

**Matter of 9F Inc. Sec. Litig. v XXX**

2023 NY Slip Op 30699(U)

March 6, 2023

Supreme Court, New York County

Docket Number: Index No. 654654/2020

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 9F INC. SECURITIES LITIGATION

INDEX NO. 654654/2020

Plaintiff,

MOTION DATE N/A

- v -

MOTION SEQ. NO. 001

XXX,

Defendant.

**DECISION + ORDER ON  
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 52, 53, 54, 55, 56, 57 were read on this motion to/for DISMISS.

The Plaintiffs’ case must be dismissed because it is predicated on the theory that the offering documents were materially misleading because they failed to disclose that PICC would ultimately not pay the amounts allegedly owed to 9F. This claim fails because there was no actionable omission at time of the offering based on the company’s lack of clairvoyance (*Camelot Event Driven Fund v Morgan Stanley & Co. LLC*, 77 Misc3d 1232[A] [Sup Ct, NY County 2023]; *Donlon v NIO Inc.*, 211 AD3d 464, 466 [1st Dept 2022]). Whether offering documents are misleading must be viewed from the time the statements are made and not retroactively in hindsight (*Matter of Netshoes Sec. Litig.*, 64 Misc3d 926, 933 [Sup Ct, NY County 2019]; *In re Express Scripts Holdings Co. Sec. Litig.*, 773 FedAppx 9, 12 [2d Cir 2019]).

Simply put, the plaintiffs do not allege any contemporaneous facts (*e.g.*, PICC did not make a payment) in August 2019 at the time of the offering, that would suggest that PICC was not going to make the payments that it was obligated to make. At this time, the Plaintiffs allege only that

9F had a sizeable and growing account receivable – nothing more. The Plaintiffs do not allege that there was an accounting violation for failure to take a doubtful account allowance with respect to any portion of this account receivable or any fact giving rise to concern that PICC would not meet its obligations. Indeed, it was not until November 2019 that PICC failed to make payments – some three months after the offering. It was not until December 2019 that 9F froze its business with PICC. Lastly, the subsequent statements made by 9F that 9F's business would be affected relate to the quarter *after* the offering closed.

In their opposition papers, the Plaintiffs assert two new theories not reflected in the complaint. The first theory is that the offering documents were materially misleading because the offering documents did not identify PICC who was obligated to insurance payments under the short term loans as servicing the loans (*i.e.*, making collection). The second theory is that the offering documents were materially misleading because the offering documents do not disclose that 9F did not spread around servicing the loans to different partners and instead had only PICC (who guaranteed payment of the loans) collect payments due. Neither theory is properly reflected in the complaint and as such the complaint must be dismissed.

As discussed on the record (3.2.23), even if these theories were set forth in an amended pleading, it does not appear that either theory would be viable. As to the first theory, in the offering documents, 9F expressly disclosed that PICC would be servicing the loans:

In addition to our Online Lending Information Intermediary Services, we also provide traffic referral services to institutional funding partners, and in most cases, in collaboration with an insurance company under our direct lending program allowing the institutional funding partners to access borrowers who have passed our risk assessment, under which the insurance company, when it is engaged, provides credit insurances to the institutional funding partners. The

insurance company also benefits from our risk management capabilities to provide credit insurance on loans of high quality borrowers. *The institutional funding partners* make the final credit decision based on their own credit assessment and *are also in charge of funding and servicing the loans*

(NYSCEF Doc. No. 26, at 35 [emphasis added]).

The second theory seems to be foreclosed by *Wilson v Merrill Lynch & Co., Inc.*, 671 F3d 120 (2d Cir 2011) (holding that a disclosure that Merrill might routinely place bids was a sufficient disclosure when it actually placed bids in every auction) and because it is not clear how this would otherwise affect the “total mix of information” given that the risk of PICC’s nonpayment was already disclosed.

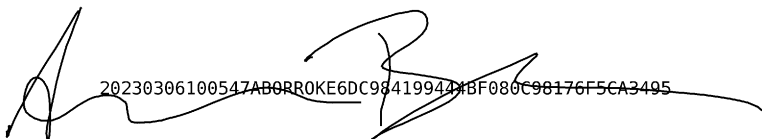
The claims against the Underwriters must be dismissed for the same reasons – *i.e.*, a failure to allege facts that there was an actionable omission at the time of the offering (*Matter of Uxin Ltd. Sec. Litig.*, 66 Misc3d 1232[A], at \* 7 [Sup Ct, NY County 2020]).

Inasmuch as the Section 11 and Section 12 claims are dismissed without prejudice, the Section 15 claim must be dismissed without prejudice as well.

It is hereby ORDERED that the motion to dismiss is granted; and it is further

ORDERED that the Plaintiffs shall file an amended complaint within 30 days of the date of today’s order; and it is further

ORDERED that if the Plaintiffs fail to timely file an amended complaint, dismissal shall be with prejudice.



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3/6/2023  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE