

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,

CASE NO. 2:23-cv-00932-JHC

Plaintiff,

ORDER

v.

AMAZON.COM, INC; NEIL LINDSAY,  
individually and as an officer of  
Amazon.com, Inc.; RUSSELL  
GRANDINETTI, individually and as an  
officer of Amazon.com, Inc.; JAMIL GHANI,  
individually and as an officer of  
Amazon.com, Inc.,

Defendant.

**I**

**INTRODUCTION**

This matter comes before the Court on the parties' cross-motions for summary judgment. Dkt. ## 314, 316, 319. Plaintiff, the Federal Trade Commission (FTC), seeks partial summary judgment as to liability against Defendant Amazon.com, Inc. (Amazon) and three Defendant Amazon executives (Individual Defendants), for alleged violations of Section 5(a) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45(a), and Section 4 of the Restore Online

Shoppers' Confidence Act (ROSCA), 15 U.S.C. § 8403. Dkt. # 314. Defendants contend that, as a matter of law, they are not liable for violations of the FTC Act or ROSCA, and that the FTC is not entitled to any compensatory relief or civil monetary penalties. Dkt. ## 316, 319. For the reasons below, the Court GRANTS in part and DENIES in part the FTC's motion for summary judgment, and DENIES Defendants' motions for summary judgment.

## II BACKGROUND

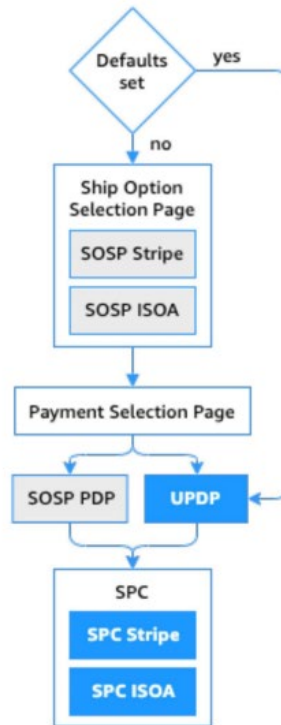
### A. Factual Background

Amazon Prime (Prime) is an online "membership subscription service that provides benefits and discounts." *See* Dkt. # 316 at 4. Defendants use enrollment and cancellation "flows" to up-sell customers to Prime and to allow Prime members to cancel their membership. *Id.* at 5; *see* Dkt. ## 317-4 at 3–28 (enrollment); 318-42 at 28–30 (cancellation). The FTC maintains that the enrollment flow has violated ROSCA since 2014 and the cancellation flow has violated ROSCA since 2016. Dkt. # 325 at 657.

#### 1. Prime Enrollment Flow

A consumer that makes a purchase on Amazon.com typically encounters multiple Prime enrollment offers while completing their product purchase. *See generally* Dkt. # 317-4. Before October 2022, Amazon referred to this checkout process and the associated Prime offers as the Multi-Page Pipeline (MPP). Dkt. # 318-7 at 28. The three pages that comprised the MPP were the (1) "Ship Option Selection Page" (SOSP); (2) "Universal Prime Decision Page" (UPDP) or "SOSP Prime Decision Page" (SOSP PDP); and (3) "Single Page Checkout" Page (SPC). *Id.* A flowchart of the MPP is depicted below:

## Multi-Page Pipeline



*Id.*

a. SOSP

At the start of the MPP, some customers with saved “defaults” (a default delivery address and payment method) and all customers without saved defaults encounter the SOSP. Dkt. # 317-2 at 15, 27 (“Prior to October 2022, non-Prime customers who have saved their default billing information and default shipping information with Amazon prior to checkout might also have been presented with the Ship Option Select Page (‘SOSP’) during the checkout process.”). An example image of the SOSP is below:

Choose your shipping options

Continue

**Shipment 1 of 1**

Shipping from Amazon.com [\(Learn more\)](#)

Shipping to: Domestic, 515 WESTLAKE AVE N, SEATTLE, WA, 98109-4304 United States

• All-new Echo Dot (4th Gen, 2020 release) | Smart speaker with Alexa | Charcoal  
\$49.99 - Quantity: 1  
Sold by: Amazon.com Services LLC

[Change quantities or delete](#)

Amazon Locker is available  
20 pickup locations near you

Choose a delivery option:

Good news Test, we're giving you a 30-day FREE trial of Prime

☒ Today  
FREE Same-Day Delivery with a free trial of [amazon prime](#)

☐ Tuesday, May 25  
FREE Shipping

☐ Sunday, May 25  
\$7.52 - Shipping

☐ Saturday, May 22  
\$10.60 - Shipping

☐ Today 2PM - 6PM  
\$12.99 - Fastest Delivery

Continue

Dkt. # 317-4 at 10. Consumers that select the “Prime” shipping option are not immediately enrolled in Prime. *Id.* at 11. Instead, regardless of the shipping option they choose, consumers need to click the orange “Continue” button. *Id.* at 10. Customers then arrive at the “Payment Selection Page.” *Id.* at 11. An example of the Payment Selection Page is below:

Select a payment method

Get \$50 off Test, your cost could be \$50.00 instead of \$541.39! Get a \$50 Amazon Gift Card instantly upon approval for the Amazon Rewards Visa Card

**Your credit and debit cards**

Name on card Expires on

Mastercard ending in 2871 Test Test 10/2025

Continue

You can review this order before it's final.

**More payment options**

**Credit or debit cards**  
Amazon accepts major credit and debit cards.

[Add a credit or debit card](#)

**Pay with cash at a location near you**  
Order ships after you pay

[Set up Amazon PayCode](#)

**Gift Cards, Vouchers & Promotional Codes**

[Enter a gift card, voucher or promotional code](#)

**Amazon.com Store Card**  
Access to exclusive financing offers. No annual fee. Zero fraud liability.

[Learn more](#)

**Personal Checking Accounts**  
Use your US based personal checking account. [Learn more](#)

[Add a personal checking account](#)

Continue

You can review this order before it's final.

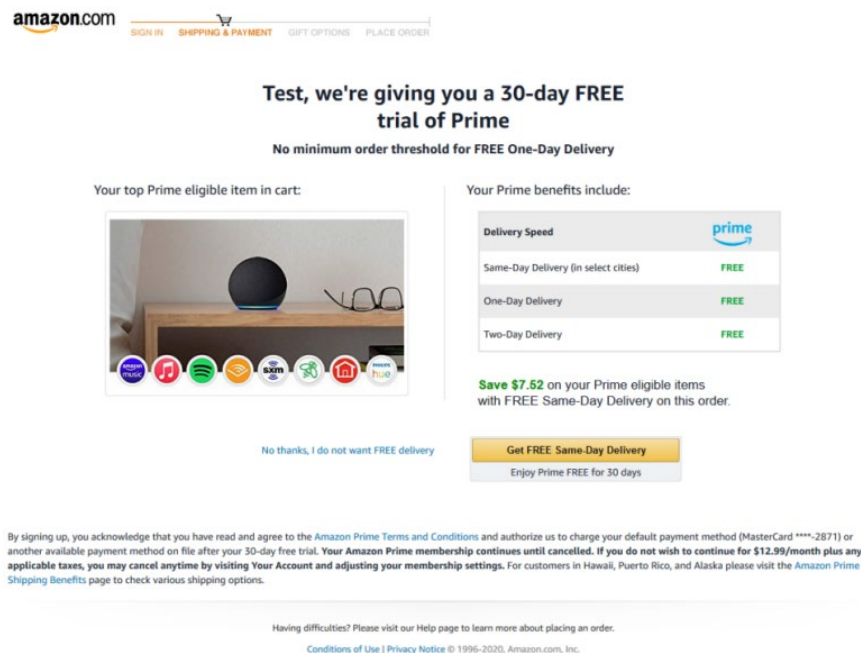
Do you need help? Explore our [Help pages](#) or [contact us](#)

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*Id.* at 11. Defendants obtain customers’ billing information on this page. *Id.*

## b. UPDP

Amazon customers who do not select a Prime shipping option on the SOSP next see the UPDP. Dkt. # 317-2 at 16–18. The UPDP page has varied over time and was “personalized based on a variety of factors unique to that customer, such as their prior interactions with Amazon, eligibility for Prime, and the items in the customer’s shopping cart.” *Id.* at 31; *see also* Dkt. # 314 Figures 5–11 (depicting various iterations of the UPDP). An example of a UPDP page is below:



Dkt. # 317-4 at 19. In this example, the only way for a customer to proceed past this page without signing up for Prime is to click the “No thanks, I do not want FREE delivery” hyperlink. *See* Dkt. # 320-22 at 28 (100:11-16), 33 (105:17-22), 47 (119:7-11).<sup>1</sup> Customers that click the orange “Get FREE Same-Day Delivery” button enroll in Prime. *Id.*<sup>2</sup> Even if a customer does

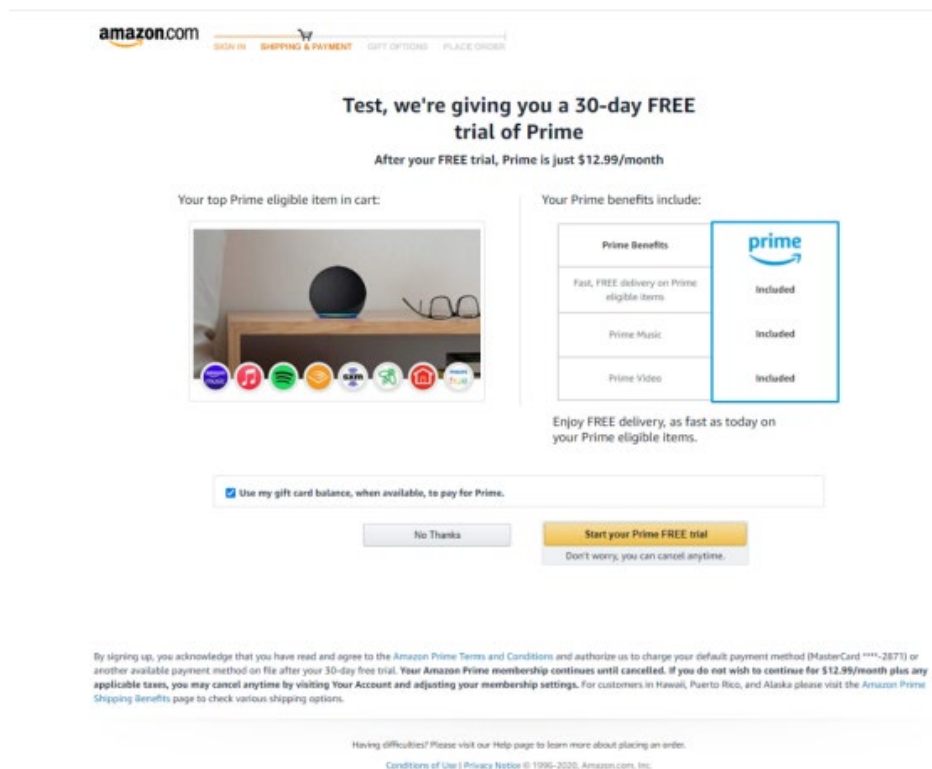
<sup>1</sup> Different versions of the UPDP page use different language for this hyperlink. *See* Dkt. # 317-2 at 11.

<sup>2</sup> Different versions of the UPDP page use different language for this button. *See* Dkt. # 317-2 at 11.

not finalize the product purchase that led them to this page, they still enroll in Prime. Dkt. # 320-22 at 16–17 (88:17–89:21). The customer is charged for a Prime membership (immediately or after a free-trial period) using the payment method either previously provided on the “Payment Selection Page” or saved as the “default” payment method in a prior visit to the website. Dkt. # 317-2 at 12; *see* Dkt. # 320-22 at 42–43 (114:22–115:22).

c. SOSP PDP

A customer that selects the “Amazon Prime” shipping option on the SOSP is directed to the SOSP PDP. Dkt. # 317-2 at 16–18. This page is pictured below and functions much like the UPDP:



Dkt. # 317-4 at 12.

//

//

d. SPC

The final page of the MPP, the SPC, allows a customer to complete their product purchase. *Id.* at 26. Clicking the orange “Place your order” button allows the customer to complete their product purchase. *Id.* This page also includes two options to join Prime: (1) the “Try Prime FREE for 30 days” button and (2) the “Today” button. *Id.* An example image of the SPC is below:

**amazon.com** SIGN IN SHIPPING & PAYMENT GIFT OPTIONS PLACE ORDER

**Review your order**

**Shipping address** [Change](#)  
 Domestic  
 515 WESTLAKE AVE N  
 SEATTLE, WA 98109-4304  
 United States  
 Phone: 555 555-5555  
[Add delivery instructions](#)

**Payment method** [Change](#)  
 ending in 2871

**Billing address** [Change](#)  
 Same as shipping address

**Add a gift card, promotion code, or voucher**  
 Enter Code

**Place your order**  
 By placing your order, you agree to Amazon's [privacy notice and conditions of use](#).  
 You also agree to all of the terms found [here](#).

**Order Summary**  
 Items: \$49.99  
 Shipping & handling: \$7.52  
 Total before tax: \$57.51  
 Estimated tax to be collected: \$5.89  
**Order total: \$63.40**

[How are shipping costs calculated?](#)

**FREE TRIAL**  
**Test, we'd hate for you to miss out on unlimited fast, FREE delivery**  
 Save \$7.52 on eligible items in this order and enjoy unlimited fast, FREE delivery when you try Prime FREE for 30 days.

[Try Prime FREE for 30 days](#)  
 No hassle. No commitments. Cancel anytime.

**Delivery: May 24, 2021** If you order in the next 14 hours and 32 minutes [\(Details\)](#)

**All-new Echo Dot (4th Gen, 2020 release) | Smart speaker with Alexa | Charcoal**  
**\$49.99 & FREE Returns** [v](#)  
 Amazon Prime eligible Join now  
[View larger image](#)  
 Quantity: 1 [Change](#)  
 Sold by: Amazon.com Services LLC  
[Add gift options](#)

**Choose a delivery option:**  
☐ **Today**  
 FREE Same-Day Delivery with your free trial of Prime  
**Fast, FREE Delivery** [prime](#)  
☐ **Wednesday, May 26**  
 FREE Shipping  
☒ **Monday, May 24**  
 \$7.52 - Shipping  
☐ **Sunday, May 23**  
 \$10.60 - Shipping  
☐ **Today 2PM - 6PM**  
 \$12.99 - Fastest Delivery

Do you need help? Explore our [Help pages](#) or [contact us](#)

For an item sold by Amazon.com: When you click the "Place your order" button, we'll send you an email message acknowledging receipt of your order. Your contract to purchase an item will not be complete until we send you an email notifying you that the item has been shipped.

Colorado, Louisiana and Puerto Rico Purchasers: Important information regarding sales tax you may owe in your State

Within 30 days of delivery, you may return new, unopened merchandise in its original condition. Exceptions and restrictions apply. See Amazon.com's [Returns Policy](#)

Go to the [Amazon.com homepage](#) without completing your order.

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*Id.* If a customer clicks the “Try Prime FREE for 30 days” button, the page changes to the version below, and if a customer wants to remove the Prime membership from their order after clicking this button, they need to click the “Delete” hyperlink in the middle of the page:

amazon.com [SIGN IN](#) [SHOPPING & PAYMENT](#) [GIFT OPTIONS](#) [PLACE ORDER](#)

### Review your order

**Shipping address** [Change](#)  
See details below.  
[Add delivery instructions](#)

**Payment method** [Change](#)  
 ending in 2871  
**Billing address** [Change](#)  
Same as shipping address

**Add a gift card, promotion code, or voucher**

**Place your order**

By placing your order, you agree to Amazon's [privacy notice and conditions of use](#).

You also agree to all of the terms found here.

By placing your order, you agree to [Terms and Conditions](#), and authorize us to charge your default payment method or any other payment method on file. **Your Amazon Prime membership continues until cancelled. If you do not wish to continue for \$12.99/month plus any applicable taxes after your first month, you may cancel anytime by visiting Your Account.** For customers in Hawaii, Puerto Rico, and Alaska please visit the [Amazon Prime Shipping Benefits](#) page to check various shipping options.

**Order Summary**

Items (2):	\$49.99
Shipping & handling:	\$0.00
Total before tax:	\$49.99
Estimated tax to be collected:	\$5.12
<b>Order total:</b>	<b>\$55.11</b>

[How are shipping costs calculated?](#)

**A 30-day FREE trial of Amazon Prime has been added to your order. Your order has been upgraded to fast, FREE shipping.**

**After your free trial, Prime is just \$12.99/month. Cancel anytime.**

**Amazon Prime (30-Day Free Trial)**  
\$0.00  
[View larger image](#)  
[Delete](#)  
Sold by: Amazon.com Services LLC  
[Gift options not available.](#)

Your Prime membership will be applied to peas-service+0-1621614338013WspB@email.Amazon.com.  
[Learn more](#)

**Items shipped from Amazon.com**  
**Shipping address:** Domestic, 515 WESTLAKE AVE N, SEATTLE, WA, 98109-4304 United States [Change](#)

**Delivery: May 23, 2021** If you order in the next 14 hours and 31 minutes [\(Details\)](#)

**All-new Echo Dot (4th Gen, 2020 release) | Smart speaker with Alexa | Charcoal**  
\$49.99 & FREE Returns [View larger image](#)  
**Quantity:** 1 [Change](#)  
Sold by: Amazon.com Services LLC  
[Add a gift receipt](#) and see other gift options

**Choose your Prime delivery option:**

☐ **Today 2PM - 6PM**  
FREE Fastest Delivery

☒ **Sunday, May 23**  
FREE Prime Delivery

By placing your order, you agree to The Amazon Prime terms next to the order button at the top of this checkout page, including Amazon Prime's auto-renewal terms.

Do you need help? Explore our [Help pages](#) or [contact us](#)

For an item sold by Amazon.com: When you click the "Place your order" button, we'll send you an email message acknowledging receipt of your order. Your contract to purchase an item will not be complete until we send you an email notifying you that the item has been shipped.

Colorado, Louisiana and Puerto Rico Purchasers: [Important information regarding sales tax you may owe in your State](#)

Within 30 days of delivery, you may return new, unopened merchandise in its original condition. Exceptions and restrictions apply. See Amazon.com's [Returns Policy](#)

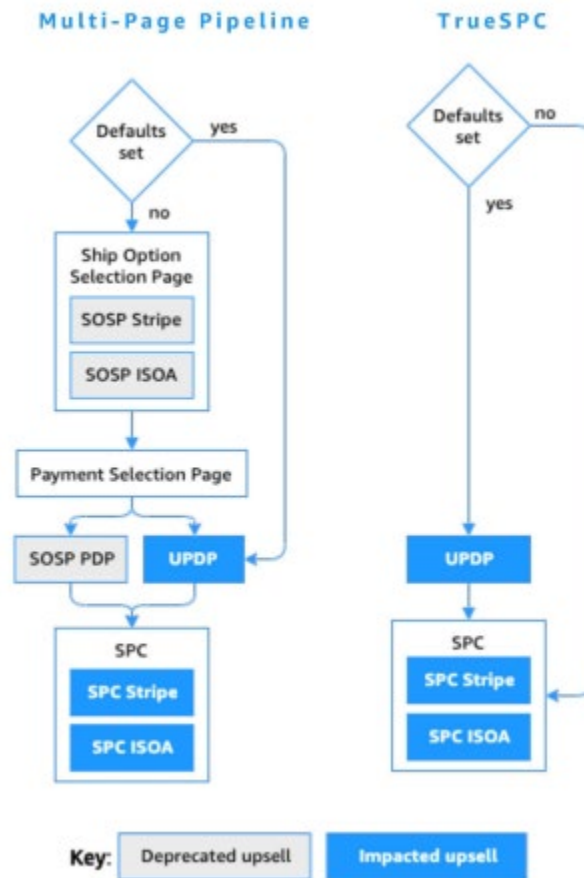
Go to the [Amazon.com homepage](#) without completing your order.

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*Id.* at 27; *see* Dkt. # 320-22 at 49 (121:19–24).

e. TrueSPC

Around October 2022, Amazon launched TrueSPC to replace the MPP. Dkt. # 318-7 at 28. A comparison of the two flows is shown below:



*Id.* This change removed the SOSP and SOSP PDP pages from the Prime enrollment flow. *Id.* In this new flow, only customers with saved default delivery address and payment methods are shown the UPDP. *Id.* And all consumers, regardless of whether they encountered the UPDP, are directed to the SPC page. *Id.*

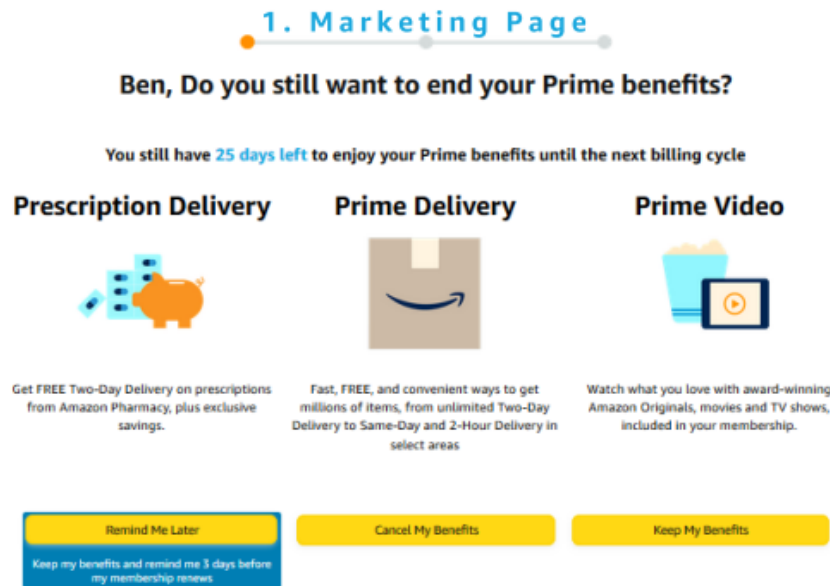
## 2. Prime Cancellation Flow

There are several ways for a Prime member to cancel their membership, including through the Prime cancellation flow. Dkt. # 318-43 at 19–21. Amazon internally refers to the Prime cancellation flow as “Iliad.” Dkt. # 320-20 at 3. And there are several ways to “ingress” to this cancellation flow. Dkt. # 318-43 at 19.

Once a Prime member enters Iliad, they must reaffirm their desire to cancel on three pages before they complete the cancellation process: (1) the Marketing Page; (2) the Offer Page; and (3) the Cancel Page. Dkt. # 318-42 at 30.

a. Marketing Page

The Marketing Page is the first page customers encounter in the Iliad flow. *Id.* To proceed to the next page, a customer must click the “Cancel My Benefits” button in the example below. *Id.*<sup>3</sup>



*Id.* To “manage customer expectations that [this] button w[ouldn]’t immediately cancel,” and in response to concerns from the European Commission, Amazon changed the label on this button to “Continue to Cancel” in 2021. Dkt. # 318-35 at 4, 7. This change was not implemented in the United States until October 2022. Dkt. # 318-46 at 3.

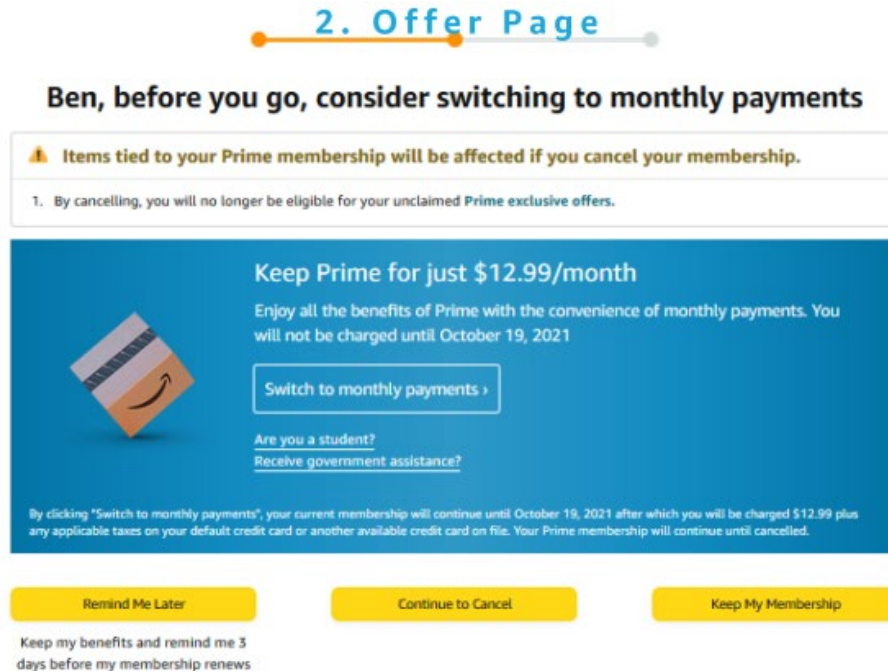
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<sup>3</sup> At times, this “Cancel My Benefits” button was labeled “Cancel My Membership” or “End My Benefits.” See Dkt. ## 318-37 at 3 (End My Benefits); 318-44 at 5 (Cancel My Membership).

b. Offer Page

The offer page presents alternative Prime payment plans, offers a student Prime membership, and suggests a membership for customers on government assistance. *See* Dkt. # 318-42 at 30. A customer that intends to proceed to the next page of Iliad must click the “Continue to Cancel” button in the example below:



*Id.*

c. Cancel Page

The final page of Iliad is the cancel page. *Id.* A customer that entered Iliad wishing to end their membership does so only once they click the “End on October 19, 2021” button in the example below.

### 3. Cancel Page

Ben, we're sorry to see you go. Please confirm the cancellation of your membership.

You could also consider the following:

#### Remind Me Later

Remind me three days before my membership renews.

Remind Me Later

#### Keep My Membership

You will continue enjoying all the benefits of Prime.  
View everything included in Prime.

Keep My Membership

Pause your Prime membership:



Items tied to your Prime membership will be affected if you pause your membership.

1. By pausing, you will no longer be eligible for your unclaimed Prime exclusive offers. [Click here to see your offers.](#)

Pause on October 19, 2021

Your benefits access will continue until October 19, 2021. After that date, your billing and benefits will be paused, and you will no longer be charged for your Prime membership. Use the quick-resume function anytime to regain access to your Prime benefits. [Learn More.](#)

Pause on October 19, 2021

Cancel your Prime membership:



Items tied to your Prime membership will be affected if you cancel your membership.

1. By cancelling, you will no longer be eligible for your unclaimed Prime exclusive offers.

End on October 19, 2021

Your benefits will continue until October 19, 2021, after which your card will not be charged.

End on October 19, 2021

*Id.* In response to government regulators, Amazon launched a two-page version of Iliad in the United States in March 2023. Dkt. ## 318-47 at 4–5 (showing the two-page version); 320-1 at 2 (describing environment of regulatory “enforcement”). This version removes the Offer Page and introduces a shortened Cancel Page. Dkt. # 318-47 at 4–5.

### 3. Individual Defendants

The Individual Defendants are Amazon executives. Dkt. # 320-21 at 2–5. Russell Grandinetti is the Senior Vice President (SVP) for Amazon International Stores and he primarily manages Amazon’s e-commerce business outside the U.S. and Canada. Dkt. # 325 at 970. He has been an SVP at Amazon since 2016, and he assumed direct authority over Prime in November 2021. *Id.* at 973–74, 978.

Neil Lindsay was Vice President for Prime and Marketing, Worldwide Consumer from February 2017 to July 2021, and was an SVP for that organization from July to November 2021. *Id.* at 810–11. In this role, he had “a wide range of responsibilities,” including “leading the team and developing technologies[.]” *Id.* at 812. Since 2021, he has been an SVP for Amazon Health Services, which is not part of the Prime organization. *Id.* at 806.

Jamil Ghani is a VP of Prime with worldwide responsibility. *Id.* at 778. He assumed this title in October 2019. *Id.* Before October 2019, he was a VP of International Prime. *Id.* Since November 2021, he has reported to Grandinetti. *Id.* at 975.

#### 4. Defendants’ Understanding

Defendants’ understanding of customer frustrations and problems caused by the flows—if any—is disputed. For instance, several Amazon employees testified that only a small number of customers enrolled in Prime unintentionally. Dkt. ## 361-1 at 148 (177:5–22); 361-2 at 152–53 (189:12–190:8); 361-2 at 106–07 (253:14–254:13); 361-2 at 163–64 (9:24–10:2). And there is evidence that Amazon established a “Shopper Frustration” team that the company’s leadership supported and was “very successful” at “driving customer experience improvements at Amazon.” Dkt. # 361-2 at 3 (25:5–8), 5 (27:14–28:4). The Individual Defendants likewise testified they worked “constantly” to “improve the customer experience,” *see* Dkt. # 325 at 1015 (211:1–8), and none of them believe the flows were deceptive. *Id.* at 769 (24:4–22); *see id.* at 994 (88:6–13); 822–23 (46:24–47:5). By contrast, the FTC presents evidence that Amazon employees discussed customer frustration with the enrollment flow; one document saying, “Prime sign-ups are not always transparent; customers sign up without knowing they did.” Dkt. # 317-26 at 5. Another document puts it more bluntly and describes unintentional Prime enrollment as “an unspoken cancer” that the company “need[ed] to correct[.]” Dkt. # 317-37 at 4. And cancellation surveys conducted by Amazon showed that many customers signed up

unintentionally. *See* Dkt. ## 318-11; 318-12 at 27; 318-14 at 8–9. The FTC likewise provides evidence that suggests Amazon knew the Iliad cancellation flow was not straightforward; rather, “The goal of project Iliad was to improve [Amazon’s] ability to retain members who attempt to cancel their membership.” Dkt. # 318-29 at 2.

### III DISCUSSION

#### A. Summary Judgment Standards

Summary judgment is warranted when the evidence, viewed in the light most favorable to the non-moving party, shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248–49). Courts must “view the facts and draw reasonable inferences in the light most favorable to the [non-moving] party.” *Scott v. Harris*, 550 U.S. 372, 378 (2007).

When a court considers cross-motions for summary judgment, “[e]ach motion must be considered on its own merits.” *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (internal citation omitted). The moving party bears the initial burden of showing there is no genuine dispute of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can show the lack of such a dispute by either: (1) producing evidence negating an essential element of the nonmoving party’s case, or (2) showing that the nonmoving party lacks evidence of an essential element of its claim or defense. *Metro. Grp. Prop. & Cas.*

1 *Ins. Co. v. Fite*, 738 F. Supp. 3d 1371, 1376 (W.D. Wash. 2024) (citing *Nissan Fire & Marine*  
 2 *Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000)). If the moving party meets its burden  
 3 of production, the burden then shifts to the nonmoving party to identify specific facts from which  
 4 a factfinder could reasonably find in the nonmoving party's favor. *Id.* (citing *Celotex*, 477 U.S.  
 5 at 324; *Anderson*, 477 U.S. at 250).

#### 6 B. ROSCA's Application

7 The parties dispute whether Section 4 of ROSCA regulates Prime. ROSCA makes it  
 8 unlawful

9 for any person to charge or attempt to charge any consumer for any goods or  
 10 services sold in a transaction effected on the Internet through a negative option  
 11 feature (as defined in the Federal Trade Commission's Telemarketing Sales Rule  
 12 in part 310 of title 16, Code of Federal Regulations), unless the person—

13 (1) provides text that clearly and conspicuously discloses all material terms of the  
 14 transaction before obtaining the consumer's billing information;

15 (2) obtains a consumer's express informed consent before charging the consumer's  
 16 credit card, debit card, bank account, or other financial account for products or  
 17 services through such transaction; and

18 (3) provides simple mechanisms for a consumer to stop recurring charges from  
 19 being placed on the consumer's credit card, debit card, bank account, or other  
 20 financial account.

21 15 U.S.C. § 8403. "Negative option feature" means "in an offer or agreement to sell or provide  
 22 any goods or services, a provision under which the customer's silence or failure to take an  
 23 affirmative action to reject goods or services or to cancel the agreement is interpreted by the  
 24 seller as acceptance of the offer." 16 C.F.R. 310.2(w).

25 The FTC says Prime is sold through a negative option feature because consumers who are  
 26 enrolled in Prime and do nothing still have their Prime membership automatically renewed. Dkt.  
 27 # 314 at 52–53. And the agency notes that Defendants did not question whether ROSCA applied  
 28 at the motion to dismiss stage of this litigation. *Id.* at 52; see Dkt. # 165 at 14 ("Amazon does

1 not contest that its Prime automatic renewal and free trials qualify as negative option features.”).  
2 The FTC identifies three other cases, including one from this District, in which courts analyzed  
3 this issue and ruled that ROSCA applied to automatically renewing online membership programs  
4 like Prime. *Id.* at 53.

5 Defendants respond that consumers manifest acceptance of an offer to join Prime only  
6 once—by actively clicking a button—so joining Prime is not a negative option feature and  
7 ROSCA does not apply. Dkt. # 365 at 17. They contend that the other decisions interpreting the  
8 application of this statute are erroneous or distinguishable. *Id.* at 18. Defendants also point out  
9 that these other decisions do not address the FTC’s recent rulemaking on negative option  
10 features, which expands the definition of a negative option feature to include provisions that the  
11 customer’s silence is considered acceptance or continuing acceptance of an offer. *Id.*

12 The plain language of ROSCA and the Federal Trade Commission’s Telemarketing Sales  
13 Rule confirm that Prime is subject to ROSCA. It is undisputed that Prime is a service sold in  
14 transactions effected on the internet. 15 U.S.C. § 8403. And Prime includes a negative option  
15 feature because Defendants’ offer to provide Prime has “*a provision* under which the customer’s  
16 silence or failure to take an affirmative action to reject goods or services or to cancel the  
17 agreement is interpreted by the seller as acceptance of the offer.” 16 C.F.R. § 310.2 (w)  
18 (emphasis added). This provision of the Prime agreement is what allows Defendants to  
19 automatically continue billing consumers for the service until they affirmatively cancel their  
20 membership. *See* Dkt. # 317-4 at 12 (“Your Amazon Prime membership continues until  
21 cancelled. If you do not wish to continue for \$12.99/month plus any applicable taxes, you may  
22 cancel anytime by visiting Your Account and adjusting your membership settings.”) (emphasis  
23 removed). Prime also has a similar provision that automatically converts a trial membership to a  
24 paid membership after the trial period. *See* Dkt. # 317-2 at 14–19. Thus, Prime is subject to

1 ROSCA because it is a service “sold in a transaction effected on the Internet through a negative  
2 option feature[.]” 15 U.S.C. § 8403.

3 Defendants’ artful application of contract law does not allow them to avoid this  
4 straightforward understanding of ROSCA. According to Defendants, the initial Prime offer  
5 includes a term that informs customers they will be charged periodically, unless the customer  
6 cancels their membership. Dkt. # 319 at 8 (“[T]he Prime enrollment offer itself includes an  
7 agreement to pay recurring charges.”). They say that when a customer pays the recurring Prime  
8 membership fee, they do not accept any offer by their silence, instead, the customer is simply  
9 abiding by the terms of the original offer. *Id.* But Defendants’ singular focus on the initial offer  
10 to join Prime is misplaced. Dkt. # 365 at 17; *see* Dkt. # 319 at 8–11. To be sure, as the Williston  
11 treatise states, “a contract for a year’s service is not split into 12 contracts by a provision that the  
12 employee is entitled to his or her pay in monthly installments.” 15 Williston on Contracts § 45:1  
13 (4th ed. May 2025); *see* Dkt. # 319 at 8. But there is no rigid test for divisibility and “each case  
14 depend[s] largely on its own facts and circumstances.” 15 Williston on Contracts § 45:1 (4th ed.  
15 May 2025).

16 This is significant because divisibility “reduces the risk of forfeiture by giving a party  
17 who has performed one part of the performances agreed to be exchanged by the parties the right  
18 to its agreed equivalent *as if the parties had made a separate contract with regard to that pair of*  
19 *corresponding parts.*” *Id.* (emphasis added). And this treatise further notes,

20 A contract may be entire in the sense that there is but one agreement covering all  
21 the terms and yet it may be that the performance under the contract will be divided  
22 into different groups each set embracing performances which are the agreed  
23 exchange for each other, the result being that the contract is entire but divisible.

24 *Id.*

//

1 The evidence here shows the Prime contract is entire but divisible because “by its terms,  
2 nature, and purpose, it is susceptible of division and apportionment, having two or more parts  
3 which are not necessarily dependent upon each other nor intended by the parties to be so.” *Id.*;  
4 *see Hudson v. Wylie*, 242 F.2d 435 (9th Cir. 1957). Indeed, the Prime contract says, for example,  
5 that customers will “pay \$12.99/month plus any applicable taxes” and “you may cancel  
6 anytime.” Dkt. # 317-4 at 12. This indicates the contract is susceptible to division into multiple  
7 parts, and the parties to the contract do not intend the parts to be dependent upon each other. *See*  
8 *also* 15 Williston on Contracts § 45:7 (4th ed. May 2025) (“[t]he essential feature of a divisible  
9 contract is that a portion of the price is set off against a portion of the performance.”) (internal  
10 citation omitted). So when a customer pays their recurring Prime membership fee, it is as if  
11 Amazon and the customer made a separate contract with regard to that payment and that term of  
12 Prime membership. *See* 15 Williston on Contracts § 45:1 (4th ed. May 2025). A customer can  
13 accept this recurring offer to enter the Prime contract through silence. *See* Dkt. # 317-4 at 12.  
14 Consequently, the Prime contract includes a provision under which the consumer’s silence is  
15 understood by Amazon as continuing acceptance of its offer. *See* 16 C.F.R. § 310.2(w). Thus,  
16 Prime is sold through a negative option feature.

17 Other courts to consider this issue have reached the same conclusion about similar online  
18 membership services. *See, e.g., United States v. MyLife.com, Inc.*, 499 F. Supp. 3d 757, 762  
19 (C.D. Cal. 2020) (“[The defendant’s] automatic renewal default for its subscriptions is a textbook  
20 example of a negative option feature.”); *FTC v. Doxo, Inc.*, 771 F. Supp. 3d 1162, 1180 (W.D.  
21 Wash. 2025) (“The statutory definition [of negative option features] is not as narrow as  
22 Defendants argue, and courts have applied it broadly to renewal subscriptions.”); *United States v.*  
23 *Adobe, Inc.*, 2025 WL 1303419, at \*8 (N.D. Cal. May 2, 2025) (“[s]ubscriptions that  
24 automatically renew by default unless the consumer affirmatively cancels” have negative option

features). The Court does not agree that these other decisions “are mistaken.” Dkt. # 319 at 10. Nor can the Court agree that the FTC’s recent rulemaking on negative option features meaningfully alters this analysis. *See* Dkt. # 365 at 18. Defendants do not explain how rulemaking in 2024 would change the meaning of a statute adopted in 2010 and its accompanying regulations. And they similarly fail to explain how *the FTC’s* definition of a negative option feature would change the definition chosen by *Congress*. Congress chose to define negative option feature—as it is used in ROSCA—with the definition found in the “Federal Trade Commission’s Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations[.]” 15 U.S.C. § 8403. But the FTC’s 2024 Negative Option Rulemaking appears in an entirely different section of the federal register: 16 C.F.R. § 425.2. *See also Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (“[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.”). What is more, two of these three cases, which Defendants attempt to distinguish, were decided after the FTC issued its negative option rulemaking. *See* Dkt. # 381 at 6. This lends further support to the Court’s conclusion that the FTC’s rulemaking does not meaningfully change this analysis.

Thus, the Court concludes that Section 4 of ROSCA regulates Prime.

#### C. ROSCA’s Requirements

The FTC brings a claim against Defendants for violating each of ROSCA’s three requirements. Dkt. # 67 at 89–90. The parties cross-move for summary judgment on each of these. *See* Dkt. ## 314 at 53–72; 319 at 11–28.

##### 1. Clear and Conspicuous Disclosure Before Obtaining Billing Information

Under ROSCA, Amazon must “provide[] text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing information” when enrolling consumers in Prime. *See* 15 U.S.C. § 8403(1). “Clear[] and conspicuous” is not

1 defined in ROSCA, but the Court has interpreted this language based on “cases concerning state  
2 laws with similar terms and caselaw defining similar terms in other federal statutes.” Dkt. # 165  
3 at 16; *see id.* at 15–20 (describing caselaw that the Court looks to). “Clear” means “reasonably  
4 understandable” and “[c]onspicuous” means “readily noticeable to the consumer.” *Gilberg v.*  
5 *California Check Cashing Stores, LLC*, 913 F.3d 1169, 1176 (9th Cir. 2019) (quoting *Rubio v.*  
6 *Capital One Bank*, 613 F.3d 1195, 1200 (9th Cir. 2010)). The “full context of the transaction” is  
7 necessary to evaluate disclosures under ROSCA. *Chabolla v. ClassPass Inc.*, 2023 WL  
8 4544598, at \*5 n.5 (N.D. Cal. June 22, 2023), *aff’d*, 129 F.4th 1147 (9th Cir. 2025); *see* Dkt. #  
9 165 at 18–20. And the Court evaluates the disclosures under a reasonable consumer standard.  
10 *See* Dkt. # 165 at 17–18; *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016).

11 The FTC says Amazon violates ROSCA’s first requirement both because it does not  
12 make clear and conspicuous disclosures and because it does not make these disclosures before  
13 obtaining a customer’s billing information. Dkt. # 314 at 55, 62. Defendants maintain that  
14 Amazon’s disclosures are clear and conspicuous and that it makes the disclosures before  
15 obtaining consent to use a customer’s billing information. Dkt. # 365 at 18–19, 32.

16 a. Disclosure

17 The FTC argues the disclosure of Prime’s material terms is not clear and conspicuous  
18 from a facial analysis. Dkt. # 314 at 55. It says users would not have understood (1) that they  
19 were enrolling in Prime, (2) that Prime automatically renews, or (3) Prime’s monthly cost. Dkt.  
20 # 314 at 48. And the agency contends that both the UPDP and SPC enrollment flows fail to meet  
21 ROSCA’s requirements. Dkt. # 314 at 56–59.

22 But Defendants say the flows themselves disprove the FTC’s arguments. Dkt. # 314 at  
23 24. They also say the design elements the flows employ are commonplace and consumers are  
24 likely to be familiar with them. *Id.* at 16–17. According to Defendants, the FTC’s critique about

1 the context of the flows likewise does not pass muster because no law prevents offers while  
2 consumers are shopping for a different product. *Id.* at 17.

3 There is a genuine dispute of material fact about whether Amazon’s disclosures of the  
4 material terms of Prime are “clear and conspicuous.” 15 U.S.C. § 8403(1). The FTC has  
5 presented figures showing the flows at issue, and based on these images a reasonable jury could  
6 find the disclosure of Prime’s material terms does not meet ROSCA’s requirements. *See* Dkt. #  
7 314 at 12–21 (Figures 4–10); *see Barrer v. Chase Bank USA, N.A.*, 566 F.3d 883, 892 (9th Cir.  
8 2009) (conspicuousness of a disclosure can be evaluated on its face). The FTC also presented  
9 additional evidence to support its argument that both the UPDP and SPC flows did not make  
10 clear and conspicuous disclosures. *See* Dkt. # 314 at 56–60. For instance, Amazon calls Prime  
11 “FREE” four times in the SPC flow and says Prime comes with “no commitments.” Dkt. # 317-  
12 4 at 26. In another example, in the UPDP flow, Amazon tells shoppers they will “save” money  
13 by enrolling in Prime even if they are already entitled to free shipping based on the dollar value  
14 of the products they are purchasing from Amazon. Dkt. # 317-5. Based on this evidence, a  
15 reasonable jury could find in favor of the FTC.

16 But Defendants present contrary evidence. They provide empirical evidence to support  
17 their claim that consumers are likely to be familiar with and understand the features of the  
18 enrollment flows. Dkt. # 325 at 370–71. They also identify expert testimony that says, contrary  
19 to the FTC’s arguments, Amazon’s design choices make it more likely that a reasonable  
20 consumer would notice Prime’s material disclosures. Dkt. # 325 at 359–60. And based on this  
21 evidence, a reasonable jury could find in favor of Amazon. Thus, the Court denies both sides’  
22  
23  
24

1 motions for summary judgment on whether Defendants “clearly and conspicuously” disclose  
2 Prime’s material terms. 15 U.S.C. § 8403(1).<sup>4</sup>

3 b. Timing

4 The FTC also contends that Defendants violate ROSCA because Amazon collects  
5 consumers’ billing information before disclosing the material terms of Prime. Dkt. # 314 at 62.  
6 According to the FTC, Amazon uses customers’ stored information to charge them when they  
7 later enroll, whether the enrollment is consensual or not, in Prime. *Id.* at 63. And the FTC adds  
8 that in some cases Defendants do not collect or confirm a consumer’s billing information at all  
9 before enrolling them in Prime. *Id.* at 63.

10 Defendants contend that Amazon complies with ROSCA’s disclosure requirements  
11 because the website discloses Prime’s terms before obtaining a customer’s consent to use their  
12 billing information. Dkt. # 365 at 32. They say that in each of the flows, Amazon discloses  
13 Prime’s terms and then obtains consent to use the customer’s billing information. *Id.* at 33–34.  
14 Defendants’ final argument is that this is a disputed question because Amazon’s material terms  
15 are “ubiquitous” on its website and in its advertisements. *Id.* at 34.

16 The evidence presented by the FTC establishes that it is entitled to summary judgment on  
17 this issue. The FTC highlights images that show Amazon collects a customer’s billing  
18 information before the material terms of Prime are disclosed to a customer. *See, e.g.*, Dkt. # 317-  
19 4 at 18 (in the UPDP flow, customer’s billing information is obtained); *id.* at 19 (in the UPDP  
20 flow, the next page discloses the material terms of Prime); *id.* at 11 (in the SOSP flow,  
21 customer’s billing information is obtained); *id.* at 12 (in the SOSP flow, the next page discloses  
22

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23 <sup>4</sup> Analyses of other Amazon flows performed by other courts do not dictate a different  
24 conclusion. The Court must evaluate the flows at issue in the context that they are presented to  
consumers. *See Chabolla*, 2023 WL 4544598, at \*6 (performing a contextual analysis and noting that,  
when the provided the opportunity, the Ninth Circuit did not discredit a similar contextual analysis).

1 the material terms of Prime). This practice violates the plain text of ROSCA. 15 U.S.C. §  
2 8403(1). No reasonable jury could find in favor of Amazon when provided with this evidence.

3 Defendants try to avoid this uncomplicated reasoning by arguing that Amazon obtains  
4 *consent* to use a customer's billing information at the same time they disclose Prime's material  
5 terms. Dkt. # 365 at 32–34. But this argument is at odds with the plain language of ROSCA.  
6 The statute requires “text that clearly and conspicuously discloses all material terms of the  
7 transaction *before obtaining* the customer's billing information.” 15 U.S.C. § 8403 (1)  
8 (emphasis added); *see* Dkt. # 165 at 26 (“Nothing in ROSCA says that companies such as  
9 Amazon may not give consumers the option to autofill the billing information already on file or  
10 simply to provide billing information after the disclosures, but ROSCA requires that consumers  
11 be given that choice after the disclosures.”). So Defendants' arguments miss the mark.  
12 Defendants also point to expert testimony that mentions some locations *where* the material terms  
13 of Prime are disclosed. *See* Dkt. # 318-43 at 17–18. But this evidence says nothing about *when*  
14 a customer's billing information is obtained in relation to the disclosure of Prime's material  
15 terms. In other words, this may show “the mere existence of a scintilla of evidence,” but is not  
16 enough to establish that a reasonable jury would find against the FTC on this issue. *Anderson*,  
17 477 U.S. at 252. As a result, the Court grants the FTC summary judgment on whether Amazon  
18 discloses all material terms of a Prime transaction before obtaining a customer's billing  
19 information. 15 U.S.C. § 8403(1).

20 2. Express Informed Consent<sup>5</sup>

21 ROSCA requires Amazon to “obtain[] a consumer's express informed consent before  
22 charging the consumer's credit card, debit card, bank account, or other financial account for”  
23

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24 <sup>5</sup> Defendants say that the FTC Act claim (Count I) does not survive without Count III (ROSCA).  
Dkt. # 319 at 11 n.3. The Court agrees and analyzes these two counts together. *See also* Dkt. # 165 at 27.

1 Prime. *See* 15 U.S.C. § 8403(2). In ROSCA cases, the failure to clearly and conspicuously  
2 disclose the material terms of a transaction can constitute evidence that a defendant did not  
3 obtain express informed consent before charging a consumer’s cards or accounts. *See FTC v.*  
4 *Health Formulas, LLC*, 2015 WL 2130504, at \*16 (D. Nev. May 6, 2015). And even if the  
5 material terms of a transaction are not clearly and conspicuously disclosed, “[t]o form a contract  
6 . . . there must be actual or constructive notice of the agreement and the parties must manifest  
7 mutual assent.” *Oberstein v. Live Nation Ent., Inc.*, 60 F.4th 505, 512–13 (9th Cir. 2023) (citing  
8 *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022)). The Court assesses  
9 Section 5 violations under a reasonable consumer standard and applies that standard here to  
10 determine whether a reasonable consumer would know that by pressing a button they were  
11 consenting to become a Prime member and to the material terms of the transaction. Dkt. # 165 at  
12 28; *see FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009).

13 The FTC contends that it is entitled to summary judgment on express informed consent  
14 because Amazon (1) fails to obtain any consent from consumers to enroll in Prime and because  
15 (2) it fails to obtain *informed* consent from consumers. Dkt. # 314 at 63. In particular, the FTC  
16 says Amazon does not obtain consent because they do not disclose the consequences of clicking  
17 certain buttons in the enrollment flows. *Id.* at 64. The FTC also points to empirical evidence to  
18 support its conclusion that Amazon does not obtain consent before enrolling consumers in Prime.  
19 *Id.* at 67–68. And the FTC argues that Amazon does not obtain informed consent because Prime  
20 does not make clear and conspicuous disclosures, so consumers did not give their informed  
21 consent before enrolling them in Prime. *Id.*

22 On the other hand, Defendants contend that they are entitled to summary judgment  
23 because every enrollment flow adequately discloses the terms of Prime and every flow  
24 adequately explains the effect of clicking the disputed buttons. Dkt. # 365 at 35. Defendants add

1 that the flows’ disclosures are clear and conspicuous, or at a minimum, this is a disputed factual  
2 issue that is inappropriate for summary judgment. Dkt. # 365 at 35–37. They also say that other  
3 courts have held that similar flows obtain express informed consent. Dkt. # 319 at 20. And they  
4 add that discovery has disproven the accuracy of the FTC’s empirical evidence, and that this  
5 evidence cannot be used for the FTC’s intended purpose. *Id.*

6 There are genuine disputes of material fact that preclude summary judgment for either  
7 side on this issue. The FTC has introduced evidence that suggests the UPDP flow does not  
8 obtain consent from consumers before enrolling them in Prime because some consumers “would  
9 not have seen or recognized any alternative to clicking the orange enrolling button if they wanted  
10 to complete their underlying product purchase.” Dkt. # 314 at 67; *see* Dkt. # 317-10. The  
11 images presented by the FTC would also allow a reasonable jury to agree that the UPDP flow’s  
12 “by signing up” text is inconspicuous and does not obtain express informed consent from  
13 consumers. Dkt. # 317-10. And the FTC has provided evidence that the SPC flow hides Prime’s  
14 terms and conditions, so consumers navigating this flow do not provide express informed  
15 consent before enrolling Prime. *See* Dkt. # 317-4 at 27. There is also empirical evidence that  
16 UPDP, SPC, and SOSP PDP enrollees did not provide express informed consent before enrolling  
17 in Prime.<sup>6</sup> Dkt. # 318-12 at 94. Based on this evidence, a reasonable jury could find in favor of  
18 the FTC.

19 Conversely, a reasonable jury could find in favor of Amazon. Defendants’ evidence  
20 suggests that the text of the website’s buttons and surrounding text demonstrates the user’s  
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22 <sup>6</sup> The FTC has met its burden to show that this evidence is admissible. It has shown the survey it  
23 relies on was conducted according to generally accepted survey principles. Dkt. # 318-72 at 36–46.  
24 Defendants’ criticisms go to the weight, not the admissibility of this evidence. *See Monster Energy Co. v. Vital Pharms., Inc.*, 2025 WL 1111495, at \*1 (9th Cir. Apr. 15, 2025) (“methodological concerns with a survey go to weight rather than admissibility”).

1 express informed consent before enrollment. Dkt. # 319 at 19–20. Defendants highlight  
2 additional evidence to show the other elements of the flows’ design illustrate that a consumer  
3 provides express informed consent before enrolling in Prime. *Id.* at 20. And there is evidence  
4 that when a “consumer sees a blue or gray ‘No Thanks’ link next to an orange or yellow ‘Start  
5 your Prime FREE trial’ button, they are likely to understand that clicking the orange or yellow  
6 button triggers a Prime purchase.” *Id.* This evidence could lead a reasonable jury to find in  
7 favor of Amazon on this issue. Thus, the Court denies summary judgment for both sides on  
8 whether Defendants obtain express informed consent before enrolling consumers in Prime. *See*  
9 15 U.S.C. § 8403(2).

### 10 3. Simple Mechanisms

11 ROSCA requires that Amazon “provide[] simple mechanisms for a consumer to stop  
12 recurring charges from being placed on the consumer’s credit card, debit card, bank account, or  
13 other financial account.” 15 U.S.C. § 8403(3). ROSCA does not define “simple mechanisms.”  
14 “Without a statutory definition,” courts “turn to the phrase’s plain meaning at the time of  
15 enactment.” *Tanzin v. Tanvir*, 592 U.S. 43, 48 (2020).

16 Defendants say that “simple” means “readily understood or performed.” Dkt. # 319 at  
17 22. And Defendants define “mechanism” as a “process . . . by which something is done,” or “[a]  
18 system of parts that operate or interact like those of a machine.” *Id.* The FTC says “simple”  
19 means “easy.” Dkt. # 314 at 68. And the FTC notes, “It is far more likely that Congress  
20 intended ‘mechanism’ to mean ‘[a]n instrument or a process, physical or mental, by which  
21 something [here, cancellation] is done[.]’” Dkt. # 351 at 31. The Court adopts the definition of  
22 “simple” proposed by Defendants because that is the plain meaning of the term at the time of  
23 ROSCA’s enactment. Merriam-Webster’s Online Dictionary (2010),  
24 <https://tinyurl.com/4mndw7zx>. And the Court defines “mechanism” as “a process, technique, or

1 system for achieving a result [here, cancellation]” because this is the meaning that makes the  
2 most sense in context. Merriam-Webster’s Online Dictionary (2010),  
3 <https://tinyurl.com/4898ps2x>; see *United States v. Hansen*, 599 U.S. 762, 775 (2023) (“When  
4 words have several plausible definitions, context differentiates among them. That is just as true  
5 when . . . a court must choose among multiple ordinary meanings[.]”).

6 The FTC says it is entitled to summary judgment because the Iliad cancellation flow is  
7 not simple. Dkt. # 314 at 69. It also says the mere availability of other cancellation methods  
8 does not demonstrate that ROSCA’s cancellation methods satisfy ROSCA. *Id.* at 71–72.

9 On the other hand, Defendants argue that summary judgment in their favor is appropriate  
10 because the flow’s methods are simple. Dkt. # 319 at 23. They also point out that ROSCA does  
11 not require that every cancellation method be simple. *Id.* at 22. And Defendants add that the law  
12 similarly does not forbid non-simple cancellation methods, so long as other simple methods are  
13 provided. *Id.*

14 There is a genuine dispute of material fact about whether a reasonable consumer would  
15 understand the Iliad cancellation method to be simple. The FTC presents evidence that even  
16 entering the Iliad cancellation flow is not readily understood because the “End Membership”  
17 button that starts the cancellation process does not, in fact, end the customer’s membership. See  
18 Dkt. # 320-40 at 115. The FTC also provides evidence that consumers needed to reaffirm their  
19 desire to cancel their Prime membership three times once they enter the flow. See Dkt. ## 318-  
20 42 at 369; 320-3 at 7; 320-3 at 8 (showing various pages in the Iliad cancellation flow). And the  
21 FTC highlights evidence demonstrating Amazon employees knew the goal of Iliad was to “retain  
22 members who attempt to cancel their membership.” Dkt. # 318-29 at 2. There is also empirical  
23 evidence that many failed Iliad cancellers did not use any Prime benefits for the next 90 days,  
24 and users that failed to cancel their membership did not click a button to affirmatively keep their

1 membership (as opposed to, for instance, simply navigating to a different webpage). Dkt. ##  
2 318-12 at 57–59; 320-20 at 4–5. Based on this evidence, a reasonable jury could find that the  
3 Iliad cancellation flow is not simple.

4 But Defendants present empirical evidence that shows consumers can readily locate,  
5 understand, and complete the Iliad cancellation flow. Dkt. # 325 at 598–99. Defendants also  
6 present empirical evidence that Amazon’s cancellation processes are similar to those offered by  
7 other digital membership services, and these features are familiar and understandable to  
8 consumers. *Id.* at 372–73. A reasonable jury could, based on this evidence, find against the FTC  
9 and in Defendants’ favor because the Iliad cancellation flow is simple. Thus, there is a genuine  
10 dispute of material fact about whether the Iliad cancellation flow is simple.

11 There is also a genuine dispute of material fact about whether the other cancellation  
12 methods for Prime are simple. Defendants present evidence that Amazon has at least four non-  
13 Iliad methods for Prime membership cancellation: calling customer service, having an online  
14 chat, emailing customer service, and using Amazon’s customer service help page. *Id.* at 350,  
15 642. Defendants also present evidence that users can cancel through these methods. Dkt. ##  
16 318-14 at 6; 364-1 at 302, 319. This evidence could lead a reasonable jury to find in Defendants’  
17 favor because Amazon does in fact offer “simple” methods for cancellation.<sup>7</sup>

18 The FTC presents contrary evidence that shows these other cancellation methods are very  
19 rarely used, as compared to the Iliad cancellation flow. *See* Dkt. ## 320-10 at 3; 320-11 at 27,  
20 29. And frequency of use is probative of a method’s simplicity. As Defendants agree, “simple”  
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22 <sup>7</sup> Although Defendants accuse the FTC of adding “new allegations” that challenge these non-Iliad  
23 cancellation methods, the FTC’s legal theory remains unchanged from the complaint: “Defendants fail to  
24 provide simple mechanisms for a consumer to stop recurring charges for the good or service to the  
consumer’s credit card, debit card, bank account, or other financial account.” Dkt. # 67 at 90; *see* Dkt. #  
378 at 12.

means “readily understood.” Dkt. # 319 at 22. At the time of ROSCA’s enactment, “understood” meant “apprehended” and “apprehended” meant to be made “aware of.” Merriam-Webster’s Online Dictionary (2010), <https://tinyurl.com/ysdcsavz>. This understanding is also consistent with ROSCA’s directive to provide simple cancellation methods. 15 U.S.C. § 8403(3). A cancellation method is not “provided” unless it is “made available.” Merriam-Webster’s Online Dictionary (2010), <https://tinyurl.com/aexeetmn>. So a reasonable jury could find the non-Iliad cancellation methods offered by Amazon were not simple because a reasonable consumer would not have been aware of them. *See also* Dkt. # 365 at 39 (accepting that if prominence of a cancellation method bears on its simplicity, that is a fact in dispute).

Because there is a genuine dispute of material fact about whether Defendants offer any “simple” cancellation methods, summary judgment is not warranted for either side on this issue.

#### D. Individual Liability under the FTC Act and ROSCA

The Ninth Circuit has “established a two-pronged test for determining when an individual may be held personally liable for corporate violations of the FTC Act.” *FTC v. Com. Planet, Inc.*, 815 F.3d 593, 600 (9th Cir. 2016). This test requires the FTC to prove the individual:

(1) participated directly in, or had the authority to control, the unlawful acts or practices at issue; and

(2) had actual knowledge of the misrepresentations involved, was recklessly indifferent to the truth or falsity of the misrepresentations, or was aware of a high probability of fraud and intentionally avoided learning the truth.

*Id.* (citing *FTC v. Network Services Depot, Inc.*, 617 F.3d 1127, 1138–39 (9th Cir. 2010); *see Stefanchik*, 559 F.3d at 931). In addition, “[t]he extent of an individual’s involvement in a fraudulent scheme alone is sufficient to establish the requisite knowledge for personal restitutionary liability.” *FTC v. Affordable Media*, 179 F.3d 1228, 1235 (9th Cir. 1999). But the

1 FTC need not show “a defendant intended to defraud consumers in order for that individual to be  
2 personally liable.” *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1102 (9th Cir. 2014).

3 The parties cross-move for summary judgment on the personal liability of the Individual  
4 Defendants. *See* Dkt. ## 314 at 72–74; 316 at 10–15.<sup>8</sup>

5 1. Defendants Ghani and Lindsay

6 The FTC cites extensive evidence that shows Ghani and Lindsay had authority to control  
7 Prime’s enrollment and cancellation flows. Amazon told the FTC that Ghani and Lindsay were  
8 two of the individuals “most responsible for any decisions” in “enrollment and cancellation in  
9 the Prime program.” Dkt. # 320-21 at 2. The FTC also presented evidence showing Amazon  
10 identified Lindsay as “the Senior Vice President responsible for Prime and a member of  
11 Amazon’s S-Team”<sup>9</sup> and Ghani as “the Vice President responsible for Prime.” *Id.* at 5. Ghani  
12 and Lindsay “had the most consistent management authority over the policies, practices, and  
13 procedures” of the “Enrollment and Unsubscribe process for Amazon Prime.” Dkt. # 320-2 at 3–  
14 4. These individuals also “have or had primary oversight and leadership over the Prime  
15 program.” Dkt. # 320-9 at 9. This evidence establishes that Ghani and Lindsay had authority to  
16 control Amazon’s Prime enrollment and cancellation practices.

17 This high degree of involvement also supports the FTC’s argument that these Defendants  
18 had actual knowledge of, or were recklessly indifferent to, the alleged issues with Amazon’s  
19 flows. *See Grant Connect*, 763 F.3d at 1101. And the FTC introduces further documentary  
20 evidence to support this argument. For example, Lindsay knew changes to the UPDP enrollment  
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22 <sup>8</sup> The FTC says, “Ghani and Lindsay do not seek summary judgment on their liability for  
23 Amazon’s ROSCA and FTC Act violations, assuming the existence of Amazon’s violations.” Dkt. # 351  
24 at 33. But the Court disagrees because the Individual Defendants’ motion repeatedly states that they are  
not liable for violations of the FTC Act and ROSCA. *See generally* Dkt. # 316.

<sup>9</sup> “S-Team” is the name for the Senior Management Team at Amazon, and this team “works  
together as a whole to manage Amazon’s entire worldwide business.” Dkt. # 320-9 at 11.

1 button reduced nonconsensual enrollment. Dkt. # 317-17 at 2–4. A Prime Content Testing  
2 Team memorandum sent to Ghani similarly said, “[W]e know that a portion of Prime members  
3 were not aware when they signed up for Prime[.]” Dkt. # 317-36 at 2. And Ghani and Lindsay  
4 received a comprehensive memorandum reporting on issues with Prime enrollment and  
5 cancellation. Dkt. # 320-1. Even viewing this evidence in the light most favorable to  
6 Defendants Ghani and Lindsay, no reasonable jury could find they are not personally liable for  
7 Amazon’s alleged FTC Act and ROSCA violations.

8 Defendants’ counterarguments are unavailing. First, Defendants argue that the FTC has  
9 not presented evidence that these Defendants acted with “actual, subjective awareness” of the  
10 deceptive nature of the flows. Dkt. # 365 at 44–45. But the FTC does not need to present this  
11 evidence; it has highlighted evidence that shows Ghani’s and Lindsay’s high degree of  
12 involvement in the Prime program, and that Ghani and Lindsay repeatedly received reports  
13 detailing consumers’ problems with Prime. And this evidence is not meaningfully rebutted by  
14 these Defendants’ after-the-fact testimony that they did not intend to violate ROSCA. *See* Dkt. #  
15 316 at 12–13 (collecting testimony). This testimony is not corroborated by any record evidence.  
16 And the Ninth Circuit “has refused to find a ‘genuine issue’ where the only evidence presented is  
17 ‘uncorroborated and self-serving’ testimony.” *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d  
18 1054, 1061 (9th Cir. 2002) (quoting *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir.  
19 1996)).

20 Second, Defendants’ argument that Ghani and Lindsay cannot be held liable because  
21 authority to control Prime was distributed across multiple teams or de-centralized is misguided.  
22 Dkt. # 365 at 44–45. The FTC does not need to establish sole authority to control to establish  
23 personal liability. *See FTC v. World Media Brokers Inc.*, 2004 WL 432475, at \*9 (N.D. Ill. Mar.  
24

1 2, 2004), *aff'd sub nom. FTC v. World Media Brokers*, 415 F.3d 758 (7th Cir. 2005); *see* Dkt. #  
2 165 at 38.

3 Third, Defendants misplace their reliance on *Grant Connect* for the proposition that  
4 Ghani and Lindsay cannot be held liable because they did not have authority to control Prime  
5 when the flows were established. *See* Dkt. # 365 at 45. To be sure, in *Grant Connect* the Ninth  
6 Circuit held an individual defendant liable because “he both controlled [the liable corporation] at  
7 the time the scheme was organized, and directly participated in establishing the scheme.” *Grant*  
8 *Connect*, 763 F.3d at 1103. But there is nothing in the *Grant Connect* decision that says an  
9 individual defendant is liable for a corporation’s misconduct *only* if they participate in  
10 establishing the unlawful scheme. Defendants advocate for a result where an individual  
11 defendant who, for years, exercises control over—but does not establish—an unlawful scheme  
12 can escape liability. Such a result finds no support in the caselaw presented by Defendants. *Cf.*  
13 *id.* at 1104 (the defendant was not liable for Acai Total Burn Scheme because he did not have  
14 authority to control the corporation when the scheme was developed *and* did not directly  
15 participate in the scheme).

16 The parties also agree on the liability period for Defendants Ghani and Lindsay.  
17 Defendants and the FTC both say liability starts for Lindsay in 2017 and for Ghani in October  
18 2019. Dkt. ## 365 at 45; 381 at 26. Thus, to the extent that the FTC establishes Amazon is  
19 liable for violations of the FTC Act and ROSCA, the Court grants the FTC’s motion for  
20 summary judgment on this issue, and liability starts for Lindsay in 2017 and Ghani in October  
21 2019.

22 2. Defendant Grandinetti

23 Evidence submitted by the FTC likewise shows that Grandinetti had the authority to  
24 control the Prime enrollment and cancellation flows. For one thing, Grandinetti testified that he

1 would expect to be consulted on major changes to the Prime enrollment flow. Dkt. # 317-28 at  
2 18:19–25. And since March 2018, Grandinetti has been an S-Team member “with responsibility  
3 for Prime.” Dkt. # 320-9 at 12. Grandinetti was a “required” in-person attendee at a March 2019  
4 meeting to discuss “Prime signup frustration”—specifically that “prime sign-ups are not always  
5 transparent; customers sign up without knowing they did.” Dkt. # 317-26 at 5. As part of  
6 Amazon’s corporate practice, all attendees—including Grandinetti—would have been required to  
7 read the document that discussed these Prime sign-up frustrations. Dkt. # 318-8 at 6 (44:20–25).  
8 After this meeting, Grandinetti provided “guidance” to the Prime and Shopping Design Teams  
9 on these frustrations. *Id.* at 7 (47:13–17). And Amazon employees understood that they were  
10 required to follow his “guidance” on Prime at this time. *Id.* at 8 (52:16–19). Consistent with his  
11 Prime responsibilities, Grandinetti also received a memorandum from Amazon’s  
12 “Benchmarking” organization in November 2019 that disclosed Prime customers “who  
13 attempted to cancel post-signup struggled with the process (how, where, and when).” Dkt. #  
14 254-11 at 3. A reasonable jury could find against Grandinetti and in favor of the FTC on his  
15 individual liability based on this evidence.

16 But here, Defendants introduce sufficient evidence to create a genuine dispute of material  
17 fact. The Prime organization did not directly report to Grandinetti until 2021. Dkt. # 325 at 843,  
18 978. At Grandinetti’s deposition, the FTC did not ask him about anything that would have  
19 shown he was involved in decisions related to the cancellation flow. *Id.* at 1018. And about  
20 30,000 people worldwide fall under the umbrella of his role, “[p]erhaps more.” *Id.* at 974; Dkt. #  
21 316 at 7. This evidence suggest that Grandinetti had less involvement in the operation of the  
22 Prime organization, as compared to Ghani and Lindsay. Based on this evidence, a reasonable  
23 jury could find against the FTC and find that Grandinetti is not personally liable for Amazon’s  
24

1 violations of the FTC Act and ROSCA. So the Court denies both sides' motions for summary  
2 judgment on this issue.

3 E. Defendants' Affirmative Defenses

4 The FTC moves for summary judgment on Defendants' equitable and due process  
5 affirmative defenses. Dkt. # 314 at 75–80. Defendants move for summary judgment on their  
6 due process and First Amendment defenses. Dkt. # 316 at 15–21.

7 Because the FTC does not bear the burden of persuasion at trial, it can show there is no  
8 genuine dispute of material fact “by showing that [Defendants] lack[] evidence of an essential  
9 element of [their] claim or defense.” *Metro. Grp.*, 738 F. Supp. 3d at 1376 (citing *Nissan Fire*,  
10 210 F.3d at 1106). “[T]he burden then shifts to the nonmoving party to identify specific facts  
11 from which a factfinder could reasonably find in the nonmoving party’s favor.” *Id.* (citations  
12 omitted).

13 1. Equitable Defenses

14 The Defendants raise three equitable affirmative defenses: unclean hands, equitable  
15 estoppel, and laches. Only the FTC moves for summary judgment on these affirmative defenses.  
16 *See* Dkt. # 314 at 75–77; *see generally* Dkt. ## 316, 319.

17 a. Unclean Hands and Equitable Estoppel

18 The FTC shows that Defendants do not have evidence to support their unclean hands and  
19 equitable estoppel defenses. *See* Dkt. # 314 at 75–77. And Defendants present no evidence to  
20 support these defenses; nor do they mention them in their motions. *See* Dkt. # 365 at 48–49  
21 (only making arguments in support of its laches defense); *see generally* Dkt. ## 316, 319. The  
22 Court grants the FTC summary judgment on these defenses.

23 //

24 //

## b. Laches

To establish the equitable defense of laches, the “defendant must prove both an unreasonable delay by the plaintiff and prejudice to itself.” *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 951 (9th Cir. 2001) (quoting *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000)). Some courts have recognized that this defense is available against a government enforcement action but requires the defendant to show “affirmative misconduct.” *See FTC v. Directv, Inc.*, 2015 WL 9268119, at \*3 (N.D. Cal. Dec. 21, 2015).

Defendants argue “affirmative misconduct” can be shown by “egregious instances of government delay.” Dkt. # 365 at 49 (citing *CFPB v. TransUnion*, 701 F. Supp. 3d 744, 754 (N.D. Ill. 2023)). But there is no binding authority presented by either side that supports or discredits this position. In any event, even if affirmative misconduct can be shown by egregious delay, there is no evidence the FTC has engaged in such a delay. At most, this case involves a seven-to-nine year delay before the FTC filed suit. *See* Dkt. # 365 at 49 (“this case involves an undisputed *seven-to-nine year* delay”). And Defendants provide no authority or evidence that would suggest this length of delay qualifies as “egregious.” The only case cited by either side in which the government’s delay supported a laches defense involved a delay of over 200 years between the filing of a treaty and a lawsuit challenging the validity of the treaty. *See Cayuga Indian Nation of New York v. Pataki*, 413 F.3d 266 (2d Cir. 2005). There are also cases presented by the FTC in which trial courts have denied the laches defense for a similar, or longer, delay than the delay at issue here. *See, e.g., TransUnion*, 701 F. Supp. 3d at 754 (five-year delay not egregious); *Groves v. United States*, 2017 WL 1806593, at \*6 (N.D. Ill., May 5, 2017) (ten-year delay not egregious). And this case is distinguishable from the caselaw presented by Defendants because here there is no dispute about the maximum length of the FTC’s delay. *See FTC v. Directv, Inc.*, 2016 WL 6947503, at \*3 (N.D. Cal. Nov. 26, 2016)

1 (“there is a genuine dispute between the parties regarding the inferences that should be drawn  
2 from the facts that are material to whether the FTC engaged in affirmative misconduct”); *FTC v.*  
3 *Hang-Ups Art Enters., Inc.*, 1995 WL 914179, at \*4 (C.D. Cal. Sept. 27, 1995) (“The facts of the  
4 case should decide whether there has been affirmative misconduct by the government such that  
5 laches might apply.”). Thus, the FTC shows that Defendants lack an essential element of their  
6 laches defense, and Defendants do not identify any facts that would allow a reasonable jury to  
7 find in their favor. The Court grants the FTC summary judgment on this issue.

## 8 2. Due Process Defenses

9 Defendants move for summary judgment on three due process affirmative defenses: as-  
10 applied and facial vagueness challenges and an as-applied challenge under the First Amendment.  
11 See Dkt. # 316 at 16–20. The FTC moves for summary judgment only on Defendants’  
12 vagueness challenges. Dkt. # 314 at 77–80.

### 13 a. Vagueness

14 “A fundamental principle in our legal system is that laws which regulate persons or  
15 entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television*  
16 *Stations, Inc.*, 567 U.S. 239, 253 (2012). This principle is violated if a law either “fails to  
17 provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless  
18 that it authorizes or encourages seriously discriminatory enforcement.” *United States v.*  
19 *Williams*, 553 U.S. 285, 304 (2008). In the context of civil statutes regulating economic  
20 activities, such as ROSCA, a law is unconstitutionally vague only where it is “so vague and  
21 indefinite as really to be no rule or standard at all.” *Boutilier v. INS*, 387 U.S. 118, 123 (1967);  
22 see Dkt. # 180 at 11 (Court applying this standard to Defendants’ due process arguments). In  
23 addition, the Court evaluates Defendants’ as-applied and facial vagueness challenges  
24 simultaneously because “the substantive legal tests used in the two challenges are invariant.”

1 *Hoye v. City of Oakland*, 653 F.3d 835, 857 (9th Cir. 2011) (internal citations and quotations  
2 omitted); *see Hightower v. City & Cnty. of San Francisco*, 77 F. Supp. 3d 867, 886 (N.D. Cal.  
3 2014), *aff'd sub nom. Taub v. City & Cnty. of San Francisco*, 696 F. App'x 181 (9th Cir. 2017)  
4 (“[T]here is no analytic or legally operative distinction between an as-applied vagueness  
5 challenge and a facial vagueness challenge.”).

6 Defendants say ROSCA is overly vague both as-applied and on its face. They argue they  
7 should not be required to determine the meaning of a statute when the agency responsible for  
8 enforcing the statute does not understand its meaning. Dkt. # 316 at 17. Defendants also say  
9 that there are no judicial opinions on the meaning of “simple mechanisms.” *Id.* And they  
10 contend that the requirement to “clearly and conspicuously” disclose material terms is similarly  
11 standardless. *Id.* at 18. So, according to Defendants, Amazon can only guess at ROSCA’s  
12 requirements. Dkt. # 316 at 18.

13 The FTC responds that these arguments do not survive any scrutiny. Dkt. # 314 at 78.  
14 The agency says Defendants’ vagueness challenge is meritless because, in effect, the parties ask  
15 the Court to apply the same standards. Dkt. # 351 at 41. And the FTC emphasizes that it does  
16 not urge a subjective test for ROSCA; the agency asks the Court to simply apply the law to the  
17 facts. *Id.* The FTC also contends that it does not advocate for any of the per se bans that  
18 Defendants claim. *Id.* at 41–42.

19 Defendants’ vagueness challenges fail because ROSCA specifies a standard of conduct.  
20 Indeed, in their motion to dismiss briefing, Defendant represented to the Court that ROSCA is a  
21 “clear statute” and “ROSCA is facially clear[.]” Dkt. # 84 at 31 (first quotation); Dkt. # 131 at  
22 29 (second quotation). The Court relied on these representations. Dkt. # 165 at 41. ROSCA  
23 also uses familiar legal terms and standards that are often found in state and federal law. Dkt. #  
24 165 at 43; *see, e.g., Walker v. Fred Meyer, Inc.*, 953 F.3d 1082, 1091 (9th Cir. 2020) (Fair Credit

Reporting Act and Truth in Lending Act have a “clear and conspicuous” requirement with the same meaning that the Court has employed here). So, at bottom, Defendants assert that ROSCA is impermissibly vague because it includes some amount of vagueness. But “[t]he Supreme Court and the Ninth Circuit have recognized that ‘[m]any statutes will have some inherent vagueness’ and that a certain quantum of vagueness is permissible—and even necessary.” *Oregon Ass’n of Hosps. & Health Sys. v. Oregon*, 734 F. Supp. 3d 1139, 1154 (D. Or. 2024), *aff’d*, 2025 WL 1833815 (9th Cir. July 3, 2025) (citing *Rose v. Locke*, 423 U.S. 48, 49–50 (1975); *McSherry v. Block*, 880 F.2d 1049, 1054 (9th Cir. 1989)); *see Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) (“Condemned to the use of words, we can never expect mathematical certainty from our language.”); Dkt. # 165 at 40–45 (rejecting many of the vagueness arguments that Defendants make again here). Accordingly, the FTC is granted summary judgment on Defendants’ due process vagueness challenges.

b. First Amendment

Defendants also say ROSCA violates their First Amendment rights. *See* Dkt. # 316 at 18–20. So Defendants must “demonstrate that the First Amendment even applies.” *B & L Prods., Inc. v. Newsom*, 104 F.4th 108, 112 (9th Cir. 2024), *cert. denied sub nom. B&L Prods. v. Newsom*, 145 S. Ct. 1958, 221 L. Ed. 2d 738 (2025) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 n.5 (1984)). “The First Amendment only applies when conduct with a significant expressive element drew the legal remedy or the statute has the inevitable effect of singling out those engaged in expressive activity.” *Id.* at 113 (citation modified) (internal citations and quotations omitted).

Defendants say the First Amendment applies to ROSCA because “the FTC reads ROSCA to prohibit truthful commercial speech.” Dkt. # 316 at 19. And they say it applies because the FTC’s Rule 30(b)(6) witness agreed that the Government takes “issue” with “the words that

1 Amazon is using.” *Id.* (quoting Dkt. # 325 at 44–45 (106:20–107:8)). Defendants also look to  
2 the verbs that the FTC used in its summary judgment motion to support their argument that  
3 ROSCA regulates speech. Dkt. # 379 at 11. As a result, Defendants contend that the FTC wants  
4 to prevent Amazon from using truthful speech to persuade customers to join Prime. Dkt. # 316  
5 at 19.

6 But these arguments are unpersuasive and do not demonstrate that ROSCA implicates  
7 First Amendment rights. Defendants do not show that selling goods or services on the Internet is  
8 conduct with a significant expressive element. Nor they do they show that ROSCA has the  
9 inevitable effect of singling out persons engaged in expressive activity. What is more, the Court  
10 does not look to the FTC’s words to determine if ROSCA implicates the First Amendment, it  
11 looks to the words of the statute. *Contra id.*; see *B & L Prods*, 104 F.4th at 113 (conducting First  
12 Amendment analysis based on language of challenged statutes). ROSCA regulates conduct: how  
13 goods and services are sold on the internet. 15 U.S.C. § 8403. And Defendants do nothing,  
14 beyond provide a single citation, to develop their argument that “A disclosure requirement like  
15 section 8403(1) is a textbook speech regulation.” Dkt. # 379 at 11. ROSCA is a regulation  
16 directed at internet commerce and, at most, imposes an incidental burden on Defendants’ speech.  
17 *See also Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011) (“the First Amendment does not  
18 prevent restrictions directed at commerce or conduct from imposing incidental burdens on  
19 speech.”). Thus, the Court denies Defendants’ motion for summary judgment on whether  
20 ROSCA violates their First Amendment rights.

#### 21 F. Monetary Penalties

22 Defendants move for summary judgment on the FTC’s ability to obtain civil penalties.  
23 Dkt. # 316 at 21–24; Dkt. # 319 at 28–37. They also move for summary judgment on whether  
24

1 the FTC can toll the statute of limitations in 15 U.S.C. § 57b(d) under a theory of equitable  
2 estoppel. Dkt. # 319 at 37.

3 1. Civil Monetary Penalties

4 The FTC is authorized to “commence a civil action to recover a civil penalty in a district  
5 court of the United States against any person, partnership, or corporation which violates any rule  
6 under this subchapter respecting unfair or deceptive acts or practices . . . with actual knowledge  
7 or knowledge fairly implied on the basis of objective circumstances that such act is unfair or  
8 deceptive and is prohibited by such rule.” 15 U.S.C. § 45(m)(1)(A). “Whether a defendant has  
9 violated a rule with actual or implied knowledge is based on objective factors. A defendant is  
10 responsible where a reasonable person under the circumstances would have known of the  
11 existence of the provision and that the action charged violated that provision.” *United States v.*  
12 *Nat’l Fin. Servs., Inc.*, 98 F.3d 131, 139 (4th Cir. 1996); *see* Dkt. # 165 at 46. Put differently,  
13 defendants face civil monetary liability if they either “knew that the act was unlawful or if [they]  
14 should have known the act was unlawful (‘knowledge fairly implied’).” *See United States v.*  
15 *Dish Network LLC*, 954 F.3d 970, 978 (7th Cir. 2020) (citing *Jerman v. Carlisle, McNellie, Rini,*  
16 *Kramer & Ulrich LPA*, 559 U.S. 573, 583–84 (2010)). This language permits a mistake-of-law  
17 defense. *Jerman*, 559 U.S. at 630; *see id.* at 630 (Kennedy, J., dissenting) (“[T]here is no doubt  
18 that § 45(m)(1)(A) permits a mistake-of-law defense.”).

19 a. Time-Barred

20 Defendants argue that the FTC’s demand for civil monetary penalties is time barred.  
21 They say the FTC’s claim for these penalties accrued in 2014 for the enrollment flows and 2016  
22 for the cancellation flows. Dkt. # 319 at 29. So, according to Defendants, the FTC was required  
23 to bring its civil monetary penalty demand by 2019 or 2021 and failed to do so. *Id.* Defendants  
24 also contend the language of 28 U.S.C. § 2462 does not allow for a continuing violations theory,

1 nor does it allow the Government to delay accrual under the discovery rule. *Id.* And Defendants  
2 say that all of the FTC’s other tolling arguments fail too. *Id.* at 29–31.

3 Yet the FTC argues that it seeks penalties from Defendants for each instance where  
4 Amazon charged a consumer in violation of ROSCA. Dkt. # 351 at 63. The FTC adds that its  
5 theory is consistent with the statute’s language. *Id.* And the agency seeks to recover for each  
6 violation that occurred within the limitations period. *Id.* at 64–66. The FTC further notes that  
7 Defendants’ arguments ignore that the precise manner in which Amazon has violated ROSCA  
8 has changed over time. *Id.* at 66–67.

9 Viewing the evidence in the light most favorable to the FTC, the Court does not believe it  
10 can grant Defendants’ motion for summary judgment on this topic. The language of ROSCA  
11 makes clear that a claim accrues each time there is a “charge or attempt to charge” a consumer in  
12 violation of the statute. 15 U.S.C. § 8403. So even if a ROSCA claim first accrued against  
13 Amazon in 2014, new claims would continue to accrue each time it charged a customer in  
14 violation of the law. This tracks the FTC’s position that Amazon has continuously violated  
15 ROSCA since 2014. *See, e.g.*, Dkt. # 325 at 34 (89:16–19) (FTC Rule 30(b)(6) witness agreeing  
16 that Amazon has “continuously violated ROSCA” since 2014). The FTC’s claims under  
17 ROSCA further illustrate that the agency is alleging a series of repeated violations, rather than  
18 one continuing violation, because it alleges Amazon has violated ROSCA “[i]n numerous  
19 instances.” Dkt. # 67 at 89–90. This differentiates this case from the primary authority relied on  
20 by Defendants, *Sierra Club v. Oklahoma Gas and Elec. Co.*, because there, the plaintiff’s claim  
21 was “best characterized as a continuing violation rather than a series of repeated violations.” 816  
22 F.3d 666, 671 (10th Cir. 2016); *see* Dkt. # 319 at 29. As a consequence, the Court denies  
23  
24

1 Defendants' motion for summary judgment on whether the FTC's claim for civil monetary  
2 penalties is time barred.<sup>10</sup>

3 b. Support for Penalties

4 Defendants also argue there is insufficient evidence to support an award of civil monetary  
5 penalties. They say there is no evidence that they had "actual knowledge" of any ROSCA  
6 violations. Dkt. # 319 at 32–33. They say that even though the FTC says Amazon violated  
7 ROSCA since 2014, the agency never told it that its flows violated the law. *Id.* Amazon's  
8 employees also repeatedly testified that they thought the flows complied with the law. *Id.* at 33.  
9 Nor is it enough, Defendants say, for the FTC to claim that Amazon is a big company with  
10 lawyers because the FTC cannot link this premise to any evidence of knowledge of ROSCA  
11 violations. *Id.* at 34. The Individual Defendants similarly argue that no evidence shows that any  
12 of them knew Amazon's practices were unfair or deceptive. Dkt. # 316 at 21–24.

13 The FTC responds by saying there is substantial evidence that Defendants knew  
14 ROSCA's requirements. Dkt. # 351 at 44. At a minimum, according to the FTC, Defendants  
15 knew about ROSCA's requirements in 2021—when the FTC told Amazon it was under  
16 investigation for potential ROSCA violations. *Id.* And the FTC says there is evidence of  
17 Defendants' pre-2021 knowledge because Amazon's initial submissions to the FTC track  
18 ROSCA's requirements. *Id.* at 44–45. The FTC also argues that Defendants had knowledge

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19  
20 <sup>10</sup> The Court does not address all of Defendants' tolling arguments because the FTC does not  
21 assert fraudulent concealment tolling. *See* Dkt. # 319 at 29–30; *see IQVIA Inc. v. MedImpact Healthcare*  
22 *Sys., Inc.*, 2022 WL 6258369, at \*5 (S.D. Cal. Oct. 7, 2022) ("Even though the Ninth Circuit has referred  
23 to equitable estoppel as fraudulent concealment . . . the elements to support equitable estoppel are distinct  
24 from fraudulent concealment.") (collecting cases). Nor does the Court address Defendants' diligence  
arguments because the FTC seeks tolling only based on equitable estoppel and diligence is not an element  
of equitable estoppel. Section III.5.b, *supra*. Defendants misquote Ninth Circuit authority to make it  
appear as if diligence is an element of equitable estoppel. *Compare* Dkt. # 378 at 22 (putting "Equitable  
estoppel" in quotation marks) *with Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1193 (9th Cir. 2001) (the  
words "Equitable estoppel" not appearing anywhere in the vicinity of the other language quoted by  
Defendants).

1 fairly implied of ROSCA’s requirements because a reasonable company—particularly one with  
2 the “largest subscription program in the United States”—would have known of the existence of  
3 ROSCA. *Id.* at 44–50.

4       There is a legitimate factual dispute about the FTC’s ability to impose civil monetary  
5 penalties. The FTC provided evidence that Amazon was aware of ROSCA in 2021 when the  
6 FTC informed the company that it was under investigation for possible ROSCA violations. Dkt.  
7 # 90-2 at 79. There is also evidence that Amazon was aware of ROSCA prior to 2021 because  
8 an early Amazon submission to the FTC described the enrollment and cancellations flows in  
9 terms that mirror ROSCA’s requirements. Dkt. # 320-4 at 29. For instance, Amazon said it  
10 “requires express consent from customers prior to enrolling them in Prime” and “Each Prime  
11 enrollment channel . . . clearly and conspicuously discloses the material terms of Prime  
12 membership.” *Id.* The evidence also suggests that Amazon knew it was violating ROSCA  
13 because it was nonconsensually enrolling customers in Prime. *See, e.g.*, Dkt. # 317-14 at 4  
14 (employee stating that as early as 2015 Amazon knew customers found the Prime enrollment  
15 process to be “deceiving”). Evidence similarly suggests Amazon knew it was violating ROSCA  
16 because, rather than offer Prime members a simple cancellation method, the Iliad cancellation  
17 flow was designed to retain members that wanted to cancel their membership. Dkt. # 318-29 at  
18 2. There is likewise evidence that suggests the Individual Defendants knew Amazon was  
19 violating ROSCA. *See* Dkt. ## 254-11; 318-15 at 9, 22; 318-33 at 7–8. Thus, viewing the  
20 evidence in the light most favorable to the FTC, there is a genuine dispute of material fact on this  
21 issue. Defendants’ motion for summary judgment on whether the FTC can support a claim for  
22 civil monetary penalties is denied.

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24 //

2. Estoppel<sup>11</sup>

Equitable doctrines do not apply to jurisdictional rules. *Kwai Fun Wong v. Beebe*, 732 F.3d 1030, 1035 (9th Cir. 2013), *aff'd and remanded sub nom. United States v. Wong*, 575 U.S. 402 (2015). Unless Congress clearly states that a rule is jurisdictional, courts should treat the rule as nonjurisdictional. *Id.* at 1036.

In order to toll a statute of limitations based on equitable estoppel, the plaintiff must plead and prove “(1) knowledge of the true facts by the party to be estopped, (2) intent to induce reliance or actions giving rise to a belief in that intent, (3) ignorance of the true facts by the relying party, and (4) detrimental reliance.” *Est. of Amaro v. City of Oakland*, 653 F.3d 808, 813 (9th Cir. 2011) (quoting *Bolt v. United States*, 944 F.2d 603, 609 (9th Cir. 1991)).

Defendants move for summary judgment on the period over which the FTC can seek redress for consumer harm. Dkt. # 319 at 37. They say that the FTC cannot recover for consumer harm before June 21, 2020 because the complaint was filed on June 21, 2023 and 15 U.S.C. § 57b(d)—the statute that entitles the FTC to seek redress for consumer harm—has a 3-year statute of limitations. *Id.*; see Dkt. # 1. But the FTC argues that Defendants’ efforts to impede its investigation should toll this statute of limitations. Dkt. # 351 at 50–51.

Congress did not clearly state that 15 U.S.C. § 57b(d) is jurisdictional, so the Court should treat it as nonjurisdictional. *Kwai Fun Wong*, 732 F.3d at 1036. Accordingly, equitable doctrines—like equitable estoppel—can be applied to the statute of limitations in 15 U.S.C. § 57b(d). *Id.* Defendants do not make any arguments to refute this conclusion; instead they focus their arguments on the sufficiency of the FTC’s evidence. See Dkt. # 378 at 20–22. Nor does

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<sup>11</sup> The FTC makes clear that it does not seek compensatory monetary relief from the Individual Defendants for any harm before June 21, 2020. Dkt. # 351 at 51 n.25.

1 the statute include any language that would indicate equitable estoppel should not apply. So the  
2 Court concludes that this statute is subject to tolling under a theory of equitable estoppel.

3 And the FTC supports its theory of equitable estoppel with evidence. The FTC provides  
4 evidence that shows Amazon knew of employees that were likely to possess information and  
5 documents responsive to the FTC's investigation and search terms that were likely to return  
6 information and documents relevant to the FTC's investigation; yet Amazon did not initially  
7 share this information with the FTC. *See* Dkt. ## 317-24; 317-36; 317-59 at 21–22 (64:3–65:9);  
8 318-15. There is also evidence that Amazon took action to induce the FTC's reliance or that  
9 Amazon's actions led the FTC to believe they intended to induce reliance, and this evidence also  
10 suggests the FTC relied on Amazon to its detriment. Dkt. # 359-11 at 6 (121:19–122:6), 24  
11 (241:2–20). The FTC's evidence further demonstrates it was ignorant of the true facts. *See* Dkt.  
12 ## 90-2 at 7–10; 140-1 at 3–4; 217 at 1–2; *see generally* Dkt. ## 286, 302, 334. This evidence  
13 creates a genuine issue of material fact as to whether the FTC can seek redress for consumer  
14 harm before June 21, 2020.

15 Defendants' counterarguments lack merit. First, Defendants apply the wrong legal  
16 standards. Dkt. # 378 at 21–22. The court in *Wasco* decided "the narrow question of whether  
17 Wasco was required to plead a civil conspiracy in order to raise the issue," and only held "that  
18 under federal law a plaintiff must plead, at a minimum, the basic elements of a civil conspiracy if  
19 the object of the conspiracy is fraudulent." *Wasco Prods., Inc. v. Southwall Techs., Inc.*, 435  
20 F.3d 989, 990–91 (9th Cir. 2006); *see Grisham v. Philip Morris, Inc.*, 670 F. Supp. 2d 1014,  
21 1022 (C.D. Cal. 2009) (distinguishing *Wasco* and describing the portion of the opinion relied on  
22 by Defendants as "dicta."). *Wasco* does not apply here because the FTC does not plead a civil  
23 conspiracy. Defendants' reliance on *Guerrero v. Gates* is similarly misplaced because the  
24 language cited by Defendants discusses "the facts which give rise to the claim of fraudulent

1 concealment.” 442 F.3d 697, 706–07 (9th Cir. 2006). The FTC does not make a claim of  
2 fraudulent concealment and, as the Court has noted *infra* n.10, the elements of fraudulent  
3 concealment and equitable estoppel are distinct. Second, Defendants rely on dicta to argue  
4 equitable estoppel requires the estopped party to have caused the plaintiff’s failure to file suit.  
5 Dkt. # 378 at 21. Read in context, the selective language quoted by Defendants was not  
6 necessary to these decisions; therefore, it has no binding authority. *Export Group v. Reef Indus.,*  
7 *Inc.*, 54 F.3d 1466, 1472 (9th Cir. 1995); *see Bertucci v. Gen. Teamsters Union Loc. No. 174,*  
8 *867 F.2d 612 at \*7 (9th Cir. 1989); Blaylock v. First Am. Title Ins. Co.*, 504 F. Supp. 2d 1091,  
9 1108 (W.D. Wash. 2007). Even so, only Defendants have moved for summary judgment on this  
10 topic. As the non-moving party, the FTC must be given the “the benefit of all reasonable  
11 inferences.” *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 790–91 (9th Cir. 2006) (internal  
12 citations omitted). And the reasonable inference from the evidence presented by the FTC is that  
13 Defendants prevented the agency from suing—at least for a time. Third, contrary to Defendants’  
14 arguments, diligence is not an element of equitable estoppel. Dkt. # 378; *Amaro*, 653 F.3d at  
15 813. So the FTC need not show diligence to support its equitable estoppel arguments. Thus, the  
16 Court denies Defendants’ motion for summary judgment on the time period when the FTC can  
17 seek redress for consumer harm.

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IV

CONCLUSION

The Court GRANTS in part and DENIES in part Plaintiffs' motion for summary judgment. Dkt. # 314. And the Court DENIES Defendants' motions for summary judgment. Dkt. ## 316, 319.

The FTC's motion for summary judgment is GRANTED with respect to (1) whether ROSCA regulates Prime; (2) whether Amazon discloses the material terms of the Prime transaction before obtaining a customer's billing information, *see* 15 U.S.C. § 8403(1); (3) the personal liability of Defendants Ghani and Lindsay; (4) Defendants' affirmative defenses of equitable estoppel, unclean hands, and laches; and (5) Defendants' as-applied and facial vagueness challenges.

Dated this 17th day of September, 2025.

  
John H. Chun  
United States District Judge