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) Hon. Andrew L. Carter, Jr. **CLASS ACTION**

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

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I, Timothy A. DeLange, do hereby declare as follows, pursuant to 28 U.S.C. § 1746:

I am a partner with the law firm Bernstein Litowitz Berger & Grossmann LLP, Lead Counsel for Lead Plaintiff Automotive Machinists Pension Trust ("Lead Plaintiff"). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.[1] I have actively supervised and participated in the prosecution and Settlement of this Action and have personal knowledge of all material matters contained in this declaration. I submit this declaration in support of Lead Plaintiff's motion for final approval of the proposed Settlement and approval of the Plan of Allocation, as well as Lead Counsel's motion for approval of attorneys' fees and reimbursement of Litigation Expenses.

I. PRELIMINARY STATEMENT

1. On January 4, 2017, the Court granted preliminary approval of the proposed $5.9 million cash settlement. *See* Order Preliminarily Approving Proposed Settlement And Providing For Notice ("Preliminary Approval Order," ECF No. 114). Since then, the funds have been deposited into an Escrow Account, and the Claims Administrator has notified potential Settlement Class Members of the Settlement in accordance with the Preliminary Approval Order.

2. This declaration does not seek to detail each and every event that has occurred during the 2 ½-year litigation. Rather, it provides highlights of the litigation, the events leading to the Settlement, and the bases upon which Lead Plaintiff and Lead Counsel recommend its approval.

3. Throughout the litigation, the risks have been substantial and the battles hard-fought. The Settlement was reached only after Lead Plaintiff conducted an extensive

[1] When not defined herein, capitalized terms are defined in the Stipulation And Agreement Of Settlement (ECF No. 112-1, the "Stipulation").

investigation, filed a comprehensive consolidated complaint, opposed Defendants' motions to dismiss, engaged in discovery including document production and depositions, briefed Lead Plaintiff's class certification motion, and consulted with experts on various complex issues. As discussed below, while the Court sustained Lead Plaintiff's claims related to Cash Genie, the Court dismissed other claims, and Lead Plaintiff faced continuing risks with regard to the sustained claims, through summary judgment, trial, and appeal.

4. The proposed Settlement is the product of a series of arm's-length negotiations that occurred only after the Court's motion to dismiss opinion was issued, the class certification motion was pending, and while discovery was ongoing. As detailed in the declaration of Robert A. Meyer, Esq., attached hereto as Exhibit 1, the Settlement is the result of a full-day in-person mediation, followed by a "mediator's proposal" that the Parties settle for $5.9 million in cash. Mediator Meyer explains that the $5.9 million Settlement is the most that could have been obtained by Lead Plaintiff at the time the Settlement was reached. *See* Meyer Decl. ¶8.

5. The Court-appointed Lead Plaintiff, Automotive Machinists Pension Trust ("Automotive Machinists"), a sophisticated institutional investor, through its board and separate outside fund counsel, supervised Lead Counsel, participated in all aspects of the litigation, remained informed throughout the settlement negotiations, and ultimately approved the Settlement.

6. In connection with the Settlement, Lead Plaintiff proposes a Plan of Allocation to equitably distribute the Net Settlement Fund to Settlement Class Members who submit valid claims, consistent with Lead Plaintiff's theory of damages and the Court's rulings. Lead Counsel developed the Plan of Allocation in consultation with Lead Plaintiff's expert, who conducted an event study using a well-accepted methodology to estimate the amount of alleged artificial

inflation in EZCORP's common stock shares during the Settlement Class Period. The declaration of Lead Plaintiff's expert in support of the Plan of Allocation is attached hereto as Exhibit 4 ("Nye Decl."). As discussed in the accompanying brief, substantially similar plans have been approved and used effectively to distribute recoveries in other securities class actions.

7. In addition, Lead Counsel requests an award of attorneys' fees in the amount of 25% of the $5.9 million Settlement Fund, or $1,475,000.00; for reimbursement of Lead Counsel's Litigation Expenses in the amount of $257,063.48; and for reimbursement to Lead Plaintiff for its expenses incurred in the amount of $10,427.50 pursuant to the PSLRA, to be paid out of the Settlement Fund. As discussed in the accompanying brief, the requested fee is well within the range of fees approved by courts in this Circuit, including for securities class actions; is supported by the institutional investor lead plaintiff; and is amply supported by each of the relevant factors considered by courts within this Circuit. The reasonableness of the 25% fee is confirmed by a lodestar cross-check resulting in a negative multiplier. The expenses requested are also reasonable and supported by separate sworn declarations attached hereto.

8. This Declaration describes: (a) the efforts undertaken by Lead Counsel to prosecute the Action (Section II); (b) the events leading up to the Settlement, the terms of the Settlement, and the risks that Lead Plaintiff and Lead Counsel considered in determining that the Settlement provides a good recovery for the Settlement Class (Sections III.A and III.B); (c) the Notice to Settlement Class Members (Section III.C); (d) the proposed Plan of Allocation for the Settlement (Section III.D); and (e) Lead Counsel's fee and expense application (Section IV).

II. PROSECUTION OF THE ACTION

9. As detailed in the Complaint, EZCORP is a pawnshop operator and provider of high-cost, short-term consumer loans, including so-called "payday loans." Beginning in

April 2012, EZCORP purchased Cash Genie, a top-ten online lender in the United Kingdom. Throughout the Settlement Class Period, Defendants assured investors that Cash Genie stood out as an exemplary practitioner of industry "best practices," distinguishing Cash Genie from the "bad actors" in the payday lending industry, representing that Cash Genie did not engage in the practices that regulators were beginning to outlaw.

10. The Complaint further alleges that, in truth, and as Defendants ultimately admitted, Cash Genie engaged in the same misconduct and practices on which the regulators were focused. The truth was allegedly revealed in a series of disclosures from November 7, 2013, when EZCORP disclosed that Cash Genie did not operate to best practices.

A. The Commencement Of The Action, Appointment Of Lead Plaintiff, And Filing Of The Consolidated Complaint

11. Beginning on August 22, 2014, two putative class action complaints were filed in the United States District Court for the Southern District of New York (the "Court"), styled *Close v. EZCORP, Inc.*, No. 14-cv-6834 (S.D.N.Y.) and *Automotive Machinists v. EZCORP, Inc.*, No. 14-cv-8349 (S.D.N.Y.). By Order dated November 17, 2014, the Court consolidated and recaptioned the cases as *In re EZCORP, Inc. Securities Litigation*, Master Docket No. 14-cv-6834 (the "Action"). By Order dated January 26, 2015, the Court appointed Automotive Machinists as the Lead Plaintiff, and approved its selection of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") as Lead Counsel for the Settlement Class.

12. Before and after its appointment, Lead Plaintiff commenced an extensive investigation. As detailed below, Lead Counsel scoured SEC filings, analyst reports, press releases, and other publicly available information related to the alleged securities violations. Lead Counsel also identified and contacted numerous percipient witnesses who provided detailed and corroborative information supporting the allegations.

13. On March 12, 2015, Lead Plaintiff filed the Consolidated Amended Class Action Complaint (the "Complaint"), alleging claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder against Defendants EZCORP, Rothamel and Kuchenrither; and under Section 20(a) of the Exchange Act against Defendants Rothamel, Kuchenrither, Cohen, and MS Pawn. The claims are alleged on behalf of a class of persons and entities that purchased or otherwise acquired EZCORP common stock between April 19, 2012, and October 6, 2014, and were damaged thereby.

14. The Complaint alleged that Defendants made false and misleading statements regarding (i) Cash Genie's compliance with lending regulations and industry practices; (ii) the value of another of its U.K. payday-lending subsidiaries; and (iii) the nature and purported benefits of EZCORP's consulting agreement with another entity controlled by Defendant Cohen.

15. The Complaint alleged that the relevant truth was revealed beginning on November 7, 2013, and continuing through a series of disclosures ending on October 6, 2014.

B. Briefing On Defendants' Motions To Dismiss, And The Court's Ruling Sustaining Claims Related To Cash Genie

16. On April 27, 2015, Defendants filed two motions to dismiss the Complaint. The motions, along with their exhibits, totaled over 1,200 pages. Defendants argued, among other things, that the Complaint failed to adequately plead a materially false statement or omission, facts giving rise to a strong inference of scienter, loss causation, or control person liability.

17. Lead Plaintiff filed its omnibus opposition to Defendants' motions to dismiss on May 27, 2015. Lead Plaintiff addressed Defendants' arguments, and explained how the Complaint adequately alleged falsity, scienter, loss causation, and control person liability. Defendants filed their replies on June 16, 2015. The Parties thereafter submitted letters addressing supplemental authority.

18. By Memorandum & Order filed March 31, 2016, the Court granted in part and denied in part Defendants' motions to dismiss. The Court denied the motions, and sustained the claims, related to misstatements about Cash Genie's compliance with lending regulations and industry best practices, and granted the motions with respect to the other allegations.

19. Defendants filed their Answers to the Complaint beginning on May 15, 2016.

C. Pretrial Proceedings And Scheduling

20. Following the Court's ruling on the motions to dismiss, the Parties participated in two telephonic Rule 26(f) conferences on April 14 and 18, 2016. In connection with the conferences, they drafted and negotiated a Rule 26(f) Report, which they filed on April 22, 2016. Although the Parties were able to reach agreement on many topics in the Report, the Report also set forth the Parties' respective positions on the anticipated scope of discovery as a result of the Court's motion to dismiss opinion, whether discovery should be bifurcated, and the Parties' proposed pretrial schedules. Overall, Lead Plaintiff proposed a shorter pretrial schedule, with non-bifurcated discovery, a fact discovery cut-off of February 2017, and trial in October 2017. Defendants, by contrast, proposed a longer pretrial schedule, with bifurcated "class" and "merits" discovery, a ten-month merits discovery period, and an estimated trial date in spring 2018.

21. On May 17, 2016, the Action was referred to Magistrate Judge Andrew Peck for general pretrial purposes. Shortly thereafter, Magistrate Judge Peck entered an Order Scheduling Initial Pretrial Conference, and held a pretrial conference on June 8, 2016. Magistrate Judge Peck set forth certain deadlines related to class certification and discovery, ordered the Parties to confer regarding the scope of class certification discovery, and scheduled a subsequent pretrial conference for July 22, 2016. At the second pretrial conference, Magistrate Judge Peck set forth additional deadlines, including an October 3, 2016 deadline for the filing of Lead Plaintiff's class certification motion, and ordered the Parties to confer regarding a further pretrial schedule. Under

the Court's instruction, the Parties negotiated and submitted an Agreed Pre-Trial Scheduling Order, which the Court approved and entered on August 2, 2016. The Order included, among other things, the October 3, 2016 class certification motion deadline, a January 31, 2017 deadline for completion of document productions, a May 1, 2017 fact discovery cut-off, and a December 2017 trial date.

22. On September 27, 2016, Magistrate Judge Peck held a status conference in which the Court and the Parties discussed the progress of the pretrial proceedings.

D. Motion For Class Certification

23. In accordance with the pre-trial Schedule, Lead Plaintiff filed its motion for class certification on October 3, 2016. The motion sought to certify for litigation purposes a class of all persons and entities who purchased or otherwise acquired common stock issued by EZCORP between April 19, 2012, and October 6, 2014, inclusive, and were damaged thereby. Lead Plaintiff demonstrated in the motion and supporting papers that the Action satisfied all of Rule 23's requirements. In support of the motion, Lead Plaintiff submitted the Expert Report of Zachary Nye, Ph.D., in which Dr. Nye opined that the market for EZCORP stock was efficient throughout the class period, and as a result, the fraud-on-the-market presumption of reliance applies. Dr. Nye also concluded that damages may be reliably assessed on a class-wide basis by using a commonly applied and widely accepted event study model that would quantify the artificial inflation per share in EZCORP's common stock during the class period.

24. Defendants filed an opposition to the class certification motion on October 24, 2016, along with a declaration and 55 exhibits. Lead Plaintiff filed its reply brief and supplemental expert declaration on November 7, 2016. The motion was under submission at the time the Parties accepted the mediator's recommendation to settle the Action.

E. Gathering Evidence, Developing The Claims, And Conducting Discovery

25. In light of the automatic discovery stay, combined with the heightened pleading standard, both contained in the PSLRA, Lead Counsel necessarily embarked on an extensive investigation before filing the Complaint.

26. Lead Counsel's investigation included, among other things, reviews and analyses of (i) public filings by EZCORP with the SEC, including Forms 10-K, 10-Q, 8-K, and S-8; (ii) transcripts of earnings calls and investor conferences with EZCORP senior management; (iii) research reports and news articles authored by securities and financial analysts; and (iv) other publicly available material and data as identified in the Complaint.

27. Lead Counsel's investigation also included identifying, locating and contacting dozens of former employees and others with personal knowledge of Defendants' alleged wrongdoing and other information relevant to the Complaint, several of whom are favorably cited in the Court's opinion sustaining the Cash Genie allegations.

28. Following the lifting of the PSLRA's automatic discovery stay, and the Parties' Rule 26(f) conferences, the Parties commenced discovery on April 18, 2016. In order to facilitate the prompt production of documents and information, the Parties negotiated and submitted for the Court's consideration a stipulation and proposed order governing the production of confidential material, which Magistrate Judge Peck entered on June 3, 2016. The Parties also negotiated and submitted a stipulation and proposed order regarding a joint protocol for production of discovery material, which Magistrate Judge Peck entered on July 6, 2016.

29. The Parties exchanged initial disclosures and supplemental disclosures, and propounded discovery requests, including requests for production of documents and answers to interrogatories. Defendants began a rolling production of documents in July 2016. In total,

Defendants produced thousands of pages of documents, and their production was continuing when the Settlement was reached. Lead Plaintiff also produced hundreds of pages of documents in response to Defendants' requests and provided detailed answers to interrogatories. Lead Plaintiff also submitted a Freedom of Information Act request to the Consumer Financial Protection Bureau.

30. Pursuant to Magistrate Judge Peck's instruction to proceed with class certification depositions, Defendants took the Rule 30(b)(6) deposition of Lead Plaintiff's Chairman and the deposition of Dr. Nye.

31. In total, the discovery propounded in this case included the following:

DOCUMENT/EVENT
Defendant's (EZCORP) First Set of Interrogatories to Lead Plaintiff Automotive Machinists Pension Trust
Lead Plaintiff's First Request for Production of Documents by EZCORP, Inc., Paul E. Rothamel, and Mark E. Kuchenrither
Lead Plaintiff Automotive Machinists Pension Trust's Initial Disclosures
Defendants MS Pawn Limited Partnership and Phillip Ean Cohen's Initial Disclosures
EZCorp, Inc.'s Rule 26(a) Disclosures
Mark E. Kuchenrither's Rule 26(a) Disclosures
Defendant Paul Rothamel Rule 26(a) Initial Disclosures
Lead Plaintiff's First Request for Production of Documents by MS Pawn and Phillip Ean Cohen
Lead Plaintiff's Responses and Objections to Defendants' First Set of Requests for Production of Documents
Lead Plaintiff's Responses and Objections to Defendants' First Set of Interrogatories
Defendant's Rule 30b6 Deposition Notice to Lead Plaintiff Automotive Machinists Pension Trust

Lead Plaintiff's Second Request for Production of Documents by EZCORP, Inc., Paul E. Rothamel and Mark E. Kuchenrither
Mark Kuchenrither's Responses and Objections to Lead Plaintiff's Second Request for Production of Documents
EZCORP, Inc.'s Objections and Responses to Lead Plaintiff's Second Request for Production of Documents
Mark E. Kuchenrither's Supplemental Rule 26(a) Disclosures on Class-Certification Issues
Lead Plaintiff Automotive Machinists Pension Trust's Supplemental Initial Disclosures Regarding Class Certification
EZCORP, Inc.'s Supplemental Rule 26(a) Disclosures on Class-Certification Issues
Defendants MS Pawn Limited Partnership and Phillip Ean Cohen's Class Certification Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(1)
Defendant Paul E. Rothamel's Responses to Lead Plaintiff's Second Request for Production of Documents
Defendant Paul E. Rothamel's Supplemental Rule 26(a) Disclosures on Class Certification Issues
Defendant EZCORP Inc.'s Amended Rule 30(b)(6) Deposition Notice to Lead Plaintiff Automotive Machinists Pension Trust
Lead Plaintiff Automotive Machinists Pension Trust's Objections and Responses to Amended Notice of 30(b)(6) Deposition
Lead Plaintiff's Notice of Deposition to Defendant's Expert Michael A. Keable
Defendant EZCORP Inc.'s Notice of Deposition of Zachary Nye, Ph.D.
Defendant Paul E. Rothamel's Responses to Lead Plaintiff's First Request for Production of Documents
Defendant EZCORP Inc.'s Amended Notice of Deposition of Zachary Nye, Ph.D. (Deposition taken October 14, 2016)
Rule 30(b)(6) Deposition of Lead Plaintiff Automotive Machinists Pension Trust
Deposition of Zachary Nye, Ph.D.

The Parties were in the process of continuing discovery when the Settlement was reached.

32. Lead Counsel also worked with experts and consultants throughout the litigation and mediation process. For example, Lead Counsel worked with experts on issues such as accounting when drafting the Complaint, and on market efficiency, loss causation, and damages, in connection with the class certification motion, and throughout the litigation and settlement negotiations.

33. Lead Counsel gained additional information through the settlement negotiation process. As discussed below, the Parties exchanged mediation statements and exhibits in advance of the formal mediation session. The information allowed Lead Counsel to evaluate the risks of continuing with the case based on the claims sustained by the Court.

III. THE SETTLEMENT

A. Arm's-Length Settlement Negotiations

34. The Settlement is the result of arm's-length negotiations, including a mediation before a professional JAMS mediator, followed by the Parties accepting a "mediator's recommendation."

35. Specifically, as set forth in the Declaration of Robert A. Meyer, Esq. of JAMS, attached hereto as Exhibit 1, on November 18, 2016, the Parties participated in an in-person full-day mediation session before Mediator Meyer.

36. Prior to the mediation, the Parties exchanged and submitted to the Mediator detailed mediation statements and exhibits that addressed both liability and damages. According to the Mediator, the arguments and positions asserted by all involved were the product of much hard work, and were complex and highly adversarial. After reviewing all of the written mediation materials, the Mediator believed that it would be a difficult and adversarial process through which all involved would hold strong to their convictions that they had the better legal and administrative

arguments, and that a resolution without further litigation was by no means certain. Meyer Decl. ¶5.

37. By the time of the mediation, the Parties had been litigating the case for over two years, through the pleading stage, into discovery, and after Lead Plaintiff's class certification motion was fully briefed. *Id*. ¶4.

38. Over the course of the full-day mediation, the Mediator engaged in extensive discussions with counsel and EZCORP's insurance carriers in an effort to find common ground between the respective positions. *Id.* ¶6. The mediation session ended without a settlement. The Mediator thereafter made a mediator's recommendation that the Parties settle for $5.9 million, and gave the Parties three business days to, separately, accept or reject the proposal. The Parties thereafter accepted the Mediator's proposal. *Id.* ¶¶6-7.

39. The Mediator made his mediator's recommendation 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 Action, and his understanding of the limitations and risks presented by the Court's opinion dismissing in part and granting in part Defendants' motions to dismiss. The Mediator understood that the $5.9 million settlement was the most that could be obtained by Lead Plaintiff at the time the settlement was reached. *Id.* ¶8. The Mediator concludes:

> Based on my experience as a litigator and a neutral, I believe that this settlement represents a recovery and outcome that is reasonable and fair for the Settlement Class and all parties involved. I further believe it was in the best interests of all parties that they avoid the burdens and risks associated with taking this case through further motion practice, additional discovery, trial, and appeals, and that they agree on the settlement now before the Court. In sum, I strongly support approval of the settlement in all respects.

Id. ¶10.

40. On November 29, 2016, Lead Plaintiff informed the Court that the Parties had agreed to settle the case and were working to fully document the terms of the Settlement. The Court stayed all deadlines, adjourned all conferences, and ordered the Parties to submit the Settlement papers by December 23, 2016.

41. On December 23, 2016, Lead Plaintiff filed the Settlement papers, including an unopposed motion for an order preliminarily certifying the Settlement, certifying the Action as a class action for settlement purposes, approving the manner and form of notice to be sent to Settlement Class Members, and scheduling a hearing for final approval of the Settlement. The Court granted the motion on January 4, 2017, setting forth the settlement-related deadlines and scheduling a final approval hearing for April 25, 2017.

42. Following the Court's Order preliminarily approving the Settlement, beginning on January 19, 2017, the Claims Administrator, the Garden City Group, LLC ("GCG"), began mailing the Notice to potential Settlement Class Members and their brokers and nominees as discussed below and in the Claims Administrator Declaration, attached hereto as Exhibit 3 ("Bareither Decl.").

43. Also following the Court's Order preliminarily approving the Settlement, on February 8, 2017, EZCORP paid or caused to be paid the $5.9 million Settlement into the Escrow Account established for this Settlement.

B. Reasons For The Settlement

44. Lead Plaintiff and Lead Counsel endorse the Settlement. Lead Plaintiff is a sophisticated institutional investor that has overseen the prosecution of the Action. Lead Counsel is a law firm that specializes in complex securities litigation, and is highly experienced in such litigation. *See* Exhibit 5-C. Based on their experience and knowledge of the facts and applicable law, Lead Counsel and Lead Plaintiff determined that the Settlement was in the best interest of

the Settlement Class, particularly in light of the Court's opinion sustaining only the claims related to Cash Genie, and the serious risks in continuing the litigation. If the Action had continued, Lead Plaintiff faced substantial risks that made any recovery uncertain. Indeed, issues of liability and damages were highly contested.

45. By way of background, as discussed above, Lead Plaintiff's Complaint alleged claims for false statements and omissions regarding Cash Genie's compliance with lending regulations and best practices, and regarding the value of EZCORP's investment in another U.K. lender, and the benefits and purported fairness of EZCORP's consulting agreement with another entity controlled by Defendant Cohen. The Court, however, sustained only the claims related to false statements and omissions regarding Cash Genie's compliance with lending regulations and best practices.

46. 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, they 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.

47. 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.

48. Relatedly, the amount of recoverable damages remaining as a result of the Court's opinion would be strongly contested. Lead Counsel engaged a consultant who estimated the potentially recoverable damages. Estimating aggregate damages can be challenging due to, among other things, assumptions that 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 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.

49. While Lead Plaintiff and Lead Counsel believe that Lead Plaintiff's claims are strong and that they would be able to develop the evidence needed to prevail at summary judgment and trial, they nonetheless recognize that if the Court or the jury were to accept any of Defendants' arguments or defenses, either at summary judgment or at trial, it would eliminate or at least dramatically limit any potential recovery that remained possible following the Court's ruling.

50. Lead Plaintiff was also 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. The Settlement avoids these litigation risks and guarantees the Settlement Class a favorable cash recovery. Lead Counsel and Lead Plaintiff firmly believe that settling the Action at this time is in the best interest of the Settlement Class.

C. Notice To The Settlement Class Meets The Requirements Of Due Process And Rule 23 Of The Federal Rules Of Civil Procedure

51. As required by the Court's Preliminary Approval Order, beginning on January 19, 2017, Lead Plaintiff, through the Claims Administrator, GCG, notified the Settlement Class of the Settlement by mailing a copy of the Court-approved Notice and Claim Form ("Notice

Packet") to potential Settlement Class Members and their brokers and nominees. GCG's declaration is attached hereto as Exhibit 3.

52. GCG utilized several resources of data to reasonably identify members of the Settlement Class. For example, paragraph 7(a) of the Preliminary Approval Order and paragraph 19 of the Stipulation required EZCORP to provide or cause to be provided to the Claims Administrator its security lists, including names and addresses, of the holders of EZCORP Class A common stock during the Settlement Class Period. EZCORP's counsel provided Settlement Class Member contact information to Lead Counsel, and the information was forwarded to GCG on January 10, 2017. In addition, GCG sent the Notice Packet to other institutions and entities identified, including entities identified on a proprietary list maintained by GCG of the largest and most common U.S. banks, brokerage firms, and other nominees. GCG also notified the security settlement system of the Depository Trust Company ("DTC") of the issuance of the Notice, and at GCG's request, DTC posted the Notice on its electronic Legal Notice System ("LENS"), which may be accessed by any firm, bank, institution or other nominee which is a participant in DTC's security settlement system. Bareither Decl. ¶¶2-9.

53. The Court-approved Notice requires nominees, within seven days, to either (i) request additional copies of the Notice to send to the beneficial owner of the securities, or (ii) provide to the Claims Administrator the names and addresses of such persons. *Id.* ¶8.

54. In the aggregate, as of March 10, 2017, GCG had disseminated 36,304 Notice Packets to potential Settlement Class Members and their brokers and nominees. *See id.* ¶¶11-12.

55. In addition, on January 23, 2017, the Court-approved Summary Notice was published in the *Investor's Business Daily* and transmitted over the *PR Newswire*. *See id.* ¶13. Information regarding the Settlement, including copies of the Notice and Claim Form, was posted

on the website established by GCG specifically for this Settlement, *id.* ¶15, and on Lead Counsel's website. A toll-free telephone line has also been established to respond to questions from potential Settlement Class Members. *Id.* ¶14. This method of giving notice, previously approved by the Court, is appropriate because it directs notice in a "reasonable manner to all class members who would be bound by the propos[ed judgment]." Fed. R. Civ. P. 23(e)(1).

56. The Notice advises Settlement Class Members of the essential terms of the Settlement, sets forth the procedure for objecting to or opting out of the Settlement, and provides specifics on the date, time and place of the final approval hearing.

57. The Notice also contains information regarding Lead Counsel's fee application and the proposed plan of allocating the Settlement proceeds among Settlement Class Members who submit valid claims.

58. As explained in the accompanying brief, the Notice fairly apprises Settlement Class Members of their rights with respect to the Settlement and therefore is the best notice practicable under the circumstances and complies with the Court's Preliminary Approval Order, Federal Rule of Civil Procedure 23, and due process.

59. In addition, Lead Counsel is informed that EZCORP caused the notice contemplated by the Class Action Fairness Act of 1995 ("CAFA") to be timely sent on December 30, 2016. A copy of the CAFA Notice is attached hereto as Exhibit 6.

60. The deadline for Settlement Class Members to object to any aspect of the Settlement or to request exclusion from the Settlement Class is April 4, 2017. To date, there are no requests for exclusions. There is only one correspondence received that is even arguably an objection, which expresses a general philosophical disagreement with securities class actions as a mechanism for investors to recover losses due to fraud. The potential objection is attached

hereto as Exhibit 7. The individual fails to comply with the requirement to demonstrate that he is a Settlement Class Member, and thus has no standing to object. In any event, as discussed in the accompanying brief, even if the individual had demonstrated that he was a Settlement Class Member, such objections that are only general in nature and do not specifically address the particular case and the merits of the Settlement are routinely rejected.

61. After the deadline for objections and exclusion requests, Lead Plaintiff will address any additional potential objections that may be received. At that time, Lead Plaintiff will also submit for the Court's consideration the Parties' agreed-upon form of proposed Judgment, including as an exhibit a list of those persons and entities, if any, who request exclusion from the Settlement Class.

D. Plan Of Allocation

62. Lead Plaintiff has proposed a plan to allocate the proceeds of the Settlement among Settlement Class Members who submit valid Proofs of Claim. The objective of the proposed Plan of Allocation is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered economic losses as a result of the alleged misrepresentations and omissions that the Court sustained in this case. The Plan of Allocation is not meant to compensate Settlement Class Members for investment losses caused by "non-fraud" factors such as market effects, industry effects, or other non-fraud company-specific effects.

63. Lead Plaintiff engaged Zachary Nye, Ph.D., of Stanford Consulting Group, Inc., to develop a fair and equitable plan to allocate the settlement proceeds amongst the Settlement Class Members (the "Plan of Allocation" or the "Plan"). Dr. Nye's declaration in support of the Plan of Allocation is attached hereto as Exhibit 4.

64. The Nye Declaration explains the method used to determine the amount of estimated artificial inflation that is used in calculating the Recognized Loss Amount in the Plan of Allocation.

65. The Notice explained the proposed Plan of Allocation to the Settlement Class. It was prepared in consultation with Lead Plaintiff's expert, tracks the theory of damages asserted by Lead Plaintiff for the sustained claims, and is fair, reasonable and adequate to the Settlement Class as a whole.

66. In response to over 36,000 Notices, there have been no objections to date to the proposed Plan of Allocation.

67. Pursuant to paragraph 26 of the Stipulation, prior to distributing the Net Settlement Fund to Settlement Class Members who submit valid Claims, Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order, *inter alia*, approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted. In the event that any Claimant disagrees with the administrative determination as to his, her or its Claim, and seeks the Court's review of that determination, they will be given the opportunity to dispute the determination and provide input to the Court at that time.

68. As set forth in paragraph 73 of the Notice, if any portion of the Settlement Fund remains after further distributions to Authorized Claimants become no longer cost-effective, the remaining balance will be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Plaintiff and approved by the Court, or as otherwise ordered by the Court.

IV. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

69. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel also seeks an award of attorneys' fees and Litigation Expenses. Specifically, Lead Counsel seeks a fee of 25% of the Settlement Amount (*i.e.,* $1,475,000.00), plus interest at the same rate as that earned on the Settlement Fund (from the time of funding to the time of award), to be paid from the Settlement Fund. Lead Counsel also requests reimbursement of $257,063.48 for its Litigation Expenses, to be paid from the Settlement Fund. In addition, as authorized by the PSLRA, Lead Plaintiff requests the amount of $10,427.50, as reimbursement for its expenses in connection with serving as Lead Plaintiff, as set forth in the declaration of Lead Plaintiff, attached hereto as Exhibit 2.

70. In determining whether a requested award of attorneys' fees is fair and reasonable, courts are guided by the factors first articulated by the Second Circuit in *City of Detroit v. Grinnell Corp*., 495 F.2d 448 (2d Cir. 1974). As summarized in *Goldberger v. Integrated Res., Inc.,* 209 F.3d 43 (2d Cir. 2000), these factors include:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation…; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Id. at 50. Based on consideration of each of the foregoing factors as further discussed below, and on the additional legal authorities set forth in the accompanying memorandum of law in support of Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses (the "Fee Memorandum") filed contemporaneously herewith, I respectfully submit that Lead Counsel's requested fee should be granted

A. Lead Counsel's Application For Attorneys' Fees

1. The Requested Fee Of 25% Is A Reasonable Percentage Of The Total Recovery

71. For the extensive efforts on behalf of the Settlement Class, Lead Counsel is applying for compensation from the common fund obtained on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Settlement Class in achieving the maximum recovery in the shortest amount of time required under the circumstances, is supported by public policy, has been recognized as appropriate by the Supreme Court for cases of this nature and represents the overwhelming current trend in the Second Circuit and other circuits.

72. Based on the result achieved for the Settlement Class, the extent and quality of work performed, the risks of the litigation, and the contingent nature of the representation, Lead Counsel submits that a 25% fee award is justified and should be approved. The institutional investor Lead Plaintiff approves of Lead Counsel's fee request. *See* Exhibit 2.

73. As discussed in the Fee Memorandum, a 25% fee is fair and reasonable for attorneys' fees in common fund cases such as this and is well within the range of the percentages typically awarded in securities class action settlements of this size within this Circuit.

74. Lead Counsel respectfully submits that the work undertaken by Lead Counsel in prosecuting this case and arriving at the Settlement has been time-consuming and challenging. As explained above, the litigation posed unique risks that made any recovery uncertain. In the face of serious risks, Lead Counsel took this case on a contingency basis, committed its resources fully, and litigated for more than two years without any compensation or guarantee of success.

2. The Time And Labor Expended By Lead Counsel

75. The Parties accepted the mediator's recommendation to settle the case only after Lead Counsel had gathered adequate information to prepare allegations, some of which overcame the heightened pleading standards of the PSLRA. To do so, Lead Counsel conducted an extensive investigation, including, as detailed above, review and analysis of relevant publicly available information; identifying and interviewing relevant percipient witnesses with direct knowledge of the facts alleged, several of which are cited in the Complaint and in the Court's Order; and consulting with experts. Lead Counsel committed time and resources to, among other things, drafting the Complaint; fully briefing Defendants' motions to dismiss; engaging and conferring with experts and consultants; researching 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; participating in various meet-and-confers and Court conferences; conducting discovery, including the exchange of Initial Disclosures, supplemental Initial Disclosures, drafting discovery requests, reviewing obtained documents and information, and participating in depositions; and fully briefing Lead Plaintiff's class certification motion. Lead Counsel also drafted Lead Plaintiff's mediation statement, participated in the full-day mediation session before a JAMS mediator, and engaged in hard-fought settlement negotiations with experienced defense counsel

76. I maintained daily control and monitoring of the work performed in this case. I personally devoted substantial time to this case, and other experienced attorneys and paralegals at my firm undertook particular tasks appropriate to their levels of expertise, skill and experience.

77. As set forth in Exhibit 5-A, Lead Counsel expended 2,734.25 hours over the 2 ½ years of the Action, through February 28, 2017. The resulting lodestar is $1,508,016.25. The requested fee of $1,475,000.00, therefore, yields a ***negative*** multiplier of 0.9.

3. The Magnitude And Complexity Of The Action

78. This is a case with a complex fact pattern, a 2 ½ year class period and challenging issues involving the payday-lending industry. Litigation of the claims 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 litigation also 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's consultation with experts was necessarily extensive given the complex nature of the subject matter underlying the claims. Lead Counsel undertook to create a compelling record addressing these and other complicated issues. Accordingly, the magnitude and complexity of the Action support the conclusion that the requested fee is fair and reasonable.

4. The Risks Of Litigation And The Need To Ensure The Availability Of Competent Counsel In High-Risk, Contingent Cases

79. As noted above, Lead Counsel undertook the Action on a wholly contingent basis. From the outset, Lead Counsel understood that it was embarking on a complex and expensive litigation with no guarantee of compensation for the investment of time, money and effort that the case would require. Lead Counsel correctly anticipated that Defendants would raise myriad challenges to the sufficiency of the pleadings. In addition, had the litigation continued, Defendants undoubtedly would have continued to dispute essentially all elements of the claims during all phases of the litigation, including at summary judgment, trial, and on appeal.

80. In undertaking the responsibility for prosecuting the Action, Lead Counsel assured that sufficient attorney resources were dedicated to the investigation of the Settlement Class' claims and that sufficient funds were available to advance the expenses required to pursue and

complete such complex litigation. Lead Counsel incurred $257,063.48 in expenses prosecuting this Action for the benefit of the Settlement Class.

81. Lead Counsel bore the risk that no recovery would be achieved. As discussed herein, this case presented a number of serious risks and uncertainties that could have prevented any recovery whatsoever. Despite the vigorous and competent efforts of Lead Counsel, success in contingent-fee litigation, such as this, is never assured.

82. Lead Counsel firmly believes that the commencement of a securities class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants – and their skilled insurance carriers – to engage in serious settlement negotiations.

83. Courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws. As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private plaintiffs, particularly institutional investors, take an active role in protecting the interests of securities purchasers. If this important public policy is to be carried out, plaintiffs' counsel should be adequately compensated, taking into account the risks undertaken in prosecuting securities class actions.

5. Standing And Expertise Of Lead Counsel, And Standing And Caliber Of Opposing Counsel

84. The expertise and experience of counsel are other important factors in setting a fair fee. As demonstrated by Lead Counsel's firm biography, attached hereto as Exhibit 5-C, the attorneys at Lead Counsel Bernstein Litowitz Berger & Grossmann LLP are experienced and

skilled class action securities litigators and have a successful track record in securities cases throughout the country, including within this District.

85. The quality of the work performed by counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Lead Counsel was opposed in this case by very skilled and highly-respected defense firms representing the Defendants, including Vinson & Elkins LLP; Skadden, Arps, Slate, Meagher & Flom LLP; Satterlee Stephens Burke & Burke LLP; and Allegaert Berger & Vogel LLP. They spared no effort in the defense of their clients. In the face of this knowledgeable and formidable defense, Lead Counsel was nonetheless able to develop a case that was sufficiently strong to persuade Defendants and insurance carriers to settle on terms that are favorable to the Settlement Class.

6. Lead Plaintiff's Approval And The Reaction Of The Settlement Class To Date

86. As set forth above, Notices have been disseminated to over 36,000 potential members of the Settlement Class and their brokers and nominees. In addition, the Summary Notice was published in *Investor's Business Daily* and over the *PR Newswire*. The Notice explained the Settlement and that Lead Counsel would seek fees in an amount not to exceed 25% of the Settlement Amount. The deadline to object to Lead Counsel's fee request is April 4, 2017. To date, only one potential objection has been received. It is attached hereto as Exhibit 7. As noted above, the individual failed to comply with the requirement to demonstrate that he is a Settlement Class Member, but in any event his correspondence merely expresses a generalized disagreement with securities class action settlements and the related attorneys' fees. As set forth in the accompanying Fee Memorandum, such generalized objections that fail to address a particular settlement and the merits of a particular fee request are routinely rejected.

87. In sum, given the time and labor expended by counsel, the magnitude and complexities of the Action, the responsibility undertaken by Lead Counsel, the experience of Lead Counsel and defense counsel, and the contingent nature of Lead Counsel's prosecution of this Action, Lead Counsel respectfully submits that the requested attorneys' fees are reasonable and should be approved.

B. Lead Counsel's Application For Reimbursement Of Litigation Expenses

88. Lead Counsel also requests $257,063.48 in reimbursement of Litigation Expenses reasonably and necessarily incurred by Lead Counsel in prosecuting this Action, to be paid from the Settlement Fund.[2] Lead Counsel respectfully submits that the application for payment of its Litigation Expenses is appropriate, fair, and reasonable and should be approved.

89. From the beginning of the case, Lead Counsel was aware that it might not recover any of its expenses, and, at the very least, would not recover anything until the Action was successfully resolved in whole or in part, through trial (and appeals) or settlement. Lead Counsel also understood that, even assuming that the case was ultimately successful, an award of expenses would not compensate it for the lost use of the funds advanced to prosecute this Action. Thus, Lead Counsel was motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

90. The expenses were necessary and appropriate for the prosecution of this Action. These include charges for experts and consultants, mediation fees, factual and legal computer research devoted to the case, out-of-town travel, postage and express mail, and similar case-

[2] As set forth in the DeLange Declaration attached hereto as Exhibit 5, the expenses of Lead Counsel for which reimbursement is sought are reflected on the firm's books and records, which are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

related costs. A chart reflecting, by category, all expenses for which Lead Counsel seeks reimbursement is attached hereto as Exhibit 5-B.

91. Included in the amount of expenses is $218,874.50 paid or payable to Lead Plaintiff's experts and consultants. This encompasses over 85% of Lead Counsel's total Litigation Expenses. As discussed above, Lead Counsel worked with experts and consultants on various specialized issues in the case, including in drafting the Complaint, and analysis and assistance regarding class certification, loss causation, damages, settlement negotiations, and developing the Plan of Allocation.

92. The expenses also include the costs of online research in the total amount of $5,874.30. These are the charges for computerized factual and legal research services such as *Lexis-Nexis*, *Westlaw* and PACER. It is standard practice for attorneys to use *Lexis-Nexis* and *Westlaw* to assist them in researching legal and factual issues, and, indeed, these tools create efficiencies in litigation and, ultimately, save clients and the class money.

93. In addition, Lead Counsel was required to travel in connection with prosecuting and settling the Action, including, for example, to hearings and conferences, and depositions. Lead Counsel thus incurred the related costs of transportation (coach airfare only), meals and lodging. Included in the expense request above is $19,360.38, for travel expenses necessarily incurred for the prosecution of this litigation, and $3,950.00 for mediation fees.

94. Lead Counsel also seeks approval for reimbursement of certain expenses incurred by Lead Plaintiff directly relating to its representation of the Settlement Class pursuant to the PSLRA, as set forth in Exhibit 2 attached hereto, in the amount of $10,427.50.

95. The application for Litigation Expenses is substantially less than the upper limit of $400,000 contained in the Notice mailed to the Settlement Class. In response to dissemination of over 36,000 Notices, as of the date of this Declaration, there are no objections to such expenses.

96. Approval of the Settlement is independent from approval of Lead Counsel's application for an award of attorneys' fees and expenses; any determination with respect to Lead Counsel's application for an award of attorneys' fees and expenses will not affect the Settlement, if approved.

V. CONCLUSION

97. In view of the significant recovery to the Settlement Class, following over two years of litigation, and the substantial risks that continued litigation on the sustained claims would have entailed, Lead Counsel respectfully requests that the Court approve the Settlement and the Plan of Allocation, and the fee and expense application, as fair, reasonable, and adequate.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of March, 2017, at San Diego, California.

/s/ Timothy A. DeLange
TIMOTHY A. DeLANGE