

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AMY CHAN, STEVEN WADE, SHUNFENG
CHENG, and ELBURN IRISH,
INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

NEW ORIENTAL EDUCATION &
TECHNOLOGY GROUP INC. and
CHENGGUANG ZHOU,

Defendants.

Civ. No. 16-9279 (KSH) (CLW)

**ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE**

WHEREAS, an action is pending before this Court entitled *Chan v. New Oriental Education and Technology Group Inc. et al.*, Case No. 2:16-cv-09279- KSH-CLW (D.N.J.) (“Litigation”);

WHEREAS, Lead Plaintiffs Amy Chan, Steven Wade, Shunfeng Cheng, and Elburn Irish (together, “Lead Plaintiffs”), on behalf of themselves and each of the Class Members, and Defendants New Oriental Education and Technology Group Inc. (“New Oriental”), and Defendant Chenggang Zhou (together with New Oriental, “Defendants”) having determined to settle the Litigation;

WHEREAS, the Lead Plaintiffs having made an application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation (D.E. 77), in accordance with a Stipulation of Settlement dated June 1, 2020 (“Stipulation”) (D.E. 80), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein;

WHEREAS, the Court having read and considered the Stipulation and the Exhibits annexed thereto;

WHEREAS, unless otherwise defined, all capitalized terms used herein have the same meanings as set forth in the Stipulation;

WHEREAS, the Court has fully considered the record and requirements of law; and good cause appearing;

IT IS, on this 4th day of June, 2021, **ORDERED** that:

1. The Court has reviewed the Stipulation and does hereby preliminarily approve the Settlement set forth therein, subject to further consideration at the Settlement Hearing described below.

2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for purposes of this Settlement only, the Litigation is hereby preliminarily certified as a class action on behalf of all Persons who purchased or otherwise acquired American Depositary Shares (“ADSs”) of New Oriental between September 28, 2016 and December 1, 2016, inclusive (“Class Period”). Excluded from the Class are Defendants herein, current and former officers and directors of New Oriental, and members of their immediate families; any entity in which Defendants have or had a controlling interest; and the legal representatives, heirs, successors, and assigns of any such excluded person or entity. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class.

3. The Court finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous

that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of Lead Plaintiffs are typical of the claims of the Class they seeks to represent; (d) Lead Plaintiffs and Lead Counsel have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the Members of the Class predominate over any questions affecting only individual Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiffs are preliminarily certified as Class Representatives.

5. The Court preliminarily finds that the proposed Settlement should be approved because the Court will likely: (a) be able to certify a Settlement Class; and (b) be able to approve the Settlement under Rule 23(e)(2) as it: (i) results from serious, extensive arm's-length and non-collusive negotiations; (ii) has no obvious deficiencies; and (iii) appears to be, for preliminary purposes only, fair, reasonable, adequate, and in the best interests of the Class.

6. A hearing (the "Settlement Hearing") shall be held before this Court on **Tuesday, October 19, 2021, at 11:00 a.m.**, at the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Courtroom PO 05, Newark, NJ 07101, to determine: (i) whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a Judgment as provided in § 1.15 of the Stipulation should be entered; (iii)

whether the proposed Plan of Allocation is fair, reasonable, and adequate to the Class and should be approved; (iv) the amount of fees and expenses that should be awarded to Lead Counsel; and (v) the compensatory awards that should be granted to the Lead Plaintiffs. The Court may adjourn the Settlement Hearing without further notice to the Members of the Class. The Court may hold the Settlement Hearing telephonically or by videoconference.

7. The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action (“Notice”), the Proof of Claim and Release form (“Proof of Claim”), and the Summary Notice, all annexed to the Stipulation as Exhibits A-1, A-2, and A-3 thereto (D.E. 80-2, 80-3, 80-4), respectively, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice substantially in the manner and form set forth in ¶ 9 of this Order meet the requirements of Federal Rule of Civil Procedure 23 and due process, and are the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

8. All fees, costs, and expenses incurred in identifying and notifying Class Members shall be paid as set forth in the Stipulation.

9. The firm of Strategic Claims Services (“Claims Administrator”) is hereby appointed to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Not later than **Friday, June 25, 2021** (“Notice Date”), the Claims Administrator shall commence mailing the Notice and the Proof of Claim, substantially in the forms annexed hereto, by First-Class Mail to all potential Class Members who or which can be identified with reasonable effort, and to be posted on its

website at www.strategicclaims.net;

(b) Not later than fourteen (14) calendar days after the Notice Date, the Claims Administrator shall cause the Summary Notice to be published once in the national edition of *Investor's Business Daily* and once over the *GlobeNewswire*; and

(c) At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall serve on Defendants' counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

10. Nominees who purchased or otherwise acquired New Oriental ADSs for the beneficial ownership of Class Members during the Class Period shall:

(a) within seven (7) calendar days of receipt of the letter, request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners, and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; (b) within seven (7) calendar days of receipt of the letter, request from the Claims Administrator an electronic copy of the Notice Packet, and within seven (7) calendar days of receipt of the electronic Notice Packet, email the Notice Packet to beneficial owners for which the broker or nominee has valid email addresses; or (c) within seven (7) calendar days of receipt of the letter, send a list of the names, mailing addresses, and, if available, email addresses, of all such beneficial owners to the Claims Administrator in which event the Claims Administrator shall promptly mail or email the Notice Packet to such beneficial owners. Upon full compliance with this Order, such nominees may seek payment of their reasonable expenses actually incurred in complying with this Order, up to a maximum of \$0.65 per Notice Packet if the Notice Packet is mailed by the broker or nominee (this amount includes postage at the current

pre-sort rate used by the Claims Administrator); or \$0.05 per Notice Packet transmitted by email by the broker or nominee; or \$0.05 per name, mailing address, and email address (to the extent available) provided to the Claims Administrator, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

11. On or before fourteen (14) calendar days after the later of: (i) entry of this Order, and (ii) provision to Defendants of all information necessary to effectuate a transfer of funds, including the bank name and ABA routing number, account name and number, and a signed W-9 reflecting the taxpayer identification number for the Settlement Fund, New Oriental shall cause the Settlement Amount to be deposited into the interest-bearing Settlement Fund escrow account controlled by the Escrow Agent. At any time after the Court grants preliminary approval of the Settlement, the Escrow Agent may, without further approval from Defendants or the Court, disburse at the direction of Plaintiffs' Counsel up to \$150,000 (One Hundred Fifty Thousand U.S. Dollars) from the Settlement Fund prior to the Effective Date¹ to pay Administrative Costs. After the Effective Date, additional amounts, up to \$100,000 (One Hundred Thousand Dollars), may be transferred from the Settlement Fund to pay for any necessary additional Administrative Costs without further order of the Court.

12. All Class Members shall be bound by all determinations and judgments in

¹ As defined in the Stipulation.

the Litigation concerning the Settlement, including, but not limited to, the Releases provided for therein, whether favorable or unfavorable to the Class, regardless of whether such Class Members submit Proofs of Claim or otherwise seek or obtain by any means any distribution from the Net Settlement Fund.

13. Class Members who wish to participate in the Settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked or submitted electronically no later than seven (7) calendar days after the date of the Settlement Hearing. Any Class Member who does not timely submit a Proof of Claim within the time provided for, shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall nevertheless be bound by the provisions of the Stipulation, the Releases contained therein, and the Judgment. Notwithstanding the foregoing, Lead Counsel may, in their discretion, accept late-submitted claims for processing by the Claims Administrator so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby.

14. Any Class Member who or that does not request exclusion from the Class may enter an appearance in the Litigation, at his, her or its own expense, individually or through counsel of his, her or its own choice. Any Class Members who or that does not enter an appearance will be represented by Lead Counsel.

15. Any Person falling within the definition of the Class may, upon request, be excluded or “opt out” from the Class. Any such Person must submit to the Claims Administrator a request for exclusion (“Request for Exclusion”), by First-Class Mail, or

hand-delivered such that it is postmarked no later than **Tuesday, September 28, 2021**. A Request for Exclusion must be signed and state: (i) the name, address, and telephone number of the Person requesting exclusion; (ii) the Person's purchases, acquisitions, and sales of New Oriental ADSs between September 28, 2016 and December 1, 2016, inclusive, including the dates, the number of ADSs of New Oriental purchased, acquired or sold, and price paid or received for each such purchase, acquisition or sale; and (iii) that the Person wishes to be excluded from the Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment. Unless otherwise ordered by the Court, any Person falling within the definition of the Class who fails to timely request exclusion from the Class in compliance with this paragraph shall be deemed to have waived his, her, or its right to be excluded from the Class, and shall be barred from requesting exclusion from the Class in this or any other proceeding.

16. Lead Counsel shall cause to be provided to Defendants' counsel copies of all Requests for Exclusion, and any written revocation of Requests for Exclusion, promptly upon receipt and as expeditiously as possible, and in any event not less than fourteen (14) calendar days prior to the Settlement Hearing.

17. Any Class Member may file a written objection to the proposed Settlement and show cause, if he, she, or it has any cause, why the proposed Settlement of the Litigation should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, why attorneys' fees and expenses should or should not be

awarded to counsel for the Lead Plaintiffs, or why the compensatory awards to Lead Plaintiffs should or should not be approved; provided, however, that no Class Member or any other Person shall be heard or entitled to contest such matters, unless that Person has delivered by hand or sent by First-Class Mail written objections and copies of any papers and briefs such that they are sent to: (i) The Rosen Law Firm P.A., Laurence M. Rosen, 609 W. South Orange Avenue, Suite 2P, South Orange, NJ 07079, or Pomerantz LLP, Jeremy A. Lieberman, 600 Third Avenue, 20th Floor, New York, New York 10016; and (ii) Skadden, Arps, Meagher, and Flom LLP, Scott D. Musoff, 4 Times Square, New York, New York 10036, postmarked or hand-delivered on or before **Tuesday, September 28, 2021**, and said objections, papers, and briefs are sent to the Clerk of the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, postmarked on or before **Tuesday, September 28, 2021**. Any Class Member who or that does not make his, her or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the proposed Settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award of attorneys' fees and expenses to counsel for the Lead Plaintiffs or compensatory awards to Lead Plaintiffs, unless otherwise ordered by the Court. Attendance at the Settlement Hearing is not necessary. However, Persons wishing to be heard orally in opposition to approval of the Settlement, the Plan of Allocation, the award of attorneys' fees and expenses to counsel for the Lead Plaintiffs, and/or the award of compensatory awards to the Lead Plaintiffs must indicate in their written objection their intention to appear at the Settlement Hearing. Class Members do

not need to appear at the Settlement Hearing or take any action if they do not oppose any aspect of the Settlement.

18. Any objections, filings, and other submissions by the objecting Class Member must: (i) state the name, address, and telephone number of the Person objecting and must be signed by the objector; (ii) contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and (iii) include documents sufficient to prove membership in the Class, including the objecting Class Member's purchases, acquisitions, and sales of New Oriental ADSs during the Class Period, including the dates, the number of New Oriental ADSs purchased, acquired, or sold, and price paid or received for each such purchase, acquisition, or sale.

19. Lead Counsel and Defendants' counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

20. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and/or further order(s) of the Court.

21. All opening briefs and supporting documents in support of the Settlement, the Plan of Allocation, and any application by counsel for the Lead Plaintiffs for attorneys' fees and expenses or by the Lead Plaintiffs for their expenses shall be filed and served by **Tuesday, August 24, 2021**. Replies to any objections shall be filed and served by **Tuesday, October 12, 2021**.

22. Neither Defendants and their Related Parties nor Defendants' counsel

shall have any responsibility for the Plan of Allocation or any application by counsel for the Lead Plaintiffs for attorneys' fees or expenses or the Lead Plaintiffs for their compensatory awards, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

23. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Lead Counsel, and any application for attorneys' fees or payment of expenses should be approved.

24. All reasonable expenses incurred in identifying and notifying Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation. If the Settlement is not approved by the Court, or otherwise fails to become effective, neither the Lead Plaintiffs nor any of their counsel shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to § 2.8 of the Stipulation.

25. Neither this Order, nor the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed or offered as an admission or concession by the Defendants as to the validity of any claims or as to the truth of any of the allegations in the Litigation, or in respect of any liability, fault, or wrongdoing of any kind.

26. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class. The Court reserves the

right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation, any application by counsel for the Lead Plaintiffs for an award of attorneys' fees and expenses, or any application by the Lead Plaintiffs for compensatory awards.

27. If the Stipulation and the Settlement set forth therein are not approved or consummated for any reason whatsoever, this Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the rights of the Settling Parties *status quo ante*.

28. Unless otherwise ordered by the Court, all proceedings in the Litigation are stayed, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation or other agreement of the Settling Parties. Pending final determination of whether the proposed Settlement should be approved, neither the Lead Plaintiffs nor any Class Member, either directly or indirectly, representatively, or in any other capacity, shall commence or prosecute against any of the Released Persons any action or proceeding in any court or tribunal asserting any of the Released Claims.

/s/ Katharine S. Hayden
Katharine S. Hayden, U.S.D.J.