NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SARAH PERKINS; EMILY WRIGHT, on their own behalf and on behalf of others similarly situated, Plaintiffs - Appellees, v. RUGS.COM, LLC, Defendant - Appellant.	No. 25-4155 D.C. No. 2:25-cv-00019-JHC MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
John H. Chun, District Judge, Presiding

Submitted October 19, 2026[**]
San Francisco, California

Before: CALLAHAN and LEE, Circuit Judges, and EZRA, District Judge.[***]

Rugs.com appeals from an order denying its motion to compel arbitration in

[*] 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 David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

a class action suit brought by named plaintiffs Sarah Perkins and Emily Wright. We have jurisdiction under 9 U.S.C. § 16(a)(1), and we affirm.

"We review a district court's denial of a motion to compel arbitration de novo and any underlying findings of fact for clear error." *Chabolla v. ClassPass Inc.*, 129 F.4th 1147, 1153 (9th Cir. 2025). When a party moves to compel arbitration, a court must first determine "whether there is an agreement to arbitrate between the parties." *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015). "The party seeking to compel arbitration bears the burden of proving the existence of an agreement to arbitrate by a preponderance of evidence." *Keebaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005, 1013 (9th Cir. 2024) (internal citation and quotation marks omitted). "In determining whether a valid arbitration agreement exists, federal courts 'apply ordinary state-law principles that govern the formation of contracts.'" *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)).

Here, the parties agree that the contract issue is governed by the laws of Washington. "Washington follows an objective manifestation test for contract formation, looking to the objective acts or manifestations of the parties." *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 952 P.2d 590, 699 (Wash. 1998); *see also Wilson v. Huuuge, Inc*., 944 F.3d 1212, 1219-20 (9th Cir. 2019) (analyzing online contract formation under Washington law). "Thus, if a website offers contractual

terms to those who use the site, and a user engages in conduct that manifests her acceptance of those terms, an enforceable agreement can be formed." *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 856 (9th Cir. 2022). But to "avoid the unfairness of enforcing contractual terms that consumers never intended to accept, courts confronted with online agreements such as [the one] at issue here have devised rules to determine whether meaningful assent has been given." *Id.* Accordingly, where a company cannot show that the consumer had "actual knowledge" of the alleged agreement, a company may be able to establish that an enforceable contract exists "based on an inquiry notice theory," but "only if" the company can show: (1) that the website provided "reasonably conspicuous notice of the terms to which the consumer [would] be bound"; *and* (2) that the consumer took "some action, such as clicking a button or checking a box, that unambiguously manifest[ed] his or her assent to those terms." *Id.*

Because Rugs.com failed to show that the plaintiffs unambiguously manifested their assent to the company's online Terms of Use, we affirm the district court order denying its motion to compel arbitration.

In *Berman*, we held that a "user's click of a button can be construed as an unambiguous manifestation of assent only if the user is explicitly advised that the act of clicking will constitute assent to the terms and conditions of an agreement." 30 F.4th at 857; *see also Nguyen*, 763 F.3d at 1178-79 ("[W]here a

website makes its terms of use available via a conspicuous hyperlink on every page of the website but otherwise provides no notice to users nor prompts them to take any affirmative action to demonstrate assent, even close proximity of the hyperlink to relevant buttons users must click on—without more—is insufficient to give rise to constructive notice."); *Godun v. JustAnswer LLC*, 135 F.4th 699, 711 (9th Cir. 2025) ("Even strongly implicit advisement isn't enough—a webpage must *explain* that certain actions will be understood by the offeror to signal assent to contractual terms . . . [a]nd it must identify what, exactly, those actions are." (emphasis in original) (internal citations omitted)).

Rugs.com's opening brief argues that the plaintiffs unambiguously manifested their assent to the company's Terms of Use by entering their email address and clicking "Join Now." This argument, however, ignores that the webpage lacked any disclosure that users agreed to its Terms of Use by merely entering an email address and clicking "Join Now." Without such an advisement, the plaintiffs' act of entering an email address and clicking "Join Now" cannot be construed as assent, no matter how prominent or close in proximity Rugs.com argues its "Terms of Use" link was in relation to the "Join Now" button the plaintiffs clicked. Nor can the plaintiffs' act of entering an email address and clicking "Join Now" be construed as assent based on the context of the transaction at issue. *See Godun*, 135 F.4th at 713 (noting that this court's unambiguous-manifestation-of-assent analysis "does not look to the

context of the transaction but relies on the *explicit* advisement of what actions will be taken to signify assent" (emphasis added)).

Rugs.com in its reply brief takes a different approach, arguing that there was an unambiguous manifestation of assent because: (1) Rugs.com made available to the plaintiffs a copy of its Terms of Use via a "Terms of Use" link, (2) the hyperlinked copy of its Terms of Use advised the plaintiffs that "use" of the Rugs.com website constitutes assent to its Terms of Use, and (3) the plaintiffs used the website. But this argument fails because it is a "browserwrap" agreement which "[c]ourts consistently decline to enforce." *See Chabolla*, 129 F.4th at 1147. A browsewrap agreement is one that "does not require the user to manifest assent to the terms and conditions expressly." *Nguyen*, 763 F.3d at 1176. Instead, the user purportedly "gives his assent simply by using the website." *Id.* "Thus, by visiting the website—something that the user has already done—the user agrees to the Terms of Use not listed on the site itself but available only by clicking a hyperlink." *Id.* (citation modified).

Because Rugs.com failed to show an enforceable agreement to arbitrate exists, the district court did not err in denying the company's motion to compel arbitration.

AFFIRMED.