

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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

DECLARATION OF BRYAN BERTHIAUME IN SUPPORT OF PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES AND LITIGATION EXPENSES, AND LEAD PLAINTIFFS’ APPLICATION FOR REIMBURSEMENT OF LITIGATION EXPENSES

I, Bryan Berthiaume, declare as follows:

1. I am the Secretary/Fund Manager for the Laborers Pension Trust Fund for Northern California (the “Fund”), the Court-appointed Lead Plaintiff in the above-captioned securities class action (the “Action”).¹ My duties include the joint responsibility, pursuant to the direction of the Board of Trustees, of control, management, operation and administration of the Fund. I regularly attend the Fund’s Board of Trustees meetings as part of the administrative team.

2. The Fund is a multi-employer defined benefit plan based in Pleasanton, California that provides retirement benefits to members of the Laborers’ International Union of North America (“LIUNA”) and its beneficiaries. The Fund has more than 43,000 participants and beneficiaries and oversees \$4.4 billion in assets. The Fund, which has been in existence since 1963, is governed by a

¹ Unless otherwise indicated herein, capitalized terms have those meanings contained in the Stipulation of Settlement, dated September 22, 2023, ECF 451.

jointly managed Board of Trustees. The Board of Trustees is responsible for the administration of the Fund.

3. I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, Class Counsel's Motion for Attorneys' Fees and Litigation Expenses, and Lead Plaintiffs' request for reimbursement for the time and expenses incurred by the Fund in representing the Class in this Action. I became the Secretary/Fund Manager on January 1, 2022. Prior to January 1, 2022, Byron Loney served as the Secretary/Fund Manager during the time period in which this litigation was prosecuted by the Fund.

I. Work Performed by the Fund on Behalf of the Class

4. The Fund understands that the Private Securities Litigation Reform Act of 1995 ("PSLRA") was intended to encourage institutional investors to manage and direct securities class actions. The Fund is an institutional investor which committed itself to prosecuting this litigation, through trial and appeal if necessary. In seeking appointment as a Lead Plaintiff in this Action, the Fund understood its fiduciary duties to serve in the interests of the class by participating in the management and prosecution of the Action.

5. During the course of six years since it was first appointed as Lead Plaintiff, the Fund has, among other things: (a) conferred with Lead Counsel (Robbins Geller Rudman & Dowd LLP) and Fund Counsel (Weinberg, Roger & Rosenfeld) on the overall strategy for prosecuting the Action; (b) reviewed significant pleadings and motion papers filed in the Action; (c) met with Lead Counsel and reviewed periodic reports from Lead Counsel concerning the progress of the Action; (d) collected and produced documents for discovery; (e) provided responses to interrogatories; (f) prepared for and attended a deposition of the Fund; and (g) communicated with Lead Counsel and Fund Counsel regarding settlement negotiations and documentation.

6. As the Secretaries/Fund Managers, I or my predecessor Byron Loney monitored the litigation, communicated with counsel on major developments in the case, including Lead Counsel's negotiation and approval of the Settlement, and met with counsel and participated in telephonic

conferences with attorneys from Robbins Geller Rudman & Dowd LLP during the course of the Litigation.

II. The Fund Endorses the Court's Approval of the Settlement

7. After seriously considering the grounds for the settlement, as well as the risks and uncertainties associated with continued litigation, including Envision's declaration of bankruptcy, the trial and appeal (if Lead Plaintiffs prevailed), the Fund's Board of Trustees authorized Lead Counsel to settle this Action for \$177,500,000. Based on its involvement during the prosecution and resolution of the Action, the Fund believes that the Settlement represents a recovery that would not have been possible without the diligent efforts of Lead Counsel. In agreeing to the Settlement, the Fund considered the real possibility that its remaining claims may not ultimately succeed, or that a jury could significantly limit the Class's damages. The Fund also understood that even if Lead Plaintiffs prevailed at trial, the Defendants would likely appeal that decision and that the appeal process would, at a minimum, substantially delay any recovery by the Class. Weighing these substantial risks against the immediacy and noteworthy amount of the recovery, the Fund believes that the \$177,500,000 Settlement is an excellent result for the Class, and that its approval is in the best interest of each Class Member.

III. The Fund Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses and Its Request for Reimbursement of Its Expenses Pursuant to 15 U.S.C. 78u(4)(a)(4)

8. Recognizing that any determination of fees and expenses is ultimately left to the Court, the Fund endorses Lead Counsel's request for a 30% attorneys' fee award plus up to \$1.9 million in expenses incurred by Lead Counsel in litigating this case. The Fund believes that Lead Counsel's request is fair and reasonable in light of the extensive, high-quality work Lead Counsel performed on behalf of Lead Plaintiffs and the Class.

9. The Fund has evaluated Lead Counsel's fee request by considering, among other things: the amount and quality of work performed; the recovery obtained for the Class, which would not have been possible without the tremendous efforts of Lead Counsel; the complexities, challenges, and novel legal arguments that counsel faced and overcame; and the customary fees in

similar cases. The Fund further believes that the litigation expenses requested by Lead Counsel are reasonable, and represent costs and expenses necessary for the prosecution and resolution of this complex securities action. Based on the foregoing, and consistent with its obligation to obtain the best result at the most efficient cost on behalf of the Class, the Fund supports Lead Counsel's motion for attorneys' fees and litigation expenses.

10. In addition, pursuant to 15 U.S.C. 78u(4)(a)(4), the Fund requests that the Court award it reasonable costs and expenses incurred while serving as a representative on behalf of the Class. I, as the Fund's Secretary/Fund Manager, understand that the Fund's prior Secretary/Fund Manager Byron Loney spent 20 hours discussing litigation strategy and case developments with Lead Counsel and Fund Counsel; collecting and reviewing materials for discovery; and preparing for a deposition and providing deposition testimony. Based on Byron Loney's overall level of compensation, I believe an hourly rate of \$105 for his time is reasonable and appropriate and therefore request a total of \$2,100. Accordingly, the Fund respectfully requests reimbursement in the amount of \$2,100 for expenses incurred in its service as a Lead Plaintiff.

IV. CONCLUSION

11. The Fund was closely involved in the prosecution and settlement of the claims in this Action, and based on its experience representing the Class, respectfully requests that the Court grant final approval of the Settlement, Lead Counsel's attorneys' fee and expense application, and its application for an award of \$2,100, in consideration of the time and expenses the Fund incurred in representing the Class in this Action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have the authority to execute this Declaration on behalf of the Fund. Executed this 9th day of January, 2024 at Pleasanton, California.



BRYAN BERTHIAUME
SECRETARY/FUND MANAGER

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
CHRISTOPHER M. WOOD

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- (No manual recipients)