

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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

DECLARATION OF ADAM DOWNS 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, ADAM DOWNS, declare as follows:

1. I am the Fund Administrator for the LIUNA National (Industrial) Pension Fund and the LIUNA Staff & Affiliates Pension Fund (collectively, the "LIUNA Funds" or "Funds"). In October 2017, the Court appointed the LIUNA Funds as Lead Plaintiffs in this action, along with Laborers Pension Trust Fund for Northern California. The LIUNA National (Industrial) Pension Fund is a trust fund established in 1967, with the primary purpose of providing retirement benefits to workers represented by the Laborers International Union of North America ("LIUNA"). The LIUNA Staff & Affiliates Pension Fund (formerly known as the LIUNA Local Union and District Council Pension Fund) was established in 1962, with the primary purpose of providing retirement

benefits to employees and officers of LIUNA and its affiliated Local Unions and District Councils.¹

2. I submit this Declaration 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 have personal knowledge of the matters related to the Funds' application, and of the other matters set forth in this Declaration, as I, or others working under my direction, along with long-time Fund Counsel, James S. Ray, Esq., and his associate Colleen R. Corday ("Fund Counsel") have been directly involved in monitoring and overseeing the prosecution of the Action on the LIUNA Funds' and the Class's behalf, and I could and would testify competently thereto.

I. WORK PERFORMED BY THE FUNDS ON BEHALF OF THE CLASS

3. The Funds understand that the Private Securities Litigation Reform Act of 1995 ("PSLRA") was intended to encourage institutional investors to manage and direct securities class actions. The Funds are institutional investors that committed themselves to prosecuting this litigation, through trial and appeal if necessary. In seeking appointment as Lead Plaintiffs and class representatives in this Action, the Funds understood their fiduciary duties to serve in the interests of the class by participating in the management and prosecution of the Action.

4. During the course of six years since the Court appointed the Funds as Lead Plaintiffs, the Funds have, among other things: (a) conferred with Lead Counsel (Robbins Geller Rudman & Dowd LLP) and Fund Counsel 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 documents requests

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

and interrogatories; (f) prepared for and sat for deposition; and (g) communicated with Lead Counsel and Fund Counsel regarding settlement negotiations and documentation.

5. Along with Fund Counsel, I was one of the primary points of contact between the LIUNA Funds and Lead Counsel. I monitored the litigation, communicated with Lead 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 and Fund Counsel during the course of the Litigation.

II. THE FUNDS ENDORSE THE COURT'S APPROVAL OF THE SETTLEMENT

6. 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 LIUNA Funds' 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 Funds believe 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 Funds considered the real possibility that its remaining claims may not ultimately succeed, or that a jury could significantly limit the Class's damages. We 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 Funds believe 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 FUNDS SUPPORT 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(A)(3)

7. Recognizing that the determination of attorneys' fees and expenses is ultimately left to the Court, the Funds support Lead Counsel's request for a 30% attorneys' fee award plus up to \$1.9 million of expenses incurred by Lead Counsel in litigating this case. The Funds believe

that Lead Counsel's request is fair and reasonable in light of the settlement they obtained on behalf of Lead Plaintiffs and the Class.

8. The Funds have 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 Funds further believe 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 Funds support Lead Counsel's motion for attorneys' fees and litigation expenses.

9. The LIUNA Funds understand that reimbursement of a lead plaintiff's reasonable costs and expenses, including lost wages, is authorized under Section 21D(a)(4) of the PSLRA, 15 U.S.C. §78u-4(a)(4). In connection with Lead Counsel's petition for reimbursement of litigation expenses, the LIUNA Funds request reimbursement in the total amount of \$57,501.47.

10. This reimbursement request amount includes the \$16,296.47 cost of the work-time expended by three employees of the Funds', to the exclusion of other work, with regard to discovery in the case (*e.g.*, researching Fund records for relevant documents, responding to interrogatories and documents requests, preparation for and participation in the Defendants' deposition of Fund Administrator Adam M. Downs), as well as monitoring of the litigation and conferring with the Lead Counsel and Fund Counsel over the past six years. Mr. Downs devoted 27 hours to the case. Brian Kaniewski, the Manager of Fund Investments, devoted 37 hours to the case. Robert Holmes, the Funds' Manager of Information, Technology & Data, devoted 90 hours to the case. Based on their compensation as employees of the Funds, Mr. Downs' hourly rate was \$167.25 during the period of this litigation, Mr. Kaniewski's hourly rate was \$106.46, and Mr.

Holmes' hourly rate was \$87.13. Accordingly, their time charges for the case are as follows: Mr. Downs \$4,515.75; Mr. Kaniewski \$3,939.02; Mr. Holmes \$7,841.70.

11. This reimbursement request also includes \$1,920 in professional fees paid to the Funds' information technology consultant for assistance to Mr. Holmes in searching records to respond to discovery requests and related services.

12. This total amount also includes the \$39,285 in legal fees paid by the LIUNA Funds to long-serving Fund Counsel James S. Ray, Esq. and his Associate Colleen R. Corday, Esq. for their work in connection with the case over the past six years. These fees were based on their normal hourly rates set by their retainer agreements with the LIUNA Funds and actual hours devoted to tasks such as reviewing pleadings, motions and discovery requests and responses, conferring with Lead Counsel, assisting Fund Administrator Downs and the LIUNA Funds' Trustees in monitoring the litigation, and advising the Trustees regarding the settlement of the litigation.

IV. CONCLUSION

13. The Funds were 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 \$57,501.47, in consideration of the time and expenses the Funds 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 Funds. Executed this 2 day of February, 2024 at Washington, D.C.



ADAM DOWNS
Fund Administrator

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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