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*And Michele Rivera*

11  
12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**  
14

15 MATT PASQUINELLI and BRYAN  
16 PAYSEN, Individually and on Behalf of  
All Others Similarly Situated,

17 Plaintiffs,

18 v.

19 HUMBL, LLC, BRIAN FOOTE,  
20 JEFFREY HINSHAW, GEORGE  
SHARP, KAREN GARCIA, and  
21 MICHELE RIVERA,

22 Defendants.  
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Case No.: 3:22-cv-00723-AJB-BLM

**DEFENDANTS' POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO TRANSFER VENUE  
PURSUANT TO 28 U.S.C. § 1404(a)**

Date: February 2, 2023  
Time: 2:00 p.m.  
Judge: Hon. Anthony Battaglia  
Courtroom.: 4A  
Complaint Filed: May 19, 2022  
Trial: Not yet set

1 Pursuant to 28 U.S.C. § 1404(a), Defendants HUMBL, Inc. (erroneously sued as  
2 HUMBL, LLC)<sup>1</sup> (“HUMBL”), Brian Foote, Jeffrey Hinshaw, Karen Garcia, and Michele  
3 Rivera (collectively, “Defendants”), through their undersigned counsel, hereby move this  
4 Court for an order transferring this case to the United States District Court for the District  
5 of Delaware (the “District of Delaware”) and for any other relief the Court deems just  
6 and proper. In support, Defendants submit the following Memorandum of Points and  
7 Authorities, together with the Declaration of Brian Foote and its attached Exhibit A.

## 8 MEMORANDUM OF POINTS AND AUTHORITIES

### 9 **I. INTRODUCTION**

10 This is a straightforward motion to transfer venue based on an applicable forum-  
11 selection clause. Plaintiffs’ putative Amended Class Action Complaint for Violations of  
12 the Federal Securities Laws dated September 22, 2022 (Dkt. 26) (“Complaint”) asserts  
13 claims under the Securities Act of 1933 and Securities Exchange Act of 1934, which are  
14 expressly covered by a valid and enforceable forum-selection provision in HUMBL’s  
15 bylaws. That bylaw provides that the U.S. District Court for the District of Delaware “shall  
16 be the exclusive forum” for resolution of any complaint asserting claims under those laws.

17 As explained below, such a forum-selection bylaw is valid under Delaware law and  
18 is fully enforceable under federal law, as set forth in controlling decisions by the United  
19 States Supreme Court and the Ninth Circuit. As such, the Court should transfer this case  
20 to the District of Delaware under 28 U.S.C. § 1404(a).

### 21 **II. RELEVANT BACKGROUND**

22 Plaintiff’s Complaint purports to be “a federal securities class action” alleging  
23 claims “under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the ‘Exchange  
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25 <sup>1</sup> Named defendant HUMBL, LLC merged into HUMBL, Inc. (then named Tesoro  
26 Enterprises, Inc.) in December 2020, and HUMBL, LLC thereby ceased to exist. *See*  
27 HUMBL, Inc., Registration Statement (Form S-1) (Nov. 29, 2021) at 5, *available at*:  
28 <https://www.sec.gov/ix?doc=/Archives/edgar/data/1119190/000149315222016613/form-s-1a.htm>. Accordingly, references herein to “HUMBL” mean HUMBL, Inc.

1 Act’) and Rule 10b-5 promulgated thereunder, and/or §§ 5 and 12(a)(1) of the Securities  
2 Act of 1933 (the ‘Securities Act’).” (Compl., ¶ 1.) Accordingly, the Complaint’s first three  
3 claims are asserted under the Exchange Act, and its fourth claim is asserted under the  
4 Securities Act. (*See* Compl., ¶¶ 315-351.)

5 Under these federal securities laws, Plaintiffs challenge the accuracy and sufficiency  
6 of HUMBL’s public disclosures, alleging that Plaintiffs held shares of HUMBL common  
7 stock and suffered investment losses. (*See id.*, ¶¶ 2-5, 10-12.) HUMBL is a Delaware  
8 corporation. (*See id.*, ¶ 13.)

9 Section 7.13 of HUMBL’s bylaws include a federal-forum-selection provision  
10 covering federal securities lawsuits:

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12 Unless the Corporation consents in writing to the selection of an  
13 alternative forum, to the fullest extent permitted by law, *the*  
14 *federal district courts of the United States situated in the State*  
15 *of Delaware shall be the exclusive forum for the resolution of*  
16 *any complaint asserting a cause of action under the Securities*  
17 *Act of 1933 and the Securities Exchange Act of 1934.* Any  
18 person or entity purchasing or otherwise acquiring any interest in  
19 shares of capital stock of the corporation shall be deemed to have  
20 notice of and consented to the provisions of this Section 7.13.

21 (Declaration of Brian Foote in Support of Defendants’ Motion to Transfer, Ex. A at §  
22 7.13(b) (emphasis added).)

### 23 **III. LEGAL STANDARD**

24 A motion under 28 U.S.C. § 1404(a) is “the appropriate way to enforce a forum-  
25 selection clause ... in which the transferee forum is within the federal court system,” rather  
26 than a Civil Rule 12(b)(3) motion based on “improper venue.” *Atl. Marine Constr. Co. v.*  
27 *United States Dist. Court*, 571 U.S. 49, 60 (2013). Section 1404(a) provides as follows:  
28 “For the convenience of parties and witnesses, in the interest of justice, a district court may  
transfer any civil action to any other district or division where it might have been brought

1 or to any district or division to which all parties have consented.”

#### 2 **IV. ARGUMENT**

3 HUMBL’s federal-forum-selection bylaw is fully valid and enforceable and governs  
4 the appropriate venue in this case. As an initial matter, Delaware law is clear that forum-  
5 selection bylaws are “valid and enforceable under Delaware law to the same extent as other  
6 contractual forum selection clauses.” *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*,  
7 73 A.3d 934, 940 (Del. Ch. 2013). More specifically, the Delaware Supreme Court has  
8 held that federal-forum-selection bylaws may properly cover “intra-corporate” disputes  
9 arising under federal law, such as Securities Act claims. *See Salzberg v. Sciabacucchi*, 227  
10 A.3d 102, 114, 131-32 (Del. 2020) (explaining that forum-selection bylaws can properly  
11 sweep more broadly than the more narrow set of disputes over a corporation’s “internal  
12 affairs”).

13 Here, HUMBL’s forum-selection bylaws cover federal securities claims and the  
14 Complaint represents an “intra-corporate” dispute as to corporate disclosures. Thus,  
15 HUMBL’s forum-selection bylaw requiring the dispute to be heard in the District of  
16 Delaware is clearly valid and enforceable under Delaware law.

17 Further, under federal law, there is a “strong federal policy in favor of enforcing  
18 forum-selection clauses,” as the Ninth Circuit recently reiterated in a case enforcing a  
19 forum-selection bylaw of a Delaware corporation. *Lee v. Fisher*, 34 F.4th 777 (9th Cir.  
20 2022). In *Lee*, the court emphasized that such a provision “creates a strong presumption in  
21 favor of transferring a case,” which plaintiff can overcome only in “extraordinary  
22 circumstances unrelated to the convenience of the parties.” *Id.* (citing *Atl. Marine*, 571  
23 U.S. at 62-63). Moreover, as the Supreme Court held in *Atlantic Marine*, “a court  
24 evaluating a defendant’s §1404(a) motion to transfer based on a forum-selection clause  
25 should not consider arguments about the parties’ private interests.... A court accordingly  
26 must deem the private-interest factors to weigh entirely in favor of the preselected forum.”  
27 *Atlantic Marine*, 571 U.S. at 64. Indeed, where a forum-selection provision applies, “the  
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1 plaintiff’s choice of forum merits no weight.” *Id.* at 63.

2 As for any public policy argument against transfer, *Lee* illustrates the very heavy  
3 burden Plaintiffs must bear to overcome the strong federal public policy favoring  
4 enforcement of a forum-selection clause. In *Lee*, the Ninth Circuit enforced a forum-  
5 selection bylaw choosing the Delaware Court of Chancery, even where doing so would  
6 preclude the plaintiff from pursuing one of her federal claims. *Lee*, 34 F.4th 777 (citing  
7 precedent holding that “the strong federal policy in favor of enforcing forum-selection  
8 clauses ... supersede[s] [statutory] antiwaiver provisions”).

9 Here, by its express terms, HUMBL’s forum-selection bylaw covers the federal  
10 securities claims asserted in the Complaint. As shown above, Delaware law makes clear  
11 that such a bylaw is valid and enforceable and there is no contrary public policy interest,  
12 much less an “extraordinary” one, sufficient to overcome the strong federal policy favoring  
13 enforcement of forum-selection provisions.

14 Accordingly, there is no question that this Court should enforce HUMBL’s forum-  
15 selection bylaw and transfer this case to the District of Delaware.

16 **V. CONCLUSION**

17 For the foregoing reasons, Defendants respectfully request that this Court transfer  
18 this case to the District of Delaware pursuant to 28 U.S.C. § 1404(a).

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Respectfully submitted,

Dated: October 21, 2022

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