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January 25, 2023

**By Electronic Filing and Federal Express**

The Honorable Scott S. Harris  
Clerk of the Court  
Supreme Court of the United States  
One First Street, NE  
Washington, D.C. 20543

**Re: *Coinbase, Inc. v. Bielski*, No. 22-105**

Dear Mr. Harris:

I represent Respondent Abraham Bielski in the above-referenced matter. I respectfully submit this letter in light of developments in the proceedings below.

On December 9, 2022, this Court granted certiorari in *Bielski* and *Suski* to determine whether a district court retains jurisdiction over the aspects of a case unrelated to arbitration when a party files an interlocutory appeal of a denial of its motion to compel arbitration. In both *Bielski* and *Suski*, the district courts denied Coinbase's motions to compel arbitration. In both cases, Coinbase appealed those denials pursuant to 9 U.S.C. § 16(a) and moved to stay district court proceedings pending those appeals. And in both cases, Coinbase's motions to stay were denied by the district courts and the Ninth Circuit. This Court also denied Coinbase's application to stay the district court cases. *Coinbase, Inc. v. Bielski*, No. 22A91, Denial of Application for Stay (Aug. 10, 2022).

In *Suski*, Coinbase's appeal was argued on November 18, 2022 and decided four weeks later on December 16, 2022. In an opinion by the Honorable A. Wallace Tashima, the Ninth Circuit panel unanimously affirmed the district court's denial of Coinbase's motion to compel arbitration. Coinbase moved for and was granted an extension of time to file a petition for rehearing. Any petition for panel rehearing or rehearing *en banc* is due by January 30, 2023.

In *Bielski*, Coinbase's appeal has been fully briefed and is scheduled for argument before the Ninth Circuit on February 14, 2023. Coinbase moved to stay the *Bielski* appeal on December 10, 2022 after this Court granted certiorari. The Ninth Circuit denied that motion on January 20, 2023.

Counsel for Coinbase submitted a letter to this Court on January 24, 2023 to discuss the mootness implications of the Ninth Circuit's denial of its latest motion to stay. Coinbase suggests this Court could order the Ninth Circuit to hold the *Bielski* appeal in abeyance pending this Court's disposition to avoid needing to address mootness. But, as Coinbase recognizes, "[n]o question of mootness in this Court will arise" at least until seven days after the Ninth Circuit disposes of a petition for rehearing. 01/24/2023 N. Katyal Letter at 2; *see* Fed. R. App. 41(b). *Bielski* has not yet been argued, let alone decided, and there is no mandate soon to issue. Holding *Bielski* in abeyance now would simply delay the Ninth Circuit's resolution of its arbitrability questions, which are wholly distinct from the issue before this Court.

If the Ninth Circuit denies Coinbase’s forthcoming petition for rehearing in *Suski*, however, the mandate in that case will issue seven days later, and *Suski* will then be moot. The question in this Court is whether district courts retain limited jurisdiction during interlocutory arbitration appeals; the interlocutory arbitration appeal in *Suski* will be complete at that time. *Suski* will no longer contain a live case or controversy within the question presented.

Coinbase suggests that *Suski* would still not be moot due to this Court’s “capable of repetition, yet evading review” mootness exception. 01/24/2023 N. Katyal Letter at 2; see *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 169 (2016). But that exception applies in only “exceptional situations,” *Kingdomware Techs.*, 579 U.S. at 169 (quotation omitted), where the challenged action “is likely forever to evade review,” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 481 (1990) (alteration in original) (quotation omitted). The question presented in *Bielski* and *Suski* does not fit. In fact, Coinbase has argued that the average time to resolve an appeal in the Ninth Circuit is so long that it is evidence of its harm, but now suggests that the time period is too short to permit review by this Court. See Brief for Petitioner at 48 & n.2. As further evidence of “harm,” Coinbase has shared an example of a Ninth Circuit interlocutory appeal “taking nearly three years” until resolution. See *id.*; *Stromberg v. Qualcomm Inc.*, 14 F.4th 1059 (9th Cir. 2021). And, as Coinbase recognizes, the issue of district courts denying motions to compel arbitration and motions to stay pending appeal reoccurs with high frequency. See, e.g., Brief for Petitioner at 47 n.1 (listing only a subset of examples in which the Ninth Circuit reversed). Because the issue is common and will sometimes be pending on appeal for years, it is not “likely forever to evade review.” *Lewis*, 494 U.S. at 481 (alteration in original) (quotation omitted).

If *Suski* becomes moot prior to a decision in this case, this Court may evaluate at that time whether *Bielski* should be held in abeyance, informed by the relative progress at that time between this case and the *Bielski* appeal in the Ninth Circuit and the interests of the parties in *Bielski* to a timely resolution of their dispute. For the time being, however, this Court need not decide whether to hold the *Bielski* appeal in abeyance.

Sincerely,

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