SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31**

Justice

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JEREL CARDENAS

Plaintiff,

- v -

NIANTIC, INC.,

Defendant.

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INDEX NO. 100248/2025

MOTION DATE 05/08/2025, 05/06/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 24, 25, 26

were read on this motion to/for COMPEL ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 3, 4, 5, 6, 7, 8, 9, 10, 20, 21, 22, 23, 43, 44, 53, 54

were read on this motion to/for COMPEL ARBITRATION.

Upon the foregoing documents, the motion by defendant Niantic, Inc. ("Niantic") to compel arbitration is granted. Upon the same record, the motion by *pro-se* plaintiff Jerel Cárdenas ("Mr. Cárdenas") to deny Niantic's motion to compel arbitration and to compel Niantic to produce certain documents is denied.

Background

Niantic is a California company and the owner of a mobile augmented reality game, Pokémon GO. Mr. Cárdenas is a New York resident and player of Pokémon GO. On August 17, 2016, he created a Pokémon GO account, and agreed to terms of service which included an arbitration agreement. The July 1, 2016 terms of service advised:

> ARBITRATION NOTICE: EXCEPT IF YOU OPT OUT AND EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE "AGREEMENT TO ARBITRATE" SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND NIANTIC WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND YOU ARE WAIVING YOUR RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.

Thereafter, on July 17, 2024, Niantic updated its terms of service. Users logging in after these updated terms of service were promulgated were met with a "blocker card," a pop-up type

message that requires players to accept the updated terms in order to access and use the service. The blocker card included a hyperlink to the updated terms of service and stated:

> Pokémon GO Terms of Service
> We've updated our Terms of Service, including our arbitration provision. Please review and accept before continuing.
> ACCEPT
> DECLINE

The July 17, 2024 updated terms of service provided, in relevant parts:

> PLEASE BE AWARE THAT SECTION 13 CONTAINS PROVISIONS GOVERNING HOW TO RESOLVE DISPUTES BETWEEN YOU AND NIANTIC. AMONG OTHER THINGS, SECTION 13 INCLUDES AN AGREEMENT ARBITRATE WHICH REQUIRES, WITH LIMITED EXCEPTIONS, THAT ALL DISPUTES BETWEEN YOU AND USE WILL BE RESOLVED BY BINDING AND FINAL ARBITRATION.
>
> 13.1 Applicability of Arbitration Agreement
> If you live in the US or another jurisdiction which allows you to agree to arbitration, you and Niantic agree that any disagreement, controversy, or claim arising out of or relating in any way to your access to or use of the Services or of the Sites, any products sold or distributed through the Sites, the Services of the Terms and prior versions of the Terms (each a "Dispute") will be settled by binding arbitration, except that each party retains the right: (a) to bring an individual action in small claims court and (b) to seek injunctive or other equitable relief … to prevent the actual or threatened infringement, misappropriation, or violation of a party's copyrights…
>
> 13.7 Authority of Arbitrator
> The arbitrator shall have exclusive authority to resolve any Dispute, including, without limitations, disputes regarding the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope or validity of the Arbitration Agreement …
>
> 13.10 Governing Law and Exclusive Venue
> … These terms and your use of the Services are governed by the law of the State of California, excluding its conflicts-of-law rules.
>
> 13.12 30-Day Right to Opt Out
> You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to

termsofservice@nianticlabs.com within thirty (30) days after first becoming subject to this Arbitration Agreement.

Mr. Cárdenas accepted the updated terms of service on July 19, 2024 at 7:39am PST. After playing Pokémon GO before bed on February 7, 2025, Mr. Cárdenas alleges that he awoke on February 8, 2025 to find his account had been banned by Niantic. Mr. Cárdenas then commenced this action seeking $9,000,000.00 alleging that Niantic unjustly banned his Pokémon GO account and falsely accused him of using unauthorized third-party software.[1] Niantic answered the complaint, and moved to compel arbitration in accordance with the terms of service pursuant to the Federal Arbitration Act (FAA) and CPLR § 7503. Mr. Cárdenas opposed Niantic's motion to compel and, by separate motion, moved to deny Niantic's motion to compel and further moved to compel Niantic to provide discovery.

Discussion

The 2024 updated terms of use expressly state that California law shall apply (§ 13.10); however, the result in this action would be the same under California or New York law (*Meyer v Uber Tech., Inc.*, 868 F.3d 66, 74 [2d Cir. 2017] ["New York and California apply substantially similar rules for determining whether the parties have mutually assented to a contract term"]).

The FAA reflects a "congressional declaration of a liberal federal policy favoring arbitration agreements" (*Perry v Thomas*, 482 US 483, 489 [1987]; *see also Hall St. Assocs., L.L.C. v Mattel, Inc.*, 552 US 576, 581 [2008]; *Ross v American Exp. Co.*, 547 F.3d 137, 142 [2d Cir. 2008]) and "creates a body of federal substantive law of arbitrability applicable to arbitration agreements affecting interstate commerce" (*Ragone v Atlantic Video at Manhattan Center*, 595 F.3d 115, 121 [2d Cir. 2010]). Where parties have agreed to arbitration, the FAA provides that such agreement shall be enforced (9 USC § 2; *see generally, Dean Witter Reynolds Inc. v Byrd*, 470 US 213 [1985]). "A user's click of a button can be construed as an unambiguous manifestation of assent only if the user is explicitly advised that the action of clicking will constitute assent to the terms and conditions of an agreement" (*Berman v Freedom Fin. Network, LLC*, 30 F.4th 849, 857 [9th Cir. 2022]; *see also Meyer*, 868 F3d 66 [providing a hyperlink at the time of registration, and the user's assent to register, is sufficient notice to the user that their registration is subject to contractual terms]).

New York has similarly long favored arbitration, as a matter of public policy (*Matter of Smith Barney Shearson v Sacharow*, 91 NY2d 39, 49 [1997]). However, "[a] party to an agreement may not be compelled to arbitrate its dispute with another unless the evidence establishes the parties' clear, explicit and unequivocal agreement to arbitrate"; it is not necessary for a party to sign the arbitration agreement (*God's Battalion of Prayer Pentecostal Church, Inc., v. Miele Assocs., LLP*, 6 NY3d 371, 374 [2006] [internal quotation omitted]).

Where parties have agreed to arbitration, but a party nevertheless refuses to arbitrate, both California and New York provide that the parties may be ordered to arbitrate (California Code, Code of Civil Procedure § 1281.2; New York CPLR § 7503).

[1] The complaint does not plead any enumerated cause of action, but generally alleges "wrongful banning of my account, defamation, emotional distress, and breach of fair dealing" (see complaint at ¶ 6).

Mr. Cárdenas does not dispute that he accepted the terms of service, or that the terms of service include a binding arbitration provision. Nor does he challenge that the terms of service reserve the issue of arbitrability for the arbitrator or allege that he opted out of arbitration within 30-days of accepting the updated terms, as required by the terms of service. Instead, his opposition is chiefly devoted to the merits of his claim and allegations of impropriety by defendants and their counsel. This is not relevant to the issue of arbitrability presented on these motions. Similarly, while Mr. Cárdenas' evidence that he saved another person from a stabbing is heroic and admirable, it is unconnected to whether he accepted the terms of service including arbitration.

Simply put, the terms of service expressly reserve the issue of arbitrability for the arbitrator. As the parties have agreed to arbitrate arbitrability, their agreement should be enforced and arbitration compelled (*Bay Anesthesia, P.C. v Zegelstein*, 194 AD2d 397 [1st Dept 1993]; *Patrick v Running Warehouse, LLC*, 96 F.th 468, 480-481 [9th Cir. 2024]). Consequently, Niantic's motion to compel arbitration is granted and this matter is dismissed.

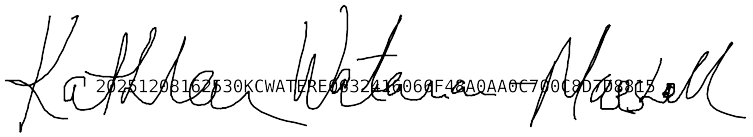
As Niantic's motion to compel arbitration is granted and this matter is dismissed, there is no basis to compel discovery; Mr. Cárdenas' motion to compel discovery is therefore denied as academic.

Accordingly, it is

ORDERED that Niantic Inc.'s motion to compel arbitration is granted; and it is further

ORDERED that Jerel Cárdenas' motion to deny Niantic Inc.'s motion to compel and to further compel Niantic Inc. to provide discovery is denied; and it is further

ORDERED that this matter shall be marked disposed.



12/8/2025
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[X]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**