**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

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| SONNY ST. JOHN, Individually and on Behalf of All Others Similarly Situated,<br><br>Plaintiff,<br><br>v.<br><br>CLOOPEN GROUP HOLDING LIMITED, CHANGXUN SUN, YIPENG LI, KUI ZHOU, QINGSHENG ZHENG, XIAODONG LIANG, ZI YANG, MING LIAO, FENG ZHU, LOK YAN HUI, JIANHONG ZHOU, CHING CHIU, COGENCY GLOBAL INC., COLLEEN A. DEVRIES, GOLDMAN SACHS (ASIA) L.L.C., CITIGROUP GLOBAL MARKETS INC., CHINA INTERNATIONAL CAPITAL CORPORATION HONG KONG SECURITIES LIMITED, TIGER BROKERS (NZ) LIMITED, and FUTU, INC.,<br><br>Defendants. | Index No. 652617/2021<br><br>Part 53: Hon. Andrew Borrok<br><br>**ORAL ARGUMENT REQUESTED** |

# MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Plaintiffs (consisting of State Class Representative Sonny St. John, together with Federal Plaintiff Guozhang Wang in the related Federal Action[1]) respectfully submit this brief in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation. The proposed Settlement's terms are set forth in the Stipulation of Settlement (the "Stipulation") filed on August 16, 2023 (NYSCEF No. 107).[2]

## INTRODUCTION

After more than two years of litigation, the Parties in this State Action and in the substantively similar action brought on behalf of the same Class in the related Federal Action (collectively, the "Actions") have agreed to settle, on a global basis, all claims asserted against all Defendants in both Actions for $12,000,000 in cash.[3] The Plaintiffs in both Actions allege that Defendants violated the federal securities laws by making misstatements and omissions of material fact in the Offering Materials for Cloopen Group Holding Limited's ("Cloopen") February 9, 2019 initial public offering of Cloopen American Depository Shares ("ADS").

The proposed $12 million Settlement was reached only after vigorously contested motions to dismiss practice in both Actions, approximately nine months of fact discovery and the certification of a class in the State Action, and protracted arm's-length settlement negotiations

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[1] The Federal Action refers to the substantively similar action brought in the United States District Court for the Southern District of New York on behalf of a substantially similar Class of investors, captioned *Dong v. Cloopen Group Holding Limited, et al.*, No 1:21-cv-10610-JGK-RWL (S.D.N.Y.).

[2] Unless otherwise indicated herein: (1) all capitalized terms have the meanings set forth in the Stipulation; and (2) in quoted material, unless otherwise indicated, all citations and internal quotation marks are omitted and all emphasis is added.

[3] After being advised of the Settlement, the Federal Court dismissed the Federal Action with prejudice. Order entered June 6, 2023 (ECF No. 135). Unless otherwise indicated or referenced to the above-captioned action (*i.e.*, "NYSCEF No."), all ECF No. references are to the Federal Action, *Dong v. Cloopen Grp. Holding Ltd.*, No. 1:21-cv-10610-JGK-RWL (S.D.N.Y.).

overseen by a highly experienced mediator, Robert Meyer, Esq., of JAMS (the "Mediator"). Plaintiffs and their counsel respectfully submit that this Settlement represents an excellent recovery in the face of very substantial litigation risk and collectability issues. Moreover, although individual "Notice Packets" have been mailed to over 4,900 potential Settlement Class Members or their nominees, to date, no objections or "opt-out" requests have been received. *See* accompanying Joint Affirmation of Max R. Schwartz and Michael Dell'Angelo ("Joint Aff."), ¶8; Affidavit of Eric Schachter Regarding: (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Schachter Aff."), ¶¶5, 16. For these and the other reasons detailed herein, the Settlement easily meets the CPLR's standards for approval.

Additionally, the proposed Plan of Allocation ("POA"), designed by Plaintiffs' damages expert, provides for a customary *pro rata* distribution of the Net Settlement proceeds to Settlement Class Members and should also be approved.

## FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs respectfully refer the Court to the accompanying Joint Affirmation for a detailed discussion of the history of the Actions, the extensive work performed by Plaintiffs' Counsel, the risks of continued litigation, and the negotiations under the independent Mediator's auspices that led to the Settlement. Joint Aff., ¶¶13-57.

## ARGUMENT

### I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND SHOULD BE APPROVED

New York courts strongly favor settlements as a matter of public policy. *IDT Corp. v. Tyco Grp., S.A.R.L.*, 13 N.Y.3d 209, 213 (2009) ("stipulations of settlement are judicially favored and may not be lightly set aside"). "Strong policy considerations favor" settlements because "[a]

negotiated compromise of a dispute avoids potentially costly, time-consuming litigation and preserves scarce judicial resources; courts could not function if every dispute devolved into a lawsuit." *Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375, 383 (1993); *accord Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (citing "strong judicial policy" favoring settlements).

When considering whether to finally approve a class action settlement, New York courts focus on "the fairness of the settlement, its adequacy, its reasonableness, and the best interests of the class members." *Hosue v. Calypso St. Barth, Inc.*, No. 160400/2015, 2017 WL 4011213, at *2 (Sup. Ct., N.Y. Cnty. Sept. 12, 2017). Specifically, New York courts consider: (i) the likelihood that plaintiffs will succeed on the merits; (ii) the extent of support from the parties; (iii) counsel's judgment; (iv) the presence of good-faith bargaining; and (v) the complexity of the legal and factual issues. *See Fernandez v. Legends Hosp., LLC*, No. 152208/2014, 2015 WL 3932897, at *2 (Sup. Ct., N.Y. Cnty. June 22, 2015). In addition, in analyzing the likelihood of success on the merits, courts have noted that finding "adequacy" involves "balancing the value of [a] settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 73 (App. Div. 2d Dep't 2006). These factors, commonly referred to as the "*Colt* factors" (after *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154 (App. Div. 1st Dep't 1990)), all favor approval here.

### A. Colt Factor One: Likelihood of Success on the Merits and Amount Recovered in Light of Litigation Risks

When assessing a proposed class action settlement, courts first consider the plaintiff's likelihood of ultimate success on the merits. *Gordon v. Verizon Commc'ns*, 148 A.D.3d 146, 162 (App. Div. 1st Dep't 2017); *Colt*, 155 A.D.2d at 160. As a general matter, securities actions are "notoriously complex and difficult to prove." *In re Bayer AG Sec. Litig.*, No. 03 Civ. 1546, 2008

WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008); *see also In re Dozier Fin., Inc.*, No. 4:18-cv-1888, 2018 WL 4599860, at *3 (D.S.C. Sept. 6, 2018), *report adopted*, 2019 WL 1075072 (D.S.C. Mar. 7, 2019) (collecting cases finding that "securities [cases] [. . .] are neither straightforward nor routine."). This case was no exception.

Although Defendants' motions to dismiss were denied in both Actions (NYSCEF No. 74; ECF No. 113), Plaintiffs recognize that proving the necessary facts to prevail on the merits would be challenging, and that surviving summary judgment was not guaranteed. The risks of litigation here were plainly substantial, and some of the challenges that Plaintiffs faced in establishing liability on the claims that they propose to settle were made clear early on. For example, Plaintiffs expected Cloopen to continue to advance the argument that it had no duty to disclose its declining Net Customer Retention Rate during Q4 2020 financials because it contended that, at the time the Prospectus was filed, this was "interim data" under Section 11 or Item 303. Plaintiffs expected Cloopen would also continue to advance arguments that the Registration Statement contained detailed and specific warnings, including 60 pages of risk factors, that warned about competitive and financial risks and disclosed the trends of increasing losses, increasing accounts receivable, and decreasing Retention Rates that were allegedly omitted. Further, Defendants would continue to contend that the Registration Statement provided explicit and extensive disclosures about the Series F Warrants, and contrary to Plaintiffs' allegations, disclosed that the warrant liabilities were subject to remeasurement at each reporting period. While Plaintiffs disputed these arguments, Plaintiffs recognize that each of them created material uncertainty regarding the ultimate outcome of the Actions at summary judgment or trial, where legal arguments are based on factual sufficiency, in contrast to the more liberal, plaintiff-friendly standards applied at the pleadings stage. Joint Aff., ¶¶60-74.

Likewise, in the Federal Action, Federal Plaintiff brought claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5, as well as Section 20(a) of the Exchange Act, 15 U.S.C. §78t(a). Those claims require proof of the element of scienter. "The scienter needed to sustain a Section 10(b) claim is intent to deceive, manipulate, or defraud, or at least knowing misconduct." ECF No. 113 at 38 (internal quotations omitted). While the court in the Federal Action held that Federal Plaintiff sufficiently pled scienter (*id.* at 50), the burden of pleading scienter is less exacting than the burden of proving it. *See Lea v. TAL Educ. Grp.*, 837 F. App'x 20, 23 (2d Cir. 2020) (quoting *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 328-29 (2007)) ("To allege a strong inference of scienter, a plaintiff 'must plead facts rendering an inference of scienter ***at least as likely as*** any plausible opposing inference,' unlike at trial where a plaintiff must prove scienter by a preponderance of the evidence, i.e., 'that it is ***more likely*** than not that the defendant acted with scienter.'"); *Patel v. L-3 Commc'ns Holdings Inc.*, No. 14-CV-6038-VEC, 2016 WL 1629325, at *15 (S.D.N.Y. Apr. 21, 2016) ("Although Lead Plaintiffs have pled a strong inference of corporate scienter for the purpose of surviving Defendants' Motion to Dismiss, to survive summary judgment or to win at trial, Lead Plaintiffs will need to *prove* that the Aerospace Systems CFO acted with the requisite scienter ***at the time of each of the alleged misstatements*** in order for L-3 to be held liable for the alleged Section 10(b) violation.") (emphasis in original).

Plaintiffs also faced an uphill battle in obtaining proof of their claims because most of the evidence in this case is located in the People's Republic of China. Plaintiffs' ability to obtain deposition discovery was uncertain, as virtually all relevant witnesses are located there, and "China has indicated that taking depositions, whether voluntary or compelled, and obtaining other

evidence in China for use in foreign courts may, as a general matter, only be accomplished through requests to its Central Authority under the Hague Evidence Convention" – an extensive, multi-year process during which evidence will disperse and witnesses' memories will fade. U.S. Dep't of State, Bureau of Consular Affairs, *Taking Voluntary Depositions of Willing Witnesses*, China Judicial Assistance Information (2019)[4]; *see also Glam & Glitz Nail Design, Inc. v. iGel Beauty, LLC*, No. SA CV 20-00088, 2022 WL 17078947, at *3 (C.D. Cal. Sept. 30, 2022). Further, while Cloopen had begun to collect and review documents in response to Plaintiffs' discovery demands, it took the position that it was unable to produce any documents while Chinese regulators considered whether Cloopen's documents or data, stored within mainland China, could be produced in litigation in the United States. In sum, the risk of being unable to collect relevant evidence was far greater here than in cases where all relevant witnesses and documents are located in the United States or in countries that are more willing to assist foreign litigants than China. In addition, the bulk of the documents located in China, if they were produced at all, were likely to be produced in Chinese, requiring translation and creating an additional cost and layer of complexity not present in the ordinary securities class action. Joint Aff., ¶¶60-74.

Even if Plaintiffs prevailed on liability, Defendants had colorable "negative loss causation" arguments – *i.e.*, that some of the Class's alleged damages resulted from factors other than belated disclosures that the Offering Documents contained the alleged material misstatements and omissions. *See Fed. Hous. Fin. Agency for Fed. Nat'l Mortg. Ass'n v. Nomura Holding Am., Inc.*, 873 F.3d 85, 99 (2d Cir. 2017). Defendants raised negative causation defenses ranging from macroeconomic factors that they say caused the drop in Cloopen's ADS, to factors unrelated to

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[4] Available at https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html (last visited Dec. 15, 2023).

the undisclosed information that purportedly contributed to those drops, to the timing of when the allegedly undisclosed information was released relative to the drop in the price of Cloopen's ADS. Joint Aff., ¶¶67-69. Such causation issues all too frequently come down to inherently unpredictable "battles of the experts," and an adverse result could have easily gutted the value of Plaintiffs' otherwise meritorious claims. *See, e.g.*, *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) ("In [a] 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited [and] which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors[. . . .]") (internal quotation marks in original); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 161-62 (S.D.N.Y. 2011) (approving settlement where litigation risk included credible causation defenses).

Further, in the Federal Action, Defendants have strenuously argued, and would continue to argue, that even if Lead Plaintiff could establish a material misstatement or omission, he could not prove the requisite mental state of scienter – *i.e.*, that Defendants misled investors intentionally or with extreme recklessness. *See also* Joint Aff., ¶62. The scienter requirement is regarded as "the most difficult and controversial aspect of a securities fraud claim." *Fishoff v. Coty Inc.*, No. 09 Civ. 628, 2010 WL 305358, at *2 (S.D.N.Y. Jan. 25, 2010), *aff'd* 634 F.3d 647 (2d Cir. 2011); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 579 (S.D.N.Y. 2008) ("[p]roving a defendant's state of mind is hard in any circumstances.").

Likewise, if the Federal Action had proceeded, Federal Plaintiff would also have encountered significant loss causation and damages defenses relating to the Exchange Act claims at the summary judgment phase and trial. Pursuant to *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345-47 (2005), Federal Plaintiff would need to show that it was the disclosure of the alleged

securities violations that caused investors' losses, as opposed to other unrelated matters. *See also* Joint Aff., ¶68. Establishing loss causation is a "complicated and uncertain process, typically involving conflicting expert opinion[s]," *In re Glob. Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004), and Defendants have strongly contested loss causation.

Even if Plaintiffs survived summary judgment and prevailed across the board on liability, causation, and damages issues at trial, there would still be no assurance that a favorable jury verdict would survive Defendants' inevitable post-trial motions and appeals. *See, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 730 (11th Cir. 2012) (overturning jury verdict for plaintiffs).

Plaintiffs also faced the risk of being unable to collect on a judgment against Cloopen because its financial status and ability to withstand a greater judgment than the recovery here is, at a minimum, questionable, if not in serious doubt. On May 17, 2023, the New York Stock Exchange ***suspended*** the trading of Cloopen ADS for the Company's failure to file annual reports with the U.S. Securities and Exchange Commission ("SEC") for years ended December 31, 2021, and December 31, 2022. Cloopen ADSs stock are currently trading at $0.00010 (as of December 18, 2023) and have been trading under $1 per ADS since May 31, 2023. Joint Aff., ¶70. Further, because Cloopen is a China-based company and appears to have no significant assets in the United States (or elsewhere outside of China), and because Cloopen and its officers had no insurance policy applicable to the claims here, collectability issues were a major additional risk. Joint Aff., ¶71. In addition, the United States and China have no treaties providing for enforcement of judgments rendered in each other's courts. Indeed, courts in China are seldom known to recognize and enforce United States civil court judgments. Joint Aff., ¶72.

Although collectability is not an issue as to the Underwriter Defendants, those defendants (unlike Cloopen) would have been able to assert a "due diligence" defense by arguing that they reasonably relied on Cloopen's assurances with regard to any allegedly misstated or omitted matters. A due diligence defense is difficult to overcome. *See Fed. Hous. Fin. Agency*, 873 F.3d at 125 (noting that "we are aware of only two other federal decisions [. . .] holding on summary judgment that a Section 12 defendant cannot pursue [a due diligence] defense"). In addition, the Underwriter Defendants here, like in similar cases, claim to be indemnified by the security issuer, Cloopen. Joint Aff., ¶73.

While Plaintiffs maintain that the Settlement Class's claims are meritorious, Defendants have steadfastly maintained throughout the case that the claims are meritless. In addition to the other numerous hurdles to establishing Defendants' liability and damages, the Actions lack several of the hallmarks of a typical, successful securities action. For example, there was no restatement of financial results prior to the settlement, no SEC investigation, and no criminal indictment on which Plaintiffs could "piggy-back." Indeed, the Actions presented several unusual risk factors due to the difficulties of taking depositions and conducting document discovery in China, as detailed above, and of enforcing a favorable judgment in China even if the evidence to establish liability against Cloopen could be obtained. Joint Aff., ¶¶60-74.

In assessing the adequacy of a settlement, courts also weigh the recovery "against the present value of the anticipated recovery following a trial[,] [as] discounted for the inherent risks of litigation[.]" *Klein*, 28 A.D.3d at 73. Here, Plaintiffs' expert estimated that the ***maximum theoretical damages*** under the statute were about $170 million, but that the ***realistic maximum damages***, given the relevant circumstances, were approximately $135 million. Importantly, this latter figure, like any maximum damage estimate, does not take into account the bulk of

Defendants' counterarguments. Joint Aff., ¶76. Indeed, as referenced above, Defendants have argued and will likely continue to assert that their negative causation defenses would eliminate most of the realistic damages. *Id.*

If one compares the proposed Settlement – $12 million – to Plaintiffs' realistic maximum damages of $135 million, the Settlement would result in the recovery of roughly 9% of investor losses (and a recovery of about 7% of maximum theoretical damages) – both percentages representing a decidedly superior recovery compared to most securities settlements. *Id.*, ¶77. For example, NERA Economic Consulting recently reported that, between 2012 and 2022, the median securities class action settlement equated to approximately 2.9% of maximum damages in cases involving estimated investor losses between $100 million and $199 million.[5] Likewise, even putting percentages aside, the Settlement value here ($12 million) compares favorably to the median securities class action settlement in the Second Circuit between 2013 and 2023 – which is $9 million.[6] Moreover, the foregoing maximum damages estimates assume that Plaintiffs would run the table on all damages questions. Defendants, however, maintain that the maximum recoverable damages is far smaller than $135 million, which means that the percentage recovery here is, under Defendants' estimate, far greater than 9%. Joint Aff., ¶77. Accordingly, the published data regarding securities class action settlements further confirms that the Settlement represents an excellent result when compared to other securities settlements from the last decade.

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[5] Janeen McIntosh, et al., *Recent Trends In Securities Class Action Litigation: 2022 Full-Year Review*, NERA ECON. CONSULTING, 17 (Jan. 25, 2022), https://www.nera.com/content/dam/nera/publications/2023/PUB_2022_Full_Year_Trends.pdf.

[6] Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2022 Review and Analysis*, CORNERSTONE RESEARCH, 19 (2022), https://www.cornerstone.com/wp-content/uploads/2023/03/Securities-Class-Action-Settlements-2022-Review-and-Analysis.pdf.

### B. *Colt* Factors Two Through Four: Extent of Support from the Parties, Judgment of Counsel, and Presence of Good-Faith Bargaining

*Colt* factors two through four also support approval. First, the Settlement has the support of all Parties, as evidenced by the Stipulation (NYSCEF No. 107) and Plaintiffs' affirmations in support of the Settlement.[7] Moreover, in this context, courts also consider the reaction of absent class members, and minimal objections and exclusions are indicative of a class's approval of a proposed settlement. *See, e.g.*, *Pressner v. MortgageIT Holdings, Inc.*, No. 602472/2006, 2007 WL 1794935, at *2 (Sup. Ct. N.Y. Cnty. May 29, 2007) (approving settlement where there were no objections to proposed settlement); *Gordon*, 148 A.D.3d at 157 (holding settlement with three objectors and 250 opt outs had "the overwhelming support" of the class). Here, although neither the Court-established deadline for filing objections of January 2, 2024 or the deadline for filing exclusions of December 26, 2023 has yet passed, no objections or exclusions to any aspect of the Settlement have been submitted to date. Joint Aff., ¶59; Schachter Aff., ¶¶5, 16. Should any objections or exclusions be filed after the date of this brief, Plaintiffs will address them on reply.

Second, Plaintiffs' Class Counsel strongly believe that the proposed Settlement is fair, reasonable, and adequate, particularly given the risks, costs, and uncertainties of continued litigation and the significant collectability issues present here. Joint Aff., ¶100; *see also supra* §I.A. New York courts give counsel's views regarding settlement considerable weight, *see MortgageIT*, 2007 WL 1794935, at *2, and it is respectfully submitted that the combined experience and expertise of the Plaintiffs' Class Counsel firms here make this factor weigh strongly in favor of approval.

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[7] *See* the accompanying affidavit/declaration of Plaintiffs Sonny St. John ("St. John Aff.") (¶1) and Guozhang Wang ("Wang Decl.") (¶1).

Third, the Settlement is the product of protracted, good-faith negotiations overseen by a mediator – Robert Meyer – with extensive experience in mediating securities and other complex class actions. *See* Joint Aff., ¶71. The facts here plainly reflect an arm's-length mediation process. The parties did not reach a quick settlement at the opening, day-long mediation session held in February 2023. Rather, it was not until May 2023 after extended mediation and negotiation that the Mediator made his independent "mediator's proposal" of $12 million, which the Parties ultimately accepted. *Id.*, ¶53. Nor can it be seriously doubted that all Parties were at all times represented by highly experienced counsel. *Id.*, ¶¶6, 97.

Additionally, while negotiations continued on a separate track, the Parties continued to press forward in litigation, including by pursuing discovery and, in the State Action, also winning class certification and reviewing documents that certain Defendants produced. *Id.*, ¶¶27-40. That the Settlement was reached only after document discovery had commenced in the State Action also further supports approval. *Fiala v. Metro. Life Ins. Co., Inc.*, 899 N.Y.S.2d 531, 538 (Sup. Ct., N.Y. Cnty. 2010). Thus, the "good-faith negotiation factor" strongly supports approval of the Settlement as well. *See Gordon*, 148 A.D.3d at 157 (courts will presume that negotiations were conducted at arm's-length and in good faith absent contrary evidence).

**C. *Colt* Factor Five: Complexity and Nature of Case**

Finally, courts look to the complexity and nature of the case (which is closely related to Plaintiffs' likelihood of success). *See Saska v. Metro. Museum of Art*, 54 N.Y.S.3d 566, 570 (Sup. Ct., N.Y. Cnty. 2017) (evaluating the first and fifth *Colt* factors together in granting final approval); *City Trading Fund v. Nye*, 72 N.Y.S.3d 371, 393 (Sup. Ct., N.Y. Cnty. 2018) (same).

As noted above, courts have recognized the "notorious complexity" of securities class action cases. The instant case, for example, involved: Cloopen's performance in the rapidly developing cloud-based computing industry in China during the global financial upheaval of the

Covid-19 pandemic; the regulatory risks posed to Cloopen's business model by Chinese authorities; and how such diverse factors may have impacted the price of Cloopen's ADS – subjects which would all have likely required specialized testimony from industry experts and damages analysts. Joint Aff., ¶75. The numerous factual and legal complexities of both Actions – as compounded by the procedural complications inherent in pursuing claims against a Chinese company – presented undeniable challenges and risks for Plaintiffs. *Id.*, ¶¶71-73.

By contrast, the Settlement will result in the certainty of an immediate, valuable $12 million "bird in the hand," thereby avoiding further costly litigation and eliminating the very real risk that even years of additional litigation might produce a lesser recovery – or no recovery at all. Accordingly, this factor, like the others discussed above, militates in favor of approval.

## II. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE

The customary standard for approving a plan of allocation is the same as for a settlement, namely it must be fair and adequate. A proposed "allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014).

The Plan of Allocation (as set forth at pages 9-11 of the Notice, attached as Exhibit A to the Schachter Aff.) (POA) was developed by Plaintiffs' Class Counsel in consultation with Plaintiff's damages expert – a Ph.D.-holding financial economist and chartered financial analyst ("C.F.A.") with over 25 years of experience in advising on (among other things) plan of allocation issues in securities cases. The objective of the POA is to equitably distribute the Net Settlement Fund among Authorized Claimants. In short, the POA proposes that the Net Settlement Fund be allocated to Authorized Claimants (*i.e.*, those who submit a completed Claim Form to the Claims Administrator that is ultimately approved for a payment) on a *pro rata* basis based on the relative

size of their Recognized Claims. In turn, their Recognized Claims are based on the time and prices at which Claimants purchased and sold Cloopen ADS, as well as impacts on those prices at those different times. Joint Aff., ¶82. In Plaintiffs' Class Counsel's experience, this type of allocation formula (as customized to the facts of this case by Plaintiffs' experts) is fully consistent with customary practice in similar securities class actions. *Id.*

The Net Settlement Fund will be distributed to Class Members who submit eligible claims; no settlement funds will revert back to Defendants. *See* Stipulation, ¶3.5. To reduce administrative costs, the Plan provides that "Recognized Claims" of less than $10 will not be paid. If any funds remain after an initial distribution to Authorized Claimants, as a result of uncashed or returned checks or other reasons, subsequent cost-effective distributions will be conducted. *Id., ¶*7.8. If any residual funds remain after all cost-effective distributions of the Net Settlement Fund to Authorized Claimants have been completed, the Stipulation identifies as the proposed *cy pres* recipient the Legal Aid Society of New York, or such other §501(c)(3) non-profit organization as may be deemed appropriate by the Court. *Id.* The Legal Aid Society is a 501(c)(3) nonprofit organization and is an appropriate *cy pres* recipient because its mission is to protect and defend the rights of New York residents who need legal support, and courts in New York have approved it as a *cy pres* recipient in other class action cases. *See, e.g.*, *Zimmerman v. Portfolio Recovery Assocs., LLC*, No. 09 CIV. 4602, 2013 WL 6508813, at *14 (S.D.N.Y. Dec. 12, 2013).

Notably, 4,967 copies of the Notice, which contains the POA and advises Class Members of their right to object to the Plan, have been mailed to potential Class Members and Nominees, and no objections to the Plan have been received to date. Schachter Aff., ¶16; Joint Decl., ¶59. The lack of any objections to date to the POA further supports its approval. *See, e.g.*, *Maley v. Del*

*Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002). In sum, the proposed Plan of Allocation should also be approved as fair, reasonable, and adequate.

## III. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

For purposes of settlement, Plaintiffs seek certification of the Settlement Class, which consists of all persons and entities who (a) purchased or otherwise acquired Cloopen ADSs pursuant or traceable to the F-1 registration statement (including all amendments made thereto) and related prospectus on Form 424B issued in connection with Cloopen's IPO; and/or (b) purchased or otherwise acquired Cloopen ADSs between February 9, 2021 (the date of Cloopen's IPO), and May 10, 2021, inclusive, and who were damaged thereby. (NYSCEF No. 112 at 1.). Securities cases, which typically have similar class definitions, are "particularly appropriate" for class certification. *Pruitt v. Rockefeller Ctr. Props., Inc.*, 167 A.D.2d 14, 21 (App. Div. 1st Dep't 1991); *see also Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.*, 301 F.R.D. 116, 130 (S.D.N.Y. 2014) (courts "have frequently held that suits alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act are especially amenable to class certification[.]").

This Court certified a litigation class in the State Action on April 10, 2023 (NYSCEF No. 102). The Court has also preliminarily certified the Settlement Class in its Preliminary Approval Order (NYSCEF No. 112), and nothing has changed since it did so. As all required elements of CPLR 901 and 902 are satisfied, the Court should confirm its prior certification ruling.

### A. The Settlement Class Easily Satisfies CPLR 901

CPLR 901 requires that the elements of numerosity, predominating common issues, typicality, adequacy, and superiority are satisfied.

**Numerosity**: Defendants issued roughly 23 million ADS in the IPO, which were bought by at least thousands of members of the proposed Class. Joint Aff., ¶14. As joinder of all parties would plainly be "impracticable," CPLR 901(1)'s numerosity requirement is satisfied. *Compare*

*Borden v. 400 E. 55th St. Assocs., L.P.*, 24 N.Y.3d 382, 399 (2014) (classes with as few as 18 members may satisfy numerosity); *Pa. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014) ("Numerosity is presumed for classes larger than forty members.").

**Commonality**: Because (as here) securities claims turn on "the truth or falsity of the prospectus' statements," "common questions of law and fact . . . predominate over individual issues." *Pruitt*, 167 A.D.2d at 21; *see also Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 84 (2d Cir. 2015) (commonality "is satisfied if there is a common issue that drive[s] the resolution of the litigation such that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke"). Here, all Settlement Class Members' claims turn on a common set of alleged material misstatements and omissions in Cloopen's Offering Materials.

**Typicality**: Plaintiffs' claims are typical of the claims of other Settlement Class Members as they all relate to the same circumstances – namely, the issuance of the same materially false and misleading IPO Offering Materials – and are also based on the same legal theories as those of the other Settlement Class Members. Accordingly, CPLR 901(3)'s typicality requirement is met. *In re SunEdison, Inc. Sec. Litig.*, 329 F.R.D. 124, 141 (S.D.N.Y. 2019); *Pruitt*, 167 A.D.2d at 22 (typicality requirement met in Securities Act cases because "plaintiff's claims are identical to those of the other [class] members[.]").

**Adequacy**: Plaintiffs have "fairly and adequately protect[ed] the interest of the class," as shown by (a) their selection of highly experienced counsel, and (b) their willingness to devote significant time to working on matters related to this case, from reviewing pleadings to periodically consulting with their counsel on litigation and settlement matters. Joint Aff., ¶¶108-09; St. John Aff., ¶5; Wang Decl., ¶5. Moreover, Plaintiffs' Class Counsel are unaware of any conflicts

between any Plaintiffs and any Settlement Class Members. Accordingly, CPLR 901(4)'s adequacy requirements are easily satisfied. *See Pruitt*, 167 A.D.2d at 24.

**Superiority**: It would be prohibitively costly to require individual Settlement Class Members, many of whom can safely be assumed to have suffered comparatively modest losses, to litigate their own individual claims. Proceeding by class action is thus a far more efficient mechanism to resolve their claims. *See Stecko v. RLI Ins. Co.*, 121 A.D.3d 542, 543 (App. Div. 1st Dep't 2014) (class action was "superior vehicle [. . .] since the damages allegedly suffered by an individual class member are likely to be insignificant, and the costs of prosecuting individual actions would result in the class members having no realistic day in court"); *SunEdison*, 329 F.R.D. at 144 ("[g]enerally, securities actions easily satisfy the superiority requirement" because "the alternatives are either no recourse for thousands of stockholders" or "a multiplicity and scattering of suits with the inefficient administration of litigation."). CPLR 901(5)'s superiority requirements are thus met.

### B. CPLR 902's Discretionary Factors Also Support Certification

The five discretionary CPLR 902 factors also support certification. Factors one (the interest of class members in individually prosecuting their claims), two (inefficiency of multiple actions), four (desirability of concentrating claims in the particular forum), and five (difficulty of managing class-wide action) are substantively identical to CPLR 901's commonality, typicality, and superiority factors. As discussed above, these factors are equally well-satisfied for CPLR 902 purposes. *Nawrocki v. Proto Constr. & Dev. Corp.*, No. 104229/2007, 2010 WL 1531428, at *5 (Sup. Ct. N.Y. Cnty. Apr. 7, 2010), *aff'd*, 82 A.D.3d 534 (App. Div. 1st Dep't 2011) (describing CPLR 902 factors as "implicit in CPLR 901"). Factor three (the extent and nature of any parallel litigation already commenced) also supports approval, as the Settlement will resolve all litigation arising out of the controversy at issue by resolving both the State and Federal Actions on a global

basis. Finally, this Court's expertise in adjudicating business disputes within its jurisdiction also reinforces a "factor four" finding that this Court is a plainly appropriate forum for this dispute. The relevant CPLR 901 and 902 factors thus support final certification of the Settlement Class.

## IV. NOTICE TO THE CLASS SATISFIED THE REQUIREMENTS OF ARTICLE 9 OF THE CPLR AND DUE PROCESS

Upon preliminary approval, the Court found that the forms and methods for notifying the Settlement Class of the Settlement and its terms and conditions meet the requirements of due process, Article 9 of the CPLR, and all other applicable laws. NYSCEF No. 112, ¶20. Since that finding, A.B. Data, the Court-appointed Claims Administrator, has carried out the Court-approved notice plan. *See* Schachter Aff., ¶¶2-10.

In accordance with the Court's Preliminary Approval Order, A.B. Data began mailing copies of the Notice and Proof of Claim form (collectively, the "Notice Packet") on October 13, 2023, and as of December 18, 2023, had sent by first class mail a total of 4,967 copies of these materials to potential Class Members and nominees. Schachter Aff., ¶5. In addition, A.B. Data arranged for the Summary Notice to be published in *Investor's Business Daily* and to be transmitted over the internet via *PRNewswire*. *Id.*, ¶10. A.B. Data also established a dedicated settlement website to provide potential Class Members with information concerning the Settlement and access to downloadable copies of the Notice, Claim Form, and the Stipulation, among other documents. Further, A.B. Data staffs with live operators during business hours a toll-free number that Class Members may call for information about the Settlement or claims process. *Id.*, ¶¶10-14.

The notices apprised Settlement Class Members of, *inter alia*: (i) the amount of the Settlement; (ii) the reasons why the Parties are proposing the Settlement; (iii) the estimated average recovery per affected share of Cloopen ADS; (iv) the maximum amount of attorneys' fees

and expenses that will be sought; (v) the identity and contact information for a representative of Plaintiffs' Lead Counsel whom is available to answer questions concerning the Settlement; (vi) the right of Settlement Class Members to object to the Settlement, and how to do so; (vii) the right of Settlement Class Members to request exclusion from the Settlement Class, and how to do so; (viii) the binding effect of a judgment on Settlement Class Members; (ix) the dates and deadlines for certain Settlement-related events (including the deadlines for requesting exclusion or objecting); and (x) the opportunity to obtain additional information about the Actions and the Settlement by contacting Plaintiffs' Class Counsel, the Claims Administrator, or visiting the Settlement Website. The Notice also contains the POA and provides Settlement Class Members with information on how to submit a Claim in order to be potentially eligible to receive a payment from the Net Settlement Fund.

In sum, this combination of individual first-class mailing of the Notice to all Settlement Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate publication, transmission over a newswire, and publication on internet websites, comports with the requirements of Article 9 of the CPLR and due process.

## CONCLUSION

For the reasons described above and in the accompanying affirmations/affidavits submitted herewith, Plaintiffs respectfully ask the Court to approve the Settlement and Plan of Allocation as fair, adequate, and reasonable.

Dated: December 19, 2023
New York, NY

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

The preceding Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation complies with the 7,000-word limit set by Commercial Division Rule 17. Excluding the caption, table of contents, table of authorities, and the signature block, the document contains 5,952 words as measured by Microsoft Word, the word-processing system that was used to prepare the memorandum.

Dated: December 19, 2023
New York, NY

*/s/ Max R. Schwartz*
Max. R. Schwartz