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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

9 ROBERT STANGER, INDIVIDUALLY  
10 AND ON BEHALF OF ALL OTHERS  
11 SIMILARLY SITUATED,

12 Plaintiff,

13 vs.

14 CHINA ELECTRIC MOTOR, INC., YU  
15 WANG, HAIXIA ZHANG, FUGUI WANG,  
16 HEUNG SANG "DEXTER" FONG,  
17 WESTPARK CAPITAL, INC., AND ROTH  
18 CAPITAL PARTNERS, LLC,

19 Defendants.

CASE No.:

COMPLAINT

CLASS ACTION

**JURY TRIAL DEMANDED**

20 Plaintiff Robert Stanger, individually and on behalf of all other persons  
21 similarly situated, by his undersigned attorneys, for his complaint against China  
22 Electric Motor, Inc. ("CELM", or the "Company"), alleges the following based  
23 upon personal knowledge as to himself and his own acts, and information and belief  
24 as to all other matters, based upon, *inter alia*, the investigation conducted by and  
25 through his attorneys, which included, among other things, a review of the  
26 Defendants' public documents, conference calls and announcements made by the  
27  
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1 Defendants, United States Securities and Exchange Commission (“SEC”) filings,  
2 wire and press releases published by and regarding the Company, securities  
3 analysts’ reports and advisories about the Company, and information readily  
4 obtainable on the Internet. Plaintiff believes that substantial evidentiary support  
5 will exist for the allegations set forth herein after a reasonable opportunity for  
6 discovery.  
7  
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### 9 NATURE OF THE ACTION

10 1. This is a securities class action on behalf of all persons or entities who:  
11  
12 (1) purchased or otherwise acquired the securities of CELM pursuant and/or  
13 traceable to the Company’s Registration and Statement and Prospectus  
14 (collectively, the “Registration Statement”) issued in connection with the  
15 Company’s January 29, 2010 initial public offering (the “IPO” or the “Offering”)  
16 seeking to pursue remedies under the Sections 11, 12(a)(2), and 15 of Securities Act  
17 of 1933 (the “Securities Act”); and (2) purchased or otherwise acquired the  
18 securities of CELM during the period from January 29, 2010 to March 30, 2011,  
19 inclusive (the “Class Period”), seeking to pursue remedies under Sections 10(b) and  
20 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”).  
21  
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23  
24 2. On January 27, 2010 the Company filed with the SEC an amended  
25 Registration Statement on Form S-1/A in connection with the Offering. The  
26 Registration Statement also contained a Prospectus and both documents contained,  
27 among other things, the Company’s financial results for the fiscal years ended  
28

1 December 31, 2008, and results for the first three quarters for the fiscal year ended  
2 2009.

3  
4 3. The Registration Statement was declared effective on January 28,  
5 2010, and the Company filed the final prospectus with the SEC on January 29,  
6 2010.

7  
8 4. The Offering was for 5,000,000 shares of the Company's common  
9 stock at a price of \$4.50 per share. The Offering was underwritten by defendants  
10 WestPark Capital, Inc. ("WestPark") and Roth Capital Partners, LLC ("Roth").  
11 WestPark and Roth are collectively referred to herein as the "Underwriters" or  
12 "Underwriter Defendants." Pursuant to the Offering the Underwriters had a 45-day  
13 option to purchase an additional 750,000 additional shares of the Company  
14 common stock to cover over-allotments.  
15

16  
17 5. Gross proceeds of the Offering to the Company was \$22.5 million.

18  
19 6. Throughout the Class Period, the Defendants made false and/or  
20 misleading statements, and failed to disclose material adverse facts about the  
21 Company's business, operations, prospects and performance, and internal controls.  
22

### 23 **JURISDICTION AND VENUE**

24 7. The claims asserted herein arise under and pursuant to Sections 10(b)  
25 and 20(a) of the Exchange Act, (15 U.S.C. §78j(b) and 78t(a)), and Rule 10b-5  
26 promulgated thereunder (17 C.F.R. §240.10b-5). Additional claims arise under  
27 Sections 11, 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§77k and 77o.  
28



1           14. Defendant Haixia Zhang (“Zhang”) at all relevant times herein was the  
2 Company’s Chief Financial Officer and Corporate Secretary, until Zhang’s  
3 resignation from those positions effective June 10, 2010. Zhang signed the  
4 Registration Statement.  
5

6           15. Defendant Heung Sang “Dexter” Fong (“Fong”) at all relevant times  
7 herein was a Company Director. Following the resignation of defendant Zhang in  
8 June 2010, Fong was appointed CFO and Corporate Secretary.  
9

10           16. Defendant Fugui Wang (“F. Wang”) at all relevant times herein was  
11 the Company’s Chairman of the Board. F. Wang signed the Registration  
12 Statement.  
13

14           17. Defendants Wang, Zhang, Fong and F. Wang are collectively the  
15 “Individual Defendants”.  
16

17           18. Defendant WestPark Capital (“WestPark”), Inc. is a full service  
18 investment banking company. WestPark’s headquarters are located at 1900 Avenue  
19 of the Stars, Suite 310, Los Angeles, CA 90067. WestPark was an underwriter of  
20 the Offering.  
21

22           19. Defendant Roth Capital Partners LLC (“Roth”) is a securities broker-  
23 dealer and underwriter it has offices in Los Angeles, and is headquartered in  
24 Newport Beach, California. Roth was an underwriter of the Offering.  
25

26                           **PLAINTIFF’S CLASS ACTION ALLEGATIONS**  
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1           20. Plaintiff brings this action as a class action pursuant to Federal Rules  
2 of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those  
3 who: (1) purchased or otherwise acquired the securities of CELM pursuant and/or  
4 traceable to the Company's Registration Statement issued in connection with the  
5 with the Company's January 29, 2010 Offering; and (2) purchased or otherwise  
6 acquired the securities of CELM during the Class Period. Excluded from the Class  
7 are the officers and directors of the Company at all relevant times, members of their  
8 immediate families and their legal representatives, heirs, successors or assigns and  
9 any entity in which Defendants have or had a controlling interest.  
10

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13           21. The members of the Class are so numerous that joinder of all members  
14 is impracticable. Throughout the Class Period, the Company's common stock was  
15 actively traded on the NASDAQ. While the exact number of Class members is  
16 unknown to Plaintiff at this time, and can only be ascertained through appropriate  
17 discovery, Plaintiff believes that there are at least hundreds of members in the  
18 proposed Class. Members of the Class may be identified from records maintained  
19 by CELM or its transfer agent, and may be notified of the pendency of this action  
20 by mail using a form of notice customarily used in securities class actions.  
21  
22

23  
24           22. Plaintiff's claims are typical of the claims of the members of the Class,  
25 as all members of the Class are similarly affected by Defendants' wrongful conduct  
26 in violation of federal law that is complained of herein.  
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1           26. On January 27, 2010 the Company filed with the SEC an amended  
2 Registration Statement on Form S-1/A in connection with the Offering. The  
3 Registration Statement also contained a Prospectus and both documents contained,  
4 among other things, the Company's financial results for the fiscal year ended  
5 December 31, 2008 and the results for three quarters for fiscal 2009.  
6

7  
8           27. The Registration Statement declared effective on January 28, 2010 and  
9 the Company filed the final prospectus with the SEC on January 29, 2010.  
10

11           28. WestPark and Roth were the Underwriters. The Underwriters had a  
12 45-day option to purchase an additional 750,000 shares of common stock from the  
13 Company to cover over-allotments.  
14

15           29. On February 17, 2010 the Company filed an 8-K with the SEC  
16 announcing that it had dismissed its auditor Kempisty & Company Certified Public  
17 Accountants, PC ("Kempisty"), and that the Company had appointed Malone &  
18 Bailey, PC ("MB") as the Company's auditor. The announcement also revealed  
19 that Kempisty's employees and parents would be providing services to MB, which  
20 would also share office space with Kempisty in its New York office.  
21

22           30. On March 2, 2010 the Company issued a press release announcing that  
23 the Underwriters had exercised their over-allotment option, and that the expected  
24 gross proceeds from the Offering was \$25.9 million.  
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1           33. Attached to the 10-K were separately signed Sarbanes-Oxley Act of  
2 2002 (“SOX”) certifications of defendants Wang and Zhang. In addition to stating  
3 that each of the them were responsible for establishing maintaining disclosure  
4 controls and procedures and internal control over financial reporting, the  
5 certifications falsely stated, in part, that the 10-K “does not contain any untrue  
6 statement of a material fact or omit to state a material fact necessary to make the  
7 statements made, in light of the circumstances under which such statements were  
8 made, not misleading...”;(2) “[a]ll significant deficiencies and material weaknesses  
9 in the design or operation of internal control over financial reporting which are  
10 reasonably likely to adversely affect the registrant’s ability to record, process,  
11 summarize and report and report financial information” was disclosed to the  
12 Company’s auditor, audit committee and board; and (3) “[a]ny fraud, whether or  
13 not material, that involves management or other employees who have a significant  
14 role in the registrant’s internal controls over financial reporting” were disclosed to  
15 the Company’s board, auditors, and audit committee.

21           34. On May 17, 2010 the Company filed its first quarter ended March 31,  
22 2010 results with the SEC on Form 10-Q, signed by defendants Wang and Zhang.  
23 The 10-Q also included SOX certifications executed by defendants Wang and  
24 Zhang that was in sum and substance the same as the SOX certifications filed with  
25 the FY 2009 10-K, attesting to the accuracy of the 10-Q.  
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1 financial statements for the fourth quarter and fiscal year ended December 31,  
2 2010. The announcement states in relevant part:

3  
4 China Electric Announces Notification of Late Filing of 2010 10-K Report;  
5 Formation of Special Committee; Postponement of Earnings Release and  
6 Conference Call

7 Press Release Source: China Electric Motor, Inc. On Thursday March 31,  
8 2011, 6:42 am EDT

9 SHENZHEN, China, March 31, 2011 /PRNewswire-Asia-FirstCall/ -- China  
10 Electric Motor, Inc. (Nasdaq:[CELM](#) - [News](#)), a Delaware corporation and  
11 China-based company that engages in the design, production, marketing and  
12 sale of micro motor products, today announced that it has filed a Notification  
13 with the Securities and Exchange Commission that the Company's Annual  
14 Report on Form 10-K for the year ended December 31, 2010 will not be filed  
15 before its March 31, 2011 due date, nor will it be filed by April 15, 2011, the  
16 extended due date of the report.

17 The delay in filing relates to possible discrepancies concerning the  
18 Company's banking statements that were very recently identified by the  
19 Company's auditors in the course of their audit of the consolidated financial  
20 statements for the fiscal year ended December 31, 2010.

21 The Company's Board of Directors has formed a Special Committee to  
22 investigate this matter. The Special Committee will be comprised of the  
23 Board's four independent directors, James M. Lee, Tony Shen, Liang Tang  
24 and Guoqiang Zhang. The Special Committee has been authorized to retain  
25 counsel and other professional firms to assist it with its internal investigation.  
26 The Special Committee has already notified the Staff of the Securities and  
27 Exchange Commission of the internal investigation. Given that the  
28 investigation only recently commenced, the Company cannot predict at this  
time whether that investigation will require any adjustments to its financial  
statements, and if so whether such adjustments will be material.

The Company will also delay its fourth quarter and full year 2010 earnings  
release and investor conference call, previously scheduled for 8:30 a.m. New  
York time (8:30 p.m. Beijing time) on March 31, 2011, until the Form 10-K  
is filed.

1 The Company and its advisors are working expeditiously to resolve the  
2 issues discovered during its audit, but the Company, at this time, is unable to  
3 determine when it will file the report.

4 Additional information regarding the Company's extension request can be  
5 found in the Form 12b-25, which may be viewed on the SEC's website,  
6 <http://www.sec.gov>.

7 40. As a result of this adverse information, trading in the Company's stock  
8 was halted, effectively rendering CELM's stock illiquid, damaging Plaintiff and the  
9 Class.

10 **Applicability of Presumption of Reliance:**  
11 **Fraud-on-the-Market Doctrine**

12 41. At all relevant times, the market for CELM's common stock was an  
13 efficient market for the following reasons, among others:

- 14 (a) The Company's stock met the requirements for listing, and  
15 was listed and actively traded on the NASDAQ, a highly  
16 efficient and automated market;  
17  
18 (b) As a regulated issuer, CELM filed periodic public reports with  
19 the SEC and the NASDAQ and was eligible and did file short  
20 form registration statements on Form S-3 with the SEC;  
21  
22 (c) CELM regularly communicated with public investors via  
23 established market communication mechanisms, including  
24 through regular disseminations of press releases on the  
25 national circuits of major newswire services and through  
26  
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1 other wide-ranging public disclosures, such as  
2 communications with the financial press and other similar  
3 reporting services;  
4

5 (d) CELM was followed by several securities analysts  
6 employed by major brokerage firms who wrote reports that  
7 were distributed to the sales force and certain customers of  
8 their respective brokerage firms during the Class Period. Each  
9 of these reports was publicly available and entered the public  
10 marketplace; and  
11  
12

13 42. As a result of the foregoing, the market for the Company's common  
14 stock promptly digested current information regarding the Company from all  
15 publicly available sources and reflected such information in the Company's stock  
16 price. Under these circumstances, all purchasers of the Company's common stock  
17 during the Class Period suffered similar injury through their purchase of the  
18 Company's common stock at artificially inflated prices, and a presumption of  
19 reliance applies.  
20  
21

22 **Applicability of Presumption of Reliance:**

23 *Affiliated Ute*

24  
25 43. Neither Plaintiff nor the Class need prove reliance – either individually or as  
26 a class because under the circumstances of this case, which involves a failure to disclose  
27 the material related party transactions described herein above, positive proof of reliance is  
28

1 not a prerequisite to recovery, pursuant to ruling of the United States Supreme Court in  
2 *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). All that is  
3 necessary is that the facts withheld be material in the sense that a reasonable investor  
4 might have considered the omitted information important in deciding whether to buy or  
5 sell the subject security.  
6

### 7 8 **NO SAFE HARBOR**

9 44. The statutory safe harbor provided for forward-looking statements  
10 under certain circumstances does not apply to any of the allegedly false statements  
11 pleaded in this Complaint. Many or all of the specific statements pleaded herein  
12 were not identified as “forward-looking statements” when made. To the extent  
13 there were any forward-looking statements, there were no meaningful cautionary  
14 statements identifying important factors that could cause actual results to differ  
15 materially from those in the purportedly forward-looking statements. Alternatively,  
16 to the extent that the statutory safe harbor does apply to any forward-looking  
17 statements pleaded herein, Defendants are liable for those false forward-looking  
18 statements because at the time each of those forward-looking statements was made,  
19 the particular speaker knew that the particular forward-looking statement was false,  
20 and/or the forward-looking statement was authorized and/or approved by an  
21 executive officer of the Company who knew that those statements were false when  
22 made.  
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### 28 **FIRST CLAIM**

1 **Violation of Section 10(b) of**  
2 **The Exchange Act and Rule 10b-5**  
3 **Promulgated Thereunder Against CELM and Individual Defendants**

4 45. Plaintiff repeats and realleges each and every allegation contained  
5 above as if fully set forth herein.

6 46. This Claim is asserted against CELM and the Individual Defendants  
7 (collectively, "First Claim Defendants").  
8

9 47. During the Class Period, First Claim Defendants carried out a plan,  
10 scheme and course of conduct which was intended to and, throughout the Class  
11 Period, did: (1) deceive the investing public, including Plaintiff and other Class  
12 members, as alleged herein; and (2) cause Plaintiff and other members of the Class  
13 to purchase CELM's securities at artificially inflated prices. In furtherance of this  
14 unlawful scheme, plan and course of conduct, First Claim Defendants, and each of  
15 them, took the actions set forth herein.  
16  
17

18 48. First Claim Defendants (a) employed devices, schemes, and artifices to  
19 defraud; (b) made untrue statements of material fact and/or omitted to state material  
20 facts necessary to make the statements not misleading; and (c) engaged in acts,  
21 practices, and a course of business that operated as a fraud and deceit upon the  
22 purchasers of the Company's securities in an effort to maintain artificially high  
23 market prices for CELM's securities in violation of Section 10(b) of the Exchange  
24 Act and Rule 10b-5 thereunder.  
25  
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1           49. First Claim Defendants, directly and indirectly, by the use, means or  
2 instrumentalities of interstate commerce and/or of the mails, engaged and  
3 participated in a continuous course of conduct to conceal adverse material  
4 information about the business, operations and future prospects of CELM as  
5 specified herein.  
6

7  
8           39. First Claim Defendants employed devices, schemes, and artifices to  
9 defraud while in possession of material adverse non-public information, and  
10 engaged in acts, practices, and a course of conduct as alleged herein in an effort to  
11 assure investors of the Company's value and performance and continued substantial  
12 growth, which included the making of, or participation in the making of, untrue  
13 statements of material facts and omitting to state material facts necessary in order to  
14 make the statements made about the Company and its business operations and  
15 future prospects in the light of the circumstances under which they were made, not  
16 misleading, as set forth more particularly herein, and engaged in transactions,  
17 practices and a course of business that operated as a fraud and deceit upon the  
18 purchasers of the Company's securities during the Class Period.  
19

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22           40. First Claim Defendants had actual knowledge of the  
23 misrepresentations and omissions of material facts set forth herein, or acted with  
24 reckless disregard for the truth in that they failed to ascertain and to disclose such  
25 facts, even though such facts were available. Such material misrepresentations  
26 and/or omissions were done knowingly or recklessly and for the purpose and effect  
27  
28

1 of concealing the Company's operating condition and future business prospects  
2 from the investing public and supporting the artificially inflated price of its  
3 securities. As demonstrated by overstatements and misstatements of the  
4 Company's financial condition throughout the Class Period, if the First Claim  
5 Defendants did not have actual knowledge of the misrepresentations and omissions  
6 alleged, they were reckless in failing to obtain such knowledge by deliberately  
7 refraining from taking those steps necessary to discover whether those statements  
8 were false or misleading.  
9

10  
11  
12 41. As a result of the dissemination of the materially false and misleading  
13 information and failure to disclose material facts, as set forth above, the market  
14 price of CELM's securities was artificially inflated during the Class Period. In  
15 ignorance of the fact that market prices of the Company's publicly-traded securities  
16 were artificially inflated, and relying directly or indirectly on the false and  
17 misleading statements made by the First Claim Defendants, or upon the integrity of  
18 the market in which the common stock trades, and/or on the absence of material  
19 adverse information that was known to or recklessly disregarded by the First Claim  
20 Defendants, but not disclosed in public statements by the First Claim Defendants  
21 during the Class Period, Plaintiff and the other members of the Class acquired  
22 CELM common stock during the Class Period at artificially high prices, and were,  
23 or will be, damaged thereby.  
24  
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1 rights, participation in and/or awareness of the Company's operations and/or  
2 intimate knowledge of the false financial statements filed by the Company with the  
3 SEC and disseminated to the investing public, the Individual Defendants had the  
4 power to influence and control, and did influence and control, directly or indirectly,  
5 the decision-making of the Company, including the content and dissemination of  
6 the various statements that plaintiff contends are false and misleading. The  
7 Individual Defendants were provided with or had unlimited access to copies of the  
8 Company's reports, press releases, public filings and other statements alleged by  
9 Plaintiff to have been misleading prior to and/or shortly after these statements were  
10 issued and had the ability to prevent the issuance of the statements or to cause the  
11 statements to be corrected.  
12

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16 47. In particular, each Individual Defendant had direct and supervisory  
17 involvement in the day-to-day operations of the Company and, therefore, is  
18 presumed to have had the power to control or influence the particular transactions  
19 giving rise to the securities violations as alleged herein, and exercised the same.  
20

21 48. As set forth above, the First Claim Defendants each violated Section  
22 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.  
23

24 49. By virtue of their positions as controlling persons, the Individual  
25 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct  
26 and proximate result of Defendants' wrongful conduct, Plaintiff and other members  
27  
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1 of the Class suffered damages in connection with their purchases of the Company's  
2 common stock during the Class Period.

3  
4 50. This action was filed within two years of discovery of the fraud and  
5 within five years of each Plaintiff's purchases of securities giving rise to the cause  
6 of action.

7  
8 **THIRD CLAIM**

9  
10 **Against All Defendants**  
11 **for Violation of §11 of the Securities Act**

12 51. Plaintiff repeats and realleges each and every allegation contained  
13 above as if fully set forth herein. This claim is not based on, and does not allege,  
14 fraud.

15  
16 52. For purposes of this claim, Plaintiff expressly disclaims and excludes  
17 any allegations that could be construed as alleging fraud or intentional or reckless  
18 misconduct as this cause of action is based expressly on claims of strict liability  
19 and/or negligence under the Securities Act.

20  
21 53. This claim is asserted by Plaintiff against all Defendants by, and on  
22 behalf of, persons who acquired shares of the Company's securities pursuant to  
23 and/or traceable to Registration Statement in connection with the Offering.

24  
25 54. Individual Defendants as signatories of the Registration Statement, as  
26 directors and/or officers of CELM and controlling persons of the issuer, owed to the  
27 holders of the securities obtained through the Registration Statement the duty to  
28

1 make a reasonable and diligent investigation of the statements contained in the  
2 Registration Statement at the time they became effective to ensure that such  
3 statements were true and correct, and that there was no omission of material facts  
4 required to be stated in order to make the statements contained therein not  
5 misleading. Defendants knew, or in the exercise of reasonable care should have  
6 known, of the material misstatements and omissions contained in or omitted from  
7 the Registration Statement as set forth herein. As such, defendants are liable to the  
8 Class.  
9  
10

11  
12 55. Underwriter Defendants owed to the holders of the securities obtained  
13 through the Registration Statement the duty to make a reasonable and diligent  
14 investigation of the statements contained in the Registration Statement at the time  
15 they became effective to ensure that such statements were true and correct and that  
16 there was no omission of material facts required to be stated in order to make the  
17 statements contained therein not misleading.  
18

19  
20 56. None of the Defendants made a reasonable investigation or possessed  
21 reasonable grounds for the belief that the statements contained in the Registration  
22 Statement were true or that there was no omission of material facts necessary to  
23 make the statements made therein not misleading.  
24

25 57. Defendants issued and disseminated, caused to be issued and  
26 disseminated, and participated in the issuance and dissemination of, material  
27 misstatements to the investing public, which were contained in the Registration  
28

1 Statement, that misrepresented or failed to disclose, *inter alia*, the facts set forth  
2 above. By reason of the conduct herein alleged, each defendant violated and/or  
3 controlled a person who violated Section 11 of the Securities Act.  
4

5 58. As a direct and proximate result of Defendants' acts and omissions in  
6 violation of the Securities Act, the market price of CELM's securities sold in the  
7 Offering was artificially inflated, and Plaintiff and the Class suffered substantial  
8 damage in connection with their ownership of CELM's securities pursuant to the  
9 Registration Statement.  
10

11 59. CELM is the issuer of the securities sold via the Registration  
12 Statement. As issuer of the securities, the Company is strictly liable to Plaintiff and  
13 the Class for the material misstatements and omissions therein.  
14

15 60. At the times they obtained his shares of CELM, Plaintiff and members  
16 of the Class did so without knowledge of the facts concerning the misstatements or  
17 omissions alleged herein.  
18

19 61. This action is brought within one year after discovery of the untrue  
20 statements and omissions in and from the Registration Statement which should  
21 have been made through the exercise of reasonable diligence, and within three years  
22 of the effective date of the Prospectus.  
23

24 62. By virtue of the foregoing, Plaintiff and the other members of the  
25 Class are entitled to damages under Section 11 as measured by the provisions of  
26 Section 11 (e), from the defendants and each of them, jointly and severally.  
27  
28

1 **FOURTH CLAIM**

2 **Against All Defendants**  
3 **for Violation of §12(a)(2) of the Securities Act Against All Defendants**  
4

5 63. Plaintiff repeats and realleges each and every allegation contained  
6 above as if fully set forth herein. This claim is not based on, and does not allege,  
7 fraud.  
8

9 64. For purposes of this claim, Plaintiff expressly disclaims and excludes  
10 any allegations that could be construed as alleging fraud or intentional or reckless  
11 misconduct as this cause of action is based expressly on claims of strict liability  
12 and/or negligence under the Securities Act.  
13

14 65. Defendants were sellers, offerors, underwriters and/or solicitors of  
15 sales of the CELM securities offering pursuant to the January 2010 Prospectus.  
16

17 66. The Prospectus contained untrue statements of material facts, omitted  
18 to state other facts necessary to make the statements made not misleading, and  
19 concealed and failed to disclose material facts. Defendants' actions of solicitation  
20 included participating in the preparation of the false and misleading Prospectus.  
21

22 67. Defendants owed, to the purchasers of CELM securities which were  
23 sold in the January 2010 Offering, the duty to make a reasonable and diligent  
24 investigation of the statements contained in the Prospectus, to insure that such  
25 statements were true and that there was not omission to state a material fact  
26 required to be stated in order to make the statements contained therein not  
27  
28

1 misleading. These Defendants knew of, or in the exercise of reasonable care should  
2 have known of, the misstatements and omissions contained in the Offering  
3 materials as set forth above.  
4

5 68. Plaintiff and other members of the Class purchased or otherwise  
6 acquired CELM securities pursuant to and traceable to the defective Prospectus.  
7 Plaintiff did not know, or in the exercise of reasonable diligence could not have  
8 known of the untruths and omissions.  
9

10 69. Plaintiff, individually and representatively, hereby offer to tender to  
11 Defendants those securities which Plaintiff and other class members continue to  
12 own, on behalf of all members of the Class who continue to own such securities, in  
13 return for the considerations paid for those securities together with interest thereon.  
14  
15

16 70. By reason of the conduct alleges herein, these Defendants violated,  
17 and/or controlled a person who violated, section 12(a)(2) of the Securities Act.  
18 Accordingly, Plaintiffs and members of the Class who hold CELM securities  
19 purchased pursuant and/or traceable to the January 2010 Offering have the right to  
20 rescind and recover the consideration paid for their CELM securities and, hereby  
21 elect to rescind and tender their CELM securities to the Defendants sued herein.  
22 Plaintiff and class members who have sold their CELM securities are entitled to  
23 rescissionary damages.  
24  
25

26 71. Less than three years elapsed from the time that the securities upon  
27 which this count is brought were sold to the public to the time of the filing of this  
28

1 action. Less than one elapsed from the time when Plaintiff discovered or reasonably  
2 could have discovered the facts upon which this count is based to the time of the  
3 filing of this action.  
4

5 **FIFTH CLAIM**

6 **Violations of Section 15 of the Securities Act**

7 **Against the Individual Defendants**

8  
9 72. Plaintiffs repeat and reallege each and every allegation contained  
10 above as if fully set forth herein. This claim is not based on, and does not allege,  
11 fraud.  
12

13 73. This claim is asserted against each of the Individual Defendants, each  
14 of whom was a control person of CELM during the relevant time period.  
15

16 74. For the reasons set forth above, CELM is liable to Plaintiff and the  
17 members of the Class who purchased CELM common stock in the Offering on the  
18 untrue statements and omissions of material fact contained in the Registration  
19 Statement and Prospectus, under §§11 and 12(a)(2) of the Securities Act.  
20

21 75. The Individual Defendants were control persons of CELM by virtue  
22 of, among other things, their positions as senior officers, directors and/or  
23 controlling shareholders of the Company. Each was in a position to control and did  
24 in fact control CELM and the false and misleading statements and omissions  
25 contained in the Registration Statement and Prospectus  
26  
27  
28

1           76. None of the Individual Defendants made reasonable investigation or  
2 possessed reasonable grounds for the belief that the statements contained in the  
3 Registration Statement and Prospectus were accurate and complete in all material  
4 respects. Had they exercised reasonable care, they could have known of the  
5 material misstatements and omissions alleged herein.  
6

7  
8           77. This claim was brought within one year after the discovery of the  
9 untrue statements and omissions in the Registration Statement and Prospectus and  
10 within three years after CELM common stock was sold to the Class in connection  
11 with the public offering.  
12

13           78. By reason of the misconduct alleged herein, for which CELM is  
14 primarily liable, as set forth above, the Individual Defendants are jointly and  
15 severally liable with and to the same extent as CELM pursuant to Section 15 of the  
16 Securities Act.  
17

18           **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:  
19

20           (a) Determining that this action is a proper class action, designating  
21 Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under  
22 Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead  
23 Counsel;  
24

25           (b) Awarding compensatory damages in favor of Plaintiff and the  
26 other Class members against all Defendants, jointly and severally, for all damages  
27  
28

1 sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial,  
2 including interest thereon;

3  
4 (c) Awarding plaintiff and the Class their reasonable costs and  
5 expenses incurred in this action, including counsel fees and expert fees;

6 (d) Awarding rescissory damages; and

7  
8 (e) Awarding such other and further relief as the Court may deem just  
9 and proper.

10 **JURY TRIAL DEMANDED**

11  
12 Plaintiff hereby demands a trial by jury.

13 Dated: April 1, 2011

Respectfully submitted,

14 **THE ROSEN LAW FIRM, P.A.**

15  
16 

17  
18  
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26  
27  
28 Counsel for Plaintiff