Action continued, Lead Plaintiff and the Settlement Class would have faced numerous risks to obtaining a recovery greater than the Settlement Amount, or any recovery

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[11] *See* Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*, NERA Economic Consulting, Jan. 29, 2019, at 35, https://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf. *See also, In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) (average settlement in securities class actions ranges from 3% to 7% of the class' total estimated losses); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (approving settlement representing approximately 6.25% of estimated damages and noting recovery was at "higher end of the range of reasonableness of recovery in class actions securities litigations").

at all. *See Facebook*, 343 F. Supp. 3d at 414 ("Even if $35 million amounts to one-tenth–or less–of Plaintiffs' potential recovery, the risk of a zero—or minimal—recovery scenario are real.").

E. The Other Rule 23(e)(2) Factors Support Final Approval of the Settlement

Rule 23(e)(2), as amended, also considers: (i) "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;" (ii) "the terms of any proposed award of attorney's fees, including timing of payment;" (iii) any agreement made in connection with the proposed settlement; and (iv) the equitable treatment of class members. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii), (iii), and (iv); Fed. R. Civ. P. 23(e)(2)(D). These additional considerations weigh in favor of approving the Settlement.

First, if the Settlement is approved, the claims of Settlement Class Members will be processed and the Settlement proceeds distributed pursuant to a method that is standard in securities class actions and is routinely found to be effective. The Court-authorized Claims Administrator, Epiq, will review and process all claims received, provide Claimants with an opportunity to cure any deficiency in their claim or request judicial review of the denial of their claim, and ultimately mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund as calculated under the Plan of Allocation, *see infra* Section III. None of the Settlement proceeds will revert to Defendants.[12]

[12] "The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Defendant, Defendant Releasee, or any other person or entity who or which paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including without limitation, the number of Claim Forms submitted, the collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund." Stipulation ¶ 14.

Second, the relief provided by the Settlement is also adequate when considering the terms of the proposed award of attorneys' fees. As discussed in the Fee Memorandum, the requested attorneys' fees of 25% of the Settlement Fund, to be paid upon approval by the Court, are reasonable in light of the efforts of Plaintiffs' Counsel over the past three years and the risks in this Action. This fee is also consistent with attorneys' fee percentages awarded to counsel in other complex class actions in this Circuit. *See Facebook*, 343 F. Supp. 3d at 416 ("Courts in this Circuit have approved complex securities class action fee awards totaling well over 25 percent."). Of particular note, the approval of attorneys' fee awards is entirely separate from the approval of the Settlement, and neither Lead Plaintiff nor Lead Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees. *See* Stipulation ¶ 18.[13]

Lastly, amended Rule 23 asks the court to consider the fairness of the proposed settlement in light of "any agreements required to be identified under Rule 23(e)(3)." *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). Here, in addition to the Stipulation, the Parties entered into a confidential Supplemental Agreement pursuant to which Defendants "shall have the unilateral right exercisable in their sole discretion to terminate the Settlement in the event that Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet the conditions set forth in Defendants' confidential Supplemental Agreement with Lead Plaintiff." *See* Stipulation ¶ 39. This type of agreement is standard in securities class actions and has no negative impact on the fairness of the Settlement. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *11 (N.D. Cal. Sept. 4, 2018) ("The existence of a termination option triggered by the number of class members

[13] In connection with its fee request, Lead Counsel also seeks payment of $743,507.30 in reasonable and necessary costs and expenses incurred by Plaintiffs' Counsel in prosecuting this Action, and reimbursement of Lead Plaintiff's and Boilermaker-Blacksmith's costs related to their representation of the Settlement Class in an aggregate amount of $45,244.36. ¶ 150.

who opt out of the Settlement does not by itself render the Settlement unfair."). The only other agreement entered into by the Parties (other than the Stipulation itself) is the April 19, 2019 Term Sheet setting forth the principal terms of the Parties' agreement-in-principle to resolve the Action.

F. The Settlement Treats Settlement Class Members Equitably Relative to Each Other

Finally, the proposed Settlement treats members of the Settlement Class equitably relative to one another. As discussed Section III below, the Net Settlement Fund will be distributed among all Settlement Class Members in accordance with the Plan of Allocation, which provides a fair and equitable method of allocating the Net Settlement Fund among Authorized Claimants. More specifically, all Authorized Claimants will receive their *pro rata* share of the Net Settlement Fund based on their transactions in Bradesco PADS during the Settlement Class Period.

III. THE PLAN OF ALLOCATION WARRANTS APPROVAL

To merit approval, a plan of allocation "must also meet the standards by which the settlement was scrutinized—namely, it must be fair and adequate." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 667 (S.D.N.Y. 2015); *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012). Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *See IMAX*, 283 F.R.D. at 192. A plan of allocation, however, need not be tailored to fit each and every class member with "mathematical precision." *PaineWebber*, 171 F.R.D. at 133. In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel. *See Giant Interactive*, 279 F.R.D. at 163.

Here, the proposed Plan of Allocation, which was developed in consultation with Lead Plaintiff's damages consultant, is a fair and reasonable method for allocating the Net Settlement Fund among Settlement Class Members. ¶ 144; *see also* Declaration of Chad Coffman, FCA,

Regarding the Proposed Plan of Allocation (ECF No. 193-2). The Plan will equitably distribute the Net Settlement Fund to Authorized Claimants who suffered losses as a result of the alleged wrongdoing as set forth in the Amended Complaint and sustained in the Court's September 29, 2017 Opinion and Order, as opposed to economic losses caused by market or industry factors or unrelated Company-specific factors. ¶ 143. The Plan incorporates a thorough economic analysis of the price movements in Bradesco PADS during the Settlement Class Period, including the price decreases in reaction to the disclosures that allegedly corrected the alleged misrepresentations and omissions. ¶ 144. The Plan also takes into consideration all Bradesco PADS stock splits that occurred through August 2018 and, if necessary, Claimants' transactions will be adjusted accordingly before calculating a Claimant's Recognized Losses and Recognized Claim pursuant to the formulas set forth in the Plan. *Id*.

Under the Plan, a Recognized Loss Amount will be calculated for each Bradesco PADS purchased or acquired during the Settlement Class Period that is listed in a Claimant's Claim Form and for which adequate documentation is provided. The calculation of a Recognized Loss Amount (and ultimately, a "Recognized Claim") will depend upon several factors, including the date(s) when the Claimant purchased or acquired his, her, or its Bradesco PADS during the Settlement Class Period, and whether such PADS were sold and if so, when and at what price. ¶ 145.[14]

The Claims Administrator will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund by dividing the Authorized Claimant's Recognized Claim (i.e., the sum of a

[14] Pursuant to the Plan, in order to have a loss, the PADS purchased or acquired during the Settlement Class Period must have been held through at least one of the alleged corrective disclosures dates (i.e., March 26, 2015, May 20, 2015, May 31, 2016, and July 27, 2016). *Id*.; *see Dura Pharm.*, 544 U.S. at 342 (investors who bought and sold shares "before the relevant truth begins to leak out" have no recognized losses because "the misrepresentation will not have led to any loss"). The calculation of a Claimant's Recognized Claim also takes into account the PSLRA's statutory limitation on recoverable damages. *See* 15 U.S.C. § 78u-4(e). ¶ 145 n.17.

claimant's Recognized Loss Amounts as calculated under the Plan) by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount of the Net Settlement Fund. ¶ 146. Thereafter, following approval of the Settlement and upon the Court's entry of the Class Distribution Order, the Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. ¶ 147. *See In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 581 (S.D.N.Y. 2008) ("Pro-rata distribution of settlement funds based on investment loss is clearly a reasonable approach.").

The Plan was fully disclosed in the Notice mailed to potential Settlement Class Members and nominees. To date, there have been no objections to the Plan. ¶ 149. Accordingly, Lead Counsel believes that the Plan is fair, reasonable, and adequate and should be approved.

IV. THE NOTICE OF SETTLEMENT SATISFIES DUE PROCESS REQUIREMENTS AND IS REASONABLE

The notice provided to the Settlement Class satisfies the requirements of Rule 23(c)(2)(B), which directs "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). The notice of the Settlement also satisfies Rule 23(e)(1), which requires that notice of a settlement be "reasonable"—i.e., it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart*, 396 F.3d at 114; *Virtus Inv. Partners, Inc.*, 2018 WL 6333657, at *4 ("The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness.").

In accordance with the Preliminary Approval Order, Epiq disseminated the Postcard Notice to prospective Settlement Class Members via mail (and e-mail, if available) at the addresses set

forth in the shareholder lists provided by Defendants' transfer agent, as well as the addresses of all other prospective Settlement Class Members who were identified by nominees. Ex. 3, ¶¶ 3-16. Epiq also mailed copies of the Notice and Claim Form (i.e., Notice Packet) to nominees and Settlement Class Members (upon request). *Id*., ¶ 16. In addition, Epiq caused the Summary Notice to be published in *Investor's Business Daily* and transmitted over *PR Newswire* on August 26, 2019. Ex. 3, ¶ 17. The long-form Notice and Claim Form, as well as the Stipulation, Preliminary Approval Order, and Amended Complaint, were posted on the Settlement Website beginning on August 23, 2019 (*Id*., ¶ 22), and copies of the Notice and Claim Form were made available on Lead Counsel's website. Pursuant to the Stipulation, Defendants also issued notice pursuant to CAFA. ¶ 139 n.12.

Collectively, the notices apprise Settlement Class Members of, among other things: (i) the amount of the Settlement; (ii) the reasons why the Parties are proposing the Settlement; (iii) the estimated average recovery per affected Bradesco PADS; (iv) the maximum amount of attorneys' fees and expenses that will be sought; (v) the identity and contact information for representatives of Lead Counsel available to answer questions concerning the Settlement; (vi) the right of Settlement Class Members to object to the Settlement; (vii) the right to request exclusion from the Settlement Class; (viii) the binding effect of a judgment on Settlement Class Members; (ix) the dates and deadlines for certain Settlement-related events; and (x) the way to obtain additional information about the Action and the Settlement by contacting Lead Counsel, the Claims Administrator, or visiting the Settlement Website. *See* Fed. R. Civ. P. 23(c)(2)(B); 15 U.S.C. § 78u-4(a)(7). The Notice also contains the Plan of Allocation and provides Settlement Class Members with information on how to submit a Claim Form in order to be eligible to receive a distribution from the Net Settlement Fund. *See* Ex. 3, Ex. B.

In sum, the notices provide sufficient information for Settlement Class Members to make informed decisions regarding the Settlement, fairly apprises them of their rights with respect to the Settlement, is the best notice practicable under the circumstances, and complies with the Court's Preliminary Approval Order, Rule 23, the PSLRA, and due process. *See, e.g., Advanced Battery*, 298 F.R.D. at 182-83; *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *12-13 (S.D.N.Y. Dec. 23, 2009).

V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

In connection with its Preliminary Approval Motion, Lead Plaintiff requested provisional certification of the Settlement Class for settlement purposes so that notice of the Settlement, the Settlement Fairness Hearing, and the rights of Settlement Class Members to request exclusion, object, or submit Claim Forms to be eligible for a payment from the Settlement, could be issued. In its Preliminary Approval Order, the Court provisionally certified the Settlement Class solely for the purpose of effectuating the Settlement. *See* ECF No. 197, ¶¶ 2-4 (analyzing how the Action satisfies each element for class certification); *see also IMAX*, 283 F.R.D. at 186 (certification of a settlement class "has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants"). Nothing has changed to alter the propriety of the Court's provisional certification of the Settlement Class and, for all the reasons stated in the Preliminary Approval Motion (ECF Nos. 187-89) incorporated herein by reference, Lead Plaintiff respectfully requests that the Court finally certify the Settlement Class for purposes of effectuating the Settlement.

VI. CONCLUSION

For the reasons stated herein and in the Whitman Declaration, Lead Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement, approve the proposed Plan of Allocation, and certify the Settlement Class for purposes of effectuating the Settlement.

Dated: October 8, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

/s/ Johnston de F. Whitman, Jr.
Johnston de F. Whitman, Jr.