

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

JOINT APPENDIX – VOLUME I OF II

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA

[Filed November 19, 2021]

Case No. 3:21-cv-07478-WHA

ABRAHAM BIELSKI, on behalf of himself and all others similarly situated,

Plaintiff,

v.

COINBASE, INC.,

Defendant.

SECOND AMENDED CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Abraham Bielski (“Plaintiff”), by and through his attorney, brings this nationwide class action against Defendant Coinbase, Inc. (“Coinbase”) pursuant to the Electronic Funds Transfer Act, 15 USC § 1693 *et seq.* (“EFTA”) and 12 C.F.R. §§ 1005.1–1005.20 (“Regulation E” of the EFTA).

NATURE OF THE ACTION

1. Coinbase is a wholly-owned subsidiary of publicly-traded entity Coinbase Global, Inc., in the business of, *inter alia*, operating an exchange on which

Coinbase users can buy and sell various cryptocurrencies and fiat currencies using their Coinbase accounts, or electronic “wallets,” which are typically funded and de-funded via electronic transfers to and from Coinbase users’ banks.

2. As the cryptocurrency market has increased in popularity and participation, Coinbase users have increasingly become the target of hackers who have breached Coinbase security and made unauthorized transfers of funds – whether in the form of cryptocurrency or fiat currency – from Coinbase users’ accounts to the hackers’ electronic wallets.¹

3. In response to widespread instances of unauthorized electronic fund transfers on the Coinbase exchange, Coinbase has done nothing for a vast number of Coinbase users, including Plaintiff.² More

¹ The owner of an electronic wallet can, for example, use cryptocurrency directly to pay for goods or services from vendors who accept payment in cryptocurrency, or they can trade the cryptocurrency on an exchange (like Coinbase) for fiat currency.

² Four days after this case was originally filed, Coinbase apparently refunded approximately 6,000 Coinbase users in the amount of the value of assets stolen from their accounts, valued at the time said assets were stolen. *See* First Amended Complaint, Exh. 1. For these users, Coinbase has acknowledged that the thefts from their accounts were a result of “third parties [who] took advantage of a flaw in Coinbase’s SMS Account Recovery Process” and Coinbase apparently issued the refunds in response to its culpability. *Id.* These users are nonetheless included in the class definitions, as they would still be able to seek under the EFTA any unpaid compensatory damages (*e.g.*, the value of asset appreciation up to the time refunds were issued), as well as treble damages, statutory damages, attorneys’ fees, costs, and interest. *See* 15 U.S.C. § 1693m(e) (safe harbor applies only to complete

specifically, Coinbase – a “financial institution” as defined by the EFTA – has failed to undertake its responsibilities to remedy unauthorized electronic fund transfers under the EFTA and Regulation E by, for example, failing to timely and in good faith investigate fraudulent transfers, and failing to timely credit and/or provisionally recredit, or credit and/or provisionally recredit at all, users’ accounts pending investigation. Coinbase users have repeatedly implored Coinbase to help them rectify the unauthorized transfers from their accounts, but Coinbase has routinely and repeatedly effectively ignored such requests, instead relying on automated responses that have not specifically addressed Coinbase users’ concerns and have not provided timely, meaningful customer service. For many months, and continuing today, Coinbase has largely turned a blind eye to the systemic breaches of security on its exchange, leaving affected Coinbase users without recourse, short of litigation, to correct these issues. Indeed, a CNBC article titled “Coinbase slammed for what users say is terrible customer service after hackers drain their accounts” documents users’ experiences with Coinbase, and specifically regarding unauthorized transfers of funds.³

4. Moreover, Coinbase has failed to comply with the EFTA and Regulation E by failing to timely provide affected Coinbase users with information concerning the status of the unauthorized electronic transfers from their accounts upon request, and has

remedial action taken before an EFTA action is filed); *see also Cobb v. PayLease LLC*, 34 F.Supp.3d 976, 985 (D.Minn.,2014).

³ See <https://www.cnbc.com/2021/08/24/coinbase-slammed-for-terrible-customer-service-after-hackers-drain-user-accounts.html>

failed to comply with Regulation E by failing to provide all Coinbase users with initial disclosures required by Regulation E.

5. Accordingly, Plaintiff seeks, on behalf of all Class Members (as defined below), compensatory damages, treble damages, statutory damages, attorneys' fees, costs of suit, interest, and any other relief the Court deems appropriate.

JURISDICTION

6. This Court has federal question subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 because this action is brought pursuant to the Electronic Funds Transfer Act of 1978, 15 U.S.C. § 1693, *et seq.*

7. The Court also has jurisdiction over the action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because there exists minimal diversity between Class Members and one or more Defendant and because the amount in controversy exceeds \$5,000,000, exclusive of interests and costs.

VENUE

8. This Court is the proper venue for this matter pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and Coinbase has substantial and systematic contacts in this District as alleged in further detail below.

9. Assignment is proper to the San Francisco or Oakland Division of the Northern District of California under Civil L.R. 3-2(c) and (d) because a substantial part of the events or omissions that gave rise to Plaintiff's claims occurred in San Francisco County.

THE PARTIES

10. Plaintiff Bielski is a citizen of Florida, residing in Duval County.

11. Coinbase is a Delaware company in the business of, *inter alia*, operating cryptocurrency exchanges and other related businesses around the world via its website and cellular phone application. While Coinbase claims to have no physical headquarters, it has its principal place of business in San Francisco, California, maintains its executive offices in San Francisco, California, is registered with the Secretary of State of California, has an agent for service of process in California, and, on information and belief, pays taxes to the State of California.

BACKGROUND

12. In May 2021, Plaintiff opened an account with Coinbase for the purpose of buying and selling cryptocurrencies for his personal use.

13. On September 8, 2021, Plaintiff realized that an unauthorized electronic transfer had been made from his Coinbase account to an unknown third party. Specifically, the third party electronically transferred USD 31,0309.06 out of Plaintiff's account. Plaintiff immediately notified Coinbase customer service of the unauthorized transfer, but Coinbase customer service did not make any good faith efforts to engage with Plaintiff about his dispute or otherwise attempt to resolve the dispute, one way or another, in a good faith manner.

14. Plaintiff has not been refunded any of his money, and Plaintiff is informed and believes that neither he nor any other Class Member (as defined

herein) have received the full relief sought in this action.

FIRST CLAIM
VIOLATION OF THE ELECTRONIC FUNDS
TRANSFER ACT
15 U.S.C. § 1693 *et seq.*
On Behalf of all Class Members against
Coinbase

15. Plaintiff, on behalf of himself and all other Class Members, as defined below, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

A. Legal Framework of the EFTA

16. The EFTA and its corresponding regulations implemented by the Consumer Financial Protection Bureau (“CFPB”), 12 C.F.R. § 1005.1, *et seq.* were designed with the “primary objective” of “the provision of individual consumer rights.” 15 U.S.C. § 1693; 12 C.F.R. § 1005.1(b) (the “primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers and remittance transfers.”).

17. Relevant definitions:

- a. A “financial institution” includes banks and credit unions, as well as “any other person who, directly or indirectly, holds an account belonging to a consumer.” 15 U.S.C. § 1693a(9). A “person” includes “a natural person or an organization, including a corporation...” 12 CFR § 1005.2(j).

b. An “account” includes any consumer asset account held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes. 15 U.S.C. § 1693a(2); *see also* 12 CFR § 1005.2(j).

c. A “consumer” is defined as a “natural person.” 15 U.S.C. § 1693a(6).

d. An “error” includes, *inter alia*, an “unauthorized electronic fund transfer.” 15 § 1693f(f)(1); 12 C.F.R. § 1005.11(a)(vii).

e. An “unauthorized electronic fund transfer” is defined as “an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit.” 15 U.S.C. § 1693(a)(12); *see also* 15 C.F.R. § 1005(m). The CFBP (as well as the Board of Governors of the Federal Reserve System) have specifically stated that “[a]n unauthorized [electronic funds transfer] includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.” *See* 12 C.F.R. § 205, Supp. I at 2(m) (Board of Governors’ Official Interpretation of § 205.2(m)); 12 C.F.R. § 1005, Supp. I at 2(m) (CFPB’s Official Interpretation of § 1005.2(m)); *see also Green v. Capital One, N.A.*, 2021 WL 3810750, at *3 (S.D.N.Y., 2021).⁴

⁴ The definition of “unauthorized electronic fund transfer” under § 1693(a)(12) and § 1005(m) excludes any electronic fund transfer initiated by a person other than the consumer who was

f. An “electronic fund transfer” includes any transfer of funds initiated through a computer. While the definition does not include any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is regulated by the Securities and Exchange Commission (“SEC”) or the Commodity Futures Trading Commission (“CFTC”) or is purchased or sold through a broker-dealer regulated by the SEC or through a future commission merchant regulated by the CFTC, the “primary purpose” of the transfers of funds at issue in this action is not the purchase or sale of a security or commodity, but rather outright theft. Indeed, CFPB has made clear that this “Securities Exemption” applies to, for example, a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call, but *not* a transfer involving an access device that accesses a securities or commodities account that a consumer uses for purchasing goods or services or for obtaining cash (*i.e.*, a Coinbase account). 12 C.F.R. § 1005, Supp. I at 3(c)(4).

18. The error resolution subpart of the EFTA provides, in relevant part, that if a financial institution, within sixty days after having transmitted to a consumer notice of an electronic funds transfer, receives

furnished with the card, code, or other means of access to such consumer’s account by such consumer. The CFPB and Board of Governors have confirmed that this exclusion does not encompass situations where a consumer technically furnishes to a third party his or her means of access to an account, but due to fraud, threat, or force.

oral or written notice in which the consumer (1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer; (2) indicates the consumer's belief that the documentation, contains an error and the amount of such error; and (3) sets forth the reasons for the consumer's belief that an error has occurred, the financial institution must investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. 15 U.S. Code § 1693f(a)(3); *see also* 12 C.F.R § 205.11; *see also* Supp. I to § 205 at 11(b)(1) (a notice of error is effective so long as the financial institution is able to identify the account in question); 12 C.F.R. § 1005, Supp. I at 11(b)(1)(1) (same). Notice may be constructive "when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made." 12 C.F.R. 1005.6(b)(5)(iii).

19. If the financial institution determines that an error did occur, it has the option to either (1) timely correct the error, including the crediting of interest where applicable; or (2) timely provisionally recredit the consumer's account for the amount alleged to be in error pending the conclusion of the institution's investigation of the error within ten business days of being notified of the error. 15 U.S. Code § 1693f(c); *see also* 12 C.F.R. § 1005.11. In no circumstance can an investigation be concluded more than forty-five days after receipt of the notice of error, and during the pendency of the investigation, the consumer must be allowed full use of funds provisionally recredited. *Id.*

20. Where a financial institution (1) fails to provisionally recredit a consumer's account within the ten-

day period specified above, and the financial institution (a) did not make a good faith investigation of the alleged error, or (b) did not have a reasonable basis for believing that the consumer's account was not in error; or (2) knowingly and willfully concludes that a consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation, then the consumer shall be entitled to treble damages determined under section 1693m(a)(1).

21. The consumer may be held liable for an unauthorized electronic fund transfer where a financial institution provides the required notices under 15 U.S.C. § 1693c and 12 C.F.R. § 1005.7(b). 15 U.S.C. § 1693g; 12 C.F.R. § 1005.6. Liability of the consumer, if applicable, is limited to \$50 if the consumer notifies the institution within two business days after learning of the loss, or \$500 if the consumer fails to notify the institution within two business days after learning of the loss. *Id.*

B. Factual Allegations

22. Coinbase is a "financial institution" as defined by the EFTA because it is a corporation that holds accounts belonging to consumers, including Class Members' accounts. As stated in Coinbase's User Agreement, Coinbase provides users with (a) "a hosted Digital Currency wallet(s) for holding Digital Currencies ("Digital Currency Wallet"), and (b) a hosted US Dollars ("USD") wallet for holding USD (a "USD Wallet").

23. Class Members are "consumers" as defined by the EFTA because they are natural persons.

24. Class Members' accounts are "accounts" as defined by the EFTA and/or Regulation E because they are asset accounts held directly by Coinbase and established primarily for personal, family, or household purposes. Class Members' accounts are used for such personal purposes – *i.e.*, intended to earn income from appreciating assets – and not for business purposes.

25. The electronic fund transfers at issue have been "unauthorized electronic fund transfers" because they have been initiated by a person other than Class Members by fraud, without actual authority to initiate such transfers, and from which Class Members have received no benefit. The primary purpose of such transfers have not been the purchase or sale of security or commodity, but rather for the purpose of stealing securities or commodities.

26. As described herein, Plaintiff and Class Members have provided timely actual and/or constructive notice to Coinbase of the unauthorized electronic transfers from their accounts. Indeed, Coinbase knew or should have known of the repeated and widespread breaches of its security and subsequent theft of funds, as well as repeated and widespread requests for assistance from numerous Class Members, such that it should have been aware of and prepared to handle inquiries concerning unauthorized electronic transfers from Class Members' accounts, and should have taken steps to monitor its users' accounts for unauthorized transfers.

27. However, Coinbase has failed to timely and in good faith investigate the unauthorized electronic transfers from Class Members' accounts as required by 15 U.S. Code § 1693f(a)(3) and 15 U.S. Code § 1693f(d) by failing to conduct a timely and

reasonable review of its own records. *See* 12 C.F.R. § 205.11(c)(4); *see also* Supp. I to § 205 at 11(c)(4)–5. Indeed, adequate and timely investigations would have easily led Coinbase to the conclusion that fraud had occurred given that Class Members have not authorized the transfers at issue, that the fraudulent transfers have been made to accounts other than those Class Members used to fund their Coinbase accounts, and that these fraudulent transfers have been widely reported as a common issue on the Coinbase exchange. Accordingly, Class Members are entitled to compensatory damages, attorneys’ fees, and costs for Coinbase’s inadequate investigation pursuant to 15 U.S.C. § 1693m(a).

28. Further, Coinbase has failed to timely correct the “errors” (as noted above, statutorily defined to include “unauthorized electronic fund transfers”), or to correct the “errors” at all, in Class Members’ accounts by timely crediting or provisionally recrediting Class Members’ accounts, or crediting or provisionally recrediting Class Members’ accounts at all, after they had been breached and drained of funds. 15 U.S. Code § 1693f(b)-(c). This failure, separately, results in compensatory damages owed to Class Members pursuant to 15 U.S.C. § 1693m(a). Further, because Coinbase has never provided disclosures to Class Members that were compliant with 12 C.F.R. § 1005.7(b), Class Members have no liability for the unauthorized electronic fund transfers under 15 U.S.C. § 1693g and/or 12 C.F.R. § 1005.6.

29. Additionally, because Coinbase has not timely provisionally recredited, or provisionally recredited at all, Class Members’ accounts, and because Coinbase has failed to conduct timely, good faith investigations into the unauthorized transactions that Class

Members have actually or constructively reported by, for example, failing to provide Class Members reasonable access to timely and effective customer service or otherwise engaging in any sort of good faith investigation of unauthorized electronic fund transfers, Coinbase is liable for treble damages under the EFTA.

30. Further, Coinbase is also liable for treble damages under the EFTA because it has not had a reasonable basis for believing Class Members' accounts were not in "error." Instead, Coinbase has failed to use the resources and procedures necessary to timely resolve, or resolve at all, the fraud that has been occurring on Class Members' accounts, thus demonstrating that Coinbase has been unable or unwilling to timely form, or form at all, a reasonable basis for believing Class Members' accounts were not in "error." Moreover, to the extent Coinbase has concluded that Class Members' accounts were not in "error," Coinbase has knowingly and willfully reached that conclusion when that conclusion could not reasonably have been drawn from the evidence available to Coinbase at the time of any investigation.

31. Plaintiff and Class members are therefore entitled to compensatory damages, attorneys' fees, and costs under 15 U.S.C. § 1693m, as well as treble damages under 15 U.S.C. § 1693f(e), on this claim.

SECOND CLAIM
VIOLATION OF EFTA AND REGULATION E
CUSTOMER SERVICE PROVISIONS
15 U.S.C. § 1693f(f)(6); 12 C.F.R. § 1005.11(a)(7)
On Behalf of all Class Members against
Coinbase

32. Plaintiff, on behalf of himself and all other Class Members, as defined below, realleges and

incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

33. The EFTA, 15 U.S.C. § 1693f(f)(6) and Regulation E, 12 C.F.R. § 1005.11(a)(7), (c)⁵ require financial institutions to address “a consumer’s request for additional information or clarification concerning an electronic fund transfer” within ten business days of receiving notice of error, or within 45 calendar days if the financial institution provisionally recredits the consumer’s account, with interest where applicable, within 10 business days of receiving the notice of error.

34. As alleged above, Class Members are “consumers” within the meaning of the EFTA and Regulation E.

35. Coinbase, a “financial institution” as alleged herein, has violated the EFTA and Regulation E by failing to timely provide information or clarification concerning electronic fund transfers, including requests Class Members made to determine whether there were unauthorized electronic transfers from their accounts. *See* 15 U.S.C. § 1693f(f)(6); 12 C.F.R. § 1005.11.

36. Accordingly, Coinbase is liable to Class Members for statutory damages, attorneys’ fees, and costs for this claim pursuant to 15 U.S.C § 1693m.

⁵ Consumers have a private right of action for violations of Regulation E. *See Lussoro v. Ocean Financial Federal Credit Union*, 456 F.Supp.3d 474, 492 (E.D.N.Y., 2020).

THIRD CLAIM
VIOLATION OF REGULATION E NOTICE
REQUIREMENTS
15 U.S.C. § 1693c; 12 C.F.R. § 1005.7
On Behalf of all Class Members against
Coinbase

37. Plaintiff, on behalf of himself and all other Class Members, as defined below, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

38. 15 U.S.C § 1693c and Regulation E, 12 C.F.R. § 1005.7, requires all financial institutions to make the disclosures set forth in § 1005.7(b) before the first electronic fund transfer is made involving a consumer's account.

39. Coinbase, a "financial institution" as alleged herein, has violated Regulation E by failing to provide adequate initial disclosures to Class Members including, as applicable: (1) a summary of Class Members' liability, under 12 CFR § 1005.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers; (2) the telephone number and address of the person or office to be notified when a Class Member believes that an unauthorized electronic fund transfer has been or may be made; (3) Coinbase's business days; (4) the type of electronic fund transfers that Class Members may make and any limitations on the frequency and dollar amount of transfers; (5) any fees imposed by Coinbase for electronic fund transfers or for the right to make transfers; (6) a summary of Class Members' right to receipts and periodic statements, as provided in 12 CFR § 1005.9 of this part, and notices regarding preauthorized transfers as provided in 12 CFR § 1005.10(a) and (d); (7) a

summary of Class Members' right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in 12 CFR § 1005.10(c); (8) a summary of Coinbase's liability to Class Members under section 910 of the Act for failure to make or to stop certain transfers; (9) the circumstances under which, in the ordinary course of business, Coinbase may provide information concerning Class Members' account to third parties; (10) A notice that is substantially similar to Model Form A-3 as set out in appendix A of 12 CFR 1005.1, *et seq.*, concerning error resolution; and (11) a notice that a fee may be imposed by an automated teller machine operator as defined in 12 CFR § 1005.16(a), when a Class Member initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

40. As a result of Coinbase's violation of the notice requirements of 15 U.S.C. § 1693c and Regulation E, Class Members are entitled to statutory damages, attorneys' fees, and costs for this claim pursuant to 15 U.S.C. § 1693m(a).

CLASS ACTION ALLEGATIONS

41. Plaintiff's first claim for compensatory and treble damages and related remedies under the EFTA is brought on behalf of himself and all others similarly situated. This putative class is defined as:

“All Coinbase users who have had funds, including but not necessarily limited to cryptocurrency and/or fiat currency, stolen from them as a result of unauthorized electronic fund transfers from their Coinbase account within

the one-year period immediately preceding the filing of this action.”

42. Plaintiff’s second claim for statutory damages and related remedies pursuant to Coinbase’s violation of the EFTA’s “customer service” provision, 15 U.S.C. § 1693f(e)(6) and Regulation E, 12 C.F.R. § 1005.11(a)(vii), is brought on behalf of himself and all others similarly situated. This putative class is also defined as:

“All Coinbase users who have had funds, including but not necessarily limited to cryptocurrency and/or fiat currency, stolen from them as a result of unauthorized electronic fund transfers from their Coinbase account within the one-year period immediately preceding the filing of this action.”

43. Plaintiff’s third claim for statutory damages and related remedies pursuant to Coinbase’s violation of the disclosure provisions of Regulation E, 12 C.F.R. § 1005.7, is brought on behalf of himself and all others similarly situated. This putative class is defined as:

“All Coinbase users within the one-year period immediately preceding the filing of this action.”

A. ASCERTAINABILITY

44. Plaintiff is informed and believes that the identities of Class Members are ascertainable through Coinbase’s records.

B. NUMEROSITY

45. Plaintiff is informed and believes that there are thousands of Class Members, and it would be impracticable to bring them all before the Court.

C. COMMONALITY

46. Questions of law and fact common to Class Members include, but are not necessarily limited to: (1) whether Coinbase has complied with the investigation and error resolution requirements of the EFTA and/or Regulation E in connection with the unauthorized electronic transfer of funds from Class Members' accounts; (2) whether Coinbase has made timely, good faith investigations of unauthorized electronic fund transfers, or has not had a reasonable basis for believing Class Members' accounts were not in error, or has knowingly and willfully concluded that Class Members' account were not in error when such conclusion could not reasonably have been drawn from the evidence available to Coinbase at the time of its investigation, if any; (3) whether Coinbase has timely complied with the customer service provisions of the EFTA and/or regulation E in connection with the unauthorized electronic transfer of funds from Class Members' accounts; and (4) whether Coinbase has complied with the disclosure requirements of the EFTA and/or Regulation E.

47. Issues common to the class can be resolved with classwide evidence, including, for example, evidence that (1) Coinbase has not timely, and in good faith, investigated and/or credited or provisionally credited any Class Members' compromised accounts; (2) that Coinbase has not taken timely, good faith steps to investigate the unauthorized electronic fund transfers or has not taken timely, good faith steps to form a reasonable basis for believing Class Members accounts were not in error; (3) that Coinbase has not provided timely, good faith customer service to Class Members; and (4) that Coinbase has not provided adequate Regulation E disclosures to any Class Members.

D. TYPICALITY

48. Plaintiff's claims are typical, if not identical, to the claims that could be asserted by all Class Members, as Plaintiff's statutory claims arise from Coinbase's practices applicable to all Class Members as described herein.

E. ADEQUACY

49. Plaintiff is a member of all proposed Classes and will adequately represent the interests Class Members because there are no conflicts between Plaintiff and any Class Members and because Plaintiff's counsel has the experience and skill to zealously advocate for the interests of Class Members.

F. PREDOMINANCE

50. Common issues predominate over individualized inquiries in this action because Coinbase's liability under the EFTA, Regulation E, can be established as to all Class Members as discussed herein.

G. SUPERIORITY

51. There are substantial benefits to proceeding as a class action that render proceeding as a class superior to any alternatives, including the fact that it will provide a realistic means for Class Members to recover damages; it would be substantially less burdensome on the courts and the parties than numerous individual proceedings; many Class Members may be unaware that they have legal recourse for the conduct alleged herein; and because issues common to Class Members can be effectively managed in a single proceeding.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- a. Certification of this action as a class action;
- b. Designation of Plaintiff as representative of the putative Classes;
- c. Designation of Plaintiff's counsel as counsel for the putative Classes;
- d. Compensatory damages pursuant to the EFTA, 15 U.S.C. § 1693(m);
- e. Treble damages pursuant to the EFTA, 15 U.S.C. § 1693(f);
- f. Statutory damages pursuant to the EFTA, 15 U.S.C. § 1693(m);
- g. Attorneys' fees pursuant to the EFTA, 15 U.S.C. § 1693(m);
- h. Costs of litigation pursuant to the EFTA, 15 U.S.C. § 1693(m);
- i. Pre-judgment interest pursuant to federal law;
- j. Post-judgment interest pursuant to 28 U.S.C. § 1961(a); and
- k. Any other relief the Court deems proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby respectfully demands a trial by jury in this matter.

Dated: November 19, 2021

LAW OFFICE OF MATTHEW D. CARLSON

By: /S/ Matthew D. Carlson
Matthew D. Carlson
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Filed January 13, 2022]

Case No. 3:21-cv-07478-WHA

ABRAHAM BIELSKI, on behalf of himself and all others similarly situated,

Plaintiff,

v.

COINBASE, INC.,

Defendant.

**DECLARATION OF CARTER MCPHERSON-
EVANS IN SUPPORT OF DEFENDANT
COINBASE, INC.'S MOTION TO COMPEL
INDIVIDUAL ARBITRATION AND TO STAY**

I, Carter McPherson-Evans, declare as follows:

1. I submit this declaration in support of Coinbase, Inc.'s ("Coinbase's") Motion to Compel Individual Arbitration and to Stay. It is based on personal knowledge and follows reasonable investigation. If called upon as a witness to testify to the truth of these statements, I could do so competently under oath.

2. Coinbase is a digital currency exchange that provides an online platform for the buying, selling, transferring, and storing of digital currencies (e.g., bitcoin).

3. I have been employed at Coinbase since February 2017. I am currently a Regulatory Affairs Program Manager. In that capacity, I help ensure compliance with Coinbase's money licensing requirements, routinely review customer records to resolve customer disputes, and respond to regulatory inquiries.

4. As part of my job at Coinbase, I am familiar with the process by which prospective customers set up Coinbase accounts and accept the terms of the Coinbase User Agreement.

5. I am also familiar with the way in which user account information is electronically logged and stored at Coinbase, and I understand how to retrieve and interpret those records. Specifically, in the regular practice of its business, Coinbase maintains a log of various actions taken by users in connection with their Coinbase accounts (the "User Activity Log"). Entries in the User Activity Log are recorded automatically, via a software application known internally as "Admin," at or near the time of the events that the entries record. I am personally familiar with these records and use them to perform my job functions at Coinbase.

6. Coinbase provides its online platform and services to its users exclusively under the terms of the Coinbase User Agreement. Before a prospective user can access Coinbase's platform or services, they must first create a Coinbase account and affirmatively agree to the Coinbase User Agreement. Whenever a Coinbase user creates a Coinbase account and accepts the User Agreement, that information is recorded in the User Activity Log, which is stored and maintained in Admin. It is Coinbase's regular practice to use Admin to record entries in the User Activity Log, including a user's acceptance of the Coinbase User Agreement.

7. I understand that this lawsuit has been filed by Plaintiff Abraham Bielski. I have reviewed Coinbase's User Activity Log in Admin for event entries related to Mr. Bielski. The User Activity Log shows that Mr. Bielski created his Coinbase account and accepted the Coinbase User Agreement, using Coinbase's mobile iOS app, on April 10, 2021 at 1:32 p.m. PDT. A true and correct copy of a screenshot from Admin of the User Activity Log that shows Mr. Bielski accepted the Coinbase User Agreement on April 10, 2021 is attached as **Exhibit 1**.

8. I am familiar with the account creation and user agreement acceptance flow that existed at the time Mr. Bielski created his Coinbase account and accepted the Coinbase User Agreement. That procedure, which is identical to the procedure in place today, works as follows. First, to create a Coinbase account via the mobile app, a prospective user must download the Coinbase mobile app onto their mobile device. Then, on opening the mobile app and tapping "Get started," the prospective user is presented with a screen containing fields to provide his or her first and last name and email address, and to create a password. Below these fields is a verification checkbox next to the text: "I certify that I am 18 years of age or older, and I agree to the User Agreement and Privacy Policy." The words "User Agreement" and "Privacy Policy" were (and still are) highlighted in blue and hyperlinked, such that a user could click on those words to be taken to the full text of the User Agreement or Privacy Policy. Below this text is a button labeled "Create account" that will only be activated if all fields have been entered and the verification box has been checked. A true and correct screenshot of this account

creation and user agreement acceptance flow on iOS is attached hereto as **Exhibit 2**.

9. To create an account, each prospective user *must* first complete each of the above fields, and they must confirm (by tapping the verification box) that they agree to the User Agreement before they can select “Create account.” A user cannot tap “Create account”—and thus cannot create an account—without first checking the verification box to confirm their assent to the User Agreement. In other words, when Mr. Bielski created his Coinbase account, it was (and still would be) impossible for him to do so without expressly indicating that he agreed to the User Agreement.

10. In addition, the attached screenshot of the User Activity Log shows that Mr. Bielski checked the verification box on the registration page in the Coinbase mobile app, confirming that he agreed to the Coinbase User Agreement, on April 10, 2021. *See Ex. 1.*

11. In reviewing Coinbase’s records, I have confirmed that Mr. Bielski first used his account to buy or sell digital currencies on April 11, 2021.

12. Coinbase’s current User Agreement is publicly available online at https://www.coinbase.com/legal/user_agreement/united_states.

13. I have reviewed the April 9, 2021 version of the User Agreement filed herewith, see Coinbase’s Request for Judicial Notice, Ex. A, and confirmed that it is the version of the User Agreement that Mr. Bielski accepted on April 10, 2021. This version of the User Agreement was published on April 9, 2021 and remained in effect, with no changes, until June 2021.

14. Attached hereto as **Exhibit 3** is a true and correct copy of Coinbase’s current User Agreement. As of

the date of this declaration, the arbitration clause in the current Coinbase User Agreement is identical to the arbitration clause in the April 9, 2021 User Agreement (which Mr. Bielski accepted on April 10, 2021).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on January 12, 2022 in Phoenix, Arizona.

/s/ Cater McPherson-Evans _____

CARTER MCPHERSON-EVANS

User Agreement - Coinbase

Last updated: April 9, 2021

Welcome to Coinbase! This is a User Agreement between you (also referred to herein as “Client,” “User,” or customer) and Coinbase Inc. (“**Coinbase**”). This User Agreement (“**Agreement**”) governs your use of the services provided by Coinbase described below (“**Coinbase Services**” or “**Services**”). By signing up to use an account through coinbase.com, pro.coinbase.com, APIs, or the Coinbase mobile application (collectively the “**Coinbase Site**”), you agree that you have read, understand, and accept all of the terms and conditions contained in this Agreement including Section 8.2. “Arbitration; Waiver of Class Action”, as well as our Privacy Policy, Cookie Policy, and E-Sign Consent Policy.

As with any asset, the value of Digital Currencies can go up or down and there can be a substantial risk that you lose money buying, selling, holding, or investing in digital currencies. You should carefully consider whether trading or holding Digital Currencies is suitable for you in light of your financial condition. Coinbase is not registered with the U.S. Securities and Exchange Commission and does not offer securities services in the United States or to U.S. persons.

Part 1: GENERAL USE

1. Account Setup

1.1 Eligibility. To be eligible to use the Coinbase Services, you must be at least 18 years old, and reside in the United States.

1.2 Terms. We may amend or modify this Agreement at any time by posting the revised agreement on the Coinbase Site and/or providing a copy to you (a “**Revised Agreement**”). The Revised Agreement shall be effective as of the time it is posted but will not apply retroactively. Your continued use of the Services after the posting of a Revised Agreement constitutes your acceptance of such Revised Agreement. If you do not agree with any such modification, your sole and exclusive remedy is to terminate your use of the Services and close your account.

1.3 Registration of Coinbase Account. You must register for a Coinbase account to use the Coinbase Services (a “**Coinbase Account**”). By using a Coinbase Account you agree and represent that you will use Coinbase only for yourself, and not on behalf of any third party, unless you have obtained prior approval from Coinbase. You are fully responsible for all activity that occurs under your Coinbase Account. We may, in our sole discretion, refuse to open a Coinbase Account, or limit the number of Coinbase Accounts that you may hold or suspend or terminate any Coinbase Account or the trading of specific Digital Currency in your account.

1.4 Identity Verification. During registration for your Coinbase Account, you agree to provide us with the information we request for the purposes of identity verification and the detection of money laundering,

terrorist financing, fraud, or any other financial crimes and permit us to keep a record of such information. You will need to complete certain verification procedures before you are permitted to use the Coinbase Services. Your access to one or more Coinbase Services and the limits that apply to your use of the Coinbase Services, may be altered as a result of information collected about you on an ongoing basis. The information we request may include certain personal information, including, but not limited to, your name, address, telephone number, e-mail address, date of birth, taxpayer identification number, a government identification, and information regarding your bank account (such as the name of the bank, the account type, routing number, and account number) and in some cases (where permitted by law), special categories of personal data, such as your biometric information. In providing us with this or any other information that may be required, you confirm that the information is accurate and authentic. You agree to keep us updated if any of the information you provide changes. **You authorize us to make inquiries, whether directly or through third parties, that we consider necessary to verify your identity or protect you and/or us against fraud or other financial crime, and to take action we reasonably deem necessary based on the results of such inquiries. When we carry out these inquiries, you acknowledge and agree that your personal information may be disclosed to credit reference and fraud prevention or financial crime agencies and that these agencies may respond to our inquiries in full. This is an identity check only and should have no adverse effect on your credit rating.** Further, you authorize your wireless operator

(AT&T, Sprint, T-Mobile, US Cellular, Verizon, or any other branded wireless operator) to use your mobile number, name, address, email, network status, customer type, customer role, billing type, mobile device identifiers (IMSI and IMEI) and other subscriber status details, if available, solely to allow verification of your identity and to compare information you have provided to Coinbase with your wireless operator account profile information for the duration of the business relationship. See our Privacy Policy for how we treat your data.

1.5 Access. To access the Coinbase Services, you must have the necessary equipment (such as a smartphone or laptop) and the associated telecommunication service subscriptions to access the Internet. The Coinbase Services can be accessed directly using the Coinbase Site. Access to Coinbase Services may become degraded or unavailable during times of significant volatility or volume. This could result in the inability to buy or sell for periods of time and may also lead to support response time delays. Although we strive to provide you with excellent service, we do not represent that the Coinbase Site or other Coinbase Services will be available without interruption and we do not guarantee that any order will be executed, accepted, recorded, or remain open. Coinbase shall not be liable for any losses resulting from or arising out of transaction delays.

2. Wallet and Custodial Services

2.1 Wallet Services. As part of your Coinbase Account, Coinbase will provide qualifying users access to: (a) a hosted Digital Currency wallet(s) for holding Digital Currencies (“**Digital Currency Wallet**”), and (b)

a hosted US Dollars (“USD”) wallet for holding USD (a “USD Wallet”).

2.2 Hosted Digital Currency Wallet. Your Digital Currency Wallet allows you to store, track, transfer, and manage your balances of Digital Currency. As used throughout, “**Digital Currency**” means only those particular digital currencies listed as available to trade or custody in your Coinbase Account (also referred to as “**Supported Digital Currency**”). Services and supported assets may vary by jurisdiction. We securely store Digital Currency private keys, which are used to process transactions, in a combination of online and offline storage. As a result of our security protocols, it may be necessary for us to retrieve private keys or related information from offline storage in order to facilitate a Digital Currency Transfers in accordance with your instructions, and you acknowledge that this may delay the initiation or crediting of such Digital Currency Transfers. You may elect to use other services, such as the Coinbase Vault, which allow you to set withdrawal time-delays and create other conditions around the custody and transfer of your Digital Currency. Additional rules associated with such product(s) and service(s) may apply.

2.3 Supported Digital Currencies. Your Coinbase Account is intended solely for proper use of Supported Digital Currencies as designated on the Site. *Under no circumstances should you attempt to use your Digital Currency Wallet to store, send, request, or receive digital currencies we do not support. Coinbase assumes no responsibility in connection with any attempt to use your Digital Currency Wallet with digital currencies that we do not support. If you have any questions about which Digital Currencies we currently support,*

please visit <https://web.archive.org/web/20210410232422/https://support.coinbase.com>.

2.4 Supplemental Protocols Excluded. Unless specifically announced on the Coinbase Site or other official public statement of Coinbase, Supported Digital Currencies excludes all other protocols and/or functionality which supplement or interact with the Supported Digital Currency. This exclusion includes but is not limited to: metacoins, colored coins, side chains, or other derivative, enhanced, or forked protocols, tokens, or coins or other functionality, such as staking, protocol governance, and/or any smart contract functionality, which may supplement or interact with a Digital Currency we support. Do not use your Coinbase Account to attempt to receive, request, send, store, or engage in any other type of transaction or functionality involving any such protocol as Coinbase is not configured to detect, secure, or process these transactions and functionality. Any attempted transactions in such items will result in loss of the item. ***You acknowledge and agree that supplemental protocols are excluded from Supported Digital Currency and that Coinbase has no liability for any losses related to supplemental protocols.***

2.5 Operation of Digital Currency Protocols. We do not own or control the underlying software protocols which govern the operation of Digital Currency supported on our platform. Generally, the underlying protocols are open source, and anyone can use, copy, modify, and distribute them. We assume no responsibility for the operation of the underlying protocols and we are not able to guarantee the functionality or security of network operations. In particular, the underlying protocols may be subject to sudden changes in

operating rules (including “**forks**”). Any such material operating changes may materially affect the availability, value, functionality, and/or the name of the Digital Currency you store in your Digital Currency Wallet. Coinbase does not control the timing and features of these material operating changes. It is your responsibility to make yourself aware of upcoming operating changes and you must carefully consider publicly available information and information that may be provided by Coinbase in determining whether to continue to use a Coinbase Account for the affected Digital Currency. In the event of any such operational change, Coinbase reserves the right to take such steps as may be necessary to protect the security and safety of assets held on the Coinbase platform, including temporarily suspending operations for the involved digital currency(ies), and other necessary steps; Coinbase will use its best efforts to provide you notice of its response to any material operating change; however, such changes are outside of Coinbase’s control and may occur without notice to Coinbase. Coinbase’s response to any material operating change is subject to its sole discretion and includes deciding not to support any new digital currency, fork, or other actions. ***You acknowledge and accept the risks of operating changes to Digital Currency protocols and agree that Coinbase is not responsible for such operating changes and not liable for any loss of value you may experience as a result of such changes in operating rules. You acknowledge and accept that Coinbase has sole discretion to determine its response to any operating change and that we have no responsibility to assist you with unsupported currencies or protocols.***

2.6 Digital Currency Custody and Title. All Digital Currencies held in your Digital Currency Wallet are custodial assets held by Coinbase for your benefit, as described in further detail below.

2.6.1 Ownership. Title to Digital Currency shall at all times remain with you and shall not transfer to Coinbase. As the owner of Digital Currency in your Digital Wallet, you shall bear all risk of loss of such Digital Currency. Coinbase shall have no liability for Digital Currency fluctuations. None of the Digital Currencies in your Digital Currency Wallet are the property of, or shall or may be loaned to, Coinbase; Coinbase does not represent or treat assets in User's Digital Currency Wallets as belonging to Coinbase. Coinbase may not grant a security interest in the Digital Currency held in your Digital Currency Wallet. Except as required by a facially valid court order, or except as provided herein, Coinbase will not sell, transfer, loan, hypothecate, or otherwise alienate Digital Currency in your Digital Currency Wallet unless instructed by you.

2.6.2 Control. You control the Digital Currencies held in your Digital Currency Wallet. At any time, subject to outages, downtime, and other applicable policies, you may withdraw your Digital Currency by sending it to a different blockchain address. As long as you continue to custody your Digital Currencies with Coinbase, Coinbase shall retain control over electronic private keys associated with blockchain addresses operated by Coinbase, including the blockchain addresses that hold your Digital Currency.

2.6.3 Acknowledgement of Risk. You acknowledge that Digital Currency is not subject to protections or insurance provided by the Federal

Deposit Insurance Corporation or the Securities Investor Protection Corporation.

2.6.4 Digital Currencies Not Segregated. In order to more securely custody assets, Coinbase may use shared blockchain addresses, controlled by Coinbase, to hold Digital Currencies held on behalf of customers and/or held on behalf of Coinbase. Although we maintain separate ledgers for Client and Coinbase accounts, Coinbase shall have no obligation to segregate by blockchain address Digital Currencies owned by you from Digital Currencies owned by other customers or by Coinbase.

2.7 USD Wallet. Your USD Wallet allows you to hold and transfer USD with your Coinbase Account as described below. In general, we will combine the balance of your USD Wallet with other customers' balances and either hold those funds in a custodial account at a U.S. FDIC-insured bank or invest those funds in liquid investments, such as U.S. treasuries, in accordance with state money transmitter laws. Coinbase owns the interest or other earnings on these investments. Pooled customer funds are held apart from Coinbase's corporate funds and Coinbase will neither use these funds for its operating expenses or any other corporate purposes.

2.8 USDC Wallets. You may also elect to buy USD Coin from Coinbase, a Digital Currency fully collateralized by the US Dollar, which is issued by Circle Internet Financial ("Circle") and supported by Coinbase ("USDC"). You are the owner of the balance of your USDC Wallet. Coinbase is not the issuer of USDC, does not hold U.S. Dollars on reserve for USDC holders, and has no obligation to repurchase your USDC for USD. You can redeem your USDC with

Circle, and Coinbase may also elect to repurchase your USDC in exchange for USD. You agree to be bound by the terms of the Circle USDC Agreement (located at <https://web.archive.org/web/20210410232422/https://support.usdc.circle.com/hc/en-us/articles/360001233386-Circle-USDC-User-Agreement>), which provides additional obligations, undertakings, and limitations with respect to USDC.

2.9 Coinbase Bundle. The Coinbase Bundle (“Bundle”) is an offer to purchase multiple Digital Currencies in a single-click transaction, subject to our current fees for purchasing Bundles. The Digital Currencies included in any Bundle are made available by Coinbase in its sole discretion. The amount of each Digital Currencies in any Bundle offer is proportional to each Digital Currency’s “market capitalization”, calculated by multiplying its current price by the circulating supply of the Digital Currency. By purchasing a Bundle, you understand and acknowledge that you have the ability to sell and send each Digital Currency included in the Bundle at your discretion, just as if you had purchased each Digital Currency in separate transactions, by choosing to “unbundle” the Bundle. Coinbase may allow you to perform a single transaction to sell an amount proportionally across all the Digital Currencies purchased as part of a Bundle, and Coinbase may allow this only if you have not previously unbundled your purchased Bundle. A Bundle can not be reconstituted once it is unbundled. All pricing or performance data related to the Bundle is for informational purposes only. A Bundle is not an offer to purchase any single security, investment or financial instrument. A Bundle offer is not a recommendation to buy, sell or hold any Digital Currency or any amount of a Digital

Currency and does not constitute investment advice, financial advice, or trading advice.

3. Payment Services, Purchase & Sale Transactions, Credit Transactions

3.1 USD Funds. You can load funds into your USD Wallet from a valid bank account via ACH transfer or wire transfer. Your USD balance is in a pending state and will not be credited to your USD Wallet until after the bank transfer has cleared, usually with 5 business days. We may debit your linked bank account as soon as you initiate payment. The name on your linked bank account and your wire transfer must match the name verified on your Coinbase Account.

3.2 Transactions on the Coinbase Site. When you purchase (buy) or sell Digital Currency on the Coinbase Site, you are not buying Digital Currency from Coinbase or selling Digital Currency to Coinbase. Coinbase acts as the agent, transacting on your behalf, to facilitate that purchase or sale between you and other Coinbase customers. You can purchase (buy) Digital Currency using: (a) funds in your USD Wallet, (b) Digital Currency held in certain Digital Currency Wallets, as permitted by Coinbase, (c) a valid bank account in the name that matches the name on your Coinbase Account, or (d) a debit or credit card that matches the name on your Coinbase Account (each a **“Valid Payment Method”**). Your purchase must follow the relevant instructions on the Coinbase Site. Coinbase reserves the right to cancel any transaction not confirmed by you within five (5) seconds after Coinbase quotes a transaction price. A purchase of Digital Currency using a Valid Payment Method generally will initiate on the business day we receive your instructions. Purchased Digital Currency will be

deposited in your Digital Currency Wallet as soon as funds have settled to Coinbase, which in the case of a bank account or credit or debit card may take up to five business days. You can sell Digital Currency and instruct Coinbase to deposit funds into your Coinbase USD Wallet or, where supported, a Digital Currency Wallet. Digital Currency purchases and sales are collectively referred to herein as “**Digital Currency Transactions**”. If Coinbase cannot complete your Digital Currency Transaction for any reason (such as price movement, market latency, inability to find a counterparty for your transaction, or order size), Coinbase will reject the order and notify you of such rejection. You will not be charged for a rejected transaction.

3.3 Fees. In general, Coinbase makes money when you purchase or sell digital currency on our Site. A full list of Coinbase fees for your Coinbase Account can be found on our Pricing and Fees Disclosures page. By using Coinbase Services you agree to pay all applicable fees. Coinbase reserves the right to adjust its pricing and fees and any applicable waivers at any time. We will always notify you of the pricing and fees which apply to your transaction when you authorize the transaction and in each receipt we issue to you. We may charge network fees (miner fees) to process a Digital Currency Transaction on your behalf. We will calculate the network fee in our discretion, although we will always notify you of the network fee at or before the time you authorize the Digital Currency Transaction. Bank fees charged to Coinbase are netted out of transfers to or from Coinbase. You are responsible for paying any additional fees charged by your financial service provider. We will not process a transfer if associated bank fees exceed the value of the transfer. You may be required to deposit additional USD to

cover bank fees if you desire to complete such a transfer.

3.4 Recurring Digital Currency Transactions.

If you initiate recurring Digital Currency Transactions, you authorize us to initiate recurring electronic payments in accordance with your selected Digital Currency Transaction and any corresponding payment accounts, such as recurring automated clearing house (ACH) debit or credit entries from or to your linked bank account. Your recurring transactions will occur in identical, periodic installments, based on your period selection (e.g., daily, weekly, monthly), until either you or Coinbase cancels the recurring order. If you select a U.S. Bank Account as your payment method for a recurring transaction, and such transaction falls on a weekend or holiday, or after bank business hours, the ACH credit or debit will be executed on the next business day, although the Digital Currency fees at the time of the regularly-scheduled transaction will apply. If your Bank is unable to process any electronic ACH debit entry, we will notify you of cancellation of the transaction and may avail itself of remedies set forth in this User Agreement to recover any amount owed to Coinbase. This authorization will remain in full force and effect until you change your recurring transaction settings at https://web.archive.org/web/20210410232422/https://www.coinbase.com/recurring_payments, or until you provide us written notification at <https://web.archive.org/web/20210410232422/https://support.coinbase.com>. You agree to notify Coinbase in writing of any changes in your linked bank account information prior to a recurring transaction. Coinbase may, at any time, terminate recurring transactions by providing notice to you.

3.5 Credit Transaction Payments. You may use the “Make A Payment” option on the Coinbase Site from time to time to authorize payments for any credit transaction with us or any of our affiliates, including any amount owing pursuant to any credit agreement you may enter into with us or any of our affiliates, from time to time. With this option, you can authorize us or our affiliates to make a one-time charge to your linked deposit account through the ACH network (your “**Preferred Payment Method**”). You may select or approve the dollar amount and transaction date for each one-time payment you authorize using your Preferred Payment Method. We and our affiliates reserve the right to limit the amount and date of these one-time charges, screen transactions, and take other steps for our own risk management and business reasons. Although we or our affiliates will try to notify you if your depository institution is unable or unwilling to process any one-time charge using your Preferred Payment Method, you agree we are not required to do so and you are still required to make payments in the time and manner required by your credit agreement with us or any of our affiliates.

3.6 Revocation. When you give us instructions to purchase (buy) Digital Currency, you cannot withdraw your consent to that purchase unless the purchase is not scheduled to occur until a future date e.g. you set up a recurring purchase of Digital Currency (a “**Future Transaction**”). In the case of a Future Transaction, you may withdraw your consent up until the end of the business day before the date that the Future Transaction is scheduled to take place. To withdraw your consent to a Future Transaction, follow the instructions on the Coinbase Site.

3.7 Unauthorized and Incorrect Transactions.

When a Digital Currency or USD transaction occurs using your credentials, we will assume that you authorized such transaction, unless you notify us otherwise. If you believe you did not authorize a particular transaction or that a transaction was incorrectly carried out, you must contact us as soon as possible either by email free of charge at <https://web.archive.org/web/20210410232422/https://support.coinbase.com> or by phone at +1 (888) 908-7930 (international call charges may apply). It is important that you regularly check your USD Wallet and Digital Currency Wallet balances and your transaction history regularly to ensure you notify us as soon as possible of any unauthorized or incorrect transactions to. We are not responsible for any claim for unauthorized or incorrect transactions unless you have notified us in accordance with this section.

3.8 Account Information. You will be able to see your USD Wallet and Digital Currency Wallet balances using the Coinbase Site. You can also see your transaction history using the Coinbase Site, including (i) the amount (and currency) of each Digital Currency Transaction, (ii) a reference to the identify of the payer and/or payee (as appropriate), (iii) any fees charged (excluding any spread, or margin, over the prevailing market rate on Coinbase's trading platform), (iv) if applicable, the rate of exchange, and the amount (in the new currency) after exchange (where you are the payer) or the amount (in the original currency) before the exchange (where you are the payee), and (v) the date of each Digital Currency Transaction.

3.9 Consent to access, processing and storage of your personal data. You consent to us accessing, processing and retaining any personal information you

provide to us for the purpose of us providing Coinbase Services to you. This consent is not related to, and does not affect, any rights or obligations we or you have in accordance with data protection laws, privacy laws and regulations. You can withdraw your consent at any time by closing your account with us. However, we may retain and continue to process your personal information for other purposes. Please see our Privacy Policy for further information about how we process your personal data, and the rights you have in respect of this.

3.10 Reversals & Cancellations. You cannot cancel, reverse, or change any transaction marked as complete or pending. If your payment is not successful, if your payment method has insufficient funds, or if you reverse a payment made from funds in your bank account, you authorize Coinbase, in its sole discretion, either to cancel the transaction or to debit your other payment methods, including your USD Wallet or Digital Currency Wallet balances or other linked accounts, in any amount necessary to complete the transaction. You are responsible for maintaining an adequate balance and/or sufficient credit limits in order to avoid overdraft, non-sufficient funds (NSF), or similar fees charged by your payment provider. We reserve the right to refuse to process, or to cancel or reverse, any Digital Currency Transaction or Transfers in our sole discretion, even after funds have been debited from your account(s), if we suspect the transaction involves (or has a high risk of involvement in) money laundering, terrorist financing, fraud, or any other type of financial crime; in response to a subpoena, court order, or other government order; if we reasonably suspect that the transaction is erroneous; or if Coinbase suspects the transaction relates to

Prohibited Use or a Prohibited Business as set forth below. In such instances, Coinbase will reverse the transaction and we are under no obligation to allow you to reinstate a purchase or sale order at the same price or on the same terms as the cancelled transaction.

3.11 Payment Services Partners. Coinbase may use a third party payment processor to process any US Dollar payment between you and Coinbase, including but not limited to payments in relation to your use of the Digital Currency Transactions or deposits or withdrawals from your USD Wallet or Coinbase Pro Account.

4. Digital Currency Transfers

4.1 In General. If you have sufficiently verified your identity, your Digital Currency Wallet enables you to send Supported Digital Currency to, and request, receive, and store Supported Digital Currency from, third parties by giving instructions through the Coinbase Site. Your transfer of Supported Digital Currencies between your other digital currency wallets (including wallets off the Coinbase Site) and to and from third parties is a “**Digital Currency Transfer**”.

4.3 Pending Transactions. Once a Digital Currency Transfer is submitted to a Digital Currency network, the transaction will be unconfirmed and remain in a pending state for a period of time sufficient to confirmation of the transaction by the Digital Currency network. A Digital Currency Transfer is not complete while it is in a pending state. Pending Digital Currency Transfers that are initiated from a Coinbase Account will reflect a pending transaction status and are not available to you for use on the Coinbase platform or otherwise while the transaction is pending.

4.4 Inbound Digital Currency Transfers. When you or a third party sends Digital Currency to a Coinbase wallet from an external wallet not hosted on Coinbase (“**Inbound Transfers**”), the person initiating the transaction is solely responsible for executing the transaction properly, which may include, among other things, payment of sufficient network or miner’s fees in order for the transaction to be successful. Insufficient network fees may cause an Inbound Transfer to remain in a pending state outside of Coinbase’s control and we are not responsible for delays or loss incurred as a result of an error in the initiation of the transaction and have no obligation to assist in the remediation of such transactions. **By initiating an Inbound Transfer, you attest that you are transacting in a Supported Digital Currency which conforms to the particular Coinbase wallet into which funds are directed. For example, if you select an Ethereum wallet address to receive funds, you attest that you are initiating an Inbound Transfer of Ethereum alone, and not any other currency such as Bitcoin or Ethereum Classic. Coinbase incurs no obligation whatsoever with regard to unsupported digital currency sent to a Coinbase Account or Supported Digital Currency sent to an incompatible Digital Currency wallet. Erroneously transmitted funds will be lost.** We recommend customers send a small amount of Supported Digital Currency as a test prior to initiating a send of a significant amount of Supported Digital Currency. Coinbase may from time to time determine types of Digital Currency that will be supported or cease to be supported.

4.5 Outbound Digital Currency Transfers. When you send Digital Currency from your Coinbase

Account to an external wallet (“**Outbound Transfers**”), such transfers are executed at your instruction by Coinbase. You should verify all transaction information prior to submitting instructions to us. Coinbase shall bear no liability or responsibility in the event you enter an incorrect blockchain destination address. We do not guarantee the identity or value received by a recipient of an Outbound Transfer. Digital Currency Transfers cannot be reversed once they have been broadcast to the relevant Digital Currency network, although they may be in a pending state, and designated accordingly, while the transaction is processed by network operators. Coinbase does not control the Digital Currency network and makes no guarantees that a Digital Currency Transfer will be confirmed by the network. We may refuse to process or cancel any pending Outbound Digital Currency Transfers as required by law or any court or other authority to which Coinbase is subject in any jurisdiction. Additionally, we may require you to wait some amount of time after completion of a transaction before permitting you to use further Coinbase Services and/or before permitting you to engage in transactions beyond certain volume limits.

4.6 Transfers to a Recipient Email Address. Coinbase allows you to initiate a Digital Currency Transfer to a Coinbase customer by designating that customer’s email address. If you initiate a Digital Currency Transfer to an email address, and the recipient does not have an existing Coinbase Account, we will invite the recipient to open a Coinbase Account. If the recipient does not open a Coinbase Account within 30 days, we will return the relevant Digital Currency to your Digital Currency Wallet.

4.8 Third Party Merchants. We have no control over, or liability for, the delivery, quality, safety, legality or any other aspect of any goods or services that you may purchase from a third party (including other users of Coinbase Digital Currency Services). We are not responsible for ensuring that a third party buyer or a seller you transact with will complete the transaction or is authorised to do so. If you experience a problem with any goods or services purchased from, or sold to, a third party using Digital Currency transferred using the Coinbase Digital Currency Services, or if you have a dispute with such third party, you should resolve the dispute directly with that third party. If you believe a third party has behaved in a fraudulent, misleading, or inappropriate manner, or if you cannot adequately resolve a dispute with a third party, you may notify Coinbase Support at <https://web.archive.org/web/20210410232422/https://support.coinbase.com> so that we may consider what action to take, if any.

4.9 Debts. In the event that there are outstanding amounts owed to us hereunder, including in your Coinbase Account, Coinbase reserves the right to debit your Coinbase Account or Coinbase Pro Account accordingly and/or to withhold amounts from funds you may transfer from your Coinbase Pro Account to your Coinbase Account.

5. Additional Services

5.1 Generally. In addition to the Services above, the following services (“**Additional Services**”) may be made available by Coinbase to users that fulfill certain eligibility criteria.

5.2 Coinbase Pro Services. Coinbase Pro Services are services related to Coinbase Pro’s order matching platform. If you are eligible and elect to use the Coinbase Pro Services, you must establish a Coinbase Pro account at pro.coinbase.com (“**Coinbase Pro Account**”). The provisions of this Section 5.1. apply to your use of such Coinbase Pro Services in addition to the other applicable provisions of this Agreement, including without limitation the releases, indemnities, disclaimers, limitations of liability, prohibited use, dispute resolution, and cancellation policies set forth above. Additionally, you also accept and agree to be bound by the Trading Rules and the Coinbase Pro Trading Fees.

5.2.1 Coinbase Pro Account. You may not sell, lease, furnish or otherwise permit or provide access to your Trading Account to any other entity or to any individual that is not your employee or agent. You accept full responsibility for your employees’ or agents’ use of Coinbase Pro, whether such use is directly through the Coinbase Pro website or by other means, such as those facilitated through API keys, and/or applications which you may authorize. You understand and agree that you are responsible for any and all orders, trades, and other instructions entered into Coinbase Pro including identifiers, permissions, passwords, and security codes associated with your Coinbase Pro Account.

5.2.2 Order Books. Coinbase Pro Services offer an order book for various Digital Currency and Fiat Currency trading pairs (each an “**Order Book**”). Refer to your Coinbase Pro Account to determine which Order Books are available to you.

5.2.3 Associated Tools. In addition to the Wallet Services detailed in Section 2.1, your Coinbase Pro

Account provides you access to associated user tools, accessible at pro.coinbase.com and through the Coinbase Pro API.

5.3 USDC Rewards.

USDC IS NOT LEGAL TENDER. USDC IS A DIGITAL CURRENCY CURRENCY AND COINBASE HAS NO RIGHT TO USE ANY USDC YOU HOLD ON COINBASE. COINBASE IS NOT A DEPOSITORY INSTITUTION, AND YOUR USDC WALLET IS NOT A DEPOSIT ACCOUNT. YOUR USDC WALLET IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) OR THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

5.3.1 Eligibility. If you are eligible, you can earn rewards for holding USDC on Coinbase.com. So long as you hold at least \$1 of USDC in your Coinbase.com account, you will automatically earn amounts of USDC as described below in the “Calculation” section (“**USDC Rewards**”). If at any time you do not hold at least \$1 of USDC in your Coinbase.com account, your enrollment in USDC Rewards will be paused until such time that you do hold at least \$1 of USDC in your Coinbase.com account. During such period you will retain all USDC Rewards previously accrued but not yet distributed. Such accrued rewards will be distributed as described below in the “Calculation” section. If at any time you are deemed ineligible, your enrollment in USDC Rewards will be similarly paused. You can opt-out of, or back into, USDC Rewards at any time by following the instructions here. If you opt-out of USDC Rewards or close your Coinbase.com account, you will forfeit the rewards you have accrued (that are not yet

distributed for the current calendar month) up to that time. USDC held on Coinbase Pro is not eligible for USDC Rewards.

5.3.2 Calculation. Rewards are earned on a daily basis in the form of USDC at the then current **USDC Rewards Rate**. Our current **USDC Rewards Rate** can be found here. Our current **USDC Rewards Annual Percentage Yield**, which includes the effect of monthly compounding, can be found here and here. Rewards earned in a particular month are airdropped into your Coinbase.com USDC wallet within 5 business days after the start of the next calendar month. USDC Rewards distributed to you are rounded-down to the nearest sixth decimal place. We use the **Daily Balance Method** to determine the rewards you earn for a particular day, using your average balance of USDC on that specific day as that day's balance. The rate used to determine rewards earned for a particular day is the then current **USDC Rewards Rate** divided by 365.

5.3.3 Changes. We reserve the right to change the **USDC Rewards Rate Annual Percentage Yield** at any time by notification here and here and by other reasonable means of notice (including e-mail). Unless otherwise stated in the notice, no change will be effective until the first day of the calendar month after such notice is made. We reserve the right to add, change, or delete any provision of these terms and to terminate the USDC rewards program, or your participation in the program, at any time upon notice made in the same manner.

5.3.4 Definitions.

“**USDC Rewards Rate**” means the annual rate of rewards earned on a USDC wallet, which does not

reflect compounding. The current USDC Rewards Rate can be found [here](#).

“USDC Rewards Annual Percentage Yield” or **“APY”** means the percentage rate reflecting the total amount of USDC Rewards earned, based on the then current USDC Rewards Rate and end of month compounding for a 365-day period. The current USDC Rewards Annual Percentage Yield can be found [here](#) and [here](#).

“Daily Balance Method” means the application of the daily periodic rate (derived from the APY) to the calendar day average of USDC held in your USDC wallet each day.

“Day” means a UTC calendar day.

5.4 Staking Services. When you hold Digital Currencies on Coinbase you may be given the option to “stake” these assets in a third party proof of stake network via staking services provided by Coinbase. In a proof of stake network, transaction validators are chosen using a formula based on the amount of underlying Digital Currency staked by the validator as opposed to computing power (i.e., proof of work). Please visit our [staking information page](#) for further details on how proof of stake works. Staking services are not available for Digital Currencies held on Coinbase Pro.

5.4.1 Staking Service is Optional. Staking services may be made available to you by default for Digital Currencies where staking functionality is available on Coinbase. **YOU ARE NOT REQUIRED TO STAKE WITH COINBASE AND YOU CAN OPT-OUT OF COINBASE STAKING SERVICES AT ANY TIME THROUGH THE SETTINGS PAGE IN YOUR ACCOUNT.** Unless otherwise specified, if you opt-out

of staking services, you can opt back in at any time with immediate effect.

5.4.2 The Service; Rewards; Commission; Limitations. (a) If you stake your assets with us, Coinbase, or one of its affiliates, will facilitate the staking of those assets on your behalf by acting as a transaction validator on the applicable network for the Digital Currency you stake. If Coinbase successfully validates a block of transactions in that Digital Currency, you may earn a reward granted by that Digital Currency’s network. Your reward will be determined by the protocols of the applicable network. Coinbase will distribute this reward to you after receipt by Coinbase, minus a 25% commission. (b) Some Digital Currency networks subject staked assets to “slashing” if the transaction validator representing those assets incorrectly validates a transaction. Coinbase will use commercially reasonable efforts to ensure that your assets will not be slashed, but in the unlikely event they are, Coinbase will promptly replace your assets at no additional cost. Some Digital Currency networks require that a certain amount of staked assets be locked (restricted from sale or transfer) for a certain period of time while staking. Coinbase may also have additional sale or withdrawal limitations for particular staked assets if you are opted-in to staking.

5.4.3 No Guarantee of Rewards. You have no right to a reward until it is received by Coinbase. Rewards will be distributed to your account promptly after they are received by Coinbase. Unless otherwise stated, Coinbase will use commercially reasonable efforts to stake any Digital Currencies for which you are using Coinbase staking services. Unless otherwise specified, the “staking rewards rate” disclosed by Coinbase for a particular Digital Currency is an annualized

historical rate based on the staking rewards generated by Coinbase in providing staking services to Coinbase customers for that Digital Currency over the last 90 days. This rate is an estimate and changes over time. COINBASE DOES NOT GUARANTEE THAT YOU WILL RECEIVE STAKING REWARDS, ANY SPECIFIC STAKING REWARD, OR ANY STAKING RETURN OVER TIME, INCLUDING THE STAKING REWARDS RATES.

5.4.4 Ethereum Staking. Supplemental to the terms outlined above, the following terms apply to staking your ETH through the Coinbase staking services.

(a) Eligibility. Users who wish to stake ETH through Coinbase must meet certain requirements, as set forth here. These requirements are subject to change.

(b) Lockup Period. If you choose to stake your ETH, your ETH will be converted to ETH2 and will be locked on the Ethereum protocol until Phase 1.5 of the Ethereum network upgrade is completed. Coinbase has no control over the duration of or end date for the lockup period, which will ultimately be determined by the success of the update to the Ethereum network. Unlike other staking services provided through Coinbase, you will be unable to “Opt Out” of ETH staking once you’ve staked your assets. Coinbase will not refund or replace any ETH you wish to unstake. Unless otherwise stated on the Coinbase interface, you will not be able to trade, transfer or otherwise access your staked ETH during the lockup period.

(c) No Guarantee of Success of Network Upgrade. Coinbase makes no guarantees that the upgrade to the Ethereum network will be successful, and

you understand that if the network upgrade ultimately fails, you may lose all, or a portion of, your staked ETH. Coinbase will not be responsible for any ETH lost due to a network upgrade failure.

(d) Ethereum Staking Rewards. Any rewards earned while staking your ETH through Coinbase will, unless otherwise stated, remain locked onchain until Phase 1.5 of the Ethereum network upgrade is completed. ETH rewards reflected in your account prior to the completion of Phase 1.5 of the Ethereum network upgrade are an estimate based on a combination of reward rates and the period of time for which you've staked your ETH (minus any Coinbase fees). Rewards will be reflected in your account, but will not be actually credited until the end of the lockup period. Unless otherwise stated, you will not be able to trade, transfer, or otherwise access your ETH staking rewards during the lockup period.

(e) Liquidity. Coinbase may offer you the ability to exchange or sell your staked ETH prior to the completion of Phase 1.5 of the Ethereum network upgrade. Coinbase does not guarantee that the offering of any such option will result in a successful exchange or sale, and Coinbase will not backstop or otherwise intervene to guarantee liquidity. In the event that you take advantage of any offered ability to exchange or sell your staked ETH, you agree to bear any risk of loss associated with taking advantage of such an offering, and Coinbase does not guarantee the value of your ETH principal or related rewards. Accessing your locked ETH may result in a loss of any rewards accrued until that point. Coinbase is not responsible for any decrease in the value of your staked ETH principal or any rewards associated with allowing you the ability to exchange or sell your staked ETH.

(f) Tax. The tax treatment of certain Digital Currency transactions is uncertain, including your voluntary election to convert your ETH to ETH2, and it is your responsibility to determine what taxes, if any, arise from these transactions. Users are solely responsible for reporting and paying any applicable taxes arising from staking through Coinbase staking services and all related transactions (e.g., any exchange or sale of your staked ETH), and acknowledge that Coinbase does not provide investment, legal, or tax advice to you in connection with such election to participate. You should conduct your own due diligence and consult your advisors before making any investment decision including whether to participate in ETH staking and related transactions.

6. Data Protection and Security

6.1 Personal Data. You acknowledge that we may process personal data in relation to you (if you are an individual), and personal data that you have provided or in the future provide to us in relation to your employees and other associated or other individuals, in connection with this Agreement, or the Coinbase Services. Accordingly, you represent and warrant that: (i) your disclosure to us of any personal data relating to individuals other than yourself was or will be made in accordance with all applicable data protection and data privacy laws, and those data are accurate, up to date and relevant when disclosed; (ii) before providing any such personal data to us, you have read and understood our Privacy Policy, which is available here, and, in the case of personal data relating to an individual other than yourself, have (or will at the time of disclosure have) provided a copy of that Privacy Policy (as amended from time to time), to that individual; and (iii) if from time to time we provide you with a

replacement version of the Privacy Policy, you will promptly read that notice and provide a copy to any individual whose personal data you have provided to us.

6.2 Security Breach. If you suspect that your Coinbase Account or any of your security details have been compromised or if you become aware of any fraud or attempted fraud or any other security incident (including a cyber-security attack) affecting you and / or Coinbase (together a “Security Breach”), you must notify Coinbase Support as soon as possible by email free of charge at <https://web.archive.org/web/20210410232422/https://support.coinbase.com> or by calling us at +1 (888) 908 7930 and continue to provide accurate and up to date information throughout the duration of the Security Breach. You must take any steps that we reasonably require to reduce, manage or report any Security Breach. Failure to provide prompt notification of any Security Breach may be taken into account in our determination of the appropriate resolution of the matter.

7. General Use, Prohibited Use, Death of Account Holder and Termination

7.1 Limited License. We grant you a limited, non-exclusive, nontransferable license, subject to the terms of this Agreement, to access and use the Coinbase Services, Coinbase Site, and related content, materials, information (collectively, the “Content”) solely for purposes approved by Coinbase from time to time. Any other use of the Coinbase Site or Content is expressly prohibited and all other right, title, and interest in the Coinbase Services, Coinbase Site or Content is exclusively the property of Coinbase and its licensors. You agree you will not copy, transmit, distribute, sell,

license, reverse engineer, modify, publish, or participate in the transfer or sale of, create derivative works from, or in any other way exploit any of the Content, in whole or in part without the prior written consent of Coinbase. “Coinbase.com“, “Coinbase“, “Coinbase Pro“, and all logos related to the Coinbase Services or displayed on the Coinbase Site are either trademarks or registered marks of Coinbase or its licensors. You may not copy, imitate or use them without Coinbase’s prior written consent.

7.2 Website Accuracy. Although we intend to provide accurate and timely information on the Coinbase Site, the Coinbase Site (including, without limitation, the Content) may not always be entirely accurate, complete or current and may also include technical inaccuracies or typographical errors. In an effort to continue to provide you with as complete and accurate information as possible, information may be changed or updated from time to time without notice, including without limitation information regarding our policies, products and services. Accordingly, you should verify all information before relying on it, and all decisions based on information contained on the Coinbase Site are your sole responsibility and we shall have no liability for such decisions. Information provided by third parties, including historical price and supply data for Digital Currencies, is for informational purposes only and Coinbase makes no representations or warranties to its accuracy. Links to third-party materials (including without limitation websites) may be provided as a convenience but are not controlled by us. You acknowledge and agree that we are not responsible for any aspect of the information, content, or services contained in any third-party materials or on any third-party sites accessible or linked to the Coinbase Site,

7.3 Promotions. From time to time, Coinbase may make available special offers or conduct promotions for qualifying customers. Subject to applicable laws, Coinbase or the issuer of a Digital Currency subject to an offer or promotion may establish qualifying criteria to participate in any special promotion its sole discretion. Coinbase may revoke any special offer at any time without notice. Once Digital Currency has been deposited in a user's Digital Currency Wallet, that Digital Currency becomes the property of the Coinbase user with all applicable property rights, including those noted in Section 2.2 of this Agreement. Coinbase shall have no obligation to make special offers available to all customers. Coinbase makes no recommendation and does not provide any advice about the value or utility of any Digital Currency subject to a promotion.

7.3.1 New User Incentive. Coinbase's New User Incentives are available exclusively to new users who have not previously verified their ID. New User Incentives will appear in a new user's account following Coinbase's verification of such user's identification. Coinbase will verify a user's identification based on its internal guidelines and governing regulations, in its sole discretion. New User Incentives are subject to the user agreement and are not guaranteed, even upon successful verification of a user's identification. New users who were referred to Coinbase through the Referral Program or who have previously opened an account using different contact information are ineligible to receive New User Incentives. Coinbase may update the conditions for eligibility at any time, in its sole discretion.

7.4 Third-Party Applications. If, to the extent permitted by Coinbase from time to time, you grant

express permission to a third party to access or connect to your Coinbase Account(s), either through the third party's product or service or through the Coinbase Site, you acknowledge that granting permission to a third party to take specific actions on your behalf does not relieve you of any of your responsibilities under this Agreement. You are fully responsible for all acts or omissions of any third party with access to your Coinbase Account(s). Further, you acknowledge and agree that you will not hold Coinbase responsible for, and will indemnify Coinbase from, any liability arising out of or related to any act or omission of any third party with access to your Coinbase Account(s). You may change or remove permissions granted by you to third parties with respect to your Coinbase Account(s) at any time through the tabs on the Account Settings page on the Coinbase Site.

7.5 Prohibited Use. In connection with your use of the Coinbase Services, and your interactions with other users, and third parties you agree and represent you will not engage in any Prohibited Business or Prohibited Use defined herein. We reserve the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, sanctions programs, legal process or governmental request. We reserve the right to cancel and/or suspend your Coinbase Account(s) and/or block transactions or freeze funds immediately and without notice if we determine, in our sole discretion, that your Account is associated with a Prohibited Use and/or a Prohibited Business.

7.6 Transaction Limits. The use of all Coinbase Services is subject to a limit on the amount of volume, stated in U.S. Dollar terms, you may transact or transfer in a given period (e.g., daily). To view your limits,

login to your Coinbase Account(s) and visit <https://web.archive.org/web/20210410232422/https://www.coinbase.com/verifications>. Your transaction limits may vary depending on your payment method, verification steps you have completed, and other factors. Coinbase reserves the right to change applicable limits as we deem necessary in our sole discretion. If you wish to raise your limits beyond the posted amounts, you may submit a request at <https://web.archive.org/web/20210410232422/https://support.coinbase.com>. We may require you to submit additional information about yourself or your business, provide records, and arrange for meetings with Coinbase staff (such process, “Enhanced Due Diligence”). Coinbase reserves the right to charge you costs and fees associated with Enhanced Due Diligence, provided that we notify you in advance of any such charges accruing. In our sole discretion, we may refuse to raise your limits or we may lower your limits at a subsequent time even if you have completed Enhanced Due Diligence.

7.7 Suspension, Termination, and Cancellation. Coinbase may: (a) suspend, restrict, or terminate your access to any or all of the Coinbase Services, and/or (b) deactivate or cancel your Coinbase Account(s) if: (i) We are so required by a facially valid subpoena, court order, or binding order of a government authority; (ii) We reasonably suspect you of using your Coinbase Account(s) in connection with a Prohibited Use or Business; (iii) Use of your Coinbase Account(s) is subject to any pending litigation, investigation, or government proceeding and/or we perceive a heightened risk of legal or regulatory non-compliance associated with your Account activity; (iv) Our service partners are unable to support your use; (v) You take

any action that Coinbase deems as circumventing Coinbase's controls, including, but not limited to, opening multiple Coinbase Accounts or abusing promotions which Coinbase may offer from time to time; or (vi) You breach our Behavior Policy.

If Coinbase suspends or closes your account, or terminates your use of Coinbase Services for any reason, we will provide you with notice of our actions unless a court order or other legal process prohibits Coinbase from providing you with such notice. You acknowledge that Coinbase's decision to take certain actions, including limiting access to, suspending, or closing your account, may be based on confidential criteria that are essential to Coinbase's risk management and security protocols. You agree that Coinbase is under no obligation to disclose the details of its risk management and security procedures to you.

You will be permitted to transfer Digital Currency or funds associated with your Hosted Digital Currency Wallet(s) and/or your USD Wallet(s) for ninety (90) days after Account deactivation or cancellation unless such transfer is otherwise prohibited (i) under the law, including but not limited to applicable sanctions programs, or (ii) by a facially valid subpoena or court order. You may cancel your Coinbase Account(s) at any time by withdrawing all balances and visiting <https://web.archive.org/web/20210410232422/https://www.coinbase.com/settings/cancel>. You will not be charged for canceling your Coinbase Account(s), although you will be required to pay any outstanding amounts owed to Coinbase. You authorize us to cancel or suspend any pending transactions at the time of cancellation.

7.8 Death of Account Holder. For security reasons, if we receive legal documentation confirming your death or other information leading us to believe you have died, we will freeze your Coinbase Account and during this time, no transactions may be completed until:(i) your designated fiduciary has opened a new Coinbase Account, as further described below, and the entirety of your Coinbase Account has been transferred to such new account, or (ii) we have received proof in a form satisfactory to us that you have not died. If we have reason to believe you may have died but we do not have proof of your death in a form satisfactory to us, you authorize us to make inquiries, whether directly or through third parties, that we consider necessary to ascertain whether you have died. Upon receipt by us of proof satisfactory to us that you have died, the fiduciary you have designated in a valid Will or similar testamentary document will be required to open a new Coinbase Account. If you have not designated a fiduciary, then we reserve the right to (i) treat as your fiduciary any person entitled to inherit your Coinbase Account, as determined by us upon receipt and review of the documentation we, in our sole and absolute discretion, deem necessary or appropriate, including (but not limited to) a Will, a living trust or a Small Estate Affidavit, or (ii) require an order designating a fiduciary from a court having competent jurisdiction over your estate. In the event we determine, in our sole and absolute discretion, that there is uncertainty regarding the validity of the fiduciary designation, we reserve the right to require an order resolving such issue from a court of competent jurisdiction before taking any action relating to your Coinbase Account. Pursuant to the above, the opening of a new Coinbase Account by a designated fiduciary

is mandatory following the death of a Coinbase Account owner, and you hereby agree that your fiduciary will be required to open a new Coinbase Account and provide the information required under Section 2 of this Agreement in order to gain access to the contents of your Coinbase Account.

7.9 Unclaimed Property. If Coinbase is holding funds (whether fiat currency or Digital Currency) in your account, and Coinbase is unable to contact you and has no record of your use of the Services for several years, applicable law may require Coinbase to report these funds (including fiat currency and Digital Currency) as unclaimed property to the applicable jurisdiction. If this occurs, Coinbase will try to locate you at the address shown in our records, but if Coinbase is unable to locate you, it may be required to deliver any such funds to the applicable state or jurisdiction as unclaimed property.

7.10 Relationship of the Parties. Coinbase is an independent contractor for all purposes. Nothing in this Agreement shall be deemed or is intended to be deemed, nor shall it cause, you and Coinbase to be treated as partners, joint ventures, or otherwise as joint associates for profit, or either you or Coinbase to be treated as the agent of the other.

7.11 Privacy of Others; Marketing. If you receive information about another user through the Coinbase Services, you must keep the information confidential and only use it in connection with the Coinbase Services. You may not disclose or distribute a user's information to a third party or use the information except as reasonably necessary to effectuate a transaction and other functions reasonably incidental thereto such as support, reconciliation and accounting unless you

receive the user's express consent to do so. You may not send unsolicited email to a user through the Coinbase Services.

7.12 Password Security; Contact Information.

You are responsible for creating a strong password and maintaining adequate security and control of any and all IDs, passwords, hints, personal identification numbers (PINs), API keys or any other codes that you use to access the Coinbase Services. Any loss or compromise of the foregoing information and/or your personal information may result in unauthorized access to your Coinbase Account(s) by third-parties and the loss or theft of any Digital Currency and/or funds held in your Coinbase Account(s) and any associated accounts, including your linked bank account(s) and credit card(s). You are responsible for keeping your email address and telephone number up to date in your Account Profile in order to receive any notices or alerts that we may send you. **You should never allow remote access or share your computer screen with someone else when you are logged on to your Coinbase Account. Coinbase will never under any circumstances ask you for your IDs, passwords, or 2-factor authentication codes. We assume no responsibility for any loss that you may sustain due to compromise of account login credentials due to no fault of Coinbase and/or failure to follow or act on any notices or alerts that we may send to you.** In the event you believe your Coinbase Account(s) information has been compromised, contact Coinbase Support immediately at <https://web.archive.org/web/20210410232422/https://support.coinbase.com>, or report your claim by phone at (888) 908-7930.

7.13 Developer Tools. If you use developer features of the Services, including but not limited to Coinbase Connect (OAuth2) and any other resources or services available at <https://web.archive.org/web/20210410232422/https://developers.coinbase.com/> (the “**Developer Services**”), you must separately agree to our Developer Agreement upon registering your application with Coinbase.

7.14 Taxes. It is your sole responsibility to determine whether, and to what extent, any taxes apply to any transactions you conduct through the Coinbase Services, and to withhold, collect, report and remit the correct amounts of taxes to the appropriate tax authorities. Your transaction history is available through your Coinbase Account(s).

7.15 No Investment Advice or Brokerage. For the avoidance of doubt, Coinbase does not provide investment, tax, or legal advice, nor does Coinbase broker trades on your behalf. All Coinbase trades are executed automatically, based on the parameters of your order instructions and in accordance with posted Trade execution procedures, and you are solely responsible for determining whether any investment, investment strategy or related transaction is appropriate for you based on your personal investment objectives, financial circumstances and risk tolerance. You should consult your legal or tax professional regarding your specific situation. Coinbase may provide educational information about Supported Digital Currency, as well as Digital Currency not supported by Coinbase, in order to assist users in learning more about such Digital Currency. Information may include, but is not limited to, blog posts, articles, links to to third-party content, news feeds, tutorials, and videos. The information provided on this website or any third-party sites does not

constitute investment advice, financial advice, trading advice, or any other sort of advice, and you should not treat any of the website's content as such. Coinbase does not recommend that any Digital Currency should be bought, earned, sold, or held by you. Before making the decision to buy, sell or hold any Digital Currency, you should conduct your own due diligence and consult your financial advisors before making any investment decision. Coinbase will not be held responsible for the decisions you make to buy, sell, or hold Digital Currency based on the information provided by Coinbase.

8. Customer Feedback, Queries, Complaints, and Dispute Resolution

8.1 Contact Coinbase. If you have feedback, or general questions, contact us via our Customer Support webpage at <https://web.archive.org/web/20210410232422/https://support.coinbase.com>. When you contact us please provide us with your name, address, and any other information we may need to identify you, your Coinbase Account(s), and the transaction on which you have feedback or questions.

If you believe your account has been compromised, you may also report your claim by calling (888) 908-7930. Coinbase requires that all legal documents (including civil subpoenas, complaints, and small claims) be served on our registered agent for service of process. Current contact information for our registered agent in each state can be found here.

Please note that our registered agent will accept service only if the entity identified as the recipient of the document is identical to the entity registered with the Secretary of State and for which our registered agent is authorized to accept service. By accepting service of

a legal document, Coinbase does not waive any objections we may have and may raise in response to such document.

8.2. Formal Complaint Process. If you have a dispute with Coinbase (a “Complaint”), you agree to contact Coinbase through our support team to attempt to resolve any such dispute amicably. **If we cannot resolve the dispute through the Coinbase support team, you and we agree to use the Formal Complaint Process set forth below.** You agree to use this process before filing any arbitration claim or small claims action. If you do not follow the procedures set out in this Section before filing an arbitration claim or suit in small claims court, we shall have the right to ask the arbitrator or small claims court to dismiss your filing unless and until you complete the following steps.

8.2.1. Procedural Steps. In the event that your dispute with Coinbase is not resolved through your contact with Coinbase Support, you agree to use our Complaint form to describe your Complaint, how you would like us to resolve the Complaint, and any other information related to your dispute that you believe to be relevant. The Complaint form can be found on the Coinbase support pages, <https://web.archive.org/web/20210410232422/https://support.coinbase.com> or can be requested from Coinbase Customer Support.

8.2.2. Coinbase Response. We will acknowledge receipt of your Complaint form after you submit it. A Coinbase customer relations agent (“Agent”) will review your Complaint. The Agent will evaluate your Complaint based on the information you have provided and information in the possession of Coinbase.

Within 15 business days of our receipt of your Complaint form, the Agent will address the issues raised in your Complaint form by sending you an e-mail (“Resolution Notice”) in which the Agent will: (i) offer to resolve your complaint in the way you requested; (ii) make a determination rejecting your Complaint and set out the reasons for the rejection; or (iii) offer to resolve your Complaint with an alternative solution. In exceptional circumstances, if the Agent is unable to respond to your Complaint within 15 business days for reasons beyond Coinbase’s control, the Agent will send you a communication indicating the reasons for any delay in answering your Complaint, and specifying the deadline by which the Agent will respond to your Complaint, which will be no later than 35 business days from our receipt of your Complaint form.

8.3. Arbitration; Waiver of Class Action. If we cannot resolve the dispute through the Formal Complaint Process, you and we agree that any dispute arising out of or relating to this Agreement or the Coinbase Services, including, without limitation, federal and state statutory claims, common law claims, and those based in contract, tort, fraud, misrepresentation, or any other legal theory, shall be resolved through binding arbitration, on an individual basis (the “Arbitration Agreement”). Subject to applicable jurisdictional requirements, you may elect to pursue your claim in your local small claims court rather than through arbitration so long as your matter remains in small claims court and proceeds only on an individual (non-class and non-representative) basis. Arbitration shall be conducted in accordance with the American Arbitration Association’s rules for arbitration of

consumer-related disputes (accessible at <https://web.archive.org/web/20210410232422/https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>).

This Arbitration Agreement includes, without limitation, disputes arising out of or related to the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement. All such matters shall be decided by an arbitrator and not by a court or judge.

CLASS ACTION WAIVER: TO THE EXTENT PERMISSIBLE BY LAW, ALL CLAIMS MUST BE BROUGHT IN A PARTY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE ACTION, OR REPRESENTATIVE PROCEEDING (COLLECTIVELY "CLASS ACTION WAIVER"). THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS OR ENGAGE IN ANY CLASS ARBITRATION. YOU ACKNOWLEDGE THAT, BY AGREEING TO THESE TERMS, YOU AND COINBASE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION.

The arbitration will be conducted by a single, neutral arbitrator and shall take place in the county or parish in which you reside, or another mutually agreeable location, in the English language. The arbitrator may award any relief that a court of competent jurisdiction could award and the arbitral decision may be enforced in any court. An arbitrator's decision and

judgment thereon will not have a precedential or collateral estoppel effect. At your request, hearings may be conducted in person or by telephone and the arbitrator may provide for submitting and determining motions on briefs, without oral hearings. To the extent permitted by law, the prevailing party in any action or proceeding to enforce this Agreement, any arbitration pursuant to this Agreement, or any small claims action shall be entitled to costs and attorneys' fees. If the arbitrator or arbitration administrator would impose filing fees or other administrative costs on you, we will reimburse you, upon request, to the extent such fees or costs would exceed those that you would otherwise have to pay if you were proceeding instead in a court. We will also pay additional fees or costs if required to do so by the arbitration administrator's rules or applicable law.

9. General Provisions

9.1. Computer Viruses. We shall not bear any liability, whatsoever, for any damage or interruptions caused by any computer viruses or other malicious code that may affect your computer or other equipment, or any phishing, spoofing or other attack. We advise the regular use of a reputable and readily available virus screening and prevention software. You should also be aware that SMS and email services are vulnerable to spoofing and phishing attacks and should use care in reviewing messages purporting to originate from Coinbase. Always log into your Coinbase Account(s) through the Coinbase Site to review any transactions or required actions if you have any uncertainty regarding the authenticity of any communication or notice.

9.2. Release of Coinbase; Indemnification. If you have a dispute with one or more users of the Coinbase Services, you release Coinbase, its affiliates and service providers, and each of their respective officers, directors, agents, joint venturers, employees and representatives from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes. You agree to indemnify and hold Coinbase, its affiliates and Service Providers, and each of its or their respective officers, directors, agents, joint venturers, employees and representatives, harmless from any claim or demand (including attorneys' fees and any fines, fees or penalties imposed by any regulatory authority) arising out of or related to your breach of this Agreement or your violation of any law, rule or regulation, or the rights of any third party.

9.3. Limitation of Liability; No Warranty. IN NO EVENT SHALL COINBASE, ITS AFFILIATES AND SERVICE PROVIDERS, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES OR REPRESENTATIVES, BE LIABLE (A) FOR ANY AMOUNT GREATER THAN THE VALUE OF THE SUPPORTED DIGITAL CURRENCY ON DEPOSIT IN YOUR COINBASE ACCOUNT(S) OR (B) FOR ANY LOST PROFITS, DIMINUTION IN VALUE OR BUSINESS OPPORTUNITY, ANY LOSS, DAMAGE, CORRUPTION OR BREACH OF DATA OR ANY OTHER INTANGIBLE PROPERTY OR ANY SPECIAL, INCIDENTAL, INDIRECT, INTANGIBLE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN

CONNECTION WITH AUTHORIZED OR UNAUTHORIZED USE OF THE COINBASE SITE OR THE COINBASE SERVICES, OR THIS AGREEMENT, EVEN IF AN AUTHORIZED REPRESENTATIVE OF COINBASE HAS BEEN ADVISED OF OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, EXCEPT TO

THE EXTENT OF A FINAL JUDICIAL DETERMINATION THAT SUCH DAMAGES WERE A RESULT OF COINBASE'S GROSS NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR INTENTIONAL VIOLATION OF LAW. THIS MEANS, BY WAY OF EXAMPLE ONLY (AND WITHOUT LIMITING THE SCOPE OF THE PRECEDING SENTENCE), THAT IF YOU CLAIM THAT COINBASE FAILED TO PROCESS A BUY OR SELL TRANSACTION PROPERLY, YOUR DAMAGES ARE LIMITED TO NO MORE THAN THE VALUE OF THE SUPPORTED DIGITAL CURRENCY AT ISSUE IN THE TRANSACTION, AND THAT YOU MAY NOT RECOVER FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, DIMINUTION IN VALUE OR OTHER TYPES OF SPECIAL, INCIDENTAL, INDIRECT, INTANGIBLE, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES IN EXCESS OF THE VALUE OF THE SUPPORTED DIGITAL CURRENCY AT ISSUE IN THE TRANSACTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THE COINBASE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COINBASE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. COINBASE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT ACCESS TO THE SITE, ANY PART OF THE COINBASE SERVICES, OR ANY OF THE MATERIALS CONTAINED THEREIN, WILL BE CONTINUOUS, UNINTERRUPTED, TIMELY, OR ERROR-FREE. COINBASE DOES NOT GUARANTEE THAT ANY ORDER WILL BE EXECUTED, ACCEPTED, RECORDED OR REMAIN OPEN. EXCEPT FOR THE EXPRESS STATEMENTS SET FORTH IN THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU HAVE NOT RELIED UPON ANY OTHER STATEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, WITH RESPECT TO YOUR USE AND ACCESS OF THE COINBASE SERVICES AND COINBASE SITE. WITHOUT LIMITING THE FOREGOING, YOU HEREBY UNDERSTAND AND AGREE THAT COINBASE WILL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES ARISING OUT OF OR RELATING TO: (A) ANY INACCURACY, DEFECT OR OMISSION OF DIGITAL CURRENCY PRICE DATA, (B) ANY ERROR OR DELAY IN THE TRANSMISSION OF SUCH DATA, OR (C) INTERRUPTION IN ANY SUCH DATA.

Coinbase makes no representations about the accuracy, order, timeliness or completeness of historical Digital Currency price data available on the Coinbase Site. Coinbase will make reasonable efforts to ensure that requests for electronic debits and credits involving bank accounts, credit cards, and check issuances are processed in a timely manner but Coinbase makes no representations or warranties regarding the amount of time needed to complete processing which is dependent upon many factors outside of our control.

IF YOU ARE A NEW JERSEY RESIDENT, the provisions of this Section 9.3 are intended to apply only to the extent permitted under New Jersey law.

9.4. Entire Agreement. This Agreement, the Privacy Policy, E-Sign Consent, and Appendices incorporated by reference herein comprise the entire understanding and agreement between you and Coinbase as to the subject matter hereof, and supersedes any and all prior discussions, agreements and understandings of any kind (including without limitation any prior versions of this Agreement), and every nature between and among you and Coinbase. Section headings in this Agreement are for convenience only and shall not govern the meaning or interpretation of any provision of this Agreement.

9.5. Amendments. We may amend or modify this Agreement by posting on the Coinbase Site or emailing to you the revised Agreement, and the revised Agreement shall be effective at such time. If you do not agree with any such modification, your sole and exclusive remedy is to terminate your use of the Services and close your account. You agree that we shall not be liable to you or any third party for any modification or termination of the Coinbase Services, or suspension or

termination of your access to the Coinbase Services, except to the extent otherwise expressly set forth herein. If the revised Agreement includes a material change, we will endeavor to provide you advanced notice via our website and/or email before the material change becomes effective.

9.6. Assignment. You may not assign any rights and/or licenses granted under this Agreement. We reserve the right to assign our rights without restriction, including without limitation to any Coinbase affiliates or subsidiaries, or to any successor in interest of any business associated with the Coinbase Services. Any attempted transfer or assignment in violation hereof shall be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

9.7. Severability. If any provision of this Agreement shall be determined to be invalid or unenforceable under any rule, law, or regulation of any local, state, or federal government agency, such provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under any applicable law and the validity or enforceability of any other provision of this Agreement shall not be affected.

9.8. Change of Control. In the event that Coinbase is acquired by or merged with a third party entity, we reserve the right, in any of these circumstances, to transfer or assign the information we have collected from you as part of such merger, acquisition, sale, or other change of control.

9.9. Survival. All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement, including, without

limitation, sections pertaining to suspension or termination, Coinbase Account cancellation, debts owed to Coinbase, general use of the Coinbase Site, disputes with Coinbase, and general provisions, shall survive the termination or expiration of this Agreement.

9.10. Governing Law. You agree that the laws of the State of California, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute that has arisen or may arise between you and Coinbase, except to the extent governed by federal law.

9.11. Force Majeure. We shall not be liable for delays, failure in performance or interruption of service which result directly or indirectly from any cause or condition beyond our reasonable control, including but not limited to, significant market volatility, any delay or failure due to any act of God, act of civil or military authorities, act of terrorists, civil disturbance, war, strike or other labor dispute, fire, interruption in telecommunications or Internet services or network provider services, failure of equipment and/or software, other catastrophe or any other occurrence which is beyond our reasonable control and shall not affect the validity and enforceability of any remaining provisions.

9.12. Non-Waiver of Rights. This agreement shall not be construed to waive rights that cannot be waived under applicable state money transmission laws in the state where you are located.

APPENDIX 1: Prohibited Use, Prohibited Businesses and Conditional Use

Prohibited Use

You may not use your Coinbase Account(s) to engage in the following categories of activity (“Prohibited Uses”). The specific types of use listed below are representative, but not exhaustive. If you are uncertain as to whether or not your use of Coinbase Services involves a Prohibited Use, or have questions about how these requirements apply to you, please contact us at <https://web.archive.org/web/20210410232422/https://support.coinbase.com>. By opening a Coinbase Account, you confirm that you will not use your Account to do any of the following:

- **Unlawful Activity:** Activity which would violate, or assist in violation of, any law, statute, ordinance, or regulation, sanctions programs administered in the countries where Coinbase conducts business, including but not limited to the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”), or which would involve proceeds of any unlawful activity; publish, distribute or disseminate any unlawful material or information
- **Abusive Activity:** Actions which impose an unreasonable or disproportionately large load on our infrastructure, or detrimentally interfere with, intercept, or expropriate any system, data, or information; transmit or upload any material to the Coinbase Site that contains viruses, trojan horses, worms, or any other harmful or deleterious programs; attempt to gain unauthorized access to the Coinbase Site, other

Coinbase Accounts, computer systems or networks connected to the Coinbase Site, through password mining or any other means; use Coinbase Account information of another party to access or use the Coinbase Site, except in the case of specific Merchants and/or applications which are specifically authorized by a user to access such user's Coinbase Account and information; or transfer your account access or rights to your account to a third party, unless by operation of law or with the express permission of Coinbase.

- **Abuse Other Users:** Interfere with another individual's or entity's access to or use of any Coinbase Services; defame, abuse, extort, harass, stalk, threaten or otherwise violate or infringe the legal rights (such as, but not limited to, rights of privacy, publicity and intellectual property) of others; incite, threaten, facilitate, promote, or encourage hate, racial intolerance, or violent acts against others; harvest or otherwise collect information from the Coinbase Site about others, including without limitation email addresses, without proper consent
- **Fraud:** Activity which operates to defraud Coinbase, Coinbase users, or any other person; provide any false, inaccurate, or misleading information to Coinbase
- **Gambling:** Lotteries; bidding fee auctions; sports forecasting or odds making; fantasy sports leagues with cash prizes; internet gaming; contests; sweepstakes; games of chance
- **Intellectual Property Infringement:** Engage in transactions involving items that infringe or violate any copyright, trademark, right

of publicity or privacy or any other proprietary right under the law, including but not limited to sales, distribution, or access to counterfeit music, movies, software, or other licensed materials without the appropriate authorization from the rights holder; use of Coinbase intellectual property, name, or logo, including use of Coinbase trade or service marks, without express consent from Coinbase or in a manner that otherwise harms Coinbase or the Coinbase brand; any action that implies an untrue endorsement by or affiliation with Coinbase

Prohibited Businesses

In addition to the Prohibited Uses described above, the following categories of businesses, business practices, and sale items are barred from Coinbase Services (“Prohibited Businesses”). Most Prohibited Businesses categories are imposed by Card Network rules or the requirements of our banking providers or processors. The specific types of use listed below are representative, but not exhaustive. If you are uncertain as to whether or not your use of Coinbase Services involves a Prohibited Business, or have questions about how these requirements apply to you, please contact us at <https://web.archive.org/web/20210410232422/https://support.coinbase.com>.

By opening a Coinbase Account, you confirm that you will not use Coinbase Services in connection with any of following businesses, activities, practices, or items:

- **Investment and Credit Services:** Securities brokers; mortgage consulting or debt reduction

services; credit counseling or repair; real estate opportunities; investment schemes

- **Restricted Financial Services:** Check cashing, bail bonds; collections agencies.
- **Intellectual Property or Proprietary Rights Infringement:** Sales, distribution, or access to counterfeit music, movies, software, or other licensed materials without the appropriate authorization from the rights holder
- **Counterfeit or Unauthorized Goods:** Unauthorized sale or resale of brand name or designer products or services; sale of goods or services that are illegally imported or exported or which are stolen
- **Regulated Products and Services:** Marijuana dispensaries and related businesses; sale of tobacco, e-cigarettes, and e-liquid; online prescription or pharmaceutical services; age restricted goods or services; weapons and munitions; gunpowder and other explosives; fireworks and related goods; toxic, flammable, and radioactive materials; products and services with varying legal status on a state-by-state basis
- **Drugs and Drug Paraphernalia:** Sale of narcotics, controlled substances, and any equipment designed for making or using drugs, such as bongs, vaporizers, and hookahs
- **Pseudo-Pharmaceuticals:** Pharmaceuticals and other products that make health claims that have not been approved or verified by the applicable local and/or national regulatory body

- **Substances designed to mimic illegal drugs:** Sale of a legal substance that provides the same effect as an illegal drug (e.g., salvia, kratom)
- **Adult Content and Services:** Pornography and other obscene materials (including literature, imagery and other media); sites offering any sexually-related services such as prostitution, escorts, pay-per view, adult live chat features
- **Multi-level Marketing:** Pyramid schemes, network marketing, and referral marketing programs
- **Unfair, predatory or deceptive practices:** Investment opportunities or other services that promise high rewards; Sale or resale of a service without added benefit to the buyer; resale of government offerings without authorization or added value; sites that we determine in our sole discretion to be unfair, deceptive, or predatory towards consumers
- **High risk businesses:** any businesses that we believe poses elevated financial risk, legal liability, or violates card network or bank policies

Conditional Use

Express written consent and approval from Coinbase must be obtained prior to using Coinbase Services for the following categories of business and/or use (“Conditional Uses”). Consent may be requested by contacting us at <https://web.archive.org/web/20210410232422/https://support.coinbase.com>. Coinbase may also require you to agree to additional conditions, make supplemental

representations and warranties, complete enhanced on-boarding procedures, and operate subject to restrictions if you use Coinbase Services in connection with any of following businesses, activities, or practices:

- **Money Services:** Money transmitters, Digital Currency transmitters; currency or Digital Currency exchanges or dealers; gift cards; prepaid cards; sale of in-game currency unless the merchant is the operator of the virtual world; act as a payment intermediary or aggregator or otherwise resell any of the Coinbase Services
- **Charities:** Acceptance of donations for non-profit enterprise
- **Games of Skill:** Games which are not defined as gambling under this Agreement or by law, but which require an entry fee and award a prize
- **Religious/Spiritual Organizations:** Operation of a for-profit religious or spiritual organization

APPENDIX 2: Verification Procedures and Limits

As a regulated financial service company operating in the US we are required to identify users on our platform. This ensures we remain in compliance with KYC/AML laws in the jurisdictions in which we operate, something that is necessary for us to be able to continue to offer digital currency exchange services to our customers. Coinbase collects and verifies information about you in order to: (a) protect Coinbase and the community from fraudulent users, and (b) to keep appropriate records of Coinbase's customers. Your

daily or weekly Conversion limits, Coinbase Pro deposit, withdrawal and trading limits, Instant Buy limits, USD Wallet transfer limits, and limits on transactions from a linked payment method are based on the identifying information and/or proof of identity you provide to Coinbase.

All U.S. customers who wish to use Coinbase Services are required to establish a Coinbase Account by:

- Providing your name and valid email address, a password and your state of residence,
- Certifying that you are 18 years or older,
- Accepting User Agreement and Privacy Policy, and
- Verifying your identity by submitting the following information:
 - Name
 - DOB
 - Physical address
 - SSN (or ID # from gov't issued ID)
 - Source of funds
 - Income/employment information (US only)
 - Explanation of activity (US only)

All U.S. customers who wish to send and received Digital Currency on to the blockchain are required to:

- Submit a copy of an acceptable form of identification (i.e. passport, state driver's license, or state identification card), and
- Submit a picture of yourself or a selfie from your webcam or mobile phone.

Notwithstanding these minimum verification procedures for the referenced Coinbase Services, Coinbase may require you to provide or verify additional information, or to wait some amount of time after completion of a transaction, before permitting you to use any Coinbase Services and/or before permitting you to engage in transactions beyond certain volume limits. You may determine the volume limits associated with your level of identity verification by visiting your account's Limits page.

You may contact us at <https://web.archive.org/web/20210410232422/https://support.coinbase.com> to request larger limits. Coinbase will require you to submit to Enhanced Due Diligence. Additional fees and costs may apply, and Coinbase does not guarantee that we will raise your limits.

APPENDIX 3: E-Sign Disclosure and Consent

This policy describes how Coinbase delivers communications to you electronically. We may amend this policy at any time by providing a revised version on our website. The revised version will be effective at the time we post it. We will provide you with prior notice of any material changes via our website.

Electronic Delivery of Communications

You agree and consent to receive electronically all communications, agreements, documents, notices and disclosures (collectively, "Communications") that we provide in connection with your Coinbase Account(s) and your use of Coinbase Services. Communications include:

- Terms of use and policies you agree to (e.g., the Coinbase User Agreement and Privacy Policy),

including updates to these agreements or policies;

- Account details, history, transaction receipts, confirmations, and any other Account or transaction information;
- Legal, regulatory, and tax disclosures or statements we may be required to make available to you; and
- Responses to claims or customer support inquiries filed in connection with your Account.

We will provide these Communications to you by posting them on the Coinbase website, emailing them to you at the primary email address listed in your Coinbase profile, communicating to you via instant chat, and/or through other electronic communication such as text message or mobile push notification.

Hardware and Software Requirements

In order to access and retain electronic Communications, you will need the following computer hardware and software:

- A device with an Internet connection;
- A current web browser that includes 128-bit encryption (e.g. Internet Explorer version 9.0 and above, Firefox version 3.6 and above, Chrome version 31.0 and above, or Safari 7.0 and above) with cookies enabled;
- A valid email address (your primary email address on file with Coinbase); and
- Sufficient storage space to save past Communications or an installed printer to print them.

How to Withdraw Your Consent

You may withdraw your consent to receive Communications electronically by contacting us at <https://web.archive.org/web/20210410232422/https://support.coinbase.com> . If you fail to provide or if you withdraw your consent to receive Communications electronically, Coinbase reserves the right to immediately close your Account or charge you additional fees for paper copies.

Updating your Information

It is your responsibility to provide us with a true, accurate and complete e-mail address and your contact information, and to keep such information up to date. You understand and agree that if Coinbase sends you an electronic Communication but you do not receive it because your primary email address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic Communications, Coinbase will be deemed to have provided the Communication to you.

You may update your information by logging into your account and visiting settings or by contacting our support team at <https://web.archive.org/web/20210410232422/https://support.coinbase.com>.

APPENDIX 4: State License Disclosures

Coinbase maintains licenses to engage in money transmission activities in many states, and these licenses may impact our provision and your use of certain Coinbase Services depending on where you live. Coinbase's licenses and corresponding required disclosures can be found on the Coinbase Licenses page, which is incorporated by reference.

If you live in the following jurisdictions, we are required to provide you with the following information:

Alaska Please note that this license does not cover the transmission of virtual currency.

For Alaska Residents Only: If your issue is unresolved by Coinbase, Inc. & 1-888-908-7930, please submit formal complaints with the State of Alaska, Division of Banking & Securities. Formal complaints must be in writing, please download the form here: <https://web.archive.org/web/20210410232422/https://www.commerce.alaska.gov/web/portals/3/pub/DBSGeneralComplaintFormupdated.pdf>

Formal complaint forms may be submitted via:
1. Fax: 907-465-1230 2. Email: msb_licensing@alaska.gov 3. Mail: Division of Banking & Securities
PO Box 110807 Juneau, AK 99811-0807

If you have questions regarding formal complaints, please call 907-465-2521

Colorado Colorado State Banking Commissioner

CUSTOMER NOTICE Entities other than FDIC insured financial institutions that conduct money transmission activities in Colorado, including the sale of money orders, transfer of funds, and other instruments for the payment of money or credit, are required to be licensed by the Colorado Division of Banking pursuant to the Money Transmitters Act, Title 11, Article 110, Colorado Revised Statutes.

If you have a Question about or Problem with YOUR TRANSACTION - THE MONEY YOU SENT You must contact the Money Transmitter who processed

your transaction for assistance. The Division of Banking does not have access to this information.

If you are a Colorado Resident and have a Complaint about THE MONEY TRANSMITTER – THE COMPANY THAT SENT YOUR MONEY ALL complaints must be submitted in writing. Please fill out the Complaint Form provided on the Colorado Division of Banking’s website and return it and any documentation supporting the complaint via mail or email to the Division of Banking at:

Colorado Division of Banking 1560 Broadway, Suite
975 Denver, CO 80202
email: DORA_BankingWebsite@state.co.us website:
www.dora.colorado.gov/dob

Section 11-110-120, C.R.S. requires that money transmitters and money order companies post this notice in a conspicuous, well-lighted location visible to customers.

Colorado Customer Notice (MO7)

Florida If you have a question or complaint, please contact the consumer assistance division of Coinbase at <https://web.archive.org/web/20210410232422/https://support.coinbase.com> or 1-888-908-7930.

Florida residents may contact the Florida Office of Financial Regulation with any unresolved questions or complaints about Coinbase, Inc. at 200 E. Gaines Street, Tallahassee, FL 32399-0376, telephone number: (850) 487-9687 (toll free).

Illinois Illinois residents may contact the Illinois Department of Financial Institutions, Consumer Credit Section with any unresolved questions or

complaints about Coinbase, Inc. at (888) 473-4858 (toll-free).

Louisiana Please note the license issued to Coinbase by the Louisiana Office of Financial Institutions does not cover the exchange or transmission of virtual currency.'

Maryland The Commissioner of Financial Regulation for the State of Maryland will accept all questions or complaints from Maryland residents regarding Coinbase, Inc. (License No. 12-1163082 and NMLS ID: 1163082) by contacting the Commissioner's office at: 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, or (888) 784-0136.

Nevada Coinbase, Inc. is licensed by the Nevada Department of Business and Industry as a money transmitter. At this time, the Nevada Department of Business and Industry does not license or regulate services related to virtual currency, including but not limited to virtual currency transmission or exchange which may be conducted by Coinbase.

New York Please note the following disclosures associated with virtual currency:

- Virtual currency is not legal tender, is not backed by the government, and accounts and value balances are not subject to Federal Deposit Insurance Corporation or Securities Investor Protection Corporation protections.
- Legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of virtual currency.

- Transactions in virtual currency may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable.
- Some virtual currency transactions shall be deemed to be made when recorded on a public ledger, which is not necessarily the date or time that the customer initiates the transaction.
- The value of virtual currency may be derived from the continued willingness of market participants to exchange fiat currency for virtual currency, which may result in the potential for permanent and total loss of value of a particular virtual currency should the market for that virtual currency disappear.
- There is no assurance that a person who accepts a virtual currency as payment today will continue to do so in the future.
- The volatility and unpredictability of the price of virtual currency relative to fiat currency may result in significant loss over a short period of time.
- The nature of virtual currency may lead to an increased risk of fraud or cyber attack.
- The nature of virtual currency means that any technological difficulties experienced by Coinbase may prevent the access or use of a customer's virtual currency.
- Any bond or trust account maintained by Coinbase for the benefit of its customers may not be sufficient to cover all losses incurred by customers.

Coinbase, Inc., located at 100 Pine St Suite 1250, San Francisco, CA 94111, is regulated and licensed as a money transmitter by the New York State Department of Financial Services. If you have a question or complaint, please contact the consumer assistance division of Coinbase at <https://web.archive.org/web/20210410232422/https://support.coinbase.com> or 1-888-908-7930.

For unresolved complaints, you may mail a complaint to New York State Department of Financial Services, Consumer Services Division, One State Street, New York, NY 10004-1417, (212) 709-5470.

Tennessee Please note that this license and the required surety bond do not cover the transmission of virtual currency. Coinbase is licensed by the Tennessee Department of Financial Institutions as a money transmitter. The Tennessee Department of Financial Institutions does not regulate virtual currency.

Texas If you have a complaint, first contact the consumer assistance division of Coinbase at <https://web.archive.org/web/20210410232422/https://support.coinbase.com> or (888) 908-7930. If you still have an unresolved complaint regarding the company's money transmission or currency exchange activity, please direct your complaint to: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, 1-877-276-5554 (toll free), www.dob.texas.gov.

Virginia Coinbase, Inc. is licensed by the Virginia State Corporation Commission as a money transmitter, but such license does not cover the transmission of virtual currency (Bitcoin).

Washington If you have a complaint, first contact the consumer assistance division of <https://web.archive.org/web/20210410232422/https://support.coinbase.com> or 1-888-908-7930, and if you still have an unresolved complaint regarding the company's money transmission activity, please contact the Washington State Department of Financial Institutions, Division of Consumer Services using one of the following methods:

File a complaint online, mail or fax: <https://web.archive.org/web/20210410232422/https://dfi.wa.gov/consumers/loan-complaints> Call us: 1-877-RING DFI (1-877-746-4334) Email us: CSEnforceComplaints@dfi.wa.gov

Part 2. COINBASE PRO

1. Coinbase Pro Accounts

1.1 Access to Coinbase Pro. Eligible users may establish an account at Coinbase Pro (at pro.coinbase.com), an order book exchange platform for Digital Currencies. Coinbase does not offer Coinbase Pro to customers in all jurisdictions. This Part 2 of the User Agreement applies to you if you access Coinbase Pro.

1.2 Order Books. Coinbase Pro offers an order book for various Digital Currency and Fiat Currency trading pairs (each an 'Order Book'). Refer to your Coinbase Pro account to determine which Order Books are available to you.

1.3 Your Coinbase Pro Account. Your Coinbase Pro Account consists of the following.

- A dedicated Hosted Digital Currency Wallet for each Digital Currency offered on Coinbase Pro.

- A dedicated Fiat Currency Wallet.
- Associated user tools, accessible at pro.coinbase.com and through Coinbase Pro API.

1.4 Deposits. You may fund your Coinbase Pro Account by depositing Digital Currency and/or Fiat Currency from your basic Coinbase Account, Bank Account or an external Digital Currency address into your Coinbase Pro Account. Funds in your Coinbase Pro Account can be used only to trade on Coinbase Pro.

1.5 Withdrawals. You may withdraw Digital Currency from your Coinbase Pro Account by transfer to your basic Coinbase Account or to an external Digital Currency address. You may withdraw Fiat Currency from your Coinbase Pro Account to your basic Coinbase Account or directly to your Bank Account.

ALL DEPOSITS AND WITHDRAWALS MAY BE SUBJECT TO LIMITS. ALL LIMITS WILL BE DISPLAYED IN YOUR Coinbase Pro ACCOUNT.

1.6 Withdrawal Fees. Coinbase may also charge a fee on certain Fiat Currency deposit or withdrawal methods (e.g. bank wire). All such fees will be clearly displayed in your Coinbase Pro Account.

2. Trading Rules and Trading Fees

2.1 Trading Rules. By accessing Coinbase Pro through pro.coinbase.com or Coinbase Pro API, you accept and agree to be bound by the Trading Rules

2.2. Trading Fees. By placing an order on Coinbase Pro, you agree to pay all applicable fees and you authorize Coinbase to automatically deduct fees directly from your Coinbase Pro Account. Trading Fees are set forth in the Trading Rules and at pro.coinbase.com/fees

3. General Use, Restrictions, and Cancellation

3.1. Trading Account Use. By using a Coinbase Pro Account you agree and represent that you will use Coinbase Pro only for yourself as Account owner, and not on behalf of any third party, unless you have obtained prior approval from Coinbase. You may not sell, lease, furnish or otherwise permit or provide access to your Trading Account to any other entity or to any individual that is not your employee or agent. You accept full responsibility for your employees' or agents' use of Coinbase Pro, whether such use is directly through Coinbase Pro website or by other means, such as those facilitated through API keys, and/or applications which you may authorize. You understand and agree that you are responsible for any and all orders, trades, and other instructions entered into Coinbase Pro including identifiers, permissions, passwords, and security codes associated with your Coinbase Pro Account.

3.2. Suspension and Cancellation. We may suspend your Coinbase Pro Account or your access to any one for more Order Books in accordance with the User Agreement Account suspension and termination provisions. Suspension or termination of your Coinbase Pro Account shall not affect the payment of fees or other amounts you owe to Coinbase. In the event that your Basic Coinbase Account is suspended or terminated, we will immediately cancel all open orders associated with your Coinbase Pro Account, block all withdrawals and bar the placing of further orders until resolution or Account cancellation.

3.3. No Warranty. We do not represent that Coinbase Pro and/or its constituent Coinbase Pro Accounts, APIs, and related services, will be available without interruption. Although we will strive to provide you

with continuous operations, we do not guarantee continuous access or that there will be no delays, failures, errors, omissions or loss of transmitted information, nor do we guarantee that any order will be executed, accepted, recorded, or remain open. Coinbase reserves the right to cancel any open trades and/or suspend Coinbase Pro activity in accordance with the Trading Rules.

3.4. No Investment Advice or Brokerage. For the avoidance of doubt, Coinbase does not provide investment, tax, or legal advice, nor does Coinbase broker trades on your behalf. All Coinbase Pro trades are executed automatically, based on the parameters of your order instructions and in accordance with posted Trade execution procedures, and you are solely responsible for determining whether any investment, investment strategy or related transaction is appropriate for you based on your personal investment objectives, financial circumstances and risk tolerance. You should consult your legal or tax professional regarding your specific situation.

3.5. Debts. In the event that there are outstanding amounts owed to us hereunder, including in your Coinbase Account, Coinbase reserves the right to debit your Coinbase Pro Account accordingly and/or to withhold amounts from funds you may transfer from your Coinbase Pro Account to your Coinbase Account.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Filed February 10, 2022]

Case No. 3:21-cv-07478-WHA

ABRAHAM BIELSKI, on behalf of himself and all others similarly situated,

Plaintiff,

v.

COINBASE, INC.,

Defendant.

**DECLARATION OF ABRAHAM BIELSKI IN
SUPPORT OF PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO COMPEL
ARBITRATION**

I, Abraham Bielski, declare as follows:

1. I am the named Plaintiff in this action, and I submit this declaration in support of my Opposition to Defendant's Motion to Compel Arbitration. I have personal knowledge of the information set forth in this Declaration.

2. To the best of my recollection, I recall opening my Coinbase account in May of 2021. However, I have no reason to dispute Coinbase's evidence that shows I opened my account in April 2021.

3. When I opened my account, I vaguely recall clicking a box that stated that I agreed to Coinbase's User Agreement. However, I was not required to scroll through the User Agreement before accepting it.

4. Coinbase did not give me an opportunity to negotiate the terms of the User Agreement, which were presented to me on a "take it or leave it" basis.

5. I have not used Coinbase since the implementation of its most recent User Agreement.

6. I opened my Coinbase account to try trading in cryptocurrencies, such as Bitcoin.

7. On September 8 and 9, 2021, I became the target of a scam by an individual who purported to be a representative of PayPal. I granted this individual remote access to my computer, which access the perpetrator used to transfer the entirety of my funds from my Coinbase account – USD 31,039.06 – to the perpetrator's account.

8. Upon discovering that my account had been compromised, I initiated a "live chat" with whom I first thought was a live Coinbase customer service representative. While I do not have a transcript of this interaction, I recall realizing that Coinbase's "representative" appeared to be a "bot" and provided only template responses and offered no meaningful help whatsoever. I then repeatedly attempted to call Coinbase customer service at the telephone number the User Agreement instructed me to call in the event of my account being compromised but was unable to reach anyone. I subsequently wrote two letters to Coinbase at its San Francisco address on September 10 and September 21, 2021, imploring Coinbase to

help me.¹ Coinbase never responded to any of my repeated inquiries until after I added my name to this case, after which Coinbase sent me multiple, apparently automated, inquiries.

9. I never submitted to Coinbase a “Formal Complaint” or used the “Formal Complaint Process” pursuant to the User Agreement concerning this dispute (or any other dispute).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 2/8/2022, in Jacksonville, Florida.

By: /s/ Abraham Bielski
Abraham Bielski

¹ My correspondence to Coinbase included all information required by paragraph 8.1 of the User Agreement.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

[Filed July 21, 2022]

Case No. 3:21-cv-07478-WHA

ABRAHAM BIELSKI, on behalf of himself and all others similarly situated,

Plaintiff,

v.

COINBASE, INC.,

Defendant.

**DEFENDANT COINBASE, INC.'S ANSWER TO
SECOND AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Defendant Coinbase, Inc. (Coinbase), as and for its Answer to the Second Amended Class Action Complaint (SACC), states as follows:

PRELIMINARY STATEMENT

This lawsuit is fundamentally flawed. Not only does the Electronic Funds Transfer Act (EFTA) not apply to Coinbase – for multiple reasons – but the proposed classes are flawed and unworkable. Plaintiff has also mischaracterized and misstated what actually

happened to his Coinbase account, including by incorrectly alleging that a third party electronically transferred fiat currency out of that account. That is not what happened, and Coinbase looks forward to demonstrating how this lawsuit is legally and factually without merit.

Except as otherwise expressly stated below, Coinbase (1) generally denies each and every allegation in the SACC, including, without limitation, any allegations in the headings, subheadings, unnumbered paragraphs, footnotes, and prayer for relief of the SACC; (2) denies it has caused Plaintiff or any member of the putative classes any harm; and (3) denies any liability to Plaintiff or to any putative class member that Plaintiff purports to represent.

Coinbase reserves the right to seek to amend or supplement this Answer as may be necessary or appropriate.

RESPONSES TO SPECIFIC ALLEGATIONS

1. Coinbase admits it is a wholly owned subsidiary of Coinbase Global, Inc., which is a publicly-traded entity. Coinbase admits that it operates an exchange on which Coinbase users can buy and sell specific cryptocurrencies and fiat currencies using their Coinbase accounts. Coinbase admits Coinbase users may fund or remove funds from their Coinbase accounts via transfers to and from their banks. Coinbase otherwise denies the allegations in paragraph 1.

2. Coinbase admits a person who owns cryptocurrency may be able to use that cryptocurrency to directly pay vendors who accept payment in that cryptocurrency, or may be able to trade the cryptocurrency for fiat currency on an exchange that supports that

cryptocurrency. Coinbase otherwise denies the allegations in paragraph 2 and footnote 1, including any legal allegations within the paragraph or footnote.

3. Coinbase admits it has reimbursed specific customers, admits it has sent emails similar to the email attached as Exhibit A¹ to the First Amended Complaint, and admits the URL in footnote 3 leads to an article that purports to be about Coinbase. Coinbase denies the remaining allegations in paragraph 3, footnote 2, and footnote 3.

4. The allegations in paragraph 4 state legal conclusions to which no response is required. To the extent a response is required, Coinbase denies the allegations. Coinbase is not subject to EFTA or Regulation E.

5. Coinbase admits Plaintiff purports to seek the listed remedies but denies Plaintiff or any purported class member would be or is entitled to such relief. Coinbase otherwise denies the allegations in paragraph 5.

6. The allegations in paragraph 6 state legal conclusions to which no response is required. To the extent a response is required, Coinbase admits Plaintiff purports to bring an EFTA claim and otherwise denies the allegations in paragraph 6.

7. The allegations in paragraph 7 state legal conclusions to which no response is required. To the extent a response is required, Coinbase admits Plaintiff alleges that this action is within the subject matter

¹ The SACC refers to this document as Exhibit 1 to the First Amended Complaint, but that exhibit is actually Exhibit A. *Compare* Dkt. 22 at 1, n.2 *with* Dkt. 6, Exh. A.

jurisdiction of this Court by virtue of the Class Action Fairness Act of 2005, 28 U.S.C. § 1332. Coinbase is without sufficient information to admit or deny the allegations about the alleged amount in controversy, and on that basis, denies them. Coinbase otherwise denies the allegations in paragraph 7.

8. The allegations in paragraph 8 state legal conclusions to which no response is required. To the extent a response is required, Coinbase is without sufficient information to admit or deny the allegations, and on that basis, denies them.

9. The allegations in paragraph 9 state legal conclusions to which no response is required. To the extent a response is required, Coinbase is without sufficient information to admit or deny the allegations, and on that basis, denies them.

10. Coinbase is without sufficient information to admit or deny the allegations in paragraph 10, and on that basis, denies them.

11. Coinbase admits it is incorporated in Delaware and operates a cryptocurrency exchange, which can be accessed around the world via Coinbase's website and cellular phone application. Coinbase admits it has no physical headquarters, is registered with the Secretary of State of California, has an agent for service of process in California, and pays taxes to the State of California. Coinbase otherwise denies the allegations in paragraph 11.

12. Coinbase denies Plaintiff opened a Coinbase account in May 2021; Coinbase's records indicate Plaintiff opened a Coinbase account on April 10, 2021. Coinbase is without sufficient information to admit or deny

the remaining allegations in paragraph 12, and on that basis, denies them.

13. Coinbase is without sufficient information to admit or deny the allegations in paragraph 13 about when Plaintiff learned of an allegedly unauthorized electronic transfer, and on that basis denies them. Coinbase denies that a third party transferred \$31,039.06² out of Plaintiff's account, denies that Plaintiff immediately notified Coinbase of that transfer, and denies that Coinbase failed to engage with Plaintiff or attempt to resolve his alleged dispute in good faith. Coinbase denies the paragraph's remaining allegations.

14. Coinbase denies paragraph 14's allegation that Plaintiff has not been refunded any of his money. As described more fully below, when Plaintiff reversed his bank's transfers, he was reimbursed. Coinbase denies that Plaintiff, or any purported class member, is entitled to any of the relief sought in this action. Coinbase denies the paragraph's remaining allegations.

COUNT ONE

15. Paragraph 15 is an incorporation paragraph, to which no response is required. To the extent a response is required, Coinbase incorporates its responses to the applicable paragraphs.

16. The allegations in paragraph 16 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase admits the

² Paragraph 13 actually refers to "USD 31,0309.06," a number that includes an extra digit. Coinbase understands Plaintiff to mean \$31,039.06 and answers this allegation based on that understanding.

paragraph's quotations are accurate. Coinbase denies the paragraph's remaining allegations.

17. The allegations in paragraph 17 and footnote 4 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase admits the paragraph's quotations are accurate. Coinbase denies the remaining allegations in the paragraph and footnote.

18. The allegations in paragraph 18 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase admits the paragraph's quotations are accurate. Coinbase denies the paragraph's remaining allegations.

19. The allegations in paragraph 19 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase admits the paragraph's quotations are accurate. Coinbase denies the paragraph's remaining allegations.

20. The allegations in paragraph 20 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase admits the paragraph's quotations are accurate. Coinbase denies the paragraph's remaining allegations.

21. The allegations in paragraph 21 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase admits the paragraph's quotations are accurate. Coinbase denies the paragraph's remaining allegations.

22. The allegations in paragraph 22 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies it is a "financial institution" as defined by EFTA, denies it holds accounts belonging to consumers as those terms

are construed under EFTA and its implementing regulations, and denies Plaintiff or any purported class member holds an account with Coinbase as those terms are construed under EFTA and its implementing regulations. Because paragraph 22's allegations about Coinbase's User Agreement do not identify the version of that agreement to which they purport to refer, Coinbase is without sufficient information to admit or deny those allegations, and on that basis denies them. Coinbase denies the paragraph's remaining allegations.

23. The allegations in paragraph 23 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase is without sufficient information to admit or deny whether Plaintiff or any other purported class member is a consumer as defined by EFTA, and on that basis, denies those allegations. Coinbase denies the paragraph's remaining allegations.

24. The allegations in paragraph 24 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase is without sufficient information to admit or deny the reasons for which any purported class member established a Coinbase account, or whether the accounts are "asset accounts held directly by Coinbase," and on that basis, denies those allegations. Coinbase specifically denies that Plaintiff's Coinbase account or any other purported class member's Coinbase account is an "account" as that term is construed under EFTA and its implementing regulations. Coinbase denies the paragraph's remaining allegations.

25. The allegations in paragraph 25 state legal conclusions, to which no response is required. To the

extent a response is required, Coinbase denies that the transfers about which Plaintiff complains were securities, commodities, or unauthorized electronic fund transfers as that term is construed under EFTA and its implementing regulations, or that they were initiated by fraud, or had as their primary purpose the stealing of securities or commodities. Coinbase further denies that any securities are purchased or sold on its platform. Coinbase denies the paragraph's remaining allegations.

26. The allegations in paragraph 26 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies that the transfer about which Plaintiff complains was unauthorized or that Plaintiff provided timely actual or constructive notice of that transfer to Coinbase. Coinbase is without sufficient information to admit or deny whether any other purported class member provided timely actual or constructive notice to Coinbase of any allegedly unauthorized electronic transfers from their accounts. Coinbase denies the paragraph's remaining allegations.

27. The allegations in paragraph 27 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies that it has failed to timely and in good faith investigate the alleged unauthorized electronic transfers from any purported class member's Coinbase account. Coinbase denies paragraph 27's characterizations and suppositions about alleged unauthorized transfers, investigations, or the lack thereof. Coinbase denies Plaintiff or any purported class member has been harmed by Coinbase or is entitled to any compensation from Coinbase, including damages, costs, or attorneys' fees.

Coinbase denies the paragraph's remaining allegations.

28. The allegations in paragraph 28 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies that it has failed to timely (or at all) correct any errors relating to Plaintiff's Coinbase account. Coinbase further denies that Plaintiff's Coinbase account was "breached and drained of funds" or that Plaintiff is entitled to any credit, recredit, or provisional recredit. Coinbase is without sufficient information to confirm or deny the allegations that Coinbase failed to timely correct any errors relating to any purported class member's account, that any purported class member is entitled to any credit, recredit, or provisional recredit, or that any purported class member's account was "breached and drained of funds," and on that basis, denies them. Coinbase denies paragraph 28's characterizations about compensatory damages and liability for unauthorized transfers. Coinbase denies Plaintiff or any purported class member has been harmed by Coinbase or is entitled to any compensation from Coinbase. Coinbase denies the paragraph's remaining allegations.

29. The allegations in paragraph 29 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies the paragraph's allegations and specifically denies it is subject to EFTA or liable for treble damages under it.

30. The allegations in paragraph 30 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies the paragraph's allegations and specifically denies it is subject to EFTA or liable for treble damages under it.

31. The allegations in paragraph 31 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies Plaintiff or any purported class member is entitled to any damages, attorneys' fees, costs, or treble damages. Coinbase denies the paragraph's remaining allegations.

COUNT TWO

32. Paragraph 32 is an incorporation paragraph, to which no response is required. To the extent a response is required, Coinbase incorporates its responses to the applicable paragraphs.

33. The allegations in paragraph 33 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase admits the paragraph's quotations are accurate. Coinbase denies the paragraph's remaining allegations.

34. The allegations in paragraph 34 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase is without sufficient information to admit or deny whether Plaintiff or any other purported class member is a consumer as defined by EFTA or Regulation E, and on that basis, denies those allegations. Coinbase denies the paragraph's remaining allegations.

35. The allegations in paragraph 35 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies it is a "financial institution" as defined by EFTA and denies it has violated EFTA or Regulation E. Coinbase denies the paragraph's remaining allegations.

36. The allegations in paragraph 36 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies Plaintiff

or any purported class member is entitled to any statutory damages, attorneys' fees, or costs. Coinbase denies the paragraph's remaining allegations.

COUNT THREE

37. Paragraph 37 is an incorporation paragraph, to which no response is required. To the extent a response is required, Coinbase incorporates its responses to the applicable paragraphs.

38. The allegations in paragraph 38 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies the paragraph's allegations.

39. The allegations in paragraph 39 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies it is a "financial institution" as defined by EFTA and denies it has violated Regulation E. Coinbase denies the paragraph's remaining allegations.

40. The allegations in paragraph 40 state legal conclusions, to which no response is required. To the extent a response is required, Coinbase denies Plaintiff or any purported class member is entitled to any statutory damages, attorneys' fees, or costs. Coinbase denies the paragraph's remaining allegations.

CLASS ACTION ALLEGATIONS

41. Coinbase admits Plaintiff purports to bring this action as a class action, but denies that the action may or should be maintained or properly pursued as a class action, denies that the putative class described in paragraph 41 may or should be certified, and further denies that any putative class may or should be certified.

Coinbase denies the paragraph's remaining allegations.

42. Coinbase admits Plaintiff purports to bring this action as a class action, but denies that the action may or should be maintained or properly pursued as a class action, denies that the putative class described in paragraph 42 may or should be certified, and further denies that any putative class may or should be certified. Coinbase denies the paragraph's remaining allegations.

43. Coinbase admits Plaintiff purports to bring this action as a class action, but denies that the action may or should be maintained or properly pursued as a class action, denies that the putative class described in paragraph 43 may or should be certified, and further denies that any putative class may or should be certified. Coinbase denies the paragraph's remaining allegations.

44. Coinbase admits that the identities of its customers are ascertainable through its records but denies that the identities of purported Class Members as defined in paragraphs 41 or 42 of the Complaint are ascertainable and denies the remaining allegations of paragraph 44. Coinbase further denies that the action may or should be maintained or properly pursued as a class action, denies that any putative class described in paragraphs 41, 42, or 43 may or should be certified, and further denies that any putative class may or should be certified.

45. Coinbase admits that it has had thousands of users in the one-year period immediately preceding the filing of this action. Coinbase otherwise denies the allegations of paragraph 45. Coinbase further denies that the action may or should be maintained or

properly pursued as a class action, denies that any putative class described in paragraphs 41, 42, or 43 may or should be certified, and further denies that any putative class may or should be certified.

46. Coinbase denies the allegations of paragraph 46. Coinbase further denies that the action may or should be maintained or properly pursued as a class action, denies that any putative class described in paragraphs 41, 42, or 43 may or should be certified, and further denies that any putative class may or should be certified.

47. Coinbase denies the allegations of paragraph 47. Coinbase further denies that the action may or should be maintained or properly pursued as a class action, denies that any putative class described in paragraphs 41, 42, or 43 may or should be certified, and further denies that any putative class may or should be certified.

48. Coinbase denies the allegations of paragraph 48. Coinbase specifically denies that Plaintiff's claims are typical of those asserted by all purported class members. Coinbase denies that the action may or should be maintained or properly pursued as a class action, denies that any putative class described in paragraphs 41, 42, or 43 may or should be certified, and further denies that any putative class may or should be certified.

49. Coinbase denies the allegations of paragraph 49. Coinbase denies that the action may or should be maintained or properly pursued as a class action, denies that any putative class described in paragraphs 41, 42, or 43 may or should be certified, and further denies that any putative class may or should be certified.

50. Coinbase denies the allegations of paragraph 50. Coinbase specifically denies it has any liability under EFTA or Regulation E. Coinbase denies that the action may or should be maintained or properly pursued as a class action, denies that any putative class described in paragraphs 41, 42, or 43 may or should be certified, and further denies that any putative class may or should be certified.

51. Coinbase denies the allegations of paragraph 51. Coinbase denies that the action may or should be maintained or properly pursued as a class action, denies that any putative class described in paragraphs 41, 42, or 43 may or should be certified, and further denies that any putative class may or should be certified.

PLAINTIFF'S PRAYER FOR RELIEF

No response to the Prayer for Relief is required. To the extent a response is required, Coinbase denies Plaintiff or any putative class member is entitled to any of the relief requested or to any other relief.

DEMAND FOR TRIAL BY JURY

Coinbase acknowledges Plaintiff has demanded a jury trial and makes a parallel demand.

AFFIRMATIVE DEFENSES

By alleging these or other defenses, Coinbase does not concede it has the burden of proof or persuasion with respect to any defense or related issue. Coinbase specifically reserves all affirmative or other defenses as may become available or apparent upon further case developments. In particular, Coinbase notes that claims asserted on behalf of absent members of the putative class may raise distinct questions of law or fact

that entitle Coinbase to affirmative defenses different from, or in addition to, the defenses applicable to Plaintiff. As no class has been certified and absent class members are not parties to this proceeding, Coinbase denies it has any obligation to identify or plead affirmative defenses that would apply to any putative class member, other than Plaintiff.

Relevant to some of Coinbase's affirmative and other defenses, the transfer about which Plaintiff complains was not an error; rather, the transfer was authorized by the User Agreement between Coinbase and Plaintiff. Plaintiff was a victim of a third-party thief, who, after obtaining access to Plaintiff's computer desktop and Coinbase account, placed orders with Coinbase to purchase cryptocurrency using \$34,000 transferred from Plaintiff's connected bank account. The third-party thief then sent that cryptocurrency off-platform. Plaintiff later instructed his bank to reverse the \$34,000 transfers to Coinbase; in response, the bank took \$34,000 from Coinbase and gave it to Plaintiff. To partially compensate for this \$34,000 loss, Coinbase then removed \$31,039.06 from Plaintiff's Coinbase account, as the parties' User Agreement expressly permits.

First Affirmative Defense: Safe Harbor

Plaintiff's claims, and those made by the putative class, are barred in whole or in part under 15 U.S.C. § 1693m(d) because Coinbase acted, or declined to act, in good faith in conformity with rules, regulations, and interpretations thereof by the Bureau of Consumer Financial Protection or in conformity with any interpretation or approval by an official or employee of the Bureau or the Federal Reserve System duly authorized to

issue such interpretations or approvals of EFTA and Regulation E.

Second Affirmative Defense: Arbitration

Plaintiff's claims, and those made by the putative class, are subject to mandatory arbitration pursuant to the terms of Coinbase's User Agreement and cannot be litigated in this forum.

Third Affirmative Defense: Offset

To the extent that Plaintiff or any putative class member is entitled to any monetary recovery, that recovery must be offset by amounts Plaintiff or the putative class member owes Coinbase resulting from the transfers at issue in this lawsuit. For example, Plaintiff owes Coinbase \$2,960.94 as a result of the reversals Plaintiff authorized.

Fourth Affirmative Defense: Causation

Plaintiff's claims, and those made by the putative class, are barred to the extent any damages they seek or injury they sustained was caused by their own negligent conduct, the negligent conduct or misconduct of third parties, or superseding or intervening causes.

Fifth Affirmative Defense: Permitted By Contract

Plaintiff's claims, and those made by the putative class, are barred because Coinbase's actions were permitted by the User Agreement(s). For example, the User Agreement(s) permitted Coinbase to withdraw funds from Plaintiff's or other putative class members' accounts to compensate for Plaintiff's or other putative class members' reversal of transfers.

Sixth Affirmative Defense: Consent

Plaintiff's claims, and those made by the putative class, are barred by the fact of their consent, express or implied, to the facts or events described in the SACC. For example, Plaintiff and other putative class members agreed Coinbase could withdraw funds from Plaintiff's or other putative class members' accounts to compensate for Plaintiff's or other putative class members' reversal of transfers.

Seventh Affirmative Defense: Class Action Not Appropriate

The SACC fails to state facts sufficient to certify a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure because, among other problems, the putative classes are inadequately defined and lack ascertainability, Coinbase has not acted or refused to act on grounds that apply generally to the putative classes, the putative classes are not so numerous that joinder is impracticable, the claims lack commonality and typicality, Plaintiff and his counsel cannot adequately protect the interests of the classes, common questions of law and/or fact do not predominate, and a class action is not the superior method for adjudicating this dispute.

WHEREFORE, Coinbase prays for judgment as follows:

1. That Plaintiff and the putative classes take nothing;
2. That the Court enter judgment in favor of Coinbase on each cause of action alleged in the SACC;
3. That Coinbase be awarded its costs, expenses, and attorneys' fees; and

4. That the Court grant Coinbase all further legal or equitable relief that the Court deems just and proper.

Dated: July 21, 2022

Respectfully submitted,
THE NORTON LAW FIRM
PC

/s/ Fred Norton
Fred Norton
Attorneys for Defendant
COINBASE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

[Filed September 22, 2022]

Case No. 3:21-cv-07478-WHA

ABRAHAM BIELSKI, on behalf of himself and all others similarly situated,

Plaintiff,

v.

COINBASE, INC.,

Defendant.

JOINT CASE MANAGEMENT STATEMENT

**JOINT CASE MANAGEMENT CONFERENCE
STATEMENT**

Plaintiff Abraham Bielski and Defendant Coinbase, Inc. (“Coinbase”) submit this Joint Case Management Conference Statement in advance of the September 29, 2022 Initial Case Management Conference.

1. JURISDICTION AND SERVICE

Because Mr. Bielski brings a claim under the Electronic Funds Transfer Act (“EFTA”), 15 U.S.C. § 1693, the Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331. In addition, the Court has subject matter jurisdiction by virtue of the Class

Action Fairness Act of 2005, 28 U.S.C. § 1332. All parties have been served and there are no issues as to personal jurisdiction or venue.

2. FACTS

Mr. Bielski's individual claims. The Second Amended Class Action Complaint (“SACC”) describes how an unauthorized electronic transfer of approximately \$34,000 was made from Mr. Bielski’s Coinbase account. Dkt. 22. As described in the SACC, Mr. Bielski contends that he immediately notified Coinbase customer service of the unauthorized transfer, but Coinbase did not make any good faith attempts to engage with him about his dispute or otherwise attempt to resolve the dispute in a good faith manner. Mr. Bielski contends that he has not been reimbursed or made whole for the losses he suffered from this unauthorized transfer. Coinbase disputes all these allegations and arguments, and, among other things, contends the alleged transfer was authorized by the parties’ agreement and that Mr. Bielski successfully reversed the withdrawal of funds from his bank account that were used to purchase cryptocurrency that a thief diverted.

The principal factual issues in dispute are how the third-party malfeasant obtained access to Mr. Bielski’s Coinbase account, the purpose for which Mr. Bielski opened his account, whether the electronic transfer was unauthorized, whether Mr. Bielski timely notified Coinbase about the transfer, whether Coinbase investigated the transfer or engaged in appropriate error correction, and whether Mr. Bielski successfully reversed the withdrawal of funds from his bank account that were used to purchase cryptocurrency that a thief diverted.

Class claims. The SACC alleges other Coinbase users have had unauthorized electronic transfers from their Coinbase accounts, that other users have provided timely notice of these unauthorized transfers, and that Coinbase did not investigate, engage in appropriate error correction, or provide disclosures. Coinbase disputes these allegations and arguments and contends that class treatment is inappropriate.

The principal factual issues in dispute are whether and how alleged class members have had unauthorized electronic transfers, the purposes for which alleged class members opened their accounts, whether alleged class members timely notified Coinbase about those alleged transfers, and whether Coinbase investigated the alleged transfers or engaged in appropriate error correction. The parties expect there will also be factual disputes relating to class certification or qualification.

3. LEGAL ISSUES

The parties dispute the following points of law:

- A) Whether Coinbase is subject to EFTA or Regulation E, including whether Coinbase is a “financial institution” as defined by EFTA and whether Coinbase holds accounts belonging to consumers as those terms are construed under EFTA and its implementing regulations;
- B) Whether the transfers about which Mr. Bielski complains are securities, commodities, or unauthorized electronic fund transfers as that term is construed under EFTA and its implementing regulations;
- C) Assuming EFTA applies, whether Coinbase met its obligations under EFTA or Regulation E to

timely provide information or clarification concerning electronic transfers, including requests made by customers to determine whether there were unauthorized electronic transfers from their accounts;

- D) Assuming EFTA applies, whether Coinbase met its obligations under Regulation E to provide adequate initial disclosures to its customers including, *inter alia*, a summary of their liability for unauthorized electronic fund transfers, contact information for Coinbase representatives that customers should contact to resolve unauthorized transfers, and a summary of customers' right to stop payment of preauthorized electronic fund transfers and the procedure for placing a stop-payment order;
- E) Assuming EFTA applies, whether Mr. Bielski's claims, and those made by the putative classes, are barred under 15 U.S.C. § 1693m(d) because Coinbase acted, or declined to act, in good faith in conformity with rules, regulations, and interpretations thereof by the Bureau of Consumer Financial Protection or in conformity with any interpretation or approval by an official or employee of the Bureau or the Federal Reserve System duly authorized to issue such interpretations or approvals of EFTA and Regulation E;
- F) Whether Mr. Bielski's claims, and those made by members of the putative classes, are subject to mandatory arbitration pursuant to the terms of Coinbase's User Agreement;
- G) Whether Coinbase's arbitration clauses and delegation clauses in the various iterations of its User

Agreement that would apply to putative class members are enforceable;

- H) Whether Mr. Bielski's claims, and those made by members of the putative classes, are barred because Coinbase's actions were permitted by its User Agreement; and
- I) Whether this action is appropriate for class treatment.

4. MOTIONS

Coinbase previously moved to compel arbitration, which the Court denied. Dkt. 42. Coinbase then moved for a stay pending arbitration, which the Court denied. Dkt. 61. Coinbase then answered the SACC. Dkt. 63. There are no pending motions.¹

Coinbase anticipates filing a motion for summary judgment. Mr. Bielski presently anticipates filing a motion to appoint interim class counsel and a motion for class certification.

5. AMENDMENT OF PLEADINGS

The parties propose that Mr. Bielski's deadline to amend his complaint will be 60 days after the initial Case Management Conference, *i.e.*, November 28, 2022. The parties further propose that Coinbase will have 45 days from the filing of any amended complaint to respond to it. Mr. Bielski anticipates that additional parties and causes of action will be added in that amended pleading.

¹ Motions, notices, and orders regarding Civil Local Rules 3-12 and 3-13 are addressed in Section 10, below.

6. EVIDENCE PRESERVATION

The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information and met and conferred pursuant to Rule 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. Coinbase has represented that its preservation efforts extend beyond documents specific to Mr. Bielski individually and extend to evidence relevant or potentially relevant to the claims of the putative class.

7. DISCLOSURES

The parties have agreed to exchange Rule 26 initial disclosures by September 30, 2022.

8. DISCOVERY

No discovery has been taken to date. The parties have agreed to not engage in class discovery and/or expert discovery until the Ninth Circuit rules on Coinbase's appeal of this Court's denial of Coinbase's motion to compel arbitration. The parties recognize, however, that certain discovery may be relevant both to individual claims and the putative class claims.

The parties anticipate discovery related to individual claims will be relatively straightforward, and so at this time do not request any limitations or modifications of the discovery rules. The parties anticipate being able to complete discovery into Mr. Bielski's individual claims before the Ninth Circuit rules on Coinbase's appeal of the denial of its motion to compel arbitration, and the parties are not yet sure when discovery may be completed into the individual claims of other, as-yet unidentified plaintiffs who may be added in an amended pleading, particularly as any such

plaintiffs may be subject to different arbitration clauses than the one the Court previously addressed. If Coinbase moves to compel arbitration as to any additional plaintiffs, the start of discovery as to those plaintiffs may be delayed while the Court consider the motion(s). The parties have discussed and intend to enter into a stipulated e-discovery order and to submit a proposed protective order to the Court. There are no discovery disputes at this time.

The parties agree and propose that they will submit a discovery plan pursuant to Rule 26(f) within 14 days after the Ninth Circuit rules on Coinbase's appeal of the denial of its motion to compel arbitration.

9. CLASS ACTIONS

This case is pleaded as a class action; Mr. Bielski believes class action treatment is appropriate, and Coinbase contends it is not. All attorneys of record for the parties have reviewed the Procedural Guidance for Class Action Settlements. Because Coinbase's appeal of the denial of its motion to compel arbitration has implications for whether this case will proceed as a class action, and because the parties have agreed to delay class discovery until after the Ninth Circuit rules on Coinbase's appeal, the parties further agree and propose to submit a proposed schedule for class certification discovery and briefing within 14 days after the Ninth Circuit rules on Coinbase's appeal.

10. RELATED CASES

On September 8, 2022, non-party Manish Aggarwal filed an administrative motion in this case, notifying the Court of his belief that newly-filed *Aggarwal v. Coinbase, Inc. and Coinbase Global, Inc.*, Case No. 4:22-cv-4829, may be related to this case under Civil

Local Rule 3-12. Dkt. 76. On September 9, Coinbase filed an administrative motion notifying the Court about the existence of *Aggarwal* as well as of *Harvey v. Coinbase, Inc.*, Case No. 4:22-cv-01606-KAW; Coinbase's position was that neither case is properly related to this case under Civil Local Rule 3-12. Dkt. 78. On September 12, Mr. Bielski filed a response to Mr. Aggarwal's and Coinbase's motions, stating that Mr. Bielski agreed that *Harvey* should not be related, but believed *Aggarwal* should be. Dkt. 81. Also on September 12, Coinbase filed its opposition to Mr. Aggarwal's motion to relate his case to this one. Dkt. 83. On September 14, the Court issued an order that *Aggarwal* and *Harvey* are not related to this case. Dkt. 86.

On September 9, Coinbase filed a notice of pending cases to identify for the Court three cases pending outside this district pursuant to Civil Local Rule 3-13, in which Coinbase explained its belief that none of the three cases should be coordinated with this one or submitted for multidistrict litigation consideration. Dkt. 79. One of these three cases, *Kattula v. Coinbase Global, Inc.*, No. 1:22-cv-03250 (N.D. Ga.), is a putative class action also alleging violations of EFTA and Regulation E, as well as state law claims. Coinbase and Mr. Bielski agree that the "alleged class definitions overlap" between *Kattula* and this action. Dkt. 79 at 3.

In addition to the cases previously identified in these filings, a putative class action is pending against Coinbase in state court in Los Angeles County, *Tarvirdi v. Coinbase Global, Inc.*, No. 22STCV24622 (Cal. Super. Ct.). The plaintiffs in *Tarvirdi* allege that Coinbase customers lost money and cryptocurrency due to Coinbase's lax security protocols and reckless disregard for the security of its customers' assets. They assert

violations of California state law on behalf of a California-only class; they do not assert an EFTA claim. Coinbase does not believe the case qualifies for inclusion in a Local Rule 3-13 notice because, for example, the class definitions vary and the claims are not the same.

11. RELIEF

Mr. Bielski contends in the SACC that he and members of the putative class are entitled to compensatory damages, treble damages, statutory damages, attorneys' fees, and costs of litigation pursuant to the EFTA, as well as pre- and post-judgment interest. He bases these contentions on Coinbase's alleged violations of the EFTA and Regulation E through its alleged failures to investigate the alleged unauthorized transfer of funds, engage in appropriate error correction, or provide disclosures. Mr. Bielski anticipates that his forthcoming amended pleading will assert additional causes of action and that he will seek additional relief.

Coinbase contends no damages are due either to Mr. Bielski as an individual or to any member of any alleged class. Coinbase further contends that, to the extent Mr. Bielski or any putative class member is entitled to any monetary recovery, that recovery must be offset by amounts Mr. Bielski or the putative class member owes Coinbase resulting from the transfers at issue in this case. (For example, Coinbase contends Mr. Bielski owes Coinbase \$2,960.94 as a result of the reversals Mr. Bielski authorized.) If liability were established, EFTA sets out bases for calculating damages.

12. SETTLEMENT AND ADR

The parties have not discussed settlement. There have been no ADR efforts to date; the parties met and conferred on August 29, 2022 about ADR options and agreed to discuss them with the Court at the CMC. The parties filed their ADR Certifications on September 1. Dkt. 73, 74.

The parties believe that resolution of this action on a classwide basis is unlikely before the Ninth Circuit rules on Coinbase's pending appeal of the denial of its motion to compel arbitration.

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

Coinbase previously declined to consent to a magistrate judge for all purposes. Dkt. 14.

14. OTHER REFERENCES

At this time, this case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. NARROWING OF ISSUES

At this time, the parties have no suggested issues to narrow by agreement or by motion. The parties will update the Court after discovery about any suggestions to expedite the presentation of evidence at trial or any other requests to bifurcate issues, claims, or defenses.

16. EXPEDITED TRIAL PROCEDURES

This case cannot be handled under the Expedited Trial Procedure of General Order No. 63 Attachment A.

17. SCHEDULING

The parties propose to submit a proposed case schedule 14 days after the Ninth Circuit rules on Coinbase's appeal of the denial of its motion to compel arbitration. Among other things, that schedule would include proposed dates for designation of experts, a fact and expert discovery cutoff, a deadline to move for class certification, a deadline to file dispositive motions, a pre-trial conference, and trial. Because individual and class discovery will proceed on separate timelines, per the parties' agreement in light of Coinbase's interlocutory appeal to the Ninth Circuit, the parties agree that no motions for summary judgment will be filed until the close of fact discovery to allow class discovery to first be completed. The parties presently anticipate that after resolution of the appeal, the proposed schedule will not exceed 18 months.

18. TRIAL

This case will be tried to a jury. Mr. Bielski anticipates a class trial length of 7 days. Coinbase anticipates 3 days if the case is tried only as to Mr. Bielski's individual claims, and 12 days if it is tried as a class action. If additional parties are added, the number of days to try this action will likely increase.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. Dkt. 2, 17. Coinbase reiterates that it is a wholly owned subsidiary of Coinbase Global, Inc.; that to the best of Coinbase's knowledge, no publicly held company owns 10% or more of Coinbase Global, Inc.; and

shareholders of Coinbase Global, Inc. have a financial interest in Coinbase.

20. PROFESSIONAL CONDUCT

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. OTHER MATTERS

At this time, the parties have no other matters to raise with the Court.

Dated: September 22, 2022

Respectfully submitted,
THE NORTON LAW FIRM
PC

/s/ Fred Norton
Fred Norton

Attorneys for Defendants
COINBASE, INC.

TYCKO & ZAVAREEI LLP

Dated: September 22, 2022

/s/ Sabita J. Soneji
Sabita J. Soneji

Attorneys for Plaintiff
ABRAHAM BIELSKI
and the Putative Class

ATTESTATION

In accordance with Civil Local Rule 5-1(h)(3), I hereby attest that the other signatories listed, on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: September 22, 2022

/s/ Sabita J. Soneji
Sabita J. Soneji

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Filed November 22, 2022]

No. C 21-07478 WHA

ABRAHAM BIELSKI,

Plaintiff,

v.

COINBASE, INC.,

Defendant.

**ORDER GRANTING MOTION FOR LEAVE TO
AMEND**

In light of defendant's statement of non-opposition, and good cause appearing, the motion for leave to amend is **GRANTED**. Further consideration of the third amended complaint will take place upon a motion to dismiss, if any. The hearing on this motion is accordingly **VACATED**.

IT IS SO ORDERED.

Dated: November 22, 2022.

/s/ William Alsup
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

[Filed November 28, 2022]

Case No. 3:21-cv-07478-WHA

ABRAHAM BIELSKI, DZHURA BINYAMINOV, and
AURYAN SAJJADI, *on behalf of themselves and all
others similarly situated,*

Plaintiffs,

v.

COINBASE, INC.,

Defendant.

THIRD AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Abraham Bielski, Dzhura Binyaminov, and Auryan Sajjadi (collectively, “Plaintiffs”), on behalf of themselves and all other similarly situated, by and through their attorneys, bring this class action against Defendant Coinbase, Inc. (“Coinbase”).

INTRODUCTION

1. This case is about holding Coinbase accountable for security failures on its platform—the largest cryptocurrency exchange in the country—that have left ordinary consumers holding the bag after sophisticated

scammers repeatedly stole from them, all while Coinbase stood idly by and ignored their pleas for support.

2. Defendant Coinbase, Inc. is a wholly-owned subsidiary of Coinbase Global, Inc., a publicly-traded company with a market capitalization of over \$16 billion. Coinbase operates a platform allowing customers to open individual accounts, buy and sell cryptocurrency and fiat currency, and maintain their assets. It holds nearly \$100 billion in customer assets on its platform, much of which is in small consumer accounts that seek to buy and hold fractions of cryptocurrency coins (such as Bitcoin) and electronically transfer U.S. dollars from their external personal bank accounts to fund cryptocurrency purchases on the Coinbase exchange.

3. Coinbase represents that it will safeguard its customers' assets from theft and that it operates a secure, trusted platform. In exchange for its operation of a cryptocurrency exchange and its storage of customer assets, customers pay Coinbase significant commissions and fees. Coinbase reported a net revenue of nearly \$2 billion in the first half of 2022.

4. As the cryptocurrency market has boomed in popularity, Coinbase users have increasingly become the targets of hackers and scammers. These malicious actors have breached Coinbase's security and made unauthorized transfers of funds—both in the form of U.S. dollars or other “fiat currency,” as well as in the form of cryptocurrencies—away from Coinbase user accounts into the hackers' or scammers' individual accounts or their virtual cryptocurrency “wallets” off of the Coinbase platform.

5. The three Plaintiffs and members of the putative Classes have each fallen victim to these hacks and

scams. But in response to widespread instances of unauthorized electronic fund transfers on its exchange, Coinbase has done nothing for the vast majority of its affected users, including Plaintiffs.¹

6. Because Coinbase is a “financial institution” as defined by the Electronic Funds Transfer Act (“EFTA”), 15 U.S.C. §§ 1693 *et seq.*, it has a legal obligation to remedy unauthorized electronic fund transfers. But it has not met that obligation because, for example, it has failed to timely and in good faith investigate fraudulent transfers, and it has failed to timely credit and/or provisionally recredit, or credit and/or provisionally recredit at all, Coinbase users’ accounts pending investigation.

7. In their attempts to secure compliance with this obligation, Coinbase users have repeatedly implored Coinbase to help them rectify the unauthorized transfers from their accounts. But in response, Coinbase has routinely and repeatedly ignored these requests,

¹ Four days after this case was originally filed, Coinbase apparently refunded approximately 6,000 Coinbase users in the amount of the value of assets stolen from their accounts, valued at the time those assets were stolen. *See* First Amended Complaint, Dkt. 6, at Ex. A. For these users, Coinbase has acknowledged that the thefts from their accounts were a result of “third parties [who] took advantage of a flaw in Coinbase’s SMS Account Recovery Process,” and Coinbase apparently issued the refunds in response to its culpability. *Id.* These users are nonetheless included in the class definitions, as they due any unpaid compensatory damages (*e.g.*, the value of asset appreciation up to the time refunds were issued), as well as treble damages, statutory damages, attorneys’ fees, costs, and interest. *See* 15 U.S.C. § 1693m(e) (safe harbor applies only to complete remedial action taken before an EFTA action is filed); *see also Cobb v. PayLease LLC*, 34 F. Supp. 3d 976, 985 (D. Minn. 2014).

instead relying on automated responses that have not specifically addressed user concerns and have not provided timely, meaningful customer service.

8. For over a year, and continuing today, Coinbase has largely turned a blind eye to the systemic breaches of security on its exchange, leaving affected users without recourse (short of litigation) to correct these issues. A CNBC article entitled, “Coinbase slammed for what users say is terrible customer service after hackers drain their accounts,” documents some of these users’ experiences with Coinbase.²

9. Coinbase has further failed to comply with the EFTA and Regulation E of its implementing regulations, 12 C.F.R. §§ 1005.1—20, by failing to timely provide affected Coinbase users with information concerning the status of the unauthorized electronic transfers from their accounts upon request, and it has failed to comply with Regulation E by failing to provide all Coinbase users with initial disclosures required by Regulation E. Its failures to secure its customers’ accounts after promising to operate a safe and secure cryptocurrency exchange also give rise to a host of state law claims.

10. On behalf of two classes and two state-specific subclasses (as defined below), Plaintiffs seek compensatory damages, statutory damages, treble damages, restitution, disgorgement, punitive damages,

² Scott Zamost *et al.*, *Coinbase slammed for what users say is terrible customer service after hackers drain their accounts*, CNBC, Aug. 24, 2021, <https://www.cnbc.com/2021/08/24/coinbase-slammed-for-terrible-customer-service-after-hackers-drain-user-accounts.html>.

attorneys' fees, costs of suit, interest, and any other relief the Court deems appropriate.

JURISDICTION

11. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 because the action is brought pursuant to the Electronic Funds Transfer Act of 1978, 15 U.S.C. §§ 1693 *et seq.* The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

12. The Court also has jurisdiction over this case pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because there exists minimal diversity between class members and Coinbase and because the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

VENUE

13. This Court is the proper venue for this matter pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and Coinbase has substantial and systematic contacts in the District as alleged within this Complaint.

14. The case has been properly assigned to the San Francisco Division of this District under Civil L.R. 3-2(c) and (d) because a substantial part of the events or omissions that gave rise to Plaintiffs' claims occurred in San Francisco County.

PARTIES

15. Plaintiff Abraham Bielski is a Coinbase customer. He is a citizen of Florida.

16. Plaintiff Dzhura Binyaminov is a Coinbase customer. He is a citizen of New York.

17. Plaintiff Auryan Sajjadi is a Coinbase customer. He is a citizen of California.

18. Defendant Coinbase, Inc. is a Delaware company in the business of, among other things, operating cryptocurrency exchanges and other related businesses around the world via its website and cellular phone applications. Coinbase operates the largest cryptocurrency exchange in the United States by trading volume and claims to have over 103 million verified users with \$96 billion of assets on its platform. While Coinbase purports to have no physical headquarters, it has its principal place of business in San Francisco, California, maintains its executive offices in San Francisco, California, is registered with the Secretary of State in California, has an agent for service of process in California, and, on information and belief, pays taxes to the State of California.

FACTS

A. The cryptocurrency market has exploded in size and popularity.

19. Cryptocurrencies are digital assets that are backed by decentralized computer networks, rather than by central banks or issuing authorities like fiat currencies such as the U.S. dollar, the Mexican peso, or the Euro. The largest and perhaps most well-known example of a cryptocurrency is Bitcoin, which was launched in 2009.

20. Unlike traditional fiat currencies that have the support of governments, cryptocurrencies rely on digital ledgers, which are public databases that contain the entire ownership and transaction history of every cryptocurrency “coin.” The information in these ledgers cannot be maliciously edited by a third party.

These secure ledgers—combined with a finite supply of available “coins”—allow cryptocurrencies to function as a storage of value, like other funds or assets. Because the “coins” have real-world value, they are often bought and sold in exchange for fiat currency or for other cryptocurrency coins.

21. Cryptocurrency’s popularity has skyrocketed in a short time, and the value of some cryptocurrencies has also risen dramatically. In 2010, a customer bought two pizzas for the price of 10,000 Bitcoin;³ as of October 27, 2022, a single Bitcoin was worth over \$20,000. The total market capitalization of all cryptocurrencies was estimated to exceed \$2 trillion earlier this year.

22. This dramatic growth in cryptocurrency has been fueled largely by ordinary American consumers, who have treated cryptocurrency like other traditional, tradeable, appreciating assets such as stocks and bonds.

B. Coinbase has played a major role in the rise of cryptocurrency trading.

23. To trade cryptocurrencies, consumers rely on a novel form of financial institution that both stores consumers’ funds and assets as well as provides a platform for the exchange of those funds and assets on the open market.

³ Rufas Kamau, *What Is Bitcoin Pizza Day, And Why Does The Community Celebrate On May 22?*, Forbes, May 9, 2022, <https://www.forbes.com/sites/rufaskamau/2022/05/09/what-is-bitcoin-pizza-day-and-why-does-the-community-celebrate-on-may-22/?sh=7cd8b56fd685>.

24. The most prominent of this new type of financial institution is Coinbase. Combining the features of financial institutions like brokerages and stock exchanges, Coinbase is a custodian for its customers' funds and an operator of a cryptocurrency exchange on which customers may buy, sell, and trade cryptocurrencies directly on the Coinbase platform.

25. Coinbase was founded in 2012 and has since grown into one of the biggest names in cryptocurrency. At its initial public offering in 2021, Coinbase's value was reportedly \$47 billion. Today, Coinbase claims more than 103 million customers with trades totaling more than \$200 billion per quarter, all on a Coinbase platform supported by nearly 5,000 employees.

26. Coinbase focuses its business on ordinary retail investors. Its business model depends on persuading ordinary consumers to sign up to trade cryptocurrency, and it is aware of its niche in the "retail crypto" space. Coinbase's 2021 annual report touted its "simple onboarding process that allows retail users to sign up and quickly purchase their first crypto asset" and claimed that Coinbase is "a primary on-ramp for customers' journeys into the cryptoeconomy."

27. Regular consumers across the country have bought and sold cryptocurrencies after Coinbase targeted its marketing toward them. For example, Coinbase spent an estimated \$13 million to broadcast a one-minute commercial nationwide on NBC during the Super Bowl in February 2022.⁴

⁴ Gabe Lacques, *What was that? Coinbase's QR code Super Bowl commercial confuses viewers*, USA Today, Feb. 13, 2022, <https://www.usatoday.com/story/sports/Ad->

28. In furtherance of its “retail crypto” efforts, Coinbase encourages users to invest their retirement savings in cryptocurrency through web advertisements like “The Crypto Guide to Retirement Savings.” Coinbase even partners with 401(k) plan provider ForUsAll to encourage users to invest their retirement savings in the cryptocurrency market.

C. Coinbase has repeatedly made false representations about its platform’s security.

29. As a financial institution, Coinbase understands that its platform will only succeed if would-be customers believe their assets and funds are secure on the Coinbase platform. To that end, Coinbase’s website is replete with representations about the safety and security of Coinbase users’ assets. The front page of its website, www.coinbase.com, represents that users can “[s]imply and securely buy, sell, and manage hundreds of cryptocurrencies” and that it provides “accessible, safe, and secure financial tools for everyone.”

30. On its website, Coinbase lays out myriad representations about its safety and security, underneath messages like “Here’s why you can trust us:” and “Most trusted. Most secure.” Coinbase represents that its cryptocurrency storage is secure, that it offers “best in class storage,” that it has “industry-leading security,” that it is the “most trusted crypto exchange,” that it uses “state-of-the-art encryption,” that its users’ “assets are protected,” that it offers “multifaceted risk management programs designed to protect customers’ assets,” that it “offer[s] the finest tools to protect your account,” and that its users can “[g]et the

help you need, when you need it” from its Support Team, in addition to other representations about safety and security. Many of these representations are in oversized and/or bold-faced and are featured prominently on Coinbase’s website.

31. Coinbase’s representations about its purported safety and security have been made about each aspect of its services. Coinbase claims that its “Wallet” will “[p]rotect your digital assets with industry-leading security,” that its “trusted and easy-to-use” platform allows “anyone, anywhere . . . to easily and securely send and receive Bitcoin,” that it will “[p]rotect your crypto with best in class cold storage,” and that its users can “[s]afely store and easily view” their assets.

32. Coinbase has published these representations beyond its own website. It has made representations about its purported security through search engine marketing, social media, media interviews, and other marketing materials. When a would-be customer searches for “Coinbase” on Google, the link to the first result—Coinbase’s website—describes it as a place to “Buy and Sell Bitcoin, Ethereum, and more with trust.” Coinbase’s Twitter account has claimed that it “provid[es] the safest and most secure crypto experience to our users”⁵ and tells potential customers that Coinbase is “[t]he safest place for your crypto.”⁶ Its Twitter account has also represented to its users (and

⁵ Coinbase (@coinbase), Twitter (June 30, 2022, 1:25 PM), www.twitter.com/coinbase/status/1542605323382337537.

⁶ Coinbase (@coinbase), Twitter (July 2, 2021, 8:09 AM), www.twitter.com/coinbase/status/1410979060868517889.

would- be users) that “[f]irst (and most importantly) your funds are safe, and they always will be.”⁷

33. Plaintiffs read Coinbase’s representations about its safety and security measures and relied on those representations in purchasing, trading, and storing cryptocurrency on the Coinbase platform.

D. Coinbase has admitted that it must provide “bank-level security” and is well-aware of its platform’s vulnerabilities.

34. Coinbase recently admitted to its investors that it is required by law to provide bank-level security for its customers’ funds. In an August 2022 disclosure statement to the SEC, Coinbase’s parent company represented that “we are required to safeguard customers’ assets using bank-level security standards applicable to our wallet and storage systems, as well as our financial management systems related to such custodial functions.”⁸ Despite this acknowledgement, Coinbase has failed and continues to fail to do so.

35. Coinbase’s acknowledgement that it is “required” to “safeguard” assets using “bank-level security standards” shows its awareness of its obligations to comply with the EFTA and Regulation E, to not breach the duty of care that it owes to its customers, and to act reasonably as a bailee of its customers’ personal property.

⁷ Coinbase (@coinbase), Twitter (May 11, 2022, 4:34 PM), www.twitter.com/coinbase/status/1524533348474912769.

⁸ Coinbase Global, Inc., Quarterly Report (Form 10-Q), at 94 (Aug. 9, 2022), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1679788/000167978822000085/coin-20220630.htm>.

36. Coinbase has also admitted to its strategic purposes in repeatedly representing its platform is secure (even without “bank-level security standards”). On May 10, 2022, in a quarterly earnings call, Coinbase CEO and co-founder Brian Armstrong explained that Coinbase makes broad representations about its safety and security features in order to form a “competitive moat” and gain an advantage over competitors in the cryptocurrency industry.⁹ By representing that customer funds are safe on its platform, Coinbase seeks to induce potential customers to sign up there (rather than with a competitor) and pay Coinbase fees for cryptocurrency transactions. During that same call, Armstrong emphasized the importance of the perception of security for Coinbase’s success:

It comes down to cybersecurity — we’re storing more crypto securely for our customers. And so whenever people are coming into a new industry, they generally want to go with the one that it’s been around the longest, it’s trusted by the most people, it has the most number of users. Coinbase is really the only crypto company that’s public in this environment. And we’re storing such a large amount of crypto that I think that’s a defensible moat because basically ***when people trust us, they store crypto with us.***

(Emphasis added.)

⁹ Coinbase Global, Inc. First Quarter 2022 Earnings Call (May 10, 2022), available at https://s27.q4cdn.com/397450999/files/doc_financials/2022/q1/Coinbase-Q1'22-Earnings-Call-Transcript.pdf.

37. Despite Coinbase’s acknowledgement that the *perception* of security is crucial to its success, it has failed and continues to fail to actually secure its customers’ funds or to resolve errors resulting from breaches in the security of its customers’ funds.

38. Coinbase has admitted to an awareness of the dangers that hackers and scammers pose to its users. In its 2021 Form 10-K, Coinbase acknowledged that a “risk factor” to its business was “cyberattacks and security breaches of our platform, or those impacting our customers or third parties” because they “could adversely impact our brand and reputation and our business, operating results, and financial condition.”¹⁰

39. These issues with cryptocurrency security are widely known. Michael Hsu, the acting Comptroller of the Currency, recently decried the “unabating volume of scams, hacks, and fraud” in cryptocurrency and urged caution about allowing cryptocurrency to interact directly with more traditional financial institutions.¹¹ Hsu said that “people get hurt” when cryptocurrency peddlers, like Coinbase, use “familiar” terminology to “downplay or mask the risks involved” in trading cryptocurrencies.¹²

¹⁰ Coinbase Global, Inc. 2021 Annual Report (Form 10-K), at 26 (Feb. 24, 2022), available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001679788/000167978822000031/coin-20211231.htm>.

¹¹ Jon Hill, *‘People Get Hurt’ When Crypto Mimics Banks, OCC’s Hsu Says*, Law360, Oct. 11, 2022, <https://www.law360.com/consumerprotection/articles/1538955/-people-get-hurt-when-crypto-mimics-banks-occ-s-hsu-says>.

¹² *Id.*

40. These issues also disproportionately affect Coinbase and its customers, because Coinbase has pursued the “retail crypto” business strategy to take advantage of unwary consumers. The cyber security firm PIXM explained that Coinbase has been “increasingly targeted by scammers, fraudsters, and cyber criminals” because these malicious actors understand Coinbase attracts an “audience of casual, generally non-technical, crypto investors” who are especially susceptible to their schemes.¹³

41. Coinbase continues to use familiar bank-like language about security in order to attract these casual, non-technical retail customers. As Coinbase has acknowledged on multiple occasions, its representations regarding security are material to consumers and are important in Coinbase’s attempt to maintain a competitive edge over its competitors. Gaining the trust of ordinary consumers by marketing its platform as the “most secure” is central to Coinbase’s brand and competitive strategy.

42. Despite these representations, which Coinbase makes for its own business benefit, Plaintiffs and the Class have been victimized by Coinbase’s lax security measures and have been left helpless after Coinbase’s Support Team refused to meaningfully assist them.

¹³ Karen Hoffman, *Coinbase phishing hack signals more crypto attacks to come, says security firm*, SC Magazine (Aug. 5, 2022), <https://www.scmagazine.com/analysis/email-security/coinbase-phishing-hack-signals-more-crypto-attacks-to-come-says-security-firm>.

E. Abraham Bielski was victimized, and Coinbase refused to help.

43. Plaintiff Abraham Bielski opened an account with Coinbase for the purpose of buying and selling cryptocurrencies for his personal use.

44. On September 8, 2021, Bielski realized that an unauthorized electronic transfer had been made from his Coinbase account to an unknown third party. The third party had electronically transferred funds totaling more than \$31,000 out of his account.

45. Bielski immediately notified Coinbase customer service of the unauthorized transfer, but customer service did not make any good faith efforts to engage with him about his dispute or otherwise attempt to resolve the dispute, one way or another, in a good faith manner.

46. Bielski has not been refunded any of his funds by Coinbase, and Bielski is informed and believes that neither he nor any other member of any class as defined herein have received the full relief sought in this action.

47. Bielski did not receive a disclosure from Coinbase including the information required by 12 C.F.R. § 1005.7 before the first electronic fund transfer was made involving his Coinbase account.

F. Dzhura Binyaminov was victimized, and Coinbase refused to help.

48. Plaintiff Dzhura Binyaminov opened an account with Coinbase for the purpose of buying and selling cryptocurrencies for his personal use.

49. On January 31, 2022, Binyaminov realized that an unauthorized electronic transfer had been made

from his Coinbase account to an unknown third party. The third party electronically transferred funds totaling approximately \$38,000 out of his account.

50. Binyaminov immediately notified Coinbase customer service of the unauthorized transfer, but customer service did not make any good faith efforts to engage with him about his dispute or otherwise attempt to resolve the dispute, one way or another, in a good faith manner.

51. Binyaminov has not been refunded any of his funds by Coinbase, and Binyaminov is informed and believes that neither he nor any other member of any class as defined herein have received the full relief sought in this action.

52. Binyaminov did not receive a disclosure from Coinbase including the information required by 12 C.F.R. § 1005.7 before the first electronic fund transfer was made involving his Coinbase account.

G. Auryan Sajjadi was victimized, and Coinbase refused to help.

53. Plaintiff Auryan Sajjadi opened an account with Coinbase for the purpose of buying and selling cryptocurrencies for his personal use.

54. On June 7, 2022, Sajjadi realized that an unauthorized electronic transfer had been made from his Coinbase account to an unknown third party. The third party had electronically transferred funds totaling approximately \$30,000 out of his account.

55. Sajjadi immediately notified Coinbase customer service of the unauthorized transfer, but customer service did not make any good faith efforts to engage with him about his dispute or otherwise attempt to resolve

the dispute, one way or another, in a good faith manner.

56. Sajjadi has not been refunded any of his funds by Coinbase, and Sajjadi is informed and believes that neither he nor any other member of any class as defined herein have received the full relief sought in this action.

57. Sajjadi did not receive a disclosure from Coinbase including the information required by 12 C.F.R. § 1005.7 before the first electronic fund transfer was made involving his Coinbase account.

H. Plaintiffs Bielski, Binyaminov, and Sajjadi are far from alone.

58. More Coinbase users in addition to Plaintiffs have suffered and continue to suffer financial losses as a result of unauthorized electronic transfers from their Coinbase accounts.

59. Coinbase users have shared their stories on social media websites including Twitter and Reddit. On Twitter, one user described how his Coinbase account was “hacked” and Coinbase “won’t help.”¹⁴ He explained that Coinbase told him he “would get the money back” that he lost in the hack, but instead his funds disappeared and Coinbase offered no support—forcing him instead to ask the FBI to intervene.¹⁵ On Reddit, multiple Coinbase users have complained of stolen funds through unauthorized electronic fund

¹⁴ John Layfield (@JCLayfield), Twitter (Jan. 13, 2022, 7:40 AM), www.twitter.com/jclayfield/status/1481652273793028106.

¹⁵ John Layfield (@JCLayfield), Twitter (Feb. 25, 2022, 11:28 AM), <https://www.twitter.com/jclayfield/status/1497292461730938886>.

transfers, each with no help from Coinbase’s Support Team.¹⁶

60. Media reports about Coinbase users falling victim to unauthorized electronic transfers are common, with titles like “Katy man out of about \$17K after his cryptocurrency account was hacked,”¹⁷ “Couple’s digital Coinbase account hacked, \$24,000 stolen,”¹⁸ and “Hackers drain cryptocurrency accounts of thousands of Coinbase users.”¹⁹

61. Additional similar lawsuits have sprung up across the country since this case was first filed, with plaintiffs levying similar allegations in putative class actions against Coinbase. *See, e.g., Aggarwal v. Coinbase, Inc.*, No. 4:22-cv-04829-JSW (N.D. Cal.); *Kattula*

¹⁶ *See, e.g., What will Coinbase do to correct hacked account / stolen money?*, Reddit, https://www.reddit.com/r/CoinBase/comments/xop5on/whatwill_coinbase_do_to_correct_hacked/; *Account was hacked. My money was stolen.*, Reddit, https://www.reddit.com/r/CoinBase/comments/tf7vni/account_was_hacked_my_money_was_stolen/; *Coinbase account hacked and all stolen*, Reddit, https://www.reddit.com/r/CoinBase/comments/s9osxr/coinbase_account_hacked_and_all_stolen/ (all last accessed Oct.27, 2022).

¹⁷ Courtney Carpenter, *Katy man out of about \$17K after his cryptocurrency account was hacked*, ABC13 KTRK-TV (Feb. 1, 2022), available at www.abc13.com/coinbase-cryptocurrency-hacked-robbed/11530402/.

¹⁸ Lara Greenberg, *Couple’s digital Coinbase account hacked, \$24,000 stolen*, FOX35 WOFL-TV (Dec. 6, 2021), available at www.fox35orlando.com/news/couples-digital-coinbase-account-hacked-24000-stolen.

¹⁹ Jorge Jiminez, *Hackers drain cryptocurrency accounts of thousands of Coinbase users*, PC Gamer (Oct. 4, 2021), available at www.pcgamer.com/hackers-drain-cryptocurrency-accounts-of-thousands-of-coinbase-users/.

v. Coinbase Global, Inc., No. 1:22- cv-03250-TWT
(N.D. Ga.).

CLASS ACTION ALLEGATIONS

62. This action is brought and may properly proceed as a class action pursuant to Federal Rule of Civil Procedure 23.

63. Plaintiffs seek certification of a class (the “Class”) with respect to Claims 1, 2, 4, 5, 6, 7, 8, 9, and 12 that is composed of and defined as follows:

All current and former Coinbase users and/or consumers in the United States who maintained funds, including but not necessarily limited to cryptocurrency and/or fiat currency, in their Coinbase account(s) and who had funds removed from their account(s) as a result of unauthorized electronic fund transfer(s) at least as recently as the one-year period immediately preceding the filing of this action.

64. Plaintiff Abraham Bielski seeks certification of a Florida Subclass with respect to Claim 10, brought pursuant to the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), that is composed of and defined as follows:

All current and former Coinbase users and/or consumers in the State of Florida who maintained funds, including but not necessarily limited to cryptocurrency and/or fiat currency, in their Coinbase account(s) and who had funds removed from their account(s) as a result of unauthorized electronic fund transfer(s) at least as recently as the one- year period immediately preceding the filing of this action.

65. Plaintiff Dzhura Binyaminov seeks certification of a New York Subclass with respect to Claim 11, brought pursuant to New York General Business Law § 349, that is composed of and defined as follows:

All current and former Coinbase users and/or consumers in the State of New York who maintained funds, including but not necessarily limited to cryptocurrency and/or fiat currency, in their Coinbase account(s) and who had funds removed from their account(s) as a result of unauthorized electronic fund transfer(s) at least as recently as the one-year period immediately preceding the filing of this action.

66. Plaintiffs seek certification of a Notice Requirement Class with respect to Claim 3, brought pursuant to 15 U.S.C. § 1693c and Regulation E, 12 C.F.R. § 1005.7, that is composed of and defined as follows:

All current and former Coinbase users and/or consumers in the United States with Coinbase account(s) active at least as recently as the one-year period immediately preceding the filing of this action.

67. Excluded from the Class, the Florida Subclass, the New York Subclass, and the Notice Requirement Class (collectively, the “Classes”) are Coinbase’s officers and directors and current or former employees of Coinbase and their immediate family members, as well as any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and staff.

68. **Ascertainability.** Plaintiffs are informed and believe that the identities of members of the Classes are ascertainable through Coinbase’s records.

69. **Numerosity.** Plaintiffs are informed and believe that there are thousands of members of the Class and the Notice Requirement Class. The Classes are so large that the joinder of all of their members is impracticable. The exact number of members of each of the four Classes can be determined from information in the possession and control of Coinbase.

70. **Commonality.** Coinbase has acted or refused to act on grounds that apply generally to the Classes, including its failure to secure consumer accounts, its inaccurate representations about their products made to the public and members of the Classes, its failure to provide meaningful customer service related to security breaches, its failure to remedy unauthorized electronic fund transfers, and its failure to provide adequate initial disclosures under Regulation E. Absent certification of the Classes, the relief sought herein creates the possibility of inconsistent judgments and/or obligations imposed on Coinbase. Numerous common issues of fact and law exist, including, without limitation:

a. Whether Coinbase has complied with the investigation and error resolution requirements of the EFTA and/or Regulation E in connection with the unauthorized electronic transfer of funds from the accounts of Plaintiffs and the Classes;

b. Whether Coinbase has made timely, good faith investigations of unauthorized electronic fund transfers, or has not had a reasonable basis for believing the accounts of Plaintiffs and the Classes were not in error, or has knowingly and willfully concluded that those accounts were not in error when such conclusion could not reasonably have been

drawn from the evidence available to Coinbase at the time of its investigation, if any;

c. Whether Coinbase has timely complied with the customer service provisions of the EFTA and/or Regulation E in connection with the unauthorized electronic transfer of funds from the accounts of Plaintiffs and the Classes;

d. Whether Coinbase has complied with the disclosure requirements of the EFTA and/or Regulation E with respect to Plaintiffs and the Notice Requirement Class;

e. Whether Coinbase is subject to the legal requirements described in (a)—(d);

f. The nature, extent, policies, and procedures of the customer service or “Support” processes that Coinbase makes available for its customers relating to security breaches or unauthorized electronic fund transfers;

g. The nature, extent, policies, and procedures of the security measures that Coinbase takes to protect its customers’ accounts and prevent security breaches or unauthorized electronic fund transfers;

h. The legal sufficiency of the facts relating to (f)—(g) as applied to the claims of Plaintiffs and the Classes;

i. Whether Coinbase was aware, or should have been aware; of potential vulnerabilities in its customer account security;

j. The nature, scope, extent, and any limitations to the obligations that Coinbase owes to depositors and users of its platform and exchange;

k. Whether a customer's decision to deposit and maintain funds or assets on Coinbase's platform, and Coinbase's decision to accept those funds or assets, forms a bailment;

l. Whether Coinbase failed to properly secure its customers' accounts, funds, cryptocurrency, or other assets;

m. Whether Coinbase owed a duty of care to safely maintain the accounts, funds, cryptocurrency, or other assets in its customers' accounts;

n. Whether Coinbase violated the duties of care it owed to Plaintiffs and the Classes;

o. Whether Coinbase's representations about the safety and security of its platform and exchange were materially false and misleading, or whether Coinbase made those representations negligently, carelessly, or recklessly with regard to their falsity;

p. Whether Plaintiffs and the Classes were harmed by the security breaches resulting in unauthorized electronic fund transfers from their Coinbase accounts;

q. Whether Coinbase is a "securities intermediary" under California law, and if so, whether the unauthorized electronic fund transfers were ineffective entitlement orders;

r. Whether Coinbase should have to repay the monies lost by Plaintiffs and the Classes;

s. Whether Coinbase should be required to make restitution to Plaintiffs and the Classes;

t. Whether Coinbase should be disgorged of monies that it received as ill-gotten gains;

u. Whether Coinbase should be required to pay damages to Plaintiffs and members of the Classes, including treble damages where available by law;

v. Whether exemplary or punitive damages should be assessed against Coinbase.

71. **Typicality.** Plaintiffs' claims are typical, if not identical, to the claims that could be asserted by all members of the Class and the Notice Requirement Class. Plaintiffs' claims arise from Coinbase's practices applicable to all such class members. Plaintiff Abraham Bielski's claims are typical, if not identical, to the claims that could be asserted by all members of the Florida Subclass. Plaintiff Dzhura Binyaminov's claims are typical, if not identical, to the claims that could be asserted by all members of the New York Subclass.

72. **Adequacy.** Plaintiffs are all members of the Class and the Notice Requirement Class and will adequately represent the interests of those class members because there are no conflicts between Plaintiffs and those class members, and because Plaintiffs' counsel has the experience and skill to zealously advocate for the interests of the members of the Classes. Plaintiff Abraham Bielski is a member of the Florida Subclass and will adequately represent the interests of those subclass members. Plaintiff Dzhura Binyaminov is a member of the New York Subclass and will adequately represent the interests of those subclass members.

73. **Predominance.** Common issues predominate over individualized inquiries in this action because Coinbase's liability can be established as to all members of the Classes as discussed herein. *See supra* 70.

74. **Superiority.** There are substantial benefits to proceeding as a class action that render proceeding as the Classes superior to any alternatives, including that it will provide a realistic means for members of the Classes to recover damages; the damages suffered by members of the Classes may be relatively small; it would be substantially less burdensome on the courts and the parties than numerous individual proceedings; many members of the Classes may be unaware that they have legal recourse for the conduct alleged herein; and because issues common to members of the Classes can be effectively managed in a single proceeding. Plaintiffs know of no difficulty that could be encountered in the management of this litigation that would preclude its maintenance as a class action.

CLAIMS

CLAIM 1

VIOLATION OF THE ELECTRONIC FUNDS TRANSFER ACT

15 U.S.C. §§ 1693 *et seq.*

On Behalf of All Class Members

75. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

A. The EFTA's legal framework is broad.

76. The EFTA and its corresponding regulations implemented by the Consumer Financial Protection Bureau ("CFPB"), 12 C.F.R. §§ 1005.1 *et seq.*, were designed with the "primary objective" of "the provision of individual consumer rights." 15 U.S.C. § 1693; 12 C.F.R. § 1005.1(b) (The "primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers and remittance transfers.").

77. Relevant definitions throughout the EFTA and its corresponding definitions include:

(1) A “financial institution” includes banks and credit unions, as well as “any other person who, directly or indirectly, holds an account belonging to a consumer.” 15 U.S.C. § 1693a(9). A “person” includes “a natural person or an organization, including a corporation” 12 C.F.R. § 1005.2(j).

(2) An “account” includes any consumer asset account held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes. 15 U.S.C. § 1693a(2); *see also* 12 CFR § 1005.2(j).

(3) A “consumer” is a “natural person.” 15 U.S.C. § 1693a(6).

(4) An “error” includes, among other things, an “unauthorized electronic fund transfer.” 15 § 1693f(f)(1); 12 C.F.R. § 1005.11(a)(vii).

(5) An “unauthorized electronic fund transfer” is defined as “an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit.” 15 U.S.C. § 1693(a)(12); *see also* 15 C.F.R. § 1005(m). The CFPB (as well as the Board of Governors of the Federal Reserve System) have specifically stated that “[a]n unauthorized [electronic funds transfer] includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.” *See* 12 C.F.R. § 205, Supp. I at 2(m) (Board of Governors’ Official Interpretation of § 205.2(m)); 12 C.F.R. § 1005, Supp. I at 2(m) (CFPB’s Official Interpretation of

§ 1005.2(m)); *see also Green v. Capital One, N.A.*, 557 F. Supp. 3d 441, 446-50 (S.D.N.Y. 2021).²⁰

(6) An “electronic fund transfer” includes any transfer of funds initiated through a computer. While the definition does not include any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is regulated by the Securities and Exchange Commission (“SEC”) or the Commodity Futures Trading Commission (“CFTC”) or is purchased or sold through a broker-dealer regulated by the SEC or through a future commission merchant regulated by the CFTC, the “primary purpose” of the transfers of funds at issue in this action is not the purchase or sale of a security or commodity, but rather outright theft. Indeed, CFPB has made clear that this “Securities Exemption” applies to, for example, a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call, but not a transfer involving an access device that accesses a securities or commodities account that a consumer uses for purchasing goods or services or for obtaining cash (*i.e.*, a Coinbase account). 12 C.F.R. § 1005, Supp. I at 3(c)(4).

²⁰ The definition of “unauthorized electronic fund transfer” under § 1693(a)(12) and § 1005(m) excludes any electronic fund transfer initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer’s account by such consumer. The CFPB and Board of Governors have confirmed that this exclusion does not encompass situations where a consumer technically furnishes to a third party his or her means of access to an account, but due to fraud, threat, or force.

78. The error resolution subpart of the EFTA provides, in relevant part, that if a financial institution, within sixty days after having transmitted to a consumer notice of an electronic funds transfer, receives oral or written notice in which the consumer (1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer; (2) indicates the consumer's belief that the documentation, contains an error and the amount of such error; and (3) sets forth the reasons for the consumer's belief that an error has occurred, the financial institution must investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. 15 U.S.C. § 1693f(a)(3); *see* 12 C.F.R. § 205.11; *see also* Supp. I to § 205 at 11(b)(1) (notice of error is effective so long as the financial institution is able to identify the account in question); 12 C.F.R. § 1005, Supp. I at 11(b)(1)(1) (same). Notice may be constructive "when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made." 12 C.F.R. § 1005.6(b)(5)(iii).

79. If the financial institution determines that an error did occur, it has the option to either timely correct the error, including the crediting of interest where applicable; or (2) timely provisionally recredit the consumer's account for the amount alleged to be in error pending the conclusion of the institution's investigation of the error within ten business days of being notified of the error. 15 U.S.C. § 1693f(c); *see also* 12 C.F.R. § 1005.11. In no circumstance can an investigation be concluded more than forty-five days after receipt of the notice of error, and during the pendency of

the investigation, the consumer must be allowed full use of funds provisionally recredited. *Id.*

80. Where a financial institution (1) fails to provisionally recredit a consumer's account within the ten-day period specified above, and the financial institution (a) did not make a good faith investigation of the alleged error, or (b) did not have a reasonable basis for believing that the consumer's account was not in error; or (2) knowingly and willfully concludes that a consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation, then the consumer shall be entitled to treble damages determined under 15 U.S.C. § 1693m(a)(1).

81. The consumer may be held liable for an unauthorized electronic fund transfer where a financial institution provides the required notices under 15 U.S.C. § 1693c and 12 C.F.R. § 1005.7(b). 15 U.S.C. § 1693g; 12 C.F.R. § 1005.6. Liability of the consumer, if applicable, is limited to \$50 if the consumer notifies the institution within two business days after learning of the loss or \$500 if the consumer does not notify the institution within two business days after learning of the loss. *Id.*

B. Coinbase is subject to the EFTA.

82. Coinbase is a "financial institution" as defined by the EFTA because it is a corporation that holds accounts belonging to consumers, including Plaintiffs and the Class. Coinbase provides users with (a) hosted Digital Currency wallet(s) for holding digital currencies, and (b) hosted U.S. Dollars wallet(s) for holding U.S. dollars.

83. Plaintiffs and the Class are “consumers” as defined by the EFTA because they are natural persons.

84. The Coinbase accounts held by Plaintiffs and the Class are “accounts” as defined by the EFTA and/or Regulation E, 12 C.F.R. §§ 1005.1—20, because they are asset accounts held directly by Coinbase and established primarily for personal, family, or household purposes. The Coinbase accounts held by Plaintiffs and the Class are used for such those purposes—*i.e.*, intended to earn income from appreciating assets—and not for business purposes.

85. The electronic fund transfers at issue have been “unauthorized electronic fund transfers” because they were initiated by a person other than Plaintiffs or the Class by fraud, without actual authority to initiate such transfers, and from which Plaintiffs and the Class have received no benefit. The primary purpose of these transfers has not been the purchase or sale of securities or commodities, but rather to steal securities or commodities.

86. Plaintiffs and the Class have provided timely actual and/or constructive notice to Coinbase of the unauthorized electronic transfers from their accounts. Indeed, Coinbase knew or should have known of the repeated and widespread breaches of its security and subsequent theft of funds, as well as the repeated and widespread requests for assistance from Plaintiffs and the Class. Coinbase should have been aware of and prepared to handle inquiries concerning unauthorized electronic transfers from the Coinbase accounts of Plaintiffs and the Class, and it should have taken steps to monitor those accounts for unauthorized transfers.

87. Coinbase has failed to timely and in good faith investigate the unauthorized electronic transfers from the Coinbase accounts of Plaintiffs and the Class, as required by 15 U.S.C. §§ 1693f(a)(3) and 1693f(d), because it failed to conduct a timely and reasonable review of its own records. *See* 12 C.F.R. § 205.11(c)(4); *see also* Supp. I to § 205 at 11(c)(4)—5. Indeed, adequate and timely investigations would have easily led Coinbase to the conclusion that fraud had occurred, given that Plaintiffs and the Class have not authorized the transfers at issue, that the fraudulent transfers have been made to accounts other than those Plaintiffs and the Class used to fund their Coinbase accounts, and that these fraudulent transfers have been widely reported as a common issue on the Coinbase exchange. Accordingly, Plaintiffs and the Class are entitled to compensatory damages, attorneys’ fees, and costs for Coinbase’s inadequate investigation pursuant to 15 U.S.C. § 1693m(a).

88. Further, Coinbase has failed to timely correct the “errors” (as noted above, statutorily defined to include “unauthorized electronic fund transfers”), or to correct the “errors” at all, in the Coinbase accounts of Plaintiffs and the Class. Coinbase failed to timely credit or provisionally recredit those accounts, or failed to credit or provisionally recredit those accounts at all, after those accounts had been breached and drained of funds. 15 U.S.C. § 1693f(b)—(c). This failure, separately, results in compensatory damages owed to Plaintiffs and the Class pursuant to 15 U.S.C. § 1693m(a). In addition, because Coinbase never provided disclosures compliant with 12 C.F.R. § 1005.7(b) to Plaintiffs or the Class, Plaintiffs and the Class have no liability for the unauthorized electronic fund transfers under 15 U.S.C. § 1693g and/or 12 C.F.R. § 1005.6.

89. Because Coinbase has not timely provisionally recredited, or provisionally recredited at all, the Coinbase accounts of Plaintiffs and the Class, and because Coinbase failed to conduct timely, good faith investigations into the unauthorized transactions that Plaintiffs and the Class have actually or constructively reported (by, for example, failing to provide Plaintiffs and the Class reasonable access to timely and effective customer service or otherwise engaging in any sort of good faith investigation of unauthorized electronic fund transfers), Coinbase is liable for treble damages under the EFTA.

90. Coinbase is further liable for treble damages under the EFTA because it has not had a reasonable basis for believing the Coinbase accounts of Plaintiffs and the Class were not in “error.” Instead, Coinbase failed to use the resources and procedures necessary to timely resolve, or resolve at all, the fraud that has been occurring on those accounts, demonstrating that Coinbase has been unable or unwilling to timely form, or form at all, a reasonable basis for believing those accounts were not in “error.” Moreover, to the extent Coinbase has concluded that the Coinbase accounts of Plaintiffs and the Class accounts were not in “error,” Coinbase has knowingly and willfully reached that conclusion when it could not reasonably have been drawn from the evidence available to Coinbase at the time of any investigation.

91. Plaintiffs and the Class are therefore entitled to compensatory damages, attorneys’ fees, and costs for this claim under 15 U.S.C. § 1693m, as well as treble damages under 15 U.S.C. § 1693f(e).

CLAIM 2**VIOLATION OF EFTA AND REGULATION E
CUSTOMER SERVICE PROVISIONS****15 U.S.C. § 1693f(f)(6); 12 C.F.R. § 1005.11(a)(7)****On Behalf of All Class Members**

92. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

93. The EFTA, 15 U.S.C. § 1693f(f)(6), and Regulation E, 12 C.F.R. § 1005.11(a)(7), (c),²¹ require financial institutions to address “a consumer’s request for additional information or clarification concerning an electronic fund transfer” within ten business days of receiving notice of error, or within 45 calendar days if the financial institution provisionally recredits the consumer’s account, with interest where applicable, within ten business days of receiving the notice of error.

94. Plaintiffs and the Class are “consumers” within the meaning of the EFTA and Regulation E.

95. Coinbase, a “financial institution,” has violated the EFTA and Regulation E by failing to timely provide information or clarification concerning electronic fund transfers, including requests made by Plaintiffs and the Class to determine whether there were unauthorized electronic transfers from their Coinbase accounts. *See* U.S.C. § 1963f(f)(6); 12 C.F.R. § 1005.11.

²¹ Consumers have a private right of action for violations of Regulation E. *See Lussoro v. Ocean Fin. Fed. Credit Union*, 456 F.Supp. 3d, 474, 492 (E.D.N.Y. 2020).

96. Coinbase is liable to Plaintiffs and the Class for statutory damages, attorneys' fees, and costs for this claim under 15 U.S.C. § 1693m.

CLAIM 3

**VIOLATION OF REGULATION E NOTICE
REQUIREMENTS**

15 U.S.C. § 1693c; 12 C.F.R. § 1005.7

**On Behalf of All Notice Requirement Class
Members**

97. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

98. 15 U.S.C. § 1693c and Regulation E, 12 C.F.R. § 1005.7, require all financial institutions to make the disclosures set forth in § 1005.7 before the first electronic fund transfer is made involving a consumer's account.

99. Coinbase, a "financial institution," has violated Regulation E by failing to provide adequate initial disclosures to Plaintiffs and members of the Notice Requirement Class including, as applicable:

- (1) a summary of liability of Plaintiffs and the Class, under 12 CFR § 1005.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers;
- (2) the telephone number and address of the person or office to be notified when a Plaintiff of member of the Class believes that an unauthorized electronic fund transfer has been or may be made;
- (3) Coinbase's business days;
- (4) the type of electronic fund transfers that Plaintiffs and the Class may make and any

limitations on the frequency and dollar amount of transfers;

(5) any fees imposed by Coinbase for electronic fund transfers or for the right to make transfers;

(6) a summary of the rights of Plaintiffs and the Class to receipts and periodic statements, as provided in 12 CFR § 1005.9 of this part, and to notices regarding preauthorized transfers as provided in 12 CFR § 1005.10(a) and (d);

(7) a summary of the rights of Plaintiffs and the Class to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in 12 CFR § 1005.10(c);

(8) a summary of Coinbase's liability to Plaintiffs and the Class for failure to make or to stop certain transfers;

(9) the circumstances under which, in the ordinary course of business, Coinbase may provide information to third parties concerning the Coinbase accounts of Plaintiffs and the Class;

(10) A notice that is substantially similar to Model Form A-3 as set out in Appendix A of 12 CFR §§ 1005.1 *et seq.* concerning error resolution; and

(11) a notice that a fee may be imposed by an automated teller machine operator as defined in 12 CFR § 1005.16(a), when a Plaintiff or member of the Class initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

100. As a result of Coinbase's violation of the notice requirements of 15 U.S.C. § 1693c and Regulation E, Plaintiffs and the Notice Requirement Class are entitled to statutory damages, attorneys' fees, and costs for this claim under 15 U.S.C. § 1963m(a).

CLAIM 4
NEGLIGENCE
On Behalf of All Class Members

101. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

102. Coinbase owed a duty of reasonable care toward Plaintiffs and the Class based upon Coinbase's relationship to them.

103. Coinbase breached this duty by negligently, carelessly, and recklessly collecting, maintaining, and controlling its customers' funds and cryptocurrency and by failing to protect them from exposure to unauthorized third parties.

104. As a direct and foreseeable consequence of Coinbase's breach of its duty of care, Plaintiffs and the Class were injured and are entitled to damages available by law in an amount to be proven at trial.

CLAIM 5
NEGLIGENT MISREPRESENTATION
On Behalf of All Class Members

105. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

106. Coinbase represented to Plaintiff and the Class, through its statements and categorizations, that it offered a safe and secure platform for the exchange and storage of funds, cryptocurrency, and other assets.

107. Coinbase failed to conduct a reasonable and diligent investigation of the representations it made to Plaintiffs and the Class to ensure that those statements were true and that there was no omission of material facts required to make the representations not misleading. Coinbase, in the exercise of reasonable care, should have known its statements and omissions were misleading.

108. Coinbase owed a duty to Plaintiffs and the Class to speak with care and explain fully and truthfully all material facts regarding the security of their Coinbase accounts and the availability and methods of remedying errors in electronic transfers. This duty arose from several bases under state and federal law, including Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, which prohibits “deceptive acts or practices in or affecting commerce.” This provision encompasses material representations, omissions, or practices that are likely to mislead a reasonable consumer.

109. Coinbase’s duty to speak with care arose from its relationship with Plaintiffs and the Class and its unique position in the cryptocurrency market. Because of its critical role within the cryptocurrency exchange market, Coinbase was in a superior position to protect against the harm suffered by Plaintiffs and the Class.

110. The relationship between Coinbase and Plaintiffs and the Class is such that, in morals and good conscience, Plaintiffs and the Class had the right to rely upon Coinbase for information. Coinbase was in a special position of confidence and trust with Plaintiffs and the Class such that their reliance on Coinbase’s negligent misrepresentations was justified.

111. Coinbase knew, or reasonably should have known, that Plaintiffs and the Class would rely on its misrepresentations and omissions in using the Coinbase platform and exchange for the transfer and storage of funds, assets, and cryptocurrencies.

112. Coinbase's negligent misrepresentations and omissions, upon which Plaintiffs and the Class reasonably and justifiably relied, were intended to induce, and actually induced, Plaintiffs and the Class to use the Coinbase platform and exchange for the transfer and storage of funds, assets, and cryptocurrencies.

113. As a direct and proximate cause of their reliance on Coinbase's representations, Plaintiffs and the Class have been injured and are entitled to damages available by law in an amount to be proven at trial.

**CLAIM 6
BAILMENT**

Common Law and Cal. Civ. Code §§ 1813 *et seq.*

On Behalf of All Class Members

114. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

115. Plaintiffs and the Class deposited funds and cryptocurrencies into their Coinbase accounts in order to use, store, keep, sell, trade, or exchange cryptocurrencies.

116. Plaintiffs and the Class gave consideration for the funds and cryptocurrencies deposited with Coinbase in the form of commissions and fees.

117. Coinbase is a bailee of the personal property of Plaintiffs and the Class. Plaintiffs and the Class are bailors of their personal property.

118. As a bailee, Coinbase had an obligation to return or account for the deposited personal property upon demand.

119. By its own acts or omissions, Coinbase caused the personal property deposited by Plaintiffs and the Class to be lost.

120. Coinbase has refused to return the personal property deposited by Plaintiffs and the Class.

121. Coinbase has refused to provide complete disclosure to Plaintiffs and the Class regarding the circumstances under which the loss of property occurred. As a result, Coinbase is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur pursuant to Cal. Civ. Code § 1838.

122. As a result of Coinbase's failure to fulfill its obligations and duties as a bailee, Plaintiffs and the Class have been injured because they are deprived of their personal property.

CLAIM 7

VIOLATION OF CALIFORNIA UNIFORM COMMERCIAL CODE DIVISION 8 Cal. Comm. Code § 8507(b)

On Behalf of All Class Members

123. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

124. Coinbase characterizes itself as a "securities intermediary" and characterizes Coinbase wallets as "financial assets," which are subject to Division 8 of the California Uniform Commercial Code ("UCC").

125. Under UCC § 8102(a)(7), the owner of assets held in an account with a securities intermediary is an “entitlement holder.”

126. If Coinbase’s characterization of the relationship is correct, at the time of the unauthorized transfers alleged herein, Plaintiffs and the Class were “entitlement holders” with respect to the assets held in their Coinbase accounts.

127. Under UCC § 8102(a)(8), an order for a securities intermediary to transfer assets is an “entitlement order.”

128. Under UCC § 8107(b), an entitlement order is only “effective” if it is made by the entitlement holder or an authorized agent or ratified by the entitlement holder.

129. The orders for the unauthorized transfers from the Coinbase accounts of Plaintiffs and the Class, as alleged herein, were not effective because they were not made by Plaintiffs or the Class or by their authorized agents, nor were they ratified by Plaintiffs or the Class.

130. Nonetheless, Coinbase completed those unauthorized transfers even though they were made pursuant to ineffective entitlement orders.

131. Pursuant to UCC § 8507(b), Coinbase is obligated to credit the Coinbase accounts of Plaintiffs and the Class to correct the unauthorized transfers and to pay or credit any payments or distributions that Plaintiffs and the Class did not receive as a result of the wrongful transfers, in addition to liability for damages.

132. As a direct and foreseeable consequence of Coinbase’s transfer of the assets of Plaintiffs and the Class pursuant to ineffective and invalid entitlement orders, and of Coinbase’s failure to credit the Coinbase accounts of Plaintiffs and the Class to correct those unauthorized transfers, Plaintiffs and the Class were injured.

CLAIM 8

VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT

Cal. Civ. Code §§ 1750 *et seq.*

On Behalf of All Class Members

133. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.
134. At all relevant times, Plaintiffs and the Class were “consumers” under the terms of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*, as individuals seeking or acquiring, by purchase or lease, goods or services for personal, family, or household purposes.
135. Coinbase’s actions and conduct constituted transactions for the sale or lease of goods or services to consumers under the terms of the CLRA. The assets involved in the unauthorized transactions are “goods” and Coinbase’s financial and online platform services are “services” under the CLRA.
136. Coinbase violated the CLRA by, among other things, making false statements and omitting truthful information about its services and including unconscionable and/or unlawful

provisions in its contracts with Plaintiffs and the Class.

137. Coinbase's misrepresentations were material. Coinbase's violations of the CLRA were a substantial factor in causing Plaintiffs and the Class to use Coinbase's services.

138. As a direct and proximate consequence of these actions, Plaintiffs and the Class suffered injury.

139. Coinbase's conduct was malicious, fraudulent, and wanton in that it intentionally and knowingly provided misleading information to Plaintiffs and the Class and refused to remedy the breach of its platform and exchange long after learning of the inadequacy of its data protection and security measures and of the unauthorized access and use of its customers' accounts.

CLAIM 9

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

Cal. Bus. & Prof. Code §§ 17200 *et seq.*

On Behalf of All Class Members

140. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

141. Coinbase and Plaintiffs and the Class are "persons" within the meaning of the California Unfair Competition Law ("UCL"). Cal. Bus. & Prof. Code § 17201.

142. Coinbase engaged in unlawful, fraudulent, and/or unfair conduct that is harmful and deceiving to consumers within the meaning of the UCL.

143. Plaintiffs and the Class suffered injuries in fact and lost money or property as a result of Coinbase's violations of the UCL.

144. Coinbase's conduct is substantially injurious to consumers, offends legislatively-declared public policy as announced by the violations of the laws alleged, and is immoral, unethical, oppressive, and unscrupulous. The gravity of Coinbase's wrongful conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Coinbase's legitimate business interests other than engaging in this wrongful conduct.

CLAIM 10

VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

Fla. Stat. §§ 501.201 *et seq.*

On Behalf of All Florida Subclass Members

145. Plaintiff Abraham Bielski repeats and realleges the allegations of the paragraphs above as if fully set forth herein.

146. Plaintiff Abraham Bielski and the Florida Subclass are "consumers" and "persons" within the meaning of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). Fla. Stat. §§ 501.203, 501.211.

147. Coinbase advertised, offered, or sold goods or services in Florida and engaged in commerce affecting Florida residents, including Plaintiff Abraham Bielski and the Florida Subclass.

148. Coinbase engaged in unconscionable acts or practices, and in unfair or deceptive acts or practices, in the conduct of its business and operation of the Coinbase platform and exchange. These acts or

practices included, among other things, making false statements and omitting truthful information about Coinbase's services and including unconscionable and/or unlawful provisions in its contracts with Plaintiff Abraham Bielski and the Florida Subclass.

149. Coinbase's misrepresentations and omissions were material because they were reasonably likely to deceive reasonable consumers about the adequacy of Coinbase's safety and security measures and its compliance with laws and standards relating to financial account security and the correction of errors relating thereto.

150. Plaintiff Abraham Bielski and the Florida Subclass acted reasonably in relying on the misrepresentations and omissions of Coinbase and could not reasonably have uncovered the falsity of those misrepresentations and omissions.

151. Plaintiff Abraham Bielski and the Florida Subclass suffered actual damages and lost money or property as a direct and proximate result of Coinbase's violations of FDUTPA.

152. Had Coinbase disclosed to Plaintiff Abraham Bielski and the Florida Subclass its actual safety and security standards for their accounts, and/or its refusal to make them whole if they were to fall victim to unauthorized electronic fund transfers out of their accounts, Plaintiff Abraham Bielski and the Florida Subclass would not have provided funds, cryptocurrency, or other assets to Coinbase for storage on the Coinbase platform and would not have used the Coinbase exchange for the transfer of funds, cryptocurrency, or other assets.

153. Plaintiff Abraham Bielski and the Florida Subclass seek all monetary and equitable relief allowed by law, including actual or nominal damages under Fla. Stat. § 501.211, declaratory and injunctive relief, attorneys' fees and costs pursuant to Fla. Stat. § 501.2105(1), and any other relief available under FDUTPA.

CLAIM 11

VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

On Behalf of All New York Subclass Members

154. Plaintiff Dzhura Binyaminov repeats and realleges the allegations of the paragraphs above as if fully set forth herein.

155. Plaintiff Dzhura Binyaminov and the New York Subclass are persons within the meaning of N.Y. Gen. Bus. § 349(g).

156. Coinbase is a person, firm, corporation, or association within the meaning of N.Y. Gen. Bus. § 349(b).

157. Coinbase engaged in deceptive acts and practices in the conduct of business, trade, and commerce by, among other things, making false statements and omitting truthful information about Coinbase's services and including unconscionable and/or unlawful provisions in its contracts with Plaintiff Dzhura Binyaminov and the New York Subclass.

158. A reasonable consumer would be misled by these deceptive acts and practices.

159. These deceptive acts and practices were consumer-oriented.

160. These deceptive acts and practices as to Plaintiff Dzhura Binyaminov and the New York Subclass occurred in New York. The New York Department of Financial Services issued Coinbase a New York Money Transmitter License and a New York Virtual Currency Business Activity Company License to regulate its activities in New York. Thus, New York has a significant interest in enforcing its consumer protection statutes, including New York General Business Law § 349.

161. Plaintiff Dzhura Binyaminov and the New York Subclass were injured as a direct and proximate result of Coinbase's deceptive acts and practices because they lost access to and control over their funds, cryptocurrency, or other assets.

162. Plaintiff Dzhura Binyaminov and the New York Subclass are entitled to injunctive relief and to actual damages or \$50 per violation, at their individual elections, because of Coinbase's deceptive acts and practices. *See* N.Y. Gen. Bus. § 349(h). Plaintiff Dzhura Binyaminov and the New York Subclass are also entitled to treble damages, because Coinbase's actions were willful and knowing.

163. Plaintiff Dzhura Binyaminov and the New York Subclass are entitled to reasonable costs and attorneys' fees. *See* N.Y. Gen. Bus. § 349(h).

CLAIM 12
UNJUST ENRICHMENT

On Behalf of All Class Members

164. Plaintiffs repeat and reallege the allegations of the paragraphs above as if fully set forth herein.

165. Plaintiffs and the Class conferred a benefit upon Coinbase through depositing funds and cryptocurrencies into their Coinbase accounts, and they paid Coinbase commissions and fees to maintain those funds and cryptocurrencies and to process transactions conducted on the Coinbase platform.

166. As a result of Coinbase's actions and omissions as alleged herein, Coinbase has been unjustly enriched at the expense of Plaintiffs and the Class. Under principles of equity, Coinbase should not be allowed to retain the commissions and fees paid to it by Plaintiffs and the Class, and Coinbase should not be allowed to retain the funds and assets held within Plaintiffs' and the Class's Coinbase accounts.

167. Plaintiffs and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

Plaintiffs pray for relief as follows:

- a. Compensatory damages;
 - b. Statutory damages;
 - c. Treble damages;
 - d. Restitution;
 - e. Disgorgement;
 - f. Punitive damages;
 - g. Attorneys' fees and costs;
 - h. Pre- and post-judgment interest, as applicable;
- and
- i. All further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby respectfully demand a trial by jury on all claims.

Date: November 28, 2022

/s/ Hassan A. Zavareei

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed June 14, 2022]

No. 22-15566

ABRAHAM BIELSKI,
Plaintiff-Appellee,

v.

COINBASE, INC.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of California
No. C 21-07478 WHA
Hon. William Alsup

**MOTION FOR STAY PENDING APPEAL
RELIEF REQUESTED BY JULY 21, 2022**

INTRODUCTION

Coinbase seeks a stay pending appeal of the District Court's order refusing to enforce the arbitration clause in the parties' contract. The District Court agreed that "reasonable minds may differ" with its decision to

invalidate the arbitration clause, ECF 54 at 2,¹ and all agree that if this Court reverses that conclusion, the case must proceed through arbitration—not court litigation. Despite that risk, the District Court denied a stay pending appeal on its view that “Coinbase is a large company” and Abraham Bielski “is a single individual” who should not be “forced to wait” for the appeal to be decided. *Id.* at 2-3.

A stay pending appeal is warranted for two reasons.

First, Coinbase’s appeal divests the District Court of jurisdiction over further proceedings. When an interlocutory appeal is filed, a district court cannot exercise control over matters subject to the appeal. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam); *United States v. Pitner*, 307 F.3d 1178, 1183 n.5 (9th Cir. 2002). If Coinbase’s arbitration agreement is valid, then the District Court is statutorily barred from doing anything beyond compelling arbitration. In comparable cases, six circuits have held that a district court lacks jurisdiction to proceed with a case until the arbitrability appeal is resolved. This Court’s thirty-plus years old decision to the contrary, *Britton v. Co-op Banking Grp.*, 916 F.2d 1405 (9th Cir. 1990), hinged on the mistaken premise that arbitrability is “independent” from a district court’s power “to proceed with the case on the merits.” *Id.* at 1412. The Supreme Court has since repudiated that reasoning: a district court’s power to proceed to the merits is not independent from arbitrability because a valid arbitration agreement means the district court has “no business weighing the merits of the grievance.” *Henry*

¹ All ECF citations are to the District Court docket, No. 3:21-cv-07478-WHA (N.D. Cal.). As below, Bielski opposes a stay.

Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524, 529 (2019) (quotation marks omitted).

A panel of this Court is not bound by a prior circuit opinion that has been undercut by intervening Supreme Court precedent. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). This Court thus can (and should) recognize that *Britton* has been effectively overruled and grant a stay. Alternatively, the Court should refer this issue to an *en banc* Court, overrule *Britton*, and bring this Circuit's precedent into conformity with the six circuits that have rejected *Britton*.

Second, this Court also should grant a stay based on the four traditional stay factors. The District Court itself acknowledged that Coinbase's appeal raises serious legal questions. Irreparable injury exists too; entire cases can proceed to conclusion in the time it will take for this appeal to be decided, which effectively vitiates the parties' agreement to resolve disputes through arbitration. By comparison, a stay would hardly harm Bielski at all. Bielski is not seeking injunctive relief, he is seeking monetary damages for an allegedly unauthorized transfer from his Coinbase account. Even assuming he ultimately prevails, pre-judgment interest is designed to address any delay in receiving that remedy. If the mere delay in obtaining a remedy were enough to foreclose a stay, then stays could never be granted. And the public interest favors a stay to prevent the risk of wasting judicial resources on pretrial proceedings that may later be rendered null.

Coinbase requests a ruling on this motion by July 21, 2022, the date on which Coinbase's motion to dismiss is due. *See* ECF 56. Coinbase will suffer

irreparable harm on that date by being forced to litigate a matter over which the District Court lacks jurisdiction.

BACKGROUND

Late last year, Bielski sued Coinbase over an allegedly unauthorized transfer from his account. *See* ECF 22. Coinbase moved to compel arbitration under the terms of the User Agreement that Bielski agreed would govern his account. *See* ECF 26. Bielski did not dispute that he agreed to be bound by the User Agreement, that it contained an arbitration agreement with a delegation provision, or that his claims all fell within the scope of that agreement. *See* ECF 29. He argued instead that (1) the arbitration agreement was unilateral and thus unconscionable and (2) a “condition precedent to arbitration” never occurred because Bielski did not submit his dispute to Coinbase’s Formal Complaint Process. *See id.* at 1-2.

The court requested supplemental briefing on whether the User Agreement’s two pre-arbitration steps—contacting customer service and submitting an online complaint form—were so “onerous” as to render the dispute-resolution provisions of the Agreement unconscionable. *See* ECFs 38, 39 (supplemental briefs).

The court then denied Coinbase’s motion to compel. There was no dispute the User Agreement “covers this dispute,” ECF 42 at 3, but the court found the arbitration agreement and delegation provision unconscionable and unenforceable. It reasoned that the delegation provision lacked “bilateralism,” the pre-arbitration procedures (contacting customer service and an online form) served “no legitimate commercial need,” and “severance is not feasible.” *Id.* at 8, 11.

Coinbase appealed, ECF 43, and sought a stay from the District Court, ECF 48. Seven days ago, the District Court denied that motion. ECF 54 at 1, 3. It conceded that “reasonable minds may differ” with the merits of the order denying arbitration, but nonetheless denied a stay because “Coinbase is a large company” and “[m]ere litigation expenses do not generally constitute irreparable injury.” *Id.* at 2-3. The Court further reasoned that Bielski would be injured by a stay because he “is a single individual” who ought not be “forced to wait for a remedy.” *Id.* at 3.

Coinbase now respectfully moves this Court for a stay pending appeal.

ARGUMENT

I. The District Court Lacks Jurisdiction To Proceed Pending Resolution Of Coinbase’s Interlocutory Appeal On Arbitrability.

1. It is well-established that “[t]he filing of a notice of appeal ... divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs*, 459 U.S. at 58. Thus, once an interlocutory appeal is filed, a district court may only conduct proceedings that do not implicate “the subject of the appeal.” *Pitner*, 307 F.3d at 1183 n.5. The question, therefore, is what is “the subject of the appeal” in an interlocutory appeal on arbitrability. Recent Supreme Court precedent guides the answer to that question.

In *Henry Schein*, the Supreme Court emphasized that “[w]hen the parties’ contract assigns a matter to arbitration,” a district court “has no business” “resolv[ing] the merits of the dispute.” 139 S. Ct. 529-530 (quotation marks omitted). That is because, under the Federal Arbitration Act (FAA), if an arbitration

agreement is valid, a district court is statutorily barred from doing anything beyond granting a motion to compel—it must “direct the parties to proceed to arbitration,” and then its “involvement” in the case ends until arbitration is over. *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (quotation marks omitted). As other courts have explained, a valid arbitration agreement means that a district court cannot “permit[] discovery,” *Levin v. Alms and Assocs., Inc.*, 634 F.3d 260, 264 (4th Cir. 2011), or allow “preparation for trial,” *Bradford–Scott Data Corp. v. Physician Comput. Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997). That is because “[c]ontinuation of proceedings” pending appeal “largely defeats the point of the appeal.” *Id.* at 505.

The question “[w]hether the litigation may go forward in the district court is precisely what the court of appeals must decide” in an arbitrability appeal. *Id.* at 506. And since a district court lacks jurisdiction to proceed with any issue “involved in the appeal,” *Griggs*, 459 U.S. at 58, an arbitrability appeal strips the district court of authority to “continue[] with the case” until the appeal is resolved. *Bradford–Scott*, 128 F.3d at 506. As a result, the District Court lacks jurisdiction here. If Coinbase’s arbitration agreement is valid, the District Court is statutorily barred from doing anything beyond compelling arbitration. *Cox*, 533 F.3d at 1119. That renders the District Court’s authority to preside over discovery and pretrial matters “the subject of the appeal,” *Pitner*, 307 F.3d at 1183 n.5, and means the District Court cannot proceed until the appeal is resolved.

2. The District Court rejected this constraint on its jurisdiction, ECF 54 at 2, by invoking this Court’s 1990 decision in *Britton*, 916 F.2d 1405. There, this Court

held that a district court could enter a default judgment while an arbitrability appeal was pending based on its conclusion that arbitrability is an “independent issue[]” from the district court’s power “to proceed with the case on the merits.” *Id.* at 1412. But that outdated premise has been repudiated by the Supreme Court.

In *Henry Schein*, the Court held that, when a valid arbitration agreement exists, a district court “has no business weighing the merits of the grievance” because the FAA requires the district court “to submit all grievances to arbitration.” 139 S. Ct. at 529 (quotation marks omitted). Accordingly, arbitrability and a district court’s power “to proceed with the case on the merits” are not “independent issues,” as the *Britton* Court wrongly assumed. 916 F.2d at 1412. To the contrary: a district court’s power to proceed with *any* “matter” beyond a motion to compel depends entirely on whether “the parties’ contract [validly] assigns [that] matter to arbitration.” *Henry Schein*, 139 S. Ct. at 530.

Because the Supreme Court has repudiated *Britton*’s inapt reasoning, *Britton* is not binding here. The panel must instead “consider [itself] bound by the intervening higher authority and reject the prior [circuit] opinion ... as having been effectively overruled.” *Gammie*, 335 F.3d at 900. *Britton* is irreconcilable with *Henry Schein*: If a valid arbitration clause means a district court “has no business weighing the merits of the grievance,” *Henry Schein*, 139 S. Ct. at 529 (quotation marks omitted), then a district court’s power “to

proceed with the case on the merits” is not “independent” from arbitrability, *Britton*, 916 F.2d at 1412.²

3. If this Court believes that *Britton*’s reasoning survives *Henry Schein*, it should revisit the case *en banc* and overrule it. In the decades since *Britton*, six courts of appeals have soundly rejected the opinion’s reasoning. The Seventh Circuit concluded that *Britton*’s holding “does not follow” because the question “[w]hether the case should be litigated in the district court ... is the mirror image of the question presented” in an arbitrability appeal. *Bradford–Scott*, 128 F.3d at 505-506. The Eleventh Circuit rejected *Britton* because “[t]he only aspect of the case involved in an [arbitrability] appeal ... is whether the case should be litigated at all in the district court.” *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251-52 (11th Cir. 2004) (per curiam). And the Fourth Circuit held that “[t]he core subject of an arbitrability appeal is the challenged continuation of proceedings before the district court on the underlying claims.” *Levin*, 634 F.3d at 264. Other circuits are in accord. See *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007) (appeal from denial of motion to compel arbitration divests district court of jurisdiction to conduct further proceedings); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d

² The question in *Henry Schein* was whether a district court could proceed to the merits after finding an argument for arbitration wholly groundless, not about proceeding to the merits pending an arbitrability appeal. 139 S. Ct. at 527-528. But “the issues decided by the higher court need not be identical in order to be controlling.” *Gammie*, 335 F.3d at 900. Because the Supreme Court has “undercut the theory or reasoning underlying the prior circuit precedent,” this Court should consider that “irreconcilable” precedent overruled. *Id.*

1158, 1160-62 (10th Cir. 2005) (same); *Bombardier Corp. v. National R.R. Passenger Corp.*, No. 02-7125, 2002 WL 31818924, at *1 (D.C. Cir. Dec. 12, 2002) (per curiam) (same).

Neither of the two appeals courts that take a contrary view have acknowledged the FAA's command that a valid arbitration agreement renders a District Court powerless to do anything beyond granting a motion to compel. In *Motorola Credit Corp. v. Uzan*, 388 F.3d 39 (2d Cir. 2004), the court believed it was bound by a prior case declining—without reasoning—to disturb a district court's "decision to proceed" pending appeal. *Id.* at 53-54 (quotation marks omitted). And in *Weingarten Realty Invs. v. Miller*, 661 F.3d 904, 909 (5th Cir. 2011), the court mistakenly held that Supreme Court precedent compelled concluding that an arbitrability dispute "does not involve the merits of the claims pending in the district court"—a premise the Supreme Court has since rejected. *See Henry Schein*, 139 S. Ct. at 529-530.

If this Court believes *Britton* is binding, it should revisit the decision *en banc*, overrule it, and align this Circuit with the majority view and Supreme Court precedent.

II. Even Under The Traditional Stay Factors, A Stay Is Warranted.

Even without revisiting *Britton*, this Court can and should stay further proceedings pending appeal based on the four traditional stay factors: likelihood of success on the merits, irreparable injury, the balance of the equities, and the public interest. *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (per curiam). This Court considers these factors on a "sliding scale," such that "a stronger showing of one element may

offset a weaker showing of another.” *Id.* (quotation marks omitted). A district court’s stay decision is reviewed de novo. *See Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 824 (9th Cir. 2020).

A. There Is A Fair Prospect That This Court Will Reverse The District Court’s Order Denying Coinbase’s Motion To Compel.

A stay applicant “need not demonstrate that it is more likely than not that [it] will win on the merits.” *Leiva-Perez*, 640 F.3d at 966. Rather, the applicant need only show a “fair prospect” of success, or that its merits arguments raise “serious legal questions.” *Id.* at 967-968 (quotation marks omitted). The District Court effectively conceded that Coinbase’s arguments raise serious legal questions; it noted that “reasonable minds may differ” about whether Coinbase should prevail. ECF 54 at 2. Indeed, Coinbase has more than a fair prospect of success; the District Court’s grounds for refusing to honor the arbitration clause were baseless.

1. The District Court failed to give proper effect to—and misread—the User Agreement’s delegation clause.

The District Court’s conclusion that the User Agreement was unconscionable rested on at least two legal errors.

First, the District Court failed to give effect to the agreement’s delegation clause. That clause unambiguously provides that any “disputes arising out of or related to the interpretation or application of the Arbitration Agreement,” including disputes about “the enforceability, revocability, scope, or validity” of the

agreement, “*shall be decided by an arbitrator and not by a court or judge.*” ECF 28-1, § 8.3 (emphasis added); see ECF 42 at 3 n.* (taking judicial notice of User Agreement). As the Supreme Court noted in *Rent-A-Center, West, Inc. v. Jackson*, a delegation clause like this reflects the parties’ agreement that “threshold issues” of the arbitration agreement’s enforceability and scope will be resolved by an arbitrator, not a court. 561 U.S. 63, 68-69 (2010). As a result, when a contract contains a valid delegation clause, a court cannot consider an unconscionability challenge “to another provision of the contract, or to the contract as a whole.” *Id.* at 70-71. Just the opposite: the core principle of *Rent-A-Center* is that a delegation clause is “severable” from potential problems in the “remainder” of an arbitration agreement. *Id.* at 71-72. As long as the delegation clause is “itself ... valid,” a court cannot “intervene” to examine “the validity of the Agreement as a whole.” *Id.* Following *Rent-A-Center*, this Court has unequivocally held that “[w]hen considering an unconscionability challenge to a delegation provision, the court must consider only arguments specific to the delegation provision.” *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1210 (9th Cir. 2016) (quotation marks omitted).

Here, the District Court did precisely what *Rent-A-Center* and its progeny prohibit courts from doing. It went beyond the delegation clause to analyze other terms of the Agreement in deciding whether to enforce the delegation clause. But the whole point of a delegation clause is to leave for an arbitrator “threshold” issues like the scope of the arbitration agreement. *Rent-A-Center*, 561 U.S. at 68.

Second, the District Court misread the arbitration clause. The arbitration clause states that a dispute is subject to arbitration “[i]f [Coinbase] cannot resolve

the dispute through the Formal Complaint Process.” ECF 42 at 5. From that premise, the District Court concluded that the agreement lacks bilaterality or mutuality because only users are obligated to arbitrate disputes. *Id.* at 7-8. That is a plain misreading of the arbitration clause, ECF 28-1, § 8.3, which says:

If we cannot resolve the dispute through the Formal Complaint Process, you and we agree that any dispute arising out of or relating to this Agreement or the Coinbase Services ... shall be resolved through binding arbitration, on an individual basis (the “Arbitration Agreement”)

This language plainly states that what drives whether a dispute must be arbitrated is whether it can be “resolve[d] ... through the Formal Complaint Process.” If not, it is subject to arbitration.

That bilateral framing applies to all disputes between Coinbase and its users. The District Court incorrectly read the Agreement as mandating users arbitrate disputes while permitting Coinbase to sue in court. But the Agreement requires arbitration of “any dispute” that cannot be resolved “through the Formal Complaint Process.” ECF 28-1, § 8.3. By definition, that includes Coinbase-initiated disputes, since Coinbase cannot file formal complaints against its users.

California courts have regularly interpreted contracts like the User Agreement contrary to the District Court’s implausible interpretation. *See, e.g., Serpa v. Cal. Sur. Investigations, Inc.*, 155 Cal. Rptr. 3d 506, 513 (Ct. App. 2013) (because parties agreed to arbitrate “any dispute,” contract established “an unmistakable mutual obligation” to arbitrate); *Nguyen v. Applied Med. Res. Corp.*, 209 Cal. Rptr. 3d 59, 74 (Ct.

App. 2016) (finding “mutual obligation to arbitrate” where contract required arbitration of “all disputes that cannot be resolved by informal internal resolution”); *Roman v. Superior Court*, 92 Cal. Rptr. 3d 153, 158, 162-163 (Ct. App. 2009) (holding contract bilateral that required arbitration of “all disputes that cannot be resolved by informal internal resolution”). The District Court’s interpretation of the Agreement as lacking mutuality is incorrect.

2. Even if the District Court could decide unconscionability, it decided that issue incorrectly.

The District Court erred in finding the arbitration clause unconscionable. To be unconscionable, an arbitration clause must be “so one-sided as to shock the conscience.” *Baltazar v. Forever 21, Inc.*, 367 P.3d 6, 11 (Cal. 2016) (quotation marks omitted). To meet this high bar, the agreement must be “both procedurally and substantively unconscionable.” *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1260 (9th Cir. 2017). The arbitration clause here is neither.

Procedural Unconscionability. Procedural unconscionability examines “the circumstances surrounding the negotiation and formation of the contract” and considers “oppression or surprise due to unequal bargaining power.” *Id.* (quotation marks omitted). That the User Agreement is a contract of adhesion—meaning it was “offered on a take-it-or-leave-it basis,” *Baltazar*, 367 P.3d at 12—carries only a “low degree of procedural unconscionability,” *Poublon*, 846 F.3d at 1261-62, given that such contracts are “indispensable facts of modern life,” and “[c]ommerce depends” on their enforceability. *Baltazar*, 367 P.3d at 11-12 (quotation marks omitted). Contracts of adhesion are “generally

enforced” unless the contract formation involved “sharp practices” like “artfully hidden” terms, “lie[s],” “duress,” or “manipulat[ion].” *Id.* at 11-13 (quotation marks omitted).

Nothing like that happened here. Bielski does not allege he was lied to, manipulated, or subject to “artfully hidden terms.” The District Court erroneously found the agreement procedurally unconscionable because of its “onerous” formal complaint process. ECF 42 at 8-9. But procedural unconscionability addresses the “formation of the contract,” *Poublon*, 846 F.3d at 1260 (quotation marks omitted), not its substance. Looking past this distinction, the District Court effectively held the contract procedurally unconscionable because it found its substantive terms “onerous,” without finding any flaws in the contract’s “formation.” That improperly blurred the distinction between the two types of unconscionability, each of which must exist to invalidate an arbitration agreement. *Id.*

Substantive Unconscionability. The District Court held the arbitration agreement substantively unconscionable for two flawed reasons. First, it read the agreement as requiring customers to submit claims to arbitration, while purportedly allowing Coinbase to go straight to court. But, as discussed above, that is not what the plain language says. Second, it read the agreement’s complaint process to place an “unduly onerous” burden on Coinbase customers. ECF 42 at 3-9. That is equally incorrect. The pre-arbitration complaint process consists of two simple actions: “contact[ing]” the Coinbase “support team” and completing an online form that asks for a description of the issue and how to resolve it. ECF 28-1, §§ 8.2, 8.2.1.

Far from being one-sided, this process requires more of Coinbase than its customers. While a customer need only message support staff and complete an online form, Coinbase has fifteen business days to “evaluate [the] Complaint,” respond to the customer, “address the issues raised,” and “offer to resolve [the] complaint in the way [the customer] requested,” “reject[] [the] Complaint and set out the reasons for the rejection,” or “offer to resolve [the] Complaint with an alternative solution.” *Id.* § 8.2.2. If Coinbase takes longer than fifteen days to respond, it must “send ... a communication indicating the reasons for any delay,” and, in any case, it must resolve the issue within thirty-five business days. *Id.* Although Bielski said he was “unable to speak to a human,” ECF 42 at 2, he never even attempted to complete the online form. ECF 29-1, ¶ 9.

Courts across California have rejected unconscionability challenges to similar pre-arbitration procedures. For example, in *Serpa*, 155 Cal. Rptr. 3d at 518, the court reasoned that “a requirement that internal grievance procedures be exhausted before proceeding to arbitration is both reasonable and laudable,” and it “plainly does not ‘shock the conscience.’” Similarly, in *Taft v. Henley Enters., Inc.*, No. SACV 15-1658-JLS (JCGx), 2016 WL 9448485, at *8 (C.D. Cal. Mar. 2, 2016), the court rejected an unconscionability challenge to a contract that required a party to “detail the facts upon which the claims are based” before arbitrating. Similar procedures are commonplace, and the District Court’s holding that these procedures are unconscionable will have profound implications unless reversed.

While only customers must submit a formal complaint before arbitrating, “a one-sided contract is not necessarily unconscionable.” *Tompkins v. 23andMe*,

Inc., 840 F.3d 1016, 1030-31 (9th Cir. 2016). Rather, a contract can permissibly provide a party with “extra protection for which it has a legitimate commercial need.” *Id.* at 1031 (quotation marks omitted). Coinbase has legitimate reasons to ask customers to submit pre-arbitration complaints. *See Sanchez v. Valencia Holding Co.*, 353 P.3d 741, 749 (Cal. 2015). Its cryptocurrency exchange platform is used by millions of customers across the world. With such a dispersed and diverse user base, minor technical difficulties are bound to arise. A uniform complaint system allows Coinbase to quickly resolve many issues. Allowing customers to arbitrate immediately would prompt customers to resolve customer support issues in arbitration rather than through a free, time-limited path of escalation through Coinbase Support. If Coinbase Support cannot, despite that escalation, resolve the dispute in the time allotted, customers can then pursue their claims in arbitration. Nothing about this process is “unduly onerous.”

3. Even if an unconscionable term existed, it is severable.

The District Court compounded its error by not severing the eleven-word prefatory phrase it found unconscionable, even though doing so would have alleviated its concerns about bilaterality:

~~“If we cannot resolve the dispute through the Formal Complaint Process, [Y]ou and we agree that any dispute arising out of or relating to this Agreement or the Coinbase Services, including, without limitation, federal and state statutory claims, common law claims, and those based in contract, tort, fraud, misrepresentation, or any other legal theory, shall be resolved~~

through binding arbitration, on an individual basis (the “Arbitration Agreement”).”

See ECF 28-1, § 8.3.

When an arbitration agreement has an illegal provision, “the strong legislative and judicial preference is to sever the offending term and enforce the balance of the agreement.” *Roman*, 92 Cal. Rptr. 3d at 166. Courts sever unconscionable terms when they “can be extirpated without affecting the remainder” of the contract. *Poublon*, 846 F.3d at 1273. That could readily be accomplished here. *Poublon* held severable a one-sided arbitration term that allowed the employer, but not the employee, to “seek judicial resolution of specified claims.” *Id.* at 1272-73 (where “illegality is collateral to the main purpose of the contract, and the illegal provision” can be severed, “then such severance” is appropriate). Here, the prefatory phrase is collateral and could easily be severed “without affecting the remainder of the paragraph.” *Id.* (quotation marks omitted). The User Agreement’s severability clause expressly permits courts to “change[]” “any provision of this Agreement [that] shall be determined to be invalid or unenforceable.” ECF 28-1, § 9.7; see *Poublon*, 846 F.3d at 1274 (nearly identical severability clause “ma[de] clear” parties preferred severance).

* * *

Each of these arguments raises serious legal questions about the District Court’s denial of the motion to compel. And prevailing on any of them would require reversal.

B. Coinbase Will Be Irreparably Harmed By The Loss Of Its Right To Forgo Litigation.

A stay denial causes irreparable harm when it injures the applicant in a way that “cannot be easily undone should [the applicant] prevail on appeal.” *Fed. Trade Comm’n v. Qualcomm Inc.*, 935 F.3d 752, 756 (9th Cir. 2019) (per curiam). Here, refusing a stay would irreparably harm Coinbase by denying the company its right to avoid litigation. If the User Agreement is valid, Coinbase has a contractual right to “the inexpensive and expeditious means by which the parties ... agreed to resolve their disputes”—arbitration. *Alascom, Inc. v. ITT N. Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984). But if Coinbase must litigate pending appeal, then it will be “deprived” of that right even if its appeal succeeds. *Id.* When a party to an arbitration agreement must litigate while an arbitrability appeal is pending, “the advantages of arbitration—speed and economy—are lost forever.” *Id.*

Courts throughout this Circuit have thus repeatedly held that an applicant is irreparably harmed when litigation proceeds during an arbitrability appeal.³

³ See, e.g., *Miller v. Amazon.com, Inc.*, No. 2:21-cv-00204-BJR, 2022 WL 910939, at *2 (W.D. Wash. March 29, 2022) (“if Defendants are forced to proceed with litigation while awaiting the outcome of the appeal, they would be deprived of the benefits of arbitration, even if the appeal is ultimately in their favor”); *Gray v. Golden Gate Nat’l Recreational Area*, No. C 08-00722 EDL, 2011 WL 6934433, at *3 (N.D. Cal. Dec. 29, 2011) (similar); *Steiner v. Apple Comput., Inc.*, No. C 07-04486 SBA, 2008 WL 1925197, at *3, *5 (N.D. Cal. Apr. 29, 2008) (“almost every California district court” has stayed litigation pending an arbitrability appeal, in

Addressing none of this precedent, the District Court stated that “[m]ere litigation expenses do not generally constitute irreparable injury.” ECF 54 at 2. True enough, litigation expenses are not “[n]ormally” irreparable, but that is because a purely financial injury “can usually be recovered” through costs and damages after the appeal. *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in chambers). Here, Coinbase’s harm is not merely financial. Rather, Coinbase has a right to forgo litigation until arbitration runs its course. If Coinbase is forced to litigate pending appeal, that right is “lost forever.” *Alascom*, 727 F.2d at 1422. Coinbase will be forced to forfeit its right to avoid litigation in the first place.

In analogous contexts, this Court has recognized that a party should not be forced to litigate pending appeal when the party claims a right to avoid litigation altogether. For example, because qualified immunity entitles a party to avoid “the burdens of broad-reaching discovery,” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (quotation marks omitted), a qualified immunity defendant’s nonfrivolous interlocutory appeal “divests the district court of jurisdiction to proceed with trial.” *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992). A similar rule applies in other contexts where a party appeals to vindicate the right to avoid legal process. *See, e.g., United States v. LaMere*, 951 F.2d 1106, 1108 (9th Cir. 1991) (per curiam) (similar rule in the double-jeopardy context). That principle applies equally here—particularly given that the District

part because such litigation “is the ‘harm’ arbitration is designed to avoid”).

Court appears to be contemplating onerous class discovery. *See* ECF 21 at 6.

C. Granting A Stay Would Not Harm Bielski.

Bielski will not be harmed by a stay. A stay does not force him to do *anything*; it merely pauses the underlying litigation until this Court decides the District Court’s authority to proceed to the merits. The District Court’s concern that Bielski would have to “wait for a remedy,” ECF 54 at 3, was misplaced. He is not yet entitled to a remedy—even if he wins the arbitrability appeal, there is no guarantee he would win on the merits. And every case where a stay is granted involves a party waiting for their case to proceed—that fact alone is not a legitimate reason to deny a stay, particularly in a suit that merely seeks financial relief.⁴ That Bielski “is a single individual” and Coinbase “is a large company,” *id.*, is similarly not a proper basis for denying a stay.

D. Granting A Stay Furthers The Public Interest.

The FAA “is a congressional declaration of a liberal federal policy favoring arbitration agreements.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Thus, the “rapid and unobstructed enforcement” of such agreements promotes the public interest. *Id.* at 23. By contrast, it is “contrary to public policy” for a district court to “waste[]” “judicial resources” litigating a case “only for the [c]ourt to later

⁴ Ironically, arbitration provides the “prospect of speedy resolution,” *see Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 238-239 (2013), while “relief through the court system often takes a long time.” *Zaborowski v. MHN Gov’t Servs., Inc.*, No. C 12-05109 SI, 2013 WL 1832638, at *3 (N.D. Cal. May 1, 2013).

discover that the case should have proceeded through arbitration.” *Zaborowski*, 2013 WL 1832638, at *3. Granting a stay pending appeal prevents this potential risk of wasted judicial resources, while promoting the FAA’s pro-arbitration public policy.

CONCLUSION

For the foregoing reasons, this Court should issue a stay pending appeal. Alternatively, this Court should grant an administrative stay to preserve the status quo while considering whether to reconsider *Britton* en banc.

Dated: June 14, 2022

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed December 10, 2022]

No. 22-15566

ABRAHAM BIELSKI,
Plaintiff-Appellee,

v.

COINBASE, INC.,
Defendant-Appellant.

**MOTION TO HOLD APPEAL IN ABEYANCE
PENDING SUPREME COURT'S MERITS
DECISION IN THIS CASE**

Defendant-Appellant Coinbase, Inc. sought a stay from this Court during the pendency of its appeal, which this Court denied on July 11, 2022. Coinbase then filed a petition for certiorari with the Supreme Court, presenting the question whether a stay is mandatory during the pendency of an arbitrability appeal like this one. On December 9, 2022, the Supreme Court granted Coinbase's petition for certiorari. This motion to hold in abeyance follows and is based on the following facts:

1. Coinbase moved to compel arbitration of the claims raised in Plaintiff-Appellee Abraham Bielski's complaint based on the arbitration clause in the

Coinbase User Agreement. The District Court denied the motion, which Coinbase immediately appealed as a matter of right. Coinbase's appeal was docketed as the instant appeal, No. 22-15566.

2. Coinbase moved the District Court for a stay of proceedings during the pendency of its arbitrability appeal, which the District Court denied.

3. Coinbase then moved this Court for a stay of the District Court proceedings during the pendency of its arbitrability appeal. Coinbase argued that it met the standard for a discretionary stay and that, in the alternative, this Court should reconsider en banc its decision in *Britton v. Co-op Banking Grp.*, 916 F.2d 1405 (9th Cir. 1990), holding that a stay of district court proceedings is not mandatory during an arbitrability appeal. Dkt. 10. This Court denied Coinbase's motion for a stay. Dkt. 17.

4. Coinbase filed its opening brief with this Court on July 27, 2022, Dkt. 18; Bielski filed his response brief on September 26, 2022, Dkt. 49; and Coinbase filed its reply on November 16, 2022, Dkt. 65.

5. Two days after it filed its opening brief with this Court, Coinbase filed a petition for certiorari seeking Supreme Court review of this Court's decision against staying the District Court's proceedings. See Joint Pet., *Coinbase, Inc. v. Bielski*, No. 22-105 (U.S.) (filed July 29, 2022). The petition for certiorari asked the Supreme Court to review the rule this Court established in *Britton*. The petition was conferenced at the Supreme Court on December 2, 2022, and re-listed for conference on December 9, 2022.

6. On December 4, 2022, this Court set oral argument on Coinbase's appeal for February 14, 2023.

7. The next day, Coinbase filed a letter with the Supreme Court, attached as Exhibit 1 here. In the letter, Coinbase notified the Supreme Court that Coinbase's appeal had been set for argument on February 14 and told the Supreme Court that Coinbase would ask this Court to hold its appeal in abeyance pending the Supreme Court's decision if the Supreme Court granted certiorari.

8. On December 9, 2022, the Supreme Court granted Coinbase's cert petition.

9. Coinbase therefore requests this Court hold this appeal in abeyance pending the Supreme Court's decision in *Coinbase, Inc. v. Bielski*, No. 22-105 (U.S.).

10. The Supreme Court's decision will resolve a recurring issue that has led to a deep and longstanding split over whether stays pending arbitrability appeal are mandatory. That question is particularly susceptible to mootness because it remains live only during the pendency of a party's appeal, as Coinbase explained in its petition for certiorari. *See* Joint Pet. 27. Abeyance would ensure the Supreme Court can resolve the question whether a stay is mandatory case before this Court issues a decision.

11. In an analogous context, this Court has held appeals in abeyance after the Supreme Court has granted certiorari in a case involving a related issue. *See* Order, *Hamby v. Walker*, No. 14-35856 (9th Cir. Feb. 27, 2015), ECF No. 20.

12. Counsel for Bielski has informed the undersigned that Bielski opposes Coinbase's request to hold this appeal in abeyance.

For these reasons, Coinbase requests that this Court grant the motion to hold this case in abeyance pending

the Supreme Court's decision in *Coinbase, Inc. v. Bielski*, No. 22-105 (U.S.).

December 10, 2022

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed December 14, 2022]

No. 22-15566

ABRAHAM BIELSKI,
Plaintiff-Appellee,

v.

COINBASE, INC.,
Defendant-Appellant.

PLAINTIFF-APPELLEE ABRAHAM BIELSKI'S
OPPOSITION TO COINBASE'S MOTION TO
HOLD APPEAL IN ABEYANCE

Coinbase, Inc. has filed a motion to stay this appeal pending Supreme Court proceedings, which it styled as a motion to “hold in abeyance.” Regardless of what it is called, good cause does not exist to grant such relief because the Supreme Court’s decision will not affect the merits or procedural course of this appeal (at most, it will only affect *district court* proceedings). Pausing proceedings in this Court to wait for the Supreme Court to decide a different issue than those presented here would be an act of delay purely for delay’s sake. This Court should reject Coinbase’s effort to impede Mr. Bielski’s right to timely adjudication of this case.

1. The Supreme Court has granted Coinbase’s petition for certiorari, which seeks review of a single,

discrete issue: when a district court denies a motion to compel arbitration and the party seeking arbitration appeals the ruling, must district court proceedings automatically be stayed pending the appeal? *See* Joint Petition for a Writ of Certiorari at (i), *Coinbase, Inc. v. Bielski*, No. 22-105 (U.S. July 29, 2022).

2. That question is not at issue in the present appeal, which challenges the District Court’s ruling that the arbitration provisions in Coinbase’s user agreement are unconscionable and thus unenforceable. *See* Coinbase Opening Br. (ECF No. 18) at 6.

3. Regardless of how Coinbase characterizes the remedy it seeks, the desired outcome is a stay pending appeal. *Cf. Aleynikov v. Goldman Sachs Grp., Inc.*, 765 F.3d 350, 356 (3d Cir. 2014) (“[W]e must evaluate the nature of the relief granted to determine whether the remedy is injunctive.”); *Matthews v. Or. State Bd. of Higher Educ.*, 249 F.3d 1085, 1085 (9th Cir. 2001) (confirming that holding a case in abeyance is the same as granting a stay by vacating such a “stay” in case previously held “in abeyance”). A stay “suspends judicial alteration of the status quo.” *Nken v. Holder*, 556 U.S. 418, 429 (2009) (cleaned up). That is precisely what holding this appeal “in abeyance” months before oral argument has even been conducted would do.

4. This Court has scheduled oral argument for February 14, 2023, and it will not decide the appeal until sometime thereafter. The Supreme Court has informed the parties that it intends to schedule argument for March 2023, but no date has yet been set. Granting Coinbase’s motion would thus halt all proceedings in this Court, including oral argument, until the Supreme Court rules likely in the spring or early summer of 2023. This is a paradigmatic example of

“[a]n order to suspend all or part of a judicial proceeding.” *Stay*, Black’s Law Dictionary (11th ed. 2019).

5. The Supreme Court could not be clearer: when a party seeks to stay judicial proceedings pending an appeal, it *must* satisfy the four-factor test to obtain a stay pending appeal. *Nken*, 556 U.S. at 433-34 (explaining “[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise” of the court’s discretion to grant a stay). Coinbase has not tried to—and could not—establish any of those four factors.

6. Most conspicuously, Coinbase will suffer no harm, much less irreparable harm, if this case continues according to schedule. That is because no decision by the Supreme Court will affect this appeal. The issue before the Supreme Court concerns whether *district court* proceedings may continue while this Court considers the appeal, so this appeal moves forward if Coinbase loses, and it moves forward if Coinbase wins. The only thing the Supreme Court’s decision will affect is the proceedings in the District Court, and Coinbase seeks no relief related to those proceedings in its present motion. This failure to articulate any harm that would flow from continued proceedings here is fatal to Coinbase’s motion. *See Ahlman v. Barnes*, No. 20-55568, 2020 WL 3547960, at *2 (9th Cir. June 17, 2020) (explaining “a showing of irreparable injury is an absolute prerequisite” to obtain a stay pending appeal).

7. For the same reason, the public interest does not favor a freeze of this Court’s process—the public has no interest in pausing an appeal pending another proceeding that won’t affect it.

8. And, again for the same reason, Mr. Bielski will suffer all the harms from a pause while Coinbase enjoys no cognizable benefits from it. Coinbase asks this Court to pause this appeal, and to delay Mr. Bielski's pursuit of civil justice for the tens of thousands of dollars defrauded from him on Coinbase's currency exchange platform, for literally no reason other than delay.

9. Finally, Coinbase cannot show likelihood of success on the merits because the "merits" of the Supreme Court case are separate from the merits of this appeal. The Court should reject Coinbase's poorly concealed end-run around the *Nken* factors.

10. Even if Coinbase's semantics game could allow it to avoid its obligation to establish the *Nken* factors, it still can't show that good cause exists to halt this appeal. Coinbase's motion does not even attempt to establish good cause. Its only stated ground for the relief it requests is a citation to *Hamby v. Walker*, a case in which this Court held a case in abeyance pending a Supreme Court decision back in 2015. That case was not, as Coinbase asserts, situated in "an analogous context." To the contrary, it was worlds apart from this case.

11. In *Hamby*, this Court was poised to decide "whether Alaska's marriage laws violate[d] the Fourteenth Amendment because they d[id] not provide for same-sex marriage or permit recognition of such marriages from other jurisdictions." Motion to Hold Appeal in Abeyance and to Suspend Briefing Schedule at 1, *Hamby v. Walker*, No. 14-35856 (9th Cir. Feb. 9, 2015), ECF No. 15. At the same time that appeal was progressing in this Court, the Supreme Court was deciding in a series of consolidated cases whether "the

Fourteenth Amendment require[s] a state to license a marriage between two people of the same sex” or “recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.” See Order Consolidating Cases and Granting Certiorari, *Obergefell v. Hodges*, 574 U.S. 1118 (2015).

12. Coinbase’s citation of *Hamby* for its misnamed stay motion is nonsensical. Here, the Supreme Court is deciding a single issue entirely different than those before this Court. *Hamby* dealt with whether a stay was appropriate when a Ninth Circuit case was deciding whether the Constitution protects same-sex marriage at the same time the Supreme Court was deciding *Obergefell*—the landmark Supreme Court case deciding whether the Constitution protects same-sex marriage.

13. Moreover, in *Hamby*, this Court recognized that a motion styled as one to hold the appeal “in abeyance” before briefing was complete and before oral argument was held is in truth a motion to stay pending appeal. The relief requested in *Hamby*, and the relief the *Hamby* panel granted, was a stay. See Order, *Hamby*, No. 14-35856 (9th Cir. Feb. 27, 2015), ECF No. 20 (“The appellants’ opposed motion to stay appellate proceedings pending the Supreme Court decision . . . is granted. Appellate proceedings are stayed”) (citation omitted). The *Hamby* panel did not discuss the standard it applied in granting a stay, but Coinbase’s motion fails under any standard.

14. Most importantly, nothing the Supreme Court does in this matter will have any impact on how this Court should rule on the instant appeal. Unlike in *Hamby*, there are no overlapping issues. As such, the

requested stay serves no valid purpose and would improperly delay resolution of the appeal, which in turn delays the district court proceedings, which are already proceeding on a limited basis pending resolution of this appeal.

For these reasons, this Court should deny Coinbase's motion.

December 14, 2022

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed December 16, 2022]

No. 22-15566

ABRAHAM BIELSKI,
Plaintiff-Appellee,

v.

COINBASE, INC.,
Defendant-Appellant.

**REPLY IN SUPPORT OF MOTION TO HOLD
APPEAL IN ABEYANCE PENDING SUPREME
COURT’S MERITS DECISION IN THIS CASE**

Bielski does not provide a reason for this Court to press ahead with this appeal while the Supreme Court resolves Coinbase’s joint petition for certiorari, which the Supreme Court recently granted to resolve a circuit split over whether district court proceedings must be stayed during the pendency of an arbitrability appeal. Moving forward with this appeal needlessly risks complicating the Supreme Court’s review of this important and recurring question, particularly since this Court has just issued its opinion in the other appeal at issue in Coinbase’s joint petition for certiorari. *See Suski v. Coinbase, Inc.*, No. 22-15209 (9th Cir. Dec. 16, 2022), ECF 55-1. This Court has broad discretion to control its docket to ensure the orderly disposition of

proceedings, and it should exercise that discretion to grant what will in substance be a modest few-month continuance of the argument in this appeal.

Bielski's opposition mischaracterizes Coinbase's motion. Coinbase's motion does not ask this Court to stay a final judgment pending appeal, or grant interim relief. It simply asks this Court to pause this fully briefed appeal to ensure that this Court's decision does not frustrate the Supreme Court's resolution of a pressing circuit split. This short delay will not harm Bielski—who continues to proceed with discovery in District Court.

Accordingly, this Court should hold the argument set for February 14, 2023 in abeyance pending the Supreme Court's disposition of Coinbase's joint petition for certiorari. In the alternative, this Court should defer issuing its opinion until after the Supreme Court delivers its decision, which is expected no later than June 2023.

ARGUMENT

This Court possesses “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997). In evaluating whether to hold a case in abeyance pending the resolution of another proceeding, this Court balances “competing interests,” such as: (1) “the possible damage” Bielski will suffer from a delay; (2) “the hardship or inequity which” Coinbase “may suffer in being required to go forward”; and (3) “the orderly course of justice.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (citation omitted). Holding an appeal in abeyance for a reasonable period of time is warranted where it would not unduly burden the parties and where “the public welfare or convenience will thereby

be promoted.” *Landis v. N. Am. Co.*, 299 U.S. 248, 256 (1936). All of those practical considerations favor allowing the Supreme Court to resolve Coinbase’s entitlement to a stay pending appeal before this Court resolves the logically subsequent question whether Coinbase’s appeal is meritorious.

Bielski will suffer no meaningful harm from abeyance. The Supreme Court will hear oral argument in this case in the March 2023 sitting and will issue a decision no later than June. Thus, abeyance will result in only a short delay in the argument and resolution of this appeal. In the meantime, the parties are currently briefing a motion to dismiss on an amended complaint in the District Court, and Bielski is conducting discovery on his individual claims.

By contrast, if this Court decides the merits of this appeal before the Supreme Court addresses whether the Federal Arbitration Act requires a stay during arbitrability appeals, this Court’s ruling risks frustrating the Supreme Court’s review. Bielski has stated that he would argue that this Court’s decision renders moot the question presented before the Supreme Court. *See* Brief in Opposition to Motion to Expedite at 5 n.5, *Bielski v. Coinbase*, No. 22-105 (U.S. Aug. 8, 2022) (“Respondent does not agree that” exception to mootness applies). While Coinbase believes that the proceedings would not be moot under the “capable of repetition yet evading review” exception to mootness, *see Davis v. FEC*, 554 U.S. 724, 735 (2008) (citation omitted), the fact that Bielski intends to dispute that conclusion raises a question as to whether the Supreme Court would be able to resolve the question before it after all.

Mootness is a jurisdictional question, which means that the Supreme Court would be required to address that antecedent constitutional question before resolving the question it granted certiorari to review. There is no reason for this Court to require the Supreme Court to confront that question when a short abeyance would entirely avoid the complication. *See Landis*, 299 U.S. at 256 (abeyance warranted where it would “simplify” questions presented); *cf. Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 346 (1936) (Brandeis, J., concurring) (outlining principles of constitutional avoidance).

If a decision by this Court were to moot the Supreme Court proceedings, that would interfere with the Supreme Court’s ability to resolve a recurring legal question that affects *every* federal arbitrability appeal. It would also mean the Supreme Court needlessly expended time and resources in granting review. In 2021, the Supreme Court was presented with the same question in two petitions arising from decisions of this Court. But each time, plaintiffs stipulated to district court stays to prevent the Supreme Court from addressing the question.¹ Contrary to Bielski’s assertion (Opp. at 3-4), the public has a strong interest in avoiding interference with the Supreme Court’s ability to resolve this issue definitively.

If this Court’s decision mooted the Supreme Court’s proceedings, that result would also harm Coinbase. Coinbase is a defendant in multiple lawsuits brought

¹ *See PeopleConnect, Inc. v. Callahan*, No. 21-885 (U.S.) (cert. petition filed on Dec. 13, 2021 and dismissed pursuant to Rule 46 on Dec. 23, 2021); *PeopleConnect, Inc. v. Knapke*, No. 21-725 (U.S.) (cert. petition filed on Nov. 12, 2021 and dismissed pursuant to Rule 46 on Dec. 1, 2021).

by users in district courts in this Circuit.² Under the current law in this Circuit, anytime a district court denies a motion to compel arbitration, Coinbase must request a discretionary stay. To date, its requests for discretionary stays have been denied unless the plaintiff acquiesces in the stay request. That was so in this case too, even though the District Court expressed doubts about its own decision on arbitrability. *See Coinbase Inc. v. Bielski*, Pet. App. 42a-43a (ER-4) (acknowledging “that reasonable minds may differ over” refusal to compel arbitration). When Coinbase is denied a stay in a case that belonged in arbitration from the outset, Coinbase suffers irreparable injury. Coinbase is required to spend significant time and resources on intrusive federal discovery, when the matter should not have been in court in the first place.

Abeyance would also promote “the efficient use of judicial resources” in this Circuit. *See Keating v. Off. of Thrift Supervision*, 45 F.3d 322, 325 (9th Cir. 1995). If the Supreme Court rules for Coinbase, district courts

² *See, e.g., Suski v. Coinbase Global, Inc.*, No. 3:21-cv-04539-SK (N.D. Cal.) (motion to compel arbitration denied, appeal pending, stay initially denied by district court and this Court); *Berk v. Coinbase, Inc.*, No. 3:18-cv-01364-VC (N.D. Cal.) (motion to compel arbitration denied, reversed on appeal and arbitration compelled, stay granted only in part); *Aggarwal v. Coinbase, Inc.*, No. 4:22-cv-04829-JSW (N.D. Cal.) (motion to compel arbitration pending); *Pearl v. Coinbase Global, Inc.*, No. 3:22-cv-03561-MMC (N.D. Cal.) (motion to compel arbitration pending); *Donovan v. Coinbase Global, Inc.*, No. 3:22-cv-02826-TLT (N.D. Cal.) (motion to compel arbitration pending); *Rodriguez v. T-Mobile USA, Inc.*, No. 3:22-cv-00581-AJB-DEB (S.D. Cal.) (motion to compel arbitration pending); *Alfia v. Coinbase Global, Inc.*, (N.D. Cal.) No. 4:21-cv-08689-HSG (N.D. Cal.) (motion to compel arbitration granted).

and this Court will no longer need to entertain requests for stays pending appeal of the denial of motions to compel. That would greatly reduce motions practice in district courts and this Court. *See, e.g.*, ECF 10 (Coinbase’s emergency motion to stay this appeal).

This Court’s precedent supports abeyance. *See* Opp. 4-5. In *Hamby v. Walker*, Alaska asked this Court to pause an appeal pending the Supreme Court’s same-sex marriage decision, and argued this Court should consider “the interests of the parties, the efficient use of judicial resources, and the interests of the public and persons not parties to the litigation.” No. 14-35856 (9th Cir. Feb. 9, 2015), ECF 15 at 3. This Court granted Alaska’s request. *Hamby v. Walker*, No. 14-35856 (9th Cir. Feb. 27, 2015), ECF 20. The same practical considerations support abeyance here.

Bielski suggests (Opp. at 4-5) that this Court pauses parallel proceedings only when the Supreme Court considers the exact same legal issue. But in *Landis*, the Supreme Court rejected that very argument. The Court said that “the issues” need *not* be “identical.” *Landis*, 299 U.S. at 254. Instead, the Supreme Court told lower courts to “exercise” sound “judgment,” “weigh competing interests and maintain an even balance.” *Id.* at 254-255. Because abeyance in this appeal will “simplify” issues before the Supreme Court, a brief pause is warranted. *Id.* at 256.

Bielski compares (Opp. at 6) Coinbase’s motion to a request for “a stay pending appeal” that is subject to the four-factor test addressed in *Nken v. Holder*, 556 U.S. 418 (2009). But Coinbase is not asking this Court to hold the district court ruling in abeyance “to allow an appellate court the time necessary to review it.” *Id.* at 421. Nor is Coinbase requesting this Court “to grant

interim relief” of any kind. *Id.* at 427. Instead, Coinbase seeks a modest continuance of the date for oral argument and this Court’s decision until after the Supreme Court has resolved a pressing circuit split. *Nken* does not govern this inquiry.

Nken’s own procedural history confirms the wisdom of abeyance here. In *Nken*, the Supreme Court granted certiorari to review the standard for granting a discretionary stay of removal pending the resolution of an appeal. That created an analogous two-track posture: The parties litigated a legal question about the standard for preliminary relief pending appeal before the Supreme Court. At the same time, the Fourth Circuit confronted the merits question of whether the petitioner was actually removable. On the parties’ joint motion, the Fourth Circuit *paused briefing on the merits question* until “after issuance of the Supreme Court’s decision.” Order, *Nken v. Holder*, No. 08-1813 (4th Cir., Dec. 2, 2008), ECF 32 at 2. That mirrors the course Coinbase recommends here.

Even if Bielski were correct that the four-factor test for a stay pending appeal applies, abeyance would still be warranted. For the reasons already discussed, the public interest and balance of injuries clearly counsel in favor of abeyance, which will ensure the Supreme Court faces no unnecessary obstacles in resolving the circuit split it has granted review to address. The public interest here is particularly weighty given that the Supreme Court has already granted review in this case. And to the extent that likelihood of success matters, Coinbase has extremely strong merits arguments, both in this appeal and in the Supreme Court.

Finally, as an alternative to holding this case in abeyance, this Court could maintain the February 14,

2023 oral argument date, but not deliver its opinion until after the Supreme Court issues its own decision. That would alleviate any mootness concerns, but would minimize delay by ensuring that this Court could hold oral argument in February and release its opinion as soon as the Supreme Court rules. *See, e.g., United States v. Hudson*, 627 F.3d 309, 312 (7th Cir. 2010) (argument held, but opinion issued after Supreme Court opinion issued); *Bentonite Performance Min. LLC v. N.L.R.B.*, 382 F. App'x 402, 403 (5th Cir. 2010) (similar).

CONCLUSION

This Court should hold this case in abeyance pending the Supreme Court's decision in *Coinbase v. Bielski*, No. 22-105 (U.S.). Alternatively, this Court should hear oral argument on February 14, 2023, but not deliver an opinion until after the Supreme Court rules.

December 16, 2022

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Filed January 10, 2022]

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

DAVID SUSKI, JAIMEE MARTIN, JONAS CALSBEEK, and
THOMAS MAHER,

Plaintiffs,

v.

COINBASE GLOBAL, INC. and MARDEN-KANE, INC.,

Defendants.

**COINBASE GLOBAL, INC.'S MOTION TO
COMPEL ARBITRATION, OR,
ALTERNATIVELY, TO DISMISS PLAINTIFFS'
COMPLAINT**

**NOTICE OF MOTION AND MOTION TO COMPEL
ARBITRATION AND TO DISMISS**

TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:

PLEASE TAKE NOTICE that on January 10, 2022, at 9:30 a.m., or as soon thereafter as this matter may be heard, in the courtroom of the Honorable Magistrate Judge Sallie Kim, located in Courtroom C, 15th Floor of the United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant

Coinbase Global, Inc.¹ will and hereby does move this Court to compel individual arbitration of Plaintiffs' claims and to dismiss Plaintiffs' claims or stay Plaintiffs' claims pending the conclusion of that arbitration. Alternatively, Coinbase moves the Court to dismiss the First Amended Complaint ("FAC") (ECF No. 22) for failure to state a claim under Rule 12(b)(6). This Motion is based on this Notice of Motion, the following Memorandum of Points and Authorities, the accompanying Declaration of Carter McPherson-Evans and the attached exhibits, the pleadings and other documents on file in this case, all other matters of which the Court may take judicial notice, and oral argument of counsel.

STATEMENT OF RELIEF SOUGHT

Coinbase respectfully seeks an order compelling arbitration of Plaintiffs' claims and staying these proceedings pending a decision by the arbitrator. Alternatively, Coinbase seeks dismissal of the FAC with prejudice under Rule 12(b)(6).

STATEMENT OF ISSUES TO BE DECIDED

1. Should the Court compel arbitration of this dispute and dismiss or stay these proceedings in light of Plaintiffs' and Coinbase's agreement requiring arbitration of the claims asserted in the FAC?
2. If the Court declines to compel arbitration, should the FAC be dismissed under Rule 12(b)(6) for

¹ Plaintiffs have filed a stipulation (ECF No. 32) seeking permission to file a Second Amended Complaint ("SAC") that revises their CLRA claims and names Coinbase, Inc. as the defendant instead of Coinbase Global, Inc. The parties agree that this motion shall respond to the SAC (if the Court permits the SAC to be filed). ECF No. 32 at 1-2.

failing to state a claim upon which relief can be granted?

I. INTRODUCTION

Plaintiffs are all Coinbase users who agreed to submit any disputes that they have with Coinbase to binding arbitration. The claims that Plaintiffs now assert against Coinbase are clearly covered by the arbitration provisions in the Coinbase User Agreement. The Court should compel Plaintiffs to arbitrate these claims, as they agreed they would do when they opened their Coinbase user accounts weeks, months, or years before the Dogecoin Sweepstakes was announced. If there is a dispute about the scope of the arbitration provision, that issue should be decided by the arbitrator.

Alternatively, if the Court finds that Plaintiffs are entitled to escape their arbitration agreements, it should dismiss their claims on the merits for two reasons.

First, the Dogecoin Sweepstakes was not an illegal lottery. An illegal lottery exists only when participants are required to pay valuable consideration for a chance to win a prize in a contest. There is plainly no lottery if participants can enter a contest for free, even if they can also enter by making a purchase. Plaintiffs readily admit that a free alternative method of entry (“FAME”) option was available for them to enter the Dogecoin Sweepstakes. *See, e.g.*, FAC ¶ 28 (“there was a 100% free, mail-in option for entering the sweepstakes”). Plaintiffs’ admission is fatal to their lottery claims. Plaintiffs’ assertion that they were “subjectively unaware” of the FAME (*id.* ¶ 89) has no bearing on whether the contest was an illegal lottery. Plaintiffs’ theory would erase the distinction between lawful

sweepstakes and unlawful lotteries, and has no basis in California law.

Second, Coinbase’s disclosures concerning the Dogecoin Sweepstakes satisfied the requirements of California law governing the content of sweepstakes promotions and were not untrue, deceptive, or misleading as a matter of law. The FAC explains that Coinbase’s marketing materials clearly displayed the phrase “NO PURCHASE NECESSARY.” *See, e.g., id.* ¶¶ 66, 69–74, 102–04. And the FAC details the numerous times Coinbase prompted users in its promotional materials to review the Sweepstakes rules. *See, e.g., id.* ¶¶ 8, 10, 11. As Plaintiffs readily admit, those rules made clear that users could enter the Sweepstakes by “simply mail[ing] the Defendants a 3x5-inch index card stating the user’s name, contact information, and date of birth.” *See, e.g., id.* ¶¶ 15, 28, 76; *see also id.* Ex. A at 4. Coinbase’s promotional materials plainly and prominently made this information available to Coinbase’s users, and no objectively reasonable consumer would have been deceived. Plaintiffs’ subjective awareness or unawareness does not convert objectively reasonable conduct into unlawful, untrue, deceptive, or misleading conduct. *See Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995) (the legal standard is whether an objectively reasonable consumer would have been aware of sweepstakes disclosures, and not whether a plaintiff was subjectively unaware). No valid claim exists when a consumer simply overlooks a company’s clear and conspicuous disclosures. Plaintiffs’ claims that Coinbase’s statements were unlawful, false, or deceptive are baseless and should be dismissed.

II. BACKGROUND

Coinbase operates one of the largest cryptocurrency exchange platforms in the United States. Its users can purchase, sell, and conduct financial transactions using digital currencies like Bitcoin, Ethereum, Litecoin, and Dogecoin. As explained below, each Plaintiff created a user account on Coinbase’s platform. As part of the signup process, users must click a checkbox that requires them to agree to Coinbase’s User Agreement, which contains an arbitration provision. Each Plaintiff also participated in Coinbase’s Dogecoin Sweepstakes, which offered participants the opportunity to win prizes of up to \$1,200,000 in Dogecoin. Each Plaintiff was presented with clear and conspicuous disclosures indicating that they could participate in the Dogecoin Sweepstakes by (1) opting in and trading Dogecoin on Coinbase’s platform or (2) entering for free by mailing an index card with their contact information. FAC ¶¶ 28–37 & Ex. A at 4. These Plaintiffs all chose to enter by trading Dogecoin.

A. Plaintiffs agreed to Coinbase’s User Agreement.

In order to trade Dogecoin on the Coinbase platform, each Plaintiff had to first sign up for a Coinbase account.² Upon visiting coinbase.com or downloading the Coinbase app, each Plaintiff was prompted to enter an email address. Declaration of Carter McPherson-Evans (“McPherson-Evans Decl.”) ¶ 8 & Ex. 1. Next, the plaintiffs were prompted to enter additional

² All facts regarding the signup process and User Agreement were true as of 2018 through present day, during which period the named Plaintiffs created their Coinbase accounts and agreed to the User Agreement. McPherson-Evans Decl. ¶¶ 7–11.

information, such as their name and a password, to create an account. The plaintiffs were also shown a checkbox requiring them to affirmatively agree to the Coinbase User Agreement:

I certify that I am over 18 years of age and I accept the [User Agreement](#) and the [Privacy Policy](#).

Create Account

Id. ¶ 8. The “User Agreement” text in blue is a link that takes the user to a page containing the full text of the agreement, titled “Coinbase User Agreement.” A user cannot create a Coinbase account without checking the box. *Id.* ¶¶ 6–11.

Coinbase’s records show that all four Plaintiffs affirmatively accepted the User Agreement. Suski accepted on January 24, 2018, at 11:12 a.m.:

User	Action	Device	Resolution	IP	Location	Source	When	Details (Toggle params)
David Suski	accepted user agreement	--	--	72.78.91.162	United States	api	2018-01-24 11:12 AM PST	Show Params

Martin accepted on February 12, 2021, at 2:58 p.m.:

User	Action	Device	Resolution	IP	Location	Source	When	Details (Toggle params)
Jaimie Martin	accepted user agreement	--	--	2601:1c1:8100:3690:81c7:2a00:4802:9f98		api	2021-02-12 2:58 PM PST	Show Params

Calsbeek accepted on May 13, 2021, at 7:05 p.m.:

User	Action	Device	Resolution	IP	Location	Source	When	Details (Toggle params)
JONAS CALSBECK	accepted user agreement	--	--	104.220.182.134		api	2021-05-13 7:05 PM PDT	Show Params

Maher accepted on April 5, 2020, at 10:40 p.m.:

User	Action	Device	Resolution	IP	Location	Source	When	Details (Toggle params)
Thomas Maher	accepted user agreement	39603... (Filter)	--	26006c40:5900:3840:94f58f4a5cd0040		api	2020-04-05 10:40 PM PDT	Show Params

Id. ¶ 13 & Exs. 2–5. Notably, all Plaintiffs accepted the Coinbase User Agreement well before Coinbase promoted or conducted the Dogecoin Sweepstakes.

B. Plaintiffs agreed to binding, individual arbitration.

The User Agreements to which Plaintiffs agreed all contained provisions requiring the arbitration of disputes with Coinbase.³

1. Plaintiff David Suski

The User Agreement to which Suski agreed included a section titled “Arbitration; Waiver of Class Action” that stated:

7.2. Arbitration; Waiver of Class Action. If you have a dispute with Coinbase, we will attempt to resolve any such disputes through our support team. **If we cannot resolve the dispute through our support team, you and we agree that any dispute arising under this Agreement shall be finally settled in binding arbitration, on an individual basis, in accordance with the American Arbitration Association’s rules for arbitration of consumer-related disputes (accessible at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>) and you and Coinbase hereby expressly waive trial by jury and right to participate in a class action lawsuit or class-wide arbitration.** The arbitration will be conducted by a single, neutral arbitrator and shall take place in the county or parish in which you reside, or another mutually agreeable location, in the

³ Since Coinbase made small changes to the language and structure of the User Agreement from 2018 through 2021, the individual arbitration provisions to which each Plaintiff agreed are set forth below.

English language. The arbitrator may award any relief that a court of competent jurisdiction could award, including attorneys' fees when authorized by law, and the arbitral decision may be enforced in any court. At your request, hearings may be conducted in person or by telephone and the arbitrator may provide for submitting and determining motions on briefs, without oral hearings. The prevailing party in any action or proceeding to enforce this agreement shall be entitled to costs and attorneys' fees.

If the arbitrator(s) or arbitration administrator would impose filing fees or other administrative costs on you, we will reimburse you, upon request, to the extent such fees or costs would exceed those that you would otherwise have to pay if you were proceeding instead in a court. We will also pay additional fees or costs if required to do so by the arbitration administrator's rules or applicable law. Apart from the foregoing, each Party will be responsible for any other fees or costs, such as attorney fees that the Party may incur. If a court decides that any provision of this section 7.2 is invalid or unenforceable, that provision shall be severed and the other parts of this section 7.2 shall still apply. In any case, the remainder of this User Agreement, will continue to apply.

McPherson-Evans Decl. ¶ 14 & Ex. 6 (emphasis in original).

2. Plaintiffs Jaimee Martin, Jonas Calsbeek, and Thomas Maher

Similarly, the User Agreements to which Martin, Calsbeek, and Maher agreed included a section titled “Arbitration; Waiver of Class Action”⁴ that stated:

8.3. Arbitration; Waiver of Class Action. If we cannot resolve the dispute through the Formal Complaint Process,⁵ you and we agree that any dispute arising out of or relating to this Agreement or the Coinbase Services, including, without limitation, federal and state statutory claims, common law claims, and those based in contract, tort, fraud, misrepresentation, or any other legal theory, shall be resolved through binding arbitration, on an individual basis (the “Arbitration Agreement”). Subject to applicable jurisdictional requirements, you may elect to pursue your claim in your local small claims court rather than through arbitration so long as your matter remains in small claims court and proceeds only on an individual (non-class and non-representative)

⁴ The relevant User Agreement language with respect to arbitration (Section 8.3) was substantively identical for these three Plaintiffs. *Compare* McPherson-Evans Decl. Ex. 7 ¶ 8.3, *with* Ex. 8 ¶ 8.3, *and* Ex. 9 ¶ 8.3.

⁵ The User Agreement defines a Formal Complaint Process that users must follow before filing arbitration claims. McPherson-Evans Decl. Exs. 7, 8, 9 ¶ 8.2. The FAC does not allege that Plaintiffs Calsbeek, Martin, or Maher completed that process. If these Plaintiffs wish to pursue their claims in arbitration, they must complete the Formal Complaint Process first.

basis. Arbitration shall be conducted in accordance with the American Arbitration Association's rules for arbitration of consumer-related disputes (accessible at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>).

This Arbitration Agreement includes, without limitation, disputes arising out of or related to the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement. All such matters shall be decided by an arbitrator and not by a court or judge.

CLASS ACTION WAIVER: TO THE EXTENT PERMISSIBLE BY LAW, ALL CLAIMS MUST BE BROUGHT IN A PARTY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE ACTION, OR REPRESENTATIVE PROCEEDING (COLLECTIVELY "CLASS ACTION WAIVER"). THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS OR ENGAGE IN ANY CLASS ARBITRATION. YOU ACKNOWLEDGE THAT, BY AGREEING TO THESE TERMS, YOU AND COINBASE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION.

The arbitration will be conducted by a single, neutral arbitrator and shall take place in the county or parish in which you reside, or another mutually agreeable location, in the English language. The arbitrator may award any relief that a court of competent jurisdiction could award and the arbitral decision may be enforced in any court. An arbitrator's decision and judgment thereon will not have a precedential or collateral estoppel effect. At your request, hearings may be conducted in person or by telephone and the arbitrator may provide for submitting and determining motions on briefs, without oral hearings. To the extent permitted by law, the prevailing party in any action or proceeding to enforce this Agreement, any arbitration pursuant to this Agreement, or any small claims action shall be entitled to costs and attorneys' fees. If the arbitrator or arbitration administrator would impose filing fees or other administrative costs on you, we will reimburse you, upon request, to the extent such fees or costs would exceed those that you would otherwise have to pay if you were proceeding instead in a court. We will also pay additional fees or costs if required to do so by the arbitration administrator's rules or applicable law.

McPherson-Evans Decl. Exs. 7, 8, 9 ¶ 8.3 (emphasis in original).

In addition to these arbitration provisions describing the procedure for arbitration (and Plaintiffs' agreement to arbitration), the User Agreement to which Plaintiffs Martin, Calsbeek, and Maher agreed also explicitly referenced the arbitration provision at the very beginning of the agreement, further advising

Plaintiffs that “[b]y signing up to use a [Coinbase] account,” they “agree that [they] have read, understand[ed], and accept[ed] all of the terms and conditions . . . including . . . ‘Arbitration; Waiver of Class Action’”:

Welcome to Coinbase! This is a User Agreement between you (also referred to herein as “Client,” “User,” or customer) and Coinbase Inc. (“**Coinbase**”). This User Agreement (“**Agreement**”) governs your use of the services provided by Coinbase described below (“**Coinbase Services**” or “**Services**”). By signing up to use an account through coinbase.com, pro.coinbase.com, APIs, or the Coinbase mobile application (collectively the “**Coinbase Site**”), you agree that you have read, understand, and accept all of the terms and conditions contained in this Agreement including Section 8.2. “Arbitration; Waiver of Class Action”, as well as our Privacy Policy, Cookie Policy, and E-Sign Consent Policy.

Id. Exs. 7, 8, 9 at 1 (emphasis in original).

C. Plaintiffs participated in Coinbase’s Dogecoin Sweepstakes.

Each Plaintiff participated in the Coinbase Dogecoin Sweepstakes between June 3 and 10, 2021. FAC ¶¶ 1, 58. To promote the Sweepstakes, Coinbase used direct-to-user emails and digital advertisements for web and mobile platforms. *Id.* ¶ 7. These marketing materials presented users with buttons to “See how to enter,” “opt-in” or “make a trade.” *Id.* ¶¶ 8–15. Above each of these buttons, users were also presented with links to disclosures at the bottom of the page (*id.* ¶ 11 n.1) or the Sweepstakes Official Rules (*id.* ¶¶ 8, 16).

The disclosure at the bottom of the marketing materials stated in part:

NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available.

Id. ¶ 66. Likewise, the Official Rules stated at the very beginning:

NO PURCHASE NECESSARY. A PURCHASE OR PAYMENT OF ANY KIND WILL NOT INCREASE YOUR CHANCES OF WINNING.

Id. Ex. A at 1. And the Official Rules clearly stated that participants could enter using one of “[t]wo methods of entry.” *Id.* Ex. A at 3. The first method was to trade Dogecoin on Coinbase’s platform. *Id.* The second method was to mail an index card containing the entrant’s contact information:

Method 2: To enter via mail, hand write the following on the front of a 3x5 card, your name, address, city, state, zip, e-mail address, telephone number and date of birth. Insert single card in an envelope and mail with sufficient postage to: Coinbase Dogecoin Sweepstakes, PO Box 738, Syosset, NY 11791-0738—return address and mailing address on envelope must be handwritten. Mail-in entries must include all requested information (as stated above) to be considered an entry. Mail-in entries must be postmarked by June 10, 2021 and received by June 15, 2021. Only one (1) entry per person. Requests for confirmation of receipt of mail-in entries will not be acknowledged. No photo copies, facsimiles or reproductions of mail-in entry

will be accepted. Sponsor is not responsible for late, lost, damaged, stolen, incomplete, illegible, postage due, or misdirected entries. Proof of mailing does not constitute proof of delivery. Winners that entered via mail will be required to create a new Coinbase account on Coinbase.com and agree to the respective terms of use and privacy notice, or have a valid Coinbase account standing, to receive their prize. If you do not create a new Coinbase account and agree to such terms of use and privacy notice within the timeframe indicated by Sponsor, you will be ineligible to receive a prize.

Id. at 3–4. The Official Rules also stated that entrants needed to create Coinbase user accounts and agree to the Coinbase User Agreement in order to be eligible to participate in the Sweepstakes. *Id.*

These disclosures made clear multiple times that Plaintiffs were not required to trade *Dogecoin* to participate in the Sweepstakes, and that Plaintiffs could have participated in the Sweepstakes for free by mailing a card.

III. LEGAL STANDARDS

Motion to compel arbitration. The Federal Arbitration Act (“FAA”) applies to arbitration agreements in contracts affecting interstate commerce, and directs that, like any other contracts, arbitration agreements “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2; *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019) (“Under the [FAA], arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms.” (citation omitted)). Indeed,

the FAA requires a court to stay judicial proceedings and compel arbitration for claims that are covered under an enforceable arbitration agreement. *See Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014) (citing 9 U.S.C. § 3 (“If any suit or proceeding be brought . . . upon any issue referable to arbitration . . . the court in which such suit is pending . . . shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement[.]”). These provisions of the FAA reflect—and courts routinely recognize—a “liberal federal policy favoring arbitration,” along with “the fundamental principle that arbitration is a matter of contract.” *Peter v. DoorDash, Inc.*, 445 F. Supp. 3d 580, 583 (N.D. Cal. 2020) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)).

In evaluating a motion to compel arbitration, “the court’s role under the FAA is ‘limited to determining (1) whether a *valid* agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.’” *DoorDash*, 445 F. Supp. 3d at 583 (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). Additionally, the parties may also delegate the initial arbitrability issue to an arbitrator with “clear and unmistakable” language, *Henry Schein*, 139 S. Ct. at 530, at which point “the courts must respect the parties’ decision as embodied in the contract,” and compel arbitration even in the face of questions about the scope of the arbitration agreement. *Id.* at 528; *DoorDash*, 445 F. Supp. 3d at 584 (“[P]arties can agree to arbitrate ‘gateway’ questions of ‘arbitrability,’ such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.”) (citation omitted).

Rule 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, a complaint must “state a claim to relief that is plausible on its face.” *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” to save a claim from dismissal. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Where “there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory,” the claim must be dismissed. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001) (citation omitted). Where amendment would be futile, the court should dismiss with prejudice. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296–97 (9th Cir. 1990).

IV. THE COURT SHOULD COMPEL ARBITRATION OF PLAINTIFFS’ CLAIMS.

A. The Court should compel arbitration because Plaintiffs consented to arbitration agreements that encompass their present claims.

The Court should compel arbitration because the parties entered into a valid and binding agreement to arbitrate that encompasses Plaintiffs’ claims.

1. Plaintiffs and Coinbase consented to final and binding individual arbitration by agreeing to the User Agreement.

Plaintiffs and Coinbase are parties to a valid arbitration agreement. “An essential element of a contract is consent.” *DoorDash*, 445 F. Supp. 3d at 585 (citing Cal. Civ. Code § 1550 and *Binder v. Aetna Life Ins. Co.*, 75 Cal. App. 4th 832, 850 (1999) (“To form a contract,

a manifestation of mutual assent is necessary.”)). As explained above, each Plaintiff consented to the arbitration provision in the User Agreement by affirmatively checking the box indicating that they “agree[d] to the User Agreement” and then clicking a button to create a Coinbase user account. McPherson-Evans Decl. ¶ 13.

Online agreements are enforceable when they put a “website user on actual or inquiry notice of [their] terms.” *DoorDash*, 445 F. Supp. 3d at 585 (citing *Nguyen* 763 F.3d at 1177). There are many variations of “[c]ontracts formed on the Internet,” including (1) “‘clickwrap’ (or ‘click-through’) agreements, in which website users are required to click on an ‘I agree’ box after being presented with a list of terms and conditions of use”; (2) “‘browsewrap’ agreements, where a website’s terms and conditions of use are generally posted on the website via a hyperlink at the bottom of the screen,” *Nguyen*, 763 F.3d at 1175–76 (citation omitted); and (3) various hybrids, including “sign-in wrap” agreements, in which a website “notif[ies] the user of the existence of the website’s terms of use and, instead of providing an ‘I agree’ button, advise[s] the user that he or she is agreeing to the terms of service when registering or signing up.” *DoorDash*, 445 F. Supp. 3d at 585. Courts will uphold such agreements “where the existence of the terms was reasonably communicated to the user.” *Id.* (citations omitted).

Here, Plaintiffs affirmatively checked the box indicating that they agreed to Coinbase’s User Agreement, and the full text of the User Agreement was linked—in blue text, which contrasted with the surrounding black text and the white background of the page—for easy identification and access. Plaintiffs were, therefore, clearly on notice of the User Agreement and its

arbitration provision. *See DoorDash*, 445 F. Supp. 3d at 582 (enforcing an arbitration agreement where users were notified that “By tapping Sign Up . . . you agree to our Terms and Conditions” and were presented with hyperlinked Terms and Conditions, but otherwise were “not required to click through to the [Terms and Conditions] in order to complete the sign-up process”); *see also id.* at 586–87 (rejecting the plaintiffs’ arguments that they were not on notice because “the text informing them that signing up for an account would constitute agreement to the terms was ‘displayed as a gray font on a lighter-shade of gray background’ and the font was ‘unreasonably small’”); *Meyer v. Uber Techs., Inc.* 868 F.3d 66, 78–79 (2d Cir. 2017) (finding sufficient inquiry notice based on, among other factors, the fact that the link to the terms appeared near the button users had to click to agree to the terms, and that the color of the link differed from the background and non-linked text). Plaintiffs were on notice of the User Agreement and expressly assented to it, and they are therefore bound by its arbitration clause.

2. The arbitration provision in the User Agreement is not unconscionable.

“[T]he party opposing arbitration must demonstrate that the contract as a whole or a specific clause in the contract is both procedurally and substantively unconscionable.” *Yu v. Volt Info. Scis., Inc.*, 2019 WL 3503111, at *5 (N.D. Cal. Aug. 1, 2019) (citations omitted). Here, there was no coercion to create a Coinbase account, Plaintiffs were on notice of the arbitration provision, and the arbitration provision applies equally to Plaintiffs and to Coinbase. Plaintiffs cannot make a credible argument that the arbitration

provision is unconscionable, and therefore cannot satisfy their burden.

3. Plaintiffs' claims fall within the scope of the arbitration clause in the User Agreement.

Plaintiffs and Coinbase agreed that “any dispute arising out of or relating to this Agreement or the Coinbase Services, including, without limitation, federal and state statutory claims, common law claims, and those based in contract, tort, fraud, misrepresentation, or any other legal theory, shall be resolved through binding arbitration, on an individual basis.”⁶ McPherson-Evans Decl. ¶ 13 & Exs. 7–9. Here, the plaintiffs each purchased at least \$100 worth of Dogecoin on Coinbase, and they seek to represent a class of Coinbase users “who purchased or sold Dogecoins” on Coinbase’s platform. *See, e.g.*, FAC ¶¶ 28–39, 80. The plaintiffs allege that they would not have purchased Dogecoin if they better apprehended that no purchase was required to enter the Dogecoin Sweepstakes. *See, e.g., id.* ¶ 18. That is a dispute that arises out of or relates to the use of the Coinbase Services.

Contrary to Plaintiffs’ claims (*id.* ¶ 79), the reference to the jurisdiction of the California courts and the laws of California in the Official Rules of the Dogecoin Sweepstakes does not change the outcome. On the contrary—California public policy strongly favors enforcement of valid arbitration agreements. *See* Cal. Code Civ. Proc. § 1281.2 (“On petition of a party to an

⁶ For Suski, the relevant language is: “any dispute arising under this [User] Agreement shall be finally settled in binding arbitration, on an individual basis.” McPherson-Evans Decl. ¶ 13 & Ex. 6.

arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists.”); *Breathe Techs., Inc. v. New Aera, Inc.*, 2020 WL 4747896, at *3 (N.D. Cal. Aug. 17, 2020) (“California law reflects a strong policy in favor of arbitration.”). And there is no conflict between the terms of the User Agreement and the Official Rules. The “Disputes” section of the Official Rules applies to Dogecoin Sweepstakes participants who never agreed to the User Agreement. For instance, if a participant entered by mailing a card and never created a Coinbase account (and thus never agreed to the User Agreement), then the participant would not have an arbitration agreement with Coinbase, and disputes between that participant and Coinbase arising from the Sweepstakes should be resolved in a California state or federal court per the Official Rules. Likewise, if a visitor who was not a Coinbase user viewed Coinbase’s marketing materials but never participated in the Sweepstakes, then that visitor too would not have an arbitration agreement with Coinbase. But as soon as a participant created a Coinbase user account and consented to the User Agreement, that participant agreed to abide by the terms of the User Agreement—including the provision that requires arbitration⁷ of disputes

⁷ The agreements signed by Plaintiffs Martin, Calsbeek, and Maher also allow certain claims to be asserted in small claims court (McPherson-Evans Decl. Exs. 7, 8, 9 ¶ 8.2), but that provision does not apply here because Plaintiffs’ claims do not meet the jurisdictional requirements for small claims court.

arising out of the participant's use of Coinbase's services, such as trading Dogecoin to participate in the Sweepstakes. Nothing in the Official Rules purports to supersede or conflict with the User Agreement; indeed, to the contrary, the Official Rules require participants to create Coinbase accounts (and thus consent to the User Agreement) in order to be eligible to win a prize in the Dogecoin Sweepstakes. FAC Ex. A at 3–4.

In light of the existence of a valid arbitration agreement in the User Agreement between Plaintiffs and Coinbase, therefore, application of California law requires arbitration of Plaintiffs' claims.

B. If there is a dispute about the arbitrability of Plaintiffs' claims, that issue must be resolved by the arbitrator.

Under the User Agreement, any dispute about the scope or applicability of the arbitration provision is delegated to the arbitrator. Binding Supreme Court precedent provides that “[w]hen the parties’ contract delegates the arbitrability question to an arbitrator”—as is the case here— “the courts must respect the parties’ decision as embodied in the contract.” *Henry Schein*, 139 S. Ct. at 528.

For Suski, the User Agreement explicitly incorporated and adopted the American Arbitration Association's (“AAA”) Consumer Arbitration Rules (and included a link to the text of those rules) to govern any dispute between Coinbase and the user. McPherson-Evans Decl. Ex. 6 ¶ 7.2. Specifically, Rule 14(a) of the AAA Rules (titled “Jurisdiction”) states that the “arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or

counterclaim.” AAA Consumer Arbitration Rules at R-14(a).⁸

Likewise, for Plaintiffs Martin, Calsbeek, and Maher, the parties delegated the question of arbitrability both by incorporating and adopting the AAA Consumer Arbitration Rules *and* by expressly reserving that question for the arbitrator on the face of the User Agreement. McPherson-Evans Decl. Exs. 7, 8, 9 ¶ 8.3. The second paragraph of Section 8.3 in the User Agreement reads:

This Arbitration Agreement includes, without limitation, disputes arising out of or related to the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement. All such matters shall be decided by an arbitrator and not by a court or judge.

Id. (emphasis in original).

The incorporation of the AAA Consumer Arbitration Rules in the User Agreement furnishes “clear and unmistakable” evidence that Plaintiffs agreed to delegate questions of arbitrability to the arbitrator. *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015) (“incorporation of the AAA rules constitutes clear and unmistakable evidence that contracting parties agreed to arbitrate arbitrability”); *see also id.* (“We observed that ‘[v]irtually every circuit to have considered the

⁸ The AAA Consumer Arbitration Rules can be found at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf> (effective September 1, 2014).

issue has determined that incorporation of the [AAA] arbitration rules constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.”) (quoting *Oracle America, Inc. v. Myriad Grp. A.G.*, 724 F.3d 1069, 1074 (9th Cir. 2013)). And although *Brennan* concerned a contract between two sophisticated parties, the *Brennan* opinion itself noted that “the vast majority of the circuits that hold that incorporation of the AAA rules constitutes clear and unmistakable evidence of the parties’ intent do so without explicitly limiting that holding to sophisticated parties.” *Brennan*, 796 F.3d at 1130–31 (collecting cases).

Despite the intra-circuit split since *Brennan*, courts in the Northern District and other lower courts in the Ninth Circuit have determined that *Brennan* similarly applies to non-sophisticated parties. See, e.g., *Gerlach v. Tickmark Inc.*, 2021 WL 3191692, at *4 (N.D. Cal. July 28, 2021) (“The ‘greater weight of authority has concluded that the holding of [*Brennan*] applies similarly to non-sophisticated parties.’”) (quoting *McLellan v. Fitbit, Inc.*, 2017 WL 4551484, at *2 (N.D. Cal. Oct. 11, 2017)); *McLellan*, 2017 WL 4551484, at *2 (collecting cases); *Cordas v. Uber Techs., Inc.*, 228 F. Supp. 3d 985, 992 (N.D. Cal. 2017); *Zenelaj v. Handybook Inc.*, 82 F. Supp. 3d 968, 973–75 (N.D. Cal. 2015); but see *Eiess v. USAA Fed. Sav. Bank*, 404 F. Supp. 3d 1240, 1252–53 (N.D. Cal. 2019) (citing *Ingalls v. Spotify USA, Inc.*, 2016 WL 6679561, at *4 (N.D. Cal. Nov. 14, 2016)).

Together, the delegation in the text of the User Agreement, along with the explicit incorporation of the AAA Consumer Arbitration Rules, is clear and unmistakable evidence that the parties agreed to delegate arbitrability questions to the arbitrator. Therefore, if

Plaintiffs dispute whether the arbitration provision in the User Agreement governs these claims, the Court should refer this case to the AAA arbitrator to consider the issue, and stay the action pending resolution of questions of arbitrability.

C. The Court should compel arbitration and dismiss this action in its entirety.

Because the arbitration provision is valid, dismissal of this entire action is appropriate. Where, as here, “an arbitration clause is broad enough to cover all of a plaintiff’s claims, the court may compel arbitration and dismiss the action.” *Hopkins & Carley, ALC v. Thomson Elite*, 2011 WL 1327359, at *8 (N.D. Cal. Apr. 6, 2011) (citations omitted); *see also Sparling v. Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988); *Dittenhafer v. Citigroup*, 2010 WL 3063127, at *7 (N.D. Cal. Aug. 2, 2010) (compelling arbitration and dismissing case); *Underwriters Reins. Co. v. Ace Am. Ins. Co.*, 2003 WL 24011931, at *7–8 (C.D. Cal. Feb. 10, 2003) (same). Accordingly, the Court should compel arbitration and dismiss the action.

D. Alternatively, the Court should stay these proceedings until arbitration is completed.

While the Court should dismiss this action in its entirety, if the Court agrees that arbitration is mandatory per Plaintiffs’ contracts with Coinbase, it must at least stay these proceedings pending the arbitrator’s determination. That is because when a matter is “referable to arbitration,” the FAA imposes a mandatory stay as to litigation between the parties required to arbitrate. 9 U.S.C. § 3; *see also Anderson v. Pitney Bowes, Inc.*, 2005 WL 1048700, at *6 (N.D. Cal. May 4, 2005) (“The stay provision is mandatory: ‘If the issues in a

case are within the reach of the Agreement, the district court has no discretion under section 3 [of the FAA] to deny the stay.” (citation omitted)); *Johnmohammadi v. Bloomingdale’s, Inc.*, 755 F.3d 1072, 1074 (9th Cir. 2014) (“[A] district court may either stay the action or dismiss it outright when, as here, the court determines that all of the claims raised in the action are subject to arbitration.” (citation omitted)).

V. ALTERNATIVELY, THE COURT SHOULD DISMISS PLAINTIFFS’ CLAIMS.

A. The Dogecoin Sweepstakes did not violate Cal. Penal Code § 320 because it was a lawful sweepstakes, not an illegal lottery (claim 1).

A contest of chance is not a lottery if participants can enter for free to win a prize. Here, Plaintiffs readily concede that they could have participated in the Dogecoin Sweepstakes without making a purchase. *See, e.g.*, FAC ¶ 28 (“there was a 100% free, mail-in option for entering the sweepstakes”); *see also id.* Ex. A at 3–4 (the Official Rules disclosed the free method of entry). That concession is fatal to their Unfair Competition Law (“UCL”) claim that the Dogecoin Sweepstakes was an illegal lottery. Recognizing this flaw, Plaintiffs assert that they were “subjectively unaware of the omitted truth that a free, mail-in entry option existed.” FAC ¶¶ 89, 92. But that assertion is legally irrelevant. A contest does not become a lottery just because a participant is “subjectively unaware” of the free method of entry.

Plaintiffs assert a claim under Cal. Penal Code § 320 (which prohibits illegal lotteries) via the “unlawful” prong of the UCL, which “borrows violations of other laws and treats them as unlawful practices that the

unfair competition law makes independently actionable.” *Gel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). A plaintiff asserting a UCL “unlawful” claim must establish a violation of the predicate statute, and if it cannot, the UCL claim must be dismissed. *See, e.g., Singh v. Wells Fargo Bank, N.A.*, 2009 WL 2365881, at *5 (N.D. Cal. July 30, 2009) (dismissing a UCL claim because the plaintiff failed to show that the defendant committed any underlying violation of law); *Ng v. US Bank, NA*, 2016 WL 5390296, at *8 (N.D. Cal. Sept. 26, 2016) (same). As discussed below, Plaintiffs cannot establish that Coinbase violated § 320. Accordingly, Plaintiffs’ lottery claim must be dismissed.

1. An illegal lottery requires payment of valuable consideration.

Lotteries are illegal under California law. Cal. Penal Code § 320. A lottery is “any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.” *Id.* § 319. This statute is strictly construed. *Haskell v. Time, Inc.*, 965 F. Supp. 1398, 1404 (E.D. Cal. 1997) (“A penal statute is strictly construed.”).

An illegal lottery has three components: “a prize, distribution by chance, and consideration.” *Hotel Emps. & Rest. Emps. Int’l Union v. Davis*, 21 Cal. 4th 585, 592 (1999). If any of these elements is missing, the contest is not an illegal lottery. *Cal. Gasoline*

Retailers v. Regal Petroleum Corp., 50 Cal. 2d 844, 850–52 (1958).

The difference between an unlawful lottery and a lawful sweepstakes is whether participants are required to pay valuable consideration to participate. Consideration is “the fee (in the form of money or anything else of value) that a participant pays the operator for entrance.” *Hotel Emps.*, 21 Cal. 4th at 592 (citing *Regal*, 50 Cal. 2d at 853–54, 857–62). The classic example is a lottery ticket: a participant buys a ticket in exchange for a chance to win. However, if prizes are awarded on the basis of chance, but entries may be obtained freely, no lottery exists because no person is required to pay consideration for the chance of winning a prize. See, e.g., *Haskell*, 965 F. Supp. at 1404 (“California courts have consistently held that business promotions are not lotteries so long as tickets to enter are not conditioned upon a purchase.” (citations omitted)); *Regal*, 50 Cal. 2d at 856–57 (holding that a contest was lawful because “the receipt of the ticket or tickets was not dependent upon a purchase of merchandise or service”); *People v. Carpenter*, 141 Cal. App. 2d 884, 888–90 (1956) (holding that a contest was lawful because many ticketholders “did not pay anything for the chance of getting the prize”); *People v. Cardas*, 28 P.2d 99, 101 (1933) (holding that a contest was lawful because “the holders of the prize tickets did not pay a valuable consideration for the chance of winning the prize”).

This is true even when some participants pay consideration to enter, so long as they are not *required* to pay as a condition of entering the sweepstakes. *Regal*, 50 Cal. 2d at 858–59. Businesses routinely hold purchase-not-required sweepstakes in which they give away entries with each product purchase or donation,

while also providing entries to those who request to enter without making a purchase. Indeed, as discussed below, California law requires the sweepstakes sponsor to include a “clear and conspicuous statement of the no-purchase-or-payment-necessary message” in solicitation materials. Cal. Bus. & Prof. Code § 17539.15(b). If the legislature believed it was improper to allow participants to receive entries in connection with a purchase or donation (while also allowing anyone enter for free), then the legislature would have said that purchases are prohibited, rather than requiring a disclaimer that no purchase or payment is necessary. The key to a lawful sweepstakes is that no purchase is necessary to enter.

2. The Dogecoin Sweepstakes was not a lottery because participants could enter for free.

California lottery law is clear: if a FAME is available, a contest is not a lottery. *Haskell*, 965 F. Supp. at 1404 (“California courts have consistently held that business promotions are not lotteries so long as tickets to enter are not conditioned upon a purchase.”); *Regal*, 50 Cal. 2d at 844 (holding that a contest was not an illegal lottery because tickets were freely distributed to non-purchasers via at-home drop-offs, by placing tickets in windshield wipers of parked cars, and by giving them away at events); *Cardas*, 28 P. 2d at 101 (finding that no consideration was required because tickets were freely given to neighborhood residents and passersby).

The Dogecoin Sweepstakes was therefore not a lottery. As Plaintiffs concede, they could have entered via the FAME that Coinbase provided. For instance, the Official Rules clearly disclosed the procedure by which

Plaintiffs could have participated for free by mailing a postcard containing their contact information. FAC Ex. A at 3–4. The Plaintiffs also state throughout the FAC that a FAME was available. *See, e.g.*, FAC ¶¶ 16 (noting the existence of a “free entry option”), 28 (“there was a 100% free, mail-in option for entering the sweepstakes”), 29 (“there was a trade-free entry option”), 54 (Coinbase disclosed the “free, mail-in entry option” in the Official Rules), 106 (there was a “purchase-free, payment-free option” to participate).

Despite admitting that Coinbase offered a FAME for the Dogecoin Sweepstakes (*e.g., id.* ¶ 28), Plaintiffs contend that they were “subjectively unaware of the omitted truth that a free, mail-in entry option existed.” *Id.* ¶¶ 89, 92. But there is no reasonable dispute that FAME was available to anyone, and it was readily apparent to any participant who took a moment to read Coinbase’s disclosures. Coinbase did not hide existence of the FAME—on the contrary, it displayed the standard “NO PURCHASE NECESSARY” language in its marketing materials, and provided additional details about the free alternative method of entry in the Official Rules. Any allegations that Coinbase “omitted” the disclosure of the FAME, or that the disclosures were not conspicuous enough, are relevant to Plaintiffs’ false advertising claims (addressed in Section V.C below), not their lottery claims. There is no support in California lottery law for Plaintiffs’ theory that a lawful sweepstakes becomes an unlawful lottery when one of its participants was “subjectively unaware” of the free method of entry. If that were the case, any participant could simply ignore sweepstakes disclosures and file a lawsuit based on the claim that they were unaware of the FAME.

Thus, Plaintiffs have not adequately alleged that Coinbase violated Cal. Penal Code § 320. Since they have not established a violation of the predicate statute, their UCL claim (FAC ¶¶ 86– 93) must be dismissed. *Ng*, 2016 WL 5390296, at *8.

B. Coinbase did not violate § 17539.15 because its marketing materials contained the required “no-purchase-or-payment-necessary message” (claim 2).

Plaintiffs also assert a UCL “unlawful” claim based on an alleged violation of Cal. Bus. & Prof. Code § 17539.15(b), which governs the content of sweepstakes promotional materials. As above, Plaintiffs’ UCL claim must be dismissed because they have not adequately alleged a violation of the predicate law.

Under § 17539.15(b), sweepstakes solicitation materials must include a “no-purchase-or-payment-necessary” disclosure in the official rules of the sweepstakes:

Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall include a clear and conspicuous statement of the no-purchase-or-payment-necessary message, in readily understandable terms, in the official rules included in those solicitation materials and, if the official rules do not appear thereon, on the entry-order device included in those solicitation materials.

Cal. Bus. & Prof. Code § 17539.15(b). The phrase “no-purchase-or-payment-necessary message” means “the following statement *or a statement substantially similar* to the following statement: ‘No purchase or

payment of any kind is necessary to enter or win this sweepstakes.” *Id.* § 17539.15(k)(1) (emphasis added).

Here, Coinbase included substantially similar statements throughout its marketing materials. *See, e.g.*, FAC ¶ 66 (in its Sweepstakes emails, website, and mobile ads, Coinbase stated: “NO PURCHASE NECESSARY TO ENTER OR WIN”); *see also id.* ¶¶ 69, 72–74. Plaintiffs acknowledge that Coinbase’s marketing materials contained the phrase “no purchase necessary,” but they nonetheless contend that the marketing materials violated § 17539.15 because they did not also include the phrase “or payment of any kind.” *See, e.g., id.* ¶ 73. But California does not require magic words to deliver the “no-purchase-or-payment-necessary message.” The message just needs to be “readily understandable.” That in some instances Coinbase allegedly did not include the “or payment of any kind” language does not *per se* violate § 17539.15(b) where its disclosures were “readily understandable” from the language that Coinbase used. Plaintiffs contend that by omitting the phrase “or payment of any kind,” Coinbase deceived consumers into thinking that they needed to make an additional payment to participate in the Sweepstakes, such as paying a transaction fee for making a trade on Coinbase’s platform. *See, e.g., id.* ¶ 73 (“Defendants’ sweepstakes ads left open the possibility that payments of some kind, other than DOGE purchases[,] might be necessary to enter: such as the ‘payment’ of a *transaction fee*” (emphasis in original)). That allegation is simply not credible, particularly since participants could easily navigate to the Official Rules, which contained additional details about the rules for participation—including the additional “or payment of any kind” language.

Accordingly, Plaintiffs fail to state a claim for a violation of § 17539.15, and their UCL claim based upon it (*id.* ¶¶ 94–107) must be dismissed.

C. Coinbase did not violate the FAL or UCL because no reasonable consumer would have been deceived by its marketing materials (claims 3 and 4).

There is no merit to Plaintiffs’ assertion that Coinbase’s promotional materials “affirmatively misrepresented, concealed and omitted” the FAME. *See, e.g.*, FAC ¶ 112.

To state a claim under the UCL or the False Advertising Law (“FAL”) based on false advertising or promotional practices, Plaintiffs must “show that members of the public are likely to be deceived.” *Becerra v. Dr Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1228 (9th Cir. 2019) (quoting *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008)). The standard for evaluating a deceptive advertising claim on a motion to dismiss is whether a reasonable person would have been misled. *Freeman*, 68 F.3d at 285 (adopting the “reasonable person” standard and rejecting the “unwary consumer” standard). This is an objective test. *Williams.*, 552 F.3d at 938; *see also Lokey v. CVS Pharmacy, Inc.*, 2020 WL 6822890, at *5 (N.D. Cal. Nov. 20, 2020) (dismissing plaintiffs’ UCL and FAL claims “[b]ecause the label [was] not deceptive, and the plaintiff’s subjective interpretation fail[ed] the reasonable-consumer test” (citations omitted)).

In *Freeman*, the Ninth Circuit addressed whether a reasonable person would have been deceived where disclosures in sweepstakes promotional materials appeared in the “small print” but not in the “large print.” 68 F.3d at 289. It held that “no reasonable reader could

ignore” the small-print disclosures, and that a reasonable consumer would be put on notice of the sweepstakes terms “simply by doing sufficient reading to comply with the instructions for entering the sweepstakes.” *Id.* Applying this standard, the court found that the disclosures expressly stated that no purchase was necessary to participate in the sweepstakes, and affirmed the district court’s dismissal of the plaintiff’s deceptive advertising claims.

Several other courts have dismissed deceptive advertising claims where a consumer failed to read clear disclosures and later claimed to have been deceived. For example, in *Castagnola*, the court observed that a “consumer cannot decline to read clear and easily understandable terms that are provided on the same webpage in close proximity to the location where the consumer indicates his agreement to those terms and then claim that the webpage, which the consumer has failed to read, is deceptive.” *Castagnola v. Hewlett-Packard Co.*, 2012 WL 2159385, at *10 (N.D. Cal. June 13, 2012) (quoting *In re Vistaprint Corp Mktg. & Sales Pracs. Litig.*, 2009 WL 2884727, at *6 (S.D. Tex. Aug. 31, 2009)). Likewise, in *Baxter*, the court held that where the terms are provided on the same webpage as the marketing statements and “in close proximity to where the consumer indicates his agreement to those terms . . . which the consumer failed to read,” the consumer cannot claim that the terms are deceptive. *Baxter v. Intelius, Inc.*, 2010 WL 3791487, at *4 (C.D. Cal. Sept. 16, 2010).

The Court should reach the same result here. Coinbase’s disclosures were readily apparent to any reasonable consumer who was willing to take a moment to “do[] sufficient reading to comply with the instructions for entering the sweepstakes.” *Freeman*, 68 F.3d

at 289–90. Coinbase’s marketing materials—including its emails and the Sweepstakes webpage—clearly stated that participants did not need to make a purchase to participate:

NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available.

FAC ¶ 66. Similarly, the Official Rules clearly disclosed both methods of entry (*id.* Ex. A at 3–4), and stated at the outset: “NO PURCHASE NECESSARY. A PURCHASE OR PAYMENT OF ANY KIND WILL NOT INCREASE YOUR CHANCES OF WINNING” (*id.* Ex. A at 1). Sweepstakes operators are not required to present each disclosure as prominently as every other marketing statement; rather, the standard is whether a reasonably diligent consumer could find and understand the terms. Coinbase met that standard here.

Since no reasonable consumer would have been deceived by Coinbase’s promotional materials, Plaintiffs UCL and FAL deceptive advertising claims (FAC ¶¶ 108–19) should be dismissed.

D. Plaintiffs have not plausibly alleged a violation of the UCL “unfair” prong (claim 5).

Plaintiffs fail to allege a violation of the “unfair” prong of the UCL, under which “a practice may be deemed unfair even if not specifically proscribed by some other law.” *In re Carrier IQ, Inc.*, 78 F. Supp. 3d 1051, 1115 (N.D. Cal. 2015) (quoting *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143 (Cal. 2003)). California courts have articulated three tests to determine whether conduct is “unfair.” *Carrier IQ*,

78 F. Supp. 3d at 1115. First, “the ‘tethering test’ requires that the ‘public policy which is a predicate to a consumer unfair competition action under the ‘unfair’ prong of the UCL must be tethered to specific constitutional, statutory, or regulatory provisions.’ “ *Id.* (quoting *Drum v. San Fernando Valley Bar Ass’n*, 182 Cal. App. 4th 247, 257 (2010)). Second, the “balancing test” “asks whether the alleged business practice is ‘immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers and requires the court to weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged victim.’ “ *Id.* Finally, the third test requires “(1) that the consumer injury be substantial; (2) that the injury not be outweighed by any countervailing benefits to consumers or competition; and (3) the injury is one that consumers could not have reasonably avoided.” *Id.*

Plaintiffs’ allegations are insufficient to state a claim under each of these three tests. First, Plaintiffs’ “tethering” allegations in FAC ¶ 121 are wholly conclusory and fail to tether the UCL claim to any specific California policy. This warrants dismissal. *See Elias v. Hewlett-Packard Co.*, 903 F. Supp. 2d 843, 858 (N.D. Cal. 2012) (dismissing UCL “unfair” claim because although plaintiff “ma[de] conclusory statements that [defendant’s] alleged conduct is unfair, he [did] not reference any established public policy that [defendant’s] actions have violated”).

Under the other two tests, Plaintiffs mischaracterize both the benefit to the public and the alleged harm to consumers. Coinbase’s Sweepstakes materials benefited the public by informing them of a novel investment opportunity and offering a chance to win valuable prizes by participating. In contrast, any harm to Plaintiffs was minimal. Plaintiffs’ allegation that

Coinbase’s marketing materials caused losses of “hundreds of millions of dollars” (FAC ¶ 123) is conclusory, highly implausible, and unsupported by any credible evidence or explanation. Plaintiffs also fail to explain how they themselves suffered any substantial injury—particularly since they all created accounts on Coinbase’s platform well before the Dogecoin Sweepstakes occurred (see Section II.A above).

Finally, under the third test, Plaintiffs clearly could have “reasonably avoided” the harms they allege. As explained in Section V.C, no reasonable consumer would have been deceived by Coinbase’s marketing materials. On the contrary—a reasonable consumer would have noticed the clear “NO PURCHASE NECESSARY” disclosures and taken a moment to understand how to participate without making a purchase.

Because Plaintiffs fail to state a claim under each of the three tests, their UCL “unfair” claim (FAC ¶ 120–26) should be dismissed.

E. Coinbase did not violate the CLRA because Coinbase’s marketing materials did not state that payment was necessary to participate in the Dogecoin Sweepstakes (claims 6 and 7).

Plaintiffs assert violations of Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1770(a)(14), both as a direct claim (FAC ¶¶ 127–34) and as the predicate violation for a UCL “unlawful” claim (*id.* ¶¶ 135–37). Both claims should be dismissed because no reasonable consumer would have interpreted Coinbase’s marketing materials to require payment to participate.

The CLRA prohibits representations “that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law.” Cal. Civ. Code § 1770(a)(14). Like UCL and FAL deceptive advertising claims, CLRA claims are evaluated under the “reasonable consumer” standard. *Freeman* 68 F.3d at 289; *Stathakos v. Columbia Sportswear Co.*, 2017 WL 1957063, at *7 (N.D. Cal. May 11, 2017). Dismissal is warranted where “the advertisement itself ma[kes] it impossible for the plaintiff to prove that a reasonable consumer [is] likely to be deceived.” *Sponchiado v. Apple Inc.*, 2019 WL 6117482, at *3 (N.D. Cal. Nov. 18, 2019) (quoting *Williams*, 552 F.3d at 939).

Courts have dismissed CLRA claims where asterisks or footnotes call the reader’s attention to important disclosures in advertisements. *See, e.g., Sponchiado*, 2019 WL 6117482, at *4–5; *Dinan v. SanDisk LLC*, 2020 WL 364277, at *9 (N.D. Cal. Jan. 22, 2020), *aff’d*, 844 F. App’x 978 (9th Cir. 2021). For instance, the court in *Dinan* explained that “[a]sterisks are common in both commerce and elsewhere to denote that the ‘reader’ should be aware that there is more than meets the eye,” and that “the asterisk calls the consumer’s attention to the fact that there is supplemental information on the package that the consumer should read.” *Dinan*, 2020 WL 364277, at *8. Likewise, in *Sponchiado*, the plaintiffs argued that Apple’s qualifying language regarding screen size was insufficient because it was not placed immediately next to actual screen size dimensions on the advertisement. *Sponchiado*, 2019 WL 6117482, at *4. The court determined that “[i]t would not be sensible for a reasonable consumer to simply assume the supplemental information would not apply to the preceding

statement in its entirety and therefore choose to ignore it (and in practice, footnotes are commonly placed at the end of a sentence). Accordingly, a reasonable consumer could not be deceived by the iPhone Products' screen size representation, given the qualifying language expressly notifying the consumer that the actual screen area is less than indicated." *Id.*

Here, Coinbase included the same type of link to a footnote containing the "no purchase necessary" disclosure. Plaintiffs allege that the statement indicating that they "need[ed]" to buy or sell Dogecoin to participate in the Sweepstakes constituted an affirmative misrepresentation. *See, e.g.*, FAC ¶ 130. But their screenshots show that, two lines below, Plaintiffs were presented with text that stated: "*View sweepstakes rules →" (including the asterisk). FAC ¶ 11 (screenshot). That text linked to a footnote that stated: "NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available." *Id.* A nearly identical disclosure appeared in the Official Rules linked at the bottom of this paragraph. *Id.* ¶ 66 & Ex. A.

Like the disclosure in *Freeman*, where Defendants' sweepstakes mailer included qualifying language about the chances of winning in the official rules, Coinbase's advertisements explicitly call the reader's attention to key information about the method of entry. *See Freeman*, 68 F.3d at 289–90 (finding that Plaintiffs' inference regarding the mailer was unreasonable in the context of the document as a whole). Coinbase clearly disclosed to readers, in multiple locations, that no purchase was necessary to participate and that a FAME was available. No reasonable consumer would have been misled.

The same reasoning applies to Plaintiffs' alleged misrepresentation as to the necessary amount of Dogecoin users needed to trade in order to participate via the paid method of entry. In describing the paid method of entry, the Official Rules state:

Method 1: Existing account holders and new* account holders must opt-in to participate in the Sweepstakes and must complete **\$100usd (cumulative [of] the transaction fee)** in trade (buy/sell) of Dogecoin on Coinbase.com (.com and/or Coinbase app) during the Promotion Period to earn one (1) entry into the Sweepstakes.

FAC Ex. A at 3 (emphasis added). (Immediately afterwards, the Official Rules stated that participants can enter for free by mailing a card.) This disclosure is adequate in the context in which it appeared. Per *Freeman*, courts should consider the context of an advertisement to evaluate whether an inference is reasonable. 68 F.3d at 289–90. And, as in *Freeman*, the disclosures here “expressly and repeatedly state[d] the conditions which must be met in order to win,” and “[n]one of the qualifying language is hidden or unreadably small.” *Id.* No reasonable consumer would have been led to believe that the only way to enter the Sweepstakes was to buy or trade at least \$100 in Dogecoin, *excluding* transaction fees; rather, the disclosures clearly stated that the \$100 trade *included* transaction fees.

Plaintiffs thus fail to state a claim for a violation of § 1770(a)(14). FAC ¶¶ 127–34. Their UCL “unlawful” claim based on § 1700(a)(14) must also be dismissed. *Id.* ¶¶ 135–37.

VI. CONCLUSION

Coinbase respectfully requests that the Court compel arbitration and stay the proceedings, or in the alternative, dismiss the FAC.

Dated: October 19, 2021

COOLEY LLP

By: /s/ Michael G. Rhodes
Michael G. Rhodes

Attorneys for Defendant
COINBASE GLOBAL, INC.

COINBASE USER AGREEMENT

This is a contract between you and Coinbase, Inc. (“Coinbase”). By signing up to use an account through coinbase.com or gdax.com, or any associated websites, APIs, or mobile applications (collectively the “Coinbase Site”), you agree that you have read, understood, and accept all of the terms and conditions contained in this Agreement, as well as our [Privacy Policy] (<https://www.coinbase.com/legal/privacy>) and E-Sign Consent.

Last updated: August 23, 2017

PART 1: GENERAL USE

1. Basic Coinbase Services.

****1.1. Eligibility.**** To be eligible to use the Coinbase Services, you must be at least 18 years old.

****1.2. Coinbase Services**.** Your Coinbase account (“Coinbase Account”) encompasses the following basic Coinbase services: One or more hosted Digital Currency wallets that allow users to store certain supported digital currencies, like Bitcoin or Ethereum (“Digital Currency”), and to track, transfer, and manage supported Digital Currencies (the “Hosted Digital Currency Wallet”); Digital Currency conversion services through which users can buy and sell Digital Currencies in transactions with Coinbase (the “Conversion Services”); and a U.S. Dollar account for use in connection with other Coinbase Services (a “USD Wallet” or “Currency Wallet”) and for eligible users, a Digital Currency exchange platform (“GDAX”) (collectively the “Coinbase Services”). ****The risk of loss in trading or holding Digital Currency can be**

substantial. You should therefore carefully consider whether trading or holding Digital Currency is suitable for you in light of your financial condition.**

2. Creating a Coinbase Account.

2.1. Registration of Coinbase Account. In order to use any of the Coinbase Services, you must first register by providing your name, an e-mail address, password, and affirming your acceptance of this Agreement. Coinbase may, in our sole discretion, refuse to allow you to establish a Coinbase Account, or limit the number of Coinbase Accounts that a single user may establish and maintain at any time.

2.2. Identity Verification. In order to use certain features of the Coinbase Services, including certain transfers of Digital Currency and/or government-issued currency (“Fiat Currency”), you may be required to provide Coinbase with certain personal information, including, but not limited to, your name, address, telephone number, e-mail address, date of birth, taxpayer identification number, government identification number, and information regarding your bank account (e.g., financial institution, account type, routing number, and account number). In submitting this or any other personal information as may be required, you verify that the information is accurate and authentic, and you agree to update Coinbase if any information changes. **You hereby authorize Coinbase to, directly or through third parties make any inquiries we consider necessary to verify your identity and/or protect against fraud, including to query identity information contained in public reports (e.g., your name, address, past addresses, or date of birth), to query account information associated with your linked bank account (e.g., name or account balance), and to take

action we reasonably deem necessary based on the results of such inquiries and reports. You further authorize any and all third parties to which such inquiries or requests may be directed to fully respond to such inquiries or requests. This includes authorizing your wireless operator (AT&T, Sprint, T-Mobile, US Cellular, Verizon, or any other branded wireless operator) to use your mobile number, name, address, email, network status, customer type, customer role, billing type, mobile device identifiers (IMSI and IMEI) and other subscriber status details, if available, solely to allow verification of your identity and to compare information you have provided to Coinbase with your wireless operator account profile information for the duration of the business relationship. See our Privacy Policy to learn more about how we treat your data.**

3. Hosted Digital Currency Wallet.

3.1. In General**.** The Hosted Digital Currency Wallet services allow you to send supported Digital Currency to, and request, receive, and store supported Digital Currency from, third parties pursuant to instructions you provide through the Coinbase Site (each such transaction is a “Digital Currency Transaction”).**Coinbase reserves the right to refuse to process or to cancel any pending Digital Currency Transaction as required by law or in response to a subpoena, court order, or other binding government order or to enforce transaction limits. Coinbase cannot reverse a Digital Currency Transaction which has been broadcast to a Digital Currency network. The Hosted Digital Currency Wallet services are available only in connection with those Digital Currencies that Coinbase, in its sole discretion, decides to support. The Digital Currencies that Coinbase supports may change from time to time. If you have any questions about which Digital

Currencies Coinbase currently supports, please contact support@coinbase.com. Under no circumstances should you attempt to use your Hosted Digital Currency Wallet services to store, send, request, or receive digital currencies in any form that are not supported by Coinbase. Coinbase assumes no responsibility or liability in connection with any attempt to use Coinbase Services for digital currencies that Coinbase does not support.**

****3.2. Digital Currency Transactions.**** Coinbase processes supported Digital Currency according to the instructions received from its users and we do not guarantee the identity of any user, receiver, requestee or other party. You should verify all transaction information prior to submitting instructions to Coinbase. In the event you initiate a Digital Currency Transaction by entering the recipient's email address and the recipient does not have an existing Coinbase Account, Coinbase will email the recipient and invite them to open a Coinbase Account. If the designated recipient does not open a Coinbase Account within 30 days, Coinbase will return the supported Digital Currency associated with the transaction to your Coinbase Account. Once submitted to a Digital Currency network, a Digital Currency Transaction will be unconfirmed for a period of time pending sufficient confirmation of the transaction by the Digital Currency network. A transaction is not complete while it is in a pending state. Funds associated with transactions that are in a pending state will be designated accordingly, and will not be included in your Coinbase Account balance or be available to conduct transactions. Coinbase may charge network fees (miner fees) to process a Digital Currency transaction on your behalf. Coinbase will calculate the network fee in its discretion, although

Coinbase will always notify you of the network fee at or before the time you authorize the transaction. Coinbase reserves the right to delay any Digital Currency Transaction if it perceives a risk of fraud or illegal activity.

****3.3. Digital Currency Storage & Transmission Delays.**** Coinbase securely stores all Digital Currency private keys in our control in a combination of online and offline storage. As a result, it may be necessary for Coinbase to retrieve certain information from offline storage in order to facilitate a Digital Currency Transaction in accordance with your instructions, which may delay the initiation or crediting of such Digital Currency Transaction for 48 hours or more. You acknowledge and agree that a Digital Currency Transaction facilitated by Coinbase may be delayed.

****3.4. Third Party Payments.**** Coinbase has no control over, or liability for, the delivery, quality, safety, legality or any other aspect of any goods or services that you may purchase or sell to or from a third party (including other users of Coinbase Services). Coinbase is not responsible for ensuring that a buyer or a seller you may transact with will actually complete the transaction or is authorized to do so. If you experience a problem with any goods or services purchased from, or sold to, a third party in connection with Digital Currency transferred using the Coinbase Services, or if you have a dispute with such third party, you must resolve the dispute directly with that third party. If you believe a third party has behaved in a fraudulent, misleading, or inappropriate manner, or if you cannot adequately resolve a dispute with a third party, you may notify Coinbase Support at support@coinbase.com so that we may consider what action to take, if any.

****3.5. Coinbase Vault**.** You may elect to use the Coinbase Vault to store supported Digital Currency. The Coinbase Vault allows users to set withdrawal time-delays and/or to require the electronic approval of multiple individuals designated by the user before transfers may be completed. Coinbase also offers an advanced Vault which allows users the option to view, control, and distribute private keys of associated Digital Currency to multiple third parties whose majority approval will be required to transfer associated Digital Currency (the “Multisig Vault”). ****Coinbase cannot restore encrypted private keys or otherwise recover private keys which are not within Coinbase’s control. If you use the Multisig Vault you acknowledge that Coinbase is not responsible for transferring, safeguarding, or maintaining private keys and/or Digital Currency associated with the Vault.**** If you and/or co-signing authorities lose, mishandle, or have stolen associated Digital Currency private keys, or if your cosigners refuse to provide requisite authority, you acknowledge that you may not be able to recover associated Digital Currency, and that Coinbase is not responsible for such loss.

****3.6. Customized Coinbase Payment Page.**** In some cases, you may establish a customizable payment page (“Payment Page”) which will allow others to easily send Digital Currency to your Coinbase Account. You may establish and customize your Payment Page through your Coinbase Account settings, which will allow you to establish a user handle and associated Payments Page URL, upload a photo, and provide a short description. In establishing your Payment Page and uploading or adding any text, photo, or other material, you agree that you will not (i) post misleading materials or misappropriate the identity of

another person or entity, (_ii_) post any copyrighted material which you are not authorized to post, or (_iii_) post any profane, unlawful, or offensive materials. Coinbase, in its sole discretion, may disable your Payment Page and take other action in accordance with this Agreement if we believe you are in violation of the foregoing or abusing this service. Coinbase may reclaim user handles associated with dormant Coinbase Accounts. Coinbase does not guarantee or endorse the purported identity, message, or other information posted by a user to the user's Payment Page.

****3.7 Advanced Protocols.**** Unless specifically announced on our website or through some other official public statement of Coinbase, we do not support meta-coins, colored coins, side chains, or other derivative, enhanced, or forked protocols, tokens, or coins which supplement or interact with a Digital Currency supported by Coinbase (collectively, "Advanced Protocols"). Do not use your Coinbase Account or GDAX account to attempt to receive, request, send, store, or engage in any other type of transaction involving an Advanced Protocol. The Coinbase platform is not configured to detect and/or secure Advanced Protocol transactions and Coinbase assumes absolutely no responsibility whatsoever in respect to Advanced Protocols.

****3.8 Operation of Digital Currency Protocols.**** Coinbase does not own or control the underlying software protocols which govern the operation of Digital Currencies supported on our platform. In general, the underlying protocols are open source and anyone can use, copy, modify, and distribute them. By using the Coinbase or GDAX platforms, you acknowledge and agree (i) that Coinbase is not responsible for operation of the underlying protocols and that Coinbase makes no guarantee of their functionality, security, or

availability; and (ii) that the underlying protocols are subject to sudden changes in operating rules (a/k/a “forks”), and that such forks may materially affect the value, function, and/or even the name of the Digital Currency you store in the Coinbase platform. In the event of a fork, you agree that Coinbase may temporarily suspend Coinbase operations (with or without advance notice to you) and that Coinbase may, in its sole discretion, decide whether or not to support (or cease supporting) either branch of the forked protocol entirely. You acknowledge and agree that Coinbase assumes absolutely no responsibility whatsoever in respect of an unsupported branch of a forked protocol.

4. Conversion Services.

****4.1. In General.**** Eligible users in certain jurisdictions may buy or sell supported Digital Currency through the Conversion Services. The Conversion Services are subject to the Coinbase “Conversion Rate” for the given transaction. “Conversion Rate” means the price of a given supported Digital Currency amount in terms of Fiat Currency or other Digital Currency as quoted on the Coinbase Site. The Conversion Rate is stated either as a “Buy Price” or as a “Sell Price,” which is the price in terms of Fiat Currency or Digital Currency at which you may buy or sell supported Digital Currency to Coinbase. You acknowledge that the quoted Buy Price Conversion Rate may not be the same as the Sell Price Conversion Rate at any given time, and that Coinbase may add a margin or “spread” to the quoted Conversion Rate. You agree, as a condition of using any Coinbase Conversion Services, to accept the Conversion Rate as the sole conversion metric. Coinbase reserves the right to delay any Conversion Service transaction if it perceives a risk of fraud or illegal activity. Coinbase does not guarantee the

availability of its Conversion Service, and the act of purchasing supported Digital Currency from Coinbase does not result in a guarantee that you may sell your supported Digital Currency to Coinbase.

****4.2. Purchase Transactions.**** After successfully completing the [Verification Procedures](https://www.coinbase.com/legal/user_agreement#appendix-2:-verification-procedures-and-limits), you may purchase supported Digital Currency by linking a valid payment method. You authorize Coinbase to initiate debits from your selected payment method(s) in settlement of purchase transactions. A Conversion Fee (defined below) applies to all purchase transactions. Although Coinbase will attempt to deliver supported Digital Currency to you as promptly as possible, funds may be debited from your selected payment method before Digital Currency is delivered to your Coinbase Account. We will make best efforts to fulfill all transactions, but in the rare circumstance where Coinbase cannot fulfill your purchase order, we will notify you and seek your approval to fulfill the purchase order at the contemporaneous Buy Price Conversion Rate. To secure the performance of your obligations under this Agreement, you grant to Coinbase a lien on and security interest in and to the balances in your account.

****4.3. Sale Transactions.**** After successfully completing the [Verification Procedures](https://www.coinbase.com/legal/user_agreement#appendix-2:-verification-procedures-and-limits), you may sell supported Digital Currency by linking a valid payment method. You authorize Coinbase to debit your Coinbase Account(s) and initiate payments to your selected payment method(s) in settlement of sell transactions. An applicable Conversion Fee (defined

below) applies to all sale transactions. Your receipt of funds will depend on the payment type, and may take up to three or more business days.

****4.4. Conversion Fees.**** Each Conversion Service transaction is subject to a fee (a “Conversion Fee”). The applicable Conversion Fee is displayed to you on the Coinbase Site prior to you completing a Conversion Service transaction. Coinbase will not process a conversion transaction if the Conversion Fee and any other associated fees as may apply, such as wire transfer fees, exceed the value of your transaction. Coinbase may waive some portion of the Conversion Fee depending on the payment method you select. The availability of each Payment Method depends on a number of factors, including but not limited to your location, the identification information you have provided to us, and limitations imposed by third party payment processors.

You can view the current fee applicable to your location and payment method at our [Fees page](<https://support.coinbase.com/customer/portal/articles/2109597-buy-sell-bank-transfer-fees>).

Coinbase reserves the right to adjust its Conversion Fees and any applicable waivers at any time. We will always notify you of the Conversion Fee which applies to your transaction when you authorize the transaction and in each receipt we issue to you.

****4.5. Reversals; Cancellations.**** You cannot cancel, reverse, or change any transaction marked as complete or pending. If your payment is not successful or if your payment method has insufficient funds, you authorize Coinbase, in its sole discretion, either to cancel the transaction or to debit your other payment methods, including Coinbase balances or other linked

accounts, in any amount necessary to complete the transaction. You are responsible for maintaining an adequate balance and/or sufficient credit limits in order to avoid overdraft, NSF, or similar fees charged by your payment provider. Coinbase reserves the right to refuse to process, or to cancel or reverse, any purchases or sales of Digital Currency in its sole discretion, even after funds have been debited from your account(s), if Coinbase suspects the transaction involves (or has a high risk of involvement in) money laundering, terrorist financing, fraud, or any other type of financial crime; in response to a subpoena, court order, or other government order; if Coinbase reasonably suspects that the transaction is erroneous; or if Coinbase suspects the transaction relates to Prohibited Use or a Prohibited Business as set forth below. In such instances, Coinbase will reverse the transaction and we are under no obligation to allow you to reinstate a purchase or sale order at the same price or on the same terms as the cancelled transaction.

****4.6. Recurring Transactions.**** If you initiate recurring Conversion Service transactions, you authorize Coinbase to initiate recurring electronic payments in accordance with your selected Conversion Service and any corresponding payment accounts, such as recurring automated clearing house (ACH) debit or credit entries from or to your linked bank account. Your recurring transactions will occur in identical, periodic installments, based on your period selection (e.g., daily, weekly, monthly), until either you or Coinbase cancels the recurring order. If you select a U.S. Bank Account as your payment method for a recurring transaction, and such transaction falls on a weekend or holiday, or after bank business hours, the ACH credit or debit will be executed on the next business

day, although the Digital Currency Conversion Rate at the time of the regularly-scheduled transaction will apply. If your Bank is unable to process any electronic ACH debit entry, Coinbase will notify you of cancellation of the transaction and may avail itself of remedies set forth in this User Agreement to recover any amount owed to Coinbase. This authorization will remain in full force and effect until you change your recurring transaction settings at [https://www.coinbase.com/recurring_payments](https://www.coinbase.com/recurring_payments), or until you provide us written notification at [support@coinbase.com](<mailto:support@coinbase.com>). You agree to notify Coinbase in writing of any changes in your linked bank account information prior to a recurring transaction. Coinbase may, at any time, terminate recurring transactions by providing notice to you.

****4.7. Payment Services Partners.**** Coinbase may use a third party payment processor to process any US Dollar payment between you and Coinbase, including but not limited to payments in relation to your use of the Conversion Service or deposits or withdrawals from your USD Wallet or GDAX Account.

5. USD Wallet.

****5.1. USD Wallets**.** Certain approved users may establish and fund a U.S. Dollar balance (“USD Wallet”) to facilitate transactions on the Coinbase or GDAX platforms. You are the owner of the balance of your USD Wallet. Coinbase holds your USD balance in dedicated custodial accounts with a financial institution.

****5.2. Deposits and Withdrawals**.** You may initiate a transfer from your linked bank account to fund your USD Wallet. Coinbase will not charge a fee for

you to transfer funds to or from Coinbase, but bank transfer fees may apply. Funds sent via bank wire (if permitted by Coinbase) are subject to additional wire fees. For deposits, Coinbase will credit your USD Wallet a corresponding amount of dollars after funds are delivered to Coinbase, typically within two to three business days after you authorize a deposit. For withdrawals, Coinbase will immediately debit your USD Wallet when you authorize a withdrawal and funds will typically settle to you within two to three business days. Bank fees are netted out of transfers to or from Coinbase. We will not process a transfer if associated bank fees exceed the value of the transfer.

6. General Use, Prohibited Use, and Termination.

****6.1. Limited License.**** We grant you a limited, nonexclusive, nontransferable license, subject to the terms of this Agreement, to access and use the Coinbase Site, and related content, materials, information (collectively, the “Content”) solely for approved purposes as permitted by Coinbase from time to time. Any other use of the Coinbase Site or Content is expressly prohibited and all other right, title, and interest in the Coinbase Site or Content is exclusively the property of Coinbase and its licensors. You agree you will not copy, transmit, distribute, sell, license, reverse engineer, modify, publish, or participate in the transfer or sale of, create derivative works from, or in any other way exploit any of the Content, in whole or in part. “Coinbase.com“, “Coinbase“, “GDAX“, “gdax.com“ and all logos related to the Coinbase Services or displayed on the Coinbase Site are either trademarks or registered marks of Coinbase or its licensors. You may not copy, imitate or use them without Coinbase’s prior written consent.

****6.2. Website Accuracy.**** Although we intend to provide accurate and timely information on the Coinbase Site, the Coinbase Site (including, without limitation, the Content) may not always be entirely accurate, complete or current and may also include technical inaccuracies or typographical errors. In an effort to continue to provide you with as complete and accurate information as possible, information may be changed or updated from time to time without notice, including without limitation information regarding our policies, products and services. Accordingly, you should verify all information before relying on it, and all decisions based on information contained on the Coinbase Site are your sole responsibility and we shall have no liability for such decisions. Links to third-party materials (including without limitation websites) may be provided as a convenience but are not controlled by us. You acknowledge and agree that we are not responsible for any aspect of the information, content, or services contained in any third-party materials or on any third party sites accessible or linked to the Coinbase Site,

****6.3. Third-Party Applications.**** If, to the extent permitted by Coinbase from time to time, you grant express permission to a third party to access or connect to your Coinbase Account, either through the third party's product or service or through the Coinbase Site, you acknowledge that granting permission to a third party to take specific actions on your behalf does not relieve you of any of your responsibilities under this Agreement. You are fully responsible for all acts or omissions of any third party with access to your Coinbase Account. Further, you acknowledge and agree that you will not hold Coinbase responsible for, and will indemnify Coinbase from, any liability arising

out of or related to any act or omission of any third party with access to your Coinbase Account. You may change or remove permissions granted by you to third parties with respect to your Coinbase Account at any time through the Account Settings (Integrations) page on the Coinbase Site.

****6.4. Prohibited Use.**** In connection with your use of the Coinbase Services, and your interactions with other users, and third parties you agree and represent you will not engage in any [Prohibited Business or Prohibited Use] (https://www.coinbase.com/legal/user_agreement#appendix-1:-prohibited-businesses-and-prohibited-use) defined herein. We reserve the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, sanctions programs, legal process or governmental request. We reserve the right to cancel and/or suspend your Coinbase Account and/or block transactions or freeze funds immediately and without notice if we determine, in our sole discretion, that your Account is associated with a Prohibited Use and/or a Prohibited Business.

****6.5. Transactions Limits**.** The use of all Coinbase Services is subject to a limit on the amount of volume, stated in U.S. Dollar terms, you may transact or transfer in a given period (e.g., daily). To view your limits, login to your Coinbase Account and visit <https://www.coinbase.com/verifications>. Your transaction limits may vary depending on your payment method, verification steps you have completed, and other factors. Coinbase reserves the right to change applicable limits as we deem necessary in our sole discretion. If you wish to raise your limits beyond the posted amounts, you may submit a request to

support@coinbase.com. We may require you to submit additional information about yourself or your business, provide records, and arrange for meetings with Coinbase staff (such process, “Enhanced Due Diligence”). Coinbase reserves the right to charge you costs and fees associated with Enhanced Due Diligence, provided that we notify you in advance of any such charges accruing. In our sole discretion, we may refuse to raise your limits or we may lower your limits at a subsequent time even if you have completed Enhanced Due Diligence.

****6.6. Suspension, Termination, and Cancellation.**** Coinbase may: (a) suspend, restrict, or terminate your access to any or all of the Coinbase Services, and/or (b) deactivate or cancel your Coinbase Account if:

- We are so required by a facially valid subpoena, court order, or binding order of a government authority; _or_

- We reasonably suspect you of using your Coinbase Account in connection with a [Prohibited Use or Business](https://www.coinbase.com/legal/user_agreement#appendix-1:-prohibited-businesses-and-prohibited-use); _or_

- Use of your Coinbase Account is subject to any pending litigation, investigation, or government proceeding and/or we perceive a heightened risk of legal or regulatory non-compliance associated with your Account activity; _or_

- Our service partners are unable to support your use; _or_

- You take any action that Coinbase deems as circumventing Coinbase’s controls, including, but not

limited to, opening multiple Coinbase Accounts or abusing promotions which Coinbase may offer from time to time.

- You breach our [Behavior Policy](<https://support.coinbase.com/customer/portal/articles/2704120>)

If Coinbase suspends or closes your account, or terminates your use of Coinbase Services for any reason, we will provide you with notice of our actions unless a court order or other legal process prohibits Coinbase from providing you with such notice. You acknowledge that Coinbase's decision to take certain actions, including limiting access to, suspending, or closing your account, may be based on confidential criteria that are essential to Coinbase's risk management and security protocols. You agree that Coinbase is under no obligation to disclose the details of its risk management and security procedures to you.

You will be permitted to transfer Digital Currency or funds associated with your Hosted Digital Currency Wallet(s) and/or your USD Wallet(s) for ninety (90) days after Account deactivation or cancellation unless such transfer is otherwise prohibited (i) under the law, including but not limited to applicable sanctions programs, or (ii) by a facially valid subpoena or court order. You may cancel your Coinbase Account at any time by withdrawing all balances and visiting <https://www.coinbase.com/settings/cancel>. You will not be charged for canceling your Coinbase Account, although you will be required to pay any outstanding amounts owed to Coinbase. You authorize us to cancel or suspend any pending transactions at the time of cancellation.

****6.7. Relationship of the Parties.**** Coinbase is an independent contractor for all purposes. Nothing in this Agreement shall be deemed or is intended to be deemed, nor shall it cause, you and Coinbase to be treated as partners, joint ventures, or otherwise as joint associates for profit, or either you or Coinbase to be treated as the agent of the other.

****6.8. Privacy of Others; **Marketing**.** If you receive information about another user through the Coinbase Services, you must keep the information confidential and only use it in connection with the Coinbase Services. You may not disclose or distribute a user's information to a third party or use the information except as reasonably necessary to effectuate a transaction and other functions reasonably incidental thereto such as support, reconciliation and accounting unless you receive the user's express consent to do so. You may not send unsolicited email to a user through the Coinbase Services.

****6.9. Password Security; Contact Information.**** You are responsible for maintaining adequate security and control of any and all IDs, passwords, hints, personal identification numbers (PINs), API keys or any other codes that you use to access the Coinbase Services. Any loss or compromise of the foregoing information and/or your personal information may result in unauthorized access to your Coinbase Account by third-parties and the loss or theft of any Digital Currency and/or funds held in your Coinbase Account and any associated accounts, including your linked bank account(s) and credit card(s). You are responsible for keeping your email address and telephone number up to date in your Account Profile in order to receive any notices or alerts that we may send you. ****We assume no responsibility for any loss that you may sustain due**

to compromise of account login credentials due to no fault of Coinbase and/or failure to follow or act on any notices or alerts that we may send to you**. In the event you believe your Coinbase Account information has been compromised, contact Coinbase Support immediately at support@coinbase.com, or report your claim by phone at (888) 908-7930.

****6.10. Taxes.**** It is your sole responsibility to determine whether, and to what extent, any taxes apply to any transactions you conduct through the Coinbase Services, and to withhold, collect, report and remit the correct amounts of taxes to the appropriate tax authorities. Your transaction history is available through your Coinbase Account.

****6.11. Unclaimed Property**.** If Coinbase is holding funds in your account, and Coinbase is unable to contact you and has no record of your use of the Services for several years, applicable law may require Coinbase to report these funds as unclaimed property to the applicable jurisdiction. If this occurs, Coinbase will try to locate you at the address shown in our records, but if Coinbase is unable to locate you, it may be required to deliver any such funds to the applicable state or jurisdiction as unclaimed property. Coinbase reserves the right to deduct a dormancy fee or other administrative charges from such unclaimed funds, as permitted by applicable law.

7. Customer Feedback, Queries, Complaints, and Dispute Resolution

****7.1. Contact Coinbase.**** If you have any feedback, questions, or complaints, contact us via our Customer Support webpage at https://support.coinbase.com or write to us

at Coinbase Customer Support, 548 Market Street, #23008, San Francisco, CA 94104, USA. When you contact us please provide us with your name, address, and any other information we may need to identify you, your Coinbase Account, and the transaction on which you have feedback, questions, or complaints. If you believe your account has been compromised, you may also report your claim by calling (888) 908-7930.

****7.2. Arbitration; Waiver of Class Action.**** If you have a dispute with Coinbase, we will attempt to resolve any such disputes through our support team. ****If we cannot resolve the dispute through our support team, you and we agree that any dispute arising under this Agreement shall be finally settled in binding arbitration, on an individual basis, in accordance with the American Arbitration Association’s rules for arbitration of consumer-related disputes (accessible at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>) and you and Coinbase hereby expressly waive trial by jury and right to participate in a class action lawsuit or class-wide arbitration**.** The arbitration will be conducted by a single, neutral arbitrator and shall take place in the county or parish in which you reside, or another mutually agreeable location, in the English language. The arbitrator may award any relief that a court of competent jurisdiction could award, including attorneys’ fees when authorized by law, and the arbitral decision may be enforced in any court. At your request, hearings may be conducted in person or by telephone and the arbitrator may provide for submitting and determining motions on briefs, without oral hearings. The prevailing party in any action or proceeding to enforce this agreement shall be entitled to costs and attorneys’ fees.

If the arbitrator(s) or arbitration administrator would impose filing fees or other administrative costs on you, we will reimburse you, upon request, to the extent such fees or costs would exceed those that you would otherwise have to pay if you were proceeding instead in a court. We will also pay additional fees or costs if required to do so by the arbitration administrator's rules or applicable law. Apart from the foregoing, each Party will be responsible for any other fees or costs, such as attorney fees that the Party may incur. If a court decides that any provision of this section 7.2 is invalid or unenforceable, that provision shall be severed and the other parts of this section 7.2 shall still apply. In any case, the remainder of this User Agreement, will continue to apply.

8. General Provisions.

****8.1. Computer Viruses.**** We shall not bear any liability, whatsoever, for any damage or interruptions caused by any computer viruses, spyware, scareware, Trojan horses, worms or other malware that may affect your computer or other equipment, or any phishing, spoofing or other attack. We advise the regular use of a reputable and readily available virus screening and prevention software. You should also be aware that SMS and email services are vulnerable to spoofing and phishing attacks and should use care in reviewing messages purporting to originate from Coinbase. Always log into your Coinbase Account through the Coinbase Site to review any transactions or required actions if you have any uncertainty regarding the authenticity of any communication or notice.

****8.2. Release of Coinbase; Indemnification.**** If you have a dispute with one or more users of the Coinbase services, you release Coinbase, its affiliates and

service providers, and each of their respective officers, directors, agents, joint venturers, employees and representatives from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes. You agree to indemnify and hold Coinbase, its affiliates and Service Providers, and each of its or their respective officers, directors, agents, joint venturers, employees and representatives, harmless from any claim or demand (including attorneys' fees and any fines, fees or penalties imposed by any regulatory authority) arising out of or related to your breach of this Agreement or your violation of any law, rule or regulation, or the rights of any third party.

****8.3. Limitation of Liability; No Warranty.**** IN NO EVENT SHALL COINBASE, ITS AFFILIATES AND SERVICE PROVIDERS, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES OR REPRESENTATIVES, BE LIABLE (A) FOR ANY AMOUNT GREATER THAN THE VALUE OF THE SUPPORTED DIGITAL CURRENCY ON DEPOSIT IN YOUR COINBASE ACCOUNT OR (B) FOR ANY LOST PROFITS OR ANY SPECIAL, INCIDENTAL, INDIRECT, INTANGIBLE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH AUTHORIZED OR UNAUTHORIZED USE OF THE COINBASE SITE OR THE COINBASE SERVICES, OR THIS AGREEMENT, EVEN IF AN AUTHORIZED REPRESENTATIVE OF COINBASE HAS BEEN ADVISED OF OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH

DAMAGES. THIS MEANS, BY WAY OF EXAMPLE ONLY (AND WITHOUT LIMITING THE SCOPE OF THE PRECEDING SENTENCE), THAT IF YOU CLAIM THAT COINBASE FAILED TO PROCESS A BUY OR SELL TRANSACTION PROPERLY, YOUR DAMAGES ARE LIMITED TO NO MORE THAN THE VALUE OF THE SUPPORTED DIGITAL CURRENCY AT ISSUE IN THE TRANSACTION, AND THAT YOU MAY NOT RECOVER FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, OR OTHER TYPES OF SPECIAL, INCIDENTAL, INDIRECT, INTANGIBLE, OR CONSEQUENTIAL DAMAGES IN EXCESS OF THE VALUE OF THE SUPPORTED DIGITAL CURRENCY AT ISSUE IN THE TRANSACTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THE COINBASE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COINBASE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. COINBASE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT ACCESS TO THE SITE, ANY PART OF THE COINBASE SERVICES, OR ANY OF THE MATERIALS CONTAINED THEREIN, WILL BE CONTINUOUS, UNINTERRUPTED, TIMELY, OR ERROR-FREE.

Coinbase makes no representations about the accuracy or completeness of historical Digital Currency price data available on the Site. Coinbase will make reasonable efforts to ensure that requests for electronic debits and credits involving bank accounts, credit cards, and check issuances are processed in a timely manner but Coinbase makes no representations or warranties regarding the amount of time needed to complete processing which is dependent upon many factors outside of our control.

IF YOU ARE A NEW JERSEY RESIDENT, the provisions of this Section 8.3 are intended to apply only to the extent permitted under New Jersey law.

****8.4. Entire Agreement.**** This Agreement, the Privacy Policy, E-Sign Consent, and Appendices incorporated by reference herein comprise the entire understanding and agreement between you and Coinbase as to the subject matter hereof, and supersedes any and all prior discussions, agreements and understandings of any kind (including without limitation any prior versions of this Agreement), and every nature between and among you and Coinbase. Section headings in this Agreement are for convenience only, and shall not govern the meaning or interpretation of any provision of this Agreement.

****8.5. Amendments**.** We may amend or modify this Agreement by posting on the Coinbase Site or emailing to you the revised Agreement, and the revised Agreement shall be effective at such time. If you do not agree with any such modification, your sole and exclusive remedy is to terminate your use of the Services and close your account. You agree that we shall not be liable to you or any third party for any modification or termination of the Coinbase Services, or

suspension or termination of your access to the Coinbase Services, except to the extent otherwise expressly set forth herein. If the revised Agreement includes a material change, we will endeavor to provide you advanced notice via our website and/or email before the material change becomes effective.

****8.6. Assignment.**** You may not assign any rights and/or licenses granted under this Agreement. We reserve the right to assign our rights without restriction, including without limitation to any Coinbase affiliates or subsidiaries, or to any successor in interest of any business associated with the Coinbase Services. Any attempted transfer or assignment in violation hereof shall be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

****8.7. Severability.**** If any provision of this Agreement shall be determined to be invalid or unenforceable under any rule, law or regulation or any governmental agency, local, state, or federal, such provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under any applicable law and the validity or enforceability of any other provision of this Agreement shall not be affected.

****8.8. Change of Control.**** In the event that Coinbase is acquired by or merged with a third party entity, we reserve the right, in any of these circumstances, to transfer or assign the information we have collected from you as part of such merger, acquisition, sale, or other change of control.

****8.9. Survival.**** All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement, including, without

limitation, sections pertaining to suspension or termination, Coinbase Account cancellation, debts owed to Coinbase, general use of the Coinbase Site, disputes with Coinbase, and general provisions, shall survive the termination or expiration of this Agreement.

****8.10. Governing Law.**** You agree that the laws of the State of California, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute that has arisen or may arise between you and Coinbase, except to the extent governed by federal law.

****8.11. Force Majeure.**** We shall not be liable for delays, failure in performance or interruption of service which result directly or indirectly from any cause or condition beyond our reasonable control, including but not limited to, any delay or failure due to any act of God, act of civil or military authorities, act of terrorists, civil disturbance, war, strike or other labor dispute, fire, interruption in telecommunications or Internet services or network provider services, failure of equipment and/or software, other catastrophe or any other occurrence which is beyond our reasonable control and shall not affect the validity and enforceability of any remaining provisions.

****8.12. English Language Controls.**** Notwithstanding any other provision of this Agreement, any translation of this Agreement is provided for your convenience. The meanings of terms, conditions and representations herein are subject to definitions and interpretations in the English language. Any translation provided may not accurately represent the information in the original English.

****8.13. Non-Waiver of Rights.**** This agreement shall not be construed to waive rights that cannot be

waived under applicable state money transmission laws in the state where you are located.

APPENDIX 1: PROHIBITED USE, PROHIBITED BUSINESSES AND CONDITIONAL USE

****Prohibited Use****

You may not use your Coinbase Account to engage in the following categories of activity (“Prohibited Uses”). The specific types of use listed below are representative, but not exhaustive. If you are uncertain as to whether or not your use of Coinbase Services involves a Prohibited Use, or have questions about how these requirements apply to you, please contact us at support@coinbase.com. By opening a Coinbase Account, you confirm that you will not use your Account to do any of the following:

- ****Unlawful Activity:**** Activity which would violate, or assist in violation of, any law, statute, ordinance, or regulation, sanctions programs administered in the countries where Coinbase conducts business, including but not limited to the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”), or which would involve proceeds of any unlawful activity; publish, distribute or disseminate any unlawful material or information

- ****Abusive Activity:**** Actions which impose an unreasonable or disproportionately large load on our infrastructure, or detrimentally interfere with, intercept, or expropriate any system, data, or information; transmit or upload any material to the Coinbase Site that contains viruses, trojan horses, worms, or any other harmful or deleterious programs; attempt to gain unauthorized access to the Coinbase Site, other

Coinbase Accounts, computer systems or networks connected to the Coinbase Site, through password mining or any other means; use Coinbase Account information of another party to access or use the Coinbase Site, except in the case of specific Merchants and/or applications which are specifically authorized by a user to access such user's Coinbase Account and information; or transfer your account access or rights to your account to a third party, unless by operation of law or with the express permission of Coinbase

- **Abuse Other Users:** Interfere with another individual's or entity's access to or use of any Coinbase Services; defame, abuse, extort, harass, stalk, threaten or otherwise violate or infringe the legal rights (such as, but not limited to, rights of privacy, publicity and intellectual property) of others; incite, threaten, facilitate, promote, or encourage hate, racial intolerance, or violent acts against others; harvest or otherwise collect information from the Coinbase Site about others, including without limitation email addresses, without proper consent

- **Fraud:** Activity which operates to defraud Coinbase, Coinbase users, or any other person; provide any false, inaccurate, or misleading information to Coinbase

- **Gambling:** Lotteries; bidding fee auctions; sports forecasting or odds making; fantasy sports leagues with cash prizes; internet gaming; contests; sweepstakes; games of chance

- **Intellectual Property Infringement:** Engage in transactions involving items that infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the law, including but not limited to sales, distribution, or access to

counterfeit music, movies, software, or other licensed materials without the appropriate authorization from the rights holder; use of Coinbase intellectual property, name, or logo, including use of Coinbase trade or service marks, without express consent from Coinbase or in a manner that otherwise harms Coinbase or the Coinbase brand; any action that implies an untrue endorsement by or affiliation with Coinbase

****Prohibited Businesses****

In addition to the Prohibited Uses described above, the following categories of businesses, business practices, and sale items are barred from Coinbase Services (“Prohibited Businesses”). Most Prohibited Businesses categories are imposed by Card Network rules or the requirements of our banking providers or processors. The specific types of use listed below are representative, but not exhaustive. If you are uncertain as to whether or not your use of Coinbase Services involves a Prohibited Business, or have questions about how these requirements apply to you, please contact us at [\[support@coinbase.com\]](mailto:support@coinbase.com)(mailto:support@coinbase.com).

By opening a Coinbase Account, you confirm that you will not use Coinbase Services in connection with any of following businesses, activities, practices, or items:

- ****Investment and Credit Services:**** Securities brokers; mortgage consulting or debt reduction services; credit counseling or repair; real estate opportunities; investment schemes
- ****Restricted Financial Services:**** Check cashing, bail bonds; collections agencies.

- **Intellectual Property or Proprietary Rights Infringement:** Sales, distribution, or access to counterfeit music, movies, software, or other licensed materials without the appropriate authorization from the rights holder
- **Counterfeit or Unauthorized Goods:** Unauthorized sale or resale of brand name or designer products or services; sale of goods or services that are illegally imported or exported or which are stolen
- **Regulated Products and Services:** Marijuana dispensaries and related businesses; sale of tobacco, e-cigarettes, and e-liquid; online prescription or pharmaceutical services; age restricted goods or services; weapons and munitions; gunpowder and other explosives; fireworks and related goods; toxic, flammable, and radioactive materials; products and services with varying legal status on a state-by-state basis
- **Drugs and Drug Paraphernalia:** Sale of narcotics, controlled substances, and any equipment designed for making or using drugs, such as bongos, vaporizers, and hookahs
- **Pseudo-Pharmaceuticals:** Pharmaceuticals and other products that make health claims that have not been approved or verified by the applicable local and/or national regulatory body
- **Substances designed to mimic illegal drugs:** Sale of a legal substance that provides the same effect as an illegal drug (e.g., salvia, kratom)
- **Adult Content and Services:** Pornography and other obscene materials (including literature, imagery and other media); sites offering any sexually-related services such as prostitution, escorts, pay-per view, adult live chat features

- **Multi-level Marketing:** Pyramid schemes, network marketing, and referral marketing programs

- **Unfair, predatory or deceptive practices:** Investment opportunities or other services that promise high rewards; Sale or resale of a service without added benefit to the buyer; resale of government offerings without authorization or added value; sites that we determine in our sole discretion to be unfair, deceptive, or predatory towards consumers

- **High risk businesses:** any businesses that we believe poses elevated financial risk, legal liability, or violates card network or bank policies

Conditional Use

Express written consent and approval from Coinbase must be obtained prior to using Coinbase Services for the following categories of business and/or use (“Conditional Uses”). Consent may be requested by contacting [\[support@coinbase.com\]](mailto:support@coinbase.com)(mailto:support@coinbase.com). Coinbase may also require you to agree to additional conditions, make supplemental representations and warranties, complete enhanced on-boarding procedures, and operate subject to restrictions if you use Coinbase Services in connection with any of following businesses, activities, or practices:

- **Money Services:** Money transmitters, Digital Currency transmitters; currency or Digital Currency exchanges or dealers; gift cards; prepaid cards; sale of in-game currency unless the merchant is the operator of the virtual world; act as a payment intermediary or aggregator or otherwise resell any of the Coinbase Services

- **Charities:** Acceptance of donations for non-profit enterprise
- **Games of Skill:** Games which are not defined as gambling under this Agreement or by law, but which require an entry fee and award a prize
- **Religious/Spiritual Organizations:** Operation of a for-profit religious or spiritual organization

APPENDIX 2: VERIFICATION PROCEDURES AND LIMITS

Coinbase uses multi-level systems and procedures to collect and verify information about you in order to protect Coinbase and the community from fraudulent users, and to keep appropriate records of Coinbase's customers. Your daily or weekly Conversion limits, GDAX deposit, withdrawal and trading limits, Instant Buy limits, USD Wallet transfer limits, and limits on transactions from a linked payment method are based on the identifying information and/or proof of identity you provide to Coinbase.

All U.S. users who wish to buy Digital Currency using Coinbase's Standard Conversion Service, at minimum, must:

- Establish a Coinbase Account by providing your name, authenticating your e-mail address, and accepting the Coinbase User Terms
- Add and verify a phone number
- Add and verify a bank account

All U.S. users who wish to use other Coinbase Services may be required to:

- Add personal details (full name, date of birth, residential address)

- Add an alternative payment method
- Complete identity verification by answering a few questions

Users based in the state of New York using Coinbase's Hosted Digital Currency Wallet Service who wish to execute a Digital Currency Transaction valued at or over \$3,000 at the time the transaction is requested, at a minimum, must:

- Establish a Coinbase Account by providing your name and residential address, authenticating your e-mail address, and accepting the Coinbase User Terms, and
- Submit a copy of an acceptable form of identification (i.e. passport, state driver's license, or state identification card)

Notwithstanding these minimum verification procedures for the referenced Coinbase Services, Coinbase may require you to provide or verify additional information, or to wait some amount of time after completion of a transaction, before permitting you to use any Coinbase Services and/or before permitting you to engage in transactions beyond certain volume limits. You may determine the volume limits associated with your level of identity verification by visiting your account's [Limits](<https://www.coinbase.com/verifications>) page.

You may contact support@coinbase.com to request larger limits. Coinbase will require you to submit to Enhanced Due Diligence. Additional fees and costs may apply, and Coinbase does not guarantee that we will raise your limits.

APPENDIX 3: E-SIGN DISCLOSURE AND CONSENT

This policy describes how Coinbase delivers communications to you electronically. We may amend this policy at any time by providing a revised version on our website. The revised version will be effective at the time we post it. We will provide you with prior notice of any material changes via our website.

****Electronic Delivery of Communications****

You agree and consent to receive electronically all communications, agreements, documents, notices and disclosures (collectively, “Communications”) that we provide in connection with your Coinbase Account and your use of Coinbase Services. Communications include:

- Terms of use and policies you agree to (e.g., the Coinbase User Agreement and Privacy Policy), including updates to these agreements or policies;
- Account details, history, transaction receipts, confirmations, and any other Account or transaction information;
- Legal, regulatory, and tax disclosures or statements we may be required to make available to you; and
- Responses to claims or customer support inquiries filed in connection with your Account.

We will provide these Communications to you by posting them on the Coinbase website, emailing them to you at the primary email address listed in your Coinbase profile, communicating to you via instant chat, and/or through other electronic communication such as text message or mobile push notification.

****Hardware and Software Requirements****

In order to access and retain electronic Communications, you will need the following computer hardware and software:

- A device with an Internet connection;
- A current web browser that includes 128-bit encryption (e.g. Internet Explorer version 9.0 and above, Firefox version 3.6 and above, Chrome version 31.0 and above, or Safari 7.0 and above) with cookies enabled;
- A valid email address (your primary email address on file with Coinbase); and
- Sufficient storage space to save past Communications or an installed printer to print them.

****How to Withdraw Your Consent****

You may withdraw your consent to receive Communications electronically by e-mailing us at support@coinbase.com. If you fail to provide or if you withdraw your consent to receive Communications electronically, Coinbase reserves the right to immediately close your Account or charge you additional fees for paper copies.

****Updating your Information****

It is your responsibility to provide us with a true, accurate and complete e-mail address and your contact information, and to keep such information up to date. You understand and agree that if Coinbase sends you an electronic Communication but you do not receive it because your primary email address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic

Communications, Coinbase will be deemed to have provided the Communication to you.

You may update your information by logging into your account and visiting settings or by contacting our support team via e-mail at support@coinbase.com

APPENDIX 4: STATE LICENSE DISCLOSURES

Coinbase maintains licenses to engage in money transmission activities in many states, and these licenses may impact our provision and your use of certain Coinbase Services depending on where you live. Coinbase's licenses and corresponding required disclosures can be found on the [Coinbase Licenses](https://coinbase.com/legal/licenses) page, which is incorporated by reference.

If you live in the following jurisdictions, we are required to provide you with the following information:

****Alaska**** Please note that this license does not cover the transmission of virtual currency. If you have a complaint or other concern about Alaska money services licensees, authorized delegates, and the money services provided by money services licensees and authorized delegates, you may contact the Alaska Department of Commerce, Community, and Economic Development, Division of Banking and Securities at (907) 465-2521.

****Florida**** If you have a question or complaint, please contact the consumer assistance division of Coinbase at support@coinbase.com or 1-888-9087930.

NOTICE by the Florida Office of Financial Regulation: BY GRANTING COINBASE A LICENSE, THE

FLORIDA OFFICE OF FINANCIAL REGULATION
IS NOT ENDORSING THE USE OF DIGITAL OR
VIRTUAL CURRENCIES.

- U.S. currency is legal tender backed by the U.S. government.
- Digital and virtual currencies are not issued or backed by the U.S. government, or related in any way to U.S. currency, and have fewer regulatory protections.
- The value of digital and virtual currencies is derived from supply and demand in the global marketplace which can rise or fall independently of any fiat (government) currency.
- Holding digital and virtual currencies carries exchange rate and other types of risk.

POTENTIAL USERS OF DIGITAL OR VIRTUAL CURRENCIES, INCLUDING BUT NOT LIMITED TO BITCOIN, SHOULD BE FOREWARNED OF A POSSIBLE FINANCIAL LOSS AT THE TIME THAT SUCH CURRENCIES ARE EXCHANGED FOR FIAT CURRENCY DUE TO AN UNFAVORABLE EXCHANGE RATE. A FAVORABLE EXCHANGE RATE AT THE TIME OF EXCHANGE CAN RESULT IN A TAX LIABILITY. PLEASE CONSULT YOUR TAX ADVISOR REGARDING ANY TAX CONSEQUENCES ASSOCIATED WITH YOUR HOLDING OR USE OF DIGITAL OR VIRTUAL CURRENCIES.

****Louisiana**** Coinbase is licensed by the Louisiana Office of Financial Institutions as a money transmitter. The Louisiana Office of Financial Institutions does not license or regulate services related to virtual

currency, including but not limited to transmission or exchange which may be conducted by Coinbase.

****Maryland**** The Commissioner of Financial Regulation for the State of Maryland will accept all questions or complaints from Maryland residents regarding Coinbase by contacting the Commissioner's office at: 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, or (888) 784-0136.

****New York**** Coinbase holds licenses issued by the New York State Department of Financial Services ("NYDFS") to engage in money transmission and virtual currency business activity, respectively. If you have a complaint, please contact support@coinbase.com or 1-888-908-7930. New York consumers may also direct unresolved complaints directly to NYDFS at the [NYDFS Consumer Complaint Portal](https://myportal.dfs.ny.gov/web/guest-applications/consumer-complaint?hn=1&forward=new) or by contacting the NYDFS as follows: NYDFS Consumer Assistance Unit, One Commerce Plaza, Albany, NY 12257, 1-800-342-3736.

Please note the following disclosures associated with virtual currency:

- Virtual currency is not legal tender, is not backed by the government, and accounts and value balances are not subject to Federal Deposit Insurance Corporation or Securities Investor Protection Corporation protections.

- Legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of virtual currency.

- Transactions in virtual currency may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable.

- Some virtual currency transactions shall be deemed to be made when recorded on a public ledger, which is not necessarily the date or time that the customer initiates the transaction.

- The value of virtual currency may be derived from the continued willingness of market participants to exchange fiat currency for virtual currency, which may result in the potential for permanent and total loss of value of a particular virtual currency should the market for that virtual currency disappear.

- There is no assurance that a person who accepts a virtual currency as payment today will continue to do so in the future.

- The volatility and unpredictability of the price of virtual currency relative to fiat currency may result in significant loss over a short period of time.

- The nature of virtual currency may lead to an increased risk of fraud or cyber attack.

- The nature of virtual currency means that any technological difficulties experienced by Coinbase may prevent the access or use of a customer's virtual currency.

- Any bond or trust account maintained by Coinbase for the benefit of its customers may not be sufficient to cover all losses incurred by customers.

Texas If you have a complaint, please contact the consumer assistance division of **Coinbase** at **support@coinbase.com** or **1-888-9087930**. If you still have an

unresolved complaint regarding Coinbase's money transmission activity, please direct your complaint to: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, 1-877-276-5554 (toll free), or [www.dob.texas.gov] (<http://www.dob.texas.gov/>).

****Tennessee**** Please note that Coinbase's Tennessee license and the required surety bond do not cover the transmission of virtual currency. Coinbase is licensed by the Tennessee Department of Financial Institutions as a money transmitter. The Tennessee Department of Financial Institutions does not regulate virtual currency.

****Virginia**** Coinbase is licensed by the Virginia State Corporation Commission as a money transmitter, but such license does not cover the transmission of virtual currency (Bitcoin).

PART 2. ADDITIONAL TERMS FOR MERCHANTS

1. Merchant Services.

****1.1. Merchant Services.**** Users who intend to sell goods and/or services (each, a "Merchant") and who wish to accept Digital Currency from purchasers as a method of payment may use a suite of tools and related services for this purpose (the "Merchant Services"). Through the Merchant Services, Coinbase enables Merchants to accept Digital Currency from customers as a method of payment, and processes the transfer of Digital Currency to Merchants from their customers. Merchants may also sell Digital Currency to, or buy Digital Currency from, Coinbase, and otherwise utilize the Coinbase Services, in the same manner as any other user. Use of Merchant Services is subject to this

Part 2 and is also subject to General Use terms, including without limitation the releases, indemnities, disclaimers, limitations of liability, prohibited use, dispute resolution, and cancellation policies set forth above.

****1.2. Merchant Profile**.** Each Merchant user is required to provide accurate information necessary to complete a merchant profile associated with the user's Coinbase Account. This information may include business name, address and other contact information, website URL, taxpayer or other government ID, corporate documents, and other information Coinbase may request. Coinbase may limit Merchant transaction volumes depending on (i) the Merchant's historical activity on Coinbase, (ii) satisfactory completion of a Merchant profile; (iii) satisfaction of reasonable requests for additional information; (iv) perceived risks; (v) repeated customer complaints; and/or (vi) any indication that the Merchant has violated this Agreement. Newly on-boarded Merchants may be required to submit to additional verification procedures as necessary to verify that the Merchant operates a legitimate business.

2. Merchant Transactions and Settlement.

****2.1. Transaction Confirmation.**** Coinbase will provide users of Merchant Services with an order notification indicating when or whether the Merchant has been paid by its customer.

****2.2. Completed Order Notifications.**** Upon Merchant's customer's submission of a valid and completed payment through Merchant Services, Coinbase will send a callback to Merchant's designated callback URL to confirm successful transfer of the customer's payment to Merchant—so designated as a “completed”

order. Except on suspicion of fraud, error, or abusive use, Coinbase will not reverse a payment and/or corresponding Digital Currency credit which it has designated as completed.

****2.3. Timing of Completed Order.**** If the Merchant's customer uses a Hosted Digital Currency Wallet to successfully initiate its purchase, Coinbase will issue the completed callback order immediately to the Merchant. If the Merchant's customer does not use a Hosted Digital Currency Wallet to effect its purchase, Coinbase will initiate an order status callback when Coinbase detects that the corresponding Digital Currency transaction has been confirmed by the corresponding Digital Currency network.

****2.4. Mispaid Order Notifications.**** A callback may also indicate an order status as "mispaid," meaning Coinbase has detected transfer of an amount of Digital Currency which does not correspond with the Digital Currency Price and/or that the customer transferred Digital Currency after expiration of a checkout window. "Mispaid" orders may result in transfer of Digital Currency to Merchant's Coinbase Wallet for further processing by Merchant in accordance with Merchant's refund and order processing policies, but shall not be deemed completed by Coinbase.

****2.5. Limitations.**** Coinbase may delay order verifications if Merchant has not provided its legal name, logo, website, phone number, address, taxpayer identification number, designation of business location and type. Until completion of such applicable verification procedures, newly-boarded Merchants may experience delayed processing of Digital Currency Transactions or Conversion Service transactions. Coinbase will designate any such delayed transaction as "pending," and

funds will not be available in the Merchant's Coinbase Account and/or Currency Account until the pending transaction is completed. Coinbase reserves the right to refuse to process, cancel, or to reverse any Merchant transaction (_i_) as required by law, (_ii_) in response to a facially valid subpoena, court order, or other government order, or (_iii_) if Coinbase reasonably suspects that the transaction is erroneous, or related to [Prohibited Use or Prohibited Business](https://www.coinbase.com/legal/user_agreement#appendix-1:-prohibited-businesses-and-prohibited-use) as defined in the User Agreement.

****2.6. Instant Conversion.**** Merchants who have successfully linked a payout method to their Coinbase Account may use the Instant Conversion Service. The Instant Conversion Service will allow Merchants to designate the price of their goods and services in Fiat Currency (e.g., USD) and customers to pay for their purchases from such Merchant in Digital Currency based on the Sell Price Conversion Rate quoted by Coinbase on the Coinbase Site and displayed to the customer at the time that the customer approves the purchase. In connection with the Instant Conversion Service, the Merchant, as merchant of record for each transaction, shall: (_i_) use Coinbase to calculate an appropriate amount of Digital Currency (a "Digital Currency Price") to be transferred to Merchant as payment for a good or service with reference to the Sell Price Conversion Rate at the time Merchant's customer visits the Merchant's checkout page; Coinbase will lock the Digital Currency Price for a period of time, but if the customer does not initiate a transfer within a certain payment window, Coinbase will recalculate the Digital Currency Price based on an updated Sell Price Conversion Rate; (_ii_) accept Digital

Currency into its corresponding Hosted Digital Currency Wallet; (iii) immediately sell such Digital Currency to Coinbase using the Instant Conversion Service, and (iv) subsequently receive the proceeds from such Digital Currency sale transaction from Coinbase in the relevant Fiat Currency in an amount equal to the original USD price of the item, less applicable fees. By using this service, Coinbase guarantees that regardless of any change in the price of Digital Currency between the time of purchase and settlement, the Merchant will receive the fixed purchase price as designated by the Merchant in Fiat Currency at the time the customer approved the purchase, less applicable fees.

****2.7. Settlement.**** Settlements to Merchant in connection with the Merchant's sale of Digital Currency to Coinbase will generally take a minimum of two to three business days, following Coinbase's transmission to Merchant of confirmation of the relevant transaction, although exceptions may apply.

3. Release, Restrictions, and General Use.

****3.1 Merchant Transactions.**** Each Merchant acknowledges and agrees that Coinbase has no control over, or liability for, the delivery, quality, safety, legality or any other aspect of any goods or services that the Merchant may sell to customers using the Coinbase Services. Each Merchant is responsible for handling customer inquiries related to the goods and/or services it sells to customers through the Coinbase Services, except for inquiries related to payment for such goods or services which will be handled by Coinbase. Each Merchant warrants that it will not use any Coinbase Services in connection with any [Prohibited Use or

Business](https://www.coinbase.com/legal/user_agreement#appendix-1:-prohibited-businesses-and-prohibited-use), as described herein. Each Merchant confirms that by opening a Coinbase Account, the Merchant will not use the Coinbase Services to accept payments in connection with any of the Prohibited Businesses. Each Merchant further warrants that it will not use Coinbase Services in connection with transactions which involve pre-payment of an order which the Merchant does not intend to fulfill within thirty (30) days. When a Merchant must issue a refund to a customer, Coinbase will debit the Merchant's Hosted Digital Currency Wallet for the relevant amount of Digital Currency (or, in the event the Merchant uses the Instant Conversion Service, the Merchant shall purchase the relevant amount of Digital Currency in Fiat Currency before Digital Currency is debited from the Merchant's Hosted Digital Currency Wallet) and provide a refund to the customer in Digital Currency having a value equal to the transaction amount being refunded, as expressed in Fiat Currency (e.g., USD), based on the then current Conversion Rate.

****3.2. Obligations of Merchants.**** In addition to the obligations set forth elsewhere in this Agreement, Merchants agree to:

(1) At all times maintain all licenses, registrations, authorizations and approvals required to operate their business, conduct all activities related thereto, and utilize the Coinbase Services in connection therewith.

(2) Ensure that all aspects of their business, including (i) all Merchant activities, and the activity of any third party engaged by the Merchant, (ii) the goods and services offered for sale by Merchant, and (iii)

the acts or omissions of each Merchant in connection with their use of Coinbase Services comply with applicable law at all times.

(3) Promptly provide, and cause third parties under its control to promptly provide, such information as Coinbase may request from time to time regarding (_i_) the Merchant, its policies, procedures, and activities, (_ii_) any good or service offered for sale and for which the Merchant may accept payment by use of Coinbase Services, or (_iii_) any transaction conducted through the use of Coinbase Services, to the extent Coinbase deems such information reasonably necessary to comply with its policies or procedures, applicable law, an audit, or the guidance or direction of, or request from, any regulatory authority or financial institution.

(4) Within the Coinbase-hosted payment page, accurately identify the sale item in the Item Name field and provide an accurate and succinct description of the same sale item in the Item Description Field.

(5) Authorize Coinbase to, directly or through third parties, (_i_) make any inquiries we consider necessary to verify your identity and/or account information, and (_ii_) request and obtain any consumer report, credit report or similar information relating to you and to take action we reasonably deem necessary based on the results of such inquiries and reports, and hereby authorize any and all third parties to which such inquiries or requests may be directed to fully respond to such inquiries or requests.

PART 3. GDAX

1. GDAX Accounts.

****1.1 Access to GDAX.**** Eligible users may establish an account at GDAX (at www.gdax.com), an order book exchange platform for Digital Currencies. Coinbase does not offer GDAX to customers in all jurisdictions. This Part 3 of the User Agreement applies to you if you access GDAX.

****1.2 Order Books.**** GDAX offers an order book for various Digital Currency and Fiat Currency trading pairs (each an ‘Order Book’). Refer to your GDAX account to determine which Order Books are available to you.

****1.3 Your GDAX Account**.** Your GDAX Account consists of the following.

- A dedicated Hosted Digital Currency Wallet for each Digital Currency offered on GDAX.
- A dedicated Fiat Currency Wallet.
- Associated user tools, accessible at [www.gdax.com](<http://www.gdax.com>) and through GDAX API.

****1.4 Deposits**.** You may fund your GDAX Account by depositing Digital Currency and/or Fiat Currency from your basic Coinbase Account, Bank Account or an external Digital Currency address into your GDAX Account. Funds in your GDAX Account can be used only to trade on GDAX.

****1.5 Withdrawals**.** You may withdraw Digital Currency from your GDAX Account by transfer to your basic Coinbase Account or to an external Digital Currency address. You may withdraw Fiat Currency from

your GDAX Account to your basic Coinbase Account or directly to your Bank Account.

****ALL DEPOSITS AND WITHDRAWALS MAY BE SUBJECT TO LIMITS. ALL LIMITS WILL BE DISPLAYED IN YOUR GDAX ACCOUNT.****

****1.6 Withdrawal Fees.**** Coinbase may also charge a fee on certain Fiat Currency deposit or withdrawal methods (e.g. bank wire). All such fees will be clearly displayed in your GDAX Account.

2. Trading Rules and Trading Fees

****2.1 Trading Rules****. By accessing GDAX through www.gdax.com or GDAX API, you accept and agree to be bound by the [Trading Rules](https://support.gdax.com/customer/en/portal/articles/2725970-trading-rules?b_id=13522)

****2.2. Trading Fees****.

By placing an order on GDAX, you agree to pay all applicable fees and you authorize Coinbase to automatically deduct fees directly from your GDAX Account. Trading Fees are set forth in the Trading Rules and at [[gdax.com/fees](https://www.gdax.com/fees)](<https://www.gdax.com/fees>)

3. General Use, Restrictions, and Cancellation.

****3.1. Trading Account Use****. By using a GDAX Account you agree and represent that you will use GDAX only for yourself as Account owner, and not on behalf of any third party, unless you have obtained prior approval from Coinbase. You may not sell, lease, furnish or otherwise permit or provide access to your Trading Account to any other entity or to any individual that is not your employee or agent. You accept full responsibility for your employees' or agents' use of GDAX,

whether such use is directly through GDAX website or by other means, such as those facilitated through API keys, and/or applications which you may authorize. You understand and agree that you are responsible for any and all orders, trades, and other instructions entered into GDAX including identifiers, permissions, passwords, and security codes associated with your GDAX Account.

****3.2. Suspension and Cancellation**.** We may suspend your GDAX Account or your access to any one or more Order Books in accordance with the User Agreement Account suspension and termination provisions. Suspension or termination of your GDAX Account shall not affect the payment of fees or other amounts you owe to Coinbase. In the event that your Basic Coinbase Account is suspended or terminated, we will immediately cancel all open orders associated with your GDAX Account, block all withdrawals and bar the placing of further orders until resolution or Account cancellation.

****3.3. No Warranty**.** We do not represent that GDAX and/or its constituent GDAX Accounts, APIs, and related services, will be available without interruption. Although we will strive to provide you with continuous operations, we do not guarantee continuous access or that there will be no delays, failures, errors, omissions or loss of transmitted information, nor do we guarantee that any order will be executed, accepted, recorded, or remain open. Coinbase reserves the right to cancel any open trades and/or suspend GDAX activity in accordance with the Trading Rules.

****3.4. No Investment Advice or Brokerage**.** For the avoidance of doubt, Coinbase does not provide investment, tax, or legal advice, nor does Coinbase

broker trades on your behalf. All GDAX trades are executed automatically, based on the parameters of your order instructions and in accordance with posted Trade execution procedures, and you are solely responsible for determining whether any investment, investment strategy or related transaction is appropriate for you based on your personal investment objectives, financial circumstances and risk tolerance. You should consult your legal or tax professional regarding your specific situation.

****3.5. Debts.**** In the event that there are outstanding amounts owed to us hereunder, including in your Coinbase Account, Coinbase reserves the right to debit your GDAX Account accordingly and/or to withhold amounts from funds you may transfer from your GDAX Account to your Coinbase Account.

PART 4. ADDITIONAL TERMS FOR DEVELOPERS

1. Developer's Tools License.

****1.1. Developer's Tools.**** This Agreement governs your use of any and all development applications provided by Coinbase, including, but not limited to Coinbase's application programming interface and any accompanying or related documentation, source code, executable applications and other materials (the "Coinbase API"), the Coinbase Sandbox, available at <https://sandbox.coinbase.com/>, and any other resources or services available at <https://developers.coinbase.com/> ("Coinbase Services") provided to you pursuant to this Agreement (collectively, the "Developer's Tools"). Use of the Developer's Tools is subject to this Part 4 and is also subject to General Use terms, including without limitation the releases,

indemnities, disclaimers, limitations of liability, prohibited use, dispute resolution, and cancellation policies set forth above.

****1.2. License Grant.**** Subject to the terms and restrictions set forth in this Agreement, Coinbase grants you a limited, revocable, non-exclusive, non-transferable and non-sublicensable license solely to use and integrate the Developer's Tools and underlying content into your website or application (your "Application") so that your Application can interface directly with Coinbase devices, applications, or services.

****1.3. Restrictions and Responsibilities.**** By using the Developer's Tools, you agree to the following terms:

****1.3.1. You shall:****

- (1) Register for a Coinbase Account.
- (2) Comply with the terms of this Agreement and the Privacy Policy incorporated herein by reference, and which may be amended from time to time (the "Terms"). If you continue to use the Developer's Tools and Coinbase Marks after any such amendment, you will be deemed to have accepted any modifications.
- (3) Comply with all applicable laws, regulations, licensing requirements, and third party rights (including, without limitation, data privacy laws).
- (4) Represent and warrant that your Application, including but not limited to the name of the Application and all content in your Application, does not infringe the Intellectual Property rights of Coinbase or any third party.
- (5) Disclose in your Application, through a privacy policy or otherwise, how you collect, use, store, and

disclose data collected from end users, as described in Section 6.2 of this Part 4.

(6) Use the Coinbase Marks only as expressly authorized in this Agreement.

(7) Obtain prior written approval from Coinbase prior to releasing any statements, written media releases, public announcements and public disclosures, including promotional or marketing materials, relating to Coinbase, the Coinbase Marks, or this Agreement.

(8) Comply with additional verification procedures in the event that your Application seeks OAuth permissions to transfer Digital Currency in an amount greater than predefined limits.

(9) Take steps to adequately secure your API Keys and OAuth Tokens, including the measures specified at <https://developers.coinbase.com/docs/wallet/api-key-authentication> and <https://developers.coinbase.com/docs/wallet/coinbase-connect/security-best-practices>

****1.3.2. You shall not:****

(1) Copy, rent, lease, sell, sublicense, or otherwise transfer your rights in the Developer's Tools to a third party.

(2) Alter, reproduce, adapt, distribute, display, publish, reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code that is derived from the Developer's Tools.

(3) Cache, aggregate, or store data or content accessed via the Developer's Tools other than for purposes allowed under this Agreement.

(4) Use the Developer's Tools for any Application that constitutes, promotes or is used in connection with spyware, adware, or any other malicious programs or code.

(5) Use the Developer's Tools to encourage, promote, or participate in illegal activity, violate third party rights, including intellectual property rights or privacy rights, or engage in any Prohibited Use or Prohibited Business as defined in the Terms.

(6) Use the Developer's Tools in a manner that exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise impacts the stability of Coinbase's servers or impacts the behavior of other applications using the Developer's Tools.

(7) Display Developer's Tools or Coinbase Marks in a manner that could reasonably imply an endorsement, relationship or affiliation with or sponsorship between you or a third party and Coinbase, other than as expressly permitted in writing by Coinbase.

(8) Attempt to cloak or conceal your identity or your Application's identity when requesting authorization to the Developer's Tools.

****1.3.3 Indemnification****

To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless Coinbase, its affiliates and their respective directors, officers, employees and agents from and against any and all third party claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or accruing from (a) your use of the Coinbase API or your Coinbase Account in violation of this Agreement, (b) your Application that infringes any

copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person or defames any person or violates their rights of publicity or privacy, or (c) your failure to secure and keep secret your OAuth Token(s) or API key(s).

2. Activities Subject to Additional Restrictions.

****2.1. Activities Subject to Additional Restrictions.**** Coinbase may require you to obtain written consent and complete enhanced on-boarding procedures, and/or may restrict your Application if you would like to create/offer an Application which is designed for or results in any of the following:

****2.1.1. Provide International Remittance Services.**** Any Application which involves a service that provides for: (i) an international (cross border) transfer of funds from a Sender to a Recipient, (ii) without an underlying sale or other bona fide commercial purpose for the transfer.

****2.1.2. Provide Banking or Other Licensed Financial Services.**** Any Application which either holds money for eventual payment or which offers or provides credit, either directly or as a broker or arranger between third parties, or any Application that would require licensing as a bank, money services business, or other financial service provider, or as an escrow service in the jurisdiction where the service's users reside, unless such Application falls within the definition of a Prohibited Business under the Terms.

****2.1.3. Provide Gaming Services.**** Any Application which involves the payment of funds by a customer in exchange for the chance to earn or win a prize, reward, or other payment.

****2.1.4. Provide Digital Currency Exchange Services.**** Any Application which involves a business engaged in the exchange of Digital Currency for Fiat Currency, funds, or other Digital Currency and which accepts and transmits a convertible Digital Currency or buys or sells convertible Digital Currency for any reason.

****2.1.5 Provide Donation Acceptance Services.**** Any Application which involves a service which allows for the acceptance of donations on behalf of a charity or other religious or spiritual organization.

3. Intellectual Property and Ownership; Use of Marks.

As between Coinbase and you, the Developer's Tools, Coinbase Marks, and all intellectual property rights therein and thereto are and shall at all times remain the sole and exclusive property of Coinbase and are protected by applicable intellectual property laws and treaties. You have no rights with respect to Developer's Tools or Coinbase Marks except as expressly set forth herein. If you obtain Coinbase's prior written consent, you may use and display Coinbase's name and logo ("Coinbase Marks") solely to attribute the Developer's Tools as the source of your Application.

4. API Calls and Compliance

Coinbase may set limits on the number of API calls that you can make at its sole discretion, for example in the interest of service stability. If you exceed these limits, Coinbase may moderate your activity or cease offering you access to the Coinbase APIs altogether in Coinbase's sole discretion. You agree to such limitations and will not attempt to circumvent such

limitations. Coinbase may immediately suspend or terminate your access to the Developer's Tools without notice if Coinbase believes, in its sole discretion, that you are in violation of this Agreement or the Terms.

5. Updates and Support

Coinbase may elect to provide you with support or modifications for the Developer's Tools, in its sole discretion, and may terminate such support at any time without notice. Coinbase may change, suspend, or discontinue any aspect of the Developer's Tools at any time, including the availability of any Developer's Tools.

6. Security and Privacy

****6.1 Security.**** You will use all reasonable efforts to protect Customer Data (as defined below) collected by your Application, including without limitation any personally identifiable information ("PII"), from unauthorized access or use. In the event your systems or infrastructure that are used for storage, processing or hosting Customer Data are breached or compromised, or if Customer Data is inadvertently exposed to non-authorized third parties, you shall notify Coinbase promptly of such a breach or exposure including root cause, remediation steps, and compensating controls to ensure such a breach does not occur in the future. You are responsible for providing customer notification under the state breach notification statutes and any other applicable privacy laws and you will bear the costs incurred by Coinbase resulting from your breach or exposure. You acknowledge that you are solely responsible for any personal injury or property damage arising from or relating to your use of any Developer's Tools or any authorized or unauthorized use of your Application.

****6.2. Privacy and PII.**** “Customer Data” means any and all technical information, PII, device usage information, or other information derived from access to or use of any of the Developer’s Tools, including but not limited to data that relates to any end users of any Coinbase products or services or pertains to use of any Coinbase products or services by such end users. You acknowledge and agree that you are solely responsible for obtaining all required consents from end users in connection with any use of your Application and the Developer’s Tools, which consent shall be compliant with all applicable data protection legislation and other privacy laws, rules, and regulations. Without limiting the foregoing, before collecting any Customer Data or other information from end users of your Application, you must provide adequate notice of what Customer Data and other information you collect and how it will be used and/or shared and obtain any necessary consents. You and your Application will comply with all privacy laws and regulations (including those applying to PII) in connection with your access and use of the Developer’s Tools. You will provide and adhere to a privacy policy for your Application that: (i) complies with all applicable laws, rules, and regulations, (ii) is conspicuously displayed to all end users of your Application, and (iii) clearly and accurately describes to end users of your Application what data and user information you collect (such as PII, login information, etc.) and how you use and share such information (including for advertising) with Coinbase and third parties. If a user requests of you or Coinbase to have any Customer Data that may be considered PII under any law, rule, or regulation throughout the world deleted, you agree to promptly honor the user’s or Coinbase’s request and to delete all such data and information

from your servers and other assets, including backups, to the extent reasonably possible, or to anonymize all user data so it cannot be tied back to a user's identity.

****6.3. Data Use.**** You will not sell any Customer Data or disclose any Customer Data to any third party. Your Application may use Customer Data only as required for use and access to your Application by the end user to whom such Customer Data relates. You shall not sublicense the Customer Data to any third party, and you shall not use or disclose any information derived directly or indirectly from the Customer Data for any purpose other than as set forth above. Without limiting the generality of the foregoing, you shall not use any part of the Customer Data to create a database separate from your Application or transmit all or part of the Customer Data to any third party for any use separate from your Application. Any use of Customer Data other than as expressly permitted by this Agreement is strictly prohibited.

<% end %>

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and Custodial Services</a>
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actions-credit-transactions">Payment Services, Pur-
chase & Sale Transactions, Credit Transactions</a>
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Currency Transfers</a>
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vices</a>
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ited Use, Death of Account Holder and Termina-
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businesses-and-conditional-use">Appendix 1. Prohib-
ited Use, Prohibited Businesses and Conditional
Use</a>
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<a href="#appendix-2-verification-procedures-and-limits">Appendix 2. Verification Procedures and Limits</a>
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<a href="#appendix-3-e-sign-disclosure-and-consent">Appendix 3: E-Sign Disclosure and Consent</a>
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<a href="#appendix-4-state-license-disclosures">Appendix 4: State License Disclosures</a>
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<strong>Part 2. Coinbase Pro</strong>
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```
<a href="#2-trading-rules-and-trading-fees">Orders, Trades, and Fees</a>
```

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<a href="#3-general-use-restrictions-and-cancellation">General Use, Restrictions, and Cancellation</a>
```

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</div>
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<div class="user-agreement">
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<% if current_user && current_user.state_code == 'FL' %>
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```
<%= render(partial: 'shared/user_agreements/united_states/florida', formats: [:html]) %>
```

```
<% end %>
```

```
<%= markdown_block do %>
# Coinbase User Agreement
```

```
Welcome to Coinbase! This is a User Agreement between you (also referred to herein as "Client," "User," or customer) and Coinbase Inc. (**Coinbase**). This User Agreement (**Agreement**) governs your use of the services provided by Coinbase described below (**Coinbase Services**" or "**Services**"). By signing up to use an account through
```


[coinbase.com](https://www.coinbase.com/), pro.coinbase.com, APIs, or the Coinbase mobile application (collectively the “**Coinbase Site**”), you agree that you have read, understand, and accept all of the terms and conditions contained in this Agreement including Section 8.2. “Arbitration; Waiver of Class Action”, as well as our [Privacy Policy](https://www.coinbase.com/legal/privacy), [Cookie Policy](https://www.coinbase.com/legal/cookie), and E-Sign Consent Policy.

As with any asset, the value of Digital Currencies can go up or down and there can be a substantial risk that you lose money buying, selling, holding, or investing in digital currencies. You should carefully consider whether trading or holding Digital Currencies is suitable for you in light of your financial condition. Coinbase is not registered with the U.S. Securities and Exchange Commission and does not offer securities services in the United States or to U.S. persons.
Last updated: December 8, 2020

PART 1: General Use

1. Account Setup

1.1. Eligibility. To be eligible to use the Coinbase Services, you must be at least 18 years old, and reside in the United States.

1.2. Terms. We may amend or modify this Agreement at any time by posting the revised agreement on the Coinbase Site and/or providing a copy to you (a “**Revised Agreement**”). The Revised Agreement shall be effective as of the time it is posted but will not apply retroactively. Your continued use of the Services after the posting of a Revised Agreement constitutes your acceptance of such Revised Agreement. If

you do not agree with any such modification, your sole and exclusive remedy is to terminate your use of the Services and close your account.

****1.3. Registration of Coinbase Account.**** You must register for a Coinbase account to use the Coinbase Services (a ****Coinbase Account****). By using a Coinbase Account you agree and represent that you will use Coinbase only for yourself, and not on behalf of any third party, unless you have obtained prior approval from Coinbase. You are fully responsible for all activity that occurs under your Coinbase Account. We may, in our sole discretion, refuse to open a Coinbase Account, or limit the number of Coinbase Accounts that you may hold or suspend or terminate any Coinbase Account or the trading of specific Digital Currency in your account.

****1.4. Identity Verification.**** During registration for your Coinbase Account, you agree to provide us with the information we request for the purposes of identity verification and the detection of money laundering, terrorist financing, fraud, or any other financial crimes and permit us to keep a record of such information. You will need to complete certain verification procedures before you are permitted to use the Coinbase Services. Your access to one or more Coinbase Services and the limits that apply to your use of the Coinbase Services, may be altered as a result of information collected about you on an ongoing basis. The information we request may include certain personal information, including, but not limited to, your name, address, telephone number, e-mail address, date of birth, taxpayer identification number, a government identification, and information regarding your bank account (such as the name of the bank, the account type, routing number, and account number)

and in some cases (where permitted by law), special categories of personal data, such as your biometric information. In providing us with this or any other information that may be required, you confirm that the information is accurate and authentic. You agree to keep us updated if any of the information you provide changes. **You authorize us to make inquiries, whether directly or through third parties, that we consider necessary to verify your identity or protect you and/or us against fraud or other financial crime, and to take action we reasonably deem necessary based on the results of such inquiries. When we carry out these inquiries, you acknowledge and agree that your personal information may be disclosed to credit reference and fraud prevention or financial crime agencies and that these agencies may respond to our inquiries in full. This is an identity check only and should have no adverse effect on your credit rating.** Further, you authorize your wireless operator (AT&T, Sprint, T-Mobile, US Cellular, Verizon, or any other branded wireless operator) to use your mobile number, name, address, email, network status, customer type, customer role, billing type, mobile device identifiers (IMSI and IMEI) and other subscriber status details, if available, solely to allow verification of your identity and to compare information you have provided to Coinbase with your wireless operator account profile information for the duration of the business relationship. See our [Privacy Policy](<https://www.coinbase.com/legal/privacy>) for how we treat your data.

****1.5. Access.**** To access the Coinbase Services, you must have the necessary equipment (such as a smartphone or laptop) and the associated telecommunication service subscriptions to access the Internet. The Coinbase Services can be accessed directly using

the Coinbase Site. Access to Coinbase Services may become degraded or unavailable during times of significant volatility or volume. This could result in the inability to buy or sell for periods of time and may also lead to support response time delays. Although we strive to provide you with excellent service, we do not represent that the Coinbase Site or other Coinbase Services will be available without interruption and we do not guarantee that any order will be executed, accepted, recorded, or remain open. Coinbase shall not be liable for any losses resulting from or arising out of transaction delays.

2. Wallet and Custodial Services

****2.1. Wallet Services.**** As part of your Coinbase Account, Coinbase will provide qualifying users access to: (a) a hosted Digital Currency wallet(s) for holding Digital Currencies (“****Digital Currency Wallet****”), and (b) a hosted US Dollars (“****USD****”) wallet for holding USD (a “****USD Wallet****”).

****2.2. Hosted Digital Currency Wallet.**** Your Digital Currency Wallet allows you to store, track, transfer, and manage your balances of Digital Currency. As used throughout, “****Digital Currency****” means only those particular digital currencies listed as available to trade or custody in your Coinbase Account (also referred to as “****Supported Digital Currency****”). Services and supported assets may vary by jurisdiction. We securely store Digital Currency private keys, which are used to process transactions, in a combination of online and offline storage. As a result of our security protocols, it may be necessary for us to retrieve private keys or related information from offline storage in order to facilitate a Digital Currency Transfers in accordance with your instructions, and you

acknowledge that this may delay the initiation or crediting of such Digital Currency Transfers. You may elect to use other services, such as the Coinbase Vault, which allow you to set withdrawal time-delays and create other conditions around the custody and transfer of your Digital Currency. Additional rules associated with such product(s) and service(s) may apply.

****2.3. Supported Digital Currencies.**** Your Coinbase Account is intended solely for proper use of Supported Digital Currencies as designated on the Site. ****_**Under no circumstances should you attempt to use your Digital Currency Wallet to store, send, request, or receive digital currencies we do not support. Coinbase assumes no responsibility in connection with any attempt to use your Digital Currency Wallet with digital currencies that we do not support. If you have any questions about which Digital Currencies we currently support, please visit <https://support.coinbase.com>. ****_**

****2.4. Supplemental Protocols Excluded.**** Unless specifically announced on the Coinbase Site or other official public statement of Coinbase, Supported Digital Currencies excludes all other protocols and/or functionality which supplement or interact with the Supported Digital Currency. This exclusion includes but is not limited to: metacoins, colored coins, side chains, or other derivative, enhanced, or forked protocols, tokens, or coins or other functionality, such as staking, protocol governance, and/or any smart contract functionality, which may supplement or interact with a Digital Currency we support. Do not use your Coinbase Account to attempt to receive, request, send, store, or engage in any other type of transaction or functionality involving any such protocol as Coinbase is not configured to detect, secure, or process these transactions and functionality. Any attempted

transactions in such items will result in loss of the item. ****_You acknowledge and agree that supplemental protocols are excluded from Supported Digital Currency and that Coinbase has no liability for any losses related to supplemental protocols._****

****2.5 Operation of Digital Currency Protocols.**** We do not own or control the underlying software protocols which govern the operation of Digital Currency supported on our platform. Generally, the underlying protocols are open source, and anyone can use, copy, modify, and distribute them. We assume no responsibility for the operation of the underlying protocols and we are not able to guarantee the functionality or security of network operations. In particular, the underlying protocols may be subject to sudden changes in operating rules (including **“**forks**”**). Any such material operating changes may materially affect the availability, value, functionality, and/or the name of the Digital Currency you store in your Digital Currency Wallet. Coinbase does not control the timing and features of these material operating changes. It is your responsibility to make yourself aware of upcoming operating changes and you must carefully consider publicly available information and information that may be provided by Coinbase in determining whether to continue to use a Coinbase Account for the affected Digital Currency. In the event of any such operational change, Coinbase reserves the right to take such steps as may be necessary to protect the security and safety of assets held on the Coinbase platform, including temporarily suspending operations for the involved digital currency(ies), and other necessary steps; Coinbase will use its best efforts to provide you notice of its response to any material operating change; however, such changes are outside of Coinbase’s control

and may occur without notice to Coinbase. Coinbase's response to any material operating change is subject to its sole discretion and includes deciding not to support any new digital currency, fork, or other actions. ****_You acknowledge and accept the risks of operating changes to Digital Currency protocols and agree that Coinbase is not responsible for such operating changes and not liable for any loss of value you may experience as a result of such changes in operating rules. You acknowledge and accept that Coinbase has sole discretion to determine its response to any operating change and that we have no responsibility to assist you with unsupported currencies or protocols._****

****2.6. Digital Currency Custody and Title.**** All Digital Currencies held in your Digital Currency Wallet are custodial assets held by Coinbase for your benefit, as described in further detail below.

****2.6.1 Ownership.**** Title to Digital Currency shall at all times remain with you and shall not transfer to Coinbase. As the owner of Digital Currency in your Digital Wallet, you shall bear all risk of loss of such Digital Currency. Coinbase shall have no liability for Digital Currency fluctuations. None of the Digital Currencies in your Digital Currency Wallet are the property of, or shall or may be loaned to, Coinbase; Coinbase does not represent or treat assets in User's Digital Currency Wallets as belonging to Coinbase. Coinbase may not grant a security interest in the Digital Currency held in your Digital Currency Wallet. Except as required by a facially valid court order, or except as provided herein, Coinbase will not sell, transfer, loan, hypothecate, or otherwise alienate Digital Currency in your Digital Currency Wallet unless instructed by you.

****2.6.2 Control.**** You control the Digital Currencies held in your Digital Currency Wallet. At any time, subject to outages, downtime, and other applicable policies, you may withdraw your Digital Currency by sending it to a different blockchain address. As long as you continue to custody your Digital Currencies with Coinbase, Coinbase shall retain control over electronic private keys associated with blockchain addresses operated by Coinbase, including the blockchain addresses that hold your Digital Currency.

****2.6.3 Acknowledgement of Risk.**** You acknowledge that Digital Currency is not subject to protections or insurance provided by the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation.

****2.6.4 Digital Currencies Not Segregated.**** In order to more securely custody assets, Coinbase may use shared blockchain addresses, controlled by Coinbase, to hold Digital Currencies held on behalf of customers and/or held on behalf of Coinbase. Although we maintain separate ledgers for Client and Coinbase accounts, Coinbase shall have no obligation to segregate by blockchain address Digital Currencies owned by you from Digital Currencies owned by other customers or by Coinbase.

****2.7. USD Wallet.**** Your USD Wallet allows you to hold and transfer USD with your Coinbase Account as described below. In general, we will combine the balance of your USD Wallet with other customers' balances and either hold those funds in a custodial account at a U.S. FDIC-insured bank or invest those funds in liquid investments, such as U.S. treasuries, in accordance with state money transmitter laws. Coinbase owns the interest or other earnings on these

investments. Pooled customer funds are held apart from Coinbase's corporate funds and Coinbase will neither use these funds for its operating expenses or any other corporate purposes.

****2.8. USDC Wallets.**** You may also elect to buy USD Coin from Coinbase, a Digital Currency fully collateralized by the US Dollar, which is issued by Circle Internet Financial ("Circle") and supported by Coinbase ("USDC"). You are the owner of the balance of your USDC Wallet. Coinbase is not the issuer of USDC, does not hold U.S. Dollars on reserve for USDC holders, and has no obligation to repurchase your USDC for USD. You can redeem your USDC with Circle, and Coinbase may also elect to repurchase your USDC in exchange for USD. You agree to be bound by the terms of the Circle USDC Agreement (located at <https://support.usdc.circle.com/hc/en-us/articles/360001233386-Circle-USDC-User-Agreement>), which provides additional obligations, undertakings, and limitations with respect to USDC.

****2.9 Coinbase Bundle.**** The Coinbase Bundle ("Bundle") is an offer to purchase multiple Digital Currencies in a single-click transaction, subject to our current fees for purchasing Bundles. The Digital Currencies included in any Bundle are made available by Coinbase in its sole discretion. The amount of each Digital Currencies in any Bundle offer is proportional to each Digital Currency's "market capitalization", calculated by multiplying its current price by the circulating supply of the Digital Currency. By purchasing a Bundle, you understand and acknowledge that you have the ability to sell and send each Digital Currency included in the Bundle at your discretion, just as if you had purchased each Digital Currency in separate transactions, by choosing to "unbundle" the Bundle.

Coinbase may allow you to perform a single transaction to sell an amount proportionally across all the Digital Currencies purchased as part of a Bundle, and Coinbase may allow this only if you have not previously unbundled your purchased Bundle. A Bundle can not be reconstituted once it is unbundled. All pricing or performance data related to the Bundle is for informational purposes only. A Bundle is not an offer to purchase any single security, investment or financial instrument. A Bundle offer is not a recommendation to buy, sell or hold any Digital Currency or any amount of a Digital Currency and does not constitute investment advice, financial advice, or trading advice.

3. Payment Services, Purchase & Sale Transactions, Credit Transactions

****3.1. USD Funds.**** You can load funds into your USD Wallet from a valid bank account via ACH transfer or wire transfer. Your USD balance is in a pending state and will not be credited to your USD Wallet until after the bank transfer has cleared, usually with 5 business days. We may debit your linked bank account as soon as you initiate payment. The name on your linked bank account and your wire transfer must match the name verified on your Coinbase Account.

****3.2. Transactions on the Coinbase Site.**** When you purchase (buy) or sell Digital Currency on the Coinbase Site, you are not buying Digital Currency from Coinbase or selling Digital Currency to Coinbase. Coinbase acts as the agent, transacting on your behalf, to facilitate that purchase or sale between you and other Coinbase customers. You can purchase (buy) Digital Currency using: (a) funds in your USD Wallet, (b) Digital Currency held in certain Digital Currency Wallets, as permitted by Coinbase, (c) a valid bank

account in the name that matches the name on your Coinbase Account, or (d) a debit or credit card that matches the name on your Coinbase Account (each a “**Valid Payment Method**”). Your purchase must follow the relevant instructions on the Coinbase Site. Coinbase reserves the right to cancel any transaction not confirmed by you within five (5) seconds after Coinbase quotes a transaction price. A purchase of Digital Currency using a Valid Payment Method generally will initiate on the business day we receive your instructions. Purchased Digital Currency will be deposited in your Digital Currency Wallet as soon as funds have settled to Coinbase, which in the case of a bank account or credit or debit card may take up to five business days. You can sell Digital Currency and instruct Coinbase to deposit funds into your Coinbase USD Wallet or, where supported, a Digital Currency Wallet. Digital Currency purchases and sales are collectively referred to herein as “**Digital Currency Transactions**”. If Coinbase cannot complete your Digital Currency Transaction for any reason (such as price movement, market latency, inability to find a counterparty for your transaction, or order size), Coinbase will reject the order and notify you of such rejection. You will not be charged for a rejected transaction.

****3.3. Fees.**** In general, Coinbase makes money when you purchase or sell digital currency on our Site. A full list of Coinbase fees for your Coinbase Account can be found on our [Pricing and Fees Disclosures page](<https://support.coinbase.com/customer/portal/articles/2109597-buy-sell-bank-transfer-fees>).

By using Coinbase Services you agree to pay all applicable fees. Coinbase reserves the right to adjust its pricing and fees and any applicable waivers at any time. We will always notify you of the pricing and fees

which apply to your transaction when you authorize the transaction and in each receipt we issue to you. We may charge network fees (miner fees) to process a Digital Currency Transaction on your behalf. We will calculate the network fee in our discretion, although we will always notify you of the network fee at or before the time you authorize the Digital Currency Transaction. Bank fees charged to Coinbase are netted out of transfers to or from Coinbase. You are responsible for paying any additional fees charged by your financial service provider. We will not process a transfer if associated bank fees exceed the value of the transfer. You may be required to deposit additional USD to cover bank fees if you desire to complete such a transfer.

****3.4. Recurring Digital Currency Transactions.**** If you initiate recurring Digital Currency Transactions, you authorize us to initiate recurring electronic payments in accordance with your selected Digital Currency Transaction and any corresponding payment accounts, such as recurring automated clearing house (ACH) debit or credit entries from or to your linked bank account. Your recurring transactions will occur in identical, periodic installments, based on your period selection (e.g., daily, weekly, monthly), until either you or Coinbase cancels the recurring order. If you select a U.S. Bank Account as your payment method for a recurring transaction, and such transaction falls on a weekend or holiday, or after bank business hours, the ACH credit or debit will be executed on the next business day, although the Digital Currency fees at the time of the regularly-scheduled transaction will apply. If your Bank is unable to process any electronic ACH debit entry, we will notify you of cancellation of the transaction and may avail itself of remedies

set forth in this User Agreement to recover any amount owed to Coinbase. This authorization will remain in full force and effect until you change your recurring transaction settings at https://www.coinbase.com/recurring_payments, or until you provide us written notification at <https://support.coinbase.com>. You agree to notify Coinbase in writing of any changes in your linked bank account information prior to a recurring transaction. Coinbase may, at any time, terminate recurring transactions by providing notice to you.

****3.5. Credit Transaction Payments.**** You may use the “Make A Payment” option on the Coinbase Site from time to time to authorize payments for any credit transaction with us or any of our affiliates, including any amount owing pursuant to any credit agreement you may enter into with us or any of our affiliates, from time to time. With this option, you can authorize us or our affiliates to make a one-time charge to your linked deposit account through the ACH network (your ****Preferred Payment Method****). You may select or approve the dollar amount and transaction date for each one-time payment you authorize using your Preferred Payment Method. We and our affiliates reserve the right to limit the amount and date of these one-time charges, screen transactions, and take other steps for our own risk management and business reasons. Although we or our affiliates will try to notify you if your depository institution is unable or unwilling to process any one-time charge using your Preferred Payment Method, you agree we are not required to do so and you are still required to make payments in the time and manner required by your credit agreement with us or any of our affiliates.

****3.6. Revocation.**** When you give us instructions to purchase (buy) Digital Currency, you cannot

withdraw your consent to that purchase unless the purchase is not scheduled to occur until a future date e.g. you set up a recurring purchase of Digital Currency (a “**Future Transaction**”). In the case of a Future Transaction, you may withdraw your consent up until the end of the business day before the date that the Future Transaction is scheduled to take place. To withdraw your consent to a Future Transaction, follow the instructions on the Coinbase Site.

****3.7. Unauthorized and Incorrect Transactions.**** When a Digital Currency or USD transaction occurs using your credentials, we will assume that you authorized such transaction, unless you notify us otherwise. If you believe you did not authorize a particular transaction or that a transaction was incorrectly carried out, you must contact us as soon as possible either by email free of charge at <https://support.coinbase.com> or by phone at +1 (888) 908-7930 (international call charges may apply). It is important that you regularly check your USD Wallet and Digital Currency Wallet balances and your transaction history regularly to ensure you notify us as soon as possible of any unauthorized or incorrect transactions to. We are not responsible for any claim for unauthorized or incorrect transactions unless you have notified us in accordance with this section.

****3.8. Account Information.**** You will be able to see your USD Wallet and Digital Currency Wallet balances using the Coinbase Site. You can also see your transaction history using the Coinbase Site, including (i) the amount (and currency) of each Digital Currency Transaction, (ii) a reference to the identify of the payer and/or payee (as appropriate), (iii) any fees charged (excluding any spread, or margin, over the prevailing market rate on Coinbase’s trading platform), (iv) if

applicable, the rate of exchange, and the amount (in the new currency) after exchange (where you are the payer) or the amount (in the original currency) before the exchange (where you are the payee), and (v) the date of each Digital Currency Transaction.

****3.9. Consent to access, processing and storage of your personal data.**** You consent to us accessing, processing and retaining any personal information you provide to us for the purpose of us providing Coinbase Services to you. This consent is not related to, and does not affect, any rights or obligations we or you have in accordance with data protection laws, privacy laws and regulations. You can withdraw your consent at any time by closing your account with us. However, we may retain and continue to process your personal information for other purposes. Please see our [Privacy Policy](<https://www.coinbase.com/legal/privacy?country=US>) for further information about how we process your personal data, and the rights you have in respect of this.

****3.10. Reversals & Cancellations.**** You cannot cancel, reverse, or change any transaction marked as complete or pending. If your payment is not successful, if your payment method has insufficient funds, or if you reverse a payment made from funds in your bank account, you authorize Coinbase, in its sole discretion, either to cancel the transaction or to debit your other payment methods, including your USD Wallet or Digital Currency Wallet balances or other linked accounts, in any amount necessary to complete the transaction. You are responsible for maintaining an adequate balance and/or sufficient credit limits in order to avoid overdraft, non-sufficient funds (NSF), or similar fees charged by your payment provider. We reserve the right to refuse to process, or to cancel or

reverse, any Digital Currency Transaction or Transfers in our sole discretion, even after funds have been debited from your account(s), if we suspect the transaction involves (or has a high risk of involvement in) money laundering, terrorist financing, fraud, or any other type of financial crime; in response to a subpoena, court order, or other government order; if we reasonably suspect that the transaction is erroneous; or if Coinbase suspects the transaction relates to Prohibited Use or a Prohibited Business as set forth below. In such instances, Coinbase will reverse the transaction and we are under no obligation to allow you to reinstate a purchase or sale order at the same price or on the same terms as the cancelled transaction.

****3.11. Payment Services Partners.**** Coinbase may use a third party payment processor to process any US Dollar payment between you and Coinbase, including but not limited to payments in relation to your use of the Digital Currency Transactions or deposits or withdrawals from your USD Wallet or Coinbase Pro Account.

4. Digital Currency Transfers

****4.1. In General.**** If you have sufficiently verified your identity, your Digital Currency Wallet enables you to send Supported Digital Currency to, and request, receive, and store Supported Digital Currency from, third parties by giving instructions through the Coinbase Site. Your transfer of Supported Digital Currencies between your other digital currency wallets (including wallets off the Coinbase Site) and to and from third parties is a **“**Digital Currency Transfer**”**.

****4.3. Pending Transactions.**** Once a Digital Currency Transfer is submitted to a Digital Currency network, the transaction will be unconfirmed and remain in a pending state for a period of time sufficient to confirmation of the transaction by the Digital Currency network. A Digital Currency Transfer is not complete while it is in a pending state. Pending Digital Currency Transfers that are initiated from a Coinbase Account will reflect a pending transaction status and are not available to you for use on the Coinbase platform or otherwise while the transaction is pending.

****4.4. Inbound Digital Currency Transfers.**** When you or a third party sends Digital Currency to a Coinbase wallet from an external wallet not hosted on Coinbase (“****Inbound Transfers****”), the person initiating the transaction is solely responsible for executing the transaction properly, which may include, among other things, payment of sufficient network or miner’s fees in order for the transaction to be successful. Insufficient network fees may cause an Inbound Transfer to remain in a pending state outside of Coinbase’s control and we are not responsible for delays or loss incurred as a result of an error in the initiation of the transaction and have no obligation to assist in the remediation of such transactions. ****By initiating an Inbound Transfer, you attest that you are transacting in a Supported Digital Currency which conforms to the particular Coinbase wallet into which funds are directed. For example, if you select an Ethereum wallet address to receive funds, you attest that you are initiating an Inbound Transfer of Ethereum alone, and not any other currency such as Bitcoin or Ethereum Classic. Coinbase incurs no obligation whatsoever with regard to unsupported digital currency sent to a Coinbase Account or Supported Digital Currency sent to an**

incompatible Digital Currency wallet. Erroneously transmitted funds will be lost.** We recommend customers send a small amount of Supported Digital Currency as a test prior to initiating a send of a significant amount of Supported Digital Currency. Coinbase may from time to time determine types of Digital Currency that will be supported or cease to be supported.

****4.5. Outbound Digital Currency Transfers.**** When you send Digital Currency from your Coinbase Account to an external wallet (“**Outbound Transfers**”), such transfers are executed at your instruction by Coinbase. You should verify all transaction information prior to submitting instructions to us. Coinbase shall bear no liability or responsibility in the event you enter an incorrect blockchain destination address. We do not guarantee the identity or value received by a recipient of an Outbound Transfer. Digital Currency Transfers cannot be reversed once they have been broadcast to the relevant Digital Currency network, although they may be in a pending state, and designated accordingly, while the transaction is processed by network operators. Coinbase does not control the Digital Currency network and makes no guarantees that a Digital Currency Transfer will be confirmed by the network. We may refuse to process or cancel any pending Outbound Digital Currency Transfers as required by law or any court or other authority to which Coinbase is subject in any jurisdiction. Additionally, we may require you to wait some amount of time after completion of a transaction before permitting you to use further Coinbase Services and/or before permitting you to engage in transactions beyond certain volume limits.

****4.6. Transfers to a Recipient Email Address.**** Coinbase allows you to initiate a Digital Currency

Transfer to a Coinbase customer by designating that customer's email address. If you initiate a Digital Currency Transfer to an email address, and the recipient does not have an existing Coinbase Account, we will invite the recipient to open a Coinbase Account. If the recipient does not open a Coinbase Account within 30 days, we will return the relevant Digital Currency to your Digital Currency Wallet.

****4.8. Third Party Merchants.**** We have no control over, or liability for, the delivery, quality, safety, legality or any other aspect of any goods or services that you may purchase from a third party (including other users of Coinbase Digital Currency Services). We are not responsible for ensuring that a third party buyer or a seller you transact with will complete the transaction or is authorised to do so. If you experience a problem with any goods or services purchased from, or sold to, a third party using Digital Currency transferred using the Coinbase Digital Currency Services, or if you have a dispute with such third party, you should resolve the dispute directly with that third party. If you believe a third party has behaved in a fraudulent, misleading, or inappropriate manner, or if you cannot adequately resolve a dispute with a third party, you may notify Coinbase Support at <https://support.coinbase.com> so that we may consider what action to take, if any.

****4.9 Debts.**** In the event that there are outstanding amounts owed to us hereunder, including in your Coinbase Account, Coinbase reserves the right to debit your Coinbase Account or Coinbase Pro Account accordingly and/or to withhold amounts from funds you may transfer from your Coinbase Pro Account to your Coinbase Account.

5. Additional Services

****5.1 Generally.**** In addition to the Services above, the following services (“****Additional Services****”) may be made available by Coinbase to users that fulfill certain eligibility criteria.

****5.2. Coinbase Pro Services.**** Coinbase Pro Services are services related to Coinbase Pro’s order matching platform. If you are eligible and elect to use the Coinbase Pro Services, you must establish a Coinbase Pro account at pro.coinbase.com (“****Coinbase Pro Account****”). The provisions of this Section 5.1. apply to your use of such Coinbase Pro Services in addition to the other applicable provisions of this Agreement, including without limitation the releases, indemnities, disclaimers, limitations of liability, prohibited use, dispute resolution, and cancellation policies set forth above. Additionally, you also accept and agree to be bound by the Trading Rules and the Coinbase Pro Trading Fees.

****5.2.1 Coinbase Pro Account.**** You may not sell, lease, furnish or otherwise permit or provide access to your Trading Account to any other entity or to any individual that is not your employee or agent. You accept full responsibility for your employees’ or agents’ use of Coinbase Pro, whether such use is directly through the Coinbase Pro website or by other means, such as those facilitated through API keys, and/or applications which you may authorize. You understand and agree that you are responsible for any and all orders, trades, and other instructions entered into Coinbase Pro including identifiers, permissions, passwords, and security codes associated with your Coinbase Pro Account.

****5.2.2 Order Books.**** Coinbase Pro Services offer an order book for various Digital Currency and Fiat

Currency trading pairs (each an “**Order Book**”). Refer to your Coinbase Pro Account to determine which Order Books are available to you.

5.2.3 Associated Tools. In addition to the Wallet Services detailed in Section 2.1, your Coinbase Pro Account provides you access to associated user tools, accessible at pro.coinbase.com and through the Coinbase Pro API.

5.3. USDC Rewards.

USDC IS NOT LEGAL TENDER. USDC IS A DIGITAL CURRENCY CURRENCY AND COINBASE HAS NO RIGHT TO USE ANY USDC YOU HOLD ON COINBASE. COINBASE IS NOT A DEPOSITORY INSTITUTION, AND YOUR USDC WALLET IS NOT A DEPOSIT ACCOUNT. YOUR USDC WALLET IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) OR THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

5.3.1 Eligibility. If you are [eligible](https://support.coinbase.com/customer/portal/articles/2980181), you can earn rewards for holding USDC on Coinbase.com. So long as you hold at least \$1 of USDC in your Coinbase.com account, you will automatically earn amounts of USDC as described below in the “Calculation” section (“**USDC Rewards**”). If at any time you do not hold at least \$1 of USDC in your Coinbase.com account, your enrollment in USDC Rewards will be paused until such time that you do hold at least \$1 of USDC in your Coinbase.com account. During such period you will retain all USDC Rewards previously accrued but not yet distributed. Such accrued rewards will be distributed as described below in the “Calculation” section. If at any time you are deemed

[ineligible](https://support.coinbase.com/customer/portal/articles/2980181), your enrollment in USDC Rewards will be similarly paused. You can opt-out of, or back into, USDC Rewards at any time by following the instructions [here](https://support.coinbase.com/customer/portal/articles/2980181). If you opt-out of USDC Rewards or close your Coinbase.com account, you will forfeit the rewards you have accrued (that are not yet distributed for the current calendar month) up to that time. USDC held on Coinbase Pro is not eligible for USDC Rewards.

5.3.2 Calculation. Rewards are earned on a daily basis in the form of USDC at the then current **USDC Rewards Rate**. Our current **USDC Rewards Rate** can be found [here](https://support.coinbase.com/customer/portal/articles/2980181). Our current **USDC Rewards Annual Percentage Yield**, which includes the effect of monthly compounding, can be found [here](https://coinbase.com/accounts) and [here](https://support.coinbase.com/customer/portal/articles/2980181). Rewards earned in a particular month are airdropped into your Coinbase.com USDC wallet within 5 business days after the start of the next calendar month. USDC Rewards distributed to you are rounded-down to the nearest sixth decimal place. We use the **Daily Balance Method** to determine the rewards you earn for a particular day, using your average balance of USDC on that specific day as that day's balance. The rate used to determine rewards earned for a particular day is the then current **USDC Rewards Rate** divided by 365.

5.3.3 Changes. We reserve the right to change the **USDC Rewards Rate Annual Percentage Yield** at any time by notification [here](https://coinbase.com/accounts) and [here]

(<https://support.coinbase.com/customer/portal/articles/2980181>) and by other reasonable means of notice (including e-mail). Unless otherwise stated in the notice, no change will be effective until the first day of the calendar month after such notice is made. We reserve the right to add, change, or delete any provision of these terms and to terminate the USDC rewards program, or your participation in the program, at any time upon notice made in the same manner.

****5.3.4 Definitions.****

****“USDC Rewards Rate”**** means the annual rate of rewards earned on a USDC wallet, which does not reflect compounding. The current USDC Rewards Rate can be found [here](<https://support.coinbase.com/customer/portal/articles/2980181>).

****“USDC Rewards Annual Percentage Yield”**** or ****“APY”**** means the percentage rate reflecting the total amount of USDC Rewards earned, based on the then current USDC Rewards Rate and end of month compounding for a 365-day period. The current USDC Rewards Annual Percentage Yield can be found [here](<https://coinbase.com/accounts>) and [here](<https://support.coinbase.com/customer/portal/articles/2980181>).

****“Daily Balance Method”**** means the application of the daily periodic rate (derived from the APY) to the calendar day average of USDC held in your USDC wallet each day.

****“Day”**** means a UTC calendar day.

****5.4 Staking Services.**** When you hold Digital Currencies on Coinbase you may be given the option to “stake” these assets in a third party proof of stake network via staking services provided by Coinbase. In

a proof of stake network, transaction validators are chosen using a formula based on ownership of the underlying Digital Currency as opposed to computing power (i.e., proof of work). Please visit our [staking information page](<https://support.coinbase.com/customer/portal/articles/2981942>) for further details on how proof of stake works. Staking services are not available for Digital Currencies held on Coinbase Pro.

****5.4.1 Staking Service is Optional.**** Staking services will be made available to you by default for Digital Currencies where staking functionality is available on Coinbase. **YOU ARE NOT REQUIRED TO STAKE WITH COINBASE AND YOU CAN OPT-OUT OF COINBASE STAKING SERVICES AT ANY TIME THROUGH THE [SETTINGS PAGE IN YOUR ACCOUNT.]**(<https://coinbase.com/settings/financial-services>)_If you opt-out of staking services, you can opt back in at any time with immediate effect.

****5.4.2 The Service; Rewards; Commission; Limitations.**** (a) If you stake your assets with us, Coinbase or one of its affiliates will stake these on your behalf, acting as a transaction validator on the applicable network for the Digital Currency you stake. If Coinbase successfully validates a block of transactions in that Digital Currency, you may earn a reward granted by that Digital Currency's network. Your reward will be determined by the protocols of the [applicable network.](<https://support.coinbase.com/customer/portal/articles/2981942#supported-currencies>) Coinbase will distribute this reward to you after receipt by Coinbase, minus a 25% commission. (b) Some Digital Currency networks subject staked assets to "slashing" if the transaction validator representing those assets incorrectly validates a transaction. Coinbase will use commercially reasonable efforts to ensure that your

assets will not be slashed, but in the unlikely event they are, Coinbase will promptly replace your assets at no additional cost. Some Digital Currency networks require that a certain amount of staked assets be locked (prohibited from sale or transfer) for a certain period of time while staking. Coinbase may also have additional sale or withdrawal limitations for particular staked assets if you are opted-in to staking.

****5.4.3 No Guarantee.**** You have no right to a reward until it is received by Coinbase. Rewards will be distributed to your account promptly after they are received by Coinbase. Coinbase will use commercially reasonable efforts to stake any Digital Currencies for which you are using Coinbase staking services. The “staking rewards rate” disclosed by Coinbase for a particular Digital Currency is an annualized historical rate based on the staking rewards generated by Coinbase in providing staking services to Coinbase customers for that Digital Currency over the last 90 days. This rate is an estimate and changes over time. COINBASE DOES NOT GUARANTEE THAT YOU WILL RECEIVE STAKING REWARDS, ANY SPECIFIC STAKING REWARD, OR ANY STAKING RETURN OVER TIME, INCLUDING THE STAKING REWARDS RATE.

6. Data Protection and Security

****6.1. Personal Data.**** You acknowledge that we may process personal data in relation to you (if you are an individual), and personal data that you have provided or in the future provide to us in relation to your employees and other associated or other individuals, in connection with this Agreement, or the Coinbase Services. Accordingly, you represent and warrant that: (i) your disclosure to us of any personal data relating

to individuals other than yourself was or will be made in accordance with all applicable data protection and data privacy laws, and those data are accurate, up to date and relevant when disclosed; (ii) before providing any such personal data to us, you have read and understood our Privacy Policy, which is available [here](<https://www.coinbase.com/legal/privacy?locale=en-US>), and, in the case of personal data relating to an individual other than yourself, have (or will at the time of disclosure have) provided a copy of that [Privacy Policy](<https://www.coinbase.com/legal/privacy?locale=en-US>) (as amended from time to time), to that individual; and (iii) if from time to time we provide you with a replacement version of the [Privacy Policy](<https://www.coinbase.com/legal/privacy?locale=en-US>), you will promptly read that notice and provide a copy to any individual whose personal data you have provided to us.

****6.2. Security Breach.**** If you suspect that your Coinbase Account or any of your security details have been compromised or if you become aware of any fraud or attempted fraud or any other security incident (including a cyber-security attack) affecting you and / or Coinbase (together a “Security Breach”), you must notify Coinbase Support as soon as possible by email free of charge at <https://support.coinbase.com> or by calling us at +1 (888) 908 7930 and continue to provide accurate and up to date information throughout the duration of the Security Breach. You must take any steps that we reasonably require to reduce, manage or report any Security Breach. Failure to provide prompt notification of any Security Breach may be taken into account in our determination of the appropriate resolution of the matter.

7. General Use, Prohibited Use, Death of Account Holder and Termination

****7.1. Limited License.**** We grant you a limited, nonexclusive, nontransferable license, subject to the terms of this Agreement, to access and use the Coinbase Services, Coinbase Site, and related content, materials, information (collectively, the “Content”) solely for purposes approved by Coinbase from time to time. Any other use of the Coinbase Site or Content is expressly prohibited and all other right, title, and interest in the Coinbase Services, Coinbase Site or Content is exclusively the property of Coinbase and its licensors. You agree you will not copy, transmit, distribute, sell, license, reverse engineer, modify, publish, or participate in the transfer or sale of, create derivative works from, or in any other way exploit any of the Content, in whole or in part without the prior written consent of Coinbase. “Coinbase.com”, “Coinbase”, “Coinbase Pro”, and all logos related to the Coinbase Services or displayed on the Coinbase Site are either trademarks or registered marks of Coinbase or its licensors. You may not copy, imitate or use them without Coinbase’s prior written consent.

****7.2. Website Accuracy.**** Although we intend to provide accurate and timely information on the Coinbase Site, the Coinbase Site (including, without limitation, the Content) may not always be entirely accurate, complete or current and may also include technical inaccuracies or typographical errors. In an effort to continue to provide you with as complete and accurate information as possible, information may be changed or updated from time to time without notice, including without limitation information regarding our policies, products and services. Accordingly, you should verify all information before relying on it, and

all decisions based on information contained on the Coinbase Site are your sole responsibility and we shall have no liability for such decisions. Information provided by third parties, including historical price and supply data for Digital Currencies, is for informational purposes only and Coinbase makes no representations or warranties to its accuracy. Links to third-party materials (including without limitation websites) may be provided as a convenience but are not controlled by us. You acknowledge and agree that we are not responsible for any aspect of the information, content, or services contained in any third-party materials or on any third-party sites accessible or linked to the Coinbase Site,

****7.3. Promotions.**** From time to time, Coinbase may make available special offers or conduct promotions for qualifying customers. Subject to applicable laws, Coinbase or the issuer of a Digital Currency subject to an offer or promotion may establish qualifying criteria to participate in any special promotion its sole discretion. Coinbase may revoke any special offer at any time without notice. Once Digital Currency has been deposited in a user's Digital Currency Wallet, that Digital Currency becomes the property of the Coinbase user with all applicable property rights, including those noted in Section 2.2 of this Agreement. Coinbase shall have no obligation to make special offers available to all customers. Coinbase makes no recommendation and does not provide any advice about the value or utility of any Digital Currency subject to a promotion.

****7.3.1. New User Incentive.**** Coinbase's New User Incentives are available exclusively to new users who have not previously verified their ID. New User Incentives will appear in a new user's account following

Coinbase's verification of such user's identification. Coinbase will verify a user's identification based on its internal guidelines and governing regulations, in its sole discretion. New User Incentives are subject to the user agreement and are not guaranteed, even upon successful verification of a user's identification. New users who were referred to Coinbase through the Referral Program or who have previously opened an account using different contact information are ineligible to receive New User Incentives. Coinbase may update the conditions for eligibility at any time, in its sole discretion.

****7.4. Third-Party Applications.**** If, to the extent permitted by Coinbase from time to time, you grant express permission to a third party to access or connect to your Coinbase Account(s), either through the third party's product or service or through the Coinbase Site, you acknowledge that granting permission to a third party to take specific actions on your behalf does not relieve you of any of your responsibilities under this Agreement. You are fully responsible for all acts or omissions of any third party with access to your Coinbase Account(s). Further, you acknowledge and agree that you will not hold Coinbase responsible for, and will indemnify Coinbase from, any liability arising out of or related to any act or omission of any third party with access to your Coinbase Account(s). You may change or remove permissions granted by you to third parties with respect to your Coinbase Account(s) at any time through the tabs on the Account Settings page on the Coinbase Site.

****7.5. Prohibited Use.**** In connection with your use of the Coinbase Services, and your interactions with other users, and third parties you agree and represent you will not engage in any [Prohibited Business or

Prohibited Use)(#appendix-1-prohibited-use-prohibited-businesses-and-conditional-use) defined herein. We reserve the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, sanctions programs, legal process or governmental request. We reserve the right to cancel and/or suspend your Coinbase Account(s) and/or block transactions or freeze funds immediately and without notice if we determine, in our sole discretion, that your Account is associated with a Prohibited Use and/or a Prohibited Business.

****7.6. Transaction Limits.**** The use of all Coinbase Services is subject to a limit on the amount of volume, stated in U.S. Dollar terms, you may transact or transfer in a given period (e.g., daily). To view your limits, login to your Coinbase Account(s) and visit <https://www.coinbase.com/verifications>. Your transaction limits may vary depending on your payment method, verification steps you have completed, and other factors. Coinbase reserves the right to change applicable limits as we deem necessary in our sole discretion. If you wish to raise your limits beyond the posted amounts, you may submit a request at <https://support.coinbase.com>. We may require you to submit additional information about yourself or your business, provide records, and arrange for meetings with Coinbase staff (such process, “Enhanced Due Diligence”). Coinbase reserves the right to charge you costs and fees associated with Enhanced Due Diligence, provided that we notify you in advance of any such charges accruing. In our sole discretion, we may refuse to raise your limits or we may lower your limits at a subsequent time even if you have completed Enhanced Due Diligence.

****7.7. Suspension, Termination, and Cancellation.**** Coinbase may: (a) suspend, restrict, or terminate your access to any or all of the Coinbase Services, and/or (b) deactivate or cancel your Coinbase Account(s) if: (i) We are so required by a facially valid subpoena, court order, or binding order of a government authority; (ii) We reasonably suspect you of using your Coinbase Account(s) in connection with a [Prohibited Use or Business](#appendix-1-prohibited-use-prohibited-businesses-and-conditional-use); (iii) Use of your Coinbase Account(s) is subject to any pending litigation, investigation, or government proceeding and/or we perceive a heightened risk of legal or regulatory non-compliance associated with your Account activity; (iv) Our service partners are unable to support your use; (v) You take any action that Coinbase deems as circumventing Coinbase's controls, including, but not limited to, opening multiple Coinbase Accounts or abusing promotions which Coinbase may offer from time to time; or (vi) You breach our [Behavior Policy](https://support.coinbase.com/customer/portal/articles/2704120).

If Coinbase suspends or closes your account, or terminates your use of Coinbase Services for any reason, we will provide you with notice of our actions unless a court order or other legal process prohibits Coinbase from providing you with such notice. You acknowledge that Coinbase's decision to take certain actions, including limiting access to, suspending, or closing your account, may be based on confidential criteria that are essential to Coinbase's risk management and security protocols. You agree that Coinbase is under no obligation to disclose the details of its risk management and security procedures to you.

You will be permitted to transfer Digital Currency or funds associated with your Hosted Digital Currency Wallet(s) and/or your USD Wallet(s) for ninety (90) days after Account deactivation or cancellation unless such transfer is otherwise prohibited (i) under the law, including but not limited to applicable sanctions programs, or (ii) by a facially valid subpoena or court order. You may cancel your Coinbase Account(s) at any time by withdrawing all balances and visiting <https://www.coinbase.com/settings/cancel>. You will not be charged for canceling your Coinbase Account(s), although you will be required to pay any outstanding amounts owed to Coinbase. You authorize us to cancel or suspend any pending transactions at the time of cancellation.

****7.8. Death of Account Holder.**** For security reasons, if we receive legal documentation confirming your death or other information leading us to believe you have died, we will freeze your Coinbase Account and during this time, no transactions may be completed until:(i) your designated fiduciary has opened a new Coinbase Account, as further described below, and the entirety of your Coinbase Account has been transferred to such new account, or (ii) we have received proof in a form satisfactory to us that you have not died. If we have reason to believe you may have died but we do not have proof of your death in a form satisfactory to us, you authorize us to make inquiries, whether directly or through third parties, that we consider necessary to ascertain whether you have died. Upon receipt by us of proof satisfactory to us that you have died, the fiduciary you have designated in a valid Will or similar testamentary document will be required to open a new Coinbase Account. If you have not designated a fiduciary, then we reserve the right

to (i) treat as your fiduciary any person entitled to inherit your Coinbase Account, as determined by us upon receipt and review of the documentation we, in our sole and absolute discretion, deem necessary or appropriate, including (but not limited to) a Will, a living trust or a Small Estate Affidavit, or (ii) require an order designating a fiduciary from a court having competent jurisdiction over your estate. In the event we determine, in our sole and absolute discretion, that there is uncertainty regarding the validity of the fiduciary designation, we reserve the right to require an order resolving such issue from a court of competent jurisdiction before taking any action relating to your Coinbase Account. Pursuant to the above, the opening of a new Coinbase Account by a designated fiduciary is mandatory following the death of a Coinbase Account owner, and you hereby agree that your fiduciary will be required to open a new Coinbase Account and provide the information required under Section 2 of this Agreement in order to gain access to the contents of your Coinbase Account.

****7.9. Unclaimed Property.**** If Coinbase is holding funds (whether fiat currency or Digital Currency) in your account, and Coinbase is unable to contact you and has no record of your use of the Services for several years, applicable law may require Coinbase to report these funds (including fiat currency and Digital Currency) as unclaimed property to the applicable jurisdiction. If this occurs, Coinbase will try to locate you at the address shown in our records, but if Coinbase is unable to locate you, it may be required to deliver any such funds to the applicable state or jurisdiction as unclaimed property.

****7.10. Relationship of the Parties.**** Coinbase is an independent contractor for all purposes. Nothing in

this Agreement shall be deemed or is intended to be deemed, nor shall it cause, you and Coinbase to be treated as partners, joint ventures, or otherwise as joint associates for profit, or either you or Coinbase to be treated as the agent of the other.

****7.11. Privacy of Others; Marketing.**** If you receive information about another user through the Coinbase Services, you must keep the information confidential and only use it in connection with the Coinbase Services. You may not disclose or distribute a user's information to a third party or use the information except as reasonably necessary to effectuate a transaction and other functions reasonably incidental thereto such as support, reconciliation and accounting unless you receive the user's express consent to do so. You may not send unsolicited email to a user through the Coinbase Services.

****7.12. Password Security; Contact Information.**** You are responsible for creating a strong password and maintaining adequate security and control of any and all IDs, passwords, hints, personal identification numbers (PINs), API keys or any other codes that you use to access the Coinbase Services. Any loss or compromise of the foregoing information and/or your personal information may result in unauthorized access to your Coinbase Account(s) by third-parties and the loss or theft of any Digital Currency and/or funds held in your Coinbase Account(s) and any associated accounts, including your linked bank account(s) and credit card(s). You are responsible for keeping your email address and telephone number up to date in your Account Profile in order to receive any notices or alerts that we may send you. ****You should never allow remote access or share your computer screen with someone else when you are logged on to your Coinbase Account.**

Coinbase will never under any circumstances ask you for your IDs, passwords, or 2-factor authentication codes. We assume no responsibility for any loss that you may sustain due to compromise of account login credentials due to no fault of Coinbase and/or failure to follow or act on any notices or alerts that we may send to you.** In the event you believe your Coinbase Account(s) information has been compromised, contact Coinbase Support immediately at <https://support.coinbase.com>, or report your claim by phone at (888) 908-7930.

****7.13. Developer Tools.**** If you use developer features of the Services, including but not limited to [Coinbase Connect (OAuth2)](<https://developers.coinbase.com/docs/wallet/coinbase-connect>) and any other resources or services available at <https://developers.coinbase.com/> (the “**Developer Services**”), you must separately agree to our [Developer Agreement](<https://developers.coinbase.com/docs/wallet/terms/2>) upon registering your application with Coinbase.

****7.14. Taxes.**** It is your sole responsibility to determine whether, and to what extent, any taxes apply to any transactions you conduct through the Coinbase Services, and to withhold, collect, report and remit the correct amounts of taxes to the appropriate tax authorities. Your transaction history is available through your Coinbase Account(s).

****7.15. No Investment Advice or Brokerage.**** For the avoidance of doubt, Coinbase does not provide investment, tax, or legal advice, nor does Coinbase broker trades on your behalf. All Coinbase trades are executed automatically, based on the parameters of your order instructions and in accordance with posted

Trade execution procedures, and you are solely responsible for determining whether any investment, investment strategy or related transaction is appropriate for you based on your personal investment objectives, financial circumstances and risk tolerance. You should consult your legal or tax professional regarding your specific situation. Coinbase may provide educational information about Supported Digital Currency, as well as Digital Currency not supported by Coinbase, in order to assist users in learning more about such Digital Currency. Information may include, but is not limited to, blog posts, articles, links to to third-party content, news feeds, tutorials, and videos. The information provided on this website or any third-party sites does not constitute investment advice, financial advice, trading advice, or any other sort of advice, and you should not treat any of the website's content as such. Coinbase does not recommend that any Digital Currency should be bought, earned, sold, or held by you. Before making the decision to buy, sell or hold any Digital Currency, you should conduct your own due diligence and consult your financial advisors before making any investment decision. Coinbase will not be held responsible for the decisions you make to buy, sell, or hold Digital Currency based on the information provided by Coinbase.

8. Customer Feedback, Queries, Complaints, and Dispute Resolution

****8.1. Contact Coinbase.**** If you have feedback, or general questions, contact us via our Customer Support webpage at <https://support.coinbase.com>. When you contact us please provide us with your name, address, and any other information we may need to identify you, your Coinbase Account(s), and the transaction on which you have feedback or questions.

If you believe your account has been compromised, you may also report your claim by calling (888) 908-7930. Coinbase requires that all legal documents (including civil subpoenas, complaints, and small claims) be served on our registered agent for service of process. Current contact information for our registered agent in each state can be found [here](<https://ct.wolterskluwer.com/sop-locations>).

Please note that our registered agent will accept service only if the entity identified as the recipient of the document is identical to the entity registered with the Secretary of State and for which our registered agent is authorized to accept service. By accepting service of a legal document, Coinbase does not waive any objections we may have and may raise in response to such document.

****8.2. Formal Complaint Process.**** If you have a dispute with Coinbase (a “Complaint”), you agree to contact Coinbase through our support team to attempt to resolve any such dispute amicably. ****If we cannot resolve the dispute through the Coinbase support team, you and we agree to use the Formal Complaint Process set forth below.**** You agree to use this process before filing any arbitration claim or small claims action. If you do not follow the procedures set out in this Section before filing an arbitration claim or suit in small claims court, we shall have the right to ask the arbitrator or small claims court to dismiss your filing unless and until you complete the following steps.

****8.2.1. Procedural Steps.**** In the event that your dispute with Coinbase is not resolved through your contact with Coinbase Support, you agree to use our Complaint form to describe your Complaint, how you would like us to resolve the Complaint, and any other

information related to your dispute that you believe to be relevant. The Complaint form can be found on the Coinbase support pages, <https://support.coinbase.com> or can be requested from Coinbase Customer Support.

****8.2.2. Coinbase Response.**** We will acknowledge receipt of your Complaint form after you submit it. A Coinbase customer relations agent (“Agent”) will review your Complaint. The Agent will evaluate your Complaint based on the information you have provided and information in the possession of Coinbase. Within 15 business days of our receipt of your Complaint form, the Agent will address the issues raised in your Complaint form by sending you an e-mail (“Resolution Notice”) in which the Agent will: (i) offer to resolve your complaint in the way you requested; (ii) make a determination rejecting your Complaint and set out the reasons for the rejection; or (iii) offer to resolve your Complaint with an alternative solution. In exceptional circumstances, if the Agent is unable to respond to your Complaint within 15 business days for reasons beyond Coinbase’s control, the Agent will send you a communication indicating the reasons for any delay in answering your Complaint, and specifying the deadline by which the Agent will respond to your Complaint, which will be no later than 35 business days from our receipt of your Complaint form.

****8.3. Arbitration; Waiver of Class Action.** If we cannot resolve the dispute through the Formal Complaint Process, you and we agree that any dispute arising out of or relating to this Agreement or the Coinbase Services, including, without limitation, federal and state statutory claims, common law claims, and those based in contract, tort, fraud, misrepresentation, or any other legal theory, shall be resolved through binding arbitration, on an individual basis (the “Arbitration

Agreement”). Subject to applicable jurisdictional requirements, you may elect to pursue your claim in your local small claims court rather than through arbitration so long as your matter remains in small claims court and proceeds only on an individual (non-class and non-representative) basis. Arbitration shall be conducted in accordance with the American Arbitration Association’s rules for arbitration of consumer-related disputes (accessible at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>).**

****This Arbitration Agreement includes, without limitation, disputes arising out of or related to the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement. All such matters shall be decided by an arbitrator and not by a court or judge.****

****CLASS ACTION WAIVER: TO THE EXTENT PERMISSIBLE BY LAW, ALL CLAIMS MUST BE BROUGHT IN A PARTY’S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE ACTION, OR REPRESENTATIVE PROCEEDING (COLLECTIVELY “CLASS ACTION WAIVER”). THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS OR ENGAGE IN ANY CLASS ARBITRATION. YOU ACKNOWLEDGE THAT, BY AGREEING TO THESE TERMS, YOU AND COINBASE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION.****

The arbitration will be conducted by a single, neutral arbitrator and shall take place in the county or parish in which you reside, or another mutually agreeable location, in the English language. The arbitrator may award any relief that a court of competent jurisdiction could award and the arbitral decision may be enforced in any court. An arbitrator's decision and judgment thereon will not have a precedential or collateral estoppel effect. At your request, hearings may be conducted in person or by telephone and the arbitrator may provide for submitting and determining motions on briefs, without oral hearings. To the extent permitted by law, the prevailing party in any action or proceeding to enforce this Agreement, any arbitration pursuant to this Agreement, or any small claims action shall be entitled to costs and attorneys' fees. If the arbitrator or arbitration administrator would impose filing fees or other administrative costs on you, we will reimburse you, upon request, to the extent such fees or costs would exceed those that you would otherwise have to pay if you were proceeding instead in a court. We will also pay additional fees or costs if required to do so by the arbitration administrator's rules or applicable law.

9. General Provisions

****9.1. Computer Viruses.**** We shall not bear any liability, whatsoever, for any damage or interruptions caused by any computer viruses or other malicious code that may affect your computer or other equipment, or any phishing, spoofing or other attack. We advise the regular use of a reputable and readily available virus screening and prevention software. You should also be aware that SMS and email services are vulnerable to spoofing and phishing attacks and should use care in reviewing messages purporting to

originate from Coinbase. Always log into your Coinbase Account(s) through the Coinbase Site to review any transactions or required actions if you have any uncertainty regarding the authenticity of any communication or notice.

****9.2. Release of Coinbase; Indemnification.**** If you have a dispute with one or more users of the Coinbase Services, you release Coinbase, its affiliates and service providers, and each of their respective officers, directors, agents, joint venturers, employees and representatives from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes. You agree to indemnify and hold Coinbase, its affiliates and Service Providers, and each of its or their respective officers, directors, agents, joint venturers, employees and representatives, harmless from any claim or demand (including attorneys' fees and any fines, fees or penalties imposed by any regulatory authority) arising out of or related to your breach of this Agreement or your violation of any law, rule or regulation, or the rights of any third party.

****9.3. Limitation of Liability; No Warranty.**** IN NO EVENT SHALL COINBASE, ITS AFFILIATES AND SERVICE PROVIDERS, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES OR REPRESENTATIVES, BE LIABLE (A) FOR ANY AMOUNT GREATER THAN THE VALUE OF THE SUPPORTED DIGITAL CURRENCY ON DEPOSIT IN YOUR COINBASE ACCOUNT(S) OR (B) FOR ANY LOST PROFITS, DIMINUTION IN VALUE OR BUSINESS OPPORTUNITY, ANY LOSS, DAMAGE, CORRUPTION OR BREACH OF DATA OR ANY OTHER INTANGIBLE PROPERTY OR ANY

SPECIAL, INCIDENTAL, INDIRECT, INTANGIBLE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH AUTHORIZED OR UNAUTHORIZED USE OF THE COINBASE SITE OR THE COINBASE SERVICES, OR THIS AGREEMENT, EVEN IF AN AUTHORIZED REPRESENTATIVE OF COINBASE HAS BEEN ADVISED OF OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, EXCEPT TO THE EXTENT OF A FINAL JUDICIAL DETERMINATION THAT SUCH DAMAGES WERE A RESULT OF COINBASE'S GROSS NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR INTENTIONAL VIOLATION OF LAW. THIS MEANS, BY WAY OF EXAMPLE ONLY (AND WITHOUT LIMITING THE SCOPE OF THE PRECEDING SENTENCE), THAT IF YOU CLAIM THAT COINBASE FAILED TO PROCESS A BUY OR SELL TRANSACTION PROPERLY, YOUR DAMAGES ARE LIMITED TO NO MORE THAN THE VALUE OF THE SUPPORTED DIGITAL CURRENCY AT ISSUE IN THE TRANSACTION, AND THAT YOU MAY NOT RECOVER FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, DIMINUTION IN VALUE OR OTHER TYPES OF SPECIAL, INCIDENTAL, INDIRECT, INTANGIBLE, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES IN EXCESS OF THE VALUE OF THE SUPPORTED DIGITAL

CURRENCY AT ISSUE IN THE TRANSACTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THE COINBASE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COINBASE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. COINBASE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT ACCESS TO THE SITE, ANY PART OF THE COINBASE SERVICES, OR ANY OF THE MATERIALS CONTAINED THEREIN, WILL BE CONTINUOUS, UNINTERRUPTED, TIMELY, OR ERROR-FREE. COINBASE DOES NOT GUARANTEE THAT ANY ORDER WILL BE EXECUTED, ACCEPTED, RECORDED OR REMAIN OPEN. EXCEPT FOR THE EXPRESS STATEMENTS SET FORTH IN THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU HAVE NOT RELIED UPON ANY OTHER STATEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, WITH RESPECT TO YOUR USE AND ACCESS OF THE COINBASE SERVICES AND COINBASE SITE. WITHOUT LIMITING THE FOREGOING, YOU HEREBY UNDERSTAND AND AGREE THAT COINBASE WILL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES ARISING OUT OF OR RELATING TO: (A) ANY INACCURACY,

DEFECT OR OMISSION OF DIGITAL CURRENCY PRICE DATA, (B) ANY ERROR OR DELAY IN THE TRANSMISSION OF SUCH DATA, OR (C) INTERRUPTION IN ANY SUCH DATA.

Coinbase makes no representations about the accuracy, order, timeliness or completeness of historical Digital Currency price data available on the Coinbase Site. Coinbase will make reasonable efforts to ensure that requests for electronic debits and credits involving bank accounts, credit cards, and check issuances are processed in a timely manner but Coinbase makes no representations or warranties regarding the amount of time needed to complete processing which is dependent upon many factors outside of our control.

IF YOU ARE A NEW JERSEY RESIDENT, the provisions of this Section 9.3 are intended to apply only to the extent permitted under New Jersey law.

****9.4. Entire Agreement.**** This Agreement, the Privacy Policy, E-Sign Consent, and Appendices incorporated by reference herein comprise the entire understanding and agreement between you and Coinbase as to the subject matter hereof, and supersedes any and all prior discussions, agreements and understandings of any kind (including without limitation any prior versions of this Agreement), and every nature between and among you and Coinbase. Section headings in this Agreement are for convenience only and shall not govern the meaning or interpretation of any provision of this Agreement.

****9.5. Amendments.**** We may amend or modify this Agreement by posting on the Coinbase Site or emailing to you the revised Agreement, and the revised Agreement shall be effective at such time. If you do not agree with any such modification, your sole and

exclusive remedy is to terminate your use of the Services and close your account. You agree that we shall not be liable to you or any third party for any modification or termination of the Coinbase Services, or suspension or termination of your access to the Coinbase Services, except to the extent otherwise expressly set forth herein. If the revised Agreement includes a material change, we will endeavor to provide you advanced notice via our website and/or email before the material change becomes effective.

****9.6. Assignment.**** You may not assign any rights and/or licenses granted under this Agreement. We reserve the right to assign our rights without restriction, including without limitation to any Coinbase affiliates or subsidiaries, or to any successor in interest of any business associated with the Coinbase Services. Any attempted transfer or assignment in violation hereof shall be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

****9.7. Severability.**** If any provision of this Agreement shall be determined to be invalid or unenforceable under any rule, law, or regulation of any local, state, or federal government agency, such provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under any applicable law and the validity or enforceability of any other provision of this Agreement shall not be affected.

****9.8. Change of Control.**** In the event that Coinbase is acquired by or merged with a third party entity, we reserve the right, in any of these circumstances, to transfer or assign the information we have

collected from you as part of such merger, acquisition, sale, or other change of control.

****9.9. Survival.**** All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement, including, without limitation, sections pertaining to suspension or termination, Coinbase Account cancellation, debts owed to Coinbase, general use of the Coinbase Site, disputes with Coinbase, and general provisions, shall survive the termination or expiration of this Agreement.

****9.10. Governing Law.**** You agree that the laws of the State of California, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute that has arisen or may arise between you and Coinbase, except to the extent governed by federal law.

****9.11. Force Majeure.**** We shall not be liable for delays, failure in performance or interruption of service which result directly or indirectly from any cause or condition beyond our reasonable control, including but not limited to, significant market volatility, any delay or failure due to any act of God, act of civil or military authorities, act of terrorists, civil disturbance, war, strike or other labor dispute, fire, interruption in telecommunications or Internet services or network provider services, failure of equipment and/or software, other catastrophe or any other occurrence which is beyond our reasonable control and shall not affect the validity and enforceability of any remaining provisions.

****9.12. Non-Waiver of Rights.**** This agreement shall not be construed to waive rights that cannot be waived under applicable state money transmission laws in the state where you are located.

APPENDIX 1: Prohibited Use, Prohibited Businesses and Conditional Use

Prohibited Use

You may not use your Coinbase Account(s) to engage in the following categories of activity (“Prohibited Uses”). The specific types of use listed below are representative, but not exhaustive. If you are uncertain as to whether or not your use of Coinbase Services involves a Prohibited Use, or have questions about how these requirements apply to you, please contact us at <https://support.coinbase.com>. By opening a Coinbase Account, you confirm that you will not use your Account to do any of the following:

- ****Unlawful Activity:**** Activity which would violate, or assist in violation of, any law, statute, ordinance, or regulation, sanctions programs administered in the countries where Coinbase conducts business, including but not limited to the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”), or which would involve proceeds of any unlawful activity; publish, distribute or disseminate any unlawful material or information
- ****Abusive Activity:**** Actions which impose an unreasonable or disproportionately large load on our infrastructure, or detrimentally interfere with, intercept, or expropriate any system, data, or information; transmit or upload any material to the Coinbase Site that contains viruses, trojan horses, worms, or any other harmful or deleterious programs; attempt to gain unauthorized access to the Coinbase Site, other Coinbase Accounts, computer systems or networks connected to the Coinbase Site, through password mining or any other means; use Coinbase Account information of another party to access or use the

Coinbase Site, except in the case of specific Merchants and/or applications which are specifically authorized by a user to access such user's Coinbase Account and information; or transfer your account access or rights to your account to a third party, unless by operation of law or with the express permission of Coinbase.

- **Abuse Other Users:** Interfere with another individual's or entity's access to or use of any Coinbase Services; defame, abuse, extort, harass, stalk, threaten or otherwise violate or infringe the legal rights (such as, but not limited to, rights of privacy, publicity and intellectual property) of others; incite, threaten, facilitate, promote, or encourage hate, racial intolerance, or violent acts against others; harvest or otherwise collect information from the Coinbase Site about others, including without limitation email addresses, without proper consent

- **Fraud:** Activity which operates to defraud Coinbase, Coinbase users, or any other person; provide any false, inaccurate, or misleading information to Coinbase

- **Gambling:** Lotteries; bidding fee auctions; sports forecasting or odds making; fantasy sports leagues with cash prizes; internet gaming; contests; sweepstakes; games of chance

- **Intellectual Property Infringement:** Engage in transactions involving items that infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the law, including but not limited to sales, distribution, or access to counterfeit music, movies, software, or other licensed materials without the appropriate authorization from the rights holder; use of Coinbase intellectual property, name, or logo, including use of Coinbase trade or

service marks, without express consent from Coinbase or in a manner that otherwise harms Coinbase or the Coinbase brand; any action that implies an untrue endorsement by or affiliation with Coinbase

****Prohibited Businesses****

In addition to the Prohibited Uses described above, the following categories of businesses, business practices, and sale items are barred from Coinbase Services (“Prohibited Businesses”). Most Prohibited Businesses categories are imposed by Card Network rules or the requirements of our banking providers or processors. The specific types of use listed below are representative, but not exhaustive. If you are uncertain as to whether or not your use of Coinbase Services involves a Prohibited Business, or have questions about how these requirements apply to you, please contact us at <https://support.coinbase.com>.

By opening a Coinbase Account, you confirm that you will not use Coinbase Services in connection with any of following businesses, activities, practices, or items:

- ****Investment and Credit Services:**** Securities brokers; mortgage consulting or debt reduction services; credit counseling or repair; real estate opportunities; investment schemes
- ****Restricted Financial Services:**** Check cashing, bail bonds; collections agencies.
- ****Intellectual Property or Proprietary Rights Infringement:**** Sales, distribution, or access to counterfeit music, movies, software, or other licensed materials without the appropriate authorization from