APPENDIX

TABLE OF CONTENTS

Page

APPENDIX A—Ninth Circuit's Opinion (Dec. 16, 2022) 1a

APPENDIX B—District Court's Order Regarding Motions to Compel Arbitration and to Dismiss (Jan. 11, 2022) 12a

APPENDIX C—Ninth Circuit's Order Denying Rehearing (Feb. 23, 2023) 35a

APPENDIX D—Coinbase User Agreement (Aug. 23, 2017) (excerpts) 37a

APPENDIX E—Coinbase User Agreement (Mar. 31, 2021) (excerpts) 40a

APPENDIX F—Coinbase Dogecoin Sweepstakes Official Rules (May 10, 2022) (excerpts) 46a

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-15209

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.

Appeal from the United States District Court
for the Northern District of California
Sallie Kim, Magistrate Judge, Presiding
(DC No. 3:21-cv-04539-SK)

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

SUMMARY**

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

---

* 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

an arbitrator the question of whether the forum selection clause in the Sweepstakes' Official Rules superseded the arbitration clause in the User Agreement.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 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.

———

COUNSEL

Kathleen R. Hartnett (argued), Michael G. Rhodes, Travis LeBlanc, Joseph D. Mornin, Bethany C. Lobo, and David S. Louk, Cooley LLP, San Francisco, California, for Defendant-Appellant.

David J. Harris Jr. (argued), Finkelstein & Krinsk LLP, San Diego, California, for Plaintiffs-Appellees.

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 state-law 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); *Masterson 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.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID SUSKI, ET AL.,

Plaintiffs,

v.

MARDEN-KANE, INC., ET AL.,

Defendants.

Case No. 21-cv-04539-SK

Regarding Docket Nos. 33, 41

Filed January 11, 2022

ORDER REGARDING MOTIONS TO COMPEL ARBITRATION AND TO DISMISS

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[1] (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.

(*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.
>
> . . .

[1] 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.

> 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 price 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).[2] 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 extent they are not premised on a violation of California Penal Code § 320.

---

[2] 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."

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

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-15209

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

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.

Filed: 02/23/2023

ORDER

Before: A. Wallace Tashima and Richard A. Paez, Circuit Judges, and William K. Sessions III,* District Judge.

The panel has voted to deny the petition for panel rehearing, and recommends that the petition for rehearing en banc be denied. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on en banc rehearing. *See* Fed. R. App. P. 35(f). The petition for panel rehearing and the petition for rehearing en banc are denied.

* The Honorable William K. Sessions III, United States District Judge for the District of Vermont, sitting by designation.

APPENDIX D

COINBASE USER AGREEMENT

This is a contract between you and Coinbase, Inc. ("Coinbase"). By signing up to use an account through coinbase.com or gdax.com, or any associated websites, APIs, or mobile applications (collectively the "Coinbase Site"), you agree that you have read, understood, and accept all of the terms and conditions contained in this Agreement, as well as our [Privacy Policy] (https://www.coinbase.com/legal/privacy) and E-Sign Consent.

Last updated: August 23, 2017

* * *

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

7.1. Contact Coinbase. If you have any feedback, questions, or complaints, contact us via our Customer Support webpage at https://support.coinbase.com or write to us at Coinbase Customer Support, 548 Market Street, #23008, San Francisco, CA 94104, USA. When you contact us please provide us with your name, address, and any other information we may need to identify you, your Coinbase Account, and the transaction on which you have feedback, questions, or complaints. If you believe your account has been compromised, you may also report your claim by calling (888) 908-7930.

7.2. Arbitration; Waiver of Class Action. If you have a dispute with Coinbase, we will attempt to resolve any such disputes through our support team. **If we cannot resolve the dispute through our

support team, you and we agree that any dispute arising under this Agreement shall be finally settled in binding arbitration, on an individual basis, in accordance with the American Arbitration Association's rules for arbitration of consumer-related disputes (accessible at https://www.adr.org/sites/default/files/Consumer%20Rules.pdf) and you and Coinbase hereby expressly waive trial by jury and right to participate in a class action lawsuit or class-wide arbitration**. The arbitration will be conducted by a single, neutral arbitrator and shall take place in the county or parish in which you reside, or another mutually agreeable location, in the English language. The arbitrator may award any relief that a court of competent jurisdiction could award, including attorneys' fees when authorized by law, and the arbitral decision may be enforced in any court. At your request, hearings may be conducted in person or by telephone and the arbitrator may provide for submitting and determining motions on briefs, without oral hearings. The prevailing party in any action or proceeding to enforce this agreement shall be entitled to costs and attorneys' fees.

If the arbitrator(s) or arbitration administrator would impose filing fees or other administrative costs on you, we will reimburse you, upon request, to the extent such fees or costs would exceed those that you would otherwise have to pay if you were proceeding instead in a court. We will also pay additional fees or costs if required to do so by the arbitration administrator's rules or applicable law. Apart from the foregoing, each Party will be responsible for any other fees or costs, such as attorney fees that the Party may incur. If a court decides that any provision of this section 7.2 is invalid or unenforceable, that provision

shall be severed and the other parts of this section 7.2 shall still apply. In any case, the remainder of this User Agreement, will continue to apply.

* * *

APPENDIX E

Coinbase User Agreement

As of March 31, 2021

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

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

* * *

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.

* * *

APPENDIX F

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.

* * *

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.

* * *