United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHARLES BUIST, and others,

Plaintiffs,

v.

ANTHROPIC, PBC, and others,

Defendants.

Case No. 26-cv-10693-NC

ORDER DENYING SPACEXAI'S MOTION TO TRANSFER WITHOUT PREJUDICE

Re: ECF 35

Defendant SpaceXAI moves the Court to sever and transfer this case because its' contracts with Plaintiffs' Buist, Hunt, and Spetsas contain forum selection clauses electing the United States District Court for the Northern District of Texas. This Order assumes the reader's familiarity with the facts, legal standards, and the parties' arguments. Because the Court finds it unclear whether SpaceXAI has a contract with a forum selection clause with each Plaintiff individually and Buist and Spetsas had reasonably conspicuous notice of the Terms of Service, the motion is DENIED without prejudice.

I. IT IS UNCLEAR WHETHER HUNT ASSENTED TO THE FORUM SELECTION CLAUSE

Before the court may consider the impact of any forum selection clause, it must first determine whether a contract exists and, if so, whether it contains the forum selection clause at issue. *Kedkad v. Microsoft Corp.*, No. 13-cv-0141-TEH, 2013 WL 4734022, at

*3 (N.D. Cal. Sept. 3, 2013). Defendant bears the burden of demonstrating the existence of a contract and the inclusion of the forum selection clause in that contract. *Id.* at *3 n.3.

Hunt has a personal X account with the handle @CheyenneHuntCA. Declaration of Megan Scolari in Support of SpaceXAI's Motion to Transfer, ¶¶ 30–31. Plaintiffs do not dispute that Hunt assented to the ToS when she created her account with X. ECF 47 at 12. On September 7, 2023, @CheyenneHuntCA acknowledged Version 19 of the X ToS, which does not contain a Texas forum selection clause or arbitration clause, by clicking "Got it" in response to an in-app prompt notifying her of the updated ToS on that date.[1] Scolari Decl. ¶ 32. Version 19 included language stating that "continued use after an update of the terms constitutes agreement to the revised terms." *Id.* Version 23 of the ToS containing the forum selection and arbitration clauses went into effect on October 9, 2026. *Id.* ¶ 34. Hunt used her @CheyenneHuntCA account as recently as November 3, 2026. Declaration of Megan Scolari ISO Reply to Motion to Transfer, ¶ 8.

While continued X usage may demonstrate assent to updated ToS, SpaceXAI has provided insufficient information for the Court to find such. "[I]n order for changes in terms to be binding pursuant to a change-of-terms provision in the original contract, both parties to the contract—not just the drafting party—must have notice of the change in contract terms." *Stover v. Experian Holdings, Inc.*, 978 F.3d 1082, 1086 (9th Cir. 2020).

SpaceXAI states that, roughly a month before the Version 23 ToS took effect, it notified users by serving an in-app prompt. Scolari Decl. ¶ 27. It does not state whether Hunt, via her personal account @CheyenneHuntCA, logged in during that time or otherwise viewed the notice. In each of Defendant's cited cases, the plaintiff X users continued utilizing the application and were provided ample notice, or expressly agreed to,

[1] The Court notes that Plaintiffs readily agree that @CheyenneHuntCA assented to the Version 19 ToS, without the forum selection and arbitration clauses. Yet SpaceXAI makes clear that @CheyenneHuntCA accepted those terms by clicking "Got it" in response to the in-app prompt. Scolari Decl. ¶ 32. Plaintiffs' other arguments that clicking "Got it" does not manifest assent to updated ToS ring hollow and will not be entertained.

updated ToS. For example, in *Doe v. X. Corp.*, defendant provided that "[d]uring a one-month period between October 16, 2024, and November 15, 2025, [d]efendants displayed a banner across the top and middle of [d]efendants' website presenting Version 20 of X's [ToS]." No. 25-cv-07597-TLT, 2025 WL 3500543, at *6 (N.D. Cal. Nov. 6, 2025). The court also found that the significant media coverage from popular news organizations regarding the new ToS "increase[ed] the probability that a reasonable consumer of X's services would have been aware of the latest version of the company's ToS." *Id.* In *St. Clair v. X.AI Holdings Corp.*, the plaintiff had clicked the "Got it" button assenting to the updated ToS. No. 1:26-cv-00386-ALC, 2026 WL 1803744, at *3 (S.D.N.Y. June 23, 2026). And in *Eliza Labs, Inc. v. X. Corp.*, the in-app prompt notifying users of the updated ToS was served for 180 days or until the user clicked the "Got it" button, which both plaintiffs there had. No. 25-cv-07243-AMO, 2025 WL 3003766, at *2 (N.D. Cal. Oct. 27, 2025). In Defendant's other references, the company provided email notice regarding the updated terms. *See Ghazizadeh v. Coursera, Inc.*, 737 F. Supp. 3d 911, 932–35 (N.D. Cal. 2024); *Sadlock v. Walt Disney Co.*, No. 22-cv-09155-EMC, 2023 WL 4869245, at *12–13 (N.D. Cal. July 31, 2023). But there are no such facts here and Defendant has not cited to a case where continued use alone supports consent to updated ToS. On this record, it is unclear to the Court whether @CheyenneHuntCA was given notice that the ToS were being updated.

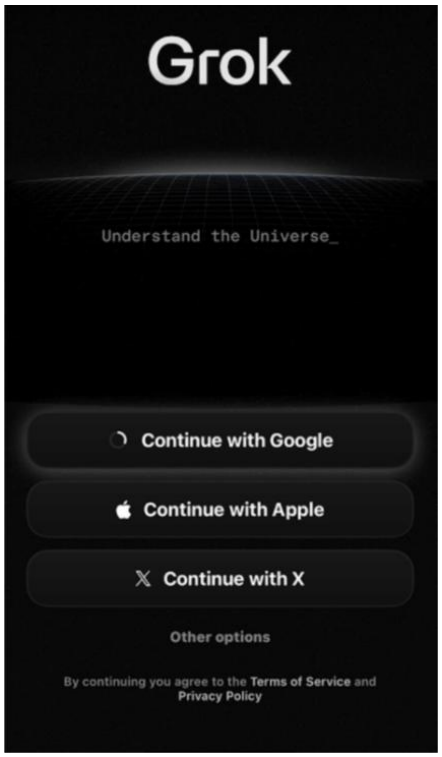
Plaintiffs contend that Hunt's second account for her organization, @reckoningaction, which did click "Got it" to the ToS update, cannot bind her personal claims in Texas. ECF 4 at 12. In reliance on *Benasra v. Marciano*, Plaintiffs argue that acceptance on behalf of an organization does not demonstrate an officer's agreement in her individual capacity. *Id.* at 13 (citing 92 Cal. App. 4th 987, 990 (2001) ("Benasra is not a party to the license agreements. As shown above, he unambiguously signed both as a corporate officer and only as a corporate officer, not in his individual capacity."). SpaceXAI has failed to address this argument in its' reply brief, so concedes this issue. *See* ECF 49. Regardless, the Court agrees with Plaintiffs that, based on the ToS, it is

unclear whether Hunt, through her use of @reckoningaction, accepted the terms in her individual capacity. ECF 47 at 12–13 (citing Ex. E § 1) ("X's terms themselves distinguish an individual's acceptance from acceptance on behalf of an entity: 'you' means 'the person accepting these Terms. . . and/or the entity . . . , as applicable.'"). Accordingly, the Court DENIES Defendant's motion as to Hunt because there are insufficient facts to conclude it had a contract with Hunt with a forum selection clause.

II. BUIST AND SPETSAS HAVE NOT ASSENTED TO SPACEXAI'S TOS

Buist and Spetsas created single Grok account in July 2025 for their law firm under Buist's name. Scolari Decl. ¶ 16. The Spetsas Buist Grok account acknowledged the September 2026 SpaceXAI ToS by clicking "Got it" in response to the in-app prompt. *Id.* ¶ 18.

Plaintiffs argue that the sign-up page for Grok fails to provide the user with reasonably conspicuous notice of the ToS. The sign-up page in 2025 appeared as follows:



Scolari Decl. ¶ 7.

Two courts in this district have found that the exact same 2025 Grok sign up page at issue here failed to provide reasonably conspicuous notice that a new user is bound to the

ToS. *Skaggs v. X.AI, LLC*, No. 26-cv-04550-BLF, 2026 WL 2352969, at *6–7 (N.D. Cal. Aug. 13, 2026); *Devin Rose v. SpaceXAI LLC*, No. 26-cv-05648-NW, 2026 WL 3169664, at *4–6 (N.D. Cal. Oct. 22, 2026). This Court finds both cases persuasive and follows suit.

Defendant attempts to distinguish *Skaggs* and *Rose* by arguing that both misapplied *Chabolla v. ClassPass, Inc.*, 129 F.4th 1147 (9th Cir. 2025). ECF 49 at n.2. The Court disagrees. The *Chabolla* court emphasized the natural flow of the website and considered whether a user who signed in using the first option in the list would see the notice at the bottom of the page before clicking continue. 129 F.4th at 1157. The same is true here—a user who selects to continue with Google "would likely read no further if she had no intention of using [Apple or X]" to login or sign-up, so "the notice seems to fade into the irrelevancy of other aspects of the page." *Id.*

Defendant relies on unpersuasive caselaw predating *Chabolla*. *See Lee v. DoNotPay, Inc.*, 683 F. Supp. 3d 1062, 1070–74 (C.D. Cal. 2023) (finding the ToS hyperlink to be "prominent and emphasized" where it was "underlined and formatted in bright magenta which is clearly set apart from the surrounding text"); *Pizarro v. QuinStreet, Inc.*, No. 22-cv-02803-MMC, 2022 WL 3357838, at *3 (N.D. Cal. Aug. 15, 2022) (ToS were reasonably conspicuous where hyperlink was underlined and the sign-in screen had only two data fields); *Peter v. DoorDash, Inc.*, 445 F. Supp. 3d 580, 587 (N.D. Cal. 2020) (differently colored hyperlink to Terms of Use provided inquiry notice to users). Nor is *Kroskey v. Elevate Labs, LLC* instructive because there the sign-in options had significant white space surrounding the Terms and Conditions notice, and it was the only text in that space. No. 5:24-cv-08113-EJD, 2025 WL 1507091, at *4 (N.D. Cal. May 27, 2025). Here, under "Continue with X" there is also text indicating "other options" and then the notice under that. Indeed, here, "[b]ecause of the notice's distance from relevant action items, its placement outside of the user's natural flow, and its font," the Court concludes it is not "prominently displayed." *Chabolla*, 129 F.4th at 1157.

Further, the Court agrees with Plaintiffs that it is unclear whether Spetsas or Buist, or both, agreed to the terms. ECF 47 at 16. Though the @SpetsasBuist account was

created under Buist's name, it is not entirely clear "who created the account, who clicked [the "Got it" button], who used [the account], or in what capacity." *Id.* Without more facts, the Court cannot discern whether each individual assented to the arbitration and forum selection clause. As discussed above, it is unclear whether assent by an entity can bind Plaintiffs here in their individual capacities. Even if the Court assumed Buist agreed to the ToS because the account was made under his name, the account was made for the law firm rather than personal use. Under these circumstances, it is not clear that Buist assented to the ToS in his personal capacity. Accordingly, the Court denies Defendant's motion as to Buist and Spetsas.

III. CONCLUSION

Accordingly, the Court DENIES Defendant's motion without prejudice.

IT IS SO ORDERED.

Dated: November 13, 2026

NATHANAEL M. COUSINS
Chief United States Magistrate Judge

United States District Court
Northern District of California