Case No. A172063

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION 3

HAAMID KHAN,
Plaintiff and Respondent,

v.

COINBASE, INC.,
Defendant and Appellant.

APPLICATION OF THE CHAMBER OF THE COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT-APPELLANT COINBASE, INC. AND REVERSAL

On Appeal from San Francisco Superior Court
No. CGC-24-615202, Hon. Andrew Y.S. Cheng &
Hon. Jeffrey S. Ross, Dept. 606, Tel: (415) 551-3830

Archis A. Parasharami
(SBN 321661)
MAYER BROWN LLP
575 Market Street, Suite 2500
San Francisco, CA 94105
(415) 874-4230
aparasharami@mayerbrown.com

Attorneys for Amicus Curiae

CERTIFICATE OF INTERESTED PERSONS

The undersigned hereby certifies that no known persons or entities have an ownership interest of 10 percent or more in the Chamber of Commerce of the United States of America. Other than *amicus curiae* and the named parties, no known person or entity has a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves. (Cal. R. Ct. 8.208(e)(2.))

Dated: April 23, 2025

Respectfully submitted.
MAYER BROWN LLP

/s/ *Archis A. Parasharami*
Archis A. Parasharami
(SBN 321661)

Attorney for Amicus Curiae

APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF

To the Honorable Justices of the California Court of Appeal:

The Chamber of Commerce of the United States of America (Chamber) respectfully seeks leave to file a brief as *amicus curiae* in support of defendant-appellant Coinbase, Inc.[1]

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of vital concern to the nation's business community, including cases involving the interpretation of the Federal

---

[1] No party or counsel for a party in this matter authored the proposed *amicus* brief in whole or in part and no person or entity made a monetary contribution intended to fund the preparation or submission of such brief, aside from *amicus curiae*, its members, or its counsel. (*See* Cal. Rules of Court, rule 8.520(f)(4).)

Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, and state-law rules relating to the formation or enforceability of arbitration agreements.

Many of the Chamber's members regularly rely on arbitration agreements in their contractual relationships. Based on the legislative policy choices reflected in the FAA, the Chamber's members have structured millions of contractual relationships around the use of arbitration to resolve disputes.

The Chamber has previously sought leave to participate in this case in support of Coinbase's petition for a writ of supersedeas, and the Chamber respectfully requests that it be permitted to participate in the underlying appeal as well.

The Chamber's members and the broader business community have a strong interest in this case and in the proper scope of the rule announced in *McGill v. Citibank, N.A.* (2017) 2 Cal. 5th 945. Under that rule, arbitration provisions may not foreclose individuals from seeking so-called "public injunctions" under certain California statutes. But the California Supreme Court was careful to draw a line between public and private injunctive relief, explaining that an injunction that primarily

benefits an individual plaintiff or similarly situated individuals is private, not public. (*See id.* at 955.)

The trial court's refusal to compel arbitration in this case—where the injunctive relief sought would benefit Coinbase customers alone—eviscerates that line. It instead treats any forward-looking injunctive relief under California's Unfair Competition Law or False Advertising Law as sufficient to trigger *McGill*. That result conflicts with *McGill* and cases applying it, and is therefore incorrect under California law. In addition, that "expansion of the *McGill* rule is preempted by the FAA" for the reasons explained by the Ninth Circuit in *Hodges v. Comcast Cable Communications, LLC* (9th Cir. 2021) 21 F.4th 535, 547.

The Chamber therefore has a strong interest in participating in this case.

CONCLUSION

The Chamber respectfully requests that the Court grant its application to file the proposed *amicus curiae* brief.

Dated: April 23, 2025 Respectfully submitted.

By: /s/ Archis A. Parasharami

Archis A. Parasharami
(SBN 321661)
MAYER BROWN LLP
575 Market Street, Suite 2500
San Francisco, CA 94105
(415) 874-4230
aparasharami@mayerbrown.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes and Rules

INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of vital concern to the nation's business community, including cases involving the interpretation of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, and state-law rules relating to the formation or enforceability of arbitration agreements.[1]

---

[1] No party or counsel for a party in this matter authored the proposed *amicus* brief in whole or in part and no person or entity made a monetary contribution intended to fund the preparation or submission of such brief, aside from *amicus curiae*, its members, or its counsel. (*See* Cal. Rules of Court, rule 8.520(f)(4).)

Many of the Chamber's members regularly rely on arbitration agreements, structuring millions of contractual relationships around the use of arbitration. Arbitration allows them to resolve disputes promptly and efficiently while both sides avoid the costs associated with traditional litigation. Arbitration is speedy, fair, inexpensive, and less adversarial than litigation in court.

The Chamber's members and the broader business community have a strong interest in this case and in the proper scope of the rule announced in *McGill v. Citibank, N.A.* (2017) 2 Cal. 5th 945. Under that rule, arbitration provisions may not foreclose individuals from seeking so-called "public injunctions" under certain California statutes. But the California Supreme Court was careful to draw a line between public and private injunctive relief, explaining that an injunction that primarily benefits an individual plaintiff or similarly situated individuals is private, not public. (*See id.* at 955).

The trial court's refusal to compel arbitration in this case—where the only beneficiaries of the injunction sought are Coinbase customers—eviscerates that line. It instead treats any forward-looking injunctive relief under California's Unfair

Competition Law or False Advertising Law as sufficient to trigger *McGill*. That result conflicts with *McGill* and cases applying it, and it is therefore incorrect under California law. In addition, that "expansion of the *McGill* rule is preempted by the FAA" for the reasons explained by the Ninth Circuit in *Hodges v. Comcast Cable Communications, LLC* (9th Cir. 2021) 21 F.4th 535, 547.

The Chamber therefore has a strong interest in this case and in reversal of the decision below.

INTRODUCTION AND SUMMARY OF ARGUMENT

The plaintiff in this case, Haamid Khan, asserts claims seeking an injunction directed at statements on a transaction preview screen that is displayed *solely* to existing Coinbase customers. In particular, Khan asks the courts to require Coinbase to make additional disclosures about a particular charge (a "spread charge") assessed when a subset of Coinbase's customers (Coinbase Simple Trade users) execute cryptocurrency transactions on Coinbase's platform. As Coinbase explains, the relevant page is walled off from, and not accessible to, the public at large: it is displayed only when a user has (1) registered to use Coinbase's platform; (2) logged into their Coinbase account, and

(3) initiated a cryptocurrency transaction on Coinbase's platform. (AOB 26-37.)

Nonetheless, Khan sought to avoid his arbitration agreement by seeking only injunctive relief under California's Unfair Competition Law ("UCL") and False Advertising Law ("FAL") and asserting that his requested injunction qualifies as public injunctive relief that triggers *McGill*. The trial court agreed, focusing on the "fundamentally public purpose of the statutes upon which Khan relies" and reasoning that "the nature of [those] statutes" is more important than "who may be impacted by the remedy requested by Khan." (AA222:2–3 & 224 n.5.) The trial court further theorized that "any member of the public" *could* create a Coinbase account and access its services. (AA224 n.5.) That mere possibility, in the court's view, was enough to make Khan's requested injunction a "public" injunction within the meaning of *McGill*.

The trial court's focus on the nature of the statutes rather than who would benefit from Khan's requested relief cannot be squared with *McGill* itself. As the *McGill* Court explained, "[r]elief that has the *primary purpose or effect* of redressing or preventing injury to an individual plaintiff—*or to a group of*

individuals similarly situated to the plaintiff—does not constitute public injunctive relief," but rather a "private" injunction. 2 Cal. 5th at 955 (emphasis added). In other words, contrary to the trial court's view, "who may be impacted by the remedy requested"—not the statutory cause of action being asserted—*is* the precise dividing line between public and private relief under *McGill*.

Honoring that line, many courts have held that *McGill* does not apply when a plaintiff seeks what amounts to an injunction on behalf of a class—such as a defendant's customers—rather than the public at large. For example, the United States Court of Appeals for the Ninth Circuit has held that an injunction regarding Comcast's privacy and data-collection practices was private because it would primarily benefit Comcast subscribers rather than members of the general public: "There is simply no sense in which this relief could be said to *primarily* benefit the general public as a more diffuse whole." (*Hodges v. Comcast Cable Commc'ns, LLC* (9th Cir. 2021) 21 F.4th 535, 549). And that remained true despite the plaintiff's argument that *future* Comcast subscribers also would benefit from "forward-looking prohibitions against future violations of law." (*Id.*)

Even the cases on which Khan relies do not support the trial court's ruling. To be sure, those cases take a broader view of the scope of *McGill* than the Ninth Circuit did in *Hodges*. But none of them involved statements or conduct occurring only *after* an individual becomes a customer of a business and affecting *only* those customers. The trial court's approach thus represents an extraordinary expansion of *McGill* that should be corrected to restore the crucial guardrails that the California Supreme Court established in *McGill* itself.

Finally, the trial court's expansion of the *McGill* rule is preempted by the FAA. To be sure, the Chamber has maintained, and continues to maintain, that the FAA preempts the *McGill* rule in its entirety.[2] But the preemption issue presented here is different: it is whether *expanding* the *McGill* rule to condition arbitration on the availability of *any* forward-looking injunctive relief under California's consumer statutes conflicts with the FAA. As the Ninth Circuit has persuasively

---

[2] *See*, *e.g.*, Br. of the Chamber of Commerce of the United States of America et al., *McBurnie v. RAC Acceptance East, LLC* (9th Cir. Mar. 13, 2023), 2023 WL 2601297; Br. of the Chamber of Commerce of the United State of America et al., *AT&T Mobility LLC v. McArdle* (U.S. Mar. 30, 2020) 2020 WL 1531242.

explained, the answer to that question is yes. (*See Hodges*, 21 F.4th at 547-48). Such a rule "disregards all of the limitations on public injunctive relief that were emphasized in *McGill*" and instead conditions enforceability of an arbitration agreement on acquiescence to *all* forward-looking injunctions under the UCL, FAL, or Consumer Legal Remedies Act ("CLRA")—including injunctions that are "inconsistent with bilateral arbitration" and "fundamentally incompatible with the sort of simplified procedures the FAA protects." (*Id.*)

ARGUMENT

I. *McGill* Does Not Apply Because Khan Seeks Quintessentially Private Relief.

A. California Law Distinguishes Public Injunctions From Injunctions Benefiting An Individual Plaintiff Or A Class Of Similarly Situated Individuals.

Not all requests for injunctive relief under California's UCL, CLRA, and FAL amount to a request for *public* injunctive relief under *McGill*.

Instead, the California Supreme Court has drawn a line based on who "benefits" from the requested injunction. (*McGill*, 2 Cal. 5th at 955.) As *McGill* itself explains, "[r]elief that has the primary purpose or effect of redressing or preventing injury to an

individual plaintiff—*or to a group of individuals similarly situated to the plaintiff*—does *not* constitute public injunctive relief." (*Id.* [emphasis added]); *see also Clifford v. Quest Software Inc.* (2019) 38 Cal. App. 5th 745, 754.) And for that reason, relief that inures to the benefit of "putative class members" is private, not public, injunctive relief. (*Kilgore v. KeyBank, N.A.* (9th Cir. 2013) (en banc) 718 F.3d 1052, 1061.)

In contrast, public injunctive relief is "relief that 'by and large' *benefits* the general public." (*McGill*, 2 Cal. 5th at 955 [emphasis added].) To qualify as a "public injunction," the relief sought must have "the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the *general public*." (*Id.* [emphasis added; quotation marks omitted].)

Accordingly, a public injunction "will . . . not benefit the plaintiff directly, because the plaintiff has already been injured, allegedly, by such practices and [is] aware of them." (*McGill*, 2 Cal. 5th at 955 [quotation marks omitted; alterations in original].) Instead, the individual plaintiff "benefits . . ., 'if at all,' only 'incidentally' and/or as 'a member of the general public.'" (*Id.* [quoting *Broughton v. Cigna Healthplans* (1999) 21 Cal. 4th 1066, 1080 n.5] [alterations omitted].)

Other Districts of the California Court of Appeal have recognized the same distinction, observing that "injunctive relief that primarily resolves a private dispute between the parties and rectifies individual wrongs is private, not public relief." (*Clifford*, 38 Cal. App. 5th at 753 [quotation marks and alterations omitted; citing *McGill*, 2 Cal. 5th at 955]); *see also Torrecillas v. Fitness Int'l* (2020) 52 Cal. App. 5th 485, 500 ["Relief that would primarily redress or prevent injury to an individual plaintiff or to a group of individuals similarly situated to the plaintiff is not public injunctive relief."], *disapproved of on other grounds by Ramirez v. Charter Commc'ns, Inc.* (2024) 16 Cal. 5th 478.)[3]

After thoroughly reviewing *McGill*, the Ninth Circuit distilled these principles into a three-part inquiry:

> [P]ublic injunctive relief within the meaning of *McGill* is limited to [1] forward-looking injunctions that seek to prevent future violations of law [2] for the general public *as a whole, as opposed to a particular class of persons*, and [3] that do so without

---

[3] *Clifford* and *Torecillas* involved claims in the workplace context. But the employment/consumer "distinction has nothing at all to do with what *McGill* says is the relevant inquiry, namely, who are the primary beneficiaries of the requested injunctive relief." (*Hodges*, 21 F.4th at 546.) As discussed below, numerous other courts have reached the same conclusion with respect to relief, like the relief sought in this case, that would benefit only the defendant's customers (or a subset of those customers).

> the need to consider the individual claims of any non-party.

(*Hodges*, 21 F.4th at 542 [emphasis added].) And it endorsed decisions holding that "even prospective injunctive relief was not 'public' when the primary beneficiaries were a defined group of similarly situated persons, rather than the general public." (*Id.* at 543, 546 [discussing *Capriole v. Uber Techs., Inc.* (9th Cir. 2021) 7 F.4th 854; *Torrecillas*, 52 Cal. App. 5th 485; and *Clifford*, 38 Cal. App. 5th 745].)

B. Khan's Requested Injunction Would Not Primarily Benefit The General Public.

1. Adhering to the distinction between public and private injunctive relief drawn by *McGill*, multiple courts have held that the *McGill* rule does not apply to complaints, like the one in this case, that nominally seek public injunctions but in fact seek relief that would primarily benefit the plaintiff or similarly situated individuals. In particular, courts have characterized as private those injunctions *that seek principally to benefit a defendant's customers* rather than the public at large.[4]

---

[4] *See, e.g.*, *Hodges*, 21 F.4th at 548-49; *Cottrell v. AT&T Inc.* (9th Cir. Oct. 26, 2021) 2021 WL 4963246, at *1-2; *Martinez v. Refinitiv, Ltd.* (C.D. Cal. Nov. 14, 2024) 2024 WL 5424373, at *5-6; *Woody v. Coinbase Global, Inc.* (N.D. Cal. Oct. 17, 2023) 2023 WL 6882750, at *4, *vacated in part on other grounds* (9th Cir.

For example, in *Hodges*, the Ninth Circuit held that the requested injunctions regarding how Comcast treats the personal data of its cable subscribers and seeking to mandate related disclosures were private, not public, in nature. (2021 WL 4127711, at *10. As the *Hodges* court explained, there "is simply no sense in which this relief could be said to *primarily* benefit the general public *as a more diffuse whole*," even if *future* Comcast subscribers would benefit from "forward-looking prohibitions against future violations of law." (*Id.* [second emphasis added].) The *primary* beneficiaries of such an injunction are still "Comcast 'cable subscribers,'" who are "a 'group of individuals similarly situated to the plaintiff.'" (*Id.* [quoting *McGill*, 2 Cal. 5th at 955].)

Similarly, in *Cottrell*, the Ninth Circuit held that the

Oct. 21, 2024) 2024 WL 4532909; *Torres v. Veros Credit LLC* (C.D. Cal. July 13, 2023) 2023 WL 5505887, at *5; *Stout v. Grubhub Inc.* (N.D. Cal., Dec. 3, 2021) 2021 WL 5758889, at *7-8; *M Resorts, Ltd. v. New England Life Ins.* (S.D. Cal. Dec. 16, 2019) 2019 WL 6840396, at *5; *Sponheim v. Citibank, N.A.* (C.D. Cal. June 10, 2019) 2019 WL 2498938, at *5; *Johnson v. JP Morgan Chase Bank, N.A.* (C.D. Cal. Sept. 18, 2018) 2018 WL 4726042, at *6-8; *Croucier v. Credit One Bank, N.A.* (S.D. Cal. June 11, 2018) 2018 WL 2836889, at *4-5; *Rappley v. Portfolio Recovery Assocs., LLC* (C.D. Cal. Aug. 24, 2017) 2017 WL 3835259, at *5-6; *Wright v. Sirius XM Radio Inc.* (C.D. Cal. June 1, 2017) 2017 WL 4676580, at *9-10.

requested injunctions, including an injunction to "refrain from committing future violations of the California law by signing customers up for products or services without authorization," was private relief. (2021 WL 4963246, at *1-2.) The court rejected the plaintiff's argument that any member of the public could walk into an AT&T store and be subject to the challenged conduct, because the challenged conduct could occur only after an individual "first transact[ed] in some way with AT&T by providing payment and billing information"—that is, "the individual must become a customer." (*Id.* at *1.)

Woody, a case that also involved Coinbase, is instructive. The plaintiffs sought a forward-looking injunction requiring Coinbase to refrain from the allegedly unlawful practice of not timely delivering newly minted cryptocurrency to its existing customers' wallets. (2023 WL 6882750, at *1, *4.) That conduct could affect an individual only *after* they voluntarily became a Coinbase user, rather than being directed at the "general public as a more diffuse whole," and therefore the requested injunctions were private, not public. (*Id.* at *4 [quoting *Hodges*, 21 F.4th at 549].)

Finally, the district court in *Stout* drew what this Court

has described as a "useful" distinction to differentiate private and public injunctions. (*Kramer v. Coinbase, Inc.* (2024) 105 Cal. App. 5th 741, 752 [noting that *Stout* "provides a useful discussion of how to classify different types of injunctions"]). The plaintiffs in *Stout* sought injunctions requiring Grubhub to (1) stop charging a certain fee to Grubhub+ subscribers; and (2) change its disclosures about its delivery fees in public-facing advertisements. (*Stout*, 2021 WL 5758889, at *7-8.) In contrast to the second injunction, which the court deemed public, the first injunction was private because the challenged fee was charged only *after* an individual becomes a Grubhub+ subscriber. (*Id.*) In other words, that injunction was "primarily designed to benefit Grubhub+ subscribers only, even if the public may incidentally benefit." (*Id.* at *7.)

2. The injunction here is private under the reasoning of all of the cases just discussed. As Coinbase details in its briefs, Khan challenges disclosures that are *not* aimed to the public, but instead can only be seen by Coinbase users.

The absence of any public-facing statements makes this case wholly unlike *McGill*, which involved the "paradigmatic example" of a public injunction because it sought to prohibit

alleged "false advertising" that "was aimed at the general public." (*Hodges*, 21 F.4th at 542 [citing *McGill*, 2 Cal. 5th at 956-57].) And the same absence of public-facing statements means that Khan cannot satisfy his own proposed test, which asks whether members of the public could be "induced" into becoming a defendant's customers by the challenged representations. (RB 37.) Someone cannot be induced into becoming a customer by a statement they can see only *after* they become a customer.

Instead, as in *Hodges*, *Cottrell*, *Woody*, *Stout*, and the other cases cited above, the challenged conduct and related disclosures in this case are limited to Coinbase users; the conduct and disclosures occur only *after* an individual becomes a Coinbase user, logs into his or her account, and initiates a transaction. That makes the requested relief private, not public, under a faithful reading of *McGill*.

3. The California cases on which Khan and the trial court primarily rely do not support their characterization of the relief that Khan seeks as a public injunction.

In *Kramer*, for example, this Court held that the plaintiffs' requested injunction was public because the plaintiffs challenged allegedly *public-facing* representations about Coinbase's security

measures, and thus those representations would be encountered by members of the public before becoming Coinbase users. (105 Cal. App. 5th at 751-52.) The Court viewed the dividing line drawn in *Stout* as "useful" and acknowledged that the *Woody* case reached a different result because the challenged conduct occurred only after someone became a Coinbase user. (*Id.* at 752-53 & n.6.) For the reasons discussed above, this case falls squarely on the private side of the line drawn in *Stout* and is much closer to the injunction requested in *Woody* than in *Kramer*. Accordingly, far from involving "similar claims" (AA225), *Kramer* supports *rejecting* application of the *McGill* rule to the circumstances presented in this case.

Ramsey v. Comcast Cable Communications, LLC (2023) 99 Cal. App. 5th 197, is likewise inapposite. The plaintiffs in that case sought to change Comcast's public-facing disclosures and "marketing" about its promotional pricing practices. (*Id.* at 206-07.) Those disclosures too would be encountered by members of the public before becoming Comcast customers, and, in the *Ramsey* court's view, would affect those individuals' decision whether to become subscribers in the first place.

The two cases that the Ninth Circuit in *Hodges* considered

incompatible with *McGill—Mejia v. DACM Inc.* (2020) 54 Cal. App. 5th 691, and *Maldonado v. Fast Auto Loans, Inc.* (2021) 60 Cal. App. 5th—likewise involved conduct that occurred *before* an individual signed a contract with the defendant—*i.e.*, when he or she was still a member of the general public. In *Mejia*, for example, the plaintiff sought an injunction requiring the defendant motorcycle dealership to make all required disclosures to *prospective* customers in a single document. (54 Cal. App. 5th at 695-96.) Such an injunction would benefit individuals *before* they become customers: "consumers would be informed of the disclosures under Civil Code § 2982 before purchasing the motor vehicles." (*Herrera v. Wells Fargo* (C.D. Cal. Oct. 8, 2020) 2020 WL 7051097, at *3 [distinguishing *Mejia* for that reason].) And in *Maldonado*, an injunction requiring the lender not to charge usurious interest rates would benefit members of the public *before* they become customers of the lender, because the rates are made available to the public before any transaction takes place and could affect whether the members of the public go forward with any such transaction. (*See* 60 Cal. App. 5th at 721-22.)

* * *

In sum, when, as here, a plaintiff's requested injunction would benefit only those who have a customer relationship with the defendant *when* the allegedly wrongful practice occurs, it is not a "public injunction" within the meaning of *McGill* because the primary beneficiaries are a class of individuals similarly situated to the plaintiff, not the general public.

II. The FAA Preempts The Trial Court's Unwarranted Expansion Of *McGill*.

If the trial court's interpretation of *McGill* is upheld as an accurate characterization of California law—and it should not be—then that expanded version of the *McGill* rule is preempted by the FAA.

The U.S. Supreme Court has repeatedly reiterated that the FAA "envision[s]" an "individualized form of arbitration." (*Lamps Plus Inc. v. Varela* (2019) 587 U.S. 176, 184 [citing *Epic Sys. Corp. v. Lewis* (2018), 584 U.S. 497, 508-09; *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 349; *Stolt-Nielsen S.A.* v. *Animal Feeds Int'l Corp.* (2010) 559 U.S. 662, 686-87].) "In individual arbitration, 'parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of

private dispute resolution,'" including "'lower costs'" and "'greater efficiency and speed.'" (*Id.* [quoting *Stolt-Nielsen*, 559 U.S. at 685].) For example, unlike court proceedings, which can take years to resolve, "the average consumer arbitration" is resolved "in six months, four months if the arbitration was conducted by documents only." (*Concepcion*, 563 U.S. at 348.)

Accordingly, the U.S. Supreme Court has repeatedly held that the FAA preempts state-law rules that "interfere[]" with the "traditionally individualized and informal nature of arbitration." (*Epic*, 584 U.S. at 508-09.) In other words, States may not impose a "rule seeking to declare individualized arbitration proceedings off limits," because such a rule would "reshape traditional individualized arbitration." (*Id.* at 509.) The FAA, the Court has explained, "seems to protect pretty absolutely" agreements calling for "one-on-one arbitration" using "individualized . . . procedures." (*Id.* at 502, 506.)

That holding followed from *Concepcion*, which stands for the "essential insight" that "courts may not allow a contract defense to reshape traditional individualized arbitration." (*Epic*, 584 U.S. at 509.) And the *Epic* Court emphasized that this point governs regardless of the garb in which a contract defense is

dressed: "Just as judicial antagonism toward arbitration before the Arbitration Act's enactment 'manifested itself in a great variety of devices and formulas declaring arbitration against public policy,' *Concepcion* teaches that we must be alert to new devices and formulas that would achieve much the same result today." (*Id.* [quoting *Concepcion*, 563 U.S. at 342].)

No matter how a State frames its rule of contract invalidity, the rule is preempted if it mandates proceedings that "would take much time and effort, and introduce new risks and costs for both sides," thereby undermining "the virtues Congress originally saw in arbitration, its speed and simplicity and inexpensiveness." (*Epic*, 584 U.S. at 509.) If such a rule were permissible, "arbitration would wind up looking like the litigation it was meant to displace." (*Id.*)

In sum, the U.S. Supreme Court's precedents teach that any "device[]" or "formula[] declaring arbitration against public policy" because of its "traditionally individualized and informal nature" runs afoul of the FAA. (*Epic*, 584 U.S. at 506-09.)

The expanded version of the *McGill* rule adopted by the trial court below is just such a preempted device, because it conditions arbitration on the availability of injunctions that are

"fundamentally incompatible with the sort of simplified procedures the FAA protects." (*Hodges*, 21 F.4th at 548.) As the Ninth Circuit explained in *Hodges*, a broader rule "that *any* injunction against future illegal conduct constitutes non-waivable public injunctive relief"—the rule endorsed by the trial court in this case—"disregards all of the limitations on public injunctive relief" that saved the narrower *McGill* rule from preemption. (*Id.*; *cf. Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819, 829 [reasoning that arbitrating claims for public injunctions, as defined in *McGill*, does not introduce "procedural complexity" inconsistent with the FAA].)

The expanded view of public injunctions adopted below introduces the very "procedural complexity" that conflicts with arbitration as envisioned by the FAA. Under that rule, an arbitration agreement may not waive "prospective injunctive relief against unlawful conduct even if, for example, the implementation of such an injunction *would require evaluation of the individual claims of numerous non-parties*" or "involve administrative complexity that is inconsistent with bilateral arbitration." (*Hodges*, 21 F.4th at 547-48 [emphasis added].) Moreover, because "injunctions are not simply words on a page,"

the Ninth Circuit cautioned that "their compatibility with bilateral arbitration must be evaluated in light of how they would actually be *implemented*." (*Id.* at 547.)

Examples of injunctions that require an impermissible level of complexity to implement are not hard to imagine. In *Hodges*, for example, the plaintiff sought injunctions requiring Comcast to stop collecting its subscribers' personal data "without their prior written or electronic consent." (21 F.4th at 548-49.) "Administering an injunction of this sort," the Ninth Circuit explained, would require "consideration of which particular consents each subscriber has or has not given." (*Id.* at 549.) That is a far cry from "a simple prohibition on running a false advertisement." (*Id.*)

Similarly, in *Cottrell*, the plaintiff requested an injunction prohibiting AT&T from charging customers for *unauthorized* services. (2021 WL 4963246, at *1.) Administering such an injunction would necessarily require an individualized private assessment, based on facts specific to each customer, of whether that customer in fact *authorized* those services. Likewise, administering the injunctions "sought in *Mejia* and *Maldonado* themselves—namely, injunctions regulating the drafting and

substantive terms of actual contracts with innumerable different persons . . . would require a level of procedural complexity that is inherently incompatible" with the FAA. (*Hodges*, 21 F.4th at 547.)

Under the trial court's overbroad reading of *McGill*, however, all of the above injunctions are public injunctions because they are forward-looking and challenge "deceptive practices alleged to be unlawful" under the UCL, CLRA, and FAL. (AA223.) That approach "flout[s] Supreme Court authority" by "'allow[ing] a contract defense to reshape traditional individualized arbitration'" and "'seeking to declare individualized arbitration proceedings off limits.'" (*Hodges*, 21 F.4th at 548 [quoting *Epic*, 584 U.S. at 509].) The FAA therefore preempts that expanded version of the *McGill* rule.

CONCLUSION

The decision below should be reversed.

Dated: April 23, 2025

Respectfully Submitted,

s/ *Archis A. Parasharami*

Archis A. Parasharami (SBN 321661)
MAYER BROWN LLP
575 Market Street, Suite 2500

San Francisco, CA 94105
(415) 874-4230

Attorneys for Amicus Curiae *the Chamber of Commerce of the United States of America*

CERTIFICATE OF WORD COUNT
(California Rule of Court 8.204(c)(1))

According to the word count facility in Microsoft Word 2016, this brief, including footnotes but excluding those portions excludable pursuant to Rule 8.204(c)(3), contains 4,269 words, and therefore complies with the 14,000-word limit contained in Rule 8.204(c)(1).

Dated: April 23, 2025

/s/ Archis A. Parasharami
Archis A. Parasharami

CERTIFICATE OF SERVICE

I, Alec Hemingway, declare as follows: I am over the age of eighteen years, and I am not a party to the action. My business address is: 1999 K Street NW, Washington, D.C. 20006.

On April 23, 2025, I served the foregoing document on the parties stated below, by the following means of service:

BY ELECTRONIC SERVICE: By causing the document to be served electronically on the persons at the addresses identified on the attached service list using the True Filing program.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 23, 2025, at Washington, D.C.

/s/ Alec Hemingway
Alec Hemingway
ahemingway@mayerbrown.com

SERVICE LIST

Attorneys for Plaintiff and Respondent Haamid Khan

Joseph H. Meltzer
Ethan J. Barlieb
Jordan E. Jacobson
Matthew Macken
jmeltzer@ktmc.com
ebarlieb@ktmc.com
mmacken@ktmc.com
jjacobson@ktmc.com
KESSLER TOPAZ MELTZER & CHECK LLP
280 King of Prussia Road
Randor, PA 19087

Electronic Service

Jennifer Joost
Melissa Yeats
jjoost@ktmc.com
myeates@ktmc.com
KESSLER TOPAZ MELTZER & CHECK LLP
One Sansome Street, Suite 1850
San Francisco, CA 94101

Gregory P. Joseph
Mara Leventhal
Christopher J. Stanley
Benjamin A. Taylor
gjoseph@jhany.com
mleventhal@jhany.com
cstanley@jhany.com
btaylor@jhany.com
JOSEPH HAGE AARONSON LLC
800 Third Avenue, 30th Floor
New York, NY 10022

Attorneys for Defendant and Appellant
Coinbase, Inc.

Fred Norton
fnorton@nortonlaw.com
Esther Kim Chang
echang@nortonlaw.com
Josephine K. Petrick
jpetrick@nortonlaw.com
Matt Ohlheiser
mohlheiser@nortonlaw.com
THE NORTON LAW FIRM PC
300 Frank H. Ogawa Plaza, Ste. 450
Oakland, CA 94612
(510) 906-4900

Electronic Service

Susan Horst
susan.horst@calg.com
COMPLEX APPELLATE LITIGATION GROUP
LLP
96 Jessie Street
San Francisco, CA 94105
(415) 649-6700

Matt Stucky
matt.stucky@calg.com
COMPLEX APPELLATE LITIGATION GROUP
LLP
600 W. Broadway, Suite 700
San Diego, CA 92101
(619) 642-2929