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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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IN RE CAREER EDUCATION  
CORPORATION SECURITIES  
LITIGATION

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No. 03 C 8884  
Honorable Joan H. Lefkow

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**PRELIMINARY APPROVAL ORDER**

WHEREAS:

A. Beginning on December 9, 2003, six class actions alleging violations of federal securities laws - *Taubenfeld v. Career Ed. Corp., et al.*, 03-CV-08884; *Stellato v. Career Ed. Corp., et al.*, 03-CV-08939; *Katz v. Career Ed. Corp., et al.*, 03-CV-09157; *Morris, et al v. Career Ed. Corp., et al.*, 04-CV-00305; *Woo v. Career Ed. Corp., et al.*, 04-CV-00339; *Schild v. Career Ed. Corp., et al.*, 04-CV-00906 - were filed in this Court and were subsequently consolidated by Order dated March 19, 2004 under the caption above, and are hereinafter referred to as the "Action";

B. That same day, by Order, this Court appointed Thomas Schroder as Lead Plaintiff and approved Lead Plaintiff's choice of counsel, the firm now known as Labaton Sucharow LLP;

C. The Consolidated Amended Complaint dated June 17, 2004 was dismissed by Order of this Court on February 11, 2005 with leave to replead;

D. The Second Consolidated Amended Complaint dated April 1, 2005 was dismissed by Order of this Court on March 28, 2006 with leave to replead;

E. On May 1, 2006, Plaintiffs filed the Third Consolidated Amended Complaint (the "Complaint") which generally alleged, among other things, that Defendants issued materially false and misleading statements regarding Career Education Corporation's ("CEC") bad debt, student enrollment and job placement statistics during the Class Period – April 22, 2002 through and including February 15, 2005- in a scheme to artificially inflate the value of CEC securities;

F. The Complaint was dismissed with prejudice by Order of this Court on March 29, 2007.

G. Plaintiffs filed and served a timely notice of appeal with the Seventh Circuit on April 24, 2007.

H. The Defendants have denied, and continue to deny, that any of them have committed or have threatened to commit any violations of law;

I. After the parties participated in a mediation session with retired United States District Judge Nicholas H. Politan, and engaged in intense negotiations both in connection with that meditation session and subsequent to it, the parties entered into a Stipulation and Agreement of Settlement of Class Action (the "Settlement Agreement"), dated November 5, 2007;

J. The Settlement Agreement, which sets forth the terms and conditions for the proposed settlement of the claims alleged in the Complaint and wherein the Parties agree to the dismissal of such claims on the merits and with prejudice, is subject to review under Rule 23 of the Federal Rules of Civil Procedure; and

K. The Court having read and considered the Settlement Agreement, and being familiar with all prior proceedings in the case, the written and oral presentations of the Parties and the Parties' consent to entry of this Order, the matter having come before the Court for hearing on

May 1, 2008, and all capitalized terms used herein having the same meanings set forth in the Settlement Agreement unless otherwise specified;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 26<sup>th</sup> day of June, 2008, that:

1. **Preliminary Class Certification for Settlement Purposes.** Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), the Action is hereby preliminarily certified as a class action for settlement purposes only on behalf of all persons or entities who, during the period from April 22, 2002 through February 15, 2005, inclusive, purchased or otherwise acquired CEC securities (including common stock, options and debt securities) (the "Settlement Class Period").

Excluded from the Settlement Class are:

(a) such persons or entities who validly and timely request exclusion from the Settlement Class in accordance with the procedures set forth in the "Notice of Pendency and Proposed Settlement of Class Action"; and

(b) such persons or entities who are Defendants; members of Defendants' immediate families; all individuals who are either current officers and/or directors, or who served as officers and directors at any time during the Settlement Class Period; Defendants' subsidiaries; any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or any entity which is related to or affiliated with any Defendant; and the legal representatives, agents, affiliates, heirs, successors and assigns of any such excluded persons.

2. **Class Findings.** The Court preliminarily finds that, for the sole purpose of settlement and without an adjudication of the merits, the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3), the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law have been satisfied in that:

(a) The number of Settlement Class members is so numerous that joinder of all members is impracticable;

(b) there are questions of law and fact common to the Settlement Class, including those pertaining to this Settlement;

(c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class he seeks to represent;

(d) the Lead Plaintiff and Plaintiff's Lead Counsel will fairly and adequately represent the interests of the Settlement Class in that (i) the interest of the Lead Plaintiff and the nature of his alleged claims are consistent with those of the Settlement Class, (ii) there appear to be no conflicts between the Lead Plaintiff and the Settlement Class members pertaining to the proposed settlement, (iii) the Lead Plaintiff has been and appears to be capable of continuing to be an active participant in both the prosecution and the settlement of the Action, and (iv) the Lead Plaintiff and the Settlement Class members are represented by qualified reputable counsel who are experienced in large, complicated securities fraud class actions;

(e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

In making these preliminary findings, the Court has considered, among other factors, (i) the interest of Settlement Class members in individually controlling the prosecution of separate actions, (ii) the impracticability or inefficiency of prosecuting or defending separate

actions, (iii) the extent and nature of any litigation concerning these claims already commenced and (iv) the desirability of concentrating the litigation of the claims in a particular forum.

3. **Class Representative.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of settlement only, Lead Plaintiff Thomas Schroder is preliminarily certified as Class Representative.

4. **Findings Regarding Proposed Settlement.** The Court finds that (i) the proposed Settlement resulted from arms-length negotiations and voluntary mediation between experienced counsel; (ii) Lead Plaintiff and Plaintiff's Lead Counsel consulted with various consultants and experts regarding the issues raised in the Complaint, including individuals with expertise in estimating potential damages in cases involving allegations of securities fraud, and (iii) the proposed Settlement evidenced by the Settlement Agreement is sufficiently fair, reasonable and adequate to warrant sending notice of the Action and the proposed Settlement to the Settlement Class, and holding a full hearing on the proposed settlement, especially because the Court dismissed the claims three times, the last time with prejudice. The Court thus preliminarily approves the Settlement Agreement, subject to further consideration at the Settlement Hearing described in paragraph 5 below.

5. **Settlement Hearing.** A hearing (the "Settlement Hearing") pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on September 18, 2008, at 10:00 a.m., in Courtroom 1925, United States District Court, Northern District of Illinois, Eastern Division, Everett McKinley Dirksen United States Courthouse, 19th Floor, 219 South Dearborn Street, Chicago, Illinois 60604, to consider the fairness, reasonableness and adequacy of the Settlement to the Settlement Class, as well as for the following purposes:

(a) to finally determine whether the Action satisfies the applicable prerequisites for class action treatment under Rules 23(a) and (b) of the Federal Rules of Civil Procedure;

(b) to finally determine whether the proposed Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to finally determine whether the Notice of Pendency and Settlement of Class Action (the "Notice"), the Summary Notice and the notice methodology implemented pursuant to the Settlement Agreement (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Settlement and their right to appear at the Settlement Hearing, (iii) were reasonable and constitute due, adequate sufficient notice to all persons entitled to receive notice and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 77a-1(a)(3)(B)(ii)) (the "PSLRA"), the Class Action Fairness Act of 2005 (28 U.S.C. §§ 1332(d), 1453, and 1711-1715) ("CAFA"), the Rules of the Court and any other applicable law;

(d) to finally determine whether Plaintiff's Lead Counsel and Lead Plaintiff adequately represent the Settlement Class for purposes of entering into and implementing the Settlement;

(e) to finally determine whether the Order and Final Judgment as provided for in the Settlement Agreement should be entered, dismissing the Complaint on the merits and with

prejudice, and to determine whether the release by the Settlement Class of the Released Claims, as set forth in the Settlement Agreement, should be provided to the Released Parties;

(f) to determine whether an injunction should be entered that permanently bars and enjoins (i) all Settlement Class members from filing, commencing, prosecuting, intervening in, participating in (as Settlement Class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating in any way to the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims; and (ii) all persons from organizing such nonexcluded Settlement Class members into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit based on or relating to the claims and causes of action, and/or the facts and circumstances relating thereto, in the Action and/or the Released Claims;

(g) to finally determine whether the proposed Plan of Allocation for distribution of the proceeds of the Settlement, as set forth in Exhibit A-1 to the Settlement Agreement, is fair and reasonable, and should be approved by the Court;

(h) to consider Plaintiffs' Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses; and

(i) to rule upon such other matters as the Court may deem appropriate.

6. The Court further directs that Plaintiff's Lead Counsel's memoranda in support of the class settlement, application for fees, costs and expenses, shall be filed no later than seven days prior to the date of the Settlement Hearing and shall be available for inspection in the Clerk's office at the above address, after they have been filed.

7. The Court reserves the right to approve the Settlement Agreement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Order and Final Judgment and to dismiss the Complaint on the merits and with prejudice regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

8. **Appointment of Settlement Administrator.** The Court approves the appointment of Strategic Claims Services as the Settlement Administrator.

9. As provided in the Settlement Agreement, Plaintiff's Lead Counsel may pay the Settlement Administrator for the cost of providing notice to the Class in accordance with this Order and the reasonable and customary fees and costs associated with the review of claims and administration of the Settlement Agreement out of the Notice and Administration Fund without further order of the Court. Plaintiff's Lead Counsel may also direct the payment of taxes on earnings of the Settlement Fund and the cost of preparing any necessary returns and filings out of the Settlement Fund without further order of this Court.

10. **Notice.** The Court approves the form, substance and requirements of the Notice, the Proof of Claim and Release ("Proof of Claim"), and the Summary Notice in the form as substantially set out in Exhibits A-1, A-2 and A-3, respectively, to the Settlement Agreement and this Order. It further approves the notice methodology set out below. The cost of providing notice pursuant to this paragraph 10 shall be paid consistent with the terms of the Settlement Agreement.

(a) **Notice by Mail.** Plaintiff's Lead Counsel shall cause a copy of the Notice and Proof of Claim to be mailed, by first-class mail, postage prepaid, on or before July 10, 2008, to all Settlement Class members who can be identified with reasonable effort. Defendants shall

cooperate in making CEC's transfer records and shareholder information available to Plaintiff's Lead Counsel and the Settlement Administrator for the purpose of identifying and giving notice to the Settlement Class. Plaintiff's Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.

(b) **Publication on Internet.** By no later than July 10, 2008, Plaintiff's Lead Counsel shall post a copy of the following on their website:

- (i) the Notice,
- (ii) Proof of Claim,
- (iii) the Complaint,
- (iv) the Settlement Agreement, and
- (v) such other pleadings, documents, and orders of the Court as the Settling Parties may agree or the Court may order.

(c) **Summary Notice.** By no later than July 18, 2008, Plaintiff's Lead Counsel shall cause the Summary Notice to be published on at least one occasion in the national edition of *Investor's Business Daily* and reported on either the PR Newswire or PrimeZone Newswire one time for national distribution on or before July 18, 2008. Plaintiff's Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of publication of the Summary Notice.

11. **Findings Concerning Notice.** Having considered the forms and methods of providing notice that are described in paragraph 10 above, the Court finds that the notice to be provided to Settlement Class members, including the Notice, the Summary Notice and the methodology employed to disseminate both, (a) is the best practicable notice; (b) is reasonably calculated, under the circumstances, to apprise Settlement Class members of (i) the pendency of the Action, (ii) the effect of this Settlement Agreement (including the Release), (iii) the binding

effect of the Orders and Judgment in the Action, whether favorable or unfavorable, on all persons who do not request exclusion from the Settlement Class, (iv) their right to object to the proposed settlement, (v) their right to exclude themselves from the Settlement Class and (vi) their right to appear at the Settlement Hearing; (c) is reasonable and constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice; and (d) meets all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the PSLRA, CAFA the Rules of the Court and any other applicable law.

12. In order to be entitled to receive a distribution in the Settlement, in the event the Settlement is effected in accordance with all of the terms and conditions set forth in the Settlement Agreement, each Member of the Settlement Class shall take the following actions and be subject to the following conditions:

(a) A properly executed Proof of Claim (as approved by the Court in paragraph 10 above) must be submitted to the Settlement Administrator at the address indicated in the Notice, postmarked no later than October 17, 2008. Plaintiff's Lead Counsel may extend the deadline for submitting Proofs of Claim for up to an additional 60 days after notice to, but without further order of, this Court. Such deadline may be further extended by Court Order. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first class mail, postage prepaid) provided such Proof of Claim is actually received prior to the motion for an order of the Court approving distribution of the Net Settlement Fund, as described in the Settlement Agreement and Notice. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received by the Settlement Administrator at the address designated in the Notice.

(b) The Proof of Claim submitted by each Member of the Settlement Class must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of paragraph 12(a); (ii) it must be accompanied by adequate supporting documentation, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Plaintiff's Lead Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his current authority to act on behalf of the Member must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Proof of Claim, each Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall (subject to final approval of the Settlement Agreement) release all Released Claims as provided in the Settlement Agreement.

13. **Exclusion from the Settlement Class.** Members of the Settlement Class shall be bound by all determinations and judgments in the Action, whether favorable or unfavorable, and by all provisions in the Settlement Agreement, if it receives final approval, including releases, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as provided in this Order. A potential Member of the Settlement Class wishing to make such request shall mail by first-class mail or otherwise deliver a written request for exclusion to the Settlement Administrator, at the address provided in the Notice, such that it is postmarked or received no later than 21 days before the Settlement Hearing. Such request for exclusion shall

clearly indicate the name, address and telephone number of the person seeking exclusion, the case caption and case number, that the sender requests to be excluded from the Settlement Class, and must be signed by such person. Such persons requesting exclusion are also directed to state: the date(s), price(s), and number(s) of shares of all purchases and other acquisitions of CEC securities (including common stock, options and debt securities) during the Settlement Class Period. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or if the exclusion is otherwise accepted by the Court. All Members who do not submit valid and timely written requests for exclusion from the Settlement Class (and their heirs, executors and administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns) will be bound by all proceedings, orders and judgments relating to this Settlement Agreement, even if such Members have previously initiated, or subsequently initiate, litigation, arbitration or any other proceeding, or have any claim, against any or all of the Released Parties that is a Released Claim or fails to submit a valid Proof of Claim and Release form.

14. Members requesting exclusion from the Settlement Class shall not be entitled to receive any payment out of the Net Settlement Fund, as described in the Settlement Agreement and Notice.

15. Plaintiff's Lead Counsel shall submit a list of the persons and entities who have requested exclusion to the Court 3 business days before the Settlement Hearing.

16. **Objections and Appearance at Settlement Hearing.** Members of the Settlement Class who have not filed requests for exclusion may object to any aspect of the Settlement Agreement (including its fairness, reasonable or adequacy), the Plan of Allocation and/or the award of attorneys' fees and reimbursement of expenses. In order to be considered by

the Court, Members must both effect service on Plaintiff's Lead Counsel and Defendants' Counsel and file with the Court by no later than 21 days prior to the Settlement Hearing, a statement of his, her or its objection(s), setting out in such statement (a) his, her or its name, address and telephone number; (b) his, her or its membership in the Settlement Class, including the number of shares or other securities he, she or it purchased; and (c) the reasons for his, her or its objection, including any factual and/or legal materials that support his, her or its objection. The Member's statement (and any supporting papers) must be filed in writing with the Clerk of the Court, United States District Court for the Northern District of Illinois, Eastern Division, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604 and served upon each of the following: Joseph Sternberg, Esq., Labaton Sucharow LLP, 140 Broadway, New York, New York, 10005 (Plaintiff's Lead Counsel); Mary Ellen Hennessy, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661 (Counsel for CEC and John M. Larson); and Lee Ann Russo, Jones Day, 77 West Wacker Drive, suite 3500, Chicago, Illinois 60601 (Counsel for Patrick K. Pesch) (together "Defendants' Counsel"). Defendants' Counsel, Plaintiff's Lead Counsel, and any other counsel for the Class, are directed to promptly furnish each other with copies of any and all objections or written requests for exclusion that come into their possession. If a Member hires an attorney to represent him, her or it for the purposes of objecting to the settlement pursuant to this paragraph, the attorney must both effect service of a notice of appearance on Plaintiff's Lead Counsel and Defendants' Counsel (at the addresses set out above) and file it with the Court by no later than 21 days prior to the Settlement Hearing. Any Member who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall

be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

17. **Attendance at the Settlement Hearing is not necessary.** Any Member who files and serves a timely, written objection in accordance with paragraph 16 above also may appear at the Settlement Hearing either in person or through counsel retained at the Member's expense. Members or their attorneys intending to appear at the Settlement Hearing must both effect service of a notice of intention to appear setting forth, among other things, the name, address and telephone number of the Member (and, if applicable, the name, address and telephone number of the Member's attorney) on Plaintiff's Lead Counsel and Defendants' Counsel (at the addresses set out above) and file it with the Court by no later than 21 days prior to the Settlement Hearing. Any Member who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Settlement Hearing, except for good cause shown. Members do not need to appear at the hearing or take any other action to indicate their approval.

18. **Release.** On the Settlement Effective Date, all Members of the Settlement Class shall conclusively be deemed to have fully, finally and forever discharged, among other things, the Released Parties from any and all claims of liability arising from the Released Claims and to have compromised, settled, released, discharged and dismissed the Released Claims as against the Released Parties on the merits and with prejudice.

19. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, if (a) the proposed Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement or (b) the proposed Settlement is terminated in accordance with the Settlement

Agreement or does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the proposed Settlement Agreement shall become null and void and of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, shall be used or referred to for any purpose whatsoever. In the event the Settlement Agreement does not become final, each party shall be restored to his, her or its respective position as of September 25, 2007.

20. If the Settlement Agreement does not become final for any reason, this Order shall be of no force or effect and shall not be construed or used as an admission, concession or declaration by or against Defendants of any fault, wrongdoing, breach or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against Lead Plaintiff or the Members that their claims lack merit or that the relief requested in the Complaint is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims he, she or it may have.

21. **Continuance of Hearing.** The Court reserves the right to continue the Settlement Hearing without further written notice.

22. **Retention of Jurisdiction.** The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement Agreement, including a determination if the settlement should be approved as fair, reasonable and adequate.

23. The Joint Motion for Relief from Judgment under Rule 60(b)(6) is granted in order to allow the Court to review the fairness of the settlement to Class Members. This Court's March 29, 2007 Order dismissing the action with prejudice (Doc. 137) and the March 29, 2007 Judgment (Doc. 139) in favor of Defendants are hereby vacated. Should the Settlement Effective Date, as defined in paragraph 1.17 of the Settlement Agreement, not occur, upon motion of a

party, the Court will vacate this Order and reinstate this Court's March 29, 2007 Order dismissing the action with prejudice and will again enter judgment in favor of Defendants.

SO ORDERED this 26 day of June, 2008.

  
Honorable Joan Humphrey Lefkowitz  
United States District Judge

**JUN 26 2008**