GOLDMAN SCARLATO & PENNY, P.C.
Mark S. Goldman (PA Atty. No. 48049)
Eight Tower Bridge, Suite 1025
161 Washington Street
Conshohocken, PA 19428
Tel: (484) 342-0700
goldman@lawgsp.com

Liaison Counsel for Lead Plaintiffs and the Settlement Class

LABATON SUCHAROW LLP
Jonathan Gardner
Alfred L. Fatale III
Lisa Strejlau
140 Broadway
New York, NY 10005
Tel: (212) 907-0700
jgardner@labaton.com
afatale@labaton.com
lstrejlau@labaton.com

Lead Counsel for Lead Plaintiffs and the Settlement Class

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA – CIVIL TRIAL DIVISION

IN RE LIVENT CORPORATION SECURITIES LITIGATION	CIVIL ACTION Consolidated Case No. 190501229

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Lead Plaintiffs, Plymouth County Retirement Association ("Plymouth") and Gary Bizarria ("Bizarria" and, together with Plymouth, "Lead Plaintiffs"), on behalf of themselves and all other members of the proposed Settlement Class, respectfully submit this brief in support of their motion for: (i) final approval of the proposed Settlement of the above-captioned class action (the "Action"); (ii) approval of the proposed plan of allocation for distributing the proceeds of the Settlement to eligible claimants (the "Plan of Allocation"); and (iii) final certification of the Settlement Class.[1]

The Motion is based on the following memorandum of law and the Declaration of Jonathan Gardner in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, (the "Gardner Declaration"), submitted herewith.[2] A proposed final order and judgment, negotiated by the Parties as part of the Settlement, is also submitted herewith.

PRELIMINARY STATEMENT AND HISTORY OF THE CASE

As set forth in the Stipulation, Lead Plaintiffs have agreed to settle all claims asserted in the Action against Defendants[3] or that could have been asserted arising out of the Company's

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[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated October 27, 2020 (the "Stipulation"), filed with the Court on October 29, 2020.

[2] The Gardner Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation; among other things. Citations to "¶" in this memorandum refer to paragraphs in the Gardner Declaration.

[3] "Defendants" are Livent Corporation ("Livent" or the "Company"); Paul W. Graves, Gilberto Antoniazzi, Nicholas L. Pfeiffer, Pierre R. Brondeau, Andrea E. Utecht (collectively the "Individual Defendants"); Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman Sachs & Co. LLC, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., Loop Capital Markets LLC, Nomura Securities International, Inc. (collectively, the "Underwriter Defendants"); and FMC Corporation (collectively with Livent, the Individual Defendants, and the Underwriter Defendants, "Defendants").

October 11, 2018 initial public offering of common stock ("IPO"), in exchange for the payment of $7,400,000 (the "Settlement Amount"), for the benefit of the Settlement Class. The terms of the Settlement are detailed in the Stipulation, which was executed by the Parties on October 27, 2020, after a rigorous mediation process that stretched over several weeks and was overseen by a highly regarded and respected mediator, Robert A. Meyer.

As described below and in the accompanying Gardner Declaration, the decision to settle was well-informed by almost two years of contentious and hard-fought litigation that involved a comprehensive investigation before the filing of two complaints; briefing on Defendants' preliminary objections to the amended complaint, which were overruled by the Court; briefing on Defendants' motion to stay the Action in favor of the Federal Action; opposing Defendants' motion for reconsideration of the Court's orders denying Defendants' preliminary objections; moving for class certification; Lead Plaintiffs' consultations with experts; and engaging in settlement discussions under the guidance of highly respected mediator. *See generally* Gardner Decl. at §§III-V.

The $7.4 million Settlement represents a recovery of between approximately 11.2% and 21.7% of reasonably recoverable class wide damages (which ranged from $34 million to $66.2 million) estimated by Lead Plaintiffs' consulting damages expert, depending upon the extent to which Defendants could meet their burden of establishing a negative causation defense.[4] *See* ¶¶68, 70. Lead Counsel, which has extensive experience and expertise in prosecuting securities class actions, believes that the Settlement represents a very favorable resolution of this complex litigation in light of the specific risks of continued litigation, particularly given that Defendants'

[4] Statutory damages were approximately $235 million. However, given Defendants' negative causation challenges and its effect on class wide damages, full statutory damages were not likely to have been recoverable.

motion for reconsideration was pending at the time of settlement and the challenges regarding materiality, falsity, negative causation, and damages. Lead Plaintiffs, who were actively involved in the Action, diligently represented the Settlement Class and have approved the Settlement. *See* Declaration of David Sullivan on Behalf of Plymouth, Ex. 1 and Declaration of Gary Bizarria, Ex. 2.[5]

Accordingly, Lead Plaintiffs respectfully request that the Court grant final approval of the Settlement and certify the Settlement Class. In addition, the Plan of Allocation, which was developed with the assistance of Lead Plaintiffs' consulting damages expert, is a fair and reasonable method for distributing the Net Settlement Fund and should also be approved by the Court.

PRELIMINARY APPROVAL AND THE NOTICE PROGRAM

On December 22, 2020, the Court entered an order preliminarily approving the Settlement and approving the proposed forms and methods of providing notice to the Settlement Class (the "Preliminary Approval Order"). Pursuant to and in compliance with the Preliminary Approval Order, through records maintained by Livent's transfer agent and information provided by brokerage firms and other nominees, the Court-appointed Claims Administrator Epiq Class Action and Claims Solutions, Inc. ("Epiq"), caused the Notice and Claim Form (together, the "Claim Packet") to be mailed by first-class mail to potential Settlement Class Members. *See* Declaration of Michael McGuinness Regarding: (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections,

[5] All exhibits referenced herein are annexed to the Gardner Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced herein as "Ex.__-__." The first numerical reference is to the designation of the entire exhibit attached to the Gardner Declaration and the second alphabetical reference is to the exhibit designation within the exhibit itself.

dated March 9, 2021, Ex. 3 at ¶¶3-9. A total of 89,080 Claim Packets have been mailed as of March 8, 2021. *Id*. at ¶9. On January 21, 2021, the Summary Notice was published in *The Wall Street Journal* and was disseminated over the internet using *PR Newswire*. *Id*. at ¶12 and Exhibit C attached thereto. The Notice and Claim Form were also posted, for review and easy downloading, on the website established by Epiq for purposes of this Settlement. *Id*. at ¶15.

The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the Parties, the course of the litigation, the terms of the Settlement, the maximum amounts that would be sought in attorneys' fees and expenses, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally* Ex. 3-A. The Notice also gave the deadlines for objecting, seeking exclusion, submitting claims, and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court. *Id*. While the deadline for requesting exclusion or objecting to the Settlement (March 25, 2021) has not yet passed, to date there has been only one generic objection/request for exclusion and no objections to the Plan of Allocation.[6]

QUESTIONS PRESENTED

1. Whether the Court should grant final approval to the proposed class action Settlement?

   A. Suggested Answer: Yes

2. Whether the Court should finally certify the Settlement Class, for purposes of the Settlement only?

   A. Suggested Answer: Yes

3. Whether the Court should approve the proposed Plan of Allocation for distributing the proceeds of the Settlement to eligible Settlement Class Members?

[6] Should any additional objections or requests for exclusion be received, Lead Plaintiffs will address them in their reply papers, which are due to be filed with the Court on April 8, 2021.

A. Suggested Answer: Yes

ARGUMENT

I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED

A. The Standards for Final Approval of a Class Action Settlement

"[S]ettlements are favored in class action lawsuits." *Dauphin Deposit Bank & Trust Co. v. Hess*, 727 A.2d 1076, 1080 (Pa. 1999). As the United States Court of Appeals for the Third Circuit Court has recognized, "[t]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004);[7] *accord, In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig*., 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.");[8] *see also Moore v. Comcast Corp.*, No. 08-773, 2011 WL 238821, at *3 (E.D. Pa. Jan. 24, 2011) ("Settlement of complex class action litigation conserves valuable judicial resources, avoids the expense of formal litigation, and resolves disputes that otherwise could linger for years.").

Pennsylvania Rule of Civil Procedure 1714(a) provides that "no class action shall be compromised, settled or discontinued without the approval of the court after hearing." In *Brophy v. Phila. Gas Works*, 921 A.2d 80 (Pa. Commw. 2007), the court explained that "a trial court's approval of a class action settlement as fair involves a two-step process." *Id*. at 88. Given the Court's preliminary approval of the Settlement, entry of the Preliminary Approval Order, and

[7] Pennsylvania state courts have looked to federal courts in the context of complex class action litigation. *See, e.g*., *Milkman v. Am. Travellers Life Ins. Co.,* No. 011925, 2002 WL 778272, at *24 (Pa. Com. Pl. Apr. 1, 2002) (citing to Third Circuit and other federal case law when assessing a class action settlement).

[8] All internal quotations and citations are omitted unless otherwise noted.

dissemination of the Notice, we are now at the second-step, the Court's consideration of final approval.

The standard for determining whether to grant final approval to a class action settlement is whether the proposed settlement falls within a "range of reasonableness" after considering the following seven factors: (1) the risks of establishing liability and damages; (2) the range of reasonableness of the settlement in light of the best possible recovery; (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation; (4) the complexity, expense, and likely duration of the litigation; (5) the state of proceedings and the amount of discovery completed; (6) the recommendations of competent counsel; and (7) the reaction of the class to the settlement. *Dauphin*, 727 A.2d at 1078; *accord Buchanan v. Century Fed. Sav. & Loan Ass'n*, 393 A.2d 704, 709 (Pa. Super. Ct. 1978) (citing *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975)).[9]

Since a settlement is a compromise, the trial court should not decide the merits of the case. *See Buchanan*, 393 A.2d at 710-11. Moreover, the trial court should not attempt to substitute its own judgment for that of the parties, but rather must consider all relevant factors and view the negotiated settlement as a whole. *See e.g.*, *Dauphin*, 727 A.2d at 1078 ("As with valuation problems in general, there will usually be a difference of opinion as to the appropriate value of a

[9] Federal Rule of Civil Procedure 23(e), to the extent its consideration is helpful to the Court, was amended to, among other things, specify that in considering approval of a settlement, courts should assess whether: (i) the class representatives and class counsel have adequately represented the class; (ii) the settlement was negotiated at arm's-length; (iii) the relief is adequate given "the costs, risks, and delay of trial and appeal," "the effectiveness of distributing the relief to the class", "the terms of any proposed award of attorney's fees," and "any agreements required to be identified under Rule 23(e)(3)"; and whether (iv) the settlement treats class members equitably relative to each other. *See* amendments to Rule 23(e)(2)(A)-(D). Many of these considerations are already among the factors that courts within Pennsylvania weigh and each are readily satisfied here, as discussed below.

settlement. For this reason, judges should analyze a settlement in terms of a 'range of reasonableness' and should generally refuse to substitute their business judgment for that of the proponents.").

B. Application of the Relevant Factors Supports Final Approval of the Settlement

1. The Risks Associated with Continued Litigation

"One very significant factor in determining whether a settlement is reasonable is the risk involved in proving liability and damages." *Treasurer of State v. Ballard, Spahr, Andrews & Ingersoll LLP*, 866 A.2d 479, 484 (Pa. Commw. 2005). "The risks surrounding a trial on the merits are always considerable." *Milkman*, 2002 WL 778272, at *13. A reviewing court "must recognize the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id*. Although Lead Plaintiffs believe that the case against Defendants is strong, that confidence must be tempered by the fact that the Settlement is certain and that every case involves significant risk of no recovery, particularly in a complex case such as the one at bar. Here, there was no Company admission, or parallel governmental proceeding, which would have aided Lead Plaintiffs in proving key elements of the case. There is no question that to prevail here, Lead Plaintiffs would have confronted numerous legal and factual challenges, while trying to prove difficult securities claims.

(a) Risks Concerning Liability

The claims in the Action arise from Sections 11, 12(a)(2) and 15 of the Securities Act. To prevail, Lead Plaintiffs would need to prove the existence of material omissions, misrepresentations, or undisclosed known trends and uncertainties at the time of the Company's IPO.

As an initial matter, Defendants' motion for reconsideration of the denial of their preliminary objections was pending at the time the Parties agreed to a settlement, and there was a risk that Defendants may have succeeded in their argument that the Federal Court's dismissal of claims brought against Defendants in that parallel action (which was issued after this Court initially ruled on the preliminary objections here) militates in favor of a dismissal. Defendants argued in the reconsideration motion that the differences in pleading standards between federal court and Pennsylvania state court are of no consequence because the Federal Court dismissed the claims for failure to identify an actionable false or misleading statement in the Offering Materials; elements that do not have a higher federal pleading standard. ¶60.

Defendants would also have continued to argue and present evidence that the Offering Materials did not contain material omissions or misrepresentations. For example, Defendants would have argued that, at the time of the IPO, Livent's statements regarding its ability to source lithium carbonate at a low cost, the purported benefits of its long-term contracts, the claimed accelerating adoption of lithium hydroxide, and the Company's competitive advantages were not false or misleading. Defendants would have argued that the Offering Materials' statement that Livent did not purchase any third-party carbonate in 2017 would not reasonably mislead an investor to think that Livent could not or would not buy any third-party carbonate in the future. Defendants would have also contested the alleged misrepresentations regarding anticipated lithium hydroxide demand, arguing that the Offering Materials contemplated that this trend would occur over the next ten years. ¶58.

Finally, Defendants would have argued that even if Lead Plaintiffs could establish the existence of these undisclosed facts and trends at the time of the Offering, Lead Plaintiffs would be unable to establish that they needed to be disclosed to investors because, instead, they were

immaterial. For example, Defendants would have argued that the alleged omission that Nemaska was permitted to terminate its agreement was not material to investors. Similarly, Defendants would have argued that Tianqi's acquisition of a minority stake in SQM—impacting Livent's market share—was a matter of public knowledge at the time of the IPO and, therefore, Livent was under no obligation to disclose this fact. ¶59.

Defendants would have argued and sought to present evidence that Lead Plaintiffs could not establish that the "trends" alleged in the Amended Complaint had materialized at the time of the Offering, such that they should have been disclosed pursuant to Item 303 or any other legal doctrine. ¶61. Defendants would also have likely argued that Lead Plaintiffs could not establish, as required, Defendants' actual knowledge of the purported trends. Defendants would likely seek to establish that at the time of the IPO, Defendants did not reasonably expect that the issues alleged in the Amended Complaint would have a material impact on the Company's net sales, revenues, or income, as required under Item 303. ¶62.

The Underwriter Defendants and the Individual Defendants would have raised additional arguments at summary judgment and trial, including that they conducted robust and thorough due diligence during the offering process to confirm the accuracy and truthfulness of the Offering Materials' disclosures, including participating in extensive meetings with key management at the Company and reviewing relevant key documents. ¶63.

(b) Risks Concerning Negative Causation and Damages

Even assuming that Lead Plaintiffs successfully established each of the elements of liability, they still faced substantial obstacles to proving damages. Defendants would have pursued a negative causation defense, arguing that factors other than the allegedly undisclosed trends and business practices caused the decline of Livent's share price after the Offering. ¶¶65-68.

Specifically, Defendants would likely argue that Lead Plaintiffs cannot recover for the price decline from $17.00 per share to $13.12 per share that took place between the October 11, 2018 IPO and the February 12, 2019 price drop because there was no corrective information disclosed to the market prior to February 12, 2019, when Livent allegedly revealed its inability to obtain contractual commitments from its China customers, the existence of a large, lower-priced contract that had been in place for several years negatively affecting the Company's margins, and weak demand for its high-performance lithium hydroxide. ¶¶66-67. Defendants would also likely argue that the February 12, 2019 price drop was not statistically significant and therefore could not be shown to have corrected any of the alleged false statements in the Offering Materials and, consequently, that the stock drop on this date should not count toward damages. Further, Defendants would likely argue that Lead Plaintiffs cannot recover the full amount of the decline that occurred following the May 7-8, 2019 disclosures because the full drop in price was only partly due to Livent's issues with its China customers and/or weakened demand for its high-performance lithium hydroxide. ¶67. Defendants would point out that Livent also revealed that its lowered guidance on May 7, 2019 was due to a changing pricing dynamic based on a confluence of factors, including the loss of 2,000 tons of higher priced product that it no longer expected to sell and 20% of uncontracted volume at low prices (none of which relate to the issues in this case). *Id*.

Lead Plaintiffs' consulting causation and damages expert estimated that, assuming Lead Plaintiffs were able to establish liability and giving no credit to Defendants' negative causation arguments (therefore assuming 100% of the stock drop from the IPO to the date of suit is attributable to revelation of the truth), maximum aggregate damages were approximately $235 million. However, Lead Plaintiffs' consulting causation and damages expert analyzed Defendants'

anticipated negative causation arguments and estimated that that if such arguments were successful, realistic recoverable damages based on all three statistically significant dates where allegedly corrective information was revealed, are approximately $66.2 million (making the Settlement a recovery of 11.2% of damages). ¶68. If Defendants succeeded in their argument that only the stock drop on May 8, 2019 counted, aggregate damages decrease to $34 million (making the settlement a recovery of 21.7 % of damages). Further, these estimates assume that the entire stock drop on the alleged corrective disclosure dates relates to the issues Lead Plaintiffs claimed were false and misleading in the Offering Materials. Defendants would have argued that some of that drop was attributable to other factors. If successful, this would have decreased damages even further. *Id*.

Though Lead Plaintiffs believe that Defendants' arguments take too narrow a view of the connection between the allegations and the price declines, there was no certainty that Lead Plaintiffs would prevail. As the case proceeded, the Parties' respective damages experts would strongly disagree with each other's assumptions and their respective methodologies, and there was no certainty concerning which expert would be credited by the jury, or the Court. Accordingly, the risk that the jury would credit Defendants' damages position over that of Lead Plaintiffs had considerable consequences, even assuming liability was proven. *See*, *e.g.*, *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 492 (E.D. Pa. 2003) ("The conflicting damage theories of defendants and plaintiffs would likely have resulted in an expensive battle of the experts and it is impossible to predict how a jury would have responded.").

2. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and all the Attendant Risks of Litigation Support Approval of the Settlement

As described above and in the Gardner Declaration, though Lead Plaintiffs' consulting damages expert estimated maximum class-wide damages of approximately $235 million,

Defendants and their experts would have made several credible arguments that damages should be much lower. While Lead Counsel would work extensively with Lead Plaintiffs' damages expert with a view towards presenting compelling arguments to the jury and prevailing on these matters at trial, Defendants would have put forth well-qualified experts of their own showing that any damages Lead Plaintiff could have recovered would have been significantly, if not entirely, diminished by negative causation arguments. If successful, damages could be as low as $66.2 million or $34 million, if not lower. ¶¶68-69.

The Settlement, therefore, recovers between approximately 11.2% and 21.7% of reasonably recoverable damages. This recovery falls well above the range of reasonableness that courts regularly approve in similar circumstances. *See, e.g.*, *In re Greenwich Pharm. Sec. Litig.*, No. 92-3071, 1995 WL 251293, at *5 (E.D. Pa. Apr. 26, 1995) (approving $4.375 million settlement that obtained 4.4% of estimated maximum damages); *Schuler v. Meds. Co.*, No. 14-1149, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (approving $4,250,000 settlement that reflected approximately 4.0% of estimated recoverable damages and noting percentage "falls squarely within the range of previous settlement approvals"); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (approving $40.3 million settlement representing approximately 6.25% of estimated damages and noting that was at the "higher end of the range of reasonableness of recovery in class actions securities litigation"); *McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG- JMA, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a $12 million settlement recovering 7% of estimated damages was fair and adequate); *In re Omnivision Techs, Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) ($13.75 million settlement yielding 6% of potential damages after deducting fees and costs was "higher than the median percentage of investor losses recovered in

recent shareholder class action settlements"); *Int'l Bhd. of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc*., No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving $12.5 million settlement recovering about 3.5% of the maximum damages that plaintiffs believe could be recovered at trial and noting that the amount is within the median recovery in securities class actions settled in the last few years).

The Settlement also presents a favorable recovery considering that it is in-line with the median value of securities class action settlements in actions asserting claims under the Securities Act. For the ten years from 2010 through 2019, the median settlement amount in such cases was $7.2 million. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2019 Review and Analysis*, at 7 (Cornerstone Research 2020), Ex. 9.

Lead Plaintiffs respectfully submits that the Settlement is squarely within the range of reasonableness in light of the best possible recovery and the attendant risks of litigation.

3. Complexity, Expense, and Duration of Continued Litigation

Final approval is also supported by the complexity, expense, and likely duration of continued litigation. In evaluating the settlement of securities class actions, courts have repeatedly recognized that such litigation is complex and uncertain. *See, e.g.*, *In re Rent–Way Sec. Litig*., 305 F. Supp. 2d 491, 501 (W.D. Pa. 2003) ("[T]his has been, and will continue to be, a very expensive case to prosecute and defend in light of the complexity of the issues and necessity for expert witnesses."); *In re Suprema Specialties, Inc. Sec. Litig.,* No. 02-168, 2008 WL 906254, at *5 (D.N.J. Mar. 31, 2008) (finding complexity of the securities class action supports final approval). As the court noted in *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000), which is equally applicable here:

> [i]n the absence of a settlement, this matter will likely extend for . . . years longer with significant financial expenditures by both defendants and Lead Plaintiffs. This is partly due to the inherently complicated nature of large class actions alleging

> securities fraud: there are literally thousands of shareholders, and any trial on these claims would rely heavily on the development of a paper trail through numerous public and private documents.

Id. at 179.

Here, at every turn, the litigation raised difficult legal and factual issues that required creativity and sophisticated analysis. The complexity, expense, and duration of continued litigation through briefing on class certification, summary judgment, preparing and trying the case before a jury, subsequent post-trial motion practice, and a jury verdict would be significant. Barring a settlement, there is no question that this case would be litigated for years, taking a considerable amount of court time and costing millions of additional dollars, with the possibility that the end result would be no better for the class, and might be worse.

The Settlement, therefore, provides sizeable and tangible relief to the Settlement Class now, without subjecting Settlement Class Members to the risks, duration, and expense of continuing litigation.

4. State of the Proceedings

The state of the proceedings and the amount of discovery completed are also factors courts consider in determining the fairness, reasonableness, and adequacy of a settlement. "Through this lens, [the] courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *Milkman*, 2002 WL 778272, at *18.

The Action has been hotly contested from its inception almost two years ago. Accordingly, at the time the Parties agreed to settle, Lead Plaintiffs and Lead Counsel had a thorough and realistic understanding of the strengths and weaknesses of the claims and defenses asserted. Their knowledge was based on, among other things, counsel's rigorous investigation before filing two complaints (which involved an investigation involving the identification and contact of 23 former employees of the Company with potentially relevant knowledge, 19 of whom were interviewed on

a confidential basis); opposing Defendants' motion to stay the action, which was denied; researching and drafting answers to Defendants' comprehensive preliminary objections to the Amended Complaint, which were overruled by the Court; opposing Defendants' motion for reconsideration of the Court's orders denying Defendants' preliminary objections; moving for class certification; consulting with experts on damages and causation issues; and engaging in settlement discussions under the guidance of a highly regarded and experienced mediator, Robert A. Meyer, Esq.[10] In connection with the mediation, the Parties exchanged mediation statements and supporting materials. *See generally* Gardner Declaration at §§III-V.

In sum, Lead Plaintiffs and Lead Counsel had a full understanding of the likelihood of success and the potential recovery at trial at the time the Settlement was entered into.

5. Recommendation of Competent Counsel

In evaluating the fairness of a settlement, the "opinion of experienced counsel is entitled to considerable weight." *Fischer v. Madway*, 485 A.2d 809, 813 (Pa. Super Ct. 1984); *Shaev v. Sidhu*, No. 0983, 2009 Phila. Ct. Com. Pl. LEXIS 63, at *30 (Pa. Com. Pl. Mar. 5, 2009) ("Although a judge must take care that there is no collusion between the proponents of the proposed class action settlement, if no indicia of collusion are present, and while there was extensive, adversarial discovery, then 'the recommendations and opinions of counsel are entitled to substantial consideration.'"); *see also Alves v. Main,* No. 01-cv-789, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) *aff'd by,* 559 F. App'x. 151 (3d Cir. 2014) ("[C]ourts in this Circuit traditionally attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class."); *In re Prudential Ins. Co. of Am. Sales Practices Litig.,* 962 F. Supp. 450, 543 (D.N.J.

[10] *See Sudunagunta v. NantKwest, Inc*., No. CV-16-1947-MWF (JEMX), 2019 WL 2183451, at *3 (C.D. Cal. May 13, 2019) (discussing and approving settlement "conducted with the help of an experienced mediator, Robert Meyer, Esq.").

1997) *aff'd*, 148 F.3d 283 (3d Cir. 1998) ("[T]he Court credits the judgment of Plaintiffs' Counsel, all of whom are active, respected, and accomplished in this type of litigation.").

The Settlement was negotiated by counsel who are well-versed in complex securities litigation and who were acting in an informed manner. *See* ¶¶49-54; Exs. 4-C, 5-C and 6-C. The work conducted by Plaintiffs' Counsel is detailed above and set forth in the Gardner Declaration. *See generally* Gardner Declaration at §§III-V.

As a result, Lead Plaintiffs and Lead Counsel had a sound basis for assessing the strengths and weaknesses of the claims and Defendants' defenses when they engaged in mediation and agreed to the Settlement. Their judgment that the Settlement is in the best interest of the Settlement Class should therefore be given substantial weight.

6. Reaction of the Settlement Class to Date

Pursuant to the Preliminary Approval Order, the Court-appointed Claims Administrator, Epiq, began mailing copies of the Notice and Claim Form to potential Settlement Class Members and nominees on January 8, 2021. *See* Ex. 3 at ¶¶3-9. As of March 8, 2021, Epiq has mailed a total of 89,080 copies of the Claim Packet (consisting of the Notice and Claim Form) to potential Settlement Class Members and their nominees. *Id*. at ¶9. In addition, a Summary Notice was published in *The Wall Street Journal* and transmitted over the internet using *PR Newswire* on January 21, 2021. *Id*. at ¶12. The Notice set out the essential terms of the Settlement and informed potential Settlement Class Members of, among other things, their right to opt out of the Settlement Class or object to any aspect of the Settlement, as well as the procedure for submitting Claim Forms.

While the March 25, 2021 deadline set by the Court for Settlement Class Members to exclude themselves or object has not yet passed, to date, only one generic objection/request for exclusion has been received. *See* Ex. 3-D. The response is a general statement opposing all class

actions and casts no doubt on the propriety of this Settlement. It also requests exclusion from the Settlement Class without providing, as required by the Notice and Preliminary Approval Order, information about the individual's membership in the Settlement Class. This information is needed in order to establish membership in the class. The Parties do not independently have investors' trading information.

As required by the Preliminary Approval Order, Lead Plaintiffs will file reply papers on April 8, 2021, addressing any additional requests for exclusion and any objections that may be submitted.

* * *

For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court grant final approval to the proposed Settlement.

II. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE SETTLEMENT CLASS

The Court previously granted preliminary certification of the Settlement Class for settlement purposes. *See* Preliminary Approval Order at ¶¶3-4. Nothing has occurred since then to cast doubt on whether the applicable prerequisites of the Pennsylvania Rules of Civil Procedure have been met. Accordingly, for all the reasons stated in Lead Plaintiffs' Unopposed Motion for (I) Preliminary Approval of Settlement, (II) Certification of the Settlement Class, and (III) Approval of the Notice to the Settlement Class, and Lead Plaintiffs' previously filed Motion to Certify the Class, Lead Plaintiffs request that the Court reaffirm its determinations and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Pa. R. Civ. P. 1702, 1708 & 1709, appoint Plymouth and Gary Bizarria as Class Representatives, Labaton Sucharow LLP as Class Counsel, and Goldman Scarlato & Penny, P.C. as Liaison Counsel.

III. THE PLAN OF ALLOCATION FOR DISTRIBUTING RELIEF TO THE SETTLEMENT CLASS IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

At the final Settlement Hearing, the Court will be asked to approve the proposed Plan of Allocation for distributing the proceeds of the Settlement to eligible claimants.

The proposed Plan of Allocation, which is reported in full in the Notice (*see* Ex. 3-A at 11-13), was drafted with the assistance of Lead Plaintiffs' consulting damages expert. It is designed to equitably distribute the Settlement proceeds among the members of the Settlement Class who were allegedly injured by Defendants' alleged misrepresentations and who submit valid Claim Forms that are approved for payment. The plan is consistent with the statutory measure of damages under Section 11 of the Securities Act.

As explained in the Gardner Declaration, the Claims Administrator will calculate claimants' "Recognized Losses" using the transactional information provided by claimants in their Claim Forms, which can be mailed to the Claims Administrator, submitted online using the settlement website, or, for large investors, with hundreds of transactions, via e-mail to the Claims Administrator's electronic filing team. Because most securities are held in "street name" by the brokers that buy them on behalf of clients, the Claims Administrator, Lead Counsel, and Defendants do not have Settlement Class Members' transactional data and a claims process is required. Because the Settlement does not recover 100% of alleged damages, the Claims Administrator will determine each eligible claimant's *pro rata* share of the Net Settlement Fund based upon each claimant's total Recognized Losses. ¶¶79-80.

In general, the Recognized Loss Amounts calculated under the Plan are based on the statutory formula for damages under Section 11(e) of the Securities Act, 15 U.S.C. §77k(e). Using the Plan of Allocation, the Claims Administrator will calculate a Recognized Loss Amount for each purchase of Livent publicly traded common stock during the period from October 11, 2018

through May 13, 2019 that is listed in the Claim Form and for which adequate documentation is provided. ¶80.

Once the Claims Administrator has processed all submitted claims, notified claimants of deficiencies or ineligibility, processed responses, and made claim determinations, distributions will be made to eligible claimants in the form of checks and wire transfers. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution, the Claims Administrator will, if feasible and economical, after payment of Notice and Administration Expenses and Taxes, if any, re-distribute the balance among eligible claimants who have cashed their checks. These re-distributions will be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute. *See* Stipulation at ¶26; Ex. 3-A at ¶74. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of any outstanding Notice and Administration Expenses or Taxes, will be donated as follows: 50% of the unclaimed balance to the Pennsylvania Interest on Lawyers Trust Account Board and 50% of the unclaimed balance to the Consumer Federation of America, a private, non-profit, non-sectarian 501(c)(3) organization, or as otherwise approved by the Court. Stipulation at ¶26; Ex. 3-A at ¶74.

CONCLUSION

For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court finally approve the proposed Settlement, finally certify the Settlement Class for purposes of the Settlement only, and approve the proposed Plan of Allocation.

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Respectfully submitted,

GOLDMAN SCARLATO & PENNY, P.C.

/s/ Mark S. Goldman
Eight Tower Bridge, Suite 1025
161 Washington Street
Conshohocken, PA 19428
Tel: (484) 342-0700
goldman@lawgsp.com

Liaison Counsel for Lead Plaintiffs and the Settlement Class

LABATON SUCHAROW LLP
Jonathan Gardner*
Alfred L. Fatale III*
Lisa Strejlau*
140 Broadway
New York, NY 10005
Tel: (212) 907-0700
jgardner@labaton.com
afatale@labaton.com
lstrejlau@labaton.com

THORNTON LAW FIRM LLP
Guillaume Buell*
Madeline Korber*
1 Lincoln Street
Boston, MA 02111
Tel: (617) 531-3933
gbuell@tenlaw.com
mkorber@tenlaw.com

ROBBINS LLP
Brian J. Robbins
Stephen J. Oddo
5040 Shoreham Place
San Diego, California 92122
Tel: (619) 525-3990
brobbins@robbinsarroyo.com
soddo@robbinsarroyo.com

Members of the Executive Committee

** admitted pro hac vice*