

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

VINCE RANALLI,

Plaintiff,

v.

AMAZON.COM LLC, ZAZZLE INC.,
ARENA MERCHANDIZING BY AND
THROUGH AMAZON.COM, LLC,
ETSY.COM, LLC, BRAVE NEW LOOK,
and OUTDOOR RESEARCH,

Defendants.

Civil Action No. 2:21-cv-0088

Judge Colville

Electronically Filed

BRIEF IN SUPPORT OF MOTION TO COMPEL ARBITRATION

TABLE OF CONTENTS

	<u>Page</u>
I. FACTUAL BACKGROUND	2
STANDARD OF REVIEW.....	7
ARGUMENT.....	8
A. Plaintiff Agreed to Arbitrate His Claims on an Individual Basis.....	8
B. The Gateway Issues under the FAA Have Been Satisfied.....	11
C. This Court Should Compel Arbitration and Stay or Dismiss This Action.	12
CONCLUSION	13

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Berryman v. Newalta Envtl. Servs., Inc., No. CV 18-793,</i> 2018 WL 5723290 (W.D. Pa. Nov. 1, 2018)	7, 12
<i>Blanton v. Domino’s Pizza Franchising LLC,</i> 962 F.3d 842 (6th Cir. 2020)	10
<i>Brown v. Firstsource Advantage, LLC</i> No. CV 17-5760, 2019 WL 568935 (E.D. Pa. Feb. 12, 2019)	7
<i>Bryan Benedict v. Guess Inc., No. 5:20-CV-4545,</i> 2021 WL 37619 (E.D. Pa. Jan. 5, 2021)	7
<i>Chiron Corp. v. Ortho Diagnostic Sys., Inc.,</i> 207 F.3d 1126 (9th Cir. 2000)	11
<i>EEOC v. Waffle House, Inc.,</i> 534 U.S. 279, 289 (2002)	11
<i>Ekin v. Amazon Servs., LLC,</i> 84 F. Supp. 3d 1172–78 (W.D. Wash. 2014)	11
<i>Fagerstrom v. Amazon.com, Inc.,</i> 141 F. Supp. 3d 1051 (S.D. Cal. 2015)	11
<i>Gilbert Enters., Inc. v. Amazon.com, No. CV 19-2453-DMG</i> (GJS), 2019 WL 6481697 (C.D. Cal. Sept. 23, 2019)	11
<i>Henry Schein, Inc. v. Archer & White Sales, Inc.,</i> 139 S. Ct. 524 (2019)	9
<i>Howsam v. Dean Witter Reynolds, Inc.,</i> 537 U.S. 79–83 (2002)	8, 9
<i>KPMG LLP v. Cocchi,</i> 565 U.S. 18 (2011) (per curiam)	8
<i>Laborers’ Combined Funds of W. Pennsylvania for Ameris v. Macson Corp., No. 2</i> 16-CV-01506, 2018 WL 2009090 (W.D. Pa. Apr. 30, 2018)	8
<i>McKee v. Audible, Inc., No. CV 17-1941-GW</i> (EX), 2017 WL 4685039 (C.D. Cal. July 17, 2017)	11

<i>Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.</i> , 460 U.S. 1–25 (1983)	8
<i>Payne v. Amazon.com, Inc.</i> , No. 2:17-CV-2313-PMD, 2018 WL4489275 (D.S.C. July 25, 2018).....	11
<i>Peters v. Amazon Servs., LLC</i> , 2 F. Supp. 3d 1165 (W.D. Wash. 2013)	11
<i>R & C Oilfield Servs., LLC v. Am. Wind Transp. Grp., LLC</i> , 447 F. Supp. 3d 339 (W.D. Pa. 2020)	12
<i>Ranazzi v. Amazon.com, Inc.</i> , 46 N.E.3d 213 (Ohio Ct. App. 2015)	11
<i>Rent-A-Center, W., Inc. v. Jackson</i> , 561 U.S. 63 (2010)	9, 10
<i>Richardson v. Coverall N. Am., Inc.</i> , 811 F. App'x 100 (3d Cir. 2020)	10
<i>Robertson v. Enbridge (U.S.) Inc.</i> , No. CV 19-1080, 2020 WL 5751641 (W.D. Pa. July 31, 2020).....	9
<i>Segal v. Amazon.com, Inc.</i> , 763 F. Supp. 2d 1367 (S.D. Fla. 2011)	11
<i>Singh v. Uber Techs. Inc.</i> , 939 F.3d 210 (3d Cir. 2019)	9
<i>Tice v. Amazon.com, Inc.</i> , No. 5:19-CV-1311-SVW-KK, 2020 WL 1625782 (C.D. Cal. March 25, 2020)	11
<i>Vilches v. The Travelers Companies, Inc.</i> , 413 F. App'x 487 (3d Cir. 2011)	8
<i>Werner v. Securitas Sec. Servs. USA Inc.</i> , No. CIV.A. 13-1794, 2014 WL 5585771 (W.D. Pa. Nov. 3, 2014)	12
Statutes	
9 U.S.C. § 2	8
9 U.S.C. § 4	8

Rules

Rule 7(a) (July 1, 2003) 6

Other Authorities

https://www.adr.org/sites/default/files/Consumer_Rules_Web_1.pdf6

[https://www.adr.org/sites/default/files/Consumer Related Disputes Supplementary Procedures Sep 15%2C2005.pdf](https://www.adr.org/sites/default/files/Consumer_Related_Disputes_Supplementary_Procedures_Sep_15%2C2005.pdf)6

[https://www.adr.org/sites/default/files/Commercial Arbitration Rules and Mediation Procedures Jul. 01%2C 2003.pdf](https://www.adr.org/sites/default/files/Commercial_Arbitration_Rules_and_Mediation_Procedures_Jul_01%2C_2003.pdf).....6

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

VINCE RANALLI,

Plaintiff,

v.

AMAZON.COM LLC, ZAZZLE INC.,
ARENA MERCHANDIZING BY AND
THROUGH AMAZON.COM, LLC,
ETSY.COM, LLC, BRAVE NEW LOOK,
and OUTDOOR RESEARCH,

Defendants.

Civil Action No. 2:21-cv-0088

Judge Colville

Electronically Filed

BRIEF IN SUPPORT OF MOTION TO COMPEL ARBITRATION

This is a straightforward motion to compel arbitration. Plaintiff Vincent Ranalli (“Plaintiff” or “Ranalli”) claims that Amazon.com Services LLC¹ (“Amazon”) improperly assessed sales tax on a face mask he purchased from Amazon sometime after March 6, 2020. But prior to that purchase—and indeed, every time he bought goods from Amazon for nearly a decade—Ranalli agreed to individually arbitrate claims arising out of any purchases from Amazon.

Under the parties’ agreement and firmly established precedent, Ranalli’s claim should be resolved through the arbitration procedure to which he repeatedly agreed. As such, the Court should order Plaintiff to pursue his claim in an individual arbitration, and should either stay this case pending the outcome of the arbitration or dismiss it outright.

¹ The entity Plaintiff sued, “Amazon.com LLC,” does not presently exist. Presumably, Plaintiff named “Amazon.com LLC” as an inadvertent error. This Notice is submitted on behalf of Amazon.com Services LLC because that is the retail entity that sold Plaintiff the product at issue and the entity that currently remits sales tax collected for the Commonwealth of Pennsylvania to the Commonwealth.

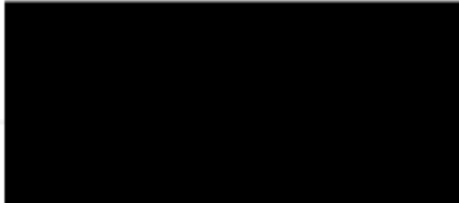
I. FACTUAL BACKGROUND

Ranalli resides in Pittsburgh, Pennsylvania. Complaint ¶ 1. He created an Amazon account in March 2011. Lewis Decl. ¶ 2. In August 2011, Amazon’s Conditions of Use (the “COUs”) were updated to include an arbitration provision. *Id.* ¶ 9. From 2012 through 2020, Ranalli placed over 220 orders for various items, each time confirming his acceptance of the latest COUs, including the arbitration provision. *Id.* ¶ 2.

On November 12, 2020, Ranalli purchased face masks for \$40.17 from Amazon. Complaint ¶ 40. He contends the “advertised price” was \$39.27 and that he was charged \$1.05 in sales tax. Complaint ¶¶ 39, 41. He argues that by imposing this sales tax, Amazon engaged in “fraudulent and deceptive conduct” and “unfair methods of competition” under the Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), violated the Pennsylvania Fair Credit Extension Uniformity Act, committed conversion, and was unjustly enriched. Complaint ¶¶ 42, 43, 118, 79 (pg. 22), 87 (pg. 23).

Ranalli agreed to Amazon’s COUs every time he completed a purchase or logged into his account. Lewis Decl. ¶ 3. Before every purchase made using an Amazon account, the consumer is directed to the “Checkout” screen. *Id.* On the right side of the screen is a box that contains an “Order Summary” with a yellow button that reads “Place your order.” *Id.* Directly beneath that yellow button it reads: “By placing your order, you agree to Amazon’s privacy notice and conditions of use.” *Id.* The terms “privacy notice” and “conditions of use” again appear in blue font and are hyperlinked to Amazon’s privacy notice and COUs:

1 Shipping address



[Change](#)

2 Payment method



[Change](#)

Place your order

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

Order Summary

Items:	\$8.99
Shipping & handling:	\$0.00
Total before tax:	\$8.99
Estimated tax to be collected:	\$0.85

Order total: \$9.84

[How are shipping costs calculated?](#)
Prime shipping benefits have been applied to your order.

3 Review items and shipping

Get a \$100 Amazon Gift Card instantly upon approval for the Amazon Prime Store Card. See details and restrictions. [Learn more](#)

Order now and we'll notify you by email when we have an estimated delivery date for this item.
Items shipped from Amazon.com

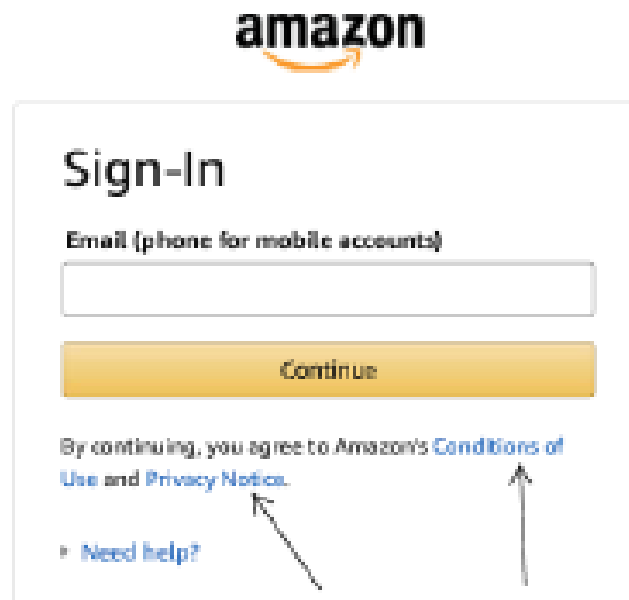
Zodiac Flea & Tick Spray for Dogs, Puppies, Cats, and Kittens, 16-ounce **\$8.99** Prime FREE Delivery
Qty: 1
Sold by: Amazon.com Services LLC
[Add gift options](#)

Choose your Prime delivery option:
6-7 business days once shipped
FREE Prime Delivery

Place your order **Order total: \$9.84**
By placing your order, you agree to Amazon's [privacy notice](#) and [conditions of use](#).

Id. Ex. A, at 3. No purchase can occur without clicking the “Place your order” button. *Id.* ¶ 5. In other words, Ranalli completed his over-two-hundred purchases, including the purchase described in the Complaint, by clicking the “Place your order” button, thereby reaffirming his agreement to Amazon’s COUs. *Id.*

Ranalli also agreed to the COUs each time he logged into his Amazon account. When logging into their accounts, users must input their email address and press a button that says “Continue.” *Id.* ¶ 7. Directly below that button is the following notice: “By continuing, you agree to Amazon’s [Conditions of Use](#) and [Privacy Notice](#).” The phrases “[Conditions of Use](#)” and “[Privacy Notice](#)” and are in blue and hyperlinked to the respective agreements. *Id.* Ex. B.



By accepting the COUs, Ranalli agreed to resolve through arbitration or small claims court “any dispute” relating to his use of Amazon or any products or service sold by Amazon or through [Amazon.com](#), and to do so on an individual as opposed to class basis. Lewis Decl. ¶ 6 & Ex. C, at 4. The COUs state as follows:

DISPUTES

Any dispute or claim relating in any way to your use of any Amazon Service, or to any products or services sold or distributed by Amazon or through Amazon.com will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this agreement.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of these Conditions of Use as a court would.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. The AAA's rules are available at www.adr.org or by calling 1-800-778-7879. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Amazon will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed location.

We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we each waive any right to a jury trial. We also both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

The COUs further provide that “any dispute of any sort” between Plaintiff and Amazon will be governed by “the Federal Arbitration Act, applicable federal law, and the laws of the state of Washington, without regard to principles of conflict of laws.” *Id.*

Amazon’s COUs have contained this arbitration provision or one substantively like it since August 2011. Lewis Decl. ¶ 7. Since being added to the COUs more than nine years ago, this provision has consistently been the first sentence under the “DISPUTES” section of the COUs, and presented to consumers in bold, regular-sized font. *Id.* Although the specific language has varied slightly over the years, it has consistently and clearly stated that disputes or claims relating to products or services sold or distributed by Amazon or through Amazon.com would be resolved

by binding arbitration and not in court, that such disputes would be resolved on an individual—not a class—basis, and that the AAA rules for consumer arbitration would govern. *Id.*

The AAA Consumer Arbitration Rules incorporated into the third paragraph of the above provision contain the following delegation provision: “The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.” Lewis Decl. ¶ 8 & Ex. D, at R-14 (“Rule 14(a”).² The current edition of the Consumer Rules was issued on September 1, 2014. *See id.* at p. 1. Before that, the AAA applied its Commercial Arbitration Rules, along with a consumer supplement, to consumer-related disputes. *See, e.g.,* AAA, Consumer-Related Disputes Supplementary Procedures, at Rule C-1(a) (Sept. 15, 2005).³ Since at least 2003, the AAA’s Commercial Arbitration Rules have provided that the arbitrator will decide “any objections with respect to the existence, scope or validity of the arbitration agreement.” *See, e.g.,* AAA Commercial Arbitration Rules, Rule 7(a) (July 1, 2003).⁴

Accordingly, with every purchase since approximately August 2011, including the purchases alleged in the Complaint, Ranalli agreed to resolve any claims through individual arbitration and to have the arbitrator decide any threshold questions of scope and enforceability in the first instance. And with each login, Ranalli again received notification of the COUs and confirmed his agreement both to arbitration and to the delegation of arbitrability disputes to the arbitrator under AAA Rule 14(a). Ranalli’s agreement on each of these occasions was not limited to his use or purchase on that particular occasion, but extended to “[a]ny dispute or claim relating

² Available at https://www.adr.org/sites/default/files/Consumer_Rules_Web_1.pdf.

³ Available at https://www.adr.org/sites/default/files/Consumer_Related_Disputes_Supplementary_Procedures_Sep_15%2C2005.pdf.

⁴ Available at https://www.adr.org/sites/default/files/Commercial_Arbitration_Rules_and_Mediation_Procedures_Jul.01%2C2003.pdf.

in any way ... to any products or services sold or distributed by Amazon or through Amazon.com.”
Lewis Decl. Ex. C, at 4.

STANDARD OF REVIEW

“When ruling on a motion to compel arbitration, a district court should use either a motion to dismiss or a motion for summary judgment standard.” *Berryman v. Newalta Envtl. Servs., Inc.*, No. CV 18-793, 2018 WL 5723290, at *3 (W.D. Pa. Nov. 1, 2018). While the motion to dismiss standard is appropriate here, the Court should grant the motion to compel under either standard.

Third Circuit courts have repeatedly held that even if an arbitration agreement is not attached to a Complaint, the motion to dismiss standard is appropriate if there is no good faith, factual challenge to the agreement’s formation or authenticity. For instance, in *Brown v. Firstsource Advantage, LLC*, while plaintiff questioned the agreement’s “validity,” he offered no indication he could come up with any “reliable evidence” or do anything to “show that discovery on the issue of contract formation is warranted.” No. CV 17-5760, 2019 WL 568935, at *2 (E.D. Pa. Feb. 12, 2019). The court applied the Rule 12(b)(6) standard and granted the motion to compel authority. As another Third Circuit court recognized, refusing to apply the Rule 12(b)(6) standard circumstances “simply because plaintiff has avoided reference to an existing arbitration agreement would frustrate the purpose of the FAA: to facilitate expedited resolution of disputes where the parties to a contract have opted for arbitration.” *Bryan Benedict v. Guess Inc.*, No. 5:20-CV-4545, 2021 WL 37619, at *4 (E.D. Pa. Jan. 5, 2021). Here, because there can be no good faith factual dispute as to the COUs’ authenticity and application, this Court should apply the familiar Rule 12(b)(6) standard.

Even if the Court applies the Rule 56 standard, it should grant this Motion. As this Court has explained, “in evaluating a motion to compel arbitration under the Rule 56 standard, courts

may consider all affidavits, exhibits and discovery in the record.” *Laborers’ Combined Funds of W. Pennsylvania for Ameris v. Macson Corp.*, No. 2:16-CV-01506, 2018 WL 2009090, at *3 (W.D. Pa. Apr. 30, 2018). Here, the attached affidavits and exhibits show there can be no reasonable dispute as to the COUs’ applicability and terms. As such, should the Court apply the summary judgment standard, it should grant Amazon’s Motion to Compel without requiring any further discovery.

ARGUMENT

A. Plaintiff Agreed to Arbitrate His Claims on an Individual Basis

The Federal Arbitration Act (“FAA”) establishes that agreements to arbitrate are “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The FAA reflects an “emphatic federal policy in favor of arbitral dispute resolution.” *KPMG LLP v. Cocchi*, 565 U.S. 18, 21 (2011) (per curiam) (citations omitted).

The FAA requires courts, upon motion, to compel arbitration “in accordance with the terms of the agreement.” 9 U.S.C. § 4. Doubts over the proper interpretation of the agreement “should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense of arbitrability.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983). The Third Circuit has “repeatedly stated that courts play a limited role when a litigant moves to compel arbitration.” *Vilches v. The Travelers Companies, Inc.*, 413 F. App’x 487, 491 (3d Cir. 2011). That role is limited to determining the validity and scope of an arbitration agreement. *Id.*; see also *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 82–83 (2002).

Before reaching these gateway issues relating to the validity and scope of the agreement, as well as other questions of arbitrability, courts must determine whether the parties agreed to

commit threshold questions of arbitrability to the arbitrator. *See Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010) (agreement to arbitrate “gateway issue” is “simply an additional, antecedent agreement the party seeking arbitration asks the court to enforce”); *accord Singh v. Uber Techs. Inc.*, 939 F.3d 210, 215 (3d Cir. 2019). If the parties “clearly and unmistakably” agreed to delegate questions of arbitrability to the arbitrator, then the arbitrator must decide the threshold issues. *Howsam*, 537 U.S. at 83; *see Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019); *Robertson v. Enbridge (U.S.) Inc.*, No. CV 19-1080, 2020 WL 5751641, at *4 (W.D. Pa. July 31, 2020) (“The United States Supreme Court has consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties’ agreement does so by ‘clear and unmistakable’ evidence.”). As the Third Circuit has explained:

[T]he parties may...agree to have [gateway questions of arbitrability] decided by an arbitrator. To do so, the arbitration agreement need only include a clause—a delegation clause—that reserves arbitrability questions for an arbitrator to decide. Where such a clause is included, courts cannot decide threshold questions of arbitrability unless a party challenges the delegation clause specifically and the court concludes that the delegation clause is not enforceable. The rationale is that a delegation clause is severable from the underlying arbitration agreement such that it is separately entitled to FAA-treatment—that is, unless specifically (and successfully) challenged, the clause is in and of itself treated as a valid contract that must be enforced under the FAA’s enforcement provisions.

Singh at 215 (quotations and citations omitted).

In other words, when presented with an agreement that delegates issues of arbitrability to the arbitrator, the Court may not inquire whether the arbitration agreement is valid or enforceable or whether it covers the dispute at issue. Rather, the court must compel arbitration and allow the arbitrator to decide those questions. *See Henry Schein*, 139 S. Ct. at 529 (where arbitration provision incorporated AAA rules, court must compel arbitration “even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless”).

Here, the parties’ arbitration provision expressly incorporates the AAA rules, including

Rule 14(a), which states that “[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.” Lewis Decl. Ex. D, at R-14(a). This constitutes clear and unmistakable evidence of their intent to arbitrate the threshold issues of the scope and enforceability of the arbitration agreement. Indeed, in addressing this exact issue, the Third Circuit recently referred to identical language as “*about as ‘clear and unmistakable’ as language can get.*” *Richardson v. Coverall N. Am., Inc.*, 811 F. App’x 100, 104 (3d Cir. 2020). Every circuit court that has confronted this issue has reached the same conclusion. *See Blanton v. Domino’s Pizza Franchising LLC*, 962 F.3d 842, 846 (6th Cir. 2020) (“[E]very one of our sister circuits to address the question—eleven out of twelve by our count—has found that the incorporation of the AAA Rules (or similarly worded arbitral rules) provides ‘clear and unmistakable’ evidence that the parties agreed to arbitrate ‘arbitrability.’” (collecting cases)).

As a result, any threshold questions about arbitrability that Ranalli might raise should be dealt with by an arbitrator, not this Court. As the Supreme Court has made clear, unless the nonmovant “challenge[s] the delegation provision specifically, [a court] must treat it as valid under § 2 [of the FAA], and must enforce it under §§ 3 and 4 [of the FAA], leaving any challenge to the validity of the Agreement as a whole for the arbitrator.” *Rent-A-Center*, 561 U.S. at 72; *see also Gilbert Enters., Inc. v. Amazon.com*, No. CV 19-2453-DMG (GJS), 2019 WL 6481697, at *4 (C.D. Cal. Sept. 23, 2019) (because AAA Rule 14(a) incorporated in Amazon’s COUs is “clear and unmistakable,” “the Court must compel the question of arbitrability to arbitration”).

In sum, Ranalli’s agreement to arbitrate his claims pursuant to the AAA rules requires him to arbitrate *both* the merits of his claims *and* any objections regarding the scope and enforceability of the arbitration provision itself. The Court should grant Amazon’s motion on this basis alone.

B. The Gateway Issues under the FAA Have Been Satisfied

Even if the Court were to reach the issue of arbitrability despite Rule 14(a), it still should compel Plaintiff to arbitrate because both “gateway” issues under the FAA have been met.

First, in matters where the delegation to AAA was not addressed, courts throughout the country have found acceptance of the Amazon COUs constitutes “a valid agreement to arbitrate.” *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000); *see, e.g., Tice v. Amazon.com, Inc.*, No. 5:19-CV-1311-SVW-KK, 2020 WL 1625782, at *2 (C.D. Cal. March 25, 2020); *Payne v. Amazon.com, Inc.*, No. 2:17-CV-2313-PMD, 2018 WL4489275, at *8 (D.S.C. July 25, 2018); *McKee v. Audible, Inc.*, No. CV 17-1941-GW(EX), 2017 WL 4685039, at *14 (C.D. Cal. July 17, 2017); *Fagerstrom v. Amazon.com, Inc.*, 141 F. Supp. 3d 1051, 1073-74 (S.D. Cal. 2015); *Ranazzi v. Amazon.com, Inc.*, 46 N.E.3d 213, 218 (Ohio Ct. App. 2015); *Ekin v. Amazon Servs., LLC*, 84 F. Supp. 3d 1172, 1177–78 (W.D. Wash. 2014); *Peters v. Amazon Servs., LLC*, 2 F. Supp. 3d 1165, 1173 (W.D. Wash. 2013), *aff’d*, 669 F. App’x 487 (9th Cir. 2016); *Segal v. Amazon.com, Inc.*, 763 F. Supp. 2d 1367, 1369 (S.D. Fla. 2011), *aff’d*, No. 11-10998-D, 2011 WL 1582517 (11th Cir. April 21, 2011) (enforcing forum selection provision in Amazon’s online terms and conditions for marketplace sellers).

Here, the evidence establishes that Ranalli not only accepted the arbitration agreement when agreeing to the COUs, but that he did so repeatedly. Since August 2011, the COUs have provided for individual arbitration pursuant to the AAA rules, which themselves have delegated arbitrability to the arbitrator at all applicable times. In the years since 2011, each time Ranalli logged into his account and each time he completed one of his many purchases, he received notice of and confirmed their agreement to the latest version of the COUs, including the arbitration provision. Accordingly, when Ranalli purchased products using his Amazon accounts, including

the contested purchases here, he agreed that any claims he had about those purchases would be resolved by individual arbitration, and that any arguments regarding the scope or enforceability of the arbitration agreement would be decided by the arbitrator.

Second, there can be no dispute that the agreement encompasses the controversy at issue. Absent ambiguity, “it is the language of the contract that defines the scope of disputes subject to arbitration.” *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002). There is no ambiguity in this case: Ranalli agreed to arbitrate “[a]ny dispute or claim relating in any way to [their] use of any Amazon Service, or to any products or services sold or distributed by Amazon or through Amazon.com.” Lewis Decl. Ex. C, at 4. This provision clearly covers Ranalli’s claims, all of which arise directly from his purchase of a product—a face mask. As such, if this court analyzes the scope of the COUs’ arbitration clause (it should not, because such analysis should be reserved for the arbitrator), it should find that this dispute is within the scope of the agreement to arbitrate.

C. This Court Should Compel Arbitration and Stay or Dismiss This Action

This court should stay or dismiss this case as to Amazon, because—as demonstrated—none of Ranalli’s claims or arguments belong in this or any other court. Courts in the Third Circuit regularly dismiss or stay cases while compelling arbitration of all claims. *See, e.g., R & C Oilfield Servs., LLC v. Am. Wind Transp. Grp., LLC*, 447 F. Supp. 3d 339, 350 (W.D. Pa. 2020) (staying case after granting motion to compel); *Berryman v. Newalta Envtl. Servs., Inc.*, No. CV 18-793, 2018 WL 5723290, at *10 (W.D. Pa. Nov. 1, 2018); *Werner v. Securitas Sec. Servs. USA Inc.*, No. CIV.A. 13-1794, 2014 WL 5585771, at *2 (W.D. Pa. Nov. 3, 2014) (granting motion to compel and dismissing case). Because all of the issues raised in Ranalli’s Complaint must be arbitrated, the Court should compel arbitration and either stay this action pending the outcome of the arbitration or dismiss it outright.

CONCLUSION

For all of the foregoing reasons, Amazon respectfully requests that the Court compel individual arbitration and either stay this action pending the outcome of the arbitration or dismiss the action.

Date: January _____, 2021

REED SMITH LLP

By: /s/ _____

James L. Rockney
Pa. I.D. No. 200026
Email: jrockney@reedsmith.com
Ginevra F. Ventre
Pa. I.D. No. 316897
Email: gventre@reedsmith.com
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
T: 412-288-3049
Email: gventre@reedsmith.com

Brian Phelps
Pa. I.D. No. 326172
REED SMITH LLP
10 South Wacker Drive
Chicago, IL 60607
T: 312-207-2457

Counsel for Defendant Amazon.com Services LLC

CERTIFICATE OF SERVICE

I hereby certify that on January [REDACTED], 2021, I electronically filed the foregoing *Motion to Compel Arbitration* with the Clerk of Court using the ECF system, which will send the notification of such filing to all registered counsel of record, including the following:

REED SMITH LLP

By: /s/_____

James L. Rockney
Pa I.D. No. 200026
Email: jrockney@reedsmith.com
Ginevra F. Ventre
Pa. I.D. No. 316897
Email: gventre@reedsmith.com
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
T: 412-288-3131

Brian Phelps
Pa. I.D. No. 326172
REED SMITH LLP
10 South Wacker Drive
Chicago, IL 60607
T: 312-207-2457

Counsel for Defendant Amazon.com Services LLC