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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RACHEL GILGAR, Plaintiff and Respondent, v. PUBLIC STORAGE et al., Defendants and Appellants.	B288270 (Los Angeles County Super. Ct. No. EC067145)

APPEAL from a judgment of the Superior Court of Los Angeles County, Donna Field Goldstein, Judge. Affirmed.

Hunton Andrews Kurth, Michele J. Beilke and Julia Y. Trankiem for Defendant and Appellant.

Hogue & Belong, Jeffrey L. Hogue, Tyler J. Belong, and Erik Dos Santos, for Plaintiff and Respondent.

INTRODUCTION

Appellant/defendant Public Storage (PS) appeals the trial court's ruling denying its motion to compel arbitration against respondent/plaintiff Rachel Gilgar. The trial court ruled that PS had failed to establish the existence of a valid agreement to arbitrate, finding that the parties had not consented to contract electronically under the Uniform Electronic Transactions Act (UETA), and that PS had failed to authenticate Gilgar's purported electronic signature. We affirm the trial court's holding on the ground that PS failed to meet its initial burden of establishing a valid agreement to arbitrate.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Complaint*

Gilgar worked as a call center sales agent for PS for 10 months in 2016. In her complaint, filed in September 2017, Gilgar alleged causes of action for hostile work environment/sexual harassment, retaliation, failure to prevent harassment/retaliation, wrongful discharge in violation of public policy, negligent retention and negligent infliction of emotional distress. All the claims arose out of her employment with PS.

B. *Motion to Compel Arbitration*

PS moved to compel arbitration, asserting that Gilgar had entered into a valid and enforceable arbitration agreement during its orientation process. PS submitted the declaration of Sybil Enriquez, corporate human resources director, who explained that "[d]uring the orientation process, all newly-hired PS employees are required to review and sign an Arbitration Agreement as a condition of employment. . . . During the orientation process, all newly-hired PS employees also receive, sign, and return to PS an Acknowledgment of Receipt, which confirms receipt of a cumulative set of documents, including the Arbitration Agreement." The declaration purported to attach both documents as exhibits, representing that exhibit 1 was "a true and correct copy of the Arbitration Agreement that Plaintiff signed and submitted to PS," and exhibit 2 was "a true and correct copy of the Acknowledgment of Receipt that Plaintiff signed and submitted to PS." Neither document contained a signature line or a signature by Gilgar.

C. *Arbitration Agreement and Exhibit 2*

The arbitration agreement broadly covers all employment-related disputes, and Gilgar does not dispute its terms. The last paragraph of the arbitration agreement states: "BY SIGNING BELOW AND ACCEPTING EMPLOYMENT OR CONTINUING EMPLOYMENT WITH THE COMPANY, THE EMPLOYEE HEREBY KNOWINGLY AND VOLUNTARILY WAIVES HIS OR HER LEGAL RIGHTS TO CLASS, REPRESENTATIVE, AND COLLECTIVE PROCEDURES AND THE RIGHT TO TRIAL BY JURY OR JUDGE FOR ANY COVERED CLAIM. . . ."

Exhibit 2, characterized by Enriquez as the "Acknowledgment of Receipt," is a seven-column chart in miniscule typeface. It bears no heading but purports to list each of the documents Gilgar acknowledged during orientation, the signature type (either "acknowledgment" or "e-signature") and the "signature statement." According to exhibit 2, Gilgar e-signed the arbitration agreement on January 18, and the "signature statement" read: "By selecting the 'I agree' check box, you are signing this Acknowledgment electronically and confirming that you have read the document. You agree your electronic signature is the legal equivalent of your manual signature." There was no visible "I agree" checkbox on either of the exhibits. Nor did the exhibits indicate where, on any document Gilgar had received, the "signature statement" appeared.

Exhibit 2 also indicated the following purported actions by Gilgar: At 10:50 a.m., she e-signed the telephone monitoring and consent; at 10:51, she e-signed the electronic disclosure consent; at 10:52, she e-signed the business conduct standards, and she acknowledged the corporate benefits brochure; at 10:53, she acknowledged the employee handbook, the California state notice for sexual harassment, the California state notice for paid family leave, the California workers compensation required notices, the Affordable Care Act eligibility and measurement period notice, and the healthcare reform marketplace exchange notice. At 10:54, she e-signed the arbitration agreement. Thus, all 11 documents were allegedly acknowledged or e-signed within four minutes.

D. *Opposition to Motion to Compel Arbitration*

In support of Gilgar's opposition to the motion to compel arbitration, Gilgar's declaration alleged that on January 18, 2016, "a supervisor on the floor told me to sit down at a computer and quickly click through a large number of documents. Because we had a meeting with all of the other new hires beginning soon, I was told that I did not have time to read all of these documents. As a result, I simply clicked through the boxes without thoroughly reading each document so that I would not be late to the meeting." In addition, Gilgar alleged that "I was not given any log-in information such as a unique username or password for the purpose of electronically signing these documents." When she sat down at the computer, she explained, "these documents were already open" and "I did not have to take any additional steps to access these documents such as inputting a username or password. The only thing that I had to do to proceed from one document to the next was click a button that said 'I agree,' or something similar." Gilgar did not recall signing an agreement to arbitrate.

In her opposition, Gilgar disputed that an enforceable agreement existed demonstrating a mutual assent to be bound by its terms; in addition to her declaration setting forth the circumstances of her orientation session, she cited the absence of any signature on either the arbitration agreement or exhibit 2.[1] Gilgar also argued that the purported electronic signature could not be authenticated with evidence showing that it was "attributable to the person allegedly making the signature, meaning that it is the act of that person." (See Civ. Code, § 1633.9, subd. (a).)

E. *Reply to Motion to Compel Arbitration*

In its reply, PS introduced the declaration of Tara Coats, vice-president of HR systems and benefits (Coats Declaration) to authenticate Gilgar's electronic acknowledgment. The Coats Declaration explained the online orientation process, the functionality of the electronic system, and the security protocols to protect the applicant's unique information and access onboarding documents. According to Coats, after an applicant accepts an

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[1] The trial court found Gilgar's opposition and declaration sufficiently raised the issue whether a valid arbitration agreement was formed. We agree.

offer of employment with PS, PS assigns the new hire a unique username and temporary password for its online onboarding system, Workday. Workday requires the new hire to immediately change the temporary password and create a new password known only to him or her, which is encrypted and secure. Coats explained that no one from PS can access the new hire's password, and only Gilgar would have known her Workday password and the answer to the security question/password recovery prompt.

After logging into Workday with the new password, a new hire must click a link to access the onboarding documents. After opening a document, "they would be asked to acknowledge that they reviewed the document and agree to be bound by the document by clicking a box at the end of the document."[2] Only after clicking the acknowledgment box at the end of the document would he or she be able to proceed to the following document. An electronic acknowledgment could be generated only after a new hire used his or her unique login ID and password to access the documents.

F. *Trial Court's Ruling*

The trial court denied the motion, finding: (1) that PS had failed to meet its initial burden of showing the existence of a signed arbitration agreement; (2) that PS had failed to show, until its reply, that Gilgar had signed anything electronically; and (3) that PS had failed to offer any evidence that Gilgar consented to conducting the transaction by electronic means, either expressly or impliedly.

The court explained: "[PS], as the moving party, bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence. As a result, [PS] has the burden of showing that [Gilgar] signed the document electronically and that this electronic signature satisfies the requirements for signing the arbitration agreement." One requirement of the UETA which governs electronically signed agreements, the court explained, is that "the parties consent to conduct the transaction by electronic means."

The trial court ruled that PS did not meet its initial burden of showing the existence of a valid agreement because it failed to show that the parties had consented to conduct the transaction by electronic means: "[PS] offers no

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[2] As quoted above and discussed *infra*, the "signature statement" did not, in fact, refer to the employees being bound by any agreement.

facts about the manner by which [Gilgar] consented to arbitration by signing the document electronically to show that, from the context and surrounding circumstances, including the parties' conduct, that the parties had agreed to conduct the transaction in which they entered into an arbitration agreement by electronic means. Instead, as noted above, [PS] offered an unsigned arbitration agreement and a list of documents with a note that they had been electronically signed by [Gilgar]. This evidence is insufficient to meet [PS's] burden of showing by a preponderance of the evidence that [Gilgar] electronically signed the arbitration agreement."

The court further explained its reasoning: "[PS] does not provide evidence that the parties expressly agreed to enter into an arbitration agreement through electronic means or that the software made it explicitly clear, in understandable language, before and after presenting the arbitration agreement, that by clicking a box on the computer screen, [Gilgar] was entering into a binding agreement to resolve disputes by arbitration. [¶] Further, [PS] has not offered evidence that [Gilgar] electronically signed the arbitration agreement in the context of a series of forms with legal import . . . that would suggest that the electronic signatures on these forms would be binding to show that the parties had agreed to perform the transaction by electronic means. . . . It cannot be determined that, when she clicked the box to acknowledge that she had received these notices, [Gilgar] was consenting to enter into an arbitration agreement and to waive her right to a jury through an electronic transaction. Indeed, [Gilgar] denies any knowledge of having entered into an arbitration agreement."

The court refused to consider the Coats Declaration submitted for the first time in the reply brief. However, it explained that even if it were to consider the Coats Declaration, PS would still be unable to meet its initial burden of proving the existence of a valid agreement: "[T[he evidence still falls far short of establishing [Gilgar's] knowing electronic signature on an arbitration agreement." The court further found that even considering the Coats Declaration, Gilgar had sufficiently challenged the authentication of her purported electronic signature.

DISCUSSION

A. *Standard of Review*

An order denying a petition to compel arbitration is generally reviewed for an abuse of discretion, and the de novo standard of review applies only where the denial presents a pure question of law. (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1056-1057 (*Espejo*).) However, "[t]here is no uniform standard of review for evaluating an order denying a motion to compel arbitration. [Citation.] If the court's order is based on a decision of fact, then we adopt a substantial evidence standard. [Citations.] Alternatively, if the court's denial rests solely on a decision of law, then a de novo standard of review is employed. [Citations.]" (*Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419, 1425.)

In this case, the trial court made factual findings based on evidence presented by the parties, from which it concluded that PS had failed to meet its burden of proving the existence of an enforceable arbitration agreement. To the extent there are material facts in dispute, "'we accept the trial court's resolution of disputed facts when supported by substantial evidence; we presume the court found every fact and drew every permissible inference necessary to support its judgment. [Citations.].'" (*Carlson v. Home Team Pest Defense, Inc*. (2015) 239 Cal.App.4th 619, 630.)

B. *The Trial Court Did Not Err in Finding No Agreement to Arbitrate.*

1. *Initial Burden of Proving the Existence of a Valid Agreement Under General Contract Law*

Under both federal and state law, the threshold question presented by a petition to compel arbitration is whether the parties formed a valid agreement to arbitrate. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396; *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59.) We apply general California contract law in making this determination. Contract law requires mutual consent, that the parties agree "upon the same thing in the same sense." (Civ. Code, § 1580; *Lawrence v. Walzer & Gabrielson* (1989) 207 Cal.App.3d 1501, 1505 (*Lawrence*) ["'arbitration is consensual in nature'"].) ""Absent a clear agreement to submit disputes to

arbitration, courts will not infer that the right to a jury trial has been waived.'"" (*Sparks v. Vista Del Mar Child & Family Services* (2012) 207 Cal.App.4th 1511, 1518 (*Sparks*), abrogated on other grounds by *Harris v. Tap Worldwide LLC* (2016) 248 Cal.App.4th 373.) "The petitioner bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, while a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense." (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842 (*Ruiz*).)

Thus, notwithstanding "'the cogency of the policy favoring arbitration and despite frequent judicial utterances that because of that policy every intendment must be indulged in favor of finding an agreement to arbitrate, the policy favoring arbitration cannot displace the necessity for a voluntary agreement to arbitrate.'" (*Lawrence, supra*, 207 Cal.App.3d at p. 1505.) California law is clear – "an offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he was unaware, contained in a document whose contractual nature is not obvious. [Citations.]" (*Windsor Mills, Inc. v. Collins & Aikman Corp.* (1972) 25 Cal.App.3d 987, 993.)

PS argues the trial court committed error by confusing its initial pleading burden of alleging the existence of an arbitration agreement with its ultimate burden of proving the authenticity of Gilgar's electronic signature. (See *Espejo, supra*, 246 Cal.App.4th at pp. 1060-1061.) The trial court's ruling makes clear, however, that even before reaching the issue of authentication, it found PS had not met its initial burden of alleging the existence of a valid arbitration agreement. The trial court accurately described exhibit 2 as merely a "computer print-out identifying a number of documents and stating that the documents were signed electronically." The trial court further correctly observed that the language of the "signature statement" did not, by its terms, bind Gilgar to arbitration. The "signature statement" advised Gilgar that "[b]y selecting the 'I agree' box, you are signing this Acknowledgment electronically and confirming that you have read the document." Acknowledging that one has read a document is not an agreement to be bound by its terms. (See *Mitri v. Arnel Management Co.*

(2007) 157 Cal.App.4th 1164, 1173 (*Mitri*) [rejecting employer's argument that employee's signature on an acknowledgment of receipt constituted an agreement to arbitrate: "Conspicuously absent from the acknowledgment receipt form is any reference to an agreement by the employee to abide by the . . . employee arbitration provision."].) There was no mention of the arbitration agreement in the "signature statement" on exhibit 2, and no signature or "I agree" checkbox visible on either document.[3] Finding no actual signature, no signature line or block, no checkbox affirmatively marked "I agree," and no language in the "signature statement" expressly binding Gilgar to arbitration, the trial court reasonably concluded PS had failed to show the formation of a valid arbitration agreement.

PS relies on this court's decision in *Espejo* to argue that it met its initial burden of establishing a valid arbitration agreement. The central issue in *Espejo* was whether the defendants were required to establish the authenticity of an electronic signature as part of their initial burden of establishing a valid arbitration agreement. (*Espejo, supra,* 246 Cal.App.4th at p. 1060.) We held that the defendants were not required to authenticate the signature until it was challenged, and that the defendants had "met their initial burden by attaching to their petition a copy of the purported arbitration agreement bearing Espejo's electronic signature." (*Ibid.*) The

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[3] We note, moreover, that unlike the agreements in *Espejo, Ruiz,* and *Rosas,* the arbitration agreement here contained no signature line, signature block, or requirement that Gilgar input personal data in order to affix an electronic signature assenting to its terms. (See *Espejo, supra,* 246 Cal.App.4th at pp. 1052-1053 [arbitration agreement contained signature block, with employee's name typed in, immediately below notification that by signing, employee agreed to its terms]; *Ruiz, supra,* 232 Cal.App.4th at p. 840 [employee's name, along with date of signature, appeared in print on arbitration agreement]; *Rosas v. Macy's, Inc.* (C.D. Cal. Aug. 24, 2012, No. CV11-7318 PSG (PLAx)) 2012 U.S. Dist. LEXIS 121400 (*Rosas*) at *5 [employee was required to enter Social Security number, date of birth and zip code in order to affix electronic signature consenting to arbitration agreement]. The sole directive PS claims was before Gilgar advised that by clicking "I agree," she was electronically signing an acknowledgment of receipt. As noted, acknowledging receipt of an agreement is not tantamount to consenting to its terms. (See *Mitri, supra,* 157 Cal.App.4th at p. 1173.)

plaintiff in *Espejo* challenged only the authentication of his signature, and the court did not analyze whether a purported arbitration agreement had been formed. (*Id.* at pp. 1054-1055.)

Nevertheless, the facts in *Espejo* underscore PS's failure to meet its initial burden. The purported arbitration agreement in *Espejo* was clearly communicated, and its binding effect was apparent and understandable. The plaintiff was required to electronically sign both a dispute resolution procedure (DRP) and an employment agreement which, in a separate paragraph titled "'Dispute Resolution and Mandatory Binding Arbitration,'" explained the parties' intent to follow the terms of the DRP. (*Espejo, supra,* 246 Cal.App.4th at p. 1052.) The last paragraph of the employment agreement, immediately above the signature block, acknowledged that by signing the employment agreement, the plaintiff had read the contract and agreed to its terms, including those set forth in the paragraph regarding arbitration and dispute resolution. (*Ibid.*) The signature line contained the typed name of the employee, and below it was a time-date stamp and IP address identifying the location where the document was signed. (*Ibid.*) The DRP contained a similar acknowledgment paragraph and signature line, acknowledging that the signer had "received and read a copy of the DRP, and agree[d] to abide by the DRP." (*Id.* at p. 1053.) In contrast, the "signature statement" relied on by PS did not purport to bind Gilgar to the terms of the arbitration agreement, and there was no signature line or signature block that exhibited her consent and made the binding effect of the arbitration agreement apparent. The evidence fell short of establishing, by a preponderance of the evidence, the """clear agreement to submit disputes to arbitration""" that was PS's initial evidentiary burden. (*Sparks, supra*, 207 Cal.App.4th at p. 1518.)

2. *Consent to Conduct the Transaction Electronically Under the UETA*

Our inquiry regarding the existence of a valid arbitration agreement necessarily encompasses and overlaps with the UETA's foundational requirement that parties who contract electronically must have "agreed to conduct the transaction by electronic means." (Civ. Code, § 1633.5, subd. (b); see *Rosas, supra,* 2012 U.S. Dist. LEXIS 121400 at *14 [analyzing

enforceability of arbitration agreement by examining whether parties "agreed to contract through electronic means" under UETA]; *Cortez v. Ross Dress for Less, Inc.* (C.D. Cal. Apr. 10, 2014, No. EDCV 13-01298 DDP (DTBx)) 2014 U.S. Dist. LEXIS 50569 (*Cortez*) at *6-7 [finding that plaintiffs consented to arbitration electronically under UETA, and thus "circumstances satisfy the requirement for the creation of a valid contract"].) "Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct." (Civ. Code, § 1633.5, subd. (b).) "The absence of an explicit agreement to conduct the transaction by electronic means is not determinative; however, it is a relevant factor to consider." (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 989.) The UETA provides that "[a] *record or signature* may not be denied legal effect or enforceability solely because it is in electronic form[,]" and that "[a] contract may not be denied legal effect or enforceability solely because an electronic *record* was used in its formation." (Civ. Code, § 1633.7, subds. (a), (b), italics added.)

Courts have held that arbitration agreements signed electronically are enforceable even when the employee disputes the electronic signature, or the purported electronic signature formed by clicking an "I agree" checkbox, as in the present case. (See, e.g., *Cortez, supra,* 2014 U.S. Dist. LEXIS 50569 at *6-7; *Rosas, supra,* 2012 U.S. Dist. LEXIS 121400 at *14.) Both parties rely on *Cortez* and *Rosas* to analyze whether Gilgar consented to contract electronically under the UETA. *Rosas* and *Cortez* are instructive in their reasoning, although their application compels us to a different result.

In *Rosas*, the district court held the parties had consented to contract electronically under the UETA based on the express language of the acknowledgment and the context in which the agreement was signed. The defendant notified employees of its arbitration program in "numerous ways," including on-the-job application, the new hire brochure, the arbitration program document, and the opt-out form contained within the brochure. (*Rosas, supra*, 2012 U.S. Dist. LEXIS 121400 at *4.) In addition, employees were asked to sign an acknowledgment form affirming they had received the brochure and understood they would be "automatically covered" by the arbitration program unless they opted out within 30 days. (*Id.* at *5.) To

sign the forms electronically, the employee had to "enter his or her social security number, month and day of birth, and zip code in order to attach his or her 'signature' to the document." (*Ibid.*) The electronic records showed that the plaintiffs had acknowledged certain documents, elected or declined certain benefit options, entered demographic information, and declared the number of allowances in their W-4. (*Id.* at *6-10.) On this record, the district court held: "The parties here agreed to contract through electronic means. First, the express language of the . . . Acknowledgment Form indicates the parties agreed to contract electronically. Moreover, the . . . Acknowledgment Form was presented in the context of a series of forms with legal import (e.g., an EEO form, a direct deposit form, a W-4 form, and an 1-9 form), thus reasonably suggesting that electronic signatures on these forms would be binding." (*Id.* at *14.)

Citing *Rosas*, the court below concluded that Gilgar had not consented to contract electronically under the UETA because there was no express agreement to do so, and the other documents Gilgar reviewed in context did not carry the same "legal import" as the arbitration agreement. The evidence in the record supports the trial court's conclusion. The other orientation documents Gilgar supposedly "acknowledged" or "e-signed" were largely required notices that were informational in nature, and would not reasonably have put her on notice that by clicking "I agree," she had formed an enforceable contract. Unlike *Rosas*, the electronic record does not reveal that Gilgar exercised any discretion in selecting or declining her options, or interacted with the software in a way that would suggest an understanding of what she agreed to.[4] (*Rosas, supra*, 2012 U.S. Dist. LEXIS 121400 at *14.) Indeed, exhibit 2 suggests that she simply clicked "I agree" in order to advance through 11 documents in four minutes. Any distinction between a document requiring "acknowledgment" or an "e-signature" is not apparent.

In *Cortez*, the express language of the acknowledgment and the software's functionality established the plaintiffs' consent to conduct a transaction electronically under the UETA. The defendant submitted forms

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[4] The Coats Declaration states that new hires were required to "fill in certain personal information." That information is nowhere identified, and exhibit 2 does not show what information, if any, was entered.

signed and dated by the plaintiffs in 2004 "acknowledging receipt and agreeing to the terms of the . . . 'Arbitration Policy,'" which the plaintiffs again signed electronically in 2011 by clicking "I agree." (*Cortez, supra*, 2014 U.S. Dist. LEXIS 50569 at *2-3.) The district court was persuaded by the software's functionality, which provided plaintiffs sufficient notice of the arbitration agreement to establish their consent: "The evidence shows that the software through which employees were asked to sign the DRA made explicitly clear, in understandable language, both before and after presenting the text of the DRA, that by clicking 'I agree,' the employees were entering into a binding agreement that disputes arising from their employment would be resolved by arbitration rather than by a court or jury. [Citation.] These circumstances satisfy the requirements for the creation of a valid contract under [the UETA]." (*Id.* at *6-7.) Here, the trial court found that, unlike *Cortez*, the Workday software did not make "explicitly clear, in understandable language, before and after presenting the arbitration agreement, that by clicking a box on the computer, [Gilgar] was entering into a binding agreement to resolve disputes by arbitration." We agree. PS has not presented any evidence that, based on the context and surrounding circumstances, Gilgar consented to arbitration under the UETA.

Unlike the plaintiffs in *Rosas* and *Cortez*, Gilgar had little notice from PS, the express language of the agreement, the legal import of the other documents she signed at the same time, or the software's functionality and interactivity of the legal significance and binding effect of any arbitration agreement she acknowledged with a mere click. PS did not challenge Gilgar's account of the circumstances surrounding her orientation or her description of the onboarding process. Gilgar stated she was told to "quickly click through" the documents so she could attend the meeting for new hires, and was expressly told she would "not have time to read" all the documents. Indeed, the four-minute span during which she allegedly clicked through the multitude of documents supports her assertion, and the trial court was entitled to credit it. (Cf. *Magno v. The College Network, Inc.* (2016) 1 Cal.App.5th 277, 285 [Substantial evidence supported trial court's findings of procedural unconscionability "based on evidence plaintiffs were young, were rushed through the signing process, had no ability to negotiate, did not see

the arbitration language 'buried on the back page of the preprinted carbon paper forms,' and did not separately initial the arbitration clause."].) On this record, we find substantial evidence to support the trial court's conclusion that Gilgar did not consent to binding arbitration through electronic means.

Under general contract law and the UETA, we find no error in the trial court's determination. Because we conclude PS failed to meet its initial burden of establishing a valid agreement to arbitrate, we need not consider the other grounds relied upon by the trial court in denying the motion.[5]

3. *The Trial Court Was Not Required to Hold an Evidentiary Hearing.*

For the first time on appeal, PS contends the trial court abused its discretion in failing to hold "a fact-finding hearing to resolve any doubts it may have had about Ms. Gilgar's consent to sign the Arbitration Agreement electronically." We disagree. Notably, PS never requested an evidentiary hearing. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 826 [declining to consider issue not raised in the trial court because failure to object was "an implied waiver of the objection"].) Moreover, PS had ample opportunity to submit evidence contradicting Gilgar's account of the circumstances under which she completed the orientation process. The evidence it submitted in reply was the Coats Declaration, which addressed the authenticity of Gilgar's alleged signature. Based on the evidence before it, the trial court clearly had no "doubts" to "resolve" regarding PS's failure to meet its burden of showing an enforceable arbitration agreement. We find no

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[5] In light of *Espejo*, which established that only after Gilgar "challenged the validity of that signature in [her] opposition [was PS] then required to establish by a preponderance of the evidence that the signature was authentic," we agree with PS that the Coats Declaration should have been considered. (*Espejo, supra*, 246 Cal.App.4th at p. 1060 [finding defendant's supplemental declaration filed after moving papers timely because it authenticated the electronic signature plaintiff challenged in opposition].) However, the court's error was harmless, because it held that even before reaching the issue of authentication – to which the Coats Declaration was relevant – PS had failed to meet its initial burden of proving the existence of a valid agreement. The Coats Declaration provides no evidence to the contrary, nor does it refute the court's conclusion that the parties did not consent to conduct the transaction by electronic means.

abuse of discretion. (See *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 414 [rejecting rule that trial court abuses its discretion by resolving evidentiary conflicts without hearing live testimony].)

DISPOSITION

The judgment of the trial court is affirmed. Appellant is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P. J.

We concur:

WILLHITE, J.

CURREY, J.