

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 19-10899-MWF (RAOx)

Date: June 24, 2021

Title: In Re: Ring LLC Privacy Litigation

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:
Rita Sanchez

Court Reporter:
Not Reported

Attorneys Present for Plaintiff:
None Present

Attorneys Present for Defendant:
None Present

Proceedings (In Chambers):

ORDER RE: MOTION TO COMPEL
ARBITRATION [83]; STAY PENDING
RESOLUTION OF RING'S MOTION TO
COMPEL ARBITRATION [112]

Before the Court are two motions:

The first is Defendant Ring LLC's ("Ring") Motion to Compel Arbitration (the "Motion"), filed on February 5, 2021. (Docket No. 83). On March 8, 2021, Plaintiffs representing the putative class filed an opposition. (Docket No. 89). On March 29, 2021, Ring filed a reply. (Docket No. 99). On March 24, 2021, Ring filed a supplemental opening brief with respect to Plaintiff Catherine Foster, who joined the consolidated action on March 23, 2021. (Docket Nos. 95, 96). Plaintiff Foster filed a supplemental opposition on March 26, 2021. (Docket No. 97).

The second is Ring's Motion to Stay Pending Resolution of Ring's Motion to Compel Arbitration (the "Motion to Stay"), filed on June 18, 2021. (Docket No. 112).

The Court has read and considered the papers filed in connection with the Motions and held a telephonic hearing on April 12, 2021, pursuant to General Order 21-03 arising from the COVID-19 pandemic. The Court now rules as follows:

- The Motion is **GRANTED *in part* and DENIED *in part***. The Purchaser Plaintiffs who made a Ring account using the Ring App or Website were on inquiry notice of Ring's Terms of Service. Therefore, the arbitration

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clause with respect to these Plaintiffs is enforceable. Because the Terms contained a delegation provision, the Court does not address Plaintiffs' arguments that the arbitration clause is unconscionable or otherwise unenforceable. However, the Non-Purchaser Plaintiffs are not bound by the agreement. They are not "Authorized Users" under the Terms of Service and their guardians' assent to the Terms' arbitration clause does not bind them.

- The Motion to Stay is **DENIED *as moot***.

I. BACKGROUND

On February 11, 2020, the Court granted the stipulation of various parties to consolidate numerous related cases into this putative class action. (Docket No. 19). Plaintiffs filed a consolidated First Amended Complaint ("FAC") on December 17, 2020. (Docket No. 69).

Ring manufactures and sells home security and smart home devices. (Declaration of John Modestine ("Modestine Decl.") ¶ 3 (Docket No. 83-2)). Such devices include video doorbells, security cameras, and alarms (the "Devices"). (*Id.*). Ring also sells a subscription service, known as the Ring Protect Plan, through which customers may purchase additional services and benefits related to their devices. (*Id.*).

The FAC alleges that Ring's security systems were defectively designed without sufficient security protocols, leaving Plaintiffs who used the systems vulnerable to cyberattack, identity theft, and physical harm. (FAC ¶¶ 3-8). The FAC also alleges that Ring actively shared users' sensitive personal identifying information with third parties without first obtaining users' authorization or consent, which allowed third parties to track and surveil Plaintiffs. (*Id.* ¶ 9).

Unless otherwise noted, the following details and descriptions represent the material features of the packaging, terms, Websites, applications, and clauses at all

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times relevant to this action (*i.e.*, from July 2017 to December 2019, when Plaintiffs purchased and/or used the Devices).

For the purposes of the Motion, the parties distinguish between those Plaintiffs who purchased the Ring devices themselves (the “Purchaser Plaintiffs”), and those who were allegedly harmed by Ring devices but did not personally purchase them (the “Non-Purchaser Plaintiffs,” twelve minor children and an elderly woman who lived in a nursing home). (*See* Motion at 1-2; Opposition at 1 n.1, 4).

The exterior packaging of the Ring video doorbell and camera products stated either that “[u]se of the product is subject to your registration with Ring and your agreement to the Terms of Service found at www.ring.com” or that “[u]se of the product is subject to your registration with Ring and your agreement to the Terms of Service found at www.ring.com/terms.” (Modestine Decl. ¶¶ 4-5, Ex. A).

To set up and manage the Device, the user must download the Ring mobile application (“Ring App”) and register for a Ring account, either through the Ring App or Ring’s Website. (*Id.* ¶¶ 21-25).

From May 2017 until June 2018, a user was required to check a box during the account registration process to indicate agreement to the Terms before moving on to the next step of the registration process. (*See* Appendix (citing *id.*, Ex. L (May 2017-Nov. 2017: “I agree to Ring’s Privacy Notice, Terms of Service, and Guidelines for Installation and Use.”); *id.*, Ex. M (Nov. 2017-June 2018: “I agree to Ring’s Privacy Notice and Terms of Services [sic].”))).

From June 2018 through January 2020, the user was required to create a password at the last step of the account registration process, and was notified that by completing account registration they agreed to the Terms. (*See* Appendix (citing *id.*, Exs. N, O (June 2018-May 2019: “By signing up, you agree to our Terms of Service”); *id.*, Ex. P (May 2019-Jan. 2020: “By continuing you agree to Ring’s Terms of Service.”))). The user was then required to click a button that appeared below the

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text notifying the user that by continuing with account registration, the user indicated assent to the Terms. (*Id.*).

The user also had the option of registering for a Ring account via Ring’s Website. (Modestine Decl. ¶ 24).

From February 2018 until April 2019, the user was required to check a box agreeing to the Terms to proceed in creating an account on the Website. (*See* Appendix (citing *id.*, Ex. Q)). From April 2019 through January 2020, the text “[b]y continuing you agree to Ring’s Terms of Service” appeared directly above a large “Create Account” button. (*See* Appendix (citing *id.*, Ex. R)).

Plaintiff does not contest that Exhibits L through R are fair and accurate depictions of the Ring App and Website on the dates stated above. (*See generally* Opposition).

Since August 18, 2017, all iterations of the Terms included an arbitration clause and class waiver. (Modestine Decl. ¶¶ 6-20, Exs. G at 15-19, B at 10-13, C at 11-14, D at 11-14, E at 10-13, F at 15-19, H at 11-14, I at 12-14, J at 15-19, K at 12-15). The section entitled “Dispute Resolution” states that “[t]he Federal Arbitration Act (the ‘FAA’) . . . and federal arbitration law apply to this Agreement and govern all questions as to whether a dispute is subject to arbitration.” (*Id.*, Ex. G at 16). The section further states that the parties “agree that any dispute, controversy, or claim arising out of, or relating to your use of the services and products, to this agreement, or to the content, any relationship between us and/or any recording on the services and/or products shall be resolved only by final and binding, bilateral arbitration.” (*Id.*, Exs. G at 16, B at 10-13, C at 11-14, D at 11-14, E at 10-13, F at 15-19, H at 11-14, I at 12-14, J at 15-19, K at 12-15).

The Terms also state that “[d]isputes’ shall include, but are not limited to, any claims or controversies between you and Ring against each other related in any way to or arising out of in any way from this Agreement, the Services, the Products, and/or the

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Content[.]” (*Id.*, Exs. G at 16, B at 11, C at 11, D at 11-12, E at 11, F at 16, H at 12, I at 12, J at 16, K at 13).

In addition, the Terms provide that “[t]he term ‘you,’ as used in these Terms, includes any person or entity who is the owner of the Product and creates an account associated with the Product (‘Owner’), as well as any person or entity authorized to access or use the Owner’s Products and Services (‘Authorized Users’).” (*Id.*, Exs. G at 2, B at 1, C at 1, D at 1, E at 1, F at 2, H at 1, I at 1, J at 2, K at 1-2).

Since August 18, 2017, the Terms have also contained a delegation clause stating that the arbitrator “shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms, including, but not limited to any claim that all or any part of these Terms are void or voidable, or whether a claim is subject to arbitration.” (*Id.*, Ex. G at 18; *see also id.*, Exs. C at 13, D at 13, E at 12, F at 18, H at 13, I at 14, J at 18, K at 14).

II. LEGAL STANDARD

The Federal Arbitration Act (“FAA”) “requires federal district courts to stay judicial proceedings and compel arbitration of claims covered by a written and enforceable arbitration agreement.” *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014) (citing 9 U.S.C. § 3). The FAA also “limits the district court’s role to determining whether a valid arbitration agreement exists, and whether the agreement encompasses the disputes at issue.” *Id.* (citation omitted). “[E]xcept where the parties **clearly** and **unmistakably** provide otherwise, it is the court’s duty” — as opposed to an arbitrator’s duty — “to interpret the agreement and to determine whether the parties intended to arbitrate grievances concerning a particular matter.” *SEIU Local 121RN v. Los Robles Reg’l Med. Ctr.*, 976 F.3d 849, 855 (9th Cir. 2020) (emphasis in original) (quoting *Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287, 301 (2010)).

“In determining whether a valid arbitration agreement exists, federal courts ‘apply ordinary state law principles that govern the formation of contracts.’” *Nguyen*,

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