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

OASIS INVESTMENTS II MASTER FUND LTD., derivatively on behalf of nominal Defendant FANG HOLDINGS LIMITED,	:	Index No. 652607/2023
Plaintiff,	:	Justice Andrew Borrok
-against-	:	Mot. Seq. No. 21
VINCENT TIANQUAN MO, RICHARD JIANGONG DAI, ACE SMART INVESTMENTS LIMITED, NEXT DECADE INVESTMENTS LIMITED, MEDIA PARTNER TECHNOLOGY LIMITED, and TRUE KNIGHT LIMITED,	:	
Defendants.	:	

REPLY TO 507 SUMMIT LLC AND KOA CAPITAL LP'S OPPOSITION TO PLAINTIFF'S MOTION FOR APPROVAL OF THE PROPOSED SETTLEMENT

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PRELIMINARY STATEMENT

KOA Capital ("KOA") and 507 Summit LLC ("507 Summit") (together, "Objectors")) were aware of this derivative case when it was filed in May 2023 and declined to participate as plaintiffs (or bring any other shareholder derivative litigation on Fang's behalf). Instead, Objectors filed a winding up petition *against* Fang in January 2024, then did nothing for nearly two years until obtaining an initial scheduling order in November 2025—after receiving notice of the Settlement in October 2025. Then in December 2025, two months after learning of the Settlement and after Plaintiff filed the motion for Settlement approval, Objectors sought injunctive relief as a pretextual (yet ineffective) roadblock to Settlement approval by convincing Fang (controlled by Mo) to sign the Consent Order that they contend blocks the Settlement on January 19, 2026—just three days before objections were due.

Their motivation in doing so and for challenging the Settlement is dubious. The economic value of the Settlement is greater than the likely outcome if the claims were litigated to judgment, especially since the Settlement procures 20.4 million CIH Holdings Limited ("CIH Holdings") shares for Fang. Objectors recognize that CIH Holdings has substantial value. They dissented to the April 2023 take-private transaction of CIH, believing that their shares were worth more than the $1.00 transaction price. And, in June 2023, they initiated a so-called "appraisal rights" proceeding in the Cayman Islands (set for trial this fall) to obtain the amount by which the fair value of their shares *exceeds* the $1.00 transaction price. Accordingly, Objectors appear to have obtained the Consent Order and objected to the Settlement to further their plan to use their winding-up petition as leverage to secure a favorable settlement in their CIH appraisal rights proceeding.

Such "international legal gamesmanship" has no place in New York courts. *U.S. Bank Nat. Ass'n v. APP Int'l Fin. Co.*, 100 A.D.3d 179, 181 (1st Dep't 2012). The First Department has "made clear that comity is not appropriate where litigants have deliberately courted legal

impediments." *Id.* at 183. And there is also "no basis" for this Court to recognize the Consent Order because the First Department "has consistently held that although the decision whether to extend comity is a matter of discretion, it is normally not extended by New York courts to non-final, non-merit orders." *Banco Nacional De Mexico, S.A. v. Societe Generale*, 34 A.D.3d 124, 131 (1st Dep't 2006) (gathering cases). Moreover, the Consent Order is irrelevant because, by its terms, it does not apply to approval of the existing Settlement of derivative claims before the Court.

Objectors' resort to Section 99 of the Cayman Island Companies Act also fails. Section 99 is not triggered unless a Cayman Court enters a final winding up *order* (appointing liquidators over Fang), a highly speculative and uncertain contingency here. But even if such an order were entered: (a) it is doubtful that any liquidator would seek to unwind a settlement with a better outcome than relitigating the claims; (b) a Cayman court could enter a validation order to recognize the Settlement; and (c) any future collateral attacks on the Settlement in the U.S. would fail.

Finally, Objectors' arguments about the scope of the Settlement's release of Fang's claims misconstrue the release and the law. The release is not an improper, general release. It applies solely to claims that "were or could have been" brought "in this Action," meaning that it "does not bar claims relating to conduct that was not alleged and could not have been alleged in [the settled] action" and, therefore, is not overbroad. *Cox v. Microsoft Corp.*, 48 A.D.3d 215, 216 (1st Dep't 2008).

Moreover, the limiting language—"in this Action"—means that the Settlement only releases claims subject to the narrow confines of derivative standing under Cayman law that have a sufficient nexus in New York to confer jurisdiction. Objectors have identified no such claims other than the ones already before the Court. Nor have Objectors pursued any other derivative claims in any forum. The value of unidentified (and likely non-existent) claims cannot possibly be

so great that "the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval." *Benedict v. Whitman Breed Abbott & Morgan*, 77 A.D.3d 870, 872 (2d Dep't 2010) (cleaned up). Thus, the release does not preclude Settlement approval.

STATEMENT OF FACTS

I. The Settlement's Release is Limited in Scope.

The Fang claims to be released are as follows:

> "Released Plaintiff's Claims" means any and all claims, causes of action, rights or remedies, including Unknown Claims, by Plaintiff or Fang… against the Defendant Releasees based upon, arising out of, or in any way relating to any of the facts, acts, inactions, omissions, deliberations, deliberations, discussions, decisions, votes, disclosures, non-disclosures, transactions, events, occurrences, or any other conduct of any kind, ***that were or could have been alleged in the Action***, that occurred from the beginning of time through the Effective Date.

[NYSCEF 563 ¶1.v. ("Stipulation")] (emphasis added). Because the release only applies to claims that "were or could have been" brought "in this Action," it does not release Fang claims that: (a) are not subject to derivative standing under Cayman law; and (b) lack a sufficient nexus in New York to confer jurisdiction.

Notably, "Released Plaintiff's Claims" does not include any direct claims (other than Plaintiff's claims). *Id.* And the Settlement is not conditioned on approval of the separate Requested Fang Minority Shareholder Release. *Id.* ¶16. Accordingly, the Court could approve the Settlement while denying the Requested Fang Minority Shareholder Release, resulting in no release of any direct claims.

II. Objectors' Cayman Islands Proceedings.

Objectors forewent serving as derivative plaintiffs in this Action when filed in May 2023. [NYSCEF 592 at 4]. Instead, in July 2023, they filed their Cayman appraisal rights proceeding to procure money for themselves as dissenting shareholders in the CIH take-private transaction. [NYSCEF 598].

Subsequently, upon learning that Evenstar settled its then-dormant winding up petition against Fang and Mo for a $4 million payment in September 2023, Objectors "largely picked up where" Evenstar "left off" and filed a new winding-up petition against Fang and Mo in January 2024, "based on similar transactions as those described in the Evenstar petition." [NYSCEF 592 5-6]. The only "additional matters" Objectors identified include: (a) a 2018 transaction in China with no nexus to New York ([NYSCEF No. 600] at ¶¶214-24); (b) changes in Fang's memorandum of association that do not give rise to any derivative claims (*id.* at ¶¶225-35); and (c) "misleading investors," implicating possible direct claims—not derivative claims. *Id.* at ¶¶236-92.

The winding up petition did not assert derivative or company claims. Toube.[1] ¶¶36-36.4. It did not otherwise identify any derivative claims that could have been brought in New York, other than those brought by Plaintiff in this Action. Nor have Objectors otherwise asserted any derivative claims on Fang's behalf. Although the winding up petition describes Mo's business dealings dating back decades, its scattershot allegations: (a) entail injuries that would give rise to investor direct claims (not company claims); (b) involve transactions with no New York contacts; or (c) describe New York activities without linking them to identifiable Fang claims.

After filing their winding up petition in January 2024, Objectors did not press it forward until after the Settlement (entered October 25, 2025). Objectors did not obtain a directions order (the Cayman equivalent of a case scheduling order) until November 26, 2025. [NYSCEF 601]. Objectors then waited until December 31, 2025—*after* Plaintiff filed its motion to approve the Settlement—to move for a summons seeking to enjoin Fang from entering into settlements or compromises of its claims. [NYSCEF 602]. Fang, through new Cayman counsel hired the day

[1] Affirmation of Felicity Toube KC and Dr. Riz Mokal ("Toube Aff.") submitted herewith.

before, signed the Consent Order with the Objectors on January 19, 2026, three days before the objection deadline. [NYSCEF 604].

ARGUMENT

I. The Winding Up Proceeding in the Cayman Islands Provides No Basis Whatsoever to Deny Settlement Approval.

Objectors are wrong in contending that their winding up petition precludes Settlement approval. "Laws of foreign governments have extraterritorial jurisdiction only by comity." *J. Zeevi & Sons, Ltd. v. Grindlays Bank (Uganda) Ltd.*, 37 N.Y.2d 220, 227–28 (1975). And the circumstances here do not require this Court, in the exercise of its "sound discretion," to defer to that proceeding. *Morgenthau v. Avion Res. Ltd.*, 11 N.Y.3d 383, 390 (2008); *Deutsche Bank Sec., Inc. v. Montana Bd. of Invs.*, 7 N.Y.3d 65, 73 (2006) ("[C]omity is not a mandate, but rather a voluntary decision to defer."). But even if comity applied, the Settlement should still be approved because: (a) the Consent Order is inapplicable on its face; and (b) Section 99 of the Companies Act is not yet applicable and would likely have no practical import.

A. Principles of Comity Do Not Warrant Delaying Approval Based on a Manufactured Pretext in a Foreign Court.

Objectors assert that "comity…require[s] denial of settlement approval." [NYSCEF 592 at 9]. But they are wrong. "The doctrine of comity…does not of its own force compel a particular course of action." *Ehrlich-Bober & Co. v. Univ. of Houston*, 49 N.Y.2d 574, 580 (1980). Here, there are numerous reasons why this Court, in its discretion, should not defer to the Consent Order or the Cayman proceeding.

First, "there is no basis for the motion court to recognize" the Consent Order because it is a "non-final" order of a foreign court, and the First Department "has consistently held that although the decision whether to extend comity is a matter of discretion, it is normally not extended by New

York courts to non-final, non-merit orders." *Banco Nacional De Mexico, S.A.,* 34 A.D.3d at 131 (gathering cases).

Second, the First Department has "made clear that comity is not appropriate where litigants have deliberately courted legal impediments." *U.S. Bank Nat. Ass'n,* 100 A.D.3d at 183 (injunction issued by foreign court not entitled to comity). That Objectors engaged in "international legal gamesmanship" here is obvious given the timeline leading up to the Consent Order on January 19, 2026,[2] which "in, and of itself, precludes the extension of comity." *Id.* at 181, 184.

Third, "[c]omity does not require [New York] courts to defer to the foreign jurisdiction" where the foreign proceeding was instituted later (and possibly in bad faith), and where the foreign proceeding would "interfere with the New York court's ability to resolve the issues before it." *IRB-Brasil Resseguros S.A. v. Portobello Int'l Ltd.*, 59 A.D.3d 366, 367 (1st Dep't 2009) (internal quotations and citations omitted). If anything, such circumstances warrant enjoining the foreign proceeding. *Id.* ("[I]t is entirely appropriate for the New York court to exercise its discretion to enjoin the action in the foreign court" where it may interfere "with the New York court's ability to resolve the issues before it.") (cleaned up).

Finally, comity is unwarranted because the claims to be settled involved New York transactions and abuse of New York's capital markets—and thus should be resolved in a New York court. *See Ehrlich-Bober,* 49 N.Y.2d 574 at 581 ("New York's recognized interest in maintaining and fostering its undisputed status as the preeminent commercial and financial nerve center of the Nation and the world….embraces a very strong policy of assuring ready access to a

[2] Additionally, the Cayman filings included in Objectors' papers here make no reference to this Action or the Settlement being presented to a Cayman Court. Plaintiff requested that Objectors provide a more complete record but have received no response. Supplemental Affirmation of William T. Reid, IV submitted herewith ¶¶11-12; Ex. 8.

forum for redress of injuries arising out of transactions spawned here."). New York's interests in policing the New York-centered misconduct at issue may not be adequately protected if the Court defers, given that: (a) Objectors declined to participate in this derivative action; (b) Objectors have conflicting interests due to their CIH appraisal rights proceeding; (c) Objectors have made minimal progress on the winding up petition; and (d) Objectors may be using the winding up petition as leverage to extract side deals for themselves.

B. The Consent Order Is Irrelevant to this Court's Determination of Whether to Approve the Settlement.

Even if the Court were to consider the Consent Order out of comity, approving the Settlement now would not contradict the Consent Order.

First, the Consent Order—by its plain terms—only applies to Fang itself, not to a derivative Plaintiff asserting claims on Fang's behalf. But Plaintiff, not Fang, controls the claims to be settled in this derivative action. *See Gerith Realty Corp. v. Normandie Nat. Sec. Corp.*, 154 Misc. 615, 616 (Sup. Ct. 1933) (stating that derivative plaintiff is regarded as "agent of the corporation" with "entire charge of the action"), *aff'd sub nom. Gerith Realty Corp. v. Normandie Nat'l Sec. Corp.*, 241 A.D. 717 (App. Div. 1934), *aff'd sub nom. Gerith Realty Corp. v. Normandie Nat. Sec. Corp.*, 266 N.Y. 525 (1935). Fang is a nominal defendant, not a co-plaintiff with settlement authority. *See Gen. Inv. Corp. v. Addinsell*, 255 A.D. 319, 320 (1st Dep't 1938) (derivative action does "not lie where the corporation, for the benefit of which the action is instituted" brings "suit itself," and company and shareholder cannot both be plaintiffs).

Because Plaintiff—not Fang—is the relevant decision-maker over the claims at issue in this Action, the Consent Order is irrelevant. Nothing in the Consent Order references Plaintiff, this proceeding, or derivative actions more broadly (and Objectors' papers provide no indication that the pending Settlement was ever disclosed to the Cayman Court).

Second, the Schedule of Undertakings attached to the Consent Order contemplates that Fang "shall not take any act which results in" a settlement or compromise of claims. [NYCEF 604]. But the Court approving the Settlement (entered into on October 25, 2025), upon motion of Plaintiff made on December 30, 2025 (the day before Objectors moved for their injunctive relief) does not require action on Fang's part. The Court can, and should, approve the Settlement without need for Fang to "take any act."

Third, and relatedly, the Schedule of Undertakings is worded prospectively in providing that Fang "shall not take any act…". *Id.* It does not purport to retroactively invalidate any actions that Fang took previously. Toube Aff. ¶48.2. And the Stipulation was signed—on Fang's behalf by counsel—in October 2025, *before* they Objectors sought injunctive relief in December 2025, and *before* they procured the Consent Order in January 2026.

Finally, even if some act by Fang were required to consummate the Settlement, the Consent Order would not have any effect here because any such actions would be subject to a contract (the Stipulation) that is: (a) subject to New York law and New York jurisdiction (Stipulation ¶43), and (b) will be effectuated in New York upon this Court's approval of the Settlement. *See Canadian Imperial Bank of Com. v. Pamukbank Tas*, 166 Misc. 2d 647, 652 (Sup. Ct. 1994) (finding that "foreign court order restraining the performance of the contract (*i.e.,* payment in New York) is to be given no effect" under doctrine of comity).

Accordingly, Objectors are wrong in suggesting that the Consent Order is applicable, and that a prospective validation order is necessary.

C. Approving the Settlement Now Would Not Contravene Cayman Law.

Objectors' assertion that approving the Settlement "at this juncture would directly contravene Cayman law" is incorrect. [NYSCEF 592 at 9].

As a threshold issue, Objectors would need to succeed in their winding up petition, procuring an order to liquidate Fang *before* Section 99 is implicated. Toube Aff. ¶¶32-34.4, 36-37.5. Otherwise, Section 99 would not be triggered because it only applies "[w]hen a winding up ***order*** has been made." *Id.* ¶¶29-32 (emphasis added). Objectors concede as much. [NYSCEF 592 at 9]. While Section 99 applies retroactively to transactions that occurred after a winding up petition has been filed, the mere filing of a winding up petition alone does not trigger Section 99. Toube Aff. ¶30-32, 37.5.

Accordingly, there is no Section 99 issue at present and there will not be one unless a winding up order is obtained, *if ever*, which is uncertain. It is doubtful that Objectors will prevail given their inequitable behavior in using the winding-up petition for settlement leverage in parallel proceedings. And it is doubtful that Objectors will litigate the case to conclusion given their lack of progress (until learning of the Settlement).

But even in the unlikely event that Objectors ultimately procured a winding up order and the appointment of liquidators, that would still not necessarily result in a future challenge to the Settlement. Because the Settlement results in a better recovery than the likely result in litigation, there is no reason why some future Fang liquidator would try to unwind it. Regardless, a Cayman court could enter a validation order to support this Court's approval of the Settlement and would likely do so for the same reason. Toube Aff. ¶¶39-44. And even if a future liquidator sought to challenge the Settlement for some strange reason *and* a Cayman Court never entered a validation order, any Settlement approval order here could not be collaterally attacked after the fact.

II. Objectors Misconstrue the Release of Company Claims, Which Is Entirely Appropriate.

None of the Objectors' contentions regarding the release establish that "the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval." *Benedict*, 77 A.D.3d at

872 (cleaned up). Accordingly, such contentions do not warrant rejecting the Settlement under the applicable standard for approval of a derivative action. *Id.*; *Waterman Corp. v. Johnston*, 106 N.Y.S.2d 813, 819 (Sup Ct. 1951), *aff'd*, 279 A.D. 1073 (1st Dep't 1952). The substantial recovery here is more than fair and reasonable on the claims asserted, and a release of non-existent or unidentified claims of unquantifiable (if any) value does not tip the scales against approval.

A. The Release is Not Overly Broad and does Not Release Any Valuable Claims Beyond those Asserted in this Action.

There is nothing unusual or overbroad about the Settlement's release of Fang claims. The release was not the result of a collusive settlement, but the product of a formal mediation before former Commercial Division Justice Barry Ostrager. [NYSCEF 568 at ¶12].

Moreover, derivative settlements with similar terms, releasing claims "that were or could have been alleged in the Action" and "unknown claims" are entirely appropriate and customary in derivative settlements. *See, e.g., In Re Renren, Inc. Derivative Litigation*, No. 653594/2018, 2022 WL 18401839 (Sup. Ct., N.Y. Cnty. June 14, 2022) (J. Borrok) (releasing "any claims, causes of action, rights or remedies, including Unknown Claims, that could have been asserted in the Action or in any forum" as defined in the October 7, 2021 Stipulation, Dkt. No. 753); *Kahn et al. v. Buttner et al.*, No. 650320/2008, Dkt. No. 64 (Sup. Ct., N.Y. Cnty. Dec. 7, 2011) (releasing all "Released Claims, known or unknown" as defined in the stipulation of settlement Dkt. No. 52).

Finally, the Settlement does ***not*** purport to release all Fang claims that could be asserted anywhere. Rather, by its plain terms, the release of Fang claims is limited to claims "that were or could have been alleged in the Action." Stipulation ¶1v. This means that the release does not apply to company claims that are outside the narrow confines of derivative standing under Cayman law and could not have been asserted in this derivative action. *See In re Renren, Inc.*2020 WL 2564684, at *24 (Sup. Ct., N.Y. Cnty. May 20, 2020) (describing only "four narrow exceptions" to rule of

Foss v. Harbottle (2 Hare 461 [1843]) that generally bars shareholder derivative actions under Cayman law). And it also means that the release does not apply to any company claims that lack an "articulable nexus or substantial relationship" with transactions of business in New York sufficient to trigger jurisdiction. *Matter of Renren, Inc.*, 192 A.D.3d 539 (1st Dep't 2021).

Accordingly, Objectors are wrong in contending that the Settlement releases "all claims, belonging to Fang, including claims that a [hypothetical] liquidator" could bring. [NYSCEF 592 at 10]. It does not. More broadly, Objectors are also wrong in suggesting that any viable released claims exist, beyond those asserted in this Action. They are wrong in insinuating that the burden is on Plaintiff to "ascribe" value to potential claims that are *not released* or that do *not exist*. *Id.* 14. And Objectors are wrong in contending that the Settlement is somehow unfair based on either the unquantifiable value of non-existent claims, or indeterminate value of supposed claims that are not released (and that Objectors themselves have not pursued derivatively).

B. Objectors' Reliance on the "Identical Factual Predicate" Doctrine is Misplaced.

Objectors rely on the "identical factual predicate" doctrine to attack the Settlement's release of Fang claims as overbroad. *Id.* at 9-11. But their argument is based on the false premise that the Settlement releases all Fang claims, which is not true for the reasons discussed above. Moreover, a settlement release is not overly broad where it "does not bar claims relating to conduct that was not alleged and *could not have been alleged in [the settled] action*." *Cox,* 48 A.D.3d at 216 (emphasis added). Because the release here applies only to conduct or claims that "were or could have been alleged in the Action," (Stipulation ¶1.v.), it does not bar claims that were not asserted and could not have been asserted in this Action, entirely consistent with *Cox*. So, the

"identical factual predicate" doctrine is not implicated here given the limiting language in the release.[3]

Moreover, the "identical factual predicate" doctrine, developed in federal class action litigation, does not apply in New York state court or in derivative actions asserted here. *See Matter of Empire State Bldg. Assoc., LLC,* No. 654456/2013, 2014 WL 3571699, (N.Y. Sup. Ct. July 17, 2014) ("the identical factual predicate doctrine… applie[s] in the Second Circuit and elsewhere *but not New York State Courts*.") (emphasis added). Objectors do not cite a single case where a New York court has rejected a proposed settlement of a New York derivative action based on the scope of the release of company claims under "identical factual predicate" doctrine or otherwise. While Objectors cite a litany of inapposite federal Fair Labor Standards Act cases applying distinct federal standards, none of those federal authorities are instructive here. [NYSCEF 592 at 11].

C. Objectors' "Inadequate Representation" Argument is Meritless.

Objectors' assertion that Plaintiff has not adequately represented Fang's and minority shareholders' interests in procuring the Settlement fails for many of the same reasons. *Id.* at 12. The Settlement was the product of hard-fought litigation and mediation before Justice Ostrager, it provides for a substantial recovery on the claims asserted that is more than "reasonable to the corporation and its shareholders," and it does not release Fang claims that could not have been asserted in this derivative action in New York. *Benedict*, 77 A.D.3d at 872. Again, Objectors are wrong in contending that the Settlement releases all Fang company claims. And their related

[3] "Class action releases may include claims *not presented and even those which could not have been presented* as long as the released conduct arises out of the 'identical factual predicate' as the settled conduct." *In re Am. Exp. Fin. Advisors Sec. Litig*., 672 F.3d 113, 135 (2d Cir. 2011). Here, because the Settlement is limited to claims that "were or could have been alleged," there is no need to reach the doctrine.

complaint regarding "opt out" rights ignores that this is a derivative action, not a class action asserting any individual direct claims.

The real reason that Objectors have a problem with the Settlement is their mistaken belief—due to their misreading of the release and misunderstanding of the law—that the Settlement will undermine their self-serving attempt to use a threat of winding up of Fang to shake-down Defendant Mo in connection with their parallel CIH appraisal rights proceeding. But if Objectors really cared about maximizing the value of the claims asserted in this Action for the benefit of Fang and minority shareholders, then they would have participated as plaintiffs in this derivative action or brought their own derivative action in the Cayman Islands (or elsewhere). Instead, they filed a winding up petition against Fang—keeping it on ice for nearly two years—as they pursued a parallel CIH appraisal rights proceeding on behalf of themselves. The Court should pay no heed to Objectors' crocodile tears in pretending to care about Fang's and other minority shareholders' interests now.

CONCLUSION

For these reasons, the Court should approve the Settlement and grant such other relief as is proper.

Dated: January 29, 2026

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Date: January 29, 2026
Austin, Texas

William T. Reid, IV