UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE BLOCK INC. SHAREHOLDER DERIVATIVE LITIGATION

Case No. 25-cv-01262-NW

ORDER DENYING MOTIONS TO DISMISS

Re: ECF Nos. 54, 55

Plaintiffs bring a shareholder derivative action on behalf of, and for the benefit of, Block, Inc. for violations of securities laws, breach of fiduciary duty, and insider trading. Block is the parent company of Cash App, which offers a variety of financial services via a mobile application. Plaintiffs sued current and former directors and officers of Block, namely Defendants Jack Dorsey, Amrita Ahuja, Roelof Botha, Amy Brooks, Shawn Carter, Paul Deighton, Randy Garutti, James McKelvey, Mary Meeker, Anna Patterson, Sharon Rothstein, Lawrence Summers, David Viniar, and Darren Walker (together, "Individual Defendants"), as well as Nominal Defendant Block, Inc. ("Block") (collectively, "Defendants").

On May 7, 2025, the Court consolidated five related derivative actions against Defendants, naming this action the lead derivative action. ECF No. 22. The Court granted the parties' stipulation designating the complaint filed in *Kelly v. Dorsey et al.*, Case No. 25-cv-03615, as the operative complaint in the consolidated derivative action. Compl., *Kelly*, ECF No. 1.

Defendants now move to dismiss Plaintiffs' operative complaint.[1] On July 28, 2025,

[1] Having considered the parties' briefs and the relevant legal authority, the Court concluded that oral argument was not required, *see* N.D. Cal. Civ. L.R. 7-1(b). Unless redacted from the public version of this order, as indicated below, the Court finds that it is unnecessary to seal any other

Block filed a motion to dismiss the operative complaint for *forum non conveniens*. Mot., ECF No. 54 ("Block Mot."). The same day, the Individual Defendants filed a motion to dismiss for failure to plead demand futility and failure to state a claim. Mot., ECF No. 55 ("Individual Defs. Mot."). The parties filed respective oppositions and replies to each motion. ECF Nos. 65, 66, 76, 77.

For the reasons stated below, the Court DENIES both motions to dismiss, ECF Nos. 54, 55.

I. BACKGROUND[2]

Plaintiffs are current shareholders of Block and have held Block shares throughout the relevant time periods alleged in the complaint. Block is a financial services and digital payment company with its principal executive offices located in Oakland, California. The Individual Defendants include current and former directors and officers of Block:

- Dorsey is a co-founder of Block, Chief Executive Officer, and Chairman of the Board of Directors.
- McKelvey is a co-founder and member of the Board of Directors.
- Botha, Brooks, Carter, Deighton, Garutti, Meeker are current members of the Board of Directors.
- Patterson, Rothstein, Summers, Viniar, and Walker are former members of the Board of Directors, who served at various times throughout the relevant period alleged in the complaint.
- Ahuja is an officer of Block and serves as Block's Chief Operating Officer and Chief Financial Officer.

Cash App, a mobile application offering a variety of financial services, is one of Block's primary business units. With Cash App, users can transfer money, make purchases, invest in stocks or cryptocurrency, and apply for loans. Block's valuation is highly dependent on

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portion of this order. The Court will address the remainder of the parties' sealing requests in a separate order.

[2] Unless otherwise noted, the background information comes directly from Plaintiffs' operative complaint, *Kelly*, ECF No. 1 ("Compl.").

demonstrating a steady increase in Cash App users, and "Block's fiduciaries have been laser-focused on expanding" the user base. Compl. ¶ 4. Plaintiffs contend that because of the importance of growing its users, Block "built Cash App on [a] bedrock of 'frictionless onboarding,' a process of intentionally seeking *minimum information* to sign on new customers." *Id.* ¶ 3. For example, to create an account, "a potential user simply needs to download the app and enter either a phone number or an email address and a zip code. No unique identifying information—such as bank account information or a Social Security number—is required." *Id.*

However, Plaintiffs allege that Block's "frictionless onboarding" approach allowed bad actors to easily create Cash App accounts, including multiple accounts per user. Plaintiffs argue that Cash App's streamlined onboarding process "facilitated fraud and other criminal activity (i.e., money laundering, drug dealing and sex trafficking, etc.)" by permitting bad actors to easily make an account while providing minimal identifying information. *Id.* ¶ 5.

Plaintiffs contend that the Individual Defendants were regularly presented with "numerous red flags" indicating Block's compliance failures, including "updates on the type of fraud and criminal activity being facilitated through Cash App" and information about the "loosening risk controls in order to accelerate Cash App growth." *Id.* ¶ 84. Plaintiffs stress that the Audit and Risk Committee of the Board of Directors was shown data on multiple occasions demonstrating that as the number of Cash App users increased, the number of suspicious activity reports "skyrocketed." *Id.*

In early 2019, the Audit and Risk Committee was informed that Cash App faced "enormous compliance backlogs and [] strain on the Compliance team" with the substantial increase in suspicious activity reports. *Id.* But instead of investing in growing its compliance program and team proportionally to its growing user base, Block's compliance program was [redacted] *Id.* ¶ 93. Block relied on an automated [redacted] *Id.* ¶ 94. The lack of investment in compliance programming and personnel resulted in [redacted] *Id.* ¶ 89.

By April 2019, the Audit and Risk Committee was informed that there was [redacted]

[redacted]

Id. ¶ 96. Plaintiffs assert that Audit and Risk Committee meeting minutes and materials indicate that [redacted] *Id.* ¶ 97 (emphasis omitted). Block's compliance concerns and [redacted] grew through the end of 2019 and into 2020, while the compliance team remained [redacted] *Id.* ¶ 117. These concerns persisted over the next few years and into 2023.

Plaintiffs allege that the Individual Defendants knowingly failed to stop fraudulent users on the Cash App platform, failed to grow Block's compliance program to manage the risk of bad actors on the platform, made fraudulent disclosures to Block and shareholders about its compliance, and failed to ensure that Block complied with relevant laws. As a result, Block was exposed to investigations from government agencies – resulting in fines of up to $295 million – and costly securities fraud litigation. Moreover, Plaintiffs submit that "[c]ompounding the Board's failure to adequately oversee the Company's compliance and risk management systems, the Director Defendants turned a blind eye while the Company's two co-founding directors, Dorsey and McKelvey, collectively sold over $1 billion of Block stock at artificially inflated prices." *Id.* ¶ 15.

Plaintiffs bring six claims against various Defendants, outlined in the chart below:

	Claim	**Claim Brought Against**[3]
Count 1	Violations of Section 14(a) of the Exchange Act	*Specifically Listed Defendants:* Botha, Brooks, Carter, Deighton, Dorsey, Garutti, McKelvey, Meeker, Rothstein, Summers, Viniar, and Walker[4]

[3] Plaintiff Patel sued Neha Narula in the *Patel* action (25-cv-01262). In the *Kelly* operative complaint, Plaintiffs list Narula as a "relevant non-part[y]," not as a Defendant. Compl. ¶ 40. The Court construes this as a deliberate choice to not maintain the claims against Narula, and the Court accordingly dismisses any pending claims against Narula.

[4] Plaintiff Patel sued Darren Walker in the *Patel* action. Walker is not listed as a named Defendant in the caption of the *Kelly* operative complaint; he is listed as a "Former Director

Count 2	Violations of Section 10(b) of the Exchange Act	*All Individual Defendants:* Ahuja, Botha, Brooks, Carter, Deighton, Dorsey, Garutti, McKelvey, Meeker, Patterson, Rothstein, Summers, Walker, and Viniar
Count 3	Violations of Section 29(b) of the Exchange Act	*All Individual Defendants:* Ahuja, Botha, Brooks, Carter, Deighton, Dorsey, Garutti, McKelvey, Meeker, Patterson, Rothstein, Summers, Walker, and Viniar
Count 4	Breach of Fiduciary Duty	*Current Director and Former Director Defendants:* Botha, Brooks, Carter, Deighton, Dorsey, Garutti, McKelvey, Meeker, Patterson, Rothstein, Summers, Walker, and Viniar
Count 5	Breach of Fiduciary Duty	*Officer Defendants:* Ahuja, and Dorsey
Count 6	Breach of Fiduciary Duty for Insider Trading Under *Brophy*	*Insider Trading Defendants:* Dorsey, and McKelvey

II. DISCUSSION

Block moves to dismiss the operative complaint for *forum non conveniens*, *see* ECF No. 54 ("Block Mot."), and the Individual Defendants move to dismiss for failure to plead demand futility and failure to state a claim, *see* ECF No. 55 ("Individual Defs. Mot.").

A. Nominal Defendant Block's Motion to Dismiss

Block argues that Plaintiffs' action is governed by the forum selection clause in Block's Amended and Restated Bylaws ("Bylaws"), and this Court should dismiss Plaintiffs' case for *forum non conveniens* as the Delaware Court of Chancery is the proper forum.

The parties agree that Section 7.7 of the Bylaws is generally applicable but dispute its

Defendant." Compl. ¶¶ 35, 36. Walker did not join the motion to dismiss, but he joined the reply brief in support of the motion to dismiss. *Compare* ECF No. 55 to ECF No. 77. Because Walker has filed an appearance in the *Patel* action and joined the reply brief, the Court finds that he is has been adequately put on notice of the claims against him and he remains a Defendant.

import here. Section 7.7 states in relevant part:

> SECTION 7.7. Exclusive Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (A) any derivative action or proceeding brought on behalf of the Corporation, (B) any action asserting a claim of breach of a fiduciary duty owed by any director, stockholder, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (C) any action asserting a claim against the Corporation or any director, stockholder, officer . . . shall, to the fullest extent permitted by law, be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) . . .

Block Mot., Ex. 1, § 7.7. Section 7.7 also contains an express exception:

> 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 sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, against any person in connection with any offering of the Corporation's securities, including, without limitation and for the avoidance of doubt, any auditor, underwriter, expert, control person, or other defendant. . . .
>
> For the avoidance of doubt, nothing contained in this Section 7.7 shall apply to any action brought to enforce a duty or liability created by the Exchange Act or any successor thereto.

Id.

Plaintiffs retort that "the plain language of the Company's bylaws makes clear the Forum Provision does not apply to this Action, so Plaintiff was not under any contractual obligation to file the Action in a different forum." Opp'n to Block Mot., 7, ECF No. 65. The Court agrees. The forum selection clause provides that "nothing contained in this Section 7.7 shall apply to any action brought to enforce a duty or liability created by the Exchange Act." Plaintiffs' claims under the Exchange Act predominate in this action. Moreover, the exception in Section 7.7 comports with the jurisdiction provision in the Exchange Act itself. *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 376–77 (2016) ("Section 27 of the Securities Exchange Act of 1934 (Exchange Act), 48 Stat. 992, as amended, 15 U.S.C. § 78a, *et seq.,* grants federal district courts exclusive jurisdiction 'of all suits in equity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules or regulations thereunder.'"). The Court finds that Plaintiffs' suit falls within the exception to the forum selection clause, and

Plaintiffs did not have an obligation to file in Delaware. Block's motion to dismiss on *forum non conveniens* grounds is therefore DENIED.

B. Individual Defendants' Motion to Dismiss

The Individual Defendants move to dismiss Plaintiffs' operative complaint on two theories: (1) failure to make a pre-suit demand and plead demand futility as required by Rule 23.1 and Delaware law, and (2) failure to state a claim under Rule 12(b)(6).[5]

1. Failure to Plead Demand Futility

The Individual Defendants argue that Plaintiffs failed to make pre-suit demand and failed to plead demand futility under Delaware law and Federal Rule of Civil Procedure Rule 23.1. Plaintiffs concede that they did not make a pre-suit demand, but argue that any such demand would have been futile because a majority of the board faces a substantial likelihood of liability for breach of fiduciary duty. *See* Compl. ¶ 268. The Court agrees.

To bring a derivative action, Federal Rule of Civil Procedure 23.1 requires a plaintiff to allege with particularity the efforts, if any, "by the plaintiff to obtain the desired action from the directors" and "the reasons for not obtaining the action or not making the effort." Fed. R. Civ. P. 23.1(b)(3). While Rule 23.1 outlines the procedure, the substantive law governing the adequacy of the demand or whether demand is futile is provided by the state of incorporation of the company. *Rosenbloom v. Pyott*, 765 F.3d 1137, 1148 (9th Cir. 2014). Block is a Delaware corporation, and accordingly Delaware law applies. *Kamen v. Kemper Fin. Serv., Inc.*, 500 U.S. 90, 108–09

[5] Defendants ask the Court to either take judicial notice or incorporate by reference 59 separate exhibits. Request for Judicial Notice, ECF No. 54-18; Declaration of Brian M. Lutz, ¶¶ 2-7, Exs. 1-6, ECF No. 54-1; Request for Judicial Notice, ECF No. 55-38; Declaration of Brian M. Lutz, ¶¶ 2-36, Exs. B-II, ECF No. 55-1; Request for Judicial Notice in support of Reply, ECF No. 77-3; Declaration of Brian M. Lutz, ¶¶ 2-21, Exs. JJ-CCC, ECF No. 77-1. These exhibits fall into two categories (1) Board of Director and Audit and Risk Committee minutes and materials, and (2) Block's SEC filings. Plaintiffs do not oppose Defendants' request for incorporation by reference nor request for judicial notice. Accordingly, the Court GRANTS Defendants' motions and incorporates by reference Exhibits 1-6, B-Z and JJ-CCC, and takes judicial notice of Exhibits AA-II, subject to *Khoja*'s restrictions. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003 (9th Cir. 2018) (the court may assume the truth of a document incorporated by reference "for purposes of a motion to dismiss under Rule 12(b)(6)," but may not do so "if such assumptions only serve to dispute facts stated in a well-pleaded complaint.").

(1991).

Under Delaware law, plaintiffs must show that demand on a board of directors is excused because, "as of the time the complaint is filed," "particularized factual allegations of a derivative stockholder complaint create a reasonable doubt that . . . the board of directors could have properly exercised its independent and disinterested business judgment in responding to a demand." *Rales v. Blasband*, 634 A.2d 927, 934 (Del. 1993). When evaluating allegations that there is a "reasonable doubt" the board of directors could have "exercised its independent and disinterested business judgment," courts consider, for each director:

> (i) whether the director received a material personal benefit from the alleged misconduct that is the subject of the litigation demand;
>
> (ii) whether the director faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand; and
>
> (iii) whether the director lacks independence from someone who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand.

United Food & Com. Workers Union & Participating Food Indus. Emps. Tri-State Pension Fund v. Zuckerberg, 262 A.3d 1034, 1059 (Del. 2021). Demand is excused as futile "[i]f the answer to any of the questions is 'yes' for at least half of the members of the demand board." *Id*.

The Court's assessment of demand futility "is confined to the well-pleaded allegations in the Complaint, the documents incorporated into the Complaint by reference, and facts subject to judicial notice." *Ritchie on Behalf of Corcept Therapeutics, Inc. v. Baker*, No. 2022-0102-BWD, 2025 WL 2048014, at *7 (Del. Ch. July 22, 2025) (internal citations omitted). "Alleged facts are considered in their totality, drawing reasonable inferences in the plaintiff's favor, but conclusory allegations are not considered as expressly pleaded facts or factual inferences." *Id.* (citations omitted, cleaned up).

Here, as of time the operative complaint was filed, "Block's Board consist[ed] of the following ten members, eight of which are defendants in this action: Dorsey, McKelvey, Botha, Brooks, Carter, Deighton, Eisen, Garutti, Meeker and Narula (the "Demand Board")." Compl.

¶ 267. Plaintiffs focus their arguments on the second and third *United Food* questions – whether the directors face a substantial likelihood of liability and whether the directors lack independence. Plaintiffs argue that a majority of the Demand Board could not have properly exercised their independent and disinterested business judgment in responding to a demand for two reasons: (a) a majority of the Demand Board faces a substantial likelihood of liability for the acts and omissions alleged in the complaint, and (b) a majority of the Demand Board lacks independence from Dorsey and McKelvey, who Plaintiffs assert materially benefited from the alleged acts. Compl. ¶ 269.

a. Substantial Likelihood of Liability

Plaintiffs allege that a majority of the Demand Board faces a substantial likelihood of liability for breaching their obligations to maintain oversight under *Caremark*. "To state a *Caremark* claim, a plaintiff must allege particularized facts that establish either (1) 'the directors utterly failed to implement any reporting or information system or controls, *or* [(2)] having implemented such a system or controls, consciously failed to monitor or oversee its operations thus disabling themselves from being informed of risks or problems requiring their attention.'" *In re Plug Power Inc. S'holder Derivative Litig.*, No. 2022-0569-KSJM, 2025 WL 1277166, at *11 (Del. Ch. May 2, 2025) (citing *Stone v. Ritter*, 911 A.2d 362, 370 (Del. 2006)).

Here, Plaintiffs only bring claims under the second *Caremark* prong. Plaintiffs contend that the Demand Board "consciously failed to monitor or oversee" the compliance program, restricting "themselves from being informed of risks." *Id.*; *see* Compl. ¶ 328.

To succeed on such a claim, a plaintiff must plead "particularized facts that the board knew of red flags but consciously disregarded them in bad faith." *Teamsters Loc. 443 Health Servs. & Ins. Plan v. Chou*, No. CV 2019-0816-SG, 2020 WL 5028065, at *17 (Del. Ch. Aug. 24, 2020) (citation omitted). Plaintiffs must show that the "red flag" is "sufficiently connected to the corporate trauma at issue" such that "the board's inaction in the face of the red flag" arises "to the level of bad faith." *Id.* "The question at the pleading stage is whether it is reasonably conceivable that the identified red flag would have placed a reasonable observer on notice of the risk of the corporate trauma that ensued." *Id.* For purposes of demand futility, "the question is whether there is sufficient reason to think that the director acted in bad faith such that the director faces a

substantial likelihood of liability." *Ontario Provincial Council of Carpenters' Pension Tr. Fund v. Walton*, No. 2021-0827-JTL, 2023 WL 3093500, at *34 (Del. Ch. Apr. 26, 2023).

Plaintiffs contend that the Demand Board, and in particular the Audit and Risk Committee, was "presented with a plethora of red flags indicating the Company's failure to maintain effective compliance measures during the Relevant Period, which allowed fraud and other criminal activity to proliferate on the Cash App platform." Compl. ¶ 271. Plaintiffs point to the following "red flags":

- [redacted] *Id.*; *see also* ¶ 88 ([redacted]).
- [redacted] *Id.* ¶ 88.
- In February 2019, [redacted] *Id.* ¶ 93.
- In April 2019, [redacted] *Id.* ¶ 96 (parentheticals omitted).
- [redacted] *Id.* ¶ 97 (emphasis in original).
- Prior to the October 2019 Board meeting, [redacted] *Id.* ¶ 107.
- By February 2020, the ARC was informed that Block had [redacted] *Id.* ¶ 109 (emphasis in original).
- [redacted]

[redacted] *Id.* ¶ 123.

- [redacted]

Id. ¶¶ 130-31 (emphasis in original).

Plaintiff alleges that eight members of the Demand Board served as directors during the relevant period when concerns regarding fraud and other criminal activity on the Cash App were raised to the Board and those members continued to serve on the Board at the time the complaint was filed. Plaintiffs have sufficiently alleged that the red flags presented to the Board regarding fraud and other criminal activity on the Cash App platform are "connected to the corporate trauma at issue" – costly government investigations and securities litigation, adverse regulatory actions, and reputational harm. *In re Plug Power*, 2025 WL 1277166 at *13. And, Plaintiffs have shown that the Board's inaction in the face of these red flags elevates the Board's conduct "to the level of bad faith." *Id.* The Court finds that it is "reasonably conceivable that the identified red flag[s] would have placed" the entire Demand Board on notice of the alleged subsequent harms to Block. *Id.* Specifically, Plaintiffs have adequately pled that the Demand Board was aware of the fraudulent accounts, criminal activity on Cash App, frequent deletion of un-reviewed suspicious activity reports, persistent understaffing of the compliance team, and inadequacies of the machine-learning based compliance programming, and that the Demand Board failed to act in response. The Demand Board's knowledge can be reasonably inferred from the Board meeting minutes and Audit and Risk Committee actions. *See Shaev v. Baker*, No. 16-cv-05541-JST, 2017 WL 1735573, at *15 (N.D. Cal. May 4, 2017) ("[T]he abundance of particularized allegations in the [] Complaint support an inference that a majority of the Director Defendants—and in particular those Director Defendants who were on the risk committee, audit and examination committee, and corporate responsibility committee—*knew about widespread illegal activity* and consciously

disregarded their fiduciary duties to oversee and monitor the company."). Defendants have submitted Section 220 evidence that shows that *some* Board and Audit and Risk Committee review was undertaken, but have not offered any support for tangible actions taken to resolve the criminal and fraudulent activities on Cash App. Without more (and it may be feasible following discovery), Defendants have not refuted well-pled allegations that the Board failed to address these critical compliance concerns regarding illegal activity.

Because the Court finds that a majority of the Demand Board faces a substantial likelihood of liability for breaching their obligations to maintain oversight under *Caremark*, the Court will not address Plaintiffs' additional arguments regarding lack of independence. The Court finds that Plaintiffs adequately pled demand futility, and Defendants' motion to dismiss under Rule 23.1 is DENIED.

2. Failure to State a Claim

Defendants also moved to dismiss Plaintiffs' claims under Rule 12(b)(6). "Because the standard under Rule 12(b)(6) is less stringent than that under Rule 23.1, a complaint that survives a motion to dismiss pursuant to Rule 23.1 will also survive a 12(b)(6) motion to dismiss, assuming that it otherwise contains sufficient facts to state a cognizable claim." *McPadden v. Sidhu*, 964 A.2d 1262, 1270 (Del. Ch. 2008). Because Plaintiffs have otherwise plead sufficient factual allegations to state a cognizable claim for breach of fiduciary duty, the Defendants' Motion to Dismiss under Rule 12(b)(6) is likewise denied.

At this stage of the litigation, Plaintiffs have plead sufficient facts to support their claims under Section 10(b), 14(a), and 29(b) of the Exchange Act. Plaintiffs' claims all rely on similar facts indicating that the Board failed to oversee Block's compliance program, thereby exposing Block to significant risk, while Defendants' statements regarding the compliance program concealed the risks. Additionally, reviewing the facts in the light most favorable to Plaintiffs as the Court must, Plaintiffs have sufficiently alleged facts to support their *Brophy* claim, namely that Dorsey and McKelvey possessed material non-public information regarding Block's compliance program risks, and they used that information to make trades motivated by that information. Plaintiffs point to the size of Dorsey and McKelvey's trades relative to their stock holdings and

the timing of their trades relative to past patterns of trading to allege scienter. This is sufficient at this stage in the litigation.

III. CONCLUSION

Defendants' motions to dismiss are DENIED. Defendants shall file an answer to Plaintiffs' complaint within 21 days of this order.

As stated earlier in this order, because Narula was not named as a Defendant in the operative complaint, Narula is DISMISSED from this action.

IT IS SO ORDERED.

Dated: January 6, 2026

Noël Wise
United States District Judge