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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRITTANY MORRISON, individually and on behalf of all others similarly situated, Plaintiff - Appellee, v. YIPPEE ENTERTAINMENT, INC., Defendant - Appellant.	No. 25-7161 D.C. No. 3:24-cv-00797-JO-KSC MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jinsook Ohta, District Judge, Presiding

Argued and Submitted October 30, 2026
Pasadena, California

Before: PAEZ, OWENS, and SANCHEZ, Circuit Judges.

Defendant Yippee Entertainment, Inc. ("Yippee") appeals the district court's denial of its motion to compel Plaintiff Brittany Morrison to arbitration. We have jurisdiction under 28 U.S.C. § 1291 as specified in 9 U.S.C. § 16(a)(1)(B). *See Diaz v. Macys W. Stores, Inc.*, 101 F.4th 697, 701 n.2 (9th Cir. 2024). "We review *de novo* the denial of a motion to compel arbitration, while underlying factual

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

findings are reviewed for clear error." *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022). We affirm.

1. We begin and end with assent to the arbitration agreement. As a threshold matter, we reject Yippee's argument that the district court erred in ruling on that issue, rather than deeming it "waived" or "conceded" because Morrison failed to raise it earlier. The district court provided Yippee a full and fair opportunity to respond to Morrison's assent arguments in a supplemental brief, so it did not abuse its discretion in ruling on the argument. *See Consumer Fin. Prot. Bureau v. Gordon*, 819 F.3d 1179, 1187 (9th Cir. 2016) (holding that district court's determination that an argument was waived is reviewed for abuse of discretion); *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (holding that district courts may rule on new arguments if the opposing party has an adequate chance to respond).

2. We agree with the district court that Yippee failed to show that an agreement to arbitrate was formed because Yippee's "sign-in wrap" did not lead to "an unambiguous manifestation of assent." *Oberstein v. Live Nation Ent., Inc.*, 60 F.4th 505, 514 (9th Cir. 2023). Under our precedent applying California law to sign-in wrap, assent occurs only

> where an internet user is *explicitly* advised that the act of clicking will constitute assent to the terms and conditions of an agreement. Even strongly implicit advisement isn't enough—a webpage must *explain* that certain actions will be understood by the offeror to signal assent to

contractual terms. And it must identify what, exactly, those actions are. *Godun v. JustAnswer LLC*, 135 F.4th 699, 710–11 (9th Cir. 2025) (citation modified).

The sign-in wrap here did not explicitly and unambiguously identify how a user manifested assent to the arbitration agreement. The advisal on Yippee's webpage said that a user agreed to the terms containing the arbitration agreement by "clicking below," but there is no unambiguous reference that this required the user to click the "Start subscription" action button. Instead, there were six clickable items "below" that advisal: hyperlinks to Yippee's terms of service, cookie policy, and privacy policy; slightly farther down, the "Start Subscription" button; and directly below that, hyperlinks to Google's terms of service and privacy policy. There is no explicit indication which of these clickable items "below" manifests assent to arbitrate.

Accordingly, Morrison was not "explicitly advised that the act of clicking [the Start subscription button would] constitute assent to the terms and conditions of an agreement." *Berman*, 30 F.4th at 857; *see also Godun*, 135 F.4th at 713 ("the text on an action button matters insofar as it matches an advisal's explanation"). We have held that similarly disconnected advisals and action buttons did not manifest assent. *See Chabolla v. ClassPass Inc.*, 129 F.4th 1147, 1158–60 (9th Cir. 2025). The cases Yippee cites in which we have held that online agreements

did lead to assent, by contrast, had explicit and unambiguous connections between the advisal and the action that manifested assent. *See Oberstein*, 60 F.4th at 517; *Patrick v. Running Warehouse, LLC*, 93 F.4th 468, 477 (9th Cir. 2024); *Keebaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005, 1020 (9th Cir. 2024).

3. Because we affirm the district court's decision on this basis, we need not address the district court's alternative grounds for denying the motion.

AFFIRMED.