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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re China Education Alliance, Inc. Securities Litigation This Document Relates to All Actions	Case No.: 2:10-CV-09239 CAS (JCx) **LEAD PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION** CLASS ACTION Date: March 11, 2013 Time: 10 a.m. Judge: Hon. Christina A. Snyder Courtroom: 15 (Spring Street)

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Lead Plaintiffs Keith Troxler, Brian Landrum, and Robert Schilling ("Lead Plaintiffs" or "Troxler Group"), through their undersigned counsel, submit this motion pursuant to Federal Rule of Civil Procedure 23(e) for final approval of the class action Settlement, as set forth in the Stipulation of Settlement, dated October 3, 2012 (the "Stipulation Agreement"). This Action has been settled for $2,425,000 in cash. The Settlement results from Plaintiffs' vigorous case prosecution and arm's-length settlement negotiations between the parties.

I. OVERVIEW OF THE LITIGATION[1] [2]

This Action was filed as a class action on behalf of purchasers of China Education Alliance ("CEU" or the "Company") common stock May 15, 2008 through December 7, 2010, inclusive (the "Class Period"). By Order dated March 1, 2011, Keith Troxler, Brian Landrum, and Robert Schilling were appointed as Lead Plaintiffs, and their selection of The Rosen Law Firm, P.A. as Lead Counsel was approved. *See* Rosen Decl., ¶ 8.

The settlement was reached only after Lead Plaintiff's Counsel's aggressive and comprehensive prosecution efforts, for example: (a) reviewing and analyzing publicly available information about CEU, including the Company's SEC filings, Chinese State Administration of Industry and Commerce ("SAIC") filings, investigation and analysis of the operations and ownership of the facilities alleged to be from which the Company derives its revenue, and using this information to draft a complaint that survived the strenuous pleading standards imposed by the Private Securities Litigation Reform Act (the "PSLRA); (b) substantial motion

[1] Unless otherwise defined, capitalized terms herein have the same meanings attributed to them in the Stipulation and Agreement of Settlement, dated October 3, 2012.

[2] For the sake of brevity, a full description of the procedural history of can be found in the Declaration of Laurence Rosen, ¶¶ 7-16.

practice, including drafting multiple complaints, opposing several motions to dismiss and moving this court for a partial lifting of the discovery stay; and (c) preparing for and participating in extensive settlement negotiations with the aid of a nationally regarded mediator, Michael Young, Esq. Rosen Dec., ¶ 6.

To date, 16,449 claim packets, including the detailed "Notice of Pendency and Settlement of Class Action," ('the "Notice") and "Proof of Claim and Release" form have been sent by first-class mail to potential Settlement Class Members, and a Summary Notice has been timely published on *GlobeNewswire* and in *Investor's Business Daily*. *See* Declaration of Josephine Bravata Concerning Mailing of Pendency and Settlement of Class Action and Proof of Claim Release ("Bravata Dec."), ¶ 5 (attached as Exhibit 1 to the Declaration of Laurence M. Rosen in Support of Plaintiffs' Motion for Final Approval of Partial Class Action Settlement and Plan of Allocation and for Award of Attorneys' Fees and for Reimbursement of Expenses ("Rosen Decl.")). The deadline to file objections to the Settlement is February 18, 2013, and the deadline to request exclusion from the settlement is February 11, 2013. To date, there have been two objections and no valid requests for exclusion. *See* Bravata Dec., ¶¶ 9-10.

As detailed in the Rosen Declaration, the Settlement represents a realistic assessment by knowledgeable and experienced attorneys of the risks of further proceedings. This includes the possibility that CEU would simply ignore a judgment issued by this Court, since CEU is a holding company which operates through its wholly owned subsidiary that is located in the PRC[3] and all of its assets are also located in the PRC,[4] which most likely would not enforce a U.S.

[3] China Education Alliance, Inc. 10-K filed April 16, 2012, at 3-4, available at http://www.sec.gov/Archives/edgar/data/1203900/000114420412022055/v309001_10k.htm

[4] China Education Alliance, Inc. 10-K filed April 15, 2011, at 16, available at http://www.sec.gov/Archives/edgar/data/1203900/000114420411022576/v218234

judgment.[5] Rosen Dec., ¶¶ 37-38. Thus, not only was it unlikely that CEU would be able to satisfy a greater judgment, there was the substantial risk that were the litigation to continue for a significant amount of time, even the current Settlement amount would become unrecoverable. The Settlement, on the other hand, confers an immediate and substantial benefit on the Settlement Class. It represents a recovery of approximately 10% of the Class' maximum damages of $24.1 million, and eliminates the risk, expense and uncertainty of continued litigation under circumstances where a more favorable outcome was at great risk. Rosen Dec., ¶¶ 20, 35. By any objective measure, the Settlement is fair, reasonable, and adequate.

II. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT AS FAIR, REASONABLE AND ADEQUATE TO THE CLASS

A. Standards of Review

Federal Rule of Civil Procedure 23(e) provides that "[t]he court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses." In deciding whether to approve a proposed settlement, the Ninth Circuit has a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Consequently, in making its assessment pursuant to Rule 23(e), the Court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of

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[5] *See* Donald C. Clarke, The Enforcement of United States Court Judgments in China: A Research Note, at 1, available at http://ssrn.com/abstract=943922 ("At present, at least, the answer is straightforward: U.S. judgments will not be enforced [in China]").

fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. *Officers for Justice v. Civil Serv. Comm'n.*, 688 F.2d 615, 625 (9th Cir. 1982); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

There is no prescribed settlement approval procedure to be followed in this Circuit. Rather, it is within the "sound discretion of the district courts to appraise the reasonableness of particular class-action settlements on a case-by-case basis." *Evans v. Jeff D.*, 475 U.S. 717, 742 (1986); *see also Hanlon*, 150 F.3d at 1011, 1025. To avoid excessive intrusion into the parties' compromise, the court considers the settlement taken as a whole, rather than its individual component parts, and examines it for overall fairness. *Officers for Justice*, 688 F.2d at 628. Consequently, a settlement hearing is "not to be turned into a trial or rehearsal for trial on the merits," nor should the proposed settlement "be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625. To the contrary, "[t]he involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length [sic] negotiations, after relevant discovery had taken place create a presumption that the agreement is fair." *Linney v. Alaska Cellular P'ship*, Nos. C-96-3008 DLJ *et seq*, 1997 WL 450064, *5 (N.D. Cal. July 18, 1997), *aff'd.*, 151 F.3d 1234 (9th Cir. 1998); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd.*, 661 F.2d 939 (9th Cir. 1981).

As explained below, the Settlement was reached after protracted litigation by experienced counsel on both sides, and then only after arm's-length negotiations that stretched over more than a year. Under these circumstances, the Settlement should be afforded the presumption of fairness.

B. All of the Relevant Considerations Employed by Courts in This Circuit Favor Approval of the Proposed Settlement

To determine whether a proposed settlement is fair, reasonable, and adequate, a court must examine the following factors: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Linney*, 151 F.3d at 1242; *Hanlon*, 150 F.3d at 1026. While these factors need to be explored comprehensively when a settlement is reached prior to formal class certification, *Mego*, 214 F.3d at 458, as applied to the instant action, these factors all point toward approval of the proposed Settlement.

1. Strength of Plaintiffs' Case, The Risk, Expense, Complexity and Likely Duration of Further Litigation

Although Defendants' motions to dismiss were largely denied, Plaintiffs were required to *prove* falsity, scienter and loss causation at summary judgment and trial. *E.g.* Rosen Decl., ¶¶ 31-34.

The primary claims in this action were based on Sections 10(b)[6] and 20(a)[7] of the Securities Exchange Act of 1934 (the "Exchange Act"), under the theory that Defendants induced the Plaintiffs and the Class to purchase CEU common stock at artificially inflated and distorted prices due to material omissions and materially misleading and/or false statements, thereby damaging Plaintiffs and the Class. In particular, each of these claims revolves around CEU's prior financial results for each of the annual and quarterly periods beginning January 1, 2008 through December 31, 2009, and claims that these results had been overstated as a result of misstatements of revenue, expenditures, tax liabilities and net income.

[6] 15 U.S.C. §78j(b)
[7] 15 U.S.C. §78j(t)(a)

Rosen Decl., ¶ 12. CEU has never admitted that Plaintiffs' claims are true, and has continued to deny them.

Under the Section 10(b) claims, the Class would have to prove that Defendants were responsible for the issuance of materially false and misleading statements and the omissions of fact in connection with their purchases of artificially inflated CEU common stock (including proof of an efficient market for CEU stock), that each Defendant acted with scienter – i.e. intent to defraud or at least severe recklessness as to their statements' potential to defraud – and that the Class suffered damages as a result of Defendants' conduct. As indicated above, and by the parties' motion practice during the briefing of Defendants' motion to dismiss, proving scienter and falsity would have been a significant challenge.

While Plaintiffs certainly believe they have arguments and evidence to support their Section 10(b) claims, establishing falsity and scienter at trial would be by no means guaranteed. *See In re Heritage Bond Litig.*, Nos. 02-ML-1475 DT *et seq*, 2005 WL 1594403, at *7 (C.D. Cal. June 10, 2005) ("It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced") (*quoting West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970)).

Beyond these complications and expense, Plaintiffs, through expensive and highly complex expert testimony, would have to prove loss causation and damages, and in particular, that the revelation of the fraud caused the price of CEU's stock to fall. Defendants would present their own expert testimony to demonstrate that the alleged stock drops were not the proximate cause of the revelation of the fraud or attempt to demonstrate that a portion of the alleged stock drops were attributable to things unrelated to the fraud or were instead attributable to general market movement.

Consequently, expert discovery and trial preparation would be expensive and complex. While certainly attainable, victory in such a complex trial is hardly assured:

> In this "battle of experts," it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions.

In re Warner Comm. Sec. Litig., 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985); *see also Heritage*, 2005 WL 1594403, at *6 (noting that class actions have a well-deserved reputation as being the most complex) (citation omitted); *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) (same).

Finally, the difficulties surrounding the Section 10(b) claims transmit themselves to the Section 20(a) claims of this litigation. Under Section 20(a) of the Exchange Act, every person who controls a person liable under Section 10(b) shall be jointly and severally liable with the primary violator unless the control person acted in good faith and did not directly or indirectly cause the violation (15 U.S.C. § 78t). As indicated above, Defendants allege that there simply was no primary violation; that Plaintiffs do not adequately plead nor can hope to prove their Section 10(b) claims; and that, at most, the control persons acted with gross negligence or negligence. By extension, there can be no grounds for Plaintiffs' Section 20(a) claims. Rosen Decl., ¶ 36.

Although Plaintiffs believe they have arguments and evidence to counter each one of Defendants' positions with respect to Plaintiffs' Exchange Act claims, and are confident that their presentation would have sustained Defendants' motion to dismiss and carried the burden of proof at trial, there is no way to guarantee that this would indeed be the case. This is especially true when one considers the number and complexity of the defenses laid out above and the difficulties of proof under the federal securities laws.

a. Pragmatic Considerations

Setting aside the difficulties in proving Plaintiffs claims, pragmatic considerations show that settlement at this time is in the best interests of the Class.

Most of the defendants, including CEU's CEO, are Chinese citizens and residents. Rosen Decl., ¶ 38. Therefore, Plaintiffs faced the significant challenge of successfully collecting on a U.S. judgment in China.

In addition, litigation costs in this Action against a Chinese company and Chinese defendants will likely be expensive due to issues of service of process, travel, translation of documents and testimony and other related costs associated with pursuing claims against foreign defendants. And, moreover, the $5 million in insurance held by CEU and its officers and directors will be significantly depleted by the defense in the course of litigation.

Lastly, there are substantial doubts pertaining to CEU's financial health. As of January 25, 2013, its stock traded at $0.46/share and the Company has a market capitulation of merely $4.8 million. Rosen Decl., ¶ 38. Its financial position is severely strained and could very well become insolvent. Nor is it realistic that CEU could tap the equity markets to sell securities to pay a greater judgment given its low stock price, market capitalization, and the fact the Company's stock has been delisted and trades over-the-counter.

The Settlement confers an immediate, reasonable, and valuable cash benefit to Class Members – one that negates the very real risks to recovery posed by continued litigation. As explained by the Ninth Circuit, where here, the financial condition of the Defendants is strained, this factor weighs in favor of approving the Settlement and "predominate[s]" over the other factors. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (financial condition of the Company "predominated" over other factors in favor of settlement); *see also In re Ikon Office Solutions, Inc.*, 194 F.R.D. 166, 183 (E.D. Pa. 2000).

2. The Amount Offered in the Settlement

Defendants' payment of $2,425,000 in cash to the Class will provide a fair and reasonable recovery under the circumstances. According to Plaintiffs' calculations, Class Members' estimated maximum damages in this case are approximately $24.1 million. *E.g.*, Rosen Decl., ¶ 35. Thus, the percentage recovery for Class Members will be approximately 10% of their best case scenario of damages. Rosen Decl., ¶ 20. While it is not high in percentage terms, it is an excellent result given the risks inherent in this litigation.

Settlements with far lower percentages have been consistently approved. *See* Ellen M. Ryan and Laura E. Simmons, Securities Class Action Settlements, 2010 Review and Analysis, at 5[8] (finding that between 1996 and 2009, securities class actions settled for an average of 3.4% of plaintiff-style damages); *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 245 (D.N.J. 2000) (citing: (1) study of 377 securities class action settlements which found that the average settlement comprises between 9% and 14% of claimed damages and (2) cases which settled for 1.6-10% of claimed damages). This figure is based on the gross recovery in cases, before the deduction of attorneys' fees and expenses. Here, the Settlement represents 10% of maximum damages. When compared with the "present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing," the Settlement is fair. *See In re Warfarin Sodium Antirust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004).

Finally, Plaintiffs' estimated recovery figure is based upon their calculation of provable damages, and does not take into account the various defenses described above. *See* Rosen Decl., ¶ 34. If a jury chose to credit Defendants' expert over Plaintiffs' expert, in whole or in part, with respect to whether a

[8] Available at http://securities.stanford.edu/Settlements/REVIEW_1995-2010/Settlements_Through_12_2010.pdf <.>

significant portion of the share price decline was causally related to Defendants' alleged misrepresentations and omissions, this could have substantially reduced the total amount of damages. *See* Rosen Decl., ¶¶ 34-35. Consequently, had the case been tried, there was a fair possibility that the damages ultimately proved could have been much lower. *See, e.g., Heritage*, 2005 WL 1594403, at *7 (citing *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 282-83 (S.D.N.Y. 1999) (recounting instances where settlement was rejected by a court only to have the recovery generated by continued litigation ultimately be less than the proposed settlement).

3. Risk of Maintaining a Class Action

Even if a class were to be certified outside the settlement proceedings, such an order would be conditional. Rule 23(c)(1) expressly provides that a class certification order may be "altered or amended before final judgment." *See, e.g., Viscaino v. U.S. District Court*, 173 F.3d 713, 721 (9th Cir. 1999) (certification order may be altered or amended "before the decision on the merits"). Consequently, where maintaining a class action to judgment is an expensive and risky enterprise, a fair and reasonable settlement is preferable to years of uncertainty. *See Heritage*, 2005 WL 1594403, at *6 ("[i]n most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results")(citing *National Rural Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (internal quotation omitted)). Similarly, because the scope of a class wide judgment is a greater detriment to Defendants than an individual action, even after an adjudication on the merits, Defendants will almost certainly appeal, and may be successful. *See, e.g., National Rural*, 221 F.R.D. at 527 (if a class action obtains a successful judgment, an appeal is likely to follow); *see also Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for

plaintiffs against an accounting firm reversed on appeal). Accordingly, this factor supports approval of the Settlement.

4. Stage of the Proceedings

Plaintiffs had sufficient information to evaluate their case and to assess the propriety of a settlement. Here, by the time the Settlement was reached, Lead Plaintiffs' Counsel had: (1) conducted an extensive investigation of the facts alleged, including the hiring of investigators in the PRC; (2) drafted and filed extensive amended complaints; (3) reviewed and analyzed and opposed Defendants' motions to dismiss; (4) consulted with experts on issues, including, but not limited to, loss causation, damages, and accounting; and (5) engaged in a lengthy mediation session with opposing counsel. Rosen Decl., ¶ 6.

Under these circumstances, Plaintiffs and their counsel were thus in an excellent position to evaluate the strengths and weaknesses of their allegations against Defendants, and the defenses raised thereto, as well as the substantial risks of continued litigation, and to be in a position to conclude that the settlement provides a fair, adequate, and reasonable recovery, and that it is in the best interests of the Class. Having sufficient information to properly evaluate the Litigation, Plaintiffs have managed to settle this Litigation on terms very favorable to the Class and without the substantial additional expense, risk, and uncertainty of continued litigation. This factor weighs in favor of this Court's approval of the settlement.

5. Experienced Counsel Concur that the Settlement, Which was Negotiated in Good Faith and at Arm's-Length, is Fair, Reasonable, and Adequate

"[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight." *Ellis*, 87 F.R.D. at 18; *see also National Rural*, 221 F.R.D. at 528 ("'Great weight is accorded to the recommendation of counsel, who are most closely acquainted with

the facts of the underlying litigation'") (quoting *In re Painewebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y.1997)). And "a presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced capable counsel after meaningful discovery." *Manual for Complex Litigation* (Third) § 30.42 (1995). This case has been litigated by experienced and well-respected counsel on both sides, who specialize in this area of securities litigation. *See* Rosen Decl., ¶¶ 44-46, Ex. 2, thereto. Accordingly, this factor weighs in favor of the Settlement.

In addition, the Settlement was brokered with the aid of a nationally regarded mediator, Michael Young, Esq. of JAMS. The parties engaged in hard-fought negotiations over an all-day mediation session and further discussions held telephonically and by e-mail. The negotiations were in good faith, at arm's-length, and had not a hint of collusion. As result of these long and hard-fought negotiations the parties agreed to the settle this action for $2,425,000. Only after these protracted and good faith negotiations, did the parties finally agree to all the terms of the settlement reflected in the Stipulation. *See* Rosen Decl., ¶¶ 17-18.

6. The Reaction of the Class Members to the Settlement

Pursuant to the Court's Notice Order, 16,449 Notices were sent to Class Members to date and Summary Notice was published on the *GlobeNewswire* and the *Investors' Business Daily*. *See* Bravata Dec. at ¶ 5-7. The deadline to file objections to the Settlement is February 18, 2013, and the deadline to request exclusion from the settlement is February 11, 2013. To date, there have been no valid requests for exclusion and two objections: one objection by Richard Taylor[9]

9 Richard Taylor's objection is addressed in Lead Plaintiffs' Memorandum of Points and Authorities in Support of an Award of Attorneys' Fee and Reimbursement of Expenses, filed herewith.

to the requested attorneys' fees and an objection to all aspects of the Settlement Melvyn Klein. *See* Bravata Dec., ¶¶ 9-10; Rosen Decl. ¶ 23.

Melvyn Klein's objection should be overruled. Mr. Klein, a purported class member, claims to have lost $2,024 in his purchase of CEU stock during the Class Period.[10] *See* Bravata Dec., Ex. D. The basis of Mr. Klein's objection is that "I do not agree with the settlement or any part of it, …" *Id.* Plaintiffs do not know what to make of this objection given that no specific facts or reasons are provided by the objection. Given the conclusory nature of this objection, Mr. Klein's objection should be overruled. Plaintiffs will address any further objections that are filed, in their reply..

"[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness." *Hanlon,* 150 F.3d at 1027; *see also Mego Fin. Corp.*, 213 F.3d at 459 (that there was only one opt out supports upholding district court's approval of settlement).

III. THE CLASS SHOULD BE CERTIFIED

In presenting the proposed Settlement to the Court for preliminary approval, the parties requested that the Court preliminarily certify a Settlement Class so that notice of the proposed Settlement, the final approval hearing and the rights of class members to request exclusion, object or submit proofs of claim could be communicated to the persons affected by the proposed Settlement. As part of the settlement process, Plaintiffs now request that the Court certify the Class for purposes of carrying out the Settlement.

10 Mr. Klein lists two purchases of "25,000" shares, but it appears that he meant "2,500" shares given the price per share and total cost he lists. *See* Bravata Decl., Ex. D.

The Supreme Court recognizes the utility and necessity of certifying settlement classes so long as absent class members' rights are protected. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In certifying a settlement class, the Court must determine that the action satisfies the criteria established by Fed. R. Civ. P. 23 -- numerosity, commonality, typicality, adequacy of representation, and predominance of common questions and superiority of class treatment.[11] *Rodriguez v. D.M. Camp & Sons*, No. 1:09-cv-00700-AWI-JLT, 2012 WL 6115651, at *4, *6 (E.D. Cal. Dec. 7, 2012).

Where the proposed settlement is presented before the class certification motion is decided,

> the parties move the court for simultaneous class certification and approval of the settlement. Typically, the court then orders a combined notice of the certification, opt-out rights, and the proposed settlement and combines the fairness hearing on the proposed settlement with a hearing on class certification.

5 *Moore's Federal Practice*, § 23.161 [2][a] at 23-552 (3d ed. 2007).

The instant action meets each of the criteria for class certification under Rule 23 and, accordingly, the Class should be certified for purposes of the Settlement. Certification as a class action pursuant to Rule 23 requires that the action meet each of the requirements of Rule 23(a). The first criterion is that the class be so numerous that joinder of all members is impracticable. This action clearly meets that criteria. CEU shares were listed on NYSE AMEX, a national exchange. In response to requests from those brokers and nominees that copies of

[11] Rule 23(b)(3)(D) inquiry into whether there are likely to be difficulties in managing a class action through trial is relaxed because the proposal is that, if the Court approves the settlement, there will be no trial. 5 *Moore's 28 Federal Practice,* § 23.161 [2][b][J] at 23-555 (3d ed. 2007).

the Notice and Proof of Claim form be sent to the actual purchasers of the common stock of CEU, the Claims Administrator mailed out additional copies of the Notice to such purchasers or sellers of CEU securities during the Class Period. Ultimately, over 16,000 copies of the Notice and Proof of Claim Form were mailed. *See* Bravata Dec. at ¶ 5. There are, therefore, thousands of Class members and joinder of all of them would be impracticable.

The second criterion under Rule 23(a) is that there are questions of law or fact common to the class. This criterion is also met. Among the common questions are whether the provisions of the Exchange Act were violated by Defendants' acts as alleged in the action; whether documents, including the Registration Statement and Prospectus, press releases, and public statements issued by Defendants to the investing public failed to accurately reflect CEU's true business condition, and whether the price of CEU securities was artificially inflated or distorted as a result of the misstatements and nondisclosures. Thus, there are numerous common issues of law and fact and, as will be discussed in connection with Rule 23(b), they predominate over other questions.

The third criterion -- typicality -- requires that "the claims or defenses of the representative parties [be] typical of the claims and defenses of the class." Fed. R. Civ. Proc. 23(a)(3). Plaintiffs allege that Defendants' misrepresentations resulted in artificial inflation of the price of CEU securities that Plaintiffs purchased and that upon disclosure of the alleged misrepresentations, the value of the securities purchased by Plaintiffs dropped in value. The other members of the Class were affected in the same ways.

The fourth criterion -- adequacy-- is met because Plaintiffs and their counsel have protected and will protect the interests of the Class. Plaintiffs and counsel have conducted intensive investigations order to unearth the truth and properly plead the claims; use of the fruits of their investigations in drafting an

amended complaint; and negotiation of the advantageous Settlement presented for approval on behalf of the Class.

In addition to satisfying the criteria of Rule 23(a) the action must meet one of the criteria of Rule 23(b). In this action, Rule 23(b)(3) is met. There are questions of law or fact common to the class members and those common questions of law or fact predominate over any questions affecting only individual members of the Class. The issues discussed above with respect to Rule 23(a) all relate to the acts of Defendants and are common to all Class members.

The few individual issues exist in all securities class actions and have not precluded class treatment. Moreover, permitting the claims of the entire class to be resolved in a single forum is superior to other available methods to fairly and efficiently adjudicate the controversy. In this connection, the Court has, previously, consolidated all related claims into this action.

Moreover, although the losses to individual members of the Class are significant, they are not sufficiently large to justify the expense of numerous individual actions. Accordingly, it is desirable to concentrate the litigation of the claims in this forum and in a single, more cost effective class action. Finally, the Supreme Court notes that the difficulties likely to be encountered in managing a class action is a factor of less importance where the proposal is that the action be settled and the difficulties of a trial avoided, and this action does not present any unusual difficulties in the management of the action or the Settlement.

The Settlement Class consists of: (1) all persons other than defendants who purchased the common stock of CEU between May 15, 2008 and December 7, 2010 inclusive. Excluded from the Settlement Class are Defendants, and all former officers and directors of CEU, and such excluded persons' immediate families, legal representatives, heirs, predecessors, successors, and assigns, and any entity in which any excluded person has or had a controlling interest, and any

persons who have separately filed actions against one or more of Defendants, based in whole or in part on any claim arising out of or relating to any of the alleged acts, omissions, misrepresentations, facts, events, matters, transactions, or occurrences referred to in the Litigation or otherwise alleged, asserted, or contended in the Litigation. Also excluded from the Settlement Class are those persons who file valid and timely requests for exclusion, should there be any.

IV. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

"Approval of a settlement, including a plan of allocation, rests in the sound discretion of the court." *Heritage*, 2005 WL 1594403, at *11 (citing *Class Plaintiffs*, 955 F.2d at 1284 (internal citation omitted)). "To warrant approval, the plan of allocation must also meet the standards by which the...settlement was scrutinized – namely, it must be fair and adequate." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 668 (E.D. Va. 2001) (citing *Class Plaintiffs*, 955 F.2d at 1284-85; *In re Oracle Sec. Litig.*, No. C-90-931-VRW, 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994)). "A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable. It is also reasonable to allocate more of the settlement to class members with stronger claims on the merits." *Oracle*, 1994 WL 502054, at *1. Therefore, as noted in *MicroStrategy*, 148 F. Supp. 2d at 669:

> "a plan of allocation . . . fairly treats class members by awarding a *pro rata* share to every Authorized Claimant, [even as it] sensibly makes interclass distinctions based upon, *inter alia*, the relative strengths and weaknesses of class members' individual claims and the timing of purchases of the securities at issue."

The proposed Plan of Allocation herein was fully described in the Notice sent to the Class, at Question 8b. thereof. *See* Bravata Dec., Ex. A. It was formulated by Lead Plaintiffs' Counsel, in consultation with a damages expert, with the goal of reimbursing Class members in a fair and reasonable manner. Each similarly

situated authorized claimant will receive a *pro rata* share of the Net Settlement Fund (*i.e.*, $2,425,000 plus interest, less attorneys' fees and expenses) based upon the number of shares purchased and sold during the Class Period. The Plan of Allocation does not discriminate between Class Members. *See* Rosen Decl., ¶¶ 27-29.

In short, the Plan of Allocation has a rational basis, Lead Counsel believes it fairly compensates Class Members, and this Court should approve it. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004) ("When formulated by competent and experienced class counsel, an allocation plan need have only a 'reasonable, rational' basis.").

V. CONCLUSION

Because both the Settlement and the Plan of Allocation are fair, reasonable, and adequate, Lead Plaintiffs respectfully request that this Court approve them.

DATED: February 4, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Laurence Rosen, hereby declare under penalty of perjury as follows: I am attorney with the Rosen Law Firm, P.A., with offices at 355 South Grand Avenue, Suite 2450, Los Angeles, CA, 90071. I am over the age of eighteen.

On February 4, 2013, LEAD PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to counsel of record.

Executed on February 4, 2013.

/s/ Laurence Rosen