**NOT FOR PUBLICATION**

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| BENJAMIN CHARLES, on behalf of himself and others similarly situated,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>PORTFOLIO RECOVERY ASSOCIATES, LLC,<br><br>Defendant-Appellee. | No. 22-35613<br><br>D.C. No. 3:17-cv-00955-YY<br><br>MEMORANDUM[*] |

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernandez, Chief District Judge, Presiding

Submitted April 4, 2024[**]
Portland, Oregon

Before: OWENS and FRIEDLAND, Circuit Judges, and RAYES,[***] District Judge.

In 2008, Benjamin Charles opened a credit card account with U.S. Bank

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Douglas L. Rayes, United States District Judge for the District of Arizona, sitting by designation.

("USB"). In 2015, Defendant Portfolio Recovery Associates, LLC ("PRA") purchased Charles' account from USB and initiated a collection action against Charles in Oregon state court to recover an unpaid balance. After the collection case was closed, Charles filed a putative class action in federal court alleging that PRA violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, in prosecuting its state court case against him. PRA moved to compel arbitration and stay the proceedings, relying on an arbitration clause contained in Charles' credit card agreement. The district court granted PRA's motion and the matter was arbitrated. Eventually, the district court dismissed the action without prejudice.

Charles appeals the district court's order compelling arbitration. We have jurisdiction under 9 U.S.C. § 16(a)(3) and review *de novo* the district court's order compelling arbitration. *See Ziober v. BLB Res., Inc.*, 839 F.3d 814, 816 (9th Cir. 2016). We affirm.

1. The district court properly concluded that Ohio law governs the validity of the arbitration agreement. Generally, "a federal court sitting in diversity applies the conflict-of-law rules of the state in which it sits." *Harris v. Polskie Linie Lotnicze*, 820 F.2d 1000, 1002 (9th Cir. 1987). But where, as here, a federal court's jurisdiction is not based on diversity of citizenship, federal common law choice-of-law rules apply. *See Schoenberg v. Exportadora de Sal, S.A. de C.V.*, 930 F.2d 777,

782 (9th Cir. 1991). Federal common law follows the Restatement (Second) of Conflict of Laws, under which Ohio law, as the parties' choice of law, governs the validity of the arbitration clause. *See id.*; Restatement (Second) of Conflicts of Laws § 187(2) (1971) (providing that law of the state chosen by the parties to govern their contractual rights will be applied unless there is no reasonable basis for parties' choice or if application of chosen law would be contrary to fundamental policy of the state with otherwise applicable law).

2. An enforceable arbitration clause exists. The Federal Arbitration Act ("FAA") provides that "an agreement in writing to submit to arbitration an existing controversy . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Charles contends that for an arbitration agreement to constitute an "agreement in writing" under the FAA, mutual assent to the agreement must be in writing. We disagree. "While the FAA 'requires a writing, it does not require that writing to be signed by the parties.'" *Nghiem v. NEC Elec., Inc.*, 25 F.3d 1437, 1439 (9th Cir. 1994) (quoting *Genesco, Inc. v. T. Kakiuchi & Co.*, 815 F.2d 840, 846 (2d Cir. 1987)). Moreover, "[i]n determining the validity of an agreement to arbitrate, federal courts ' . . . apply ordinary state-law principles that govern the formation of contracts.'" *Circuit City Stores, Inc. v. Adams*, 279 F.3d 889, 892 (9th Cir. 2002) (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). Under

Ohio law, "[t]he manifestation of assent may be made wholly or partly by written or spoken words[,] or by other acts or by the failure to act." *McSweeney v. Jackson*, 691 N.E.2d 303, 308 (Ohio Ct. App. 1996). Ohio courts have held that a credit card agreement is enforceable "whereby the issuance and use of a credit card creates a legally binding agreement." *Bank One, Columbus, N.A. v. Palmer*, 579 N.E.2d 284, 285 (Ohio Ct. App. 1989); *see also Citibank, N.A. v. Hine*, 130 N.E.3d 924, 938 (Ohio Ct. App. 2019). Charles' use of his credit card and account constitutes assent to the credit card agreement, including the arbitration clause contained within it.

3. The district court did not err in holding that PRA could enforce the arbitration clause. Charles contends PRA only purchased the debts, not the contract rights, associated with his account. Not so. In the sale agreement, USB assigned to PRA all rights, title, and interest in Charles' account. This broad language encompasses the right to enforce agreements associated with the account, including the arbitration clause. *See Citizens Fed. Bank, F.S.B. v. Brickler*, 683 N.E.2d 358, 364 (Ohio Ct. App. 1996) ("[T]he assignee of a contract takes that contract with all rights of the assignor . . . . The assignee stands in the shoes of the assignor[.]").

4. Charles' FDCPA claims fall within the scope of the arbitration clause. "The [FAA] establishes that, as a matter of federal law, any doubts concerning the

scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983). "This presumption [of arbitrability] carries particular force where the arbitration clause is phrased in broad and general terms." *Westinghouse Hanford Co. v. Hanford Atomic Metal Trades Council*, 940 F.2d 513, 517 (9th Cir. 1991). To require arbitration, a party's "factual allegations need only 'touch matters' covered by the contract containing the arbitration clause." *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 721 (9th Cir. 1999). The arbitration clause at issue is broad, covering "any claim, dispute, or controversy" that "arises from or relates to" Charles' credit card agreement or his account and the credit issued thereunder. In his complaint, Charles alleges that PRA committed unfair debt collection practices by providing him with false information and using requests for admissions to make misleading implications about PRA's ability to take valuable property. The factual allegations underlying such claims relate to how PRA collected the unpaid balance that Charles incurred on his account. Given the presumption of arbitrability and the broad language of the arbitration clause, Charles' FDCPA claims are arbitrable.

**AFFIRMED**.