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 EVENSTAR MASTER FUND SPC, EVENSTAR SPECIAL SITUATIONS LIMITED, AND GEMINS FUNDS SPC' S OPPOSITION TO PLAINTIFF'S MOTION FOR APPROVAL OF THE PROPOSED SETTLEMENT

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PRELIMINARY STATEMENT

The objection lodged by Evenstar Master Fund SPC, Evenstar Special Situations Limited, and Geminis Funds SPC's (collectively "Evenstar" or the "Evenstar Funds") shows some real chutzpah. Frustrated with the decline in Fang's share price and the loss suffered on its Fang investment, Evenstar filed a winding up petition *against* Fang and Defendant Mo in the Cayman Islands in 2020, threatening to kill the company. In doing so, Evenstar did *not* assert any derivative claims on Fang's behalf against Mo to remedy corporate injury, nor has Evenstar since brought any such derivative claims anywhere else.

Instead, Evenstar used its winding up petition as a threat to pressure Mo and thereby: (a) obtain concessions for itself, *e.g.,* a right to a board seat; (b) elbow its way into participating alongside Mo in a take-private merger transaction involving CIH in April 2023 (which Fang fully funded); and (c) extract a $4 million payment, funded by Fang, in exchange for dropping the petition in September 2023 (during this litigation). In other words, Evenstar held Fang hostage and extracted windfalls for itself at *Fang's expense*. Yet now, Evenstar portrays itself as the hero, claiming credit for the substantial recovery achieved by Plaintiff and its Counsel in this case, while at the same time whining that the Settlement does not benefit Evenstar enough. Hubris aside, Evenstar's objection to the Settlement is meritless for several reasons.

First, Evenstar's contentions are based on a fundamental misunderstanding of the nature of derivative actions, and the difference between derivative claims for corporate injury and direct claims for individual injury. For instance, Evenstar complains about inadequacy of compensation for individual investor losses, while failing to appreciate that the derivative claims asserted here—and to be released—only involve company claims for corporate injury. Individual investor losses are not at issue and not relevant to reasonableness of the Settlement consideration. Relatedly, in a case of *Renren* déjà vu, Evenstar claims that distributions should be made to Fang's historical

minority shareholders, not those determined at a record date fixed after the Settlement is approved. This Court wrestled with such arguments in approving the *Renren* settlement, and it should again reject them here.

Second, Evenstar compounds its error in assessing the relevant "gives" and "gets" in the Settlement by misconstruing the scope of the release of Fang company claims. By its plain terms, the release is not an overbroad, general release. Rather, it expressly applies solely to claims that "were or could have been" brought "in this Action," (Stipulation 1.v.), 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). It does not extend to company claims that could not be brought derivatively (under the narrow tests for derivative standing under Cayman law) or in New York. Evenstar has not identified any valuable released claims that were not asserted in this Action.

Third, Evenstar attacks the value of the 20.4 million CIH Holdings Limited ("CIH Holdings") shares to be transferred from Defendants to Fang, *i.e.,* the CIH Consideration, while failing to appreciate that regardless of the value of those shares, this is a better outcome than the more limited constructive trust remedy that would have been available at trial. Fang taking possession of the shares is a much better outcome than Fang obtaining a constructive trust because it immediately gives Fang all value and upside (not just a claim for disgorgement of profits above the prices Defendants paid for those shares). That holds true at any value of the CIH Holdings shares, even Evenstar's non-sensical suggested $0.15 per share value.

Finally, Evenstar requests that the Court impose a wish list of modifications, ignoring that the Court's role here is limited to deciding whether to approve or reject the Settlement, as the "court may not modify the terms of the settlement." *Benedict v. Whitman Breed Abbott & Morgan*,

77 A.D.3d 870, 872 (2d Dep't 2010). None of Evenstar's suggested modifications or requests are material, or tip the scale against Settlement approval.

STATEMENT OF FACTS

I. Evenstar's Winding Up Petition and Side Deals With Defendants.

A. Evenstar's Winding Up Petition.

In November 2020, Evenstar filed a winding-up petition against Fang and Mo in the Cayman Islands. [NYSCEF 594]. In exchange for obtaining board designation rights, Evenstar put its petition on hold in July 2021. [NYSCEF 614 at 5].

B. Evenstar Participated in the CIH Take-Private Transaction that Defendants Orchestrated at Fang's Defense.

On August 23, 2022, Fang and the Defendants announced their intention to take CIH private through a short-form merger under Cayman Islands law. [NYSCEF 119 at 29]. The initial buyer group for the CIH take-private transaction did not include Evenstar. *Id.* at 31, 34. Evenstar requested inclusion in the buyer group in October 2022, and officially joined the buyer group in November 2022. *Id.* at 34. In doing so, Evenstar decided to forgo cashing out at the $1.00 per share merger price, instead rolling over its shares into CIH Holdings. *Id.* at 22, 36. The CIH take-private transaction, funded by Fang, closed in April 2023. [NYSCEF 563 ¶Q].

C. During this Litigation, Evenstar Extracted a $4 Million Payment from Fang to Drop its Winding Up Petition.

On September 27, 2023, Evenstar agreed to withdraw its winding-up petition in exchange for a $4 million payment from Fang (not Mo, who was also a party to that proceeding). [NYSCEF No. 596]. This occurred shortly after Defendants announced interest in taking Fang public. [NYSCEF 156].

II. Evenstar is Wrong About the Key Settlement Components.

A. The Settlement's Release of Fang Claims Is Limited in Scope.

The Stipulation defines the Fang claims to be released, 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, 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). Thus, in addition to the claims that "were" asserted, the release extends solely to claims that "could have been" brought in *this* derivative case in *New York*.

B. The CIH Consideration Has Substantial Value.

For the reasons explained in Plaintiff's moving papers and Counsel's reply brief in support of its fee application, there is ample basis to conclude that the CIH Holdings shares are worth $2.00 each. At a minimum, those shares are worth at least $1.00 as evidenced by: (a) the take-private merger price (and Evenstar's decision to reject $1.00 for its shares); and (b) datapoints establishing that the value has not significantly declined since that transaction, such as fair value reporting in Fang's audited financial statements and Mo's recent declaration. [NYSCEF 648 ¶¶3-4; NYSCEF 616] ¶¶36-39; NYSCEF 629 at F-38]. Evenstar's alternative calculation of $0.15 is contradicted by those datapoints, and it is not based on valid valuation concepts for the reasons explained in the Supplemental Affirmation of Boris Steffen ("Steffen Supp. Aff."), Plaintiff's valuation expert. [NYSCEF 677 ¶¶16-19].

ARGUMENT

I. The Release of Fang Claims Is Not Overbroad.

Evenstar misconstrues the release of Fang claims as releasing all claims that Fang might hold. But by its plain terms, the release of Fang claims is limited to claims "that were or could have been alleged in the Action." [NYSCEF 562 ¶1v]. This limiting language necessarily 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 the rule of *Foss v. Harbottle* (2 Hare 461 [1843]) that generally bars shareholder derivative actions under Cayman law). And the limiting language also means that the release does not apply to any potential 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, 140 N.Y.S.3d 701 (1st Dep't 2021). Thus, the release of Fang company claims does not release any claims that Fang might have based on conduct outside of New York or that would not trigger derivative standing.

More broadly, the First Department has held that a release is not overbroad 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. The release here applies only to conduct or claims that "were or could have been alleged in the Action," (Stipulation ¶1.v.), meaning that it does not bar claims that were not asserted and could not have been asserted in this Action, consistent with *Cox* and releases given in other derivative actions in New York. *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).

Evenstar fails to address this New York precedent, instead turning to Delaware and federal law. [NYSCEF 615 at 12-13]. But even so, the release here would not run afoul of either of Evenstar's authorities. The release at issue in *Griffith v. Stein*, unlike here, was not limited to claims that could have been asserted in the action, but instead improperly applied to claims arising out of *future* events (meaning that such claims could not have been asserted). 283 A.3d 1124, 1135 (Del. 2022). And Evenstar's quoted language from *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* 396 F.3d 96, 107 (2d Cir. 2005) refers to the "identical factual predicate" rule, which is a federal court doctrine that is only implicated where, unlike here, a release is not expressly limited to claims that were or could have been asserted in the action, and does not apply in New York. *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); *In re Am. Exp. Fin. Advisors Sec. Litig*., 672 F.3d 113, 135 (2d Cir. 2011) ("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.") (emphasis added).

Accordingly, Evenstar's arguments regarding the release are factually and legally meritless and provide no reason to reject the Settlement.

II. Evenstar's Wish List of Requested Changes to the Settlement Are Improper.

Evenstar urges the Court to change Settlement terms to improve upon what is already a fantastic result by any objective measure. Such requests are beyond the purview of the Court's role in deciding whether to approve or reject the Settlement, however, because the "court may not

modify the terms of the settlement." *Benedict,* 77 A.D.3d at 872. Rather, the Court's role is solely to "determine whether a proposed settlement of a shareholder derivative claim is fair and reasonable to the corporation and its shareholders, then either approve or disapprove the settlement." *Id.* (internal quotations and citations omitted). Accordingly, the Court should reject Evenstar's various requested modifications and approve the Settlement before the Court, as is.

III. The Settlement Consideration is Well Above the Fair and Reasonable Threshold for Settlement Approval.

None of Evenstar's quibbles moves the needle, individually or collectively, on the fairness and reasonableness of the Settlement given the substantial recovery obtained. And none of Evenstar's complaints come close to establishing 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 (internal quotations and citation omitted).

A. The Settlement Does Not Release All Fang Claims, and Evenstar Fails to Identify Other Released Claims With Any Value.

Because it misconstrues the scope of the release, as discussed above, Evenstar does not understand the core "gives" (the release) and the "gets" (the CIH Consideration and the $30 million Monetary Consideration) in the Settlement. Again, Fang is not releasing claims that were not or could not be asserted in this Action. More broadly, Evenstar has failed to identify any valuable claims beyond those asserted in this Action that fall within the scope of the release, let alone establish that any such claims are so valuable that they dwarf the substantial Settlement consideration. Indeed, Evenstar has identified no other company claims that could have been brought derivatively in New York and were released. While Evenstar references a 2019 transaction involving Fang's purchase of convertible notes from Mo, that transaction had no identifiable nexus to New York (and any claims related to that transaction would be time-barred even if brought in the Cayman Islands). [NYSCEF 615 at 12-13 *citing* NYSCEF 624 ¶¶47-58].

Moreover, Evenstar's suggestion that claims based on that 2019 transaction or any other transactions have substantial value is belied by Evenstar's own failure to ever pursue derivative claims in the Cayman Islands or elsewhere. *See* [NYSCEF 659[1] ¶¶36.1-36.4 (winding up petition does not entail assertion of company claims or derivative claims)]. Evenstar's contentions are particularly rich when considering that, not only did it fail to pursue any derivative claims, Evenstar instead self-interestedly used its winding up petition as a means to procure special board rights for itself, to benefit from Defendants' take-private transaction, and to extract a $4 million cash payment *from Fang* (not Defendants).

B. The CIH Consideration Has Substantial Value that Exceeds the Value of the Constructive Trust Remedies that Could be Obtained through Judgment.

Evenstar misses the forest for the trees in disputing the value of the CIH Consideration. [NYSCEF 615 at 9-11]. As explained in Plaintiff's motion for Settlement approval, had the claims been litigated through judgment, the likely result would have been imposition of a constructive trust over Defendants' CIH Holdings shares, requiring them to disgorge profits, *i.e.,* the difference between the price Defendants paid for those shares and the price received in selling them. [NYSCEF 567 at 14-16]. Procuring 20.4 million shares for Fang to hold directly (the CIH Consideration) is far more valuable than a constructive trust over those shares in Defendants' hands because: (a) Fang is immediately in the money; and (b) Fang, not Defendants, obtains the immediate economic benefit of those shares. *Id.*

Practically speaking, this means that for any value of the CIH Holdings shares above zero, the Settlement is an objectively better outcome than obtaining a constructive trust over those shares. It makes no difference if the CIH Holdings shares are worth $2.00 (as Plaintiff contends),

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

the $1.00 CIH take-private price; or even the nonsensical, $0.15 attributed by Evenstar. In any scenario, 20.4 million multiplied by that share price will exceed the value of a constructive trust requiring profit disgorgement, which will be measured—at the time Defendants realize profits—as the price received by Defendants less their $1.01 per share weighted average basis in those shares.[2]

Because the CIH Consideration is objectively more valuable than the likely trial outcome (a constructive trust over CIH shares) at any value of CIH Holdings shares, the Settlement is "fair and reasonable" and should be approved regardless of the value of the CIH Consideration. That said, for the reasons explained more fully in Counsel's opening brief (NYSCEF 571) and reply brief in support of its fee application, Evenstar's suggested $0.15 value for CIH shares is ludicrously low. Defendants' valuation report at the time of the transaction supports a $2.00 share price. A $1.00 share price is a hard floor based on the CIH take private price, Evenstar's refusal to accept a $1.00 cash buyout of its shares in that transaction, and strong evidence that the value has not declined since the time of the transaction (Fang's fair value reporting in its audited financial statements and Defendant Mo's affirmation). Evenstar's reasoning behind the $0.15 per share value is non-sensical and defies economic reality. Steffen Supp. Aff. ¶¶9-21. And revealingly, despite being a current shareholder in CIH Holdings with access to its current financial statements, Evenstar has submitted no affirmative documentation—*e.g.,* CIH Holdings financial statements or Evenstar's reports to its investors—touching upon CIH Holdings' value.

[2] Defendant Mo's entity Defendant Ace paid $12.33 million for 11.67 million shares, and Defendant Dai's entity Defendant True Knight paid $8.36 million for 8.8 million shares. [NYSCEF 15 ¶¶131-32]. The total paid ($20,689,851.85) divided by the total number of shares (20,471,063) equals $1.01.

C. The Settlement is of Derivative Claims for Corporate Injury, Not Direct Claims for Investor Losses.

Evenstar's complaint that the settlement consideration is "far short of what is needed to make investors whole" ignores that this is a derivative action involving claims brought on Fang's behalf for corporate injuries that Fang itself suffered. [NYSCEF 615 at 2]. Derivative claims like those asserted in this action are not for individual harms, but corporate harms. *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" suffered "individually"). Any injuries that Evenstar or other minority shareholders may have suffered due to a decline in Fang's share price might be brought as separate direct claims, but they are not at issue in this derivative litigation and are, therefore, irrelevant to the fairness and reasonableness of the Settlement.

D. The Settlement Does Not Unfairly "Dilute" Fang Minority Shareholders.

Evenstar's complaints regarding "dilution" and participation of new shareholders are misguided. [NYSCEF 615 at 15-16]. The Settlement does not result in any changes to Fang's overall share count or alter Evenstar's or any other Fang minority shareholder's economic interest in Fang. Although the Settlement permits Defendants to sell Fang shares, it does so only "in order to help fund the payment of the Monetary Consideration." Stipulation ¶2. This provision helped procure a larger amount ($30 million) for the Monetary Consideration than what otherwise would have been available given Defendants' available resources and liquidity. And any Fang shares sold reduce Defendants' proportionate economic interest in Fang, thereby giving Fang's minority shareholders a larger share of future economic upside in Fang, including that associated with the CIH Consideration. Substantively, this term is a feature, not a bug.

Evenstar also loses sight of the bigger picture. Without the Settlement, Defendants would have been free to sell their Fang shares anyway, including for purposes other than funding a

substantial monetary settlement involving payments to Fang minority shareholders. And because this is a derivative action involving company claims brought on Fang's behalf, any recoveries would have gone to Fang—not Evenstar and other minority shareholders—if not for the Settlement. [NYSCEF 567 at 14].

Relatedly, Evenstar is also wrong in contending any new Fang minority shareholders as of the to-be-determined Record Date must be excluded from the Settlement, or that it would be unfair to include new participants because "longtime minority shareholders are the ones who have been harmed by Defendants' self-dealing." [NYSCEF 615 at 4, 15-16]. This argument, like the objectors in *Renren*, misunderstands the nature of a derivative claim. Because the settled claims are corporate assets, present shareholders as of the Record Date[3] are the ones entitled to participate based on their pro rata ownership of Fang at that time, just as if Fang had declared a dividend. *See In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1049 (Del. Ch. 2015) ("[A]ny right to benefit from the derivative claims belongs to the current holders of shares."); *Gordon v. Fundamental Invs., Inc.*, 362 F. Supp. 41, 46 (S.D.N.Y. 1973) ("recovery for the corporation in a derivative suit" if "distributed directly to the shareholders… would be to present shareholders.").

Finally, Evenstar ignores that the Monetary Consideration still represents a complete recovery on the claims for monetary relief even if the total outstanding minority interest has shifted slightly. Defendants' representation of their ownership in the Stipulation implies a 45.49% minority interest. Stipulation ¶9. Evenstar currently believes that the minority interest is 52.65%, [NYSCEF 616 ¶32], whereas Defendant Mo's recent security reflect ownership of 46,994,746 shares (or 52.0% of the total), implying minority of the remaining balance of 43,362,583 shares, or 47.99%. [NYSCEF 645]. The $30 million Monetary Consideration implies a company-level

[3] The Record Date is described in Stipulation paragraphs 1.l, 1.r, 6-8, and 27.

equivalent recovery of $62.5 million (based on minority holdings implied by Defendants' securities filings) or $56.0 million (based on Evenstar's estimate of minority shareholder holdings). Either way, that is *above* the likely $39.2 million - $55.6 million damages award to Fang if the case were litigated to judgment. [NYSCEF 567] at 13-14.

Accordingly, the Settlement term permitting Defendants to sell Fang shares to fund the Monetary Consideration is fair and reasonable.

E. Evenstar's Complaints Regarding Corporate Governance Forms Are No Reason to Reject the Settlement.

Evenstar complains that the corporate governance reforms procured through the Settlement "are not supported by adequate guardrails," urging the Court to reject or modify the Settlement for that reason, even going so far as forcing codification of such changes in "Fang's corporate articles." [NYSCEF 615 at 3, 14-15]. But Evenstar once again ignores that the Court may not impose changes to the terms of a settlement agreement, no matter how laudable. *Benedict*, 77 A.D.3d at 872. And more broadly, the relief Evenstar seeks—changing corporate governance of a Cayman company—is not relief that may be judicially imposed based on the claims asserted in this derivative action if tried to judgment. Absent the Settlement, therefore, no corporate governance reforms would be achieved. Perfection should not be the enemy of the good, and the Settlement's corporate governance terms are both fair and reasonable.

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