

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Smith v. JPMorgan Chase Bank, N.A.

Smith · No. 24-CV-1287 JLS (DTF) · Decided June 2, 2025

SUMMARY

The United States District Court for the Southern District of California denies Marcia Smith’s motion to remand, concluding that the action falls within federal jurisdiction under the Edge Act based on an international wire transfer. The court overrules the parties’ evidentiary objections, grants JPMorgan Chase Bank, N.A.’s motion to compel arbitration under the deposit account agreement, and stays the action pending completion of arbitration proceedings.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Janis L. Sammartino
JURISDICTION	United States District Court for the Southern District of California
DECIDED	June 2, 2025
DOCKET	24-CV-1287 JLS (DTF)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to remand a removed California state-court action and opposed Defendant Chase's motion to compel arbitration. The district court denied remand, overruled the parties' evidentiary objections, compelled arbitration, and stayed the action pending arbitration.
STANDARD OF REVIEW	Removal jurisdiction is reviewed according to whether the action could originally have been filed in federal court, with the removing party bearing the burden of establishing federal jurisdiction. A motion to compel arbitration is evaluated under the summary-judgment evidentiary standard. At that stage, the court considers whether the evidence's contents could be presented in admissible form at trial. Contract formation and arbitration-agreement enforceability are determined under ordinary state-law principles, while challenges to the contract as a whole are generally for the arbitrator.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential outside the case

PARTIES

Marcia Smith v. JPMorgan Chase Bank, N.A., Sadaf Zadeh, Angel Arenas, Does 1-10

TOPICS

subject matter jurisdiction

arbitration

evidence

consumer protection

civil procedure

PRACTICE AREAS

federal jurisdiction

arbitration

banking law

consumer protection

evidence

QUESTIONS PRESENTED

1. Whether the action was properly removable under the Edge Act because the claims arose out of transactions involving international or foreign banking.
2. Whether the court should consider Plaintiff's amount-in-controversy and diversity-jurisdiction arguments when Edge Act jurisdiction independently supported removal.
3. Whether Plaintiff entered into a valid agreement to arbitrate by signing the Personal Signature Card incorporating Chase's Deposit Account Agreement.
4. Whether the arbitration agreement was procedurally or substantively unconscionable under California law.
5. Whether California's McGill rule barred arbitration of Plaintiff's Unfair Competition Law claim because she sought public injunctive relief.
6. Whether the action should be stayed pending completion of arbitration.
7. Whether the parties' evidentiary objections should be sustained.

HOLDINGS

1. The action falls within the Edge Act because it is a civil action involving a United States-organized corporation and Plaintiff's alleged harm derives in significant part from an international wire transfer received abroad. The court therefore denied the motion to remand.
2. Plaintiff formed a valid agreement to arbitrate by signing the Personal Signature Card, which incorporated Chase's Deposit Account Agreement containing a mandatory arbitration provision. Plaintiff did not dispute that her claims fell within the provision's scope.
3. Plaintiff failed to establish that the arbitration agreement was procedurally or substantively unconscionable. The court therefore enforced the agreement.
4. The McGill rule did not preclude arbitration of Plaintiff's California Unfair Competition Law claim because Plaintiff failed to allege a threat of future harm and therefore lacked the Article III standing necessary to seek public injunctive relief.
5. The action must be stayed in its entirety pending completion of arbitration because the claims are subject to binding arbitration and a party requested a stay.

6. The court overruled Plaintiff's and Chase's evidentiary objections because it did not rely on evidence that could not be presented in admissible form at trial.

KEY QUOTATIONS

"Courts have widely recognized three requirements for Edge Act jurisdiction: "(1) a civil action, (2) in which a 'corporation organized under the laws of the United States' is a party, and which (3) 'aris[es] out of transactions involving international or foreign banking.'"" (at 4)

"In deciding whether to compel arbitration, courts must generally "determine two 'gateway' issues: (1) whether there is an agreement to arbitrate between the parties; and (2) whether the agreement covers the dispute."" (at 12)

"When a court "finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding."" (at 23)

FACTUAL BACKGROUND

Smith alleged that unknown individuals perpetrated an Amazon-related scam that caused her to withdraw funds from her Chase account, deposit money into a Bitcoin ATM, and wire money to a bank account in Hong Kong in August 2023. She alleged that Chase employees knew or should have known she was being scammed when she sought to complete a \$37,000 international wire transfer and that Chase failed to assist her after she reported the scam. When Smith opened her Chase account in 2021, she signed a Personal Signature Card acknowledging receipt of and agreeing to be bound by Chase's Deposit Account Agreement, which contained an arbitration provision.

PROCEDURAL HISTORY

Smith filed suit in California Superior Court alleging financial elder abuse and, against Chase, violations of California's Unfair Competition Law arising from an alleged scam involving a cash withdrawal and an international wire transfer. Chase removed the action under the Edge Act and, alternatively, diversity jurisdiction. After discharging an order to show cause concerning removal, the court considered Smith's motion to remand and Chase's motion to compel arbitration. The court denied remand, granted arbitration, and stayed the case.

DISPOSITION

other

REMAND INSTRUCTIONS

The action is stayed in its entirety pending completion of arbitration. The parties must file a joint status update every 120 days beginning on the date of the Order and within 14 days after the arbitration proceedings conclude.

CASES CITED

- Kim v. Wells Fargo, N.A., 2021 WL 5996486, at *2 (N.D. Cal. Dec. 20, 2021)

- Lin v. JPMorgan Chase Bank N.A., 2024 WL 2272387, at *1-*4 (C.D. Cal. May 19, 2024)
- Gavaldon v. Standard Chartered Bank International (Americas) Limited, 2020 WL 835311, at *11 (S.D. Cal. Feb. 20, 2020)
- Gray v. Ben, 2022 WL 3928375, at *2-*4 (C.D. Cal. Aug. 31, 2022)
- Bortz v. JPMorgan Chase Bank, N.A., 2021 WL 4819575, at *2 n.2 (S.D. Cal. Oct. 15, 2021)
- Burge v. JPMorgan Chase Bank, N.A., 2022 WL 18540501, at *3 (S.D. Ind. Nov. 18, 2022)
- Ekopel D.O.O. v. Citibank, N.A., 717 F. Supp. 3d 17, 26 (D.D.C. 2024)
- Ritchie Cap. Mgmt., L.L.C. v. JP Morgan Chase & Co., 960 F.3d 1037, 1047 (8th Cir. 2020)
- City of Chicago v. International College of Surgeons, 522 U.S. 156, 163 (1997)
- Rodriguez v. AT&T Mobility Services LLC, 728 F.3d 975, 978 (9th Cir. 2013)
- Lewis v. Verizon Communications, Inc., 627 F.3d 395, 399 (9th Cir. 2010)
- British-American Tobacco Co. v. Federal Reserve Bank of New York, 105 F.2d 935, 936 (2d Cir. 1939)
- Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24-26 (1991)
- AT&T Mobility LLC v. Concepcion, AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24 (1983)
- Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 67, 71 (2010)
- Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 84 (2002)
- Lifescan, Inc. v. Premier Diabetic Services, Inc., 363 F.3d 1010, 1012 (9th Cir. 2004)
- Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 62 (1995)
- Alkutkar v. Bumble Inc., 2022 WL 16973253, at *3 (N.D. Cal. Nov. 16, 2022)
- Sandoval v. County of San Diego, 985 F.3d 657, 666 (9th Cir. 2021)
- Pierre v. IEC Corp., 2023 WL 3551962, at *4 n.1 (C.D. Cal. Mar. 14, 2023)
- Cherewick v. State Farm Fire & Casualty, 578 F. Supp. 3d 1136, 1157 (S.D. Cal. 2022)
- Vasquez v. RSI Home Products, Inc., 2020 WL 6778772, at *13 (C.D. Cal. Nov. 12, 2020)
- Van Ness Townhouses v. Mar Industries Corp., 862 F.2d 754, 756 (9th Cir. 1988)
- Johnson v. JP Morgan Chase Bank, N.A., 2018 WL 4726042, at *3 (C.D. Cal. Sept. 18, 2018)
- Schwartz v. Comcast Corp., 256 F. App'x 515, 518 (3d Cir. 2007)
- Blau v. AT&T Mobility, 2012 WL 10546, at *4 (N.D. Cal. Jan. 3, 2012)
- Al-Thani v. Wells Fargo & Co., 2009 WL 55442, at *6 (N.D. Cal. Jan. 7, 2009)
- Caballero v. Premier Care Simi Valley LLC, 284 Cal. Rptr. 3d 560, 564-65 (Ct. App. 2021)
- Randas v. YMCA of Metropolitan Los Angeles, 21 Cal. Rptr. 2d 245, 248 (Ct. App. 1993)
- Armendariz v. Foundation Health Psychcare Services, Inc., 6 P.3d 669, 690 (Cal. 2000)
- Bridge Fund Capital Corp. v. Fastbucks Franchise Corp., 622 F.3d 996, 1000-02 (9th Cir. 2010)
- Pinnacle Museum Tower Ass'n v. Pinnacle Market Development (US), LLC, 282 P.3d 1217, 1232 & n.12 (Cal. 2012)
- Kilgore v. KeyBank, National Ass'n, 718 F.3d 1052, 1059 (9th Cir. 2013)
- Circuit City Stores, Inc. v. Ahmed, 283 F.3d 1198, 1199-1200 (9th Cir. 2002)

- Morris v. Redwood Empire Bancorp, 27 Cal. Rptr. 3d 797, 1321 (Ct. App. 2005)
- Heckman v. Live Nation Entertainment, Inc., 120 F.4th 670, 683 (9th Cir. 2024)
- Wright v. JPMorgan Chase Bank N.A., 2014 WL 13130330, at *7 (C.D. Cal. Aug. 1, 2014)
- Baltazar v. Forever 21 Inc., 367 P.3d 6, 12-13 (Cal. 2016)
- In re StubHub Refund Litigation, 2021 WL 5447006, at *9 (N.D. Cal. Nov. 22, 2021)
- Davis v. TWC Dealer Group, Inc., 254 Cal. Rptr. 3d 443, 450-51 (Ct. App. 2019)
- Davidson v. Kimberly-Clark Corp., 889 F.3d 956, 969-70 (9th Cir. 2018)
- Stover v. Experian Holdings, Inc., 978 F.3d 1082, 1087 (9th Cir. 2020)
- Smith v. Spizzirri, 601 U.S. 472, 478 (2024)

OPINION

Smith v. JPMorgan Chase Bank, N.A.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MARCIA SMITH, Case No.: 24-CV-1287 JLS (DTF) 12 Plaintiff, ORDER: 13 v.

(1) DENYING PLAINTIFF’S

14 JPMORGAN CHASE BANK, N.A., a

MOTION TO REMAND TO STATE

business entity; SADAF ZADEH, an 15 COURT; individual; ANGEL ARENAS, an 16 individual;
and DOES 1–10, inclusive,

(2) OVERRULING PARTIES’

17 Defendants. EVIDENTIARY OBJECTIONS; 18

(3) GRANTING DEFENDANT

19 JPMORGAN CHASE BANK, N.A.’S

MOTION TO COMPEL

20

ARBITRATION; AND

21

(4) STAYING ACTION PENDING

22

COMPLETION OF ARBITRATION

23 PROCEEDINGS

24 (ECF Nos. 9, 10, 17-3, 19-6) 25 26 Presently before the Court are Plaintiff Marcia Smith’s
 (“Plaintiff”) Motion to 27 Remand to State Court (“Remand Mot.,” ECF No. 9) and Memorandum
 of Points and 28 Authorities in support thereof (“Remand Mem.,” ECF No. 9-1). Defendant
 JPMorgan 1 Chase Bank N.A. (“Defendant” or “Chase”) filed an Opposition to Plaintiff’s Motion

for 2 Remand (“Remand Opp’n,” ECF No. 14), to which Plaintiff filed a Reply (“Remand 3 Reply,” ECF No. 15). 4 Also before the Court is Chase’s Motion to Compel Arbitration (“Arb. Mot.,” ECF

5 No. 10), along with Declarations of William A. Garrett (“Garrett Decl.,” ECF No. 10-1) 6 and Halie Williams (“Williams Decl.,” ECF No. 10-2) in support of Chase’s Motion to 7 Compel Arbitration. Plaintiff then filed an Opposition to the Arbitration Motion (“Arb. 8 Opp’n,” ECF No. 17), along with Declarations of Plaintiff Marcia Smith (“Smith Decl.,” 9 ECF No. 17-1) and Caleb Logan (“Logan Decl.,” ECF No. 17-2) in support of Plaintiff’s 10 Opposition. Plaintiff also filed Objections to Chase’s Declarations in Support of its Motion 11 to Compel Arbitration (“Pl.’s Arb. Objs.,” ECF No 17-3). Thereafter, Chase submitted a 12 Reply (“Arb. Reply,” ECF No. 19), Supplemental Declaration of Halie Williams in Support 13 of Chase’s Motion to Compel Arbitration (“Suppl. Williams Decl.,” ECF No 19-1), 14 Responses to Plaintiff’s Evidentiary Objections to Declarations in Support of the Motion 15 to Compel Arbitration (“Resp. to Pl.’s Arb. Objs.,” ECF No. 19-5), and Evidentiary 16 Objections to Plaintiff’s Declarations (“Chase’s Arb. Objs.,” ECF No. 19-6). 17 Having carefully considered the Parties’ arguments, the evidence, and the law, the 18 Court DENIES Plaintiff’s Remand Motion, OVERRULES the Parties’ Evidentiary 19 Objections, GRANTS Chase’s Arbitration Motion, and STAYS this action pending the 20 completion of arbitration proceedings.

21 BACKGROUND

22 I. Factual Background 23 On June 20, 2024, Plaintiff initiated this action in California Superior Court against 24 Chase and two of its employees, Defendants Sadaf Zadeh and Angel Arenas (collectively, 25 the “Individual Defendants”). In her Complaint, Plaintiff alleges all three Defendants 26 assisted in financial elder abuse in violation of California Welfare and Institutions Code 27 § 15610.30. Specifically, Plaintiff alleges she was the victim of an “Amazon” scam 28 perpetrated by unknown individuals who convinced her to withdraw funds from her Chase 1 account ending in -8297 (“Account”) and to deposit them into a Bitcoin ATM, as well as 2 wire funds internationally to a bank account in Hong Kong in August 2023. Compl. 3 ¶¶ 25–34; Declaration of Kevin Kesterson in Support of Notice of Removal (“Kesterson 4 Decl.”), ECF No. 1-3 ¶ 3, Ex. A. 5 Plaintiff claims the Individual Defendants knew or should have known she was being 6 scammed when she sought to complete a \$37,000 wire transfer.¹ See Compl. ¶¶ 43–44, 7 46–48. Plaintiff also alleges, inter alia, that Chase had “actual knowledge of the scam” 8 after she reported it, yet withheld its assistance until it was too late to do anything. See id. 9 ¶ 51. The Complaint contains a second cause of action as to Chase alone for violations of 10 California’s Unfair Competition Law. 11 II. Procedural Background 12 On July 24, 2024, Chase removed this action to federal court pursuant to 13 12 U.S.C. § 632 and 28 U.S.C. § 1332(a), as well as 28 U.S.C. §§ 1441 and 1446, based 14 upon statutory provisions providing for federal jurisdiction in matters related to foreign 15 banking transactions. Notice of Removal (“Notice”) at 1, ECF No. 1. In the Notice, Chase 16 provides two grounds for removal. Chase first cites the Edge Act, which

grants federal 17 courts subject matter jurisdiction over civil suits “to which any corporation organized under 18 the laws of the United States” is a party and that “aris[e] out of transactions involving 19 international or foreign banking.” 12 U.S.C. § 632. Chase notes that it is such a federally 20 chartered corporation and claims this case involves a foreign banking transaction because 21 the recipient of the alleged wire transfer was located abroad. Notice at 3–4. In the 22 alternative, Chase asserts diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Chase 23 tacitly admits the Individual Defendants are not diverse from Plaintiff but argues the Court 24 need not consider their citizenship because both are “fraudulently joined.” *Id.* at 4. 25 On July 31, 2024, the Court ordered Chase to show cause as to why the action should 26 27 1 Plaintiff also seeks to recover for a \$35,000 cash withdrawal that resulted from the same scam the day 28 before the wire transfer took place. See Compl. ¶¶ 27–31. Neither of the Individual Defendants appear 1 not be remanded for lack of subject matter jurisdiction. ECF No. 4 (“OSC”). First, the 2 Court noted concerns with finding jurisdiction appropriate here under the Edge Act. The 3 Court recognized that removal jurisdiction is appropriate under the Edge Act “when: (1) the 4 lawsuit is a civil action in law or equity; (2) a corporation organized under the laws of the 5 United States is a party; and (3) the lawsuit arises out of transactions involving 6 international or foreign banking.” OSC at 3 (citing *Kim v. Wells Fargo, N.A.*, No. 21-CV- 7 05405-JD, 2021 WL 5996486, at *2 (N.D. Cal. Dec. 20, 2021)). While acknowledging the 8 first two requirements were met, the Court expressed reservation about whether the action 9 “arises out of” the international wire transfer. OSC at 4–5. 10 Next, the Court raised its doubts as to Chase’s alternative assertion of diversity 11 jurisdiction, on the basis that the Individual Defendants’ citizenship, which would 12 otherwise destroy diversity, should not be considered because they were fraudulently 13 joined in the action. *Id.* at 5–8. 14 On August 14, 2024, Chase filed its Response to the Order to Show Cause Re 15 Removal (“Resp. to OSC,” ECF No. 5), asserting the action was properly removed under 16 the Edge Act, as this action “arises out of” an international wire transfer. Resp. to OSC. 17 at 3–10. Chase explained that Plaintiff’s “claims are founded on her accusation Chase 18 should have known about the purported scam, including because Plaintiff requested the 19 international wire transfer.” *Id.* at 6 (emphasis in original) (citing Compl. ¶ 48(c)). 20 Further, Chase asserted “there is indisputable evidence that Plaintiff directed the wire to 21 Hong Kong and that it represents more than 50% of the amount at issue.” *Id.* at 6–7 (citing 22 Ketersen Decl., Ex. A at 2). 23 The Court noted that it continued to find it bizarre for federal jurisdiction to 24 essentially turn on random chance, but was satisfied by Chase’s response, and discharged 25 its Order to Show Cause. 2 See ECF No. 6 (“Discharge Order”) at 2 (first citing 12 U.S.C. 26 27 28 2 Chase also reiterated its fraudulent joinder argument in its Response to the Order to Show Cause, but the 1 § 632; and then citing *Lin v. JPMorgan Chase Bank N.A.*, No. 2:24-CV-01837-JLS-E, 2 2024 WL 2272387, at *4 (C.D. Cal. May 19, 2024) (“The Court admits that it is somewhat 3 strange for federal-court jurisdiction to turn on the happenstance of where a wire transferee 4 is located, but that result flows from Congress requiring a nexus to an ‘international’ 5 transaction.”)). 6 Subsequently, on

September 10, 2024, Plaintiff filed her Motion to Remand to State 7 Court. The next day, Chase filed its Motion to Compel Arbitration.

8 PLAINTIFF'S MOTION TO REMAND

9 I. Legal Standard 10 Generally, defendants may remove to federal court “any civil action brought in a 11 State court of which the district courts of the United States have original jurisdiction.” 12 28 U.S.C. § 1441(a). “The propriety of removal thus depends on whether the case 13 originally could have been filed in federal court.” *City of Chicago v. Int’l Coll. of Surgeons*, 14 522 U.S. 156, 163 (1997) (citation omitted). “The party seeking the federal forum bears 15 the burden of establishing that the statutory requirements of federal jurisdiction have been 16 met.” *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 978 (9th Cir. 2013) (citing 17 *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 399 (9th Cir. 2010)). 18 II. Analysis 19 Plaintiff argues that the Court should remand because it lacks Edge Act (12 U.S.C. 20 § 632) jurisdiction as, among other things, her claims do not “arise out of” international 21 banking transactions, see Remand Mem. 4–7, in effect, urging the Court to reconsider its 22 prior Order discharging its Order to Show Cause on the same issue. Defendant argues 23 Plaintiff’s Motion for Remand is thus an improper motion for reconsideration. Remand 24 Opp’n at 4–5. However, the Court declines to deny Plaintiff’s Motion on this ground as 25 28 U.S.C. § 1447(c) permits parties to raise subject matter jurisdiction at any time, and 26 Plaintiff has not otherwise been heard on this issue. Nonetheless, as explained below, the 27 Court is not persuaded by Plaintiff’s arguments. 28 Courts have widely recognized three requirements for Edge Act jurisdiction: “(1) a 1 civil action, (2) in which a ‘corporation organized under the laws of the United States’ is a 2 party, and which (3) ‘aris[es] out of transactions involving international or foreign 3 banking.’” *Lin*, 2024 WL 2272387, at *1 (first citing *Am. Int’l Grp., Inc. v. Bank of Am. 4 Corp.*, 712 F.3d 775, 780 (2d Cir. 2013); and then citing *Gray v. Ben, No. CV 22-03090 5 DSF (PVCx)*, 2022 WL 3928375, at *2 (C.D. Cal. Aug. 31, 2022)). 6 Specifically, here, Plaintiff argues (1) her claims do not “arise out of” international 7 banking transactions; (2) the Edge Act’s “actual purpose” favors remand; (3) the case does 8 not “involve” an international banking transaction; and (4) Chase has asserted mutually 9 exclusive positions as to the Court’s subject matter jurisdiction. See generally Remand 10 Mem. 11 As the Court previously held when discharging its Order to Show Cause, Plaintiff’s 12 harm is alleged to derive in significant part from a wire transfer that happened to be 13 received abroad, which is sufficient for Edge Act jurisdiction. See Discharge Order; see 14 also *Lin*, 2024 WL 2272387, at *4. Plaintiff emphasizes that she “interacted with 15 Defendants only in San Diego County and used money only from her local bank account.” 16 Remand Mem. at 5–6. The Court does not dispute this. Rather, in its Discharge Order, the 17 Court acknowledged as much, noting it “sees little in the Complaint to suggest that the 18 international nature of said wire transfer bears on Plaintiff’s claims.” Discharge Order at 2 19 n.4. Nevertheless, the Court held, as Plaintiff’s alleged harm “derives in significant part 20 from a wire transfer that happened to be received abroad[,]” the Court found “this case 21 falls under the Edge Act’s vast umbrella.” *Id.*

(emphasis added). 22 While Plaintiff urges the Court to rely on *Gavaldon v. Standard Chartered Bank 23 International (Americas) Limited*, No. 16cv590-LAB (MDD), 2020 WL 835311 (S.D. Cal.

24 Feb. 20, 2020), see Remand Mem. 4–7, the Court finds such case readily distinguishable.

25 In *Gavaldon*, the court determined Edge Act jurisdiction was “present at the time of 26 removal,” but as the court had dismissed the claims relating to international transactions, 27 such basis for jurisdiction had “now disappeared.” 2020 WL 835311, at *11. Moreover, 28 the Court is not swayed by Plaintiff’s reliance on *Kim*, a case the Court previously 1 considered in its Order to Show Cause. See OSC at 4–5 (citing *Kim*, 2021 WL 5996486, 2 at *2). The Court was—and remains—ultimately persuaded by the multiple directly 3 analogous decisions finding Edge Act jurisdiction. See *Lin*, 2024 WL 2272387, at *2–4 4 (finding Edge Act jurisdiction because plaintiff’s claims under the California financial 5 elder abuse statute and the Unfair Competition Law arose out of an international wire 6 transfer); *Gray*, 2022 WL 3928375, at *2–4 (holding that Chase’s processing of plaintiff’s 7 international wire transfer fell within the purview of the Edge Act); *Bortz v. JPMorgan 8 Chase Bank, N.A.*, No. 21-CV-618 TWR (JLB), 2021 WL 4819575, at *2 n.2 (S.D. Cal.

9 Oct. 15, 2021) (upholding removal under the Edge Act of California financial elder abuse 10 claim associated with international wire transfers); see also *Burge v. JPMorgan Chase 11 Bank, N.A.*, No. 1:22-cv-00607-RLY-DLP, 2022 WL 18540501, at *3 (S.D. Ind. Nov. 18, 12 2022) (since wire transfers were directed to foreign banks, the transfers were “squarely 13 within the ambit of the Edge Act”); *Ekopel D.O.O. v. Citibank, N.A.*, 717 F. Supp. 3d 17, 14 26 (D.D.C. 2024) (holding “wire transfers directed to foreign banks fall ‘squarely within’ 15 the ‘involving international or foreign banking’ requirement”); *Ritchie Cap. Mgmt., L.L.C. 16 v. JP Morgan Chase & Co.*, 960 F.3d 1037, 1047 (8th Cir. 2020) (concluding Edge Act 17 jurisdiction exists even under narrow interpretation where plaintiff “alleged foreign 18 banking transactions involving [Chase] as a core part of their claims of wrongdoing”). 19 And while Plaintiff suggests that the Edge Act’s “actual purpose” favors remand, 20 see Remand Mem. at 7–8, and that her claims “are not integrally tied to banking activity 21 and do not require the Court to apply banking law,” *id.* at 10, the Court must follow what 22 Congress has required. See *Lin*, 2024 WL 2272387, at *4 (“The Court admits that it is 23 somewhat strange for federal-court jurisdiction to turn on the happenstance of where a wire 24 transferee is located, but that result flows from Congress requiring a nexus to an 25 ‘international’ transaction.”). 26 Finally, Plaintiff argues that Chase asserts “mutually exclusive positions” because 27 Chase’s Notice claims the \$75,000 amount in controversy for diversity jurisdiction is 28 satisfied, see Remand Mem. at 10 (citing Notice ¶ 14), yet Chase also represented 1 Plaintiff’s \$37,000 wire transfer was “over half ‘of the amount at issue,’ *id.* (emphasis 2 added) (citing Resp. to OSC at 1–2, 6–7). Plaintiff argues “the amount in controversy 3 cannot exceed \$75,000 under Chase’s assertion that it is less than \$74,000,” thus Chase has 4 not met its burden of proving the propriety of removal. Remand Mem. at 10. 5 Chase

responds that its Notice of Removal affirms the amount in controversy exceeds \$75,000, noting: Plaintiff seeks restitution of the \$72,050 that she allegedly lost as a result of a scam, in addition to general damages, treble damages, punitive damages and attorneys' fees and costs The amount in controversy with respect to Plaintiff's elder financial abuse claim alone exceeds the jurisdictional limit as trebled damages are considered for purposes of calculating the amount in controversy for diversity cases. Remand Opp'n at 10 (quoting Notice ¶ 14 (internal citations omitted)). The relevance of Plaintiff's amount in controversy argument is not clear to the Court, as the Court has already found Chase failed to establish diversity jurisdiction in its prior Order, see Discharge Order at 2 n.2, and lack of diversity jurisdiction is not the basis for Plaintiff's Motion to Remand, see generally Remand Mem. Plaintiff makes no argument the \$75,000 amount in controversy requirement for diversity jurisdiction is a prerequisite for federal question jurisdiction under the Edge Act, nor could she. See *Brit.-Am. Tobacco Co. v. Fed. Rsrv. Bank of N. Y.*, 105 F.2d 935, 936 (2d Cir. 1939) (explaining that § 632 provides federal jurisdiction "regardless of the amount in controversy"). The Court is thus unpersuaded that Chase failed to prove the propriety of removal on this basis. Further, Plaintiff makes no argument that the proportion of the international wire transfer to the amount in controversy is otherwise relevant to her Motion to Remand, and the Court does not find such issue affects its analysis. In light of the foregoing, the Court DENIES Plaintiff's Motion to Remand. / / / / 27 / / / 28 / / /

1 CHASE'S MOTION TO COMPEL ARBITRATION

2 I. Legal Standard 3 The Federal Arbitration Act ("FAA") governs the enforceability of arbitration 4 agreements in contracts. See 9 U.S.C. § 1, et seq.; *Gilmer v. Interstate/Johnson Lane 5 Corp.*, 500 U.S. 20, 24–26 (1991). If a suit is proceeding in federal court, the party seeking 6 arbitration may move the district court to compel the resisting party to submit to arbitration 7 pursuant to their private agreement. 9 U.S.C. § 4. The FAA reflects both a "liberal federal 8 policy favoring arbitration," and the "fundamental principle that arbitration is a matter of 9 contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (first quoting 10 *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); and then 11 quoting *Rent-A-Ctr., West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010)). 12 In deciding whether to compel arbitration, courts must generally "determine two 13 'gateway' issues: (1) whether there is an agreement to arbitrate between the parties; and 14 (2) whether the agreement covers the dispute." *Brennan v. Opus Bank*, 796 F.3d 1125, 15 1130 (9th Cir. 2015) (citing *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 16 (2002)). Courts generally resolve those issues by "apply[ing] ordinary state-law principles 17 that govern the formation of contracts." *First Options of Chicago, Inc. v. Kaplan*, 18 514 U.S. 938, 944 (1995); see also 9 U.S.C. § 2. If the answer to both questions is yes, a 19 court must enforce the agreement and compel arbitration. See, e.g., *Lifescan, Inc. v. 20 Premier Diabetic Servs., Inc.*, 363 F.3d 1010, 1012 (9th Cir. 2004). Doubts regarding the 21 scope of an agreement must be resolved in favor of arbitration. See *Mastrobuono v. 22 Shearson Lehman*

Hutton, Inc., 514 U.S. 52, 62 (1995). 23 II. Analysis 24 Chase contends that Plaintiff agreed to arbitrate because when she opened her 25 Account on July 13, 2021, she signed a Personal Signature Card, “acknowledg[ing] receipt 26 of the Bank’s Deposit Account Agreement” and “agree[ing] to be bound by the terms and 27 conditions contained therein as amended from time to time.” Arb. Mot. at 2–3 (quoting 28 Exhibit A to Williams Decl. (“Personal Signature Card”), ECF No. 10-3). 1 The Deposit Account Agreement (“DAA”) includes a provision at Section X, titled, 2 “Arbitration; Resolving Disputes” (the “Arbitration Agreement”), which provides that 3 disputes or claims between the parties are subject to mandatory arbitration: 4 You and we agree that upon the election of either of us, any claims or disputes (as defined below) will be resolved by binding 5 arbitration as discussed below[.] 6 [. . .] This arbitration agreement is entered into pursuant to the Federal 7 Arbitration Act, 9 U.S.C. §§ 1–16 (“FAA”). 8 [. . .] What claims or disputes are subject to arbitration? 9 Claims or disputes between you and us about your deposit 10 account, transactions involving your deposit account, and any related service or agreement with us are subject to arbitration. 11 Any claims or disputes arising from or relating to this agreement, 12 any prior account agreement between us . . . are included. Claims or disputes are subject to arbitration, regardless of what theory 13 they are based on or whether they seek legal or equitable 14 remedies. Arbitration applies to any and all such claims or disputes, whether they arose in the past, may currently exist or 15 may arise in the future. All such claims or disputes are referred 16 to in this section as “Claims.” The only exception to arbitration of Claims is that both you and we have the right to pursue a Claim 17 in a small claims court instead of arbitration, if the Claim is in 18 that court’s jurisdiction and proceeds on an individual basis. [...] 19 Does arbitration apply to Claims involving third parties? 20 Arbitration applies whenever there is a Claim between you and us. If a third party is also involved in a Claim between you and 21 us, then the Claim will be decided with respect to the third party 22 in arbitration as well For purposes of arbitration, . . . “we” include[] JPMorgan Chase Bank, N.A., all its affiliates, and all 23 third parties who are regarded as agents or representatives of ours 24 in connection with a Claim. 25 Exhibit B to Williams Decl. (“July 2021 DAA”), ECF No. 10-4 at Section X.3 And Chase 26 27 3 Chase indicates that the Arbitration Agreement in the operative DAA was in effect from June 11, 2023, 28 through October 14, 2023, including when Plaintiff made the subject transfers to the purported third-party 1 asserts that Plaintiff’s claims against Defendants fall squarely within the broad scope of 2 the Arbitration Agreement. Arb. Mot. at 8–10. 3 Plaintiff responds that she never agreed to the DAA, and even if she had, the DAA 4 is an unenforceable, unconscionable, adhesive contract. See generally Arb. Opp’n. 5 Moreover, Plaintiff argues she cannot be forced to arbitrate her claims under the UCL 6 because such claims seek to redress a public injury. Id. at 14–16. 7 A. Evidentiary Objections 8 As an initial matter, Plaintiff raises several evidentiary objections to the Declarations 9 submitted by Chase in support of its Motion to Compel Arbitration. See generally Pl.’s 10 Arb. Objs. Plaintiff objects to portions of Chase’s Declaration of Halie Williams based on 11 hearsay (Federal Rules of Evidence 802, 803(6)) and lack of personal knowledge (Federal 12 Rule of

Evidence 602). Id. at 3–5. She also objects to a single portion of the Declaration 13 of William A. Garrett based on relevance (Federal Rule of Evidence 402). Id. at 2. 14 Specifically, Plaintiff argues portions of Ms. Williams’s Declaration and attached 15 exhibits are hearsay and do not satisfy the business records exception of Federal Rule of

16 Evidence 803(6) because:

17 (1) Chase has not given any evidence that the records were made at or near the time by—or from information transmitted 18 by— someone with knowledge; (2) although the declarant has 19 “access to information in the normal course of business,” Chase maintains records “in the ordinary course of business,” and [the 20 Exhibits were] “made in the ordinary course of business,” no 21 evidence goes to show that the records in question were kept specifically in the course of Chase’s regularly conducted 22 business activity; (3) no evidence shows making the records in 23 question were a regular practice of any particular activity; and

(4) no declarant has testified to the foregoing factors.

24 25 Pl.’s Arb. Objs. at 3–5. In response, Chase relies on a Supplemental Declaration of Halie 26 27 Halie Williams, Section X). Chase represents that this Agreement is “the same in all material respects 28 regarding arbitration as the DAA in effect when Plaintiff opened the Account,” id., which Plaintiff does 1 Williams addressing the foregoing factors. See generally Resp. to Arb. Objs. 2 Ms. Williams attests: “In my capacity as Vice President, Product Manager Sr., I have 3 access to information in the normal course of business regarding certain Chase banking 4 operations and practices, including maintenance, revisions to, and distributions of account 5 agreements. I also have access through Chase’s systems to information and records relating 6 to Chase deposit account holders, including [Plaintiff.]” Williams Suppl. Decl. ¶ 2. 7 Further, Ms. Williams indicates “[t]he records attached hereto were created and maintained 8 in the ordinary course of business at Chase and were created at or near the time of the 9 occurrence of the matters set forth by those records. All facts set forth in this Declaration 10 are based upon my personal knowledge or my review of records maintained by Chase in 11 the ordinary course of business.” Id. ¶ 3. 12 As to Plaintiff’s objections that Ms. Williams “was not present when Ms. Smith 13 opened her Chase account” or “when the Personal Signature Card was signed” and 14 consequently lacks personal knowledge of when Plaintiff opened the account and whether 15 she signed the Personal Signature Card, Pl.’s Arb. Objs. at 3–4, Chase responds that such 16 evidence is a business record admissible under Rule 803(6), see Resp. to Arb Objs at 2–4. 17 Chase also points out that Ms. Williams states that “she has access through Chase’s systems 18 to information and records relating to [Plaintiff]” and that “Chase’s records reflect that 19 [Plaintiff’s account] was opened July 13, 2021.” Id. at 3–4. 20 Plaintiff additionally argues the statement by Mr. Garrett “. . . that are governed by 21 the Deposit Account Agreement (“DAA”)” is irrelevant because it does not “specify 22 whether ‘the’ agreement” is one of two account agreements proffered by Chase. Pl.’s Arb.

23 Objs. at 2–3. In Reply, Chase responds that such paragraph refers to “all versions of the

24 [DAA] governing Plaintiff’s account.” Resp. to Arb. Objs. at 1. 25 Similarly, Chase objects to

portions of Declarations by Plaintiff Marcia Smith and 26 Caleb Logan in support of Plaintiff's Opposition. As to Mr. Logan's Declaration, Chase 27 argues statements about Microsoft Word's Flesch-Kincaid tool and the tool's calculation 28 of Flesch reading score and Flesch-Kincaid grade level are inadmissible under Rule 602 1 because Mr. Logan does not have "personal knowledge of the inner workings of the 2 Microsoft Word software program," and the report by the tool is inadmissible hearsay 3 under Federal Rule of Evidence 806. Chase's Arb. Objs. at 1. And Chase objects to various 4 statements by Plaintiff as irrelevant under Rule 402, and substantially outweighed by a 5 danger of unfair prejudice and confusing the issues under Rule 403. Id. at 2-3. 6 "[A] court ruling on a motion to compel arbitration reviews the evidence on the same 7 standard as for summary judgment under Rule 56." *Alkutkar v. Bumble Inc.*, No. 22-cv- 8 00422-PJH, 2022 WL 16973253, at *3 (N.D. Cal. Nov. 16, 2022). As to the documents 9 themselves, at this stage, courts do not "focus on the admissibility of the evidence's form," 10 but rather "on the admissibility of its contents." *Sandoval v. County of San Diego*, 11 985 F.3d 657, 666 (9th Cir. 2021) (citations omitted). As another district court in this 12 Circuit explained, "except in the rare instances in which the objecting party demonstrates 13 with specificity that the subject evidence could not be produced in a proper format at trial, 14 the court does not consider any objections on the grounds that the evidence 'constitutes 15 hearsay or inadmissible lay opinion, or that there is a lack [of] personal knowledge.'" 16 *Pierre v. IEC Corp.*, No. 8:22-cv-01280-FWS-JDE, 2023 WL 3551962, at *4 n.1 (C.D. 17 Cal. Mar. 14, 2023) (emphasis added). 18 In reaching its conclusion below, the Court does not rely on any statements that are 19 irrelevant, lack personal knowledge, or constitute hearsay. To the extent the Court relies, 20 in this Order, on evidence objected to, it does so because it finds the evidence could be 21 presented in an admissible form at trial. See e.g., *Cherewick v. State Farm Fire & Cas.*, 22 578 F. Supp. 3d 1136, 1157 (S.D. Cal. 2022) ("[A]s long as a court finds that hearsay 23 evidence could be presented in an admissible form at trial (i.e., through testimony from a 24 witness laying the foundation for an exception or because the Court finds the evidence to 25 be non-hearsay), it may consider the evidence when ruling on the motion for summary 26 judgment."). Accordingly, the Court **OVERRULES** both Plaintiff's Objections and 27 Chase's Objections. 28 / / / 1 B. Validity of the Agreement 2 Plaintiff does not dispute that her claims fall within the Arbitration Agreement's 3 scope, and as such, the Court need only determine "whether a valid agreement to arbitrate 4 exists." *Vasquez v. RSI Home Prods., Inc.*, No. 8:20-cv-01494-JWHJDEx, 5 2020 WL 6778772, at *13 (C.D. Cal. Nov. 12, 2020) (quoting *Cox v. Ocean View Hotel 6 Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008)). 7 The threshold issue is thus "whether the parties agreed to arbitrate." *Van Ness 8 Townhouses v. Mar Indus. Corp.*, 862 F.2d 754, 756 (9th Cir. 1988). Here, Chase has 9 submitted evidence that Plaintiff signed her Personal Signature Card when she opened the 10 Account. See Personal Signature Card. Plaintiff's Personal Signature Card states, "I 11 acknowledge receipt of the Bank's Deposit Account Agreement or other applicable account 12 agreement which includes all provisions that apply to this deposit account and/or Bank 13 Privacy Policy, and agree to be bound by the terms and

conditions contained therein as 14 amended from time to time.” Id. The DAA includes an Arbitration Agreement which 15 provides that disputes or claims between the parties are subject to mandatory arbitration. 16 See July 2021 DAA at Section X; see also June 2023 DAA at Section X. 17 Plaintiff, for her part, does not dispute that she signed the Personal Signature Card 18 when she opened the Account. Rather, Plaintiff argues (1) the Personal Signature Card 19 does not look like a contract and contained a font too small for Plaintiff to read; (2) Chase 20 employees did not call any terms to Plaintiff’s attention, including the DAA’s arbitration 21 clause; (3) she did not receive a copy of the DAA; and (4) the two DAAs presented do not 22 contain her signature. See Arb. Opp’n at 4–7. 23 Plaintiff’s arguments are unpersuasive. As an initial matter, “[t]he relationship of 24 bank and depositor is founded on contract, which is ordinarily memorialized by a signature 25 card that the depositor signs upon opening the account.” *Chazen v. Centennial Bank*, 26 71 Cal. Rptr. 2d 462, 465 (Ct. App. 1998) (internal quotation marks and citation omitted). 27 And courts recognize that plaintiffs are bound by terms contained in account agreements 28 they agreed to be bound by in signature cards. *Andre v. U.S. Bank, N.A.*, No. CV 20-4854- 1 CBM-(PJWx), 2021 WL 3598737, at *2 (C.D. Cal. May 20, 2021); see also *U.S. Bank 2 Nat’l Ass’n v. Wayman*, No. 13-cv-2203-BAS-BLM, 2015 WL 5772730, at *7 (S.D. Cal. 3 Sept. 30, 2015).

4 Accordingly, by signing the Personal Signature Card, “Plaintiff consented to be 5 bound by the provision contained in the [Deposit] Account Agreement.” *Andre*, 2021 WL 6 3598737, at * 2; see also *Johnson v. JP Morgan Chase Bank, N.A.*, 2018 WL 4726042, 7 at *3 (C.D. Cal. Sept. 18, 2018) (finding a valid agreement to arbitrate existed where 8 plaintiffs did not dispute that they signed a signature card when opening their bank account, 9 the signature card stated that by signing the signature card plaintiffs “acknowledge[d] 10 receipt of the Bank’s Account Rules and Regulations or other applicable account 11 agreement” and “agree[d] to be bound by the terms and conditions contained therein as 12 amended from time to time,” and the Account Rules and Regulations and Deposit Account 13 Agreement amended contained an arbitration provision). 14 Plaintiff’s mere denial of receipt of the DAA is insufficient to raise a triable issue as 15 to consent. See *Schwartz v. Comcast Corp.*, 256 F. App’x 515, 518 (3d Cir. 2007) (denial 16 of receipt of agreement was “not sufficient to create a material dispute of fact”); *Blau v. 17 AT & T Mobility*, No. C 11–00541 CRB, 2012 WL 10546, at *4 (N.D. Cal. Jan. 3, 2012) 18 (“If a party could get out of a contract by arguing that he did not recall making it, contracts 19 would be meaningless.”); *Al-Thani v. Wells Fargo & Co.*, No. C 08-1745 CW, 2009 WL 20 55442, at *6 (N.D. Cal. Jan. 7, 2009) (“If Plaintiff had not received the agreement and was 21 concerned about being bound to terms she had not read, she could have asked to see it 22 before signing it.”). And Chase submits evidence that when Plaintiff opened her Account 23 with Chase, it was Chase’s policy and procedure to provide each customer with a copy of 24 the DAA. Suppl. Williams Decl. ¶ 5. Moreover, Chase makes copies of the effective DAA 25 available to every customer who holds a deposit account with Chase both in branches and 26 on the Chase.com website. Id. ¶ 6. 27 Finally,

Plaintiff’s argument that she is not bound by the terms of the DAA because 28 she is unable to read small type does not sway the Court. Under California law, “[o]ne 1 who accepts or signs an instrument, which on its face is a contract, is deemed to assent to 2 all its terms, and cannot escape liability on the ground that he has not read it. If he cannot 3 read [it], he should have it read or explained to him.” *Caballero v. Premier Care Simi 4 Valley LLC*, 284 Cal. Rptr. 3d 560, 564–65 (Ct. App. 2021) (quoting *Randas v. YMCA of 5 Metro. L.A.*, 21 Cal. Rptr. 2d 245, 248 (Ct. App. 1993)). 6 C. Unconscionability 7 Plaintiff next argues the DAA is unconscionable and therefore unenforceable. Under 8 § 2 of the FAA, arbitration agreements can “be invalidated by generally applicable contract 9 defenses, such as fraud, duress, or unconscionability.” *Lim v. TForce Logistics, LLC*, 10 8 F.4th 992, 999 (9th Cir. 2021) (quoting *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 11 1259 (9th Cir. 2017)). In California, “unconscionability has both a procedural and a 12 substantive element, the former focusing on oppression or surprise due to unequal 13 bargaining power, the latter on overly harsh or one-sided results.” *Mohamed v. Uber 14 Techs., Inc.*, 848 F.3d 1201, 1210 (9th Cir. 2016) (internal quotation marks omitted) 15 (quoting *Armendariz v. Found. Health Psychcare Servs., Inc.*, 6 P.3d 669, 690 (Cal. 2000)). 16 Plaintiff, as the party opposing arbitration, must demonstrate both forms of 17 unconscionability, though they “need not be present in the same degree.” *Lim*, 8 F.4th 18 at 1000 (quoting *Poublon*, 846 F.3d at 1260). 19 Before the Court can contemplate the merits of Plaintiff’s unconscionability 20 argument, the Court must determine whether it can entertain that argument at all. “When 21 a plaintiff argues that an arbitration clause, standing alone, is unenforceable—for reasons 22 independent of any reasons the remainder of the contract might be invalid—that is a 23 question to be decided by the court.” *Bridge Fund Cap. Corp. v. Fastbucks Franchise 24 Corp.*, 622 F.3d 996, 1000 (9th Cir. 2010) (citing *Cox*, 533 F.3d at 1120). However, “when 25 a plaintiff’s legal challenge is that a contract as a whole is unenforceable, the arbitrator 26 decides the validity of the contract, including derivatively the validity of its constituent 27 provisions (such as the arbitration clause).” *Id.* (citing *Buckeye Check Cashing, Inc. v. 28 Cardegna*, 546 U.S. 440, 445–46 (2006) (“[A]s a matter of substantive federal arbitration 1 law, an arbitration provision is severable from the remainder of the contract. [U]nless the 2 challenge is to the arbitration clause itself, the issue of the contract’s validity is considered 3 by the arbitrator in the first instance.”)). 4 To determine whether a challenge is to an arbitration provision alone or to an entire 5 contract, courts evaluate the “crux of the complaint,” or under appropriate circumstances, 6 the arguments made in a party’s opposition to a motion to compel. See *Bridge Fund*, 622 7 F.3d at 1002 (“[W]e look not only to the complaint, but to Plaintiffs’ motion papers, to 8 determine if Plaintiffs’ objections to the arbitration clause are severable from Plaintiffs’ 9 challenge to the validity of the . . . agreement as a whole.”). When the “substantive basis 10 of the challenge” is to the arbitration provision, the court resolves the question. *Id.* at 1001; 11 see also *Rent-A-Ctr.*, 561 U.S. at 71 (“[W]e . . . require the basis of [the] challenge to be 12 directed specifically to the agreement to arbitrate before the court will intervene.”). 13 However, when the challenge is a general challenge to the overarching contract,

the 14 challenge goes to the arbitrator. *Buckeye*, 546 U.S. at 449. 15 Chase argues the Court should compel arbitration as to the unconscionability issues 16 in this case, as “almost [Plaintiff’s] entire argument goes to the enforceability of the DAA 17 as a whole rather than the enforceability of the Arbitration Agreement itself.” *Arb. Reply* 18 at 5. The Court agrees that the bulk of Plaintiff’s argument in her Opposition challenges 19 the enforceability of the overarching DAA, rather than the Arbitration Agreement. 20 Specifically, Plaintiff argues the DAAs are procedurally and substantively unconscionable 21 and requests that the Court “refuse to enforce the DAA even if it finds a valid agreement 22 between Chase and Ms. Smith.” *Arb. Opp’n* at 8. Although Plaintiff references the 23 Arbitration Agreement in her argument, she often appears to do so as an example of the 24 unconscionability of the DAA as a whole. To the extent Plaintiff challenges the 25 overarching contract, such challenge goes to the arbitrator. *Buckeye*, 546 U.S. at 449. 26 Nevertheless, the Court finds it appropriate to address Plaintiff’s arguments to the 27 extent she also challenges the Arbitration Agreement within the DAA as procedurally and 28 substantively unconscionable.

1. Procedural Unconscionability 2 Preliminarily, the Court does not find the Arbitration Agreement procedurally 3 unconscionable. “The procedural element of unconscionability focuses on ‘oppression or 4 surprise due to unequal bargaining power.’” *Poublon*, 846 F.3d at 1260 (quoting *Pinnacle 5 Museum Tower Ass’n v. Pinnacle Mkt. Dev. (US), LLC*, 282 P.3d 1217, 1232 (Cal. 2012)). 6 “Oppression occurs where a contract involves lack of negotiation and meaningful choice, 7 surprise where the allegedly unconscionable provision is hidden within a prolix printed 8 form.” *Pinnacle*, 282 P.3d at 1232. 9 Here, as Plaintiff notes, the Arbitration Agreement has an opt out provision that 10 permits individuals to opt out within 60 days of opening the account. See *Arb. Opp’n* 11 at 8–9 (first citing July 2021 DAA at 24; and then citing Exhibit C to Williams Decl. (“June 12 2023 DAA”), ECF No. 10-5 at 25). But a “meaningful right to opt-out of [arbitration] 13 necessarily renders [the arbitration clause] procedurally conscionable as a matter of law.” 14 *Mohamed*, 848 F.3d at 1210; see also *Kilgore v. KeyBank, Nat’l Ass’n*, 718 F.3d 1052, 15 1059 (9th Cir. 2013) (finding no procedural unconscionability where arbitration provision 16 within promissory note contained 60-day opt-out provision); *Cir. City Stores, Inc. v. 17 Ahmed*, 283 F.3d 1198, 1199–00 (9th Cir. 2002) (holding that plaintiff failed to establish 18 procedural unconscionability because agreement included 30-day opt out provision for 19 arbitration). While Plaintiff argues that she “did not perceive that she had any opportunity 20 to modify, negotiate, or refuse any agreement when she opened her account in 2021,” *Arb. 21 Opp’n* at 9 (citing Smith Decl. ¶ 5), “the general rule is that ‘one who signs a contract is 22 bound by its provisions and cannot complain of unfamiliarity with the language of the 23 instrument.’” *Cir. City Stores, Inc.*, 283 F.3d at 1200 (citing *Madden v. Kaiser Found. 24 Hosps.*, 552 P.2d 1178, 1185 (Cal. 1976)). 25 Even if Plaintiff were to make it past this initial hurdle, Plaintiff’s argument that the 26 DAA “contain[s] other elements of procedural unconscionability” does not sway the Court 27 that the Arbitration Agreement is procedurally unconscionable. As explained above, 28 Plaintiff mainly challenges the DAA, rather than the

Arbitration Agreement, as she argues 1 the DAA is a “prolix, pre-printed form document,” and “the entire contract is in small, 2 tightly spaced font and uses language that requires an attorney to fully understand.” Arb. 3 Opp’n at 10. To the extent she suggests the Arbitration Agreement itself is procedurally 4 unconscionable because it is “set forth at the very end” of the DAA, id., this is not a 5 situation where the arbitration clause was buried in fine print in the contract, but was 6 instead “in its own section, clearly labeled, in boldface.” Kilgore, 718 F.3d at 1059; see 7 also Pinnacle, 282 P.3d at 1232 n.12 (finding no unfair surprise where arbitration 8 provisions appeared in separate article with bold, capitalized, and underlined headings); 9 Morris v. Redwood Empire Bancorp, 27 Cal. Rptr. 3d 797, 1321 (Ct. App. 2005) (finding 10 no unfair surprise where arbitration provisions were offset with a “clear heading”). 11 And while Plaintiff relies on “Flesch reading ease score” and “Flesch-Kincaid grade 12 level” tests, to demonstrate the “complexity of the arbitration clause’s words and 13 sentences,” Arb. Opp’n at 10, Plaintiff does not cite any cases “considering, let alone 14 adopting, these tests as part of an unconscionability analysis,” In re Stubhub Refund Litig., 15 2021 WL 5447006, at *9 (N.D. Cal. Nov. 22, 2021) (finding Flesch Reading Ease and 16 Flesch-Kincaid tests failed to establish arbitration provision was procedurally 17 unconscionable). Furthermore, Plaintiff does not demonstrate that the Arbitration 18 Agreement was “composed in a manner . . . to thwart rather than promote understanding.” 19 Davis v. TWC Dealer Grp., Inc., 254 Cal. Rptr. 3d 443, 450–51 (Ct. App. 2019), reh’g 20 denied (Nov. 26, 2019), review denied (Feb. 11, 2020) (finding high procedural 21 unconscionability where typeface “challenge[d] the limits of legibility,” was written in a 22 single block of text with no paragraph separation, and required legal training to understand 23 references to statutory provisions). 24 Nor is the Court persuaded that the DAA’s language indicating Chase can “change 25 the terms of this agreement . . . at any time” without notice unless the “change would 26 adversely affect you,” Arb. Opp’n at 10 (first citing July 2021 DAA at 22, 24; and then 27 citing June 2023 DAA at 22, 25), renders the arbitration clause procedurally 28 unconscionable. Plaintiff suggests this language is procedurally unconscionable as the 1 Arbitration Agreement applies to past, present, and future claims. Id. Plaintiff points to 2 Heckman v. Live Nation Entertainment, Inc., where the court found a unilateral 3 modification provision without prior notice to be illusory because the modification 4 provision expressly applied “not only prospectively but also retroactively.” 120 F.4th 670, 5 683 (9th Cir. 2024). However, under California law, a “unilateral modification provision 6 that is silent as to whether contract changes apply to claims, accrued or known, is impliedly 7 restricted by the covenant so that changes do not apply to such claims.” Peleg v. Neiman 8 Marcus Grp., Inc., 140 Cal. Rptr. 3d 38, 67 (Ct. App. 2012). And Plaintiff does not argue 9 that the modification provision in the DAA here, as opposed to the provision in Heckman, 10 “expressly addresses whether contract changes apply to claims that have accrued or are 11 known[.]” Peleg, 140 Cal. Rptr. 3d at 68. Accordingly, California’s covenant of good 12 faith and fair dealing saves the Arbitration Agreement from being illusory. See Wright v. 13 JPMorgan Chase Bank N.A., No. CV 13-9022 DMG (MRWX), 2014 WL 13130330, at *7 14

(C.D. Cal. Aug. 1, 2014) (finding no additional procedural unconscionability where 15 agreement allowed for unilateral modification but was silent as to whether any changes 16 apply to known or accrued claims). Thus, the Court finds Plaintiff has not shown 17 procedural unconscionability. 18

2. Substantive Unconscionability 19 Plaintiff next makes substantive unconscionability arguments, but even were these 20 arguments successful, substantive unconscionability alone is not enough; she must 21 demonstrate both forms of unconscionability, though they “need not be present in the same 22 degree.” *Lim*, 8 F.4th at 1000 (quoting *Poublon*, 846 F.3d at 1260). In any event, the Court 23 does not find Plaintiff has demonstrated the Arbitration Agreement is substantively 24 unconscionable. 25 “Substantive unconscionability pertains to the fairness of an agreement’s actual 26 terms and to assessments of whether they are overly harsh or one-sided.” *Pinnacle*, 282 P.3d at 1232 (citations omitted). “A contract term is not substantively unconscionable 28 when it merely gives one side a greater benefit; rather, the term must be ‘so one-sided as 1 to shock the conscience.’” *Id.* (citation omitted). 2

First, Plaintiff argues the DAA is substantively unconscionable as “the entire 3 document is in fine print other than the Table of Contents and Privacy Notice.” *Arb. Opp’n* 4 at 12. As explained above, this is a substantive challenge to the unconscionability of the 5 contract as a whole, not the arbitration clause; thus such challenge goes to the arbitrator. 6 See *Buckeye*, 546 U.S. at 449. 7 Next, Plaintiff argues the opt-out provision is “largely meaningless” because, 8 according to Plaintiff, Chase “can nullify a consumer’s decision to opt out simply by 9 sending the consumer a new agreement.” *Arb. Opp’n* at 12. However, the Court agrees 10 with Chase, that it “plainly could not force a customer that had opted out of an arbitration 11 agreement to agree to a new arbitration agreement.” *Arb. Reply* at 8 (emphasis in original). 12 And to the extent Plaintiff suggests the 60-day opt-out provision makes the Arbitration 13 Agreement substantively unconscionable, such contention is not supported by the law. See 14 *Kilgore*, 718 F.3d at 1059 (holding 60-day opt-out provision to be evidence against a 15 finding of unconscionability). 16 Additionally, Plaintiff has not persuaded the Court that the Arbitration Agreement 17 is unconscionable because it does not include a copy of the applicable American 18 Arbitration Association (“AAA”) and Judicial Arbitration and Mediation Services 19 (“JAMS”) rules, in light of authority to the contrary. See *Poublon*, 846 F.3d at 1262 (9th 20 Cir. 2017) (rejecting argument that failure to attach arbitration rules rendered arbitration 21 agreement procedurally or substantively unconscionable); *Baltazar v. Forever 21 Inc.*, 367 22 P.3d 6, 12–13 (Cal. 2016) (holding that failure to attach arbitration rules did not render 23 arbitration more procedurally unconscionable and would impact analysis of substantive 24 unconscionability only if the allegedly unconscionable term was part of the arbitration rules 25 rather than agreement itself). True, the Court “may ‘more closely scrutinize the substantive 26 unconscionability’ of terms appearing only in the [AAA] rules,” but the incorporation of 27 these documents by reference does not support Plaintiff’s claim that the Arbitration 28 Agreement was oppressive. See *Poublon*, 846 F.3d at 1262 (quotation omitted). 1 Finally, Plaintiff suggests the Arbitration Agreement is unconscionable because the 2 AAA rules “generally do not allow for any

depositions, and even document requests must be approved by the arbitrator, differing greatly from litigation.” Arb. Opp’n at 13. And Plaintiff contends she will be left with these “largely useless discovery provisions,” and not be able to utilize JAMS’s apparently more desirable rules because of a purported conflict between Chase’s Arbitration Agreement and JAMS’s minimum standards for consumer cases. Id. The Court is persuaded by Chase’s representation that JAMS arbitration is, in fact, available, see Arb. Reply at 9, and in any event, Plaintiff fails to explain why the AAA procedures are substantively unconscionable; instead, she admits the AAA rules do not prohibit additional discovery that is needed to ensure “a fundamentally fair process,” see Arb. Opp’n at 13. Accordingly, the Court does not find the Arbitration Agreement to be substantively unconscionable. D. Affecting the Public Next, Plaintiff contends that she may not be forced to arbitrate her UCL claims, as under *McGill v. Citibank, N.A.*, 393 P.3d 85, 95 (Cal. 2017), California law “forbids agreements that prohibit the right to seek public injunctive relief in any forum.” Arb. Opp’n at 14. Plaintiff argues that she “seeks to redress a public injury here,” as her UCL claim “states that Chase’s conduct injures ‘consumers,’ i.e., the public, and that its conduct includes ‘waiving through manifestly fraudulent transactions like Ms. Smith’s cash withdrawal and wire transfer.’” Arb. Opp’n at 15 (citing Compl. ¶ 63). She asserts the claim “also targets Chase’s concealment of ‘the true nature of its anti-fraud practices, which focus primarily on protecting credit accountholders rather than deposit accountholders.’” Id. (citing Compl. ¶ 64). Plaintiff thus seeks an injunction “enjoining The Court notes Plaintiff additionally argues “the DAA more generally has substantially unfair terms,” unspecified to the Arbitration Agreement. Arb. Opp’n at 7–8. Plaintiff does not cite any authorities in support of her position as to these terms. However, in any event, such a challenge to the overarching Chase permanently from violating Business & Professions Code section 17200 in connection with the violations alleged in the Complaint.” Compl. at Prayer for Relief. 3 However, to seek public injunctive relief in federal court, Plaintiff must also allege that she has Article III standing. “[A] previously deceived consumer may have standing to seek an injunction against false advertising or labeling, even though the consumer now knows or suspects that the advertising was false at the time of the original purchase[.]” 7 *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 969 (9th Cir. 2018). But Davidson further states: 9 Knowledge that the advertisement or label was false in the past does not equate to knowledge that it will remain false in the future. In some cases, the threat of future harm may be the 11 consumer’s plausible allegations that she will be unable to rely on the product’s advertising or labeling in the future, and so will 12 not purchase the product although she would like to. In other 13 cases, the threat of future harm may be the consumer’s plausible allegations that she might purchase the product in the future, 14 despite the fact it was once marred by false advertising or 15 labeling, as she may reasonably, but incorrectly, assume the product was improved. 16

17 Id. at 969–70 (citation and footnote omitted).

18 Here, Plaintiff has not alleged she is threatened with future harm. Rather, she admits 19 “the

injunction requested will not benefit her because Chase’s deceptive practices have 20 already injured her and thus alerted her to their true nature.” Arb. Opp’n at 15 (citing 21 Compl. ¶ 64). Accordingly, McGill does not preclude arbitration of Plaintiff’s California 22 UCL claims. See *Stover v. Experian Holdings, Inc.*, 978 F.3d 1082, 1087 (9th Cir. 2020) 23 (holding because plaintiff’s “complaint does not allege the threat of future harm . . . 24 required for Article III standing in a case seeking public injunctive relief . . . the McGill 25 rule does not preclude arbitration of her California UCL claim”). 26 Thus, the Court GRANTS Chase’s Motion to Compel Arbitration (ECF No. 10). 27 / / / 28 / / / 1 Impact on Plaintiff’s Complaint 2 The Court must still decide what happens to Plaintiff’s Complaint. Chase argues the 3 || Action must be stayed pending the outcome of arbitration. Arb. Mot. at 10-11. Plaintiff 4 ||does not resist this assertion, and the Court agrees. When a court “finds that a lawsuit 5 ||involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the 6 || FAA compels the court to stay the proceeding.” *Smith v. Spizzirri*, 601 U.S. 472, 478 7 (2024). For the reasons discussed above, Plaintiff’s claims against Defendants are subject 8 ||to binding arbitration. Accordingly, this action must be stayed in its entirety pending 9 ||completion of arbitration.

10 CONCLUSION

11 In light of the foregoing, the Court: 12 1. DENIES Plaintiff’s Remand Motion (ECF No. 9); 13 2. OVERRULES Plaintiff’s Evidentiary Objections (ECF No. 17-3); 14 3. OVERRULES Defendant Chase’s Evidentiary Objections (ECF No. 19-6); 15 4. GRANTS Defendant Chase’s Arbitration Motion (ECF No. 10); and 16 5. STAYS this action pending the completion of arbitration proceedings pursuant 17 to 9 U.S.C. § 3. 18 The Parties SHALL FILE a joint status update on the arbitration proceedings every 19 || 120 days, starting from the date of this Order, and within 14 days of the proceedings’ 20 || completion. 21 IT IS SO ORDERED. 22 ||Dated: June 2, 2025 (een 3 on. Janis L. Sammartino United States District Judge 24 25 26 27 28