

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Amber Ferrell, et al. v. SnapCommerce Holdings, Inc., et al.

Ferrell · No. 25-cv-03160-JST · Decided November 25, 2025

SUMMARY

The United States District Court for the Northern District of California denied Defendants’ motion to compel arbitration and administrative motion for an evidentiary hearing in a putative class action alleging violations of the Telephone Consumer Protection Act and Oklahoma Telephone Solicitation Act. The court held that Super did not demonstrate that its online notice of terms of use was reasonably conspicuous enough to establish contract formation under California law. Because the motion was resolved without reliance on disputed facts, the court also denied the request for an evidentiary hearing.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jon S. Tigar
JURISDICTION	United States District Court for the Northern District of California
DECIDED	November 25, 2025
DOCKET	25-cv-03160-JST
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought Telephone Consumer Protection Act and Oklahoma Telephone Solicitation Act claims against Defendants. Defendants moved to compel arbitration and filed an administrative motion for an evidentiary hearing.
STANDARD OF REVIEW	On a motion to compel arbitration, the court determines whether a valid agreement to arbitrate exists and whether the agreement encompasses the dispute. When the existence of the arbitration agreement is disputed, the court applies the summary-judgment standard, considers evidence outside the pleadings, gives the opposing party the benefit of reasonable doubts and inferences, and applies state-law principles of contract interpretation.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

arbitration

contract formation

mutual assent

civil procedure

consumer protection

PRACTICE AREAS

arbitration

contract law

consumer protection

civil procedure

QUESTIONS PRESENTED

1. Whether the signup interface provided reasonably conspicuous notice of Super's Terms of Use.
2. Whether a user's entry of a phone number and interaction with the signup page manifested mutual assent sufficient to form an agreement to arbitrate.
3. Whether an evidentiary hearing was required to resolve the motion to compel arbitration.

HOLDINGS

1. Super's website and app did not provide reasonably conspicuous notice of the Terms of Use because the hyperlink appeared in very small gray font on a white background, was placed at the bottom of the page, and was not otherwise distinguished by bolding or contrasting color.
2. Super failed to carry its burden to show that a contract to arbitrate existed because the signup page did not provide reasonably conspicuous notice of the Terms of Use.
3. An evidentiary hearing was unnecessary and was properly denied because the court resolved the motion without relying on disputed facts.

KEY QUOTATIONS

"On a motion to compel arbitration, the Court's role under the FAA is "limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." (at 3)

"To form a contract under California law, there must be "actual or constructive notice of the agreement" and a "manifest[ation of] mutual assent." (at 4)

"Because Super has not shown that its website and app provided reasonably conspicuous notice of its terms of service, Super has not carried its burden to show that a user entering a phone number on Super's website or app constitutes contract formation." (at 5)

FACTUAL BACKGROUND

Super's website and app required a new user to enter a phone number. At the bottom of the signup page, in small gray font on a white background, the page stated: "By clicking 'Send code' you agree to our Super.com Terms of Use." The words "Super.com Terms of Use" were underlined and hyperlinked to a separate page containing an arbitration agreement. The court found that the hyperlink was not otherwise distinguished by bolding, contrasting color, or another design feature and was less prominent than other text on the page.

PROCEDURAL HISTORY

Amber Ferrell and Sara Schneider filed a putative class action on April 8, 2025, alleging that Defendants sent text-message solicitations and commercial telephone calls to consumers on the National Do Not Call Registry. Defendants moved to compel arbitration, and Plaintiffs opposed. Defendants also sought an evidentiary hearing concerning arbitrability. The court denied both motions.

DISPOSITION

other

CASES CITED

- AT&T Mobility LLC v. Concepcion, AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011)
- Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000)
- Hansen v. LMB Mortg. Servs., Inc., 1 F.4th 667, 670, 672 (9th Cir. 2021)
- Burger v. Northrop Grumman Sys. Corp., 2011 WL 13317033 (C.D. Cal. 2011)
- Concat LP v. Unilever, PLC, 350 F. Supp. 2d 796, 804 (N.D. Cal. 2004)
- First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)
- Kum Tat Ltd. v. Linden Ox Pasture, LLC, 845 F.3d 979, 983 (9th Cir. 2017)
- AT&T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 648 (1986)
- United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960)
- Oberstein v. Live Nation Ent., Inc., 60 F.4th 505, 512-13, 515 (9th Cir. 2023)
- Knutson v. Sirius XM Radio Inc., 771 F.3d 559, 565 (9th Cir. 2014)
- Rosenthal v. Great W. Fin. Sec. Corp., 14 Cal. 4th 394, 413 (1996)
- Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1179 (9th Cir. 2014)
- Berman v. Freedom Fin. Network, LLC, 30 F.4th 849, 856-57 (9th Cir. 2022)
- Sellers v. JustAnswer LLC, 73 Cal. App. 5th 444, 465, 481-82 (2021)
- Massel v. SuccessfulMatch.com, 718 F. Supp. 3d 1112, 1117 (N.D. Cal. 2024)
- Sarhadi v. Pear Health Labs, Inc., No. 24-cv-07921-TLT, 2025 WL 1350033, at *6 (N.D. Cal. Apr. 18, 2025)
- Kroskey v. Elevate Labs, LLC, No. 5:24-cv-08113-EJD, 2024 WL 1507091, at *4 (N.D. Cal. May 27, 2025)
- Morrison v. Yippee Entertainment, Inc., No. 24-7235, 2025 WL 2389424, at *1 (9th Cir. Aug. 18, 2025)

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