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 COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF COINBASE, INC.'S PETITION FOR WRIT OF SUPERSEDEAS AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION

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: March 26, 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 IN SUPPORT OF PETITION FOR WRIT OF SUPERSEDEAS

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 the petition for writ of supersedeas filed by 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

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[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).)

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.

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's members and the broader business community have a strong interest in a judicial determination that the FAA preempts California's Senate Bill 365. SB 365 unlawfully singles out arbitration agreements for disfavored treatment, making appeals from the denial of arbitration available only on unique, arbitration-disfavoring terms. And it imposes very substantial burdens on parties that invoke their federally protected right to enforce arbitration agreements. The Chamber therefore has a strong interest in participating in this case and expressing its perspective on why the FAA preempts SB 365, as well as why this Court should issue a stay regardless of preemption.

Finally, this Court should accept this *amicus* brief. Rule 8.112 of the California Rules of Court, which governs petitions for writs of supersedeas, does not expressly address *amicus* briefs or letters in support of a petition for writ of supersedeas, but courts have previously exercised their discretion to accept *amicus* briefs in this context. (See, e.g., *Leung v. Verdugo Hills Hospital* (2008) 168 Cal.App.4th 205, 211 n.3 [granting request to file *amicus* brief in support of petition for writ of supersedeas].)

An analogy to petitions for writ of mandate further supports the filing. Rule 8.487 expressly permits the filing of *amicus* briefs after an appellate court issues an alternative writ or order to show cause. (Cal. Rules of Court, rule 8.487(e)(1).) The Advisory Committee comment to the rule makes clear, however, that *amicus* submissions are also permissible *before* a court issues an alternative writ or order to show cause:

> These provisions do not alter the court's authority to request or permit the filing of amicus briefs or amicus letters in writ proceedings in circumstances not covered by these subdivisions, such as before the court has determined whether to issue an alternative writ or order to show cause . . . .

Indeed, the Second District has stated in a published opinion that the filing of *amicus* submissions in connection with a writ

petition was one factor that the court considered in deciding whether to issue an order to show cause, because it underscored that the matter presented an issue "of widespread interest." (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 557-558.)

CONCLUSION

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

Dated: March 26, 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

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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.[1]

The Chamber and its members have a strong interest in this case. Many of the Chamber's members regularly rely on arbitration agreements, structuring millions of contractual

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[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).)

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.

SB 365 unlawfully singles out arbitration agreements for disfavored treatment, making appeals from the denial of arbitration available only on unique, arbitration-disfavoring terms. And it imposes very substantial burdens on parties that invoke their federally protected right to enforce arbitration agreements. The Chamber therefore has a strong interest in this case and in a determination that the FAA preempts SB 365 or that a stay is otherwise necessary.

INTRODUCTION AND SUMMARY OF ARGUMENT

A century ago, Congress enacted the Federal Arbitration Act to reverse hostility to arbitration. The FAA's principal substantive provision, Section 2, directs state courts and legislatures to "place arbitration agreements 'on equal footing with *all other contracts*.'" (*Kindred Nursing Centers Ltd. P'ship v. Clark* (2017) 581 U.S. 246, 248 [emphasis added].) The U.S. Supreme Court has further admonished courts to "be alert to new

devices and formulas" impermissibly "declaring arbitration against public policy." (*Epic Sys. Corp. v. Lewis* (2018) 584 U.S. 497, 509 [quotation marks omitted].)

Nonetheless, the California Legislature and some courts applying California law have sought to restrict arbitration as a matter of state public policy, particularly in the consumer and employment contexts, and the U.S. Supreme Court has repeatedly held that the FAA preempts those efforts.[2] SB 365, which the Superior Court applied here to deny a stay pending Coinbase's appeal from the denial of arbitration, represents more of the same impermissible treatment of arbitration.

In 1988, Congress amended the FAA to add Section 16, which provides the right to an immediate appeal from an order

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[2] *See*, *e.g.*, *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 659-62 (California judicial rule prohibiting division of PAGA actions into individual and non-individual claims); *Lamps Plus, Inc. v. Varela* (2019) 587 U.S. 176, 186-89 (use of California "public policy" rule interpreting ambiguities against the drafter to impose class procedures on the parties where the contract did not expressly authorize class arbitration); *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 352 (California judicial rule declaring class-action waivers unconscionable); *Preston v. Ferrer* (2008) 552 U.S. 346, 353 (California Labor Code provision requiring an agency to hear certain disputes before arbitration); *Perry v. Thomas* (1987) 482 U.S. 483, 491 (California Labor Code provision requiring judicial forum for wage-collection actions).

denying arbitration. The U.S. Supreme Court recently held that Section 16's right to an immediate appeal also includes the right to a stay of further proceedings in the trial court during the pendency of the appeal. (*See Coinbase, Inc. v. Bielski* (2023) 599 U.S. 736.) As the Supreme Court explained, Congress enacted Section 16 against the backdrop of the established principle that an interlocutory appeal "divests the district court of its control over those aspects of the case involved on appeal." (*Id.* at 740 [quoting *Griggs v. Provident Consumer Discount Co.* (1982) 459 U.S. 56, 58].) The Court further explained that allowing trial-court proceedings to go forward would "largely nullif[y]" the appellate right and result in many of the benefits of arbitration being "irretrievably lost." (*Id.* at 743.) In other words, the Supreme Court said, a "right to interlocutory appeal of the arbitrability issue without an automatic stay" is "like a lock without a key, a bat without a ball, a computer without a keyboard—in other words, not especially sensible." (*Id.*)

This automatic-stay requirement was already the generally applicable rule of appellate procedure governing the courts of this State prior to SB 365. As discussed below, Section 916 of the California Code of Civil Procedure provides that, apart from a

relative handful of exceptions, "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby." (Cal. Code Civ. Proc. § 916(a).)

But SB 365 amended Section 1294(a) to state that "[n]otwithstanding Section 916, the perfecting of such an appeal [of an order denying arbitration] shall not automatically stay any proceedings in the trial court during the pendency of the appeal." (Cal. Code Civ. Proc. § 1294(a) [eff. Jan. 1, 2024].) That amendment purports, solely in the context of arbitration, to take away the right to an automatic stay that accompanies most other types of interlocutory appeals in California courts under Section 916.

SB 365's anti-arbitration change to the rules of civil procedure violates the FAA for two independent reasons. *First*, SB 365 impermissibly singles out arbitration for disfavored treatment and thus erects a special procedural hurdle to the enforcement of arbitration agreements that does not apply across the board. *Second*, SB 365 violates the command in Section 2 of the FAA that States provide an enforcement mechanism equivalent to Section 16, including its automatic stay.

Next, when, as here, the parties have contracted that the FAA will apply, Section 16—including the accompanying right to an automatic stay—applies of its own force and nullifies any contrary state procedures.

Finally, even if this Court were to conclude that SB 365 controls, this Court retains discretion to issue a stay pending appeal. A stay is warranted as a matter of discretion here; the relevant factors heavily favor a stay in the context of a non-frivolous appeal of the denial of arbitration. The Court should stay further trial-court proceedings pending the appeal for this independent reason.

ARGUMENT

I. The FAA Preempts SB 365.

A. SB 365 Impermissibly Singles Out Arbitration For Disfavored Treatment.

1. Section 2 of the FAA requires that, at minimum, state law must "place arbitration agreements on equal footing with all other contracts." (*Kindred Nursing Ctrs. Ltd. P'Ship v. Clark* (2017) 581 U.S. 246, 248, 254-55; *accord Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 650; *see also Chamber of*

Commerce v. Bonta (9th Cir. 2023) 62 F.4th 473, 483 [discussing the FAA's "equal-treatment principle"].)

Based on that principle, the U.S. Supreme Court has repeatedly held that the FAA "preclude[s] States from singling out arbitration provisions for suspect status." (*Doctor's Assocs., Inc. v. Casarotto* (1996) 517 U.S. 681, 687; *see also*, *e.g.*, *Kindred*, 581 U.S. at 248; *DIRECTV, Inc. v. Imburgia* (2015) 577 U.S. 47, 54-55; *Marmet Health Care Ctr., Inc. v. Brown* (2012) 565 U.S. 530, 533 [per curiam]; *Concepcion*, 563 U.S. at 339; *Perry*, 482 U.S. at 492 n.9.) Therefore, the Court has held, the FAA preempts state-law rules that are "restricted to [the] field" of arbitration. (*Imburgia*, 577 U.S. at 54-55 [quotation marks omitted].) For decades, it has been established that "[a] state-law principle that takes its meaning precisely from the fact that a contract to arbitrate is at issue does not comport with . . . § 2." (*Perry*, 482 U.S. at 492 n.9.)

The FAA also precludes reliance on state-law "policy concern[s] as a source of authority" for deviating from the FAA's requirement that arbitration agreements be treated equally. (*14 Penn Plaza LLC v. Pyett* (2009) 556 US 247, 270; *see also Concepcion*, 563 U.S. at 342 [explaining that the FAA was

enacted to eliminate the "'great variety' of 'devices and formulas' declaring arbitration against public policy"].) Thus, it is immaterial whether a discriminatory rule derives from common law or statute; the FAA preempts any "state law, whether of *legislative* or judicial origin," that disfavors arbitration. (*Perry*, 482 U.S. at 492 n.9 [emphasis added]; *accord Casarotto*, 517 US at 687 n.3.)

It is also immaterial whether a case is pending in state or federal court; the FAA preempts contrary law in either forum. Indeed, because "[s]tate courts rather than federal courts are most frequently called upon to apply the … FAA," "[i]t is a matter of great importance … that state supreme courts adhere to a correct interpretation of the legislation." (*Nitro-Lift Techs., L.L.C. v. Howard* (2012) 568 U.S. 17, 17-18 [per curiam].) Moreover, the "Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." (*Imburgia*, 577 U.S. at 53 [quoting *Howlett v. Rose* (1990) 496 U.S. 356, 371]; *see also James v. City of Boise* (2016) 577 U.S. 306, 307 [per curiam] [state courts are "bound by [the U.S. Supreme] Court's interpretation of federal law"].)

2. SB 365 violates these well-established principles. It specifically "*disfavor[s]* arbitration" by exempting arbitration from "the same stay principles that [California] courts apply in other analogous contexts where an interlocutory appeal is authorized." (*Bielski*, 599 U.S. at 746.)

The U.S. Supreme Court held in *Bielski* that an automatic stay pending appeal from the denial of arbitration is required in light of the general rule of federal appellate procedure that an interlocutory appeal "divests the district court of its control over those aspects of the case involved on appeal." (*Id.* at 740 [quoting *Griggs*, 459 U.S. at 58].) California follows the same general principle, which is codified by statute: An appeal "divests the trial court of jurisdiction over the subject matter on appeal." (*Varian Med. Sys. v. Delfino* (2005) 35 Cal. 4th 180, 198.) As *Varian Medical Systems* explains (*id.*), California Code of Civil Procedure Section 916 provides, with the exception of a handful of specialized judgments, that "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby." (Cal. Code Civ. Proc. § 916.)

Varian Medical Systems held, even prior to *Bielski*, that this general principle applies to "an appeal from the denial of a motion to compel arbitration." (35 Cal. 4th at 198.) That is why, before the enactment of SB 365, further proceedings on the merits in California trial courts were "automatically stayed" under Section 916. (*Id.*; *see Bielski*, 599 U.S. at 741-43 [reaching the same conclusion under the identical federal principle].) SB 365 is an arbitration-specific exception to this general California rule: It amends the statute authorizing an interlocutory appeal from the denial of arbitration to provide that "*Notwithstanding Section 916*, the perfecting of such an appeal shall not automatically stay any proceedings in the trial court during the pendency of the appeal." (Cal. Code Civ. Proc. § 1294(a) [emphasis added].)

The FAA forbids California from making arbitration appeals available only on arbitration-disfavoring terms. SB 365 subjects parties seeking to enforce an arbitration agreement to a particular burden—namely, continued litigation pending an arbitration-related appeal—that California does not require for interlocutory appeals in general. That approach "is too tailor-made to arbitration agreements" and subjects their enforcement

to "uncommon barriers" that run afoul of the FAA. (*Kindred*, 581 U.S. at 252.)[3] That *discretionary* stays theoretically remain available does not cure SB 365's discrimination against arbitration, because litigants in other types of interlocutory appeals need not satisfy the discretionary stay factors.[4]

Moreover, SB 365 imposes very substantial burdens on parties that invoke their federally protected right to enforce arbitration agreements. As the U.S. Supreme Court explained in *Bielski*, continuing proceedings in the trial court while the denial of arbitration is on appeal effectively eviscerates the benefits of agreeing to arbitration and "largely defeats the purpose of the

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[3] The fact that there are a few other exceptions to the general principle codified in Section 916 does not salvage SB 365 from FAA preemption. A state law is preempted if it "singles out arbitration provisions as an exception to *generally* applicable law," such as Section 916. (*Bonta*, 62 F.4th at 487 [emphasis added; quotation marks omitted].) As the U.S. Supreme Court explained in *Kindred*, an "arbitration-specific rule" cannot be salvaged by "attempt[ing] to cast the rule in broader terms"; instead, the "rule must in fact apply generally rather than single out arbitration." (581 U.S. at 253-254 & n.2.) SB 365 is an arbitration-only rule.

[4] As explained in Part III below, at the very least discretionary stays should virtually always be granted in any non-frivolous appeal from the denial of arbitration. To the extent they are not, that is another reason why SB 365 fails to "adequately protect parties' rights to an interlocutory appellate determination of arbitrability." (*Bielski*, 599 U.S. at 746.)

appeal" by subjecting the parties to the very "court proceedings (including discovery and trial) that they contracted to avoid through arbitration." (599 U.S. at 743 [quotation marks omitted].) Without a stay, the "benefits of arbitration (including efficiency, less expense, [and] less intrusive discovery)" are "irretrievably lost—even if the court of appeals later conclude[s] that the case actually had belonged in arbitration all along." (*Id.*)

A significant example of the burdens of traditional litigation, which parties will inevitably undergo pending appeal in the absence of a stay, is formal discovery—particularly in cases filed as putative class or collective actions despite the parties' agreement to individualized arbitration. Such discovery is much more extensive than in arbitration and also asymmetric: the burdens fall almost entirely on the defendant—the party seeking arbitration.[5] Indeed, in consumer and employment disputes, the plaintiffs generally have few, if any, documents to search and

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[5] *See*, *e.g.*, Charles Yablon & Nick Landsman-Roos, *Discovery about Discovery: Sampling Practice and the Resolution of Discovery Disputes in an Age of Ever-Increasing Information*, 34 Cardozo L. Rev. 719, 726-27 (2012); Rodney A. Satterwhite & Matthew J. Quatrara, *Asymmetrical Warfare: The Cost of Electronic Discovery in Employment Litigation*, 14 Rich. J.L. & Tech. 9, ¶¶ 6-8 (2008).

produce. By contrast, business defendants often have enormous databases, millions of e-mails, and numerous other sources of electronic documents that must be examined, at great expense.[6]

Thus, "discovery costs now comprise between 50 and 90 percent of the total litigation costs in a case." (John H. Beisner, *Discovering a Better Way: The Need for Effective Civil Litigation Reform*, 60 Duke L.J. 547, 549 (2010).) And "discovery costs in cases that do not go to trial"—the vast majority of cases—"are closer to seventy percent of total costs." (Andrew M. Pardieck, *The Shifting Sands of Cost Shifting*, 69 Clev. St. L. Rev. 349, 424 (2021).) Even relatively minor aspects of the discovery process, such as the preparation of privilege logs, are enormously expensive. (*See*, *e.g.*, *The Sedona Conference Commentary on Protection of Privileged ESI*, 17 Sedona Conf. J. 95, 103 (2016) [preparing privilege logs alone "can consume hundreds of thousands of dollars or more"].)

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[6] *See*, *e.g.*, *Swanson v. Citibank, N.A.* (7th Cir. 2010) 614 F.3d 400, 411 (Posner, J., dissenting in part) ("[T]he cost of discovery to a defendant" because of e-discovery "has become in many cases astronomical."); Duke Conf. Subcomm., Advisory Comm. on Civ. Rules, *Report of the Duke Conference Subcommittee* 79, 83 (2014) (survey of in-house lawyers finding that 90% reported that "discovery costs in federal court are not generally proportional to the needs of the case").

In short, without a stay, even if the defendant ultimately prevails on appeal, the victory would be pyrrhic: the defendant would already have been subjected to the complex judicial procedures and burdens that the FAA authorized them to avoid. And in light of those burdens, it is no surprise that, as the U.S. Supreme Court further explained in *Bielski*, some defendants will never make it that far—the costs of being forced to litigate in trial court may coerce them into giving up their federally protected arbitration rights and settling. (599 U.S. at 743.) "That potential for coercion is especially pronounced in class actions," the Court noted, "where the possibility of colossal liability can lead to what Judge Friendly called 'blackmail settlements.'" (*Id.* [quoting H. Friendly, Federal Jurisdiction: A General View 120 (1973)].)

Defendants in other kinds of cases in California generally are entitled to avoid these pressures through a stay pending interlocutory appeal, and California may not single out arbitration for worse treatment.

B. SB 365 Departs From The FAA's Mandate To Provide An Enforcement Mechanism Equivalent To Section 16 Of The FAA, Including The Automatic Stay Pending Appeal.

SB 365 is preempted for the additional, independent reason that it impermissibly departs from the FAA's requirement that States provide appropriate procedural mechanisms for enforcing arbitration agreements.

The U.S. Supreme Court has held that Section 2 of the FAA "'carries with it' a duty for States to provide certain enforcement mechanisms *equivalent to* the FAA's." (*Badgerow v. Walters* (2022) 596 U.S. 1, 8 n.2 [quoting *Vaden v. Discover Bank* (2009) 556 U.S. 49, 71] [emphasis added].) California courts have likewise recognized that state arbitration procedures may not "conflict with or defeat the rights Congress granted in the FAA." (*Judge v. Nijjar Realty, Inc.* (2014) 232 Cal.App.4th 619, 632 [citing *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal. 4th 394, 409; *Muao v. Grosvenor Properties, Ltd.* (2002) 99 Cal.App.4th 1085, 1092].)

Bielski makes clear that the rights Congress conferred in the FAA include not only the right to an interlocutory appeal under Section 16, but also the automatic stay that accompanies

that right. A stay avoids the "worst possible outcome for parties and the courts": the waste of party and judicial resources that would result from continued litigation in court "only for the court of appeals to reverse and order the dispute arbitrated." (599 U.S. at 743 [quotation marks omitted].)

Prior to SB 365's passage, California's statute providing for an interlocutory appeal of an order denying arbitration did not interfere with the enforcement of arbitration agreements under the FAA or conflict with Section 16's appellate rights. (*See Muao*, 99 Cal.App.4th at 1092.) Indeed, as explained above, even prior to *Bielski*, California courts had long recognized that, under Section 916, an interlocutory appeal from the denial of arbitration required a stay of further trial proceedings. (*See Varian Med. Sys.*, 35 Cal. 4th at 198.) SB 365, however, "largely nullifie[s]" the right to an interlocutory appeal. (*Bielski*, 599 U.S. at 743.) For all of the reasons discussed above, the benefits of arbitration will be "irretrievably lost" if the defendant is forced to continue litigating in court while pursuing an appeal to vindicate its federally protected right to enforce the arbitration agreement. (*Id.*) The resulting dramatic departure from the FAA-mandated

enforcement mechanisms violates the "duty" created by Section 2 of the Act. (*Badgerow*, 596 U.S. at 8 n.2.)

Moreover, and relatedly, SB 365 "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'" in the FAA. (*Concepcion*, 563 U.S. at 352 [quoting *Hines v. Davidowitz* (1941) 312 U.S. 52, 67]; *see also Bonta*, 62 F.4th at 482-83 [explaining that state-law rules that disproportionately burden the "enforceability of arbitration agreements" are preempted under "principles of obstacle preemption"].) Congress determined that those denied arbitration have a right to an automatic stay pending interlocutory appeal, and more broadly has designed the FAA "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." (*Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 22.) By eliminating the automatic stay that would otherwise apply to appeals of orders denying arbitration and subjecting a party seeking to vindicate its federally protected arbitration rights to additional burdens, SB 365 defies the FAA and imposes an obstacle to congressional objectives.

II. Section 16 Of The FAA Applies As A Matter Of Contract.

A stay under the FAA also is available as a matter of contract. Here, the parties explicitly contracted for application of the FAA, including all of its procedural provisions. Their contract provides that "the Federal Arbitration Act, 9 U.S.C. § 1 et seq., will govern the interpretation and enforcement of this Arbitration Agreement and any arbitration proceedings." Given the parties' choice, Section 16, including the automatic stay that accompanies it under *Bielski*, applies of its own force in this Court. The parties "adopted the FAA—all of it—to govern their arbitration" and arbitration agreement. (*Rodriguez v. Am. Techs., Inc.* (2006) 136 Cal.App.4th 1110, 1122.)

The California Supreme Court recently confirmed that California's "procedural rules" do not apply when the parties have "expressly agreed that the FAA's procedural rules apply" instead. (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal. 5th 562, 576.) The contract in *Rodriguez*, for example, provided that the parties agreed to arbitrate their claims "'pursuant to the Federal Arbitration Act.'" (136 Cal.App.4th at 1122.) That "broad and unconditional" adoption of the FAA demonstrated the

parties' agreement to "move forward under the FAA's procedural provisions rather than under state procedural law," displacing the default application of the California Arbitration Act's procedures in California's courts. (*Id.* [quotation marks omitted].)

Other California courts have likewise recognized that the "FAA's procedural provisions" can apply in State court when "the contract contains a choice-of-law clause expressly incorporating them." *Judge*, 232 Cal.App.4th at 631 (quoting *Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 173-174). To be sure, in *Judge* "appealability [was] determined by state law" because the agreement did "not mention the FAA" or otherwise provide an "indication that the parties intended to apply the procedural provisions of the FAA." *Id.* But the court's reasoning made clear that the result would have been different if the parties had contracted for application of the FAA's procedures instead, as they did in *Rodriguez* and in this case.

Because here there is "an agreement by the parties to apply the procedural provisions of the FAA" (*Judge*, 232 Cal.App.4th at 631), Section 16 of the FAA supplies the governing procedural rules—not the California Arbitration Act as amended by SB 365.

For that reason too, the parties' agreement to be governed by the FAA requires an automatic stay pending appeal in this case.

III. Even If SB 365 Validly Prohibits An Automatic Stay, This Court Should Use Its Discretion To Stay Trial-Court Proceedings Pending Coinbase's Appeal.

Even if this Court were to conclude that SB 365 prohibits an automatic stay, this Court retains discretion to issue a stay pending appeal. The amended statute provides that an appeal from the denial of arbitration "shall not *automatically* stay any proceedings in the trial court during the pendency of the appeal." (Cal. Code of Civ. Proc. § 1294(a) [emphasis added].) The California Practice Guide accordingly recognizes that, under SB 365, "trial courts retain their usual discretion to stay . . . proceedings in the interests of justice" after an "[o]rder denying [a] petition to compel arbitration." (Weil & Brown, Cal. Practice Guide: Civ. App. & Writs (The Rutter Group 2023) ¶ 7.254b.) The Court thus retains the "'power to stay proceedings [that] is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" (*St. Paul Fire & Marine Ins. Co. v. AmerisourceBergen Corp.* (2022) 80

Cal.App.5th 1, 13-14 [quoting *Landis v. N. Am. Co.* (1936) 299 U.S. 248, 254].)

Under the traditional discretionary stay factors, California courts weigh "the likelihood that substantial questions will be raised on appeal" (*People ex rel. S.F. Bay Conservation & Dev. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 537); "engage in a balancing of the equities" (*Daly v. San Bernardino Cnty. Bd. of Supervisors* (2021) 11 Cal. 5th 1030, 1054); and assess the extent to which a stay will "promote judicial efficiency" (*St. Paul Fire*, 80 Cal.App.5th at 14 [quotation marks omitted].) These stay factors are similar to those that, prior to *Bielski*, federal courts, including the Ninth Circuit, applied when evaluating stays of trial proceedings pending appeal of the denial of arbitration:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

(*Nken v. Holder* (2009) 556 U.S. 418, 434 [quoting *Hilton v. Braunskill* (1987) 481 U.S. 770, 776]; *see also*, *e.g.*, *Leiva-Perez v. Holder* (9th Cir. 2011) 640 F.3d 962, 964.)

Both sets of factors heavily favor a stay in the context of a non-frivolous appeal of the denial of arbitration, like Coinbase's here.

A. Non-Frivolous Appeals Like This One Raise Substantial Questions As To Whether The Claims Belong In Arbitration.

As to the first factor—the appellant's likelihood of success—courts have repeatedly held that regardless whether the appellant can show that success is probable, if the other stay factors weigh in its favor, any "serious question[]" on appeal is enough to warrant a stay. (*See*, *e.g.*, *Luxshare, Ltd. v. ZF Automotive US, Inc.* (6th Cir. 2021) 15 F.4th 780, 783; *Flores v. Barr* (9th Cir. 2020) 977 F.3d 742, 746; *Tex. Democratic Party v. Abbott* (5th Cir. 2020) 961 F.3d 389, 397; *Cuomo v. U.S. Nuclear Regul. Comm'n* (D.C. Cir. 1985) 772 F.2d 972, 974.) Indeed, unless a non-frivolous appeal is deemed substantial, there is a significant risk that superior courts would regularly deny stays improperly, as "it is unlikely that" the same court that just denied the defendant's request for arbitration "would ever be able to find that defendants will be likely to succeed on the merits of their appeal." (*C.B.S. Emps. Fed. Credit Union v. Donaldson, Lufkin & Jenrette Secs. Corp.* (W.D. Tenn. 1989) 716 F. Supp.

307, 309; *see also*, *e.g.*, *Murphy v. DIRECTV, Inc.* (C.D. Cal. July 1, 2008) 2008 WL 8608808, at *2; *Eberle v. Smith* (S.D. Cal. Jan. 29, 2008) 2008 WL 238450, at *2.)

This case presents a prime example. As Coinbase's petition explains, its appeal presents serious questions about what qualifies as "public injunctive relief" under the *McGill* rule, given that the case involves statements made exclusively to existing Coinbase accountholders—not the general public. Notwithstanding that substantial question, the Superior Court refused to enter a stay.

B. The Balance Of The Equities Always Favors A Stay.

1. A party that is forced to litigate a claim that should have been arbitrated suffers a "serious, perhaps, irreparable" injury, because "the advantages of arbitration" are "lost forever." (*Alascom, Inc. v. ITT N. Elec. Co.* (9th Cir. 1984) 727 F.2d 1419, 1422.) The U.S. Supreme Court recently affirmed that principle in *Bielski*, explaining that if a trial court "could move forward with pre-trial and trial proceedings while the appeal on arbitrability was ongoing, then many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and

the like) would be irretrievably lost." (599 U.S. at 743). In other words, continued litigation results in the permanent deprivation of the substantive right to arbitrate that the FAA protects and that the appeal seeks to vindicate.

The California Supreme Court has explained outside of the arbitration context that a stay should be granted "where to deny a stay would deprive the appellant of the benefit of a reversal of the judgment against him." (*S.F. Bay Conservation*, 69 Cal. 2d at 537.) As *Bielski* makes clear, that is precisely what would happen if courts refuse to stay further litigation pending the resolution of the threshold question of whether the claims belong in arbitration or in court.

Indeed, that conclusion is confirmed by cases decided prior to *Bielski* in which stays were denied by federal district courts. Over and over again, defendants were subjected to heavy litigation burdens even though they ultimately prevailed on the arbitration issue. Those burdens included classwide and merits discovery and various types of motion practice—all of which was for naught in light of the reversal on appeal of the order denying

arbitration.[7] These cases demonstrate why, in the context of appeals of arbitration denials, "to deny a stay would deprive the appellant of the benefit of a reversal of the judgment against him." (*S.F. Bay Conservation*, 69 Cal. 2d at 537.)

2. On the other side of the ledger, plaintiffs would not suffer any comparable irreparable harm from a stay pending appeal. In virtually all cases, the plaintiff is seeking monetary

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[7] *See, e.g.*, *Meeks v. Experian Info. Sols., Inc.* (N.D. Cal. Nov. 5, 2021) 2021 WL 5149066, *rev'd sub nom. Meeks v. Experian Info. Servs., Inc.* (9th Cir. Dec. 27, 2022) 2022 WL 17958634 (classwide discovery); *Ohring v. UniSea, Inc.* (W.D. Wash. July 13, 2021) 2021 WL 2936641, *rev'd* (9th Cir. May 20, 2022) 2022 WL 1599127 (merits discovery); *Cottrell v. AT&T Inc.* (N.D. Cal. May 27, 2020) 2020 WL 2747774, *rev'd* (9th Cir. Oct. 26, 2021) 2021 WL 4963246 (classwide discovery, motions to dismiss, and motions regarding discovery disputes); *Fernandez v. Bridgecrest Credit Co.* (C.D. Cal. May 4, 2020) 2020 WL 7711837, at *4, *rev'd* (9th Cir. Mar. 28, 2022) 2022 WL 898593 (classwide discovery); *In re Pac. Fertility Ctr. Litig.* (N.D. Cal. June 27, 2019) 2019 WL 2635539, at *1, *rev'd* (9th Cir. 2020) 814 F. App'x 206 (classwide discovery, *Daubert* motions, and motions for class certification and to dismiss); *Geier v. m-Qube Inc.* (W.D. Wash. 2016) 314 F.R.D. 692, 701, *rev'd* (9th Cir. 2016) 824 F.3d 797 (discovery and class certification); *Mohamed v. Uber Techs., Inc.* (N.D. Cal. 2015) 109 F. Supp. 3d 1185, *rev'd* (9th Cir. 2016) 848 F.3d 1201 (merits discovery); *Momot v. Mastro* (D. Nev. Feb. 24, 2010) 2010 WL 11538047, at *2, *rev'd* (9th Cir. 2011) 652 F.3d 982 (summary judgment); *Kilgore v. Keybank Nat'l Ass'n* (N.D. Cal. July 8, 2009) 2009 WL 1975271, *rev'd* (9th Cir. 2013) 718 F.3d 1052, 1057, 1060-61 (merits discovery and motion to dismiss); *Manigault v. Macy's East, LLC* (E.D.N.Y. 2007) 506 F. Supp. 2d 156, 165, *rev'd* (2d Cir. 2009) 318 F. App'x 6 (classwide discovery).

relief, such as damages or restitution. An award of prejudgment interest would therefore compensate any injury resulting from delay if the plaintiffs were to ultimately prevail. (*See*, *e.g.*, *Zaborowski v. MHN Gov't Servs., Inc.* (N.D. Cal. May 1, 2013) 2013 WL 1832638, at *3; *Murphy*, 2008 WL 8608808, at *3; Cal. Civ. Code §§ 1287-1289.) And if (as here) the plaintiff were seeking injunctive relief, she often remains free to seek a preliminary injunction or temporary restraining order either from the court or an arbitrator to preserve the status quo until the case is arbitrated or litigated. (*See*, *e.g.*, American Arbitration Association Commercial Arbitration Rule R-38; JAMS Streamlined Arbitration Rules R-19(d); *Performance Unlimited, Inc. v. Questar Publishers, Inc.* (6th Cir. 1995) 52 F.3d 1373, 1380.)

The balancing of the equities also must consider arbitration's benefits to plaintiffs. Like the defendant, plaintiffs realize the efficiencies, cost savings, expedition, improved accuracy of results, greater privacy and control over the selection of the adjudicator, and the less adversarial nature of arbitration. Continued litigation in court threatens to undermine for all parties these "real benefits to the enforcement of arbitration

provisions." (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 122-23; *see also*, *e.g.*, *14 Penn Plaza*, 556 U.S. at 257 ["Parties generally favor arbitration precisely because of the economics of dispute resolution."].)

Accordingly, the balance of equities tips strongly in favor of a stay.

C. The Public Interest And Judicial Efficiency Favor A Stay.

Finally, the important public policies supporting the use of arbitration and conservation of judicial and party resources counsel in favor of a stay.

In the FAA, Congress has acted to protect parties seeking to enforce arbitration agreements, and thus avoid the costs and delays of traditional litigation, from being forced to litigate. The considered policy enacted in the FAA would be frustrated by the denial of a stay because such denials sharply raise the cost of enforcing arbitration agreements. The "FAA does not sanction" the imposition of "preliminary litigating hurdle[s]" on arbitration that "would undoubtedly destroy the prospect of speedy resolution that arbitration in general and bilateral arbitration in particular was meant to secure." (*Am. Express Corp. v. Italian*

Colors Restaurant (2013) 570 U.S. 228, 239.) Indeed, by diluting the benefits of arbitration, the denial of a stay would undermine the FAA's goal of "promot[ing] arbitration." (*Concepcion*, 563 U.S. at 345.) California, too, "has a strong public policy in favor of arbitration" that would be undermined in the same way by the denial of a stay. (*Gordon v. Atria Mgmt. Co., LLC* (2021) 70 Cal.App.5th 1020, 1026.)

The public policy favoring judicial economy points to the same result. As the U.S. Supreme Court explained in *Bielski*, "allowing a case to proceed simultaneously in the [trial] court and the court of appeals creates the possibility that the [trial] court will waste scarce judicial resources—which could be devoted to other pressing criminal or civil matters—on a dispute that will ultimately head to arbitration in any event." (599 U.S. at 743; *see also*, *e.g.*, *Aviles v. Quik Pick Express, LLC* (C.D. Cal. Jan. 25, 2016) 2016 WL 6902458, at *4 ["[T]he interests of judicial efficiency and conservation of resources favor a stay" because "[i]t does not make sense for [the trial court] to expend its time and energy preparing this case for trial . . . only to learn at a later date from the court of appeals that it was not the proper forum to hear the case."] [quotation marks omitted]; *Zaborowski*, 2013 WL

1832638, at *3 ["[C]ontrary to public policy, judicial resources will be wasted if this case proceeds all the way to trial, only for the Court to later discover that the case should have proceeded through arbitration."].)

Similarly, the public's interest in efficient resolution of disputes and access to judicial relief favors a stay. The many other parties whose cases await the superior courts' attention would be harmed by the denial of stays pending appeal. Courts' already busy dockets would become even more congested as a result of the diversion of resources towards cases that may belong in arbitration, delaying relief for other litigants.

In sum, the traditional factors all weigh in favor of a stay pending appeal in this case and in every case in which a party brings a non-frivolous appeal from the denial of arbitration.

CONCLUSION

Coinbase's petition for a writ of supersedeas should be granted.

Dated: March 26, 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 5,839 words, and therefore complies with the 14,000-word limit contained in Rule 8.204(c)(1).

Dated: March 26, 2025

/s/ Archis A. Parasharami
Archis A. Parasharami

CERTIFICATE OF SERVICE

I, Travis Parrott, 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 March 26, 2025, I served the foregoing document on the parties stated below, by the following means of service:

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/s/ Travis Parrott
Travis Parrott
tparrott@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

Superior Court of San Francisco County

Superior Court of California,
County of San Francisco
400 McAllister St., Room 103
San Francisco, CA 94102-45144

Mail Service