

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Kaitlyn Lawrence v. Finicity Corporation

No. 2:23-cv-01005-DJC-AC (E.D. Cal. Dec. 9, 2025) · No. No. 2:23-cv-01005-DJC-AC · Decided December
10, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 KAITLYN LAWRENCE, No. 2:23-cv-01005-DJC-AC 12 Plaintiff, 13 v.
ORDER 14 FINICITY CORPORATION, 15 Defendant. 16 17 In 2023, Plaintiff Kaitlyn
Lawrence filed a Complaint on behalf of herself and 18 other consumers regarding an application,
website, or online or Internet service 19 provided by Defendant Finicity Corporation.

After Finicity moved to compel 20 arbitration of Plaintiff’s claims, this Court denied the motion,
concluding that Plaintiff 21 had not consented to arbitration as she lacked adequate notice of the
User 22 Agreement containing the arbitration provision.

The Ninth Circuit reversed and 23 remanded, finding there was valid consent and directing this
Court to analyze, in the 24 first instance, whether there was sufficient consideration to support the
User 25 Agreement.

For the reasons stated below, because the Court finds there is sufficient 26 consideration,
Finicity’s motion to compel arbitration is GRANTED. 27 //// 28 //// 1 BACKGROUND 2 As the
facts are well known to the parties and addressed in the Court’s prior 3 order, (see generally
Underlying Order (ECF No. 37)), the Court will not recite them 4 except when necessary.

As to the relevant procedural history, on August 21, 2023, 5 Finicity filed a Motion to Compel
Arbitration along with a Motion to Change Venue or 6 Dismiss. (Arb. Mot. (ECF No. 17); MTD
(ECF No. 19).) The Court denied the Motion to 7 Compel Arbitration, finding that Finicity failed
to provide reasonably conspicuous 8 notice of its terms and conditions relating to the User
Agreement, which contained the 9 arbitration provision, such that Plaintiff did not knowingly
consent to those terms.1 10 (See generally Underlying Order.)

11 Finicity appealed, and the Ninth Circuit reversed and remanded. (9th Cir. Mem. 12 (ECF No.
46); 9th Cir. Mandate (ECF No. 47).) Specifically, the Ninth Circuit concluded 13 that both the
transactional context and the visual presentation of Finicity’s disclosure 14 page provided Plaintiff
with reasonably conspicuous notice of Finicity’s terms, and that 15 by clicking “Next,” she
unambiguously manifested her assent to the User Agreement.

16 (9th Cir. Mem. at 4.) Having decided the threshold issue of consent, the Ninth Circuit 17 directed this Court to address, in the first instance, whether the User Agreement was 18 supported by sufficient consideration. (Id.)

The parties filed supplemental briefing on 19 that limited issue. (Suppl. Arb. Opp’n (ECF No. 51); Suppl. Arb. Reply (ECF No. 52).) 20 On October 16, 2025, Plaintiff filed a Notice of Supplemental Authority (ECF No. 54) 21 and, on October 22, 2025, Finicity filed objections (ECF No. 55).² The Motion to 22 Compel Arbitration is now fully briefed. 23 24 25 1 As the Court limits its discussion in this Order to the User Agreement and the arbitration provision, it 26 will not revisit its prior ruling denying in part the Motion to Change Venue or Dismiss Complaint.

27 2 Contrary to this Court’s standing order for civil cases, Plaintiff included argument in connection with the notice of supplemental authority. As Plaintiff did not seek leave to file a sur-reply, the Court will not 28 consider any of the legal arguments advanced in the notice. 1 LEGAL STANDARD 2 The Federal Arbitration Act (“FAA”) governs arbitration agreements.

9 U.S.C. 3 § 2. The FAA affords parties the right to obtain an order directing that arbitration 4 proceed in the manner provided for in the agreement. Id. § 4. Under the FAA, 5 federal courts must apply state-law principles that govern the formation of contracts 6 when determining whether the specific dispute between the parties is one that they 7 agreed to arbitrate.

Chabolla v. ClassPass Inc., 129 F.4th 1147, 1154 (9th Cir. 2025). 8 To decide on a motion to compel arbitration, a court must determine: (1) whether a 9 valid agreement to arbitrate exists and, if it does, (2) whether the agreement 10 encompasses the dispute at issue. *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 11 1017 (9th Cir. 2016). 12 Arbitration is a matter of contract, and the FAA requires courts to honor parties’ 13 expectations.

AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 351 (2011) (citing *Rent- 14 A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67–69 (2010)). However, parties may use 15 general contract defenses to invalidate an agreement to arbitrate. See *id.* at 339. 16 Thus, a court should order arbitration of a dispute only where satisfied that neither the 17 agreement’s formation nor its enforceability or applicability to the dispute is at issue.

18 See *Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287, 299–300 (2010). “Where 19 a party contests either or both matters, ‘the court’ must resolve the disagreement.” 20 *Id.* at 299. If a valid arbitration agreement encompassing the dispute exists, 21 arbitration is mandatory. See *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213 (1985). 22 Under section 3 of the FAA, a court, “upon being satisfied that the issue involved... is 23 referable to arbitration under such an agreement, shall on application of one of the 24 parties stay the trial of the action until such arbitration has been had in accordance 25 with the terms of the agreement....” 9 U.S.C. § 3.

26 The party seeking to compel arbitration bears the burden of proving by a 27 preponderance of the evidence the existence of a valid agreement to arbitrate. See 28 *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th Cir. 2015).

In 1 resolving a motion to compel arbitration, “[t]he summary judgment standard [of 2 Federal Rule of Civil Procedure 56] is appropriate because the district court’s order 3 compelling arbitration ‘is in effect a summary disposition of the issue of whether or not 4 there had been a meeting of the minds on the agreement to arbitrate.’” *Hansen v. 5 LMB Mortg.*

Servs., Inc., 1 F.4th 667, 670 (9th Cir. 2021) (quoting *Par-Knit Mills, Inc. v. 6 Stockbridge Fabrics Co.*, 636 F.2d 51, 54 n.9 (3d Cir. 1980)). Under this standard of 7 review, “[t]he party opposing arbitration receives the benefit of any reasonable doubts 8 and the court draws reasonable inferences in that party’s favor, and only when no 9 genuine disputes of material fact surround the arbitration agreement’s existence and 10 applicability may the court compel arbitration.” *Smith v. H.F.D.*

No. 55, Inc., No. 2:15- 11 cv-01293-KJM-KJN, 2016 WL 881134, at *4 (E.D. Cal. Mar. 8, 2016). A material fact is 12 genuine if “the evidence is such that a reasonable jury could return a verdict for the 13 nonmoving party.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 500 (9th Cir. 1992) 14 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Conversely, 15 “[w]here the record taken as a whole could not lead a rational trier of fact to find for 16 the nonmoving party, there is no ‘genuine issue for trial.’” *Id.* (quoting *Matsushita Elec.*

17 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). 18 DISCUSSION 19 Plaintiff contends that the User Agreement containing the arbitration provision 20 lacks consideration because Finicity had a pre-existing duty to provide “bank 21 connectivity” services to EveryDollar users like herself. (Suppl. Opp’n at 6.) Plaintiff 22 next argues that Finicity’s promise to arbitrate disputes is illusory and lacks 23 consideration because, in Clause 8, Finicity purportedly retains unilateral power to 24 change the agreement as to only some disputes.

(*Id.* at 10–11.) 25 Finicity counters that it does provide services demonstrating valuable 26 consideration, such as “gather[ing] data from PNC Bank,” and securing that data “by 27 encryption.” (Suppl. Reply at 7.) Finicity also asserts that Plaintiff misreads Clause 8 28 1 and that it is not a unilateral modification clause rendering the overall arbitration 2 agreement illusory.

(*Id.* at 9–14.) The Court addresses each argument in turn. 3 I. Valuable Consideration 4 California Civil Code section 1605 defines consideration as follows: 5 Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not 6 lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time 7 of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

8 9 “It is not enough, however, to confer a benefit or suffer prejudice for there to be 10 consideration....[T]he benefit or prejudice must actually be bargained for as the 11 exchange for the promise.” *Orcilla v. Big Sur, Inc.*, 244 Cal. App. 4th 982, 1006 (2016); 12 see also *Jara v. Suprema Meats, Inc.*, 121 Cal. App. 4th 1238, 1248 (2004) (“[T]he 13 Supreme Court authoritatively adopted the concept of consideration as a bargained- 14 for exchange”).

In assessing “good consideration,” California courts “direct legal 15 analysis to the process by which the parties had arrived at that exchange—[asking] was 16 it the product of a bargain?” *Jara*, 121 Cal. App. 4th at 1249 (citations and internal 17 quotation marks omitted).

The Civil Code section expresses this analytical emphasis 18 on bargain by the phrase “as an inducement to the promisor.” Cal. Civ. Code § 1605. 19 A. Finicity’s Services 20 The issue before the Court is whether EveryDollar’s original inducement offer of 21 “bank connectivity” is legally distinct from the services Finicity offers (and Plaintiff 22 accepted), which Finicity describes, in part, as “facilitating and securing this [bank] 23 connection.” (Suppl.

Reply at 8.) Finicity contends it provides additional valuable 24 services such that the Court should find sufficient consideration. (Id. at 7.) Keeping in 25 mind that “all the law requires for sufficient consideration is the proverbial 26 ‘peppercorn,’” *San Diego City Firefighters, Local 145 v. Bd. of Admin. of San Diego 27 City Emps.’ Ret. Sys.*, 206 Cal. App.

4th 594, 619 (2012) (citations omitted), the Court 28 1 agrees with Finicity that there is sufficient consideration to support the User 2 Agreement between the parties. 3 Taking a step back, the Court first evaluates the terms “bank connectivity,” the 4 offer Plaintiff accepted when first forming a contract with EveryDollar. When 5 interpreting words in contract disputes, California courts give them “their ordinary 6 sense, according to the plain meaning a layperson would attach to them.” *Gravillis v. 7 Coldwell Banker Residential Brokerage Co.*, 143 Cal. App.

4th 761, 774–75 (2006) 8 (citation omitted). “The purpose of the law of contracts is to protect the reasonable 9 expectations of the parties.” Id. (citations omitted). And “in construing arbitration 10 provisions, courts may also consider the subject matter of the agreement and the 11 industry involved.” Id. (citations omitted). 12 While in the Court’s view the phrase “bank connectivity” is straightforward and 13 readily understood, to avoid any doubt the Court looks to the dictionary definition of 14 the words “bank” and “connectivity” to further understand their plain meaning.

15 Merriam-Webster’s definition for the noun “bank” is “an establishment for the custody, 16 loan, exchange, or issue of money, for the extension of credit, and for facilitating the 17 transmission of funds.”³ Next, the definition for the noun “connectivity” is “the ability 18 to connect to or communicate with another computer or computer system.”⁴ Thus, an 19 ordinary person would likely understand EveryDollar’s offer of “bank connectivity” to 20 mean the ability

to communicate with and access one's bank and its computer 21 systems about the account funds held there.

22 Turning to Finicity's User Agreement, the definition of "services" includes, 23 among other things, "retrieval of financial records and other Consumer Data... from 24 you or your Provider... as directed and/or authorized by you." (User Agreement 25 3 Definition of "bank" (noun): Merriam-Webster Dictionary Online (2025) <[https://merriam- 26 webster.com/dictionary/bank](https://merriam-webster.com/dictionary/bank)> [as of Sept.

30, 2025], archived at <<https://perma.cc/KL76-UNMG>>. 27 4 Definition of "connectivity" (noun): Merriam-Webster's Dictionary Online (2025) < <https://www.merriam-webster.com/dictionary/connectivity>> [as of Sept. 30, 2025], archived at 28 <<https://perma.cc/54AV-LGPA>>. 1 (ECF No. 21-1) ¶ 1.)

Moreover, EveryDollar's website explains that "Finicity is the 2 third-party provider we use to facilitate the connection between your bank and 3 EveryDollar," which helps to "maintain the privacy and security of [Plaintiff's] bank 4 accounts." (Suppl. Reply at 7.)

Thus, while it facially appears that Finicity is offering 5 "bank connectivity," a service to which Plaintiff is already entitled by means of the prior 6 payment to EveryDollar, it is not all that Finicity offers. The language of the User 7 Agreement makes plain that Finicity also facilitates and secures a robust collection of 8 "Consumer Data," in addition to other services: 9 The term "Services" includes, but is not limited to, the provision of any of our products and services, including 10 verification of income, verification of assets, verification of employment, retrieval of financial records and other 11 Consumer Data (as hereafter defined) from you or your Provider(s) of Provider Services (each term as hereafter 12 defined) as directed and/or authorized by you pursuant to the terms of this Agreement, regardless of the manner in 13 which you receive or benefit from the Services, whether by email or mail, through a website or mobile application, by 14 telephone, or through any other mechanism by which a Service is performed by us in accordance with this 15 Agreement.

16 (User Agreement ¶ 1.) (italics added). The End User Agreement clarifies that 17 "Consumer Data" includes both "Provider Account Data" and "Uploaded Data."⁵ (Id. 18 ¶ 3.) For example, Finicity is authorized to "access, use and share [Plaintiff's] Provider 19 Account Data," "(i) collect [Plaintiff's] Consumer Credentials and Uploaded Data, (ii) 20 instruct Provider on [Plaintiff's] behalf to provide Provider Account Data to Finicity in 21 order to provide Services... (iii) retain and use...

Consumer Credentials for 22 provision of the Services... (v) compare Provider Account Data and Uploaded 23 Data... and/or (vi) disclose and share [Plaintiff's] Consumer Data to service providers 24 and/or resellers to use in accordance with applicable law and for research and 25 5

“Provider Account Data” includes “account access number(s), password(s), security question(s) and 26 answer(s), account number(s), login information, and any other security or access information, and the actual data in your account(s) with such Provider(s) such as bank and other account balances, credit 27 card charges, debits and deposits.” (User Agreement ¶ 3.)

In turn, “Uploaded Data” encompasses user-uploaded “financial and/or employment documents, statements, records, or other information,” 28 which is “stored and used in the Services.” (Id.) 1 development.” (Id.) If that were not clear enough, the End User Agreement later 2 reinforces that Finicity and its third-party affiliates are authorized to “collect [Plaintiff’s] 3 Consumer Data, (b) reformat and manipulate such Consumer Data, (c) create and 4 provide hypertext links to your Provider(s), (d) access the Providers’ websites using 5 your Consumer Data, (e) update and maintain [Plaintiff’s] account information, (f) 6 address errors or service interruptions, (g) enhance the type of data and services we 7 can provide to you in the future, and (h) take such other actions as are reasonably 8 necessary....” (Id.)

The services that Finicity offers seemingly go beyond mere 9 ability to access one’s bank account about the funds held there. And Plaintiff has 10 conceded that Finicity “collects users’ login credentials for purposes that far exceed 11 the disclosed scope... and acquires massive amounts of data....” (Compl. ¶¶ 18– 12 19.)

As such, the breadth of services Finicity provides have some value, which is all 13 that is necessary. “[T]he quantum of consideration is generally irrelevant as long as it 14 has some value.” *Huong Que, Inc. v. Luu*, 150 Cal. App. 4th 400, 415 (2007) (cleaned 15 up and citation omitted). 16 The primary case Plaintiff provides is distinguishable.

In *Seneca v. Homeaglow, 17 Inc.*, the court denied a motion to compel arbitration where it found that defendant’s 18 modified terms and conditions, which plaintiffs purportedly accepted, lacked 19 consideration. No. 8:23-cv-02308-CJC-ADS, 2024 WL 750029, at *4 (C.D. Cal. Feb. 7, 20 2024).

In *Seneca*, the plaintiffs agreed to and paid for cleaning services for a certain 21 monthly fee, accepting upfront certain terms on defendant’s website. *Id.* at *4–5. 22 Subsequently, when plaintiffs reached a different page to choose a cleaner and 23 schedule the cleaning service, defendant presented its modified terms and 24 conditions, including the arbitration provision.

Id. at *5. The court found that 25 defendant was either attempting to form a new contract or modify an existing contract 26 and “sought to extract additional value—such as abandoning important rights—from 27 Plaintiffs without providing any additional consideration in turn.” *Id.* Concluding 28 there was no consideration to support the attempted contract modification, the court 1 denied the motion to compel arbitration.

Id. at *6. Unlike in Seneca where the 2 defendant seeking to enforce the arbitration provision was the same entity who made 3 the website and formed the original contract with plaintiffs, here, Plaintiff is not suing 4 the app provider EveryDollar, but third party Finicity.

The supplemental authority 5 Plaintiff provides is distinguishable for the same reason. In Fagan v. Nexo Capital Inc., 6 the court found that an amendment to a contract between the original contracting 7 parties was unsupported by new and additional consideration. No. 4:24-cv-466, 2025 8 WL 2446301, at *15 (E.D. Tex. Aug. 25, 2025).

Here, there is no proposed 9 amendment at issue, but an entirely separate agreement between Plaintiff and third 10 party Finicity. 11 As explained above, the Court concludes that Plaintiff formed an independent 12 contract with Finicity who offered a variety of services, over and above bank 13 connectivity, and which is supported by consideration. 14 B. Agreement to Arbitrate 15 In the interest of completeness, the Court addresses Plaintiff's second 16 argument.

The Ninth Circuit has held that a "promise to be bound by the arbitration 17 process itself serves as adequate consideration." Circuit City Stores, Inc. v. Najd, 294 18 F.3d 1104, 1109 (2002). 19 Plaintiff contends that Finicity's promise to be bound by the arbitration process 20 is illusory and lacks consideration because Finicity can unilaterally modify the 21 arbitration agreement as it relates to disputes involving Finicity's websites but not as 22 to Finicity's services.

(See Suppl. Opp'n at 13.) Finicity advances several reasons why 23 Plaintiff misreads Clause Eight, with which the Court largely agrees 24 Section 11 of the End User Agreement contains the Arbitration Agreement. 25 The first sentence provides that "Finicity and [Plaintiff] agree to arbitrate all disputes 26 and claims between us arising out of this Agreement directly related to the Services or 27 Websites....

This agreement to arbitrate is intended to be broadly interpreted and to 28 make all disputes and claims between us directly relating to the provision of any 1 Service and/or [Plaintiff's] use of any Website subject to arbitration to the fullest extent 2 permitted by law." (User Agreement ¶ 11(1).)

In turn, Clause Eight of the Arbitration 3 Agreement explains that, 4 [n]otwithstanding any provision in this Agreement to the contrary, [the parties] agree that if Finicity makes any 5 change to this arbitration provision (other than a change to the Notice Address) during the term, or subsequent to 6 [Plaintiff's] purchase of any Service, [Plaintiff] may reject any such change and require Finicity to adhere to the language 7 in this provision as written at the time of [Plaintiff's] enrollment or purchase if a dispute between [the parties] 8 arises regarding such Service.

9 10 (Id. ¶ 11(8).) Plaintiff unduly focuses on the phrase "regarding such Service" to 11 contend that she has no right to reject any changes to arbitration agreement 12 involving other non-Service-related claims, such as her claim that the design of 13 Finicity's widget deceived her into

entering her bank credentials. Plaintiff 14 claims that the design of the widget “precedes the performance of Finicity’s 15 bank connectivity services.” (Suppl.

Opp’n at 11.) Plaintiff has it backwards. As 16 figures 7, 8, and 9 in the Complaint demonstrate, the first opportunity at which 17 Plaintiff can affirmatively enter any bank credentials is on the screen that 18 appears after she has already clicked “Next” and affirmatively enrolled in 19 Finicity’s User Agreement and privacy policy. (Compl. ¶ 24.)

Thus, Plaintiff’s 20 phishing claim related to the design of Finicity’s widget, along with any service- 21 related claims, arises after this affirmative exchange. (Id.) 22 The Court does not interpret the language of Clause Eight to be a “hedged 23 modification provision” permitting changes to only service-related claims but 24 understands it to grant Plaintiff the express power to reject any modifications to the 25 arbitration agreement that Finicity might propose.

By its terms, Clause Eight 26 empowers Plaintiff to “require Finicity to adhere to the language in this provision as 27 written at the time of your enrollment or purchase.” (User Agreement ¶ 11(8).) (italics 28 added).

Because Plaintiff “enrolled” when she accepted the terms of the User 1 | Agreement and its arbitration provisions, all her claims, including any design-related 2 | claims, are subject to arbitration as the first sentence of section 11 states: “Finicity and 3 | [Plaintiff] agree to arbitrate all disputes and claims between us arising out of this 4 | Agreement directly related to the Services or Websites.” (/d.

9 11(1).) 5 Accordingly, because Finicity promises to be bound by the arbitration 6 | process and it is not an illusory promise, it constitutes sufficient consideration. Najd, 294 F.3d at 1109. 8
CONCLUSION 9 For the foregoing reasons, IT IS HEREBY ORDERED THAT: 10 1. Defendant's Motion to Compel Arbitration (ECF No. 17) is GRANTED; and 11 2.

The Clerk of the Court is directed to administratively close this case. 12 13 IT IS SO ORDERED.
14 | Dated: _December 9, 2025 “Daniel A CoD tto— Hon. Daniel alabretta UNITED STATES
DISTRICT JUDGE 16 17 18 | bJc8 - Lawrence.23ev1005.motion to compel arbitration 19 20 21
22 23 24 25 26 27 28 441