

No. 22-105

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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 II OF II**

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## TABLE OF CONTENTS

	<u>Page</u>
<b>VOLUME I:</b>	
Relevant Pleadings in <i>Bielski v. Coinbase, Inc.</i> , No. 3:21-cv-07478-WHA (N.D. Cal.):	
Second Amended Class Action Complaint (Dkt. 22) (11/19/2021) .....	1
Declaration of Carter McPherson-Evans (Dkt. 27) (1/13/2022) .....	22
Coinbase User Agreement (Dated 4/9/2021) (Dkt. 28-1) (Filed 1/13/2022) .....	27
Declaration of Abraham Bielski (Dkt. 29-1) (2/10/2022).....	95
Coinbase Answer to Second Amended Class Action Complaint (Dkt. 63) (7/21/2022) .....	98
Joint Case Management Statement (Dkt. 90) (9/22/2022) .....	116
Order Granting Motion for Leave to Amend (Dkt. 102) (11/22/2022) .....	129
Third Amended Class Action Complaint (Dkt. 103) (11/28/2022) .....	130
Relevant Pleadings in <i>Bielski v. Coinbase, Inc.</i> , No. 22-15566 (9th Cir.):	
Motion for Stay Pending Appeal (Dkt. 10) (6/14/2022).....	178
Motion to Hold Appeal in Abeyance (Dkt. 68) (12/10/2022) .....	199
Opposition to Motion to Hold Appeal in Abeyance (Dkt. 70) (12/14/2022) .....	203

**TABLE OF CONTENTS—Continued**

	<u>Page</u>
Reply in Support of Motion to Hold Appeal in Abeyance (Dkt. 71) (12/16/2022) .....	209
Relevant Pleadings in <i>Suski v. Coinbase, Inc.</i> , No. 3:21-cv-04539-SK (N.D. Cal.):	
Motion to Compel Arbitration, or, Alternatively, to Dismiss (Dkt. 33) (10/19/2021) .....	217
Coinbase User Agreement (Dated 8/23/2017) (Dkt. 33-7) (Filed 10/19/2021) ....	257
Coinbase User Agreement (Dated 12/8/2020) (Dkt. 33-8) (Filed 10/19/2021) ....	315
 <b>VOLUME II:</b>	
Coinbase User Agreement (Dated 3/31/2021) (Dkt. 33-9) (Filed 10/19/2021) ....	366
Coinbase User Agreement (Dated 11/6/2019) (Dkt. 33-10) (Filed 10/19/2021) .....	431
Second Amended Class Action Complaint (Dkt. 36) (10/20/2021) .....	486
Order Regarding Motions to Compel Arbitration and to Dismiss (Dkt. 53) (1/11/2022) .....	554
Third Amended Class Action Complaint (Dkt. 83) (5/10/2022) .....	576
Coinbase Dogecoin Sweepstakes Official Rules (Exhibit A to Third Amended Class Action Complaint) (Dkt. 83-1) (Filed 5/10/2022) .....	652

**TABLE OF CONTENTS—Continued**

	<u>Page</u>
Coinbase, Inc.’s Joinder in Defendant Marden-Kane, Inc.’s Motion to Compel Arbitration (Dkt. 88) (6/9/2022) .....	664
Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss (Dkt. 113) (8/31/2022) .....	694
Notice of Appeal (Marden-Kane, Inc.) (Dkt. 122) (9/30/2022) .....	714
Notice of Appeal (Coinbase, Inc.) (Dkt. 123) (9/30/2022) .....	716
Declaration of David J. Harris (Dkt. 137-1) (11/10/2022) .....	718
Stipulation and Order to Extend Time of Certain Case Deadlines and Events (Dkt. 138) (11/14/2022) .....	722
Relevant Pleadings in <i>Suski v. Coinbase,</i> <i>Inc.</i> , No. 22-15209 (9th Cir.):	
Motion for Stay Pending Appeal (Dkt. 16-1) (5/16/2022) .....	728
Reply in Support of Motion for Stay Pend- ing Appeal (Dkt. 23-1) (5/25/2022) .....	749
Ninth Circuit’s Opinion (Dkt. 56) (12/19/2022) .....	760

**Coinbase User Agreement**  
**As of March 31, 2021**

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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.

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## 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://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. 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](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 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](https://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](https://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 ownership of the underlying Digital Currency 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 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.** 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](#). 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, 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://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://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; (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://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) and any other resources or services available at <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 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](#).



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.

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## 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 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://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://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://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://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://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](mailto: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://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 323990376, 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) 4734858 (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. 121163082 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://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://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](http://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://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://dfi.wa.gov/consumers/loan-complaints> Call us:  
1877-RING DFI (1-877-746-4334) Email us: [CSEnforceComplaints@dfi.wa.gov](mailto:CSEnforceComplaints@dfi.wa.gov)

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## 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](https://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](https://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](https://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](https://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.

```
<div class="toc">
  <strong>Part 1. General Use</strong><a href="#1-
account-setup">Account Setup</a>
  <a href="#2-wallet-and-custodial-services">Wallet
and Custodial Services</a>
  <a href="#3-payment-services-purchase-sale-trans-
actions">Payment Services, Purchase & Sale Transac-
tions</a>
  <a href="#4-digital-currency-transfers">Digital
Currency Transfers</a>
  <a href="#5-additional-services">Additional Ser-
vices</a>
  <a href="#6-data-protection-and-security">Data
Protection and Security</a>
  <a href="#7-general-use-prohibited-use-death-of-ac-
count-holder-and-termination">General Use, Prohib-
ited Use, Death of Account Holder and Termina-
tion</a>
  <a href="#8-customer-feedback-queries-complaints-
and-dispute-resolution">Customer Feedback, Que-
ries, Complaints, and Dispute Resolution</a>
  <a href="#9-general-provisions">General Provi-
sions</a>
  <a href="#appendix-1-prohibited-use-prohibited-
businesses-and-conditional-use">Appendix 1. Prohib-
ited Use, Prohibited Businesses and Conditional
Use</a>
```

```
<a href="#appendix-2-verification-procedures-and-limits">Appendix 2. Verification Procedures and Limits</a>
```

```
<a href="#appendix-3-e-sign-disclosure-and-consent">Appendix 3: E-Sign Disclosure and Consent</a>
```

```
<a href="#appendix-4-state-license-disclosures">Appendix 4: State License Disclosures</a>
```

```
<strong>Part 2. Coinbase Pro</strong>
```

```
<a href="#1-coinbase-pro-accounts">Coinbase Pro</a>
```

```
<a href="#2-trading-rules-and-trading-fees">Orders, Trades, and Fees</a>
```

```
<a href="#3-general-use-restrictions-and-cancellation">General Use, Restrictions, and
```

```
Cancellation</a>
```

```
</div>
```

```
<div class="user-agreement">
```

```
<% if current_user && current_user.state_code == 'FL' %>
```

```
<%= 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](http://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: November 6, 2019 \_

## # 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

**\*\*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. Purchase or Sale of Digital Currency.\*\*** When you purchase (buy) Digital Currency from Coinbase (or from a third-party using Coinbase Pro) this transaction is intended to effect a sale of Digital Currency. 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, failure of Pro to respond, or an order exceeding the maximum 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](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. 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.

**\*\*3.6. 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.

**\*\*3.7. 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.

**\*\*3.8. 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.

**\*\*3.9. 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.

**\*\*3.10. 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 [\[pro.coinbase.com\]](http://pro.coinbase.com)(<http://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](http://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.

**\*\*5.4.2 The Service; Rewards; Commission.\*\*** 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.

**\*\*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 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.

**\*\*7.4. 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 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 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 bong, 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://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](<https://www.coinbase.com/verifications>) page.

You may contact us at <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 b

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed October 20, 2021]

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

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

*Plaintiffs,*

v.

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

*Defendants.*

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**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR:**

- (1) VIOLATIONS OF CALIFORNIA FALSE  
ADVERTISING LAW, Cal. Bus. & Prof. Code  
§§ 17500, *et seq.*;
- (2) VIOLATIONS OF CALIFORNIA UNFAIR  
COMPETITION LAW, Cal. Bus. & Prof. Code  
§§ 17200, *et seq.*;
- (3) VIOLATIONS OF CALIFORNIA CONSUMER  
LEGAL REMEDIES ACT, Cal. Civ. Code §§ 1750, *et  
seq.*

**JURY TRIAL DEMANDED**

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*“When you see these sort[s] of practices done by both scammers and legitimate entities, it makes it really hard to distinguish between the two of them.”*

-Benjamin Powers, Coindesk.com (June 4, 2021)

Pursuant to Fed. R. Civ. P. 23, Plaintiffs David Suski, Jaimee Martin, Jonas Calsbeek and Thomas Maher bring this class action individually and on behalf of all other persons who opted into Coinbase’s \$1.2 million Dogecoin (DOGE) sweepstakes in June 2021, and who purchased or sold Dogecoins on a Coinbase exchange for a total of \$100 or more between June 3, 2021 and June 10, 2021, inclusive. Plaintiffs make the following allegations based upon the investigation of their counsel, and based upon personal knowledge as to themselves and their own acts and dealings with the Defendants. Plaintiffs and their counsel believe that substantial, additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

## **INTRODUCTION**

1. Founded in 2012, Defendant Coinbase, Inc. (“Coinbase,” or the “Company”) is a newly public company and one of the largest online cryptocurrency exchanges in the world. Coinbase has approximately 60 million active users worldwide, consisting primarily of retail consumers, who buy and sell cryptocurrencies online through the Company’s website, [www.coinbase.com](http://www.coinbase.com), and through the Coinbase mobile app.

2. Coinbase collects trading fees (or “commissions”) from its users for each crypto purchase or sale they execute with Coinbase. Trading fees are generally calculated as a percentage of the dollar price (or Euro

price, or Yen price, etc.) of the cryptocurrencies being bought or sold. Coinbase's financial health depends upon its ability to buy, offer, sell, and resell cryptos to consumers in exchange for traditional currencies, like U.S. dollars.

3. Among the many different cryptocurrencies that Coinbase buys and sells is a cryptocurrency called "Dogecoin," or "DOGE." Dogecoin was created in December 2013 by two software engineers, who decided to create a new digital payment system as a joke, making light of the speculative trading that was occurring in cryptocurrencies generally. After all, if arbitrary computer codes like "Bitcoins" could be invented out of thin air, and sold for thousands of dollars each, then why not invent and sell "Dogecoins" too?



4. The software engineers' joke eventually became a hit, especially among millennials and younger generations. As the retail prices of many cryptocurrencies skyrocketed in recent years, so too did the retail price of the "coin" known as "DOGE." The retail price of one Dogecoin was less than a penny as of January 2021,

before spiking as high as \$0.70 per DOGE in May 2021.

5. Coinbase, one of the world's preeminent crypto dealers, took notice of DOGE's meteoric ascent in popularity, and in response, decided to add Dogecoins to the list of cryptos that Coinbase would offer to its customers.

6. On June 1, 2021, for the first time, Coinbase started allowing users to transfer "Dogecoins" into their Coinbase trading accounts. Coinbase announced that it would start allowing its users to buy and sell Dogecoins on or after June 3, 2021, "if liquidity conditions are met." See <https://blog.coinbase.com/dogecoin-doge-is-launching-on-coinbase-pro-1d73bf66dd9d> (last visited Jun. 9, 2021). Given the huge amount of commissions that Coinbase could earn from millions of users buying and selling DOGE on its platform, Coinbase had no intention of leaving DOGE's "liquidity conditions" up to chance, or up to natural consumer sentiment. Instead, Coinbase decided to incentivize as much Dogecoin trading as possible on its platform. To do this, Coinbase hired Defendant Marden-Kane Inc. ("MKI") to design, market, and execute a \$1.2 million "Dogecoin sweepstakes," which began on June 3, 2021.

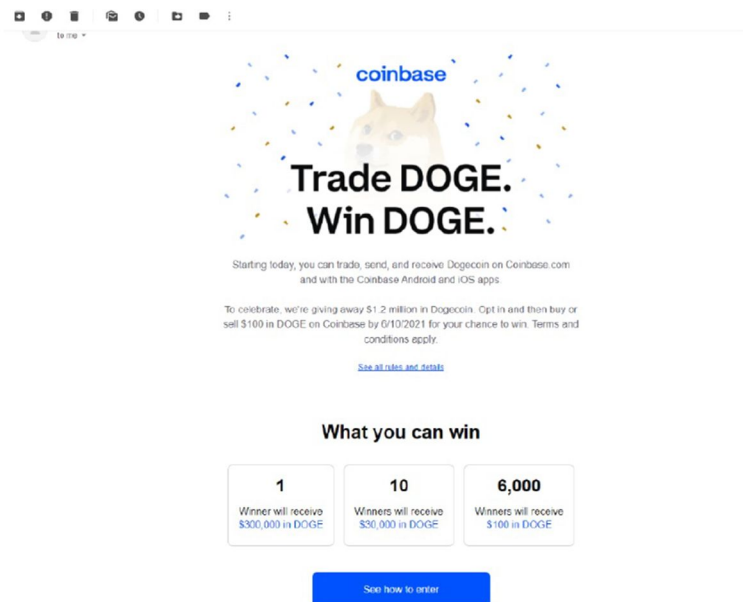
7. On June 3, 2021 (the first day that Coinbase opened for Dogecoin trading), Coinbase directly emailed Plaintiffs and millions of its users, and also displayed to them on its website and mobile app, advertisements of a \$1.2 million Dogecoin "sweepstakes." Defendants' direct-to-user emails and digital ads were drafted, structured and designed collaboratively by MKI and Coinbase, and then ultimately transmitted to users by Coinbase.



8. Defendants' direct-to-user emails and digital ads displayed large, colorful graphics and large print stating:

Trade DOGE. Win DOGE. Starting today, you can trade, send, and receive Dogecoin on Coinbase.com and with the Coinbase Android and iOS apps. To celebrate, we're giving away \$1.2 million in Dogecoin. Opt in and then buy or sell \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Terms and conditions apply.

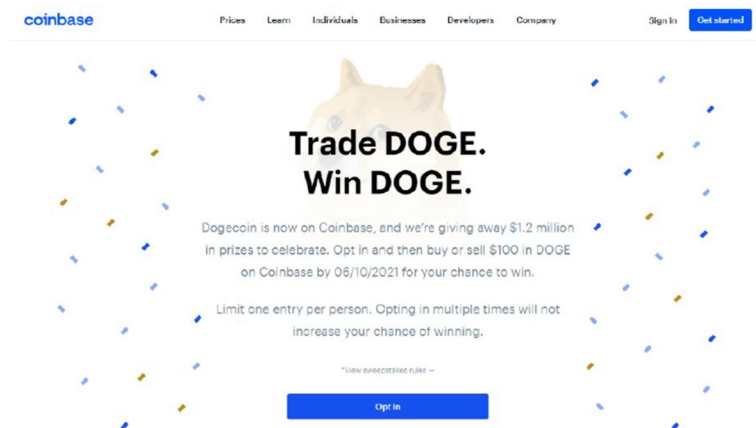
Defendants' email solicitations also displayed large, bold text, showing "What you can win," highlighting that "1 Winner will receive \$300,000 in DOGE," that "10 Winners will receive \$30,000 in DOGE," and that "6,000 Winners will receive \$100 in DOGE." Immediately below those flashy statements about prizes was a large, bright blue button that said, "See how to enter." Sandwiched in between those large, prominent statements was a much smaller-font link stating, "See all rules and details." The first "screen-page" of Defendants' email ads looked like the image below.



9. Defendants’ “sweepstakes” ads on Coinbase’s website and mobile app were substantially identical.

10. When Plaintiffs and other consumers clicked the big, bright blue “See how to enter” button (before clicking the smaller, “See all rules and details” link), they were taken to a Coinbase web advertisement containing similar, prominent instructions on how to enter the Company’s sweepstakes. Once again, the ad stated in large, bold letters, with graphics: “Trade DOGE. Win DOGE.” This web ad reiterated the main assertions in the email ad, stating that “Dogecoin is now on Coinbase, and we’re giving away \$1.2 million in prizes to celebrate. Opt in and then buy or sell \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Limit one entry per person. Opting in multiple times will not increase your chance of winning.” Once again, there was a much smaller, fainter link, beneath the prominent text, that said “View sweepstakes

rules,” and then a much larger, bright-blue button prompting the customer to “Opt-in.”<sup>1</sup>



11. Upon clicking “Opt-in,” Plaintiffs and other consumers would see the large text and the bright blue button change. The large text changed to say:

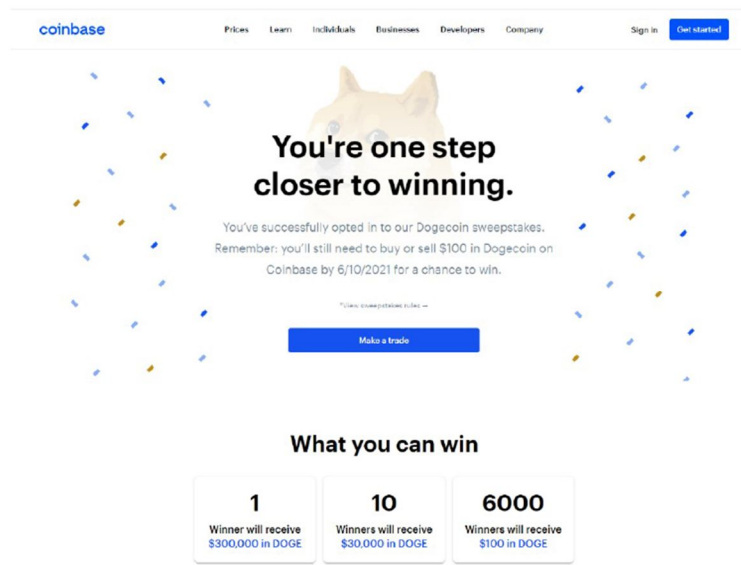
“You’re one step closer to winning. You’ve successfully opted in to our Dogecoin Sweepstakes. *Remember, you’ll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win.*” (emphasis added)

At the same time, Defendants’ large, bright blue button changed from saying “Opt in,” to saying “Make a trade.” All other aspects of this digital ad remained unchanged upon clicking the “Opt in” button. Thus, Defendants affirmatively represented to Plaintiffs and the Class that “buy[ing] or sell[ing] \$100 in Dogecoin

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<sup>1</sup> The faint and tiny “View sweepstakes rules” link displayed above did not even link to the sweepstakes rules, but rather, to a footnote at the bottom of the page containing generalized, ambiguous statements about *some* aspects of the sweepstakes rules.

on Coinbase by 6/10/2021” was necessary to enter “for a chance to win.” (See the image below.)



12. Upon clicking “Make a trade,” customers were taken directly to Coinbase’s trading platform, where they could sell or buy Dogecoins for \$100 or more on Coinbase, minus trading commissions.

13. If users happened to scroll down Defendants’ digital ads a bit before “opting in” or “making a trade,” they would see other large, bold-font statements. The digital ads’ second and third “screen pages” further highlighted the sweepstakes prizes, and the process for entering to win.

coinbase Prices Learn Individuals Businesses Developers Company Sign in [Get started](#)

**\$300,000 in DOGE** **\$30,000 in DOGE** **\$100 in DOGE**

### How to enter

- Sign in to Coinbase**  
Not logged in? Sign in or create an account at [coinbase.com](https://coinbase.com). Then follow the prompts to opt in.
- Opt in to the sweepstakes**  
If you're signed in, you can opt in above. You'll get an email confirming that you've successfully opted in after about 24 hours.
- Make a trade**  
Buy or sell \$100 or more in DOGE on Coinbase between 6/3/21 and 6/10/21. You can trade \$100 all at once, or a little at a time.
- Watch your inbox**  
Once you opt in and trade, you'll be officially entered to win. Winners will hear from us via email on or around 6/17.

**Important security notice:** Be on the lookout for [scammers](#). You will get a confirmation email within 24 hours. We will only notify you about prizes via [no-reply@coinbase.com](mailto:no-reply@coinbase.com). See a [fraudulent giveaway?](#) Report it to [security@coinbase.com](mailto:security@coinbase.com).

14. Thus, according to Defendants' prominent, repeated instructions, the process for entering their Dogecoin sweepstakes was as follows.

(a) **“Sign in to Coinbase.** Not logged in? Sign in or create an account at [coinbase.com](https://coinbase.com). Then follow the prompts to opt in.”

(b) **“Opt in to the sweepstakes.** If you're signed in, you can opt in above. You'll get an email confirming that you've successfully opted in after about 24 hours.”

(c) **“Make a trade.** Buy or sell \$100 or more in DOGE on Coinbase between 6/3/21 and 6/10/21. You can trade \$100 all at once, or a little at a time.”

(d) **“Watch your inbox.** Once you opt in and trade, you'll be officially entered to win. Winners will hear from us via email on or around 6/17.”

15. Defendants' above email, web, and mobile app advertisements to Plaintiffs and the Class were materially false and misleading when disseminated. The truth was that users did *not* “need” to buy or sell “\$100 or more in DOGE” to enter Defendants' sweepstakes.

Instead, users could buy or sell *almost* \$100 in DOGE, *or* simply mail the Defendants a 3x5-inch index card stating the user's name, contact information, and date of birth.

16. Defendants ultimately stated those truths on their separate "rules and details" webpage. Defendants, however, specifically crafted their digital ads with the knowledge and intent that their ads' text, structure, and design would lead *most* consumers to "Opt in" and "Make a trade" before discovering any free entry option. As detailed herein, Defendants made other false and misleading statements to Class members, all to deceive Class members into believing that buying or selling \$100 or more "in Dogecoin" was necessary to enter the sweepstakes.

17. Defendants directly and affirmatively deceived Plaintiffs and the Class for the purposes of extracting hundreds of millions of dollars from them, thereby ensuring that Coinbase's "liquidity conditions" would be met as soon as the Company's platform opened for Dogecoin trading. <https://blog.coinbase.com/dogecoin-doge-is-launching-on-coinbase-pro-1d73bf66dd9d> (last visited Jun. 9, 2021) ("Trading will begin on or after 9AM Pacific Time (PT) Thursday June 3, if liquidity conditions are met.").

18. Defendants' deceptive digital ad campaign caused Plaintiffs and millions of Class members to pay hundreds of millions of dollars in "Dogecoin" purchases and trading fees to Coinbase, which they would not otherwise have paid absent Defendants' affirmative misstatements and omissions. This nationwide class action seeks judicial relief from Defendants' wrongful conduct, on behalf of Plaintiffs and all other Class members.

**PARTIES**

19. Plaintiff David Suski is a citizen of New York, and has a personal account with Coinbase that allows him to sell and buy cryptocurrencies directly to and from Coinbase via [www.coinbase.com](http://www.coinbase.com), as well as the Company's mobile app.

20. Plaintiff Jaimee Martin is a citizen of Oregon, and has a personal account with Coinbase that allows her to sell and buy cryptocurrencies directly to and from Coinbase via [www.coinbase.com](http://www.coinbase.com), as well as the Company's mobile app.

21. Plaintiff Jonas Calsbeek is a citizen of California, and has a personal account with Coinbase that allows him to sell and buy cryptocurrencies directly to and from Coinbase via [www.coinbase.com](http://www.coinbase.com), as well as the Company's mobile app.

22. Plaintiff Thomas Maher is a citizen of Missouri, and has a personal account with Coinbase that allows him to sell and buy cryptocurrencies directly to and from Coinbase via [www.coinbase.com](http://www.coinbase.com), as well as the Company's mobile app.

23. Founded in 2012, Defendant Coinbase, Inc. ("Coinbase") is a Delaware corporation with its primary offices located in San Francisco, California. Coinbase is one of the largest online cryptocurrency dealers in the world. Coinbase has approximately 60 million active users worldwide, consisting primarily of consumers who buy and sell cryptocurrencies through the Company's website, [www.coinbase.com](http://www.coinbase.com). In 2021, the common stock of Coinbase's parent company, Coinbase Global, Inc., began trading publicly on the NASDAQ global stock exchange under ticker symbol "COIN."

24. Defendant Marden-Kane, Inc. (“MKI”) is a New York corporation with its primary offices located in New York. MKI specializes in designing, creating, executing, and analyzing various advertising and promotional campaigns for corporate clients, and specializes particularly in administering digital sweepstakes campaigns. In or before 2021, Defendant MKI contracted with Defendant Coinbase to serve as Coinbase’s “Administrator” for the June 2021 Dogecoin sweepstakes.

### **JURISDICTION AND VENUE**

25. This Court has jurisdiction under 28 U.S.C. § 1332(d) because the aggregate amount in controversy exceeds \$5,000,000, and Plaintiffs and most Class members are citizens of States different from the Defendants’ home States.

26. This Court has, at minimum, specific personal jurisdiction over both Defendants because Defendants’ official sweepstakes rules and terms provide that “the California courts (state and federal) shall have sole jurisdiction of any controversies regarding the [sweepstakes] promotion, and the laws of the State of California shall govern the promotion.” *See* Ex. A, Official Rules, ¶10, *available at* <https://www.coinbase.com/sweepstakes-doge-terms> (last visited Jun. 11, 2021).

27. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1), because a substantial part of the events and omissions giving rise to the claims occurred in this district, and a substantial part of the property at issue in this action is situated within this district.



**SUBSTANTIVE ALLEGATIONS****Plaintiffs' Experiences With Defendants' DOGE Sweepstakes**

28. On or about June 8, 2021, Plaintiff David Suski viewed Defendants' email and internet ads, without knowing that he could enter the Dogecoin sweepstakes simply by mailing in a 3x5 index card stating his name, birthday, and contact information. Before seeing all of Defendants' sweepstakes "rules and details," Plaintiff Suski followed the more conspicuous statements and action buttons contained in Defendants' ads to "See how to enter," to "Opt in" to the sweepstakes, and to "Make a trade" on Coinbase's platform by buying Dogecoins from Coinbase for \$100. Nowhere did Defendants' ads make clear to Plaintiff Suski that there was a 100% free, mail-in option for entering the sweepstakes: an option that required no Dogecoin purchases or sales. In fact, as soon as he clicked the big blue button to "Opt in" to the sweepstakes, Defendants' digital ad affirmatively misrepresented to Plaintiff Suski that he would "*need* to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win."<sup>2</sup> Plaintiff Suski relied upon Defendants' material misrepresentations and omissions to his own detriment.

29. If Defendants' ads had made clear to Plaintiff Suski that there was a trade-free entry option, then he would not have given Coinbase his \$100, or paid any trading commissions to buy Dogecoins from Coinbase. The only reason that Plaintiff Suski undertook to buy Dogecoins from Coinbase was because Defendants led

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<sup>2</sup> All emphasis within quotations marks is added unless otherwise stated herein.

him to believe that doing so was necessary to enter a \$1.2 million sweepstakes.

30. On or about June 4, 2021, Plaintiff Jaimee Martin viewed a screenshot of Defendants' email advertisement for the Dogecoin sweepstakes. Upon reviewing the screenshot of Defendants' email ad, Plaintiff Martin reasonably believed that buying or selling \$100 or more in DOGE was necessary to enter the sweepstakes. In reliance upon Defendants' misleading email advertisement, Plaintiff Martin immediately went on Coinbase and bought Dogecoins she would not otherwise have purchased, for a total of approximately \$120 (including commissions). She had not yet opted into the sweepstakes at this time.

31. Days later, on or about June 9, 2021, Plaintiff Martin once again viewed Defendants' Dogecoin sweepstakes ad, but this time on her Coinbase mobile app. Defendants' digital sweepstakes ad again led Plaintiff Martin to believe that buying or selling \$100 or more in DOGE was necessary to enter the sweepstakes. In reliance upon Defendants' false and misleading ads, Plaintiff Martin clicked Defendants' prominent "Opt in" button, and then purchased additional Dogecoins from Coinbase for a total of \$100 (including commissions). She made this purchase even after making her prior, \$120 purchase because: (a) when she clicked Defendants' prominent "Opt in" button, the ad falsely represented to her that *"you'll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win"*; and because (b) she had still not received any email from Coinbase

confirming her sweepstakes entry, despite her \$120 Dogecoin purchase from Coinbase days earlier.<sup>3</sup>

32. Plaintiff Martin opted into the sweepstakes, and made each of her Dogecoin purchases, without knowing that she could have entered the Dogecoin sweepstakes simply by mailing Coinbase an index card stating her name, birthday, and contact information. Before seeing all of Defendants' sweepstakes "rules and details," Plaintiff Martin followed the more conspicuous statements and action buttons in Defendants' ads to "See how to enter," to "Opt in" to the sweepstakes, and to "Make a trade" on Coinbase's platform, by buying Dogecoins from Coinbase for a total of \$220. Nowhere did Defendants' ads make clear to Plaintiff Martin that there was a 100% free, mail-in option for entering the sweepstakes, an option that required no Dogecoin purchases or sales. Indeed, as soon as she clicked the big blue button to "Opt in" to the sweepstakes, Defendants' digital ad affirmatively misrepresented to Plaintiff Martin that she would "*need* to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win." Plaintiff Martin relied upon Defendants' material misrepresentations and omissions, to her own detriment.

33. If Defendants' digital ads had made clear to Plaintiff Martin that there was a 100% free, mail-in

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<sup>3</sup> Coinbase sent Plaintiff Martin an email confirmation of her "opting in" almost instantly after she clicked "Opt in," yet Coinbase inexplicably delayed for several days in sending her an email confirmation of her *entry*. Coinbase's delayed entry-confirmation email left Plaintiff Martin unsure of whether she had successfully entered the sweepstakes with her first purchase, so she made a second purchase to ensure that she would be entered. Coinbase did not send her entry-confirmation email until June 10, 2021.

entry option, then she would not have given Coinbase her \$120, or her subsequent \$100, or paid any trading commissions to buy Dogecoins from Coinbase.

34. On or about June 3, 2021, Plaintiff Jonas Calsbeek viewed Coinbase's email and internet ads, without knowing that he could enter the Dogecoin sweepstakes simply by mailing Coinbase an index card with his name, birthday, and contact information on it. Before seeing all of Defendants' sweepstakes "rules and details," Plaintiff Calsbeek followed Defendants' more conspicuous statements and action buttons in the ads to "See how to enter," to "Opt in" to the sweepstakes, and to "Make a trade" on Coinbase's platform by buying Dogecoins for a total of \$125 (including trading fees). Nowhere did Defendants' digital sweepstakes ads make clear to Plaintiff Calsbeek that there was a 100% free, mail-in option for entering this sweepstakes, an option that required no Dogecoin purchases or sales. In fact, as soon as Plaintiff Calsbeek clicked the big blue button to "Opt in" to the sweepstakes, Defendants' digital ad affirmatively misrepresented to Plaintiff Calsbeek that he would "*need* to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win." Plaintiff Calsbeek relied upon Defendants' misrepresentations and omissions to his own detriment.

35. If Defendants' ads had made clear to Plaintiff Calsbeek that there was a 100% free, mail-in entry option, which did not require any DOGE trading, then he would not have given Coinbase his \$125 or paid Coinbase any trading fees. In fact, the only reason Plaintiff Calsbeek undertook to buy Dogecoins from Coinbase was that Defendants led him to believe that doing so was necessary to enter a \$1.2 million sweepstakes.

36. On or about June 3, 2021, Plaintiff Thomas Maher viewed Coinbase’s email and internet ads, without knowing that he could enter the Dogecoin sweepstakes simply by mailing Coinbase an index card with his name, birthday, and contact information on it. Before seeing all of Defendants’ sweepstakes “rules and details,” Plaintiff Maher followed Defendants’ more conspicuous statements and action buttons to “See how to enter,” to “Opt in” to the sweepstakes, and to “Make a trade” on Coinbase’s platform by buying Dogecoins for a total of \$105 (including trading fees). Nowhere did Defendants’ digital sweepstakes ads make clear to Plaintiff Maher that there was a 100% free, mail-in option for entering this sweepstakes, an option that required no Dogecoin purchases or sales. In fact, as soon as Plaintiff Maher clicked the big blue button to “Opt in” to the sweepstakes, Defendants’ digital ad affirmatively misrepresented to Plaintiff Maher that he would “*need* to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win.” Plaintiff Maher relied upon Defendants’ misrepresentations and omissions to his own detriment.

37. As with Plaintiff Martin, Coinbase delayed in sending Plaintiff Maher a contemporaneous (or even same-day) email confirming his opt-in and entry into the sweepstakes. Coinbase’s delayed email confirmations left Plaintiff Maher unsure of whether he had successfully entered the sweepstakes with his \$105 purchase, so he made a *second* DOGE purchase from Coinbase on June 4, 2021, spending an additional \$100, to ensure that he would be entered. Coinbase eventually sent Maher an email confirmation of his opt-in on June 5, 2021, and an email confirmation of his sweepstakes entry on June 6, 2021.

38. If Defendants' ads had made clear to Plaintiff Maher that there was a 100% free, mail-in entry option, which did not require any DOGE trading, then he would not have given Coinbase his \$205 or paid Coinbase any trading fees. In fact, the only reason Plaintiff Maher undertook to buy Dogecoins from Coinbase was that Defendants led him to believe that doing so was necessary to enter a \$1.2 million sweepstakes.

39. Defendants' sweepstakes ads were specifically known and designed by Defendants to deceive and confuse each Plaintiff, and most layperson-consumers, into believing that they would "need" to buy or sell Dogecoins on Coinbase's platform to enter the sweepstakes. Defendants' ads were designed to deceptively induce, and did deceptively induce, Plaintiffs and the Class to pay \$100 or more to Coinbase on that false pretense.

**Defendants' Additional False And Misleading Statements And Omissions To Class Members**

40. In addition to misrepresenting the necessity of "making a trade," Defendants also misrepresented the dollar amount of purchase or sale transactions that would be (purportedly) necessary to enter.

41. Specifically, Defendants' ads stated that "[W]e're giving away \$1.2 million in Dogecoin. Opt in and then buy or sell \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win." See ¶¶9-12, supra. Likewise, upon clicking Defendants' "Opt in" button, Defendants' ads stated that "you'll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win." These statements reasonably conveyed the message that the total value of the Dogecoins purchased or sold during the entry period must be greater than or equal to \$100.

42. When purchasing cryptocurrencies on Coinbase, users select the digital token that they wish to buy (*e.g.*, Bitcoin, Litecoin, Dogecoin, etc.) and input the dollar amount that they wish to spend. Coinbase then shows users the dollar amount of trading commissions that will be deducted from their purchase (or sale), and then displays the quantity of cryptocurrency that will be purchased with the remaining dollar amount.

43. For example, if a Coinbase user goes to purchase Dogecoins, and enters a dollar amount of \$100, Coinbase displays to that user a “preview” of the transaction. Coinbase’s transaction preview will show a “Total” price of \$100, a “Coinbase fee” of approximately \$3 to \$4, and a “Purchase” price of approximately \$96 to \$97. The transaction preview also shows the user how many Dogecoins will be purchased with the \$96 or \$97 that remain *after* deducting commissions.

44. Thus, when Defendants advertised to Class members that they “need[ed]” to buy or sell “\$100 *in DOGE*” or “\$100 *in Dogecoin*” to enter, Defendants effectively communicated that users would have to pay a transaction “Total” of *more than* \$100 to account for the transaction fee, and ensure that the previewed DOGE “Purchase” price was greater than or equal to \$100.

45. Indeed, that is why Plaintiff Martin made a purchase “Total” of \$120, instead of \$100 even. That is also why Plaintiff Calsbeek’s purchase “Total” was \$125, instead of \$100 even. That is also why Plaintiff Maher’s June 3, 2021 purchase “Total” was \$105, instead of \$100 even. Based on the plain language in Defendants’ ads, each of them believed they needed to buy “\$100 in Dogecoin,” *after* deducting the “Coinbase

fee,” because that fee was *not* part of the previewed “Purchase” price for the Dogecoins. Once again, Defendants’ sweepstakes ads were both untrue and materially misleading.

46. The truth was that a purchase or sale transaction “Total” of *\$100 even*—and hence, a Dogecoin “Purchase” price of less than \$100 (in other words, *less than* “\$100 in DOGE”)—would have sufficed for Plaintiffs and the Class to enter the sweepstakes. Defendants buried this truth only in the fine print of their official sweepstakes rules, which provided:

Existing account holders and new\* account holders must opt-in to participate in the Sweepstakes and must complete \$100usd (*cumulative 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.

(emphasis added).

47. The false and misleading “\$100 in DOGE” and “\$100 in Dogecoin” language in Defendants’ ads caused most Class members to make purchases totaling *more than* \$100, to avoid having their “Coinbase fee” reduce the previewed value of their Dogecoin “Purchase” below \$100. This subtle deception by the Defendants allowed Coinbase to fleece millions of Class members out of several more dollars each, which Class members never needed to spend to enter. Defendants’ deception in this regard further inflated Coinbase’s fee-based profits by at least millions of dollars, and further ensured that Coinbase’s “liquidity conditions” for DOGE trading would be immediately satisfied on June 3, 2021.



48. In sum, Defendants successfully deployed multiple, misleading and deceptive advertising tactics to induce millions of consumers to spend *over* \$100 that they did not need to spend to enter Defendants' \$1.2 million sweepstakes.

**Defendants' Knowledge and Intent in Crafting Their Misleading "Sweepstakes" Solicitations**

49. Coinbase and its sweepstakes "Administrator," Defendant MKI, knew that their ads had the likelihood, tendency and capacity to mislead and confuse consumers like Plaintiffs because Defendants had already executed and analyzed a nearly identical, digital "sweepstakes" on Coinbase just two months prior to this DOGE Sweepstakes.

50. Specifically, in April 2021, Defendants had collaborated to execute a \$2 million *Bitcoin* sweepstakes. The only substantive difference between this Bitcoin sweepstakes and Defendants' subsequent Dogecoin sweepstakes was that, instead of purporting to require people to "make a trade" to enter, Defendants' Bitcoin sweepstakes ads purported to require people to "[s]ign up for an account at coinbase.com," and "verify [their] identity." Aside from that one difference, the digital structure, aesthetic design, and language that Defendants' used in their Bitcoin sweepstakes ads were identical to what they used in their Dogecoin sweepstakes ads.

51. In Defendants' earlier Bitcoin sweepstakes—just like in the subsequent Dogecoin sweepstakes—there was a different, less intrusive entry-option provided *not* on the ads or on the entry webpages, but instead on a separate "rules" and "details" webpage. Rather than providing social security numbers, drivers' licenses, and other sensitive, personally identifying

information (“PII”) to Coinbase (*i.e.*, “verify[ing] [their] identity”), users had the *alternative* option to enter by mailing Coinbase a 3x5-inch index card with the customer’s name, contact information, and birthday on it.

52. The digital ads that Defendants used in their earlier Bitcoin sweepstakes were designed and presented to consumers in a manner substantially identical to the digital ads they used in their June 2021 Dogecoin sweepstakes.

53. In executing their April 2021 Bitcoin sweepstakes, Defendants had collected, reviewed and analyzed a wealth of data about consumers’ specific behaviors and reactions to various parts of this ad campaign. Both Coinbase and MKI knew exactly how many consumers had “create[d] a Coinbase account” and rigorously “verif[ied] [their] identities” (Coinbase’s desired outcome), versus how many had simply mailed in an index card with their name, birthday, and contact information on it (*not* Coinbase’s desired outcome). Even more specifically, however, Defendants collected and analyzed the following consumer-behavior data from their Bitcoin sweepstakes: (a) how many Bitcoin sweepstakes entrants had navigated to the “rules and details” webpage upon reviewing these sweepstakes ads; and (b) how ad recipients navigated the various “web paths” that one might take from reviewing the ads, to ultimately entering the sweepstakes.

54. Indeed, MKI’s own website touts its sophisticated, in-depth data analysis and reporting capabilities as follows.

### Tracking and Reporting

Each client promotion includes two levels of tracking and reporting: (1) website traffic and (2) promotion registration database tracking. Information we provide via website traffic analysis includes aggregate and daily information on key metrics, such as site hits, unique visitors, top pages, operating systems, entry and exit paths, and top promotion referrers. Promotion registration data analysis includes the aggregate and daily number of unique registrants and entries. At the close of each promotion, we provide clients with a detailed analysis of how their promotion performed in the marketplace, including the effectiveness of media tactics in driving engagement, demographics, age and gender, opt-ins, and responses to any survey questions related to brand awareness and purchase intent.

*See* <http://www.mardenkane.com/sweepstakes> (last visited Jun. 11, 2021). As of June 2021, Defendants already knew—based on in-depth, empirical data from their Bitcoin sweepstakes in April 2021—that the precise ways they were wording, designing, and presenting their Dogecoin sweepstakes ads to users would have a high likelihood, capacity, and tendency to cause most users to never see their separate “rules and details” webpage. Yet Defendants’ separate, “rules and details” webpage was the *only* place where they disclosed their free, mail-in entry option for this “sweepstakes.”

55. Defendants were not merely guessing that their digital sweepstakes ads would tend to conceal the true sweepstakes-entry options from most viewers’ eyes.

Instead, Defendants knew as a matter of empirical proof (from their earlier Bitcoin sweepstakes) that their substantially identical, digital ads for the DOGE sweepstakes would have a likelihood, capacity, and tendency to conceal the free, mail-in entry option from most consumers' eyes.

56. It was never any surprise to Defendants that their digital sweepstakes ads to Class members would achieve (and did achieve) an outcome in which consumers would unwittingly pay hundreds of millions of dollars collectively, just to enter a sweepstakes that they could have entered for free. Defendants' digital sweepstakes ads were not only objectively false and misleading to Plaintiffs and the Class, but also known and specifically intended by Defendants' to be misleading (and damaging) to Plaintiffs and the Class.<sup>4</sup>

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<sup>4</sup> The only reason why Defendants inconspicuously slipped a free entry option into their separate, "rules and details" webpage was that Defendants sought to avoid the legal conclusion that they were conducting an unlawful "lottery," as opposed to a "sweepstakes." The elements of a "lottery" are: (i) consideration given by an entrant; (ii) in exchange for a chance; (iii) to win a prize. *See, e.g., Trinkle v. California State Lottery*, 105 Cal.App.4th 1401, 1406 (Cal. Ct. App. 2003). Defendants here attempted to conduct a profitable *non*-lottery by offering a free entry option *that most reasonable consumers would never know about*. As detailed *infra*, Defendants' attempt was and remains insufficient to avoid California's "lottery" laws, and was additionally insufficient to comply with California's "sweepstakes" laws.

**Contemporaneous Media Reports Further Suggest That Defendants' Ads Were Materially Misleading to Reasonable Viewers**

57. Defendants' Dogecoin sweepstakes ads were communicated to and publicized by several online media outlets in June 2021.

58. For example, on June 3, 2021, *Business Insider* published an online news article regarding Defendants' sweepstakes. The headline stated: "Coinbase is giving away \$1.2 million in dogecoin as it starts letting users trade the meme cryptocurrency." See <https://www.businessinsider.com.au/coinbase-dogecoin-sweepstakes-users-can-trade-meme-cryptocurrency-2021-6> (last visited Aug. 9, 2021). The entire body of the article read as follows:

Coinbase said on Thursday that it plans to give away \$1.2 million in dogecoin to encourage users to take advantage of its newest cryptocurrency trading option.

***Users must buy or sell \$100 in DOGE through Coinbase by June 10 to be eligible for the sweepstakes, the company said.***

Coinbase said it plans to give out one prize worth \$300,000, 10 prizes worth \$30,000, and 6,000 prizes worth \$100 by around June 17.

The sweepstakes follows the company's announcement on Tuesday that it would start letting Coinbase Pro users trade dogecoin on its platform.

The announcement, along with a tweet from Elon Musk referencing the meme currency, sent dogecoin's value climbing by as much as 41%.

At \$52.3 billion, dogecoin had the sixth-largest market cap among all cryptocurrencies as of Thursday evening, according to CoinMarketCap, after seeing a massive rally in May that sent its market cap soaring to more than \$85 billion.

Dogecoin was started as a joke by two engineers in 2013, but has since gained immense popularity thanks to Redditors as well as endorsements from Musk and other high-profile celebrities, leading other crypto trading platforms like Robinhood, eToro, and Gemini to start accepting trades in recent weeks.

*Id.* (emphasis added). Nowhere did this *Business Insider* article reference any free, mail-in entry option for the sweepstakes, because nowhere did Defendants' sweepstakes ads state that such a free entry option existed.

59. Similarly, on June 7, 2021, *InvestorPlace.com* published an online article regarding Defendants' sweepstakes. That article was titled, "Coinbase Dogecoin Sweepstakes: What to Know About the \$1.2M DOGE Giveaway." See <https://investorplace.com/2021/06/coinbase-dogecoin-sweepstakes-what-to-know-about-the-1-2m-doge-giveaway> (last visited Aug. 9, 2021). The article's subtitle said, "Here's what crypto investors may want to know about the Coinbase Dogecoin Sweepstakes taking the market by storm today." The body of the article stated as follows:

Today, investors in **Coinbase** (NASDAQ:COIN) are seeing a green day. For everyone's favorite Shiba Inu-inspired meme currency, **Dogecoin** (CCC:DOGE-USD) not so

much. However, any green day is a good day for investors in COIN stock, given the recent ride Coinbase has been on. One might be curious as to the primary reason for today's move. Perhaps part of the answer is the recently launched Coinbase Dogecoin Sweepstakes.



Source: Shutterstock

Most investors know how popular Dogecoin has become of late. Whether due to the incessant tweeting of Elon Musk, or simply the momentum of this moonshot cryptocurrency, Dogecoin is still ranked No. 6 among all cryptocurrencies in market capitalization. That's right, a meme cryptocurrency with no real utility is valued at nearly \$50 billion.

There are a variety of reasons for this. However, most investors know just how catchy the simplistic marketing behind this digital coin has been. Today's recent moves reflect yet another marketing stunt from Dogecoin and its purveyors.

Whether this maneuver ultimately pays off for investors remains to be seen. However, news of

the Coinbase Dogecoin sweepstakes certainly has the DOGE crowd barking.

### **What Is the Coinbase Dogecoin Sweepstakes All About?**

Last week, Coinbase announced the launch of a Dogecoin giveaway. This sweepstakes is in honor of Dogecoin's recent listing on Coinbase Pro. Indeed, that's news in and of itself. But when an exchange like Coinbase offers \$1.2 million in prizes to celebrate such an announcement, crypto investors perk up.

What's the catch?

***Well, crypto investors simply need to opt in to the sweepstakes and buy or sell \$100 in DOGE on Coinbase by June 10. That's it.***

Each crypto investor gets one entry per person. One winner will receive \$300,000 in DOGE, 10 winners will receive \$30,000 in DOGE, and 6,000 winners will receive \$100 in DOGE.

The simplicity of this sweepstakes makes this a no-brainer for most investors to get in on the action. For those bullish on DOGE, adding an additional \$100 in exposure sure seems like a good idea, given the recent dip in Dogecoin prices. For those bearish on DOGE, selling \$100 worth of this digital token still provides an entry. There's really no downside to entering, for those interested.

***Of course, Coinbase's business model is one which is fee-based. The more volume Coinbase can generate, the more money this platform stands to earn. Those behind this***



**marketing stunt have undoubtedly done the math.** However, if it proves successful, this could pave the way for future giveaways in an attempt to rekindle retail investor enthusiasm in this sector.

*Id.* (underlined emphasis added).

60. Like the June 3 article from *Business Insider*, this June 7 article from *InvestorPlace* failed to mention any free, mail-in entry option because nowhere did Defendants' sweepstakes ads—to which the article directly linked—state that such a free entry option existed.

61. Moreover, on June 5, 2021, the Business webpage on *NJ.com* published a similar article stating that: “Coinbase is giving away \$1.2 million worth of Dogecoin. **To be eligible, you have to ‘opt in’ and buy or sell \$100 worth of the meme-inspired cryptocurrency by June 10.**” See <https://www.nj.com/business/2021/06/dogecoin-coinbase-giveaway-how-to-opt-in-to-sweepstakes-and-how-to-buy-dogecoin.html> (last visited Aug. 9, 2021) (emphasis added) (linking to Coinbase's sweepstakes advertisement). Nowhere did this *NJ.com* article reference any free, mail-in entry option for the sweepstakes because nowhere did Defendants' sweepstakes ads state that such an entry option existed.

62. Finally, even after Defendants' Dogecoin sweepstakes ended, *Newsweek* published an online article materially misstating the sweepstakes entry requirements. In a June 18, 2021 article titled, “Why Coinbase Dogecoin Sweepstake[s] Winners Haven't Been Announced Amid Confusion Online,” *Newsweek* stated that “[t]he sweepstake[s] ended on June 10 at 11:59 p.m. PDT, **by which time entrants needed to have**

*opted in and completed a \$100 trade of Dogecoin to be eligible. Coinbase said entrants would receive an email once they had met both requirements.”* See <https://www.newsweek.com/why-coinbase-dogecoin-sweepstake-winners-havent-been-announced-confusion-online-1601996> (last visited Aug. 9, 2021). Like the other three articles referenced above, nowhere did this *Newsweek* article reference any free entry option because nowhere did Defendants’ sweepstakes ads state that any free entry option existed.

63. In sum, numerous, reasonable viewers of Defendants’ sweepstakes ads—including members of the media and the public—were misled into believing that buying or selling \$100 worth of Dogecoins on Coinbase was necessary to enter Defendants’ June 2021 sweepstakes.

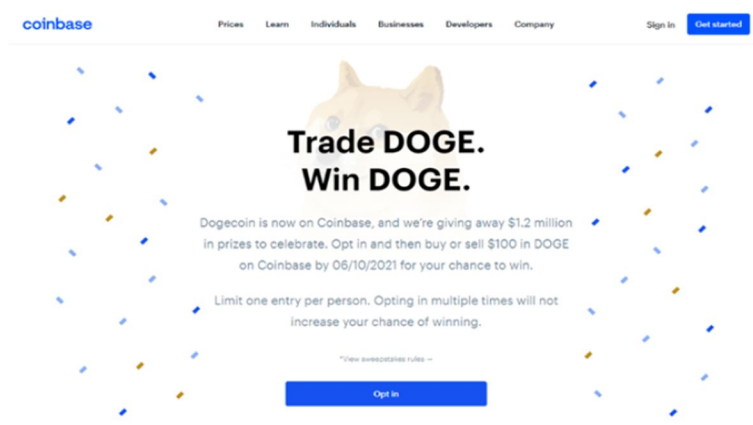
**The Ambiguous Fine Print in Defendants’ “Sweepstakes” Solicitations Did Not Comply With California Law, and Did Not Correct Defendants’ More Conspicuous Misstatements**

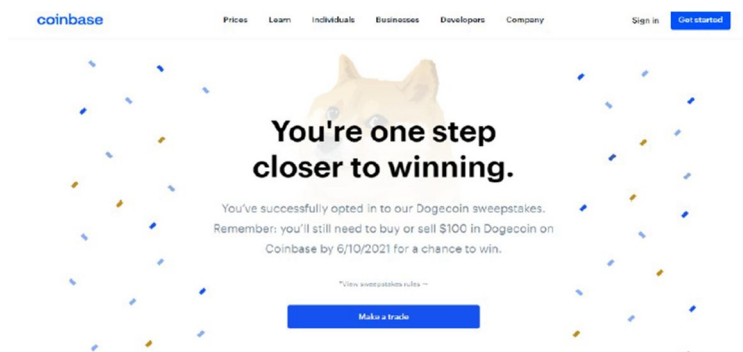
64. California law provides specific requirements for “solicitation materials containing sweepstakes entry materials,” such as Defendants’ sweepstakes ads here.

*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). Defendants’ “sweepstakes” ads were “solicitation materials” containing both “sweepstakes entry materials” and “entry-order device[s].” *Id.* The “sweepstakes entry materials” contained in Defendants’ ads consisted of Defendants’ plain-text sweepstakes entry instructions. *E.g.*, ¶¶9-12, *supra*. The “entry-order devices” contained in Defendants’ ads consisted of the bright blue “Opt in” and “Make a trade” buttons, the webpages and mobile app screens on which those buttons appeared, and Coinbase’s online crypto trading interface (to which Defendants’ “Make a trade” button directly routed users). See the images below.





Defendants' were required by statute to include "a clear and conspicuous" statement of the "no-purchase-or-payment-necessary message" in their official rules. *Id.* Moreover, because Defendants' "official rules d[id] not appear" on their "solicitation materials," Defendants were also required to "include a clear and conspicuous statement of the no-purchase-or-payment-necessary message . . . on the entry-order device included in those solicitation materials containing sweepstakes entry materials."<sup>5</sup> If Defendants' Dogecoin "sweepstakes" did *not* constitute an unlawful lottery<sup>6</sup>, then

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<sup>5</sup> The statute defines "official rules" as "the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials." Cal. Bus. & Prof. Code § 17539.15(k)(2). Defendants' "formal printed statement . . . of the rules for the [Dogecoin] sweepstakes" did not "appear" on Defendants' email, website, or mobile app ads for the DOGE sweepstakes. Instead, what "appeared" on Defendants' ads was only a small hyperlink to the "formal printed statement . . . of the rules," which "appeared" on a separate webpage, and not on the "solicitation materials" themselves.

<sup>6</sup> An unlawful "lottery" is excluded from the statutory definition of a "sweepstakes." Cal. Bus. & Prof. Code § 17539.5(a)(12) ("Sweepstakes" means any procedure for the distribution of anything of value by lot or chance that is not unlawful under other

Defendants' sweepstakes ads violated Cal. Bus. & Prof. Code § 17539.15(b) in several, independent respects.

65. The statute expressly required Defendants' "statement of the no-purchase-or-payment-necessary message" on the "entry-order device" to be "clear and conspicuous," and to be made "in readily understandable terms." Cal. Bus. & Prof. Code § 17539.15(b). The statute defines the "no-purchase-or-payment-necessary message" to mean "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.'" Cal. Bus. & Prof. Code § 17539.15(k)(1).

66. To the extent that Defendants made such a statement *at all* in their sweepstakes email, web, or mobile app ads, they made it using the following text.

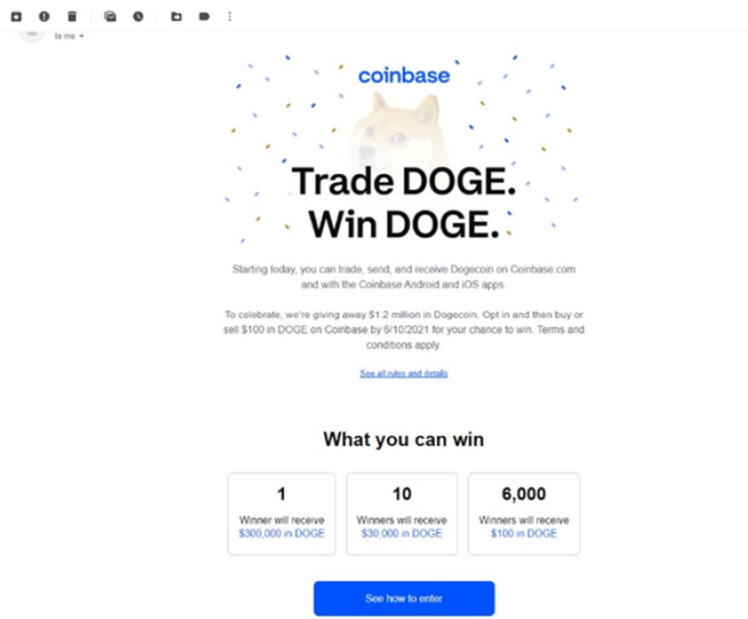
Not investment advice or a recommendation to trade Dogecoin. NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available. Sweepstakes open to legal residents of the fifty (50) United States and the District of Columbia (excluding Hawaii). Void where prohibited by law. Must be age of majority in state of residence as of 6/3/21. Promotion ends 11:59 PM (PT) on 6/10/21. Winners must have a Coinbase account on Coinbase.com to

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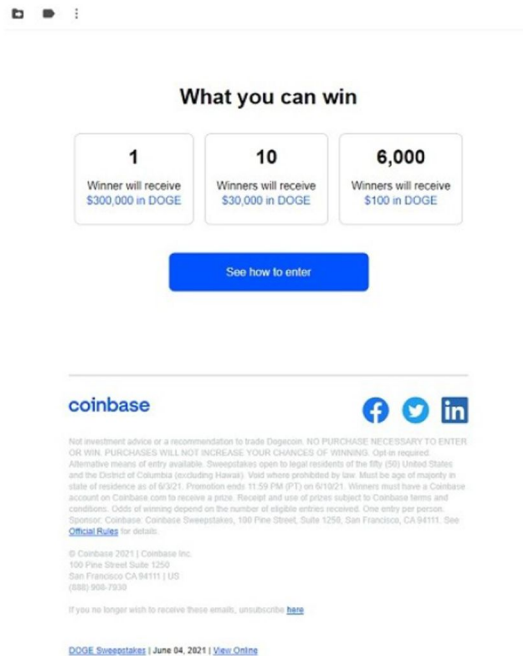
provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code."); *see also* Cal. Penal Code § 320 ("Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.").

receive a prize. Receipt and use of prizes subject to Coinbase terms and conditions. Odds of winning depend on the number of eligible entries received. One entry per person. Sponsor: Coinbase: Coinbase Sweepstakes, 100 Pine Street, Suite #1250, San Francisco, CA 94111. See Official Rules for details.

**First**, the above text was not stated “conspicuous[ly]” on or around Defendants’ solicitation materials or “entry-order device[s].” Instead, this text appeared in faint, fine print at the bottom of Defendants’ multi-page/multi-screen email solicitations. To view the above text at all, recipients would have to have scrolled down to the bottom of the email, which did *not* require any scrolling before clicking the “See how to enter button.”



Only upon scrolling down to the bottom of this email would recipients see Defendants’ “NO PURCHASE NECESSARY” statement in fine, gray-colored print.



This was not a “conspicuous” statement of the “no-purchase-or-payment-necessary message” on (or near) Defendants’ “entry-order device”—as required by § 17539.15(b)—because users’ eyes might not even see Defendants’ fine print *at all* before clicking “See how to enter,” and thereby being taken immediately to a separate webpage (or mobile app screen) containing Defendants’ “Opt in” and “Make a trade” buttons.

67. Similarly, Defendants buried the same faint, fine-print text at the bottom of their “Opt in” and “Make a trade” webpages and mobile screens, requiring users to scroll down several pages to see the above text at all. Below is the sequence of screen-pages that

users would see, *if* they scrolled to the bottom of the page before clicking Defendants’ “Opt in” and “Make a trade” buttons.

coinbase Prices Learn Individuals Businesses Developers Company Sign In [Get Started](#)

**You're one step closer to winning.**

You've successfully opted in to our Dogecoin sweepstakes. Remember, you'll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win.

[View sweepstakes rules](#)





[Make a trade](#)

**What you can win**

coinbase Precios Recursos Personas físicas Negocios Desarrolladores Acerca de Inicio sesión [Get Started](#)

<b>1</b> Winner will receive <b>\$300,000 in DOGE</b>	<b>10</b> Winners will receive <b>\$30,000 in DOGE</b>	<b>6000</b> Winners will receive <b>\$100 in DOGE</b>
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**How to enter**

<p></p> <p><b>Sign in to Coinbase</b></p> <p>Not logged in? Sign in or create an account at <a href="https://coinbase.com">coinbase.com</a>. Then follow the prompts to opt in.</p>	<p></p> <p><b>Opt in to the sweepstakes</b></p> <p>If you're signed in, you can opt in above. You'll get an email confirming that you've successfully opted in after about 24 hours.</p>	<p></p> <p><b>Make a trade</b></p> <p>Buy or sell \$100 or more in DOGE on Coinbase between 6/3/21 and 6/10/21. You can trade \$100 all at once, or a little at a time.</p>	<p></p> <p><b>Watch your inbox</b></p> <p>Once you opt in and trade, you'll be officially entered to win. Winners will hear from us via email on or around 6/17.</p>
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**Important security notice:** Be on the lookout for scammers. You will get a confirmation email within 24 hours. We will only notify you about prizes via [no-reply@coinbase.com](mailto:no-reply@coinbase.com). See a [fraudulent giveaway?](#) Report it to [security@coinbase.com](mailto:security@coinbase.com).





### There's no such thing as too much security

#### 2-step verification

We require an extra layer of security for all Coinbase accounts.

#### Secure storage

We store the majority of digital assets in secure offline storage.

#### Encryption at every step

We use bank-level security: SSL and AES-256 encryption.

### Buy, sell, and manage your crypto anywhere

With 56M+ verified users, you're in good company when you trade with Coinbase.

#### Start buying



##### Manage your portfolio

See how your crypto performs, and stay on top of the market.



##### Set automatic recurring buys

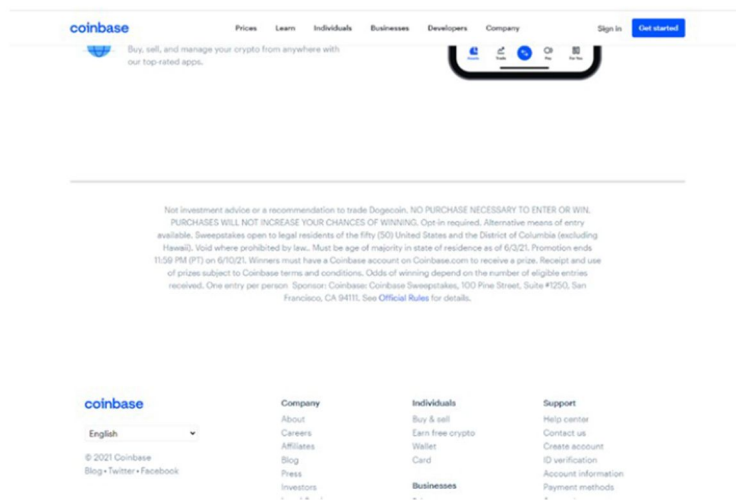
Invest in cryptocurrency slowly over time by scheduling buys daily, weekly, or monthly.



##### Access your crypto on the go

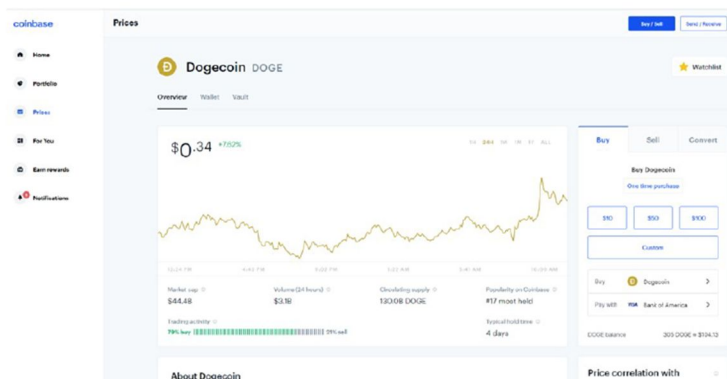
Buy, sell, and manage your crypto from anywhere with our top-rated apps.





This was by no means a “conspicuous” statement of the “no-purchase-or-payment-necessary message” on (or near) Defendants’ “entry-order device,” as required by § 17539.15(b). Many users’ eyes would not see this fine print, at the bottom of a multi-page site, before clicking the large, blue “Opt in” and “Make a trade” buttons at the very top of the website or mobile-app screen.

68. Upon clicking Defendants’ prominent “Make a trade” button, users were rerouted directly to Coinbase’s trading platform, which contained no sweepstakes-related disclosures at all.



Defendants' above-pictured trading interface also constituted an "entry-order device," as each Class member *completed* their sweepstakes "entry" by executing a purchase or sale "order" on this interface. Yet this crypto trading interface (this "entry-order device") did not contain any "no-purchase-or-payment-necessary message," let alone a "clear and conspicuous" one. Cal. Bus. & Prof. Code § 17539.15(b).

69. **Second**, Defendants' faintly colored, fine-print disclaimer was not stated "clear[ly]" or in "readily understandable terms" when read within the context of Defendants' more prominent statements in their sweepstakes ads. Defendants' "NO PURCHASE NECESSARY" statement was at best ambiguous when read in context, and could be reasonably understood as *consistent* with Defendants' more prominent misstatements in their sweepstakes ads.

Not investment advice or a recommendation to trade Dogecoin. NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available. Sweepstakes open to legal residents of the fifty (50) United States and the

District of Columbia (excluding Hawaii). Void where prohibited by law. Must be age of majority in state of residence as of 6/3/21. Promotion ends 11:59 PM (PT) on 6/10/21. Winners must have a Coinbase account on Coinbase.com to receive a prize. Receipt and use of prizes subject to Coinbase terms and conditions. Odds of winning depend on the number of eligible entries received. One entry per person. Sponsor: Coinbase: Coinbase Sweepstakes, 100 Pine Street, Suite #1250, San Francisco, CA 94111. See Official Rules for details.

70. Specifically, Defendants' direct-to-user email ads stated:

Trade DOGE. Win DOGE. Starting today, you can trade, send, and receive Dogecoin on Coinbase.com and with the Coinbase Android and iOS apps. To celebrate, we're giving away \$1.2 million in Dogecoin. Opt in and then buy *or sell* \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Terms and conditions apply.

Similarly, Defendants' webpage and mobile app screens prominently stated the following, right above the big, blue "Opt in" in button:

Dogecoin is now on Coinbase, and we're giving away \$1.2 million in prizes to celebrate. Opt in and then buy *or sell* \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Limit one entry per person. Opting in multiple times will not increase your chance of winning.

Thus, Defendants' most prominent text made clear that either a DOGE purchase or sale on Coinbase

would suffice for entry into the sweepstakes. So when Defendants' faint, fine-print disclaimer at the bottom of each page said "NO PURCHASE NECESSARY"—and that "PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING"—readers could reasonably understand that statement to be consistent with Defendants' more prominent entry instructions, which made clear that a DOGE sale transaction of \$100 or more would suffice for entry. The same is true of Defendants' fine-print disclaimer that "[a]lternative means of entry [were] available." In context, reasonable recipients (who were fortunate enough to even see this fine print at the bottom of Defendants' solicitation materials) could fairly understand the "[a]lternative means of entry" to be exactly what Defendants' had advertised more prominently: (a) buy \$100 or more in DOGE; or, "alternative[ly]," (b) sell \$100 or more in DOGE. There was simply nothing in the text of Defendants' faint, fine-print disclaimer that clearly corrected Defendants' main assertion: namely, that users must "Trade DOGE" (*i.e.*, either buy *or* sell DOGE) for a chance to win.

71. Defendants' fine-print disclaimer was particularly "[un]clear" regarding any free entry option, when read in conjunction with the *large*-print statement directly above Defendants' big "Make a trade" button.

You're one step closer to winning. You've successfully opted in to our Dogecoin Sweepstakes. *Remember, you'll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win.*

Defendants conspicuously stated that a Dogecoin purchase or sale was necessary to enter "for a chance to win." So when Defendants later said only that no

“*purchase*” was “necessary,” reasonable readers could well understand that disclaimer to be *consistent with* Defendants’ (false) statement that a Dogecoin purchase *or* sale was necessary to enter. Obviously, no purchase transaction is necessary if—as Defendants had already highlighted—a sale transaction suffices.

72. In sum, Defendants’ “NO PURCHASE NECESSARY” statement was not only designed and placed *inconspicuously* away from Defendants’ “entry-order device[s],” but in addition, Defendants’ “NO PURCHASE NECESSARY” statement was *unclearly* worded and *not* “readily understandable,” when read in the context of Defendants’ more prominent instructions and misstatements regarding sweepstakes entry. Cal. Bus. & Prof. Code § 17539.15(b). Nothing in Defendants’ fine-print disclaimer clearly or objectively corrected the false and misleading nature of the most prominent, material misstatements and omissions in Defendants’ sweepstakes solicitations.

73. **Third**, the “NO PURCHASE NECESSARY” statement in Defendants’ sweepstakes solicitations was not “substantially similar” to the statement required by statute. The “no-purchase-or-payment-necessary message” required by § 17539.15 “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.’” Cal. Bus. & Prof. Code § 17539.15(k)(1). By contrast, the “NO PURCHASE NECESSARY” statement at the bottom of 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* to Coinbase for *selling* \$100 or more worth of Dogecoins.

74. Defendants omitted the required “payment of any kind” language from their “NO PURCHASE NECESSARY” message to avoid contradicting their more prominent assertions to users that trading Dogecoins (and paying Coinbase’s customary transaction fees) was necessary for entry.<sup>7</sup>

75. **Fourth**, Defendants’ fine-print disclaimer expressly stated “*Opt-in required*,” while presenting users with a big, bright “*Opt in*” button on the entry webpage and mobile app screen. This was materially false and misleading, as it created a reasonable impression that clicking Defendants’ conspicuous “*Opt in*” button was “required” for entry. But in fact, clicking Defendants’ “Opt in” button was *not* necessary for entry.

76. Instead, mailing in a 3x5 index card with one’s name, contact information, and birthdate on it would suffice for entry. Defendants’ “Opt in required” disclaimer was thus affirmatively misleading when read within the context of the entire solicitation email, webpage, and mobile app screen.

77. Moreover, upon (unnecessarily) clicking the “Opt-in” button, that button would transform into a big, bright “Make a trade” button topped off with the following large-font text: “Remember, you’ll still need to buy or sell \$100 in Dogecoin on Coinbase by

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<sup>7</sup> Defendants did include the required “payment of any kind” language in their “official rules,” but because those official rules did not “appear” on Defendants’ “[s]olicitation materials containing sweepstakes entry materials,” Defendants were also required to include the “payment of any kind” language “on the entry-order device included in those solicitation materials.” Cal. Bus. & Prof. Code § 17539.15(b). Defendants failed to do so.

6/10/2021 for a chance to win.” This statement was flatly untrue.

78. Defendants’ ambiguous, fine-print disclaimer at the very bottom of their “entry-order device[s]” (*i.e.*, the emails, webpages and mobile app screens containing the “See how to enter,” “Opt in,” and “Make a trade” buttons) was not just legally insufficient under § 17539.15(b). It was also affirmatively false and materially misleading, when read in the full context of Defendants’ solicitation materials.

### **No Arbitration Or Class Action Waiver**

79. Pursuant to Coinbase’s “Official Rules” for its Dogecoin Sweepstakes, “[p]articipation [in the Sweepstakes] constitutes entrant’s full and unconditional agreement to these Official Rules and [Coinbase’s] and [its] Administrator’s decisions, which are final and binding in all matters related to the Sweepstakes.” *See* Ex. A, Official Rules, ¶1, *available at* <https://www.coinbase.com/sweepstakes-doge-terms> (last visited Jun. 11, 2021). The Official Rules further provide that “THE CALIFORNIA COURTS (STATE AND FEDERAL) SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THE PROMOTION AND THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN THE PROMOTION. EACH ENTRANT WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION AND VENUE IN THOSE COURTS FOR ANY REASON AND HEREBY SUBMITS TO THE JURISDICTION OF THOSE COURTS.” *Id.*, ¶10. Although the same paragraph provides that “[c]laims may not be resolved through any form of class action,” *id.*, such class action waivers are *unconscionable and unenforceable* as a matter of California law (in the absence of an



agreement to arbitrate), where, as here, a class action waiver “is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that a party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then, at least to the extent the obligation at issue is governed by California law, the waiver becomes in practice the exemption of the party from responsibility for its own fraud, or willful injury to the person or property of another. Under these circumstances, such waivers are unconscionable under California law and should not be enforced.” *Discover Bank v. Superior Court*, 36 Cal.4th 148, 162-63 (2005), *abrogated on other grounds by AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (internal citations omitted).

### **CLASS ACTION ALLEGATIONS**

80. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of themselves and all other persons who opted into Coinbase’s \$1.2 million Dogecoin (DOGE) sweepstakes in June 2021, and who purchased or sold Dogecoins on a Coinbase exchange for a total of \$100 or more between June 3, 2021 and June 10, 2021, inclusive. Excluded from the Class are Defendants, the officers and directors of Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which either Defendant has or had a controlling interest.

81. The members of the Class are so numerous that joinder of all members is impracticable. While the

exact number of Class members is unknown to Plaintiffs at this time, and can be ascertained only through appropriate discovery, Plaintiffs believe that there are millions of members of the proposed Class. Members of the Class may be identified and located from database records maintained by Defendants, and may be notified of the pendency of this action by electronic mail and/or regular mail, using the form of notice similar to that customarily used in class actions.

82. Plaintiffs' claims are typical of other Class members' claims, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of law, as complained of herein.

83. Plaintiffs will fairly and adequately protect the interests of Class members and have retained counsel competent and experienced in class action litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

84. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. whether Defendants' uniform, digital advertising campaign for the June 2021 DOGE sweepstakes was materially false, deceptive, and misleading when disseminated to Plaintiffs and the Class;

b. whether Defendants' June 2021 Dogecoin "sweepstakes" in fact constituted an unlawful "lottery" within the meaning of California Penal Code § 320;

c. whether Defendants violated Cal. Bus. & Prof. Code § 17539.15 by, *inter alia*, failing to make the

required “clear and conspicuous statement[s]” of the “no-purchase-or-payment-necessary message”;

d. whether Defendants, individually and together, violated California’s False Advertising Law, by designing, drafting, creating, analyzing, and presenting to Class members a uniform advertising campaign that was materially false, deceptive, and misleading when disseminated to Class members;

e. whether Defendants violated the unlawful or unfair prongs of California’s Unfair Competition Law when they designed, drafted analyzed and presented to Class members a uniform digital advertising campaign that was materially false, deceptive, and misleading when disseminated to Class members;

f. whether Plaintiffs and the Class suffered harm as a result of Defendants’ conduct, and the forms of judicial relief to which Class members are entitled, including, but not limited to, public and permanent injunctive relief, restitution of the money Class members paid to Coinbase, and disgorgement of Defendants’ ill-gotten gains; and

g. whether Plaintiffs and the Class are entitled to reasonable attorneys’ fees and expenses as a result of Defendants’ wrongful conduct as set forth herein.

85. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, as the joinder of all members is impracticable. Furthermore, because the financial harm suffered by individual Class members may be relatively small, the expense and burden of individual litigation would make it difficult if not impossible for members of the Class to redress the wrongs done to them on an individual basis. There will likely be no substantial

difficulty in the management of this case as a class action.

**FIRST CAUSE OF ACTION**

**Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* –  
Unlawful Business Acts and Practices  
(Unlawful Lottery)**

86. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this Complaint.

87. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), prohibits “unfair competition,” meaning “any unlawful, unfair or fraudulent business act or practice.”

88. California Penal Code § 320 provides that “[e]very person who contrives, prepares, sets up, proposes, or draws any lottery” is guilty of a misdemeanor. Defendant Coinbase committed an “unlawful” business act or practice by “contriv[ing], prepar[ing], set[ting] up,” and “propos[ing]” and conducting an unlawful “lottery” within the meaning of Cal. Penal Code § 320, when it contrived, prepared, set up, broadly advertised, and then ultimately conducted its \$1.2 million Dogecoin “sweepstakes” in June 2021. Defendant MKI likewise committed an “unlawful” business act or practice by “contriv[ing], prepar[ing], set[ting] up, propos[ing],” and randomly “draw[ing]” the winners of an unlawful “lottery” at its offices in Syosset, NY on or about June 17, 2021, within the meaning of Cal. Penal Code § 320, as it contrived, prepared, set up, and ultimately administered, and randomly drew the winners of, Defendants’ \$1.2 million Dogecoin “sweepstakes.”

89. The elements of a “lottery” are: (i) consideration given by an entrant; (ii) in exchange for a chance; (iii) to win a prize. *See, e.g., Trinkle v. California State Lottery*, 105 Cal.App.4th 1401, 1406 (Cal. Ct. App. 2003). Defendants’ Dogecoin “sweepstakes” solicitations sent to Plaintiffs and the Class affirmatively represented that consideration (in the form of buying or selling Dogecoins on Coinbase for \$100 or more, and paying Coinbase the attendant transactions fees) “need[ed]” to be given for Plaintiffs and other Class members to enter for a chance to win prizes of various dollar values. Relying upon Defendants’ affirmative representations that paying consideration to Coinbase was necessary to enter—and being reasonably and subjectively unaware of the omitted truth that a free, mail-in entry option existed—Plaintiffs and other Class members in fact paid consideration to Coinbase in the forms described herein, in exchange for a chance to win one of Defendants’ advertised prizes.

90. Defendants’ unlawful Dogecoin “sweepstakes” was structured by Defendants to distribute the advertised prizes by chance, within the meaning of a “lottery,” as all prize winners (none of whom are Plaintiffs here) were randomly selected from among millions of eligible entrants on or about June 17, 2021. Defendant MKI, as “administrator,” conducted the random prize drawings at its offices in Syosset, New York. Defendant MKI also assisted Coinbase in “contriv[ing], prepar[ing], [and] set[ting] up” the June 2021 Dogecoin “sweepstakes” by collaborating with Coinbase to draft, design and structure Defendants’ digital ad campaign for the “sweepstakes,” and to draft and finalize the “official rules,” a copy of which is attached hereto as “Exhibit A.”

91. The lottery “prizes” distributed by the Defendants to their randomly drawn winners included: (a) to one winner, a large number of Dogecoins priced at a retail value of approximately \$300,000; (b) to ten other winners, a large number of Dogecoins priced at a retail value of approximately \$30,000; and (c) to six thousand other “winners,” a number of Dogecoins priced at a retail value of approximately \$100.

92. Hence, Defendants conducted an unlawful “lottery” within the meaning of Cal. Penal Code § 320 because Defendants, by fraud, affirmatively induced Plaintiffs and the Class to pay “consideration” to Coinbase in exchange for a random “chance” to win a “prize” of some dollar value. Defendants’ June 2021 Dogecoin “sweepstakes” was, in substance, an unlawful, million-dollar “lottery,” which Plaintiffs and the Class unwittingly paid many millions of dollars to enter.

93. As a result of Defendants’ unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 more on coinbase.com, and by paying the attendant transaction fees to Coinbase, between June 3, 2021 and June 10, 2021. Plaintiffs, on behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all monetary payments that Class members made in consideration of their entries into Defendants’ June 2021 DOGE “sweepstakes,” and of all other ill-gotten gains derived from Defendants’ wrongful conduct to the fullest extent permitted by law.

**SECOND CAUSE OF ACTION<sup>8</sup>**  
**Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* –**  
**Unlawful Business Acts and Practices**  
**(Violations of Cal. Bus. & Prof. Code § 17539.15)**

94. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this Complaint.

95. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), prohibits “unfair competition,” meaning “any unlawful, unfair or fraudulent business act or practice.”

96. Under California law, a “[s]weepstakes” is “any procedure for the distribution of anything of value by lot or chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code.” Cal. Bus. & Prof. Code § 17539.5(a)(12); *see also* Cal. Penal Code § 320 (“Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a

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<sup>8</sup> Plaintiffs hereby plead this, their Second Cause of Action, in the alternative to their First Cause of Action, in case the Court (or a jury) ultimately finds that Defendants’ June 2021 Dogecoin sweepstakes did *not* constitute a “lottery” within the meaning of Cal. Penal Code § 320. Plaintiffs’ First Cause of Action and Second Cause of Action are pled in the alternative because, as a matter of California statutory law, the definitions of the terms “lottery” and “sweepstakes” are mutually exclusive. Cal. Bus. & Prof. Code § 17539.5(a)(12) (“‘Sweepstakes’ means any procedure for the distribution of anything of value by lot or chance *that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code.*”) (emphasis added).

misdemeanor.”). Thus, an unlawful “lottery” is excluded from the statutory definition of a “sweepstakes.”

97. If the Court or a jury in this case ultimately concludes that Defendants’ June 2021 Dogecoin sweepstakes did *not* constitute a “lottery” within the meaning of Cal. Penal Code § 320, then Plaintiffs hereby allege, in the alternative, that Defendants’ June 2021 Dogecoin sweepstakes constituted a “sweepstakes” within the meaning of Cal. Bus. & Prof. Code § 17539.15(b), which provides that:

*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) (emphasis added). Defendants’ “sweepstakes” ads were “solicitation materials” containing both “sweepstakes entry materials” and “entry-order device[s].” *Id.* The “sweepstakes entry materials” contained in Defendants’ solicitations consisted of Defendants’ plain-text sweepstakes entry instructions. *E.g.*, ¶¶9-12, *supra*. The “entry-order devices” contained in Defendants’ solicitations consisted of Defendants’ bright blue “Opt in” and “Make a trade” buttons, the webpages and mobile app screens on which those buttons appeared, and Coinbase’s online crypto trading interface (to which the



“Make a trade” button immediately rerouted users).  
*E.g.*, ¶¶65-69, *supra*.

98. The term “official rules” means “the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials.” Cal. Bus. & Prof. Code § 17539.15(k)(2).

99. The term “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.’” Cal. Bus. & Prof. Code § 17539.15(k)(1).

100. Defendants Coinbase and MKI were each a “sweepstakes sponsor” within the meaning of Cal. Bus. & Prof. Code § 17539.15, as each Defendant was a “person or entity that operate[d] or administer[ed] a sweepstakes as defined in paragraph (12) of subdivision (a) of Section 17539.5.” Cal. Bus. & Prof. Code § 17539.15(l)(2)(A).

101. The “formal printed statement” of Defendants’ “official rules” did not “appear” on Defendants’ sweepstakes entry “solicitation materials.” Consequently, Defendants were required to include “a clear and conspicuous statement of the no-purchase-or-payment-necessary message, in readily understandable terms,” on “*the entry-order device*”: namely, on their direct-to-user emails, webpages and mobile app screens displaying the “See how to enter,” “Opt in,” and “Make a trade” buttons, on which Plaintiffs and each Class member clicked to enter Defendants’ digital sweepstakes. Defendants failed to satisfy this statutory requirement for several, independent reasons.

102. **First**, the “NO PURCHASE NECESSARY” statement on Defendants’ entry-order devices was not “substantially similar” to the statement required by statute. The “no-purchase-or-payment-necessary message” required by § 17539.15 “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.’” Cal. Bus. & Prof. Code § 17539.15(k)(1). By contrast, the “NO PURCHASE NECESSARY” statement at the bottom of (some of) Defendants’ entry-order devices omitted the material fact that that no “payment of any kind” was necessary to enter, such as the “payment” of a transaction fee for *selling* Dogecoins on Coinbase. Defendants’ unlawfully omitted the required “payment of any kind” language from their sweepstakes entry emails, webpages, and mobile app screens, for the particular purpose of concealing any truly free, sweepstakes-entry option from Plaintiffs’ and the Class’s eyes. *E.g.*, ¶¶74-75, *supra*.

103. **Second**, Defendants’ “NO PURCHASE NECESSARY” statement on their “entry-order devices” was not stated “clear[ly],” or in “readily understandable terms,” when read within the context of Defendants’ more prominent statements in their sweepstakes solicitation materials. *E.g.*, ¶¶70-73, *supra*.

104. **Third**, Defendants’ “NO PURCHASE NECESSARY” statement on their “entry-order devices” was not stated “conspicuous[ly]” on or around Defendants’ solicitation materials or “entry-order device[s].” Instead, Defendants’ textually inadequate statement appeared only in faint, fine print at the very bottom of Defendants’ multi-page emails, webpages and mobile app screens. To view Defendants’ textually inadequate statement at all, recipients would have to

have scrolled down to the bottom of Defendants' entry-order webpages and mobile app screens, which did *not* require any scrolling to click Defendants' far more conspicuous "See how to enter," "Opt in," and "Make a trade" buttons. *E.g.*, ¶¶65-69, *supra*.

105. **Fourth**, Defendants' Dogecoin trading interface also constituted an "entry-order device," as each Class member *completed* their sweepstakes "entry" by executing a Dogecoin purchase or sale "order" on this interface. Yet this crypto trading interface (this "entry-order device") did not contain any "no-purchase-or-payment-necessary message," let alone a "clear and conspicuous" message. Cal. Bus. & Prof. Code § 17539.15(b). *See* ¶69, *supra*.

106. For each of the above, independent reasons, Defendants violated Cal. Bus. & Prof. Code § 17539.15(b) by failing to include the required "clear and conspicuous statement" of the "no-purchase-or-payment-necessary message" in or on the "entry-order devices" included in their "solicitation materials containing sweepstakes entry materials." Cal. Bus. & Prof. Code § 17539.15(b). Defendants' failure to make the clear and conspicuous disclosures expressly required by statute caused Plaintiffs and other Class members (as well as members of the media) to remain unaware of any purchase-free, payment-free option for entering Defendants' advertised sweepstakes in June 2021.

107. As a result of Defendants' unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 more on coinbase.com, and by paying the attendant transaction fees to Coinbase, between June 3, 2021 and June 10, 2021. Plaintiffs, on

behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and other equitable relief, including full restitution of all monetary payments that Class members made in consideration of their entries into Defendants' June 2021 DOGE sweepstakes, and of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

### **THIRD CAUSE OF ACTION**

#### **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -**

#### **Untrue, Misleading and Deceptive Advertising**

108. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this Complaint.

109. California Business and Professions Code, Section 17500, makes it unlawful for any person:

to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by

the exercise of reasonable care should be known, to be untrue or misleading.

110. Before and during the June 2021 Dogecoin sweepstakes alleged herein, Defendant Coinbase made and disseminated from this state to the public nationwide, over the Internet and through wireless phone networks, digital advertising devices which falsely and misleadingly asserted to consumers that entry into Defendants' Dogecoin sweepstakes was, in fact, contingent upon such consumers "opting in" online, and purchasing or selling Dogecoins for \$100 more on Coinbase's digital trading platform, between June 3, 2021 and June 10, 2021, when in fact, no Dogecoin purchase or sale transaction was required for entry into Defendants' sweepstakes.

111. Likewise, before and during the June 2021 Dogecoin sweepstakes alleged herein, Defendant MKI caused such materially false and misleading advertising to be made and disseminated from this state to the public nationwide, over the Internet and through wireless phone networks. Defendant MKI caused such false and misleading advertising statements to be made and disseminated nationwide, from California, because MKI personally created, drafted, designed and structured Defendants' digital sweepstakes ads, including but not limited to the direct-to-consumer email, website and mobile app advertisements depicted and alleged herein, with the full knowledge and intent that Coinbase would electronically disseminate MKI's false and misleading ads to members of the public nationwide.

112. Defendants' advertisements of their June 2021 DOGE Sweepstakes affirmatively misrepresented, concealed and omitted the material truth regarding

the requirements for sweepstakes entry. Defendants' advertisements were made to consumers and emanated from Coinbase's primary offices within the State of California, to millions of consumers within the State of California and nationally or internationally, and are within the meaning of advertising as provided in Cal. Bus. & Prof. Code §§ 17500, *et seq.*, in that such promotional materials were intended as inducements to purchase products and services on Coinbase.com and are statements made and disseminated by Defendants, and caused by Defendants to be made and disseminated, to Plaintiffs and other members of the Class. Each Defendant knew, or in the exercise of reasonable care should have known, that their advertising statements about their June 2021 DOGE Sweepstakes would be and were false, misleading, confusing, and deceptive to a substantial segment if not the vast majority of layperson-consumers.

113. In furtherance of Defendants' false and misleading advertising scheme, Coinbase and MKI, individually and in collaboration, designed, created, prepared, structured, tested, reviewed, analyzed and disseminated via the Internet digital advertisements misleadingly suggesting, and overtly and falsely stating, that their June 2021 DOGE Sweepstakes in fact *required* entrants to purchase or sell Dogecoins for \$100 more on Coinbase, between June 3, 2021 and June 10, 2021. Defendants also materially falsified their digital sweepstakes ads and misled consumers by representing that sweepstakes entrants had to buy or sell "\$100 in DOGE" or "\$100 in Dogecoin," when in fact consumer purchases or sales of marginally less than "\$100 in Dogecoin" would have sufficed for entry. *See* ¶¶41-49, *supra*. Consumers, including Plaintiffs and members of the Class, reasonably relied on

Defendants' multiple, material misstatements regarding their sweepstakes entry requirements because all members of the Class were demonstrably exposed to such statements. Consumers, including Plaintiffs and members of the Class, were among the specifically intended targets of Defendants' material misrepresentations.

114. Defendants' above acts—in designing, creating, preparing, structuring, testing, reviewing, analyzing and disseminating via the Internet such misleading and deceptive statements throughout the United States to Plaintiffs and the Class—were demonstrably likely to deceive, mislead, and confuse, and did deceive, mislead and confuse, reasonable consumers by obfuscating the true requirements (and non-requirements) for entry into Defendants' Dogecoin sweepstakes, and thus were violations of Cal. Bus. & Prof. Code §§ 17500, *et seq.*

115. Defendants' materially false and misleading sweepstakes advertising devices caused Plaintiffs and other members of the Class to suffer personal financial injuries, in the form of paying Coinbase hundreds of millions of dollars in purchases and commissions that they would not otherwise have spent to enter the sweepstakes. Had Plaintiffs and members of the Class known that Defendants' solicitation materials, advertisements and inducements misrepresented, obfuscated and concealed the true entry requirements for Defendants' sweepstakes, they would not have purchased or sold Dogecoins for \$100 or more on Coinbase's trading platform between June 3, 2021 and June 10, 2021 (inclusive).

116. Plaintiffs, on behalf of themselves and the Class, seek permanent injunctive relief prohibiting

Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into the June 2021 DOGE sweepstakes, and disgorgement of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

**FOURTH CAUSE OF ACTION**

**Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* –  
Unlawful Business Acts and Practices  
(False Advertising)**

117. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this complaint, as if fully set forth herein.

118. As a result of Defendants' unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 or more and paying the attendant purchase and sale transaction fees on Coinbase between June 3, 2021 and June 10, 2021, when in fact no Dogecoin purchase or sale transactions were required for entry into Defendants' sweepstakes.

119. As a result of Defendants' above unlawful acts and practices of false and misleading advertising detailed herein, Plaintiffs, on behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into the June 2021 DOGE Sweepstakes, and of all other ill-gotten gains derived



from Defendants' wrongful conduct to the fullest extent permitted by law.

**FIFTH CAUSE OF ACTION**  
**Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* – Unfair Business Acts and Practices**

120. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this complaint, as if fully set forth herein.

121. Defendants' actions alleged herein violate the laws and public policies of California, as set out in the preceding paragraphs of this complaint.

122. There is no benefit to consumers, competition or the general public from allowing Defendants to deceptively market and sell million-dollar "sweepstakes" (really, "lottery") entries to millions of consumers, in violation of California law, and under the false guise of executing a cryptocurrency sales "promotion."

123. The gravity of harm suffered by Plaintiffs and the Class, who have unnecessarily lost hundreds of millions of dollars collectively, outweighs any legitimate justification, motive or reason for Defendants' deceptive sweepstakes marketing. Accordingly, Defendants' actions are immoral, unethical, unscrupulous and offend the public policies of California, and are substantially injurious to Plaintiffs and the Class.

124. Defendants' above acts and practices were and are likely to deceive—and in fact, did deceive—reasonable consumers as to the true requirements for entering Defendants' \$1.2 million Dogecoin sweepstakes, and further, were likely to conceal and did conceal from reasonable consumers the true options and requirements for sweepstakes entry.

125. As a result of Defendants' unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 more and paying the attendant transaction fees on Coinbase, between June 3, 2021 and June 10, 2021, when in fact no Dogecoin purchase or sale transactions were required for entry into Defendants' sweepstakes.

126. Plaintiffs, on behalf of themselves and all others similarly situated, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing their wrongful advertising practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into the June 2021 DOGE sweepstakes, and of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

#### **SIXTH CAUSE OF ACTION**

#### **Violation of Cal. Civ. Code §§ 1750, *et seq.* – (Misrepresenting That a “Transaction” Involves Certain “Obligations”)**

127. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this complaint, as if fully set forth herein.

128. California's Consumer Legal Remedies Act, Cal. (“CLRA”) provides that “[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful: . . . (14) [r]epresenting 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).

129. Plaintiffs’ and the Class’s entries into Defendants’ June 2021 Dogecoin sweepstakes constituted “transactions” which Defendants “intended to result,” and which did result, in the sale of goods and services to consumers (“goods” in the form of Dogecoins, and “services” in the form of cryptocurrency trade-execution, for a fee). As detailed throughout this complaint, Defendants’ June 2021 Dogecoin sweepstakes solicitations—including, but not limited to, Defendants’ direct-to-user email, website, and mobile app advertisements—affirmatively “represent[ed] that” Plaintiffs’ and the Class’s sweepstakes entries “involved” and “conferred” on all entrants the “obligation” to buy or sell “\$100 in DOGE” on Coinbase’s trading platform between June 3 and June 10, 2021, when in fact, entry into Defendants’ DOGE sweepstakes did *not* involve or confer that “obligation” on any Class member, because Defendants in fact made available an alternative, *free* mail-in option for entering their sweepstakes. In representing to Plaintiffs and the Class that they “need[ed]” to trade Dogecoins on Coinbase to enter for a chance to win one of Defendants’ sweepstakes prizes, Defendants affirmatively misrepresented the “obligations” involved in Class members’ sweepstakes entry transactions, in violation of Cal Civ. Code § 1770(a)(14).

130. In addition, Defendants’ affirmative misrepresentation to Plaintiffs and the Class that they “need[ed] to” buy or sell Dogecoins on Coinbase—and pay Coinbase’s attendant trading commissions—constituted an affirmative representation to Plaintiffs and the Class that they were obligated to pay *consideration* to Coinbase for a *chance* to win a *prize*. In

making that representation to Plaintiffs and the Class, Defendants represented that a “transaction” (Plaintiffs’ and the Class’s entries) involved and conferred on all Class members an “obligation” that was and remains “prohibited by law” (*i.e.*, an “obligation” to pay consideration, in exchange for a chance, to win a prize). *See* Cal. Penal Code § 320 (providing that “[e]very person who contrives, prepares, sets up, proposes, or draws any lottery” is guilty of a misdemeanor); *see also Trinkle v. California State Lottery*, 105 Cal.App.4th 1401, 1406 (Cal. Ct. App. 2003) (explaining that the elements of an unlawful “lottery” are (i) consideration given by an entrant; (ii) in exchange for a chance; (iii) to win a prize). Thus, Defendants independently violated Cal Civ. Code § 1770(a)(14) in this second way.

131. Moreover, Defendants’ affirmatively misrepresented that sweepstakes entrants had an “obligation” to buy or sell “\$100 in DOGE” or “\$100 in Dogecoin,” when in fact, the truth was that consumer purchases or sales of marginally *less than* “\$100 in Dogecoin” would have sufficed for entry. *See* ¶¶41-49, *supra*. Defendants thus independently violated Cal Civ. Code § 1770(a)(14) in a third way, as they misrepresented the *dollar value* of DOGE trades that Class members were (purportedly) “obligat[ed]” to make in exchange for their sweepstakes entries.

132. Plaintiffs and members of the Class reasonably relied on Defendants’ multiple, material misstatements regarding their sweepstakes entry “obligations,” as all members of the Class were demonstrably exposed to such statements, and each paid \$100 or more to Coinbase as a direct result of Defendants misrepresentations, which were prohibited by Cal Civ. Code § 1770(a)(14) in several respects.

133. On account of Defendants' unlawful acts and misrepresentations detailed herein, Plaintiffs, on behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into Defendants' June 2021 DOGE Sweepstakes, and disgorgement of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

134. At the time that Plaintiffs filed their First Amended Class Action Complaint (Dkt. 22) ("FAC"), Plaintiffs and the Class expressly declined to "seek their actual damages at law for violations of Cal Civ. Code § 1770(a)(14), [and] instead, reserve[d] their statutory rights to amend [the FAC] to include a request for damages and other relief at law after complying with Cal. Civ. Code § 1782(a)." Dkt. 22, ¶134.

135. On or about September 12, 2021, Plaintiffs provided Defendants with notices of their alleged, respective violations of the CLRA pursuant to California Civil Code § 1782(a) via certified mail, demanding that Defendants correct such violations.

136. On or about October 12, 2021, Defendants provided Plaintiffs with responsive letters, denying that Defendants violated the CLRA or any other law, and declining to undertake any of the corrective actions demanded by Plaintiffs. In light of Defendants' respective refusals to take any corrective action in response to Plaintiffs' demand letters, Plaintiffs and the putative Class hereby seek all available damages under the CLRA for all violations complained of herein,

including, but not limited to, their actual damages, punitive damages, attorneys' fees and costs, as well as injunctive and any other equitable relief that the Court may deem proper.

**SEVENTH CAUSE OF ACTION**

**Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* –  
Unlawful Business Acts and Practices  
(Violations of Cal Civ. Code § 1770(a)(14))**

137. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this complaint, as if fully set forth herein.

138. As a result of Defendants' unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 or more and paying the attendant purchase and sale transaction fees on Coinbase between June 3, 2021 and June 10, 2021, when in fact no Dogecoin purchase or sale transactions were required for entry into Defendants' sweepstakes.

139. As a result of Defendants' above unlawful acts and practices in violation of Cal. Civ. Code § 1770(a)(14), Plaintiffs, on behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into the June 2021 DOGE Sweepstakes, and of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiffs as Class Representatives, and the law firm of Finkelstein & Krinsk LLP as Class Counsel;

B. Requiring Defendants to pay the actual damages sustained by Plaintiffs and the Class by reason of the acts and transactions alleged herein, plus punitive damages;

C. For an order of restitution necessary to restore to Plaintiffs and each Class member all money and personal property that Defendants have acquired from Plaintiffs and the Class by means of Defendants' unlawful conduct as described herein, and an order for the disgorgement of all of Defendants' ill-gotten gains from the unlawful conduct alleged herein;

D. For an order permanently and publicly enjoining Defendants from continuing to engage in the unlawful and unfair business acts and practices alleged herein;

E. Ordering Defendants to pay Plaintiffs' and the Class's reasonable attorneys' fees, expert fees, and other costs and expenses of this litigation; and

F. Ordering such other equitable relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury.

Dated: October 19, 2021

553

Respectfully submitted,

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Putative Class*



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed January 11, 2022]

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Case No. 21-cv-04539-SK

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DAVID SUSKI, et al.,  
*Plaintiffs,*

v.

MARDEN-KANE, INC., et al.,  
*Defendants.*

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**ORDER REGARDING MOTIONS TO COMPEL  
ARBITRATION AND TO DISMISS**

Regarding Docket Nos. 33, 41

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This matter comes before the Court upon consideration of the motion to compel arbitration or, in the alternative, to dismiss filed by Coinbase Global, Inc. (“Coinbase”). Having carefully considered the parties’ papers, relevant legal authority, the record in the case, and oral argument, the Court hereby DENIES Coinbase’s motion to compel arbitration and GRANTS IN PART and DENIES IN PART Coinbase’s alternative motion to dismiss for the reasons set forth below. The Court GRANTS Plaintiffs’ request for judicial notice pursuant to Federal Rule of Evidence 201. (Dkt. No. 41.)

## BACKGROUND

Plaintiffs David Suski, Jaimee Martin, Jonas Calsbeek and Thomas Maher (collectively, “Plaintiffs”) filed this purported class action on behalf of themselves and persons who opted into Coinbase’s \$1.2 million Dogecoin (DOGE) sweepstakes in June 2021, and who purchased or sold Dogecoins on a Coinbase exchange for a total of \$100 or more between June 3, 2021 and June 10, 2021. (Dkt. No. 36 (Second Amended Complaint (“SAC”), p. 2.)

Plaintiffs are Coinbase users with Coinbase accounts, which they created before the sweepstakes began. When they created their Coinbase accounts, each Plaintiff agreed to the Coinbase User Agreement which indisputably contains an arbitration provision. Suski agreed to a User Agreement with the following provision:

. . . 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. . . .

(Dkt. No. 33-7 (Attached as Exhibit 6 to the Declaration of Carter McPherson-Evans) (emphasis in original).) Martin, Calsbeek, and Maher agreed to a User Agreement with the following provision:

**. . . 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 <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.**

\* \* \*

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.

(Dkt. Nos. 33-8, 33-9, 33-10 (Exhibits 7, 8, 9 to the McPherson-Evans Decl.) (emphasis in original).)

Suski accepted Coinbase's User Agreement on January 24, 2018; Martin accepted on February 12, 2021; Calsbeek accepted on May 13, 2021; and Maher accepted on April 5, 2020. (Dkt. Nos. 33-3, 33-4, 33-5, 33-6 (Exhibits 2 through 5 to the McPherson-Evans Decl.).)

Plaintiffs then participated in Coinbase's June 2021 sweepstakes. Coinbase's advertisements for its sweepstakes stated:

Trade DOGE. Win DOGE. Starting today, you can trade, send, and receive Dogecoin on Coinbase.com and with the Coinbase Android and iOS apps. To celebrate, we're giving away \$1.2

million in Dogecoin. Opt in and then buy or sell \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Terms and conditions apply.

(Dkt. No. 36, ¶ 8.) Below that language was a link to “See all rules and details” in smaller font. (*Id.*, ¶ 8.) The Sweepstakes advertisements then stated: “What you can win,” “1 Winner will receive \$300,000 in DOGE,” “10 Winners will receive \$30,000 in DOGE,” and “6,000 Winners will receive \$100 in DOGE.” (*Id.*, ¶ 8.) Immediately below those statements about prizes was a large, bright blue box that said, “See how to enter.” (*Id.*, ¶ 8.) Below the blue box in light small print was the following text:

Not investment advice or a recommendation to trade Dogecoin. NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available. Sweepstakes open to legal residents of the fifty (50) United States and the District of Columbia (excluding Hawaii). Void where prohibited by law. Must be age of majority in state of residence as of 6/3/21. Promotion ends 11:59 PM (PT) on 6/10/21. Winners must have a Coinbase account on Coinbase.com to receive a prize. Receipt and use of prizes subject to Coinbase terms and conditions. Odds of winning depend on the number of eligible entries received. One entry per person. Sponsor: Coinbase: Coinbase Sweepstakes, 100 Pine Street, Suite #1250, San Francisco, CA 94111. See Official Rules for details.

(*Id.*, ¶¶ 66.)

When Plaintiffs clicked on the blue box with “See how to enter”, they were taken to another page stating in large, bolded letters: “Trade DOGE. Win DOGE.” (*Id.*, ¶ 10.) Underneath it stated:

Dogecoin is now on Coinbase, and we’re giving away \$1.2 million in prizes to celebrate. Opt in and then buy or sell \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win.

Limit one entry per person. Opting in multiple times will not increase your chance of winning.”

(*Id.*) Below, in smaller text, was a link to “View sweepstakes rules.” Below that link, in a bright blue box was a link in larger text to “Opt in.” (*Id.*) At the bottom of the advertisement was the same paragraph in small, light print regarding no purchase necessary. (*Id.*, ¶ 67.)

Upon clicking “Opt-in,” Plaintiffs were taken to another screen which stated in large, bolded text: “You’re one step closer to winning.” (*Id.*, ¶ 11.) Below the large text stated:

“You’ve successfully opted in to our Dogecoin Sweepstakes. Remember, you’ll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win.”

(*Id.*) Below, in smaller text, was a link to “View sweepstakes rules.” Below that link, in a bright blue box was a link in larger text to “Make a trade.” (*Id.*) Again, at the bottom of the advertisement was the same paragraph in small, light print regarding no purchase necessary. (*Id.*, ¶ 67.)

Upon clicking “Make a trade,” Plaintiffs were taken directly to Coinbase’s trading platform, where they

could sell or buy Dogecoins for \$100 or more on Coinbase. (*Id.*, ¶ 12.)

However, Coinbase users were not required to buy or sell \$100 or more in Dodge to enter the sweepstakes. Instead, individuals were able to mail an index card with their name, contact information and date of birth, without a purchase, to enter the sweepstakes. (*Id.*, ¶ 15.) Coinbase provided that information in the sweepstakes rules and details webpage. (*Id.*, ¶ 16.) Coinbase, based on in-depth, empirical data from a previous sweepstakes, knew that the wording, design, and presentation of their Dogecoin sweepstakes advertisements would cause most users never to see the information about the alternative ways to enter on the separate “rules and details” webpage. (*Id.*, ¶ 54.)

Coinbase’s “Official Rules” for its Dogecoin sweepstakes states:

Participation [in the Sweepstakes] constitutes entrant’s full and unconditional agreement to these Official Rules and [Coinbase’s] and [its] Administrator’s decisions, which are final and binding in all matters related to the Sweepstakes.”

(Dkt. No. 22-1, Ex. A<sup>1</sup> (Official Rules), ¶ 1.) The Official Rules further provide:

**THE CALIFORNIA COURTS (STATE AND  
FEDERAL) SHALL HAVE SOLE  
JURISDICTION OF ANY CONTROVERSIES**

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<sup>1</sup> Plaintiffs did not attach a copy of the Official Rules for the Dogecoin sweepstakes to their Second Amended Complaint. If Plaintiffs file a Third Amended Complaint in accordance with this Order, they shall attach a copy of the Official Rules.

REGARDING THE PROMOTION AND THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN THE PROMOTION. EACH ENTRANT WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION AND VENUE IN THOSE COURTS FOR ANY REASON AND HEREBY SUBMITS TO THE JURISDICTION OF THOSE COURTS.

(*Id.*, ¶ 10.) With respect to entry, the Official Rules state:

Two methods of entry:

Method 1: Existing account holders and new\* account holders must opt-in to participate in the Sweepstakes and must complete \$100usd (cumulative 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.

...

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: . . . Only one (1) entry per person. . . . 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.

**Note: Your chances of winning are the same regardless of method of entry.**

*(Id.*, ¶ 3.)

At the hearing on this matter, Coinbase stated that an individual who won through the mail-in process would be required to open a Coinbase account to collect the winnings.

Plaintiffs allege that Coinbase’s sweepstakes was an unlawful lottery in violation of California Penal Code § 320, that its solicitations for the sweepstakes violated California Business and Professions Code § 17539.15, and that Coinbase’s conduct violated California Civil Code § 1770. Plaintiffs brings claims under California Business and Professions Code § 17200, California’s Unfair Competition Law (“UCL”) based on this alleged unlawful and unfair conduct. Plaintiffs also bring a claim for false advertising under California Business and Professions Code §§ 17200 and 17500, California’s False Advertising Law (“FAL”) and for violation of California Civil Code § 1750, California’s Consumers Legal Remedy Act (“CLRA”). (Dkt. No. 36.)

Coinbase now moves to compel arbitration under its User Agreement or, in the alternative, to dismiss Plaintiffs’ claims for failure to state a claim.

## ANALYSIS

### **A. Legal Standard Applicable to Motions to Compel Arbitration.**

Pursuant to the Federal Arbitration Act (“FAA”), arbitration agreements “shall be valid, irrevocable, and

enforceable, save upon such grounds that exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. Once the Court has determined that an arbitration agreement involves a transaction involving interstate commerce, thereby falling under the FAA, the Court’s only role is to determine whether a valid arbitration agreement exists and whether the scope of the parties’ dispute falls within that agreement. *United Computer Systems v. AT&T Corp.*, 298 F.3d 756, 766 (9th Cir. 2002); *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000); 9 U.S.C. § 4.

The FAA represents the “liberal federal policy favoring arbitration agreements” and “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). Under the FAA, “once [the Court] is satisfied that an agreement for arbitration has been made and has not been honored,” and the dispute falls within the scope of that agreement, the Court must order arbitration. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 400 (1967).

Notwithstanding the liberal policy favoring arbitration, by entering into an arbitration agreement, two parties enter into a contract. *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 479 (1989) (noting that arbitration “is a matter of consent, not coercion.”). The principles of state contract law are applied in determining the validity of the arbitration agreement. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *Circuit City Stores, Inc. v. Adams*, 279 F.3d 889, 892 (9th Cir. 2002). A party seeking to compel arbitration must prove by a preponderance of the

evidence the existence of an arbitration agreement, and a party opposing arbitration bears the burden of proving by a preponderance of evidence any fact necessary to its defense. *Olvera v. El Pollo Loco, Inc.*, 173 Cal.App.4th 447, 453 (2009) (citing *Rosenthal v. Great Western Fin. Securities Corp.*, 14 Cal.4th 394, 413 (1996)).

Both the arbitrability of the merits of a dispute and the question of who has the primary power to decide arbitrability depend on the agreement of the parties. *See First Options of Chicago*, 514 U.S. at 943. “But, unlike the arbitrability of claims in general, whether the court or the arbitrator decides arbitrability is an issue for judicial determination unless the parties *clearly and unmistakably provide otherwise.*” *Oracle Am., Inc. v. Myriad Group A. G.*, 724 F.3d 1069, 1072 (9th Cir. 2013) (internal quotation marks and citations omitted) (emphasis in original). Thus, “there is a presumption that courts will decide which issues are arbitrable.” *Id.*

### **B. Coinbase’s Motion to Compel.**

Here, the parties do not dispute that: (1) Plaintiffs agreed to Coinbase’s User Agreement; (2) Coinbase’s User Agreement contains a valid arbitration agreement; and (3) Plaintiffs subsequently agreed to the Dogecoin sweepstakes’ Official Rules; and (4) the Dogecoin sweepstakes’ Official Rules provides that California courts have exclusive jurisdiction over any controversies regarding the sweepstakes. Plaintiffs also do not dispute that their claims would fall within the scope of Coinbase’s User Agreement arbitration provision, had they not agreed to the subsequent exclusive jurisdiction provision in the Dogecoin sweepstakes’ Official Rules. The issues are thus which

contract (Coinbase’s User Agreement or the Dogecoin sweepstakes’ Official Rules) governs this dispute and who decides which contract applies (this Court or the arbitrator).

### 1. Who Decides Which Contract Governs.

Whether the Court or the arbitrator determine which contract applies “is an issue for judicial determination unless the parties *clearly and unmistakably provide otherwise.*” *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 738 (9th Cir. 2014) (emphasis in original) (quoting *Oracle Am., Inc. v. Myriad Group A. G.*, 724 F.3d 1069, 1072 (9th Cir. 2013)). Therefore, “there is a presumption that courts will decide which issues are arbitrable.” *Id.* Coinbase argues that the arbitration provisions in the Coinbase User Agreements clearly delegate the issue of arbitrability to the arbitrator. Three of the four Plaintiffs agreed to the arbitration provision in the Coinbase User Agreement, which provides:

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.

(Dkt. Nos. 33-8, 33-9, 33-10 (Exhibits 7, 8, 9 to the Declaration of McPherson-Evans) (emphasis omitted).) 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. (Dkt. No. 33-7 (Ex. 6 to the McPherson-Evans Decl.)) 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.” See AAA Consumer Arbitration Rules, <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf> (effective September 1, 2014).

While disagreements over the scope of the arbitration provisions were delegated to the arbitrator, the dispute here is not over the scope of the arbitration provision, but rather whether the agreement was superseded by another separate contract. In other words, Plaintiffs do not dispute that their claims would fall within the scope of the arbitration provision if they had not agreed to the Official Rules of the Dogecoin sweepstakes. Moreover, because Plaintiffs agreed to a subsequent agreement with an exclusive jurisdiction provision, the dispute over how to address the interaction between two separate contracts is not clearly and unmistakably delegated in the arbitration provision to the arbitrator. Or, as another district court explained, the required “clear and unmistakable evidence of intent to arbitrate arbitrability does not exist where an arbitration provision has been excluded from superseding agreements.” *Ingram Micro Inc. v. Signeo Int’l, Ltd.*, 2014 WL 3721197, at \*3 (C.D. Cal. July 22, 2014). In light of the presumption that the Court address this issue, the Court will determine which contract applies.

## **2. Which Contract Governs.**

“[A]rbitration is a matter of contract,” *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010). “Where

the arbitrability of a dispute is contested, we must decide whether the parties are contesting the *existence* or the *scope* of an arbitration agreement. If the parties contest the *existence* of an arbitration agreement, the presumption in favor of arbitrability does not apply.” *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 742 (9th Cir. 2014) (emphasis in original). When determining whether parties have agreed to submit to arbitration, courts apply general state-law principles of contract interpretation. *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1044 (9th Cir. 2009).

Here, after agreeing to the Coinbase User Agreement with the arbitration provision, Plaintiffs agreed to the Official Rules for the Dogecoin sweepstakes, which contains an exclusive forum selection clause designating California courts for all disputes regarding the sweepstakes. The arbitration clause and the forum selection provision in the two contracts are conflicting. As in *Applied Energetics, Inc. v. NewOak Cap. Markets, LLC*, the language in the sweepstakes Official Terms “that ‘[a]ny dispute’ between the parties ‘shall be adjudicated’ by specified courts stands in direct conflict with the [Coinbase User] Agreement’s parallel language that ‘any dispute . . . shall be resolved through binding arbitration.’ Both provisions are all-inclusive, both are mandatory, and neither admits the possibility of the other.” *Id.*, 645 F.3d 522, 525 (2d Cir. 2011) (finding the adjudication clause specifically precludes and, thus, supersedes the arbitration provision). Although Coinbase tries to reconcile the two, arguing that the sweepstakes Official Rules only applies to non-Coinbase users, there is no support in the contract language for this distinction. The Official Rules does not limit to whom it applies. Instead, by its

terms, it applies to all sweepstakes' "entrants." (Dkt. No. 22-1, Ex. A, ¶¶ 1, 10.)

Because the arbitration provision and the forum selection clause conflict, the subsequent contract supersedes the first. *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 742-43 (9th Cir. 2014) (finding an arbitration clause was superseded by a forum selection clause in a subsequent agreement); *see also Applied Energetics*, 645 F.3d at 525-26 (same); *Capili v. Finish Line, Inc.*, 116 F. Supp. 3d 1000, 1004 n. 1 (N.D. Cal. 2015) (Under California law, "[t]he general rule is that when parties enter into a second contract dealing with the same subject matter as their first contract without stating whether the second contract operates to discharge or substitute for the first contract, the two contracts must be interpreted together and the latter contract prevails to the extent they are inconsistent.") (quoting 17A C.J.S. Contracts § 574).

Therefore, the Court DENIES Coinbase's motion to compel arbitration and, thus, turns to the alternative motion to dismiss for failure to state a claim.

### **C. Applicable Legal Standard on Motion to Dismiss.**

A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. On a motion to dismiss under Rule 12(b)(6), the Court construes the allegations in the complaint in the light most favorable to the non-moving party and takes as true all material allegations in the complaint. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). Even under the liberal pleading standard of Rule 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and

conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Rather, a plaintiff must instead allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

“The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . When a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). If the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g. Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Lieche, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

As a general rule, “a district court may not consider material beyond the pleadings in ruling on a Rule 12(b)(6) motion.” *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on other grounds, Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (citation omitted). However, documents subject to judicial notice, such as matters of public record, may be considered on a motion to dismiss. *See Harris v. Cnty of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2011). In doing so, the Court does not convert a motion to dismiss to one for summary judgment. *See Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991). “The court need not . . . accept as true allegations that contradict matters



properly subject to judicial notice . . . .” *Sprewell v. Golden State Warriors*, 266 F. 3d 979, 988 (9th Cir. 2001).

#### **D. Coinbase’s Motion to Dismiss.**

##### **1. California Penal Code § 320.**

Plaintiffs allege that the Dogecoin sweepstakes violates California Penal Code § 320. Coinbase argues that the Dogecoin sweepstakes was not an illegal lottery under California law because it provided free alternative methods of entry. As a result, Coinbase argues that Plaintiffs’ UCL claims, predicated on violation of the lottery law, fail as a matter of law.

Lotteries are illegal under California law. *See* Cal. Penal Code § 320. California law defines a lottery as:

any scheme for the disposal of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property . . . upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance.

Cal. Pen. Code §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.”). The essential elements of a lottery are chance, consideration, and the prize. *People v. Cardas*, 137 Cal. App. Supp. 788, 790 (1933); *Cal. Gasoline Retailers v. Regal Petroleum Corp.*, 50 Cal. 2d 844, 851 (1958). If any one of the three elements is missing, the game or scheme at issue is not a lottery. *Haskell*, 965 F. Supp. at 1403.

In *Cardas*, tickets for a promotional scheme were distributed with programs in the neighborhood of the

theater, with two thousand distributed to passing motorists and others handed out to patrons and non-patrons in front of the theater. 137 Cal. App. Supp. at 789. It was unnecessary to buy an admission ticket to secure a prize ticket or to claim the prize. *Id.* The court held there was no lottery because “those who purchased admission tickets and received prize tickets, . . ., could not be said to have paid a consideration for the prize tickets since they could have received them free.” *Id.* at 791. In *People v. Carpenter*, 141 Cal. App. 2d 884, 889-90 (1956), the court found that the movie theater’s contest was not a lottery because tickets were offered to customers and non-customers and no consideration was paid for the chance of winning. Anyone who wanted to participate could do so for free. *Id.* Similarly, in *Regal*, the participating gas stations did not conduct a lottery where they distributed tickets for free before and after purchases at the gas stations and elsewhere, including homes, drive-in theaters, and baseball games. The Court clarified that, as long as any person could have received a ticket without paying anything for it, it did not matter how many tickets were distributed with a purchase. *Regal*, 50 Cal. App. 2d at 858-59.

In contrast, in *People v. Gonzales* the court held that a promotion was a lottery because “[t]here was no general or indiscriminate distribution of the drawing tickets to persons irrespective of whether they paid admission.” 62 Cal. App. 2d 274, 279 (1944). Instead, a person had to purchase at least one admission ticket in order to participate in the drawing. *Id.* at 280.

Summarizing the “implicit holdings” of these leading lottery cases, the court in *People v. Shira* explained:

in order for a promotional giveaway scheme to be legal any and all persons must be given a ticket free of charge and without any of them paying for the opportunity of a chance to win a prize. Conversely, a promotional scheme is illegal where any and all persons cannot participate in a chance for the prize and some of the participants who want a chance to win must pay for it.

62 Cal. App. 3d 442, 459 (1976); *see also Haskell v. Time, Inc.*, 965 F. Supp. 1398, 1404 (E.D. Cal. 1997) (“California courts have consistently held that business promotions are not lotteries so long as tickets to enter are not conditioned upon a purchase.”).

Although a close case, the Court finds that, as currently alleged in the Second Amended Complaint, the Dogecoin sweepstakes was not an illegal lottery. In the California cases finding no consideration, the tickets were clearly and widely distributed for free. *Cardas*; 137 Cal. App. Supp. at 789; *Regal*, 50 Cal. App. 2d at 852-53; *Carpenter*, 141 Cal. App. 2d at 889-90. However, the holdings of those cases did not turn on a wide and obvious method of free ticket distribution. Although Plaintiffs may not have been aware of it when they made a trade of Dogecoins, they were not actually required to trade Dogecoins in order to enter the sweepstakes and have a chance to win. Because California penal statutes are construed strictly and because no California court has held that being unaware of the free method of entry is sufficient to demonstrate the required consideration, the Court finds that Plaintiffs have not and cannot allege a violation of California Penal Code § 320. Therefore, the Court GRANTS Coinbase’s motion to dismiss as to Plaintiffs’ first claim (violation of Cal. Bus. & Prof. Code § 17200) in

full and Plaintiffs' second claim (violation of Cal. Bus. & Prof. Code §§ 17200, 17539.15) and sixth claim (violation of Cal. Civ. Code § 1750) to the extent they are is premised on a violation of Penal Code § 320. At oral argument, Plaintiffs advanced a theory that they conceded they had not explicitly pleaded in the Second Amended Complaint, and the Court GRANTS leave to amend to advance this theory.

## **2. Disclosure and Misrepresentation Claims.**

That many people may not have been aware that there was a free method of entry is significant for Plaintiffs' claims for disclosure and misrepresentation under the UCL, FAL, and CLRA. Under the FAL, the CLRA, and the fraudulent prong of the UCL, conduct is considered deceptive or misleading if the conduct is "likely to deceive" a "reasonable consumer." *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008). Because the same standard for false advertising or misrepresentations governs all three statutes, courts often analyze the three statutes together. *Hadley v. Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1089 (N.D. Cal. 2017). Upon review of Coinbase's advertising materials as alleged in the Second Amended Complaint, the Court finds that Plaintiffs state a claim that the materials were likely to deceive a reasonable consumer that they needed to make a trade to participate in the sweepstakes. While Coinbase may have actually disclosed the free method in the Dogecoin sweepstakes' Official Rules, its advertising methods heavily directed people to make a trade in order to participate in this sweepstakes. Additionally, Coinbase's statements regarding "no purchase necessary" were ambiguous in light of the other statements regarding the need to "buy or sell" Dogecoin. Persons could have

reasonably believed they were required to buy *or sell* Dogecoin to participate, which would have been consistent with not making a purchase but still requiring them to make a trade.

Additionally, California law requires sweepstakes sponsors to include a “clear and conspicuous statement of the no-purchase-or-payment-necessary message” in solicitation materials. *See* Cal. Bus. & Prof. Code § 17539.15(b).<sup>2</sup> The statute defines the “no-purchase-or-payment-necessary” statement to mean a statement substantially similar to: “No purchase or payment of any kind is necessary to enter or win this sweepstakes.” Cal. Bus. & Prof. Code § 17539.15(k)(1). There are no cases construing this statute. Therefore, the Court considers the language of the statute, which requires a “clear and conspicuous statement” that “no purchase or payment of any kind” is required to enter or win. The Court finds that Plaintiffs have alleged sufficient facts to show that Coinbase’s advertisements were not “clear and conspicuous” as to whether all persons could enter for free.

Accordingly, the Court finds that Plaintiffs have alleged sufficient facts as to the remainder of their claims and DENIES Coinbase’s motion to dismiss as to Plaintiffs’ second through seventh claims to the

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<sup>2</sup> California Business and Professions Code § 17539.15(b) provides: “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.”

extent they are not premised on a violation of California Penal Code § 320.

### **CONCLUSION**

For the foregoing reasons, the Court DENIES Coinbase's motion to compel arbitration and GRANTS IN PART and DENIES IN PART Coinbase's alternative motion to dismiss for failure to state a claim. Therefore, the Court GRANTS WITH LEAVE TO AMEND Coinbase's motion to dismiss as to Plaintiffs' first claim (violation of Cal. Bus. & Prof. Code § 17200) in full and Plaintiffs' second claim (violation of Cal. Bus. & Prof. Code §§ 17200, 17539.15) and sixth claim (violation of Cal. Civ. Code § 1750) to the extent they are is premised on a violation of Penal Code § 320. The Court DENIES Coinbase's motion to dismiss as to the remainder of Plaintiff's claims. Plaintiffs shall file their amended complaint, if any, by no later than February 1, 2022.

**IT IS SO ORDERED.**

Dated: January 11, 2022

/s/ Sallie Kim  
SALLIE KIM  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed May 10, 2022]

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

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

*Plaintiffs,*

v.

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

*Defendants.*

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**THIRD AMENDED CLASS ACTION  
COMPLAINT FOR:**

- (1) VIOLATIONS OF CALIFORNIA FALSE  
ADVERTISING LAW, Cal. Bus. & Prof. Code  
§§ 17500, *et seq.*;
- (2) VIOLATIONS OF CALIFORNIA UNFAIR  
COMPETITION LAW, Cal. Bus. & Prof. Code  
§§ 17200, *et seq.*;
- (3) VIOLATIONS OF CALIFORNIA CONSUMER  
LEGAL REMEDIES ACT, Cal. Civ. Code §§ 1750, *et  
seq.*

**JURY TRIAL DEMANDED**

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*“When you see these sort[s] of practices done by both scammers and legitimate entities, it makes it really hard to distinguish between the two of them.”*

-Benjamin Powers, Coindesk.com (June 4, 2021)

This putative class action concerns an unlawful, fraudulently marketed cryptocurrency lottery (or in the alternative, an unlawfully marketed “sweepstakes”). The operators of this cryptocurrency lottery objectively and affirmatively represented to millions of consumers that they were required to give valuable consideration for a chance to win up to \$300,000. Contrary to the operators’ express representations to those consumers, the operators had privately agreed among themselves to grant free entry requests from those consumers (if any happened to be submitted). Based on the totality of the operators’ statements to them personally and to the public at large, the consumers at issue in this case objectively had no reasonable way of knowing that the operators would grant any free entry requests from them. The operators solicited millions of consumers to pay hundreds of millions of dollars to enter and lose an unlawful “lottery,” disguised as a lawful “sweepstakes,” for the sake of pure corporate profit.

Pursuant to Fed. R. Civ. P. 23, Plaintiffs David Suski, Jaimee Martin, Jonas Calsbeek and Thomas Maher bring this class action individually and on behalf of all other persons who opted into Coinbase’s \$1.2 million Dogecoin (DOGE) sweepstakes in June 2021, and who purchased or sold Dogecoins on a Coinbase exchange for a total of \$100 or more between June 3, 2021 and June 10, 2021, inclusive. Plaintiffs make the following allegations based upon the investigation of their counsel, and based upon personal knowledge as



to themselves and their own acts and dealings with the Defendants. Plaintiffs and their counsel believe that substantial, additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **INTRODUCTION**

1. Founded in 2012, Defendant Coinbase, Inc. (“Coinbase,” or the “Company”) is a newly public company and one of the largest online cryptocurrency exchanges in the world. Coinbase has approximately 60 million active users worldwide, consisting primarily of retail consumers, who buy and sell cryptocurrencies online through the Company’s website, [www.coinbase.com](http://www.coinbase.com), and through the Coinbase mobile app.

2. Coinbase collects trading fees (or “commissions”) from its users for each crypto purchase or sale they execute with Coinbase. Coinbase’s trading fees are calculated as the greater of either a flat fee, or some percentage of the price of the cryptocurrencies being bought or sold. For transaction amounts totaling between \$50.01 and \$200, a flat fee of \$2.99 per transaction applies. On top of the applicable trading fees, Coinbase also charges a “spread” of approximately 0.5% for each cryptocurrency purchase or sale transaction executed by its users. Coinbase’s financial health depends upon its ability to buy, offer, sell, and resell “cryptocurrencies” to consumers in exchange for actual currencies, like U.S. dollars.

3. Among the many different cryptocurrencies that Coinbase buys and sells is a cryptocurrency called “Dogecoin,” or “DOGE.” Dogecoin was created in December 2013 by two software engineers, who decided to create a new digital payment system as a joke, making light of the speculative trading that was occurring

in cryptocurrencies generally. After all, if arbitrary computer codes like “Bitcoins” could be invented by private persons out of thin air, and sold for thousands of dollars each, then why not invent and sell “Doge-coins” too?



4. The software engineers’ joke eventually became a hit, especially among millennials and younger generations. As the retail prices of many cryptocurrencies skyrocketed in recent years, so too did the retail price of the “coin” known as “DOGE.” The retail price of one Dogecoin was less than a penny as of January 2021, before spiking as high as \$0.70 per DOGE in May 2021.

5. Coinbase, one of the world’s preeminent crypto dealers, took notice of DOGE’s meteoric ascent in popularity, and in response, decided to add Dogecoins to the list of cryptos that Coinbase would offer to its customers.

6. On June 1, 2021, for the first time, Coinbase started allowing its users to transfer “Dogecoins” into their Coinbase trading accounts. Coinbase announced that it would start allowing users to buy and sell Dogecoins on or after June 3, 2021, “if liquidity conditions are met.” See <https://blog.coinbase.com/dogecoin-doge>

is-launching-on-coinbase-pro-1d73bf66dd9d (last visited Jun. 9, 2021). Given the huge amount of commissions that Coinbase could earn from millions of users buying and selling DOGE on its platform, Coinbase had no intention of leaving DOGE’s “liquidity conditions” up to chance, or up to natural consumer sentiment. Instead, Coinbase decided to actively incentivize as much Dogecoin trading as possible on its platform. To do this, Coinbase hired Defendant Marden-Kane Inc. (“MKI”) to help plan and execute a \$1.2 million “Dogecoin sweepstakes,” which began on June 3, 2021.

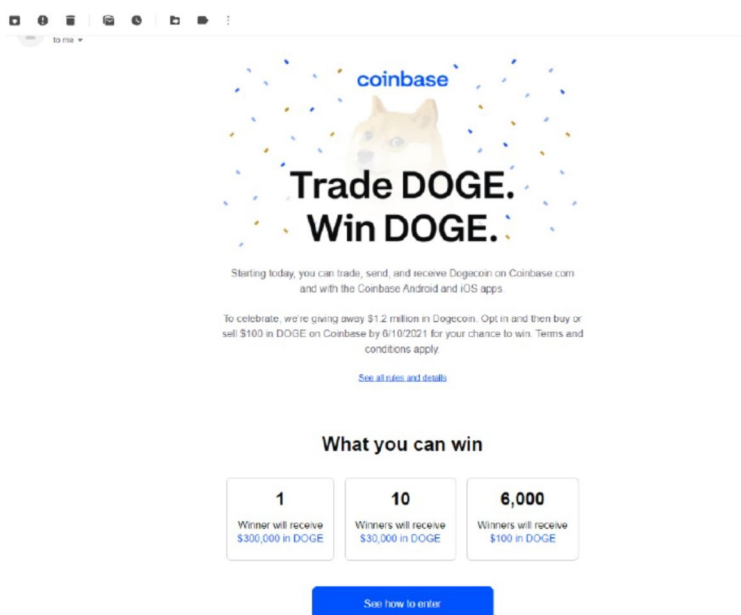
7. On June 3, 2021 (the first day that Coinbase opened for Dogecoin trading), Coinbase directly emailed Plaintiffs and millions of its users, and also displayed to them on its website and mobile app, advertisements of a \$1.2 million Dogecoin “sweepstakes.” Defendants’ direct-to-user emails and digital ads were drafted, structured and designed collaboratively by MKI and Coinbase, and then ultimately transmitted to users by Coinbase.

8. Defendants’ direct-to-user emails and digital ads displayed large, colorful graphics and large print stating:

Trade DOGE. Win DOGE. Starting today, you can trade, send, and receive Dogecoin on Coinbase.com and with the Coinbase Android and iOS apps. To celebrate, we’re giving away \$1.2 million in Dogecoin. Opt in and then buy or sell \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Terms and conditions apply.

Defendants’ email solicitations also displayed large, bold text, showing “What you can win,” highlighting

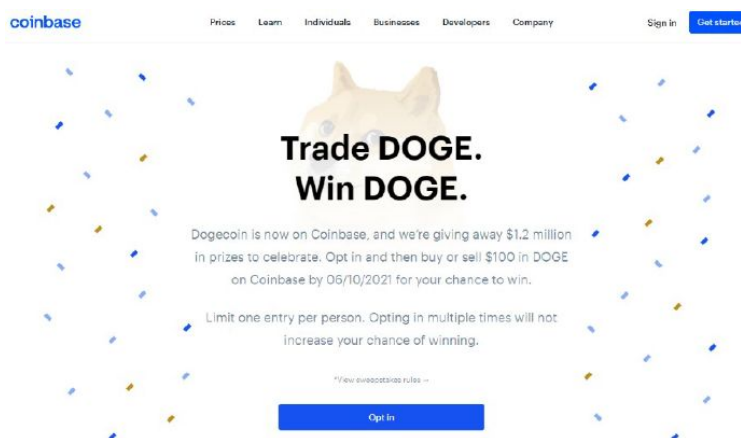
that “1 Winner will receive \$300,000 in DOGE,” that “10 Winners will receive \$30,000 in DOGE,” and that “6,000 Winners will receive \$100 in DOGE.” Immediately below those flashy statements about prizes was a large, bright blue button that said, “See how to enter.” Sandwiched in between those large, prominent statements was a much smaller-font link stating, “See all rules and details.” The first “screen-page” of Defendants’ email ads looked like the image below.



9. The digital ads on Coinbase’s website and mobile app were substantially identical.

10. When Plaintiffs and other consumers clicked the big, bright blue “See how to enter” button (before clicking the smaller, “See all rules and details” link), they were taken to a Coinbase web advertisement containing similar, prominent instructions on how to enter the Company’s sweepstakes. Once again, the ad stated in large, bold letters, with graphics: “Trade

DOGE. Win DOGE.” This web ad reiterated the main assertions in the email ad, stating that “Dogecoin is now on Coinbase, and we’re giving away \$1.2 million in prizes to celebrate. Opt in and then buy or sell \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Limit one entry per person. Opting in multiple times will not increase your chance of winning.” Once again, there was a much smaller, fainter link, beneath the prominent text, that said “View sweepstakes rules,” and then a much larger, bright-blue button prompting the customer to “Opt-in.”<sup>1</sup>



11. Upon clicking “Opt-in,” Plaintiffs and other consumers would see the large text and the bright blue button change. The large text changed to say:

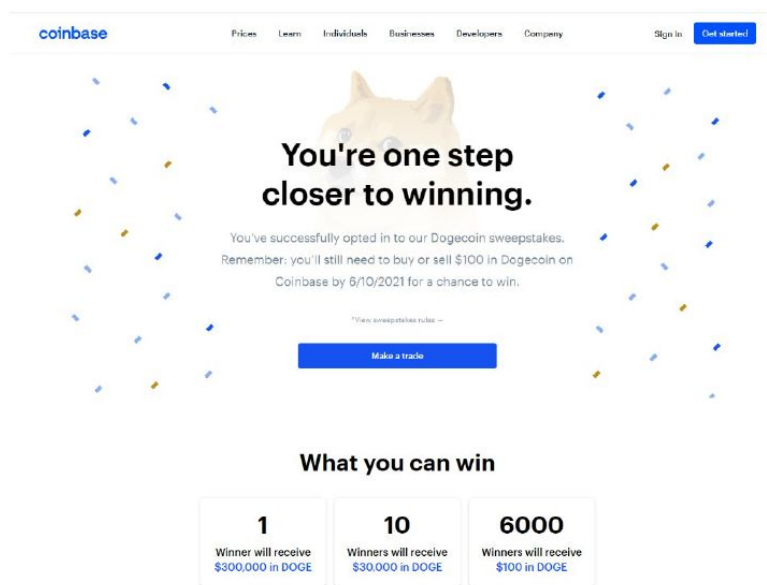
*“You’re one step closer to winning. You’ve successfully opted in to our Dogecoin Sweepstakes. Remember, you’ll still need to buy or sell \$100*

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<sup>1</sup> The faint and tiny “View sweepstakes rules” link displayed above did not even link to the sweepstakes rules, but rather, to a footnote at the bottom of the page containing generalized, ambiguous statements about some aspects of the sweepstakes rules.

*in Dogecoin on Coinbase by 6/10/2021 for a chance to win.”* (emphasis added)

At the same time, Defendants’ large, bright blue button changed from saying “Opt in,” to saying “Make a trade.” All other aspects of this digital ad remained unchanged upon clicking the “Opt in” button. Thus, Defendants affirmatively represented to Plaintiffs and the Class that “buy[ing] or sell[ing] \$100 in Dogecoin on Coinbase by 6/10/2021” was necessary to enter “for a chance to win.” (See the image below.)



12. Upon clicking “Make a trade,” customers were taken directly to Coinbase’s trading platform, where they could sell or buy Dogecoins for \$100 or more on Coinbase.

13. If users happened to scroll down Defendants’ digital ads a bit before “opting in” or “making a trade,” they would see other large, bold-font statements. The digital ads’ second and third “screen pages” further

highlighted the sweepstakes prizes, and the process for entering to win.

The screenshot shows the Coinbase website header with navigation links: Prices, Learn, Individuals, Businesses, Developers, Company, Sign in, and Get started. Below the header, three boxes highlight sweepstakes prizes: \$300,000 in DOGE, \$30,000 in DOGE, and \$100 in DOGE. Below this is a section titled "How to enter" with a four-step flowchart:

- Sign in to Coinbase**: Not logged in? Sign in or create an account at coinbase.com. Then follow the prompts to opt in.
- Opt in to the sweepstakes**: If you're signed in, you can opt in above. You'll get an email confirming that you've successfully opted in after about 24 hours.
- Make a trade**: Buy or sell \$100 or more in DOGE on Coinbase between 6/3/21 and 6/10/21. You can trade \$100 all at once, or a little at a time.
- Watch your inbox**: Once you opt in and trade, you'll be officially entered to win. Winners will hear from us via email on or around 6/17.

**Important security notice:** Be on the lookout for scammers. You will get a confirmation email within 24 hours. We will only notify you about prizes via no-reply@coinbase.com. See a fraudulent giveaway? Report it to security@coinbase.com.

14. Thus, according to Defendants' prominent, repeated instructions, the process for entering their Dogecoin sweepstakes was as follows.

- “Sign in to Coinbase.** Not logged in? Sign in or create an account at coinbase.com. Then follow the prompts to opt in.”
- “Opt in to the sweepstakes.** If you're signed in, you can opt in above. You'll get an email confirming that you've successfully opted in after about 24 hours.”
- “Make a trade.** Buy or sell \$100 or more in DOGE on Coinbase between 6/3/21 and 6/10/21. You can trade \$100 all at once, or a little at a time.”
- “Watch your inbox.** Once you opt in and trade, you'll be officially entered to win. Winners will hear from us via email on or around 6/17.”

15. Defendants' above email, web, and mobile app advertisements to Plaintiffs and the Class were materially false and misleading when disseminated. The truth was that users did *not* "need" to buy or sell "\$100 or more in DOGE" to enter Defendants' sweepstakes. Instead, users could have bought or sold *almost* \$100 in DOGE, *or* simply mailed the Defendants a 3x5-inch index card stating the user's name, contact information, and date of birth. Defendants, however, specifically crafted their ads with the knowledge and intent that the ads' text, structure, and design— as well as the text of the Official "Sweepstakes" Rules—would reasonably lead most Coinbase users to "Opt in" and "Make a trade" to enter for a slim chance to win. As detailed herein, Defendants made other false and misleading statements to Plaintiffs and the Class to deceive them into buying or selling \$100 or more "in Dogecoin," and into paying Coinbase's associated transaction costs, for a chance to win the advertised prizes.

16. Defendants directly and affirmatively deceived Plaintiffs and the Class for the purposes of extracting hundreds of millions of dollars from them, thereby ensuring that Coinbase's "liquidity conditions" would be met as soon as the Company's platform opened for Dogecoin trading. <https://blog.coinbase.com/dogecoin-doge-is-launching-on-coinbase-pro-1d73bf66dd9d> (last visited Jun. 9, 2021) ("Trading will begin on or after 9AM Pacific Time (PT) Thursday June 3, if liquidity conditions are met.").

17. Defendants' deceptive digital ad campaign caused Plaintiffs and millions of Class members to pay hundreds of millions of dollars in "Dogecoin" purchases and transaction costs to Coinbase, which they would not otherwise have paid absent Defendants'



affirmative misstatements and omissions. This nationwide class action seeks judicial relief from Defendants' unlawful conduct, on behalf of Plaintiffs and all other Class members.

### **PARTIES**

18. Plaintiff David Suski is a citizen of New York, and has a personal account with Coinbase that allows him to sell and buy cryptocurrencies directly to and from Coinbase via [www.coinbase.com](http://www.coinbase.com), as well as the Company's mobile app.

19. Plaintiff Jaimee Martin is a citizen of Oregon, and has a personal account with Coinbase that allows her to sell and buy cryptocurrencies directly to and from Coinbase via [www.coinbase.com](http://www.coinbase.com), as well as the Company's mobile app.

20. Plaintiff Jonas Calsbeek is a citizen of California, and has a personal account with Coinbase that allows him to sell and buy cryptocurrencies directly to and from Coinbase via [www.coinbase.com](http://www.coinbase.com), as well as the Company's mobile app.

21. Plaintiff Thomas Maher is a citizen of Missouri, and has a personal account with Coinbase that allows him to sell and buy cryptocurrencies directly to and from Coinbase via [www.coinbase.com](http://www.coinbase.com), as well as the Company's mobile app.

22. Founded in 2012, Defendant Coinbase, Inc. ("Coinbase") is a Delaware corporation with its primary offices located in San Francisco, California. Coinbase is one of the largest online cryptocurrency dealers in the world. Coinbase has approximately 60 million active users worldwide, consisting primarily of consumers who buy and sell cryptocurrencies through the Company's website, [www.coinbase.com](http://www.coinbase.com). In 2021,

the common stock of Coinbase's parent company, Coinbase Global, Inc., began trading publicly on the NASDAQ global stock exchange under ticker symbol "COIN."

23. Defendant Marden-Kane, Inc. ("MKI") is a New York corporation with its primary offices located in New York. MKI specializes in designing, creating, executing, and analyzing various advertising and promotional campaigns for corporate clients, and specializes particularly in administering digital sweepstakes campaigns. In or before 2021, Defendant MKI contracted with Defendant Coinbase to serve as Coinbase's "Administrator" for the June 2021 Dogecoin sweepstakes.

#### **JURISDICTION AND VENUE**

24. This Court has jurisdiction under 28 U.S.C. § 1332(d) because the aggregate amount in controversy exceeds \$5,000,000, and Plaintiffs and most Class members are citizens of States different from the Defendants' home States.

25. This Court has, at minimum, specific personal jurisdiction over both Defendants because Defendants' official sweepstakes rules and terms provide that "the California courts (state and federal) shall have sole jurisdiction of any controversies regarding the [sweepstakes] promotion, and the laws of the State of California shall govern the promotion." *See* Ex. A, Official Rules, ¶10, *available at* <https://www.coinbase.com/sweepstakes-doge-terms> (last visited Jun. 11, 2021).

26. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1), because a substantial part of the events and omissions giving rise to the claims occurred

in this district, and a substantial part of the property at issue in this action is situated within this district.

### **SUBSTANTIVE ALLEGATIONS**

#### **Plaintiffs' Experiences With Defendants' DOGE Sweepstakes**

27. On or about June 8, 2021, Plaintiff David Suski viewed Defendants' email and internet ads, reasonably without knowing that he could have entered the Dogecoin sweepstakes simply by mailing in a 3x5 index card stating his name, birthday, and contact information. Before reading all of Defendants' sweepstakes "rules and details," Plaintiff Suski followed the more conspicuous statements and action buttons contained in Defendants' ads to "See how to enter," to "Opt in" to the sweepstakes, and to "Make a trade" on Coinbase's platform by buying Dogecoins from Coinbase for \$100.

28. Nowhere did Defendants' ads clearly and objectively disclose to Plaintiff Suski that there was any 100% free, mail-in option for him to enter the sweepstakes: an option that required no Dogecoin purchases or sales. Instead, as soon as he clicked the big blue button to "Opt in" to the sweepstakes, Defendants' digital ad affirmatively represented to Plaintiff Suski that he would "*need* to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win."<sup>2</sup> Moreover, even Defendants' Official Rules for the DOGE Sweepstakes (hereinafter "Official Rules") affirmatively and objectively stated that "[*e*]*xisting account holders* [like Plaintiff Suski] must opt-in to participate in the Sweepstakes *and must* complete \$100usd (cumulative

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<sup>2</sup> All emphasis within quotations marks is added unless otherwise stated herein.

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.” See Official Rules, Ex. A, ¶3. The above statements were materially and *objectively* false and misleading because, the true and undisclosed, material fact—reasonably knowable only to the Defendants themselves—was that Defendants would accept free, mail-in entries from any and all “Sweepstakes” participants, including but not limited to “account holders” such as Plaintiff Suski. Plaintiff Suski reasonably relied upon Defendants’ material, *objectively* false and misleading representations and omissions to his own detriment.

29. If Defendants’ “sweepstakes” solicitations had clearly and objectively disclosed to Plaintiff Suski that he had any trade-free entry option, then he would not have given Coinbase his \$100, or paid any trading commissions or spreads to buy or sell Dogecoins on Coinbase. The only reason that Plaintiff Suski undertook to buy Dogecoins from Coinbase between June 3 and June 10, 2021 was because Defendants led him to reasonably believe that doing so was necessary to enter a \$1.2 million sweepstakes.

30. On or about June 4, 2021, Plaintiff Jaimee Martin viewed a screenshot of Defendants’ email advertisement for the Dogecoin sweepstakes. Upon reviewing the screenshot of Defendants’ email ad, Plaintiff Martin reasonably believed that buying or selling \$100 or more in DOGE was necessary to enter the sweepstakes. In reliance upon Defendants’ misleading email advertisement, Plaintiff Martin immediately went on Coinbase and bought Dogecoins she would not otherwise have purchased, for a total of approximately \$120

(including commissions). She had not yet opted into the sweepstakes at this time.

31. Days later, on or about June 9, 2021, Plaintiff Martin once again viewed Defendants' Dogecoin sweepstakes ad, but this time on her Coinbase mobile app. Defendants' digital sweepstakes ad again led Plaintiff Martin to reasonably believe that buying or selling \$100 or more in DOGE was necessary to enter the sweepstakes. In reasonable reliance upon Defendants' affirmatively false and misleading ads, Plaintiff Martin clicked Defendants' prominent "Opt in" button, and then purchased additional Dogecoins from Coinbase for a total of \$100 (including commissions). She made this purchase even after making her prior, \$120 purchase because: (a) when she clicked Defendants' prominent "Opt in" button, the ad falsely represented to her that "*you'll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win*"; and because (b) she had still not received any email from Coinbase confirming her sweepstakes entry, despite her \$120 Dogecoin purchase from Coinbase days earlier.<sup>3</sup>

32. Plaintiff Martin opted into the sweepstakes, and made each of her Dogecoin purchases, reasonably without knowing that she could have entered the Dogecoin sweepstakes simply by mailing Coinbase an

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<sup>3</sup> Coinbase sent Plaintiff Martin an email confirmation of her "opting in" almost instantly after she clicked "Opt in," yet Coinbase inexplicably delayed for several days in sending her an email confirmation of her *entry*. Coinbase's delayed entry-confirmation email left Plaintiff Martin unsure of whether she had successfully entered the sweepstakes with her first purchase, so she made a second purchase to ensure that she would be entered. Coinbase did not send her entry-confirmation email until June 10, 2021.

index card stating her name, birthday, and contact information. Before reading all of Defendants' sweepstakes "rules and details," Plaintiff Martin followed the more conspicuous statements and action buttons in Defendants' ads to "See how to enter," to "Opt in" to the sweepstakes, and to "Make a trade" on Coinbase's platform, by buying Dogecoins from Coinbase for a total of \$220.

33. Nowhere did Defendants' ads clearly and objectively disclose to Plaintiff Martin that there was a 100% free, mail-in option for her to enter the sweepstakes, an option that required no Dogecoin purchases or sales. Indeed, as soon as she clicked the big blue button to "Opt in" to the sweepstakes, Defendants' digital ad affirmatively misrepresented to Plaintiff Martin that she would "*need* to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win." Moreover, even Defendants' Official Rules for the DOGE Sweepstakes affirmatively and objectively stated that "[e]xisting account holders [like Plaintiff Martin] must opt-in to participate in the Sweepstakes *and must* complete \$100usd (cumulative 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." See Official Rules, Ex. A, ¶3. The above statements were materially and **objectively** false and misleading because, the true and undisclosed, material fact—reasonably knowable only to the Defendants themselves—was that Defendants would accept free, mail-in entries from any and all "Sweepstakes" participants, including but not limited to Coinbase "account holders" such as Plaintiff Martin. Plaintiff Martin reasonably relied upon Defendants' material, objectively false and

misleading representations and omissions to her own detriment.

34. If Defendants' "sweepstakes" solicitations had clearly and objectively disclosed to Plaintiff Martin that she had a 100% free, mail-in entry option, then she would not have given Coinbase her \$120, or her subsequent \$100, or paid any trading commissions or spreads to buy or sell Dogecoins from Coinbase. The only reason that Plaintiff Martin undertook to buy Dogecoins from Coinbase between June 3 and June 10, 2021 was because Defendants led her to reasonably think that doing so was necessary to enter a \$1.2 million sweepstakes.

35. On or about June 3, 2021, Plaintiff Jonas Calsbeek viewed Coinbase's email and internet ads, reasonably without knowing that he could have entered the Dogecoin sweepstakes simply by mailing Coinbase an index card with his name, birthday, and contact information on it. Before reading all of Defendants' sweepstakes "rules and details," Plaintiff Calsbeek followed Defendants' more conspicuous statements and action buttons in the ads to "See how to enter," to "Opt in" to the sweepstakes, and to "Make a trade" on Coinbase's platform by buying Dogecoins for a total of \$125 (including trading fees).

36. Nowhere did Defendants' digital sweepstakes ads clearly and objectively disclose to Plaintiff Calsbeek that there was a 100% free, mail-in option for him to enter this sweepstakes, an option that required no Dogecoin purchases or sales. In fact, as soon as Plaintiff Calsbeek clicked the big blue button to "Opt in" to the sweepstakes, Defendants' digital ad affirmatively misrepresented to Plaintiff Calsbeek that he would "*need* to buy or sell \$100 in Dogecoin on

Coinbase by 6/10/2021 for a chance to win.” Moreover, even Defendants’ Official Rules for the DOGE Sweepstakes affirmatively and objectively stated that “[e]xisting account holders [like Plaintiff Calsbeek] must opt-in to participate in the Sweepstakes *and must* complete \$100usd (cumulative 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.” See Official Rules, Ex. A, ¶3. The above statements were materially and **objectively** false and misleading because, the true and undisclosed, material fact—reasonably knowable only to the Defendants themselves—was that Defendants would accept free, mail-in entries from any and all “Sweepstakes” participants, including but not limited to Coinbase “account holders” such as Plaintiff Calsbeek. Plaintiff Calsbeek reasonably relied upon Defendants’ material, objectively false and misleading representations and omissions to his detriment.

37. If Defendants’ “sweepstakes” solicitations had clearly and objectively disclosed to Plaintiff Calsbeek that he had a 100% free, mail-in entry option, then he would not have given Coinbase his \$125 or paid Coinbase any trading fees or spreads. In fact, the only reason why Plaintiff Calsbeek undertook to buy Dogecoins from Coinbase between June 3 and June 10, 2021 was that Defendants led him to reasonably think that doing so was necessary to enter a \$1.2 million “sweepstakes.”

38. On or about June 3, 2021, Plaintiff Thomas Mather viewed Coinbase’s email and internet ads, without knowing that he could have entered the Dogecoin sweepstakes simply by mailing Coinbase an index card with his name, birthday, and contact information



on it. Before reading all of Defendants' sweepstakes "rules and details," Plaintiff Maher followed Defendants' more conspicuous statements and action buttons to "See how to enter," to "Opt in" to the sweepstakes, and to "Make a trade" on Coinbase's platform by buying Dogecoins for a total of \$105 (including trading fees).

39. Nowhere did Defendants' digital sweepstakes ads clearly and objectively disclose to Plaintiff Maher that there was a 100% free, mail-in option for him to enter this sweepstakes, an option that required no Dogecoin purchases or sales. In fact, as soon as Plaintiff Maher clicked the big blue button to "Opt in" to the sweepstakes, Defendants' digital ad affirmatively misrepresented to Plaintiff Maher that he would "*need* to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win." Moreover, even Defendants' Official Rules for the DOGE Sweepstakes affirmatively and objectively stated that "[*existing account holders* [like Plaintiff Maher] must opt- in to participate in the Sweepstakes *and must* complete \$100usd (cumulative 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." *See* Official Rules, Ex. A, ¶3. The above statements were materially and *objectively* false and misleading because, the true and undisclosed, material fact—reasonably knowable only to the Defendants themselves—was that Defendants would accept free, mail-in entries from any and all "Sweepstakes" participants, including but not limited to Coinbase "account holders" such as Plaintiff Maher. Plaintiff Maher reasonably relied upon Defendants' material, objectively false and misleading representations and omissions to his detriment.

40. As with Plaintiff Martin, Coinbase delayed in sending Plaintiff Maher a contemporaneous (or even same-day) email confirming his opt-in and entry into the sweepstakes. Coinbase's delayed email confirmations left Plaintiff Maher unsure of whether he had successfully entered the sweepstakes with his \$105 purchase, so he made a second DOGE purchase from Coinbase on June 4, 2021, spending an additional \$100, to ensure that he would be entered. Coinbase eventually sent Maher an email confirmation of his opt-in on June 5, 2021, and an email confirmation of his sweepstakes entry on June 6, 2021.

41. If Defendants' ads had clearly and objectively disclosed to Plaintiff Maher that he had a 100% free, mail-in entry option, which did not require any DOGE trading, then he would not have given Coinbase his \$205 or paid Coinbase any trading fees. In fact, the only reason why Plaintiff Maher undertook to buy Dogecoins from Coinbase between June 3 and June 10, 2021 was that Defendants led him to believe that doing so was necessary to enter a \$1.2 million "sweepstakes."

42. Defendants' sweepstakes ads and Official Rules were specifically known and designed by Defendants to deceive and confuse each Plaintiff, and to deceive and confuse **any** reasonable consumer who happened to be a Coinbase "account holder," into believing that they would "need" to, and that they "must," buy or sell Dogecoins on Coinbase's platform to enter the sweepstakes. Defendants' materially and objectively false and misleading representations and omissions were designed to induce, and did deceptively induce, Plaintiffs and the Class to pay \$100 or more to Coinbase on that false, misleading, and unlawful pretense.

**Defendants' Additional False And Misleading Statements And Omissions To Class Members**

43. In addition to misrepresenting the necessity of “making a trade,” Defendants also misrepresented the dollar amount of purchase or sale transactions that would be (purportedly) necessary to enter.

44. Specifically, Defendants’ ads stated that “[W]e’re giving away \$1.2 million in Dogecoin. Opt in and then buy or sell \$100 in *DOGE* on Coinbase by 6/10/2021 for your chance to win.” See ¶¶9-12, *supra*. Likewise, upon clicking Defendants’ “Opt in” button, Defendants’ ads stated that “you’ll still need to buy or sell \$100 in *Dogecoin* on Coinbase by 6/10/2021 for a chance to win.” These statements reasonably conveyed the message that the total value of *the Dogecoins* purchased or sold during the entry period must be greater than or equal to \$100.

45. When purchasing cryptocurrencies on Coinbase, users select the digital token that they wish to buy (*e.g.*, Bitcoin, Litecoin, Dogecoin, etc.) and input the dollar amount that they wish to spend. Coinbase then shows users the dollar amount of trading commissions that will be deducted from their purchase (or sale), and then displays the quantity of cryptocurrency that will be purchased with the remaining dollar amount.

46. For example, if a Coinbase user goes to purchase Dogecoins, and enters a dollar amount of \$100, Coinbase displays to that user a “preview” of the transaction. Coinbase’s transaction preview will show a “Total” price of \$100, a “Coinbase fee” of approximately \$3, and a “*Purchase*” price of approximately \$97. The transaction preview also shows the user how many

Dogecoins will be purchased with the \$97 that remain *after* deducting commissions.

47. Thus, when Defendants advertised to Class members that they “need[ed]” to buy or sell “\$100 *in DOGE*” or “\$100 *in Dogecoin*” to enter, Defendants effectively communicated that users would have to pay a transaction “Total” of *more than* \$100 to account for the transaction fee, and ensure that the previewed DOGE “Purchase” price was greater than or equal to \$100.

48. Indeed, that is why Plaintiff Martin made a purchase “Total” of \$120, instead of \$100 even. That is also why Plaintiff Calsbeek’s purchase “Total” was \$125, instead of \$100 even. That is also why Plaintiff Maher’s June 3, 2021 purchase “Total” was \$105, instead of \$100 even. Based on the plain language in Defendants’ ads, each of them believed they needed to buy “\$100 in Dogecoin,” *after* deducting the “Coinbase fee,” because that fee was *not* part of the previewed “Purchase” price for the Dogecoins. Once again, Defendants’ sweepstakes ads were both untrue and materially misleading.

49. The truth was that a purchase or sale transaction “Total” of *\$100 even*—and hence, a Dogecoin “Purchase” price of less than \$100 (in other words, *less than* “\$100 in DOGE”)—would have sufficed for Plaintiffs and the Class to enter the sweepstakes. Defendants buried this truth only in the fine print of their official sweepstakes rules, which provided:

Existing account holders and new\* account holders must opt-in to participate in the Sweepstakes and must complete \$100usd (*cumulative 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.

(emphasis added).

50. The false and misleading “\$100 in DOGE” and “\$100 in Dogecoin” language in Defendants’ ads caused most Class members to make purchases totaling marginally *more than* \$100, to avoid having their “Coinbase fee” reduce the previewed value of their Dogecoin “Purchase” below \$100. This subtle deception by the Defendants allowed Coinbase to fleece millions of Class members out of several more dollars each, which Class members never needed to spend to enter. Defendants’ deception in this regard further inflated Coinbase’s fee-based and spread-based profits by at least millions of dollars, and further ensured that Coinbase’s “liquidity conditions” for DOGE trading would be immediately satisfied on June 3, 2021.

51. In sum, Defendants deployed multiple, objectively false and misleading advertising tactics to induce millions of consumers to spend over \$100 that they did not need to spend to enter Defendants’ \$1.2 million sweepstakes.

### **Defendants’ Knowledge and Intent in Crafting Their Misleading “Sweepstakes” Solicitations**

52. Coinbase and its sweepstakes “Administrator,” Defendant MKI, knew that their ads had the likelihood, tendency and capacity to mislead and confuse consumers like Plaintiffs because Defendants had already executed and analyzed a nearly identical, digital “sweepstakes” on Coinbase just two months prior to this DOGE Sweepstakes.

53. Specifically, in April 2021, Defendants had collaborated to execute a \$2 million *Bitcoin* sweepstakes.

The only substantive difference between this Bitcoin sweepstakes and Defendants' subsequent Dogecoin sweepstakes was that, instead of purporting to require people to "make a trade" to enter, Defendants' Bitcoin sweepstakes ads purported to require people to "[s]ign up for an account at coinbase.com," and "verify [their] identity." Aside from that one difference, the digital structure, aesthetic design, and language that Defendants' used in their Bitcoin sweepstakes ads were identical to what they used in their Dogecoin sweepstakes ads.

54. In Defendants' earlier Bitcoin sweepstakes—just like in the Dogecoin sweepstakes—there was a different, less intrusive entry-option provided not on the ads or on the entry webpages, but instead on a separate "rules" and "details" webpage. Rather than providing social security numbers, drivers' licenses, and other sensitive, personally identifying information ("PII") to Coinbase (*i.e.*, "verify[ing] [their] identity"), users had the alternative option to enter by mailing Coinbase a 3x5-inch index card with the customer's name, contact information, and birthday on it.

55. The digital ads that Defendants used in their earlier Bitcoin sweepstakes were designed and presented to consumers in a manner substantially identical to the digital ads they used in their June 2021 Dogecoin sweepstakes.

56. In executing their April 2021 Bitcoin sweepstakes, Defendants had collected, reviewed and analyzed a wealth of data about consumers' specific behaviors and reactions to various parts of this ad campaign. Both Coinbase and MKI knew exactly how many consumers had "create[d] a Coinbase account" and rigorously "verif[ied] [their] identities"

(Coinbase’s desired outcome), versus how many had simply mailed in an index card with their name, birthday, and contact information on it (*not* Coinbase’s desired outcome). Even more specifically, however, Defendants collected and analyzed the following data from their Bitcoin sweepstakes showing how ad recipients actually navigated the various “web paths” that one might take from reviewing the ads, to ultimately entering the sweepstakes.

57. Indeed, MKI’s own website touts its sophisticated, in-depth data analysis and reporting capabilities as follows.

#### Tracking and Reporting

Each client promotion includes two levels of tracking and reporting: (1) website traffic and (2) promotion registration database tracking. Information we provide via website traffic analysis includes aggregate and daily information on key metrics, such as site hits, unique visitors, top pages, operating systems, entry and exit paths, and top promotion referrers. Promotion registration data analysis includes the aggregate and daily number of unique registrants and entries. At the close of each promotion, we provide clients with a detailed analysis of how their promotion performed in the marketplace, including the effectiveness of media tactics in driving engagement, demographics, age and gender, opt-ins, and responses to any survey questions related to brand awareness and purchase intent.

*See* <http://www.mardenkane.com/sweepstakes> (last visited Jun. 11, 2021). As of June 2021, Defendants already knew—based on in-depth, empirical data from

their Bitcoin sweepstakes in April 2021—that the precise ways they were wording, designing, and presenting their Dogecoin sweepstakes ads to users would have a high likelihood, capacity, and tendency to cause most users to “make a trade” in exchange for entry, rather than mailing in a free-entry request.

58. Defendants were not merely *guessing* that their sweepstakes ads would tend to conceal the existence of any free entry option from consumers. Instead, Defendants knew as a matter of empirical proof (from their earlier Bitcoin sweepstakes) that their substantially identical, digital ads for the DOGE sweepstakes would have a likelihood, capacity, and tendency to conceal any free entry option from most consumers.

59. It was never any surprise to Defendants that their digital sweepstakes ads to Plaintiffs and the Class would achieve (and did achieve) an outcome in which they would unwittingly pay hundreds of millions of dollars collectively, just to enter a sweepstakes that they could have entered for free. Defendants’ digital sweepstakes ads were not only objectively false and misleading to Plaintiffs and the Class, but also known and specifically intended by Defendants’ to be misleading (and damaging) to Plaintiffs and the Class.<sup>4</sup>

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<sup>4</sup> The only reason why Defendants inconspicuously slipped a free entry option into their separate, “rules and details” webpage was that Defendants sought to avoid the legal conclusion that they were conducting an unlawful “lottery,” as opposed to a “sweepstakes.” The elements of a “lottery” are: (i) consideration given by an entrant; (ii) in exchange for a chance; (iii) to win a prize. *See, e.g., Trinkle v. California State Lottery*, 105 Cal.App.4th 1401, 1406 (Cal. Ct. App. 2003). Defendants here



**Contemporaneous Media Reports Further Suggest That Defendants' Ads Were Objectively And Materially False And Misleading To Reasonable Viewers**

60. Defendants' Dogecoin sweepstakes ads were communicated to and publicized by several online media outlets in June 2021.

61. For example, on June 3, 2021, *Business Insider* published an online news article regarding Defendants' sweepstakes. The headline stated: "Coinbase is giving away \$1.2 million in dogecoin as it starts letting users trade the meme cryptocurrency." See <https://www.businessinsider.com.au/coinbase-dogecoin-sweepstakes-users-can-trade-meme-cryptocurrency-2021-6> (last visited Aug. 9, 2021). The entire body of the article read as follows:

Coinbase said on Thursday that it plans to give away \$1.2 million in dogecoin to encourage users to take advantage of its newest cryptocurrency trading option.

***Users must buy or sell \$100 in DOGE through Coinbase by June 10 to be eligible for the sweepstakes, the company said.*** Coinbase said it plans to give out one prize worth \$300,000, 10 prizes worth \$30,000, and 6,000 prizes worth \$100 by around June 17.

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attempted to conduct a profitable *non*-lottery by offering a free entry option *that most reasonable consumers would never know about*. As detailed *infra*, that is insufficient to evade California's "lottery" laws, and in the alternative, is insufficient to comply with California's "sweepstakes" laws.

The sweepstakes follows the company's announcement on Tuesday that it would start letting Coinbase Pro users trade dogecoin on its platform.

The announcement, along with a tweet from Elon Musk referencing the meme currency, sent dogecoin's value climbing by as much as 41%.

At \$52.3 billion, dogecoin had the sixth-largest market cap among all cryptocurrencies as of Thursday evening, according to CoinMarketCap, after seeing a massive rally in May that sent its market cap soaring to more than \$85 billion.

Dogecoin was started as a joke by two engineers in 2013, but has since gained immense popularity thanks to Redditors as well as endorsements from Musk and other high-profile celebrities, leading other crypto trading platforms like Robinhood, eToro, and Gemini to start accepting trades in recent weeks.

*Id.* (emphasis added). Nowhere did this *Business Insider* article reference any free, mail-in entry option for the sweepstakes, because nowhere did Defendants' sweepstakes ads state that such a free entry option existed.

62. Similarly, on June 7, 2021, *InvestorPlace.com* published an online article regarding Defendants' sweepstakes. That article was titled, "Coinbase Dogecoin Sweepstakes: What to Know About the \$1.2M DOGE Giveaway." See <https://investorplace.com/2021/06/coinbase-dogecoin-sweepstakes-what-to-know-about-the-1-2m-doge-giveaway>

(last visited Aug. 9, 2021). The article’s subtitle said, “Here’s what crypto investors may want to know about the Coinbase Dogecoin Sweepstakes taking the market by storm today.” The body of the article stated as follows:

Today, investors in **Coinbase** (NASDAQ:COIN) are seeing a green day. For everyone’s favorite Shiba Inu-inspired meme currency, **Dogecoin** (CCC:DOGE- USD) not so much. However, any green day is a good day for investors in COIN stock, given the recent ride Coinbase has been on. One might be curious as to the primary reason for today’s move. Perhaps part of the answer is the recently launched Coinbase Dogecoin Sweepstakes.



Source: Shutterstock

Most investors know how popular Dogecoin has become of late. Whether due to the incessant tweeting of Elon Musk, or simply the momentum of this moonshot cryptocurrency, Dogecoin is still ranked No. 6 among all cryptocurrencies in market capitalization. That’s right, a meme cryptocurrency with no real utility is valued at nearly \$50 billion.

There are a variety of reasons for this. However, most investors know just how catchy the simplistic marketing behind this digital coin has been. Today's recent moves reflect yet another marketing stunt from Dogecoin and its purveyors.

Whether this maneuver ultimately pays off for investors remains to be seen. However, news of the Coinbase Dogecoin sweepstakes certainly has the DOGE crowd barking.

### **What Is the Coinbase Dogecoin Sweepstakes All About?**

Last week, Coinbase announced the launch of a Dogecoin giveaway. This sweepstakes is in honor of Dogecoin's recent listing on Coinbase Pro. Indeed, that's news in and of itself. But when an exchange like Coinbase offers \$1.2 million in prizes to celebrate such an announcement, crypto investors perk up.

What's the catch?

**Well, crypto investors simply need to opt in to the sweepstakes and buy or sell \$100 in DOGE on Coinbase by June 10. That's it.**

Each crypto investor gets one entry per person. One winner will receive \$300,000 in DOGE, 10 winners will received \$30,000 in DOGE, and 6,000 winners will receive \$100 in DOGE.

The simplicity of this sweepstakes makes this a no-brainer for most investors to get in on the action. For those bullish on DOGE, adding an additional \$100 in exposure sure seems like a good idea, given the recent dip in Dogecoin

prices. For those bearish on DOGE, selling \$100 worth of this digital token still provides an entry. There's really no downside to entering, for those interested.

**Of course, Coinbase's business model is one which is fee-based. The more volume Coinbase can generate, the more money this platform stands to earn. Those behind this marketing stunt have undoubtedly done the math.** However, if it proves successful, this could pave the way for future giveaways in an attempt to rekindle retail investor enthusiasm in this sector.

*Id.* (underlined emphasis added).

63. Like the June 3 article from *Business Insider*, this June 7 article from *InvestorPlace* failed to mention any free, mail-in entry option because nowhere did Defendants' sweepstakes ads— to which the article directly linked—state that such a free entry option existed.

64. Moreover, on June 5, 2021, the Business webpage on *NJ.com* published a similar article stating that: "Coinbase is giving away \$1.2 million worth of Dogecoin. ***To be eligible, you have to 'opt in' and buy or sell \$100 worth of the meme-inspired cryptocurrency by June 10.***" See <https://www.nj.com/business/2021/06/dogecoin-coinbase-giveaway-how-to-opt-in-to-sweepstakes-and-how-to-buy-dogecoin.html> (last visited Aug. 9, 2021) (emphasis added) (linking to Coinbase's sweepstakes advertisement). Nowhere did this *NJ.com* article reference any free, mail-in entry option for the sweepstakes because nowhere did Defendants' sweepstakes ads state that such an entry option existed.

65. Finally, even after Defendants’ Dogecoin sweepstakes ended, *Newsweek* published an online article materially misstating the sweepstakes entry requirements. In a June 18, 2021 article titled, “Why Coinbase Dogecoin Sweepstake[s] Winners Haven’t Been Announced Amid Confusion Online,” *Newsweek* stated that “[t]he sweepstake[s] ended on June 10 at 11:59 p.m. PDT, **by which time entrants needed to have opted in and completed a \$100 trade of Dogecoin to be eligible. Coinbase said entrants would receive an email once they had met both requirements.**” See <https://www.newsweek.com/why-coinbase-dogecoin-sweepstake-winners-havent-been-announced-confusion-online-1601996> (last visited Aug. 9, 2021). Like the other three articles referenced above, nowhere did this *Newsweek* article reference any free entry option because nowhere did Defendants’ sweepstakes ads state that any free entry option existed.

66. In sum, numerous, reasonable viewers of Defendants’ sweepstakes ads—including members of the media and the public—were misled into believing that buying or selling \$100 worth of Dogecoins on Coinbase was necessary to enter Defendants’ June 2021 sweepstakes.

**Defendants’ June 2021 Dogecoin “Sweepstakes” Was an Unlawful Lottery in Disguise**

67. California Penal Code § 320 provides that “[e]very person who contrives, prepares, sets up, proposes, or draws any lottery” is guilty of a misdemeanor.

68. As a matter of objective fact, considering the totality of Defendants’ statements regarding the June 2021 “Sweepstakes”—including the “Sweepstakes”

ads, the Official Rules, and all public statements made by Defendants—the ordinary, reasonable consumer could not be expected to have known the truth that Defendants would privately allow Coinbase users to obtain “a chance to win” *without* “buy[ing] or sell[ing] \$100 in Dogecoin on Coinbase by 6/10/2021.” *See* ¶11, *supra*. That truth was reasonably and objectively knowable only to the Defendants themselves during the “Sweepstakes” entry period of June 3 to June 10, 2021.

69. Considering the totality of Defendants’ statements regarding the June 2021 “Sweepstakes,” a reasonable Coinbase “account holder” could not be expected to have known the truth: namely, that Defendants would privately allow “[e]xisting account holders and new\* account holders” such as them to “participate in the Sweepstakes” *without* “complet[ing] \$100usd . . . in trade (buy/sell) of Dogecoin on Coinbase.com (.com and/or Coinbase app) during the Promotion Period.” *See* Official Rules, Ex. A, ¶3. That truth was reasonably and objectively knowable only to the Defendants themselves during the “Sweepstakes” entry period.

70. By affirmatively and objectively telling Plaintiffs and all other Class members that they “need[ed] to,” and that they “must,” buy or sell Dogecoins and pay all associated transaction costs to earn a chance to win prizes, Defendants objectively caused Plaintiffs and all Class members to pay consideration in exchange for a chance to win prizes. This constituted an unlawful “lottery” scheme by the Defendants, within the meaning of California Penal Code §§ 319, 320.

71. The “lottery” problem here is not merely that Plaintiffs and the Class were *subjectively unaware*

that they had a free entry option (though they were subjectively unaware). Instead, the “lottery” problem here is that for millions of Coinbase users and “account holders,” Defendants affirmatively, objectively and publicly disclosed only that they “need[ed] to” and that they “must” buy or sell DOGE—and pay all associated transaction costs—to obtain a chance to win.

72. It is one thing for consumers to be subjectively unaware of a clearly and objectively **disclosed**, free option for entering an alleged “lottery.” Such a factual scenario might not constitute a “lottery” under Cal. Penal Code § 319, but such a scenario is not at all what occurred in this case.

73. It is another thing for a defendant to advertise to millions of consumers a chance to win prizes, while **objectively** disclosing—but failing to **clearly or conspicuously** disclose—to those consumers that they have a free option for entering. Such a factual scenario may or may not constitute a “lottery.”

74. It is quite another thing for a defendant to advertise to millions of consumers a chance to win prizes: while affirmatively telling those consumers that consideration **is** required for a chance to win, and furthermore, **objectively** concealing from those consumers **and from the public at large** that the consumers can obtain free chances to win. This factual scenario is precisely what occurred in this case, and this definitely constitutes an unlawful lottery “scheme” under § 319: perpetrated by the Defendants against millions of consumers nationwide.



**In the Alternative, Defendants’ “Sweepstakes” Solicitations Failed To Comply With California “Sweepstakes” Law, and Did Not Correct Defendants’ Conspicuous Misstatements Of Fact**

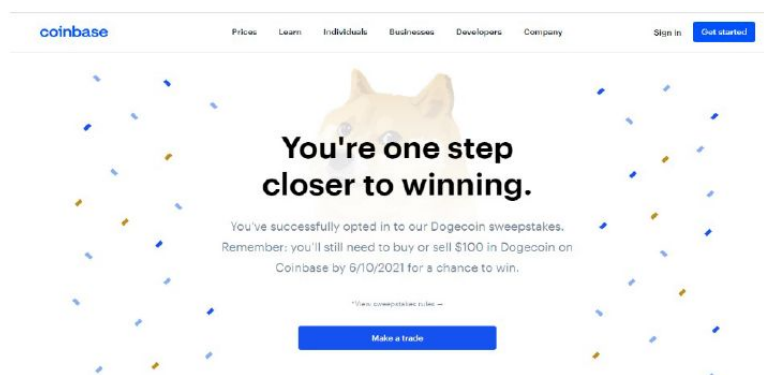
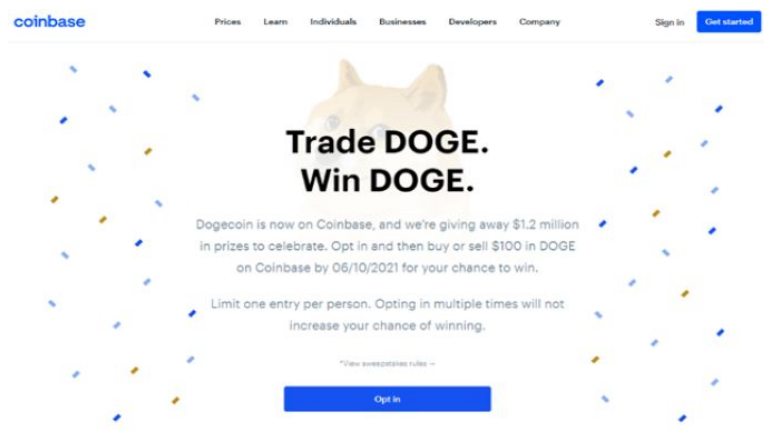
75. If the Court or a jury finds that Defendants’ June 2021 Dogecoin Sweepstakes did *not* constitute an unlawful “lottery” within the meaning of California Penal Code §§ 319 and 320, then the Sweepstakes was nevertheless an unlawfully executed “sweepstakes” as a matter of law.

76. California law provides specific requirements for “solicitation materials containing sweepstakes entry materials,” such as Defendants’ sweepstakes ads here.

*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). Defendants’ “sweepstakes” ads were “solicitation materials” containing both “sweepstakes entry materials” and “entry-order device[s].” *Id.* The “sweepstakes entry materials” contained in these ads consisted of plain-text sweepstakes entry instructions. ¶¶9-12, *supra*. The “entry-order devices” contained in the ads consisted of the “Opt in” and “Make a trade” buttons, the webpages and mobile-app screens on which those buttons appeared, and Coinbase’s online trading interface (to

which the “Make a trade” button routed users). See the images below.



Defendants’ were required by statute to include “a clear and conspicuous” statement of the “no- purchase-or-payment-necessary message” in their Official Rules. *Id.* Moreover, because Defendants’ “official rules d[id] not appear” on their “solicitation materials,” Defendants were also required to “include a clear and conspicuous statement of the no-purchase-or-payment-necessary message . . . on the entry-order device included in those solicitation materials containing

sweepstakes entry materials.”<sup>5</sup> If the Dogecoin “sweepstakes” did *not* constitute an unlawful lottery<sup>6</sup>, then Defendants’ sweepstakes ads violated Cal. Bus. & Prof. Code § 17539.15(b) in several independent respects.

77. The statute expressly required Defendants’ “statement of the no-purchase-or- payment-necessary message” on the “entry-order device” to be “clear and conspicuous,” and to be made “in readily understandable terms.” Cal. Bus. & Prof. Code § 17539.15(b). The statute defines the “no-purchase-or-payment-necessary message” to mean “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.’” Cal. Bus. & Prof. Code § 17539.15(k)(1).

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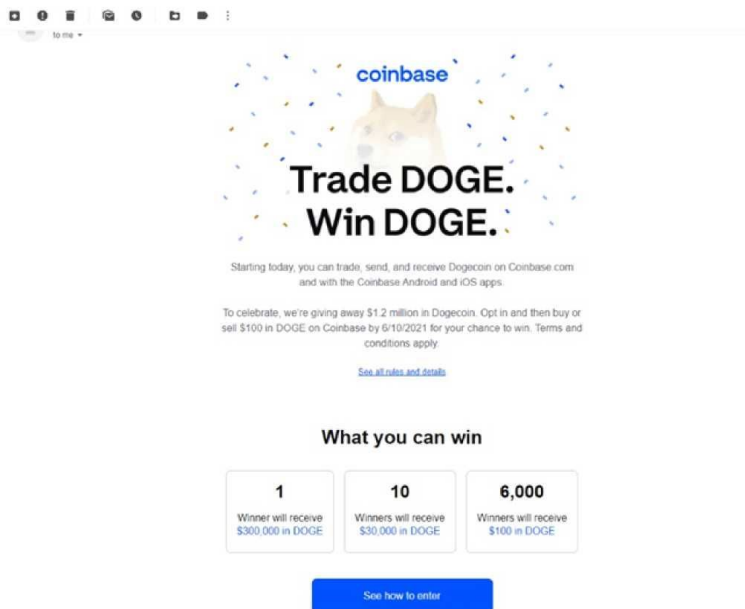
<sup>5</sup> The statute defines “official rules” as “the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials.” Cal. Bus. & Prof. Code § 17539.15(k)(2). Defendants’ “formal printed statement . . . of the rules for the [Dogecoin] sweepstakes” did not “appear” on Defendants’ email, website, or mobile app ads for the DOGE sweepstakes. Instead, what “appeared” on Defendants’ ads was only a small hyperlink to the “formal printed statement . . . of the rules,” which “appeared” on a separate webpage, and not on the “solicitation materials” themselves.

<sup>6</sup> An unlawful “lottery” is excluded from the statutory definition of a “sweepstakes.” Cal. Bus. & Prof. Code § 17539.5(a)(12) (“Sweepstakes” means any procedure for the distribution of anything of value by lot or chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code.”); *see also* Cal. Penal Code § 320 (“Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.”).

78. To the extent that Defendants made such a statement *at all* in their sweepstakes email, web, or mobile app ads, they made it using the following text.

Not investment advice or a recommendation to trade Dogecoin. NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available. Sweepstakes open to legal residents of the fifty (50) United States and the District of Columbia (excluding Hawaii). Void where prohibited by law. Must be age of majority in state of residence as of 6/3/21. Promotion ends 11:59 PM (PT) on 6/10/21. Winners must have a Coinbase account on Coinbase.com to receive a prize. Receipt and use of prizes subject to Coinbase terms and conditions. Odds of winning depend on the number of eligible entries received. One entry per person. Sponsor: Coinbase: Coinbase Sweepstakes, 100 Pine Street, Suite #1250, San Francisco, CA 94111. See Official Rules for details.

***First***, the above text was not stated “conspicuously” on or around Defendants’ solicitation materials or “entry-order device[s].” Instead, this text appeared in faint, fine print at the bottom of Defendants’ multi-page/multi-screen email solicitations. To view the above text at all, recipients would have to have scrolled down to the bottom of the email, which did *not* require any scrolling before clicking the “See how to enter button.”



coinbase

**Trade DOGE.  
Win DOGE.**

Starting today, you can trade, send, and receive Dogecoin on Coinbase.com and with the Coinbase Android and iOS apps.

To celebrate, we're giving away \$1.2 million in Dogecoin. Opt in and then buy or sell \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Terms and conditions apply.

[See all rules and details](#)

**What you can win**

<b>1</b> Winner will receive \$300,000 in DOGE	<b>10</b> Winners will receive \$30,000 in DOGE	<b>6,000</b> Winners will receive \$100 in DOGE
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[See how to enter](#)

Only upon scrolling down to the bottom of this email would recipients see Defendants' "NO PURCHASE NECESSARY" statement in fine, gray-colored print.



## What you can win

**1**

Winner will receive  
\$300,000 in DOGE

**10**

Winners will receive  
\$30,000 in DOGE

**6,000**

Winners will receive  
\$100 in DOGE

See how to enter

coinbase



Not investment advice or a recommendation to trade Dogecoin. NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available. Sweepstakes open to legal residents of the 50 United States and the District of Columbia (excluding Hawaii). Void where prohibited by law. Must be age of majority in state of residence as of 6/3/21. Promotion ends 11:59 PM (PDT) on 6/16/21. Winners must have a Coinbase account on Coinbase.com to receive a prize. Receipt and use of prizes subject to Coinbase terms and conditions. Odds of winning depend on the number of eligible entries received. One entry per person. Sponsor: Coinbase. Coinbase Sweepstakes, 100 Pine Street, Suite 1250, San Francisco, CA 94111. See [Official Rules](#) for details.

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100 Pine Street Suite 1250  
San Francisco CA 94111 | US  
(888) 908-7930

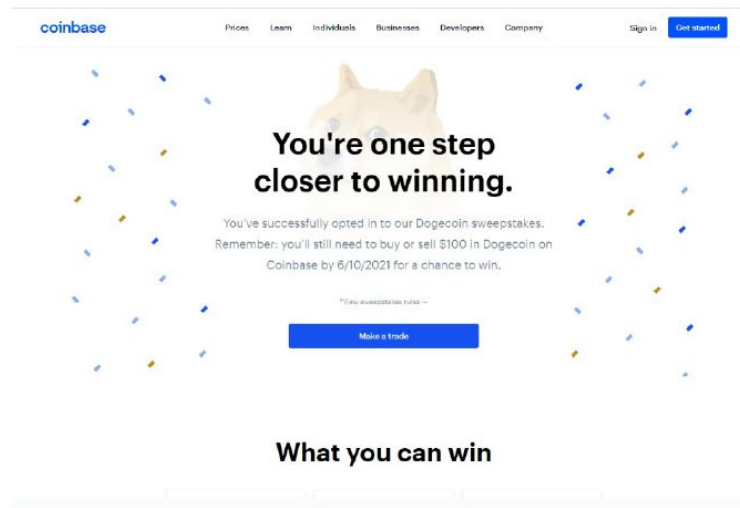
If you no longer wish to receive these emails, unsubscribe [here](#)

[DOGE Sweepstakes](#) | June 04, 2021 | [View Online](#)

This was not a “conspicuous” statement of the “no-purchase-or-payment-necessary message” on (or near) Defendants’ “entry-order device”—as required by § 17539.15(b)—because users’ eyes might not even see Defendants’ fine print *at all* before clicking “See how





to enter,” and thereby being taken immediately to a separate webpage (or mobile app screen) containing Defendants’ “Opt in” and “Make a trade” buttons.

79. Similarly, Defendants buried the same faint, fine-print text at the bottom of their “Opt in” and “Make a trade” webpages and mobile screens, requiring users to scroll down several pages to see the above text at all. Below is the sequence of screen-pages that users would see, *if* they scrolled to the bottom of the page before clicking Defendants’ “Opt in” and “Make a trade” buttons.



<b>1</b> Winner will receive \$300,000 in DOGE	<b>10</b> Winners will receive \$30,000 in DOGE	<b>6000</b> Winners will receive \$100 in DOGE
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### How to enter

 <b>Sign in to Coinbase</b>	 <b>Opt in to the sweepstakes</b>	 <b>Make a trade</b>	 <b>Watch your inbox</b>
Not logged in? Sign in or create an account at <a href="#">coinbase.com</a> . Then follow the prompts to opt in.	If you're signed in, you can opt in above. You'll get an email confirming that you've successfully opted in after about 24 hours.	Buy or sell \$100 or more in DOGE on Coinbase between 6/3/21 and 6/10/21. You can trade \$100 all at once, or a little at a time.	Once you opt in and trade, you'll be officially entered to win. Winners will hear from us via email on or around 6/17.

**Important security notice:** Be on the lookout for scammers. You will get a confirmation email within 24 hours. We will only notify you about prizes via [no-reply@coinbase.com](mailto:no-reply@coinbase.com). See a [fraudulent giveaway?](#) Report it to [security@coinbase.com](mailto:security@coinbase.com).



### There's no such thing as too much security

<b>2-step verification</b> We require an extra layer of security for all Coinbase accounts.	<b>Secure storage</b> We store the majority of digital assets in secure offline storage.	<b>Encryption at every step</b> We use bank-level security: SSL and AES-256 encryption.
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## Buy, sell, and manage your crypto anywhere

With 56M+ verified users, you're in good company when you trade with Coinbase.

Start buying

- Manage your portfolio**  
See how your crypto performs, and stay on top of the market.
- Set automatic recurring buys**  
Invest in cryptocurrency slowly over time by scheduling buys daily, weekly, or monthly.
- Access your crypto on the go**  
Buy, sell, and manage your crypto from anywhere with our top-rated apps.



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Buy, sell, and manage your crypto from anywhere with our top-rated apps.

Not investment advice or a recommendation to trade Dogecoin. NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available. Sweepstakes open to legal residents of the fifty (50) United States and the District of Columbia (excluding Hawaii). Void where prohibited by law. Must be age of majority in state of residence as of 6/3/21. Promotion ends 11:59 PM (PT) on 6/10/21. Winners must have a Coinbase account on Coinbase.com to receive a prize. Receipt and use of prizes subject to Coinbase terms and conditions. Odds of winning depend on the number of eligible entries received. One entry per person. Sponsor: Coinbase. Coinbase Sweepstakes, 100 Pine Street, Suite #1250, San Francisco, CA 94111. See [Official Rules](#) for details.

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English

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**Company**

- About
- Careers
- Affiliates
- Blog
- Press
- Investors

**Individuals**

- Buy & sell
- Earn free crypto
- Wallet
- Card

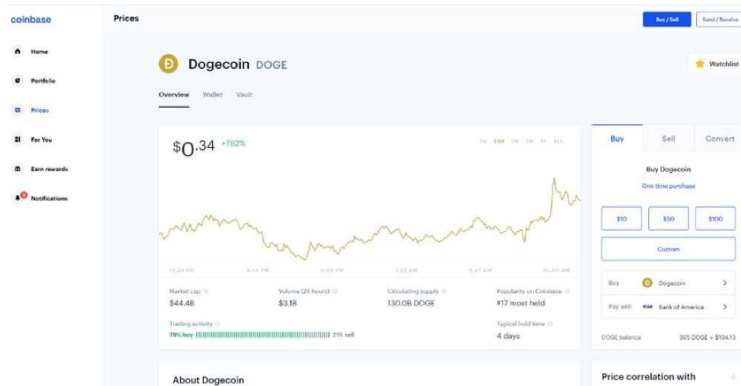
**Businesses**

**Support**

- Help center
- Contact us
- Create account
- ID verification
- Account information
- Payment methods

This was by no means a “conspicuous” statement of the “no-purchase-or-payment- necessary message” on (or near) Defendants’ “entry-order device,” as required by § 17539.15(b). Many users’ eyes would not see this fine print, at the bottom of a multi-page site, before clicking the large, blue “Opt in” and “Make a trade” buttons at the very top of the website or mobile-app screen.

80. Upon clicking Defendants’ prominent “Make a trade” button, users were rerouted directly to Coinbase’s trading platform, which contained no sweepstakes-related disclosures at all.



Defendants’ above-pictured trading interface also constituted an “entry-order device,” as each Class member *completed* their sweepstakes “entry” by executing a purchase or sale “order” on this interface. Yet this crypto trading interface (this “entry-order device”) did not contain any “no- purchase-or-payment-necessary message,” let alone a “clear and conspicuous” one. Cal. Bus. & Prof. Code § 17539.15(b).

81. **Second**, Defendants’ faintly colored, fine-print disclaimer was not stated “clear[ly]” or in “readily understandable terms” when read within the context of Defendants’ more prominent statements in their sweepstakes ads. Defendants’ “NO PURCHASE NECESSARY” statement was at best *ambiguous* when read in context, and could be reasonably understood as *consistent* with Defendants’ more prominent misstatements in their sweepstakes ads.

Not investment advice or a recommendation to trade Dogecoin. NO PURCHASE NECESSARY TO ENTER OR WIN. PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING. Opt-in required. Alternative means of entry available. Sweepstakes open to legal residents of the fifty (50) United States and the District of Columbia (excluding Hawaii). Void where prohibited by law. Must be age of majority in state of residence as of 6/3/21. Promotion ends 11:59 PM (PT) on 6/10/21. Winners must have a Coinbase account on Coinbase.com to receive a prize. Receipt and use of prizes subject to Coinbase terms and conditions. Odds of winning depend on the number of eligible entries received. One entry per person. Sponsor: Coinbase: Coinbase Sweepstakes, 100 Pine Street, Suite #1250, San Francisco, CA 94111. See Official Rules for details.

82. Specifically, Defendants' direct-to-user email ads stated:

Trade DOGE. Win DOGE. Starting today, you can trade, send, and receive Dogecoin on Coinbase.com and with the Coinbase Android and iOS apps. To celebrate, we're giving away \$1.2 million in Dogecoin. Opt in and then buy *or sell* \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Terms and conditions apply.

Similarly, Defendants' webpage and mobile app screens prominently stated the following, right above the big, blue "Opt in" in button:

Dogecoin is now on Coinbase, and we're giving away \$1.2 million in prizes to celebrate. Opt in

and then buy *or sell* \$100 in DOGE on Coinbase by 6/10/2021 for your chance to win. Limit one entry per person. Opting in multiple times will not increase your chance of winning.

Thus, Defendants' most prominent text made clear that either a DOGE purchase *or* sale on Coinbase would suffice for entry into the sweepstakes. So when Defendants' faint, fine-print disclaimer at the bottom of each page said "NO PURCHASE NECESSARY"—and that "PURCHASES WILL NOT INCREASE YOUR CHANCES OF WINNING"—readers could reasonably understand that statement to be consistent with Defendants' more prominent entry instructions, which made clear that a DOGE *sale* transaction of \$100 or more would suffice for entry. The same is true of Defendants' fine-print disclaimer that "[alternative means of entry [were] available." In context, reasonable recipients (who were fortunate enough to even see this fine print at the bottom of Defendants' solicitation materials) could fairly understand the "[alternative means of entry" to be exactly what Defendants' had advertised more prominently: (a) buy \$100 or more in DOGE; or, "alternatively," (b) sell \$100 or more in DOGE. There was simply nothing in the text of Defendants' faint, fine-print disclaimer that clearly corrected Defendants' main assertion: namely, that users must "Trade DOGE" (*i.e.*, either buy *or* sell DOGE) for a chance to win.

83. Defendants' fine-print disclaimer was particularly "[un]clear" regarding any free entry option, when read in conjunction with the *large-print* statement directly above Defendants' big "Make a trade" button.

You're one step closer to winning. You've successfully opted in to our Dogecoin Sweepstakes.

*Remember, you'll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win.*

Defendants conspicuously stated that a Dogecoin purchase or sale *was* necessary to enter “for a chance to win.” So when Defendants later said only that no “*purchase*” was “necessary,” reasonable readers could well understand that disclaimer to be *consistent with* Defendants’ (false) statement that a Dogecoin purchase or sale was necessary to enter. Obviously, no purchase transaction is necessary if—as Defendants had already highlighted—a sale transaction suffices.

84. In sum, Defendants’ “NO PURCHASE NECESSARY” statement was not only designed and placed *inconspicuously* away from Defendants’ “entry-order device[s],” but in addition, Defendants’ “NO PURCHASE NECESSARY” statement was *unclearly* worded and *not* “readily understandable,” when read in the context of Defendants’ more prominent instructions and misstatements regarding sweepstakes entry. Cal. Bus. & Prof. Code § 17539.15(b). Nothing in Defendants’ fine-print disclaimer clearly or objectively corrected the false and misleading nature of the most prominent, material misstatements and omissions in Defendants’ sweepstakes solicitations.

85. **Third**, the “NO PURCHASE NECESSARY” statement in Defendants’ sweepstakes solicitations was not “substantially similar” to the statement required by statute. The “no-purchase-or-payment-necessary message” required by § 17539.15 “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.’” Cal. Bus. & Prof. Code § 17539.15(k)(1).

By contrast, the “NO PURCHASE NECESSARY” statement at the bottom of 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* to Coinbase for *selling* \$100 or more worth of Dogecoins.

86. Defendants omitted the required “payment of any kind” language from their “NO PURCHASE NECESSARY” message to avoid contradicting their more prominent assertions to users that trading Dogecoins (and paying Coinbase’s customary transaction fees) was necessary for entry.

87. Similarly, when read objectively and in full context, the “NO PURCHASE NECESSARY” statement contained in Defendants’ Official Rules left open the possibility that a payment of some kind, other than for DOGE purchases, might be necessary for Coinbase users to enter: such as the payment of a transaction fee to Coinbase for *selling* Dogecoins. The Official Rules prominently stated: “NO PURCHASE NECESSARY. A PURCHASE OR PAYMENT OF ANY KIND WILL NOT INCREASE YOUR CHANCES OF WINNING.” (underline added) When read in the full context of Defendants’ solicitations and Official Rules, this statement was objectively unclear in communicating that *neither* a “purchase” *nor a “sale”* of Dogecoins was necessary for Coinbase “account holders” to enter. This is particularly true, in light of Defendants’ statement in Official Rules ¶3 that:

Existing account holders and new\* account holders *must* opt-in to participate in the Sweepstakes and *must* complete \$100usd . . . 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.

See Official Rules, Ex. A, ¶3. The clearest, objective reading of the Official Rules was that the free, mail-in entry method (denoted as “Method 2”) was available **only** to persons who were **not** “[e]xisting account holders [or] new\* account holders” with Coinbase, and that “A PURCHASE OR PAYMENT OF ANY KIND” would not give “**account holders**” any greater chance of winning than **non-“account holders”** who chose to enter for free. *Id.* At best, the “NO PURCHASE NECESSARY” statement in the Official Rules was less than “clear,” as required by statute, when read objectively and in fully context.<sup>7</sup>

88. **Fourth**, Defendants’ fine-print disclaimer expressly stated “*Opt-in required*,” while presenting users with a big, bright “*Opt in*” button on the entry webpage and mobile app screen. This was materially false and misleading, as it created a reasonable impression that clicking Defendants’ conspicuous “*Opt in*” button was “required” for entry. But in fact, clicking Defendants’ “*Opt in*” button was *not* necessary for entry.

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<sup>7</sup> Even if the Court or a jury was inclined to find that Defendants *did* include the required “payment of any kind” language in their “Official Rules,” that alone would not satisfy the statute. Indeed, because the Official Rules did not “appear” on Defendants’ “[solicitation materials containing sweepstakes entry materials,” Defendants were **also** required to include the “payment of any kind” language “on the entry-order device included in those solicitation materials.” Cal. Bus. & Prof. Code § 17539.15(b). Defendants failed to include the required “payment of any kind” language “on the entry-order device included in those solicitation materials,” as the statute demanded. *Id.*

89. Instead, mailing in a 3x5 index card with one's name, contact information, and birthdate on it would have sufficed for entry. Defendants' "Opt in required" disclaimer was thus affirmatively misleading when read within the context of the entire solicitation email, webpage, and mobile app screen.

90. Moreover, upon (unnecessarily) clicking the "Opt-in" button, that button would transform into a big, bright "Make a trade" button topped off with the following large-font text:

"Remember, you'll still need to buy or sell \$100 in Dogecoin on Coinbase by 6/10/2021 for a chance to win." This statement was flatly untrue.

91. Defendants' ambiguous, fine-print disclaimer at the very bottom of their "entry-order device[s]" (*i.e.*, the emails, webpages and mobile app screens containing the "See how to enter," "Opt in," and "Make a trade" buttons) was not just legally insufficient under § 17539.15(b). It was also affirmatively false and materially misleading, when read in the full context of Defendants' solicitation materials.

### **No Arbitration Or Class Action Waiver**

92. Defendant Marden-Kane, Inc. does not now have, nor has it ever had, any form of arbitration agreement with Plaintiffs. In addition, as this Court has already correctly held, there is no existing agreement between Plaintiffs and Coinbase to arbitrate any controversies regarding this Sweepstakes. *See* Order (ECF No. 53); Order (ECF No. 76).

93. In the alternative, even if there were any extant agreement between Plaintiffs and Coinbase to arbitrate their controversies regarding this Sweepstakes (there is no such agreement, as this Court has already



correctly held), Coinbase’s adhesive, one-sided arbitration agreements with Plaintiffs, including but not limited to Coinbase’s adhesive “delegation clause,” would be unconscionable and unenforceable for the reasons recently decided by Judge Alsup in *Bielski v. Coinbase, Inc.*, No. C 21-07478 WHA, 2022 WL 1062049 (N.D. Cal. Apr. 8, 2022).

94. Pursuant to Coinbase’s “Official Rules” for its Dogecoin Sweepstakes, “[p]articipation [in the Sweepstakes] constitutes entrant’s full and unconditional agreement to these Official Rules and [Coinbase’s] and [its] Administrator’s decisions, which are final and binding in all matters related to the Sweepstakes.” See Ex. A, Official Rules, ¶1, *available at* <https://www.coinbase.com/sweepstakes-doge-terms> (last visited Jun. 11, 2021). The Official Rules further provide that “THE CALIFORNIA COURTS (STATE AND FEDERAL) SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THE PROMOTION AND THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN THE PROMOTION. EACH ENTRANT WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION AND VENUE IN THOSE COURTS FOR ANY REASON AND HEREBY SUBMITS TO THE JURISDICTION OF THOSE COURTS.” *Id.*, ¶10. The same paragraph provides that “[c]laims may not be resolved through any form of class action.” *Id.* However, absent an existing agreement to arbitrate (or in the alternative, absent any *enforceable* agreement to arbitrate), such class action waivers are unconscionable and unenforceable as a matter of California law, where, as here, a class action waiver “is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts

of damages, and when it is alleged that a party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then, at least to the extent the obligation at issue is governed by California law, the waiver becomes in practice the exemption of the party from responsibility for its own fraud, or willful injury to the person or property of another. Under these circumstances, such waivers are unconscionable under California law and should not be enforced.” *Discover Bank v. Superior Court*, 36 Cal.4th 148, 162-63 (2005), *abrogated on other grounds by AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (internal citations omitted). Moreover, where, as here, there is no conflict between the Federal Arbitration Act and California’s Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*) (“CLRA”), the CLRA is **not** preempted and expressly **precludes** courts from enforcing class action waivers like the one in Defendants’ Official Rules.

### CLASS ACTION ALLEGATIONS

95. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of themselves and all other persons who opted into Coinbase’s \$1.2 million Dogecoin (DOGE) sweepstakes in June 2021, and who purchased or sold Dogecoins on a Coinbase exchange for a total of \$100 or more between June 3, 2021 and June 10, 2021, inclusive. Excluded from the Class are Defendants, the officers and directors of Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which either Defendant has or had a controlling interest.

96. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can be ascertained only through appropriate discovery, Plaintiffs believe that there are millions of members of the proposed Class. Members of the Class may be identified and located from database records maintained by Defendants, and may be notified of the pendency of this action by electronic mail and/or regular mail, using the form of notice similar to that customarily used in class actions.

97. Plaintiffs' claims are typical of other Class members' claims, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of law, as complained of herein.

98. Plaintiffs will fairly and adequately protect the interests of Class members and have retained counsel competent and experienced in class action litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

99. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. whether Defendants' uniform, digital advertising campaign for the June 2021 DOGE sweepstakes was materially false, deceptive, and misleading when disseminated to Plaintiffs and the Class;

b. whether Defendants' June 2021 Dogecoin "sweepstakes" in fact constituted an unlawful "lottery" within the meaning of California Penal Code §§ 319, 320;

c. whether Defendants violated Cal. Bus. & Prof. Code § 17539.15 by, inter alia, failing to make the required “clear and conspicuous statement[s]” of the “no-purchase-or-payment-necessary message”;

d. whether Defendants, individually and together, violated California’s False Advertising Law, by designing, drafting, creating, analyzing, and presenting to Class members a uniform advertising campaign that was materially false, deceptive, and misleading when disseminated to Class members;

e. whether Defendants violated the unlawful or unfair prongs of California’s Unfair Competition Law when they designed, drafted analyzed and presented to Class members a uniform digital advertising campaign that was materially false, deceptive, and misleading when disseminated to Class members;

f. whether Plaintiffs and the Class suffered harm as a result of Defendants’ conduct, and the forms of judicial relief to which Class members are entitled, including, but not limited to, public and permanent injunctive relief, restitution of the money Class members paid to Coinbase, and disgorgement of Defendants’ ill-gotten gains; and

g. whether Plaintiffs and the Class are entitled to reasonable attorneys’ fees and expenses as a result of Defendants’ wrongful conduct as set forth herein.

100. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, as the joinder of all members is impracticable. Furthermore, because the financial harm suffered by individual Class members may be relatively small, the expense and burden of individual litigation would make it difficult if not impossible for members

of the Class to redress the wrongs done to them on an individual basis. There will likely be no substantial difficulty in the management of this case as a class action.

### **FIRST CAUSE OF ACTION**

#### **Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unlawful Business Acts and Practices (Unlawful Lottery)**

101. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this Complaint.

102. California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"), prohibits "unfair competition," meaning "any unlawful, unfair or fraudulent business act or practice."

103. California Penal Code § 319 provides that "[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."

104. California Penal Code § 320 provides that "[e]very person who contrives, prepares, sets up, proposes, or draws any lottery" is guilty of a misdemeanor. Defendant Coinbase committed an "unlawful" business act or practice by "contriv[ing], prepar[ing], set[ting] up," and "propos[ing]" and conducting an unlawful "lottery" within the meaning of Cal. Penal Code

§ 320, when it contrived, prepared, set up, broadly advertised, and then ultimately conducted its \$1.2 million Dogecoin “sweepstakes” in June 2021. Defendant MKI likewise committed an “unlawful” business act or practice by “contriv[ing], prepar[ing], set[ting] up, propos[ing],” and randomly “draw[ing]” the winners of an unlawful “lottery” at its offices in Syosset, NY on or about June 17, 2021, within the meaning of Cal. Penal Code § 320, as it contrived, prepared, set up, and ultimately administered, and randomly drew the winners of, Defendants’ \$1.2 million Dogecoin “sweepstakes.”

105. The elements of a “lottery” are: (i) consideration given by an entrant; (ii) in exchange for a chance; (iii) to win a prize. *See, e.g., Trinkle v. California State Lottery*, 105 Cal.App.4th 1401, 1406 (Cal. Ct. App. 2003). Defendants’ Dogecoin “Sweepstakes” was a “scheme for the disposal or distribution of property [Dogecoins or “US Dollars,” see Official Rules, Ex. A, ¶6] by chance.” Cal. Penal Code §319. Defendants’ Dogecoin “Sweepstakes” solicitations, transmitted directly to Plaintiffs and the Class, **affirmatively and objectively** represented that they “need[ed] to,” and that they “must,” pay “valuable consideration” to Coinbase between June 3 and June 10, 2021 (in the form of buying **or** selling Dogecoins on Coinbase for \$100 or more, and paying the attendant transaction costs) in order for them to obtain a chance to win the advertised “property.” *Id.* Nowhere did Defendants objectively disclose to Plaintiffs or other Class members, or even objectively disclose to the public, that Defendants would allow Coinbase users and “account holders” like Plaintiffs and the Class to enter the “Sweepstakes” without executing any Dogecoin purchase **or** sale transaction on Coinbase.

106. Plaintiffs and the Class, reasonably relying on Defendants’ affirmative, objective representations to them and to the public that paying consideration to Coinbase *was* necessary for them to enter—and being reasonably unaware of the truth that Defendants had privately agreed, only among themselves, to accept free entry requests (if any) from Coinbase users—did objectively pay valuable consideration (totaling at least \$100 each) to Coinbase in the forms described herein, in exchange for a chance to win one of Defendants’ advertised prizes.

107. Defendants’ unlawful “sweepstakes” was structured by Defendants to distribute the advertised prizes by chance, within the meaning of a “lottery,” as all prize winners (none of whom are Plaintiffs here) were randomly selected from among millions of eligible entrants on or about June 17, 2021. Defendant MKI, as “administrator,” conducted the random prize drawings at its offices in Syosset, New York. Defendant MKI also assisted Coinbase in “contriv[ing], prepar[ing], [and] set[ting] up” the June 2021 Dogecoin “sweepstakes” by collaborating with Coinbase to draft, design and structure Defendants’ digital ad campaign for the “sweepstakes,” and to draft and finalize the “Official Rules,” a copy of which is attached hereto as “Exhibit A.”

108. The lottery “prizes” and “property” distributed by the Defendants to their randomly drawn winners included: (a) to one winner, either \$300,000 **or** a large number of Dogecoins priced at a retail value of approximately \$300,000; (b) to ten other winners, either \$30,000 **or** a large number of Dogecoins priced at a retail value of approximately \$30,000; and (c) to six thousand other “winners,” a number of Dogecoins priced at a retail value of approximately \$100.

109. Hence, Defendants conducted an unlawful “lottery” within the meaning of Cal. Penal Code §§ 319 and 320 because, from the reasonable perspectives of Plaintiffs and the Class, Defendants **objectively** required Plaintiffs and the Class to pay “consideration” to Coinbase in exchange for a random “chance” to win some form of prize or “property.” Defendants’ June 2021 Dogecoin “sweepstakes” was, in substance, an unlawful, million-dollar “lottery,” which Plaintiffs and the Class unwittingly paid many millions of dollars to enter.

110. As a result of Defendants’ unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 more on coinbase.com or the Coinbase app, and by paying all attendant transaction costs to Coinbase, between June 3, 2021 and June 10, 2021. Plaintiffs, on behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all monetary payments that Class members made in consideration of their entries into Defendants’ June 2021 DOGE “sweepstakes,” and disgorgement of all other ill-gotten gains derived from Defendants’ wrongful conduct to the fullest extent permitted by law.



**SECOND CAUSE OF ACTION**<sup>8</sup>**Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unlawful Business Acts and Practices (Violations of Cal. Bus. & Prof. Code § 17539.15)**

111. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this Complaint.

112. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), prohibits “unfair competition,” meaning “any unlawful, unfair or fraudulent business act or practice.”

113. Under California law, a “[s]weepstakes” is “any procedure for the distribution of anything of value by lot or chance that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code.” Cal. Bus. & Prof. Code § 17539.5(a)(12); *see also* Cal. Penal Code § 320 (“Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a

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<sup>8</sup> Plaintiffs hereby plead this, their Second Cause of Action, in the alternative to their First Cause of Action, in case the Court (or a jury) ultimately finds that Defendants’ June 2021 Dogecoin sweepstakes did *not* constitute a “lottery” within the meaning of Cal. Penal Code § 320. Plaintiffs’ First Cause of Action and Second Cause of Action are pled in the alternative because, as a matter of California statutory law, the definitions of the terms “lottery” and “sweepstakes” are mutually exclusive. Cal. Bus. & Prof. Code § 17539.5(a)(12) (“‘Sweepstakes’ means any procedure for the distribution of anything of value by lot or chance *that is not unlawful under other provisions of law including, but not limited to, the provisions of Section 320 of the Penal Code.*”) (emphasis added).

misdemeanor.”). Thus, an unlawful “lottery” is excluded from the statutory definition of a “sweepstakes.”

114. If the Court or a jury in this case ultimately concludes that Defendants’ June 2021 Dogecoin sweepstakes did not constitute a “lottery” within the meaning of Cal. Penal Code § 320, then Plaintiffs hereby allege, in the alternative, that Defendants’ June 2021 Dogecoin sweepstakes constituted a “sweepstakes” within the meaning of Cal. Bus. & Prof. Code § 17539.15(b), which provides that:

*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) (emphasis added). Defendants’ “sweepstakes” ads were “solicitation materials” containing both “sweepstakes entry materials” and “entry-order device[s].” *Id.* The “sweepstakes entry materials” contained in Defendants’ solicitations consisted of Defendants’ plain-text sweepstakes entry instructions. *E.g.*, ¶¶9-12, *supra*. The “entry-order devices” contained in Defendants’ solicitations consisted of Defendants’ bright blue “Opt in” and “Make a trade” buttons, the webpages and mobile app screens on which those buttons appeared, and Coinbase’s online crypto trading interface (to which the

“Make a trade” button immediately rerouted users).  
*E.g.*, ¶¶65-69, *supra*.

115. The term “official rules” means “the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials.” Cal. Bus. & Prof. Code § 17539.15(k)(2).

116. The term “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.’” Cal. Bus. & Prof. Code § 17539.15(k)(1).

117. Defendants Coinbase and MKI were each a “sweepstakes sponsor” within the meaning of Cal. Bus. & Prof. Code § 17539.15, as each Defendant was a “person or entity that operate[d] or administer[ed] a sweepstakes as defined in paragraph (12) of subdivision (a) of Section 17539.5.” Cal. Bus. & Prof. Code § 17539.15(l)(2)(A).

118. The “formal printed statement” of Defendants’ “official rules” did not “appear” on Defendants’ sweepstakes entry “solicitation materials.” Consequently, Defendants were required to include “a clear and conspicuous statement of the no-purchase-or-payment-necessary message, in readily understandable terms,” *on “the entry-order device”*: namely, on their direct-to-user emails, webpages and mobile app screens displaying the “See how to enter,” “Opt in,” and “Make a trade” buttons, on which Plaintiffs and each Class member clicked to enter Defendants’ digital sweepstakes. Defendants failed to satisfy this statutory requirement for several, independent reasons.

119. **First**, the “NO PURCHASE NECESSARY” statement on Defendants’ entry-order devices was *not* “substantially similar” to the statement required by statute. The “no-purchase-or-payment-necessary message” required by § 17539.15 “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.’” Cal. Bus. & Prof. Code § 17539.15(k)(1). By contrast, the “NO PURCHASE NECESSARY” statement at the bottom of (some of) Defendants’ entry-order devices omitted the material fact that that no “payment of any kind” was necessary to enter, such as the “payment” of a transaction fee for *selling* Dogecoins on Coinbase. Defendants’ unlawfully omitted the required “payment of any kind” language from their sweepstakes entry emails, webpages, and mobile app screens, for the particular purpose of concealing any truly free, sweepstakes-entry option from Plaintiffs’ and the Class’s eyes. *E.g.*, ¶¶74-75, *supra*.

120. **Second**, Defendants’ “NO PURCHASE NECESSARY” statement on their “entry-order devices” was not stated “clear[ly],” or in “readily understandable terms,” when read within the context of Defendants’ more prominent statements in their sweepstakes solicitation materials. *E.g.*, ¶¶70-73, *supra*.

121. **Third**, Defendants’ “NO PURCHASE NECESSARY” statement on their “entry-order devices” was not stated “conspicuously” on or around Defendants’ solicitation materials or “entryorder device[s].” Instead, Defendants’ textually inadequate statement appeared only in faint, fine print at the very bottom of Defendants’ multi-page emails, webpages and mobile app screens. To view Defendants’ textually inadequate statement at all, recipients would have to

have scrolled down to the bottom of Defendants' entry-order webpages and mobile app screens, which did *not* require any scrolling to click Defendants' far more conspicuous "See how to enter," "Opt in," and "Make a trade" buttons. *E.g.*, ¶¶65-69, *supra*.

122. **Fourth**, Defendants' Dogecoin trading interface also constituted an "entry-order device," as each Class member *completed* their sweepstakes "entry" by executing a Dogecoin purchase or sale "order" on this interface. Yet this crypto trading interface (this "entry-order device") did not contain any "no-purchase-or-payment-necessary message," let alone a "clear and conspicuous" message. Cal. Bus. & Prof. Code § 17539.15(b). *See* ¶69, *supra*.

123. For each of the above, independent reasons, Defendants violated Cal. Bus. & Prof. Code § 17539.15(b) by failing to include the required "clear and conspicuous statement" of the "no-purchase-or-payment-necessary message" in or on the "entry-order devices" included in their "solicitation materials containing sweepstakes entry materials." Cal. Bus. & Prof. Code § 17539.15(b). Defendants' failure to make the clear and conspicuous disclosures expressly required by statute caused Plaintiffs and other Class members (as well as members of the media) to remain unaware of any purchase-free, payment-free option for entering Defendants' advertised sweepstakes in June 2021.

124. As a result of Defendants' unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 more on coinbase.com, and by paying the attendant transaction fees to Coinbase, between June 3, 2021 and June 10, 2021. Plaintiffs, on

behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and other equitable relief, including full restitution of all monetary payments that Class members made in consideration of their entries into Defendants' June 2021 DOGE sweepstakes, and of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

### **THIRD CAUSE OF ACTION**

#### **Violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.* -**

#### **Untrue, Misleading and Deceptive Advertising**

125. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this Complaint.

126. Although Defendants would privately grant free-entry requests from all persons (whether Coinbase "account holders" or not), that material truth was affirmatively and objectively contradicted by the plain text and full context of Defendants' Sweepstakes solicitations, Official Rules, and all other public statements made by the Defendants in June 2021. Defendants declined to objectively disclose the truth to Plaintiffs, the Class, or even the public at large.

127. California Business and Professions Code, Section 17500, makes it unlawful for any person:

to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other

publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

128. Before and during the June 2021 Dogecoin sweepstakes alleged herein, Defendant Coinbase made and disseminated from this state to the public nationwide, over the Internet and through wireless phone networks, digital advertising devices and “Official Rules” which falsely and misleadingly asserted to consumers that entry into Defendants’ Dogecoin sweepstakes was, in fact, entirely contingent upon such consumers “opting in” online, and purchasing or selling Dogecoins for \$100 more on Coinbase’s digital trading platform, between June 3, 2021 and June 10, 2021, when the true, material, and undisclosed fact was that Defendants would privately grant entry requests from Coinbase users and “account holders” ***who executed no Dogecoin purchase or sale transaction on Coinbase during the Promotion Period.***

129. Likewise, before and during the June 2021 Dogecoin sweepstakes alleged herein, Defendant MKI caused such materially false and misleading advertising and Official Rules to be made and disseminated from this state to the public nationwide, over the Internet and through wireless phone networks. Defendant MKI caused such false and misleading advertising statements and Official Rules to be made and

disseminated nationwide, from California, because MKI personally participated in creating, drafting, designing and structuring Defendants' digital sweepstakes ads, including but not limited to the direct-to-consumer email, website and mobile app advertisements and Official Rules depicted and alleged herein, with the full knowledge and intent that Coinbase would electronically disseminate MKI's false and misleading ads and Official Rules to members of the public nationwide.

130. Defendants' advertisements of and Official Rules for their June 2021 DOGE Sweepstakes affirmatively misrepresented, concealed and omitted the material truth regarding the requirements for sweepstakes entry. Defendants' advertisements were made to consumers and emanated from Coinbase's primary offices within the State of California, to millions of consumers within the State of California and nationally or internationally, and are within the meaning of advertising as provided in Cal. Bus. & Prof. Code §§ 17500, *et seq.*, in that such promotional materials were intended as inducements to purchase products and services on Coinbase.com and are statements made and disseminated by Defendants, and caused by Defendants to be made and disseminated, to Plaintiffs and other members of the Class. Each Defendant knew, or in the exercise of reasonable care should have known, that their advertising statements about, and the Official Rules for, their June 2021 DOGE Sweepstakes would be and were false, misleading, confusing, and deceptive to a substantial segment if not the vast majority of layperson-consumers who viewed them.

131. In furtherance of Defendants' false and misleading advertising scheme, Coinbase and MKI, individually and in collaboration, designed, created,



prepared, structured, tested, reviewed, analyzed and disseminated via the Internet digital advertisements and Official Rules misleadingly suggesting, and overtly and falsely stating, that their June 2021 DOGE Sweepstakes in fact *required* entrants and Coinbase users to purchase or sell Dogecoins for \$100 more on Coinbase, between June 3, 2021 and June 10, 2021. Defendants also materially falsified their digital sweepstakes ads and misled consumers by representing that sweepstakes entrants had to buy or sell “\$100 in DOGE” or “\$100 in Dogecoin,” when in fact consumer purchases or sales of marginally less than “\$100 in Dogecoin” would have sufficed for entry. *See* ¶¶41-49. *supra*. Consumers, including Plaintiffs and members of the Class, ***reasonably*** relied on Defendants’ multiple, material misstatements regarding their sweepstakes entry requirements because all members of the Class were demonstrably exposed to such statements. Consumers, including Plaintiffs and members of the Class, were among the specifically intended targets of Defendants’ material misrepresentations.

132. Defendants’ above acts—in designing, creating, preparing, structuring, testing, reviewing, analyzing and disseminating via the Internet such misleading and deceptive statements throughout the United States to Plaintiffs and the Class—were demonstrably and objectively likely to deceive, mislead, and confuse, and did deceive, mislead and confuse, reasonable consumers by obfuscating the true requirements (and non-requirements) for entry into Defendants’ Dogecoin sweepstakes, and thus were violations of Cal. Bus. & Prof. Code §§ 17500, *et seq.*

133. Defendants’ materially false and misleading sweepstakes advertising devices and Official Rules

caused Plaintiffs and other members of the Class to suffer personal financial injuries, in the form of paying Coinbase hundreds of millions of dollars in purchases and transaction costs that they would not otherwise have spent to enter the sweepstakes. Had Plaintiffs and members of the Class known that Defendants' solicitation materials, advertisements, Official Rules, and inducements misrepresented, obfuscated and concealed the true entry requirements for Defendants' sweepstakes, then they would not have purchased or sold Dogecoins for \$100 or more on Coinbase's trading platform between June 3, 2021 and June 10, 2021 (inclusive).

134. Plaintiffs, on behalf of themselves and the Class, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into the June 2021 DOGE sweepstakes, and disgorgement of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

#### **FOURTH CAUSE OF ACTION**

#### **Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unlawful Business Acts and Practices (False Advertising)**

135. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this complaint, as if fully set forth herein.

136. As a result of Defendants' unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 or more and paying the

attendant purchase and sale transaction costs on Coinbase between June 3, 2021 and June 10, 2021, when in fact no Dogecoin purchase or sale transactions were required for entry into Defendants' sweepstakes.

137. As a result of Defendants' above unlawful acts and practices of false and misleading advertising detailed herein, Plaintiffs, on behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into the June 2021 DOGE Sweepstakes, and disgorgement of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

#### **FIFTH CAUSE OF ACTION**

#### **Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* - Unfair Business Acts and Practices**

138. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this complaint, as if fully set forth herein.

139. Defendants' actions alleged herein violate the laws and public policies of California, as set out in the preceding paragraphs of this complaint.

140. There is no benefit to consumers, competition or the general public from allowing Defendants to deceptively market and sell million-dollar "sweepstakes" (really, "lottery") entries to millions of consumers, in violation of California law, and under the false guise of executing a cryptocurrency sales "promotion."

141. The gravity of harm suffered by Plaintiffs and the Class, who have unnecessarily lost hundreds of millions of dollars collectively, outweighs any legitimate justification, motive or reason for Defendants' deceptive sweepstakes marketing. Accordingly, Defendants' actions are immoral, unethical, unscrupulous and offend the public policies of California, and are substantially injurious to Plaintiffs and the Class.

142. Defendants' above acts and practices were and are likely to deceive—and in fact, did deceive—reasonable consumers as to the true requirements for entering Defendants' \$1.2 million Dogecoin sweepstakes, and further, were likely to conceal and did conceal from reasonable consumers the true options and requirements for sweepstakes entry.

143. As a result of Defendants' unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 more and paying the attendant transaction fees on Coinbase, between June 3, 2021 and June 10, 2021, when in fact no Dogecoin purchase or sale transactions were required for entry into Defendants' sweepstakes.

144. Plaintiffs, on behalf of themselves and all others similarly situated, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing their wrongful advertising practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into the June 2021 DOGE sweepstakes, and disgorgement of all other ill-gotten gains derived from Defendants' wrongful conduct to the fullest extent permitted by law.

**SIXTH CAUSE OF ACTION**  
**Violation of Cal. Civ. Code §§ 1750, *et seq.* -**  
**(Misrepresenting That a “Transaction” Involves**  
**Certain “Obligations”)**

145. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this complaint, as if fully set forth herein.

146. California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”) provides that “[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful: . . . (14) [r]epresenting 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).

147. Plaintiffs’ and the Class’s entries into Defendants’ June 2021 Dogecoin sweepstakes constituted “transactions” which Defendants “intended to result,” and which did result, in the sale of goods and services to consumers (“goods” in the form of Dogecoins, and “services” in the form of cryptocurrency trade-execution, for a fee). As detailed throughout this complaint, Defendants’ June 2021 Dogecoin sweepstakes solicitations—including, but not limited to, Defendants’ direct-to-user email, website, and mobile app advertisements, and Official Rules—affirmatively “represent[ed] that” Plaintiffs’ and the Class’s sweepstakes entries “involved” and “conferred” upon them an “obligation” to buy or sell “\$100 in DOGE” on Coinbase’s trading platform between June 3 and June 10, 2021, when in fact, entry into Defendants’ DOGE sweepstakes did not involve or confer that “obligation” on

any Class member, as Defendants were in fact *privately* agreeing among themselves to grant trade-free entry requests (if any) from Coinbase users and “account holders” like Plaintiff and the Class, contrary to Defendants’ affirmative and objective representations to Plaintiffs, the Class, and to the public at large. In representing to Plaintiffs and the Class that they “need[ed]” to, and that they “must,” buy **or** sell Dogecoins on Coinbase to enter for a chance to win one of Defendants’ sweepstakes prizes, Defendants affirmatively misrepresented the “obligations” involved in Class members’ sweepstakes entry transactions, in violation of Cal Civ. Code § 1770(a)(14).

148. In addition, Defendants’ affirmative representations to Plaintiffs and the Class that they “need[ed] to,” and that they “must,” buy or sell Dogecoins on Coinbase—and pay all attendant transaction costs to Coinbase—constituted an affirmative representation to Plaintiffs and the Class that they were obligated to pay *consideration* to Coinbase for a *chance* to win a *prize*. In making those affirmative representations to Plaintiffs and the Class, Defendants affirmatively and unnecessarily represented that a “transaction” (Plaintiffs’ and the Class’s “Sweepstakes” entries) involved and conferred on all Class members an “obligation” that was and remains “prohibited by law” (*i.e.*, an “obligation” to pay consideration, in exchange for a chance, to win a prize). *See* Cal. Penal Code §§ 319, 320; *see also Trinkle v. California State Lottery*, 105 Cal.App.4th 1401, 1406 (Cal. Ct. App. 2003) (explaining that the elements of an unlawful “lottery” are (i) consideration given by an entrant; (ii) in exchange for a chance; (iii) to win a prize). Thus, Defendants independently violated Cal Civ. Code § 1770(a)(14) in this second way.

149. Moreover, Defendants’ affirmatively misrepresented that sweepstakes entrants had an “obligation” to buy or sell “\$100 in DOGE” or “\$100 in Dogecoin,” when in fact, the truth was that consumer purchases or sales of marginally *less than* “\$100 in Dogecoin” would have sufficed for entry. See ¶¶41-49, *supra*. Defendants thus independently violated Cal Civ. Code § 1770(a)(14) in a third way, as they misrepresented the *dollar value* of DOGE trades that Class members were (purportedly) “obligat[ed]” to make in exchange for their sweepstakes entries.

150. Plaintiffs and members of the Class reasonably relied on Defendants’ multiple, material misstatements regarding their sweepstakes entry “obligations,” as all members of the Class were demonstrably exposed to such statements, and each paid \$100 or more to Coinbase as a direct result of Defendants misrepresentations, which were prohibited by Cal Civ. Code § 1770(a)(14) in several independent respects.

151. On account of Defendants’ unlawful acts and misrepresentations detailed herein, Plaintiffs, on behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into Defendants’ June 2021 DOGE Sweepstakes, and disgorgement of all other ill-gotten gains derived from Defendants’ wrongful conduct to the fullest extent permitted by law.

152. On or about September 12, 2021, Plaintiffs provided Defendants with notices of their alleged, respective violations of the CLRA pursuant to California

Civil Code § 1782(a) via certified mail, demanding that Defendants correct such violations.

153. On or about October 12, 2021, Defendants provided Plaintiffs with responsive letters, denying that Defendants violated the CLRA or any other law, and declining to undertake any of the corrective actions demanded by Plaintiffs. In light of Defendants' respective refusals to take any corrective action in response to Plaintiffs' demand letters, Plaintiffs and the putative Class hereby seek all available damages under the CLRA for all violations complained of herein, including, but not limited to, their actual damages, punitive damages, attorneys' fees and costs, as well as injunctive and any other equitable relief that the Court may deem proper.

**SEVENTH CAUSE OF ACTION**

**Violations of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* -  
Unlawful Business Acts and Practices  
(Violations of Cal Civ. Code § 1770(a)(14))**

154. Plaintiffs hereby incorporate by reference the allegations contained in all other paragraphs of this complaint, as if fully set forth herein.

155. As a result of Defendants' unfair and unlawful conduct as described herein, Plaintiffs and the Class have lost money and property by purchasing and/or selling Dogecoins for \$100 or more and paying the attendant purchase and sale transaction costs on Coinbase between June 3, 2021 and June 10, 2021.

156. As a result of Defendants' above unlawful acts and practices in violation of Cal. Civ. Code § 1770(a)(14), Plaintiffs, on behalf of themselves and the Class, and on behalf of the general public, seek



permanent injunctive relief prohibiting Defendants from continuing such wrongful practices, and such other equitable relief, including full restitution of all payments Class members made to Coinbase to facilitate their entries into the June 2021 DOGE Sweepstakes, and disgorgement of all ill-gotten gains derived from Defendants' conduct, to the fullest extent allowed by law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiffs as Class Representatives, and the law firm of Finkelshtein & Krinsk LLP as Class Counsel;

B. Requiring Defendants to pay the actual damages sustained by Plaintiffs and the Class by reason of the acts and transactions alleged herein, as well as punitive damages;

C. For an order of restitution necessary to restore to Plaintiffs and each Class member all money and personal property that Defendants have acquired from Plaintiffs and the Class by means of Defendants' unlawful conduct as described herein, and an order for the disgorgement of all of Defendants' ill-gotten gains from the unlawful conduct alleged herein;

D. For an order permanently and publicly enjoining Defendants from engaging in the unlawful and unfair business acts and practices alleged herein;

E. Ordering Defendants to pay Plaintiffs' and the Class's reasonable attorneys' fees, expert fees, and all other costs and expenses of this litigation; and

F. Ordering such other legal or equitable relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury.

Dated: May 10, 2021      Respectfully submitted,

FINKELSTEIN & KRINSK LLP

By: s/ David J. Harris, Jr.  
David J. Harris, Jr., Esq.

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Telephone: (619) 238-1333  
Facsimile: (619) 238-5425

*Counsel for Plaintiffs and the  
Putative Class*

**EXHIBIT A**

**COINBASE DOGECOIN SWEEPSTAKES  
OFFICIAL RULES**

**NO PURCHASE NECESSARY. A PURCHASE OR PAYMENT OF ANY KIND WILL NOT INCREASE YOUR CHANCES OF WINNING.**

**PARTICIPATION IS LIMITED TO LEGAL RESIDENTS OF THE 50 UNITED STATES (EXCLUDING HAWAII) & THE DISTRICT OF COLUMBIA.**

**VOID IN HAWAII AND WHERE PROHIBITED BY LAW.**

**THIS PROMOTION SHALL BE CONSTRUED ACCORDING TO AND GOVERNED EXCLUSIVELY BY U.S. LAW.**

**1. Eligibility:** Coinbase - Dogecoin Sweepstakes (the “**Sweepstakes**” or “**Promotion**”) is open only to legal residents of the fifty (50) United States (excluding Hawaii) and the District of Columbia, who are at least 18 years of age or older and legal age of majority in their jurisdiction of residence. Coinbase (the “**Sponsor**”), Marden-Kane Inc. (the “**Administrator**”), their parent, affiliates, subsidiaries, promotion agencies and each of their respective directors, officers, employees and assigns (collectively “**Released Parties**”) and their immediate family members and/or those living in the same household of each (whether related or not) are not eligible. For purposes of this Promotion, the term “family member” is defined as spouse, partner, parent, legal guardian, in-law, grandparent,

child, or grandchild. The Sweepstakes is subject to all applicable federal, state and local laws and regulations. Void where prohibited. Participation constitutes entrant's full and unconditional agreement to these Official Rules and Sponsor's and Administrator's decisions, which are final and binding in all matters related to the Sweepstakes. Winning a prize is contingent upon fulfilling all requirements set forth herein.

**2. Timing:** The Promotion begins on June 3, 2021 at 1:00 p.m. Pacific Time ("PT"), ends on June 10, 2021 at 11:59 p.m. PT (the "**Promotion Period**"). Administrator's computer systems is the official time-keeping device for the Sweepstakes.

**3. How to Enter:**

Two methods of entry:

Method 1: Existing account holders and new\* account holders must opt-in to participate in the Sweepstakes and must complete \$100usd (cumulative 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.

This is not a recommendation to buy or sell dogecoin. Investing in cryptocurrency comes with risk. The price of a given cryptocurrency may increase or decrease based on market conditions and participants may lose money, including their original purchase amount. See below for instructions on alternative means of entry.

\*To create a new Coinbase account on Coinbase.com during the Promotion Period, provide required information as requested online at [www.Coinbase.com](http://www.Coinbase.com) (inclusive of Social Security number) and complete the required ID verification process (upload a valid and

current driver's license or state ID or complete a set of identity-verification questions). There is no fee or charge to create an account and become a registered Coinbase user. By submitting your information and creating an account, you agree to the respective terms of use and privacy notice. If you do not agree to such terms of use and privacy notice, you cannot create a respective account, and will be ineligible to receive a prize.

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 photocopies, 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.

**Note: Your chances of winning are the same regardless of method of entry.**

**Note: To claim a prize in this Sweepstakes, all potential winners will be required to create a Coinbase account (free to create an account) or have a valid Coinbase account standing. Creating an account will require the collection of personal information for identity verification purposes (including a valid and current driver's license or state ID, tax ID number, or completion of a set of identity verification questions). If a winner sells the Dogecoin, you will need to link a bank account to withdraw fiat. Potential winners that do not create a Coinbase account and/or if their Coinbase account is not approved by Sponsor will be disqualified. ALL POTENTIAL WINNERS ARE SUBJECT TO VERIFICATION BY SPONSOR, WHOSE DECISIONS ARE FINAL AND BINDING. A PARTICIPANT IS NOT A WINNER OF ANY PRIZE UNLESS AND UNTIL THAT PARTICIPANT'S ELIGIBILITY AND COMPLIANCE WITH ALL REQUIREMENTS TO CLAIM A PRIZE HAVE BEEN VERIFIED AND FULFILLED, AND THE PARTICIPANT HAS BEEN NOTIFIED THAT VERIFICATION IS COMPLETE.**

**Participants must comply with these Official Rules and the Conditions of Entry.** Determination of compliance will be in the sole discretion of the Sponsor/Administrator.

**Limit: Limit one entry per person/email address no matter the means of entry.** Entries received from any person in excess of the stated

limitation will be void, and that person may be disqualified from entry and/or winning. Entries received from any person who attempts to cancel and create a new account, or who attempts to create an additional account, during the promotion period will be disqualified. Any attempt by any entrant to obtain more than the stated number of entries by using multiple/different email addresses or any other methods will void that entrant's entries and that entrant may be disqualified. Use of any automated system to participate is prohibited and will result in disqualification. In the event of a dispute over the identity of a potential winner, the entry will be declared made by the authorized account holder of the email address associated with the entrant's Coinbase account (or submitted with the mail-in entry, as applicable) ("**Entrant's Email Address**"), and potential winner may be required to provide identification sufficient to show that he/she is the authorized account holder of the email account.

The "authorized account holder" is the natural person assigned to the applicable email account. Proof of submission of an entry does not constitute proof of delivery.

**4. Drawings:** Winners will be randomly selected from all eligible entries received on or about **June 17, 2021**. The random drawings will be conducted by the Administrator at their offices in Syosset, NY, USA, an independent judging organization whose decisions are final. The odds of winning a prize depend upon the number of eligible entries received for each drawing. **Limit one prize per person/household in this Promotion.**

**5. Winner Notification:** Potential winners will be contacted via email at Entrant's Email Address by

a representative of Coinbase with instructions on how to claim their prize and will be required to respond to such email within 48 hours of date/time email was sent by Sponsor. Potential winners will be required to complete and return an Affidavit of Eligibility, Release of Liability or any other document needed to validate eligibility (“**Documents**”) within five (5) days (including Saturdays, Sundays and Holidays) of first attempted delivery of same. In the event a potential winner cannot be contacted, fails to respond to the email within the allotted time, refuses the prize, or fails or refuses to timely return completed Documents, or if a prize/prize notification is returned as undeliverable, potential winner will be disqualified without further notice and an alternate winner may be selected. Potential winners that entered the Sweepstakes by mail that do not create a new Coinbase account timely will forfeit the prize. Winners must have an active Coinbase account at the time of awarding the prize. Prizes will be fulfilled within approximately 6-8 weeks of winner verification. Sponsor assumes no responsibility for undeliverable emails resulting from any form of active or passive filtering by an email client or for insufficient space in user’s account to receive an email. Sponsor reserves the right to modify the notification procedures and applicable deadlines for responding in connection with the selection of any alternate. If a prize is legitimately claimed it will be awarded. Upon prize forfeiture or inability to use a prize or portion thereof, no compensation will be given, and Sponsor will have no further obligation to that participant.

## **6. Prizes.**

**Tier 1:** one (1) winner will receive Three Hundred Thousand Dollars (\$300,000) in Dogecoin.



**Tier 2:** ten (10) winners will each receive Thirty Thousand Dollars (\$30,000) in Dogecoin.

**Tier 3:** six thousand (6,000) winners will each receive One Hundred Dollars (\$100) in Dogecoin.

**Estimated total retail value of all prizes is approximately \$1,200,000 usd.**

**All prize values stated herein are in USD.** Winners of Tier 1 and Tier 2 prizes may elect to receive prize in US Dollars instead of Dogecoin. All prizes will be fulfilled via an upload of Dogecoin (or US Dollars, if applicable) to winner's Coinbase account. Access to Dogecoin and US Dollar prizes is subject to the Coinbase Terms and Conditions of the Coinbase account. Restrictions may apply. Fees apply when you buy and sell digital currency on the Coinbase site (these fees are at the discretion and responsibility of the Winner and will not be reimbursed by Sponsor). Cryptocurrency conversions from Dogecoin to US Dollars are treated as cryptocurrency "sales", and all the forgoing transactions are charged a spread and a Coinbase Fee as described in the Coinbase pricing and fee disclosures at <https://help.coinbase.com/en/coinbase/trading-and-funding/pricing-and-fees/fees.html>. Value of Dogecoin prizes determined by Sponsor's set rate on a date and time selected by Sponsor at its discretion prior to upload of prize to winner's Coinbase account.

**DISCLOSURE: THE VALUE OF DOGECOIN IS SUBJECT TO CHANGE, IT CAN GO UP OR DOWN AND THERE CAN BE A SUBSTANTIAL RISK THAT IT COULD LOSE VALUE (POSSIBLY ALL VALUE) AS A RESULT OF BUYING, SELLING, OR HOLDING DOGECOIN.**

Prizes are non-transferable and no substitution will be made except as provided herein at the Sponsor's sole discretion. Sponsor reserves the right where lawful to substitute a prize for one of equal or greater value if the designated prize should become unavailable for any reason. Prizes consist of only the items specifically listed as part of the prize. In no event will more than the stated number of prizes be awarded. Winners are solely responsible for any/all applicable federal, state and local taxes and any other expenses related to the acceptance and use of a prize not specified herein. Prize details not specifically stated in these Official Rules will be determined in Sponsor's sole discretion. Sponsor is not responsible for, and will not replace, any lost, damaged or stolen prize or prize component or any prize that is undeliverable. Winners acknowledge that Sponsor is subject to U.S. economic restrictions and trade sanctions; as such, Sponsor reserves the right to deny distribution of any prize when required by applicable law. Participants waive the right to assert as a cost of winning a prize, any costs associated with claiming or seeking to claim a prize, or using a prize.

**7. Taxes:** Each winner is solely responsible for reporting and paying any and all applicable taxes related to the prize(s). Each winner will be subject to an onboarding verification process and is required to provide any requested tax reporting information before any prize is awarded including name, date of birth, address, phone numbers and social security number or taxpayer identification number. The value of any prize awarded to a winner will be reported for tax purposes as required by law. Any person receiving at least six hundred dollars (USD600) from the Sponsor will receive an IRS Form 1099 at the end of the calendar year

and a copy of such form will be filed with the IRS. Each winner is required to notify the Sponsor if any information provided hereunder changes, including the winner's address. **Potential winner should consult an accountant or tax professional to determine tax implications in accepting and using (including conducting transactions of) any Prize.**

**8. Release:** Entrants/winners agree to release, discharge and hold harmless Released Parties from and against any claim or cause of action or liability (including but not limited to, personal injury, death or damage to or loss of property as well as claims based on publicity rights, defamation and/or invasion of privacy) arising out of or in connection with participation in the Sweepstakes or acceptance/receipt/use or misuse of any prize, and agree to be bound by the Official Rules and the decisions of the Sponsor, the Administrator and/or Sponsor's representatives, which are final. Acceptance of a prize constitutes permission for the Sponsor and its agencies to use winner's name, likeness, photograph and/or hometown and state for purposes of complying with obligations as described in Section 11 below, and for advertising and trade without further compensation, in any media, worldwide, unless prohibited by law.

**9. General:** ANY ATTEMPT BY AN INDIVIDUAL TO DELIBERATELY UNDERMINE THE LEGITIMATE OPERATION OF THIS PROMOTION IS A VIOLATION OF CRIMINAL AND CIVIL LAWS, AND SHOULD SUCH AN ATTEMPT BE MADE, SPONSOR RESERVES THE RIGHT TO SEEK DAMAGES FROM ANY SUCH INDIVIDUAL TO THE FULLEST EXTENT PERMITTED BY LAW. Sponsor will not be responsible for lost, late, damaged, misdirected or mutilated mail, misdirected email, or

for any technical problems, faulty, lost, garbled, incomplete, incorrect or mistranscribed data transmissions, incorrect announcements of any kind, malfunctions, technical hardware or software failures of any kind including any injury or damage to any person's computer/mobile device related to or resulting from participating in or experiencing any materials in connection with this Sweepstakes. Sponsor is not responsible for malfunctions or breakdown of any network systems, unavailable service connections, lost, incomplete, faulty network connectivity of any kind, failures of any service providers, or any combination thereof, which may limit a person's ability to participate in this Promotion. Sponsor reserves the right to suspend, cancel or modify the Promotion if it cannot be executed as planned for any reason including, but not limited to, if fraud, human error, technical failures, or any other factor impairs the integrity or proper functioning of the Promotion; or if a virus, bug or other technical problem corrupts the administration, security, or proper play of the Promotion as determined by Sponsor in its sole discretion. If the Promotion is so cancelled or modified, Sponsor may award prizes from among all eligible participants prior to such action and Sponsor shall have no further obligation to any participant in connection with this Promotion. Sponsor reserves the right to prohibit the participation of an individual if fraud or tampering is suspected or if the participant fails to comply with any requirement of participation as stated herein or with any provision in these Official Rules. In the event there is a discrepancy or inconsistency between disclosures or other statements contained in promotional materials and the terms and conditions of the Official Rules, the Official Rules shall prevail, govern and control. Sponsor

will not be responsible for any typographical or other error in the printing of the offer, administration of the Sweepstakes or in the announcement of the prizes.

**10. Disputes:** All federal, state and local laws and regulations apply. THE CALIFORNIA COURTS (STATE AND FEDERAL) SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THE PROMOTION AND THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN THE PROMOTION. EACH ENTRANT WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION AND VENUE IN THOSE COURTS FOR ANY REASON AND HEREBY SUBMITS TO THE JURISDICTION OF THOSE COURTS. Claims may not be resolved through any form of class action. Entrant agrees that any and all claims, judgments, and awards shall be limited to the lower of either reasonable or actual out of pocket costs incurred, including any costs associated with participation in this Promotion but in no event attorneys' fees; and under no circumstances will entrants/winners be permitted to obtain awards for and entrants/winners hereby waive all rights to claim punitive, incidental and consequential damages and any other damages, other than for the lower of either reasonable or actual out-of-pocket expenses and any and all rights to have damages multiplied or otherwise increased. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE MAY NOT APPLY TO YOU. In addition to the tax liability disclosures in these Rules, winners are subject to abide by the income reporting and, if applicable, the payment of any taxes due per the laws, rules and regulations of the winner's state of residence. By entering and

participating in the Promotion, Entrants hereby expressly agree and accept that for all that is related to the interpretation, performance and enforcement of these Official Rules, each of them expressly submit themselves to the laws of the United States of America and the State of California, expressly waiving to any other jurisdiction that could correspond to them by virtue of their present or future domicile or by virtue of any other cause.

**11. Entrant's Personal Information:** Information collected from entrants is subject to Coinbase's [Privacy Policy](https://www.coinbase.com/legal/privacy), which can be found at <https://www.coinbase.com/legal/privacy>. Sponsor assures that your information will be kept confidential in accordance with applicable data protection laws and regulations. Data will be stored in the United States and may be shared with a third-party fulfillment company only to administer this Sweepstakes, verify winners and fulfill prizes unless you have given your prior express consent to receive additional information from Sponsor or a third party.

**12. Winner List:** For a list of winners, send an email to [winnerslist@mkpromosource.com](mailto:winnerslist@mkpromosource.com) with "WINNERS - Coinbase Sweepstakes" as the subject line. Requests must be received by July 15, 2021. The winners list will be available after all winners have been verified.

**SPONSOR:** Coinbase, 100 Pine Street, Suite #1250, San Francisco, CA 94111, USA **ADMINISTRATOR:** Marden-Kane Inc., 575 Underhill Blvd., Suite 222, Syosset, NY 11791, USA.

Google and Apple are not participants or sponsors of this promotion.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed June 9, 2022]

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

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DAVID SUSKI, JAIMEE MARTIN, JONAS CALSBEEK, and  
THOMAS MAHER,

*Plaintiffs,*

v.

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

*Defendants.*

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**COINBASE, INC.'S JOINDER IN DEFENDANT  
MARDEN-KANE, INC.'S MOTION TO COMPEL  
ARBITRATION AND, ALTERNATIVELY,  
COINBASE, INC.'S MOTION TO DISMISS  
PLAINTIFFS' THIRD AMENDED COMPLAINT**

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**NOTICE OF JOINDER; NOTICE OF MOTION AND  
MOTION TO DISMISS**

TO ALL PARTIES AND THEIR COUNSEL OF  
RECORD:

PLEASE TAKE NOTICE that on August 22, 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, Inc. will and hereby does join in Defendant Marden- Kane, Inc.'s motion to compel individual arbitration of Plaintiffs' claims.

Alternatively, Coinbase moves the Court to (1) enforce the class action waiver in the Official Rules for the Dogecoin Sweepstakes ("Official Rules") and dismiss this case for lack of subject-matter jurisdiction under Rule 12(b)(1); (2) dismiss portions of the Third Amended Complaint ("TAC") (ECF No. 83) for failure to state a claim under Rule 12(b)(6); and (3) dismiss Plaintiffs' requests for injunctive relief for lack of standing under Rule 12(b)(1) or strike those requests under Rule 12(f). This Motion is based on this Notice of Motion, the following Memorandum of Points and Authorities, 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 joins Marden-Kane's request for an order compelling arbitration of Plaintiffs' claims. Alternatively, Coinbase requests that the Court (1) enforce the class action waiver in the Official Rules and dismiss this case for lack of subject-matter jurisdiction under Rule 12(b)(1); (2) dismiss of portions of the TAC with prejudice under Rule 12(b)(6); and (3) dismiss Plaintiffs' requests for injunctive relief for lack of standing under Rule 12(b)(1) or strike those requests under Rule 12(f).

#### **STATEMENT OF ISSUES TO BE DECIDED**

1. Should the Court compel arbitration of this dispute by granting Marden-Kane's motion to compel, in which Coinbase joins?



2. Should the Court enforce the binding class action waiver in the Official Rules for the Coinbase Dogecoin Sweepstakes and dismiss this case for lack of subject-matter jurisdiction under Rule 12(b)(1)?

3. Should the Court dismiss portions of the TAC under Rule 12(b)(6) for failing to state a claim upon which relief can be granted?

4. Should the Court dismiss Plaintiffs' requests for injunctive relief for lack of standing under Rule 12(b)(1), or alternatively, strike Plaintiffs' requests for injunctive relief under Rule 12(f)?

## I. INTRODUCTION

Plaintiffs are former Coinbase users who agreed to arbitrate their claims. Although the Court previously denied Coinbase's motion to compel arbitration, Coinbase joins in Defendant Marden-Kane, Inc.'s motion to compel arbitration, and respectfully submits that the Court should enforce the parties' arbitration agreement, especially in light of Plaintiffs' new admissions. Plaintiffs have now taken a position before the Ninth Circuit—that the User Agreement and the Official Rules do *not* involve the same parties—that undermines the arguments for arbitration that Plaintiffs previously presented to this Court and on which this Court relied. Additionally, binding Ninth Circuit case law not considered by the Court in its previous order requires that the Court compel arbitration, notwithstanding the forum selection clause in the Official Rules. *See Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1209 (9th Cir. 2016).

Alternatively, the Court should grant Coinbase's motion to dismiss the TAC. To begin, the Court should enforce the class action waiver in the Official Rules,

which bars Plaintiffs from bringing a class action in any forum, and thus dismiss this case for lack of subject-matter jurisdiction, as Plaintiffs' sole claimed basis for federal jurisdiction is the Class Action Fairness Act ("CAFA"). Additionally, several of Plaintiffs' claims are subject to dismissal on the merits without leave to amend. First, the Court previously dismissed Plaintiffs' lottery claims, finding that Plaintiffs "have not and cannot allege a violation" of California's lottery laws because participants could have entered the Dogecoin Sweepstakes for free, rendering it a lawful sweepstakes, not an illegal lottery. ECF No. 53 at 13 (emphasis added) (dismissing claim 1 in full, and claims 2 and 6 to the extent they were premised on a violation of lottery laws). The TAC fails to cure this fundamental flaw. Second, as other courts have recognized, the Consumer Legal Remedies Act ("CLRA")—which applies only to "tangible goods" and related "services"—does not apply to virtual currencies or exchange platforms, including cryptocurrencies like Dogecoin and cryptocurrency exchanges like Coinbase. This Court should reach the same result and dismiss Plaintiffs' CLRA claims (claims 6 and 7). Finally, the Court should dismiss or strike Plaintiffs' requests for injunctive relief for lack of standing because none of the challenged practices are ongoing and there is no risk of future harm.

## **II. BACKGROUND**

### **A. Coinbase's Platform and the Dogecoin Sweepstakes**

Coinbase operates one of the largest cryptocurrency exchange platforms in the United States. *See generally* TAC ¶¶ 1-17, 27-51; *see also* Mot. to Compel Arb. and to Dismiss, ECF No. 33 at 2. Its users can purchase,

sell, and conduct financial transactions using digital currencies like Bitcoin, Ethereum, Litecoin, and Dogecoin. TAC ¶ 45. As explained in Section II.B 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. ECF No. 33 at 2-3. 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. TAC ¶ 6. 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. *Id.* ¶¶ 27-36 & Ex. A at 3-4. These Plaintiffs all chose to enter by trading Dogecoin.

### **B. Coinbase's User Agreement**

As Coinbase explained in its previous motion, each Plaintiff agreed to the Coinbase User Agreement, which contains a valid, binding arbitration provision. ECF No. 33 at 2-6. The version of the User Agreement to which Plaintiff Suski agreed stated: "you and we agree that any dispute arising under this Agreement shall be finally settled in binding arbitration, on an individual basis[.]" *Id.* at 4. Likewise, the version to which Plaintiffs Martin, Calsbeek, and Maher agreed stated: "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." *Id.* at 5.

### C. Relevant Proceedings

Coinbase previously moved to compel arbitration and, alternatively, to dismiss Plaintiffs' claims under Rule 12(b)(6). ECF No. 33. The Court denied Coinbase's motion to compel arbitration (ECF No. 53), but noted that this case presented "a very unusual set of circumstances" and that "a different legal set of minds [could] look[] at this factual pattern" and reach the opposite conclusion (ECF No. 78 at 14:17-15:5). The Court also granted Coinbase's motion to dismiss Plaintiffs' lottery claims with leave to amend, finding that the Dogecoin Sweepstakes was not a lottery because participants could enter for free, and thus the element of consideration was missing. The Court declined to dismiss the remainder of Plaintiffs' claims, which centered on Coinbase's Sweepstakes-related marketing statements. *Id.* Plaintiffs subsequently filed their TAC, which re-alleged the lottery claims and included additional factual allegations regarding Coinbase's marketing statements. ECF No. 83.

Coinbase appealed the denial of its motion to compel arbitration to the Ninth Circuit. Case No. 22-15209. Plaintiffs' answering brief is due on July 11, 2022. Coinbase also moved this Court to stay proceedings pending appeal (ECF No. 59), which the Court denied (ECF No. 76). Coinbase then filed a motion to stay in the Ninth Circuit, which the Ninth Circuit denied. Ninth Circuit ECF No. 24.

In opposition to Coinbase's Ninth Circuit stay motion, Plaintiffs argued—for the first time—that the Official Rules for the Dogecoin Sweepstakes was a three-party contract between Coinbase, each of its users, and Marden Kane. Appellees' Brief in Opp., Ninth Circuit, ECF No. 22 at 2, 4. This Court should now consider

Plaintiffs' position in ruling on Marden-Kane's Motion to Compel Arbitration.

### III. LEGAL STANDARDS<sup>1</sup>

**Compelling arbitration.** Under the Federal Arbitration Act ("FAA"), 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). 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.'" *Peter v. DoorDash, Inc.*, 445 F. Supp. 3d 580, 583 (N.D. Cal. 2020) (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. *Id.* at 531; *see also* Coinbase's Mot. to Compel Arb. and to Dismiss, ECF No. 33 at 8 (setting forth the legal standard governing motions to compel arbitration).

**Rule 12(b)(1).** As courts of limited jurisdiction, federal courts are "presumed to lack jurisdiction in a particular case unless the contrary affirmatively

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<sup>1</sup> District courts are not "bound by any law of the case" in ruling on subsequent dispositive motions to dismiss an amended complaint. *Askins v. U.S. Dep't of Homeland Sec.*, 899 F.3d 1035, 1043 (9th Cir. 2018). "[P]ermitting the filing of an amended complaint requires a new determination." *Id.*

appears.” *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). Plaintiffs bear the burden of proving that the court has jurisdiction to decide their claims. *Thornhill Publ’n Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). If Plaintiffs cannot establish federal jurisdiction, their claims must be dismissed. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 333 (2016), as revised (May 24, 2016).

**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).

**Rule 12(f).** Rule 12(f) allows the Court to “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” A matter is “immaterial” when it “has no essential or important relationship to the claim for relief or the defenses being pleaded, while ‘[i]mpertinent’ matter consists of statements that do not pertain, and are not necessary, to the issues in question.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993) (citation omitted), *rev’d on other grounds by Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994).

**IV. COINBASE JOINS MARDEN-KANE'S MOTION TO COMPEL ARBITRATION, WHICH SHOULD BE GRANTED.**

Coinbase joins in the motion to compel arbitration submitted by Marden-Kane (ECF No. 87). As explained below, Coinbase agrees with Marden-Kane that arbitration is warranted, including because Plaintiffs have now taken a position before the Ninth Circuit that undermines its previous arguments in opposition to arbitration, and because of binding Ninth Circuit case law that the Court did not address in its previous order.

**A. Plaintiffs have conceded in Ninth Circuit briefing that the User Agreement and the Official Rules involve different contracting parties, precluding any supersession of the User Agreement by the Official Rules.**

In seeking and obtaining denial of Coinbase's motion to compel arbitration, Plaintiffs asserted that the User Agreement and Official Rules both were agreements between "the parties" and that the Official Rules superseded the User Agreement. *See, e.g.*, Pls. Opp. to MTC/MTD at 11 (referring to "the parties' original arbitration agreements and subsequent litigation agreements"). Since this Court's initial MTC/MTD ruling, however, Plaintiffs have expressly conceded in their Ninth Circuit stay briefing that the Official Rules and User Agreement do *not* involve the same parties. *See* Appellees' Brief in Opp. to Stay at 2 (acknowledging that Defendant "Marden-Kane, Inc. . . . was never party to Coinbase's User Agreements"); *id.* at 4 (claiming that Plaintiffs "could follow their original User Agreements with Coinbase . . . [or] they

could follow their . . . Official Rules agreements with Coinbase and Marden-Kane . . .”).<sup>2</sup>

This concession is fatal to Plaintiffs’ argument—accepted by this Court in its previous order denying Coinbase’s motion to compel arbitration—that the forum selection clause in the Official Rules disrupts the User Agreement’s delegation clause and supersedes the arbitration clause in the User Agreement. *See* MTC/MTD Order at 7-10. Under basic contract interpretation principles, supersession by a later agreement can only occur where the parties between the agreements remain the same. “Before one contract is merged in another [or found to ‘replace the former agreement[]’ in some respect], the last contract must be between *the same parties as the first*, and must embrace the same subject matter, and be inconsistent with one another.” 17A C.J.S. Contracts § 580 (emphasis added) (citations omitted).

Courts have therefore concluded, in situations like this one, that a subsequent agreement among one set of parties cannot supersede a valid earlier agreement between different parties. *See, e.g., Spark Connected, LLC v. Semtech Corp.*, No. 4:18-cv-748-KPJ, 2020 WL 6118575, at \*5 (E.D. Tex. 2020) (applying California contract law and holding that a later executed “Separation Agreement did not supersede the [earlier] Purchase Agreement because the agreements concern different subject matter and involve different parties”); *Dunn v. FastMed Urgent Care PC*, 424 P.3d 436, 441-42 (Ariz. Ct. App. 2018) (relying on general contract

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<sup>2</sup> Courts “may take judicial notice of court filings and other matters of public record.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).



principles to conclude that later purchase agreement could not supersede where parties did not remain identical between agreements at issue).

**B. Under the Ninth Circuit’s decision in *Mohamed*, the Official Rules’ forum selection clause does not disrupt the User Agreement’s clear and unmistakable delegation of arbitrability questions to the arbitrator.**

As this Court has previously recognized, the Coinbase User Agreement, which applies to all disputes between Coinbase and its users about the Agreement or the Coinbase Services, delegates questions of arbitrability to the arbitrator. *See* MTC/MTD Order at 8 (“disagreements over the scope of the arbitration provisions were delegated to the arbitrator”); ECF Nos. 33-8-33-10, McPherson-Evans Decl. Exs. 7-9 (disputes about arbitrability “shall be decided by an arbitrator and not by a court or judge”). Under binding Ninth Circuit precedent, such a “clear and unmistakable” delegation clause in an arbitration agreement must be enforced, *even where a forum selection clause to which the parties also agreed provides for judicial resolution*. *See Mohamed*, 848 F.3d at 1209. The Court’s MTC/MTD Order did not account for this holding of *Mohamed*, and Coinbase respectfully submits that this holding is dispositive of the motion to compel.

In *Mohamed*, the Ninth Circuit concluded that a delegation clause in the parties’ arbitration agreement served as “clear and unmistakable” evidence of the parties’ intent to delegate arbitrability questions to the arbitrator, even though the parties’ agreement also—as here—contained a forum selection clause granting “exclusive jurisdiction” to state and federal

courts in San Francisco over “any disputes, actions, claims or causes of action arising out of or in connection with this Agreement[.]” 848 F.3d at 1209 (citation omitted). As *Mohamed* explained, there is at most an “artificial” conflict between arbitration and forum selection clauses like those at issue here, *Mohamed*, 848 F.3d at 1209, and the two provisions can and should be read harmoniously, *see, e.g., id.; Peterson v. Minidoka Cnty. Sch. Dist. No. 331*, 118 F.3d 1351, 1359 (9th Cir. 1997), *amended*, 132 F.3d 1258 (9th Cir. 1997).

Following *Mohamed*, district courts in the Ninth Circuit have regularly concluded in recent years that delegation clauses in arbitration agreements provide “clear and unmistakable” evidence of intent to delegate questions of arbitrability to the arbitrator—even where the parties also agreed to forum selection clauses or other terms expressly contemplating the possibility of judicial relief. *See, e.g., Dillion v. BET Info. Sys., Inc.*, No. 18-cv-04717-JST, 2019 WL 12338059, at \*4 (N.D. Cal. Feb. 19, 2019) (delegation clause constituted “clear and unmistakable” evidence to delegate notwithstanding provision in same agreement providing exclusive jurisdiction to Delaware state and federal courts); *Jacksen v. Chapman Scottsdale Autoplex, LLC*, No. CV-21-00087-PHX-DGC, 2021 WL 3410912, at \*3 (D. Ariz. July 21, 2021) (enforcing delegation clause, notwithstanding severability clause referencing potential court review of class action waiver); *Taylor v. Shutterfly, Inc.*, No. 18-cv-00266-BLF, 2018 WL 4334770, at \*5 (N.D. Cal. Sept. 11, 2018) (enforcing delegation clause, notwithstanding severability clause contemplating judicial determination of unenforceability); *see also Davis v. Einstein Noah Rest. Grp., Inc.*, No. 19-cv-00771-JSW, 2019 WL

6835717, at \*3 & n.1 (N.D. Cal. Oct. 23, 2019) (delegation clause “clear and unmistakable” evidence of delegation to arbitrator even with respect to questions of whether agreement applied to pre-agreement claims).

The Court’s prior reliance on *Ingram Micro Inc. v. Signeo International, Ltd.*, No. SACV 13-1934-DOC (ANx), 2014 WL 3721197 (C.D. Cal. July 22, 2014), was misplaced. See MTC/MTD Order at 8. *Ingram* pre-dates *Mohamed* and is factually distinguishable. First, in *Ingram*, the parties entered into a new agreement on the exact same issues, and the new agreement contained a merger clause reflecting the parties’ express intent to entirely supersede their earlier agreement to arbitrate, as well as a provision releasing all claims between the parties arising from their business relationship up to that date. See *Ingram*, 2014 WL 3721197, at \*2-3. No such express intent to supersede exists here. Second, *Ingram* relied on out-of-circuit caselaw that, unlike *Mohamed*, did not pertain to a competing forum selection clause. Nor did *Ingram* acknowledge that a conflict between arbitration and forum selection clauses can be “artificial,” as such clauses can and should be read harmoniously. See *id.*, 2014 WL 3721197, at \*3; *Mohamed*, 848 F.3d at 1209.

**C. Arbitration should be compelled because the User Agreement is fully integrated and the Official Rules did not amend or supersede the User Agreement.**

Although, as explained, the User Agreement’s delegation clause is dispositive and compels arbitration, alternatively arbitration should be compelled for the additional reason that the present dispute is within the scope of the parties’ arbitration agreement and

was not (as the Court previously concluded) superseded by the forum selection clause in the Official Rules.

The User Agreement contains an integration clause stating that the Agreement “comprise[s] the entire understanding and agreement between [the user] and Coinbase.” McPherson-Evans Decl. at Ex. 7, § 9.4; *id.* at Ex. 8, § 9.4; *id.* at Ex. 9, § 9.4.<sup>3</sup> The User Agreement further provides that “[w]e 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,” and “[i]f 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.”<sup>4</sup> Plaintiffs do not allege that Coinbase followed the procedure for amending the User Agreement. And nowhere do the Official Rules evince the parties’ intent to amend, revise, revoke, or supersede *any* prior agreement, including the User Agreement.

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<sup>3</sup> For Suski, that language appears in Section 8.4. *See* McPherson-Evans Decl. at Ex. 6, § 8.4.

<sup>4</sup> *Id.* at Ex. 7, § 9.5 (agreement of Martin); *id.* at Ex. 8, § 9.5 (agreement of Calsbeek). For Suski, that language, in materially similar form, appears in Section 8.5. *See id.* at Ex. 6, § 8.5. Mather’s version of the clause is substantially similar. *See id.* at Ex. 9, § 9.5 (“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 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.”).

Under controlling law, the Official Rules did not and could not amend the integrated User Agreement because there is no indication whatsoever in the agreements (or otherwise) that Coinbase and Plaintiffs intended the Official Rules to supplant the User Agreement. *Garcia v. ISS Facility Servs., Inc.*, 855 F. App'x 338, 339 (9th Cir. 2021) (emphasis added) (quoting *Masterson v. Sine*, 68 Cal. 2d 222, 225 (1968)). Any “collateral agreement itself must be examined . . . to determine whether the parties intended the subjects of negotiation it deals with to be included in, excluded from, or otherwise affected by the writing.” *Masterson*, 68 Cal. 2d at 226; see also *Stiner v. Brookdale Senior Living, Inc.*, 810 F. App'x 531, 533-34 (9th Cir. 2020) (looking to whether subsequent agreement contains a “complete agreement” provision reflecting intent to supersede an earlier agreement); *Kanno v. Marwit Cap. Partners II, L.P.*, 18 Cal. App. 5th 987, 1000 (2017) (noting California law instructs courts to look for contract terms evincing the parties’ “final expression” or “complete and exclusive statement” in finding evidence of integration (quoting Cal. Code Civ. Proc. §§ 1856(a), (b))).

**D. The User Agreement is not unconscionable.**

Finally, Plaintiffs now seek to avoid arbitration by claiming—incorrectly, and contrary to their prior representations in response to Coinbase’s MTC/MTD—that the User Agreement is unconscionable. Compare TAC ¶ X93, *with*, Pls. Opp. to MTC/MTD at 6 (“Plaintiffs do not dispute the validity of their original arbitration agreements with Coinbase, as those agreements existed on ‘March 31, 2021.’”).

The User Agreement is not unconscionable, as the vast majority of courts to evaluate the validity of Coinbase's User Agreement have concluded. *See, e.g., Berk v. Coinbase, Inc.*, 840 F. App'x 914, 915 (9th Cir. 2020) (reversing district court and holding that the plaintiffs' claims against Coinbase are subject to arbitration); *Sultan v. Coinbase, Inc.*, 354 F. Supp. 3d 156, 158 (E.D.N.Y. 2019); *Pierre v. Coinbase, Inc.*, No. 159761/20, 2021 WL 1538015, at \*1 (N.Y. Sup. Ct. Apr. 14, 2021); *Tarverdiyeva v. Coinbase Global, Inc.*, No. 8:21-cv-1717-MSS-SPF, 2021 WL 4527960, at \*2 (M.D. Fla. Sept. 8, 2021); *Strozier v. Coinbase, Inc.*, No. 651451/2018, 2018 N.Y. Misc. LEXIS 14299 (Sup. Ct., N.Y. Cnty. Sept. 10, 2018). The recent ruling in *Bielski* involved a situation where the plaintiff opposed Coinbase's motion to compel arbitration on the grounds that the User Agreement's delegation clause and arbitration agreement were unconscionable. Here, in contrast, Plaintiffs have already conceded that the delegation clause and arbitration agreement were valid and binding. But more importantly, the *Bielski* ruling runs counter to binding Ninth Circuit precedent and does not change the conclusion. *Bielski v. Coinbase, Inc.*, No. C 21-07478 WHA, 2022 WL 1062049 (N.D. Cal. Apr. 8, 2022). Coinbase has appealed that decision to the Ninth Circuit. *See* Ninth Circuit Case No. 22-15566.

**V. ALTERNATIVELY, THE COURT SHOULD ENFORCE THE CLASS ACTION WAIVER AND DISMISS THIS CASE FOR LACK OF SUBJECT-MATTER JURISDICTION.**

Although arbitration should be compelled, alternatively the Court should enforce the class action waiver in the Official Rules and dismiss the case for lack of subject-matter jurisdiction under Rule 12(b)(1)

because CAFA is Plaintiffs' sole asserted basis for federal jurisdiction over Plaintiffs' claims. *See* TAC ¶ 24 (alleging jurisdiction pursuant to CAFA). Applying the class action waiver, all that remains are individual claims, which cannot support federal jurisdiction. *See, e.g., Saldivar v. Insight Global, LLC*, No. 17-cv-05981 NC, 2018 U.S. LEXIS 119338, at \*2 (N.D. Cal. July 16, 2018) (dismissing case for lack of subject-matter jurisdiction under CAFA where named plaintiff signed class action waiver); *Archer v. Carnival Corp.*, No. 20-cv-04203- RGK-SK, 2021 U.S. Dist. LEXIS 201310, at \*9 (C.D. Cal. May 14, 2021) (same).

**A. Plaintiffs agreed to the class action waiver in the Official Rules.**

Plaintiffs do not dispute that they agreed to a class action waiver in the Official Rules, which states that Sweepstakes-related claims “may not be resolved through any form of class action.” *See* TAC, Ex. A at 9; MTC/MTD Order at 3-5 (detailing allegations that show Plaintiffs' acceptance of Official Rules).

**B. Class action waivers are enforceable under binding U.S. Supreme Court precedent.**

Plaintiffs wrongly allege in passing that class action waivers like that in the Official Rules are unenforceable under *Discover Bank v. Superior Court*, 113 P.3d 1100 (Cal. 2005). *See* TAC ¶ 94. Not so. The U.S. Supreme Court overruled *Discover Bank* on this issue. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011); *Carter v. Rent-A-Center, Inc.*, 718 F. App'x 502, 504 (9th Cir. 2017) (noting that *Discover Bank* was “expressly overruled by *Concepcion*”); *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 362 (2014) (same). The Ninth Circuit has “interpreted *Concepcion*

as foreclosing any argument that a class action waiver, by itself, is unconscionable under state law or that an arbitration agreement is unconscionable solely because it contains a class action waiver.” *Carter*, 718 F. App’x at 504 (collecting cases).<sup>5</sup>

Plaintiffs cannot simply plead in conclusory terms that the class action waiver in the Official Rules is unconscionable. Plaintiffs must meet the higher burden—as the party asserting the defense—to show both procedural and substantive unconscionability with factual allegations in support. *See Sanchez*, 61 Cal. 4th at 911 (“Because unconscionability is a contract defense, the party asserting the defense bears the burden of proof.”). Plaintiffs have not met this burden.

**C. Plaintiffs do not adequately plead that the class action waiver in the Official Rules is unconscionable.**

Plaintiffs do not specifically allege both procedural and substantive unconscionability with respect to the class action waiver they agreed to in the Official Rules. Instead, Plaintiffs quote non-exhaustive factors considered in *Discover Bank* and proclaim in conclusory fashion that the same factors must apply here to render the class action waiver unenforceable. *See TAC* ¶ 94. This argument falls short for multiple reasons.

First, the unconscionability test for class action waivers articulated in *Discover Bank* and quoted in the TAC was rejected by *Concepcion*. *See Sanchez*, 61

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<sup>5</sup> The *Concepcion* holding also applies to, and thus invalidates, the CLRA’s anti-waiver provision, insofar as the CLRA bars class waivers in arbitration agreements covered by the FAA (as the parties’ agreements are so governed here). *See Sanchez v. Valencia Holding Co.*, 61 Cal. 4th 899, 924 (2015).



Cal. 4th at 923 (noting *Discover Bank*'s unconscionability "rule was abrogated by *Concepcion*"). It is far from sufficient for Plaintiffs to parrot that holding, without more. For the same reasons discussed above with respect to the User Agreement (*see supra* Section IV.A.2), the TAC fails to allege the Official Rules are unconscionable under California law.

Second, although *Discover Bank* has been abrogated, the Official Rules' class action waiver is nonetheless fully enforceable under *Discover Bank*'s non-exhaustive test. Per *Discover Bank*, a class action waiver in a contract of adhesion is only unconscionable—and thus unenforceable—when disputes “between the contracting parties predictably involve *small amounts* of damages,” and the party with “superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of *individually small sums* of money.” 113 P.3d at 162-63 (emphasis added). Courts appropriately consider the entire theory of damages in deciding whether the “small amounts” contemplated by *Discover Bank* are at stake. *See Arguelles-Romero v. Super. Ct.*, 184 Cal. App. 4th 825, 844 (2010) (rejecting plaintiffs' attempt to minimize individual damage amounts for purposes of enforcing class action waiver and faulting plaintiffs for “fail[ing] to establish that these amounts are too small to justify individual actions”).

Under this standard, there is no basis for a finding of unconscionability here because the requested damages amounts are neither “predictable” nor “small.”<sup>6</sup>

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<sup>6</sup> Plaintiffs' damages allegations are baseless and improper as a matter of law. But even if Plaintiffs' damages allegations were valid (they are not), they fail to satisfy *Discover Bank*.

Plaintiffs' requested damages seek, among other things, "disgorgement of [Coinbase's] ill-gotten gains" (*see, e.g.*, TAC 99(f), 124, 134, 137, 144, 151, 156), which they allege amount to "hundreds of millions of dollars" (*see, e.g., id.* 16, 17, 59, 133, 141). Plaintiffs also point to the allegedly "huge amount of commissions that Coinbase could earn from millions of users buying and selling DOGE on its platform," not limited to the alleged class. The TAC also contains multiple allegations about the price volatility of Dogecoin (*see, e.g., id.* ¶¶ 3-4, 61-62), indicating that Plaintiffs' damages claims may include losses related to trading Dogecoin regardless of whether those losses are related to the Dogecoin Sweepstakes. Finally, Plaintiffs also seek punitive damages.

Although the exact amount of damages Plaintiffs seek remains ambiguous, that too is why they fail to establish unconscionability under *Discover Bank*, which emphasizes that class action waivers are unconscionable only where the damages sought are both *predictable* and *small*. For example, in *Discover Bank*, class members sought to recover only a \$29 late fee and other miniscule charges by the defendant bank. 36 Cal. 4th at 159-61. Here, by contrast, Plaintiffs seek the disgorgement of "hundreds of millions of dollars" that Coinbase allegedly "gained" from the sweepstakes (*see, e.g.*, TAC ¶ 99(f)), as well as damages tied to the volatility of the price of Dogecoin. These damages are far from "small" or "predictable," but could easily amount to thousands of dollars, depending on the amount of Dogecoin at issue and the trading periods involved. Under *Discover Bank*, courts enforce class action waivers where, as here, the individualized damages claims are unpredictable and potentially amount to thousands of dollars, and the aggregated claims

amount to hundreds of millions of dollars. *See Provencher v. Dell, Inc.*, 409 F. Supp. 2d 1196, 1202 (C.D. Cal. 2006) (class action waiver was enforceable where, as here, the plaintiff did “not state the specific amount of damages he is seeking for himself and the nationwide class,” but “clearly [was] seeking to recover a significant amount of money,” and where the aggregate recover would be “a significant amount of money, most likely hundreds of millions of dollars”); *see also Arguelles-Romero*, 184 Cal. App. 4th at 844 (upholding class action where waiver plaintiffs “wholly failed to introduce any evidence as to the size of the amounts” of damages they sought, and the court inferred from the pleadings that their recovery would be approximately \$16,000).

Accordingly, the Official Rules’ class action waiver is enforceable. Without a class action to bring, Plaintiffs cannot satisfy the CAFA jurisdictional requirements and the Court should dismiss the case for lack of subject-matter jurisdiction under Rule 12(b)(1). Alternatively, the Court should strike the class allegations under Rule 12(f).

#### **VI. ALTERNATIVELY, THE COURT SHOULD DISMISS PLAINTIFFS’ CLAIMS.**

Plaintiffs have failed to cure the fundamental flaw in their lottery claims: because participants could enter the Dogecoin Sweepstakes for free, the contest was a lawful sweepstakes, not an unlawful lottery. The Court should again dismiss Plaintiffs’ lottery claims. In addition, the Court should dismiss Plaintiffs’ CLRA claims because cryptocurrencies like Dogecoin are not “goods” within the meaning of the statute, and cryptocurrency exchanges like Coinbase are not “services.”

**A. Plaintiffs again fail to adequately allege that the Dogecoin Sweepstakes was an illegal lottery (claims 1, 2, and 6).**

The Dogecoin sweepstakes had a free alternative method of entry that any consumer could use to enter the contest without having to purchase Dogecoin. Thus, the Court previously dismissed Plaintiffs' lottery claims, determining that the element of consideration was missing because Plaintiffs "were not actually required to trade Dogecoins in order to enter the sweepstakes and have a chance to win." MTC/MTD Order at 13. Plaintiffs fail to cure this defect in their TAC. They concede that participants could have entered the sweepstakes for free, but allege that an "ordinary, reasonable consumer" would not have known that a free alternative method of entry was available. TAC ¶ 68. But there is no "reasonable consumer" test in California lottery law—what matters is *whether* a free alternative method of entry existed, not whether a participant knew about it. Plaintiffs' lottery claims once again fail as a matter of law—and because further amendment would be futile, the Court should dismiss these claims with prejudice.

It is black letter law that an illegal lottery must have 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).

In its previous order dismissing Plaintiffs’ lottery claims, the Court recognized that no consideration was required because participants could enter for free, and thus the Dogecoin Sweepstakes was not an illegal lottery. MTC/MTD Order at 11-13. The Court explained that it made no difference whether Plaintiffs were “aware of [the free alternative method of entry] when they made a trade of Dogecoins” because they “were not actually *required* to trade Dogecoins in order to enter the sweepstakes and have a chance to win.” *Id.* at 13 (emphasis added). The Court concluded that Plaintiffs “have not *and cannot* allege a violation” of California’s lottery laws. *Id.* (emphasis added).

Nonetheless, Plaintiffs have reasserted their lottery claims in the TAC without alleging any new facts that change the outcome. They repeat their allegations that Coinbase’s disclosures were deceptive, and contend now that “the ordinary, reasonable consumer could not be expected to have known” about the free alternative method of entry. TAC ¶ 68. Nothing has changed. And as the Court explained in its previous order, the relevant inquiry is whether a free alternative method of entry existed, not whether participants knew about it. There is no dispute that such a method existed here, and Plaintiffs do not (and cannot) contend otherwise.

There is also no basis for the Court to import a “reasonable consumer” test into California lottery law. As the Court explained, the fact that “many people may not have been aware that there was a free method of entry is significant for Plaintiffs’ claims for disclosure and misrepresentation under the UCL, FAL, and

CLRA[,]” but “no California court has held that being unaware of the free method of entry is sufficient” to state a lottery claim. MTC/MTD Order at 13.

Plaintiffs further allege that the “truth” about the free alternative method of entry “was reasonably and objectively knowable only to the Defendants themselves.” TAC ¶ 68. That is not merely irrelevant, it is *false*. As Plaintiffs concede throughout the TAC and elsewhere, Coinbase disclosed the existence of the free method of entry and stated that no purchase was necessary to participate. *See, e.g., id.* ¶¶ 77-78 (admitting that Coinbase included a “no-purchase-or-payment-necessary message” in its “sweepstakes email, web, [and] mobile app ads”), ¶¶ 81-87 (same); *see also* Pls.’ Opp’n to Mot. to Compel and Dismiss, ECF No. 40 at 7 (acknowledging that Coinbase’s sweepstakes materials contained “conspicuous statement[s] that ‘[t]erms and conditions appl[ied]’” and that these statements were “coupled with reasonably conspicuous hyperlinks” to the Official Rules, which clearly disclosed the free alternative method of entry).

Accordingly, the Court should dismiss with prejudice Plaintiffs’ first claim (violation of Cal. Bus. & Prof. Code § 17200) in full. The Court should also dismiss with prejudice Plaintiffs’ second claim (violation of Cal. Bus. & Prof. Code §§ 17200, 17539.15) and sixth claim (violation of Cal. Civ. Code § 1750) to the extent they are premised on a violation of Cal. Penal Code § 320.

**B. The CLRA does not apply to cryptocurrencies or cryptocurrency exchange platforms (claims 6 and 7).**

Plaintiffs’ CLRA claims should be dismissed because virtual cryptocurrencies like Dogecoin are not

“tangible chattels” to which the CLRA applies and Coinbase is not a covered “service.”

The CLRA provides remedies to any consumer who “seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.” Cal. Civ. Code § 1761(d).

The CLRA defines “goods” and “services” as follows:

“Goods” means *tangible chattels* bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

Cal. Civ. Code § 1761(a) (emphasis added).

“Services” means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of *goods*.

Cal. Civ. Code § 1761(b) (emphasis added).

The CLRA does not apply to Plaintiffs’ claims because virtual currencies—including cryptocurrencies like Dogecoin—are not “tangible chattels” within the meaning of the statute because they exist only online, and cryptocurrency exchange platforms are not covered “services.”<sup>7</sup>

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<sup>7</sup> “Tangible” means “perceptible by touch.” “Tangible,” adj., Lexico.com (Oxford), <https://www.lexico.com/en/definition/tangible> (last visited June 9, 2022)

After the Court issued its order on Coinbase’s previous motion to compel and dismiss, another court in this district considered CLRA claims (among others) asserted against Nexo, a cryptocurrency exchange platform like Coinbase. *Jeong v. Nexo Fin. LLC*, No. 21-CV-02392-BLF, 2022 WL 174236 (N.D. Cal. Jan. 19, 2022). It concluded that the CLRA was inapplicable because cryptocurrencies are not “tangible chattels,” and cryptocurrency exchanges are merely ancillary services rather than “services” to which the CLRA applies. *Id.* at \*23-24. It determined that cryptocurrencies are “intangible” just like extensions of credit, which are unambiguously outside the CLRA’s scope. *Id.* at \*23 (citing, among others, *Berry v. Am. Express Publ’g, Inc.*, 147 Cal. App. 4th 224, 229, 233 (2007)). It also analogized cryptocurrencies to virtual currencies on digital platforms, which are similarly “outside the purview of the CLRA, since they ‘exist only as an indicia of the credit extended’ like in *Berry*.” *Id.* (citing *Doe v. Epic Games, Inc.*, 435 F. Supp. 3d 1024, 1046 (N.D. Cal. 2020) and *I.B. ex rel. Fife v. Facebook, Inc.*, 905 F. Supp. 2d 989, 1007-1009 (N.D. Cal. 2012)); *see also Reeves v. Niantic, Inc.*, 21-cv-05883-VC, 2022 WL 1769119, at \*2 (N.D. Cal. May 31, 2022) (dismissing CLRA claims with prejudice because “PokeCoins”—a virtual currency used in the Pokemon virtual world—are not tangible “goods” and the sale of virtual currencies is not a “service,” and noting that “courts should not shoehorn transactions involving the purchase of intangible goods into the definition of ‘services’”).

With respect to the CLRA claims, this case is directly analogous to *Jeong*, and the Court should likewise dismiss Plaintiffs’ CLRA claims with prejudice. *Id.* at \*24 (finding that amendment would be futile because “the Court does not see how Plaintiff could



amend its claims to plausibly allege that Nexo offers anything other than intangible goods and ancillary services” on its cryptocurrency exchange platform).

**VII. THE COURT SHOULD DISMISS PLAINTIFFS’ REQUESTS FOR INJUNCTIVE RELIEF OR, ALTERNATIVELY, STRIKE THOSE REQUESTS.**

The Dogecoin Sweepstakes is over. Coinbase operated the Dogecoin Sweepstakes for approximately one week in June of 2021. TAC 6-17. There is no allegation that Coinbase anticipates operating Sweepstakes in the same fashion again at any time in the future, nor is there any allegation that Coinbase is currently engaging in or is expected to engage in any of the challenged conduct against Plaintiffs or anyone else in the future. Accordingly, the Court should dismiss Plaintiffs’ requests for injunctive relief for lack of standing under Rule 12(b)(1), or, in the alternative, strike these requests under Rule 12(f).<sup>8</sup>

“To have standing to assert a claim for prospective injunctive relief, a plaintiff must demonstrate ‘that he is realistically threatened by a repetition of [the violation].’” *Melendres v. Arpaio*, 695 F.3d 990, 997 (9th Cir. 2012) (quoting *City of Los Angeles v. Lyons*, 461 U.S.

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<sup>8</sup> Courts in this district are split on whether a challenge to injunctive relief should be asserted in a motion to dismiss or a motion to strike. See *Grayson v. Cnty. of Marin*, No. 14-CV-05225-JST, 2015 WL 720830, at \*2 (N.D. Cal. Feb. 18, 2015) (denying motion to strike and suggesting that the proper vehicle would be a motion to dismiss). But see *Mou v. SSC San Jose Operating Co.*, 415 F. Supp. 3d 918, 932-33 (N.D. Cal. 2019) (striking request for injunctive relief under Rule 12(f)). Thus, Coinbase requests that the Court dismiss Plaintiffs’ claims for injunctive relief under Rule 12(b)(1), or alternatively, strike those claims under Rule 12(f).

95, 109 (1983)); *see also* *Young v. Oakland Unified Sch. Dist.*, 20-CV-00685-VC, 2020 WL 6684844, at \*1 (N.D. Cal. Nov. 12, 2020) (striking request for prospective injunctive relief for lack of standing). To establish standing, a plaintiff must identify a “threat of injury” that is “actual and imminent, not conjectural or hypothetical.” *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)). Thus, “the ‘threatened injury must be certainly impending to constitute injury in fact’ and ‘allegations of possible future injury are not sufficient.’” *Id.* (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (emphasis in original)).

There is nothing to enjoin in this case. The TAC contains various boilerplate requests for injunctive relief, but fails to identify any ongoing conduct or any possibility of future injury, much less a “certainly impending” injury. *See, e.g.*, TAC, Prayer for Relief (requesting “an order permanently and publicly enjoining Defendants from engaging in the unlawful and unfair business acts and practices alleged herein”); *see also id.* ¶ 110 (“Plaintiffs, on behalf of themselves and the Class, and as appropriate, on behalf of the general public, seek permanent injunctive relief prohibiting Defendants from continuing such wrongful practices[.]”). All of Plaintiffs’ claims—comprising allegations that the Dogecoin Sweepstakes was an unlawful lottery and that Coinbase made deceptive statements in its Sweepstakes marketing materials—relate entirely to Coinbase’s *previous* conduct in connection with the marketing and operation of the Sweepstakes. The Sweepstakes has ended, and there are no allegations that Coinbase will reopen the Sweepstakes or re-engage in any of the allegedly unlawful conduct that

Plaintiffs challenge. Indeed, Plaintiffs are not even Coinbase customers anymore,<sup>9</sup> and thus cannot be harmed by participating in future sweepstakes. Because there is no risk of future harm whatsoever, the Court should dismiss Plaintiffs' requests for injunctive relief for lack of standing. *See, e.g., Olmos v. Harbor Freight Tools USA, Inc.*, 18-CV-04986-SK, 2018 WL 8804820, at \*4 (N.D. Cal. Dec. 24, 2018) (Kim, J.) (dismissing requests for injunctive relief for lack of standing where the plaintiff did not allege that he would be harmed in the future by the defendant's advertisements); *Scott v. AT&T Inc.*, 19-CV-04063-SK, 2021 WL 2839959, at \*5 (N.D. Cal. Feb. 16, 2021) (Kim, J.) (dismissing requests for injunctive relief for lack of standing where there was no indication that AT&T would continue to provide customers' geolocation data to the government).

### VIII. CONCLUSION

Coinbase joins in Defendant Marden-Kane's motion to compel arbitration as to all parties. Alternatively, the Court should enforce the binding class action waiver in the Official Rules and dismiss this case for lack of subject-matter jurisdiction under Rule 12(b)(1). Additionally, the Court should dismiss Plaintiffs' lottery claims and CLRA claims with prejudice because (1) no further amendments could cure the defects identified above and (2) further amendment would cause

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<sup>9</sup> Plaintiffs' counsel contacted Coinbase's counsel on January 28, 2022, to ask Coinbase to close each Plaintiff's Coinbase account. Coinbase complied. The Court may take judicial notice of this fact because it is not reasonably in dispute. *Hash v. Kanaan*, No. 17-CV-01663-SK (PR), 2018 WL 9801576, at \*3 (N.D. Cal. Jan. 4, 2018) (Kim, J.) (citing *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001)).

undue delay, as Plaintiffs have already amended their complaint three times since June 2021. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995) (“Futility of amendment can, by itself, justify the denial of a motion for leave to amend.”); *Senza-Gel Corp. v. Seiffhart*, 803 F.2d 661, 666 (9th Cir. 1986) (dismissal with prejudice is warranted where amendment would cause undue delay). Finally, the Court should dismiss or strike Plaintiffs’ requests for injunctive relief.

Dated: June 9, 2022

COOLEY LLP

By: /s/ Michael G. Rhodes  
Michael G. Rhodes

Attorneys for Defendant  
COINBASE, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed August 31, 2022]

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Case No. 21-cv-04539-SK

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DAVID SUSKI, et al.,  
*Plaintiffs,*

v.

MARDEN-KANE, INC., et al.,  
*Defendants.*

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**ORDER GRANTING IN PART AND DENYING  
IN PART DEFENDANTS' MOTIONS TO  
DISMISS**

Regarding Docket Nos. 87, 88

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This matter comes before the Court upon consideration of the motions to dismiss filed by Defendant Marden-Kane, Inc. (“Marden-Kane”) and by Coinbase Global, Inc. (“Coinbase”) (collectively referred to as “Defendants”). Having carefully considered the parties’ papers, relevant legal authority, and the record in the case, and having had the benefit of oral argument, the Court hereby GRANTS IN PART and DENIES IN PART both Defendants’ motion for the reasons set forth below.

## BACKGROUND

Plaintiffs David Suski, Jaimee Martin, Jonas Calsbeek and Thomas Maher (collectively, “Plaintiffs”) filed this purported class action on behalf of themselves and persons who opted into Coinbase’s \$1.2 million Dogecoin (DOGE) sweepstakes in June 2021, and who purchased or sold Dogecoin on a Coinbase exchange for a total of \$100 or more between June 3, 2021 and June 10, 2021. (Dkt. No. 83 (Third Amended Complaint, ¶ 95.) Coinbase hired Marden-Kane as the administrator of the Dogecoin Sweepstakes. (*Id.*, ¶ 23)

Plaintiffs are Coinbase users with Coinbase accounts, which they created before the sweepstakes began. When they created their Coinbase accounts, each Plaintiff agreed to the Coinbase User Agreement, each of which contains an arbitration provision. Suski agreed to a User Agreement with the following provision:

. . . 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 . . .

(Dkt. No. 33-7 (Attached as Exhibit 6 to the Declaration of Carter McPherson-Evans) (emphasis in original).) Martin, Calsbeek, and Maher agreed to a User Agreement with the following provision:

**. . . 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**

<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.**

\* \* \*

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.

(Dkt. Nos. 33-8, 33-9, 33-10 (Exhibits 7, 8, 9 to the McPherson-Evans Decl.) (emphasis in original).)

Suski accepted Coinbase's User Agreement on January 24, 2018; Martin accepted on February 12, 2021; Calsbeek accepted on May 13, 2021; and Maher accepted on April 5, 2020. (Dkt. Nos. 33-3, 33-4, 33-5, 33-6 (Exhibits 2 through 5 to the McPherson-Evans Decl.).)

Plaintiffs then participated in Coinbase's June 2021 sweepstakes. The "Official Rules" for the Dogecoin Sweepstakes identifies Coinbase as the sponsor and Marden-Kane as the administrator and states:



Participation [in the Sweepstakes] constitutes entrant's full and unconditional agreement to these Official Rules and [Coinbase's] and [its] Administrator's decisions, which are final and binding in all matters related to the Sweepstakes."

(Dkt. No. 83-1, Ex. A (Official Rules), ¶ 1.) The Official Rules further provide:

THE CALIFORNIA COURTS (STATE AND FEDERAL) SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THE PROMOTION AND THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN THE PROMOTION. EACH ENTRANT WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION AND VENUE IN THOSE COURTS FOR ANY REASON AND HEREBY SUBMITS TO THE JURISDICTION OF THOSE COURTS. Claims may not be resolved through any form of class action.

(*Id.*, ¶10.)

The Court denied Coinbase's earlier motion to compel arbitration, which Coinbase then appealed to the Ninth Circuit. (Dkt. Nos. 53, 58.) The Court also granted in part and denied in part Coinbase's alternative motion to dismiss. (Dkt. No. 53.) The Court granted the motion as to Plaintiffs' claim that the Dogecoin Sweepstakes constituted an illegal lottery under California Penal Code § 320 but provided Plaintiffs with leave to amend. (*Id.*) Marden-Kane did not move to compel arbitration or dismiss any of Plaintiff's claims at that time. Plaintiffs filed their Third Amended Complaint in response. (Dkt. No. 83.)

In their Third Amended Complaint, Plaintiffs bring the following claims against both Defendants: (1) violations of the California Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* (“UCL”) based on California Penal Codes §§ 319 and 320 regarding unlawful lotteries; (2) violations of UCL based on California Business and Professions Code § 17539.15 regarding solicitation materials for sweepstakes; (3) violation of California Business and Professions Code §§ 17500, *et seq.*, (“FAL”) for false advertising; (4) violation of UCL for false advertising; (5) violation of UCL for unfair business practices; (6) violations of California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”); and (7) violations of UCL based on unlawful acts under the CLRA. (Dkt. No. 83.)

## ANALYSIS

### A. Applicable Legal Standard on Motion to Dismiss.

A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. On a motion to dismiss under Rule 12(b)(6), the Court construes the allegations in the complaint in the light most favorable to the non-moving party and takes as true all material allegations in the complaint. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). Even under the liberal pleading standard of Rule 8(a)(2), “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Rather, a plaintiff

must instead allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

“The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully . . . . When a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). If the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g. Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Lieche, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

As a general rule, “a district court may not consider material beyond the pleadings in ruling on a Rule 12(b)(6) motion.” *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on other grounds, Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (citation omitted). However, documents subject to judicial notice, such as matters of public record, may be considered on a motion to dismiss. *See Harris v. Cnty of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2011). In doing so, the Court does not convert a motion to dismiss to one for summary judgment. *See Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991). “The court need not . . . accept as true allegations that contradict matters properly subject to judicial notice . . . .” *Sprewell v. Golden State Warriors*, 266 F. 3d 979, 988 (9th Cir. 2001).

## **B. Defendants' Motions to Dismiss.**

Each Defendant joined in the other's arguments made in the respective motions. Therefore, the Court will address both motions together. However, in the future, the parties are required to make the arguments they are on which they relying and opposing in their own briefs. The Court will not refer to a separate brief in evaluating a party's argument.

### **1. Arbitration.**

In their motion to dismiss, Marden-Kane moves to enforce the arbitration provision in Coinbase's User Agreement, an agreement between Coinbase and Plaintiffs as Coinbase users. Coinbase joins in the motion.

#### **i. Coinbase.**

This Court no longer has jurisdiction over the issue of whether the arbitration clause of Coinbase's User Agreement applies to Coinbase. Coinbase appealed the Court's denial of its motion to compel arbitration to the Ninth Circuit, and that appeal deprives this Court of jurisdiction over the issue of arbitration. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance - it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."). Coinbase's cites to *Medidata Solutions, Inc. v. Veeva Systems, Inc.*, 748 F. App'x 363 (2nd Cir. 2018), which held that the filing of an amended complaint divested the circuit court's jurisdiction over the appeal of the denial of motion to compel arbitration based on the prior complaint. If Coinbase believes that Plaintiffs' filing of their Third

Amended Complaint divested the Ninth Circuit of jurisdiction over the pending appeal, then Coinbase should withdraw its appeal. As the Supreme Court has made clear, “a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously.” *Griggs*, 459 U.S. at 58. Unless and until the Ninth Circuit remands the arbitration issue back to this Court or Coinbase withdraws its appeal, this Court does not have jurisdiction over the arbitration issue. Moreover, the Court notes that, in *Medidata Solutions*, the Second Circuit observed, without providing any factual detail, that the amended complaint contained new factual allegations which superseded the allegations of the prior complaint. *Medidata Solutions*, 748 F. App’x at 365. Here, while Plaintiffs filed an amended complaint, the new factual allegations do not affect the arbitration analysis in any manner.

**ii. Marden Kane.**

Absent an applicable exception, Marden-Kane does not have standing to enforce an arbitration provision in an agreement to which it is not a party. *Britton v. Co-op Banking Grp.*, 4 F.3d 742, 744 (9th Cir. 1993) (“An entity that is neither a party to nor agent for nor beneficiary of the contract lacks standing to compel arbitration.”). The legal theories on which Marden-Kane rely to support standing - equitable estoppel and successor in interest - are inapplicable. *See Goldman v. KPMG, LLP*, 173 Cal. App. 4th 209, 213-14 (2009) (“The *sine qua non* for allowing a nonsignatory to enforce an arbitration clause based on equitable estoppel is that the claims the plaintiff asserts against the nonsignatory are dependent on or inextricably bound up with the contractual obligations of the agreement containing the arbitration clause.”). Here, none of

Plaintiffs' claims against either Defendant are inextricably bound up with the contractual obligations of the User Agreements. *See also Allen v. Shutterfly, Inc.*, 2020 WL 5517172, at \*8 (N.D. Cal. Sept. 14, 2020) (“To the extent Plaintiff argues the new Shutterfly (Shutterfly LLC) lacks standing to enforce the Arbitration Agreement, Plaintiff has provided no authority and articulated no arguments as to why a restructured successor is barred from enforcing an arbitration agreement entered into by its predecessor.”) And Marden-Kane does not even argue and can point to no evidence showing that it is a successor-in-interest to Coinbase, so Marden-Kane cannot enforce the terms of the User Agreements on that basis.

Therefore, the Court denies both Defendants' motions with respect to the issue of arbitration.

## **2. Pre-Arbitration Dispute Process**

Three of the four User Agreements between Plaintiffs and Coinbase provide:

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.

(Dkt. Nos. 33-8, 33-9, 33-10.)

Marden-Kane - but notably not Coinbase - argues that the Court must dismiss Plaintiffs' claims because Plaintiffs failed to comply with this process for contacting Coinbase before filing suit. However, as discussed above, Marden-Kane lacks standing to enforce the User Agreements between Plaintiffs and Coinbase.

Moreover, even if the Court could find that Marden-Kane had standing, the provision in the User Agreements with three of the Plaintiffs is inapplicable to this lawsuit, according to its terms. The provision explicitly applies only to claims filed in arbitration or small claims court: "You agree to use this process before filing any arbitration claim or small claims action." (Dkt. Nos. 33-8, 33-9, 33-10.) Here, Plaintiffs filed suit in federal court and did not file an arbitration claim or small claims action, and thus the plain terms of the User Agreements do not apply.

Because Marden-Kane lacks standing and because this provision is simply inapplicable, the Court need not address whether it is unconscionable.

### **3. Class Action Waiver in Official Rules.**

Defendants both argue that the Court should enforce the class action waiver in the Dogecoin Sweepstakes Official Rules. However, where, as here, a class action waiver is not coupled with an arbitration provision, California law on unconscionability applies.<sup>1</sup>

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<sup>1</sup> Coinbase argues that *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) bars Plaintiffs' argument that the class action waiver is unconscionable. However, in *Concepcion*, the

California courts apply a three-part inquiry in order to determine whether a class action waiver in a consumer contract is unconscionable:

(1) whether the agreement is a consumer contract of adhesion drafted by a party that has superior bargaining power; (2) whether the agreement occurs in a setting in which disputes between the contracting parties predictably involve small amounts of damages; and (3) whether it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money.

*Shroyer v. New Cingular Wireless Servs., Inc.*, 498 F.3d 976, 983 (9th Cir. 2007) (quotation marks omitted) (summarizing how California courts have construed *Discover Bank v. Superior Court of Los Angeles*, 36 Cal. 4th 148 (Cal.2005)).

Defendants do not contest that the Official Rules is a consumer contract of adhesion, that Coinbase had superior bargaining power, or that Plaintiffs allege that Coinbase carried out a scheme to cheat consumers.<sup>2</sup> Instead, Defendants focus on the second

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Supreme Court merely held that the Federal Arbitration Act preempted California's *Discover Bank* rule. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011). Where, as here, the class action waiver in the Official Rules is not coupled with an arbitration provision, *Concepcion* does not apply.

<sup>2</sup> In its reply brief, Marden-Kane argues that Plaintiffs fail to allege facts to support its unconscionability argument with sufficient particularity. However, a party cannot raise a new argument for the first time in its reply brief. Regardless, the Court



requirement of unconscionability above: whether Plaintiffs' alleged damages do not "predictably involve small amounts." Plaintiff David Suski spent \$100 to buy Dogecoins to enter the Dogecoin Sweepstakes. (Dkt. No. 83, ¶ 27.) Plaintiff Jaimee Martin spent \$220 to buy Dogecoins to enter the Dogecoin Sweepstakes. (*Id.*, ¶¶ 30, 31.) Plaintiff Jonas Calsbeek spent \$125 to buy Dogecoins to enter the Dogecoin Sweepstakes. (*Id.*, ¶ 35.) Plaintiff Thomas Maher spent \$105 to buy Dogecoins to enter the Dogecoin Sweepstakes. (*Id.*, ¶ 38.) Each Plaintiff's alleged damages are well under \$1,000, and courts have found amounts of \$1,000 are small enough to satisfy the second element of the *Discover Bank* test. *Shroyer*, 498 F.3d at 984 (citing cases).

Plaintiffs' request for attorneys' fees does not alter this analysis. *Id.* at 986 (noting "[t]he California Supreme Court in *Discover Bank* rejected 'the rationale . . . that the potential availability of attorney fees to the prevailing party in arbitration or litigation ameliorates the problem posed by such class action waivers.'" (quoting *Discover Bank*, 36 Cal. 4th at 162)).

Lastly, Plaintiffs' request for disgorgement and punitive damages does not enlarge their damages to render the class action waiver conscionable. California law does not allow "nonrestitutionary disgorgement," meaning that Plaintiffs can recover disgorgement only for amounts paid out of pocket. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1148-49 (2003) ("nonrestitutionary disgorgement is not an available remedy in an individual action under the

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finds that Plaintiffs have sufficiently alleged sufficient facts to satisfy all of the elements of the *Discover Bank* test.

UCL”); *Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1113 (N.D. Cal. 2018) (“it is well-established that nonrestitutionary disgorgement, which focuses on the defendant's unjust enrichment, is unavailable in a . . . class action under the FAL, CLRA, and UCL) (internal quotation marks and citations omitted). Moreover, while Plaintiffs seek punitive damages, punitive damages are only available under Plaintiffs’ CLRA claim. See *Roper v. Big Heart Pet Brands, Inc.*, 510 F. Supp. 3d 903, 926 (E.D. Cal. 2020) (“Punitive damages are generally not available under the UCL or FAL.”). As discussed below, the Court finds that Plaintiffs cannot state a claim under the CLRA as a matter of law. Therefore, Plaintiffs cannot recover punitive damages. For these reasons, the Court finds that Plaintiffs’ claims predictably involve small amounts of damages and that the class action waiver is unconscionable.

#### **4. Plaintiffs’ Illegal Lottery Claims.**

The Court previously rejected Plaintiffs’ contention that the Dogecoin sweepstakes violates California Penal Code § 320. (Dkt. No. 53.) The Court held that:

[a]lthough Plaintiffs may not have been aware of it when they made a trade of Dogecoins, they were not actually required to trade Dogecoins in order to enter the sweepstakes and have a chance to win. Because California penal statutes are construed strictly and because no California court has held that being unaware of the free method of entry is sufficient to demonstrate the required consideration, the Court finds that Plaintiffs have not and cannot allege a violation of California Penal Code § 320.

(*Id.* at p. 13.) In their Third Amended Complaint, Plaintiffs include allegations that in addition to *their*

subjective lack of knowledge of the free method of entry, “the ordinary, reasonable consumer could not be expected to have known the truth that Defendants would privately allow Coinbase users to” enter the sweepstakes without buying or selling Dogecoin on Coinbase and that the “truth was reasonably and objectively knowable only to the Defendants themselves.” (Dkt. No. 83, ¶ 68.) Plaintiffs further allege that Defendants “objectively conceal[ed] from those consumers and from the public at large that the consumers [could] obtain free chances to win.” (*Id.*, ¶ 74.) Again, Plaintiffs’ allegations center around Defendants’ alleged misrepresentations and disclosures, or lack of disclosures. As the Court previously stated “[b]ecause California penal statutes are construed strictly and because no California court has held that being unaware of the free method of entry is sufficient to demonstrate the required consideration, the Court finds that Plaintiffs have not and cannot allege a violation of California Penal Code § 320.” Plaintiffs have not cited to any authority to alter the Court’s conclusion. Accordingly, the Court GRANTS Defendants’ motions as to Plaintiffs’ claims to the extent they are premised on allegations of an illegal lottery. Moreover, because giving leave to amend would be futile, the Court dismisses such claims with prejudice.

### **5. Allegations Against Marden-Kane.**

Marden-Kane argues that Plaintiffs fail to allege sufficient allegations against it to support their claims against Marden-Kane but merely group Marden-Kane together with Coinbase. Plaintiffs allege that Coinbase hired Marden-Kane to help plan and execute the Dogecoin Sweepstakes. (Dkt. No. 83, ¶ 6; *see also* ¶ 23 (Marden-Kane “contracted with Defendant Coinbase to serve as Coinbase’s “Administrator” for the June

2021 Dogecoin sweepstakes.”.) Plaintiffs further allege that Marden-Kane and Coinbase, in collaboration, drafted, structured and designed the emails and digital ads for the Dogecoin Sweepstakes. (*Id.*, ¶ 7; see also ¶ 108 (Marden-Kane collaborated “with Coinbase to draft, design and structure Defendants’ digital ad campaign for the “sweepstakes,” and to draft and finalize the “Official Rules[.]”).) Coinbase and Marden-Kane knew that the advertisements had the likelihood, tendency and capacity to mislead and confuse consumers. (*Id.*, ¶¶ 52.) Plaintiffs then describe an earlier sweepstakes for which Coinbase and Marden-Kane had collaborated. (*Id.*, ¶¶ 53-56.) The Court finds that Plaintiffs allege sufficient facts related to Marden-Kane to hold Marden-Kane liable for any misrepresentations in the advertisements for the Dogecoin Sweepstakes. Accordingly, the Court denies Marden-Kane’s motion to dismiss on this ground.

### **6. Plaintiffs’ CLRA Claims.**

Both Coinbase and Marden-Kane move to dismiss Plaintiffs’ CLRA claims. Plaintiffs argue that, pursuant to Federal Rule of Civil Procedure 12(g), which prohibits successive motions to dismiss, the Court should not consider Coinbase’s arguments. However, some courts have held that, although Rule 12(g) “technically prohibits successive motions to dismiss that raise arguments that could have been made in a prior motion . . . courts faced with a successive motion often exercise their discretion to consider the new arguments in the interests of judicial economy.” *Amaretto Ranch Breedables, LLC v. Ozimals, Inc.*, 2011 WL 2690437, \*2 n. 1 (N.D. Cal. 2011) (“Rule 12(g) merely prohibits them from raising it before filing an answer because they did not raise it in their initial response under Rule 12(b). Plaintiffs do not dispute that

Defendants would simply be able to renew their motion as a Rule 12(c) motion for judgment on the pleadings after filing an answer.”); *see also Banko v. Apple, Inc.*, 2013 WL 6623913, at \*2 (N.D. Cal. Dec. 16, 2013); *Green v. ADT, LLC*, 2016 WL 5339800, at \*6 (N.D. Cal. Sept. 23, 2016) (“Some courts have, however, exercised their discretion to consider the untimely arguments if they were not interposed for delay and the final disposition of the case would thereby be expedited.”) (quotation marks omitted) (citing cases). Here, the Court finds that judicial economy warrants considering Coinbase’s arguments. As discussed below, the Court finds that Plaintiffs’ CLRA claims fail as a matter of law. The Court’s reason for dismissing the claim against Marden-Kane applies equally to Plaintiffs’ CLRA claims against Coinbase, so applying that argument only to Marden-Kane and forcing Coinbase to file a motion for judgment on the pleadings at a later date is not an efficient way to address this issue.

The CLRA prohibits certain “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of *goods or services* to any consumer.” Cal. Civ. Code § 1770(a) (emphasis added). The CLRA defines “goods” as “tangible chattels bought or leased for use primarily for personal, family, or household purposes,” and “services” as “work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.” Cal. Civ. Code § 1761(a), (b).

Interpreting these definitions, the California Supreme Court held that the CLRA’s protections do not extend to the sale of life insurance. *Fairbanks v. Superior Court*, 46 Cal. 4th 56, 61 (2009). The Court

reasoned life insurance contracts are not “tangible chattels,” and therefore not “goods” under the CLRA. *Id.* The plaintiffs in that case also argued the work and labor in connection with helping consumers select insurance policies, assisting policyholders to maintain their policies, and processing claims were all “services” under the CLRA. *Id.* at 65. The Court rejected that argument, as well: “Using the existence of these ancillary services to bring intangible goods within the coverage of the [CLRA] would defeat the apparent legislative intent in limiting the definition of ‘goods’ to include only ‘tangible chattels.’” *Id.* Following *Fairbanks*, the California Court of Appeal concluded the CLRA’s prohibitions do not extend to mortgage loans or the ancillary services connected with servicing home loans. *Alborzian v. JP Morgan Chase Bank, N.A.*, 235 Cal. App. 4th 29, 33 (2015) (“*Fairbanks* applies with equal force to lenders.”). Similarly, “[m]ost federal district courts that have considered the issue since *Fairbanks* likewise have held that the CLRA does not apply to mortgage loan servicing.” *Jamison v. Bank of Am., N.A.*, 194 F. Supp. 3d 1022, 1031 (E.D. Cal. 2016).

The parties agree that Dogecoin is cryptocurrency and thus is an intangible good outside the purview of the CLRA. *See Doe v. Epic Games, Inc.*, 435 F. Supp. 3d 1024, 1046 (N.D. Cal. 2020) (“Plaintiff’s CLRA claim therefore fails because the virtual currency at issue is not a good or service.”). Plaintiffs argue that, because Coinbase does not actually buy or sell Dogecoin but rather facilitates other in trading it, Coinbase is akin to a broker and thus provides “standalone” as opposed to ancillary services related to the cryptocurrency. However, the only authority on which Plaintiffs rely is mere dicta. *See Sonoda v. Amerisave Mortg.*

*Corp.*, 2011 WL 2690451, at \*4 (N.D. Cal. July 8, 2011) (“To be sure, if Amerisave was not loaning money but instead acted only as a broker for other third-party lenders, then *arguably* what Amerisave was selling was its work or labor in finding a loan for Plaintiffs (rather than negotiating terms of its own loans). Such brokerage services *might* well qualify as ‘services’ under the CLRA.”) (emphasis added). However, another court actually considered and rejected this argument. See *Meyer v. Cap. All. Grp.*, 2017 WL 5138316, at \*6 (S.D. Cal. Nov. 6, 2017) (rejecting argument that plaintiffs’ services were distinguishable because they were not lenders themselves and merely served as loan advertisers). As the court reasoned:

For services “in connection with” the sale of goods to qualify under the CLRA, “goods” must themselves be covered by the CLRA . . . Since loans at their core are not “goods” or “services” under the CLRA, advertising related to selling such intangible financial goods are not “services furnished in connection with” any goods or services. . . . It would seem wildly incongruous that the CLRA would apply to advertising or marketing of loans but not apply to the loans themselves. Indeed, bootstrapping the CLRA into this case in this manner would, as the Supreme Court of California explained, “defeat the apparent legislative intent in limiting the definition of” goods and services, *Fairbanks*, 92 Cal. Rptr. 3d 279 . . . by greatly expanding that definition.

*Id.*, 2017 WL 5138316, at \*7 (internal citations omitted). The Court finds the reasoning of *Meyer* persuasive. The case law is clear, and Plaintiffs do not argue otherwise, that if the Coinbase’s alleged services were

offered by an entity which sold cryptocurrency, such services would be considered ancillary and would not be covered by the CLRA. The Court finds that Coinbase offering the same services for others selling cryptocurrency does not meaningfully distinguish the services. Therefore, the Court GRANTS both Defendants' motions on Plaintiffs' CLRA claims. Because granting leave would be futile, the Court dismisses Plaintiffs' CLRA claims with prejudice.

#### **7. Plaintiffs' Claims for Injunctive Relief.**

Plaintiffs do not oppose the dismissal of their request for injunctive relief. Therefore, the Court GRANTS Defendants' motion on this ground.

#### **CONCLUSION**

For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART Coinbase's and Marden-Kane's motions to dismiss. The Court GRANTS WITH PREJUDICE the motion to dismiss Plaintiffs' requests for injunctive relief, GRANTS WITH PREJUDICE the motion to dismiss Plaintiffs' CLRA claims 6 and 7 against both Defendants, and GRANTS WITH PREJUDICE Plaintiffs' claims 1 and 5 to the extent they are premised on an unlawful lottery. The Court DENIES the remainder of both motions.

#### **IT IS SO ORDERED.**

Dated: August 31, 2022

/s/ Sallie Kim  
SALLIE KIM  
United States Magistrate Judge



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed September 30, 2022]

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

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DAVID SUSKI, et al.,  
*Plaintiffs,*

v.

COINBASE, INC. and MARDEN-KANE, INC.,  
*Defendants.*

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**NOTICE OF APPEAL**

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TO PLAINTIFFS AND THEIR ATTORNEYS OF  
RECORD:

NOTICE IS GIVEN that defendant Marden-Kane, Inc. hereby appeals to the United States Court of Appeals for the Ninth Circuit from the district court's order (ECF No. 113) denying Marden-Kane's motion to dismiss seeking to compel arbitration of Plaintiffs' claims (ECF 87). The order is immediately appealable under the Federal Arbitration Act, 9 U.S.C. § 16(a)(1)(B).

There is currently pending in the Ninth Circuit an appeal of the order denying defendant Coinbase Inc.'s motion to compel arbitration (ECF 53), docketed as

Appeal No. 22-15209. Oral argument in Coinbase's pending appeal is calendared for November 18, 2022.<sup>1</sup>

This Notice is timely filed pursuant Federal Rule of Civil Procedure 4(a)(3). Pursuant to 28 U.S.C. § 1917 and Federal Rule of Appellate Procedure 3(e), Marden-Kane is simultaneously paying all required fees associated with this Notice of Appeal.

Dated: September 30, 2022

VENABLE LLP

/s/ Laura A. Wytsma  
Laura A. Wytsma  
Attorneys for Defendant  
Marden-Kane, Inc.

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<sup>1</sup> The issues raised by Marden-Kane's appeal (e.g., third-party standing to enforce an arbitration requirement in Plaintiffs' User Agreement with Coinbase covering Plaintiffs' purchases at issue) should not impact the issues briefed in the pending appeal and to be argued on November 18. However, a decision on Coinbase's appeal could moot Marden-Kane's appeal. As such, once its appeal is docketed, Marden-Kane will request the Ninth Circuit to stay briefing pending a final decision in Coinbase's appeal.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed September 30, 2022]

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

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DAVID SUSKI, Individually and On Behalf of All  
Others Similarly Situated,

*Plaintiffs,*

v.

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

*Defendants.*

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**NOTICE OF APPEAL**

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TO PLAINTIFFS AND THEIR ATTORNEYS OF  
RECORD:

NOTICE IS HEREBY GIVEN that Defendant Coinbase, Inc. (“Coinbase”) hereby appeals to the United States Court of Appeals for the Ninth Circuit from this Court’s order (ECF No. 113) denying Coinbase, Inc.’s Motion to Dismiss the Third Amended Complaint (“TAC”) for Lack of Jurisdiction and Joinder in Defendant Marden-Kane, Inc.’s Motion to Compel Arbitration (ECF No. 88). The order is immediately appealable under the Federal Arbitration Act, 9 U.S.C. § 16(a)(1)(B).

There is currently pending a related appeal of this Court’s denial of Coinbase’s motion to compel

arbitration of the Second Amended Complaint (ECF No. 53), docketed as Appeal No. 22-15209. Oral argument in Coinbase's pending appeal is calendared for November 18, 2022.

Coinbase appeals this Court's denial of its motion to dismiss the TAC in an abundance of caution. Coinbase does not believe this additional appeal requires additional briefing or any alteration of the schedule of its pending appeal. Coinbase will promptly file a motion to consolidate the appeals so they both can be heard on November 18, 2022.

This Notice is timely filed pursuant Federal Rule of Civil Procedure 4(a)(3). Pursuant to 28 U.S.C. § 1917 and Federal Rule of Appellate Procedure 3(e), Coinbase, Inc. is simultaneously paying all required fees associated with this Notice.

Dated: September 30, 2022      COOLEY LLP

By: /s/ Kathleen R. Harnett  
Kathleen R. Harnett

Attorneys for Defendant  
COINBASE, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed November 10, 2022]

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

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DAVID SUSKI, JAIMEE MARTIN, JONAS CALSBEEK, and  
THOMAS MAHER,

*Plaintiffs,*

v.

COINBASE GLOBAL, INC. and MARDEN-KANE, INC.,

*Defendants.*

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**DECLARATION OF DAVID J. HARRIS, JR.  
IN SUPPORT OF STIPULATION AND  
[PROPOSED] ORDER TO EXTEND TIME OF  
CERTAIN CASE DEADLINES AND EVENTS**

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I, David J. Harris, Jr., declare as follows:

1. I am an attorney admitted to practice law before the United States District Court for the Northern District of California. I am an attorney in the law firm of Finkelstein & Krinsk LLP, and lead trial counsel for Plaintiffs in the above-captioned action. I make this declaration in support of the Stipulation and [Proposed] Order to Extend Time of Certain Case Deadlines and Events.

2. On September 21, 2022, following the Court's August 31, 2022 Order resolving Defendants' motions

to dismiss or compel arbitration of the Third Amended Complaint (Dkt. 113), the Court issued an Order Regarding Case Schedule setting pre-trial deadlines and events in this litigation (ECF No. 120).

3. Currently before the Ninth Circuit are two appeals from Coinbase in relation to the Court's denial of Coinbase's motions to compel arbitration, docketed as Appeal No. 22-15209 and No. 22-16506. Oral argument for Appeal No. 22-15209 is scheduled for November 18, 2022.

4. Also before the Ninth Circuit is Marden-Kane's pending appeal from the Court's August 31, 2022 Order denying Marden-Kane's motion to compel arbitration, docketed as Appeal No. 22-16508.

5. The United States Supreme Court is currently considering Coinbase's Joint Petition for Writ of Certiorari (Docket No. 22-105) in this case and in *Coinbase v. Bielski* (Ninth Circuit Appeal No. 22-15566), presenting the question whether, contrary to the Ninth Circuit's approach, a non-frivolous appeal of the denial of a motion to compel arbitration ousts a district court's jurisdiction to proceed with litigation pending that appeal. Plaintiffs, now "the *Suski* Respondents" before the Supreme Court, have taken the position that the Supreme Court should grant Coinbase's Joint Petition, and decide the extent to which district courts have discretion to conduct merits proceedings pending an appeal on arbitrability. See [https://www.supremecourt.gov/DocketPDF/22/22-105/244437/20221031163906368\\_SuskiRespondents%20MAIN%20Oct%2031%202022%20E%20FILE.pdf](https://www.supremecourt.gov/DocketPDF/22/22-105/244437/20221031163906368_SuskiRespondents%20MAIN%20Oct%2031%202022%20E%20FILE.pdf) (last visited Nov. 4, 2022).

6. On Friday October 28, 2022, I conferred with Coinbase's counsel to discuss the District Court

litigation, and all pending Ninth Circuit and Supreme Court proceedings. The parties agreed that, in light of the multiple, interrelated proceedings presently before the Ninth Circuit and the Supreme Court, judicial economy and efficiency would be best served by extending current deadlines and events in the District Court litigation, pending the Ninth Circuit's decision on Coinbase's first appeal, Appeal No. 22-15209.

7. The parties also agreed not to undertake further, potentially unnecessary discovery until the Ninth Circuit issues its decision on Coinbase's first appeal.

8. The parties intend to confer again after the Ninth Circuit's decision on Coinbase's first appeal, Appeal No. 22-15209, regarding the status of all remaining Ninth Circuit and Supreme Court proceedings, to determine whether the parties believe any further proposed adjustments to the District Court case schedule would be prudent at that time. The parties anticipate that, once the Ninth Circuit decides Coinbase's first appeal, the parties will have greater clarity on whether and how the remaining Ninth Circuit and Supreme Court proceedings will move forward.

9. The parties have further agreed that an extension of deadlines, as proposed in the stipulation, should have no effect on the Supreme Court's consideration of the Joint Petition or on whether Supreme Court review is warranted.

10. The Court has previously modified the case schedule pursuant to the parties' joint stipulations on the following dates: August 24, 2021 (ECF No. 21), September 24, 2021 (ECF No. 30), October 20, 2021 (ECF No. 35), December 9, 2021 (ECF No. 44), January 26, 2022 (ECF No. 55), February 7, 2022 (ECF No.

721

57), May 20, 2022 (ECF No. 85), and July 14, 2022 (ECF No. 95).

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Diego, California on November 10, 2022.

/s/ David J. Harris, Jr. \_\_\_\_\_  
David J. Harris, Jr., Esq.



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Filed November 14, 2022]

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

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

*Plaintiff,*

v.

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

*Defendants.*

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

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

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

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

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

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

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

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

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

WHEREAS, the parties agree that, in light of the multiple proceedings presently before the Ninth Circuit and Supreme Court, judicial economy and efficiency would be best served by extending current deadlines and events in the District Court litigation pending the Ninth Circuit's decision on Coinbase's first appeal, Appeal No. 22-15209, with the parties

agreeing not to undertake further discovery until the Ninth Circuit issues its decision on Coinbase's first appeal;

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

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

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

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

extending the deadlines and events set forth in ECF No. 120 as follows:

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

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

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

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

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

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

Respectfully Submitted,

Dated: November 10, 2022

COOLEY LLP

By: /s/ Kathleen R. Hartnett  
Kathleen R. Hartnett

Attorneys for Defendant  
COINBASE, INC.

Dated: November 10, 2022

VENABLE LLP

By: /s/ Laura A. Wytsma  
Laura A. Wytsma

Attorneys for Defendant  
MARDEN-KANE, INC.

Dated: November 10, 2022

FINKELSTEIN & KRINSK LLP

By: /s/ David J. Harris, Jr.  
David J. Harris, Jr.

Attorneys for Plaintiffs  
DAVID SUSKI, JAIMEE  
MARTIN, JONAS CALSBEEK,  
THOMAS MAHER

ATTESTATION OF SIGNATURES

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: November 10, 2022

By: /s/ David J. Harris, Jr.

**ORDER**

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

**IT IS SO ORDERED.**

Dated: November 14, 2022

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

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Filed May 16, 2022]

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No. 22-15209

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DAVID SUSKI; JAIMEE MARTIN; JONAS CALSBEEK;  
THOMAS MAHER; Individually and on Behalf of All  
Others,

*Plaintiffs-Appellees,*

v.

COINBASE, INC.,

*Defendant-Appellant,*

and

MARDEN-KANE, INC.,

*Defendant.*

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On Appeal from the United States District Court  
for the Northern District of California  
Hon. Sallie Kim  
Case No. 21-cv-04539

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**APPELLANT COINBASE, INC.'S  
MOTION FOR STAY PENDING APPEAL  
RELIEF REQUESTED BY JUNE 1, 2022**

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## INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 8(a)(2) and Circuit Rule 27-1(3), Defendant-Appellant Coinbase, Inc. respectfully moves for a stay pending appeal of the denial of its motion to compel individual arbitration of Plaintiffs-Appellees' claims. Coinbase requests a ruling on this motion by June 1, 2022, due to Plaintiffs' service of their first set of 23 interrogatories on May 5, responses to which are due by June 9, and Coinbase's intent to seek relief from the Supreme Court if this motion is not granted.<sup>1</sup>

Coinbase operates a popular crypto currency exchange whose users all agree, through the Coinbase User Agreement, to binding arbitration and to delegate any disputes about arbitrability to the arbitrator. Coinbase has appealed the District Court's failure to enforce Coinbase's admittedly valid arbitration agreement in the context of a putative class action brought by Plaintiffs, all of whom disregarded their arbitration agreements by filing this lawsuit in District Court complaining about Coinbase's 2021 Dogecoin Sweepstakes. The District Court candidly stated that its denial of Coinbase's motion to compel arbitration could be "wrong" and that it was "right on the edge on this motion" based on what it called "a strange unusual fact pattern." Ex. K at 15:2-4, 15:23-24. If the District Court erroneously denied Coinbase's motion to compel—and it did, for the reasons discussed in Coinbase's Opening Brief filed with this Court on May 11, 2022—then each day of continued litigation in federal court strips Coinbase of its right to arbitrate Plaintiffs'

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<sup>1</sup> On May 16, 2022, Coinbase notified Plaintiffs' counsel of this motion and was informed that Plaintiffs oppose this motion.



claims. This violation cannot be undone, even if this Court ultimately decides the District Court should have compelled arbitration.

This Court should grant Coinbase's motion for a stay pending appeal. To assess whether a stay pending appeal is warranted, this Court applies a four-factor balancing test. *See Britton v. Co-op Banking Grp.*, 916 F.2d 1405, 1412 (9th Cir. 1990). Here, all four factors weigh in favor of granting the stay.

*First*, Coinbase has made a strong showing that it is likely to succeed on the merits of its appeal that this dispute must be compelled to arbitration. Plaintiffs do not dispute they agreed to the User Agreement, which contains a valid and binding arbitration provision and delegation clause. Where, as here, the parties "clearly and unmistakably" delegate to an arbitrator threshold issues of arbitrability, such as "the validity or application of any of the provisions of the arbitration clause," courts must enforce that agreement, *Momot v. Mastro*, 652 F.3d 982, 987-88 (9th Cir. 2011) (citation omitted), and they "may not decide the arbitrability issue." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019).

The District Court nevertheless disregarded the delegation provision based on a forum selection clause in the Dogecoin Sweepstakes' Official Rules. But whether a forum selection clause affects the scope of a concededly agreed-to arbitration provision is precisely the kind of question that the User Agreement's clear and unmistakable delegation clause has reserved for arbitral resolution. This Circuit has made clear that a forum selection clause does not disrupt an otherwise "clear and unmistakable" delegation clause. *See*

*Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1208-10 (9th Cir. 2016).

Not only did the District Court err by failing to delegate, but it then erroneously decided the arbitrability question itself, determining that the Official Rules' forum selection clause superseded the User Agreement's arbitration provision, and thus that none of Plaintiffs' claims may be arbitrated. That conclusion is counter to California contract law and unsupported by the cases the District Court cited.

*Second*, Coinbase will suffer irreparable harm without a stay. Absent a stay, Coinbase will be forced to bear the cost of litigating the putative class action, even though its User Agreement mandates individual arbitration of all disputes between Plaintiffs and Coinbase. Coinbase will also be required to undergo burdensome discovery on both individual and class claims, despite the arbitration provision's class waiver. This harm has already begun: on May 5, Plaintiffs propounded 23 interrogatories on Coinbase. *See* Ex. Q. Such interrogatories are unavailable under the AAA Consumer Rules, which govern this dispute under the User Agreement.

*Third*, the balance of harm tips significantly in favor of Coinbase. Whereas Coinbase faces irreparable harm without a stay, Plaintiffs do not. They face no continuing harm, and they seek no injunctive relief, just damages related to a Sweepstakes that concluded nearly a year ago. Nor is there a risk of evidence loss, as litigation holds are in place.

*Fourth*, the public interest favors a stay. The Supreme Court has made clear that enforcing valid agreements mandating individual arbitration advances the public's strong interest in fairness,

efficiency, and the right to contract, as well as the “liberal federal policy favoring arbitration . . . .” *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (citation omitted). In contrast, the public has little interest in Plaintiffs’ individual claims, and any generalized public interest can be addressed in arbitration.

For these reasons, this Court should grant a stay pending appeal of the District Court’s order denying the motion to compel. Absent a discretionary stay, this Court, sitting en banc, should reconsider Britton and hold—in line with five other circuits—that an appeal from the denial of a motion to compel arbitration automatically stays district court proceedings by divesting the district court of jurisdiction.

## BACKGROUND

### **A. Plaintiffs Agreed to Coinbase’s User Agreement and Thus to Binding Arbitration.**

Coinbase operates one of the largest cryptocurrency exchanges in the United States. Ex. C ¶ 1. Coinbase users can purchase, sell, and transact in a myriad of digital currencies, including Dogecoin, a popular cryptocurrency. *Id.* ¶ 3. As a condition of using the platform, Coinbase requires all users, including Plaintiffs, to agree to the Coinbase User Agreement and its binding arbitration provision and delegation clause. *See* Ex. E ¶¶ 6, 8-9.

Plaintiffs are Coinbase users, each of whom created a Coinbase account before participating in the Dogecoin Sweepstakes. Ex. G at 1, 3. The signup process required that each click a checkbox reflecting agreement to Coinbase’s User Agreement, which contains an arbitration provision and delegation clause. *Id.* at

1-2. The arbitration provision applies to *any* dispute with Coinbase related to Plaintiffs' use of the Coinbase Services. *Id.* at 2.<sup>2</sup> Plaintiffs also agreed via the delegation clause that the arbitrator would decide threshold questions of arbitrability. *See id.* at 8.<sup>3</sup>

The User Agreement contains an amendment provision setting out the manner in which the agreement may be amended: “[w]e 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,” and “[i]f 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.”<sup>4</sup> Additionally, the User Agreement contains an integration clause stating that the

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<sup>2</sup> The District Court noted textual differences between Suski's and the other Plaintiffs' versions of the User Agreement, but treated all versions as materially similar for purposes of the legal question before it. *See* Ex. G at 1-2 (“[E]ach Plaintiff agreed to the Coinbase User Agreement which indisputably contains an arbitration provision.”).

<sup>3</sup> The District Court again noted textual differences between Suski's version of the agreement and that of the other Plaintiffs, but treated the agreements as materially similar for purposes of the legal question. *See* Ex. G at 8 (“[D]isagreements over the scope of the arbitration provisions were delegated to the arbitrator.”)

<sup>4</sup> Ex. N at 29 (agreement of Martin); Ex. O at 29 (agreement of Calsbeek). The language of Suski's and Maher's versions of the agreement are materially similar, with slight variations. *See* Ex. M at 14 (agreement of Suski); Ex. P at 28 (agreement of Maher).

agreement “comprise[s] the entire understanding and agreement between [the user] and Coinbase.”<sup>5</sup>

### **B. Coinbase’s Dogecoin Sweepstakes.**

Coinbase’s Dogecoin Sweepstakes, held in June 2021, offered entrants the opportunity to win prizes of up to \$1,200,000 in Dogecoin. Ex. D at 2.<sup>6</sup> To promote the Sweepstakes, Coinbase used direct-to-user emails and digital advertisements. Ex. C ¶ 7.

The Official Rules stated that participants could enter the Sweepstakes using one of “[t]wo methods of entry.” Ex. B at 2. The first was to trade Dogecoin on Coinbase’s platform. *Id.* The second, “free” method was to mail an index card containing the entrant’s contact information. *Id.* at 3-4. The Official Rules stated that entrants did not need to create a Coinbase user account and agree to the Coinbase User Agreement in order to be eligible to participate in the Sweepstakes, but that a participant would need to become a user (and agree to the User Agreement) to claim a prize. *Id.* at 3-4. The Official Rules contained a forum selection clause providing for jurisdiction in “THE CALIFORNIA COURTS (STATE AND FEDERAL).” *Id.* at 9.

Each Plaintiff participated in Coinbase’s Dogecoin Sweepstakes by trading Dogecoin in June 2021. Ex. G at 1. This means each Plaintiff was subject to the

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<sup>5</sup> Ex. M at 14 (agreement of Suski); Ex. N at 29 (agreement of Martin); Ex. O at 29 (agreement of Calsbeek); Ex. P at 28 (agreement of Maher).

<sup>6</sup> The Sweepstakes was operated by Defendant Marden-Kane, Inc (“Marden-Kane”). Plaintiffs did not have arbitration agreements with Marden-Kane, which did not move to compel arbitration.

Coinbase User Agreement when they entered the Dogecoin Sweepstakes.

**C. Plaintiffs Sued Coinbase in Federal Court.**

The day after the Sweepstakes entry period ended, Plaintiffs filed a putative class action complaint on behalf of themselves and other Coinbase users who opted into Coinbase's Sweepstakes by trading Dogecoin, seeking to maintain various California consumer protection claims. Ex. G at 1; *See* Ex. A at 1 (ECF No. 1) (filed June 11, 2021). Thus, the putative class includes only Coinbase users who agreed to the User Agreement. The parties consented to proceed before a magistrate judge. Ex. A at 4 (ECF Nos. 8, 13).

**D. Coinbase Moved To Compel Arbitration And Timely Appealed The Denial Of The Motion.**

On October 19, 2021, Coinbase filed its Motion to Compel Arbitration, or, Alternatively, to Dismiss Plaintiffs' Complaint. Ex. D. Coinbase argued that arbitration should be compelled and the case dismissed or stayed pending arbitration. *Id.* at 15-21; *see* 9 U.S.C. § 3. Plaintiffs opposed the motion. Ex. F. On January 11, 2022, the District Court denied Coinbase's motion to compel arbitration. Ex. G at 7-10.

In denying the motion to compel arbitration, the District Court acknowledged (as did Plaintiffs) that Plaintiffs agreed to Coinbase's User Agreement and that the agreement contains a valid arbitration agreement. *Id.* at 7. The District Court also recognized that the Federal Arbitration Act ("FAA") "represents the 'liberal federal policy favoring arbitration agreements' and 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.'" *Id.* at

6 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983)). Nevertheless, the District Court denied Coinbase's motion to compel (and refused to enforce the delegation clause) based on its determination that the forum selection clause in the Sweepstakes' Official Rules superseded the User Agreement's arbitration provision. Ex. G at 9-10. According to the District Court, "[b]ecause the arbitration provision and the forum selection clause conflict, the subsequent contract supersedes the first." *Id.* at 9.

**E. The District Court Denied A Stay Pending Appeal And Coinbase Seeks Relief From This Court Before Discovery Begins.**

Under existing Ninth Circuit precedent, whether to stay district court proceedings pending an appeal from a denial of a motion to compel arbitration is a "proper subject for the exercise of discretion by the trial court." *Britton*, 916 F.2d at 1412 & n.8. The Ninth Circuit's rule is part of a deep circuit split, with five other circuits holding that a denial of a motion to compel arbitration warrants a mandatory stay because the district court is divested of jurisdiction during the appeal.<sup>7</sup>

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<sup>7</sup> Five circuits have concluded a stay is mandatory on jurisdictional grounds pending an appeal of an order denying a motion to compel. See *Levin v. Alms and Assocs., Inc.*, 634 F.3d 260, 264-66 (4th Cir. 2011); *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1160-62 (10th Cir. 2005); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251-52 (11th Cir. 2004); *Bradford-Scott Data Corp., v. Physician Comput Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997). This Court and two others have held that the stay decision is discretionary. See *Weingarten*

After Coinbase appealed the denial of its motion to compel arbitration pursuant to 9 U.S.C. § 16(a)(1)(A)-(B), Ex. A at 8 (ECF No. 58), Coinbase moved to stay the District Court proceedings during the pendency of its appeal, Ex. H, which Plaintiffs opposed, Ex. I. In briefing, *see* Ex. J at 2, and at the hearing on the stay motion, *see* Ex. K at 24:15-19, Coinbase explained why a stay was warranted under the Ninth Circuit’s *Britton* standard, but also noted the circuit split and that an automatic stay is required under the majority view. The District Court applied the *Britton* standard, stating at the stay hearing that “the Ninth Circuit is clear as to what my roles are in terms of how I decide this. I’m not going to worry about the circuit split. I can’t worry about that right now, to be candid with you.” *Id.* at 24:20-23.

Notably, the District Court acknowledged at the stay hearing that Coinbase may succeed on appeal, remarking that “I could see a different legal set of minds looking at this factual pattern and saying I was wrong.” *Id.* at 15:1-4. The District Court also noted the novelty of the issue—that it had “not seen a case that has a similar set of facts”—and described itself as “right on the edge on this motion . . . [u]sually, . . . on the motions to compel, I feel pretty confident. On this one I’m just not sure.” *Id.* at 14:21-22, 15:23-16:3. Despite these doubts, the District Court denied Coinbase’s motion to stay pending appeal. Ex. L.

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*Realty Invs. v. Miller*, 661 F.3d 904,907-10(5th Cir. 2011); *Motorola Credit Corp. v. Uzan*, 388 F.3d 39, 53-54 (2d Cir. 2004). As discussed below, in the event this Court does not grant a discretionary stay, it should reconsider *Britton* en banc and adopt the majority rule.



Plaintiffs served 23 interrogatories on May 5, responses to which are due by June 9 absent a stay. *See* Ex. Q. Plaintiffs filed their Third Amended Class Action Complaint on May 10. *See* Ex. A at 11 (ECF No. 83).

### ARGUMENT

In this Circuit, a four-factor test applies to determine whether to “stay trial proceedings pending appeal from denial of motion to stay proceedings pending arbitration.” *Britton*, 916 F.2d at 1412 (citing *C.B.S. Emps. Fed. Credit Union v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 716 F. Supp. 307, 309-10 (W.D. Tenn. 1989)). Those factors include: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) [whether] public interest [favors a stay].” *C.B.S.*, 716 F. Supp. at 309 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Coinbase readily satisfies this standard, and a stay pending appeal therefore should be granted.

#### **I. Coinbase Has A Strong Case On The Merits.**

“An applicant for a stay ‘need not demonstrate that it is more likely than not they will win on the merits,’ but rather must show ‘a reasonable probability’ or ‘fair prospect’ of success.” *Fed. Trade Comm’n v. Qualcomm Inc.*, 935 F.3d 752, 755 (9th Cir. 2019) (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 966-67 (9th Cir. 2011)). Here, Coinbase has at least a reasonable probability of success on appeal; indeed, it has a strong merits case. As the District Court itself recognized, it “could see a different legal set of minds looking at this factual pattern and saying I was wrong.” Ex. K at 15:1-4. The

District Court likewise described itself as “right on the edge on this motion . . . [u]sually, . . . on the motions to compel, I feel pretty confident. On this one I’m just not sure.” *Id.* at 15:23-16:3.

The District Court erred by failing to enforce the parties’ delegation clause and by erroneously resolving the arbitrability question itself. While the District Court may have found the factual circumstances underlying this motion “unique,” Ex. K at 17:2, and “weird,” *id.* at 14:23; 16:18, but the controlling principles are not: clear and unmistakable delegations in arbitration agreements, as here, must be enforced.

**A. The User Agreement’s Delegation Clause “Clearly And Unmistakably” Delegates Threshold Questions of Arbitrability To An Arbitrator.**

Plaintiffs’ claims are subject to binding arbitration under the Coinbase User Agreement and it was for the arbitrator—not the District Court—to decide arbitrability. The District Court’s contrary holding was error.

Plaintiffs have not disputed that they agreed to Coinbase’s User Agreement. Ex. G at 7. Nor do they dispute the agreement contains a valid and enforceable arbitration provision and delegation clause, which delegate to an arbitrator the resolution of threshold questions of the “scope” of the agreement. Ex. F at 11,15. Nonetheless, the District Court erroneously concluded instead that the forum selection clause in the Dogecoin Sweepstakes Official Rules precluded enforcement of the User Agreement’s delegation clause. Ex. G at 8-9.

But the impact, if any, of the Dogecoin Sweepstakes’ Official Rules on the “scope” of the User Agreement’s

arbitration provision is a question the parties delegated to the arbitrator. *See Aceves v. Autonation, Inc.*, 317 F. App'x 665, 666-67 (9th Cir. 2009) (delegation clause assigns questions of “scope” and “validity” to the arbitrator). And where, as here, a contract delegates the question of arbitrability to the arbitrator, “courts must respect the parties’ decision as embodied in the contract” and “may not decide the arbitrability issue.” *Henry Schein*, 139 S. Ct. at 528, 530. In particular, this Court has held that a forum selection clause providing for judicial resolution *does not interfere* with an arbitration clause’s delegation of arbitrability to the arbitrator. *See Mohamed*, 848 F.3d at 1209.<sup>8</sup> The District Court disregarded this controlling law and erred by refusing to enforce the parties’ delegation clause.

**B. The Official Rules Did Not Supersede The User Agreement, And The Agreements Can Be Read Harmoniously.**

Alternatively, assuming the District Court had authority to decide threshold questions of arbitrability (which it did not), it erred in concluding the Official Rules superseded the User Agreement and its arbitration provision. The Official Rules did not formally amend the User Agreement, and, in any event, the Official Rules can<sup>8</sup> be read harmoniously with the

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<sup>8</sup> District courts in this Circuit have held similarly. *See, e.g., Dillion v. BET Info. Sys., Inc.*, No. 18-cv-04717-JST, 2019 WL 12338059, at \*4 (N.D. Cal. Feb. 19, 2019) (delegation clause constituted “clear and unmistakable” evidence to delegate notwithstanding provision in same agreement providing exclusive jurisdiction to Delaware state and federal courts); *Jacksen v. Chapman Scottsdale Autoplex, LLC*, No. CV-21-00087-PHX-DGC,

arbitration provision, and thus should not be read to annul it.

This Circuit applies general state-law principles of contract interpretation when determining whether parties agreed to arbitrate a dispute, resolving ambiguities as to scope in favor of arbitration. *See Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1049 (9th Cir. 1996). Under California law, “an agreement is integrated, and thereby supersedes any prior oral or written agreements between the parties, if ‘the parties intended their writing to serve as the *exclusive* embodiment of their agreement.’” *Garcia v. ISS Facility Servs., Inc.*, 855 F. App’x 338, 339 (9th Cir. 2021) (quoting *Masterson v. Sine*, 68 Cal. 2d 222, 225 (1968)) (emphasis added). No evidence supports that the Official Rules were an integrated, superseding agreement. Whereas the User Agreement has both an integration clause and an amendment provision reflecting a complete agreement between the parties, the Official Rules lack a merger or integration clause and nowhere purport to amend, revise, revoke, or supersede that prior agreement. *See Ex. B.* None of the cases cited by the District Court support a conclusion that the parties intended the Official Rules to supersede the User Agreement, and none of the precedential authorities cited by the District Court even purported to apply California contract law.

Moreover, even if the Official Rules amended the User Agreement in some capacity, there is at most an “artificial” conflict between arbitration and forum

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2021 WL 3410912, at \*3 (D. Ariz. July 21, 2021) (enforcing delegation clause, notwithstanding severability clause referencing potential court review of class action waiver).

selection clauses like those at issue here, *Mohamed* 848 F.3d at 1209, and the two provisions can and should be read harmoniously, *see, e.g., id.; Peterson v. Minidoka Cnty. Sch. Dist. No. 331*, 118 F.3d 1351, 1359 (9th Cir. 1997), *amended*, 132 F.3d 1258 (9th Cir. 1997). Where, as here, a later-enacted forum selection clause does not expressly disclaim any earlier-established right or requirement to arbitrate, courts have interpreted such clauses narrowly, covering only such claims that would fall outside the agreement to arbitrate.<sup>9</sup> Such a harmonious interpretation indicates that the User Agreement’s arbitration provision stands as to Coinbase users like Plaintiffs, who entered the Sweepstakes by trading Dogecoin on the Coinbase platform. By contrast, the Official Rules’ forum selection clause provides a forum for those Sweepstakes entrants who entered by means of the mail-in index card and designates a venue for the enforcement of arbitral awards for Coinbase user-entrants. *Accord Mohamed*, 848 F.3d at 1209 (venue provision provides

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<sup>9</sup> Other Circuits have held similarly. *See, e.g., Bank Julius Baer & Co. v. Waxfield Ltd.*, 424 F.3d 278, 284 (2d Cir. 2005) (merger and forum selection clause in subsequent agreement cannot supersede or nullify arbitration clauses in earlier agreements “unless the forum selection clause specifically precludes arbitration” (citation omitted)); *Pers. Sec. & Safety Sys. Inc. v. Motorola Inc.*, 297 F.3d 388, 395 (5th Cir. 2002) (interpreting forum selection clause “in the context of the entire contractual arrangement,” including arbitration agreement, and giving full “effect to all of the terms of that arrangement”); *Patten Sec. Corp. v. Diamond Greyhound & Genetics, Inc.*, 819 F.2d 400, 407 (3d Cir. 1987) (concluding forum selection clause in later agreement did not preclude arbitration arising under binding rules in earlier agreement because express reference to arbitration was “[c]onspicuously absent from” forum selection clause and so clause did not displace arbitration agreement).

forum to obtain a judgment enforcing an arbitration award and identify venue for other non-arbitrable claims but does “not conflict with or undermine the agreement’s unambiguous statement identifying arbitrable claims”).

## **II. Irreparable Harm Is Certain Without a Stay.**

The irreparable harm that Coinbase will suffer absent a stay also weighs heavily in favor of a stay. Coinbase will forever lose the benefit of individual arbitration of Plaintiffs’ claims if it must litigate Plaintiffs’ class claims in court before its appeal is resolved. This Court has previously recognized that if “a litigant ‘must undergo the expense and delay of a trial before being able to appeal, the advantages of arbitration—speed and economy—are lost forever.’” *Int’l Ass’n of Machinists & Aerospace Workers, AFL-CIO v. Aloha Airlines, Inc.*, 776 F.2d 812, 815 (9th Cir. 1985) (citation omitted). District courts in this Circuit have repeatedly recognized that such expenses constitute irreparable harm.<sup>10</sup>

Moreover, absent an order compelling arbitration of Plaintiffs’ claims on an individual, non-class basis, Coinbase will be subject to the broader discovery associated with the putative class action, significantly exacerbating Coinbase’s irreparable harm. Notably, discovery has already begun: on May 5, Plaintiffs

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<sup>10</sup> See, e.g., *Eberle v. Smith*, No. 07-CV-0120 W(WMC), 2008 WL 238450, at \*3 (S.D. Cal. Jan. 29, 2008) (movants irreparably harmed if stay denied as litigation would defeat cost-limiting purpose of arbitration agreements); *Murphy v. DirectTV, Inc.*, No. 07-cv-06465-FMC-VBKx, 2008 WL 8608808, \*2 (C.D. Cal. July 1, 2008) (same); *Ali v. JP Morgan Chase Bank*, No. C 13-01184 JSW, 2014 WL 12691084, at \*1 (N.D. Cal. Mar. 3, 2014) (same).

propounded 23 interrogatories on Coinbase, responses to which are due by June 9. *See* Ex Q. Such interrogatories are unavailable under the AAA Consumer Rules, which apply under the User Agreement. Should Coinbase prevail on appeal, it will be unable to “unring any bell rung by discovery” and its assorted costs. *Levin*, 634 F.3d at 265; *see also Roe v. SFBSC Mgmt., LLC*, No. 14-cv-03616-LB, 2015 WL 1798926, at \*3 (N.D. Cal. Apr. 17, 2015) (recognizing “[t]he burdens associated with discovery in a putative class action are substantially greater than [those] in an individual arbitration” (citation omitted)).

Additionally, absent a stay, the parties will need to litigate another motion to dismiss, since Plaintiffs have filed their Third Amended Complaint, *see* Ex. A at 11 (ECF No. 83)—resources wasted if this Court rules in Coinbase’s favor on appeal.

### **III. A Stay Will Not Injure Plaintiffs.**

Plaintiffs, by contrast, will suffer no injury from a stay. The Dogecoin Sweepstakes ended nearly one year ago, and Plaintiffs do not seek injunctive or other prospective relief.<sup>11</sup> The only possible harm to Plaintiffs would be a delay in potentially obtaining monetary damages, but that harm “does not compare to the unjustifiable waste of time and money that would result from proceeding with this litigation before the Ninth Circuit decides whether this dispute is even subject to judicial resolution.” *Mundi v. Union Sec.*

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<sup>11</sup> Plaintiffs’ Second Amended Complaint requested no particular injunctive relief—and injunctive relief would be inappropriate because the Dogecoin Sweepstakes has ended, and all of Plaintiffs’ alleged injuries are redressable with monetary relief. *See* Ex. C.

*Life Ins. Co.*, No. CV-F-06-1493 OWW/TAG, 2007 WL 2385069, at \*6 (E.D. Cal. Aug. 17, 2007) (citation omitted); see also *Antonelli v. Finish Line, Inc.*, No. 11—cv-03874 EJD, 2012 WL 2499930, at \*3 (N.D. Cal. June 27, 2012) (delay alone is insufficient to constitute undue prejudice).

#### **IV. The Public Interest Favors A Stay.**

Recognizing the strong federal preference for arbitration, Plaintiffs and Coinbase agreed to mandatory arbitration of any disputes. The public interest therefore favors a stay, which would promote judicial economy. See, e.g., *Ali*, 2014 WL 12691084, at \*2 (“federal policy favoring arbitration” and “economical use of judicial resources lead the public interest to favor a stay” (citation omitted)); *Ward v. Estate of Goossen*, No. 14—cv-03510—TEH, 2014 WL 7273911, at \*5 (N.D. Cal. Dec. 22, 2014) (same).

Conversely, a stay would not impair any public rights: a class has not been certified, and Plaintiffs’ individual arbitrations are of limited to no public interest. Cf. *Mina v. Red Robin Intl Inc.*, No. CV 18-9472 PSG (GJSx), 2019 WL 3207807, at \*3 (C.D. Cal. Apr. 2, 2019) (granting stay while noting “no class has been certified, so the interest of putative class members in the litigation is minimal”); *Rajagopalan*, No. C11-5574 BHS, 2012 WL 2115482, at \*4-5 (W.D. Wash. June 11, 2012) (granting stay and disregarding purported harm to an uncertified putative class).



**V. If This Court Does Not Issue A Discretionary Stay, It Should Revisit *Britton* En Banc And Recognize—As Do A Majority Of Circuits—That Stays Are Required Pending Appeal Of A District Court’s Order Denying A Motion To Compel Arbitration.**

A stay pending appeal is warranted under *Britton* and should be granted. Alternatively, however, this Court should revisit en banc the outlier *Britton* standard and hold that an automatic stay pending appeal is required upon appeal of the denial of a motion to compel arbitration.

This Court was the first to hold, in 1990, that an appeal from denial of a motion to compel arbitration does not divest the district court of jurisdiction and trigger a mandatory stay. *See Britton*, 916 F.2d at 1412. Much has changed since then. Since 1990, five of the seven Circuits to consider the question have rejected *Britton*. Those Circuits have recognized that a notice of appeal “divests the district court of its control over those aspects of the case involved in the appeal.” *Levin*, 634 F.3d at 263 (quoting *Bradford-Scott*, 128 F.3d at 505). This is because “[t]he only aspect of the case involved in an appeal from an order denying a motion to compel arbitration is whether the case should be litigated at all in the district court.” *Id.* at 264 (quoting *Blinco*, 366 F.3d at 1251). Therefore, the “issue of continued litigation in the district court is not collateral to the question presented. . . .” *Id.* (quoting *Blinco*, 366 F.3d at 1251).

The now-majority rule comports with the Supreme Court’s further developed jurisprudence concerning the reach and application of the FAA in the last several decades. Since *Britton*, the Supreme Court has

repeatedly reversed lower courts for failing to enforce valid delegation clauses in arbitration agreements. See *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (parties can delegate “gateway” questions of arbitrability to an arbitrator where they so do “clearly and unmistakably”); *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 72 (2010) (arbitrator can decide validity of entire Agreement unless validity of delegation clause itself is specifically challenged); *Henry Schein*, 139 S. Ct. at 529, 530-31 (delegation clause enforceable even where a court thinks arbitrability argument is “wholly groundless”).

Thus, if this Court does issue a discretionary stay pending appeal, it should *sua sponte* call to convene en banc to reconsider *Britton*. See General Order 5.2.

### CONCLUSION

For the foregoing reasons, Coinbase respectfully requests that, before June 1, 2022, this Court 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: May 16, 2022

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Filed May 25, 2022]

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No. 22-15209

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DAVID SUSKI; JAIMEE MARTIN; JONAS CALSBEEK;  
THOMAS MAHER; Individually and on Behalf of All  
Others,

*Plaintiffs-Appellees,*

v.

COINBASE, INC.,

*Defendant-Appellant,*

and

MARDEN-KANE, INC.,

*Defendant.*

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On Appeal from the United States District Court  
for the Northern District of California  
Hon. Sallie Kim  
Case No. 21-cv-04539

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**REPLY IN SUPPORT OF COINBASE INC.'S  
MOTION FOR STAY PENDING APPEAL  
RELIEF REQUESTED BY JUNE 1, 2022**

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## INTRODUCTION

As Coinbase, Inc. detailed in its Motion (“Mot.”), this Court should grant a stay pending Coinbase’s appeal of the District Court’s failure to enforce Coinbase’s arbitration agreement with Plaintiffs. Absent a stay, Coinbase will suffer irreparable harm: Plaintiffs have filed their Third Amended Class Action Complaint to which Coinbase must respond, discovery has commenced, and litigating a putative class action will force Coinbase to irrevocably forfeit the benefits of arbitration as set out in the User Agreement entered into by Coinbase and Plaintiffs. Mot. 16-17.

Coinbase has shown that it has a reasonable probability of success on appeal. As the District Court candidly stated with respect to her denial of Coinbase’s motion to compel, “I could see a different legal set of minds looking at this factual pattern and saying I was wrong.” Ex. K at 15:2-4. This Circuit has made clear that an otherwise “clear and unmistakable” arbitration provision and delegation clause, as in Coinbase’s User Agreement, is not disrupted by a separate forum selection provision. *See* Mot. 2-3, 11-13 (citing *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1208-10 (9th Cir. 2016)). Plaintiffs’ Opposition (“Opp.”) fails to rebut Coinbase’s showing of likely success. Plaintiffs simply ignore *Mohamed*, despite that its reasoning is dispositive. They instead contend their position is supported by a “general contract-law principle,” which is ironic because their position is wrong on the law and ignores Coinbase’s cited California contract law authorities.

Plaintiffs also do not undercut Coinbase’s showing of irreparable harm. They claim that Coinbase having to litigate in court despite Plaintiffs’ agreement to

arbitrate does not constitute irreparable harm. Opp. 19-20. But this Court has all but rejected that argument, explaining that when a party must litigate pending appeal, notwithstanding an agreement to arbitrate, “the advantages of arbitration—speed and economy—are lost forever” and the harm is “serious, perhaps, irreparable.” *Alascom, Inc. v. ITT N. Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984). Plaintiffs have no serious argument they will suffer harm, seek only recovery of damages, and articulate no public interest against a stay. Thus, all stay factors favor Coinbase.

Although a discretionary stay is warranted under this Circuit’s existing framework, alternatively, the Court should convene en banc to reconsider *Britton v. Co-op Banking Group*, 916 F.2d 1405 (9th Cir. 1990), and join the majority of Circuits that correctly hold that an appeal of a motion to compel arbitration divests a district court of jurisdiction and triggers a mandatory stay.

## ARGUMENT

### **I. The District Court’s Denial Of A Stay Pending Appeal Under *Britton* Receives No Deference, Reinforcing That An Automatic Stay, Not *Britton*, Is The Correct Framework.**

Plaintiffs contend this Court should review Coinbase’s motion for a stay pending appeal under *Britton* for abuse of discretion. Opp. 10-11. That is wrong—Coinbase’s motion is not an appeal of the District Court’s denial of the stay. Rather, Coinbase has moved for a stay directly from this Court. *See* Mot. 1 (filed pursuant to Circuit Rule 27-1(3) (“Filing of Motions”). In such circumstances, this Court applies the discretionary stay factors itself. *See, e.g., Doe #1 v. Trump,*

957 F.3d 1050, 1058 (9th Cir. 2020) (in deciding whether to issue a stay pending appeal, “we apply the familiar [four-factor] standard set forth by the Supreme Court in *Nken*”).

Plaintiffs contend that if this Court itself reviews, on an expedited basis, every motion for a stay pending appeal of a denial of a motion to compel arbitration, “then the Court will soon be addressing the merits of every interlocutory appeal under the FAA before this Court has even received the appellees’ Response Briefs.” Opp. 11. Plaintiffs’ argument for deference to the District Court’s stay denial is legally wrong. Appellants like Coinbase are entitled to file a motion seeking a stay pending appeal, regardless of whether their appeal is of a denial of a motion to compel arbitration— or an appeal of any other kind. Whether to grant a discretionary motion is a matter reserved for this Court’s discretion under the Federal Rules of Appellate Procedure. See *Doe #1*, 957 F.3d at 1058; Fed. R. App. P. 27 (“Motions”). Nowhere does *Britton* say that a motion to stay directed at this Court should be reviewed for a district court’s “abuse of discretion” in denying a stay below. Compare Opp. 10, with *Britton*, 916 F.2d at 1412. *Britton* does not mention “abuse of discretion” at all.

Plaintiffs’ argument also demonstrates precisely why this Circuit’s holding in *Britton*—that stays in this context are discretionary—is incorrect. A majority of circuits to reach the issue have correctly recognized that a stay pending an appeal of an order denying a motion to compel arbitration should be mandatory, because the district court is divested of jurisdiction during the appeal. See Mot. 9 n.7. In contrast, in this Circuit, movants like Coinbase have no choice but to seek a stay pending appeal directly with this Court if they

are to avoid the irreparable harm of being forced to proceed in litigation during appeal.

Were this Court to reconsider *Britton* en banc and adopt the majority rule that entry of a stay is mandatory, it would obviate this Circuit's need for case-by-case adjudication of motions like Coinbase's. Federal arbitration law is substantially more developed than when *Britton* was decided 32 years ago, and arbitrability disputes are far more common. *See* Mot. 19-20. Thus, the majority rule is not only correct, but also substantially more efficient.

Plaintiffs incorrectly contend “there is no real principled difference among Circuits with respect to whether stays are (ultimately) mandatory or discretionary,” Opp. 12, because the majority of circuits deny stays for appeals deemed “frivolous.” *Id.* (quoting *Levin v. Alms and Assocs., Inc.*, 634 F.3d 260, 265 (4th Cir. 2011)). This inaccurate characterization is beside the point, however, because Plaintiffs do not even contend that Coinbase's appeal is frivolous. Nor could they, since even the District Court expressed doubt about its ruling, conceding it was “right on the edge on this motion,” Ex. K at 15:23, and that a “different legal set of minds” might find the District Court was “wrong.” *Id.* at 15:2-4. Thus, Plaintiffs do not and cannot dispute that Coinbase would be entitled to an automatic stay pending appeal under the rule recognized by a majority of circuits—a rule that this Circuit should adopt en banc.

## **II. A Stay Is Warranted Under *Britton*'s Discretionary Test.**

Even if this Circuit declines to reconsider *Britton*, Coinbase is entitled to a stay under *Britton*'s discretionary framework. Each factor supports the entry of



a stay. *See* Mot. 11-19. These are “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Fed. Trade Comm’n v. Qualcomm Inc.*, 935 F.3d 752, 755 (9th Cir. 2019) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)).

Plaintiffs incorrectly dispute the applicability of the four-factor test for a stay pending appeal set out in *Nken v. Holder*, 556 U.S. 418, 426 (2009). *See* Opp. 10. Yet this is the approach endorsed in *Britton*. *See Britton*, 916 F.2d at 1412 (citing *C.B.S. Emps. Fed. Credit Union v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 716 F. Supp. 307, 309-10 (W.D. Tenn. 1989) (setting forth four-factor test)). It is also one Plaintiffs did not object to when applied by the District Court below. *See* Ex. L at 2 (applying *Nken* four-factor stay test). This Circuit regularly applies the *Nken* stay factors when determining whether to enter a stay pending appeal, and thus should do so here. *See Qualcomm*, 935 F.3d at 755 (“To determine whether to issue a stay pending appeal, we consider [*Nken* stay factors].” (citing *Nken*, 556 U.S. at 426)).

**A. Coinbase Has A Reasonable Probability Of Success On Appeal.**

To merit a stay pending appeal, a movant need only establish “a reasonable probability’ or ‘fair prospect’ of success.” *Qualcomm*, 935 F.3d at 755 (citation omitted). Coinbase has certainly established such a prospect. *See* Mot. 11-16. As noted, the District Court openly acknowledged that “I could see a different legal

set of minds looking at this factual pattern and saying I was wrong.” Ex. K at 15:2-4.

**1. Plaintiffs Have No Response To *Mohamed*, Which Is Controlling.**

The District Court’s denial of arbitration was wrong because the District Court—contrary to Circuit precedent—held that a forum selection clause providing for judicial resolution disrupts an arbitration clause’s clear and unmistakable delegation of arbitrability to the arbitrator. *Compare* Ex. G at 8-9, *with Mohamed*, 848 F.3d at 1209 (rejecting the conflict claimed by the District Court as “artificial”). Conspicuously, Plaintiffs neither cite nor discuss *Mohamed* in their Opposition. *Mohamed* makes clear the District Court’s error, and Plaintiffs’ failure to dispute this point is dispositive of Coinbase’s likely success.

**2. Coinbase Did Not “Waive” Its Contract Interpretation Arguments Below.**

Rather than engaging with *Mohamed*, Plaintiffs contend that their argument against arbitration is supported by a “longstanding principle of contract law,” Opp. 14, all the while failing to engage with the California contract law principles Coinbase cited in support of *its* position. *See* Mot. 14-15. Plaintiffs instead assert that Coinbase waived its arguments that the Official Rules lack a merger or integration clause and nowhere purport to amend or supersede that prior agreement, and so under California law could not supersede the User Agreement. Opp. 14-15.

Not so. This Circuit has recognized that “no bright line rule exists to determine whether a matter [h]as been properly raised below”; the operative question is whether it was “raised sufficiently for the trial court to

rule on it.” *Tibble v. Edison Int’l*, 843 F.3d 1187, 1193 (9th Cir. 2016) (citation omitted). Here, Coinbase’s supersession arguments were raised below at the first opportunity, and the District Court had ample opportunity to consider and rule on them. Plaintiffs argued for the first time in their Opposition to Coinbase’s Motion to Compel that the Official Rules superseded the User Agreement. *See* Ex. F at 11-13. Coinbase then countered in its Reply that the Rules could not supersede the User Agreement given the agreement’s integration and amendment clauses. *See* Ex. R at 2-3. Coinbase also raised this argument again at the hearing on its motion to compel. *See* Ex. S 4:16-19; 20:20-21:3. Plaintiffs thus had the opportunity to address Coinbase’s arguments at oral argument on the motion to compel, *id.* at 13:15-15:4, and the Court invited them to submit supplemental authority on the issue, *id.* at 15:5-20. Instead, they submitted other authorities. *See* Ex. T.

Moreover, this Circuit has said that “when the issue presented is purely one of law,” it is appropriately reached on appeal regardless of the extent to which it was raised below. *Bolker v. Comm’r of Internal Revenue*, 760 F.2d 1039, 1042 (9th Cir. 1985). And since “interpretation of the language of a contract is a question of law which is reviewed on a *de novo* basis,” *United States v. 1.377 Acres of Land, More or Less, situated in City of San Diego, Cnty. of San Diego, State of Cal.*, 352 F.3d 1259, 1264 (9th Cir. 2003), there is no compelling reason this Court should decline to reach questions concerning the legal effect of the User Agreement’s integration and amendment provisions. “This is particularly true where the intent of the parties is easily ascertainable from the clear and explicit language of the contract.” *Id.*

### **3. Marden-Kane's Involvement In The Official Rules Further Supports Coinbase's Position.**

Plaintiffs also argue, for the first time, that the Official Rules constitute a “three-party” agreement that modified the “two-party User Agreements” between Plaintiffs and Coinbase. Opp. 15. But to the extent Co-Defendant Marden-Kane was a contracting party to the Official Rules, this only weakens Plaintiffs’ position. Plaintiffs assert that where “the contracts were entered into by the same parties and cover the same subject matter, it is a well settled principle of law that the later contract supersedes the former contract as to inconsistent provisions.” Opp. at 14 (citation omitted). But Marden-Kane was *not* a party to the User Agreement, and so has no legal basis to form a contract superseding that agreement. And nothing in the User Agreement concerns rules related to contests. Because the two agreements involve *neither* the “same parties” nor the “same subject matter,” the Official Rules could not have superseded the User Agreement as Plaintiffs contend.

#### **B. The Other Stay Factors Favor Coinbase As Well.**

Plaintiffs have no credible retort to Coinbase’s showing as to the three other discretionary stay factors. Mot. 16-19. Coinbase will forever lose the benefit of individual arbitration of Plaintiffs’ claims if it must litigate their class claims in court before its appeal is resolved. As noted, discovery has already begun, and if Coinbase prevails on appeal, it will be unable to “unring any bell rung by discovery” and its assorted costs. *Levin*, 634 F.3d at 265. The parties must litigate another motion to dismiss, since Plaintiffs filed their

Third Amended Complaint, *see* Ex. A at 11 (ECF No. 83), and Coinbase’s motion is due June 9. *See* Ex. U at 4. Plaintiffs, by contrast, will suffer no injury from a stay, and they identify no such harm in their Opposition. *See* Op. 20. Finally, Plaintiffs do not even attempt to identify a public interest against a stay. *See id.* Where, as here, all factors favor a stay, the stay pending appeal should be granted.

### **III. Plaintiffs Conceded The Validity and Enforceability Of the User Argument Below, And Cannot Now Contend It Is Unconscionable.**

For the first time in their Opposition, Plaintiffs contend the User Agreement is unconscionable and unenforceable, citing *Bielski v. Coinbase, Inc.*, No. C 21-07478 WHA, 2022 WL 1062049 (N.D. Cal. Apr. 8, 2022). First, *Bielski* is currently on appeal, and its conclusion is inconsistent with the many courts that have compelled arbitration under Coinbase’s User Agreement.<sup>1</sup> Second, Plaintiffs have already expressly conceded that the User Agreement is valid and enforceable. *See* Ex. F at 6 (“The parties’ ‘Official Rules’ agreements are just as valid and enforceable as the parties’ original arbitration agreements.”). And under California law, plaintiffs forfeit unconscionability arguments if they do not raise them when they initially resisted

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<sup>1</sup> *E.g.*, *Berk v. Coinbase, Inc.*, 840 F. App’x 914, 915 (9th Cir. 2020) (reversing district court’s denial of Coinbase’s motion to compel arbitration and instructing it to compel arbitration pursuant to Coinbase’s User Agreement); *Sultan v. Coinbase, Inc.*, 354 F. Supp. 3d 156, 158 (E.D.N.Y. 2019) (granting Coinbase’s motion to compel arbitration); *Pierre v. Coinbase, Inc.*, No. 159761/20, 2021 WL 1538015, at \*1 (N.Y. Sup. Ct. Apr. 14, 2021) (same).

arbitration. *See Cummings v. Future Nissan*, 128 Cal. App. 4th 321, 328-29 (2005), as modified (Apr. 8, 2005) (“[t]hose who are aware of a basis for finding the arbitration process invalid [as unconscionable] must raise it at the outset” or forfeit it); *Pearson Dental Supplies, Inc. v. Super. Ct.*, 48 Cal. 4th 665, 681 (2010) (same). Accordingly, this newfound argument provides no basis for denying a stay.

### CONCLUSION

For the foregoing reasons, Coinbase respectfully requests that, before June 1, 2022, this Court 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: May 25, 2022

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Filed December 19, 2022]

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No. 22-15209

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DAVID SUSKI; JAIMEE MARTIN; JONAS CALSBEEK;  
THOMAS MAHER; Individually and on Behalf of All  
Others,

*Plaintiffs-Appellees,*

v.

COINBASE, INC.,

*Defendant-Appellant,*

and

MARDEN-KANE, INC.; COINBASE GLOBAL, INC.,

*Defendants.*

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

Appeal from the United States District Court for the  
Northern District of California  
Sallie Kim, Magistrate Judge, Presiding

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**OPINION**

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Argued and Submitted November 18, 2022  
San Francisco, California  
Filed December 16, 2022

Before: A. Wallace Tashima and Richard A. Paez,  
Circuit Judges, and William K. Sessions III,\* District  
Judge.

Opinion by Judge Tashima

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**SUMMARY**<sup>†</sup>

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**Arbitration**

The panel affirmed the district court’s order denying Coinbase, Inc.’s motion to compel arbitration in a diversity suit brought by four Coinbase users who opted into Coinbase’s Dogecoin Sweepstakes in June 2021.

When plaintiffs created their Coinbase accounts, they agreed to the “Coinbase User Agreement,” which contained an arbitration provision. They later opted into the Sweepstakes’ “Official Rules,” which included a forum selection clause providing that California was the exclusive jurisdiction for controversies regarding the sweepstakes.

First, Coinbase challenged the district court’s ruling that the Coinbase User Agreement did not delegate to an arbitrator the question of whether the forum selection clause in the Sweepstakes’ Official Rules superseded the arbitration clause in the User Agreement. Coinbase argued that the issue of any superseding effect of the Sweepstakes’ Official Rules concerned the

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\* The Honorable William K. Sessions III, United States District Judge for the District of Vermont, sitting by designation.

† This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.



scope of the arbitration clause and therefore fell within the User Agreement delegation clause. The panel held that the “scope” of an arbitration clause concerns how widely it applies, not whether it has been superseded by a subsequent agreement. The district court therefore correctly ruled that the issue of whether the forum selection clause in the Sweepstakes’ Official Rules superseded the arbitration clause in the User Agreement was not delegated to the arbitrator, but rather was for the court to decide.

Second, Coinbase challenged the district court’s ruling that the forum selection clause in the Sweepstakes’ Official Rules superseded the User Agreement’s arbitration clause. Coinbase argued that the User Agreement contained an integration clause, and procedures for amendment of the User Agreement, and the User Agreement therefore could not have been superseded by the Official Rules. The panel held that the district court correctly ruled that because the User Agreement and the Official Rules conflict on the question whether the parties’ dispute must be resolved by an arbitrator or by a California court, the Official Rules’ forum selection clause supersedes the User Agreement’s arbitration clause.

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David J. Harris Jr. (argued), Finkelstein & Krinsk LLP, San Diego, California, for Plaintiffs-Appellees.

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**OPINION**

TASHIMA, Circuit Judge:

Coinbase, Inc., an online cryptocurrency exchange, appeals the district court’s order denying its motion to compel arbitration in a diversity suit brought by David Suski and three other Coinbase users who opted into Coinbase’s Dogecoin Sweepstakes in June 2021. We affirm.

When plaintiffs created their Coinbase accounts, they agreed to the “Coinbase User Agreement,” which contains an arbitration provision. They later opted into the Sweepstakes’ “Official Rules,” which include a forum selection clause providing that California courts have exclusive jurisdiction over any controversies regarding the sweepstakes. Plaintiffs brought claims under California’s False Advertising Law, Unfair Competition Law, and Consumer Legal Remedies Act against Coinbase and Marden-Kane, Inc., a company hired by Coinbase to design, market, and execute the sweepstakes. Coinbase filed a motion to compel arbitration, which the district court denied. The district court concluded that a delegation clause in the Coinbase User Agreement did not delegate to the arbitrator the issue of which contract governed the dispute. The district court further ruled that, under statelaw principles of contract interpretation, the Official Rules superseded the Coinbase User Agreement and, therefore, that the User Agreement’s arbitration clause did not apply.

We have jurisdiction under 9 U.S.C. § 16(a)(1). We review de novo the district court’s order denying Coinbase’s motion to compel arbitration. *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1207 (9th Cir. 2016).

### I. The Delegation Clause

First, Coinbase challenges the district court's ruling that the User Agreement did not delegate to an arbitrator the question of whether the forum selection clause in the Sweepstakes' Official Rules superseded the arbitration clause in the User Agreement.

“[W]hether the court or the arbitrator decides arbitrability is an issue for judicial determination unless the parties clearly and unmistakably provide otherwise.” *Oracle Am. Inc. v. Myriad Grp. A.G.*, 724 F.3d 1069, 1072 (9th Cir. 2013) (internal quotation marks and citations omitted). Issues of contract formation may not be delegated to an arbitrator. *Ahlstrom v. DHI Mortg. Co.*, 21 F.4th 631, 635 (9th Cir. 2021). But “if the parties [formed] an agreement to arbitrate containing an enforceable delegation clause, all arguments going to the scope or enforceability of the arbitration provision are for the arbitrator to decide in the first instance.” *Caremark, LLC v. Chickasaw Nation*, 43 F.4th 1021, 1030 (9th Cir. 2022); see *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 527 (2019) (recognizing that the Federal Arbitration Act “allows parties to agree by contract that an arbitrator, rather than a court, will resolve threshold arbitrability questions as well as underlying merits disputes”).

The delegation clause in the User Agreement accepted by three plaintiffs provides that the arbitrator shall decide “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.” Suski accepted a different version of the Coinbase User Agreement, but the American Arbitration Association rules incorporated in that agreement similarly grant the

arbitrator the power to rule on “the existence, scope, or validity of the arbitration agreement.”

Coinbase argues that the issue of any superseding effect of the Sweepstakes’ Official Rules concerns the scope of the arbitration clause and therefore falls within the User Agreement’s delegation clause. Coinbase cites *Mohamed*, which held that delegation clauses in the parties’ arbitration agreements served as clear and unmistakable evidence of the parties’ intent to delegate questions of arbitrability, even though the parties’ agreements also contained forum selection clauses granting “exclusive jurisdiction” to state and federal courts in San Francisco over “any disputes, actions, claims or causes of action arising out of or in connection with this Agreement.” *Mohamed*, 848 F.3d at 1209. In *Mohamed*, however, the delegation clause and the forum selection clause were included in the same contract, and there was no question about a later, potentially-superseding agreement. We held that the delegation clause remained clear and unmistakable despite the presence of the forum selection clause because any conflicts between them were “artificial.” *Id.* (“It is apparent that the venue provision . . . was intended . . . to identify the venue for any other claims that were not covered in the arbitration agreement.”).

We find well-taken plaintiffs’ argument that under *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733 (9th Cir. 2004), the existence rather than the scope of an arbitration agreement is at issue here. In *Goldman*, plaintiff Goldman, a broker-dealer and member of the Financial Industry Regulatory Authority (“FINRA”), sought to enjoin a FINRA arbitration that the City of Reno had initiated against it. *Id.* at 735. As a FINRA member, Goldman had a default obligation under the

FINRA Rules to arbitrate at the request of a customer such as Reno. *Id.* at 742. The contracts between the parties, however, included forum selection clauses providing that actions arising out of the contracts must be brought in the United States District Court for the District of Nevada. *Id.* at 736-37. *Goldman* held that the issue of whether the forum selection clauses applied and superseded Goldman’s arbitration obligation was an issue of whether a contractual obligation to arbitrate existed. *Id.* at 743.

The “scope” of an arbitration clause concerns how widely it applies, not whether it has been superseded by a subsequent agreement. *See id.*; *cf. Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.*, 862 F.3d 981, 985-86 (9th Cir. 2017) (explaining that issues regarding whether an arbitration agreement included a dispute were questions of the scope of the arbitration agreement, delegated to the arbitrators). The district court therefore correctly ruled that the issue of whether the forum selection clause in the Sweepstakes’ Official Rules superseded the arbitration clause in the User Agreement was not delegated to the arbitrator, but rather was for the court to decide. *See Ahlstrom*, 21 F.4th at 635 (issues of contract formation may not be delegated to an arbitrator).

## II. The Forum Selection Clause

Coinbase also challenges the district court’s ruling that the forum selection clause in the Sweepstakes’ Official Rules superseded the User Agreement’s arbitration clause.

When determining whether parties have agreed to submit to arbitration, courts apply state-law principles of contract formation and interpretation. *Holl v. U.S. Dist. Court (In re Holl)*, 925 F.3d 1076, 1083 (9th

Cir. 2019). A contract containing a forum selection clause supersedes an arbitration agreement where “the forum selection clause[] . . . sufficiently demonstrate[s] the parties’ intent to do so.” *Goldman*, 747 F.3d at 741. Under California law, “[t]he general rule is that when parties enter into a second contract dealing with the same subject matter as their first contract without stating whether the second contract operates to discharge or substitute for the first contract, the two contracts must be interpreted together and the latter contract prevails to the extent they are inconsistent.” *Capili v. Finish Line, Inc.*, 116 F. Supp. 3d 1000, 1004 n.1 (N.D. Cal 2015) (quoting 17A C.J.S. Contracts § 574), *aff’d*, 699 F. Appx. 620 (9th Cir. 2017); *see also Williams v. Atria Las Posas*, 24 Cal. Rptr. 3d 341, 345 (Ct. App. 2018) (holding that later-signed arbitration agreement superseded parties’ original agreement, which did not include an arbitration clause); *Mastersson v. Sine*, 436 P. 2d 561, 563 (Cal. 1968) (Any “collateral agreement itself must be examined . . . to determine whether the parties intended the subjects of negotiation it deals with to be included in, excluded from, or otherwise affected by the writing”).

Coinbase argues that the User Agreement contains an integration clause, and procedures for amendment of the User Agreement, and the User Agreement therefore could not have been superseded by the Official Rules. Coinbase also argues that the Official Rules concern a different subject matter from the User Agreement and do not evince the parties’ intent to amend, revise, revoke, or supersede any prior agreement, including the User Agreement. An integration clause, however, does not preclude a superseding contract from being formed in the future. *See In re Ins. Installment Fee Cases*, 150 Cal. Rptr. 3d 618, 632 (Ct.

App. 2012) (“[A]n integration clause only covers antecedent and contemporaneous agreements; it does not foreclose the possibility of future agreements.” (quoting *Nakashima v. State Farm Mut. Auto. Ins. Co.*, 153 P. 3d 664, 668 (N.M. Ct. App. 2007))). Coinbase is correct that the Official Rules contain no language specifically revoking the parties’ arbitration agreement in the User Agreement. By including the forum selection clause, however, the Official Rules evince the parties’ intent not to be governed by the User Agreement’s arbitration clause when addressing controversies concerning the sweepstakes. *See Goldman*, 747 F.3d at 741.

Coinbase contends that, even if the Official Rules amended the User Agreement, the two agreements can and should be read harmoniously. It argues that, like the forum selection clause in *Mohamed*, the forum selection clause here must be read to apply only to non-arbitrable claims and to suits seeking enforcement of any arbitration awards. *See Mohamed*, 848 F.3d at 1209. As stated above, however, *Mohamed* is distinguishable because there, the arbitration clause and the forum selection clause were included in the same contract. Coinbase also cites *Peterson v. Minidoka County School District No. 331*, 118 F.3d 1351, 1359 (9th Cir.), *amended by* 132 F.3d 1258 (9th Cir. 1997), for the proposition that in situations involving multiple contracts, the contractual provisions should be read “so that they harmonize with each other, not contradict each other.” *Peterson*, however, also involved a single contract that incorporated a statute and a policy, rather than an original contract and a subsequent contract. *Id.*

Finally, as the district court explained, the Official Rules cannot be reconciled with the User Agreement.

The Official Rules apply to all Sweepstakes entrants, including entrants who are not subject to the User Agreement because they used an alternative mail-in procedure. Despite Coinbase's arguments, the Official Rules make no distinction between entrants who are Coinbase users subject to the User Agreement's arbitration clause and those who are not because they used an alternative mail-in entry procedure.

The district court correctly ruled that because the User Agreement and the Official Rules conflict on the question whether the parties' dispute must be resolved by an arbitrator or by a California court, the Official Rules' forum selection clause supersedes the User Agreement's arbitration clause. *See Goldman*, 747 F.3d at 741. We therefore affirm the district court's order denying Coinbase's motion to compel arbitration.

**AFFIRMED.**