SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART 53**

Justice

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IN RE RENREN, INC. DERIVATIVE LITIGATION,

Plaintiff,

- v -

XXX,

Defendant.

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INDEX NO. 653594/2018

MOTION DATE

MOTION SEQ. NO. 021

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 021) 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 842, 843, 844

were read on this motion to/for COMPROMISE.

Upon the foregoing documents and for the reasons set forth on the record (12.9.21), the motion must be denied. The proposed settlement can not be approved as a settlement to a derivative action structured with direct payments to certain minority shareholders but excluding relevant injured minority shareholders. The plaintiffs are certain of the minority shareholders that are entitled to payment and can not exclude them from the settlement. Plaintiff counsel's argument that only his clients and not all of the minority shareholders who were harmed should be paid fails. In a derivative action, a shareholder sues on behalf of all effected shareholders – here the minority shareholders. Having undertaken to claim on behalf of all minority shareholders, the plaintiffs may not limit the rewards reaped by this action to themselves. Allowing plaintiffs to do this would, in effect, provide a windfall to the company as to the other minority shareholders. This is antithetical to the concept of the derivative action that the plaintiffs brought. Thus, the settlement as structured is not fair and reasonable to the effected shareholders and when taken as a whole is "so unfair on its face to preclude judicial approval" (*Benedict v Whitman Breed Abbott*

& Morgan, 77 AD3d 870, 872 [2d Dept 2010], *citing Zerkle v Cleveland Cliffs Iron Co.,* 52 FRD 151, 159 [SD NY 1971], *quoting Glicken v Bradford*¸ 35 FRD 144, 151 [SD NY 1964]; *see Mathes v Roberts,* 85 FRD 710, 713 [SD NY 1980]; *Trainor v Berner,* 334 F Supp 1143, 1149 [SD NY 1971]).

It does not matter that this lawsuit was brought as a derivative action. The nature of the action goes to standing, not the substantive basis for the claim. Here, the substantive basis of the claim was breach of fiduciary duty and fraud on the minority. This requires the court to set a record date to determine the identity of the minority shareholders who were allegedly defrauded. Those shareholders are the record shareholders at the close of business on April 29, 2018 (the **Record Date**), *i.e.*, the day before the spin-off transaction was announced. These are the shareholders who were given the "Hobson's choice" (NYSCEF Doc. No. 405 ¶ 10) that forms the basis for this litigation when Renren's most valuable assets were allegedly siphoned off and it is irrelevant whether they have sold their shares. The harm caused to their investment was immediate and at the time of the announcement because the market is efficient. Investors who purchased shares after the Record Date or who increased their positions during the pendency of this litigation, on the other hand, knew exactly what they were purchasing and can not profit by allocating to themselves the damages due to those harmed.

The settlement proceeds pursuant to the proposed settlement are appropriately not structured to be returned to the company, but they can not exclude, and must only include the Record Date injured minority shareholders as to their record holdings on such Record Date. Plaintiff counsel's reliance on 17 CFR 240.10b-17 and FINRA 11140(b)(1) to argue that the record date

can only be set prospectively and therefore only the current minority shareholders (*i.e.*, their clients) should recover fails. This is not a cash dividend or distribution or stock payment from the issuer. This is a settlement payment from the controlling shareholders to the Record Date minority shareholders to recompense the Record Date minority shareholders for the alleged breach of fiduciary duty and fraud on the minority caused by the controlling shareholders and the relevant minority shareholders must recover. The relevant minority shareholders are the Record Date minority shareholders and their interest in the settlement must correspond with their holdings on the Record Date.

The settlement also can not provide that unclaimed proceeds should be redistributed. These funds belong to the Record Date minority shareholders and, to the extent any are unclaimed, they should be deposited in the names of the relevant Record Date minority shareholders in the amounts owned on the Record Date who do not come forward with the New York State Comptroller's office unclaimed property funds or otherwise set aside in escrow with Plaintiff counsel to be held until the expiration of the statute of limitations.

Plaintiff counsel's statement that certain shareholders that he represents have interests that are adverse to the Record Date minority shareholders is both legally untenable and highlights why the court's role in protecting the injured minority shareholders is sacrosanct. (*Saks Inc. Shareholder Litigation v XXX*, 2020 WL 1471858 [Sup Ct, NY County 2020]). The settlement funds belong to all of the Record Date minority shareholders that were allegedly defrauded – not just his clients. Put another way, his clients never had an interest in the portion of the settlement

proceeds that belong to the other Record Date minority shareholders in the interests that such other Record Date minority shareholders held on the Record Date.

Nor can the court arrogate to Plaintiff counsel the determination of whether their request for a whopping $100 million legal fee is appropriate. It is not. The issue of attorneys' fees is left to the sound discretion of the Court (*Gordon v Verizon Communications, Inc.*, 148 AD3d 146, 165 [1st Dept 2017], *quoting Seinfeld v Robinson*, 246 AD2d 291, 300 [1st Dept 1998]).

Plaintiff counsel confirmed on the record (12.9.21) that they spent approximately 16,938.3 hours. This amounts to approximately $5,903.78 per hour. Taking into account the risks of this litigation, its complexity and the elements of corporate governance reform that the settlement includes, this is unfair and excessive. Legal fees must bear a relationship to the value added and the risks involved and the percentage of legal fees must be inverted to the settlement amount. Stated differently, the higher the settlement amount, the lower the percentage. As Plaintiff counsel is well aware, this court is very familiar with the issues involved and 33 1/3% under the circumstances of this case is simply not appropriate.

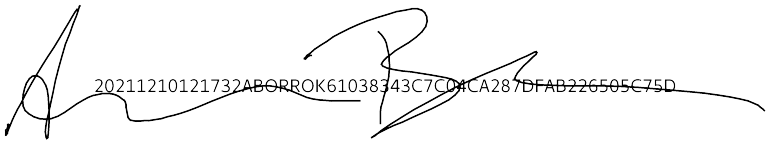
For the avoidance of doubt, the importance of reviewing the appropriateness of legal fees can not be overstated:

> If fees are set too low, counsel will not receive fair compensation for their services…If fees are set too high, attorneys will receive an unjustified windfall, and some of the benefit that should have gone to class members will be diverted to class counsel. ***Excessive class counsel fees might also induce class counsel to bring weak cases.***
>
> (Theodore Eisenberg et al, *Attorneys' Fees in Class Actions: 2009-2013*, 92 NYU L Rev 937 [2017] [emphasis added]).

In other words, were the court to effectively abdicate its role here as requested by Plaintiff counsel in rubber stamping their extraordinary fee request, this could necessarily have the undesired effect of leading to the proliferation of otherwise meritless lawsuits in the hope of bringing a lawsuit to induce quick settlement given the potential upside (*see In re Everquote, Inc. Securities Litigation*, 65 Misc3d 226 [Sup Ct, NY County 2019] (applying the Private Securities Litigation Reform Act of 1995, which was enacted to combat perceived abuses in securities litigation]).

For the avoidance of doubt, it is a false to narrative to conclude that the fee here is only 10.4% of the settlement based on the way certain settlements are structured. This settlement is for $300 million and the lawyers are asking for $100 million. That is a 33 1/3% fee, plain and simple. Lastly, the notion that this is really a $965 million settlement ($300 million to the minority shareholders and $665 million to the majority shareholders) where the majority shareholder defendants are recovering for their own alleged fraud on the minority and breach of fiduciary duty because this is styled as a derivative action is wrong. The gravamen of this dispute was that this was a breach of fiduciary duty and a fraud on the minority and plaintiff counsel can not compute its fees based on the amount that plaintiff counsel imputes to the defendants as paying themselves.

The court has considered Plaintiff counsel's remaining arguments and finds them unavailing.



12/10/2021
DATE

ANDREW BORROK, JSC

CHECK ONE:		**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
		GRANTED	X **DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**