IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

FERNANDO VOLONTE, individually and on behalf of all others similarly situated, Plaintiff, vs. DOMO, INC.; JOSHUA G. JAMES; BRUCE FELT; FRASER BULLOCK; MATTHEW R. COHLER; DANA EVAN; MARK GORENBERG; NEHAL RAJ; GLENN SOLOMON; MORGAN STANLEY & CO., LLC; CREDIT SUISSE SECURITIES (USA) LLC; ALLEN & CO., LLC; WILLIAM BLAIR & COMPANY LLC; UBS SECURITIES LLC; COWEN AND COMPANY LLC; AND JMP SECURITIES LLC, Defendants.	:	**RULING AND ORDER RE:** DEFENDANTS' MOTIONS TO DISMISS CLASS ACTION COMPLAINT Case No. 190401778 Judge Darold J. McDade Division 10

This matter came before the Court for oral argument on March 3, 2021. Plaintiff was represented by Frank A. Bottini, Jr., and Defendants were represented by Gregory L. Watts ("Domo Defendants") and Adam S. Hakki ("Underwriter Defendants") accordingly. The Court, having carefully read and considered the motion and memoranda in connection herewith, and otherwise being fully advised in the matter, hereby rules as follows:

PROCEDURAL POSTURE

Plaintiff filed his Class Action Complaint on November 8, 2019.

On January 23, 2020, Domo Defendants (Domo, Inc., Joshua G. James, Bruce Felt, Fraser Bullock, Matthew R. Cohler, Dana Evan, Mark Gorenberg, Nehal Raj, and Glenn

Solomon) filed their Motion to Stay, which was denied.

Domo Defendants submitted their Motion to Dismiss Class Action Complaint on August 19, 2020, along with the Declaration of Stephanie L. Jensen.

Underwriter Defendants (Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, Allen & Company LLC, William Blair & Company, L.L.C., UBS Securities LLC, Cowen and Company, LLC, and JMP Securities LLC) filed an Amended Motion to Join in the Domo Defendants' Motion to Dismiss Class Action Complaint on September 16, 2020.

On November 16, 2020, Plaintiff submitted his Memorandum in Opposition to Domo Defendants' Motion to Dismiss, as well as a Memorandum in Opposition to Underwriter Defendants' Amended Motion to Join.

On December 16, 2020, Domo Defendants and Underwriter Defendants entered their distinct replies in support.

ARGUMENTS

A. DEFENDANTS

1. Domo Defendants

Domo Defendants request that this Court dismiss Plaintiff's Class Action Complaint for various reasons. First, Domo Defendants move for dismissal on the basis that the subject federal forum provision in Domo's bylaws is valid and enforceable. Plaintiff argues that, according to the federal forum provision, Plaintiff's action must be or must have been brought in federal court.

Further, pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure, Domo

Defendants argue that even if the Court does not dismiss the Complaint for improper venue, the Court should dismiss the Complaint for failure to state a claim because Plaintiff "has not pled an actionable false or misleading statement." Domo Defendants state that "Plaintiff's allegations of false or misleading statements in the Offering Documents are conclusory and contradicted by alleged facts" and that [t]he challenged statements are accurate historical facts not alleged to be false, nonactionable opinions and statements of corporate optimism, forward-looking statements accompanied by meaningful cautionary language, and unactionable risk factors."

Finally, regarding standing, Domo Defendants argue that Plaintiff's Securities Act Section 12(a)(2) claim should be dismissed for failure to plead standing because "Plaintiff did not purchase in the IPO" and that "[t]he U.S. Supreme Court, Tenth Circuit, and courts within Utah have made clear that Section 12(a)(2) does not apply to secondary market transactions."

2. Underwriter Defendants

Underwriter Defendants wish to join in Domo Defendants' Motion to Dismiss. First, Underwriter Defendants argue that "the plain language of the FFP [federal forum provision] in Domo's bylaws makes crystal clear that it applies to the entire complaint and action under the Securities Act regardless of the defendant. Second, Underwriter Defendants argue that "limiting the application of the FFP to claims asserted against Domo would not only contravene the express language of the FFP, it would also be illogical and impractical." Third, they argue that "Domo has the independent right to enforce its FFP as to all Defendants because Domo itself can, as a matter of contract law, bargain for and enforce a provision that benefits a third party where, as here, Domo has its own interest in that third party receiving the benefit." Fourth,

Underwriter Defendants argue that they are "entitled to enforce the FFP due to the close nature of the relationship between Domo and the Underwriter Defendants with respect to Domo's IPO." Fifth, Underwriter Defendants assert that they may also enforce the forum provision as third-party beneficiaries to Domo's bylaws. Finally, they argue that according to the Utah Supreme Court, "in considering whether to enforce a forum selection clause," this Court "should avoid a decision that will result in multiple legal actions."

B. PLAINTIFF

Regarding alleged improper venue, Plaintiff first asserts that Domo's bylaws do not constitute an agreement between Domo and its shareholders, which would render the federal forum provision moot in this action. Second, Plaintiff argues that, here, theories of estoppel render the forum provision unenforceable. Third, Plaintiff argues that Domo consented, in writing, to not enforcing the forum provision when Domo filed its January 7, 2019 Form 8-K with the SEC, which advised that "it does not currently intend to enforce the foregoing federal forum selection provision unless the *Sciabacucchi* decision is appealed and the Delaware Supreme Court reverses the decision." Fourth, Plaintiff argues that no "meeting of the minds" occurred regarding the federal forum provision because the Offering Documents did not adequately address the provision and because, at the time this action was commenced, no law provided that Domo's Forum Bylaw was either valid or enforceable. On that point, Plaintiff highlights the United States Supreme Court's decision in *Cyan, Inc. v. Beaver Cty. Emps. Ret. Fund.* (*See* 138 S. Ct. at 1066, 1078 (2018)). Fifth, Plaintiff argues that the forum bylaw is procedurally and substantively unconscionable because "Plaintiff had no reasonable opportunity

to understand the terms and conditions of the Forum Bylaw, because "it is unilateral, requiring only the shareholders (but not the Company) to comply with the exclusive forum stated therein for the Securities Act claims," and because the bylaw is contrary to established law like the *Cyan* decision. Finally, Plaintiff argues that, according to *Cyan*, the forum bylaw violates the Securities Act. In addition, at oral argument, Plaintiff addressed the issue of whether Plaintiff, at this time, has any "reasonable alternative" to moving forward with his state court cause of action. Plaintiff asserts that, if the Complaint was dismissed for improper venue, he would not be able to file in federal court because the applicable statute of limitations has run.

Regarding Domo Defendants' assertion that the Complaint fails to state any cognizable claim, Plaintiff argues that the Complaint states a claim for violation of Section 11 because it "challenges Defendants' failure to disclose then-existing material facts that were known to Defendants and were reasonably likely to — and, in fact, did — impact the Company's financial prospects after the IPO." Plaintiff asserts that "disclosure was required because of the omission of material facts rendered misleading other statements in the offering documents," "disclosure was required under Item 303" of the SEC's Regulation S-K, and that Defendants violated Item 105 of Regulation S-K because "the purported 'Risk Factors' . . . warned of mere potential 'risks' that had, in truth, already materialized and were already affecting the Company's [Domo's] financial condition." Finally, Plaintiff argues that the Complaint states a claim for violation of Section 12(a)(2) because "the U.S. Supreme Court and the Tenth Circuit have never held that to allege standing under § 12(a)(2), the plaintiff must plead that he purchased the shares 'in the IPO.'"

LEGAL ANALYSIS

A. MOTION TO DISMISS STANDARD

Regarding Domo Defendants' Motion to Dismiss, the Utah Supreme Court has explained that a court must "accept the factual allegations in a complaint as true and interpret those facts, and all reasonable inferences drawn therefrom, in a light most favorable to the plaintiff as the nonmoving party." (*Russell Packard Dev. v. Carson*, 2005 UT 14, ¶ 3, 108 P.3d 741 (citing *Krouse v. Bower*, 2001 UT 28, ¶ 2, 20 P.3d 895)). Specifically, pursuant to Rule 12(b)(6), a case will be dismissed for "failure to state a claim upon which relief can be granted." (Utah R. Civ. P. 12(b)(6)). If under "no set of facts" can a plaintiff state a claim, Plaintiff's complaint should be dismissed. (*Lopez v. Ogden City*, 2017 UT App 122, ¶ 15, 402 P.3d 3 (quoting *Am. W. Bank Members, L.C., v. State*, 2014 UT 49, ¶ 7, 342 P.3d 224)). Further, the Utah Supreme Court has clarified that this Court need not "accept extrinsic facts not pleaded nor need [it] accept legal conclusions in contradiction of the pleaded facts." (*Am. W. Bank Members*, L.C., 2014 UT at ¶ 7). Accordingly, this Court may dismiss claims for which "no actual right or obligation exists." (*State v. Rettig*, 2017 UT 83, ¶ 104, 416 P.3d 520).

B. FEDERAL FORUM PROVISION IN DOMO'S BYLAWS

1. Is the Federal Forum Provision generally binding and enforceable?

As a threshold matter, this Court must determine whether bylaws generally are binding and whether the subject federal forum provision generally is enforceable.

Domo's bylaw federal forum provision states that "[u]nless 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 . . . ." (Am. and Restated Bylaws of Domo, Inc., Art. XI). The provision also states 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 the provisions of this Article XI." (*Ibid.*).

"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." (*Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982); see also *Wasatch Oil & Gas, LLC v. Reott*, 263 P.3d 391, 393 (Utah Ct. App. 2011)). According to Delaware law, bylaws are broad, binding agreements among implicated parties. (*See, e.g., Salzberg v. Sciabacucchi* 227 A.3d 102, 135 (Del. 2020) ("[C]orporate charters are viewed as contracts"); *Blackrock Credit Allocation Income Tr. v. Saba Capital Master Fund, Ltd.*, 224 A.3d 964, 977 (Del. 2020) ("Bylaws 'constitute part of a binding broader contract among the directors, officers, and stockholders'"); *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934, 939–40 (Del. Ch. 2013) ("board-adopted bylaws" are "an essential part of the contract stockholders assent to when they buy stock"). Further, though not dispositive, in *Workman v. Brighton Props., Inc.*, the Utah Supreme Court generally recognized the "binding nature" of bylaws. (976 P.2d 1209, 1212–13 (Utah 1999) (holding that "[t]he binding nature of [a corporation's] article, bylaw and covenant provisions is settled under Utah law"); *see also Turner v. Hi-Country Homeowners Ass'n*, 910 P.2d 1223, 1225 (Utah 1996) (citation omitted); *Jacobson*

v. Backman, 401 P.2d 181, 183 (Utah 1965) ("a corporate charter is a dual contract, one between the state and the corporation and its stockholders, and the other between the corporation and its stockholders"); *Baggett v. Cyclopss Med. Sys.*, 935 P.2d 1265, 1269 (Utah Ct. App. 1997); *K&T, Inc. v. Koroulis*, 888 P.2d 623, 627, n.11 (Utah 1994)). Therefore, according to case law, the Court finds that bylaws generally are binding on a corporation's shareholders, and that the rule applies to Plaintiff. Not only are bylaws binding on shareholders under Delaware and Utah law, case law supports the notion that Domo's federal forum provision is valid and enforceable.

In *Ingres Corp. v. CA, Inc.*, the Delaware Supreme Court held that forum-selection clauses are presumptively valid and enforceable under Delaware law. (8 A.3d 1143, 1146 (Del. 2010)). Further, in *M/S Bremen v. Zapata Off-Shore Co.*, the United States Supreme Court stated that "absent some compelling and countervailing reason it [a forum provision] should be honored by the parties and enforced by the courts." (407 U.S. 1, 12, 92 S. Ct. 1907, 1914, 32 L. Ed. 2d 513 (1972)). Recently, in *Salzberg v. Sciabacucchi*, the Delaware Supreme Court held that federal forum provisions—provisions in a Delaware corporation's bylaws that specify that the federal district courts shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933—are *facially* valid under Delaware law. (227 A.3d 102, 114 (Del. 2020)). There, the *Salzberg* court stated that "the party seeking to avoid enforcement of a forum-selection clause bears the burden of establishing that its enforcement would be unreasonable." (*Id.* at 135). In addition, Utah courts have held that forum selection clauses are binding and enforceable. (*See, e.g., Prows v. Pinpoint Retail Sys.*, 868 P.2d 809, 812 (Utah 1993) ("[t]he parties' agreement as to the place of the action will be given effect unless it

is unfair or unreasonable")). Therefore, the Court finds that the forum provision is binding and enforceable. However, despite being valid and enforceable, such does not end this Court's analysis regarding whether the Court should enforce the subject forum provision.

2. Should the Court enforce the Forum Provision?

Although the Court finds the forum provision generally is valid and enforceable, the Court must determine whether to enforce the provision. The *Salzberg* court opined that "[p]erhaps the most difficult aspect of this dispute is not with the facial validity of FFPs, but rather, with the 'down the road' question of whether they will be respected and enforced by our sister states." (*Salzberg*, 227 A.3d at 133). In that vein, the court explained that

> *Bremen* identifies three bases on which forum-selection provisions might be invalidated on an "as applied" basis: (I) they will not be enforced if doing so would be "unreasonable and unjust;" (ii) they would be invalid for reasons such as fraud or overreaching; or (iii) they could be not enforced if they "*contravene[d] a strong public policy of the forum in which suit is brought*, whether declared by statute or by *judicial decision*.

(*Id.* at 135 (citing *Bremen*, 407 U.S. at 15). This Court must determine whether, under the circumstances of this case, it must or should enforce the forum provision.

This is a situation where this Court—a state court—is faced with an outbound forum selection clause, not a situation involving a transfer between federal courts that invokes a Section 1404 analysis or one involving a federal court facing an outbound forum selection clause (to state courts or a foreign jurisdiction). Yet, federal courts' analysis regarding these issues, paired with state law, is instructive. (*See, e.g., Mueller v. Apple Leisure Corp.*, 880 F.3d 890 (7th Cir. 2018); *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. Of Texas*, 571 U.S. 49 (2013) (addressing

proper way to approach Section 1404 transfer and outbound forum selection clause issues)).

In the context of Section 1404 transfers where a forum selection clause exists and is enforceable, the *Atlantic Marine* court explained that "enforcement of valid forum-selection clauses . . . protects their [the parties'] legitimate expectations and furthers vital interests of the justice system." (*Id.* at 63) (quoting *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988) (Kennedy, J., concurring)). There, the Court reasoned that "as the party defying the forum-selection clause, the plaintiff bears the burden of establishing that the transfer to the forum for which the parties bargained is unwarranted." *Id.* Further, the *Atlantic Marine* court asserted that courts "should not consider arguments about the parties' *private* interests" and that "[b]ecause public-interest factors will rarely defeat a transfer motion, the practical result is that forum-selection clauses should control except in unusual cases." (*Id.* at 51, 64).

Regarding a slightly different context, the *Atlantic Marine* court explained that "the appropriate way to enforce a [valid] forum-selection clause pointing to a state or foreign forum is through the doctrine of forum non conveniens." (*Atl. Marine*, 571 U.S. at 60; *see also Mueller*, 880 F.3d at 894). In Utah, the Supreme Court has stated that "[a]ll courts consider the availability of an adequate alternative forum at the outset of a forum non conveniens analysis." (*Energy Claims Ltd. v. Catalyst Inv. Grp. Ltd.*, 325 P.3d 70, 76 (2014); *see also Kish v. Wright*, 562 P.2d 625, 627–28 (Utah 1977)). The Supreme Court of Utah has also found that forum selection clauses "should be weighed" in a forum non conveniens analysis. (*Energy Claims*, 325 P.3d at 82). In addition, the Supreme Court of Utah has explained that the application of the doctrine is discretionary. (*See Kish*, 562 P.2d at 627).

Here, case law makes clear that Domo's bylaws are binding between Domo and its shareholders. Also, the Court finds that the Delaware Supreme Court's forum selection clause analysis generally can be harmonized with federal law and Utah law. Because this Court finds that Domo's federal forum provision generally is enforceable, the Court must determine whether Plaintiff's arguments against the validity and enforcement of the provision are meritorious. Although the Court has not included a full analysis regarding all of Plaintiff's contentions against the validity and enforceability of the forum provision—to be clear—the Court rejects all contentions.

The Court disagrees with Plaintiff's argument that estoppel requires this Court to deem the forum provision unenforceable. Indeed, relatedly, the Court does not find that, through its Form 8-K, Domo consented (in writing) to suit in state court. The express language on the form does not constitute affirmative consent, nor does it represent an affirmative statement that Domo simply would not enforce the forum provision. By its express language, Domo's 2019 Form 8-K merely states that Domo did not intend to enforce the provision unless the *Salzberg* lower court decision was appealed and reversed, which it was. To clarify, not only does this Court determine that the subject forum provision is valid and enforceable, the Court rejects Plaintiff's arguments that no mutual assent surrounded the forum provision (because the bylaw constitutes a binding agreement); that the forum provision is unconscionable (because no real evidence of procedural or substantive unconscionability was offered); that Domo Defendants consented, in writing, to be sued in state court (because no SEC filing constituted affirmative consent); that Domo Defendants are estopped from invoking the forum provision (because the elements of estoppel

are not met); and that the forum provision violates the Securities Act (*Cyan* does not preclude enforcement of federal forum provisions in relation to Securities Act claims). Within this ruling, the Court has also found that the forum provision is not "unfair or unreasonable." Accordingly, in its discretion, the Court will focus its analysis on a forum non conveniens doctrine application.

This case involves a forum selection clause. Because the Court has determined that Domo's bylaw federal forum provision is valid and enforceable, the Court will consider the provision in relation to a common law non conveniens analysis. Indeed, among other relevant law, the *Salzberg* court found guidance in the United States Supreme Court's *Bremen* decision. Further, while many courts give deference to forum selection clauses, many courts have introduced caveats to the presumption of their validity and subsequent enforcement. The *Bremen* "as applied" analysis is similar to the underlying forum non conveniens principles asserted in *Atlantic Marine* (federal courts, when faced with an outbound forum selection clause, should conduct a forum non conveniens analysis). And, the Supreme Court of Utah has explained that, if valid and enforceable, forum selection clauses "should be weighed" within an overarching forum non conveniens analysis.

The bylaw forum provision constitutes a forum non conveniens factor, and one the Court opines should be weighed heavily here because of context. The situation before the Court is not one where a defendant attempts to move a case where no forum selection clause governs and where it is argued that another forum simply is much more convenient. Indeed, Plaintiff never argued that filing in federal court would be inconvenient or improper in itself. Instead, Plaintiff hinges his entire forum non conveniens argument, which was raised during oral argument, on the

threshold question: whether there is an adequate, available alternative forum.

The scenario before the Court presents the Court with a dilemma. On one hand, the Court finds that the subject forum provision is enforceable and includes mandatory language. On the other hand, in 2019, Domo stated in its SEC Form 8-K that it did not "intend to enforce the foregoing federal forum selection provision unless the *Sciabacucchi* decision is appealed and the Delaware Supreme Court reverses the decision." Further, though Plaintiff filed its Complaint in November 2019, Domo Defendants did not move to dismiss the Complaint until August 2020. Indeed, Domo Defendants filed a Motion to Stay in January 2020. But, while the Court can infer certain things, the Court cannot truly ascertain Domo Defendants' reasons for the delay. Therefore, while Domo Defendants' delay is not dispositive, the Court must consider principles underlying the doctrine of forum non conveniens in light of the delay.

At this juncture, in light of Plaintiff's argument focusing on the threshold forum non conveniens question, the Court must consider whether enforcement of the clause would be contrary to public policy and, therefore, "unwarranted." The Court finds that Plaintiff's forum non conveniens argument, which was raised at oral argument, is misplaced. At oral argument, Domo Defendants and Underwriter Defendants had the opportunity to present a convincing argument that Plaintiff was not precluded from now filing in federal court. They failed to do so. However, Plaintiff did not present a convincing argument or present any facts that he was precluded from filing in federal court. Further, no party asked this Court to consider supplemental briefing on the specific, dispositive matter. Such gives this Court very little to consider regarding the dispositive issue. It is not the duty of this Court to seek out and provide

such information to itself.

Essentially, at oral argument, Plaintiff argued that his procedural woes largely stem from Domo Defendants' dilatory tactics. However, based on the lack of information and argument presented to the Court on this matter, Plaintiff cannot rely on the liberal motion to dismiss standard. The merits of Plaintiff's claims might very well be heard in a federal forum. Critically, because Plaintiff assented to the bylaws, which include the federal forum provision, because Defendants are not estopped from invoking the forum provision, and because Domo Defendants did not consent to being sued in state court through its Form 8-K statement, Plaintiff could have and should have brought suit in federal court (or, in both state and federal court). While this Court certainly is sympathetic with Plaintiff's position, despite the clear language of the federal forum selection clause, Plaintiff declined to file a federal complaint. Plaintiff is liable for his decision to file suit in state court alone.

Here, Plaintiff is not effectively being deprived of his day in court because of inconvenience or unfairness of the forum stated in the subject forum provision. There is no reliable inference that Plaintiff failed to file in an appropriate forum because of someone else's conduct. To reiterate, no party provided adequate argument or briefing regarding whether Plaintiff could or could not currently bring his claims in federal court. The parties merely glossed over the issue. The Court cannot overstate the important of such omission. Beyond the threshold forum non conveniens issue, the Court finds that federal courts bear a reasonable relationship to the parties before this Court. Further, Plaintiff has not argued that expense would be a serious issue regarding filing in federal court. Plaintiff has not pointed to any state statute requiring this

Court to ignore the forum provision. Therefore, even when weighing all reasonable inferences in his favor, the Court will dismiss Plaintiff's claims based on improper venue. The Court is not convinced that enforcement of the forum provision contravenes public policy and, therefore, is "unwarranted." Accordingly, the Court will not address Domo Defendants' URCP 12(b)(6) and Section 12(a)(2) arguments because they are moot.

C. URCP 12(B)(6) & SECTION 12(A)(2) STANDING

The issues of whether Plaintiff failed to state any claims in his Complaint and whether Plaintiff enjoys Section 12(a)(2) standing are made moot by the Court's conclusion that the case should be dismissed for improper venue.

D. UNDERWRITER DEFENDANTS' JOINDER

Regarding their motion to join, Underwriter Defendants, comparatively, put forth two salient points. First, Underwriter Defendants assert that the Utah Supreme Court has recognized that, in considering whether to enforce a forum selection clause, the Court should avoid a decision that will result in multiple legal actions. Second, Underwriter Defendants argue that they are entitled to enforce the forum provision because of the close nature of the relationship between Domo and the Underwriter Defendants with respect to Domo's IPO. The Court agrees. "Requiring a bifurcated trial on the same issues contravenes the 'objective of modern procedure,' which is to 'litigate all claims in one action if that is possible'." (*Prows v. Pinpoint Retail Sys., Inc.*, 868 P.2d 809, 813 (Utah 1993) (quoting *Dyersburg Machine Works, Inc. v. Rentenbach Eng'g Co.*, 650 S.W.2d 378, 380–81 (Tenn. 1983). In *Dyersburg*, the court refused to enforce a forum selection clause because of the likelihood that the chosen forum had

jurisdiction over only two of three defendants. (*Dyersburg*, 650 S.W.2d at 380–81). Such "also increases the cost of litigation." (*Prows*, 868 P.2d at 813). Further, "a range of transaction participants, parties and non-parties, should benefit from and be subject to forum selection clauses," including where "the alleged conduct of the non-parties is so closely related to the contractual relationship that the forum selection clause applies to all defendants." (*Manetti-Farrow, Inc. v. Gucci Am.*, Inc., 858 F.2d 509, 514 n.5 (9th Cir. 1988); *see also Hugel v. Corp. of Lloyd's*, 999 F.2d 206, 210 (7th Cir. 1993) ("The district court found that the corporations owned and controlled by Hugel are so closely related to the dispute that they are equally bound by the forum selection clause and must sue in the same court in which Hugel agreed to sue . . . these findings are not clearly erroneous.")). The Court finds that applicable case law supports Underwriter Defendants' arguments that they be permitted to join in Domo Defendants' Motion to Dismiss. In addition, the Court agrees that a decision to the contrary would promote unnecessary burdens. Therefore, the Court will allow joinder.

ORDER

Accordingly, in light of joinder, the Court hereby GRANTS Domo Defendants' and Underwriter Defendants' Motions to Dismiss Class Action Complaint. IT IS SO ORDERED.

Dated this 13 day of April, 2021.

BY THE COURT:

DAROLD J. MCDADE, JUDGE

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STATE OF UTAH
FOURTH DIST. COURT · UTAH COUNTY

MAILING CERTIFICATE

I hereby certify that true copies of the foregoing Ruling and Order were electronically mailed on the 13 day of April, 2021 to the following at the addresses indicated, to wit:

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