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**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 AUTHORIZATION TO DISTRIBUTE
NET SETTLEMENT FUND TO AUTHORIZED CLAIMANTS**

TABLE OF CONTENTS

I. THE NOTICE PROGRAM AND APPROVAL OF THE SETTLEMENT2

II. CLAIMS ADMINISTRATION PROCESS2

 A. Procedures and Review.....3

 B. Recommended Disposition of the Claims.....5

 1. Lead Counsel Recommends that the Claims Administrator’s Eligibility
 Determinations Be Approved 5

 2. Lead Counsel Recommends that the Court Accept Late-Filed But Otherwise Valid
 Claims6

 C. Claimants Requesting Judicial Review.....7

III. DISTRIBUTION OF THE NET SETTLEMENT FUND9

CONCLUSION.....11

Lead Plaintiffs Plymouth County Retirement Association and Gary Bizarria (“Lead Plaintiffs”), on behalf of themselves and all other members of the Settlement Class, through Lead Counsel, respectfully submit this brief in support of their motion for entry of the proposed Order Authorizing Distribution of Net Settlement Fund to Authorized Claimants and Granting Related Relief (the “Distribution Order”) in the above-captioned class action (the “Action”), consistent with the accompanying Declaration of Michael McGuinness in Support of Lead Plaintiffs’ Motion for Authorization to Distribute Net Settlement Fund (“Distribution Declaration” or “Distribution Decl.”), dated October 5, 2023, submitted on behalf of the Court-approved Claims Administrator, Epiq Class Action & Claims Solutions, Inc. (“Epiq” or “Claims Administrator”).

Pursuant to the Stipulation and Agreement of Settlement dated as of October 27, 2020 (“Stipulation”), previously approved by the Court, Defendants have no interest in the relief sought by this motion.¹ See Stipulation at ¶12 (“This is not a claims-made settlement. As of the Effective Date, Defendants, and/or any other Person funding the Settlement on a Defendant’s behalf, shall not have any right to the return of the Settlement Fund or any portion thereof for any reason.”); ¶24 (“Defendants, Defendants’ Counsel, and Released Defendant Parties shall have no responsibility or liability for reviewing or challenging claims, the allocation of the Net Settlement Fund, or the distribution of the Net Settlement Fund.”).

If entered by the Court, the proposed Distribution Order will, among other things: (i) approve Epiq’s administrative recommendations for accepting and rejecting claims submitted in connection with the Settlement, including the rejection of the two disputed claims seeking judicial review; (ii) authorize the distribution of the Net Settlement Fund to Settlement Class Members whose claims have been accepted as valid and approved by the Court; (iii) establish a

¹ All capitalized terms not defined herein have the same meanings as set forth in the Stipulation or in the Distribution Declaration.

final bar date beyond which no new claims will be allowed; (iv) approve payment of the Claims Administrator's estimated fees and expenses to complete an initial distribution of the Net Settlement Fund; and (v) authorize the destruction of Claim Forms after the distribution is complete.

I. THE NOTICE PROGRAM AND APPROVAL OF THE SETTLEMENT

Pursuant to the Stipulation, Defendants agreed to pay, or cause to be paid, \$7,400,000 to settle the claims against them in the Action and related claims. The Court granted preliminary approval of the Settlement by an order dated December 22, 2020 ("Preliminary Approval Order") and granted final approval by a Final Order and Judgment dated April 26, 2021.

In accordance with the Preliminary Approval Order, Epiq mailed the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Notice") and Proof of Claim and Release Form ("Claim Form") (collectively, the "Claim Packet") to potential Settlement Class Members and to brokers and other nominees. As set forth in the accompanying Distribution Declaration, Epiq has mailed 95,323 Claim Packets to potential Settlement Class Members and nominees. Distribution Decl. at ¶5. The Notice informed Settlement Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Claim Forms by no later than May 8, 2021.

The Court approved the proposed Plan of Allocation and the Effective Date of the Settlement has occurred. *See* Stipulation at ¶40. Accordingly, the Net Settlement Fund may be distributed to Authorized Claimants. Stipulation at ¶25.

II. CLAIMS ADMINISTRATION PROCESS

Under the terms of the Stipulation and the Notice, all Settlement Class Members wishing to participate in the distribution of the Net Settlement Fund were required to submit Claim Forms

no later than May 8, 2021. As set forth in the accompanying Distribution Declaration, Epiq received and processed 41,012 Claim Forms. Distribution Decl. at ¶4. All Claim Forms received through February 23, 2023, a date prior to the finalization of the claim determinations and the preparation of the Distribution Declaration, have been processed and reviewed. *Id.*

Epiq has prepared detailed reports of: (i) Authorized Claimants who submitted timely and eligible claims (Exhibit D-1); (ii) Authorized Claimants who submitted late, but otherwise eligible claims (Exhibit D-2); and (iii) all wholly rejected or ineligible claims (Exhibit D-3). These reports are annexed to the Distribution Declaration, respectively. *Id.* at ¶50. Based on these determinations, Epiq, in consultation with Lead Counsel, recommends that a distribution to the claimants listed in Exhibits D-1 and D-2 be authorized.

A. Procedures and Review

With respect to Epiq’s extensive review process, among the 41,012 Claim Forms received and processed, 1,361 were paper Claim Forms (submitted by mail) and 643 were online claims (uploaded using the Settlement website). *Id.* at ¶11. Among the Claim Forms received and processed, 39,008 were submitted electronically by large investors with hundreds or thousands of transactions (“Electronic Claims”) to Epiq’s Securities Team. *Id.* at ¶16. The paper Claim Forms were opened and scanned into an electronic database created for this Settlement. *Id.* at ¶12. The data from all the Claim Forms was entered into the database created for the Settlement, evaluated, and processed according to a complex coding procedure to identify the types and conditions of the Claim Forms. *Id.* at ¶¶12-20.

Many of the claims initially submitted were deficient or ineligible for one or more reasons, including not being signed, not being properly documented, not having any eligible transactions in Livent common stock during the relevant time period, or being otherwise deficient. *Id.* at ¶24. Epiq also encountered many “non-conforming” claims, which, in general,

require significantly more work than properly submitted claims because of the information contained in or missing from the claim or the manner in which the claim form was completed. *Id.* at ¶23. Non-conforming claims include, among other conditions, missing pages, no name or address, claim forms that are blank but submitted with documentation for Epiq to complete, and claim forms that are so materially deficient as to make what is being claimed unrecognizable. *Id.*

If a paper or online claim was determined to be defective or ineligible, a Notice of Deficient Claim Form Submission (“Deficiency Notice”) was sent to the claimant describing the defect(s) in his, her or its claim and what was necessary to cure any “curable” defect(s) in the claim. *Id.* at ¶¶24-25. The Deficiency Notice advised the claimant that the submission of the appropriate information and/or documentary evidence to complete the claim had to be sent within twenty (20) days from the date of the Deficiency Notice or the claim would be recommended for rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.* Claimants were also advised that they could request Court review of Epiq’s administrative determinations if they wished to contest the rejection of their claims. *Id.* An example of such a letter is attached as Exhibit A to the Distribution Declaration.

If an “Electronic Claim,” *i.e.*, large claims with many transactions that are submitted to Epiq’s Securities Team specializing in handling such claims, was determined to be defective or ineligible, Epiq notified the filer of the deficiencies or conditions of ineligibility by emailing a Transaction Report, which listed the specific claims that were incomplete, along with a list of the specific portions of claims that were incorrect or incomplete so that the conditions could be cured. *Id.* at ¶27. The email advised the filer that any deficient transactions or claims that remain uncured would remain rejected, and informed the filer that it could, on behalf of the

claimant, request that the Court review Epiq’s administrative determination if it wished to contest the rejection. *Id.*

Epiq carefully reviewed claimants’ and electronic filers’ responses to the deficiency notifications and worked with them to resolve deficiencies where possible. *Id.* at ¶¶26, 28. The process was designed to cure as many deficient claims as possible and advise claimants of their rights.

The administration was also subject to Epiq’s rigorous quality assurance reviews and screening for potentially fraudulent filers. *Id.* at ¶¶43-45. Among other things, Epiq’s Securities Team performed a final quality control check once all of the accepted claims were processed, deficiency notices were mailed, and deficiency responses were reviewed and processed, to ensure the correctness and completeness of all of the processed claims before Epiq prepared its final reports to Lead Counsel. Here, in connection with this Quality Assurance wrap-up, Epiq: confirmed that the claims that are being recommended for approval have no message codes denoting ineligibility; confirmed that claims that are being recommended for rejection have message codes denoting ineligibility; confirmed that all claims requiring “deficiency” notices were sent such notices; performed a sample review of deficient claims; reviewed a sampling of claims with high Recognized Loss amounts; sampled claims that had been determined to be ineligible; and retested the accuracy of the loss calculation program. *Id.* at ¶45.

B. Recommended Disposition of the Claims

1. Lead Counsel Recommends that the Claims Administrator’s Eligibility Determinations Be Approved

Of the 41,012 claims received through February 23, 2023, 8,621 have been determined by Epiq to be eligible in whole or in part to receive a payment from the Net Settlement Fund. *Id.* at ¶48 and Exs. D-1 and D-2 thereto. A total of 32,391 claims were administratively rejected,

after exhaustion of the deficiency process explained above. *Id.* and Ex. D-3. Many of these rejected claims (30,456) did not have eligible purchases of Livent common stock during the relevant time period; 1,152 did not calculate to a Recognized Loss under the Court-approved Plan of Allocation; 213 were deficient claims not cured; 53 were duplicate claims; and 517 claims were withdrawn. ¶49.

It is respectfully requested that the Court authorize distribution of the Net Settlement Fund to the 8,621 eligible claimants (including those that filed after the claim deadline but on or before February 23, 2023, as set forth below) identified by Epiq and reject those designated for rejection.

2. Lead Counsel Recommends that the Court Accept Late-Filed But Otherwise Valid Claims

Epiq received and processed 1,068 claims that were postmarked after the Court-established claim deadline, but on or before February 23, 2023. *Id.* at ¶41. Among these, 185 are, but for their late submission, otherwise valid and calculate to a Recognized Loss amount of \$12,049,479.93. *Id.* at ¶¶31, 40.

Although these claims were late, they were received while the processing of claims was ongoing. The processing of these late claims did not delay the claims administration nor will it delay the distribution of the Net Settlement Fund. Lead Counsel believes that it is appropriate to allow payment of these otherwise eligible claims received while claim processing was being completed, and respectfully requests that these Claim Forms be approved as eligible for payment.²

² The Court has discretion to accept Claim Forms submitted after the filing deadline. *See* Preliminary Approval Order at ¶13(a) (“Such deadline may be further extended by Court order or by Lead Counsel in its discretion.”).

However, in order to complete the administration, there needs to be a final bar date. Epiq recommends that all claims received after February 23, 2023 be rejected as untimely, subject to paragraph 55(c) of the proposed distribution plan.

C. Claimants Requesting Judicial Review

Epiq received requests for judicial review from ten claimants. Epiq was able to resolve all but two of these requests, either because the claim was cured or because the claimant withdrew the request. *Id.* at ¶30. Disputed Claim No. 1 (Claim No. 1027) failed to report any eligible purchases during the relevant time period of October 11, 2018 through May 13, 2019. Disputed Claim No. 2 (Claim No. 800000592) has been identified as questionable and the claimant failed to provide curative information. As described above, both claimants were advised in writing of his or her rights and the reasons why the claims were denied. Exhibit B to the Distribution Declaration contains copies of the claim submissions and related communications, which have been redacted to protect confidential information. The Court-approved Plan of Allocation appears at pages 11-13 of the Notice, which is attached as Exhibit C.

Disputed Claim No. 1 does not report any eligible purchases during the relevant time period. *See* Distribution Decl. at ¶32. A Claim Form was submitted showing only a holding position of 380 shares of Livent common stock as of October 26, 2020. A Deficiency Notice was sent to the claimant explaining the claim did not contain any eligible purchases, and there was a trade discrepancy due to missing transactions. *Id.* and Exhibit B. In response to the Deficiency Notice, the claimant provided a revised Claim Form showing a purchase of Livent common stock on March 4, 2019, and a holding of 380 shares as of October 26, 2020. *Id.* However, the documentation submitted with the revised Claim Form shows that the 380 shares of Livent common stock were received on March 4, 2019 as a result of a Stock Spinoff in connection with 407.23981 shares of FMC Corp. The shares were not acquired in Livent's IPO. *Id.* The claim

remains rejected because the claimant did not have any eligible purchases. Accordingly, Epiq recommends the rejection of Claim No. 1027.

Disputed Claim No. 2 is recommended for rejection because it is a high value claim with insufficient supporting documentation, filed by a claimant with a history of filing unsubstantiated high value claims. *See* Distribution Decl. at ¶¶33-39. The claimant submitted an electronic claim reflecting six sizeable purchases of Livent common stock. *Id.* at ¶34. The claimant initially submitted only a self-generated spreadsheet listing the transactions in Livent common stock. On July 23, 2021, Epiq mailed a Deficiency Notice to the claimant advising that the spreadsheet was inadequate. *Id.* at ¶35.

Epiq follows comprehensive procedures for verifying high-value claims, which often require the production of additional documentary evidence by a claimant, including, but not limited to, confirmation by a broker or custodian. *Id.* at ¶36. On August 31, 2021, the claimant emailed trade confirmations from TD Direct Investing for Epiq's consideration. After Epiq received the claimant's trade confirmations, Epiq also requested that the claimant authorize TD Direct Investing to speak with Epiq directly in order to verify the claimant's transactions, given the nature of the claim and its high-value. Epiq received an authorization letter from the claimant on October 17, 2021. *Id.* at ¶37. Epiq contacted TD Direct Investing and was referred to TD Wealth Shared Services. Epiq attempted to verify the trading data with TD Wealth Shared Services, however, TD reported that the account had no record of any of the transactions claimed by the claimant. *Id.* at ¶38.

On January 12, 2022, the claimant sent an email to Epiq requesting an update on the status of the claim. Epiq advised the Claimant that TD Wealth Shared Services had no record of the claimant's claimed transactions and that the claimant's claim remained denied. *Id.* at ¶39. On

January 28, 2022, the claimant requested proof of the communication with TD Wealth Shared Services, which Epiq provided together with a reminder about the procedure for requesting Court review. *Id.* On March 9, 2022, the claimant contacted Epiq by email and requested Court review of the denial. *Id.* 40. Epiq cannot recommend the approval of Disputed Claim No. 2 because the claim could not be verified as genuine and accurate. Accordingly, Epiq recommends that the Court deny this claim.

For the foregoing reasons, Lead Counsel respectfully requests that the Disputed Claims be rejected consistent with Epiq's determinations.

III. DISTRIBUTION OF THE NET SETTLEMENT FUND

The Claims Administrator, in consultation with Lead Counsel, has developed a distribution plan for the Net Settlement Fund that will allow for the fair distribution of the Settlement proceeds, pursuant to the Plan of Allocation and Stipulation, until the fund is exhausted. *See* Distribution Decl. at ¶55. Epiq estimates that it will cost \$30,564.13 to conduct the initial distribution of the Net Settlement Fund, and Lead Counsel respectfully requests approval to pay Epiq this amount from the Settlement Fund. *See* Distribution Decl., Ex. E. If less than this amount is actually incurred, Epiq will refund the difference to the Net Settlement Fund.

The key components of the distribution plan provide for: (i) the initial distribution of the Net Settlement Fund to all Authorized Claimants whose Claim Forms are valid and whose *pro rata* payment amount meets or exceeds \$10.00; (ii) additional distributions of unclaimed funds to Authorized Claimants who cash their initial distribution checks in an equitable and economic fashion, until it is no longer economically feasible to make further distributions; (iii) once it is not economical to make additional distributions to Authorized Claimants who have cashed their prior checks, Claim Forms received after February 23, 2023 may be processed; and (iv) any

unclaimed balance that still remains will be donated 50% to the Pennsylvania Interest on Lawyers Trust Account Board and 50% to the Consumer Federation of America, as previously approved by the Court. *See* Distribution Decl. at ¶55.

More specifically, Epiq will conduct an initial distribution (the “Initial Distribution”) of the Net Settlement Fund, after deducting the payments previously allowed and requested herein, and after payment of any Taxes, the costs of preparing appropriate tax returns, and any escrow fees. Epiq will, pursuant to the terms of the Plan of Allocation, eliminate from the Initial Distribution any Authorized Claimant whose *pro rata* share of the Net Settlement Fund is less than \$10.00. The remaining Authorized Claimants’ distribution amounts will be calculated by dividing the total updated Net Settlement Fund by the Recognized Claims of all remaining Authorized Claimants. After the Initial Distribution, any unclaimed balance will be distributed in subsequent distributions. *Id.* at ¶55(a).

With respect to additional distributions, after Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, but no earlier than six (6) months after the Initial Distribution, Epiq will conduct a second distribution of the Net Settlement Fund (the “Second Distribution”) in which any unclaimed amounts remaining in the Net Settlement Fund after the Initial Distribution, after deducting Epiq’s fees and expenses incurred in connection with administering the Settlement for which it has not yet been paid (including the estimated costs of such Second Distribution), and after the payment of any Taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed in an equitable and economic fashion to Authorized Claimants in the Initial Distribution who cashed their Initial Distribution checks. *Id.* at ¶55(b). Additional re-distributions, after deduction of costs and expenses as described above and subject to the same conditions, may occur thereafter

until Lead Counsel, in consultation with Epiq, determines that further re-distribution is not cost-effective. *Id.*

When Lead Counsel, in consultation with Epiq, determines that further redistribution of the funds remaining in the Net Settlement Fund is not cost-effective, if sufficient funds remain to warrant the processing of Claim Forms received after February 23, 2023, such claims will be processed, and any such late claims that are valid will be paid, after deduction of costs, expenses, and Taxes as described above. *Id.* at ¶55(c)(i).

If any funds still remain in the Net Settlement Fund after payment of the late claims, or if there are no such claims or there are insufficient funds remaining to warrant the processing of the late claims, then after payment of any unpaid costs, expenses, and Taxes as described above, the unclaimed balance in the Net Settlement Fund will be contributed: 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, as previously approved by the Court. *Id.* at ¶55(c)(ii).

Unless otherwise ordered by the Court, one year after the Second Distribution, Epiq will destroy the paper copies of the Claim Forms and all supporting documentation, and one year after all funds have been distributed, Epiq will destroy electronic copies of the same.

CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that this motion be granted in its entirety and that the Court enter the proposed Distribution Order submitted herewith.

Dated: October 11, 2023

Respectfully submitted,

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