UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ALAN HALL AND JAMES DEPALMA, PLAINTIFFS, v. RENT-A-CENTER, INC., ROBERT D. DAVIS, AND GUY J. CONSTANT, DEFENDANTS.	§ § § § § § § § § § § § §	CIVIL NO. 4:16-CV-00978-ALM-CMC

MOTION FOR APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND SUPPORTING MEMORANDUM OF LAW

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Court-appointed Lead Plaintiff Oklahoma Firefighters Pension and Retirement System ("Oklahoma Firefighters" or "Lead Plaintiff"), on behalf of itself, and additional named plaintiff City of Hollywood Employees' Retirement Fund ("Hollywood ERF," together with Oklahoma Firefighters, "Plaintiffs") and the other members of the Settlement Class, respectfully submits this memorandum of law in support of the motion for approval of the proposed Settlement of the above-captioned action (the "Action"), approval of the proposed plan of allocation for distributing the proceeds of the Settlement (the "Plan of Allocation"), and final certification of the Settlement Class.[1]

PRELIMINARY STATEMENT OF REASONS IN SUPPORT OF SETTLEMENT

The proposed Settlement resolves this litigation in its entirety in exchange for a cash payment of $11 million. The Settlement is "fair, reasonable, and adequate" under Federal Rule of Civil Procedure 23(e)(2) and satisfies each of the factors that a district court within the Fifth Circuit must consider. *See Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

The Settlement is the product of extensive arm's-length negotiations between the Parties that included an in-person mediation session before a highly respected and experienced mediator, the Honorable Layn R. Phillips (Ret.) ("Judge Phillips"), as well as significant follow-up discussions between the Parties. The reaction of the Settlement Class to date has been very

[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated December 3, 2018 (the "Stipulation," ECF No. 117-1) (the "Stipulation") or in the Declaration of Jonathan Gardner in Support of (I) Motion for Approval of Class Action Settlement and Plan of Allocation and (II) Motion for Award of Attorneys' Fees and Payment of Litigation Expenses (the "Gardner Declaration" or "Gardner Decl."), filed herewith. Citations to "¶" in this memorandum refer to paragraphs in the Gardner Declaration. All exhibits herein are annexed to the Gardner Declaration. For clarity, citations to exhibits that themselves have attached exhibits will be referenced as "Ex. ___ - ___." The first numerical reference is to the designation of the entire exhibit attached to the Gardner Declaration and the second reference is to the exhibit designation within the exhibit itself.

All internal quotations and citations are omitted unless otherwise noted.

favorable. While the April 12, 2019 deadline to object to or request exclusion from the Settlement has not yet passed, to date, no Settlement Class Member has objected or requested exclusion.

At the time the agreement to settle was reached, Lead Plaintiff and Lead Counsel understood the strengths and weaknesses of the Action. As detailed in the Gardner Declaration,[2] the litigation efforts in the Action included: (i) Lead Counsel's thorough and wide-ranging investigation of the claims, which included interviews with 26 former RAC employees and others with relevant knowledge, consultation with experts on damages and accounting issues, and a review of SEC filings, press releases, news reports and other public information; (ii) drafting and filing a detailed Consolidated Amended Class Action Complaint for Violations of Federal Securities Laws (the "Complaint"); (iii) researching and drafting a successful opposition to Defendants' comprehensive motion to dismiss the Complaint; (iv) successfully opposing Defendants' objection to the Magistrate Judge's Amended Report and Recommendation, which recommended that the Court deny Defendants' motion to dismiss the Complaint; (v) a class certification motion that included the preparation of two expert reports; (vi) extensive fact and expert discovery efforts, which included Lead Counsel's analysis of approximately 420,000 pages of documents produced by Defendants and third-parties and taking or defending six depositions; and (vii) thorough mediation efforts with Judge Phillips, which included the preparation of mediation briefs, a full-day mediation session, and extensive subsequent negotiations. This substantial work gave Lead Plaintiff and Lead Counsel a thorough

[2] The Gardner Declaration is an integral part of this submission and, for the sake of brevity in this motion, the Court is respectfully referred to it for a detailed description of, among other things: the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; a description of the services Lead Counsel provided for the benefit of the Settlement Class; and the terms of the Plan of Allocation for the Settlement proceeds.

understanding of the strengths and weaknesses of the claims and defenses asserted in the Action. Additionally, Lead Plaintiff supports the Settlement and, together with Lead Counsel, respectfully submits that the Settlement represents a favorable recovery that is in the best interests of the Settlement Class. *See* Ex. 1 at ¶5.

The Settlement is a favorable result in light of the significant risks of continued litigation. While Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants are compelling, they recognize that the Action presented challenges to establishing both liability and damages. As detailed in the Gardner Declaration and discussed below, Defendants raised numerous challenges to Plaintiffs' claims, including, among other things, the actionability and falsity of Defendants' statements, whether Defendants acted with scienter, and the existence and amount of damages. Absent the Settlement, Plaintiffs faced the risk that Defendants would prevail on any one or all of their defenses, resulting in a judgment against Plaintiffs or vastly reducing, if not completely eliminating, recoverable damages. Furthermore, the Parties faced the prospect of protracted and costly litigation, which would likely have included additional contested motions, a trial, post-trial motion practice, and ensuing appeals. The Settlement will enable the Settlement Class to recover a certain and immediate benefit without incurring the significant risks of ongoing litigation.

Additionally, it is respectfully requested that the Court approve the Plan of Allocation, which was set forth in the Notice sent to Settlement Class Members. The Plan of Allocation governs how Settlement Class Members' claims will be calculated and was developed by Lead Counsel's damages expert in consultation with Lead Counsel. As discussed below, the Plan of Allocation is fair, reasonable, and adequate, and should likewise be approved.

ARGUMENT

I. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

A. The Law Favors and Encourages Settlement of Class Action Litigation

Public policy favors the settlement of disputed claims among private litigants, especially in class actions, and the Fifth Circuit, as well as district courts within the Fifth Circuit, have recognized a strong public policy in favor of pretrial settlements of class actions. *See Cotton v. Hinton,* 559 F.2d 1326, 1331 (5th Cir. 1977) ("Particularly in class action suits, there is an overriding public interest in favor of settlement."); *In re Deepwater Horizon,* 739 F.3d 790, 807 (5th Cir. 2014) (noting a public interest favoring class action settlements); *Marcus v. J.C. Penney Co., Inc.,* No. 6:13-CV-736, 2017 WL 6590976, at *3 (E.D. Tex. Dec. 18, 2017), *report and recommendation adopted,* No. 6:13CV736, 2018 WL 307024 (E.D. Tex. Jan. 4, 2018) ("There is a strong judicial policy in favor of settlements, particularly in the class action context."); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.,* No. H-01-3624, 2003 WL 22962792, at *4 (S.D. Tex. Nov. 5, 2003) (same).

B. The Standards for Final Approval

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval. The Settlement should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004) (the gravamen of the inquiry is whether the proposed settlement is "fair, adequate, and reasonable and is not the product of collusion between the parties"). In evaluating the Settlement, the Court should not attempt to try the case or "to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute," and should not make the proponents of the settlement "justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained." *Cotton,* 559

F.2d at 1330. Instead, the Court should bear in mind that "compromise is the essence of a settlement" and that "inherent in compromise is a yielding of absolutes and an abandoning of highest hopes." *Id*.

In *Reed v. General Motors Corp.*, the Fifth Circuit held that the following factors should be considered in evaluating whether a class action settlement is fair, reasonable and adequate:

> (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.

703 F.2d 170, 172 (5th Cir. 1983); *see also Newby,* 394 F.3d at 301; *In re Dell Inc*., *Sec. Litig*., No. A-06-CA-726-SS, 2010 WL 2371834, at *6 (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).

Pursuant to the recent December 1, 2018 amendments to Rule 23(e)(2), a court should also consider the following four factors, most of which overlap with the *Reed* factors:

(A) whether the class representatives and class counsel have adequately represented the class;

(B) whether the proposal was negotiated at arm's length;

(C) whether 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 attorneys' fees, including timing of payment; and

  iv. any agreement required to be identified under Rule 23(e)(3); and

(D) whether the proposal treats class members equitably relative to each other.

For the reasons discussed herein, the proposed Settlement meets the criteria set forth by the Fifth Circuit and Rule 23(e)(2).

C. Application of the Fifth Circuit's *Reed* Factors Supports Approval of the Settlement as Substantively Fair, Reasonable, and Adequate

1. The Settlement Was Reached Following Arm's-Length Negotiations with the Assistance of an Experienced Mediator and There Was No Fraud or Collusion

The first *Reed* factor supports final approval of the Settlement because the Settlement was negotiated at arm's-length and it was not obtained by fraud or collusion. The Settlement was reached after extensive arm's-length settlement negotiations between experienced counsel, which included a formal mediation session overseen by Judge Phillips. The initial full-day mediation session was unsuccessful, and the Parties only reached an agreement-in-principal after they engaged in significant additional arm's-length negotiations, with the assistance of the mediator. *See* ¶¶62-63.

Given the arm's-length nature of the negotiations, counsel's experience, and the active involvement of an experienced mediator, there can be no question that the Settlement is procedurally fair and is not the product of fraud or collusion. *See 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) (noting that "the settlement was not the result of improper dealings" where it "was obtained through formal mediation before former U.S. District Judge Layn R. Phillips"); *Billitteri v. Sec. Am., Inc.*, No. 3:09-cv-01568-F, 2011 WL 3586217, at *10 (N.D. Tex. Aug. 4, 2011) (concluding that a settlement was free of fraud or collusion where it was "diligently negotiated after a long and hard-fought process that culminated" in a mediation before a retired judge).

2. The Complexity, Expense, and Likely Duration of Continued Litigation Support Approval of the Settlement

Continued litigation of the Action would involve complex and costly pre-trial, trial, and post-trial proceedings that would delay the ultimate resolution of the claims without any guarantee of recovery for the Settlement Class. *See Klein v. O'Neal*, *Inc*., 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010) ("When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened."); *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *18 (N.D. Tex. Nov. 8, 2005) (the costs and delays of continuing to litigate "fact-intensive and difficult-to-prove claims" supported approval of the settlement); *In re Dell Inc., Sec. Litig.*, 2010 WL 2371834, at *10 ("Securities claims are difficult to prove, and without agreeing to a settlement, Plaintiffs no doubt face unpredictable and significant delays and expense in prosecuting this case.").

Continuing to litigate this Action for Plaintiffs and the Settlement Class would have required substantial additional time and expense, without any guarantee of success. Prevailing on class certification, completing fact and expert discovery, surviving Defendants' anticipated motion for summary judgment, and then achieving a litigated verdict at trial (and sustaining any such verdict for Plaintiffs in the appeals that would inevitably ensue) would have been a very complex undertaking that would have required substantial additional time and expense. Defendants would have vigorously contested numerous key issues such as the falsity of Defendants' statements, scienter, loss causation, and damages.

Lead Plaintiff and Lead Counsel recognize that, in order to prevail on the claims against Defendants at trial, they would have to marshal substantial additional factual evidence about Defendants' state of mind concerning the problems with the development and implementation of

SIMS, and would need to be prepared to present expert testimony to establish loss causation and damages. Lead Counsel was prepared to do so, but it cannot be disputed that achieving a litigated verdict in this Action would have required an extremely substantial investment of time and resources.

Moreover, if Plaintiffs were to succeed at trial, it is virtually certain that Defendants would make post-trial motions challenging the verdict and appeal, further delaying the receipt of any recovery by the class. *See Schwartz*, 2005 WL 3148350, at *19 (finding that the complexity and length of continued litigation supported approval of settlement given that even "if Plaintiffs were to succeed at trial, they still could expect a vigorous appeal by Defendants and an accompanying delay in the receipt of any relief"). Further, there is always a risk that a verdict could be reversed by the trial court or on appeal. *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07-cv-61542, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (in a case tried by Labaton Sucharow, after plaintiffs' jury verdict, court granted defendants' motion for judgment as a matter of law on loss causation grounds), *aff'd*, 688 F. 3d 713 (11th Cir. 2012) (trial court erred, but defendants entitled to judgment as matter of law on lack of loss causation); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing $81 million jury verdict in securities action and dismissing case with prejudice); *cf. In re Apollo Grp., Inc. Sec. Litig.*, No. 04-cv-2147, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court overturned unanimous verdict for plaintiffs, later reinstated by the Ninth Circuit Court of Appeals, and judgment re-entered after denial of *certiorari* by the U.S. Supreme Court).

In contrast to costly, lengthy, and uncertain litigation, the Settlement provides a significant and certain recovery of $11 million for members of the Settlement Class. Accordingly, this factor supports approval of the Settlement.

3. The Stage of the Proceedings, the Amount of Discovery Completed, and Lead Plaintiff's and Lead Counsel's Investigation Support Approval of the Settlement

The Settlement was reached after nearly two years of hard-fought litigation that included a careful investigation by Lead Counsel, thorough briefing on Defendants' motion to dismiss, briefing on the Magistrate Judge's Amended Report and Recommendation, thorough briefing on the class certification motion, substantial fact discovery, expert discovery, and preparation of detailed mediation statements and participation in an extensive mediation process. Accordingly, Lead Plaintiff and Lead Counsel had a firm grasp of the strengths and weaknesses of the case when negotiating and evaluating the proposed Settlement.

Lead Counsel's investigation in connection with the preparation of the Complaint was comprehensive, involving interviews with 26 individuals who were either former RAC employees or other persons with potentially relevant knowledge. Additionally, Lead Counsel conducted an extensive review of publicly available information, including SEC filings, and consulted with experts on issues related to accounting, loss causation, and damages. ¶¶17-18.

In connection with discovery, Lead Counsel engaged in a thorough discovery process involving numerous meet and confer sessions, ultimately obtaining approximately 420,000 pages of documents from Defendants and third parties. ¶¶48-54. Lead Counsel defended or took six depositions, including defending the depositions of Plaintiffs' representatives as well as Plaintiffs' investment managers, defending the deposition of Lead Plaintiff's class certification expert, and deposing Defendants' class certification expert. ¶¶39, 56, 59-60.

The Parties also exchanged detailed expert reports on issues pertaining to class certification. ¶¶38, 42-43. Lead Counsel also understood Defendants' defenses to the claims asserted in the Action through the extensive briefing on the motion to dismiss, the class certification motion, the detailed expert reports exchanged by the Parties on issues pertaining to class certification, the analysis of the documents produced, the detailed mediation statements, and the positions taken by Defendants in the course of the mediation. ¶¶25-46, 53, 57, 59-62.

These efforts and the Court's findings on the various pre-trial motions gave the Parties a clear understanding of the strengths and weaknesses of their respective positions. As a result, the Parties were able to fully evaluate the claims and agree on a settlement that is fair, reasonable, and adequate to the Settlement Class. Accordingly, this factor also favors approval of the Settlement. *See, e.g., In re Heartland Payment Sys. Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1063 (S.D. Tex. 2012) ("the key issue is whether the parties and the district court possess ample information with which to evaluate the merits of the competing positions").

4. The Probability of Success on the Merits in Light of the Substantial Risks of Establishing Liability and Damages Support Approval of the Settlement

"This factor favors approval of the settlement when the class's likelihood of success on the merits is questionable." *Slipchenko, et al. v. Brunel Energy, Inc., et al.*, Civil Action No. H–11–1465, 2015 WL 338358, at *9 (S.D. Tex. Jan. 23, 2015) (citing *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1322, 1326–27 (5th Cir. 1981)). Although Lead Plaintiff believes it would have been able to put forth substantial evidence to support its claims, Lead Plaintiff recognizes the ongoing risks in establishing liability and damages at trial. Weighing these risks against the certain recovery for the Settlement Class demonstrates that the Settlement is fair, reasonable, and adequate. *See, e.g., In re OCA, Inc. Sec. & Derivative Litig.*, No. CIV.A.05-2165, 2009 WL 512081, at *13 (E.D. La. Mar. 2, 2009) (approving settlement where plaintiffs

faced substantial risks in establishing elements of securities laws violations); *Schwartz*, 2005 WL 3148350, at *18 ("plaintiffs' uncertain prospects of success through continued litigation" supported approval of securities class action settlement).

In this case, Plaintiffs faced several obstacles that made the likelihood of success on the merits uncertain. As discussed below and detailed in the Gardner Declaration at ¶¶71-85, Plaintiffs faced a real risk that (i) they would be unable to establish the falsity of certain of Defendants' alleged misstatements; (ii) they would be unable to establish that Defendants acted with scienter; and (iii) even if Plaintiffs prevailed on liability, Defendants may successfully challenge loss causation and the calculation of damages.

(i) Risks to Proving Falsity of Defendants' Alleged Misstatements

Defendants had several strong arguments with respect to the falsity of certain of their alleged misstatements that they would likely raise at summary judgment and at trial. For example, Defendants would likely contend that Plaintiffs would not be able to prove that the alleged misstatements made in 2015 are actionable, arguing that, prior to February 2016, RAC only reported accurate information regarding the number of stores in which SIMS was operating and issued meaningful cautionary language about the implementation of SIMS. ¶72. Defendants would argue that the statements were true and that they had no duty to disclose anything further about the development and rollout of SIMS, whether positive or negative. *Id*.

Regarding the alleged misstatements made in 2016, including statements about how the Company was rolling out SIMS, Defendants would likely argue that they were truthful opinion-based statements that are non-actionable under the standard set forth in *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 135 S. Ct 1318, 1332-33 (2015). *Omnicare* held that omitted material facts can render opinions misleading only if the defendants either did not hold the belief professed or omitted a particular, material fact about the bases for their

opinions that made the statements misleading to a reasonable person reading them. ¶73. Defendants would argue, in particular, that Plaintiffs cannot prove that Defendants did not actually hold their stated opinions regarding the nature of the issues with the SIMS rollout or the impact of those issues. *Id*.

(ii) Risks to Proving Defendants' Scienter

One of Defendants' principal defenses to liability in the litigation was that they did not act with scienter, and if the litigation continued, Defendants would have presented a number of strong scienter arguments that would have made it difficult for Plaintiffs to prove that Defendants acted with an intent to commit securities fraud.

For example, Defendants would assert that none of the traditional hallmarks of scienter, such as insider trading, are present in this case given that neither Davis nor Constant sold stock during the Class Period. ¶75. Defendants would argue that the only motive that Plaintiffs have advanced – that RAC rushed the rollout of SIMS in order to avoid an accounting write down related to the development of SIMS – fails because it has no support under GAAP. *Id*. Defendants would argue that Plaintiffs cannot point to any evidence that anyone at RAC ever thought that they should force a rollout of SIMS to avoid writing off the cost of developing the system, and that it makes no sense for RAC to have accelerated the rollout of SIMS before it was ready in order to avoid a potential write down at the same time it was taking a write down of $1.17 billion with respect to other assets having nothing to do with Plaintiffs' claims. *Id*.

For all these reasons, there was a very significant risk that the Court on summary judgment, or a jury after trial, could have concluded that Defendants did not act with scienter.

(iii) Risks Related to Damages and Loss Causation

Even assuming that Plaintiffs overcame each of the above risks and successfully established liability, they faced serious risks in proving damages and loss causation. This case

involved four alleged partial corrective disclosure events, which together allegedly removed the alleged artificial inflation in RAC's common stock: (i) February 1, 2016; (ii) April 27, 2016; (iii) July 27, 2016; and (iv) October 11, 2016.

If the litigation continued, Defendants would have argued that Plaintiffs would not be able to prove loss causation through stock price drops associated with the alleged disclosures because the alleged disclosures were not corrective. *Id*. ¶¶78-81. Defendants would have also argued that the Company's disclosures on those days consisted of press releases and earnings announcements where a variety of information—including many pieces of information unrelated to the alleged fraud—was disclosed to the market and impacted RAC's stock price. *Id*. ¶82. Defendants would have further argued that Plaintiffs bear the burden of proof in "disaggregating" the impact of this "confounding," non-fraud information from the impact of the information at issue in this case. Defendants would have argued that disaggregating cannot be done with a reasonable degree of scientific accuracy, and that even if it could, it would substantially reduce damages. *Id*.

As detailed in the Gardner Declaration, Lead Counsel's damages expert has estimated that the maximum aggregate damages that the Settlement Class could seek at trial were approximately $148 million if pre-class period gains are removed. *Id*. ¶84. This figure also assumes that all of the corrective disclosures set forth in the Complaint are established at trial and that the abnormal stock price drops on each alleged corrective disclosure would not need to be disaggregated. However, given Defendants' arguments described above, Lead Counsel's consulting damages expert also performed a disaggregation analysis to remove the effects of potentially confounding information. Such disaggregation would reduce damages to approximately $95 million. Further, if Defendants succeeded in having one or more of the

corrective disclosure dates dismissed at summary judgment, or succeeded in proving that Plaintiffs had not adequately disaggregated confounding information, damages would be further reduced. *Id*.

Furthermore, to determine damages and loss causation, the Parties would have to rely on expert testimony. The experts would be subject to *Daubert* challenges. Even if Plaintiffs' expert survived a *Daubert* motion, at trial, these crucial elements of proof would be reduced to an inherently unpredictable and highly contentious "battle of experts." Lead Counsel recognizes the possibility that a jury could be swayed by experts for Defendants, and find that there were no damages or only a fraction of the amount of damages alleged.

When viewed in the context of these significant litigation risks and the uncertainties involved with any litigation, the Settlement is a very favorable result. Accordingly, this factor supports approval of the Settlement.

5. The Range of Possible Recovery and the Attendant Risks of Litigation Support Approval of the Settlement

"This factor includes an inquiry into whether the terms of the settlement 'fall within *a reasonable range of recovery*, given the likelihood of the plaintiffs' success on the merits.'" *Billitteri*, 2011 WL 3586217, at *12 (quoting *Klein*, 705 F. Supp. 2d at 656) (emphasis in original). "In ascertaining whether a settlement falls within the range of possible approval, courts will compare the settlement amount to the relief the class could expect to recover at trial, *i.e*., the strength of the plaintiff's case." *Erica P. John Fund, Inc.*, 2018 WL 1942227, at *5.

As previously noted, Lead Counsel's damages expert estimated that maximum recoverable damages were approximately $148 million (reflecting a recovery of 7.4% of the class's damages) when pre-class period gains are removed. Under other scenarios, where disaggregation is considered and less than all four corrective disclosures are established at trial,

estimated damages, assuming liability were established, would be reduced or even eliminated. ¶84. Of course, if a jury or the Court had credited all of Defendants' arguments with respect to liability—the Settlement Class would have recovered nothing.

This estimated recovery falls well above the range of reasonableness that courts regularly approve in similar circumstances. *See, e.g.*, *Int'l Bhd of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, No. 3:09-cv-00419, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving $12.5 million settlement recovering 3.5% of maximum damages and noting that the amount is within the median recovery in securities class actions settled in the last few years); *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) ($13.75 million settlement yielding 6% of potential damages was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02-md-1484, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (approving settlement representing 6.25% of estimated damages and noting was at the "higher end of the range of reasonableness of recovery in class actions securities litigation"); *In re Merrill Lynch & Co. Research Reports Sec. Litig*., 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving settlement that was "between approximately 3% and 7% of estimated damages [and] within the range of reasonableness for recovery in the settlement of large securities class actions"). The Settlement also presents a favorable recovery considering that, over the past ten years, median securities settlement values have ranged from $6 million to $13 million. *See* S. Boettrich & S. Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* (NERA , Jan. 29, 2019), at 30, Ex. 2.

Moreover, if there were a favorable verdict at trial, Defendants almost certainly would have appealed. Recovery was thus not only uncertain but would likely take years, while the

Settlement confers a certain, substantial, and immediate benefit. Thus, when weighed against the risks of continued litigation, including the risks that there would be no recovery at all, the proposed Settlement for $11 million in cash is a favorable result.

6. The Opinions of Lead Counsel, Lead Plaintiff, and Absent Members of the Settlement Class Support Approval of the Settlement

The opinions of Lead Counsel, Lead Plaintiff and absent members of the Settlement Class all support approval of the Settlement, thereby satisfying the sixth *Reed* factor. *See Marcus,* 2017 WL 6590976, at *3 ("Significant weight is given to the opinion of class counsel concerning whether the settlement is in the best interest of the class and the court is not to substitute its own judgment for that of counsel."). Lead Counsel strongly believes that the $11 million Settlement is in the best interests of the Settlement Class in light of the significant risks of continued litigation. *See generally* Gardner Decl. Lead Counsel has extensive experience in securities class action litigation and was well-informed about the strengths and weaknesses of the claims in the Action when it recommended the Settlement. *See* Ex. 4-C. The judgment of experienced and well-informed class counsel should be accorded great weight by the Court. *See Cotton*, 559 F.2d at 1330 ("the trial court is entitled to rely upon the judgment of experienced counsel for the parties"); *In re Heartland Payment Sys. Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d at 1068 ("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."); *Klein*, 705 F. Supp. 2d at 649 ("The Fifth Circuit has repeatedly stated that the opinion of class counsel should be accorded great weight.").

Lead Plaintiff, a sophisticated institutional investor, has overseen the work of Lead Counsel throughout the Action and attended the August 8, 2018 mediation in New York City. *See* Ex. 1. Lead Plaintiff endorses the Settlement, *see* Ex. 1 at ¶5, and this recommendation

supports approval of the Settlement. *See, e.g., City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014), *aff'd, Arbuthnot v. Pierson*, 607 F. App'x. 73 (2d Cir. 2015) ("the recommendation of Lead Plaintiff, a sophisticated institutional investor, also supports the fairness of the Settlement").

Finally, the reaction of the Settlement Class to date strongly supports approval of the Settlement. Pursuant to the Preliminary Approval Order, the Court-appointed Claims Administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), began mailing copies of the Notice and Claim Form to potential Settlement Class Members and nominees on January 2, 2019. *See* Ex. 3 at ¶¶3-11. As of March 26, 2019, Epiq has mailed a total of 31,071 copies of the Claim Packet (consisting of the Notice and Claim Form) to potential Settlement Class Members and their nominees. *Id*. ¶10. In addition, a Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire* on January 16, 2019. *Id*. ¶12. The Notice set out the essential terms of the Settlement and informed potential Settlement Class Members of, among other things, their right to opt out of the Settlement Class or object to any aspect of the Settlement, as well as the procedure for submitting Claim Forms. While the April 12, 2019 deadline set by the Court for Settlement Class Members to exclude themselves or object has not yet passed, to date, there have been no objections to the Settlement or the Plan of Allocation and no requests for exclusion from the Settlement Class. As provided in the Preliminary Approval Order, Lead Plaintiff will file reply papers on April 26, 2019, addressing all requests for exclusion and any objections that may be received.

In sum, all of the *Reed* factors support a finding that the Settlement is fair, reasonable and adequate.

D. Application of the Factors Identified in the Amendments to Rule 23 Supports Approval of the Settlement as Fair, Reasonable, and Adequate

The proposed Settlement also meets the criteria set forth in the recent amendments to Rule 23(e)(2), most of which are covered by the Fifth Circuit factors discussed above.

1. Lead Plaintiff and Lead Counsel Have Adequately Represented the Settlement Class

It is respectfully submitted that Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class. As set forth in the previously filed class certification motion and motion for preliminary approval, Lead Plaintiff, like all other members of the Settlement Class, acquired shares of RAC publicly-traded common stock during the Class Period, and was subject to the same allegedly untrue statements and omissions as all Settlement Class Members. Thus, the claims of Lead Plaintiff and the Settlement Class would prevail or fail in unison, and the common objective of maximizing recovery from Defendants aligns the interests of Lead Plaintiff and all members of the Settlement Class. *See, e.g., Marcus v. J.C. Penney Co., Inc.,* No. 13-cv-736, 2016 WL 8604331, at *1 (E.D. Tex. Aug. 29, 2016), *report and recommendation adopted in full*, 2017 WL 907996 (E.D. Tex. Mar. 8, 2017) (adequacy of lead plaintiff found where the lead plaintiff "committed to vigorously prosecuting this litigation ... actively direct[ing] this litigation and maximize[ing] the recovery for the class"). Lead Plaintiff has participated in the litigation, produced document discovery, been deposed, conferred with counsel, attended the mediation in New York, and with an informed understanding of the strengths and weaknesses of the claims, supports the Settlement. *See* Ex. 1 at ¶¶2-5.

Additionally, throughout the Action, Lead Plaintiff had the benefit of the advice of knowledgeable counsel well-versed in shareholder class action litigation and securities fraud cases. Labaton Sucharow is among the most experienced and skilled firms in the securities litigation field, and has a long and successful track record in such cases. *See* ¶¶104-05; Ex. 4-C.

This factor clearly supports approval of the Settlement.

2. The Settlement Is the Result of Arm's-Length Negotiations

As discussed above, the Settlement was reached after arm's-length negotiations between counsel and overseen by an experienced mediator. This factor clearly supports approval of the Settlement.

3. The Relief Provided to the Settlement Class Is Adequate and the Settlement Treats Class Members Equitably Relative to Each Other

Rule 23(e)(2)(C)(i) which requires that "the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal," has been discussed above.

Rule 23(e)(2)(C)(ii) considers whether the relief is adequate, taking into account the "effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." As set forth below in Section II, discussing the proposed Plan of Allocation, the proceeds of the Settlement will be distributed to Settlement Class Members who submit valid and timely claims. Using the formulas of the Plan of Allocation, the Claims Administrator will calculate claimants' Recognized Claims using the transactional information provided by claimants in their Claim Forms, which can be mailed to the Claims Administrator, submitted online using the settlement website, or, for large investors, with hundreds of transactions, submitted via e-mail to the Claims Administrator's electronic filing team. Lead Plaintiff's claim will be calculated the same way. Because most securities are held in "street name" by the brokers that buy them on behalf of clients, the Claims Administrator, Lead Counsel, and Defendants do not have Settlement Class Members' transactional data and a claims process is required. Because the Settlement does not recover 100% of alleged damages, the Claims Administrator will determine each eligible claimant's *pro rata* share of the Net

Settlement Fund based upon each claimant's total "Recognized Claim" compared to the aggregate Recognized Claims of all eligible claimants.

Once the Claims Administrator has processed all submitted claims, notified claimants of deficiencies or ineligibility, processed responses, and made claim determinations, distributions will be made to eligible claimants in the form of checks and wire transfers. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), after at least six (6) months from the date of initial distribution, Lead Counsel will, if feasible and economical, re-distribute the balance among eligible claimants who have cashed their checks. These re-distributions will be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute. *See* Stipulation ¶26. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of any outstanding Notice and Administration Expenses or Taxes, will be contributed to a non-sectarian, not-for-profit charitable organization(s) serving the public interest, designated by Plaintiffs and approved by the Court. *Id*.

The terms of any proposed award of attorneys' fees, (Rule 23(e)(2)(C)(iii)), are discussed in Lead Counsel's accompanying Fee and Expense Application. Lead Counsel seeks an award of attorneys' fees and expenses pursuant to the common fund doctrine and the request is fully within the discretion of the Court, was not negotiated with Defendants, and is separate from the Settlement. Any fees and expenses that are awarded by the Court are payable upon award.

Finally, Rule 23(e)(2)(C)(iv) asks the Court to consider the fairness of the proposed Settlement in light of any agreement required to be identified under Rule 23(e)(3). Here, the only agreements made by the Parties in connection with the Settlement are the Term Sheet, the

Stipulation, and the confidential Supplemental Agreement concerning the circumstances under which Defendants may terminate the Settlement based upon the number of exclusion requests. *See* Stipulation ¶40. It is standard to keep such agreements confidential so that a large investor, or a group of investors, cannot intentionally try to leverage a better recovery for themselves by threatening to opt out, at the expense of the class. *See Erica P. John Fund, Inc*., 2018 WL 1942227, at *5 (granting final approval of securities class action settlement that included a supplemental confidential agreement permitting settlement termination in the event of exclusion request by a certain portion of the class). The Supplemental Agreement can be provided to the Court *in camera* or under seal.[3]

II. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A plan for allocating settlement proceeds, like the Settlement itself, should be approved if it is fair, reasonable, and adequate. *See In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982); *Schwartz*, 2005 WL 3148350, at *23 ("Approval of a plan of allocation of settlement proceeds . . . is governed by the same standard of fairness, reasonableness and adequacy applicable to approval of the settlement as a whole."); *In re Dell Inc., Sec. Litig.*, 2010 WL 2371834, at *10 (the "allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel"); *In re OCA, Inc. Sec. & Derivative Litig*., 2009 WL 512081, at *11 (approving a plan of allocation where the "plan of allocation does not give unfair or preferential treatment to the lead plaintiff or any segment of the class"). All Settlement Class Members with valid claims, including Lead Plaintiff, will receive an allocation pursuant to the uniformly applied Plan of Allocation.

[3] Rule 23(e)(2)(D), whether the proposal treats class members equitably with respect to each other has been discussed and is addressed in Section II below.

The proposed Plan of Allocation, developed by Lead Counsel in consultation with its damages expert, Mr. Coffman, provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members who suffered losses as result of the conduct alleged in the Complaint. In developing the Plan of Allocation, Lead Counsel's damages expert considered the measure of damages under the Exchange Act and the amount of artificial inflation present in RAC's common stock throughout the Class Period that was purportedly caused by the alleged fraud. This analysis entailed studying the price declines associated with the alleged corrective disclosures, adjusted to eliminate the effects attributable to general market or industry conditions. In this respect, an inflation table was created as part of the Plan of Allocation and reported in the Notice. ¶¶87-88.

Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated by the Claims Administrator for each share of RAC common stock purchased or acquired during the Class Period, as listed in the Claim Form, and for which adequate documentation is provided. The Claims Administrator will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Claim compared to the aggregate Recognized Claims of all Authorized Claimants. Calculation of Recognized Claims will depend upon several factors, including when the Authorized Claimant purchased shares during the Class Period and whether those shares were sold during the Class Period, and if so, when. *Id*. ¶89.

Accordingly, for all of the reasons set forth herein and in the Gardner Declaration, the Plan of Allocation is fair and reasonable, and should be approved.

III. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

The Notice provided to the Settlement Class satisfied the requirements of Rule 23(c)(2)(B), which requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). The Notice must be "reasonable" – *i.e.*, it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them." *Maher v. Zapata Corp.*, 714 F.2d 436, 451 (5th Cir. 1983); *see In re Katrina Canal Breaches Litig.*, 628 F.3d 185, 197 (5th Cir. 2010) ("Under Rule 23(e), a settlement notice need only satisfy the 'broad reasonableness standards imposed by due process.'").

Both the substance of the Notice and the method of its dissemination to potential members of the Settlement Class Members satisfied these standards. The Court-approved Notice includes all the information required by Federal Rule of Civil Procedure 23(c)(2)(B) and the PSLRA, 15 U.S.C. § 78u-4(a)(7), including: (i) an explanation of the nature of the Action and the claims asserted; (ii) the definition of the Settlement Class; (iii) the amount of the Settlement; (iv) an explanation of the reasons why the parties are proposing the Settlement; (v) a statement indicating the attorneys' fees and costs that will be sought; (vi) a description of Settlement Class Members' right to opt-out of the Settlement Class or object to the Settlement, the Plan of Allocation or the requested attorneys' fees or expenses; and (vii) notice of the binding effect of a judgment on Settlement Class Members.

As noted above, in accordance with the Court's Preliminary Approval Order, beginning on January 2, 2019 through March 26, 2019, the Claims Administrator has mailed 31,071 copies of the Notice by first-class mail to potential members of the Settlement Class and their nominees.

See Ex. 3 ¶¶3-11. In addition, the Summary Notice was published in the *Wall Street Journal* and transmitted over the internet using *PR Newswire* on January 16, 2019. *Id*. ¶12. Copies of the Notice, Claim Form, Preliminary Approval Order and Stipulation were made available on the Settlement website maintained by Epiq, www.RentACenterSecuritiesSettlement.com, and copies of the Notice and Claim Form were made available on Lead Counsel's website. *See* Ex. 3 at ¶ 16; ¶69.

This thorough approach of providing (1) individual mailing to Settlement Class Members who could be identified with reasonable effort, (2) notice in an appropriate, widely-circulated publication, and (3) notice transmitted over a newswire and available on internet websites, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see also Schwartz*, 2005 WL 3148350, at *11.

IV. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE SETTLEMENT CLASS

The Court previously granted preliminary class certification for settlement purposes. *See* Preliminary Approval Order at ¶2. Nothing has occurred since then to cast doubt on whether the applicable prerequisites of Rule 23 are met. For all the reasons stated in Lead Plaintiff's Unopposed Motion and Supporting Memorandum of Law for Preliminary Approval of Class Action Settlement (ECF No. 116) and in the Court's Preliminary Approval Order, Lead Plaintiff requests that the Court reaffirm its determinations in the Preliminary Approval Order and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and (b)(3), appoint Oklahoma Firefighters as Class Representative, and appoint Labaton Sucharow LLP as Class Counsel and Hicks Davis Wynn, PC. as Liaison Counsel.

CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court approve the proposed Settlement as fair, reasonable and adequate, approve the Plan of Allocation as fair, reasonable, and adequate, and grant final certification for settlement purposes.[4]

Dated: March 29, 2019

Respectfully submitted,

By: */s/ Jonathan Gardner*

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[4] A proposed judgment, negotiated by the Parties, will be submitted with Lead Plaintiff's reply papers, after the deadline for objecting and seeking exclusion has passed.

Pension and Retirement System, City of Hollywood Employees' Retirement Fund, and the Proposed Class

CERTIFICATE OF SERVICE

I certify that on this 29th day of March 2019, I caused the foregoing to be electronically filed with Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

By: */s/ Jonathan Gardner*
JONATHAN GARDNER

Mailing Information for a Case 4:16-cv-00978-ALM-KPJ
Hall v. Rent-A-Center, Inc. et al.
Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing).

- (No manual recipients)