IN RE: **ATRIUM MEDICAL CORP. C-QUR MESH PRODUCTS LIABILITY LITIGATION** **This relates to: ALL CASES**	**MDL No. 2753** **MDL Docket No. 1:16-md-02753-LM**

UNOPPOSED MOTION FOR THE ALLOWANCE OF DOCUSIGN

Plaintiffs by and through Lead Counsel seek an Order allowing individual Plaintiff's in these actions to utilize DocuSign to execute settlement documents to facilitate the final resolution of his case. Therefore, Plaintiffs in the above entitled action seek an Order from this Honorable Court allowing the use of DocuSign to procure electronic signatures from any individual Plaintiff(s) that may resolve in the future, in lieu of traditional "wet ink" signature for settlement documents including releases and other documents that may be necessary to complete the settlement process. The Plaintiffs rely upon the attached memorandum of law in support of their unopposed motion.

Dated: December 10, 2021

Respectfully Submitted,

/s/ Jonathan D. Orent
Jonathan D. Orent
MOTLEY RICE LLC
55 Cedar Street, Suite 100
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401-457-7700
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Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

This 9th day of December 2021.

By: /s/Jonathan D. Orent
Jonathan D. Orent
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IN RE:	**MDL No. 2753**
ATRIUM MEDICAL CORP. C-QUR MESH PRODUCTS LIABILITY LITIGATION	**MDL Docket No. 1:16-md-02753-LM**
This relates to: ALL CASES	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS UNOPPOSED MOTION FOR THE ALLOWANCE OF DOCUSIGN

Lead Counsel on behalf of Plaintiffs' seek an Order allowing Plaintiffs in these actions to utilize DocuSign to execute settlement documents to facilitate the final resolution of his case. Therefore, Plaintiffs in the above entitled action seek an Order from this Honorable Court allowing the use of DocuSign to procure electronic signatures from any individual Plaintiff(s) that may resolve in the future, in lieu of traditional "wet ink" signature for settlement documents including releases and other documents that may be necessary to complete the settlement process.

nder H Rev. Stat. 294-E:9:

> **Attri tio a d e ect o electro ic record a d electro ic si at re.-**
>
> I. n electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
>
> II. The effect of an electronic record or electronic signature attributed to a person under paragraph I is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties agreement, if any, and otherwise as provided by law.

hile Plaintiffs have been unable to find any Court in ew Hampshire that has previously examined the use of DocuSign for the procurement of electronic signatures, Courts throughout the Country have approved of the use of DocuSign in class action and mass tort settings. Other Courts have made holdings supporting the ade uacy of the security measures of the software. See Exhibit .

DocuSign e-signatures utilize security management processes and development practices, including business continuity and disaster recovery planning, employee training, secure coding practices, formal code reviews and regular code-base security audits. DocuSign e-signatures also come with an electronic record that serves as an audit trail and proof of the transaction. The audit trail includes the history of actions taken with the document, including the details of when it was opened, viewed and signed. If the signer agreed to allow access to their location, the record will also show the geolocation where it was signed. If one of the signers disputes their signature, or if there's any uestion about the transaction, this audit trail is available to all participants in the transaction and can resolve such objections. See https://www.Docusign.com/blog/is-your-esignature-safe accessed pril 28, 2021.

Moreover, DocuSign is in compliance with applicable laws, regulations and industry standards, governing digital transactions and electronic signatures, including:

ISO 27001:2013: the highest level of global information security assurance available today

SOC 1 Type 2 and SOC 2 Type 2: both reports evaluate internal controls, policies and procedures, with the SOC 2 report focusing on those directly related to

security, availability, processing integrity, confidentiality and privacy at a service organization

Payment Card Industry Data Security Standard (PCI DSS): ensures safe and secure handling of credit card holder information

Cloud Security lliance (CS) Security Trust ssurance and Risk (ST R) program: comprises key principles of transparency, rigorous auditing and harmonization of standards

bility to comply with specialized industry regulations, such as HIP , 21 CFR Part 11 and specified rules from the FTC, FH , IRS and FI R

See https://www.Docusign.com/blog/is-your-esignature-safe accessed pril 28, 2021.

Therefore, Plaintiffs re uest this Honorable Court R T their motion and issue an order allowing the use of DocuSign.

Dated: December 10, 2021

Respectfully Submitted,

/s/ Jonathan D. Orent
Jonathan D. Orent
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401-457-7700
401-457-7708 Fax
Counsel for Plaintiffs

CERTIFIC TE OF SER ICE

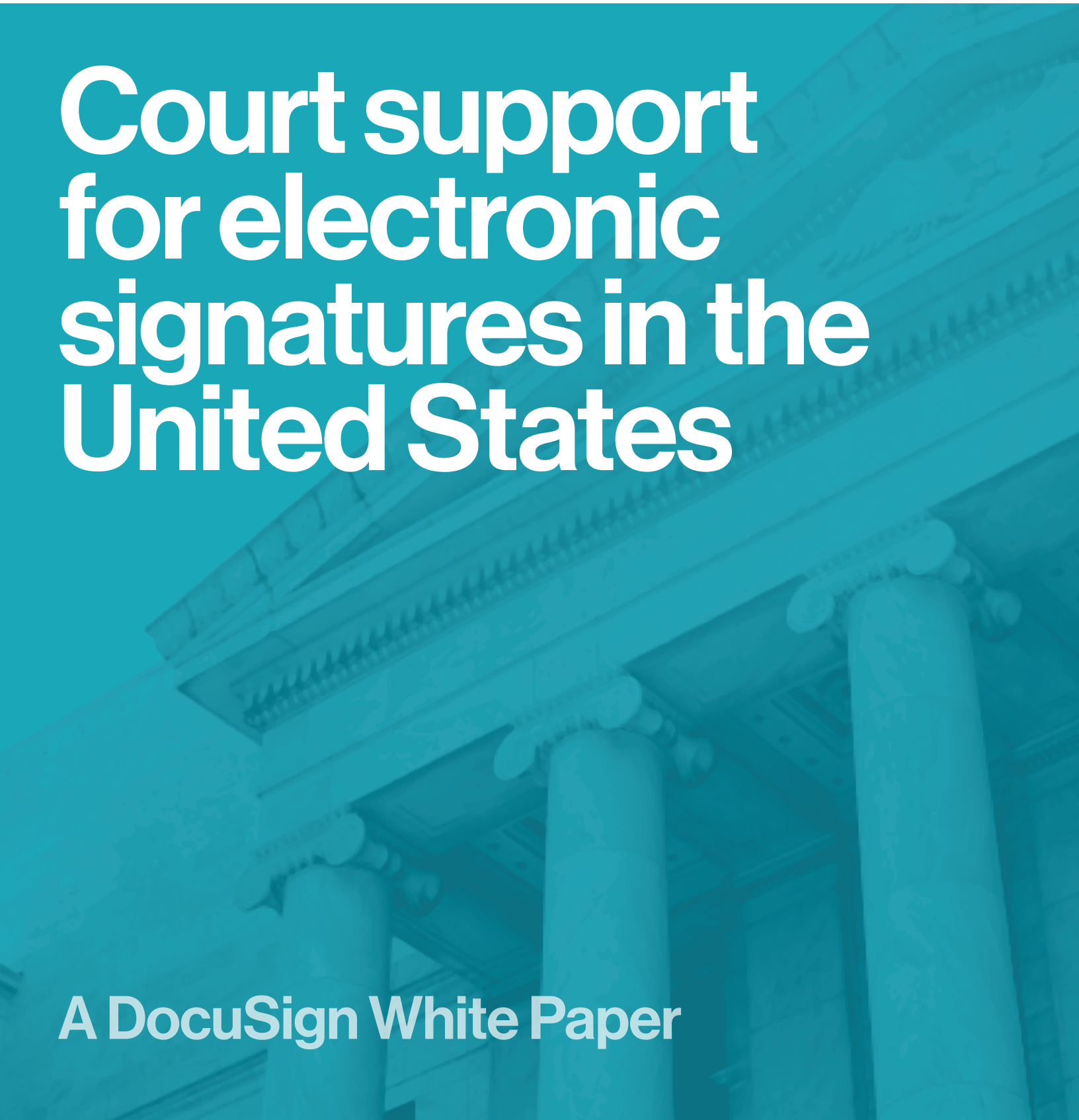
I hereby certify that a true and correct copy of this document has this date been filed electronically with the Clerk of Court using the CM/ECF system. otice of these filings will be sent to all counsel of record and parties by operation of the Court's electronic filing system.

/s/ Jonathan D. Orent
Jonathan D. Orent

Exhibit A

DocuSign®

Court support for electronic signatures in the United States



A DocuSign White Paper

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Overview of applicable case law

Background: electronic signatures are well established as legally binding

Judicial opinions addressing a challenge to the legality of e-signatures in the United States are relatively rare. This is likely a function of the widespread adoption of electronic signatures (over one billion signing transactions with DocuSign alone) combined with the effectiveness of the Uniform Electronic Transactions Act (UETA) and the Electronic Signatures in Global and National Commerce Act (ESIGN) in confirming their legal validity around the start of the millennium.

For the vast majority of use cases, and in nearly all jurisdictions, a properly executed electronic signature carries the same legal effect as a "wet" signature. Indeed, as the court declared in *Keller v. Pfizer, Inc*., 2018 WL 5841865 (M.D. Pa. Nov. 8, 2018):

> "Plaintiff's argument that she should not be bound by the arbitration agreement simply because she did not sign a physical paper contract is as archaic today as the notion that James Joyce is unlawfully obscene."

Analysis of U.S. case law involving DocuSign

DocuSign surveyed reported cases across all United States jurisdictions (through June 2019) where the court indicated that the DocuSign eSignature service was used. *In none of these rulings was a DocuSign signature denied the same legal effect as a paper-and-ink signature for any use case covered by ESIGN.*

DocuSign also surveyed published court orders specifying the use of DocuSign as an approved means of participating in certain kinds of legal proceedings; several such court orders have appeared from 2017 to 2019.

In effect, these cases and court orders fall into four categories:

1. **Cases where a DocuSign signature was ruled legally binding in the face of a direct challenge by a signer,** underscoring the evidentiary value of the DocuSign audit trail, which effectively logs the who, what, when, and how of the signing
2. **Cases in which the court acknowledged that DocuSign was used to create a binding contract,** although the electronic signature was not central to the issues of enforceability for the underlying agreement in dispute
3. **Cases where electronically signed court filings were deemed inadmissible based on local court rules** specifically requiring a paper-based process or other procedural requirements (such use cases are expressly excluded from ESIGN)
4. **Court orders approving DocuSign as an accepted methodology for participation in certain legal proceedings,** including class actions and settlements, Fair Labor Standards Act (FLSA) collective actions, and the interlocutory sale of real property

Below are brief summaries of these opinions and court orders, categorized as described above.

DocuSign eSignature audit trail relied upon as key evidence

In these opinions, the DocuSign audit trail was relied upon as evidence of a binding, enforceable agreement in the face of allegations by a party that it did not actually sign the agreements or did not intend to be bound by the terms contained therein.

IO Moonwalkers, Inc. v. Banc of Am. Merch. Servs., LLC

814 S.E.2d 583 (N.C. Ct. App. 2018)

Court affirmed summary judgment that plaintiff had ratified the agreement, relying on DocuSign audit trail as evidence of intent.

In this business banking dispute, the CEO of plaintiff IO Moonwalkers asserted that he had not signed defendant's agreement for credit card services. The North Carolina Court of Appeals affirmed the lower court's grant of summary judgment against plaintiff on the basis that he had ratified the agreement. In so doing, the court relied on the DocuSign audit trail showing that someone with access to the corporate email account had accessed, signed, and reviewed the agreement at specific times:

> "Were this a more traditional contract negotiation, in which the parties had mailed proposed contracts back and forth, a sworn affidavit stating that Moonwalkers never reviewed or signed the contracts might be sufficient to create a genuine issue of material fact...But this case is different because [defendant] presented evidence from the DocuSign records... Simply put, the electronic trail created by DocuSign provides information that would not have been available before the digital age...." (at 586-587)

As plaintiff had ratified the agreement, the court ruled, there was no need to rule on any further question of the signer's identity. The court also noted that plaintiff's CEO had used DocuSign previously and was thus familiar with the eSignature process, suggesting the additional value of using an industry-leading signature service.

Alliant Credit Union v. Abrego

No. 76669-4-1, 2018 Wash. App. LEXIS 2964 (Ct. App. Dec. 31, 2018)

Allegation of forged DocuSign eSignature for an auto loan was not enough to create a genuine issue of material fact as to the existence of an enforceable contract.

In this unpublished opinion, the Washington Court of Appeals affirmed summary judgment for plaintiff on a breach of contract claim over defendant's default on a 2014 auto loan. Defendant issued a series of allegations challenging the existence of a valid loan, including that the e-signature had somehow been forged. The court highlighted the extensive authentication process employed by DocuSign, agreeing that no genuine issue of material fact exists as to the existence of an enforceable agreement.

Obi v. Exeter Health Resources, Inc.

WL2142498 (D.N.H. Ct. 2019)

Plaintiff's claim of forgery was rejected in light of the fact that she had reviewed and executed the documents from her DocuSign account, creating a binding and enforceable contract.

In a breach of contract claim in the context of employment at a hospital, Plaintiff Dr. Obi alleged that one or another of the defendants had "forged" her signature onto a Placement Order, even though she did not challenge the authenticity of her signature on an overarching Client Services Agreement. In an unpublished opinion, the U.S. District Court for the District of New Hampshire granted summary judgment to the defendants, finding the plaintiff's "somewhat vague claim" of forgery to be "wholly unsupported by the record," as she had reviewed and signed the relevant documents via her DocuSign account.

In re Henriquez

559 B.R. 900 (Bankr. C.D. Cal. 2016)

Court relied on DocuSign audit trail as evidence of the signer's intent to be bound by the terms of the agreement.

In this bankruptcy matter, the court ordered the payment of legal fees to plaintiff (i.e. did not except them from discharge), rejecting Defendant Henriquez's argument that he had believed he would only need to pay if plaintiff had been successful in modifying a loan. The court relied, in part, on the DocuSign audit trail showing when plaintiff accessed and signed the documents – including initialing each page – in concluding that he was well on notice that he would need to pay even if the loan modification were unsuccessful.

Designs for Health, Inc. v. Miller

187 Conn. App. 1 (2019)

Evidence that defendant had DocuSigned an agreement containing a forum selection clause was sufficient to establish the court's personal jurisdiction over defendant.

In this breach of contract matter pertaining to an agreement to sell plaintiff's health care products, the Connecticut trial court granted dismissal on the basis that plaintiff had not met its burden to establish the court's personal jurisdiction over defendant. The appellate court reversed the dismissal in light of the forum selection clause in the DocuSigned agreement, finding that the DocuSign Certificate of Completion and other evidence provided by plaintiff met its prima facie burden to establish personal jurisdiction over defendant, who (the court noted) had used DocuSign previously to sign agreements.

ADHY Investments Properties, LLC v. Garrison Lifestyle Pierce Hill LLC

41 Misc. 3d 1211(A) (N.Y. Sup. Ct. 2013)

DocuSigned agreement, including arbitration clause, was ratified by plaintiff, rendering moot the question of whether his agent had signed the agreement without proper authorization.

Garrison Lifestyle sought to enforce a contractual requirement to arbitrate after ADHY refused to close on the purchase of real properties won in a successful bid on Auction.com. ADHY claimed that its principal did not sign the sales agreements, which contained a requirement to arbitrate. To reach its decision, the New York state trial court reviewed Auction.com's practice of using DocuSign to secure signatures for the relevant contracts. The court reasoned that, although petitioner did not sign the agreements (his assistant did), petitioner ratified or adopted as his own the acts of his agent, his assistant.

DocuSign eSignature acknowledged as legally binding

In these opinions, the use of DocuSign eSignature was not central to the dispute over enforceability of the contract terms but was acknowledged by the court as part of the facts surrounding the legal agreement.

Perez-Tejada v. Mattress Firm, Inc.

2019 WL 830450 (D. Mass. February 21, 2019)

Arbitration clause in an employment agreement was part of a binding contract executed using DocuSign.

In this effort by plaintiffs to initiate an overtime wages class action against their employer, defendant Mattress Firm, Inc. was granted its motion to compel individual arbitration instead. All but one plaintiff had accepted the arbitration clause via a DocuSign eSignature process. The remaining plaintiff had accepted the terms via inaction, after multiple warnings that failing to affirmatively opt out of the provision would indicate acceptance. Applying Massachusetts law, the court found that the arbitration provision was not unconscionable and met other requirements for an enforceable agreement.

Guidotti v. Legal Helpers Debt Resolution, LLC

74 F. Supp. 3d 699 (D.N.J. Dec. 3, 2014)

DocuSign had been used to form a binding contract, although the arbitration provision of the underlying agreement was struck down as unconscionable.

In a customer's dispute with various related debt resolution services, the trial court denied defendant's motion to compel arbitration, after which, the case went to the Third Circuit Court of Appeals. The court did not question that a binding contract had been formed but found that there were real questions about whether defendants had presented plaintiff with an agreement to arbitrate. The appeals court vacated the order denying arbitration and remanded the case to the trial court to oversee limited discovery relating to defendant's motion to compel arbitration. After additional discovery and briefing, the trial court found the arbitration requirements to be unconscionable and thereby unenforceable. However, the court agreed that when plaintiff signed agreements using DocuSign, a binding contract was formed.

Woods v. Vector Mktg. Corp.

2014 U.S. Dist. LEXIS 121165 (N.D. Cal. Aug. 28, 2014)

Arbitration clause in a sales representation agreement ruled an enforceable part of a binding contract executed using DocuSign.

Plaintiff Woods and others sought to bring a class action over alleged failures to pay minimum wages. Defendant Vector argued that the court should enforce the agreement to arbitrate (on an individual basis) contained in the contracts signed by plaintiffs. The federal trial court reasoned that because the defendant's Sales Representative Agreement (SRA) included an agreement to arbitrate disputes on an individual basis, defendant's motion to compel arbitration should be granted. In reaching its decision, the court reviewed defendant's onboarding process and determined that the SRA, which plaintiffs had signed using DocuSign, resulted in binding contracts that the court should enforce.

Newton v. Am. Debt Servs.

854 F.Supp.2d 712 (N.D. Cal. 2012)

DocuSign had been used to form a binding contract, although the arbitration provision of the underlying agreement was struck down as unconscionable.

Plaintiff Newton alleged that American Debt Services (ADS) had promised to cut her credit card debt in half but never contacted her creditors and did not settle any of her debts. Newton brought several claims and sought to establish a class action. ADS sought to compel arbitration based on Newton's DocuSigned agreement. Newton challenged the validity of the agreement, arguing she did not see or read the agreement to arbitrate, so it should not apply or, alternatively, should be voided for unconscionability. Citing the ESIGN Act and noting that an electronic signature that complies with the Act is legally binding, the federal court for the Northern District of California found that Newton "assented to the contract and the arbitration clause, and that the arbitration clause is binding on all parties to the contract." However, the court refused to enforce the arbitration clause on grounds of unconscionability.

Pavlov v. Debt Resolvers USA, Inc.

907 N.Y.S.2d 798 (N.Y. Civ. Ct. 2010)

DocuSign had been used to form a binding contract, although the underlying agreement was unenforceable due to defendant's lack of a required service license.

Plaintiff Pavlov sought a refund of money he paid to a debt resolution service, Debt Resolvers, which argued that Pavlov was not entitled to a refund because the agreement he signed using DocuSign did not permit him to obtain one. The New York City Civil Court found that the parties, who used DocuSign to apply signatures to some or all of their agreements, had formed a binding contract. However, the court voided the contract as unlawful because defendant provides services that require a license in NY, and defendant was not licensed.

Use of e-signature for court filings

As indicated above, court filings are expressly not covered under ESIGN. Whether electronic signatures are appropriate to use for documents filed in court may depend on local court and evidentiary rules that, as these opinions show, litigating parties should always heed.

Thomas v. Credit Mgmt., LP

2018 U.S. Dist. LEXIS 83685 (N.D. Ind. May 17, 2018)

While the DocuSign audit trail may have provided sufficient evidence of the date of signature of a declaration, it could not overcome statutory requirement for "under penalty of perjury" language.

In a case alleging violations of the Fair Debt Collection Practices Act, plaintiff submitted a DocuSigned affidavit from her sister in support of her motion for summary judgment. Defendant challenged the admissibility of the affidavit as undated and unsworn. The court evaluated the affidavit under 28 U.S.C. § 1746 ("Unsworn declarations under penalty of perjury") and ruled that, although the DocuSign audit trail provided evidence of the date of signature, the declaration was nonetheless inadmissible as it lacked the requisite language indicating that it had been signed "under penalty of perjury."

In re Mayfield

Nos. 16-22134-D-7, UST-1, 2016 Bankr. LEXIS 2613 (Bankr. E.D. Cal. July 15, 2016)

DocuSign could not be used to satisfy local court rule requiring debtor's counsel to maintain and provide original signed documents, excluding "software-generated" electronic signatures.

Counsel for the debtor seeking bankruptcy status filed various documents to the court with client signatures via DocuSign. The court penalized counsel for not adhering to Local Bankruptcy Court Rules 9004-1(c)(1) (C) and (D), which, it said, require that counsel maintain "originally signed" paper court documents rather than exclusively rely on "software-generated electronic signature." Though the court acknowledged that, under ESIGN, DocuSign and other electronic signature services may be appropriately used in various commercial and other transactions, it determined that "they do not comply with this court's local rule." (Note: Judge Bardwil goes on to suggest that an electronic signature may be more easily forged than a paper-based signature. This comment may best be regarded as *dictum*; it was not based on expert testimony about electronic signatures and was not required for the ruling.)

See also:

Saechao v. Landry's Inc.

No. C 15-00815 WHA, 2016 U.S. Dist. LEXIS 33409 (N.D. Cal. Mar. 15, 2016)

DocuSign could not be used to satisfy court rules for a declaration filed in the context of a class action.

Derrick Fenley v. Rite Aid Corp.

2014 Cal. Super. LEXIS 156 (Cal. Super. Ct. July 2014)

DocuSigned declarations may meet California Code of Civil Procedure requirements that they be "subscribed" (signed with one's own hand), but California Rules of Court require declarants to sign a printed document first.

Use of DocuSign for class actions and related matters

Despite the general limitation of using electronic signatures in the context of court filings, the court orders below reflect the approved use of DocuSign for participation in class actions, FLSA collective actions, and related legal actions.

Joseph v. Velocity, the Greatest Phone Company Ever, Inc.

Case No. 3:18-cv-01174 (S.D. Ohio Jan. 14, 2019)

Approved the use of DocuSign to opt in to a class action.

Weckesser v. Knight Enters. S.E., LLC

Civil Action No. 2:16-cv-02053-RMG, 2018 U.S. Dist. LEXIS 144981 (D.S.C. Aug. 27, 2018)

Approved the use of DocuSign to participate in collective actions under the FLSA.

United States v. Real Prop. Located at 6340 Logan St.

No. 2:16-CV-02259-KJM-CKD, 2018 U.S. Dist. LEXIS 19061 (E.D. Cal. Jan. 23, 2018)

Approved the use of DocuSign in the context of interlocutory sale of real property.

Titus v. The Martin-Brower Company, LLC

Case No. 2:17-cv-00558-JAM-GGH (E.D. Cal. Feb. 27, 2018)

Approved the use of DocuSign to participate in class action settlement agreement.

Brandenburg v. Cousin Vinny's Pizza, LLC

No. 3:16-cv-516, 2017 U.S. Dist. LEXIS 129955 (S.D. Ohio Aug 14, 2017)

Approved the use of DocuSign to participate in collective actions under the FLSA.

In re Anthem, Inc. Data Breach Litig.

No. 15-MD-02617-LHK, 2017 U.S. Dist. LEXIS 137281 (N.D. Cal. Aug. 25, 2017)

Approved the use of DocuSign to participate in class action settlement agreement.

Visit the DocuSign E-Signature Legality Guide to learn about current electronic signature laws, local legal systems, and technology preferences for countries around the world.

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+1-877-720-2040

IN RE: **ATRIUM MEDICAL CORP. C-QUR MESH PRODUCTS LIABILITY LITIGATION** **This relates to: ALL CASES**	**MDL No. 2753** **MDL Docket No. 1:16-md-02753-LM**

PROPROSED ORDER GRANTING PLAINTIFFS UNOPPOSED MOTION FOR THE ALLOWANCE OF DOCUSIGN

hereas, Plaintiffs seek an Order allowing any future Plaintiff(s) in these actions to utilize DocuSign to execute settlement documents to facilitate the final resolution of his case and any cases that may resolve in future.

hereas Plaintiffs' nopposed Motion for an Order for the llowance of the se of DocuSign came before the Court

The Court R TS the Plaintiffs Motion and holds that the use of DocuSign is permissible under H Rev Stat 294-E for use by individual plaintiffs as a means of executing settlement documents including releases.

The Court DIRECTS the Clerk to file a copy of this Order in the MDL Docket o. 1:1 -md-02753 and it shall apply to each member related case previously filed in this Court. In cases subse uently filed in this Court, it shall be the responsibility of the parties to review and abide by all case management orders previously entered by the Court.

SO ORDERED, this day of December, 2021.

McCafferty, J. Clerk