

WEDNESDAY, FEBRUARY 23, 2022

PERSPECTIVE

Judge: Scien-ter unproven though insiders sold shares before drop

By Federico Lo Giudice

Daily Journal Staff Writer

A federal judge granted Latham & Watkins' motion to dismiss a securities class action complaint against client HyreCar Inc. finding the plaintiffs failed to sufficiently allege falsity by company executives and insiders who sold hundreds of thousands of shares a month before the web-based car sharing marketplace's stock declined by 52%.

"Plaintiff has failed to adequately allege any actionable misrepresentation or omission," U.S. District Judge Percy Anderson ruled on Feb. 16, stating oral argument was unnecessary. "None of the facts alleged in the [first amended complaint] make plaintiff's theory more likely than these innocent explanations," he wrote, offering hypothetical reasons for HyreCar to have been slow to pay insurance claims or later speeding up payments.

He granted lead plaintiff Turton Inc. — represented by Robert V. Prongay, Ex Kano S. Sams II and Raymond D. Sulentic of Glancy, Prongay & Murray LLP — leave to file a second

amended complaint by March 21. A secretary at the firm said in a phone call the partners "declined to comment on ongoing cases."

Latham & Watkins partners

'None of the facts alleged in the [first amended complaint] make plaintiff's theory more likely than these innocent explanations.'

— U.S. District Judge Percy Anderson

Joshua G. Hamilton and Meryn C.N. Grant with associate Regina R. Wang also declined to comment on the dismissal of the first amended complaint.

HyreCar operates a web-based marketplace that allows users to rent their cars to Uber, Lyft and other drivers while providing insurance and support for a fee out of each rental. The insurance is managed through ABI, owned by HyreCar's strategic board advisory member David Haley.

Plaintiff Ivan Baron filed the original complaint in August 2021 alleging he bought HyreCar securities at "artificially inflated prices" during the class

period and "suffered damages as a result of defendants' misconduct." *Ivan Baron v. HyreCar Inc. et al.*, 2:21-cv-06918-PA-JC (C.D. Cal., filed Aug. 27, 2021).

The court later appointed Turton Inc. as lead plaintiff on behalf of all investors who purchased stock between February and August 2021.

"This is a paradigmatic securities fraud case where a tightly-controlled public company, led by the individual defendants, raised money from shareholders, and used a conflicted party to help manage earnings through expense concealment and suppression," stated the plaintiffs' complaint. This "enabled the company to delay reporting insurance losses for just long enough for insiders to cash out through perfectly-timed sales."

HyreCar reported quarterly

net losses of \$9.3 million in August 2021, compared to losses of \$3.8 million in the same period the year before due to higher insurance claims, stated Anderson's order.

This made stock prices fall nearly 50% in a single day but the individual defendants including HyreCar's CEO, chief financial officer and board members cashed out weeks before, said the complaint.

The alleged causes of action were falsity and scienter by withholding the financial information that allowed the board to cash out, and violation of Section 20(a) of the Securities Exchange Act by exercising actual power or control over the primary violator.

Anderson dismissed each cause of action, saying that the plaintiff failed to adequately allege any actionable misrepresentation or omission, or to "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind" as to plead scienter, that is, knowledge that an act or conduct is wrongful and intent to act despite this.

federico_giudice@dailyjournal.com