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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KATHERINE MURPHY, MONIQUE  
PAYAN, DAMIEN UHL, and those  
similarly situated,  
  
Plaintiffs,  
  
v.  
  
ROBLOX CORPORATION, a Delaware  
corporation,  
  
Defendant.

Case No.: 23-CV-1940 TWR (BLM)  
  
**ORDER DENYING DEFENDANT  
ROBLOX CORPORATION’S  
RENEWED MOTION TO COMPEL  
PLAINTIFF DAMIEN UHL TO  
ARBITRATION**  
  
(ECF No. 80)

Presently before the Court is Defendant Roblox Corporation’s long-anticipated Renewed Motion to Compel Plaintiff Damien Uhl to Arbitration (“Mot.,” ECF No. 80), as well as Plaintiff’s Response in Opposition to (“Opp’n,” ECF No. 84) and Defendant’s Reply in Support of (“Reply,” ECF No. 91) the Motion. The Court held a hearing on May 29, 2025. (*See* ECF No. 94.) Having carefully considered the Parties’ arguments, the record, and the applicable law, the Court **DENIES** Defendant’s Motion.

**BACKGROUND**

**I. Procedural Background**

Katherine Murphy and Monique Payan initiated this action in the Superior Court of the State of California, County of San Diego, on August 7, 2023, filing an initial Class

1 Action Complaint for Damages alleging seven causes of action for (1) intentional  
2 misrepresentation; (2) negligent misrepresentation; (3) unjust enrichment; (4) violations of  
3 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200–17210;  
4 (5) violations of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code  
5 §§ 17500–17606; (6) violations of the California Consumer Legal Remedies Act  
6 (“CLRA”), Cal. Civ. Code §§ 1750–1784; and (7) violations of the consumer protection  
7 laws of California, Connecticut, Illinois, Maryland, and Missouri. (*See generally* ECF No.  
8 1-4.) On October 2, 2023, Ms. Murphy, Ms. Payan, and Mr. Uhl filed a First Amended  
9 Class Action Complaint for Damages, alleging the same seven causes of action. (*See*  
10 *generally* ECF No. 1-2.)

11 On October 20, 2023, Defendant removed to this Court under the Class Action  
12 Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453, 1711–1715. (*See generally*  
13 ECF No. 1.) In response to the Court’s October 31, 2023 Order (1) Granting Joint Motion  
14 Regarding Briefing Schedule for Defendant’s Anticipated Motion to Dismiss; and (2) for  
15 Plaintiffs to Show Cause Why This Action Should Not Be Remanded to the Superior Court  
16 of California, County of San Diego, (*see* ECF No. 10), Plaintiffs filed the operative Second  
17 Amended Class Action Complaint alleging the same seven causes of action, (*see generally*  
18 ECF No. 14), and moved for this case to be remanded to state court. (*See generally* ECF  
19 No. 20.) On February 8, 2024, the Court denied Plaintiffs’ motion to remand, (*see* ECF  
20 No. 31), and set a briefing schedule for Defendant’s motion to dismiss. (*See* ECF No. 32.)

21 Defendant’s motion to dismiss was comprehensive, seeking dismissal of each of  
22 Plaintiffs’ causes of action on several grounds.<sup>1</sup> (*See generally* ECF No. 35.) After the  
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24 <sup>1</sup> Specifically, Defendant argued that (1) Plaintiffs’ claims were barred by Section 230 of the  
25 Communications Decency Act, 47 U.S.C. § 230 (“Section 230”), (*see* ECF No. 35 at 11–15); (2) Plaintiffs’  
26 claims were barred by the First Amendment, (*see* Mot. at 15–16); (3) Plaintiffs’ claims failed to comply  
27 with Rule 9(b), (*see* ECF No. 35 at 16–17); (4) Plaintiffs failed to allege actionable misrepresentations  
28 and omissions, (*see id.* at 17–23); (5) Plaintiffs failed to allege reasonable reliance, (*see id.* at 24–25);  
(6) Plaintiffs failed to allege intent to defraud or induce reliance, (*see id.* at 25); (7) Plaintiffs lacked  
standing to bring claims under the consumer protection laws of Connecticut, Illinois, Maryland, Missouri,  
or New York, (*see id.* at 26–27); (8) Plaintiffs failed to allege equitable claims because they did not allege

1 Court granted in part Defendant’s motion to dismiss on July 10, 2024, (*see* ECF No. 47),  
2 Ms. Murphy and Mr. Uhl filed a Third Amended Class Action Complaint for Damages,  
3 (*see* ECF No. 48), and then the operative Fourth Amended Class Action Complaint for  
4 Damages, (*see* ECF No. 53 (“FACAC”)), again alleging the same seven causes of action.

5 On August 28, 2024, Defendant moved both to dismiss the Fourth Amended Class  
6 Action Complaint,<sup>2</sup> (*see* ECF No. 58), and to compel remaining Plaintiffs Ms. Murphy and  
7 Mr. Uhl to arbitration. (*See* ECF No. 59.) To streamline this litigation, the Court stayed  
8 briefing on Defendant’s motion to dismiss in favor of first resolving the issue of  
9 arbitrability. (*See* ECF No. 62.) After Plaintiffs filed their opposition to the motion to  
10 compel arbitration, (*see* ECF No. 64), Defendant determined that additional arbitration-  
11 related discovery was required. (*See* ECF No. 66.) Although “Plaintiffs believe[d] that  
12 Roblox should have sought all discovery relevant to the[ arbitration] issues before filing its  
13 initial motion to compel arbitration” and “should have moved to compel arbitration under  
14 all potentially applicable Terms of Use in its initial motion to compel arbitration,” the  
15 Parties “agreed to targeted and limited discovery.” (*See id.* at 2.) Defendant therefore  
16 withdrew its initial motion to compel arbitration. (*See generally id.*)

17 Over the next several months, the Parties engaged in their agreed-to arbitration-  
18 related discovery. (*See* ECF Nos. 67, 70, 76.) During this period, Ms. Murphy voluntarily  
19 dismissed her claims, (*see* ECF No. 74), leaving Mr. Uhl as the sole remaining named  
20 Plaintiff. Defendant filed the instant Motion on March 20, 2025. (*See generally* ECF No.  
21 80.)

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25 that there was an inadequate remedy at law, (*see id.* at 27–28); (9) Plaintiffs failed to state a claim under  
26 the “unfair prong” of California’s Unfair Competition Law, (*see* ECF No. 35 at 28); and (10) Plaintiffs  
27 failed to allege a cause of action under California’s Consumer Legal Remedies Act because they could  
28 not allege a “good” or “service,” (*see* ECF No. 35 at 28–29).

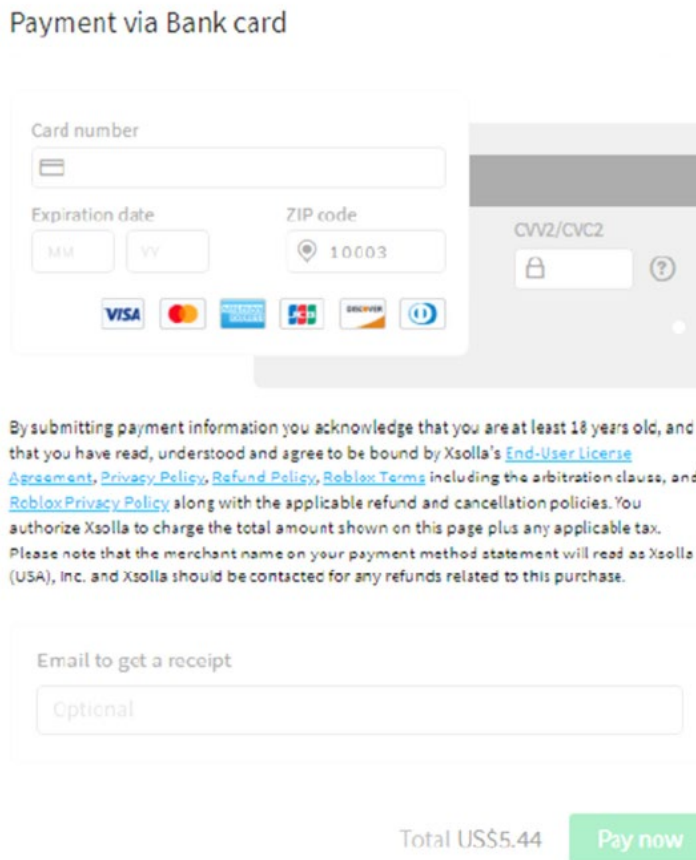
29 <sup>2</sup> Like its first motion to dismiss, Defendant’s second motion to dismiss was exhaustive, seeking  
30 dismissal of Plaintiffs’ claims on nearly all the same grounds as before except for the First Amendment  
and Rule 9(b) arguments. (*Compare* ECF No. 58, *with* ECF No. 35.)

1 **II. Factual Background<sup>3</sup>**

2 **A. Defendant’s Roblox Platform and Robux**

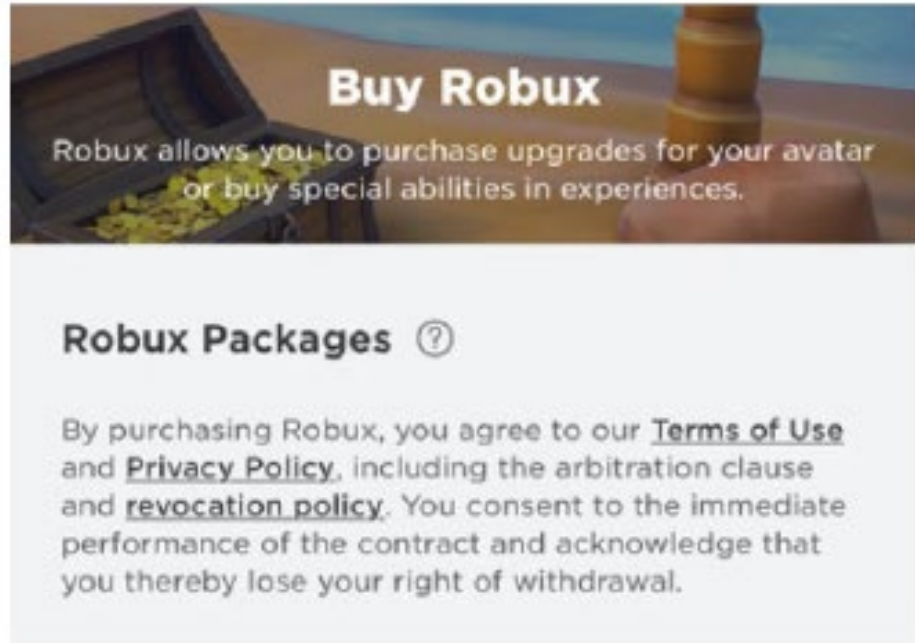
3 Defendant “operates an online platform (“the Roblox Platform”) that hosts a virtual  
4 universe where users can create virtual games and experiences, connect with other users to  
5 enjoy user-created games and user-created virtual experiences, and use virtual apparel and  
6 other content created by themselves and other users.” (See ECF No. 83 (“Jit Decl.”) ¶ 4.)  
7 “Robux is a virtual currency that can be used on the Roblox Platform to acquire virtual  
8 items and gain access to virtual experiences.” (Id. ¶ 5.)

9 Robux can be purchased through either the Roblox website, (see id. ¶ 10), or the  
10 Roblox app. (See id. ¶ 13.) From May 2, 2018, through January 3, 2023, those purchasing  
11 Robux through the Roblox website encountered the following screen:



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27 <sup>3</sup> “[I]n deciding a motion to compel arbitration, [the court] may consider the pleadings, documents  
28 of uncontested validity, and affidavits submitted by either party.” *Macias v. Excel Bldg. Servs. LLC*, 767  
F. Supp. 2d 1002, 1007 (N.D. Cal. 2011).

1 (See *id.* ¶ 12.) Meanwhile, those purchasing Robux through the Roblox app encountered  
2 the following:

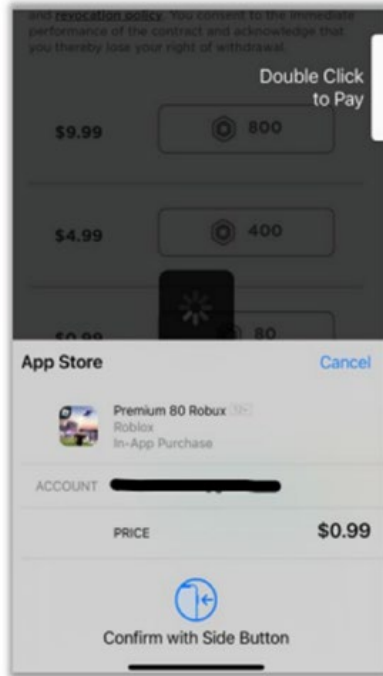


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14 (See *id.* ¶ 14.) From February 24, 2021, to October 16, 2022, the disclosure through the  
15 Roblox app read: “[B]y purchasing Robux, you agree to our **Terms of Use** including the  
16 arbitration clause and to our **Privacy Policy**,” with the phrase “Terms of Use” “hyperlinked  
17 to the then-current version of the Roblox Terms.” (See *id.* ¶¶ 13–14 (emphasis in original).)  
18 “On October 17, 2022, the language of the disclosure was updated to what is reflected in  
19 the screenshot” above. (See *id.* ¶ 15.) “If the user had a payment method stored on their  
20 mobile device through either Apple Pay or Google Pay, once the user selected the desired  
21 Robux package, a pop-up window corresponding to the payment method appeared on the  
22 bottom of the same screen containing the disclosure[s] described” above. (See *id.* ¶ 16.)  
23 “To complete their purchase of Robux through the mobile app, users were required to  
24 provide affirmative consent for the charge by double clicking the side button to pay through  
25 Apple Pay or clicking 1-tap buy on Google Pay,” as depicted below:

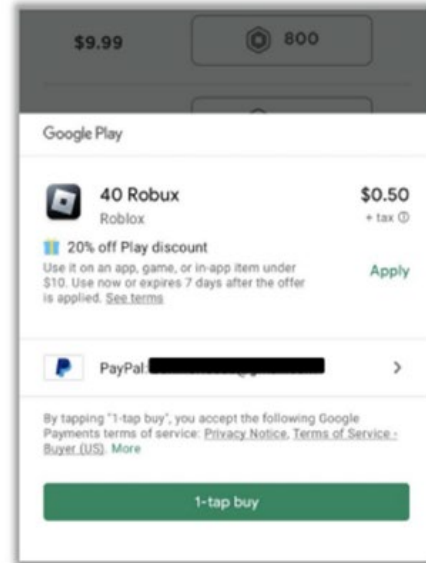
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Apple



Android

(See *id.*)

**B. Plaintiff’s and His Children’s Interactions with the Roblox Platform**

Plaintiff Uhl was first introduced to the Roblox Platform by his twelve-year-old daughter. (See FACAC ¶ 78.) He has three children, whom he allowed to use the Roblox Platform beginning in approximately June 2017. (See *id.* ¶ 19.) “Mr. Uhl allowed all three of his children to continue playing the game because he believed that Roblox was a safe environment for his children after reading the 2017 version of Roblox’s Terms of Use and Parent’s Guide in viewing Roblox’s own advertisements, as then found on their website, www.roblox.com.” (*Id.*) “Specifically, Mr. Uhl researched the safety of the Roblox platform on or around June 1, 2017,” (*id.* ¶ 79), at which time he visited Roblox’s website, (*see id.*) and reviewed the Parents’ Guide. (See *id.* ¶ 80.)

Although all three of Plaintiff’s children apparently used the Roblox Platform, the Parties only introduce evidence related to one account used by his twelve-year-old daughter. According to Defendant’s records, the one active username provided by Plaintiff “shows that this account was created on November 7, 2018,” which Defendant calls the “Uhl Account.” (See Jit Decl. ¶ 6.) It therefore appears possible that Plaintiff’s child(ren)

1 may have had an additional account (or accounts) between June 2017, and November 7,  
2 2018.

3 “At the time [Plaintiff’s] child’s account was created, it was done so with [his]  
4 permission, and [his] email address.” (See Uhl Decl. (ECF No. 80-7 (public redacted  
5 version), ECF No. 82-1 (sealed version)) ¶ 2; see also Supp. Uhl Decl. (ECF No. 80-8  
6 (public redacted version), ECF No. 82-2 (sealed version)) ¶ 2.) “To [his] knowledge,  
7 [Plaintiff] ha[s] never been emailed a copy of the Roblox Terms of Use, nor ha[s] [he]  
8 received any emailed notifications of updates made to the Roblox Terms of Use.” (See Uhl  
9 Decl. ¶ 3.) “In addition, [his] child has never presented [him] with the Roblox Terms of  
10 Use, nor has she sought [his] permission to assent to the Roblox Terms of Use.” (See *id.*)

11 Defendant’s records show that between December 26, 2018, and July 12, 2024, more  
12 than 160 Robux purchases were made by the Uhl Account. (See Jit Decl. ¶ 8; see also Jit  
13 Ex. 1 (ECF No. 80-1 (public redacted version); ECF No. 82 (sealed version)).) In June  
14 2022, however, Plaintiff “discovered inappropriate communications between [his] child  
15 and an adult posing as a young girl named ‘Jessica.’” (See Uhl Decl. ¶ 12.) “It was at that  
16 time that [Plaintiff] revoked [his] permission for [his] child to access and play on the  
17 Roblox [P]latform.” (*Id.*) He “deleted the Roblox application from each of the computer  
18 tablets, and [his] wife deleted the application from her mobile device at the time.” (*Id.*  
19 ¶ 14.) “After revoking [his] permission for [his] child to access and play on the Roblox  
20 platform, [Plaintiff’s] child has not accessed the Roblox platform or made any purchases  
21 of Roblox *with [his] knowledge[,]*” and Plaintiff has “not personally made any purchases  
22 or payments to Roblox, via the Apple AppStore or otherwise, since before the initiation of  
23 this litigation.” (See *id.* ¶ 15 (emphasis in original).) Plaintiff therefore disclaims any  
24 knowledge of the last 35 purchases of Robux made by the Uhl Account between  
25 approximately June 14, 2022, and July 12, 2024, as well as three purchases made with a  
26 credit card occurring on December 20, 2020; January 14, 2021; and January 18, 2022. (See  
27 *id.* ¶¶ 15, 20, 23; Supp. Uhl Decl. ¶¶ 3 (“I dispute personally making transactions identified  
28 in lines 2–36 on [Jit Ex. 1].”), 7–9; see also Jit Ex. 1 at 2–4, 6.)

1 The remaining approximately 130 transactions occurred between December 26,  
2 2018, and May 18, 2022, and the vast majority were made either through Defendant’s  
3 website (Payment Method: XsollaCreditdebitcards) or through Defendant’s app using  
4 Apple Pay (Payment Method: AppleAppStore). (See Jit Ex. 1 at 3–7.) Plaintiff’s debit  
5 card information was “saved as the payment method on [his] child’s Apple iPhone” and  
6 his “CashApp payment information was saved on the computer tablets and [his] wife’s  
7 prior mobile device.” (See Uhl Decl. ¶ 16.) Plaintiff’s “child [wa]s given permission to  
8 make small purchases through the Apple AppStore from time to time.” (See *id.*)  
9 “However, that permission [wa]s *not* extended to make purchases of Robux or other  
10 transactions related to Robux.” (*Id.* (emphasis added).) That said, Plaintiff “do[es] not  
11 recall providing instructions to [his] child specifically related to purchases made on  
12 Roblox,” although he “[g]enerally[] . . . ha[s] instructed [his] children to ask for [his]  
13 permission or [his] wife’s permission prior to making any purchases online using [their]  
14 payment information.” (See *id.* ¶ 17.) It is not clear whether Plaintiff ever gave his children  
15 permission to make the purchases logged between December 26, 2018, and May 18, 2022.

16 What is clear is that Plaintiff “would occasionally purchase gift cards for [his]  
17 children to use as gifts for birthdays and holidays.” (See Supp. Uhl Decl. ¶ 4.) Indeed,  
18 “[t]he last purchase of Robux that [Plaintiff] can recall having personally made with  
19 knowledge was . . . sometime around June of 2022[,]” which was a “purchase . . . made  
20 with cash for a Robux gift card.” (See Uhl Decl. ¶ 19.) Plaintiff “ha[s] never personally  
21 redeemed any gift card codes on the Roblox platform, and [he] dispute[s] having personally  
22 redeemed any of the gift card codes listed on [Jit Exhibit 1].” (See Supp. Uhl Decl. ¶ 4.)

23 **C. Defendant’s Terms of Use**

24 Defendant submits several iterations of its Terms of Use covering the period between  
25 August 8, 2017, through June 14, 2022. (See Jit Decl. ¶¶ 18–20; *see also* ECF Nos. 80-2  
26 (“2017 Terms of Use” or “2017 TOU”), 80-3 (“2018 Terms of Use” or “2018 TOU”),  
27 80-4 (“2022 Terms of Use” or “2022 TOU”).) The 2017 Terms of Use were effective on  
28 August 8, 2017, (*see* Jit Decl. ¶ 18); the 2018 Terms of Use were effective on November 7,

1 2018, (*see id.* ¶ 19), when the Uhl Account was created, (*see id.* ¶ 17); and the 2022 Terms  
2 of Use were effective starting on April 6, 2022, through at least June 14, 2022, (*see id.*  
3 ¶ 20). It is undisputed that each version of the Terms of Use contains a separate provision  
4 regarding “Dispute Resolution, Arbitration and No Class Actions.” (*See* 2017 TOU at  
5 12–13, 2018 TOU at 14–15, 2022 TOU at 9–11.)

### 6 LEGAL STANDARD

7 The Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1–16, governs arbitration  
8 agreements in any contract affecting interstate commerce, including those found in  
9 employment contracts. *See Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 119, (2001); *see*  
10 *also* 9 U.S.C. § 2. The FAA “provides that ‘an agreement in writing to submit to arbitration  
11 an existing controversy arising out of such a contract, transaction, or refusal shall be valid,  
12 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the  
13 revocation of any contract.’” *Fli-Lo Falcon, LLC v. Amazon.com, Inc.*, 97 F.4th 1190,  
14 1193 (9th Cir. 2024) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339  
15 (2011)).

16 Courts review arbitration agreements in light of the “liberal federal policy favoring  
17 arbitration agreements.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S.  
18 1, 24–25 (1983); *Soto v. Am. Honda Motor Co.*, 946 F. Supp. 2d 949, 953–54 (N.D. Cal.  
19 2012). “If a party ignores its agreement to arbitrate, the other party may ask a court to issue  
20 ‘an order directing that such arbitration proceed in the manner provided for in such  
21 agreement.’” *Fli-Lo Falcon*, 97 F.4th 1190 at 1194 (quoting 9 U.S.C. § 4). Further, “[i]f  
22 an agreement exists, the FAA ‘leaves no place for the exercise of discretion by a district  
23 court, but instead mandates that [it] shall direct the parties to proceed to arbitration.’” *Id.*  
24 at 1193 (quoting *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985)).

### 25 ANALYSIS

26 “Generally, in deciding whether to compel arbitration, a court must determine two  
27 ‘gateway’ issues: (1) whether there is an agreement to arbitrate between the parties; and  
28 (2) whether the agreement covers the dispute.” *Brennan* 796 F.3d at 1130 (citing *Howsam*

1 *v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002)). Defendant “bears the burden of  
2 showing each of these elements by a preponderance of the evidence.” *See Hansen v. Rock*  
3 *Holdings, Inc.*, 434 F. Supp. 3d 818, 824 (E.D. Cal. 2020) (citing *BG Grp., PLC v. Rep. of*  
4 *Argentina*, 572 U.S. 25, 60 (2014); *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320,  
5 1323 (9th Cir. 2015); *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559, 565 (9th Cir. 2014)),  
6 *rev’d on other grounds*, 1 F.4th 667 (9th Cir. 2021). “The district court, when considering  
7 a motion to compel arbitration [that] is opposed on the ground that no agreement to arbitrate  
8 had been made between the parties, should give to the opposing party the benefit of all  
9 reasonable doubts and inferences that may arise.” *Three Valleys Mun. Water Dist. v. E.F.*  
10 *Hutton & Co.*, 925 F.2d 1136, 1141 (9th Cir. 1991).

11 Plaintiff disputes only the first of the two “gateway” issues here, arguing both that  
12 there is no valid arbitration agreement, (*see* Opp’n at 12–24), and that Defendant waived  
13 its right to move to compel arbitration. (*See id.* at 7–12.) The Court addresses each of  
14 Plaintiff’s arguments in turn.

### 15 **I. Agreement to Arbitrate**

16 “In determining whether the parties have agreed to arbitrate a particular dispute,  
17 federal courts apply state-law principles of contract formation.” *Berman v. Freedom Fin.*  
18 *Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022) (citing *First Options of Chicago, Inc. v.*  
19 *Kaplan*, 514 U.S. 938, 944 (1995)). “To form a contract under . . . California law, the  
20 parties must manifest their mutual assent to the terms of the agreement.” *See id.* (citing  
21 *Specht v. Netscape Commc’ns Corp.*, 306 F.3d 17, 29 (2d Cir. 2002) (applying California  
22 law)).

23 “Parties traditionally manifest assent by written or spoken word, but they can also  
24 do so through conduct.” *Id.* (citing *Specht*, 306 F.3d at 29). “However, [t]he conduct of  
25 a party is not effective as a manifestation of his assent unless he intends to engage in the  
26 conduct and knows or has reason to know that the other party may infer from his conduct  
27 that he assents.” *Id.* (alteration in original) (quoting Restatement (Second) of Contracts  
28 § 19(2) (1981)). “These elemental principles of contract formation apply with equal force

1 to contracts formed online.” *Id.* at 855–56. “Thus, if a website offers contractual terms to  
2 those who use the site, and a user engages in conduct that manifests her acceptance of those  
3 terms, an enforceable agreement can be formed.” *Id.* at 856.

4 Defendant contends that Plaintiff agreed to arbitrate his claims each time he  
5 purchased Robux through the Roblox website and the mobile application, (*see* Mot. at  
6 11–15; *see also* Reply at 9 n.3), or by authorizing his child to make such purchases. (*See*  
7 Reply at 3–5.) Plaintiff counters that Roblox has not met its burden of establishing by a  
8 preponderance of the evidence that it was Plaintiff himself who made any of those  
9 purchases, (*see* Opp’n at 13), or that an agency relationship existed between Plaintiff and  
10 his child. (*See id.* at 13–15.) Upon review of the record in this case, the Court agrees with  
11 Plaintiff on both counts.

12 Defendant withdrew its initial motion to compel arbitration—which was filed over  
13 ten months after the case was removed from state court—so that the Parties could engage  
14 in “targeted discovery related to Plaintiffs’ assent to Roblox’s Terms and arbitration  
15 clause.” (*See* ECF No. 84-2 (“Siko Decl. Ex. A”) at 8.) Specifically, defense counsel  
16 provided Plaintiff’s counsel “a list of questions we believe should be answered prior to  
17 filing our renewed motion to compel arbitration.” (*See id.* at 2.) The second of these  
18 requests was “[a] list of all purchases identified on the payment spreadsheets associated  
19 with the relevant Roblox accounts that Plaintiffs dispute personally making,” and the fourth  
20 “[a] description of the instructions Plaintiffs provided to their children with regard to  
21 Robux purchases prior to Plaintiffs’ revocation of permission to purchase Robux and . . .  
22 when Plaintiffs revoked their permission for their children to purchase Robux.” (*See id.*)

23 In his resultant declarations, Plaintiff specifies that he personally purchased Robux  
24 “sometime around June of 2022,” “with cash for a Robux gift card,” (*see* Uhl Decl. ¶ 19),  
25 and that, prior to June of 2022, he “would occasionally purchase gift cards for [his] children  
26 to use as gifts for birthdays and holidays.” (*See* Supp. Uhl Decl. ¶ 4.) Plaintiff specifically  
27 disclaims having “personally” made a number of specific purchases, including “any  
28 purchases or payments to Roblox, via the Apple AppStore or otherwise, since before the

1 initiation of this litigation[,]” (*see* Uhl Decl. ¶ 15); the “transactions identified in lines  
2 2–36 on the spreadsheet provided by Roblox’s counsel bates numbered as  
3 ROBLOX\_000000[0]1[,]” (*see* Supp. Uhl Decl. ¶ 3); “three transactions that were recorded  
4 on [Plaintiff’s Wells Fargo] account history that occurred on December 4, 2023,  
5 November 21, 2023, and August 4, 2023[,]” (*see id.* ¶ 6); and transactions appearing in  
6 Plaintiff’s “Cash-App transaction history . . . [that] occurred on October 6, 2023, July 12,  
7 2023, January 29, 2023, October 29, 2022, October 11, 2022, October 7, 2022,  
8 September 21, 2022, September 18, 2022, September 2, 2022, August 27, 2022, and  
9 January 18, 2022[,]” (*see id.* ¶ 7). Plaintiff also disclaims having “knowledge” or a specific  
10 “rec[ollection]” of several additional transactions, including “transactions, purchases, or  
11 payments made to or from Defendant Roblox Corporation subsequent to the initiation of  
12 this litigation[,]” (*see* Uhl Decl. ¶ 20); “any purchases for Robux or other goods or services  
13 on the Roblox platform that were made with [Plaintiff’s] debit/credit card on the dates  
14 July 12, 2024; September 8, 2023; December 10, 2023; December 3, 2023; November 20,  
15 2023; or August 3, 2023[,]” (*see id.* ¶ 20); “any transaction with Roblox using” six specific  
16 credit or debit card numbers, (*see id.* ¶ 23; *see also* Supp. Uhl Decl. ¶¶ 8–9); and  
17 “purchasing any of the gift cards listed on the document provided by Roblox’s counsel  
18 bates numbered as ROBLOX\_00000001[,]” (*see id.* ¶ 4).

19 This leaves approximately 130 transactions that Plaintiff does not specifically  
20 disclaim knowledge of or attest to making personally. Based on its counsel’s request for  
21 “[a] list of all purchases identified on the payment spreadsheets associated with the relevant  
22 Roblox accounts that Plaintiffs dispute personally making[,]” (*see* Siko Decl. Ex. A at 2),  
23 Defendant asks the Court to infer that Plaintiff personally made at least one of those 130  
24 remaining transactions. As Defendant conceded at oral argument, however, the Court must  
25 view the evidence most favorably to Plaintiff and draw all reasonable inferences in his  
26 favor in resolving the instant Motion. (*See* ECF No. 94); *see also Three Valley Mun. Water*  
27 *Dist.*, 925 F.2d at 1141. While it is certainly possible that Plaintiff personally made one of  
28 the purchases at issue, the Court cannot conclude that it is more likely than not based on

1 the current record. Indeed, Plaintiff admits only to having personally purchased with cash  
2 gift cards that his children could redeem for Robux. (*See* Uhl Decl. ¶ 19; Supp. Uhl Decl.  
3 ¶ 4.) Ultimately, Defendant did not “come forward with evidence [that] would entitle it to  
4 a directed verdict if the evidence went uncontroverted at trial.” *See C.A.R. Transp.*  
5 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (setting forth  
6 standard for party bearing burden of proof at summary judgment (quoting *Houghton v.*  
7 *South*, 965 F.2d 1532, 1536 (9th Cir. 1992))). Defendant therefore fails to establish by a  
8 preponderance of the evidence that Plaintiff assented to its Terms by purchasing Robux  
9 through the Roblox website or app.

10 Alternatively, Defendant argues that Plaintiff is “bound to the Terms because he  
11 expressly authorized his child’s repeated purchases of Robux through a Roblox account  
12 associated with [his] email address and via payment methods Plaintiff controlled.” (*See*  
13 Reply at 3 (citing Opp’n at 13; Uhl Decl. ¶¶ 2, 16, 18, 21; Supp. Uhl Decl. ¶¶ 6–7).) It is  
14 true that Plaintiff’s debit card information “is saved as the payment method on [his] child’s  
15 Apple iPhone” and his “CashApp payment information was saved on the computer tablets  
16 and [his] wife’s prior mobile device,” (*see* Uhl Decl. ¶ 16), which were the devices his  
17 child used to access the Roblox Platform. (*See id.* ¶ 7.) While Plaintiff’s “child [wa]s  
18 given permission to make small purchases through the Apple AppStore from time to time[,]  
19 h]owever, that permission [wa]s not extended to make purchases of Robux or any other  
20 transactions related to Roblox.” (*See id.* ¶ 16.) Further, Plaintiff “do[es] not recall  
21 providing instructions to [his] child specifically related to purchases made on Roblox[,]”  
22 but, “[g]enerally, [he] ha[s] instructed [his] children to ask for [his] permission or [his]  
23 wife’s permission prior to making any purchases online using [their] payment  
24 information.” (*See id.* ¶ 17.)

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1 There is no indication that Plaintiff ever provided such permission here,<sup>4</sup> (*see*  
2 *generally* Uhl Decl.; Supp. Uhl Decl.), as Defendant contends would be necessary to create  
3 an agency relationship. (*See* Reply at 4–5.) Further, the only case on which Defendant  
4 relies, *Heidbreder v. Epic Games, Inc.*, 438 F. Supp. 3d 591 (E.D.N.C. 2020), is inapposite  
5 because the parent-plaintiff in that case created the account that was linked to his debit card  
6 but to which he “then gave [his child] free rein over . . . for over a year.” *See id.* at 595,  
7 597–98. Here, by contrast, “[Plaintiff’s] child’s account was created . . . with [his]  
8 permission” and with his email address,<sup>5</sup> (*see* Uhl Decl. ¶ 2), but it is not clear that Plaintiff  
9 linked his card information to the account or gave his child his permission to use it.  
10 Defendant therefore also fails to establish that Plaintiff assented to its Terms by providing  
11 his permission for his child to purchase Robux through the Roblox website or app. Because  
12 Defendant fails to establish by a preponderance of the evidence that Plaintiff assented to  
13 its arbitration provision, the Court **DENIES** Defendant’s Motion.

14 Nonetheless, the Court feels compelled to address Defendant’s argument in its Reply  
15 that Plaintiff “resist[ed] producing documents or sitting for a deposition,” (*see* Reply at 2),  
16 and Defendant’s request that, “[t]o the extent the Court believes that there is a genuine  
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19 <sup>4</sup> Plaintiff’s Opposition does indicate that, “in Mr. Uhl’s declaration, he confirms that he did not  
20 personally make these purchases, but rather he authorized or otherwise gave permission for the purchases  
21 to be made,” (*see* Opp’n at 13 (citing Uhl Decl. ¶¶ 20–21; Supp. Uhl Decl. ¶¶ 3–4, 6–9)), and Defendant  
22 cites to this “admission[.]” in its Reply. (*See* Reply at 4.) As Defendant itself noted at the hearing,  
23 however, counsel’s argument is not properly considered part of the record before the Court. Plaintiff’s  
24 declarations make clear that, although his daughter had “permission to make small purchases through the  
25 Apple AppStore from time to time . . . , that permission [wa]s not extended to make purchases of Robux  
or any other transaction related to Roblox,” (*see* Uhl Decl. ¶ 16), and that he “[g]enerally . . . ha[s]  
instructed [his] children to ask for [his] permission or [his] wife’s permission prior to making any  
purchases online using [their] payment information,” (*see id.* ¶ 17), which permission is not specifically  
addressed in either the January 8, 2025 Uhl Declaration or the February 5, 2025 Supplemental Uhl  
Declaration. (*See generally* Uhl Decl.; Supp. Uhl Decl.)

26 <sup>5</sup> To the extent Defendant argues that “Plaintiff’s declarations strongly suggest that he created his  
27 child’s Roblox account,” (*see* Mot. at 15 (citing Uhl Decl. ¶¶ 1–2; Supp. Uhl Decl. ¶¶ 1–2)), the  
28 declarations do not specify who created the account. While it is possible that Plaintiff created the account,  
it is equally possible that his child, the child’s mother, another child, or some other person entirely created  
the account after obtaining Plaintiff’s permission.

1 dispute of fact about Plaintiff’s assent to Roblox’s Terms,” the Court issue “an order  
2 requiring full discovery on the issue” because “Plaintiff should not be rewarded for his  
3 stratagems.” (*See id.* at 3 n.1.) Ultimately, Defendant requests too little, too late. First,  
4 where—as here—there is a question concerning “the making of the arbitration agreement,”  
5 *see* 9 U.S.C. § 4, “[t]he FAA provides for discovery and a full trial in connection with a  
6 motion to compel arbitration.” *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th  
7 Cir. 1999). Although the Court appreciates the Parties’ attempts to resolve their discovery  
8 issues without the involvement of the Court, the time for Defendant to seek the Court’s  
9 intervention to obtain reasonable discovery to ascertain the extent of Plaintiff’s assent to  
10 Defendant’s Terms of Service was *before* filing its initial and instant motions. That  
11 Defendant failed to do so does not excuse its failure to carry its burden of proof, particularly  
12 given Defendant’s delay in seeking to enforce its arbitration clause. *See infra* Section II.  
13 In short, both sides have staked their stratagems, and Defendant’s wager that it had a “clear  
14 answer” regarding the pre-June 2022 purchases of Robux from the Uhl Account did not  
15 win the day.

16 Further, this is not an instance where there exists a genuine dispute as to the material  
17 facts, but rather an example of a failure of proof. Plaintiff’s counsel conceded at the hearing  
18 that Plaintiff’s declarations were less than clear—indeed, although Plaintiff’s counsel  
19 claimed that they were “inartfully worded,” one could also conclude that they are artfully  
20 vague. That the facts are ambiguous, however, does not mean that there is a dispute of  
21 material fact. The burden was not on Plaintiff to prove that he did not personally engage  
22 in any of the transactions but rather on Defendant—as the moving party and the party  
23 seeking to compel arbitration—timely to develop a sufficient factual record from which  
24 the Court could find, by a preponderance of the evidence, that Plaintiff had assented to  
25 Defendant’s arbitration clause. Defendant failed to do so, and its Motion therefore fails.

26 **II. Waiver**

27 Plaintiff also argues that, even if there were a valid agreement to arbitrate, Defendant  
28 has waived its right to compel Plaintiff to arbitration. (*See Opp’n* at 7–12.) “To establish

1 waiver under generally applicable contract law, the party opposing enforcement of a  
2 contractual agreement must prove by clear and convincing evidence that the waiving party  
3 knew of the contractual right and intentionally relinquished or abandoned it.” *Quach v.*  
4 *Cal. Com. Club, Inc.*, 16 Cal. 5th 562, 584 (2024) (citing *Lynch v. Cal. Coastal Comm’n*,  
5 3 Cal. 5th 470, 475 (2017); *Waller v. Truck Ins. Exchange, Inc.*, 11 Cal. 4th 1, 31 (1995)).

6 Defendant contends that it did not know that Plaintiff’s claims were arbitrable until  
7 August 16, 2024, when Plaintiff’s counsel finally provided Defendant with the username  
8 of Plaintiff’s minor child. (See Reply at 9 (citing ECF No. 59-7 ¶ 5).) But the Ninth Circuit  
9 “ha[s] never suggested that for waiver purposes, knowledge of an existing right to arbitrate  
10 requires a present ability to move to enforce an arbitration agreement.” See *Hill v. Xerox*  
11 *Bus. Servs., LLC*, 59 F.4th 457, 469 (9th Cir. 2023) (citing *In re Cox Enterps., Inc. Set-top*  
12 *Cable Television Box Antitrust Litig.*, 790 F.3d 1112, 1119 (10th Cir. 2015)). Here,  
13 Defendant’s main argument in support of its Motion is that “Plaintiff accepted Roblox’s  
14 Terms and agreed to arbitrate his claims every time he purchased Robux.” (See Mot. at  
15 11.) From Plaintiff’s first appearance in the case, he has alleged that he “is a . . . parent of  
16 three children who used the Roblox platform beginning in around 2017,” and he “and his  
17 wife spent money on the Roblox platform on at least a monthly basis to pay for Robux.”  
18 (See FAC ¶ 20.) Consequently, Defendant has had knowledge of its right to compel  
19 Plaintiff to arbitration since the date Plaintiff was added as a party to this case.<sup>6</sup>

20 As for the second element of the waiver analysis, the Ninth Circuit has articulated  
21 “no concrete test to determine whether a party has engaged in acts that are inconsistent  
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24 <sup>6</sup> And Defendant had knowledge that he could compel prior named Plaintiffs Ms. Murphy and  
25 Ms. Payan to arbitration from the outset of this case. (See Compl. ¶¶ 18 (“Plaintiff Katherine Murphy is  
26 a . . . parent of a child who used the Roblox platform beginning in January 2021[, who] . . . spent money  
27 on Robux on the Roblox platform for her son’s benefit[.]”, 19 (“Plaintiff Monique Payan is a . . . parent  
28 of a child who used the Roblox platform beginning in 2019[, who] . . . spent money on the Roblox  
platform, including paying for a recurring monthly charge for Robux, for her daughter’s benefit[.]”).) And, even if Defendant did require the username of Plaintiff’s minor child[ren], that does not excuse Defendant’s failure timely to exercise its right to compel reasonable arbitration-related discovery. See *supra* pages 14–15.

1 with its right to arbitrate.” *See Martin v. Yasuda*, 829 F.3d 1118, 1125 (9th Cir. 2016).  
2 The Ninth Circuit has “stated, however, that a party’s extended silence and delay in moving  
3 for arbitration may indicate a ‘conscious decision to continue to seek judicial judgment on  
4 the merits of [the] arbitrable claims,’ which would be inconsistent with a right to arbitrate.”  
5 *Id.* (alteration in original) (quoting *Van Ness Townhouses v. Mar Indus. Corp.*, 862 F.2d  
6 754, 759 (9th Cir. 1988)). The Ninth Circuit has found “this element satisfied when a party  
7 chooses to delay his right to compel arbitration by actively litigating his case to take  
8 advantage of being in federal court.” *See id.* (first citing *Van Ness Townhouses*, 862 F.2d  
9 756, 759; then citing *Kelly v. Pub. Util. Dist. No. 2*, 552 Fed. App’x 663, 664 (9th Cir.  
10 2014); then citing *Plows v. Rockwell Collins, Inc.*, 812 F. Supp. 2d 1063, 1067–68 (C.D.  
11 Cal. 2011)). “A statement by a party that it has a right to arbitration in pleadings or motions  
12 is not enough to defeat a claim of waiver.”<sup>7</sup> *Id.* (citing *In re Mirant Corp. v. Castex Energy,*  
13 *Inc.*, 613 F.3d 584, 591 (5th Cir. 2010); *Hooper v. Advance Am., Cash Advance Ctrs. of*  
14 *Miss., Inc.*, 589 F.3d 917, 923 (8th Cir. 2009)). “Additionally, although filing a motion to  
15 dismiss that does not address the merits of the case is not sufficient to constitute an  
16 inconsistent act, seeking a decision on the merits of an issue may satisfy this element.” *Id.*  
17 at 1125–26 (collecting cases).

18 Here, Defendant moved to dismiss Plaintiffs’ Second Amended Complaint on a  
19 variety of grounds, including that Plaintiffs’ claims are barred by Section 230, on  
20 March 11, 2024. (*See generally* ECF No. 35.) Defendant did not seek to stay briefing on  
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22 <sup>7</sup> The Court therefore concludes that the following footnote in Defendant’s initial motion to dismiss  
23 did not suffice to preserve its right to arbitration:

24 Prior to filing this Motion, Roblox asked Plaintiffs to disclose their Roblox usernames so  
25 that Roblox could determine whether Plaintiffs were parties to an enforceable arbitration  
26 agreement. Plaintiffs refused to provide this information. If Roblox learns that Plaintiffs  
27 are, in fact, subject to an agreement to arbitrate, Roblox may move to compel this case to  
arbitration. Roblox therefore expressly reserves, and does not waive, its right to compel  
arbitration at a later point.

28 (*See id.* at 2 n.1 (citing *Newirth ex rel. Newirth v. Aegis Senior Cmtys., LLC*, 931 F.3d 935, 940 (9th Cir.  
2019).)

1 the motion to dismiss pending resolution of the arbitrability issue, as it did pending a  
2 decision on Plaintiffs’ motion for remand. (See ECF No. 19.) Instead, Defendant took  
3 advantage of the opportunity to litigate a “motion to dismiss on a key merits issue” that  
4 may have proven dispositive, namely, whether Plaintiffs’ claims were barred by Section  
5 230.<sup>8</sup> See *Martin*, 829 F.3d at 1126 (affirming district court’s decision that the defendants  
6 had waived arbitration where they had “spent seventeen months litigating the case,” which  
7 “included devoting ‘considerable time and effort’ to a joint stipulation structuring the  
8 litigation, filing a motion to dismiss on a key merits issue, entering into a protective order,  
9 answering discovery, and preparing for and conducting a deposition”) (footnote omitted).  
10 Indeed, concurrently with the filing of its prior and withdrawn motion to compel  
11 arbitration, Defendant *again* sought to dismiss Plaintiff’s operative Fourth Amended Class  
12 Action Complaint on the merits. (See ECF No. 58.) Had Defendant been serious about  
13 compelling this action to arbitration, it would have taken advantage of the statutory  
14 resources available to it that evidence “Congress’ clear intent, in the Arbitration Act, to  
15 move the parties to an arbitrable dispute out of court and into arbitration as quickly and  
16 easily as possible.” See *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 22. Instead, Defendant  
17 has repeatedly sought to take advantage of this forum by asking this Court—over a  
18 protracted period of time—to dismiss this action. The Court therefore concludes that  
19 Defendant has waived its right to compel arbitration and **DENIES** Defendant’s Motion on  
20 this second and independent basis.

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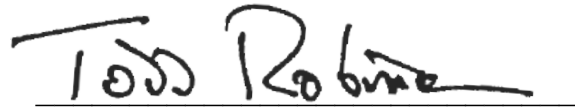
25 <sup>8</sup> Although the Court declined to address the issue in ruling on Defendant’s first motion to dismiss,  
26 (see ECF No. 47 at 12 & n.5), subsequent clarification from the Ninth Circuit would appear to foreclose  
27 Defendant’s hopes of a speedy resolution on the merits. See *Est. of Bride ex rel. Bride v. Yolo Techs.,*  
28 *Inc.*, 112 F.4th 1168, 1178–79 (9th Cir. 2024) (concluding that the plaintiff-users’ misrepresentation  
claims based on the defendant-interactive computer service’s promises to unmask and ban abusive users  
were not categorically prohibited by Section 230), *cert. denied*, No. 24-864, 2025 WL 889177 (U.S.  
Mar. 24, 2025).

**CONCLUSION**

In light of the foregoing, the Court **DENIES** Defendant’s Motion to compel Plaintiff Damien Uhl to arbitration. Defendant **SHALL RESPOND** to Plaintiff’s Fourth Amended Class Action Complaint within thirty (30) days of the electronic docketing of this Order.

**IT IS SO ORDERED.**

Dated: July 9, 2025



Honorable Todd W. Robinson  
United States District Judge

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