Patrick Maranda, et al. v. Hyundai Motor Am., Inc., et al.
8:22-CV-02193-JVS (JDE)

TENTATIVE Order Regarding Motions to Compel Arbitration [30] [31]

Defendants Hyundai Motor America, Inc. and Hyundai Motor Company (collectively, "Hyundai") and Kia Motors America, Inc. and Kia Motors Corporation (collectively, "Kia") move to compel individual arbitration of Plaintiffs' Patrick Maranda ("Maranda"), Robert Ewing ("Ewing"), Terri Sue Holliday ("Holliday"), and Alma Jones ("Jones") (collectively, "Plaintiffs") First Amended Class Action Complaint ("FACAC"). (Hyundai Mot., Dkt. No. 31; Kia Mot., Dkt. No. 30.) Plaintiffs oppose the motion. (Opp'n to Hyundai, Dkt. No. 33; Opp'n to Kia, Dkt. No. 32.) Hyundai and Kia replied. (Hyundai Reply, Dkt. No. 35; Kia Reply, Dkt. No. 34.)

For the following reasons, the Court **GRANTS** the motions to compel arbitration. The Court also **STAYS** the proceedings pending the binding arbitration.

I. BACKGROUND

A. Factual Background

The following facts are taken from Plaintiffs' FACAC. (FACAC, Dkt. No. 27.) Maranda purchased a 2022 Hyundai Palisade from a Hyundai dealership in Minnesota. (Id. ¶ 17.) Jones purchased a 2022 Hyundai Palisade from a Hyundai dealership in Maryland. (Id. ¶ 51.) Ewing purchased a 2022 Kia Telluride from a Kia dealership in South Carolina. (Id. ¶ 27.) Holliday purchased a 2020 Kia Telluride from a Kia dealership in Illinois. (Id. ¶ 41.) Plaintiffs seek to represent a class of individuals who purchased or leased any 2020-present Kia Telluride vehicle or 2020-present Hyundai Palisade vehicle ("Vehicles"). (Id. ¶ 1.) Plaintiffs allege that Hyundai and Kia "manufactured, distributed, and/or sold" the Vehicles without disclosing that the headlights were defective. (Id. ¶ 4.) Plaintiffs contend that the headlights are defective because they do not sufficiently seal out moisture and humidity. (Id. ¶ 5.) As a result, the high beams fail to fully illuminate, the headlights fail to properly illuminate ahead of the vehicle, and the headlights become extremely fogged. (Id.) Because of the foggy headlights, Plaintiffs "are unable to see at a distance in front of them, are unable to see

inclement weather . . . while driving at night, and are unable to see potential road hazards." (Id. ¶ 6.) The foggy headlights thus constitute a safety hazard. (Id.) Plaintiffs allege that the headlight defect is inherent in each Vehicle. (Id. ¶ 8.) Hyundai and Kia were aware of this defect but continued to equip the Vehicles with the defective headlights. (Id. ¶ 9.) Hyundai and Kia actively concealed and continue to conceal the headlight defect. (Id. ¶¶ 9, 14.) Plaintiffs claim that they would not have bought the Vehicles or would have paid less for them if they knew about this headlight defect. (Id. ¶ 15.) Plaintiffs bring eighteen causes of action alleging breach of warranty, fraud, unjust enrichment, and violation of the Magnuson-Moss Warranty Act. (Id. ¶¶ 170–508.)

Plaintiffs purchased their Vehicles from Hyundai and Kia dealerships. (Id. ¶¶ 17, 51, 27, 41.) Hyundai offers Bluelink services, which is a "connected car system that includes various functions and features." (Declaration of Vijay Rao ("Rao Decl."), Dkt. No. 31–2 ¶ 4.) Kia offers Kia Connect Services (formerly, "UVO Services"), which is "an integrated in-vehicle communications and entertainment system that provides consumers with vehicle features such as navigation, alerts, roadside assistance, and cloud voice recognition." (Declaration of Sujith Somasekharan ("Somasekharan Decl."), Dkt. No. 30–2 ¶ 4.)

To enroll in Bluelink services, customers must agree to the Connected Services Agreement, which is often called the "Terms and Conditions." (Rao Decl. ¶ 5.) Maranda and Jones enrolled in Bluelink services through the Dealer-Assisted Enrollment process. (Id. ¶¶ 6–7.) Maranda and Jones had to click the box to acknowledge that they "read and agree[d] to the Blue Link Terms & Conditions" and then click the "Complete" button. (Id. ¶ 8.) The "Terms & Conditions" phrase included a hyperlink to the then-effective Connected Services Agreement. (Id.) The box acknowledging the "Terms & Conditions" is not "prepopulated" with a check mark. (Id.) Customers must complete the step requiring them to click the box that acknowledges they agree to Bluelink's Terms and Conditions in order to successfully activate Bluelink services. (Id. ¶ 9.) Hyundai's internal database shows that Maranda completed the activation on October 25, 2021 and Jones completed the activation on July 7, 2022. (Id. ¶ 11.) Hyundai's internal database also shows that Jones agreed to the same version of the Connected Services Agreement on January 29, 2023 when she logged into the Connected Service mobile application. (Id. ¶ 12.)

To enroll in Kia Connect or UVO Services, customers must also accept the

"Terms of Service" by checking a box. (Somasekharan Decl. ¶ 5.) Ewing and Holliday enrolled in Kia Connect or UVO Services by completing a two-step process. (Id. ¶¶ 6, 10.) First, Ewing and Holliday needed to complete an initial in-vehicle registration. (Id.) Then, Ewing and Holliday needed to create an account and obtain a verification code to finish the enrollment process. (Id.) The in-vehicle registration begins by requiring the customer to select the "Kia Connect" button on the dashboard and then the "Kia Connect Settings" button. (Id. ¶ 7.) After selecting those buttons, the customer is directed to another screen and required to click "Activate Service." (Id.) After pressing the "Activate Service" button, the customer is presented with the Kia Connect Terms of Service on the dashboard. (Id.) Here, customers are able to scroll through the Terms of Service and are required to check a box agreeing to the Terms of Service. (Id.) By clicking the box, the customer accepts and agrees to the Terms of Service. (Id.) Customers must click the box acknowledging agreement and acceptance of the Terms of Service in order to complete the enrollment process. (Id.) For UVO Services, customers are only required to select "Activate UVO" on the dashboard, which will complete the in-vehicle enrollment process. (Id. ¶ 11.)

After the initial in-vehicle step, the enrollment process for Kia Connect and UVO Services are virtually identical. The only difference is the name of the service. Customers must enter their phone number or email address. (Id. ¶¶ 8, 11.) Ewing and Holliday entered an email address and were emailed a link. (Id.) That link allowed them to create an account and complete the enrollment process by receiving a verification code. (Id.) The email Ewing and Holliday received required them to click a box acknowledging that they "read and agree to the Kia Connect Terms of Service" or "read and agree to the UVO Terms of Service." (Id.) Customers must check the box accepting the Terms of Service before they can create an account and obtain the verification code. (Id.) The "Terms of Service" phrase included a hyperlink to the Kia Connect or UVO Terms of Service. (Id.) If someone clicks the hyperlink on the "Terms of Service," another window opens that contains the entire text of the Kia Connect or UVO Terms of Service. (Id.) After checking the box to agree to the Terms of Service, the customer must click a button stating "ACCEPT TO GET THE CODE" or "GET VERIFICATION CODE." (Id.) The customer cannot obtain the code without checking the box agreeing to the Terms of Service. (Id.) Then, the customer is required to complete a form entitled "CREATE ACCOUNT." (Id. ¶¶ 9, 11.) In order to complete this form, customers must enter certain personal information, including their first and last name, email address, phone number, and password. (Id.) After entering this

information, the customer must check another box acknowledging that they have "read and agree[d] to the General Terms of Use" or "read and agree[d] to the UVO Terms of Service." (Id.) For Kia Connect, the customer must then click the "SAVE" button, which prompts the system to send the customer an email with a verification code. (Id. ¶ 9.) For both services, the verification code must be entered on the vehicle's on-screen dashboard to complete the enrollment process. (Id. ¶¶ 9, 11.) Kia also maintains an internal log that tracks each customer's sign-up dates and times for Kia Connect and UVO Services. (Id. ¶ 13.) Kia's internal log shows that Ewing agreed to Kia Connect Terms of Service and the General Terms of Use on July 30, 2022 and Holliday agreed to UVO Terms of Service on July 25, 2019. (Id. ¶¶ 13–14.) Kia's internal log also reveals that Ewing subsequently logged into the Kia Connect account on August 31, 2022 and Holliday logged into the UVO Services account on March 27, 2020. (Id. ¶¶ 15–16.)

B. Arbitration Agreements

The Hyundai and Kia Arbitration Agreements contained the following:

> Hyundai and you agree to arbitrate any and all disputes and claims between us arising out of or relating to this Agreement, Connected Services, Connected Services Systems, Service Plans, your Vehicle, use of the sites, or products, services, or programs you purchase, enroll in or seek product/service support for, whether you are a Visitor or Customer, via the sites or through mobile application, except any disputes or claims which under governing law are not subject to arbitration, to the maximum extent permitted by applicable law.[1] This agreement to

[1] The Kia Connect and UVO Services Arbitration Agreements are substantially similar with only a few differences. Kia Connect's Arbitration Agreement states that "Kia and you agree to arbitrate any and all disputes and claims between us arising out of or relating to the KIA CONNECT SERVICES, the KIA CONNECT SERVICES App, the KIA CONNECT SERVICES Hardware, your KOP Account, the Content, these Terms, any Additional Terms, your Vehicle, or any matters relating to or arising out of your Vehicle purchase, ownership, or lease, except any disputes or claims which under governing law are not subject to arbitration, to the maximum extent permitted by applicable law." (Somasekharan Decl., Ex. D § 7.A, Ex. G § 7.C.) The UVO Services Arbitration Agreement differs from the Kia Connect Arbitration Agreement in that it uses "KMA" and "UVO Services" instead of "Kia" and "Kia Connect." (See Somasekharan Decl., Ex. F § 7.A.)

arbitrate is intended to be broadly interpreted and to make all disputes and claims between us subject to arbitration to the fullest extent permitted by law. However, any dispute you or we may have relating to copyrights or other intellectual property shall not be governed by this agreement to arbitrate. For the avoidance of doubt, this means that any claims you or we may have relating to intellectual property rights against the other, including injunctive and other relief sought, may be brought in a court of competent jurisdiction. The agreement to arbitrate otherwise includes, but is not limited to:

> claims based in contract, tort, warranty, statute, fraud, misrepresentation or any other legal theory; claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising); claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; claims relating to your vehicle for which you seek product or service support via the sites; claims arising out of or relating to the Telephone Consumer Protection Act; claims relating to your data privacy or information security; and claims that may arise after the termination of this Agreement.[2]

For purposes of this arbitration provision, references to "Hyundai," "you," and "us" shall include our respective parent entities, subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, websites of the foregoing, as well as all authorized or unauthorized users or beneficiaries of services, products or information provided or made available under this or prior Agreements between us relating to or arising from any aspect of your use of the Connected Services, Connected Service Systems, Service Plans, your Vehicle or access to the sites. Notwithstanding the foregoing, either party may bring an individual action in small claims court. You agree that, by entering into this Agreement, you and Hyundai are each waiving the right to a trial by jury or to participate in a class or representative action

[2] The Kia Connect and UVO Services Arbitration Agreements do not differ in a meaningful way. (See Somasekharan Decl., Ex. D § 7.A, Ex. F § 7.A, Ex. G § 7.C.)

> to the maximum extent permitted by law. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this arbitration provision. This arbitration provision shall survive termination of this Agreement or your relationship with Hyundai for any reason.[3]

(Rao Decl. Ex. C § 15.C(a), Ex. D § 14.C(a), Ex. F § 14.C(a); Somasekharan Decl., Ex. D § 7.A, Ex. F § 7.A, Ex. G § 7.A.)

The Hyundai and Kia Delegation Clauses contained the following:

> All issues are for the arbitrator to decide, including the scope and enforceability of this arbitration provision as well as the Agreement's other terms and conditions, and the arbitrator shall have exclusive authority to resolve any such dispute relating to the scope and enforceability of this arbitration provision or any other term of this Agreement including, but not limited to any claim that all or any part of this arbitration provision or Agreement is void or voidable. However if putative class or representative claims are initially brought by either party in a court of law, and a motion to compel arbitration is brought by any party, then the court shall decide whether this agreement permits class proceedings. For the avoidance of doubt, the court and arbitrator shall be bound by the terms of this Agreement, including with regard to the class and representative waiver provision. In any arbitration, the arbitrator shall be bound by the terms of this Agreement and shall follow the applicable law. The arbitrator shall not have the power to commit manifest errors of law or legal reasoning, and any award rendered by the arbitrator that employs a manifest error of law or legal reasoning may be vacated or corrected by a court of competent jurisdiction for any such error. Unless Hyundai and you agree otherwise, any arbitration will be governed by the substantive laws of your state, and hearings will take place in the country (or parish) of your billing or registered address. Case management and other hearings shall be heard via telephone unless

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[3] The only difference in the Kia Connect Arbitration Agreement is the use of "Kia" and "KIA CONNECT SERVICES." (See Somasekharan Decl., Ex. D § 7.A, Ex. G § 7.C.) Similarly, the only difference in the UVO Services Arbitration Agreement is the use of "KMA" and "UVO Services." (See Somasekharan Decl., Ex. F § 7.A.)

> otherwise agreed to. Except as otherwise provided for herein, Hyundai will pay all AAA filing, administration and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse Hyundai for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules.[4]

(Rao Decl. Ex. C § 15.C(c), Ex. D § 14.C(c), Ex. F § 14.C(c); Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C.)

Because the Hyundai and Kia agreements to arbitrate are virtually the same, the Court will refer to both as the "Arbitration Agreement." The Court will also refer to both delegation clauses as the "Delegation Clause."

In their Opposition, Plaintiffs advance three main arguments: (1) they never consented to the Arbitration Agreement; (2) the Delegation Clause is ambiguous and unconscionable; and (3) their claims are not covered by the Arbitration Agreement. (See generally Opp'n to Hyundai; Opp'n to Kia.)

II. LEGAL STANDARD

Under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq. any party bound to an arbitration agreement that falls within the scope of the FAA may bring a motion in federal district court to compel arbitration and stay the proceeding pending resolution of the arbitration. 9 U.S.C. §§ 3, 4. The FAA eliminates district court discretion and requires a court to compel arbitration of issues covered by the arbitration agreement. Dean Witter Reynolds, Inc., v. Byrd, 470 U.S. 213, 218 (1985). The FAA limits the district court's role to determining whether a valid agreement to arbitrate exists and whether the agreement encompasses the disputes at issue. Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th

[4] The only difference is the use of "Kia" or "KMA." (See Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C.)

Cir. 2000).

Applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2. Ticknor v. Choice Hotels Int'l, Inc., 265 F.3d 931, 937 (9th Cir. 2001) (internal citation omitted). However, "where a party specifically challenges arbitration provisions as unconscionable and hence invalid, whether the arbitration provisions are unconscionable is an issue for the court to determine, applying the relevant state contract law principles. This rule applies even where the agreement's express terms delegate that determination to the arbitrator." Jackson v. Rent-A-Center West, Inc., 581 F.3d 912, 918–19 (9th Cir. 2009), rev'd on other grounds by Rent-A-Center, West, Inc. v. Jackson, 130 S. Ct. 2772 (2010).

A court may consider evidence beyond the complaint in ruling on a motion to compel. See Guadagno v. E*Trade Bank, 592 F. Supp. 2d 1263, 1266–69 (C.D. Cal. 2008) (examining declarations and exhibits in ruling on a motion to compel arbitration under the FAA). The party seeking to compel arbitration must prove the existence of an agreement to arbitrate by a preponderance of the evidence standard. Knutson v. Sirius XM Radio Inc., 771 F.3d 559, 565 (9th Cir. 2014). If the moving party carries this burden, the opposing party must prove any contrary facts by the same burden. Castillo v. CleanNet USA, Inc., 358 F. Supp. 3d 912, 2018 WL 6619986, at *10 (N.D. Cal. Dec. 18, 2018) (citing Bruni v. Didion, 160 Cal. App. 4th 1272, 1282 (2008) ("The petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense.")).

III. DISCUSSION

A. Clear Agreement to Arbitrate

"The threshold issue in deciding a motion to compel arbitration is 'whether the parties agreed to arbitrate.'" Quevedo v. Macy's, Inc., 798 F. Supp. 2d 1122, 1133 (C.D. Cal. 2011) (quoting Van Ness Townhouses v. Mar Indus. Corp., 862 F.2d 754, 756 (9th Cir. 1988)). "District courts apply a summary judgment-like standard and rule as a matter of law when there are no genuine issues of material fact regarding the existence of an arbitration agreement." Slade v. Empire Today, LLC, No. 20-cv-2393, 2021 WL 2864813, at *4 (S.D. Cal. July 7, 2021); see also

Roma Mikha, Inc. v. S. Glazer's Wine & Spirits, LLC, No. 8:22-CV-01187, 2023 WL 3150076, at *4 (C.D. Cal. Mar. 30, 2023). A factual dispute is genuine if "a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Thus, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

After Plaintiffs purchased their Vehicles, they allege that a dealership employee "initiated and completed the set-up process [to the infotainment technology system] independently." (Declaration of Patrick Maranda ("Maranda Decl."), Dkt. No. 33–1 ¶¶ 3–4; Declaration of Alma Jones ("Jones Decl."), Dkt. No. 33–2 ¶¶ 3–4; Declaration of Robert Ewing ("Ewing Decl."), Dkt. No. 32–1 ¶¶ 3–4; Declaration of Terri Sue Holliday ("Holliday Decl."), Dkt. No. 32–2 ¶¶ 3–4.) Plaintiffs further allege that they "did not see or touch the infotainment screen at any time." (Maranda Decl. ¶ 6; Jones Decl. ¶ 5; Ewing Decl. ¶ 5; Holliday Decl. ¶ 5.) Nor were they "given any option to agree to or reject any Terms and Conditions or arbitration agreement." (Maranda Decl. ¶ 7; Jones Decl. ¶ 7; Ewing Decl. ¶ 6; Holliday Decl. ¶ 6.) As a result, Plaintiffs allege that they "did not click, sign, or otherwise agree to any Terms and Conditions or arbitration agreement." (Maranda Decl. ¶ 8; Jones Decl. ¶ 8; Ewing Decl. ¶ 7; Holliday Decl. ¶ 7.) Thus, Plaintiffs argue that there is no valid agreement to arbitrate. (Opp'n to Hyundai at 4–5; Opp'n to Kia at 4–5.)

However, Plaintiffs allegations do not create genuine issues of material fact as to the existence of an Arbitration Agreement. None of the Plaintiffs allege that they did not want to sign up for Bluelink, Kia Connect, or UVO Services. (Opp'n to Hyundai at 6; Opp'n to Kia at 4–6.)

Nor do Plaintiffs dispute that the dealership employees were acting as their agents. Under Maryland agency law, "one person, the principal, can be legally bound by actions taken by another person, the agent." Dickerson v. Longoria, 414 Md. 419, 441–42 (2010). An agency relationship is created when the principal confers actual or apparent authority. Id. at 442. "Actual 'authority to do an act can be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account.'" Citizens v. Maryland Indus., 338 Md. 448, 459 (1995) (quoting Restatement (Second) of Agency § 26 (1958)). Actual authority

"may be inferred from conduct, including acquiescence." Anderson v. General Casualty, 402 Md. 236, 247 (2007). Minnesota has similar agency law principles. "Minnesota law requires an agent to act solely for the benefit of his or her principal in all matters connected with the agency." Dahl v. Charles Schwab & Co., 545 N.W.2d 918, 925 (Minn. 1996); see also Bedow v. Watkins, 552 N.W.2d 543, 547 (Minn. 1996) ("[A] principal is liable for the act of an agent committed in the course and within the scope of agency and not for a purpose personal to the agent."). Likewise, under Illinois law, "the principal can be legally bound by action taken by the agent where the principal confers actual authority on the agent." Curto v. Illini Manors, Inc., 940 N.E.2d 229, 233 (Ill. 2010). Such authority may be express or implied. Id. Implied authority "is actual authority circumstantially proved." Id. "It arises when the conduct of the principal, reasonably interpreted, causes the agent to believe that the principal desires him to act on the principal's behalf." Id. (citing Restatement (Second) of Agency § 26 (1958)). Moreover, "[a]n agent's authority may be presumed by the principal's silence if the principal knowingly allows another to act for him as his agent." Id. at 236. Under South Carolina law, "[a]gency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control." Froneberger v. Smith, 406 S.C. 37, 49 (Ct. App. 2013) (quoting Restatement (Third) of Agency § 1.01 (2006)). "An agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the consequences of the relationship to follow." Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 145–46 (1992). "The test to determine agency is whether or not the purported principal has the *right to control* the conduct of his alleged agent." Fernander v. Thigpen, 278 S.C. 140, 144 (1982) (emphasis in original).

Here, Maranda admits that he gave the employee his cell phone number in order to have the employee set up the Bluelink phone application. (Maranda Decl. ¶ 5.) Similarly, Jones admits that she gave the employee a 4-digit pin for the Bluelink application, which the employee subsequently entered. (Jones Decl. ¶ 5.) Likewise, Ewing and Holliday had to provide the dealer employee with their phone number or email address to continue the initial in-vehicle step of signing up for Kia Connect or UVO services. (Somasekharan Decl. ¶¶ 8, 11.) Ewing and Holliday were then emailed a link that prompted them to create an account and complete enrolling in Kia Connect or UVO services by receiving a verification code. (Id.) Then, to create an account, Ewing and Holliday had to enter certain personal

information, including their name, email address, phone number, and password. (Id. ¶¶ 9, 11.) Thus, in order to sign up for Kia Connect or UVO Services, Ewing and Holliday had to affirmatively provide Kia employees access to their email inboxes and give them their personal information. Because Plaintiffs authorized the dealership employees to complete the sign-up processes on their behalf, the dealership employees acted as Plaintiffs agents.

Velasquez-Reyes v. Samsung Electronics America, Inc., No. ED CV 16-1953, 2020 WL 6528422 (C.D. Cal. Oct. 20, 2020) is particularly instructive. In Velasquez-Reyes, the plaintiff took a phone to a T-Mobile store for activation. 2020 WL 6528422, at *1. A T-Mobile employee set up the plaintiff's phone at the store. Id. During this process, the phone displayed a page titled "Terms and Conditions" and advised users to "[r]ead the conditions," which contained a binding arbitration provision. Id. The T-Mobile employee could not continue setting up plaintiff's phone until clicking an "Agree to all" bubble next to the "Terms and Conditions." Id. The employee then had to click "Next" to continue. Id. When setting up plaintiff's phone, the T-Mobile employee "did not say anything to [plaintiff] about the Arbitration Agreement or any other terms and conditions when setting up his phone[]." Id. at *2. The T-Mobile employee also did not tell plaintiff "about any documents he would need to read before using the phone." Id. The court still enforced the arbitration agreement even though the plaintiff did not personally click on the bubbles and was unaware of the terms and conditions. Id. at *3. Applying California agency law principles, the court found that the T-Mobile employee acted as plaintiff's agent. Id. Similar to Maryland, Minnesota, Illinois, and South Carolina law, agency relationships in California can be created informally through "conduct by each party manifesting acceptance of a relationship whereby one of them is to perform work for the other under the latter's direction." Id. (quoting Malloy v. Fong, 37 Cal. 2d 356, 372 (1951)). Other courts have reached similar results. See, e.g., Nicosia v. Amazon, Inc., 384 F. Supp. 3d 254, 269–70 (E.D.N.Y. 2019) (enforcing a clickwrap arbitration clause where plaintiff gave her friend her account password and allowed her to book her travel plans on the website); Kyani, Inc. v. Jordan, No. 4:17-CV-00251, 2017 WL 11458072, at *6 (D. Idaho Aug. 3, 2017) ("[W]hile Defendants may have not accepted the terms of the agreements on their own (there are questions of fact regarding this), it is undisputed they had agents do that on their behalf. This is a valid and legal way to negotiate and agree to contracts. By providing the required personal information to their agents, such as social security number and credit card number, they authorized their agent to agree to the Agreements on their behalf.

The clickwrap method of obtaining acceptance of the terms and conditions is a valid method, especially when the user is given ample opportunity to review the documents, even if an agent did the clicking."); Adsit Co., Inc. v. Gustin, 874 N.E.2d 1018, 1023–24 (Ind. Ct. App. 2007) (finding that plaintiff was bound by the forum selection clause even though plaintiff's "only role in the transaction" was providing her credit card number and plaintiff "did not personally accept [defendant's] policy, including the forum selection clause").

Plaintiffs rely on cases that do not address the agency relationship between themselves and dealer employees. (Opp'n to Hyundai at 5; Opp'n to Kia at 5.) Nor do the cases that Plaintiffs cite address pure clickwrap agreements. In Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1176–79 (9th Cir. 2014), the Ninth Circuit found that plaintiff was not required to affirmatively acknowledge the Terms of Use before completing the online purchase. Thus, the Ninth Circuit held that this type of "browsewrap agreement" could not be enforced. Id. "Unlike a clickwrap agreement, a browsewrap agreement does not require the user to manifest assent to the terms and conditions expressly . . . [a] party instead gives his assent simply by using the website." Id. at 1177 (quoting Hines v. Overstock.com, Inc., 668 F. Supp. 2d 362, 366 (E.D.N.Y. 2009). The other cases Plaintiffs cite are inapposite for similar reasons. See, e.g., Nicosia v. Amazon.com, Inc., 834 F.3d 220, 236 (2d Cir. 2016) (assuming a hybrid between a clickwrap and browsewrap agreement); Fteja v. Facebook, Inc., 841 F. Supp. 2d 829, 838 (S.D.N.Y. 2012) (finding that Facebook's Terms of Use are "somewhat like a browsewrap agreement" and "somewhat like a clickwrap agreement"). Thus, Plaintiffs rely on factually distinguishable cases that are inapplicable to the present case. It is undisputed that the Hyundai and Kia Terms of Use are clickwrap agreements, not a combination of clickwrap and browsewrap agreements.

Moreover, Jones, Ewing, and Holliday assented to the service's Terms of Use by subsequently logging into their accounts. On January 29, 2023 and March 16, 2023, Jones logged into the Connected Services mobile application and assented to the Customer Service Agreement. (Rao Decl. ¶ 12.) On August 31, 2022, Ewing logged into his Kia Connect account and thus consented to the then-current version of the Terms of Service. (Somasekharan Decl. ¶ 15.) On March 27, 2020, Holliday logged into the UVO Services account and thus accepted the then-current version of the Terms of Service. (Id. ¶ 16.) Jones, Ewing, and

Holliday fail to address these subsequent logins and thus do not dispute these facts. (See generally Opp'n to Hyundai; Opp'n to Kia.)

B. Validity of the Delegation Clause

1. Ambiguity

Plaintiffs argue that the Delegation Clause in the Arbitration Agreement is ambiguous. (Opp'n to Hyundai at 7; Opp'n to Kia at 7.) Plaintiffs claim that the issue of class arbitration is specifically carved out as an issue for the courts, not the arbitrator, to decide. (Opp'n to Hyundai at 8; Opp'n to Kia at 7.) Plaintiffs cite Shivkov v. Artex Risk Solutions, Inc., 974 F.3d 1051 (9th Cir. 2020), to support their position. However, the Delegation Clause in this case is consistent with Shivkov's holding that "the availability of class arbitration is a gateway question for a court to presumptively decide." 974 F.3d at 1065. The Delegation Clause specifically states that "[a]ll issues are for the arbitrator to decide, including the scope and enforceability of this arbitration provision as well as the Agreement's other terms and conditions, and the arbitrator shall have exclusive authority to resolve any such dispute relating to the scope and enforceability of this arbitration provision or any other term of this Agreement including, but not limited to any claim that all or any part of this arbitration provision or Agreement is void or voidable." (Rao Decl. Ex. C § 15.C(c), Ex. D § 14.C(c), Ex. F § 14.C(c); Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C.) The carve-out states that "if putative class or representative claims are initially brought by either party in a court of law, and a motion to compel arbitration is brought by any party in court, then the court shall decide whether this Agreement permits class proceedings." (Id.) Thus, the Delegation Clause is entirely consistent with the general presumption that reserves the class arbitration issue for the court, as noted in Shivkov. See, e.g., Saucedo v. Experian Info. Sols., Inc., No. 1:22-CV-01584, 2023 WL 4708015, at *2 (E.D. Cal. July 24, 2023) (enforcing a virtually identical Delegation Clause with a carve-out for class arbitration); Coulter v. Experian Info. Sols., Inc., No. 20-1814, 2021 WL 735726, at *2 (E.D. Pa. Feb. 25, 2021) (same). Moreover, Plaintiffs fail to cite additional authority indicating that the carve-out for class arbitration makes the Delegation Clause ambiguous.

Given the class arbitration carve-out, Hyundai and Kia move for Plaintiffs' claims to be arbitrated on an individual basis. (Opp'n to Hyundai at 7; Opp'n to Kia at 8.) The Arbitration Agreement specifically provides that "[a]ny arbitration

under this agreement will take place on an individual basis" and "class arbitrations, class actions or representative arbitrations are not permitted." (Rao Decl. Ex. C § 15.C, Ex. D § 14.C, Ex. F § 14.C; Somasekharan Decl., Ex. D § 7, Ex. F § 7, Ex. G § 7.) Class action waivers are enforceable under the FAA. See AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011). The Arbitration Agreement thus requires that claims brought by either party be arbitrated on an individual basis, rather than as a representative of a class. Plaintiffs' assent to the Terms of Use Agreements also includes assent to the class arbitration waiver. Thus, this Court finds that Plaintiffs waived their right to bring claims against Hyundai and Kia as class representatives. Plaintiffs must arbitrate their claims on an individual basis.

Plaintiffs also argue that the broader arbitration provision conflicts with the Delegation Clause regarding issues of scope and enforceability. (Opp'n to Hyundai at 8; Opp'n to Kia at 8.) Specifically, Plaintiffs argue that the provision that allows for resolving disputes through "binding arbitration or small claims court" conflicts with the broader arbitration provision. (Opp'n to Hyundai at 8; Opp'n to Kia at 8.) However, there is nothing inherently inconsistent with bringing an individual action in small claims court or arbitration. Nor do Plaintiffs cite any authority indicating as much. Plaintiffs subsequently argue that the term "Binding Arbitration" in the prefatory language of the Arbitration Agreement directly conflicts with the Delegation Clause's provision allowing parties to "appeal manifest errors of law" to the courts. (Opp'n to Hyundai at 9; Opp'n to Kia at 8.) But this is consistent with the FAA. "[A]n arbitrator's manifest disregard of the law remains a valid ground for vacatur of an arbitration award under § 10(a)(4) of the Federal Arbitration Act." Comedy Club, Inc. v. Improv W. Assocs., 553 F.3d 1277, 1281 (9th Cir. 2009).

Lastly, Plaintiffs argue that the Arbitration Agreement and Delegation Clause contain contradictory provisions of governing law. (Opp'n to Hyundai at 9; Opp'n to Kia at 8.) The dispute resolution states that "this Agreement and any disputes arising out of or relating to it will be governed by the laws of the state of California." (Rao Decl. Ex. C § 15.A, Ex. D § 14.A, Ex. F § 14.A.) The Arbitration Agreement provides that the "Federal Arbitration Act governs the interpretation and enforcement of this arbitration provision." (Rao Decl. Ex. C § 15.C(a), Ex. D § 14.C(a), Ex. F § 14.C(a); Somasekharan Decl., Ex. D § 7.A, Ex. F § 7.A, Ex. G § 7.A.) Moreover, the Delegation Clause's governing law states that "any arbitration will be governed by the substantive law of your state." (Rao Decl. Ex. C § 15.C(c), Ex. D § 14.C(c), Ex. F § 14.C(c); Somasekharan Decl., Ex. D §

7.C, Ex. F § 7.C, Ex. G § 7.C.) According to Plaintiffs, these three different applications of law render the Delegation Clause ambiguous. But the application of state law in arbitration proceedings and the FAA's governance of the interpretation and enforcement of the arbitration provision is not mutually exclusive. Plaintiffs fail to cite any case indicating otherwise.

The Delegation Clause is not ambiguous.

2. Unconscionability

"[W]here a party specifically challenges arbitration provisions as unconscionable and hence invalid, whether the arbitration provisions are unconscionable is an issue for the court to determine, applying the relevant state contract law principles." Jackson v. Rent-A-Center West, Inc., 581 F.3d 912, 918–19 (9th Cir. 2009), rev'd on other grounds by Rent-A-Center, West, Inc. v. Jackson, 130 S. Ct. 2772 (2010). Therefore, applicable contract defenses, such as fraud, duress, or unconscionability, as well as other defenses arising from case law, may be applied to invalidate arbitration agreements without contravening § 2 of the FAA. Ticknor v. Choice Hotels Int'l, Inc., 265 F.3d 931, 937 (9th Cir. 2001) (internal citation omitted); Blair v. Rent-A-Ctr., Inc., 928 F.3d 819, 827 (9th Cir. 2019).

Maranda's unconscionability defense is subject to Minnesota law. In Minnesota, "[u]nconscionability must be substantive and procedural, meaning that a plaintiff must demonstrate 1) that it had no meaningful choice except to accept the term or contract as offered and 2) that the [term or contract] was unreasonably favorable to the defendant." Ikechi v. Verizon Wireless, No. 10-4554, 2012 WL 3079254, at *20 (D. Minn. July 6, 2012) (internal quotation marks and citations omitted). Jones's unconscionability defense is subject to Maryland law. In Maryland, "[t]he prevailing view is that both procedural and substantive unconscionability must be present in order for a court to invalidate a contractual term as unconscionable." Freedman v. Comcast Corp., 190 Md. App. 179, 207–08 (2010). Ewing's unconscionability defense is subject to South Carolina law. In South Carolina, "procedural and substantive unconscionability must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." Damico v. Lennar Carolinas, LLC, 879 S.E.2d 746, 755 (S.C. 2022) (quoting 17A Am. Jur. 2d Contracts § 272). Holliday's unconscionability defense is subject to Illinois law. In Illinois, "[a]

finding of unconscionability may be based on either procedural or substantive unconscionability, or a combination of both." Kinkel v. Cingular Wireless, LLC, 857 N.E.2d 250, 263 (Ill. 2006) (citing Razor v. Hyundai Motor Am., 854 N.E.2d 607, 622 (Ill. 2006)). Thus, Illinois is the only applicable state law that does not explicitly require both procedural and substantive unconscionability to render a contractual provision unenforceable. For the following reasons, the Court finds that the Delegation Clause is not unconscionable under Minnesota, Maryland, South Carolina, and Illinois law.

a. Procedural Unconscionability

Under Minnesota law, procedural unconscionability specifically focuses on whether the parties had "no meaningful choice" but to accept the contract. Dorso Trailer Sales, Inc. v. America Body & Trailer, Inc., 372 N.W.2d 412, 415 (Minn. Ct. App. 1985). It refers to situations where "a term is so difficult to find, read, or understand that the plaintiff cannot fairly be said to have been aware he was agreeing to it, and also takes into account a lack of bargaining power." Prairie River Home Care, Inc. v. Procura, LLC, No. 17-5121, 2019 WL 3021253, at *8 (D. Minn. July 10, 2019) (applying Illinois law). However, disparity in bargaining power "is not enough, by itself, to establish that the contract was procedurally unconscionable." Bam Navigation, LLC v. Wells Fargo & Co., No. 20-CV-1345, 2021 WL 533692, at *4 (D. Minn. Feb. 12, 2021). In Minnesota, procedural unconscionability can arise in adhesion contracts. A contract of adhesion is "drafted unilaterally by a business enterprise and forced upon an unwilling and often unknowing public for services that cannot readily be obtained elsewhere." Schlobohm v. Spa Petite, Inc., 326 N.W.2d 920, 924 (Minn. 1982). "Even though a contract is on a printed form and offered on a 'take it or leave it' basis, those facts alone do not cause it to be an adhesion contract." Id. To establish the existence of an adhesion contract, the party "must show (1) a great disparity in bargaining power with no opportunity for negotiation; and (2) that the services offered by defendants are a public necessity and cannot be obtained elsewhere." Siebert v. Amateur Athletic Union of U.S., Inc., 422 F. Supp. 2d 1033, 1040 (D. Minn. 2006). "The services contemplated by the second aspect of the adhesion-contract rule are those 'generally thought suitable for public regulation,' including 'common carriers, hospitals and doctors, public utilities, innkeepers, public warehousemen, employers, and services involving extra-hazardous activities.'" Siebert, 422 F. Supp. 2d at 1040–41 (quoting Schlobohm, 326 N.W.2d at 925).

In Maryland, procedural unconscionability "deals with the process of making a contract" and "looks much like fraud and duress." Walther v. Sovereign Bank, 872 A.2d 735, 744 (Md. 2005). It includes the use of "fine print and convoluted or unclear language;" "deficiencies in the contract formation process, such as deception or a refusal to bargain over contract terms;" and "one party's lack of meaningful choice." Id. at 743–44 (internal quotation marks and citations omitted). Under Maryland law, "a contract of adhesion is not automatically deemed per se unconscionable." Id. at 746.

In South Carolina, procedural unconscionability is "the absence of meaningful choice on the part of one party due to one-sided contractual provisions." Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663, 668 (S.C. 2007). Under South Carolina law, "[a]dhesion contracts are not per se unconscionable." Damico, 879 S.E.2d at 756.

In Illinois, procedural unconscionability "refers to a situation in which a term is so difficult to find, read, or understand that the party could not fairly be said to have been aware she was agreeing to it, and also takes into account a lack of bargaining power." Razor, 854 N.E.2d at 622. But under Illinois law, "adhesive contracts 'are a fact of modern life. Consumers routinely sign such agreements to obtain credit cards, rental cars, land and cellular telephone service, home furnishings and appliances, loans, and other products and services. It cannot reasonably be said that all such contracts are so procedurally unconscionable as to be unenforceable.'" Phoenix Ins. Co. v. Rosen, 949 N.E.2d 639, 654 (Ill. 2011) (quoting Kinkel, 857 N.E.2d at 266); see also id. at 654–55 ("[E]ven if we accept [plaintiff's] argument that her insurance agreement is a contract of adhesion, such a finding does not render the agreement unenforceable. . . . [Besides the existence of an adhesion contract, Plaintiff] has made no other argument of procedural unconscionability. Thus, even if the insurance contract is a contract of adhesion, [plaintiff] must still establish substantive unconscionability that is, when taken with the adhesive character of the contract, sufficient to meet her burden of showing that the contract is so unconscionable that it should not be enforced."). Thus, "contracts of adhesion . . . are not per se unconscionable from a procedural standpoint." Tortoriello v. Gerald Nissan of N. Aurora, Inc., 882 N.E.2d 157, 175 (Ill. App. Ct. 2008). "Rather, there must be '[s]ome added coercion or overreaching' beyond these characteristics for a court to find that a contractual

provision is procedurally unconscionable." Zuniga v. Major League Baseball, 196 N.E.3d 12, 21 (Ill. App. Ct. 2021) (quoting Tortoriello, 882 N.E.2d at 175).

Plaintiffs argue that the Delegation Clause is an adhesion contract, contained in a misleading subparagraph titled "Filing Fees," and not part of a separate document providing for arbitration. (Opp'n to Hyundai at 10; Opp'n to Kia at 9.) Plaintiffs argue that the Delegation Clause is an adhesion contract because Plaintiffs were required to accept the Terms of Use in order to enroll in Bluelink, Kia Connect, or UVO Services. (Rao Decl. ¶ 5; Somasekharan Decl. ¶ 5.) However, each applicable state law has held that adhesion contracts are not per se unconscionable. See, e.g., Schlobohm, 326 N.W.2d at 924; Siebert, 422 F. Supp. 2d at 1040–41; Ikechi, 2012 WL 3079254, at *20; Walther, 872 A.2d at 746; Damico, 879 S.E.2d at 756; Phoenix Ins. Co., 949 N.E.2d at 654–55. Thus, to the extent that the Delegation Clause is an adhesion contract, it is procedurally unconscionable only under Maryland and South Carolina law. Minnesota and Illinois law require more for adhesion contracts to be considered procedurally unconscionable. Minnesota law also requires that the "services offered by defendants are a public necessity and cannot be obtained elsewhere," which is not the case here. Siebert, 422 F. Supp. 2d at 1040. Illinois requires additional "coercion or overreaching" beyond the adhesion contract itself. Razor, 854 N.E.2d at 622; Phoenix Ins. Co., 949 N.E.2d at 654–55; Zuniga, 196 N.E.3d at 21; Tortoriello, 882 N.E.2d at 175. Thus, the take-it-or-leave-it nature of the Delegation Clause does not render it procedurally unconscionable under Minnesota and Illinois law.

Moreover, the Delegation Clause is not placed in a misleading subparagraph because it is in the same font size and color as the Arbitration Agreement. (Rao Decl. Ex. C § 15.C(c), Ex. D § 14.C(c), Ex. F § 14.C(c); Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C.) It is also set off in a freestanding paragraph, making it clearly visible. (Id.) While the Delegation Clause in the Kia Connect and UVO Services is under a subparagraph titled "Filing Fees," that subparagraph is under a bold, all-caps heading titled "RESOLVING DISPUTES BY BINDING ARBITRATION." (Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C.) The Delegation Clause is not difficult to understand nor is it written in unclear language.

Plaintiffs also argue that the failure to provide a physical copy of the American Arbitration Association rules renders the Delegation Clause procedurally

unconscionable. (Opp'n to Hyundai at 11; Opp'n to Kia at 10.) But the Delegation Clause itself is an electronic agreement, not a physical one. (Rao Decl. Ex. C § 15.C(c), Ex. D § 14.C(c), Ex. F § 14.C(c); Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C.) Moreover, the Delegation Clause includes a link to the American Arbitration Association rules and directs Plaintiffs to review them. (Id.) The Delegation Clause states: "The arbitration will be governed by the Consumer Arbitration Rules (the 'AAA Rules') of the American Arbitration Association ('AAA') . . . . The AAA Rules are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. The AAA Rules may change from time to time, and you should review them periodically." (Id.) Thus, it is unclear how providing electronic access to the American Arbitration Association rules but failing to provide a physical copy renders the Delegation Clause procedurally unconscionable.

The Delegation Clause is not procedurally unconscionable under Minnesota and Illinois law, but the Delegation Clause is procedurally unconscionable under Maryland and South Carolina law.

b. Substantive Unconscionability

In Minnesota, substantive unconscionability is present if "the terms of the contract itself are unreasonably favorable" to Hyundai and Kia. Butler v. ATS Inc., No. 20-CV-1631, 2021 WL 1382378, at *19 (D. Minn. Apr. 13, 2021). It "examines the relative fairness of the obligations assumed," and considers whether the contract terms are "so one-sided as to oppress or unfairly surprise an innocent party [and] an overall imbalance in the obligations and rights imposed by the bargain." Prairie River Home Care, 2019 WL 3021253, at *8 (applying Illinois law). In Maryland, substantive unconscionability "involves those one-sided terms of a contract from which a party seeks relief," and it "reminds us of contracts or clauses contrary to public policy or illegal." Walther, 872 A.2d at 744 (internal quotation marks and citations omitted). Terms are substantively unconscionable if they "are unreasonably favorable to the more powerful party," "impair the integrity of the bargaining process or otherwise contravene the public interest or public policy," "attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law," or are "unreasonably and unexpectedly harsh." Id. at 426. In South Carolina, substantive unconscionability refers to "terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Simpson, 644 S.E.2d at 668. In Illinois, substantive

unconscionability refers to contractual "terms which are inordinately one-sided in one party's favor." Razor, 854 N.E.2d at 622. "Substantive unconscionability concerns the actual terms of the contract and examines the relative fairness of the obligations assumed, asking whether the terms are so one-sided as to oppress or unfairly surprise an innocent party." Phoenix Ins. Co., 949 N.E.2d at 647 (internal quotation marks and citations omitted). Thus, the law regarding substantive unconscionability is similar under all four states.

Plaintiffs argue that the Delegation Clause is substantively unconscionable because it materially conflicts with the broader arbitration provision, has a confidentiality provision, and contains a filing fee provision. (Opp'n to Hyundai at 11; Opp'n to Kia at 10.) As discussed above, there are no genuine conflicts between the Delegation Clause and the broader arbitration provision. Nor does the confidentiality provision make the Delegation Clause substantively unconscionable. (Opp'n to Hyundai at 11; Opp'n to Kia at 10.) The confidentiality provision states that "[t]he arbitration proceedings shall otherwise remain confidential, except for purposes of seeking court intervention (if necessary)." (Rao Decl., Ex. C § 15.C(b), Ex. D § 14.C(b), Ex. F § 14.C(b); Somasekharan Decl., Ex. D § 7.B, Ex. F § 7.B, Ex. G § 7.B.) This confidentiality provision is limited to arbitration proceedings. The provision does not include the confidentiality of arbitration orders and awards. Thus, "[o]ther potential plaintiffs would be able to learn the results and content of any past award and would not be operating 'in the dark.'" Hutcherson v. Sears Roebuck & Co., 342 Ill. App. 3d 109, 125 (2003) (failing to find a similar confidentiality provision substantively unconscionable) (internal citation omitted). Courts applying relevant state law have upheld more restrictive confidentiality provisions. See, e.g., Bailey v. Thompson Creek Window Co., No. 21-00844, 2021 U.S. Dist. LEXIS 209762, at * (D. Md. Oct. 29, 2021) (finding that an arbitration agreement requiring that "[a]ny arbitration proceeding brought under this Agreement, and any award, finding, or verdict of or from such proceeding shall remain confidential between the parties and shall not be made public" is not substantively unconscionable); Carmax Auto Superstores, Inc. v. Sibley, 215 F. Supp. 3d 430, 437 (D. Md. 2016) ("This Court finds nothing under Maryland law finding confidentiality requirements in arbitration agreements to be void as a matter of public policy."). Nor do Plaintiffs

cite any relevant state authority indicating otherwise.[5] Moreover, the confidentiality provision challenged by Plaintiffs is not contained in the Delegation Clause. Rather, the provision appears in the subsection regarding written notices of dispute. (Compare Rao Decl., Ex. C § 15.C(c), Ex. D § 14.C(c), Ex. F § 14.C(c); Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C with Rao Decl., Ex. C § 15.C(b), Ex. D § 14.C(b), Ex. F § 14.C(b); Somasekharan Decl., Ex. D § 7.B, Ex. F § 7.B, Ex. G § 7.B.)

Lastly, the Delegation Clause expressly states that "[a]fter [Hyundai and Kia] receive[] [n]otice at the Notice Address that you have commenced arbitration, [they] will promptly reimburse you for your payment of the filing fee." (Rao Decl. Ex. C § 15.C(c), Ex. D § 14.C(c), Ex. F § 14.C(c); Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C.) Plaintiffs argue that this filing fee restricts access to the arbitral forum because some claimants may not have the financial resources to pay the filing fee upfront and wait for reimbursement. (Opp'n to Hyundai at 11; Opp'n to Kia at 10–11.) But Plaintiffs only need to pay once to bring a claim in arbitration. After that, Plaintiffs will get reimbursed and will not need to pay again. Thus, this one-time filing fee is not "so one-sided as to oppress or unfairly surprise an innocent party" such that "no fair and honest person would accept" it. Plaintiffs fail to cite any relevant authority indicating otherwise.

The Delegation Clause is not substantively unconscionable. Because Minnesota, Maryland, and South Carolina require both procedural and substantive unconscionability to find a contractual provision unconscionable, the Delegation Clause is not unconscionable as to those three states. While Illinois does not require both procedural and substantive unconscionability, adhesion contracts are

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[5] Plaintiffs rely on Pokorny v. Quixtar, Inc., 601 F.3d 987 (9th Cir. 2010), to support their argument. (Opp'n to Hyundai at 11; Opp'n to Kia at 10.) However, that case is inapplicable for two reasons. First, Pokorny applies California law, which does not apply here. Second, the Ninth Circuit overruled its reasoning regarding the confidentiality provision in Pokorny in 2017. See Poublon v. C.H. Robinson Co., 846 F.3d 1251, 1266 (9th Cir. 2017) (finding that the Ninth Circuit is "bound by CarMax" because "the California Court of Appeal rejected the same policy argument that Poublon makes here, namely that such confidentiality provisions 'inhibit employees from discovering evidence from each other'") (quoting Sanchez v. CarMax Auto Superstores Cal. LLC, 224 Cal. App. 4th 398, 408 (2014)).

not "so procedurally unconscionable as to be unenforceable." Rather, Illinois requires additional findings of coercion to render the contractual provision procedurally unconscionable, which are not present here. Thus, the Delegation Clause is not unconscionable under Minnesota, Maryland, South Carolina, and Illinois law.

C. Whether Plaintiffs' Claims Are Covered by the Agreement

"[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration . . . ." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24–25 (1983). But, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." AT&T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 648 (quoting United Steelworkers of Am. v. Warrior & Gulf Nav. Co., 363 U.S. 574, 582 (1960)). The FAA reflects "both a liberal federal policy favoring arbitration . . . and the fundamental principle that arbitration is a matter of contract." AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011) (internal quotation marks and citations omitted).

After determining that a valid arbitration agreement exists, the Court analyzes whether the arbitration clause encompasses the dispute at issue. Cox v. Ocean View Hotel, Corp., 533 F.3d 1114, 1119 (9th Cir. 2008). "The question whether the parties have submitted a particular dispute to arbitration, *i.e.*, the '*question of arbitrability*' is 'an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise.'" Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83 (2002) (quoting AT&T Techs., Inc., 475 U.S. at 649) (emphasis in original).

Hyundai and Kia assert that the Delegation Clause delegates the question of arbitrability of Plaintiffs' claims to an arbitrator. (Hyundai Mot. at 7; Kia Mot. at 11.) The Court agrees. The Delegation Clause states that "[a]ll issues are for the arbitrator to decide, including the scope and enforceability of this arbitration provision as well as the Agreement's other terms and conditions, and the arbitrator shall have exclusive authority to resolve any such dispute relating to the scope and

enforceability of this arbitration provision or any other term of this Agreement including, but not limited to any claim that all or any part of this arbitration provision or Agreement is void or voidable." (Rao Decl. Ex. C § 15.C(c), Ex. D § 14.C(c), Ex. F § 14.C(c); Somasekharan Decl., Ex. D § 7.C, Ex. F § 7.C, Ex. G § 7.C.) Additionally, the intent to delegate the scope of questions to arbitration is further demonstrated by the incorporation of the American Arbitration Association rules. (Id.) The Ninth Circuit has held that incorporation of the American Arbitration Association rules "constitutes 'clear and unmistakable' evidence of the parties' intent" to delegate the arbitrability question. Brennan v. Opus Bank, 796 F.3d 1125, 1130 (9th Cir. 2015). This is true even for unsophisticated parties. See, e.g., Gountoumas v. Giaran, Inc., No. CV 18-7720, 2018 WL 6930761, at *6 (C.D. Cal. Nov. 21, 2018) ("The Court agrees with the majority view, and concludes that incorporation of [American Arbitration Association] rules constitutes clear and unmistakable evidence that the contracting parties agreed to arbitrate arbitrability, even if one or more of the parties are unsophisticated."). As such, the Court concludes that the arbitrator shall determine whether arbitration is appropriate for each of Plaintiffs' claims.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motions to compel arbitration. The Court also **STAYS** the proceedings pending the binding arbitration.

IT IS SO ORDERED.

The Court **VACATES** the September 18, 2023 hearing. Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. on Tuesday, September 19, 2023, stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted.