THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

David White, ... Respondent,

v.

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

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

APPELLANT'S INITIAL REPLY BRIEF

Blake T. Williams
Email: blake.williams@nelsonmullins.com
Yasmeen Ebbini
Email: yasmeen.ebbini@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
1320 Main Street / 17th Floor
Columbia, SC 29201
(803) 799-2000

Attorneys for Appellant Lyft Inc, d/b/a Lyft Drives South Carolina, Inc.

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INTRODUCTION

Respondent's Brief fails to come to grips with both established law and the express terms of the Arbitration Agreement to which he twice agreed. That Arbitration Agreement contains a clear and unmistakable delegation clause. And despite never contesting that delegation clause, Respondent erroneously argued in the circuit court—and continues to argue here—that the court must decide threshold arbitrability issues before compelling arbitration. But what Respondent keeps missing is that the parties' delegation clause ***is an agreement to arbitrate these very arbitrability issues***. "[A]n agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the . . . court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010). And as with any other arbitration agreement, the FAA mandates these delegation clauses be placed "on an equal footing with other contracts," and "enforce[d] . . . according to their terms." *Id.* at 67.

The parties' delegation clause expressly provides that "***[a]ll disputes*** concerning the arbitrability of a Claim (***including disputes about the scope, applicability, enforceability***, revocability, or validity of the Arbitration Agreement) shall be decided by the arbitrator[.]" (Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a); R. __ (emphasis added).) This language is clear and unmistakable and Respondent has never suggested otherwise. As result, the delegation clause is valid and binding. *See Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020) (citing *Rent-A-Ctr.*, 561 U.S. at 68). Accordingly, Respondent and Lyft's delegation clause must be enforced according to its terms just like any other contract. *Id.*

The FAA mandates this outcome under the established framework for this Court's review. Respondent resists this conclusion, but he does so with inapplicable cases where courts reached

arbitrability issues ***because the parties did not agree to arbitrate them***. (*See* Resp. Br. at 6-11.) Of course the analysis is different when the parties choose to forego a delegation clause. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (citing *AT&T Techs., Inc. v. Commc'n Workers of Am.*, 475 U.S. 643 (1986)). However, Lyft and Respondent indisputably agreed otherwise here. And where "the parties' agreement delegates the arbitrability question to an arbitrator . . . , a court may not override the contract and decide the arbitrability question." *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 700, 869 S.E.2d 859, 864 (Ct. App. 2022) (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019)). So Respondent's reliance on authority where there was no delegation clause cannot save the circuit court's order. Instead, it simply proves Lyft's point.

Therefore, the circuit court erred by reaching the issue of whether the Arbitration Agreement applies to Respondent's claims and Respondent's unconscionability arguments.This Court should reverse and compel the matter to arbitration.[1]

ARGUMENT

I. The delegation clause controls, and Respondent's "threshold" framework conflicts with controlling law.

Respondent submits that "[w]hile parties may clearly and unmistakably delegate questions of arbitrability to an arbitrator, courts still retain the antecedent authority to determine whether the disputes arise out of a significant relationship to the contract at all." (Resp. Br. at 6.) That is not the law. Rather, Respondent's position improperly conflates contract formation and arbitrability. In the process, it runs directly afoul of *Henry Schein*, and resurrects the "wholly groundless"

[1] The circuit court further erred in its findings on scope and unconscionability, which, again, are issues that it should not have even addressed. Regardless, however, Respondent's claims fall within the scope of the broad Arbitration Agreement and Respondent failed to meet his burden of showing that the Arbitration Agreement is unconscionable, further necessitating reversal here.

exception the Supreme Court squarely rejected. Under *Henry Schein*, courts cannot "short-circuit" a contractual agreement to arbitrate arbitrability and decide the agreement's scope. 586 U.S. at 65. That question is for the arbitrator alone to decide. This case really is that simple.

A. Lyft and Respondent clearly, unmistakably, and indisputably agreed to delegate all gateway issues to the arbitrator in accordance with the FAA and South Carolina law.

Respondent's Brief begins with a false premise. It erroneously conflates two distinct inquiries: (1) whether the parties entered into an arbitration agreement, and (2) whether the parties' dispute is arbitrable under the terms of that agreement. These two inquiries are not a package deal under the FAA.

The first inquiry is whether an agreement exists. That inquiry is for the court, and it is undisputed that an agreement exists. Respondent has never contested that he created a Lyft account and affirmatively accepted the Lyft Terms of Service ("TOS"), or that the TOS includes the Arbitration Agreement and delegation clause. (Resp. Br. at 2.) Indeed, he rightfully concedes as much. (*See id.*) There is thus no question as to whether the parties entered into the Arbitration Agreement.

The second inquiry is about everything else. Because arbitration is a matter of contract, the FAA allows parties to contractually agree "who has the primary power to decide" disputes regarding gateway arbitrability issues. *Coinbase, Inc. v. Suski*, 602 U.S. 143, 148–49 (2024). *See also Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 384, 892 S.E.2d 112, 115 (2023) ("[T]he Supreme Court has consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence.") (quoting *Henry Schein*, 586 U.S. at 69)). Just like the first inquiry, the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about that matter." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (citations omitted). "As long

as the parties' agreement delegates the arbitrability question to an arbitrator 'by clear and unmistakable evidence,' a court may not override the contract and decide the arbitrability question." *Palmetto Wildlife Extractors*, 435 S.C. at 700, 869 S.E.2d at 864 (quoting *Henry Schein*, 586 U.S. at 69). This is so even if the court believes the argument that the agreement covers a particular claim is "wholly groundless." *Henry Schein*, 586 U.S. at 67-68.

These well-established principles have straightforward application here. The parties have a delegation clause. It expressly provides that "[a]ll disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability, or validity of the Arbitration Agreement) shall be decided by the arbitrator." (Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a); R. __.) This language is clear, unmistakable, and enforceable under the FAA.

Respondent has never argued otherwise. Indeed, Respondent did not mention the delegation clause ***at all*** below, let alone raise a direct and discrete challenge to its validity or enforceability.

The Circuit Court likewise ignored the parties' bargained-for delegation clause to decide the scope, applicability, and enforceability of the Arbitration Agreement. That was error. Because Respondent failed to specifically challenge the delegation clause, the Circuit Court was required to treat the delegation clause "as valid under § 2 [of the FAA]" and "enforce it under §§ 3 and 4 [of the FAA], leaving any challenge to the . . . the Agreement as a whole for the arbitrator." *Doe*, 430 S.C. at 609, 846 S.E.2d at 877 (citing *Rent-A-Ctr.*, 561 U.S. at 72). There was no room for discretion. *See also Palmetto Wildlife*, 435 S.C. at 700, 869 S.E.2d at 864 ("As long as the parties' agreement delegates the arbitrability question to an arbitrator 'by clear and unmistakable evidence,' a court may not override the contract and decide the arbitrability question.").

B. The significant relationship analysis goes squarely to the scope of the parties' Arbitration Agreement—a gateway issue expressly delegated to the arbitrator.

In Response, Respondent primarily argues that he cannot be compelled to arbitration unless the court finds that there is a "significant relationship" between the dispute and the Arbitration Agreement. (Resp. Br. at 6-11.) Not so. The "significant relationship" analysis is the exact same thing as whether a claim falls ***within the scope*** of an arbitration agreement. *See e.g. Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 492, 689 S.E.2d 602, 604 (2010) ("[A] claim falls within the scope of an arbitration clause if it is encompassed by the language of the clause or if a "significant relationship" exists between the claim and the contract). Respondent and Lyft expressly delegated scope to the arbitrator.

Respondent compounds this error by misstating his cited authorities. They do not support Respondent's position because they all involve arbitration agreements ***without*** delegation clauses like the one here. Start with *Doe*, which Respondent claims held that "courts still retain the antecedent authority to determine whether the disputes arise out of a significant relationship to the contract at all." (Resp. Br. at 6.) *Doe* actually says the opposite.

In *Doe*, a customer signed an arbitration agreement in connection with the purchase of a vehicle from a car dealership. Four years after the sale, a car dealership employee stole the customer's personal information and posted it on a sexually explicit website, and the customer subsequently sued the dealership. 430 S.C. at 606, 846 S.E.2d at 876. The customer's claims were, by any measure, far more attenuated from the underlying contract than Respondent's claims here. Yet this Court held that the delegation clause there, which committed the "interpretation," "scope," and "arbitrability" of the agreement to the arbitrator, precluded this Court from deciding whether Doe's claims fell within the scope of the agreement. *Id*. at 607, 616, 846 S.E.2d at 876, 881.

The only gateway issue the *Doe* Court retained for itself was whether the arbitration agreement was valid and enforceable. And it did so for good reason: the *Doe* delegation clause did not expressly delegate validity and enforceability to the arbitrator. So, the *Doe* Court properly applied the parties' contract. In so doing, *Doe* distinguished the parties' contract from broader delegation clauses like the one contained in Lyft's TOS that does delegate validity and enforceability. *See id.* at 608–11, 846 S.E.2d at 877–78. *Doe* thus directly undercut Respondent's contention.

Respondent then proceeds to cite a series of cases that he says all hold that the circuit court must decide scope before the delegation clause takes effect. *See Aiken v. World Finance Corp.*, 373 S.C. 144, 644 S.E.2d at 705 (2007), *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 611 S.E.2d 305 (Ct. App. 2005), and *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 553 S.E.2d 110 (2001). (Resp. Br. at 6–11.) The problem for Respondent is that none of these cases involve a delegation clause. Rather, in each case, it was the court's job to decide scope because the parties had not agreed to delegate that question to the arbitrator. That is the very distinction that controls this appeal.

Indeed, the absence of delegation clauses in *Aiken*, *Chassereau*, and *Zabinski* is what made judicial resolution of the scope question appropriate. Citing these cases as if they establish a universal rule that courts must always decide scope, even when the parties have expressly delegated that question to an arbitrator, is simply incorrect. When a valid delegation clause exists, the scope question is reserved for the arbitrator alone per *Doe* and U.S. Supreme Court precedent. *See Coinbase*, 602 U.S. at 146; *Henry Schein*, 586 U.S. at 69.

C. Respondent's position would eviscerate *Henry Schein*.

At bottom, Respondent's "significant relationship" test is simply the "wholly groundless" exception that *Henry Schein* rejected by another name. If Respondent's position is adopted, *Henry Schein* will be rendered a dead letter. And it's easy to see why. Before *Henry Schein*, some courts ignored delegation clauses and refused to compel arbitration if they found that the parties underlying substantive dispute did not have a "significant relationship" with the contract containing their arbitration agreement. Under this view, courts examined the "scope of the arbitration clause and the precise issues that the moving party asserts are subject to arbitration." *InterDigital Commc'ns, LLC* v. *ITC*, 718 F.3d 1336, 1346 (Fed. Cir. 2013) (citation omitted).

This pre-*Henry Schein* approach posed the same scope question that Respondent proposes here: whether the underlying substantive dispute had a "significant relationship" to the contract. If there was no "significant relationship," the court would invoke the "wholly groundless" exception and refuse to compel arbitration. *See e.g.*, *Evans* v. *Building Materials Corporation of America*, 858 F.3d 1377 (Fed. Cir. 2017) (describing the "wholly groundless" inquiry as a question of "scope" and asking whether claims "aris[e] under" or have a "significant relationship" to the contract in question); *Turi* v. *Main Street Adoption Services, LLP*, 633 F.3d 496, 507, 511 (6th Cir. 2011) (holding that a delegation clause "applies only to claims that are at least *arguably* covered by the agreement") (emphasis in original); *Douglas* v. *Regions Bank*, 757 F.3d 460, 464 (5th Cir. 2014) (invoking the "wholly groundless" exception despite a delegation clause because "the events leading to [the plaintiff's] claim . . . have nothing to do with her checking account [agreement with the arbitration provision] opened years earlier").

Then came *Henry Schein*. Like Respondent, the *Henry Schein* respondent argued that courts—not arbitrators—are required to determine whether an issue is "'referable to arbitration'

under the 'agreement'"—*i.e.*, whether the case has a "significant relationship" to the contract. *Henry Schein*, 586 U.S. at 69 (emphasis added). As support, the *Henry Schein* respondent pointed to these same cases equating no "significant relationship" with a "wholly groundless" arbitration position. But the U.S. Supreme Court dismissed that understanding out-of-hand: "[T]hat ship has sailed." *Id.* And, along the way, the U.S. Supreme Court expressly rejected the "significant relationship" line of cases. *Id.* at 67 (citing *Douglas* and *Turi*, among others). A "court possesses no power to decide the arbitrability issue" where "the parties' contract delegates the arbitrability question to an arbitrator." *Id.* at 68. That is true "even if the court thinks that the argument that the arbitration agreement applies ***to a particular dispute*** is wholly groundless." *Id.* (emphasis added).

This is now the law of the land. *See, e.g.*, *Bossé v. New York Life Ins. Co.*, 992 F.3d 20, 30 (1st Cir. 2021) (holding that argument that a "court must assess whether the particular dispute falls within the scope of the arbitration agreement to determine whether the arbitrability of that dispute was delegated to the arbitrator" is "prohibited by … *Henry Schein*"); *Commc'ns Workers of Am. v. AT&T Inc.*, 6 F.4th 1344, 1349 (D.C. Cir. 2021) ("[O]nce the parties subject some set of issues to an arbitrator for resolution, and once the parties clearly and unmistakably assign to an arbitrator the authority to decide whether disputes fit within that set of issues, the question whether a particular dispute is arbitrable is strictly for the arbitrator, not a court."); *New Heights Farm I, LLC v. Great Am. Ins. Co.*, 119 F.4th 455, 461 (6th Cir. 2024) (party "must present [] threshold question to the arbitrator, and that is so no matter how strong or weak [the other party's] rejoinders may be").

And it makes perfect sense. Delegation clauses are designed to "insulate and protect the arbitration process" from costly pre-arbitration litigation. 1 Martin Domke et al., Domke on Commercial Arbitration § 15:12 (Nov. 2025 update). Indeed, fighting about arbitrability in court

"sacrifices the principal advantage of arbitration" by "mak[ing] the process slower, more costly, and more likely to general procedural morass." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 348 (2011). That's exactly why Lyft and Respondent agreed to a delegation clause. Just like any other contract, *Henry Schein* requires it to be enforced according to its terms. The "significant relationship" test Respondent advocates no longer exists—*Henry Schein* did away with it.

Simply put, Respondent's arguments around the "significant relationship" analysis are incredible, unsupported, and should be flatly rejected. Indeed, if courts could (let alone must, as Respondent submits) conduct a "significant relationship" analysis even where issues of scope have been expressly delegated to an arbitrator, it would effectively render delegation clauses meaningless. That is an outcome the FAA does not allow. *See e.g. Henry Schein*, 586 U.S. at 63 ("[W]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract, even if the court thinks that the arbitrability claim is wholly groundless."). This Court should reverse and compel the matter to arbitration so that the arbitrator may decide these issues in accordance with the parties' agreement.

II. Respondent's claims have a significant relationship to the TOS because the vehicle was being used to provide Rideshare Services at the time of the collision.

Even if this Court were to reach the merits of the scope question, (which it should not, as argued in Lyft's opening brief and herein), Respondent's claims plainly "arise out of or relate to" the TOS. Respondent's effort to characterize this as an "ordinary negligence" case untethered to Lyft's platform ignores the undisputed facts.

A. The collision occurred in a vehicle actively providing Lyft rideshare services.

Respondent does not dispute that at the time of the collision, he was a passenger in a vehicle driven by Defendant Alicia White, who was ***actively providing rideshare services through the Lyft Platform*** to another passenger in the backseat. (Compl. ¶ 8; R. __.) White was logged into

the Lyft app, had accepted a ride request, and had a Lyft passenger in the car. Respondent's injuries arose ***during the provision of the Rideshare Services***—not in some unrelated context having nothing to do with the Platform.

The TOS provides that the Arbitration Agreement covers "any dispute, claim or controversy, whether based on past, present, or future events, arising out of or relating to … the Lyft Platform, the Rideshare Services . . . [and] your relationship with Lyft." (Mot. to Compel, Exs. A-3, ¶ 17(a), A-5, ¶ 17(a); R. __.) The language "arising out of or relating to" is "construed broadly" and "is capable of expansive reach." *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013). It "connotes 'incident to,' 'flowing from,' or 'having connection with' as well as 'causal relation to.'" *Town of Duncan v. State Budget & Control Bd.*, 326 S.C. 6, 13, 482 S.E.2d 768, 772 (1997). Respondent's injuries are, at a minimum, "incident to" and "have a connection with" Lyft's Rideshare Services. The driver was performing Rideshare Services ***through*** the Platform when the collision occurred. Respondent was in the vehicle ***because of*** his relationship with the driver, who was simultaneously fulfilling a Lyft ride request. To suggest that these claims bear no relationship whatsoever to the TOS or Rideshare Services strains credulity.

B. Respondent ignores the undisputed factual nexus of his claims.

Respondent nevertheless attempts to recast his claims as having nothing to do with Lyft by asserting that he "was not actively using the Lyft Platform" and "was merely a passenger in a vehicle whose driver happened to be providing rideshare services." (Resp. Br. at 1.) But the claims in Respondent's own Complaint belie this characterization. The third cause of action alleges negligence ***against Lyft*** based on vicarious liability under respondeat superior and negligent hiring, training, supervision, and retention. (Compl. ¶¶ 29–37; R. __.) These claims are premised entirely

on the theory that Lyft is liable for the conduct of its driver ***while she was performing rideshare services through the Lyft Platform***.

The factual predicate of Respondent's claims against Lyft—that Defendant White was providing Rideshare Services through the Lyft Platform at the time of the collision—is the very nexus that ties these claims to the TOS. Under Respondent's theory, the TOS's broadly worded arbitration clause, covering claims "arising out of or relating to" the Lyft Platform and Rideshare Services, would never reach a personal injury claim, no matter how closely connected to the provision of Rideshare Services, so long as the injured party was not the one who tapped "Request Ride." That interpretation renders the broad language of the Arbitration Agreement toothless and is squarely at odds with the weight of authority from every jurisdiction to have considered the question.

Respondent's arguments are unsupported by record evidence in any event. In contrast to Lyft's evidentiary presentation with sworn affidavits, Respondent presented no ***evidence*** in opposition to Lyft's motion prior to the circuit court's August 21, 2025 Order denying the motion. The circuit court's factual findings in support of its holding that the claims did not fall within the scope of the arbitration agreement were based entirely on the unsworn allegations of the Complaint and arguments of counsel, neither of which constitutes evidence.[2]

Respondent now attempts to rehabilitate this deficiency by pointing to the Affidavit of David White, which was not filed until the Rule 59(e) stage, after the circuit court had already entered its Order. (Aff. of David White; R. __.) This affidavit is an impermissible *ex post facto* attempt to bolster factual findings that were not supported by evidence at the time they were made.

[2] *See S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."); *see also McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.").

There is no reason Respondent could not have submitted this affidavit in opposition to Lyft's original Motion to Compel. Instead, Respondent chose not to submit any evidence in opposition, obtained an Order he recognized lacked evidentiary support, and then attempted to retroactively supplement the record. Moreover, Respondent's assertion that "allegations in an unsworn pleading are 'evidence for the purposes of a motion to compel arbitration,'" (Resp. Br. at 13), is not the standard where the movant has provided actual record evidence. *See* 6 C.J.S. Arbitration § 70 ("Statements in motions and briefs do not constitute evidence to be considered by a trial court when ruling on a motion to compel arbitration."). When one party submits sworn declarations and documentary evidence in support of a motion, the opposing party cannot rely solely on unsworn pleading allegations and arguments of counsel to create a factual dispute.

In the end, Respondent's scope arguments improperly attempt to limit the clear language of the Agreement and should be rejected. This Court should reverse the circuit court and compel the matter to arbitration.

III. Respondent's unconscionability arguments lack merit.

While Lyft addressed the unconscionability issue at length in its Initial Brief and this is likewise an issue that has been properly delegated to the arbitrator for determination, several of Respondent's specific arguments on this issue warrant a brief response.

A. A party is deemed to have read a contract he executes.

First, a party is deemed to have read a contract he or she executes. Respondent's complaint that he "did not have the business judgment to understand the effect of the arbitration clause" and "did not have counsel present" during account creation, (Resp. Br. at 18), ignores the longstanding principle that a party who signs or agrees to a contract is presumed to have read and understood its terms. *See Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 892 S.E.2d 112 (2023)

(enforcing the duty-to-read doctrine in the arbitration context). "An 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." *Sydnor v. Conseco Financial Servicing Corp.*, 252 F.3d 302, 306 (4th Cir. 2001). Courts in this State have "consistently rejected" the argument that an arbitration agreement is unenforceable simply because no one explained it to the plaintiff. *See, e.g.*, *Green v. Progressive Cas. Ins. Co.*, No. 2:25-CV-12529-BHH-MGB, 2025 WL 3906480, at *6 (D.S.C. Nov. 5, 2025), *report and recommendation adopted*, No. 2:25-CV-12529-BHH, 2025 WL 3527164 (D.S.C. Dec. 9, 2025) (collecting cases).

Similarly, the argument that the arbitration clause is "buried" in a 38-page document and is "inconspicuous in nature, particularly when viewed on a mobile device," (Order at 6–7; R. __), is factually inaccurate and in any event does not establish unconscionability. As this Court recognized in *Doe v. TCSC*, "commercial transactions in the modern age differ from traditional face-to-face negotiation," and online arbitration agreements presented in clickwrap format are enforceable. 430 S.C. 602, 617, 846 S.E.2d 874, 881 (Ct. App. 2020). Conspicuousness is but one factor in the analysis, and Respondent now concedes the first page of the TOS contains a notice about the arbitration clause. (Resp. Br. at 20.) However, Respondent continues to ignore that this conspicuous notice at the outset of the TOS also has a blue internal jump link ***that takes users directly to the full Arbitration Agreement***. (*See* Mot. to Compel, Ex. A, ¶ 17; R. __.) Further, the absence of personal counsel during a routine app sign-up does not render an arbitration clause unconscionable. If it did, virtually every contract in the digital economy would be unenforceable.

The sheer volume of case law holding such agreements to be enforceable belies Respondent's arguments on this point.

B. The unconscionability analysis must focus on the arbitration clause itself, not the entire TOS.

Respondent reiterates the circuit court's erroneous analysis which considered provisions ***outside*** the arbitration clause, specifically, the limitation of liability in Section 15 of the TOS, to conclude that the arbitration clause was unconscionable. That approach is squarely foreclosed by the *Prima Paint* doctrine and its application in South Carolina.

Under *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, an arbitration provision is separable from the contract in which it is embedded, and the issue of its validity is distinct from the substantive validity of the contract as a whole. *See* 388 U.S. 395, 403–04 (1967). The court does not consider unconscionable terms outside of the arbitration provision. *See Doe*, 430 S.C. at 607, 846 S.E.2d at 876 ("Because an arbitration provision is often one of many provisions in a contract covering many other aspects of the transaction, the first task of a court is to separate the arbitration provision from the rest of the contract. This may seem odd, but it is the law, known as the *Prima Paint* doctrine.").

This principle was applied directly by the Supreme Court of South Carolina in *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022), where the Court unanimously affirmed that "the circuit court impermissibly considered the terms found in the limited warranty booklet" when analyzing the arbitration provision of the purchase and sales agreement. *Id.* at 607–08, 879 S.E.2d at 753. The Court then analyzed the arbitration provisions "***standing alone***" to determine whether they contained oppressive and one-sided terms. *Id.* at 604, 879 S.E.2d at 751 (emphasis added). This Court applied the same principle in *Mart v. Great Southern Homes, Inc.*, 441 S.C. 304, 315, 893 S.E.2d 360, 365 (Ct. App. 2023), and held that "controlling case law does

not permit us to consider the language of the separate limited Warranty or the propriety of the waiver of implied warranties in analyzing the standalone arbitration language of the Sales Contract." *Id.* There, this Court emphasized that "[e]ven if the overall contract is unenforceable, the arbitration provision is not unenforceable unless the reason the overall contract is unenforceable ***specifically relates to the arbitration provision***." *Id.* at 313, 893 S.E.2d at 364 (quoting *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 366, 887 S.E.2d 534, 539–40 (Ct. App. 2023)) (emphasis added).

Here, the circuit court committed the precise error that *Damico* and *Mart* prohibit. Rather than analyzing Lyft's Arbitration Agreement on its own terms, the court looked to Section 15 of the TOS, the general limitation of liability provision, and improperly construed it as part of the Arbitration Agreement to conclude that it "essentially renders Lyft immune from liability under any scenario, which is impermissibly onerous." (Order at 6; R. __.) But Section 15 is not part of the Arbitration Agreement. It is a separate provision of the broader TOS that applies regardless of whether disputes proceed in court or arbitration. The court's reliance on Section 15 to invalidate the arbitration clause is exactly the kind of impermissible conflation that *Prima Paint*, *Damico*, and *Mart* forbid.

Contrary to Respondent's assertions, when the Arbitration Agreement is examined ***standing alone***, as required by case law, it contains no oppressive or one-sided terms. It provides for neutral arbitration administered by the AAA. It applies equally to both parties. It does not limit the remedies available to Respondent in the arbitral forum. It does not shorten the statute of limitations. It does not give Lyft a unilateral right to litigate while requiring the consumer to arbitrate. It is, in short, a straightforward, even-handed arbitration provision, precisely the kind of clause that South Carolina and other courts routinely enforce.

C. The TOS's adhesive nature does not render the arbitration clause unenforceable.

Respondent's argument that the TOS is a "contract of adhesion" presented on a "take-it-or-leave-it" basis is a contract-of-adhesion argument directed at the contract ***as a whole***—not a specific challenge to the Arbitration Agreement. As the Fourth Circuit has explained, "[t]hat is precisely the sort of argument that . . . must be deferred for arbitration." *Amos v. Amazon Logistics, Inc.*, 74 F.4th 591, 595 n.4 (4th Cir. 2023). Moreover, it is well established that adhesion contracts are not unconscionable merely because they are adhesive. The Supreme Court of South Carolina has made this point with unmistakable clarity: "The distinction between a contract of adhesion and unconscionability is worth emphasizing: *adhesive contracts are not unconscionable in and of themselves so long as the terms are even-handed*." *Damico*, 437 S.C. at 614, 879 S.E.2d at 756 (emphasis in original). The Court further clarified: "unconscionability requires a finding of a lack of meaningful choice *coupled with* unreasonably oppressive terms. Thus, an adhesion contract with fair terms is certainly not unconscionable, and the mere fact a contract is one of adhesion does not doom the contract-drafter's case." *Id.* (emphasis in original).

The circuit court identified "the waiver of a jury trial, inability to appeal an arbitration decision, and inability to participate in a class action" as "additional oppressive and one-sided terms." (Order at 6; R. __.) These are not oppressive terms—they are the ***defining features*** of arbitration and the trade-offs a party makes in exchange for the efficiency and finality of the arbitral process. As this Court has explained, "a party desiring to avoid an arbitration clause on the grounds that no reasonable person would have agreed to it merely because it precludes judicial remedies must demonstrate how he or she has been prejudiced by compelled arbitration." *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 401, 498 S.E.2d 898, 905 (Ct. App. 1998). To treat the

inherent characteristics of arbitration as grounds for finding unconscionability would effectively invalidate arbitration itself, a result squarely at odds with both federal and South Carolina policy.

Finally, Respondent points to no provision of Lyft's Arbitration Agreement that is unfair.

D. Severance need not be reached because the arbitration clause is not unconscionable.

Because the Arbitration Agreement, analyzed standing alone, contains no oppressive or one-sided terms, the question of severance should not arise. However, to the extent the Court found that Section 15 of the TOS was implicated in the unconscionability analysis, then this provision could be severed as Lyft noted in its opening brief. The cases relied on by Respondent are readily distinguishable. In *Damico,* the Supreme Court refused to sever because the arbitration clause itself contained "grossly one-sided" terms, including a provision giving the builder the "sole election" to choose which parties could participate in arbitration. 437 S.C. at 615, 879 S.E.2d at 757. In *Huskins*, the Court refused to sever an illegal 90-day limitations period that was baked into the arbitration clause itself and "went to the core of the arbitration agreement's purpose by drastically curtailing homeowners' rights." 444 S.C. at 595, 910 S.E.2d at 476. As noted, Respondent has not identified any provision ***within*** Lyft's Arbitration Agreement that is unconscionable, illegal, or void as a matter of public policy. However, to the extent the Court finds Section 15 applicable, it could simply sever this provision from the analysis and enforce the Arbitration Agreement. And in that case, what would remain is the entirety of the Arbitration Agreement—of which Section 15 is not a part.

CONCLUSION

For the reasons stated in Lyft's opening brief and herein, the Court should reverse the circuit court and compel the matter to arbitration.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Blake T. Williams
Blake T. Williams
S.C. Bar 100794
blake.williams@nelsonmullins.com
Yasmeen Ebbini
S.C. Bar 104681
yasmeen.ebbini@nelsonmullins.com
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc.

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