UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-cv-62506 (FAM)

JULIE SIEGMUND and SETH LIPNER, as Successor Co-Trustees of THE FREDERICK SIEGMUND LINKWELL CORP. CLAIMS LIVING TRUST DATED JULY 31, 2018, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

XUELIAN BIAN, WEI GUAN, SIDLEY AUSTIN LLP, SHANGHAI YINLING ASSET MANAGEMENT CO., LTD., LEADING FIRST CAPITAL LIMITED and LEADING WORLD CORPORATION,

Defendants.
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PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT, PRELIMINARY CERTIFICATION OF CLASS, APPROVAL OF FORM AND MANNER OF CLASS NOTICE, AND DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT AND INCORPORATED MEMORANDUM OF LAW

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Plaintiffs Julie Siegmund and Seth Lipner, as Successor Co-Trustees of The Frederick Siegmund Linkwell Corp. Claims Living Trust dated July 31, 2018 ("Plaintiffs"), individually and on behalf of the proposed Class, hereby move, pursuant to Federal Rule of Civil Procedure 23, for preliminary approval of a class action settlement with Defendants Xuelian Bian ("Bian"), Wei Guan ("Guan"), and Sidley Austin LLP (Sidley"),[1] preliminary certification of the Class for purposes of the Settlement, approval of the Class notice, and a date for a fairness hearing on final approval of the Settlement. In support of the motion, Plaintiffs submit this memorandum of law, the Krasner Declaration, and the Declaration of Jack Ewashko ("JND Decl.").

I. INTRODUCTION

This litigation was commenced almost three years ago following the dismissal of a derivative action brought on behalf of Linkwell Corporation ("Linkwell") in December 2012.[2] Plaintiffs alleged in this litigation that Individual Defendants, Sidley, Shanghai Yinling Asset Management Co., Ltd. ("Yinling"), Leading First Capital Limited ("Leading First"), and Leading World Corporation ("Leading World") (collectively, "Defendants") violated federal securities law and state law in connection with Linkwell's 2014 go-private merger transaction by engaging in a deceptive scheme to eliminate shareholder standing to prosecute the Derivative Action through the forced sale of shareholders' Linkwell stock, avoid liability for the claims asserted in the Derivative Action, and deprive shareholders of fair value for their Linkwell stock. Settling Defendants deny all allegations of wrongdoing.

After years of hard-fought litigation of the claims, which included document discovery, several depositions by remote video and one deposition in Hong Kong, extensive motion practice, expert discovery, two mediation sessions before Jed D. Melnick, Esq. of JAMS and further negotiations in good faith and at arm's length, Plaintiffs and Settling Defendants have agreed to settle this securities class action ("Action") pursuant to the terms and conditions set

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[1] Bian and Guan are collectively referred to as "Individual Defendants," Individual Defendants and Sidley are collectively referred to as "Settling Defendants," and Plaintiffs, Individual Defendants, and Sidley are collectively referred to as the "Parties." Unless otherwise indicated, all other capitalized terms herein shall have the same meanings ascribed to them in the Stipulation and Settlement Agreement, dated as of May 1, 2019 (the "Stipulation"), which is attached as Exhibit 1 to the Declaration of Daniel W. Krasner in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement, Preliminary Certification of Class, Approval of Form and Manner of Class Notice, and Date for Hearing on Final Approval of Settlement ("Krasner Declaration" or "Krasner Decl.").

[2] *See Siegmund v. Bian, et al.,* No. 12-cv-62539 (S.D. Fla.) ("Derivative Action").

forth in the Stipulation. In exchange for the release of all claims asserted in this Action by Plaintiffs and the proposed Class, Settling Defendants have agreed to pay a total of $6,000,000 in cash (the "Settlement").

The Settlement offers substantial benefits to Class Members who were paid a total of only $176,432.96 (200,492 shares at $0.88 per share) in connection with the 2014 go-private merger transaction. Based on Plaintiffs' calculations of the number of shares affected, *the estimated average recovery*, before deducting Court awarded attorneys' fees and expenses and Notice Administration Expenses, is $29.93 per share of Linkwell stock (assuming all eligible Class Members file valid claims valued at the full amount of the claim), or almost 34 times the $0.88 shareholders received.[3] The Settlement also avoids the delay, expenses, and risks inherent in litigating the claims through trial and appeals.

The Settlement is a fair, reasonable, and adequate resolution of the claims in the Action. It is the product of informed, arm's length negotiations between the Parties and their experienced counsel, and was aided by an independent mediator. Preliminary approval of the Settlement and conditional certification of the Class will allow Plaintiffs to notify Class Members of the Settlement and of their rights, among others, to submit a claim, object to the Settlement, or request to be excluded. Moreover, preliminary approval does not require the Court to rule on the ultimate fairness of the Settlement, but rather to make a preliminary determination as to its fairness, adequacy, and reasonableness.

Plaintiffs respectfully move for entry of the proposed Order Granting Preliminary Approval of Class Action Settlement, Preliminarily Certifying Class, Approving Form and Manner of Notice, and Setting Date for Fairness Hearing on Final Approval of Settlement ("Preliminary Approval Order")[4] that will: (i) preliminarily approve the Settlement on the terms set forth in the Stipulation and certify the proposed Class for settlement purposes only; (ii) appoint Plaintiffs as Class Representatives and their counsel Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein") as Class Counsel; (iii) approve the form and manner of providing notice of the Settlement to Class Members; (iv) approve the appointment of JND Legal

[3] As noted above, the $29.93 amount is *only an estimate*. A Class Member's actual recovery will depend on several things, including: (1) the number of claims filed; (2) the country of residence of Class Members; (3) the amount of Notification Costs and Administration Expenses; and (4) the amount of the Service Award and attorneys' fees and costs awarded by the Court to proposed Class Counsel.

[4] A proposed Preliminary Approval Order is attached as Exhibit C to the Stipulation.

Administration as Claims Administrator; and (v) set a date for the Fairness Hearing at which time the Court will consider final approval of the Settlement, the Plan of Allocation, Class Counsel's application for attorneys' fees and expenses, and a service award to The Frederick Siegmund Linkwell Corp. Claims Living Trust dated July 31, 2018 ("The Siegmund Trust"). Settling Defendants do not oppose the relief requested herein.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Factual Background

The Court is generally familiar with the facts underlying the claims in the Action. Plaintiffs reference the facts below to the extent they are relevant to the issues raised herein.

On December 26, 2012, Frederick Siegmund ("Siegmund") commenced the Derivative Action. At the time the suit was filed, Linkwell was a public Florida corporation with its sole place of business operations in Shanghai, China. The Derivative Action sought damages from Individual Defendants, as the directors and officers of Linkwell, for, among other things, their alleged self-dealing of Linkwell's assets to themselves, without the payment of any value therefor, and other breaches of fiduciary duty.

In April 2014, Sidley was retained by Linkwell's direct operating subsidiary Shanghai Likang Disinfectant High-Tech Co., Ltd. ("Likang Disinfectant") to represent Linkwell in a one-step, go-private merger transaction ("Merger") with a yet-to-be formed Yinling. Upon consummation, the Merger would, among other things, divest Siegmund and all other similarly situated shareholders of their Linkwell stock. Later in April 2014, Sidley was retained by Likang Disinfectant to represent Linkwell and Individual Defendants in the Derivative Action.

On September 19, 2014, the Merger was approved at the Special Meeting of Linkwell shareholders ("Special Meeting") by the affirmative vote of Individual Defendants and certain other shareholders who resided in China. Siegmund later alleged that he and other similarly situated Linkwell shareholders did not receive notice of the Merger or the Special Meeting (though Sidley argued that Linkwell had made arrangements for notice to be mailed to shareholders). Because shareholders did not receive notice, Siegmund asserted that he and other Linkwell shareholders were denied the opportunity to exercise their rights and seek to enjoin the vote on the Merger at the Special Meeting. As a result of the consummation of the Merger, Linkwell shareholders' stock was cancelled in exchange for the payment of $0.88 per share. On April 11, 2016, the Derivative Action was dismissed for lack of shareholder standing because Siegmund no longer owned Linkwell stock. On August 21, 2018, the Court of Appeals affirmed

the dismissal without prejudice.

Siegmund commenced this Action on October 24, 2016 alleging claims against Defendants for violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder (collectively, "10b-5"), breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and civil conspiracy. Siegmund claimed that he and other similarly situated Linkwell shareholders were injured by the alleged misconduct because the Merger was undertaken to wrongfully extinguish the valuable claims asserted on behalf of Linkwell in the Derivative Action, and the Merger was completed without due notice to Siegmund and other similarly situated shareholders, which unlawfully denied them their rights to move to enjoin the vote on the Merger or exercise other appropriate remedies to obtain fair value for their Linkwell stock.

B. Procedural History

On December 15, 2016, Sidley moved to dismiss the Action for failure to state a claim and lack of personal jurisdiction. On March 7, 2017, the Court entered an Order (DE No. 49) directing that the Clerk enter a default against Leading World. The default (DE No. 50) was entered on March 8, 2017. On September 29, 2017, the Court entered an Order (DE No. 57) dismissing Siegmund's initial complaint, however, granting leave to amend. On October 19, 2017, Siegmund filed the First Amended Class Action Complaint (DE No. 60) ("Complaint").[5]

Individual Defendants and Sidley again moved to dismiss. On April 2, 2018, the Court entered an Order (DE No. 96) granting Sidley's motion to dismiss the 10b-5 claims against it in the Complaint, and denying the motion in all other respects. On the same date the Court entered another Order (DE No. 97) denying Individual Defendants' motion to dismiss in its entirety. On April 3, 2018, the Court entered a Scheduling Order Setting Trial (DE No. 98) that, among other things, established a June 15, 2018 deadline to complete fact and expert discovery. The Court also entered an Order (DE No. 99) referring the case to mediation.

On April 20, 2018, Sidley answered the Complaint (DE No. 106). On May 11, 2018, Sidley moved for reconsideration of the portion of the April 2 Order denying its motion to dismiss (DE No. 120).[6] On May 14, 2018, Individual Defendants answered the Complaint (DE

[5] Papers to effect service of the Complaint abroad upon Yinling were provided to the Ministry of Justice of China; however, service was not completed while this Action was pending.

[6] On May 14, 2018, the Court entered an Order (DE No. 123) denying the motion for reconsideration.

Nos. 121-22). On June 5, 2018, a mediation conference was conducted. The Parties, however, were unable to reach agreement (DE Nos. 104, 146).

As a consequence of the June 15, 2018 discovery deadline, discovery began shortly after Settling Defendants served their answers to the Complaint. Extensive motion practice was engaged in by the Parties related to fact and expert discovery.[7] On June 12, 2018, the Court entered an Order (DE No. 148) extending the deadline to complete fact and expert discovery to September 7, 2018. By that deadline, counsel for the Parties had conducted the depositions of 12 fact and expert witnesses.[8] Over 30,000 pages of documents were produced in direct and third-party discovery.

On September 5, 2018, Siegmund moved for certification of the Class, his appointment as Class Representative, and the appointment of Wolf Haldenstein as Class Counsel (DE No. 222). On September 21, 2018, Defendants moved for summary judgment (DE Nos. 237-43).

On September 27, 2018, the Court entered an Order of Continuance and Order Revising Pretrial Deadlines (DE No. 246) extending the discovery deadline to March 8, 2019. On September 28, 2018, a second mediation conference was conducted. The Parties were unable to reach agreement at the mediation conference, however, they made progress and continued their settlement negotiations. In light of the Parties' ongoing settlement discussions, on October 2,

[7] *See, e.g.*, Siegmund's Motion to Compel Sidley to Produce Documents Withheld as Privileged (DE No. 132); Individual Defendants' Motion for Protective Order (DE No. 145); Siegmund's Motion to Compel Individual Defendants to Appear for Depositions (DE No. 156); Siegmund's Motion to Compel Sidley to Produce Document Designated as Privileged and Inadvertently Disclosed (DE No. 157); Siegmund's Motion for Determination that Individual Defendants Waived Attorney-Client Privilege (DE No. 160); Siegmund's Motion for Reconsideration of Omnibus Order on Discovery Motions (DE No. 186); Siegmund's Motions to Compel Joseph Chan and Thomas A. Paskowitz to Appear for Further Depositions and Answer Questions (DE Nos. 187-88); Siegmund's Motion for Order Requiring Individual Defendants to Appear for Deposition (DE No. 211); Individual Defendants' Objection to Order Granting Motion for Reconsideration (DE No. 214); Siegmund's Motion to Strike Rebuttal Reports of Sidley's Testifying Experts (DE No. 218); Siegmund's Motion to Compel Sidley to Produce Documents Withheld as Privileged (DE No. 219); Sidley's Motion to Strike Supplemental Report of Expert Joseph Thompson (DE No. 254); Siegmund's Motion for Order Granting Sanctions against Individual Defendants for Failure to Comply with Discovery Order (DE No. 256); Siegmund's Motion for Discovery Sanctions against Sidley (DE No. 262); Sidley's Motion to Compel Siegmund to Produce Documents (DE No. 266). In total, 28 discovery and related motions were filed and ruled upon by Magistrate Judge Louis.

[8] The Parties stipulated that documents produced and depositions conducted in the Derivative Action could be used in the Action as well without replication.

2018, the motions for class certification and summary judgment were withdrawn without prejudice as to the right to renew. (DE Nos. 249-51).

Siegmund died on November 23, 2018. On February 8, 2019, Plaintiffs moved to be substituted in the Action for Siegmund pursuant to Rule 25 of the Federal Rules of Civil Procedure (DE No. 281). On February 22, 2019, the Court entered an Order (DE No. 284) granting the substitution motion.

C. Settlement Negotiations

Parallel to the litigation of the Action, preliminary settlement negotiations began in the late spring of 2018. During the negotiations, counsel to the Parties discussed the merits of the case, their view of the facts and law relative to the merits and potential relief for the proposed Class, and exchanged counter-proposals for a potential settlement. Following the two mediation sessions and numerous additional communications between counsel for the Parties, an agreement-in-principle to settle the Action was reached. Plaintiffs and Sidley executed a memorandum of understanding dated February 5, 2019. Thereafter Plaintiffs reached an agreement-in-principle with Individual Defendants and, therefore, the Parties executed a superseding memorandum of understanding ("MOU") dated March 21, 2019, and subsequently negotiated and executed the Stipulation as of May 1, 2019. The negotiations between the Parties were undertaken in good faith and conducted at arm's length.

D. The Terms of the Settlement

1. The Proposed Class

The Class for purposes of the Settlement only is defined as follows:

> All persons and entities who owned, either as a record or beneficial owner, one or more shares of Linkwell common stock as of the close of business on September 19, 2014, who did not vote to approve the Merger between Linkwell and Leading World, whose shares were canceled as a result of the Merger between Linkwell and Leading World, and were allegedly damaged thereby.

Stipulation ¶ 7. Excluded from the Class are Individual Defendants; Sidley and its employees and agents; Yinling, Leading First, Leading World Corporation, and their subsidiaries and affiliates; all Linkwell shareholders who voted to approve the Merger, and all persons who make a timely request to opt-out of the Settlement. *Id*.

2. The Settlement Amount

The Settlement Amount is $6,000,000 in cash, which includes all attorneys' fees and expenses, and all costs related to Class notice and administration of the Settlement. *Id.* ¶¶ 22, 35.

The Settlement Amount will be deposited into an interest-bearing escrow account (the "Settlement Fund") within 10 days of this Court's preliminary approval of the Settlement. *Id.* ¶¶ 36, 50-51.

3. The Service Award

Wolf Haldenstein (proposed Class Counsel) will seek a Service Award of $15,000 for The Siegmund Trust to reimburse Mr. Siegmund's estate for his reasonable costs and expenses relating to his service in the Action prior to his death. If the Court approves the Service Award, it will be paid from the Settlement Fund, and will be in addition to the relief to which The Siegmund Trust is entitled as a Class Member under the terms of the Settlement. *Id*. ¶¶ 31, 70.

4. Attorneys' Fees and Expenses

Wolf Haldenstein intends to request attorneys' fees of up to 35% of the Settlement Fund, plus reimbursement of litigation expenses incurred in connection with the prosecution and resolution of the Action. *See* Stipulation ¶ 70; Krasner Decl. ¶ 41. Wolf Haldenstein will submit an application for attorneys' fees and expenses 35 days prior to the Fairness Hearing, which is 2 weeks before the deadline for Class Members to object or exclude themselves from the Settlement. *See* [Proposed] Preliminary Approval Order ¶ 36.

5. Proposed Plan of Allocation

The Court will be asked to approve a proposed Plan of Allocation for the Net Settlement Fund at the Fairness Hearing, *see* Stipulation ¶¶ 27, 75, which is reported in full in the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees, and Fairness Hearing ("Notice of Pendency").[9] The distributions to be made pursuant to the Plan of Allocation reflect the allegations that Class Members did not receive fair value for their Linkwell stock in connection with the Merger. The Plan of Allocation provides that each eligible Class Member or Authorized Claimant shall receive his, her, or its pro rata share of the Net Settlement Fund.

Authorized Claimants residing in the United States and its territories, except for Linkwell *record shareholders* who did not vote to approve the Merger, shall have their claims valued at the full amount of the claim. Authorized Claimants residing outside the United States and its territories, and all Linkwell *record shareholders* who did not vote to approve the Merger, shall have their claims valued at 40% of the full amount of the claim. *See* Krasner Decl. ¶ 33. The Claims Administrator will calculate Authorized Claimants' pro rata share of the Net Settlement

[9] The Notice of Pendency is attached as Exhibit A to the Stipulation.

Fund and Class Counsel will file a motion seeking approval of the Proof of Claim determinations after administration of the Settlement is complete. Once it is no longer economically feasible to distribute the Net Settlement Fund, Class Counsel will request Court approval of the distribution of any remaining nominal amount.

III. PRELIMINARY APPROVAL SHOULD BE GRANTED

A. The Standard for Preliminary Approval

Federal Rule of Civil Procedure 23(e) requires judicial approval for the compromise of claims brought on a class basis. Pursuant to the Rule, "[t]he claims, issues, or defenses of a certified class – or a class proposed to be certified for purposes of settlement – may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). Such approval is committed to the Court's sound discretion. *In re United States Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). *See Diakos v. HSS Sys., LLC*, 137 F. Supp. 3d 1300, 1311 (S.D. Fla. 2015) (same).

"Public policy strongly favors the pretrial settlement of class action lawsuits." *In re HealthSouth Corp. Sec. Litig.*, 572 F.3d 854, 862 (11th Cir. 2009). The Court's judgment whether to approve a class settlement "is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Smith v. Wm. Wrigley Jr. Co.*, 2010 U.S. Dist. LEXIS 67832, at *6 n.1 (S.D. Fla. June 15, 2010) (citation omitted). There is "an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1314 (S.D. Fla. 2005) (citations omitted).

A proposed class action settlement should be approved where it is "fair, adequate and reasonable and is not the product of collusion between the parties." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (internal quotations omitted). Courts in this Circuit consider the following factors in determining whether a settlement is fair, reasonable, and adequate:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Smith, 2010 U.S. Dist. LEXIS 67832, at *6 (quoting *Bennett, supra*). *Accord Wilson v. EverBank*, 2016 U.S. Dist. LEXIS 15751, at *21 (S.D. Fla. Feb. 3, 2016) (citing *Leverso v. S. Trust Bank of Ala. N.A.*, 18 F.3d 1527, 1530 n.6 (11th Cir. 1994)).

At the preliminary approval stage, the Court is required to make only "a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *City of Los Angeles v. Bankrate, Inc.*, 2016 U.S. Dist. LEXIS 115071, at *14 (S.D. Fla. Aug. 24, 2016) (internal quotations and citation omitted). In other words, "the Court's task is to evaluate whether the Settlement is within the 'range of reasonableness.'" *Gerstenhaber v. Galleria Fitness Club, LLC*, 2019 U.S. Dist. LEXIS 42058, at *9 (S.D. Fla. Mar. 12, 2019) (quoting 4 Newberg on Class Actions § 11.26 (4th ed. 2010)). "Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason." *City of Los Angeles*, *supra* (internal quotations and citations omitted). "Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness." *Almanzar v. Select Portfolio Servicing, Inc.,* 2015 U.S. Dist. LEXIS 178149, at *4-*5 (S.D. Fla. Oct. 15, 2015). *See Manual for Complex Litigation*, Third, § 30.42 (West 1995) (internal quotations omitted) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery.") "Where … the proposed settlement is the result of serious, arms'-length negotiations between the parties, has no obvious deficiencies, falls within the range of possible approval and does not grant preferential treatment to plaintiff or other segments of the class, courts generally grant preliminary approval and direct that notice of a formal final approval hearing be given to class members." *Diakos, supra* (citations omitted).

B. The Settlement Satisfies the Criteria for Preliminary Approval

The Settlement satisfies each of the elements relevant to the grant of preliminary approval. The Settlement was reached in the absence of collusion, and is the product of informed, good faith, and arm's length negotiations by the Parties and their experienced counsel. Moreover, a preliminary evaluation of the fairness, adequacy, and reasonableness of the Settlement shows that it is well within the range of reasonableness.

Any settlement requires the parties to balance the merits of claims and defenses asserted against the attendant risks of litigation and delay. Plaintiffs believe that the claims asserted in the Complaint are meritorious, and that they could prevail on a motion for class certification and ultimately at trial. Settling Defendants deny any potential liability and take the position that the Action cannot be maintained as a class action and that the claims cannot be proven at trial.

Continuing the action poses significant risks and costs. The Parties have respectively determined that the benefits of settlement outweigh the risks of continued litigation. Those risks include the time and expense in preparing for and proceeding to trial, any appellate review, and other uncertainties related to complex class action litigation.

1. The Settlement Resulted from Informed, Good Faith, and Arm's Length Negotiations

When a class action settlement is the result of arm's length, informed negotiations between the parties and their experienced counsel, the Court may presume the settlement to be fair, adequate, and reasonable. *See Almanzar*, 2015 U.S. Dist. LEXIS 178149, at *4-*5 (citations omitted) ("Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness."); *see also Montoya v. PNC Bank, N.A.*, 2016 U.S. Dist. LEXIS 50315, at *27-*28 (S.D. Fla. April 13, 2016) (internal quotations and citations omitted) ("In considering the settlement, the district court may rely upon the judgment of experienced counsel for the parties. Absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel."). The Settlement is the result of informed, arm's length negotiations between the Parties and their highly experienced counsel. "Where the parties have negotiated at arm's length, the Court should find that the settlement is not the product of collusion." *Saccoccio v. JPMorgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014) (citation omitted). The Parties simultaneously engaged in extensive negotiations over a period of several months and exchanged multiple proposals while zealously representing their clients' interests in the Action. "[W]here the case proceeds adversarially, this counsels against a finding of collusion." *Id.* (citation omitted).

The Parties also had the assistance of an experienced mediator, Jed D. Melnick Esq. of JAMS, who has successfully assisted in the settlement of many complex securities class action litigations.[10] Mr. Melnick presided over two mediations. This further confirms that the Settlement is not the product of collusion. *See, e.g., Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1247 (S.D. Fla. 2016) (citations omitted) ("The assistance of an experienced mediator in

[10] *See* Krasner Decl. ¶ 24. *See also City of Los Angeles*, 2016 U.S. Dist. LEXIS 115071, at *50-*51; *In re Longwei Petroleum Inv. Holding Ltd. Sec. Litig.*, 2017 U.S. Dist. LEXIS 85004, at *23 (S.D.N.Y. May 22, 2017); *Xuechen Yang v. Focus Media Holding, Ltd.*, 2014 U.S. Dist. LEXIS 126738, at *13-*14 S.D.N.Y. Sept. 4, 2014); *Howell v. JBI, Inc.*, 298 F.R.D. 649, 653 (D. Nev. 2014); *In re PAR Pharm. Secs. Litig.*, 2013 U.S. Dist. LEXIS 106150, at *8 (D.N.J. July 29, 2013).

the settlement process confirms that the settlement is non-collusive.") ("[T]he fact that the Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable.").

In negotiating this Settlement, Plaintiffs' counsel conducted a thorough investigation and analysis of the claims and defenses asserted, and engaged in extensive fact and expert discovery with Settling Defendants. Review and analysis of that discovery enabled Plaintiffs' counsel to formalize an understanding of the evidence related to central questions in the Action and prepared them for well-informed settlement negotiations. *See Francisco v. Numismatic Guaranty Corp. of Am*., 2008 U.S. Dist. LEXIS 125370, at *27 (S.D. Fla. Jan. 30, 2008) (cited in *Morgan*, 301 F. Supp. 3d at 1251) ("Class Counsel had sufficient information to adequately evaluate the merits of the case and weigh the benefits against further litigation" where counsel conducted two 30(b)(6) depositions and obtained "thousands" of pages of documentary discovery).

2. An Evaluation of the Relevant Factors Supports a Determination that the Settlement Should be Preliminarily Approved

A preliminary evaluation of the *Bennett* factors demonstrates that the Settlement falls within the range of reason to warrant preliminary approval.

a) Likelihood of Success at Trial

As indicated above, any settlement requires the parties to balance the merits of claims and defenses asserted against the attendant risks of continued litigation and delay. Under the first *Bennett* factor, the Court weighs a "[p]laintiff's likelihood of success at trial … against the amount and form of relief contained in the settlement." *Saccoccio*, 297 F.R.D. at 692 (internal quotations and citations omitted).

Here, Plaintiffs asserted many highly complex claims in the Complaint. While Plaintiffs believe that the claims are meritorious and they could prevail on a renewed motion for class certification, they are fully cognizant of the fact that litigating the claims to a favorable resolution at trial poses significant risks and expense. Settling Defendants, on the other hand, had some success in moving to dismiss Plaintiffs' claims, filed an extensive motion for summary judgment, have challenged the methodologies of Plaintiffs' experts on various grounds, and would oppose a renewed motion for class certification. Even if the motion for class certification was successful, Settling Defendants could seek immediate review of any certification ruling under Rule 23(f), and delay the trial of Plaintiffs' claims. At trial, Plaintiffs will have "to prove

every element of their cause[s] of action and negate every affirmative defense … to recover." *Thorpe v. Walter Inv. Mgmt. Corp*., 2016 U.S. Dist. LEXIS 144133, at *8 (S.D. Fla. Oct. 14, 2016).[11] Any favorable resolution of the Action at trial in favor of the Class would likely be followed by appellate proceedings, further delaying recovery for Class Members. Each of these uncertainties of outcome at future stages of litigation strongly favors approval of a negotiated settlement. *Lipuma*, 406 F. Supp. 2d at 1322.

The Settlement provides significant and immediate relief to Class Members without further delay. The significant monetary relief the Settlement provides to Class Members outweighs the risks of continued litigation.

b) Range of Possible Recovery and the Point on or Below the Range of Recovery at which a Settlement is Fair

According to the damages expert retained by Plaintiffs, the recovery provided by the Settlement is between 10% and 35% of the maximum potential recovery Class Members could have achieved at trial, depending on the methodology used to value the claims in the Complaint. This assumes that the Class was certified, the claims survived summary judgment, and Settling Defendants' anticipated challenges to the methodology of Plaintiffs' experts were unsuccessful.[12] This recovery is an excellent result considering the substantial risks inherent in the Action and delay that would necessarily occur from protracted litigation.

When evaluating the terms of a settlement in relation to the likely benefits of a successful trial, "[t]he Court must evaluate the settlement in light of the attendant risks with litigation." *Thorpe*, 2016 U.S. Dist. LEXIS 144133, at *8-*9 (internal quotation and citation omitted). When evaluating a securities case, the Court is guided by two maxims: "(1) proof of damages in a securities fraud case is always difficult and requires expert testimony, and (2) the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate." *City of Los Angeles,* 2016 U.S. Dist. LEXIS 115071, at *15 n.2 (citation omitted).

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[11] *See In re Sunbeam Sec. Litig*., 176 F. Supp. 2d 1323, 1330 (S.D. Fla. 2001) (noting that success at trial of securities fraud claims was "far less than a sure thing" as proof of scienter requires a showing of "at least 'severe recklessness'").

[12] Sidley's damages expert was highly critical of Plaintiffs' damages expert and opined that even if performing a valuation was appropriate, if Plaintiffs' damages expert had applied an accepted valuation methodology, he would have arrived at a much lower per-share value of $13.93.

Here, the Settlement is fair, adequate, and reasonable when weighed against continued costly and time-consuming litigation against Defendants. The $6,000,000 Settlement Amount is an outstanding result given the complexity of this case and the significant obstacles to litigating the Action to a verdict: class certification; interlocutory Rule 23(f) appeal; *Daubert* challenges to experts; motions for summary judgment; trial; and post-trial appeals. *See* Krasner Decl. ¶¶ 37-38. Given these serious challenges to recovery, the Settlement falls well within the range of reason.

This case had additional significant issues not usually present in most litigated securities cases: the operating entity operated exclusively in China; the Individual Defendants reside in China; the Individual Defendants claimed that they possessed none of the relevant documents sought; relevant parties and third-parties in China could not be served with process to appear in this Action or subpoenaed to provide evidence; collection of a default judgment is virtually impossible to achieve in China; and Plaintiffs were never able to achieve any meaningful discovery from the Individual Defendants and third-parties in China. Thus, trying this case before a judge or jury in Florida would have been extremely difficult given all the unavailable persons and documents.

c) Complexity, Expense, and Duration of Litigation

"A securities case, by its very nature, is a complex animal. Further, complex class actions are notably difficult and notoriously uncertain." *Thorpe*, 2016 U.S. Dist. LEXIS 144133, at *9-*10 (internal quotations and citations omitted). "Complex litigation … can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive." *Wilson*, 2016 U.S. Dist. LEXIS 15751, at *24-*25 (internal quotations and citations omitted).

This complex securities case has taken almost three years to reach this posture. The Parties have expended significant amounts of time, energy, and expense litigating the claims, conducting discovery and, absent settlement, will expend more precious resources to conclude fact and expert discovery, brief class certification, summary judgment, and *Daubert* motions, and try the Action through verdict and any post-trial appeals. The Settlement presents the most efficient means for Class Members to receive value for their shares of Linkwell stock. The benefits of resolution by way of the Settlement are apparent.

d) Stage of Proceedings at which the Settlement was Achieved

Courts consider the stage of the proceedings at which settlement was achieved "to ensure that plaintiffs had sufficient information to evaluate the case and to determine the adequacy of

the settlement." *Thorpe*, 2016 U.S. Dist. LEXIS 144133, at *11 (citations omitted). Here, Plaintiffs agreed to a resolution of the Action after having substantially completed fact and expert discovery. At such time, Plaintiffs had a strong understanding of the strengths and weaknesses of their claims and prospects of success in certifying the Class, summary judgment and at trial. In addition, the Parties attended two mediations sessions with a highly regarded mediator.

IV. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED

Plaintiffs request that the Court preliminarily certify the Class defined above for purposes of the Settlement. It is well settled that "[a] class may be certified solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue." *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (internal quotations and citations omitted). *See* 4 Newberg on Class Actions § 11.27 (4th ed. 2002) ("When the court has not yet entered a formal order determining that the action may be maintained as a class action, the parties may stipulate that it be maintained as a class action for the purpose of settlement only.").

In deciding whether to provisionally certify a settlement class, the Court must consider the same factors that it would consider in connection with a proposed litigation class – *i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied – except the Court need not consider the manageability of a potential trial. *Gerstenhaber*, 2019 U.S. Dist. LEXIS 42058, at *4. Because settlement obviates a trial, "a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 620 (1997) (citation omitted).

For purposes of the Settlement, Settling Defendants do not oppose certification of the Class. For the reasons set forth below, the requirements of Rule 23 are satisfied and certification of the Class is appropriate.

A. The Proposed Class Meets the Requirements of Rule 23(a)

Certification under Rule 23(a) requires that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

1. The Class is Sufficiently Numerous

Classes numbering in the hundreds easily meet the numerosity requirement of Rule 23(a)(1). "A plaintiff need not show the precise number of members in the class. A reasonable estimate is enough." *Cox v. Porsche Fin. Servs., Inc.*, 2018 U.S. Dist. LEXIS 192707, at *12 (S.D. Fla. Nov. 9, 2018) (internal quotations and citations omitted). While mere numbers are not dispositive, the rule in the Eleventh Circuit is that "generally less than twenty-one [members of the proposed class] is inadequate, more than forty adequate." *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986), *cert. denied*, 479 U.S. 883 (1986). To support a finding of numerosity, the Court may make common sense assumptions. *See Evans v. U.S. Pipe & Foundry Co.*, 696 F.2d 925, 930 (11th Cir. 1983). Other relevant factors include the geographic diversity of the class members, judicial economy and the inconvenience of trying individual lawsuits, and the ability of individual class members to bring individual lawsuits. *See Agan v. Katzman & Korr, P.A.*, 222 F.R.D. 692, 696 (S.D. Fla. 2004).

Here, the proposed Class satisfies the numerosity requirement. Class Members are the non-insider shareholders of a former public company that received no notice of the Merger and/or did not vote to approve it and suffered injury as a result. Plaintiffs believe that there are at least 300 Class Members residing throughout the United States and abroad that owned 200,492 shares of Linkwell stock on September 19, 2014, *see* Complaint ¶ 196, Krasner Decl. ¶¶ 8, 33 & n.5, thus making joinder impractical, uneconomical, and inconvenient. *See, e.g., Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (finding of numerosity bolstered by wide geographic dispersion of the 31 class members); *Cnty. of Monroe v. Priceline.com, Inc.*, 265 F.R.D. 659, 667 (S.D. Fla. 2010) (putative class of 59 Florida counties was "presumptively large enough" for numerosity and their "geographic dispersion also militates in favor of a finding that joinder is impracticable").

2. Common Questions of Law and Fact Exist

Under Rule 23(a)(2), "a class action must involve issues that are susceptible to class-wide proof." *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). "Commonality requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members." *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009) (internal quotations and citation omitted). This threshold is not high. *Id.* at 1356. Commonality is generally satisfied "when a plaintiff alleges that defendants have engaged in a standardized

course of conduct that affects all class members." *Smith*, 2010 U.S. Dist. LEXIS 67832, at *11 (internal quotations and citation omitted).

Here, the requirement is satisfied because there are multiple questions of law and fact common to the Class involving Defendants' course of conduct in connection with the Merger.[13] *See, e.g.*, *Walco Inv., Inc. v. Thenen*, 168 F.R.D. 315, 325 (S.D. Fla. 1996) (finding commonality based on unified scheme to defraud investors). In addition, all Class Members have been subject to the same alleged conduct and all have suffered the same injury as a result; namely, the divestiture of their shares of Linkwell common stock through an unfair process and at an unfair price. All Class Members' claims are based on the same legal theories and will rise or fall on the basis of common proof. Given these common issues subject to common resolution, this requirement is met.

3. Plaintiffs' Claims are Typical of Those of the Class

While facially similar to the commonality requirement, "[t]ypicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large." *Diakos*, 137 F. Supp. 3d at 1309. "Like commonality, typicality is not a demanding test." *Monroe,* 265 F.R.D. at 668. To satisfy this requirement, "[a] class representative must possess the same interest and suffer the same injury as the class members…." *Williams*, 568 F.3d at 1357 (internal quotations and citation omitted). Typicality is "established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory. Typicality, however, does not require identical claims or defenses." *Kornberg v. Carnival Cruise Lines*, 741 F.2d 1332, 1337 (11th Cir. 1984), *cert. denied*, 470 U.S. 1004 (1985).

Here, Plaintiffs' claims are virtually indistinguishable from those of the Class. Plaintiffs, like all Class Members, assert claims that involve the alleged misconduct by Defendants, arise

[13] *See* Complaint ¶ 197 (listing common questions of law and fact: (i) whether the federal securities law were violated by Defendants' acts as alleged herein; (ii) whether Defendants, by their direct involvement and participation in the scheme to cause the forced sale of Linkwell stock owned by Class Members without any notice, employed a scheme to defraud, or engaged in acts, practices, or a course of conduct which operated as a fraud or deceit in connection with the sale of Class Members' Linkwell stock; (iii) whether Defendants breached their fiduciary duties and/or aided and abetted breaches of fiduciary duties to Class Members as alleged herein; (iv) whether Defendants conspired to acquire 100% of the equity of Linkwell through an unlawful and unfair process; and (v) whether $0.88 per share was fair value for the Linkwell stock owned by Class Members).

from the same legal theories, and concern the same type of harm and entitlement to relief. Plaintiffs and Class Members will equally benefit from the relief provided by the Settlement. Thus, the typicality requirement is also satisfied.

4. Plaintiffs will Fairly and Adequately Protect the Class

The adequacy of representation requirement "encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *City of Los Angeles*, 2016 U.S. Dist. LEXIS 115071, at * 8 (citing *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1323 (11th Cir. 2008). "Adequate representation is presumed in the absence of contrary evidence." *Ass'n for Disabled Americans, Inc. v. Amoco Oil Co*., 211 F.R.D. 457, 464 (S.D. Fla. 2002).

Based on their losses sustained as a result of Defendants' alleged misconduct, Plaintiffs' interests are directly aligned with, and not antagonistic to, the interests of other Class Members who were injured by precisely the same alleged misconduct. The proof for Plaintiffs' claims against Defendants will also prove the claims of the Class. Plaintiffs have actively litigated the Action on behalf of themselves and the putative Class, and will continue to do so.

Plaintiffs' counsel, Wolf Haldenstein, is qualified, experienced, and capable of vigorously prosecuting this litigation (and has done so) and is likewise adequate.[14] Plaintiffs and their counsel have vigorously and competently represented Class Members' interests in this Action.

Accordingly, the Court should conclude that Plaintiffs and their counsel will adequately represent the Class and appoint Plaintiffs as Class Representatives.

B. The Proposed Class Satisfies Rule 23(b)(3)

Plaintiffs seek certification under Rule 23(b)(3). Rule 23(b)(3) is satisfied if: "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Each of those elements is satisfied here.

[14] Wolf Haldenstein is a nationally recognized firm that has both successfully litigated numerous securities fraud and complex class action cases and has dedicated substantial time and resources to the prosecution of the Action. *See* Krasner Decl. ¶ 40, Ex. 2 (Firm Resume).

1. Common Questions of Law or Fact Predominate

The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. at 623. It is usually present when the action is based on a common course of conduct on the part of defendant. Rule 23(b)(3) "does not require a plaintiff seeking class certification to prove that each 'elemen[t] of [their] claim [is] susceptible to classwide proof,'" just "that common questions 'predominate over any questions affecting only individual [class] members.'" *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 469 (2013) (citation omitted). "'Predominance is a test readily met in certain cases alleging … securities fraud.'" *City of Los Angeles*, 2016 U.S. Dist. LEXIS 115071, at *9 (quoting *Amchem*, 521 U.S. at 625).

Here, common questions of law and fact predominate over individual questions because Defendants' alleged acts and omissions in connection with the Merger affected all Class Members in the same manner. *See, e.g., Kennedy v. Tallant*, 710 F.2d 711, 718 (11th Cir. 1983); *Kirkpatrick v. J.C. Bradford & Co*., 827 F.2d 718, 724-25 (11th Cir. 1987); *Klay v. Humana, Inc.*, 382 F.3d 1241, 1258-59 (11th Cir. 2004), *abrogated in part on other grounds by Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008); *Walco*, 168 F.R.D. at 333 (all finding common questions predominate in lawsuits suit involving a single, common fraudulent scheme and that class certification is appropriate). Moreover, in the circumstances of this case reliance is also susceptible to class-wide proof. *See Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 153-54 (1972). Applied here, the presumption dispenses with the requirement that each Class Member prove individual reliance on Defendants' alleged omissions. Finally, Class Members each suffered the same alleged injury – the forced sale of their Linkwell common stock, without notice, at an allegedly unfair price of $0.88 per share.

2. A Class Action is a Superior Method of Adjudication

A class action is superior where it serves the primary goals of Rule 23, namely, "economies of time, effort, and expense," without sacrificing fairness. *See Amchem,* 521 U.S. at 615. "It is well-established that class actions are a particularly appropriate means for resolving securities fraud actions." *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 489 (S.D. Fla. 2003) (internal quotations and citation omitted). In sum, as shown above, Rule 23(b)(3) is satisfied, and the Court should preliminarily approve class certification.

V. PLAINTIFFS' COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL

Rule 23(g) sets forth four factors the Court must consider in connection with the appointment of class counsel:

> (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and types of claims of the type asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class;

Fed. R. Civ. P. 23(g)(1)(A). Each of the factors favors the appointment of Wolf Haldenstein as class counsel. Wolf Haldenstein was the first and only counsel to file class action claims against Defendants for federal securities violations and breaches of fiduciary duty, aiding and abetting breaches of fiduciary duty, and civil conspiracy under Florida law. Wolf Haldenstein also represented Siegmund in the Derivative Action, which preceded this Action. Further, Wolf Haldenstein is a nationally recognized firm with extensive experience and has successfully litigated numerous securities fraud and complex class action cases. *See* Krasner Decl. Ex. 2. Finally, Wolf Haldenstein has committed significant resources to prosecuting the claims in the Action on behalf of Plaintiffs and the Class, and will continue to do so.

Because Wolf Haldenstein satisfies the above criteria, the Court should appoint it as Class Counsel.

VI. THE PROPOSED NOTICE PLAN AND FORMS SHOULD BE APPROVED

The proposed Notice of Pendency and Summary Notice, attached as Exhibits A and B to the Stipulation, respectively, satisfy due process, the Federal Rules and the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Rule 23(c)(2) requires that the notice of the pendency of the class action be "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is one which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950). To satisfy due process, "[n]ot only must the substantive claims be adequately described but the notice must also contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action." *Rosen v. J.M. Auto Inc*., 2009 U.S. Dist. LEXIS 130129, at *10 (S.D. Fla. May 19, 2009) (quoting *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998)).

The proposed Notice program satisfies all of these criteria. The Notice will inform Class Members of the substantive terms of Settlement, advise them of their options to opt-out of or object to the Settlement, and direct them how to obtain additional information about the Settlement. The Notice also satisfies the PSLRA's separate disclosure requirements by, *inter alia*, stating: (i) the amount of the Settlement determined in the aggregate and on an average per share basis; (ii) that the Parties do not agree on the average amount of damages per share that would be recoverable; (iii) that proposed Class Counsel intends to make an application for attorneys' fees and expenses (including the amount of such fees and expenses on an average per share basis); (iv) the name, telephone number, and address of Proposed Lead Counsel; and (v) the reasons why the Parties are proposing the Settlement. *See* 15 U.S.C. §78u-4(a)(7)(A)-(F).

The Notice program is designed to reach a high percentage of Class Members (including most by direct mail, the best form of notice) and exceeds the requirements of constitutional due process. Notification also includes publication in a national newspaper focusing on investors. Upon entry of the Preliminary Approval Order, the Claims Administrator will mail the Notice to Class Members who can be identified through reasonable effort.[15] The Claims Administrator will also cause the Summary Notice to be published in *Investor's Business Daily* and *The New York Times (International)*, and transmitted over *PR Newswire*. In addition, the Notice and Proof of Claim form will be made available for viewing and downloading on the settlement website. The manner of providing notice, *i.e.*, individual notice by mail and additional publication notice, represents the best notice practicable under the circumstances, and satisfies the requirements of Rule 23, the PSLRA, and due process. *See, e.g., City of Los Angeles*, 2016 U.S. Dist. LEXIS 115071, at *20-*21 (finding the notice by publication and mail was sufficient).

Plaintiffs request that the Court appoint JND Legal Administration as the Claims Administrator to provide all notices approved by the Court to Class Members, to process Proofs of Claim, and to administer the Settlement. JND Legal Administration has extensive relevant experience and is a nationally recognized notice and claims administration firm. *See* JND Decl. ¶¶ 4-7. JND Legal Administration has also provided an estimate of claims administration costs in this Action and is available to answer any questions by the Court. *Id.* ¶ 20.

[15] Plaintiffs have copies of the shareholders' records of Linkwell as of August 15, 2014. There was minimal trading of Linkwell shares after that date since it was listed only on the pink sheets and, on April 11, 2014, Linkwell filed a notice of termination with the SEC. Indeed, most shareholders appear to be street name holders and will get their Notice through their brokers.

VII. PROPOSED PLAN OF ALLOCATION

The Court will be asked to approve the proposed Plan of Allocation for the Settlement Fund, which is reported in full in the Notice of Pendency, at the final Settlement Fairness Hearing. "[A] plan of allocation … fairly treats class members by awarding a pro rata share to every Authorized Claimant, even as it sensibly makes interclass distinctions based upon, *inter alia*, the relative strengths and weaknesses of class members' individual claims …." *Redwen v. Sino Clean Energy, Inc.*, 2013 U.S. Dist. LEXIS 100275, at *29 (C.D. Cal. July 9, 2013) (internal quotations and citation omitted).

Individual Authorized Claimants' recoveries under the proposed Plan of Allocation will depend upon (a) the country of residence of the Class Member, and (b) and whether such Class Member was a record shareholder of Linkwell. Authorized Claimants that reside in the United States, except for Linkwell record shareholders who did not vote to approve the Merger, will recover their pro rata share of the Net Settlement Fund. The claims of Authorized Claimants that do not reside in the United States and all Linkwell record shareholders who did not vote to approve the Merger, however, will recover 40% of their pro rata share of the Net Settlement Fund. *See* Notice of Pendency at 15. This distinction is made based on the fact that questions exist concerning the merits of non U.S. resident Class Members claims. *See Morrison v. Nat'l Australia Bank Ltd*. 561 U.S. 247, 268 (2010) (internal quotations omitted) (The federal securities laws "do[] not apply to any person insofar as he transacts a business in securities without the jurisdiction of the United States…."). *Accord SEC v. Berbel*, 2018 U.S. Dist. LEXIS 31746, at *8 (S.D. Fla. Feb. 26, 2018) (internal quotations and citation omitted) ("[T]he federal securities laws apply to transactions where the purchaser incurred irrevocable liability within the United States to take and pay for a security, or [] the seller incurred irrevocable liability within the United States to deliver a security."). The claims of Authorized Claimants that were Linkwell record shareholders who did not vote to approve the Merger are similarly discounted insofar as such Class Members received notice of the Merger and, presumably, could have exercised their rights.

The Claims Administrator will calculate Authorized Claimants' pro rata share of the Net Settlement Fund and Proposed Class Counsel will file a motion seeking approval of the claim determinations after the administration of the Settlement is complete. Once it is no longer economically feasible to distribute the Net Settlement Fund, Proposed Class Representatives will request Court approval of the distribution of any remaining nominal amount.

VIII. PROPOSED SCHEDULE OF EVENTS

Plaintiffs respectfully propose the following schedule for Settlement-related events:

Deadline for mailing individual Notices and Claim Forms (the "Notice Date")	***15 business days after entry of Preliminary Approval Order.***
Deadline for publication in *Investor's Business Daily* and transmission over *PR Newswire*	***Within 14 calendar days of the Notice Date.***
Deadline for filing motions in support of the Settlement, the Plan of Allocation, and Class Counsel's application for fees and expenses	***No later than 35 calendar days before the Fairness Hearing.***
Deadline for submission of requests for exclusion or objections	***Received no later than 21 calendar days before the Fairness Hearing.***
Deadline for filing reply papers in support of the motions	***No later than 7 calendar days before the Settlement Hearing.***
Fairness Hearing	***At the Court's convenience, but no fewer than 90 calendar days after entry of the Preliminary Approval Order.***[16]
Deadline for submission of Proofs of Claim Forms	***Postmarked no later than 120 calendar days after the Notice Date.***

IX. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court issue an Order substantially in the form of the proposed Preliminary Approval Order: (i) preliminarily approving the Settlement and certifying the Class; (ii) appointing Plaintiffs as Class Representatives and Wolf Haldenstein as Class Counsel; (iii) approving the form and manner of providing notice of the Settlement to Class Members; (iv) appointing JND Legal Administration as Claims Administrator; (v) setting a date for the Fairness Hearing to consider final approval of the Settlement, the Plan of Allocation, the application for an award of attorneys' fees and

[16] Under the Class Action Fairness Act, "[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and appropriate State official are served" with a notice advising them of the proposed settlement and giving them an opportunity to object. *See* 28 U.S.C. § 1715(d). The Settling Defendants are required (and will) mail the notice to the appropriate Federal and State officials within 10 days after this preliminary approval motion is filed with the Court. *See* 28 U.S.C. § 1715(b) (requiring defendants in class actions to mail notice to federal and state officials "[n]ot later than 10 days after a proposed settlement of a class action is filed in court").

expenses, and service award to The Frederick Siegmund Trust; and (vi) granting such other and further relief as may be just and appropriate.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), the undersigned hereby certify that they have conferred in good faith with counsel for Settling Defendants Xuelian Bian, Wei Guan, and Sidley Austin LLP to resolve the issues raised in this motion, and state that the relief sought is not opposed.

Dated: May 21, 2019

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Claims Living Trust dated July 31, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2019, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using the CM/ECF system thereby causing electronic notice of the same to be provided to all counsel of record.

/s/ Michael A. Fischler, Esq.
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Attorney Bar Number**:** 255531