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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 MIKE MCGEE, BANKIM GOPANI,
12 NIRANJAN KUMAR DAS, MARK
13 STEPHENSON, MELVIN YOUNKER,
14 VICTOR BRANCACIO, and ROBERT
15 WALSH, Individually and On Behalf of All
16 Others Similarly Situated,

17 Plaintiffs,

18 vs.

19 CHINA ELECTRIC MOTOR, INC., YUE
20 WANG, HAIXIA ZHANG, HEUNG SANG
21 “DEXTER” FONG, FUGUI WANG,
22 GUOQIANG ZHANG, LIANG TANG,
23 SHUIPING WANG, WESTPARK CAPITAL,
24 INC., ROTH CAPITAL PARTNERS, LLC,
25 RICHARD RAPPAPORT, PHILIP
26 KEMPISTY, KEMPISTY & COMPANY
27 CPAS, P.C., and MALONEBAILEY, LLP,

28 Defendants.

No. CV 11-2794-R (AGR_x)

CLASS ACTION

**MEMORANDUM OF
POINTS AND
AUTHORITIES IN SUPPORT
OF MOTION FOR ENTRY
OF ORDER
PRELIMINARILY
APPROVING SETTLEMENT
AND ESTABLISHING
NOTICE PROCEDURES**

Hon. Manuel L. Real
Hearing Date: June 3, 2013
Hearing Time: 10 AM
Courtroom: 8- 2nd floor

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1 **I. PRELIMINARY STATEMENT**

2 The Parties have reached a proposed settlement of this securities class action
3 ("Proposed Settlement") in which: (1) defendants China Electric Motor, Inc.,
4 ("China Electric"), Liang Tang, Fugui Wang, Shuiping Wang, Yue Wang,
5 Guoqiang Zhang, and Haixia Zhang (the "China Electric Defendants") will pay a
6 total of \$2,750,000, (2) defendant MaloneBailey LLP ("MaloneBailey") will pay a
7 total of \$518,333.33, (3) defendant Roth Capital Partners, LLC ("Roth") will pay a
8 total of \$400,000; and (4) defendants WestPark Capital, Inc. ("WestPark") and
9 Richard Rappaport ("Rappaport") (WestPark and Rappaport are collectively the
10 "WestPark Defendants")¹ will pay a total of \$100,000, to resolve Class Members'
11 claims. The \$3,768,333.33 total cash settlement amount shall be deposited into an
12 escrow account established by Lead Plaintiff's Counsel within ten (10) days after
13 the Court issues the order preliminarily approving the settlement and establishing
14 notice procedures ("Preliminary Approval Order"). Copies of: the Stipulation of
15 Settlement dated March 18, 2013 between Lead Plaintiff and the China Electric
16 Defendants (the "China Electric Stipulation"); the Stipulation of Settlement dated
17 March 18, 2013 between Lead Plaintiff and MaloneBailey (the "MaloneBailey
18 Stipulation"); the Stipulation of Settlement dated May 3, 2013 between Lead
19 Plaintiff and Roth; and the Stipulation of Settlement dated February 26, 2013
20 between Lead Plaintiff and the WestPark Defendants (the "WestPark
21 Stipulation")², all of which were extensively negotiated among the Parties, are
22 being filed simultaneously herewith.³

23
24 _____
25 1 The China Electric Defendants, MaloneBailey, Roth, and WestPark Defendants
26 are collectively the "Settling Defendants."

27 2 The China Electric, MaloneBailey, Roth, and WestPark Stipulations are
28 collectively the "Stipulations."

3 Unless otherwise defined herein, all capitalized terms have the same meaning as
set forth in the China Electric Stipulation.

1 Lead Plaintiff Mike McGee ("Lead Plaintiff") respectfully submits this
2 Memorandum of Points and Authorities in support of the entry, to which the
3 Settling Defendants consent⁴, of the accompanying Preliminary Approval Order,
4 which provides for:

- 5 1. Preliminary approval of the Proposed Settlement; and
- 6 2. Approval of the form and method for giving notice as provided in the
7 Stipulation, which notice describes, inter alia, the pendency of this
8 action, the terms of the Proposed Settlement, Class Members' rights
9 with respect thereto, the proposed release of claims, the proposed Plan
10 of Allocation of the Settlement's proceeds, and the procedures for
11 submitting Proofs of Claim; and
- 12 3. Setting the date for a final approval hearing ("Final Approval
13 Hearing") to consider:
 - 14 (i) whether the Proposed Settlement provided for in the Stipulation is
15 fair, reasonable and adequate to the Class and should be finally
16 approved by the Court and implemented;
 - 17 (ii) the Plan of Allocation for the distribution of the Net Settlement
18 Fund;
 - 19 (iii) the application of Lead Counsel for an award of attorneys' fees,
20 reimbursement of expenses, and award to Lead Plaintiff to be paid
21 from the Settlement Fund; and
 - 22 (iv) to hear and rule on such other matters at the Court may deem
23 appropriate.⁵

24
25 ⁴ Because the Settling Defendants consent to the relief requested in this motion,
26 unless the Court requests further briefing, the motion is now fully submitted for the
27 Court's review.

28 ⁵ Lead Counsel will submit a Fee Expense and Award Application and a motion for
approval of the Plan of Allocation separately from this motion.

1 The Proposed Settlement is an excellent result for the Class. The Proposed
2 Settlement was reached after over a year and a half of aggressive litigation, which
3 included substantial motion practice and two full-day mediation conferences.

4 The Proposed Settlement was the result of extensive arm's-length
5 negotiations conducted by experienced counsel informed through discovery of the
6 facts underlying this litigation and represents a substantial recovery of the Class's
7 estimated damages. Plaintiffs submit that, while the merits of the case are strong,
8 in light of the Settling Defendants' potential defenses, the maximum amount of
9 potentially recoverable damages, the risks of prosecuting this litigation through
10 trial, the financial condition of the Company, and the very significant recovery
11 achieved, the Proposed Settlement is not only well within the range of
12 reasonableness, it is an excellent result and is in the best interests of the Class. The
13 Proposed Settlement warrants preliminary approval by this Court so that a
14 Settlement Hearing can be scheduled to consider final approval of the Proposed
15 Settlement and notice of the Proposed Settlement and hearing can be distributed to
16 members of the Class.

17 **II. OVERVIEW OF THE LITIGATION**

18 This Action was filed as a class action on behalf of purchasers of China
19 Electric common stock between January 29, 2010 through March 30, 2011, (the
20 "Class Period"). By Order dated July 26, 2011, the Court appointed Mike McGee
21 to serve as Lead Plaintiff, and his choice of counsel The Rosen Law Firm, P.A.
22 was approved as Lead Counsel.

23 On September 2, 2011, Lead Plaintiff filed the operative Consolidated
24 Amended Complaint (the "Complaint") alleging violations of Sections 11 of the
25 Securities Act of 1933 ("Securities Act") against the Settling Defendants, Heung
26 Sang "Dexter" Fong, and Kempisty & Company CPAs, P.C. The Complaint also
27 alleged violations of Section 15 of the Securities Act against Heung Sang "Dexter"
28

1 Fong, Liang Tang, Fugui Wang, Shuiping Wang, Yue Wang, Guoqiang Zhang,
2 Haixia Zhang, Richard Rappaport, Phillip Kempisty, and MaloneBailey.

3 On March 14, 2011, defendants China Electric, MaloneBailey, WestPark,
4 Rappaport, and Roth filed motions to dismiss the Complaint. Following full
5 briefing on the motions to dismiss, the Court on March 26, 2012 denied the
6 defendants' motions to dismiss.

7 Subsequently, Lead Plaintiff and the Settling Defendants agreed to mediate
8 the dispute before Roger M. Deitz, Esq. Extensive arm's-length negotiations
9 continued following a full-day mediation conference. Lead Plaintiff subsequently
10 engaged in a second full-day mediation with the WestPark Defendants, and
11 continued litigating the case while conducting additional negotiations with Roth.
12 The negotiations led to the parties' agreeing to the Proposed Settlement.

13 Lead Plaintiff believes that the claims asserted in the litigation are strong
14 and that investigation and discovery have unearthed sufficient evidence to
15 demonstrate that the Settling Defendants are liable. Nevertheless, Plaintiffs
16 recognize and acknowledge the inherent problems of proof under, and possible
17 defenses to, the securities law violations asserted in the litigation, especially with
18 respect to proof of loss causation and the maximum amount of potentially
19 recoverable damages to the Class even if Plaintiffs prevail at trial, as well as the
20 expense and length of continued proceedings necessary to prosecute the litigation
21 against it through trial and through appeals. Lead Plaintiff also has taken into
22 account the uncertain outcome and the risk of any litigation, especially in complex
23 actions such as this litigation, as well as the difficulties and delays inherent in such
24 litigation.

25 Thus, Lead Plaintiff believes that the Proposed Settlement, which recovers
26 approximately 15.2% of the Class' estimated \$24.75 million of maximum damages
27 is an excellent result given the risks inherent in this litigation.
28

1 As set forth in the Stipulations, the Settling Defendants have denied, and
2 continue to deny, all charges of wrongdoing or liability against them arising out of
3 any of the claims alleged in the Complaint. Nonetheless, the Settling Defendants
4 have concluded that further conduct of the litigation would be uncertain, protracted
5 and expensive, and that it is desirable that the litigation be fully and finally settled
6 in the manner and upon the terms and conditions set forth in the Stipulations. The
7 Settling Defendants also have taken into account risks inherent in any litigation,
8 especially in complex cases like this litigation.

9 **III. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY**
10 **APPROVAL**

11 As a matter of public policy, settlement is a strongly favored method for
12 resolving disputes, especially in complex class actions. *See In re Syncor ERISA*
13 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) ("[T]here is a strong judicial policy that
14 favors settlements, particularly where complex class action litigation is
15 concerned"); *accord Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d
16 437, 443 (9th Cir. 1989); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615,
17 625 (9th Cir. 1982) ("[V]oluntary conciliation and settlement are the preferred
18 means of dispute resolution").

19 **A. The Standards for Preliminary Approval**

20 Fed. R. Civ. P. 23(e) requires court approval for any settlement of a class
21 action. Such approval is a two-step process. The court first determines whether a
22 proposed settlement deserves preliminary approval; then, after notice is given to
23 class members, it determines whether final approval is warranted. *Nat'l Rural*
24 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004);
25 *Manual for Complex Litigation* §13.14, at 173 (4th ed. 2004). By this motion,
26 Lead Plaintiffs request that the Court take the first step in the approval process –

1 preliminary approval of the Proposed Settlement to permit communication of
2 notice to the Class.

3 In determining whether preliminary approval is warranted, the central issue
4 before the Court is whether the Proposed Settlement is within the range of what
5 might be found fair, reasonable and adequate, so that notice of the Proposed
6 Settlement should be given to Class Members, and a hearing scheduled to consider
7 final Settlement approval. *See Manual for Complex Litigation* §21.632, at 321 (4th
8 ed. 2004); 4 Herbert Newberg & Alba Conte, *Newberg on Class Actions* §11:25
9 (4th ed. 2002); *Villegas v. J.P. Morgan Chase & Co.*, 09-CV-261-SBA, 2012 WL
10 3542187, at *6 (N.D. Cal. Aug. 14, 2012).

11 Preliminary approval does not require the Court to make a final
12 determination that the Proposed Settlement is fair, reasonable and adequate. That is
13 reserved for the hearing on final approval. At that time, interested Class Members,
14 as well as Lead Plaintiffs' and Settling Defendants' Counsel, shall be heard on the
15 matter. *See* 5 James Wm. Moore, *Moore's Federal Practice* ¶ 23.83 [1], at 23-
16 336.2 - 23-339 (3d ed. 2001). In considering a potential settlement, the Court need
17 not reach any ultimate conclusions on the issues of fact and law which underlie the
18 merits of the dispute, and need not engage in a trial on the merits. *See Acosta v.*
19 *Trans Union*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether
20 preliminary approval is appropriate, the settlement need only be potentially fair, as
21 the Court will make a final determination of its adequacy at the hearing on Final
22 Approval, after such time as any party has had a chance to object and/or opt out.").
23 Preliminary approval is merely the prerequisite to giving notice so that "the
24 proposed settlement . . . may be submitted to members of the prospective class for
25 their acceptance or rejection." *Philadelphia Hous. Auth. v. Am. Radiator &*
26 *Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970).

1 The Proposed Settlement meets the criteria for preliminary approval and is
2 well within the range of what might be approved as fair, reasonable and adequate,
3 Plaintiffs, with the Settling Defendants' consent, respectfully requests that this
4 Court enter the proposed Preliminary Approval Order.

5 **B. The Proposed Settlement Is Fair, Reasonable and Adequate**

6
7 **1. The Proposed Settlement Was Negotiated by Informed,**
8 **Experienced Counsel Who Were Aware of the Risks of the**
9 **Litigation**

10 The Proposed Settlement of \$3,768,333.33 constitutes approximately 15.2%
11 of the Class' maximum estimated damages of \$24.75 million and is therefore well
12 within the range of fairness. Counsel for Plaintiffs and the Settling Defendants
13 have extensive experience in securities litigation and reached settlement only after
14 arm's-length negotiations, and substantial mediation before a neutral mediator.

15 Lead Plaintiff and his counsel have conducted a thorough investigation of
16 the claims asserted in the Action. Plaintiffs' counsel had, among other things,
17 performed a thorough investigation of China Electric's public filings with the SEC,
18 China Electric's filings with the SAIC, media, analyst and news reports about the
19 Company, and other publicly available data. The Parties had also engaged in
20 discovery and reviewed MaloneBailey's audit workpapers, due diligence files of
21 underwriters, and communications concerning the alleged fraudulent conduct in
22 the complaint. The Parties further explored their relative legal and factual
23 positions through the exchange of mediation briefs in the context of the mediation,
24 and engaged in two full-day mediation conferences. While Lead Plaintiff believes
25 that he is likely to prevail on both the merits and on class certification, he
26 recognizes that there are risks that he will not win on the merits and that a class
27 will not be certified. Thus, the Proposed Settlement was entered into only after
28

1 Plaintiffs and their counsel had conducted a thorough analysis of the legal and
2 factual issues and the risks associated with continued litigation.

3 In sum, Plaintiffs were armed with extensive information about the
4 underlying facts and the strengths and weaknesses of the case so as to reasonably
5 assess the potential value of the case and make an intelligent appraisal of the
6 Proposed Settlement. Plaintiffs were able to evaluate the potential risks, benefits
7 and delays of trying the case and dealing with inevitable appeals, and to weigh
8 those considerations against the benefits of the Proposed Settlement, with its
9 significant cash payment. Consequently, Plaintiffs' counsel was able to negotiate
10 the Proposed Settlement and to achieve a recovery of \$3,768,333.33.

11 **2. The Proposed Settlement Resulted from Arm's-Length**
12 **Negotiations And Is Presumed to Be Fair to the Class**

13 There is an initial presumption that a proposed settlement is fair and
14 reasonable when it is the result of arm's-length negotiations. *See In re Portal*
15 *Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 51794, at *15 (N.D. Cal. June 30,
16 2007); *Linney v. Cellular Alaska P'ship*, 1997 WL 450064, at *5 (N.D. Cal. Jul.18,
17 1997) ("The involvement of experienced class action counsel and the fact that the
18 settlement agreement was reached in arm's-length negotiations, after relevant
19 discovery had taken place create a presumption that the agreement is fair"); *Ellis v.*
20 *Naval Air Rework Facility*, 87. F.R.D. 15, 18 (N.D. Cal. 1980); *see also Williams*
21 *v. Vukovich*, 720 F.2d 909, 922-23 (6th Cir. 1983) ("The court should defer to the
22 judgment of experienced counsel who has competently evaluated the strength of
23 his proofs"); *see also* 4 Herbert Newberg & Alba Conte, *Newberg on Class Actions*
24 §11:42 at 119 (4th ed. 2002).

25 Counsel for both sides have extensive experience in securities class action
26 litigation and are thoroughly familiar with the factual and legal issues involved.
27 "Great weight is accorded to the recommendation of counsel, who are most closely
28

1 acquainted with the facts of the underlying litigation." *See Gribble v. Cool*
 2 *Transports Inc.*, 2008 WL 5281665, at *9 (C.D. Cal. Dec. 15, 2008) quoting *Nat'l*
 3 *Rural Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

4 The Proposed Settlement is the product of intensive litigation and arm's-
 5 length negotiations that included two full day mediations, and numerous follow-up
 6 negotiations. The Proposed Settlement was reached only after extensive motion
 7 practice and expert damage reports were prepared and reviewed by each side, and
 8 consultation with damage, and market finance experts. Based on their familiarity
 9 with the factual and legal issues, the Parties were able to negotiate the Proposed
 10 Settlement, taking into account the costs and risks of continued litigation. There
 11 was no collusion among the Parties.⁶ The negotiations were at all times adversarial
 12 and at arm's-length, and produced a result that the Parties believe to be in their
 13 respective best interests.

14
 15 **C. The Proposed Forms and Method of Providing Notice to the Class**
 16 **Are Appropriate and Satisfy Fed. R. Civ. P. 23, the PSLRA, and Due**
 17 **Process**

18 Rule 23(e) governs notice requirements for settlements or "compromises" in
 19 class actions. The Rule provides that a class action shall not be dismissed or
 20 compromised without the approval of the court, and notice of the proposed
 21 dismissal or compromise shall be given to all members of the class in such manner
 22 as the court directs. Fed. R. Civ. P. 23(e). Here the parties propose to mail, by first

23 _____
 24 ⁶ Nor is there any preferential treatment of Plaintiff or any other Class Member.
 25 See *Louie v. Kaiser Found. Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, at
 26 *17 (S.D. Cal. Oct. 6, 2008). The proposed Plan of Allocation provides formulas
 27 for calculating the recognized claim of each Class Member, based on each such
 28 person's purchases and sales of China Electric securities on the open market during
 the Class Period and when they sold. Plaintiffs will receive a distribution from the
 Net Settlement Fund based on the same formulas that govern the recovery of every
 member of the Class.

1 class mail, postage prepaid, individual copies of the Notice of Proposed Settlement
2 (the "Notice"), together with a copy of the Proof of Claim and Release form (the
3 "Proof of Claim") to all potential Class Members at the address of each such
4 person as set forth in the records of China Electric or its transfer agent or who
5 otherwise may be identified through further reasonable effort. In addition, a
6 summary notice (the "Summary Notice") will be published electronically once on
7 the *GlobeNewswire* and in print once in the *Investor's Business Daily*, both well
8 known, widely circulated business-oriented publications. As required by Fed. R.
9 Civ. P. 23(c)(2), the notices will inform Class Members of the claims alleged in the
10 action, the terms of the Proposed Settlement and their rights as Class Members to
11 opt out or object to the settlement, or otherwise object to the Plan of Allocation
12 and/or the proposed attorneys' fees and expenses. *See Churchill Village, L.L.C. v.*
13 *General Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is satisfactory if it
14 'generally describes the terms of the settlement in sufficient detail to alert those
15 with adverse viewpoints to investigate and to come forward and be heard"),
16 *quoting Mendoza v. Tucson School Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir.
17 1980).

18 The federal judicial center has published a model notices. Federal Judicial
19 Center, Model Full Notice (go to www.fjc.gov, select "Securities class action
20 certification and settlement: full notice"). The attached model notice closely
21 conforms to the Federal Judicial Center's model notice. (Compare *id.* with Notice.)

22 In addition, the Notice satisfies the requirements of Rule 23 by setting forth
23 in plain, easily understandable language:

- 24 – the nature of the action, *see* Notice, Questions 2, 4 ("What is this lawsuit
25 about?" "Why is there a settlement?");
26 – the Class definition, *see* Notice, (p. 1) and Question 5 ("How do I know if
27 I am part of the Class settlement?");

28

1 – a description of the claims at issue and the defenses to those claims, *see*
2 Notice, (pp. 2-3) and Question 2 ("What is this lawsuit about?");

3 – the ability of Class Members to enter an appearance through Counsel, *see*
4 Notice, Questions 14-16 ("How do I tell the Court that I do not like the
5 Settlement?", "What is the difference between objecting and requesting
6 exclusion?", "When and where will the Court decide whether to approve the
7 Settlement?")

8 – the Class Member's ability to be excluded and the process for exclusion
9 from the Class, *see* Notice, Questions 10-11 ("How do I get out of the
10 Settlement?", "If I do not exclude myself, can I sue the Defendants for the same
11 thing later?"). The Notice also provides clear information about the time, date, and
12 location of the Settlement Hearing and the process for submitting an objection to
13 the Settlement and other relief to be requested by Plaintiffs and Plaintiffs' Counsel.
14 Notice, Questions 14-18.

15 The Notice also meets the requirements of the PSLRA, 15 U.S.C. §78u-
16 4(a)(7). The Notice provides:

17 – A cover page summarizing the information contained in the Notice. 15
18 U.S.C. §78u-4(a)(7); *see* Notice, cover page;

19 – A statement of class member recovery, estimating a recovery of \$0.15 per
20 damaged share before deduction of Court-approved fees and expenses and costs of
21 notice and claims administration and directing options traders to review the Plan of
22 Allocation for their personal recovery; the Notice further explains that under the
23 Plan of Allocation, the actual amount recovered will vary greatly across the Class,
24 15 U.S.C. §78u-4(a)(7)(A); *see* Notice, Question 7 ("What does the settlement
25 provide?")

26 – A statement of the potential outcome of the case including a statement
27 concerning the issue or issues on which the Parties disagree. 15 U.S.C. §78u-
28

1 4(a)(7)(B); see Notice, Question 7.b, ("What can you expect to receive under the
2 proposed Settlement?"), Questions 2, 4 ("What is this case about?", "Why is there a
3 settlement?")

4 – A statement of attorneys' fees or costs sought, including a summary of this
5 information on the cover page. 15 U.S.C. §78u-4(a)(7)(C); see Notice, Page 2, fifth
6 paragraph and Question 13 ("How will the lawyers be paid?");

7 – Information on how to contact the Claims Administrator and/or Class
8 Counsel, including names, addresses, telephone numbers, and websites. 15 U.S.C.
9 §78u-4(a)(7)(D); see Notice, Page 3 and Question 14 ("How do I tell the Court that
10 I do not like the Settlement?"); and

11 – A discussion of the reasons for Proposed Settlement, including the factors
12 Lead Plaintiff and Defendants considered in reaching the Proposed Settlement. 15
13 U.S.C. §78u-4(a)(7)(E); see Notice, Question 4 ("Why is there a settlement?").

14 Thus, the proposed Notice to be mailed to the Class provides all of the
15 information required by the PSLRA. Courts have found that notice substantially
16 equivalent to that provided for in the instant Proposed Settlement constituted the
17 "best notice practicable under the circumstances," satisfying the requirements of
18 Fed. R. Civ. P. 23(c)(2)(B). *In re Am. Honda Motor Co., Inc.*, MDL No. 06-1736,
19 2009 WL 1204495, at *4 (C.D. Cal. Apr. 17, 2009); *Diamond Chem. Co. v. Akzo*
20 *Nobel Chems. B.V.*, 205 F.R.D. 33, 35-36 (D.D.C. 2001); *see generally Manual for*
21 *Complex Litigation* §21.633, at 321-22. Trial courts are given substantial latitude
22 to determine fair and expedient procedures. *See, e.g., Petrovic v. AMOCO Oil Co.*,
23 200 F.3d 1140, 1153 (8th Cir. 1999); *Gottlieb v. Wiles*, 11 F.3d 1004, 1013 (10th
24 Cir. 1993) (finding the content and form of notices are left to the court's
25 discretion).

26 Further, the generally accepted method to provide notice to class members is
27 by direct mail and publication in newspapers. *Am. Honda*, 2009 WL 1204495, at
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1 *4 (approving of such notice plan); *see also Gordon v. Hunt*, 117 F.R.D. 58, 63
2 (S.D.N.Y. 1987) (combination of mailed and published notice is "long-accepted
3 norm in large class actions"). This proposed plan of notice complies with the
4 accepted norm.

5 The parties have carefully drafted the notice provisions of the Proposed
6 Settlement to provide the best notice practicable to the Class and respectfully
7 submit that the proposed notices, the Notice, and the Summary Notice, which are
8 annexed as Exhibits C and B to the Stipulations, are adequate.

9 Lastly, as part of the preliminary approval of the Proposed Settlement,
10 Plaintiffs also respectfully request the appointment of Strategic Claims Services, an
11 experienced and diligent administrator, as Claims Administrator. As Claims
12 Administrator, Strategic Claims Services will be responsible for, among other
13 things, mailing the notices to the Class, reviewing claims from Class Members,
14 claims administration, and compiling a distribution schedule to Class Members.

15 This proposed notice procedure takes into account the identity and location
16 of the Class Members and specifies the most practicable method of providing
17 notice to them. The traditional methods of providing notice proposed in this case
18 are precisely those recognized as reasonably calculated to notify class members of
19 a proposed settlement. *See Manual for Complex Litigation* §21.312, at 294.

20 **IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED**

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

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

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

13
14 the parties move the court for simultaneous class certification and
15 approval of the settlement. Typically, the court then orders a
16 combined notice of the certification, opt-out rights, and the proposed
17 settlement and combines the fairness hearing on the proposed
18 settlement with a hearing on class certification.

19 *5 Moore's Federal Practice*, § 23.161 [2][a] at 23-552 (3d ed. 2007).

20 The instant action meets each of the criteria for class certification under
21 Rule 23 and, accordingly, the Class should be certified for purposes of the
22 Settlement. Certification as a class action pursuant to Rule 23 requires that the
23 action meet each of the requirements of Rule 23(a). The first criterion is that the
24 class be so numerous that joinder of all members is impracticable. This action

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26 ⁷ Rule 23(b)(3)(D) inquiry into whether there are likely to be difficulties in
27 managing a class action through trial is relaxed because the proposal is that, if the
28 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).

1 clearly meets that criterion. CELM shares were listed on the NASDAQ, a
2 national exchange. There are, therefore, potentially thousands of Class Members
3 and joinder of all of them would be impracticable.

4 The second criterion under Rule 23(a) is that there are questions of law or
5 fact common to the class. This criterion is also met. Among the common
6 questions are whether the provisions of the Securities Act were violated by
7 Defendants' acts as alleged in the action; whether documents, including filings
8 made to the SEC, press releases, and public statements issued by Defendants to
9 the investing public failed to accurately reflect CELM's true business condition,
10 and whether the price of CELM securities was artificially inflated or distorted as a
11 result of the misstatements and nondisclosures. Thus, there are numerous
12 common issues of law and fact and, as will be discussed in connection with Rule
13 23(b), they predominate over other questions.

14 The third criterion -- typicality -- requires that "the claims or defenses of
15 the representative parties [be] typical of the claims and defenses of the class." Fed.
16 R. Civ. Proc. 23(a)(3). Lead Plaintiff alleges that Defendants' misrepresentations
17 resulted in artificial inflation of the price of CELM securities that plaintiffs
18 purchased and that upon disclosure of the alleged misrepresentations, the value of
19 the securities purchased by plaintiffs dropped in value. The other members of the
20 Class were affected in the same ways.

21 The fourth criterion -- adequacy-- is met because Lead Plaintiff and his
22 counsel have protected and will protect the interests of the Class. Lead Plaintiff
23 and counsel have conducted intensive investigations order to unearth the truth and
24 properly plead the claims; use of the fruits of their investigations in drafting an
25 amended complaint and briefing motions to dismiss; and negotiation of the
26 advantageous Settlement presented for approval on behalf of the Class.

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

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

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

20 The Settlement Class consists of: all persons other than Defendants who
21 purchased the common stock of CELM between January 29, 2010 and March 30,
22 2011 inclusive. Excluded from the Settlement Class are: (1) Defendants, and the
23 members of their immediate families and Defendants' legal representatives, heirs,
24 successors and assigns, any entity in which any Defendant has or had a controlling
25 interest, and China Electric's, MaloneBailey's, Roth's, and WestPark's
26 predecessors; (2) Present and former officers and/or directors of China Electric,
27 MaloneBailey, Roth, and WestPark; (3) All such excluded persons' immediate
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1 families, legal representatives, heirs, predecessors, successors, and assigns, and any
2 entity in which any excluded person has or had a controlling interest; (4) Any
3 persons who have separately filed actions against one or more of Defendants,
4 based in whole or in part on any claim arising out of or relating to any of the
5 alleged acts, omissions, misrepresentations, facts, events, matters, transactions, or
6 occurrences referred to in the Litigation or otherwise alleged, asserted, or
7 contended in the Litigation; and (5) Those persons who file valid and timely
8 requests for exclusion in accordance with this Order.

9 **V. PROPOSED SETTLEMENT SCHEDULE**

10 The Court's entry of the proposed Preliminary Approval Order would,
11 among other things, (i) certify, for settlement purposes, this action as a class
12 action; and (ii) direct notice of the Proposed Settlement to all members of the
13 Class. As such, the Preliminary Approval Order sets a proposed schedule for
14 mailing and publication of the Notice and Summary Notice, and deadlines for
15 submitting claims and/or objecting to the Proposed Settlement or opting out of the
16 Class.

17 Plaintiffs recommend the schedule set forth below. The Settling Defendants
18 agree to the proposed schedule setting the Settlement Hearing to be held at least
19 100 days after the granting of the Preliminary Approval Order. The Parties also
20 agree to the schedule for the other dates, as provided for in the proposed
21 Preliminary Approval Order, which was negotiated among the Parties.

22 The parties propose the following schedule for notice, final approval hearing
23 and related dates:

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<p>1 Notice of Proposed Settlement and Copy 2 of Proof of Claim Mailed to Class 3 Members (Preliminary Approval Order, 4 ¶11)</p>	<p>28 days after entry of the order preliminarily approving the settlement</p>
<p>5 Summary Notice published (Preliminary 6 Approval Order, ¶ 16)</p>	<p>10 days after entry of the order preliminarily approving the settlement</p>
<p>8 Final Approval Hearing (Preliminary 9 Approval Order, ¶ 5)</p>	<p>To be determined by the court , approximately 100 days after entry of the order preliminarily approving the settlement</p>
<p>12 Deadline for Plaintiffs to file papers in 13 support of final approval and application 14 of Lead Counsel for attorneys' fees, 15 reimbursement of expenses, and an 16 award to Lead Plaintiff, and application 17 for approval of the Plan of Allocation 18 (Preliminary Approval Order, ¶ 25)</p>	<p>At least 35 days before the Final Approval hearing</p>
<p>19 Deadline for Objections to the 20 Settlement, Plan of Allocation, 21 Attorneys' Fees and Lead Plaintiff Award 22 (Preliminary Approval Order, ¶ 22)</p>	<p>20 days prior to the Final Approval Hearing</p>
<p>23 Deadline for requesting exclusion from 24 the Settlement, (Preliminary Approval 25 Order, ¶ 20)</p>	<p>30 calendar days prior to the Final Approval Hearing</p>
<p>26 Deadline for submitting Proof of Claim 27 forms (Preliminary Approval Order, ¶</p>	<p>No later than 75 days from the date of this Order, unless otherwise ordered</p>

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1 18(a))

by the Court

2 **VI. CONCLUSION**

3 Plaintiffs respectfully request that the Court enter the Preliminary Approval
4 Order, which the Settling Defendants have consented to, and direct that Notice be
5 distributed to the members of the Class.

6
7 Dated: May 3, 2013

Respectfully submitted,

8 By: /s/ Laurence Rosen

9 Laurence M. Rosen, Esq. (SBN 219683)

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16 *[Proposed]Class*

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CERTIFICATE OF SERVICE

I, Laurence M. Rosen, hereby declare under penalty of perjury as follows:

I am the managing attorney of 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 May 3, 2013, I electronically filed the following **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ENTRY OF ORDER PRELIMINARILY APPROVING SETTLEMENT AND ESTABLISHING NOTICE PROCEDURES** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on May 3, 2013

/s/ Laurence Rosen

Laurence M. Rosen