UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re GRAÑA Y MONTERO S.A.A. SECURITIES LITIGATION	Civil Action No. 2:17-cv-01105-LDH-ST
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	DECLARATION OF DAVID A. ROSENFELD AND COREY D. HOLZER IN SUPPORT OF MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

DAVID A. ROSENFELD and COREY D. HOLZER, declare 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"), one of the counsel for the Court-appointed Lead Plaintiff and the Settlement Class ("Lead Counsel") in the above-captioned consolidated action (the "Action"). I respectfully submit this Declaration in support of Motions for Final Approval of Class Action Settlement and Approval of Plan of Allocation and an Award of Attorneys' Fees and Expenses and Award to 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. I, Corey D. Holzer, am a member of the Georgia Bar and a member of the law firm of Holzer & Holzer, LLC ("Holzer & Holzer"), one of the Lead Counsel in the Action. I respectfully submit this Declaration in support of Motions for Final Approval of Class Action Settlement and Approval of Plan of Allocation and an Award of Attorneys' Fees and Expenses and Award to 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.

3. The parties to this Settlement are Lead Plaintiff Treasure Finance Holding Corp. ("Lead Plaintiff") and plaintiff Marcia Goldberg (collectively, "Plaintiffs"), and defendants Graña y Montero S.A.A. ("Graña" or the "Company") and Monica Miloslavich Hart ("Hart," and together with Graña, "Defendants").

4. Plaintiffs allege claims against Defendants on behalf of a Settlement Class defined as all persons or entities who purchased or otherwise acquired Graña's American Depository Shares ("ADSs")[1] during the period from July 24, 2013 through February 24, 2017, inclusive (the "Class Period").[2] Plaintiffs have entered into a settlement on behalf of themselves and the other Members of the Settlement Class with Defendants, which provides a recovery of $20,000,000.00 in cash to resolve this securities class action against Defendants (the "Settlement"). The Settlement is described in a settlement agreement entered into by all parties dated July 2, 2020 (the "Stipulation"), and previously filed with the Court. ECF No. 112-2.

5. 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 Settlement Class, and why the application for attorneys' fees and expenses is reasonable and should be approved by this Court.

6. As explained below and in the accompanying memoranda 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 Gregory P. Lindstrom, Esq. of Phillips ADR Enterprises (the "Mediator"). These negotiations were conducted by experienced counsel with an understanding of the strengths and weaknesses of the claims and defenses, and the

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[1] An ADS 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 ADS certificate to an investor in the United States. *See id.*

[2] Plaintiffs also named as defendants Peruvian residents José Graña Miro Quesada, Hernando Graña Acuña, and Mario Alvarado Pflucker (the "Unserved Defendants"), but as of the date of the Settlement, were unable to affect service on them. *See* ¶¶43-46 below.

Settlement was reached after each side had an opportunity to reflect on the negotiations at the mediation, consider the Mediator's input, and deliberate further.

7. Lead Counsel and Plaintiffs believe that the Settlement is in the best interests of the Settlement Class, especially considering its size and the significant risks involved in the case. As set forth below, despite the fact that many of Plaintiffs' 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 Plaintiffs' allegations being located abroad, principally in Peru and Brazil, beyond the jurisdiction of this Court.

I. PRELIMINARY STATEMENT

8. 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 undertook a significant factual investigation to gain a detailed understanding of Defendants' alleged undisclosed scheme to bribe numerous high-ranking public officials, including at least two former Peruvian presidents, to secure lucrative public-works construction projects in Peru. In this regard, Lead Counsel thoroughly analyzed a wide-range of evidentiary materials, including documents and witness testimony from ongoing investigations in Peru and Brazil. Lead Counsel also reviewed and analyzed publicly available information regarding Graña, including, but not limited to, relevant U.S. Securities and Exchange Commission ("SEC") filings, financial reports and press releases, and media and analysts' reports. Furthermore, due to the complex nature of analyzing material written in Spanish and Portuguese, Lead Counsel relied on attorneys fluent in Spanish and Portuguese to obtain and translate publicly available information relating to the alleged fraud that was disseminated in Peru and Brazil.

9. During the course of litigating this case, Plaintiffs filed two amended complaints, continually adding new information that came to light as part of Lead Counsel's ongoing investigation. Defendants filed several motions to dismiss, which Plaintiffs opposed. In November 2019, while the motion to dismiss the Second Amended Complaint was pending, the parties agreed to participate in a mediation before Mr. Lindstrom. Despite a good faith effort to reach a resolution, the parties were unable to agree on a settlement at the mediation. Ultimately, through the continued efforts of the parties and the Mediator over the course of several months, an agreement in principle to settle this case for $20 million was agreed upon.

10. The parties negotiated and then entered into a term sheet on February 10, 2020, and negotiated and then entered into the Stipulation, which was filed with the Court on July 2, 2020. During the course of the parties' negotiations, Lead Counsel made it clear that, while we were prepared to assess the strengths and weaknesses of the case fairly, we would continue to litigate rather than settle for less than fair value. We persisted in the negotiations until we achieved a settlement we thought was in the best interests of the Settlement Class.

11. The proposed $20,000,000 Settlement, obtained due to the substantial efforts of Lead Counsel, is a notable achievement under the circumstances of the Action. Although Plaintiffs believe they would have defeated Defendants' motion to dismiss, and that the allegations of the Second Amended Complaint would have been borne out by the evidence, they also recognize that they faced a difficult road in prevailing on the merits. Further, 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 Peru and Brazil, where much of the evidence and witnesses are located, and the expense and effort to translate discovery material from Spanish and Portuguese into English. Moreover, Plaintiffs were concerned about Graña's ability to successfully

continue its operations such that it could fund a settlement (of any amount) in the future. 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 class certification, summary judgment, and trial against Defendants.

12. 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 Settlement Class, while eliminating the risk that the Settlement Class would receive nothing. Furthermore, even if Plaintiffs had prevailed at the motion to dismiss stage, the class certification stage, and the summary judgment stage, and then at trial, any recovery could still be years away, as Defendants would likely have appealed any adverse judgment. In fact, a prolonged litigation could have substantially impeded Graña's business and eliminated sources of a settlement or judgment. Thus, under these circumstances, the Settlement is in the best interest of the Settlement Class and should be approved as fair, reasonable, and adequate.

13. Lead Counsel also respectfully submit that the Court should approve the Plan of Allocation and award attorneys' fees in the amount of 25% of the Settlement Fund, plus litigation costs, charges, and expenses of $54,774.05, plus interest thereon, as a result of Lead Counsel's considerable efforts in creating this substantial benefit on behalf of the Settlement Class, and as recognition for the risks faced and overcome.

14. The Settlement Class appears to approve the Settlement overwhelmingly. Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice, dated August 18, 2020 (the "Notice Order") (ECF No. 115), more than 13,600 copies of the Notice of Pendency and

Proposed Settlement of Class Action (the "Notice") were mailed to potential Settlement Class Members and nominees.[3] Murray Decl., ¶11. Additionally, a Summary Notice was published in *The Wall Street Journal* and transmitted over *Business Wire* on September 22, 2020 (the "Summary Notice"). *Id.*, ¶12. The Notice apprised Settlement 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 25% of the Settlement Fund plus expenses of up to $100,000, and awards to Plaintiffs. While the time to file objections to any of the relief, by November 10, 2020, has not yet expired, to date, there have been no objections to the Settlement, the Plan of Allocation or the request for fees and expenses.

15. Lead Counsel zealously and aggressively litigated this case for approximately three years on a wholly-contingent basis. The fee application for 25% 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 Motion for an Award of Attorneys' Fees and Expenses and Award to Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Fee Memorandum").

16. 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 Settlement Class, and the reasonableness of Lead Counsel's fee and expense request.

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

II. SUMMARY OF PLAINTIFFS' ALLEGATIONS

A. Overview of Defendants' Fraud

17. From 2005 to 2015, Graña and Odebrecht S.A. ("Odebrecht") were both members of a consortium involved in several major infrastructure projects in Peru, including the Lima Metro project and the IIRSA South project. ¶¶3, 56.[4] To win these contracts, Odebrecht paid millions of dollars to corrupt Peruvian public officials, of which Graña was aware and contributed its proportional share. ¶56. Odebrecht did not pay the bribes in lump sum payments. Rather, it paid the bribes in installments, often pursuant to fictitious consulting contracts, over the life of the projects. ¶58. Graña then reimbursed Odebrecht for its share of the bribes by accepting reduced dividend distributions relative to its equity interest in the projects, and assigning the balance of its profits to Odebrecht. ¶59. These so-called differential dividends were documented in the shareholder meeting minutes and profit distribution agreements (attached to the SAC) by reference to purported "additional risks" that Odebrecht incurred on behalf of the consortium. ¶¶59-61; SAC Exs. 2-4.

18. To win the contracts for the Lima Metro project, Odebrecht paid $13.5 million of bribes to Peruvian President Alan García and other high-ranking Transportation Ministry officials to rig the technical specifications for the project to guarantee that the Electric Train Consortium would be the most qualified bidder and win the contract. ¶¶68, 72, 78, 83. An additional $10.5 million was spent to camouflage the bribes through offshore companies and fictitious contracts. ¶83. Graña then contributed its share of the total $24 million allocation, approximately $9 million, by yielding a percentage of its profits to Odebrecht as compensation for "additional risks" Odebrecht purportedly

[4] References to the Second Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (the "SAC") are cited herein as "¶__."

incurred for the benefit of the Electric Train Consortium. ¶¶88, 100. In the 2012 Profit Distribution Agreement, for example, Graña yielded 10.6% of its profits to Odebrecht. ¶¶89-91. That agreement explained that Odebrecht was entitled to a "higher percentage than its share of the profits of the Consortium" because it was "instrumental in obtaining the profit of the Consortium, assuming even additional risks[.]" ¶92. Likewise, in May 2015, during the Class Period, Graña surrendered a staggering 69.6% of its profits to Odebrecht, citing the "additional risks" Odebrecht assumed to benefit the Consortium. ¶¶95-98; SAC Ex. 3.

19. To win the IIRSA South project, Odebrecht paid $31 million in bribes to Peruvian President Alejandro Toledo. ¶115. José Graña, then Graña's chairman, was told about these bribes and agreed to them. ¶¶218-219; SAC Ex. 6 at 1; *see also* Def. Ex. 7 §§4.6, 4.11. Odebrecht later paid $750,000 to a Peruvian official to obtain fraudulent work progress certifications needed to obtain financing to keep the project afloat. ¶¶116-123. After President García took office in 2006, Odebrecht paid an additional $4.3 million to him and his secretary to facilitate the smooth completion of the project. ¶¶125-127. Graña contributed approximately $7 million to the bribes by accepting reduced dividend distributions. ¶493. As memorialized in the 2011 IIRSA Minutes, Graña ceded 35.3% of its profits to Odebrecht as payment for the "additional risks" Odebrecht incurred for the benefit of the consortium. ¶¶141-142; *see also* SAC Ex. 7, §§1.1.2, 4.3.3.1.3.

20. In addition, the Construction Club was a cartel of construction companies that colluded to share highway maintenance and rehabilitation contracts. ¶¶146-147. After a public-works contract was announced, the cartel met to select the winning firm. ¶149. A conspiring lobbyist then conveyed the identity of the winner to Peru's Vice Minister of Transportation, who delivered the contract to that company. ¶150. Both men received kickbacks equal to 2.92% of the contract's total value. ¶151. On June 7, 2019, media reported that Graña admitted it was a member

of the cartel and that it paid bribes to win a highway rehabilitation contract. Graña acknowledged these reports in a Form 6-K filed that same day, and did not dispute these allegations.

B. The Truth Is Revealed and Graña ADSs Plummet

21. The relevant truth about Odebrecht's bribery scheme and its connection to Graña-linked projects began to be disclosed in mid-March 2016. On March 11, 2016, Odebrecht was reported to have handed management of the Southern Gas Pipeline to its consortium partners (which included Graña) due to a bribery probe, and on March 14, 2016, news outlets reported that Odebrecht may sell its interest in petrochemical company Braskem S.A. ("Braskem") due to the corruption probe. Evolving developments concerning Odebrecht's possible involvement in corrupt activities in connection with the bid for the Southern Gas Pipeline were publicly reported beginning in mid-November 2016.

22. On December 21, 2016, Odebrecht pled guilty to violating the anti-bribery provisions of the Foreign Corrupt Practices Act, and confessed, *inter alia*, to paying at least $29 million in bribes to public officials to secure two major infrastructure contracts in Peru in 2005 and 2008. ¶¶163-165. The Odebrecht Plea Agreement thus indirectly implicated Graña, Odebrecht's key partner in the IIRSA South and Lima Metro projects, in the bribery. ¶166. Within weeks, the Peruvian authorities obtained and executed (in one instance) arrest warrants for Peruvian officials fingered by Odebrecht, including Vice Minister of Transportation Jorge Cuba and President Toledo. ¶¶174, 175, 185. Prosecutors soon began calling for Graña to be incorporated in the investigation. ¶¶12, 173. Graña, however, vehemently denied any involvement in the bribery in conference calls (¶¶180, 435, 437), public interviews (¶¶171, 176, 181, 431, 433, 438), and SEC filings (¶¶183, 439).

23. Then, on Friday, February 24, 2017, *Hildebrandt en sus trece* ("*Hildebrandt*"), a Perúvian news magazine, reported that Graña knew about Odebrecht's $20 million bribery payment

to win the IIRSA South contract. ¶¶191-193. According to *Hildebrandt*, Jorge Barata ("Barata"), a former Odebrecht executive and collaborating witness, testified that the IIRSA South consortium companies, which included Graña, "knew there was an agreement . . . knew that [Odebrecht] had paid and . . . knew that they had to assume what would correspond to them." ¶193. Graña denied its involvement in the bribery in an SEC filing (¶195), but the market reacted vehemently nonetheless. By the close of business that day, Graña ADSs fell 35%. ¶14. On Monday, February 27, 2017, Graña Chairman José Graña, Chief Executive Officer ("CEO") Alvarado, and Director Hernando Graña (all named defendants in this action) "resigned." ¶197. All of these events led to material stock-price declines. ¶¶537-546.

24. On July 25, 2019, after the SAC was filed in this Action, Peruvian media reported that José Graña was cooperating with the Peruvian prosecutor investigating the Construction Club cartel. On August 25, 2019, José Graña and Hernando Graña appeared before the trial court judge in Peru, and Peruvian prosecutors informed the court that they were withdrawing the petition for pretrial detention of José Graña and Hernando Graña in exchange for their effective collaboration. *See* ECF No. 100.

25. In seeking effective collaborator status, José Graña and Hernando Graña admitted that each served as "primary the [sic] accomplices for the alleged commission of felony against the public administration – collusion. And as perpetrators of the felony of money laundering. All an affront against the Peruvian State – public collusion." ECF No. 102-1. According to the prosecutor, both defendants "waived the right to keep their identities confidential. They [were] present [at the hearing] as proof of their submission to justice. There [was] a recognition of guilt and duty to deliver information in the acts they are found to have committed[.]" *Id.* Through their counsel, José Graña and Hernando Graña both fully agreed with the prosecutor's representations. *See id.*

26. Then, in late September 2019, media reported that José Graña admitted that Odebrecht had made an illicit $3 million political contribution to win the Southern Gas Pipeline. According to the reports, José Graña stated that when Graña was ready to buy into the project, it agreed it would assume its proportional share of the bribe. José Graña implicated Nadine Heredia, wife of former Peruvian President Ollanta Humala, as a key figure in the scheme. As part of the scheme, Odebrecht would charge its Peruvian partners a percentage of the $3 million that Odebrecht paid for the presidential campaign of Humala in 2011. Media reports noted that this "was the same corruption scheme used in prior business as the concession of the [IIRSA South project] and the Lima Metro where it has already been documented that Graña y Montero gave part of its utilities to compensate the bribes paid by Odebrecht."

III. PLAINTIFFS' PROSECUTION OF THE CASE

A. The Commencement of the Litigation, Appointment of Lead Plaintiff, and the Filing of the First Amended Complaint and Alternate Service Motion

27. On February 27, 2017, a class action complaint styled *Peralta v. Graña y Montero S.A.A.* was filed in this Court on behalf of Graña investors, alleging violations of §§10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5. ECF No. 1. The action was assigned to Judge Joan M. Azrack and Magistrate Judge Arlene R. Lindsay.

28. On March 23, 2017, a related class action complaint was filed in this District by Plaintiff Marcia Goldberg, styled *Goldberg v. Graña y Montero S.A.A.*, et al., No. 2:17-cv-01643 (E.D.N.Y.).

29. On April 28, 2017, Treasure Finance Holding Corp. filed a motion to be appointed lead plaintiff. ECF No. 7. One other movant sought appointment as lead plaintiff. ECF No. 5. On March 5, 2018, the Court issued an Order appointing Treasure Finance Holding Corp. as Lead

Plaintiff, appointing Robbins Geller and Holzer & Holzer as Lead Counsel, and consolidating the two related cases. ECF No. 16.

30. Following their appointment, Lead Counsel continued their aggressive, wide-ranging investigation into the facts and circumstances surrounding Defendants' alleged fraud. On May 29, 2018, Plaintiffs filed their Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (the "First Amended Complaint" or "FAC"). ECF No. 22.

31. The First Amended Complaint alleges that between 2005 and 2011, Graña, through its subsidiaries, participated in multiple consortia led by Odebrecht in the concessions for high-value public works projects, including the Interoceanica Norte and Interoceanica Sur (IIRSA South) highways, and the engineering and construction of Line 1 of the Lima Metro. FAC, ¶3. Throughout the Class Period, Graña maintained that these highly lucrative public works projects were obtained through a competitive bidding process, and that its history of performance and its reputation (and Odebrecht's reputation) as an industry leader were indispensable components of its winning bid. *Id*., ¶4. In truth, however, these public-works projects were obtained through the payment of bribes to former Peruvian presidents by Odebrecht, to which Graña contributed approximately $16 million. *Id*. Graña concealed the illicit means of procuring numerous projects, which generated millions of dollars in lucrative additional business, and, as a result, Graña ADSs traded at artificially inflated prices. *Id*., ¶5. Based on Defendants' deception, Graña was able to cash in, selling more than 22.4 million Graña ADSs at artificially inflated prices in the July 24, 2013 IPO, generating approximately $475 million in gross proceeds.

32. According to the FAC, on December 21, 2016, the U.S. Department of Justice announced that Odebrecht and Braskem, a Brazilian petrochemical company of which Odebrecht is the controlling shareholder, pled guilty and agreed to pay a combined total penalty of at least $3.5

billion to resolve charges with U.S., Brazilian and Swiss authorities for paying millions of dollars in bribes to government officials around the world. *Id.*, ¶6. A series of additional corrective disclosures revealing Defendants' scheme culminated on February 24, 2017, when *Hildebrandt* reported that Graña knew about $20 million in bribes paid by Odebrecht to former President Alejandro Toledo. *Id.*, ¶13. The *Hildebrandt* article published four pages of testimony given by former Odebrecht executive-turned-whistleblower Jorge Barata confirming that Graña knew about the bribes and had committed to repay its proportional share. *Id.* Barata was the director of Odebrecht's operations in Peru and was personally involved in negotiating the bribes. *Id.* On this news, the price of Graña's ADSs declined precipitously, falling approximately 35%. *Id.*, ¶14.

33. On July 12, 2018, Plaintiffs filed a Motion for an Order Directing Service of Summons and Amended Complaint by Alternate Means (the "Alternate Service Motion"). ECF Nos. 34-38. Counsel for Graña, Simpson Thacher & Bartlett LLP ("Simpson"), accepted service on Graña's behalf (ECF No. 12 at 3), but was not authorized to accept service on behalf of the Individual Defendants. ECF No. 35 at 2. The Individual Defendants are Peruvian residents who, with the exception of Hart,[5] were no longer employed by Graña at the time. ECF No. 38 at 2-3. Plaintiffs sought to serve Hart through Simpson; Alvarado by international expedited courier at his primary residence in Peru; and José Graña and Hernando Graña by international expedited courier at their primary residences in Peru and through their Peruvian counsel in their criminal proceedings. ECF No. 34 at 1-2. Plaintiffs retained the services of an investigative firm to identify Peruvian criminal counsel for José Graña and Hernando Graña, and to identify residence addresses for them as well as Alvarado. ECF No. 36. Plaintiffs also consulted with a third-party service to attempt to effect service extraterritorially on the Individual Defendants, but were informed that service in Peru

[5] At the time, Hart was Graña's Chief Financial Officer ("CFO").

could take up to 12 months or longer, if service would be able to be effected at all. ECF No. 37 at 2. In the Alternate Service Motion, Plaintiffs argued that, under these circumstances, service of process by alternate means under Federal Rule of Civil Procedure 4(f)(3) was warranted because the proposed method of alternate service was not expressly prohibited by international agreement and otherwise gave the Individual Defendants sufficient notice of the lawsuit and time to object. ECF No. 38 at 3.

34. On July 26, 2018, Graña filed an opposition to the Alternate Service Motion (ECF No. 39), arguing, *inter alia*, that Plaintiffs did not show that steps had been taken to serve the Defendants through the Inter-American Convention on Letters Rogatory and Additional Protocol (the "Inter-American Convention"). *Id*. at 2.

35. Subsequently, Plaintiffs withdrew the Alternate Service Motion and refiled it as a letter requesting a pre-motion conference, *see* ECF Nos. 40-41, and Defendants opposed via letter. ECF No. 42. On September 14, 2018, Plaintiffs filed a reply in further support, in which they vigorously opposed Defendants' arguments. ECF No. 45.

36. On July 30, 2018, Graña served a Motion to Dismiss the FAC, along with an accompanying memorandum of law and declaration in support. ECF Nos. 50-52.[6] Graña argued that the FAC failed to plead any material misstatements or omissions because: (i) there is no general duty to disclose uncharged, unproven criminal conduct; (ii) Plaintiffs did not plead any falsity in Graña's financial statements; (iii) statements about corporate governance and ethics are puffery; (iv) many of the alleged misstatements are forward-looking statements protected by the Private Securities Litigation Reform Act of 1995 ("PSLRA") safe harbor; and (v) Graña's statements regarding the

[6] Pursuant to Judge Azrack's Individual Rules, Graña filed the parties' briefing concerning the Motion to Dismiss on October 26, 2018, after the Motion to Dismiss was fully briefed. *See* ECF No. 43 at 1.

effectiveness of its disclosure controls are not actionable. *See* ECF No. 51 at 9-18. Defendants also argued that Plaintiffs did not plead a strong inference of scienter against any Defendant (*see id*. at 19-24), and Plaintiffs did not adequately plead loss causation with respect to Graña's internal controls (*see id*. at 24-25).

37. On September 26, 2018, Plaintiffs served their opposition to Defendants' motion to dismiss the FAC, and an accompanying declaration in support. ECF Nos. 53-54. Plaintiffs vigorously opposed Defendants' motion, arguing that the FAC adequately alleged materially false and misleading statements and omissions as follows: (i) Defendants' statements regarding competition and bidding are actionable because, in reality, Defendants' depiction of a competitive landscape was a sham (*see* ECF No. 53 at 8-9); (ii) Defendants' statements falsely attributing Graña's success to legitimate sources are actionable because they failed to disclose that a material source of Graña's success was the use of improper or illegal business practices (*see id*. at 9-11); (iii) Defendants' statements regarding legal compliance are actionable because Graña's senior management did not believe such statements and had no reasonable basis for such statements (*see id*. at 11-12); (iv) Defendants' statements regarding Graña's internal controls are actionable because the presence of unheeded, serious red flags raised by Odebrecht's refusal to provide important financial information to Graña meant that Defendants were at least reckless in certifying the effectiveness of the internal controls (*see id*. at 12-14); (v) Defendants' statements denying illegal conduct and affirming Graña's compliance with its code of ethics are actionable because Defendants made these knowingly false statements in order to reassure the market of Graña's integrity (*see id*. at 14-15); and (vi) Defendants' statements regarding Graña's financials are actionable because the bribes paid to obtain the Lima Metro and IIRSA South concessions were not expensed as incurred (*see id*. at 15-16).

38. Further, in the opposition to the Motion to Dismiss, Plaintiffs argued that the FAC adequately alleged a strong inference of scienter due to: (i) statements by Barata and Marcelo Odebrecht (CEO of Odebrecht) incriminating Graña (*see id*. at 17-19); (ii) documentary evidence in the form of Graña and Odebrecht's dividend distribution agreements memorializing the bribes (*see id*. at 19-22); (iii) unheeded, serious red flags of fraud raised by Odebrecht's refusal to provide important financial information to Graña (*see id*. at 22-23); (iv) Graña's motive to commit fraud in order to effectuate its initial public offering, which raised $475 million in gross proceeds (*see id*. at 23); (v) suspiciously timed "resignations" by Alvarado, Jose Graña, and Hernando Graña (*see id*. at 23-24); and (vi) government investigations into the bribery scheme (*see id*. at 24). Regarding Graña's argument that Plaintiffs failed to plead loss causation with respect to Graña's ineffective internal controls, Plaintiffs responded that the risk concealed by Graña's misrepresentations concerning the adequacy of its internal controls materialized on February 24, 2017, when *Hildebrandt* reported Barata's testimony that Graña knew about Odebrecht's $20 million bribery payment to win the IIRSA South concession. *See id*. at 25.

39. Also on September 26, 2018, Plaintiffs filed a letter requesting a pre-motion conference to discuss Plaintiffs' anticipated motion to strike certain exhibits annexed to Graña's Motion to Dismiss. ECF No. 46. The disputed exhibits consisted of four interlocutory appellate resolutions from Peru's First Criminal Appeals Chamber that revoked the provisional arrest orders for Defendants Jose Graña and Hernando Graña, and another Graña executive. *See id*. at 2. Plaintiffs argued that because Graña sought to introduce those exhibits to challenge the allegations of the FAC, and because they were not subject to judicial notice, they should be stricken. *See id*. On October 1, 2018, Graña filed a letter in opposition (ECF No. 47), and on October 11, 2018, Plaintiffs filed a reply letter in further support of the motion to strike. ECF No. 48.

40. On October 26, 2018, Graña served and filed a reply brief in support of its motion to dismiss. ECF No. 55.

41. On October 31, 2018, Plaintiffs advised the Court of new factual developments in the criminal proceedings in Peru concerning Graña and Odebrecht that took place after the filing of the FAC. ECF No. 57. The additional developments included reports that an Odebrecht executive, Carlos Nostre Junior ("Nostre"), confirmed to Peruvian prosecutors that Graña yielded part of its profits in the Lima Metro project to pay bribes to Peruvian public officials. *See id*. at 2. Nostre further stated that the transfer of profits was made pursuant to the fictitious concept of "additional risks," which the former CEO of Graña's construction subsidiary knew to reflect Graña's obligation to contribute to the bribery. *See id*. Plaintiffs stated that these facts could, if necessary, be used to support a future amendment of the pleadings if the Court decided to grant the Motion to Dismiss. *Id*. On November 5, 2018, Defendants filed a letter in response (ECF No. 58), and on November 19, 2018, Plaintiffs filed a reply letter. ECF No. 59. On November 21, 2018, the Court issued an Order on the docket denying the motion for a pre-motion conference concerning Plaintiffs' anticipated motion to strike, and stating that it would treat the pre-motion conference letters as the briefings on Plaintiffs' motion to strike and consider them with the Motion to Dismiss.

42. On December 19, 2018, Plaintiffs advised the Court of new factual developments in the Peruvian government's investigation of Graña. ECF No. 60. The additional developments included an announcement by Graña that the Peruvian First National Preparatory Investigation Court issued a resolution that formally incorporated Graña and its construction subsidiary as "Civilly Responsible Third Part[ies]" for their roles in the bribes for the IIRSA South project, and the construction subsidiary as a civilly responsibly party in connection with the Lima Metro bribe. *See id*. at 1-2. Plaintiffs also advised that Graña was named a Civilly Responsible Third Party in

connection with the Peruvian government's investigation into an illicit "Construction Club" that allegedly conspired to rig the outcome of the purportedly competitive bidding process for upcoming public-works projects in Peru. *See id*. at 2. Plaintiffs stated that these facts could, if necessary, be used to support a future amendment of the pleadings if the Court decided to grant the Motion to Dismiss. *Id*. at 4. On December 28, 2018, Defendants filed a letter in response. ECF No. 61.

43. On January 9, 2019, Judge Lindsay issued a Report & Recommendation granting in part and denying in part the Alternate Service Motion. ECF No. 62. Judge Lindsay permitted Plaintiffs to serve Defendant Hart by service on Graña's counsel (Simpson), reasoning that since Hart was Graña's then-current CFO, she was likely already on notice of the claims asserted in the FAC, thereby satisfying the due process requirement of notice of the pendency of the action. *See id*. at 11-12. Judge Lindsay denied Plaintiffs' motion as to Alvarado, Jose Graña, and Hernando Graña, who were no longer employed by Grana, because Plaintiffs had not attempted to serve them through the Inter-American Convention. *See id*. at 13-14.

44. On January 16, 2019, Hart was served with the FAC through Simpson. ECF No. 65. On February 6, 2019, attorneys from Goodwin Procter LLP appeared on behalf of Hart and submitted a proposed scheduling order for Hart's motion to dismiss. ECF No. 69.

45. On January 23, 2019, Plaintiffs filed Objections to the Report & Recommendation of Judge Lindsay as it pertained to service upon Alvarado, Jose Graña, and Hernando Graña. ECF No. 63. Plaintiffs argued that the Report & Recommendation erroneously concluded that Plaintiffs' failure to attempt to serve the Individual Defendants in the two years since the action was initially commenced was dispositive, even though the threshold showing of prior attempts at service is just one of many considerations that guide the exercise of a court's discretion, and is not akin to an exhaustion requirement. *See id*. at 1. On February 6, 2019, Graña filed a response to Plaintiffs'

Objections to the Report & Recommendation. ECF No. 70. On February 13, 2019, Plaintiffs filed a reply memorandum in further support of their Objections to the Report & Recommendation. ECF No. 72.

46. On March 5, 2019, Judge Azrack adopted Judge Lindsay's Report & Recommendation in its entirety as the opinion of the Court, after having undertaken a *de novo* review of the record, the Report & Recommendation, and the instant objections. ECF No. 73 at 2. Subsequently, Plaintiffs commenced the process to serve Alvarado, Jose Graña, and Hernando Graña pursuant to the Inter-American Convention.

B. The Filing of the Second Amended Complaint

47. On March 14, 2019, Plaintiffs filed a letter requesting a pre-motion conference to discuss Plaintiffs' anticipated motion for leave to amend the FAC in response to recent factual developments that further supported Plaintiffs' allegations. ECF No. 75. Those factual developments included not only the developments that were the subject of the aforementioned letters, but also included information further corroborating the FAC's allegations that Graña knew about the bribes paid by Odebrecht. *See id*. at 2-3. On March 19, 2019, Graña and Hart indicated that they did not oppose Plaintiffs' request for leave to amend the FAC. ECF No. 77. On March 25, 2019, Judge Lindsay granted Plaintiffs' request to amend the FAC. ECF No. 78.

48. On April 26, 2019, this case was reassigned to Judge LaShann DeArcy Hall and Magistrate Judge Steven Tiscione.

49. On May 10, 2019, Plaintiffs filed the SAC. ECF No. 86. The SAC expanded on the allegations of the FAC and added new allegations regarding, *inter alia*: (i) the Construction Club's alleged conspiracy to rig the outcome of the purportedly competitive bidding process for upcoming public-works projects in Peru; (ii) additional witnesses who testified during governmental

proceedings concerning Graña's participation in the bribery scheme; and (iii) the imputation to Graña of the scienter of another Graña executive in addition to the Individual Defendants. The SAC continued to allege claims pursuant to §10(b) of the Exchange Act and Rule 10b-5 against Defendant Graña and the Individual Defendants, and §20(a) of the Exchange Act against the Individual Defendants.

50. On June 7, 2019, Graña and Hart served their respective motions to dismiss the SAC. ECF Nos. 89-90 (Hart's motion); 93-95 (Graña's motion). In support of its motion to dismiss, Graña reiterated its previous arguments, any of which could have resulted in the dismissal of the litigation. Hart's motion to dismiss argued that Plaintiffs failed to adequately allege her scienter and control-person liability. *See* ECF No. 90 at 2-5.

51. On July 22, 2019, Plaintiffs served their opposition to Graña's and Hart's motion to dismiss. ECF No. 91 (opposing Hart's motion); 96-97 (opposing Graña's motion). In addition to refining and updating their earlier arguments, Plaintiffs argued that the recent facts alleged in the SAC further supported denial of Graña's motion. With respect to Hart's motion to dismiss, Plaintiffs argued that the SAC pleads a strong inference of her scienter because: (i) she ignored serious red flags of fraud when certifying the effectiveness of Graña's internal controls; and (ii) her false Sarbanes-Oxley certifications established scienter and control-person liability. *See* ECF No. 91 at 7-9.

52. On August 12, 2019, Graña and Hart served reply briefs in further support of their motions to dismiss. ECF Nos. 92, 98. They supplemented their arguments objecting to the allegations of the falsity and materiality of the misstatements and the allegations of individual and corporate scienter.

53. On August 23, 2019, the parties filed a Joint Status Report pursuant to an order from Judge Tiscione dated August 5, 2019. ECF No. 99.

54. On August 27, 2019, Plaintiffs advised the Court of new factual developments in the criminal proceedings in Peru concerning Jose Graña and Hernando Graña that took place after the filing of the SAC. ECF No. 100. The additional developments included reports that, during a court appearance in Peru, Jose Graña and Hernando Graña confessed to their involvement in the bribes, were cooperating with the authorities, and were in the process of obtaining effective collaboration status. *See id.* at 2. Plaintiffs requested the Court to take judicial notice of these developments in deciding Graña's and Hart's motions to dismiss. *See id.* at 4. On September 4, 2019, Graña responded to Plaintiffs' letter. ECF No. 101. On September 13, 2019, Plaintiffs filed a reply letter. ECF No. 102.

C. The Mediation and Settlement

55. While Graña's and Hart's motions to dismiss the SAC were pending, the parties attempted an early resolution of the litigation and engaged an experienced mediator, Mr. Lindstrom. In advance of that mediation, the parties provided to Mr. Lindstrom (and exchanged) detailed mediation statements, along with supporting evidence.

56. On November 19, 2019, Lead Counsel and Defendants' Counsel (and representatives of Graña) attended an in-person mediation session that was overseen by Mr. Lindstrom. In addition to submitting the mediation materials, Lead Counsel prepared responses to specific questions posed by Mr. Lindstrom based on the parties' submissions, which included the mediation statements, the briefing on the motions to dismiss, and other documents. At the mediation, each side argued in support of their positions. Lead Counsel made it clear that they 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.

57. Plaintiffs continued to advise the Court of significant legal and factual developments supporting Plaintiffs' claims. ECF Nos. 103, 105. Graña continued to respond to Plaintiffs' letters. ECF Nos. 104, 106.

58. Ultimately, through the continued efforts of the parties and Mr. Lindstrom, on or about February 10, 2020, an agreement in principle was reached to settle the case for $20 million. The settlement agreement was finalized on or about July 2, 2020. ECF No. 112-2.

59. Lead Counsel firmly believe that the Settlement represents an excellent recovery for the Settlement Class. The proposed $20 million Settlement will provide Settlement Class Members a certain benefit 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. Indeed, Graña's business and operations have been impacted by the effects of the COVID-19 pandemic,[7] so settling and securing a benefit now is in the interests of the Settlement Class. To that end, the timing of the funding of the Settlement was structured to ensure sufficient time for Graña to make its required payment to the class – with interest payments to the Settlement fund of five percent (5%) per annum on the balance not paid thirty (30) days after preliminary approval of the Settlement was granted – while maintaining its ability to continue its operations.

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[7] *See* https://www.sec.gov/Archives/edgar/data/1572621/000119312520168063/d862224d20f.htm ("The COVID-19 pandemic is significantly and adversely affecting our business, results of operations and financial condition. From mid-March through the end of May 2020, substantially all of our engineering and construction and real estate projects were mandatorily shut down. Although certain projects are gradually resuming, we cannot assure you when we will be able to resume work on our projects in full.").

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

60. On July 2, 2020, Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement. ECF No. 112. In connection therewith, Plaintiffs requested that the Court approve the forms of notice, which, among other things, described the terms of the Settlement, advised Settlement Class Members of their rights in connection with the Settlement, set forth the Plan of Allocation, informed Settlement Class Members of the amount of attorneys' fees and expenses that Lead Counsel and Plaintiffs would request, and explained the procedure and deadline 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, Plaintiffs requested that the Court certify the Settlement Class for settlement purposes.

61. By Order dated August 18, 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 Settlement Class Members identifiable with reasonable effort. ECF No. 115. 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.

62. Submitted herewith is the Murray Declaration, which attests that more than 13,600 Notices have been mailed to potential Settlement Class Members and nominees and that the Summary Notice was published on September 22, 2020, as directed by the Court. Murray Decl., ¶¶11-12.

63. The Notice informed Settlement 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 25% of the Settlement Amount, plus expenses not to exceed $100,000, plus interest on each amount at the same rate earned on the Settlement Fund until paid, and that Plaintiffs

would seek an award not to exceed $10,000 in the aggregate in connection with their representation of the Settlement Class.

64. 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 November 10, 2020. While the date for objections has not expired, to date, no objections have been filed by any Member of the Settlement 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 they obtained a highly favorable outstanding result for the Settlement Class under the circumstances.

V. FACTORS TO BE CONSIDERED IN SUPPORT OF SETTLEMENT

A. The Settlement Was Fairly and Aggressively Negotiated by Counsel

65. 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 months-long period, including an in-person mediation session and extensive follow-up discussions, with the substantial assistance of Mr. Lindstrom. Consistent with the parties' hard-fought and aggressive litigation of the Action, Lead Counsel spent many hours investigating the allegations of wrongdoing and litigating Plaintiffs' claims, while at the same time pursuing settlement discussions.

66. The volume and substance of Lead Counsel's knowledge of the merits and potential weaknesses of Plaintiffs' 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 thorough briefing on Defendants' motions to dismiss, and the lengthy, arm's-length settlement negotiations, including, *inter alia*: (i) reviewing Defendants' public statements, SEC filings, regulatory filings and reports, and securities analysts' reports about Graña; (ii) reviewing media

reports about Graña; (iii) researching the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; (iv) translating, reviewing, and analyzing documents and evidence from Peruvian and Brazilian civil and criminal proceedings and foreign media reports; (v) briefing two rounds of opposition to Defendants' motions to dismiss and a motion to serve by alternative means; (vi) actively monitoring Peruvian and 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 (vii) negotiating the Settlement with Defendants, including participating in a full-day mediation in-person, and submitting comprehensive mediation statements, in which the parties thoroughly presented arguments supporting their claims and defenses.

67. The Settlement avoids the hurdles Plaintiffs would have to clear in proving liability and damages if the Action continued, especially with regard to obtaining, translating, and reviewing discovery in Peru and 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 Plaintiffs had obtained a large judgment that was upheld after likely appeals. Significantly, a number of key witnesses in this Action are third parties located in Peru or Brazil who were formerly employed by Odebrecht (not Graña), and compelling their testimony was far from guaranteed. In addition, several of the Individual Defendants and third-party witnesses are currently under government investigation, substantially diminishing their willingness to voluntarily provide testimony in this Action. In view of the significant risks and additional time and expense involved in taking the Action further in litigation, we respectfully submit that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

68. As a result of the litigation efforts of Lead Counsel and the discussions that occurred during the parties' settlement negotiations, we were able to identify the issues that were critical to

the outcome of this case. We have considered the risks of continued litigation, the likelihood of defeating the motions to dismiss, the likelihood of obtaining class certification, 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 have 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. Plaintiffs participated in this assessment, and were consulted with and kept apprised of the Settlement negotiations.

69. Lead Counsel are actively engaged in complex federal civil litigation, particularly the litigation of securities class actions. We believe that our reputations as attorneys who are unafraid to zealously carry a meritorious case through the trial and appellate levels gave us a strong position in engaging in settlement negotiations with Defendants.

70. We respectfully submit that the Settlement represents a highly favorable result for the Settlement Class. It will provide Settlement 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 Plaintiffs Could Not Prevail on Their Claims

71. 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 Settlement Class.

72. Throughout the course of the litigation, Defendants asserted that they possessed defenses to Plaintiffs' claims. Principally, Defendants argued that Plaintiffs failed to plead material

misstatements and omissions made with scienter, and loss causation. Defendants argued that Plaintiffs failed to plead any material misstatements or omissions because: (i) there is no general duty to disclose uncharged, unproven criminal conduct; (ii) Plaintiffs did not plead any falsity in Graña's financial statements; (iii) statements about corporate governance and ethics are puffery; (iv) many of the alleged misstatements are forward-looking statements protected by the PSLRA safe harbor; and (v) Graña's statements regarding the effectiveness of its disclosure controls are not actionable. Defendants also argued that Plaintiffs did not plead a strong inference of scienter against any Defendant, asserting, *inter alia*, that the statements of the former Odebrecht executives who directly implicated Graña in the bribery scheme were not sufficiently trustworthy to be used to plead an inference of conscious misbehavior. In addition, Defendants argued that Plaintiffs did not adequately plead loss causation with respect to Graña's internal controls because Graña's corrective disclosures about its internal controls did not lead to any appreciable stock price reaction.

73. If the case continued after the motion to dismiss stage and after completion of what was certain to be expensive fact and expert discovery, it was likely that Defendants would have moved for summary judgment, and if Plaintiffs were successful in opposing summary judgment, Defendants would have likely continued to trial. At trial, Defendants would have continued to argue that Plaintiffs could not prevail on their claims. They would have claimed that Graña's Class Period statements were not false or misleading and were not made with scienter.

74. While Plaintiffs believe their claims and allegations are sound, they nevertheless recognize that they would face substantial risks if the Action continued. Plaintiffs 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 Settlement Class. This case presents substantial risks not only because Defendants deny their

liability altogether, but also because of the following risks unique to this Action: (i) the difficulty of obtaining document and deposition discovery in Peru and Brazil, where much of the evidence and witnesses are located; (ii) several key witnesses in this Action are third parties located in Peru or Brazil who were formerly employed by Odebrecht (not Graña), and compelling their testimony was far from guaranteed; (iii) several of the Individual Defendants and third-party witnesses are currently under government investigation, substantially diminishing their willingness to voluntarily provide testimony in this Action; (iv) to date, Plaintiffs have been unable to serve process on Defendants José Graña and Hernando Graña; (v) the COVID-19 pandemic would have created serious logistical difficulties in connection with travel to Peru and Brazil as needed; and (vi) Graña's business and operations have been adversely impacted by the effects of the COVID-19 pandemic, creating uncertainty about Graña's future ability to fund a settlement.

75. Although Plaintiffs believe that they effectively countered Defendants' arguments in their motion to dismiss opposition briefs, Defendants' arguments in their likely summary judgment motions would have been just as hard-fought and extensive, and Plaintiffs 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 recognize that the finding of liability by a jury is never assured and could lead to no recovery in the Action.

76. 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,

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

2. Defendants Would Argue that the Declines in Graña ADSs Were Unrelated to the Alleged Fraud

77. Plaintiffs also faced the risk that they would not be able to prove that their 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. For example, Defendants would have argued that Graña's corrective disclosures about its internal controls did not lead to any appreciable stock price reaction.

78. 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 alleged bribery scheme) caused the losses suffered by the Settlement Class.

3. The Impact of COVID-19 Supports the Settlement

79. At the time the parties agreed in principle to the Settlement, COVID-19 was not yet a global pandemic. One month later, however, the United States and Peru were largely under quarantine. Since then, COVID-19 fatalities and infections in Peru, where Defendants are located, have skyrocketed. This has negatively impacted Graña's operations. For example, in its Form 20-F filed on June 15, 2020, Graña stated that "***[t]he ongoing COVID-19 pandemic and government measures to contain the spread of the virus are disrupting economic activity in the countries where we operate and adversely affecting our business, results of operations and financial***

condition." (Emphasis in original).[8] In fact, Peru has the highest COVID-19 death rate per capita in the world.[9] Further, Defendants' insurance policy was a wasting policy and there was a risk all insurance would be exhausted well before the anticipated date for a trial. Thus, it was in the interests of the Settlement Class to obtain a settlement sooner rather than later. Even if Plaintiffs were victorious at trial, there might have been no money left to satisfy a judgment, rendering the proposed Settlement at this stage even more valuable.

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

80. 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 for several months between adversaries with significant experience in securities class action litigation.

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

82. Furthermore, over 13,600 copies of the Notice have been mailed to potential Settlement 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 Settlement Class Member. Should any objections be timely filed between the date of this Declaration and the final approval hearing,

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[8] *See* https://www.sec.gov/Archives/edgar/data/1572621/000119312520168063/d862224d20f.htm.

[9] *See* https://www.miamiherald.com/news/nation-world/world/americas/article245600805.html ("Peru now has more COVID-19 deaths per capita than any other country in the world, with almost 30,000 total deaths in a total population of about 33 million, double the rate of the United States and Brazil.").

Lead Counsel will address them in a supplemental memorandum to be filed with the Court on or before November 24, 2020.

D. The Settlement Amount Relative to Total Damages Provides Additional Support for the Settlement

83. In connection with the Action, Lead Counsel engaged an outside damages consultant who opined that, depending on which damages model is used, the total recoverable damages amount ranged from $84 million to $136 million (Defendants estimated reasonable recoverable damages at a significantly lower amount). Thus, the Settlement represents a recovery of between approximately 15% and 24% of Plaintiffs' estimated damages. This percentage far exceeds the median recovery in similar securities class actions in 2019 of 2.1%. *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* (NERA Feb. 12, 2020), at 20, Fig. 13. 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 Peru and Brazil in ordinary circumstances, let alone the present circumstances brought on by COVID-19. Moreover, the Settlement amount was too large to be immediately funded such that the parties had to structure the timing of the funding of the Settlement to ensure sufficient time for Graña to make its required payment to the class – with interest payments to the Settlement fund of five percent (5%) per annum on the balance not paid thirty (30) days after preliminary approval of the Settlement was granted – while maintaining its ability to continue its operations.

VI. THE PLAN OF ALLOCATION

84. Pursuant to the Notice Order and as set forth in the Notice, all Settlement 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 and expenses (as well as reimbursement of Plaintiff's

expenses), the remainder of the settlement fund (the "Net Settlement Fund") shall be distributed among Settlement Class Members who submit valid Proof of Claim forms according to the Plan of Allocation.

85. 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 Settlement 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.

86. The proposed Plan of Allocation was formulated after consultation with Lead Counsel's in-house damages consultant in order to calculate an equitable method to divide the Net Settlement Fund for distribution among Settlement Class Members who submit valid claims. The proposed Plan of Allocation attempts to simplify the claims administration with attendant reduced cost to the Settlement Class. Thus, the proposed Plan of Allocation is designed to fairly and rationally allocate the proceeds of this Settlement among the Settlement Class.

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

87. Despite working on this matter for three years, Lead Counsel have not received any payment for our services in prosecuting this litigation, nor have we been paid for our 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 25% of the Settlement Fund, plus expenses of up to $100,000.

88. As set forth in the Fee Memorandum, Lead Counsel are requesting attorneys' fees of 25% of the Settlement Fund plus expenses. The requested fee award of 25% was approved by Lead

Plaintiff and is well within the range of fees awarded by courts in this District and in courts throughout the country.

89. Lead Counsel achieved this highly favorable result for the Settlement Class at great risk and substantial expense. Lead Counsel were unwavering in their dedication to the interests of the Settlement Class and their 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 Settlement Class.

90. Indeed, the result obtained by Lead Counsel for the Settlement Class is excellent 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, it would have proceeded to discovery. The expense and difficulty of obtaining discovery in this Action would have been significantly greater than in the typical securities class action because: (i) obtaining document and deposition discovery in Peru and Brazil, where much of the evidence and witnesses are located, would be pursuant to the Inter-American Convention; (ii) several key witnesses in this Action are third parties located in Peru or Brazil who were formerly employed by Odebrecht (not Graña), and compelling their testimony was far from guaranteed; (iii) several of the Individual Defendants and third-party witnesses are currently under government investigation, substantially diminishing their willingness to voluntarily provide testimony in this Action; (iv) to date, Plaintiffs have been unable to serve process on defendants José Graña and Hernando Graña; (v) the vast majority of documents were presumably written in Spanish or Portuguese, requiring added time and cost to translate them; and (vi) the COVID-19 pandemic

would have created serious logistical difficulties in connection with travel to Peru and Brazil as needed.

91. Plaintiffs would have moved for class certification, which Defendants would have likely vigorously opposed. Defendants would undoubtedly move for summary judgment after fact and expert discovery were complete. Then, if the case continued after summary judgment, which would also not be guaranteed, the case would proceed to trial. If Plaintiffs could obtain a judgment, and if such judgment was upheld, Plaintiffs would have faced challenges enforcing a U.S. class-action judgment in Peru. It would be years before any recovery was obtained for the Settlement Class.

92. For our extensive efforts on behalf of the Settlement Class, we are applying for compensation from the Settlement Fund on a percentage basis, and seek 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.

93. Lead Counsel's compensation for the services rendered was wholly contingent on their success. Demonstrating Lead Counsel's tremendous commitment to this litigation, counsel and their paraprofessionals have devoted more than 3,900 hours to litigating the Action resulting in a lodestar of $2,483,523.75. Lead Counsel's 25% fee request represents a slight multiplier of 2 to the aggregate lodestar, well within range of multipliers awarded by courts in this District and in courts throughout the country. 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 ("Robbins Geller Declaration"); the Declaration of Corey D. Holzer Filed on Behalf of Holzer & Holzer, LLC in Support of Application for Award of Attorneys' Fees and Expenses ("Holzer & Holzer Declaration"); and the Declaration of Curtis V. Trinko Filed on Behalf of Law Offices of Curtis V. Trinko in Support of Application for Award of Attorneys' Fees and Expenses (collectively, the "Fee and Expense Declarations"). Plaintiffs' Counsel's expenses are reflected in the books and records maintained by the firms, and are an accurate recordation of the expenses incurred. In total, Plaintiffs' Counsel incurred expenses in the amount of $54,774.05 to successfully prosecute the Action. We respectfully submit that all of these costs and expenses are reasonable and should be approved by the Court.

A. Extent of Litigation

94. As described above, this case was aggressively litigated and settled only after extensive settlement negotiations, including a formal mediation session before Mr. Lindstrom. Counsel thoroughly researched the law applicable to the Settlement Class' claims and Defendants' defenses, conducted an intensive investigation that included consultation with experts, prepared and filed two fact-specific amended complaints specifying Defendants' alleged violations of the federal securities laws, translated numerous Spanish- and Portuguese-language documents, actively monitored Peruvian and Brazilian criminal and civil case dockets, reviewed Peruvian and Brazilian court filings and news media, pursued service on three of the Individual Defendants pursuant to the Inter-American Convention, opposed Defendants' motions to dismiss the case, submitted numerous letters to the Court in connection with the motions to dismiss, drafted a mediation statement, participated in a full-day mediation session with Defendants overseen by Mr. Lindstrom, and engaged in extensive follow-up settlement negotiations with the Defendants. Lead Counsel's work

in this case will, however, not cease after final approval of the Settlement. Lead Counsel anticipate spending significant time assisting Settlement 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 Settlement Class.

B. Standing and Expertise of Lead Counsel

95. The expertise and experience of Lead Counsel are described in Exhibit F attached to the Robbins Geller Declaration and Exhibit D attached to the Holzer & Holzer Declaration. Lead Counsel are among the most experienced and skilled practitioners in the securities litigation field. The attorneys at Lead Counsel's firms 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 Defendants' Counsel

96. Defendants are represented by very experienced counsel – Simpson Thacher & Bartlett LLP and Goodwin Procter LLP – who spared no effort in the defense of their clients. Defendants' law firms vigorously defended their 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 their case so as to persuade Defendants to settle the case on a basis favorable to the Settlement 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

97. This litigation was undertaken by Lead Counsel on a wholly contingent basis. From the outset, Lead Counsel understood that they were 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 were 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.

98. 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 that 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.

99. 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.

100. 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 Settlement Class and its counsel would receive nothing. It took hard and diligent work by skilled counsel to develop facts and theories that 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.

101. When Lead Counsel undertook to act for Plaintiffs and the Settlement Class in this matter, it was with the knowledge that they 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

their efforts. The benefits conferred on the Settlement Class by this Settlement are particularly noteworthy in that a Settlement Fund worth $20 million was obtained for the Settlement Class despite the existence of substantial risks of no recovery in light of the vigorous defense mounted by Defendants, and the other practical obstacles to obtaining a larger recovery after continued litigation.

VIII. CONCLUSION

102. For the reasons set forth above and in the accompanying Fee Memorandum and the Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation, we 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 Settlement Class Members and should also be approved; and (c) the application for attorneys' fees of 25% of the proceeds of the Settlement and expenses in the amount of $54,774.05, plus interest earned on each amount, and awards to Plaintiffs for their service to the Settlement Class should be granted in its entirety.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of October, 2020 at Melville, New York.

DAVID A. ROSENFELD

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of October, 2020 at Atlanta, Georgia.

COREY D. HOLZER

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 27, 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 the all counsel registered to received such notice.

s/ David A. Rosenfeld
DAVID A. ROSENFELD