

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 110726 NAME: Kirk B. Hulett FIRM NAME: Hulett Harper Stewart LLP STREET ADDRESS: 550 West C Street, Suite 1500 CITY: San Diego STATE: CA ZIP CODE: 92101 TELEPHONE NO.: (619) 338-1133 FAX NO.: (619) 338-1139 E-MAIL ADDRESS: kirk@huletttharper.com ATTORNEY FOR (name): Plaintiff		FOR COURT USE ONLY E-FILED 8/8/2017 12:42 PM Clerk of Court Superior Court of CA, County of Santa Clara 16CV294673 Reviewed By: R. Walker
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 101 North 1st Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court		
PLAINTIFF/PETITIONER: Dean Drulias DEFENDANT/RESPONDENT: 1st Century Bancshares, Inc.		
<input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)		CASE NUMBER: 16CV294673

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

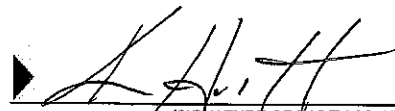
1. NOTICE IS HEREBY GIVEN that (name): Dean Drulias
 appeals from the following judgment or order in this case, which was entered on (date): June 20, 2017
- Judgment after jury trial
 - Judgment after court trial
 - Default judgment
 - Judgment after an order granting a summary judgment motion
 - Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
 - Judgment of dismissal after an order sustaining a demurrer
 - An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
 - An order or judgment under Code of Civil Procedure, § 904.1(a)(3)-(13)
 - Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
 - b. Date superior court clerk mailed notice of original appeal:
 - c. Court of Appeal case number (if known):

Date: August 8, 2017

Kirk B. Hulett

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

ATTACHMENT

E-FILED
6/20/2017 7:54:00 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
16CV294673
Reviewed By:R. Walker

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

DEAN DRULIAS, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

1ST CENTURY BANCSHARES, INC., ALAN
I. ROTHENBERG, WILLIAM W. BRIEN,
M.D., DAVE BROOKS, JASON P.
DINAPOLI, ERIC M. GEORGE, ALAN D.
LEVY, BARRY D. PRESSMAN, ROBERT A.
MOORE, LEWIS N. WOLFF, NADINE
WATT, STANLEY R. ZAX, and SANDLER
O'NEILL & PARTNERS, L.P.,

Defendants.

Case No.: 16CV294673

**ORDER AFTER HEARING ON
JUNE 16, 2017**

**(1) Motion by Defendants to Seal
Portions of the First Amended
Complaint; (2) Motion by 1st Century
Defendants to Stay or Dismiss for
Forum Non Conveniens**

The above-entitled matter came on regularly for hearing on Friday, June 16, 2017 at 9:00
a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. A
tentative ruling was issued by the Court on June 15, 2017. The appearances are as stated in the
record. The Court, having reviewed and considered the written submission of all parties, having
heard and considered the oral argument of counsel, and being fully advised, orders that the
tentative ruling be adopted and incorporated herein as the Order of the Court, as follows:

1 This putative shareholder class action arises from the sale of defendant 1st Century
2 Bancshares, Inc. to Midland Financial Co., a transaction which plaintiff claims advanced the
3 interests of 1st Century's directors at the expense of its public shareholders. Before the Court are
4 motions by 1st Century and the individual defendants (collectively, the "1st Century
5 Defendants") (1) to file under seal portions of the first amended complaint ("FAC") and (2) to
6 dismiss the action pursuant to Code of Civil Procedure sections 410.30 and 418.10. Plaintiff
7 opposes the latter motion.

8
9 I. Factual and Procedural Background

10
11 Plaintiff filed this action for breaches of fiduciary duty on May 3, 2016, after the sale had
12 been announced but prior to the shareholder vote on June 20. On May 25, plaintiff filed an
13 application to preliminarily enjoin the shareholder vote. The 1st Century Defendants filed an
14 opposition to plaintiff's application, arguing, among other things, that the action was improperly
15 filed in California in light of a forum selection bylaw designating Delaware as the exclusive
16 forum for any fiduciary duty claims. Prior to the hearing on the preliminary injunction, the
17 parties reached a settlement, and the hearing was taken off-calendar. The shareholder vote
18 proceeded as scheduled on June 20, with over 99.8% of the voting shares approving the
19 transaction.

20
21 On August 8, plaintiff filed a motion for preliminary approval of the parties' settlement.
22 The 1st Century Defendants joined in plaintiff's motion, but not in the memorandum supporting
23 it. The parties presented the Court (Hon. Kirwan) with a non-monetary settlement pursuant to
24 which 1st Century provided supplemental disclosures to its shareholders prior to the shareholder
25 vote in exchange for a broad release of claims related to the merger. 1st Century also agreed not
26 to oppose plaintiff's request for attorney fees in the amount of \$400,000. Adopting the standard
27 recently announced by the Delaware Chancery Court in *In re Trulia, Inc. Stockholder Litigation*
28

1 (Del. Ch. 2016) 129 A.3d 884, the Court found that the disclosures were not adequately material
2 to justify the settlement and release of claims, and denied preliminary approval on November 21.
3

4 On January 6, 2017, the first case management conference in this action was held. The
5 Court adopted a schedule for plaintiff to file an amended complaint and for defendants to file a
6 motion to stay or dismiss for forum non conveniens.
7

8 Plaintiff filed his FAC on January 13, asserting the following claims for breach of
9 fiduciary duty: (1) breaches of the duties of care, good faith, and loyalty against the individual
10 defendants; (2) breaches of the duty of disclosure against the 1st Century Defendants; and (3)
11 aiding and abetting the individual defendants' breaches of duty against Sandler O'Neill &
12 Partners, L.P. (an investment bank that provided a fairness opinion in connection with the
13 merger).
14
15

16 II. Motion to Seal

17

18 The 1st Century Defendants move to file under seal the unredacted version of the FAC,
19 which reflects information that was provided to plaintiff in connection with the parties'
20 settlement discussions.
21

22 A. Legal Standard

23

24 "The court may order that a record be filed under seal only if it expressly finds facts that
25 establish: (1) There exists an overriding interest that overcomes the right of public access to the
26 record; (2) The overriding interest supports sealing the record; (3) A substantial probability
27 exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed
28 sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding
interest." (Cal. Rules of Court, rule 2.550(d).)

1 "Courts have found that, under appropriate circumstances, various statutory privileges,
2 trade secrets, and privacy interests, when properly asserted and not waived, may constitute
3 overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn.
4 3.) In addition, confidential matters relating to the business operations of a party may be sealed
5 where public revelation of the information would interfere with the party's ability to effectively
6 compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court (Unity Pictures*
7 *Corp.)* (2003) 110 Cal.App.4th 1273, 1285-1286.)

8
9 Where some material within a document warrants sealing, but other material does not, the
10 document should be edited or redacted if possible, to accommodate both the moving party's
11 overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court,
12 rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the
13 information in the document, rather than framing the issue to the court on an all-or-nothing basis.
14 (*In re Providian, supra*, 96 Cal.App.4th at p. 309.)

15 B. Analysis

16
17 As described in the declaration supporting defendants' motion, the materials at issue are
18 (1) documents including confidential minutes of board meetings, confidential financial analyses
19 prepared by Sandler O'Neill, and confidential communications between Midland and 1st Century
20 preceding the merger and (2) deposition testimony provided by 1st Century board member Eric
21 George and Sandler O'Neill managing director Peter Buck in connection with the parties'
22 settlement efforts.

23 With respect to the first category of information, defendants' counsel declares that these
24 documents reflect confidential business information whose disclosure may prove harmful to 1st
25 Century and its business. As to the second category, counsel declares that the deposition
26 testimony references board members' private information, including personal financial
27 information. This information is appropriately filed under seal. (See *Mercury Interactive Corp.*
28 *v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35 [although pleadings should "as a general rule" be

1 open to public inspection, pleadings and exhibits thereto may be filed under seal under
2 appropriate circumstances; noting that it is unnecessary to include evidence beyond allegations
3 of ultimate facts in a complaint in any event[.]
4

5 Having reviewed the redacted versions of the FAC, the Court finds that the redactions are
6 narrowly tailored to the material described above. The factors set forth in rule 2.550(d) are
7 satisfied under the circumstances.

8 C. Conclusion and Order

9
10 The motion to seal the unredacted version of the FAC is accordingly GRANTED.

11 III. Motion to Dismiss

12
13 The 1st Century Defendants move to dismiss this action in light of the forum selection
14 bylaw, citing Code of Civil Procedure sections 410.30 and 418.10. The bylaw provides:

15
16 Unless the Corporation consents in writing to the selection of an alternative
17 forum, the Court of Chancery of the State of Delaware (or, if the Court of
18 Chancery does not have jurisdiction, the federal district court for the District of
19 Delaware) shall be the sole and exclusive forum for ... (ii) any action asserting a
20 claim of breach of a fiduciary duty owed by any director, officer, other employee
21 or stockholder of the Corporation to the Corporation or the Corporation's
22 stockholders, ... (iv) any action to interpret, apply, enforce or determine the
23 validity of the Certificate of Incorporation or these Bylaws or (v) any action
24 asserting a claim governed by the internal affairs doctrine.

25 Plaintiff does not dispute that the bylaw applies to the claims against the 1st Century
26 Defendants, but argues that they waived their right to enforce it, while plaintiff has a right to a
27 California forum pursuant to Corporations Code section 2116. In addition, he contends that the
28 bylaw does not apply to his claim for aiding and abetting against Sandler O'Neill.

1 A. Legal Standard

2
3 As an initial matter, the Court notes that section 418.10, which authorizes a defendant to
4 file a forum non conveniens motion before making a general appearance, does not apply where
5 the defendant has made a general appearance; however, such a defendant may still bring a forum
6 non conveniens motion pursuant to section 413.30, which authorizes a court to stay or dismiss an
7 action if it finds that “in the interest of substantial justice” it should be heard in a forum outside
8 the state. (Code Civ. Proc., § 410.30, subd. (b); *Britton v. Dallas Airmotive, Inc.* (2007) 153
9 Cal.App.4th 127, 133 [“Under [section 410.30] subdivision (b), a defendant who has generally
10 appeared may make a forum non conveniens motion at any time, not only on or before the last
11 day to plead.”].)

12 Where a mandatory forum selection provision is asserted, the traditional forum non
13 conveniens factors (whether the designated forum is a suitable alternative forum and whether the
14 balancing of various private and public interest factors favors retaining the action in California)
15 are not considered. (See *Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 147, fn.2.)
16 To avoid enforcement of such a provision, the plaintiff bears a “heavy burden” to show that
17 enforcement would be wholly “unreasonable under the circumstances of the case.” (*Wimsatt v.*
18 *Beverly Hills Weight etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, 1523.)

19
20
21 B. Waiver

22 “[O]bjections to the venue of an action,” including those based on forum selection
23 agreements, “are waived unless promptly presented.” (*Smith, Valentino & Smith, Inc. v.*
24 *Superior Court (Life Ins. Co. of Pennsylvania)* (1976) 17 Cal.3d 491, 497; see also *Trident Labs,*
25 *Inc. v. Merrill Lynch Commercial Finance Corp.* (2011) 200 Cal.App.4th 147, 157 (hereinafter,
26 “*Trident*”) [unreasonable to enforce forum selection clause where defendant chose “to
27
28

1 extensively litigate in the original forum by filing a cross-complaint, conducting substantial
2 discovery, and filing motions seeking relief from the forum court”].)

3
4 Cases arising in the context of arbitration clauses are instructive with respect to this issue.
5 Those cases consider the following factors with respect to waiver:

6 (1) whether the party’s actions are inconsistent with the right to arbitrate; (2)
7 whether the litigation machinery has been substantially invoked and the parties
8 were well into preparation of a lawsuit before the party notified the opposing
9 party of an intent to arbitrate; (3) whether a party either requested arbitration
10 enforcement close to the trial date or delayed for a long period before seeking a
11 stay; (4) whether a defendant seeking arbitration filed a counterclaim without
12 asking for a stay of the proceedings; (5) whether important intervening steps [e.g.,
taking advantage of judicial discovery procedures not available in arbitration] had
taken place; and (6) whether the delay affected, misled, or prejudiced the
opposing party.

13 (*Sobremonte v. Superior Court (Bank of America Nat. Trust and Sav. Ass’n)* (1998) 61
14 Cal.App.4th 980, 992, internal citations and quotations omitted.)

15 Here, the 1st Century Defendants have consistently asserted their objection based on the
16 forum selection bylaw—including in their opposition to plaintiff’s motion for a preliminary
17 injunction—and raised it by motion at the earliest reasonable opportunity consistent with the
18 Court’s scheduling orders. The Court has yet to hear any substantive motions in this action,
19 other than the motion for preliminary approval of a settlement, which it denied. Defendants’
20 attempt to settle the action did not waive their right to raise the forum selection bylaw under the
21 circumstances, and plaintiff’s argument regarding forum-shopping is unconvincing considering it
22 was plaintiff who chose to file this action in California. The circumstances here are in contrast to
23 those in *Trident*, where the defendant “litigated the suit in California vigorously” over 19
24 months, “removing the case to the United States District Court, Central District, and, after it was
25 remanded, filing a cross-complaint and other pleadings and engaging in substantial discovery,
26 including discovery motions.” (At p. 149.)

27 The Court accordingly finds that defendants have not waived their right to raise the forum
28 selection bylaw.

1 C. Analysis as to the 1st Century Defendants

2
3 There is no California authority addressing the enforceability of a forum selection *bylaw*,
4 as opposed to a contractual forum selection provision. Federal courts in California have split on
5 the issue of whether such bylaws are enforceable. (See *Galaviz v. Berg* (N.D. Cal. 2011) 763
6 F.Supp.2d 1170 [forum selection bylaw unilaterally adopted by directors after the alleged
7 wrongdoing at issue in the action would not be enforced]; *In re: CytRx Corp. Stockholder*
8 *Derivative Litigation* (C.D. Cal., Oct. 30, 2015, No. CV146414GHKPJWX) 2015 WL 9871275
9 [enforcing Delaware forum selection bylaw, noting that courts have criticized *Galaviz*].) In
10 Delaware, on the other hand, forum selection bylaws are considered “valid and enforceable
11 contractual forum selection clauses,” even if unilaterally adopted by the board after shareholders
12 purchased their shares. (*Boilermakers Local 154 Retirement Fund v. Chevron Corp.* (Del. Ch.
13 2013) 73 A.3d 934, 939; see also *City of Providence v. First Citizens BancShares, Inc.* (Del. Ch.
14 2014) 99 A.3d 229 [dismissing claims challenging a forum selection bylaw adopted the same day
15 a challenged merger was announced].)

16
17 A critical issue, then, is whether California or Delaware law should be applied to
18 determine whether the forum selection bylaw is enforceable. Under the internal affairs doctrine,
19 Delaware law should generally govern a question regarding the validity of bylaws and bylaw
20 amendments. (See *Lidow v. Superior Court (International Rectifier Corp.)* (2012) 206
21 Cal.App.4th 351, 359 [the internal affairs doctrine is a conflict of laws principle providing that
22 the laws of the state of incorporation should generally govern a corporation’s internal affairs,
23 such as the adoption and amendment of bylaws, so that it is not faced with conflicting demands];
24 *Olinco v. Merle Norman Cosmetics, Inc.* (1962) 200 Cal.App.2d 260, 271 [validity of bylaws is
25 determined according to the law of the state of incorporation].)

26
27 “There is, however, a vital limitation to the internal affairs doctrine: The local law of the
28 state of incorporation will be applied ... *except where, with respect to the particular issue, some*
other state has a more significant relationship ... to the parties and the transaction.” (*Lidow v.*

1 *Superior Court, supra*, 206 Cal.App.4th at p. 359 [internal citations and quotations omitted,
2 italics original].) California “courts are less apt to apply the internal affairs doctrine when vital
3 statewide interests are at stake, such as maintaining the integrity of California security markets
4 and protecting its citizens from harmful conduct.” (*Id.* at p. 362.) “In contrast, ... when less
5 vital state interests are at stake (e.g., whether a foreign corporation headquartered in another state
6 pays promised dividends to its shareholders, or whether the shareholder of a foreign corporation
7 must fulfill certain procedural requirements set before bringing a derivative suit), courts are more
8 apt to apply the internal affairs doctrine.” (*Ibid.*)

9
10 Here, plaintiff contends that enforcing the forum selection clause would conflict with
11 Corporations Code section 2116, which provides:

12 The directors of a foreign corporation transacting intrastate business are liable to
13 the corporation, its shareholders, creditors, receiver, liquidator or trustee in
14 bankruptcy for the making of unauthorized dividends, purchase of shares or
15 distribution of assets or false certificates, reports or public notices or other
16 violation of official duty *according to any applicable laws of the state or place of
incorporation or organization*, whether committed or done in this state or
elsewhere. Such liability may be enforced in the courts of this state.

17 (Italics added.)

18 Corporations Code section 2116 codifies the internal affairs doctrine. (*Vaughn v. LJ*
19 *Intern., Inc.* (2009) 174 Cal.App.4th 213, 223 (hereinafter, “*Vaughn*”).) While it provides that
20 liability under the laws of the state of incorporation “may” be enforced in California, it does not
21 purport to create a *right* to sue in California as urged by plaintiff. Plaintiff cites no authority
22 supporting the proposition that section 2116 creates such a right, and his argument on this point
23 must accordingly fail.

24
25 Plaintiff also raises the issue of whether California’s interest in applying its own law to
26 the bylaw issue is more significant than Delaware’s, given that plaintiff is a California resident,
27 1st Century is headquartered here, and the individual defendants almost all reside here. The
28 Court does not find this argument persuasive given that 1st Century is a Delaware corporation

1 whose shareholders may reside anywhere, and California has expressly adopted the internal
2 affairs doctrine for the “salutary” purpose of “enhancing confidence that a predictable legal
3 framework will govern the relationship between investors and the corporation.” (*Vaughn, supra*,
4 174 Cal.App.4th at p. 224.) Notably, there is no dispute that Delaware law will apply to the
5 substance of plaintiff’s claims, so there is no concern that a Delaware court would not enforce
6 protections established by California law. The Court finds no unfairness in a requirement that
7 claims against a Delaware corporation under Delaware law be brought in a Delaware court.
8 Further, it is not at all clear that California’s law regarding the enforceability of a forum selection
9 bylaw would differ from its law regarding the enforceability of purely contractual forum
10 selection provisions, where the plaintiff bears a “heavy burden” to show that enforcement would
11 be wholly “unreasonable under the circumstances of the case.” (*Wimsatt v. Beverly Hills Weight*
12 *etc. Internat., Inc., supra*, 32 Cal.App.4th at p. 1523.)

13
14 Turning to that final issue, plaintiff argues that it would be unreasonable to enforce the
15 bylaw since it was adopted after plaintiff purchased his shares (which was before such bylaws
16 came into vogue in Delaware) and concurrently with the challenged merger. Again, however, it
17 is not unreasonable to impose Delaware law regarding corporate internal affairs on a shareholder
18 in a Delaware corporation. The internal affairs doctrine is a clear and longstanding principle of
19 California law. Similarly, the fact that Delaware corporate law tends to evolve in front of the
20 law of other states is no surprise to anyone. Presumably, plaintiff would not dispute that he is
21 bound by changes in Delaware law following his purchase when it comes to the substance of his
22 claims. The Court sees no reason to draw a distinction with respect to the bylaw provision.
23 While not a derivative action, the circumstances here are analogous to those in *Vaughn*, where a
24 requirement that shareholders in British Virgin Islands corporations receive permission from the
25 high court of that jurisdiction before bringing suit was held to apply to a California lawsuit under
26 the internal affairs doctrine.

27 *In re Facebook, Inc., IPO Securities and Derivative Litigation* (S.D.N.Y. 2013) 922
28 F.Supp.2d 445—which held that a forum selection clause in a certificate of incorporation that did

1 not become effective until *after* the challenged transaction was no bar to plaintiffs' claims—is
2 not to the contrary. (At p. 463.) Here, there is no dispute that the bylaw became effective before
3 the merger was accomplished and before this action was filed.

4 For these reasons, Delaware is the proper forum as to the 1st Century Defendants.
5

6 D. Analysis as to Sandler O'Neill and Propriety of Dismissing the Action
7

8 While not raised by plaintiff, the California Supreme Court has "consistently held that
9 except in extraordinary cases a trial court has no discretion to dismiss an action brought by a
10 California resident on grounds of forum non conveniens," and should instead stay the action so
11 that the court

12 *retains jurisdiction* over the parties and the cause; ... it can compel the foreign
13 party to cooperate in bringing about a fair and speedy hearing in the foreign
14 forum; it can resume proceedings if the foreign action is unreasonably delayed or
15 fails to reach a resolution on the merits. ... In short, the staying court can protect ...
the interests of the California resident pending the final decision of the foreign
court.

16 (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 857-858, internal citations and quotations
17 omitted.) Here, there is no indication that the Delaware courts will not assume jurisdiction over
18 plaintiff's claims; nevertheless, it would be premature to dismiss the action entirely. (See *Auffret*
19 *v. Capitales Tours, S.A.* (2015) 239 Cal.App.4th 935, 940-943 [trial court properly stayed the
20 action so that it could be established whether the French courts would assume jurisdiction, but
21 improperly dismissed it two years later before there was conclusive proof they would].)
22

23 As to Sandler O'Neill, which has been served in this action but has not yet appeared, it is
24 appropriate for the stay to include the derivative claims against this defendant. (See *Cal-State*
25 *Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1674 [affirming trial
26 court, which held that the existence of other parties did not prevent the court from issuing a stay
27 based on a forum selection agreement executed by only one defendant, where the other
28 defendants did not oppose the motion]; *Lu v. Dryclean-U.S.A. of California, Inc.* (1992) 11

1 Cal.App.4th 1490, 1493-1494 [closely-related claims against defendants who were not
2 signatories to a forum selection agreement were appropriately stayed; “[t]o hold otherwise would
3 be to permit a plaintiff to sidestep a valid forum selection clause simply by naming a closely
4 related party who did not sign the clause as a defendant”].) “In the event that plaintiff is unable
5 to obtain jurisdiction over those defendants in [Delaware], plaintiff may apply for a partial lifting
6 of the stay, or a severance of the claim against them.” (*Cal-State Business Products & Services,*
7 *Inc. v. Ricoh, supra*, 12 Cal.App.4th at p. 1674.)
8

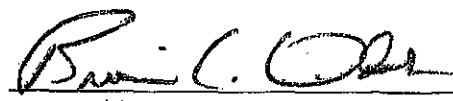
9 In sum, this entire action is appropriately stayed pending the assumption of jurisdiction
10 by the Delaware courts, but is not appropriately dismissed at this juncture. (Code Civ. Proc., §
11 410.30, subd. (a) [in granting forum non conveniens motion “the court shall stay or dismiss the
12 action in whole or in part on any conditions that may be just”]; *Archibald v. Cinerama Hotels,*
13 *supra*, 15 Cal.3d at p. 860 [the “trial court, applying the doctrine of *forum non conveniens*,” has
14 the power “to stay a suit by a California resident even when it lacks the power to dismiss that
15 suit”].)

16
17 E. Conclusion and Order

18 Defendants’ motion is GRANTED IN PART. The entire action is stayed on the ground
19 that Delaware is a more appropriate and just forum for this action in light of 1st Century’s
20 bylaws. The motion is DENIED to the extent defendants seek an immediate dismissal of the
21 action.

22
23 IT IS SO ORDERED.

24
25 Dated: 6-19-17

26 
27 Honorable Brian C. Walsh
28 Judge of the Superior Court