SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE RENREN, INC.	:	Index No. 653594/2018
	:	Hon. Andrew Borrok
DERIVATIVE LITIGATION	:	Mot. Seq. No. 028

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RENEW AND, IN THE ALTERNATIVE REARGUE, MOTION TO APPROVE SETTLEMENT

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PRELIMINARY STATEMENT

The perfect should not be the enemy of the good, and the Court should now bring closure to this case by approving the settlement (the "Settlement") memorialized in the Stipulation of Settlement filed October 7, 2021 (the "Stipulation"). NYSCEF 753. Admittedly, a more perfect settlement agreement might modify paragraph 33 of the Stipulation, which provides for reversion of any remaining funds to Renren following initial distributions and subsequent redistributions to Renren's minority shareholders. And Plaintiffs recently tried to re-negotiate that provision with Defendants. But Defendants would not agree to modification without strings attached and changing the deal economics.

Accordingly, Plaintiffs now seek to renew their prior motion (Mot. Seq. No. 021) to approve the Settlement (solely to the extent of seeking Settlement approval[1]) and present additional facts addressing the Court's concerns over the reversion provision that were not previously brought to the Court's attention. Because the Court raised that issue *sua sponte*, First Department precedent establishes that those facts should now be considered. *See Hernandez v. New York City Hous. Auth.*, 129 A.D.3d 446, 446 (1st Dep't 2015). And this information, which was not presented before, establishes that the redistribution and reversion provision (even if imperfect) is no reason to reject a good Settlement.

Practically speaking, the amount of any reversion will be a drop in the bucket in the context of a settlement of at least $300 million for several reasons. First, over 99% of the minority interest in Renren is held in the form of publicly traded ADSs, and the then-current beneficial owners of ADSs will be paid through securities industry channels and broker-dealers, for which there should be virtually no leftovers. The court-approved settlement administrator,

[1] Plaintiffs' counsel is not seeking to renew or reargue the prior fee request but will separately move for different relief of a fee percentage award significantly lower than previously requested.

Epiq Class Action & Claims Solutions, Inc. ("Epiq" or "Administrator"), will wire transfer the settlement proceeds from a settlement trust account under Epiq's supervision to the Depositary Trust Clearinghouse & Company ("DTCC"), which will in turn disburse funds to broker-dealers (for ultimate disbursement to beneficial owners of ADSs) and other registered holders of ADSs. There should be almost no leftovers from the distribution to ADS holders, just as there are virtually no leftovers when public companies make distributions to their current public shareholders using the DTCC process.[2]

Second, the Class A shares held by minority shareholders constitute less than 1% of the minority interest, and there are only a few dozen holders (readily ascertainable from Renren's register of members (the "Register"), which is determinative under Cayman law). Epiq will pay them directly through checks or wire transfers out of the settlement trust account. If just five of those Class A shareholders (and Plaintiffs and intervenors) cash their disbursement checks, then the maximum leftovers following disbursements to remaining Class A shareholders will be less than $1,000.

Lastly, even if there were unanticipated hiccups in the initial distributions made by Epiq, then Epiq will try for at least six months to have shareholders cash their checks. And even if that fails, Epiq would redistribute remaining funds to Renren's minority shareholders before there would be any reversion to Renren itself. In short, there is virtually no chance that any material amount of money will revert.

Moreover, not only will redistribution and reversion (if any) consist of just a tiny fraction of one percent of the proceeds, all eligible current shareholders have ample opportunity to participate because ***they will be sent payments automatically***, either via DTCC (for ADS

[2] As discussed below, Defendants and other directors and officers will not participate.

owners) or by check/wire from Epiq (for Class A owners), and Epiq will follow-up with them for at least six months in the event of any uncashed checks or returned wires.

Based on this additional information, paragraph 33 is no reason to reject the Settlement. Accordingly, the Court should grant leave to renew, and now approve the Settlement upon reconsideration. (To the extent any other issues would preclude Settlement approval upon renewal, Plaintiffs respectfully request leave to reargue or for vacatur, as discussed below.)

BACKGROUND

A. The Settlement Was Carefully Crafted to Provide Efficient Payments to Renren's Current Minority Shareholders, While Excluding Defendants and Other Culpable Releasees from Participating.

1. The Settlement Provides for Pro Rata Distributions to All Innocent Current Minority Shareholders, Treating Them Equally.

The parties entered into the Stipulation on October 7, 2021. NYSCEF 753. The Settlement essentially transforms the indirect benefit that current minority shareholders would receive based on their proportionate ownership in Renren at the time of a company recovery into a direct benefit in the form of payments to be made from a settlement trust account. Stipulation ¶¶2, 6-8. Plaintiffs negotiated this settlement structure and amount based on company damages ($1.094 billion) and the minority shareholders' proportionate ownership interest; the $300 million settlement floor under this structure equated to the same proportionate indirect benefit that Renren's minority shareholders would receive from a $955 million company-level recovery (or an 87% recovery of the company-level damages model). NYSCEF 760 ¶¶6, 7, 50. All then-existing owners of Renren securities following an official recovery (*i.e.*, final approval of the settlement), excluding Defendants and culpable non-party directors and officers receiving

releases (the "D&O Releasees")[3], are included and treated equally. Stipulation ¶¶1.aa (defining "Renren Shareholders"), 6-8 (providing for pro rata distributions to Renren Shareholders).

Because this is a derivative action asserting only claims brought on Renren's behalf for Renren's corporate injury, only Renren's current shareholders at the time of any recovery stand to benefit, directly or indirectly, from this action. But any settlement of derivative claims requires Court approval under BCL 626(d), meaning that there is no official recovery on the claims until both the Settlement is approved and the order approving the Settlement becomes final. For that reason, the "Effective Date" of the Settlement is "the first date on which approval of the Settlement has become Final." Stipulation ¶1.j. Thus, only those who are then-current shareholders on or after the Effective Date of the Settlement stand to benefit.

The Settlement provides a mechanism to identify those then-current shareholders, accounting for the fact that most Renren minority investors' holdings are in the form of publicly traded ADSs. Reid Aff. ¶4. Over 99% of the minority interest in Renren is held in the form of ADSs (each representing 45 Class A ordinary shares) that are traded on the NYSE. Reid Aff. ¶4; Villanova Aff. ¶20. Because those ADSs are publicly traded, current ownership is constantly changing; an ADS might change hands multiple times in a single day. Given that practical reality, the parties concluded that the fairest and most efficient means of ascertaining current ownership for purposes of disbursing Settlement proceeds was to utilize the same process that the public markets utilize in determining present share ownership for purposes of other

[3] The D&O Releasees include the three Special Committee members (Tappin, Huang, Pu); Renren director, COO, and controlling stockholder James Liu; and former CFO Thomas Ren. Stipulation ¶1.g. Plaintiffs' proposed second amended complaint explains how those five were involved in the Transaction. NYSCEF 741.

distributions of company assets to current shareholders.[4] Reid Aff. ¶7. Thus, the "Record Date," which is best thought of as a current ownership ascertainment date,[5] was set as "the earliest practicable date after the Effective Date consistent with the terms of the Deposit Agreement and/or the requirements of any applicable New York Stock Exchange rules(s)....or other applicable securities laws and regulations." Stipulation ¶1.t.

Accordingly, the "Renren Shareholders" entitled to participate include "all owners of Renren Class A ordinary shares….and…all owners of Renren ADSs," as of the then-current ownership ascertainment date following final approval (*i.e.*, the Record Date), "but excluding as to either owners of Class A ordinary shares or Renren ADSs, all Defendants and the D&O Releasees." Stipulation ¶1.aa. Payments to then-current Renren Shareholders, as determined as of that date, will be made on a pro rata basis. Stipulation ¶6.

2. The Settlement Utilizes an Administrator to Maintain a Trust Account for Receipt of Proceeds and to Distribute Proceeds.

The Court approved Epiq's retention as the Administrator in the Scheduling Order entered on October 18, 2021. [NYSCEF 755 ¶5]. In addition to facilitating notice (which Epiq has done), the Administrator's primary role is to: (1) establish and oversee a settlement trust account to receive and disburse settlement proceeds; and (2) direct and oversee disbursements of proceeds to Renren Shareholders. Villanova Aff. ¶¶4, 6, 8; Stipulation ¶¶1.a, 2, 6-8, 33.

As contemplated, Epiq established the settlement trust account (the "Settlement Account"), and the Defendants made the required "Initial Settlement Deposit" of $300 million

[4] Utilizing pre-existing securities industry mechanisms to determine present beneficial ownership of publicly traded securities is fair and consistent with reasonable expectations of investors; the depositary arrangement in place governs any distributions that Renren's ADS owners might expect to receive based on their ADS ownership.

[5] The term "Record Date" was used in describing the current ownership ascertainment date because that is the term utilized in the Deposit Agreement.

into the Settlement Account in November 2021. Villanova Aff. ¶6; Stipulation ¶2. The Settlement Account is "the sole source of payment" of any payments to Renren Shareholders and to pay any fees and expenses related to the Settlement. Stipulation ¶5.

Epiq will transfer the portion of the Settlement proceeds attributable to eligible ADS owners to DTCC for further disbursement to broker-dealers and registered ADS holders. Villanova Aff. ¶10; Stipulation ¶7. Epiq will pay the portion of the Settlement proceeds attributable to Class A shareholders of record, as determined by the Register under Cayman Islands law, to those Class A shareholders, by check or wire transfer. Stipulation ¶8.

This structure affords several advantages over a claims process typical of class action litigation involving direct claims. Present ADS ownership is readily ascertainable through securities industry mechanisms and participants (*i.e.*, DTCC and broker-dealers), and using those channels avoids the delay and administrative burden associated with a claims process while ensuring that virtually everyone gets paid (unlike in a claims process, where the claims rate is often just 30% to 60%). Villanova Aff. ¶¶10-13; Reid Aff. ¶7. Similarly, present Class A share ownership as of a specified date is determined by the Register as a matter of Cayman law. Third Dawson Aff. ¶¶13-15; Stipulation ¶8 (providing that Register controls). Cutting checks to eligible Class A shareholders directly is more efficient than requiring a separate claims process. Villanova Aff. ¶12. Given that securities industry and Cayman law mechanisms provide established and reliable means of ascertaining present ownership, Plaintiffs believed that the Settlement's structure was the best way of maximizing investor participation. Reid Aff. ¶9.

3. Redistribution and Reversion Should Be Minimal.

Given the established mechanisms for determining current ownership and the payment mechanisms to pay those Renren Shareholders, the funds remaining after the initial round of distributions contemplated in paragraphs 6-8 of the Stipulation should be minimal. Because each

ADS attributable to the minority interest is necessarily beneficially held by someone and payment is to be made through DTCC, virtually all such funds should be disbursed. Villanova Aff. ¶20. And based on the Register, over 99% of the minority interest is held in the form of ADSs.[6] Villanova Aff. ¶20.

Of the less than 1% portion of settlement proceeds to be disbursed to minority Class A shareholders (as opposed to ADS holders), the amount of possible undeposited funds should be very small because there are very few such holders and Epiq will cut checks or make wire transfers directly. Villanova Aff. ¶21. Most of the Class A shares are held by just five shareholders, meaning that there will likely be less than $1,000 remaining if just those five shareholders (along with named Plaintiffs and CRCM) cash their checks. Villanova Aff. ¶22.

To the extent that there are more funds remaining than anticipated after the first round of distributions, then Epiq is required to make "reasonable and diligent efforts to have Renren Shareholders who are entitled to participate in the distribution….cash their distributions." Stipulation ¶33; Villanova Aff. ¶18. Only after such efforts over six months, Epiq will then make a supplemental redistribution of leftover funds among Renren Shareholders. Stipulation ¶33; Villanova Aff. ¶18. While the last sentence of paragraph 33 of the Stipulation provides that leftovers at that point will revert to Renren, the amount of any such reversion should be minimal given the initial distribution mechanisms and the redistribution as a backstop.

[6] This information is based on the Register as of October 7, 2021 that Renren provided for purposes of sending notice. *See* Stipulation ¶12. The final Class A share ownership determination and distributions will be based on an updated Register, as of the Record Date. Stipulation ¶8.

Nevertheless, Plaintiffs tried to renegotiate a new Settlement to modify paragraph 33 of the Stipulation. Reid Aff. ¶17. But that effort failed, as Defendants would not agree to that modification without strings attached and re-trading the deal economics. Reid Aff. ¶18.

4. The Settlement Incorporates Important Protections to Preclude Defendants from Benefitting.

The Stipulation also includes many safeguards to prevent Defendants and the D&O Releasees from sharing in the Settlement proceeds. Notably:

- Defendants and D&O Releasees are expressly excluded, by definition, from the "Renren Shareholders" eligible to participate and are excluded in the distribution provisions. Stipulation ¶1.aa; *see also* Stipulation ¶¶7-9 (excluding Defendants and D&O Releasees from distributions).

- Defendants and D&O Releasees are obligated to take specific steps to ensure that they do not inadvertently receive funds from DTCC on account of any ADSs they own. Stipulation ¶7.

- Defendants and D&O Releasees are precluded from exercising any options or warrants or otherwise transacting in stock and ADSs from the date of the Stipulation (October 7, 2021) until after the Effective Date and Record Date. Stipulation ¶9.

- To the extent that any Defendant or D&O Releasee receives any Settlement Funds in error, they are obligated to return such funds to Epiq for deposit in the Settlement Account. Stipulation ¶10.

- All Settlement proceeds are to flow through the Settlement Account under the control of Administrator, not to Renren's corporate bank accounts in China. Stipulation ¶¶2, 3 & 5.

Moreover, the Settlement includes a critical protection for minority shareholders through the "greater of" definition of the defined Settlement Amount and the related "True Up" provisions. Specifically, the "Settlement Amount" is defined as the "greater of" $300 million and a calculated amount determined by multiplying specified per-ADS ($38.6866) and per Class A ordinary share ($0.859701) prices by the number of such securities held by then-current minority shareholders as of a future current ownership determination date following final

approval of the Settlement. Stipulation ¶1.ee. The difference between $300 million and that calculated amount is defined as the "True Up." *Id.* ¶1.jj. Defendants are responsible for paying the True Up into the Settlement Account if the "greater of" protection of the Settlement kicks in and the final Settlement Amount exceeds $300 million. *Id.* ¶3.

The "greater of" protection and "True Up" ensure that Defendants cannot share in the Settlement proceeds and dilute the Settlement consideration payable to the eligible Renren Shareholders by issuing new shares to cronies or fronts. Reid Aff. ¶13. If, for example, more shares were issued such that the number of participating shares was greater than that estimated when the Stipulation was negotiated, then the "greater of" protection in the Settlement Amount would apply and the total Settlement Amount would exceed $300 million (because the increased number of shares would be multiplied by the per-share floor prices). Reid Aff. ¶13.

This "greater of" protection and "True Up" were material deal terms. NYSCEF 760 ¶¶54-55, 63. The OPI Defendants might be unhappy with those protections now, as evidenced in their recent motion to reduce the amount of the stipulated attachment order that effectively attempted to read those provisions out of the deal. NYSCEF 973; NYSCEF 986. But these are important protections for all minority shareholders.

B. No Shareholders, Past or Present, Objected to the Reversion Provision.

No objections were raised to paragraph 33 and the reversion term of the Stipulation. Rather, the Court initially raised concerns over the redistribution and reversion terms of the Stipulation, *sua sponte*, as part of its original rationale for rejecting the Settlement in its December 10, 2021 Decision and Order. NYSCEF 846 at 3.

Subsequent to its initial order, the Court concluded in its December 31, 2021 Additional Supplemental Order, this "action is brought derivatively," that a derivative action entails

shareholders "bring[ing] a claim on behalf of the corporation," and "[t]he claim belongs to the corporation." NYSCEF 852 at 1-2. The Court later concluded in its March 9, 2022 Supplemental Decision and Order, "[t]his is a derivative action," that "the alleged injury was to the company – Renren," and that "[b]ased on the alleged wrongdoing, it is Renren that actually suffered the loss." NYSCEF 969 at 8. These conclusions are consistent with Plaintiffs' pleadings and the procedural history, including the Court's May 2020 order recognizing that Plaintiffs had derivative standing based on the "fraud on the minority" standing doctrine under Cayman law,[7] which the First Department affirmed on appeal.[8]

ARGUMENT

I. RENEWAL IS WARRANTED BASED ON NEW FACTS ADDRESSING CONCERNS RAISED BY THE COURT, *SUA SPONTE*.

Renewal is warranted under CPLR 2221(e), and the Court should reconsider approving the Settlement based on new facts addressing the Court's concerns over paragraph 33 that were not offered on the prior motion. The Court should consider those facts, notwithstanding that

[7] The Court's analysis of "fraud on the minority" properly focused on the self-dealing benefits that Defendants received at Renren's expense through looting. *See* NYSCEF 305 at 57 ("Plaintiffs…allege that the element of fraud is satisfied for the purposes of derivative standing as the Director Defendants received significant financial benefits at the expense of Renren as a result of the Transaction that they strategically structured" and "by doing so, the Director Defendants looted Renren's investments."); *see id.* at 59, 67.

[8] "Fraud on the minority" is a Cayman legal term of art addressing when a shareholder may bring a company claim derivatively on the company's behalf. NYSCEF 152 ¶38; NYSCEF 70 ¶13 (same). The doctrine does not provide a basis to recover shareholder injuries; it refers to self-dealing at the company's expense. *Matter of Renren, Inc.*, 192 A.D.3d 539, 539 (1st Dep't 2021) (affirming that Plaintiffs established "fraud on the minority" standing because defendants "obtain[ed] personal benefits at the corporation's expense"); *Davis* v. *Scot. Re Grp.*, 160 A.D.3d 114, 118 (1st Dep't 2018) ("alleged wrongdoer benefitted at the expense of the company"); *Shenwick v. HM Ruby Fund, L.P.*, 106 A.D.3d 638, 639 (1st Dep't 2013) ("personal benefit at the company's expense"); *Feiner Fam. Tr. v. VBI Corp.*, No. 07-cv-01914 (RPP), 2007 WL 2615448, at *5 (S.D.N.Y. Sept. 11, 2007) ("[F]raud in this context differs from the American understanding of the term in that it refers to 'self-dealing' at the company's expense.").

some were known to Plaintiffs at the time of the original motion, because the Court raised concerns over paragraph 33 *sua sponte*.[9] *See Argento v. Wal-Mart Stores, Inc.*, 66 A.D.3d 930, 933 (2d Dep't 2009). For the same reason, Plaintiffs have a reasonable justification for not previously offering facts addressing the Court's concerns over paragraph 33. *See Hernandez v. New York City Hous. Auth.*, 129 A.D.3d 446, 446 (1st Dep't 2015) ("Because the new facts submitted on the motion to renew addressed an issue raised *sua sponte* by the court in the original decision, respondent had a reasonable excuse for failing to offer them on the prior motion.") (quotations and citations omitted); *accord First Mercury Ins. Co. v. Nova Restoration of NY, Inc.*, 203 A.D.3d 598 (1st Dep't 2022).

Indeed, "it is error for the court not to consider the additional information" where "the additional information addresses an issue raised *sua sponte* by the court in the original decision." *Scannell v. Mt. Sinai Med. Ctr.*, 256 A.D.2d 214, 214 (1st Dep't 1998); *see also, e.g., Wilder v. May Dep't Stores Co.*, 23 A.D.3d 646, 648 (2d Dep't 2005) (same); *Matter of Bevona (Superior Maint. Co.)*, 204 A.D.2d 136, 138-39 (1st Dep't 1994) (finding that "failure to grant…motion for renewal and to consider the matter on its merits was an abuse of discretion" where additional facts related to an issue raised by court *sua sponte* and not by the parties).

Here, the new information regarding the miniscule dollar amounts of any redistributions and reversions (if any) should alter the Court's prior determination. Based on the incomplete factual record before it, the Court seemed concerned that a material percentage of the Settlement

[9] *See also, e.g., Rancho Santa Fe Ass'n v. Dolan-King*, 36 A.D.3d 460, 461 (1st Dep't 2007) ("[T]he court, in its discretion, may grant renewal, in the interest of justice, upon facts known to the movant at the time of the original motion… Indeed, this Court has held that even if the rigorous requirements for renewal are not satisfied, such relief may still be granted so as not to defeat substantive fairness."); *Garner v. Latimer*, 306 A.D.2d 209, 209-10 (1st Dep't 2003) (same).

proceeds could indirectly benefit Defendants or flow to other shareholders in a manner inconsistent with the "transitive property" structure of the Settlement. *See Baker v. Sadiq*, C.A. No. 9464-VCL, 2016 WL 4375250, at *1-4 (Del. Ch. Aug. 16, 2016) (describing "transitive property" derivative settlement structures, explaining rationale, and gathering cases). For instance, too many of the "chickens" that were to go to Renren's minority shareholders might find there way back to the "henhouse" under the control of "foxes," undermining the Settlement. *See id.* at *3 (explaining that current minority shareholders benefit from transitive property settlements because "they get actual cash rather than the indirect benefit of the entity-level recovery," preferable in circumstances where "the prospect of an entity-level recovery leaves the foxes in charge of the henhouse, so having more chickens in the henhouse isn't nearly as attractive as receiving chickens directly"). If that were the case, then the total settlement consideration might need to be higher, *i.e.*, Defendants (the foxes) might need to pay over more chickens if a large proportion of those contributed were to return to the henhouse under their control. *Id.* (explaining that in a transitive property settlement, defendants pay "less cash, because rather than making a payment to the entity based on the full amount of the private benefits extracted from the entity, they need only fund a percentage of the payment equal to the minority investors' stake").

Based on the additional facts presented to the Court now, however, there should be no concern; the portion of funds subject to redistribution and reversion should be tiny. There should be minimal leftovers after the initial round of distribution given that ADS holders to receive payment via DTCC represent over 99% of the minority interest, that the Class A shareholders of record—to be paid by Epiq directly—are limited in number and readily determinable by the Register under Cayman law, and that Epiq will undertake six months of follow-up efforts to have

shareholders cash their checks. And every eligible current Renren Shareholder has ample opportunity to participate because ***payments will be sent to them automatically***.

Moreover, the minimal amount of funds leftover (if any) after the initial distribution process and Epiq's follow-up efforts will be redistributed pro rata to the Renren Shareholders before any possible reversion. Thus, any reversion is likely to be a fraction of a percent of the total settlement proceeds; in other words, any reversion to the fox's henhouse will entail merely feathers, not chickens.

Accordingly, paragraph 33 does not make a substantial settlement of at least $300 million, "***taken as a whole***,…so unfair on its face as to preclude judicial approval." *Benedict v. Whitman Breed*, 77 A.D.3d 870, 872 (2d Dep't 2010) (internal quotations and citations omittted) (emphasis added). That is especially so when considering that the implied recovery percentage (87%) is far higher than typical, and the Settlement contains many safeguards to prevent Defendants from sharing in the proceeds.

Accordingly, the Court should grant leave to renew and approve the Settlement.

II. IN THE ALTERNATIVE, REARGUMENT IS WARRANTED TO THE EXTENT THAT OTHER ISSUES PRECLUDE APPROVAL OF THE SETTLEMENT.

While the Court should grant renewal and now approve the Settlement upon reconsideration, to the extent that any other reason for rejecting the Settlement (discussed below) would preclude approval, the Plaintiffs respectfully request leave to reargue those points pursuant to CPLR 2221(d).

Although re-argument now is more than 30 days after entry of the orders addressing the Settlement, "even where a motion for reargument is technically untimely under CPLR 2221(d)(3), a court has discretion to reconsider its prior ruling." *HSBC Bank USA, N.A. v. Halls*, 98 A.D.3d 718, 721 (2d Dep't 2012); *see also Profita v. Diaz*, 100 A.D.3d 481, 481 (1st Dep't

2012) ("The court properly considered plaintiffs' motion to reargue, even though it was untimely under CPLR 2221(d)(3)."); *Garcia v. Jesuits of Fordham, Inc.*, 6 A.D.3d 163, 165 (1st Dep't 2004) ("[A]lthough plaintiff's motion for reargument was technically untimely pursuant to CPLR 2221(d), it was not an improvident exercise of the court's discretion to have reconsidered its prior ruling.").

That is especially so where delay is caused by negotiations seeking to resolve the matter. *People v. Rodriguez*, 21 A.D.3d 834, 834 (1st Dep't 2005) ("The court properly exercised its discretion in entertaining the People's technically untimely motion to reargue the dismissal…especially as the People's delay was caused by ongoing plea negotiations."). And here, Plaintiffs have spent the last four months attempting to achieve a consensual resolution with objectors, intervenors, and now Defendants. NYSCEF 760 ¶¶43-47; Reid Aff. ¶¶16-19.

Moreover, the Court should exercise its discretion to grant re-argument to bring closure to this litigation without further delay, and to hold Defendants to the deal. "Strong policy considerations favor the enforcement of settlement agreements," and those "interests are advanced only if settlements are routinely enforced rather than becoming gateways to litigation." *Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375, 383 (1993). Because Defendants have refused to agree to modifications without demanding economic concessions in return, reconsideration is the only path to hold Defendants to the deal (other than allowing Plaintiffs' appeal to run its course months from now).[10] Reid Aff. ¶19.

Accordingly, the Court should exercise its discretion to reconsider the following issues (to the extent such issues preclude Settlement approval on Plaintiffs' motion to renew), and now approve the Settlement.

[10] Plaintiffs' appeal has now been adjourned twice to the September term, at intervenors' urging.

A. Only Current Shareholders Stand to Benefit from this Derivative Litigation.

The Court observed in its December 31, 2021 and March 9, 2022 orders that this is a derivative action, that the claims belong to Renren, and that the claims seek redress for the corporate injury that Renren suffered when its assets were looted in the Transaction. NYSCEF 852 at 1-2; NYSCEF 969 at 8. Nevertheless, the intervenors and April 2018 objectors have cherry-picked language from this Court's initial December 10, 2021 order to treat the claims like shareholder direct claims for shareholder injuries, thereby hoping to exploit the Court's discussion of Record Date to reallocate settlement proceeds based on historical 2018 shareholdings.[11] To the extent that any opposition is lodged to Plaintiffs' foregoing motion to renew based on any discussion related to the "Record Date" in the Court's prior orders, then the Court should now revisit those prior statements. As a matter of law, only a corporation's present shareholders stand to benefit from derivative claims for two reasons.

First, only current shareholders stand to benefit because only current shareholders would receive any indirect benefit if the corporation itself were to recover, following trial. And settled New York law and Cayman law establish that any recovery (post-trial) flows to the

[11] Intervenors and the objectors mischaracterized the pleadings and failed to address controlling New York and Cayman precedent establishing that they suffered no cognizable legal injury. NYSCEF 938 ¶¶14-15, 34; *Prudential Assurance v. Newman Industries* [1982] 1 Ch. 204, 224 ("The company acquires causes of action…for torts which damage the company. No cause of action vests in the shareholder."); *cf. Serino v. Lipper*, 123 A.D.3d 34, 39 (1st Dep't 2014) ("It is black letter law that a stockholder has no individual cause of action against a person or entity that has injured the corporation…notwithstanding that the wrongful acts may have diminished the value of the shares...."). Likewise, they have ignored the distinction between direct claims and derivative claims. *See Yudell v. Gilbert*, 99 A.D.3d 108, 113 (1st Dep't 2012) ("[A] derivative claim seeks to recover for injury to the business entity," whereas "a direct claim seeks redress for injury to him or herself individually."). And they have ignored that, "where an individual harm is claimed, if it is confused with or embedded in the harm to the corporation, it cannot separately stand." *Serino*, 123 A.D.3d at 40.

corporation.[12] *See* NYSCEF 938 ¶11 (Judge Mangatal agreeing with December 2, 2021 Affirmation of Sam Dawson); NYSCEF 831 ¶¶46-47; NYSCEF 919 ¶¶17-18; *Glenn v. Hoteltron Sys., Inc.*, 74 N.Y.2d 386, 392 (1989) ("[B]ecause a shareholders' derivative suit seeks to vindicate a wrong done to the corporation through enforcement of a corporate cause of action, any recovery obtained is for the benefit of the injured corporation."); *Paradiso & DiMenna, Inc. v. DiMenna*, 232 A.D.2d 257, 258 (1st Dep't 1996) (similar). This is because claims brought derivatively are corporate assets that belong to the corporation. *Id.*; *see also Davis v. Scottish Re Grp. Ltd.*, 160 A.D.3d 114, 116 (1st Dep't 2018) (under Cayman law, "derivative claims are owned and controlled by the company").

Second, all economic rights incident to share ownership pass when shares are sold. While derivative standing is a different question than who may benefit from derivative claims, the settled rule that rights pass when shares are sold is the basis for the continuous ownership doctrine[13] for derivative standing. NYSCEF 938 ¶¶22-33; NYSCEF 831 ¶¶48-49; *Birch v. Sullivan*, [1958] 1 All E.R. 56, 58 (derivative plaintiff "can no longer maintain the [derivative] action when he has ceased to be a registered holder"); *Indep. Inv. Protective League v. Time, Inc.*, 50 N.Y.2d 259, 263-64 (1980) (when a shareholder "voluntarily disposes of the stock, his rights as a shareholder cease" and becomes a "stranger to the corporation"); *Hanna v. Lyon*, 179

[12] For this reason, the First Department has held that post-trial judgments in derivative actions must be awarded to the corporation, not to individual shareholders. *See, e.g., Resnick v. Socolov*, 5 A.D.3d 125, 126 (1st Dep't 2004) (modifying judgment "to direct the award to the corporation…in its capacity as beneficiary of the derivative action"); *Paradiso*, 232 A.D.2d at 258 (similar).

[13] New York law and Cayman law both require current ownership to bring derivative claims. Plaintiffs contend that Cayman law does not impose a contemporaneous ownership requirement, but the Court need not resolve the issue here.

N.Y. 107, 110-11 (1904) ("[R]ights as a stockholder [pass] to the subsequent purchaser of the stock....").

Likewise, because all economic rights incident to share ownership pass when shares are sold, there was no contemporaneous ownership requirement at common law. *Pollitz v. Gould*, 202 N.Y. 11, 15 (1911) (holding that derivative action could "be maintained by a stockholder acquiring his stock subsequent to the transaction which is challenged"); *see also In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1047 (Del. Ch. 2015) ("At common law, the right to sue derivatively passed with the shares....").

While the New York legislature subsequently adopted the contemporaneous ownership requirement to limit who could initiate a derivative suit on a corporation's behalf, that procedural standing requirement did not change the settled rule that all other rights incident to stock ownership—including all economic rights—passed when shares were obtained by their present holder. *Independent Investors*, 50 N.Y.2d at 263 (describing history); *see also Activision*, 124 A.3d at 1046 (describing history). Indeed, because "[t]he recovery in a derivative action belongs to and is almost inevitably awarded to the corporation," it follows that "all current stockholders benefit, notwithstanding the contemporaneous ownership requirement." *Activision*, 124 A.3d at 1048. By the same token, "any right to benefit from the derivative claims belongs to the current holders of shares" because "[a]nyone who sold their shares chose to dissociate their economic interests from the corporation and, by doing so, to forego the opportunity to benefit from...the potential benefit to the corporation from the derivative claims." *Id.* at 1049 (internal quotations and citations omitted).

The Settlement structure here, which contemplates payment only to current shareholders, is consistent with that settled law. Like several recent derivative action settlements in

Delaware[14] and at least one in New York, the Settlement contemplated transforming the indirect benefit that Renren's current minority shareholders[15] would receive from a recovery by Renren itself (by virtue of their proportionate current ownership in Renren) into a direct benefit (again, based on their proportionate current ownership). *See Baker*, 2016 WL 4375250, at *2-3 (gathering cases); NYSCEF 908 & 909. When a company obtains a recovery, existing minority investors receive an indirect benefit based on their proportionate ownership of the company. Therefore, where wrongdoers remain in control, a settlement may be structured so that the current minority shareholders receive a direct benefit in an amount "equal to their proportionate share" of the recovery. *Baker*, 2016 WL 4375250, at *1-3.

Because minority shareholders receive "their percentage interest in the entity multiplied by the amount of the entity-level recovery," former shareholders receive nothing (because 0% times any number is zero), just as they would not benefit if the corporation itself recovered. *Id.* at 1. This result tracks cases recognizing that "any right to benefit from the derivative claims belongs to the current holders of shares." *Activision*, 124 A.3d at 1049 (former shareholders have "no right to benefit from the derivative claims"); *In re Triarc Cos., Inc.*, 791 A.2d 872, 875 (Del. Ch. 2001) (former shareholders would "not benefit, even indirectly, from the proposed [derivative] settlement"). And it is also consistent with the rare cases from other jurisdictions (not New York or the Cayman Islands) where courts have contemplated awarding relief to

[14] Delaware courts have approved such settlements, notwithstanding that Delaware law—like New York law and Cayman Islands law—establishes that post-trial derivative recoveries flow to the company. *See, e.g.*, *Eshleman v. Keenan*, 194 A. 40, 43 (Del. Ch. 1937).

[15] The Settlement contemplated pro rata distributions to *all* current minority shareholders—not just Plaintiffs—except for Defendants and non-party directors and officers who played a culpable role in the Transaction. Stipulation at ¶1.aa (defining "Renren Shareholders" as "all owners of Renren Class A ordinary shares" and "all owners of Renren ADSs," but "excluding…all Defendants and the D&O Releasees").

shareholders. *See Gordon v. Fundamental Invs., Inc.*, 362 F. Supp. 41, 46 (S.D.N.Y. 1973) (In "unusual circumstances…the recovery for the corporation in a derivative suit may be distributed directly to the shareholders…but it would be to ***present shareholders***.") (emphasis added).

Thus, the Settlement's forward-looking determination of the "Record Date" to base eligibility on then-current ownership following final approval is consistent with the law, and historical shareholdings confer no right to participate. Accordingly, the Court should reconsider its prior statements regarding the Record Date to the extent that any opposition to Plaintiffs' motion to renew contends that the Court's prior statements regarding the Record Date preclude approval of the Settlement upon renewal. Although there might be other mechanisms for determining current ownership of ADSs, the Settlement's use of the method utilized in the securities industry to ascertain current proportionate ownership is not "so unfair on its face as to preclude judicial approval." *Benedict*, 77 A.D.3d at 872.

B. The Settlement Does Not Unfairly Exclude any Current, Innocent Minority Shareholders.

To the extent that any oppositions to Plaintiffs' motion for renewal contend that the Settlement should not be approved because it was unfairly exclusionary (as the April 2018 objectors have contended), re-argument is appropriate because the Settlement does not exclude any current shareholders who should participate.

As discussed above, only current shareholders have any interest in Renren and stand to benefit, indirectly or directly, from derivative claims brought on Renren's behalf. And the Settlement here expressly contemplated distributions to *all* innocent, current minority shareholders; it excluded only the Defendants and the five D&O Releasees. Stipulation ¶¶1.aa (defining "Renren Shareholders" as "all owners of Renren Class A ordinary shares" and "all owners of ADSs" as of the current ownership ascertainment date, or Record Date, "but

excluding…all Defendants and the D&O Releasees"); 6-8 (providing for pro rata distributions to Renren Shareholders). Because only current owners stand to benefit as a matter of law and all innocent Renren Shareholders are included, re-argument and reconsideration is appropriate to the extent that any opposition to Plaintiffs' renewal motion contends (based on any of the Court's prior statements) that the Settlement was unfairly exclusionary.

C. The Prior Fee Request Was, and Is, No Basis to Reject the Settlement.

To the extent that any opposition to Plaintiffs' motion to renew and for approval of the Settlement is based on any prior statements of the Court regarding counsel's initial fee request, whether in the March 9, 2022 order or otherwise, the Court should revisit such statements because neither the facts nor the law support denial of the Settlement based on the fee request.

Whether to approve the Settlement as "fair and reasonable" under *Benedict* and BCL 626(d) is a distinct legal question from determination of a fee award under the common fund doctrine. *Compare Benedict*, 77 A.D.3d at 872 (standard for BCL 626(d) settlement approval), *with Seinfeld v. Robinson*, 246 A.D.2d 291, 294 (1st Dep't 1998) (describing BCL 626(e) and observing that "the common fund doctrine allows for an award of counsel fees out of a common fund actually created by a successful shareholder litigation"); *see also Gordon v. Verizon Comms., Inc.*, 148 A.D.3d 146, 165 (1st Dep't 2017) (articulating factors for fee award).

Moreover, the Settlement here did not make any specific allocation to the fee award. While the Stipulation contemplated a fee award, it did not provide for any specific fee amount and left the amount of the award up to the Court's discretion, keeping the fee question separate from settlement approval. Stipulation ¶20 ("The effectiveness of the Settlement…shall not be conditioned on the resolution of, nor any ruling regarding, any fee and expense award"); ¶1.k ("[T]he Court's ruling or failure to rule on any application for attorneys' fees or expenses or any modification…shall not preclude any judgment approving the Settlement from becoming Final");

Stipulation, Ex. C at ¶24 (similar). Indeed, the proposed final judgment submitted as Exhibit C to the Stipulation left the fee percentage blank, in recognition of the Court's discretion and authority to award a fee percentage in an amount higher, lower, or the same as that requested. Stipulation, Ex. C at ¶23.

Accordingly, the prior fee request has no bearing on Settlement approval. The Court should now approve the Settlement and address any forthcoming fee request separately. Plaintiffs' counsel is not seeking to renew or reargue the prior fee request but will instead separately move for different relief seeking an award of a fee percentage significantly lower than previously requested.

III. IN THE ALTERNATIVE, THE COURT SHOULD VACATE ITS PRIOR ORDERS TO THE EXTENT NECESSARY TO APPROVE THE SETTLEMENT NOW.

In the alternative, for many of the same reasons, and in the interests of substantial justice, Plaintiffs respectfully request that the Court vacate its prior orders to the extent that any such orders preclude approval of the Settlement on Plaintiffs' motion for renewal. "In addition to the grounds set forth in section 5015(a), a court may vacate its own judgment [or order] for sufficient reason and in the interests of substantial justice." *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 68 (2003); *see Block v. Block*, 153 A.D.2d 601, 603 (2d Dep't 1989) ("[T]he court properly exercised its inherent power to vacate in the interest of justice its prior order which was based on mistaken information."); *Jericho Union Free Sch. Dist. No. 15, Town of Oyster Bay v. Bd. of Assessors of Nassau Cty.*, 131 A.D.2d 482, 483 (2d Dep't 1987) ("CPLR 5015 does not provide the only basis," and court's have "inherent power in the furtherance of justice" to vacate). "In exercising its discretion," the Court "should consider the facts of the particular case, the equities affecting each party and others affected by the judgment or order, and the grounds for the requested relief." *Nash v. Port Auth. of New York & New Jersey*, 22

N.Y.3d 220, 226 (2013) (quotations and citations omitted).

Here, the Settlement should be approved to end this litigation. Plaintiffs and Renren's current shareholders have been waiting for months for payment. The only objections to the Settlement itself were based on historical shareholdings that confer no right to benefit from this litigation as a matter of law. And Plaintiffs cannot unilaterally modify the Settlement without Defendants' agreement, meaning that Plaintiffs and Renren's current shareholders are stuck with either (a) re-trading the deal economics; or (b) proceeding forward with litigation and waiting out Plaintiffs' appeal, if the Settlement is not approved now. Accordingly, to the extent that any of the Court's prior orders preclude approval of the Settlement on Plaintiffs' motion for renewal (and, in the alternative, for re-argument), then the Court should vacate those prior orders in the interests of substantial justice so that the Settlement can be approved now.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion to renew the portion of their prior motion seeking approval of the Settlement, and now approve the Settlement upon reconsideration. To the extent that any other aspects of the Court's prior orders preclude approval upon Plaintiffs' motion to renew, then the Court should grant leave to reargue and/or vacate such orders, and approve the Settlement.

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