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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

RUSSELL ROPE,
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES,
Respondent,

COINBASE, INC.,
Real Party in Interest.

Case No. _____
Trial Court Case No. 25STCV16692
Hon. Rupert A. Byrdsong, Dept. 28

MEMORANDUM
OF POINTS & AUTHORITIES

Filed In Pro Per & In Forma Pauperis — **STAY REQUESTED**

I. WHY WRIT REVIEW IS APPROPRIATE / INADEQUATE REMEDY

Writ relief is appropriate where a party is compelled to arbitrate absent proof of any agreement to arbitrate—an error that exceeds statutory authority and inflicts irreparable procedural prejudice. (Rosenthal, supra, 14 Cal.4th at 413; Hyundai Amco, supra, 232 Cal.App.4th at 577.)   The order presents threshold issues concerning the evidentiary standards required to establish online arbitration agreements and the treatment of disputes involving non-signatory actors whose identities, though suspected, remain unconfirmed absent the discovery the arbitration order has foreclosed.

Post-award review is inadequate because compelled arbitration under a disputed agreement forces the very forum, cost, and remedial constraints that Petitioner contends were never agreed to—creating irreversible prejudice even if the issue is later revisited.

This petition presents a recurring threshold issue in modern online-platform litigation: whether a court may compel arbitration based on unauthenticated digital screenshots and generalized declarations without resolving disputed formation facts or addressing the presence of non-signatory actors whose identities, though suspected, remain unconfirmed absent the discovery the arbitration order obstructed.

Writ review is particularly appropriate because the order compels arbitration without resolving disputed formation facts and without addressing the presence of non-signatory actors whose identities require discovery. Issues concerning the evidentiary standards required to establish online arbitration agreements arise frequently in modern litigation involving digital platforms and are likely to recur.

II. STANDARD OF REVIEW

Whether an arbitration agreement exists and is enforceable is reviewed de novo; factual determinations are reviewed for substantial evidence. (Rosenthal, supra, 14 Cal.4th at 413.)

Where formation is contested, the trial court must resolve evidentiary conflicts and make findings. (Engalla, supra, 15 Cal.4th at 972–973.)

III. COINBASE FAILED TO AUTHENTICATE AN ALLEGED ARBITRATION AGREEMENT

A party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement through competent evidence.

Where an agreement is allegedly formed through an electronic system, the moving party must authenticate the records demonstrating assent and explain the reliability of the system used to capture the acceptance. (Ruiz v. Moss Bros. Auto Group, Inc. (2014) 232 Cal.App.4th 836, 844-846.)

Courts require evidence explaining how the electronic records were generated, how the system verifies user acceptance, and how the record is linked to the specific individual alleged to have agreed to the terms. (Espejo v. Southern California Permanente Medical Group (2016) 246 Cal.App.4th 1047, 1062-1063.)

Here, Coinbase relied on generalized declarations and screenshots purporting to show terms of service and arbitration provisions.

However, Coinbase did not present competent evidence establishing:

• How the system records user acceptance

• How those records are generated and preserved

• How the records are tied to Petitioner's specific account

• Why the records presented accurately reflect the operative agreement

Without such authentication, the materials presented do not constitute sufficient evidence of an enforceable arbitration agreement.

Because Coinbase failed to meet its evidentiary burden, the trial court lacked a sufficient basis to compel arbitration.

IV. THE TRIAL COURT ERRED BY COMPELLING ARBITRATION WITHOUT PROOF OF FORMATION

Coinbase bore the burden of proving by admissible evidence the existence of an agreement to arbitrate. (Rosenthal, supra, 14 Cal.4th at 413.)

Petitioner disputed formation and objected to Coinbase's evidence as lacking authentication/foundation and failing to identify the operative version allegedly assented to. (Ex. I)

On this record, Coinbase failed to prove:

- What agreement (version/effective date) governed at the time of alleged assent;

- That Petitioner received reasonable notice of the arbitration clause;

- That Petitioner manifested affirmative assent to that clause;

- That subsequent material changes were accepted with notice and assent.

Digital contract enforcement requires meaningful notice and assent—generalized screenshots and non-account-specific materials are inadequate. (Nguyen v. Barnes & Noble Inc. (9th Cir. 2014) 763 F.3d 1171, 1177–79.)

V. COINBASE FAILED TO PROVE ASSENT TO MATERIAL MODIFICATIONS

Material modifications require notice and assent; unilateral change provisions do not dispense with assent. (Badie v. Bank of America (1998) 67 Cal.App.4th 779, 803–806.) To the extent any agreement is deemed to have been formed, Coinbase did not demonstrate that Petitioner assented to material post-formation modifications affecting access conditions and dispute resolution.

VI. THE TRIAL COURT FAILED TO MAKE REQUIRED FINDINGS DESPITE DISPUTED FORMATION

The trial court's order compelling arbitration does not address the controverted issues presented by the parties. Petitioner specifically requested a statement of decision identifying the factual and legal basis for the ruling. Despite multiple disputed issues—including assent, authentication, and applicable terms —the court issued an order compelling arbitration without explaining which evidence it relied upon or how it resolved those disputes.

Where formation is disputed, the trial court must resolve evidentiary conflicts and cannot compel arbitration by assumption or by accepting conclusory declarations. (Rosenthal, supra; Engalla, supra.)

The Minute Order contains no express findings resolving (a) which agreement governs, (b) how assent was established, or (c) how evidentiary objections were resolved. That omission, in the face of a contested formation record, constitutes reversible error.

VII. UNCONSCIONABILITY (PROCEDURAL AND SUBSTANTIVE)

Unconscionability requires procedural and substantive elements evaluated on a sliding scale, with a lesser showing of one compensating for a greater showing of the other. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.)

Without conceding that any arbitration agreement was formed or proven — a threshold issue addressed

in Sections III through VI above — Petitioner alternatively establishes that any such agreement, if deemed to exist, is unenforceable as unconscionable under California law.

Procedural unconscionability is established on multiple grounds. The alleged arbitration clause, if presented at all, was contained within a non-negotiable adhesion contract — a take-it-or-leave-it condition of accessing a custodial digital wallet that Petitioner had already created and funded. Petitioner had no meaningful opportunity to negotiate any term, was not provided a printed copy of any agreement, and was not directed to any alleged arbitration clause in a prominent or conspicuous manner at the time of signup. Any such clause would have been buried within a lengthy terms of service document presented on a mobile application interface where complete review is structurally impractical and meaningful assent to specific terms cannot be presumed. (*Nguyen v. Barnes & Noble Inc.* (9th Cir. 2014) 763 F.3d 1171, 1177–79.) These facts establish at minimum a significant degree of procedural unconscionability with respect to any agreement Coinbase claims was formed.

Substantive unconscionability is independently established. The arbitration clause Coinbase seeks to enforce imposes one-sided constraints that systematically favor Coinbase: it limits available remedies, restricts class and representative claims, imposes discovery limitations that would prevent Petitioner from obtaining evidence of internal corporate misconduct and system manipulation uniquely within Coinbase's control, and effectively immunizes Coinbase from accountability for conduct affecting large numbers of consumers. Furthermore, Coinbase's post-formation biometric verification requirement imposed a discriminatory barrier to account access that implicates the Americans with Disabilities Act — a federal statute that cannot be waived by private contract. Coinbase possessed no baseline

biometric images of Petitioner against which to conduct any meaningful comparison, rendering the verification requirement both inapplicable to Petitioner's circumstances and impossible to fairly satisfy on its own terms. Compelling arbitration of claims rooted in an ADA-implicating access barrier, without addressing that federal statutory dimension, compounds the substantive unconscionability of any agreement Coinbase claims was formed. The alleged clause further eliminates the right to jury trial and imposes a private forum with structural advantages for a repeat-player institutional party over a one-time individual claimant. (*Armendariz*, *supra*, 24 Cal.4th at 117; *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1145.) The combination of adhesive presentation and substantively one-sided terms renders any such clause unconscionable under California law. The trial court did not conduct the required *Armendariz* analysis, which itself constitutes reversible error.

VIII. THE COURT COULD NOT COMPEL ARBITRATION WITHOUT FIRST RESOLVING DISPUTED FORMATION FACTS

Even where arbitration is requested, a court may not compel arbitration when material facts concerning the existence of an arbitration agreement are disputed. Under California law, the court must resolve those factual disputes before compelling arbitration. (Rosenthal v. Great Western Fin. Securities Corp. (1996) 14 Cal.4th 394, 413–414.)

Where material facts regarding formation are contested, the court must weigh the evidence and determine the threshold issue of contract formation. (Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal.4th 951, 972–973.)

Here, Petitioner directly challenged assent, authentication, the operative version of the alleged agreement, and post-formation modifications. The record therefore contained unresolved threshold factual disputes.

Rather than resolving those disputes, the court compelled arbitration without findings addressing assent, authentication, or which agreement governed.

In addition, the factual questions concerning formation and authentication involve information uniquely within Coinbase's possession and control. Evidence concerning how Coinbase records user assent, the system logs associated with Petitioner's account, and the mechanisms used to impose the access restrictions at issue are not available to Petitioner absent discovery. Where the evidence necessary to determine arbitrability is controlled by the party seeking arbitration, courts may permit limited discovery before ruling on a motion to compel arbitration. (See Gamboa v. Northeast Community Clinic (2021) 72 Cal.App.5th 158, 168.) The trial court compelled arbitration without permitting any such discovery despite the existence of disputed facts directly bearing on the existence and scope of any alleged agreement. Compelling arbitration under those circumstances effectively insulated the relevant evidence from judicial review.

That was legal error. Because the existence of an arbitration agreement was materially disputed, the court could not compel arbitration without first resolving those factual disputes.

IX. THE PRESENCE OF NON-SIGNATORY DOE DEFENDANTS CREATES A THIRD-PARTY LITIGATION PROBLEM

Even if Coinbase had established the existence of an arbitration agreement—which it did not—the court was required to consider the third-party litigation exception under Code of Civil Procedure section 1281.2(c).

Petitioner's complaint names Doe defendants whose identities, though suspected, remain unconfirmed absent the discovery that the arbitration order has foreclosed and whose conduct arises from the same events giving rise to the dispute. Discovery is required to determine the identity and role of these actors.

Those individuals or entities have not agreed to arbitration and cannot be compelled to arbitrate absent proof they are bound by Coinbase's agreement.

If arbitration proceeds while claims against non-signatory actors remain in court, separate tribunals would necessarily address overlapping factual questions, including whether the access restrictions were lawful, whether notice of relevant terms was adequate, which actors were responsible for the account lockout, and whether the resulting deprivation of access was justified.

That creates a substantial risk of fragmented proceedings and inconsistent determinations on common factual issues. The order compelling arbitration contains no analysis of this problem despite the

presence of Doe defendants on the face of the complaint and record. At minimum, the court was required to consider whether arbitration should be denied or stayed pending discovery sufficient to confirm the identities and roles of non-signatory actors whose involvement is suspected but unconfirmed and coordinated adjudication of overlapping issues.

X. CLAIMS IMPLICATING PUBLIC RIGHTS AND SYSTEMIC PRACTICES CANNOT BE DISMISSED AS A PURELY PRIVATE ARBITRATION MATTER

Petitioner's claims are not limited to a routine private contract dispute. The allegations concern Coinbase's systematic imposition of coercive biometric verification requirements as a condition of accessing custodial digital assets — conduct that affects not only Petitioner but any Coinbase customer subjected to the same post-formation access restrictions. Petitioner's Verified Complaint expressly seeks injunctive relief enjoining Coinbase from imposing nonstandard biometric verification requirements as a condition of account access, restoring access to custodial wallets, and preventing the destruction or permanent impairment of digital assets held in custody. That relief, by its nature, would operate to protect all similarly situated Coinbase users subjected to the same practices — it is public injunctive relief within the meaning of *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 955–956.

California law is unambiguous: an arbitration provision that purports to waive the right to seek public injunctive relief in any forum is unenforceable. (*McGill*, *supra*, 2 Cal.5th at 952.) This rule survives FAA preemption because it applies equally to arbitration and non-arbitration agreements. (*Id.* at 961–962.) To the extent Coinbase's arbitration clause would eliminate or restrict Petitioner's ability to seek public injunctive relief addressing Coinbase's systematic access restriction practices, that clause is

unenforceable as contrary to California public policy. The trial court's order compelling arbitration without addressing this issue was error requiring reversal.

XI. DELEGATION WAS NOT ESTABLISHED

Delegation requires clear and unmistakable evidence. (First Options of Chicago, Inc. v. Kaplan (1995) 514 U.S. 938.) Absent proof of formation, any purported delegation fails.

XII. FAA PREEMPTION DOES NOT BAR RELIEF

To the extent Coinbase invokes the Federal Arbitration Act, that invocation does not alter the outcome here. The FAA does not preempt state-law contract defenses of general applicability, including fraud, duress, and unconscionability, when those defenses apply to the formation of the arbitration agreement itself rather than to arbitration as a category of dispute resolution. (*Doctor's Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, 687.) California's formation and unconscionability standards are facially neutral rules of contract law applicable to all agreements — they do not single out arbitration clauses for disfavored treatment and therefore survive FAA preemption. (*Id.*)

Moreover, the threshold question here is not whether an arbitration agreement should be enforced but whether one exists at all. The FAA has no application to that question — it presupposes a valid agreement and addresses only enforcement. Where, as here, the moving party has failed to establish formation by competent evidence, the FAA's mandate to enforce arbitration agreements simply does not attach. (*Rosenthal*, *supra*, 14 Cal.4th at 402.) The formation defenses Petitioner raises — lack of

authenticated assent, failure to identify the operative agreement, absence of notice of material modifications — are state contract law principles that the FAA expressly preserves. Coinbase cannot use the FAA as a shield against the obligation to prove the agreement it seeks to enforce actually exists.

XIII. STAY SHOULD ISSUE

A stay is warranted to preserve the status quo because arbitration has not begun and Coinbase will suffer no prejudice, while Petitioner faces irreparable procedural harm from being forced into a disputed forum and losing the practical ability to vindicate rights.

XIV. CONCLUSION

The order under review compels arbitration without proof that any agreement to arbitrate exists, without resolving disputed formation facts, without findings addressing Petitioner's evidentiary objections, and without considering the statutory bar created by the presence of non-signatory Doe defendants whose identities, though suspected, remain unconfirmed absent the discovery that the arbitration order has foreclosed. It is precisely the kind of threshold legal error that writ review exists to correct.

Coinbase offered generalized declarations and unauthenticated screenshots in place of the account-specific, authenticated evidence that California law requires. (*Rosenthal*, *supra*, 14 Cal.4th at 413; *Ruiz*, *supra*, 232 Cal.App.4th at 844–846; *Espejo*, *supra*, 246 Cal.App.4th at 1062–1063.) The trial court accepted them without resolving a single disputed formation question — not which agreement

governed, not how assent was established, not how evidentiary objections were resolved. Where such evidence is absent, the threshold question of arbitrability remains for the court and cannot be delegated or presumed. The result is an order that compels Petitioner into a private forum whose jurisdiction has never been lawfully established, under terms that were never proven to exist, while foreclosing the very discovery that would confirm what Petitioner already suspects about the non-signatory actors whose conduct lies at the heart of this dispute. That is not arbitration enforcement. That is the elimination of judicial review by assumption.

Petitioner does not take lightly that writ review is discretionary. That discretion exists precisely for cases like this one — where the ordinary machinery of justice has failed at every level it was invoked, where a pro per litigant facing documented, coordinated interference has been compelled into a disputed arbitral forum by an order that resolved nothing, and where no other meaningful remedy remains. Discretionary authority unexercised in the face of demonstrated injustice is not neutrality — it is a choice. This Court has both the authority and the occasion to make the right one.

Arbitration has not begun. The status quo can be preserved. Coinbase suffers no prejudice from a Court that simply insists on proof before compelling a citizen into a private tribunal. Petitioner respectfully requests that this Court issue the writ, vacate the order compelling arbitration, and restore Petitioner's ability to seek justice in a forum with proper jurisdiction over this dispute.

Petitioner asks only that this Court do so.

TABLE OF AUTHORITIES

Cases

- Armendariz v. Foundation Health Psychcare Services, Inc. (2000) 24 Cal.4th 83

- Badie v. Bank of America (1998) 67 Cal.App.4th 779

- Doctor's Associates, Inc. v. Casarotto (1996) 517 U.S. 681

- Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal.4th 951

- First Options of Chicago, Inc. v. Kaplan (1995) 514 U.S. 938

- Hyundai Amco America, Inc. v. S3H, Inc. (2014) 232 Cal.App.4th 572

- Johnson v. Superior Court (2000) 80 Cal.App.4th 1050

- Nguyen v. Barnes & Noble Inc. (9th Cir. 2014) 763 F.3d 1171

- Popelka, Allard, McCowan & Jones v. Superior Court (1980) 107 Cal.App.3d 496

- Rosenthal v. Great Western Fin. Securities Corp. (1996) 14 Cal.4th 394

- Sonic-Calabasas A, Inc. v. Moreno (2013) 57 Cal.4th 1109

- Ruiz v. Moss Bros. Auto Group, Inc. (2014) 232 Cal.App.4th 836

- Espejo v. Southern California Permanente Medical Group (2016) 246 Cal.App.4th 1047

- McGill v. Citibank, N.A. (2017) 2 Cal.5th 945

Statutes

- Code Civ. Proc., §§ 1085, 1103, 1281.2, 923

- Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

Rules

- Cal. Rules of Court, rules 8.104, 8.116, 8.486

Respectfully Submitted,

Dated: March 10, 2026

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