



**BLOGS**  
Arbitration

## California Appellate Court Rules that Customer Agreed to Franchisor’s Arbitration Requirement in “Clickwrap” Agreement

A state appellate court in California reversed a superior court’s denial of a massage franchisor’s motion to compel arbitration. *Jane Doe #1 (I.G.) v. Massage Envy Franchising, LLC*, 2023 WL 8801517 (Cal. Ct. App. Dec. 20, 2023).

A state appellate court in California reversed a superior court’s denial of a massage franchisor’s motion to compel arbitration. *Jane Doe #1 (I.G.) v. Massage Envy Franchising, LLC*, 2023 WL 8801517 (Cal. Ct. App. Dec. 20, 2023). Respondent Jane Doe was allegedly sexually assaulted while attending a massage appointment at a franchised location of appellant Massage Envy. Doe filed suit asserting claims against Massage Envy and the franchisee. Massage Envy moved to compel arbitration, contending that Doe accepted Massage Envy’s Terms of Use Agreement which required all disputes to be submitted to arbitration. Doe opposed the motion, arguing that she never saw or read the Terms of Use Agreement and that, even if she had, a reasonable person would not understand that they were entering into an agreement with an arbitration provision. The superior court denied Massage Envy’s motion.

The court of appeals reversed, reasoning that Doe’s acceptance of the Terms of Use Agreement during her creation of an online profile showed that she assented to the formation of a valid internet contract. While creating her profile, Massage Envy’s website required Doe to check a box adjacent to the phrase “I agree and assent to the Terms of Use Agreement,” with “Terms of Use Agreement” underlined and hyperlinked. When clicked, the agreement contained an arbitration provision requiring parties to submit any dispute to arbitration. Doe argued that, despite checking the box, she did not see, review, or read the agreement. The appellate court explained that it was immaterial whether Doe reviewed the agreement because the checkbox and hyperlink structure was a valid “clickwrap” agreement that made it apparent that Doe was assenting to the agreement’s terms. The appellate court also concluded that it was inappropriate for it to consider the issue of whether Doe’s claims were within the scope of the agreement’s arbitration clause and that such a declaration is properly reserved for the arbitrator.

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