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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHANNON IRELAND-GORDY; STEPHANIE IRELAND GORDY; MELISSA BROAD; JANE DOE, individually and on behalf of all others similarly situated,

Plaintiffs - Appellees,

v.

TILE, INC.; LIFE360 INC.,

Defendants - Appellants,

and

AMAZON.COM, INC.,

Defendant.

No. 25-403

D.C. No. 3:23-cv-04119-RFL

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Rita F. Lin, District Judge, Presiding

Argued and Submitted January 5, 2026
San Francisco, California

Before: GOULD, NGUYEN, and BENNETT, Circuit Judges.

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

Defendant-Appellants Tile, Inc. (Tile) and Life360, Inc. (Life360) appeal the district court's order granting in part and denying in part their motion to compel arbitration. We have jurisdiction under 9 U.S.C. § 16(a)(1)(B). *Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1008 (9th Cir. 2023). Reviewing *de novo* the district court's denial of Appellants' motion to compel arbitration and for clear error any underlying factual findings, *Holley-Gallegly v. TA Operating, LLC*, 74 F.4th 997, 1000 (9th Cir. 2023), we reverse and remand.

I.

This is a putative class action in which Plaintiffs allege that third-party stalkers used Tile Trackers to track Plaintiffs without their consent. Alleging representative harm based on such stalking, Plaintiffs claim that Tile, with oversight from its parent company Life360, designed, marketed, distributed, and serviced the Tile Tracker in violation of California law.

1. Plaintiff-Appellees[1] Melissa Broad and Jane Doe concede that they each agreed to an earlier version of Tile's Terms of Service (Terms)—Broad to the January 2021 Terms (Jan. 2021 Terms) and Doe to the February 2023 Terms (Feb. 2023 Terms) (together, the "earlier Terms").[2] Tile later introduced the October

[1] Plaintiffs Shannon Ireland-Gordy and Stephanie Ireland-Gordy are not parties to this appeal.

[2] The Jan. 2021 and Feb. 2023 Terms differed only in minor ways not relevant to this appeal.

2023 Terms (Oct. 2023 Terms) and attempted to notify Appellees of the update to its Terms. Unlike the earlier Terms, which Appellants contend delegated arbitrability by incorporating the American Arbitration Association (AAA) rules, the Oct. 2023 Terms expressly delegated arbitrability in plain and accessible language. Namely, under the Oct. 2023 Terms, contracting parties "agree[d] to resolve all Disputes" (except certain small and equitable claims) "by binding arbitration," "includ[ing] all threshold issue[s] of arbitrability." Additionally, while the earlier Terms contained an exclusive venue clause which potentially conflicted with arbitrability and the delegation of arbitrability, the Oct. 2023 Terms introduced a nonexclusive venue clause which did not create any potential conflict with arbitrability or the delegation of arbitrability.

In October 2023, Tile sent to all accountholders the Oct. 2023 Notice—an email with the heading "Updated Terms of Service and Privacy Policy"—advising that Tile was updating its Terms. Sent to the email address provided by accountholders during registration, the Oct. 2023 Notice contained a blue-text and bolded hyperlink to the Oct. 2023 Terms. The email told accountholders that "[i]f you continue to use any of [Life360 and Tile's] apps, or access our websites (other than to read the new terms) on or after November 26, 2023, you are agreeing to the [Oct. 2023 Terms]."

Broad did not locate the Oct. 2023 Notice until January 2024, when she affirmatively searched for the email and found it in her spam folder. Broad next accessed the Tile App in January 2024.[3] Broad also sometimes opened the Tile App or asked family and friends to do so to confirm that she was not sharing her location through the app. Tile's records show that Broad last used the Tile App on April 26, 2024, but she does not recall this.

Doe "never knew that Tile sent" the Oct. 2023 Notice and so never "read any revised or updated Terms." In March 2024, Doe downloaded the Tile App to use the Scan and Secure feature to locate her alleged stalker's Tile Tracker. Doe does not specifically recall logging into her account in March 2024, but Tile's records show that she opened the Tile App four times in March and April 2024.

2. After Appellees joined as Plaintiffs through amendment, Appellants moved to compel arbitration against Appellees. In ruling on that motion, the district court found that Broad agreed to the Jan. 2021 Terms and Doe agreed to the Feb. 2023 Terms, but that neither had assented to the Oct. 2023 Terms. Interpreting the earlier Terms, the district court acknowledged that they "expressly incorporate[d] the AAA's rules," which generally constitutes a "clear and unmistakable" delegation of arbitrability to the arbitrator. *See Brennan v. Opus*

[3] Broad's declaration states that she accessed the Tile App in January 2024 "for legal reasons" but does not explain what that means.

Bank, 796 F.3d 1125, 1130–31 (9th Cir. 2015). But the district court determined that any such delegation of arbitrability was irreconcilable with a separate provision granting exclusive jurisdiction and venue to courts in the Northern District of California. The district court therefore determined that, under the earlier Terms, "the parties agreed to have 'all disputes' relating to the 'enforcement, interpretation or validity' of the Terms, including the arbitration provision, be decided exclusively by courts in this District."

In deciding arbitrability, the district court implicitly assumed without deciding that all of Appellees' claims were covered by the scope of the earlier Terms' arbitration agreement. The district court then held, under California law, that the earlier Terms' arbitration agreement was unconscionable insofar as it covered Appellees' claims concerning third parties' use of Tile's products and services, but not unconscionable in its coverage of Appellees' claims concerning their own Tile products and accounts. The district court accordingly granted in part and denied in part Appellants' motion to compel arbitration. This appeal followed.

II.

The parties dispute whether the earlier Terms or the Oct. 2023 Terms govern. The district court held that neither Broad nor Doe assented to the Oct. 2023 Terms. Challenging that ruling, Appellants argue that, under California law,

Tile provided sufficient notice of the Oct. 2023 Terms to users, and that Appellees manifested assent through continued use of the Tile App. Appellees contend that, under California law, they did not receive notice and thus did not assent to the Oct. 2023 Terms. But the parties do not dispute that the Oct. 2023 Terms delegated arbitrability. Thus, if the Oct. 2023 Terms govern, the district court erred by not sending Appellees' claims to arbitration.

"In determining whether the parties have agreed to arbitrate a particular dispute, federal courts apply state-law principles of contract formation." *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022). "Under California law," Tile as the party seeking arbitration bears the burden "to show that it provided notice of a new [terms of service] and that there was mutual assent to the contractual agreement to arbitrate." *Jackson v. Amazon.com, Inc.*, 65 F.4th 1093, 1099 (9th Cir. 2023). "Parties traditionally manifest assent by written or spoken word, but they can also do so through conduct." *Berman*, 30 F.4th at 855. But "the conduct of a party is not effective as a manifestation of his assent unless he intends to engage in the conduct and knows or has reason to know that the other party may infer from his conduct that he assents." *Id.* (alteration accepted) (quoting Restatement (Second) of Contracts § 19(2) (A.L.I. 1981)). These principles "apply with equal force to contracts formed online." *Id.* at 855–56.

In adjudicating web-based contracts, courts applying California law have "devised rules to determine whether meaningful assent has been given." *Id.* at 856. Unless the

> operator can show that a consumer has actual knowledge of the agreement, an enforceable contract will be found based on an inquiry notice theory only if: (1) the [app or] website provides reasonably conspicuous notice of the terms to which the consumer will be bound; and (2) the consumer takes some action, such as clicking a button or checking a box, that unambiguously manifests his or her assent to those terms.

Id.; *see also Keebaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005, 1014 (9th Cir. 2024) (applying the same principles to mobile phone app operators).

1. Applying California law, we determine that Appellees received inquiry notice of the Oct. 2023 Terms.[4] In web-based contracting under California law, the test for inquiry notice asks whether, viewed cumulatively—(1) the "context of the transaction," *Keebaugh*, 100 F.4th at 1016–17; (2) the app or website's design and content; and (3) "other notices given to users"—would have led "a reasonably prudent user" to read the provider's terms of service, *Oberstein v. Live Nation Ent., Inc.*, 60 F.4th 505, 515 (9th Cir. 2023) (quoting *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1177 (9th Cir. 2014)). Because "there is very little empirical evidence regarding" Internet users' expectations, the focus of this

[4] In the district court, Appellants forfeited any argument that Broad agreed to arbitrate by viewing the Oct. 2023 Notice in her spam inbox in January 2024. So we do not consider Broad's viewing the Oct. 2023 Notice in January 2024.

inquiry is "on the providers, which have complete control over the design of their [apps and] websites and can choose from myriad ways of presenting contractual terms to consumers online." *See Sellers v. JustAnswer LLC*, 289 Cal. Rptr. 3d 1, 25 (Ct. App. 2021); *Weeks v. Interactive Life Forms, LLC*, 319 Cal. Rptr. 3d 666, 674 (Ct. App. 2024).[5]

Considering each factor in turn, we determine that the Oct. 2023 Notice placed Appellees on inquiry notice of the Oct. 2023 Terms. The context of the transaction favors finding inquiry notice. As Tile users, each Appellee provided an email address during account registration, and should have expected to receive relevant updates there while the account was active. *See Sellers*, 289 Cal. Rptr. 3d at 26 (recognizing that registration contemplates "some sort of continuing relationship between the putative user and [the provider]" (quotation and emphasis omitted)); *see also Keebaugh*, 100 F.4th at 1020 (downloading a mobile game anticipates ongoing access to the app). And Tile sent the Oct. 2023 Notice to all

[5] Appellees argue that precedents concerning contract formation on websites do not apply because the Oct. 2023 Notice was sent by mass email. But we have made clear that the "elemental principles of contract formation apply with equal force to contracts formed online." *Berman*, 30 F.4th at 855–56. And both website-based and email offers of contract formation take place "online." *Id.* at 856. Thus, the case law on web-based contracting applies. In applying our test for inquiry notice under California law, however, we are attuned to the factual differences between website-based and email offers which may affect the application of the inquiry notice factors.

registered users, including Appellees, "at the email address users associated with their account."

The notice email's design and content also favor finding inquiry notice. In this analysis, we look to the email's "design and content," *Nguyen*, 763 F.3d at 1177, and consider whether it is fair to "assume that a reasonably prudent Internet user would have seen [the notice of the terms and conditions]," *Berman*, 30 F.4th at 856. The design and content of the Oct. 2023 Notice provided reasonably conspicuous notice of the Oct. 2023 Terms because the email's design was "clear and legible," *Patrick v. Running Warehouse, LLC*, 93 F.4th 468, 477 (9th Cir. 2024), and it provided the updated Terms through a link with "customary design elements denoting the existence of a hyperlink," *Berman*, 30 F.4th at 857. The subject line clearly stated that Tile was updating its Terms. And the body contained a hyperlink to the Oct. 2023 Terms in bold, blue text which contrasted against the white background. Although the email did not say specifically that the arbitration agreement would be updated, reasonable notice does not require the email to discuss every revision. *See B.D. v. Blizzard Ent., Inc.*, 292 Cal. Rptr. 3d 47, 58 (Ct. App. 2022) ("If an offeree objectively manifests assent to an agreement, the offeree cannot avoid a specific provision of that agreement on the ground the offeree did not actually read it.").

The lack of other notices given by Tile to its users weighs against finding inquiry notice. *See Weeks*, 319 Cal. Rptr. 3d at 675 (expressing "skepticism of charging parties with knowledge they do not actually possess"); *Long v. Provide Com., Inc.*, 200 Cal. Rptr. 3d 117, 127 (Ct. App. 2016) (recognizing that "the Internet-using public" encompasses a broad "range of technological savvy") (emphasis and quotation omitted)). Focusing "on the provider[]," *Sellers*, 289 Cal. Rptr. 3d at 25, Tile could have done more to ensure that all its users were on inquiry notice of the Oct. 2023 Terms. Tile could, for example, have interrupted users' next visit to the Tile App with a clickwrap pop-up notice. *See Saeedy v. Microsoft Corp.*, 757 F. Supp. 3d 1172, 1199 (W.D. Wash. 2024); *Weeks*, 319 Cal. Rptr. 3d at 675. Because Tile should have known that at least some of its users do not closely monitor email, *see Long*, 200 Cal. Rptr. 3d at 127, and Tile should have furnished additional notices, this factor weighs against finding inquiry notice.

In sum, because the first and second factors favor finding inquiry notice while the third factor weighs against it, we determine that Appellees received inquiry notice of the Oct. 2023 Terms. Evaluating whether inquiry notice has been established is, however, always a "fact-intensive analysis," *Godun v. JustAnswer LLC*, 135 F.4th 699, 710 (9th Cir. 2025), and we do not hold that notice by mass email establishes inquiry notice in every case.

2. We determine that Appellees unambiguously manifested assent to the Oct. 2023 Terms through their continued use of the Tile App. As the party seeking arbitration, Tile must show "that there was mutual assent to the contractual agreement to arbitrate." *Jackson*, 65 F.4th at 1099. Mutual assent is analyzed "under an objective-reasonableness standard," *Oberstein*, 60 F.4th at 513, to determine "whether there is an *unambiguous* manifestation of assent," *Godun*, 135 F.4th at 713. To assent, the user must "take[] some action, such as clicking a button or checking a box." *Berman*, 30 F.4th at 856. We evaluate "whether the outward manifestations of consent would lead a reasonable person to believe the offeree has assented to the agreement." *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559, 565 (9th Cir. 2014).

Doe unambiguously manifested assent to the Oct. 2023 Terms by downloading the Tile App in March 2024 and using the Scan and Secure feature in attempting to locate her alleged stalker's Tile Tracker. Under the objective standard, a reasonable provider would understand a user's downloading and using an app after receiving inquiry notice of the provider's updated terms of service as an unambiguous manifestation of assent, through conduct, to the provider's updated terms.

Broad also unambiguously manifested assent to the Oct. 2023 Terms by using the Tile App in January 2024 and periodically opening the Tile App to check

location-sharing settings—including, according to Tile's records, in April 2024. Under the objective standard, a reasonable provider would understand that a user on inquiry notice who opens and uses the provider's app thereby assents to the provider's updated terms of service. Broad's "unexpressed intentions or understandings" are irrelevant to this inquiry. *Sellers*, 289 Cal. Rptr. 3d at 12 (quotation omitted). Thus, we determine that both Broad and Doe unambiguously manifested assent to Tile's Oct. 2023 Terms.[6]

Tile, therefore, has met its burden "to show that it provided notice of a new [terms of service] and that there was mutual assent to the contractual agreement to arbitrate." *See Jackson*, 65 F.4th at 1099. In sum, under California law, the parties agreed to the Oct. 2023 Terms.

3. By agreeing to the Oct. 2023 Terms, the parties agreed to arbitrate issues of arbitrability. "[P]arties can form multiple levels of agreements concerning arbitration." *Coinbase, Inc. v. Suski*, 602 U.S. 143, 148 (2024). At the base level, parties can "agree by contract that an arbitrator, rather than a court, will

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[6] In arguing to the contrary, Appellees misplace reliance on language in Tile's earlier Terms which stated that "Tile will not enforce material changes to this section [concerning arbitration] in the future unless you expressly agree to them." Appellees received the Oct. 2023 Notice, which "*explicitly* advised that," *Godun*, 135 F.4th at 710 (quotation omitted), "[i]f you continue to use any of our apps . . . on or after November 26, 2023, you are agreeing to the new [Oct. 2023 Terms]." By using the Tile App in 2024 after receiving inquiry notice of that explicit advisement "identify[ing] what, exactly," would constitute assent, *id.* at 711, Appellees expressly agreed to the Oct. 2023 Terms.

resolve threshold arbitrability questions." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 65 (2019). "[T]he FAA operates on this additional arbitration agreement just as it does on any other." *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010). Thus, "[w]hen deciding whether the parties agreed to arbitrate" arbitrability, we "apply ordinary state-law principles" of contract formation. *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). But we do so with one federal law caveat—we do "not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so." *Id.* (alterations accepted) (quotation omitted).

Under the Oct. 2023 Terms, the parties agreed to arbitrate "all Disputes" (except certain small and equitable claims), "includ[ing] all threshold issue[s] of arbitrability." Appellees do not argue that any other contractual term in the Oct. 2023 Terms creates a potential conflict with this clear and unmistakable agreement to arbitrate arbitrability. Nor do they argue that the delegation provision in the Oct. 2023 Terms is unenforceable for any other reason. Thus, by agreeing to the Oct. 2023 Terms, the parties agreed to arbitrate all issues. *See Rent-A-Center*, 561 U.S. at 70.

III.

We therefore reverse and remand with instructions to enforce the parties' arbitration agreement contained in the Oct. 2023 Terms.[7] On remand, the district court shall grant Appellants' motion to compel arbitration against Appellees and leave all issues, including arbitrability and scope, to an arbitrator.

REVERSED and REMANDED WITH INSTRUCTIONS.

[7] We do not decide the other issues raised by the parties because, under the Oct. 2023 Terms, all issues should be decided by an arbitrator.