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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 CARNEICE KATHRINE HALL-
8 JOHNSON,

9 Plaintiff,

10 v.

11 CITIBANK, N.A.,

12 Defendant.

Case No. 23-cv-05378-JST

**ORDER DENYING DEFENDANT'S
MOTION TO COMPEL
ARBITRATION**

Re: ECF No. 8

13 Before the Court is a motion to compel arbitration brought by Defendant Citibank, N.A.
14 ECF No. 8. The arbitration provision at issue is part of Citibank's client manual. The Court
15 concludes that Citibank's evidence does not establish that Plaintiff Carneice Kathrine Hall-
16 Johnson was ever given a copy of the arbitration agreement, or that she assented to its terms.
17 However, the evidence before the Court also does not conclusively establish that no agreement
18 was formed. Accordingly, the Court concludes that a trial is necessary regarding the formation of
19 the alleged arbitration agreement, and Citibank's motion will be held in abeyance pending the
20 resolution of that proceeding.

21 **I. BACKGROUND**

22 Hall-Johnson alleges that on June 12, 2023, she deposited a cashier's check in the amount
23 of \$7,500.00 into her Citibank checking account. ECF No. 1-1 ¶ 1. When she sought to access
24 her banking account online that same day, she was informed that her account was blocked because
25 she had deposited a fraudulent check into her account. *Id.* ¶¶ 2–3. After various conversations
26 with Citibank representatives, Hall-Johnson's Citibank account was deactivated on June 16, 2023.
27 *Id.* ¶¶ 3–8. During one of these conversations, a Citibank employee allegedly told Hall-Johnson
28 that her "race" and "the amount of [her] check" "set off the fraud alert." *Id.* ¶ 9. On July 28,

1 2023, Hall-Johnson received a check from Citibank in the amount of \$6,629.50.¹ *Id.* ¶ 10.

2 On August 11, 2023, Hall-Johnson brought suit against Citibank in San Francisco Superior
3 Court for violations of 42 U.S.C. § 1981, Cal. Civ. Code. § 1710, Cal. Bus. and Prof. Code
4 §§ 17200 *et seq.*, as well as claims for negligent misrepresentation, intentional misrepresentation,
5 defamation per se, defamation per quod, slander per se, conversion, respondeat superior, and false
6 promise. *See generally* ECF No. 1-1.

7 After removing the case to federal court based on federal question, Citibank moved to
8 compel arbitration on October 27, 2023. ECF No. 8. Citibank asserts that “[o]n June 9, 2023,
9 Plaintiff Carneice Hall-Johnson and Citibank, N.A. entered into a written agreement (Client
10 Manual) regarding the opening of a bank account.” *Id.* at 3. It further claims that “[d]espite an
11 agreement to arbitrate, [she] initiated litigation and refuses to arbitrate.” *Id.* at 4.

12 Denise Renollino Payne, the manager of the San Francisco branch where Hall-Johnson
13 opened her account, provided a declaration in support of Citibank’s motion to compel arbitration.
14 ECF No. 8-4. She states, in relevant part, that:

15 4. On June 9, 2023, Carneice Hall-Johnson opened an online
16 account (xxxxxxx9332) with Citibank, N.A. Upon opening account
17 9332, Ms. Hall-Johnson was provided with the 2023 Client Manual
18 wherein Ms. Carneice Hall-Johnson agreed to arbitrate all disputes.
The 2023 Client Manual contains an arbitration provision which
reads:

19 THIS SECTION PROVIDES THAT DISPUTES MAY BE
20 RESOLVED BY BINDING ARBITRATION. ARBITRATION
21 REPLACES THE RIGHT TO GO TO COURT, HAVE A JURY
22 TRIAL OR INITIATE OR PARTICIPATE IN A CLASS ACTION.
23 IN ARBITRATION, DISPUTES ARE RESOLVED BY AN
24 ARBITRATOR, NOT A JUDGE OR JUDGE [sic].
ARBITRATION PROCEDURES ARE SIMPLER AND MORE
LIMITED THAN IN COURT. THIS ARBITRATION PROVISION
IS GOVERNED BY THE FEDERAL ARBITRATION ACT
(FAA), AND SHALL BE INTERPRETED IN THE BROADEST
WAY THE LAW WILL ALLOW.

25 5. The arbitration provisions appear on pages 51-53 of the
26 Client Manual. Pursuant to the arbitration provisions of the Client
27 Manual, all disputes are subject to arbitration no matter the legal
theory or remedy. Attached as Exhibit “1” to this Declaration is a

28 ¹ The complaint does not explain the discrepancy between the amount of money Hall-Johnson
deposited and the amount of the check she received from Citibank.

1 true and correct copy of the 2023 Client Manual.

2 6. To open the account, Plaintiff was required to agree to
3 certain terms and conditions, including her agreement to be bound
4 by the Client Manual. Carneice Hall-Johnson agreed with Citibank,
5 N.A. to arbitrate any disputes.

6 *Id.* at 2–3. Citibank has also included a reference copy of the 2023 client manual that was in effect
7 when Hall-Johnson opened her account.² ECF No. 8-5. Page 54 of the manual includes a
8 reference copy of a signature card. *Id.* at 55. The card states: “By signing below, I . . . agree to be
9 bound by all Citibank, N.A. terms and conditions applicable to my account(s).” *Id.* Citibank has
10 neither produced a signature card completed by Hall-Johnson, nor does it assert she ever signed
11 one.

12 In her response to Citibank’s motion to compel arbitration, Hall-Johnson alleges that she
13 “was not informed of an existing arbitration agreement guiding the resolution of any potential
14 claim” ECF No. 18 at 5. She also asserts that “she was not given a client manual, nor did
15 she agree to arbitrate[] any potential legal claims with Defendant Citibank[.]” *Id.* at 7.

16 **II. JURISDICTION**

17 The Court has jurisdiction over Hall-Johnson’s federal claims under 28 U.S.C. § 1331, and
18 it has supplement jurisdiction over her state law claims pursuant to 28 U.S.C. § 1367.

19 **III. LEGAL STANDARD**

20 Under the Federal Arbitration Act (“FAA”), arbitration agreements “shall be valid,
21 irrevocable, and enforceable, save upon such grounds that exist at law or in equity for the
22 revocation of any contract” 9 U.S.C. § 2. A party may bring a motion in the district court to
23 compel arbitration. 9 U.S.C. § 4. This provision reflects “both a liberal federal policy favoring
24 arbitration, and the fundamental principle that arbitration is a matter of contract.” *AT&T Mobility
25 LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (internal quotations and citations omitted); *see
26 Mortensen v. Bresnan Commuc ’ns, LLC*, 722 F.3d 1151, 1157 (9th Cir. 2013) (quoting *Moses H.
27 Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)) (“The [FAA] . . . has been

28 ² The reference copy of the client manual does not contain the apparent typographical error in
Payne’s declaration (“JUDGE OR JUDGE”), but instead uses the phrase “judge or jury.” ECF
No. 8-5 at 10.

1 interpreted to embody ‘a liberal federal policy favoring arbitration.’”).

2 On a motion to compel arbitration, the Court’s role under the FAA is “limited to
3 determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the
4 agreement encompasses the dispute at issue.” *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207
5 F.3d 1126, 1130 (9th Cir. 2000) (citing 9 U.S.C. § 4). If the Court is “satisfied that the making of
6 the agreement for arbitration or the failure to comply therewith is not in issue, the [C]ourt shall
7 make an order directing the parties to proceed to arbitration in accordance with the terms of the
8 agreement.” 9 U.S.C. § 4. If, however, “the making of the arbitration agreement” is “in issue, the
9 court shall proceed summarily to the trial thereof.” *Id.* Until a trial on arbitrability is held, “any
10 motion to compel arbitration” must be held “in abeyance until the factual issues have been
11 resolved.” *Hansen v. LMB Mortg. Servs., Inc.*, 1 F.4th 667, 672 (9th Cir. 2021).

12 A district court should apply the summary judgment standard to motions to compel
13 arbitration. *Id.* at 670. The Court must “give to the opposing party the benefit of all reasonable
14 doubts and inferences that may arise.” *Concat LP v. Unilever, PLC*, 350 F. Supp. 2d 796, 804
15 (N.D. Cal. 2004) (citations omitted). If the parties contest the existence of an arbitration
16 agreement, courts “generally . . . apply state-law principles of contract interpretation to decide
17 whether a contractual obligation to arbitrate exists.” *First Options of Chicago, Inc. v. Kaplan*, 514
18 U.S. 938, 944 (1995).

19 Under California law, contract formation requires mutual assent. *See Binder v. Aetna Life*
20 *Ins. Co.*, 75 Cal. App. 4th 832, 850 (1999); *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559, 565
21 (9th Cir. 2014) (holding that mutual assent is “a required element of contract formation.”).
22 “Mutual assent may be manifested by written or spoken words, or by conduct . . . and acceptance
23 of contract terms may be implied through action or inaction.” *Knutson*, 771 F.3d at 565 (internal
24 quotations and citations omitted). “Accordingly, an offeree, knowing that an offer has been made
25 to him but not knowing all of its terms, may be held to have accepted by his conduct, whatever
26 terms the offer contains.” *Windsor Mills, Inc. v. Collins & Aikman Corp.*, 25 Cal. App. 3d 987,
27 992–93 (1972) (citations omitted). “However, when the offeree does not know that a proposal has
28 been made”—such as when “inconspicuous contractual provisions” are “contained in a document

1 whose contractual nature is not obvious”—“this objective standard does not apply.” *Id.* (citations
2 omitted).

3 **IV. DISCUSSION**

4 Citibank argues that Hall-Johnson agreed to arbitrate this dispute when she opened her
5 checking account on June 9, 2023. Citibank’s motion—two-pages in length and devoid of any
6 citation to caselaw—relies entirely on Payne’s declaration that “[u]pon opening account 9332, Ms.
7 Hall-Johnson was provided with the 2023 Client Manual wherein [she] agreed to arbitrate all
8 disputes.” ECF No. 8-4 at 2. Hall-Johnson responds that because “she was not given a client
9 manual,” and did not “agree to arbitrate[] any potential legal claims,” Citibank cannot carry its
10 burden of proving that she entered into this agreement to arbitrate. ECF No. 18 at 7.

11 The Court begins with California law regarding contract formation. *See In re Holl*, 925
12 F.3d 1076, 1083 (9th Cir. 2019) (noting that courts apply state law principles of contract formation
13 and interpretation when determining if the parties entered into a binding arbitration agreement).
14 The existence of a contract under California law requires four essential elements: (1) parties
15 capable of contracting; (2) their consent; (3) a lawful object; and (4) a sufficient cause or
16 consideration. Cal. Civ. Code. § 1550.

17 At issue in this dispute is the element of consent. Under California law, the consent of
18 parties to a contract must be free, mutual, and communicated to one another. Cal. Civ. Code. §
19 1565; *see also* Cal. Civ. Code, § 1580 (“Consent is not mutual, unless the parties all agree upon
20 the same thing in the same sense.”).

21 Here, Payne has declared that, in order to open her Citibank account, Hall-Johnson “was
22 required to agree to certain terms and conditions, including her agreement to be bound by the
23 Client Manual.” ECF No. 8-4 at 2–3. Effectively, Citibank is arguing that Hall-Johnson’s
24 conduct—namely, opening her online account—manifests her consent to the terms of the client
25 manual. But this argument overlooks the threshold step of the analysis: before Citibank can prove
26 that Hall-Johnson agreed to arbitration through her conduct, it must establish beyond genuine
27 dispute that she consented to the arbitration agreement. In other words, Citibank must first carry
28 its burden of proving that Hall-Johnson was actually provided with a copy of the arbitration

1 agreement found within the client manual. *See Chambers v. Crown Asset Mgmt., LLC*, 71 Cal.
2 App. 5th 583, 602 (2021) (holding that “[w]ithout a predicate showing” that the plaintiff was
3 mailed a copy of the arbitration agreement, the plaintiff’s consent could not be established);
4 *Fleming v. Oliphant Fin., LLC*, 88 Cal. App. 5th 13, 23 (2023) (upholding trial court’s decision to
5 deny arbitration, as defendant “[did] not explain how Plaintiff could have consented to any
6 agreement that he was not provided.”). Citibank included a reference copy of the client manual
7 with its motion to compel arbitration, as well as a reference copy of a signature card. ECF No. 8-
8 5. But it has neither produced direct evidence that Hall-Johnson received a client manual, nor that
9 she completed a signature card. Indeed, the fact that no completed signature card has been
10 provided by Citibank casts some doubt on whether Hall-Johnson was actually “provided with the
11 2023 Client Manual” upon opening her account. ECF No. 8-4 at 2.


12 In addition, Citibank offers no indication that it has a “recordkeeping practice[]” of
13 providing a customer with a client manual upon opening an account. *Izett v. Crown Asset Mgmt.,*
14 *LLC*, No. 18-CV-05224-EMC, 2019 WL 4845575, at *4 (N.D. Cal. Oct. 1, 2019). In cases where
15 statements of custom and practice have been deemed sufficient evidence, significant detail is often
16 included. *See, e.g., id.* at *4 (declarant averred that it was “Citibank’s regular business practice to
17 mail a card agreement to customers at the time of the opening of an account”); *Lomeli v. Midland*
18 *Funding, LLC*, No. 19-CV-01141-LHK, 2019 WL 4695279, at *5 (N.D. Cal. Sept. 26, 2019)
19 (declarant stated that it was “Citibank’s regular business practice to mail a card agreement to
20 customers at the time of the opening of an account” and that it “include[d] a note in cardmembers’
21 computerized account records when mail [was] returned undeliverable); *Brecher v. Midland*
22 *Credit Mgmt., Inc.*, No. 18CV3142ERKJO, 2019 WL 1171476, at *4 (E.D.N.Y. Mar. 13, 2019)
23 (declarant stated that the bank at issue “had a regular procedure of mailing a letter, via United
24 States Postal Service, the credit card and a copy of the credit card agreement that governed the
25 account for each new [] cardholder.”). In a similar case to the one at hand, another court in this
26 district held that Citibank failed to demonstrate that it had a “custom and practice” of providing
27 client manuals to new customers. *Hoang v. Citibank, N.A.*, No. 23-CV-03270-PCP, 2023 WL
28 7890208, at *4 (N.D. Cal. Nov. 16, 2023). In rejecting Citibank’s claim, the court reasoned that

1 abeyance until the question can be resolved.

2 For the above reasons, the Court holds in abeyance Citibank’s motion to compel
3 arbitration. If the parties wish to engage in fact discovery on the question of contract formation,
4 they may do so until the fact discovery cutoff of May 31, 2024.³ The Court will hold a one-day
5 bench trial on June 18, 2024 at 8:30 a.m. The Court will conduct a pretrial conference on June
6 14, 2024 at 2:00 p.m. Pretrial statements are on June 7, 2024. Because Plaintiff represents
7 herself, the parties may file separate statements.

8 **IT IS SO ORDERED.**

9 Dated: March 11, 2024

10 
11 JON S. TIGAR
12 United States District Judge

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28 ³ This cut-off applies only to fact discovery regarding contract formation. The Court will set a separate cut-off for fact discovery as to the entire case at a later date if necessary.