

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAMBIZ ADIBZADEH,
Plaintiff,
v.
BEST BUY, CO. INC., et al.,
Defendants.

Case No. 20-cv-06257-JSW

**ORDER GRANTING MOTION TO
COMPEL INDIVIDUAL
ARBITRATION AND GRANTING
MOTION TO DISMISS**

Re: Dkt. No. 16

Now before the Court for consideration is the motion to compel individual arbitration, filed by Defendant Best Buy Stores, L.P. (“Best Buy”). Best Buy moves to compel Plaintiff Kambiz Adibzadeh (“Adibzadeh”) to arbitrate his claims individually and to dismiss or stay Adibzadeh’s claims pending arbitration. The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and for the reasons set forth below, the Court GRANTS Best Buy’s motion to compel individual arbitration and GRANTS Best Buy’s motion to dismiss.

BACKGROUND

Adibzadeh alleges that on or about December 23, 2019, he went to a Best Buy store to inquire about purchasing and installing a security system at his new home. (Dkt. No. 1, Compl. ¶ 18.) While at the store, Adibzadeh purchased a Google Nest System and worked with a sales associate to determine the location and approximately how many security cameras would be installed by Best Buy at his home. (*Id.* ¶¶ 19-20.) A Best Buy in-home representative and a Best Buy sales representative coordinated a site visit to Adibzadeh’s home to inspect the entire property and determine where to install and activate the Google Nest System. (*Id.* ¶¶ 21-22.) According to

1 Adibzadeh, he paid a total of \$5,500.00 for the site visit, hardware, and installation of the security
2 system. (*Id.* ¶ 22.) Adibzadeh alleges that the in-home representative expressly represented that
3 Best Buy would install the security equipment using Geek Squad, but instead Best Buy sent a
4 third-party contractor. (*Id.* ¶¶ 26, 27.) Once the third-party contractor arrived at Adibzadeh’s
5 home, Adibzadeh alleges that he was asked for and provided his personal information to the third-
6 party contractor. (*Id.* ¶ 28.) He further alleges that the third-party contractor was unlicensed to
7 perform the installation and that they failed to complete the work in one day, which may have
8 exposed him to security threats. (*Id.* ¶¶ 28, 29.) Adibzadeh thus claims that Best Buy falsely
9 advertised that it could legally provide installation services and that Best Buy knowingly sold and
10 used unlicensed installation companies to install the Google Nest System in his residence. (*Id.* ¶¶
11 16, 20, 56.) In this suit, Adibzadeh alleges that Best Buy (1) violated the Consumer Legal
12 Remedies Act, California Civil Code §§ 1750, *et seq.*; (2) violated the Unfair Competition Law,
13 California Business & Professions Code §§ 17200, *et seq.*; (3) violated the False Advertising Law,
14 California Business & Professions Code §§ 17500, *et seq.*; (4) violated California licensing
15 requirements by failing to either acquire a license prior to performing installation services or
16 failing to show plaintiffs proof of licensure at the time of service, California Business &
17 Professions Code § 7592; (5) failed to provide or carry a temporary licensure application or valid
18 registration, California Business & Professions Code § 7598.7; (6) breached its express warranty
19 to plaintiffs; (7) negligently misrepresented that it was licensed or would provide a licensed agent
20 to perform installation services; (8) has been unjustly enriched; (9) is guilty of conversion; and
21 (10) has breached its contract with members of the purported class. (*Id.* ¶¶ 51-123.) Adibzadeh
22 seeks to recover damages on behalf of himself and a putative class of consumers. (*Id.* ¶ 42.)

23 Best Buy moves to compel Adibzadeh to arbitrate all his claims individually
24 pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.*, the My Best Buy Loyalty
25 Program Terms and Conditions (“My Best Buy® Terms”), and the Geek Squad On-Site Services
26 Terms and Conditions. Best Buy also moves to dismiss or, in the alternative, to stay Adibzadeh’s
27 claims pending arbitration.

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The relevant arbitration provisions from the My Best Buy® Terms are as follows:

11. Dispute Resolution By Binding Individual Arbitration

ANY DISPUTE INVOLVING YOU AND BEST BUY OR ANY OF ITS AGENTS SHALL BE RESOLVED THROUGH INDIVIDUAL ARBITRATION.

“Dispute” shall be interpreted broadly and include any claim or controversy arising out of or relating in any way to (1) your relationship with Best Buy whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (2) the Program; and/or (3) any products or services offered, sold, or distributed by Best Buy, including, but not limited to, the advertising of or the sales practices for such products and services. Dispute shall also include all disputes that arose before your enrollment in the Program and after the cancellation or termination of the Program, including any claims that are the subject of a purported class action litigation.

...

The arbitration will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, the “AAA Rules”) of the AAA, as modified by these Terms, and will be administered by the AAA. The AAA Rules and the form for filing an arbitration claim are available at www.adr.org or by calling 1-800-778-7879.

...

YOU AND BEST BUY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED, OR REPRESENTATIVE PROCEEDING. THIS MEANS THAT YOU MAY NOT PURPORT TO ACT ON BEHALF OF A CLASS OR ANY OTHER PERSON.

...

12. Applicable Law

IN CONSIDERATION FOR PARTICIPATING IN THE PROGRAM, YOU AGREE THAT THE FEDERAL ARBITRATION ACT AND APPLICABLE FEDERAL LAW (OR IN THE ABSENCE OF APPLICABLE FEDERAL LAW, THEN THE LAWS OF THE STATE OF MINNESOTA), WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS, WILL GOVERN THESE TERMS AND APPLY TO ANY DISPUTES OR CLAIMS AGAINST BEST BUY ARISING OUT OF OR RELATING TO YOUR PARTICIPATION IN THE PROGRAM.

(Dkt. No. 16-4, Declaration of Susan Fletcher (“Fletcher Decl.”), Ex. B. ¶¶ 11-12.)

Adebzadeh does not dispute the content of the My Best Buy® Terms or the Geek Squad

1 On-Site Services Terms and Conditions. Rather, he argues that no arbitration agreement exists.
2 (Dkt. No. 25-1, Declaration of Kambiz Adibzadeh (“Adibzadeh Decl.”) ¶ 10.) Adibzadeh claims
3 that he was unaware that he had been enrolled in the My Best Buy Loyalty Program until
4 sometime in May 2020. (*Id.* ¶ 9.) He argues that the alleged agreement to enter into the My Best
5 Buy Loyalty Program in-store on June 27, 2016 was procedurally unconscionable, and that the
6 Geek Squad services he purchased at home were expressly excluded from any alleged agreement.

7 Best Buy argues that Adibzadeh agreed to arbitrate his claims by consenting to the My
8 Best Buy® Terms and the Geek Squad On-Site Services Terms and Conditions in-store, at home,
9 and online at least fifteen times. Adibzadeh claims that Best Buy has not produced any evidence
10 that he had accepted any terms and conditions to any arbitration agreements. He further asserts
11 that even if he had consented to the My Best Buy® Terms or the Geek Squad On-Site Services
12 Terms and Conditions, the contracts are invalid because Best Buy knowingly used unlicensed
13 third-party contractors to perform installation services.

14 The Court will first address the existence of the arbitration agreement and the motion to
15 compel and then will turn to the issue of dismissal.

16 ANALYSIS

17 A. Applicable Legal Standards.

18 The FAA establishes that arbitration agreements “shall be valid, irrevocable, and
19 enforceable, save upon such grounds as exist at law or in equity for the revocation of any
20 contract.” 9 U.S.C. § 2. A district court must compel arbitration under the FAA if it finds (i) a
21 valid agreement to arbitrate exists, and (ii) the agreement covers the dispute. *Brennan v. Opus*
22 *Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015) (citing *Howsam v. Dean Witter Reynolds, Inc.*, 537
23 U.S. 79, 84 (2002)). The party moving to compel arbitration has the burden to prove that an
24 agreement to arbitrate exists by a preponderance of the evidence. *Engalla v. Permanente Medical*
25 *Group, Inc.*, 15 Cal. 4th 951, 972 (1997). The party challenging enforcement of an arbitration
26 agreement bears the burden of proving any fact necessary to its defense by a preponderance of the
27 evidence. *Id.*

28 Under the FAA, parties may agree to have an arbitrator decide “‘gateway’ questions of

1 ‘arbitrability,’ such as whether the parties have agreed to arbitrate or whether their agreement
2 covers a particular controversy.” *Schein, Inc. v. Archer and White Sales, Inc.*, 139 S. Ct. 524, 529
3 (2019) (quoting *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010)). The FAA
4 represents a “liberal federal policy favoring arbitration agreements,” and courts must resolve
5 doubts concerning the scope of arbitrable issues in favor of arbitration. *Moses H. Cone Mem’l*
6 *Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).

7 Even so, “a party cannot be required to submit to arbitration any dispute which he has not
8 agreed so to submit.” *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574,
9 582 (1960). Accordingly, a court must determine that a valid arbitration agreement exists before
10 referring a dispute to an arbitrator. *Schein*, 139 S. Ct. 524 U.S. at 530. Courts “should apply
11 ordinary state-law principles that govern the formation of contracts” to determine whether a valid
12 arbitration agreement exists. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).
13 Thus, general contract defenses, such as fraud, duress, or unconscionability, can invalidate
14 arbitration agreements. *AT & T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011).

15 When a district court finds that a valid arbitration agreement exists, it must then determine
16 whether the parties contracted to delegate threshold arbitrability questions to an arbitrator by
17 “clear and unmistakable evidence.” *Schein*, 139 S. Ct. at 530 (quoting *First Options*, 514 U.S. at
18 944). Upon a finding that the parties clearly and unmistakably contracted to delegate threshold
19 arbitrability questions to an arbitrator, a district court may not rule on arbitrability questions. *Id.*

20 **B. The Court Decides Whether a Valid Arbitration Agreement Exists.**

21 The parties classify their fundamental disagreement differently. Best Buy contends that all
22 gateway questions of arbitrability, including whether the parties have agreed to arbitrate, should be
23 addressed by an arbitrator rather than the Court. Adibzadeh argues that the existence of a contract
24 is an issue for the Court to decide. The Court agrees with Adibzadeh.

25 Adibzadeh cites *Granite Rock Co. v. Int’l Brotherhood of Teamsters* to contend that when
26 a contract formation issue exists, courts generally resolve the issue before assessing the
27 applicability of an arbitration provision. 561 U.S. 287, 296-97 (2010). In *Granite Rock*, an
28 employer sued a local union and the union’s international parent for damages stemming from a

1 strike. *Id.* at 291-92. The collective-bargaining agreement contained a no-strike provision and
2 arbitration clause. *Id.* at 292. The parties disagreed about the date the collective-bargaining
3 agreement was ratified, which affected the applicability of the arbitration agreement. *Id.* In
4 resolving the matter, the Supreme Court explained that “courts should order arbitration of a
5 dispute only where the court is satisfied that neither the formation of the parties’ arbitration
6 agreement *nor* . . . its enforceability or applicability to the issue is in issue.” *Id.* at 299. If a party
7 contests the formation of the arbitration agreement, the applicability of enforcement, or both, then
8 it is a court’s role to resolve the issue. *Id.* at 299-300.

9 Best Buy argues that the Court should rely on *Schein* rather than *Granite Rock* because
10 *Granite Rock* does not involve a delegation clause. In *Schein*, a dental equipment distributor sued
11 a dental equipment manufacturer, alleging violations of federal and state antitrust law. 139 S. Ct.
12 at 528. The dental equipment manufacturer moved to compel arbitration under the parties’
13 contract, which contained an arbitration agreement incorporating the rules of the FAA. *Id.* The
14 Supreme Court held “[w]hen the parties’ contract delegates the arbitrability question to an
15 arbitrator, the courts must respect the parties’ decision as embodied in the contract.” *Id.* at 531.
16 Though the Supreme Court did not rule on whether the parties in *Schein* delegated the arbitrability
17 question, the Court held that parties may delegate arbitrability to an arbitrator when they do so by
18 clear and unmistakable evidence. *Id.* at 530. Citing *Schein* to support its argument, Best Buy
19 asserts that the parties have a clear and unmistakable delegation clause and thus *Granite Rock*
20 should not apply. However, Best Buy omits a key sentence in *Schein*: “To be sure, before
21 referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement
22 exists.” *Id.*

23 Adibzadeh cites *Granite Rock* to contend that courts determine whether a valid contract
24 exists. *Schein* can be read harmoniously. Thus, both cases support the proposition that courts
25 must determine whether a valid arbitration agreement exists before deciding whether parties
26 delegated threshold arbitrability questions to an arbitrator. *Id.*; *Granite Rock*, 561 U.S. at 296-97.
27 Consequently, the Court has authority to determine whether a valid arbitration agreement exists.

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1 **C. Adibzadeh Agreed to Individual Arbitration.**

2 Adibzadeh disputes the existence of a valid arbitration agreement between him and Best
 3 Buy. Specifically, Adibzadeh argues that he was entered into the My Best Buy Loyalty Program
 4 during an in-store purchase on June 27, 2016 without his knowledge or consent. Adibzadeh also
 5 claims that he did not agree to the Geek Squad On-Site Terms and Conditions during his January
 6 9, 2020 at home purchase. The Court need not address these assertions, however, because
 7 Adibzadeh does not dispute Best Buy’s argument that he accepted the My Best Buy® Terms
 8 during his three online purchases on BestBuy.com. By failing to dispute that he made online
 9 purchases and earned points for purchases on March 3, 2020, May 19, 2020, and May 25, 2020,
 10 Adibzadeh waives any argument that he had not in fact signed on to BestBuy.com and agreed to
 11 the My Best Buy® Terms to make these online purchases and earn rewards.

12 **1. Adibzadeh Agreed to the My Best Buy® Terms by Consenting to a Clickwrap
 13 Agreement on BestBuy.com.**

14 In California, the forum state, and Minnesota, the state identified in the My Best Buy®
 15 Terms choice-of-law provision, courts follow the objective theory of contract formation.¹ *T.M.*
 16 *Cobb Co. v. Superior Court*, 36 Cal. 3d 273, 282 (Cal. 1984) (citing *Meyer v. Benko*, 55 Cal. App.
 17 3d 937, 942-43 (1976)) (“The existence of mutual consent is determined by objective rather than
 18 subjective criteria, the test being what the outward manifestations of consent would lead a
 19 reasonable person to believe.”); *Speckel by Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. Ct.
 20 App. 1985) (“Minnesota follows the objective theory of contract formation, under which an
 21 outward manifestation of assent is determinative, rather than a party’s subjective intention.”).

22 Courts in the Ninth Circuit and other circuits acknowledge that mutual assent manifests
 23 when internet users accept “clickwrap” agreements. *See Nguyen v. Barnes & Noble Inc.*, 763 F.3d
 24 1171, 1175-76 (9th Cir. 2014); *Specht v. Netscape Commc’ns. Corp.*, 306 F.3d 17, 21-22 n.4 (2d
 25 Cir. 2002); *Siebert v. Amateur Athletic Union of the United States, Inc.*, 422 F. Supp. 2d 1033,
 26 1039-40 (D. Minn. 2006). A clickwrap agreement is an agreement in which internet users are
 27 “required to click on an ‘I agree’ box after being presented with a list of terms and conditions of

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¹ Because there is no conflict as both states follow the objective theory of contract formation, the Court does not need to address whether the choice-of-law provision applies..

1 use.” *Nguyen*, 763 F.3d at 1175-76.

2 Here, Adibzadeh consented to the My Best Buy® Terms when he signed in to
3 BestBuy.com to make three online purchases and earn rewards in March and May of 2020. Best
4 Buy’s records indicate that Adibzadeh earned a total of 571.19 rewards points for these online
5 purchases. (Fletcher Decl., Ex. C.) The only way Adibzadeh could have earned rewards points
6 for his March and May 2020 online purchases is if he first signed into BestBuy.com and agreed to
7 arbitrate his claims. Adibzadeh also acknowledges that as of May 2020, he was a member of the
8 reward program. (Adibzadeh Decl., ¶ 9.)

9 The BestBuy.com sign in screen contains a clickwrap agreement with an arbitration clause
10 that Adibzadeh consented to when he signed in to earn points for his purchases. All My Best Buy
11 members who wish to receive rewards points for any purchase must confirm their acceptance of
12 the My Best Buy® Terms regardless of whether the transaction occurs in-store, at home, or online.
13 Each time an existing customer like Adibzadeh logs into BestBuy.com to make purchases and earn
14 points, the customer must enter in an email and password and click “Sign In.” (Fletcher Decl.,
15 2:21-3:2.) Directly below the “Sign In” button is the following text: “By continuing you agree to
16 our Terms and Conditions, our Privacy Policy, and the My Best Buy® Program Terms.” (*Id.*, Ex.
17 A.) By clicking “Sign In,” as Adibzadeh did, a BestBuy.com customer effectively consents to the
18 My Best Buy® Terms and agrees to the arbitration provision within the terms.

19 **2. Adibzadeh Was Presented with a Reasonably Conspicuous Notice of the My**
20 **Best Buy® Terms.**

21 Adibzadeh argues that he never agreed to be bound by any contract terms or conspicuous
22 language that apprised him of an arbitration provision. The Court finds this unpersuasive. To the
23 extent that Adibzadeh may argue that the clickwrap agreement on BestBuy.com is inconspicuous,
24 the Court finds that the My Best Buy® Terms’ hyperlink on the BestBuy.com Sign In page was
25 reasonably conspicuous and Adibzadeh had inquiry notice of the My Best Buy® Terms’ existence
26 and contents when he made the three online purchases in March and May 2020.

27 A party is “not bound by inconspicuous contractual provisions of which he is unaware.”
28 *Windsor Mills, Inc. v. Collins & Aikman Corp.*, 25 Cal. App. 3d 987, 992 (1972). Clickwrap

1 agreements are enforceable, however, when they incorporate terms and conditions by reference.
2 *In re Holl*, 925 F.3d 1076, 1084 (9th Cir. 2019) (“Where it is clear that a party is assenting to a
3 contract that incorporates other documents by reference, the incorporation is valid—and the terms
4 of the incorporated document are binding—so long as the incorporation is ‘clear and unequivocal,
5 the reference [is] called to the attention of the other party and he [] consent[s] thereto, and the
6 terms of the incorporated document [are] known or easily available to the contracting parties.’”
7 (citations omitted)).

8 The Ninth Circuit affirmed the district court’s decision in *In re Holl* finding that even when
9 a clickwrap agreement requires users to go through “several steps and a fair amount of web-
10 browsing” to locate an arbitration clause, the clickwrap agreement is still enforceable. *Id.* at 1083-
11 84. The webpage present in *Holl* prevented users from enrolling in a free, optional package
12 managing program without first selecting a box stating: “By selecting this checkbox and the
13 Continue button, I agree to the UPS Technology Agreement and the UPS My Choice® Service
14 Terms.” “UPS Technology Agreement” and “UPS My Choice® Service Terms” were placed
15 directly above the “Continue” button and were offset in blue text and hyperlinked. *Id.* at 1080.
16 The Ninth Circuit upheld the district court’s determination that the plaintiff had notice of the
17 agreement’s existence and contents, and thus had unequivocally assented to the terms which
18 incorporated the document containing the arbitration clause in question. *Id.* at 1084-85.

19 Just as in *Holl*, this case involves a website where users must agree to the website’s terms
20 and conditions before they can proceed, and the terms and conditions are offset in a blue text,
21 hyperlinked text. Further, the My Best Buy® Terms were conspicuous to internet consumers like
22 the terms in *Holl* because the terms were available to the consumer via hyperlinked text. The
23 Court finds Adibzadeh thus had inquiry notice of the agreement’s existence and contents when he
24 was provided with the statement “By continuing you agree to our Terms and Conditions, our
25 Privacy Policy, and the My Best Buy® Program Terms” and clicked “Sign In” to assent.

26 Adibzadeh was presented with and consented to conspicuous terms containing an
27 arbitration agreement when he signed into BestBuy.com in March and May of 2020 to make
28 online purchases and earn rewards for his purchases. By consenting to the My Best Buy® Terms,

1 Adibzadeh agreed to arbitrate his claims individually and retroactively to purchases he made in-
2 store and at home.

3 **3. The Parties Agreed to Arbitrate Their Claims Individually and Agreement**
4 **Applies Retroactively.**

5 The My Best Buy® Terms beginning on October 21, 2019 undoubtedly compel parties to
6 the contract to bring forth claims only in an individual capacity, and not as a class. The My Best
7 Buy® Terms explicitly state:

8 YOU AND BEST BUY AGREE THAT EACH MAY BRING
9 CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS
10 INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR
11 CLASS MEMBER IN ANY PURPORTED CLASS,
12 CONSOLIDATED, OR REPRESENTATIVE PROCEEDING.
13 THIS MEANS THAT YOU MAY NOT PURPORT TO ACT ON
14 BEHALF OF A CLASS OR ANY OTHER PERSON.

15 (Fletcher Decl., Ex. B. ¶ 11.) Further, the terms explain that “dispute” includes “all disputes that
16 arose before your enrollment in the Program and after the cancellation or termination of the
17 Program, including any claims that are the subject of a purported class action litigation.” This
18 indicates that the My Best Buy® Terms apply retroactively to all disputes Adibzadeh had with
19 Best Buy even before he concedes that he enrolled in the My Best Buy Loyalty Program and all
20 disputes he currently has and may have with Best Buy in the future.

21 Given that Adibzadeh does not dispute that he signed into BestBuy.com to make three
22 online purchases and earn rewards on in March and May of 2020, he waived any argument that he
23 did not consent to the My Best Buy® Terms when he signed in. Consequently, the explicit words
24 of the My Best Buy® Terms establish a valid arbitration agreement compelling individual
25 arbitration between Adibzadeh and Best Buy.²

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27 ///

28 ² The Court notes that the parties may elect to bring actions before a court in limited circumstances detailed in the My Best Buy® Terms: “Notwithstanding any of the foregoing, either party may elect to bring an action (1) in small claims court on an individual basis if the amount in controversy is properly within the jurisdiction of an appropriate small claims court or (2) in a court of competent jurisdiction to seek to enjoin infringement or other misuse of intellectual property rights.” (Fletcher Decl., Ex. B. ¶ 11.)

D. The Agreement to Arbitrate Is Not Unconscionable.

1 Adibzadeh does not contend that his online agreement to the My Best Buy® Terms
2 through BestBuy.com was unconscionable, which definitively waives any argument that the
3 BestBuy.com clickwrap agreement was unconscionable. To the extent that Adibzadeh might have
4 argued that the My Best Buy® Terms online were unconscionable, the Court finds that the
5 agreement to arbitrate is not unconscionable and is enforceable.

6 Under California law, the party challenging the enforceability of an arbitration agreement
7 has the burden of proving that the agreement is unenforceable. *Mortensen v. Bresnan Commc 'ns*
8 *LLC*, 722 F.3d 1151, 1157 (9th Cir. 2013). A court must find that a contract is both procedurally
9 and substantively unconscionable before it can exercise its discretion to refuse to enforce a
10 contract. *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 114 (2000); *Kiefer*
11 *v. Simonton Bldg. Prod., LLC*, No. CV 16-3540 (RHK/SER), 2017 WL 1380497, at *3 (D. Minn.
12 Apr. 17, 2017) (citing *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 449 (D.C. Cir.
13 1965)) (“The unconscionability doctrine has procedural and substantive aspects, and the party
14 invoking the doctrine must demonstrate both to avoid the terms of a contract.”). Procedural
15 unconscionability “focus[es] on ‘oppression or surprise’ due to unequal bargaining power” while
16 the substantive element “focus[es] on ‘overly harsh’ or ‘one-sided results.’” *Armendariz*, 24 Cal.
17 4th at 114 (citation omitted). Adibzadeh cannot meet his burden because he did not assert that the
18 alleged My Best Buy® Terms presented to him online were procedurally or substantively
19 unconscionable.

20 Even if Adibzadeh asserted that the clickwrap agreement on BestBuy.com was
21 unconscionable, his argument would not be persuasive. As addressed above, clickwrap
22 agreements that incorporate terms and conditions by reference are enforceable. *Holl*, 925 F.3d at
23 1080, 1083-84. Adibzadeh was clearly presented with the My Best Buy® Terms when he went to
24 sign on to BestBuy.com and clicked “Sign In” after being presented with the statement “By
25 continuing you agree to our Terms and Conditions, our Privacy Policy, and the My Best Buy®
26 Program Terms.” Adibzadeh had the opportunity to click on and review the hyperlinked My Best
27 Buy® Terms on three separate occasions, but he elected not to. There was no oppression,
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1 surprise, or overly harsh results. Adibzadeh could have purchased items in-store at Best Buy or
2 through another online retailer. Yet, he chose to purchase products and earn rewards at
3 BestBuy.com, thus consenting to the Best Buy® Terms of his own free will.

4 Adibzadeh’s choice not to read the My Best Buy® Terms before clicking “Sign In” does
5 not invalidate his contract by rendering it unconscionable. *See Mohamed v. Uber Techs., Inc.*, 848
6 F.3d 1201, 1211 (9th Cir. 2016) (noting that an Uber driver who agreed to an arbitration
7 agreement “buried” in a clickwrap agreement was still bound by it and that “one who signs a
8 contract is bound by its provisions and cannot complain of unfamiliarity with the language of the
9 instrument.” (citations omitted)); *Gartner v. Eikill*, 319 N.W.2d 397, 398 (Minn. 1982) (“In the
10 absence of fraud or misrepresentation, a person who signs a contract may not avoid it on the
11 ground that he did not read it or thought its terms to be different.”).

12 **E. The Parties Agreed to Delegate Issues of Arbitrability to an Arbitrator.**

13 Having determined that the parties agreed to arbitrate and that the agreement was not
14 unconscionable, the Court now addresses whether the My Best Buy® Terms clearly and
15 unmistakably delegate arbitrability to an arbitrator. The Court holds that it does.

16 When a contract contains language delegating “the authority to determine ‘the validity or
17 application of any of the provisions of’ the arbitration clause” to an arbitrator, the parties clearly
18 and unmistakably agreed to arbitrate questions of arbitrability. *Momot v. Mastro*, 652 F.3d 982,
19 988 (9th Cir. 2011) (citation omitted). The Ninth Circuit has recognized that virtually every
20 circuit to have considered whether incorporation of the AAA rules has constituted clear and
21 unmistakable evidence that the parties agreed to arbitrate arbitrability has determined that
22 incorporation of the AAA rules meets the clear and unmistakable threshold. *Oracle America, Inc.*
23 *v. Myriad Group A.G.*, 724 F.3d 1069, 1074 (9th Cir. 2013); *Brennan*, 796 F.3d at 1130
24 (“[I]ncorporation of the AAA rules constitutes clear and unmistakable evidence that contracting
25 parties agreed to arbitrate arbitrability.”). The Eighth Circuit is in agreement. *Fallo v. High-Tech*
26 *Inst.*, 559 F.3d 874, 878 (8th Cir. 2009) (“[W]e conclude that the arbitration provision’s
27 incorporation of the AAA Rules . . . constitutes a clear and unmistakable expression of the parties’
28 intent to leave the question of arbitrability to an arbitrator.”).

1 Here, the parties have clearly and unmistakably delegated issues of arbitrability to an
 2 arbitrator by incorporating the AAA rules into their agreement. The My Best Buy® Terms cover
 3 “any dispute” involving the consumer and “Best Buy or any of its agents.” (Fletcher Decl., Ex. B.
 4 ¶ 11.) “Dispute” is defined in the terms to broadly include “any claim or controversy arising out
 5 of or relating in any way to your relationship with Best Buy.” *Id.* The terms further state “[t]he
 6 arbitration will be governed by the Commercial Dispute Resolution Procedures and the
 7 Supplementary Procedures for Consumer Related Disputes (collectively, the “AAA Rules”) of the
 8 AAA, as modified by these Terms, and will be administered by the AAA.” *Id.*

9 The referenced AAA rules in the My Best Buy® Terms expressly provide “[t]he arbitrator
 10 shall have the power to rule on his or her own jurisdiction, including any objections with respect
 11 to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim
 12 or counterclaim.” AAA, Consumer Arbitration Rules, R-14, *available at*
 13 https://www.adr.org/sites/default/files/Consumer_Rules_Web_0.pdf, at 17.

14 By incorporating the AAA rules into the My Best Buy® Terms, the parties clearly and
 15 unmistakably agreed to submit arbitrability issues to an arbitrator. Thus, the Court may not rule
 16 on arbitrability questions.

17 CONCLUSION

18 For the reasons explained above, the Court GRANTS the motion to compel arbitration and
 19 DISMISSES this matter. *See Johnmohammadi v. Bloomingdale’s, Inc.*, 755 F.3d 1072, 1073-74
 20 (9th Cir. 2014) (holding that a district court has the discretion to dismiss or stay an action when
 21 the court determines all claims raised in the action are subject to arbitration).

22 A separate judgment shall issue and the Clerk is directed to close the file.

23 **IT IS SO ORDERED.**

24 Dated: March 1, 2021

25 
 26 _____
 27 JEFFREY S. WHITE
 28 United States District Judge