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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

IN RE DROPBOX, INC. SECURITIES LITIGATION

Lead Case No. 19-CIV-05089
(Consolidated with Case Nos. 19-CIV-05217, 19-CIV-05417, and 19-CIV-05865)

CLASS ACTION

DROPBOX DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS FOR FORUM NON CONVENIENS; MEMORANDUM OF POINTS AND AUTHORITIES

Assigned for All Purposes to:
Dept.: 4
Judge: Nancy L. Fineman
Trial Date: Not Yet Set
Date Action Filed: August 30, 2019

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, in light of the ongoing global pandemic, at a date and time convenient to the Court in the courtroom of the Honorable Nancy L. Fineman, located in Department 4 at 400 County Center, Redwood City, California, defendants Dropbox, Inc. ("Dropbox" or the "Company"), Andrew W. Houston, Ajay V. Vashee, Timothy J. Regan, Arash Ferdowsi, Robert J. Mylod, Jr., Donald W. Blair, Paul E. Jacobs, Condoleezza Rice, R. Bryan Schreier, and Margaret C. Whitman (collectively with Dropbox, the "Dropbox Defendants"), will, and hereby do, move the Court for an order dismissing this action for forum non conveniens. This motion is brought on the grounds of Dropbox's valid and enforceable forum selection bylaw, which mandates that federal court "shall be the exclusive forum" for all causes of action brought under the Securities Act of 1933, and this Court's authority to dismiss the action for forum non conveniens under California Code of Civil Procedure § 410.30(a).

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Nina F. Locker submitted herewith, the [Proposed] Order submitted herewith, the records and files in this action, and upon such other evidence or argument as may be presented before or during the hearing on this matter.

Dated: May 11, 2020

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: */s/ Nina F. Locker*
Nina F. Locker

Attorney for Defendants Dropbox, Inc., Andrew W. Houston, Ajay V. Vashee, Timothy J. Regan, Arash Ferdowsi, Robert J. Mylod, Jr., Donald W. Blair, Paul E. Jacobs, Condoleezza Rice, R. Bryan Schreier, and Margaret C. Whitman

Defendants Dropbox, Inc. ("Dropbox" or the "Company"), Andrew W. Houston, Ajay V. Vashee, Timothy J. Regan, Arash Ferdowsi, Robert J. Mylod, Jr., Donald W. Blair, Paul E. Jacobs, Condoleezza Rice, R. Bryan Schreier, and Margaret C. Whitman (collectively, the "Dropbox Defendants") respectfully submit this Memorandum of Points and Authorities in Support of their Motion to Dismiss on the basis of Dropbox's federal forum provision, found in its Amended and Restated Bylaws.

INTRODUCTION

Dropbox's bylaws designate federal court as the exclusive forum for litigating cases such as this one—a lawsuit asserting claims under the Securities Act of 1933 (the "Securities Act"). For this reason, this lawsuit should be dismissed on forum non conveniens grounds.

In 2018, before Dropbox became a public company, Dropbox's Board of Directors amended the Company's bylaws to include a provision that designated federal district courts as the "exclusive forum" for Securities Act claims (the "Federal Forum Provision"). Plaintiffs were on notice of and consented to the Federal Forum Provision when they purchased Dropbox's stock.

Dropbox's Federal Forum Provision is valid. Courts in California look to the law of the state of incorporation to determine the validity of a corporation's bylaws. Because Dropbox is a Delaware corporation, Delaware law governs the validity of its Federal Forum Provision. In March 2020, the Delaware Supreme Court sitting *en banc* unanimously held that federal forum provisions such as Dropbox's are facially valid under Delaware law.

Given that Dropbox's Federal Forum Provision is valid, the only question is whether it is enforceable. Under California law, a forum selection clause will be enforced unless the party challenging the clause shows that its enforcement would be unreasonable under the circumstances of the case. "Unreasonable" in this context means that "the forum selected would be unavailable or unable to accomplish substantial justice or that no rational basis exists for the choice of forum." For the reasons set forth below, plaintiffs cannot come close to satisfying their burden of showing that a federal forum for their claims is unreasonable. This lawsuit should be dismissed.

I. FACTUAL BACKGROUND

Dropbox is a Delaware corporation headquartered in San Francisco. In February and March 2018, Dropbox filed and made amendments to its Form S-1 Registration Statement (the "Registration Statement") in anticipation of carrying out an initial public offering ("IPO"). Ex. 1.[1] The Registration Statement disclosed that Dropbox had adopted Amended and Restated Bylaws (the "Amended Bylaws") that would become effective immediately prior to the completion of its IPO. *Id.* at 43. The Amended Bylaws, which were attached as an exhibit to the Registration Statement, contained the Federal Forum Provision, which stated:

> Unless the corporation consents in writing to the selection of an alternative forum, ***the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933***.

Ex. 2 at 23 (emphasis added). The Registration Statement also stated that "[a]ny person or entity purchasing or otherwise acquiring any interest in any security of the corporation shall be deemed to have notice of and consented to [this] provision[] . . . ." *Id.*

II. PROCEDURAL HISTORY

This lawsuit followed Dropbox's announcement of its second quarter results for fiscal year 2019 on August 18, 2019, after which Dropbox's stock price dropped below its IPO price for the first consistent period in the Company's trading history. Multiple putative shareholder class action lawsuits followed, each asserting causes of action under the Securities Act. Four class action complaints, each of which was essentially identical to the others, were filed in this Court by stockholder plaintiffs and their counsel. The Court consolidated those actions and appointed Lead Counsel on November 15, 2019. On January 31, 2020, this Court stayed this action pending the outcome of the Delaware Supreme Court's decision in *Salzberg v. Sciabacucchi*, which was issued on March 18, 2020 and is discussed in further detail herein. *See Salzberg v. Sciabacucchi*, No. 346, 2019, -- A,3d --, 2020 Del. LEXIS 100 (Del. Mar. 18, 2020).

[1] References to "Ex. ___" refer to documents attached to the Declaration of Nina F. Locker ("Locker Decl."), filed herewith.

In addition to this action, two parallel federal actions were filed in the United States District Court for the Northern District of California. Those federal actions were assigned to Judge Beth Labson Freeman and were consolidated. Lead Plaintiff motions were filed and a Lead Plaintiff and Lead Counsel were appointed on January 16, 2020. Ex. 3. The Lead Plaintiff filed a Consolidated Class Action Complaint on March 2, 2020, and the Dropbox Defendants filed a motion to dismiss on April 16, 2020. A hearing on the motion to dismiss is scheduled for August 13, 2020.

III. THE DELAWARE SUPREME COURT'S *SCIABACUCCHI* DECISION

On March 18, 2020, the Delaware Supreme Court sitting *en banc* unanimously upheld the facial validity of federal forum provisions in the charters of three Delaware corporations (Blue Apron Holdings, Inc., Roku, Inc., and Stitch Fix, Inc.) that are substantively identical to Dropbox's Federal Forum Provision.[2] In doing so, the Court reversed a decision of the Court of Chancery that had previously declared such provisions facially invalid. *Sciabacucchi*, 2020 Del. LEXIS 100, at *3, *11. The plaintiff, a stockholder in the three defendant companies, argued that such provisions were invalid as a matter of Delaware law because they "d[id] not involve rights or relationships that were established by or under Delaware's corporate law," and were therefore "external" affairs, which fall outside the subject matter authorized for inclusion in the charters of Delaware corporations. *Id.* at *3 (citation omitted).

In holding that federal forum provisions are valid, the Delaware Supreme Court looked first to the plain language of Section 102(b)(1) of the Delaware General Corporation Law ("DGCL"), which provides that corporate charters may contain (1) "[a]ny provision for the management of the business and for the conduct of the affairs of the corporation," and (2) "any

[2] In a facial challenge to the validity of a charter provision or bylaw, the court must decide whether the provision can "operate lawfully or equitably *under any circumstances*." *Sciabacucchi*, 2020 Del. LEXIS 100, at *9 (citation omitted). That is, the plaintiff must demonstrate that it "'do[es] not address proper subject matters' as defined by statute, 'and can never operate consistently with law.'" *Id.* (quoting *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934, 949 (Del. Ch. 2013)). By contrast, an "as applied" challenge to a specific provision is an individualized inquiry into enforceability and "depends on the manner in which it was adopted and the circumstances under which it [is] invoked." *Id.* at *54 (quoting *ATP Tour, Inc. v. Deutscher Tennis Bund*, 91 A.3d 554, 558 (Del. 2014)).

provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the stockholders . . . if such provisions are not contrary to the laws of [Delaware]." *Id.* at *9-10 (quoting 8 *Del. C.* § 102(b)(1)). The Delaware Supreme Court explained that these broad categories set forth in Section 102(b)(1) encompass "'intra-corporate' matters that are not necessarily limited to 'internal affairs.'" *Id.* at *45-46. The Court noted that in regulating the forum in which a stockholder can bring Securities Act claims, a federal forum provision relates to "the management of litigation arising out of the Board's disclosures to current and prospective stockholders in connection with an IPO or secondary offering." *Id.* at *10-11. The Court also noted that such disclosures are "an important aspect of a corporation's management of its business and affairs and of its relationship with its stockholders." *Id.* at *11. The Court therefore concluded that because federal forum provisions address the "management of the business" and the "conduct of the affairs of the corporation," they "easily fall" within the broad categories of Section 102(b)(1) and are thus facially valid under the DGCL. *Id.* at *10-11.

The Court went on to emphasize the particular importance of federal forum provisions after the United States Supreme Court clarified the concurrent state court jurisdiction for Securities Act claims in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018). *Sciabacucchi*, 2020 Del. LEXIS 100, at *13. It observed that federal forum provisions are valuable tools to curb the proliferation and inefficiency of parallel securities class actions filed in state and federal courts, and to remedy the lack of a mechanism to consolidate and coordinate such suits. *Id.* By directing Securities Act claims "to federal courts [where] coordination and consolidation are possible, FFPs classically fit the definition of a provision 'for the management of the business and for the conduct of the affairs of the corporation.'" *Id.* (citation omitted).

The Court also determined that federal forum provisions are entirely consistent with federal law and policy. In particular, it recognized that the United States Supreme Court has expressed a strong preference for giving effect to forum selection clauses, citing *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477 (1989), discussed *infra*, where the Court upheld an arbitration provision that precluded bringing Securities Act claims in any judicial

forum. *Sciabacucchi*, 2020 Del. LEXIS 100, at *48 (citing *Rodriguez*, 490 U.S. at 482-83). In upholding that provision—which was "in effect, a specialized kind of forum selection clause"—*Rodriguez* "provides forceful support for the notion that FFPs do not violate federal policy by narrowing the forum alternatives available under the Securities Act." *Id.* (quoting *Rodriguez*, 490 U.S. at 482-83). The Court further explained that Supreme Court precedent under *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), "requires courts to give as much effect as possible to forum-selection clauses, and to 'only deny enforcement of them to the limited extent necessary to avoid some fundamentally inequitable result or a result contrary to positive law.'" *Id.* at *49 (quoting *Bremen*, 407 U.S. at 15). The Court also emphasized that federal forum provisions are "process-oriented" and "not substantive," as they only "regulate *where* stockholders may file suit, not *whether* the stockholder may file suit or the kind of remedy that the stockholder may obtain on behalf of herself or the corporation." *Id.* at *56 (quoting *Boilermakers*, 73 A.3d at 951-52). Accordingly, the Court concluded that a provision requiring stockholders to litigate federal claims in federal court is not violative of federal policy or constitutional principles. *Id.* at *50-51, *56.

Finally, while the *Sciabacucchi* litigation itself only involved a facial challenge to the validity of federal forum provisions, the Court recognized that as applied challenges would remain available as an important "safety valve" to avoid the unreasonable enforcement of particular federal forum provisions. *Id.* at *53-54. And under both federal and Delaware law, and similar to the California forum non conveniens analysis, *see infra* at 14, such challenges involve an inquiry into whether: (i) enforcing the provision "would be 'unreasonable and unjust'"; (ii) the provision "would be invalid for reasons such as fraud or overreaching"; or (iii) the provision "contravene[s] a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision." *Id.* at *54 (quoting *Bremen*, 407 U.S. at 15).

ARGUMENT

As demonstrated in Section I, *infra*, because Dropbox is a Delaware corporation, Delaware law governs the validity of its bylaws. *Sciabacucchi* therefore conclusively establishes that Dropbox's Federal Forum Provision is facially valid.[3] As a valid bylaw under Delaware law, Dropbox's Federal Forum Provision creates a binding contract between the Company and its shareholders, including the plaintiffs.

Therefore, the only question remaining for this Court is whether to enforce Dropbox's valid Federal Forum Provision. As explained in Section II, *infra*, under California law, contractual forum selection clauses, including those found in corporate bylaws, are enforced through the doctrine of forum non conveniens. Under that doctrine, Dropbox's mandatory Federal Forum Provision must be enforced unless plaintiffs can satisfy their heavy burden of showing that to do so would be "unreasonable." Plaintiffs cannot meet that burden and accordingly, the provision should be enforced.

I. DROPBOX'S FEDERAL FORUM PROVISION IS VALID

Sciabacucchi establishes that Dropbox's Federal Forum Provision is facially valid. Under the internal affairs doctrine, the validity of the provisions in a foreign corporation's charter or bylaws is a question governed by the substantive law of the state of incorporation. *See Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982) ("The internal affairs doctrine . . . recognizes that only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands."); *Drulias v. 1st Century Bancshares, Inc.*, 30 Cal. App. 5th 696, 702, 707 (2018) (threshold

[3] As noted above, a party seeking to avoid a forum selection bylaw may also bring an "as applied" challenge under Delaware law. That challenge is analyzed under the *Bremen* framework, which is explained above. *See supra* at 10. Because the *Bremen* framework is similar to California's forum non conveniens analysis—*e.g.*, both place the burden on plaintiffs to show enforcement of the Federal Forum Provision would be unreasonable—we omit a duplicative "as applied" analysis here given the discussion of California's forum non conveniens framework. *Lu v. Dryclean-U.S.A. of Cal., Inc.*, 11 Cal. App. 4th 1490, 1493 (1992) (citing *Bremen* in recognition that "both the United States Supreme Court and the California Supreme Court" place a heavy burden on parties seeking to avoid forum selection provisions); *see also Boilermakers*, 73 A.3d at 958-59 (describing the "as applied" analysis under *Bremen*).

question of validity of forum selection bylaw determined under law of chartering jurisdiction); *State Farm Mut. Auto. Ins. Co. v. Superior Court*, 114 Cal. App. 4th 434, 442 (2003) ("'Internal affairs' include . . . the adoption of by-laws . . . [and] charter amendments . . . ."); *Olincy v. Merle Norman Cosmetics, Inc.*, 200 Cal. App. 2d 260, 271 (1962) (validity of bylaws determined according to law of state of incorporation). This basic premise is fundamental to the predictable and orderly functioning of corporations that operate across state lines. As the Court of Appeals observed in *State Farm*:

> It would be impractical to have matters . . . which involve a corporation's organic structure or internal administration[] governed by different laws. It would be impractical, for example, if . . . an issuance of shares, a payment of dividends, ***a charter amendment***, or a consolidation or reorganization were to be held valid in one state and invalid in another. . . . In the absence of an explicitly applicable local statute to the contrary, . . . the local law of the state of incorporation has been applied to determine issues involving corporate acts of the sort [mentioned].

114 Cal. App. 4th at 442-43 (quoting Rest.2d Conf. of Laws, § 302, com. e, p. 310) (emphasis added); *see also CTS Corp. v. Dynamics Corp of Am.*, 481 U.S. 69, 90 (1987) ("This beneficial free market system [for raising capital in various markets] depends at its core upon the fact that a corporation—except in the rarest situations—is organized under, and governed by, the law of a single jurisdiction, traditionally the corporate law of the State of its incorporation."). And furthermore, as the California Supreme Court has recognized, a corporation's chartering jurisdiction has a "keen and intimate interest in [its] internal corporate affairs, including the purchase and sale of its shares, as well as corporate management and operations." *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal. 4th 459, 467-68 (1992).

Dropbox is incorporated under the laws of the State of Delaware. Ex. 1. Accordingly, the statutory and decisional law of Delaware governs the validity of the Federal Forum Provision. *E.g.*, *Boilermakers*, 73 A.3d at 938 ("[A] foreign court that respects the internal affairs doctrine, as it must, when faced with a motion to enforce the bylaws will consider, as a first order issue, whether the bylaws are valid under the 'chartering jurisdiction's domestic law.'") (citation omitted). The Delaware Supreme Court in *Sciabacucchi* unambiguously held that federal forum

provisions like the one that Dropbox now seeks to enforce are permissible under Delaware law.[4] *See supra* at 8. Therefore, there can be no further dispute as to whether Dropbox's Federal Forum Provision is facially valid.

II. DROPBOX'S FEDERAL FORUM PROVISION IS ENFORCEABLE AND THEREFORE REQUIRES DISMISSAL OF THIS ACTION

Because it is valid, Dropbox's Federal Forum Provision bylaw constitutes a binding and enforceable contractual obligation between it and its shareholders. *See Sciabacucchi*, 2020 Del. LEXIS 100, at *54.[5] Dropbox's Federal Forum Provision is therefore treated the same as any contractual forum selection provision. *E.g.*, *Drulias*, 30 Cal. App. 5th at 703 (analyzing and enforcing a Delaware corporation's forum selection bylaw as a "contractual forum selection clause"); *see also Bushansky v. Soon-Shiong*, 23 Cal. App. 5th 1000, 1005 (2018) (analyzing a forum selection provision in a Delaware corporation's certificate of incorporation as a "contractual forum selection clause"). Under California law, a contractual forum selection clause is enforced by a motion to dismiss for forum non conveniens under Code of Civil Procedure section 410.30. *Drulias*, 30 Cal. App. 5th at 703 (citing *Berg v. MTC Elecs. Techs. Co. Ltd.*, 61 Cal. App. 4th 349, 358 (1998)); *see also Cal-State Bus. Prods. & Servs., Inc. v. Ricoh*, 12 Cal. App. 4th 1666, 1680 (1993); *Korman v. Princess Cruise Lines, Ltd.*, 32 Cal. App. 5th 206, 215-16 (2019). In cases involving mandatory forum-selection clauses, "[t]he factors that apply generally to a forum non conveniens motion do not control"; courts do not consider the forum's convenience or other private interest factors. *Berg*, 61 Cal. App. 4th at 358-59. Instead, the clause will be enforced unless the chosen forum is "unreasonable." *Animal Film,*

[4] Although *Sciabacucchi* considered charter provisions rather than bylaws, the holding is equally applicable to a federal forum selection bylaw. *See Sciabacucchi*, 2020 Del. LEXIS 100, at *23-24 (relying heavily on *Boilermakers*, 73 A.3d 934, and *ATP Tour*, 91 A.3d 554, both of which concerned bylaws).

[5] *See also, e.g.*, *Blackrock Credit Allocation Income Trust v. Saba Capital Master Fund, Ltd.*, 224 A.3d 964 (Del. 2020) ("[b]ylaws 'constitute part of a binding broader contract among the directors, officers, and stockholders . . . .'") (citation omitted); *Boilermakers*, 73 A.3d at 939-40 ("board-adopted bylaws" are "an essential part of the contract stockholders assent to when they buy stock").

LLC v. D.E.J. Productions, Inc., 193 Cal. App. 4th 466, 471 (2011) (quoting *Intershop Commc'ns AG v. Superior Court*, 104 Cal. App. 4th 191, 196 (2002)).

Here, "unreasonable" means that the "selected forum would be unavailable or unable to accomplish substantial justice or that no rational basis exists for the choice of forum." *Intershop*, 104 Cal. App. 4th at 199; *see also Drulias*, 30 Cal. App. 5th at 707 (same). The party seeking to defeat a forum selection clause bears a "substantial burden" to "demonstrate enforcement of the clause would be unreasonable under the circumstances of the case." *CQL Original Prods., Inc. v. Nat'l Hockey League Players' Ass'n*, 39 Cal. App. 4th 1347, 1354 (1995); *Lu*, 11 Cal. App. 4th at 1493; *see also Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal. 3d 491, 496 (1976) ("Mere inconvenience or additional expense is not the test of unreasonableness . . . .") (citation omitted). As explained in further detail below, Dropbox's Federal Forum Provision is mandatory and applies to this action. Plaintiffs cannot meet their burden to show it is unreasonable, and therefore this action should be dismissed.

A. Dropbox's Mandatory Federal Forum Provision Applies Here

By providing that "the federal district courts of the United States of America ***shall be the exclusive forum***" for Securities Act claims, Dropbox's Federal Forum Provision is a mandatory forum selection provision. Ex. 2 at 23 (emphasis added); *Korman*, 32 Cal. App. 5th at 215-16 ("[A] phrase such as 'shall be litigated' generally has been construed to indicate that the forum selection clause is mandatory."); *see also CQL*, 39 Cal. App. 4th at 1358 ("Moreover, its mandatory character is reflected by the use of the word 'shall.'"); *Bushansky*, 23 Cal. App. 5th at 1011 ("shall be the sole and exclusive forum" language denotes mandatory forum selection clause). In addition, by its express terms, the Federal Forum Provision applies to all of plaintiffs' causes of action. The provision covers "***any complaint asserting a cause of action arising under the Securities Act of 1933***." Ex. 2 at 23 (emphasis added). All of the causes of action asserted in each of plaintiffs' complaints arise under the Securities Act of 1933. *E.g.*, Steinhaus Complaint for Violations of the Securities Act of 1933 at ¶ 1 ("This action asserts claims under the Securities Act of 1933"). Dropbox has not consented in writing to any alternative forum. Accordingly, the Federal Forum Provision applies here.

B. Plaintiffs Cannot Meet Their Burden Of Showing That Enforcement Of Dropbox's Federal Forum Provision Is Unreasonable

Plaintiffs bear a "heavy burden" to show that enforcement of Dropbox's Federal Forum Provision would be unreasonable. *Lu*, 11 Cal. App. 4th at 1493 (citing *Bremen*, 407 U.S. at 10, 15; *Smith*, 17 Cal. 3d at 496). Plaintiffs cannot come close to carrying that burden.

The forum selected by Dropbox's Federal Forum Provision is undoubtedly available for plaintiffs to pursue their claims. The Federal Forum Provision selects "the federal district courts of the United States of America" as the exclusive forum for plaintiffs' causes of action under the Securities Act. Ex. 2 at 23. Federal courts are, of course, an appropriate forum for plaintiffs to pursue their claims; the Securities Act itself expressly provides that federal courts have subject matter jurisdiction to hear Securities Act claims. 15 U.S.C. § 77v(a) ("[t]he district courts of the United States . . . shall have jurisdiction of offenses and violations under this subchapter"); *see also Korman*, 32 Cal. App. at 221 ("selection of a federal forum does not make enforcement of [a forum selection clause] unreasonable"). In fact, and as the Court is aware, there is a substantially similar action—brought on behalf of the same class of shareholders plaintiffs seek to represent here—already proceeding before Judge Freeman in the U.S. District Court for the Northern District of California.

There also clearly is a rational basis for selecting federal courts as the forum to litigate Securities Act claims. The Securities Act is, after all, a federal law. Federal courts, including those in the Northern District of California, frequently adjudicate Securities Act claims. Moreover, by directing Securities Act claims to federal court, Dropbox is able to avoid the unnecessary costs and burden of defending multiple cases simultaneously in both state and federal courts and the possibility of inconsistent judgments and rulings. *Cf. Sciabacucchi*, 2020 Del. LEXIS 100, at *15. As aptly recognized by the *Drulias* court, "reducing litigation expenses and avoiding duplication of effort (not to mention promoting efficient use of judicial resources) . . . is beneficial to corporations and their shareholders alike" and provides a rational basis to adopt and enforce a forum selection bylaw. *Drulias*, 30 Cal. App. 5th at 709-10.

C. The Federal Forum Provision Does Not Contravene California Public Policy

Dropbox's Federal Forum Provision must be enforced because plaintiffs cannot show that requiring them to litigate in federal court would contravene an inviolate right under California law or policy. California courts will refuse to enforce a valid forum selection provision in very limited circumstances; namely, when to do so would substantially diminish the rights of California residents in a way that violates a statute or public policy of the state. *See, e.g.*, *Drulias*, 30 Cal. App. 5th at 703.[6] But those circumstances are not present here. Plaintiffs' claims are not based on unwaivable rights created by a California statute because they are brought pursuant to the federal Securities Act. *Id.* The Dropbox Defendants are likewise not aware of any fundamental policy of California that would be violated by a forum selection provision that selects federal court for Securities Act claims. *See Korman*, 32 Cal. App. 5th at 221 (enforcing forum selection clause selecting a federal forum; rejecting argument that the provision was unenforceable "because California state courts have concurrent jurisdiction over the matter" and the provision "deprive[d] California state courts from hearing the matter").

D. Plaintiffs' Anticipated Reliance On *Cyan* Will Be Misplaced

The Dropbox Defendants anticipate that plaintiffs may argue that the United States Supreme Court's decision in *Cyan* establishes some inviolate right to assert Securities Act claims in state courts. The Delaware Supreme Court rejected this argument, and so should this Court. *Sciabacucchi*, 2020 Del. LEXIS 100, at *50-51.

By its express terms, *Cyan* merely confirmed that state courts have concurrent jurisdiction over Securities Act claims. *Cyan*, 138 S. Ct. at 1078. *Cyan* does not create any substantive right that Securities Act claims ***must*** be permitted to be brought in state courts, nor does it address situations in which the parties contractually agree to a different forum to litigate

[6] None of the plaintiffs here have pleaded that they are California residents. In opposing the Dropbox Defendants' motion to stay, plaintiffs claimed that "at least one plaintiff in these consolidated actions is a California resident," without any offering any supporting detail (or even the identity of the plaintiff). Plaintiffs' Memorandum in Opposition to Defendants' Motion to Stay at 21 (Dec. 20, 2019). If plaintiffs seek to rely on a purported California public policy in avoiding Dropbox's Federal Forum Provision they should, at a minimum, provide evidence to show that this action involves a California resident with standing to pursue his Securities Act claims.

Securities Act claims. *See id.* at 1073 (Securities Act cases "***may*** proceed in state court") (emphasis added). Rather, decisions by the United States Supreme Court and the Ninth Circuit Court of Appeals make clear that parties may contractually agree to litigate Securities Act claims in a forum of the parties' choosing because the Securities Act's jurisdictional provisions are procedural in nature and do not implicate a substantive right.

Specifically, in *Rodriguez*, the United States Supreme Court confirmed that parties can limit the fora in which they may bring Securities Act claims through contractual forum selection clauses. There, plaintiffs invested $400,000 in stock through the defendant brokerage firm. 490 U.S. at 478. Plaintiffs signed a form contract agreeing to arbitrate any claims arising from the investments. *Id.* After plaintiffs lost money on the investments, they sued, among others, the brokerage firm for violations of state and federal law, including under Section 12 of the Securities Act, in federal court. *Id.* The brokerage firm moved for arbitration on all claims under the parties' agreement, but the District Court held that the Securities Act claims could not be submitted to arbitration. *Id.* at 479. The Fifth Circuit reversed and the Supreme Court affirmed that reversal. *Id.* at 479, 486.

The central issue in *Rodriguez* was whether the agreement to arbitrate violated the anti-waiver provision of the Securities Act, which provides that parties cannot enter stipulations binding any purchaser of securities "to waive compliance with any provision" of the Securities Act. *Id.* at 479; *see also* 15 U.S.C. § 77n (Securities Act anti-waiver provision). The Supreme Court held that the agreement did not violate the anti-waiver provision because "the right to select the judicial forum and the wider choice of courts are not such essential features of the Securities Act" that the anti-waiver provision could be construed to bar an agreement to arbitrate Securities Act claims. *Rodriguez*, 490 U.S. at 482. In so holding, the Court distinguished between the substantive provisions of the Securities Act (such as the burden of proof regarding scienter) and others that are merely procedural, including "the grant of concurrent jurisdiction in the state and federal courts without possibility of removal." *Id.* The Court went on to reason that "[t]here is no sound basis for construing the prohibition in [the anti-waiver provision] . . . to apply to [the Securities Act's] procedural provisions." *Id.* The Court acknowledged that

arbitration provisions "are 'in effect, a specialized kind of forum-selection clause'" that "should not be prohibited under the Securities Act" because they "serve to advance the objective of allowing buyers of securities a broader right to select the forum for resolving disputes, whether it be judicial or otherwise." *Id.* at 483 (citation omitted). *Cyan* did not mention *Rodriguez* and did not modify its holding that the Securities Act's concurrent jurisdiction provision is merely procedural.

The Ninth Circuit reached a similar conclusion—namely that the Securities Act does not prohibit enforcement of a contractual forum selection provision—in *Richards v. Lloyd's of London*, 135 F.3d 1289 (9th Cir. 1998). There, Lloyd's of London had entered into agreements with three hundred underwriting agencies, each of which included a forum selection provision designating the courts of England for the parties' disputes. *Id.* at 1291-92. Heavy losses occurred, and more than six hundred plaintiffs, all of whom were citizens or residents of the United States, sought to litigate claims under federal securities laws and the Racketeer Influenced and Corrupt Organizations Act ("RICO") against Lloyd's in the United States. *Id.* at 1292. The district court dismissed the action due to the forum selection provisions, and the Ninth Circuit affirmed. Among other things, the Ninth Circuit considered whether the anti-waiver provision of the Securities Act voided the forum selection clauses in the agreements at issue and found that it did not due to the judicial policy in favor of enforcing forum selection provisions announced in *Bremen*. *Id.* at 1293, 1298. The Ninth Circuit also acknowledged that the plaintiffs' "strongest argument for escaping their agreement to litigate their claims in England is that the choice clauses contravene a strong public policy embodied in federal and state securities law and RICO" and that, under English law, Lloyd's was "immunize[d] . . . from many actions possible under our securities laws . . . ." *Id.* at 1294, 1296. Nevertheless, the Court of Appeals enforced the forum selection provisions because English law did not deprive the plaintiffs "of any reasonable recourse." *Id.* at 1296. If litigants can be bound to a forum selection clause that would send them to England and ***extinguish*** their Securities Act claims,

plaintiffs here cannot claim an inviolate right under federal law to bring their claims in state court as opposed to an easily available federal forum applying the exact same substantive law.[7]

E. The Federal Forum Provision Requires Dismissal

As discussed above, the FFP to which Dropbox investors consented is facially valid and its enforcement is reasonable in this case. As a result, this case cannot proceed in any non-federal forum, including this Court. There is no question as to the availability of the federal forum, as there is already a substantially similar action seeking to represent the same purported class in the Northern District of California. Accordingly, there is no reason for the Court to stay this action. It must be dismissed. Dismissal is an appropriate remedy to enforce a forum selection provision. *See Richtek USA, Inc. v. uPI Semiconductor Corp.*, 242 Cal. App. 4th 651, 663 (2015) ("We find the forum selection clause in the employment agreement between Chen and Richtek Technology is mandatory, and the trial court correctly granted Chen's motion to dismiss.").[8]

* * *

[7] Other courts have reached similar conclusions. *See, e.g.*, *Young v. Valt.X Holdings, Inc.*, 336 S.W.3d 258 (Tex. App. 2010) (dismissing Securities Act claims where forum selection clause in shareholder agreement designated Canadian courts to hear claims relating to stock). Likewise, in *Matsushita Electric Indus. Co. v. Epstein*, 516 U.S. 367, 377 (1996), the United States Supreme Court held that state courts can settle claims subject to exclusive federal jurisdiction without violating federal law or policy. *Sciabacucchi*, 2020 Del. LEXIS 100, at *50 (citing *Matsushita*, 516 U.S. at 377). As the Delaware Supreme Court explained "[i]f it is permissible for a Delaware state court to settle federal claims . . . (resulting in the *extinguishment* of the federal claims), then it follows that a provision in a Delaware corporation's charter requiring stockholders of the corporation to litigate federal claims in federal court is not violative of federal policy." *Id.* at *50-51. Additionally, the Court observed that federal forum provisions merely requiring Securities Act claims to be brought in federal courts (including ones in their home states) are arguably *less* restrictive than the kinds of provisions upheld in *Boilermakers* and enforced in, among other cases, *Drulias*, which mandate litigation in the incorporating jurisdiction for particular classes of claims. *Id.* at *56-57.

[8] *See also Bushansky*, 23 Cal. App. 5th at 1012 (dismissing a case because of a mandatory forum selection clause); *Quanta Computer Inc. v. Japan Commc'ns Inc.*, 21 Cal. App. 5th 438, 451 (2018) (same); *Schlessinger v. Holland America N.V.*, 120 Cal. App. 4th 552, 560 (2004) (same); *CQL*, 39 Cal. App. 4th at 1358-59 (same); *Lu*, 11 Cal. App. 4th at 1492-93 (same).

CONCLUSION

For these reasons, the Court should enforce Dropbox's Federal Forum Provision and grant the Motion to Dismiss.

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