

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X
RETIREMENT BOARD OF ALLEGHENY COUNTY,

Plaintiff,

- v -

PING IDENTITY HOLDING CORPORATION, VISTA EQUITY PARTNERS, VISTA EQUITY PARTNERS FUND VI, L.P., VISTA EQUITY PARTNERS FUND VI-A, L.P., VEPF VI FAF, L.P., ANDRE DURAND, RAJ DANI, ADRIANA CARPENTER, ROD ALIABADI, DAVID BREACH, CLIFFORD CHIU, MICHAEL FOSNAUGH, LISA HOOK, JOHN MCCORMACK, BRIAN SHETH, YANCEY SPRUILL, GOLDMAN SACHS & CO. LLC, BOFA SECURITIES, INC., RBC CAPITAL MARKETS, LLC, CITIGROUP GLOBAL MARKETS, LLC, BARCLAYS CAPITAL INC., CREDIT SUISSE SECURITIES (USA) LLC, WELLS FARGO SECURITIES LLC, DEUTSCHE BANK SECURITIES INC., PIPER SANDLER & CO., RAYMOND JAMES & ASSOCIATES, INC., STIFEL, NICOLAUS & COMPANY, LLC, WILLIAM BLAIR & COMPANY, L.L.C., BTIG, LLC, MIZUHO SECURITIES USA LLC

Defendant.
-----X

INDEX NO. 654912/2021

MOTION DATE _____

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 were read on this motion to/for DISMISS.

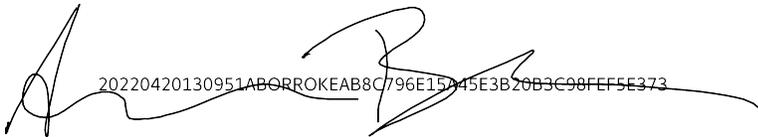
As discussed on the record (4.19.22), although it is well settled that to survive a CPLR 3211 motion to dismiss, a claim brought pursuant to the Securities Act of 1933 must only satisfy CPLR 3013 and not CPLR 3016(b) (*Feinberg v Marathon Patent Group Inc.*, 193 AD3d 568, 570-571 [1st Dept 2021]; *In re Netshoes Sec. Litig.*, 68 Misc.3d at 794-795; *In re PPD AI Group Sec. Litig.*, 66 Misc.3d 1226[A], at *6; *In re Uxin Limited Sec. Litig.*, 2020 WL 1146636, at *6 [Sup Ct, NY County 2020]), the complaint in this case is doomed because the very performance that Ping Identity Holding Corporation's (**Ping**) is alleged to have failed to disclose in its July

2020 secondary public offering (**SPO**) documents was in fact disclosed in such documents (NYSCEF Doc. No. 24, at 15-16) (*PPDAI Group Securities Litigation v XXX*, 66 Misc.3d 1226[A], * 7 [Sup Ct, NY County 2020]; *Hoffman v AT&T Inc.*, 67 Misc.3d 1212[A], * 7 [Sup Ct, NY County 2020]). To wit, the complaint does not allege that the actual historical results which were disclosed were false or over-stated. The complaint acknowledges that Ping's historical results which specifically identified the amounts by which Ping's revenue had shifted from term licenses to SaaS was accurate. In addition, Ping disclosed that it could well experience additional disruption based on COVID. Furthermore, to the extent the complaint relies on certain confidential witnesses (e.g., NYSCEF Doc. No. 1, ¶¶ 71-80) who allege that certain downturn events had occurred, they indicate that such events are corroborated by the quarterly financial statements which financial statement results were included in the offering documents. As such, as alleged, these trends were disclosed, the offering documents were not false and misleading, and the plaintiffs attempt to say that Ping tried to pin the ultimate slow-downs Ping experienced on COVID fails. Lastly, to the extent the complaint is based on the notion that the offering documents were misleading because they failed to disclose this shift (which in fact was disclosed as discussed above), taking this shift into account, Ping made a financial projection which it met. As such, the complaint must be dismissed.

It is hereby ORDERED that the motion to dismiss is granted; and it is further

ORDERED that the Plaintiff shall have 45 days from the date of this order to replead and file an amended complaint; and it is further

ORDERED that, if the Plaintiff does not file an amended complaint within 45 days of the date of this order, the dismissal of this complaint shall be with prejudice.


20220420130951ABORROKEAB8C796E157445E3B20B3C98FF5E373

4/20/2022

DATE

ANDREW BORROK, JSC

CHECK ONE:

CASE DISPOSED

GRANTED DENIED

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE