

# Using Federal Forum Provisions To Nix State Securities Cases

By **Andrew Ehrlich, Audra Soloway and Daniel Sinnreich** (May 23, 2025)

On April 23, the Court of Appeal of the State of California, Fourth Appellate District, affirmed the dismissal of claims brought under Sections 11 and 15 of the Securities Act of 1933 against an issuer and its underwriters based on a federal forum provision, or FFP, in the issuer's articles of incorporation.

The appellate court's decision in *Bullock v. Rivian Automotive Inc.* adds authoritative support to past opinions enforcing FFPs and affirms that underwriters — and, by extension, other defendants that are not parties to a corporate charter — have standing to enforce FFPs. The opinion is welcome news for companies seeking to eliminate costly, uncertain and often duplicative Securities Act litigation in state courts.

## **Background: State Court Securities Act Filings and FFPs**

The Securities Act provides for concurrent jurisdiction in state and federal courts.

In 2018, the U.S. Supreme Court unanimously held in *Cyan Inc. v. Beaver County Employees Retirement Fund*<sup>[1]</sup> that claims brought solely under the Securities Act in state court are not removable to federal court due to the Securities Act's antiremoval provision, Title 15 of the U.S. Code, Section 77v(a).

Following *Cyan*, the securities plaintiffs bar dramatically increased the number of Securities Act class actions filed in state courts, which are generally perceived as more favorable forums for plaintiffs than federal courts due to more lenient pleading standards and, according to some courts, the lack of certain statutory protections for defendants. According to Cornerstone Research, the number of state court Securities Act filings quadrupled from 13 in 2017 to 52 in 2019 — more than the number filed in federal court that year.<sup>[2]</sup>

Securities Act defendants also increasingly faced parallel, simultaneous lawsuits in both state and federal courts that could not be consolidated or even coordinated, which led to increased burdens on public companies, including substantially higher directors and officers insurance premiums.

To counter this trend, corporations began adopting FFPs in their charters providing that federal district courts are the exclusive forum for any lawsuit brought against the corporation asserting claims under the Securities Act.

In March 2020, the Delaware Supreme Court held in *Salzberg v. Sciabacucchi*<sup>[3]</sup> that FFPs included in corporate charters are facially valid under the Delaware General Corporation Law, and do not violate federal law or policy.

As corporations increasingly adopted FFPs, state courts were called on to determine



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whether, and how, to enforce FFPs.

Beginning in September 2020, state courts from California to New York began granting motions to dismiss Securities Act claims due to the presence of FFPs in issuers' charters, and the number of state court Securities Act filings began to decline — but not disappear. These decisions also left certain issues unresolved or subject to conflicting opinions, including whether and in what circumstances courts will enforce FFPs to dismiss claims not only against an issuer, but also against underwriters and other Securities Act defendants that are not parties to a corporate charter.[4]

### **Bullock v. Rivian Automotive**

In November 2021, Rivian, a manufacturer of electric vehicles incorporated in Delaware and headquartered in California, held an initial public offering, selling 176 million Class A shares at \$78 per share and raising over \$13.7 billion in gross offering proceeds. Plaintiffs filed a putative class action in California state court in February 2023 asserting Securities Act claims against Rivian and its underwriters, alleging that the IPO registration statement contained materially misleading information that overstated Rivian's financial outlook, and failed to disclose supply chain constraints, inflationary pressures and other challenges.[5]

Rivian moved to dismiss the Securities Act claims based on the FFP in its charter, which provides that "the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933."

The IPO underwriters filed a joinder to the motion to dismiss. The trial court granted the motion to dismiss for all defendants on the basis of the FFP, and the plaintiffs appealed.

On April 23, a three-judge panel for California's Fourth Appellate District Court affirmed the dismissal and rejected the arguments advanced by the plaintiffs, all of which are arguments commonly asserted by securities plaintiffs seeking to remain in state court.

First, the plaintiffs argued that the FFP violated the antiremoval and antiwaiver provisions of the Securities Act. The court found that the FFP did not violate the antiremoval provision because Rivian did not seek removal in the current action — it sought dismissal.

The court also followed U.S. Supreme Court and appellate precedent holding that the antiwaiver provision — which voids any waiver of compliance with the Securities Act — does not apply to procedural provisions, such as a waiver of the right to select a judicial forum.

Second, the plaintiffs argued that Delaware General Corporation Law Sections 102 and 115 — which govern what may be included in a corporation's certification of incorporation and permit Delaware corporations to adopt forum selection provisions — violated the commerce and supremacy clauses of the U.S. Constitution.

The court rejected this argument, noting that "nothing in the Delaware statutory scheme precludes a plaintiff from bringing a [Securities Act] claim in state court." Rather, it allows corporations and shareholders to agree to forum selection provisions that limit such claims to federal courts.

The court noted that Delaware courts have a "legitimate interest" in allowing its corporations to adopt FFPs because they allow for the consolidation and coordination of claims and the avoidance of inefficiencies.

Third, the plaintiffs argued that the FFP was an unenforceable contract of adhesion because it was outside the reasonable expectations of the shareholders, and was unduly oppressive and unconscionable.

The court held, to the contrary, that California law favors mandatory forum selection clauses and enforces such clauses unless they are unfair or unreasonable. Rivian's FFP was neither because it was made public in its charter when the IPO became effective and was not outside the reasonable expectations of shareholders.

Furthermore, the panel held that there was nothing "substantively unconscionable in the waiver of the waivable procedural right to a state forum, particularly where, as here, the provision does not restrict a plaintiff's procedural right under the statute to file suit in a local federal court."

Lastly, the plaintiffs argued that the court erred in granting the underwriters' joinder because the underwriters were not intended third-party beneficiaries of the FFP. The court did not address this argument and instead affirmed the lower court's basis for granting the joinder motion, which was that the underwriters had standing to enforce the FFP because the allegations against them and Rivian were "so intertwined that they cannot be separated."

The plaintiffs alleged that the underwriters helped to draft, approve the content of, and disseminate the registration statement and market the IPO, as well as "deliver the shares ... to purchasers." The underwriters were sufficiently "closely related to the contractual relationship" that principles of judicial economy favored their enforcing the forum selection provision, despite being noncontracting parties, according to the court.

## **Implications**

In the past five years, in response to the onslaught of state court Securities Act filings after Cyan and with the blessing of the Delaware Supreme Court in Salzberg, corporations have increasingly adopted FFPs to mitigate the risk and expense of defending Securities Act claims in state courts. In that time, more than 10 state courts across the country have enforced FFPs to dismiss Securities Act lawsuits, including appellate courts in California, New Jersey and Utah, and additional trial courts in New York and Massachusetts.[6]

In the same period, proxy adviser Institutional Shareholders Services began favoring FFPs, recommending in its 2025 policy recommendations that shareholders "[g]enerally vote for federal forum selection provisions in the charter or bylaws that specify 'the district courts of the United States' as the exclusive forum for federal securities law matters, in the absence of serious concerns about corporate governance or board responsiveness to shareholders." [7]

The widespread adoption and vigorous enforcement of FFPs has yielded results. State court Securities Act filings have sharply declined, from a peak of 52 in 2019 all the way down to five in 2024 — the lowest number of such filings since 2013.[8] The number of parallel federal and state court filings has also decreased significantly, from a peak of 25 parallel suits in 2019 to one in 2024.[9]

The unanimous appellate decision in Rivian serves as a reminder that corporations that anticipate going public should strongly consider adopting FFPs in their corporate charters, and confirms that corporations with FFPs should feel confident enforcing them, including

through a motion to dismiss, if they are sued under the Securities Act in state court.

The Rivian decision also helpfully clarifies that underwriters, and other closely related defendants that are not parties or signatories to the corporate charter, may enforce FFPs to escape state court. This is particularly welcome in California, where at least one trial court had declined to dismiss Securities Act claims against underwriters that were not signatories to an FFP.

This continued trend is good news for corporations and marks progress in restoring Securities Act lawsuits to federal courts and reducing the litigation costs that arise from duplicative state court litigation.

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[1] 583 U.S. 416 (2018).

[2] See Cornerstone Research, Securities Class Action Filings: 2024 Year in Review at 4, 17.

[3] 227 A.3d 102 (Del. 2020).

[4] Compare *In Re Uber Technologies, Inc. Securities Litigation*, No. CGC-19-579544, Order on Motion to Dismiss (Cal. Super. Ct. Nov. 16, 2020) (dismissing claims as to all defendants including underwriters), with *Wong v. Restoration Robotics, Inc.*, No. 18CIV02609, Order on Motion to Dismiss (Cal. Super. Ct. Sept. 1, 2020) (dismissing claims against issuer and individuals but not underwriters).

[5] 2025 WL 1177303 (Cal. App. 4th Dist. Apr. 23, 2025).

[6] See, e.g., *Hook v. Casa Systems*, Index No. 654548/2019, Order on Motion to Dismiss (N.Y. Sup. Ct. Sept. 15, 2021); *Shen v. Casa Systems*, 2020 WL 8839637 (Mass. Super. Ct. Jan. 11, 2020); *Volonte v. Domo*, 528 P.3d 327 (Utah Ct. App. Mar. 9, 2023); *Kuehl v. electroCore*, 2023 WL 3444383 (N.J. Super. Ct. App. Div. May 15, 2023).

[7] ISS, United States Proxy Voting Guidelines Benchmark Policy Recommendations, Jan. 9, 2025, at 29.

[8] See Cornerstone Research, Securities Class Action Filings: 2024 Year in Review at 17.

[9] Id. at 4.