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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**

17 Darren MacDonald, individually and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 Rocket Mortgage, LLC, a Michigan
22 company,

23 Defendant.
24

Case No.: 2:23-cv-02558-DJH

**ROCKET MORTGAGE, LLC'S
MOTION TO COMPEL
ARBITRATION**

(Oral Argument Requested)

25
26 In direct violation of a binding and enforceable arbitration agreement, Plaintiff
27 Darren MacDonald filed this lawsuit against Rocket Mortgage, LLC for violation of
28

1 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* Accordingly, consistent with
2 the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, Rocket Mortgage now moves this Court to
3 (a) enforce Plaintiff’s agreement to arbitrate and compel this lawsuit to binding arbitration,
4 and (b) to dismiss this lawsuit.

5 The grounds for this Motion are set forth in the accompanying Memorandum of Law.

6 **MEMORANDUM OF LAW IN SUPPORT OF**
7 **ROCKET MORTGAGE, LLC’S MOTION TO COMPEL ARBITRATION**

8 Plaintiff Darren MacDonald (“Plaintiff”) agreed to arbitrate (not litigate) any claims
9 for violation of the Telephone Consumer Protection Act (“TCPA”) against Rocket
10 Mortgage, LLC (“Rocket Mortgage”) (f/k/a Quicken Loans, LLC) on an individual (not
11 class) basis. In direct breach of that agreement, Plaintiff filed this putative class action
12 lawsuit against Rocket Mortgage asserting claims for violation of the TCPA. This Court
13 should enforce Plaintiff’s agreement and compel his TCPA individual claims to arbitration.¹

14 The facts relevant to this Motion are straightforward and set forth in detail in the
15 accompanying Declaration of Amy Courtney (“Courtney Decl.”). On June 8, 2022, Plaintiff
16 completed an online submission at Rocket Mortgage’s website (quickenloans.com) to
17 request information—by calls or text messages—from the Company about its mortgage
18 products. In the course of his online submission, Rocket Mortgage (a) made its complete
19 Terms of Use, including the TCPA-related arbitration provision, readily available to
20 Plaintiff for review, and (b) expressly informed Plaintiff that by choosing to make his
21 submission on the Rocket Mortgage website—by clicking a submission button—he was
22 agreeing to the TCPA-related arbitration and other provisions in the Terms of Use. Thus,
23 by choosing to make his submission, Plaintiff expressly agreed to Rocket Mortgage’s Terms

24 ¹ Without prejudice to this Motion, Rocket Mortgage also has contemporaneously moved to
25 dismiss Plaintiff’s claim pursuant to Fed. R. Civ. P. 12(b)(6). The resolution of this Motion,
26 however, should precede the resolution of Rocket Mortgage’s motion to dismiss. *Shivkov v.*
27 *Artex Risk Sols. Inc.*, No. CV-18-04514-PHX-SMM, 2019 WL 8806260, at *1 (D. Ariz. Aug.
28 5, 2019) (granting motion to compel arbitration and denying motion to dismiss as moot),
aff’d, 974 F.3d 1051 (9th Cir. 2020). If this Court grants this Motion, then it need not reach
the motion to dismiss.

1 of Use, including the TCPA-related arbitration provision requiring him to arbitrate (and not
2 litigate) any TCPA claims against Rocket Mortgage on an individual basis.

3 Despite this, Plaintiff filed this lawsuit against Rocket Mortgage, asserting a single
4 claim for violation of the TCPA based upon a single purported call and a single text message
5 that Rocket Mortgage made to him in response to his online submission. Compl. ¶¶ 36-41.
6 It is well-settled that where, as here, the arbitration terms were clearly and conspicuously
7 disclosed, and the plaintiff manifested his or her agreement to them, the proper remedy is
8 for this Court to compel the claims to arbitration and dismiss the lawsuit. *See Lee v. Panera*
9 *Bread Co.*, No. 1:22-cv-11058, 2023 WL 2606611, at *4 (E.D. Mich. Mar. 6, 2023)
10 (granting motion to compel arbitration where the terms of agreement were conspicuous and
11 the plaintiff unambiguously manifested his assent to the terms), *report & recommendation*
12 *adopted by*, 2023 WL 2603934 (E.D. Mich. Mar. 22, 2023); *Rosskamm v. Amazon.com,*
13 *Inc.*, 637 F. Supp. 3d 500, 511 (N.D. Ohio 2022) (defendant’s Conditions of Use enforceable
14 where terms were hyperlinked and in blue text directly below the “Continue” button).

15 BACKGROUND

16 **I. PLAINTIFF’S AGREEMENT TO ARBITRATE HIS TCPA CLAIMS** 17 **AGAINST ROCKET MORTGAGE.**

18 On June 8, 2022, Plaintiff visited Rocket Mortgage’s website (quickenloans.com)²
19 and voluntarily submitted an online request to receive information—by calls or text
20 messages—about its mortgage products. Courtney Decl. ¶ 5. As part of his submission,
21 Plaintiff, among other things, (a) provided his prior express written consent to receive calls
22 or texts from Rocket Mortgage, (b) entered the telephone number that began with 480-540-
23 XXXX, an email address that began with “Darren@,” and a mailing address in Arizona that
24 began with “8448 E Roanoke Ave,” and (c) indicated that he was looking for information
25 regarding a refinance loan. *Id.* ¶ 7.

26
27 ² The QuickenLoans.com website explicitly disclosed that “Quicken Loans is a registered
28 service mark of Rocket Mortgage, LLC.” *See* Courtney Decl. ¶ 5.

1 In addition, before completing his submission, Rocket Mortgage provided Plaintiff
2 an express disclosure entitled “**Communication Consent.**” Courtney Decl. ¶¶ 9–11. That
3 express disclosure specifically advised Plaintiff that by voluntarily submitting his contact
4 information to Rocket Mortgage, he was agreeing to Rocket Mortgage’s Terms of Use. This
5 disclosure stated as follows:

6 **“Communication Consent:**

7 By submitting your contact information you agree to our [Terms of Use](#) and
8 our [Security and Privacy Policy](#). You also expressly consent to having Rocket
9 Mortgage, our [Family of Companies](#), and potentially [our mortgage partners](#)
10 contact you about your inquiry by text message or phone (including automatic
11 telephone dialing system or an artificial or prerecorded voice) to the
residential or cellular telephone number you have provided, even if that
telephone number is on a corporate, state, or national Do Not Call Registry.
You do not have to agree to receive such calls or messages as a condition of
getting any services from Rocket Mortgage or its affiliates.

12 Courtney Decl. ¶ 10; Courtney Decl. Ex. 1. The phrase “Terms of Use” appeared in blue
13 typeface, offsetting it from the surrounding black typeface and clearly indicating that it was
14 a hyperlink. *Id.* When clicked, a user like Plaintiff would be directed to a webpage
15 displaying Rocket Mortgage’s complete Terms of Use, including the TCPA-related
16 arbitration provision. *Id.* ¶¶ 10-11; Courtney Decl. at Ex. 2. Consumers, like Plaintiff, had
17 the ability to click on the Terms of Use hyperlink and review the full text of the Terms of
18 Use. Courtney Decl. ¶¶ 10-11. In addition, immediately proximate to and above the
19 Communication Consent was the “Click to See Your Results!” submission button
20 referenced in the Communication Consent. *Id.* ¶ 9. As Plaintiff was explicitly informed in
21 the Communication Consent, by voluntarily clicking the “Click to See Your Results!”
22 submission button, Plaintiff, among other things, agreed to Rocket Mortgage’s Terms of
23 Use. *Id.*

24 Rocket Mortgage’s Terms of Use contained a mandatory arbitration provision for
25 TCPA claims like Plaintiff’s here. *Id.* ¶ 11. That arbitration provision provided, in relevant
26 part, as follows:

1 **Governing Law:**

2 You agree that these Terms of Use shall be governed by and construed in
3 accordance with the laws of the State of Michigan, without giving effect to
4 any principles of conflicts of law. You understand and agree to resolve
5 through final and binding arbitration the following claims, disputes, or
6 controversies arising between you and Rocket Mortgage, LLC, and its
7 parents, affiliates, subsidiaries, or related companies: *all claims, disputes, or*
8 *controversies arising from the Telephone Consumer Protection Act of 1991*
9 *(“TCPA”), or state law claims similar to the TCPA. . . .* The arbitrator, not
10 the court, will resolve the issue of arbitrability. . . . This arbitration contract is
11 made under a transaction in interstate commerce, and Federal Arbitration Act
12 (“FAA”) will govern its interpretation, application, enforcement, and
13 proceedings. As the Governing Law provision indicates, the laws of the State
14 of Michigan govern the enforceability of this arbitration provision as a
15 contract, but not the scope of the provision. Neither you nor Rocket Mortgage
16 are entitled to join or consolidate claims in arbitration by or against other
17 consumers or to arbitrate any claim as a representative or member of a class
18 or in a private attorney general capacity. The parties voluntarily and
19 knowingly waive any right they have to a jury trial for TCPA-related matters
20 which, based on the above, will be arbitrated.”

21 *Id.* ¶ 11; Courtney Decl. Ex. 2, at 9 (emphasis added). Plaintiff voluntarily agreed to this
22 TCPA-related arbitration provision by clicking the “Click to See Your Results!” submission
23 button on the Rocket Mortgage website. Courtney Decl. ¶¶ 9-11.³

24 **II. THE LAWSUIT**

25 After Plaintiff completed his submission and agreed to Rocket Mortgage’s Terms of
26 Use, including the TCPA-related arbitration provision, Rocket Mortgage called Plaintiff one
27 time on June 8, 2022, in response to his online inquiry. Courtney Decl. ¶ 13. During the
28 course of that phone call, the Rocket Mortgage team member (employee) on the call sent a
29 text message to Plaintiff with the team member’s name and phone number. *Id.* After the
30 phone call ended, Rocket Mortgage did not call or text Plaintiff again. Nonetheless and
31 without any prior notice or complaint to Rocket Mortgage, Plaintiff filed this putative, class
32 action lawsuit on December 11, 2023—18 months after the challenged call and text
33 message—asserting a claim for violation of the TCPA (47 U.S.C. § 227) and its

34 ³ Approximately fifteen minutes after receiving his online submission at QuickenLoans.com,
35 Rocket Mortgage received a second submission from Plaintiff, made at LendingTree.com.
36 Courtney Decl. ¶ 12. The LendingTree submission contained the same name, phone number,
37 and mailing address for Plaintiff, and likewise included his express agreement and request to
38 receive calls and text messages from Rocket Mortgage. *Id.*

1 implementing regulation (47 C.F.R. § 64.1200(c)). Compl. ¶¶ 40-41.

2 LEGAL STANDARD

3 The Federal Arbitration Act (“FAA”) provides that a written arbitration provision
4 contained in a “contract evidencing a transaction involving commerce . . . shall be valid,
5 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the
6 revocation of any contract.” 9 U.S.C. § 2. The FAA reflects both a “liberal federal policy
7 favoring arbitration, and the fundamental principle that arbitration is a matter of contract.”
8 *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citations and internal
9 quotation marks omitted). Thus, federal law mandates that federal courts “rigorously
10 enforce agreements to arbitrate,” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221
11 (1985), and that “any doubts concerning the scope of arbitrable issues should be resolved in
12 favor of arbitration.” *Owner-Operator Indep. Drivers Ass’n, Inc. v. Swift Transp. Co.*, 288
13 F. Supp. 2d 1033, 1036 (D. Ariz. 2003). “By its terms, the [FAA] leaves no place for the
14 exercise of discretion by a district court, but instead mandates that district courts *shall* direct
15 the parties to arbitration on issues as to which an arbitration agreement has been signed.”
16 *York v. Dave & Buster’s Inc.*, No. CV-21-01130-PHX-JJT, 2022 WL 2491228, at *1 (D.
17 Ariz. June 3, 2022) (citation omitted).

18 The basic role for courts under the FAA is to determine “(1) whether a valid
19 agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the
20 dispute at issue.” *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th
21 Cir. 2000); *McCarthy v. Stifel, Nicolaus & Co. Inc.*, No. 2:16-cv-0581-HRH, 2016 WL
22 4507107, at *2 (D. Ariz. Aug. 29, 2016). “If the response is affirmative on both counts,
23 then the [Federal Arbitration] Act requires the court to enforce the arbitration agreement in
24 accordance with its terms.” *Chiron*, 207 F.3d at 1130. The threshold question of whether
25 an arbitration agreement exists is a matter of contract, and thus state law generally governs
26 whether an enforceable agreement exists. *Newbill v. CVS Caremark, LLC*, No. CV-22-
27 01001-PHX-GMS, 2023 WL 4746120, at *4 (D. Ariz. July 25, 2023) (quoting *Davis v.*

1 *O’Melveny & Myers*, 485 F.3d 1066, 1072 (9th Cir. 2007)); *see Roszak v. U.S. Foodservice,*
 2 *Inc.*, No. CV 13-01009-PHX-SRB, 2013 WL 12203869, at *2 (D. Ariz. Sept. 24, 2013),
 3 *aff’d* 628 F. App’x 513 (9th Cir. 2016) (finding that Delaware law applied per an arbitration
 4 agreement). “However, these gateway issues can be expressly delegated to the arbitrator
 5 where ‘the parties *clearly and unmistakably* provide otherwise.’” *Brennan v. Opus Bank,*
 6 796 F.3d 1125, 1130 (9th Cir. 2015) (quoting *AT&T Techs., Inc. v. Commc’ns Workers of*
 7 *Am.*, 475 U.S. 643, 649 (1986)); *see Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 78
 8 (2010) (“‘[Q]uestion[s] of arbitrability’ thus include questions regarding the existence of a
 9 legally binding and valid arbitration agreement[.]”). Application of these well-established
 10 standards to the record evidence demonstrates that the Motion should be granted and
 11 Plaintiff’s TCPA claims compelled to arbitration without delay.

ARGUMENT⁴

I. THE ROCKET MORTGAGE TERMS OF USE CONTAIN A VALID AND ENFORCEABLE ARBITRATION AGREEMENT WITH PLAINTIFF REQUIRING HIM TO ARBITRATE (NOT LITIGATE) HIS TCPA CLAIMS.

15 The record evidence establishes that Plaintiff entered into a valid and enforceable
 16 arbitration agreement with Rocket Mortgage when he sought out and affirmatively agreed
 17 to receive mortgage information from the Company through his voluntary June 2022 online
 18 submission at its website. Courtney Decl. ¶¶ 7–12. In determining whether an arbitration
 19 agreement exists, the “Court should apply ordinary state-law principles that govern the
 20 formation of contracts.” *Newbill*, 2023 WL 4746120, at *4 (citation and alterations
 21 omitted).

22 Under Michigan law (Rocket Mortgage’s principal place of business and the law
 23 governing the Terms of Use to which Plaintiff agreed, Courtney Decl. ¶ 113), clickwrap or

25 ⁴ While this Motion is directed to Plaintiff’s individual claim, Rocket Mortgage expressly
 26 reserves its rights (i) to compel arbitration of the claims of some or all of the members of any
 27 class that may be certified in this action, and (ii) to demonstrate that arbitration agreements
 28 and class action waivers operate to preclude putative class members from participating in this
 lawsuit. These and other similar issues are premature at this initial stage of the litigation,
 where no class has been certified and Plaintiff has not filed any motion for class certification.

1 modified clickwrap agreements are enforceable where (i) “the consumer ha[d] reasonable
2 notice, either actual or constructive, of the terms of the putative agreement” and (ii) “the
3 consumer manifest[s] assent to those terms.” *Lee*, 2023 WL 2606611, at *3 (applying
4 Michigan law); *Scriber v. Ford Motor Co.*, No. 22-cv-1716, 2023 WL 7348461, at *11 (S.D.
5 Cal. Nov. 7, 2023) (“Michigan law seems to recognize clickwrap agreements as enforceable
6 so long as the consumer ‘had reasonable notice, actual or constructive, of the terms of the
7 putative agreement’ and ‘manifeste[d] assent to those terms.’”) (S.D. Ca. Nov. 7, 2023)
8 (quoting *Lee*, 2023 WL 2606611, at *3). A consumer accepts an agreement when “the
9 individual to whom an offer is extended manifests an intent to be bound by the offer, and
10 all legal consequences flowing from the offer, through voluntarily undertaking some
11 unequivocal act sufficient for that purpose.” *Mannor v. Amerilodge Grp., LLC*, No. 2:21-
12 CV-11378, 2022 WL 2867182, at *5 (E.D. Mich. July 20, 2022) (applying Michigan law,
13 granting motion to compel arbitration where plaintiff electronically assented to arbitration
14 terms).

15 **A. PLAINTIFF HAD REASONABLE NOTICE OF THE TERMS**
16 **OF USE AND THE TCPA-RELATED ARBITRATION**
17 **CLAUSE.**

18 Here, the record evidence is that Plaintiff was presented with express disclosures
19 about the TCPA-related arbitration provision in Rocket Mortgage’s Terms of Use and
20 manifested his agreement to that provision (and the other provisions of the Terms of Use)
21 by voluntarily clicking the “Click to See Your Results!” submission button. Courtney Decl.
22 ¶¶ 6–11.

23 First, as demonstrated above, the Communication Consent disclosure expressly
24 informed Plaintiff that clicking the “Click to See Your Results!” button constituted his
25 agreement to the Terms of Use. Courtney Decl. ¶ 10.

26 Second, as demonstrated above, a hyperlink to the Terms of Use containing the full
27 TCPA-related arbitration provision was contained in the Communication Consent.
28 Courtney Decl. ¶ 10. That disclosure appeared directly proximate to and beneath the “Click

1 to See Your Results!” button, was clearly and conspicuously displayed in bold-type, and
2 specifically informed Plaintiff that clicking the button constituted his agreement to the
3 Terms of Use. Courtney Decl. ¶ 10, Courtney Decl. Ex. 1 (“By submitting your contact
4 information you agree to our Terms of Use.”). In addition, in the Communication Consent
5 disclosure, the Terms of Use were offset in a contrasting blue color and hyperlinked. There
6 were no ads, videos or other distractions to divert Plaintiff’s attention from the
7 Communication Consent disclosure. Plaintiff had the opportunity to review the complete
8 terms, including the arbitration clause, with just one click on the hyperlink before clicking
9 the “Click to See Your Results!” button submitting his information. Courtney Decl. ¶ 11.

10 Federal courts have enforced agreements to arbitrate under nearly identical
11 circumstances where, as here, the consumer receives reasonable notice of the terms for
12 arbitration. For instance, in *Rosskamm v. Amazon.com, Inc.*, the district court held that a
13 company’s website “reasonably communicate[d] the existence of the [Conditions of Use]
14 to its users” where the text notifying the customer of the Conditions of Use stated “[b]y
15 creating an account, you agree to [the company’s] Conditions of Use . . .” and the text
16 referencing the Conditions of Use were “linked in blue” and “directly below the ‘Continue’
17 button.” 637 F. Supp. 3d 500, 511 (N.D. Ohio 2022). The *Rosskamm* court concluded that
18 the Conditions of Use at issue in this case were “sufficiently conspicuous and accessible,
19 and thus deemed enforceable.” *Id.* at 510. In *Fteja v. Facebook, Inc.*, the district court
20 enforced an agreement where the text informing the user of the terms were “immediately
21 below” the “Sign Up” button, finding plaintiff was “informed of the consequences of his
22 assenting click and he was shown, immediately below, where to click to understand those
23 consequences.” 841 F. Supp. 2d 829, 839-40 (S.D.N.Y. 2012). Similarly, in *Lee v. Panera*
24 *Bread Co.*, the court found plaintiff had “reasonable notice” of the terms of the agreement
25 and that the terms were “conspicuous” where the terms of use were displayed “either above
26 or adjacent” to the “Start” button. 2023 WL 2606611, at *4 (applying Michigan law). In
27 so finding, the court relied on *Shirley v. Rocket Mortgage*, No. 2:21-cv-13007, 2022 WL
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1 2541123, at *4 (E.D. Mich. July 7, 2022), where the court held that a “text block in grey
2 (either above or below the ‘Calculate’ button) stating that the plaintiff was bound by the
3 terms and conditions of the agreement (with hyperlinks to the terms and conditions in a
4 contrasting color)” was sufficiently conspicuous to establish notice. *Id.* This Court should
5 not hesitate to reach the same conclusions here.

6 As in the cases above, Rocket Mortgage’s Terms of Use were displayed in a font
7 color, format, and location such that Plaintiff was “informed of the consequences of his
8 assenting click.” *See Fteja*, 841 F. Supp. 2d at 839-40. Plaintiff was reasonably and
9 explicitly on notice of the existence of the Terms of Use, which included the agreement to
10 arbitrate. *See Lee*, 2023 WL 2606611 at *4; *Rosskamm*, 637 F. Supp. 3d at 511.⁵

11 **B. PLAINTIFF AFFIRMATIVELY AGREED TO THE TERMS**
12 **OF USE, INCLUDING THE ARBITRATION PROVISION.**

13 The factual record also shows that Plaintiff affirmatively agreed to Rocket
14 Mortgage’s Terms of Use. Specifically, Rocket Mortgage’s records establish that on June
15 8, 2022, Plaintiff was shown the Communication Consent during his visit to and submission
16 at Rocket Mortgage’s website and voluntarily clicked the “Click to See Your Results!”
17 button to confirm his agreement to the Terms of Use, including the TCPA-related arbitration
18 provision.

19 Under similar circumstances, federal courts have held that an affirmative
20 acknowledgement results in an enforceable agreement. *Hall v. Pac. Sunwear Stores Corp.*,
21 No. 15-CV-14220, 2016 WL 1366413, at *6 (E.D. Mich. Apr. 6, 2016) (finding that an
22 electronic acknowledgment of an arbitration agreement constitutes acceptance under
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24 ⁵ Rocket Mortgage anticipates that in opposition, Plaintiff may cite to the recent decision
25 denying a motion to compel arbitration in the Daschbach case. *Daschbach v. Rocket Mortg.,*
26 *LLC*, No. 22-cv-346-JL, 2023 WL 2599955, at *1 (D.N.H. Mar. 22, 2023). That case simply
27 does not apply here because it concerned a third-party affiliate website, with a disparate
28 format and facts different than those here, and an arbitration clause under which Rocket
Mortgage was a third-party beneficiary. Here, Plaintiff went to Rocket Mortgage’s own
website and agreed to arbitrate directly with Rocket Mortgage. Furthermore, Rocket
Mortgage maintains that Daschbach was wrongly decided.

1 Michigan law); *Berkson v. Gogo LLC*, 97 F.Supp.3d 359, 397 (E.D.N.Y. 2015) (stating that
 2 “almost [e]very [lower] court to consider the issue has found ‘clickwrap’ licenses, in which
 3 an online user clicks ‘I agree’ to standard form terms, enforceable”) (citation and internal
 4 quotations omitted); *Shirley*, 2022 WL 2541123, at *8 (enforcing an agreement to arbitrate
 5 with Rocket Mortgage where plaintiff “unambiguously manifested his assent to [the] Terms
 6 of Use by clicking the second and third buttons,” that “came with a notice directly
 7 underneath them”). The same conclusion attends here. *Meyer v. Uber Techs., Inc.*, 868
 8 F.3d 66, 79 (2d Cir. 2017) (finding that plaintiff’s agreement to arbitration was
 9 “unambiguous in light of the objectively reasonable notice of the terms.”).⁶

10 **II. PLAINTIFF AGREED TO ARBITRATE HIS TCPA CLAIM.**

11 As there is a valid and enforceable arbitration agreement, the only remaining
 12 potential question is whether Plaintiff’s TCPA claims fall within the substantive scope of
 13 the arbitration agreement. *See McCarthy*, 2016 WL 4507107, at *2. While that question
 14 must be answered in the affirmative, under the express terms of the arbitration agreement,
 15 it is reserved for the arbitrator. Specifically, the Terms of Use require that “[t]he arbitrator,
 16 not the court, will resolve the issue of arbitrability.” Courtney Decl. ¶ 11, Courtney Decl.
 17 Ex. 2 at 9. As a matter of law, when the parties have contracted to delegate the arbitrability
 18 determination to an arbitrator, courts are not permitted to “short-circuit the process and
 19 decide the arbitrability question themselves.” *Henry Schein, Inc. v. Archer & White Sales,*
 20 *Inc.*, 139 S. Ct. 524, 527–28 (2019); *Newsome v. Vehi-Ship, LLC*, No. 22-cv-10545, 2023
 21 WL 2267163, at *2 (E.D. Mich. Feb. 28, 2023) (applying Michigan law) (finding “the

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 23 ⁶ Even if the Court were to apply Arizona law, the outcome here would be unchanged. Courts
 24 interpreting Arizona law have “held that ‘clickwrap’ [and ‘hybrid clickwrap’] agreements
 25 create inquiry notice, and thus an enforceable contract, if ‘(1) the website provides reasonably
 26 conspicuous notice of the terms to which the consumer will be bound; and (2) the consumer
 27 takes some action, such as clicking a button or checking a box, that unambiguously manifests
 his or her assent to those terms.’” *Arciniega v. Experian Info. Sols., Inc.*, No. CV-23-00245-
 PHX-SPL, 2023 WL 6803084, at *3 (D. Ariz. Oct. 12, 2023) (citation omitted) (finding an
 enforceable arbitration agreement under Arizona law after plaintiff clicked the “ACCEPT
 TERMS” and “CONTINUE” button on website, and where “Terms of Use Agreement” was
 “off set in blue text indicating that it was a hyperlink”).

1 parties' agreement provides 'clear and unmistakable' evidence that issues of arbitrability
2 should be decided by an arbitrator"); *Jacksen v. Chapman Scottsdale Autoplex, LLC*, No.
3 CV-21-00087-PHX-DGC, 2021 WL 3410912, at *5 (S.D. Ariz. July 21, 2021) (finding the
4 "parties must litigate their disagreement about the scope of the arbitration provision before
5 the arbitrator" where the agreement "states without equivocation that 'the interpretation and
6 scope of this clause and the arbitrability of any issue' are the province of the arbitrator").
7 Therefore, because there is a valid arbitration agreement that Rocket Mortgage is entitled to
8 enforce, this Court should compel arbitration and permit the arbitrator to resolve any
9 disputes about arbitrability.

10 Even assuming this Court may properly consider the arbitrability question, Rocket
11 Mortgage's Terms of Use confirms that it unquestionably "encompasses the dispute at
12 issue." *See Chiron*, 207 F.3d at 1130. The Terms of Use state, in relevant part:

13 You understand and agree to resolve through final and binding arbitration the
14 following claims, disputes, or controversies arising between you and Rocket
15 Mortgage, LLC, and its parents, affiliates, subsidiaries, or related companies:
16 all claims, disputes, or controversies arising from the [TCPA], or state law
claims similar to the TCPA. . . . The parties voluntarily and knowingly waive
any right they have to a jury trial for TCPA-related matters, which, based on
the above, will be arbitrated.

17 Courtney Decl. Ex. 2 at 9.

18 Plaintiff's only claim here is that Rocket Mortgage violated the TCPA's do-not-call
19 regulation, 47 C.F.R. § 64.1200(c), by calling and texting him after he had purportedly
20 registered his telephone number on the National Do Not Call Registry. Compl. ¶¶ 40-41.
21 The arbitration agreement explicitly states that a claim that falls within the scope of the
22 agreement includes "all claims, disputes, or controversies arising from the [TCPA],"
23 without exception. Courtney Decl. Ex. 2 at 9. *See Thanh Do v. Toyota Motor N. Am.*, No.
24 17-12984, 2018 WL 278637, at *2 (E.D. Mich. Jan. 3, 2018) (applying Michigan law and
25 compelling arbitration where the arbitration agreement "expressly require[d]" plaintiff to
26 arbitrate his claims for Title VII discrimination); *Boyton v. Xerox Com. Sols., LLC*, No.
27 3:17-CV-505-RJC-DCK, 2018 WL 4001287, at *6 (W.D.N.C. July 31, 2018) (finding
28

1 claims fell within the scope of the parties’ agreement to arbitrate where the agreement
2 “expressly provides that the agreement covers . . . precisely the type of claims that Plaintiff
3 makes”), *report & recommendation adopted by*, 2018 WL 3995948 (W.D.N.C. Aug. 21,
4 2018); *Jenkins v. Sterling Jewelers, Inc.*, No. 17cv1999-MMA (BGS), 2018 WL 922386, at
5 *5 (S.D. Cal. Feb. 16, 2018) (finding “Arbitration Agreement’s language clearly
6 encompasses Plaintiff’s employment-related claims,” which were “expressly provide[d]”
7 for in the agreement). The parties’ agreement to arbitrate encompasses Plaintiff’s TCPA
8 claim because it falls squarely within the language of the agreement, and there cannot be
9 any legitimate dispute that it does not.

10 As the agreement to arbitrate is valid, and Plaintiff’s claim is within its scope or
11 subject to the arbitrator’s decision on whether it is within the scope, this Court should
12 dismiss this action and compel the Plaintiff to arbitrate his claim.⁷ *See York*, 2022 WL
13 2491228, at *1.

14 CONCLUSION

15 For the foregoing reasons, Rocket Mortgage respectfully requests that this Court
16 grant this Motion, compel Plaintiff’s claim to arbitration, and dismiss this lawsuit.

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25 ⁷ This Court should dismiss—and not stay—Plaintiff’s claim because “the entirety of the
26 complaint is subject to arbitration.” *See Cap. Healthcare, LLC v. Amkai, LLC*, No. 2:22-cv-
27 12019, 2023 WL 3075885, at *5 (E.D. Mich. Apr. 25, 2023) (granting motion to compel
28 arbitration and dismissing the case pursuant to the arbitration agreement, which encompassed
all claims); *Memmer v. United Wholesale Mortg.*, No. 23-cv-10921, 2024 WL 187697, at *6
(E.D. Mich. Jan. 16, 2024) (same).

1 DATED this 9th day of February, 2024.
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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2024, the attached document was electronically transmitted to the Clerk of Court’s CM/ECF system, which will send notification of such filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/s/ Courtney Ryan

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