IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

George Kattula, Ashley Adams, John Alexander, Kenneth Axelsson, Tara Bennett, Al Bigonia, Joseph Blumetti, Darren Bradley, Dallas Bray, Franklin Calderón, Wayne Colt Carter, Allan Chiulli, Lolletta Cohen, Laleh Dallalnejad, Erick Eliezaire, Mark Gambell, Rodrigo Garcia, Mark Girshovich, Charles Glackin, Eldon Hastings, Roger Haston, Travis Houzenga, Dan Hyatt, Bobby Johnson, Jane Krieser, Eric Larson, Chris Longstreth, Ngoun Mang, Lisa Marcial, Bianca McWilliams, Victor Mechanic, Mihail Mihalitsas, Brady Lee Nessler, Frank Onimus, Vilasini Pillai, William Plyler, Edward Polhill, Steven Paperno, Luis Rodriguez, Earlando Samuel, Von Sims, Varun Singh, Larry Sowell, Vesselina Spassova, Richard Stefani, Christopher Suero, Natalie Tang, Daniel Tucker, Fatima Waheed, Eric White, Bob Whittington, and Karen Wright, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Coinbase Global, Inc., and Coinbase Inc.,

Defendants.

CIVIL FILE ACTION

NO. 1:22-cv-03250-TWT

CLASS ACTION

JURY TRIAL DEMANDED

PLAINTIFFS' OPPOSITION TO COINBASE'S AMENDED MOTION TO COMPEL ARBITRATION

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Defendants' attempt to construct a world in which they are free to operate outside the jurisdiction of the courts, state and federal regulatory oversight, and any public scrutiny should be rejected. Coinbase has lured millions of customers to its platform based on promises of "guaranteed accounts" and "bank-level security," while delivering neither. While Coinbase has flouted the very state and federal regulations designed to protect customers, Plaintiffs have lost untold millions of dollars from their Coinbase exchange accounts and/or Wallets because of Coinbase's failures. After leaving their accounts to be looted, Coinbase refused to assist Plaintiffs, meaningfully respond to their complaints, or stop the rampant theft on its platform. Instead, Coinbase attempts to sweep all of its failures out of the public view and into a one-way, sham dispute resolution process. One district court has already found that process unconscionable.[1] This Court should deny Coinbase's request as well.

Defendants' shotgun approach to compelling arbitration misses the mark.[2] After twice invoking this Court's authority before compelling arbitration, Coinbase's amended memorandum **still** fails to specify which arbitration clause applies to each Plaintiff, including for example Luis Rodriguez. This deficiency fails to satisfy Coinbase's own standards.[3] Well-established forfeiture and waiver rules prohibit

[1] *Bielski v. Coinbase, Inc.*, No. C 21-07478 WHA, 2022 WL 1062049 (N.D. Cal. Apr. 8, 2022), *appeal docketed*, No. 22-15566 (9th Cir. Apr. 18, 2022).
[2] *See* Fed. R. Civ. P. 7(b)(1)(B) (grounds for order must be stated "with particularity").
[3] *See* Defs. Motion, Dkt. 47 at 12 ("In order to fully brief a motion to compel, Coinbase needs to confirm . . . which User Agreement applies to those accounts."); Defs.' Reply

Defendants – having already filed a motion and an amended motion – from sandbagging Plaintiffs by waiting until reply to take a "third bite at the apple."[4]

Coinbase burdens this Court with the task of attempting to mix and match hundreds if not thousands of agreements with dozens of plaintiffs.[5] This opposition focuses on the two "Arbitrations Clauses" apparently relied upon by the Amended Motion: the "2022-UA"[6] and the "2021-UA." (Dkt. 80 at 15-16).[7] Coinbase fails to make any showing that the Coinbase Wallet holders are subject to an arbitration clause.

The Supreme Court rejects Coinbase's plea to favor its Arbitration Clauses, much less their onerous preconditions. It recently held that "a court may not devise novel rules to favor arbitration," but must treat arbitration clauses like other contracts.[8] As set forth below, Defendants' Amended Motion should be denied as to all Plaintiffs.

Br., Dkt. 52 at 6 ("Coinbase's emergency motion explained that it is seeking Plaintiffs' identifying information so it can match Plaintiffs with the arbitration provisions to which they agreed."); *see also* Miller Decl., Dkt. 47-4 at 43 ("Because these arbitration provisions have varied slightly over time, we believe it is important to match the correct plaintiffs to the correct arbitration provisions.")

[4] "Attaching a contract to a motion does not raise every argument that could be made under the contract." *Entrekin v. Internal Med. Assocs. of Dothan, P.A.*, 689 F.3d 1248, 1252-53 (11th Cir. 2012) (holding defendant forfeited delegation clause argument).

[5] *Cf. Ragab v. Howard*, 841 F.3d 1134, 1138 (10th Cir. 2016) (court "cannot arbitrarily pick [which arbitration agreement] to enforce").

[6] "2022-UA" refers to versions: Jan. 31, 2022 (Dkt. 62-2) & Feb. 1, 2022 (Dkt. 62-1).

[7] "2021-UA" refers to versions: Oct. 2, 2019 (Dkt. 78-3); Nov. 6, 2019 (Dkt. 62-5); Dec. 8, 2020 (Dkt. 62-4); April 9, 2021 (Dkt. 62-3); July 2, 2021 (Dkt. 78-4); Dec. 6, 2021 (Dkt. 78-5). As best can be discerned from cobbling together declarations and the Amended Motion (Dkt. 80 at 15-16), Coinbase never compels arbitration under the version dated Sept. 9, 2014 (Dkt. 78-1) (the "2014-UA"), nor does it compel arbitration under the versions dated Jan. 26, 2015 (Dkt. 62-9); Nov. 9, 2015 (Dkt. 62-8); Sept. 22, 2016 (Dkt. 62-7); Aug. 23, 2017 (Dkt. 62-6).

[8] *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1713 (2022).

I. The Arbitration Clauses are unconscionable.

Defendants cannot compel Plaintiffs (or class members) to arbitration because the Arbitration Clauses are unconscionable. Under California law, a contract provision is unenforceable if it was "unconscionable at the time it was made."[9] Unconscionability has a procedural element focused on oppression or surprise due to unequal bargaining power, and a substantive element focused on harsh or one-sided results.[10] California uses a "sliding-scale:" "the more substantively unfair, the less procedurally unconscionable a provision need be for a finding it is unenforceable, and vice-versa."[11]

A. The Arbitration Clauses are procedurally unconscionable.

Procedural unconscionability focuses on two factors: oppression from unequal bargaining power and surprise arising from hidden terms.[12] First, arbitration agreements in contracts of adhesion are "at least minimally procedurally unconscionable."[13] Coinbase admits its Arbitration Clauses only exist within standardized, Coinbase-drafted contracts presented on a "take-it-or-leave-it" basis.[14] Thus, the Arbitration Clauses are contracts of adhesion and at least minimally procedurally unconscionable.

The degree of procedural unconscionability is still greater because of how

[9] *Bielski*, 2022 WL 1062049, at *2 (quoting Cal. Civ. Code § 1670.5(a)). *Bielski* found the 2021-UA unconscionable. The 2022-UA fails to cure the unconscionability.
[10] *Pinela v. Neiman Marcus Grp., Inc.*, 238 Cal. App. 4th 227, 242 (2015).
[11] *Bielski*, 2022 WL 1062049, at *2 (citing *Sanchez v. Valencia Holding Co.*, 61 Cal. 4th 899, 910 (2015)).
[12] *Pinela*, 238 Cal. App. at 243.
[13] *MacClelland v. Cellco P'ship*, 609 F.Supp.3d 1024, 1033 (N.D. Cal. 2022)(on appeal).
[14] *See* Declaration of Tony Jankowski, Dkt. 78 at 6, ¶ 10.

Coinbase has amended its Arbitration Clauses. Coinbase purports to have unilaterally amended the User Agreement dozens of times, without notice.[15] Frequent unilateral modification of an agreement enhances the degree of unconscionability because the contract "binds an individual to later-provided terms."[16] Plaintiffs, who did not know about these modifications, had little choice but to continue using Coinbase because they had cryptocurrencies in these accounts and they are difficult or impossible to move.[17]

Second, the Arbitration Clauses are unfairly surprising. "Surprise" involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms.'"[18] Users, many of whom are using a small cell phone screen, must piece together various sections in the middle of an over 100-page agreement and, in the 2022-UA, consult the last of five appendices.[19] It is also unfairly surprising for arbitration clauses buried in agreements for a Coinbase exchange account to somehow cover claims concerning an entirely separate platform, the Coinbase Wallet.[20]

Coinbase's unilateral amendment backdated to January 31, 2022 illustrates both

[15] *See, e.g.*, Jankowski Decl., Dkt. 78 at 25, ¶ g(ii) (Plaintiff agreed to 2021-UA by merely accessing his account); Am. Compl., Dkt. 16 at 44, ¶¶ 161-2. Coinbase does not bother to update the date on the agreement when it updates it. *Am. Compl.* at 36, ¶ 138.
[16] *See Chavarria v. Ralphs Grocery Co.*, 733 F.3d 916, 923 (9th Cir. 2013).
[17] *See, e.g.,* Chiulli Decl. at 3, ¶ 11.
[18] *Pinela*, 238 Cal. App. 4th at 243.
[19] *See Nelson v. Dual Diagnosis Treatment Ctr., Inc.*, 77 Cal. App. 5th 643, 661 (2022) (holding manipulating presentation of terms is unfairly surprising).
[20] *See* Gambell Decl., at 3, ¶ 7.

the oppression and surprise of its Arbitration Clauses. An arbitration agreement is procedurally unconscionable, even without the element of surprise, in "dire situations [where] the plaintiff cannot be expected to 'shop around' for an alternative bargain."[21] Starting on February 3, 2022, Coinbase held user accounts hostage until they accepted a new arbitration agreement.[22] Maximizing its superior bargaining power over existing customers, Coinbase forced the renewed agreement at the peak of tax season and by giving users little time to consider an agreement spanning 111 pages when formatted using this Court's rules. Failure to consent put users at the mercy of an undefined process run by the notorious "Coinbase Support."[23] That left Coinbase users with no choice in the already tiny market for large, audited, and U.S.-based cryptocurrency exchanges.[24] Although such a dire situation is procedurally unconscionable without surprise, widespread security breaches at Coinbase add an especially cruel element of surprise here. Coinbase uses the actions of hackers to spring new arbitration agreements on unsuspecting victims of Coinbase's negligence.[25] Consequently, Plaintiffs have no way of knowing what agreement(s) Coinbase will pick to enforce.

Third, the Arbitration Clauses require Plaintiffs, upon pain of dismissal, to spend

[21] *Fisher v. MoneyGram Int'l, Inc.*, 66 Cal. App. 5th 1084, 1096 (2021).
[22] Jankowski Decl., Dkt. 78, ¶ 10 (using euphemism "enhanced acceptance protocol").
[23] Jankowski Decl. Ex. 36, Dkt. 78-2, at 3; Declaration of Joseph Blumetti at 3. Coinbase used a fake account "upgrade" gimmick to make users accept the 2022-UA due to fear of an outdated account. *Id.* at 4.
[24] *See, e.g.*, Am. Compl., Dkt 16 at 3, ¶¶ 4 & 5.
[25] *See, e.g.*, Bennett Decl., at 2-3, ¶ 6; Declaration of Fatima Waheed, at 2-3, ¶ 5.

months exhausting a confusing multi-step sham dispute resolution process before they can reach a neutral decisionmaker.[26] In *Bielski*, the Court found that "such a broad prohibition on access to formal resolution procedures would surprise the average consumer for this type of service."[27] "Even though a federal claim for relief can be forced into arbitration, this order holds that the 'right' to arbitrate may not be further conditioned on onerous procedural preconditions."[28]

B. The Arbitration Clauses are substantively unconscionable.

"Substantively unconscionable terms may take various forms, but may generally be described as unfairly one-sided."[29]

1. The preconditions to arbitration are one-sided, onerous, and a sham.

One court has already found Coinbase's sham dispute resolution procedure unenforceable because it lacked "even a modicum of bilaterality."[30] The arbitration clauses in the 2022-UA and 2021-UA condition an arbitrator's jurisdiction on exhaustion of a multi-step process that, by design, is one-sided and oppressive. The ordeal forces consumers to trek back and forth between court and arbitration, enduring the costs of each forum, delay, and the palpable threat of Coinbase collecting its

[26] *Bielski*, 2022 WL 1062049, at *2.
[27] *Id.* at *6.
[28] *Id.*
[29] *See Little v. Auto Stiegler, Inc.*, 29 Cal. 4th 1064, 1066 (2003).
[30] *Bielski*, 2022 WL 1062049, at *2-6.

attorneys' fees. The penalty for failing to complete all the preconditions is dismissal.[31] Coinbase never faces preconditions. The preconditions to arbitration can take three months (if not forever) to complete and defy coherent explanation. Meanwhile, nothing in the agreement tolls the statute of limitations.[32] The sham process is illustrated below.

i. Contact Coinbase Support

A customer must first contact Coinbase's notorious "support team" known as "Coinbase Support."[33] This step imposes no obligations on Coinbase. It may drag the process out indefinitely with misleading and dilatory responses, as well as falsehoods.

If one has the misfortune of getting in touch with Coinbase Support, the experience is not only a waste of time but can be extremely abusive and distressing. For one victim, this process subjected him to emails from Coinbase Support using profane language and a racial epithet.[34] Coinbase ignored the letter he mailed requesting an apology for the language it used in emails to him.[35]

As shown by Plaintiffs' extensive evidence supporting their Motion for a Receiver, Coinbase Support is an outsourced operation that, at all relevant times, has been unavailable, unhelpful, untrustworthy, understaffed, and heavily automated.

[31] 2022-UA, § 7.2 (Dkt. 62-2); 2021-UA, § 8.2 (e.g. Dkt. 78-5).
[32] *Cf. Soto v. Sweetman*, 882 F.3d 865, 870 (9th Cir. 2018)
[33] 2022-UA, § 7.2 (Dkt. 62-2); 2021-UA, § 8.2 (e.g. Dkt. 78-5).
[34] *See* Declaration of Gregory Ware, Exs. A-B. To avoid reusing the offensive language in Coinbase's emails, Plaintiffs respectfully ask the Court to review the emails.
[35] Ware Decl. at 3, ¶ 9.

Making matters worse, Coinbase Support is infiltrated by hackers.[36] Coinbase Support misleads users about what happened and asks self-serving questions to get one-sided discovery.[37] Users have no way of knowing for sure when they may move on from the vicious cycle of communications with Coinbase Support.[38]

ii. Submit a "Formal Complaint"

For those that persevere through Coinbase Support, the second step is to submit a "Formal Complaint." Put simply, the process is illusory. An untitled "complaint" form online, which has been unilaterally changed over time, is buried on Coinbase's website.[39] Under the 2021-UA, Coinbase gives itself 35 business days to respond to a Formal Complaint.[40] The 2022-UA indicates Coinbase may respond in 45 business days, but it eliminates any obligation on Coinbase to even respond to a Formal Complaint.[41] When Coinbase does respond to a Formal Complaint, the responses come

[36] Pls. Mem. Supp. Mot. Receiver, Dkt 23-1 at 6-16. Plaintiff Bob Whittington, for example, received emails from an "Elliot Anderson" at Coinbase Support (help@coinbase.com). Declaration of Bob Whittington, Exhibits A & B, Dkt. 72-2 & 72-3. "Elliot Anderson" appears to be an alias combining the names of cybercriminal characters from the T.V. show Mr. Robot and movie The Matrix. The Declarations of Mr. Rodriguez and Ms. Bennett about show Coinbase does not fix security flaws.

[37] *See, e.g.*, Declaration of Daniel Tucker, Dkt. 41 at 3, ¶ 5; Declaration of Mark Girshovich; Declaration of Travis Houzenga, Dkt. 27 at 3-4, ¶¶ 11 & 12 (incorrectly stating user's credentials were compromised); Plyler Decl., Exhibit A (misstating month of unauthorized transfer).

[38] *See e.g.*, Declaration of Kelechukwu Osuji, Dkt 39 at 3, ¶¶ 8-9; *see also* Plyler Decl., Exhibit B (confusingly inviting user to submit another support request to Coinbase or "less formal legal documents" to yet another place).

[39] *See* Am. Compl., Dkt. 16 at 37-44, ¶¶ 144-164.

[40] *See* 2021-UA, § 8.2.2 (*e.g.* Dkt. 78-5 at 2).

[41] 2022-UA, § 7.2.1 (Dkt. 62-2 at 2); *See also* Declaration of Lisa Marcial, Dkt. 37 at 3, ¶ 9. Separately, Coinbase uses a page referenced by the Arbitration Clauses to give itself 10 more calendar days to respond. *See* Am. Compl., Dkt. 16 at 44, ¶¶ 161-2.

from Coinbase Support, except they are always signed by "David." Such a long, onerous process only applies to Plaintiffs, and works entirely in Coinbase's favor to chill consumer claims.

In addition to the *Bielski* decision finding this multi-step process unconscionable, Courts have found unconscionable similar mandatory informal processes that allow the stronger party a "free peek" at the weaker party's case while imposing no comparable obligations on the stronger party.[42]

Coinbase contends it does not matter how bad the sham dispute resolution process is because it happens after contract formation.[43] But the contract as offered presupposed that a viable dispute process was in fact in place, a fact material to the arbitration provision.[44] As a factual matter, Plaintiffs' evidence regarding the sham dispute resolution spans years and precedes the dates when Plaintiffs allegedly accepted the Arbitration Clauses.[45]

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[42] *See Nyulassy v. Lockheed Martin Corp.*, 120 Cal. App. 4th 1267, 1282 (2004) (provision requiring employee to engage in informal discussions "as a condition precedent to[] having his dispute resolved through binding arbitration" was unconscionable); *Carmona v. Lincoln Millennium Car Wash, Inc.*, 226 Cal. App. 4th 74, 89 (2014) (one-sided informal resolution procedure was unconscionable because employer had "no corresponding obligation under the agreement to discuss its disputes with employees before taking action in court or through arbitration"); *Pokorny v. Quixtar, Inc.*, 601 F.3d 987, 999 (9th Cir. 2010) (agreement requiring employee to "engage in non-binding conciliation" was unconscionable because it was "not mutual").
[43] *See* Dkt. 80 at 21-22.
[44] *See, e.g.*, Coinbase Global Inc., Annual Report (Form 10-K) (Feb. 25, 2022) at 38.
[45] Coinbase asserts agreements allegedly accepted as late as October 11, 2022. Coinbase's own admissions of legal violations and inadequate customer support go back to at least 2018 (*see, e.g.*, NYDFS Consent Order, Dkt. 59-1 at 13).

2. The Arbitration Clauses deter reporting criminal activity.

The delays and misdirection inherent in the sham dispute resolution process particularly shock the conscience where speed is necessary to stop criminal activity occurring in financial institutions and cryptocurrency platforms. During the process, Coinbase deters users from contacting regulators or other financial institutions.[46] In other words, Coinbase refuses to allow customers to report criminal activity to the authorities, thereby keeping the public at large from learning the extent to which its platform has been infiltrated and actively thwarting Plaintiffs' ability to protect their own assets. Counsel is aware of no case in which an arbitration agreement containing a law enforcement gag order provision has been enforced. Moreover, such a provision is likely *illegal*, as it runs directly counter to state breach notification laws, which require that Coinbase report a breach within a particular time frame.

3. The Arbitration Clauses exempt claims by Coinbase.

"An agreement may be unfairly one-sided if it compels arbitration of the claims more likely to be brought by the weaker party but exempts from arbitration the types of claims that are more likely to be brought by the stronger party."[47]

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[46] Herman Decl., Ex. C., Dkt. 24-3 at 3 ("you must complete the Coinbase Complaint Resolution Process before contacting any regulatory bodies"). The Arbitration Clauses reference and/or directly link to that page. 2022-UA, § 7.2.1 (Dkt. 62-1 at 2).

[47] *Fitz v. NCR Corp.*, 118 Cal. App. 4th 702, 724 (2004); *see Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 119 (2000) (holding an arbitration agreement is unconscionable where a stronger bargaining power maximizes its advantage by giving itself a choice of forums for its claims while sending the weaker party's claims to arbitration).

The arbitration clause in the 2021-UA is entirely one-sided. Under the 2021-UA, Coinbase has no obligation to arbitrate its claims against users. The 2021-UA begins with "[i]f we cannot resolve the dispute through the Formal Complaint Process . . ."[48] "Because only Coinbase users can raise a complaint though the pre-arbitration complaint procedure, the arbitration provision imposes no obligation on Coinbase itself to submit its disputes with users to binding arbitration."[49] Accordingly, this Court should hold the total one-sidedness of the 2021-UA is substantively unconscionable.[50] Coinbase's preferential access to the Court system is unconscionable.[51]

The 2022-UA retains much of the one-sidedness of the 2021-UA. It provides that "all Disputes about whether either party has satisfied any condition precedent to arbitration shall be decided only by a court of competent jurisdiction and not by an arbitrator."[52] The conditions precedent – *i.e.*, Coinbase's sham dispute resolution processes – only apply to consumers, so Coinbase has the sole option to file suit in court against its customers based on an alleged failure to meet its own preconditions. The 2022-UA curtails the arbitrator's authority in a manner favorable to Coinbase by

[48] 2021-UA, § 8.2 (e.g. Dkt 78-5 at 2).
[49] *Bielski*, 2022 WL 1062049, at *4.
[50] *Id.* at *6.
[51] *See id.*; *Gelow v. Cent. Pac. Mortg. Corp.*, 560 F. Supp. 2d 972, 981 (E.D. Cal. 2008) ("In order for an arbitration agreement to be lawful, it must allow for all types of relief that a court could order."); *Armendariz*, 24 Cal. 4th at 121 ("The unconscionable one-sidedness of the arbitration agreement is compounded [because] . . . it does not permit the full recovery of damages for [the non-drafting party], while placing no such restriction on the [drafting party]").
[52] (2022-UA, § 1.6.)

preventing the arbitrator from deciding which versions of the User Agreement applies and from deciding the validity of the class action and public injunctive relief waivers.[53]

Adding to the one-sidedness of the Arbitration Clauses, preliminary relief is unavailable to consumers but is available to Coinbase. Users are unable to get preliminary relief in any forum, including arbitration, because users (but not Coinbase) must spend months (if not forever) exhausting the onerous preconditions to arbitration.

In contrast, the Arbitration Clauses allow Coinbase to freeze a user's account and seize a user's cryptocurrency or funds without notice, explanation, or process.[54] As a result, the Arbitration Clauses create an unduly oppressive disparity in remedies.[55]

4. The arbitrator cannot award damages against Coinbase.

The Arbitration Clauses unconscionably limit the arbitrator's power to award damages against Coinbase. Coinbase, but not the customer, has no liability for any damages "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."[56] This one-sided limitation of liability is facially unlawful because a

[53] 2022-UA, § 1.6 (Dkt. 62-2).
[54] 2022-UA, § 4.6 (Dkt. 62-2); 2021-UA, § 4.7 (e.g. Dkt. 78-5).
[55] *See Flores v. Transamerica HomeFirst, Inc.*, 93 Cal. App. 4th 846, 853-54 (2001) (affirming asymmetrical remedies imposed by stronger party in contract of adhesion were unconscionable).
[56] (2022-UA at § 8.2.) Section 1.6 of the 2022-UA provides that "[i]n any award of damages, the arbitrator shall abide by the 'Limitation of Liability' section . . ." The arbitration clauses incorporate and are "functionally intertwined" with other unconscionable provisions, so the Court should consider them. *See MacClelland*, 609 F. Supp. 3d at 1032.

financial institution entrusted with a customer's property may not exculpate itself from liability for negligence.[57] It is also one-sided because Coinbase limited its liability to gross negligence, while the user can be liable for simple negligence and required to "indemnify and hold Coinbase […] 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."[58]

5. The Arbitration Clauses impose one-sided fee shifting rules.

Under the 2021-UA, "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."[59] Because Coinbase can choose to bring its claims in Court, this provision creates unconscionable "unilateral fee-shifting."[60]

Similarly, the 2022-UA awards attorneys' fees and costs to a party who successfully "obtains an order compelling arbitration," but not for a party who successfully resists such a motion to compel. Thus, Coinbase gives itself a free chance to move to compel arbitration: if it wins, it gets attorneys' fees, and if it loses, customers

[57] *Vilner v. Crocker Nat'l Bank*, 89 Cal. App. 3d 732, 737 (1979) (clause was unenforceable under public policy prohibiting exculpation for negligence in bailment and banking relationships).
[58] 2022-UA, § 8.1 (Dkt. 62-2).
[59] *See* Dkts. 78-5 at 3; 78-4 at 12; 62-3 at 2-3; 62-4 at 26; 62-5 at 17; 78-3 at 24.
[60] *See Samaniego v. Empire Today LLC*, 205 Cal. App. 4th 1138, 1143 (2012).

must bear their own costs.[61] Users uniquely face fee-shifting if there is a question about whether they have satisfied Coinbase's sham dispute resolution process. These one-sided fee-shifting provisions in Coinbase's favor are unconscionable.[62]

6. Coinbase alone can amend the arbitration clauses at any time.

The Arbitration Clauses are unconscionable because Coinbase is the only party that can unilaterally modify them.[63] Coinbase has leveraged this provision to change the rules "in the middle of its game" – amending and retroactively imposing a new arbitration clause against Plaintiffs who have had the accounts breached and are in the midst of a dispute with Coinbase.[64] These modification rights, which Coinbase has exploited against victims of its poor security, also contributes to the *procedural* unconscionability of the arbitration clauses.[65]

[61] 2022-UA, § 1.7 (Dkt. 62-2).
[62] *See Samaniego*, 205 Cal. App. 4th at 1143.
[63] *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1179 (9th Cir. 2003)(arbitration clause unconscionable because, in part, "the provision affording [the drafting party] the unilateral power to terminate or modify the contract is substantively unconscionable").
[64] *See Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 939 (4th Cir. 1999) (holding arbitration rules unconscionable where "[n]othing in the rules even prohibits Hooters from changing the rules in the middle of an arbitration proceeding."). Coinbase changed the agreement applicable to Mr. Plyler and Mr. Glackin, for example, after they initiated the sham dispute resolution process. *See* Plyler Decl., Ex. A (email from Coinbase citing 2021-UA); Glackin Decl. ¶¶ 4-7; Jankowski Decl., Dkt. 78 at 10-11 (listing 2022-UA). Further, Coinbase asserts alleged acceptances of the 2022-UA that happened after this class action was filed, making the alleged agreements the result of unauthorized communications with absent class members in violation of Local Rule 23.1.
[65] *See Pokorny*, 601 F.3d at 997 (higher degree of procedural unconscionability where rules incorporated into contract "were subject to unilateral amendment by [the defendant] at any time").

7. Public injunctive relief is prohibited.

The Arbitration Clauses unconscionably prohibit public injunctive relief.[66]

8. The 2022-UA curtails rights to a hearing, discovery, and counsel.

The Arbitration Clauses deprive users of a hearing for claims less than $25,000, which violates the AAA's *Consumer Process Protocol*.[67] Further, the 2022-UA imposes extraordinary limits on discovery. Plaintiffs may be put into a single "Batch Arbitration" with up to 100 other individuals whose claims will all be heard in a single hearing held at a location potentially across the country from a claimant, with that claimant having to share three depositions of Coinbase with 99 other claimants. To avoid a "Batch Arbitration," a claimant would have to select a different law firm, whereas Coinbase faces no such dilemma or provision interfering with its counsel.[68] The confidentiality provisions prohibit claimants from exchanging information to adduce any more evidence than from the three depositions, so Coinbase alone is sure to enjoy "all of the advantages" of being a "repeat player."[69]

C. The unconscionable terms cannot be severed.

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[66] *See McGill v. Citibank, N.A.*, 2 Cal. 5th 945, 962 (2017); 2022-UA, § 1.3; 2021-UA, § 8.3.
[67] Am. Compl., Dkt. 16 at ¶ 173-4.
[68] *See, e.g.*, *Roa v. Lodi Medical Group, Inc.*, 695 P.2d 164, 166 (Cal. 1985) ("our cases have long recognized that the constitutional due process guarantee" grants the "right to be represented by retained counsel in civil actions"); Cal. Civ. Proc. Code § 1282.4(a) (right to attorney at arbitration).
[69] 2022-UA, App'x 5, § 1.4 (Dkt. 62-2); *see Larsen v. Citibank FSB*, 871 F.3d 1295, 1318 (11th Cir. 2017); *MacClelland*, 2022 WL 2390997, at *13.

An unconscionable arbitration clause can only be enforced under California law if a court decides, in its discretion, to sever every unconscionable provision.[70] In determining severability, "[c]ourts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced."[71] Multiple defects in an arbitration agreement also weigh against severability, although even a single unconscionable term, drafted in bad faith, can preclude severance. *Id.* Here, it is clear the intent of the Arbitration Clauses is to create dispute resolution theatre that applies only to consumers but not Coinbase, so Coinbase may collect illicit profits from the unsuspecting public.[72]

II. There is not a delegation clause that applies.

At the outset of this litigation, Coinbase's emergency motions in this case did not invoke the delegation clause. Rather, they contemplated the "Court [will be] deciding the threshold arbitrability of all 52 Plaintiffs' claims."[73] Coinbase's Amended Motion

[70] Cal. Civ. Code § 1670.5(a).
[71] *Armendariz*, 24 Cal. 4th at 124.
[72] *See, e.g., Bielski*, 2022 WL 1062049, at *7 (declining to sever unconscionable provision from Coinbase's arbitration clause); *Dunham v. Env't Chemmical Corp.*, No. C 06-03389 JSW, 2006 WL 2374703, at *13 (N.D. Cal. Aug. 16, 2006) (one-sided arbitration agreement and unilateral requirement to exhaust internal company resources rendered arbitration agreement tainted with illegality).
[73] Defs.' Mot. Require Disclosure of Pls. Identities, Dkt. 47 at 2; *see Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204, 1213 (11th Cir. 2011) ("someone who invites a court down the primrose path to error should not be heard to complain that the court accepted its invitation"); *United States ex rel Dorsa v. Miraca Life Scis., Inc.*, 33 F.4th 352, 357 (6th Cir. 2022) (holding defendant waived challenge to district court's authority on arbitrability by asking court to rule on arbitrability in motion to dismiss). Defendants also conceded that, at a minimum, this Court may decide that "some Plaintiffs should go to arbitration and some [should] not…" Hr'g. Tr., Dkt. 73 at 7, 16, Dec. 7, 2022.

quotes delegation clauses from User Agreements dated January 31, 2022 and December 8, 2020, without identifying where they apply.[74] As a result, Coinbase forfeits and waives any right to assert arbitrability is delegated.[75] The unconscionability and enforceability of the Arbitration Clauses are issues that remain entrusted to this Court.

A. Plaintiffs' challenges to the 2022-UA are not delegated.

To begin with, even if preserved by Coinbase, threshold questions of arbitrability must be decided by courts unless the arbitration clause "clearly and unmistakably" delegates those issues to an arbitrator.[76] There is a presumption that courts will decide which issues are arbitrable.[77] Carve-outs in the 2022-UA preclude finding a clear and unmistakable delegation of Plaintiffs' challenges. Coinbase's quotation of the 2022-UA cuts-off a list of pivotal issues that only the Court can decide:

> (1) "all Disputes arising out of or relating to the Section entitled 'Waiver of Class and Other Non-Individualized Relief,' including any claim that all or part of [that Section] is unenforceable, illegal, void or voidable, or that such Section . . . has been breached"
> (2) "all Disputes about the payment of arbitration fees"
> (3) "all Disputes about whether either party has satisfied any condition precedent to arbitration"; and
> (4) "all Disputes about which version of the Arbitration Agreement applies."[78]

These carve-outs, which incorporate the defined term "Dispute," preclude a

[74] *See* Amended Motion, Dkt. 80 at 16-18; *Entrekin*, 689 F.3d at 1252-53 (holding defendant forfeited argument delegation clause applies).
[75] *See Entrekin*, 689 F.3d 1252-53.
[76] *See, e.g.*, *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944-45 (1995).
[77] *Id.*
[78] 2022-UA, App'x 5, § 1.6 (Dkt. 62-2)

finding that the delegation of arbitrability issues to the arbitrator is "clear and unmistakable." The carve-outs negate or make unclear any delegation to the arbitrator.

Further, Plaintiffs' challenges fall within the broad carve-outs in both the 2022-UA and 2014-UA.[79] Notably, Plaintiffs dispute the validity of Coinbase's one-sided preconditions for arbitration, which are surprising and otherwise unconscionable. Plaintiffs also challenge, for example, Coinbase's class action waiver. Additionally, Mr. Rodriguez brings numerous claims for injunctive or equitable relief[80] that fall entirely under the Court's jurisdiction under the 2014-UA.[81] Even if he accepted a backdated version of the 2021-UA, the 2021-UA (and its delegation clause) do not apply retroactively to his earlier loss.[82]

Reference to the AAA rules does not overcome the presumption that the Court decides arbitrability. First, authority expressly given to the Court supersedes any AAA rule.[83] Second, where, as in the 2022-UA,[84] application of the AAA rules depends on the judicial construction of carve-outs, the parties' intent to delegate arbitrability to an

[79] Also, the term "Dispute" in the carve-outs is defined broadly. *Id.* at § 1.1.
[80] *See, e.g.*, Am. Compl., Dkt. 16 at 121, 129, 151-154.
[81] 2014-UA, Dkt. 78-1 at 16, ¶ 8.2 ("CLAIMS FOR INJUNCTIVE OR EQUITABLE RELIEF…MAY BE BROUGHT IN ANY COMPETENT COURT.").
[82] *See Carter v. Doll House II, Inc.*, 608 Fed. Appx. 903, 903–904 (11th Cir. 2015) (because there is nothing in the agreement regarding retroactivity, trial court correct not to apply it to claims that predated agreement); *Thomas v. Carnival Corp.*, 573 F.3d 1113, 1119 (11th Cir. 2009) ("if the parties had intended retroactivity, they would have explicitly said so"); Declaration of Luis Rodriguez at 3.
[83] *See* 2022-UA § 1.4, Dkt. 62-2 (AAA rules apply "as modified" by the agreement); *Goldman*, 747 F.3d at 741 (denying arbitration because contract can supersede rules).
[84] The same argument and other arguments would apply to the 2014-UA, if asserted.

arbitrator is not "clear and unmistakable."[85] The delegation buried in AAA R-14 (or elsewhere) is not triggered until the Court construes numerous other provisions.[86]

B. Any delegation in the Arbitration Clauses is unconscionable.

Second, any delegation clauses are procedurally unconscionable for the same reasons as the arbitration agreements—they are standardized contracts of adhesion, presenting terms in inconspicuous font, buried in lengthy text.[87] Further, for both the 2022-UA and the 2021-UA, any delegation clause found in the Arbitration Clause or the AAA Rules operates subject to the sham dispute resolution process.[88] Whether Coinbase's contract is invalid and unconscionable is a dispute that surprisingly triggers a multilayer, months-long sham dispute resolution process before the drafter of the contract in question – Coinbase. Even a challenge to the validity of the Arbitration Clauses and any delegation clauses ensnares users, but not Coinbase, in multiple steps: (i) Contact Coinbase Support to attempt an amicable resolution, and (ii) Submit a "Formal Complaint." Specifically, a user who finds the Arbitration Clauses to be

[85] *See Archer & White Sales, Inc. v. Henry Schein, Inc.*, 935 F.3d 274, 281-82 (5th Cir. 2019), *cert. dismissed as improvidently granted*, 141 S. Ct. 656 (Jan. 25, 2021).
[86] *See id.*; *see also NASDAQ OMX Group, Inc. v. UBS Sec., LLC*, 770 F.3d 1010, 1031-32 (2d Cir. 2014) (finding no delegation where carve-out "delays application of AAA rules until a decision is made as to whether a question does or does not fall within the intended scope of arbitration, in short, until arbitrability is decided").
[87] *See Esquer v. Educ. Mgmt. Corp.*, 292 F. Supp. 3d 1005, 1014 (S.D. Cal. 2017) (unconscionability arguments as to arbitration agreement were "no less applicable to the delegation clause").
[88] *See id.* (finding "the delegation clause only delegates questions of arbitrability that emerge from the user agreement's tripartite dispute-resolution procedure, not arbitration, generally").

unconscionable because Coinbase Support is abusive (e.g., subjecting customers to racist epithets) and untrustworthy still must engage "amicably" with Coinbase Support for an indeterminant period before filling-out an online form and waiting 45 business days. That process is, to say the least, surprising for a delegation clause and shocks the conscience considering the overwhelming evidence about Coinbase Support.

Further, the one-sided provisions above in the Arbitration Clauses operate to render the delegation clauses likewise substantively unconscionable. "A delegation clause lacking mutuality imposes an unfair burden that qualifies as unconscionable."[89]

The attorneys' fees provisions, especially Coinbase's right to fees for compelling arbitration, apply with one-sided harshness to the delegation clause in particular.[90]

III. The Arbitration Clauses prevent vindication of federal statutory rights.

The Arbitration Clauses, including their delegation clauses, are unenforceable because Coinbase can and has used its them not only to shield its security failings from regulators and law enforcement, but also to stop users from bringing claims under the Electronic Funds Transfer Act ("EFTA"). An arbitration agreement may be invalid if

[89] *Bielski*, 2022 WL 1062049, at *2.
[90] *See* 2022-UA, § 1.7; 2021-UA § 8.3; *Saravia v. Dynamex, Inc.*, 310 F.R.D. 412, 421 (N.D. Cal. 2015) (delegation clause substantively unconscionable where attorneys' fees provision imposed on plaintiff the risk of having to pay attorneys' fees if he lost "even as to the limited issue of arbitrability" and noting that plaintiff "would not face such a risk if he is permitted to vindicate his rights to be free from an unconscionable contract in court"); *Reyes v. Hearst Commc'ns, Inc.*, No. 21-CV-03362-PJH, 2021 WL 3771782, at *4 (N.D. Cal. Aug. 24, 2021) (same), *aff'd*, No. 21-16542, 2022 WL 2235793 (9th Cir. June 22, 2022).

it "operate[s] as a prospective waiver of a party's right to pursue statutory remedies."[91] "Even if there is no contract-based defense to the enforceability of an arbitration agreement, a court cannot enforce the agreement as to a claim if the specific arbitral forum provided under the agreement does not 'allow for the effective vindication of that claim.'"[92]

The Arbitration Clauses preclude users from asserting their federal statutory rights because they are substantively unconscionable for all the reasons argued above, including removing rights to a hearing and discovery.[93] The Arbitration Clauses also prospectively waive federal statutory rights under the EFTA, including: rights to collect attorneys' fees in 15 U.S.C. § 1694m(a)(3);[94] statutory and treble damages in 15 U.S.C §§ 1693f, 1693m;[95] the EFTA's error resolution process in 15 U.S.C. § 1693f(f)(6); and Regulation E's Customer Service Provisions, 12 C.F.R. § 1005.11(a)(7).[96]

Because Coinbase has complete control over how long the sham dispute resolution process lasts and the agreement does not toll the time to bring a claim, it can

[91] *See Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 235 (2013); *see also Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 1919 (2022) (an arbitration clause cannot "alter or abridge substantive rights").
[92] *See Walker v. Ryan's Fam. Steak Houses, Inc.*, 400 F.3d 370, 385 (6th Cir. 2005).
[93] *See Walker*, 400 F.3d at 387 (holding limiting discovery to only one deposition could significantly prejudice claimants).
[94] 2022-UA, § 1.3 (Dkt. 62-2) ("parties shall bear their own attorneys' fees and costs…"); 2021-UA, § 8.3 (e.g. Dkt. 78-5 at 2).
[95] *See* 2022-UA at App'x 5 § 1.6 and § 8.2 (Dkt. 62-2) (limiting Coinbase's liability); 2021-UA, § 9.3 (e.g. Dkt. 78-5 at 2) (same).
[96] Coinbase has no obligations under the sham dispute resolution process.

drastically shrink the one-year statute of limitations for an EFTA claim. Further, that long process eliminates consumers' rights to the error resolution process and customer service provisions under the EFTA.[97] Coinbase can and has used the sham dispute resolution process to lie about EFTA-covered transactions by falsely claiming they are "irreversible cryptocurrency transactions."[98]

IV. Defendants fail to establish the existence of arbitration agreements.

Defendants bear the burden of proving there is no genuine dispute over the existence and terms of an arbitration agreement.[99] In determining whether such an agreement was formed, federal courts apply "ordinary state-law principles that govern the formation of contracts."[100] It is the court that always decides if an arbitration agreement exists.[101] While not necessary to do so, a plaintiff-by-plaintiff review also shows many of alleged arbitration agreements unenforceable.

A. Assent by unknown persons does not form a contract with Plaintiffs.

Coinbase fails to verify a user's identity before allowing access to a Coinbase

[97] *See* 15 U.S.C. § 1693*l* ("No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter.")
[98] *See* Tucker Decl., Dkt. 41 at 3, ¶ 5. Coinbase also invokes the 2022-UA based on actions by hackers. Waheed Decl. at 2, ¶¶ 4-7; Jankowski Decl., Dkt. 78 at 11.
[99] *Bazemore v. Jefferson Cap. Sys., LLC*, 827 F.3d 1325, 1333 (11th Cir. 2016).
[100] *First Options*, 514 U.S. at 944. Because Defendants fail to show all the elements of an arbitration agreement, the Amended Motion must be denied as a matter of law without being afforded a "[third] bite at the apple" to prove an agreement at trial. *See Bazemore*, 827 F.3d at 1333.
[101] *Reiterman v. Abid*, 26 F.4th 1226, 1231 (11th Cir. 2022) ("Courts must decide any challenges to the existence of the contract or to the validity of the arbitration clause standing alone before compelling arbitration.").

account.[102] As a result, Coinbase fails to establish the 2022-UA forms a contract with certain Plaintiffs, including Ms. Bennett and Ms. Waheed, because it is indisputable that neither ever accepted the 2022-UA.[103] Coinbase apparently cannot tell who accepts the 2022-UA, even after obtaining information from Plaintiffs.[104] The testimony alleging Mr. Rodriguez accepted an agreement on December 3, 2014 is inadmissible and insufficient because it is based "upon information and belief."[105] Coinbase also claims it unilaterally amended the 2014-UA based on unspecified account access.[106]

B. Illusoriness prevents formation of a contract.

"Under Texas law, an arbitration clause is illusory if one party can 'avoid its promise to arbitrate by amending the provision or terminating it altogether.'"[107] This provides an independent reason why no arbitration agreement was formed with

[102] Pls. Mem. Supp. Mot. Receiver, Dkt 23-1 at 6-16.
[103] Bennett Decl. at 2, ¶ 6; Waheed Decl. at ¶ 5.
[104] *Id.*; *see, e.g.*, Paperno Decl. at 2, ¶ 5; Gambell Decl. at 2, ¶ 5 ("I do not recognize that Coinbase account activity [across the country from me] as being mine."). Also, California law requires that it be "possible to identify" the contracting parties. *See* Cal. Civ. Code § 1558; *Lee v. Intelius Inc.*, 737 F.3d 1254, 1260 (9th Cir. 2013).
[105] *See* Jankowski Decl., Dkt. 78 at 24-5. Testimony "upon information and belief" cannot raise a genuine issue of fact. *See, e.g.*, *Rhiner v. Sec'y, Fla. Dep't of Corr.*, 817 F. App'x 769, 774 (11th Cir. 2020). Coinbase also fails to submit any testimony account creation in 2014. Dkt. 78 at 3-4, ¶8 (describing account creation procedure "[s]ince at least 2015"). Further, Coinbase's own screenshot contradicts that an acceptance on December 3, 2014 was done through an account creation procedure because there is a previous purported acceptance on January 16, 2014. *See* Dkt. 78-34.
[106] *See* Jankowski Decl., Dkt. 78 at 24-5; *Sevier Cnty. Sch. Fed. Credit Union v. Branch Banking & Tr. Co.*, 990 F.3d 470, 479 (6th Cir. 2021) (rejecting unilateral amendment).
[107] *Carey v. 24 Hour Fitness, USA, Inc.*, 669 F.3d 202, 205 (5th Cir. 2012) (quoting *In re 24R, Inc.*, 324 S.W.3d 564, 567 (Tex.2010)); *accord Nat'l Fed'n of the Blind v. The Container Store, Inc.*, 904 F.3d 70, 87–88 (1st Cir. 2018) ("pursuant to Texas law the issue of illusoriness goes to formation (and not to validity or enforceability)").

Plaintiffs Chiulli, Bennett, Calderón, Johnson, Paperno, and Wright. Ohio recognizes this rule too, so no arbitration agreement exists with Mr. Longstreth and Mr. Blumetti.[108]

C. There are no arbitration agreements covering the Coinbase Wallet.

Coinbase previously took the position that the Wallet and exchange accounts are governed by the *different* agreements.[109] As Coinbase concedes, "[y]ou do not need a Coinbase, Inc. account to use Coinbase Wallet."[110] Although it produced a copy of the "Coinbase Wallet Terms of Service" dated *after* the Amended Complaint was filed, Coinbase has not produced any evidence showing nor has it argued that any Plaintiff accepted an arbitration agreement for the Coinbase Wallet. Neither the 2021-UA nor the 2022-UA can fix this glaring omission.[111] A court cannot compel arbitration of a claim unless the claim has some relationship to the contract containing the arbitration clause.[112] Therefore, the Arbitration Clauses are unconscionably overbroad or

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[108] *Stanich v. Hissong Group, Inc.*, 2010 WL 3732129, *6 (S.D. Ohio Sept. 20, 2010) ("by unilaterally reserving the right to change the terms of the purported arbitration agreement, Defendants are not truly binding themselves to the arbitration process. And since the purported arbitration agreement does not bind Defendants, it lacks mutuality").

[109] "Coinbase's internal systems record which terms govern each Coinbase account or Wallet, including the corresponding arbitration agreements." Def's Mot., Dkt. 47 at 7. "Coinbase Wallet is made available to users by Toshi Holdings Pte. Ltd., a separate, wholly owned subsidiary of Coinbase Global, Inc." in Singapore. Black Decl., Dkt. 62 at 21, ¶ 19.

[110] Declaration of Teresa Chrisinger, Dkt. 47-2 at 3, ¶ 6.

[111] The 2021-UA only requires arbitration of users' disputes "arising out of or relating to this [User] Agreement or" "services provided by Coinbase described [in the Agreement.]" 2021-UA, § 8.3 (e.g. Dkt. 78-5 at 2). The 2022-UA uses similar language. 2022-UA, App'x 5 § 1.1 (Dkt. 62-2 at 2).

[112] *See Gamble v. New England Auto Fin., Inc.*, 735 F. App'x 664, 666-67 (11th Cir. 2018); *see also Hearn v. Comcast Cable Commc'ns, LLC*, 992 F.3d 1209, 1212 n. 1 & 1214 (11th Cir. 2021) (suggesting arbitration clauses applying to all disputes at any time

inapplicable to those Plaintiffs with claims arising out of the Coinbase Wallet.[113]

Coinbase Global, Inc. cannot compel arbitration as a non-signatory. Its argument that "federal policy" allows non-signatories to compel arbitration is based on old decisions before the Supreme Court held that state law governs that issue.[114] Coinbase Global, Inc. does not argue what state law basis exists for it to compel arbitration. The claims against Coinbase Global, Inc. that arise from the Coinbase Wallet are not intertwined with the 2022-UA, the 2021-UA, or associated exchange accounts.[115]

V. Plaintiffs' claims for public injunctive relief are not arbitrable.

Plaintiffs' claims for public injunctive relief under the California Unfair Competition Law must remain in Court because they are not arbitrable.[116]

CONCLUSION

For all the reasons stated herein, the Court should deny the Amended Motion.

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may be unenforceable). The FAA only applies if a controversy "aris[e] out of" the contract between the parties. 9 U.S.C. § 2; *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

[113] *I.e.,* Plaintiffs Stefani, Houzenga, Gambell, Johnson, Singh, Tang, and Dallalnejad.

[114] *See Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009); Dkt. 80 at 4 n.4.

[115] *See* Am. Compl., Dkt. 16 at ¶ 66; *Carson v. Home Depot, Inc.*, No. 1:21-CV-4715-TWT, 2022 WL 2954327, at *4 (N.D. Ga. July 26, 2022) (Thrash, J.) (holding non-signatory could not enforce arbitration clause through equitable estoppel). Since there is no contract with Coinbase Global, Inc., this issue cannot be delegated to an arbitrator. *See Lavigne v. Herbalife, Ltd.*, 967 F.3d 1110, 1120 n.7 (11th Cir. 2020).

[116] Am. Compl., Dkt. 16 at 147, ¶ 718 & p. 151, ¶ (c); *see Blair v. Rent-A-Ctr., Inc.*, 928 F.3d 819, 827 (9th Cir. 2019) (holding rule that "waiver of public injunctive relief in 'any contract—even a contract that has no arbitration provision'—is 'unenforceable under California law.'")

Respectfully submitted, this 24th day of March, 2023.

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CERTIFICATE OF COMPLIANCE WITH LR 5.1

I hereby certify that the foregoing document is written in 14-point Times New Roman font in accordance with Local Rule 5.1.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing document with the Clerk of the District Court, and the CM/ECF system will send notification of such filing to all attorneys of record.

Dated: March 24, 2023

/s/ John C. Herman
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