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FILED

NOV 4 2026

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IN RE: SNOWLAKE, INC. DATA SECURITY BREACH LITIGATION

ANTOUN NADER; AARON MACOM; NATHAN THOMAS; LINDA PIERCE,

Plaintiffs - Appellees,

v.

LENDINGTREE, LLC; QUOTEWIZARD.COM, LLC,

Defendants - Appellants.

No. 25-7045

D.C. No. 2:24-md-03126-BMM-JTJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, Chief District Judge, Presiding

Argued and Submitted October 14, 2026
Missoula, Montana

Before: TALLMAN, BEA, and BRESS, Circuit Judges.

LendingTree, LLC and QuoteWizard.com, LLC appeal an order denying their motion to compel arbitration. This appeal is one piece of a data breach

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

putative class action brought by Antoun Nader and others (Plaintiffs) and assigned to the United States District Court for the District of Montana by the Judicial Panel on Multidistrict Litigation. We affirm.

We review "de novo the denial of a motion to compel arbitration, while underlying factual findings are reviewed for clear error." *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022).

1. Defendants invited the district court to apply Ninth Circuit law, including cases that apply California law. Therefore, the district court's choice of law is unreviewable. *Sovak v. Chugai Pharm. Co*., 280 F.3d 1266, 1270 (9th Cir. 2002) (citing *Deland v. Old Republic Life Ins. Co.*, 758 F.2d 1331, 1336–37 (9th Cir. 1985)). But it makes no difference here, because though the district court considered the "context of the transaction," that factor was not dispositive in its analysis. And neither party disputes the conclusion that Washington, Texas, and North Carolina contract law are substantively the same for present purposes. The same result is reached applying the law of any of those three states or "Ninth Circuit case law," by evaluating only the "traditional inquiry related to the visuals involved with the notice, such as font size, text placement, and overall screen design." *Chabolla v. ClassPass Inc*., 129 F.4th 1147, 1155 (9th Cir. 2025) (citing *Oberstein v. Live Nation Ent., Inc*., 60 F.4th 505, 516 (9th Cir. 2023)). We

therefore apply Ninth Circuit case law without considering the context of the transaction factor.

2. Here we consider a "sign-in wrap" agreement, one method by which websites obtain assent to electronic contracts. In this type of agreement, "the website provides a link to terms of use and indicates that some action may bind the user but does not require that the user actually review those terms." *Id.* at 1154 (quoting *Keebaugh v. Warner Bros. Ent. Inc*., 100 F.4th 1005, 1114 (9th Cir. 2024)). "Like all online contracts, 'a sign-in wrap agreement may be an enforceable contract based on inquiry notice if (1) the website provides reasonably conspicuous notice of the terms to which the consumer will be bound; and (2) the consumer takes some action, such as clicking a button or checking a box, that unambiguously manifests his or her assent to those terms.'" *Id.* at 1154–55 (quoting *Keebaugh*, 100 F.4th at 1114).

We consider the "visual aspects of the Websites" to determine if users had conspicuous notice of terms. *Id.* at 1156. "While terms may be disclosed through hyperlinks, the presence of a hyperlink 'must be readily apparent,' and '[s]imply underscoring words or phrases . . . will often be insufficient to alert a reasonably prudent user that a clickable link exists.'" *Id.* (quoting *Keebaugh*, 100 F.4th at 1014) (alteration in original). Additionally, courts examine "'the conspicuousness and placement of the Terms of Use hyperlink, other notices given to users of the

terms of use, and the website's general design' in determining 'whether a reasonably prudent user would have inquiry notice of a sign-in wrap agreement.'" *Id.* (quoting *Oberstein*, 60 F.4th at 515) (brackets omitted). "[T]here is no bright-line test for finding that a particular design element is adequate in every circumstance. We must instead consider how those design elements appear on the page." *Id.* at 1156–57.

Whether we examine the district court's holding as to visual aspects of the Websites for clear error, or evaluate the Websites de novo, our conclusion is the same—the Websites here did not provide reasonably conspicuous notice of the terms of use containing the arbitration provision.

Under our precedents, the district court properly found that the font size, the clutter of the webpages, and the general layout all evidenced a lack of conspicuousness. As in *Berman*, both Websites' terms were printed in a tiny font "considerably smaller than the font used in the surrounding website elements." *Berman*, 30 F.4th at 856. "[T]he comparatively larger font used in all of the surrounding text naturally directs the user's attention everywhere else." *Id.* at 857. And unlike in *Keebaugh*, which featured a sign-in screen that "lack[ed] clutter" with the notice directly below the action button, 100 F.4th at 1020–21, here, like in *Berman*, "the textual notice is [] deemphasized by the overall design of the webpage, in which other visual elements draw the user's attention away from the

barely readable critical text." *Berman*, 30 F.4th at 857. The QuoteWizard form also requires the user to scroll past larger and more conspicuous text elements, including "Good News! We've Found Matches For You!" and the operative bright green box inviting the user to "Get My Quotes." LendingTree's forms similarly place the Terms of Use hyperlink well below the confirmation button to "View Your Rates," and the page contains various other hyperlinks that draw attention away from the Terms of Use link. "The notice seems to fade into the irrelevancy of other aspects of the page" because the webpage has multiple hyperlinks and "varying font sizes and images." *Chabolla*, 129 F.4th at 1157.

Because there was no conspicuous notice of terms, there could be no mutual assent to those terms. *Id.* at 1158.

AFFIRMED.