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10 **AMERICAN ARBITRATION ASSOCIATION**

11 INDIVIDUAL CLAIMANTS,

12 Claimants,

13 v.

14 TOSHI HOLDINGS PTE. LTD D/B/A  
15 COINBASE WALLET, COINBASE, INC., &  
16 COINBASE GLOBAL, INC.,

17 Respondents.

18 CASE NO. 01-22-0004-3719

19 **ANSWERING STATEMENT AND**  
20 **AFFIRMATIVE DEFENSES TO**  
21 **DEMAND FOR ARBITRATION**

1 Pursuant to Rule 2(c) of the American Arbitration Association’s Consumer Arbitration Rules and  
2 Rule MC-4(a) of the Supplementary Rules for Multiple Case Filings, Respondents Toshi Holdings Pte.  
3 Ltd (“Toshi”), Coinbase Global, Inc. (“Coinbase Global”), and Coinbase, Inc. hereby respond to the  
4 Consolidated Demand for Arbitration (the “Demand”) submitted on October 14, 2022, and to the First  
5 Supplement to the Demand for Arbitration submitted on November 9, 2022.

6 **PRELIMINARY STATEMENT AND BACKGROUND**

7 Respondent Toshi operates Coinbase Wallet, a leading “self-custody” cryptocurrency wallet that  
8 empowers consumers who want to hold their own cryptocurrency and explore the decentralized web.<sup>1</sup>  
9 Claimants are Coinbase Wallet users victimized by scammers (who have not been sued, and are not  
10 parties before the Tribunal). These scammers, who approached Claimants through unlikely avenues such  
11 as online dating apps or other social media platforms, persuaded them to invest in phony “liquidity  
12 mining” schemes based on promises of unrealistic returns. It is unfortunate and regrettable that  
13 Claimants have fallen prey to the scammers who swindled them out of their assets, and Respondents  
14 focus enormous resources on product features and education to help their customers guard against  
15 scams. But Respondents are not liable for these losses, which unquestionably were caused by the  
16 malfeasance of third parties, and for which Claimants themselves bear significant fault.

17 **Industry Background**

18 These arbitration proceedings involve (1) “cryptocurrency,” decentralized digital money, that  
19 was (2) stored in a “self-custody wallet” and then (3) lost to bad actors running scams on decentralized  
20 apps or “dApps.”

21 Cryptocurrency (or “crypto”) lets people store and transfer value online using digital “wallets,”  
22 without the need for financial intermediaries like banks or payment processors. Cryptocurrencies are  
23 powered by “blockchain” technology, which utilizes a public ledger of transactions distributed across  
24 many computers that anyone can view and verify.

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27 <sup>1</sup> The other parties Claimants have named, Coinbase Global, Inc. and Coinbase, Inc., are not  
28 proper Respondents and should be dismissed. Claimant alleges no facts sufficient to disregard their  
separate corporate form.

1 Central to the technology, a crypto holder is issued two “keys” in the form of long strings of letters  
2 and numbers. The “private” key, revealed only to the wallet owner, is needed to confirm or “sign” a  
3 transaction, somewhat like a password. The “public” key, also known as a wallet address, is visible to  
4 others and identifies the user’s wallet to others. Most crypto users never interact with their private keys at  
5 all. Instead, they rely on centralized exchanges like Coinbase to store and secure the user’s private keys.  
6 Such users interact with their crypto by simply logging on to Coinbase (or another centralized exchange)  
7 with a username and password, much like how one might log on to an online brokerage account. This is  
8 known as a “custodial wallet,” meaning that a centralized intermediary like Coinbase takes custody of the  
9 users’ private keys and crypto.

10 A “self-custody wallet,” in contrast, is different in that the user retains sole control of their  
11 private key—and thus, sole control of their crypto assets. Coinbase Wallet, like other self-custody  
12 wallets such as MetaMask and Binance’s Trust Wallet, is akin to physical cash wallet in that its owner  
13 has complete and direct control over the assets it holds, and does not need assistance from any third  
14 party (let alone the wallet manufacturer) to complete a transaction. When a user signs up for a Coinbase  
15 Wallet, they receive a “recovery phrase” (or “seed phrase”), a series of words that is an English-  
16 language manifestation of the wallet’s private keys. Recording and securing the “recovery phrase” is  
17 critical because it controls access to the assets in the Wallet.

18 In addition to holding assets, Coinbase Wallet can be used to browse decentralized web  
19 applications, or “dApps,” that have been built on blockchain networks. For example, decentralized  
20 cryptocurrency exchanges such as Uniswap and dYdX let people engage in peer-to-peer crypto  
21 transactions directly through their self-custody wallets, without going through an intermediary such as  
22 Coinbase. Many dApps run on the Ethereum blockchain, which supports “smart contracts”—software  
23 code that runs on the blockchain and automatically executes transactions when certain conditions are  
24 met.

### 25 **Liquidity Mining Scams**

26 The scammers who victimized these Claimants purported to be associated with “liquidity  
27 mining” operations, which are intended to solve an inherent problem with decentralized crypto  
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1 exchanges: How do strangers, collectively operating a decentralized exchange without a middleman,  
2 create markets with sufficient liquidity so that users can transact on demand in the cryptocurrencies they  
3 want to buy or sell?

4 A “liquidity pool” is a reserve into which crypto holders place their assets and make them  
5 available to others who may wish to transact in them, providing the necessary capital for decentralized  
6 trades. For example, a user might deposit Bitcoin and Ethereum from their self-custody wallet into a  
7 liquidity pool, facilitating trades between those two cryptocurrencies executed by smart contracts. After  
8 fulfilling the terms and obligations of the pool to which they commit their assets, such as a “lock-up  
9 period” that requires the user to keep their assets in the pool for a certain period, users can eventually  
10 retrieve their assets. “Liquidity mining” describes the practice of lending crypto to a pool in exchange  
11 for passive income or other rewards.

12 Claimants fell victim to malicious third parties using this new technology as a vehicle for get-  
13 rich-quick scams. These scammers persuaded Claimants to connect to an illegitimate dApp using a self-  
14 custody Wallet, and then to click a button that executed a smart contract giving the scammers authority  
15 to withdraw all of a certain cryptocurrency in the Wallet—generally “Tether,” or USDT. (This  
16 convention of preapproving future withdrawals has been used by many legitimate dApps because it  
17 reduces the “network fees” that must be paid.) Claimants allege that they were unaware they were  
18 granting such authority, and that the smart contracts were presented as purchasing a “node,” “voucher,”  
19 or “certificate” to enable the liquidity mining. Demand ¶ 139.<sup>2</sup> Although the basis of liquidity pools is to  
20 lend assets so that others may make transactions using them, Claimants allege that they were “typically  
21 told that the USDT w[ould] remain in their wallet throughout their participation in the mining pool.” *Id.*  
22 ¶ 141.

23 The scammers generally contacted Claimants through “social media, such as WhatsApp,  
24 Facebook, Twitter, or online dating sites.” Demand ¶ 138. Indeed, the vast majority of Claimants allege  
25 being approached by a stranger on the internet. *See, e.g., id.* ¶¶ 298, 311, 534, 619 (dating app Tinder);

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26 <sup>2</sup> Several Claimants, however, affirmatively allege their knowledge that they were entering into a  
27 “smart contract” through the dApp. *See, e.g.,* Demand ¶ 184 (Shakeeb Khan), ¶ 197 (Autumn Pavao),  
28 ¶ 206 (Johannes Masehi), ¶ 503 (Deepak Soneji), ¶ 788 (Dieu Thai).

1 ¶¶ 488, 527, 601 (dating app Hinge); ¶¶ 439, 643 (dating app Plenty of Fish); ¶¶ 226, 340, 399  
2 (unspecified dating app); ¶ 174 (LinkedIn); ¶ 206 (Facebook Messenger); ¶ 252 (Instagram); ¶ 693  
3 (video-based social networking app TikTok); ¶ 359 (social messaging platform Discord); ¶ 429 (Reddit).  
4 Once connected with their victims, some of the scammers favored encrypted social messaging apps such  
5 as WhatsApp (¶ 205), and Signal (¶ 340) for their fraudulent pitches.

6 The strangers promised incredible returns on Claimants’ “investments.” For example, Gabriel  
7 Rockman was told he could earn an astounding 0.8% interest *per day* (*id.* ¶ 285)—an annual rate of  
8 292%, or 1,807% if the “interest” were compounded daily. Kelly Schmittel’s scammer claimed to be  
9 earning “3500 in income every day,” or “120k income per month.” *Id.* ¶ 610; *see also, e.g., id.* ¶ 360  
10 (Raphael Elbaz’s scammer met in “group chats on Discord” claimed “gains of over \$1,000,000 USD and  
11 told Elbaz that she would share the Coinbase Wallet mining node with him, but he could not share it  
12 with others”). Claimants further report being told that there was “no risk associated with” the  
13 investment. *Id.* ¶ 263.

14 Many of the strangers feigned rapid and intense romantic interest as part of the scam. For  
15 example, seven days after they first matched on a dating app, a scammer persuaded Manash Sharma to  
16 invest thousands into a phony liquidity mining pool so the two could “build a better future together.” *Id.*  
17 ¶¶ 439-445. The same month Christian Kelly “was contacted by an individual named ‘Alice’ on a social  
18 dating application,” “Alice” told Kelly: “I seem to feel that you are indispensable in my life”—then  
19 continued to pressure Kelly over the next couple of days “to invest more and more of his assets into the  
20 pool under the guise that they were working together to build towards a joint financial future for them as  
21 a couple.” *Id.* ¶¶ 340-342. The scammers also used other pressure tactics, such as describing the  
22 investment opportunity as “time-limited.” *Id.* ¶ 174.

23 Many Claimants continued to deposit large sums into what they believed were “mining pools”  
24 even after seeing earlier deposits disappear from their Wallets, without notice and contrary to their  
25 expectations. For example, “[d]espite the unexpected withdrawal” of all USDT in her Wallet, “Jane Doe  
26 still believed that the liquidity mining pool was legitimate” and made deposits on eight additional days.  
27 *Id.* ¶¶ 255-257; *see also, e.g.,* ¶¶ 228-229 (even after over \$25,000 was removed from his Wallet, Jon  
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1 Leathers still “believed he had access to his assets” and made another deposit five days later); ¶ 287  
2 (after his Wallet was “emptied,” Gabriel Rockman “continued to deposit assets,” “liquidated his entire  
3 savings,” and “sold funds in taxable brokerage account” to contribute more); ¶¶ 588-589 (scammers  
4 “withdraw all the USDT” from Bryce Richmond’s wallet on two separate occasions in December 2021  
5 and January 2022).

6 Many such post-loss deposits appear to have been made after scammers told Claimants that the  
7 rules or requirements of the “investment” had changed dramatically. Jeffrey Yeager, for instance, had  
8 nearly \$350,000 withdrawn from his Wallet. When he contacted the scam dApp’s “customer service  
9 chat,” he allegedly was told he needed to contribute at least another \$172,000 within days to “avoid  
10 losing his initial investment”—and did. *Id.* ¶¶ 267-268. After Daniel Chang’s Wallet was emptied  
11 twice—the first time \$31,633; the second time almost \$225,000—he was told “that he would have to  
12 ‘pay taxes’” to release his original funds, and deposited another \$34,795 in assets. And after Dominic  
13 Chow noticed over \$100,000 in crypto “emptied and sent to another address without his consent or  
14 authorization,” he complied with a “customer support” agent’s instruction “that he needed to contribute  
15 more money into his Wallet to meet a \$280,000.00 USD threshold before he could retrieve his assets  
16 and obtain a reward.” *Id.* ¶¶ 422-424; *see also, e.g., id.* ¶¶ 402-403 (Wai Chan “noticed that his Wallet  
17 had been emptied” was told that “in order to retrieve [the assets] and a bonus award he would have to  
18 increase his contribution,” and made two additional contributions on separate days, each of which was  
19 “[i]mmediately” drained); ¶ 461 (“[a]fter realizing that his Coinbase Wallet had been drained,”  
20 Chenggou Dong followed instruction to “make an additional deposit of 425,182.19 USDT before he  
21 could withdraw his assets”); ¶ 871 (after Troy Gochenour’s initial \$5,000 deposit was withdrawn, he  
22 followed instructions to “fulfill his contract” by depositing another \$10,000, which also disappeared).

23 Some Claimants allege that they trusted the scammers because the *scammers* described  
24 themselves as affiliated with Coinbase. But it is not seriously claimed that *Respondents* gave them that  
25 impression.<sup>3</sup> Coinbase has never claimed to have been affiliated with any of the scam dApps, nor with

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27 <sup>3</sup> Chris Elkins alleges without details that he “discovered the fraudulent dapp, UniSwap  
28 (<http://swapuni.org>)” on “Coinbase’s website.” (Demand ¶ 543.) Respondents have never claimed an  
affiliation with the popular decentralized exchange Uniswap, and any explanatory mentions of Uniswap

1 any liquidity mining operation. And the Terms of Service to which each Claimant agreed before they  
2 suffered losses expressly stated the opposite: Toshi “do[es] not have control over the[] content,” of third-  
3 party services expressly including dApps, “do[es] not warrant or endorse” them, and [is] not responsible  
4 for the[ir] availability or legitimacy,” making “no warranties or representations, express or implied”  
5 about third-party materials accessible through Coinbase Wallet. Each claimant “acknowledge[d] sole  
6 responsibility for and assume[d] all risk arising from [their] use of any third-party websites, applications,  
7 or resources.”

### 8 **Respondents Are Not Liable for the Alleged Losses**

9 On this record, Claimants assert nine causes of action falling into three categories: (A) claims  
10 under the Electronic Funds Transfer Act (“EFTA”) (Counts I-III); (B) claims for breach of contract and  
11 of the implied covenant of good faith and fair dealing (Counts VI-VII); and (C) negligence and other  
12 claims under the common law and California’s unfair-competition statute (Counts IV-V and VII-IX).  
13 Although Respondents are deeply sympathetic to Claimants for their losses, none of these legal theories  
14 makes Respondents liable to them.

15 Just as Google is not an all-purpose insurer of all who use its Chrome web browser, Toshi is not  
16 responsible for everything that takes place on the decentralized web using its self-custody wallet  
17 product. As noted, the Terms of Service to which Claimants agreed that access to third-party dApps was  
18 provided “only as a convenience,” that Toshi does not control or endorse dApps, and that Wallet users  
19 “assume[d] all risk” associated with dApps. The agreement further provided that Toshi “SHALL NOT  
20 BE LIABLE UNDER ANY CIRCUMSTANCES FOR DAMAGES ARISING OUT OF OR IN ANY  
21 WAY RELATED TO SOFTWARE, PRODUCTS, SERVICES, AND/OR INFORMATION OFFERED  
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23 \_\_\_\_\_  
24 on Coinbase’s website made clear that its URL is “app.uniswap.org”—not the “swapuni.org” URL that  
25 Mr. Elkins apparently visited. *See* Wayback Machine, Coinbase, *What Is UniSwap?*,  
26 <https://web.archive.org/web/20211006000309/https://www.coinbase.com/learn/crypto-basics/what-is-uniswap> (archived Oct. 6, 2021). Coinbase’s website also warned customers that URLs with slight  
27 misspellings of well-known websites are a common front for fraud. *See, e.g.,* Wayback Machine,  
28 Coinbase, *What Is Phishing?*, [https://web.archive.org/web/20211020040808/https://help.  
coinbase.com/en/coinbase/privacy-and-security/avoiding-phishing-and-scams/what-is-phishing](https://web.archive.org/web/20211020040808/https://help.coinbase.com/en/coinbase/privacy-and-security/avoiding-phishing-and-scams/what-is-phishing) (archived Oct. 20, 2021).

1 OR PROVIDED BY THIRD-PARTIES AND ACCESSED THROUGH THE APP, SITE OR  
2 SERVICES.”

3 Respondents have strong defenses to each of Claimants’ causes of action. To summarize briefly:  
4 Electronic Funds Transfer Act: Claimants’ invocation of the EFTA and its implementing  
5 “Regulation E” tries to fit a square peg into the round hole of a banking statute enacted decades before  
6 cryptocurrency was invented, and which has *never* been applied to the cryptocurrency industry, let alone  
7 to a self-custody wallet. In April 2022, the Congressional Research Service explained that  
8 “[c]ryptocurrency transactions are not subject to Regulation E primarily because these are not bank  
9 products and also because cryptocurrencies are not typically used for consumer payments.”<sup>4</sup> This is  
10 particularly true in the context of a *self-custody* wallet solely controlled by its owner (and not any  
11 Respondent). Coinbase Wallet users, as Claimants acknowledge, have sole “control of their private key”  
12 and thus the sole ability “to spend, trade, or do other things with the crypto contained” in their wallets  
13 (*id.* ¶ 114 n.13). Respondents have no control whatsoever of Claimants’ Coinbase Wallets or what  
14 Claimants do with them. Simply put, the EFTA and Regulation E are about as applicable to Coinbase  
15 Wallet as they are to physical wallets that hold cash—that is, they are not applicable at all.

16 Contract Claims: The contract-based claims fail for the simple reason that Claimants have not  
17 identified any contractual provision that was breached. The only provision they cite provides in relevant  
18 part: “You are solely responsible for the retention and security of your twelve word recovery phrase  
19 (‘Recovery Phrase’). Your Recovery Phrase is the only way to access the cryptocurrency associated with  
20 your Account.” (*See Demand* ¶ 1160.) Claimants allege that Respondents breached the latter sentence  
21 “by allowing scammers to withdraw Claimants’ crypto” without “access to Claimants’ 12-word  
22 Recovery Phrase[s].” (*Id.* ¶ 1161.) This allegation is nonsense. The excerpt cited above imposes no duty  
23 on Toshi. Rather, it puts sole responsibility on the user for retaining and securing the user’s recovery  
24 phrase. Further, Claimants’ transactions with alleged scammers, like any crypto transaction involving a  
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27 <sup>4</sup> Congressional Research Service, *In Focus, Digital Wallets and Selected Policy Issues* (Apr. 18,  
28 2022), <https://crsreports.congress.gov/product/pdf/IF/IF12079>.



1 Coinbase Wallet, required access to the Recovery Phrase—access that Claimants and only Claimants  
2 used to authorize the alleged scam transactions at issue. There is no breach of contract here.

3 Tort and Unfair Competition Claims: Claimants allege that Respondents negligently caused  
4 Claimants’ losses by failing to implement reasonable security measures or sufficiently warn them of the  
5 third-party scams. But as the California Court of Appeal has already explained in a case involving  
6 Coinbase, Respondents “had no legal duty to provide services beyond those [they] agreed to provide” in  
7 the governing contract—here, the Toshi Terms of Service between each Claimant and Toshi. *Archer v.*  
8 *Coinbase, Inc.*, 53 Cal. App. 5th 266, 278 (2020). In any event, Coinbase Wallet’s security precautions  
9 were reasonable and Claimants expressly assumed the risk of their interactions with third-party dApps.  
10 Claimants’ unfair-competition claims will likewise fail because, among other reasons, no Respondent  
11 engaged in any unlawful, unfair, or fraudulent business practice, and because Claimants could have  
12 avoided their losses to third parties by exercising reasonable caution.

### 13 GENERAL DENIAL

14 For reasons including but not limited to those set forth in their Preliminary Statement, Respondents  
15 generally deny each and every claim and allegation asserted against each of them in the Demand.  
16 Respondents reserve their rights to amend this Answering Statement as their factual investigation  
17 continues.

### 18 PROCEDURAL OBJECTIONS

19 Respondents object to Claimants filing a consolidated proceeding rather than individual  
20 proceedings. Each Claimant agreed in the Toshi terms of service that “any Dispute **shall be finally**  
21 **settled in binding arbitration, on an individual basis**” (emphasis in original). They have no  
22 contractual right to a consolidated proceeding against any Respondent. Nothing in the filing or content  
23 of this Answering Statement should be construed as any Respondent’s consent to any consolidated  
24 proceeding.

25 Respondents further object to the extent Claimants are otherwise proceeding or attempting to  
26 proceed in arbitration in any manner which is inconsistent with the terms of the parties’ arbitration  
27 agreement. Nothing in the filing or content of this Answering Statement should be construed as waiving  
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1 any rights set out therein. Respondents reserve the right to further supplement this objection as  
2 appropriate.

3 **AFFIRMATIVE DEFENSES**

4 In addition to denying its allegations, Respondents also plead the following affirmative defenses  
5 to the Demand. Respondents plead these affirmative defenses based on their current understanding of all  
6 allegations, claims, and legal theories in the Demand and reserve their rights to amend and add to these  
7 defenses. In asserting these defenses, Respondents do not suggest or concede that any of them has the  
8 burden of proof with respect to any particular issue at law or in equity. Further, all such defenses are  
9 pleaded in the alternative, and do not constitute an admission of liability or an admission that any  
10 Claimant is entitled to any relief whatsoever.

11 **First Affirmative Defense**

12 **(Failure to State a Cause of Action)**

13 Each and every cause of action in the Demand fails to allege facts sufficient to constitute a cause  
14 of action against any Respondent.

15 **Second Affirmative Defense**

16 **(Waiver)**

17 Each and every cause of action in the Demand is barred, in whole or in part, by the doctrine of  
18 waiver. For example, and without limitation, each Claimant agreed to the Toshi Terms of Service, which  
19 preclude their claims here.

20 **Third Affirmative Defense**

21 **(Estoppel)**

22 Claimants are estopped by their own acts, omissions, representations, and/or courses of conduct  
23 from asserting the claims upon which they seek relief. For example, and without limitation, each  
24 Claimant agreed to the Toshi Terms of Service, which preclude their claims here.

1 **Fourth Affirmative Defense**

2 **(Failure to Mitigate)**

3 Respondents are informed and believe that through the exercise of reasonable effort, Claimants  
4 could have mitigated the damages they allegedly suffered, but that they instead failed to exercise such  
5 reasonable effort. Claimants are therefore barred, in whole or in part, from recovering any damages from  
6 Respondents, or any recovery of damages must be reduced, excused and/or discharged by virtue of  
7 Claimants' failure to exercise reasonable diligence to mitigate their alleged damages.

8 **Fifth Affirmative Defense**

9 **(Lack of Causation)**

10 No act or omission by Respondents was the cause-in-fact or proximate cause of any cognizable  
11 damages.

12 **Sixth Affirmative Defense**

13 **(Result of Claimant's Conduct)**

14 Respondents are informed and believe that the alleged acts and/or omissions that form the basis  
15 for any relief for Claimants are the result of conduct caused by Claimants. Claimants are therefore  
16 barred, in whole or in part, from recovering any damages from Respondents.

17 **Seventh Affirmative Defense**

18 **(Fault of Others)**

19 Respondents are informed and believe that Claimants' damages, if any, were caused, in whole or  
20 in part, by the conduct, fault and/or negligence of persons or entities other than Respondents. Claimants  
21 are therefore barred, in whole or in part, from recovering any damages from Respondents.

22 **Eighth Affirmative Defense**

23 **(Comparative Fault)**

24 Respondents are informed and believe that each Claimant's negligence or recklessness was a  
25 substantial factor in causing each Claimant's alleged harm. Each Claimant is therefore barred, in whole  
26 or in part, from recovering any damages, or any recovery of damages must be reduced, excused and/or  
27 discharged by the percentage of each Claimant's responsibility.

1 **Ninth Affirmative Defense**

2 **(Consent)**

3 The Demand and each purported claim alleged therein is barred, in whole or in part, to the extent  
4 Claimants consented to any and/or all of the conduct about which Claimants now complain.

5 **Tenth Affirmative Defense**

6 **(No Reliance)**

7 Claimants' claims are barred in whole or in part because Claimants did not rely on any  
8 representation or statements allegedly made by any Respondent or any allegedly actionable omission  
9 attributable to any Respondent.

10 **Eleventh Affirmative Defense**

11 **(Assumption of the Risk)**

12 At all times herein described, Claimants knew the risks involved in their actions and conduct,  
13 and with full knowledge of such risks and appreciating the dangers thereof, nevertheless voluntarily  
14 assumed such risks, thereby extinguishing or limiting any responsibility on the part of any Respondent.

15 **Twelfth Affirmative Defense**

16 **(Negligence or Other Acts of Others--Apportionment)**

17 The injuries and damages alleged by Claimants, if any, were proximately caused by the  
18 negligence, recklessness, and intentional conduct of other persons and/or entities, and thus, Respondents  
19 are entitled to an allocation of such negligent, reckless and intentional conduct amongst them, conduct  
20 which this answering Respondent denies, and these other persons and/or entities. Thus, if any liability is  
21 found against any Respondent, judgment should be assessed against that Respondent only to the extent  
22 that it represents the proportionate percentage by which Respondent's acts and/or omissions contributed  
23 to Claimants' injuries, if any.

1 **Thirteenth Affirmative Defense**

2 **(Superseding Acts)**

3 Any alleged acts and/or omissions on the part of any Respondent that allegedly contributed to  
4 Claimants' alleged injuries were superseded by the acts and/or omissions of other persons or entities,  
5 which acts and omissions were the independent, superseding and intervening cause of the incidents and  
6 injuries alleged in the Demand.

7 **Fourteenth Affirmative Defense**

8 **(No Common Law Duty)**

9 Claimants' causes of action for negligence are barred in whole or in part because any duties  
10 owed to any Claimant by any Respondent were set forth by the applicable Terms of Service.

11 **Fifteenth Affirmative Defense**

12 **(Inapplicability of Electronic Fund Transfer Act)**

13 Claimants' causes of action under the Electronic Fund Transfer Act are barred, in whole or in  
14 part, because the provisions of that Act on which Claimants rely do not apply to any Respondent or to  
15 any of the alleged transactions at issue here.

16 **Sixteenth Affirmative Defense**

17 **(Statute of Limitations)**

18 Claimants' causes of action for negligence under the Electronic Fund Transfer Act are barred, in  
19 whole or in part, by the one-year statute of limitations of 15 U.S.C. § 1693m(g).

20 **Seventeenth Affirmative Defense**

21 **(No Unauthorized Transfers)**

22 Claimants' causes of action under the Electronic Fund Transfer Act are barred, in whole or in  
23 part, because Claimants do not allege "electronic fund transfers" or "unauthorized transfers" within the  
24 meaning of that Act.

1 **Eighteenth Affirmative Defense**

2 **(Failure to Notify)**

3 As to Claimants' causes of action under 15 U.S.C. § 1693f and 12 C.F.R. § 1005.11,  
4 Respondents are informed and believed that one or more failed sufficiently to notify any Respondent of  
5 the alleged errors.

6 **Nineteenth Affirmative Defense**

7 **(Separate Corporate Form)**

8 To the extent Claimants seek to hold one Respondent liable for the alleged acts or  
9 omissions of another, such claims are barred because each Respondent is a separate and duly organized  
10 legal entity and Claimants have not alleged and could not prove facts sufficient to pierce the corporate  
11 veil or otherwise disregard the corporate form.

12 **Twentieth Affirmative Defense**

13 **(Existence of Contract)**

14 As a separate and affirmative defense to Claimants' cause of action for unjust enrichment,  
15 Respondents are informed and believe that Claimants are barred from claiming or recovering any relief  
16 for unjust enrichment because the Toshi Terms of Service constitutes a valid express contract between  
17 the parties that covers the same subject matter as Claimants' unjust enrichment claims.

18 **Twenty-First Affirmative Defense**

19 **(Lack of Standing)**

20 As a separate and affirmative defense to Claimants' cause of action for violation of California's  
21 Unfair Competition Law, Respondents are informed and believe that Claimants' claim is barred because  
22 Claimants lack standing to assert such claim.

23 **Twenty-Second Affirmative Defense**

24 **(No "Unlawful," "Fraudulent" or "Unfair" Practice)**

25 As a separate and affirmative defense to Claimants' cause of action for violation of California's  
26 Unfair Competition Law, Respondents are informed and believe that Claimants' claim is barred because  
27

1 the acts or practices complained of were not “unlawful,” “fraudulent,” or “unfair” as required by  
2 California’s Unfair Competition Law.

3 **Twenty-Third Affirmative Defense**  
4 **(Justification and Privilege)**

5 As a separate and affirmative defense to Claimants’ cause of action for violation of California’s  
6 Unfair Competition Law, Respondents are informed and believe that they cannot be liable for any  
7 violation of Business and Professions Code § 17200 et seq. because their actions, conduct, and/or  
8 dealings were lawful, and were carried out in good faith and for legitimate business purposes.

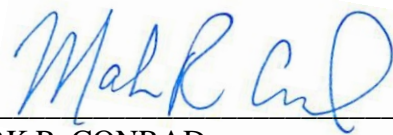
9 **RESERVATION OF RIGHTS**

10 The Demand does not describe the claims or events with sufficient particularity to permit  
11 Respondents to ascertain what other defenses may exist. Respondents therefore reserve the right to  
12 assert additional defenses that may pertain to the Demand and any or all claims for relief therein once  
13 the precise nature of such claims or events is ascertained.

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16 DATED: January 26, 2023

Respectfully submitted,

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18 **CONRAD | METLITZKY | KANE LLP**

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21 MARK R. CONRAD  
22 GABRIELA KIPNIS  
23 WILLIAM J. COOPER  
24 *Attorneys for Respondents*

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**PROOF OF SERVICE**

I, **MICHAEL SCHIRMER**, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the law firm of Conrad | Metlitzky | Kane LLP, Four Embarcadero Center, Suite 1400, San Francisco, CA, 94111.

On January 26, 2023, I served the following document(s):

**Answering Statement and Affirmative Defenses to Demand for Arbitration**

on the following person(s) at the location(s) specified:

Eric Rosen  
Kelvin Goode  
Amos Friedland  
Jordana Haviv  
Maya Jumper  
**FREEDMAN NORMAND FRIEDLAND LLP**  
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Constantine Economides  
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in the manner indicated below:

**BY AMERICAN ARBITRATION ASSOCIATION PORTAL:** I caused the documents to be served electronically through The American Arbitration Association Portal in portable document format ("PDF") Adobe Acrobat.

**BY ELECTRONIC MAIL:** I caused a copy of such document to be transmitted *via* electronic mail in portable document format ("PDF") Adobe Acrobat from the electronic address: mschirmer@conmetkane.com.



1 I declare under penalty of perjury pursuant to the laws of the State of California that the  
2 foregoing is true and correct.

3 Executed January 26, 2023, at San Francisco, California.  
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9 MICHAEL SCHIRMER  
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