No. 22-15566

United States Court of Appeals for the Ninth Circuit

ABRAHAM BIELSKI.

Plaintiff-Appellant,

v.

COINBASE, INC.,

Defendant-Appellee.

Appeal from the District Court for the Northern District of California
No. 3:21-cv-07478 (Hon. William H. Alsup)

BRIEF OF AMICUS CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

TABLE OF CONTENTS

Corporate disclosure statement i
Table of authorities iii
Amicus curiae's identity, interest, and authority to file 1
Summary of argument 3
Argument 8
- I. The District Court Erred In Refusing to Enforce The Delegation Clause 8
  - A. The delegation clause must be analyzed separate from, and antecedent to, the full agreement. 8
  - B. The decision below conflated the predicate question of delegation with the validity of the entire agreement. 12
  - C. The district court's approach harms businesses and subverts the FAA's purpose. 15
- II. Pre-Arbitration Dispute-Resolution Mechanisms Benefit Customers and Businesses Alike 18

Conclusion 21
Certificate of service 22
Certificate of compliance 23

TABLE OF AUTHORITIES

Page(s)

Cases

Am. Express Co. v. Italian Colors Rest.,
570 U.S. 228 (2013) 8

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011) 3, 8, 17, 19

Brennan v. Opus Bank,
796 F.3d 1125 (9th Cir. 2015) 9, 11, 14

Circuit City Stores, Inc. v. Adams,
532 U.S. 105 (2001) 6, 16

Epic Systems Corp. v. Lewis,
138 S. Ct. 1612 (2018) 9

First Options of Chi., Inc. v. Kaplan,
514 U.S. 938 (1995) 9, 15

Henry Schein, Inc. v. Archer & White Sales, Inc.,
139 S. Ct. 524 (2019) 2, 9, 10, 13

Mohamed v. Uber Techs., Inc.,
848 F.3d 1201 (9th Cir. 2016) 4, 11

Rent-A-Center, W., Inc. v. Jackson,
561 U.S. 63 (2010) .... *passim*

Serpa v. Cal. Sur. Investigations, Inc.,
155 Cal. Rptr. 3d 506 (Ct. App. 2013) 18

Statutes

9 U.S.C. § 2 8

9 U.S.C. § 3 9

9 U.S.C. § 4 9

Other Authorities

Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress* (March 2015), available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf 20

JAMS Clause Workbook (June 2018), available at https://www.jamsadr.com/clauses/#Standard 14

Martin Domke et al., *Domke on Commercial Arbitration* (2020 Supp.) 16

AMICUS CURIAE'S IDENTITY, INTEREST, AND AUTHORITY TO FILE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 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 concern to the nation's business community, including questions regarding arbitration agreements and delegation clauses in particular. *E.g.*, *Caremark LLC v. Chickasaw Nation*, No. 21-16209 (9th Cir. docketed July 21,

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[1] All parties have consented to the filing of this brief. No party's counsel authored the brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting the brief, and no person or entity, aside from the Chamber, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

2021); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524 (2019); *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63 (2010).

Many of the Chamber's members have found that arbitration allows them to resolve disputes promptly and efficiently, while avoiding the costs associated with traditional litigation. Many members also routinely include delegation clauses in their arbitration agreements in order to avoid time-consuming litigation over the scope and enforceability of those agreements. Arbitration of these issues is faster and less expensive than litigation in court. Based on the principles embodied in the Federal Arbitration Act (FAA) and settled Supreme Court precedent, the Chamber's members have structured millions of contractual relationships around arbitration agreements that include delegation clauses.

The Chamber thus has a strong interest in this case and in reversal of the judgment below. The district court's refusal to enforce the delegation clause according to its terms runs afoul of the FAA as construed by both the Supreme Court and this Court, and threatens to subject businesses to protracted litigation over threshold issues that delegation clauses are specifically designed to avoid.

To the extent the Court reaches the merits of the unconscionability analysis, the Chamber also has an interest in the district court's faulty assessment of mandatory, but informal, pre-arbitration procedures. In the decision below, the district court mischaracterized these mechanisms as "onerous" and lacking a "legitimate commercial need." In reality, many of the Chamber's members reasonably require that consumers provide an opportunity to resolve their concerns quickly and efficiently, before engaging in formal arbitration. Such an arrangement benefits all parties by increasing the speed and lowering the cost of dispute resolution.

SUMMARY OF ARGUMENT

I. The FAA embodies a liberal federal policy in favor of arbitration and requires courts rigorously to enforce arbitration agreements according to their terms. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Whenever a party seeks to pursue arbitration pursuant to the FAA over the other party's objection, two threshold issues frequently arise: First, is there a valid and enforceable arbitration agreement? And second, under the terms of the agreement, who should decide that question—the court or an arbitrator?

The arbitration agreements in many business and consumer contracts include delegation clauses that assign threshold questions of arbitrability to an arbitrator, and not the court. Such a delegation clause, the Supreme Court has explained, operates as "an additional, *antecedent* agreement" to arbitrate gateway issues; as a result, the validity of a delegation clause "does *not* depend on the substance of the remainder of the contract." *Rent-A-Center*, 561 U.S. at 72 (emphases added). Hence, when a party seeks to avoid arbitration despite the presence of a delegation clause, that party must make arguments "specific to the delegation provision" demonstrating that the delegation *itself* is unenforceable, without reference to or reliance upon any purported defects in the broader agreements. *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1210 (9th Cir. 2016).

This case should have been resolved through a straightforward application of these settled principles. Abraham Bielski "agreed to be bound by the Coinbase user agreement," which included "a clear and unmistakable delegation clause" requiring both sides to submit to arbitration any and all disputes over the interpretation and validity of the arbitration agreement. This now-standard (and bilateral) provision was exactly the kind of delegation clause recognized by the Supreme Court in *Rent-A-*

Center, and should have been enforced according to its terms. That is, all questions regarding the validity of the arbitration agreement should have been referred to the arbitrator, and not decided by a court.

But the district court had other ideas. It "looked through" the delegation clause (the only provision properly before it) to the operation of the *broader arbitration clause* and reached the conclusion that the latter was impermissibly unilateral; and then the court imputed that alleged defect back into the delegation provision, on the theory that the delegation clause "incorporated" the broader arbitration agreement by referring to it. ER 9. In doing so, the court decided the very question—validity of the arbitration agreement—that the parties agreed would be reserved to the arbitrator.

That evasion of the FAA is indefensible. In *Rent-A-Center*, the Supreme Court explained that delegation clauses must be analyzed first and separate from the rest of the agreement, not because they enjoy their own separate subheading in the contract, but because the question they address ("who decides arbitrability?") is logically antecedent to the issue of arbitrability itself. Delegation clauses routinely make reference to, and are nested within, a broader arbitration agreement; but that drafting choice does not authorize a district court to bypass the delegation. The district court thus

erred when it refused to enforce the delegation clause based on a contestable (and contested) interpretation of the broader arbitration agreement.

That error will have ripple effects on the business community well beyond this case, and it will expose arbitration to the very "judicial hostility" that the FAA was enacted to "overcome." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001) (citation omitted). Many of the Chamber's members have entered into arbitration agreements containing delegation clauses to avoid exactly the kind of time-consuming litigation in which Coinbase is presently mired (including this appeal). For each of those contracts, the district court's "look through" approach would vitiate completely the parties' contractual commitment to arbitrate gateway issues and undermine the FAA's promise of fair and consistent enforcement.

II. Because the district court's refusal to enforce the delegation clause was erroneous, and that error is sufficient to resolve this appeal, the Court need not consider the district court's flawed unconscionability analysis. But if it does, the Court should reject the district court's mischaracterization of the pre-arbitration procedures. The district court criticized these procedural requirements through which businesses routinely

resolve customer complaints as "unduly onerous" and lacking a "legitimate commercial need." ER 13, 16.

None of that could be further from the truth. Many of the Chamber's members require their customers to provide them an initial opportunity to resolve complaints quickly through internal channels, before the parties proceed down the road of formal arbitration. Although arbitration is much quicker and less costly than litigation, informal complaint mechanisms are still quicker and less costly than arbitration. They are also more familiar to customers. These informal resolution procedures thus benefit everyone involved, lowering the overall costs of dispute resolution in each case and companywide, which creates savings that can be passed on to consumers in the form of lower prices. Indeed, pre-arbitration procedures are so ubiquitous today that customers affirmatively expect to resolve their concerns through a phone call or an email to customer support—and not through the comparatively costly and time-consuming processes of arbitration.

The district court's order should be reversed.

ARGUMENT

I. The District Court Erred In Refusing to Enforce The Delegation Clause

The Federal Arbitration Act reflects "both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract." *Concepcion*, 563 U.S. at 339 (internal quotation marks and citations omitted). When parties agree to arbitrate gateway questions through a delegation clause, "the FAA operates [directly] on this additional arbitration agreement" and requires its enforcement, without regard to "the substance of the remainder of the contract." *Rent-A-Center*, 561 U.S. at 70, 72. Because the decision below flouted that settled rule, it should be reversed.

A. The delegation clause must be analyzed separate from, and antecedent to, the full agreement.

The FAA requires that courts "rigorously enforce arbitration agreements according to their terms." *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (internal quotation marks and citation omitted). Section 2, the FAA's primary substantive provision, "places arbitration agreements on an equal footing with other contracts" by guaranteeing their enforcement, "save upon such grounds as exist at law or in equity for the revocation of any contract." *Rent-A-Center*, 561 U.S. at 67 (quoting

9 U.S.C. § 2). The FAA's next two sections "specifically direct[]" courts "to respect and enforce the parties' chosen arbitration procedures." *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018). Section 3 allows for a mandatory stay of litigation pending arbitration, 9 U.S.C. § 3, while Section 4 provides that parties may seek an order to compel arbitration of any arbitrable issues, 9 U.S.C. § 4.

That enforcement mandate applies with full and equal force to delegation clauses. These provisions, which are often "nested inside" the broader arbitration agreement, assign to the arbitrator, and not the courts, threshold questions about the scope, enforceability, and validity of the overall agreement to arbitrate. *Brennan v. Opus Bank*, 796 F.3d 1125, 1133 (9th Cir. 2015). "[P]arties may agree to have an arbitrator decide not only the merits of a particular dispute but also 'gateway' questions of 'arbitrability[.]'" *Henry Schein*, 139 S. Ct. at 529. And "the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about *that* matter." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (emphasis in original). If the parties agree "clear[ly] and unmistakabl[y]" to "delegate threshold arbitrability question to the arbitrator," then the FAA requires that courts honor the agreement and defer arbitrability

to the arbitrator. *Henry Schein*, 139 S. Ct. at 529-30. That remains the case, "even if the court thinks that a party's claim on the merits is frivolous" or that their "argument for arbitration is wholly groundless." *Id.* No matter what the rest of the contract says, valid delegation clauses must be enforced according to their terms.

In *Rent-A-Center*, the Supreme Court held that a court may not determine whether an arbitration agreement is unconscionable when the agreement delegates questions of arbitrability to an arbitrator. 561 U.S. at 65, 68, 72. *Rent-A-Center* explained that a delegation clause is "an additional*, antecedent agreement* the party seeking arbitration asks the federal court to enforce." *Henry Schein*, 139 S. Ct. at 529 (quoting *Rent-A-Center*, 561 U.S. at 70) (emphasis added). Hence, when a contract includes a delegation clause, courts must first answer the antecedent question of whether the delegation clause is itself enforceable, before proceeding to questions about the scope or validity of the underlying arbitration agreement. And because the delegation clause is, by definition, a self-contained and antecedent agreement to arbitrate arbitrability, its validity "*does not depend on the substance of the remainder of the contract*." *Rent-A-Center*, 561 U.S. at 72 (emphasis added).

Since *Rent-A-Center*, this Court has admonished, repeatedly, that "[w]hen considering an unconscionability challenge to a delegation provision, the court must consider only arguments specific to the delegation provision." *Mohamed*, 848 F.3d at 1210. The party resisting arbitration must show first "that the agreement to delegate to an arbitrator his unconscionability claim was *itself* unconscionable," separate and apart from the overarching agreement to arbitrate. *Brennan*, 796 F.3d at 1132-33 (emphasis in original). Only if the delegation provision is indeed invalid on its own terms may a court determine for itself the validity of the broader arbitration agreement.

This case should have been resolved easily, through a straightforward application of these settled precedents. There is no dispute that Bielski "agreed to be bound by the Coinbase user agreement," nor that the agreement included "a clear and unmistakable delegation clause" assigning to the arbitrator "all" questions as to the "interpretation," "enforceability, revocability, scope, or validity of the Arbitration Agreement." ER 8-9. The plain terms of the clause require *both sides* to submit to arbitration any and "all" disputes they may have about the meaning, scope, enforceability of the arbitration agreement, regardless of which side—

Bielski or Coinbase—was seeking to avoid arbitration. Under the FAA and controlling circuit and Supreme Court precedent, that standard, bilateral delegation clause should have been enforced according to its terms.

B. The decision below conflated the predicate question of delegation with the validity of the entire agreement.

The district court reached the opposite conclusion, but only by jettisoning *Rent-A-Center's* controlling framework. Rather than analyze the bilateral delegation clause in isolation, the court "looked through" that clause to the broader arbitration agreement between the parties, on the theory that the delegation clause "incorporated," and was "included" within, that "Arbitration Agreement." ER 10. The court then interpreted the Arbitration Agreement as unilateral, applying only to claims initiated by users, but not to claims initiated by Coinbase. *Id.* at 3-8. And it imputed this apparent "unilaterality" back into the delegation clause, which it then declared unconscionable for "impos[ing] no requirements on Coinbase." *Id.* at 8.

That analysis was deeply flawed. As *Rent-A-Center* teaches, delegation clauses are "severable" from, and "antecedent" to, "the remainder of the [arbitration] contract." *Rent-A-Center*, 561 U.S. at 70-72. The delega-

tion clause here assigns to the arbitrator, and not the court, "all" questions about the "interpretation," "enforceability" and "scope" of the Arbitration Agreement—*including whether the agreement is impermissibly unilateral*. That clear delegation divested the district court of authority to decide arbitrability, no matter the court's views of the arbitration agreement itself. *Henry Schein*, 139 S. Ct. at 529. Indeed, that is the very purpose of the delegation clause.

The district court was wrong to think that it could bypass the delegation provision merely because it was "included" within the broader arbitration agreement. ER 10. Delegation clauses routinely mention the arbitration agreement of which they are a part, but that is no warrant to end-run the delegation. In fact, drafters have good reason to identify the arbitration clause by name and nest the delegation clause inside it. As the Supreme Court has explained, parties wishing to delegate arbitrability questions to the arbitrator are required to do so to "*clearly and unmistakabl[y]*." *Henry Schein*, 139 S. Ct. at 530 (emphasis added) (quoting *First Options*, 514 U.S. at 944). No doubt, the best way to do that is for the parties to describe the arbitration agreement expressly and by name in the delegation clause itself. That is presumably why the delegation clauses in both

Brennan and *Rent-A-Center* were "nested inside" a broader agreement to arbitrate. *Brennan*, 796 F.3d at 1133; *Rent-A-Center*, 561 U.S. at 68, 72 (delegation clause provided that "[t]he Arbitrator . . . shall have exclusive authority to resolve any dispute relating to the . . . enforceability . . . of *this Agreement*"—and that agreement was "*itself an arbitration agreement*" (emphases added)); *see JAMS Clause Workbook* (June 2018), at 1, available at https://www.jamsadr.com/clauses/#Standard (standard arbitration provision providing that any dispute "arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, *including the determination of the scope or applicability of this agreement to arbitrate*, shall be determined by arbitration" (emphasis added)).

These "nesting" techniques are commonplace, and do not authorize district courts to "look through" an otherwise valid delegation clause. *Id.* at 69-70. Courts must analyze the delegation clause first and separate from the broader agreement for reasons of substance, not style. As *Rent-A-Center* teaches, the "who decides" question addressed by a delegation provision is conceptually "antecedent" to the question whether a particular dispute is in fact arbitrable. Once the parties delegate the "who decides" question

to the arbitrator, the court must enforce that provision regardless of where it appears in the contract—and regardless of the court's perspective on the validity of the remainder of the agreement. The district court's contrary view violated that settled, common-sense rule.

C. The district court's approach harms businesses and subverts the FAA's purpose.

The decision below, if permitted to stand, would also upend contractual commitments and undermine the FAA's core purposes in at least two respects.

First, the district court's "look through" rule would turn a party's drafting specificity into a perpetual source of uncertainty. Under the district court's rule, a judge need only locate the "defined term" "Arbitration Agreement"' or its equivalent within the delegation clause (which the drafters no doubt included for clarity), and then poof – the delegation clause falls away and the validity of the broader agreement becomes fair game for judicial interpretation. That approach would mire the parties in exactly the kind of litigation that delegation clauses are drafted to avoid, and it would subject arbitration to the very "judicial hostility" that the FAA was

enacted to "overcome." *Circuit City*, 532 U.S. at 118 (citation omitted). Parties include delegation clauses to move these disputes into arbitration, not to invite more litigation.

This case illustrates these concerns perfectly. The district court refused to enforce the delegation clause because it believed that the entire agreement was impermissibly unilateral and onerous. But even the district court acknowledged that "reasonable minds may differ over whether" the relevant pre-arbitration procedures were sufficiently "onerous as to invalidate the arbitration clause." ER 4 (emphasis added). The district court's view on that contested question was wrong (as explained below), but more importantly it was not the court's role to make that decision.

The entire point of the delegation clause was to "insulate and protect the arbitration process" from contestable determinations of arbitrability, and to avert the costly rounds of pre-arbitration litigation that this appeal is part of. 1 Martin Domke et al., Domke on Commercial Arbitration § 15:11.50, at 74 (2020 Supp.). If the parties had been permitted to arbitrate the issue, as the delegation clause requires, a reasonable arbitrator could have concluded that the entire agreement is enforceable—as even

the district court acknowledged. By taking that decision away from the arbitrator, the court vitiated the parties' contractual commitment by forcing protracted litigation on an issue plainly covered by the delegation clause.

Second, the district court's rule puts businesses to an impossible drafting choice. Either they can say nothing at all about the arbitration agreement in the text of the delegation clause, in which case a court may refuse to enforce the delegation as insufficiently "clear and unmistakable"; or they can identify the arbitration agreement with specificity, and risk a court "looking through" the agreement to decide gateway issues for itself, as the district court did here. That heads-I-win, tails-you-lose proposition is completely incompatible with the FAA's "liberal federal policy favoring arbitration" and its animating "fundamental principle that arbitration is a matter of contract." *Concepcion*, 563 U.S. at 339.

Both the law and common sense lead to the same place: Where, as here, the parties contractually agree to refer threshold questions of validity and enforceability to an arbitrator, the court's only role is to enforce that reference unless the delegation clause *itself* is invalid. The clause here is not (and the district court did not find otherwise), and therefore the order under review should be reversed.

II. Pre-Arbitration Dispute-Resolution Mechanisms Benefit Customers and Businesses Alike

This Court should reverse because the district court failed to adhere faithfully to *Rent-A-Center* and assess the delegation clause independent of the broader agreement. Because that issue is antecedent to the district court's unconscionability determination, 561 U.S. at 70, this Court need not reach the merits of the latter issue. Nonetheless, the Chamber wishes to address one point of particular importance to its members: the district court's incorrect assessment of pre-arbitration complaint procedures as "unduly onerous" and lacking a "legitimate commercial need." ER 13, 16.

The district court got this issue exactly backward. The "requirement that internal grievance procedures be exhausted before proceeding to arbitration is both reasonable and laudable" because it saves time and money for everyone involved. *Serpa v. Cal. Sur. Investigations, Inc.*, 155 Cal. Rptr. 3d 506, 513 (Ct. App. 2013). Companies often request that customers give them an opportunity to resolve complaints quickly and inexpensively, before the parties proceed down the comparatively longer and costlier road of arbitration. A human resource or customer service department may be able to resolve a concern with a phone call, e-mail, or text message; if not, then arbitration remains available. That process benefits

both the business and the customer because it reduces the cost (and time) of dispute resolution, both in individual cases and in the aggregate, creating cost savings that can then be passed on to consumers through more competitive pricing.

Coinbase's policies fit neatly within this efficiency-enhancing mold. Like many of the Chamber's members, Coinbase operates a platform used by millions of customers, some subset of whom will invariably face challenges and technical difficulties in the course of utilizing the service. Coinbase's pre-arbitration procedures—which require the consumer to send a message and then fill out an online form—channel complaints to the personnel best equipped to resolve them quickly and at the lowest possible cost to the business and the consumer. While that system makes a modest ask of the consumer (send a message and fill out a form), those efforts pale in comparison to the time and effort required of the parties if the case proceeds to full-blown arbitration.

Coinbase is hardly alone. Many companies, including many of the Chamber's members, encourage or require consumers to engage in some sort of pre-dispute process to resolve concerns short of arbitration. *See, e.g.*, *Concepcion*, 563 U.S. at 336-37 (agreement included pre-arbitration

procedure in which consumers completed a “one-page Notice of Dispute form available on AT&T’s Web site” and gave AT&T an opportunity to resolve their claim informally, before resorting to arbitration). Such processes benefit consumers by providing a predictable, speedy, and inexpensive avenue for the resolution of most disputes. Most consumers would rather have their problems solved without arbitration—as would most companies. *See* Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress* (March 2015), at 11, available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf (“Consumers rarely consider bringing formal claims in any forum, arbitration or litigation . . . after exhausting more informal procedures, such as customer service.”). The fact that, in the real world, consumers actually prefer these processes provides a powerful indicator that the district court’s concerns over “oppression and surprise” are entirely untethered to commercial reality. ER 14.

To reiterate, none of this should be subject to judicial scrutiny at all—the parties agreed that the arbitrator would decide validity of their arbitration agreement. But if the Court were to consider the unconscionability

issue, it should reject the suggestion that pre-arbitration grievance processes are so onerous as to vitiate an agreement to arbitrate. The speedy, efficient, and inexpensive resolution of disputes—without requiring litigation *or* arbitration—should be encouraged. The district court's order has the opposite effect.

CONCLUSION

The order denying Coinbase's motion to compel arbitration should be reversed, and the case remanded with instructions to refer the matter to arbitration pursuant to the parties' delegation agreement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 2, 2022. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Mark A. Perry
Mark A. Perry

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Ninth Circuit Rule 29(a)(5) because, excluding parts of the document exempted by Federal Rule of Appellate Procedure 32(f), it contains 3,920 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionately spaced typeface using the 2016 version of Microsoft Word in 14-point Century Schoolbook font.

/s/ Mark A. Perry
Mark A. Perry