NOT FOR PUBLICATION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

WILLIAM RUSHING; ELIZABETH PERLIN, Individually and on Behalf of all Others Similarly Situated, Plaintiffs - Appellees, v. WILLIAMS-SONOMA, INC., a Delaware corporation doing business as Pottery Barn, Williams-Sonoma, and Williams-Sonoma Home; WILLIAMS-SONOMA ADVERTISING, INC., a California corporation; WILLIAMS-SONOMA DTC, INC., a California corporation, Defendants - Appellants.	No. 25-5252 D.C. No. 3:16-cv-01421-WHO MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William Horsley Orrick, District Judge, Presiding

Argued and Submitted September 3, 2026
San Francisco, California

Before: S.R. THOMAS, GOULD, and BYBEE, Circuit Judges.

Defendants-Appellants Williams-Sonoma, Inc. (d/b/a Pottery Barn, Williams-

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

Sonoma, and Williams-Sonoma Home), Williams-Sonoma Advertising, Inc., and Williams-Sonoma DTC, Inc. (collectively, "WSI") appeal the district court's order denying their motion to compel members of the certified class of Plaintiffs-Appellees ("Rushing") to arbitrate. For the reasons discussed below, we have jurisdiction under 9 U.S.C. § 16(a)(1)(B). We review the district court's decision to deny a party's motion to compel arbitration *de novo*, and we review the underlying factual determinations for clear error. *Chabolla v. ClassPass Inc.*, 129 F.4th 1147, 1153 (9th Cir. 2025). We affirm.

1. The Federal Arbitration Act ("FAA") provides parties with the right to an interlocutory appeal of an order "denying a petition . . . to order arbitration to proceed" pursuant to an arbitration agreement alleged to exist between the parties. 9 U.S.C. § 16(a)(1)(B). We do not have appellate jurisdiction over orders that "ha[ve] the *practical effect* of denying a motion to compel." *Van Dusen v. Swift Transp. Co.*, 830 F.3d 893, 896–97 (9th Cir. 2016) (emphasis added). But based on the "ordinary meaning" of the statute, we do have jurisdiction over orders that *actually* deny motions to compel arbitration. *Id.* (citing *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 86 (2000)).

WSI initially filed a motion in the district court to modify the class definition to exclude class members that purportedly agreed to arbitrate their claims. Finding that the briefing "raised some significant issues that are more complex than [the] truncated briefing allowed [the parties] to flesh out," the district court denied that motion as moot and directed WSI to "file a full and properly noticed motion to compel [arbitration.]" WSI subsequently filed the properly noticed motion, and after briefing, the district court issued an "Order Maintaining Prior Class Certification Definition." The district court stated that "the pending motion is not properly considered as a motion to compel arbitration" and that "the motion was originally and is properly considered a motion to modify the class definition to exclude class members subject to valid and enforceable WSI arbitration agreements."

Although the court styled its order as one "Maintaining Prior Class Certification Definition," WSI's only pending, unresolved motion was its "full and properly noticed" motion to compel arbitration that was filed at the direction of the district court. Unlike in cases where the underlying order only had the *practical* effect of denying a motion to compel, *see*, *e.g.*, *Van Dusen*, here, the district court solicited and then *actually* denied WSI's properly noticed motion to compel arbitration. Accordingly, we have jurisdiction under the FAA to hear this appeal.[1]

2. The district court relied on two "separate and independent ground[s]" in denying WSI's motion. First, WSI "failed to submit sufficient evidence regarding how the visual elements appeared . . . through each purchasing channel during the

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[1] Because we have jurisdiction under the FAA, we do not reach the parties' alternative arguments about whether we have jurisdiction under the collateral order doctrine.

time periods in question in order to meet its preponderance of the evidence burden[.]”[2] Second, “the exemplar pages provided by WSI fail[ed to] satisfy the visual conspicuousness requirement to support inquiry notice.” On appeal, WSI focuses almost exclusively on the second finding, providing little to no guidance as to how we should approach the first.

The “failure of proof” identified by the district court is fatal to WSI’s appeal. The exemplars provided by WSI only reflect what the webpages looked like at a particular moment in time, and their own witness admitted that “visual elements” of the webpages “may have changed over time.” Despite the witness’s assurances that WSI’s screenshots are “true and correct exemplar[s,]” the evidence does not establish for what specific time periods those exemplars would have accurately reflected the visual designs of the webpages, or which individual class members would have accessed the pages when they looked like the exemplars. In fact, WSI fails to show that *any* class member accessed the pages as reflected by the exemplars. Even if we were to disagree with some or all of the district court’s conclusions on visual conspicuousness, WSI has not provided enough evidence to meet its evidentiary burden. We therefore affirm the district court’s holding that WSI failed to show consumers were put on inquiry notice that, by proceeding, they agreed to

[2] The district court also found that WSI failed to submit sufficient evidence regarding how the visual elements appeared on mobile websites or “apps” or across the different WSI brand websites. WSI does not challenge these findings on appeal.

arbitrate any claims against WSI.[3]

AFFIRMED.

[3] Because WSI's appeal fails "independently" on the "failure of proof" issue, we do not reach the parties' arguments about visual conspicuousness.