THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2025-002283
Case No. 2024-CP-10-06252

David White, ... Respondent,

v.

Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc., Alicia White, and Jane Doe, Defendants,

Of whom Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc. is the ..... Appellant.

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court err by addressing the gateway arbitrability issues of (a) the applicability of the Arbitration Agreement in Lyft's Terms of Service to Respondent's claims and (b) unconscionability in the face of a valid, enforceable, and unchallenged delegation clause reserving these determinations for the arbitrator?

2. Did the Circuit Court err by finding that Respondent's claims did not fall within the scope of the Arbitration Agreement in Lyft's Terms of Service despite the Arbitration Agreement's language expressly providing that "any dispute, claim or controversy" between the parties arising out of or relating to . . . the Lyft Platform" are subject to arbitration?

3. Did the Circuit Court err by finding the Arbitration Agreement in Lyft's Terms of Service unconscionable notwithstanding Respondent's failure to provide any evidence that he lacked meaningful choice or sufficiently demonstrate that the terms were illegally one sided and oppressive?

STATEMENT OF THE CASE AND FACTS

This appeal arises from the Circuit Court's Order denying Appellant Lyft Inc, d/b/a Lyft Drives South Carolina, Inc.'s ("Lyft" or "Appellant") Motion to Compel Arbitration. The Circuit Court incorrectly concluded that Respondent David White's ("Respondent") claims: (1) do not fall within the scope of the Arbitration Agreement in Lyft's Terms of Service and (2) that the Agreement was an unconscionable and unenforceable adhesion contract. In doing so, the Circuit Court ignored the parties' valid delegation clause and made improper ruling as to the scope, validity, and enforceability of the Arbitration Agreement. However, these decisions were expressly delegated to the arbitrator by the parties, and Respondent never mentioned or challenged the delegation clause below. As a result, "a court may not override the contract and decide the arbitrability question." *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 700, 869 S.E.2d 859, 864 (Ct. App. 2022) (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019) (same)). This Court should therefore reverse.

This matter arises out of a December 26, 2021 car accident. At the time of the accident, Respondent was a passenger in Defendant White's vehicle while White was providing Rideshare Services on the Lyft Platform. (*See* Compl. ¶¶ 8, 14; R. __.)

Lyft is a transportation network company that "uses a digital network, platform, or Internet-enabled application to connect a passenger to a transportation network driver for the purpose of providing transportation for compensation using a vehicle." S.C. Code Ann. § 58-23-1610. In other words, Lyft operates a peer-to-peer software platform that connects users seeking rides to certain destinations ("riders") with independent contractor drivers ("drivers") who provide rides using personal vehicles. (Mot. to Compel, Ex. A – McCachern Aff. ¶ 4; R. __.) The Lyft software Platform includes Lyft's website, technology platform, and mobile device application (the "Lyft

App"). (*Id.*) The Lyft App offers a method to connect drivers and riders and allows those two groups to communicate. (*Id.*)

For users to access Lyft's services and use its Platform to connect riders with drivers, they must first create a Lyft user account using the Lyft App and agree to Lyft's Terms of Service ("Terms" or "TOS"). After creating an account, users are prompted periodically to reaffirm their acceptance of Lyft's updated Terms if they wish to continue using the Lyft Platform.

The Terms have at all times included a mutual arbitration agreement (the "Arbitration Agreement"). (Mot. to Compel, Ex. A ¶¶ 7–8; R. __.) The first page of the Terms contains the following notice in all caps:

> PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION . . .

(Exs. A-3, A-5 – Lyft TOS; R. __.) The "SEE SECTION 17 BELOW" is a blue internal jump link that would take the viewer directly to the full Arbitration Agreement. (*See* Mot. to Compel, Ex. A, ¶ 17; R. __.)

The Arbitration Agreement states that Lyft and any prospective user mutually agree that all claims between them "arising out of or relating to . . . the Lyft Platform" and/or "Rideshare Services" are subject to arbitration and that the Federal Arbitration Act would govern. (*See* Mot. to Compel, Exs. A-3, A-5; R. __.) It states in relevant part:

> **17. DISPUTE RESOLUTION AND ARBITRATION AGREEMENT**
>
> YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOVLE ANY DISPUTE BY ARBITRATION, as set forth

> below. This agreement to arbitrate ("Arbitration Agreement") is governed by the Federal Arbitration Act ("FAA"); . . . This Arbitration Agreement Survives after the Agreement terminates or your relationship with Lyft ends.
>
> ***
>
> Except as expressly provided below, ALL DISPUTES AND CLAIMS BETWEEN US (EACH A "CLAIM" AND COLLECTIVELY, "CLAIMS") SHALL BE EXCLUSIVELY RESOVLED BY BINDING ARBITRATION SOLELY BETWEEN YOU AND LYFT. These Claims include, but are not limited to, any dispute, claim or controversy, whether based on past, present, or future events, arising out of or relating to: this Agreement and prior versions thereof (including the breach, termination, enforcement, interpretation or validity thereof), the Lyft Platform, the Rideshare Services, . . . your relationship with Lyft . . . and all other federal and state statutory and common law claims. All disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator, except as expressly provided below.

(Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a); R. __.) The Arbitration Agreement further expressly provides that by agreeing to arbitration "YOU AND LYFT ARE WAIVING THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL FOR ALL CLAIMS, EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS ARBITRATION AGREEMENT." (*Id.*) Critically, the Arbitration Agreement contains a delegation clause providing that the arbitrator possesses the ***sole*** authority to resolve any disputes concerning the "arbitrability of a Claim" including the "scope, applicability, enforceability, revocability or validity of the Arbitration Agreement." (*Id*.)

Respondent created a user account with Lyft on October 31, 2020, and affirmatively accepted Lyft's TOS dated August 26, 2019 within the Lyft App. (Mot. to Compel, Ex. A ¶¶ 11–12; R. __.) At the time Respondent accepted the operative TOS, he was presented with the full text of the Terms directly on the screen of the Lyft App accompanied by a banner stating: "Before you

can proceed you must read and agree to Lyft's Terms of Service." (*Id.* at ¶ 15; R. __.) At the bottom of the screen—immediately under the full text of the Lyft Terms—the Lyft App presented Respondent with a large "I Agree" button, which he was required to click to demonstrate consent and agreement to be bound by the Terms to proceed with using the Lyft App. (*Id.*) A full copy of the current Terms was also accessible to Respondent at any time on Lyft's website and within the Lyft App. (*Id.* at ¶ 9; R. __.)

Lyft updated its TOS on December 9, 2020. On December 13, 2020, Lyft notified Respondent directly by email with the subject line: "We're updating our Terms of Service." (*Id.* at ¶ 12; R. __.) The email explained to Respondent that the December 9, 2020 TOS included "revisions to our Dispute Resolution and Arbitration Agreement, which explains how legal disputes are handled." (*Id.*) The email also included a blue hyperlink to the December 9, 2020 TOS, and stated in bold and underline: "**Your continued use of Lyft will confirm that you have reviewed and agreed to the updated Terms**." (*Id.*) On February 7, 2021, Respondent accepted Lyft's December 9, 2020 TOS. (*Id.*)

In affirmatively accepting Lyft's Terms and reaffirming that acceptance, Respondent agreed to be bound by the Arbitration Agreement. (*Id.*; Mot. to Compel, Ex. A-2 – TOS Consent History; R. __). And because of his agreement to be bound the Arbitration Agreement, Respondent was able to use the Lyft App to request and/or purchase Rideshare Services on 43 separate occasions. (Mot. to Compel, Ex. A ¶ 4; R. __.) Respondent could not have requested or purchased those Rideshare Services without affirmatively consenting to the Terms. (*Id.*) Indeed, Respondent has never disputed that he accepted the Terms or the benefits that flowed therefrom. (*See generally* Resp. in Opp'n; R. __.)

In December 2021, Respondent was riding as a passenger in Defendant White's vehicle while she was providing Rideshare Services on the Lyft Platform. (*See* Compl. ¶¶ 8–16; R. __.) Respondent alleges he was injured when Defendant Jane Doe sideswiped Defendant White's vehicle. (*Id.*)

In December 2024, Respondent filed suit asserting claims of negligence and negligence *per se* against Lyft, Defendant White, and Defendant Doe. (*See generally id.*; R. __.) As to Lyft, Respondent contended that Lyft is vicariously liable for Defendant White's alleged negligent driving on the Lyft Platform because Defendant White was using the Lyft Platform when the accident occurred. (*Id.* at ¶¶ 32–37; R. __.)

In response, Lyft filed a Motion to Compel Arbitration (the "Motion"). (Mot. to Compel; R. __.) Respondent opposed the Motion, contending that: (1) the Arbitration Agreement was an unconscionable adhesion contract and (2) none of his claims against Lyft fell within the scope of the Arbitration Agreement. (Mem. in Opp'n pp. 5–6; R. __.) ***Respondent made no mention of the delegation clause***. Lyft then filed a Reply arguing, among other things, that the court had no authority to decide Respondent's contentions because of the unchallenged and enforceable delegation clause. (Reply; R. __.)

The Circuit Court held a hearing on Lyft's Motion. (Transcript of 7/31/2025 Hrg.; R. __.) At the hearing, Respondent again did not challenge the delegation clause. In fact, Respondent conceded that "the arbitrator does have [] the authority to decide if this dispute arises under the arbitration clause." (*Id.* at 9:10–12; R. __.) Instead, Respondent argued that since he was not driving on the Lyft Platform or physically logged into the Lyft App himself, the Terms are inapplicable to him, including the Arbitration Agreement. (*See id.* at 8:9–11:7; R. __.)

On August 21, 2025, the Circuit Court issued an Order denying Lyft's Motion.[1] The Order failed to mention or address the delegation clause. Instead, the Order proceeded directly to the merits of Respondent's challenges to the arbitrability of his claims against Lyft. As to the scope and applicability of the Arbitration Agreement, the Circuit Court concluded that Lyft's Terms "only govern a user's active use or access of the Lyft Platform or Defendant Lyft's services" and thus there is no "significant relationship" between Respondent's claims and the TOS containing the Arbitration Agreement. (Order p. 2; R. __.) The Circuit Court additionally found the Arbitration Agreement unenforceable on grounds of unconscionability. (*Id.* pp. 2–3; R. __.)

Lyft timely filed a Motion to Reconsider pursuant to Rule 59(e), SCRCP. (Mot. to Reconsider; R. __.) In response, Respondent filed a Memorandum and Affidavit in Opposition. (Resp. in Opp'n; R. __.) Lyft then filed a Motion to Strike Respondent's Affidavit. (Mot. to Strike; R. __.) The Circuit Court denied Lyft's Motion to Reconsider by Form 4 Order dated October 15, 2025. (Form 4 Order; R. __.)

On November 12, 2025, Lyft timely filed and served its Notice of Appeal. (Not. of Appeal; R. __.)

STANDARD OF REVIEW

Each of the legal issues on appeal are subject to de novo review. *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007) (appeal from denial of a motion to compel arbitration); *One Belle Hall Prop. Owners Ass'n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 59, 791 S.E.2d 286, 291 (Ct. App. 2016) (appeal of arbitrability determination); *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 13, 742 S.E.2d 37, 39 (Ct. App. 2013) (determining agreement is unconscionable).

[1] The Circuit Court's Order adopted Respondent's proposed order verbatim.

ARGUMENT

I. The Circuit Court erred by deciding gateway issues delegated to the arbitrator.

This case presents a straightforward application of a valid and unchallenged delegation clause confirmed by an unbroken line of U.S. Supreme Court and South Carolina precedent. Respondent indisputably and repeatedly agreed to the Arbitration Agreement. The Arbitration Agreement contains a clear and broad delegation clause. It requires the arbitrator to resolve all arbitrability disputes, including the scope, applicability, validity and enforceability of the Arbitration Agreement. (Mot. to Compel, Exs. A-3, ¶ 17(a) & A-5, ¶ 17(a); R. __.) Respondent has not challenged the delegation clause. Accordingly, "a court may not override the contract and decide the arbitrability question." *Palmetto Wildlife Extractors*, 435 S.C. at 700, 869 S.E.2d at 864 (citing *Henry Schein*, 586 U.S. at 69). However, that is exactly what the Circuit Court did here. This was reversible error.

A. Respondent entered into a binding and enforceable Arbitration Agreement with Lyft containing a delegation clause.

State law governs whether an agreement to arbitrate was formed. *First Options of Chicago, Inc. v. Kaplan* 514 U.S. 938, 944 (1995). To form an agreement in South Carolina, there must be: (1) an offer, (2) acceptance, and (3) valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003).

The Circuit Court correctly found that an agreement to arbitrate exists. Indeed, Respondent has never disputed the existence of such an agreement or that he validly accepted Lyft's TOS. Nor could he since Respondent affirmatively and twice agreed to Lyft's Terms (the offer), acknowledging his consent within the Lyft App by clicking a button labeled "I Agree" (the acceptance) presented to him beneath the full text of Lyft's TOS. (*See* Mot. to Compel, Ex. A, ¶ 18; R. __ ("Plaintiff could not have proceeded to access content on the Lyft App without first

accepting Lyft's Terms of Service by clicking the 'I Agree' button beneath the full text of Lyft's Terms of Service.").)

The Arbitration Agreement plainly states that Lyft and Respondent "AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION." (Mot. to Compel, Exs. A-3, ¶ 17(a) & A-5, ¶ 17(a); R. __.) Importantly, the Arbitration Agreement also clearly and unmistakably sets forth the parties' "additional antecedent agreement"—a mutual delegation clause expressly delegating to the arbitrator exclusive authority to resolve any disputes regarding arbitrability, including those concerning the "scope, applicability, enforceability, revocability or validity of the Arbitration Agreement." (*Id.*)

In return for Respondent's consent to the TOS, including the mutual Arbitration Agreement, Lyft provided Respondent with access to the Lyft Platform, which he used to purchase Rideshare Services on 43 occasions. (*See* Mot. to Compel, Ex. A, ¶ 13; R. __.) This suffices to establish consideration. *See e.g.*, *Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 10–11 (D.D.C. 2021) (Jackson, J.) (Lyft and plaintiff "exchanged adequate consideration" and were therefore required to arbitrate because, "in return [for the plaintiff's] assent to its arbitration clause, Lyft provided [the plaintiff] with access to its application" and "further agreed to arbitrate any disputes between the parties."); *accord Mohammed v. Uber Technologies, Inc.* No. 16 C 2537, 2018 WL 1184733, at *6, *8 (N.D. Ill. Mar. 7, 2018) ("Uber provided consideration for the agreement through providing [plaintiff] with the benefits of its [ridesharing platform] app and connection to its riders.").

Therefore, Lyft indisputably established the existence of the Arbitration Agreement with Respondent, and since Lyft and Respondent have expressly agreed to delegate resolution of all arbitrability questions to the arbitrator, this ends the Court's inquiry as detailed below.

B. The Circuit Court erred by overriding the delegation clause in the Arbitration Agreement delegating all gateway issues to the arbitrator for determination.

1. The FAA Requires that a delegation clause—like any agreement to arbitrate— be enforced according to its terms.

The Arbitration Agreement is governed by the FAA, which Respondent has also never disputed. The FAA provides, in relevant part, that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. When an action subject to arbitration is brought in court, the court "***shall*** make an order directing the parties to proceed to arbitration." 9 U.S.C. §§ 3–4 (emphasis added).

The FAA "leaves no place for the exercise of discretion . . . but instead mandates that [] courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001) (The FAA "requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms") (internal quotations omitted)).

Ordinarily, "the court, rather than an arbitrator, will decide 'gateway' issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it covers the parties' dispute." *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). However, arbitration is a matter of contract, and the FAA allows parties to resolve by their contract the question of "who has the primary power to decide" disputes regarding gateway

arbitrability questions. *Coinbase, Inc. v. Suski*, 602 U.S. 143, 148–49 (2024). *See also Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 384, 892 S.E.2d 112, 115 (2023) ("[T]he 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.") (quoting *Henry Schein*, 586 U.S. at 69)).

"Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about that matter." *First Options*, 514 U.S. at 943 (citations omitted). "As long as the parties' agreement delegates the arbitrability question to an arbitrator 'by clear and unmistakable evidence,' a court may not override the contract and decide the arbitrability question." *Palmetto Wildlife Extractors*, 435 S.C. at 700, 869 S.E.2d at 864 (quoting *Henry Schein*, 586 U.S. at 69). To do otherwise would contravene the FAA's mandate that arbitration agreements—whether governing the resolution of substantive claims, issues of arbitrability, or any other dispute—be placed "on an equal footing with other contracts," and "enforce[d] … according to their terms." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010) (citations omitted).

2. Lyft and Respondent clearly and unmistakably agreed to arbitrate all disputes as to arbitrability.

The delegation clause in the Arbitration Agreement is clear and unmistakable. It plainly provides that "***[a]ll disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator.***" (Mot. to Compel, Exs. A-3, ¶ 17(a) & A-5, ¶ 17(a); R. __ (emphasis added).) This statement reflects the parties' clear intention for an arbitrator to decide all gateway issues, including whether the claims fall within its scope and unconscionability. The Arbitration Agreement delegates the resolution of these issues for the arbitrator's exclusive

authority. That's why it expressly invokes the terms of "scope, applicability, enforceability, . . . [and] validity" and assigns them to "the arbitrator" with the mandatory word "shall." *See Henderson v. Summerville Ford-Mercury Inc.*, 405 S.C. 440, 453, 748 S.E.2d 221, 228 (2013) (holding that "use of words such as 'shall'" denotes a "mandatory requirement") (citations omitted). The Circuit Court had no discretion to simply ignore this plain and "mandatory" language. Put another way, the clear and unmistakable language of the delegation clause resolves any dispute as to "who should have the primary power to decide." *Coinbase*, 602 U.S. at 148–49. The Circuit Court, therefore, was powerless to "override the contract and decide the arbitrability question." *Palmetto Wildlife Extractors*, 435 S.C. at 700, 869 S.E.2d at 864.

South Carolina precedent makes this clear. Indeed, similar—and more limited—delegation clauses have been consistently enforced by South Carolina courts under the FAA. Start with *Palmetto Wildlife Extractors*. There, like here, the circuit court denied a motion to compel arbitration, finding that the plaintiff's claims "did not implicate the Agreement and were not subject to arbitration." *Id.* at 698, 869 S.E.2d at 863.

The moving party appealed, pointing out that issues of scope were for the arbitrator to decide pursuant to the parties' delegation clause. This Court agreed:

> In the present case, the Agreement provided, 'Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding.' This statement is clear that issues of arbitrability are be determined by the arbitrator. *See Henry Schein, Inc.*, 139 S. Ct. at 529-30 (finding as long as the parties' agreement delegates the arbitrability question to an arbitrator "by 'clear and unmistakable' evidence," a court may not override the contract and decide the arbitrability question). This includes claims arising out of conduct that Respondents assert was unforeseeable. *See Doe* 430 S.C. at 616, 846 S.E.2d at 881 ("Because the outrageous and unforeseen torts exception relates to ... the arbitrability of the dispute[,] . . . precedent requires that we honor the parties' choice to leave the issue of the exception to the arbitrator.").

Id. at 702, 869 S.E.2d at 866.

In *Doe v. TCSC, LLC*, this Court likewise enforced a delegation clause that the circuit court had disregarded. There, the question before this Court was "whether the parties intended for the court or an arbitrator to decide the threshold issue of whether the Agreement is valid and enforceable" under the FAA. 430 S.C. at 607, 846 S.E.2d at 876. This Court again found that the delegation clause controlled:

> Consistent with *Rent-A-Center*, because it is clear and unmistakable the delegation clause committed disputes over the 'interpretation and scope' of the Arbitration Agreement and issues of 'arbitrability of the claim or dispute' to the arbitrator, the FAA requires us to honor that agreement and leave resolution of these discrete gateway issues to the arbitrator.

Id. at 609, 846 S.E.2d at 877.

However, the *Doe* delegation clause was circumscribed. Unlike Lyft and Respondent's delegation clause, the *Doe* delegation clause "did not mention who decides the gateway validity and enforceability issues." *Id.* As a result, this Court addressed unconscionability since "we must honor the parties' choice to leave these to the court." *Id.*[2]

Lyft and Respondent made the opposite choice here. Their Arbitration Agreement expressly delegates issues of "validity" and "enforceability" to the arbitrator for resolution. So, just like in *Doe*, this Court "must honor the parties' choice" and allow the arbitrator to decide unconscionability (along with scope). *Id.*

The import of *Palmetto Wildlife Extractors* and *Doe* is unmistakable. In South Carolina, the delegation clause means what it says and must be enforced as written just as the U.S. Supreme

[2] This Court then proceeded to address unconscionability, found that the unconscionable terms alone must be severed from the arbitration agreement under controlling law, and remanded the case for the remainder of the arbitration agreement to be enforced. *Id.* at 614–15, 846 S.E.2d at 880.

Court has continuously instructed. When the parties delegate gateway arbitrability issues to the arbitrator, there is no escape hatch. The arbitrator—not the Court—must resolve any challenges regarding these gateway issues. *See also, e.g.*, *Blume v. Starbucks Corp.*, No. 2023-001506, 2025 WL 2159033, at *4 (S.C. Ct. App. July 30, 2025) (reversing circuit court's arbitrability determinations and compelling the dispute to arbitration in light of the delegation clause in the subject arbitration agreement)[3]; *Masters v. KOL, Inc.*, 431 S.C. 28, 41, 846 S.E.2d 893, 899 (Ct. App. 2020) (same).

For the same reason, courts around the country routinely enforce the delegation clause in Lyft's TOS, including in scenarios where the passenger did not order the subject ride. For example, in *Lyft, Inc. v. Abenante*, 574 P.3d 433, 2025 WL 2414236 (Nev. Ct. App. 2025) (unpublished table decision), the respondent-plaintiffs argued that the Arbitration Agreement in Lyft's TOS was "invalid and inapplicable to [them] because they did not utilize the Lyft app to order the ride." *Id.* at *2. The trial court agreed and denied Lyft's motion to compel arbitration. On appeal, the Nevada Court of Appeals reversed the order of the trial court, finding:

> The arbitration agreements here contained clear and unmistakable delegation clauses, which provided that disputes concerning the arbitrability of a claim, including applicability, scope, enforceability, and validity of the agreements were for an arbitrator to decide. Further, the arbitration agreements incorporated the AAA rules, which further supports that the parties intended to submit the question of arbitrability to the arbitrator. Given the incorporation of the delegation clause and the AAA rules, there is clear and unmistakable evidence of the parties' intent to delegate the question of arbitrability to an arbitrator. Therefore, the district court erred by denying the motions to compel arbitration and concluding the arbitration agreements were inapplicable to respondents in this dispute.

Id. at *3.

[3] Lyft acknowledges that this Court's unpublished opinion in *Blume* is not binding precedent. It is cited for illustrative purposes only.

In so concluding, the Nevada Court of Appeals expressly "reject[ed] respondents' argument that the arbitration agreements did not apply to them because they did not order the ride at issue." *Id.* On the contrary, the court noted that "clear and unmistakable evidence of intent to arbitrate applies with equal force to passengers who did not order the ride but previously contracted with the rideshare company and assented to its terms and conditions." *Id.* While "it remained to be seen whether the arbitration agreement covered the underlying accident, . . . that was a question for the arbitrator to decide under the plain language of the delegation clause." *Id.*

The New York Supreme Court's Appellate Division recently reached the same conclusion in *Samuel v. Islam*, 233 A.D.3d 632, 633, 224 N.Y.S.3d 57 (2024). In *Samuel*, the plaintiff argued that that the Arbitration Agreement did not apply to their claims because they did not order the subject ride, and they were therefore not a "user" of the Lyft Platform at the time of the alleged accident. The trial court agreed and declined to compel the plaintiff's claims to arbitration. *Id.* The appellate court reversed, finding that the express terms of the delegation clause mandate that the plaintiff must present their argument to the arbitrator:

> There is no dispute that if plaintiff had ordered the subject ride through his own Lyft account, then the instant claims would be subject to arbitration because plaintiff was party to a valid and enforceable arbitration agreement with a valid and enforceable delegation provision—even if there were a question as to the arbitration agreement's scope. We find that the question of whether the agreement to arbitrate encompassed claims stemming from plaintiff's presence in a Lyft that he did not order is a question of arbitrability that must be decided by the arbitrator.

Id. (internal citations omitted.)

Other courts are in accord. *See Williams v. Lyft, Inc.*, No. 4:22-cv-3394 (S.D. Tex. May 28, 2024), ECF No. 41, at *9–10 (compelling arbitration under Lyft's delegation clause even though the plaintiff "was not the holder of the account that summoned the specific ride that led to his

injury"); *Uber Techs. v. Royz*, 517 P.3d 905, 911 (Nev. 2022) ("Although [the plaintiff] did not order the Uber ride or use the Uber app on the day of the accident, she previously contracted with Uber when she downloaded the Uber app and thereby assented to all of Uber's terms and conditions, including the arbitration provision and delegation clause"); *Wakeman v. Uber Techs., Inc.*, 721 F. Supp. 3d 1191, 1197 (D. Kan. Feb. 2024) ("Whether the arbitration agreement covers Wakeman's ride in a ride-share her husband ordered using his Uber app falls squarely within the delegation clause's commitment of 'threshold arbitrability issues, *including issues relating to whether the Terms are applicable*' to an arbitrator." (emphasis in original)).

To conclude, U.S. Supreme Court and South Carolina precedent mandate that an arbitrator alone must decide any arbitrability disputes under a delegation clause like the one in the TOS. This includes the very questions about scope, applicability, validity, and enforceability of the Arbitration Agreement that Respondent has raised here. After all, that is exactly what the parties contracted for. In such circumstances, there is no place for discretion under the FAA: a court cannot rewrite or ignore the parties' wishes. The Circuit Court failed to follow that bedrock principle mandate here.

3. The validity and enforceability of the delegation clause are not at issue.

Respondent never mentioned, let alone challenged, the parties' delegation clause in the Circuit Court. As a result, the delegation clause must be treated as valid and enforced according to its terms. Again, there is no place for discretion.

It is axiomatic that an agreement to delegate "gateway" issues of arbitrability to an arbitrator is itself an agreement to arbitrate, which is severable from any other provision of the contract and presumed to be valid under the FAA. *See Rent-A-Ctr.*, 561 U.S. at 70–72; *see also Palmetto Wildlife Extractors*, 435 S.C. at 699–700, 869 S.E.2d at 864; *Doe*, 430 S.C. at 609, 846 S.E.2d at 877. And like an agreement to arbitrate any other dispute, an agreement to arbitrate

gateway issues of arbitrability must be enforced according to its terms unless the party resisting arbitration makes a direct and discreet challenge to the delegation clause itself. *Rent-A-Ctr.*, 561 U.S. at 70–72; *Doe*, 430 S.C. at 609, 846 S.E.2d at 877 ("If such a delegation occurred, the court still retains the right and duty to determine whether the delegation is valid and enforceable as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause specifically, rather than the arbitration agreement as a whole.")

The Supreme Court's ruling in *Rent-A-Center* is binding and instructive as to this point. In *Rent-A-Center*, the dispute "between the parties [was] whether the [Arbitration] Agreement is unconscionable." 561 U.S. at 68. That arbitration agreement contained a delegation clause whereby the parties agreed the "Arbitrator shall have exclusive authority to resolve any dispute relating to the enforceability of this Agreement including, but not limited to [,] any claim that all or any part of this Agreement is void or voidable." *Id*. (alterations omitted). The Supreme Court explained that an "agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the . . . court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other." *Id.* at 70. Like any other arbitration agreement, an agreement to arbitrate gateway issues is "valid under the FAA save upon such grounds as exist at law or in equity for the revocation of any contract." *Id.* Accordingly, because the delegation clause was not itself challenged, the court held it must treat it as valid under the severability doctrine and any dispute regarding arbitrability—such as the contract's conscionability—were properly delegated to the arbitrator for resolution. *Id*. (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–404 (1967)); *see also Palmetto Wildlife*, 435 S.C. at 699–700, 869 S.E.2d at 864 (discussing *Rent-A-Ctr.*, 561 U.S. at 68–69).

Respondent failed to mount such a challenge here. Indeed, Respondent did not mention the delegation clause ***at all***, let alone raise a direct and discrete challenge to its validity or enforceability. Respondent instead merely attacked the validity of the Terms as a whole, contending that the "subject Terms of Service agreement is a contract of adhesion, Plaintiff lacked meaningful choice and could not negotiate its terms, and the arbitration clause contains several oppressive and one-sided terms." (Mem. in Opp'n p. 6; R. __.) Such an argument is nothing more than one that "challenges the contract as a whole, either on a ground that directly affects the entire agreement (e.g., the agreement was fraudulently induced), or on the ground that the illegality of one of the contract's provisions renders the whole contract invalid." *Rent-A-Ctr.*, 561 U.S. at 70; *see also Wu v. Uber Techs., Inc.*, 78 Misc. 3d 551, 576, 186 N.Y.S.3d 500, 522 (N.Y. Sup. Ct. 2022) ("Furthermore, even where such a challenge [on unconscionability grounds] is directed specifically at the arbitration provision, if the contract also contains a delegation provision delegating resolution of that challenge to an arbitrator and that delegation provision is not itself directly challenged, the *Prima Paint* severability doctrine, as extended by *Rent-A-Center*, operates to foreclose judicial review."), *aff'd*, 219 A.D.3d 1208, 197 N.Y.S.3d 1 (2023), *aff'd*, No. 90, 2024 WL 4874383 (N.Y. Nov. 25, 2024).[4]

The Circuit Court likewise made no mention of the delegation clause before proceeding to address Respondent's challenges to the scope, applicability, and enforceability of the Arbitration Agreement as a whole. Given Respondent's failure to specifically challenge the delegation clause, the Circuit Court was required to treat the delegation clause "as valid under § 2 [of the FAA]" and

[4] Indeed, the AAA Commercial Rules contemplate a scenario in which a party attacks the validity of the contract containing the arbitration agreement, but with the arbitrator still being empowered to decide arbitrability issues: "The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. . . . A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause." Am. Arbitration Assoc. Commercial Rules, Rule 7(b).

"enforce it under §§ 3 and 4 [of the FAA], leaving any challenge to the . . . the Agreement as a whole for the arbitrator." *Doe*, 430 S.C. at 609, 846 S.E.2d at 877 (citing *Rent-A-Ctr.*, 561 U.S. at 72). There was no room for discretion. The Circuit Court's conclusion that the claims do not fall within the scope of the Arbitration Agreement and that it is unconscionable despite the clear, unmistakable, and unchallenged delegation provision ignored binding Supreme Court precedent confirming that an arbitrator must decide these questions. *Rent-A-Ctr.*, 561 U.S. at 68.

The Circuit Court erred in reaching these gateway issues and by failing to compel the action to arbitration for the arbitrator to determine them in accordance with the terms of the Arbitration Agreement and established South Carolina law.[5] This Court should reverse.

II. The Circuit Court erred in finding that Respondent's claims do not fall within the scope of the Arbitration Agreement.

Even if the Court could reach the issue of the scope of the Arbitration Agreement (which it cannot), Respondent has not shown how his claims related to the Lyft Platform are not subject to the Arbitration Agreement governing the Lyft Platform. (*See* Mot. to Recons. p. 9; R. __.)

The FAA mandates that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983); *see also Brown v. Santander Consumer USA, Inc.*, No. 0:12-2825-CMC-PJG, 2013 WL 4017162, at *2 (D.S.C. Aug. 5, 2013) ("Arbitration is compelled 'unless it may be said with positive assurance that the arbitration [agreement] is not susceptible of an interpretation that covers the asserted dispute." (quoting *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989))). The Supreme Court dictates that a presumption of arbitrability exists where a contract contains an arbitration clause. *AT&T Technologies, Inc. v. Commc'ns*

[5] Deferring these issues to the arbitrator is consistent with this South Carolina policy that "arbitration is a matter of contract, and courts must enforce contracts according to their terms." *Palmetto Wildlife*, 435 S.C. at 699, 869 S.E.2d at 864.

Workers of Am., 475 U.S. 643, 650 (1986). The presumption in favor of arbitrability "is particularly applicable where the [arbitration] clause is . . . broad," as it is in this case. *Id*. Importantly, "the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Green Tree Fin. Corp. Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

Here, the Complaint contains a sole factual allegation describing Respondent's involvement with the incident: "[o]n December 26, 2021, at approximately 2:11 pm, [Respondent] was a passenger in a vehicle driven by Defendant White that was illegally parked on the side of Delano Street in Charleston, South Carolina. Defendant White also had a passenger in the backseat that had requested transportation from Defendant Lyft earlier in the day." (Compl. ¶ 8; R. __.) This paragraph (from an unverified pleading) is the only "evidence" Respondent submitted to the Circuit Court to support his argument that his claims are not subject to arbitration because he was not actively using the Lyft Platform at the time of the collision.

The Circuit Court's Order further reiterates and adopts several unsubstantiated statements made by Respondent's counsel, which were never supported by any ***evidence*** before the Court: (1) that Respondent's "friend" was Defendant White, who was driving on the Lyft Platform, (2) Respondent himself did not order a Lyft nor ride with someone else who ordered a Lyft to a requested destination, and (3) Respondent was not utilizing the Lyft Platform or its Rideshare Services at the time of the collision. (*See* Order pp. 2–3; R. __.) Arguments made by counsel are, of course, not evidence. *See S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."); *see also McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.").

And because Respondent presented no evidence regarding his scope position, the Circuit Court erred in denying Lyft's Motion based on Respondent counsel's mere beliefs.[6] *See Thompson*, 357 S.C. at 105, 590 S.E.2d at 513; *see also McManus*, 171 S.C. at 89, 171 S.E. at 475.

But even if Respondent had properly provided evidence, the result would be no different. The Arbitration Agreement states that Lyft and Respondent would mutually arbitrate all claims and disputes between them. Its scope expressly included claims "arising out of or relating to . . . the Lyft Platform." (Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a); R. __.) Crediting Respondent's argument, he voluntarily chose to ride in a vehicle driving on the Lyft Platform with his "friend," Defendant White. He has sued Lyft for Defendant White's (alleged) negligent driving on the Lyft Platform. And his claim against Lyft originates out of his status as a passenger in Defendant White's vehicle while she was driving on the Lyft Platform. There is no question, then, that his claims against Lyft "arise our of or relate to . . . the Lyft Platform" per his own allegations. *See Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) ("[U]nless the Court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001))). This Court should reverse.

[6] As discussed in the Motion to Strike, Respondent's affidavit in opposition to Lyft's Motion to Reconsider purporting to "cure" these deficiencies was untimely. Rule 6(d) of the South Carolina Rules of Civil Procedure sets a deadline for opposing affidavits, requiring they be served no later than two days before a motions hearing. The court's Form 4 Order denying Lyft's Motion to Reconsider did not address whether the court considered Respondent's opposing affidavit in denying the motion. However, because the affidavit failed to comply with Rule 6(d)'s deadline and formed no basis for the Circuit Court's order refusing to compel the matter to arbitration, it should not be considered by this Court on appeal.

III. The Circuit Court erred by finding the Arbitration Agreement was unconscionable.

While unconscionability is similarly for the arbitrator, the Arbitration Agreement is not unconscionable.[7] This also warrants reversal.

To establish that the Arbitration Agreement is unconscionable, Respondent was required to show: (1) he lacked a meaningful choice as to whether to arbitrate because the Agreement's provisions were one-sided, and (2) the terms were so oppressive no reasonable person would make them and no fair and honest person would accept them. *Doe*, 430 S.C. at 612, 846 S.E.2d at 879. Determining whether an arbitration agreement is tainted by an absence of meaningful choice is both fact-specific and context-specific. *See Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 755 (2022) ("A determination of whether a contract is unconscionable depends upon all the facts and circumstances of the case.").

Contrary to the case-by-case determination required by *Damico*, the Circuit Court here simply concluded that because the Terms are a contract of adhesion, unconscionability is established. (Order at 5–6; R. __.) This was error for two reasons. ***First***, Respondent again presented no ***evidence*** supporting his arguments that he lacked meaningful choice and could not negotiate the terms. Just as he did with his scope position, Respondent relied solely on his counsel's arguments, which is insufficient. *See Thompson*, 357 S.C. at 105, 590 S.E.2d at 513; *see also McManus*, 171 S.C. at 89, 171 S.E. at 475.

Second, the "distinction between a contract of adhesion and unconscionability is worth emphasizing: ***adhesive contracts are not unconscionable in and of themselves so long as the***

[7] Courts from around the country have rejected analogous efforts to challenge the Lyft Terms as unconscionable. *See Bekele v. Lyft, Inc.*, 918 F.3d 181, 190 (1st Cir. 2019)*; Broadnax v. Lyft, Inc.*, No. 2:25-CV-00190-APG-BNW, 2025 WL 2379618, at *1 (D. Nev. July 8, 2025); *Spain v. Lyft, Inc.*, 711 F. Supp. 3d 1260, 1265 (D. Colo. Jan. 16, 2024); *Speight v. Lyft, Inc.*, No. 3:20CV189-HEH, 2021 WL 298192, at *5 (E.D. Va. Jan. 28, 2021); *Peterson v. Lyft, Inc.*, No. 16-CV-07343-LB, 2018 WL 6047085, at *5–6 (N.D. Cal. Nov. 19, 2018); *Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 966 (N.D. Cal. 2015).

terms are even-handed." *Damico*, 437 S.C. at 614, 879 S.E.2d at 756 (emphasis added). "[T]o constitute unconscionability, the contract terms must be so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* at 612, 879 S.E.2d at 755 (citing *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc*., 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996)). The Circuit Court's Order failed to follow the requirement that courts "focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker" when conducting its analysis. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007). Instead, the Circuit Court incorrectly limited its consideration to the adhesive-nature of the contract, thereby conflating the factors Respondent had the burden to prove and failed to do so.

The Arbitration Agreement in Lyft's Terms aims to obtain an unbiased decision by a neutral decisionmaker. It requires ***both*** Respondent and Lyft to arbitrate any disputes and ***mutually*** waive any respective rights to seek resolution in a court of law. The Agreement contains no carve-out for specific types of claims (whether offensive or defensive) and does not limit or restrict Respondent's rights or remedies except for an inapplicable prohibition on class or representative actions—a limitation regularly upheld under the FAA in any event. *See One Belle Hall Prop. Owners Ass'n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 65, 791 S.E.2d 286, 294 (Ct. App. 2016); *York v. Dodgeland of Columbia, Inc*., 406 S.C. 67, 91–94, 749 S.E.2d 139, 151–53 (Ct. App. 2013) (upholding a class action waiver in an arbitration agreement under the FAA); *see also Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 517 (2018) (collecting cases upholding class action waivers in the arbitration context). The mere fact that an arbitration clause contains a limitation or waiver with respect to jury trials (which is inherent in any arbitration agreement), arbitration appeals, or class actions does not mean render it definitively oppressive or one-sided.

Next, as this Court has explained, commercial transactions in the modern age differ from traditional face-to-face negotiation and drafting contracts for services. *Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus., Inc.*, 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) ("The rise of mass produced goods, the growth of markets, and the advance of communications technology have brought changes from former methods of making commercial contracts. Many such contracts are no longer concluded on a face to face basis nor are they individually drafted."). "As more and more transactions are conducted online, arbitration agreements are not presented face to face but digitally, in such forms as 'browsewrap,' 'clickwrap,' 'scrollwrap,' and 'sign-on wrap.'" *Doe*, 430 S.C. at 617, 846 S.E.2d at 881. Thus, the Circuit Court's mere reliance on the TOS being a contract of adhesion "fails to accommodate the realities of much modern commercial practice." *Id.*; *see also Church v. Hotels.com L.P.*, No. 2:18-0018-RMG, 2018 WL 3130615, at *2 (D.S.C. June 26, 2018) (finding that a consumer impliedly agreed to the company's Terms of Service, including an agreement to arbitrate, when they affirmatively click on a "complete reservation" button online).

Again, Respondent presented no ***evidence*** to the Circuit Court demonstrating ***how*** the terms of the Arbitration Agreement are one-sided apart from the argument that he had no opportunity to negotiate the terms. *See generally Simpson*, 373 S.C. at 24–25, 644 S.E.2d at 668. This element alone cannot establish unconscionability as it would vitiate every contract with terms accepted by clear assent unless they were fully negotiated by the parties first. This is an untenable standard demonstrating why courts must also consider whether the terms are so oppressive that no reasonable person would make them and no fair and honest person would accept them. There is no evidence in the record showing that no fair, honest, or reasonable person would make or agree to the Arbitration Agreement in Lyft's TOS. This failure of proof should have been fatal to the

Circuit Court's unconscionability analysis, particularly when contrasted with the extensive authority provided by Lyft showing that courts across the country have enforced identical arbitration provisions contained in the required terms of service and user agreements of various entities in the rideshare industry. (*See* Mot. to Reconsider, Ex. A – Compilation of Orders; R. __.)

The Circuit Court's improper consideration of language from TOS sections other than the Arbitration Agreement further undermines its unconscionability finding. Indeed, the Court began its unconscionability analysis by specifically noting that: "'[i]n conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract.'" (Order at 4; R. __ (quoting *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016)). And yet, the court's Order proceeds to directly quote language from Section 15 of the TOS governing "Limitation of Liability" to conclude that Lyft's Terms are "impermissibly onerous." (Order at 6; R. __.) Section 15 is a general contract provision.[8] It is not part or parcel of the Arbitration Agreement located at Section 17 of the TOS. (Mot. to Compel., Exs. A-3, A-5; R. __.) The only TOS section that is relevant for the unconscionability finding are those contained in the terms of the ***Arbitration Agreement***. *See Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 440, (2006) ("[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract"); *D.R. Horton, Inc.*, 417 S.C. at 48, 790 S.E.2d at 4. Thus, the Circuit Court erred when it failed to exclude unrelated language from non-arbitration provisions of the TOS in its unconscionability test. This reliance on external

[8] It provides that Lyft shall not be liable for incidental, special, exemplary, punitive, consequential, or indirect damages. However, it also acknowledges that certain jurisdictions may not allow such a limitation and, if so, the limitation may not apply, and the user may have additional rights. As detailed below, the Terms also contain a severability clause.

language inherently undermines any finding that the Arbitration Agreement terms are "oppressive" or "one-sided."[9] (Order at 7; R. __.)

The Circuit Court also concluded the Agreement is unconscionable because it was "buried within a 38-page document" and "inconspicuous in nature, particularly when viewed on a mobile device."[10] (Order p. 6; R. __.) However, the ***first page*** of the TOS provides the following notice in all caps:

> PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION . . .

(Mot. to Compel, Exs. A-3, A-5; R. __.) The "SEE SECTION 17 BELOW" is a blue internal jump link that would take Respondent directly to the full Arbitration Agreement. (*See* Mot. to Compel, Ex. A, ¶ 17; R. __.) Therefore, contrary to the Circuit Court's finding, the TOS put Respondent on notice from the outset of the existence of the arbitration agreement. Neither of the Circuit Court's findings support terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them.

The Circuit Court erred as a matter of law by failing to compel the action to arbitration and leave the issue of whether the TOS were unconscionable to the arbitrator and further erred by

[9] The Circuit Court further erred by refusing to sever the limitation of liability provision rather than declaring the entirety of the agreement unconscionable in accordance with the severability clause in the TOS. (*See* Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a) (explaining that "in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable . . . such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect"). As the Supreme Court recently noted, "[w]e have . . .interpreted contracts as severable if consistent with the parties' intent." *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 596, 910 S.E.2d 474, 476 (2024).

[10] The Court simultaneously acknowledged that Lyft's TOS "clearly define the scope of the agreement containing the arbitration." (*See* Order p. 6; R. __.) The Order provides no explanation for these contradictory conclusions.

finding the Terms unconscionable where Respondent failed to meet his burden of proving unconscionability in any event. This Court should reverse.

CONCLUSION

The parties delegated consideration of gateway issues related to arbitrability, including the validity, scope, and enforceability of the Arbitration Agreement, to the arbitrator. The Circuit Court erred by overriding the valid and enforceable Arbitration Agreement containing the delegation clause and reaching the issues of scope and unconscionability and further erred in its holdings on those issues. This Court should reverse and remand to the Circuit Court with instructions to compel the dispute to arbitration.

Respectfully submitted,

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