

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ALYCE FRAHER,

Plaintiff,

v.

VERIZON WIRELESS SERVICES,  
LLC, a Delaware limited liability  
company, and DOES 1 through 10,

Defendants.

Case No.: 21-cv-00763-H-JLB

**ORDER:**

**(1) GRANTING DEFENDANT'S  
MOTION TO COMPEL  
ARBITRATION; AND**

[Doc. No. 3.]

**(2) DENYING PLAINTIFF'S  
MOTION TO REMAND**

[Doc. No. 5.]

On April 21, 2021, Defendant Verizon Wireless Services, LLC ("Defendant") filed a motion to compel arbitration and stay the action. (Doc. No. 3.) On May 18, 2021, Plaintiff Alyce Fraher ("Plaintiff") filed a motion to remand the case to state court. (Doc. No. 5.) The parties filed their respective oppositions to each motion on June 7, 2021. (Doc. Nos. 9, 10.) The parties filed their replies on June 14, 2021. (Doc. Nos. 12, 13.) On June 17, 2021, the Court submitted both motions on the papers. (Doc. No. 16.) For the following reasons, the Court grants Defendant's motion to compel arbitration and denies Plaintiff's motion to remand.

## Background

In March 2018, Plaintiff went to a local Best Buy to purchase one of Defendant's cell phones and its related services for her son. (Doc. No. 10-2, Fraher Decl. ¶¶ 2-4.) While there, a Best Buy employee reviewed the price of the phone and Defendant's terms of service with her. (*Id.* ¶ 5.) She ultimately decided to buy the phone and its services, and she signed an electronic signature pad to finalize the purchase. (*See id.* ¶¶ 5-9.) Plaintiff maintains that she was never aware of any arbitration agreement before signing the signature pad. (*Id.*) But according to Defendant, Plaintiff must have accepted its customer agreement to complete the transaction on the signature pad. (Doc. No. 12-1, Supp. Slade Decl. ¶ 3.)

Defendant produced a receipt for the transaction that contains Plaintiff's signature and states the following in bold: **"I agree to the VZW Customer Agreement (CA), including settlement of disputes by arbitration instead of jury trial, as well as the terms of the plan and optional services I have chosen. I am aware that I can view the CA anytime at verizonwireless.com."** (Doc. No. 10-1, Henderson Decl., Ex. 2 (emphasis in original); Doc. No. 12-2, Kim Decl. Ex. A (emphasis in original);<sup>1</sup> *see also* Fraher Decl. ¶¶ 7, 9 (admitting she signed a signature pad and that the signature appears to be hers).) The referenced customer agreement expressly provides the following mandatory arbitration provisions:

**How do I resolve disputes with Verizon?**

**WE HOPE TO MAKE YOU A HAPPY CUSTOMER, BUT IF THERE'S AN ISSUE THAT NEEDS TO BE RESOLVED, THIS SECTION OUTLINES WHAT'S EXPECTED OF BOTH OF US.**

**YOU AND VERIZON BOTH AGREE TO RESOLVE DISPUTES**

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<sup>1</sup> Plaintiff raised concerns that the receipt Defendant submitted in its original motion to compel was modified to include Plaintiff's signature on the second page, not the third page. (Doc. No. 10 at 8.) In reply, Plaintiff admits that this was a clerical mistake, and submitted a copy of the original document. (Doc. No. 12-2, Kim Decl. ¶ 3 & Ex. A.) The original document submitted by Defendant in its reply appears to be identical to the one Plaintiff submitted in her opposition. (*Compare* Doc. No. 10-1, Henderson Decl., Ex. 2, *with* Kim Decl., Ex. A.)

1 **ONLY BY ARBITRATION OR IN SMALL CLAIMS COURT. YOU**  
 2 **UNDERSTAND THAT BY THIS AGREEMENT YOU ARE GIVING**  
 3 **UP THE RIGHT TO BRING A CLAIM IN COURT OR IN FRONT OF**  
 4 **A JURY. WHILE THE PROCEDURES MAY BE DIFFERENT, AN**  
 5 **ARBITRATOR CAN AWARD YOU THE SAME DAMAGES AND**  
 6 **RELIEF, AND MUST HONOR THE SAME TERMS IN THIS**  
 7 **AGREEMENT, AS A COURT WOULD. IF THE LAW ALLOWS FOR**  
 8 **AN AWARD OF ATTORNEYS' FEES, AN ARBITRATOR CAN**  
 9 **AWARD THEM TOO. WE ALSO BOTH AGREE THAT:**

10 (1) THE FEDERAL ARBITRATION ACT APPLIES TO THIS  
 11 AGREEMENT. EXCEPT FOR SMALL CLAIMS COURT CASES, ANY  
 12 DISPUTE THAT IN ANY WAY RELATES TO OR ARISES OUT OF THIS  
 13 AGREEMENT OR FROM ANY EQUIPMENT, PRODUCTS AND  
 14 SERVICES YOU RECEIVE FROM US (OR FROM ANY ADVERTISING  
 15 FOR ANY SUCH PRODUCTS OR SERVICES), INCLUDING ANY  
 16 DISPUTES YOU HAVE WITH OUR EMPLOYEES OR AGENTS, WILL  
 17 BE RESOLVED BY ONE OR MORE NEUTRAL ARBITRATORS  
 18 BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR  
 19 BETTER BUSINESS BUREAU ("BBB").

20 (Supp. Slade Decl. Ex. C at 6. (emphasis in original).)

21 Plaintiff alleges that she encountered various issues with Defendant's services.  
 22 (Doc. No. 4 ¶¶ 14-21.) She also alleges that Defendant billed her for services that she  
 23 either did not agree to pay for or did not receive. (*Id.* ¶¶ 22-29.) On March 13, 2021,  
 24 Plaintiff filed a complaint in the San Diego County Superior Court, alleging claims against  
 25 Defendant for (1) negligence, (2) violations of the California Consumer Credit Agency  
 26 Reporting Act, and (3) violations of California's Unfair Competition Law. (Doc. No. 1-  
 27 2.) On March 22, 2021, Plaintiff filed a first amended complaint, adding a state law claim  
 28 under California's Consumer Legal Remedies Act and a federal claim under the Fair Credit  
 Reporting Act (the "FCRA"). (Doc. No. 1-3.)

Because Plaintiff's first amended complaint added a federal claim, on April 19,  
 2021, Defendant timely removed the case. (Doc. No. 1.) Two days later, on April 21,  
 2021, Defendant filed a motion to compel Plaintiff to submit her claims to arbitration and  
 stay the action. (Doc. No. 3.) On May 9, 2021, before responding to Defendant's motion,

1 Plaintiff filed a second amended complaint, dropping her lone federal claim. (Doc. No. 4.)  
 2 On May 18, 2021, Plaintiff filed a motion to remand the case, asking the Court to decline  
 3 to exercise jurisdiction over her remaining state law claims. (Doc. No. 5.)

## 4 Discussion

### 5 **I. Motion to Compel Arbitration**

#### 6 **A. Legal Standards**

7 The Federal Arbitration Act (the “FAA”)<sup>2</sup> permits “[a] party aggrieved by the  
 8 alleged failure, neglect, or refusal of another to arbitrate under a written agreement for  
 9 arbitration [to] petition any United States District Court . . . for an order directing that . . .  
 10 arbitration proceed in the manner provided for in [the arbitration] agreement.” 9 U.S.C. §  
 11 4. The FAA reflects an “emphatic federal policy in favor of arbitral dispute resolution.”  
 12 KPMG LLP v. Cocchi, 565 U.S. 18, 21 (2011). Upon a showing that a party failed to  
 13 comply with a valid arbitration agreement, the district court must issue an order compelling  
 14 arbitration. Id. The party moving to compel arbitration carries the burden to show “(1) the  
 15 existence of a valid, written agreement to arbitrate; and, if it exists, (2) that the agreement  
 16 to arbitrate encompasses the dispute at issue.” Ashbey v. Archstone Prop. Mgmt., Inc.,  
 17 785 F.3d 1320, 1323 (9th Cir. 2015) (citation omitted). “Any doubts about the scope of  
 18 arbitrable issues, including applicable contract defenses, are to be resolved in favor of  
 19 arbitration.” Poublon v. C.H. Robinson Co., 846 F.3d 1251, 1259 (9th Cir. 2017) (quoting  
 20 Tompkins v. 23andMe, Inc., 840 F.3d 1016, 1022 (9th Cir. 2016)). “While the Court may  
 21 not review the merits of the underlying case in deciding a motion to compel arbitration, it  
 22 may consider the pleadings, documents of uncontested validity, and affidavits submitted  
 23 by either party.” Macias v. Excel Bldg. Servs. LLC, 767 F. Supp. 2d 1002, 1007 (N.D.  
 24 Cal. 2011) (internal quotations, citations, and brackets omitted)).

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25  
 26 <sup>2</sup> The parties agree that the FAA applies to this case. After all, the contract at issue, one for cell  
 27 phone services between citizens of different states, clearly involves commerce, see 9 U.S.C. § 2 (covering  
 28 all transactions “involving commerce”); Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265,  
 277 (1995) (reading “involving commerce” in § 2 of the FAA broadly to mean “affecting commerce”).

## B. Whether a Valid Agreement to Arbitrate Exists

Fundamentally, “arbitration is a matter of contract.” Rent-A-Center, West, Inc., v. Jackson, 561 U.S. 63, 67 (2010). Courts apply state contract law to determine whether a valid arbitration agreement exists, “while giving due regard to the federal policy in favor of arbitration.” Goldman, Sachs & Co. v. City of Reno, 747 F.3d 733, 742 (9th Cir. 2014) (international quotation marks and citations omitted); see also First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995). Under California law, which applies here, the movant need only show the existence of a valid agreement to arbitrate by a preponderance of the evidence. Knutson v. Sirius XM Radio Inc., 771 F.3d 559, 565 (9th Cir. 2014) (citing Rosenthal v. Great W. Fin. Sec. Corp., 926 P.2d 1061 (Cal. 1996)). In so doing, “a court applies a standard similar to the summary judgment standard of Fed. R. Civ. P. 56.” Lomeli v. Midland Funding, LLC, No. 19-CV-01141-LHK, 2019 WL 4695279, at \*4 (N.D. Cal. Sept. 26, 2019) (citation omitted).

Here, Defendant argues that Plaintiff agreed to arbitrate her claims by signing an electronic sales receipt that expressly incorporated Defendant’s customer agreement and, more specifically, its terms mandating arbitration. (Doc. No. 3 at 8-9; Doc. No. 12 at 8.) Under California law,

[f]or the terms of another document to be incorporated into the document executed by the parties the reference must be clear and unequivocal, the reference must be called to the attention of the other party and he must consent thereto, and the terms of the incorporated document must be known or easily available to the contracting parties.

Shaw v. Regents of Univ. of California, 67 Cal. Rptr. 2d 850, 856 (Ct. App. 1997) (citation omitted). A contract need not expressly “recite that it ‘incorporates’ another document, so long as it ‘guide[s] the reader to the incorporated document.’” Id. (brackets in original) (citation omitted).

The Court agrees with Defendant. Plaintiff claims that she was unaware of any agreement to arbitrate when she signed the signature pad to complete her purchase. (Doc. No. 10-2, Fraher Decl. ¶¶ 7-9.) But the receipt for the transaction submitted by Defendant,

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