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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

AMBER FERRELL AND SARA SCHNEIDER, individually and on behalf of all others similar situated,

Plaintiffs,

v.

SNAPCOMMERCE HOLDINGS, INC. d/b/a/ SUPER.COM and SNAPMONEY, INC. d/b/a SUPER.COM, Delaware corporations,

Defendants.

Case No. 4:25-cv-03160-JST

Assigned to: Hon. Jon S. Tigar

DEFENDANT'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND INCORPORATED MEMORANDUM OF LAW

Date: August 21, 2025
Time: 2:00 p.m.
Location: Courtroom 6 – 2nd Floor

PUTATIVE CLASS ACTION

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD

Please take notice that on August 21, 2025, at 2:00 p.m., Defendants SnapCommerce Holdings, Inc. d/b/a Super.com and SnapMoney, Inc. d/b/a Super.com (collectively, "Defendants" or "Super.com"), will bring for hearing this Motion to Compel Arbitration, before the Honorable Judge Jon S. Tigar, Oakland Courthouse, Courtroom 6, 2nd Floor, 1301 Clay Street, Oakland, CA 94612.

Defendants hereby do move the Court for an Order staying all proceedings in Plaintiffs Amber Ferrell and Sara Schneider's Class Action Complaint (the "Complaint") (ECF 1) in favor of arbitration pursuant to Federal Rule of Civil Procedure 12[1] and the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq*, or, alternatively, staying all proceedings in this action pending conclusion of the arbitration.

This Motion is based on this Notice, the Memorandum of Points and Authorities and attached exhibits, and such other matters and arguments as may come before this Court, including those raised in connection with reply briefing and oral argument.

STATEMENT OF ISSUES PRESENTED

Whether Plaintiffs' claims for relief for purported violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*, and the Oklahoma Telephone Solicitation Act ("OTSA"), Okla. Stat. Tit. § 15, 755C.1 *et seq.*, should be dismissed or stayed in favor of arbitration pursuant to the FAA.

MEMORANDUM OF POINTS AND AUTHORITIES

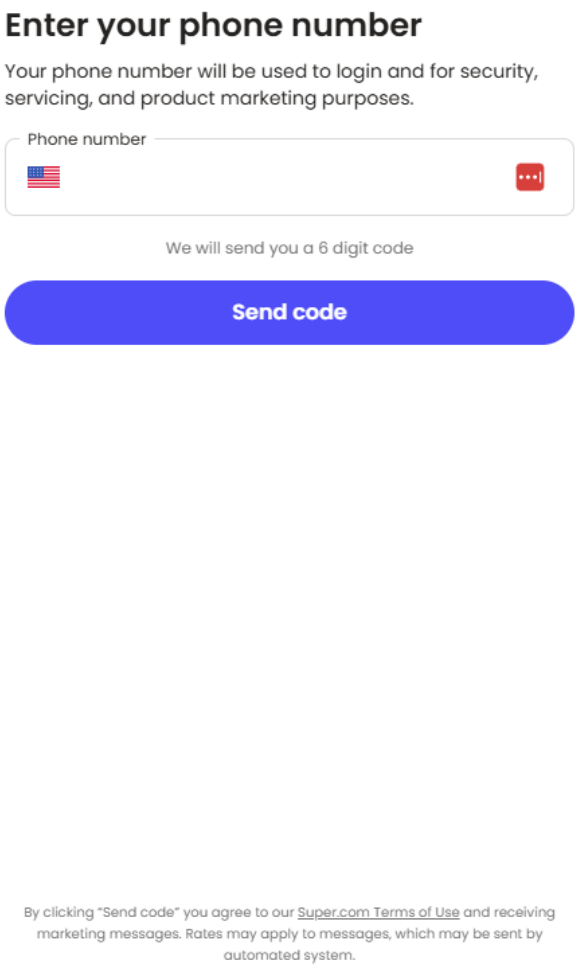
I. INTRODUCTION

Plaintiffs contend that Defendants violated the TCPA and OTSA by knowingly sending unsolicited and automated text message solicitations without prior express permission or written consent. Compl. ¶ 19 (Apr. 8, 2025), ECF No. 1. But Plaintiffs' claims do not belong in this Court because, when Plaintiffs signed up for an account on Super.com's website and mobile application, they agreed to resolve this dispute by individual binding arbitration. Specifically, during their sign-up process, Plaintiffs were presented with and agreed to Super.com's Terms and Conditions (the

[1] Courts in this Circuit generally agree that a motion to compel arbitration is a Rule 12(b) motion. *See Lemberg v. LuLaRoe, LLC*, 2018 WL 6927836, at *3 (C.D. Cal. Mar. 1, 2018) (citing cases).

"Terms"), which includes a clearly disclosed arbitration agreement and class action waiver. By agreeing to the Terms, Plaintiffs also agreed that any questions relating to the scope or validity of their agreement to arbitrate would be decided by an arbitrator, not the Court. Thus, the only matter for this Court to decide under Ninth Circuit law is whether there is a contract containing an arbitration provision (which there clearly is).

As detailed below, when Plaintiffs formed their relationship with Super.com by creating their accounts and voluntarily submitting their cell phone numbers, they agreed to the "Terms of Use" displayed clearly and conspicuously on the Super.com sign-up page:



See Declaration of Matthew Eric Culver ("Culver Decl."), ¶¶ 6-11. These Terms appeared on an unadorned screen with no other text below the sign-up button other than the disclosure of the Terms, which were hyperlinked and underlined for Plaintiffs' review. Moreover, the message presented to them made clear that "By clicking 'Send Code,'" which they both did, they would be forming a

relationship with Super.com and agreeing to the Terms. *Id.*

In these Terms, Plaintiffs agreed to arbitrate "any dispute, claim, or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation, or validity thereof, or the use of [Super.com's] Services" with Defendants, whether "based upon contract, tort, consumer rights, fraud, constitutional law, statute, regulation, ordinance, common law and equity (including any claim for injunctive or declaratory relief)." Culver Decl. at Exhibit C at 2, 18 (the "Arbitration Agreement"). Plaintiffs also agreed that "[t]he arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement." *Id.*

The Ninth Circuit has held these types of "sign-in wrap" or "clickwrap" agreements to be enforceable where the disclosure provides reasonable notice of the terms and the consumer takes some action—here, clicking a button—to manifest assent to those terms. *Keebaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005, 1014 (9th Cir. 2024) (citation omitted). Indeed, courts in this District have repeatedly enforced arbitration clauses disclosed in a similar manner. *See infra* at 9-11. Accordingly, pursuant to Sections 3 and 4 of the FAA, Defendants respectfully request that the Court compel arbitration of this matter and dismiss this action, or stay this action pending the arbitration.

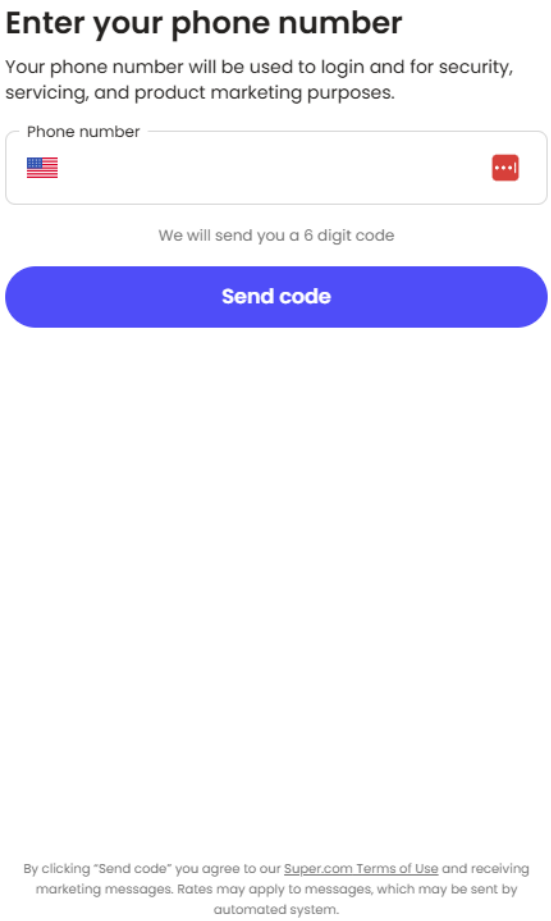
II. STATEMENT OF FACTS

A. Plaintiffs Agreed to Arbitrate Under Super.com's Terms of Use

Defendants are affiliated entities that own and operate a website and mobile application called Super.com. Culver Decl. ¶¶ 3-4; Compl. ¶ 10. Super.com provides a mobile commerce platform using AI technology to locate travel and hotel deals for consumers. *See* Compl. ¶ 10. Super.com also offers a membership program that allows users to sign up and receive text messages on its website, www.super.com (the "Website"), or the Super.com mobile application (the "App").

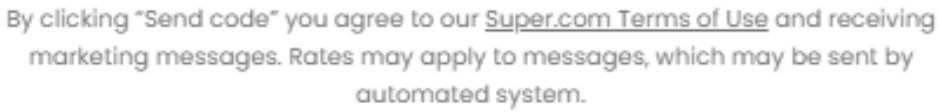
During the Fall of 2024, Plaintiffs created an account with Super.com and voluntarily provided their cell phone numbers, thereby enabling them to receive transactional and marketing SMS messages. Specifically, on November 16, 2024, Plaintiff Schneider voluntarily created an account with Super.com, submitting her cell phone number where required on the sign-up page. Culver Decl. ¶ 6. When Plaintiff Schneider selected a sign-up option on the Website, a sign-up pop-up appeared on the

right side of her screen, allowing her to enter her cell phone number and agree to Super.com's Terms. Culver Decl. ¶ 7. The sign-up page to which she was directed to create an account appeared in substantially the same form as the partial screenshot below. Culver Decl. ¶¶ 7-8. Plaintiff Schneider entered her phone number in the designated box, and clicked "Send Code." Culver Decl. ¶ 8.



On September 30, 2024, Plaintiff Ferrell downloaded the Super.com App and, thereafter, on October 24, 2024, she signed up for Super+ on the App. Culver Decl. ¶ 9. When Plaintiff Ferrell selected a sign-up option on the App, a sign-up screen appeared on the App, allowing her to voluntarily enter her cell phone number and agree to the Terms. The screenshot that Plaintiff saw—and disclosure she agreed to—appeared in substantially the same form as the disclosure presented to Plaintiff Schneider. Culver Decl. ¶ 10. Plaintiff Ferrell submitted her phone number and clicked "Send Code." Culver Decl. ¶ 11.

In the disclosures Plaintiffs saw, the phrase "Super.com Terms of Use" is underlined and hyperlinked so that the Terms are easily accessible and can be reviewed by clicking anywhere on the underlined phrase, as evidenced by this partial screenshot:



Culver Decl. ¶ 7 and Exs. B, C. Super.com account holders, including Plaintiffs, cannot complete the Super.com sign-up process without affirmatively agreeing to the Terms linked at the bottom of the screen. Culver Decl. ¶¶ 8, 11.

The Terms Plaintiffs agreed to contain a comprehensive Arbitration Agreement, which broadly defines Super.com to include "its subsidiaries and affiliates," and has the following capitalized disclosure:

> EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED BELOW, OR WHERE PROHIBITED BY LAW, **BY ENTERING INTO THESE TERMS YOU EXPRESSLY AGREE THAT DISPUTES BETWEEN YOU AND SUPER WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION**, AND YOU HEREBY WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

Culver Decl. ¶ 8, Ex. C at 2. The Arbitration Agreement defines further states that:

> [A]ny dispute, claim, or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation, or validity thereof, or the use of the Services . . . will be resolved solely by binding, individual arbitration . . .and not in a class, representative, or consolidated action or proceeding. You and Super agree that the U.S. Federal Arbitration Act (or equivalent laws in the jurisdiction in which the Super entity that you have contracted with is incorporated) governs the interpretation and enforcement of these Terms and that YOU AND SUPER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Culver Decl. ¶ 8, Ex. C at 18. Moreover, Plaintiffs agreed that "[t]he arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement." Culver Decl. ¶ 8, Ex. C at 20.

B. Plaintiffs' Claims Arise From the Arbitration Agreement

Plaintiffs allege that they received various text messages from Super.com for several months, beginning in Fall 2024. *See* Compl. ¶¶ 20-35. But when Plaintiffs signed up on the sign-up page, they expressly agreed to receive "marketing messages" from Super.com in the sign-up disclosure, *see supra* at 3-4, also agreed in the Terms themselves. The Terms plainly state:

> If you sign up or otherwise engage with a Super.com Service using a phone number, you opt-in to receive text (SMS) messages from us and agree that Super.com, and those acting on our behalf, may send you text messages at the phone number you provide us. These messages may include operational messages about your use of Super.com Services, as well as promotional messages.

Culver Decl. ¶ 8, Ex. C at 4.

Plaintiffs nevertheless maintain that the text messages they received from Super.com were "unsolicited" and "without the prior express permission or written consent of the recipients." Compl. ¶ 19. Plaintiffs purport to represent several classes of an unspecified number of individuals who allegedly did not provide prior express consent to receive text messages from Super.com, and/or received text messages from Super.com despite registering their numbers on the National Do Not Call Registry. *Id.* ¶¶ 43, 53, 60. All of these disputes, claims, or controversies arise from Plaintiffs' contractual relationship with Super.com. Moreover, as discussed *infra*, because Plaintiffs agreed to delegate any questions regarding the validity or scope of the Arbitration Agreement to an arbitrator, Plaintiffs may not argue to this Court that their claims fall outside the scope of the Arbitration Agreement.

III. LEGAL STANDARD

Section 2 of the FAA provides that an arbitration agreement provision in any contract involved in interstate commerce "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; *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 336 (2011). The FAA applies to any arbitration agreement that is "written" and that is in a contract evidencing "a transaction involving commerce." 9 U.S.C. § 2; *see Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) ("[T]he term 'involving commerce' in the FAA [is] the functional equivalent of the more familiar term 'affecting commerce'–words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power." (citation omitted)).

Once a court determines that the parties to a litigation agreed to arbitrate, the FAA gives the court no discretion; rather, it must compel the parties to arbitrate and stay the action pending the outcome. *See Smith v. Spizzirri*, 601 U.S. 472, 475–76 (2024); *see also Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

Although under the FAA courts ordinarily determine whether a dispute falls within the scope of an arbitration provision, "parties may agree to have an arbitrator decide not only the merits of a particular dispute but also 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67–68 (2019) (cleaned up). In such cases, the court looks to whether the parties "clearly and unmistakably" gave such authority to the arbitrator. *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015); *see also Schein*, 586 U.S. at 67–68. Where an arbitration agreement "delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue." *Schein*, 586 U.S. at 69; *Brennan*, 796 F.3d at 1130.

When parties enter into arbitration agreement and one party fails to comply, the aggrieved party may petition the court "for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4. "[U]pon being satisfied that the making of the agreement for arbitration . . . is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." *Id*. The burden then shifts to the party opposing arbitration to put "the making of that agreement 'in issue.'" *Blau v. AT&T Mobility*, No. C 11-00541 CRB, 2012 WL 10546, at *3 (N.D. Cal. Jan. 3, 2012) (citation omitted).

IV. ARGUMENT

Here, the record shows that when Plaintiffs signed up for their accounts, they agreed to arbitrate disputes with Super.com. They specifically agreed that the arbitrator would decide any questions about arbitrability itself. Because the parties have delegated these threshold issues to the arbitrator, Plaintiffs cannot now litigate arbitrability or challenge whether this dispute falls within their Arbitration Agreement in this Court. *See Schein*, 586 U.S. at 69. Arbitration should therefore be compelled.

A. Plaintiffs Agreed to Arbitrate Their Claims on an Individual Basis by Assenting to the Terms of Use of Super.com's Website and App

Federal courts apply state law principles to the issue of contract formation. *Keebaugh*, 100 F.4th at 1013–14 (citation omitted). "To form a contract under California law, there 'must be actual or constructive notice of the agreement and the parties must manifest mutual assent.'" *Id.* at 1014 (quoting *Oberstein v. Live Nation Ent., Inc.*, 60 F.4th 505, 512-13 (9th Cir. 2023). A sign-in wrap agreement gives adequate inquiry notice to users if "(1) the website provides reasonably conspicuous notice of the terms to which the consumer will be bound; and (2) the consumer takes some action, such as clicking a button or checking a box, that unambiguously manifests his or her assent to those terms." *Keebaugh*, 100 F.4th at 1014 (citation omitted). *See Keebaugh*, 100 F.4th at 1014 (a "sign-in wrap" agreement occurs when a user signs up for an internet product or service and the sign-in screen states that acceptance of a separate agreement is required before the user can access the service). When evaluating sign-in wrap agreements, courts must first evaluate "the full context of the transaction and consider whether that type of transaction contemplates entering into a continuing, forward looking relationship governed by terms and conditions." *Id.* at 1017 (citing *B.D. v. Blizzard Ent., Inc.*, 76 Cal. App. 5th 931, 950-51 (2022)) (cleaned up) (enforcing arbitration clause and holding that users contemplated entering into a continuing, forward-looking relationship governed by terms and conditions when users downloaded and used a gaming app that informed users that by pressing the "Play" button below the terms, they agreed to the Terms of Service).

Courts in this Circuit—as recently confirmed by the Ninth Circuit—have held that a website or mobile application provides reasonably conspicuous notice, and thus represents an enforceable sign-in wrap agreement, when the notice is presented in such a way that "a reasonably prudent Internet user would have seen it." *Keebaugh*, 100 F.4th at 1014 (enforcing arbitration clause in terms where the notice is visually clear, directly beneath the operative Play button, and displayed in a contrasting font color to the interface background); *see also Oberstein*, 60 F.4th at 516 (holding that "a reasonable user would have seen the notice and been able to locate the Terms via hyperlink" when the notice is "conspicuously displayed directly above or below the action button" and "the language . . . clearly denotes that continued use will act as a manifestation of the user's intent to be bound" (cleaned up)

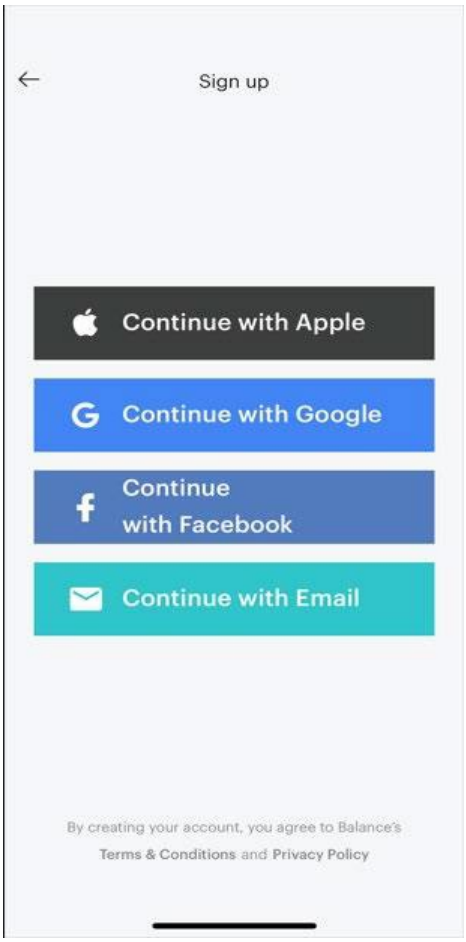
(citation omitted)). Furthermore, when a consumer signs up for an ongoing account, "it is reasonable to expect that the typical consumer in that type of transaction contemplates entering into a continuing, forward-looking relationship" governed by terms and conditions. *Blizzard*, 76 Cal. App. 5th at 951 (reversing the denial of a motion to compel arbitration where the Plaintiff frequently accessed the online platform, purchased add-ons, and "spent approximately 50 hours playing . . . over the course of approximately two years").

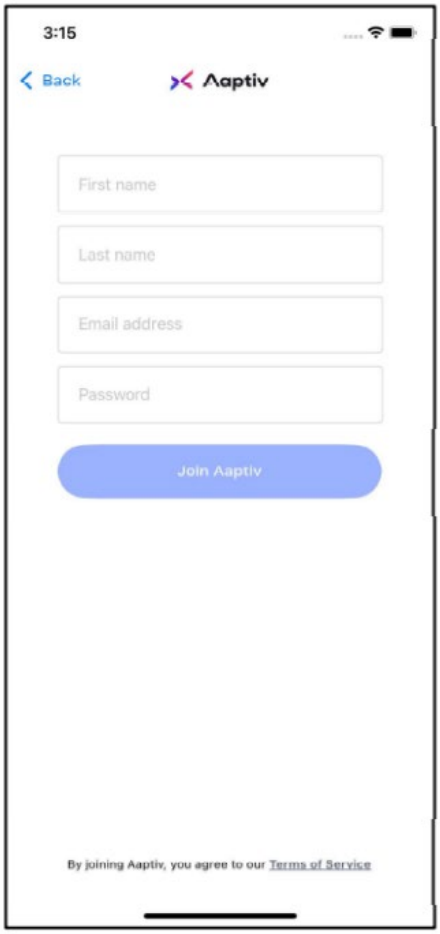
Here, Plaintiffs assented to the Arbitration Agreement when they created their accounts on the Website (for Plaintiff Schneider) and App (for Plaintiff Ferrell) after being presented with a conspicuous disclosure on Super.com's sign-up page. Culver Decl. ¶¶ 6-11. The sign-up page provided, in a contrasting, dark font, that, "By clicking 'Send Code' you agree to Super.com's Terms of Use." *Id.* (emphasis in original). As shown *supra*, the Terms of Use were underlined and hyperlinked and disclosed on an unadorned sign-up screen. *Id.* By clicking anywhere on those underlined words, Plaintiffs were able to review the Terms of Use and Privacy Policy associated with their Super.com account before agreeing to sign-up.

Courts have consistently enforced arbitration clauses disclosed in a similar manner. *See, e.g.*, *Silva v. WhaleCo, Inc.*, No. 24-cv-02890-SK, 2024 WL 4487421, at *4 (N.D. Cal. Oct. 10, 2024) (enforcing arbitration agreement where disclosure below sign-up button was "large enough to read" and "stands out from the surrounding text"); *Dean v. OkCoin USA Inc.*, No. 24-cv-01331-PCP, 2024 WL 3522207, at *4 (N.D. Cal. July 23, 2024) (holding the same where terms were bolded and treated "in contrast to almost all other text on the page"); *Ghazizadeh v. Coursera, Inc.*, 737 F. Supp. 3d 911, 926 (N.D. Cal. 2024) (holding the same where the sign-in screen "'lack[ed] clutter'" and "[t]he design elements used 'a contrasting font color' making the notice legible" (quoting *Keebaugh*, 100 F.4th at 1020–21)). These courts have noted that the context of the transaction—here, signing up for an account via website and mobile application, is an "important factor to consider and key to determining the expectations of a typical consumer," as most consumers would understand that they need to agree to a set of terms when first using a mobile application. *See Keebaugh*, 100 F.4th at 1019 (citing *Blizzard*, 76 Cal. App. 5th at 947. And courts have made clear that a plaintiff cannot disclaim a sign-up disclosure simply based on the font size or color of the disclosure: instead, a district court should

"consider[s] the full context of the hyperlink as presented." *Ghazizadeh*, 737 F. Supp. 3d at 929.

Indeed, in the last two months alone, two different judges in this Court have granted motions to compel arbitration featuring disclosures substantially similar to the disclosure here:





See Kroskey v. Elevate Labs, LLC, No. 5:24-cv-08113-EJD, ECF No. 37 at 2 (N.D. Cal. May 27, 2025) (image on left, above); *Sarhadi v. Pear Health Labs, Inc.*, No. 3:24-cv-07921-TLT, 2025 WL 1350033, at *7 (N.D. Cal. Apr. 18, 2024); *see also* Motion to Compel Arbitration at 3, *Sarhadi v. Pear Health Labs, Inc.*, No. 3:24-cv-07921-TLT, ECF No. 25 (N.D. Cal. Mar. 14, 2025) (showing sign-up disclosure image on right, above). In both instances, the courts found that the sign-up screen reasonably disclosed and provided conspicuous notice of the arbitration clause. *See id.*; *see also Ghazizadeh*, 737 F. Supp. 3d at 928-29 (applying *Berman* to hold that "on balance and considering the full context of the hyperlink as presented," a sign-up screen with gray bolded text on a lighter gray background, located below a more colorful sign-up button, provided conspicuous notice to a user).

The same color scheme and presentation here has also been approved by other district courts. *See Lee v. DoNotPay, Inc.*, 683 F. Supp. 3d 1062, 1070, 1073-74 (C.D. Cal. 2023) (court rejected an argument that the "small, transparent gray font" of the notice was inconspicuous after analyzing several sign-up flows with grey font that other courts had deemed sufficient for inquiry notice); *Pizarro v. QuinStreet, Inc.,* No. 22-cv-02803-MMC, 2022 WL 3357838, at *3 (N.D. Cal. Aug. 15, 2022) (approving of grey font on a white background where "the general design of the webpage, which is comprised of only two data fields", was "uncluttered" and had a "muted" color scheme); *Peter v. Doordash, Inc.*, 445 F. Supp. 3d 580, 586 (N.D. Cal. 2020) (holding that "despite Plaintiff's characterization of the font as gray-on-gray, the text contrasts clearly with the background and is plainly readable").

In *Kroskey,* the court explained that the sign-up pages in *Berman* and other decisions where arbitration was not compelled featured pages with "clutter" where the hyperlinks were "buried in text or otherwise placed in a confusing location," as opposed to appearing as "the only text in the white space of the Sign Up page." *Kroskey*, ECF No. 37 at 9. No such clutter or otherwise confusion is present in the disclosures here. And courts have consistently enforced terms where a hyperlink was below the sign-up button and not buried on a cluttered sign-up screen. *See Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 78 (2d Cir. 2017) (holding defendants provided users sufficient notice of its terms and conditions where the screen was "uncluttered," and "[t]he entire screen [wa]s visible at once" such that the user did "not need to scroll beyond what is immediately visible to find notice of the Terms of Service"); *DoorDash*, 445 F. Supp. 3d at 586 (holding the same where the screen was "uncluttered and wholly visible"); *Oberstein*, 60 F.4th at 517 (finding notice conspicuous where "notices were not buried on the bottom of the webpage"); *Ghazizadeh,* 737 F. Supp. 3d at 928 (finding hyperlink conspicuous because it "appears on a screen that is simple and lacks clutter," despite the fact that the hyperlink was not "blue, underlined, or capitalized").

Here, arbitration should be compelled for the same reason it was compelled by these other courts: Plaintiffs received conspicuous notice of, and was required to assent to, the Terms when they created their accounts from the sign-up page of Super.com's Website and App. Plaintiffs' creation of Super.com accounts manifested their intent to be bound by the agreement's terms. *See Oberstein*, 60 F. 4th at 516. Both Plaintiffs voluntarily submitted their cell phone numbers as part of the Super.com

registration process. When Plaintiffs created accounts on Super.com, they signaled clearly that they accepted its Terms and intended to enter an ongoing relationship governed by those Terms. They are bound accordingly.

B. Plaintiffs Agreed to Delegate Any Questions of Arbitrability to the Arbitrator

Parties may agree to have an arbitrator decide "'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Henry Schein, Inc.*, 586 U.S. at 67–68 (cleaned up). Where an arbitration agreement expressly incorporates the rules of an arbitration association, the rules of the association apply with respect to whether the arbitrator or court will decide threshold issues of arbitrability and scope. *Id.*

Here, the Arbitration Agreement clearly and unmistakably delegates any questions of arbitrability to the arbitrator. First, it states that "any dispute, claim, or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation, or validity thereof, or the use of the Services . . . will be resolved solely by binding, individual arbitration." Culver Decl. ¶ 8, Ex. C at 18. Second, it further explains that, in the arbitration proceeding, "[t]he arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement." Culver Decl. ¶ 8, Ex. C at 20. Third, the Arbitration Agreement expressly incorporates the National Arbitration & Mediation ("NAM") arbitration rules into the arbitration proceeding, which also provides that any dispute relating to arbitrability must be decided by the arbitrator. *See* Culver Decl. ¶ 8, Ex. C at 19-20; *Patrick v. Running Warehouse, LLC*, 93 F.4th 468, 481 (9th Cir. 2024) ("By agreeing to an arbitration provision that incorporates JAMS Rules, and particularly in light of the language of JAMS Rule 11(b), the Court finds that the parties clearly and unmistakably delegated the question of arbitrability to JAMS." (cleaned up) (citation omitted)). Thus, by the terms of the Arbitration Agreement (and under NAM rules), the Court should compel this matter to arbitration rather than resolving any issues relating to the arbitrability of Plaintiffs' dispute. *Henry Schein, Inc.*, 586 U.S. at 69; *Contec Corp. v. Remote Sol., Co.*, 398 F.3d 205, 211 (2d Cir. 2005) (same); *see also Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1209 (9th Cir. 2016) (language in arbitration clause stating that "arbitrators [had] the authority to decide issues relating to the 'enforceability, revocability or validity of the Arbitration Provision or any portion of the Arbitration

Provision' . . . 'clearly and unmistakably indicates [the parties'] intent for the arbitrators to decide the threshold question of arbitrability'" (citation omitted)).

C. Plaintiffs' Claims Plainly Fall Within the Scope of the Arbitration Agreement

Because the parties agreed that any disputes about the validity or scope of the Arbitration Agreement must go to the arbitrator, the Court should not consider such arguments if Plaintiffs raise them on opposition. *Schein*, 586 U.S. at 69; *Brennan*, 796 F.3d at 1130. Section 4 of the FAA "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) (emphasis in original)

Nonetheless, to the extent that Plaintiffs seek to avoid the delegation of any dispute regarding the scope or validity of the Arbitration Agreement to the arbitrator, Defendants respectfully submit (without waiver of its rights to compel under the Arbitration Agreement) that the scope of the Arbitration Agreement clearly encompasses Plaintiffs' disputes. The Arbitration Agreement broadly covers "any dispute, claim, or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation, or validity, thereof, or the use of the Services," and the Terms explicitly govern the use of "products and services [Super.com] or [its] partners may offer via the [Super.com website] or [its] mobile app. . . ." Culver Decl. ¶ 8, Ex. C at 1. The Ninth Circuit and other appeals courts have construed similarly broad provisions regarding "any" claims related to an agreement in favor of compelling arbitration. *Patrick*, 93 F.4th at 475 (holding that an agreement to arbitrate "any and all claims" between the parties "arising from or relating in any way to your use or purchase of products of services through the website or services" is enforceable); *Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading, Inc.*, 252 F.3d 218, 225 (2d Cir. 2001) (holding that broad construction is given to clauses that provide for arbitration of "[a]ny dispute"); *Belke v. Merrill Lynch, Pierce, Fenner & Smith*, 693 F.2d 1023, 1028 (11th Cir. 1982) ("An arbitration clause covering disputes arising out of the contract or business [relationship] between the parties evinces a clear intent to cover more than just those matters set forth in the contract."), *overruled on other grounds by Dean*

Witter, 470 U.S. at 213.[2]

Thus, Defendants (without waiver of their right to delegate such issues to the arbitrator) respectfully submit that Plaintiffs' statutory claims fall within the scope of the Arbitration Agreement, and also that both Defendants are entitled to enforce that Arbitration Agreement. The Terms specifically define Super.com to include "its subsidiaries and affiliates," and Snapmoney, Inc. is one of those affiliates. Culver Decl. ¶¶ 3-4; Compl. ¶¶ 5, 10. Plaintiffs can hardly contest otherwise, as they reference to both Defendants collectively exclusively throughout his Complaint. *See, e.g.* Compl. ¶¶ 28-29, 38-40, 53-56; *see also Kroskey*, ECF 37 at 10 (allowing affiliate to enforce arbitration agreement where "[t] here are no individual allegations unique to either Defendant"). For that reason as well, even if the Arbitration Agreement did not expressly allow affiliates to enforce the argument, it would be enforceable by affiliates under common law principles of agency and contract law, as well as principles of estoppel, as courts regularly allow non-signatory affiliates to enforce arbitration agreements against signatories where the allegations are intertwined with those against a signatory. *See, e.g., Letizia v. Prudential Bache Sec., Inc.*, 802 F.2d 1185, 1187 (9th Cir. 1986) (citing cases enforcing arbitration agreements on behalf of non-signatory employees); *Marselian v. Wells Fargo & Co.*, 514 F. Supp. 3d 1166, 1172 (N.D. Cal. 2021) (quoting *NORCAL Mut. Ins. Co. v. Newton*, 84 Cal. App. 4th 64, 76 (2000) as holding, "the common thread [in holding nonsignatories bound by arbitration contracts] is the existence of an agency or similar relationship between the nonsignatory and one of the parties to the arbitration agreement"); *Larson v. Living Vehicle, Inc.*, No. 24-cv-00598-DSF-MAA, 2024 WL 3298294, at *4 (C.D. Cal. May 14, 2024) (granting motion to compel arbitration by nonsignatory who asserted "theories of agency, third-party beneficiary status, and equitable estoppel"); *Wolf v. ClubCorp USA, Inc.*, No. 22-cv-1688-MMA, 2023 WL 4306693, at *6 (S.D. Cal. June 20, 2023) ("Plaintiff is compelled to arbitrate her claims against [non-signatory] under either prong of the Ninth Circuit's equitable estoppel test"). Thus, Defendants may enforce the Arbitration Agreement.

[2] The parties' agreements also include a class action waiver. Defendants reserve the right to seek to have Plaintiffs' class action allegations stricken and/or class certification denied based on his waiver of any purported right to file a putative class action.

D. This Action Should Be Stayed or Dismissed

The Court "may either stay the action or dismiss it outright when, as here, the court determines that all of the claims raised in the action are subject to arbitration." *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072, 1073–74 (9th Cir. 2014). Dismissal is often the most efficient path forward when there is no "compelling reason to keep this case on the Court's docket." *Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 966 (N.D. Cal. 2015); *see also Peterson v. Lyft, Inc.*, No. 16-cv-07343-LB, 2018 WL 6047085, at *6 (N.D. Cal. Nov. 19, 2018) (granting motion to compel arbitration and dismissing case). At a minimum, the FAA requires that this case be stayed "until such arbitration has been had" in accordance with the terms of the Arbitration Agreement. 9 U.S.C. § 3.

V. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant their motion to compel Plaintiffs to arbitrate their claims against Defendants on an individual basis and to dismiss or, in the alternative, stay the case pending arbitration.

Date: June 9, 2025

Respectfully submitted,

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