

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. EDCV 25-1533-MWF (PDx)

Date: December 29, 2025

Title: Thomas Anthony Ellis v. Wallet Buddha LLC

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 DENYING DEFENDANT’S MOTION TO
COMPEL ARBITRATION [10]**

Before the Court is a Motion to Compel Arbitration or, Alternatively, to Dismiss (the “Motion”) filed on September 15, 2025, by Defendant Wallet Buddha LLC. (Docket No. 10). Plaintiff Thomas Anthony Ellis filed his Opposition on October 6, 2025. (Docket No. 13). Defendant filed its Reply on October 14, 2025. (Docket No. 15).

The Court has read and considered the papers on the Motion and held a hearing on **November 24, 2025**.

The Motion is **DENIED**. Plaintiff has standing to bring his claims, and Defendant has not produced competent evidence to establish that a contract was formed between Plaintiff and LendYou. (“LendYou” is variously capitalized in certain documents.)

I. BACKGROUND

This action arises from text messages putatively sent from Defendant, Wallet Buddha, to Plaintiff on or about July 20, 2025. (Docket No. 1 (“Complaint”) ¶ 12). Plaintiff alleges that these text messages were sent for the purpose of advertising and marketing. (*Id.* ¶¶ 15-17). The text message allegedly indicated that Plaintiff could “Reply stop to end,” and Plaintiff alleges he did reply “Stop,” signaling his desire not to be contacted again. (*Id.*). Despite his alleged request to end the text messages,

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Plaintiff alleges that he continued receiving text messages from the same sender. (*Id.* ¶ 13).

Based on these allegations, Plaintiff asserts a violation of 47 U.S.C. § 227(c), otherwise known as the Telephone Consumer Protection Act (the “TCPA”), and accompanying regulation 47 C.F.R. § 64.1200(d).

Defendant now moves to compel arbitration or, in the alternative, to dismiss the Complaint. (*See generally* Motion). Defendant argues that Plaintiff entered into a valid arbitration agreement with another corporation, LendYou, which disclosed Wallet Buddha as a “marketing partner[]” encompassed within the arbitration agreement, and so Plaintiff is bound to arbitrate disputes on the basis of this agreement. (Motion at 10). Additionally, Defendant argues that Plaintiff does not have standing to bring this action. (*Id.* at 24).

II. LEGAL STANDARD

A. Rule 12(b)(1)

Although Defendant asserts that it is bringing a Rule 12(b)(6) challenge, a challenge to standing is properly considered under Rule 12(b)(1). (*See* Motion at 24). “Although the defendant is the moving party in a motion to dismiss brought under Rule 12(b)(1), the plaintiff is the party invoking the court’s jurisdiction. As a result, the plaintiff bears the burden of proving that the case is properly in federal court.” *Brooke v. Kashl Corp.*, 362 F. Supp. 3d 864, 871 (S.D. Cal. 2019) (citing *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001)). In other words, “[i]t is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court’s remedial powers.” *Warth v. Seldin*, 422 U.S. 490, 518 (1975).

B. Compel Arbitration

The Federal Arbitration Act (“FAA”) requires the district courts to compel arbitration on all claims subject to arbitration agreements. *See Dean Witter Reynolds*,

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Inc. v. Byrd, 470 U.S. 213, 218 (1985) (“By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” (citing 9 U.S.C. §§ 3, 4)). The FAA creates a general presumption in favor of arbitration and requires the enforcement of a written agreement to arbitrate. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24–25 (1991). A court must interpret arbitration provisions liberally, resolving doubts in favor of arbitration. *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983).

Under the FAA, a party moving to compel arbitration must show two things: “(1) the existence of a valid, written agreement to arbitrate; and, if it exists, (2) that the agreement to arbitrate encompasses the dispute at issue.” *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th Cir. 2015). The party seeking arbitration need only prove the existence of an agreement to arbitrate by a preponderance of the evidence. *Norcia v. Samsung Telecoms. Am., LLC*, 845 F.3d 1279, 1283 (9th Cir. 2017). Because the FAA favors arbitration, the burden is on the plaintiff to prove that the arbitration agreement is, in fact, not enforceable. *See Mortensen v. Bresnan Commc’ns, LLC*, 722 F.3d 1151, 1157 (9th Cir. 2013) (“[T]hose parties challenging the enforceability of an arbitration agreement bear the burden of proving that the provision is unenforceable.”).

III. DISCUSSION

Because lack of standing would deprive the Court of jurisdiction to decide the issue of contract formation, the Court begins the analysis there.

A. Standing

Defendant argues that Plaintiff lacks standing to sue “because he fails to allege that he suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical,’” citing to *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). (Motion at 24). Defendant argues that Plaintiff’s allegations of “SMS texts or calls made by unnamed third parties, or

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received by putative members of the putative class” does not satisfy these standing requirements. (*Id.*).

The Court agrees with Plaintiff that this argument is foreclosed by the Ninth Circuit precedent *Van Patten v. Vertical Fitness Group, LLC*, 847 F.3d 1037, 1042-43 (2017), where the court held that a violation of the TCPA, such as Plaintiff alleges here, establishes concrete injury-in-fact under *Spokeo*. (Opp. at 22).

To the extent that Defendant objects to the texts or calls being allegedly “made by unnamed third parties,” the Court disagrees. The Complaint continually attributes the alleged unwanted text messages to Defendant, and alleges that the text messages sent by Defendant invaded Plaintiff and Class Members’ privacy, causing them harm. (Complaint ¶¶ 12-14, 26). At the pleading stage, Plaintiff need not do more to allege that Defendant was responsible for these text messages.

Accordingly, the Motion is **DENIED** as to Defendant’s argument that Plaintiff lacks standing.

B. Contract Formation

As a preliminary matter, the party seeking to compel arbitration has the burden under the FAA to show that a valid, written agreement to arbitrate exists. *Ashbey*, 785 F.3d at 1323. This burden remains even where an arbitration agreement contains a delegation clause because “a party who contests the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the *existence* of an agreement to arbitrate. Only a court can make that decision.” *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1140–41 (9th Cir. 1991); *Kum Tat Ltd. v. Linden Ox Pasture, LLC*, 845 F.3d 979, 983 (9th Cir. 2017). In other words, “[t]he issue of contract formation . . . is not a delegable gateway issue.” *Eiss v. USAA Fed. Sav. Bank*, 404 F. Supp. 3d 1240, 1248 (N.D. Cal. 2019).

When deciding whether the parties formed an agreement to arbitrate, courts generally “apply ordinary state-law principles that govern the formation of contracts.”

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First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 944 (1995). “An essential element of any contract is the consent of the parties, or mutual assent.” *Donovan v. RRL Corp.*, 26 Cal. 4th 261, 270, 109 Cal. Rptr. 2d 807 (2001), *as modified* (Sept. 12, 2001). And “[m]utual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, *i.e.*, the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings.” *Serafin v. Balco Properties Ltd., LLC*, 235 Cal. App. 4th 165, 173, 185 Cal. Rptr. 3d 151 (2015).

Plaintiff raises several issues with respect to formation. First, Plaintiff asserts that Defendant has not submitted authenticated or admissible evidence to prove that Plaintiff assented to any agreement. (Opp. at 10-12). Next, Plaintiff argues that Defendant is a non-signatory to any putative agreement between Plaintiff and LendYou and is not entitled to benefit from the contract. (*Id.* at 12-19). The Court, however, holds that the first issue is dispositive of this Motion, and so does not reach the beneficiary arguments.

As to the first issue, Plaintiff challenges both the authentication and admissibility of the evidence used by Defendant to support its contention that there was an agreement between Plaintiff and the third party, LendYou. (*See id.* at 10-12). On this Motion, Defendant’s only evidence of such an agreement is a declaration of Defendant’s own CEO, Noam Samson. Samson’s declaration is based upon Samson’s “personal knowledge” or “documents over which [he has] care, custody, and control.” (Declaration of Noam Samson (“Samson Decl.”) ¶ 10 (Docket No. 11)).

Samson first explains that Plaintiff visited the LendYou website and completed a “Request Form” on the website, disclosing personal information including Plaintiff’s phone number. (*Id.* ¶ 8). As part of submitting such a request form, Samson asserts that Plaintiff had to click a button labeled “Submit and Agree,” and over this button there is a disclaimer explaining:

“By clicking ‘SUBMIT AND AGREE’ I acknowledge that I have read and agreed to the terms of the Privacy Policy and Terms of Use, which contain a mandatory arbitration clause.

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I also consent to receive marketing and other texts or calls from Lendyou and/or its marketing partners at the number previously provided, by any means or technology, including an automatic dialing system, to the phone number I have provided, even if that number is on a national or state Do-Not-Call registry. Carrier and data rates may apply. I understand that my consent to such calls and text messages is not required to purchase products from or use the services of lendyou and/or its marketing partners.”

(Samson Decl. at Ex. A-2).

Samson asserts that Defendant’s business records reflect that Plaintiff “logged on to LendYou.com.” on two separate dates, July 18, 2024, and September 4, 2024. (*Id.*). Samson further asserts that “[i]n both instances, Plaintiff logged on, identifying his phone, name, date of birth, city, state, and zip code.” (*Id.*).

Plaintiff argues this testimony offered to prove the existence of the agreement is “(1) inadmissible hearsay, (2) unauthenticated materials from a third party, and (3) conclusory assertions by a declarant without personal knowledge.” (Opp. at 12). Defendant replies that the Court may still consider this evidence if it can be presented in an admissible form at trial, as in the case of summary judgment, citing to *Lopez v. County of Los Angeles*, EDCV 21-290-MEMF-SHK, 2025 WL 2644751, at *4 (C.D. Cal. Sept. 12, 2025). (Reply at 10-11).

Defendant is correct that district courts “ruling on a motion to compel arbitration must apply a ‘standard similar to the summary judgment standard of [Rule] 56.’” *See S.S. by and through Stern v. Peloton Interactive, Inc.*, 566 F. Supp. 3d 1019, 1044 (S.D. Cal. Oct. 7, 2021). Accordingly, the Court only considers whether the evidence could be presented in an admissible form at trial, and will not necessarily discount evidence on this Motion because it is presented in an inadmissible form. *See Sandoval v. Cnty. of San Diego*, 985 F.3d 657, 665 (9th Cir. 2021). For example, the Court may reject Plaintiff’s hearsay objection to Samson’s testimony because Samson himself can testify at trial.

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But the other two objections to Samson’s testimony pose the same question of whether Samson has adequate personal knowledge to authenticate the business records and screenshots that he references in his declaration under Rule 901(b)(1). As Defendant agrees, before a court may consider an item of evidence, the proponent must authenticate the item under Rule 901. (Motion at 11); *see Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002) (“Authentication is a ‘condition precedent to admissibility[.]’ ... We have repeatedly held that unauthenticated documents cannot be considered in a motion for summary judgment.”)

As the Ninth Circuit explained in *Orr*, where documents are authenticated through personal knowledge, “the affiant must be a person through whom the exhibits could be admitted into evidence.” *Id.* at 774. Here, there are several salient facts to this Motion that Samson’s declaration seeks to establish using Wallet Buddha business records and LendYou webpage screenshots: (1) that Plaintiff visited LendYou’s website; (2) that Plaintiff submitted a “Request Form,” entering his personal information; and (3) that Plaintiff agreed to an arbitration agreement in order to submit the Request Form.

As to the first two facts, Samson may be able to competently testify through his personal knowledge that Plaintiff submitted his personal information through LendYou’s website. Samson declares that “[a]ccording to [Wallet Buddha’s] business records,” Plaintiff “logged onto LendYou.com” on the two separate dates in 2024, and in each instance, he “identif[ied] his phone, name, date of birth, city, state, and zip code.” (Samson Decl. ¶ 10). Although Plaintiff argues that Samson could not have personal knowledge of LendYou’s records, Samson appears to testify that Wallet Buddha *itself* keeps these records of “log-ins,” including when they occur and what information is passed on to affiliates of LendYou, like Wallet Buddha. (*Id.*). Accordingly, as CEO of Wallet Buddha, Samson could have personal knowledge to substantiate the facts from these business records if he testified at trial.

At the hearing, Defendant repeatedly stated that recognizing the competency of this testimony from Samson would establish that Plaintiff consented to receiving text messages. To be clear, the Court is *not* accepting as a factual matter that Plaintiff

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consented to receive Defendant's text messages at any time. To do so would be inappropriate on a motion to dismiss, as it would be adjudicating a disputed material fact that goes to the merits of the TCPA claim. As the Court reminded Defendant at the hearing, the only factual issue that is appropriate to resolve with this Motion is whether an agreement to arbitrate was formed. That is the only purpose for which the Court recognizes and considers any of the putative evidence offered by Defendant.

Indeed, at the hearing, Defendant often conflated the merits of its TCPA defense with the issue of whether an arbitration agreement was reached. Whether Defendant can prove, via its business records, that Plaintiff gave consent for Defendant to send text messages is a separate question from whether an agreement to arbitrate was ever formed. Indeed, if Defendant believed that its evidence was unequivocal as to the purported consent by Plaintiff, Defendant had the option of moving for summary judgment even at this early stage. But Defendant chose not to raise these merits issues, and instead asserted that the dispute was subject to an arbitration agreement.

Accordingly, while there may be competent evidence through Samson to support that Defendant received Plaintiff's information through the LendYou website, the Court now turns to whether Defendant can prove that Plaintiff assented to an arbitration provision when he putatively visited LendYou's website. Defendant has not presented any competent evidence of that fact, and thus the Court cannot conclude that an arbitration agreement was ever formed.

Again, Defendant attempts to introduce evidence of the contents of LendYou's webpage through Samson's declaration. But Defendant does not establish how Samson would have personal knowledge of the fact that any action putatively taken by Plaintiff on LendYou's website would constitute assent to LendYou's arbitration agreement. (*See* Samson Decl. ¶ 8). Even if the Court could conclude that Plaintiff visited the LendYou website, submitted his personal information through that website, and that Plaintiff's personal information somehow made its way to Defendant, Defendant has not proven that in submitting that information, Plaintiff necessarily agreed to an arbitration provision, let alone the specific contents of that arbitration provision.

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In order to make such an assumption of assent, Defendant would have to present evidence that an arbitration contract appeared on the LendYou website when Plaintiff visited the website, and that Plaintiff, in submitting his personal information, affirmatively agreed to that contract. Indeed, Samson attempts to assert these facts in his declaration when he states that “Plaintiff intentionally clicked the SUBMIT AND AGREE button” on the LendYou webpage, which constituted agreement to the arbitration provision that Defendant now seeks to enforce. (*Id.* ¶ 8). But there is no basis in Samson’s declaration to establish his knowledge of the content of the LendYou website at the time that Plaintiff putatively visited this website. Put more simply, Samson has not established in his declaration that he is responsible for developing or updating LendYou’s webpages or its Request Form, such that he would know what content appeared on the webpage at the point in time that Plaintiff visited the webpage. The only relationship that Samson alleges with LendYou is that Wallet Buddha is a “marketing partner,” but that fact alone does not implicate any knowledge about LendYou’s website content or how the website content has evolved over time. (*Id.* ¶ 4).

Perhaps in anticipation of this issue, Samson’s declaration contains a footnote explaining how the screenshots were captured and putatively authenticated, stating in relevant part:

“These documents or screenshots either were reviewed by me or were copied at my direction by a person who visited the LendYou.com website and for illustrative purposes captured the page-to-page movements and links as an ordinary user would. These screenshot-documents by virtue of my position are within my care, custody, and control, and I have verified their accuracy to the best of my ability.”

(Samson Decl. at 2, n.1).

These assertions do not cure the issue. Indeed, the footnote merely underlines that Samson or someone at his direction went to the public LendYou website and took

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the screenshots of the webpages as they appeared on the particular day that they were investigating Plaintiff's claims. This effort falls short of what would be required to prove what Plaintiff saw when he visited the website in July or September of 2024.

In sum, Samson has not properly authenticated through his personal knowledge the webpage screenshots on LendYou.com as they appear in paragraph eight of Samson's declaration, nor could Samson cure this issue by testifying at trial based on the current contents of his declaration. And this level of personal knowledge is precisely what Rule 901 requires, even on a summary judgment standard. *See Orr*, 285 F.3d at 773-74.

Moreover, although *Orr* acknowledges that "a proper foundation need not [only] be established through personal knowledge" because Rules 901(b) and 902 provide alternate avenues for authentication, the Court is not persuaded that some other method authenticates the screenshots here. *See id.* at 774. Defendant merely asserts in a one-sentence, conclusory argument that the evidence presented here could be authenticated "by the distinctive characteristics of the item, or evidence about a process or system that produces accurate results." (*See Reply* at 10-11). The Court does not see how either method would cure the defects identified above.

At the hearing, Defendant asserted that it could offer testimony from another of Defendant's employees that Defendant could not have obtained Plaintiff's information if he had not clicked on the "Submit and Agree" button on the LendYou website. But again, this proffered testimony does nothing to prove the content of exactly what Plaintiff was "agreeing" to with the click of this button, even if it could be proven that Plaintiff clicked on that button. Perhaps by some stretch of the imagination Defendant could prove via competent evidence that it would not be in possession of Plaintiff's information without Plaintiff affirmatively submitting his information through some website, but again, that proves nothing about whether Plaintiff agreed to any arbitration agreement, nor the precise content of this putative agreement.

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C. Trial on Existence of Arbitration Agreement

In accordance with § 4 of the FAA, the Ninth Circuit has held that “once a district court concludes that there are genuine disputes of material fact as to whether the parties formed an arbitration agreement, the court must proceed without delay to a trial on arbitrability and hold any motion to compel arbitration in abeyance until the factual issues have been resolved.” *See Hansen v. LMB Mortgage Servs., Inc.*, 1 F.4th 667, 672 (9th Cir. 2021). But without competent evidence to establish the content of LendYou’s webpages, the Court is unable to consider the arbitration agreement as it is presented on those webpages. And indeed, as discussed above, at the hearing Defendant was unable to offer even the hope of competent evidence to establish the existence of an arbitration agreement that might cover this dispute. Further, Plaintiff, for his part, asserts in his declaration that he “did not consent to arbitrate any dispute with [Defendant] or with any entity acting in its name.” (Plaintiff’s Declaration ISO Plaintiff’s Response in Opposition to Motion to Compel (Docket No. 14) ¶ 8).

Relevant case law supports this result. In cases involving similar facts, courts have seen fit to hold trials under § 4 where there has at least been a declaration by the defendant that establishes that an arbitration agreement exists. The remaining question typically is only whether the defendant can establish that the plaintiff agreed to the arbitration provision. *See Hansen*, 1 F.4th at 670-71 (9th Cir. 2021) (district court erroneously denied motion to compel where defendant argued that plaintiffs assented to arbitration on defendant’s own website and so was entitled to trial on the issue); *Hoang v. Citibank, N.A.*, 702 F. Supp. 3d 864, 869-872 (N.D. Cal. 2023) (employee declaration asserted that customers receive notice of arbitration provision at account opening, but the declaration did not establish that this procedure was followed at plaintiff’s particular account opening). Again, here there is no competent evidence that an arbitration agreement existed in the first place, so there is no factual dispute to try under § 4.

While a recent Fourth Circuit case reversed a district court’s denial of a motion to compel for lack of personal knowledge of the declarant in a similar posture, the facts of that case only highlight the deficiencies with the Samson declaration. *See Austin v.*

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Experian Information Solutions, 148 F.4th 194, 204 (2025). In *Austin*, the declarant was an officer of the entity that “directly over[saw]” the program that the plaintiff putatively enrolled in, where the enrollment process required assent to the arbitration agreement. *Id.* at 200, 204-205. Here, again, the only testimony offered is that of an **employee of a third party** to the company that allegedly imposes an arbitration agreement on consumers. And while the Fourth Circuit held that a “technical understanding” of the enrollment process need not be required, it was sufficient that the declaration in *Austin* established that the declarant’s “day-to-day work responsibilities” and review of his own employer’s business records gave him personal knowledge of the salient facts in his declaration. *Id.* at 204. While the Court has already credited Samson with knowledge of facts that might be in **Wallet Buddha’s** own records, the Samson declaration does not similarly establish that Wallet Buddha’s business records would have evidence of LendYou’s arbitration agreement.

While the authentication issues are somewhat distinct, there is a further line of cases examining whether electronic signatures are properly authenticated where courts have seen fit to deny the motion rather than proceed to a trial on the issue. *See, e.g., Zamudio v. Aerotek, Inc.*, 698 F. Supp. 3d 1202, 1207-09 (E.D. Cal. 2023) (surveying the case law on authentication of electronic signatures). As in those cases, where there was no competent evidence to establish that the plaintiff was the one who signed the agreements, courts saw fit to deny the motion rather than hold a trial. *See id.* at 1209; *Smith v. Rent-A-Center, Inc.*, CV 18-1351 LJO JLT, 2019 WL 1294443, at *8 (E.D. Cal. March 21, 2019).

Accordingly, Defendant has not established a genuine dispute of material fact over whether a contract was formed, as Defendant has offered no competent evidence to prove that the arbitration agreement existed and Plaintiff denies agreeing to arbitrate this dispute. The Motion to Compel Arbitration is therefore **DENIED**. Defendant may submit any responsive pleading by **January 23, 2025**.

IT IS SO ORDERED.