

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Martinez v. Choose Your Horizon, Inc.

No. 24-cv-02798-LB, Order (N.D. Cal. Aug. 31, 2025) · No. 24-cv-02798-LB · Decided September 1, 2025

OPINION

Martinez v. Choose Your Horizon, Inc.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 San Francisco Division 11 KAREN MARTINEZ, et al., Case No. 24-cv-02798-LB 12

Plaintiffs, ORDER DENYING MOTION TO

DISMISS AND GRANTING MOTION

13 v. TO COMPEL ARBITRATION

14 CHOOSE YOUR HORIZON, INC., Re: ECF No. 39

15 Defendant. 16

17 INTRODUCTION

18 In this putative class action, plaintiffs Karen Martinez and Eli Silva — consumers of defendant
19 Choose Your Horizon’s (CYH’s) services for ketamine-treatment products sold via CYH’s
website 20 — allege that CYH intercepted their personally identifying information (PII) and
personal health 21 information (PHI) and disclosed it to third parties, in violation of California
privacy statutes. CYH 22 moved to dismiss for lack of personal jurisdiction — it is incorporated
and headquartered 23 elsewhere, provides services nationally, and derives thirteen percent of its
revenue from California 24 consumers — and, alternatively, to compel plaintiff Martinez’s claims
to arbitration under its terms 25 of service. The plaintiffs counter that shipping ketamine products
to the district establishes personal 26 jurisdiction, the arbitration clause does not preclude a
lawsuit for interception of information before 27 the plaintiff accepted the terms of service, the
arbitration clause covers ketamine services but not 1 privacy breaches, and the clause is a
procedurally unconscionable contract of adhesion that is also 2 substantively unconscionable
because it does not specify the plaintiffs’ fees. 3 There is personal jurisdiction: CYH did business
with known California customers, required 4 and facilitated their communication with California
medical clinicians, and intercepted their 5 personal identifying information. *Briskin v. Shopify,*
Inc., 135 F.4th 739, 752–53, 756–58 (9th Cir. 6 2025) (en banc). The arbitration clause is not
unconscionable, and it applies to plaintiff Martinez’s 7 claims.¹

8 STATEMENT

9 1. The Alleged Interceptions and Claims 10 CYH, a Delaware corporation with its principal
place of business in Texas, sells prescription 11 oral ketamine treatments to consumers via its
website chooseketamine.com. Prospective customers 12 must complete a questionnaire about their
mental and physical health and then meet with a CYH 13 medical professional, who must approve
the prescription and purchase. The ketamine is mailed to 14 customers, who self-administer the
first dose, supervised by CYH medical professional via a virtual 15 call.² The plaintiffs allege that
CYH emphasizes on its website and in marketing materials that it is a 16 medical-services
provider, including by requiring an appointment with a doctor before fulfilling a 17 prescription.³
CYH's CEO declares that CYH facilitates the scheduling of appointments between 18 prospective
patients and medical providers, does not determine treatment suitability, and merely 19 allows the
patients to "pre-purchase ketamine therapy treatment packages that are dependent on the 20
establishment of a doctor-patient relationship that CYH does not control."⁴ 21 Plaintiffs Karen
Martinez and Eli Silva, citizens of California, visited CYH's website in April 22 23 1 CYH does
not contend that plaintiff Silva is subject to the arbitration agreement. Opp'n – ECF No. 42 at 9
n.2 (making this point); Reply – ECF No. 43 (arguing only that plaintiff Martinez is bound by 24
the arbitration clause). Citations refer to material in the Electronic Case File (ECF); pinpoint
citations are to the ECF-generated pages at the top of documents. 25 2 First Am. Compl. (FAC) –
ECF No. 35 at 2 (¶¶ 26), 7–8 (¶¶ 51–53); Holland Suppl. Decl. – ECF No. 43-1 at 1–2 (¶¶ 2–6)
(CYH does not ship or otherwise distribute the ketamine treatment packages); cf. 26 Opp'n – ECF
No. 42 at 6 (contending that CYH ships physical medication); FAC – ECF No. 35 at 7 (¶ 51)
(alleges that "medication is shipped to the patient" without specifying the shipper). 27 3 FAC –
ECF No. 35 at 7–8 (¶¶ 51–53). 1 2024 and August 2023, respectively, and completed the
questionnaires. Ms. Martinez purchased 2 ketamine treatments.⁵ Thereafter, both received
advertisements from CYH and other advertisements 3 related to ketamine treatment via Facebook
(now Meta Platforms), without their consent.⁶ 4 CYH "provides ketamine therapy" in twenty-one
states, including California, and Naltrexone 5 (an opioid antagonist) in all fifty states.⁷ It derives
thirteen percent of its revenue from California 6 and does not hyper-target advertising to
California residents and instead advertises in a 7 "substantially similar manner to all other states in
which it actively provides services."⁸ 8 The plaintiffs sued CYH individually and on behalf of a
California class for three counts of 9 invasion of privacy, in violation of the California Invasion of
Privacy Act, Cal. Penal Code § 631, 10 the California Confidentiality of Medical Information Act,
Cal. Civ. Code § 56.10, and the 11 California Constitution.⁹ 12 13 2. The Arbitration Clause 14
Beginning on March 28, 2024, CYH's terms of use had the following clause: 15 Any controversy,
dispute or claim arising out of, or relating in any way to these Terms or your use of the Site or
Service will be resolved by binding arbitration rather 16 than in court. There is no judge or jury in
arbitration, and court review of an arbitration award is 17 limited. Your claims cannot be brought
as a class action. However, an arbitrator can 18 award on an individual basis the same damages
and relief as a court. Judgment on the award rendered by the arbitrator(s) may be entered in any

court having 19 jurisdiction thereof. 20 Choose Your Horizon and you each agree that any dispute resolution proceedings 21 will be conducted only on an individual basis and not in a class or representative 22 23 5 FAC – ECF No. 35 at 2–3 (¶¶ 27–28, 33–34). 24

6 Id. at 2 (¶ 25), 3 (¶ 31), 4 (¶ 37).

25 7 Holland Decl. – ECF No. 39-1 at 5 (¶ 17) (ketamine therapy in Arizona, Colorado, California, Texas, Florida, Georgia, Ohio, Connecticut, Washington State, Michigan, Massachusetts, New Hampshire, 26 New York, Tennessee, Montana, Iowa, Minnesota, Maine, Oregon, Wisconsin, and Virginia). Naltrexone is an opioid antagonist. Fed. R. Evid. 201(b) (authorizing judicial notice). 27 8 Holland Decl. – ECF No. 39-1 at 5 (¶¶ 18–19). action. If for any reason a claim proceeds in court rather than in arbitration, Choose 1 Your Horizon and you each waive any right to a jury trial. 10 2 In April 2024, the website required customers, like Ms. Martinez, to check a box agreeing to 3 the website’s terms of service and privacy policy, both presented via a hyperlink, before 4 completing the purchase.¹¹ The purchase page listed the purchased treatment package and cost and 5 — in this order — required a customer to input patient information (email, name, billing address, 6 and shipping address) and credit-card information (number, CVC, and expiration date), check the 7 box “I agree to the Terms of Use and Privacy Policy,” hyperlinked in blue, and then click Pay to 8 complete the transaction.¹² 9 In April 2024, after customers paid for treatments, the website automatically redirected them to 10 a page to schedule a mandatory consultation — after agreeing to the website’s terms of service and 11 privacy policy, via a blue hyperlink — with a medical provider.¹³ The scheduling page required 12 selecting a clinician in the customer’s state, inputting personal-identification information (name, 13 email, date of birth, driver’s license or state ID number, and shipping address), and agreeing — in a 14 final section titled Terms & Conditions to the blue hyperlinked Terms of Use, Privacy Policy, and 15 Notice of Privacy Policy. The section reads, “I agree to Terms of Use [blue hyperlink to website], 16 Privacy Policy [same], and Notice of Privacy Practices [same],” and is followed by a checkbox: “I 17 have read and agreed to the terms above.” Only after completing the process can the customer click 18 Complete Appointment.¹⁴ CYH’s records confirm that Ms. Martinez inputted the required personal 19 information, confirmed that she read and agreed to the terms of service and privacy policy, and then 20 scheduled an appointment with a clinician.¹⁵ 21 22 23 24 10 Holland Decl. – ECF No. 39-1 at 3–4 (¶ 12), 5 (¶ 16). The omitted paragraph describes initiating arbitration by sending an email. 25 11 Id. at 1–2 (¶ 4). 26 12 Id.; Screenshot, Ex. A to id. – ECF No. 39-2. 13 Holland Decl. – ECF No. 39-1 at 2–3 (¶¶ 8–11). 27 14 Id.; Screenshot, Ex. B to id. – ECF No. 39-3. 1 3. Procedural History 2 The court has subject-matter jurisdiction under the Class Action Fairness Act. 28 U.S.C 3 § 1332(d). The parties consented to magistrate-judge jurisdiction.¹⁶ Id. § 636(c). The court held a 4 hearing on June 26, 2025.

5 ANALYSIS

6 1. Personal Jurisdiction 7 A plaintiff opposing a defendant’s challenge to personal jurisdiction must establish that 8 jurisdiction is proper. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir.

2015). The court may 9 consider affidavits and other evidence. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001), 10 abrogated on other grounds by *Williams v. Yamaha Motor Co.*, 851 F.3d 1015 (9th Cir. 2017). 11 When a defendant relies on written materials, rather than an evidentiary hearing, the plaintiff need 12 make only a prima facie showing of jurisdictional facts to withstand a motion to dismiss. *Ranza*, 13 793 F.3d at 1068. Uncontroverted allegations are taken as true, and conflicts between parties — 14 such as conflicting statements in affidavits — must be resolved in the plaintiff’s favor. *Id.* A court 15 may not assume as true allegations in a pleading that are contradicted by affidavit. *Mavrix Photo, 16 Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011); accord *Ranza*, 793 F.3d at 1068 (a 17 plaintiff may not rest on the bare allegations of the complaint). 18 No federal statute conveys personal jurisdiction. The court thus applies California law. Fed. R. 19 Civ. P. 4(k)(1)(A); *Herbal Brands, Inc. v. Photoplaza, Inc.*, 72 F.4th 1085, 1089 (9th Cir. 2023). 20 California’s long-arm statute provides for personal jurisdiction to the maximum that due process 21 allows. Cal. Civ. Proc. Code § 410.10; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 22 291 (1980). A court may exercise personal jurisdiction over a nonresident defendant with “certain 23 minimum contacts” with the forum “such that the maintenance of the suit does not offend 24 traditional notions of fair play and substantial justice.” *Mavrix*, 647 F.3d at 1223 (cleaned up) 25 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). 26 Personal jurisdiction is general or specific. *Bristol-Myers Squibb Co. v. Super. Ct.*, 582 U.S. 27 1 255, 262 (2017). The plaintiffs assert specific personal jurisdiction. 27 The court’s specific- 2 jurisdiction inquiry focuses on the relationship among the defendant, the forum, and the litigation. 3 *Walden v. Fiore*, 571 U.S. 277, 284 (2014). The Ninth Circuit employs a three-part test: 4 (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he 5 purposefully avails himself of the privilege of conducting activities in the forum, 6 thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the defendant’s forum- 7 related activities; and 8 (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable. 9 10 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The plaintiff must 11 prove the first two parts. *Picot v. Weston*, 780 F.3d 1206, 1211–12 (9th Cir. 2015). If it does, then 12 the defendant must present a compelling case that the presence of other considerations renders 13 jurisdiction unreasonable. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985). 14 A plaintiff satisfies the first part by “demonstrating that the defendant either purposefully 15 availed itself of the privilege of conducting activities in the forum or purposefully directed its 16 activities at the forum,” *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th 17 Cir. 2012), abrogated on other grounds by *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064 18 (9th Cir. 2016), or “some combination thereof,” *Yahoo! Inc. v. La Ligue Contre Le Racisme et*

19 *L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc) (per curiam). For claims sounding in tort, like the privacy violations asserted here, the Ninth Circuit most often applies a purposeful-direction test.¹⁸ *Briskin*, 135 F.4th at 752–53, 751 & n.10 (the rule is not rigid and allows “some combination thereof”).²³ Purposeful direction exists if the defendant (1) commits an intentional act (2) expressly aimed at (3) the forum (3) that causes harm that the defendant knows will be suffered in the forum. *Washington Shoe*, 704 F.3d at 673. The defendant need not be physically present in the forum state: “it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence.” *Burger King*, 471 U.S. at 476. Instead, the so-called *Calder* effects test focuses on the forum where the defendant’s acts were felt, whether or not the acts themselves occurred in the forum. *Mavrix*, 564 F.3d at 1288. There is personal jurisdiction when the acts are such that the defendants “must reasonably anticipate being haled into court” in the forum to answer for their acts. *Calder v. Jones*, 465 U.S. 783, 788–90 (1984) (cleaned up) (asserted specific jurisdiction over the non-resident *National Enquirer* for a libelous story distributed in California about a well-known California actor because the acts were aimed at California, and the actor suffered injury here).¹⁰ Parts one and three of the purposeful-direction test are met: CYH’s alleged acts were intentional¹¹ and caused harm here. The issue is part two: whether CYH expressly aimed its conduct at California. CYH argues that its website lacks a forum-specific focus, while the plaintiffs argue that shipping products to the district is enough.¹⁹ Both parties cite *Herbal Brands, Inc. v. Photoplaza, Inc.* There, *Herbal Brands*, a Virginia corporation with its principal place of business in Arizona,¹⁵ sued a New York company selling *Herbal Brand* products on Amazon, in violation of the Lanham Act. Because two factors existed — the product sales must be part of the defendant’s regular course of business (as opposed to random, isolated, or fortuitous), and the defendant must exercise some level of control over the ultimate distribution of products beyond placing them into the stream of commerce — the court found specific personal jurisdiction. *Herbal Brands*, 72 F.4th at 1088–89.²⁰ CYH contends that there is no personal jurisdiction here because its website and business have no California-specific focus: its California revenues are thirteen percent of revenues, it does not hyper-target California and treats all states similarly, and it merely allows potential ketamine patients to pre-purchase ketamine therapy packages that depend on independent doctor approval,²⁴ which is not a forum-specific focus.²⁰ The plaintiffs counter that CYH uses its website to ship medication and provide live medical appointments to California customers, which satisfies the test.¹⁹ Both parties focus on this prong. Mot. – ECF No. 39 at 14–17; Opp’n – ECF No. 42 at 7–9.¹ *Herbal Brands* factors: product sales that are part of CYH’s regular course of business and exercise control over the distribution of products beyond placing them into the stream of commerce.²¹ This lawsuit involves known California customers, who completed forms to obtain ketamine treatment, had a consultation with a California clinician, and had their PII intercepted, all through

5 CYH's online business, which serves customers in twenty-one states, including California. CYH's 6 business model is not a passive website. *Id.* at 1088–92; *Briskin*, 135 F.4th at 752–53, 758. 7 In *Briskin*, a decision issued after briefing in this case, the Ninth Circuit held that the 8 ecommerce platform Shopify was subject to personal jurisdiction in California. There, a California 9 customer bought athletic apparel online from a California retailer, and Shopify — which 10 facilitated the credit-card transaction — embedded tracking cookies that harvested personal 11 information (including geolocation, IP address, and browser identity), developed a customer 12 profile, and marketed it widely, including to California merchants. *Briskin*, 135 F.4th at 745–46. 13 Shopify's acts were intentional, and they violated the customers' rights to data privacy and 14 security, thus satisfying factors one and three. *Id.* at 756 (parties did not dispute these factors). 15 The disputed issue was whether Shopify's acts were expressly aimed at California under factor 16 two, or, as Shopify contended, a “mere happenstance arising from the California consumers' 17 choice to do business with a merchant” that had contracted with Shopify. *Id.* The Ninth Circuit 18 held that Shopify knew the customers' location, and obtaining their customer data for its own 19 commercial gain was express aiming. *Id.* (analogizing to pre-internet cases where California courts 20 had specific jurisdiction over persons who entered their homes by deceptive means to obtain 21 personal information for commercial gain). It did not matter that Shopify operated nationally and 22 was agnostic about its customers' location: operating everywhere does not mean that personal 23 jurisdiction lies only in a corporation's principal place of business and state of incorporation. *Id.* at 24 757 (citing *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 592 U.S. 351, 355, 363 (2021)). 25 Shopify relied on earlier precedent, *AMA Multimedia, LLC v. Wanat*, to argue that because eight 26 percent of its worldwide merchants were in California, there was no forum-specific focus. *Id.* (citing 27 1 *AMA*, 970 F.3d 1201, 1210–11 (9th Cir. 2020)). *AMA* misrelied on *Mavrix* to conclude that a porn 2 website was not expressly aimed at the United States because the market for adult content was 3 global. *Id.* at 757 (citing *AMA*, 970 F.3d at 1210 and analyzing *Mavrix*, 647 F.3d at 1230). Factors 4 for evaluating whether a nonresident defendant has done “something more” can be the interactivity 5 of the defendant's website, the geographic scope of the defendant's commercial ambitions, and the 6 individual targeting of a forum plaintiff. *Id.* at 757–58. *AMA*'s adding a requirement for a forum- 7 specific focus had no basis in Ninth Circuit precedent and ran contrary to Supreme Court authority 8 establishing jurisdiction over a company in a state where its product causes injury when the 9 company serves, “directly or indirectly, the market for its product in many states.” *Id.* at 758 10 (quoting *World-Wide Volkswagen*, 444 U.S. at 297) (citing *Ford Motor*, 592 U.S. at 355, 365) (*Ford* 11 purposefully availed itself of Montana's and Minnesota's markets, even though its business is 12 everywhere). The Ninth Circuit thus overruled *AMA* and held that even when an interactive 13 platform cultivates a national audience for commercial gain, it expressly aims its conduct toward a 14 forum state when its contacts are its own choice, and not random, isolated, or fortuitous. *Id.* (citing 15 *Mavrix*, 647 F.3d at 1230 and *Ford Motor*, 592 U.S. at 359). The court distinguished

Walden, where 16 — in a lawsuit brought by Nevada residents against a Georgia defendant contesting an asset seizure 17 at a Georgia airport while the plaintiffs were in transit to Nevada — the Nevada court lacked 18 personal jurisdiction over the defendant, who had no link to the Nevada forum. By contrast, Shopify 19 knew about its California customers, conducted business with them, interacted with them as an 20 intermediary for merchants, installed tracking software on customer devices in California, and 21 tracked their activities. *Id.* at 758–59 (analyzing Walden, 571 U.S. at 280–81, 285, 288–90). 22 CYH’s acts meet these criteria: CYH knew about its California customers, conducted business 23 with them, required and facilitated their communication with California medical clinicians, and 24 intercepted their PII. Despite its national platform, CYH’s contacts with California are express 25 aiming because they are its choices and are not random, isolated, or fortuitous. *Id.* at 756–59. 26 CYH’s arguments — that its California revenues are only thirteen percent of overall revenues and 27 it does not hyper-target California and instead treats all states similarly — are foreclosed by 1 The plaintiffs also satisfied part two of the test: their claims must arise out of or be related to 2 the CYH’s contacts with the forum state. *Id.* at 760; *Ford Motor*, 592 U.S. at 359. Part two 3 requires an affiliation between the forum state and the controversy, subjecting the company to the 4 state’s regulation. *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 983 (9th Cir. 2021). Under *Ford* 5 *Motor*, “arise out of” and “relate to” are alternatives: “for a claim to arise out of a defendant’s 6 forum contacts requires causation, while a claim can relate to those contacts[] even absent 7 causation.” *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 504–05 (9th Cir. 2023). 8 The plaintiffs’ claims arise out of CYH’s contacts with its California customers, including 9 requiring the customers’ communication with California medical clinicians and intercepting their 10 PII. The claims also relate to CYH’s California contacts because the plaintiffs allege injury caused 11 by CYH’s contacts with its California customers, intercepting their PII and causing privacy 12 injuries. *Briskin*, 135 F.4th at 760. 13 Part three of the test requires CYH to present a compelling case that the exercise of jurisdiction 14 is not reasonable. *Schwarzenegger*, 374 F.3d at 802. The Ninth Circuit applies a seven-factor 15 balancing test to assess the reasonableness of asserting personal jurisdiction: (1) the extent of the 16 defendant’s interjection into the forum state’s affairs; (2) the defendant’s burden defending a case 17 in the forum; (3) any conflict with the sovereignty of the defendant’s state; (4) the forum state’s 18 interest in adjudicating the dispute; (5) the most efficient resolution of the controversy; (6) the 19 importance of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the 20 existence of an alternative forum. *Herbal Brands*, 72 F.4th at 1096. CYH does not contend that it 21 is burdensome to defend here, that jurisdiction here would create a conflict, that California lacks 22 an interest in defending California consumers’ privacy rights, or that California would not provide 23 an efficient resolution of the dispute. Its pre-*Briskin* argument about the extent of its business 24 activities in California implicates factors one and two, the extent of its interjection into the forum 25 state’s affairs and the burden of defending here. The Ninth Circuit rejected a similar argument: the 26 extent of Shopify’s purposeful direction of its

business activities supported specific personal jurisdiction and, balancing all the factors, the exercise of personal jurisdiction in California was jurisdiction because it could lead to specific jurisdiction in all fifty states; that result might be true, and it might not, depending on whether other states had laws like California's protecting their citizens from like privacy violations). That result controls here: balancing all factors, personal jurisdiction in California is reasonable.

2. Arbitration Clause

7 Under the Federal Arbitration Act (FAA), "arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67 (2019); *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1259 (9th Cir. 10 2017) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). "Section 2 of the FAA makes agreements to arbitrate 'valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'" *Poublon*, 846 F.3d at 1259 (citing 9 U.S.C. § 2). "By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that the district court 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) (cleaned up) (citing 9 U.S.C. §§ 3–4). "The court's role under the Act is therefore limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000) (citing 9 U.S.C. § 4). "If the response is affirmative on both counts, then the Act requires the court to enforce the arbitration agreement in accordance with its terms." *Id.*

22 The issue is whether CYH can compel plaintiff Martinez to arbitration. She raises three grounds: (1) the arbitration clause does not apply retroactively to PII and PHI that she disclosed before she agreed to the arbitration clause; (2) the privacy claims are not within the scope of the arbitration agreement, which covers only claims about ketamine treatment, not privacy claims; and (3) the arbitration clause is procedurally and substantively unconscionable: it is procedurally unconscionable as a contract of adhesion and is hidden on an unknown page in the terms of service, and it is substantively unconscionable because it does not specify what the plaintiff must pay.

22 The arbitration agreement is not procedurally or substantively unconscionable, and it covers all claims.

2.1 Unconscionability

5 Arbitration agreements are unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening the FAA. *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). In California, the party opposing arbitration has the burden of proving any defense, such as unconscionability. *Poublon*, 846 F.3d at 1260 (quoting *Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 236 (2012)).

12 In California, contractual unconscionability has procedural and substantive components. *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 114 (2000). Procedural

unconscionability focuses on oppression or surprise due to unequal bargaining power, and 15 substantive unconscionability focuses on overly harsh or one-sided results. *Id.* Both must be 16 present but not in the same degree. *Id.* There is a sliding scale: the more substantively oppressive 17 the contract term, the less evidence of procedural unconscionability is needed to conclude that the 18 term is unenforceable, and vice versa. *Poublon*, 846 F.3d at 1260 (quoting *Sanchez v. Valencia* 19 *Holding Co.*, 61 Cal. 4th 899, 910 (2015)). 20 The plaintiff contends that the arbitration clause is procedurally unconscionable: it is a contract 21 of adhesion because she had to sign it to buy CYH’s products, and it was hidden in the twenty-six 22 subsections of the agreement and was not bolded, capitalized, or otherwise apparent.²³ It is not 23 procedurally unconscionable: the plaintiff agreed to the terms of service, which were conspicuous. 24 First, the plaintiff does not deny that she accepted the terms of service: she had to check a box 25 agreeing to the website’s terms of service and privacy policy, both presented via a conspicuous 26 27 22 Opp’n – ECF No. 42 at 15–17. 1 blue hyperlink, after inputting all billing, shipment, and payment information and before clicking 2 Pay to complete her purchase. Then, the website automatically redirected her to schedule a 3 mandatory consultation, which required her to select a clinician, input her identification and 4 shipping information, and then agree — in a final section titled Terms & Conditions to the blue 5 hyperlinked Terms of Use, Privacy Policy, and Notice of Privacy Policy — to the terms of use and 6 privacy policy by checking a box, confirming that she had “read and agreed to the terms,” and 7 then clicking Complete Appointment. Courts routinely enforce a plaintiff’s acceptance of terms of 8 service under circumstances like these. *Oberstein v. Live Nation Entm’t, Inc.*, 60 F.4th 505, 515– 9 16 (9th Cir. 2023) (hyperlink to terms of service in a bright-blue font; notices were not buried but 10 were placed on top of or below each action button); *Cordas v. Uber Techs. Inc.*, 228 F. Supp. 3d 11 985, 990 (N.D. Cal. 2017) (clicked DONE to complete the sign-up process on a page clearly 12 displaying a notice that by creating an Uber account, the user agreed to its terms of service and 13 policy policy). The plaintiff cites no cases to support her one-line adhesion argument — that she 14 had to sign if she wanted to buy CYH’s product — other than an *id.* citation to *Armendariz*, 15 without analysis.²⁴ That case held that mandatory arbitration agreements — presented as a 16 condition of employment — do not invalid arbitration clauses as procedurally unconscionable. 17 *Armendariz*, 24 Cal. 4th at 114–15. 18 Second, the plaintiff cites only CYH’s website to support her argument that the arbitration 19 clause was buried in the terms of service.²⁵ It was not: the arbitration clause — set forth in the 20 Statement — is in the third section, titled Disputes (in bold). The two sections that precede it are 21 titled Acceptance of Terms of Use (use of CYH’s service requires accepting the conditions) and 22 Your Relationship with Us (describing CYH’s services). The side panel has hyperlinked titles to 23 all sections in the terms of use. This is conspicuous. The plaintiff cites no cases supporting a 24 different outcome. *OTO, L.L.C. v. Kho* involved a prolix agreement with an extremely small font 25 and a dense arbitration clause given to a low-level employee under circumstances that suggested 26 27

24 Id. at 15 (the previous section cited Armendariz to support the procedural and substantive components for contractual unconscionability). 1 that he had to sign it immediately, else lose his job. 8 Cal. 5th 111, 128 (2019). A&M Produce Co. 2 v. FMC Corp. buried a consequential-damages provision in the middle of the last page in 3 inconspicuous font. 135 Cal. App. 3d 473, 490 (1982); cf. Stanfield v. Tawkify, Inc., 517 F. Supp. 4 3d 1002, 1006 (N.D. Cal. 2021) (in one-way arbitration agreement, itself unconscionable, the 5 “arbitration provision was a needle in a haystack”). 6 The agreement is not procedurally unconscionable. Because both procedural and substantive 7 unconscionability must be present, the arbitration clause is enforceable. In any event, the only 8 argument about substantive unconscionability is that the clause does not specify the fees that the 9 plaintiff must pay. The plaintiff is required to download a demand for arbitration from the AAA, 10 and if those rules applied, they might require her to pay administrative fees up to \$15,000.26 The 11 defendant dismissed that argument at the hearing as speculative and disavowed any intention to 12 require those fees. Under these circumstances, the plaintiff has not shown substantive 13 unconscionability. 14 Generally, “when an employer imposes mandatory arbitration as a condition of employment, the 15 arbitration agreement or arbitration process cannot generally require the employee to bear 16 any type of expense that the employee would not be required to bear if he or she were free to bring 17 the action in court.” Armendariz, 24 Cal. 4th at 110–11. Here, the plaintiff would be required to pay 18 a filing fee in federal district court and would be required to file a like arbitration fee unless she 19 could show an inability to pay it. Aronow v. Super. Ct., 76 Cal. App. 5th 865, 886 (2022) (if a 20 plaintiff cannot pay the arbitrator’s fee, the defendant should be given the chance to either to pay 21 the plaintiff’s share of the arbitrator or to waive the right to arbitrate). The court also has discretion 22 to sever a problematic clause. Armendariz, 24 Cal. 4th at 121–27. But the plaintiff has pointed to no 23 facts and no cases to support the conclusion that she would pay anything beyond the equivalent of a 24 filing fee. CYH disavowed that intention. The plaintiff did not show substantive unconscionability. 25 26 27 1 2.2 Scope of the Arbitration Agreement 2 The claims involve invasion of privacy from CYH’s alleged collection of PII and PHI, in 3 violation of California law. The terms of service, which incorporated the privacy policy, require 4 arbitration for “any controversy, dispute, or claim arising out of, or relating in any way” to the terms 5 or the customer’s use of CYH’s site or service. The arbitration clause applies to the privacy claims. 6 Under arbitration clauses, the fact allegations “must at least touch matters covered by the 7 contract containing the arbitration clause,” “whatever the legal labels attached to those 8 allegations.” Jackson v. Amazon.com, Inc., 65 F.4th 1093, 1101 (9th Cir. 2023) (cleaned up). The 9 claims here involve unauthorized interception of customers’ private information during business 10 transactions, and CYH required its customers to assent to its terms of service and privacy policy 11 before completing the purchase. The disputes — taking PII and PHI — arise from the business 12 transaction and involve the privacy policy. See id. at 1102 (analyzing Simula, Inc. v. Autoliv, Inc., 13 175 F.3d 716, 721–25 (9th Cir. 1999), which involved a contract for the

development of airbag 14 technology; the arbitration clause for “all disputes arising in connection with this Agreement” 15 applied to antitrust, defamation, trademark-violation, trade-secret misappropriation, and breach of 16 NDO claims). In contrast to the transaction-related breaches of privacy here, the privacy claims in 17 Jackson were wholly unrelated to the parties’ contract: Amazon allegedly monitored its drivers’ 18 private conversations during off hours in a private Facebook group, which was employer 19 misconduct unrelated to the employment agreement. *Id.* at 1095, 1101–03. 20 21 2.3 Retroactivity 22 The plaintiff contends that the arbitration clause does not apply to the wrongful collection of 23 her PII and PHI before she agreed to the terms of service.²⁷ Arbitration is required for all claims 24 — including the privacy claims here — arising out of, or relating any way, to the terms of service 25 or the customer’s use of CYH’s site or service, without temporal limitation. 26 27] What matters is the substance of the claims, not their timing. Courts have applied arbitration 2 || clauses without a temporal limitation to claims that precede the plaintiffs acceptance of a 3 contract’s terms. See, e.g., *Azeveda v. Comcast Cable Commc’ns LLC*, No. 5:19-CV-01225-EJD, 4 2019 WL 5102607, at *6 (N.D. Cal. Oct. 11, 2019) (arbitration clause for “claims related to or 5 arising from any aspect of the employment relationship” applied to disputes that predated the 6 || contract, which did not have a temporal limitation); *Trujillo v. Gomez*, No. 14cv2483 BTM (BGS), 7 { | 2015 WL 1757870, at *8 (S.D. Cal. Apr. 17, 2015) (similar arbitration clause in distribution 8 agreement for lighting products had no temporal limitation and applied to disputes that predated 9 the agreement); cf, *Castro v. ABM Indus., Inc.*, No. 17-cv-3026-YGR, 2018 WL 2197527, at *4 10 || (N.D. Cal. May 14, 2018) (CBA binding-mediation clause for “all Covered Claims, whenever they 11 arise” was language covering future conduct). 12 Here, the plaintiff accepted the terms of service, including the arbitration agreement and 13 || privacy policy, before completing her transaction. Courts enforce like arbitration clauses in data- 14 disclosure cases. See, e.g., *.C. v. Zynga, Inc.*, No. 20-cv-01539-YGR, 2021 WL 3271187, at *1 3 15 (N.D. Cal. July 30, 2021). The court enforces the arbitration clause here.

i 17 CONCLUSION

Z 18 The court denies the motion to dismiss for lack of personal jurisdiction, compels arbitration of 19 || plaintiff Martinez’s claims, and stays her case pending arbitration. *Smith v. Spizzirri*, 601 U.S. 20 || 472, 474, 476-78 (2024) (per curiam) (requiring stay). This resolves ECF No. 39. 21 IT IS SO ORDERED. 22 Dated: August 31, 2025 LAE 23

LAUREL BEELER

24 United States Magistrate Judge 25 26 27 28