THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
The Honorable S. Bryan Doby
Third Judicial Circuit

Appellate Case No. 2025-002019
Circuit Court Case No. 2024-CP-45-00502

William Ward and Charlotte Ward, Plaintiffs / Respondents,

v.

AmeriCredit Financial Services, Inc. d/b/a GM Financial; Windingmakia Automotive Group, LLC D/B/A Winding Chevrolet GMC; Michael Winding; and Andrew Efird, Defendants,

Of whom, AmeriCredit Financial Services, Inc. d/b/a GM Financial is the Appellant.

FINAL BRIEF OF APPELLANT

/s/ Richard Carlton Keller
Richard Carlton Keller
Nicholas C. Stewart
BURR & FORMAN, LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Phone: (205) 251-3000
rkeller@burr.com
nstewart@burr.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

I. **Whether the Trial Court Erred in Denying GM Financial's Motion to Compel Arbitration?**

II. **Whether the Trial Court Erred by Ruling on the Scope of the Arbitration Provision When the Arbitration Provision Contains a Clear and Unmistakable Delegation Clause Delegating Threshold Issues of Arbitrability, Interpretation and Scope to an Arbitrator?**

III. **Whether the Trial Court Erred in Holding that the Claims in this Action Are Outside the Scope of the Arbitration Provision?**

IV. **Whether the Trial Court Erred in Finding that the Arbitration Provision is Unconscionable?**

V. **Whether the Trial Court Erred in Failing to Sever Any Alleged Unconscionable Terms?**

STATEMENT OF THE CASE

This appeal arises from the trial court's Order denying Appellant AmeriCredit Financial Services, Inc. d/b/a GM Financial's ("GM Financial") Motion to Compel Arbitration. This Court should reverse the trial court's Order and remand to the trial court with instructions to compel this dispute to arbitration pursuant to the parties' Arbitration Provision.

On March 27, 2023, Respondent William Ward ("Mr. Ward") entered into a Retail Installment Contract ("2023 Contract") to finance the purchase of a 2023 Chevrolet Silverado ("2023 Chevrolet") from Patriot Chevrolet of Darlington ("Dealer") in Darlington, South Carolina. (*See* Mot. to Compel, Ex. A – Affidavit of Lonnie Wilson, Jr. [hereinafter, "Wilson Aff."] ¶ 4; *id.* Ex. 1; R. pp. 98-102.) The Dealer immediately assigned and transferred its entire interest in the Contract and related documents to GM Financial. (*See* Wilson Aff. ¶ 6; *id.* Ex. 1 at 5; R. p. 102.) GM Financial provided the financing for the 2023 Contract. (*See* Wilson Aff. ¶ 8.; R. p. 95, ¶ 8.) The 2023 Contract also contains an arbitration provision (the "Arbitration Provision"), which states in relevant part as follows:

> **ARBITRATION PROVISION**
> **PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS**
> **1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.**
> **2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.**
> **3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.**
>
> Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, any allegation of waiver of rights under this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this Vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral binding arbitration and not by a court action. If federal law provides that a

claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a plaintiff in a collective or representative action, or a class representative or member of a class on any class claim. The arbitrator may not preside over a consolidated, representative, class, collective, injunctive, or private attorney general action. You expressly waive any right you may have to arbitrate a consolidated, representative, class, collective, injunctive, or private attorney general action. You or we may choose the American Arbitration Association (www.adr.org) or National Arbitration and Mediation (www.namadr.com) as the arbitration organization to conduct the arbitration. If you and we agree, you or we may choose a different arbitration organization. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

*****

Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C §§ 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

*****

This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, other than waivers of class rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable.

(*See* Ex. 1 to Wilson Aff. at 4; R. p. 101.) Mr. Ward also signed a provision in the 2023 Contract that reads as follows:

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read all pages of this contract, including the arbitration provision on page 4, before signing below. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X [signature] Date 3/27/2023 Co-Buyer Signs X N/A Date N/A

Buyer Printed Name William Brian Ward Co-Buyer Printed Name N/A

If the "business" use box is checked in "Primary Use for Which Purchased", Print Name N/A Title N/A

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X N/A Address N/A

Seller signs Patriot Chevrolet of Darlington Date 3/27/2023 By X [signature] Title F&I

(*See id.*, R. p. 102.)

Respondents Mr. Ward and Charlotte Ward ("Mrs. Ward") (collectively, "Respondents"), filed this action on or about December 2, 2024. (*See* Complaint; R. pp. 16-34.) On February 14, 2025, Respondents filed their Amended Complaint. (*See* Amended Complaint; R. pp. 35-53.) Respondents assert in their Amended Complaint that Mr. Ward executed, among other things, a

Retail Installment Contract ("2024 Contract") for the purchase of a 2024 GMC Sierra 1500 ("2024 GMC") from WindingMakia Automotive Group, LLC d/b/a Winding Chevrolet GMC ("Winding Chevrolet") (*See id.*; R. pp. 37-38, ¶ 18.) Respondents claim that during the execution of the 2024 Contract, Winding Chevrolet agreed to accept the 2023 Chevrolet as a trade-in. (*See id.*) Respondents further allege that as part of the 2024 Contract, Winding Chevrolet agreed to pay off the remaining balance owed to GM Financial on the 2023 Contract in the amount of $36,358.92. (*See id.*) Ultimately, Respondents contend that Winding Chevrolet failed to pay off the remaining balance owed under the 2023 Contract and that GM Financial improperly continued to demand payments for the remaining balance on the 2023 Contract. (*See id.*; R. pp. 38-39, ¶¶ 25-29.) Additionally, Respondents contend that on or about October 16, 2024, GM Financial repossessed the 2023 Chevrolet and sold it at auction. (*See id.*; R. p. 39, ¶¶ 30-31.)

Based on the foregoing allegations, Respondents' Amended Complaint asserts claims against GM Financial to include: (1) negligence, gross negligence and negligence *per se*; (2) unfair trade practices; (3) *quantum meruit*/unjust enrichment; (4) unclean hands; and (5) outrage. (*See id.*; R. pp. 39-46.)

On March 12, 2025, GM Financial filed its Answer and Affirmative Defenses to Respondents' Amended Complaint. (*See* Answer; R. pp. 54-71.) Thereafter, on March 27, 2025, GM Financial filed its Motion to Compel Arbitration and Stay Case. (*See* Mot. to Compel; R. pp. 71-176.)

On March 28, 2025, GM Financial filed a Motion for Protective Order and Stay of Discovery pending resolution of GM Financial's Motion to Compel Arbitration. (*See* Mot. for Protective Order; R. pp. 177-197.)

On July 9, 2025, Respondents filed their Memorandum in Opposition to GM Financial's Motion to Compel Arbitration. (*See* Memo. in Opp.; R. pp. 198-217.) Respondent's Memorandum in Opposition did not contest that Mr. Ward entered into the 2023 Contract, nor did they challenge the applicability of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.* (*See id.*) Furthermore, Respondents did not challenge GM Financial's argument that Mrs. Ward was estopped from avoiding arbitration of her claims despite being a non-signatory to the 2023 Contract. (*See id.*) Instead, Respondents argued that: (1) their claims were outside the scope of the Arbitration Provision; (2) the Arbitration Provision was unconscionable; and (3) the trial court should exercise its discretion in denying GM Financial's Motion to Compel Arbitration. (*See id.*)

The trial court held a hearing on GM Financial's Motion to Compel Arbitration on July 10, 2025. (*See* Transcript of 07/10/2025 Hrg.; R. pp. 253-278.) The trial court permitted GM Financial to file a Reply in Support of its Motion to Compel Arbitration and Stay Case, which it did on July 18, 2025. (*See* Reply; R. pp. 218-235.)

On July 28, 2025, the trial court issued a Form 4 Order denying GM Financial's Motion to Compel Arbitration and Stay Case as well as GM Financial's Motion for Protective Order and Stay of Discovery and found that "the causes of action in this case are not connected to the original transaction and compelling arbitration would be unconscionable." (*See* 07/28/2025 Order; R. pp. 3-5.)

On August 20, 2025, the Court issued a second Order holding that: (1) the Arbitration Provision did not clearly and unmistakably delegate the issue of whether a valid arbitration agreement exists; (2) the claims asserted in Respondents' Amended Complaint were outside the scope of the Arbitration Provision; and (3) the Arbitration Provision was unconscionable due to

Mr. Ward's lack of meaningful choice and the oppressive nature of its terms. (*See* 08/20/2025 Order; R. pp. 6-8.)

On August 25, 2025, GM Financial filed a Motion to Alter or Amend the trial court's July 28, 2025 Order. (*See* Mot. To Alter or Amend, R. pp. 236-248.) The trial court denied this Motion in a single Form 4 Order dated September 26, 2025. (*See* 09/26/2025 Order; R. pp. 9-11.)

On September 30, 2025, Respondents filed a Motion to Reconsider the trial court's September 26, 2025 Order to expressly hold that GM Financial's Motion to Alter or Amend was denied due to GM Financial's failure to comply with SCRCP Rule 59(g). (*See* Mot. to Reconsider; R. pp. 249-252.) On the same date, the trial court entered a new Order clarifying that in addition to the reasons previously set forth in its Form 4 Order dated September 26, 2025, GM Financial's Motion to Alter or Amend was denied for the additional reason that GM Financial failed to provide a copy of its Motion to Alter or Amend to the trial court within ten (10) days after the filing of the Motion. (*See* 09/30/2025 Order; R. pp. 12-15.)

GM Financial filed its Notice of Appeal on October 1, 2025. Thereafter, GM Financial filed a Motion for Extension of Time to file its Initial Brief and Designation of Matter, which was granted by this Court.

STANDARD OF REVIEW

An appeal from the denial of a motion to compel arbitration is subject to de novo review. *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 382, 892 S.E.2d 112, 114 (2023), *reh'g denied* (Sept. 27, 2023) (citing *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 631, 611 S.E.2d 305, 307 (Ct. App. 2005)).

ARGUMENT

I. A Valid Written Arbitration Provision Exists, Which GM Financial is Entitled to Enforce.

Respondents do not dispute that a written Arbitration Provision exists, that the FAA applies, or that Mrs. Ward is estopped from avoiding arbitration of her claims. (*See generally* Memo. in Opp.; R. pp. 198-217.) The FAA establishes that an arbitration agreement "shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. Congress enacted the FAA to overcome long-standing judicial hostility toward pre-dispute arbitration agreements. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995). Through passage of the FAA, Congress placed arbitration agreements "upon the same footing as other contracts." *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 225-26 (1987) (quoting *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511 (1974)). Indeed, the purpose behind the FAA is to promote the enforceability of arbitration agreements. *See Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989) (the federal policy underlying the FAA "is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate"). "By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district 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) (emphasis in original); *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002) (holding that courts have "no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview").

Thus, Congress, through its passage of the FAA, and the Supreme Court, through its interpretation of the Act, have together created a strong federal policy favoring the enforcement of arbitration agreements. Indeed, these policies are so strong that, "as a matter of federal law, any

doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983); *see also Brown v. Santander Consumer USA Inc.*. No. CA 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)). As shown more fully herein, the trial court erred in ignoring this strong federal and state policy of encouraging arbitration in denying GM Financial's Motion.[1]

II. The Trial Court Erred by Reaching the Issue of Whether Respondents' Claims Fell Within the Scope of the Arbitration Provision Where the Arbitration Provision Delegated Issues of Arbitrability, Interpretation and Scope to the Arbitrator.

The Arbitration Provision expressly delegates any disputes regarding "the interpretation and scope of this Arbitration Provision, any allegation of waiver of rights under this Arbitration Provision, and the arbitrability of the claim or dispute" to be determined by the arbitrator and not by any court. (*See* Ex. 1 to Wilson Aff. at 4; R. p. 101.) Furthermore, the Arbitration Provision incorporates the rules of both the American Arbitration Association ("AAA") and National

[1] A myriad of courts nationwide presented with GM Financial's Arbitration Provision have held that the Arbitration Provision is enforceable under the FAA and state contract law principles. *See, e.g., Shabazz v. AmeriCredit Fin. Servs. Inc.*, No. 4:25CV197 HEA, 2025 WL 2958764 (E.D. Mo. Oct. 17, 2025) (applying the FAA and holding that GM Financial's Arbitration Provision is enforceable, compelling plaintiff's claims to arbitration); *Carter v. AmeriCredit Fin. Servs., Inc.*, No. 8:25-cv-493-KKM-AEP, 2025 WL 1880197 (M.D. Fla. June 20, 2025) (same); *Meza v. General Motors Fin. Co., Inc.*, No. EDCV 19-449 JCB (KKx), 2019 WL 12374012 (C.D. Cal. Aug. 2, 2019) (same); *Kolman v. General Motors Fin. Co., Inc.*, No. 5:18-CV-300-BO, 2018 WL 6620888 (E.D.N.C. Dec. 18, 2018) (same).

Arbitration and Mediation ("NAMS"). (*See id.*) Therefore, questions regarding the interpretation and scope of the Arbitration Provision, as well as the arbitrability of Respondents' claims, are properly reserved for the arbitrator and the trial court erred by reaching these issues.

In *Rent-A-Center*, the United States Supreme Court acknowledged the right of parties to include delegation clauses in arbitration agreements, whereby they "agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." 561 U.S. at 68–69 (citing *Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 83–85 (2002)). To be enforceable, the parties' intent to arbitrate the issue of arbitrability must be demonstrated by "clear and unmistakable evidence." *Id.* at 79; *First Options, Inc.*, 514 U.S. at 944. Such evidence may include explicit language in a delegation provision or the incorporation of an arbitral forum's rules that provide for delegation. *See, e.g.*, *Ward v. Discover Bank*, No. 3:19-cv-02124-SAL, 2020 WL 1922908, at *3 (D.S.C. Apr. 21, 2020) ("By incorporating the rules governing arbitration before the AAA and JAMS, the parties agreed to have [the question of arbitrability] resolved by arbitration."); *Green v. Rent-A-Center East, Inc.*, No. 0:15-cv-3245-MGL-TER, 2015 WL 8907452, at *3–4 (D.S.C. Nov. 24, 2015) (finding that the "clear and unmistakable" standard was satisfied by language stating that the arbitrator had exclusive authority "to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement"). Importantly, the Supreme Court has stated, in no unclear terms, that "if a valid [arbitration] agreement exists, and if the [arbitration] agreement delegates the arbitrability issues to the arbitrator, a court ***may not*** decide the arbitrability issue." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019) (emphasis added).

The Supreme Court has clarified that "questions of arbitrability" include not only the scope of an arbitration provision, but also "allegation[s] of waiver, delay, or a like defense to

arbitrability." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84–85 (2002) (quoting *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964)). These procedural questions "are presumptively *not* for the judge, but for an arbitrator, to decide." *Id.* (emphasis in original). Thus, "'in the absence of an agreement to the contrary, . . . issues of procedural arbitrability, *i.e.*, whether prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate have been met, are for the arbitrators to decide.'" *Id.* at 85 (quoting Revised Uniform Arbitration Act § 6, comment 2, 7 U.L.A., at 13)) (emphasis in original).

South Carolina courts likewise routinely recognize that the parties to an arbitration agreement may delegate authority to an arbitrator to resolve "gateway issues" concerning the enforceability, scope and interpretation of the agreement. *Doe v. TSCS, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020) (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944-45 (1995)). Moreover, "a court may not override the contract" to arbitrate and decide issues when "the parties' [arbitration] agreement delegate[s]" authority to the arbitrator to resolve such issues. *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 699-70, 869 S.E.2d 859, 864 (Ct. App. 2022) (finding delegation clause was valid and enforceable and required the court to abstain from ruling on gateway issues); *Blume v. Starbucks Corp.*, No. 2025-UP-274, 2025 WL 2159033, at *4 (Ct. App. 2025) (concluding that the trial court " 'possess[ed] no power to decide the arbitrability issue' because the arbitration agreement delegated gateway issues to the arbitrator.") (quoting *Henry Schein*, 586 U.S. at 68-69 ("That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless")).

Here, the trial court adopted Respondents' arguments challenging the scope of the Arbitration Provision and held that the Arbitration Provision "does not govern the transaction at issue in this litigation" and that Respondents' claims "are not connected to the [2023 Contract]."

(*See* 08/20/2025 Order; R. p. 6, ¶¶ 2-3.) However, these arguments concerned the "interpretation or scope of the Arbitration Provision," which are issues *exclusively* delegated to the arbitrator through the express terms of the Arbitration Provision. (*See* Ex. 1 to Wilson Aff. at 4; R. p. 101.) As a result, the challenges raised by Respondents are only proper before the respective arbitrator, and it was an error for the trial court to reach those issues in contravention of the clear and unmistakable language of the Arbitration Provision and established law.

South Carolina and Fourth Circuit courts consistently uphold identical or substantially similar delegation clauses as the one contained within the Arbitration Provision here. *See, e.g.*, *Baque v. Hendrick Automotive Group, LLC*, No. 2:24-cv-03041-DCN-KFM, 2024 WL 4584068, at *6 (D.S.C. Oct. 15, 2024) (enforcing delegation clause identical to the delegation clause here); *Queen-Gilbertson v. U.S. Auto Sales, Inc.*, No. 6:23-cv-03331-DCC, 2024 WL 3067282, at *4 (D.S.C. June 20, 2024) (enforcing delegation clause which stated it applied to claims "*including the interpretation and scope of this clause and the arbitraibility of any issue*" and stating that the clause "contains 'clear and unmistakable' language."); *Rutledge v. Santander Consumer USA Inc.*, No. 6:20-cv-04214-DCC, 2021 WL 2949860, at *3 (D.S.C. July 14, 2021) (enforcing delegation clause providing that "the interpretation and scope of this Arbitration Clause, and the arbitrability of the claim or dispute ... shall ... be resolved by neutral, binding arbitration."); *see also Blume*, 2025 WL 2159033, at *4 (enforcing delegation clause delegating issues regarding the "formation, interpretation, applicability, enforceability, or implementation of this Agreement, including any claim that all or part of this agreement is void or voidable."); *Palmetto Wildlife*, 869 S.E.2d at 864-866; *Modern Perfection, LLC v. Bank of Am., N.A.*, 126 F.4th 235, 242 (4th Cir. 2025); *Hengle v. Treppa*, 19 F.4th 324, 335 (4th Cir. 2021); *Gibbs v. Sequoia Capital Operations, LLC*, 966 F.3d 286, 290 (4th Cir. 2020).

Additionally, the Arbitration Provision expressly incorporates the rules of both the AAA and NAMS. (*See* Ex. 1 to Wilson Aff. at 4; R. p. 101.) The rules for both of these arbitral forums allow for the arbitrator to decide questions regarding an arbitration agreement's existence, scope or validity as well as the arbitrability of any claims. *See* Am. Arbitration Assn. Consumer Arbitration Rules, www.adr.org, Rule R-7(a) ("The arbitrator shall have the power to rule on their own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim."); *see also* NAMS Comprehensive Dispute Resolution Rules and Procedures, www.namadr.com, Rule 17(b) ("The Arbitrator(s) shall have the authority to determine jurisdiction and arbitrability including, but not limited to, any issue regarding the validity, existence, formation, or scope of the agreement under which Arbitration is being sought, and the proper parties to the Arbitration.")

Therefore, for this additional reason, the trial court erred by denying GM Financial's Motion to Compel Arbitration and determining issues of interpretation and scope of the Arbitration Provision despite the Arbitration Provision's incorporation of the aforementioned arbitrable rules. *See, e.g., Singh v. Anesthesia Assocs. of Rock Hill, P.A.*, No. 0:25-CV-0696-CMC-SVH, 2025 WL 1378693, at *7 (D.S.C. May 13, 2025) ("Courts overwhelmingly agree incorporation of the AAA rules provides 'clear and unmistakable' evidence of the parties' intent to delegate arbitrability.") (citing *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842, 846 (6th Cir. 2020) ("[E]very one of our sister circuits to address the question – eleven out of twelve by our count – has found that the incorporation of the AAA rules (or similarly worded arbitral rules) provides 'clear and unmistakable' evidence that the parties agreed to arbitrate 'arbitrability.' "))[2]

[2] *See also, e.g., NLM Services, LLC v. K1 Speed Franchising, Inc.*, No. 9:23-cv-1777-RMG, 2023 WL 11887252, at *3 (D.S.C. June 27, 2023) ("[T]he Fourth Circuit has held that 'the explicit incorporation of JAMS Rules serves as 'clear and unmistakable' evidence of the parties'

In sum, the trial court's Order inappropriately determined that the Arbitration Provision "does not govern the transaction at issue in this litigation" and that Respondents' claims "are not connected to the [2023 Contract]," two issues directly encompassing the interpretation, scope, and arbitrability of Respondents' claims. These issues are gateway issues for the arbitrator to decide. GM Financial respectfully requests that this Court reverse the trial court's Order.

III. The Trial Court Erred in Holding that Respondents' Claims Are Outside the Broad Scope of the Arbitration Provision.

As detailed in Section II, the interpretation and scope of the Arbitration Provision are gateway issues delegated to the arbitrator pursuant to the Arbitration Provision and the trial court's Order should be reversed on that basis alone. However, reversal is also appropriate because the trial court erroneously determined that Respondents' claims did not fall within the broad scope of the Arbitration Provision. When determining the scope of an arbitration provision, the Court must look to the factual allegations of the complaint and determine whether the claims alleged therein touch and concern matters covered by the arbitration provisions. *See Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 93 (4th Cir. 1996). Additionally, "due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration." *Volt Info. Sci.,*, 489 U.S. at 476.

---

intent to arbitrate arbitrability' when 'the JAMS Rules expressly delegate arbitrability questions to the arbitrator" . . . "The Fourth Circuit also recognized that 'other circuits have concluded that the incorporation of [American Arbitration Association] arbitral rules substantively identical to those found in JAMS Rule 11(b) constitutes clear and unmistakable evidence of the parties' intent to arbitrate arbitrability.") (collecting cases); *Ward v. Discover Bank*, No. 3:19-cv-02124-SAL, 2020 WL 1922908, at *4 (D.S.C. Apr. 21, 2020) ("By incorporating the AAA and JAMS rules, however, the parties agreed that disputes over the interpretation of the scope of the arbitration clauses are to be determined by the arbitrator.")

The presumption of arbitrability, created by the mere existence of an arbitration clause, can be overcome only if "it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *AT&T Techs., Inc. v. Communications Workers of Am.*, 475 U.S. 643, 650 (1986) (quoting *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582–83 (1960)); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118-19 (2001) ("A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation [that] would cover the asserted dispute."). Furthermore, in order to exclude a claim from arbitration, there must be an express provision within the original contract between the parties that excludes a particular grievance. *See United Steelworkers*, 363 U.S. at 584–85.

In construing arbitration clauses, courts have distinguished between "broad" clauses that purport to cover all disputes "arising out of" or "relating to" an agreement, and "narrow" clauses that limit arbitration to specific types of disputes. Specifically, the presumption of arbitrability is "strengthened when an arbitration clause is broadly written." *See Landers v. Federal Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (quoting *AT&T Tech., Inc.*, 475 U.S. at 650). Here, as has been routinely held by courts within the Fourth Circuit and South Carolina, the Arbitration Provision must be construed as "broad." *See, e.g., Landers*, 402 S.C. at 109, 739 S.E.2d at 213-14 ("A clause which provides for arbitration of all disputes 'arising out of or relating to' the contract is construed broadly.") (quoting *Prima Paint Corp.*, 388 U.S. at 398 (labeling as "broad" a clause that required arbitration of "[a]ny controversy or claim arising out of or relating to this Agreement.")); *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001) (labeling as "broad" a

clause that required arbitration of "any and all disputes . . . arising out of or in connection with [the agreement].")

As previously noted, the Arbitration Provision encompasses the claims and allegations in this action. The Arbitration Provision applies to, in relevant part:

> **Any claim or dispute**, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which **arises out of or relates** to your credit application, purchase or condition of this Vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral binding arbitration and not by a court action.

(*See* Ex. 1 to Wilson Aff. at 4; R. p. 101) (emphasis added).

Additionally, the Fourth Circuit applies a "but for" test, finding claims arbitrable if they "derive[] from the specific relationship created by the relevant agreement." *Wachovia Bank, Nat. Ass'n v. Schmidt*, 445 F.3d 762, 769 (4th Cir. 2006) (citing *Long*, 248 F.3d at 317-19 ("Because Long would not have a valid breach of fiduciary duty claim ***but for*** the existence of the 1972 Agreement creating his status as a shareholder in the Corporation, we hold that Long's breach of fiduciary duty claim is properly referable to arbitration.") (emphasis added). Respondents' claims against GM Financial—centered on GM Financial's alleged improper collection activities—exist solely because of the 2023 Contract, which granted GM Financial a security interest and the right to collect payments and repossess the 2023 Chevrolet. Without this 2023 Contract, Respondents would have no basis for their claims and GM Financial would not be named in this action. Put differently, "but for" the 2023 Contract, Respondents would have no relationship with GM Financial. It then follows that, "but for" the 2023 Contract, GM Financial would have no right to collect payments from Mr. Ward or repossess the 2023 Chevrolet.

As such, it was a clear error for this Court to determine that Respondents' claims were outside the broad scope of the Arbitration Provision. The trial court's adoption of Respondents' two-paragraph "nexus" argument, which was entirely unsupported by any case law whatsoever, should be reversed by this Court. At the very least, the trial court erred in coming to these conclusions because Respondents did not meet their heavy burden to show "with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *AT&T Techs., Inc.*, 475 U.S. at 650. This Court should reverse.

IV. The Trial Court Erred in Finding that the Arbitration Provision is Unconscionable.

Additionally, the trial court found that the Arbitration Provision was unconscionable due to Mr. Ward's "lack of meaningful choice in accepting the arbitration provision and the oppressive nature of its terms." (*See* 08/20/2025 Order ¶ 5; R. p. 7, ¶ 5.) In doing so, GM Financial may only assume that the trial court adopted in full Respondents' arguments pertaining to unconscionability. The trial court erred in adopting Respondents' unconscionability argument, and this holding should likewise be reversed by this Court.

Unconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Simpson v. MSA of Myrtle Beach*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007) (citing *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004)). In *Simpson*, the Supreme Court of South Carolina adopted the Fourth Circuit's analysis for evaluating unconscionability in arbitration agreements by focusing generally on whether the arbitration clause is geared towards achieving an "unbiased decision by a neutral decision-maker." *Id.* (citing *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999)). Courts evaluate this by examining whether the party

seeking to invalidate the arbitration agreement had both an absence of meaningful choice and the contract contained oppressive, one-sided terms. *Id.* at 25, 644 S.E.2d at 669.

A. Mr. Ward Did Not Lack Meaningful Choice in Entering Into the 2023 Contract and the Arbitration Provision is Clear and Conspicuous Unlike in *Simpson*.

This trial court's finding of a lack of meaningful choice "speaks to the fundamental fairness of the bargaining process." *Simpson*, 644 S.E.2d at 668. Respondents' Memorandum in Opposition primarily relied upon *Simpson* in arguing a lack of meaningful choice. (*See* Memo. in Opp.; R. pp. 205-207.) However, the facts of *Simpson* are distinguishable from those here, and each of the arguments provided by Respondents as it pertains to a lack of meaningful choice have either been recently rejected, or plainly false based upon decades of authority. As such, the trial court erred by seemingly adopting those arguments in full in its Order.

First, Respondents argued that the 2023 Contract was offered on a "take-it-or-leave-it" basis. (*See* Memo. in Opp. at 9; R. p. 206.) However, this is insufficient to constitute a lack of meaningful choice. *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, 908 S.E.2d 892, 897 (Ct. App. 2024) ("Adhesion contracts . . . are not per se unconscionable.") In fact, the U.S. Supreme Court has noted that "the times in which consumer contracts were anything other than adhesive are long past," and therefore, adhesive contracts **must be enforced** so as to not conflict with the FAA's purpose. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 346-47 (2011).

Several cases which succeed *Simpson* are directly on point with the language and approach of the Arbitration Provision here. First, in *Rutledge*, the court rejected the plaintiff's reliance on *Simpson* factors to establish lack of meaningful choice in a motor vehicle retail installment sale contract's arbitration provision, directly distinguishing *Simpson* and holding as follows:

> The undersigned does not necessarily disagree with Plaintiff's assertion that the RISC is a contract of adhesion. However, the additional factors that led to a finding of procedural unconscionability in *Simpson* are not present here. The arbitration clause of the RISC appeared conspicuously at the end of the second (and final) page, was clearly separated from the preceding paragraph, and was marked in bold, all-capital letters: "**ARBITRATION CLAUSE / PLEASE REVIEW – IMPORTANT – AFFECTS YOUR LEGAL RIGHTS.**" On the first page, just above the signature line, it was stated:
>
> **You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read both sides of this contract, including the arbitration clause on the reverse side, before signing below. You confirm that you received a completely filled-in copy when you signed it**.
>
> In short, under the circumstances, it is difficult to imagine what more Koons Automotive could have done to make the arbitration clause conspicuous and to emphasize its legal significance. *See, e.g.*, *Prosper v. Am. Credit Acceptance, LLC*, C/A No. 7:15-cv-01581-HMH, 2015 WL 13310148, at *4 (D.S.C. Aug. 17, 2015) (finding arbitration clause sufficiently conspicuous where the contract provided in bold lettering above the signature line: "You acknowledge that you have read both sides of this contract, including the arbitration clause on the reverse side, before signing below."). The Court consequently finds no procedural unconscionability.

See Rutledge, 2021 WL 2949860 at *5. Likewise, as referenced by the court in *Rutledge*, the court in *Prosper* rejected identical arguments as the Respondents make in the present matter:

> While the RISC is an adhesion contract, this fact alone does not render the arbitration clause unconscionable, especially where the provision is conspicuous and a person of average intelligence could understand the rights that are being abrogated. In the RISC, the arbitration clause is enclosed in its own distinct section, captioned with bold and all-capital font. While the arbitration clause appears on the second page of the two-page document, the contract provides in bold lettering directly above the signature line: "**You acknowledge that you have read both sides of this contract, including the arbitration clause on the reverse side, before signing below.**" The court finds that the arbitration clause here is conspicuous. Further, the only evidence the Plaintiff presents for her lack of sophistication is that she is "inexperienced in interpreting and reading complex legal jargon and provisions." The fact that Prosper possesses a bachelor's degree in Criminal Justice indicates that she can read and has average intelligence. Based on the foregoing, Prosper has failed to establish that the arbitration clause is not conspicuous or that she lacks sophistication.

See Prosper, 2015 WL 13310148, at *4.

As in *Rutledge* and *Prosper*, the Arbitration Provision here appears conspicuously within the 2023 Contract. The inclusion of the Arbitration Provision is first outlined on **page 1** of the 2023 Contract, stating as follows:

> **Agreement to Arbitrate:** By signing below, you agree that, pursuant to the Arbitration Provision on page 4 of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

(*See* Ex. 1 to Wilson Aff. at 1; R. p. 98) (emphasis in original).

Afterwards, the Arbitration Provision itself appears conspicuously in essentially the exact same way as those in *Rutledge* and *Prosper*. The Arbitration Provision is enclosed with borders in its own distinct section, captioned with bold and all-capital font, stating: "**ARBITRATION PROVISION PLEASE REVIEW – IMPORTANT – AFFECTS YOUR LEGAL RIGHTS.**" (*See id.* at 4; R. p. 101) (emphasis in original). Finally, on the last page of the 2023 Contract, just above the signature line, it states:

> **You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read all pages of this contract, including the arbitration provision on page 4, before signing below. You confirm that you received a completely filled-in copy when you signed it.**

(*See id.* at 4; R. p. 102.) As the court rightly held in *Rutledge* based on the same language, "it is difficult to imagine what more [GM Financial] could have done to make the arbitration clause conspicuous and to emphasize its legal significance." *See Rutledge*, 2021 WL 2949860 at *5. As such, Respondents' reliance on *Simpson* is misplaced and the Arbitration Provision here is identically as conspicuous as the agreements in *Rutledge* and *Prosper*. Therefore, the trial court's adoption of Respondents' argument—which was entirely reliant on *Simpson*—to establish a lack of meaningful choice was an error which should be reversed by this Court.

Beyond their insufficient allegations of the 2023 being an adhesion contract (which is insufficient on its own to establish a lack of meaningful choice), their remaining arguments were entirely unsupported and contrary to overwhelming authority. By refusing to apply this well-established authority, the trial court committed clear error. First, Respondents argued that the Arbitration Provision was "buried inside a large stack of documents" and that Mr. Ward "did not have time to review the documents." (*See* Memo. in Opp. at 10; R. p. 207.) This argument is baseless. *See Baque,* 2024 WL 4584068, at *5 ("The undersigned finds that the plaintiffs' argument that arbitration should not be compelled because the plaintiff did not read or understand the contracts before signing them is without merit.") (collecting cases).[3] Likewise, Respondents' argument pertaining to the loss of right to a jury trial is also a meritless argument, and has been specifically stated as so by South Carolina courts, including *Simpson*. *Kelly v. Capital Senior Living Corp.*, No. 6:19-2414-HMH, 2019 WL 13414126, at *5 (D.S.C. Nov. 6, 2019) (holding that the plaintiff's argument that the parties' arbitration agreement was unconscionable due to its jury trial waiver was "**without merit**") (emphasis added) (collecting cases); *Simpson*, 644 S.E.2d at 670 ("The loss of the right to a jury trial is an obvious result of arbitration.").

Finally, Respondents' unsupported argument of unconscionability due to the Arbitration Provision precluding class claims has been tried, and rejected, by the U.S. Supreme Court, and class action waivers have been an insufficient basis to overturn arbitration agreements since at

[3] *See also Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d 302, 306 (4th Cir. 2001) ("[A]n elementary principle of contract law is that a party signing a written contract has a duty to inform himself of its contents before executing it, ... and in the absence of fraud or overreaching he will not be allowed to impeach the effect of the instrument by showing that he was ignorant of its contents or failed to read it."). "South Carolina law 'does not impose a duty to explain a document's contents to an individual when the individual can learn the contents from simply reading the document.' " *Pitt v. Wells Fargo Bank, Nat'l Assoc.*, C.A. No. 3:21-cv-3428-JFA-TER, 2022 WL 2068851, at *4 (D.S.C. Apr. 1, 2022).

least 2011. *See Concepcion*, 563 U.S. 333 (upholding the enforceability of class action waivers in arbitration agreements); *Meadows v. Cebridge Acquisition, LLC*, 132 F.4th 716, 733 (4th Cir. 2025) ("[C]lass action waivers in arbitration agreements are enforceable under the FAA.") The same rationale applies to Respondents' arguments regarding discovery limitations in arbitration. *See Beasenburg v. Ultragenyx Pharma., Inc.*, No. 2:22-cv-4022-BHH, 2023 WL 5993169, at *4 (D.S.C. Sept. 15, 2023) ("[I]t is well settled that the discovery limitations provided in arbitration agreements are not grounds for unconscionability.") (collecting cases).[4]

Because the only legitimate argument Respondents made for a lack of meaningful choice was the fact that the Arbitration Provision was contained within an "adhesion contract" and their remaining arguments fly in the face of overwhelmingly established case law to the contrary, the trial court's finding of a lack of meaningful choice was a clear error and should be reversed. And, because Mr. Ward did not lack meaningful choice in entering the 2023 Contract, this Court should reverse the trial court's finding of unconscionability.

B. The Arbitration Provision Did Not Contain Oppressive, One-Sided Terms Such that No Reasonable Person Would Make Them and No Fair and Honest Person Would Accept Them.

The trial court's Order further found the Arbitration Provision to be unconscionable due to the "oppressive nature of its terms." (*See* 08/20/2025 Order ¶ 5; R. p. 7, ¶ 5.) Respondents took issue with the following terms: (1) that the Arbitration Provision would apply to "any claim or dispute" arising out of or relating to "your credit application, purchase or condition of this Vehicle, this contract or any resulting transaction or relationship (including any such relationship with third

[4] *See also Stinger v. Fort Lincoln Cemetery, LLC*, No. 21-1460, 2022 WL 2702424, at *2 (4th Cir. July 12, 2022) ("As we have recognized, '[b]ecause limited discovery is a consequence of perhaps every agreement to arbitrate, it cannot, standing alone, be a reason to invalidate an arbitration agreement.'") (quoting *In re Cotton Yarn Antitrust Litig.*, 505 F.3d 274, 286 (4th Cir. 2007)); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991).

parties who do not sign this contract)" and (2) that the Arbitration Provision "shall survive any termination, payoff or transfer of this contract." (*See* Memo. in Opp. at 11-12; R. pp. 207-209.) Importantly, even if the trial court was correct that these terms are "oppressive," (which it was not), this alone is insufficient to invalidate the entire Arbitration Provision as unconscionable. As shown above, Respondents have not met their heavy burden to show a lack of meaningful choice. As such, a finding of oppressive terms by itself is insufficient to conclude that the Arbitration Provision is unconscionable. *See Simpson*, 644 S.E.2d at 668. For this reason alone, the trial court's Order is a clear error of law.

Notwithstanding this fact, the terms of the Arbitration Provision (which appear in arbitration agreements as a routine matter) are not "harsh or oppressive." In support of their argument that the language "any claim or dispute" arising out of or relating to "any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract)" is unconscionable, Respondents relied entirely upon *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 847 (Ct. App. 2020). (*See* Memo. in Opp. at 11; R. pp. 207-209.) In *Doe*, this Court found identical language to be unconscionable. However, GM Financial respectfully contends that the holding of *Rutledge* is more closely aligned to the facts in this case. In *Rutledge*, the plaintiff argued that this exact term was unconscionable because "[n]o reasonable person would agree to arbitration of any and all claims in perpetuity, especially those arising after both parties had fully performed their contractual duties." *See Rutledge*, 2021 WL 294860, at *5. In rejecting this argument, the court in *Rutledge* stated as follows:

> This appears to be a strawman argument. A clause providing for arbitration of any and all claims in perpetuity might well be unreasonable and therefore unconscionable, but such a clause is not at issue here. By its clear terms, the arbitration clause covers only those claims that "arise[] out of or relate[] to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third

> parties who do not sign this contract)." In sum, it is substantively limited to claims with a reasonable relationship to the RISC and Plaintiff's vehicle purchase. There is nothing unconscionable about its scope.

See Rutledge, 2021 WL 2949860, at *5. Here, the facts are more similar to those in *Rutledge* than those considered by this Court in *Doe*. Like in *Rutledge*, and as shown more fully above, the application of the Arbitration Provision pertains solely to claims "with a reasonable relationship to the [2023 Contract] and [Mr. Ward's] vehicle purchase." In *Doe*, on the other hand, this Court considered this term in the context of claims brought by a plaintiff against an automobile dealership as a result of the dealership's salesman "posting an ad posing as Doe on a sexually explicit website, together with Doe's contact information" and Doe subsequently being the victim of "strange telephone calls and text messages, some of which were sexually suggestive." *See Doe*, 430 S.C. at 606, 846 S.E.2d at 876.

Simply put, this is not an instance of this term being applied in a case "wander[ing] outside the bounds of the FAA," as in *Doe*, but rather, a case which is directly relevant to Mr. Ward's responsibilities to continue to make payments under the terms of the 2023 Contract and GM Financial's ability to continue collection activities despite Winding Chevrolet's alleged failure to comply with its separate obligations. Therefore, the trial court erred in purportedly determining that this term was unconscionable.

Next, Respondents took issue with the Arbitration Provision's language that it "shall survive any termination, payoff or transfer of this contract." (*See* Memo. in Opp. at 12; R. pp. 208-209.) In doing so, Respondents again relied upon this Court's analysis in *Doe*. (*See id.*) However, this Court in *Doe* **did not hold that this clause was unconscionable**. *See Doe*, 430 S.C. at 615, 846 S.E.2d at 880. Instead, it reviewed this term to bolster its holding that the previously analyzed term was unconscionable. *See id.* Therefore, Respondents' reliance on *Doe* is misplaced as to this

term and the trial court erred in purportedly finding this term to be unconscionable. Furthermore, the court in *Prosper* also considered this exact argument. *See Prosper*, 2015 WL 13310148, at *3. In rejecting this argument, the court in *Prosper* explained that "broad arbitration clauses are generally enforceable even after the pay-off of the loan." *See id.* at *4. Additionally, this exact language in motor vehicle retail installment contract arbitration agreements has been repeatedly upheld by courts within South Carolina and across the country.[5] *See e.g.*, *Baque*, 2024 WL 4584068 (compelling arbitration of claims despite arbitration provision containing language that "[t]his arbitration provision shall survive any termination, payoff or transfer of this contract.") As such, notwithstanding the fact that Respondents have failed to establish any lack of meaningful choice on the part of Mr. Ward, the Arbitration Provision at issue here does not contain "harsh or oppressive" terms and thus, the trial court erred in determining that the Arbitration Provision was unconscionable for this additional reason.

V. The Circuit Court Erred in Failing to Sever Any Alleged Unconscionable Terms.

Even if this Court ultimately affirms the trial court's finding of unconscionability (which it should not), the trial court nonetheless erred in invalidating the entirety of the Arbitration Provision rather than severing any unconscionable terms and compelling Respondent's claims to arbitration. In *Doe*, after determining that one of the "at issue" terms was unconscionable as stated above, this Court went on to explain that "[c]ourts have discretion though to decide whether a contract is so infected with unconscionability that it must be scrapped entirely, or to sever the offending terms so the remainder may survive. Once again, we are guided by the parties' intent."

[5] *Graham v. Santander Consumer USA, Inc.*, 2018 WL 2462881 (D. Md. June 1, 2018); *Jefferson v. BMW Fin. Services NA, LLC*, 2025 WL 1940350 (D. Md. July 15, 2025); *Phillips v. American Credit Accept., LLC*, 2023 WL 1789586 (S.D. Fla. Feb. 7, 2023); *Simpson v. Nissan of N. Am., Inc.*, 2023 WL 5120240 (M.D. Tenn. Aug. 9, 2023).

Doe, 430 S.C. at 615, 846 S.E.2d at 880 (citing *Columbia Architectural Grp., Inc. v. Barker*, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980) ("The entirety or severability of a contract depends primarily upon the intent of the parties ...")); *see also Simpson*, 373 S.C. at 25, 644 S.E.2d at 668 ("If a court as a matter of law finds any clause of contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result.")

In *Doe*, the arbitration agreement contained a severability clause, stating that if any portion of the contract is found "unenforceable for any reason, the remainder shall remain enforceable." *See Doe*, 430 S.C. at 615, 846 S.E.2d at 881. And, due to the severability clause, this Court ultimately compelled the claims to arbitration. *See id.* In particular, due to the delegation clause in the parties' arbitration agreement, this Court in *Doe* left any remaining questions of "interpretation and scope" to be determined by the arbitrator. *See id.*

Here, the Arbitration Provision contains **the exact same severability clause**, stating that if any part of the 2023 Contract is found "unenforceable for any reason, the remainder shall be enforceable." (*See* Ex. 1 to Wilson Aff. at 4; R. p. 101.) And, because the Arbitration Provision contains a delegation clause and incorporates the rules of the AAA and NAMS as explained more fully in Section II, this Court should—to the extent it determines any terms to be unconscionable—strike the unconscionable terms, compel Respondents' claims to arbitration, and leave any remaining challenges to be determined by the arbitrator. *Henry Schein, Inc.*, 586 U.S. at 68 ("When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a

particular dispute is wholly groundless."). Therefore, the trial court erred in failing to sever any alleged unconscionable terms and compel Respondents' claims to arbitration.

CONCLUSION

Based on the foregoing, Appellant GM Financial respectfully requests that this Court reverse the Order denying GM Financial's Motion to Compel Arbitration and Stay Case and remand to the trial court with instructions to compel this dispute to arbitration pursuant to the parties' Arbitration Provision.

Respectfully Submitted,

BURR & FORMAN LLP

/s/ Richard Carlton Keller
Richard Carlton Keller
Nicholas C. Stewart
BURR & FORMAN, LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Phone: (205) 251-3000
rkeller@burr.com
nstewart@burr.com

Attorneys for Appellant

Birmingham, Alabama

Dated: April 8, 2026