

Research Memorandum

Online terms accepted through a SaaS sign-up flow: when do they bind the user?

To	Supervising attorney
From	Aequivra
Date	30 September 2026
Re	Enforceability of terms of service (including arbitration clauses) presented in web and app sign-up flows; current standard in the Ninth and Second Circuits under California law, with a note on the Sixth Circuit

Question presented

A SaaS client lets customers sign up online. Its terms of service contain an arbitration clause and a class-action waiver. What must the sign-up screens show for a court to find that users agreed to those terms?

Brief answer

Under California law, as applied by the Ninth Circuit, an online agreement is formed only if (1) the website gives **reasonably conspicuous notice** of the terms and (2) the user takes an action, such as clicking a button or checking a box, that **unambiguously manifests assent** to them. *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 856 (9th Cir. 2022). A traditional clickwrap (an unticked box stating “I agree to the Terms”) is routinely enforced. “Sign-in wrap” flows, where a line of text says that continuing means agreement, are enforced only when the design is clean and the wording ties the specific button to agreement. Since 2025 the Ninth Circuit has applied that second requirement strictly: *Chabolla v. ClassPass Inc.*, 129 F.4th 1147 (9th Cir. 2025) (Bybee, J., dissenting); *Godun v. JustAnswer LLC*, 135 F.4th 699 (9th Cir. 2025). Browsewrap (a link in the footer, no action required) will usually fail. *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171 (9th Cir. 2014).

Discussion

1. The governing test

Mutual assent is a question of state contract law, and most consumer platforms choose California law. The Ninth Circuit states the test in two parts: the user must receive “reasonably conspicuous notice of the terms to which the consumer will be bound,” and must take “some action, such as clicking a button or checking a box, that unambiguously manifests his or her assent to those terms.” *Berman*, 30 F.4th at 856; *Oberstein v. Live Nation Ent., Inc.*, 60 F.4th 505 (9th Cir. 2023). The Second Circuit reached the same framework applying California law in *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 75 (2d Cir. 2017), and California’s own courts apply it as well. *Sellers v. JustAnswer LLC* (2021) 73 Cal.App.5th 444.

2. Notice: design and context

Courts look at the screen as a whole: font size and color, where the notice sits relative to the action button, and how cluttered the page is. In *Berman* the notice sat in tiny gray type above the button, and its underlined links were the same grey as the surrounding text rather than a contrasting color; no contract was formed. In *Chabolla* the court refused to enforce terms presented in faint, small type outside the user’s natural flow through the screens. *Godun* treated underlined text without a contrasting color as insufficient to signal a hyperlink in the circumstances. By contrast, *Meyer* held that an agreement was formed where an uncluttered registration screen placed a hyperlinked notice directly below the button (remanding on a separate waiver question).

Context counts too. Where a user signs up for a continuing relationship, such as an account used over time, a reasonable user expects terms and notice is easier to show. *Keebaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005 (9th Cir. 2024) (mobile game account; terms enforced). Where the transaction looks like a one-off purchase, courts expect more. *Sellers*, 73 Cal.App.5th 444 (users who paid \$5 to ask a single question were enrolled in an automatically renewing membership; a one-off transaction does not put a user on notice of continuing terms; terms not enforced).

3. Assent: the words must match the button

The second element is where recent Ninth Circuit cases turn. A notice that simply says “By using this site you agree to the Terms” does not tie agreement to any particular click. In *Chabolla* the notice said that by signing up the user agreed to the terms, but the button on that screen was labeled differently; the majority held that the mismatch left the user's assent ambiguous. *Godun* reached the same result where the assent language did not refer to the action the user actually took. *Oberstein* and *Keebaugh* show the other side: notices placed immediately next to the relevant button, in legible type, were enough.

4. Browsewrap and later changes to terms

Terms that are only linked from the page footer, with no action required, generally do not bind a user even if the links are visible, because the user never signals agreement. *Nguyen*, 763 F.3d 1171; *Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17 (2d Cir. 2002). The same logic limits unilateral amendment: posting revised terms on a website, without notice to the user, did not bind an existing customer in *Douglas v. U.S. Dist. Court*, 495 F.3d 1062 (9th Cir. 2007). A client that relies on “continued use means acceptance” language should expect that clause to be tested.

5. Other circuits

The Sixth Circuit, applying California law by agreement of the parties, enforced an arbitration clause presented in a multi-page online referral flow, weighing page clutter, proximity of the notice to the button, visual design and the context of the interaction. *Dahdah v. Rocket Mortgage, LLC*, No. 24-1910 (6th Cir. Jan. 26, 2026) (published). The court reversed the district court's refusal to compel arbitration. For a client whose users are nationwide, the practical answer is to design to the stricter Ninth Circuit standard.

Recommendations for the client's sign-up flow

- **Use a true clickwrap where possible:** an unticked checkbox beside the text “I agree to the Terms of Service and Privacy Policy,” with the account-creation button disabled until it is ticked.
- **If a sign-in wrap is used, match the words to the button:** “By clicking *Create account*, you agree to the Terms of Service.” The quoted label must be the label on the button, on that screen.
- **Make links look like links:** contrasting color and underline, in type no smaller than the surrounding form text, placed directly above or below the button with nothing in between.
- **Keep the screen clean:** no promotional content between the notice and the button; the notice must be visible without scrolling on common mobile screen sizes.
- **Flag the arbitration clause:** mention it in the notice itself and at the top of the terms.
- **Keep evidence:** log the version of the terms, a timestamp and the screen design shown to each user; courts decide these motions on screenshots and declarations.
- **Re-consent for material changes:** present revised terms with a fresh click at next login rather than relying on posting alone.
- **Enterprise customers:** for negotiated B2B deals, incorporate the terms by reference in a signed order form; the wrap analysis then largely falls away.

Scope and verification

This memo addresses federal appellate authority applying California law, with one California Court of Appeal decision. It does not cover other states' law, unconscionability or mass-arbitration terms, or automatic-renewal statutes. Citations were checked on CourtListener on 30 September 2026; *Chabolla* has since been cited as authority in published decisions in 2026. Subsequent history should be re-checked on a citator before filing.