

1 BAKER MARQUART LLP
BRIAN E. KLEIN (258486) (bklein@bakermarquart.com)
2 SCOTT M. MALZAHN (229204) (smalzahn@bakermarquart.com)
DONALD R. PEPPERMAN (109809) (dpepperman@bakermarquart.com)
3 2029 Century Park East, Suite 1600
Los Angeles, CA 90067
4 Telephone: (424) 652-7800
Facsimile: (424) 652-7850
5

COOLEY LLP
6 PATRICK E. GIBBS (183174) (pgibbs@cooley.com)
JEFFREY M. KABAN (235743) (jkaban@cooley.com)
7 SAMANTHA A. KIRBY (307917) (skirby@cooley.com)
3175 Hanover Street
8 Palo Alto, CA 94304-1130
Telephone: (650) 843-5000
9 Facsimile: (650) 849-7400

10 *Attorneys for Defendant*
DYNAMIC LEDGER SOLUTIONS, INC.

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
06/22/2018
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN FRANCISCO CIVIC CENTER COURTHOUSE**

14 ANDREW BAKER, Individually and on Behalf
of All Others Similarly Situated,

15 Plaintiff,

16 v.

17 DYNAMIC LEDGER SOLUTIONS, INC., a
18 Delaware corporation, TEZOS STIFTUNG, a
Swiss foundation, KATHLEEN BREITMAN, an
19 individual, ARTHUR BREITMAN, an individual,
JOHANN GEVERS, an individual, STRANGE
20 BREW STRATEGIES, LLC, a California limited
liability company, and DOES 1-100,
21 INCLUSIVE,

22 Defendants.

Case No.: CGC-17-562144

CLASS ACTION

**DEFENDANT DYNAMIC LEDGER
SOLUTIONS, INC.'S NOTICE OF
MOTION AND MOTION TO STAY ALL
PROCEEDINGS PENDING RESOLUTION
OF PARALLEL FEDERAL CLASS
ACTION; MEMORANDUM OF POINTS
AND AUTHORITIES**

DATE: July 23, 2018

TIME: 9:30 a.m.

DEPT: 302

Reservation No. 06220723-07

Judge: Hon. Harold E. Kahn

Action Filed: October 25, 2017

Trial Date: Unassigned

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 23, 2018, at 9:30 a.m., in Department 302, or as soon
3 thereafter as counsel can be heard at the Civic Center Courthouse, 400 McAllister Street, San
4 Francisco 94102 defendant Dynamic Ledger Solutions, Inc. (“DLS”) will, and hereby does move the
5 Court for an order staying this putative class action pending final resolution of a virtually identical
6 putative class action known as *In Re Tezos Securities Litigation* (the “Consolidated Federal Action”),
7 Master File No. 17-cv-06779-RS, currently being actively litigated before the United States District
8 Court for the Northern District of California (“N.D.C.A.”). This Motion is brought pursuant to this
9 Court’s inherent discretion to stay litigation in the interests of judicial efficiency and comity in
10 deference to a parallel proceeding involving the same subject matter in federal court. *See Farmland*
11 *Irrigation Co., Inc. v. Dopplmaier* (1957) 48 Cal. 2d 208, 215; *see also* Code Civ. Proc.
12 § 418.10(a)(2).

13 The parties met and conferred on the bases for this Motion on [insert date] and were unable
14 to reach an agreement. (Declaration of Scott Malzahn filed concurrently herewith (“Malzahn Decl.”),
15 ¶ Ex. 1.) This Motion is, and will be, based upon the attached Memorandum of Points and Authorities,
16 the Declaration of Scott M. Malzahn, Esq. filed concurrently herewith, the files and records in this
17 action, all matters as to which judicial notice may be taken, and such further evidence and argument
18 as may be offered at or before the hearing of this Motion.

19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //

1 Dated: June 22, 2018

2 **BAKER MARQUART LLP**

3 *s/ Scott M. Malzahn*

4 _____
Scott M. Malzahn (229204)

5
6 Attorneys for Defendant
DYNAMIC LEDGER SOLUTIONS, INC.

7 **COOLEY LLP**

8
9 */s/ Patrick E. Gibbs*

10 _____
Patrick E. Gibbs (183174)

11 Attorneys for Defendant
12 DYNAMIC LEDGER SOLUTIONS, INC.,

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This action filed by plaintiff Andrew Baker (“Baker”) is one of five putative class actions filed
4 in federal or state courts in California, arising from the same operative facts, asserting the same causes
5 of action, and seeking to represent the same putative class. Three of these cases have been
6 consolidated into a single action (captioned *In Re Tezos Securities Litigation* (the “Consolidated
7 Federal Action”), Master File No. 17-cv-06779-RS) before the Honorable Richard Seeborg in the
8 Northern District of California. Like the Consolidated Federal Action, this suit stems from a
9 fundraiser held in July 2017 by defendant Tezos Stiftung (the “Foundation”), a Swiss non-profit
10 formed to promote a new decentralized computer network known as the “Tezos Network” or “Tezos.”
11 Baker alleges (like the plaintiff in the Consolidated Federal Action) that the electronic tokens tied to
12 the Tezos Network (known as XTZ or “Tezzies”) are “securities” and that the fundraiser was an
13 unregistered sale of securities in violation of the Securities Act of 1933. And just as in the
14 Consolidated Federal Action, Baker seeks to represent a putative class of all persons who purchased
15 XTZ.

16 There is no reason for two courts to adjudicate the same claims involving the same class and
17 this Court should use its inherent power to stay these proceedings in the interests of comity and
18 judicial efficiency. As Judge Seeborg has cautioned, given the “novel questions of federal securities
19 law” raised by this case, “the risk is higher here than in the average securities case that parallel state
20 and federal proceedings could produce inconsistent (and even contradictory) conclusions regarding
21 key questions of fact and law.” (Dynamic Ledger Solutions Inc.’s Request for Judicial Notice
22 (“RJN”), Ex. C at 4.) Furthermore, a stay would conserve judicial resources, while causing no
23 detriment to Baker, whose interests are fully represented by the lead plaintiff in the federal suit.
24 Because the Consolidated Federal Action can fully adjudicate Baker’s claims, the Court should stay
25 this action while the Consolidated Federal Action is pending.

1 **II. FACTUAL BACKGROUND**

2 Tezos is a computer network, which, in contrast to traditional computer networks that are run
3 off of centralized services, is decentralized and maintained by various participants in a network of
4 computers. (RJN, Ex. A ¶¶ 2, 5.) The Foundation was originally created to promote the Tezos
5 Network and in July of 2017 held a fundraiser to raise the money needed to continue developing
6 Tezos. (See *id.* ¶¶ 34, 37, 38, 60.) While contributors could possibly receive XTZ tokens after Tezos
7 launched, the Foundation cautioned them in advance that contributions qualified as “non-refundable
8 donation[s]” and XTZ tokens do not represent or constitute any ownership right or stake, share or
9 security or equivalent right in or relating to Tezos. (See *id.* ¶ 64 (referring and quoting to the “terms”
10 of the fundraiser).)

11 The fundraiser was highly successful. Tens of thousands of individual contributors donated
12 over 65,000 Bitcoin and over 300,000 Ether—the equivalent of over \$232 million at the time. (*Id.*
13 ¶ 61.) The Foundation holds title to those funds, which it has used to promote the development of the
14 Tezos Network.

15 **III. PROCEDURAL HISTORY**

16 Following a meteoric rise in the value of Bitcoin and Ether, beginning in October 2017, a few
17 contributors filed a series of putative class actions against the Foundation, Dynamic Ledger Solutions,
18 Inc. (“DLS”) and other defendants seeking a return of the Bitcoin or Ether contributed by putative
19 class members during the fundraiser.

20 **A. The Consolidated Federal Action**

21 To date, the lion’s share of litigation has taken place in federal court. Shortly after the filing
22 of the *Baker* Action, three nearly identical class actions were filed in the Northern District of
23 California. See *GGCC, LLC v. Dynamic Ledger Sols., Inc.*, Case No. 3:17-cv-06779, United States
24 District Court, Northern District of California (filed November 26, 2017) (“*GGCC*”); *Okusko v.*
25 *Dynamic Ledger Sols., Inc.*, Case No. 3:17-cv-06829, United States District Court, Northern District
26 of California (filed November 28, 2017) (“*Okusko*”); and *MacDonald v. Dynamic Ledger Sols., Inc.*,
27 Case No. 3:17-cv-7095, United States District Court, Northern District of California (filed December
28

1 13, 2017) (“*MacDonald I*”). All three of these federal cases were related to each other and assigned
2 to Judge Seeborg. (Declaration of Scott Malzahn (“Malzahn Decl.”) ¶ 3.)

3 Since the filing of these federal lawsuits, the Northern District has spent considerable
4 resources and time on this matter. (Malzahn Decl. ¶ 4.) On December 19, 2017, the Court held a
5 hearing on an *ex parte* application for a temporary restraining order to enjoin the defendants from
6 selling, transferring, converting or otherwise disposing of any assets collected or derived from the
7 fundraiser. (*Id.*) It denied the application in a 7-page written order on December 20, 2017, finding
8 that the movant had failed to show that he is likely to suffer irreparable harm. (*Id.*)

9 On January 25, 2018, five different sets of plaintiffs and law firms moved for appointment as
10 lead plaintiff and lead counsel. (*Id.*, ¶ 5.) On March 16, 2018, Judge Seeborg consolidated *GGCC*,
11 *Okusko* and *MacDonald I* into a single consolidated federal action captioned *In Re Tezos Securities*
12 *Litigation*, Master File No. 17-cv-06779-RS.¹ (*Id.*, ¶ 5 & RJN, Ex. F.) Applying established Ninth
13 Circuit law that governs appointment of a lead plaintiff and lead counsel under the Private Securities
14 Litigation Reform Act (“PSLRA”), Judge Seeborg found that plaintiff Arman Anvari had the “largest
15 financial interest in the litigation” and that his counsel “have substantial experience litigating complex
16 class actions in state and federal court and appear to have obtained favorable results for class members
17 in multiple cases.” (RJN, Ex. F at *5-6.) Accordingly, Judge Seeborg appointed Anvari and his
18 selected counsel, LTL Attorneys LLP and HGT Law, as lead plaintiff and lead counsel.² (*See id.* at
19 *5.)

21
22 ¹ Judge Seeborg declined to consolidate the *Baker* Action because the action was already stayed
pending the *Cyan* decision. (RJN, Ex. F.)

23 ² At present, there is another action pending in California state court that is not directly relevant to
24 this motion. After losing the battle before Judge Seeborg to be appointed lead plaintiff and lead
25 counsel, MacDonald voluntarily dismissed his federal case and re-filed in California state court with
26 co-plaintiff Trigon Trading Party Ltd. *See Trigon Trading Pty., Ltd v. Dynamic Ledger Sols., Inc.*
27 (“*MacDonald II*”), Case No. 18CIV02045, in Superior Court for the State of California, County of
28 San Mateo. On June 4, 2018, DLS moved to stay or abate that case pending resolution of this action
and the Consolidated Federal Action. Malzahn Decl. ¶ 6 n.1. On June 14, 2018, the two co-plaintiffs
in *MacDonald II* filed a Petition for Coordination before the Judicial Council, seeking an order
coordinating *MacDonald II* and the instant *Baker* Action in San Mateo Superior Court. *Id.*

1 On April 3, 2018, Anvari filed the consolidated complaint in the Consolidated Federal Action.
2 (Malzahn Decl. ¶ 7 & RJN, Ex. G.) The Consolidated Complaint names DLS, the Foundation,
3 Kathleen Breitman, Arthur Breitman, Timothy Cook Draper, Draper Associates V. Crypto LLC and
4 Bitcoin Suisse AG as defendants. (RJN, Ex. G.) It asserts two causes of action for violations of
5 Sections 12 and 15 of the Securities Act of 1933 (15 U.S.C. §§ 77e, 77l), alleging that the defendants
6 unlawfully offered “securities” to the public through the fundraiser without filing a registration
7 statement with the Securities and Exchange Commission and that a subset of Defendants are liable
8 under Section 15 as those who “controlled” the Tezos Foundation. (*Id.* & RJN, Ex. G ¶¶ 137-50.)
9 The Consolidated Complaint defines the class as “[a]ll persons and entities who, directly or indirectly
10 through an intermediary, contributed Bitcoin and/or Ethereum to the Tezos Initial Coin Offering
11 conducted in July 2017.” (*Id.* & RJN, Ex. G ¶ 129.)

12 At present, multiple potentially dispositive motions to dismiss are pending before Judge
13 Seeborg, which are scheduled to be heard on July 19, 2018. (Malzahn Decl. ¶ 8 & RJN Ex. H.) The
14 two foreign defendants, the Foundation and Bitcoin Suisse, have moved to dismiss the complaints
15 against them based on lack of personal jurisdiction. (*Id.*) In addition, they and other defendants
16 (including DLS, Mr. Breitman and Mrs. Breitman) have moved to dismiss on forum *non conveniens*
17 grounds due to the existence of a forum selection clause. (*Id.*) All the parties raise other legal
18 challenges related to the failure to properly state claims. (*Id.*)

19 **B. The Baker Action.**

20 As with the federal cases, the *Baker* Action alleges securities violations arising out of the
21 Tezos fundraiser. (Malzahn Decl. ¶ 9 & RJN, Ex. A.) It was filed in San Francisco Superior Court
22 on October 25, 2017. Baker asserts two causes of action arising from alleged violations of federal
23 securities laws and various state level common law and statutory claims. (RJN, Ex. A at Caption).³

24
25 ³ DLS expects that Baker will argue that his causes of action for fraud under Section 17 of the
26 Securities Act and California’s UCL differentiate his case from the Consolidated Federal Action.
27 However, there is no private right of action under Section 17 (*In re Washington Pub. Power Supply*
28 *Sys. Sec. Litig.* (9th Cir. 1987) 823 F.2d 1349, 1354 (“In face of the plain language of section 17(a),
there is no reason to infer a private remedy”) and California’s UCL does not apply to securities
transactions (*Bowen v. Ziasun Techs., Inc.* (2004) 116 Cal. App. 4th 777, 788 (“we conclude that

1 Baker seeks to represent a class consisting of “[a]ll natural persons who purchased Tezzies during the
2 ICO⁴ conducted by Defendants in July 2017.” (*Id.*, Ex. A ¶ 19.)

3 On November 29, 2017, DLS removed the *Baker* Action to federal court. (Malzahn Decl.
4 ¶ 10.) Baker then filed a motion to remand. (*Id.* & RJN, Ex. B.) On February 1, 2018, Judge Seeborg
5 denied the motion to remand without prejudice and instead stayed the case pending a decision from
6 the Supreme Court in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, No. 15-1439. (*Id.* &
7 RJN, Ex. C at 4-5.) Judge Seeborg reasoned that a stay was particularly appropriate due to the novel
8 questions of federal law presented by the related class actions:

9 [T]his case involves novel questions of federal securities law. The Tezos-related
10 actions currently pending before this Court are among the first to apply federal
11 securities laws to cryptocurrency assets. There is no extensive body of federal law
12 for the San Francisco County Superior Court to apply should this case be remanded.
Thus, the risk is higher here than in the average securities case that parallel state
and federal proceedings could produce inconsistent (and even contradictory)
conclusions regarding key questions of fact and law.

13 (*Id.*, Ex. C at 4.) The Court ruled that Baker “may refile his motion, if appropriate, within twenty-
14 one (21) days of the Supreme Court issuing its opinion in *Cyan*.” (*Id.* & RJN, Ex. C at 5.)

15 After the Supreme Court’s decision in *Cyan*,⁵ on April 19, 2018, Judge Seeborg remanded the
16 *Baker* Action. (Malzahn Decl., ¶ 11 & RJN, Ex. D.) Judge Seeborg again cautioned that “remanding
17 the case creates the risk that parallel state and federal proceedings could produce inconsistent (and
18 even contradictory) conclusions regarding key questions of fact and law.” (*Id.* & RJN, Ex. D at 3.)

19
20
21
22 section 17200 does not apply to securities transactions”). Baker cannot use unsustainable causes of
action to differentiate his case.

23 ⁴ Baker and the plaintiffs who followed him erroneously refer to the fundraiser as an “initial coin
offering” or ICO.

24 ⁵ In *Cyan Inc. v. Beaver County Employees Retirement Fund* (2018) 138 S. Ct. 1061, the Supreme
25 Court was asked to consider whether the Securities Litigation Uniform Standards Act of 1998
26 (“SLUSA”) stripped state courts of jurisdiction over certain securities class actions and empowered
defendants to remove such actions from state to federal court. It answered both questions in the
27 negative, holding that SLUSA “leaves in place state courts’ jurisdiction over 1933 Act claims,
including when brought in class actions.” *Id.* at 1069. The *Cyan* court was not asked to consider and
28 did not address a state court’s power to stay an action in deference to an earlier filed action in state or
federal court.

1 On May 29, 2018, this Court received the record in the *Baker* Action on remand. (*Id.*, ¶ 12 &
2 RJN, Ex. E.) DLS now moves to stay this action pending resolution of the Consolidated Federal
3 Action. (*Id.*)

4 **IV. ARGUMENT**

5 **A. This Action Should Be Stayed Pending Resolution of a Parallel Consolidated**
6 **Federal Action Based on Judicial Efficiency and Principles of Comity.**

7 This Court should stay this action to conserve resources, mitigate the risk of contradictory
8 rulings, and avoid unseemly conflicts with the federal court. As noted above, Baker seeks to represent
9 the same class and brings essentially the same claims as the court-appointed Lead Plaintiff in the
10 Consolidated Federal Action. Where a federal action has been filed covering the same subject matter
11 as is involved in a California action, the California court has the discretion to stay the state court
12 action. *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal. App. 4th 800, 804
13 (citing *Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal. 2d 208); *see also* Code Civ. Proc. §
14 418.10(a)(2). To determine whether a stay is appropriate, California courts consider the *Farmland*
15 factors:

16 (1) [T]he importance of discouraging multiple litigation designed solely to harass
17 an adverse party; (2) [the importance] of avoiding unseemly conflicts with the
18 courts of other jurisdictions, and (3) whether the rights of the parties can best be
19 determined by the court of the other jurisdiction because of the nature of the subject
matter, the availability of witnesses, or the state to which the proceedings in the
other courts have already advanced.

20 *Farmland*, 48 Cal. 2d at 215. These factors guide the court “to avoid a multiplicity of suits and
21 prevent vexatious litigation, conflicting judgments, confusion and unseemly controversy between
22 litigants and courts.” *Simmons v. Superior Court* (1950) 96 Cal. App. 2d 119, 125. Each of these
23 three factors militate a stay of this action.

24 **1. A Stay of This Action in Deference to the More Advanced Consolidated Federal**
25 **Action Will Prevent Unnecessary Harassment and Duplication of Effort.**

26 This action should be stayed to prevent unnecessary and burdensome harassment of
27 defendants with multiple class action lawsuits. If this Court denies a stay, the parties will be forced
28

1 to conduct overlapping discovery in multiple fora and the same motions will be briefed and argued
2 multiple times before different judges. It is “undoubtedly preferable from the point of view of the
3 judicial system to resolve the instant dispute by one class action rather than by duplicate class actions
4 in two jurisdictions.” *Schneider v. Vennard* (1986) 183 Cal. App. 3d 1340, 1347-48; *see also*
5 *Bancomer, S.A. v. Superior Court* (1996) 44 Cal. App. 4th 1450, 1462 (It is “unreasonable and
6 illogical to have an individual involved in simultaneous litigation in two separate forums over the
7 same issue . . . This outcome violates the principles of judicial economy.”). Moreover, class actions
8 are specifically meant to conserve resources and efficiently adjudicate complex disputes, and
9 allowing this claim to go proceed would defeat the underlying purpose of this vehicle. *See Reese v.*
10 *Wal-Mart Stores, Inc.* (1999) 73 Cal. App. 4th 1225, 1236-38 (trial court properly considered the
11 viability of individual suits, risks of multiple actions, availability of other remedies, and judicial
12 economy in denying certification).

13 Worse still, allowing two actions to proceed in parallel would waste resources to the sole end
14 of benefiting Baker and his lawyers. Baker had the opportunity to participate in the Consolidated
15 Federal Action and chose instead to return to state court —presumably as a strategic maneuver to
16 stake a claim to attorneys’ fees. The Court of Appeals warned against precisely this “potential for
17 misuse” of class actions as “benefits to class members are often nominal and symbolic, with persons
18 other than class members becoming the chief beneficiaries.” *Howard Gunty Profit Sharing Plan v.*
19 *Superior Court* (2001) 88 Cal. App. 4th 572, 579 (quoting *Deposit Guaranty National Bank v. Roper*
20 (1980) 445 U.S. 326, 339). Basic principles of judicial economy accordingly militate in favor of a
21 stay.

22 **2. The Risk of Unseemly Conflict with the Consolidated Federal Action, Especially**
23 **Given the Novel Legal Questions Presented, Weighs Heavily in Support of a**
24 **Stay.**

25 Courts should grant a stay where doing so avoids “unseemly conflicts with the courts of other
26 jurisdictions.” *Caiafa*, 15 Cal. App. 4th at 807 (upholding stay of a state arbitration pending
27 resolution of a federal action where “[t]he potential for ‘unseemly conflict’ is great unless both forums
28

1 should reach the exact same resolution of the issues”); *Simmons*, 96 Cal. App. 2d at 130 (“Courts
2 should not be in collision. . . . It is the duty of the court to give preference to principles and methods
3 of procedure by which the tribunals [of different jurisdictions] may cooperate as harmonious members
4 of the judicial system. . . . A conflict of authority should not occur if it can be avoided.”). Beyond
5 the risk of inter-jurisdiction conflicts, allowing this action to persist despite the pendency of the
6 Consolidated Federal Action would create a chaotic and “unseemly race by each party to trial and
7 judgment in the forum of its choice.” *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng’r*
8 *Co.* (Del. 1970) 263 A.2d 281, 283.

9 The risk of inconsistent or outright contradictory rulings is especially heightened here
10 because, as Judge Seeborg noted, this case presents novel legal questions and there is little existing
11 case law to guide the parties or the courts. (RJN, Ex. C at 4 (“There is no extensive body of federal
12 law for the San Francisco County Superior Court to apply should this case be remanded. Thus, the
13 risk is higher here than in the average securities case that parallel state and federal proceedings could
14 produce inconsistent (and even contradictory) conclusions”).) Judge Seeborg also found that, while
15 the *Cyan* decision forced him to remand the *Baker* action, doing so “creates the risk that parallel state
16 and federal proceedings could produce inconsistent (and even contradictory) conclusions regarding
17 key questions of fact and law.” (*Id.*, Ex. D at 3.) Under these circumstances, principles of comity
18 and judicial efficiency weigh heavily in favor of a stay of this action to avoid unseemly conflict and
19 the risk of inconsistent or contradictory court rulings.

20 **3. The Federal Court Can Best Determine the Rights of the Parties.**

21 In determining if a stay is appropriate, courts also consider the third *Farmland* factor: whether
22 “the rights of the parties can best be determined by the court of the other jurisdiction because (1) of
23 the nature of the subject matter, (2) the availability of witnesses, or (3) the stage to which the
24 proceedings in the other court have already advanced.” 48 Cal. 2d at 215; *see also Caiafa*, 15 Cal.
25 App. 4th at 804. All three sub-factors demonstrate the Northern District of California is best
26 positioned to determine the rights of the parties.

1 First, federal court is the natural choice to resolve this matter, which centers around claims of
2 alleged violations of *federal* securities laws. See *Fox Factory, Inc. v. Superior Court* (2017) 11 Cal.
3 App. 5th 197, 204 (“the interest in trying the case in a forum familiar with the applicable law” is a
4 factor relevant to a stay); *Celotex Corp. v. Am. Ins. Co.* (1987) 199 Cal. App. 3d 678, 685 (affirming
5 order staying action in California in favor of federal actions pending in Ohio where Ohio law would
6 apply to plaintiff’s claims). Consistent with Congress’s intent to place securities class actions in the
7 hands of investors with the greatest financial incentive to prosecute the case (15 U.S.C. § 77z-
8 1(a)(3)(B)(iii)), Judge Seeborg has appointed Arman Anvari as lead plaintiff to manage the class
9 litigation on behalf of the putative class. In contrast to Baker who allegedly contributed a single
10 Bitcoin (worth about \$2,800 at the time) to the Tezos fundraiser (RJN, Ex. A ¶ 22), Anvari contributed
11 more than 17 times that amount to the fundraiser. See RJN, Ex. F at *4-5 (stating that Anvari
12 contributed 250 Ether worth approximately \$49,467.50 at the time of the fundraiser). It is difficult to
13 see how Baker should be permitted to pursue the same federal claims on behalf of the same class in
14 state court given his far lower financial interest in the case.

15 Second, the fact that the Consolidated Federal Action is pending in the Northern District of
16 California, only miles away from this Court, is a “critical” factor weighing in favor of a stay because
17 the federal action is “of equal convenience to parties and witnesses.” *Caiafa*, 15 Cal. App. 4th at 804,
18 807 (“so important [is this factor that] it accounted for several . . . decisions which appeared to make
19 a stay of the state court proceedings a matter or right [rather than] discretion”). Like the situation
20 here, *Caiafa* gave great weight to the fact that the action “is pending in the Southern District of
21 California, not in some other state.” *Id.* Given what the California Supreme Court has called the
22 “strong policy of comity,” this geographic factor weighs heavily in favor of staying this action.
23 *Thomson v. Continental Ins. Co.* (1967) 66 Cal. 2d 738, 747; see also *Caiafa*, 15 Cal. App. 4th at 807.

24 Third, though this action was filed first, the Consolidated Federal Action is at an advanced
25 stage of litigation. In considering whether to stay, courts look at whether “the stage of the proceedings
26 in the other court have already advanced” favors issuance of a stay. *Caiafa*, 15 Cal. App. 4th at 804.
27 The instant action was filed just one month before the first federal action was filed, was served on
28

1 just one defendant (DLS), and was then stayed. In the meantime, the federal actions have been
2 consolidated, a lead plaintiff has been appointed under the PSLRA, a consolidated complaint has been
3 filed and served on all defendants, and motions to dismiss are scheduled to be heard on July 19.
4 Furthermore, Judge Seeborg is best positioned to navigate these issues as he is already intimately
5 familiar with this dispute and, over the course of the past six months, has issued multiple orders
6 designed to efficiently resolve the multiple class actions that have arisen out of the Tezos fundraiser.
7 (Malzahn Decl. ¶ 8.). Baker’s failure to serve his complaint on the Swiss-based Tezos Foundation
8 could lead to even longer delays in this action due to the service of process rules applicable to foreign
9 defendants.

10 Finally, Baker would not be prejudiced by a stay for any other reason. This action would not
11 be dismissed; instead, this Court would retain jurisdiction and temporarily halt proceedings pending
12 resolution of the Consolidated Federal Action. Moreover, a stay would not deny the class the relief
13 it seeks. *See, e.g., Simmons*, 96 Cal. App. 2d at 131 (finding no prejudice where remedy available in
14 duplicative action was “equally as effective and advantageous as any that may be afforded by the
15 California courts”).

16 **V. CONCLUSION**

17 Because all three *Farmland* factors support a stay of this action, this Court should stay this
18 action pending resolution of the Consolidated Federal Action.

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 22, 2018

BAKER MARQUART LLP

s/ Scott M. Malzahn
Scott M. Malzahn (229204)

Attorneys for Defendant
DYNAMIC LEDGER SOLUTIONS, INC.

COOLEY LLP

/s/ Patrick E. Gibbs
Patrick E. Gibbs (183174)

Attorneys for Defendant
DYNAMIC LEDGER SOLUTIONS, INC.,

179261325

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and a resident of the State of California. I am employed in
3 San Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of 18 years and not a party to this action. My
5 business address is Cooley LLP, 101 California Street, 5th Floor, San Francisco, California 94111-
6 5800. My e-mail address is avera@cooley.com. On June 22, 2018, I served the following documents
7 on the parties listed below in the manner(s) indicated:

- 8
- 9 **1. DEFENDANT DYNAMIC LEDGER SOLUTIONS, INC.’S NOTICE OF MOTION AND MOTION TO**
 - 10 **STAY ALL PROCEEDINGS PENDING RESOLUTION OF PARALLEL FEDERAL CLASS ACTION;**
 - 11 **MEMORANDUM OF POINTS AND AUTHORITIES;**
 - 12 **2. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT DYNAMIC LEDGER**
 - 13 **SOLUTIONS, INC.’S MOTION TO STAY ALL PROCEEDINGS;**
 - 14 **3. DECLARATION OF SCOTT M. MALZAHN IN SUPPORT OF DEFENDANT DYNAMIC LEDGER**
 - 15 **SOLUTIONS, INC.’S MOTION TO STAY ALL PROCEEDINGS PENDING RESOLUTION OF**
 - 16 **PARALLEL FEDERAL CLASS ACTION;**
 - 17 **4. NOTICE OF PAYMENT FOR COURT REPORTER FEE BY DEFENDANT DYNAMIC LEDGER**
 - 18 **SOLUTIONS, INC.;**
 - 19 **5. [PROPOSED] ORDER GRANTING MOTION TO STAY ALL PROCEEDINGS**

20

21 (BY ELECTRONIC MAIL – CCP § 1010.6(a)(4)(A)) Based on a court order or an
22 agreement of the parties to accept service by e-mail or electronic transmission, I
23 caused such documents described herein to be sent to the persons at the e-mail
24 addresses listed below **via File & ServeXpress**. I did not receive, within a
25 reasonable time after the transmission, any electronic message or other indication
26 that the transmission was unsuccessful.

27 *ServiceList*

28 Andrew Baker, Esq. Lucas Freeman Olts, Esq. Robbins Geller Rudman & Dowd LLP 655 W Broadway Ste #1900 San Diego, CA 92101 Tel: 619-231-1058 Fax: 619-231-7423 Email: bcochran@rgrdlaw.com lolts@rgrdlaw.com	
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Attorneys for Plaintiff Andrew Baker

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 22, 2018, at San Francisco, California.



Adriana R. Vera