

1 TROUTMAN AMIN, LLP
Eric J. Troutman (State Bar # 229263)
2 Puja Amin (State Bar # 299547)
3 Brittany A. Andres (State Bar # 340856)
400 Spectrum Center Drive, Suite 1550
4 Irvine, California 92618
5 Telephone: +1 949 350 3663
6 Facsimile: +1 949 203 8689
7 troutman@troutmanamin.com
8 amin@troutmanamin.com
9 brittany@troutmanamin.com

10 Attorneys for Defendant
11 ALLEVIATE TAX, LLC

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 FARBOD HADIZADEH MOGHADAM
15 AND NIGEL LUCOMBE, individually
16 and on behalf of themselves and others
17 similarly situated,

18 Plaintiffs,

19 VS.

20 ALLEVIATE TAX, LLC

21 Defendant.

Case No. 8:24-cv-01810-MWC-DFM

**DEFENDANT ALLEVIATE TAX,
LLC'S NOTICE OF MOTION
AND MOTION TO COMPEL
INDIVIDUAL ARBITRATION**

Date: January 24, 2025
Time: 1:30 p.m.
Courtroom: 6A

Hon. Judge Michelle Williams Court

22
23 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR**
24 **ATTORNEYS OF RECORD:**
25

26 **PLEASE TAKE NOTICE** that on January 24, 2025, at 1:30pm, or at such
27 other date and time set by and before Honorable Michelle Williams Court,
28

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 Defendant Alleviate Tax, LLC will and hereby does move this Court for an order
2 compelling Plaintiff Lucombe’s claims to arbitration.

3 This Motion is made following the conference of counsel pursuant to L.R. 7-
4 3, which took place on December 27, 2024¹.

5
6 This Motion is based upon this Notice of Motion and Motion, the
7 accompanying Memorandum of Points and Authorities, the pleadings and the
8 records on file herein, and on any oral argument or evidence that may be presented
9 at the hearing on this Motion.
10

11
12 Dated: December 27, 2024

TROUTMAN AMIN, LLP

13 By: /s/Brittany A. Andres

14 Eric J. Troutman
15 Puja J. Amin
16 Brittany A. Andres

17 *Attorneys for Defendant Alleviate Tax, LLC.*
18
19
20
21
22
23
24
25
26

27 ¹ loanDepot’s counsel first reached out to Plaintiff’s counsel via email on December 20, 2024. But did not receive a
28 response. loanDepot’s counsel follow up again on December 26, 2024. Ultimately, counsel for the parties met and
conferred on December 27, 2024.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION..... 9

II. FACTUAL BACKGROUND 10

 A. Plaintiff Completed an Online Form and Accepted the Terms and Conditions By Clicking “Get Quote Now!” 10

 B. Plaintiff Agreed to Arbitrate *Any* Dispute and to Proceed Individually. 12

III. LEGAL STANDARD 13

IV. ARGUMENT 16

 A. Plaintiff’s Claims Are Subject To Mandatory Arbitration. 16

 1. Plaintiff Entered Into an Enforceable Arbitration Agreement..... 18

 2. Plaintiff’s Claims Fall Within the Scope of the Arbitration Agreement Which Delegates All Issues to the Arbitrator. 22

 B. Arbitration is Required to Proceed on an Individual Basis, and Plaintiff’s Class Claims Must be Dismissed..... 25

V. CONCLUSION 27

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases

Allen v. Shutterfly, Inc.,

No. 20-CV-02448, 2020 WL 5517172 (N.D. Cal. Sept. 14, 2020) 20

AT&T Mobility LLC v. Concepcion,

563 U.S. 333 (2011)..... 14, 26

AT&T Techs., Inc. v. Commc'ns. Workers of Am.,

475 U.S. 643 (1986)..... 16, 17, 23

Augustine v. TLC Resorts Vacation Club, LLC,

2018 WL 3913923 (S.D. Cal. Aug. 16, 2018)..... 25

Berman v. Freedom Fin. Network, LLC,

30 F.4th 849 (9th Cir. 2022) 18, 20, 21

Brennan v. Opus Bank,

796 F.3d 1125 (9th Cir. 2015) 17

Chiron Corp. v. Ortho Diagnostic Sys., Inc.,

207 F.3d 1126 (9th Cir. 2000) 15, 16, 22, 23, 24

Dean Witter Reynolds, Inc. v. Byrd,

470 U.S. 213 (1985)..... 15, 16

Digital Software Servs., Inc. v. Entm't Programs, Inc.,

2010 WL 727610 (E.D. Cal. Mar. 1, 2010)..... 24

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 *Epic Systems Corp. v. Lewis,*
2 138 S.Ct. 1612 (2018)..... 13, 14
3
4 *Gilmer v. Interstate/Johnson Lane Corp.,*
5 500 U.S. 20 (1991)..... 14
6
7 *Graf v. Match.com, LLC,*
8 No. 15-CV-3911, 2015 WL 4263957 (C.D. Cal. July 10, 2015) 19
9
10 *Greenberg v. Amazon.com, Inc.,* No. 20-CV-02782, 2021 WL 7448530 (N.D. Cal.
11 May 7, 2021)..... 19
12
13 *Guadagno v. E*Trade Bank,*
14 592 F. Supp. 2d 1263 (C.D. Cal. 2008) 18
15
16 *Henry Schein, Inc. v. Archer & White Sales, Inc.,*
17 139 S. Ct. 524 (2019)..... 17
18
19 *Hill v. ActiveProspect, Inc.,*
20 No. 20-CV-01351, 2021 WL 9880874 (C.D. Cal. July 16, 2021) 19
21
22 *Kramer v. Toyota Motor Corp.,*
23 705 F.3d 1122 (9th Cir. 2013) 22
24
25 *Lamps Plus, Inc. v. Varela,*
26 139 S. Ct. 1407 (2019)..... 25, 26
27
28 *Legnaioli v. Chrysler Capital, LLC,*
No. 15-CV-00744, 2015 WL 12765468 (C.D. Cal. June 9, 2015) 26

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TROUTMAN AMIN, LLP
 400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
 troutman@troutmanamin.com

1 *M/S Bremen v. Zapata Off-Shore Co.*,
 2 407 U.S. 1 (1972)..... 15
 3
 4 *Mims v. Davison Design & Dev., Inc.*,
 5 No. 16-CV-92, 2016 WL 10771297 (C.D. Cal. Apr. 14, 2016)..... 26
 6
 7 *Mohamed v. Uber Techs., Inc.*,
 8 No. C-14-5200, 2015 WL 3749716 (N.D. Cal. June 9, 2015) 18, 21
 9
 10 *Mohamed v. Uber Techs., Inc.*,
 11 848 F.3d 1201 (9th Cir. 2016) 18
 12
 13 *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*,
 14 460 U.S. 1 (1983)..... 15, 16
 15
 16 *Moule v. UPS*,
 17 No. 16-CV-00102, 2016 WL 3648961 (E.D. Cal. July 7, 2016) 20
 18
 19 *Murphy v. DirecTV, Inc.*,
 20 724 F.3d 1218 (9th Cir. 2012) 26
 21
 22 *Nguyen v. Barnes & Noble Inc.*,
 23 763 F.3d 1171 (9th Cir. 2014) 18, 19, 21
 24
 25 *Par. v. Fitness Int'l, LLC*,
 26 No. SACV20613PSGRAOX, 2020 WL 5371510 (C.D. Cal. June 10, 2020) ... 23,
 27 25
 28 *Peterson v. Lyft, Inc.*,
 No. 16-CV-07343, 2018 WL 6047085 (N.D. Cal. Nov. 19, 2018)..... 26

TROUTMAN AMIN, LLP
 400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
 troutman@troutmanamin.com

1 *Pizarro v. QuinStreet, Inc.*,
 2 2022 WL 3357838 (N.D. Cal. 2022) 18, 19, 20
 3
 4 *Regan v. Pinger, Inc.*,
 5 No. 20-CV-02221-LHK, 2021 WL 706465 (N.D. Cal. Feb. 23, 2021) 24
 6 *Rent-A-Center, West, Inc. v. Jackson*,
 7 561 U.S. 63 (2010)..... 17
 8
 9 *Simula, Inc. v. Autoliv, Inc.*,
 10 175 F.3d 716 (9th Cir. 1999) 22, 23, 24
 11
 12 *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*,
 13 559 U.S. 662 (2010)..... 14, 25
 14
 15 *Swift v. Zynga Game Network, Inc.*,
 16 805 F. Supp. 2d 904 (N.D. Cal. 2011)..... 19, 20
 17
 18 *Tompkins v. 23andMe, Inc.*,
 19 No. 5:13-cv-05682, 2014 WL 2903752 (N.D. Cal. June 25, 2014)..... 20
 20
 21 *Tompkins v. 23andMe, Inc.*,
 22 840 F.3d 1016 (9th Cir. 2016) 20
 23
 24 *Villamar v. Clean Harbors Env't Servs. Inc.*,
 25 No. 222CV03966MEMFJEMX, 2022 WL 4465549 (C.D. Cal. Sept. 23, 2022)
 25, 26
 26
 27 *Wagner v. Stratton Oakmont, Inc.*,
 28 83 F.3d 1046 (9th Cir. 1996) 22

1 *Yei A. Sun v. Advanced China Healthcare, Inc.*,
 2 901 F.3d 1081 (9th Cir. 2018) 14, 15

3
 4 **Statutes**

5 9 U.S.C. § 2..... 13, 16
 6 9 U.S.C. § 3..... 14
 7
 8 9 U.S.C. § 4..... 14

9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Nigel Lucombe’s (“Plaintiff”) case belongs in binding arbitration. When Plaintiff accepted the terms disclosed on www.taxreliefwarehouse.online/, he agreed to arbitrate any dispute, claim, or controversy of any kind arising out of the parties’ relationship, which includes the claims asserted in this action. Defendant Alleviate Tax, LLC (“Alleviate”) therefore seeks an order under the Federal Arbitration Act (“FAA”), 9 U.S.C. §1 et seq., compelling Plaintiff to resolve this dispute by arbitration.

In the First Amended Complaint (“FAC”), Plaintiff alleges Alleviate violated the Telephone Consumer Protection Act (“TCPA”) and Florida Telephone Solicitation Act (“FTSA”) by making six calls to him without his consent and despite his phone number being registered on the National Do-Not-Call (“DNC”) Registry. *See* Plaintiff’s FAC (“FAC”), at ¶¶ 68-91. However, the Court need not address the merits of Plaintiff’s claims because, as a threshold matter, this action does not belong before this Court. This Court’s focus is limited to two narrow issues: (1) whether an agreement to arbitrate was formed and (2) whether the agreement encompasses the dispute at issue.

As to the first issue, a valid agreement to arbitrate was formed. On February 26, 2024, Plaintiff visited the website www.taxreliefwarehouse.online, entered his first and last name and phone number, read the disclosure which included the

1 following language: “You also agree to our Terms and Conditions and Privacy
2 Policy” and accepted the terms and conditions by clicking the button: “Get Quote
3 Now!” *See* Declaration of George Baseluos (“Baseluos Decl.”), at ¶¶ 5-11.
4

5 As to the second issue, Plaintiff’s claims are within the scope of the agreement.
6 Indeed, the “Terms and Conditions” located on www.taxreliefwarehouse.online
7 contained an arbitration provision which stated that “if a dispute, claim or
8 controversy of any kind arises between the prospect and us or any or all of its
9 Alleviate Tax, LLC as well as its subsidiaries and parties, the prospect agrees to
10 resolve the dispute, claim or controversy by binding arbitration administered by the
11 American Arbitration association...” Baseluos Decl., at ¶ 8.
12

13
14 As such, because the answer to both issues is *yes*, the Court must compel
15 arbitration as to Plaintiff Lucombe.
16

17 **II. FACTUAL BACKGROUND**

18 **A. Plaintiff Completed an Online Form and Accepted the Terms and**
19 **Conditions By Clicking “Get Quote Now!”**

20 On February 26, 2024, Plaintiff visited the website
21 www.taxreliefwarehouse.online. While he was on the website, he entered his first
22 and last name Nigel Lucombe; phone number (813) 900-7705; and accepted the
23 following disclosure:
24

25 By clicking the "Get Quote Now", you consent that you are providing
26 express “written” consent for Alleviate Tax, LLC as well as its
27
28

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

subsidiaries and parties calling on Alleviate Tax's behalf to contact you for marketing purposes related to tax relief services or products, by email or at the phone number you entered using an automated telephone dialing system, text messages, pre-recorded messages, A.I. generative voice, artificial voice messages and/or ringless voicemails, even if your phone is a mobile number or is currently listed on any state, federal, or corporate "Do Not Call" lists. You also agree that you have provided your legal name, your own phone number and email address. You understand that your telephone company may impose charges on you for these contacts, and that you can revoke this consent at any time. For SMS campaigns Text STOP to cancel and HELP for help. Consent is not required as a condition to utilize Alleviate Tax, LLC's services. Message and data rates may apply. *You also agree to our Terms and Conditions* and Privacy Policy.

Baseluos Decl., at ¶¶ 5-11 (emphasis added).

The disclosure language clearly states that by clicking the "Get Quote Now" button, the user is consenting to the Terms and Conditions of the website. Baseluos Decl., at ¶ 6. Further, the Terms and Conditions is located in a hyperlink on the website beneath the disclosure. *Id.*

Contact Us

1
2
3
4
5
6
7
8
9
10
11
12
13
14

First Name

Last Name

Phone Number

Get Quote Now

By clicking the "Get Quote Now", you consent that you are providing express "written" consent for Alleviate Tax, LLC as well as its subsidiaries and parties calling on Alleviate Tax's behalf to contact you for marketing purposes related to tax relief services or products, by email or at the phone number you entered using an automated telephone dialing system, text messages, pre-recorded messages, A.I. generative voice, artificial voice messages and/or ringless voicemails, even if your phone is a mobile number or is currently listed on any state, federal, or corporate "Do Not Call" lists. You also agree that you have provided your legal name, your own phone number and email address. You understand that your telephone company may impose charges on you for these contacts, and that you can revoke this consent at any time. For SMS campaigns Text STOP to cancel and HELP for help. Consent is not required as a condition to utilize Alleviate Tax, LLC's services. Message and data rates may apply. You also agree to our Terms and Conditions and Privacy Policy.

Tax Relief Warehouse

- Home
- Privacy Policy
- Terms & conditions
- CCPA

B. Plaintiff Agreed to Arbitrate Any Dispute and to Proceed Individually.

15
16
17
18
19
20

Contained in the "Terms of Conditions" hyperlink is an arbitration and class action waiver provision. *See* Baseluos Decl., at ¶ 8. In relevant part, the arbitration provision states:

21
22
23
24
25
26
27
28

Prospect irrevocably agrees that if a dispute, claim or controversy of any kind arises between the prospect and us or any or all of its Alleviate Tax, LLC as well as its subsidiaries and parties, the prospect agrees to resolve the dispute, claim or controversy by binding arbitration administered by the American Arbitration association in the state of Illinois (USA) or another location mutually acceptable to the parties.

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 This arbitration provision limits a prospect's ability to litigate claims in
2 court and a prospect's right to a jury trial.

3 ...
4

5 This arbitration provision shall survive termination of this agreement
6 as well as opt-out/cancelling of service of any and all kinds by the
7 prospect. In event of arbitration the non-prevailing party will pay for
8 any and all reasonable legal expenses (lawyer fees only) of the
9 prevailing party. If any of the terms are held unenforceable, the
10 reminder of the terms shall remain in effect.

11 (the "Arbitration Agreement"). Baseluos Decl., at ¶ 8. The Terms and Conditions
12 also contains the following class action waiver provision:

13 A prospect also waives his/her right to participate as a class
14 representative or member of any class of claimants for any and all
15 claims subject to arbitration.
16
17
18

19 Baseluos Decl., at ¶ 8.

20 Because Plaintiff entered his personal information on
21 www.taxreliefwarehouse.online and accepted the disclosure, he expressly agreed to
22 be bound by the terms contained therein, including binding arbitration.
23
24

25 **III. LEGAL STANDARD**

26 The FAA codifies a strong federal policy in favor of enforcing arbitration
27 agreements, including agreements to arbitrate statutory claims. *See* 9 U.S.C. § 2; *Epic*
28

1 *Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018) (“The [FAA], this Court has said,
2 establishes ‘a liberal federal policy favoring arbitration agreements.’”); *Gilmer v.*
3 *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24-25 (1991) (holding that FAA
4 provisions demonstrate federal policy that favors arbitration and its purpose was to
5 reverse the longstanding judicial hostility to arbitration agreements); *see AT&T*
6 *Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (noting that the FAA’s
7 “principle purpose . . . is to ensure that private arbitration agreements are enforced
8 according to their terms”).

9
10
11 “[I]n Congress’s judgment arbitration ha[s] more to offer than courts
12 recognized – not least the promise of quicker, more informal, and often cheaper
13 resolutions for everyone involved.” *Epic Systems*, 138 S. Ct. at 1621; *see Stolt-*
14 *Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 685 (2010) (noting that
15 arbitration allows parties to resolve their claims for “lower costs, greater efficiency
16 and speed, and the ability to choose expert adjudicators to resolve specialized
17 disputes”). Thus, “by agreeing to arbitrate a statutory claim, a party does not forego
18 the substantive rights afforded by the statute; it only submits to their resolution in an
19 arbitral, rather than a judicial, forum.” *Gilmer*, 500 U.S. at 26.

20
21
22
23 The FAA permits a party to move to compel arbitration when an opposing
24 party refuses to arbitrate as required by a valid arbitration agreement. *Id.* at 25; 9
25 U.S.C. §§ 3, 4. In the Ninth Circuit, courts have held that “only under extraordinary
26 circumstances unrelated to the convenience of the parties should a motion to enforce
27
28

1 a forum-selection clause be denied.” *Yei A. Sun v. Advanced China Healthcare, Inc.*,
2 901 F.3d 1081, 1087 (9th Cir. 2018). Indeed, the forum-selection clause will control,
3 “unless the plaintiff made a strong showing that: (1) the clause is invalid due to fraud
4 or overreaching, (2) enforcement would contravene a strong public policy of the
5 forum in which suit is brought, whether declared by statute or by judicial decision,
6 or (3) trial in the contractual forum will be so gravely difficult and inconvenient that
7 the litigant will for all practical purposes be deprived of his day in court.” *Id.* at 1088.
8
9 Nevertheless, a forum selection clause is presumptively valid; the party seeking to
10 avoid a forum selection clause bears a heavy burden to establish a ground upon which
11 we will conclude the clause is unenforceable. *See M/S Bremen v. Zapata Off-Shore*
12 *Co.*, 407 U.S. 1, 10 (1972).

13
14
15 Any doubts concerning the scope of arbitrable issues “should be resolved in
16 favor of arbitration, whether the problem at hand is the construction of the contract
17 language itself or an allegation of waiver, delay, or a like defense to arbitrability.”
18 *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).

19
20
21 According to the Supreme Court, the FAA “leaves no place for the exercise
22 of discretion by a [trial] court but instead mandates that [trial] courts shall direct the
23 parties to proceed to arbitration” on all claims covered under the agreement. *Dean*
24 *Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). The court’s role under the
25 Act is therefore limited to determining: (1) whether a valid agreement to arbitrate
26 exists and, if it does, (2) whether the agreement encompasses the dispute at issue. If
27
28

1 the response is affirmative on both counts, then the Act requires the court to enforce
2 the arbitration agreement in accordance with its terms. *Chiron Corp. v. Ortho*
3 *Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). Courts, therefore, should
4 “move the parties to an arbitrable dispute out of court and into arbitration as quickly
5 and easily as possible.” *Moses*, 460 U.S. at 22.

7 **IV. ARGUMENT**

8 **A. Plaintiff’s Claims Are Subject To Mandatory Arbitration.**

9 Plaintiff’s claims against Alleviate are governed by the FAA. *See* 9 U.S.C. §
10 2. Under the FAA, an agreement to arbitrate, like the one in the Terms and
11 Conditions, “shall be valid, irrevocable, and enforceable, save upon such grounds as
12 exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. As the Ninth
13 Circuit explained, in deciding a motion to compel arbitration, a district court is
14 confined to two inquiries: “(1) whether a valid agreement to arbitrate exists and, if it
15 does; (2) whether the agreement encompasses the dispute at issue.” *Chiron Corp. v.*
16 *Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1131 (9th Cir. 2000).

17 By its terms, the FAA “leaves no place for the exercise of discretion by a
18 district court, but instead mandates that district courts shall direct the parties to
19 proceed to arbitration on issues as to which an arbitration agreement has been
20 signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). When a valid
21 arbitration clause exists, there is a presumption in favor of arbitration “unless it may
22 be said with positive assurance that the arbitration clause is not susceptible of an
23
24
25
26
27
28

1 interpretation that covers the asserted dispute.” *AT&T Techs., Inc. v. Commc'ns.*
2 *Workers of Am.*, 475 U.S. 643, 650 (1986). The court’s inquiry is even more limited
3 where (as here) the parties delegate the power to decide arbitrability to the
4 arbitrator—rather than the court. *See Brennan v. Opus Bank*, 796 F.3d 1125, 1130
5 (9th Cir. 2015). The Supreme Court has repeatedly made clear that “parties may agree
6 to have an arbitrator decide . . . ‘gateway’ questions of ‘arbitrability,’ such as whether
7 the parties have agreed to arbitrate or whether their agreement covers a particular
8 controversy.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529
9 (2019) (quoting *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010)).
10 “[I]f a valid agreement exists, and if the agreement delegates the arbitrability issue to
11 an arbitrator, a court may not decide the arbitrability issue.” *Id.* at 530. When
12 considering whether there is a valid delegation, the court undertakes a limited inquiry
13 into whether the parties “clearly and unmistakably” delegated the power to decide
14 arbitrability to the arbitrator. *Brennan*, 796 F.3d at 1130; *see also Schein*, 139 S. Ct.
15 at 530.

16
17
18
19
20
21 As demonstrated herein, Plaintiff entered into a valid arbitration agreement,
22 and the TCPA and FTSA claims he attempts to plead against Alleviate falls squarely
23 within the scope of that arbitration agreement. Because the arbitration provision in
24 the Terms and Conditions delegates questions of scope and enforceability to the
25 arbitrator, this Court’s inquiry should end here. However, if this Court does elect to
26 address the second prong, Plaintiff’s claim is covered by the arbitration provision in
27
28

1 the Terms and Conditions. Accordingly, Plaintiff should be compelled to arbitrate his
2 claim against Alleviate on an individual basis and this case should be dismissed.

3 **1. Plaintiff Entered Into an Enforceable Arbitration**
4 **Agreement.**

5 Plaintiff entered into an enforceable arbitration agreement with Alleviate as
6 the Terms and Conditions constitute an enforceable “clickwrap” agreement. Such a
7 ““clickwrap’ agreement” is enforceable “if the terms are clear and acceptance is
8 unambiguous, regardless of whether [the user] actually reads them.” *Guadagno v.*
9 *E*Trade Bank*, 592 F. Supp. 2d 1263, 1271 (C.D. Cal. 2008). “[I]t is essentially
10 irrelevant whether a party actually reads [a] contract or not” in determining whether
11 a valid contract exists, “so long as the individual had a legitimate *opportunity* to
12 review it.” *Mohamed v. Uber Techs., Inc.*, No. C-14-5200, 2015 WL 3749716, at *7
13 (N.D. Cal. June 9, 2015), *rev’d in part on other grounds*, 848 F.3d 1201 (9th Cir.
14 2016) (citations omitted). Ninth Circuit law, requiring enforcement of this type of
15 agreement is well-established: a user assents to an arbitration agreement on a website
16 when “(1) the website provides reasonably conspicuous notice of the terms to which
17 the consumer will be bound; and (2) the consumer takes some action, such as clicking
18 a button or checking a box, that unambiguously manifests his or her assent to those
19 terms.” *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 856 (9th Cir. 2022).
20 California law is clear that an individual is bound by a “website operator’s ‘terms of
21 use’” if the “website puts a reasonably prudent user on inquiry notice of [those]
22
23
24
25
26
27
28

1 terms.” *Pizarro v. QuinStreet, Inc.*, 2022 WL 3357838, at *3 (N.D. Cal. 2022)
2 (quoting *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1177 (9th Cir. 2014)).
3 “Whether a reasonably prudent user has inquiry notice of the agreement, in turn,
4 depends on the design and content of the website and the agreement’s webpage, i.e.,
5 the conspicuousness and placement of the ‘Terms of Use’ hyperlink.” *Id.*

7 Thus, for example, where a user of a website, agrees to an arbitration provision
8 in a terms of use “when they clicked on a ‘Continue’ . . . button on the registration
9 page where it was explained that by clicking on that button, the user was affirming
10 that they would be bound by the Terms of Use, which were always hyperlinked and
11 available for review” the user agrees to the arbitration. *Graf v. Match.com, LLC*, No.
12 15-CV-3911, 2015 WL 4263957, at *4 (C.D. Cal. July 10, 2015); *see also Hill v.*
13 *ActiveProspect, Inc.*, No. 20-CV-01351, 2021 WL 9880874 (C.D. Cal. July 16, 2021)
14 (compelling plaintiff’s TCPA claims to arbitration based on evidence of plaintiff’s
15 clicking “See My Results” button on web form to obtain personal loan information);
16 *Greenberg v. Amazon.com, Inc.*, No. 20-CV-02782, 2021 WL 7448530, at *4 (N.D.
17 Cal. May 7, 2021) (enforcing arbitration clause in Conditions of Use where the user
18 clicked a “Continue” button on defendant’s website, below which was the following
19 statement: “By continuing, you agree to Amazon’s Conditions of Use where the user
20 clicked a “Continue” button on defendant’s website, below which was the following
21 statement: “By continuing, you agree to Amazon’s Conditions of Use and Privacy
22 Notice”); *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 911 (N.D. Cal.

1 2011) (enforcing terms where plaintiff “was required to and did click on an ‘Accept’
2 button directly above a statement that clicking on the button served as assent to the
3 [site’s] terms of service along with a blue hyperlink”); *Allen v. Shutterfly, Inc.*, No.
4 20-CV-02448, 2020 WL 5517172, at *7 (N.D. Cal. Sept. 14, 2020) (enforcing terms
5 where website disclosed that “by clicking ‘Submit Payment’ I agree to the Privacy
6 Statement and Terms of Service”); *Moule v. UPS*, No. 16-CV-00102, 2016 WL
7 3648961, at *5 (E.D. Cal. July 7, 2016) (enforcing terms where website disclosed
8 that “By clicking the Yes button, you agree to the UPS Tariff/Terms and
9 Conditions”); *Tompkins v. 23andMe, Inc.*, No. 5:13-cv-05682, 2014 WL 2903752, at
10 *7-8 (N.D. Cal. June 25, 2014), *aff’d*, 840 F.3d 1016 (9th Cir. 2016).

14 The same conclusions apply here. The disclosure containing the Terms and
15 Conditions, “when viewed in the context of the overall design and content of the
16 webpage,” was at least as conspicuous as those courts have held to provide the
17 requisite notice. *Pizarro*, 2022 WL 3357838, at *3. “[T]he general design of the
18 webpage, which is comprised of only [three] data fields, is relatively uncluttered and
19 has a muted, and essentially uniform, color scheme.” *Id.* Additionally, the Terms and
20 Conditions were hyperlinked at the bottom of the Website, they were expressly
21 referenced in the disclaimer and acknowledged by Plaintiff Lucombe, and the
22 disclaimer and acknowledgement stated that by clicking the “Get Quote Now” button
23 the user agreed to the Terms and Conditions. *See Baseluos Decl.*, at ¶ 6. The Website
24 expressly notified Plaintiff that “[b]y clicking the ‘Get Quote Now’ button . . . [y]ou
25
26
27
28

1 also agree to our Terms and Conditions and Privacy Policy.” *Id.*; *Berman v. Freedom*
2 *Fin. Network, LLC*, 30 F.4th 849, 858 (9th Cir. 2022) (“[t]his notice defect could
3 easily have been remedied by including language such as, “By clicking the Continue
4 . . . button, you agree to the Terms & Conditions” (internal citation omitted)). Here,
5 the Plaintiff was explicitly notified of the legal significance of the actions he must
6 have taken to enter into a contractual agreement. *Id.*

7
8
9 In short, Plaintiff Lucombe “had the opportunity to review the relevant terms
10 of the hyperlinked agreements, and the existence of the relevant contracts was made
11 conspicuous.” *See Mohamed*, 2015 WL 3749716, at *7. He was “required to
12 affirmatively acknowledge the agreement before proceeding with use of” Alleviate’s
13 online service or, at the very least, was “on inquiry notice of the terms of the contract”
14 due to “the design and content of the website and the agreement’s webpage.” *See*
15 *Nguyen*, 763 F.3d at 1176-77. Therefore, Plaintiff Lucombe agreed to be bound by
16 the Terms and Conditions, and, more importantly, agreed to arbitrate his dispute.
17
18

19
20 Alleviate expects that Plaintiffs will cite *Berman v. Freedom Fin. Network,*
21 *LLC* to argue that the Terms and Conditions were not sufficiently conspicuous to
22 form an agreement. Not so. The Terms and Conditions here were much more
23 conspicuous than the hyperlink at issue in *Berman*. There, the text alerting users that
24 they were agreeing to terms appeared “in a font so small that it [was] barely legible
25 to the naked eye.” *Berman*, 30 F.4th at 856-57. And the text could not compete with
26 “other visual elements” on the webpages at issue. *Id.* at 857. Here, the Terms and
27
28

1 Conditions were presented in text that was readily legible to the naked eye and whose
2 gray, font stood out from other visual elements on the screen. *See* Baseluos Decl., at
3 ¶ 6.

4
5 In sum, the Website provided reasonably conspicuous notice of the Terms and
6 Conditions and Plaintiff unambiguously manifested his assent when submitting his
7 information, thereby entering into an enforceable arbitration agreement with
8 Alleivate.

9
10 **2. Plaintiff’s Claims Fall Within the Scope of the Arbitration**
11 **Agreement Which Delegates All Issues to the Arbitrator.**

12 The Court must compel arbitration without inquiring whether Plaintiff’s
13 claims fall within the scope of the arbitration agreements, because those agreements
14 delegate questions of arbitrability to the arbitrator. *Kramer v. Toyota Motor Corp.*,
15 705 F.3d 1122, 1126 (9th Cir. 2013) (“The scope of an arbitration agreement “is
16 governed by federal substantive law” and “any doubts concerning the scope of
17 arbitrable issues should be resolved in favor of arbitration.”) (quoting *Chiron Corp.*
18 *v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1131 (9th Cir. 2000)); *see also* *Wagner*
19 *v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1049 (9th Cir. 1996) (“contract
20 interpretation insist on due regard to the federal policy in favor of arbitration by
21 resolving ambiguities as to the scope of arbitration in favor of arbitration.”) (citations
22 omitted).

23
24
25
26
27 In construing arbitration clauses, courts should first determine the breadth of
28

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 the arbitration clause. *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 720 (9th Cir.
2 1999). An arbitration clause is broad if it covers “all disputes arising out of a contract”
3 and is a narrow clause if it covers only specific types of disputes. Under a broad
4 arbitration provision—i.e., one that encompasses all disputes related to or arising out
5 of an agreement—a presumption of arbitrability applies and “only the most forceful
6 evidence of a purpose to exclude the claim from arbitration can prevail.” *AT & T*
7 *Techs., Inc. v. Commun. Workers of Am.*, 475 U.S. 643, 649 (1986) (holding that only
8 the strongest evidence against arbitration will remove a dispute from the purview of
9 a broad arbitration clause). Accordingly, “arbitration should only be denied where it
10 may be said with positive assurance that the arbitration clause is not susceptible of
11 an interpretation that covers the asserted dispute.” *AT&T Tech., Inc.*, 475 U.S. at 650
12 (internal quotation marks omitted).
13
14
15
16

17 Here the scope of the arbitration agreement unquestionably “encompasses the
18 dispute at issue.” *See Chiron*, 207 F.3d at 1130. Plaintiff’s TCPA and FTSA claim
19 against Alleviate fits within his agreement to that requires arbitration of any “dispute,
20 claim or controversy *of any kind* [that] arises between the prospect and us or any or
21 all of its Alleviate Tax, LLC.” Baseluos Decl., at ¶ 8. *See also Par. v. Fitness Intl.,*
22 *LLC*, No. SACV20613PSGRAOX, 2020 WL 5371510, at *4 (C.D. Cal. June 10,
23 2020) (noting that “‘sweeping language’ like ‘any dispute’ covers a broad range of
24 disputes that may arise between parties to an arbitration agreement, even those that
25 may arise outside of the agreement.”).
26
27
28

1 Indeed, “when parties include a broad arbitration provision, every dispute
2 between the parties having a significant relationship to the contract and all disputes
3 having their origin or genesis in the contract should be sent to arbitration.” *See Digital*
4 *Software Servs., Inc. v. Entm’t Programs, Inc.*, 2010 WL 727610, at *3 (E.D. Cal.
5 Mar. 1, 2010)) (internal quotations and citations omitted). Put differently, agreements
6 to arbitrate “any dispute,” like the agreement at issue here, are “broad and far
7 reaching,” *Chiron*, 207 F.3d at 1131, and require arbitration of all disputes that “touch
8 matters covered by the contract containing the arbitration clause.” *Simula, Inc. v.*
9 *Autoliv, Inc.*, 175 F.3d 716, 721 (9th Cir. 1999).

10
11
12
13 Regardless, here there can be no serious dispute that the arbitration agreement
14 in the www.taxreliefwarehouse.online/ Terms and Conditions cover all of Plaintiff’s
15 TCPA and FTSA claims. Plaintiff’s claims touches on Alleviate’s services and, more
16 importantly, his consent to be contacted at the phone number he provided. *See*
17 *Baseluos Decl.*, at ¶ 13. Specifically, the Terms and Conditions provide that “[i]f you
18 submit a contact form or otherwise indicate your interest in contacting a Third-Party
19 Provider, you may receive telemarketing calls from the Third-Party Provider using
20 the contact information you provided.” *Baseluos Decl.*, at ¶ 8. Thus, Alleviate’s
21 alleged communications with Plaintiff to Plaintiff’s phone number “were express
22 envisioned by the contract between the parties.” *Regan v. Pinger, Inc.*, No. 20-CV-
23 02221-LHK, 2021 WL 706465, at *10 (N.D. Cal. Feb. 23, 2021) (finding TCPA
24 claim within the scope of the arbitration agreement where the terms provided that
25
26
27
28

1 “For Sideline Accounts, you agree that [Pinger] may contact you at the mobile phone
2 number you provide during registration about your Account and/or about setting up
3 an Account.”).

4 As such, Plaintiff’s claims fall within the scope of the Arbitration Agreement.
5
6 *See Augustine v. TLC Resorts Vacation Club, LLC*, 2018 WL 3913923, at *8 (S.D.
7 Cal. Aug. 16, 2018) (TCPA claim arising out of text messages addressing unpaid
8 dues was subject to arbitration “[g]iven the circumstances of this case and the plain,
9 broad language of the arbitration provision, as well as the strong presumption in favor
10 of arbitration.”); *Par. v. Fitness Int’l, LLC*, No. SACV20613PSGRAOX, 2020 WL
11 5371510, at *1 (C.D. Cal. June 10, 2020) (same).

12
13
14 **B. Arbitration is Required to Proceed on an Individual Basis, and**
15 **Plaintiff’s Class Claims Must be Dismissed.**

16 “Parties to an arbitration agreement may specify the issues they choose to
17 arbitrate, may agree on a set of procedural rules to use during the arbitration, and may
18 limit with whom they choose to arbitrate their disputes.” *Stolt-Nielsen S.A. v.*
19 *AnimalFeeds Int’l Corp.*, 559 U.S. 662, 664 (2010) (citing *Villamar v. Clean Harbors*
20 *Env’t Servs. Inc.*, No. 222CV03966MEMFJEMX, 2022 WL 4465549, at *3 (C.D.
21 Cal. Sept. 23, 2022)). As a result, “a party may not be compelled under the FAA to
22 submit to class arbitration unless there is a contractual basis for concluding that the
23 *party agreed to do so.*” *Stolt-Nielsen S.A.*, 559 U.S. at 664 (emphasis added). The
24 Supreme Court has held that “[c]ourts may not infer from an ambiguous agreement
25
26
27
28

1 that parties have consented to arbitrate on a classwide basis.” *Lamps Plus, Inc. v.*
2 *Varela*, 139 S. Ct. 1407, 1419 (2019). “Rather, only an agreement that affirmatively
3 and explicitly provides for class arbitration can permit the use of such procedures.”
4
5 *Villamar*, 2022 WL 4465549, at *3.

6 It is well-settled that class action waivers in arbitration provisions are
7 enforceable. *See Concepcion*, 563 U.S. at 352; *Murphy v. DirecTV, Inc.*, 724 F.3d
8 1218, 1225-26 (9th Cir. 2012) (“Importantly, the FAA meant what the [Supreme]
9 Court in *Concepcion* says it means—that the Customer Agreement’s class waiver is
10 enforceable.....”) (citing *Concepcion*, 563 U.S. at 1748).

11
12
13 Here, although Plaintiff seeks class treatment in his FAC, the Arbitration
14 agreement states that “[a] prospect also waives his/her right to participate as a class
15 representative or member of any class of claimants for any and all claims subject to
16 arbitration.” Baseluos Decl., at ¶ 8. Here, as courts have found in many other cases,
17 dismissal is the most efficient path forward. *See, e.g., Peterson v. Lyft, Inc.*, No. 16-
18 CV-07343, 2018 WL 6047085, at *6 (N.D. Cal. Nov. 19, 2018) (granting motion to
19 compel arbitration and dismissing case); *Mims v. Davison Design & Dev., Inc.*, No.
20 16-CV-92, 2016 WL 10771297, at *4 (C.D. Cal. Apr. 14, 2016) (same); *Legnaioli v.*
21 *Chrysler Capital, LLC*, No. 15-CV-00744, 2015 WL 12765468, at *4 (C.D. Cal. June
22 9, 2015) (same). As such, this Court should dismiss Plaintiff Lucombe’s class claims,
23
24
25 and compel individual arbitration. *See Villamar*, 2022 WL 4465549, at *3
26
27 (dismissing the plaintiff’s class claims in their entirety where the agreement
28

1 contained a clear and unambiguous class action waiver).

2 **V. CONCLUSION**

3 For the foregoing reasons, Alleviate respectfully requests that the Court
4 compel Plaintiff Nigel Lucombe’s claims to arbitration.
5

6
7 Dated: December 27, 2024

TROUTMAN AMIN, LLP

8 By: /s/Brittany A. Andres

9 Eric J. Troutman
10 Puja J. Amin
11 Brittany A. Andres

Attorneys for Defendant Alleviate Tax, LLC

12
13 **CERTIFICATE OF COMPLIANCE**

14 The undersigned, counsel of record for Defendant Alleviate Tax, LLC,
15 certifies that this brief contains 4,398 words, which complies with the word limit of
16 L.R. 11-6.1.
17

18 Dated: December 27, 2024

/s/ Brittany A. Andres

19 Brittany A. Andres
20

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on December 27, 2024, a copy of the foregoing was served
23 by ECF to counsel of record.
24

25 /s/ Brittany A. Andres

26 Brittany A. Andres
27
28

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com