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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

R. MITCHELL,
Plaintiff,
v.
U-HAUL COMPANY OF CALIFORNIA,
Defendant.

Case No. [16-cv-04674-JD](#)

**ORDER DENYING MOTION TO
COMPEL ARBITRATION**

Re: Dkt. No. 9

Pending before the Court is a motion by defendant U-Haul Co. of California (“UHCA”) to compel arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16. Dkt. No. 9. In deciding such a motion, “whether a valid agreement to arbitrate exists” is the first question the Court must answer. *Norcia v. Samsung Telecomm. Am., LLC*, No. 14-cv-00582-JD, 2014 WL 4652332, at *4 (N.D. Cal. Sept. 18, 2014), *aff’d*, 845 F.3d 1279 (9th Cir. 2017). UHCA, as the party seeking to compel arbitration, has the burden of proving the existence of an agreement to arbitrate by a preponderance of the evidence. *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559, 565 (9th Cir. 2014). UHCA has not met that burden and so the Court denies the motion to compel arbitration.

As the Court previously observed, UHCA initially sought to compel arbitration under a “rental contract” with plaintiff, but it subsequently filed a reply brief that was directed entirely to a different arbitration agreement contained in “UHCA’s Terms and Conditions” which were referenced by hyperlink in emails to the plaintiff. *See* Dkt. No. 35. Because UHCA has consequently abandoned any “rental contract” (as to which UHCA acknowledges it is “unable to locate” a copy signed by plaintiff in any event, *see* Dkt. No. 9 at 4 n.1), the Court denies any request to compel arbitration under that contract.

1 UHCA has further failed to meet its burden of proving the existence of an agreement to
2 arbitrate in the form of its “Terms and Conditions.” Under California law, which is the applicable
3 law here, “there is no contract until there is mutual consent of the parties. The manifestation of
4 mutual consent is generally achieved through the process of offer and acceptance.” *Norcia*, 2014
5 WL 4652332, at *4 (internal quotation omitted). It is critical that an offeree knows that an offer
6 has been made. *See id.*

7 Here, UHCA relies heavily on two form emails plaintiff received from UHCA on June 21,
8 2014. Dkt. No. 18 at 6. By UHCA’s own description, “at the end of” both emails there were
9 “links, *inter alia*, to view . . . UHCA’s Terms and Conditions.” *Id.* at 5; *see also* Dkt. No. 13,
10 Ex. 1. UHCA has submitted no evidence that plaintiff “had actual notice” of these Terms and
11 Conditions nor that she “was required to affirmatively acknowledge” them at any time. *See*
12 *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1177 (9th Cir. 2014). And, similar to the
13 circumstances in *Nguyen*, the link was “buried” at the bottom of the email where recipients were
14 unlikely to see it. *Id.* The conclusion reached in *Nguyen* therefore applies here as well: plaintiff
15 had insufficient notice of UHCA’s Terms and Conditions, and thus she did not enter into any
16 arbitration agreement contained within those Terms and Conditions. *See id.* at 1180; *see also*
17 *Norcia*, 2014 WL 4652332, at *7 (concluding no arbitration agreement formed where “no
18 reasonable person would know that a proposal has been made to him”); *Knutson*, 771 F.3d at 567
19 (“when the writing does not appear to be a contract and the terms are not called to the attention of
20 the recipient . . . , no contract is formed with respect to the undisclosed term”).

21 Because UHCA has failed to carry its burden of proving the existence of an agreement to
22 arbitrate in the first place, the Court does not reach the question of whether that agreement would
23 have encompassed the dispute at issue in any event. Defendant’s motion to compel arbitration and
24 dismiss the action, Dkt. No. 9, is denied.

25 **IT IS SO ORDERED.**

26 Dated: May 23, 2017

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JAMES DONATO
United States District Judge