

**Ionic Ventures, LLC v Vision Mar. Tech., Inc**

2025 NY Slip Op 33098(U)

August 13, 2025

Supreme Court, New York County

Docket Number: Index No. 651289/2025

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X

IONIC VENTURES, LLC, CAVALRY FUND I LP, WVP  
 EMERGING MANAGER OFFSHORE FUND  
 LLC, STRUCTURED SMALL CAP LENDING SERIES

Plaintiff,

- v -

VISION MARINE TECHNOLOGIES, INC,

Defendant.

INDEX NO. 651289/2025

MOTION DATE 05/23/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
 MOTION**

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23

were read on this motion to/for APPROVE/SETTLE FINAL ACCOUNTING.

Upon the foregoing documents, the plaintiffs’ motion (Mot. Seq. No. 001) for an order approving the parties’ Settlement (hereinafter defined) and for the issuance of shares under Section 3(a)(10) of the Securities Act of 1933 is GRANTED to the extent set forth below.

**Background**

Reference is made to Securities Purchase Agreements (**SPA**)’s by and between Vision Marine Technologies, Inc. (**VMAR**) and each of the plaintiffs, Ionic Ventures, LLC (**Ionic**), Cavalry Fund I LP (**Cavalry**), and WVP Emerging Manager Onshore Fund LLC – Structured Small Cap Lending Series (**WVP**).

On or about December, 2023, each of the plaintiffs entered into an SPA with VMAR, a public company, to purchase shares of VMAR’s Convertible Preferred Stock, as well as warrants to

purchase shares of VMAR's common stock (NYSCEF Doc. No. 2 ¶ 10). Ionic purchased 250 preferred shares for \$250,000, Cavalry purchased 790 preferred shares for \$790,000, and WVP purchased 210 preferred shares for \$210,000 (*id.*). Under the terms of the SPAs, the preferred shares are convertible into shares of VMAR's common stock either at the option of the holder (NYSCEF Doc. No. 4 § 6[a]) or by a forced conversion on the one-year anniversary of the original issue date (*id.* § 8).

The plaintiffs did not convert any of their respective preferred shares during the one-year period following their issue date (NYSCEF Doc. No. 2 ¶ 17). Thus, a forced conversion was due to occur in December, 2024 (*id.*). Pursuant thereto, VMAR issued forced conversion notices to each of the plaintiffs dated as of December 21, 2024 (NYSCEF Doc. No. 5). The plaintiffs alleged that, pursuant to the conversion formula in the SPAs, Ionic is entitled to 203,138 common shares; Cavalry is entitled to 641,917 common shares; and WVP is entitled to 170,636 common shares (*id.* at 24). However, VMAR claimed that each of the plaintiffs is entitled to a much lower number of shares (*id.* at 26), based on adjustments to the conversion price which plaintiffs claim to have not been notified about (*id.* at 34).

On March 6, 2025, the plaintiffs filed the instant complaint for breach of contract, seeking damages or specific performance (NYSCEF Doc. No. 2).

Subsequently, on May 23, 2025, the plaintiffs filed the instant motion by order to show cause (NYSCEF Doc. No. 18), indicating that the parties had agreed to a Settlement Agreement and Release (the **Settlement**; NYSCEF Doc. No. 11) dated May 16, 2025, and asking that this Court

approve the issuance of the shares pursuant to the Settlement as fair and reasonable pursuant to Section 3(a)(10) of the Securities Act of 1933 (NYSCEF Doc. No. 14 at 8). The motion was unopposed.

On July 28, 2025, the Court asked the plaintiffs to supplement the record as by adducing evidence of the fairness of the terms and conditions of the Settlement.

In response, the plaintiffs adduced the affidavits of Thomas Walsh (NYSCEF Doc. No. 22; the **Walsh Affidavit**) on behalf of Cavalry and WVP, and Brendan T. O'Neil (NYSCEF Doc. No. 23; the **O'Neil Affidavit**) on behalf of Ionic. The defendants adduced the affidavit of Alexandre Mongeon (NYSCEF Doc. No. 24; **Mongeon Affidavit**).

In the Walsh Affidavit, Mr. Walsh explains that he has a long history in investment in micro and small capital companies (Walsh Affidavit, ¶ 3), that Cavalry and WVP are sophisticated investors that are capable of making informed investment and strategic decisions (Walsh Affidavit, ¶ 10), that the Settlement was the product of extensive arms-length negotiations over several months between the parties, each represented by experienced, competent counsel with an expertise in such transactions (Walsh Affidavit, ¶ 11), that Cavalry and WVP are entering into the Settlement upon the recommendation of counsel (Walsh Affidavit, ¶ 12), and that he believes that the Settlement is preferable to the alternative of proceeding with litigation, with its inherent risks, and that even if the plaintiffs ultimately prevail after litigation, there is a substantial risk that the value of VMAR's shares will have greatly diminished by then (Walsh Affidavit, ¶¶ 13-15).

In the O’Neil Affidavit, Mr. O’Neil explains that he is a Certified Financial Analyst and former Registered Investment Advisor with extensive experience in financial and industry analysis (O’Neil Affidavit, ¶ 3), that Ionic is a sophisticated investor that is capable of making informed investment and strategic decisions (O’Neil Affidavit, ¶ 10), that the Settlement was the product of extensive arms-length negotiations over several months between the parties, each represented by experienced, competent counsel with an expertise in such transactions (O’Neil Affidavit, ¶ 11), that Ionic is entering into the Settlement upon the recommendation of counsel (O’Neil Affidavit, ¶ 12), and that he believes that the Settlement is preferable to the alternative of proceeding with litigation, with its inherent risks, and that even if the plaintiffs ultimately prevail after litigation, there is a substantial risk that the value of VMAR’s shares will have greatly diminished by then (O’Neil Affidavit, ¶¶ 13-15).

In the Mongeon Affidavit, Mr. Mongeon explains that he has been the CEO of VMAR since 2020 and has participated in numerous capital raises for the company, as well as several financings using various financing structures (Mongeon Affidavit, ¶¶ 1, 10), that he and his team at VMAR determined that the Settlement was in VMAR’s best interests after considering the alternative of expensive and time-consuming litigation and its effects upon VMAR (Mongeon Affidavit ¶¶ 11, 13-14), that the Settlement was the product of extensive arms-length negotiations over several months between the parties and that VMAR was agreeing to the settlement upon the recommendation of counsel (Mongeon Affidavit ¶ 12), and that VMAR is saving on costs by entering into the Settlement rather than engaging in litigation (Mongeon Affidavit ¶ 18).

On August 13, 2025, the court held a fairness hearing on the Settlement where the relevant parties appeared.

### Discussion

The Securities Act generally requires a public company like VMAR to register the securities it intends to offer to the public with the Securities and Exchange Commission (*Slack Tech., LLC v Pirani*, 598 US 759, 143 S Ct 1433, 1435, 216 L Ed 2d 18 [2023]). Under 17 CFR 230.144(a)(3)(i), securities acquired directly from a public issuer (like VMAR), and not in a public offering, are “restricted securities” and cannot be sold on a public exchange until the expiration of a holding period (*Gudmundsson v United States*, 634 F3d 212, 215 [2d Cir 2011]). Section 3(a)(10) of the Securities Act provides an exemption from registration if the following prerequisites are met: (i) an exchange for outstanding securities, claims or property interests, (ii) a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities shall have the right to appear, and (iii) a finding of fairness and approval by a court (*YA II PN, Ltd. v Taronis Tech., Inc.*, 435 F Supp 3d 622, 625 [SDNY 2020]).

In *YA*, the Hon. Jed Rakoff explained:

Generally, public companies are not permitted to issue their stock -- and shareholders receiving those shares are not permitted to immediately resell them into public markets -- without first filing a registration statement. See 15 U.S.C. §§ 77e(c), 77d(a)(1). However, Section 3(a)(10) of the Securities Act of 1933 provides an exemption from such general rule:

any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests [is exempt from

application of this subchapter] where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court ....

15 U.S.C. § 77c(a)(10). That is, the statutory prerequisites for an issuer claiming a Section 3(a)(10) exemption, as relevant here, are:

(i) exchange for outstanding securities, claims or property interests;

(ii) a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities shall have the right to appear; and

(iii) a finding of fairness and approval by a court.

[...]

Some courts have focused on procedural fairness by looking at: “(1) the recommendations of counsel; (2) the scope of the discovery record as an indicator of the adequacy of the investigation into the facts; (3) the apparent alternatives to the settlement; (4) the nature and volume of responses from those receiving notice of the hearing; and (5) the opportunity for direct participation in the process of obtaining full disclosure.” *Sec. & Exch. Comm'n v. Blinder Robinson & Co.*, 511 F. Supp. 799, 801 (D. Colo. 1981). Other courts have looked at, in addition to those procedural factors, (6) “a consideration of the value of the settlement compared to the possible results of litigation” *Cont'l Assur. Co. v. Macleod-Stedman, Inc.*, 694 F. Supp. 449, 468 (N.D. Ill. 1988).

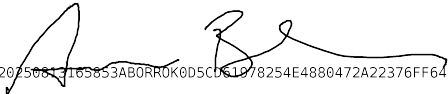
(*id.*).

The Settlement involves, among other things, an exchange of shares. The shares are subject to certain terms and conditions, such as a beneficial ownership limitation, partial lock up, reporting requirements, and a prohibition on short selling for a maximum period of twelve months (NYSCEF Doc. No. 11 § 13).

As discussed above, the Court held a fairness hearing on August 13, 2025, where all relevant parties appeared and had an opportunity to be heard.

As to the fairness of the Settlement, relying on *YA*, the court addresses the six factors identified by the *YA* Court. First, the parties indicate that they are relying on advice of counsel and that although discovery is in its nascent stage, counsel for all plaintiffs recommended the approval of the Settlement in light of the risks, uncertainties, and time requirements associated with pursuing litigation as an alternative to the Settlement (Walsh Affidavit ¶¶ 12; O’Neil Affidavit ¶¶ 12). Additionally, all relevant parties received notice of the hearing and participated in it. Finally, pursuant to the terms of the Settlement, the plaintiffs recoup their original investment in VMAR plus a premium for legal and transaction costs pursuant to the transaction (Walsh Affidavit ¶¶ 14-15; O’Neil Affidavit ¶¶ 14). As such, the Settlement is fair and the statutory prerequisites for a Section 3(a)(10) exemption are satisfied.

Accordingly, it is hereby ORDERED that the plaintiffs’ motion (Mot. Seq. No. 001) is GRANTED as set forth above.



20250813165853AB0RR0K0D5C61878254E4880472A22376FF640

<u>8/13/2025</u> DATE			<hr/> <b>ANDREW BORROK, J.S.C.</b>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE