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**Date and Time:** Monday, January 10, 2022 12:30:00 PM EST

**Job Number:** 161496632

## **Document (1)**

1. [\*Matter of Renren Inc. Derivative Litig. v XXX, 2021 N.Y. Misc. LEXIS 6839\*](#)

**Client/Matter:** 00440.111CM

*Matter of Renren Inc. Derivative Litig. v XXX*

Supreme Court of New York, New York County

December 31, 2021, Decided

Index No. 653594/2018

**Reporter**

2021 N.Y. Misc. LEXIS 6839 \*; 2021 NY Slip Op 51281(U) \*\*

**[\*\*1]** Matter of Renren, Inc. Derivative Litigation,  
Plaintiff, against XXX, Defendant.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL  
NOT BE PUBLISHED IN THE PRINTED OFFICIAL  
REPORTS.

**Core Terms**

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shareholders, settlement, announcement, eligible,  
lawsuit, direct payment, spin-off, alleged wrongdoer,  
perpetrated, harmed, controlling shareholder,  
shareholder of record, minority shareholder, derivative  
action, alleged breach, fiduciary duty, allege fraud,  
supplemental, structured, dividend, proceeds, stock

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**Judges:** Andrew Borrok, J.S.C.

**Opinion by:** Andrew Borrok

**Opinion**

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Andrew Borrok, J.

The following e-filed documents, listed by NYSCEF  
document number (Motion 021) 758, 759, **[\*\*2]** 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, **[\*2]** 822, 823, 824, 825, 826,  
827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837,  
838, 839, 840, 842, 843, 844, 846, 847, 848, 849, 851  
were read on this motion to/for COMPROMISE.

This additional supplemental order is issued to further  
clarify why the motion to approve the settlement must  
be denied and leave is granted to the defendants to file  
a motion to dismiss.

As this court explained in its decision and order, dated December 10, 2021 (the **Prior Decision**; NYSCEF Doc. No. 846) and in its supplemental order, dated December 29, 2021 (NYSCEF Doc. No. 851), this is an action alleging a breach of fiduciary duty and a fraud on the minority by its controlling shareholders (i.e., [i] alleged wrongdoers controlled a majority of stock and [ii] those alleged wrongdoers diverted corporate assets for personal benefit).

The action is brought derivatively. This action proceeds as a derivative action because the allegations in this case include that the board of Renren was not independent and merely rubber stamped the spin-off based on a faulty valuation and that as such those directors would not bring this lawsuit against themselves and the controlling shareholders who allegedly perpetrated this scheme [\*3] and control them.

As this court previously explained in the Prior Decision, in a derivative action, *eligible* shareholders bring a claim on behalf of the corporation against the alleged wrongdoers. The claim belongs to the corporation. The fact that the claim is brought derivatively does not change that fact. But it is incumbent upon the court to determine who the eligible shareholders are—i.e., in the context of a lawsuit alleging fraud on the minority—the shareholders of record at the time of the alleged wrongdoing are the eligible shareholders. The eligible shareholders in this case are the shareholders of record immediately preceding the announcement of the spin-off which forms the basis of the lawsuit. These are the shareholders to which the fraud on the minority was allegedly perpetrated as of the date the spin-off was announced. They are the ones who were harmed by the "Hobson's choice" (NYSCEF Doc. 405 ¶ 10) when it was announced that Renren's most valuable assets were allegedly to be siphoned off because the market is efficient. The date of the announcement was April 30, 2018. The close of business on April 29, 2018—i.e., the

day before the announcement is therefore the **Record [\*4] Date**.

Because the market is efficient, the harm to Renren and its then minority shareholders was immediate and occurred at the time of the announcement. To wit, any shareholder who purchased after the Record Date purchased with the knowledge of the spin-off transaction which forms the basis for this lawsuit. It would appear that they therefore are *not* eligible shareholders to bring this action alleging breach of fiduciary duty and fraud on the minority because they lack standing as to the claim of fraud on the minority as they were not the minority upon whom the fraud was allegedly perpetrated.

Nor, as this Court previously explained, are shareholders who purchased after the Record Date eligible shareholders to participate in a settlement structured as direct payments to them and to the exclusion of the shareholders that were shareholders on the Record Date upon whom this alleged fraud took place. Stated differently, the misappropriation here was as to Renren's assets and the harm to its shareholders as of the Record Date, and they appear to be the correct shareholders to both maintain this suit and participate in any settlement. Subsequent purchasers were aware of the transaction (so [\*5] a fraud as to their interests could not have taken place).

Therefore, the Record Date shareholders must necessarily participate in any direct payment settlement of this case as they are the ones who were harmed, whose harm cannot be [\*\*3] altered by any later appreciation in the stock as they are no longer shareholders. As discussed above, the shareholders who acquired their interests after the Record Date were not harmed and cannot share in the settlement of this case because they were not injured. They purchased their interests with full knowledge of the transaction which forms the basis for this lawsuit. Thus, the

defendants must be given leave to bring a motion to dismiss as against the non-Record Date plaintiffs.

Finally, the court notes that the direct payments to the Renren "new" shareholders cannot be considered a deemed cash dividend to them such that FINRA regulations regarding dividends apply. These payments are not pro-rata as to all shareholders, and are not from some business success or windfall. To the contrary, they are settlement proceeds designed to recompensate the harm occasioned to the minority shareholders on the Record Date. This is opposed to if Renren were to make [\*6] a general cash distribution of profits where such distribution would need to be made pro rata in respect of all current shareholders in accordance with FINRA. The fact that the proposed settlement was structured as direct payments to certain shareholders highlights the point.

Dated: December 31, 2021

Andrew Borrok, J.S.C.

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