

No. 22-105

IN THE
Supreme Court of the United States

COINBASE, INC.,
Petitioner,

v.

ABRAHAM BIELSKI,
Respondent.

COINBASE, INC.,
Petitioner,

v.

DAVID SUSKI, *et al.*,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth
Circuit**

SUPPLEMENTAL BRIEF FOR PETITIONER

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Pursuant to Supreme Court Rule 15.8, Coinbase files this supplemental brief to inform the Court of a development in the district court proceedings in *Suski*, one of the two separate cases presented for review in Coinbase’s Joint Petition.

ARGUMENT

In this Joint Petition, Coinbase seeks review of Ninth Circuit orders in two cases—*Bielski* and *Suski*—refusing to grant a stay pending appeal from the district court’s denial of Coinbase’s motion to compel arbitration. The Joint Petition implicates an entrenched and widely acknowledged circuit split over whether district courts are divested of jurisdiction to proceed with the merits when a party appeals the denial of a motion to compel arbitration.

As the *Suski* litigation proceeded in district court pending this Court’s consideration of the Joint Petition, the parties agreed to extend certain filing deadlines and to pause discovery pending appeal. The parties stipulated that their agreement “should have no effect on the Supreme Court’s consideration of the Joint Petition and whether Supreme Court review is warranted.” Supp. App. 3a. On November 14, the district court in *Suski*, despite having previously denied Coinbase’s motion for a stay, went further than the parties had proposed and issued an order (attached as a supplemental appendix) staying district court proceedings “pending the appeal before the Ninth Circuit.” *Id.* at 4a.

This stay order in *Suski* does not implicate this Court’s consideration of the question presented in the Joint Petition. The stay order does not affect *Bielski* in any respect. *Bielski* is an unrelated matter before

a separate district court judge. The district court in *Bielski* has not imposed a stay, and the parties in *Bielski* continue to engage in active litigation in district court. Coinbase continues to suffer harm from the lack of an automatic stay in *Bielski* while its arbitrability appeal proceeds in the Ninth Circuit, and the Court's review remains necessary to remedy that harm.

Even as to *Suski*, the district court's stay order does not moot Coinbase's petition because it does not entirely preclude district court proceedings pending appeal. Should a panel of the Ninth Circuit affirm the district court's refusal to compel arbitration in *Suski*, the district court's stay would not necessarily extend to the disposition of a petition by Coinbase for rehearing in the Ninth Circuit or for certiorari in this Court. By contrast, if this Court were to hold that the district court lacks jurisdiction during the pendency of Coinbase's arbitrability appeal, a stay would be mandatory through rehearing proceedings and any proceedings in this Court.

Coinbase filed this Joint Petition presenting two separate vehicles in part to ensure that, even if an unforeseen complication arose as to one, it would not prevent this Court's review. Thus, even if the Court were to conclude that the grant of a stay would complicate review of *Suski*, this Court could grant review in *Bielski* and hold *Suski* in abeyance pending its disposition of *Bielski*.

The developments in the *Suski* district court underscore that certiorari is warranted. As Coinbase explained in its Joint Petition (at 27), the question presented is particularly susceptible to mootness given

the risk that ongoing lower court proceedings will interfere with this Court's ability to reach the merits. Indeed, in two petitions two Terms ago, after the petitioner sought review of this same question, respondents reversed course and agreed to a stay of district court proceedings pending appeal rather than allowing this Court to resolve the question. *See PeopleConnect, Inc. v. Callahan*, No. 21-885 (cert. petition filed on Dec. 13, 2021 and dismissed pursuant to Rule 46 on Dec. 23, 2021); *PeopleConnect, Inc. v. Knapke*, No. 21-725 (cert. petition filed on Nov. 12, 2021 and dismissed pursuant to Rule 46 on Dec. 1, 2021).

This Joint Petition remains an excellent vehicle to address an important question that arises frequently in lower courts but tends to evade this Court's review. If the Court grants certiorari, Coinbase would be prepared to brief the case expeditiously to ensure the case can be heard and decided this Term.

CONCLUSION

The Court should grant Coinbase's Joint Petition. Alternatively, the Court should grant certiorari in *Bielski* and hold *Suski* pending the Court's disposition of *Bielski*.

Respectfully submitted,

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November 2022

SUPPLEMENTAL APPENDIX

SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Filed November 14, 2022]

Case No. 3:21-cv-04539-SK

DAVID SUSKI, JAIMEE MARTIN, JONAS CALSBEEK, and
THOMAS MAHER, Individually and On Behalf of All
Others Similarly Situated, et al.,

Plaintiffs,

v.

COINBASE, INC. and MARDEN-KANE, INC., et al.,

Defendants.

STIPULATION AND ORDER TO EXTEND TIME
OF CERTAIN CASE DEADLINES AND EVENTS

Pursuant to Local Civil Rules 6-1(b), 6-2, and 7-12, Plaintiffs and Defendants Coinbase, Inc. (“Coinbase”) and Marden-Kane, Inc. (“Marden-Kane”) stipulate as follows:

WHEREAS, on September 21, 2022, following the Court’s August 31, 2022 Order resolving Defendants’ motions to dismiss or compel arbitration of the Third Amended Complaint (Dkt. 113), the Court issued an Order Regarding Case Schedule setting pre-trial deadlines and events in this litigation (ECF No. 120);

WHEREAS, on February 11, 2022, Coinbase filed a Notice of Appeal from the Court’s January 11, 2022

order denying Coinbase's motion to compel arbitration (ECF No. 53), docketed with the Ninth Circuit as Appeal No. 22-15209;

WHEREAS, oral argument before the Ninth Circuit in Coinbase's Appeal No. 22-15209 is currently set for November 18, 2022;

WHEREAS, on September 30, 2022, Marden-Kane and Coinbase filed Notices of Appeal from the Court's August 31, 2022 Order (ECF Nos. 122, 123), docketed with the Ninth Circuit as Appeal Nos. 22-16508 and 22-16506;

WHEREAS, the United States Supreme Court currently has under consideration Coinbase's Joint Petition for Writ of Certiorari (Docket No. 22-105) in this case and in *Coinbase v. Bielski* (Ninth Circuit Appeal No. 22-15566), presenting the question whether, contrary to the Ninth Circuit's approach, a non-frivolous appeal of the denial of a motion to compel arbitration ousts a district court's jurisdiction to proceed with litigation pending that appeal;

WHEREAS, counsel for Plaintiffs stated to the Supreme Court in Plaintiffs' October 31, 2022 Response In Support of Granting Coinbase's Joint Petition for Writ of Certiorari that the Supreme Court should grant Coinbase's Joint Petition on this question "of nationwide importance";

WHEREAS, the parties agree that, in light of the multiple proceedings presently before the Ninth Circuit and Supreme Court, judicial economy and efficiency would be best served by extending current deadlines and events in the District Court litigation pending the Ninth Circuit's decision on Coinbase's first appeal, Appeal No. 22-15209, with the parties agreeing not to undertake further discovery until the

Ninth Circuit issues its decision on Coinbase's first appeal;

WHEREAS, the parties agree that a stipulated extension of deadlines as proposed herein and their agreement not to undertake further discovery until the Ninth Circuit issues its decision on Coinbase's first appeal should have no effect on the Supreme Court's consideration of the Joint Petition and whether Supreme Court review is warranted;

WHEREAS, the Court has previously modified the case schedule pursuant to the parties' joint stipulations on the following dates: August 24, 2021 (ECF No. 21), September 24, 2021 (ECF No. 30), October 20, 2021 (ECF No. 35), December 9, 2021 (ECF No. 44), January 26, 2022 (ECF No. 55), February 7, 2022 (ECF No. 57), May 20, 2022 (ECF No. 85), and July 14, 2022 (ECF No. 95);

WHEREAS, the parties intend to confer following the Ninth Circuit's decision on Coinbase's first appeal, Appeal No. 22-15209, regarding the status of the other Ninth Circuit and Supreme Court proceedings to determine whether the parties believe any further proposed adjustments to this Court's case schedule are warranted:

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED that certain deadlines and events in the September 21, 2022 Order Regarding Case Schedule (ECF No. 120) be extended, subject to this Court's approval, pending the Ninth Circuit's resolution of Coinbase's first appeal, Appeal No. 22-15209, to be argued on November 18, 2022. Specifically, the parties respectfully request that the Court enter an order extending the deadlines and events set forth in ECF No. 120 as follows:

Alternative Dispute Resolution (current deadline March 24, 2023): 200 days after the mandate has issued in Ninth Circuit Appeal No. 22-15209;

Plaintiffs' motion for class certification (current deadline April 28, 2023): 235 days after the mandate has issued in Ninth Circuit Appeal No. 22-15209;

Defendant's opposition to class certification motion (current deadline May 26, 2023): 263 days after the mandate has issued in Ninth Circuit Appeal No. 22-15209;

Plaintiffs' reply supporting class certification motion (current deadline June 16, 2023): 284 days after the mandate has issued in Ninth Circuit Appeal No. 22-15209;

Hearing on motion for class certification (currently scheduled for July 10, 2023): approximately 310 days after the mandate has issued in Ninth Circuit Appeal No. 22-15209 (to be scheduled at the Court's convenience).

Close of fact discovery (current deadline October 20, 2023): 400 days after the mandate has issued in Ninth Circuit Appeal No. 22-15209.

* * *

ORDER

Pursuant to the parties' stipulation, the Court **HEREBY VACATES** all deadlines and **STAYS** this matter pending the appeal before the Ninth Circuit (Appeal No. 22-15209). The parties are directed to file joint status updates regarding the appeal every 90 days or within 10 days of the Ninth Circuit issuing an

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opinion in Ninth Circuit Appeal No. 22-15209, which-
ever is sooner.

IT IS SO ORDERED.

Dated: November 14, 2022

/s/ Sallie Kim
Hon. Sallie Kim
United States Magistrate Judge