UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re BRF S.A. SECURITIES LITIGATION	Civil Action No. 1:18-cv-02213-PKC
This Document Relates To: ALL ACTIONS.	<u>CLASS ACTION</u> DECLARATION OF DAVID A. ROSENFELD IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

DAVID A. ROSENFELD, declares as follows:

1. I, David A. Rosenfeld, am a member of the New York Bar admitted to practice before this Court and a member of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), lead counsel for Lead Plaintiff ("Lead Counsel") in the above-captioned action (the "Action"). I respectfully submit this Declaration in support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation, and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4). I have personal knowledge of the matters set forth herein based on my active participation in all material aspects of the prosecution and settlement of this litigation. If called upon, I could and would competently testify that the following facts are true and correct.

2. The plaintiff in this Action is Lead Plaintiff City of Birmingham Retirement and Relief System ("Lead Plaintiff" or "Plaintiff" or "Birmingham"). The defendants are BRF S.A. ("BRF" or the "Company"), José Antonio de Prado Fay, Claudio Galeazzi, Pedro Faria de Andrade ("Faria"), Leopoldo Viriato Saboya, Augusto Ribeiro Júnior, José André Carneiro Borges, Lorival Nogueira Luz Jr. ("Luz"), Hélio Rubens Mendes dos Santos Júnior ("Mendes") and Abilio dos Santos Diniz ("Diniz") (collectively, the "Individual Defendants") (the Individual Defendants, together with BRF, are referred to herein as "Defendants").

3. Plaintiff alleges claims against Defendants on behalf of a Class defined as all persons or entities who purchased or otherwise acquired BRF's American Depository Receipts ("ADRs")[1] during the period from April 4, 2013 through March 5, 2018, inclusive (the "Class Period").

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[1] An ADR represents ownership in a security issued by a foreign company in foreign markets. *See Edward F. Greene, et al., U.S. Regulation of the International Securities and Derivatives Markets 2-19* (9th ed. 2009). Generally, a U.S. bank (a "depository") has custody of the foreign security and issues the ADR certificate to an investor in the United States. *See id.*

Plaintiff has entered into a settlement on behalf of itself and the other Members of the Class with Defendants, which provides a recovery of $40,000,000.00 in cash to resolve this securities class action against all Defendants (the "Settlement"). The Settlement is described in a settlement agreement entered into by all parties dated May 5, 2020 (the "Stipulation"), and previously filed with the Court. ECF No. 157.

4. This Declaration sets forth the nature of the claims asserted, the principal proceedings in the Action, the legal services provided by Lead Counsel, the settlement negotiations between the parties, and also demonstrates why the Settlement and Plan of Allocation are fair, reasonable, adequate and in the best interests of the Class, and why the application for attorneys' fees and expenses are reasonable and should be approved by this Court.

5. As explained below and in the accompanying memorandum of law, this Settlement takes into consideration the significant risks specific to this litigation. Furthermore, the Settlement is the result of arm's-length negotiations between the parties facilitated by the Honorable Layn R. Phillips, a retired federal judge and a nationally-recognized mediator of complex cases and securities class actions. These negotiations were conducted by experienced counsel with an understanding of the strengths and weaknesses of the claims and defenses, and the Settlement was reached after each side had an opportunity to reflect on the negotiations at the mediations, consider Judge Phillips' input, and deliberate further.

6. Plaintiff believes that this Settlement provides a significant recovery to the Class, given the nature of the allegations and the size of investors' estimated losses. As set forth below, despite the fact that many of these allegations were independently supported, numerous uncertainties remained in the case, especially given the international component to this litigation, with many of the

documents and witnesses relevant to Plaintiff's allegations being located abroad, principally in Brazil, beyond the jurisdiction of this Court.

I. PRELIMINARY STATEMENT

7. Lead Counsel thoroughly investigated and vigorously litigated the claims asserted in this Action arising under the Securities Exchange Act of 1934 (the "Exchange Act"). Lead Counsel performed a significant factual investigation at the pleading stage to gain a detailed understanding of how BRF, the world's largest poultry exporter, and its most senior executives were liable for falsely representing that BRF produced safe, high-quality food products, that BRF had controls in place to monitor every stage of the production process, and that they complied with all applicable laws and regulations designed to protect the integrity of BRF's products. In this regard, Lead Counsel thoroughly analyzed a wide-range of evidentiary materials, including emails, text messages, laboratory reports, and witness testimony from an ongoing investigation in Brazil. Lead Counsel also reviewed and analyzed publicly available information regarding BRF, including, but not limited to, relevant U.S. Securities and Exchange Commission ("SEC") filings, financial reports and press releases, as well as media and analysts' reports. Furthermore, due to the complex nature of analyzing material written in Portuguese, Lead Plaintiff relied on attorneys fluent in Portuguese to obtain and translate publicly available information relating to the alleged fraud that was disseminated in Brazil.

8. During the course of litigating this case, Lead Plaintiff filed four amended complaints, continually adding additional information that came to light as part of its ongoing investigation. Defendants filed numerous motions to dismiss, which Plaintiff opposed. In March 2019, while the motion to dismiss the second amended complaint was pending, the parties agreed to participate in a mediation before the Honorable Layn R. Phillips (Ret.), a former United States

District Judge for the Western District of Oklahoma and highly experienced mediator. Despite a good faith effort to reach a resolution, the parties were unable to agree on a settlement. After the filing of two more amended complaints, and responsive motions to dismiss, the parties agreed to participate in a second mediation in New York City. Due to the onset of the coronavirus pandemic, the mediation was rescheduled to take place via Zoom video conferencing in March 2020. Again, despite the good faith efforts of the parties, a resolution was not reached. Ultimately, through the continued efforts of the parties and the mediator, an agreement in principle to settle this case for $40 million was agreed upon.

9. The parties negotiated and then entered into a term sheet on April 23, 2020 and negotiated and then entered into a stipulation of settlement (the "Stipulation"), which was filed with the Court on May 8, 2020. During the course of the parties' negotiations, Lead Counsel made it clear that, while it was prepared to assess the strengths and weaknesses of its case fairly, it would continue to litigate rather than settle for less than fair value. Lead Counsel persisted in its negotiations until it achieved a settlement it thought was in the best interests of the Class.

10. The proposed $40,000,000 Settlement, derived from the substantial efforts of Lead Counsel, is a notable achievement under the circumstances of the Action. Although Plaintiff believes it would have defeated Defendants' motion to dismiss, and that the allegations of the Fourth Amended Complaint would have been borne out by the evidence, it also recognizes that it faced a difficult road in prevailing on the merits. This case presents substantial hurdles not only because Defendants deny their liability altogether, but also because of the difficulty of obtaining document and deposition discovery in Brazil, where much of the evidence and witnesses are located. Thus, the Settlement is eminently fair, reasonable, and adequate based on the impediments to recovery, the

legal hurdles and risks involved in proving liability and damages, as well as the further risk, delay, and expense had this case continued to summary judgment and trial against Defendants.

11. The Settlement was negotiated on all sides by experienced counsel with a firm understanding of the strengths and weaknesses of their clients' respective claims and defenses. The Settlement confers substantial and immediate benefits to the Class, while eliminating the risk that the Class would receive nothing. Furthermore, even if Plaintiff had prevailed at the motion to dismiss stage, and at the summary judgment stage, and then at trial, any recovery could still be years away, as Defendants would likely have appealed. In fact, a prolonged litigation could have substantially impeded BRF's business and eliminated sources of a settlement or judgment. Thus, Lead Counsel respectfully submits that, under these circumstances, the Settlement is in the best interest of the Class and should be approved as fair, reasonable, and adequate.

12. Lead Counsel also respectfully submits that the Court should approve the Plan of Allocation and award attorneys' fees in the amount of 27.5% of the Settlement Fund, plus expenses in the amount of $94,821.84, which have been incurred or advanced by Lead Counsel in connection with this Action, plus interest thereon, as a result of Lead Counsel's considerable efforts in creating this substantial benefit on behalf of the Class, and as recognition for the risks faced and overcome.

13. The Class appears to approve the Settlement overwhelmingly. Under the Court's Amended Order Preliminarily Approving Settlement and Providing for Notice, dated May 15, 2020 (the "Notice Order") (ECF No. 160), more than 61,500 copies of the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") were mailed to potential Class Members and nominees.[2] Murray Decl., ¶¶4-11. Additionally, a Summary Notice was published in *The Wall*

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[2] *See* the accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl.").

Street Journal and transmitted over the *Business Wire* on June 12, 2020 (the "Summary Notice"). *Id.*, ¶12. The Notice apprised Class Members of their right to object to the Settlement, the Plan of Allocation and/or to Lead Counsel's application for attorneys' fees of 27.5% of the Settlement Fund plus expenses of up to $150,000. While the time to file objections to any of the relief by October 2, 2020, has not yet expired, to date, there have been no objections to the Settlement, the Plan of Allocation or Lead Counsel's request for an award of attorneys' fees and expenses.

14. Lead Counsel has zealously and aggressively litigated this case for well over two years on a wholly-contingent basis. The fee application for 27.5% of the total recovery is fair, reasonable and adequate, and warrants Court approval. This fee request is well within the range of fees typically awarded in actions of this type, was approved by Lead Plaintiff, and is wholly justified in light of the benefits obtained, the substantial risks undertaken, and the quality, nature and extent of the services rendered, as more fully set forth in the accompanying Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Fee Memorandum").

15. The following sections set forth the principal proceedings in this matter and the major legal services provided by Lead Counsel, the negotiation of the Settlement, the terms of the Settlement, why the Settlement and the Plan of Allocation are fair, reasonable, adequate and in the best interests of the Class, and the reasonableness of Lead Counsel's fee and expense request.

II. SUMMARY OF PLAINTIFF'S ALLEGATIONS

A. Overview of Defendants' Fraud

16. BRF, headquartered in São Paolo, Brazil, is a food processor and the world's largest poultry exporter. ¶2.[3] During the Class Period, BRF was engaged in an unprecedented and massive case of food fraud. This widespread fraud involved numerous senior executives, as well as the Company's top management, and included lobbying regulators and other politicians to subvert inspections in order to conceal unsanitary practices at the Company's meatpacking plants, falsifying laboratory test results and the improper use of additives and chemicals. ¶3. Nonetheless, Defendants failed to disclose these material facts and repeatedly made statements to investors that emphasized BRF's growth, its focus on product quality and food safety, and its compliance with legislation, legal requirements, and international certification standards – all of which were false. *Id.*

17. Although the poultry production industry is highly regulated in Brazil, Plaintiff alleges Defendants engaged in a practice that disregarded health and sanitary laws and regulations at nearly every stage of the production process. As a result, BRF produced and distributed poultry products contaminated with bacterial pathogens, such as salmonella (¶¶171, 191-200, 245-297), contained excessive levels of dangerous environmental toxins, such as dioxins (¶¶97-136), and laden with illegal medications designed to unnaturally fatten the birds (¶¶298-334). These contaminated products were nonetheless distributed around the world bearing labels representing they were free of pathogens and safe for human consumption when they were not. *See* ¶¶9, 257, 313-318, 347-360.

18. Defendants engaged in illegal and corrupt practices during the Class Period to hide this misconduct from government authorities. For instance, Defendants routinely disregarded their

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[3] References to the Fourth Amended Class Action Complaint for Violations of the Federal Securities Laws (the "FAC") are cited herein as "¶__."

legal obligation to report confirmed instances of salmonella and/or other pathogens, and affirmatively concealed such outbreaks, as complying with the law would disrupt its operations. *See* ¶¶277-290. Instead, Defendants would simply verify that the contaminated products were free of pathogens. *See, e.g.*, ¶80. These records were substantiated by fraudulent laboratory reports (¶¶203-210, 291-297, 335-346), which were then used to obtain the requisite health certifications for domestic distribution, and international export (¶¶137-149, 203-210).

19. In addition to poultry, BRF had six facilities in Brazil producing animal feed and premix. Although these products are strictly regulated, BRF manufactured feed and premix containing illegal additives, including antibiotics and other medications used to artificially stimulate animal growth, or excessive amounts of permitted ingredients. ¶¶298-323. To avoid government scrutiny, BRF would alter the labels on the feed and premix, as well as its internal production records, to indicate that the product was manufactured in accordance with all applicable regulations. ¶¶310-323. BRF's laboratories then provided governmental agencies with falsified traceability reports to conceal that BRF's products were laden with illegal additives. ¶¶316-318.

20. Bribes were also casually paid to politicians, government officials, and lobbyists, as necessary, to help BRF further its goals. For instance, BRF financed a trip to Europe for a high-ranking regulator, in exchange for her efforts to lobby for legislation to increase the legal poultry production rate by approximately 20%, despite the inherent health risks caused by such an increase. ¶¶222-224. The Brazilian Federal Police launched a criminal investigation into the circumstances revolving around this trip. ¶225.

21. BRF had a sophisticated and well-connected government and institutional relations ("GIR") team that worked behind the scenes to protect its interests. For example, the GIR team leaned on its relationships to obtain access to government computer systems, which it would then

use to generate fraudulent certifications or monitor the status of pending administrative proceedings. ¶¶361-402. On several occasions during the Class Period, Brazilian authorities mandated additional testing by accredited laboratories for poultry exports. Knowing that its products were contaminated, BRF helped obtain appropriate accreditation for those laboratories that agreed to fabricate the requisite test results. *See, e.g.*, ¶¶127-136, 346. Inspectors who interfered with BRF's operations were promptly removed by BRF through their relationships with government officials. ¶¶389-392. BRF also used its political influence to authorize the export of products that were missing key export documentation. ¶¶378-386.

B. The Truth Is Revealed and BRF ADRs Plummet

22. On March 17, 2017, after a two-year investigation codenamed "Operation Weak Flesh" (in Portuguese, *Operação Carne Fraca*), the Brazilian authorities simultaneously executed hundreds of search and arrest warrants as they raided the facilities of dozens of meatpackers, including BRF. Operation Weak Flesh found at least 40 cases of federal regulators accepting bribes in exchange for loosening regulations and helping food processors put adulterated food products in the marketplace. The raids, which were authorized by a Brazilian Federal judge in a decision spanning more than 300 pages (the "*Carne Fraca* Decision"), revealed that BRF was a major player in what it described as a "staggering" web of corruption in Brazil's meatpacking industry. On this news, BRF's ADR price fell $0.99, or 7.73%, to close at $11.81 on March 17, 2017. *See* ¶¶71-74; 626-627.

23. Then, on March 5, 2018, the Brazilian police launched Operation Trapaça. ¶76. Multiple BRF facilities were raided, and high-ranking executives, including Faria, were arrested. *Id.* The Trapaça Decision revealed that numerous BRF executives and other high-ranking officials were involved in a "vicious circle of criminal practices . . . in which one crime was committed to conceal

another." ¶¶8; 76-79; 634. This news caused BRF's ADRs to plummet 19.4%. This event marks the end of the Class Period.

C. Post Class-Period Events

24. After the Class Period, on October 15, 2018, the Brazilian police issued a final report of their investigation into BRF (the "Trapaça Report"), which detailed the Company's: (i) production of feed and premix containing illegal and/or undisclosed medications; (ii) routine production and distribution of poultry contaminated with salmonella; and (iii) use of non-certified laboratories to obtain fraudulent health certifications for contaminated products. ¶80. The Trapaça Report recommended the indictment of Diniz, Faria, and other high-ranking BRF executives. ¶81. That same month, BRF began negotiating a leniency agreement with the prosecution. ¶83.

25. Over the next year, BRF confessed to paying millions of dollars in bribes for more than a decade, in cash and in kind, to over 70 Brazilian health inspectors to circumvent regulatory requirements. ¶84. On October 1, 2019, a Brazilian court authorized a new round of raids of these corrupt officials, citing "[p]lenty of documentation from the voluntary collaboration of the BRF company." ¶86.

III. PLAINTIFF'S PROSECUTION OF THE CASE

A. The Commencement of the Litigation, Appointment of Lead Plaintiff, and the Filing of the First, Second and Third Amended Complaints

26. On March 12, 2018, a class action complaint was filed in this Court on behalf of BRF investors, alleging violations of §§10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5. ECF No. 1.

27. On May 11, 2018, Birmingham filed a motion to be appointed lead plaintiff. Four other movants sought appointment as lead plaintiff. *See* ECF No. 29 at 1. After extensive lead plaintiff motion practice consisting of four opening motions, two opposition briefs and two reply

briefs (*see* ECF No. 34 at 1), on July 2, 2018, the Court issued an Opinion and Order appointing Birmingham as Lead Plaintiff, and appointing Robbins Geller as Lead Counsel. ECF No. 42.

28. Following its appointment, Lead Counsel continued its aggressive, wide-ranging investigation into the facts and circumstances surrounding Defendants' fraud. On August 31, 2018, Lead Plaintiff filed its Amended Class Action Complaint for Violations of the Federal Securities Laws (the "Amended Complaint"). ECF No. 46.

29. The Amended Complaint alleges that the Defendants disregarded health and sanitary laws and regulations in the poultry production process, and engaged in unlawful conduct to conceal its disregard of the law and made materially false and misleading statements and omissions regarding this conduct; when this misconduct was revealed, the price of BRF ADRs declined from their artificially inflated levels. *See* ECF No. 46 at ¶¶1-13; 34. Specifically, BRF was engaged in an unprecedented and widespread food fraud. ¶3. The fraud involved numerous senior executives, as well as the Company's top management, and included paying bribes to regulators and politicians to subvert inspections in order to conceal unsanitary practices at the Company's meatpacking plants, falsifying laboratory test results and improper use of additives and chemicals. *Id.* Nonetheless, Defendants failed to disclose these material facts and repeatedly made statements to investors that emphasized BRF's growth, its focus on product quality and food safety, and its compliance with legislation, legal requirements, and international certification standards – all of which were false. *Id.* Lead Plaintiff filed an updated Amended Complaint, which edited the case caption pursuant to the Court's instructions, on September 7, 2018. ECF No. 49.

30. On October 1, 2018, Defendants filed with the Court a pre-motion letter outlining the bases for their anticipated motion to dismiss the Amended Complaint. ECF No. 56. The letter argued that the Amended Complaint failed to state a claim under §10(b) of the Exchange Act and

failed to meet the heightened pleading requirements of the Private Securities Litigation Reform Act of 1995 and Fed. R. Civ. P. 9(b) because the Amended Complaint did not adequately plead an actionable misstatement or omission, and likewise failed to adequately plead scienter. *Id.* at 2-7. Lead Plaintiff submitted a letter in response on October 9, 2018. ECF No. 58. In addition to vigorously opposing Defendants' contention that the Amended Complaint failed to state a claim with scienter, Lead Plaintiff also respectfully requested that the Court grant leave to file a Second Amended Complaint to address Defendants' purported concerns. *Id.* at 11.

31. The next day, October 10, 2018, Lead Plaintiff filed a pre-motion letter seeking leave to file an Alternative Service Motion to effectuate service on the Individual Defendants. ECF No. 59. As Lead Plaintiff explained, counsel for Defendant BRF – Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") – accepted service on BRF's behalf, but with the exception of Individual Defendant Luz, the remaining defendants are Brazilian residents who were no longer employed by BRF and who could not be served in the same manner. *Id.* at 1. Lead Plaintiff sought to serve Defendant Luz through Skadden; Defendants Mendes and Faria through their Brazilian counsel in their criminal proceedings; Defendant Diniz through his Brazilian counsel in a civil action in Brazil; and the remaining Individual Defendants through non-party Brazilian entities where they serve as officers or directors. *Id.* at 3.

32. On October 15, 2018, the Brazilian Federal Police issued the Trapaça Report, described above.

33. A pretrial conference was held before the Court on October 16, 2018. Following the conference, the Court granted Lead Plaintiff leave to file its Alternative Service Motion, and also authorized Lead Plaintiff leave to file the Second Amended Complaint, in light of the issuance of the

Trapaça Report the day before. ECF No. 60. The Court also suggested the parties attempt to mediate the Action.

34. On October 30, 2018, the parties advised the Court via fax that they agreed with the Court's suggestion that they attempt mediation, and that they intended to hold a private mediation at a later time.

35. On November 7, 2018, Lead Plaintiff filed its Motion for an Order Directing Service of Summons and Amended Complaint by Alternate Means on Non-U.S. Defendants, and a memorandum of law in support (the "Service Motion"). ECF Nos. 61; 63. In addition to expanding on the reasons outlined in its October 10, 2018 pre-motion letter, Lead Plaintiff retained the services of an experienced Brazilian attorney, Renato Mantoanelli Tescari ("Tescari"), to conduct an investigation to identify Brazilian criminal counsel for Defendants Faria and Mendes. ECF No. 66. Tescari submitted a declaration in support of Plaintiff's motion. *Id.* Lead Plaintiff also consulted with a third-party service to attempt to effect service extraterritorially on the Individual Defendants, but was informed that service in Brazil could take up to 18 months, if service would be able to be effected at all. ECF No. 63 at 4. Indeed, extraterritorial service was commenced on these individuals on January 24, 2019 and was still not complete at the time of settlement.

36. Defendant BRF filed its opposition to the Service Motion on November 21, 2018. ECF No. 68. BRF argued that the Court should deny the Service Motion because: (1) Lead Plaintiff did not show that steps have been taken to serve the Defendants through authorized means; (2) there was no need for the Court's intervention; and (3) Lead Plaintiff's proposed methods of service did not comport with due process. *Id.* at 2. Lead Plaintiff filed its reply brief on November 28, 2018, in which it vigorously opposed Defendants' arguments. ECF No. 70.

37. Lead Plaintiff filed the Second Amended Class Action Complaint for Violations of the Federal Securities Laws (the "SAC") on December 4, 2018. ECF No. 72. In addition to the allegations in the Amended Complaint, the SAC incorporated Lead Plaintiff's investigation and analyses of the Trapaça Report, as well as other developments concerning Brazilian investigations into BRF's wrongful conduct. ECF No. 72 at ¶¶81-87. The SAC also revised various Brazilian names and terms that appeared in the Amended Complaint.

38. On December 20, 2018, Defendants filed their pre-motion letter outlining the arguments they intended to raise in their motion to dismiss the SAC. ECF No. 73. Similar to the pre-motion letter concerning the Amended Complaint described above, Defendants argued that the SAC fails to state a claim under §10(b) of the Exchange Act and fails to meet the heightened pleading requirements of the Private Securities Litigation Reform Act of 1995 and Fed. R. Civ. P. 9(b) because it fails to adequately plead an actionable misstatement or omission, and likewise fails to adequately plead scienter. *Id.* at 3-10. The letter also argued the SAC fails to establish general or personal jurisdiction over Luz because he resided in Brazil throughout the Class Period, and had no specific ties to New York, and that the SAC does not sufficiently allege Luz made any false or misleading statements during the Class Period. *Id.* at 10-11.

39. Lead Plaintiff filed its response to Defendants' letter on January 4, 2019. ECF No. 74. Lead Plaintiff emphasized that the SAC presents a textbook case of securities fraud. *Id.* at 18. The SAC specifically alleges that BRF and its executives crafted an image of BRF as a purveyor of safe and healthy food products, and disseminated numerous false and misleading statements designed to protect that image. Relying on these statements, investors were misled into purchasing shares of BRF securities at artificially inflated prices during the Class Period. When the market learned that BRF had misrepresented virtually every aspect of its operations, shares of BRF

securities sharply declined. *Id.*; *see also id.* at 1-17. In addition, with regard to Defendant Luz, Plaintiff argued that due process permits the maintenance of personal jurisdiction over a foreign defendant who served as an executive of a company listed on the NYSE, and signed false SEC filings, thereby negating Defendants' argument that the SAC does not assert general or personal jurisdiction over him. *Id.* at 18.

40. The Court granted in part and denied in part the Service Motion on January 18, 2019. ECF No. 77. The Court permitted Lead Plaintiff to serve process on Defendants Faria, Diniz and Mendes by sending the Amended Complaint and summons to their Brazilian counsel of record via certified mail. ECF No. 77 at 17. The Court also denied Lead Plaintiff's motion, without prejudice, with regard to Defendants Galeazzi, Fay, Saboya, Ribeiro and Borges. *Id.* at 16. The Court held serving these Defendants at non-party businesses where they sit as outside board members was not reasonably calculated to apprise them of the claims against them and to give them an opportunity to object under due process. *Id.* The Court nonetheless suggested Plaintiff pursue alternate means of service for these Defendants that would comport with due process. *Id.*

41. On March 4, 2019, at the Court's suggestion, the parties engaged in a mediation. The mediation was held before Judge Layn R. Phillips (Ret.), one of the most respected mediators in the country, in an attempt to settle the case. In advance of that mediation, the parties provided to Judge Phillips (and exchanged) detailed mediation statements, along with supporting evidence. Unfortunately, the parties were unable to agree on a fair settlement number and no settlement was reached at that time.

42. After the mediation, Defendants expressed concern over Lead Plaintiff's translation of the word "diretoria" as set forth in ¶179 of the SAC. *See* ECF No. 101-1. Lead Plaintiff advised Defendants that the term "diretoria" is translated to board of director in English, but it has an

alternate meaning that refers to the individuals that manage the day-to-day operations of a company, namely, the executive board. *Id.* To avoid any disagreement, and because Lead Plaintiff believed that this alternative translation strengthened its claims, Lead Plaintiff advised Defendants that it intended to modify the SAC so that the term "diretoria" would be defined as executive board. *Id.*

43. On March 15, 2019, Lead Plaintiff filed a Notice of Errata with the Court. ECF No. 99. The Notice of Errata sought to: (i) modify the translation of the Portuguese term "diretoria," as set forth in the transcripts presented in ¶¶179, 422, and 649 of the SAC from "Board of Directors" to "Executive Board"; (ii) modify references to the Board of Directors which relied on the previous translation of "diretoria" to clarify that the references are to the Executive Board; (iii) add two factual allegations defining role, duties, and members of the Executive Board during the Class Period; and (iv) modify language in the SAC regarding allegations concerning Dinis' agreement to intervene in preventing the closure of a facility. *Id.* Lead Plaintiff filed a proposed corrected SAC reflecting these changes with the Notice of Errata. ECF No. 100.

44. The Court struck the Notice of Errata and corrected SAC in an Order dated March 18, 2019. ECF No. 102. In lieu of the proposed changes to the SAC, the Court permitted Lead Plaintiff to move for leave to file a Third Amended Complaint (the "TAC") within 14 days of the Order. *Id.* The Court stayed briefing on the motion to dismiss the SAC pending the outcome of the motion to amend. *Id.* Lead Plaintiff filed its Motion for Leave to File a Proposed Third Amended Class Action Complaint for Violations of the Federal Securities Laws on April 1, 2019 (ECF No. 104), and Defendants filed their opposition on April 15, 2019, ECF No. 113. Lead Plaintiff filed a reply memorandum on April 22, 2019. ECF No. 114. The Court granted Lead Plaintiff's motion for leave to file the TAC on May 3, 2019, requiring Lead Plaintiff to file the TAC by May 10, 2019. ECF No. 116.

45. Lead Plaintiff filed the TAC on May 10, 2019. ECF No. 117. The TAC modified references to the Board of Directors, which relied on the translation of the term "diretoria," by replacing it with the term "Executive Board," as described above. The TAC also contained new information that became available after the filing of the SAC, which shed further light on the details of Defendants' fraudulent conduct. Most notably, on September 28, 2018, the Brazilian court issued a decision which both convicted and acquitted numerous public officials of corruption charges arising out of their relationships with BRF employees (the "Carne Fraca Verdict"). *See* TAC, ¶248. Plaintiff accordingly updated many allegations in the SAC to conform to the Carne Fraca Verdict.

46. Defendants filed their Motion to Dismiss the Third Amended Class Action Complaint and Strike Allegations Therein on June 24, 2019, along with an accompanying memorandum of law and declaration in support. ECF Nos. 122-124. Defendants generally argued that the TAC failed to state a claim because BRF's alleged regulatory misconduct in Brazil did not constitute a violation of the federal securities laws. *See* ECF No. 124 at 1. Defendants also argued the alleged wrongdoing about food safety at BRF was not widespread because it was isolated to a small number of processing plants and employees who were not in privity with Defendants, and the TAC does not allege any BRF customer got sick as a result of the alleged fraud. *See id.* at 1-4. For these reasons, Defendants argued the TAC should be dismissed because: (1) it did not allege any actionable omissions; (2) it did not allege any actionable misstatements; (3) BRF's disclosure of Operation Weak Flesh was not false or misleading; (4) the TAC did not plead a strong inference of scienter against any Defendant; (5) it improperly relies on Brazilian criminal complaints; and (6) control person liability claims should be dismissed for failure to state a primary violation. *See id.* at 5-6. Defendants further argued that, in the event the TAC is not dismissed, the Class Period should be

shortened, and the Court lacks personal jurisdiction over Defendants Luz and Mendes (as described above).

47. Lead Plaintiff filed its opposition to Defendants' motion to dismiss the TAC on August 8, 2019, and an accompanying declaration in support. ECF Nos. 126-127. The opposition vigorously opposed Defendants' motion. Contrary to Defendants' contentions, the opposition argued that the TAC alleges that numerous BRF executives had actual knowledge of the food safety issues and regulatory violations, and actively worked to conceal these issues from consumers and from the market. ECF No. 126 at 1-2. For instance, at least one BRF official was convicted on corruption charges for lobbying a government official to overlook a salmonella outbreak in a major BRF processing plant to prevent it from closing. *Id.* The Brazilian Federal Police also recommended the indictment of several others – including Diniz, Faria, and other senior BRF executives. *Id.* Due to the sheer magnitude of the fraud, Lead Plaintiff maintained that Defendants' motion to dismiss the TAC should be rejected in its entirety. *Id.* Defendants filed a reply brief and accompanying declaration in support of their motion to dismiss on September 9, 2019. ECF Nos. 129-130.

48. On October 18, 2019, Lead Plaintiff advised the Court of new factual developments in the criminal proceedings in Brazil against BRF that took place after the filing of the TAC. ECF No. 131. The additional developments included reports that BRF had pled guilty to paying millions of dollars in bribes to public officials to circumvent regulatory requirements. *Id.* at 2-5. Lead Plaintiff requested that the Court take judicial notice of these developments, or in the alternative, permit Lead Plaintiff an opportunity to amend the TAC. *Id.* at 5. Defendants filed a letter opposing Lead Plaintiff's request on October 24, 2019. ECF No. 133. On October 25, 2019, the Court issued an Order: (i) directing Lead Plaintiff to file a fourth amended complaint; (ii) setting a briefing

schedule for Defendants' motion to dismiss the fourth amended complaint; and (iii) denying Defendants' motion to dismiss the TAC without prejudice. ECF No. 134.

B. The Fourth Amended Complaint

49. Filed on November 8, 2019 (ECF No. 135), the FAC expounded on the allegations of the previously-filed complaints, added, *inter alia*, new allegations from the criminal proceedings in Brazil, and continued to allege claims pursuant to §10(b) of the Exchange Act and Rule 10b-5 against Defendant BRF and the Individual Defendants, and §20(a) of the Exchange Act against the Individual Defendants. *Id.* at ¶¶648-667.

C. Defendants' Motion to Dismiss the FAC Briefing

50. On December 13, 2019, Defendants filed their Motion to Dismiss the FAC and to Strike Allegations Therein, along with a memorandum of law and declaration in support thereof. ECF Nos. 138-140.

51. In support of their motion to dismiss, Defendants reiterated their previous arguments, any of which could have resulted in the dismissal of the litigation and further argued that the allegations in the FAC exceeded the scope of this Court's Order permitting Plaintiff to amend the third amended complaint. Specifically, Defendants argued that Plaintiff's new allegations included a number of allegations unrelated to the Romanos Operation, which were based on information available to Plaintiff when it filed the prior iterations of the complaint. Defendants also argued that Plaintiff's underlying theory of fraud was based on unproven and unadjudicated allegations drawn from preliminary Brazilian investigation documents that should be stricken.

52. On January 21, 2020, Lead Plaintiff filed its opposition to Defendants' motion to dismiss the FAC. ECF Nos. 144-145. In addition to refining and updating its earlier arguments,

Lead Plaintiff argued that the recent facts alleged in the FAC further supported denial of Defendants' motion.

53. On February 11, 2020, Defendants filed a reply brief and declaration in support thereof in further support of their motion to dismiss. ECF Nos. 149-150. They supplemented their arguments objecting to the allegations of the falsity and materiality of the misstatements and omissions identified in the FAC, the allegations of individual and corporate scienter, the jurisdiction of Defendants Luz and Mendes, and their contention that the FAC contains allegations not authorized by the Court.

D. The Second Mediation and Settlement

54. While Defendants' motion to dismiss the FAC was pending, the parties resumed settlement discussions with the aid of Judge Phillips, and prepared for a second mediation (which was scheduled and agreed to before the coronavirus pandemic broke out). In advance of that mediation, the parties submitted supplemental mediation materials to Judge Phillips. On March 20, 2020, Lead Counsel, Birmingham, and Defendants' counsel (and representatives of BRF) attended a second face-to-face mediation session (via Zoom video conferencing) that was overseen by Judge Phillips. In addition to submitting the supplemental mediation materials, Lead Counsel prepared responses to specific questions posed by Judge Phillips based on Plaintiff's submissions, including the mediation statements, the briefing on the motion to dismiss, and other documents submitted by the parties. The negotiations at the mediation went back-and-forth with each side arguing for their positions. Lead Counsel made it clear that it would continue to litigate rather than settle for less than fair value. Although progress was made, no agreement was reached, but the parties continued negotiations. Ultimately, through the continued efforts of the parties and Judge Phillips, on March 27, 2020, an agreement was reached to settle the case for $40 million.

55. Lead Counsel firmly believes that the Settlement represents an excellent recovery for the Class. The proposed $40 million Settlement will provide Class Members a benefit now without risking the possibility of dismissal or prevailing against Defendants after years of litigation and not being able to collect any judgment because of Defendants' inability to pay, or other unforeseen risks.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT AND MAILING AND PUBLICATION OF NOTICE OF SETTLEMENT

56. On May 8, 2020, Plaintiff filed its unopposed Motion for Preliminary Approval of Class Action Settlement. In connection therewith, Plaintiff requested that the Court approve the forms of notice, which, among other things, described the terms of the Settlement, advised Class Members of their rights in connection with the Settlement, set forth the Plan of Allocation, informed Class Members of the amount of attorneys' fees and expenses that Lead Counsel would request, and explained the procedure for filing a Proof of Claim and Release form ("Proof of Claim") in order to be eligible to receive a payment from the Net Settlement Fund. In addition, Plaintiff requested that the Court certify the Class for settlement purposes.

57. By Order dated May 15, 2020, the Court preliminarily approved the terms of the Settlement and directed that Lead Counsel cause the mailing of the Notice and the Proof of Claim to all potential Class Members identifiable with reasonable effort. The Court's Notice Order also directed Lead Counsel to cause the Summary Notice to be published once in *The Wall Street Journal* and once over a national newswire service.

58. Submitted herewith is the Murray Declaration, which attests that over 61,500 Notices have been mailed to potential Class Members and nominees and that the Summary Notice was published on June 12, 2020, as directed by the Court. Murray Decl., ¶¶11-12.

59. The Notice informed Class Members of, among other things, the terms of the Settlement, the Plan of Allocation, and that Lead Counsel would apply for an award of attorneys'

fees not to exceed 27.5% of the Settlement Amount, plus expenses not to exceed $150,000, plus interest on each amount at the same rate earned on the Settlement Fund until paid, and that Lead Plaintiff would seek an award not to exceed $10,000 in connection with its representation of the Class.

60. The Notice states that objections to any aspect of the Settlement, the Plan of Allocation or the application for attorneys' fees and expenses must be filed by October 2, 2020. While the date for objections has not expired, to date, no objections have been filed by any Member of the Class to the Settlement, the Plan of Allocation or to the request for attorneys' fees and expenses. This fact supports Lead Counsel's conclusion that it obtained a highly favorable outstanding result for the Class under the circumstances.

V. FACTORS TO BE CONSIDERED IN SUPPORT OF SETTLEMENT

A. The Settlement Was Fairly and Aggressively Negotiated by Counsel

61. As set forth above, the terms of the Settlement were negotiated by the parties at arm's-length through adversarial good faith negotiations. The Settlement was reached only after extensive settlement negotiations over a year-long period, including an in-person mediation session, a Zoom mediation session, and follow-up discussions, with the substantial assistance of Judge Phillips. Consistent with the parties' hard-fought and aggressive litigation of the Action, Lead Counsel spent many hours investigating the allegations of wrongdoing and litigating Plaintiff's claims, while at the same time pursuing settlement discussions.

62. The volume and substance of Lead Counsel's knowledge of the merits and potential weaknesses of Plaintiff's claims are unquestionably adequate to support the Settlement. This knowledge is based on Lead Counsel's extensive investigation during the prosecution of the Action, the extensive briefing on Defendants' motions to dismiss and the extensive settlement negotiations,

including, *inter alia*: (i) reviewing Defendants' public statements, SEC filings, regulatory filings and reports, and securities analysts' reports about BRF; (ii) reviewing media reports about BRF; (iii) researching the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; (iv) translating, reviewing and analyzing the documents and evidence from Operation Weak Flesh and other Brazilian civil and criminal proceedings; (v) engaging multiple experts on non-duplicative work; (vi) briefing two rounds of opposition to Defendants' motions to dismiss, along with pre-trial letter briefing; (vii) actively monitoring Brazilian court dockets and news media to stay updated on any criminal or civil developments against Defendants, and promptly advising the Court of same; and (viii) negotiating the Settlement with Defendants, including participating in a full-day mediation in-person, and another full-day Zoom mediation, and submitting comprehensive mediation statements, in which the parties thoroughly presented arguments supporting their claims and defenses.

63. The Settlement avoids the hurdles Plaintiff would have to clear in proving liability and damages if the Action continued, especially with regard to obtaining discovery in Brazil, and avoids the significant costs and risks associated with further litigation of such a complex securities action and the very real risk of no recovery, even if Plaintiff had obtained a large judgment that was upheld after likely appeals. In view of the significant risks and additional time and expense involved in taking the Action further in litigation, I respectfully submit that the Settlement is fair, reasonable, adequate and in the best interests of the Class.

64. As a result of the litigation efforts of Lead Counsel and the discussions that occurred during the parties' settlement negotiations, Lead Counsel was able to identify the issues that were critical to the outcome of this case. Lead Counsel has considered the risks of continued litigation, the likelihood of getting past the motion to dismiss, the likely summary judgment motions after

completion of fact and expert discovery and, if successful, the risk, expense, and length of time to prosecute the Action through trial and the inevitable subsequent appeals. Lead Counsel has also considered the substantial monetary benefit provided by the Settlement in light of the risk of continued litigation. Additionally, Lead Counsel considered the ability of the Defendants to fund a settlement now and in the future or to satisfy a judgment. Lead Plaintiff participated in this assessment, and was consulted with and kept apprised of the Settlement negotiations.

65. Lead Counsel is actively engaged in complex federal civil litigation, particularly the litigation of securities class actions. Lead Counsel believes that its reputation as attorneys who are unafraid to zealously carry a meritorious case through the trial and appellate levels gave it a strong position in engaging in settlement negotiations with Defendants.

66. I respectfully submit that the Settlement represents a highly favorable result for the Class. The Settlement will provide Class Members with a substantial benefit now without the risk of zero recovery if the litigation were to continue and be unsuccessful.

B. Serious Questions of Law and Fact Placed the Outcome of the Action in Significant Doubt

1. Defendants Would Argue that Plaintiff Could Not Prevail on Its Claims

67. Another factor considered in assessing the merits of class action settlements – whether serious questions of law and fact exist – supports the conclusion that the Settlement is fair, reasonable, and adequate to the Class.

68. Throughout the course of the litigation, Defendants asserted that they possessed defenses to Plaintiff's claims. Generally, Defendants argued that Plaintiff failed to plead material misstatements and omissions made with scienter.

69. If the case continued after the motion to dismiss stage and after completion of discovery, it was likely that Defendants would have moved for summary judgment and if Plaintiff was successful in opposing summary judgment, Defendants would have likely continued to trial. At trial, Defendants would have continued to argue that Plaintiff could not prevail on its claims. They would have claimed that BRF's Class Period statements were not false or misleading, nor did they omit material facts that would trigger liability under the Exchange Act.

70. While Lead Plaintiff believes its claims and allegations are sound, it nevertheless recognizes it faces substantial risks if the Action continued. Plaintiff and Lead Counsel heavily considered and analyzed potential risks to continued litigation of the Action in determining the Settlement's fairness, and, in light of such risks, believe the Settlement is in the best interests of the Class.

71. Although Plaintiff believes that it effectively countered Defendants' arguments in its motion to dismiss opposition briefs, Defendants' arguments in their likely summary judgment motion would have been just as hard-fought and extensive, and Plaintiff would have no guarantee of success. Even if Defendants' potential summary judgment motions were denied, Defendants would likely renew their arguments at trial. In turn, Lead Counsel recognizes that the finding of liability by a jury is never assured and could lead to no recovery in the Action.

72. The risks of establishing liability posed by conflicting testimony and evidence would be exacerbated by risks inherent in all shareholder litigation, including the unpredictability of a lengthy and complex jury trial, the risk that the jury would react to evidence in unforeseen ways, the risk that a jury would find that some or all of the alleged misrepresentations were not material and the risk that the jury would find that the Defendants disclosed all information that they were required to disclose in their public statements and that no damages were caused by their actions. Thus,

Plaintiff faced the risk that Defendants' arguments would find favor with a jury and result in the Class losing at trial and receiving no recovery.

2. Defendants Would Argue that the Declines in BRF ADRs Were Unrelated to the Fraud

73. Plaintiff also faced the risk that it would not be able to prove that its alleged damages were caused by the alleged misrepresentations and omissions – even if liability was established. Defendants would have likely continued to assert a loss causation defense that if accepted by the Court, would essentially end the prospect of any recovery.

74. In addition, Defendants maintained that even if their motion to dismiss the FAC were denied, Plaintiff would not be able to demonstrate loss causation after March 17, 2017, because it was their position that there could be no misrepresentations following the disclosure of Operation Weak Flesh that day.

75. Defendants also repeatedly argued that the Class Period could not have started on April 4, 2013 because the FAC does not plead scienter against any Defendant until July 29, 2015, thereby reducing the size of the class and class-wide damages.

76. The determination of damages, like the determination of liability, is a complicated and uncertain process, typically involving conflicting expert opinions. Moreover, the reaction of the jury to such complex expert testimony is highly unpredictable. At trial, Defendants would have likely presented evidence that unforeseen forces outside Defendants' control (*i.e.*, other negative news unrelated to the food fraud) caused the losses suffered by the Class.

3. The Impact of COVID-19 Supports the Settlement

77. At the time the parties entered into the Settlement, most of the United States was on quarantine. Since then, COVID-19 fatalities and infections in Brazil, where BRF and Defendants are

located, have skyrocketed. This has negatively impacted BRF's operations. For example, China recently announced that it is suspending poultry imports from BRF due to COVID-19 concerns.[4]

C. The Judgment of the Parties that the Settlement Is Fair and Reasonable Provides Additional Support for Approval of the Settlement

78. Another factor in considering whether to approve class action settlements is the judgment of the parties that the settlement is fair and reasonable. As outlined above, the Settlement is the product of arm's-length negotiations lasting over a year between adversaries with significant experience in securities class action litigation.

79. Lead Counsel strongly believes that the Settlement represents a highly favorable resolution for the Class under the circumstances. As outlined above, the Settlement is fair, reasonable and adequate in all respects, and should be approved by the Court.

80. Furthermore, over 61,500 copies of the Notice have been mailed to potential Class Members and nominees. As of the date of this Declaration, no objections to the Settlement or the Plan of Allocation have been submitted by a Class Member. Should any objections be timely filed between the date of this Declaration and the final approval hearing, Lead Counsel will address them in a supplemental memorandum to be filed with the Court on or before October 16, 2020.

D. The Settlement Amount in the Context of Total Damages Provides Additional Support for the Settlement

81. In connection with the Action, Lead Counsel engaged an outside damages consultant, who opined that, depending on which class period the Court ultimately allowed, the total recoverable damages amount ranged from $38.7 million to approximately $282 million. Thus, the Settlement represents a recovery of between almost 14.2% and 103% of the estimated damages. This is

[4] *See* https://thepoultrysite.com/news/2020/07/china-blocks-poultry-imports-from-brazil-amid-covid-19-concerns.

considerably higher than the 4.6% median settlement as a percentage of estimated damages for securities class actions between 2010 and 2019. *See* Laarni T. Bulan and Laura E. Simmons, *Securities Class Action Settlements: 2019 Review and Analysis* at 7, Fig. 6 (Cornerstone Research 2020) available at www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-Analysis. Notably, this result is especially favorable under the circumstances brought on by the fact that it would have been difficult, if not impossible, to obtain discovery in Brazil in ordinary circumstances, let alone the present circumstances brought on by COVID-19.

VI. THE PLAN OF ALLOCATION

82. Pursuant to the Notice Order and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a timely and proper Proof of Claim form. As provided in the Stipulation, after deducting all appropriate taxes, administrative costs and attorneys' fees (as well as reimbursement of Lead Plaintiff's expenses), the remainder of the settlement fund (the "Net Settlement Fund") shall be distributed among Class Members who submit valid Proof of Claim forms according to the Plan of Allocation.

83. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed. The proposed Plan of Allocation provides that, to qualify for payment, a claimant must be, among other things, an eligible Member of the Class and must submit a valid Proof of Claim form that provides all of the requested information. The Plan of Allocation is set forth in the Notice.

84. The proposed Plan of Allocation was formulated after consultation with Lead Counsel's in-house damages consultant in order to calculate a fair method to divide the Net Settlement Fund for distribution among the Class Members. The proposed Plan of Allocation attempts to simplify the claims administration with attendant reduced cost to the Class. Thus, the

proposed Plan of Allocation is designed to fairly and rationally allocate the proceeds of this Settlement among the Class.

VII. FACTORS TO BE CONSIDERED IN SUPPORT OF THE REQUESTED ATTORNEYS' FEE AWARD

85. Despite working on this matter for more than two-and-a-half years, Lead Counsel has not received any payment for its services in prosecuting this litigation, nor has it been paid for its expenses incurred in the prosecution of the litigation. The Notice provides that Lead Counsel may apply for an award of attorneys' fees not to exceed 27.5% of the Settlement Fund, plus expenses of up to $150,000, which were incurred in the litigation.

86. As set forth in the Fee Memorandum, Lead Counsel is requesting attorneys' fees of 27.5% of the Settlement Fund plus expenses. The requested fee award of 27.5% was negotiated by Lead Plaintiff and is well within the range of fees awarded by courts in this District and in courts throughout the country.

87. Lead Counsel achieved this highly favorable result for the Class at great risk and substantial expense to itself. Lead Counsel was unwavering in its dedication to the interests of the Class and its investment of the time and resources necessary to bring this litigation to a successful conclusion against the Defendants. Lead Counsel's compensation for the services rendered has always been wholly contingent. The requested fee is reasonable based on the quality of Lead Counsel's work and the substantial benefit obtained for the Class.

88. Indeed, the result obtained by Lead Counsel for the Class is truly extraordinary given the obstacles that existed to obtaining any recovery. Defendants have maintained throughout this litigation that they had no liability. If the case survived Defendants' motion to dismiss, of which there were no guarantees, Defendants would have likely moved for summary judgment after discovery was complete. Then, if the case continued after summary judgment, which would also not

be guaranteed, Plaintiff would likely seek to go to trial. If Plaintiff could obtain a judgment, and if such judgment was upheld, it would be years before any recovery was obtained for the Class.

89. For its extensive efforts on behalf of the Class, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis, and seeks the Court's approval of this fee percentage. The percentage method is the appropriate method of compensating counsel because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum recovery in the shortest amount of time required under the circumstances. In addition, here, the percentage method is particularly appropriate given the highly favorable result under the circumstances it was achieved.

90. Lead Counsel's compensation for the services rendered was wholly contingent on its success. Demonstrating Lead Counsel's tremendous commitment to this litigation, Lead Counsel and its paraprofessionals have devoted more than 3,200 hours to litigating the Action resulting in a lodestar of $1,794,898.00. The expenses incurred in the prosecution of the litigation are set forth in the accompanying Declaration of David A. Rosenfeld Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses (the "Fee and Expense Declaration"). Lead Counsel's expenses are reflected in the books and records maintained by the firm, and are an accurate recordation of the expenses incurred. In total, Lead Counsel incurred expenses in the amount of $94,821.84 to successfully prosecute the Action. I respectfully submit that all of these costs and expenses are reasonable and should be approved by the Court.

A. Extent of Litigation

91. As described above, this case was aggressively litigated and settled only after extensive settlement negotiations, including two formal mediation sessions before Judge Phillips. Lead Counsel thoroughly researched the law applicable to the Class' claims and Defendants'

defenses, conducted an intensive investigation which included consultation with experts, prepared and filed four fact-specific amended complaints specifying Defendants' alleged violations of the federal securities laws, translated countless Portuguese-language documents, actively monitored Brazilian criminal and civil case dockets, reviewed Brazilian court filings and news media, opposed Defendants' pre-motion letters in support of their motions to dismiss, opposed Defendants' motions to dismiss the case, drafted multiple mediation statements, participated in two full day mediation sessions with Defendants overseen by Judge Phillips, and engaged in extensive settlement negotiations with the Defendants. Lead Counsel's work in this case will, however, not cease after final approval of the Settlement. Lead Counsel anticipates spending significant time assisting Class Members with claims administration issues and in working with the Claims Administrator to ensure a prompt distribution of the Net Settlement Fund to the Class.

B. Standing and Expertise of Lead Counsel

92. The expertise and experience of Lead Counsel is described in Exhibit E attached to the Fee and Expense Declaration. Lead Counsel is among the most experienced and skilled practitioners in the securities litigation field. The attorneys at Lead Counsel's firm have years of experience litigating securities class actions, and have been involved in cases that have recovered billions of dollars for shareholders.

C. Standing and Caliber of Opposition Counsel

93. Defendants are represented by very experienced counsel – Skadden – who spared no effort in the defense of their clients. Defendants' law firm vigorously defended its clients, insisted they had no liability and gave every indication they were ready to proceed with the litigation to trial, if necessary, if a settlement was not reached. In the face of this opposition, Lead Counsel developed

its case so as to persuade Defendants to settle the case on a basis favorable to the Class under the circumstances.

D. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High Risk, Contingent Securities Cases

94. This litigation was undertaken by Lead Counsel on a wholly-contingent basis. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the enormous investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient attorney and paraprofessional resources were dedicated to the prosecution of this Action and that funds were available to compensate staff and the considerable costs which a case such as this entails.

95. Because of the nature of a contingent practice in the area of securities litigation, where cases are predominantly "big cases" lasting several years, not only do contingent litigation firms have to pay regular overhead, but they also have to advance the expenses of the litigation. This does not even take into consideration the possibility of no recovery. As discussed above, from the outset, this Action presented a number of risks and uncertainties which could have prevented any recovery whatsoever. It is wrong to assume that a law firm handling complex contingent litigation such as this always wins. Tens of thousands of hours have been expended in losing efforts. The factor labeled by the courts as "the risks of litigation" is not an empty phrase.

96. As discussed in the Fee Memorandum, there have been many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, changes in the law during the pendency of the case, or a decision of a judge following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel.

97. The foregoing refutes the argument that the commencement of a class action is a guarantee of a settlement and payment of a fee. Thus, there was a demonstrable risk that the Class and its counsel would receive nothing. It took hard and diligent work by skilled counsel, to develop facts and theories which persuaded Defendants to enter into serious settlement negotiations. If defendants believe they will prevail, experience shows that they will litigate to the end. The risk factor is real.

98. When Lead Counsel undertook to act for Lead Plaintiff and the Class in this matter, it was with the knowledge that it would spend many hours of hard work against some of the best defense lawyers in the United States with no assurance of obtaining any compensation for its efforts. The benefits conferred on the Class by this Settlement are particularly noteworthy in that a Settlement Fund worth $40 million was obtained for the Class despite the existence of substantial risks of no recovery in light of the vigorous defense mounted by Defendants, and the practical other obstacles to obtaining a larger recovery after continued litigation.

VIII. CONCLUSION

99. For the reasons set forth above and in the accompanying Fee Memorandum and the Memorandum of Law in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation, I respectfully submit that: (a) the Settlement is fair, reasonable and adequate, and should be finally approved; (b) the Plan of Allocation represents a fair method for the distribution of the Net Settlement Fund among Class Members and should also be approved; and (c) the application for attorneys' fees of 27.5% of the proceeds of the Settlement and expenses in the amount of $94,821.84, plus interest earned on each amount, and an award to Lead Plaintiff for its service to the Class should be granted in its entirety.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Melville, New York this 18th day of September, 2020.

s/ David A. Rosenfeld
DAVID A. ROSENFELD

CERTIFICATE OF SERVICE

I, David A. Rosenfeld, hereby certify that on September 18, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

s/ David A. Rosenfeld
DAVID A. ROSENFELD