UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

R.C., et al.,

Plaintiffs,

v.

WALMART INC.,

Defendant.

Case No. 5:24-cv-02003-SRM-DTB

ORDER DENYING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND TO STAY ALL LITIGATION [35]

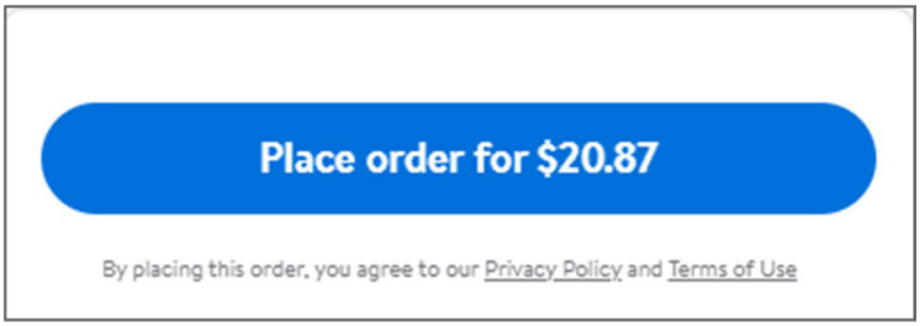
Before the Court is Defendant Walmart Inc.'s Motion to Compel Arbitration and to Stay All Litigation. Dkt. 35, Mot. Plaintiffs R.C., K.B., and C.H. oppose the motion. Dkt. 53, Opp'n. The Court has considered the parties' arguments, the relevant law, and the record in this case. The Motion to Compel Arbitration and to Stay All Litigation is **DENIED**.

I. BACKGROUND

On September 18, 2024, R.C., K.B., and C.H. filed a class action complaint against Walmart as owner and operator of www.walmart.com. Plaintiffs allege that Walmart, through the use of the "Pinterest Tag" and other tracking technologies on the Website, disclosed their "personally identifiable information" about sensitive health items they purchased to third parties without their consent. Plaintiffs assert various health-privacy

claims arising out of Walmart's use of tracking technologies on its website to share information with third parties.

Walmart now moves to compel Plaintiffs to arbitration, arguing they agreed to arbitrate their claims by clicking "Place order" button during the checkout process. To complete purchases on the Website, Plaintiffs were required to go through Walmart's "Check Out" or "Buy Now" processes. Dkt. 35-2, Decl. of Kartikay Sahay ¶ 3. Regardless of which process Plaintiffs selected, each pathway required them to click a blue "Place order" button. *Id*. ¶ 4. Below the button, written in gray font, the Website states, "By placing this order, you agree to our Privacy Policy and Terms of Use:"



See e.g., *id*. Ex. B. The underlined terms are hyperlinks to other webpages that contain Walmart's Privacy Policy and Terms of Use. *Id*. ¶ 8. According to Walmart, the "Terms of Use have always contained an arbitration provision during the time frame relevant to Plaintiffs' claims." Mot. at 4 (citing Dkt. 35-5, Decl. of Stacey Krsulic ¶¶ 2–4).

II. LEGAL STANDARD

The Federal Arbitration Act ("FAA") provides that a written arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). A court's role under the FAA is to determine "(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at

issue." *Kilgore v. KeyBank, Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). "If the response is affirmative on both counts, then the Act requires the court to enforce the arbitration agreement in accordance with its terms." *Chiron Corp.*, 207 F.3d at 1130.

"The presence of a delegation clause further limits the issues that a court may decide." *Caremark, LLC v. Chickasaw Nation*, 43 F.4th 1021, 1029 (9th Cir. 2022). "A delegation clause is a clause within an arbitration provision that delegates to the arbitrator gateway questions of arbitrability, such as whether the agreement covers a particular controversy or whether the arbitration provision is enforceable at all." *Id.* (citing *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010)). Thus, in evaluating an arbitration agreement that includes a delegation clause, a court must proceed as follows: "First, a court must resolve any challenge that an agreement to arbitrate was never formed, even in the presence of a delegation clause." *Id.* at 1030. "Next, a court must also resolve any challenge directed specifically to the enforceability of the delegation clause before compelling arbitration of any remaining gateway issues of arbitrability." *Id.* However, a party seeking to challenge the enforceability of a delegation provision must "mention that it is challenging the delegation provision and make specific arguments attacking the provision in its opposition to a motion to compel arbitration." *Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1009 (9th Cir. 2023). "Finally, if the parties did form an agreement to arbitrate containing an enforceable delegation clause, all arguments going to the scope or enforceability of the arbitration provision are for the arbitrator to decide in the first instance." *Caremark*, 43 F.4th at 1030.

III. DISCUSSION

Walmart argues Plaintiffs must arbitrate their claims because they agreed to the arbitration agreement by clicking the "Place order" button on the Website, thereby agreeing to the Terms of Use that purport to require arbitration. Walmart claims that "this Court's task is limited to answering whether there is a valid agreement to arbitrate between the parties," Dkt. 58, Reply at 1, because the arbitration provision delegated all

questions of arbitrability to the arbitrator through the incorporation of the AAA or JAMS rules. Plaintiffs argue that Walmart has not established the existence of a valid arbitration agreement. Plaintiffs alternatively argue that (1) the question of arbitrability should be decided by this Court, not an arbitrator; (2) that the arbitration provision is unconscionable; and (3) that discovery should not be stayed.

A. Formation of the Arbitration Agreement

Although a delegation clause requires that all gateway questions of arbitrability be addressed by the arbitrator, "the issues reserved to the courts for decision 'always include' whether an arbitration agreement was formed, even in the presence of a delegation clause." *Caremark*, 43 F.4th at 1030 (quoting *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010)). Accordingly, a court "should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement *nor* (absent a valid provision specifically committing such disputes to an arbitrator) its enforceability or applicability to the dispute is in issue." *Granite Rock*, 561 U.S. at 299.

To determine "whether the parties have agreed to arbitrate a particular dispute, federal courts apply state-law principles of contract formation." *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022). In California, internet contracts are classified by the way the user assents to the contract terms. *Keebaugh v. Warner Bros Ent. Inc.*, 100 F.4th 1005, 1014 (9th Cir. 2024). Generally, there are four types of internet contracts: browsewraps, clickwraps, scrollwraps, and sign-in wraps. *Id.* Relevant here, sign-in wrap agreements are contracts where "the website provides a link to terms of use and indicates that some action may bind the user but does not require that the user actually review those terms." *Chabolla v. ClassPass Inc.*, 129 F.4th 1147, 1154 (9th Cir. 2025) (citing *Keebaugh*, 100 F.4th at 1014).

Walmart's website contains a sign-in wrap agreement. When completing an online purchase, the website states that by clicking "Place order," users agree to the terms in the

hyperlinked Terms of Use, i.e., the terms are not shown unless the customer clicks the hyperlink.

The issue remains whether the parties mutually assented to the terms of the arbitration agreement. An objective-reasonableness standard is used to determine if mutual assent exists. *Oberstein*, 60 F.4th at 513. A contract is formed under California law if the party had actual, constructive, or inquiry notice of the agreement and the parties manifested mutual assent. *See Keebaugh*, 100 F.4th at 1013–14; *Godun v. JustAnswer LLC*, 135 F.4th 699, 708–09 (9th Cir. 2025). A sign-in wrap agreement based on inquiry notice is enforceable if, among other things, the website provided "'reasonably conspicuous notice of the terms to which the consumer will be bound.'" *Keebaugh*, 100 F.4th at 1014 (quoting *Berman*, 30 F.4th at 856). To determine whether the website provided Plaintiffs with reasonably conspicuous notice of the terms, the Court must consider together the placement of the notice and the context of the transaction and the placement of the notice. *Id*. at 1019–20.

1. The visual placement of the notice is unclear.

Website owners bear the onus of putting "users on notice of the terms to which they wish to bind consumers." *Berman*, 30 F.4th at 857 (quoting *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1179 (9th Cir. 2014)). To be conspicuous, a notice "must be displayed in a font size and format such that the court can fairly assume that a reasonably prudent Internet user would have seen it." *Id*. at 856. "This largely centers on an analysis of the 'visual aspects of the notice' within the 'overall screen design.'" *Godun*, 135 F.4th at 709 (quoting *Keebaugh*, 100 F.4th at 1019). This is a fact-intensive inquiry and is informed by the totality of the circumstances. *Id.* While terms may be disclosed through hyperlinks, the presence of a hyperlink "must be readily apparent" and "alert a reasonably prudent user that a clickable link exists." *Berman*, 30 F.4th at 857.

Here, although the proximity of the hyperlink directly underneath the "Place order" button helps to put users on notice of the terms, the website does not provide reasonably conspicuous notice of the Terms of Use for three reasons. *First*, Walmart's hyperlink is

written in small, light gray font against a white background. In fact, the font is nearly identical to that in *Berman*, in which the Ninth Circuit held that the light gray font against a white background could not provide a user with reasonably conspicuous notice. *Id*. at 856–57. The Ninth Circuit explained that "[c]ustomary design elements denoting the existence of a hyperlink include the use of a contrasting font color (typically blue) and the use of all capital letters, both of which can alert a user that the particular text differs from other plain text in that it provides a clickable pathway to another webpage." *Id*. at 857. But neither was done here. Walmart further argues that underlining the hyperlink constitutes reasonably conspicuous notice, but this directly contradicts the Ninth Circuit's holding. "Simply underscoring words or phrases . . . will often be insufficient to alert a reasonably prudent user that a clickable link exists." *Id.* "A web designer must do more than simply underscore the hyperlinked text in order to ensure that it is sufficiently 'set apart' from the surrounding text." *Id*. (citing *Sellers v. JustAnswer LLC*, 289 Cal. Rptr. 3d 1, 29 (Cal. Ct. App. 2021)).

Second, the website's "Check Out" or "Buy Now" pages are cluttered with colorful graphics, links, and additional information along the left-hand side and around the Order Summary. Thus, the website's clutter draws a user's eyes away from the notice. *See Keebaugh*, 100 F.4th at 1011, 1021 (holding sign-in screen was not cluttered because the webpage contained only the app's background artwork, game title, operative Play button, and the notice); *Patrick v. Running Warehouse, LLC*, 93 F.4th 468, 477 (9th Cir. 2024) (similar). *Third*, the arbitration notice is only provided once at the final stage of the purchase. *See* Dkt. 53-1, Decl. of Andrew R. Tate ¶¶ 6-8; *see also Oberstein*, 60 F.4th at 515–16 (finding website gave constructive notice of terms where users were presented with the relevant information at three independent stages).

2. The context of the transaction is insufficient.

The context of the transaction is also considered together with the visual placement of the Terms of Use notice. Some common contexts include "(1) whether the transaction contemplates a continuing relationship by creating an account requiring a full registration

process, (2) whether the user is entering a free trial, (3) whether a user enters credit card information, and (4) whether the user has downloaded an app on their phone (suggesting consistent accessibility)." *Godun*, 135 F.4th at 710 (citation modified).

Here, the context of Plaintiffs' transactions involve isolated, one-off, and non-continuous purchases of sensitive health items. They were not required to create an account, sign up for a subscription, or download an app. Thus, their transactions are aptly characterized as "one-and-done" because Plaintiffs merely purchased goods that "contemplate[] a definite end to the relationship with respect to the purchase." *Plata v. Lands' End, Inc.*, No. 5:24-CV-00723, 2024 WL 5339858, at *4 (C.D. Cal. Dec. 19, 2024), *aff'd,* No. 25-328, 2025 WL 2408818 (9th Cir. Aug. 20, 2025). And "when a user simply purchases goods," as seems true here, "there is less reason for [them] to expect a continued relationship beyond the purchase." *Chabolla*, 129 F.4th at 1155 (citing *Sellers*, 289 Cal. Rptr. 3d at 25); *see also Berman*, 30 F.4th at 869 (Baker, J., concurring) ("In this case involving one-off transactions, reasonably prudent users of defendants' sites are unlikely to be on the lookout for fine print."). Plaintiffs would thus not have expected their purchases to come with ongoing terms and thus would not have scrutinized Walmart's website for additional terms.

For these reasons, the website does not provide reasonably conspicuous notice of the terms to which Plaintiffs would have been bound. Walmart has thus failed to establish the parties mutually assented to the arbitration agreement, and without mutual assent, no valid arbitration agreement exists.[1] Accordingly, Walmart's Motion to Compel Arbitration is **DENIED**.

[1] Because the Court finds there was no mutual assent, it need not reach the analysis of whether the delegation provision requires questions of arbitrability to be sent to the arbitrator or whether the arbitration provision is unconscionable.

B. Motion to Stay

Because the Court denies the Motion to Compel Arbitration, the Court need not stay the litigation. Accordingly, Walmart's Motion to Stay All Litigation [38] is likewise **DENIED AS MOOT**.

IV. CONCLUSION

For the above reasons, Walmart's Motion to Compel Arbitration and to Stay All Litigation is **DENIED**.

IT IS SO ORDERED.

Dated: September 30, 2025

HON. SERENA R. MURILLO
UNITED STATES DISTRICT JUDGE