UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

In re ENVISION HEALTHCARE CORPORATION SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Civil Action No. 3:17-cv-01112 (**Consolidated with Case Nos. 3:17-cv-01323 and 3:17-cv-01397**) CLASS ACTION Honorable William L. Campbell, Jr. Magistrate Judge Jeffery S. Frensley

DECLARATION OF CHRISTOPHER M. WOOD IN SUPPORT OF: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARDS TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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I, CHRISTOPHER M. WOOD, declare as follows:

1. I am a member of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Class Counsel"), counsel of record for Plaintiffs Laborers Pension Trust Fund for Northern California, LIUNA National (Industrial) Pension Fund and LIUNA Staff & Affiliates Pension Fund ("LIUNA Funds"), Central Laborers' Pension Fund, and United Food and Commercial Workers Union Local 655 Food Employers Joint Pension Fund ("Plaintiffs"). I was actively involved in the prosecution of this action (hereinafter the "Litigation"), am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my supervision of, and participation in, all material aspects of this Litigation.[1]

2. I submit this Declaration in support of Plaintiffs' application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of: (a) the settlement of $177.5 million for the benefit of the Class; (b) the proposed Plan of Allocation of the Settlement proceeds; and (c) the application for attorneys' fees and expenses and the application for expenses by Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4).

3. The Class, preliminarily certified by the Court in its Order Preliminarily Approving Settlement and Providing for Notice (ECF 459), is defined as:

> [A]ll Persons who purchased or otherwise acquired the common stock of Envision Healthcare Corporation and/or Envision Healthcare Holdings, Inc. ("Envision") between February 3, 2014 and October 31, 2017, inclusive (the "Class Period"), including common stock purchased or otherwise acquired in or traceable to the December 1, 2016 merger between AmSurg Corp. and Envision Healthcare Holdings, Inc. Excluded from the Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) Envision's subsidiaries or other entities owned or controlled by Envision; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Persons who properly exclude themselves by submitting a valid and timely request for exclusion.

[1] Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Stipulation of Settlement, filed on September 22, 2023 (ECF 451) (the "Stipulation").

I. SUMMARY OF LITIGATION AND REASONS FOR SETTLEMENT

4. This action was brought against Envision Healthcare Corporation ("Envision" or the "Company"), William A. Sanger ("Sanger"), Randel G. Owen ("Owen"), Craig A. Wilson, Todd G. Zimmerman, Carol J. Burt, Mark V. Mactas, Leonard M. Riggs, Jr., Richard J. Schnall, James D. Shelton, Michael L. Smith, Ronald A. Williams, Christopher A. Holden ("Holden"), Claire M. Gulmi ("Gulmi"), Kevin D. Eastridge, Thomas G. Cigarran, James A. Deal, John T. Gawaluck, Steven I. Geringer,[2] Henry D. Herr, Joey A. Jacobs,[3] Kevin P. Lavender, Cynthia S. Miller, John W. Popp, Jr., and Clayton, Dubilier & Rice, LLC, together with certain of its affiliated entities (collectively, "Defendants") on behalf of the Class for violations of §§10(b), 14(a), 20A, and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and violations of §§11, 12(a)(2), and 15 of the Securities Act of 1933 ("Securities Act"). This case was vigorously litigated until the proposed Settlement was reached on August 29, 2023.

5. Plaintiffs alleged, among other things, that Defendants misled investors about: (a) the underperformance of certain hospital contracts that EmCare, Envision's largest business segment, entered into in 2014-2015; and (b) the fact that, and the extent to which, EmCare relied on an undisclosed and unsustainable out-of-network[4] billing scheme as a driver of revenue and EBITDA growth. Plaintiffs intended to prove at trial that Envision perpetrated this fraud by:

- Hastily entering into certain contracts with hospitals with little or no due diligence, causing lost revenue and earnings from the contracts failing to perform;

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[2] Steven I. Geringer passed away in September 2022 and, Linda Geringer, Executor of the Estate of Steven I. Geringer, was substituted as a Defendant. ECF 434.

[3] Joey A. Jacobs passed away in January 2023. ECF 426.

[4] In general, "out-of-network," "non-participating," or "non-par" billing occurs when a healthcare provider does not have a contract or agreement with a patient's insurance plan.

- Staffing nearly all of its emergency departments with out-of-network physicians, permitting the Company to bill insurers and patients at vastly higher rates; and
- Balance billing patients for amounts not covered by their insurance.

6. Plaintiffs contend these actions caused Envision's stock to trade at inflated prices, causing economic harm to Class Members when the risks and conditions concealed by Defendants' misrepresentations and omissions, and the economic consequences thereof, materialized. Plaintiffs alleged Defendants concealed material risks to the Company's business, which were revealed through public disclosures on: October 22, 2015, when Envision disclosed an earnings and reduced fiscal year 2015 guidance shortfall caused by underperforming contracts in its EmCare segment; February 28, 2017, when Envision disclosed lower-than-expected fourth quarter 2016 results and reduced 2017 EBITDA expectations; July 24, 2017, when an exposé in *The New York Times* and a study by the National Bureau of Economic Research ("NBER") revealed Envision had a distinct out-of-network strategy that involved taking over hospital emergency rooms; and October 31, 2017, when Envision disclosed a third quarter 2017 guidance miss, a fiscal year guidance reduction, and a projection of zero growth for fiscal year 2018.

7. The settlement of this Litigation was negotiated with the assistance and oversight of the Honorable Layn R. Phillips (Ret.) of Phillips ADR, a highly respected mediator with substantial experience in mediating actions arising under the federal securities laws. The parties engaged in numerous joint mediation sessions and teleconferences with Judge Phillips, during which Plaintiffs and Defendants vigorously advanced and thereafter defended their positions. The parties did not reach a settlement during these sessions; however, Judge Phillips continued to be apprised of the Litigation's status. After careful consideration of the parties' positions, on August 29, 2023, Judge Phillips made a mediator's proposal of a global settlement based upon a cash payment of

$177.5 million. Both sides accepted the mediator's proposal and agreed to the material terms of the Settlement shortly thereafter.

8. The proposed Settlement is the result of hard-fought and contentious litigation pursued by zealous advocates on both sides and takes into consideration the significant risks specific to the case. It was negotiated by experienced counsel for Plaintiffs and Defendants with a comprehensive understanding of both the strengths and weaknesses of their respective positions.

9. Class Counsel and Plaintiffs are pleased with the proposed Settlement and believe it is fair, reasonable, and adequate. Based upon the evidence obtained in discovery, as well as the investigation, research, analysis, and motion practice conducted, Plaintiffs believed their case had significant merit. Plaintiffs also recognized there were significant risks that had to be carefully evaluated in determining what course (*i.e.*, whether to settle and on what terms or whether to continue to litigate through trial and beyond) was in the best interest of the Class. As set forth in further detail below, the specific circumstances involved here presented many risks and uncertainties in Plaintiffs' ability to prevail if the case proceeded to trial and to collect any judgment awarded.

10. Plaintiffs' perseverance through over six years of litigation resulted in the discovery of substantial evidence they believed supported the alleged claims. Class Counsel believed discovery had revealed evidence sufficient to sustain a jury verdict in Plaintiffs' favor, including evidence that Class Members were harmed because they bought shares of Envision common stock at inflated prices due to Defendants' material misrepresentations and omissions.

11. Despite the strength of the evidence developed in discovery, there were substantial risks to Plaintiffs' ability to obtain, protect, and ultimately recover a favorable judgment after trial, including the fact that Envision filed for bankruptcy protection on May 15, 2023, which automatically stayed the proceedings against Envision.

12. Moreover, a continuation of the litigation, which would have entailed completing expert discovery, summary judgment, trial, and any appeals, would have been extremely expensive and time consuming. In accepting the mediator's proposal to settle, Plaintiffs were also cognizant of the inherent risks involved in trial, where Plaintiffs would have had the burden of proving each of the elements of their claims in order to succeed.

13. In reaching the determination to settle, Plaintiffs and Class Counsel have evaluated the documentary evidence, deposition testimony, expert analysis, and legal authority that weigh in favor of and against the claims. All of these factors, together with the other factors discussed herein, were considered by Plaintiffs and Class Counsel in concluding that the mediator's proposal to settle the Litigation for $177.5 million provided fair, reasonable, and adequate consideration in light of the risks and uncertainties of continued litigation.

14. The fee application for 30% of the Settlement Fund is fair to both the Class and Class Counsel, is supported by Plaintiffs, and warrants this Court's approval. This fee request is below similar fee requests approved by courts in this District and the Sixth Circuit and is justified in light of the risks undertaken by Class Counsel, the quality of representation, and the nature and extent of the legal services performed. Class Counsel, as described below, vigorously prosecuted this Litigation on a wholly contingent basis for over six years and advanced or incurred significant litigation expenses. Class Counsel has long borne the risk of an unfavorable result. It has not received any compensation for its substantial efforts, nor have its expenses been reimbursed.

15. Plaintiffs' Counsel should also be awarded their expenses of $1,571,265.44 as the costs and expenses incurred in prosecuting this Litigation were reasonable and necessary in order to achieve the result obtained on behalf of the Class. Class Counsel advanced fees and expenses in relation to: (a) the procurement of experts and consultants whose services Class Counsel required for

a successful prosecution, analysis, and resolution of this case; (b) stenographic and videographer services for depositions; (c) transportation, hotels, and meals when Class Counsel was required to travel; (d) factual and legal research, as well as photocopying, imaging, and printing thousands of pages of documents; (e) litigation database costs for serving, cataloguing, and facilitating the review and analysis of more than 3,200,000 pages of documents; (f) court and witness fees; (g) fees for outside bankruptcy counsel; and (h) mediation fees.

16. As described in detail below, these expenses were reasonably and necessarily incurred to, *inter alia*, plead Plaintiffs' claims with particularity, brief both motions to certify the Class, substantially complete discovery, and obtain a settlement on the terms proposed. It is therefore respectfully submitted that: (a) the Settlement should be approved as fair, reasonable, and adequate; (b) Class Counsel should be awarded attorneys' fees in the amount of 30% of the Settlement Amount and expenses in an amount of $1,571,265.44, plus interest on both amounts; (c) the Plan of Allocation should be approved; and (d) Plaintiffs should be awarded $73,500.47 in the aggregate for their time and expenses in representing the Class.

II. FACTUAL BACKGROUND OF LITIGATION

17. The following is a summary of the nature of the Class' claims, the principal events that occurred during the course of this Litigation, and the legal services provided by Class Counsel.[5]

18. This securities fraud class action was brought on behalf of a Class of investors who purchased or otherwise acquired Envision common stock between February 3, 2014 and October 31, 2017, inclusive, against Envision and certain of its senior insiders. ¶1.

[5] The information in this section is based on the allegations in the Complaint, the evidence produced in discovery, and other sources of information believed to be accurate. However, I do not have personal knowledge of the conduct of Envision's business other than what I have reviewed during the course of discovery. Unless otherwise indicated, references to "¶_" or "¶¶_" are to the Complaint (ECF 369), filed with the Court on December 13, 2021.

19. During the Class Period, Envision was a publicly traded healthcare company whose largest business segment, EmCare, provided outsourced emergency department and hospitalist physician services. ¶¶2, 165.

20. The Complaint alleged Defendants misled investors about: (a) the underperformance of certain hospital contracts EmCare entered into in 2014-2015; and (b) the fact that, and extent to which, EmCare relied on out-of-network billing as a driver of revenue and EBITDA growth throughout the Class Period.

21. Plaintiffs alleged that, in early and mid-2015, Defendants falsely assured the market that the profitability of its recent contract starts was similar to its "'overall EmCare margins'" and that Envision "'expect[ed] to see margin improvement from [its] recent [contract] starts.'" ¶¶99, 102. Despite the fact that these contracts "immediately" suffered from performance problems since "day one," Defendants concealed these performance issues from investors until October 22, 2015 – when Envision announced a significant and surprising 3Q 2015 earnings miss caused by these contracts' underperformance. ¶¶105-112. On this news, Envision's stock fell by over 30%. ¶141.

22. The Complaint also alleged that EmCare's undisclosed out-of-network (*i.e.*, "non-par") billing strategy enabled Envision to bill both health insurers and patients at vastly higher rates than its industry peers throughout the Class Period and propelled the Company to nearly double its annual revenue between 2013 and 2016.

23. Plaintiffs alleged that Defendants made misstatements and omissions relating to the Company's out-of-network exposure and expected synergies in the Joint Proxy/Registration Statement filed in connection with Envision's merger with AmSurg, Inc. ("AmSurg") that was completed on December 1, 2016 (the "Merger"). ¶¶13, 251-253.

24. The truth regarding, and risks concealed by, Defendants' misleading statements and omissions manifested over time. For instance, on February 28, 2017, after the market closed, Envision issued lower-than-expected financial results for 4Q 2016 and FY 2016 and reduced its 2017 EBITDA projections previously reported in the Joint Proxy/Registration Statement for the combined Envision-AmSurg company. ¶¶192, 194. In response to this news, on March 1, 2017, the next trading day, Envision's stock price declined by $4.41 or 6.51%. ¶193.

25. Then, on July 24, 2017, Yale University researchers published a study in the NBER titled: *Surprise! Out-of-Network Billing for Emergency Care in the United States*. ¶¶5, 195. *The New York Times* published an article online the same day detailing how the NBER study had exhaustively analyzed EmCare's pattern and practice of overbilling and reporting how numerous patients were being "ambushed" by EmCare's business strategy into paying unexpected and outrageous charges. ¶16.

26. These disclosures caused a precipitous and immediate decline in Envision's stock price, ¶¶195-196, and prompted former U.S. Senator Claire McCaskill and the Senate Committee on Homeland Security and Government Affairs to initiate an inquiry into EmCare's abusive billing practices. ¶18.

27. The undisclosed risks posed by Envision's out-of-network scheme were further disclosed in October 2017 when the Company released its 3Q 2017 results, slashing its earnings and revenue outlook related to the negative impact on its physician services business. ¶¶199-202. As a result of this disclosure, Envision's stock declined 41.86%. ¶199.

III. PROCEDURAL HISTORY

28. Litigating this case was highly contentious, involving significant disputes at all phases of the case. Defendants mounted vigorous challenges at the pleading and class certification stages, and the parties had numerous disputes over the scope and adequacy of the substantial

discovery produced. Due to the extent of the disputes and communications, thousands of hours of attorney and staff time were required to obtain and review the documents responsive to discovery requests, compel sufficient responses to other discovery requests, and prepare for depositions.

29. Voluminous communications were exchanged between Class Counsel and Defendants' Counsel regarding the scores of disputes that arose during the pendency of the case, including numerous disputes over discovery. Extensive meet and confers were held regarding Defendants' productions of documents responsive to Plaintiffs' discovery requests, as well as regarding disputes concerning the scope of privilege and other protections asserted over information sought in discovery.

30. These efforts, described in more detail below, contributed to the thousands of hours of attorney and staff time that were needed to complete discovery and prepare this case for trial and develop Plaintiffs' claims in the manner that led the mediator to propose, and the parties to agree to, the Settlement now before the Court for approval.

A. Laborers Pension Trust Fund for Northern California, LIUNA National (Industrial) Pension Fund and LIUNA Staff & Affiliates Pension Fund Are Appointed Lead Plaintiff

31. On August 4, 2017, Terry W. Bettis ("Bettis") initiated this action by filing a complaint in this District against Envision and four individual defendants: Sanger, Owen, Holden, and Gulmi. The case brought by Bettis was consolidated with two related cases: *Carpenters Pension Fund of Ill. v. Envision Healthcare Corp.*, No. 3:17-cv-01323 (M.D. Tenn. Sept. 29, 2017), and *Central Laborers' Pension Fund v. Envision Healthcare Corp.*, No. 3:17-cv-01397 (M.D. Tenn. Oct. 23, 2017). *See* ECF 58, 60. On October 27, 2017, this Court appointed Laborers Pension Trust Fund for Northern California and the LIUNA Funds as Lead Plaintiffs and approved their selection of Robbins Geller as Lead Counsel. ECF 58.

B. The Complaints, the Court's MTD Orders, and Defendants' Answers to the Complaints

1. The Consolidated Complaint

32. Based on an extensive analysis of the Company's SEC filings and public statements, media articles, and interviews of former employees conducted by investigators retained by Class Counsel, on January 26, 2018, Plaintiffs filed the Consolidated Class Action Complaint for Violation of the Federal Securities Laws ("Consolidated Complaint"), alleging violations of §§10(b), 14(a), 20A, and 20(a) of the Exchange Act and violations of §§11, 12(a)(2), and 15 of the Securities Act. ECF 88.

33. On April 3, 2018, Defendants moved to dismiss the Consolidated Complaint, arguing that Plaintiffs failed to plead any of the core elements of their claims, including an actionable misrepresentation or omission, intent to defraud, or loss causation.[6] ECF 122, 125. Plaintiffs filed their opposition on June 11, 2018. ECF 131. On July 13, 2018, Defendants filed a reply in support of their motion to dismiss. ECF 133.

34. On November 19, 2019, the Court issued a Memorandum Opinion and Order granting in part and denying in part Envision's and the Individual Defendants' motion to dismiss. ECF 152-153. The Court allowed claims to proceed related to allegations involving out-of-network billing as a basis for Envision's revenue and growth and regarding underperformance of certain contracts into which EmCare entered between 2014 and 2015. *See id*. The Court dismissed claims related to upcoding, improper increases in hospital admission rates, Envision's transition to in-network status, and due diligence on certain 2014-2015 contracts. *See id.* The Court also dismissed all claims against Clayton, Dubilier & Rice, LLC, CD&R Associates VIII Ltd., Clayton Dubilier & Rice Fund

[6] Pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Defendants' motion stayed all discovery in this matter.

VIII, L.P., CD&R EMS Co-Investor, L.P., CD&R Advisor Fund VIII Co-Investor, L.P., and CD&R Friends and Family Fund VIII, L.P. (collectively, "CD&R"). *Id.*

2. Defendants' Answer to the Consolidated Complaint

35. On December 23, 2019, Defendants filed an answer to the Consolidated Complaint, in which they denied all of Plaintiffs' substantive allegations and asserted 45 affirmative defenses. ECF 158.

3. The Operative Complaint

36. On August 23, 2021, Plaintiffs sought permission to amend the Consolidated Complaint to include allegations drawn from information uncovered in discovery. ECF 333. Specifically, Plaintiffs sought to amend the Consolidated Complaint to plead: (a) additional material misrepresentations made during the Class Period by certain of the Defendants with respect to Envision's out-of-network and balance billing practices and the revenue derived therefrom; and (b) an additional partial corrective disclosure that took place on February 28, 2017. ECF 333-337. On August 30, 2021, Defendants filed a response notifying the Court they did not oppose Plaintiffs' motion for leave to amend the Consolidated Complaint but arguing that amendment would be prejudicial to Defendants. ECF 342. On September 7, 2021, Plaintiffs filed a reply. ECF 344. On December 2, 2021, the Court granted Plaintiffs leave to amend the Consolidated Complaint. ECF 368. On December 13, 2021, Plaintiffs filed the operative Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws ("Complaint"). ECF 369.

37. On January 10, 2022, Defendants moved to dismiss the newly added claims in the Complaint on numerous grounds, including that the new allegations were time-barred and the alleged statements relating to Envision's out-of-network revenues and balance billing practices were protected by the PSLRA safe harbor and were inactionable statements of opinion and corporate optimism. ECF 373-375. Plaintiffs filed their opposition on January 31, 2022, arguing, *inter alia*,

that the Complaint was timely and Defendants had made actionably false misstatements and omissions with scienter. ECF 378. On February 11, 2022, Defendants filed a reply in support of their motion to dismiss. ECF 381.

38. On September 29, 2022, the Court granted in part and denied in part Defendants' motion to dismiss. ECF 383. While the Court largely upheld Plaintiffs' claims against the Company and the Individual Defendants brought under the Securities Exchange Act of 1934 and the Securities Act of 1933, it dismissed several categories of false and misleading statements, as well a key party to the action. The Order both impaired Plaintiffs' liability case, and significantly impacted both the scope and complexity of proving classwide damages. For example, the Court dismissed misstatements concerning Plaintiffs' allegations that Envision unlawfully upcoded the severity of claims and improperly increased hospital admissions in order to boost profits. The Court also dismissed all misstatements that Defendants made at healthcare conferences, all statements relating to Envision's ability to transition in-network in a revenue neutral manner, and all misstatements relating to the adequacy of Defendants' due diligence with respect to certain failing hospital contracts. The Court also deferred ruling on whether certain statements in the Joint Proxy Registration Statement were forward-looking and could be dismissed under the PSLRA's safe harbor protections. Finally, the Court also dismissed all claims against the private equity firm that backed Envision – Clayton, Dublier & Rice – which sold over $4 billion of Envision stock artificially inflated prices during the Class Period.

4. Defendants' Answer to the Operative Complaint

39. On October 13, 2022, Defendants filed an answer to the Complaint, in which they denied all of Plaintiffs' substantive allegations and asserted 48 affirmative defenses. ECF 388.

C. Plaintiffs Move for Class Certification Twice

40. On November 9, 2020 Plaintiffs moved to certify this action as a class action, appoint Plaintiffs as Class Representatives, and appoint Robbins Geller as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure. ECF 221-224. Class Counsel retained the services of Crowninshield Financial Research, Inc. and its founder, Steven P. Feinstein, Ph.D., CFA, to provide economic analysis in support of this motion, opine as an expert on market efficiency, and explain there was a methodology to calculate damages on a class-wide basis. *See* ¶89, *infra*.

41. On March 15, 2021, Defendants filed their response in opposition to Plaintiffs' motion for class certification, arguing, *inter alia*, that neither reliance nor damages could be demonstrated on a class-wide basis. ECF 271-274. On June 4, 2021, Plaintiffs filed a reply in support of their motion for class certification. ECF 301.

42. Following the Court's denial of Defendants' second motion to dismiss, Plaintiffs and Defendants disagreed as to whether the Court should require renewed class certification briefing. ECF 389. Plaintiffs argued that the issue of class certification had been fully briefed and the new allegations in the Complaint had no impact on the existing class certification briefing. *Id.* Defendants argued that alleging additional corrective disclosures triggered a need to re-brief class certification briefing. *Id.* On November 7, 2022, the Court ordered the parties to re-brief class certification because Plaintiffs' previously filed motion for class certification had been terminated. ECF 390.

43. On November 15, 2022, Plaintiffs again moved to certify the Class. ECF 393-395. Defendants filed their opposition on January 17, 2023, again arguing that individualized issues predominated with respect to reliance, and that Plaintiffs had not demonstrated that damages could be calculated on a class-wide basis. ECF 406. On February 16, 2023, Plaintiffs filed a reply in support of their motion for class certification. ECF 410. On March 10, 2023, Defendants moved to

file a sur-reply to the class certification motion; Plaintiffs opposed that motion on March 12, 2023. ECF 422-425. Plaintiffs' motion for class certification and Defendants' motion for leave to file a sur-reply in opposition to class certification remained pending when the parties reached the Settlement.

D. Fact Discovery

44. Plaintiffs undertook fact discovery for over three years –from January 2020 until May 2023 – obtaining and analyzing more than 2 million pages of documents from Defendants and over 1.1 million additional pages from third parties. Class Counsel deposed dozens of fact witnesses in places such as Colorado, Florida, South Carolina, Tennessee, and Virginia, as well as remotely, during the course of discovery. Class Counsel also obtained interrogatory responses and admissions from Defendants in an attempt to narrow the issues at trial. Below is a summary of the discovery conducted by Plaintiffs, as well as the discovery propounded by Defendants and responded to by Plaintiffs.

1. Requests for Documents

a. Document Requests Directed at Defendants

45. On January 22, 2020, Plaintiffs served their First Request for Production of Documents to Defendants containing 52 requests regarding all aspects of their claims. Defendants served responses to Plaintiffs' first set of requests on March 2, 2020, objecting to the requests as irrelevant and overbroad and agreeing to produce documents pursuant to some requests while only agreeing to meet and confer for a number of others.

46. Ultimately, after months of negotiations to obtain documents responsive to their discovery requests, Defendants produced 33 volumes of electronic documents, totaling over two million pages. Plaintiffs expended significant time reviewing, organizing, and analyzing the documents produced in preparation for depositions, expert reports, and class certification.

b. Document Requests and Related Discovery Directed at Plaintiffs and Their Advisors

47. On March 19, 2020, Defendants served discovery requests on Plaintiff Laborers Pension Trust Fund for Northern California. On April 1, 2020, Defendants served discovery requests on Plaintiffs United Food and Commercial Workers Union Local 655 Food Employers Joint Pension Fund, LIUNA National (Industrial) Fund, and Central Laborers' Pension Fund. Defendants' document requests sought, *inter alia*, information relevant to class certification and to Plaintiffs' investigation of the Complaint. Plaintiffs provided their responses and objections on April 20, 2020 and May 1, 2020 to these discovery requests.

48. On November 30, 2020, Defendants noticed Plaintiffs' depositions, including seeking testimony on Plaintiffs' investments, the information upon which they relied in making their purchasing and selling decisions, communications with Defendants, their discovery responses, and their litigation history. After time preparing for their depositions, including meetings with Class Counsel, between January 14, 2021 and January 22, 2021, each Plaintiff sat for a deposition and provided 30(b)(6) testimony.

49. On August 10, 2021, Defendants served additional discovery requests on Plaintiffs. Defendants sought documents related to Plaintiffs' trades in Envision and AmSurg stock. On September 23, 2021, Plaintiffs served their responses and objections; on November 3, 2021, Plaintiffs amended their responses and objections.

2. Interrogatories and Requests for Admission

50. Class Counsel expended significant effort to evaluate the bases, if any, for Defendants' allegedly false and misleading statements and the bases for Defendants' defenses, as well as to create complete sets of Envision reports and other documents directly relevant to the parties' claims and defenses.

a. Requests Directed at Defendants

51. On February 28, 2020, Plaintiffs served their First Set of Interrogatories to Defendants. On March 30, 2020, Defendants provided objections and responses.

52. On July 17, 2020, after conferring with Defendants extensively, Plaintiffs filed a Motion to Compel Defendants to Search Additional Custodians and to Answer Interrogatory Nos. 1-3. ECF 185. On November 16, 2020, the Court ordered Defendants to produce relevant, responsive, non-duplicative, and non-privileged documents from the custodial files of 22 of Plaintiffs' 24 proposed new custodians and supplement their responses to the interrogatories in dispute. ECF 229 at 19; *infra* at ¶62.

53. On July 29, 2020, Plaintiffs served an interrogatory concerning EmCare contracts that were disclosed as underperforming in October 2015. Defendants provided their responses and objections to the interrogatory on August 28, 2020.

54. On March 18, 2021, Plaintiffs served an interrogatory seeking identification of professional advisors and third parties upon whom Defendants claimed they relied upon and the general subject matter on which the advisor or third party provided advice. Defendants provided their objections and an initial list of advisors and other third parties on April 16, 2021.

55. On November 23, 2021, Plaintiffs served 12 interrogatories seeking identification of information that formed the bases of statements made by Envision's key executives during the relevant period concerning, for example, Envision's out-of-network revenues. Defendants provided their responses and objections on October 20, 2022.

56. In addition, on November 2, 2022, Plaintiffs served 31 requests for admission on Defendants. Defendants provided their responses and objections on December 9, 2022. On April 21, 2023, Plaintiffs served dozens of requests for admission on Envision and numerous

individual defendants. These requests for admission remained outstanding at the time the Settlement was reached.

b. Requests Directed at Plaintiffs

57. On April 14, 2020, Defendants served their own, largely class certification-directed, interrogatories. Defendants' interrogatories sought information purportedly relevant to class certification, such as information concerning Plaintiffs' transactions in Envision and AmSurg stock. On May 28, 2020, Plaintiffs served their responses and objections. On August 10, 2021, Defendants served an additional interrogatory. Plaintiffs served their objections to the additional interrogatory on September 23, 2021.

58. On November 28, 2022, Defendants served 20 interrogatories and over 40 requests for admission on each Plaintiff. On January 10, 2023, Plaintiffs served their responses and objections to both sets of discovery. On March 6, 2023, Defendants served additional requests for admission on Plaintiffs. On April 4, 2023, Plaintiffs provided responses and objections to the second set of requests for admission.

3. Discovery Disputes with Defendants

59. Numerous disputes arose during the fact discovery phase of this Litigation, requiring extensive written correspondence, telephonic conferrals, and hours upon hours of negotiations between the parties. While many of these disputes were resolved by the parties, others could not be resolved and were brought before the Court via joint discovery dispute statements or motion practice.

60. These joint discovery dispute statements and discovery motions were also often accompanied by motions to file documents under seal, all of which Class Counsel opposed on the grounds that the documents did not qualify for protection from public disclosure. *See* ECF 188, 198, 201, 205, 213, 232, 283, 287, 289-290, 327, 331, 340, 343, 352, 415. Class Counsel also prepared

for and argued several of these discovery disputes on telephonic conferences held before Magistrate Judge Jeffery S. Frensley. *See, e.g.*, ECF 228, 242, 430.

a. Disputes over the Scope of Party and Third-Party Discovery

61. The parties briefed multiple disputes concerning the proper scope of: (a) party discovery; and (b) third-party subpoenas issued by Plaintiffs to several commercial health insurers.

62. The parties first outlined their disputes concerning the document sources to be collected and searched in connection with each party's document production in a joint discovery status report to Judge Frensley in June 2020. ECF 184. On July 17, 2020, Plaintiffs moved to compel Defendants to: (a) search the files of 24 additional document custodians; and (b) provide substantive responses to Plaintiffs' Interrogatory Nos. 1-3 (which sought information on the percentage of bills and total revenue attributable to Defendants' out-of-network billing practices). ECF 185-186. Defendants opposed the motion on August 7, 2020, ECF 196, and Plaintiffs filed their reply brief in support of the motion on August 18, 2020. ECF 204. On November 16, 2020, the Court granted Plaintiffs' motion to compel almost in its entirety and ordered Defendants to search the custodial files of 22 of Plaintiffs' 24 proposed new custodians and supplement their interrogatory responses to provide their best estimates of the out-of-network figures in question. ECF 229.

63. Defendants similarly sought to compel Plaintiffs to search additional sources of documents. On September 30, 2020, Defendants moved to compel Plaintiffs to search the files of: (a) at least four additional custodians; and (b) third-party investment advisors and consultants who managed Plaintiffs' investments. ECF 210-211. Plaintiffs opposed this motion on October 14, 2020, ECF 216, and Defendants filed their reply on October 21, 2020. ECF 218. On December 14,

2020, the Court granted Defendants' motion with respect to only two proposed custodians but denied the remainder of their requests. ECF 241.

64. Defendants also unsuccessfully sought to limit Plaintiffs' efforts to obtain discovery from the third-party commercial health insurers impacted by Envision's out-of-network-billing practices. On October 1, 2020, Plaintiffs issued subpoenas to five of the largest health insurers in the country: Aetna, Inc., Blue Cross Blue Shield Association, Cigna Corporation, Humana Inc., and UnitedHealth Group Incorporated. On November 2, 2020, the parties filed a joint discovery dispute statement on Defendants' motion for a protective order to either quash or significantly narrow these document subpoenas. ECF 219. Following a hearing, the Court issued an order on November 13, 2020 requesting supplemental briefing on two document requests at issue in the subpoenas and denying Defendants' motion for a protective order on all other requests. ECF 228. The parties filed their supplemental briefs on November 18, 2020. ECF 230, 235. On December 15, 2020, the Court denied Defendants' motion for a protective order on the remaining two document requests as well. ECF 242.

b. Disputes over Document Production Deadlines, Confidentiality Designations, and the Stay of Discovery

65. In addition to the scope of party and third-party document productions, the parties also filed several discovery dispute statements regarding the timing of Defendants' document production and the level of confidentiality to be afforded certain documents produced by Defendants and the third-party insurers. On December 28, 2020, Plaintiffs filed a discovery dispute statement regarding Defendants' repeated failure to meet substantial completion of document production deadlines and their refusal to produce certain contracts absent Plaintiffs' agreement to an overbroad and unwieldy "Attorneys' Eyes Only" ("AEO") designation. ECF 243. Defendants filed their response on December 30, 2020, ECF 244, and the following day the Court ordered the parties to

meet and confer further on these issues and refile a joint statement on any issues that remained in dispute. ECF 246. On January 7, 2021, the parties filed a renewed joint discovery dispute statement with their respective proposals for document production deadlines as the parties continued to meet and confer on the scope of AEO designations. ECF 248. On February 5, 2021, the Court set a third deadline for Defendants to substantially complete their document production. ECF 254.

66. The parties were ultimately unable to resolve their disagreement regarding the scope and applicability of an AEO designation for certain documents produced by Defendants and the third-party insurers and filed a further joint discovery dispute statement on the issue on February 12, 2021. ECF 255. On May 4, 2021, the Court ordered Defendants to submit a further response alongside a proposed protective order to compare to the proposal filed by Plaintiffs. ECF 293. Defendants did so on May 11, 2021. ECF 296. On May 19, 2021, the Court largely adopted Defendants' proposed order but struck one of the overly broad provisions to which Plaintiffs had objected. ECF 298.

67. Following the substantial completion of Defendants' document production and the depositions of numerous fact witnesses in spring and summer 2021, Plaintiffs ultimately moved to amend the operative complaint on August 23, 2021 to add additional false statements Plaintiffs believed to be actionable. ECF 333, 335. In light of this motion to amend, Defendants moved for an "emergency" protective order to stay all discovery on September 24, 2021. ECF 349-350. Plaintiffs opposed on October 1, 2021, ECF 353, and Defendants filed their reply on October 6, 2021. ECF 354. In granting Plaintiffs' motion for leave to amend on December 2, 2021, the Court ultimately imposed a stay of discovery, ECF 368, which lasted until September 29, 2022. ECF 383.

c. Disputes over Defendants' Assertions of Attorney-Client Privilege, Work Product, and Reliance on Counsel

68. Several discovery disputes concerned Defendants' assertions of attorney-client privilege and work product protection, including: (a) assertions of privilege and work product over documents related to Envision's response to a U.S. Senate inquiry into the Company's out-of-network and balance billing practices; (b) Defendants' refusal to disclose whether they intended to invoke an advice-of-counsel defense; and (c) assertions of privilege over documents produced by Envision's third-party consultants.

69. On April 1, 2021, the parties filed a joint discovery dispute statement concerning Plaintiffs' challenge to approximately 1,900 disputed documents Defendants had redacted or withheld on privilege or work product grounds. ECF 282. Class Counsel began challenging Defendants' privilege assertions as early as September 2020 and spent several months reviewing all redacted documents and more than 17,000 privilege log entries in order to negotiate with Defendants to narrow or withdraw their overbroad privilege claims. *See id.* at 3-6. Despite those efforts, the parties remained at an impasse on Defendants' privilege and work product claims over approximately 1,900 documents, the vast majority of which related to Envision's response to a U.S. Senate inquiry into the Company's out-of-network and balance billing practices. On June 17, 2021, the Court entered an order granting in part and denying in part Plaintiffs' request for an order compelling production of these disputed privilege documents, ordering Defendants to produce: (a) documents that had been withheld or redacted on the sole basis that they contained lobbying advice; and (b) documents withheld or redacted on the sole basis that they were prepared because of the U.S. Senate inquiry, as opposed to other ongoing or anticipated litigation. ECF 307. This resulted in several rounds of additional negotiations by the parties to determine what entries fell within the scope of the Court's June 17, 2021 order.

70. On August 5, 2021, the parties also filed a joint discovery dispute statement regarding Defendants' refusal to disclose whether they intended to invoke an advice-of-counsel defense. ECF 326. Despite numerous fact witnesses testifying at depositions to the purported involvement of counsel in the preparation of public statements at the heart of the case, and Defendants withholding or redacting countless related documents on claims of attorney-client privilege, Defendants would not take a position on the defense. On January 9, 2023, the Court granted Plaintiffs' request and ordered Defendants to inform Plaintiffs by March 17, 2023 whether they intended to assert an advice-of-counsel defense in this matter. ECF 404.

71. Finally, on February 22, 2023, the parties filed a joint discovery dispute statement concerning Defendants' assertions of attorney-client privilege and attorney work product protection over documents in the possession of Envision's third-party merger consultants Guggenheim Securities LLC and KPMG LLP. ECF 414. Following a telephonic discovery conference on the matter, on March 30, 2023, the Court ordered the parties to submit a further status report on Guggenheim's and KPMG's willingness to submit the disputed documents for *in camera* review. ECF 430. On April 7, 2023, the parties filed a joint status report to apprise the Court that both Guggenheim and KPMG were willing to voluntarily submit any of the disputed documents to the Court for *in camera* review. ECF 431. On April 10, 2023 and May 8, 2023, the Court entered further orders directing *in camera* review. ECF 432, 436. The case was subsequently stayed and resolved while this dispute was pending before the Court.

4. Discovery from Third Parties

72. Substantial efforts were undertaken by Class Counsel to obtain relevant evidence from third parties, including those described below. A brief description of the key subpoenas issued and documents sought is set forth below.

a. Analysts

73. Plaintiffs subpoenaed documents from several firms, including Barclays, Canaccord Genuity, Citigroup, Jefferies, J.P. Morgan, RBC Capital Markets, UBS, and William Blair, that employed analysts to cover Envision during the Class Period. The subpoenas sought, *inter alia*, documents related to securities reports covering Envision, including all notes, research, and communications upon which the analysts relied in developing their reports, as well as communications between analysts and Envision employees. Plaintiffs received nearly 264,000 pages of documents from the analysts as a result of counsel's discovery efforts. Certain of these documents were relevant to market efficiency, loss causation, and damages.

b. Auditors and Financial Advisors

74. Plaintiffs sought documents from Envision's outside auditor, Deloitte & Touche ("Deloitte"), regarding Deloitte's audit results, work papers, communications, and other documents related to the professional services it provided to Envision from 2016 to 2018. Plaintiffs were ultimately successful in obtaining more than 8,600 pages of documents from Deloitte.

75. Plaintiffs sought documents from Houlihan Lokey Financial Advisors ("Houlihan Lokey"), which was engaged in 2016 to perform professional services for legacy AmSurg/Sheridan Healthcare in connection with the Merger. The subpoena sought, *inter alia*, documents and communications concerning due diligence undertaken by Houlihan Lokey of Envision's billing systems and procedures, out-of-network billing revenue, risk, reimbursements, exposure, and collections. Plaintiffs were ultimately successfully in obtaining nearly 23,000 pages of documents from Houlihan Lokey.

76. Plaintiffs sought documents from KPMG LLP ("KPMG"), which was engaged in 2016 to perform professional services for legacy AmSurg/Sheridan Healthcare in connection with the Merger. The subpoena sought, *inter alia*, documents and communications concerning due

diligence undertaken by KPMG of Envision's billing systems and procedures, out-of-network billing revenue, risk, reimbursements, exposure, and collections. Plaintiffs were ultimately successful in obtaining more than 2,600 pages of documents from KPMG.

77. Plaintiffs sought documents from Guggenheim Partners ("Guggenheim"), which was engaged by Defendants to review and analyze the financial information of Envision and AmSurg, as well as the combined company, in connection with the Merger. Guggenheim continued to act as a financial advisor to Envision following the Merger and into 2018. The subpoena sought, *inter alia*, documents and communications concerning Guggenheim's engagement to provide due diligence in connection with the Merger, as well as Guggenheim's financial analyses or models of Envision and EmCare. Plaintiffs were ultimately successful in obtaining more than 45,000 pages of documents from Guggenheim.

c. Insurers

78. Plaintiffs subpoenaed documents from Envision's major commercial payors, including Aetna, Blue Cross Blue Shield, Community Health Systems (CHS), Horizon Healthcare Services, Humana, and UnitedHealth Group. The subpoenas sought, *inter alia*, audits performed by the payors of Envision or EmCare's submitted claims, documents and communications concerning the rejection or denial of claims submitted by EmCare, and documents concerning complaints the payors received regarding the cost of care for services provided by EmCare, including complaints concerning out-of-network billing, surprise bills, or balance bills. Plaintiffs were ultimately successful in obtaining more than 5,000 pages of documents from the commercial payors, and disputes regarding productions from certain of the payors were ongoing at the time of the Settlement.

d. Investment Firms and Advisors

79. Plaintiffs subpoenaed documents from KKR & Co. ("KKR"), a global investment firm that acquired Envision in October 2018. The subpoena sought, *inter alia*, documents and

communications concerning KKR's buyout of Envision, primarily relating to diligence concerning Envision. Plaintiffs were ultimately successful obtaining more than 6,000 pages of documents from KKR.

80. Plaintiffs also subpoenaed documents from Sard Verbinnen & Co ("SVC"), a firm retained by KKR in connection with KKR's buyout of Envision in October 2018. Plaintiffs were ultimately successful in obtaining nearly 11,000 pages of documents from SVC.

e. Lobbyists and Public Relations Consultants

81. Plaintiffs subpoenaed documents from Envision's key lobbyists and publication relations, investor relations, and media consultants, including Greenough Communications Group, Foley & Lardner LLP, and Revive Public Relations. Plaintiffs subpoenaed these entities requesting, *inter alia*, communications and agreements between Envision and these entities, documents and communications concerning Envision's out-of-network billing procedures, policies, or practices and government efforts to inquire about, investigate, or regulate out-of-network billing, as well as documents and communications concerning news articles related to Envision. Plaintiffs were ultimately successful in obtaining over 6,700 pages of documents from these firms.

f. Physicians' Groups

82. Plaintiffs subpoenaed documents from physicians' groups, including the American College of Emergency Physicians, the Emergency Department Practice Management Association, and Physicians for Fair Coverage. Plaintiffs subpoenaed these entities requesting, *inter alia*, documents and communications concerning Envision's out-of-network billing practices, including documents and communications concerning government inquiries into Envision's out-of-network billing practices. Plaintiffs were ultimately successful in obtaining more than 10,700 pages of documents from these physicians' groups.

5. Fact Depositions

83. Class Counsel expended substantial efforts identifying relevant deponents, as well as preparing for and conducting fact depositions.

a. Depositions Taken by Plaintiffs

84. During the course of fact discovery, Plaintiffs took the following fact depositions:

Deponent	Date	Location
Meg Lafave (as Envision's 30(b)(6) witness)	05/24/2021	Remote
William Johnson	05/25/2021	Remote
James Deal	05/28/2021	Remote
Ralph Giacobbe	06/02/2021	Remote
Kenny Coupel	06/03/2021	Remote
Bob Kneeley (as Envision's 30(b)(6) witness)	06/14/2021	Remote
Ryan Daniels	06/16/2021	Remote
Gary Gelbart	06/22/2021	Remote
Steven Geringer	06/24/2021	Remote
Carol Burt	06/30/2021	Remote
Joseph Coens	07/08/2021	Remote
John Gawaluck	07/15/2021	Remote
Richard Schnall	07/21/2021	Remote
David Marks	07/22/2021	Remote
Murray Fein (RTI)[7]	07/27/2021	Remote
Dorothy McGilvery	07/29/2021	Remote
Leonard Riggs, Jr.	08/04/2021	Remote
Danny Claycomb	08/10/2021	Remote
Jason Standifird	08/12/2021	Remote
Kevin Lavender	08/16/2021	Remote
David Copple	08/26/2021	Remote
Cynthia Miller	09/10/2021	Remote
Michael Smith	09/20/2021	Remote
Joey Jacobs	09/29/2021	Remote
James Shelton	10/18/2021	Remote
Kevin Eastridge	10/19/2021	Remote
Mark Switaj	10/27/2021	Remote
Jack Wolf	11/04/2021	Remote
Kim Warth	11/08/2021	Remote
Greg Hufstetler (RTI)	11/09/2021	Remote
Christian Belville	11/17/2021	Remote

[7] RTI refers to Reimbursement Technologies Inc., EmCare's internal billing subsidiary.

Deponent	Date	Location
Robert Coward	11/17/2021	Remote
Jorje Melendez (RTI)	11/19/2021	Remote
Ray Iannaccone	11/19/2021	Remote
Ronald Williams	11/24/2021	Remote
Ross Ronan	12/02/2021	Remote
John Popp, Jr.	11/15/2022	Columbia, SC
Todd Zimmerman	12/14/2022	Richmond, VA
Craig Wilson	12/15/2022	Nashville, TN
Thomas Cigarran	12/20/2022	Nashville, TN
Henry Herr	01/27/2023	Nashville, TN
Bob Kneeley	02/07/2023	Denver, CO
Steve Ratton	03/10/2023	Remote
Teresa Gregg (as KPMG's 30(b)(6) witness)	04/18/2023	Remote
David Blais (as Guggenheim Partners' 30(b)(6) witness)	04/25/2023	Remote
William Sanger	05/09/2023	Boca Raton, FL

b. Depositions Taken by Defendants

85. During the course of fact discovery, Defendants took the following fact depositions:

Deponent	Date	Location
Jeffrey Kusmierz (as Rhumbline's 30(b)(6) witness)	12/09/2020	Remote
Richard Vingers (as LMCG's 30(b)(6) witness)	01/06/2021	Remote
Robert Gruendyke (as Wells Capital's 30(b)(6) witness)	01/12/2021	Remote
Byron Loney (as Laborers Pension Trust's 30(b)(6) witness)	01/14/2021	Remote
David Cook (as UFCW's 30(b)(6) witness)	01/15/2021	Remote
Michael Cross (as SouthernSun's 30(b)(6) witness)	01/19/2021	Remote
Matthew Kamm (as Artisan Partners's 30(b)(6) witness)	01/19/2021	Remote
Dan Koeppel (as Central Laborers' 30(b)(6) witness)	01/21/2021	Remote
Adam Downs (as LIUNA Funds' 30(b)(6) witness)	01/22/2021	Remote

(1) Investigators and Experts Assisting the Litigation

(i) Investigators

86. Prior to filing the Complaint (while discovery was stayed pursuant to the PSLRA), Plaintiffs retained the services of an independent private investigator, L.R. Hodges & Associates, Ltd. ("LRH&A"), to help identify, locate, and contact former Envision employees, or those with knowledge of Envision's operations, who might have knowledge relevant to the claims at issue.

(ii) Industry Expert

87. Plaintiffs retained the services of Christopher Garmon, a healthcare economist and researcher, Assistant Professor of Health Administration at the University of Missouri – Kansas City, and Senior Consultant at Compass Lexecon, in connection with issues relating to Envision's out-of-network medical billing practices. Plaintiffs engaged Professor Garmon to prepare an expert report in anticipation of motions for summary judgment regarding out-of-network and balance billing practices by physician service providers, as well as the laws and regulations that govern such practices. Professor Garmon analyzed various documents produced during discovery, deposition transcripts and exhibits, and other relevant materials. Professor Garmon was in the process of preparing an expert report regarding these issues at the time the parties reached an agreement in principal to settle the case. Professor Garmon also provided expert guidance to Class Counsel in preparing for the depositions of key Envision executives and in drafting discovery to third parties, such as insurers.

(iii) Valuation Expert

88. Plaintiffs engaged the services of consulting firm BVA Group and one of its partners, Mr. Scott Dalrymple, to consult and provide expert opinion on financial valuation matters relevant to proving materiality. Mr. Dalrymple, with other members of BVA, was in the process of preparing an expert report regarding: (i) how market analysts valued Envision's out-of-network revenue stream and policies; (ii) how concealment of underperforming contracts could have impacted market analysts' view of the Company; and (iii) market analysts' quantifications of Envision's in-network and out-of-network-revenues.

(iv) Market Efficiency, Price Impact, Loss Causation, and Damages Expert

89. Plaintiffs retained the services of the consulting firm Crowninshield Financial Research, Inc., and one of its partners, Dr. Steven Feinstein, concerning market efficiency and damages. Dr. Feinstein, with the assistance of other members of Crowninshield: (a) provided critical economic analysis, as well as expert reports and testimony, in connection with class certification; (b) assisted in mediation efforts by analyzing and responding to Defendants' contentions regarding potentially recoverable damages; and (c) began preparing a merits report for use at summary judgment and trial. Following the settlement of this action, Crowninshield also assisted Class Counsel in developing the Plan of Allocation. Dr. Feinstein and his team spent considerable time studying the record and public information, including analyst reports and SEC filings, in order to be able to address the market in which Envision securities traded, disclosures related to Envision's finances and operations, and the related price movement in Envision's securities. Based on this work, Dr. Feinstein provided detailed information and analysis that were used in analyzing market efficiency, loss causation, and damages.

c. Envision Files for Bankruptcy Protection

90. On May 15, 2023, Envision filed for bankruptcy protection. *See* ECF 439. Following notice of Envision's bankruptcy, the Court entered an Order on May 15, 2023, stating that the case was automatically stayed pursuant to 11 U.S.C. §362, and ordering the Clerk to administratively close the case. ECF 441. Later that day, Plaintiffs filed a Motion for Case Management Conference and Response to Defendants' Notice of Filing of Bankruptcy and Automatic Stay, asserting that the case was not automatically stayed as to all defendants pursuant to 11 U.S.C. §362, and contending that the Court's Order was in error. ECF 442. The Court then ordered the parties to file briefs regarding whether the automatic stay should be extended as to the individual defendants, and such

briefs were subsequently filed by the parties. ECF 443-446. At the same time, Plaintiffs retained bankruptcy counsel to ensure that class members' claims were protected, to the extent possible, throughout Envision's bankruptcy proceedings. Through bankruptcy counsel, Plaintiffs ensured that class members' claims against the individual defendants were not impaired as part of a bankruptcy release, and that D&O insurance proceeds – which might otherwise have been partially part of the bankruptcy estate – were available to fund a settlement in this action. The action remained stayed pursuant to the Court's May 15, 2023 Order at the time the parties reached an agreement to resolve the case.

IV. STRENGTHS AND WEAKNESSES OF CASE

91. At the time of the Settlement, Class Counsel and Plaintiffs had a thorough understanding of the issues and risks present in this case.

92. Plaintiffs believed there was substantial evidence to support a jury verdict in favor of the Class. At the time of the Settlement, facts and evidence supporting Plaintiffs' claims included:

(a) The Court upheld several claims against Envision and 23 individual defendants, including claims asserted under §§10(b), 14(a), 20(a), and 20A of the Exchange Act and §§11, 12(a)(2), and 15 of the Securities Act.

(b) Certain internal communications produced during discovery, Plaintiffs believed, strongly supported Plaintiffs' allegations that Envision's out-of-network billing practices were knowingly improper and unsustainable and Defendants knowingly made false statements concerning Envision's billing practices and out-of-network exposure.

(c) Plaintiffs believed that significant evidence showed that, contrary to Defendants' public assertions, Envision did, in fact, engage in the intentional, pervasive, and unsustainable practice of balance billing patients.

(d) Plaintiffs believed they had evidence showing Defendants hid from investors the fact that throughout 2014 and 2015, approximately 30 of the Company's new hospital contracts were significantly underperforming.

(e) Plaintiffs also believed they would prevail on their negligence-based claims against all 23 individual defendants arising out of misstatements and omissions concerning out-of-network exposure and expected synergies in the Joint Proxy/Registration Statement filed on October 21, 2016 ("Joint Proxy").

93. At the same time, there were considerable risks and uncertainties if the case had proceeded to summary judgment, trial, a judgment, and appeal. At the time the Settlement was reached, risks to recovery for the Class included the following:

(a) The risk the Class would not be certified in whole or in part. Certification of a litigation class is never guaranteed; even if the Court were to certify a litigation class, Defendants may later have moved to decertify the Class or sought to shorten the Class Period. Plaintiffs' motion for class certification was fully briefed and remained pending at the time the Settlement was reached.

(b) The risk at summary judgment the Court would dismiss certain of the remaining alleged misstatements on the grounds that they were inactionable forward-looking statements or inactionable puffery. In its ruling granting in part Defendants' first motion to dismiss, the Court had already dismissed certain allegations relating to upcoding, improper increases in hospital admission rates, Envision's transition to in-network status, and due diligence on certain 2014-2015 contracts.

(c) The risk some or all Defendants would be found at summary judgment or trial not to have materially misled investors. For example, Defendants contended throughout the litigation that Envision adequately disclosed its out-of-network billing and the transition to in-

network billing with analysts and investors as early as May 2016. Defendants argued that the market was aware of, and actively discussing, Envision's out-of-network billing practices and any associated risk.

(d) The risk damages would not be awarded or would be limited based on Defendants' arguments that other factors caused the declines in the price of Envision's common stock. For example, Defendants repeatedly argued that the Envision stock price decline on November 1, 2017 was caused by developments unrelated to Plaintiffs' out-of-network billing allegations, including a reduction in anesthesia reimbursements, a decline in emergency department volumes, and two major hurricanes in Texas and Florida.

(e) The risk expert testimony or important factual evidence would be limited or excluded.

(f) The risk, in what was certain to be a heated "battle of the experts," the jury would find Defendants' experts more credible, potentially undermining Plaintiffs' ability to prove the elements of their claims or resulting in a damages award of minimal or no value.

(g) The risk the Class would not be able to recover any damages awarded, particularly in light of Envision's bankruptcy and ongoing disputes regarding the availability of certain insurance coverage.

94. In summary, while Plaintiffs had developed strong evidence supported by expert opinion and expected to continue developing such evidence through the completion of discovery and at trial, they faced both factual and legal challenges in presenting this matter to a jury and potentially on appeal. These risks were carefully considered by Class Counsel and Plaintiffs before the mediator's proposal was accepted.

V. NATURE AND ADEQUACY OF SETTLEMENT

95. The proposed Settlement was the result of arm's-length negotiations between zealous advocates on both sides and could not have been reached without the substantial participation and assistance of a capable mediator with extensive experience in negotiating the resolution of actions of this type. In the estimation of Class Counsel, the compromise embodied in the stipulation with Defendants represents a successful resolution of a complex and risky class action. We believe Plaintiffs' commitment to prosecuting this action, our reputation as attorneys who will zealously prosecute a meritorious case through the trial and appellate levels, and our aggressive litigation of this case put us in a strong position in settlement negotiations with Defendants.

A. History of Settlement Negotiations

96. Settlement discussions occurred at various times during the pendency of the Litigation, beginning with an exchange of lengthy mediation statements and a formal mediation with Judge Phillips on March 8, 2021. Additionally, during the mediation process, the parties participated in numerous teleconferences and videoconferences with Judge Phillips concerning their respective settlement positions and exchanged additional presentations regarding their divergent views on numerous issues, including the amount of recoverable damages.

97. The parties remained far apart in their respective assessments of the strengths and weaknesses of the case during these negotiations, and no settlement was reached. Nevertheless, the March 8, 2021 mediation, follow-up discussions, as well as subsequent mediation sessions, laid the groundwork for continuing discussions with Judge Phillips as this case continued and ultimately resulted in the mediator's proposal to resolve the Litigation on the terms proposed.

98. Following the mediation sessions, and while the case was stayed pursuant to the Court's May 15, 2023, Order, the parties continued settlement discussions through Judge Phillips. On August 29, 2023, Judge Phillips made a mediator's proposal to both sides proposing a settlement

of the Litigation in exchange for a cash payment of $177.5 million. The parties accepted the mediator's proposal, notified the Court of the proposed settlement, and jointly asked the Court lift the stay so the Court could consider the proposed settlement. ECF 448. The parties then drafted, finalized, and signed the formal settlement agreement detailing the terms of the proposed settlement, which was submitted to the Court with the Motion for Preliminary Approval, filed on September 22, 2023. ECF 449-451.

B. The Settlement Is in the Best Interests of the Class and Warrants Approval

99. On November 20, 2023, the Court granted preliminary approval of the Settlement, as well as the form and manner of notice of the Settlement to the Class. ECF 459. Plaintiffs believe they could have prevailed on the merits of the case but acknowledge there was a very real risk, as discussed above, the Class would not prevail at trial. Had Plaintiffs' case successfully reached trial, the Class faced the risk a jury would find Defendants' statements inactionable or would not be convinced Defendants acted with the requisite scienter with respect to Plaintiffs' fraud claims. There were also the risks the jury would reduce the damages awarded or Plaintiffs would not be able to recover any judgment. Further, even if Plaintiffs prevailed at trial and Defendants possessed the resources to fund a judgment, post-trial proceedings and appeals could have delayed any recovery from Defendants.

100. Having considered the foregoing, and evaluating Defendants' likely defenses at trial, it is my informed judgment, based upon the Litigation to date and the extensive experience of Class Counsel in litigating shareholder class actions, that the proposed settlement of this matter before the Court, upon a payment of $177.5 million in exchange for a mutual release of all claims and on the other terms set forth in the Stipulation, provides fair, reasonable, and adequate consideration and is in the best interest of the Class.

VI. PLAN OF ALLOCATION[8]

101. The proposed Plan of Allocation was created by Class Counsel with the assistance of Dr. Feinstein based on his event study and analysis of the movement of Envision common stock during the Class Period. The Plan of Allocation is intended to fairly apportion the net proceeds of the Settlement based on the alleged inflation and subsequent declines in Envision common stock price attributable to the alleged misstatements and their correction as of the date of a Class Member's purchases or acquisitions and sales of Envision common stock.

102. The Plan of Allocation estimates the amount of alleged artificial inflation in the prices of Envision common stock that was proximately caused by Defendants' materially false and misleading statements and omissions. In calculating the estimated artificial inflation allegedly caused by the misrepresentations and omissions, Class Counsel considered price changes in Envision common stock related to the respective alleged misrepresentations and omissions and adjusted the price change for factors that were attributable to market or industry forces and for non-fraud-related, Envision-specific information, if any.

103. Using the determinations of the amount of inflation in Envision's stock price at different points during the Class Period, the Plan of Allocation apportions damages to Class Members based on the difference between the amount of alleged inflation on the date they purchased or acquired their securities and the date they sold them, or as of January 29, 2018 (the expiration of the 90-day "look-back period"), if the shares were retained as of that date. To be eligible for a recovery, the shares must have been purchased or acquired prior to, and sold after, at least one of the

[8] The summary of the Plan of Allocation provided herein is intended only to explain the basis on which the plan was developed in order to assist the Court in evaluating the fairness, reasonableness, and adequacy of the proposed Settlement. Nothing set forth herein is intended to, or does, modify or affect the interpretation of the Plan of Allocation, which is set forth in full in the Notice and will be applied by the Claims Administrator according to its express terms.

corrective events based on the losses they incurred in their transactions. Class Members who realized a net gain in their overall transactions in Envision common stock during the Class Period will not be entitled to recovery.

104. Based on Class Counsel's experience in this and other securities actions, its understanding of the factual circumstances giving rise to this action, and the risks at trial, including the risks as to both liability and damages, Class Counsel believes the Plan of Allocation set forth in the Notice provides a fair, reasonable, and adequate method of compensating Class Members for the economic harm they suffered as a result of the fraud alleged in the Litigation.

VII. CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE

105. The successful prosecution of this action required Plaintiffs' Counsel and their staff to perform over 51,000 hours of work and incur more than $1.5 million in expenses, as detailed in the accompanying declarations in support of the application for an award of fees and expenses. Based on the extensive efforts on behalf of the Class, as described above, Class Counsel is applying for compensation from the Settlement Fund on a percentage basis and has requested a fee in the amount of 30% of the Settlement Fund.

106. The percentage method is the appropriate method of fee recovery because, *inter alia*, 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. As set forth in the accompanying memorandum in support of Class Counsel's application for an award of attorneys' fees and expenses ("Fee Memorandum"), courts throughout the Sixth Circuit have applied the percentage-of-recovery method in awarding fees. The percentage sought is merited in this case in light of the effort required and the results obtained.

A. The Requested Fee Is Reasonable

107. In light of the nature and extent of the Litigation, the diligent prosecution of the action, the complexity of the factual and legal issues presented and the other factors described above, and as stated in the accompanying Fee Memorandum, Class Counsel believes the requested fee of 30% of the Settlement Fund is fair and reasonable.

108. A 30% fee award is below percentages regularly awarded by courts in this District and is justified by the specific facts and circumstances in this case and the substantial risks Plaintiffs had to overcome at the pleadings and class certification phases of the Litigation, and to prepare to overcome at trial, as set forth herein.

B. The Requested Fee Is Supported by Plaintiffs

109. Plaintiffs actively monitored the Litigation and consulted with Class Counsel during the course of settlement negotiations. Plaintiffs spent considerable time and effort fulfilling their duties and responsibilities in this case, including reviewing briefs, answering discovery requests, producing documents, sitting for deposition, providing declarations in support of class certification, and consulting with Class Counsel concerning the merits of the Litigation. As a result, Plaintiffs developed an understanding of the strengths and weaknesses of this case, the risks to continued litigation, and the nature and extent of Class Counsel's efforts on behalf of the Class.

110. As reflected in the accompanying Declarations, Plaintiffs believe the requested fee is fair and reasonable in light of the result achieved and support the award of Class Counsel's requested fee.

C. The Requested Fee Is Supported by the Effort Expended and Results Achieved

111. As set forth herein, the $177.5 million cash settlement was achieved as a result of extensive and creative prosecutorial and investigative efforts, complicated motion practice, years of hard-fought discovery, and analysis of voluminous evidence.

112. As discussed in greater detail above, this case was fraught with significant risk factors concerning liability and damages. Plaintiffs' success was by no means assured. Defendants disputed whether the alleged false statements were even actionable, disputed that investors were misled, and sought to attribute any harm suffered to other factors. Were this Settlement not achieved, and even if Plaintiffs prevailed at trial, Plaintiffs and the Class faced years of costly and risky appellate litigation against Defendants with ultimate success far from certain. It is also possible a jury could have found no liability or damages. Plaintiffs faced the further risk they would be unable to collect on a sizable judgment against Defendants.

113. As a result of this Settlement, thousands of Class Members will benefit and receive compensation for their losses and avoid the very substantial risk of no recovery in the absence of a settlement. These risk factors also support Class Counsel's request for 30% of the Settlement Fund.

D. The Risk of Contingent Class Action Litigation Supports the Requested Fee Award

114. As set forth in the accompanying Fee Memorandum, a determination of a fair fee should include consideration of the contingent nature of the fee, the financial burden by Class Counsel, and difficulties overcome in obtaining the Settlement.

115. This action was prosecuted by Class Counsel on an "at-risk" contingent fee basis. Class Counsel fully assumed the risk of an unsuccessful result. Class Counsel has received no compensation for its services during the course of this Litigation and has incurred very significant expenses in litigating for the benefit of the Class. Any fees or expenses awarded to Class Counsel

have always been at risk and are completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainties from the outset were that there would be no fee without a successful result and such a result would be realized only after a lengthy and difficult effort.

116. Class Counsel's efforts were performed on a wholly contingent basis despite significant risk and in the face of determined opposition. Under these circumstances, Class Counsel is justly entitled to the award of a reasonable percentage fee based on the benefit conferred and the common fund obtained. Under all circumstances, Class Counsel is justly entitled to the award of a reasonable percentage fee based on the benefit conferred and the common fund obtained. Under all circumstances present here, a 30% fee plus expenses is fair and reasonable.

117. There are numerous cases, including many handled by my firm, where class counsel in contingent fee cases such as this, after expenditure of thousands of hours of time and incurring significant out-of-pocket costs, have received no compensation whatsoever. The losses suffered by class counsel in other actions where insubstantial settlement offers were rejected, and where class counsel ultimately receives little or no fee, should not be ignored. Class Counsel knows from personal experience that, despite the most vigorous and competent of efforts, attorneys' success in contingent litigation is never assured.

118. Lawsuits such as this are expensive to litigate. Those unfamiliar with the efforts required to litigate class actions often focus on the aggregate fees awarded but ignore the fact that those fees fund enormous overhead expenses incurred during the course of many years of litigation, are taxed by federal and state authorities, are used to fund the expenses of other contingent cases prosecuted by Class Counsel, and help pay the monthly salaries of the firms' attorneys and staff.

VIII. CONCLUSION

119. For all of the foregoing reasons, Class Counsel respectfully requests the Court to approve the Settlement and Plan of Allocation of Settlement proceeds, approve the fee and expense application, and award Class Counsel 30% of the Settlement Fund plus $1,571,265.44 in expenses, as well as the interest earned on both amounts at the same rate and for the same period as that earned on the Settlement Fund until paid, and approve the award of $73,500.47 to Plaintiffs.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of February, 2024, at Nashville, Tennessee.

s/ Christopher M. Wood
CHRISTOPHER M. WOOD

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 15, 2024, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Christopher M. Wood
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