

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JUSTIN HUNT,  
Plaintiff,  
v.  
META PLATFORMS, INC., et al.,  
Defendants.

Case No. 23-cv-04953-PCP

**ORDER GRANTING H&R BLOCK’S  
MOTION TO COMPEL  
ARBITRATION**

Re: Dkt. No. 86

In this putative consumer class action, plaintiff Justin Hunt alleges that his sensitive tax return information was improperly transmitted to Facebook and Google when he used H&R Block’s online service to file his taxes. He brings this action against HRB Tax Group, Inc. and HRB Digital LLC (collectively “H&R Block”), as well as Meta Platforms, Inc. and Google, LLC. H&R Block has moved to compel arbitration under the terms of its Online Services Agreement. H&R Block’s motion is granted for the reasons that follow.

**I. Background**

Mr. Hunt used H&R Block’s online service to file his taxes from 2018 to 2023. Compl., Dkt. No. 36 ¶ 10. He alleges that H&R Block transmitted sensitive tax return information to Meta and Google through the use of tracking tools installed on H&R Block’s website. Compl. ¶¶ 85–87.

According to H&R Block, both new and returning users are required to agree to the H&R Block Online Service Agreement each year they use the company’s online tax filing service. Schuessler Decl., Dkt. No. 88, at 2. The agreement includes an arbitration provision. *Id.*

According to H&R Block, when Mr. Hunt logged into his account in April 2023, he was presented with a screen that required him to check a box next to the statement, “I agree to the terms and conditions of the Electronic Communications Consent and the Online Services

1 Agreement, which includes the requirement that any dispute be resolved through binding  
 2 arbitration.” Dkt. No. 88-2, at 2. The underlined terms (which appeared in green) were hyperlinks  
 3 to the complete versions of the indicated documents. Schuessler Decl. at 3. According to H&R  
 4 Block records, Mr. Hunt completed this process and checked the box indicating his agreement to  
 5 the Online Services Agreement on April 5, 2023. *Id.* at 4. Mr. Hunt does not dispute that he  
 6 accepted the Online Service Agreement in this manner. *See* Opposition, Dkt. No. 105, at 12.

7 The version of the H&R Block Online Services Agreement that Mr. Hunt agreed to  
 8 includes a section entitled “11. Arbitration If A Dispute Arises (‘Arbitration Agreement’).”  
 9 Agreement, Dkt. No. 88-4, at 16. The first paragraph of this section provides:

10 You and the H&R Block Parties agree that all disputes and claims  
 11 between you and the H&R Block Parties shall be resolved through  
 12 binding individual arbitration unless you opt out of this Arbitration  
 13 Agreement using the process explained below.... All issues are for  
 14 the arbitrator to decide, except that issues relating to the arbitrability  
 of disputes and the validity, enforceability, and scope of this  
 Arbitration Agreement ... shall be decided by a court and not an  
 arbitrator.

15 *Id.* Instructions for opting out of the arbitration agreement appear in bold text in a box directly  
 16 following the first paragraph of the arbitration agreement. *Id.* The agreement also requires parties  
 17 to pursue an informal resolution process before commencing arbitration, and specifies that  
 18 “[a]rbitration shall be conducted by the American Arbitration Association (‘AAA’) pursuant to its  
 19 Consumer Arbitration Rules..., as modified by this Arbitration Agreement.” *Id.* at 16–17.

20 Mr. Hunt filed his first complaint in this case in September 2023. He filed the operative  
 21 second amended complaint in December 2023, alleging claims against H&R Block, Meta, and  
 22 Google for violating the Racketeer Influenced and Corrupt Organizations Act and the Internal  
 23 Revenue Code. H&R Block then filed a motion to compel arbitration of Mr. Hunt’s claims.

## 24 **II. Legal Standard**

25 The Federal Arbitration Act provides that a “written provision in ... a contract evidencing  
 26 a transaction involving commerce to settle by arbitration a controversy thereafter arising out of  
 27 such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such  
 28 grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. As this

1 language makes clear, “an arbitration agreement is a contract like any other.” *Bielski v. Coinbase,*  
 2 *Inc.*, 87 F.4th 1003, 1009 (9th Cir. 2023). And like other contracts, arbitration agreements are  
 3 subject to “generally applicable contract defenses” like “fraud, duress, or unconscionability.” *Lim*  
 4 *v. TForce Logs., LLC*, 8 F.4th 992, 999 (9th Cir. 2021). There is one way arbitration provisions in  
 5 a contract are distinct, however: “[A]s a matter of substantive federal arbitration law, an arbitration  
 6 provision is severable from the remainder of the contract.” *Buckeye Check Cashing, Inc. v.*  
 7 *Cardegna*, 546 U.S. 440, 445 (2006). In other words, notwithstanding state law on severability, an  
 8 arbitration provision can be valid and enforceable even if other parts of the contract it is in are not.

9 A purported arbitration agreement presents a few “gateway” issues. The first is whether an  
 10 agreement to arbitrate was actually formed. *See Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th  
 11 631, 634–35 (9th Cir. 2021). Formation challenges are decided pursuant to state law. *Berman v.*  
 12 *Freedom Fin. Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022). The second is whether that  
 13 agreement is “valid,” *Bielski*, 87 F.4th at 1009, in other words, whether there are any defenses to  
 14 the agreement’s enforcement. The third is “whether the agreement encompasses the dispute at  
 15 issue.” *Id.* These gateway issues must be resolved by the court unless the parties have validly  
 16 agreed to delegate those issues to the arbitrator.<sup>1</sup>

### 17 **III. Analysis**

18 Mr. Hunt does not dispute that he entered an arbitration agreement with H&R Block by  
 19 accepting the Online Services Agreement. Opposition at 12. He argues that the agreement is  
 20 unenforceable, however, because it was induced by fraud and because it is unconscionable. He  
 21 also argues that the agreement does not cover his claims. None of these arguments has merit.

#### 22 **A. The Arbitration Agreement Is Enforceable.**

##### 23 **1. Mr. Hunt Has Not Established the Agreement Was Induced by Fraud.**

24 Mr. Hunt argues that the arbitration agreement cannot be enforced because it was induced  
 25 by fraud. He premises his argument on Section 11.2(B) of the arbitration agreement, which sets  
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27 <sup>1</sup> H&R Block’s Online Services Agreement does not include a delegation clause. To the contrary,  
 28 it provides that questions regarding the “arbitrability of disputes” and the “scope” of the agreement  
 are to be decided by a court. Dkt. No. 88-4, at 16.

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1 forth the “Informal Resolution Period” required before commencing arbitration and reads, in part:  
 2 “Any counsel representing you or us [in an Informal Settlement Conference] may also participate;  
 3 however, if you have retained counsel, a signed statement is required by law to authorize the H&R  
 4 Block Parties to disclose your confidential tax and account records to your counsel.” Agreement at  
 5 17. Mr. Hunt argues that this statement “induced Mr. Hunt to reasonably believe that H&R Block  
 6 would comply with all legal requirements and applicable laws governing the disclosure of his [tax  
 7 return information] to third parties, such as an attorney, and would not disclose such information  
 8 without his express written consent.” Opposition at 13. Mr. Hunt asserts that had he “been made  
 9 aware that H&R Block did not intend to comply with applicable law, as referenced within the  
 10 arbitration agreement, and would instead be sharing his highly sensitive [tax return] data with  
 11 Meta and Google, Mr. Hunt would not have used H&R Block.” Opposition at 14. He concludes on  
 12 this basis that his “assent to the arbitration agreement and OSA is therefore negated by ... fraud.”  
 13 *Id.*

14 “Under the FAA, courts may resolve challenges directed specifically to the validity of the  
 15 arbitration provision itself, but if there are no arbitration-specific challenges, the court must send  
 16 to the arbitrator any other challenges, including challenges to the validity of the contract as a  
 17 whole. Specifically, in the presence of an otherwise-valid arbitration provision, a challenge that  
 18 the entire agreement was fraudulently induced must be sent to the arbitrator.” *Rossi v. Purvis*, —  
 19 F. Supp. 3d —, 2024 WL 319679, at \*5 (N.D. Cal. 2024) (cleaned up) (quoting *Caremark, LLC*  
 20 *v. Chickasaw Nation*, 43 F.4th 1021, 1029 (9th Cir. 2022)).

21 Mr. Hunt’s fraud theory challenges the entire Online Services Agreement rather than solely  
 22 its arbitration provision. It must therefore be decided by the arbitrator rather than the Court.  
 23 Although the language from the Online Services Agreement that Mr. Hunt asserts fraudulently  
 24 induced him to enter the agreement appears in the arbitration provision, his claim is that, if he had  
 25 understood H&R Block’s true practices with his tax return information, he would not have used  
 26 H&R Block’s services *at all*. He does *not* assert that a fuller understanding of H&R Block’s  
 27 intentions would have caused him to opt out of the arbitration provision, or that he otherwise  
 28 agreed *to that provision* solely due to the purportedly misleading language regarding H&R

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1 Block’s data practices.

2 Because Mr. Hunt’s fraudulent inducement challenge is to the validity of the contract as a  
3 whole rather than to the arbitration provision, it must be addressed by the arbitrator. *See*  
4 *Caremark*, 43 F.4th at 1029. Mr. Hunt cannot rely on that challenge to defeat H&R Block’s  
5 motion to compel.

6 **2. Mr. Hunt Has Not Established That The Agreement Is Unconscionable.**

7 Mr. Hunt also argues that the arbitration provision is unconscionable and therefore  
8 unenforceable. Under California law (which governs whether the agreement is unconscionable),  
9 Mr. Hunt must establish both procedural and substantive unconscionability to render the  
10 arbitration agreement unenforceable:

11 Unconscionability consists of both procedural and substantive  
12 elements. The procedural element addresses the circumstances of  
13 contract negotiation and formation, focusing on oppression or  
14 surprise due to unequal bargaining power. Substantive  
15 unconscionability pertains to the fairness of an agreement’s actual  
16 terms and to assessments of whether they are overly harsh or one-  
17 sided. A contract term is not substantively unconscionable when it  
18 merely gives one side a greater benefit; rather, the term must be “so  
19 one-sided as to shock the conscience.” ...

20 Both procedural unconscionability and substantive unconscionability  
21 must be shown, but they need not be present in the same degree and  
22 are evaluated on a sliding scale. The more substantively oppressive  
23 the contract term, the less evidence of procedural unconscionability  
24 is required to come to the conclusion that the term is unenforceable,  
25 and vice versa.

26 *Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 246–47 (2012)  
27 (cleaned up).

28 Mr. Hunt’s unconscionability challenge fails because the Online Services Agreement is not  
procedurally unconscionable. Mr. Hunt’s only argument on procedural unconscionability is that  
the agreement was a contract of adhesion. Opposition at 15. But Mr. Hunt does not contest that its  
arbitration provision included a clear opt-out provision. Nor does he assert that he ever attempted  
to opt out. Because the agreement included a clear opt-out provision, it cannot be deemed  
procedurally unconscionable solely on grounds of adhesiveness. *See Mohamed v. Uber Techs.*,

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1 *Inc.*, 848 F.3d 1201, 1211 (9th Cir. 2016). Because Mr. Hunt has offered no other reason why the  
2 arbitration agreement is procedurally unconscionable, the Court finds no procedural  
3 unconscionability. And because a contract can be invalidated under California law only where  
4 there is both procedural and substantive unconscionability, the arbitration agreement is  
5 enforceable whether or not its terms are substantively unconscionable.

6 \* \* \*

7 In sum, Mr. Hunt has not shown that the arbitration agreement he entered into with H&R  
8 Block was induced by fraud or unconscionable. He is therefore bound by its terms.

9 **B. The Arbitration Agreement Covers Mr. Hunt’s Claims.**

10 Mr. Hunt separately argues that even if the arbitration agreement is enforceable, his claims  
11 here do not fall within its scope. The section of the Online Services Agreement that includes the  
12 arbitration provision states that “all disputes and claims between you and the H&R Block Parties  
13 shall be resolved through binding individual arbitration.” Agreement at 16. Although this broad  
14 language clearly covers Mr. Hunt’s claims against H&R Block in this action, Mr. Hunt suggests  
15 that this language is limited by narrower language in Section 1.1 of the Online Services  
16 Agreement stating: “This Agreement governs your use of Products and Services ... provided by  
17 H&R Block....” Opposition at 7–8. Mr. Hunt argues that this language means that he only agreed  
18 to arbitrate claims or disputes “arising out of the use of H&R Block’s products and services,” and  
19 that his claims in this case do not satisfy this requirement because the complaint “centers upon the  
20 enterprises [sic] use of Meta’s and Google’s products and services.” Opposition at 8. In Mr.  
21 Hunt’s view, his complaint is about H&R Block’s use of Meta and Google tracking tools, not Mr.  
22 Hunt’s use of H&R Block services, and thus falls outside the scope of the arbitration provision.

23 The Court is skeptical that Section 1.1 limits the clear language of Section 11 in the  
24 manner Mr. Hunt proposes. But even if it does, Mr. Hunt’s argument would fail because his  
25 claims all relate to his use of H&R Block’s products and services. The tax return information that  
26 was allegedly transmitted to Google and Meta by H&R Block was information that Mr. Hunt  
27 provided to H&R Block while using its products and services, and the transmission of that  
28 information occurred in the course of his use of those products and services as part of Google and

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1 Meta’s tracking of that use. *See, e.g.*, Compl. ¶ 252. (alleging that, “[a]t all relevant times, H&R  
2 Block’s online tax preparation software and mobile platforms contained Meta Pixels and Google  
3 Analytics that disclosed, disseminated, transmitted, and/or released Plaintiff’s ... [tax return  
4 information] to Meta and Google”). These claims closely relate to Mr. Hunt’s use of H&R Block  
5 services, even if they also arise from H&R Block’s use of third-party tools in providing those  
6 services.

7 Mr. Hunt’s claims in this action are therefore covered by his arbitration agreement with  
8 H&R Block, and Mr. Hunt must pursue those claims in arbitration rather than in court.

9 **IV. Conclusion**

10 For the foregoing reasons, H&R Block’s motion to compel arbitration is granted. Mr. Hunt  
11 and the H&R Block parties are ordered to proceed with arbitration in the manner provided in their  
12 agreement. Mr. Hunt’s claims against H&R Block shall be stayed until arbitration is complete.

13  
14 **IT IS SO ORDERED.**

15 Dated: April 11, 2024



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18 P. Casey Pitts  
United States District Judge