

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

_____)	
SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	Plaintiff,
v.)	
)	Civil Action No. 21-cv-00260
LBRY, INC.,)	
)	Defendant.
_____)	

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S
MOTION FOR JUDGMENT ON THE PLEADINGS
ON DEFENDANT’S AFFIRMATIVE DEFENSE OF SELECTIVE ENFORCEMENT**

Pursuant to Fed. R. Civ. P. 12(c), plaintiff Securities and Exchange Commission respectfully asks the Court to grant it judgment on the pleadings dismissing defendant LBRY, Inc.’s Third Defense of selective enforcement. The Commission’s grounds for this relief are set forth fully in its Memorandum of Law, submitted with this Motion. In sum, LBRY’s affirmative defense fails because the Commission’s decision to investigate and file an enforcement action against LBRY is discretionary, delegated to the Commission in the Securities Act and not subject to judicial review as a “class-of-one” equal protection defense. And LBRY pleaded facts in its Answer establishing that it is *not* a class of one. LBRY’s Answer admits that the Commission has brought more than 40 actions against similarly situated defendants, defeating LBRY’s claim

that it has been singled out as a class of one. For these reasons, LBRY's Third Defense is not legally or factually viable and should be dismissed through judgment on the pleadings.

Dated: July 12, 2021

Respectfully submitted,

**SECURITIES AND EXCHANGE
COMMISSION**

By its Attorneys,

/s/ Marc Jones
Marc Jones (Mass Bar No. 645910)
Eric A. Forni (Mass. Bar No. 669685)
Peter B. Moores (Mass Bar No. 658033)
Senior Enforcement Counsel
Boston Regional Office
33 Arch Street
Boston, MA 02110
(617) 573-8947 (Jones direct)
jonesmarc@sec.gov

CERTIFICATE OF SERVICE

I hereby certify that, on July 12, 2021, I caused true and correct copies of the foregoing to be served on counsel of record for all parties that have appeared to date through the Court's CM/ECF system.

/s/ Marc Jones
Marc Jones