UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: EZCORP, INC. SECURITIES LITIGATION, This document applies to: ALL CASES	No. 14-cv-6834 (ALC) (AJP) Date: April 25, 2017 Time: 10:00 a.m. Judge: Hon. Andrew L. Carter, Jr. Courtroom: 1306

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

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I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiff Automotive Machinists Pension Trust ("Lead Plaintiff" or "Automotive Machinists") respectfully submits this memorandum of law in support of its motion for final approval of the class action Settlement, and approval of the proposed plan for allocating the Net Settlement Fund.[1]

The Settlement provides for payment of $5.9 million in cash.[2] The Settlement is the product of mediation before an experienced mediator, Robert A. Meyer, Esq. of JAMS. Based on his experience as a litigator and a neutral, the mediation materials and negotiations, his acknowledgment that the Parties were well-versed in the facts and law applicable to the case, and his understanding of the limitations and risks presented by the Court's opinion denying in part and granting in part Defendants' motions to dismiss, Mediator Meyer made a "mediator's proposal" to settle for $5.9 million in cash, which the Parties separately accepted. *See* Declaration Of Mediator Robert A. Meyer, Esq. In Support Of Class Action Settlement ("Meyer Decl."), submitted herewith as Exhibit 1 to the DeLange Decl., ¶8.

The terms of the Settlement are set forth in the Stipulation, previously filed as ECF No. 112-1. By Order dated January 4, 2017, the Court preliminarily approved the Settlement, certified

[1] Lead Plaintiff respectfully refers the Court to the accompanying Declaration Of Timothy A. DeLange In Support of Final Approval of Class Action Settlement, The Plan Of Allocation, And Lead Counsel's Application For An Award Of Attorneys' Fees And Litigation Expenses ("DeLange Decl.") for a detailed description of the case and the Settlement. Unless otherwise noted, capitalized terms have the meanings set forth in the Stipulation And Agreement Of Settlement filed December 23, 2016 (ECF No. 112-1, the "Stipulation" or the "Stip.").

[2] As certified by the Court in the January 4, 2017 Order Preliminarily Approving Proposed Settlement And Providing For Notice (ECF No. 114, the "Preliminary Approval Order"), the "Settlement Class" consists of persons and entities who purchased or otherwise acquired Class A common stock issued by EZCORP between April 19, 2012, and October 6, 2014, inclusive, and were damaged thereby. Defendants and certain other persons and entities are excluded from the Settlement Class, as set forth in the Order.

the Settlement Class for purposes of the Settlement, and directed notice be distributed to potential Settlement Class Members. Shortly thereafter, on February 8, 2017, EZCORP paid or caused to be paid the $5.9 million Settlement Amount into the Escrow Account established for the Settlement. DeLange Decl. ¶43.

By the time the Parties accepted the mediator's proposal and agreed to the Settlement, they had developed a full and clear understanding of the strengths and weaknesses of the claims and defenses asserted in the Action. During the course of the Action, Lead Plaintiff: (i) conducted an extensive investigation, including review and analysis of EZCORP's public filings with the Securities and Exchange Commission (the "SEC"), research and analyst reports, EZCORP's conference call transcripts and presentations, EZCORP's press releases, news and media reports concerning EZCORP; (ii) identified and interviewed numerous percipient witnesses; (iii) prepared the detailed consolidated Complaint; (iv) fully briefed Defendants' motions to dismiss; (v) engaged in document and deposition discovery; (vi) fully briefed Lead Plaintiff's class certification motion; (vii) consulted with experts on issues such as accounting, market efficiency, loss causation, and damages; (viii) researched the applicable law with respect to the claims of Lead Plaintiff and the Settlement Class, as well as Defendants' potential defenses and other litigation issues; (ix) drafted and exchanged comprehensive mediation statements; and (x) engaged in extensive settlement negotiations with experienced defense counsel facilitated by a professional JAMS mediator. DeLange Decl. Sections II, III.A.

While Lead Plaintiff believes that the claims sustained by the Court are strong, Lead Plaintiff recognizes that it would have faced significant risks in establishing all the elements of its claims and proving the case to a jury. Lead Plaintiff believes that the Settlement is a very favorable result for the Settlement Class considering the risks and delay of continued litigation, including

the risks surrounding liability and damages, as well as the risk surrounding recovering from defendants and insurance policies that are subject to other investigations and proceedings. The $5.9 million Settlement eliminates the risks, provides a certain and immediate cash recovery for the Settlement Class, and is a fair and reasonable resolution of the claims.

Lead Plaintiff also requests that the Court approve the proposed Plan of Allocation for the Settlement proceeds. The Plan of Allocation will govern how Settlement Class Members' claims will be calculated and, ultimately, how money will be distributed to valid claimants. The Plan of Allocation was prepared with the assistance of Lead Plaintiff's expert and is based on the expert's event study analysis estimating the amount of artificial inflation in the prices of EZCORP common stock during the Settlement Class Period. *See* Declaration of Zachary Nye, Ph.D. ("Nye Decl."), attached as Exhibit 4 to the DeLange Decl. As discussed below, it is substantively the same as plans that have been approved and successfully used to allocate recoveries in other securities class actions. Lead Plaintiff respectfully requests approval of the Plan of Allocation as fair, reasonable and adequate.

II. ARGUMENT

A. The Proposed Settlement Warrants Final Approval

Under Federal Rule of Civil Procedure Section 23(e), a class action settlement should be approved if the Court finds it "fair, reasonable, and adequate." "A court determines a settlement's fairness by looking at both the settlement's terms and the negotiating process leading to settlement." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 116 (2d Cir. 2005); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) ("The District Court must carefully scrutinize the settlement to ensure its fairness, adequacy and reasonableness, and that it was not a product of collusion."). In this Circuit, public policy favors the settlement of disputed claims

among private litigants, particularly in complex class actions such as this one. *Wal-Mart*, 396 F.3d at 116 ("We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'"); *Chavarria v. N.Y. Airport Serv., LLC*, 875 F. Supp. 2d 164, 171 (E.D.N.Y. 2012) ("Settlement approval is within the Court's discretion, which 'should be exercised in light of the general judicial policy favoring settlement.'"). "Courts examine procedural and substantive fairness in light of the 'strong judicial policy favoring settlements' of class action suits.'" *Flores v. Anjost Corp.*, No. 11 Civ. 1531, 2014 WL 321831, at *4 (S.D.N.Y. Jan. 29, 2014) (quoting *Wal-Mart*, 396 F.3d at 116).

Recognizing that a settlement represents an exercise of judgment by the negotiating parties, the Second Circuit has cautioned that, while a court should not give rubber stamp approval to a proposed settlement, it should "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974), *abrogated on other grounds by, Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). Because "'[t]he very purpose of a compromise is to avoid the trial of sharply disputed issues and to dispense with wasteful litigation,' the court must not turn the settlement hearing 'into a trial or a rehearsal of the trial.'" *Newman v. Stein*, 464 F.2d 689, 691-92 (2d Cir. 1972); *see Chavarria*, 875 F. Supp. 2d at 172 (a court may not "conduct a mini-trial of the merits of the action."); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 138 (S.D.N.Y. 2010) ("In deciding whether to approve a settlement, a court 'should not attempt to approximate a litigated determination of the merits of the case lest the process of determining whether to approve a settlement simply substitute[s] one complex, time consuming and expensive litigation for another.'").

1. The Settlement Was Reached After Arm's-Length Negotiations With The Assistance Of An Experienced Mediator And Is Procedurally Fair

A strong initial presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations; and great weight is accorded to the recommendations of counsel, who are closely acquainted with the facts of the underlying litigation. *See, e.g., Khait v. Whirlpool Corp.*, No. 06-6381, 2010 WL 2025106, at *3 (E.D.N.Y. Jan. 20, 2010) (Carter, J.); *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 315 (E.D.N.Y. 2006). A court may find the negotiating process is fair where, as here, "the settlement resulted from arm's-length negotiations and that plaintiffs' counsel have possessed the experience and ability . . . necessary to effective representation of the class's interests." *D'Amato*, 236 F.3d at 85; *In re China Sunergy Sec. Litig.*, No. 07-CV-7895, 2011 WL 1899715, at **3-4 (S.D.N.Y. May 13, 2011); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) ("So long as the integrity of the arm's length negotiation process is preserved . . . a strong initial presumption of fairness attaches to the proposed settlement."), *aff'd*, 117 F.3d 721 (2d Cir. 1997).

The initial presumption of fairness and adequacy applies here because all of the Parties are represented by counsel with extensive experience litigating these types of claims (DeLange Decl. ¶¶83-84); the Settlement was the result of intense, arm's-length negotiations (*id.* Section III.A.; Meyer Decl. ¶9); and the Parties understood the strengths and weaknesses of the claims and defenses before they accepted the mediator's proposal and Settlement was reached (DeLange Decl. Section III.B.).

Mediator Meyer, an experienced mediator and litigator who oversaw the mediation and recommended the Settlement, states that the arguments and positions asserted by the Parties "were the product of much hard work, and they were complex and highly adversarial." Meyer Decl. ¶5. He further explains that the Settlement "represents a recovery and outcome that is reasonable and

fair for the Settlement Class and all parties involved," and that he believes it is in the best interests of all Parties that they avoid the burdens and risks associated with taking the case through further motion practice, additional discovery, trial, and appeals. *Id.* ¶10. The active involvement of an experienced independent mediator is strong evidence of the absence of collusion and further supports the presumption of fairness. *See, e.g., In re Priceline.com, Inc. Sec. Litig.*, No. 00-cv-1884, 2007 WL 2115592, at *3 (D. Conn. July 20, 2007) ("The settlement in this case was ably negotiated at arms' length with the impartial participation of Judge Politan and attorney [Robert] Meyer and is, therefore, entitled to a presumption of fairness and adequacy."); *see also D'Amato*, 236 F.3d at 85 (a mediator's involvement in settlement negotiations "helps to ensure that the proceedings were free of collusion and undue pressure"); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. 2011) (parties were entitled to a presumption of fairness where mediator facilitated arms-length negotiations); *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 02 Civ. 5575, 2006 WL 903236, at *7 (S.D.N.Y. Apr. 6, 2006) (noting that involvement of mediator in pre-certification settlement negotiations helped "ensure that the proceedings were free of collusion and undue pressure").

2. Application Of The *Grinnell* Factors Supports Approval Of The Settlement As Fair, Reasonable, And Adequate

This Settlement is also substantively fair, reasonable and adequate and in the best interests of the Settlement Class. In the Second Circuit, the following factors are to be considered in evaluating a class action settlement:

> (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and]

> (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463 (internal citations omitted); *see also McReynolds v. Richards-Cantave*, 588 F.3d 790, 804 (2d Cir. 2009); *Wal-Mart*, 396 F.3d at 117. "A court need not find that every factor militates in favor of a finding of fairness; rather, a court considers the totality of these factors in light of the particular circumstances." *Padro v. Astrue,* No. 11-cv-1788, 2013 WL 5719076, at *4 (E.D.N.Y. Oct. 18, 2013) (citation omitted). Here, the Settlement easily satisfies the *Grinnell* factors.

a) The Complexity, Expense And Likely Duration Of The Litigation Support Approval Of The Settlement

"In evaluating the settlement of a securities class action, federal courts, including this Court, have long recognized that such litigation is notably difficult and notoriously uncertain." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 189 (S.D.N.Y. 2012) (citation omitted). Indeed, courts recognize that "[s]ecurities class actions are generally complex and expensive to prosecute." *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007). Accordingly, "[c]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *Luxottica*, 233 F.R.D. at 310.

Litigation of the claims alleged in this case raised many complex issues, as is evidenced by the over 1,200 pages of briefing and exhibits dedicated to addressing Defendants' multiple arguments in their motions to dismiss. The Mediator, too, recognized that the Parties' arguments were "complex and highly adversarial." Meyer Decl. ¶5. The litigation raised a number of complex questions that required substantial efforts by Lead Counsel, often through analysis of the factual record and consultation with experts. Lead Counsel undertook to create a compelling record addressing these and other complicated issues. DeLange Decl. Section II.

As discussed below and in the DeLange Declaration, Lead Plaintiff would have had to overcome numerous hurdles in order to achieve a litigated verdict in this Action against Defendants. Even assuming that the sustained claims survived summary judgment, a jury trial would have required a substantial amount of factual and expert testimony. Whatever the outcome at trial, it is virtually certain that an appeal would be taken. All of the foregoing would have posed considerable expense to the Parties, and would have delayed the Settlement Class' potential recovery for several years, assuming that Lead Plaintiff ultimately succeeded on its claims. Accordingly, the complexity, expense and likely duration of the litigation support approval of the Settlement as fair and reasonable.

b) The Reaction Of The Settlement Class Supports Approval Of The Settlement

"It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *See, e.g., Chavarria*, 875 F. Supp. 2d at 173; *see also Padro*, 2013 WL 5719076, at *5 ("The fact that a small number of objections were received weighs in favor of settlement," as does "the positive reaction of the class, particularly in light of its size."). In accordance with the Court's Preliminary Approval Order, the Court-approved Claims Administrator, the Garden City Group, LLC ("GCG"), began mailing copies of the Notice to potential members of the Settlement Class and their brokers and nominees on January 19, 2017 (the "Notice Date"). *See* Declaration of Jennifer Bareither ("Bareither Decl."), attached to the DeLange Decl. as Exhibit 3. To date, over 36,304 copies of the Notice have been disseminated to potential Settlement Class Members and their brokers and nominees. *Id.* ¶¶11-12. In addition, the Summary Notice was published in the *Investor's Business Daily* and over the *PR Newswire* on January 23, 2017, *id.* ¶13, and the Notice and related settlement

documents are available on the website specifically created for the Settlement, *id.* ¶15, as well as Lead Counsel's website. DeLange Decl. ¶55.

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 deadline set by the Court for Settlement Class Members to opt out or object to the Settlement has not yet passed, to date, Lead Counsel has received no request for exclusion, and only one correspondence that is even arguably an objection. The potential objection, attached as Exhibit 7 to the DeLange Declaration, does not object to any specific terms of the Settlement, but merely expresses a general philosophical disagreement with securities class actions as a tool for injured investors to recover losses suffered as a result of fraud. As an initial matter, the individual fails to comply with the requirement in the Preliminary Approval Order and the Notice to demonstrate that he is a Settlement Class Member. He, therefore, has no standing to object. That itself is grounds to reject the potential objection.[3]

Even if the individual had demonstrated that he had standing to object, such objections that are only general in nature and do not specifically address the particular case and the merits of the proposed Settlement are swiftly rejected. *See, e.g., Domonoske v. Bank of Am., N.A.,* 790 F. Supp. 2d 466, 474 (W.D. Va. 2011) ("[A] philosophical disagreement with class action litigation . . . do[es] not impugn the adequacy of the settlement itself."); *McLennan v. LG Elecs. USA, Inc.*, No.

[3] *See, e.g., Feder v. Elec. Data Sys. Corp.*, 248 Fed. App'x 579, 581 (5th Cir. 2007) (holding that objector who produced no evidence to prove his class membership lacked standing to object to settlement, and stating that "[a]llowing someone to object to settlement in a class action based on this sort of weak, unsubstantiated evidence would inject a great deal of unjustified uncertainty into the settlement process"); *In re Initial Pub. Offering Sec. Litig.*, Master File No. 21 MC 92, 2011 WL 3792825, at *2 (S.D.N.Y. Aug. 25, 2011) (finding unsigned, unsworn, unauthenticated tax form to be insufficient to establish class membership).

10-CV-03604, 2012 WL 686020, at *8 (D.N.J. Mar. 2, 2012) ("It is well-established that such generalized objections should be overruled."); *In re Royal Dutch/Shell Transp. Sec. Litig.*, No. 04-374, 2008 WL 9447623, at *30 (D.N.J. Dec. 9, 2008) (rejecting an objection that was "vague at best" and "appear[ed] to be objecting to class actions generally, which is not an appropriate basis for objection").[4]

The lack of exclusion requests, and lack of any substantive objections, especially by institutional investors, strongly supports the Settlement. *See, e.g., In re Citigroup Inc. Bond Litig.,* 296 F.R.D. 147, 156 (S.D.N.Y. 2013) (the reaction of the class supported the settlement where "not one of the objections or requests for exclusion was submitted by an institutional investor"); *AOL Time Warner*, 2006 WL 903236, at *10 (the lack of objections from institutional investors supported approval of settlement); *In re Bisys Sec. Litig*., No. 04 Civ 3840 (JSR), 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (noting that only one individual raised any objection, "even though the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive"); *Davis v. J.P. Morgan Chase & Co*., 827 F. Supp. 2d 172, 177 (W.D.N.Y. 2011) (granting final approval and noting "very little negative reaction by class members to the proposed settlement" where 11 out of 3,800 class members opted out, and 3 objected); *Willix v. Healthfirst,*

[4] To the extent the correspondence may be interpreted as objecting to the claims process, that objection too should be rejected. Courts have repeatedly upheld the appropriateness of claim processes in securities class actions that require individual claimants to subject their securities transaction information. *See, e.g., In re Marsh & McLennan Cos. Sec. Litig*., No. 04-cv-8144, 2009 WL 5178546, at *25 (S.D.N.Y. Dec. 23, 2009) (holding that requiring class members to submit transaction information "comport[ed] with the long-approved procedures for the efficient management of class-action settlement distributions" and noting that "[w]ithout that necessary information, the Claims Administrator could not calculate claimants' distributions"); *In re WorldCom, Inc. Sec. Litig*., No. 02-cv-3288, 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004) (rejecting objection to the requirement that individual claimants submit transaction information).

Inc., No. 07 Civ. 1143, 2011 WL 754862, at * 4 (E.D.N.Y. Feb. 18, 2011) (granting final approval of the settlement where 7 out of 2,025 class members objected and 2 opted out); *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 Civ. 2207, 2010 WL 3119374, at * 3 (S.D.N.Y. Aug. 6, 2010) (granting final approval where there were no objections but 28 of 5,262 opted out, noting that "[a] small number of objections is convincing evidence of strong support by class members").

The deadline for submitting objections and exclusion requests, if any, is April 4, 2017. If any exclusion requests or additional potential objections are received, they will be addressed in Lead Plaintiff's reply papers.

c) The Stage Of The Proceedings And The Amount Of Information Obtained Support Approval Of The Settlement

"Under this factor the relevant inquiry 'is whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement.'" *In re Sinus Buster Prods. Consumer Litig.,* No. 12-CV-2429, 2014 WL 5819921, at *9 (E.D.N.Y. Nov. 10, 2014) (quoting *AOL Time Warner,* 2006 WL 903236, at *10). "The pertinent question is 'whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *Whirlpool*, 2010 WL 2025106, at *6. "The parties 'need not have engaged in extensive discovery as long as they have engaged in sufficient investigation of the facts to enable the Court to 'intelligently make an appraisal' of the settlement.'" *AOL Time Warner*, 2006 WL 903236, at *10 (quoting *In re Austrian & German Bank Holocaust Litig*., 80 F. Supp. 2d 164, 176 (S.D.N.Y. 2000)); *see also In re Nissan Radiator/Transmission Cooler Litig*., No. 10-cv-7493, 2013 WL 4080946, at *7 (S.D.N.Y. May 30, 2013) (finding the factor to weigh in favor of approval even where "the parties have not engaged in extensive discovery" but after "plaintiffs conducted an investigation prior to commencing the action" and also consulted with experts concerning their claims). Here, the successful resolution of the case occurred after two years of litigation. As set

forth in greater detail in Section II of the DeLange Declaration, Lead Counsel extensively developed the record by, among other things:

- Performing an in-depth review and analysis of (a) EZCORP's SEC filings; (b) research reports by securities and financial analysts; (c) transcripts of EZCORP's earnings conference calls and industry conferences; (d) EZCORP's press releases; (e) news and media reports concerning EZCORP and other facts related to this action; and (f) data reflecting the pricing of EZCORP common stock;
- Conducting a thorough investigation identifying and interviewing potential percipient witnesses, including the witnesses with direct knowledge as alleged in the Complaint, and cited by the Court in its Order partially sustaining the Complaint;
- Conferring extensively with experts and consultants concerning the specialized issues in the case, including in drafting the Complaint, and when analyzing class certification, loss causation, and damages;
- Drafting the detailed 97-page consolidated Complaint based on Lead Counsel's extensive factual investigation and legal research into the applicable claims;
- Preparing an extensive opposition in response to over 1,200 pages of briefing and exhibits filed in support of Defendants' motions to dismiss;
- Participating in discovery, including propounding and responding to multiple discovery requests, producing and reviewing documents, and participating in depositions;

- Fully briefing Lead Plaintiff's motion for class certification, which was supported by an expert declaration demonstrating market efficiency and the ability to calculate class-wide damages; and
- Drafting Lead Plaintiff's mediation statement, analyzing Defendants' mediation statement, and preparing for and participating in the mediation process, including a full-day mediation session held before a JAMS mediator.

Thus, at the time the Settlement was reached, Lead Plaintiff had "obtained sufficient information to be able to intelligently assess the strengths and weaknesses of the case and appraise settlement proposals." *Padro*, 2013 WL 5719076, at *6; *see also Whirlpool*, 2010 WL 2025106, at *6 (finding factor supported settlement where the parties informally exchanged information and participated in mediation which "allowed them to further explore the claims and defenses"). Here, Lead Plaintiff and Lead Counsel had a well-informed basis for their belief that the Settlement – proposed by an experienced litigator and JAMS mediator – is a favorable resolution for the Settlement Class, and this factor strongly supports approval of the Settlement.

d) The Risks Of Establishing Liability And Damages Support Approval Of The Settlement

Grinnell requires that, in assessing the fairness, reasonableness and adequacy of a settlement, courts consider such factors as the "risks of establishing liability [and] . . . the risks of establishing damages." 495 F.2d at 463.

Here, Lead Plaintiff alleged claims for false statements and omissions regarding (i) Cash Genie's compliance with lending regulations and lending best practices; (ii) the value of EZCORP's investment in another U.K. lender; and (iii) the benefits and purported fairness of EZCORP's consulting agreement with another entity controlled by Defendant Cohen. While Lead Plaintiff believes that the claims have merit, it also recognizes that there were significant risks as

to whether it would ultimately be able to prove liability and establish damages, as well as with respect to the amount of damages that could be establish. Indeed, the Court dismissed many of Lead Plaintiff's claims and sustained only the claims related to false statements and omissions regarding Cash Genie's compliance with lending regulations and best practices. Even with respect to this narrowed case, Lead Plaintiff understood that risks remained in further prosecution. These risks could manifest themselves at any time throughout the remainder of the case, including during class certification, summary judgment, trial, or on appeal. For example, one of the elements that Lead Plaintiff would need to prove is that Defendants made their false statements with scienter. Defendants argued in their motions to dismiss that Lead Plaintiff had not sufficiently alleged that Defendants were aware of the problems at Cash Genie, and that they genuinely believed that Cash Genie had put in place best practices that would comply with new U.K. regulations. Defendants also argued that because Cash Genie was an immaterial part of EZCORP's overall business, the individual defendants and other top executives were not actively involved with Cash Genie or its operations. Rather, Defendants contended, they relied on local management in the U.K., who retained operational control. Finally, Defendants argued that they had no motive to violate the securities laws because none of them sold stock or profited directly from the alleged fraud. Although Lead Plaintiff succeeded in defeating these arguments at the pleading stage as to the Cash Genie allegations, Defendants undoubtedly would have made these same arguments at summary judgment and trial.

In addition, Lead Plaintiff would also be required to prove that Defendants' false statements caused the losses to investors. Lead Plaintiff alleged that Defendants' fraud was revealed to the market through a series of partial corrective disclosures beginning on November 7, 2013, through the end of the Settlement Class Period on October 6, 2014. Lead

Plaintiff alleged that the disclosures revealed that Cash Genie had not been complying with regulatory best practices and that new U.K. regulations would have a significant negative impact on Cash Genie's business. Although EZCORP's stock price dropped on the day after each of those disclosures, Defendants argued that none of the disclosures impacted the price of EZCORP stock, but rather the drop was due to other non-fraud-related negative information. Defendants would continue to argue both that the element of loss causation was not satisfied, and that Lead Plaintiff was required to "disaggregate" the drop allegedly caused by fraud-related information regarding Cash Genie, from the non-fraud-related information.

Several of these contested issues, including loss causation, would ultimately have required expert testimony before the jury. While Lead Plaintiff expected to present persuasive testimony establishing causation and damages, Defendants likely would have presented experts in support of their positions. Lead Plaintiff could not be certain which experts' views would be credited by the jury, particularly given the complexity of the underlying factual issues, and who would prevail at trial in this "battle of the experts." *See, e.g., In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 332 (E.D.N.Y. 2010) ("The proof on many disputed issues – which involve complex financial concepts – would likely have included a battle of experts, leaving the trier of fact with difficult questions to resolve."); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) ("In such a battle, Plaintiffs' Counsel recognize the possibility that a jury could be swayed by experts for Defendants.").

The Settlement enables the Settlement Class to recover a substantial sum of money, while avoiding continued protracted litigation, significant challenges, and further reducing available resources for recovery. In light of all of these risks, the proposed Settlement is fair, reasonable and adequate.

e) The Risks Of Maintaining The Class Action Through Trial Support Approval Of The Settlement

Even assuming Lead Plaintiff was successful in getting the class certified for litigation purposes, there was no guarantee that it would be able to maintain certification because courts may always exercise their discretion to re-evaluate the appropriateness of class certification at any time. The Settlement avoids any uncertainty with respect to this issue, which militates in favor of approval. *See, e.g., Charron v. Wiener*, 731 F.3d 241, 249 (2d Cir. 2013) ("[W]e cannot find that the district court abused its discretion in finding that the class faced significant risks of decertification, that decertification would drastically reduce the chances of any member of the class achieving meaningful relief, and that the litigation risks attendant to these possibilities weighed heavily in favor of the fairness of a settlement.").

f) The Inability Of Defendants To Withstand A Greater Judgment Supports Approval Of The Settlement

The resources available to fund a substantial recovery were a factor considered by Lead Plaintiff in accepting the mediator's proposal to resolve the case for $5.9 million. DeLange Decl. ¶50. *See, e.g., In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 456-57 (S.D.N.Y. 2004) (recognizing that "protracted litigation could deprive the class members of the substantial amount of insurance money the partial settlement would provide," and that the settlement "would maximize the recovery of insurance money for the class").

Lead Plaintiff was aware that, in addition to this litigation, Defendants continued to face costly investigations and other litigation, including, for example, the securities class action pending in the Western District of Texas, *In re EZCORP, Inc. Sec. Litig.*, 15-cv-608, and the derivative action pending in Delaware, *In re EZCORP, Inc. Consulting Agreement Derivative Litig.*, Del. Ch. Ct., C.A. No. 9962-VCL. Lead Plaintiff understood that this and other proceedings would continue to reduce the potential sources of recovery in this case, including available insurance proceeds.

Lead Plaintiff, therefore, understood there was a risk that there would be insufficient resources to fund a substantial future settlement or litigated judgment. DeLange Decl. ¶50. Thus, this factor weighs in favor of final approval of the Settlement.

g) The Range Of Reasonableness Of The Settlement Amount, In Light Of The Best Possible Recovery And All Of The Attendant Risks Of Litigation, Supports Approval Of The Settlement

The last two substantive factors that courts consider are the range of reasonableness of the settlement fund in light of (i) the best possible recovery and (ii) litigation risks. In analyzing these two factors, the issue for courts is not whether the settlement represents the best possible recovery, but how the settlement relates to the strengths and weaknesses of the case. A court "consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable." *Grinnell*, 495 F.2d at 462 (citations omitted).

The Second Circuit has described the "range of reasonableness" as "a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in . . . any litigation." *Wal-Mart Stores*, 396 F.3d at 119 (quoting *Newman*, 464 F.2d at 693). "The determination of a reasonable settlement 'is not susceptible of a mathematical equation yielding a particularized sum,' but turns on whether the settlement falls within a 'range of reasonableness.'" *Chavarria*, 875 F. Supp. 2d at 174 (citation omitted). "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell*, 495 F.2d at 455. "In fact, there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single

percent of a potential recovery." *Chavarria*, 875 F. Supp. 2d at 175; *Grinnell*, 495 F.2d at 455 n.2. (citation omitted).

The Settlement here is well within the range of reasonableness in light of the substantial risks presented by this litigation. Estimating aggregate damages can be challenging because, among other things, assumptions must be made regarding trading activity. Here, a realistic estimate of potential maximum recoverable damages, assuming Lead Plaintiff prevailed on all of the sustained claims, was $82.3 million. But those damages would be reduced or eliminated if the jury accepted some or all of Defendants' arguments, including finding that all or a substantial portion of the losses were attributable to causes other than the revelations regarding Cash Genie. In that scenario, maximum recoverable damages would be reduced to as low as $16.1 million.[5]

The recovery is an excellent result for the Settlement Class in light of the attendant risks of continued litigation. Indeed, Mediator Meyer confirms that the $5.9 million settlement "was the most that could be obtained by Lead Plaintiff at the time the settlement was reached." Meyer Decl. ¶8. In accepting the mediator's proposal and reaching the Settlement, Lead Plaintiff understood that, particularly in this context where the sources of a significant recovery were diminishing, "[a] very large bird in the hand in this litigation is surely worth more than whatever

[5] DeLange Decl. ¶48. Even before accounting for Defendants' causation arguments and other defenses, the recovery of over 7% of the maximum recoverable damages is significantly higher than the 1.8% median settlement recovery as a percentage of estimated damages in securities class actions in 2015, as reported by Cornerstone Research. See Cornerstone Research, "Securities Class Action Settlements: 2015 Review and Analysis," at p. 8, Figure 7, available at www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2015-Review-and-Analysis; *see also* NERA, "Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review," at p. 34, Figure 30 (reporting a 0.7% median settlement value as a percentage of investor losses in 2015), available at www.nera.com/content/dam/nera/publications/2016/2015_Securities_Trends_Report_NERA.pdf. Accounting for Defendant's argument that the damages are substantially limited, the Settlement is over 36% of the estimated recoverable damages.

birds are lurking in the bushes." *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

Moreover, a court may not "substitute its judgment for that of the parties who negotiated the settlement." *Chavarria*, 875 F. Supp. 2d at 172. The Court-appointed Lead Counsel Bernstein Litowitz Berger & Grossmann LLP is intimately familiar with the facts of the case and has extensive experience prosecuting comparable securities class actions. In these circumstances, Lead Counsel's opinion that the Settlement is reasonable is entitled to "great weight." *Padro*, 2013 WL 5719076, at *7 ("Where, as here, settlement has been reached after an arms-length negotiation, 'great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.'") (citation omitted). The recommendation of Lead Plaintiff, an institutional investor, also strongly supports the fairness of the Settlement. *See* Lead Plaintiff's Declaration, attached to the DeLange Declaration as Exhibit 2. A settlement reached "under the supervision and with the endorsement of a sophisticated institutional investor . . . is 'entitled to an even greater presumption of reasonableness.'" *In re Veeco Instruments Inc. Sec. Litig.*, No. 05-MDL-01695, 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007) (citation omitted). In sum, a review of the *Grinnell* factors strongly supports a finding that the Settlement is fair, reasonable and adequate.

B. The Plan Of Allocation Is Fair, Reasonable, And Adequate

The standard for approval of a plan of allocation is the same as the standard for approving the settlement as a whole: "'namely, it must be fair and adequate.'" *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002). "An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) (citation

omitted); *see also In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 518 (E.D.N.Y. 2003), *aff'd sub nom., Wal-Mart*, 396 F.3d 96; *Am. Bank Note*, 127 F. Supp. 2d at 429-30. Further, courts enjoy "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably." *Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978).

Here, the Plan of Allocation, which was fully described in the Notice, has a rational basis and was formulated by Lead Counsel in consultation with Lead Plaintiff's damages consultant, ensuring its fairness and reliability. *See Veeco*, 2007 WL 4115809, at *13. Under the proposed Plan of Allocation, each Authorized Claimant will receive a *pro rata* share of the Net Settlement Fund, with that share to be determined by the ratio that the Authorized Claimant's allowed claim bears to the total allowed claims of all Authorized Claimants. *See* Nye Decl., attached as Exhibit 4 to the DeLange Decl.[6]

The Plan determines the Authorized Claimants' claim amount principally based on Lead Plaintiff's expert's calculation of the amount of estimated alleged artificial inflation in the per-

[6] The Plan provides that if any Claimant's Distribution Amount calculates to less than $10.00, it will not be included in the calculation and no distribution will be made to such Claimant. The Recognized Claims of any Claimants whose Distribution Amounts would be less than $10.00 are then excluded and the total Recognized Claims of all other Claimants are totaled to determine the *pro rata* Distribution Amounts for the Authorized Claimants who will receive $10.00 or more. A $10 minimum for distribution is necessary given the administrative costs involved and to prevent depletion of the Settlement Fund to pay *de minimis* claims. Courts routinely approve settlements that require a class member's payment to exceed a minimum threshold in order to recover from a settlement fund. *See, e.g., Global Crossing Sec.*, 225 F.R.D. at 463 ($10 minimum allowed); *Gilat Satellite*, 2007 WL 1191048, at *9 ("*de minimus* thresholds for payable claims are beneficial to the class as a whole since they save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs and courts have frequently approved such thresholds, often at $10."); *see also Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 782-83 (7th Cir. 2004) (Posner, J.) (stating that a settlement may give nothing to people with claims "worth too little to justify a distribution"); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1268 (D. Kan. 2006) ($25 minimum allowed).

share closing price of EZCORP common stock that allegedly was caused by alleged false and misleading statements sustained by the Court. To calculate that inflation, Lead Plaintiff's expert performed an event study using a widely accepted methodology. The amount of an Authorized Claimant's claim will depend on several factors, including when and at what price the shares were purchased, and whether and at what price they were sold. Because they tend to mirror the complaint's allegations in securities class actions, "plans that allocate money depending on the timing of purchases and sales of the securities at issue are common." *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-CV-525, 2007 WL 4225828, at *5 (D.N.J. Nov. 28, 2007); *see also In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (deeming plan of allocation where "claimants are to be reimbursed on a *pro rata* basis for their recognized losses based largely on when they bought and sold their shares of [company] stock" as "even handed").

The Plan of Allocation is substantially similar to other plans of allocation that have been approved and successfully implemented in other securities class action settlements, including within this Circuit. *See Veeco*, 2007 WL 4115809, at *14 ("Each valid claim will then be calculated so that each authorized claimant will receive, on a proportionate basis, the share of the net settlement fund that the claimant's recognized loss bears to the total recognized loss of all authorized claimants."); *Global Crossing*, 225 F.R.D. at 462 ("Pro-rata distribution of settlement funds based on investment loss is clearly a reasonable approach.").

In assessing a proposed plan of allocation, the Court may give great weight to the opinion of informed counsel. *See, e.g.*, *Chavarria*, 875 F. Supp. 2d at 175 ("In determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel. That is, 'as a general rule, the adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits

of all claims, and whether the proposed apportionment is fair and reasonable in light of that information.'").

Here, the Plan of Allocation was detailed in the Notice, and to date there are no objections, further supporting its approval. *See In re NASDAQ Mkt.-Makers Antitrust Litig.*, No. 94 Civ. 3996, 2000 WL 37992, at *2 (S.D.N.Y. Jan. 18, 2000) (holding that the "small number of objections to the Proposed Plan" was entitled to "substantial weight" in approving the plan); *see also Veeco*, 2007 WL 4115809, at *14; *Maley*, 186 F. Supp. 2d at 367.

C. Notice To The Settlement Class Satisfied The Requirements Of Rule 23, Due Process, And The PSLRA

The Notice provided to the Settlement Class satisfied the requirements of Rule 23(c)(2)(B), which requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The Notice also satisfied Rule 23(e)(1), which requires that notice of a settlement be "reasonable." Fed. R. Civ. P. 23(e)(1). Notice is reasonable if it "fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart*, 396 F.3d at 114.

Both the substance of the Notice and the method of its dissemination to potential Settlement Class Members satisfied these standards. *See In re Bank of Am. Corp. Sec., Derivative and ERISA Litig.*, 772 F.3d 125, 133 n.5 (2d Cir. 2014) (affirming sufficiency of similar notice plan). As noted above, in accordance with the Court's Preliminary Approval Order, the Claims Administrator, GCG, has sent more than 36,000 copies of the Notice to potential Settlement Class Members and their brokers and nominees. *See* Bareither Decl. ¶¶11-12. GCG utilized several resources to reasonably identify potential members of the Settlement Class, including information provided by EZCORP, a proprietary list maintained by GCG of the largest and most common U.S.

Banks, brokerage firms, and other nominees, and posting on the electronic Legal Notice System of the Depository Trust Company, which serves as a clearinghouse to process and settle trades in securities. *Id.* ¶¶2-9. The Notice requires brokers and nominees, within seven days, to either (i) request additional copies of the Notice to send to the beneficial owners of the securities, or (ii) provide to GCG the names and addresses of such persons. *Id.* ¶8.

Lead Plaintiff also caused the Summary Notice to be published in the *Investor's Business Daily* and over the *PR Newswire*, and copies of the Notice were made available on a dedicated website maintained by GCG and on Lead Counsel's website. *Id.* ¶15; DeLange Decl. ¶55.

This combination of individual mail to all members of the Settlement Class who could be identified with reasonable effort, supplemented by notice in appropriate, widely circulated publications, and set forth on Internet websites, was "the best notice . . . practicable under the circumstances" and satisfies the requirements of due process, Rule 23, and the PSLRA. Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, *Padro*, 2013 WL 5719076, at *3 ("Notice need not be perfect, but need be only the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members."); *see also Arace v. Thompson*, No. 08 Civ. 7905, 2011 WL 3627716, at *4 (S.D.N.Y. Aug. 17, 2011) (describing *Investor's Business Daily* as "a nationally-circulated business-oriented publication catering to investors," and finding notice of settlement published therein "sufficient[] [to] apprise[] . . . shareholders of the nature of the proposed settlement").

D. Certification Of The Settlement Class Remains Warranted

On January 4, 2017, the Court granted Lead Plaintiff's motion for preliminary approval of the Settlement and preliminarily certified the Settlement Class for settlement purposes only, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure. Nothing has changed

to alter the propriety of certification for settlement purposes and, for all the reasons stated in Lead Plaintiff's preliminary approval brief (ECF No. 112) and class certification motion papers, incorporated herein by reference (ECF Nos. 98-100, 106, 107), Lead Plaintiff requests that the Court grant final certification of the Settlement Class pursuant to Rules 23(a) and (b)(3).

III. CONCLUSION

Lead Plaintiff respectfully requests that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate.

Dated: March 21, 2017

Respectfully submitted,

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