UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

In re EZCORP, Inc. Securities Litigation	Master File No. 1:15-cv-00608-SS

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

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23(e) and this Court's August 5, 2019 Order granting preliminary approval of the settlement of this class action (ECF No. 139, the "Preliminary Approval Order"), Lead Plaintiff John Rooney ("Lead Plaintiff"), by and through his counsel, respectfully submits this memorandum of law in support of final approval of the proposed settlement (the "Settlement") and the Plan of Allocation of the Settlement proceeds ("Plan of Allocation").[1] Lead Plaintiff and Lead Counsel believe that the recovery of $4.875 million in cash is an excellent result for the Settlement Class and merits the Court's approval. ¶¶ 3, 52. The Settlement resolves all of Lead Plaintiff's claims against EZCORP, Inc. ("EZCORP" or the "Company") and Mark E. Kuchenrither ("Kuchenrither") (collectively, "Defendants").

The Settlement was reached after nearly four years of vigorous litigation and extensive arm's-length settlement negotiations with the assistance of Robert A. Meyer, Esq. of JAMS ("Mediator"), a highly-respected mediator experienced in mediating complex business disputes and securities class actions. ¶¶ 3, 59. By the time the Settlement was reached, Lead Plaintiff and Lead Counsel were well-informed about the strengths and weaknesses of their claims and Defendants' defenses. ¶¶4, 41. Prior to reaching the Settlement, Plaintiff's Counsel had, among other things: (i) conducted a comprehensive investigation into the alleged wrongdoing, which included, (a) a review and analysis of EZCORP's filings with the U.S. Securities and Exchange

[1] All capitalized terms not defined herein have the same meanings ascribed to them in the Stipulation and Agreement of Settlement filed with the Court on July 18, 2019 (ECF No. 137-1, the "Stipulation"), or the concurrently-filed Declaration of Jeffrey C. Block in Support of: (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Block Declaration" or "Block Decl."). Unless otherwise noted, all citations herein to "¶__" and "Ex.__" refer, respectively, to paragraphs in, and exhibits to the Block Declaration.

Commission ("SEC"), public reports and news concerning Defendants, and transcripts of EZCORP's investor calls, (b) interviews with former employees and potential witnesses with relevant information, and (c) consultation with accounting, damages and market efficiency experts; (ii) drafted three consolidated complaints, including the operative 94-page Third Amended Class Action Complaint (the "Complaint" or "TAC"), based on the investigation; (iii) engaged in voluminous briefing related to Defendants' motions to dismiss the Amended Class Action Complaint ("Amended Complaint") and Second Amended Class Action Complaint ("SAC"); (iv) engaged in substantial discovery, which included reviewing 38,549 documents produced by Defendants and 10,079 documents produced by third parties upon the issuance of 17 subpoenas, defending the Lead Plaintiff's deposition and the deposition of Plaintiff's market efficiency expert and taking four fact depositions of EZCORP and other third party witnesses; (v) fully briefed class certification twice; (vi) drafted a substantive opposition brief to Defendants' petition to the United States Court of Appeals for the Fifth Circuit for permission to appeal the Court's order granting class certification on February 19, 2019, under Federal Rule of Civil Procedure 23(f); (vii) drafted and analyzed two sets of extensive mediation statements, which included numerous exhibits; (viii) participated in two separate full-day mediations with the Mediator; and, (ix) engaged in extensive negotiations with Defendants regarding the terms of the Settlement. ¶ 4, 41.

Lead Counsel firmly believes that this Settlement is an excellent recovery for the Settlement Class based on their investigation, past experience in litigating similar cases, the significant risk, expense, and uncertainty of continued litigation, and the serious dispute between the Parties concerning the merits of the case and damages. Members of the Settlement Class agree. Pursuant to the Preliminary Approval Order, Notice was mailed to over 13,741 potential Settlement Class Members, and the Summary Notice was published in *Investor's Business Daily*

and over *PR Newswire* on September 9, 2019. ¶ 44; Declaration of Lance Cavallo Regarding (A) Mailing of the Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Cavallo Decl."), ¶ 8 & Ex. B (attached to the Block Declaration as Exhibit 1). To date, not a single Settlement Class Member has opted out of the Settlement. ¶ 46; Cavallo Decl. ¶ 11. Although the objection deadline is November 15, 2019, to date, not one Settlement Class Member has filed an objection to any aspect of the Settlement or the Plan of Allocation. ¶ 7. This is strong evidence that the Settlement is fair, adequate and reasonable. *Vaughn v. Am. Honda Motor Co.*, 627 F. Supp. 2d 738, 748 (E.D. Tex.) (finally approving class action settlement, noting that few objections and "[t]he extremely small number of opt-outs suggests a favorable opinion by the absent class members"), *stay granted, order amended sub nom. Vaughn v. Am. Honda Motor Co.*, 507 F.3d 295 (5th Cir. 2007).[2]

For the reasons set forth herein, and in the accompanying Block Declaration, Lead Plaintiff respectfully requests that the Court finally approve the Settlement and Plan of Allocation.

II. FACTUAL AND PROCEDURAL HISTORY

The Block Declaration is an integral part of this submission. The Court is respectfully referred to it for a detailed description of the factual and procedural history of the litigation the claims asserted, the extensive investigation undertaken, the settlement negotiations, and the numerous risks and uncertainties presented in this litigation.

III. STANDARDS GOVERNING FINAL APPROVAL: RULE 23(e) AND *REED*

The standard for approving a proposed class action settlement is whether the proposed settlement is "'fair, adequate and reasonable and is not the product of collusion between the

[2] If any objections or requests for exclusions are received after the date of this submission, Lead Counsel will address them in the reply brief, which will be filed with the Court no later than November 29, 2019.

parties.'" *Newby v. Enron Corp*., 394 F.3d 296, 301 (5th Cir. 2004) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)); *accord Union Asset Mgmt. Holding A.G. v. Dell, Inc*., 669 F.3d 632, 639 (5th Cir. 2012). Fed. R. Civ. P. Rule 23(e)(2) requires court approval for settlement of class action claims, and provides that such approval should be granted "only after a hearing and only on finding that [a proposed settlement] is fair, reasonable, and adequate." When a settlement, such as this one, is reached as the result of arm's-length negotiations between competent counsel on both sides, the settlement is presumptively fair and adequate and "ordinarily may be overcome only if its provisions are not within reasonable bounds or are illegal, unconstitutional or against public policy." *U. S. v. Texas Education Agency*, 679 F.2d 1104, 1108 (5th Cir. 1982).

The Court has broad discretion in approving class action settlements. *See Smith v. Crystian*, 91 Fed. Appx. 952, 955 (5th Cir. 2004) ("[A] district court's approval of a settlement is given great deference and 'will not be upset unless the court clearly abused its discretion.'"), *cert denied sub nom*, *Crystian v. Tower Loan of Mississippi Inc.*, 543 U.S. 1089 (2005); *see also Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982), *cert denied*, 459 U.S. 828 (1982).[3] As a matter of public policy, courts strongly favor the settlement of complex class action litigation. *See Klein v. O'Neal, Inc.,* 705 F. Supp. 2d 632, 650 (N.D. Tex. 2010) ("The public interest favoring settlement is especially apparent in the class action context where claims are complex and may involve a large number of parties, which otherwise could lead to years of protracted litigation and sky-rocketing expenses.").

Courts in the Fifth Circuit have long considered the following six factors set forth in *Reed v. Gen. Motors Corp*., 703 F.2d 170 (5th Cir. 1983) ("*Reed* factors"), in evaluating whether a class action settlement is fair, reasonable, and adequate under Rule 23:

[3] Unless otherwise indicated, all citations are omitted and emphasis is added.

> (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members.

Id. at 172.

Additionally, the recently amended Fed. R. Civ. P. Rule 23(e)(2) instructs the Court to determine if the Settlement is "fair, reasonable, and adequate" after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. Rule 23(e)(2).

The factors set forth in Rule 23(e)(2) are not intended to "displace" the Fifth Circuit's *Reed* factors, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Advisory Committee Notes to 2018 Amendments, 324 F.R.D. 904, 918 (Apr. 26, 2018); *see also Swinton v. SquareTrade, Inc*., 2019 WL 617791, at *5 (S.D. Iowa Feb. 14, 2019) ("The Court will therefore consider the Rule 23(e)(2) factors along with the factors developed by courts in the Eighth Circuit.").

As explained below and in the Block Declaration, application of each of the four factors specified in Rule 23(e)(2), and the relevant, non-duplicative *Reed* factors, demonstrate that the Settlement merits final approval.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. Lead Plaintiff and Lead Counsel Have Adequately Represented the Class

Pursuant to Rule 23(e)(2)(A), Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class by zealously advocating on their behalf for nearly four years. ¶¶ 3-4. Lead Plaintiff produced documents, responded to written discovery, underwent a deposition, and regularly consulted with Lead Counsel as to strategy and case developments. ¶ 82. *See Berger v. Compaq Computer Corp.,* 257 F.3d 475, 483 (5th Cir. 2001) (adequate class representatives in securities fraud actions are "informed and can demonstrate they are directing the litigation."). Lead Plaintiff's claims are typical of other Settlement Class Members' claims and there is no conflict of interest between Lead Plaintiff and the Settlement Class. *See* Order certifying class and appointing Lead Plaintiff as Class Representative. ECF No. 120.

Lead Plaintiff also retained counsel who are highly experienced in securities and class action litigation, with excellent track records. ¶ 70. *See, e.g., Tex. Educ. Agency*, 679 F.2d at 1108; *Murillo v. Tex. A&M Univ. Sys.*, 921 F. Supp. 443, 445 (S.D. Tex. 1996). As set forth in detail above (*see* § I) and in the Block Declaration, prior to reaching the Settlement, Lead Counsel vigorously prosecuted Lead Plaintiff's claims by, among other things, conducting an extremely detailed investigation into the Company, drafting three amended complaints which incorporated information procured from Lead Counsel's investigation efforts, and defending those allegations in multiple rounds of motion to dismiss briefing, reviewing and analyzing over 48,000 documents produced by Defendants and third parties, fully briefing class certification twice, opposing Defendants' petition to the United States Court of Appeals for the Fifth Circuit for permission to appeal the Court's order granting class certification, as well as unremittingly pursuing settlement efforts following the two in-person mediation sessions. ¶ 64. As such, Lead Plaintiff and Lead

Counsel have adequately represented the Settlement Class.

B. The Settlement Was Negotiated at Arm's-Length and There Was No Fraud Or Collusion

Pursuant to Rule 23(e)(2)(B) and the first *Reed* factor, "[w]hen a class settlement is reached through arm's-length negotiations after meaningful discovery, a 'presumption of fairness, adequacy, and reasonableness may attach.'" *See Cole v. Collier,* No. 4:14-CV-1698, 2018 WL 2766028, at *4 (S.D. Tex. June 8, 2018). "The involvement of 'an experienced and well-known' mediator 'is also a strong indicator of procedural fairness.'" *Jones v. Singing River Health Servs. Found.,* 865 F.3d 285, 295 (5th Cir. 2017); *see also Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-CV-1152-M, 2018 WL 1942227, at *4 (N.D. Tex. Apr. 25, 2018) (approving securities class action settlement that was "obtained through formal mediation before [an experienced mediator], which strongly suggests the settlement was not the result of improper dealings."). Where there is no evidence to the contrary, "[t]he Court may presume that no fraud or collusion occurred[.]" *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010).

There was no collusion during any part of the settlement negotiations. ¶ 59. Nor is there any evidence that the Settlement was tainted by fraud. ¶ 59. Instead, the Settlement was achieved after years of contentious litigation and two full-day, in-person mediation sessions facilitated by an experienced, neutral mediator. ¶ 59. Lead Counsel have many years of experience litigating securities fraud class actions and have negotiated scores of class settlements, which have been approved in courts throughout the country. *See* Block Decl. ¶ 70 & Exhibits 2-4 attached thereto. Defendants are represented by Vinson & Elkins LLP, and Ewell, Brown, Blanke & Knight LLP, both highly respected firms with strong reputations for the tenacious defense of class actions and other complex civil matters. ¶ 72. The Settlement was achieved by hard fought arm's-length negotiations between experienced counsel knowledgeable about the strengths and weaknesses of

Lead Plaintiff's claims and the potential defenses thereto, with the assistance of the Mediator. Under such circumstances, there can be no question that the Parties were fairly and adequately represented throughout the course of these proceedings. ¶ 4. *See Cole,* 2018 WL 2766028, at *4 (first *Reed* factor met where the parties "vigorously litigated this case for years prior to settlement" and settlement negotiations were facilitated by neutral mediator).

As there is no evidence of fraud or collusion, the Court can presume that the settlement negotiations were conducted in good faith. *See DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 287 (W.D. Tex. 2007) (there is a "presumption of no fraud or collusion . . . in the absence of any evidence to the contrary."). Thus, Rule 23(e)(2)(B) and the first *Reed* factor support approval. *See Cotton*, 559 F.2d at 1330 ("[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.").

C. The Settlement Is Fair and Adequate Given the Costs and Delay of Trial and Appeal

Fed. R. Civ. P. Rule 23(e)(2)(C) instructs the Court to consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" along with other relevant factors. Similarly, the second *Reed* factor instructs the Court to consider "the complexity, expense, and likely duration of the litigation." *Reed,* 703 F.2d at 172. Both Rule 23(e)(2)(C) and the second *Reed* factor support final approval. *In re Dell Inc., Sec. Litig.*, No. A-06-CA-726, 2010 WL 2371834, at *7 (W.D. Tex. June 11, 2010), *aff'd, appeal dismissed sub nom. Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632 (5th Cir. 2012) ("securities litigation on the whole is 'notoriously difficult and unpredictable' . . . . Thus, the complexity, expense, and likely duration of the suit weighs in favor of approval of the settlement.").

Continued litigation of the Action would unquestionably involve complex, lengthy, and costly trial and post-trial proceedings that would delay the resolution of the claims of Lead Plaintiff

and the Settlement Class, with no guarantee of recovery. ¶¶ 47-50. Although Lead Plaintiff successfully obtained class certification, the outcome of Defendants' interlocutory appeal of that decision was uncertain. ¶ 48. Further litigation of the Action would have necessitated additional fact and expert discovery, dispositive motion practice, pre-trial preparation, trial, and post-trial appeals. ¶ 50. Considering the costs, risks, complexity and delay at stake, Lead Plaintiff and Lead Counsel recognized a very real risk that continuing to prosecute their claims would result in a smaller—or even non-existent— recovery for the Settlement Class years into the future. ¶¶ 47, 50.

In contrast, the Settlement provides a substantial and immediate recovery of $4.875 million for the Settlement Class, without subjecting the Settlement Class to the significant risks, expenses and delay of continued litigation. ¶ 5. Therefore, Rule 23(e)(2)(C) and the second *Reed* factor support final approval of the Settlement.

D. The Stage of the Proceedings and the Amount of Discovery Completed

The third *Reed* factor also weighs in favor of final approval. This Action has been actively litigated for nearly four years, since its commencement on July 20, 2015, through the negotiation of the Stipulation. Lead Counsel conducted a thorough investigation into the claims asserted in the highly detailed 94-page Complaint, which included interviewing numerous potential witnesses, consulting with experts, and reviewing and analyzing voluminous documents. ¶ 4. The Parties engaged in extensive motion practice, which included the following: (i) briefing on Defendants' motions to dismiss the Amended Complaint and the SAC; (ii) briefing on Lead Plaintiff's motion to file the TAC; (iii) briefing on both of Lead Plaintiff's motions for class certification, and (iv) briefing on Defendants' interlocutory appeal. ¶ 64. The Fifth Circuit granted Defendants leave to file their interlocutory appeal, and while Defendants' appeal was pending, the Parties engaged in settlement discussions which ultimately led to successful negotiation of the Stipulation. ¶¶ 39-40.

Significant discovery was conducted, including the review of 38,549 documents produced by Defendants and 10,079 documents produced by third parties pursuant to the issuance of 17 subpoenas, defending the Lead Plaintiff's deposition and the deposition of Plaintiff's market efficiency expert and Lead Counsel took four fact depositions of EZCORP and other third party witnesses. ¶¶ 4, 41. Furthermore, Lead Plaintiff responded to several sets of written discovery, produced responsive documents, and was deposed by Defendants. ¶ 4. Thus, by the time settlement discussions began, Lead Counsel had a solid understanding of the strengths and weaknesses of Lead Plaintiff's claims, and were able to engage in a rigorous negotiation process with Defendants. ¶ 41. There can be no doubt that the Parties reached the instant settlement with a "full understanding of the legal and factual issues surrounding this case." *Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996. Accordingly, the third *Reed* factor weighs in favor of final approval.

E. The Probability of Success On the Merits

As in every complex case of this kind, Lead Plaintiff and the Settlement Class faced formidable obstacles to recovery at trial, both with respect to liability and damages. ¶¶ 47-51, 56-58. The claims in this litigation are for violations of Sections 10(b) and 20(a) of the 1934 Securities and Exchange Act and SEC Rule 10b-5. Lead Plaintiff would, therefore, have the burden of proving, among other things: "(1) a material misrepresentation or omission by the defendant[s]; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 37-38 (2011).

1. Risks in Proving Scienter

Although Lead Plaintiff believes he would be successful at trial, he also recognizes the significant hurdles to establishing liability. ¶ 49. Defendants have argued and would continue to argue that Lead Plaintiff could not establish liability because the alleged false and/or misleading statements or omissions concerning Defendants' business operations were not made with scienter. ¶¶ 33, 62.

The Complaint alleges that Defendants engaged in repeated manipulations of straightforward generally accepted accounting principles ("GAAP") pertaining to Loan Sales and Non-Performing Loans, resulting in significant overstatements of the Company's net income and requiring the Company to restate its financial results. ¶¶ 12-19. Lead Plaintiff believes that these allegations, coupled with the magnitude and fact of the restatement, information provided by confidential witnesses, and Kuchenrither's inaccurate Sarbanes-Oxley certifications and incentive-based bonus, supported a strong inference of scienter that Lead Plaintiff would be able to prove at trial. Defendants have, however, vehemently argued that Lead Plaintiff failed to allege a strong inference of scienter because the confidential witness statements were not indicative of scienter, and/or were too unreliable and vague. Defendants have also argued that Kuchenrither's bonus was not sufficiently extraordinary to be indicative of scienter.

Since scienter was hotly contested at the pleading stage, it follows that the Parties would have litigated this issue aggressively, both at summary judgment and at trial. While Lead Plaintiff believes he would be able to present evidence of Defendants' scienter sufficient to withstand summary judgment and to obtain a jury verdict, there nevertheless existed a very real risk that he would not be able to meet his burden at either stage. Indeed, Defendants had already prevailed on motions to dismiss certain of Lead Plaintiff's claims for failure to allege scienter. ¶ 33. *See In re*

Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig., 364 F. Supp. 2d 980, 1003 (D. Minn. 2005) ("[t]he court needs to look no further than its own order dismissing the . . . litigation to assess the risks involved."). Further, there is no way to predict with certainty "which interpretations, inferences, or testimony a jury would accept." *See Buettgen v. Harless,* No. 3:09-CV-00791-K, 2013 WL 12303143, at *8 (N.D. Tex. Nov. 13, 2013). These issues of proof pose considerable risks to recovery at trial. *See id.*

2. Risks in Proving Loss Causation and Damages

Even if Lead Plaintiff was successful in establishing liability at trial, he would still face substantial risks in proving loss causation and damages at summary judgment and trial. ¶ 49. Defendants have challenged and would continue to challenge Lead Plaintiff's alleged loss causation events. ¶ 49, 57. Defendants argued that there was no price impact related to either the July 17, 2015 corrective disclosure, or the October 20, 2015 corrective disclosure, on the grounds that the stock price drops that followed both events were statistically insignificant.

To prevail on these issues, Lead Plaintiff would have to prove that it was the disclosure of the alleged securities violations that caused him to suffer loss, as opposed to unrelated matters. *Lormand v. US Unwired, Inc.,* 565 F.3d 228, 255 (5th Cir. 2009). "[T]he determination of loss causation and damages is a complicated process requiring expert testimony" and thus, "there is a risk that the loss causation assessments of the parties' experts at trial would vary substantially, reducing this defense to a 'battle of experts.'" *Buettgen,* 2013 WL 12303143, at *8. Defenses to loss causation and damages pose substantial risks to a plaintiff's potential recovery at trial because "[o]ne cannot predict which expert's testimony or methodology a jury would find reliable. If the jury agreed with Defendants, Plaintiff[] would have had their damages significantly reduced or their claims fail as a matter of law." *Id.* Accordingly, in the absence of a settlement, there was a

very real risk that the Settlement Class would have recovered significantly less—or even nothing at all. ¶ 59.

3. Risks of Maintaining Class Action Status

While Lead Plaintiff successfully obtained class certification and is confident that the class was properly certified, he faced the risk that the class would be decertified in whole or in part by Defendants' interlocutory appeal (for which permission to file was granted by the Fifth Circuit on March 25, 2019). ¶ 48. If Defendants' appeal were successful even in part, this could jeopardize recovery for the class. Even if Defendants were to lose the interlocutory appeal, there is no guarantee that the class would remain certified and receive a recovery. "[T]he law of class actions is developing at a rapid clip, and it is always possible that some new Supreme Court decision would counsel in favor of decertification." *City of Providence v. Aeropostale, Inc.,* No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *9 (S.D.N.Y. May 9, 2014); *see also Buettgen*, 2013 WL 12303143, at *8. As such, Lead Plaintiff faced serious risks in maintaining class action status and achieving a recovery for the class.

4. Risks of Preserving a Favorable Jury Verdict After Trial

The risks would continue even if Lead Plaintiff prevailed at trial. Defendants would certainly have appealed any verdict in favor of Lead Plaintiff.[4] Thus, while Lead Plaintiff believed he had a meritorious case and could prevail despite all of the foregoing arguments and obstacles, continued litigation presented serious risks which informed his decision to enter into the

[4] *See, e.g.*, *Robbins v. Koger Properties, Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing on appeal $81 million jury verdict and dismissing securities action with prejudice); *AUSA Life Ins. Co. v. Ernst & Young*, 39 F. App'x 667 (2d Cir. 2002) (affirming district court's dismissal after a full bench trial and earlier appeal and remand); *Glickenhaus & Co. v. Household Int'l, Inc.,* 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instructions).

Settlement. ¶ 51. When viewed in the context of the risks and uncertainties involved in continued litigation, the substantial Settlement of $4.875 million weighs heavily in favor of approval. *Williams v. Go Frac, LLC*, No. 2:15-cv-00199-JRG, 2017 WL 3699350, at *2 (E.D. Tex. Apr. 26, 2017) (approving class action settlement where the parties have conducted "sufficient investigation, research and litigation . . . such that counsel for the parties are able to evaluate their respective risks of further litigation, including the additional costs and delay associated with the further prosecution" of the action).

F. The Settlement Is Well Within the Range of Reasonableness

The fifth *Reed* factor, which considers "whether the terms of the settlement 'fall within *a reasonable range of recovery,* given the likelihood of the plaintiffs' success on the merits[]'" also weighs in favor of final approval. *See Billitteri v. Sec. Am., Inc.,* No. 3:11-cv-00191-F, 2011 WL 3586217 (N.D. Tex. Aug. 4, 2011) (emphasis in original). To assess the reasonableness of a proposed settlement seeking monetary relief, an inquiry "should contrast settlement rewards with likely rewards if [the] case goes to trial." *In re Chicken Antitrust Litig.*, 669 F.2d 228, 239 (5th Cir 1982). In considering this factor, courts recognize the uncertainty of securities litigation and the difficulties of proving liability and damages at trial in such cases. *See Nathenson v. Zonagen Inc.,* 267 F.3d 400, 412 (5th Cir. 2001) (recognizing the complexity of securities fraud class action claims under the PSLRA).

Under the Settlement, the Settlement Class will receive $4.875 million—a substantial amount—in exchange for the release of all claims against Defendants. Lead Plaintiff's damages expert estimates that if Lead Plaintiff overcame ***all*** obstacles to establishing liability, and prevailed on ***all*** his loss causation and damages theories, the $4.875 million settlement would equate to approximately 7.9% of the total ***maximum*** damages ***potentially*** available in this Action. ¶ 56.

However, as discussed above, Defendants raised credible arguments that Lead Plaintiff could not prove all of his loss causation allegations. If Defendants had prevailed on these arguments, the total ***maximum*** damages available would be $30 million, in which case, the Settlement represents a recovery of approximately 16.25% of the Settlement Class's maximum total damages. ¶ 57. A recovery within the range of 7.9%-16.25% is well above the average recovery in similar situations.[5]

In light of the fact that the Court had already dismissed the Action with leave to amend and the Fifth Circuit had granted Defendants' 23(f) petition, these were not speculative risks. ¶ 58. Given these risks, the Settlement is an extremely favorable outcome for the Settlement Class and is well within the range of reasonableness. Thus, this factor weighs in favor of approval of the Settlement.

G. The Opinions of Class Counsel, the Class Representative, and Absent Class Members

The sixth *Reed* factor is satisfied because Lead Counsel, Lead Plaintiff and the Settlement Class Members all support final approval of the Settlement. "Counsel are the Court's 'main source of information about the settlement' . . . and therefore the Court will give weight to class counsel's opinion regarding the fairness of settlement." *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 852 (E.D. La. 2007) . "[W]here the parties have conducted an extensive investigation, engaged in significant fact-finding and Lead Counsel is experienced in class-action litigation, courts typically defer to the judgment of experienced trial counsel who has evaluated the strength

[5] *See e.g., In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 804 (S.D. Tex. 2008) ("The typical recovery in most class actions generally is three-to-six cents on the dollar."). Further, the median recovery in securities class actions in 2018 was approximately 2.6% of estimated damages. *See* Kendall Declaration in Support of Motion for Preliminary Approval (ECF No. 138), Ex. D (Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* (NERA Jan. 29, 2019) at p. 36, Fig. 28)).

of his case." *Schwartz v. TXU Corp.*, Case No. 3:02-CV-2243-K, 2005 WL 3148350, at *21 (N.D. Tex. Nov. 8, 2005). "The endorsement of class counsel is entitled to deference, especially in light of class counsel's significant experience in complex civil litigation and their lengthy opportunity to evaluate the merits of the claims." *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 292 (W.D. Tex. 2007).

Lead Counsel has considerable experience in complex class action and securities litigation and believes the Settlement merits approval. ¶ 52. Lead Counsel's opinion of the Settlement was reached after engaging in extensive investigation and significant fact-finding that provided a thorough understanding of the strengths and risks attendant to Lead Plaintiff's claims. ¶ 52. *See Schwartz,* 2005 WL 3148350, at *21. Moreover, the Court-appointed Class Representative strongly endorses the Settlement. ¶¶ 50-51. Lead Plaintiff has supervised and monitored Lead Counsel's work throughout the Action, and was kept apprised of the case's developments, including settlement negotiations. ¶ 80.

The response of the absent Settlement Class Members also weighs in favor of final approval. While the deadline to file objections and requests for exclusion is November 15, 2019, to date, not a single objection has been filed and no requests for exclusion have been received. ¶¶ 7, 46; Cavallo Decl. ¶ 11. The universally positive reaction of absent Settlement Class Members favors final approval. *See Vaughn,* 627 F. Supp. 2d at 748. As Class Counsel, the Class Representative, and the absent Settlement Class Members support approval of the Settlement, the final factor under *Reed* is satisfied.

H. The Remaining Rule 23(e) Factors Support Final Approval

Under Rule 23(e)(2)(C), the Court must also consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member

claims," "the terms of any proposed award of attorneys' fees, including timing of payment," and, "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Under Rule 23(e)(3), the Parties must identify any agreement made in connection with the proposed Settlement. Fed. R. Civ. P. 23(e)(3). Last, Rule 23(e)(2)(D) requires the Court to assess whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Each of these factors supports final approval of the Settlement.

First, pursuant to Rule 23(e)(2)(C)(ii), the method for processing Settlement Class Members' claims and distributing relief to eligible claimants is comprised of well-established, effective procedures and will result in efficiently distributing the Net Settlement Fund. *See* Sec. VII, *infra*. The Claims Administrator, KCC LLC ("KCC"), will review and process claims with the guidance of Lead Counsel, provide claimants with an opportunity to cure any deficiency in their claims or to request the Court review denial of their claims, and last, mail a check to or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund as calculated under the Plan of Allocation, after Court-approval. This type of claims processing and method for distributing settlement proceeds is standard in securities and other class actions and is effective. *See, e.g., In re Dell Inc., Sec. Litig.,* 2010 WL 2371834, at *10.

Second, pursuant to Rule 23(e)(2)(c)(iii), the relief provided for the Settlement Class is adequate when the terms of the proposed award of attorneys' fees are considered. As discussed in the accompanying Fee Memorandum, the proposed attorneys' fees of up to one-third to be paid upon approval by the Court are reasonable in light of Plaintiff's Counsel's substantial work and efforts, the results achieved, and relative to awards in similar cases. *See Jenkins v. Trustmark Nat. Bank,* 300 F.R.D. 291, 310 (S.D. Miss. 2014). Most importantly, the Court's approval of the proposed award of attorneys' fees is separate from approval of the Settlement, and neither Lead

Plaintiff nor Lead Counsel may terminate the Settlement based on the ultimate award of attorneys' fees or expenses.

Third, pursuant to Rule 23(e)(2)(c)(iv) and (e)(3), the Parties entered into a confidential agreement establishing conditions under which Defendants may terminate the Settlement if a certain threshold of Settlement Class Members submit valid and timely requests for exclusion. This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement. *See Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018) (approving settlement with similar confidential agreement).

Finally, pursuant to Rule 23(e)(2)(D), the proposal treats class members equitably relative to each other. ¶ 8. All Authorized Claimants will receive their *pro rata* share of the Net Settlement Fund based on the amount of their Recognized Loss calculated under the Plan of Allocation. ¶ 8; Cavallo Decl. at Ex. A (Notice at pp. 9-11); *see also* Sec. VII, *infra* (regarding Plan of Allocation).

V. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS

The Court's Preliminary Approval Order certified the Class for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3). (ECF No. 139).[6] There have been no changes to alter the propriety of class certification for settlement purposes. Thus, for the reasons stated in Lead Plaintiff's memorandum in support of preliminary approval of the Settlement (ECF No. 137), Lead Plaintiff respectfully requests that the Court affirm its determinations in the Preliminary Approval

[6] Additionally, by Order dated February 19, 2019, the Court granted Lead Plaintiff's amended motion for class certification certifying a class consisting of "all persons and entities that purchased or otherwise acquired EZCORP, Inc. Class A common stock between January 28, 2014 and October 20, 2015, inclusive, and were damaged thereby." The Court further appointed John Rooney as Class Representative, appointed Lead Counsel as Class Counsel, and appointed The Kendall Law Group, LLP as Liaison Counsel. ECF No. 120.

Order certifying the Settlement Class under Rules 23(a) and (b)(3).

VI. THE NOTICE PROGRAM SATISFIES RULE 23 AND DUE PROCESS

The Court approved the proposed notice program in the Preliminary Approval Order, and Lead Plaintiff has executed the notice program in accordance with the provisions therein. ¶ 44. Notice was given to Settlement Class Members via Postcard Notice, the settlement website, and publication. ¶ 44. Copies of the Court-approved Postcard Notice were timely mailed by the Court-appointed Claims Administrator, KCC, to an aggregate of 13,741potential Settlement Class Members and the largest brokerage firms, banks, institutions, and other nominees. ¶ 44*;* Cavallo Decl. ¶ 7.

On September 9, 2019, the Court-approved Summary Notice was published in *Investors Business Daily* and over the *PR Newswire*. ¶ 44; Cavallo Decl. ¶ 8. The published Summary Notice clearly and concisely provided information concerning the Settlement and the means to obtain a copy of the Notice. *See* Cavallo Decl. at Ex. B. Finally, the Claims Administrator posted the Notice, Claim Form, and other relevant documents online at the settlement website, www.ezcorpsettlement.com, and provided a phone number for Settlement Class Members to call with any questions concerning the Settlement. ¶ 44; Cavallo Decl. ¶¶ 9-10. Courts routinely find that comparable notice programs meet the requirements of due process and Rule 23. *See In re Mut. Funds Inv. Litig.*, MDL No. 1586, 2010 WL 2342413, at *6-7 (D. Md. May 19, 2010) (approving combination of postcard notice, summary notice, and detailed notice available online as "the best notice practical"); *In re Advanced Battery Techs., Inc. Secs. Litig.*, 298 F.R.D. 171, 182-83 n.3 (S.D.N.Y. 2014) (collecting cases and stating that "[t]he use of a combination of a mailed post card directing class members to a more detailed online notice has been approved by courts.").

VII. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Assessment of a plan of allocation of settlement proceeds in a class action under Rule 23 is governed by the same standard of review applicable to the settlement as a whole – the plan must be "fair, adequate and reasonable." *Chicken Antitrust*, 669 F.2d at 238. "When formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012); *In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 270 (S.D.N.Y. 2012) (same). District 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); *accord Chicken Antitrust*, 669 F.2d at 238.

Here, the proposed Plan of Allocation is set forth in the Notice posted on the Settlement website. ¶ 44; Cavallo Decl. ¶ 10 & Ex. A (Notice at pp. 9-11). Lead Counsel developed the Plan of Allocation in consultation with Lead Plaintiff's damages consultant with the objective of equitably distributing the Net Settlement Fund. ¶ 8. The Plan of Allocation was developed based on an event study, which calculated the estimated amount of artificial inflation in the per share closing prices of EZCORP's Class A common stock ("EZCORP's stock"), as a result of Defendants' alleged materially false and misleading statements and omissions, adjusting for factors attributable to market or industry forces. ¶ 8; Cavallo Decl. Ex. A (Notice at pp. 9). Under the Plan of Allocation, a "Recognized Loss" will be calculated for each purchase of EZCORP stock, for which adequate documentation is provided. ¶ 8; Cavallo Decl. Ex. A (Notice at pp. 10). The calculation of Recognized Losses is explained in detail in the Notice and incorporates several factors, including when and for what price EZCORP stock was purchased and sold and the estimated artificial inflation in the stock's respective prices at the time of purchase and sale, as

determined by Lead Plaintiff's damages consultant. ¶ 8. *See In re Datatec Sys. Inc. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 WL 4225828, at *5 (D.N.J. Nov. 28, 2007) ("plans that allocate money depending on the timing of purchases and sales of the securities at issue are common"). The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Losses. ¶ 43.

Lead Counsel believes that the proposed Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who suffered losses as a result of the conduct alleged in the Action, and their opinion as to allocation is entitled to "considerable weight" by the Court in deciding whether to approve the plan. ¶ 43. *Am. Bank Note*, 127 F. Supp. 2d at 430. To date, no objections to the Plan of Allocation have been received, suggesting that the Settlement Class also finds the Plan of Allocation to be fair and reasonable. ¶ 8. Moreover, similar plans have repeatedly been approved by federal courts in securities class actions. *See, e.g.*, *City of Omaha Police & Fire Retirement System v. LHC Group*, No. 6:12-1609, 2015 WL 965693, at *15 (W.D. La. Mar. 3, 2015) (approving plan of allocation where each class member would receive their *pro rata* share of the funds based on calculation of recognized losses); *Marcus v. J.C. Penney Company, Inc.*, 6:13-CV-736, 2017 WL 6590976, at *5 (E.D.Tex. Dec. 18, 2017); *Schwartz*, 2005 WL 3148350, at *21. Accordingly, Lead Plaintiff respectfully submits that the proposed Plan of Allocation is fair and reasonable, and merits final approval from the Court.

VIII. CONCLUSION

For the reasons stated herein and in the Block Declaration, Lead Plaintiff respectfully requests that the Court grant final approval of the Settlement and approve the Plan of Allocation.

Dated: November 1, 2019

By: */s/ Joe Kendall*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon its filing via this Court's CM/ECF system on this 1st day of November, 2019 to all counsel of record.

By: *s/ Joe Kendall*
Joe Kendall