

Matter of Renren, Inc. v XXX
2022 NY Slip Op 30999(U)
March 28, 2022
Supreme Court, New York County
Docket Number: Index No. 653594/2018
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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IN RE RENREN, INC. DERIVATIVE LITIGATION,

INDEX NO. 653594/2018

Plaintiff,

MOTION DATE

- v -

MOTION SEQ. NO. 024 025

XXX,

Defendant.

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 024) 860, 861, 862, 863, 864, 875, 897, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 922, 923, 924, 925, 926, 927, 928, 938, 971

were read on this motion to/for MISCELLANEOUS

The following e-filed documents, listed by NYSCEF document number (Motion 025) 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 896, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 929, 930, 931, 932, 933, 934, 935, 980

were read on this motion to/for MISCELLANEOUS

The motion (Mtn. Seq. No. 024) of Altimeo Asset Management, Miao Cao, Song Lin, Gillian Li Lian Lee, Zhongqiang Fan, Ke Liao, Xiaobin Mei, ShiChang Zhong, Lingyun Wu, Lixin Ding, Yunshan Li, Yuliang Wu, Keyou Yang, Xiaojie Wu, Ning Liu, Yan Wang, Tingpeng Wu, Qiu Weifeng, Nante Yin, Song Ya Fei, Yejun Yan, Hailin Peng, Ming Zhu, Zhi Yang, JieTong Zhu, Bin Qiu, Shoujing Zhu, Xiaofang Tang, Zhang Jiye, Qian Yang, Linyu Zhou, Hu FuHua, Cheng Xiaojing, Dawei Zheng, Wenhua Zhang, Yuanzhi Chen, Cheng Xiojing, Changhao Zhao, Lili Zhang, GengBiao Liao, Zhang Jilei, Zhuowei Wang, Chen Jingqiao, Qi Zhang, Xia Yu, and the Cinderella Fund (collectively, the Proposed April Intervenors) to intervene in this action is granted solely to the extent of permitting Miao Cao to intervene in this action.

As discussed in the Decision and Order and Supplemental Order, dated March 9, 2022 (the **2022 Decision**; NYSCEF Doc. No. 969), in order to have standing to bring this lawsuit under BCL 626(b), one must satisfy the dual requirement of contemporaneous and continuous ownership (NYSCEF Doc. No. 969, at 3-4). On the record before the Court, of the Proposed April Intervenors, Mia Cao is the only shareholder who satisfies both of these requirements. Mr. Cao has also demonstrated that he has timely moved to intervene, that his claims share common questions of law and fact with this action, and that the current plaintiffs in this action inadequately represent his interests (CPLR 1012-1013). This is firmly established by the current plaintiffs' attempt to settle this action and to allocate the settlement proceeds to themselves and to the exclusion of other relevant shareholders.

The motion (Mtn. Seq. No. 25) of proposed intervenor CRCM Institutional Master Fund (BVI) Limited (the **Proposed June Intervenor**) to intervene in this action is granted because the Proposed June Intervenor owned its shares as of the record date, continues to own its shares as of today, timely moved to intervene, and has demonstrated that its claims and this action share common questions of law and fact. Thus, the Proposed June Intervenor also has standing.

Reference is made herein to (i) the Decision and Order (the **2020 Decision**), 67 Misc.3d 1219(A) (Sup Ct, NY County 2020), *affd* 192 AD3d 539 (1st Dept 2021), (ii) the Decision and Order dated December 20, 2021 (the **December 10, 2021 Decision**; NYSCEF Doc. No. 846), the Supplemental Order dated December 29, 2021 (the **First Supplemental Order**; NYSCEF Doc. No. 851), and the Supplemental Order dated December 31, 2021 (the **Second Supplemental Order**; NYSCEF Doc. No. 852; the Second Supplemental Order, together with the December

10, 2021 Decision and the First Supplemental Order, as amended by the 2022 Decision, hereinafter, collectively, the **2021 Decision**), pursuant to which this Court held that the proposed settlement was “so unfair on its face to preclude judicial approval” because the proposed settlement was structured with direct payments to certain minority shareholders but excluded other relevant injured minority shareholders and because the proposed legal fees were excessive (NYSCEF Doc. No. 846, at 1), and (iii) the Decision and Order and Supplemental Order, dated March 9, 2022 (the **2022 Decision**; NYSCEF Doc. No. 969) pursuant to which this Court dismissed the claims brought by shareholders who were not shareholders as of June 21, 2018 and otherwise amended the 2021 Decision to set the record date as of June 21, 2018 because that is the date when the damage to Renren was final and fixed (NYSCEF Doc. No. 969, at 8-9)

In the 2022 Decision, this Court indicated that it appeared based on the affidavit provided by Judge Ingrid Mangatal (NYSCEF Doc. No. 938) that, like under New York law, under Cayman Islands law, current ownership is a standing requirement to maintain a derivative action (NYSCEF Doc. No. 969, at 5). Now, upon review of the papers submitted in connection with the instant intervention motions, the Court holds that under Cayman Law, like under New York law, to maintain a derivative action, one must be a current owner of Renren shares.

To the extent the Proposed April Intervenors argue that the Record Date should be set as of April 30, 2018, rather than June 21, 2018, these arguments fail for the reasons set forth in the 2022 Decision. Thus, in order to have standing, a shareholder must have owned their shares in Renren as of June 21, 2018 and must still own shares in Renren.

Additionally, the Proposed April Intervenors argue that their basis for intervention is broader than the basis for standing and that they should be permitted to intervene to protect their interest in any settlement proceeds. The premise behind this argument is simply not correct.

As discussed in the 2020 Decision, the 2021 Decision and the 2022 Decision, this is a derivative action that alleges harm to, and seeks recovery for, damage to Renren for the assets that were inappropriately siphoned off. To have standing to maintain a derivative action, a prospective plaintiff must have both a sufficient legal interest and injury (NYSCEF Doc. No. 969, at 4) because in a shareholder derivative action, a shareholder is “defending his own interests as well as those of the corporation” and where a shareholder “voluntarily disposes of the stock, his rights as a shareholder cease, and his interest in the litigation is terminated” (*Independent Inv. Protective League v Time, Inc.*, 50 NY2d 259, 263 [1980]). The Proposed April Intervenors other than Mr. Cao plainly do not have any interest in Renren, this action or any potential settlement proceeds as of right. They voluntarily sold their interests in Renren prior to the time in which the harm to Renren became fixed and final. Their intervention is thus improper. The Proposed April Intervenors fail to cite any case to support their contention that, as former shareholders, they have a legally cognizable interest in Renren. It does not matter that as part of any settlement of this action which provides for direct payment to current shareholders of Renren, the plaintiffs could voluntarily and without obligation agree to pay them some portion of the settlement proceeds.

For the avoidance of doubt, given that the proposed settlement was only recently presented to, and rejected by this Court in the 2021 Decision, the motions to intervene are timely and there is

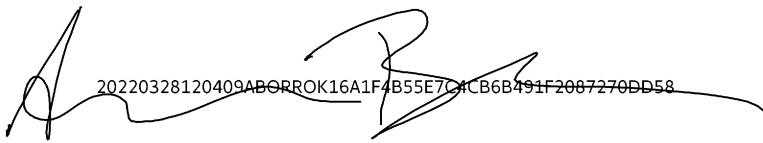
no prejudice to the parties or delay because they only seek to represent their own interests adequately and they do not seek to assert new claims (*Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 AD3d 197, 201 [1st Dept 2010]).

The court has considered the remaining arguments and finds them unavailing.

It is hereby ORDERED that the Proposed April Intervenors' motion to intervene is granted solely to the extent of allowing Miao Cao to intervene in this action; and it is further

ORDERED that the Proposed June Intervenor's motion to intervene is granted; and it is further

ORDERED that the parties shall appear for a status conference on April 6, 2022, at 12:30pm



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3/28/2022
DATE

ANDREW BORROK, JSC

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SETTLE ORDER	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/>	<input type="checkbox"/>