UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CNOVA N.V. SECURITIES LITIGATION This Document Relates To: All Actions	MASTER FILE 16 CV 444-LTS

DECLARATION OF DAVID A.P. BROWER IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL CERTIFICATION OF THE CLASS, FINAL APPROVAL OF CLASS NOTICE, FINAL APPROVAL OF THE PROPOSED SETTLEMENT, FINAL APPROVAL OF THE PROPOSED PLAN OF ALLOCATION, AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

FACTUAL BACKGROUND 6

Procedural History 6

The Lead Plaintiff Process 6

Factual Investigation 7

The Amended Complaint 8

Foreign Service on the Individual Defendants 8

The Supplemental Complaint 9

The Answers to the Supplemental Complaint 18

Service on the Individual Defendants in Accord with the International Conventions 19

Discovery 22

The Settlement Negotiations and Proposed Settlement 33

Preliminary Approval of the Settlement 40

Notice to the Class 42

Claims Processing 46

THE RESULTS ACHIEVED 46

THE SETTLEMENT WARRANTS APPROVAL 51

The Complexity, Expense, and Likely Duration of the Litigation 51

The Reaction of the Class to the Settlement 56

The Stage of the Proceedings and Discovery Completed 56

The Risks 57

The Risk of Establishing Liability and Damages 58

The Risk of Maintaining the Class Action Through the Trial 60

The Ability of the Defendants to Withstand a Greater Judgment..... 61

The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation.....62

THE PLAN OF ALLOCATION 63

LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES..... 68

The Magnitude, Complexities, and the Risk of The Litigation 68

The Quality of the Representation 70

The Requested Fee Award in Relation to the Settlement 71

The Time and Labor..... 72

Public Policy Considerations 76

LEAD COUNSEL'S APPLICATION FOR REIMBURSEMENT OF EXPENSES..... 77

CONCLUSION..... 79

I, David A.P. Brower, hereby declare under penalty of perjury as follows:

1. I am a Managing Director of the law firm of Brower Piven, A Professional Corporation ("Brower Piven"). My firm was appointed as Lead Counsel in this Action for Lead Plaintiffs and the proposed Class ("Lead Counsel").[1]

2. I submit this Declaration pursuant to Rule 23 of the Federal Rules of Civil Procedure in support of Lead Plaintiffs' motions for (a) final certification of the Class; (b) final approval of the forms and methods for providing notice to the Class; (c) final approval of the proposed Settlement; and (d) final approval of the proposed Plan of Allocation. This Declaration is also submitted in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

3. My firm has worked actively on this litigation under my direction since its inception. As such, I have personal knowledge of the matters described below and am competent to testify thereto.

PRELIMINARY STATEMENT

4. This case has been vigorously litigated from its commencement on January 20, 2016 through agreement on the final form of the Stipulation and the associated exhibits on September 20, 2017. The Settlement represents an extraordinary recovery for Cnova N.V. ("Cnova" or the "Company") ordinary share purchasers who were at a substantial risk of receiving a smaller recovery or, indeed, no recovery at all, through continued litigation. At every stage of the Action, counsel for Defendants asserted aggressive defenses and expressed the belief

[1] Capitalized terms not otherwise defined have the meaning set forth in the Parties' Stipulation and Agreement of Settlement, dated September 20, 2017 ("Stipulation") attached as Exhibit 1 to the Declaration of David A.P. Brower In Support of Motion for: (1) Preliminary Approval of Settlement; (2) Certification of the Class for Purposes of Settlement; (3) Approval of Notice to the Class; and (4) Scheduling of a Final Approval Hearing, dated September 22, 2017. Dkt. No. 127. Unless otherwise indicated, the definitions used in the Stipulation are the same as those used herein.

that the Class could not prevail on the claims asserted, that a class would not be certified, and that Lead Plaintiffs could not prove or recover damages in the magnitude that they sought, if at all. The Settlement was not achieved until Lead Plaintiffs, among other things: (a) conducted an extensive factual investigation; (b) prepared a detailed consolidated amended complaint and a supplemental consolidated class action complaint; (c) reviewed and analyzed approximately one million pages of documents, including those produced by Defendants; (d) consulted with well-respected experts on economics, finance and damages; and (e) prepared for and attended multiple mediation sessions, as well as participated in numerous informal discussions between the Parties without the mediator.

5. Substantial investigation, discovery, meetings with consultants, and legal research informed Lead Plaintiffs that, while they believed their case was meritorious, it had weaknesses that had to be carefully evaluated in determining what course was in the best interests of the Class – *i.e.*, whether to settle and on what terms, or continue to litigate.

6. As set forth in further detail below, despite the fact that Lead Counsel believe Lead Plaintiffs' allegations and claims were supported by legal authority and the evidence discovered to date, this Action presented many uncertainties with respect to Lead Plaintiffs' ability to ultimately prevail or recover more than is offered by the Settlement. These risks include, but are not limited to, establishing personal jurisdiction over the Individual Defendants, each of whom is a foreigner with limited contacts with the United States; properly effecting service of process on such Defendants in accordance with international conventions and treaties; prevailing on motions to dismiss on procedural and substantive grounds and a motion for class certification; amassing sufficient evidence through discovery to defeat Defendants' inevitable motions for summary judgment; demonstrating, by a preponderance of the evidence to the trier of fact, that Defendants made misrepresentations of fact; credibly demonstrating the amount of

damages caused by the alleged misleading statements; sustaining a judgement at trial through the inevitable appellate process; and enforcing a class action judgment in the foreign jurisdictions in which the Defendants reside.

7. In addition to the factual and legal obstacles to success on the merits was the certainty that further litigation would require the expenditure of enormous amounts of time and expense to complete merits and expert discovery (including obtaining extremely difficult, sometimes impossible, foreign discovery), litigate pretrial motions, try the case and succeed on the ultimate appellate proceedings that would have followed the trial no matter what the verdict might have been. Weighed against these risks was the achievement of an immediate $28,500,000.00 cash settlement that represents an extremely high 62.5% aggregate recovery of Class Members best possible damages recoverable at trial without the risk of non-recovery posed by continued litigation. *See* Declaration of Professor Geoffrey Miller, dated December 15, 2017 ("Miller Declaration" or "Miller Decl."), at ¶24, annexed as Exhibit C to the Appendix of Exhibits to this Declaration (the "Appendix"), submitted herewith.

8. In accordance with the Court's October 11, 2017 Order Granting Preliminary Approval of Proposed Settlement, Granting Conditional Class Certification, and Providing for Notice to the Class ("Preliminary Approval Order"; Dkt. No. 131), 9,175 Notices were mailed to potential Class Members as of December 11, 2017 (including 10 that were remailed), and the Publication Notice was published two separate times over *PR Newswire* on October 31 and November 14, 2017, and transmitted over *Business Wire* on November 7, 2017. *See* Affidavit of Jose C. Fraga Regarding Mailing of the Notice and Proof of Claim Form and Publication of the Summary Notice, dated December 13, 2017, the Court-appointed Claims Administrator in this case ("Fraga Affidavit" or "Fraga Aff.") at ¶¶7, 8, annexed as Exhibit A to the Appendix The Stipulation (and its exhibits); the Notice; and a Proof of Claim and Release form were posted on

the Claims Administrator's website. Fraga Aff. at ¶9. Both notices described, in detail, *inter alia*, the Settlement; the likely recoveries for Class Members; the reasons for the Settlement, the Plan of Allocation; the maximum amount of attorneys' fees and litigation expenses that Lead Counsel would seek; Class Members' rights; and the procedures and deadlines for exercising those rights. Thus, the notice program fully complied with the Court's Preliminary Approval Order, was the best notice practicable under the circumstances and met the requirements of FED. R. CIV. P. 23(c), (e), and (h), the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and due process.

9. In response to the extensive notice program, as of the date of this Declaration, no objections or requests for exclusion from the Class have been received.[2] I also believe that the Plan of Allocation is fair, reasonable, and adequate and should be approved by the Court. The Plan of Allocation was developed with assistance from Lead Plaintiffs' expert on damages, Zachary Nye, Ph.D. *See* Declaration of Zachary Nye, Ph.D in Support of the Proposed Settlement and Plan of Allocation, dated December 14, 2017 ("Nye Declaration" or "Nye Decl."), annexed as Exhibit B to the Appendix. The proposed Plan of Allocation reflects Lead Plaintiffs' most likely recoverable damages at trial, adjusted for the strengths and weaknesses of certain claims, and, therefore, is both fair and equitable. The Plan proposes to allocate the net proceeds of the Settlement to eligible Class Member claimants depending on when they acquired and/or sold their Cnova ordinary shares; and the different amounts of estimated recoverable damages, if any, for each ordinary share for the period in which those ordinary shares were purchased and/or held. The Plan of Allocation provides for a 100% Recognized Loss for the

[2] The deadline to opt-out or file objections is January 24, 2018. Accordingly, as provided by the Preliminary Approval Order, Lead Plaintiffs will file supplemental papers twenty-one (21) days prior to the final "fairness" hearing scheduled for March 15, 2018 to address any objections and/or opt-outs as necessary.

Class Members' strongest claims and a 50% Recognized Loss for those claims that suffered from potential dispositive weaknesses, and depending on the number of claims received and approved, as discussed below, it is estimated that the Settlement, before attorneys' fees and expenses, may actually represent a recovery to Class Members exceeding their Recognized Losses. Class Member may ultimately receive *pro rata* distributions from the Settlement Fund equal to or approaching their Recognized Losses. Although the deadline for objections to the request for attorneys' fees does not expire until January 24, 2018, to date, no objections to the Plan of Allocation have been received.

10. Finally, I submit that the requested fee of 33 1/3% of the Settlement Fund, or $9,500,000, and the request for reimbursement of litigation expenses in the amount of $163,778.44 should be approved as fair and reasonable. The requested fee is consistent with awards made in other, similar securities class action cases under either the percentage-of-the-recovery or lodestar/multiplier methodologies used by the courts in making such awards. The requested fee is also appropriate to compensate Lead Counsel for, *inter alia*, the extremely high amount of Class Members' damages recovered in the Action, the contingent nature of Lead Counsel's representation, the quality of that representation, and the risk undertaken at inception. *See* Miller Decl., *passim*. Although the deadline for objections to the request for attorneys' fees does not expire until January 24, 2018, to date, no objections to the fee request have been received.

11. Likewise, I submit the expenses incurred to achieve the Settlement were necessary to the successful resolution of this Action for the Class and are extremely reasonable in the context of complex class action securities litigation. Notably, the expenses requested are well below the maximum amount Lead Counsel indicated they might seek in reimbursement of

expenses in the Notice. Nevertheless, as of the date of this Declaration, there have been no objections to the request for reimbursement of expenses.

FACTUAL BACKGROUND

Procedural History

12. The first of these related federal securities class actions was filed on January 20, 2016. *See Stevenson v. Cnova N.V. et al*., No. 1:16-00444-LTS-AJP, Dkt. No. 1. Following the filing of the *Stevenson* action, two additional complaints were filed in this District.[3]

The Lead Plaintiff Process

13. As required by the PSLRA, on January 20, 2016, plaintiff Stevenson published notice over a national business-oriented wire service (*Business Wire*) advising members of the proposed class that a securities class action was filed and that investors had 60 days (until March 21, 2016) in which to move for appointment as lead plaintiff. *See* 15 U.S.C. § 78u-4 (a)(3)(A)(i); 15 U.S.C. § 77z-1(a)(3)(A)(i).

14. On March 11, 2016, the Court set a date to hear oral argument on the lead plaintiff motions for April 14, 2016. Dkt. No. 6.

15. On March 21, 2016, four movants filed motions for consolidation, and appointment as lead plaintiff and lead counsel, including: (1) the Cnova Investor Group (comprised of Michael Schwabe and Jaideep Khanna), Dkt. Nos. 13-15; (2) Teresa Granieri ("Ms. Granieri"), Dkt. Nos. 7-9; (3) William J. Stevenson ("Mr. Stevenson"), Dkt. Nos. 10-12; and (4) Donald M. Perugini, Shivakumar Ballur, and Charles Dumon (collectively, the "Perugini Group"), Dkt. Nos. 16-18.

16. On March 28, 2016, the Perugini Group filed a Notice of Withdrawal,

[3] *See Dumon v. Cnova N.V, et al.*, Civil Action No. 1:16-cv-00498-LTS-AJP, Dkt. No. 1; *Lee v. Cnova N.V, et al.*, Civil Action No. 1:16-cv-01199-LTS-AJP, Dkt. No. 1.

withdrawing its motion. Dkt. No. 19.

17. On April 1, 2016, Ms. Granieri filed a notice of non-opposition with respect to the competing lead plaintiff motions, conceding that she does not possess the "largest financial interest in the relief sought by the class," as required by the PSLRA. Dkt. No. 20.

18. On April 4, 2017, the Cnova Investor Group filed its opposition to the other lead plaintiff motions. Dkt No. 21.

19. On April 11, 2016, the Cnova Investor Group filed a letter with Court notifying it that it was the only movant that has filed opposition papers and requested that the Court appoint it as lead plaintiff and Brower Piven as lead counsel. Dkt. No. 22.

20. On April 14, 2016, the Court held a hearing on, *inter alia*, the motion for consolidation and appointment of lead plaintiff and lead counsel and granted Cnova Investor Group's motion, noting that an order would follow.

21. On April 14, 2016, the Court issued an order appointing the Cnova Investor Group as lead plaintiff and appointing Brower Piven as Lead Counsel.

Factual Investigation

22. Following the Court's April 14, 2016 appointment of lead plaintiffs and lead counsel, Lead Counsel commenced an extensive investigation of the claims in the Action.

23. The factual investigation included an analysis of the publicly available information about Cnova. Among other things, Lead Plaintiffs obtained and reviewed Cnova's SEC filings, press releases, news reports, and analyst reports relevant to the claims and defenses. Lead Counsel analyzed this and other extensive information for inclusion in the amended complaint and the supplemental complaint.

24. Lead Counsel also consulted with experts concerning the calculation of the potential amounts of recoverable damages at various points during the Class Period, as well as

issues concerning loss causation and Defendants' potential defenses to Lead Plaintiffs' Class-wide damages estimates. Lead Counsel was aware that pleading and ultimately proving loss causation and damages would feature prominently in this litigation and require expert input at the outset.

The Amended Complaint

25. During the hearing on April 14, 2016, the Court set a schedule for the filing of the consolidated amended complaint, for Defendants to answer, move or otherwise respond to the consolidated amended complaint, for Lead Plaintiffs to oppose any motion to dismiss, and for Defendants to reply to Lead Plaintiffs' opposition.

26. On June 13, 2016, Lead Plaintiffs filed their Amended Class Action Complaint ("Amended Complaint"). Dkt. No. 24. The Amended Complaint asserted securities claims under Section 11 and Section 15 of the Securities Act of 1933 ("Securities Act") on behalf of a proposed class of those persons or entities who purchased or otherwise acquired Cnova securities: (1) pursuant and/or traceable to the Company's Registration Statement and Prospectus (collectively, the "Registration Statement") issued in connection with the Company's initial public offering on or about November 19, 2014 (the "IPO"); and/or (2) between November 19, 2014 and December 18, 2015, inclusive.

Foreign Service on the Individual Defendants

27. On June 17, 2016, shortly after Lead Plaintiffs filed the Amended Complaint (which was the first complaint filed by Lead Plaintiffs), Lead Counsel wrote to counsel for Cnova to inquire whether they would also be representing the Individual Defendants and whether the Individual Defendants would consent to waiving service in the Action.

28. On June 21, 2016, counsel for Cnova advised Lead Counsel that representation for the Individual Defendants had not yet been determined and that they would not consent to

waive service of process.

29. On July 7, 2016, Lead Counsel attempted to effect service of process on the 13 Individual Defendants, pursuant to FED. R. CIV. P. 4(f)(2)(C)(ii) and in accordance with the United States District Court Southern District of New York Clerk's Office Foreign Mailing Instructions, by providing the Clerk of the Court with, *inter alia*, 13 pre-paid by Federal Express packages containing copies of the respective summonses; the initial complaint in this Action; and the Amended Complaint, to be delivered to the Individual Defendants at Cnova's registered office in The Netherlands, which was designated as the official business addresses for each of the Individual Defendants in various filings made by Cnova with the SEC.

30. On July 8, 2016, the Clerk of the Court mailed each of the 13 service packets via Federal Express. *See* Dkt. Nos. 33-45 (Clerk Certificates of Mailing, filed July 11, 2016).

31. On July 29, 2016, in accordance with the United States District Court Southern District of New York Clerk's Office Foreign Mailing Instructions, Lead Counsel provided the Clerk of the Court with tracking summaries confirming that the 13 service packets were delivered to each of the Individual Defendants at Cnova's headquarters in The Netherlands.

32. On August 3, 2016, the Clerk of the Court noted its receipt of the certificates of mailing on the Court's docket for the Action.

The Supplemental Complaint

33. On August 9, 2016, the Parties filed a letter motion, which advised the Court that Cnova filed an Annual and Transition Report of Foreign Private Issuers with the SEC on June 22, 2016 ("Form 20-F"). As a result, Lead Plaintiffs requested to be allowed to supplement their Amended Complaint in order to address the information contained in the Form 20-F. Dkt. No. 61.

34. On August 10, 2016, the Court granted the letter motion and ordered that Lead

Plaintiffs file their supplemental complaint by August 16, 2016. Dkt. No. 64.

35. On August 16, 2016, Lead Plaintiffs filed the Amended and Supplemental Consolidated Class Action Complaint ("Supplemental Complaint"). Dkt. No. 65.

36. In sum, the Supplemental Complaint was brought on behalf of all persons, other than Defendants, who purchased the ordinary shares of Cnova pursuant and/or traceable to the Company's Registration Statement pursuant to Rule 424(b)(4) of the Securities Act, that was issued in connection with the Company's IPO, against Cnova; Vitor Faga de Almeida; German Quiroga; Emmanuel Grenier; Jean-Charles Naouri; Libano Miranda Barroso; Eleazar de Carvalho Filho; Didier Leveque; Ronaldo Iabrudi dos Santos Pereira; Arnaud Strasser; Fernando Tracanella; Nicolas Woussen; Yves Desjacques; and Bernard Oppetit (collectively, the "Individual Defendants"); Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., BNP Paribas Securities Corp., HSBC Securities (USA) Inc., Natixis Securities Americas LLC, and SG Americas Securities, LLC (collectively, the "Underwriter Defendants").

37. The Supplemental Complaint alleged that Cnova was formed on May 30, 2014 as a combination of Cdiscount S.A. and its subsidiaries ("Cdiscount"), which have operations in France, Columbia, Thailand, Vietnam, Ecuador, Ivory Coast, Belgium and Senegal, and Nova Pontocom Comércio Eletrônico S.A. and its subsidiaries ("Cnova Brazil"), which operate Extra.com, Casasbahia.com and Pontofrio.com in Brazil. To effect the combination of Cdiscount and Cnova Brazil, Cnova implemented a reorganization of the eCommerce businesses of its parent companies (*i.e.*, Cnova and Big C Supercenter, Casino, CBD, Éxito and Via Varejo). As of the IPO, approximately 49.0% of Cnova's net sales came from its operations in France and approximately 51.0% of its net sales from its operations in Brazil.

38. The Supplemental Complaint further alleged that in the Registration Statement, Cnova described itself as "one of the largest global eCommerce companies, with operations in Europe, Latin America, Asia and Africa," with its most significant product categories being home appliances, consumer electronics, computers, and home furnishings. In its primary markets of France and Brazil, Cnova was the largest and second largest eCommerce company, respectively.

39. The Registration Statement included the Company's consolidated financial statements for the years ended December 31, 2011, 2012 and 2013, and for the nine months ended September 30, 2013 and 2014.

40. The Supplemental Complaint alleges that on November 20, 2014, Cnova priced its IPO of 26,800,000 shares, exclusive of the underwriters' over-allotment option to purchase 4,020,000 additional shares, at an artificially inflated price of $7.00 per share. Cnova's shares issued in the IPO were listed and traded in the United States on the NASDAQ Global Select Market under the symbol "CNV." The IPO offered approximately 6.1% of Cnova's equity to the public.

41. On January 28, 2015, after the market closed, Cnova released its year-end 2014 financial results. Cnova reported net sales of €1.1 billion and an adjusted EBITDA of €42 million. Cnova also provided sales guidance for the first quarter of 2015, stating that it expected year-over-year sales to increase just 17% +/- 200 basis points (or €894–€925 million). During its conference call the next day, the Company attributed its lower-than-expected sales guidance to deteriorating macroeconomic conditions in Brazil. *See* Exhibit D to the Appendix (transcript of Cnova's fourth quarter and fiscal year 2014 financial results conference call, held on January 29, 2015).

42. Prior to this announcement, as reported by Bloomberg, analysts' consensus (*i.e.*,

average) forecast for net sales in 2015 was €4.311 billion, implying an annual growth rate of 24.1% over 2014 net sales of €3.474 billion. *See* Exhibit E to the Appendix (chart of analysts' consensus 2015 net sales forecast for Cnova). Subsequent to the January 28 guidance announcement, analysts' consensus forecast for 2015 dropped to €4.199 billion, implying an annual growth rate of 20.9% over 2014.

43. On January 29, 2015, the price of Cnova ordinary shares declined 14.8%. The next day, January 30, 2015, the share price declined another 12.4%. News commentators attributed the decline in the price of Cnova ordinary shares to its poor earnings results and guidance.[4]

44. The Supplemental Complaint further alleged that through a series of disclosures beginning on December 18, 2015, the Company revealed that, *inter alia*, the financial information incorporated into the Registration Statement for 2012 through 2014, and all of the financial results Cnova reported since becoming a public company, required corrective restatements ("Restatements") and could no longer be relied upon.

45. After the market closed on Friday, December 18, 2015, the Company announced that it had engaged legal advisors and external forensic accountants as part of an internal investigation into employee misconduct related to inventory management at its Brazilian subsidiary, and that it would assess any related accounting and financial statement impact:[5]

> [Cnova] today announced that its Board of Directors has engaged legal advisors and external forensic accountants to perform a review of issues in connection with employee misconduct related to inventory management. The issues identified primarily involve the handling of product returns and damaged product inventory at distribution centers of Cnova's Brazilian subsidiary, Cnova Comércio

[4] *See, e.g., Reuters News*, "BUZZ-Cnova NV: Second day of slump pushes stock to lowest since Nov IPO," January 30, 2015, 1:44 PM.

[5] *Dow Jones Institutional News*, "Press Release: Cnova N.V.: Cnova N.V. Initiates a Review of Inventory in Brazil," December 18, 2015, 4:02 PM.

> Eletrônico S.A. (Cnova Brazil). The investigation will also assess any accounting and financial statement impact of the conduct under review. Cnova's Board and its Audit Committee will liaise as appropriate with and benefit from the active support of the BrazilSHY-based Audit Committee of Companhia Brasileira de Distribuição (CBD), Cnova's Brazilian controlling shareholder. The investigation is ongoing and, at this stage, it is still too early to foresee when it will be completed or what actions, if any, may be taken by Cnova and its affiliates.

46. Following the Company's December 18, 2015 disclosures, analysts expressed concern over the implications of the investigation. For example, Morgan Stanley issued a report questioning the ultimate scope of the investigation:

> The materiality of a Brazilian inventory investigation is unclear although we tentatively size the initial problem up to €20m (5-10% inventories in Brazil). Our key concern is whether this ultimately widens to include other product categories. There are also wider implications for management oversight, audit and provisions.
>
> * * *
>
> The scale and implications of this investigation will not be clear until a full inventory assessment has been made over the next couple of weeks. We see two key issues. (1) Materiality in terms of cash flow, inventory, potential provisioning and its impact on earnings; (2) Wider implications for company management, oversight, audit controls and investor confidence.[6]

47. Societe Generale also issued a report expressing concerns over the impact of the investigation:

> At this stage it is indeed difficult to assess the potential negative impact and write-downs. All depends on the final number of distribution centres concerned, the extent of inventory concerned (only product returns/product damaged at DCs or the entire inventory?) and for how long the misconduct has been going on. We note that group net inventory stood at €436m at 30 September 2015, up from €417m at end December 2014, o/w c50%e in Brazil. We estimate returned products and products damaged at DCs account for c. 10% of inventory as a rule for such a business. All in all, this is undoubtedly bad news for Cnova as it is likely to raise concerns on Brazil (c. 50% of group sales) which already saw significant deterioration in market conditions and sales growth in Q3. Although we expect France to deliver resilient sales growth in Q4 (noting the November terrorist attack could have diverted business to online players), we remain

[6] Franco T. Abelardo, *et al*., "Cnova NV, Investory Investigation," Morgan Stanley & Co. International plc, Dec. 21, 2015.

concerned by Brazil and expect further deterioration in sales trends in Q4.[7]

48. On December 21, 2015, the price of Cnova stock declined 18%. On December 22, 2015, the stock price declined another 5.9%. News commentators attributed the decline in the price of Cnova stock to news of the investigation.[8]

49. According to the Supplemental Complaint, the information disclosed by the Company on December 18, 2015 advised the market that there was misconduct within Cnova's Brazilian operations that put its financial statements and business operations in question.

50. The Supplemental Complaint further alleges that in the midst of these revelations, on January 21, 2016, defendant German Quiroga, formerly Co-CEO of the Company and CEO of Cnova Brazil, abruptly resigned. The Company offered no explanation for defendant Quiroga's sudden resignation and made no attempt to disclaim its connection with Cnova Brazil's false financial information incorporated into the Company's prior financial statements and reports, including the Registration Statement and Prospectus. Indeed, as was later disclosed, defendants Quiroga and Vitor Faga de Almeida (who resigned on June 10, 2016) were involved in and/or responsible for the conduct that resulted in the misstatements of the financial results and information contained in the Registration Statement.

51. Subsequently, on February 24, 2016, the Company issued a press release entitled "Cnova N.V. — Update on Brazil Internal Review," wherein it stated that, in addition to its financial statements issued after the IPO, accounting adjustments will also need to be made to its previously issued financial statements for 2013 and 2014 (*i.e.*, the financial statements incorporated into the Registration Statement), and therefore they should no longer be relied

[7] Arnaud Joly, "Cnova, Negative news with inventory issues in Brazil," SG Americas Securities LLC [Societe Generale], Dec. 21, 2015.

[8] *Reuters News*, "BUZZ-Cnova NV: Slumps on employee misconduct probe at Brazil unit," December 21, 2015, 12:58 PM.

upon. However, Cnova had not yet determined the specific amounts attributable to these prior periods or the total amount of the requisite Restatements.

52. The Company also advised that the scope of the false financial information was broader than initially disclosed and included: (i) an overstatement of Cnova Brazil's previously reported net sales and accounts receivable (Customers' Claims); (ii) inconsistencies linked to the amount and valuation of damaged and/or returned items in Cnova Brazil's inventory (Reverse Logistics); (iii) incorrect entries recorded at Cnova Brazil concerning primarily accounts payable; (iv) altered account reconciliations that were prepared by Cnova Brazil accounting staff at the direction of former Cnova Brazil personnel; (v) the unsupported capitalization of software development costs related to certain vendor expenses and employee payroll expenses into intangible asset accounts; and (vi) the improper deferral of certain operating expenses at Cnova Brazil. The Company also identified (i) a non-recurring Brazilian Imposto sobre Operações relativas à Circulaçãode Mercadorias e Prestação (ICMS) tax credit of R$75 million related to the sale of certain products by Cnova Brazil, which was recognized by the Company in December 2014, the impact of which on the Company's results of operations for the three months ended December 31, 2014, was not previously disclosed; and (ii) misconduct by Cnova Brazil IT personnel who altered records related to user access to certain of Cnova Brazil's IT systems.

53. On July 22, 2016, Cnova belatedly filed its Annual Report for fiscal year ended December 31, 2015 on Form 20-F wherein it disclosed, *inter alia*, the impact and allocation of the Restatements and restated its (i) consolidated financial statements as of and for the fiscal years ended December 31, 2013 and 2014; and (ii) selected financial information as of and for the fiscal year ended December 31, 2012.

54. The Form 20-F reported the following adjustments:

With respect to Inventories, additional depreciation of a cumulated amount at December 31, 2015 of €12.7 million (R$46.9 million, including a R$4.8 million impact for 2014) based on the net realizable value approach. Form 20-F at F-13.

With respect to Net Sales and Accounts Receivable, a decrease of 2013 and 2014 Net Sales by respectively €5.6 million (R$16.2 million) and €12.8 million (R$40.1 million); a decrease of 2013 and 2014 Cost of Sales and Fulfillment Costs by respectively €0.2 million (R$0.6 million) and €0.5 million (R$1.7 million); and a decrease of the related Accounts Receivable with Freight Companies as of December 31, 2013 and 2014 by respectively €4.7 million (R$15.4 million) and €11.9 million (R$38.4 million). The cumulative impacts of the foregoing was a reduction of €29.8 million (R$110.1 million) on cumulative net sales over 2015, 2014, 2013 and prior years and a reduction of €15.6 million (R$57.7 million) on accounts receivable as of December 31, 2015. In addition, management discovered a "sales cut-off error" on orders to be billed and consequently decreased 2013 and 2014 net sales by respectively €7.9 million (R$22.7 million) and €5.4 million (R$16.7 million) and increased other current liabilities for the same amounts. At Cnova Brazil, the cumulated impact on cumulative net sales is €5.4 million (R$19.8 million). Form 20-F at F-14.

With respect to Accounts Payable and Other Accounts, management adjusted year-end accounts payable as of December 31, 2013 and 2014 by respectively an increase of €2.3 million (R$7.6 million) and a decrease of €0.3 million (R$0.9 million) and related cost of sales in the same amounts. At Cnova Brazil, the cumulated impact on accounts payable as of December 31, 2015 is an increase of €11.3 million (R$48.9 million). Form 20-F at F-14.

With respect to Intangible Assets, management reduced year-end intangible assets as of December 31, 2013 and 2014 by respectively €4.3 million (R$13.9 million) and €7.5 million (R$24.2 million). This has resulted in a corresponding increase of operating expenses in the same amounts for 2013 and 2014. At Cnova Brazil, the cumulated impact on intangible assets as of December 31, 2015 is a decrease of €16.5 million (R$71.0 million). Form 20-F at F-14.

With respect to Deferred Costs Related to Freight and Other Expenses, management increased year-end accounts payable as of December 31, 2013 and 2014 by respectively €1.2 million (R$4.0 million) and €6.1 million (R$19.5 million) and related operating costs in the same amounts. At Cnova Brazil, the cumulated impact on accounts payable as of December 31, 2015 is an increase of €5.0 million (R$21.7 million). Form 20-F at F-14.

In addition, Cnova management purportedly performed a thorough review of Cnova Brazil's accounts and recorded several adjustments, some with

> impacts on prior years. They relate primarily to i) suppliers rebates impacting the inventory valuation, ii) fixed asset count, iii) provision for losses on accounts receivable, and iv) marketplace liabilities. At Cnova Brazil, the cumulative Balance Sheet overstatement impacted cost of sales for €3.0 million (R$12.9 million), fulfillment costs for €7.7 million (R$33.0 million) and financial expense by €0.8 million (R$3.4 million). Form 20-F at F-15.

55. According to the Form 20-F, the foregoing adjustments add up to a negative impact on opening equity as of January 1, 2013 of €30.9 million (R$83.5 million, or approximately USD $33.56 million[9]), €1.6 million (R$5.2 million, or approximately USD $1.74 million) for the year ended 2013 and €58.0 million (R$186.8 million, or approximately USD $62.98 million) for the year ended 2014, representing a cumulated amount of €83.0 million (R$357.8 million, or approximately USD $90.13 million) at December 31, 2015. Form 20-F at F-15.

56. Moreover, Cnova increased its reported loss per share by 40*%* for 2013 and 225*%* for 2014 (from -€0.05 to -€0.07 and -€0.12 to -€0.27, respectively). Form 20-F at F-17-18.

57. In addition, in the Form 20-F, Cnova also disclosed that "due to material weaknesses in our internal control over financial reporting [], our disclosure controls and procedures were not effective as of December 31, 2015." Specifically, the Company admitted that defendant Quiroga, the former CEO of Cnova Brazil and Co-CEO and Executive Officer of Cnova, and defendant Faga de Almeida, the former CFO of Cnova, "did not set the proper tone at the top by demonstrating a commitment to integrity and ethical values in the conduct of business and oversight of financial reporting of Cnova Brazil. . . .[and] either directed and/or did not take action to prevent or stop the alteration of records and override of existing controls and other misconduct when they became aware of them and that were subsequently identified by the

[9] Consistent with the Form 20-F, all translations from euros to U.S. dollars and from U.S. dollars to euros were made at a rate of $1.0859 per euro, the exchange rate set forth in the H.10 statistical release of the U.S. Federal Reserve Board on December 31, 2015. Form 20-F at 5.

Investigation, and also concealed the existence of such practices or directed other former employees to do so." Form 20-F at 170.

The Answers to the Supplemental Complaint

58. On September 15, 2016, Cnova filed its Answer to the allegations in the Supplemental Complaint. Dkt. No. 67.

59. Also on September 15, 2016, the Underwriter Defendants filed their Answer to the allegations in the Supplemental Complaint. Dkt. No. 68.

60. Further, on September 15, 2016, certain of the Individual Defendant moved to dismiss the Supplemental Complaint. Dkt. No. 74. In their motion to dismiss, the moving Individual Defendants argued that Lead Plaintiffs' service on the European defendants who resided in France and England by Federal Express was invalid and, therefore, the European defendants were not properly served by the requirements of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (the "Hague Convention") or FED. R. CIV. P. 4(f)(2)(C). Further, the moving Individual Defendants argued that Lead Plaintiffs' purported service on the Brazilian Defendants under Rule 4(f)(2)(C)(ii) was also invalid. Dkt. No. 75.

61. As part of their motion to dismiss, the Individual Defendants also submitted the: (1) Declaration of Steven Geers, the general counsel and secretary of the board of director of Cnova to support that none of the Individual Defendants lived or work in the Netherlands, Dkt. No. 76; (2) Declaration of Professor Mathias Audit, who was a law professor at the Sorbonne School of Law, to support their service of process arguments, Dkt. No. 77; (3) Declaration of Paul Anthony Key, a English barrister, to support that the service on certain of the Defendants was contrary to English law, Dkt. No. 78; (4) Declaration of Toon Van Mierlo, an attorney and a professor of law, who opined on the service issues as to the law in the Netherlands, Dkt. No. 79;

and (5) Declaration of Professor Arnoldo Wald, a Brazilian law professor and attorney, who opined on the service issues as to the law in Brazil, Dkt. No. 80.

62. On February 13, 2017, defendant Quiroga filed his motion to dismiss, Dkt. No. 97, arguing that he was not properly served through the mailing of the Complaint to Cnova's corporate offices because he resides and works in Brazil. Dkt. No. 98. Defendant Quiroga also submitted his Declaration stating that he has lived and worked in Brazil his entire adult life. Dkt. No. 99.

Service on the Individual Defendants in Accord with the International Conventions

63. Following the filing of the motions to dismiss, in an abundance of caution, and in order to moot any jurisdictional arguments raised therein, Lead Plaintiffs commenced a protracted, complicated and costly process of re-effecting service on the Individual Defendants in accordance with the Hague Convention and the Inter-American Convention on Letters Rogatory (the "Inter-American Convention" and, together with the Hague Convention, the "Conventions").

64. In order to re-effect service, Lead Plaintiffs first needed to identify addresses for each of the 13 Individual Defendants that would comply with the requirements of the pertinent Conventions. Notwithstanding Cnova's contention that the automatic stay of discovery under the PSLRA was in effect at the time, Lead Plaintiffs successfully negotiated with counsel for Cnova to obtain the last known addresses of the Individual Defendants. Nevertheless, Cnova was unable to provide current and/or appropriate addresses for all of the Individual Defendants and Lead Plaintiffs still had to investigate and identify the proper service addresses for certain of the Individual Defendants.

65. Thereafter, Lead Plaintiffs retained Steven F. Loble, a solicitor located in London, England that has over 30 years experience working with international clients and substantial

expertise in dealing with the issues which arise in cross-border litigation, to effect personal service upon Individual Defendant Bernard Oppetit.

66. With the assistance of Julian Matthew Paul Rozario, a local process server in the United Kingdom, Mr. Loble successfully effected service upon defendant Bernard Oppetit on November 19, 2016 after five attempts at multiple addresses. And, on January 26, 2017, Lead Plaintiffs filed the Declaration of Steven F. Loble regarding completion of such service, which attached the Statement of Mr. Rozario evidencing proof of such service. Dkt. No. 95.

67. Lead Counsel also consulted with local attorneys in France and Brazil in order to effect service on the 12 remaining Individual Defendants. However, due to the complexity of complying with the Conventions, including, *inter alia*, the requirement of translating all the documents to be served into Brazilian Portuguese and French, respectively, Lead Counsel ultimately elected to retain Legal Language Services ("LLS") a leading service provider with expertise in translating legal documents, international litigation support, and efficiently managing and complying with the procedures required by the Conventions.

68. In order to successfully and expeditiously effect service in France pursuant to the Hague Convention, Lead Counsel, with the assistance of LLS (i) translated the documents to be served into French, including attachments and exhibits; (ii) obtained legal certification of the documents; (iii) retained a *huissiers de justice* (court bailiffs) in Paris and Boulogne to effect service; and (iii) delivered the materials to the *huissiers*. Moreover, once service was effected, the Hague Certificate of Service completed by the French needed to be translated and certified by LLS.

69. On April 5, 2017, Lead Plaintiffs filed proofs of service on defendants Didier Leveque, Yves Desjacques, Jean-Charles Naouri, Arnaud Strasser and Nicolas Wouseen, *i.e.*, the French Individual Defendants. Dkt. Nos. 103-07.

70. In order to successfully effect service in Brazil pursuant to the Inter-American Convention (in a manner that would not potentially frustrate enforcement of a judgment against the respective defendants in Brazil, if necessary), Lead Counsel, with the assistance of LLS, (i) prepared in English and Brazilian Portuguese service forms USM 272 and obtained signatures thereon from the Clerk of the Court and the U.S. Central Authority; (ii) translated all the documents to be served into Brazilian Portuguese and obtained legal certification of same, including all attachments and exhibits; (iii) authenticated/"legalized"[10] the documents; (iv) translated the seals and signatures on the legalized documents; and (v) served the documents on the U.S. and Brazilian Central Authorities.

71. Lead Counsel was advised by LLS that the process of effecting service in Brazil typically takes between 12 to 18 months or more. As this time, the documents are currently in the possession of the Brazilian Central Authority, which is in the process of completing service upon the Brazilian Individual Defendants. Upon information and belief, certain of the Brazilian defendants have already been served.

72. On December 4, 2017, due to certain of the Individual Defendants being served abroad or in the process of being served abroad, counsel for Cnova wrote a letter to the Court stating that in light of the Settlement, Lead Plaintiffs and Cnova have agreed to adjourn *sine die* the time for all individual defendants to respond to the operative complaint and requested an order to that effect. Dkt. No. 134. The order was entered on December 5, 2017. Dkt. No. 135.

[10] Article 5(a) of the Inter-American Convention requires that a letter rogatory must be "legalized" by a competent consular or diplomatic agent in the state of origin before it can be honored in the State of Execution. In addition, Article 8(a) of the Inter-American Convention states that the complaint, along with its supporting documentation, must be "authenticated" by authorities in the State of Origin. And, although these requirements appear to be waived in Article 3 of the Additional Protocol to the Convention, LLS advised Lead Counsel that in their experience the Brazilian Supreme Court will quash serves which include English documents that have not been fully authenticated before a Brazilian consulate.

Discovery

73. On June 14, 2017, Defendants sent a letter to the Court stating that they have agreed to a voluntary production of documents and requested that the Court approve the Parties' Confidentiality Agreement and Stipulated Protective Order Concerning Voluntary Discovery, Dkt. No. 110, which the Court did on June 15, 2017. Dkt. No. 111.

74. On June 30, 2017, defendant Quiroga filed a letter motion requesting a pre-motion conference concerning a discovery dispute with Cnova due to its refusal to produce to him the same documents that the Company agreed to produce to Lead Plaintiffs and other defendants. Dkt. No. 112.

75. On July 6, 2017, the Court referred general pre-trial matters to a magistrate judge, Dkt. No. 113, and Magistrate Judge Andrew J. Peck was assigned to the matter on July 13, 2017.

76. On July 6, 2017, the Court directed defendant Quiroga's counsel to contact Magistrate Judge Peck's chambers to schedule a conference. Dkt. No. 114.

77. On July 14, 2017, counsel for Cnova and a number of the Individual Defendants sent a letter to Magistrate Judge Peck in response to defendant Quiroga's letter of June 30, 2017 requesting a pre-motion conference so that defendant Quiroga may make a motion to lift the stay under the PSLRA and compel production of certain documents, stating that he is not entitled to the production and it appears that he is improperly seeing it for some other matter. Dkt. No. 115.

78. On July 18, 2017, Lead Counsel sent a letter to Magistrate Judge Peck agreeing that defendant Quiroga should not be entitled to the production of documents, especially because he continues to deny that the Court has jurisdiction over him. Dkt. No. 116.

79. On July 18, 2017, the letter motion by defendant Quiroga was granted and a discovery hearing was set for July 24, 2017. Dkt. No. 117.

80. On July 24, 2017, the discovery hearing was held. Lead Plaintiffs were

indifferent to whether Mr. Quiroga received copies of Cnova's document production or not, but Lead Plaintiffs argued that Mr. Quiroga could not seek the assistance of the Court to participate in discovery in a case where he denied the Court had jurisdiction over him for the purposes of being a defendant in the Action. Dkt. No. 116. As the commencement of the hearing before Magistrate Judge Peck, Mr. Quiroga's counsel represented to the Court that Mr. Quiroga consented to the jurisdiction of this Court for all purposes, thus, mooting his jurisdictional motion to dismiss and mooting Lead Plaintiffs' efforts to serve him in Brazil. *See* Transcript of the July 24, 2017 Hearing, Dkt. No. 120, at 4, lines 4-9. Nevertheless, Magistrate Judge Peck denied defendant Quiroga's request for the discovery, but defendant Quiroga could no longer contest the validity of the service of process. *See* Docket Minute Entry, July 24, 2017.

81. To prepare for the documents being produced, several e-discovery platforms were identified and researched online. After investigating the standards, services, and rates of the e-discovery services, it was determined which services were needed and which providers were the best suited for the Action.

82. Four vendors were determined to have superior services for e-discovery, customer service and special features that would be particularly helpful for this specific review. Each of the four vendors was contacted by either email or phone. Each potential platform was sampled for speed, ease of use, and special features.

83. Based upon each vendor's competitive rates, the performance of each platform, the quality and promptness of each vendors' customer service and the size and scope of the Action, one e-discovery vendor was selected.

84. The vast majority of the Defendants were either Portuguese or French speakers. Accordingly, the vast majority of the relevant documents produced in connection with discovery in this matter were in Portuguese or French. My firm considered over 60 candidates to review

the documents to be produced. We specifically tested their proficiency in translating and comprehending Portuguese and French and ultimately retained Brazilian natives who spoke Portuguese as their primary language and also had mastery over English and complicated legal and financial concepts. The team we compiled included three Brazilian attorneys (one of whom was also proficient in French) and two other Portuguese-speaking Brazilians with substantial investigatory experience. The credentials and experience of the five Brazilians hired by Brower Piven to assist with the review and organization of Defendants' documents and to assist with the completion of discovery, including the interviews of the Cnova agents responsible for the internal investigation at Cnova's Brazilian subsidiary between 2015 and 2016 (discussed below), are included in the Brower Piven firm resume annexed as Exhibit F to the Appendix.

85. In total, Lead Counsel reviewed, analyzed and organized approximately one million pages of documents, including approximately 175,000 documents produced by Defendants that were largely in Portuguese, as well as documents in French and English, that included confidential internal emails by and between Defendants and their agents, presentations and selected work papers prepared by and for Cnova in connection with the investigations conducted by Cnova' directors, outside counsel, outside auditors and outside forensic accountants concerning events and accounting at Cnova's Brazilian subsidiary prior to and subsequent to Cnova's initial public offering of its ordinary shares and the ultimate restatement of its financial statements and results for fiscal years 2014 and 2015. The documents also included presentations prepared by Cnova counsel, White & Case LLP ("White & Case") and Wachtell, Lipton, Rosen & Katz ("Wachtell"), on behalf of Cnova to the SEC, along with translations of numerous Brazilian documents, which were compared to the original Portuguese versions of the documents by Lead Counsel's Brazilian attorneys and investigators for accuracy.

86. Lead Plaintiffs also interviewed the forensic auditor and met with Cnova's outside

counsel that led the Cnova investigation of its accounting irregularities to discuss the forensic analysis that was completed during the course of Cnova's internal investigation. Harvey Kelly, the managing director of AlixPartners ("Alix"), was interviewed by Lead Counsel and discussed the work involved in bridging the KPMG forensic investigation of the events in Brazil and the Ernst & Young 2014 audit of Cnova. Alix is a consulting firm, and their work includes enterprise improvement consulting, financial advisory services, information management services, and executing turnarounds of distressed and healthy companies. *See* https://www.alixpartners.com. Mr. Kelly also discussed the work done regarding the inventory count and the audit at the warehouses. Lead Counsel also had discussions with Daniel Fridman, a partner from White & Case, who led the internal investigation of Cnova's Brazilian subsidiary. The interview and discussions focused on the details of the misstatements in Cnova's reported financial statements, how they occurred, what subject matters they involved, who was involved in assembling and publishing the information, and how the misstatements were discovered within Cnova. In addition, Lead Counsel focused their inquiry on the January 28, 2015 announcement of earnings and the components of those results. In particular, Lead Counsel sought to determine whether any or all of the January 2015 results were *sui generis*, stand-alone poor results for the quarter, or reflected the leakage of previously understated liabilities, or the correction of other financial metrics concealed by or misstated in the financial statements included in the Registration Statement. As discussed further below, this area was of importance to Lead Counsel's investigation and analysis of the strengths and weaknesses of Lead Plaintiffs' claims regarding the January 28, 2015 announcements and their ability to defeat a loss causation defense and, thus, to recover damages for the decline in the price of Cnova ordinary shares caused by those announcements.

87. As part of Lead Plaintiffs' thorough investigation of the strengths and weaknesses

of their claims, Lead Counsel engaged and worked closely with their markets and damages expert, Dr. Nye of Stanford Consulting group, Inc. ("SCG"), and their Brazilian economy expert, Professor Albert Fishlow.

88. Dr. Nye is a financial economist and Vice President at SCG. SCG has provided economic research and expert testimony for business litigation, and regulatory and legislative proceedings. Dr. Nye has a Ph.D. from University of California, Irvine, an M.Sc. from the London Business School and an A.B. from Princeton University. Dr. Nye's resume is attached as Exhibit 1 to his Declaration, which is attached as Exhibit B to the Appendix. Dr. Nye's research areas include the market efficiency of underlying and derivative securities, volatility forecasting, risk management, financial econometrics, valuation and corporate finance. He has previously served as an expert witness in matters involving securities litigation, as well as business and intellectual property valuation. *See* Nye Decl. at ¶¶1-2.

89. SCG has advised Lead Counsel throughout this litigation regarding capital market issues and potential recoverable damages from a financial standpoint. SCG was retained to prepare an event study, identifying statistically significant movements in the share price of Cnova during the Class Period, and to estimate damages to Class Members based on various potential loss causation and damages scenarios, including the estimation of statutory damages under Sections 11 and 12(2) of the Securities Act. *See* Nye Decl. at ¶4. As part of its work, SCG analyzed public information and financial data related to Cnova and its publicly traded peers, and evaluated the reactions of market professionals to new information released by Cnova during the Class Period. SCG also considered potential loss causation defenses that Defendants could credibly raise and assessed the merits of any potential negative causation defense from a financial standpoint. SCG also analyzed and responded to the estimate of damages contained in Defendants' mediation statement, and assisted in defending Lead Plaintiffs' proposed damages

model and estimates. *See* Nye Decl. at ¶5. SCG also assisted Lead Counsel in developing the proposed Plan of Allocation. *Id.* at ¶6.

90. Dr. Nye consulted with Lead Plaintiffs regarding loss causation associated with the price decline of Cnova's ordinary shares upon the disclosure of information that allegedly corrected Defendants' misstatements and omissions in this matter; the estimated damages per-share and Class-wide aggregate damages incurred by investors who purchased the ordinary shares of Cnova pursuant and/or traceable to the IPO, as well as during the Class Period, and the development of the Plan of Allocation. *Id.* at ¶7.

91. Lead Plaintiffs allege that the truth regarding Cnova's financial condition and prospects were partially revealed on the following three dates: after market close on January 28, 2015; after market close on December 18, 2015, and prior to market open on February 24, 2016. In order to assess loss causation in this matter, Dr. Nye prepared an event study that statistically analyzed the price movements of Cnova ordinary shares and the price performance of relevant market and peer indices during the Class Period. Dr. Nye's calculations sought to isolate the losses in Cnova ordinary shares that were caused by the partially curative announcements alleged by Lead Plaintiffs, eliminating losses attributable to market factors, industry factors, or Company-specific factors unrelated to the alleged violations of law, and to determine whether the corrective disclosures and/or risk materialization events caused a measurable stock price reaction. *Id.* at ¶9.

92. Dr. Nye concluded that the alleged corrective information released on three dates was new, negative, Company-specific information that caused a statistically significant Company-specific decline in the price of Cnova ordinary shares. *Id.* at ¶10.

93. On December 18, 2015, the Company announced that it had engaged legal advisors and external forensic accountants as part of an internal investigation into misconduct

related to its Brazilian subsidiary, and that it would assess any related accounting and financial statement impact. Lead Plaintiffs alleged that the information disclosed was the first of a series of disclosures through which Defendants admitted that the Registration Statement for the Company's IPO contained material misstatements and/or omissions. *Id.* at p. 7.

94. On February 24, 2016, the Company released its fourth quarter and full-year 2015 results, provided an update on the internal review, and stated that the previous financial statements filed in the 2014 annual report could not be relied on. Lead Plaintiffs alleged that the information disclosed provided further confirmation to the market that there was misconduct within Cnova's Brazilian operations that put its financial statements and business prospects in question. *Id.* at pp. 7-8.

95. There is little dispute as to the link between the announcements on December 18, 2015 and February 24, 2016 and the alleged misstatements in the Registration Statement, or the market's reaction to those announcements. The January 28, 2015 announcement is a different story. Lead Plaintiffs alleged that the Company's worse-than-expected quarterly results and sales guidance released on January 28, 2015 was a result of the alleged misrepresentations and/or omissions in place at time of the Company's IPO, which Lead Plaintiffs alleged were designed to make the Company's Brazilian operations appear stronger than they really were. Therefore, Lead Plaintiffs alleged that the negative information released on January 28, which evidenced weaker results and prospects than the Registration Statement implied, was a partial materialization of the risk concealed by the alleged accounting fraud. *Id.* at p. 6. Lead Plaintiffs argued that the January 28, 2015 disclosures could reasonably be considered, by implication, a partial disclosure of the falsity of the information in the Registration Statement for the purposes of loss causation based on the theory that the poor fourth quarter results were, at least in part, the realization of the Company's true operating prospects that were misrepresented and concealed by

the false financial information contained in the Registration Statement. However, no information on January 28th directly addressed the accuracy of the financial information contained in Cnova's Registration Statement, nor did that disclosure indicate any suspicions of financial misdeeds by Defendants. The January 28th disclosures reported disappointing operating result for the Company for its fourth quarter of 2014, which were attributed, among other operational factors, primarily to deteriorating business conditions in Brazil. Thus, Lead Counsel recognized that Defendants could (and did throughout the litigation) argue that they could defeat claims related to the January 28, 2015 announcements based on a negative loss causation defense. If the ultimate trier of fact did not accept the January 28th disclosures as partially curative disclosures, all of the losses suffered in response to the January 28th announcements would be lost.

96. Dr. Nye concluded that no damages were incurred on shares sold before January 29, 2015, the earliest corrective disclosure impact date, or on shares both purchased and sold between two consecutive corrective disclosure impact dates. *Id.* at ¶18. Dr. Nye also concluded that for shares sold prior to January 20, 2016 (the date the suit was commenced, *i.e.*, the "Suit Date"), per-share damages are the lesser of: (a) the cumulative Company-specific share price decline suffered by investors who held Cnova shares through one or more of the alleged corrective events; or (b) the purchase price (not to exceed the $7.00 offering price) minus the sale price. For shares sold on or after January 20, 2016, per-share damages are the lesser of: (a) the cumulative Company-specific share price decline suffered by investors who held Cnova shares through one or more of the alleged corrective events; or (b) the purchase price (not to exceed the $7.00 offering price) minus the higher of the sale price and $2.28 (*i.e.*, Cnova's share price on the Suit Date). *Id.*

97. To estimate aggregate damages, the timing and quantity of investor transactions in Cnova stock during the Class Period was estimated using the so-called proportional "One-Trader

Model," which posits that each share purchased during the Class Period has the same chance of being sold on a subsequent day as any other share in the float, and that shares purchased on day one of the class period have, on average, a probability of being sold on day two equal to the adjusted volume-to float ratio on day two. Applying the theory of per-share damages to the daily trading behavior predicted by the One-Trader Model, Dr. Nye estimated that aggregate Class-wide damages to be $45.59 million on 25.16 million damages shares. *Id.* at ¶20. Dr. Nye also estimated that out of the $45.59 million in estimated aggregate damages, approximately $31.02 million is attributable to the January 28, 2015 corrective disclosure; approximately $13.72 million is attributable to the December 18, 2015 corrective disclosure; and approximately $0.85 million is attributable to the February 24, 2016 corrective disclosure. *Id.* at ¶21.

98. Recognizing that loss causation with respect to the January 28th announcement would be a major area of dispute between the Parties and a potential obstacle to recovery for Class Members with that claim, Lead Plaintiffs also retained Professor Albert Fishlow. Professor Fishlow is an internationally renowned expert on the Brazilian economy. He is Professor Emeritus of International Affairs at Columbia University and the former Director of the Columbia University Institute of Latin American Studies and Center for the Study of Brazilian Studies. Professor Fishlow has taught as a Professor of Economics at the University of California, Berkeley and Yale University, and as a Visiting Fellow at Oxford University. He was also previously the Paul A. Volcker Senior Fellow for International Economics at the Council of Foreign Relations. His teaching and published research has focused on the Brazilian economy in particular and the Latin American economy in general. He holds a B.A. with honors from University of Pennsylvania in Economics and a Ph.D. from Harvard University. His resume listing his other credentials and his publications is attached as Exhibit G to the Appendix.

99. Professor Fishlow was asked to review, among other things, the macro- and micro-economic events in Brazil that occurred in or about the fourth quarter of 2014 to assess the validity of a potential negative causation defense by Defendants surrounding the January 28, 2015 announcement of Cnova's disappointing results and to test the argument that those results were a function of a material decline in the Brazilian economy, particularly in the segments of the economy in which Cnove's Brazilian subsidiary operates.

100. Based on Lead Counsel's research and consultations with Professor Fishlow, Lead Counsel believe that they could rebut Defendants' negative causation arguments by showing that the statistical evidence available regarding the macroeconomic conditions in Brazil in the latter half of 2014 does not support that argument, and that the decline in Cnova's ordinary share price in January 2015 was an incident that had little, if anything, to do with the poor performance of the Brazilian economy. Indeed, the Ibovespa Brasil Sao Paulo Exchange Index had already declined by approximately 15% by January 28, 2015, and remained relatively stable until July, 2015. *See* Exhibit H to the Appendix (chart comparing historical closing prices of Ibovespa Brasil Sao Paulo Exchange Index and Cnova common shares from beginning of the Class Period through March 31, 2016). Thus, the 15% deterioration in the Brazilian economy should have already been reflected in Cnova's ordinary share price by January 28, 2015, because the market would have extrapolated the effect of deteriorating Brazilian business conditions on demand for Cnova's products.

101. Only in the second half of 2015, when Brazil's new national economic strategy proved inadequate for short-term recovery, did the realization that the Brazilian economy was moving into recession begin to affect the prices of Brazilian company's stock prices significantly. *See, e.g.*, Galinari, Rangel, *et al. E-Commerce, Mobile Technologies And Social Media In Brazil*, Brazilian Development Bank Sectoral Report, Rio de Janeiro, 41, at 135-180

(2015); U.N. Indus. Dev. Org. (UNIDO), *Working Paper: National Report on E-Commerce Development in Brazil*, 14 (2017) (*prepared by* Gabriel Alvares de Lima)[11]; Organization for Economic Co-operation and Development (OCED), *Economic Surveys: Brazil*, (2015)[12]; Brazil, Presidency of the Republic, Special Secretariat of Social Communication, *Brazilian Media Research 2016: Habits Of Media Consumption By The Brazilian Population*, Brasília: Secom, 47-65 (2016). Thus, while it could be argued that the Brazilian economy began experiencing headwinds in the latter part of 2014, those conditions, based on Lead Counsel's investigation, would not explain the magnitude of the impact in Cnova's fourth quarter results.

102. On the other hand, Cnova's internal documents, including emails, obtained in discovery suggest that the Defendants in Brazil were shocked in mid-January, 2015 by the worse than expected overall results of Cnova's Brazilian subsidiary for the fourth quarter and full year 2014. Cnova employees responsible for day-to-day operations explained those poor results to senior Cnova Brazil management as caused by a plethora of unanticipated operational challenges that, individually were small, but in the aggregate, resulted in the worse than expected results. Moreover, the internal investigation of Cnova did not indicate (nor did Lead Counsel uncover) evidence that the poor fourth quarter and full year 2014 results were caused by Defendants moving previously improperly recorded liabilities or other financial metrics into the fourth quarter of 2014 that should have been reported or were misstated in the financial statements contained in the Registration Statement.

103. Furthermore, that Defendants may have misstated the reasons for the poor fourth quarter results would not necessarily translate into a claim for damages under the theory of Lead Plaintiffs' case. Even if Lead Plaintiffs were able to establish the falsity of Defendants

[11] https://www.unido.org/sites/default/files/2017-10/WP_14.pdf.

[12] https://www.oecd.org/eco/surveys/Brazil-2015-overview.pdf.

statements regarding the role of the Brazilian economy in connection with Cnova's poor results for the fourth quarter and full year 2014, Lead Plaintiffs would nevertheless have faced difficulty in establishing a link between that misrepresentation and the misrepresentations and omissions in the Registration Statement, which was the *sine quo non* of recovering damages for the January 28, 2015 disclosures under Section 11 of the Securities Act.

104. Thus, while Lead Plaintiffs believe they could prevail against a negative causation defense, there still existed significant risk that that they would be unable to sufficiently link the January 28, 2015 announcement (and its substance) to misstatements or omissions in the Registration Statement for the purposes of defeating a negative loss causation defense. Lead Counsel went into the mediation with this understanding in mind.

The Settlement Negotiations and Proposed Settlement

105. Beginning in the summer of 2016, the Parties began discussions regarding the potential for a settlement of the Action.

106. As a result of the discussions between counsel, the Parties concluded, given the number of constituencies involved (Cnova, Casino, the Individual Defendants, the Underwriter Defendants and Cnova's various directors' and officers' insurance carriers), that using an experienced mediator was the best course. The Parties agreed to use the Honorable Layn R. Phillips (Ret.). Judge Phillips is a former United States Attorney and retired United States District Court Judge for the District of Oklahoma. Judge Phillips has developed a national reputation for successfully mediating large, complex business cases, and in particular securities fraud actions. The mediation was scheduled to take place on November 2, 2016 near Newport Beach, California. The Parties agreed to follow Judge Phillips' protocol regarding the exchange of mediation statements and other materials.

107. Preparation of Lead Plaintiffs' mediation statement required Lead Counsel to marshal and organize the information they had gleaned from their wide-ranging investigation of the facts and the law and encapsulate that mass of information into a clear, concise and cogent "story" as substantiated by the evidence for the purpose of presenting Lead Plaintiffs' case on the merits as it had developed to that point in time.

108. Another key issue Lead Plaintiffs needed to address at the outset of settlement discussions was damages. Accordingly, together with their expert, Dr. Nye, Lead Plaintiffs marshaled massive amounts of information concerning Cnova's stock price movements and public disclosures to defend Lead Plaintiffs' positions with respect to each sub-period within the Class Period.

109. Lead Counsel understood that they could take the position under the Section 11 statutory damages provisions that the entire decline in Cnova's ordinary share price was recoverable as damages. However, Lead Counsel also intended the mediation to be productive and to not take extreme positions that were likely to negatively impact their credibility in the negotiations. While plaintiffs in a Section 11 case do not bear the burden of proving loss causation, as plaintiffs do in a case under Section 10(b) of the Securities Exchange Act of 1934, Lead Counsel was cognizant of the Section 11 negative causation defense which prevents recovery for losses that defendants prove are not attributable to misrepresentations and/or omissions alleged by plaintiffs in the subject registration statement and prospectus. *See* 15 U.S.C. § 77k(e). Given that the negative loss causation defense was anticipated to be a focus of the mediation, Lead Counsel, in consultation with their damages expert, concluded that Lead Plaintiffs would proffer damages at the mediation that were not clearly susceptible to a negative loss causation defense. Therefore, the damages model Lead Plaintiffs included in their mediation statement assumed that the declines in the price of Cnova ordinary shares in response

to corrective disclosures alleged by Lead Plaintiffs are the only compensable losses. As discussed above, Lead Counsel, in consultation with their damages experts, determined that such disclosures occurred on the following dates: after market close on January 28, 2015; after market close December 18, 2015; and February 23, 2016, and caused the declines in the price of Cnova ordinary shares, net of market and industry effects.

110. On September 30, 2016, the Court ordered that a pre-trial conference would be held on October 25, 2016 and the Parties were directed to submit a pre-trial statement no later than seven days before the conference. Dkt. No. 82.

111. On October 21, 2016, the Parties exchanged mediation statements (and voluminous exhibits, which totaled hundreds of pages). Upon receipt of Defendants' mediation statement and supporting materials, Lead Counsel immediately began their analysis and the work of de-constructing Defendants' arguments in preparation for the mediation itself, as well as the reply.

112. Lead Counsel, having received the analysis of potential damages and the theories of damages from their damages' consultant, discussed Lead Plaintiffs' damages analysis with Defendants' counsel. Not surprisingly, Defendants' counsel informed Lead Counsel that their own damages analysis showed a significantly lower amount, if any.

113. The Parties exchanged their replies to each other's mediation statement on October 28, 2016 (which also included voluminous exhibits).

114. On November 2, 2016, the Parties conducted a full day mediation under the supervision of Judge Phillips. The mediation was attended by Defendants' counsel and Lead Counsel, corporate representatives of Cnova, Cnova's French counsel, and representatives and counsel for the Defendants' directors' and officers' insurance carriers.

115. Throughout the mediation, Lead Counsel insisted on making all settlement

demands tied to each of the claimed disclosures, in particular pressing for a 100% recovery for Class Members related to December 18, 2015 disclosure. As such, much of the negotiation centered on the Parties' competing damages analyses relevant periods and, as anticipated, the actionability of the January 28, 2015 announcement. While progress was made, the November 2nd mediation failed to result in a resolution of the Action.

116. Following the November 2nd mediation, Judge Phillips continued to have informal discussions with Lead Plaintiffs' and Defendants' attorneys to close the gap between the Parties and determine whether a framework for further, potentially more successful, settlement negotiations was possible.

117. On December 9, 2016, the Parties provided a status update to the Court, reporting on the November 2nd mediation, and explaining that the Parties were continuing to explore options to resolve the Action. The Parties stated that they would provide an update in thirty days. Dkt. No. 86.

118. On December 12, 2016, the Court granted the adjournment of the conference. Dkt. No. 87.

119. On January 11, 2017, the Parties provided another status update to the Court, stating that the Parties are continuing to explore mediated options to resolve the Action and its scope and Lead Plaintiffs may also seek leave to amend the current complaint to include Exchange Act claims. The Parties also requested that the deadline for the opposition to the motion to dismiss be extended to March 15, 2017. Dkt. No. 89.

120. The Court granted the extension asked for in the January 11, 2017 letter on January 24, 2017. Dkt. No. 90.

121. On January 24, 2017, Lead Counsel informed the Court that it was still contemplating an amendment to the Complaint. Dkt. No. 91.

122. On January 25, 2017, the Court ordered a status report to be provided by February 28, 2017. Dkt. No. 94.

123. On February 1, 2017, the Parties met for a second mediation session before Judge Phillips in New York City at which time the Parties made further efforts to resolve the litigation. Lead Counsel stayed with their prior framework of negotiating based on the sub-periods within the Class Period and continued pressing for a 100% recovery of their estimate of damages resulting from the December 18, 2015 disclosures. Again, while the Parties moved closer together, no resolution of the Action occurred. Following the second mediation session, Judge Phillips continued his efforts to settle the Action by shuttling between Lead Plaintiffs and Defendants, at times, on a daily basis.

124. On February 28, 2017, the Parties provided another status update to the Court. The Parties reported that they met for a second mediation session before Judge Phillips to further attempt to resolve the litigation, as well as continued discussions through telephone calls. Another extension was requested for opposing the motions to dismiss to pursue the negotiations. Dkt. No. 100.

125. On March 1, 2017, the Court granted the extension requested on February 28, 2017 and requested another status report by May 15, 2017. Dkt. No. 101.

126. In April, 2017, the Parties reached a tentative agreement – broker by Judge Phillips – on the amount of the Settlement, *i.e.*, $28,500,000.00 in cash (the "Settlement Amount"). The agreement on the Settlement Amount was only, however, the first step in the process. The Parties, now directly between Lead Counsel and counsel for Cnova, began negotiating the non-monetary terms of the Settlement. The issues involved, *inter alia*, extensive additional confirmatory discovery (coupled with the right of Lead Plaintiffs to withdraw from the Settlement depending on the outcome of that discovery); the definition of the Class for

settlement purposes as well as the persons and entitles excluded from the Class; the terms of the opt-out provisions; the procedures for payment of the Settlement Amount and its investment; certain time-periods for accomplishing all preliminary matters and entering into a definitive, detailed stipulation of settlement; the scope of the class release and Defendants' releases; and rights of the respective Parties in connection with enforcing and/or terminating the Settlement.

127. On May 15, 2017, the Parties provided a status update to the Court, in which they reported that they are continuing to actively negotiate a resolution, including negotiating document production and meetings with employees and agents of Cnova. The Parties anticipated the process would take two to four months. Dkt. No. 108.

128. On May 18, 2017, the Court ordered the stay in the matter to continue pending a status report on September 15, 2017. Dkt. No. 109.

129. On May 22, 2017, the Parties entered into a memorandum of understanding ("MOU") that memorialized their agreements on the basic terms of the Settlement.

130. Lead Plaintiffs obtained a Settlement – based on their financial expert's estimates, taking into account the statutory limitations on damages dictated by Section 11 of the Securities Act, 15 U.S.C. § 77k(e), Class Members' maximum recoverable damages at trial, assuming compete victory on all issues on the merits and damages for the entire Class and a 100% claims rate, but without regard to Defendants' anticipated statutory negative causation defense, and the factual risks to proving the existence of claims of Class Members during certain times during the Class Period – that represents, before attorneys' fees and expenses, an approximately 62.5% recovery of estimated aggregate Class-wide damages of approximately $45.6 million.

131. As is discussed below, Lead Counsel continued to press their initial position with respect to the December 21, 2015 disclosure (when Cnova announced that it had retained legal advisors and external forensic accountants to review issues related to potential accounting

irregularities at its Brazilian subsidiary), seeking a 100% recovery on Class Members most likely compensable damages at trial on this claim (based on Lead Plaintiffs' expert's damages analysis).

132. Under Dr. Nye's analysis, the December 18th announcement (using a two-day absorption window) resulted in $13.72 million in damages. In addition, Dr. Nye estimates that the announcement on February 24, 2016 (when Cnova announced that its prior financial statements, including those in the Registration Statement, would need adjustment and could no longer be relied upon), resulted in $850,000 in compensable damages. As the Plan of Allocation provides, both claims are allocated 100% of the per share damages caused by those announcements as their Recognized Loss for the purpose of calculating claims for payment from the Settlement Fund.

133. With respect to the January 28, 2015 disclosures (when Cnova released disappointing results for its fourth quarter of 2014), Dr. Nye estimates (again using a two-day absorption period) that, in connection with that announcement (which, as discussed above, faced far greater risks to recovery), Class Members suffered approximately $31.02 million in compensable damages. Under the Plan of Allocation, to adjust for the risks associated with that claim, Class Members are allocated 50% of their most likely recoverable damages at trial as the Recognized Loss for damages sustained due to the January 28th disclosures for Class Members, based on the assumption that those results were the partial materialization of the undisclosed risk that the financial statements in the Registration Statement were materially inaccurate for the purposes of loss causation (a position Defendants strenuously dispute), or imputed estimated damages of approximately $13.9 million.

134. Throughout the ensuing months, the Parties vigorously negotiated the terms of the Stipulation and the accompanying exhibits (*e.g.*, the Notice and Publication Notice). Numerous

drafts were exchanged.

135. On July 26, 2017, the Parties wrote a letter to the Court requesting a status conference on September 15, 2017. Dkt. No. 118.

136. The Court scheduled a status conference for September 15, 2017. Dkt. No. 119.

137. On September 13, 2017, the Parties wrote a letter to the Court requesting that the September 15th conference be moved to September 25, 2017. Dkt. No. 122. The Court granted this request on September 14, 2017. Dkt. No. 123.

138. On September 20, 2017, the Parties executed the Stipulation, together with its exhibits, which included forms of orders, forms of notice to the Class and the form of the final judgment. As detailed above, the Settlement was reached only after Lead Counsel: (i) conducted extensive factual investigations into the events and circumstances underlying the claims in the complaints, which uncovered substantial information about the Company that formed the basis of Lead Plaintiffs' detailed complaints; (ii) obtained and reviewed filings with SEC, as well as press releases, analyst reports, and other relevant public documents; (iii) thoroughly researched the law related to the claims against Defendants; (iv) reviewed more than one million pages of documents, including those produced by Defendants; (v) consulted with attorneys in Brazil, England and France; and (vi) consulted with experts concerning the Brazilian economy during the Class Period, and other economics and damages experts. Further, the Settlement was reached only after two mediations and extensive direct discussions between counsel for the Parties.

Preliminary Approval of the Settlement

139. On September 22, 2017, Lead Plaintiffs filed the Notice of Motion For: (1) Preliminary Approval of Settlement; (2) Certification of the Class For Purposes of the Settlement; (3) Approval of Notice to The Class; and (4) Scheduling of a Final Hearing ("Preliminary Approval Motion"; Dkt. No. 125); the Memorandum of Law in Support of

Preliminary Approval Motion (Dkt. No. 126); and the Declaration of David A.P. Brower in Support of Preliminary Approval Motion (Dkt. No. 127), which included, as Exhibit 1, the Stipulation, which attached Exhibit A: The [Proposed] Preliminary Approval Order (Order"); Exhibit A-1: The [Proposed] Notice of Pendency of Class Action and Proposed Settlement; Exhibit A-2: The [Proposed] Proof of Claim and Release form; Exhibit A-3: The [Proposed] Summary Publication Notice of Proposed Settlement of Class Action and Hearing; and Exhibit B: The [Proposed] Final Judgment and Order of Dismissal. Lead Plaintiffs also submitted a letter describing the documents. Dkt. No. 128.

140. On September 22, 2017, the Court rescheduled the preliminary approval hearing to October 6, 2017. Dkt. No. 129.

141. On October 6, 2017, the Court held a lengthy preliminary approval hearing. During the hearing, the Court engaged in wide-ranging questioning of the Parties' counsel, particularly Lead Counsel. The Court requested several changes to the Class Notice and requested certain additional matters be added or highlighted in the Notice. *See* Transcript of October 6, 2017 Hearing, Dkt. No. 132, *passim*.

142. On October 10, 2017, Lead Counsel sent a letter to the Court providing a revised [Proposed] Preliminary Approval Order ("Preliminary Approval Order") with exhibits complying with the Court's guidance and instructions at the October 6th hearing. Dkt. No. 130.

143. On October 11, 2017, the Court granted preliminary approval of the Settlement and entered the Preliminary Approval Order. Dkt. No. 131. Further, the Preliminary Approval Order (a) preliminarily certified the Class; (b) approved the forms, methods and timing for providing the Notice, the Publication Notice and the Proof of Claim form to Class Members; (c) appointed GCG as the claims administrator; (d) set the deadlines for Class Members to request exclusion from the Class, object to the Settlement, Plan of Allocation and/or Lead Counsel's

request for an award of attorneys' fees and reimbursement of expenses and/or to personally appear or appear through counsel; (e) scheduled the final fairness hearing for March 15, 2018. ("Final Approval Hearing"); and (f) set the deadlines for the submission of papers in support of, and opposition to, the matters that will be heard at the Final Approval Hearing.

Notice to the Class

144. Lead Counsel was judicious in its selection of The Garden City Group ("GCG"), the Court-appointed Claims Administrator in this Action. Lead Counsel only selected GCG as the proposed claims administrator after assuring itself that GCG's bid reflected the most aggressive and efficient proposal among the administrators considered by Lead Counsel.

145. Lead Counsel orchestrated a competitive bidding process among the potential claims administrators and only selected GCG after carefully reviewing and negotiating, line by line, each component of the claims administration process delineated in the bids received by Lead Counsel. Further, lead Counsel negotiated a settlement administration cost cap of $400,000 with GCG and, at the Court's request, that cap was disclosed in the Notice.

146. As demonstrated by the Fraga Affidavit, the notice program directed by the Court has been fully completed. An aggregate 9,175 copies (including ten that were remailed) of the detailed long form Notice and Proof of Claim form were mailed to potential Class Members and the Publication Notice was disseminated over national business-oriented wire services on three staggered occasions.

147. Specifically, on October 5, 2017, Lead Counsel forwarded to GCG an email from Defendants' Counsel containing Excel files which contained 25 unique names and addresses of potential Class Members. On October 23, 2017, Notices were disseminated by first-class mail to those 25 potential Class Members. Fraga Aff. at ¶3.

148. As in most securities class actions, many Class Members are beneficial purchasers

whose ordinary shares are held in "street name" – *i.e.*, the ordinary shares are purchased by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. GCG also maintains a proprietary database with the names and addresses of 1,802 of the largest and most common U.S. nominees ("Nominee Database"). Page 11 of the Notice, under the heading "Special Notice to Securities Brokers and Other Nominees," directed all those who purchased Cnova ordinary shares during the Class Period for the beneficial interest of a person or organization other than themselves, within seven (7) days of receipt of the Notice, to either (a) provide to the Claims Administrator the name and last known address of each person or entity for whom or which they purchased Cnova ordinary shares during such time period or (b) request additional copies of the Notice and the Proof of Claim form, which would be provided to them free of charge, and within seven (7) days mail the Notice and Proof of Claim form directly to the beneficial owners. Accordingly, on October 23, 2017, GCG caused Claim Packets to be mailed to the 1,802 mailing records contained in GCG's Nominee Database. Fraga Aff. at ¶4.

149. Through December 11, 2017, GCG has mailed an additional 4,503 Claim Packets to potential Class Members whose names and addresses were received from individuals or nominees requesting that a Claim Packet be mailed to such persons, and mailed another 2,835 Claim Packets to nominees who requested Claim Packets to forward to their customers. Fraga Aff. at ¶6.

150. Additionally, pursuant to an agreement between Lead Counsel and counsel for the Underwriter Defendants, O'Melveny & Myers, LLP ("O'Melveny"), special handling arrangements were made at the Underwriter Defendant firms to follow up with their clients and nominees who purchased Cnova ordinary shares during the Class Period. This step was to further assure the Notice and Proof of Claim form reached as many Class Members as

reasonably possible.

151. GCG established a toll-free "Interactive Voice Response" system to accommodate potential claimants. This system became operational on or about October 23, 2017. Fraga Aff. at ¶10. GCG also maintains a website where important documents related to this case are posted, www.choosegcg.com/cases-info/CNV. The papers in support of Lead Plaintiffs' motion for approval of the Settlement, Plan of Allocation, final certification of the Class, the forms and methods for providing notice to the Class, and Lead Counsel's requested for an award of attorneys' fees and reimbursement of litigation expenses will also be posted on that website after the papers are filed with the Court.

152. Pursuant to the Preliminary Approval Order, GCG Communications, the media division of GCG, had the Publication Notice sent out over *PR Newswire* on October 31, 2017 and November 14, 2017, and sent over *Business Wire* on November 7, 2017. GCG also caused a copy of the Notice, Proof of Claim and Stipulation to be posted on its website on October 23, 2017. Fraga Aff. at ¶¶8-9.

153. The Notice provides, *inter alia*: (1) the detailed terms of the Settlement and the releases that would be exchanged; (2) summarized the history of the litigation; (3) described the Parties and the Class; (4) discussed the settlement negotiations; (5) discussed Lead Plaintiffs' expert's estimates of recoverable damages at trial for each segment of the Class; (6) detailed the Plan of Allocation; (7) detailed the percentage and per share recoveries to Class Members based on the dates of their purchases and sales, if any, of Cnova ordinary shares during the Class Period; (8) detailed the maximum amount that Lead Counsel would seek in attorneys' fees (33.33%) and in reimbursement of expenses for prosecuting the Action ($300,000); (9) described Class Members' right to request exclusion from the Class or appear through personal counsel of their choosing and/or to object to the Settlement, Plan of Allocation and/or request for attorneys'

fees and reimbursement of expenses; (10) specified the deadlines for asserting these rights and procedures for doing so; (11) provided addresses, a toll-free telephone number and a website where Class Members could obtain additional information; and (12) informed Class Members when Lead Plaintiffs and Lead Counsel's papers in support of the proposed Settlement, Plan of Allocation and request for attorneys' fees and expenses will be filed with the Court and available for their inspection.

154. The Notice also provided the "statement of plaintiffs' recovery," as required by the PSLRA, which states that Class Members' average per share recovery will be $1.13 per share, it identified the attorneys and provides their addresses, it provided information on how to contact Lead Counsel's representatives to obtain additional information, and it contained a brief description of the reasons why the Parties are proposing the Settlement. The Notice, however, also points out that the "average per share recovery" is not necessarily reflective of Class Members' actual likely recoveries from the Settlement and provides more accurate per share figures in the Plan of Allocation detailed in the Notice based on the various potential scenarios for Class Members' transactions in Cnova ordinary shares purchased during the Class Period. Indeed, as detailed below, Lead Counsel, with the assistance of their damages expert, provided step-by-step formulas for Class Members to calculate their own, individual Recognized Loss by reference to the Plan of Allocation.

155. All objections to the Settlement, the Plan of Allocation and the request for fees and expenses, and all requests for exclusion from the Class are required to be filed no later than January 24, 2018. Thus, as provided by the Preliminary Approval Order, Lead Plaintiffs' papers in support of the Settlement, the Plan of Allocation and their application for an award of attorneys' fees and reimbursement of expenses will be filed with the Court and available on the GCG Cnova website more than a month before the objection and opt-out date.

156. As of the date of this Declaration, there are no objections concerning the Settlement, the Plan of Allocation, or request for attorneys' fee and expenses, and no requests for exclusion have been received from putative Settlement Class Members.

Claims Processing

157. The Plan of Allocation set forth in the long form Notice also details the procedures that will be followed to process claims made by Class Members. In order to receive a share of the distribution of the proceeds from the Settlement, a member of the Class must be an "Authorized Claimant." An Authorized Claimant is a Class Member who: (a) purchased Cnova ordinary shares during the Class Period, (b) meets the further qualifications set out below, and (c) submits a valid and properly documented Proof of Claim form that accompanies the Notice in a timely manner as set out in the Notice.

158. Class Members will be able to substantiate their claims with any of the following forms of evidence: brokerage firm confirmation slips; monthly account statements; or such other third-party documents that Lead Counsel and Defendants' counsel, in their discretion, mutually agree are sufficiently reliable and verifiable.

159. As discussed above, with each copy of the Notice disseminated to potential members of the Class, a copy of the Proof of Claim in the form approved by the Court was included. As provided by the Preliminary Approval Order, the deadline for submitting Proofs of Claim is March 12, 2018.

160. Additionally, it is the experience of Lead Counsel and the Claims Administrator that members of similar classes do not submit proofs of claim until (and, often, shortly after) the claims filing deadline. Further, such deadline may be extended by the Court.

THE RESULTS ACHIEVED

161. The cash Settlement Amount of $28,500,000.00, under all of the circumstances

here, is an extraordinary, if not unprecedented, result for Class Members.

162. As discussed above, based on the aggregate of Lead Plaintiffs' damages expert's estimates of the best possible recovery for the Class on all claims at trial, the Settlement reflects an overall 62.5% recovery of Class Members' total compensable damages of $45.6 million. That figure assumes a 100% participation rate by Class Members and does not take into account the risks of litigation, including the typical risks inherent in any litigation, the unique foreign aspects of this Action, or the potential defenses to any liability for the January 2015 disclosures, which would represent an all-or-nothing battle between the Parties. Importantly, under the Parties agreement, as reflected in the Stipulation, no portion of the Settlement Amount is to be returned to Defendants under any circumstance (other than on account of termination of the Settlement itself) and all excess funds, if any, are to be reallocated among claiming Class Members.

163. The Plan of Allocation gives 100% credit to Class Members for their Section 11 claims in connection with the December 2015 and February 2016 disclosures and a 50% credit to Class Members in connection with the January 2015 disclosures. Within each period, the size of the recovery becomes even more clear:

Disclosure Date	**Actual Estimated Damages (100%)**	**Recovery Under Settlement (assuming equal allocation- ~62.5%)**	**% of Loss Recognized Under Plan of Allocation**	**Recognized Loss Under Plan of Allocation**	**Settlement Fund % of Recognized Loss**	**Allocation Under Plan (94.75% of Recognized Loss)**
Jan. 28, 2015	$31,020,000	$19,391,753	50%	$15,510,000	94.75%	$14,695,313
Dec. 18, 2015	$13,720,000	$8,576,881	100%	$13,720,000	94.75%	$12,999,335
Feb. 24, 2016	$850,000	$531,366	100%	$850,000	94.75%	$805,352
TOTAL	**$45,590,000**	**$28,500,000**		**$30,080,000**		**$28,500,000**

164. As demonstrated by the case law in Lead Plaintiffs' Memorandum of Law in

Support of Motion for Final Approval of the Proposed Settlement ("Settlement Memorandum"), submitted herewith, at 24, and the detailed analysis in the Miller Declaration, at ¶¶24-30, that percentage is exponentially higher than the typical recovery range of settlements in federal securities class actions.

165. For instance, as detailed in the Miller Declaration, a 2016 Cornerstone Report on securities class action settlements found that the median securities class action settlement amount for the 80 court-approved settlements in 2015 was $6.1 million, or 1.8% of "estimated damages" that investors incurred. For settlements with damages that were less than $50 million, the median settlement as a percentage of "estimated damages" was 6.7% in 2015 and 11.4% between 2006-2014. *See* Miller Decl. at ¶27.

166. A 2017 Cornerstone Report on securities class action settlements found that the median securities class action settlement amount for the 85 court-approved settlements in 2016 was $8.6 million, or 8% of "estimated damages" that investors incurred. For the years 1996-2016 the median settlement, as a percentage of "estimated damages," was 7.4% for Section 11 and/or Section 12(a)(2) only claims and 3.0% for both Rule 10b-5 and Section 11 and/or Section 12(a)(2) claims. The median settlement for that period was $4 million for Section 11 and/or Section 12(a)(2) only and $13.6 million for both Rule 10b-5 and Section 11 and/or Section 12(a)(2). *See* Miller Decl. at ¶28.

167. Thus, based upon the available data and studies, as Professor Miller stated, the recovery in this Action is much higher than the mean and median percentage of "estimated damages" recoveries by class members in comparable securities actions based on Lead Plaintiffs' damages estimate. *See* Miller Decl. at ¶30; *see also id.* at ¶¶25-29.

168. Notably, following the trial of a federal securities class action, prior to entry of judgment against defendants, a claims process must be conducted to identify class members and

for those class members to prove the amount of their claim. Defendants do not pay on the judgment until that process is complete and then are only required to pay on the amount of claims that are actually submitted and proven. Moreover, while all of Lead Plaintiffs' damages estimates assume a 100% participation rate, in any class action, not all of those who can make claims do. Nevertheless, here, Class Members will share in the total $28,500,000.00 Settlement Amount regardless of the number or amount of claims actually received. Therefore, while the Settlement in the aggregate represents an already extremely high recovery of approximately 62.5% of Class Members' maximum compensable damages, in actuality, before attorneys' fees and expenses, based on the actual amount of claims that are made, the Settlement is likely to represent a significantly higher percentage of Class Members' damages.

169. Based on consultations over the years with financial experts, claims administrators, and Lead Counsel's own experience, typical institutional investor claim rates in securities class actions are approximately 90% and individual investor claim rates are approximately 30%. From about the beginning of the Class Period through approximately the commencement date of the Action, the percentage of Cnova ordinary shares held by institutions compared to individuals ranged from 69.1%/30.9% to 59.9%/40.1%, respectively. *See* Cnova-Shareholder History Report, based on Thomson Reuters Eikon, attached as Exhibit I to the Appendix. Using an average of those relative holding estimates, throughout the Class Period the percentage of shares held by institutions and individuals was approximately 65% and 35%, respectively. This implies effective claims rates for institutions and individuals of approximately 58.5% and 10.5%, respectively, or 69% in the aggregate.

170. Applying these estimates to the total aggregate damages of approximately $45.6 million, institutions and individuals are projected to claim approximately $26.67 million and $4.8 million, respectively, or collectively $31.46 million. Thus, applying the approximated

holdings and estimated claim rates, the Settlement Amount of $28,500,000 represents, on a projected claims-made basis, a recovery of approximately 90.6% of total Class-wide aggregate damages, without consideration of any of the risks attendant to success on the merits, including those related to the January, 2015 disclosures, or adjustments among Class Members for those risks.

171. Out of the approximately $45.6 million in estimated aggregate damages, approximately $13.72 million is attributed to the December 18, 2015 disclosure, and $850,000 is attributed to the February 24, 2016 disclosure, or a total of $14.57 million. Applying the 58.5%/10.5% estimated institution and individual claim rates to the $14.57 million of total recoverable damages, it can be inferred that institutions and individuals will make claims in connection with the December 18, 2015 and February 24, 2016 disclosures of approximately $8.52 million and $1.53 million, respectively, or $10.05 million in total.

172. Of the approximate $45.6 million in Class-wide damages (putting aside the 50% discount), the total recoverable damages attributed to the January 28, 2015 disclosure is approximately $31 million. Applying the 58.5%/10.5% estimated institution and individual claim rates, it can be inferred that institutions and individuals will make claims related to the January disclosure of approximately $18.15 million and $3.26 million, respectively, or $21.4 million in total. After the 100% allocation to the December and February claims, there remains $18.45 million, representing a recovery of approximately 87% of the total potential recoverable damages for the January 28, 2015 disclosure that would be available to Class Members for that claim. Then, applying the 50% risk adjustment under the Plan of Allocation to the January 2015 disclosure results in institutions and individuals prospectively claiming approximately $9.07 million and $1.63 million, respectively, or $10.7 million in total (*i.e.*, 50% of $21.4 million). Assuming these estimates hold true, the combined projected 100% recovery to claiming Class

Members of $10.05 million for December and February disclosures and the $10.7 million recovery for the January disclosure, or $20,750,000 in total, compared to a Settlement of $28,500,000, speaks for itself. Notably, again, Defendants receive no reversion of any funds under the Stipulation.

173. Two caveats to the foregoing estimates: they are projections based on historical experience and actual results may vary in any particular case; and claims rates are affected by the likely per share recovery disclosed in the notice to the class, with the lower the recovery the lower the claims rate. Here, the Notice discloses the already unusually high per share recoveries and percentages of likely damages recovered and, thus, the claims rate here might be higher than in the typical settlement of cases of this type.

174. In any event, whether viewed on a gross basis or on a likely claims-made basis, the result achieved for the Class in this litigation is extraordinary.

THE SETTLEMENT WARRANTS APPROVAL

The Complexity, Expense, and Likely Duration of the Litigation

175. The foreign aspects of this Action presented unique difficulties and challenges here.

176. More fundamental than the difficulties in enforcing judgments, Lead Plaintiffs faced significant challenges in connection with properly effecting service on the Individual Defendants, which is notoriously complex and tenuous. *See, e.g.*, Jennifer Scullion *et al.*, Practical Law Company, *International Litigation: Serving Process outside the US* (2011).[13]

177. Lead Plaintiffs would have been required to pursue discovery of Defendants, as

[13] http://www.proskauer.com/files/News/5b04a3dd-34ab-40f4-a64f-3bc52468277a/Presentation/NewsAttachment/db2a546c-d01c-4ce3-815a-43df368f05c8/Proskauer_122011_Practical%20Law%20Company_Scullion_Berkowitz_McNew_International%20Litigation_Serving.pdf.

well as other essential witnesses and documents, in as many as four foreign countries -- Brazil, the location of the relevant Cnova subsidiary and where defendants Tracanella, Pereira, Filho, Barroso Almeida and Quiroga reside; the United Kingdom, where defendant Oppetit resides; France, where defendants Desjacques, Woussen, Strasser, Leveque and Naouri reside; and the Netherlands, where Cnova is headquartered. All four countries follow the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Evidence Convention").

178. For each country, Lead Plaintiffs would be required, first, to apply to the Court to execute a Letter of Request for each witness and the documents sought and, then, to submit the executed Letter of Request to the designated Central Authority in each country. Settlement Memorandum at 9 (citing Hague Evidence Convention, Articles 1 & 2). Further complicating Lead Plaintiffs' efforts to obtain discovery, the judicial authority in each country that executes the Letter of Request would apply its own local laws to the methods and procedures to be followed. *Id*. (citing Article 9). A special method or procedure requested in the Letter of Request will not be followed if it "is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties." *Id*.

179. The Hague Evidence Convention also provides that "the person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse to give the evidence" either "(a) under the law of the State of execution; or (b) under the law of the State of origin." Settlement Memorandum at 9 (citing Article 11). The State of execution "may declare that, in addition, it will respect privileges and duties existing under the law of States other than the State of origin and the State of execution . . . ." *Id*.

180. Importantly, as authorized by Article 23 of the Hague Evidence Convention, each

of the countries in question has declared "that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries." Settlement Memorandum at 9 (citing Article 23; Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, Table Reflecting Applicability of Articles 15, 16, 17, 18 and 23 of the Hague Evidence Convention, Hague Conference on Private International Law).

181. For France and Brazil the Letter of Request would need to be translated into French and Portuguese, respectively. *Id*. According to Lead Plaintiffs' foreign legal consultant, the time frame for getting the foreign discovery would be three to six months after the Letter of Request is transmitted abroad. Lead Plaintiffs would need to find, retain, and work with local counsel in each country. In sum, securing necessary testimony and document discovery in Brazil, the United Kingdom, France, and the Netherlands would present serious hurdles and obstacles and entail substantial delay and expense. There is a very real risk that Lead Plaintiffs would not be able to obtain the discovery he needs. In addition, the particular rules and procedures with respect to discovery in each country would pose further problems and delays. And, adding further complication and uncertainty, in 2016, Brazil put into effect a new Civil Procedure Code. Settlement Memorandum at 8-9 (citing "Brazil's New Civil Procedure Code," Columbia Journal of Transnational Law). Thus, for instance:

> Full disclosure and discovery are not a part of Brazilian civil proceedings. . . . According to the new Brazilian Code of Civil Procedure, the requested party may refuse to exhibit a document when: (i) it relates to his or her private life; (ii) the exhibition violates his or her duty of honour; (iii) the exhibition could create dishonor to the party or to a third party; (iv) the exhibition could cause the publicity of confidential facts; (v) there are any other justified reasons, pursuant to the court's opinion; and (vi) the law expressly allows the party to object to the request, in that specific situation.

Id. (citing Brazil, Litigation & Dispute Resolution 2017, Global Legal Insights).

182. Discovery in foreign countries with respect to foreign defendants is extremely difficult to pursue (particularly in countries like Brazil), as evidenced by how difficult it was to simply serve the Defendants. It is not clear if the countries would allow discovery, the extent of the discovery that would be allowed, and how long it would take to obtain the discovery, not even taking into account the expense of such discovery. Further, at trial, if Lead Plaintiffs succeeded that far, testimony might well have needed to be translated into English further complicating matters. Most importantly, Cnova sold off its Brazilian operations, so discovery would be even more difficult, even if allowed, as the most relevant documents are not necessarily in the custody of Defendants, which would further prolong the process.

183. Furthermore, even assuming Lead Plaintiffs obtained document discovery in the relevant foreign countries, most of the documents relevant to Lead Plaintiffs' claims were in Portuguese or French. Likewise, with respect to foreign countries, many countries will not allow American-style examinations. Rather, they only allow depositions on written questions administered by a government officer or notary. Depositions under those conditions are difficult and far less valuable than face-to-face depositions where the examiner can ask follow up questions on the spot based on the witnesses' answers. In addition, depositions and interrogatories would have to be in the language of the witnesses. Accordingly, even if American-style depositions were allowed, the questions and answers would need to be filtered through translators, increasing the complexity (and, inevitably, resulting in ambiguities) of the testimony.

184. Moreover, as the claims against Cnova involved primarily accounting violations, discovery of Cnova's outside accountants would have been essential. Cnova's outside accounting, however, was performed by the French office of Ernst & Young. Under French law, accounting firms have a privilege akin to the American attorney-client privilege. Therefore,

there was a risk that Lead Plaintiffs could not obtain Cnova's accountants' work papers through discovery. While Lead Counsel had developed ideas on how to by-pass the Ernst & Young French office to obtain Cnova's accounting documents, whether those efforts would have been successful remains unclear.

185. Even enforcing judgments against the Individual Defendants who reside in Brazil, France, the Netherlands and the United Kingdom would have been very difficult, if not impossible, and certainly would take significant time. *See* Settlement Memorandum at 10 (citing sources). For instance, throughout the litigation process, Cnova argued vehemently that, under recent French law, France will not enforce an opt-out class action judgment. Rather, Cnova argued, under French law, to enforce a class action judgment, the class must be an opt-in class. Although Lead Counsel believes they could overcome this obstacle regardless of the rule in France or any of the other subject jurisdictions, clearly navigating potentially four foreign legal systems, even after victory on the merits at trial, to enforce a judgment against Defendants posed a difficult, time consuming, and risky venture.

186. The presence of these extremely difficult issues would add considerably to the complexity, expense and duration of the Action.

187. Lead Counsel considered the substantial time and expense that would be involved in continuing to prosecute the Action (if Lead Plaintiffs survived the motions to dismiss) through trial and the inevitable post-trial motions and appellate proceedings. Simply, even without the procedural and legal obstacles posed by the substantial foreign aspects of this Action, completing the pre-trial proceedings would have involved considerable additional foreign discovery; taking dozens of depositions of witnesses located in other countries; defense of the depositions of Lead Plaintiffs and other investors; preparation of complex expert reports and discovery of the expert witnesses; the negotiation and completion of a complex and voluminous pre-trial order; and

extensive briefing on motions for summary judgment, motions to strike experts and other motions *in limine* likely to be made by Lead Plaintiffs and by Defendants. Given the complex nature of the case and the numerous persons with knowledge of discreet aspects of the case, trial of the Action would be extremely complex and likely take weeks, if not months, to complete.

188. Significantly, even if the Class could recover a larger judgment after trial, the additional delay through trial, post-trial motions, and the appellate process could deny the Class any recovery (even assuming victory at every step) for years. *See also* Miller Decl. at ¶¶31-51 (discussing this factor).

The Reaction of the Class to the Settlement

189. As noted above, in the aggregate, 9,175 Notices (including ten that were remailed) describing the nature and procedural history of the Action, and the terms of the Settlement, have, to date, been disseminated to potential Class Members. In addition, the Publication Notice was transmitted over *PR Newswire* and *Business Wire* on three separate, staggered days. Although the deadline for objecting to the Settlement or seeking exclusion from the Class has not yet passed, to date, no Class Member has objected to approval of the Settlement and no potential Class Member has sought exclusion. Nor, for that matter, has any potential Class Member contacted Lead Counsel to complain about the Settlement.

The Stage of the Proceedings and Discovery Completed

190. At the commencement of the Action, Lead Counsel conducted an extensive investigation relating to Lead Plaintiffs' claims in the Action, including the: (i) review and analysis of filings made by, and/or concerning, Defendants with the SEC; and (ii) review and analysis of wire and press releases, public statements, news articles, and other publications disseminated by, and/or concerning, Defendants.

191. Lead Plaintiffs also conducted extensive discovery relevant to the Class

Members' claims and the reasonableness of the Settlement, including reviewing a massive quantity of documents, among them internal Cnova documents that were arguably non-discoverable, but were produced by Defendants pursuant to an agreement between the Parties, and Lead Plaintiffs interviewed the lead investigator and had further discussions with counsel to Cnova who led the internal investigation of events in Brazil.

192. Further, to assist with the prosecution and analysis of this case, Lead Counsel also consulted with well-respected experts concerning the Brazilian economy during the Class Period, the calculation of the potential amounts of recoverable damages at various points during the Class Period, as well as issues concerning loss causation and Defendants' potential defenses to Lead Plaintiffs' Class-wide damages estimates. Lead Counsel also consulted with French, Brazilian and English attorneys about various legal obstacles throughout the case.

193. As a result of all of the foregoing, Lead Counsel was well-prepared to negotiate from a position of strength and knowledge to reach the settlement in principle in May 2017, and to enter into the final Stipulation in September 2017.

The Risks

194. While Lead Plaintiffs are confident in the strength of their case, Defendants were just as confident that Lead Plaintiffs would not succeed, at least in part, on the merits. It can be said, however, without gainsay that Lead Plaintiffs faced considerable risks to success in this Action. In achieving the Settlement, Lead Counsel carefully considered numerous factors, including, but not limited to, the complexity, expense and delay inherent in continued prosecution of the Action through the pretrial, trial and appeal phases, including trying to obtain discovery and any depositions in foreign countries; Lead Plaintiffs' ultimate need to rebut a negative loss causation defense and their difficult burden of proof on damages; the difficulties discussed above in pursuing foreign discovery; the risks of obtaining and maintaining the entire

Class throughout the litigation; the uncertainties of the outcome of a trial before a jury; the likelihood and vagaries of appellate proceedings in an environment where the law governing the federal securities law claims continues to be in flux; the potential obstacles to enforcement of a class action judgment potentially in four different foreign countries under very different legal systems; the maximum amount Lead Plaintiffs could reasonably expect to recover at trial; the delay that would likely be incurred in obtaining a recovery for the Class; the extremely large percentage of Class Members' losses recovered by the Settlement; and the substantial and immediate monetary benefit provided by the Settlement to the Class. Lead Plaintiffs evaluated these factors only after extensive factual investigation and legal analysis that enabled Lead Plaintiffs to assess the strengths and weaknesses of their claims. Armed with this information, Lead Counsel were prepared to engage in extensive arm's-length negotiations, which eventually led to the Settlement presently before this Court.

The Risk of Establishing Liability and Damages

195. As a result of Lead Plaintiffs' factual and legal research and analysis, as well as the Settlement negotiations, Lead Plaintiffs were able to identify many of the arguments and issues that would likely have been raised in the course of continued litigation against the Defendants. Although Lead Counsel would forcefully argue the merits of Lead Plaintiffs' claims at trial, and Lead Plaintiffs still believe ultimate victory would have been theirs, Defendants could have offered potentially effective arguments of their own in their defense to Lead Plaintiffs' claims.

196. Most importantly, to survive summary judgment and succeed at trial, Lead Plaintiffs would need to show, among other things, that the price of Cnova ordinary shares declined due to Defendants' false and misleading statements in the Registration Statement, and the appropriate amount of that decline solely attributable to the misinformation in the

Registration Statement. *See* Nye Decl. at ¶9 & pp. 6-8 (detailing the various disclosures). This was sharply disputed, with Defendants consistently arguing that the decline in Cnova shares was either less than Lead Plaintiffs argued or not linked to any misrepresentation or omission in the Registration Statement, or both. Although confident with respect to their claims and estimated damages with respect to the December 18, 2015 and February 24, 2016 Cnova announcements, as discussed at length above, serious issues surrounding loss causation and the amount of any damages for the January 28, 2015 disclosures that could be linked to the Registration Statement persisted. Indeed, while those Class Members who held Cnova ordinary shares on January 29, 2015 will be credited under the Plan of Allocation with 50% of their best possible recoverable damages for that claim, had Lead Plaintiffs lost that claim based on Defendants' anticipated negative loss causation defense, the highest possible damages they could recover at trial for the Class, assuming complete victory on all other issues in the Action and enforceability of a judgment, would have been $14,570,000, far less than the $28,500,000 recovered here.

197. Additionally, here, all of Lead Counsel's negotiations, considerations and analyses of the Settlement throughout the litigation, including in this Declaration, are based on Dr. Nye's calculations of damages resulting from the December 18, 2015, January 28, 2015 and February 24, 2016 Cnova announcements. It should be noted that Dr. Nye based those calculations on a two-day window for absorption of information by the market related to the January 28, 2015 and December 18, 2015 disclosures. The two-day window has the effect of materially increasing aggregate Class Members' damages attributable to those alleged partially curative disclosures. Although Dr. Nye explains his reasons for using a two-day absorption period, *see* Nye Declaration at ¶11-15, and Lead Counsel believes it was appropriate and justifiable in this case, the use of a two-day absorption window for public information (particularly corporate earnings reports like the January 28, 2015 announcement), however, is by

no means unanimously accepted in the financial community and peer reviewed literature.

198. Defendants would argue that the two-day period for those two disclosure dates (assuming they are both partially curative and meet the loss causation requirement) is not proper and that, under the universally accepted efficient market hypothesis, only a one-day absorption period is proper. Had Defendants succeeded as to eliminating the second absorption date related to either or both of the January and December 2015 disclosures, Defendants would have succeeded in reducing recoverable damages by a significant amount. *See* Nye Decl. at pp. 6-8. Indeed, the fact that Lead Counsel successfully negotiated a settlement with such a high recovery percentage of the Class Members' estimated maximum recoverable damages is extraordinary given that the damages estimates were predicated on two-day absorption windows.

199. In the end, the issue of damages would have degenerated into a "battle of experts," and whose experts the jury would believe is a risk not practically measurable in advance of trial. Thus, Lead Plaintiffs were at risk that the jury might not resolve the "battle of experts" over causation and damages in favor of the Class.

The Risk of Maintaining the Class Action Through the Trial

200. A very significant procedural risk Lead Plaintiffs faced was that the Court had not yet certified the class. Absent this Settlement, Defendants would likely have vigorously opposed class certification, including for reasons such as reliance.

201. While Lead Plaintiffs believe that their motion to certify the Class would have been granted (and certification would have survived any attempts at a FED. R. CIV. P. 23(f) appeal), Lead Counsel recognized the real risk that the Court might not certify a class at all and, even if it did, might certify a smaller class than the one proposed, increasing the risk of no recovery for some, potentially large segment of the Class, such as refusing to certify the Class for claims related to the January 2015 disclosure.

202. Moreover, a risk related to class certification is the fact, discussed above, that, assuming success on the merits in this Court on behalf of the Class, some of the foreign countries in which Lead Plaintiffs would seek to enforce the judgment would not afford it full faith and credit. Here, Lead Plaintiffs would have sought a traditional FED. R. CIV. P. 23(b)(3) opt-out litigation class. However, if certain subject countries where Lead Plaintiffs would need to enforce a judgment only recognize opt-in class judgments, the form of the class certification could have presented serious difficulties. On the other hand, while it is possible (although to Lead Counsel's knowledge unprecedented) to seek certification of an opt-in class in a federal securities action, opt-in classes are notorious for under participation by eligible class members. Accordingly, Lead Plaintiffs may have been faced with a Hobson's dilemma: obtain certification of an opt-out class and potentially be unable to enforce some or all of the class judgment, or obtain an opt-in class and potentially reduce the size of the class (and the attendant damages) significantly.

The Ability of the Defendants to Withstand a Greater Judgment

203. The Settlement Amount may be considered in the context of the collectability of a greater judgment. The Settlement is being paid from available insurance coverage. Those policies, however, are wasting policies that pay for the cost of defense as well as for any future finding of liability or a settlement. Here, had the Action continued, the amount of available insurance to pay a recovery would have continued to diminish. Absent available insurance coverage, the ability to collect on any judgment equal to or greater than the Settlement was, for many of the reasons already discussed, a significant risk to continued litigation

204. Adding to the obstacles facing Lead Plaintiffs in settling this Action is the fact that Cnova has four tiers of insurance coverage underwritten by different carriers. In order to obtain the Settlement here, multiple layers of insurance carriers needed to agree. In the event of

a trial, the potential for one or more of Cnova's insurance carriers to seek to disclaim coverage is not simply a theoretical risk. It can be easily argued, although not an element of Lead Plaintiffs' claims, that the conduct of the Brazilian subsidiary's management was outright fraud. Like any directors' and officers' insurance policy, there are coverage exclusions for fraud in the application or fraudulent conduct causing the insurance claim. The Settlement obviates this risk and assures the Class recovery from those insurance proceeds.

The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation

205. The comparison of the most likely recoverable damages on a class wide and projected claims basis is discussed at length above. In sum, based on aggregate Section 11 damages, which were estimated at $45.6 million, the Settlement represents a 62.5% recovery. Nye Decl. at ¶20. That is an enormous percentage recovery in a federals securities class action. *See* Miller Decl. at ¶¶26-30; *see* Settlement Brief at 24-25. Similarly, given the risks of litigation, and the typical percentage of compensable damages recovered in securities class action litigation, *see* Miller Decl. at ¶¶26-30 (citing statistics; stating that the median settlement as a percentage of "estimated damages" was 10.8% of "estimated damages" for 2006-2015 and 7.3% in 2016 for settlements of $50 million and less), the comparison here of the Settlement to the hypothetical best possible recovery militates very strongly in favor of final approval of the Settlement. Indeed, as discussed in the Settlement Memorandum, courts in this Circuit and elsewhere, have typically found percentage recoveries far, far lower than the recovery here to be within the range of reasonableness for settlement. *See id.* at 24-25 (citing cases).

206. Furthermore, taking into account the estimate of claims likely to be made, which result in the percentage recoveries represented by the Settlement for the Class Members' claims related to the December 2015 and February 2016 disclosures potentially rising to 100% of their

most likely recoverable damages in the Action, and Class Members' claims related to the January 2015 disclosures potentially rising to 87% of their most likely recoverable damages in the Action, the $28,500,00.00 is not only reasonable, but a very excellent result.

* * *

207. In sum, through many months of analysis and negotiation, the Parties compromised their differences and reached the agreement that is embodied in the Stipulation. In view of the $28,500,000.00 Settlement that has been recovered for the Class, the sharply contested factual and legal issues (both as to liability and damages), and the uncertainties and enormous costs and delays inherent in continuing the litigation, Lead Counsel believes the Settlement to be an excellent result and urge its approval by the Court.

THE PLAN OF ALLOCATION

208. As set forth in the Notice, Lead Counsel prepared the Plan of Allocation (in consultation with Dr. Nye) for the distribution of the proceeds of the Settlement. The objective of the proposed Plan of Allocation is to distribute equitably the net proceeds of the Settlement to those Class Members who suffered losses as a result of the alleged misrepresentations and omissions. Thus, the proposed division of the proceeds of the Settlement among claiming Class Members is based upon the formula that results in Lead Plaintiffs' best possible damages assuming success on the merits for all claims of the Class Members at the various junctures during the Class Period. Since the proposed allocation reflects the best possible damages theory that Lead Counsel believes could have been proffered at trial, Lead Counsel submits that the Plan of Allocation is eminently fair, reasonable, and equitable. *See also* Nye Decl. at ¶¶22-27.

209. The Plan of Allocation, which is fully set forth in Section IX of the Notice, *see* Fraga Aff., Ex. 1, and below, provides for the calculation of "Recognized Losses" for those Class Members who file timely and properly completed Proof of Claim forms ("Authorized

Claimants"). In sum, the calculation of Recognized Loss, which is step-by-step set forth in the Notice, is based on the dates and prices Cnova ordinary shares were purchased; whether those shares were sold, and if sold, when and for what price; the price of the shares in the IPO; and the price of the shares when the first complaint was filed in this Action. Class Members will be eligible to participate in the distribution only to the extent they had a net loss on their overall transactions in Cnova ordinary shares during the Class Period. If a Class Member had a net gain from his/her overall transactions in Cnova ordinary shares during the Class Period, the value of the Recognized Loss will be zero:

> For each Cnova ordinary share purchased or otherwise acquired by a Class Member during the Class Period the Recognized Loss per share shall be calculated as follows:
>
> I. For each Cnova ordinary share purchased during the period November 19, 2014 through January 28, 2015, inclusive, including those shares purchased directly from an underwriter or its agent in the Offering,
>
> a. that was sold prior to January 29, 2015, the Recognized Loss per share is $0.
>
> b. that was sold on January 29, 2015, the Recognized Loss per share is *the lesser of*
>
> i. $0.55; or
>
> ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the sale price.
>
> c. that was sold during the period January 30, 2015 through December 18, 2015, inclusive, the Recognized Loss per share is *the lesser of*
>
> i. $0.91; or
>
> ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the sale price.
>
> d. that was sold on December 21, 2015, the Recognized Loss per share is *the lesser of*
>
> i. $1.44; or
>
> ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the sale price.
>
> e. that was sold during the period December 22, 2015 through January 19, 2016, inclusive, the Recognized Loss per share is *the lesser of*
>
> i. $1.59; or
>
> ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the sale price.
>
> f. that was sold during the period January 20, 2016 through February 23, 2016, inclusive, the Recognized Loss per share is *the lesser of*

i. $1.59; or

ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the higher of the sale price or $2.28 (*i.e.*, the price of Cnova ordinary shares on January 20, 2016, when the first complaint was filed in this Action).

g. that was sold on or after February 24, 2016, inclusive, the Recognized Loss per share is *the lesser of*

i. $1.77; or

ii. the purchase price (not to exceed the $7.00 offer price) *minus* the higher of the sale price or $2.28 (*i.e.*, the price of Cnova ordinary shares on January 20, 2016, when the first complaint was filed in this Action).

II. For each Cnova ordinary share purchased by a Class Member during the period January 29, 2015 through December 18, 2015, inclusive,

a. that was sold prior to December 21, 2015, the Recognized Loss per share is $0.

b. that was sold on December 21, 2015, the Recognized Loss per share is *the lesser of*

i. $0.53; or

ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the sale price.

c. that was sold during the period December 22, 2015 through January 19, 2016, inclusive, the Recognized Loss per share is *the lesser of*

i. $0.68; or

ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the sale price.

d. that was sold during the period January 20, 2016 through February 23, 2016, inclusive, the Recognized Loss per share is *the lesser of*

i. $0.68; or

ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the higher of the sale price or $2.28 (*i.e.*, the price of Cnova ordinary shares on January 20, 2016, when the first complaint was filed in this Action).

e. that was sold on or after February 24, 2016, the Recognized Loss is *the lesser of*

i. $0.86; or

ii. the purchase price (not to exceed the $7.00 offer price) *minus* the higher of the sale price or $2.28 (*i.e.*, the price of Cnova ordinary shares on January 20, 2016, when the first complaint was filed in this Action).

III. For each Cnova ordinary share purchased by a Class Member during the period December 21, 2015 through February 23, 2016, inclusive, and

a. that was sold prior to February 24, 2016, the Recognized Loss per share is $0.

b. that was sold on or after February 24, 2016, the Recognized Loss per share is *the lesser of*

i. $0.18; or
ii. the purchase price (not to exceed the $7.00 Offering Price) *minus* the higher of the sale price or $2.28 (*i.e.*, the price of Cnova ordinary shares on January 20, 2016, when the first complaint was filed in this Action).

210. An Authorized Claimant's total Recognized Loss is the sum total of his, her or its per share Recognized Loss for each Cnova ordinary share purchased during the Class Period. For purposes of determining whether a Claimant has a Recognized Loss, purchases, acquisitions, and sales of like ordinary shares will first be matched on a First In/First Out basis. To the extent that a calculation of a per share Recognized Loss results in zero or a negative number, that number shall be set to zero.

211. For all purposes, the transaction date and not the settlement date shall be used as the date for determining eligibility to file a claim. The covering purchase of a "short" sale is not an eligible purchase. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than $5.00.

212. Finally, under the Plan of Allocation, if the sum total of Recognized Losses of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Loss bears to the total of the Recognized Loss of all Authorized Claimants (*i.e.*, on a *pro rata* basis). Class Members who do not file acceptable Proofs of Claim will not share in the settlement proceeds. Class Members who do not file an acceptable Proof of Claim and do not opt-out of the Class will nevertheless be bound by the judgment and the Settlement. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court approves the final calculations and distributions to be made to Class Members.

213. The Plan of Allocation here developed with the assistance of Dr. Nye mirrors Dr.

Nye's method and calculations for estimating per-share damages that Lead Plaintiffs would most likely have proffered at trial, and represents Lead Plaintiffs' estimate of the highest likely damages awards that could be obtained in the litigation. Nye Decl. at ¶23. However, as discussed above, claims for Cnova ordinary shares purchased during the Class Period and held on January 29 and 30, 2015 involved difficulties of proof and potential negative causation defenses that justified an adjustment under the Plan of Allocation of the per-share Recognized Losses incurred on those dates of 50%. *Id.* at ¶23. Dr. Nye opined that the Plan of Allocation is fair and reasonable because the per-share Recognized Loss formulas used in the Plan of Allocation are based on the per-share compensable loss figures that SCG calculated for litigation purposes as the estimated maximum amounts of damages Class Members could likely recover at trial. *Id.* at ¶26. He also opined that as to the 50% discount applied in the Plan of Allocation for losses attributable to the January 28, 2015 corrective event was reasonable and justified due to the uncertainty as to whether the poor fourth quarter results represented a partial realization of the Company's true operating prospects and the heightened risk that Defendants could mount a viable negative causation defense, thereby precluding any recovery for the attendant losses (*i.e.*, $31 million of Dr. Nye's $45.6 million in total Class-wide estimated damages). *Id.* at ¶27.

214. As noted above, although the deadline has not yet passed, Lead Counsel has not received any objections to the Plan of Allocation to date. If any objections are received by the deadline, Lead Counsel will address any additional issues resulting from the objections in Lead Plaintiffs' supplemental papers scheduled to be submitted on February 22, 2018, which is 21 calendar days prior to the final approval hearing. *See* Preliminary Approval Order at ¶16.

215. In sum, the Notice and notice procedure pursued not only meets the customary requirements in federal securities cases that have been consistently held to satisfy FED. R. CIV. P. 23(c), 23(e), the PSLRA, and due process, but the detail in the Notice and the additional

procedures Lead Counsel pursued through multiple publication notices and arrangements with the Underwriter Defendants to give special attention to disseminating the Notice and Proof of Claim form to their customers exceed the notice requirements typically approved and found sufficient by courts in federal securities law class action settlements.

LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES

216. For their extensive, and highly successful efforts on behalf of the Class, Lead Counsel is applying for compensation to be calculated on a percentage basis. As set forth in the accompanying Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Fee Memorandum"), the percentage method for awarding attorneys' fees in this Action is the appropriate method of fee recovery 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. The percentage method is also supported by public policy, has been recognized as appropriate by the United States Supreme Court in common fund cases, is the authorized method under the PSLRA, and represents the overwhelming current trend in the Second Circuit as well as in the other Circuits. *See* Fee Memorandum at 5-6; Miller Decl. at ¶¶18, 21-22. As demonstrated below, the factors relevant to the award of attorneys' fees in securities class actions all support the requested fee award here.

The Magnitude, Complexities, and the Risk of The Litigation

217. The magnitude, complexities and the risk of the litigation is described in detail above. *See also* Miller Decl. at ¶¶41-51; Fee Memorandum at 7-13.

218. Moreover, Lead Counsel prosecuted this case on a fully contingent basis, committed their own resources, and litigated it without any compensation or guarantee of

success. As set forth in detail above, at the outset, each of the attorneys representing Lead Plaintiffs understood they were embarking on a difficult, complex, expensive, lengthy, and in many respects, highly unusual case. Lead Counsel understood that Defendants would (and, in fact, did) retain highly experienced large corporate defense firms to mount a vigorous defense, and that there was no guarantee of ever being compensated for the anticipated enormous investment of time and money the case would require.

219. Undertaking a federal securities action on a contingency is, itself, a high risk endeavor, with a majority of such cases being dismissed at the pleading stage. Indeed, according to a NERA Economics Consulting, in 2016 "[f]or the first time since passage of the PSLRA, more cases were dismissed than settled – in fact, almost a third more cases were dismissed than settled. *See* Stephan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review*, NERA Economic Consulting, Jan. 23, 2017, at p. 24. Furthermore, the law governing federal securities cases remains in constant flux and prior assumptions could have been swept away at any point during the course of the Action. *See* Miller Decl. at ¶42; Fee Memorandum at 12. Indeed, just on December 8, 2017, the Supreme Court granted certiorari in yet another federal securities class action, *China Agritech v. Resh*, No. 17-432 (*cert. granted*, Dec. 8, 2017) in which the Court is expected to review and potentially revise the rules governing tolling of the statutes of limitations on individual class members' claims in class actions.

220. There are numerous cases in which Lead Counsel, in contingent fee cases such as this, after expenditures of thousands of hours, have received no compensation whatsoever. Counsel know from personal experience that despite the most vigorous and competent of efforts, a law firm's success in contingent litigation such as this is never assured – and that many able plaintiffs' law firms have suffered major defeats after years of litigation (and after expending

tens of millions of dollars of time and money) without receiving any compensation at all for their efforts. However, Defendants and their counsel know that Lead Counsel, who include leading members of the Plaintiffs' bar, are prepared and willing to go to trial, which permits meaningful settlement in actions such as this.

221. Notwithstanding the tremendous risks faced in pursuing this Action, Lead Counsel undertook this Action on a fully contingent basis. Had Lead Plaintiffs not prevailed or achieved a favorable settlement in the Action, Lead Counsel would have sustained a substantial financial loss. Nevertheless, Lead Counsel devoted 3,741.80 hours of time and advanced over $160,000.00 in out-of-pocket expenses to prosecute this Action. Clearly, Lead Counsel undertook a significant risk to represent the Class here.

222. It would also be wrong to ignore the responsibility undertaken by Lead Counsel in agreeing to represent the Class in the Action in terms of foregoing other potential employment during the litigation to assure sufficient resources were dedicated to the prosecution of this Action. Another factor is the attorney's loss of the use of the money invested during the course of the litigation. Attorneys representing hourly fee-paying clients are paid immediately, with the money available for investment and the creation of additional revenues. Such additional revenues are not available to the contingent fee attorney. Lawsuits such as this Action are exceedingly expensive to litigate. Outsiders often focus on the gross fees awarded but ignore that those fees are used to fund overhead expenses incurred during the course of many years of litigation, are taxed by federal, state, and local authorities, and, when reduced to a bottom line, are far less imposing to each individual firm involved than the gross fee award might suggest.

The Quality of the Representation

223. The expertise and experience of Lead Counsel is another important factor in setting a fair fee. As demonstrated by Lead Counsel's firm resume, *see* Exhibit F to the

Appendix, the attorneys at Brower Piven are experienced and skilled practitioners in the securities litigation field and have a successful track record in securities cases throughout the country – including within this Circuit. Miller Decl. at ¶40.

224. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Lead Plaintiffs were opposed in this case by very skilled and highly-respected counsel. Defendants were represented by White & Case LLP, Morrison & Foerster LLP, Wachtell, Lipton, Rosen & Katz, and O'Melveny, some of the most prestigious law firms in the world. These prominent defense firms spared no effort or expense in the defense of their clients. In the face of this knowledgeable and formidable defense, Lead Counsel was nonetheless able to develop a case that was sufficiently strong to persuade the Defendants to settle on terms quite favorable to the Class. *See* Miller Decl. at ¶39. Furthermore, Defendants were made aware that Lead Counsel was not going to back down until satisfied with the settlement result, as evidenced by Lead Counsel litigating *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig*., No. 3:05-CV-02367 (MDL 1658) (D.N.J.) for over twelve years, and which only settled shortly before trial in early 2016, with the assistance of Judge Phillips.

225. Moreover, Lead Counsel achieved this outstanding Settlement through their own skill, effort, and initiative. Lead Counsel received no outside or governmental assistance. *See* Miller Decl. at ¶46. Lead Counsel achieved this result without expending unnecessary time and expenses, or burdening the Court with unnecessary motion practice.

The Requested Fee Award in Relation to the Settlement

226. When determining whether a fee request is reasonable in relation to a settlement amount, the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.

227. Lead Counsel's fee request is well within the range of awards typically granted

for cases that have been contested for this length of time.[14] In private contingent litigation, plaintiffs' attorneys generally undertake representation for fees of one third (1/3) to 40% of the potential recovery, plus expenses. Courts in this Circuit and elsewhere have routinely awarded 33.33% of a class action recovery in attorneys' fees. *See* Fee Memorandum at 14-16 (citing numerous cases); Miller Decl. at ¶¶35-36 (citing cases) & Exs. 1 and 2 thereto.

228. Likewise, Lead Counsel are seeking an award that would represent a 3.79 multiplier of their lodestar. Multipliers are usually awarded to compensate successful plaintiffs' attorneys for the contingent nature of the their fee arrangement, the long delay in payment, the responsibilities and risks undertaken in complex class action litigation and the incentivizing nature of such success awards to assure prosecution of claims of small investors to vindicate the federal securities laws. *See* Fee Memorandum at 22-23; Miller Decl. at ¶¶89-90. Thus, the requested fee is well within the amount of awards in similar cases whether analyzed under the percentage-of-the-recovery method or the lodestar/multiplier method.

The Time and Labor

229. The work undertaken by Lead Counsel in prosecuting this case and arriving at this Settlement in the face of substantial risks has been time-consuming and challenging. Lead Counsel performed a wide range of tasks necessitated by the complexity of both the underlying facts presented by this case, including the foreign aspects, and the sophisticated legal issues that naturally arise under the federal securities laws. These efforts included, among many other things, conducting extensive factual investigations into the events and circumstances underlying the claims in the complaints, which uncovered substantial information about the Company that form the basis of Lead Plaintiffs' detailed and particularized complaints; interviewing the lead

[14] Awards of attorneys' fees that have been approved in other similar securities class action cases have been compiled and discussed in Lead Counsel's accompanying Fee Memorandum.

investigator and counsel for Cnova in connection with the Company's internal investigation that resulted in revealing the misstatements of financial information in the Registration Statement and the ultimate restatement of Cnova's prior reported financial results to discuss the forensic analysis that was completed during that investigation; obtaining and reviewing filings with the SEC, as well as press releases, analyst reports, and other relevant documents; thoroughly researching the law relevant to the claims against Defendants; serving the Defendants in foreign countries; briefing the mediation statements; reviewing approximately one million pages of documents, including those obtained from Defendants; consulting with foreign attorneys; consulting with experts in accounting and the Brazilian economy; conferring repeatedly over the course of the litigation with counsel for Defendants to resolve innumerable disputes; working with their experts to assess and calculate recoverable damages; negotiating the Settlement; developing the Plan of Allocation; preparing the Stipulation with its accompanying exhibits; and drafting all preliminary and final settlement papers presented to the Court to effectuate the Settlement. *See also* Miller Decl. at ¶¶77-82

230. The chart below lists the identity and level of each attorney and paraprofessional at Brower Piven who worked on this Action, each of their current billing rates and the number of hours each devoted to this Action. Attached as Exhibit F to the Appendix, the Brower Piven firm resume describes the backgrounds, education and experience of each of the persons listed below. The total hourly charges of Lead Counsel in this Action, on a current basis (*i.e.*, their "lodestars"), is $2,502,956.25 on 3,741.80 hours of time. On an hourly basis, therefore, the requested fee of $9,500,000 is equivalent to a multiplier of 3.79 of the time charges of Lead Counsel:

Inception through December 12, 2017

Name	Status	Rate	Total Hours	Total Lodestar
David A.P. Brower	Managing Director	$995.00	688.25	$684,808.75
Charles J. Piven	Managing Director	$900.00	70.90	$63,810.00
Richard Weiss	Director	$900.00	87.75	$78,975.00
Brian C. Kerr	(Former) Director	$775.00	20.40	$15,810.00
Yelena Trepetin	Associate	$645.00	370.50	$238,972.50
Maria J. Stephen	Brazilian Of Counsel	$625.00	309.50	$193,437.50
Daniel Kuznicki	Associate	$600.00	708.80	$425,280.00
Gabriella Ortigara Girardi	Brazilian Of Counsel	$600.00	466.75	$280,050.00
Aline Guedes Klein	Brazilian Of Counsel	$600.00	321.75	$193,050.00
Mario Rocha	Brazilian Investigator/Reviewer	$500.00	96.75	$48,375.00
Eduarda Rocha-Waid	Brazilian Investigator/Reviewer	$500.00	203.70	$101,850.00
Michael Zoldan	Associate/Paraprofessional	$450.00	396.75	$178,537.50
TOTALS:			**3741.80**	**$2,502,956.25**

231. Lead Counsel maintained daily control and monitoring of the work performed by lawyers and paraprofessionals on this case. While I, the senior attorney at my firm, personally devoted substantial time to this case, other experienced attorneys at my firm undertook particular tasks appropriate to their levels of expertise, skill and experience, and more junior attorneys and paralegals worked on matters appropriate to their experience levels. Throughout the Action, I allocated work assignments among the attorneys at my firm to avoid unnecessary duplication of effort with the goal of providing efficient, low-cost representation to the Class.

232. Lead Counsel's billing rates are consistent with (and, indeed, lower than) rates charged in the communities in which they practice, including in the New York City and Baltimore legal communities. Lead Counsel's rates are also commensurate with (and, again, lower than) rates charged by attorneys of comparable skill, reputation and experience who specialize in the defense of securities fraud litigation. *See* Miller Decl. at ¶¶58-76. Indeed, as noted by the ABA Journal, billing rates for partners at the types of firms that Lead Counsel must litigate against have long exceeded $1,000 an hour and, as reported early last year, partner rates

approaching $1,500.00 per hour at those firms have become common. *See* Miller Decl. at ¶64 (citing *See* ABA Journal, "Top Partner Billing Rates at BigLaw Firms approach $1,500 Per Hour." 8 Feb. 2016). By comparison, the rates for partner level attorneys at Brower Piven who worked on this case range from $775 to $995 per hour.

233. The rates for the Brower Piven associates who worked on the case range from $450 to $645 per hour, with a blended rate of $565, which is notably lower than the rates of associates at White & Case, which was billing up to $665 for associates admitted in 2009. At Morrison & Foerster, counsel for defendant Quiroga, associates licensed in 2008 billed as high as $825 per hour. Also, O'Melveny, counsel for the Underwriters, billed attorneys admitted in 2007 and 2008 at $775 in 2016 according to bankruptcy filings. *See* Miller Decl. at ¶72.

234. The resulting lodestar for Lead Counsel, which excludes all time spent on Lead Counsel's request for attorneys' fees and reimbursement of expenses, is $2,502,956.25. The total requested fee of one-third of the Settlement Fund, therefore, yields a 3.79 multiplier and is fair and reasonable based upon the significant risk of the litigation, the results achieved, the time devoted to the Action, the reputation of counsel, awards in similar cases, and the quality of representation by Lead Counsel in achieving the excellent Settlement before the Court. Indeed, as discussed in the Fee Memorandum and the Miller Declaration, whether using a lodestar/multiplier approach to determine a reasonable fee award or as a cross-check for a percentage fee award, courts have awarded fee requests with lodestar multipliers equal to, and far larger in securities fraud class actions than the 3.79 requested by Lead Counsel and those awards were consistently in cases where the results achieved did not even approach the extraordinary percentage recovery of class members' likely recoverable damages at trial. *See* Miller Decl. at ¶¶89-90.

Public Policy Considerations

235. As set forth in the Fee Memorandum, the United States Supreme Court and countless lower courts have repeatedly and consistently recognized that the public has a strong interest in having experienced and able counsel be incentivized to undertake the risky task, on a contingent basis, of privately enforcing the federal securities laws and related regulations designed to protect investors from the pernicious effects of false and misleading statements made in connection with the issuance or subsequent purchase or sale of publicly-traded securities. *See* Fee Memorandum at 18-19; *see also* Miller Decl. at ¶¶92-93. The importance of this public policy is particularly evident in this case. Government authorities (including the SEC) can only bring a certain amount of securities law enforcement actions against companies at a time. Here, the Company disclosed in a July 22, 2016 press release that:

> Cnova also announced today the conclusion of the internal review at its Brazilian subsidiary, Cnova Brazil. In December 2015, the Company's board of directors engaged external counsel to assist with an internal review of suspected employee misconduct related to inventory management. The internal review was later expanded to include certain accounting issues. The commencement of the internal review was disclosed on December 18, 2015. These matters were also reported in December 2015 to the staff of the SEC's Division of Enforcement as well as the French Autorité des Marchés Financiers (AMF) and the Dutch Authority for the Financial Markets (AFM). The Company's cooperation with these agencies is ongoing.

236. Nevertheless, no formal proceedings by the SEC against Cnova have been commenced. Instead, without any assistance from any government authority, Lead Counsel has recovered $28,500,000.00 on behalf of Cnova investors. Such recoveries – and the complex, difficult and high risk litigation necessary to achieve them – are only possible if plaintiffs' counsel is ultimately compensated with fees commensurate with the magnitude of the risk they undertook and the results they achieve.

237. As to the reaction of Class Members to the fee request, as set forth above, over

9,000 copies of the Notice have been mailed to potential Class Members. *See* Fraga Aff. at ¶7. In addition, the Publication Notice was disseminated on *PR Newswire* and *Business Wire* on three separate, spaced-out occasions. *Id*. at ¶8. The Notices described Lead Counsel's intention to apply to the Court for an award of attorneys' fees not to exceed 33.33% of the Settlement Fund. The deadline to object to Lead Counsel's fee request is January 24, 2018, but to date, no Class Member has objected to either of this request.

238. Based upon all of the foregoing, and for the reasons set forth in the Fee Memorandum, Lead Counsel submit that the request for an award of one-third (33.33%) of the Settlement Fund is fair and reasonable and should be granted.

239. Importantly, if the full 33.33% is granted, pursuant to the terms of the Settlement, although typically allowed, Lead Counsel will not be seeking any fees related to time devoted to maintenance of the Settlement Fund, or administration and distribution of the proceeds of the Settlement, which could be significant, as it entails supervising GCG, communicating with Class Members regarding claims administration matters, resolving issues relating to the treatment of claims, addressing questions from claimants, reviewing correspondence by GCG with claimants, investing the proceeds of the Settlement, and preparing documentation necessary to make the distributions to Claimants.

LEAD COUNSEL'S APPLICATION FOR REIMBURSEMENT OF EXPENSES

240. Lead Counsel also request $163,778.44 as reimbursement of their out-of-pocket litigation expenses reasonably and necessarily incurred by them in the prosecution of this Action.

241. From the beginning of the case, Lead Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Lead Counsel also understood that, even assuming that the case was ultimately successful, an award of expenses would not compensate them for the loss of the use of

those funds advanced to prosecute this Action. Thus, Lead Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

242. The following chart details the expenses incurred by Lead Counsel by category:

Phillips ADR (Mediator)	$	33,229.17
Stanford Consulting (Damages Expert)	$	80,990.00
Legal Language Services (Translation/Foreign Service)	$	16,520.00
Professor Albert Fishlow (Brazilian Economy Expert)	$	10,000.00
W Legal (British law firm)	$	1,944.14
AccessData/Document Management/Software & Licenses	$	9,323.99
Reproduction/Printing	$	3,853.50
Express Mail/Messenger/Postage	$	2,340.84
Computer Research/Pacer/Lexis/Westlaw	$	1,659.87
Travel/Meals/Hotels	$	3,356.81
Court Reporters	$	330.12
Special Supplies	$	230.00
TOTAL	$	163,778.44

243. As the above chart indicates, the expenses incurred by Lead Counsel are the types typically and necessarily incurred in modern complex business litigation and the types that courts routinely reimburse in securities and antitrust class actions. These expenses include the cost of experts and consultants; translation services and foreign service of process; computer research; photocopying; telephone; postal and express mail charges; hand delivery charges; charges for transcripts; costs associated with the software and maintenance charges for the electronic document organization and coding platform provided by an outside vendor for this case; the mediator's fees; travels expenses related to court appearances, discovery and the mediations; and other similar case-related costs. *See* Fee Memorandum at 23-25.

244. The expenses incurred in this Action are reflected on the books and records of Brower Piven. These books and records are prepared from expense vouchers, check records and

other primary source materials, and are an accurate record of the expenses incurred. The bills, receipts and other records reflecting the firm's expenses are available for inspection at the Court's request.

245. I believe the foregoing expenses were reasonably and necessarily incurred in the prosecution of the Action and that they were essential to obtaining result achieved for the Class.

246. Moreover, the requested reimbursement of expenses is significantly less than the limit of Lead Counsel's prospective requests of $300,000 set forth in the Notices. Nevertheless, as of the date of this Declaration, no objections have been received to that higher potential reimbursement request disclosed to Class Members.

CONCLUSION

Based on all the factors discussed above, as well as my extensive experience in the litigation of securities class actions, I believe that the proposed Settlement, which provides a very substantial recovery to the Class, is fair, reasonable, and adequate, and should be approved; that the Plan of Allocation of the net proceeds of the Settlement, which mirrors the formulas Lead Plaintiffs would have used at trial to prove Class Members' damages, is fair and equitable and should be approved; and that Lead Counsel's requested award of attorneys' fees and reimbursement of litigation expenses are fair and reasonable and should be granted.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 22nd day of December, 2017 at New York, New York.

/s/ *David A.P. Brower*
David A.P. Brower