The Computer & Internet Lawyer

Volume 38 ▲ Number 7 ▲ July/August 2021

Ronald L. Johnston, Arnold & Porter, Editor-in-Chief

# Survey of Enforceability of Consumer Electronic Acceptance: A Practitioner's Guide to Designing Online Arbitration Agreements and Defending Them in Court – Part VII

**By Elie Salamon**

As businesses continue to face unprecedented challenges navigating the global pandemic and depressed consumer spending and demand, companies are looking for cost-saving measures across the board to stay afloat and to maintain corporate profits. Many businesses have shifted to adding arbitration agreements with binding class action waivers to the sale of goods and use of services to consumers to flatten company annual litigation defense spending. These agreements require consumers to bring any claim arising out of their purchase or use of a product or service in arbitration rather than in court, and prevent consumers from bringing such claims as part of a class or consolidated action.

The first part of this article, published in the January issue of *The Computer & Internet Lawyer*, discussed why an arbitration clause can be a powerful tool in a company's litigation defense arsenal; the enforceability of arbitration agreements under the Federal Arbitration Act; the two most common types of web-based contracts (a "clickwrap" or "clickthrough" agreement and a "browsewrap" agreement); and best practices for drafting those web-based contracts; and elements that attorneys defending a company's arbitration agreement in court should incorporate into any motion to compel arbitration.

Subsequent parts of this article published in *The Computer & Internet Lawyer* surveyed recent decisions (in chronological order based on date of publication) over the past year or so across all jurisdictions involving the enforceability of consumer electronic acceptance of arbitration agreements. This final part concludes the survey.

The summaries below are focused principally on the question of contract formation, that is, whether the consumer had notice of the arbitration agreement and manifested their agreement to it, and the arguments plaintiffs have invoked in an effort to evade a finding of mutual assent to arbitrate any disputes. The summaries include

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imagery of the corporate website and app presentations of the arbitration agreements at issue in each case, and explain how those agreements fared when tested in court.

For instance, *Rakofsky v. Airbnb, Inc.* is illustrative of "a classic example" of modified clickwrap acceptance by which a user is presented with hyperlinked terms and conditions immediately below a button that the user is warned, when clicked on, will result in their agreement to Airbnb's terms of service. There, the fact that the user was not required to view Airbnb's terms of service, the court held, did not affect the inquiry notice analysis.

By contrast, *Snow v. Eventbrite, Inc.*, for example, is demonstrative of two common pitfalls committed in an effort to bind a user to a company's arbitration agreement.

First, the district court in *Snow* found the declaration submitted by Eventbrite to authenticate the company's arbitration agreement in support of the company's motion to compel arbitration wanting because the declaration submitted "exemplary" "versions" of the sign-in wrap agreement that would have been presented to each plaintiff, but did not indicate (i) when those versions were in effect, and thus whether those versions could have been the agreements actually presented to the plaintiffs, and (ii) whether there were other variations of the agreement used by the company not depicted in the company's motion papers with which the plaintiffs might have been confronted. And while the company submitted a supplemental declaration asserting that the text of each interface was identical, the district court faulted Eventbrite's declaration because it did not indicate whether "the overall design" also remained unchanged.

Second, the district court also found that inquiry notice was lacking where the company's disclaimer that warned the user that clicking a large "Continue" button would result in acceptance of Eventbrite's terms of service was inconspicuous – in dark gray font against a black background and therefore could be "easily missed because of the lack of contrast between it and the background."

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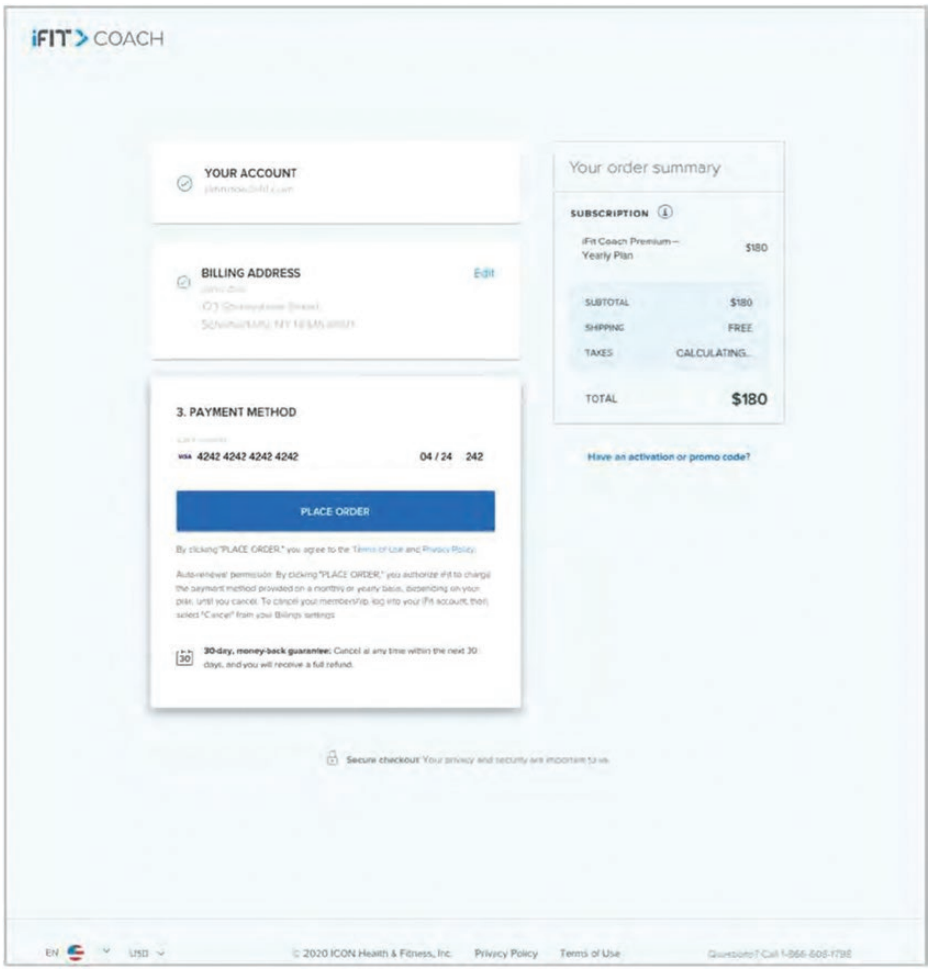
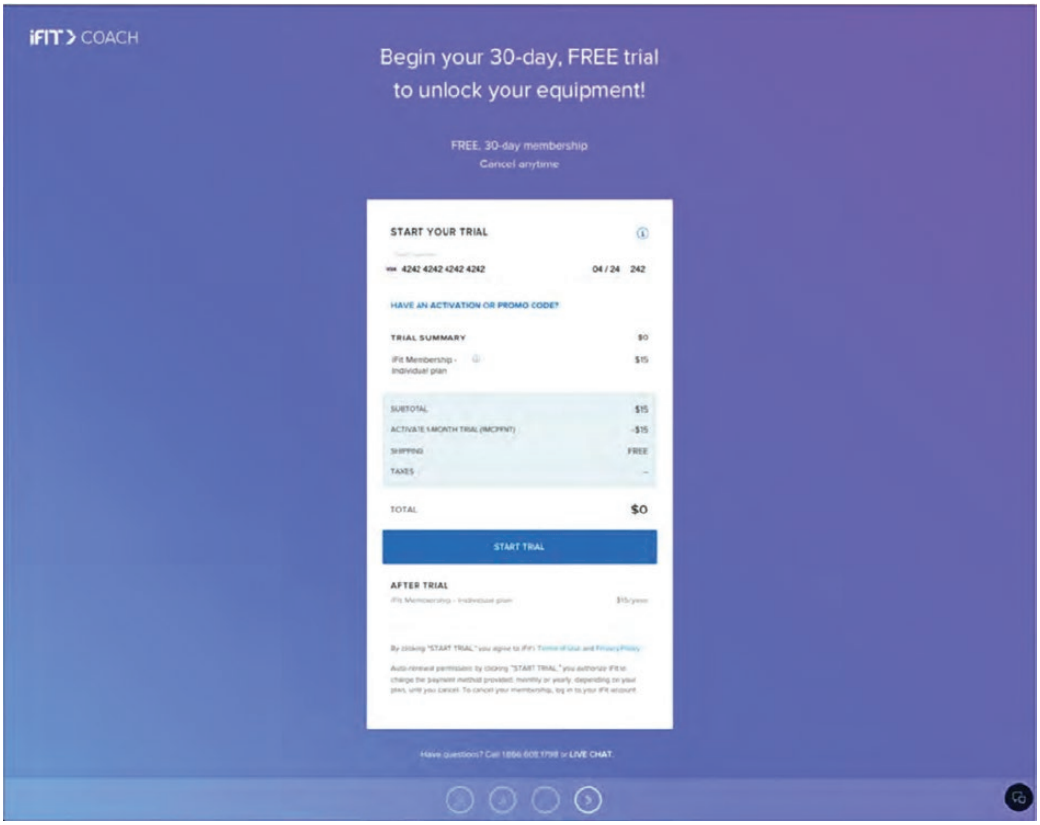
***Teeda Barclay v. ICON Health & Fitness, Inc.*, 2020 WL 6083704 (D. Minn. Oct. 15, 2020) (Tostrud, J.) (applying Utah law)—**Three plaintiffs filed a

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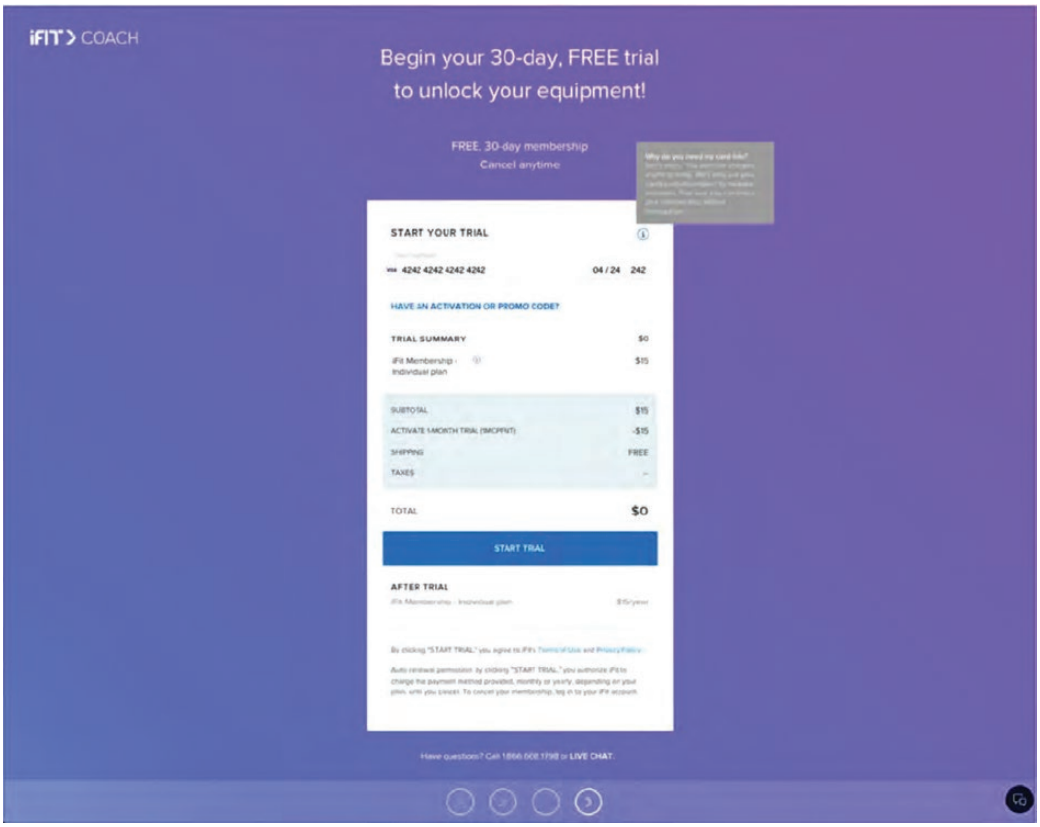
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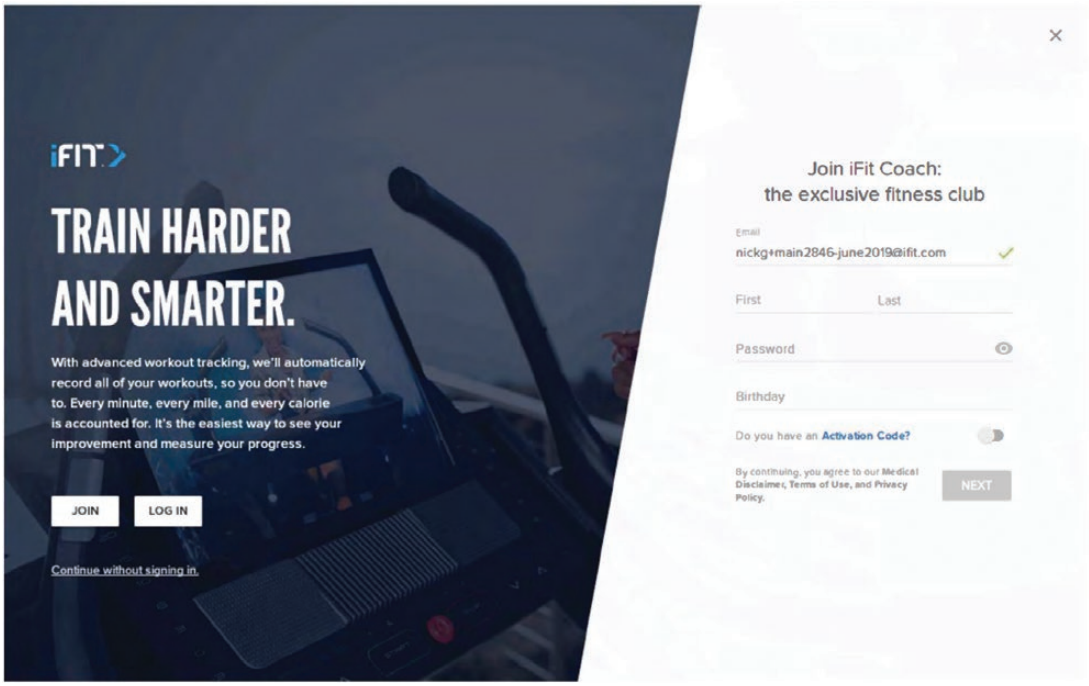



putative class action against ICON Health & Fitness and NordicTrack, claiming that the NordicTrack treadmills each of them purchased could not achieve or maintain the continuous horsepower ICON represented they were capable of. As is relevant here, defendants moved to compel two of the three plaintiffs to arbitrate their claims.

Defendants argued that these plaintiffs, Barclay and Nordick, agreed to arbitration when they registered as iFit members to access iFit's training support technology while they exercised on the treadmills. Because defendants did not know how either plaintiff actually registered as iFit members, they submitted evidence with a company declaration showing all the ways in which plaintiffs could have registered, and argued that under any of the registration methods, they would have been required to assent to arbitration. The documentation submitted showed that both plaintiffs signed up as members of ICON's iFit service on March 4 and June 18, 2019 respectively, and that the iFit Terms of Service then in effect included an arbitration clause. Plaintiffs could have registered using iFit's mobile application, on iFit's website registration page, by unlocking and activating ICON's Bluetooth-equipped treadmills, or by using ICON's touchscreen-equipped treadmills. Each of these methods would have required Barclay and Nordick to click a button that read in all caps typeface either "PLACE ORDER," "START TRIAL," or "NEXT." Either immediately below or left of each of these buttons appeared a statement in gray font alerting users that, by clicking the button, they agreed to the hyperlinked iFit "Terms of Use," among other contracts. The phrase "Terms of Use" was either colored blue or in gray boldface. The hyperlinked Terms of Use included an arbitration provision.

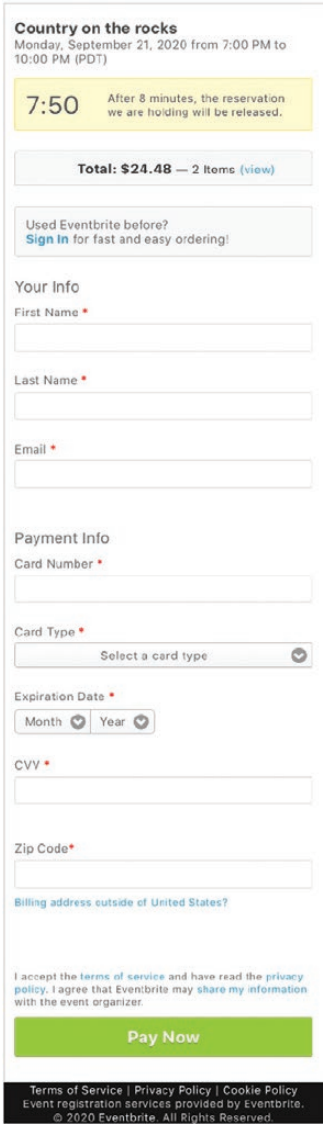
Plaintiffs argued that these sign-up methods were inadequate to establish their assent to arbitration. The district court disagreed, and held that plaintiffs Barclay and Nordick agreed to arbitrate their claims under Utah law, as each of the four possible iFit registration methods, the court explained, would have required plaintiffs to click a button, adjacent to which "would have appeared a statement alerting Barclay and Nordick that by clicking on the box, she agreed to the hyperlinked iFit 'Terms of Use,' among other contracts," and that "[a]ny of these processes would have provided Barclay and Nordick reasonably conspicuous notice of the iFit Terms of Use (and the arbitration provision within them)." *Id.* at *10. The court found that "[t]he clicking-means-assent statement and hyperlink to the Terms of Use were clear, conspicuous, adjacent to each other, and not buried at the bottom of the page," and that "[a]ny of these processes would have given Barclay and Nordick enough information to discover and review the Terms of Use by proper diligence." *Id.* (internal quotation marks omitted). The district court observed that "[f]ederal courts generally give effect to such agreements where the button required to perform the action manifesting assent (e.g., signing up for an account or executing a purchase) is located directly next to a hyperlink to the terms and

a notice informing the user that, by clicking the button, the user is agreeing to those terms," and the court concluded that "[t]here [was] no reason to think Utah law might require a different result." *Id.* (internal quotation marks omitted). Because each of the registration methods available to plaintiffs "did not diverge from the basic hybridwrap layout," the court compelled both plaintiffs to arbitrate their disputes against defendants. *Id.*

***Snow v. Eventbrite, Inc.*, 2020 WL 6135990 (N.D. Cal. Oct. 19, 2020) (Orrick, J.) (applying California law)—**Three plaintiffs filed this putative class action, claiming that they purchased tickets to events through Eventbrite, and after events were cancelled or postponed due to the COVID-19 pandemic, Eventbrite unlawfully withheld refunds from them. Eventbrite moved to compel plaintiffs to arbitrate their claims pursuant to the company's Terms of Service it claimed plaintiffs agreed to when they created Eventbrite accounts and made ticket purchases.

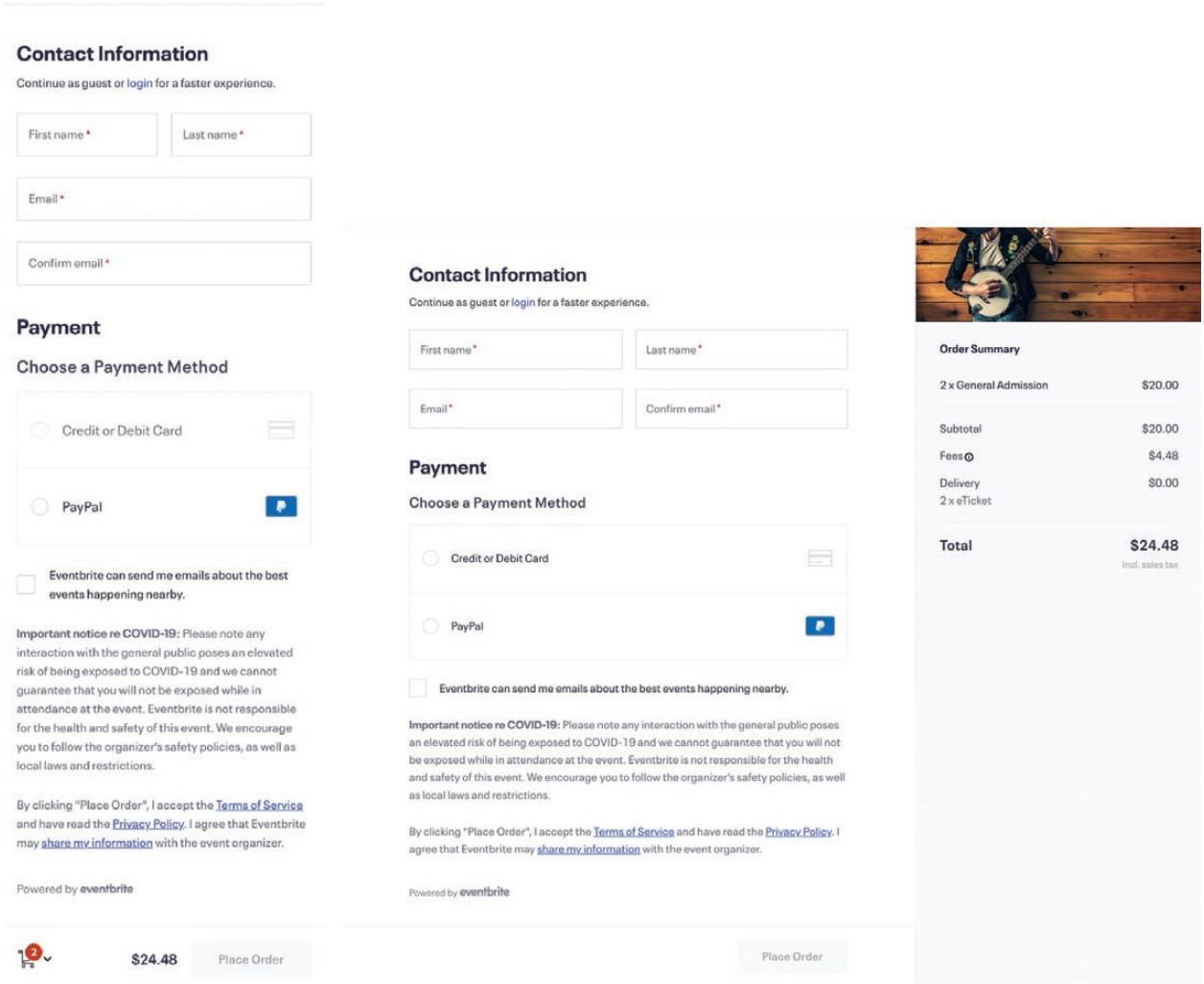
Users could interact with Eventbrite's platform either by using its desktop website, mobile website, or smartphone application. Plaintiffs alleged that they signed up for accounts at various times, the earliest of which was in January 2018, and made the purchases at issue from December 2019 onward. Eventbrite argued that plaintiffs could not have created their accounts or purchased tickets without consenting to the Terms of Service, which were hyperlinked on the relevant pages displayed to plaintiffs, and which included an arbitration clause.

The district court found numerous deficiencies with Eventbrite's evidence submitted in support of its motion. First, the court observed that Eventbrite's evidence did not demonstrate what version of the agreements plaintiffs would have seen during the relevant time period. For each plaintiff, Eventbrite submitted one image of the sign-in wrap as it appeared in 2016 and another as it appeared today, and then stated that the images were merely "exemplary" of how the messages appeared between 2016 and the present, and that the agreements' layouts were "substantially identical" for each plaintiff. Eventbrite did not indicate the date when the website first adopted its current appearance; nor did it say which of the images each plaintiff would have encountered on the date of his or her use of the platform. Moreover, Eventbrite's authenticating declaration also did not state whether these were the only ways the page appeared between 2016 and the present or whether there were other variations, as the declaration simply stated that the images appended to the motion "depict[ed] versions of" the pages, not that they depicted the only version of the pages. Eventbrite's declarant attempted to remedy these issues by stating that, "[a]lthough the look and feel of the




[page] have changed slightly over time[,] . . . such page has always contained language in close proximity to the" buttons, and the disclosures have always "contained blue, typically underlined hyperlinks" to the Terms of Service. The declaration also stated that "since at least as early as 2016, all versions of the Smartphone App Sign-Up have contained disclosures substantially identical to those shown here (including hyperlinks to the TOS in blue font) notifying users that they assented to the TOS by creating an Eventbrite account." But the district court found these statements inadequate, observing that the Smartphone App Sign-Up, for example, "only state[d] that the *text* of the disclosures was identical, not the overall design," which is equally important. *Id.* at *5.

Second, the district court found that Eventbrite's motion papers were contradictory in some places, as it stated that plaintiff Conner, for instance, signed up for

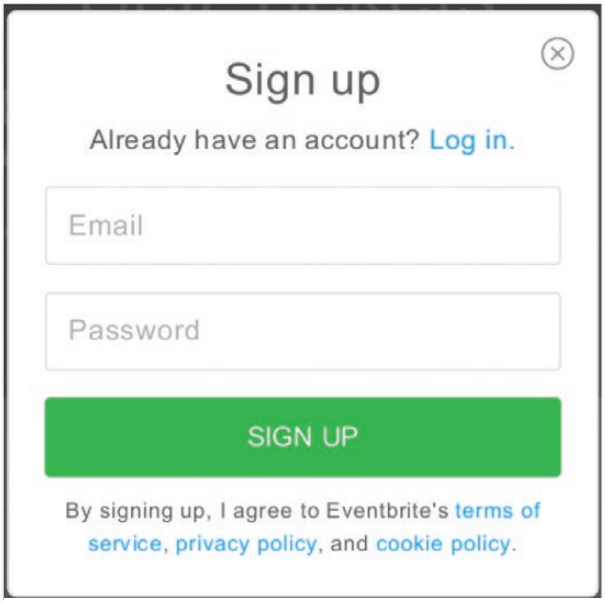



an Eventbrite account on August 13, 2019, and "was shown the below disclosure." But in Eventbrite's reply brief in support of its motion to compel, it stated that particular disclosure was not displayed until April 20, 2020, several months after plaintiff Conner signed up for her account.

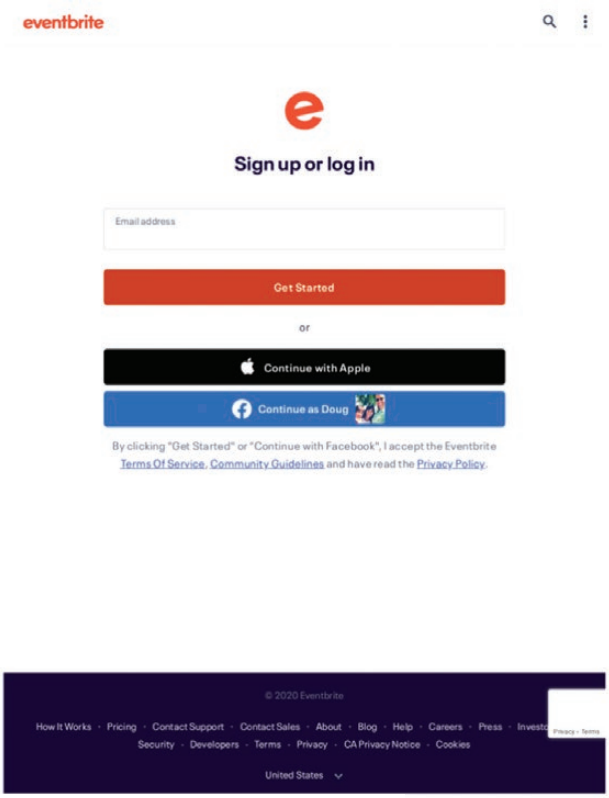
Third, the district court faulted Eventbrite for submitting "misleading evidence." *Id.* at *6. In its motion, Eventbrite argued that a user must scroll past the Terms of Service message in order to tap the "Place Order" button at the bottom of the screen on both the website and app. But plaintiffs pointed out in their opposition that Eventbrite's images and argument omitted the fact that everything on the page except for the "Place Order" button scrolls up and down, while the "Place Order" button always remains static and visible at the bottom of the page. The court reasoned that, if true, "a user could fill in her personal details on this page and select 'Place Order' without ever having seen the TOS acceptance message at the bottom of the scrollbar section of the page." *Id.* While not evidence, the district court credited the fact that Eventbrite, in its reply, "failed to deny that there [was] a discrete scrollable area that exclude[d] the Place Order button." *Id.* at *7. The court took judicial notice of the fact that some scrollbars fade from visibility when not in use and therefore took judicial notice that Eventbrite's website in its current form did appear to work in the manner that plaintiffs suggested, rendering Eventbrite's evidence misleading.

As to the particular plaintiffs, Eventbrite asserted in its company declaration that plaintiff Snow signed up for an Eventbrite account using the company's mobile web page on January 14, 2018 and that Snow was presented with the following screen where she tapped a large green "Pay Now" button to purchase tickets on the same date.

The district court agreed that, if this was indeed what plaintiff Snow saw, it would be sufficient to put her on notice of the terms of service, as the message that stated




2016 Agreement




Current Version

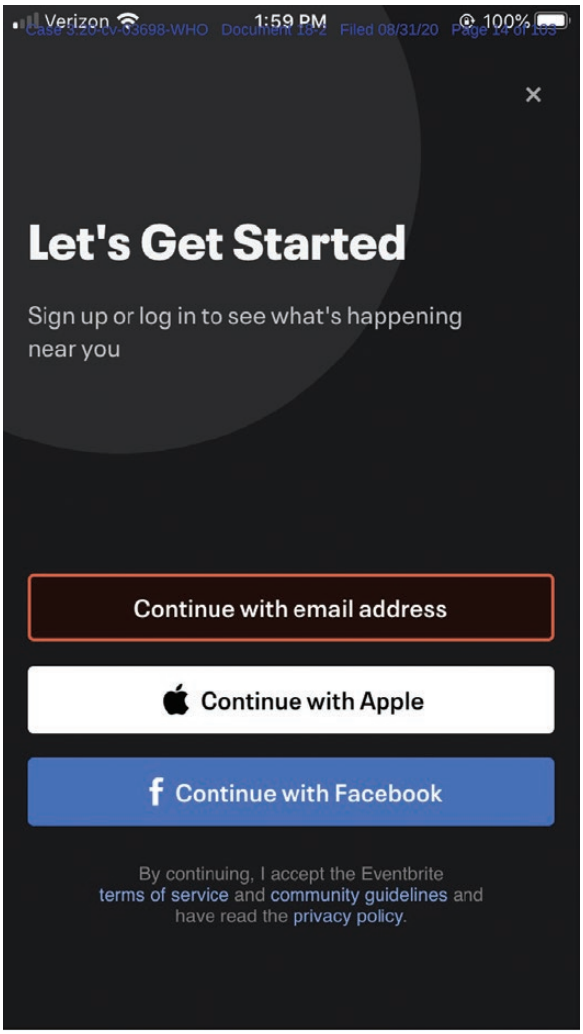
"I accept the terms of service" appeared "directly above that Pay Now button, meaning that Snow had to scroll past it to press the button," and the message "was also positioned close to the button." *Id.* at *7. The phrase "terms of service" was also hyperlinked to the Terms of Service and "[t]hat hyperlink [was] blue, while the text around it [was] gray." *Id.*

While the agreement was sufficient to place a reasonably prudent user on inquiry notice of the arbitration agreement, the district court found that, because the interface image was from January 2016, and Eventbrite did not indicate when that interface stopped being used, there was no way for the court to determine whether plaintiff could have actually seen it.

Eventbrite also argued alternatively that plaintiff Snow made several other orders on its platform and agreed to its Terms of Service by tapping the "Place Order" button in either of the following images from the present day.

Despite the static nature of the Place Order button that would mean that a user could enter all of their information and tapping the button without ever seeing the Terms of Service hyperlink and notification, the court concluded that these agreements nevertheless satisfied inquiry notice because they were "not buried at the bottom of the page or tucked away in obscure corners of the website where users [were] unlikely to see it." *Id.* at *8. "[A]lthough users [were] not absolutely guaranteed to see these agreements, . . ." the court concluded that "they [were] likely to because the agreements [were] close enough to the action buttons and [were] part of a page that a plaintiff [was] required to scroll through a portion of." *Id.* But the district court found that Eventbrite failed to carry its burden again because the record did not establish whether the images from the present day were the same ones Snow would have seen when she made her purchases.

With respect to plaintiff Piceno, the district court credited both agreements for placing the message advising users of their acceptance to the Terms of Service "adjacent to the buttons that signal acceptance" and were "in a font that contrast[ed] with the background, and display[ed] the phrase 'terms of service' in hyperlink blue (and sometimes in hyperlink blue." *Id.* at *8. And while the court found that these agreements would have provided plaintiff Piceno with inquiry notice, it identified two flaws, which precluded such a finding. The first, was that Eventbrite had presented no evidence that either agreement was in effect at the time Piceno signed up for his



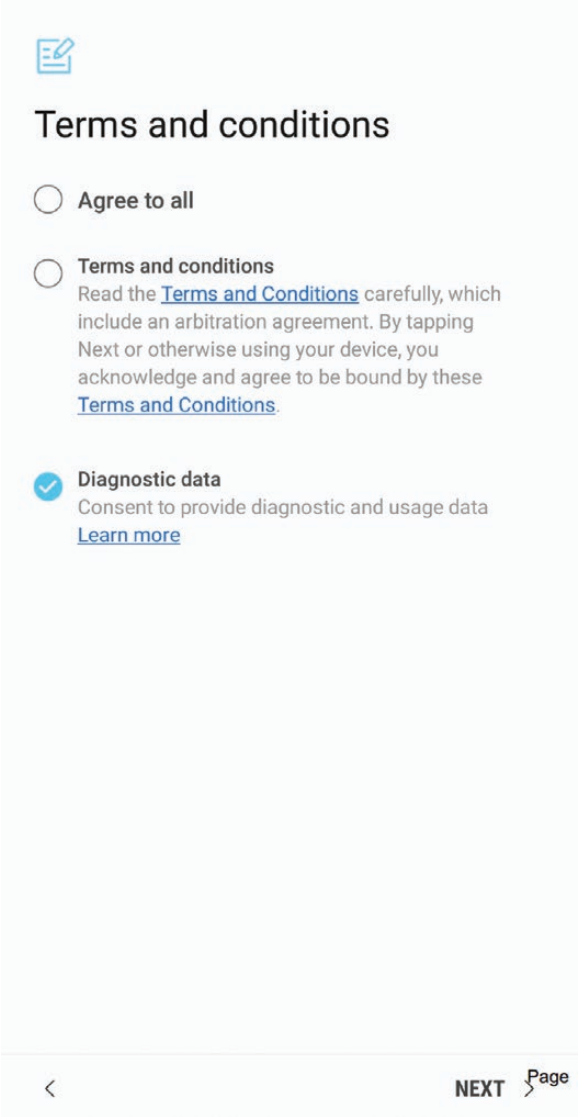

account. The second concerned the "Continue with Apple" button in the current version of the agreement. The court observed that the message below the buttons stated that a user accepted the Terms of Service "[b]y clicking 'Get Started' or 'Continue with Facebook,'" but did not say that a user accepted the Terms of Service by clicking the "Continue with Apple" button.

The district court next turned to the smartphone app sign-up page, for which it found inquiry notice was wanting as to both plaintiffs Piceno and Conner.

The district court held that a reasonably prudent user would not be put on adequate notice of the Terms of Service from the particular interface Eventbrite claimed both plaintiffs would have seen. "While the text is close to the sign-up button and 'terms of service' is in a blue hyperlink, . . ." the court explained, "the message as a whole [was] inconspicuous." *Id.* at *9. The district court observed that "[t]he background of the page [was] black (or very dark gray) while the text "By continuing, I accept the Eventbrite terms of service" [was]—except for the phrase 'terms of service' itself—dark gray." *Id.* The court thus found that "[t]he operative message that clicking the button 'accept[s]' the TOS is easily missed because of the lack of contrast between it and the background." *Id.* In addition, the court noted that "[t]he buttons immediately above the text [were] either brightly colored and contrast[ed] starkly with the black background (as [was] the case for the Apple and Facebook buttons) or use[d] large, white text against the black (as [was] the case for the email address button). All of those buttons also use[d] large, clear fonts; the text of the disclaimer, in contrast, [was] small." *Id.* Relying on the First Circuit's decision in *Cullinane*, which, applying Massachusetts law, found inquiry notice lacking with Uber's agreement that used dark gray text against a black background, the district court concluded that this setup likely "would lead many consumers to click one of the vibrant buttons while never knowing—and reasonably so—that the low-contrast disclaimer subjects them to the TOS." *Id.* The court explained that interfaces are generally approved where "the text contrasts with the background—usually gray or black text against white or off-white backgrounds"; unlike here, where the setup screen used "small, dark text against black beneath larger, bright action buttons." *Id.*

***Velasquez-Reyes v. Samsung Elecs. Am., Inc.*, 2020 WL 6528422 (C.D. Cal. Oct. 20, 2020) (Gee, J.) (applying California law)—**This putative class action was brought against Samsung, claiming that the company misrepresented to consumers that certain smartphone models were water-resistant. Samsung moved to compel one of the plaintiffs to arbitrate their claims pursuant to Terms and Conditions the plaintiff agreed to when they activated their phone.

During the activation process, the phone displayed a page titled in large bold font, "**Terms and conditions**," which advised users in gray text to "[r]ead the "Terms and Conditions carefully, which include an arbitration agreement. By tapping Next or otherwise using your device, you acknowledge and agree to be bound by these Terms and Conditions." The phrase "Terms and Conditions," which appeared twice, was underlined in both places, and hyperlinked to the relevant terms, which included an arbitration clause. The user could not proceed with the set-up process and use the phone until clicking a bubble next to the bolded phrases "**Terms and conditions**" or "**Agree to all**," and then tapping the bolded "**Next**" button at the bottom of the screen. User can opt out of the arbitration




agreement by providing notice to Samsung within 30 days of purchase.

Plaintiff sought to avoid arbitration by arguing that the T-Mobile sales representative activated the phone for him, and that he therefore was unaware of the Terms and Conditions and never assented to them. The district court, however, rejected plaintiff's argument, holding that the T-Mobile representative acted as an agent within the scope of his authority when accepting the terms and conditions for plaintiff.

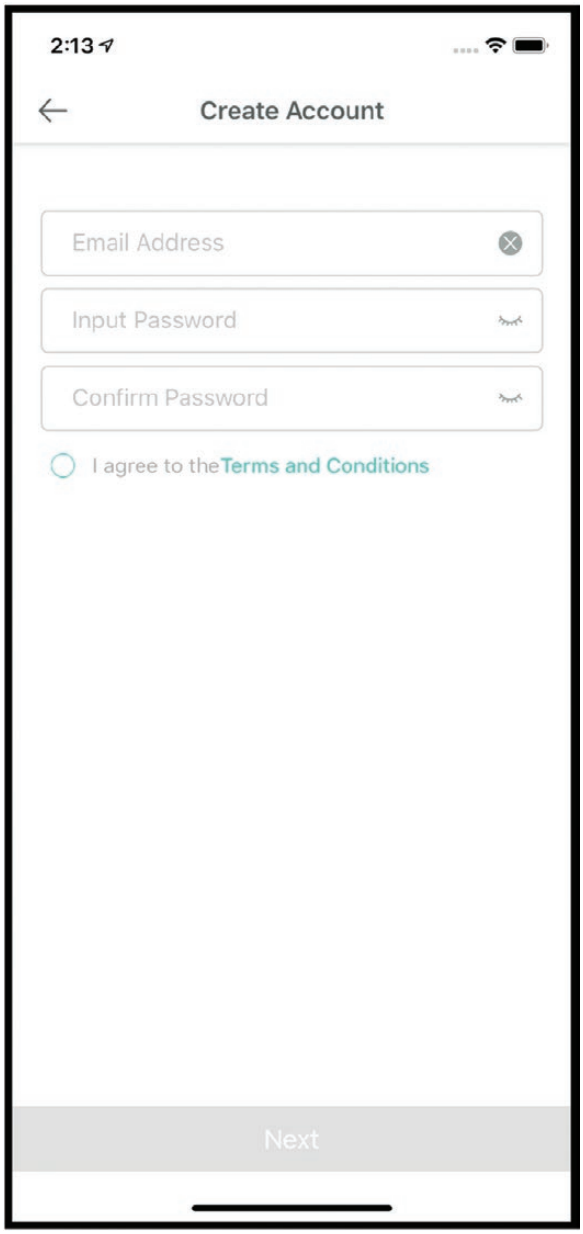
Plaintiff also contended that, notwithstanding his assent, he could not be bound to the arbitration agreement by his failure to opt out because he was not aware of the arbitration provision. But the court explained that "[c]hoosing not to read the terms and conditions does not negate inquiry notice." *Id.* at *4. The district court observed that "[t]he terms and conditions page plainly and conspicuously inform[ed] the user that the terms 'include[d] an arbitration agreement,' without even needing to click to view the full terms." *Id.* That plaintiff authorized the T-Mobile representative to click through this page for him, the court explained, did not mean that he was deprived of reasonable inquiry notice as to its contents.

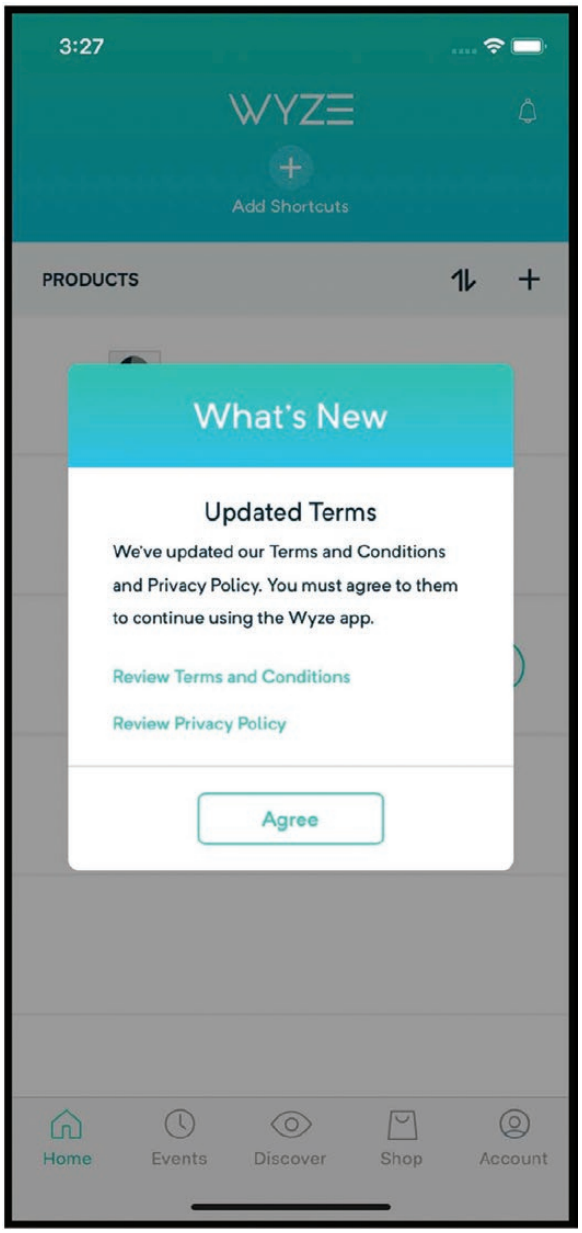
***In re Wyze Data Incident Litig.*, 2020 WL 6202724 (W.D. Wash. Oct. 22, 2020) (Coughenour, J.) (applying Washington law)—**This consolidated data breach putative class action stems from separate class actions filed against Wyze Labs by consumers who acquired Wyze internet-enabled home security cameras through third-party retailers and direct purchases from Wyze. Plaintiffs claimed that Wyze exposed customer sensitive personally identifiable information, including customer live video feeds. Wyze moved to compel plaintiffs' claims to arbitration based on their acceptance of the company's Terms and Conditions.

Plaintiffs established user accounts with Wyze between January 2018 and October 2019. Beginning in July 2018, Wyze implemented a clickwrap agreement to present its Terms and Conditions to users at the time of registration. Users were required to tap a circle next to a statement in gray typeface that said "I agree to the **Terms and Conditions**," before they could complete their account registration. The phrase "Terms and Conditions" was bolded and turquoise, and hyperlinked to the relevant terms, which included an arbitration provision.

Wyze later modified its interface to make the link to its Terms and Conditions more prominent, and required established account holders to click the turquoise "Agree" box to the company's "Updated Terms," and offering established users an opportunity to "Review Terms and Conditions," which phrase was colored turquoise and hyperlinked to the new terms, which included an arbitration clause. Users could not regain access to their cameras with their smartphone until they clicked on the turquoise "Agree" button.

Plaintiffs argued that they did not assent to arbitration because Wyze did not attempt to apprise them of its terms and conditions when they purchased their equipment—only when later establishing user accounts after purchasing their cameras as many as two months after the date of purchase. But the district court rejected this argument, noting that "the primary subject of the parties' agreement was Defendant's *monitoring services*, i.e., linking cameras to smartphones,




not the purchase of the camera." *Id.* at *3. And, in any event, the court found that it could find "no precedent that even a two month delay would preclude a manifestation of mutual intent" even if the purchase of the camera itself was integrally related to the monitoring services. *Id.*

Plaintiffs also contended that the hyperlink to Wyze's Terms and Conditions was not sufficiently conspicuous to bind them. But the court found the hyperlink was legally adequate, as "[t]he link and the click box, both in style and substance, [were] comparable to other clickwrap arrangement[s] upheld by courts in this and other districts." *Id.*

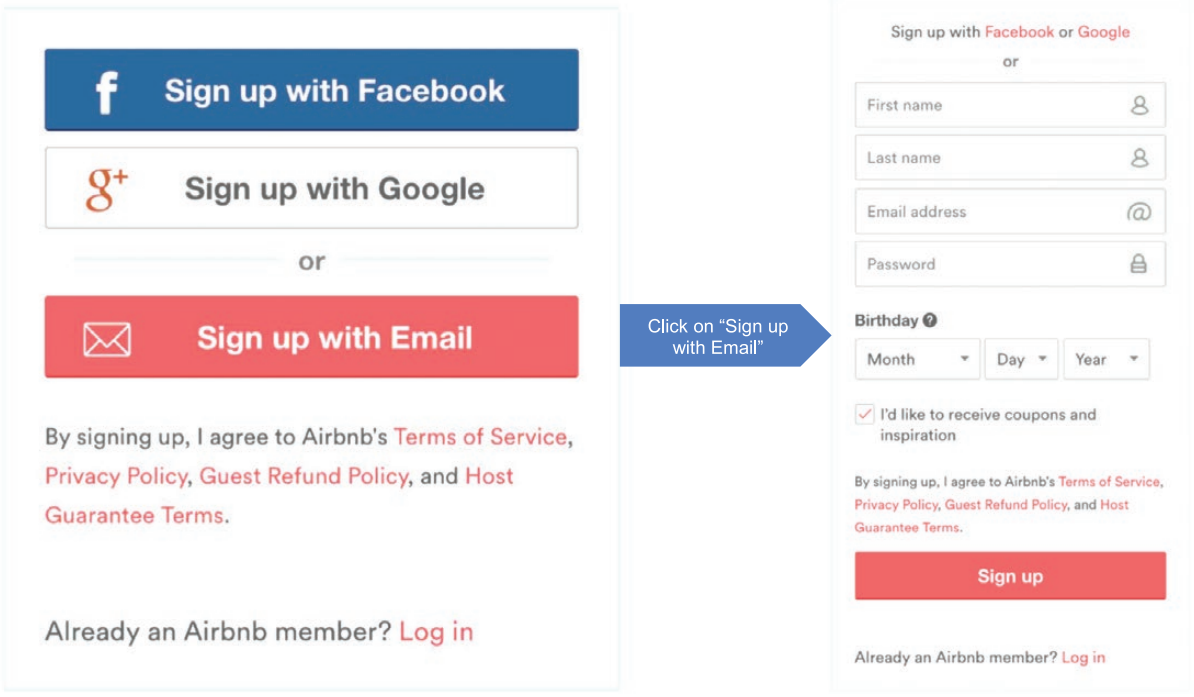
Last, plaintiffs maintained that Wyze had not established that they had assented to arbitration because it had not provided evidence of individualized acts of assent for each of them. But the court explained that such evidence was not required, and that Wyze had submitted evidence that (i) plaintiffs had admitted that they had active user accounts on or after December 2018, and (ii) any such user could not have accessed their account without clicking a box indicating that they agreed to Wyze's Terms and Conditions, which satisfied Wyze's evidentiary burden.

***Rakofsky v. Airbnb, Inc.*, 2020 WL 6450489 (N.Y. Sup. Ct. Nov. 03, 2020) (Engoron, J.) (applying**

**California law)—**Plaintiff brought this action against Airbnb, seeking to hold it responsible after plaintiff was unable to access an accommodation he had booked through Airbnb's platform, which eventually led to him spending the night on a park bench where he was assaulted. Airbnb moved to compel plaintiff to arbitrate his claims pursuant to the Terms of Service it said plaintiff agreed to when he created his Airbnb account and booked his accommodation.

Airbnb submitted a declaration in support of its motion to dismiss, which showed that plaintiff had created an account on July 28, 2015 using a desktop browser and consented to the company's Terms of Service on that date. The company's records showed that plaintiff was presented with the following screen with three clickable buttons from which he could create an account with Airbnb, and that he clicked on the large red "Sign up with Email" button. Immediately below that button was black text stating, "By signing up, I agree to Airbnb's Terms of Service, Privacy Policy, Guest Refund Policy, and Host Guarantee Terms." The phrases colored red were each hyperlinked to the relevant policies, with the Terms of Service including an arbitration agreement. Once plaintiff clicked on the "Sign up with Email" button, he was presented with another screen to enter his personal information. At the bottom of that screen was a large red "Sign Up" button to complete the registration process. Immediately above that button Airbnb repeated the same prompt, advising plaintiff that, by signing up, he was agreeing to Airbnb's Terms of Service, which was hyperlinked in red.

Plaintiff argued that no valid agreement to arbitrate was ever formed because the agreement was unenforceable, since Airbnb users are forced to consent to the Terms of Service before having an opportunity to read them. The trial court, however, concluded that Airbnb had established that plaintiff was on inquiry notice of, and had assented to, the Terms of Service, including the arbitration provision. The court found that this case was "a classic example" of modified clickwrap acceptance that courts have found sufficient to put a plaintiff on notice of the terms of service to which they are assenting. *Id.* at ⋆3. As the court explained, "[w]hen plaintiff utilized the Airbnb website to book the accommodation that is the subject of this litigation, he was presented with the updated TOS, either in a scroll-box or via a hyperlink, and he had the option to click a button indicating that he agreed to be bound by the updated TOS. The button, which plaintiff clicked, thereby signaling his assent to the TOS, was accompanied by text indicating that he was accepting the updated TOS." *Id.* The court further observed that "[p]laintiff was clearly provided notice and an opportunity to review the terms of the TOS, including section 19, relating to arbitration, prior to clicking a button signaling his acceptance of them." *Id.* Taken together, the court held that "[t]hese facts illustrate[d] that plaintiff assented to being bound by the arbitration provision contained in the TOS." *Id.*



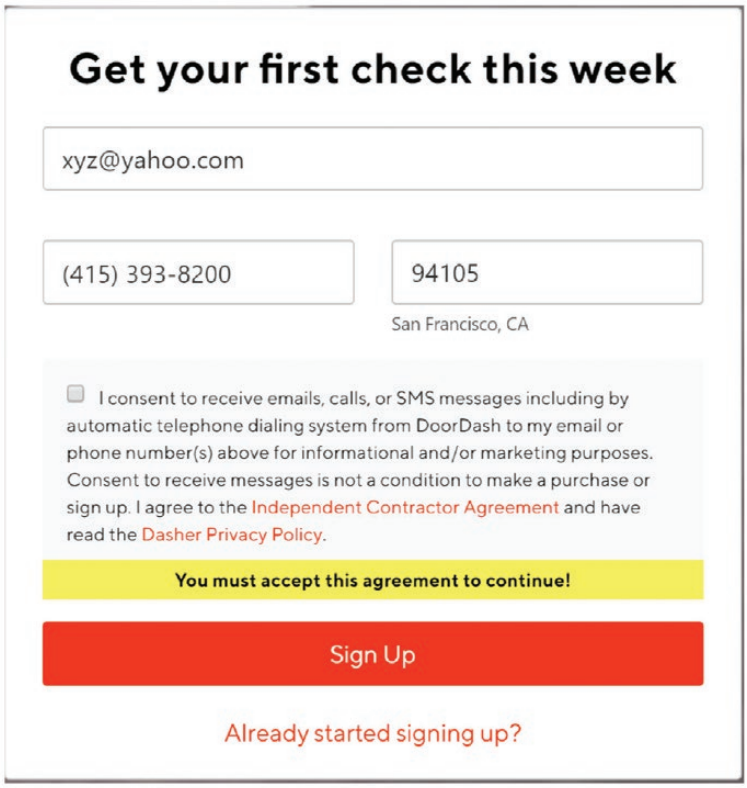
***McGrath v. DoorDash, Inc.*, 2020 WL 6526129 (N.D. Cal. Nov. 5, 2020) (Chen, J.) (silent regarding applicable law)—**Plaintiff filed this nationwide collective action under the Fair Labor Standards Act against DoorDash, claiming that the web-based takeout food delivery service was misclassifying him and other employees as independent contractors rather than as employees and therefore was not paying them for all hours worked. DoorDash moved to compel to arbitration the claims of the majority of plaintiffs who filed consent forms and joined the litigation.

To work as a driver for DoorDash, individuals needed to sign up for a DoorDash account by entering their personal information online and clicking a large red "Sign Up" button. Immediately above that button was the following statement in black font in a gray textbox: "I consent to receive emails, calls, or SMS messages including by automatic telephone dialing system from DoorDash to my email or phone number(s) above for informational and/or marketing purposes. Consent to receive messages is not a condition to make a purchase or sign up. I agree to the Independent Contractor Agreement have read the Dasher Privacy Policy." The phrases "Independent Contractor Agreement" and "Dasher Privacy Policy" were colored red and hyperlinked to the applicable terms, the former of which included an arbitration clause. A user was required to check a box next to that statement before they could proceed to the next page. If a user tried to click on the "Sign Up" button before checking the box, a yellow banner would appear along the bottom of the screen with boldface text stating "**You must accept this agreement to continue!**"

DoorDash included an opt-out provision by which drivers could opt out of the arbitration agreement, which plaintiff invoked. Thus, DoorDash's motion to compel arbitration was narrowly aimed only at those individuals who opted into the litigation and did opt out of arbitration.

The plaintiffs against whom DoorDash moved to compel argued that the company had failed to establish an agreement to arbitrate in the first place, and therefore the fact that they had not opted out was of no consequence. But the district court held that DoorDash had proffered evidence of the existence of an arbitration agreement for each plaintiff, as "an individual c[ould not] become a Dasher without signing up and, as part of the sign-up process, she is required to agree to the ICA, which includes an arbitration provision." *Id.* at *5.

Plaintiffs sought to liken their case to *In re Uber Text Messaging*, 2019 WL 2509337 (N.D. Cal. June 18, 2019),



where the court, applying California law, denied Uber's motion to compel arbitration because genuine disputes of fact remained regarding whether an agreement to arbitrate was formed. But the district court here found that case distinguishable because, there, the plaintiff expressly declared under oath in a declaration that he had no recollection of ever completing the Uber registration process or ordering an Uber ride, and that his phone lacked the technological capability to download the Uber app, thereby creating material issues of fact that could not be resolved based on the record created by the parties. By contrast, here, the district court observed, plaintiff had not offered declarations from the thousands of opt-in plaintiffs disputing that they entered into arbitration agreements with DoorDash. Accordingly, the district court granted DoorDash's motion.