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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

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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.

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# FINAL REPLY BRIEF OF APPELLANT

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/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**

**Rules**

## ARGUMENT

### I. GM Financial's Appeal is Timely.

Respondents first contend that GM Financial's appeal is untimely due to its inadvertent failure to provide a copy of its motion for reconsideration to the trial court pursuant to Rule 59(g). (*See* Resp. Br. pp. 6-8.) Respondents argue that by failing to timely comply with Rule 59(g), "the time to appeal ran from the August 20, 2025 Order denying arbitration," rather than the September 30, 2025, Order denying GM Financial's motion for reconsideration. (*See id.* p. 7.) In support of this position, Respondents cite to *Smith v. Fedor*, 809 S.E.2d 612, 422 S.C. 118 (Ct. App. 2017) and *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002). Curiously, Respondents fail to acknowledge that this Court in *Gallagher* directly rejected their argument, stating "[t]here is no indication that the failure to transmit a copy of the motion to the circuit court affects the tolling provision of Rule 203(b)(1), SCACR." *Gallagher*, 577 S.E.2d at 217. Additionally, *Smith* did not address this issue whatsoever. Instead, *Smith* only relates to whether a party preserves issues on appeal that are raised solely in a motion for reconsideration when that motion is denied on procedural grounds pursuant to Rule 59(g). *See Smith*, 422 S.C. at 126-27.

Not only is there no authority in support of Respondents' position, but this Court has routinely rejected their argument, including as set forth above in *Gallagher*—a case they seemingly misrepresent in their brief. In *Coon v. Coon*, 356 S.C. 342, 346, 588 S.E.2d 624, 626 (Ct. App. 2003), this Court stated as follows:

> Rule 59(g) requires "a party filing a written motion under this rule [to] provide a copy of the motion to the judge within ten (10) days after the filing of the motion. The notes to Rule 59 state the 1998 amendment adding subsection (g) was "intended to help insure that the judge is promptly *notified* that the motion has been filed." (emphasis added). As this Court discussed in *Gallagher v. Evert*, "**[t]here is no indication that the failure to transmit a copy of the motion to the circuit court affects the tolling provision of Rule 203(b)(1), South Carolina Appellate Court Rules**. Therefore, the time for filing the notice of appeal did not begin to run

> until after the circuit court denied the motion." 353 S.C. 59, 63, 577 S.E.2d 217, 219 (Ct. App. 2002). In accordance with Rule 59(g) and this Court's decision in *Gallagher*, we hold Wife was not required to file her notice of appeal until after the family court issued its order denying her motion to reconsider. Thus, her appeal to this Court is timely.

*See id.* (emphasis added). Accordingly, because GM Financial's failure to provide a copy of its motion for reconsideration to the trial court does not affect the tolling provision of Rule 203(b)(1), its appeal is timely, and Respondents preliminary argument should be rejected.

## II. Respondents' Unconscionability Argument Challenges Validity and Enforceability, Two Issues Delegated to an Arbitrator Pursuant to the Incorporation AAA and NAM Rules.

Respondents argue that pursuant to the FAA, a court, not an arbitrator "must determine whether an agreement to arbitrate was ever formed." (*See* Resp. Br. p. 8.) However, at no point in time, even on appeal, have Respondents took issue with formation, and it is undisputed that the Arbitration Provision exists. The issue, as Respondents state later into their Response, "is whether a valid arbitration agreement exists at all" due to their unconscionability challenge. (*See id.* at p. 9.) This issue, through the incorporation of the arbitrable forum rules of the AAA and NAM, has been delegated to the arbitrator and should not have been determined by the trial court.

Respondents rely on *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007) for the proposition that where a party challenges the validity of the entire arbitration clause on grounds of unconscionability, the court should determine that issue despite the existence of a delegation clause to the contrary. (*See* Resp. Br. p. 5.) However, *Simpson* was prior to the U.S. Supreme Court's holding directly to the contrary in *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63 (2010). In *Jackson*, the plaintiff brought an employment discrimination lawsuit against the defendant, his former employer. *Id.* at 65. The defendant filed a motion to dismiss and to compel arbitration based on the parties' arbitration agreement. *Id.* The parties' arbitration agreement

contained a delegation clause which provided that an arbitrator would have authority to resolve disputes about the enforceability of the arbitration agreement. *Id.* In opposing the defendant's motion to compel arbitration, the plaintiff challenged the validity of the agreement as a whole, arguing that it was unconscionable because of the agreement to split arbitration fees and because the discovery procedures were too limited. *Id.* at 66, 73. The plaintiff did not attack the delegation clause specifically. *Id.* at 73. Therefore, the Supreme Court ruled that the plaintiff's challenges to the enforceability of the arbitration agreement should be heard by the arbitrator, not the court. *Id.* at 72-73 ("Accordingly, unless Jackson challenged the delegation provision specifically, we must treat it as valid under § 2, and must enforce it under §§ 3 and 4, leaving any challenge to the validity of the [Arbitration] Agreement as a whole for the arbitrator.").

The issue here is identical to that in *Jackson*. Respondents' unconscionability challenge is not directed specifically to the delegation clause, but rather, to the Arbitration Provision as a whole. As set forth more fully below, a determination of the validity and enforceability of the Arbitration Provision has been delegated to an arbitrator. The U.S. Supreme Court has made clear that, "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019).

### A. The Arbitration Provision's Incorporation of AAA and NAM Rules Clearly and Unmistakably Delegates this Issue to an Arbitrator.

Here, beyond the express delegation clause which delegates issues of interpretation, scope, waiver and arbitrability to an arbitrator, the Arbitration Provision also incorporates the rules of both the AAA and NAM. (*See* Ex. 1 to Wilson Aff. at 4; R. p. 101.) The rules for both of these arbitral forums allow 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.") (emphasis added); *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.") (emphasis added).

As previously outlined, the incorporation of these rules has been overwhelmingly accepted as evidencing a "clear and unmistakable" intent of the parties to delegate such issues to an arbitrator. *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) ("[A] majority of circuit courts … have held that the 'clear and unmistakable' standard is met when, in addition to the expansive language of delegation, an arbitration clause incorporates a specific set of rules that authorize arbitrators to determine arbitrability."); *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.' ")).[1]

Rather than address this overwhelming authority, Respondents **for the first time on appeal** now contend that incorporation of these rules does not constitute a "clear and unmistakable" intent to delegate these issues because Respondents were not provided with copies of these rules. (*See* Resp. Br. pp. 11-13.) This newfound argument is improper and should not be considered by this Court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.") Nonetheless, this argument is unsupported by any case law, and in none of the above cited cases did the courts condition their ruling upon the plaintiffs having been provided with copies of the arbitral forum rules. Furthermore, the Arbitration Provision states that Respondents "may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website." (*See* Ex. 1 to Wilson Aff. at 4; R. p. 101.) Respondents do not contend that Mr. Ward was incapable of reviewing these rules themselves, and again, cite no authority finding that GM Financial had an obligation to provide Mr. Ward with copies of the same. It is well-established that GM Financial has no obligation to explain the meaning behind the incorporation of these rules. *See, e.g., Baque v. Hendrick*

[1] *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' 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.")

*Automotive Group, LLC*, No. 2:24-cv-03041-DCN-KFM, 2024 WL 4584068, at *6 (D.S.C. Oct. 15, 2024) ("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).[2]

Accordingly, because the arbitral forum rules of the AAA and NAMS expressly provide for the arbitrator to determine issues involving the "existence" and "validity" of the Arbitration Provision, and courts have routinely found such incorporation to evidence an "clear and unmistakable" intent to delegate such issues to an arbitrator, this Court should find that the trial court erred in denying GM Financial's Motion to Compel Arbitration and reverse its decision. *See Green*, 2015 WL 8907452, at *4 (holding that "the rules incorporated into the Arbitration Agreement as well as the Arbitration Agreement itself clearly and unmistakably delegates to the arbitrator the question of the validity of the Arbitration Agreement" despite the plaintiff's unconscionability challenge); *Jackson*, 56 U.S. 72-73.

## III. The Trial Court Erred in Determining Issues of Interpretation and Scope in Contravention of the Express Delegation Clause.

As set forth more fully in GM Financial's Initial Brief, the trial court further erred in determining 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]" when the Arbitration Provision contains a clear and unmistakable express delegation clause specifically delegating these exact issues to an arbitrator (*See* 08/20/2025 Order; R. p. 6, ¶¶ 2-3.) The Arbitration Provision contains an express delegation clause, delegating any disputes regarding "the

[2] *See also Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d 302, 306 (4th Cir. 2001); *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).

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.) As for the express delegation clause, which has been routinely upheld by the Fourth Circuit and South Carolina courts alike,[3] Respondents fail to address its enforceability whatsoever, including on appeal. Accordingly, because by its plain language it states that disputes involving "the interpretation and scope of [the] Arbitration Provision" are to be determined by an arbitrator, and the trial court made at least two determinations involving the interpretation and scope of the Arbitration Provision, this Court should determine that the trial court erred by reaching these 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")).

[3] *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).

## IV. Respondents' Claims Are Within the Broad Scope of the Arbitration Provision.

As an initial matter, the interpretation and scope of the Arbitration Provision are gateway issues delegated to the arbitrator pursuant to the delegation clause within the Arbitration Provision and the trial court's Order should be reversed on that basis alone. However, as set forth in GM Financial's Initial Brief, reversal is also appropriate because the trial court erroneously determined that Respondents' claims did not fall within the broad scope of the Arbitration Provision. In their Response, Respondents continue to take the position that the entirety of their dispute against GM Financial relates solely to their separate 2024 Contract with Winding Chevrolet and GM Financial's alleged "post-contract misconduct." However, this argument is incorrect and fails to distinguish their dispute with Winding Chevrolet, on the one hand, and GM Financial, on the other.

In Respondents' own Response, they contend as follows:

> Respondents suffered concrete financial and reputational harm, including continued payments on the 2023 Truck after the trade-in. Appellant demanded payments from Respondents despite its assent to and notice of the trade in, and made deceptive and misleading communications to Respondents regarding same. Respondents' credit worthiness and financial health was detrimentally harmed by Appellant's failure to remove its lien.

(*See* Resp. Br. p. 15.) By Respondents' own statement, it is evident that each of the "harms" allegedly suffered by Respondents arise out of: (1) GM Financial's continued demand for payment pursuant to the 2023 Contract; (2) GM Financial's communications to Respondents regarding their responsibility under the 2023 Contract; (3) GM Financial's credit reporting of the account relating to the 2023 Contract; and (4) GM Financial's continued lien on the 2023 Chevrolet. Respondents' dispute with Winding Chevrolet (that they failed to perform under the 2024 Contract), and their dispute with GM Financial (that they continued to enforce the 2023 Contract), are two entirely separate and distinct issues and Respondents' attempt to fixate on the 2024 Contract to avoid

arbitration of a dispute with GM Financial solely centered in their responsibilities under the 2023 Contract should be rejected.

Respondents do not dispute that the Arbitration Provision is broadly written, nor do that dispute that the presumption of arbitrability is "strengthened when an arbitration clause is broadly written." *Landers v. Federal Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013). Therefore, GM Financial will not rehash those arguments herein. However, it bears repeating that the sole basis for GM Financial's ability to collect payments from Respondents, credit report the subject account, and have a lien on the 2023 Chevrolet, is the 2023 Contract. But for this 2023 Contract, Respondents would have no basis for their claims and GM Financial would not be named in this action.

As such, it was a clear error for the trial 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. v. Communications Workers of Am.*, 475 U.S. 643, 650 (1986). This Court should reverse.

## V. Mr. Ward Did Not Lack Meaningful Choice in Entering Into the Arbitration Provision.

Furthermore, despite this issue having been delegated through the incorporation of the above-mentioned arbitral forum rules, the trial court likewise erred in determining that the Arbitration Provision was unconscionable. In their Response, Respondents first contend that Mr. Ward lacked meaningful choice in entering the Arbitration Provision, based on the six (6) factors

outlined in *Simpson*. (*See* Resp. Br. pp. 15-19.) GM Financial will address each of these factors below.

### A. Nature of Injuries.

First, as to the "nature of the injuries suffered by the party sought to be held to the contract," the alleged injuries outlined by Respondents all arise from obligations pursuant to the 2023 Contract which contains the Arbitration Provision. Additionally, no term in the Arbitration Provision prohibits Respondents from seeking recovery for these alleged injuries in arbitration. In fact, the Arbitration Provision contains no language limiting the damages obtained by Respondents whatsoever. Therefore, this argument is unavailing. *Pampa Bay Landscape Constr. LLC v. W.M. Jordan Co., Inc.*, No. 2:25-cv-10181-DCN, 2026 WL 59859, at *5 (D.S.C. Jan. 8, 2026) (finding that this factor had not been satisfied to show a lack of meaningful choice when the plaintiff's "injuries are for nonpayment of $125,310.25 for landscaping labor and materials it provided under the Subcontract, and no term in the Arbitration Clause prohibits [plaintiff] from seeking recovery."); *Phillips v. Renu Energy Solus., LLC*, No. 2024-000338, 2025 WL 1825501, at *2 (Ct. App. July 20, 2025) ("Phillips is not prevented from receiving any *remedy* under the arbitration agreement; instead, he is only required to pursue his remedy in an alternate *forum*—arbitration.").

### B. Substantial Business Concern, Bargaining Power, and Relative Sophistication.

Next, Respondents contends that Mr. Ward is an individual consumer, rather than a substantial business entity, and that this "makes him the weaker party." Likewise, Respondents argue that for this same reason, and due to the 2023 Contract being one of adhesion, there was disparity in the parties' bargaining power. Furthermore, Respondents similarly argue that Mr. Ward lacked sophistication as he is "a maintenance mechanic who entered this transaction with a large car dealership as a single customer." (*See* Resp. Br. pp. 15-16.) The case of *Wood v. D.R.*

*Horton, Inc.*, No. 8:25-cv-03367-JDA, 2026 WL 368934, at *7 (D.S.C. Feb. 10, 2026) is instructive as to these contentions. In *Wood*, the court found no procedural unconscionability in an agreement involving a consumer and home builder when "Plaintiffs were free to purchase a home from another builder, purchase a pre-existing home, or purchase no home at all." Similarly, Mr. Ward has not shown that he was forced into executing the 2023 Contract or purchase the 2023 Chevrolet from the dealership utilizing the 2023 Contract. Mr. Ward could have sought to purchase a vehicle from a separate dealership not utilizing any arbitration provision but did not do so and has not shown any attempt to do so. Respondents essentially argue that any arbitration agreement involving a consumer for the purchase of an automobile is per se procedurally unconscionable. Such a finding is at odds with the requirement that motions to compel arbitration "must be addressed with a healthy regard for the federal policy favoring arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983).

Additionally, it is well settled that "[a]dhesion contracts … are not per se unconscionable." *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, 908 S.E.2d 892, 897 (Ct. App. 2024). 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).

As for Respondents' argument relating to Mr. Ward's "relative sophistication," this argument is also unavailing. In numerous cases cited herein and throughout GM Financial's Initial Brief, courts have routinely upheld arbitration agreements entered into by consumers. There is no requirement under the FAA or otherwise that Mr. Ward have a college degree, or some legal training, to understand the following language which could not be any more conspicuously placed:

**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.**

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

### C. Element of Surprise and Conspicuousness.

Respondents argue that the Arbitration Provision was "buried inside a large stack of documents" and that Mr. Ward "was not provided a meaningful opportunity to review or understand the provision before signing." (*See* Resp. Br. p. 16.) 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).[4] As for Respondents' position that Mr. Ward was not provided with the subject arbitral forum rules, as set forth above, Respondents never argued this before the trial court and cite no authority providing that GM Financial is required to provide copies of these rules and in none of the cases where courts have enforced incorporation of rules have they held that the rules must be provided to the consumer.

Regarding the conspicuousness of the Arbitration Provision, GM Financial has highlighted two cases which succeed *Simpson* where courts have review **identical** arbitration agreements to the Arbitration Provision here and rejected claims of unconscionability throughout distinguishing

[4] *See also Sydnor*, 252 F.3d at 306; *Pitt*, 2022 WL 2068851, at *4 (D.S.C. Apr. 1, 2022).

the holding in *Simpson*. *Rutledge v. Santander Consumer USA Inc.*, No. 6:20-cv-04214-DCC, 2021 WL 2949860, at *3 (D.S.C. July 14, 2021); *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). Respondents fail to cite even a single case supporting their position that the Arbitration Provision was inconspicuous.

Respondents attempt to distinguish *Prosper* by claiming that the court found that arbitration agreement to be conspicuous and enforceable because the plaintiff held a bachelor's degree in criminal justice. (*See* Resp. Br. p. 18.) This argument appears to be a red herring. The only mention in *Prosper* of this fact is to support the conclusion that the plaintiff "can read and has average intelligence." *See Prosper*, 2015 WL 13310148, at *4. Mr. Ward does not contend that he cannot read, nor does he claim to have below average intelligence. As stated above, there is no requirement that arbitration agreements are only enforceable to those with bachelor's degrees and nothing in the record establishes that Mr. Ward was any less sophisticated than the litany of other consumers who have entered into valid and enforceable arbitration agreements. Respondents essentially argue that because Mr. Ward is a mechanic, any arbitration agreement he enters is procedurally unconscionable. This conclusory position is not supported by any authority.

## VI. The Arbitration Provision Does Not Contain Harsh and Oppressive Terms.

The alleged harsh and oppressive term Respondents' take issue with in the Arbitration Provision is it stating that it will 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 parties who do not sign this contract)." (*See* Ex. 1 to Wilson Aff. at 4; R. p. 101.) In its Initial Brief, GM Financial distinguished the holding of *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 847 (Ct. App. 2020), with several cases

which have found this language to be enforceable, including the court in *Rutledge*.[5] Before the trial court, Respondents also challenged the language stating that the Arbitration Provision "shall survive any termination, payoff or transfer of this Contract." (*See* Memo. in Opp. At 11-12; R. pp. 208-209.) However, they do not challenge that term on appeal, and GM Financial will not further analyze it here.

Respondents first argue that *Rutledge* is unpersuasive as the court "applied Virginia law in its unconscionability reasoning and analysis." (*See* Resp. Br. p. 20.) This is a distinction without a difference. While the Court did apply Virginia law (which is virtually identical to South Carolina law on this issue), it went on to state as follows prior to conducting its unconscionability analysis:

> Plaintiff first argues that the RISC is procedurally unconscionable because it "falls squarely under" the analysis of the Supreme Court of South Carolina in *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663 (S.C. 2007). Although, as explained above, the RISC is not properly analyzed under South Carolina, unconscionability doctrine in the two states is substantially similar and **the Court will consider *Simpson*** in relation to the present case.

*See Rutledge*, 2021 WL 2949860, at *4 (emphasis added). The court in *Rutledge* then proceeded to distinguish that case from *Simpson* and did not rely on Virginia law at any point while doing so, even citing to another South Carolina case GM Financial relies upon here, *Prosper*. Therefore, the U.S. District Court of South Carolina, applying the standards of the Supreme Court of South Carolina in *Simpson*, and distinguishing it based on facts which are identical to those here, should be persuasive to this Court.

Respondents attempt to further distinguish *Rutledge* by stating that while that court found the subject term not to be unconscionable because it was "substantively limited to claims with a

[5] *See also 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).

reasonable relationship to the RISC and Plaintiff's vehicle purchase," Respondents' claims in this action relate to the 2024 Contract with Winding Chevrolet. (*See* Resp. Br. p. 20.) While GM Financial disagrees with the characterization of the scope of their claims, as set forth above, Respondents appear to be making a scope argument, which has no relevance to whether the term itself is harsh or oppressive. The court in *Rutledge* reviewed the exact term that Respondents challenge and found it not to be harsh and oppressive, and this Court should find the same.

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*—which involved claims against an automobile dealership relating to sexual harassment—but rather, a case that 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 pursuant to the 2023 Contract. Therefore, the trial court erred in purportedly determining that this term was unconscionable.

## VII. Discovery Limitations Cannot Invalidate Arbitration Agreements.

Respondents next argue that limitations on discovery "further demonstrate the unfairness" of the Arbitration Provision. (*See* Resp. Br. p. 21.) Once again, throughout the entirety of this section, Respondents do not cite even a single case supporting their argument. That is because no such case exists. To the contrary, this argument has been overwhelmingly rejected by courts. *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).

Nevertheless, Respondents' arguments are false. They contend that Respondents "would lack the ability to compel pre-hearing depositions of Appellant's employees or other relevant witnesses" because the "AAA Consumer Rules do not permit depositions." (*See* Resp. Br. pp. 21-

22.) This is not true. Rule R-20 of the AAA Consumer Rules states that "[t]he arbitrator shall manage any necessary exchange of information among the parties, **including depositions** …" *See* Am. Arbitration Assn. Consumer Arbitration Rules, www.adr.org, Rule R-20. There are no rules providing that depositions are not permitted in arbitration and Respondents' unsupported contention otherwise is meritless.

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

Finally, to the extent this Court determines that the single clause at issue in the Arbitration Provision is unconscionable, Respondents argue that it should not be severed, but instead, the Arbitration Provision should be scrapped entirely. First, Respondents contend that severance would be "impractical and contrary to public policy." (*See* Resp. Br. p. 22.) It is unclear how that is the case when there is only a single alleged unconscionable term, and in *Doe*, the Supreme Court of South Carolina severed this exact same term, compelling the claims to arbitration. *Doe*, 430 S.C. at 615, 846 S.E.2d at 880. Respondents cite to *Simpson* to support this position. However, Respondents conveniently ignore that the court in *Simpson* stated, "the arbitration clause in the contract between Simpson and Addy contained a total of three unconscionable provisions while arbitration clauses examined by courts prescribing severability generally contained only one offending provision." *Simpson*, 644 S.E.2d at 674 n.9 (collecting cases). Unlike the court in *Ingle*, there is no "insidious pattern of unconscionable provisions," *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir. 2003), but rather only one alleged unconscionable term.

More to this point, Respondents argue that "unconscionable provisions permeate the arbitration clause" and that "severance would improperly require the court to rewrite the parties' contract." (*See* Resp. Br. p. 23.) Once again, this position is at odds with Respondents' own Response which takes issue with a single term in the Arbitration Provision. Therefore, because

this is not an instance of multiple unconscionable terms overtaking the entirety of the Arbitration Provision—but instead the exact same term the court in *Doe* severed—this Court should simply sever the at issue term if it finds it to be unconscionable, and compel Respondents' claims to arbitration.

## CONCLUSION

Based on the foregoing, and as more fully set forth in GM Financial's Initial Brief, 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 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

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