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.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1006252

David White
PLAINTIFF(S)

Lyft Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant Lyft, Inc. D/B/A Lyft Drives South Carolina, Inc.'s Motion to Compel Arbitration and Stay Proceedings, filed 3/24/2025, was heard by this court on 7/31/2025. Present at the hearing was Jeffrey Wayne Ward Jr. and Amy Elizabeth McLaren on behalf of Plaintiff, Sarah Theresa Eibling on behalf of Defendant Lyft, Inc., and David Cooper Cleveland on behalf of Defendant Alicia White. Upon careful consideration of the arguments and submissions from counsel, this court hereby DENIES Defendant's motion. The court requests Plaintiff's counsel submit a formal proposed order in a word document to the court within ten (10) days of this order. The court will then review and edit as deemed appropriate.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/10/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption: David White VS Lyft Inc , defendant, et al

Case Number: 2024CP1006252

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CIVIL ACTION NO. 2024-CP-10-06252
DAVID WHITE,	)	
	)	
Plaintiff,	)	
	)	
	)	**ORDER DENYING DEFENDANT LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC.'S MOTION TO STAY AND COMPEL ARBITRATION**
	)	
LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE	)	
	)	
	)	
Defendants.	)	

This matter came before the Court on Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc.'s (hereinafter "Defendant Lyft") Motion to Compel Arbitration and Stay Proceedings, filed March 24, 2025. The Court heard arguments from counsel on July 31, 2025. Having reviewed the Motion, memoranda from parties' counsel, and oral arguments, the Court hereby **DENIES** Defendant Lyft's motion to compel arbitration and stay proceedings. This decision is based on the following:

This matter arises from a motor vehicle collision that occurred on December 26, 2021, at approximately 2:11 pm, when Plaintiff David White (hereinafter "Plaintiff") was a passenger in a vehicle driven by Defendant Alicia White that was illegally parked on the side of Delano Street in Charleston, South Carolina. A Complaint was initiated against Defendants in this Court on December 18, 2024. Defendant Lyft filed an Answer on February 20, 2025. On March 24, 2025, Defendant Lyft filed a Motion to Stay and Compel Arbitration seeking to enforce the arbitration clause contained in Defendant Lyft's Terms of Service ("TOS") with Plaintiff, which is this Motion.

This Court finds that Defendant's Motion shall be denied for two reasons.

I. THE TERMS OF SERVICE DO NOT APPLY TO PLAINTIFF'S CLAIMS.

First and foremost, this Court finds that Defendant Lyft's Terms of Service ("TOS") do not apply to this case for the following reasons:

A. The Terms of Service govern only use of the Lyft Platform and related Services.

Defendant Lyft's TOS clearly define the scope of the agreement containing the arbitration clause. The opening paragraph explicitly states that the "Terms of Service constitute a legally binding agreement . . . between [Plaintiff] and Lyft, Inc., its parents, subsidiaries, representatives, affiliates, officers and directors . . . ***governing [Plaintiff's] use of the Lyft application (the 'Lyft App'), website, and technology platform (collectively, the 'Lyft Platform')***." Def.'s Mot. to Stay & Compel Arbitration, Ex. E, at 1 (emphasis added). The Terms further provide that "IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM OR ANY OF THE SERVICES PROVIDED THROUGH THE LYFT PLATFORM." *Id.*

This language demonstrates that the TOS, which includes the subject arbitration clause, only govern a user's active use or access of the Lyft Platform or Defendant Lyft's services. This contract creates no broader relationship and does not apply outside of these limited circumstances. Plaintiff was not a "Lyft" passenger at the time of the incident. He was riding with a friend who was a Lyft driver. He did not order a Lyft nor ride with someone else who ordered a Lyft to a requested destination. Defense counsel argued that he is bound by the arbitration provision simply because he had the Lyft app downloaded on his phone. This court is not inclined to extend the provisions of the Lyft app contract in this particular context.

B. Plaintiff's claims against Lyft do not arise out of a business or contractual relationship created by the Terms of Service in the Lyft application.

Since an arbitration agreement originates from a contract, a party cannot be required to arbitrate a dispute to which he did not agree. *See Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 149 (2007) (citing *Zabinski v. Bright Acres Associates*, 346 S.C 580, 596–97). In order to determine whether an arbitration agreement applies to a claim, the court will analyze whether a "significant relationship" exists between the alleged claims and the contract in which the arbitration clause is contained. *Id*.

In this case, Plaintiff alleges that Defendant Lyft is vicariously liable for the actions of Defendant White under *respondeat superior*. Complaint at ¶ 33. Plaintiff also alleges that Defendant Lyft was negligent in inadequately training and supervising agents or employees and negligently hiring unqualified agents or employees, among other allegations. *Id.* at ¶ 34(a)–(h). As previously discussed, *supra*, Defendant Lyft's own TOS clearly define the scope of the agreement, and the opening paragraph explicitly states when the TOS govern and apply. *See* Def.'s Mot. to Stay & Compel Arbitration, Ex. E, at 1.

This Court finds that Lyft's TOS are not triggered regarding the subject incident and Plaintiff's claims. Plaintiff does not allege any breach of the TOS, or reference the TOS whatsoever, in his Complaint. Plaintiff is not alleging a dispute with the Lyft Platform or Rideshare Services, and Plaintiff was not utilizing the Lyft Platform or its Rideshare Services at the time of the subject collision. Plaintiff's claims against Lyft fall first under *respondeat superior* and arise second out of Lyft's negligence in hiring, supervising, and retaining agents or employees. *See* Complaint at ¶ ¶ 33, 34(a)–(h). Plaintiff's claims do not stem from his use of either the Lyft Platform or its Rideshare Services. As there is no link between Plaintiff's claims in his Complaint and the TOS, there is no "significant relationship" between the contract containing the arbitration clause and the allegations within this Complaint as required by the South Carolina Supreme Court

in *Aiken v. World Finance Corporation of South Carolina*. Therefore, Defendant Lyft's TOS do not apply.

II. THE ARBITRATION CLAUSE IS UNCONSCIONABLE AND THEREFORE UNENFORCEABLE.

Even if the Terms of Service ("TOS") did apply, which this Court finds they do not, the arbitration clause found within the TOS would be unenforceable as unconscionable under South Carolina law. "In conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract." *Smith v. D.R. Horton*, 417 S.C. 42, 48 (2016). Unconscionability, as it pertains to a contractual arbitration clause, is defined as 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, Inc.*, 373 S.C. 14, 25 (2007). "Whether one party lacks meaningful choice in entering into the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process." *Gladden v. Boykin*, 402 S.C. 140, 148 (2013). If a court as a matter of law finds any clause of a 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 as to avoid an unconscionable result. S.C. Code Ann. § 36-2-302(1) (2003). In determining whether an arbitration clause is unconscionable, South Carolina courts consider both the absence of meaningful choice and whether the clause contains oppressive, one-sided terms. *Simpson*, 373 S.C. at 25.

Unsurprisingly, arbitration clauses are often found in contracts of adhesion. An adhesion contract is a standard form contract offered on a "take-it-or-leave it" basis with terms that are not negotiable. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 (2001). And while an arbitration clause in an adhesion contract is not *per se* unconscionable, it is a strong indication that there was

a lack of meaningful choice in negotiating the terms of the contract and is met with "considerable skepticism" by courts. *Simpson*, 373 S.C. at 25. In determining whether there was an absence of meaningful choice between parties, the South Carolina Supreme Court in *Simpson v. MSA of Myrtle Beach, Inc.*, considered whether the arbitration clause was included in a contract of adhesion between a commercial entity and a consumer, whether the consumer lacked the business judgment necessary to make her aware of the implications of the arbitration agreement, and whether the consumer had a lawyer present to provide any assistance in the matter. 373 S.C. at 27.

In determining whether an arbitration clause is unconscionable and therefore unenforceable, South Carolina courts will also consider whether the clause contains oppressive and one-sided terms. *Id.* at 25. In *Huskins v. Mungo Homes, LLC*, the South Carolina Supreme Court found that an arbitration clause in a contract which shortened the statute of limitations for any claim brought was void and illegal as a matter of public policy and thus unenforceable as it violated S.C. Code Ann. §15-3-140 (2005). 444 S.C. 592 (2024). S.C. Code Ann. §15-3-140 (2005) forbids and renders void any contract clauses attempting to shorten the legal statute of limitations. The Court in *Simpson* found that the arbitration clause's limitation on statutory remedies was oppressive and one-sided. 373 S.C. at 28–30. Furthermore, courts have found that sections of arbitration clauses that purport to shorten the statute of limitations are material to the whole of the arbitration clause and have declined to salvage the remaining sections of the arbitration requirement, instead finding the entire arbitration provision unenforceable. *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 597 (2024). The Court in *Damico v. Lennar Carolinas, LLC*, went as far to say that severing terms from an unconscionable contract of adhesion discourages fair, arms-length transactions and would encourage sophisticated parties to intentionally insert unconscionable terms in the contract. 437 S.C. 596, 604 (2022).

Here, the TOS agreement between the Plaintiff and Defendant is clearly an adhesion contract. The TOS were not negotiable on the Plaintiff's behalf and were presented to him on a "take-it-or-leave-it" basis. As Defendant Lyft concedes in its Motion, "[a] user cannot access the Lyft software platform without first creating a Lyft user account and cannot request or purchase rideshare services through the Lyft App unless they have affirmatively accepted Lyft's Terms of Service." *See* Def.'s Mot. to Stay & Compel Arbitration, Ex. A, at ¶ 8. Plaintiff did not have the business judgment to understand the effect of the arbitration clause contained in the TOS, and did not have counsel present to provide assistance during the account creation process. The arbitration clause is also found in section 17 of the subject TOS while containing several oppressive and one-sided terms.

First, section 15 of the TOS contains broad language purporting to exempt Lyft from virtually all liability, stating "IN NO EVENT WILL LYFT . . . BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES . . . ARISING OUT OF OR IN CONNECTION WITH THE LYFT PLATFORM, THE RIDESHARE SERVICES, OR THIS AGREEMENT, HOWEVER ARISING INCLUDING NEGLIGENCE." Def.'s Mot. to Stay & Compel Arbitration, Ex. E, at 15. This provision essentially renders Lyft immune from liability under any scenario, which is impermissibly onerous.

Second, the arbitration clause contains additional oppressive and one-sided terms including the waiver of a jury trial, inability to appeal an arbitration decision, and inability to participate in a class action. And third, the arbitration provision is buried within a 38-page document and is inconspicuous in nature, particularly when viewed on a mobile device as most users would experience it. *See* Def.'s Mot. to Stay & Compel Arbitration, Ex. E, at 16–23.

As the subject TOS is a contract of adhesion, this Court determines that Plaintiff lacked meaningful choice and could not negotiate its terms, and that the arbitration clause contains several oppressive and one-sided terms. For these reasons, the arbitration clause of the TOS is unconscionable, and thus unenforceable.

Based on the foregoing evidence, this Court determines Defendant Lyft's Motion to Stay and Compel Arbitration is **DENIED**.

AND IT IS SO ORDERED.

_____
The Honorable Jennifer B. McCoy

Charleston, South Carolina
August ___, 2025

Charleston Common Pleas

Case Caption: David White VS Lyft Inc , defendant, et al

Case Number: 2024CP1006252

Type: Order/Stay

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1006252

David White
PLAINTIFF(S)

Lyft Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant's filed a Motion to Reconsider with this Court on September 2, 2025. “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court DENIES Defendant's Motion to Reconsider without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/15/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption: David White VS Lyft Inc , defendant, et al

Case Number: 2024CP1006252

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2024-CP-10-_____
)	
DAVID WHITE,)	
)	
Plaintiff,)	
vs.)	**SUMMONS**
)	(Jury Trial Demanded)
LYFT, INC., d/b/a LYFT DRIVES SOUTH)	
CAROLINA, INC., ALICIA WHITE and)	
JANE DOE,)	
)	
Defendants.)	
_____)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

MILLER, DAWSON, SIGAL & WARD, LLC

By: s/ Jeffrey W. Ward, Jr.

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Attorneys for the Plaintiff

December 18, 2024
North Charleston, South Carolina

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-_____
DAVID WHITE,)) Plaintiff,) vs.)) LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE,)) Defendants.) _____)	**COMPLAINT** (Jury Trial Demanded)

TO THE DEFENDANTS ABOVE-NAMED:

Plaintiff David White (hereinafter "Plaintiff") brings this action against Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc. (hereinafter "Defendant Lyft"), Defendant Alicia White (hereinafter "Defendant White"), and Defendant Jane Doe (hereinafter "Defendant Doe") based on the allegations set forth below.

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the County of Dorchester, State of South Carolina.

2. Upon information and belief, Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc., is a foreign business authorized to do business in South Carolina and conducts business in Charleston County, South Carolina.

3. Upon information and belief, Defendant Alicia White is a citizen and resident of Dorchester County, South Carolina.

4. Defendant Doe is an individual whose identity is unknown to Plaintiff and who, at all times relevant herein, was the operator of a motor vehicle hereinafter designated as the "Doe

Vehicle." Plaintiff brings this action pursuant to S.C. Code Ann. § 38-77-180 (1976, as amended). Defendant has the capacity to be sued as "Jane Doe" under this statute.

5. The Court has subject-matter jurisdiction over the claims in this lawsuit under article V § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350.

6. The Court has personal jurisdiction over the Defendants.

7. Venue is proper in this Circuit under South Carolina Code § 15-7-30 because the acts and omissions that are the subject of this action occurred in Charleston County, South Carolina and Defendant Lyft conducts business in Charleston County, South Carolina.

FACTS

8. On December 26, 2021, at approximately 2:11 pm, Plaintiff was a passenger in a vehicle driven by Defendant White that was illegally parked on the side of Delano Street in Charleston, South Carolina. Defendant White also had a passenger in the backseat that had requested transportation from Defendant Lyft earlier in the day.

9. At the same time, Defendant Jane Doe was also traveling on Delano Street in Charleston, South Carolina.

10. As Defendant White prepared to leave her illegally parked position on the side of Delano Street, suddenly and without warning, the vehicle being driven by Jane Doe left the roadway and side swiped the vehicle in which Plaintiff was a passenger.

11. Upon information and belief, Defendant Doe was distracted and violently collided with Defendant White's vehicle as it was illegally parked on the side of Delano Street.

12. Plaintiff, as a passenger, had no opportunity to avoid the collision.

13. Jane Doe then fled the scene without stopping.

14. As a result of the motor vehicle collision, Plaintiff sustained injuries.

15. As a result of the motor vehicle collision, Plaintiff sought medical treatment for his injuries.

16. As a result of the motor vehicle collision, Plaintiff sustained damages including but not limited to mental anguish, pain, suffering, injuries, medical bills, and property damage.

FOR A FIRST CAUSE OF ACTION
(As to Defendant Jane Doe)
(Negligence - Personal Injury and Negligence Per Se)

17. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

18. Defendant Doe was negligent, negligent per se, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned in the following particulars:

(a) In driving recklessly with wanton and/or willful disregard for the safety of other persons or property in violation of S.C. Code § 56-5-2920;

(b) In failing to obey all applicable traffic laws, in direct violation of S.C. Code § 56-5-730;

(c) In failing to use due care;

(d) In failing to keep her vehicle under proper control;

(e) In failing to keep a proper lookout;

(f) In failing to use the degree of care and caution that a reasonably prudent driver would have used under the circumstances then and there prevailing;

(g) In failing to apply her brakes;

(h) In failing to stop after causing a collision as is required under South Carolina law, S.C. Code § 56-5-1210 and instead fleeing the scene;

(i) In operating a motor vehicle with a reckless disregard for the rights and safety of others; and

(j) In such other and further particulars as the evidence may show.

19. As a result of the collision on December 26, 2021, Plaintiff sustained serious physical injuries.

20. Defendant Doe breached South Carolina statutes §56-5-2920, 56-5-1210, and 56-5-730 regarding reckless driving, fleeing the scene, and failure to keep a proper lookout among

other South Carolina laws and statutes, which are designed to protect citizens, including Plaintiff from injury due to a motor vehicle collision, property damage, and other damages.

21. All of the above acts of negligence, negligence per se, willful, wanton, careless, and reckless conduct are in violation of the statutes, regulations, rules and laws of the State of South Carolina, and are the direct and proximate cause of the injuries and damages suffered by Plaintiff.

22. The injuries and damages suffered by Plaintiff were proximately caused by the negligent, willful, wanton, and grossly negligent conduct of Defendant Doe.

23. All of the above acts of negligence, negligence per se, willful, wanton, careless, and reckless conduct are in violation of the statutes, regulations, rules and laws of the State of South Carolina designed to protect drivers, including but not limited to Plaintiff; and are the direct and proximate cause of the injuries and damages suffered by Plaintiff.

FOR A SECOND CAUSE OF ACTION
(As to Defendant Alicia White)
(Negligence - Personal Injury and Negligence Per Se)

24. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

25. Defendant White was negligent, negligent per se, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned in the following particulars:

(a) In driving and parking recklessly with wanton and/or willful disregard for the safety of other persons or property in violation of S.C. Code § 56-5-2920;

(b) In failing to obey all applicable traffic laws, in direct violation of S.C. Code § 56-5-730;

(c) In failing to use due care while parking her vehicle;

(d) In failing to properly park her vehicle;

(e) In illegally parking her vehicle on the side of a road;

(f) In failing to keep a proper lookout;

(g) In failing to use the degree of care and caution that a reasonably prudent driver would have used under the circumstances then and there prevailing;

(h) In operating a motor vehicle with a reckless disregard for the rights and safety of others; and

(i) In such other and further particulars as the evidence may show.

26. As a result of the collision on December 26, 2021, Plaintiff sustained serious physical injuries.

27. Defendant White breached South Carolina statutes §56-5-2920 and 56-5-730 regarding reckless driving and failure to keep a proper lookout among other South Carolina laws and statutes, which are designed to protect citizens, including Plaintiff from injury due to a motor vehicle collision, property damage, and other damages.

28. All of the above acts of negligence, negligence per se, willful, wanton, careless, and reckless conduct are in violation of the statutes, regulations, rules and laws of the State of South Carolina, and are the direct and proximate cause of the injuries and damages suffered by Plaintiff.

29. The injuries and damages suffered by Plaintiff were proximately caused by the negligent, willful, wanton, and grossly negligent conduct of Defendant White.

30. All of the above acts of negligence, negligence per se, willful, wanton, careless, and reckless conduct are in violation of the statutes, regulations, rules and laws of the State of South Carolina designed to protect drivers, including but not limited to Plaintiff; and are the direct and proximate cause of the injuries and damages suffered by Plaintiff.

FOR A THIRD CAUSE OF ACTION

(As to Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc.)
(Negligence - Personal Injury and Negligence Per Se)

31. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

32. Defendant White was acting within the scope of her employment with Defendant Lyft when she illegally parked her vehicle on the side of the road.

33. Defendant Lyft is liable for the acts and omissions of its employees pursuant to *respondeat superior*.

34. Additionally, Defendant Lyft was negligent, negligent per se, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned in the following particulars:

(a) In causing and allowing its common carrier vehicles to be operated by a reckless, careless, and incompetent driver;

(b) In failing to adequately train and supervise its agents or employees;

(c) In negligently hiring an unqualified agent or employee;

(d) In failing to equip a common carrier motor vehicle owned and maintained by itself with adequate and safe steering mechanisms, or if so equipped, in allowing such motor vehicle to be driven by a reckless and careless driver who failed to properly apply the same;

(e) In failing to equip a common carrier motor vehicle owned and maintained by itself with adequate and safe signaling device, hazard blinking lights, or horn, or if so equipped, in allowing such motor vehicle to be driven by a reckless and careless driver who failed to properly apply the same;

(f) In endangering the lives of the traveling public and more specifically Plaintiff, by placing said common carrier motor vehicle, a dangerous instrumentality, in the care and under the control of a reckless, careless and incompetent driver;

(g) All of which were the direct and proximate cause of the injuries and damages Plaintiff suffered and acts being in violation of the laws of the State of South Carolina; and

(h) In such other and further particulars as the evidence may show.

35. All of the above acts of negligence, negligence per se, willful, wanton, careless, and reckless conduct are in violation of the statutes, regulations, rules and laws of the State of South Carolina, and are the direct and proximate cause of the injuries and damages suffered by Plaintiff.

36. The injuries and damages suffered by Plaintiff were proximately caused by the negligent, willful, wanton, and grossly negligent conduct of Defendant Lyft.

37. All of the above acts of negligence, negligence per se, willful, wanton, careless, and reckless conduct are in violation of the statutes, regulations, rules and laws of the State of South Carolina designed to protect drivers, including but not limited to Plaintiff; and are the direct and proximate cause of the injuries and damages suffered by Plaintiff.

WHEREFORE, Plaintiff demands a jury trial and requests that judgment be entered against the Defendants on all causes of action and that Plaintiff be awarded: (1) actual damages; (2) consequential damages; (3) punitive damages; (4) attorneys' fees and costs; and (5) such other and further relief as the Court and jury deem just and appropriate.

MILLER, DAWSON, SIGAL & WARD, LLC

By: s/ Jeffrey W. Ward, Jr.

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Attorneys for the Plaintiff

December 18, 2024
North Charleston, South Carolina

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2024-CP-10-06252
David White,)) Plaintiff,)) v.)) Lyft, Inc. d/b/a Lyft Drives South Carolina, Inc., Alicia White and Jane Doe,)) Defendant.)	**ANSWER OF STATE FARM FIRE AND CASUALTY COMPANY IN THE NAME OF JANE DOE (Jury Trial Demanded)**

TO THE PLAINTIFF

State Farm Fire and Casualty Company in the name of Jane Doe in an attempt to preserve its rights under law, answers the Complaint as follows:

1. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 1 and therefore denies them.

2. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 2 and therefore denies them.

3. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 3 and therefore denies them.

4. Paragraph 4 is admitted upon information and belief.

5. Defendant lacks sufficient information to form a belief

as to the truthfulness of the allegations in Paragraph 5 and therefore denies them.

6. Paragraph 6 is denied.

7. Paragraph 7 is admitted.

8. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 8 and therefore denies them.

9. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 9 and therefore denies them.

10. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 10 and therefore denies them.

11. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 11 and therefore denies them.

12. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 12 and therefore denies them.

13. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 13 and therefore denies them.

14. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 14 and

therefore denies them.

15. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 15 and therefore denies them.

16. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 16 and therefore denies them.

FOR A FIRST CAUSE OF ACTION
(As to Defendant Jane Doe)
(Negligence - Personal Injury and Negligence Per Se)

17. Defendant denies all prior paragraphs not admitted.

18. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 18 and therefore denies them.

19. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 19 and therefore denies them.

20. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 20 and therefore denies them.

21. Paragraph 21 is denied.

22. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 22 and therefore denies them.

23. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 23 and therefore denies them.

FOR A SECOND CAUSE OF ACTION
(As to Defendant Alicia White)
(Negligence - Personal Injury and Negligence Per Se)

24. Defendant denies all prior paragraphs not admitted.

25. Paragraph 25 is admitted.

26. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 26 and therefore denies them.

27. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 27 and therefore denies them.

28. Defendant admits Co-Defendant's violation of law, but denies Plaintiff's injuries.

29. Defendant admits Co-Defendant's violation of law, but denies Plaintiff's injuries.

30. Defendant admits Co-Defendant's violation of law, but denies Plaintiff's injuries.

FOR A THIRD CAUSE OF ACTION
(As to Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc.)
(Negligence - Personal Injury and Negligence Per Se)

31. Defendant reaffirms, denies, and repeats all prior paragraphs as if fully stated herein, including admissions and denials.

32. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 32 and therefore denies them.

33. Paragraph 33 is admitted.

34. Paragraph 34 is admitted.

35. Paragraph 35 is admitted, except as to Plaintiff's injury claim.

36. Paragraph 36 is admitted, except Defendant denies Plaintiff's injuries.

37. Paragraph 37 is admitted, except Plaintiff's injuries are denied.

38. Defendant denies every allegation not specifically admitted.

WHEREFORE having fully answered the Complaint, the Defendant prays that the same be dismissed, for costs, and for such further relief as the Court and jury deem just and proper.

GRIMBALL & CABANISS, L.L.C.

s/E. Warren Moise

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ATTORNEYS FOR STATE FARM FIRE AND CASUALTY COMPANY IN THE NAME OF JANE DOE

Charleston, South Carolina

January 30, 2025

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON David White, Plaintiff, vs. Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc., Alicia White and Jane Doe, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-06252 **ANSWER OF ALICIA WHITE** **(Jury Trial Demanded)**

To: Jeffrey Ward, Jr., Esq., Attorney for David White

The Defendant, Alicia White, answering the Complaint of the above-named Plaintiff, allege(s) and say(s) as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation in Plaintiff's Complaint which is not herein below specifically admitted, qualified or explained and strict proof is demanded thereof.

2. Paragraph Nos. 1 and 2 of Plaintiff's Complaint do not contain any allegations as to Defendant White. To the extent they contain any allegations as to Defendant White, the same are denied and strict proof is demanded thereof.

3. Paragraph No. 3 of Plaintiff's Complaint is admitted.

4. No response is required to Paragraph Nos. 4 through 7 of Plaintiff's Complaint. To the extent a response is required, the same are denied and strict proof is demanded thereof.

5. In response to Paragraph Nos. 8 through 13 of Plaintiff's Complaint, Defendant White admits that an accident occurred due to the negligence of others over

whom she had no control. The remaining allegations of Paragraph Nos. 8 through 13 of Plaintiff's Complaint are denied and strict proof is demanded thereof.

6. Defendant White lacks sufficient information to form a belief as to the allegations of Paragraph Nos. 14 through 16 of Plaintiff's Complaint and, therefore, denies the same and demands strict proof thereof.

7. Paragraph Nos. 17 and 18 of Plaintiff's Complaint do not contain any allegations as to Defendant White. To the extent they contain any allegations as to Defendant White, the same are denied and strict proof is demanded thereof.

8. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph No. 19 of Plaintiff's Complaint and, therefore, denies the same and demands strict proof thereof.

9. Paragraph Nos. 20 through 23 of Plaintiff's Complaint do not contain any allegations as to Defendant White. To the extent they contain any allegations as to Defendant White, the same are denied and strict proof is demanded thereof.

10. No response is required to Paragraph No. 24 of Plaintiff's Complaint. To the extent a response is required, the same are denied and strict proof is demanded thereof.

11. Defendant White denies Paragraph Nos. 25 through 30 of Plaintiff's Complaint.

12. No response is required to Paragraph No. 31 of Plaintiff's Complaint. To the extent a response is required, the same are denied and strict proof is demanded thereof.

13. Defendant White denies Paragraph No. 32 of Plaintiff's Complaint.

14. Paragraph Nos. 33 through 37 of Plaintiff's Complaint do not contain any allegations as to Defendant White. To the extent they contain any allegations as to Defendant White, the same are denied and strict proof is demanded thereof.

FOR A SECOND DEFENSE
(Sole Negligence of Others)

15. Plaintiff's injuries and damages, if any, were cause by the sole negligence of others over whom Defendant White had no control, thereby barring Plaintiff's claim.

FOR A THIRD DEFENSE
(Set Off)

16. Defendant White alleges that any recover by Plaintiff must be set off or reduced, abated or apportioned to the extent that any other parties' actions caused or contributed to damages, if any, there were.

FOR A FOURTH DEFENSE
(Apportionment)

17. Defendant White seeks an apportionment of damages to the extent that a verdict is rendered against this party.

FOR A FIFTH DEFENSE
(Punitive Damages Unconstitutional)

18. To the extent that Plaintiff seeks punitive or exemplary damages it violates the right to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and, therefore, fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A SIXTH DEFENSE
(Bifurcation of Actual vs. Punitive Damages)

19. To the extent that punitive damages are claimed, this Party reserves its

right to request a bifurcated jury trial and to request the Court limit any award of punitive damages which the jury may make in accordance with the provisions and caps on punitive damages provided by SC Code Ann. §15-32-530 and as further limited by the Constitution of the United States.

FOR A SIXTH DEFENSE
(Reserve Right to Amend)

20. Defendant White reserves the right to amend this Answer to assert additional defenses as may arise during the discovery process.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant White prays for a trial by jury and that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

CLAWSON and STAUBES, LLC

s/David C. Cleveland

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Attorney for Alicia White

Charleston, South Carolina

January 30, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	
DAVID WHITE,	)	C/A No. 2024-CP-10-06252
	)	
Plaintiff,	)	
	)	
Versus	)	**DEFENDANT LYFT, INC, d/b/a LYFT DRIVES SOUTH CAROLINA, INC.'S ANSWER TO THE PLAINTIFF'S COMPLAINT (Jury Trial Requested in the alternative to arbitration)**
	)	
LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE,	)	
	)	
Defendants.	)	

The Defendant Lyft, Inc. d/b/a Lyft Drives South Carolina, Inc. (hereinafter "this Defendant" and/or "Lyft"), by and through its undersigned attorneys hereby answers the allegations contained in the Plaintiff's Complaint subject to all affirmative defenses and motions as follows:

1. Each and every allegation not specifically admitted herein is denied.

AS TO JURISDICTION AND VENUE

2. The allegations contained in Paragraph 1 of the Plaintiff's Complaint are not directed toward this Defendant and therefore no response is required. To the extent a response is deemed necessary, this Defendant lacks specific information upon which to form a belief as to the allegations contained in Paragraph 1 of the Plaintiff's Complaint and therefore denies the same.

3. This Defendant admits the allegations contained in Paragraph 2 of the Plaintiff's Complaint.

4. Paragraphs 3 and 4 of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required. To the extent a response is needed, this Defendant

lacks specific information upon which to form a belief as to the allegations contained in Paragraphs 3 and 4 of the Plaintiff's Complaint and therefore denies the same.

5. The allegations in Paragraphs 5, 6, and 7 of the Plaintiff's Complaint state conclusions of law to which no response is required. If such a response is required, said allegations are denied.

AS TO FACTS

6. The allegations in Paragraph 8 of the Plaintiff's Complaint state conclusions of law to which no response is required. If such a response is required, this Defendant admits, upon information and belief, that Plaintiff was seated in the vehicle driven by Alicia White. This Defendant further admits, upon information and belief, that a passenger was seated in the backseat of Alicia White's vehicle. This Defendant specifically denies that it hired employed or controlled Alicia White. Rather, at the time of the subject accident, Alicia White used the Lyft application, website, and technology (collectively the "Lyft Platform") to connect with the backseated passenger, another Lyft Platform user, who was looking for a ride pursuant to Lyft's Terms of Service. This Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 8 of the Plaintiff's Complaint and therefore denies the same.

7. This Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Plaintiff's Complaint and therefore denies the same.

8. The allegations in Paragraphs 10 and 11 of the Plaintiff's Complaint state conclusions of law to which no response is required. If such a response is required, this Defendant

is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 and 11 of the Plaintiff's Complaint and therefore denies the same.

9. This Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, 13, 14, 15 and 16 of the Plaintiff's Complaint and therefore denies the same

AS TO THE FIRST CAUSE OF ACTION
(As to Defendant Doe)
(Negligence – Personal Injury and Negligence Per Se)

10. In response to the allegations contained in Paragraph 17 of the Plaintiff's Complaint, this Defendant restates and incorporates all of its responses above.

11. The allegations contained in Paragraphs 18 (including subparts a, b, c, d, e, f, g, h, i, and j), 19, 20, 21, 22, and 23 of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraphs 18 (including subparts a, b, c, d, e, f, g, h, i, and j), 19, 20, 21, 22, and 23 of the Plaintiff's Complaint.

AS TO THE SECOND CAUSE OF ACTION
(As to Defendant Alicia White)
(Negligence – Personal Injury and Negligence Per Se)

12. In response to the allegations contained in Paragraph 24 of the Plaintiff's Complaint, this Defendant restates and incorporates all of its responses above.

13. The allegations contained in Paragraphs 25 (including subparts a, b, c, d, e, f, g, h, and i), 26, 27, 28, 29, and 30 of the Plaintiff's Complaint are not directed towards this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies the allegations contained in Paragraphs 25 (including subparts a, b, c, d, e, f, g, h, and i), 26, 27, 28, 29, and 30 of the Plaintiff's Complaint.

AS TO THE THIRD CAUSE OF ACTION
(As to Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc.)
(Negligence – Personal Injury and Negligence Per Se)

14. In response to the allegations contained in Paragraph 31 of the Plaintiff's Complaint, this Defendant restates and incorporates all of its responses above.

15. This Defendant denies the allegations contained in Paragraphs 32, 33, 34 (including subparts a, b, c, d, e, f, g, and h), 35, 36, and 37 of the Plaintiff's Complaint. Further answering, this Defendant did not hire, control or employ Alicia White. At the time of the incident, Alicia White was an independent contractor who used the Lyft platform to connect with other platform users looking for a ride pursuant to Lyft's Terms of Service. This Defendant did not own, control, maintain, manage, repair or entrust the vehicle involved in the incident in issue.

16. This Defendant denies the Plaintiff's WHEREFORE Paragraph, being all such remaining allegations contained in the Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(No Proximate Cause)

17. That, even if this Defendant were negligent, as alleged in the Complaint, which is specifically denied, the negligence of this Defendant is not the direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(No Breach)

18. The allegations complained of in the Plaintiff's Complaint, which are denied, do not constitute a breach and therefore any recovery against this Defendant for such a cause of action is barred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Sole, Superseding, and Intervening Negligence)

19. That whatever damages, if any, which may have been sustained by the Plaintiff in this action were the result of, were due solely to, caused solely by, and were the direct and proximate result of the intervening, superseding, and unforeseeable negligence of others, over whom this Defendant had no control. Consequently, the Plaintiff is barred from recovery against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Lack of Foreseeability)

20. That upon information and belief, even if the damages alleged in Plaintiff's Complaint, if any, were proximately caused by the acts and/or omissions of this Defendant, which is otherwise denied except for the purpose of these affirmative defenses, this Defendant did not and could not have foreseen that Plaintiff's damages, if any, could have proximately resulted from this Defendant's alleged acts or omissions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Limitation of Punitive Damages)

21. This Defendant pleads all applicable statutory caps on punitive damages, including but not limited to, the caps described in S.C. Code Ann. §15-32-530, *et seq*., as amended.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Punitive Damages Unconstitutional)

22. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate this Defendant's Constitutional rights under the Fifth, Sixth and Fourteenth

Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Compliance with Laws, Codes and Regulations)

23. That the Plaintiff's claims are barred, in whole or in part, by virtue of the fact that this Defendant at all times relevant hereto complied with all applicable laws, codes and regulations.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Reasonableness and Good Faith)

24. This Defendant alleges that it acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by it at the time it so acted. Accordingly, Plaintiff is not entitled to recovery any damages whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Arbitration Agreement)

25. At the time of the occurrence alleged in the Complaint, Plaintiff was bound by the Lyft Terms of Service, which mandate that any claims between Plaintiff and Lyft be submitted to arbitration. Pursuant to the Federal Arbitration Act, Plaintiff is required to arbitrate the claims against Lyft.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Terms of Service)

26. Defendant invokes and reserves the right to assert any and all rights and defenses as provided in Lyft's Terms of Service, to which Plaintiff is bound.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

27. These Defendants reserve any additional and affirmative defenses as may be revealed or become available to it during the course of its investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Complaint, and having asserted these affirmative defenses, the Defendant, Lyft, Inc. d/b/a Lyft Drives South Carolina, Inc. prays that the Plaintiff's Complaint be dismissed with prejudice and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

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/s/ Evan M. Sobocinski
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Attorneys for the Defendant
Lyft, Inc. d/b/a Lyft Drives South Carolina, Inc.

February 20, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO.: 2024-CP-10-06252
COUNTY OF CHARLESTON	)	
	)	
David White,	)	
Plaintiff,	)	**ANSWER OF UNIVERSAL INSURANCE COMPANY IN THE NAME OF JANE DOE**
	)	
vs.	)	
	)	**(Jury Trial Requested)**
Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc., Alicia White and Jane Doe,	)	
	)	
Defendant.	)	
_____	)	

Universal Insurance Company, an alleged uninsured motorist carrier, pursuant to §38-77-150 of the *South Carolina Code of Laws* hereby makes an appearance in this action and answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. An Answer in the name of John Doe has already been filed in this matter (January 30, 2025) and Universal Insurance Company incorporates by reference the Answer, responses and affirmative defenses contained therein. To the extent necessary, Universal denies the material allegations contained in the Complaint as directed towards Jane Doe and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Complaint concerning the nature and extent of the injuries and/or damages claimed.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed, with cost, as for such further relief as may be just and proper.

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P.A.

By: **s/James M. Saleeby, Jr.**

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Florence, South Carolina
4/1/2025

ATTORNEYS FOR UNIVERSAL INSURANCE COMPANY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON) 2024-CP-10-6252

DAVID WHITE,)
)
Plaintiff,) **Transcript of Record**
)
vs.)
) July 31, 2025
LYFT INC,)
)
Defendants.)

B E F O R E:

Honorable Jennifer B. McCoy
Charleston County Courthouse
Charleston, South Carolina

TRANSCRIBED BY:
Sandra Allen

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A P P E A R A N C E S:

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Attorney for Defendant

I N D E X

E X H I B I T S

No.	ID	EV
NONE		

JUDGE: Alright. You'll can all state your names for the record and who you represent. Start on this side of the room.

MR. WARD: Jeffrey Ward and Amy McClaren for the Plaintiff, David White.

JUDGE: Alright.

MS. EIBLING: Good morning, Your Honor. Sarah Eibling on behalf of Lyft Incorporated.

JUDGE: Okay.

MR. CLEVELAND: Good morning, I'm David Cleveland on behalf of the Defendant's White.

JUDGE: Alright. Well, Ms. Eibling, let's see you filed a Motion to Compel Arbitration Stay Proceedings, is that correct?

MS. EIBLING: That's correct. Yes, Your Honor.

JUDGE: Happy to hear from you.

MS. EIBLING: Thank you, Your Honor. This case involves an accident involving David White, who is a passenger in a vehicle being driven by Defendant Alicia White. Who was providing services under the Lyft Platform. And the purpose to our motion, Your Honor.

JUDGE: Are they related? No relation?

MS. EIBLING: They are related. Yes, Your Honor. Although that's not in the record.

JUDGE: He was providing her a ride?

MS. EIBLING: No. Ms. White was providing services under

the Lyft Platform. Mr. White simply happened to be a passenger in her vehicle when she picked up a Lyft passenger.

JUDGE: And they're related?

MS. EIBLING: Well, that's an interesting twist on things.

MS. EIBLING: It is, Your Honor.

JUDGE: Well, go ahead.

MS. EIBLING: But the purpose of our Motion to Compel Arbitration is that David White was a Lyft App user and on two separate occasions on October 31st of 2020 and on February 7th of 2021, Mr. White had utilized the Lyft Platform, had downloaded the terms of service and had agreed on two separate occasions to be very conspicuous clear arbitration agreement contained with the Lyft App. So, we are here today invoking the provisions of section 17 of our terms of service to compel the case that is now before the court, as it pertains only to Lyft, to arbitration and to stay the proceedings in the Circuit Court as to Lyft. Allowing the case to proceed with the driver, Alicia White. Now, Your Honor, what's clear before you is there is no dispute in the record that Mr. White did, in fact, accept the terms of service. So, contract formation is not an issue for the court today. Now, the FAA very clearly says the court's gateway function in determining whether or not a particular case should go to arbitration is first, to be determined, if there is a valid contract.

Second, to determine scope. Now, what's important about the scope argument for this case, Your Honor, is that our arbitration agreement contains a clear and unmistakable delegation clause. And that delegation clause indicates that all issues about scope, enforceability, arbitrability, and validity are delegated solely to the arbitrator. While we take the contention that Mr. White's claims as to Lyft fall within the arbitration agreement, even if the court were to have some concern about scope, that has been clearly delegated to the arbitrator. The Plaintiff has not contested the delegation clause. So, as the record is before the court, we have uncontested formation and uncontested delegation clause indicating that this matter should properly proceed before the arbitrator. One thing that needs to be clear, Your Honor, the arguments that you are going to hear from counsel today are not waived simply because we've asked this request of the court. He is free to make all the arguments he's going to make before Your Honor, to the arbitrator. We're simply asking that our valid arbitration agreement be withheld and that these issues that have been delegated to the arbitrator go to the arbitrator.

JUDGE: Okay. Alright. Happy to hear from you.

MR. WARD: Good morning, Your Honor. The majority of what opposing counsel has said, we don't disagree with. But one thing we do I want to make sure is very clear is the

positions of the Plaintiff, Defendant, and Defendant Lyft, and the Defendant driver when this wreck occurred. Because it's not an issue of whether the arbitration agreement applies. The threshold issue that this court does have jurisdiction over and does need to decide is if the contract in general applies to this case. And because one thing I want to point out in their Motion to Compel, I believe it was exhibit either 5 or E. The very first paragraph of that terms of service read these terms of service constitute a legal binding agreement -- legal binding agreement between you and Lyft, Inc. Its parents, subsidiaries, representatives, affiliates, officers, and directors governing your use of the Lyft Application, Website, and Technology Platform. And that's where we take issue, and I'm having trouble understanding, and I've relayed this to opposing counsel. He wasn't using the Lyft Platform, he wasn't driving for Lyft, he wasn't a passenger using Lyft services to get from point A to point B. He was just simply a ride-along passenger of -- it is his wife, Defendant White, was his wife at the time. They were out; they hadn't decided that morning that they were going to go out together, and she was going to drive for Lyft. It's when they were out that day she decided to flip on the Lyft App and pick up a ride -- driver -- or a passenger to make some money during that time. He was not a party to any of that. And I agree he did consent to the terms of service.

That is not in dispute.

JUDGE: So, he wasn't -- he was just riding with her while she was picking up passengers?

MR. WARD: Yes, Your Honor. And the terms of service are silent ---

JUDGE: I mean, do you see how it's kind of counterintuitive, then why are you suing the Lyft?

MR. WARD: Well, the driver ---

JUDGE: You've got to kind of pick one position or the other. I mean, you're either going to say yeah, Lyft's liable and so therefore, the terms are going to apply, or I mean, you can't have it both ways.

MR. WARD: Well, Defendant White was driving on behalf of Lyft. And then directed claims brought against Lyft were due to her negligence in this tort action. But it's in -- hypothetical to think about would be if I left, or if you left this courtroom today, driving home, and were hit by a Lyft driver. An order following their logic would allow them to compel arbitration against you when you are in your own car, because you agreed to the Lyft terms of service Friday night when you caught a ride home. Because there is no contract in play at the time of that -- in our hypothetical and there's no contract in play at that time of our wreck because he wasn't working for Lyft, he wasn't using the Lyft Platform, and the whole basis of the terms of the service say arising out of the

use of the platform, the use of the services, and then that's only the time this agreement even applies.

JUDGE: Well, honestly, and I mean, I understand. You've made clear of what you are telling me. I appreciate the hypothetical. This is exactly why this clause is in place, and you might end up right back here in Circuit Court after this arbitrator is going to go through this thing line by line and makes a decision. But I think that they have the right just to at least have that decided by the arbitrator.

MR. WARD: I completely agree with you. The arbitration clause does -- the arbitrator does have the -- the authority to decide this dispute arises under the arbitration clause.

JUDGE: Right. Right.

MR. WARD: But the arbitration clause falls under the contract when the contracts not ---

JUDGE: Yeah. I get it.

MR. WARD: --- in play.

JUDGE: I see what you're saying.

MR. WARD: We just want to make sure the court understands.

JUDGE: I do.

MR. WARD: The contract just isn't applicable here. If the contracts not applicable, then we don't even get to the arbitration.

JUDGE: So, he's not paying for a ride, but he's her

husband?

MR. WARD: He's her husband. He was a ride-along passenger. She decided in the heat of the moment to turn on the Lyft App, pick up a rider, he had no consent, he had no say, he had no decision in that. She chose to do that. He was just a passenger sitting in the front seat. The terms of a ride-along passenger -- there's no terms -- or the contracts silent on a ride-along passenger. There's nothing Lyft says that either says you can or can't do in that situation. Or what rights you have as a ride-along passenger. I know what's going to happen down the road, now an order saying that arbitration applies here when there's no contractual relationship at the time is going to expand to the hypothetical I have. And they are going to say, look, it has already been decided. Here's an order saying, even if you are not a rider for Lyft, or a driver for Lyft, our terms of service apply because you, at any point in the past, have agreed to these terms of service.

JUDGE: It's a weird set of facts we have here. It's definitely ---

MR. WARD: It is, but they're important, I agree, Your Honor. It's important to make this distinction that if the terms of service apply, it only needs to apply if you are a driver or if you are using the Lyft Platform as a passenger. Neither of those apply to Plaintiff White here, and we don't

want a situation down the road where this now gets expanded to include other drivers who -- you know, a third car in a wreck like the hypothetical I gave because I have used Lyft. I consented to those terms of service, and I worry that I'm not going to be forced into arbitration with a Lyft driver and bring a lawsuit against Lyft. Even though at the time I wasn't using Lyft for a ride.

JUDGE: Yeah. I hear you.

MR. WARD: Thank you, Your Honor.

JUDGE: Sure. Anything else?

MS. EIBLING: If I may just briefly, Your Honor?

JUDGE: Yeah.

MS. EIBLING: The record before the court, the evidence before the court is uncontested. All of the things that Mr. Ward has said for legal arguments they're not evidenced properly before the court. None of the things that he has articulated are actually in front of Your Honor, through any affidavit, through any testimony, through any record. So, the uncontested evidence for the court's consideration is what Lyft provided by affidavit by Paul McCachurn and any of the information that was attached to Lyft's Motion to Compel Arbitration. The Plaintiff has proffered no evidence. So, in rendering a decision, the evidence that the court is inclined to look at is limited to the evidence that's properly before it and not the legal argument. And we've cited several cases

in our reply that indicate legal argument by counsel not evidenced to be considered under this stage. But I also want to point the court's attention -- I'm sorry it's very lengthy, but we've attached both terms of service to our original motion. And those terms of service very clearly say that all claims, any disputes, between you, the Lyft Applicant, and Lyft are to be resolved in binding arbitration. And that includes any information ---

JUDGE: Whether you're using it or not.

MS. EIBLING: Correct, Your Honor. And that's where the scope ---

JUDGE: I mean, that's pretty broad.

MS. EIBLING: That's where the scope argument for the delegation goes to the arbitrator. Again, all of the arguments Mr. Ward is making are things he can proffer with proper evidence to the arbitrator. But the court doesn't have that evidence ---

JUDGE: I mean, this has probably come up. So, where are the courts on this issue?

MS. EIBLING: So, we've had a lot of courts that have ruled in favorably for Lyft regarding third-party beneficiaries. Folks who did not utilize the Lyft App but were ride-along passengers. And those courts have found favorably in upholding Lyft's ---

JUDGE: Well, there are other courts that have found the

other way, too?

MS. EIBLING: We have not had any that have found the other way yet, Your Honor.

JUDGE: So, if I -- so this guy is bound to arbitration simply at this point by virtually that he had the Lyft App on his phone. Do you agree with that?

MS. EIBLING: And he was participating in a Lyft ride.

JUDGE: Okay. So, let's say, for just hypothetical sake, since this is -- let's say he was in another car at the time of the accident.

MS. EIBLING: Lyft is not taking that position with regards to passengers in other vehicles. But in this instance, he was in a vehicle that was providing Lyft ride shared services. And that is analogous to you and your friend are out to the -- our somewhere and you need a Lyft ride, she uses her Lyft App to call for a ride, and you're the passenger. So, courts have routinely upheld Lyft's Motion to Compel Arbitration under those circumstances, specifically holding that the delegation of scope is compelled to the arbitrator, is a decision for the arbitrator to make. Again, you're not making a finding that he's correct or that our terms of service actually apply. So, I -- you know the scare tactic that this is going to be, you know, utilized improperly, it still gives him the argument to make, and like you said, Your Honor, we might be right back in front of you

in 6 months' time. But the delegation of the scope, whether his use under these circumstances falls under the arbitration agreement, have been delegated to the arbitrator. We're not asking for any large extension of that to pedestrians, passengers, -- bystanders. He was in a vehicle that was providing Lyft services. Had agreed to the terms of service twice, and we believe that he's been compelled to utilize the arbitration agreement that he agreed to.

JUDGE: So, again, if he had never downloaded the Lyft App, where would you be with this?

MS. EIBLING: Then, we wouldn't have any argument that he's been compelled to arbitration. But he has agreed -- contract has been formed between him and Lyft regarding his services.

JUDGE: Okay. Anything else, sir?

MR. WARD: Yes, Your Honor. May I briefly reply? A couple of things to point out. There is evidence in the record -- our complaint specifically defines Plaintiff White's role in the vehicle during this wreck. And the terms of services presented as an exhibit by defense counsel in their Motion to Compel, also lay out those terms and show when the contract actually applies. Not the arbitration clause but the actual contract. And the cases she references that have -- show that courts have ruled favorably for Lyft, in a third-party situation, a ride-along situation, that was a passenger

whose friend or companion had called or ordered a Lyft.

JUDGE: Sure.

MR. WARD: None of those cases that were cited, and there's only a single South Carolina case that I saw, they are all factually distinctive to this one because none of those provided or considered a ride-along passenger of a driver, and that's different. That's what we have here, it's different than any case that was presented by opposing counsel that courts have ruled favorably for Lyft. And it's important because I do think this will be extracatalytic. Of course, Lyft is going to use this in the future and say Oh, you weren't using the Lyft Platform, Oh, you weren't driving for Lyft, or you weren't a passenger of someone who had called a Lyft. You still have to go to arbitration. Look at this court order. Because we've already -- this has already been settled in Charleston, or this has already been settled in South Carolina. So the slippery slope that we see from that is one we want to avoid here and make sure that this court understands that contract is applicable to Mr. White. The contract does have an arbitration clause. But the applicability to this specific instance just isn't here. Because he wasn't using Lyft for a ride, he wasn't using Lyft as a driver, and all the terms he agreed to only fall under that scope. And that scope of the contract is not the scope of the arbitration clause. And this court does have

jurisdiction to decide if the contract is even applicable here. And for those reasons, we ask that you deny this motion.

JUDGE: Very interesting. I'll tell you the amount of Uber and Lyft cases that we see, I mean, they are keeping you'll busy.

MR. WARD: Yes, Your Honor, they are.

JUDGE: Good clients to have. Well, that's interesting I'll take a look at your Memos again. Look at the ordinance and issue a ruling as soon as possible. If I need a formal order, I'll let you know, okay?

MR. WARD: Thank you, Your Honor.

JUDGE: You'll take care. Good to see everybody.

CERTIFICATE OF TRANSCRIBER

I, **SANDRA ALLEN**, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidenced introduced in the trial of the captioned case, relative to appeal, in the **Circuit Court of Charleston County, South Carolina, on the 31st day of July, 2025.**

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 26, 2025

Sandra Allen

Sandra Allen, Transcriber

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL DISTRICT
David White, *Plaintiff*, Versus Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc., Alicia White and Jane Doe, *Defendants*.	)))))))))	C/A No. 2024-CP-10-06252 **DEFENDANT LYFT, INC., D/B/A LYFT DRIVES SOUTH CAROLINA, INC.'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

TO: JEFFREY W. WARD, JR., ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc. (hereinafter "this Defendant" or "Lyft"), respectfully moves this Court for an Order compelling the Plaintiff to arbitrate the claims alleged in the instant lawsuit and dismissing the case, or in the alternative, staying the case pending arbitration against these Defendants. This Motion is brought pursuant to pursuant to Rules 12(b)(1), 12(b)(3), and 12(b)(6) of the South Caroline Rules of Civil Procedure and the Federal Arbitration Act ("FAA"), 9 U.S.C. §1, *et seq.*

I. INTRODUCTION

On October 31, 2020, David White ("Plaintiff") created a Lyft user account and affirmatively agreed to Lyft's Terms of Service ("Terms" or "TOS"). Plaintiff again agreed to Lyft's TOS on February 7, 2021. The TOS to which Plaintiff consented included a prominent mutual arbitration provision. The Terms provided that "ALL DISPUTES AND CLAIMS" between Plaintiff and Lyft "SHALL BE EXCLUSIVELY RESOLVED BY BINDING ARBITRATION," that arise out of or relate to the "Lyft Platform," "Rideshare Services," and "all other federal and state statutory and common law claims." *See Declaration of Paul McCachern,* attached as **Exhibit ("Ex.") A, at Exs. A-3, A-5**. The Arbitration Agreement also

included an express delegation clause providing that any threshold 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." *Id.*

On December 26, 2021, Plaintiff was a passenger in a vehicle operated by Defendant Alicia White ("Ms. White" or "Defendant White"), while Ms. White was on the Lyft Platform. *See* Compl. at ¶ 8. In addition to suing Ms. White for negligence, recklessness and gross negligence, Plaintiff brings derivative claims against Lyft for vicarious liability and negligent hiring, training, retention, and supervision, all premised upon Ms. White's alleged negligent operation of her vehicle while on the Lyft platform. *See* Compl. at ¶¶ 31-37.[1]

Plaintiff's claims against Lyft belong in arbitration. As now-Supreme Court Justice Ketanji Brown Jackson observed, it is also "well established that Lyft's method of obtaining [] assent to its Terms of Service [by] presenting the terms of the agreement and requiring users to click 'I Agree' before they can access the service" is binding and sufficient to enforce Lyft's contractual arbitration clause. *Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 11 (D.D.C. 2021) (Jackson, J.) (citations omitted); *see also, e.g.*, *Gambo v. Lyft, Inc.* (D.D.C. Nov. 16, 2022) 642 F.Supp.3d 46, 56 (D.D.C. 2022) (same). Indeed, another State's highest Court endorsed Lyft's process for obtaining assent to its Terms of Service as a ***model*** for the "clearest manifestations of assent." *Kauders v. Uber Tech., Inc.*, 486 Mass. 557, 574 (Mass. 2021) (citing *Wickberg v. Lyft*, 356 F. Supp. 3d 179, 181 (D. Mass. 2018)). Courts around the country that have consistently enforced Lyft's TOS in analogous personal injury cases and granted Lyft's motions to compel arbitration in over 150 cases in the last four years.[2]

[1] Lyft contests the merits of the claims against it, but resolution of those claims is for the arbitrator, not this Court.

[2] *See, e.g.*, *Domonique Amonoo, et al. v. Lyft, Inc., et al.,* No. ESX-L-3955-23 (Superior Ct. Essex Cnty., NJ, January 24, 2025); *Jefferson Burgett v. Lyft, Inc., et al.,* No. STK-CV-UAT-2024-0003912 (Superior Ct. San Joaquin Cnty.,

CA, January 23, 2025); *Lennox Wynter v. Lyft, Inc., et al.*, No. ESX-L-939-24 (Superior Ct. Essex Cnty., NJ, January 22, 2025); *Victor Manuel Suarez Escobar v. Lyft, Inc., et al.*, No. 24CU001827C (Superior Ct. San Diego Cnty., CA, January 16, 2025); *Tatiyanna Warren v. Lyft, Inc., et al.*, No. 2024CV04098 (State Ct. Clayton County, GA, January 13, 2025); *Davion Woods v. Lyft, Inc., et. al.*, No. 24AVCV00835 (Superior Ct. Los Angeles Cnty., CA, January 13, 2025); *Jahneilla Atkinson v. Lyft, Inc., et al.*, No. HHDCV246192991S (Superior Ct. Hartford Cnty., CT, January 8, 2025); *Shakira Reyes v. Lyft, Inc. et al.*, No. HUD-L-3716-24 (Superior Ct. Hudson Cnty., NJ, January 3, 2025); *Veleka Watkins v. Lyft, Inc., et al.*, No. 804860/2024 (Supreme Ct. Erie Cnty., NY, December 19, 2024); *Tammy Annette Gillispie v. Lyft, Inc., et. al.*, No. 24VECV04017 (Superior Ct. Los Angeles Cnty., CA, December 18, 2024); *Erika Cleaves v. Lyft, Inc., et al.*, No. 37-2024-00026460-CU-PA-CTL (Superior Ct. San Diego Cnty., CA, December 13, 2024); *Joshua Lee Barrera v. Lyft, Inc., et al.*, No. C-4913-22L (464th Judicial District Ct. Hidalgo Cnty., TX, December 12, 2024); *Ladena Presley v. Lyft, Inc., et al.*, No. CV 2024-021983 (Superior Ct. Maricopa Cnty., AZ, December 12, 2024); *Saul Garcia v. Lyft, Inc., et. al.*, No. 24STCV07334 (Superior Ct. Los Angeles Cnty., CA, December 10, 2024); *Tiffany Maciel v. Lyft, Inc., et al.*, No. CGC-24-616129 (Superior Ct. San Francisco Cnty., CA, December 9, 2024); *Kevin Milmoe v. Lyft, Inc., et al.*, No. 37-2024-00009087-CU-PA-CTL (Superior Ct. San Diego Cnty., CA, December 5, 2024); *Timothy Pinney v. Lyft, Inc. et al.*, No. 24CV059274 (Superior Ct. Alameda Cnty., CA, December 3, 2024); *Yarasey Guadalupe Rodriguez-Ramos v. Lyft, Inc., et. al.*, No. S-CV-0052553 (Superior Ct. Placer Cnty., CA, December 3, 2024); *Gloria Johnston v. Lygaft, Inc., et al.*, 24-2-05783-8 SEA (Superior Ct. King Cnty., WA, December 2, 2024); *Isireli Laveti, et al. v. Lyft, Inc., et al.*, 24-2-07586-1 SEA (Superior Ct. King Cnty., WA, December 2, 2024); *Sujie Ye v. Lyft, Inc., et al.*, No. 727318/2022 (Supreme Ct. Queens Cnty., NY, November 29, 2024); *Doris Lewis v. Lyft, Inc., et al.*, No. 2023-CP-10-03260 (Ct. Com. Pl. Charleston Cnty., SC, November 26, 2024); *Blanca Flor Frutos Avalos v. Lyft, Inc., et. al.*, No. 24STCV20299 (Superior Ct. Los Angeles Cnty., CA, November 18, 2024); *Rashamid Mateen, et al. v. Lyft, Inc., et. al.*, No. 23TRCV03390 (Superior Ct. Los Angeles Cnty., CA, November 13, 2024); *Moses Masita. v. Lyft, Inc., et al.*, MID-L-003391-24 (Superior Ct. Middlesex Cnty., NJ, November 8, 2024); *Azimjon Saksanov v. Lyft, Inc., et al.*, No. CIVSB2216531 (Superior Ct. San Bernadino Cnty., CA, November 5, 2024); *Shalyn Lewis v. Lyft, Inc., et al.*, No. 2024-CAB-000612 (Superior Ct. District of Columbia, November 4, 2024); *Kenneth Riddick v. Lyft, Inc., et al.*, No. 813489/2023E (Supreme Ct. Bronx Cnty., NY, November 1, 2024); *Leonabel Harvey v. Lyft, Inc., et al.*, No. 526488/2023 (Supreme Ct. Kings Cnty., NY, October 31, 2024); *Jessica Chavez v. Lyft, Inc., et al.*, No. CIVSB2402840 (Superior Ct. San Bernadino Cnty., CA, October 29, 2024); *Marguerita Repola v. Lyft, Inc., et. al.*, No. 21STCV45366 (Superior Ct. Los Angeles Cnty., CA, October 24, 2024); *Michelle Christine Hanlon v. Lyft, Inc., et. al.*, No. 24PSCV01592 (Superior Ct. Los Angeles Cnty., CA, October 22, 2024); *Sheila Banks, et al. v. Lyft, Inc., et al.*, No. ESX-L-1979-23 (Superior Ct. Essex Cnty., NJ, September 27, 2024); *Sethi Pradhdeep v. Lyft, Inc., et al.*, No. CIVSB2414307 (Superior Ct. San Bernadino Cnty., CA, September 23, 2024); *Ana Vallecillo v. Lyft, Inc., et al.*, No. 512328/2023 (Supreme Ct. Kings Cnty., NY, September 23, 2024); *Katrina Williams v. Lyft, Inc., et al.*, No. 24-C-05189-S3 (State Ct. Gwinett County, GA, September 18, 2024); *Tiffany Solomon v. Lyft, Inc., et al.*, No. 513449/2023 (Supreme Ct. Kings Cnty., NY, September 16, 2024); *Daniel Odebode v. Lyft, Inc., et al.*, No. 2024-007896-CA-01 (11th Judicial Circuit Ct. Miami-Dade Cnty., FL, September 13, 2024); *April Lundy v. Lyft, Inc., et al.*, No. D-05-CV-24-025171 (Dis. Ct. Prince George's Cnty., MD, September 10, 2024); *Jason L. Jeffries v. Lyft, Inc., et al.*, No. BUR-L-49-24 (Superior Ct. Burlington Cnty., NJ, August 16, 2024); *Shirley Cartagena v. Lyft, Inc., et al.*, No. FBTCV246133319S (Superior Ct. Bridgeport Cnty., CT, August 13, 2024); *Enkhtuya Jamiyansuren, et al. v. Lyft, Inc. et al.*, No. 23CV056008 (Superior Ct. Alameda Cnty., CA, August 5, 2024); *Jesus De Guzman v. Lyft, Inc. et al.*, No. 24CV069253 (Superior Ct. Alameda Cnty., CA, August 2, 2024); *Cheyenne Rose v. Lyft, Inc., et al.*, No. 537901/2022 (Supreme Ct. Kings Cnty., NY, August 1, 2024); *Raul M. Passeggi, et al. v. Lyft, Inc., et al.*, No. UNN-L-306-24 (Superior Ct. Union Cnty., NJ, July 19, 2024); *Franklin Berroa v. Lyft, Inc., et al.*, No. 520939/2023, 2024 WL 3490753, at (Supreme Ct. Kings Cnty., NY, July 19, 2024); *Dara Sue Crippen v. Lyft, Inc., et. al.*, No. 24STCV04497 (Superior Ct. Los Angeles Cnty., CA, July 18, 2024); *Mycah Bacchus, et al. v. Lyft, Inc., et. al.*, No. 24STCV05452 (Superior Ct. Los Angeles Cnty., CA, July 17, 2024); *Natasha Giliberti v. Lyft, Inc., et al.*, No. 153717/2023 (Supreme Ct. New York Cnty., NY, July 11, 2024); *Latisha Boone v. Lyft, Inc., et al.*, No. 23-012502-NI (Cir. Ct. Wayne Cnty.., MI, June 14, 2024); *Vincent Rosa v. Lyft, Inc., et al.*, No. 719318/2022 (Supreme Ct. Queens Cnty., NY, June 7, 2024); *Vincent Hunt-Sosa v. Lyft, Inc., et al.*, No. ESX-L-6015-23 (Superior Ct. Essex Cnty., NJ, June 7, 2024); *Yamil Pena v. Lyft, Inc., et. al.*, No. 22STCV26230 (Superior Ct. Los Angeles Cnty., CA, June 4, 2024); *Kadidiatou Doukoure v. Lyft, Inc., et al.*, No. C-16-CV-23-003910 (Cir. Ct. Prince George's Cnty., MD, May 29, 2024); *Timothy Williams v. Yordano Duverger, and Lyft, Inc.*, No. 4:22-cv-3394 (S.D. Tex. May 28, 2024), ECF No. 41; *Marlon Temple. v. Lyft, Inc., et al.*, No. ESX-L-3879-23 (Superior Ct. Essex Cnty., NJ, May 24, 2024); *Jesus Vera v. Lyft, Inc., et. al.*, No. 22STCV28051 (Superior Ct. Los Angeles Cnty., CA, May 23, 2024);

Johnna Lisa Ferguson v. Lyft, Inc., et. al., No. 23TRCV02834 (Superior Ct. Los Angeles Cnty., CA, May 22, 2024); *Michaya Collins v. Lyft, Inc., et al.,* No. 2024CV30104 (Dis. Ct. Arapahoe Cnty., CO, May 13, 2024); *Vanessa Roldan v. Lyft, Inc., et al.,* No. 503073/2023 (Supreme Ct. Kings Cnty., NY, May 10, 2024); *Joshua Gale. v. Lyft, Inc., et al.,* No. OCN-L-2144-23 (Superior Ct. Ocean Cnty., NJ, May 10, 2024); *Jamari Rouse v. Lyft, Inc., et al.,* No. CACE-23-008910 (17th Judicial Circuit Ct. Broward Cnty., FL, May 8, 2024); *Aisha K. Goodridge v. Lyft, Inc., et al.,* No. 525347/2023 (Supreme Ct. Kings Cnty., NY, May 7, 2024); *Elliot Kreitenberg, et al. v. Lyft, Inc., et. al.,* No. 23CV04345 (Superior Ct. Santa Barbara Cnty., CA, April 26, 2024); *Anthony Walker v. Lyft, Inc., et. al.,* No. 23STCV28951 (Superior Ct. Los Angeles Cnty., CA, April 15, 2024); *Roley White, et al. v. Lyft, Inc., et al.,* No. ESX-L-6517-23 (Superior Ct. Essex Cnty., NJ, April 12, 2024); *Na'eem Walton v. Lyft, Inc., et. al.,* No. 23GDCV01941 (Superior Ct. Los Angeles Cnty., CA, April 12, 2024); *Pedro Joel Ducas v. Lyft, Inc., et al.,* No. 2023-010816-CA-01 (11th Judicial Circuit Ct. Miami-Dade Cnty., FL, April 9, 2024); *Katrina Green v. Lyft, Inc., et al.,* No. 804604/2023E (Supreme Ct. Bronx Cnty., NY, April 9, 2024); *Jennifer Bautista v. Lyft, Inc., et al.,* No. CGC-23-609275 (Superior Ct. San Francisco Cnty., CA, April 8, 2024); *Lesly Lopez-Ortiz v. Lyft, Inc., et al.,* No. 2023-008048-CA-01 (11th Judicial Circuit Ct. Miami-Dade Cnty., FL, April 5, 2024); *Cynthia Riddell v. Lyft, Inc., et al.,* No. 814630/2022E (Supreme Ct. Bronx Cnty., NY, April 4, 2024); *Sade Jackson v. Lyft, Inc., et al.,* No. 452283/2023 (Supreme Ct. New York Cnty., NY, April 3, 2024); *Jennifer Marie Pansegrau v. Lyft, Inc., et al.,* No. 37-2023-00026097-CU-PA-CTL (Superior Ct. San Diego Cnty., CA, March 29, 2024); *Angela Banks v. 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Los Angeles Cnty., CA, February 21, 2024); *Jeffrey Kramer, et al. v. Lyft, Inc., et al.,* MID-L-4079-23 (Superior Ct. Middlesex Cnty., NJ, February 16, 2024); *Andres Benavides, et al. v. Lyft, Inc., et al.,* MID-L-000376-23 (Superior Ct. Middlesex Cnty., NJ, February 16, 2024); *Danielle Burton v. Lyft, Inc., et. al.,* No. 21STCV42559 (Superior Ct. Los Angeles Cnty., CA, February 16, 2024); *Mildred Garcia v. Lyft, Inc., et al.,* No. 537310/2022 (Supreme Ct. Kings Cnty., NY, February 15, 2024); *Lal Finci v. Lyft, Inc., et. al.,* No. 23SMCV03256 (Superior Ct. Los Angeles Cnty., CA, February 13, 2024); *Camile Ann-Marie Gayle v. Lyft, Inc., et al.,* No. 507876/2023 (Supreme Ct. Kings Cnty., NY, February 9, 2024); *Lawanda Harvey v. Lyft, Inc., et. al.,* No. 21STCV34841 (Superior Ct. Los Angeles Cnty., CA, February 8, 2024); *Rodrick Echols v. Lyft, Inc., et. al.,* No. 21STCV42513 (Superior Ct. Los Angeles Cnty., CA, February 7, 2024); *Zulikka Scarlett v. Lyft, Inc., et al.,* No. 57431/2023 (Supreme Ct. Westchester Cnty., NY, January 31, 2024); *Shatiana Glasper v. Lyft, Inc., et. al.,* No. 23BBCV01743 (Superior Ct. Los Angeles Cnty., CA, January 18, 2024); *Chantel Spain v. Lyft, Inc. et. al.,* 711 F. Supp.3d 1260, 2024 WL 907435, at *3 (D. Colo. Jan. 16, 2024); *Jevaughn Lebert v. Lyft, Inc., et al.,* No. BER-L-625-23 (Superior Ct. Bergen Cnty., NJ, January 5, 2024); *Pedro Chinchilla v. Lyft, Inc., et. al.,* No. 23STCV19379 (Superior Ct. Los Angeles Cnty., CA, January 3, 2024); *Christine Armstrong v. Lyft, Inc. et. al.,* No. CVRI2204594 (Superior Ct. Riverside Cnty., CA, January 2, 2024); *Diora Jones v. Lyft, Inc., et al.,* No. 2022-62932 (151st Judicial District Ct. Harris Cnty., TX, December 24, 2023); *Aminah Robinson v. Lyft, Inc., et al.,* No. 2023-CA-003239 (6th Judicial Circuit Ct. Pasco Cnty., FL, December 22, 2023); *Deandre Loving v. Lyft, Inc., et al.,* No. 153-342509-23 (153rd Judicial District Ct. Tarrant Cnty., TX, December 19, 2023); *Jollana Lewis v. Lyft, Inc., et. al.,* No. 23STCV15650 (Superior Ct. Los Angeles Cnty., CA, December 12, 2023); *Sarah Whittaker, et al. v. Lyft, Inc, et al.,* No. A-23-867728-C (District Ct. Clark Cnty., NV, December 12, 2023); *Abdisalaam Hajiabdirahman v. Lyft, Inc., et al.,* No. 2384-CV-01308 (Superior Ct. Suffolk Cnty., MA, December 8, 2023); *Laura Calamuci v. Lyft, Inc., et al.,* No. 150275/2023 (Supreme Ct. New York Cnty., NY, December 6, 2023); *Mark Anthony Hinds v. Lyft, Inc., et al.,* No. 609998/2022 (Supreme Ct. Nassau Cnty., NY, December 4, 2023); *Daniel Verdin v. Lyft, Inc., et al.,* No. 1:23-cv-12037-WGY (D. Mass. Nov. 28, 2023), ECF No. 27; *Leroy Gibbons v. Lyft, Inc., et. al.,* No. 23STCV15883 (Superior Ct. Los Angeles Cnty., CA, November 27, 2023); *Shamir Gill v. Lyft, Inc., et. al,* No. 22STCV23656 (Superior Ct. Los Angeles Cnty., CA, November 21, 2023); *James Herr v. Lyft, Inc., et al.,* No. FBTCV236128267S (Superior Ct. Bridgeport Cnty., CT, November 20, 2023); *Angelique Griego v. Lyft, Inc., et al.,* No. 23STCV15464 (Superior Ct. Los Angeles Cnty., CA, November 17, 2023); *Vahe Karapet v. Lyft, Inc., et al.,* No. 21STCV26396 (Superior Ct. Los Angeles Cnty., CA, November 9, 2023); *Rachel Nicole Yonkers v. Lyft, Inc., et al.,* No. 2023CV31063 (Dis. Ct. Arapahoe Cnty., CO, November 5, 2023); *Amber Vaatete v. Lyft, Inc., et al.,* No.

23SMCV03631 (Superior Ct. Los Angeles Cnty., CA, November 3, 2023); *Stephanie Beauduy v. Lyft, Inc., et al.*, No. 814386/2022E (Supreme Ct. Bronx Cnty., NY, November 1, 2023); *Isaac Benavidez v. Lyft, Inc., et al.*, No. 23AHCV01287 (Superior Ct. Los Angeles Cnty., CA, October 18, 2023); *Maya Freeman v. Lyft, Inc., et al.*, No. 806157/2022E (Supreme Ct. Bronx Cnty., NY, October 17, 2023); *Farhad Karooyeh v. Lyft, Inc., et al.*, No. 2023-31133 (District Ct. Harris Cnty., TX, October 5, 2023); *Tasheara Samuels v. Lyft, Inc., et al.*, No. 2022-L-010341 (Circuit Ct. Cook Cnty., IL, October 3, 2023); *Beth Pepper v. Lyft, Inc., et al.*, No. 23-C-1546 (N.D.Ill., September 24, 2023); *Frankie R. Pineda, et al. v. Lyft, Inc, et al.*, No. A-22-854149-C (**granted in part**) (District Ct. Clark Cnty., NV, September 18, 2023); *Deandre Parker v. Lyft, Inc., et al.*, No. 34-2023-00334354-CU-PO-GDS (Superior Ct. Sacramento Cnty., CA, September 5, 2023); *Valerie Wells v. Lyft, Inc., et al.*, No. 30-2022-01297972-CU-PA-WJC (Superior Ct. Orange Cnty., CA, September 1, 2023); *Noel Saldana, et al. v. Lyft, Inc., et al.*, No. ESX-L-2301-23 (Superior Ct. Essex Cnty., NJ, August 30, 2023); *Nelly C. Reyes v. Lyft, Inc., et al.*, No. 612505/2022 (Supreme Ct. Nassau Cnty., NY, August 16, 2023); *Demarvel Gaskin v. Lyft, Inc., et al.*, No. FBTCV236124354S (Superior Ct. Fairfield Cnty., CT, August 14, 2023); *Valentina Lore v. Lyft, Inc., et al.*, No. 22STCV16058 (Superior Ct. Los Angeles Cnty., CA, August 10, 2023); *Jorge Quiroa v. Lyft, Inc., et al.*, No. 21STCV36758 (Superior Ct. Los Angeles Cnty., CA, August 10, 2023); *Brooke Rosselle v. Lyft, Inc., et al.*, No. 2384-CV-000083 (Superior Ct. Suffolk Cnty., MA, August 9, 2023); *Tahjania Taylor, et al. v. Lyft, Inc., et al.*, No. ESX-L-002316-23 (Superior Ct. Essex Cnty., NJ, August 8, 2023); *Arturo Peza Amezquita v. Lyft, Inc., et al.*, No. 23STCV02907 (Superior Ct. Los Angeles Cnty., CA, July 31, 2023); *Emani Mageo v. Lyft, Inc., et al.*, No. 23-2-04191-7 SEA (Superior Ct. King Cnty., WA, July 26, 2023); *Hannah Bohland v. Lyft, Inc., et al.*, No. 23SMCV00874 (Superior Ct. Los Angeles Cnty., CA, July 21, 2023); *Anthony Castillo v. Lyft, Inc.,et al.*, No. CVRI2301122 (Superior Ct. Riverside Cnty., CA, July 18, 2023); *Patrick Suzor v. Lyft, Inc.,et al.*, No. 21STCV39534 (Superior Ct. Los Angeles Cnty., CA, July 17, 2023); *Tesfai v. Lyft, Inc. et al.*, No.22CV020105, (Superior Ct. Alameda Cnty., CA, July 12, 2023); *Ma Bernadette Labiano Martinez v. Lyft, Inc. et al.*, No. 22CV020640 (Superior Ct. Alameda Cnty., CA, June 6, 2023); *Kaushie Singletary, et al. v. Lyft, Inc., et al.*, No. ESX-L-174-23 (Essex Cnty., NJ, May 26, 2023); *Anthony Purnell v. Lyft, Inc., et al.*, No. 220700856 (Ct. Com. Pl. Philadelphia Cnty., PA, May 25, 2023); *Daneen Taylor v. Lyft, Inc., et al.*, No. C-15-CV-22-2721 (Cir. Ct. Montgomery Cnty., MD, May 25, 2023); *Sonya Smith v. Lyft, Inc., et al.*, No. 22STCV26112 (Superior Ct. Los Angeles Cnty., CA, May 24, 2023); *Camille Sparks v. Lyft, Inc., et al.*, No. 37-2022-00032155-CU-PA-CTL (Superior Ct. San Diego Cnty., CA, May 10, 2023); *Dejanae Odham v. Lyft, Inc., et al.*, No. CGC-22-603322 (Superior Ct. San Francisco Cnty., CA, May 8, 2023); *Meilana Wilson v. Lyft, Inc., et al.*, No. 2023-001393-CA-01 (11th Judicial Circuit Ct. Miami-Dade Cnty., FL, May 5, 2023); *Christopher Clark v. Lyft, Inc., et al.*, No. 23STCV00132 (Superior Ct. Los Angeles Cnty., CA, May 1, 2023); *Manzar Qureshi v. Lyft, Inc., et al.*, No. 21STCV27934 (Superior Ct. Los Angeles Cnty., CA, April 13, 2023); *Maria Bustamante v. Lyft, Inc. et al.*, No. HUD-L-1257-22 (Superior Ct. Hudson Cnty., NJ, March 31, 2023); *Alyssa Mancillas v. Lyft, Inc., et al.*, No. CGC-23-604533 (Superior Ct. San Francisco Cnty., CA, March 29, 2023); *Ana Cervantes v. Lyft, Inc., et al.*, No. 22STCV02524 (Superior Ct. Los Angeles Cnty., CA, March 27, 2023); *Sarkis Avagyan v. Lyft, Inc., et al.*, No. 20STCV44666 (Superior Ct. Los Angeles Cnty., CA, March 27, 2023); *Melodie Purifoy v. Lyft, Inc., et al.*, No. 153-335392-22 (153rd Judicial District Ct. Tarrant Cnty., TX, March 21, 2023); *Kevin Velazquez v. Lyft, Inc., et al.*, No. ESX-L-6378-22 (Superior Ct. Essex Cnty., NJ, March 17, 2023); *Stephanie Farber v. Lyft, Inc., et al.*, No. CGC-22-597457 (Superior Ct. San Francisco Cnty., CA March 14, 2023); *Imani Wertz v. Lyft, Inc., et al.*, No. PAS-L-002585-22 (Superior Ct. Passaic Cnty., NJ, March 6, 2023); *William Walker v. Lyft, Inc., et al.*, No. 2022-CA-002704-V (Superior Ct. District of Columbia, March 1, 2023); *Maged Hugais v. Lyft, Inc., et al.*, No. CGC-22-601247 (Superior Ct. San Francisco Cnty., CA, March 1, 2023); *Julius Hawthorne v. Lyft, Inc., et al.*, No. 2022-40889 (157th Judicial District Ct. Harris Cnty., TX, February 14, 2023); *Tara Butkiewicz v. Lyft, Inc., et al.*, No. PAS-L-3714-21 (Superior Ct. Passaic Cnty., NJ, February 14, 2023); *Latoya Manning v. Lyft, Inc., et al.*, No. 2022-58016 (281st Judicial District Ct. Harris Cnty., TX, February 9, 2023); *Michael Luciano v. Lyft, Inc., et al.*, No. 22CV006690 (Superior Ct. Alameda Cnty., CA, February 9, 2023); *Pilar Toro v. Lyft, Inc., et al.*, No. 2022-018163-CA-01 (11th Judicial Circuit Ct. Miami-Dade Cnty., FL, January 25, 2023); *Andria Liles v. Lyft, Inc., et al.*, No. 22-001031-NI (Cir. Ct. Wayne Cnty., MI, January 25, 2023); *Vito Coladonato v. Lyft, Inc., et al.*, No. 60081/2022 (Supreme Ct. Westchester Cnty., NY, January 4, 2023); *Sara Youssef v. Lyft, Inc., et al.*, No. HUD-L-00148-22 (Superior Ct. Hudson Cnty., NJ, December 16, 2022); *Donna Rogers v. Lyft, Inc., et al.*, No. CV-21-006248 (Superior Ct. Stanislaus Cnty., CA, December 14, 2022); *Cherille Cade v. Lyft, Inc., et al.*, No. RG21112821 (Superior Ct. Alameda Cnty., CA, December 2, 2022); *Ashley Valdez v. Lyft, Inc., et al.*, No. 2022CV32285 (Dis. Ct. Denver Cnty., CO, October 24, 2022); *Brent Smith v. Lyft, Inc., et al.*, No. 2021CV34013 (Dis. Ct. Denver Cnty., CO, August 29, 2022); *Quinton Campbell v. Lyft, Inc., et al.*, No. 2021CCV-60293-4 (Nueces Cnty., TX, August 23, 2022); *Eric Beard v. Lyft, Inc., et al.*, No. 2021-008417-CA-01 (11th Judicial Circuit Ct. Miami-Dade Cnty., FL, July

The Court should reach the same result here. The FAA "withdrew the power of the states to require a judicial forum" where a contract—like Lyft's TOS—contains an arbitration clause. *See Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984); *cf. Allied-Bruce Terminix Co., Inc. v. G. Michael Dobson*, 513 U.S. 265, 270 (1995) ("the basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate."); *see also Cape Romain Contractors, Inc. v. Wando E., LLC, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013) (*[C]ourts must rigorously enforce arbitration agreements according to their terms, including terms that 'specify with whom the parties choose to arbitrate their disputes, and 'the rules under which that arbitration will be conducted.") (internal citations omitted). Plaintiff indisputably agreed to Lyft's TOS—including its prominent mutual arbitration clause— on *two separate occasions* before the subject accident. That agreement requires Plaintiff to arbitrate any dispute against Lyft, expressly including those "arising out of or relating to" "the Lyft Platform," "Rideshare Services," and/or "any other goods or services made available through the Lyft Platform," as in this case. By accepting the Terms, Plaintiff was able to use the Lyft Platform to request and/or purchase Rideshare Services on 43 separate occasions, including on fifteen (15) occasions *after* the subject accident.

Any other objection that Plaintiff may raise to arbitration here—such as scope or enforceability—must be decided by the arbitrator pursuant to the delegation clause. As a result, there is "no place for the exercise of discretion" by the Court, as Plaintiff is contractually bound to arbitrate his claims. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). This Court

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28, 2022); *Gilda Suriel v. Lyft, Inc., et al.*, No. HUD-L-4551-21 (Superior Ct. Hudson Cnty., NJ, July 8, 2022); *Sonya Gonzalez v. Lyft, Inc., et al.*, No. 20-003685-CI (6th Judicial Circuit Ct. Pinellas Cnty., FL, April 8, 2022); *Jose Rodriguez-Ramirez v. Lyft, Inc., et al.*, No. BER-L-725-21 (Superior Ct. Bergen Cnty., NJ, December 3, 2021); *Graciela Perez v. Lyft, Inc., et al.*, No. 2020-CA-012199-O (9th Judicial Circuit Ct. Orange Cnty., FL, November 11, 2021); *Ali Ahmed v. Lyft, Inc., et al.*, No. 2021CV30740 (Dis. Ct. Denver Cnty., CO, October 7, 2021); *Ledy Pineda v. Lyft, Inc., et al.*, No. UNN-L-999-20 (Superior Ct. Hudson Cnty., NJ, May 4, 2021).

should therefore enforce the parties' agreement by compelling Plaintiff to arbitrate his claims against Lyft and staying the proceedings as to Lyft pending the outcome of the arbitration.

II. FACTUAL BACKGROUND

This case arises out of a December 26, 2021, motor vehicle accident in which Plaintiff allegedly sustained personal injuries (the "Accident") while a passenger in a vehicle operated by Ms. White while she was on the Lyft Platform. *See* Complaint at ¶¶ 8-16. In addition to suing Ms. White for negligence, Plaintiff brings derivative claims against Lyft for vicarious liability and direct negligence, which are premised on Ms. White's alleged negligent operation of her vehicle while on the Lyft platform. *See id.* at ¶¶ 31-37.

A. The Lyft Platform

Under South Carolina law, Lyft is a transportation network company ("TNC") that that "uses a digital network, platform, or Internet-enabled application to connect a passenger to a transportation network driver for the purpose of providing transportation for compensation using a vehicle." S.C. Code Ann. § 58-23-1610. In other words, Lyft operates a peer-to-peer software platform that connects users seeking rides to certain destinations ("riders") with independent contractor drivers ("drivers") who provide rides using personal vehicles. *See* Ex. A, at ¶ 4.

A user—like Plaintiff—cannot access the Lyft platform to request rides without first creating a Lyft user account via the Lyft App. *Id.* at ¶¶ 7-8. This process requires the user to input information such as their first and last name, email address, and phone number. *Id.* at ¶ 7. The user is also required during the account creation process to accept Lyft's then-current TOS, which include (and have at all relevant times included) a conspicuous mutual arbitration clause requiring Lyft and the user to submit all disputes between them—including those arising out of

or related to Rideshare Services and/or the Lyft platform—to binding arbitration. *See Id.* at ¶ 8; *see also* Exs. A-3, A-5 at ¶ 17.

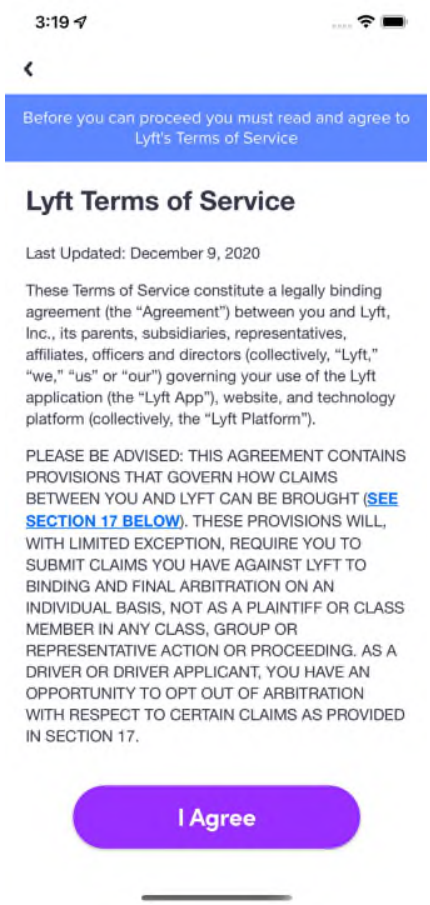
A person cannot complete the account creation process or purchase rideshare services through the Lyft App unless they affirmatively accept and agree to be bound by Lyft's Terms. Ex. A at ¶ 8. Lyft's current TOS are always available on its public website, and after a user creates a Lyft account, he or she may also access a full copy of Lyft's TOS at any time through his or her own Lyft App. *Id.* at ¶ 9.

B. Plaintiff's Repeated Consent to Lyft's Terms of Service

Plaintiff affirmatively accepted Lyft's TOS through the Lyft App on two separate occasions before the alleged Accident. *See* Ex. A at ¶ 12. In turn, Plaintiff was able to benefit from his acceptance of Lyft's TOS by requesting or purchasing Rideshare Services on 43 different occasions—including on 15 occasions *after* the alleged Accident. *Id.* at ¶ 13. Plaintiff's consent history to Lyft's TOS on the Lyft Platform is as follows:

- Plaintiff first created a user account through the Lyft App on October 31, 2020, accepting Lyft's TOS dated August 26, 2019. *See id.* at ¶ 12(a).
- Lyft updated its TOS on December 9, 2020. On December 13, 2020, Lyft notified Plaintiff directly by email with the subject line: "We're updating our Terms of Service." The email explained to Plaintiff that the December 9, 2020 TOS included "revisions to our Dispute Resolution and Arbitration Agreement, which explains how legal disputes are handled." The email also included a blue hyperlink to the December 9, 2020 TOS, and stated in bold and underline: "**Your continued use of Lyft will confirm that you have reviewed and agreed to the updated Terms**." *See id.* at ¶ 12(b).
- On February 7, 2021, Plaintiff accepted Lyft's December 9, 2020 TOS. *See id.* at ¶ 12(c).

At the time of Plaintiff's acceptance of the applicable December 9, 2020 TOS, Plaintiff (like all Users) was presented with the full text of those Terms—including the prominent arbitration provision—directly on the screen in Plaintiff's Lyft App. *Id.* at ¶ 15. At the top of the screen, immediately above the text of the Lyft TOS, there was a conspicuous banner that notified Plaintiff that "Before you can proceed you must read and agree to Lyft's Terms of Service." Id. At the bottom of the screen, immediately under the text of the Lyft's Terms, the Lyft App presented Plaintiff with an "I Agree" button that he was required to click to demonstrate his consent and agreement to the Lyft TOS and to proceed with use of the Lyft App. *Id.* Below is a depiction of what a user like Plaintiff would have seen in his Lyft App when consenting to the December 9, 2020, Terms of Service on February 7, 2021:



Id. at ¶ 16.

Plaintiff could not have used the Lyft App to request or purchase his 43 rides on the Lyft Platform, without having affirmatively accepted the TOS by clicking the "I Agree" button beneath Lyft's TOS. *Id.* at ¶ 13. If Plaintiff had exited the Lyft App without clicking that consent button, he would have been presented with the full Lyft TOS every time he opened the Lyft App until he clicked the "I Agree" button demonstrating Plaintiff's agreement and consent to Lyft's Terms. *Id.* at ¶ 18.

C. Plaintiff and Lyft's Agreement to Arbitrate Disputes

The Terms Plaintiff accepted had an arbitration provision providing that Lyft and Plaintiff would *both* submit all disputes between them to binding arbitration.[3] *See* Ex. A at ¶ 12. The introduction of the very first page of the TOS alerted Plaintiff to the arbitration agreement, conspicuously, and unambiguously stating, apart from other text:

> PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION . . .
>
> By entering into this Agreement, and/or by using or accessing the Lyft Platform you expressly acknowledge that you understand this Agreement (including the dispute resolution and arbitration provisions in Section 17) and accept all of its terms. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM OR ANY OF THE SERVICES PROVIDED THROUGH THE LYFT PLATFORM.

Ex. A-5 at p. 1. The "SEE SECTION 17 BELOW" is a blue hyperlink that takes the reader directly to the full arbitration provision within the TOS. *Id.* at ¶ 17.

[3] For ease of reference, this Motion will hereafter cite to the December 9, 2020, TOS in effect as to Plaintiff on the date of the alleged Incident.

The arbitration provision itself, under the bold heading "**DISPUTE RESOLUTION AND ARBITRATION AGREEMENT,"** emphasized in capital letters: "YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION, as set forth below." *Id.* at ¶ 17(a).

The Arbitration Agreement included: (1) a delegation clause making clear that any dispute "concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator" (except in a narrow set of circumstances that do not apply here); and (2) a choice-of-law provision, providing that the Arbitration Agreement "is governed by the Federal Arbitration Act" and "survives after the Agreement terminates or your relationship with Lyft ends." *Id.*

Even if the question of scope were not delegated to the arbitrator, the scope of the parties' arbitration agreement expressly covered "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… any other goods or services made available through the Lyft Platform, … and all other federal and state statutory and common law claims." *Id.*

Plaintiff indisputably accepted the Lyft TOS and could not have benefited from his use of the Lyft platform—on 43 occasions, including on 15 occasions *after* the Accident —without having agreed to be bound by these Terms.

D. Efforts to Meet and Confer

In an effort to avoid burdening the Court with this clear-cut issue, Lyft sent Plaintiff's Counsel a meet and confer letter on March 3, 2025, (a) reminding Plaintiff of his contractual

obligation to arbitrate this dispute, and (b) informing Plaintiff that Lyft had procured a $1 million combined single limit auto liability insurance policy, consistent with South Carolina's TNC Statute that provides comprehensive coverage for Plaintiff's alleged injuries upon proof of mere negligence against Ms. White without the need to name Lyft as a defendant. *See* **Ex. B**, March 3, 2025, Meet and Confer Letter. But, Lyft noted, if Plaintiff chose to keep Lyft in this case notwithstanding his ability to recover from the $1 million insurance policy, he was required to arbitrate his claims against Lyft separately. *Id*. Lyft also offered Plaintiff a formal stipulation confirming the availability of the $1 million insurance policy to ensure there would be no coverage dispute. *Id*. Plaintiff has not dismissed Lyft, thus necessitating this Motion to enforce the parties' mutual arbitration agreement. *Id.*

III. LEGAL ARGUMENT

Plaintiff's claims arise from an incident that occurred while he was a passenger in the vehicle operated by Defendant White while she was on the Lyft platform. *See* Compl. ¶¶ 8-16. Yet, Plaintiff seeks to avoid enforcement of the very Terms that enabled him to benefit from his use of the Lyft platform on 43 occasions by suing Lyft in this Court. Plaintiff cannot have it both ways. Because he unambiguously agreed to arbitrate any dispute against Lyft, including those "arising out of or relating to … the Lyft Platform, the Rideshare Services, … any other goods or services made available through the Lyft Platform" and "all other federal and state statutory and common law claims," Plaintiff is contractually required under the TOS and the FAA to pursue those claims in arbitration. *See* Compl. ¶¶ 31-37; *see also* Ex. A, at ¶ 12; Ex. A-5 at ¶ 17.

A. The FAA Governs the Arbitration Agreements

The parties' Arbitration Agreement is expressly governed by the FAA.[4] The FAA reflects "a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."[5] *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984)*; Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C.371, 379, 759 S.E.2d 727, 731 (2014)*; cf. Allied-Bruce Terminix Co., Inc. v. G. Michael Dobson*, 513 U.S. 265, 270 (1995) ("the basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate."). Under the FAA, the standard for arbitrability is "not high," and "leaves no place for the exercise of discretion …, but instead mandates that … courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc.*, 470 U.S. at 218 (emphasis in original); *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999) (arbitration agreements "are to be rigorously enforced"). Stated otherwise, courts as a matter of law ***must*** enforce a valid arbitration agreement "in the manner provided for in [the parties'] agreement." 9 U.S.C. §§ 2, 4.

Consistent with the strong policy favoring arbitration embodied in Section 2 of the FAA, an arbitration agreement may be invalidated ***only*** under narrow contract principles applicable to the "revocation of any contract." *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987); *see AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) ("[C]ourts must place

[4] *See* Ex. A-5, at ¶ 17(a) ("This agreement to arbitrate … is governed by the Federal Arbitration Act … ."). Even in the absence of an express choice-of-law provision, the FAA would govern here because the arbitration agreement here is a "written provision in a contract evidencing a transaction involving commerce." *See* 9 U.S.C. § 2; *see also Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) ("Because the statute provides for 'the enforcement of arbitration agreements within the full reach of the Commerce Clause,' it is perfectly clear that the FAA encompasses a wider range of transactions than those actually 'in commerce'—that is, 'within the flow of interstate commerce.'" (citation omitted)).

arbitration agreements on an equal footing with other contracts and enforce them according to their terms."); *Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d. 710 (4th Cir. 2001) ("Agreements to arbitrate are construed according to the ordinary rules of contract interpretation, as augmented by federal policy requiring that all ambiguities be resolved in favor of arbitration."); *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 699 (Ct. App. 2022) ("[A]rbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms.") (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 63 (2019)). As the party resisting arbitration, Plaintiff "bears the burden of proving that the claims at issue are unsuitable for arbitration." *Masters v. KOL, Inc.*, 431 S.C. 28, 37, 846 S.E.2d 893, 897 (Ct. App. 2002) (quoting *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 91 (2000)).

B. <u>The Court Must Compel Arbitration of Plaintiff's Claim Against Lyft.</u>

Under the FAA, a court may generally decide only two narrow "gateway" issues in determining whether to compel arbitration. First, the court "determines whether a valid arbitration agreement exists." *Henry Schein, Inc.*, 586 U.S. at 67. Second, it resolves any threshold questions of "arbitrability," including whether the arbitration agreement "applies to a particular type of controversy." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002). In other words, courts merely assess whether an arbitration agreement exists, and if it does, enforce it according to its terms. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983); *Santoro v. Accenture Fed. Servs., LLC*, 748 F.3d 217, 220 (4th Cir. 2014).

However, because arbitration "is a matter of contract," parties may agree to bypass this second analytical step by delegating the threshold issue of arbitrability to an arbitrator. *See Henry Schein, Inc.*, 586 U.S. at 67; *Gibbs v. Haynes Invs., LLC*, 967 F.3d 332, 337 (4th Cir. 2020) ("Thus, when an agreement 'clearly and unmistakably' delegates the

threshold issue of arbitrability to the arbitrator, a court must enforce that delegation clause and send that question to arbitration.."); *see also Palmetto Wildlife Extractors, LLC* 435 S.C. at 699 ("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.") (internal quotations omitted).There is simply "no place for the exercise of discretion." *Dean Witter Reynolds, Inc.*, 470 U.S. at 218.

Here, the parties did just that, expressly delegating "[a]ll disputes concerning the arbitrability of a Claim" to the arbitrator, "including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement." Ex. A-5 at ¶17(a). Because the TOS delegate all arbitrability questions to the arbitrator, the first ***and only*** question for the Court to decide in ruling on Lyft's Motion is whether Plaintiff entered into an arbitration agreement with Lyft. There is no doubt that he did. Any remaining dispute Plaintiff may raise over the scope, applicability, validity, or enforceability of that arbitration agreement is for the arbitrator to decide.

1. Plaintiff is Bound by the Arbitration Agreement

State law governs the question of whether an agreement to arbitrate was formed. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *see Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001). To constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). An offer and acceptance are essential prerequisites to the creation of every kind of contract. *Id.* Thus, the law requires that the parties consent to the formation of a contract. *Id.*

All these requirements are met here. As explained above in Section II.B above, Plaintiff affirmatively agreed to Lyft's Terms by acknowledging his consent within the Lyft App by clicking a button labeled "I Agree." Ex. A at ¶¶ 12, 15-16. Plaintiff could not have used the Lyft App to request and/or purchase any of his 43 rides on the Lyft platform without having first affirmatively accepted the TOS by clicking the consent button. *Id.* at ¶¶ 13-18.

The TOS to which Plaintiff consented contained a mutual, conspicuous, and unambiguous arbitration clause confirming that Lyft and Plaintiff "AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION." Ex. A-5, at ¶ 17(a). Furthermore, the introductory first page of the Terms of Service advised Plaintiff in capital letters: "IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM." Ex. A-5, at p. 1. The TOS remained publicly available to Plaintiff on Lyft's website and through the Lyft App on Plaintiff's own mobile device. Ex. A at ¶ 9.

Not only did Plaintiff explicitly consent to the TOS within the Lyft App numerous times, but Plaintiff's ongoing use and benefit from the Lyft platform by requesting Rideshare Services on 43 different occasions before *and* after the Accident, also constitutes Plaintiff's implicit consent to the terms. *See e.g., Am. Bankers Ins. Grp., Inc. v. Long,* 453 F.3d 623, 627 (4th Cir. 2006) ("The legal principle underlying the theory of equitable estoppel rests on a simple proposition: it is unfair for a party to rely on a contract when it works to its advantage, and repudiate it when it works to its disadvantage.") (citation omitted).

Courts nationwide have routinely enforced Lyft's arbitration agreement on virtually identical facts. In *Osvatics v. Lyft, Inc.*, for example, now-Justice Jackson evaluated Lyft's Terms

of Service in a putative class-action lawsuit, finding it "well established that Lyft's method of obtaining assent to its Terms of Service—presenting the terms of the agreement and requiring users to click 'I Agree' before they can access the service—constitutes a valid means of offer and acceptance." 535 F. Supp. 3d at 11 (citations omitted). Justice Jackson thus held that Lyft's Terms of Service "formed a valid arbitration agreement, and that agreement is enforceable under the FAA." *Id*. at 22-23.

South Carolina courts and courts in South Carolina's sister jurisdictions, Virginia, the District of Columbia and Maryland, are in accord. *See* Ex. C, *Doris Lewis v. Lyft, Inc., et al.*, No. 2023-CP-10-03260 (Ct. Com. Pl. Charleston Cnty., SC, November 26, 2024) (granting Lyft's motion to compel arbitration in a personal injury case and "direct[ing] enforcement of Section 17 of Lyft's Terms of Service"); *see also Speight v. Lyft, Inc*., No. 3:20CV189-HEH, 2021 WL 298192, at *5 (E.D. Va. Jan. 28, 2021) (holding that the arbitration agreement in Lyft's Terms of Service "is an enforceable contract" under Virginia law); *Gambo v. Lyft,* 642 F.Supp.3d 46, 2022 U.S. Dist. LEXIS 207510 at *2, *16 (D.D.C., Nov. 16, 2022) (granting Lyft's motion to compel arbitration in a personal injury case and finding that "[a]ny reasonable smartphone user would understand that by clicking on" Lyft's consent button, "he was agreeing to [Lyft's Terms of Service]" and the arbitration provision therein); *Walker v. Lyft*, Case No. 2022 CA 002704 V (Superior Court for the District of Columbia) (granting Lyft's motion to compel arbitration in a personal injury case for similar reasons); *Taylor v. Lyft,* Case No. C-15-CV-22-002721 (Circuit Court for Montgomery County) (same).

So is other significant federal court authority across the country. *See e.g., Bekele v. Lyft, Inc.*, 918 F.3d 181, 184 (1st Cir. 2019) (enforcing Lyft's Terms of Service presented online where user could scroll to review all terms before clicking "I accept"); *Spain v. Lyft, Inc.*, 711

F.Supp.3d 1260, at *3 (D. Colo. Jan. 16, 2024) ("Ms. Spain was provided with the terms of service repeatedly and was clearly told she was agreeing to them when creating her account and when using Lyft's service. … That is all that is required under the law [for] her to be bound by them."); *Verdin v. Lyft, Inc.*, No. 1:23-cv-12037-WGY (D. Mass. Nov. 28, 2023), ECF No. 27 (granting Lyft's motion to compel arbitration in personal injury matter); *Pepper v. Lyft*, 2023 WL 6214101, *3 (N.D. Ill. Sept. 24, 2023) (granting Lyft's motion to compel arbitration in a personal injury case because the plaintiff "affirmatively manifested her acceptance of an agreement to arbitrate" in Lyft's Terms of Service when she "clicked 'I agree'"); *Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 966 (N.D. Cal. 2015) (granting motion to compel arbitration and referring disputes over scope and enforceability to the arbitrator, consistent with delegation clause); *Austin v. Lyft, Inc.*, No. 21-CV-9345, 2022 WL 4095386 (N.D. Cal. Sept. 2, 2022) ("Here, the Court finds Austin agreed to arbitrate each of his claims asserted against Lyft. In particular, contrary to Austin's argument, Lyft has established that … the parties executed an arbitration agreement contained in … Lyft's Terms of Service."); *Peterson v. Lyft, Inc.*, 2018 U.S. Dist. LEXIS 197164, 2018 WL 6047085, at *2-6 (N.D. Cal. Nov. 19, 2018) (similar); *Camilo v. Lyft, Inc.*, 384 F.Supp.3d 435, 439–440 (S.D.N.Y. 2019) ("[B]y clicking 'I ACCEPT' upon being presented with the updated Terms of Service, [Plaintiff] accepted the terms of the updated contact and entered into an agreement with Lyft and its subsidiaries."); *Person v. Lyft, Inc.*, No. 1:19-CV-2914-TWT, 2020 WL 5639804, at *1 (N.D. Ga., Sept. 9, 2020) (holding Lyft's "arbitration agreement is valid and enforceable and precludes [Plaintiff] from bringing claims in court."); *Kingsbury v. Lyft, Inc.*, No. 17 C 2272, 2018 WL 905509, at *2 (N.D. Ill., Feb. 15, 2018) (granting motion to compel arbitration where "on multiple occasions Plaintiffs agreed to broad arbitration clauses" in Lyft's Terms of Service).

The Court should join this consensus and reach the same conclusion here. As in *Doris*, *Osvatics*, *Gambo*, *Loewen*, *Austin*, *Bekele*, and a litany of other cases, Plaintiff agreed to and is bound by Lyft's TOS, including its conspicuous arbitration agreement.

2. The Arbitrator Must Resolve Any Dispute as to Arbitrability

Having established that Plaintiff and Lyft formed an agreement to arbitrate, this Court's analysis is at an end. The delegation clause in Lyft's TOS dictates that the only other threshold issue under the FAA—arbitrability of the claims against Lyft—be resolved by the arbitrator, not this court. Section 17(a) of the Terms of Service states in no uncertain terms that "All disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator," except in very limited circumstances that do not apply here. Ex. A-5 at ¶ 17(a).

An "agreement to arbitrate a gateway issue" through a delegation clause like the one in Lyft's Terms of Service "is simply an additional, antecedent agreement," and "the FAA operates on this additional arbitration agreement just as it does on any other." *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010). Indeed, both the United States Supreme Court and other state and federal courts agree that parties may delegate the issue of arbitrability and "courts must respect the parties' decision as embodied in the contract"—particularly where (as here) the delegation clause is clear and unmistakable. *Henry Schein, Inc*, 586 U.S. at 67; *see Gibbs*, 967 F.3d at 337 (holding that "when an agreement 'clearly and unmistakably' delegates the threshold issue of arbitrability to the arbitrator, a court must enforce that delegation clause and send that question to arbitration"); *Peterson*, 2018 WL 6047085, at *2-4; *Loewen*, 129 F. Supp. 3d at 966 (holding delegation clause in Lyft's Terms of Service enforceable, such that the arbitrator must resolve the parties' dispute as to arbitrability).

Here, "section 17(a) clearly and unmistakably delegates threshold questions of arbitrability to the arbitrator as a general matter." *Rogers v. Lyft, Inc.*, 452 F. Supp. 3d 904, 918 (N.D. Cal. 2020), *aff'd*, No. 20-15689, 2022 WL 474166 (9th Cir. Feb. 16, 2022); *Doris Lewis* (Ex. C) ("direct[ing] enforcement of section 17 of Lyft's Terms of Service," and holding "[t]he validity, scope, enforceability, and arbitrability of the agreement may be addressed by the arbiter."); *see also Rent-A-Center*, *supra*, 561 U.S. at 69 n.1 (party challenging a similarly worded delegation clause conceded the language was clear); *Henry Schein*, 586 U.S. at 67; In light of the clear and unmistakable delegation clause in the TOS, any dispute that Plaintiff may raise as to whether his claims are subject to arbitration is for the arbitrator to decide.

3. The Arbitration Agreement Covers Plaintiff's Claim Against Lyft, and Regardless, Any Dispute as to Arbitrability Must be Resolved by the Arbitrator

Even if there were no delegation provision, the outcome would be the same because Plaintiff's claims are arbitrable under the plain language of the Arbitration Agreement. The Terms of Service require Lyft and Plaintiff to submit "ALL DISPUTES AND CLAIMS BETWEEN" them to arbitration, including those "arising out of or relating to … the Lyft Platform, the Rideshare Services, … any other goods or services made available through the Lyft Platform" and "all other federal and state statutory and common law claims." *See* Ex. A-5 at ¶17(a). Indeed, the arbitration agreement expressly states that it is "intended to require the arbitration of ***every claim or dispute that can lawfully be arbitrated***" except for certain claims expressly excluded (none of which apply here).[6] *Id.* (emphasis added); *see Landers v. Fed.*

[6] These exceptions are for (1) small claims actions brought on an individual basis, (2) representative actions "brought on behalf of others under PAGA or other private attorneys general acts," (3) claims for "workers' compensation, state disability insurance and unemployment insurance benefits," (4) claims that are not subject to arbitration pursuant to "generally applicable law not preempted by the FAA;" and (5) "individual claims of sexual assault or sexual harassment in connection with the use of the Lyft Platform, Lyft Services, or Rideshare Services." Ex. A-5 at ¶17(g).

Deposit Ins. Corp., 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) ("A clause which provides for arbitration of all disputes 'arising out of or relating to' the contract is construed broadly . . . [and is] capable of expansive reach") (internal quotations, citations omitted).

Here, it is undisputed that Plaintiff's claims arise from an incident that occurred while he was a passenger in the vehicle operated by Defendant White, while she was on the Lyft platform. *See* Compl. ¶¶ 8-16. Indeed, Plaintiff's claims against Lyft are wholly predicated upon the allegation that Defendant White was on the Lyft Platform at the time of the Accident. Plaintiff thus cannot credibly contend that his claims against Lyft arise out of anything other than Rideshare Services and/or the Lyft Platform, and accordingly, those claims must "be exclusively resolved by binding arbitration." *See* Ex. A-5 at ¶17.

Even if Plaintiff could dispute the scope of the arbitration agreement (he cannot), any such dispute must be resolved by the arbitrator and not this Court. That is because the issue of whether the arbitration agreement applies to Plaintiff's claims has been explicitly and exclusively delegated to the arbitrator: Section 17(a) of the Terms of Service states in no uncertain terms that "All disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator" (except in very limited circumstances that do not apply here). *Id.*at ¶ 17(a).

In short, Plaintiff agreed to Lyft's TOS and its conspicuous arbitration clause requiring not only that he submit his claims against Lyft to arbitration, but also that any dispute over arbitrability be resolved in arbitration. Accordingly, consistent with the strong federal policy favoring arbitration, this Court should—indeed, *must* as a matter of law—enforce the parties' contractual agreement and compel Plaintiff to arbitrate his claims against Lyft.

C. The Court Should Stay the Proceedings Against Lyft Pending Arbitration

An order compelling claims to arbitration results in a mandatory stay of those claims. *See* 9 U.S.C. § 3; ; *Smith v. Spizzirri*, 601 U.S. 472, 476 (2024) ("When § 3 says that a court 'shall ... stay' the proceeding, the court must do so."); *Concepcion*, 563 U.S. at 344 ("[Section] 3 requires courts to stay litigation of arbitral claims pending arbitration of those claims 'in accordance with the terms of the agreement'"). Because Plaintiff's sole claims against Lyft are subject to binding arbitration, the Court should stay litigation of Plaintiff's claim against Lyft pending arbitration.

Of course, if Plaintiff does not wish to arbitrate, Plaintiff has a meaningful choice in the matter.[7] He can simply dismiss his derivative claims against Lyft and proceed in his chosen state court venue against Defendant White, the driver who allegedly caused his injuries. Plaintiff's own factual allegations do not demonstrate any liability against Lyft at the time of the Accident. Removing Lyft would streamline these proceedings and facilitate Plaintiff's pursuit of relief against the proper party.

IV. CONCLUSION

For the foregoing reasons, Lyft respectfully requests that this Court grant this Motion, compel Plaintiff's claim against Lyft to binding arbitration pursuant to the TOS, and stay the proceedings against Lyft pending the outcome of that arbitration.

Respectfully submitted,

[7] Any purported concerns about inefficiency or inconsistency of parallel proceedings are both meritless and irrelevant to the resolution of this motion. The Supreme Court has made clear that, under the FAA, a court must compel arbitration of "arbitrable claims when one of the parties files a motion to compel, even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." *Dean Witter Reynolds, Inc.*, 470 U.S. at 217; *accord Moses H. Cone Mem. Hosp.*, 460 U.S. at 20 ("an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement," even if this outcome "requires piecemeal resolution" of the different claims). Furthermore, any such concerns are superficial and could be readily resolved through simple coordination among the parties regarding discovery, or if necessary, agreeing to stay one proceeding pending the outcome of the other.

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

March 24, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
DAVID WHITE,	)	C/A No. 2024-CP-10-06252
Plaintiff,	)	
	)	
Versus	)	
	)	**AFFIDAVIT OF PAUL McCACHERN**
LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Paul McCachern, who after being duly sworn, deposes and says:

I, Paul McCachern, declare the following:

1. I am Paul McCachern, Safety Program Lead for Lyft, Inc. ("Lyft"). I have been employed with Lyft since August 14, 2017. I have held my current position of Safety Program Lead since August 29, 2022.

2. I am over the age of eighteen, of sound mind and body, and submit this declaration in support of Lyft's Motion to Compel Arbitration (the "Motion"). Based on my experience working for Lyft, and my review of relevant company records, I have personal knowledge of every fact stated in this declaration and, if called to testify as a witness, would competently and truthfully testify to those facts. I am personally familiar with the record retention policies and record keeping systems of Lyft. Furthermore, I am personally familiar with the records kept concerning Plaintiff David White's ("Plaintiff") consent to Lyft's Terms of Service. All records identified and produced in connection with this Motion were made during the normal course of business at or near the time the event giving rise to the creation of the records occurred.

3. Based on my experience working for Lyft and my responsibilities as Safety Program Lead, I am also personally familiar with (a) the Lyft App, including the user sign-up and consent process; (b) Lyft's Terms of Service Agreement, which governs the use of the Lyft platform and describes the terms and conditions on which Lyft offers access to the Lyft platform; (c) how Lyft's Terms of Service are presented to users for their consent including what is displayed in the Lyft App during the consent process; and (d) how Lyft then records their consent and maintains those Terms of Service Agreements.

4. Lyft operates a mobile device-based ridesharing software platform that, among other things, enables individuals in all fifty states, the District of Columbia, and parts of Canada who seek a ride to certain destinations ("riders") to be matched with independent drivers ("drivers") who provide rides using personal vehicles. The Lyft software platform includes Lyft's website, technology platform, and mobile device application (the "Lyft App"). The Lyft App offers a method to connect drivers and riders and allows those two groups to communicate.

5. The Lyft App and software platform operate over the internet to connect drivers and riders, arrange rideshare requests between those two groups, and transmit payments from riders to drivers.

6. Lyft users in need of a ride can open the Lyft App on their mobile devices to request rideshare services. The Lyft software platform attempts to match a driver with the rider. At their discretion, drivers may accept ride requests, pick up the riders, and transport them to their requested destinations. After riders complete the ride, the Lyft App transmits payment from the rider to the driver via the internet.

7. To access Lyft's software platform to request rides, a person (the "user") must first create a Lyft user account using the Lyft App. This process requires the user to input information such as the user's first and last name, email address, and phone number.

8. After the user enters the required personal information, the user is then prompted within the Lyft App to accept the Terms of Service during their account creation process. Thereafter, the user is periodically prompted within the Lyft App to accept Lyft's updates to its Terms of Service. A user cannot access the Lyft software platform without first creating a Lyft user account and cannot request or purchase rideshare services through the Lyft App unless they have affirmatively accepted Lyft's Terms of Service.

9. Users can access a full copy of Lyft's then-current Terms of Service at any time and at their discretion on Lyft's publicly available website, https://www.lyft.com/terms, or directly within the user's own Lyft App.

10. It is the custom and practice of Lyft to maintain in its business records copies of Lyft's past and present Terms of Service, as well as data regarding when each Lyft user accepts Lyft's Terms of Service, including periodic updates to those Terms of Service.

11. I accessed Lyft's business records and determined that Plaintiff created a Lyft user account on October 31, 2020. To create a Lyft user account, Plaintiff provided the following phone number and email address: (843) 998-8931 and skully37@gmail.com. Plaintiff's Lyft user account is associated with the following unique User ID: 1468384011027335804.

12. Plaintiff affirmatively accepted Lyft's Terms of Service within the Lyft App on two separate occasions before the subject accident. A true and correct copy of Lyft's business record identifying each date and time of Plaintiff's consent to Lyft's Terms of Service is attached to the Motion as **Exhibit 2** ("TOS Consent History").[1]

a. During the account creation process, on October 31, 2020, Plaintiff accepted Lyft's Terms of Service dated August 26, 2019. A true and correct copy of the August 26, 2019, Terms of Service is attached to the Motion as **Exhibit 3.**

b. Lyft again updated its Terms of Service on December 9, 2020. On December 13, 2020, Lyft notified Plaintiff directly by email with the subject line: "We're updating our Terms of Service." The email explained to Plaintiff that the December 9, 2020

[1] All times in the TOS Consent History exhibit are in Coordinated Universal Time (UTC).

Terms of Service included "revisions to our Dispute Resolution and Arbitration Agreement, which explains how legal disputes are handled." The email also included a blue hyperlink to the December 9, 2020 Terms of Service, and stated in bold and underline: "**Your continued use of Lyft will confirm that you have reviewed and agreed to the updated Terms**." A true and correct copy of the December 13, 2020 email, sent and delivered to Plaintiff by Lyft is attached to the Motion as **Exhibit 4**.

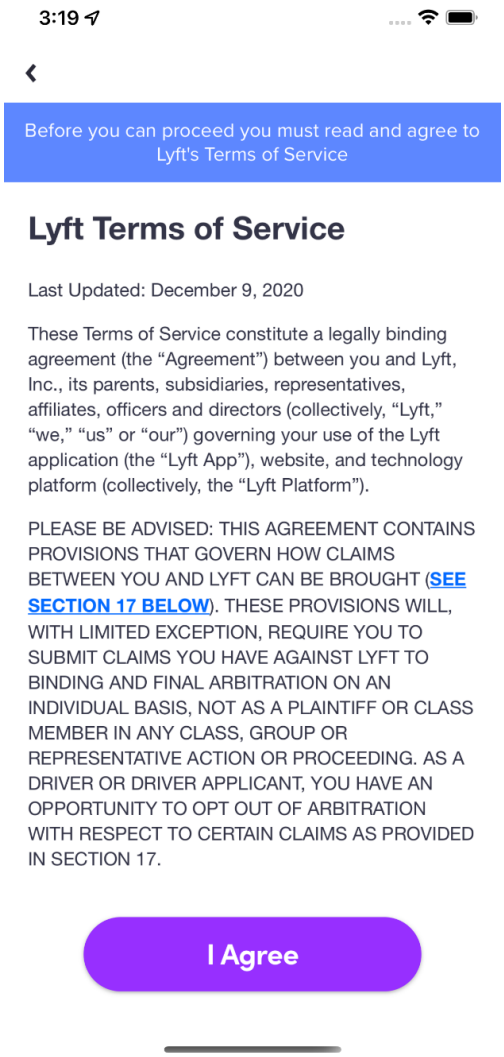
c. Plaintiff then affirmatively accepted the December 9, 2020 Terms of Service on February 7, 2021. A true and correct copy of the December 9, 2020 Terms of Service is attached to the Motion as **Exhibit 5**.

13. In the time since Plaintiff created a Lyft user account and accepted Lyft's Terms of Service, Plaintiff has used the Lyft platform to request and/or purchase rideshare services on 43 different occasions. Of those 43 rides, 15 occurred after the subject accident. Plaintiff could not have requested or purchased those rideshare services without affirmatively consenting to the Lyft Terms of Service.

14. The December 9, 2020 Terms of Service were in effect as to Plaintiff at the time of the alleged incident on December 26, 2021, as pleaded in Plaintiff's complaint. As noted above, Plaintiff affirmatively accepted the December 9, 2020 Terms of Service on February 7, 2021.

15. At the time Plaintiff accepted the operative December 9, 2020 Terms of Service, Plaintiff (like all users) was presented directly on the screen of the Lyft App with the full text of those Terms of Service, including the arbitration provision. At the top of the screen, immediately above the full text of the Lyft Terms of Service, the Lyft App presented Plaintiff with a banner stating, "Before you can proceed you must read and agree to Lyft's Terms of Service." At the bottom of the screen, immediately under the full text of the Lyft Terms of Service, the Lyft App presented Plaintiff with a large "I Agree" button, which Plaintiff was required to click to demonstrate consent and agreement to be bound by the Terms of Service and to proceed with use of the Lyft App.

16. The following image depicts what a user like Plaintiff would have seen on their screen within their Lyft App when consenting to the December 9, 2020, Lyft Terms of Service on February 7, 2021:



17. The blue "SEE SECTION 17 BELOW" was a hyperlink that would take the user directly to Section 17—the arbitration provision—within the Terms of Service.

18. Plaintiff could not have proceeded to access content on the Lyft App without first accepting Lyft's Terms of Service by clicking the "I Agree" button beneath the full text of Lyft's Terms of Service. If Plaintiff had exited the Lyft App without clicking the "I Agree" button,

Plaintiff would have been presented with the full Lyft Terms of Service every time Plaintiff opened the Lyft App until Plaintiff clicked the "I Agree" button demonstrating agreement and consent to the Lyft Terms of Service.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Executed this 11th day of March, 2025.

PAUL MCCACHERN

SWORN TO AND SUBSCRIBED before me
this 11th day of March, 2025.

NOTARY PUBLIC FOR Tennessee
MY COMMISSION EXPIRES: 03/03/2026
PRINT NAME: Starr Ashonda Mosley

Notarized remotely using audio-video communication technology via Proof.

	user_id	name	date
1	_1468384011027335804	David White	2021-02-07 01:15:49
2	_1468384011027335804	David White	2020-10-31 23:59:54

EXHIBIT 2

Download the app

EXHIBIT 3

Lyft Terms of Service

Last Updated: August 26, 2019

These Terms of Service constitute a legally binding agreement (the "Agreement") between you and Lyft, Inc., its parents, subsidiaries, representatives, affiliates, officers and directors (collectively, "Lyft," "we," "us" or "our") governing your use of the Lyft application, website, and technology platform (collectively, the "Lyft Platform").

PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS, GROUP OR REPRESENTATIVE ACTION OR PROCEEDING. AS A DRIVER OR DRIVER APPLICANT, YOU HAVE AN OPPORTUNITY TO OPT OUT OF ARBITRATION WITH RESPECT TO CERTAIN CLAIMS AS PROVIDED IN SECTION 17.

By entering into this Agreement, and/or by using or accessing the Lyft Platform you expressly acknowledge that you understand this Agreement (including the dispute resolution and arbitration provisions in Section 17) and accept all of its terms. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS

AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM OR ANY OF THE SERVICES PROVIDED THROUGH THE LYFT PLATFORM. If you use the Lyft Platform in another country, you agree to be subject to Lyft's terms of service for that country.

1. The Lyft Platform

The Lyft Platform provides a marketplace where persons who seek transportation to certain destinations ("Riders") can be matched with transportation options to such destinations. One option for Riders is to request a ride from rideshare drivers who are driving to or through those destinations ("Drivers"). Drivers and Riders are collectively referred to herein as "Users," and the driving services provided by Drivers to Riders shall be referred to herein as "Rideshare Services." As a User, you authorize Lyft to match you with a Driver or Rider based on factors such as your location, the estimated time to pickup, your destination, user preferences, and platform efficiency, and to cancel an existing match and rematch based on the same considerations. Any decision by a User to offer or accept Rideshare Services is a decision made in such User's sole discretion. Each Rideshare Service provided by a Driver to a Rider shall constitute a separate agreement between such persons.

In certain markets, Riders may have the option to rent bikes or scooters through the Lyft Platform to ride to their destination. In some markets these bikes and scooters are owned by Lyft. In other markets Lyft operates a bike-share or scooter-share program on behalf of third parties. In either case, your rental and use of bikes and scooters through the Lyft Platform is subject to additional agreements between you and Lyft and third parties as applicable to the particular market ("Supplemental Agreements"). Please review any applicable Supplemental Agreements carefully. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF A SUPPLEMENTAL AGREEMENT, YOU MAY NOT RENT OR USE THE BIKES OR SCOOTERS IN SUCH MARKET. In the event of any conflict between this Agreement and the terms and conditions of any Supplemental Agreement, the terms of this agreement shall control.

2. Modification to the Agreement

Lyft reserves the right to modify the terms and conditions of this Agreement, such modifications shall be binding on you only upon your acceptance of the modified Agreement. Lyft reserves the right to modify any information on pages referenced in the hyperlinks from this Agreement from time to time, and such modifications shall become effective upon posting. Continued use of the Lyft Platform or Rideshare Services after any such changes shall constitute your consent to such changes. Unless material changes are made to the arbitration provisions herein, you agree that modification of this Agreement does not create a renewed opportunity to opt out of arbitration (if applicable).

3. Eligibility

The Lyft Platform may only be used by individuals who have the right and authority to enter into this Agreement, are fully able and competent to satisfy the terms, conditions, and obligations herein. The Lyft Platform is not available to Users who have had their User account temporarily or permanently deactivated. You may not allow other persons to use your User account, and you agree that you are the sole authorized user of your account. To use the Lyft Platform, each User shall create a User account. Each person may only create one User account, and Lyft reserves the right to deactivate any additional or duplicate accounts.

By becoming a User, you represent and warrant that you are at least 18 years old. Notwithstanding the foregoing, if you are the parent or legal guardian of a 16 or 17-year old minor you may create a Lyft account for such minor to use the Lyft Platform subject to the following requirements and restrictions: (a) you ensure that the minor's use of the Lyft Platform is limited solely to accessing and using bike-share or scooter-share services where expressly permitted under the Supplemental Agreement applicable to such services, (b) you ensure that the minor's use of the Lyft Platform and applicable bike-share or scooter-share services is done in compliance and acknowledgement of

all applicable safety instructions and warnings in this Agreement, any applicable Supplemental Agreements, and the Lyft App, (c) you ensure that the minor does not request or accept any Rideshare Services unless accompanied by you or an authorized guardian, and (d) you expressly guarantee the minor's acceptance of the terms of this Agreement. You will be responsible for any breach of the above representations, warranties and/or this Agreement, and/or any attempt of the minor to disaffirm this Agreement. Furthermore, you hereby represent that you are fully authorized to execute this Agreement on behalf of yourself and all other parents or legal guardians of the minor rider.

By creating a Lyft account for such minor, you hereby give permission and consent to the Agreement on the minor's behalf, and you shall assume any and all responsibility and liability for the minor's use of the Lyft Platform as provided by the terms of this Agreement and any applicable Supplemental Agreements. You will be responsible for any breach of the above representations, warranties and/or this Agreement, and/or any attempt of the minor to disaffirm this Agreement. Furthermore, you hereby represent that you are fully authorized to execute this Agreement on behalf of yourself and all other parents or legal guardians of the minor rider.

4. Charges

As a rider, you understand that request or use of Rideshare Services may result in charges to you ("Charges"). Charges related to bikes and scooters are addressed in the applicable Supplemental Agreement. Charges for Rideshare Services include Fares and other applicable fees, tolls, surcharges, and taxes as set forth on your market's Lyft Cities page (www.lyft.com/cities), plus any tips to the Driver that you elect to pay. Lyft has the authority and reserves the right to determine and modify pricing by posting applicable pricing terms to your market's Lyft Cities page or quoting you a price for a specific ride at the time you make a request. Pricing may vary based on the type of service you request (e.g., shared, economy, extra seats, luxury) as described on your market's Lyft Cities page. You are responsible for reviewing the applicable Lyft Cities page or price quote within the Lyft app and shall be responsible for all Charges incurred under your User account regardless of your awareness of such Charges or the amounts thereof.

Fares. There are two types of fares, variable and quoted.

- **Variable Fares**. Variable fares consist of a base charge and incremental charges based on the duration and distance of your ride. For particularly short rides, minimum fares may apply. Please note that we use GPS data from your Driver's phone to calculate the distance traveled on your ride. We cannot guarantee the availability or accuracy of GPS data. If we lose signal we will calculate time and distance using available data from your ride.
- **Quoted Fares**. In some cases Lyft may quote you a Fare at the time of your request. The quote is subject to change until the ride request is confirmed. If during your ride you change your destination, make multiple stops, or attempt to abuse the Lyft Platform, we may cancel the fare quote and charge you a variable fare based on the time and distance of your ride. Lyft does not guarantee that the quoted fare price will be equal to a variable fare for the same ride. Quoted Fares may include the Fees and Other Charges below, as applicable.

Fees and Other Charges.

- **Service Fee**. You may be charged a "Service Fee" for each ride as set forth on the applicable Lyft Cities page.
- **Prime Time**. At times of high demand for Rideshare Services ("Prime Time") you acknowledge that Charges may increase substantially. For all rides with a variable fare, we will use reasonable efforts to inform you of any Prime Time multipliers in effect at the time of your request. For quoted fares we may factor in the Prime Time multiplier into the quoted price of the ride.
- **Cancellation Fee**. After requesting a ride you may cancel it through the app, but note that in certain cases a cancellation fee may apply. You may also be charged if you fail to show up after requesting a ride. Please check out our Help Center to learn more about Lyft's cancellation policy, including applicable fees.
- **Damage Fee**. If a Driver reports that you have materially damaged the Driver's vehicle, you agree to pay a "Damage Fee" of up to $250 depending on the extent of the damage (as determined by Lyft in its sole discretion), towards vehicle repair or cleaning. Lyft reserves the right (but is not obligated) to verify or

otherwise require documentation of damages prior to processing the Damage Fee.

- **Tolls**. In some instances tolls (or return tolls) may apply to your ride. Please see our Help Center and your market's Lyft Cities page for more information about toll charges and a list of applicable tolls and return charges. We do not guarantee that the amount charged by Lyft will match the toll charged to the Driver, if any.
- **Other Charges**. Other fee and surcharges may apply to your ride, including: actual or anticipated airport fees, state or local fees, or event fees as determined by Lyft or its marketing partners. In addition, where required by law Lyft will collect applicable taxes. See your market's Lyft Cities page for details on other Charges that may apply to your ride.
- **Tips**. Following a ride, you may elect to tip your Driver in cash or through the Lyft application. You may also elect to set a default tip amount or percentage through the app; Any tips will be provided entirely to the applicable Driver.

General.

- **Facilitation of Charges**. All Charges are facilitated through a third-party payment processor (e.g., First Data, Stripe, Inc., or Braintree, a division of PayPal, Inc.). Lyft may replace its third-party payment processor without notice to you. Charges shall only be made through the Lyft Platform. With the exception of tips, cash payments are strictly prohibited. Your payment of Charges to Lyft satisfies your payment obligation for your use of the Lyft Platform and Rideshare Services. Lyft may group multiple charges into a single aggregate transaction on your payment method based on the date(s) they were incurred. If you don't recognize a transaction, then check your ride receipts and payment history.
- **No Refunds**. All Charges are non-refundable. This no-refund policy shall apply at all times regardless of your decision to terminate usage of the Lyft Platform, any disruption to the Lyft Platform or Rideshare Services, or any other reason whatsoever.
- **Coupons**. You may receive coupons that you can apply toward payment of certain Charges upon completion of a Ride. Coupons are only valid for use on the Lyft Platform, and are not transferable or redeemable for cash except as required by law.

Coupons cannot be combined, and if the cost of your ride exceeds the applicable credit or discount value we will charge your payment method on file for the outstanding cost of the Ride. For quoted or variable fares, Lyft may deduct the amount attributable to the Service Fee, Tolls, or Other Charges before application of the coupon. Additional restrictions on coupons may apply as communicated to you in a relevant promotion or by clicking on the relevant coupon within the Promotions section of the Lyft App.

- **Credit Card Authorization**. Upon addition of a new payment method or each ride request, Lyft may seek authorization of your selected payment method to verify the payment method, ensure the ride cost will be covered, and protect against unauthorized behavior. The authorization is not a charge, however, it may reduce your available credit by the authorization amount until your bank's next processing cycle. Should the amount of our authorization exceed the total funds on deposit in your account, you may be subject to overdraft of NSF charges by the bank issuing your debit or prepaid card. We cannot be held responsible for these charges and are unable to assist you in recovering them from your issuing bank. Check out our Help Center to learn more about our use of pre-authorization holds.

5. Payments

If you are a Driver, you will receive payment for your provision of Rideshare Services pursuant to the terms of the Driver Addendum, which shall form part of this Agreement between you and Lyft.

6. Lyft Communications

By entering into this Agreement or using the Lyft Platform, you agree to receive communications from us, including via e-mail, text message, calls, and push notifications. You agree that texts, calls or prerecorded messages may be generated by automatic telephone dialing systems. Communications from Lyft, its affiliated companies and/or Drivers, may include but are not limited to: operational communications concerning your User account or use of the Lyft Platform or Rideshare Services, use of bikes and scooters through the Lyft Platform, updates concerning

new and existing features on the Lyft Platform, communications concerning promotions run by us or our third-party partners, and news concerning Lyft and industry developments. Standard text messaging charges applied by your cell phone carrier will apply to text messages we send.

IF YOU WISH TO OPT OUT OF PROMOTIONAL EMAILS, YOU CAN UNSUBSCRIBE FROM OUR PROMOTIONAL EMAIL LIST BY FOLLOWING THE UNSUBSCRIBE OPTIONS IN THE PROMOTIONAL EMAIL ITSELF. IF YOU WISH TO OPT OUT OF PROMOTIONAL CALLS OR TEXTS, YOU MAY TEXT "END" TO 46080 FROM THE MOBILE DEVICE RECEIVING THE MESSAGES. YOU ACKNOWLEDGE THAT YOU ARE NOT REQUIRED TO CONSENT TO RECEIVE PROMOTIONAL TEXTS OR CALLS AS A CONDITION OF USING THE LYFT PLATFORM OR RELATED SERVICES. IF YOU WISH TO OPT OUT OF ALL TEXTS OR CALLS FROM LYFT (INCLUDING OPERATIONAL OR TRANSACTIONAL TEXTS OR CALLS), YOU CAN TEXT THE WORD "STOPALL" TO 46080 FROM THE MOBILE DEVICE RECEIVING THE MESSAGES, HOWEVER YOU ACKNOWLEDGE THAT OPTING OUT OF RECEIVING ALL TEXTS MAY IMPACT YOUR USE OF THE LYFT PLATFORM OR RELATED SERVICES.

7. Your Information

Your Information is any information you provide, publish or post to or through the Lyft Platform (including any profile information you provide) or send to other Users (including via in-application feedback, any email feature, or through any Lyft-related Facebook, Twitter or other social media posting) (your "Information"). You consent to us using your Information to create a User account that will allow you to use the Lyft Platform and participate in the Rideshare Services. Our collection and use of personal information in connection with the Lyft Platform and Rideshare Services is as provided in Lyft's Privacy Policy located at www.lyft.com/privacy. You are solely responsible for your Information and your interactions with other members of the public, and we act only as a passive conduit for your online posting of your Information. You agree to provide and maintain accurate, current and complete information and that we and other members of the public may rely on your Information as accurate, current and complete. To enable Lyft to use your Information for the purposes described in the Privacy Policy and this Agreement, you grant to us a non-exclusive,

worldwide, perpetual, irrevocable, royalty-free, transferable, sub-licensable (through multiple tiers) right and license to exercise the copyright, publicity, and database rights you have in your Information, and to use, copy, perform, display and distribute such Information to prepare derivative works, or incorporate into other works, such Information, in any media now known or not currently known. Lyft does not assert any ownership over your Information; rather, as between you and Lyft, subject to the rights granted to us in this Agreement, you retain full ownership of all of your Information and any intellectual property rights or other proprietary rights associated with your Information.

8. Promotions, Referrals, and Loyalty Programs

Lyft, at its sole discretion, may make available promotions, referral programs and loyalty programs with different features to any Users or prospective Users. These promotions and programs, unless made to you, shall have no bearing whatsoever on your Agreement or relationship with Lyft. Lyft reserves the right to withhold or deduct credits or benefits obtained through a promotion or program in the event that Lyft determines or believes that the redemption of the promotion or receipt of the credit or benefit was in error, fraudulent, illegal, or in violation of the applicable promotion or program terms or this Agreement. Lyft reserves the right to terminate, discontinue or cancel any promotions or programs at any time and in its sole discretion without notice to you.

Currently, Lyft's referral program ("Referral Program")

provides you with incentives to refer your friends and family to become new Users of the Lyft Platform in your country (the "Referral Program"). Your participation in the Referral Program is subject to this Agreement and the additional Referral Program rules.

9. Restricted Activities

With respect to your use of the Lyft Platform and your participation in the Rideshare Services, you agree that you will not:

a. impersonate any person or entity;
b. stalk, threaten, or otherwise harass any person, or carry any weapons;
c. violate any law, statute, rule, permit, ordinance or regulation;
d. interfere with or disrupt the Lyft Platform or the servers or networks connected to the Lyft Platform;
e. post Information or interact on the Lyft Platform or Rideshare Services in a manner which is fraudulent, libelous, abusive, obscene, profane, sexually oriented, harassing, or illegal;
f. use the Lyft Platform in any way that infringes any third party's rights, including: intellectual property rights, copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
g. post, email or otherwise transmit any malicious code, files or programs designed to interrupt, damage, destroy or limit the functionality of the Lyft Platform or any computer software or hardware or telecommunications equipment or surreptitiously intercept or expropriate any system, data or personal information;
h. forge headers or otherwise manipulate identifiers in order to disguise the origin of any information transmitted through the Lyft Platform;
i. "frame" or "mirror" any part of the Lyft Platform, without our prior written authorization or use meta tags or code or other devices containing any reference to us in order to direct any person to any other web site for any purpose;
j. modify, adapt, translate, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Lyft Platform;
k. rent, lease, lend, sell, redistribute, license or sublicense the Lyft Platform or access to any portion of the Lyft Platform;
l. use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, scrape, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Lyft Platform or its contents;
m. link directly or indirectly to any other web sites;
n. transfer or sell your User account, password and/or identification, or any other User's Information to any other party;
o. discriminate against or harass anyone on the basis of race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age or sexual orientation;

p. violate any of the Referral Program rules if you participate in the Referral Program; or
q. cause any third party to engage in the restricted activities above.

10. Driver Representations, Warranties and Agreements

By providing Rideshare Services as a Driver on the Lyft Platform, you represent, warrant, and agree that:

a. You possess a valid driver's license and are authorized and medically fit to operate a motor vehicle and have all appropriate licenses, approvals and authority to provide transportation to Riders in all jurisdictions in which you provide Rideshare Services.
b. You own, or have the legal right to operate, the vehicle you use when providing Rideshare Services; such vehicle is in good operating condition and meets the industry safety standards and all applicable statutory and state department of motor vehicle requirements for a vehicle of its kind; and any and all applicable safety recalls have been remedied per manufacturer instructions.
c. You will not engage in reckless behavior while driving, drive unsafely, operate a vehicle that is unsafe to drive, permit an unauthorized third party to accompany you in the vehicle while providing Rideshare Services, Rideshare provide Services as a Driver while under the influence of alcohol or drugs, or take action that harms or threatens to harm the safety of the Lyft community or third parties.
d. You will only provide Rideshare Services using the vehicle that has been reported to, and approved by Lyft, and for which a photograph has been provided to Lyft, and you will not transport more passengers than can securely be seated in such vehicle (and no more than seven (7) passengers in any instance).
e. You will not, while providing the Rideshare Services, operate as a public or common carrier or taxi service, accept street hails, charge

for rides (except as expressly provided in this Agreement), demand that a rider pay in cash, or use a credit card reader, such as a Square Reader, to accept payment or engage in any other activity in a manner that is inconsistent with your obligations under this Agreement.

f. You will not attempt to defraud Lyft or Riders on the Lyft Platform or in connection with your provision of Rideshare Services. If we suspect that you have engaged in fraudulent activity we may withhold applicable Fares or other payments for the ride(s) in question and take any other action against you available under the law.
g. You will not discriminate against Riders with disabilities and agree to review Lyft's Anti-Discrimination Policies. You will make responsible accommodation as required by law and our Service Animal Policy and Wheelchair Policy for Riders who travel with their service animals or who use wheelchairs (or other mobility devices) that can be folded for safe and secure storage in the car's trunk or backseat.
h. You agree that we may obtain information about you, including your criminal and driving records, and you agree to provide any further necessary authorizations to facilitate our access to such records during the term of the Agreement.
i. You have a valid policy of liability insurance (in coverage amounts consistent with all applicable legal requirements) that names or schedules you for the operation of the vehicle you use to provide Rideshare Services.
j. You will pay all applicable federal, state and local taxes based on your provision of Rideshare Services and any payments received by you.

11. Intellectual Property

All intellectual property rights in the Lyft Platform shall be owned by Lyft absolutely and in their entirety. These rights include database rights, copyright, design rights (whether registered or unregistered), trademarks (whether registered or unregistered) and other similar rights wherever existing in the world together with the right to apply for protection of the same. All other trademarks, logos, service marks, company or product names set forth in the Lyft Platform are the property of their respective owners. You acknowledge and agree that

any questions, comments, suggestions, ideas, feedback or other information ("Submissions") provided by you to us are non-confidential and shall become the sole property of Lyft. Lyft shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

LYFT and other Lyft logos, designs, graphics, icons, scripts and service names are registered trademarks, trademarks or trade dress of Lyft in the United States and/or other countries (collectively, the "Lyft Marks"). If you provide Rideshare Services as a Driver, Lyft grants to you, during the term of this Agreement, and subject to your compliance with the terms and conditions of this Agreement, a limited, revocable, non-exclusive license to display and use the Lyft Marks solely on the Lyft stickers/decals, Lyft Amp, and any other Lyft-Branded items provided by Lyft directly to you in connection with providing the Rideshare Services ("License"). The License is non-transferable and non-assignable, and you shall not grant to any third party any right, permission, license or sublicense with respect to any of the rights granted hereunder without Lyft's prior written permission, which it may withhold in its sole discretion. The Lyft logo (or any Lyft Marks) may not be used in any manner that is likely to cause confusion, including but not limited to: use of a Lyft Mark in a domain name or Lyft referral code, or use of a Lyft Mark as a social media handle or name, avatar, profile photo, icon, favicon, or banner. You may identify yourself as a Driver on the Lyft Platform, but may not misidentify yourself as Lyft, an employee of Lyft, or a representative of Lyft.

You acknowledge that Lyft is the owner and licensor of the Lyft Marks, including all goodwill associated therewith, and that your use of the Lyft logo (or any Lyft Marks) will confer no interest in or ownership of the Lyft Marks in you but rather inures to the benefit of Lyft. You agree to use the Lyft logo strictly in accordance with Lyft's Trademark Usage Guidelines, as may be provided to you and revised from time to time, and to immediately cease any use that Lyft determines to nonconforming or otherwise unacceptable.

You agree that you will not: (1) create any materials that use the Lyft Marks or any derivatives of the Lyft Marks as a trademark, service mark, trade name or trade dress, other than as expressly approved by

Lyft in writing; (2) use the Lyft Marks in any way that tends to impair their validity as proprietary trademarks, service marks, trade names or trade dress, or use the Lyft Marks other than in accordance with the terms, conditions and restrictions herein; (3) take any other action that would jeopardize or impair Lyft's rights as owner of the Lyft Marks or the legality and/or enforceability of the Lyft Marks, including, challenging or opposing Lyft's ownership in the Lyft Marks; (4) apply for trademark registration or renewal of trademark registration of any of the Lyft Marks, any derivative of the Lyft Marks, any combination of the Lyft Marks and any other name, or any trademark, service mark, trade name, symbol or word which is similar to the Lyft Marks; (5) use the Lyft Marks on or in connection with any product, service or activity that is in violation of any law, statute, government regulation or standard.

You agree you will not rent, lease, lend, sell, or otherwise redistribute the Lyft driver amp, or manufacture, produce, print, sell, distribute, purchase, or display counterfeit/inauthentic Lyft driver amps or other Lyft Marks or (including but not limited to signage, stickers, apparel, or decals) from any source other than directly from Lyft.

Violation of any provision of this License may result in immediate termination of the License, in Lyft's sole discretion, a takedown request sent to the appropriate ISP, or social media platform, and/or a Uniform Domain-Name Dispute-Resolution Policy Proceeding (or equivalent proceeding). If you create any materials (physical or digital) bearing the Lyft Marks (in violation of this Agreement or otherwise), you agree that upon their creation Lyft exclusively owns all right, title and interest in and to such materials, including any modifications to the Lyft Marks or derivative works based on the Lyft Marks or Lyft copyrights. You further agree to assign any interest or right you may have in such materials to Lyft, and to provide information and execute any documents as reasonably requested by Lyft to enable Lyft to formalize such assignment.

Lyft respects the intellectual property of others, and expects Users to do the same. If you believe, in good faith, that any materials on the Lyft Platform infringe upon your copyrights, please view our Copyright Policy for information on how to make a copyright complaint.

12. Disclaimers

The following disclaimers are made on behalf of Lyft, our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, and shareholders.

Lyft does not provide transportation services, and Lyft is not a transportation carrier. Lyft is not a common carrier or public carrier. It is up to the Driver to decide whether or not to offer a ride to a Rider contacted through the Lyft Platform, and it is up to the Rider to decide whether or not to accept a ride from any Driver contacted through the Lyft Platform. We cannot ensure that a Driver or Rider will complete an arranged transportation service. We have no control over the quality or safety of the transportation that occurs as a result of the Rideshare Services.

The Lyft Platform is provided on an "as is" basis and without any warranty or condition, express, implied or statutory. We do not guarantee and do not promise any specific results from use of the Lyft Platform and/or the Rideshare Services, including the ability to provide or receive Rideshare Services at any given location or time. To the fullest extent permitted by law, we specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimer may not apply to you.

We do not warrant that your use of the Lyft Platform or Rideshare Services will be accurate, complete, reliable, current, secure, uninterrupted, always available, or error- free, or will meet your requirements, that any defects in the Lyft Platform will be corrected, or that the Lyft Platform is free of viruses or other harmful components. We disclaim liability for, and no warranty is made with respect to, connectivity and availability of the Lyft Platform or Rideshare Services.

We cannot guarantee that each Rider is who he or she claims to be. Please use common sense when using the Lyft Platform and Rideshare Services, including looking at the photos of the Driver or Rider you have matched with to make sure it is the same individual you see in person. Please note that there are also risks of dealing with underage persons or people acting under false pretense, and we do not accept responsibility or liability for any content, communication or other use or access of the Lyft Platform by persons under the age of 18 in violation of this Agreement. We encourage you to communicate directly with

each potential Driver or Rider prior to engaging in an arranged transportation service.

Lyft is not responsible for the conduct, whether online or offline, of any User of the Lyft Platform or Rideshare Services. You are solely responsible for your interactions with other Users. We do not procure insurance for, nor are we responsible for, personal belongings left in the car by Drivers or Riders. By using the Lyft Platform and participating in the Rideshare Services, you agree to accept such risks and agree that Lyft is not responsible for the acts or omissions of Users on the Lyft Platform or participating in the Rideshare Services.

You are responsible for the use of your User account and Lyft expressly disclaims any liability arising from the unauthorized use of your User account. Should you suspect that any unauthorized party may be using your User account or you suspect any other breach of security, you agree to notify us immediately.

It is possible for others to obtain information about you that you provide, publish or post to or through the Lyft Platform (including any profile information you provide), send to other Users, or share during the Rideshare Services, and to use such information to harass or harm you. We are not responsible for the use of any personal information that you disclose to other Users on the Lyft Platform or through the Rideshare Services. Please carefully select the type of information that you post on the Lyft Platform or through the Rideshare Services or release to others. We disclaim all liability, regardless of the form of action, for the acts or omissions of other Users (including unauthorized users, or "hackers").

Opinions, advice, statements, offers, or other information or content concerning Lyft or made available through the Lyft Platform, but not directly by us, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content. Under no circumstances will we be responsible for any loss or damage resulting from your reliance on information or other content posted by third parties, whether on the Lyft Platform or otherwise. We reserve the right, but we have no obligation, to monitor the materials posted on the Lyft Platform and remove any such material that in our sole opinion violates, or is alleged to violate, the law or this agreement or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of Users or others.

Location data provided by the Lyft Platform is for basic location purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Lyft, nor any of its content providers, guarantees the availability, accuracy, completeness, reliability, or timeliness of location data tracked or displayed by the Lyft Platform. Any of your Information, including geolocational data, you upload, provide, or post on the Lyft Platform may be accessible to Lyft and certain Users of the Lyft Platform.

Lyft advises you to use the Lyft Platform with a data plan with unlimited or very high data usage limits, and Lyft shall not responsible or liable for any fees, costs, or overage charges associated with any data plan you use to access the Lyft Platform.

This paragraph applies to any version of the Lyft Platform that you acquire from the Apple App Store. This Agreement is entered into between you and Lyft. Apple, Inc. ("Apple") is not a party to this Agreement and shall have no obligations with respect to the Lyft Platform. Lyft, not Apple, is solely responsible for the Lyft Platform and the content thereof as set forth hereunder. However, Apple and Apple's subsidiaries are third party beneficiaries of this Agreement. Upon your acceptance of this Agreement, Apple shall have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof. This Agreement incorporates by reference Apple's Licensed Application End User License Agreement, for purposes of which, you are "the end-user." In the event of a conflict in the terms of the Licensed Application End User License Agreement and this Agreement, the terms of this Agreement shall control.

As a Driver, you may be able to use "Lyft Nav built by Google" while providing Rideshare Services on the Platform. Riders and Drivers may also use Google Maps while using the App. In either case, you agree that Google may collect your location data when the Lyft App is running in order to provide and improve Google's services, that such data may also be shared with Lyft in order to improve its operations, and that Google's terms and privacy policy will apply to this usage.

13. State and Local Disclosures

Certain jurisdictions require additional disclosures to you. You can view any disclosures required by your local jurisdiction at www.lyft.com/terms/disclosures. We will update the disclosures page as jurisdictions add, remove or amend these required disclosures, so please check in regularly for updates.

14. Indemnity

You will defend, indemnify, and hold Lyft including our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, or shareholders harmless from any claims, actions, suits, losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of your use of the Lyft Platform and participation in the Rideshare Services, including: (1) your breach of this Agreement or the documents it incorporates by reference; (2) your violation of any law or the rights of a third party, including, Drivers, Riders, other motorists, and pedestrians, as a result of your own interaction with such third party; (3) any allegation that any materials that you submit to us or transmit through the Lyft Platform or to us infringe or otherwise violate the copyright, trademark, trade secret or other intellectual property or other rights of any third party; (4) your ownership, use or operation of a motor vehicle or passenger vehicle, including your provision of Rideshare Services as a Driver; and/or (5) any other activities in connection with the Rideshare Services. This indemnity shall be applicable without regard to the negligence of any party, including any indemnified person.

15. Limitation of Liability

IN NO EVENT WILL LYFT, INCLUDING OUR AFFILIATES, SUBSIDIARIES, PARENTS, SUCCESSORS AND ASSIGNS, AND EACH OF OUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR

SHAREHOLDERS (COLLECTIVELY "LYFT" FOR PURPOSES OF THIS SECTION), BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES (INCLUDING DAMAGES FOR DELETION, CORRUPTION, LOSS OF DATA, LOSS OF PROGRAMS, FAILURE TO STORE ANY INFORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY THE LYFT PLATFORM, SERVICE INTERRUPTIONS, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES) ARISING OUT OF OR IN CONNECTION WITH THE LYFT PLATFORM, THE RIDESHARE SERVICES, OR THIS AGREEMENT, HOWEVER ARISING INCLUDING NEGLIGENCE, EVEN IF WE OR OUR AGENTS OR REPRESENTATIVES KNOW OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LYFT PLATFORM MAY BE USED BY YOU TO REQUEST AND SCHEDULE TRANSPORTATION, GOODS, OR OTHER SERVICES WITH THIRD PARTY PROVIDERS, BUT YOU AGREE THAT LYFT HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY TRANSPORTATION, GOODS OR OTHER SERVICES PROVIDED TO YOU BY THIRD PARTY PROVIDERS OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT. CERTAIN JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

16. Term and Termination

This Agreement is effective upon your creation of a User account. This Agreement may be terminated: a) by User, without cause, upon seven (7) days' prior written notice to Lyft; or b) by either Party immediately, without notice, upon the other Party's material breach of this Agreement, including but not limited to any breach of Section 9 or breach of Section 10(a) through (i) of this Agreement. In addition, Lyft may terminate this Agreement or deactivate your User account immediately in the event: (1) you no longer qualify to provide Rideshare Services or to operate the approved vehicle under applicable law, rule, permit, ordinance or regulation; (2) you fall below Lyft's star rating or cancellation threshold; (3) Lyft has the good faith belief that such action is necessary to protect the safety of the Lyft community or third parties,

provided that in the event of a deactivation pursuant to (1)-(3) above, you will be given notice of the potential or actual deactivation and an opportunity to attempt to cure the issue to Lyft's reasonable satisfaction prior to Lyft permanently terminating the Agreement. For all other breaches of this Agreement, you will be provided notice and an opportunity to cure the breach. If the breach is cured in a timely manner and to Lyft's satisfaction, this Agreement will not be permanently terminated. Sections 2, 6, 7 (with respect to the license), 11-12, 14-19, and 21 shall survive any termination or expiration of this Agreement.

17. DISPUTE RESOLUTION AND ARBITRATION AGREEMENT

(a) Agreement to Binding Arbitration Between You and Lyft.

YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION, as set forth below. This agreement to arbitrate ("Arbitration Agreement") is governed by the Federal Arbitration Act and survives after the Agreement terminates or your relationship with Lyft ends. ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED. Except as expressly provided below, this Arbitration Agreement applies to all Claims (defined below) between you and Lyft, including our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, or shareholders. This Arbitration Agreement also applies to claims between you and Lyft's service providers, including but not limited to background check providers and payment processors; and such service providers shall be considered intended third party beneficiaries of this Arbitration Agreement.

Except as expressly provided below, ALL DISPUTES AND CLAIMS BETWEEN US (EACH A "CLAIM" AND COLLECTIVELY, "CLAIMS") SHALL BE EXCLUSIVELY RESOLVED BY BINDING ARBITRATION SOLELY BETWEEN YOU AND LYFT. These Claims include, but are not limited to, any dispute, claim or controversy, whether based on past, present, or future events, arising out of or relating to: this Agreement and prior versions thereof (including the breach, termination, enforcement, interpretation or validity thereof), the Lyft Platform, the Rideshare Services, rental or use of bikes or scooters through the Lyft Platform, Lyft promotions, gift card, referrals or loyalty programs, any other goods or services made available through the Lyft Platform, your relationship with Lyft, the threatened or actual suspension, deactivation or termination of your User Account or this Agreement, background checks performed by or on Lyft's behalf, payments made by you or any payments made or allegedly owed to you, any promotions or offers made by Lyft, any city, county, state or federal wage-hour law, trade secrets, unfair competition, compensation, breaks and rest periods, expense reimbursement, wrongful termination, discrimination, harassment, retaliation, fraud, defamation, emotional distress, breach of any express or implied contract or covenant, claims arising under federal or state consumer protection laws; claims arising under antitrust laws, claims arising under the Telephone Consumer Protection Act and Fair Credit Reporting Act; and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Older Workers Benefit Protection Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for individual claims for employee benefits under any benefit plan sponsored by Lyft and covered by the Employee Retirement Income Security Act of 1974 or funded by insurance), and state statutes, if any, addressing the same or similar subject matters, and all other federal and state statutory and common law claims. All disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator, except as expressly provided below.

BY AGREEING TO ARBITRATION, YOU UNDERSTAND THAT YOU AND LYFT ARE WAIVING THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL FOR ALL CLAIMS, EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS ARBITRATION AGREEMENT. This Arbitration Agreement is intended to require arbitration of every claim or dispute that can

lawfully be arbitrated, except for those claims and disputes which by the terms of this Arbitration Agreement are expressly excluded from the requirement to arbitrate.

(b) Prohibition of Class Actions and Non-Individualized Relief.

YOU UNDERSTAND AND AGREE THAT YOU AND LYFT MAY EACH BRING CLAIMS IN ARBITRATION AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT ON A CLASS, COLLECTIVE ACTION, OR REPRESENTATIVE BASIS ("CLASS ACTION WAIVER"). YOU UNDERSTAND AND AGREE THAT YOU AND LYFT BOTH ARE WAIVING THE RIGHT TO PURSUE OR HAVE A DISPUTE RESOLVED AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE OR REPRESENTATIVE PROCEEDING. NOTWITHSTANDING THE FOREGOING, THIS SUBSECTION (B) SHALL NOT APPLY TO REPRESENTATIVE PRIVATE ATTORNEYS GENERAL ACT CLAIMS BROUGHT AGAINST LYFT, WHICH ARE ADDRESSED SEPARATELY IN SECTION 17(C).

The arbitrator shall have no authority to consider or resolve any Claim or issue any relief on any basis other than an individual basis. The arbitrator shall have no authority to consider or resolve any Claim or issue any relief on a class, collective, or representative basis. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claims.

Notwithstanding any other provision of this Agreement, the Arbitration Agreement or the AAA Rules, disputes regarding the scope, applicability, enforceability, revocability or validity of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which: (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that the Class Action Waiver is unenforceable with respect to any Claim or any particular remedy for a Claim (such as a request for public injunctive relief), then that Claim or particular remedy (and only that Claim or particular remedy) shall be severed from any remaining claims and/or remedies and may be brought in a civil court of competent jurisdiction, but the Class Action Waiver shall be enforced in arbitration on an individual basis as to all other Claims or remedies to the fullest extent possible.

(c) Representative PAGA Waiver.

Notwithstanding any other provision of this Agreement or the Arbitration Agreement, to the fullest extent permitted by law: (1) you and Lyft agree not to bring a representative action on behalf of others under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code § 2698 et seq., in any court or in arbitration, and (2) for any claim brought on a private attorney general basis, including under the California PAGA, both you and Lyft agree that any such dispute shall be resolved in arbitration on an individual basis only (i.e., to resolve whether you have personally been aggrieved or subject to any violations of law), and that such an action may not be used to resolve the claims or rights of other individuals in a single or collective proceeding (i.e., to resolve whether other individuals have been aggrieved or subject to any violations of law) (collectively, "representative PAGA Waiver"). Notwithstanding any other provision of this Agreement, the Arbitration Agreement or the AAA Rules, disputes regarding the scope, applicability, enforceability, revocability or validity of this representative PAGA Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. If any provision of this representative PAGA Waiver is found to be unenforceable or unlawful for any reason: (i) the unenforceable provision shall be severed from this Agreement; (ii) severance of the unenforceable provision shall have no impact whatsoever on the Arbitration Agreement or the requirement that any remaining Claims be arbitrated on an individual basis pursuant to the Arbitration Agreement; and (iii) any such representative PAGA or other representative private attorneys general act claims must be litigated in a civil court of competent jurisdiction and not in arbitration. To the extent that there are any Claims to be litigated in a civil court of competent jurisdiction because a civil court of competent jurisdiction determines that the representative PAGA Waiver is unenforceable with respect to those Claims, the Parties agree that litigation of those Claims shall be stayed pending the outcome of any individual Claims in arbitration.

(d) Rules Governing the Arbitration.

Any arbitration conducted pursuant to this Arbitration Agreement shall be administered by the American Arbitration Association ("AAA") pursuant to its Consumer Arbitration Rules that are in effect at the time the arbitration is initiated, as modified by the terms set forth in this

Agreement. Copies of these rules can be obtained at the AAA's website (www.adr.org) (the "AAA Rules") or by calling the AAA at 1-800-778-7879. Notwithstanding the foregoing, if requested by you and if proper based on the facts and circumstances of the Claims presented, the arbitrator shall have the discretion to select a different set of AAA Rules, but in no event shall the arbitrator consolidate more than one person's Claims, or otherwise preside over any form of representative, collective, or class proceeding. The parties may select a different arbitration administrator upon mutual written agreement.

As part of the arbitration, both you and Lyft will have the opportunity for reasonable discovery of non-privileged information that is relevant to the Claim. The arbitrator may award any individualized remedies that would be available in court. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claims. The arbitrator will provide a reasoned written statement of the arbitrator's decision which shall explain the award given and the findings and conclusions on which the decision is based.

The arbitrator will decide the substance of all claims in accordance with applicable law, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different Riders or Drivers, but is bound by rulings in prior arbitrations involving the same Rider or Driver to the extent required by applicable law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, provided that any award may be challenged in a court of competent jurisdiction.

(e) Arbitration Fees and Awards.

The payment of filing and arbitration fees will be governed by the relevant AAA Rules subject to the following modifications:

1. If Lyft initiates arbitration under this Arbitration Agreement, Lyft will pay all AAA filing and arbitration fees.
2. With respect to any Claims brought by Lyft against a Driver, or for Claims brought by a Driver against Lyft that: (A) are based on an alleged employment relationship between Lyft and a Driver; (B) arise out of, or relate to, Lyft's actual deactivation of a Driver's User account or a threat by Lyft to deactivate a Driver's User account; (C)

arise out of, or relate to, Lyft's actual termination of a Driver's Agreement with Lyft under the termination provisions of this Agreement, or a threat by Lyft to terminate a Driver's Agreement; (D) arise out of, or relate to, Fares (as defined in this Agreement, including Lyft's commission or fees on the Fares), tips, or average hourly guarantees owed by Lyft to Drivers for Rideshare Services, other than disputes relating to referral bonuses, other Lyft promotions, or consumer-type disputes, or (E) arise out of or relate to background checks performed in connection with a user seeking to become a Driver (the subset of Claims in subsections (A)-(E) shall be collectively referred to as "Driver Claims"), Lyft shall pay all costs unique to arbitration (as compared to the costs of adjudicating the same claims before a court), including the regular and customary arbitration fees and expenses (to the extent not paid by Lyft pursuant to the fee provisions above). However, if you are the party initiating the Driver Claim, you shall be responsible for contributing up to an amount equal to the filing fee that would be paid to initiate the claim in the court of general jurisdiction in the state in which you provide Rideshare Services to Riders, unless a lower fee amount would be owed by you pursuant to the AAA Rules, applicable law, or subsection (e)(1) above. Any dispute as to whether a cost is unique to arbitration shall be resolved by the arbitrator. For purposes of this Section 17(e)(3), the term "Driver" shall be deemed to include both Drivers and Driver applicants who have not been approved to drive.

3. Except as provided in Federal Rule of Civil Procedure 68 or any state equivalents, each party shall pay its own attorneys' fees and pay any costs that are not unique to the arbitration (i.e., costs that each party would incur if the claim(s) were litigated in a court such as costs to subpoena witnesses and/or documents, take depositions and purchase deposition transcripts, copy documents, etc.).
4. At the end of any arbitration, the arbitrator may award reasonable fees and costs or any portion thereof to you if you prevail, to the extent authorized by applicable law.
5. Although under some laws Lyft may have a right to an award of attorneys' fees and non-filing fee expenses if it prevails in an arbitration, Lyft agrees that it will not seek such an award unless you are represented by an attorney or the arbitrator has determined that the claim is frivolous or brought for an improper purpose (as measured by the standards of Federal Rule of Civil Procedure 11(b)).

6. If the arbitrator issues you an award that is greater than the value of Lyft's last written settlement offer made after you participated in good faith in the optional Negotiation process described in subsection (k) below, then Lyft will pay you the amount of the award or U.S. $1,000, whichever is greater.

(f) Location and Manner of Arbitration.

Unless you and Lyft agree otherwise, any arbitration hearings between Lyft and a Rider will take place in the county of your billing address, and any arbitration hearings between Lyft and a Driver will take place in the county in which the Driver provides Rideshare Services. If AAA arbitration is unavailable in your county, the arbitration hearings will take place in the nearest available location for a AAA arbitration. Your right to a hearing will be determined by the AAA Rules.

(g) Exceptions to Arbitration.

This Arbitration Agreement shall not require arbitration of the following types of claims: (1) small claims actions brought on an individual basis that are within the scope of such small claims court's jurisdiction; (2) a representative action brought on behalf of others under PAGA or other private attorneys general acts, to the extent the representative PAGA Waiver in Section 17(c) of such action is deemed unenforceable by a court of competent jurisdiction under applicable law not preempted by the FAA; (3) claims for workers' compensation, state disability insurance and unemployment insurance benefits; and (4) claims that may not be subject to arbitration as a matter of generally applicable law not preempted by the FAA.

Nothing in this Arbitration Agreement prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, Securities Exchange Commission, National Labor Relations Board ("NLRB"), or Office of Federal Contract Compliance Programs, or similar local, state or federal agency, and nothing in this Arbitration Agreement shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration However, should you bring an administrative claim, you may only seek or recover money damages of any type pursuant to this Arbitration Provision, and you knowingly and voluntarily waive the right to seek or

recover money damages of any type pursuant to any administrative complaint, except for a complaint issued by the NLRB. Should you participate in an NLRB proceeding, you may only recover money damages if such recovery does not arise from or relate to a claim previously adjudicated under this Arbitration Provision or settled by you. Similarly, you may not recover money damages under this Arbitration Provision if you have already adjudicated such claim with the NLRB. Nothing in this Agreement or Arbitration Agreement prevents your participation in an investigation by a government agency of any report, claim or charge otherwise covered by this Arbitration Provision.

(h) Severability.

In addition to the severability provisions in subsections (b) and (c) above, in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable under applicable law not preempted by the FAA, such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect.

(i) Driver Claims in Pending Settlement.

If you are a member of a putative class in a lawsuit against Lyft involving Driver Claims and a Motion for Preliminary Approval of a Settlement has been filed with the court in that lawsuit prior to this Agreement's effective date (a "Pending Settlement Action"), then this Arbitration Agreement shall not apply to your Driver Claims in that particular class action. Instead, your Driver Claims in that Pending Settlement Action shall continue to be governed by the arbitration provisions contained in the applicable Agreement that you accepted prior to this Agreement's effective date.

(j) Opting Out of Arbitration for Driver Claims That Are Not In a Pending Settlement Action.

As a Driver or Driver applicant, you may opt out of the requirement to arbitrate Driver Claims defined in Section 17(e)(3) (except as limited by Section 17(i) above) pursuant to the terms of this subsection if you have not previously agreed to an arbitration provision in Lyft's Terms of Service where you had the opportunity to opt out of the requirement to arbitrate. If you have previously agreed to such an arbitration provision, you may opt out of any revisions to your prior arbitration agreement made by this provision in the manner specified below, but

opting out of this arbitration provision has no effect on any previous, other, or future arbitration agreements that you may have with Lyft. If you have not previously agreed to such an arbitration provision and do not wish to be subject to this Arbitration Agreement with respect to Driver Claims, you may opt out of arbitration with respect to such Driver Claims, other than those in a Pending Settlement Action, by notifying Lyft in writing of your desire to opt out of arbitration for such Driver Claims, which writing must be dated, signed and delivered by electronic mail to arbitrationoptout@lyft.com.

In order to be effective, (A) the writing must clearly indicate your intent to opt out of this Arbitration Agreement with respect to Driver Claims that are not part of a Pending Settlement Action, (B) the writing must include the name, phone number, and email address associated with your User Account, and (C) the email containing the signed writing must be sent within 30 days of the date this Agreement is executed by you. Should you not opt out within the 30-day period, you and Lyft shall be bound by the terms of this Arbitration Agreement in full (including with respect to Driver Claims that are not part of a Pending Settlement Action). As provided in paragraph 17(i) above, any opt out that you submit shall not apply to any Driver Claims that are part of a Pending Settlement Action and your Driver Claims in any such Pending Settlement Action shall continue to be governed by the arbitration provisions that are contained in the applicable Lyft Terms of Use that you agreed to prior to the effective date of this Agreement.

Cases have been filed against Lyft and may be filed in the future involving Driver Claims. You should assume that there are now, and may be in the future, lawsuits against Lyft alleging class, collective, and/or representative Driver Claims in which the plaintiffs seek to act on your behalf, and which, if successful, could result in some monetary recovery to you. But if you do agree to arbitration of Driver Claims with Lyft under this Arbitration Agreement, you are agreeing in advance that you will bring all such claims, and seek all monetary and other relief, against Lyft in an individual arbitration, except for the Driver Claims that are part of a Pending Settlement Action. You are also agreeing in advance that you will not participate in, or seek to recover monetary or other relief, for such claims in any court action or class, collective, and/or representative action. You have the right to consult with counsel of your choice concerning this Arbitration Agreement and you will not

be subject to retaliation if you exercise your right to assert claims or opt- out of any Driver Claims under this Arbitration Agreement.

(k) Optional Pre-Arbitration Negotiation Process.

Before initiating any arbitration or proceeding, you and Lyft may agree to first attempt to negotiate any dispute, claim or controversy between the parties informally for 30 days, unless this time period is mutually extended by you and Lyft. A party who intends to seek negotiation under this subsection must first send to the other a written notice of the dispute ("Notice"). The Notice must (1) describe the nature and basis of the claim or dispute; and (2) set forth the specific relief sought. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, and attorneys are confidential, privileged and inadmissible for any purpose, including as evidence of liability or for impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

18. Confidentiality

You agree not to use any technical, financial, strategic and other proprietary and confidential information relating to Lyft's business, operations and properties, information about a User made available to you in connection with such User's use of the Platform, which may include the User's name, pick-up location, contact information and photo ("Confidential Information") disclosed to you by Lyft for your own use or for any purpose other than as contemplated herein. You shall not disclose or permit disclosure of any Confidential Information to third parties, and you agree not to store separate and outside of the Lyft Platform any User Information obtained from the Lyft Platform. As a Driver, you understand that some of Rider Information you receive may be protected by federal and/or state confidentiality laws, such as the Health Information Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy and security of protected (patient) health information. In the event that you know a Rider, you should not disclose to anyone the identity of the Rider or the location that you picked up, or dropped of the Rider as this could violate HIPAA. You

understand that any violation of the Agreement's confidentiality provisions may violate HIPAA or state confidentiality laws and could result in civil or criminal penalties against you. You agree to take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of Lyft in order to prevent it from falling into the public domain. Notwithstanding the above, you shall not have liability to Lyft with regard to any Confidential Information which you can prove: was in the public domain at the time it was disclosed by Lyft or has entered the public domain through no fault of yours; was known to you, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; is disclosed with the prior written approval of Lyft; becomes known to you, without restriction, from a source other than Lyft without breach of this Agreement by you and otherwise not in violation of Lyft's rights; or is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that You shall provide prompt notice of such court order or requirement to Lyft to enable Lyft to seek a protective order or otherwise prevent or restrict such disclosure.

19. Relationship with Lyft

As a Driver on the Lyft Platform, you acknowledge and agree that you and Lyft are in a direct business relationship, and the relationship between the parties under this Agreement is solely that of independent contracting parties. You and Lyft expressly agree that (1) this is not an employment agreement and does not create an employment relationship between you and Lyft; and (2) no joint venture, franchisor-franchisee, partnership, or agency relationship is intended or created by this Agreement. You have no authority to bind Lyft, and you undertake not to hold yourself out as an employee, agent or authorized representative of Lyft.

Lyft does not, and shall not be deemed to, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Rideshare Services, your acts or omissions, or your operation and maintenance of your vehicle. You retain the sole right to determine when, where, and for how long you will utilize the Lyft Platform. You retain the option to accept or to decline or ignore a Rider's request for Rideshare Services via the Lyft Platform, or to cancel an accepted request for Rideshare Services via

the Lyft Platform, subject to Lyft's then-current cancellation policies. With the exception of any signage required by law or permit/license rules or requirements, Lyft shall have no right to require you to: (a) display Lyft's names, logos or colors on your vehicle(s); or (b) wear a uniform or any other clothing displaying Lyft's names, logos or colors. You acknowledge and agree that you have complete discretion to provide Rideshare Services or otherwise engage in other business or employment activities.

20. Other Services

In addition to connecting Riders with Drivers, the Lyft Platform may enable Users to provide or receive services from other third parties. For example, Users may be able to use the Lyft Platform to plan and reserve rides on public transportation, take a ride in an autonomous vehicle provided by a third party, rent vehicles, or obtain financial services provided by third parties (collectively, the "Other Services"). You understand and that the Other Services are subject to the terms and pricing of the third-party provider. If you choose to purchase Other Services through the Lyft Platform, you authorize Lyft to charge your payment method on file according to the pricing terms set by the third-party provider. You agree that Lyft is not responsible and may not be held liable for the Other Services or the actions or omissions of the third-party provider. Such Other Services may not be investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Other Services accessed through the Lyft Platform.

21. General

Except as provided in Section 17, this Agreement shall be governed by the laws of the State of California without regard to choice of law principles. This choice of law provision is only intended to specify the use of California law to interpret this Agreement and is not intended to create any other substantive right to non- Californians to assert claims under California law whether by statute, common law, or otherwise. If any provision of this Agreement is or becomes invalid or non- binding, the parties shall remain bound by all other provisions of this Agreement. In that event, the parties shall replace the invalid or non-

binding provision with provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement. You agree that this Agreement and all incorporated agreements may be automatically assigned by Lyft, in our sole discretion by providing notice to you. Except as explicitly stated otherwise, any notices to Lyft shall be given by certified mail, postage prepaid and return receipt requested to Lyft, Inc., 548 Market Street, #68514 San Francisco, CA 94104. Any notices to you shall be provided to you through the Lyft Platform or given to you via the email address or physical you provide to Lyft during the registration process. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. The words "include", "includes" and "including" are deemed to be followed by the words "without limitation". A party's failure to act with respect to a breach by the other party does not constitute a waiver of the party's right to act with respect to subsequent or similar breaches. This Agreement sets forth the entire understanding and agreement between you and Lyft with respect to the subject matter hereof and supersedes all previous understandings and agreements between the parties, whether oral or written.

If you have any questions regarding the Lyft Platform or Rideshare Services, please contact us through our Help Center.

Lyft Privacy Policy

Last Updated: February 8, 2017

At Lyft, we want to connect people through transportation and bring communities together. In this privacy policy, we tell you what information we receive from Lyft riders and drivers, and how we use it to connect riders with drivers and continue to improve our services. Below, we explain how you can share with other riders and drivers in the Lyft community as part of our mission to bring people together.

1. Scope of this Privacy Policy

Lyft ("Lyft," "we," "our," and/or "us") values the privacy of individuals who use our application, websites, and related services (collectively, the "Lyft Platform "). This privacy policy (the "Privacy Policy") explains how we collect, use, and share information from Lyft users ("Users"), comprised of both Lyft riders ("Riders") and Lyft drivers (including Driver applicants) ("Drivers"). Beyond the Privacy Policy, your use of Lyft is also subject to our Terms of Service (www.lyft.com/terms).

2. Information We Collect

A. Information You Provide to Us

Registration Information. When you sign up for a Lyft account, you give us your name, email address, and phone number. If you decide to sign up for Lyft using your Facebook account, we will also get basic information from your Facebook profile like your name, gender, profile photo, and Facebook friends.

User Profile Information. When you join the Lyft community, you can create a Lyft Profile to share fun facts about yourself, and discover mutual friends and interests. Filling out a profile is optional, and you can share as little or as much as you want. Your name (and for Drivers, Profile photos) is always part of your Profile. Read more below about how you can control who sees your Profile. You can also add a Business Profile to your account, which requires a designated business email address and payment method.

Payment Method. When you add a credit card or payment method to your Lyft account, a third party that handles payments for us will receive your card information. To keep your financial data secure, we do not store full credit card information on our servers.

Communications. If you contact us directly, we may receive additional information about you. For example, when you contact our Customer Support Team, we will receive your name, email address, phone number, the contents of a message or attachments that you may send to us, and other information you choose to provide.

Driver Application Information. If you decide to join our Lyft driver community, in addition to the basic registration information we ask you for your date of birth, physical address, Social Security number, driver's license information, vehicle information, car insurance information, and in some jurisdictions we may collect additional business license or permitting information. We share this information with our partners who help us by running background checks on Drivers to help protect the Lyft community.

Payment Information. To make sure Drivers get paid, we keep information about Drivers' bank routing numbers, tax information, and any other payment information provided by Drivers.

B. Information We Collect When You Use the Lyft Platform

Location Information. Lyft is all about connecting Drivers and Riders. To do this, we need to know where you are. When you open Lyft on your mobile device, we receive your location. We may also collect the precise location of your device when the app is running in the foreground or background. If you label certain locations, such as "home" and "work," we receive that information, too.

Your location information is necessary for things like matching Riders with nearby Drivers, determining drop off and pick up locations, and suggesting destinations based on previous trips. Also, if the need ever arises, our Trust & Safety team may use and share location information to help protect the safety of Lyft Users or a member of the public. In addition to the reasons described above, Drivers' location information and distance travelled is necessary for calculating charges and insurance for Lyft rides. If you give us permission through your device

settings or Lyft app, we may collect your location while the app is off to identify promotions or service updates in your area.

Device Information. Lyft receives information from Users' devices, including IP address, web browser type, mobile operating system version, phone carrier and manufacturer, application installations, device identifiers, mobile advertising identifiers, push notification tokens, and, if you register with your Facebook account, your Facebook identifier. We collect mobile sensor data from Drivers' devices (such as speed, direction, height, acceleration or deceleration) to improve location accuracy and analyze usage patterns.

Usage Information. To help us understand how you use the Lyft Platform and to help us improve it, we automatically receive information about your interactions with the Lyft Platform, like the pages or other content you view, your actions within the Lyft app, and the dates and times of your visits.

Call and Text Information. We work with a third party partner to facilitate phone calls and text messages between Riders and Drivers who have been connected for a ride. We receive information about these communications including the date and time of the call or SMS message, the parties' phone numbers, and the content of any SMS messages. For security purposes, we may also monitor and/or record the contents of phone calls made on the Lyft Platform, such as those between Riders and Drivers. You will be given notice that your call may be recorded, and by proceeding you agree to allow Lyft to monitor and/or record your call.

User Feedback. At Lyft, we want to make sure Users are always enjoying great rides. Riders and Drivers may rate and review each other at the end of every ride. We receive information about ratings and reviews and, as we explain below, give Riders information about Drivers' ratings and reviews and vice versa.

Address Book Contacts. If you permit Lyft to access the address book on your device through the permission system used by your mobile platform, we may access and store names and contact information from your address book to facilitate invitations and social interactions that you initiate through our Platform and for other purposes described in this privacy policy or at the time of consent or collection.

Information from Cookies and Similar Technologies. We collect information through the use of "cookies", tracking pixels, and similar technologies to understand how you navigate through the Lyft Platform and interact with Lyft advertisements, to learn what content is popular, and to save your preferences. Cookies are small text files that web servers place on your device; they are designed to store basic information and to help websites and apps recognize your browser. We may use both session cookies and persistent cookies. A session cookie disappears after you close your browser. A persistent cookie remains after you close your browser and may be accessed every time you use the Lyft Platform. You should consult your web browser(s) to modify your cookie settings. Please note that if you delete or choose not to accept cookies from us, you may be missing out on certain features of the Lyft Platform.

C. Information We Collect from Third Parties

Third Party Services. If you choose to register for Lyft or otherwise link your Lyft account with a third party's service (such as Facebook), we may receive the same type of information we collect from you (described above) directly from those services.

Third Party Partners. We may receive additional information about you, such as demographic data, payment information, or fraud detection information, from third party partners and combine it with other information that we have about you.

Enterprise Programs. If your company, university, or organization participates in one of our enterprise programs such as Lyft for Work, we may receive information about you, such as your email address, from your participating organization. We also may give your participating organization the opportunity to request a ride on your behalf, in which case they may provide us with your name, phone number, and the pickup and drop off location for your ride.

Background Information on Drivers. Lyft works with third party partners to perform driving record and criminal background checks on Drivers, and we receive information from them such as publicly available information about a Driver's driving record or criminal history.

3. How We Use the Information We Collect

We use the information we collect from all Users to:

- Connect Riders with Drivers;
- Provide, improve, expand, and promote the Lyft Platform;
- Analyze how the Lyft community uses the Lyft Platform;
- Communicate with you, either directly or through one of our partners, including for marketing and promotional purposes;
- Personalize the Lyft experience for you and your friends and contacts;
- Send you text messages and push notifications;
- Facilitate transactions and payments;
- Provide you with customer support;
- Find and prevent fraud; and
- Respond to trust and safety issues that may arise, including auto incidents, disputes between Riders and Drivers, and requests from government authorities.

Additionally, we use the information we collect from Drivers for the following purposes related to driving on the Lyft Platform:

- Sending emails and text messages to Drivers who have started the driver application process regarding the status of their application;
- Determining a Driver's eligibility to drive for Lyft
- Notifying Drivers about ride demand, pricing and service updates; and
- Calculating and providing Lyft's auto insurance policy and analyzing usage patterns for safety and insurance purposes.

4. How We Share the Information We Collect

A. Sharing Between Users

Sharing between Riders and Drivers. Riders and Drivers that have been matched for a ride are able to see basic information about each other, such as names, photo, ratings, and any information they have added to their Profiles. Riders and Drivers who connect their Lyft accounts to Facebook will also be able to see their mutual Facebook friends during the ride. Drivers see the pick-up location that the Rider has provided. Riders see a Driver's vehicle information and real-time location as the Driver approaches the pick-up location. Riders' ratings of Drivers are shared with Drivers on a weekly basis. We de-identify the ratings and feedback, but we can't rule out that a driver may be able to identify the Rider that provided the rating or feedback.

Although we help Riders and Drivers communicate with one another to arrange a pickup, we do not share your actual phone number or other contact information with other Users. If you report a lost or found item to us, we will seek to connect you with the relevant Rider or Driver, including sharing actual contact information with your permission.

Sharing between Lyft Line Riders. If you use Lyft Line, Riders who have been matched with you will be able to see your name, photo and any information you have added to your Profile. If you connect your Lyft account to Facebook (such as by signing up through Facebook), we may show your mutual friends with other Riders who are also connected via Facebook. During the Lyft Line matching process we may show photos of possible matches to you and other Riders.

B. Sharing Between Lyft and Third Parties

API and Integration Partners. If you connect to the Lyft Platform through an integration with a third party service, we may share information about your use of the Lyft Platform with that third party. We may share your information with our third party partners in order to receive additional information about you. We may also share your information with third party partners to create offers that may be of interest to you.

Third Party Services. The Lyft Platform may allow you to connect with other websites, products, or services that we don't have control over (for example, we may give you the ability to order a food delivery from

a restaurant from within the Lyft app). If you use these services, we will provide the third party with information about you to allow them to provide the service to you (for example, we would give the restaurant your name, phone number and address to drop off the food). We can't speak to the privacy practices of these third parties, and we encourage you to read their privacy policies before deciding whether to use their services.

Service Providers. We work with third party service providers to perform services on our behalf, and we may share your information with such service providers to help us provide the Lyft Platform, including all of the things described in Section 3 above.

Enterprise Partners. If you participate in an enterprise program and charge a ride to your organization's billing method or credits, we will provide your organization's account holder with information about your use of the Lyft Platform, including ride details such as date, time, charge, and pick up and drop off locations. If you create a Business Profile, at the end of each ride you will have the option to designate the ride as a business ride. If you do so, and your organization has a corporate account with Lyft, we may share information about your use of Lyft Platform with your organization including ride details such as date, time, charge, and region of the trip. If you change organizations, it is your responsibility to update your Business Profile with the new information. (Please remember to check and set your designation settings accordingly.) If you integrate your account with an expense platform (like Concur) we will share the ride details to your expense account.

International Partners. We've partnered with several ride-sharing services around the globe so Riders can continue to find rides when they open the Lyft app abroad, and Drivers can provide services to international travelers in the U.S. When we match a ride with the partner, we share the same information that is shared between matched Riders and Drivers on the Lyft Platform. In some cases we are unable to mask your phone number if you call an international driver, so please keep that in mind before using this feature.

Other Sharing. We may share your information with third parties in the following cases:

- While negotiating or in relation to a change of corporate control such as a restructuring, merger or sale of our assets;
- If a government authority requests information and we think disclosure is required or appropriate in order to comply with laws, regulations, or a legal process;
- With law enforcement officials, government authorities, or third parties if we think doing so is necessary to protect the rights, property, or safety of the Lyft community, Lyft, or the public (you can read more about this in our Law Enforcement Request policy);
- To comply with a legal requirement or process, including but not limited to, civil and criminal subpoenas, court orders or other compulsory disclosures.
- If you signed up for a promotion with another User's referral or promotion code, with your referrer to let them know about your redemption of or qualification for the promotion;
- With our insurance partners to help determine and provide relevant coverage in the event of an incident;
- To provide information about the use of the Lyft Platform to potential business partners in aggregated or de-identified form that can't reasonably be used to identify you; and
- Whenever you consent to the sharing.

5. Your Choices

Email Subscriptions. You can always unsubscribe from our commercial or promotional emails but we will still send you transactional and relational emails about your account use of the Lyft Platform.

Text Messages. You can opt out of receiving commercial or promotional text messages by texting the word END to 46080 from the mobile device receiving the messages. You may also opt out of receiving all texts from Lyft (including transactional or relational messages) by texting the word STOPALL to 46080 from the mobile device receiving the messages, however, opting out of receiving all texts may impact your use of the Lyft Platform. Drivers can also opt out of driver-specific messages by texting STOP in response to a driver SMS. To re-enable texts you can text START in response to an unsubscribe confirmation SMS.

Push Notifications. You can opt out of receiving push notifications through your device settings. Please note that opting out of receiving push notifications may impact your use of the Lyft Platform (such as receiving a notification that your ride has arrived).

Profile Information. While your name will always be shared with Drivers and fellow Lyft Line Riders, you can delete any additional information that you added to your Profile at any time if you don't want Drivers and Lyft Line Riders to see it. Riders will always be able to see Drivers' names, rating, profile photos, and vehicle information.

Location Information. While you can prevent your device from sharing location information at any time through your Device's operating system settings, Rider and Driver location is core to the Lyft Platform and without it we can't provide our services to you.

Facebook Friends. You can control whether to enable or disable the Facebook mutual friends feature through your profile settings.

Editing and Accessing Your Information. You can review and edit certain account information by logging in to your account settings and profile (Drivers may edit additional information through the Driver portal). If would like to terminate your Lyft account, please contact us through our Help Center with your request. If you choose to terminate your account, we will deactivate it for you but may retain information from your account for a certain period of time and disclose it in a manner consistent with our practices under this Privacy Policy for accounts that are not closed. We also may retain information from your account to collect any fees owed, resolve disputes, troubleshoot problems, analyze usage of the Lyft Platform, assist with any investigations, prevent fraud, enforce our Terms of Service, or take other actions as required or permitted by law.

6. Other

Data Security. We are committed to protecting the data of the Lyft community. Even though we take reasonable precautions to protect your data, no security measures can be 100% secure, and we cannot guarantee the security of your data.

Children's Privacy. Lyft is not directed to children, and we don't knowingly collect personal information from children under 13. If we find out that a child under 13 has given us personal information, we will take steps to delete that information. If you believe that a child under the age of 13 has given us personal information, please contact us at our Help Center.

Changes to Our Privacy Policy. We may make changes to this Privacy Policy from time to time. If we make any material changes, we will let you know through the Lyft Platform, by email, or other communication. We encourage you to read this Privacy Policy periodically to stay up-to-date about our privacy practices. As long as you use the Lyft Platform, you are agreeing to this Privacy Policy and any updates we make to it.

Contact Information. Feel free to contact us at any time with any questions or comments about this Privacy Policy, your personal information, our use and sharing practices, or your consent choices by contacting our Help Center.

LYFT RIDER APP

to	skully37@gmail.com
subject	We're updating our Terms of Service
fromDomain	lyftmail.com
sender	Go-http-client/1.1
fromAddress	Lyft <noreply@lyftmail.com>

created	12/13/20 08:44:50pm PST
sent	12/13/20 08:44:50pm PST
updated	12/13/20 08:44:57pm PST
delivered	12/13/20 08:44:57pm PST

Hi David,

We updated our Terms of Service for all riders on Dec. 9.

The updated Terms include information about our Community Guidelines, which help keep our community safe and respectful. Changes also include updated information about how we may communicate with you, and revisions to our Dispute Resolution and Arbitration Agreement, which explains how legal disputes are handled.

These are just a few highlights. **Your continued use of Lyft will confirm that you have reviewed and agreed to the updated Terms.**

Thanks for sharing the ride!

The Lyft Team

Contact

548 Market St., P.O. Box 68514, San Francisco, CA 94104
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CPUC ID No. TCP0032513 - P

EXHIBIT 4

EXHIBIT 5

Lyft Terms of Service

Last Updated: December 9, 2020

These Terms of Service constitute a legally binding agreement (the "Agreement") between you and Lyft, Inc., its parents, subsidiaries, representatives, affiliates, officers and directors (collectively, "Lyft," "we," "us" or "our") governing your use of the Lyft application (the "Lyft App"), website, and technology platform (collectively, the "Lyft Platform").

PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS, GROUP OR REPRESENTATIVE ACTION OR PROCEEDING. AS A DRIVER OR DRIVER APPLICANT, YOU HAVE AN OPPORTUNITY TO OPT OUT OF ARBITRATION WITH RESPECT TO CERTAIN CLAIMS AS PROVIDED IN SECTION 17.

By entering into this Agreement, and/or by using or accessing the Lyft Platform you expressly acknowledge that you understand this Agreement (including the dispute resolution and arbitration provisions in Section 17) and accept all of its terms. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM OR ANY OF THE SERVICES PROVIDED THROUGH THE LYFT PLATFORM. If you use the Lyft Platform in another country, you agree to be subject to Lyft's terms of service for that country.

When using the Lyft Platform, you also agree to conduct yourself in accordance with our Community Guidelines, which shall form part of this Agreement between you and Lyft.

1. The Lyft Platform

The Lyft Platform provides a marketplace where, among other things, persons who seek transportation to certain destinations ("Riders") can be matched with transportation options to such destinations. One option for Riders is to request a ride from rideshare drivers who are driving to or through those destinations ("Drivers"). Drivers and Riders are collectively referred to herein as "Users," and the driving services provided by Drivers to Riders shall be referred to herein as "Rideshare Services." As a User, you authorize Lyft to match you with Drivers or Riders based on factors such as your location, the requested pickup location, the estimated time to pickup, your destination, User preferences, driver mode, and platform efficiency, and to cancel an existing match and/or rematch you with a Driver or Rider based on the same considerations. Any decision by a User to offer or accept Rideshare Services is a decision made in such User's sole discretion. Each Rideshare Service provided by a Driver to a Rider shall constitute a separate agreement between such persons.

In certain markets, Riders may have the option to rent bikes or scooters through the Lyft Platform to ride to their destination. In some markets these bikes and scooters are owned by Lyft. In other markets Lyft operates a bike-share or scooter-share program on behalf of third parties. In either case, your rental and use of bikes and scooters through the Lyft Platform is subject to additional agreements between you and Lyft and third parties as applicable to the particular market ("Supplemental Agreements"). Please review any applicable Supplemental Agreements carefully. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF A SUPPLEMENTAL AGREEMENT, YOU MAY NOT RENT OR USE THE BIKES OR SCOOTERS IN SUCH MARKET. In the event of any conflict between this Agreement and the terms and conditions of any Supplemental Agreement, the terms of this Agreement shall control.

2. Modification to the Agreement

Lyft reserves the right to modify the terms and conditions of this Agreement, and such modifications shall be binding on you only upon your acceptance of the modified Agreement. Lyft reserves the right to modify any information on pages referenced in the hyperlinks from this Agreement from time to time, and such modifications shall become effective upon posting. Continued use of the Lyft Platform or Rideshare Services after any such changes shall constitute your consent to such changes. Unless material changes are made to the arbitration provisions herein, you agree that modification of this Agreement does not create a renewed opportunity to opt out of arbitration (if applicable).

3. Eligibility

The Lyft Platform may only be used by individuals who have the right and authority to enter into this Agreement and are fully able and competent to satisfy the terms, conditions, and obligations herein. The Lyft Platform is not available to Users who have had their User account temporarily or permanently deactivated. You may not allow other persons to use your User account, and you agree that you are the sole authorized user of your account. To use the Lyft Platform, each User shall create a User account. Each person may only create one User account, and Lyft reserves the right to deactivate any additional or duplicate accounts. Your participation in certain Lyft programs and use of certain Lyft products or services may be subject to additional eligibility requirements as determined by Lyft.

By becoming a User, you represent and warrant that you are at least 18 years old. Notwithstanding the foregoing, if you are the parent or legal guardian of a 16 or 17-year-old minor you may create a Lyft account for such minor to use the Lyft Platform subject to the following requirements and restrictions: (a) you ensure that the minor's use of the Lyft Platform is limited solely to accessing and using bike-share or scooter-share services where expressly permitted under the Supplemental Agreement applicable to such services, (b) you determine that the bike-share and scooter-share services are suitable for the minor, (c) you ensure that the minor's use of the Lyft Platform and applicable bike-share or scooter-share services is done in compliance and acknowledgement of all applicable safety instructions and warnings in this Agreement, any applicable Supplemental Agreements, and the Lyft App, (d) you ensure that the minor does not request or accept any Rideshare Services unless accompanied by you or an authorized guardian, (e) you explain the terms of this Agreement to the minor, and (f) you expressly guarantee the minor's acceptance of the terms of this Agreement.

By creating a Lyft account for such minor, you hereby give permission and consent to the Agreement on the minor's behalf, and you shall assume any and all responsibility and liability for the minor's use of the Lyft Platform as provided by the terms of this Agreement and any applicable Supplemental Agreements. You will be responsible for any breach of the above representations, warranties and/or this Agreement, and/or any attempt of the minor to disaffirm this Agreement. Furthermore, you hereby represent that you are fully authorized to execute this Agreement on behalf of yourself and all other parents or legal guardians of the minor rider.

4. Charges

As a Rider, you understand that request or use of Rideshare Services may result in charges to you ("Charges"). Charges related to bikes and scooters are addressed in the applicable

Supplemental Agreement. Charges for Rideshare Services include Fares and other applicable fees, tolls, surcharges, and taxes as set forth on your market's Lyft Cities page (www.lyft.com/cities), plus any tips to the Driver that you elect to pay. Lyft has the authority and reserves the right to determine and modify pricing by posting applicable pricing terms to your market's Lyft Cities page or quoting you a price for a specific ride at the time you make a request. Pricing may vary based on the type of service you request (e.g., shared, economy, extra seats, luxury) as described on your market's Lyft Cities page. You are responsible for reviewing the applicable Lyft Cities page or price quote within the Lyft App and shall be responsible for all Charges incurred under your User account regardless of your awareness of such Charges or the amounts thereof.

Fares. There are two types of Fares, variable and quoted.

- **Variable Fares**. Variable fares consist of a base charge and incremental charges based on the duration and distance of your ride. For particularly short rides, minimum fares may apply. Please note that we use GPS data from your Driver's phone to calculate the distance traveled on your ride. We cannot guarantee the availability or accuracy of GPS data. If we lose signal we will calculate time and distance using available data from your ride.
- **Quoted Fares**. In some cases Lyft may quote you a Fare at the time of your request. The quote is subject to change until the ride request is confirmed. If during your ride you change your destination, make multiple stops, or attempt to abuse the Lyft Platform, we may cancel the fare quote and charge you a variable fare based on the time and distance of your ride. Lyft does not guarantee that the quoted fare price will be equal to a variable fare for the same ride. Quoted Fares may include the Fees and Other Charges below, as applicable.

Fees and Other Charges.

- **Service Fee**. You may be charged a "Service Fee" for each ride as set forth on the applicable Lyft Cities page.
- **Prime Time**. At certain times, including times of high demand for Rideshare Services ("Prime Time"), you acknowledge that Charges may increase substantially. For all rides with a variable fare, we will use reasonable efforts to inform you of any Prime Time increases in effect at the time of your request. For Quoted Fares we may factor in the Prime Time increases into the quoted price of the ride.
- **Cancellation Fee**. After requesting a ride you may cancel it through the Lyft App, but note that in certain cases a cancellation fee may apply. You may also be charged if you fail to show up after requesting a ride. Please check out our Help Center to learn more about Lyft's cancellation policy, including applicable fees.
- **Damage Fee**. If a Driver reports that you have materially damaged the Driver's vehicle, you agree to pay a "Damage Fee" of up to $250 depending on the extent of the damage (as determined by Lyft in its sole discretion), towards vehicle repair or cleaning. Lyft

reserves the right (but is not obligated) to verify or otherwise require documentation of damages prior to processing the Damage Fee.

- **Tolls**. In some instances tolls (or return tolls) may apply to your ride. Please see our Help Center and your market's Lyft Cities page for more information about toll charges and a list of applicable tolls and return charges. We do not guarantee that the amount charged by Lyft will match the toll charged to the Driver, if any.
- **Other Charges**. Other fees and surcharges may apply to your ride, including: actual or anticipated airport fees, state or local fees, or event fees as determined by Lyft or its marketing partners. In addition, where required by law Lyft will collect applicable taxes. See your market's Lyft Cities page for details on other Charges that may apply to your ride.
- **Tips**. Following a ride, you may elect to tip your Driver in cash or through the Lyft Platform. You may also elect to set a default tip amount or percentage through the Lyft App. Any tips will be provided entirely to the applicable Driver.

General.

- **Facilitation of Charges**. All Charges are facilitated through a third-party payment processor (e.g., First Data, Stripe, Inc., or Braintree, a division of PayPal, Inc.). Lyft may replace its third-party payment processor without notice to you. Charges shall only be made through the Lyft Platform. With the exception of tips, cash payments are strictly prohibited. Your payment of Charges to Lyft satisfies your payment obligation for your use of the Lyft Platform and Rideshare Services. Lyft may group multiple Charges into a single aggregate transaction on your payment method based on the nature of the Charges and/or the date(s) they were incurred. If you don't recognize a transaction, then check your ride receipts and payment history.
- **No Refunds**. All Charges are non-refundable. This no-refund policy shall apply at all times regardless of your decision to terminate usage of the Lyft Platform, any disruption to the Lyft Platform or Rideshare Services, or any other reason whatsoever.
- **Coupons**. You may receive coupons that you can apply toward payment of certain Charges upon completion of a Ride. Coupons are only valid for use on the Lyft Platform, and are not transferable or redeemable for cash except as required by law. Coupons cannot be combined unless expressly provided otherwise, and if the cost of your ride exceeds the applicable credit or discount value we will charge your payment method on file for the outstanding cost of the Ride. For quoted or variable fares, Lyft may deduct the amount attributable to the Service Fee, Tolls, or Other Charges before application of the coupon. Additional restrictions on coupons may apply as communicated to you in a relevant promotion or by clicking on the relevant coupon within the Promotions section of the Lyft App.
- **Credit Card Authorization**. Upon addition of a new payment method or each ride request, Lyft may seek authorization of your selected payment method to verify the payment method, ensure the ride cost will be covered, and protect against unauthorized behavior. The authorization is not a charge, however, it may reduce your available credit by the authorization amount until your bank's next processing cycle. Should the amount of

our authorization exceed the total funds on deposit in your account, you may be subject to overdraft of NSF charges by the bank issuing your debit or prepaid card. We cannot be held responsible for these charges and are unable to assist you in recovering them from your issuing bank. Check out our Help Center to learn more about our use of pre-authorization holds.

5. Payments

If you are a Driver, you will receive payment for your provision of Rideshare Services pursuant to the terms of the Driver Addendum, which shall form part of this Agreement between you and Lyft.

6. Lyft Communications

By entering into this Agreement or using the Lyft Platform, you agree to receive communications from us or communications related to the Lyft Platform at any of the phone numbers provided to Lyft by you or on your behalf, including via e-mail, text message, calls, and push notifications. You agree that texts, calls or prerecorded messages may be generated by automatic telephone dialing systems. Communications from Lyft, its affiliated companies and/or Drivers, may include but are not limited to: operational communications concerning your User account or use of the Lyft Platform or Rideshare Services, use of bikes and scooters through the Lyft Platform, updates concerning new and existing features on the Lyft Platform, communications concerning marketing or promotions run by us or our third-party partners, and news concerning Lyft and industry developments. If you change or deactivate the phone number you provided to Lyft, you agree to update your account information to help prevent us from inadvertently communicating with anyone who acquires your old number. Standard text messaging charges applied by your cell phone carrier will apply to text messages we send.

IF YOU WISH TO OPT OUT OF PROMOTIONAL EMAILS, YOU CAN UNSUBSCRIBE FROM OUR PROMOTIONAL EMAIL LIST BY FOLLOWING THE UNSUBSCRIBE OPTIONS IN THE PROMOTIONAL EMAIL ITSELF. IF YOU WISH TO OPT OUT OF PROMOTIONAL CALLS OR TEXTS, YOU MAY TEXT “END” TO 46080 FROM THE MOBILE DEVICE RECEIVING THE MESSAGES. YOU ACKNOWLEDGE THAT YOU ARE NOT REQUIRED TO CONSENT TO RECEIVE PROMOTIONAL TEXTS OR CALLS AS A CONDITION OF USING THE LYFT PLATFORM OR RELATED SERVICES. IF YOU WISH TO OPT OUT OF ALL TEXTS OR CALLS FROM LYFT (INCLUDING OPERATIONAL OR TRANSACTIONAL TEXTS OR CALLS), YOU CAN TEXT THE WORD “STOPALL” TO 46080 FROM THE MOBILE DEVICE RECEIVING THE MESSAGES,

HOWEVER YOU ACKNOWLEDGE THAT OPTING OUT OF RECEIVING ALL TEXTS MAY IMPACT YOUR USE OF THE LYFT PLATFORM OR RELATED SERVICES.

7. Your Information

Your Information is any information you provide, publish or post to or through the Lyft Platform (including any profile information you provide) or send to other Users (including via in-application feedback, any email feature, or through any Lyft-related Facebook, Twitter or other social media posting) (your "Information"). You consent to us using your Information to create a User account that will allow you to use the Lyft Platform and participate in the Rideshare Services. Our collection and use of personal information in connection with the Lyft Platform and Rideshare Services is as provided in Lyft's Privacy Policy located at www.lyft.com/privacy. You are solely responsible for your Information and your interactions with other members of the public, and we act only as a passive conduit for your online posting of your Information. You agree to provide and maintain accurate, current and complete information and that we and other members of the public may rely on your Information as accurate, current and complete. To enable Lyft to use your Information for the purposes described in the Privacy Policy and this Agreement, you grant to us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, transferable, sub-licensable (through multiple tiers) right and license to exercise the copyright, publicity, and database rights you have in your Information, and to use, copy, perform, display and distribute such Information to prepare derivative works, or incorporate into other works, such Information, in any media now known or not currently known. Lyft does not assert any ownership over your Information; rather, as between you and Lyft, subject to the rights granted to us in this Agreement, you retain full ownership of all of your Information and any intellectual property rights or other proprietary rights associated with your Information.

8. Promotions, Referrals, and Loyalty Programs

Lyft, at its sole discretion, may make available promotions, referral programs and loyalty programs with different features to any Users or prospective Users. These promotions and programs, unless made to you, shall have no bearing whatsoever on your Agreement or relationship with Lyft. Lyft reserves the right to withhold or deduct credits or benefits obtained through a promotion or program in the event that Lyft determines or believes that the redemption of the promotion or receipt of the credit or benefit was in error, fraudulent, illegal, or in violation of the applicable promotion or program terms or this Agreement. Lyft reserves

the right to terminate, discontinue or cancel any promotions or programs at any time and in its sole discretion without notice to you.

Currently, Lyft's referral program provides you with incentives to refer your friends and family to become new Users of the Lyft Platform in your country (the "Referral Program"). Your participation in the Referral Program is subject to this Agreement and the additional Referral Program rules.

9. Restricted Activities

With respect to your use of the Lyft Platform and your participation in the Rideshare Services, you agree that you will not:

a. impersonate any person or entity;
b. stalk, threaten, or otherwise harass any person, or carry any weapons;
c. violate any law, statute, rule, permit, ordinance or regulation;
d. interfere with or disrupt the Lyft Platform or the servers or networks connected to the Lyft Platform;
e. post Information or interact on the Lyft Platform or Rideshare Services in a manner which is fraudulent, libelous, abusive, obscene, profane, sexually oriented, harassing, or illegal;
f. use the Lyft Platform in any way that infringes any third party's rights, including: intellectual property rights, copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
g. post, email or otherwise transmit any malicious code, files or programs designed to interrupt, damage, destroy or limit the functionality of the Lyft Platform or any computer software or hardware or telecommunications equipment or surreptitiously intercept or expropriate any system, data or personal information;
h. forge headers or otherwise manipulate identifiers in order to disguise the origin of any information transmitted through the Lyft Platform;
i. "frame" or "mirror" any part of the Lyft Platform, without our prior written authorization or use meta tags or code or other devices containing any reference to us in order to direct any person to any other web site for any purpose;
j. modify, adapt, translate, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Lyft Platform;
k. rent, lease, lend, sell, redistribute, license or sublicense the Lyft Platform or access to any portion of the Lyft Platform;
l. use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, scrape, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Lyft Platform or its contents;
m. link directly or indirectly to any other web sites;
n. transfer or sell your User account, password and/or identification, or any other User's Information to any other party;

o. discriminate against or harass anyone on the basis of race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age or sexual orientation;
p. violate any of the Referral Program rules if you participate in the Referral Program; or
q. cause any third party to engage in the restricted activities above.

10. Driver Representations, Warranties and Agreements

By providing Rideshare Services as a Driver on the Lyft Platform, you represent, warrant, and agree that:

a. You possess a valid driver's license and are authorized and medically fit to operate a motor vehicle and have all appropriate licenses, approvals and authority to provide transportation to Riders in all jurisdictions in which you provide Rideshare Services.
b. You own, or have the legal right to operate, the vehicle you use when providing Rideshare Services; such vehicle is in good operating condition and meets the industry safety standards and all applicable statutory and state department of motor vehicle requirements for a vehicle of its kind; and any and all applicable safety recalls have been remedied per manufacturer instructions.
c. You will not engage in reckless behavior while driving, drive unsafely, operate a vehicle that is unsafe to drive, permit an unauthorized third party to accompany you in the vehicle while providing Rideshare Services, provide Services as a Driver while under the influence of alcohol or drugs, or take action that harms or threatens to harm the safety of the Lyft community or third parties.
d. You will only provide Rideshare Services using the vehicle that has been reported to, and approved by Lyft, and for which a photograph has been provided to Lyft, and you will not transport more passengers than can securely be seated in such vehicle (and no more than seven (7) passengers in any instance).
e. You will not, while providing the Rideshare Services, operate as a public or common carrier or taxi service, accept street hails, charge for rides (except as expressly provided in this Agreement), demand that a rider pay in cash, or use a credit card reader, such as a Square Reader, to accept payment or engage in any other activity in a manner that is inconsistent with your obligations under this Agreement.
f. You will not attempt to defraud Lyft or Riders on the Lyft Platform or in connection with your provision of Rideshare Services. If we suspect that you have engaged in fraudulent activity we may withhold applicable Fares or other payments for the ride(s) in question and take any other action against you available under the law.
g. You will not discriminate against Riders with disabilities and agree to review Lyft's Anti-Discrimination Policies. You will make reasonable accommodation as required by law

and our Service Animal Policy and Wheelchair Policy for Riders who travel with their service animals or who use wheelchairs (or other mobility devices) that can be folded for safe and secure storage in the car's trunk or backseat.

h. You agree that we may obtain information about you, including your criminal and driving records, and you agree to provide any further necessary authorizations to facilitate our access to such records during the term of the Agreement.
i. You have a valid policy of liability insurance (in coverage amounts consistent with all applicable legal requirements) that names or schedules you for the operation of the vehicle you use to provide Rideshare Services.
j. You will pay all applicable federal, state and local taxes based on your provision of Rideshare Services and any payments received by you.

11. Intellectual Property

All intellectual property rights in the Lyft Platform shall be owned by Lyft absolutely and in their entirety. These rights include database rights, copyright, design rights (whether registered or unregistered), trademarks (whether registered or unregistered) and other similar rights wherever existing in the world together with the right to apply for protection of the same. All other trademarks, logos, service marks, company or product names set forth in the Lyft Platform are the property of their respective owners. You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information ("Submissions") provided by you to us are non-confidential and shall become the sole property of Lyft. Lyft shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

LYFT and other Lyft logos, designs, graphics, icons, scripts and service names are registered trademarks, trademarks or trade dress of Lyft in the United States and/or other countries (collectively, the "Lyft Marks"). If you provide Rideshare Services as a Driver, Lyft grants to you, during the term of this Agreement, and subject to your compliance with the terms and conditions of this Agreement, a limited, revocable, non-exclusive license to display and use the Lyft Marks solely on the Lyft stickers/decals, Lyft Amp, and any other Lyft-branded items provided by Lyft directly to you in connection with providing the Rideshare Services ("License"). The License is non-transferable and non-assignable, and you shall not grant to any third party any right, permission, license or sublicense with respect to any of the rights granted hereunder without Lyft's prior written permission, which it may withhold in its sole discretion. The Lyft logo (or any Lyft Marks) may not be used in any manner that is likely to cause confusion, including but not limited to: use of a Lyft Mark in a domain name or Lyft referral code, or use of a Lyft Mark as a social media handle or name, avatar, profile photo, icon, favicon, or banner. You may

identify yourself as a Driver on the Lyft Platform, but may not misidentify yourself as Lyft, an employee of Lyft, or a representative of Lyft.

You acknowledge that Lyft is the owner and licensor of the Lyft Marks, including all goodwill associated therewith, and that your use of the Lyft logo (or any Lyft Marks) will confer no interest in or ownership of the Lyft Marks in you but rather inures to the benefit of Lyft. You agree to use the Lyft logo strictly in accordance with Lyft's Brand Guidelines, as may be provided to you and revised from time to time, and to immediately cease any use that Lyft determines to nonconforming or otherwise unacceptable.

You agree that you will not: (1) create any materials that use the Lyft Marks or any derivatives of the Lyft Marks as a trademark, service mark, trade name or trade dress, other than as expressly approved by Lyft in writing; (2) use the Lyft Marks in any way that tends to impair their validity as proprietary trademarks, service marks, trade names or trade dress, or use the Lyft Marks other than in accordance with the terms, conditions and restrictions herein; (3) take any other action that would jeopardize or impair Lyft's rights as owner of the Lyft Marks or the legality and/or enforceability of the Lyft Marks, including, challenging or opposing Lyft's ownership in the Lyft Marks; (4) apply for trademark registration or renewal of trademark registration of any of the Lyft Marks, any derivative of the Lyft Marks, any combination of the Lyft Marks and any other name, or any trademark, service mark, trade name, symbol or word which is similar to the Lyft Marks; (5) use the Lyft Marks on or in connection with any product, service or activity that is in violation of any law, statute, government regulation or standard.

You agree you will not rent, lease, lend, sell, or otherwise redistribute the Lyft driver amp, or manufacture, produce, print, sell, distribute, purchase, or display counterfeit/inauthentic Lyft driver amps or other Lyft Marks or (including but not limited to signage, stickers, apparel, or decals) from any source other than directly from Lyft.

Violation of any provision of this License may result in immediate termination of the License, in Lyft's sole discretion, a takedown request sent to the appropriate ISP, or social media platform, and/or a Uniform Domain-Name Dispute-Resolution Policy Proceeding (or equivalent proceeding). If you create any materials (physical or digital) bearing the Lyft Marks (in violation of this Agreement or otherwise), you agree that upon their creation Lyft exclusively owns all right, title and interest in and to such materials, including any modifications to the Lyft Marks or derivative works based on the Lyft Marks or Lyft copyrights. You further agree to assign any interest or right you may have in such materials to Lyft, and to provide information and execute any documents as reasonably requested by Lyft to enable Lyft to formalize such assignment.

Lyft respects the intellectual property of others, and expects Users to do the same. If you believe, in good faith, that any materials on the Lyft Platform infringe upon your copyrights, please view our Copyright Policy for information on how to make a copyright complaint.

12. Disclaimers

The following disclaimers are made on behalf of Lyft, our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, and shareholders.

Lyft does not provide transportation services, and Lyft is not a transportation carrier. Lyft is not a common carrier or public carrier. It is up to the Driver to decide whether or not to offer a ride to a Rider contacted through the Lyft Platform, and it is up to the Rider to decide whether or not to accept a ride from any Driver contacted through the Lyft Platform. We cannot ensure that a Driver or Rider will complete an arranged transportation service. We have no control over the quality or safety of the transportation that occurs as a result of the Rideshare Services.

The Lyft Platform is provided on an "as is" basis and without any warranty or condition, express, implied or statutory. We do not guarantee and do not promise any specific results from use of the Lyft Platform and/or the Rideshare Services, including the ability to provide or receive Rideshare Services at any given location or time. Lyft reserves the right, for example, to limit or eliminate access to the Lyft Platform for Rideshare Services in specific geographic areas and/or at specific times based on commercial viability, public health concerns, or changes in law. To the fullest extent permitted by law, we specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimer may not apply to you.

We do not warrant that your use of the Lyft Platform or Rideshare Services will be accurate, complete, reliable, current, secure, uninterrupted, always available, or error-free, or will meet your requirements, that any defects in the Lyft Platform will be corrected, or that the Lyft Platform is free of viruses or other harmful components. We disclaim liability for, and no warranty is made with respect to, connectivity and availability of the Lyft Platform or Rideshare Services.

We cannot guarantee that each Rider or Driver is who he or she claims to be. Please use common sense when using the Lyft Platform and Rideshare Services, including looking at the photos of the Driver or Rider you have matched with to make sure it is the same individual you see in person. Please note that there are also risks of dealing with underage persons or people acting under false pretense, and we do not accept responsibility or liability for any content, communication or other use or access of the Lyft Platform by persons under the age of 18 in violation of this Agreement. We encourage you to communicate directly with each potential Driver or Rider prior to engaging in an arranged transportation service.

Lyft is not responsible for the conduct, whether online or offline, of any User of the Lyft Platform or Rideshare Services. You are solely responsible for your interactions with other Users. We do not procure insurance for, nor are we responsible for, personal belongings left in the car by Drivers or Riders. By using the Lyft Platform and participating in the Rideshare Services, you agree to accept such risks and agree that Lyft is not responsible for the acts or omissions of Users on the Lyft Platform or participating in the Rideshare Services.

You are responsible for the use of your User account and Lyft expressly disclaims any liability arising from the unauthorized use of your User account. Should you suspect that any unauthorized party may be using your User account or you suspect any other breach of security, you agree to notify us immediately.

It is possible for others to obtain information about you that you provide, publish or post to or through the Lyft Platform (including any profile information you provide), send to other Users, or share during the Rideshare Services, and to use such information to harass or harm you. We are not responsible for the use of any personal information that you disclose to other Users on the Lyft Platform or through the Rideshare Services. Please carefully select the type of information that you post on the Lyft Platform or through the Rideshare Services or release to others. We disclaim all liability, regardless of the form of action, for the acts or omissions of other Users (including unauthorized users, or “hackers”).

Opinions, advice, statements, offers, or other information or content concerning Lyft or made available through the Lyft Platform, but not directly by us, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content. Under no circumstances will we be responsible for any loss or damage resulting from your reliance on information or other content posted by third parties, whether on the Lyft Platform or otherwise. We reserve the right, but we have no obligation, to monitor the materials posted on the Lyft Platform and remove any such material that in our sole opinion violates, or is alleged to violate, the law or this agreement or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of Users or others.

Location data provided by the Lyft Platform is for basic location purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Lyft, nor any of its content providers, guarantees the availability, accuracy, completeness, reliability, or timeliness of location data tracked or displayed by the Lyft Platform. Any of your Information, including geolocational data, you upload, provide, or post on the Lyft Platform may be accessible to Lyft and certain Users of the Lyft Platform.

Lyft advises you to use the Lyft Platform with a data plan with unlimited or very high data usage limits, and Lyft shall not be responsible or liable for any fees, costs, or overage charges

associated with any data plan you use to access the Lyft Platform.

This paragraph applies to any version of the Lyft Platform that you acquire from the Apple App Store. This Agreement is entered into between you and Lyft. Apple, Inc. ("Apple") is not a party to this Agreement and shall have no obligations with respect to the Lyft Platform. Lyft, not Apple, is solely responsible for the Lyft Platform and the content thereof as set forth hereunder. However, Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement. Upon your acceptance of this Agreement, Apple shall have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary thereof. This Agreement incorporates by reference Apple's Licensed Application End User License Agreement, for purposes of which, you are "the end-user." In the event of a conflict in the terms of the Licensed Application End User License Agreement and this Agreement, the terms of this Agreement shall control.

As a Driver, you may be able to use "Lyft Nav built by Google" while providing Rideshare Services on the Platform. Riders and Drivers may also use Google Maps while using the Lyft App. In either case, you agree that Google may collect your location data when the Lyft App is running in order to provide and improve Google's services, that such data may also be shared with Lyft in order to improve its operations, and that Google's terms and privacy policy will apply to this usage.

Lyft shall not be in breach of this Agreement nor liable for failure or delay in performing obligations under this Agreement if such failure or delay results from events, circumstances or causes beyond its reasonable control including (without limitation) natural disasters or acts of God; acts of terrorism; labor disputes or stoppages; war; government action; epidemic or pandemic; chemical or biological contamination; strikes, riots, or acts of domestic or international terrorism; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond the party's reasonable control. All service dates under this Agreement affected by force majeure shall be tolled for the duration of such force majeure. The parties hereby agree, when feasible, not to cancel but reschedule the pertinent obligations as soon as practicable after the force majeure condition ceases to exist.

13. State and Local Disclosures

Certain jurisdictions require additional disclosures to you. You can view any disclosures required by your local jurisdiction at www.lyft.com/terms/disclosures. We will update the disclosures page as jurisdictions add, remove or amend these required disclosures, so please check in regularly for updates.

14. Indemnity

You will defend, indemnify, and hold Lyft including our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, or shareholders harmless from any claims, actions, suits, losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of your use of the Lyft Platform and participation in the Rideshare Services, including: (1) your breach of this Agreement or the documents it incorporates by reference; (2) your violation of any law or the rights of a third party, including, Drivers, Riders, other motorists, and pedestrians, as a result of your own interaction with such third party; (3) any allegation that any materials that you submit to us or transmit through the Lyft Platform or to us infringe or otherwise violate the copyright, trademark, trade secret or other intellectual property or other rights of any third party; (4) your ownership, use or operation of a motor vehicle or passenger vehicle, including your provision of Rideshare Services as a Driver; and/or (5) any other activities in connection with the Rideshare Services. This indemnity shall be applicable without regard to the negligence of any party, including any indemnified person.

15. Limitation of Liability

IN NO EVENT WILL LYFT, INCLUDING OUR AFFILIATES, SUBSIDIARIES, PARENTS, SUCCESSORS AND ASSIGNS, AND EACH OF OUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SHAREHOLDERS (COLLECTIVELY "LYFT" FOR PURPOSES OF THIS SECTION), BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES (INCLUDING DAMAGES FOR DELETION, CORRUPTION, LOSS OF DATA, LOSS OF PROGRAMS, FAILURE TO STORE ANY INFORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY THE LYFT PLATFORM, SERVICE INTERRUPTIONS, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES) ARISING OUT OF OR IN CONNECTION WITH THE LYFT PLATFORM, RIDESHARE SERVICES, OR THIS AGREEMENT, HOWEVER ARISING INCLUDING NEGLIGENCE, EVEN IF WE OR OUR AGENTS OR REPRESENTATIVES KNOW OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LYFT PLATFORM MAY BE USED BY YOU TO REQUEST AND SCHEDULE TRANSPORTATION, GOODS, OR OTHER SERVICES WITH THIRD-PARTY PROVIDERS, BUT YOU AGREE THAT LYFT HAS NO RESPONSIBILITY OR LIABILITY TO YOU RELATED TO ANY TRANSPORTATION, GOODS OR OTHER SERVICES PROVIDED TO YOU BY THIRD PARTY PROVIDERS OTHER THAN AS EXPRESSLY SET FORTH IN IN THIS AGREEMENT. CERTAIN JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

16. Term and Termination

This Agreement is effective upon your acceptance of this Agreement. This Agreement may be terminated: a) by User, without cause, upon seven (7) days' prior written notice to Lyft; or b) by either Party immediately, without notice, upon the other Party's material breach of this Agreement, including but not limited to any breach of Section 9 or breach of Section 10(a) through (i) of this Agreement. In addition, Lyft may terminate this Agreement or deactivate your User account immediately in the event: (1) you no longer qualify to provide Rideshare Services or to operate the approved vehicle under applicable law, rule, permit, ordinance or regulation; (2) you fall below Lyft's star rating or cancellation threshold; (3) Lyft has the good faith belief that such action is necessary to protect the safety of the Lyft community or third parties, provided that in the event of a deactivation pursuant to (1)-(3) above, you will be given notice of the potential or actual deactivation and an opportunity to attempt to cure the issue to Lyft's reasonable satisfaction prior to Lyft permanently terminating the Agreement. For all other breaches of this Agreement, you will be provided notice and an opportunity to cure the breach. If the breach is cured in a timely manner and to Lyft's satisfaction, this Agreement will not be permanently terminated. Sections 2, 6, 7 (with respect to the license), 11-12, 14-19, and 21 shall survive any termination or expiration of this Agreement.

17. DISPUTE RESOLUTION AND ARBITRATION AGREEMENT

(a) Agreement to Binding Arbitration Between You and Lyft.

YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION, as set forth below. This agreement to arbitrate ("Arbitration Agreement") is governed by the Federal Arbitration Act ("FAA"); but if the FAA is inapplicable for any reason, then this Arbitration Agreement is governed by the laws of the State of Delaware, including Del. Code tit. 10, § 5701 et seq., without regard to choice of law principles. This Arbitration Agreement survives after the Agreement terminates or your relationship with Lyft ends. ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED. Except as expressly provided below, this Arbitration Agreement applies to all Claims (defined below) between you and Lyft, including our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, or shareholders. This Arbitration Agreement also applies to claims between you and Lyft's service providers,

including but not limited to background check providers and payment processors; and such service providers shall be considered intended third-party beneficiaries of this Arbitration Agreement.

Except as expressly provided below, ALL DISPUTES AND CLAIMS BETWEEN US (EACH A "CLAIM" AND COLLECTIVELY, "CLAIMS") SHALL BE EXCLUSIVELY RESOLVED BY BINDING ARBITRATION SOLELY BETWEEN YOU AND LYFT. These Claims include, but are not limited to, any dispute, claim or controversy, whether based on past, present, or future events, arising out of or relating to: this Agreement and prior versions thereof (including the breach, termination, enforcement, interpretation or validity thereof), the Lyft Platform, the Rideshare Services, rental or use of bikes or scooters through the Lyft Platform, Lyft promotions, gift card, referrals or loyalty programs, any other goods or services made available through the Lyft Platform, your relationship with Lyft, the threatened or actual suspension, deactivation or termination of your User Account or this Agreement, background checks performed by or on Lyft's behalf, payments made by you or any payments made or allegedly owed to you, any promotions or offers made by Lyft, any city, county, state or federal wage-hour law, trade secrets, unfair competition, compensation, breaks and rest periods, expense reimbursement, wrongful termination, discrimination, harassment, retaliation, fraud, defamation, emotional distress, breach of any express or implied contract or covenant, claims arising under federal or state consumer protection laws; claims arising under antitrust laws, claims arising under the Telephone Consumer Protection Act and Fair Credit Reporting Act; and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Older Workers Benefit Protection Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act of 1974 (except for individual claims for employee benefits under any benefit plan sponsored by Lyft and covered by the Employee Retirement Income Security Act of 1974 or funded by insurance), and state statutes, if any, addressing the same or similar subject matters, and all other federal and state statutory and common law claims. All disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator, except as expressly provided below.

BY AGREEING TO ARBITRATION, YOU UNDERSTAND THAT YOU AND LYFT ARE WAIVING THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL FOR ALL CLAIMS, EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS ARBITRATION AGREEMENT. This Arbitration Agreement is intended to require arbitration of every claim or dispute that can lawfully be arbitrated, except for those claims and disputes which by the terms of this Arbitration Agreement are expressly excluded from the requirement to arbitrate.

(b) Prohibition of Class Actions and Non-Individualized Relief.

YOU UNDERSTAND AND AGREE THAT YOU AND LYFT MAY EACH BRING CLAIMS IN ARBITRATION AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT ON A

CLASS, COLLECTIVE ACTION, OR REPRESENTATIVE BASIS ("CLASS ACTION WAIVER"). YOU UNDERSTAND AND AGREE THAT YOU AND LYFT BOTH ARE WAIVING THE RIGHT TO PURSUE OR HAVE A DISPUTE RESOLVED AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE OR REPRESENTATIVE PROCEEDING. NOTWITHSTANDING THE FOREGOING, THIS SUBSECTION (B) SHALL NOT APPLY TO REPRESENTATIVE PRIVATE ATTORNEYS GENERAL ACT CLAIMS BROUGHT AGAINST LYFT, WHICH ARE ADDRESSED SEPARATELY IN SECTION 17(C).

The arbitrator shall have no authority to consider or resolve any Claim or issue any relief on any basis other than an individual basis. The arbitrator shall have no authority to consider or resolve any Claim or issue any relief on a class, collective, or representative basis. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claims.

Notwithstanding any other provision of this Agreement, the Arbitration Agreement or the AAA Rules, disputes regarding the interpretation, applicability, or enforceability of the Class Action Waiver may be resolved only by a court and not by an arbitrator. In any case in which: (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that the Class Action Waiver is unenforceable with respect to any Claim or any particular remedy for a Claim (such as a request for public injunctive relief), then that Claim or particular remedy (and only that Claim or particular remedy) shall be severed from any remaining claims and/or remedies and may be brought in a court of competent jurisdiction, but the Class Action Waiver shall be enforced in arbitration on an individual basis as to all other Claims or remedies to the fullest extent possible.

(c) Representative PAGA Waiver.

Notwithstanding any other provision of this Agreement or the Arbitration Agreement, to the fullest extent permitted by law: (1) you and Lyft agree not to bring a representative action on behalf of others under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code § 2698 et seq., in any court or in arbitration, and (2) for any claim brought on a private attorney general basis, including under the California PAGA, both you and Lyft agree that any such dispute shall be resolved in arbitration on an individual basis only (i.e., to resolve whether you have personally been aggrieved or subject to any violations of law), and that such an action may not be used to resolve the claims or rights of other individuals in a single or collective proceeding (i.e., to resolve whether other individuals have been aggrieved or subject to any violations of law) (collectively, "representative PAGA Waiver"). Notwithstanding any other provision of this Agreement, the Arbitration Agreement or the AAA Rules, disputes regarding the scope, applicability, enforceability, revocability or validity of this representative PAGA Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. If any provision of this representative PAGA Waiver is found to be unenforceable or unlawful for any reason: (i) the unenforceable provision shall be severed from this Agreement; (ii) severance

of the unenforceable provision shall have no impact whatsoever on the Arbitration Agreement or the requirement that any remaining Claims be arbitrated on an individual basis pursuant to the Arbitration Agreement; and (iii) any such representative PAGA or other representative private attorneys general act claims must be litigated in a civil court of competent jurisdiction and not in arbitration. To the extent that there are any Claims to be litigated in a civil court of competent jurisdiction because a civil court of competent jurisdiction determines that the representative PAGA Waiver is unenforceable with respect to those Claims, the Parties agree that litigation of those Claims shall be stayed pending the outcome of any individual Claims in arbitration.

(d) Rules Governing the Arbitration.

Any arbitration conducted pursuant to this Arbitration Agreement shall be administered by the American Arbitration Association ("AAA") pursuant to its Consumer Arbitration Rules that are in effect at the time the arbitration is initiated, as modified by the terms set forth in this Agreement. Copies of these rules can be obtained at the AAA's website (www.adr.org) (the "AAA Rules"). Notwithstanding the foregoing, if requested by you and if proper based on the facts and circumstances of the Claims presented, the arbitrator shall have the discretion to select a different set of AAA Rules, but in no event shall the arbitrator consolidate more than one person's Claims, or otherwise preside over any form of representative, collective, or class proceeding. The parties may select a different arbitration administrator upon mutual written agreement.

As part of the arbitration, both you and Lyft will have the opportunity for reasonable discovery of non-privileged information that is relevant to the Claim. The arbitrator may award any individualized remedies that would be available in court. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claims. The arbitrator will provide a reasoned written statement of the arbitrator's decision which shall explain the award given and the findings and conclusions on which the decision is based.

The arbitrator will decide the substance of all claims in accordance with applicable law, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different Riders or Drivers, but is bound by rulings in prior arbitrations involving the same Rider or Driver to the extent required by applicable law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, provided that any award may be challenged in a court of competent jurisdiction.

(e) Arbitration Fees and Awards.

The payment of filing and arbitration fees will be governed by the relevant AAA Rules subject to the following modifications:

1. If Lyft initiates arbitration under this Arbitration Agreement, Lyft will pay all AAA filing and arbitration fees.
2. With respect to any Claims brought by Lyft against a Driver, or for Claims brought by a Driver against Lyft that: (A) are based on an alleged employment relationship between Lyft and a Driver; (B) arise out of, or relate to, Lyft's actual deactivation of a Driver's User account or a threat by Lyft to deactivate a Driver's User account; (C) arise out of, or relate to, Lyft's actual termination of a Driver's Agreement with Lyft under the termination provisions of this Agreement, or a threat by Lyft to terminate a Driver's Agreement; (D) arise out of, or relate to, Fares (as defined in this Agreement, including Lyft's commission or fees on the Fares), tips, or average hourly guarantees owed by Lyft to Drivers for Rideshare Services, other than disputes relating to referral bonuses, other Lyft promotions, or consumer-type disputes, or (E) arise out of or relate to background checks performed in connection with a user seeking to become a Driver (the subset of Claims in subsections (A)-(E) shall be collectively referred to as "Driver Claims"), Lyft shall pay all costs unique to arbitration (as compared to the costs of adjudicating the same claims before a court), including the regular and customary arbitration fees and expenses (to the extent not paid by Lyft pursuant to the fee provisions above). However, if you are the party initiating the Driver Claim, you shall be responsible for contributing up to an amount equal to the filing fee that would be paid to initiate the claim in the court of general jurisdiction in the state in which you provide Rideshare Services to Riders, unless a lower fee amount would be owed by you pursuant to the AAA Rules, applicable law, or subsection (e)(1) above. Any dispute as to whether a cost is unique to arbitration shall be resolved by the arbitrator. For purposes of this Section 17(e)(2), the term "Driver" shall be deemed to include both Drivers and Driver applicants who have not been approved to drive.
3. Except as provided in Federal Rule of Civil Procedure 68 or any state equivalents, each party shall pay its own attorneys' fees and pay any costs that are not unique to the arbitration (i.e., costs that each party would incur if the claim(s) were litigated in a court such as costs to subpoena witnesses and/or documents, take depositions and purchase deposition transcripts, copy documents, etc.).
4. At the end of any arbitration, the arbitrator may award reasonable fees and costs or any portion thereof to you if you prevail, to the extent authorized by applicable law.
5. Although under some laws Lyft may have a right to an award of attorneys' fees and non-filing fee expenses if it prevails in an arbitration, Lyft agrees that it will not seek such an award unless you are represented by an attorney or the arbitrator has determined that the claim is frivolous or brought for an improper purpose (as measured by the standards of Federal Rule of Civil Procedure 11(b)).
6. If the arbitrator issues you an award that is greater than the value of Lyft's last written settlement offer made after you participated in good faith in the optional Negotiation process described in subsection (k) below, then Lyft will pay you the amount of the award or U.S. $1,000, whichever is greater.

(f) Location and Manner of Arbitration.

Unless you and Lyft agree otherwise, any arbitration hearings between Lyft and a Rider will take place in the county of your billing address, and any arbitration hearings between Lyft and a Driver will take place in the county in which the Driver provides Rideshare Services. If AAA arbitration is unavailable in your county, the arbitration hearings will take place in the nearest available location for a AAA arbitration. Your right to a hearing will be determined by the AAA Rules.

(g) Exceptions to Arbitration.

This Arbitration Agreement shall not require arbitration of the following types of claims: (1) small claims actions brought on an individual basis that are within the scope of such small claims court's jurisdiction; (2) a representative action brought on behalf of others under PAGA or other private attorneys general acts, to the extent the representative PAGA Waiver in Section 17(c) of such action is deemed unenforceable by a court of competent jurisdiction under applicable law not preempted by the FAA; (3) claims for workers' compensation, state disability insurance and unemployment insurance benefits; (4) claims that may not be subject to arbitration as a matter of generally applicable law not preempted by the FAA; and (5) individual claims of sexual assault or sexual harassment in connection with the use of the Lyft Platform or Rideshare Services. Where these claims are brought in a court of competent jurisdiction, Lyft will not require arbitration of those claims. Lyft's agreement not to require arbitration of these claims does not waive the enforceability of any other provision of this Arbitration Agreement (including without limitation the waivers provided in Section 17(b)), or of the enforceability of this Arbitration Agreement as to any other dispute, claim, or controversy.

Nothing in this Arbitration Agreement prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, Securities Exchange Commission, National Labor Relations Board ("NLRB"), or Office of Federal Contract Compliance Programs, or similar local, state or federal agency, and nothing in this Arbitration Agreement shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration However, should you bring an administrative claim, you may only seek or recover money damages of any type pursuant to this Arbitration Provision, and you knowingly and voluntarily waive the right to seek or recover money damages of any type pursuant to any administrative complaint, except for a complaint issued by the NLRB. Should you participate in an NLRB proceeding, you may only recover money damages if such recovery does not arise from or relate to a claim previously adjudicated under this Arbitration Provision or settled by you. Similarly, you may not recover money damages under this Arbitration Provision if you have already adjudicated such claim with the NLRB. Nothing in this Agreement or Arbitration Agreement prevents your participation in an investigation by a government agency of any report, claim or charge otherwise covered by this Arbitration Provision.

(h) Severability.

Except as otherwise provided in the severability provisions in subsections (b) and (c) above, in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable under applicable law not preempted by the FAA, such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect.

(i) Driver Claims in Pending Settlement.

If you are a member of a putative class in a lawsuit against Lyft involving Driver Claims and a Motion for Preliminary Approval of a Settlement has been filed with the court in that lawsuit prior to this Agreement's effective date (a "Pending Settlement Action"), then this Arbitration Agreement shall not apply to your Driver Claims in that particular class action. Instead, your Driver Claims in that Pending Settlement Action shall continue to be governed by the arbitration provisions contained in the applicable Agreement that you accepted prior to this Agreement's effective date.

(j) Opting Out of Arbitration for Driver Claims That Are Not In a Pending Settlement Action.

As a Driver or Driver applicant, you may opt out of the requirement to arbitrate Driver Claims defined in Section 17(e)(2) (except as limited by Section 17(i) above) pursuant to the terms of this subsection if you have not previously agreed to an arbitration provision in Lyft's Terms of Service where you had the opportunity to opt out of the requirement to arbitrate. If you have previously agreed to such an arbitration provision, you may opt out of any revisions to your prior arbitration agreement made by this provision in the manner specified below, but opting out of this arbitration provision has no effect on any previous, other, or future arbitration agreements that you may have with Lyft. If you have not previously agreed to such an arbitration provision and do not wish to be subject to this Arbitration Agreement with respect to Driver Claims, you may opt out of arbitration with respect to such Driver Claims, other than those in a Pending Settlement Action, by notifying Lyft in writing of your desire to opt out of arbitration for such Driver Claims, which writing must be dated, signed and delivered by electronic mail to arbitrationoptout@lyft.com.

In order to be effective, (A) the writing must clearly indicate your intent to opt out of this Arbitration Agreement with respect to Driver Claims that are not part of a Pending Settlement Action, (B) the writing must include the name, phone number, and email address associated with your User Account, and (C) the email containing the signed writing must be sent within 30 days of the date this Agreement is executed by you. Should you not opt out within the 30-day period, you and Lyft shall be bound by the terms of this Arbitration Agreement in full (including with respect to Driver Claims that are not part of a Pending Settlement Action). As provided in paragraph 17(i) above, any opt out that you submit shall not apply to any Driver Claims that are part of a Pending Settlement Action and your Driver Claims in any such Pending Settlement Action shall continue to be governed by the arbitration provisions that are contained in the applicable Lyft Terms of Use that you agreed to prior to the effective date of this Agreement.

Cases have been filed against Lyft and may be filed in the future involving Driver Claims. You should assume that there are now, and may be in the future, lawsuits against Lyft alleging class, collective, and/or representative Driver Claims in which the plaintiffs seek to act on your behalf, and which, if successful, could result in some monetary recovery to you. But if you do agree to arbitration of Driver Claims with Lyft under this Arbitration Agreement, you are agreeing in advance that you will bring all such claims, and seek all monetary and other relief, against Lyft in an individual arbitration, except for the Driver Claims that are part of a Pending Settlement Action. You are also agreeing in advance that you will not participate in, or seek to recover monetary or other relief, for such claims in any court action or class, collective, and/or representative action. You have the right to consult with counsel of your choice concerning this Arbitration Agreement and you will not be subject to retaliation if you exercise your right to assert claims or opt-out of any Driver Claims under this Arbitration Agreement.

(k) Optional Pre-Arbitration Negotiation Process.

Before initiating any arbitration or proceeding, you and Lyft may agree to first attempt to negotiate any dispute, claim or controversy between the parties informally for 30 days, unless this time period is mutually extended by you and Lyft. A party who intends to seek negotiation under this subsection must first send to the other a written notice of the dispute ("Notice"). The Notice must (1) describe the nature and basis of the claim or dispute; and (2) set forth the specific relief sought. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, and attorneys are confidential, privileged and inadmissible for any purpose, including as evidence of liability or for impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

18. Confidentiality

You agree not to use any technical, financial, strategic and other proprietary and confidential information relating to Lyft's business, operations and properties, information about a User made available to you in connection with such User's use of the Platform, which may include the User's name, pick-up location, contact information and photo ("Confidential Information") disclosed to you by Lyft for your own use or for any purpose other than as contemplated herein. You shall not disclose or permit disclosure of any Confidential Information to third parties, and you agree not to store separate and outside of the Lyft Platform any User Information obtained from the Lyft Platform. As a Driver, you understand that some of Rider Information you receive may be protected by federal and/or state confidentiality laws, such as the Health Information Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy and security of protected (patient) health information. In the event that you know a

Rider, you should not disclose to anyone the identity of the Rider or the location that you picked up, or dropped off the Rider, as this could violate HIPAA. You understand that any violation of the Agreement's confidentiality provisions may violate HIPAA or state confidentiality laws and could result in civil or criminal penalties against you. You agree to take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of Lyft in order to prevent it from falling into the public domain. Notwithstanding the above, you shall not have liability to Lyft with regard to any Confidential Information which you can prove: was in the public domain at the time it was disclosed by Lyft or has entered the public domain through no fault of yours; was known to you, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; is disclosed with the prior written approval of Lyft; becomes known to you, without restriction, from a source other than Lyft without breach of this Agreement by you and otherwise not in violation of Lyft's rights; or is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that You shall provide prompt notice of such court order or requirement to Lyft to enable Lyft to seek a protective order or otherwise prevent or restrict such disclosure.

19. Relationship with Lyft

As a Driver on the Lyft Platform, you acknowledge and agree that you and Lyft are in a direct business relationship, and the relationship between the parties under this Agreement is solely that of independent contracting parties. You and Lyft expressly agree that (1) this is not an employment agreement and does not create an employment relationship between you and Lyft; and (2) no joint venture, franchisor-franchisee, partnership, or agency relationship is intended or created by this Agreement. You have no authority to bind Lyft, and you undertake not to hold yourself out as an employee, agent or authorized representative of Lyft.

Lyft does not, and shall not be deemed to, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Rideshare Services, your acts or omissions, or your operation and maintenance of your vehicle. You retain the sole right to determine when, where, and for how long you will utilize the Lyft Platform. Lyft does not, and shall not be deemed to, unilaterally prescribe specific dates, times of day, or any minimum number of hours for you to utilize the Lyft Platform. You retain the option to accept or to decline or ignore a Rider's request for Rideshare Services via the Lyft Platform, or to cancel an accepted request for Rideshare Services via the Lyft Platform, subject to Lyft's then-current cancellation policies. Lyft does not, and shall not be deemed to, require you to accept any specific request for Rideshare Services as a condition of maintaining access to the platform. With the exception of any signage required by law or permit/license rules or requirements, Lyft shall have no right to require you to: (a) display Lyft's names, logos or colors

on your vehicle(s); or (b) wear a uniform or any other clothing displaying Lyft's names, logos or colors. You acknowledge and agree that you have complete discretion to provide Rideshare Services or otherwise engage in any other business or employment activities, including but not limited to providing services similar to the Rideshare Services to other companies, and that Lyft does not, and shall not be deemed to, restrict you from engaging in any such activity.

20. Other Services

In addition to connecting Riders with Drivers, the Lyft Platform may enable Users to provide or receive services from other third parties. For example, Users may be able to use the Lyft Platform to plan and reserve rides on public transportation, take a ride in an autonomous vehicle provided by a third party, rent vehicles, or obtain financial services provided by third parties (collectively, the "Other Services"). You understand that the Other Services are subject to the terms and pricing of the third-party provider. If you choose to purchase Other Services through the Lyft Platform, you authorize Lyft to charge your payment method on file according to the pricing terms set by the third-party provider. You agree that Lyft is not responsible and may not be held liable for the Other Services or the actions or omissions of the third-party provider. Such Other Services may not be investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Other Services accessed through the Lyft Platform. This Agreement incorporates by reference ADT Mobile Security Monitoring Terms. In the event of a conflict in the terms of the ADT Mobile Security Monitoring Terms and this Agreement, the terms of this Agreement shall control with respect to Lyft and your agreements with Lyft herein, and the limitations of liability set forth in Section 15 above shall also apply to ADT. The Dispute Resolution and Arbitration Agreement provisions in Section 17 above shall apply instead of any terms in the ADT Mobile Security Monitoring Terms for all purposes except with respect to claims that are solely against ADT.

21. General

Except as provided in Section 17, this Agreement shall be governed by the laws of the State of California without regard to choice of law principles. This choice of law provision is only intended to specify the use of California law to interpret this Agreement and is not intended to create any other substantive right to non- Californians to assert claims under California law whether by statute, common law, or otherwise. If any provision of this Agreement is or becomes invalid or non- binding, the parties shall remain bound by all other provisions of this Agreement. In that event, the parties shall replace the invalid or non-binding provision with provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this

Agreement. You agree that this Agreement and all incorporated agreements may be automatically assigned by Lyft, in our sole discretion by providing notice to you. Except as explicitly stated otherwise, any notices to Lyft shall be given by certified mail, postage prepaid and return receipt requested to Lyft, Inc., 548 Market Street, #68514 San Francisco, CA 94104. Any notices to you shall be provided to you through the Lyft Platform or given to you via the email address or physical you provide to Lyft during the registration process. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. The words "include", "includes" and "including" are deemed to be followed by the words "without limitation". A party's failure to act with respect to a breach by the other party does not constitute a waiver of the party's right to act with respect to subsequent or similar breaches. This Agreement sets forth the entire understanding and agreement between you and Lyft with respect to the subject matter hereof and supersedes all previous understandings and agreements between the parties, whether oral or written.

If you have any questions regarding the Lyft Platform or Rideshare Services, please contact us through our Help Center.

Lyft Privacy Policy

Last Updated: January 12, 2021

At Lyft our mission is to improve people's lives with the world's best transportation, providing a platform to help you get from point A to point B. To do that, we need to collect, use, and share some of your personal information. This Privacy Policy is meant to help you understand how Lyft does that and how to exercise the choices and rights you have in your information.

Lyft's privacy homepage provides additional information about our commitment to respecting your personal information, including ways for you to access and delete that information.

1. The Scope of This Policy

This policy applies to all Lyft users, including Riders and Drivers (including Driver applicants), and to all Lyft platforms and services, including our apps, websites, features, and other services (collectively, the "Lyft Platform"). Please remember that your use of the Lyft Platform is also subject to our Terms of Service.

2. The Information We Collect

When you use the Lyft Platform, we collect the information you provide, usage information, and information about your device. We also collect information about you from other sources like third-party services, and optional programs in which you participate, which we may combine with other information we have about you. Here are the types of information we collect about you:

A. Information You Provide to Us

Account Registration. When you create an account with Lyft, we collect the information you provide us, such as your name, email address, phone number, birth date, and payment information. You may choose to share additional info with us for your Rider profile, like your photo or saved addresses (e.g., home or work), and set up other preferences (such as your preferred pronouns).

Driver Information. If you apply to be a Driver, we will collect the information you provide in your application, including your name, email address, phone number, birth date, profile photo, physical address, government identification number (such as social security number), driver's license information, vehicle information, and car insurance information. We collect the payment information you provide us, including your bank routing numbers, and tax information. Depending on where you want to drive, we may also ask for additional business license or permit information or other information to manage driving and programs relevant to that location. We may need additional information from you at some point after you become a Driver, including information to confirm your identity (like a photo).

Ratings and Feedback. When you rate and provide feedback about Riders or Drivers, we collect all of the information you provide in your feedback.

Communications. When you contact us or we contact you, we collect any information that you provide, including the contents of the messages or attachments you send us.

B. Information We Collect When You Use the Lyft Platform

Location Information. Great rides start with an easy and accurate pickup. The Lyft Platform collects location information (including GPS and WiFi data) differently depending on your Lyft app settings and device permissions as well as whether you are using the platform as a Rider or Driver:

- Riders: We collect your device's precise location when you open and use the Lyft app, including while the app is running in the background from the time you request a ride until it ends. Lyft also tracks the precise location of scooters and e-bikes at all times.
- Drivers: We collect your device's precise location when you open and use the app, including while the app is running in the background when it is in driver mode. We also collect precise location for a limited time after you exit driver mode in order to detect ride incidents, and continue collecting it until a reported or detected incident is no longer active.

Usage Information. We collect information about your use of the Lyft Platform, including ride information like the date, time, destination, distance, route, payment, and whether you used a promotional or referral code. We also collect information about your interactions with the Lyft Platform like our apps and websites, including the pages and content you view and the dates and times of your use.

Device Information. We collect information about the devices you use to access the Lyft Platform, including device model, IP address, type of browser, version of operating system, identity of carrier and manufacturer, radio type (such as 4G), preferences and settings (such as preferred language), application installations, device identifiers, advertising identifiers, and push notification tokens. If you are a Driver, we also collect mobile sensor data from your device (such as speed, direction, height, acceleration, deceleration, and other technical data).

Communications Between Riders and Drivers. We work with a third party to facilitate phone calls and text messages between Riders and Drivers without sharing either party's actual phone number with the other. But while we use a third party to provide the communication service, we collect information about these communications, including the participants' phone numbers, the date and time, and the contents of SMS messages. For security purposes, we may also monitor or record the contents of phone calls made through the Lyft Platform, but we will always let you know we are about to do so before the call begins.

Address Book Contacts. You may set your device permissions to grant Lyft access to your contact lists and direct Lyft to access your contact list, for example to help you refer friends to Lyft. If you do this, we will access and store the names and contact information of the people in your address book.

Cookies, Analytics, and Third-Party Technologies. We collect information through the use of "cookies", tracking pixels, data analytics tools like Google Analytics, SDKs, and other third-party technologies to understand how you navigate through the Lyft Platform and interact with Lyft advertisements, to make your Lyft experience safer, to learn what content is popular, to improve your site experience, to serve you better ads on other sites, and to save your preferences. Cookies are small text files that web servers place on your device; they are designed to store basic information and to help websites and apps recognize your browser. We may use both session cookies and persistent cookies. A session cookie disappears after you close your

browser. A persistent cookie remains after you close your browser and may be accessed every time you use the Lyft Platform. You should consult your web browser(s) to modify your cookie settings. Please note that if you delete or choose not to accept cookies from us, you may miss out on certain features of the Lyft Platform.

C. Information We Collect from Third Parties

Third-Party Services. Third-party services provide us with information needed for core aspects of the Lyft Platform, as well as for additional services, programs, loyalty benefits, and promotions that can enhance your Lyft experience. These third-party services include background check providers, insurance partners, financial service providers, marketing providers, and other businesses. We obtain the following information about you from these third-party services:

- Information to make the Lyft Platform safer, like background check information for drivers;
- Information about your participation in third-party programs that provide things like insurance coverage and financial instruments, such as insurance, payment, transaction, and fraud detection information;
- Information to operationalize loyalty and promotional programs or applications, services, or features you choose to connect or link to your Lyft account, such as information about your use of such programs, applications, services, or features; and
- Information about you provided by specific services, such as demographic and market segment information.

Enterprise Programs. If you use Lyft through your employer or other organization that participates in one of our Lyft Business enterprise programs, we will collect information about you from those parties, such as your name and contact information.

Concierge Service. Sometimes another business or entity may order you a Lyft ride. If an organization has ordered a ride for you using our Concierge service, they will provide us your contact information and the pickup and drop-off location of your ride.

Referral Programs. Friends help friends use the Lyft Platform. If someone refers you to Lyft, we will collect information about you from that referral including your name and contact information.

Other Users and Sources. Other users or public or third-party sources such as law enforcement, insurers, media, or pedestrians may provide us information about you, for example as part of an investigation into an incident or to provide you support.

3. How We Use Your Information

We use your personal information to:

- Provide the Lyft Platform;
- Maintain the security and safety of the Lyft Platform and its users;
- Build and maintain the Lyft community;
- Provide customer support;
- Improve the Lyft Platform; and
- Respond to legal proceedings and obligations.

Providing the Lyft Platform. We use your personal information to provide an intuitive, useful, efficient, and worthwhile experience on our platform. To do this, we use your personal information to:

- Verify your identity and maintain your account, settings, and preferences;
- Connect you to your rides and track their progress;
- Calculate prices and process payments;
- Allow Riders and Drivers to connect regarding their ride and to choose to share their location with others;
- Communicate with you about your rides and experience;
- Collect feedback regarding your experience;
- Facilitate additional services and programs with third parties; and
- Operate contests, sweepstakes, and other promotions.

Maintaining the Security and Safety of the Lyft Platform and its Users. Providing you a secure and safe experience drives our platform, both on the road and on our apps. To do this, we use your personal information to:

- Authenticate users;
- Verify that Drivers and their vehicles meet safety requirements;
- Investigate and resolve incidents, accidents, and insurance claims;
- Encourage safe driving behavior and avoid unsafe activities;
- Find and prevent fraud; and
- Block and remove unsafe or fraudulent users from the Lyft Platform.

Building and Maintaining the Lyft Community. Lyft works to be a positive part of the community. We use your personal information to:

- Communicate with you about events, promotions, elections, and campaigns;
- Personalize and provide content, experiences, communications, and advertising to promote and grow the Lyft Platform; and
- Help facilitate donations you choose to make through the Lyft Platform.

Providing Customer Support. We work hard to provide the best experience possible, including supporting you when you need it. To do this, we use your personal information to:

- Investigate and assist you in resolving questions or issues you have regarding the Lyft Platform; and

- Provide you support or respond to you.

Improving the Lyft Platform. We are always working to improve your experience and provide you with new and helpful features. To do this, we use your personal information to:

- Perform research, testing, and analysis;
- Develop new products, features, partnerships, and services;
- Prevent, find, and resolve software or hardware bugs and issues; and
- Monitor and improve our operations and processes, including security practices, algorithms, and other modeling.

Responding to Legal Proceedings and Requirements. Sometimes the law, government entities, or other regulatory bodies impose demands and obligations on us with respect to the services we seek to provide. In such a circumstance, we may use your personal information to respond to those demands or obligations.

4. How We Share Your Information

We do not sell your personal information. To make the Lyft Platform work, we may need to share your personal information with other users, third parties, and service providers. This section explains when and why we share your information.

A. Sharing Between Lyft Users

Riders and Drivers.

Rider information shared with Driver: Upon receiving a ride request, we share with the Driver the Rider's pickup location, name, profile photo, rating, Rider statistics (like approximate number of rides and years as a Rider), and information the Rider includes in their Rider profile (like preferred pronouns). Upon pickup and during the ride, we share with the Driver the Rider's destination and any additional stops the Rider inputs into the Lyft app. Once the ride is finished, we also eventually share the Rider's rating and feedback with the Driver. (We remove the Rider's identity associated with ratings and feedback when we share it with Drivers, but a Driver may be able to identify the Rider that provided the rating or feedback.)

Driver information shared with Rider: Upon a Driver accepting a requested ride, we will share with the Rider the Driver's name, profile photo, preferred pronouns, rating, real-time location, and the vehicle make, model, color, and license plate, as well as other information in the Driver's Lyft profile, such as information Drivers choose to add (like country flag and why you drive) and Driver statistics (like approximate number of rides and years as a Driver).

Although we help Riders and Drivers communicate with one another to arrange a pickup, we do not share your actual phone number or other contact information with other users. If you report a lost or found item to us, we will seek to connect you with the relevant Rider or Driver, including sharing actual contact information with your consent.

Shared Ride Riders. When Riders use a Lyft Shared ride, we share each Rider's name and profile picture to ensure safety. Riders may also see each other's pickup and drop-off locations as part of knowing the route while sharing the ride.

Rides Requested or Paid For by Others. Some rides you take may be requested or paid for by others. If you take one of those rides using your Lyft Business Profile account, a code or coupon, a subsidized program (e.g., transit or government), or a corporate credit card linked to another account, or another user otherwise requests or pays for a ride for you, we may share some or all of your ride details with that other party, including the date, time, charge, rating given, region of trip, and pick up and drop off location of your ride.

Referral Programs. If you refer someone to the Lyft Platform, we will let them know that you generated the referral. If another user referred you, we may share information about your use of the Lyft Platform with that user. For example, a referral source may receive a bonus when you join the Lyft Platform or complete a certain number of rides and would receive such information.

B. Sharing With Third-Party Service Providers for Business Purposes

Depending on whether you're a Rider or a Driver, Lyft may share the following categories of your personal information for a business purpose (as we have done for the preceding 12 months) to provide you with a variety of the Lyft Platform's features and services:

- Personal identifiers, such as your name, address, email address, phone number, date of birth, government identification number (such as social security number), driver's license information, vehicle information, and car insurance information;
- Financial information, such as bank routing numbers, tax information, and any other payment information you provide us;
- Commercial information, such as ride information, Driver/Rider statistics and feedback, and Driver/Rider transaction history;
- Internet or other electronic network activity information, such as your IP address, type of browser, version of operating system, carrier and/or manufacturer, device identifiers, and mobile advertising identifiers; and
- Location data.

We disclose those categories of personal information to service providers to fulfill the following business purposes:

- Maintaining and servicing your Lyft account;
- Processing or fulfilling rides;

- Providing you customer service;
- Processing Rider transactions;
- Processing Driver applications and payments;
- Verifying the identity of users;
- Detecting and preventing fraud;
- Processing insurance claims;
- Providing Driver loyalty and promotional programs;
- Providing marketing and advertising services to Lyft;
- Providing financing;
- Providing requested emergency services;
- Providing analytics services to Lyft; and
- Undertaking internal research to develop the Lyft Platform.

C. For Legal Reasons and to Protect the Lyft Platform

We may share your personal information in response to a legal obligation, or if we have determined that sharing your personal information is reasonably necessary or appropriate to:

- Comply with any applicable federal, state, or local law or regulation, civil, criminal or regulatory inquiry, investigation or legal process, or enforceable governmental request;
- Respond to legal process (such as a search warrant, subpoena, summons, or court order);
- Enforce our Terms of Service;
- Cooperate with law enforcement agencies concerning conduct or activity that we reasonably and in good faith believe may violate federal, state, or local law; or
- Exercise or defend legal claims, protect against harm to our rights, property, interests, or safety or the rights, property, interests, or safety of you, third parties, or the public as required or permitted by law.

D. In Connection with Sale or Merger

We may share your personal information while negotiating or in relation to a change of corporate control such as a restructuring, merger, or sale of our assets.

E. Upon Your Further Direction

With your permission or upon your direction, we may disclose your personal information to interact with a third party or for other purposes.

5. How We Store and Protect Your Information

We retain your information for as long as necessary to provide you and our other users the Lyft Platform. This means we keep your profile information for as long as you maintain an account. We retain transactional information such as rides and payments for at least seven years to

ensure we can perform legitimate business functions, such as accounting for tax obligations. If you request account deletion, we will delete your information as set forth in the "Deleting Your Account" section below.

We take reasonable and appropriate measures designed to protect your personal information. But no security measures can be 100% effective, and we cannot guarantee the security of your information, including against unauthorized intrusions or acts by third parties.

6. Your Rights And Choices Regarding Your Data

As explained more below and on our privacy homepage, Lyft provides ways for you to access and delete your personal information as well as exercise other data rights that give you certain control over your personal information.

A. All Users

Email Subscriptions. You can always unsubscribe from our commercial or promotional emails by clicking unsubscribe in those messages. We will still send you transactional and relational emails about your use of the Lyft Platform.

Text Messages. You can opt out of receiving commercial or promotional text messages by texting the word END to 46080 from the mobile device receiving the messages. You may also opt out of receiving all texts from Lyft (including transactional or relational messages) by texting the word STOPALL to 46080 from the mobile device receiving the messages. Note that opting out of receiving all texts may impact your use of the Lyft Platform. Drivers can also opt out of driver-specific messages by texting STOP in response to a driver SMS. To re-enable texts you can text START in response to an unsubscribe confirmation SMS.

Push Notifications. You can opt out of receiving push notifications through your device settings. Please note that opting out of receiving push notifications may impact your use of the Lyft Platform (such as receiving a notification that your ride has arrived).

Profile Information. You can review and edit certain account information you have chosen to add to your profile by logging in to your account settings and profile.

Location Information. You can prevent your device from sharing location information through your device's system settings. But if you do, this may impact Lyft's ability to provide you our full range of features and services.

Cookie Tracking. You can modify your cookie settings on your browser, but if you delete or choose not to accept our cookies, you may be missing out on certain features of the Lyft Platform.

Do Not Track. Your browser may offer you a "Do Not Track" option, which allows you to signal to operators of websites and web applications and services that you do not want them to track your online activities. The Lyft Platform does not currently support Do Not Track requests at this time.

Deleting Your Account. If you would like to delete your Lyft account, please visit our privacy homepage. In some cases, we will be unable to delete your account, such as if there is an issue with your account related to trust, safety, or fraud. When we delete your account, we may retain certain information for legitimate business purposes or to comply with legal or regulatory obligations. For example, we may retain your information to resolve open insurance claims, or we may be obligated to retain your information as part of an open legal claim. When we retain such data, we do so in ways designed to prevent its use for other purposes.

B. California Residents

The California Consumer Privacy Act provides some California residents with the additional rights listed below. To exercise these rights see the "Exercising Your California Privacy Rights" section or visit our privacy homepage.

Right to Know. You have the right to know and see what data we have collected about you over the past 12 months, including:

- The categories of personal information we have collected about you;
- The categories of sources from which the personal information is collected;
- The business or commercial purpose for collecting your personal information;
- The categories of third parties with whom we have shared your personal information; and
- The specific pieces of personal information we have collected about you.

Right to Delete. You have the right to request that we delete the personal information we have collected from you (and direct our service providers to do the same). There are a number of exceptions, however, that include, but are not limited to, when the information is necessary for us or a third party to do any of the following:

- Complete your transaction;
- Provide you a good or service;
- Perform a contract between us and you;
- Protect your security and prosecute those responsible for breaching it;
- Fix our system in the case of a bug;
- Protect the free speech rights of you or other users;
- Comply with the California Electronic Communications Privacy Act (Cal. Penal Code § 1546 et seq.);

- Engage in public or peer-reviewed scientific, historical, or statistical research in the public interests that adheres to all other applicable ethics and privacy laws;
- Comply with a legal obligation; or
- Make other internal and lawful uses of the information that are compatible with the context in which you provided it.

Other Rights. You can request certain information about our disclosure of personal information to third parties for their own direct marketing purposes during the preceding calendar year. This request is free and may be made once a year. You also have the right not to be discriminated against for exercising any of the rights listed above.

Exercising Your California Privacy Rights. To request access to or deletion of your personal information, or to exercise any other data rights under California law, please contact us using one of the following methods:

Website: You may visit our privacy homepage to authenticate and exercise rights via our website.

Email webform: You may write to us to exercise rights.

To respond to some rights we will need to verify your request either by asking you to log in and authenticate your account or otherwise verify your identity by providing information about yourself or your account. Authorized agents can make a request on your behalf if you have given them legal power of attorney or we are provided proof of signed permission, verification of your identity, and confirmation that you provided the agent permission to submit the request.

Response Timing and Format. We aim to respond to a consumer request for access or deletion within 45 days of receiving that request. If we require more time, we will inform you of the reason and extension period in writing.

7. Children's Data

Lyft is not directed to children, and we don't knowingly collect personal information from children under the age of 13. If we find out that a child under 13 has given us personal information, we will take steps to delete that information. If you believe that a child under the age of 13 has given us personal information, please contact us at our Help Center.

8. Links to Third-Party Websites

The Lyft Platform may contain links to third-party websites. Those websites may have privacy policies that differ from ours. We are not responsible for those websites, and we recommend that you review their policies. Please contact those websites directly if you have any questions about their privacy policies.

9. Changes to This Privacy Policy

We may update this policy from time to time as the Lyft Platform changes and privacy law evolves. If we update it, we will do so online, and if we make material changes, we will let you know through the Lyft Platform or by some other method of communication like email. When you use Lyft, you are agreeing to the most recent terms of this policy.

10. Contact Us

If you have any questions or concerns about your privacy or anything in this policy, including if you need to access this policy in an alternative format, we encourage you to contact us.

DRIVER

RIDER

LYFT

Lyft driver app

Lyft rider app

Ride on web

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON DAVID WHITE, Plaintiff, LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2024-CP-10-06252 **MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO STAY AND COMPEL ARBITRATION**

COMES NOW Plaintiff, David White, by and through his undersigned counsel, hereby submits this Memorandum in Opposition of Defendant's Motion to Stay and Compel Arbitration. For the reasons stated herein, Plaintiff respectfully requests that Defendant's Motion to Stay and Compel Arbitration be denied. Defendant relies on the arbitration clause in the Terms of Service agreement between Plaintiff and Defendant, the Federal Arbitration Act (FAA), and the S.C. Uniform Arbitration Act, S.C. Code Ann. §15-48-10 et seq. However, Defendant's reliance is misplaced the arbitration clause is unconscionable, not applicable, and therefore unenforceable in this case.

FACTS OF THE CASE

On December 26, 2021, at approximately 2:11 pm, Plaintiff was a passenger in a vehicle driven by Defendant Alicia White that was illegally parked on the side of Delano Street in Charleston, South Carolina. Complaint ¶ 8. Defendant White also had a passenger in the backseat that had requested transportation from Defendant Lyft earlier in the day. *Id*. As Defendant White prepared to leave her illegally parked position on the side of Delano Street, suddenly and without warning, the vehicle being driven by Jane Doe left the roadway and side swiped the vehicle in which Plaintiff was a passenger. *Id.* at ¶ 10. Upon information and belief, Defendant Doe was

distracted and violently collided with Defendant White's vehicle as it was illegally parked on the side of Delano Street. *Id.* at ¶ 11. Defendant Doe then fled the scene without stopping. *Id.* at ¶ 13. As a result of the motor vehicle collision, Plaintiff sustained injuries. *Id.* at ¶ 14.

Importantly, Plaintiff was not utilizing the Lyft platform at the time of the collision and had not requested transportation services from Lyft. Nowhere in Plaintiff's Complaint does it state that Plaintiff was a driver for Lyft, nor was he a passenger who had booked a ride through the Lyft application at the time of the subject collision. Rather, Plaintiff was merely a passenger in Defendant White's vehicle at the time of the collision, riding along with her when she decided to start accepting requests for transportation from Lyft participants. *Id.* at ¶ 8. The collision was, in part, due to Defendant White illegally parking her vehicle on the side of a public roadway and then attempting to re-enter the roadway before it was safe to do so while conducting separate Lyft business with another passenger. *Id.* at ¶ ¶ 8 -11.

Plaintiff filed a complaint against all Defendants in Charleston County Court of Common Pleas on December 18, 2024. Defendant Lyft filed an Answer to Plaintiff's complaint on February 20, 2025. Approximately three months after Plaintiff filed his complaint, Defendant filed the instant Motion to Stay and Compel Arbitration.

ARGUMENT

First and foremost, for purposes of this collision, Plaintiff's situation is analogous to that of an innocent pedestrian struck by both a Lyft driver's vehicle and a Jane Doe vehicle, or a motorist in a completely separate vehicle who is involved in a three-car collision and struck by a Lyft driver during the course of providing rideshare services to a different passenger and a Jane Doe driver that then fled the scene. In both scenarios, the injured party would have no contractual relationship with Lyft at the time of the collision and would not be bound by any Terms of Service

agreement, despite being injured by the conduct of someone operating on the Lyft platform. Further, Plaintiff argues this Motion should be denied on the following basis:

I. Defendant's Motion to Stay and Compel Arbitration should be denied because the arbitration clause is unconscionable and therefore unenforceable.

"In conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract." *Smith v. D.R. Horton*, 417 S.C. 42, 48, 790 S.E.2d 1, 4, (2016). Unconscionability, as it pertains to a contractual arbitration clause, is defined as 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, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007). "Whether one party lacks meaningful choice in entering into the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process." *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013). If a court as a matter of law finds any clause of a 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 as to avoid an unconscionable result. S.C. Code Ann. § 36-2-302(1) (2003). In determining whether an arbitration clause is unconscionable, South Carolina courts consider both the absence of meaningful choice and whether the clause contains oppressive, one-sided terms. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007).

Unsurprisingly, arbitration clauses are often found in contracts of adhesion. An adhesion contract is a standard form contract offered on a "take-it-or-leave it" basis with terms that are not negotiable. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 260, 365 (2001). And while an arbitration clause in an adhesion contract is not per se unconscionable, it is a strong indication that there was a lack of meaningful choice in negotiating the terms of the contract and

is met with "considerable skepticism" by courts. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007). In determining whether there was an absence of meaningful choice between parties, the South Carolina Supreme Court in *Simpson v. MSA of Myrtle Beach, Inc.*, considered whether the arbitration clause was included in a contract of adhesion between a commercial entity and a consumer, whether the consumer lacked the business judgment necessary to make her aware of the implications of the arbitration agreement, and whether the consumer had a lawyer present to provide any assistance in the matter. 373 S.C. 14, 27, 644 S.E.2d 663, 670 (2007).

In determining whether an arbitration clause is unconscionable and therefore unenforceable, South Carolina courts will also consider whether the contract contains oppressive and one-sided terms. *Id.* at 25. In *Huskins v. Mungo Homes, LLC*, the South Carolina Supreme Court found that an arbitration clause in a contract which shortened the statute of limitations for any claim brought was void and illegal as a matter of public policy and thus unenforceable as it violated S.C. Code Ann. §15-3-140 (2005). 444 S.C. 592, 910 S.E.2d 474 (2024). S.C. Code Ann. §15-3-140 (2005) forbids and renders void any contract clauses attempting to shorten the legal statute of limitations. The court in *Simpson v. MSA of Myrtle Beach, Inc.*, found that the arbitration clause's limitation on statutory remedies was oppressive and one-sided. 373 S.C. at 28-30, 644 S.E. 2d at 670-71 (2007). Furthermore, courts have found that sections of arbitration clauses that purport to shorten the statute of limitations are material to the whole of the arbitration clause and have declined to salvage the remaining sections of the arbitration requirement, instead finding the entire arbitration provision unenforceable. *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 597, 910 S.E.2d 474, 477 (2024). The court in *Damico v. Lennar Carolinas, LLC*, went as far to say that severing terms from an unconscionable contract of adhesion discourages fair, arms-length

transactions and would encourage sophisticated parties to intentionally insert unconscionable terms in the contract. 437 S.C. 596, 604, 879 S.E.2d 746, 751 (2022).

Here, the Terms of Service agreement between the Plaintiff and Defendant is clearly an adhesion contract. The terms of the agreement were not negotiable on the Plaintiff's behalf and were presented to him on a "take-it-or-leave-it" basis. As Defendant concedes in its Motion, "a person cannot complete the account creation process or purchase rideshare services through the Lyft App unless they affirmatively accept and agree to be bound by Lyft's Terms." *See* Def. Lyft's Exhibit A at ¶ 8 in Def. Lyft's Motion. Plaintiff did not have the business judgment to understand the effect of the arbitration clause contained in the Terms of Service agreement, and did not have counsel present to provide assistance during the account creation process. The arbitration clause is found in section 17 of the subject Terms of Service agreement and contains several oppressive and one-sided terms.

First, section 15 of the Terms of Service contains broad language purporting to exempt Lyft from virtually all liability, stating "IN NO EVENT WILL LYFT...BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES...ARISING OUT OF OR IN CONNECTION WITH THE LYFT PLATFORM, THE RIDESHARE SERVICES, OR THIS AGREEMENT, HOWEVER ARISING INCLUDING NEGLIGENCE." This provision essentially renders Lyft immune from liability under any scenario, which is impermissibly onerous.

Second, the arbitration clause contains several other oppressive and one-sided terms including the waiver of a jury trial, inability to appeal the arbitration decision, and inability to participate in a class action. Third, the arbitration provision is buried within a 43-page document and is inconspicuous in nature, particularly when viewed on a mobile device as most users would

experience it. The subject Terms of Service agreement is a contract of adhesion, Plaintiff lacked meaningful choice and could not negotiate its terms, and the arbitration clause contains several oppressive and one-sided terms. Therefore, the arbitration clause contained in section 17 of the Terms of Service agreement is unconscionable, and thus unenforceable.

II. Even if the Court determines the Arbitration Clause is enforceable, it does not apply in this case to this Plaintiff; and therefore, this Motion should be denied.

Plaintiff does not dispute that he has utilized the Lyft application at times, but he was not utilizing the application as a passenger or driver for Lyft at the time of the subject collision. Plaintiff was simply a passenger in a vehicle in which the driver decided to accept requests for rides through the Lyft application. Complaint at ¶ 8. Additionally, Plaintiff's claims against Lyft involve negligent hiring, supervision, and retention, which do not fall within the scope of the arbitration clause, so it cannot apply to this Plaintiff.

A. Plaintiff did not access Lyft's application for this travel.

Defendant argues that a user agrees to its Terms of Service by clicking "I Agree" prior to accessing the service to request a ride. *See* Def.'s Motion pg. 2. Plaintiff did not click "I Agree" because he did not access the service on the subject date. Therefore, Plaintiff cannot be bound to any terms through the Lyft application as related to this collision.

To state that Plaintiff may have accessed the application on other dates and other times, which now binds him to an arbitration clause for this incident is akin to the recently publicized Florida litigation filed in Orange County between Jeffrey Piccolo as Personal Representative for the Estate of Kanokporn Tangsuan and the defendants he sued: Walt Disney Parks & Resorts and Raglan Road Irish Pub & Restaurant. *See* "Disney wants wrongful death suit thrown out because widower bought an Epcot ticket and had Disney+", Aug. 14, 2024, https://edition.cnn.com/2024/08/14/business/disney-plus-wrongful-death-lawsuit/index.html. In

the *Piccolo* case, Defendant Walt Disney Parks & Resorts moved to dismiss the action on the basis that Plaintiff consented to arbitration when he signed up for a Disney Plus subscription and therefore, must arbitrate his wrongful death lawsuit involving a Disney subsidiary. Ultimately Walt Disney Parks & Resorts withdrew its Motion due to the absurd nature of the argument and public backlash. This is similarly absurd for Lyft to claim arbitration applies in this case despite no relationship existing between Plaintiff and Lyft during his subject ride in the vehicle.

B. Plaintiff's claims against Lyft do not arise out of a business or contractual relationship created by the Terms of Service in the Lyft application.

Even in the instance that a court determines a valid agreement to arbitrate exists between parties, the court must go one step further to ascertain whether the agreement applies to the controversy in question. *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 452 (2003). The factual allegations within a complaint must be within the scope of the arbitration agreement. *See Partain v. Upstate Auto. Grp*., 386 S.C. 488, 491-92, 689 S.E.2d 602, 604 (2010) (citing *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2010)). Since an arbitration agreement originates from a contract, a party cannot be required to arbitrate a dispute which he did not agree to. *See Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007) (citing *Zabinski*, 346 S.C, 596-97). In order to determine whether an arbitration agreement applies to a claim, the court will analyze whether a "significant relationship" exists between the alleged claims and the underlying contract for arbitration. *Id*.

In this case, Plaintiff alleges that Defendant Lyft is vicariously liable for the actions of Defendant White under *respondeat superior*. Complaint at ¶ 33. Plaintiff also alleges that Defendant Lyft was negligent in inadequately training and supervising agents or employees and negligently hiring unqualified agents or employees, among other allegations. *Id.* at ¶ 34 (a-h). As Defendant Lyft points out in the Motion, the Terms of Service explain that the arbitration clause

"applies to all Claims (defined below) between you and Lyft…These claims include but are not limited to any dispute, claim, or controversy…arising out of or relating to: this agreement…the Lyft Platform, the Rideshare Services…services made available through the Lyft Platform." *See* Def.'s Motion, pg. 11 and Def.'s Exhibit A-5 at ¶ 17(a). Nowhere within this excerpt, or anywhere within Defendant's Motion, does Defendant allege that the Terms of Service bind Plaintiff, Defendant White, and Defendant Lyft, yet Plaintiff's claims are inexplicably intertwined with both Defendants. Additionally, Plaintiff does not allege any breach of the Terms of Service, or reference the Terms of Service whatsoever, in his Complaint. As previously stated herein, Plaintiff cannot be alleging a dispute with the Lyft Platform or Rideshare Services, because he was not utilizing the Lyft Platform or its Rideshare Services at the time of the subject collision. Plaintiff's claims against Lyft arise out of Lyft's negligence in hiring, supervising, and retaining agents or employees, which does not involve the Lyft Platform or its Rideshare Services. *See* Complaint at ¶ 34(a) – (h). There is no link between Plaintiff's claims in his Complaint and the Terms of Service and/or, specifically, the arbitration agreement in the Lyft Platform, therefore there is no "significant relationship" between the arbitration clause and the factual allegations within this Complaint.

Based on the foregoing, Defendant's Motion to Stay and Compel Arbitration should be denied.

[SIGNATURE PAGE TO FOLLOW]

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North Charleston, SC
June 19, 2025

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
DAVID WHITE,	)	Civil Action No. 2024-CP-10-06252
Plaintiff,	)	
vs.	)	**LYFT, INC. d/b/a LYFT DRIVES SOUTH CAROLINA, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL ARBITRATION**
LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE,	)	
Defendants.	)	

Lyft Inc., d/b/a Lyft Drives South Carolina, Inc. (hereinafter "Lyft") hereby submits its Reply to Plaintiff's Opposition to Compel Arbitration based on the following grounds.

INTRODUCTION

Under the Federal Arbitration Act ("FAA") and Lyft's Terms of Service ("TOS"), this Court's sole task is to determine whether a valid arbitration agreement exists; all other issues are expressly delegated to the arbitrator. In his Memorandum in Opposition ("Opposition"), Plaintiff David White ("Plaintiff") does not dispute that he agreed to the TOS and used the Lyft Platform[1] to purchase rideshare services, nor does Plaintiff even mention—let alone specifically challenge—the delegation clause in the parties' agreement. Thus, this Court need not go any further to enforce the parties' agreement and grant Lyft's Motion.

Plaintiff tries to weave in arguments regarding *scope* and *enforceability* as contract *formation* issues – which they are not. In summary form, Plaintiff's arguments are: (1) the TOS is a contract of adhesion and unconscionable under South Carolina law; and (2) his claims are outside

[1] Lyft operates a peer-to-peer software platform that connects users seeking rides to certain destinations ("riders") with independent contractor drivers ("drivers") who provide rides using personal vehicles – hereinafter referred to as the "Lyft Platform".

the scope of the arbitration provision. Each of these arguments are contrary to law, as set forth in detail below.

First, as a threshold matter, Plaintiff effectively admits that he agreed to the TOS. *See e.g.* (Pl.'s Opp., p. 5) ("Plaintiff does not dispute that he has utilized the Lyft application at times . . ."); *see also* (**Ex. A** to MTCA, ¶ 18) ("Plaintiff could not have proceeded to access content on the Lyft App without first accepting Lyft's Terms of Service by clicking the 'I Agree' button beneath the full text of Lyft's Terms of Service.") But to the extent Plaintiff's Opposition can be interpreted to argue or imply no contract exists between Plaintiff and Lyft, he has presented ***no evidence*** in support of this position. Lyft's evidence, on the other hand, conclusively establishes that Plaintiff *twice* consented to the TOS—which contain materially identical arbitration provisions—before ***and*** after the subject accident. Before consenting, Plaintiff was presented with the full text of the TOS, including emphasized, capitalized lettering ***at the top of the screen,*** stating**:** PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION (**Ex. A** to MTCA, ¶¶ 15, 16). Lyft's affidavit stands uncontroverted and there is no fact dispute regarding the process by which Plaintiff consented to the TOS; Plaintiff has not met his burden of demonstrating that a contract—the TOS—was not formed between himself and Lyft.

Second, and fundamentally, the TOS includes a clear and unmistakable delegation clause, which requires the parties to submit the question of enforceability (Plaintiff's argument #1) and scope (Plaintiff's argument #2) of the arbitration agreement to the *arbitrator*—not the Court. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 71, 139 S. Ct. 524, 531, 202 L. Ed.

2d 480 (2019) ("When the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract."). Plaintiff has not challenged the delegation clause itself, so the Court's analysis ends here. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 130 S. Ct. 2772, 2774, 177 L. Ed. 2d 403 (2010) ("Accordingly, unless [Plaintiff] 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 Agreement as a whole for the arbitrator.")

Third, even if the issue of scope were before the Court—which it is not—the operative arbitration provision pertains to "ALL DISPUTES AND CLAIMS BETWEEN" Lyft and Plaintiff. (Lyft Terms of Service from August 26, 2019 and December 9, 2020, and both accepted by Plaintiff, attached as **Ex. A-3**, and **Ex. A-5** to MTCA, respectively) (capitalization in original). The plain language of the TOS to which he indisputably consented covers **all** of Plaintiff's claims against Lyft.

Fourth, even if the issue of unconscionability were not clearly and unmistakably delegated to the arbitrator—which it is—Plaintiff has not met his burden to prove unconscionability. Plaintiff's Opposition fails to cite to a ***single*** case that declined to enforce the subject arbitration provision based on either procedural or substantive unconscionability, both of which are required for a finding of unconscionability, while also ignoring the mountain of authority finding Lyft's TOS enforceable.[2]

Lyft only seeks to hold Plaintiff to the agreement he made (twice)—to bring any disputes or claims against Lyft in arbitration. Plaintiff's Opposition provides no basis to deny Lyft's Motion.

[2] *See* footnote 2 in Lyft's MTCA.

Accordingly, the Court should reject Plaintiff's Opposition arguments and grant Lyft's Motion to Compel Arbitration.

ARGUMENT

As the party resisting arbitration, Plaintiff bears the burden of proving that the claims at issue are unsuitable for arbitration. *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 81, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000). Plaintiff has failed to meet that heavy burden.

I. There is No Dispute Plaintiff Consented to the TOS.

Under the FAA, the Court may only address whether an arbitration agreement exists, and if it does, enforce it according to its terms. *See Rogers v. Tug Hill Operating, LLC*, 76 F.4th 279, 285 (4th Cir. 2023), *cert. denied,* 144 S. Ct. 818, 218 L. Ed. 2d 28 (2024). South Carolina law applies to the threshold question of whether the parties agreed to arbitration. *Hooters of Am., Inc. v. Phillips*, 39 F. Supp. 2d 582, 610 (D.S.C. 1998), *aff'd and remanded*, 173 F.3d 933 (4th Cir. 1999) (*citing S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc.*, 312 S.C. 559, 437 S.E.2d 22 (1993)). Nothing in Plaintiff's Opposition challenges the undisputed fact that Plaintiff and Lyft formed such agreement.

On the single determinative issue of whether Plaintiff consented to Lyft's TOS, Plaintiff does not offer *any* evidence[3] to contradict Lyft's sworn Affidavit and supporting business records

[3] It is of note, Plaintiff has not provided <u>any</u> <u>evidence</u>; no affidavit, no document, nothing. The only thing before this Court is briefing by Plaintiff's counsel, which is not evidence. To treat a statement made by a party's own counsel as the evidence that supports a finding in favor of that party is erroneous as a matter of law. *See Trivelas v. S.C. Dept. of Transportation*, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001); *Higgins v. MUSC*, 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997); *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 508 n.7, 443 S.E.2d 401, 406 n.7 (Ct. App. 1994).

"[F]actual statements of counsel, whether made during oral argument or in written briefs or memoranda, ordinarily may not be so considered [in determining whether a genuine issue of material fact exists]. *Gilmore v. Ivey*, 348 S.E.2d 180, 290 S.C. 53 (1986) (citing *Smith v. Mack*

demonstrating (1) Plaintiff was presented with the full text of the TOS on the screen of his Lyft App; (2) Plaintiff consented to the TOS on two separate occasions, (3) he was presented with the full text of the TOS, for his consents on October 31, 2020, and on February 7, 2021, including a section in capital letters at the very top of his screen: "PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION"; (4) he was further presented with a large "I Agree" button that he clicked to confirm his assent; and (5) Plaintiff benefited from that acceptance by purchasing rideshare services on 43 occasions, including 15 occasions *after* the subject accident. (**Ex. A** to MTCA, ¶ 15). Importantly, Plaintiff in fact mischaracterizes Lyft's evidence, making it sound as if these terms were buried in a 43-page document. (Pl.'s Opp., p. 5). This is belied by the description of the presentation of the TOS contained in Lyft's uncontroverted Affidavit submitted in support of its Motion. (**Ex. A** to MTCA, ¶ 15). As now-Supreme Court Justice Ketanji Brown Jackson recently observed, consistent with a litany of cases nationwide, it is "well established that Lyft's method of obtaining assent to its Terms of Service [by] presenting the terms of the agreement and requiring users to click 'I Agree' before they can access the service" is binding and sufficient to enforce Lyft's contractual arbitration clause. *Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 11 (D.D.C. 2021) (Jackson, J.) (citations omitted); *see also* MTCA, n.2.

Trucks, Inc., 505 F. (2d) 1248 (9th Cir.1974)); *Cromwell v. Brisbane*, No. 2016-001298, 2018 WL 775564, at *1 (S.C. Ct. App. Feb. 7, 2018) (citing *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This [c]ourt has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.").

Lyft has presented the ***only*** evidence on contract formation—and it stands uncontradicted. *See Morin v. Innegrity, LLC*, 424 S.C. 559, 567, 819 S.E.2d 131, 136 (Ct. App. 2018) (noting a party who alleged a contract defense "bore the burden of proving it" by the greater weight of the evidence); *Moncada v. DHI Mortg. Co., Ltd.*, 714 F. Supp. 3d 645, 648 (D.S.C. 2023) (finding that the "Fourth Circuit has explained that when the making of the arbitration agreement is in issue, 'the district court must employ the summary judgment standard as a gatekeeper'"); *see also Rose v. New Day Fin., LLC*, 816 F. Supp. 2d 245, 251 (D. Md. 2011) ("Motions to compel arbitration in which the parties dispute the validity of the arbitration agreement are treated as motions for summary judgment"). As such, Lyft has demonstrated Plaintiff and Lyft entered into the TOS, including the clear and conspicuous arbitration agreement contained therein.

II. Enforceability of the TOS and Scope of the Arbitration Provision are Delegated to the Arbitrator.

Plaintiff devotes the bulk of his Opposition to attacking the TOS as "unconscionable" and a "contract of adhesion" in attempt to invalidate the agreement he made. In the alternative, he argues that the arbitration clause does not apply to the purportedly narrow subset of claims he brings against Lyft. As a threshold matter, Plaintiff does not even mention, let alone specifically challenge, the delegation clause itself. Absent a direct and discrete challenge to the validity of the delegation clause the delegation clause must be enforced by this Court per its terms. *Rent-A-Ctr., W., Inc.*, 561 U.S. at 73 ("But we need not consider that claim because none of Jackson's substantive unconscionability challenges was specific to the delegation provision."). His arguments regarding scope (whether his particular claims are subject to arbitration) and enforceability (whether the arbitration agreement is unconscionable)—despite ultimately lacking merit—are thus not properly before this Court.

The uncontested, clear and unmistakable delegation clause in the arbitration agreement at issue in Lyft's TOS states:

> All disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator, except as expressly provided below."[4]

(**Ex. A-3** of MTCA, ¶ 17(a); **Ex. A-5** of MTCA, ¶ 17(a)). Foremost, unconscionability of an arbitration provision is a question of contract "enforceability," which Plaintiff and Lyft *clearly and unmistakably* agreed to delegate to the arbitrator. *See* S.C. Code Ann. § 36-2-302; *Lucey v. Meyer*, 401 S.C. 122, 139, 736 S.E.2d 274, 283 (Ct. App. 2012) (treating unconscionability as a question of contract enforceability). Likewise, it is well-settled that parties can agree to arbitrate "gateway" questions of arbitrability, including enforceability and unconscionability of the contract and disagreements regarding the scope of the arbitration provision itself. *See First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995); *Henry Schein, Inc.*, 139 S. Ct. at 530; *AT & T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986).

When, as here, the FAA applies, courts *must* enforce the delegation clause and send the parties' disputes to the arbitrator for resolution. *Henry Schein, Inc.*, 139 S. Ct. at 528. There is simply no place for the exercise of discretion. *Id.*; *see also Rent-A-Center, West, Inc.*, 561 U.S. at 68; *compare Doe v. TCSC, LLC*, 430 S.C. 602, 609, 846 S.E.2d 874, 877 (Ct. App. 2020) (finding that because the parties' delegation clause did **not** mention who decides the gateway validity and enforceability issues, the court "must honor the parties' choice to leave these [issues of validity and enforceability] to the court.")

[4] Plaintiff does not argue that any of the exceptions "enumerated below" are applicable, because they are not.

The subject delegation clause makes clear that any dispute "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." (**Ex. A-3** of MTCA, ¶ 17(a); **Ex. A-5** of MTCA, ¶ 17(a) (emphasis added). Plaintiff's arguments are therefore foreclosed by the Supreme Court's decision in *Henry Schein* and *Rent-A-Center*; any disputes as to enforceability (including unconscionability), scope, or validity must be submitted to the arbitrator. Therefore, this Court's analysis ends here. While Plaintiff is free to raise his unconscionability and scope arguments in arbitration, he cannot justify them at this juncture as a means by which to defeat Lyft's Motion in this Court.

III. The Lyft Arbitration Provision Covers Plaintiff's Claims.

Even without a delegation clause, Plaintiff's arguments that his claims are somehow outside the scope of the arbitration provision are unavailing for the reasons set forth in detail in Lyft's Motion to Compel Arbitration Section C. In the interest of brevity for the Court, Lyft incorporates those arguments fully herein. Further, the arbitration provision in the Lyft's TOS broadly applies to "ALL DISPUTES AND CLAIMS BETWEEN US." *See York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81–82, 749 S.E.2d 139, 146 (Ct. App. 2013) (finding that where an arbitration provision of the agreement relates to all disputes, the agreement indicates an "unambiguous, mutual intent to arbitrate.").

It is without question that Plaintiff's causes of action asserted against Lyft – negligence and *respondeat superior* – are disputes or claims *between* Plaintiff and Lyft. While Plaintiff tries to argue – unmeritoriously – that the claims against Lyft do not fall within the purview of "Rideshare Services" and are "independent of the Lyft Platform," what Plaintiff fails to appreciate is that the list of enumerated "claims" are framed as "include[d], *but are not limited to*" so even if the Court

finds Plaintiff's argument persuasive, which it should not, Plaintiff has failed to adduce any evidence that his claims do not fall within the "all disputes and claims" language of the arbitration provision. *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the Court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

Plaintiff's argument that his claims are beyond the scope of the arbitration agreement because he did not request the subject ride are likewise without merit. Again, Plaintiff has produced no evidence in support of what has only been presented to this court as legal argument from counsel. Further, Plaintiff is not relieved of his contractual obligations in the TOS simply because he did not request the ride. *See Samuel v. Islam*, 233 A.D.3d 632, 633, 224 N.Y.S.3d 57, 59 (2024).[5]

Distilled to its essence, Plaintiff's claim is that he was injured while knowingly a passenger in a vehicle operated by Defendant Alicia White ("Defendant White"), while she was allegedly active on the Lyft Platform. (Compl. ¶ 8). Indeed, Plaintiff allegedly knew that he was on a ride with Defendant White while she was active on the Lyft Platform, given that "Defendant White also had a passenger in the backseat that had requested transportation" via the Lyft Platform "earlier in the day." (Compl. ¶ 8). Now, Plaintiff sues Lyft for injuries allegedly stemming from that accident.

[5] Plaintiff also attempts to use "publicized Florida litigation" as some sort of binding precedence on this Court – which it is not. In fact, it is not even legal authority of any nature. Even if this Court were to consider this article, the facts are significantly inapposite to the facts in this case. In the Florida litigation, the plaintiff was eating at a restaurant at Disney Springs and suffered an allergic reaction to her food. Walt Disney Parks & Resorts argued that plaintiff's television subscription (Disney+) arbitration agreement compelled arbitration for plaintiff's claims. In the present case, Plaintiff's claims are directly connected to his Lyft relationship and are governed by the TOS he entered with Lyft, not a subsidiary or remotely connected television subscription. (Compl. ¶ 8).

Certainly, these claims fit within the broad application of the language "all claims and disputes" between Plaintiff and Lyft. As such, even if the issue of scope were before the Court—which it is not—Plaintiff's arguments fail under the plain language of the arbitration provision to which he consented.

IV. The TOS are Not Unconscionable.

Even in the absence of the delegation clause, Plaintiff's arguments regarding unconscionability and contract of adhesion are unavailing. It is "a high burden for a party to establish that an arbitration provision [is] unconscionable." *Id.* Plaintiff fails to meet this high burden.

Unconscionability requires a court to find *both* an absence of meaningful choice **and** one-sided contract provisions with oppressive terms in the arbitration provision itself. "In South Carolina, 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***.'" *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 85, 749 S.E.2d 139, 148 (Ct. App. 2013) (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24–25, 644 S.E.2d 663, 668 (2007)) (emphasis added), *Colletti v. Monitronics Int'l, Inc.*, No. 0:15-4838-TLW, 2016 WL 11563370, at *4 (D.S.C. Aug. 4, 2016) (quoting *Carson v. LendingTree LLC*, 456 F. App'x 234, 236 (4th Cir. 2011)), *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 754 (2022), *reh'g denied* (Nov. 17, 2022), *cert. denied,* 143 S. Ct. 2581, 216 L. Ed. 2d 1192 (2023); *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996). Plaintiff has adduced evidence of neither.

An unconscionability analysis in the context of an arbitration agreement should focus on

"*whether the arbitration clause* is geared towards achieving an unbiased decision by a neutral decision-maker," rather than an assessment of the contract as a whole. *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 368, 887 S.E.2d 534, 541 (Ct. App. 2023), *cert. granted* (Feb. 7, 2024) (internal citations omitted) (emphasis added). If it is, then it is not unconscionable. Plaintiff's claim for unconscionability must fail because the arbitration clause at issue will achieve an unbiased decision, and Plaintiff has failed to show otherwise.

In a veiled attempt to hide his legal shortcomings for proving unconscionability, Plaintiff contends "the Terms of Service agreement between the Plaintiff and Defendant is clearly an adhesion contract" because "the terms of the agreement were not negotiable on the Plaintiff's behalf and were presented to him on a 'take-it-or-leave-it' basis" (Pl. Opp., p. 5); however, this is an incorrect interpretation of South Carolina law on the issue. A "take-it-or-leave-it contract of adhesion is not *per se* unconscionable, even though it may indicate one party lacked a meaningful choice." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001). Indeed, "the South Carolina Supreme Court has noted the standardization of contracts is 'a rational and economically efficient response to the rapidity of market transactions and the high costs of negotiations.'" *Morgan v. Advance Am.*, No. 4:07-3235-TLW-TER, 2008 WL 4191754, at *15 (D.S.C. Sept. 5, 2008) (quoting *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898, 902 (Ct. App. 1998)).

Even if Plaintiff could prove the absence of meaningful choice in this era of contract standardization, Plaintiff must still prove the terms are so one-sided that no reasonable person would accept them. "Mutuality [] is a paramount consideration when assessing the substantive unconscionability of a contract term." *Damico*, 879 S.E.2d at 757 (citing 17A Am. Jur. 2d Contracts § 272). It is indisputable the arbitration provision in the TOS applies mutually to claims brought

by the rider and to claims brought by Lyft. (**Ex. A-3** of MTCA, ¶ 17(a); **Ex. A-5** of MTCA, ¶ 17(a)). Mutuality under Lyft's TOS defeats Plaintiff's claim of oppressiveness and one-sidedness. Moreover, Plaintiff has not produced a single piece of evidence or proffered any valid legal argument on one-sided provisions and oppressive terms. This shortcoming is fatal to his claim of unconscionability. Additionally, any claim by Plaintiff that these terms were buried and were, therefore, unconscionable is a roundabout way to say he did not read the TOS before clicking "I Agree" - twice. However, that argument fails on several grounds.

In *Munoz v. Green Tree Financial Corp.*, our Supreme Court reversed a trial court's denial of a defendant creditor's motion to compel arbitration on grounds that arbitration clause was unconscionable. The *Munoz* plaintiffs had signed an installment contract and security agreement with a builder, who then assigned the agreement to a creditor. In the agreement, the following arbitration clause conspicuously appeared:

> All disputes, claims, or controversies arising from or relating to this contract or the relationships which result from this contract, or the validity of this arbitration clause or the entire contract, shall be resolved by binding arbitration by one arbitrator selected by us with consent of you. This arbitration contract is made pursuant to a transaction in interstate commerce, and shall be governed by the Federal Arbitration Act at 9 U.S.C. section 1.... THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL, EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO A COURT ACTION BY U.S. (AS PROVIDED HEREIN). The parties agree and understand that all disputes arising under case law, statutory law, and all other laws including, but not limited to, all contract, tort, and property disputes, will be subject to binding arbitration in accord with this contract.

Munoz, 343 S.C. at 536.

The *Munoz* plaintiffs, like Plaintiff here, did not contest their assent to the terms. However, they contended that they were not advised that arbitration terms were included in the agreement. In response to this contention, our Supreme Court held that the clause was not unconscionable and explicitly advised the plaintiffs and all consumers: "a person who can read is bound to read an

agreement before signing it." *Id.* at 542; *citing Hood v. Life & Cas. Ins. Co. of Tennessee*, 173 S.C. 139, 175, 175 S.E. 76 (1934); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 39, 524 S.E.2d 839, 845 (Ct. App. 1999) ("[T]he law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents simply from reading the document.").

Here, Plaintiff does not contest that he assented to Lyft's TOS and the arbitration provision contained therein, not only once, ***but twice***—before ***and*** after the alleged accident. Like the plaintiffs in *Munoz*, Plaintiff implies that he did not read the arbitration provision because it was "buried within a 43-page document." This argument falls flat.

First, Plaintiff's statement the arbitration agreement was "buried" in the TOS is patently incorrect. The very first page of the TOS, presented to the Plaintiff in the Lyft app, includes the following language in all capital letters: "PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION." (**Ex. A** of MTCA, ¶ 16). Notably, the phrase above, "(SEE SECTION 17 BELOW)" contains an internal cross-reference link which Plaintiff could have clicked and immediately been taken to the arbitration provision which he claims was "buried" in the TOS. (**Ex. A** of MTCA, ¶ 17).

Second, Plaintiff does not actually submit any evidence—not even an affidavit—contesting Lyft's sworn affidavit regarding the presentation of the TOS to him. Nor is there any evidence that Plaintiff did not review and understand the TOS to which he repeatedly assented.

Even if there were (there is not), it would make no difference. Our Supreme Court has clearly opined that a party must read an agreement before accepting it. By his assent to the TOS,

Plaintiff is assumed at law to have read and understood the terms of the agreement. *Burwell v. S.C. Nat. Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986) ("[E]very contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it."); *see also First Baptist Church of Timmonsville v. George A. Creed & Son, Inc.*, 276 S.C. 597, 599, 281 S.E.2d 121, 123 (1981) (concluding that "in the absence of showing of fraud, mistake, unfair dealing or the like, a party to a contract incorporating an arbitration provision cannot escape the obligation of such a provision by simply declaring: 'But I did not read the whole agreement'").

Understanding that it is unfeasible and commercially impractical to have every potential Lyft rider negotiate, redline, and return the TOS to Lyft for approval, our highest court, including other courts around the country, understand that collectively striking every contract of adhesion as unconscionable would have detrimental public policy implications.[6] Considering the burden of proof, Plaintiff has failed to provide any evidence or meritorious legal arguments that Lyft's TOS and the arbitration provision contained within are unconscionable.[7]

Instead, Plaintiff argues the limitation of liability provision contained within Section 15 of the TOS—*not the arbitration provision contained within Section 17 of the TOS*—renders the entire

[6] Plaintiff cannot cite a single case holding that an arbitration provision is substantively unconscionable simply by virtue of serving its core purpose: sending claims to arbitration. Such a holding would render unconscionable nearly all consumer arbitration agreements, in conflict with the strong federal policy favoring arbitration. The FAA embodies a "national policy favoring arbitration," and the Supreme Court has interpreted its scope broadly. *Chamber of Com. of the United States of Am. v. Bonta*, 62 F.4th 473, 478 (9th Cir. 2023) (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443, 126 S. Ct. 1204, 163 L. Ed. 2d 1038 (2006)).

[7] The United States Supreme Court has made it clear: the court, in evaluating arbitration agreements under the FAA, must be treated like all other contracts. "[A] court must hold a party to its arbitration contract just as the court would to any other kind." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 412, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022).

agreement unconscionable. Plaintiff's argument regarding the effect of the limitation of liability clause in the TOS is improper for the Court's analysis of whether the parties entered into a binding *arbitration agreement*. The validity of an arbitration clause "is distinct from the substantive validity of the contract as a whole." *Huskins*, 439 S.C. at 366 (citation omitted); *see also Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016) (noting "in conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract"). While Lyft takes the position that the limitation of liability provision is conscionable and not for the Court's decision regarding valid contract formation, even if this Court were to find otherwise, the provision can and should be severed from the TOS analysis. *See Huskins*, 439 S.C. at 370–71 (deciding to sever two sentences in an arbitration agreement that did not contain a severability clause and "affirm the circuit court's order compelling arbitration as modified"); (**Ex. A-3** of MTCA, ¶ 17(h); **Ex. A-5** of MTCA, ¶ 17(h)) ("in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable . . . such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect.").

Likewise, any suggestion that Plaintiff will be without remedy because of the limitation of liability provision if the Court compels this case to arbitration is without merit. This is a low-speed, sideswipe collision wherein Plaintiff alleges he was injured as a passenger in Defendant White's vehicle. As referenced in Lyft's Motion to Compel Arbitration, there is a $1,000,000 combined single limit auto liability insurance policy in effect for driver Defendant White and Lyft in the underlying case.

Moreover, enforcing the arbitration agreement does not foreclose Plaintiff's arguments and claims, it simply moves Plaintiff's claims against Lyft to the proper forum agreed to by the parties.

As mentioned above, the arguments Plaintiff presented to this Court are still available to Plaintiff in arbitration. This motion is only as to forum, and not to the underlying legal issues raised by Plaintiff. Any arguments of bias in an arbitral forum are premature and should only be raised post-award under the FAA (or at the very least at the arbitrator's determination). *Huffman v. Sticky Fingers, Inc.*, No. CV 2:05-2108-DCN-GCK, 2005 WL 8165097, at *4 (D.S.C. Dec. 20, 2005), *report and recommendation adopted*, No. CIV.A. 2:052108DCNGC, 2006 WL 895029 (D.S.C. Mar. 31, 2006). If an arbitrator finds Plaintiff's arguments persuasive, the arbitrator can return this case to this Court. It is precisely for this reason why the Supreme Court has ruled that the proper mechanism for handling the underlying suit is to *stay* the proceedings versus *dismiss* the action. *Smith v. Spizzirri*, 601 U.S. 472, 144 S. Ct. 1173, 218 L. Ed. 2d 494 (2024). Plaintiff will still have any and all claims against driver Defendant White and is free to litigate those claims in the forum he selected, state court, while also pursuing claims he has against Lyft in the forum he agreed to, arbitration.

Finally, Lyft has produced several court opinions finding Lyft's TOS conscionable and enforceable: courts across the country have evaluated the same TOS at issue here and (1) have compelled more than 130 Lyft cases to arbitration in similar cases to the one at issue (*See* MTCA, n.2), and (2) found that Lyft's TOS are not unconscionable.[8] (*See* **Ex. 1)**. Plaintiff has failed to establish the alleged unconscionability of Lyft's TOS.

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[8]*See, e.g., Williams v. Lyft, Inc.*, No. 4:22-cv-3394, ECF No. 41, pp. *9-10 (S.D. Tex. May 28, 2024) (enforcing delegation clause where "Williams's exclusive argument in opposition to Lyft seeking to enforce the arbitration provision is a challenge to the validity and enforceability of the agreement as a whole"); *Spain v. Lyft, Inc.*, --- F.Supp.3d ---, No. 1:23-cv-419, 2024 WL 907435, at *4 (D. Colo. Jan. 16, 2024) ("[T]he provision [in Lyft's Terms of Service] includes a delegation clause that says a dispute about the scope of the agreement is for the arbitrator to decide."); *Rogers v. Lyft, Inc.*, 452 F. Supp. 3d 904, 918 (N.D. Cal. 2020), *aff'd*, No. 20-15689, 2022 WL 474166 (9th Cir. Feb. 16, 2022), *affd*. No. 20-15689, 2022 U.S. App. LEXIS 4219 (9th Cir. Feb. 16, 2022)

CONCLUSION

For the reasons state above, this forum is not the proper forum for Plaintiff's claims against Lyft. Instead, all of Plaintiff's claims are subject to the arbitration provision in the TOS that Plaintiff consented to, twice. Any remaining issues as to validity, enforceability, arbitrability, and scope have been uncontestably delegated to the arbitrator. Therefore, Lyft respectfully requests that the Court grant the Motion to Compel Arbitration pursuant to the TOS and stay these proceedings pending the outcome of that arbitration.

Respectfully submitted,

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June 22, 2025

("[S]ection 17(a) clearly and unmistakably delegates threshold questions of arbitrability to the arbitrator as a general matter."); *Peterson v. Lyft, Inc.*, No. 16-cv-07343-LB, 2018 U.S. Dist. LEXIS 197164, at *3 (N.D. Cal. Nov. 19, 2018) (the delegation clause "explicitly refer[ring] arbitrability questions to an arbitrator is evidence that the parties clearly and unmistakably have referred the arbitrability question to the arbitrator."); *Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 966 (N.D. Cal. 2015) (same); *Amber Vaatete v. Lyft, Inc., et al.*, No. 23SMCV03631, at *2 (Superior Ct. Los Angeles Cnty., CA, November 3, 2023) (same).

EXHIBIT 7

918 F.3d 181
United States Court of Appeals, First Circuit.

Yilkal BEKELE, Plaintiff, Appellant,

v.

LYFT, INC., Defendant, Appellee.

No. 16-2109
|
March 13, 2019

Synopsis

Background: Driver brought putative class action in state court against ride-sharing company, alleging that company wrongfully classified drivers as independent contractors, rather than employees, in violation of the Massachusetts Wage Act. Action was removed to federal court. The United States District Court for the District of Massachusetts, F. Dennis Saylor, J., 199 F.Supp.3d 284, granted company's motion to compel arbitration of dispute. Driver appealed.

Holdings: The Court of Appeals, Lynch, Circuit Judge, held that:

[1] driver waived argument on appeal that no valid contract to arbitrate had been formed;

[2] arbitration clause was not rendered substantively unconscionable by selection of the American Arbitration Association (AAA) rules; and

[3] arbitration clause was not rendered substantively unconscionable by provision allowing company to modify terms.

Affirmed.

West Headnotes (13)

[1] **Federal Courts** Alternative dispute resolution

State contract law supplies the principles for determining validity, revocability, and enforceability of arbitration clauses, under the Federal Arbitration Act (FAA). 9 U.S.C.A. § 2.

6 Cases that cite this headnote

[2] **Federal Courts** Failure to mention or inadequacy of treatment of error in appellate briefs

Driver waived argument on appeal from the grant of ride-sharing company's motion to compel arbitration that no valid contract to arbitrate had been formed, in driver's putative class action, alleging that company wrongfully classified drivers as independent contractors, rather than employees, in violation of the Massachusetts Wage Act; driver failed to raise that argument in his initial appellate brief, and although driver raised argument in his supplemental appellate brief, no exceptional circumstances excused the belated briefing of the issue. Mass. Gen. Laws Ann. ch. 149, § 148B.

3 Cases that cite this headnote

[3] **Federal Courts** Failure to mention or inadequacy of treatment of error in appellate briefs

The Court of Appeals does not generally consider arguments for reversing a decision of a district court when the argument is not raised in a party's opening appellate brief.

1 Case that cites this headnote

[4] **Federal Courts** Waiver of Error in Appellate Court

An appellate court is more reluctant to excuse deliberate waiver of an argument than to overlook inadvertent forfeiture.

[5] **Federal Courts** Waiver of Error in Appellate Court

Lack of prejudice to the opposing party is not on its own an exceptional circumstance justifying forgiveness of a waiver of an argument on appeal.

[6] **Contracts** Procedural unconscionability

Contracts Substantive unconscionability

To show unconscionability of a contract, under Massachusetts law, the party asserting that defense must prove both substantive unconscionability, that is, that the terms are oppressive to one party, and procedural unconscionability, that is, that the circumstances surrounding the formation of the contract show that the aggrieved party had no meaningful choice and was subject to unfair surprise.

3 Cases that cite this headnote

[7] **Alternative Dispute Resolution** Unconscionability

Under Massachusetts law, as predicted by the Court of Appeals, arbitration clause contained in service agreement between driver and ride-sharing company, was not rendered substantively unconscionable by clause's selection of the American Arbitration Association (AAA) Commercial Rules, which required driver and company to equally split arbitration costs, where company offered to pay all costs for arbitration of parties' dispute, arising from driver's claim that company wrongfully classified drivers as independent contractors, rather than employees, in violation of the Massachusetts Wage Act. 9 U.S.C.A. § 2; Mass. Gen. Laws Ann. ch. 149, § 148B.

[8] **Alternative Dispute Resolution** Unconscionability

In Massachusetts, an arbitration-fee-splitting arrangement is not substantively unconscionable when the arbitration fees a party would owe amount to less than the damages the party claims.

3 Cases that cite this headnote

[9] **Alternative Dispute Resolution** Unconscionability

Under Massachusetts law, an adhesion contract that imposes filing and administrative fees attached to arbitration that are so high as to make access to the arbitral forum impracticable may be unenforceable.

[10] **Contracts** Unconscionable Contracts

Generally, under Massachusetts law, unconscionability of a contract is determined at the time of contracting.

3 Cases that cite this headnote

[11] **Alternative Dispute Resolution** Unconscionability

Under Massachusetts law, evaluating whether arbitration cost-sharing arrangement renders the arbitration agreement unconscionable allows courts to consider facts developed during litigation, such as on party's offer to pay the arbitration costs.

3 Cases that cite this headnote

[12] **Alternative Dispute Resolution** Unconscionability

Massachusetts follows a case-specific approach to evaluating whether an arbitration fee-splitting arrangement renders an arbitration agreement unconscionable.

4 Cases that cite this headnote

[13] **Alternative Dispute Resolution** Unconscionability

Under Massachusetts law, as predicted by the Court of Appeals, arbitration clause contained in service agreement between driver and ride-sharing company, was not rendered substantively unconscionable by provision in agreement that allowed company to modify terms of agreement upon notice and acceptance of new terms, as such provision did not grant company unilateral power to modify, but rather required company to give notice to driver of any modification, and required that driver accept the proposed modification.

4 Cases that cite this headnote

***183** APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS [Hon. F. Dennis Saylor, IV, U.S. District Judge]

Attorneys and Law Firms

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Bryan K. Weir, Thomas R. McCarthy, Cameron T. Norris, Consovoy McCarthy Park PLLC, Arlington, VA, Steven P. Lehotsky, Washington, DC, Michael B. Schon, and U.S. Chamber Litigation Center on brief for Chamber of Commerce of the United States of America, amicus curiae.

Before Lynch, Circuit Judge, Souter,[*] Associate Justice, and Stahl, Circuit Judge.

Opinion

LYNCH, Circuit Judge.

This case is about the enforceability of an arbitration clause alleged to be unconscionable under Massachusetts law.

Yilkal Bekele, the plaintiff, drove for Lyft, Inc., the defendant, starting in mid-2014. Bekele tapped "I accept" on his iPhone 4 when presented with Lyft's Terms of Service Agreement ("TOS Agreement"), which contains a provision requiring that all disputes between the parties be resolved by one-on-one arbitration. Bekele later brought a putative class action in Massachusetts Superior Court against Lyft alleging that the company misclassifies its drivers as independent contractors under that Commonwealth's wage law. After removing the case to federal court, Lyft moved to dismiss in favor of arbitration of Bekele's claim in his individual capacity, invoking the clause in the TOS Agreement that required arbitration and that precluded class, collective, or representative ***184** proceedings. Concluding that the parties had a valid and enforceable agreement to arbitrate, the district court granted the motion and dismissed the case in favor of individual arbitration. See Bekele v. Lyft, Inc., 199 F.Supp.3d 284, 314 (D. Mass. 2016). We affirm.

I.

A. Factual Background

The following undisputed facts are drawn from the complaint and the parties' submissions to the district court. See, e.g., Justiniano v. Soc. Sec. Admin., 876 F.3d 14, 17 (1st Cir. 2017).

Lyft operates a ride-hailing service. Customers use its mobile-phone application ("the App") to request rides. The App then matches each ride request with a Lyft driver in the area.

Before Bekele started driving for Lyft in Boston in the summer of 2014, he downloaded the App on his iPhone 4 and completed the registration process that Lyft requires of customers and drivers before they use Lyft's service. When Bekele registered, users were presented, at one step, with a screen titled "Lyft Terms of Service," which displayed sixteen lines of text from the TOS Agreement in grey ink on a white background. The text explained, "[t]his following user agreement describes the terms and conditions on which Lyft, Inc. offers you access to the Lyft platform," and "[t]his Agreement is a legally binding agreement made between you ... and Lyft, Inc." Beneath that text, a turquoise-colored "I accept" button appeared.

The TOS Agreement's specific provisions were outlined in the text that followed these initial sixteen lines. Users could scroll through the entire text of the TOS Agreement on this screen, but scrolling was not required before accepting. Tapping "I accept" allowed the user to proceed to the next stage of the registration process. But a user who did not accept the terms could not finish registering. The sixth paragraph of the agreement explained this, as well as the process by which Lyft could modify the TOS Agreement:

> IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, PLEASE DO NOT USE OR ACCESS LYFT OR REGISTER FOR THE SERVICES PROVIDED ON LYFT. We may amend this Agreement at any time by posting the amended terms on the Lyft Platform. If We post amended terms on the Lyft platform, You may not use the Services without accepting them. Except as stated below, all amended terms shall automatically be effective after they are posted on the Lyft Platform. This Agreement may not be otherwise amended except in writing signed by You and Lyft.

The arbitration clause appeared about two-thirds of the way through the TOS Agreement.[1] We reproduce the clause with its original bold, capitalized heading and capitalized conclusion:

> **AGREEMENT TO ARBITRATE ALL DISPUTES AND LEGAL CLAIMS**
>
> You and We agree that any legal disputes or claims arising out of or related to the Agreement (including but not limited to the use of the Lyft Platform and/or the Services, or the interpretation, enforceability, revocability, or validity ***185** of the Agreement, or the arbitrability of any dispute), that cannot be resolved informally shall be submitted to binding arbitration in the state in which the Agreement was performed. The arbitration shall be conducted by the American Arbitration Association under its Commercial Arbitration Rules (a copy of which can be obtained here [the word here is a hyperlink to the Commercial Arbitration Rules]), or as otherwise mutually agreed by you and we. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be brought within the time required by applicable law. You and we agree that any claim, action or proceeding arising out of or related to the Agreement must be brought in your individual capacity, and not as a plaintiff or class member in any purported class, collective, or representative proceeding. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative, collective, or class proceeding. YOU ACKNOWLEDGE AND AGREE THAT YOU AND LYFT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.

Bekele tapped "I accept" on the TOS Agreement on May 19, 2014 at 11:45 am; on September 24, 2014 at 10:07 am; and again on October 11, 2014 at 12:25 pm. The record is silent on why Bekele accepted the agreement three times. See Bekele, 199 F.Supp.3d at 289 n.2. The parties agree that the TOS Agreement in effect on October 11, 2014 controls this case. Id. at 289.

B. Procedural History

Bekele's complaint on behalf of a class of Massachusetts Lyft drivers alleges that Lyft violated the Massachusetts Wage Act by classifying drivers as independent contractors rather than as employees, see Mass. Gen. Laws ch. 149 § 148B, and by requiring drivers to bear expenses such as gas and car maintenance, see id. § 148.

[1] Lyft moved to dismiss the complaint and to compel individual arbitration under the Federal Arbitration Act ("FAA"). The parties later agreed to treat Lyft's motion as a motion for partial summary judgment. See Bekele, 199 F.Supp.3d at 288. Relevantly, the FAA provides that

> a written provision in any ... contract ... to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. State contract law supplies the principles for determining validity, revocability, and enforceability. See Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681, 686-87, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996).

In opposing Lyft's motion, Bekele argued that no valid contract to arbitrate had been formed under Massachusetts law. He also argued that, even if a valid contract had been formed, it would be unenforceable under the FAA's savings clause for two reasons: (1) because its class-waiver provision violates the right to engage in concerted action granted by the National Labor Relations Act (NLRA), and (2) because any agreement to arbitrate was procedurally and substantively unconscionable under Massachusetts law.

On substantive unconscionability, an issue we take up in greater detail in the ***186** analysis, Bekele challenged the arbitration clause's selection of the American Arbitration Association (AAA) Commercial Rules. In October 2014, when the parties' agreement was signed, these Rules required that parties like Bekele and Lyft split equally the arbitration's costs.[2] Limited exceptions to this cost-splitting arrangement existed, but Bekele argued that, under the 2014 Rules, he would have been charged $3,750 -- half of the $7,500 initial arbitration fee -- to have an arbitrator decide the threshold issue of fee apportionment. He argued that these fees were unaffordably high for Lyft drivers like him and that the inclusion of the Rules requiring fee-splitting was therefore unconscionably oppressive. Lyft responded that the mere reference to the AAA Rules in the agreement could not be unconscionable. Significantly, it also bound itself to pay the full costs of any arbitration with Bekele.

Ultimately, the district court dismissed the case in favor of individual arbitration. See Bekele, 199 F.Supp.3d at 293-94, 314.

Bekele appealed. His initial brief, filed in January 2017, focused on the NLRA question. It also argued that the agreement was unconscionable, but it did not raise the formation issue. Before Lyft had filed its response, the Supreme Court granted certiorari in Lewis v. Epic Systems Corp., 823 F.3d 1147 (7th Cir. 2016), cert. granted, —— U.S. ——, 137 S.Ct. 809, 196 L.Ed.2d 595 (mem.) (2017), to decide whether class-action waivers in arbitration agreements violate the NLRA. On Lyft's motion, we then ordered this appeal held in abeyance pending the Supreme Court's decision.

While the appeal was stayed, this court decided Cullinane v. Uber Technologies, Inc., 893 F.3d 53 (1st Cir. 2018), which held that no valid agreement to arbitrate had been formed under Massachusetts law between Uber and customers who registered on Uber's mobile-phone application. Id. at 64.

In May 2018, the Supreme Court held in Epic Systems Corp. v. Lewis, —— U.S. ——, 138 S.Ct. 1612, 200 L.Ed.2d 889 (2018), that class and collective action bars in arbitration agreements are not incompatible with the NLRA and are therefore enforceable under the FAA. Id. at 1619.

Lyft and Bekele next agreed, in a Joint Status Report, that, after Epic Systems, Bekele cannot prevail on his argument that the arbitration agreement violates the NLRA. The parties proposed that Bekele be allowed to file a supplemental opening brief arguing that no agreement to arbitrate had been formed under Cullinane.

We lifted the stay and allowed this supplemental brief. Bekele filed his supplemental brief, Lyft then responded, and Bekele replied.

II.

A. Waiver of Contract Formation Issue

[2] **[3]** **[4]** Bekele waived the contract formation issue by not raising it in his opening brief. It is well settled that "we do not consider arguments for reversing a decision of a district court when the argument is not raised in a party's opening brief." Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 29 (1st Cir. 2015). And we are even more reluctant to excuse deliberate waiver than we are to overlook inadvertent ***187** forfeiture. See Sindi v. El-Moslimany, 896 F.3d 1, 28-29 (1st Cir. 2018) (acknowledging this); Nat'l Ass'n of Soc. Workers v. Harwood, 69 F.3d 622, 628 (1st Cir. 1995) (same). Here, Bekele sought to appeal the formation issue only after Epic Systems foreclosed the argument on which he had chosen to focus in his initial brief.

Bekele argues that unusual features of the briefing here weigh against applying this waiver rule to his contract-formation argument. But we find that Bekele has not shown "exceptional circumstances" that excuse his belated appellate briefing. See, e.g., Aetna Cas. Sur. Co. v. P & B Autobody, 43 F.3d 1546, 1571 (1st Cir. 1994) (noting that such circumstances can excuse waiver).

[5] Bekele first argues that Lyft would not be prejudiced if we considered the argument. But (even assuming there would be no prejudice to Lyft if the argument were considered) lack of prejudice to the opposing party is not on its own an exceptional circumstance justifying forgiveness of a waiver. See Sindi, 896 F.3d at 27-28 (listing circumstances that, taken together, justify forgiveness of waiver). For example, recently, in United States v. Mayendía-Blanco, 905 F.3d 26, 33 (1st Cir. 2018), we deemed waived an argument raised for the first time on appeal, in a criminal defendant's supplemental brief, even though the supplemental brief was filed before the government's response. See id. at 31. Lack of prejudice to the government was not a circumstance that warranted excusing the defendant's failure to initially raise the argument. See id. at 33.

Nor does our decision in Cullinane, decided between Bekele's opening and supplemental briefs, amount to an exceptional circumstance. Cullinane did not "substantial[ly] change" the applicable law. Mayendía-Blanco, 905 F.3d at 33 (noting that a "substantial change" in law can justify excusing waiver in an opening brief); see also, e.g., DSC Commc'ns Corp. v. Next Level Commc'ns, 107 F.3d 322, 326 (5th Cir. 1997) (recognizing the same in the civil context). Indeed, Cullinane applied the very same rule that the district court used in this case: the "reasonably communicated and accepted" standard. Compare Cullinane, 893 F.3d at 62, with Bekele, 199 F.Supp.3d at 295. That standard had been adopted for online contracts in a 2013 Massachusetts case, Ajemian v. Yahoo!, Inc., 83 Mass.App.Ct. 565, 987 N.E.2d 604 (2013), cited by both Cullinane and the district court. See Cullinane, 893 F.3d at 62; Bekele, 199 F.Supp.3d at 295.

Bekele mistakenly reads Cullinane as newly clarifying that reasonable notice must be determined based on context. But that was clear before Cullinane. The reasonable notice standard has governed online contracts across jurisdictions since the early days of the internet, and the inquiry has always been context- and fact-specific. See, e.g., Starke v. SquareTrade, Inc., 913 F.3d 279, 289-96 (2d Cir. 2019) (looking at the "design and content of the relevant interface," id. at 289, and summarizing cases); Sgouros v. TransUnion Corp., 817 F.3d 1029, 1034–35 (7th Cir. 2016) ("This is a fact-intensive inquiry."); Specht v. Netscape Commc'ns Corp., 306 F.3d 17, 30-35 (2d Cir. 2002) (Sotomayor, J.) (describing the screen seen by the user and evaluating all "these circumstances," id. at 31).

In sum, Bekele waived his contract-formation argument when he chose not to raise it in his opening brief.

B. Substantive Unconscionability

[6] Bekele also contends that the agreement to arbitrate is unconscionable and therefore unenforceable. To show unconscionability under Massachusetts law, Bekele must prove "both substantive unconscionability ***188** (that the terms are oppressive to one party) and procedural unconscionability (that the circumstances surrounding the formation of the contract show that the aggrieved party had no meaningful choice and was subject to unfair surprise)." Machado v. System4 LLC (Machado II), 471 Mass. 204, 28 N.E.3d 401, 414 (2015) (emphasis added) (citations and internal quotation marks omitted). Reviewing de novo, see Cullinane, 893 F.3d at 60, we put aside Bekele's procedural attack and decide that, because Bekele cannot show substantive unconscionability, the agreement is enforceable.

[7] Bekele's principal argument that the agreement is substantively unconscionable stems from the arbitration clause's selection of AAA Commercial Rules. As said, in October 2014 when the parties' agreement was formed, these Rules required Bekele and Lyft to split equally the arbitration's costs. Bekele argues that he and other Lyft drivers cannot afford such high fees and that this arrangement is substantively unconscionable. Under the precedent of this court and the Massachusetts Supreme Judicial Court ("SJC"), Lyft's offer before the district court to pay all fees for an arbitration with Bekele sinks this argument.

[8] **[9]** In Massachusetts, an arbitration-fee-splitting arrangement is not substantively unconscionable when the arbitration fees a plaintiff would owe amount to less than the damages the plaintiff claims.[3] For example, the SJC said in McInnes v. LPL Financial, LLC, 466 Mass. 256, 994 N.E.2d 790 (2013), that "an adhesion contract that imposes 'filing and administrative fees attached to arbitration that are so high as to make access to the forum impracticable' may ... be unenforceable." Id. at 798-99 (quoting Am. Express Co. v. Italian Colors Rest., 570 U.S. 228, 236, 133 S.Ct. 2304, 186 L.Ed.2d 417 (2013)). McInnes then enforced the arbitration provision at issue because "the amount of the arbitration fees would not make access to the arbitral forum impracticable in view of the substantial amount in compensatory damages that [the plaintiff] claims." Id. at 799. Again, in Machado v. System4 LLC (Machado I), 465 Mass. 508, 989 N.E.2d 464 (2013) and Machado v. System4 LLC (Machado II), 471 Mass. 204, 28 N.E.3d 401 (2015), the SJC concluded that a provision that required splitting arbitration costs was enforceable and not substantively unconscionable because the plaintiffs' costs of arbitration were less than the plaintiffs' potential recovery under the Wage Act.[4] Machado II, 28 N.E.3d at 414 (citing Machado I, 989 N.E.2d at 471-72). Here, Bekele faces $0 in arbitration fees, an amount lower than his potential recovery (which he ***189** estimates could be about $1,000). As in McInnes and Machado I and II, then, the agreement is enforceable.

[10] **[11]** Bekele contends that Lyft's offer to pay for arbitration cannot be considered because, under more general principles of Massachusetts law, unconscionability is determined at the time of contracting. See Miller v. Cotter, 448 Mass. 671, 863 N.E.2d 537, 545 (2007). But Massachusetts' specific framework for evaluating fee-sharing arrangements allows courts to consider facts developed during litigation, such as Lyft's offer to pay. In fact, the case-specific evaluation McInnes and Machado I and II require us to undertake depends on facts and figures, such as the claims and potential recovery, unknowable at the time of contracting.

Courts use a similar approach to evaluate arbitration fees when the claims that would be arbitrated are federal statutory claims. See Green Tree Fin. Corp. v. Randolph, 531 U.S. 79, 90, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000) (recognizing that "large arbitration costs could preclude a litigant ... from effectively vindicating her federal statutory rights in the arbitral forum" and holding that such costs could render an arbitration agreement unenforceable as to those federal claims). Indeed, in that context, this court has enforced an arbitration agreement under circumstances like those presented here. In Large v. Conseco Finance Servicing Corp., 292 F.3d 49 (1st Cir. 2002), the plaintiffs sought to avoid arbitration of their claims under the Federal Truth in Lending Act because arbitrating would be prohibitively expensive. Id. at 56. After the other party agreed to pay for the arbitration, the Large court compelled arbitration and rejected the plaintiffs' request for discovery on costs. Id. at 56-57. We held that no showing of prohibitive costs was "possible because [the other party] has agreed to cover the costs of arbitration." Id. at 56. Numerous other federal courts have done the same in cases involving offers to pay for arbitration of federal statutory claims. See, e.g., Muriithi v. Shuttle Express, Inc., 712 F.3d 173, 183 n.10 (4th Cir. 2013); Ragone v. Atl. Video at Manhattan Ctr., 595 F.3d 115, 125 (2d Cir. 2010).

[12] Bekele further argues that, even considering Lyft's offer, the cost-sharing requirement is substantively unconscionable. He points to cases holding that fee splitting is per se unconscionable under California law. See, e.g., Ting v. AT&T, 319 F.3d 1126, 1151 (9th Cir. 2003); Circuit City Stores v. Adams, 279 F.3d 889, 892 (9th Cir. 2002). But, as explained, Massachusetts has taken a case-specific approach to evaluating fee-splitting arrangements.

Bekele next urges us to adopt a rule that a cost-splitting provision is "unenforceable whenever it would have the 'chilling effect' of deterring a substantial number of potential litigants from seeking to vindicate their statutory rights." Morrison v. Circuit City Stores, Inc., 317 F.3d 646, 661 (6th Cir 2003). But this too would conflict with the SJC's case-by-case approach, which looks not at the contract in the abstract nor at other potential litigants but at the individual claimant. Here, Lyft's offer to pay to arbitrate Bekele's claims means that he cannot show that the arbitration clause's fee-sharing arrangement renders that provision unenforceable.

[13] Bekele makes one final argument: that the TOS Agreement's provision allowing Lyft to modify the terms of the agreement upon notice and acceptance of the new terms is substantively unconscionable.[5] He relies on ***190** Ingle v. Circuit City Stores, Inc., 328 F.3d 1165, 1179 (9th Cir. 2003), a case deeming "unilateral power to terminate or modify [a contract] substantively unconscionable" under California law.[6] But the Lyft TOS Agreement does not allow unilateral modification; it requires that Lyft give notice to the user and that the user accept the new terms. In contrast, the modification clause in Ingle allowed the employer to revise the contract's terms and then notify employees months after the fact. Id. Other courts have rejected the argument that provisions like Lyft's -- that require notice to users and acceptance by users -- are substantively unconscionable. See Iberia Credit Bureau, Inc. v. Cingular Wireless LLC, 379 F.3d 159, 173-74 (5th Cir. 2004) (applying Louisiana law). Bekele offers no evidence that a Massachusetts court would consider the mere presence of a provision allowing the parties to modify their agreement to be oppressive.

III.

Affirmed.

All Citations

918 F.3d 181, 169 Lab.Cas. P 61,941

Footnotes

* Hon. David H. Souter, Associate Justice (Ret.) of the Supreme Court of the United States, sitting by designation.

1 The TOS Agreement is about eighteen pages long, printed on standard paper, and Bekele estimates that it would be fifty-five pages on an iPhone 4. The arbitration clause was on page twelve of the printed version of the Agreement and at around page forty of the iPhone 4 version.

2 In a supplemental filing after oral argument in this court, Lyft noted that, in October 2017, the AAA changed the fee schedule applicable to claims like Bekele's that are about work. The now-applicable fee schedule limits Bekele's arbitration costs to $300. See Am. Arbitration Ass'n, Commercial Arbitration Rules and Mediation Procedures, Rule R-1, at 10 (2017).

3 Machado v. System4 LLC (Machado I), 465 Mass. 508, 989 N.E.2d 464 (2013) concluded that a state-law rule that high arbitration fees can render an arbitration agreement unenforceable could "coexist with the FAA," which preempts states' arbitration-specific contract defenses. Id. at 471 (discussing AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011)). Because Bekele's substantive unconscionability argument cannot succeed on the present facts, we need not get into this issue.

4 Lyft argues that Machado II adopts a per se rule that cost-sharing for arbitration of Wage Act claims is not substantively unconscionable. Not so. Machado II reasoned that a cost-splitting provision was not substantively unconscionable because the SJC "made clear in Machado I that the mandates of the Wage Act would override this provision if the plaintiffs were successful in arbitration." Machado II, 28 N.E.3d at 414 (citing Machado I, 989 N.E.2d at 471-72). Machado I had made this clear by comparing the plaintiffs' costs of arbitration to the plaintiffs' potential recovery under the Wage Act. Machado I, 989 N.E.2d at 471-72.

5 Because we do not get into matters of procedural unconscionability, we do not consider Bekele's distinct argument that the specific process by which Lyft amended the terms of the agreement in October 2014 was procedurally unconscionable.

6 Bekele also points to Floss v. Ryan's Family Steak Houses, Inc., 211 F.3d 306 (6th Cir. 2000), but that case is not instructive. It is about fatally indefinite contract terms, not substantive unconscionability. See id. at 315 ("The purported arbitration agreement therefore lacks a mutuality of obligation. Without a mutuality of obligation, the agreement lacks consideration and, accordingly, does not constitute an enforceable arbitration agreement." (footnote omitted)).

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711 F.Supp.3d 1260
United States District Court, D. Colorado.

Chantel SPAIN, Plaintiff
v.
Freeman JOHNSON, and Lyft, Inc., Defendants.

Civil Action No. 1:23-cv-00419-DDD-MEH
|
Signed January 16, 2024

Synopsis

Background: Passenger brought action against rideshare driver and rideshare service provider alleging that she was injured in a car accident that was caused by driver's negligence. Provider moved to stay and compel arbitration pursuant to arbitration provision contained within its terms of service.

Holdings: The District Court, Daniel D. Domenico, J., held that:

[1] passenger had reasonable notice of provider's terms of service, which contained arbitration provision;

[2] passenger manifested assent to terms of service, including arbitration provision;

[3] arbitration provision was not procedurally unconscionable;

[4] arbitration provision was not substantively unconscionable;

[5] dispute fell within scope of arbitration provision; and

[6] compelling arbitration would not be unconscionable for violating Colorado public policy.

Motion granted.

Procedural Posture(s): Motion for Stay; Motion to Compel Arbitration.

West Headnotes (9)

[1] Alternative Dispute Resolution Validity

Alternative Dispute Resolution Disputes and Matters Arbitrable Under Agreement

A motion to compel arbitration presents a two-fold inquiry: first, the court must determine whether a valid agreement to arbitrate exists between the parties to the action, and second whether the issues being disputed are within the scope of the arbitration agreement.

[2] Contracts Form and contents of instrument

Under Colorado law, electronic terms of service can create a legally binding contract as long as the language in question does so and the parties' conduct manifests an intent to accept the contractual language.

[3] Alternative Dispute Resolution In general; formation of agreement

Passenger had reasonable notice of rideshare service provider's terms of service at time of car accident giving rise to passenger's Colorado law negligence claim against rideshare driver and provider, as provider alleged in seeking to compel arbitration of the dispute under arbitration clause contained within those terms; passenger was provided with terms of service repeatedly and clearly told that she was agreeing to them when creating her account with provider and when using provider's service, which was at least constructive notice of the terms, including the arbitration agreement.

1 Case that cites this headnote
More cases on this issue

[4] Alternative Dispute Resolution In general; formation of agreement

Passenger manifested assent to rideshare service provider's terms of service at time of car

accident giving rise to passenger's Colorado law negligence claim against rideshare driver and provider, as provider alleged in seeking to compel arbitration of the dispute under arbitration clause contained within those terms; passenger manifested her assent to provider's terms by creating and using her account scores of times after being informed, clearly, that doing so amounted to agreeing to the terms of service, and passenger had opportunity to avoid agreeing to arbitrate her claims by choosing not to use provider's services.

1 Case that cites this headnote
More cases on this issue

[5] **Alternative Dispute Resolution** Unconscionability

Arbitration provision of rideshare service provider's terms of service was not procedurally unconscionable, as passenger asserted in seeking to avoid arbitration of her Colorado law negligence claim against rideshare driver and provider arising from car accident wherein passenger was injured; terms of service were a standardized form, but terms were readily available to passenger and other users of provider's services, the use of arbitration was common and not unreasonable, and the mass nature of provider's service meant that tens of thousands of other consumers were able to review the same terms.

4 Cases that cite this headnote
More cases on this issue

[6] **Alternative Dispute Resolution** Arbitrability of dispute

Parties can agree to arbitrate gateway questions of arbitrability including the enforceability of the arbitration agreement.

[7] **Alternative Dispute Resolution** Unconscionability

Arbitration provision of rideshare service provider's terms of service was not substantively unconscionable, as passenger asserted in seeking to avoid arbitration of her Colorado law negligence claim against rideshare driver and provider arising from car accident wherein passenger was injured; arbitration of disputes was generally not unconscionable, and was in fact encouraged by Congress via the Federal Arbitration Act (FAA), parties could agree to arbitrate gateway questions of arbitrability including the enforceability of the arbitration agreement, and passenger's preference for bringing case directly in court did not make arbitration provision unconscionable. 9 U.S.C.A. § 2.

3 Cases that cite this headnote
More cases on this issue

[8] **Alternative Dispute Resolution** Disputes and Matters Arbitrable Under Agreement

Dispute wherein passenger alleged that she was injured in car accident due to rideshare driver's negligence fell within scope of arbitration clause contained in rideshare service provider's terms of service, to which passenger agreed by signing up for and using provider's services, where provision stated that the parties agreed to waive rights to resolution of disputes in court by a judge or jury and agreed to resolve any dispute by arbitration, specifying that provision applied to any dispute, claim, or controversy arising out of or relating to provider's platform, provider's services, and all other federal and state statutory and common law claims, and provision included delegation clause saying that a dispute about the scope of the agreement was for the arbitrator to decide.

More cases on this issue

[9] **Alternative Dispute Resolution** Unconscionability

Arbitration of passenger's Colorado law negligence claim against rideshare service provider while allowing passenger's claim against rideshare driver to proceed in court would not be unconscionable for violating "Colorado's Public Policy of Judicial Economy," as passenger asserted; although sending dispute

with provider to arbitration while litigating with driver in court might lead to some repeated effort and possible inconsistencies, passenger provided no authority for such public policy, that was not sufficient reason for court to ignore binding agreement to arbitrate, which was generally preferred by Congress, as signaled by the Federal Arbitration Act (FAA), and passenger and driver could always submit their dispute to arbitration if they chose to avoid those inefficiencies that way. 9 U.S.C.A. § 2.

More cases on this issue

Attorneys and Law Firms

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Paul Joseph Rupprecht, Amy Theresa Johnson, Richard Andrew Lane, III, Trevor Joel Alexander, Lewis Brisbois Bisgaard & Smith LLP, Denver, CO, Tate Christopher Hughes, O'Hagan Meyer, Denver, CO, for Defendant Lyft, Inc.

ORDER GRANTING MOTION TO STAY AND COMPEL ARBITRATION

Daniel D. Domenico, United States District Judge

Plaintiff Chantel Spain brought this case after being injured in a car accident she alleges was caused by the negligence of Defendant Freeman Johnson, who was driving her at the time for fellow Defendant Lyft, Inc. Doc. 4. Lyft has filed a motion to stay and compel arbitration, saying Ms. Spain agreed to arbitrate any such claims when signing up for its services. Doc. 11. Lyft is right, so the motion is granted.

BACKGROUND

In September 2021, Ms. Spain hailed a ride on Lyft's app and was picked up by Mr. Freeman. She was seriously injured in a multivehicle car accident she says was caused by Mr. Freeman's failure to yield the right of way when entering an intersection on Tower Road in Denver, Colorado. Doc. 4 at 5-6. Ms. Spain alleges, and for purposes of this order, it is assumed to be true, that Mr. Freeman was at fault and was the agent of Lyft, Inc., at the time of the accident.

To use Lyft's rideshare services, Ms. Spain, like others, had to create a Lyft user account in order hail a ride. See Doc. 11-1. Creating an account required clicking a button that said the user accepted Lyft's terms of service. *Id.* at 2-3. Ms. Spain first created a Lyft account in November 2019. *Id.* at 3. At that time, the first page of the terms of service included the following:

> PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT HAVE AGAINST EACH OTHER CAN BE BROUGHT (**SEE SECTION 17 BELOW**). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION ...
>
> By entering into this Agreement, you expressly acknowledge that you understand this Agreement (including the dispute resolution and arbitration provisions in Section 17) and accept all of its terms. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM.

Doc. 11-2 at 1. The highlighted parenthetical linked directly to the arbitration provision, which was headlined "**DISPUTE RESOLUTION AND ARBITRATION AGREEMENT**" and stated "YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION, as set forth below." *See id.* at ¶ 17(a). This arbitration agreement applies to all "claims" between the user and Lyft, its affiliates, subsidiaries, employees, and agents. *Id.* "Claims" is broadly defined to capture all disputes arising from the use of Lyft's rideshare services. *See id.*

In December 2020, Lyft updated its terms of service, sending users (including Ms. Spain) an email saying so and providing a link to the new provisions. Doc. 11-3. The arbitration

provisions remained substantively identical. *See* Docs. 11-2 at ¶ 17(a), 11-4 at ¶ 17(a).

ANALYSIS

Lyft says Ms. Spain is bound by the language of the terms of service to submit any claims to arbitration rather than litigation in a court of law. Ms. Spain does not appear to dispute that the terms of service at all relevant times included an agreement to arbitrate disputes with Lyft, or that she clicked on the relevant boxes and affirmations in creating her account. She nonetheless makes two arguments that the arbitration clause is not enforceable against her: first, that the clause was not conspicuous enough to conclude she actually agreed to it; second, that even if she did it is procedurally and substantively unconscionable and thus unenforceable. See Doc. 20.

I. Agreement to Arbitrate

[1] As Ms. Spain points out, a motion to compel arbitration presents a two-fold inquiry. First, the court "must determine whether a valid agreement to arbitrate exists between the parties to the action and [second] whether the issues being disputed are within the scope of the arbitration agreement." Doc. 20 at 2 (quoting *Vallagio at Inverness Respondent. Condo. Ass'n, Inc. v. Metro. Homes, Inc.*, 412 P.3d 709, 713 (Colo. Ct. App. 2015)). [1] Ms. Spain argues that whether she actually agreed to the arbitration clause is at least disputable and thus not amenable to resolution as a matter of law. *See id.* at 3-8.

[2] The parties agree that, in general, electronic terms of service *can* create a legally binding contract as long as the language in question does so and the parties' conduct manifests an intent to accept the contractual language. *See Marquardt v. Perry*, 200 P.3d 1126, 1129 (Colo. App. 2008). Ms. Spain, however, argues that the second half of this issue can't be determined here because Lyft did not show "how the Terms of Service were presented to Plaintiff while she was setting up her Lyft account.... [and] failed to show how the Terms and Conditions were presented to Plaintiff on her mobile device including the size and color of the font, how a user affirmatively accepts the Terms of Service, or how the Terms and Conditions appeared on Plaintiff's mobile device." Doc. 20 at 6. This she says, means "Lyft failed to show how Plaintiff demonstrated her unambiguous assent to arbitrate." *Id.* And that means that it failed to carry its burden to show that "the contractual terms were reasonably conspicuous and whether [her] alleged assent to them was unambiguous." *Grosvenor v. Qwest Corp.*, 854 F. Supp. 2d 1021, 1026 (D. Colo. 2012) (quotation omitted). She then says Lyft failed to show that she clicked on a link Lyft emailed to her when it updated the terms of service in December 2020. Doc. 20 at 6.

Lyft responds first by noting "the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." Doc. 21 at 3 quoting *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 91, 121 S. Ct. 513, 522, 148 L.Ed.2d 373 (2000). I am not confident, however, that the cases cited by Lyft, including *Green Tree*, apply to the threshold question of whether an agreement to arbitrate exists rather than to the subsidiary question whether particular claims fall within an arbitration provision.

I am persuaded though that Lyft's evidence shows that Ms. Spain agreed to the terms of service, including the arbitration provisions. Attached to Lyft's motion is a declaration of Alex Sniegowski, a Safety Program Senior Specialist at Lyft (Doc. 11-1), along with printouts of the terms of service in place when Ms. Spain created her Lyft account (Doc. 11-2), the email sent to Ms. Spain when the terms were updated in December 2020 (Doc. 11-3), and those new terms of service (Doc. 11-4). That evidence shows that in creating her account, Ms. Spain was required to affirmatively accept Lyft's terms of service. See Doc. 11-1 at 2-3. The full text of the terms of service is available on the app or Lyft's website. *Id.* When Lyft updated the terms of service in December 2020, it emailed users including Ms. Spain a link to the new terms with the bolded and underlined statement, "**Your continued use of Lyft will confirm that you have reviewed and agreed to the updated Terms**." *Id.* at 3; Doc. 11-3.

As Lyft notes, this sort of process is now ubiquitous, and has generally been held to be sufficient to create binding terms. *See Vernon v. Qwest Commc'ns Int'l, Inc.*, 925 F. Supp. 2d 1185, 1191 (D. Colo. 2013) (finding assent where subscribers were subject to "clickwrap agreement"); *Hancock v. Am. Tel. & Tel. Co.*, 701 F.3d 1248, 1256 (10th Cir. 2012) (noting that clickwrap agreements are "increasingly common and have routinely been upheld").

Ms. Spain argues that "Lyft failed to provide any links or screenshots showing what Plaintiff saw when she was setting up her Lyft user account. Lyft failed to show how the Terms and Conditions were presented to Plaintiff on her mobile device including the size and color of the font, how a user

affirmatively accepts the Terms of Service, or how the Terms and Conditions appeared on Plaintiff's mobile device." Doc. 20 at 6. Lyft provided a supplemental declaration that fills in some of those details (Doc. 21-2), but even without it the evidence was sufficient to show Ms. Spain agreed to Lyft's terms of service. The question is not whether Lyft can prove that Ms. Spain actually read the particular provision she now wishes to evade. In her words, the question "is as follows: 'did the consumer have reasonable notice, either actual or constructive, of the terms of the putative agreement and did the consumer manifest assent to those terms?' " Doc. 20 at 5 (quoting *Vernon v. Qwest Commc'ns Int'l, Inc.*, 857 F. Supp. 2d 1135, 1149 (D.Colo. 2012)).

[3] **[4]** The answer to both of those questions is yes. Ms. Spain was provided with the terms of service repeatedly and was clearly told she was agreeing to them when creating her account and when using Lyft's service. That was at least constructive notice of those terms, including the arbitration agreement. Whether Ms. Spain actually read the provisions or, like most of us, just scrolled through and clicked the box, is not necessary to know. She repeatedly manifested her assent to Lyft's terms by creating and using her account scores of times after being informed, clearly, that doing so amounted to agreeing to the terms of service. That is all that is required under the law to her to be bound by them. *See Marquardt*, 200 P.3d at 1129. She may not have subjectively known she was agreeing to an arbitration clause, but, objectively, she agreed to what Lyft had included in its terms of service; to the extent she did not want to agree to arbitrate her claims, she had an opportunity to choose not to use Lyft's app, but didn't. *See Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 11 (D.D.C. 2021) (Jackson, J.) ("it is well established that Lyft's method of obtaining [ ] assent to its Terms of Service—presenting the terms of the agreement and requiring users to click 'I Agree' before they can access the service [ ] constitutes a valid means of offer and acceptance").

II. Unconscionability

[5] Ms. Spain also argues that the arbitration provision can't be enforced because it is both procedurally and substantively unconscionable. The procedural argument is largely a reframing of the argument above about contract formation, and is unpersuasive. While Lyft's terms of service are a standardized form, the terms were readily available to Ms. Spain and other Lyft users, the use of arbitration is common and not unreasonable (in fact it is encouraged by Congress), and the mass nature of Lyft's service means that tens of thousands of other consumers are able to review the same terms. The circumstances here simply don't support the idea that this provision was snuck in or forced upon an unsuspecting or unsophisticated consumer with no other options. *Cf. Davis v. M.L.G. Corp.*, 712 P.2d 985, 991 (Colo. 1986).

[6] **[7]** Substantively, as noted, arbitration of disputes is generally not unconscionable, and in fact is encouraged by Congress. *See* 9 U.S.C. § 2. Ms. Spain, or her counsel, apparently prefers to bring her case directly in court, but that does not make it unconscionable. *See, e.g., Bekele v. Lyft, Inc.*, 918 F.3d 181 (1st Cir. 2019). Indeed, parties can "agree to arbitrate gateway questions of arbitrability including the enforceability ... of the arbitration agreement," as they appear to have done here. *Jones v. Waffle House, Inc.*, 866 F.3d 1257, 1264 (11th Cir. 2017); Doc. 11-4 at ¶ 17(a) (parties agreeing to submit the "scope, applicability, enforceability, revocability, or validity of the Arbitration Agreement" to the arbitrator); *see also Wolfire Games, LLC v. Valve Corp.*, No. C21-0563-JCC, 2021 WL 4952220, at *2 (W.D. Wash. Oct. 25, 2021) (noting that, unless party specifically challenges the conscionability of a delegation provision, the court must allow arbitrator to determine whether arbitration clause is unconscionable).

III. Scope of the Arbitration Clause

[8] Ms. Spain alternatively argues that this dispute is not within the scope of the provision in the applicable terms of service. Doc. 20 at 10-11. She notes that her claims against Lyft "are entirely related to and arise from the negligent conduct of Defendant Johnson. In this regard, Plaintiff has a vicarious liability claim against Defendant Lyft for the negligent conduct of Defendant Johnson." *Id.* at 11. That is so, but does not bring the claims outside the scope of the arbitration provision. The provision in effect at the time says that "YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION." Doc. 11-4 at ¶ 17(a). It further specifies that it applies to "any dispute, claim or controversy ... arising out of or relating to: ... the Lyft Platform, the Rideshare Services ... and all other federal and state statutory and common law claims." *Id.*

This is clearly a "dispute" arising out of Ms. Spain's use of Lyft's platform and rideshare services, and vicarious liability is a state common law claim. Even if not, the provision includes a delegation clause that says a dispute about the

scope of the agreement is for the arbitrator to decide, as discussed above. *See* Doc. 11-4 at ¶ 17(a).

IV. Public Policy

[9] Ms. Spain's last argument is that arbitrating her claims against Lyft while allowing her claims against Mr. Johnson to proceed in court "violates Colorado's Public Policy of Judicial Economy." Doc. 20 at 11. Ms. Spain provides no authority for this Public Policy of Judicial Economy, although it sounds like a good idea to me. And she is probably right that sending the dispute with Lyft to arbitration while litigating with Mr. Johnson in this court may lead to some repeated effort and possible inconsistencies. But that is not sufficient reason for a court to ignore a binding agreement to arbitrate, which, again, is generally preferred by Congress. And of course, Ms. Spain and Mr. Johnson could always submit their dispute to arbitration if they choose to avoid these inefficiencies that way. The agreement will not be voided for this reason.

CONCLUSION

Defendant Lyft's Motion to Stay and Compel Arbitration (**Doc. 11**) is **GRANTED**.

Section 3 of the FAA provides that "if any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court ... shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3. Lyft seeks a stay under this provision of the case as to it only, which is also **GRANTED**. *See also* Doc. 43 (staying discovery as to Defendant Lyft).

The case between Plaintiff and Defendant Lyft is **HEREBY STAYED pending conclusion of the arbitration proceeding**. The parties shall file joint status reports regarding the status of the arbitration every **THREE MONTHS**, starting May 1, 2024, and within **TWO WEEKS** upon termination of the arbitration proceedings.

All Citations

711 F.Supp.3d 1260

Footnotes

1 Since this case is in federal court based on its diversity jurisdiction, the parties agree that Colorado substantive law applies.

End of Document

2021 WL 298192
Only the Westlaw citation is currently available.
United States District Court, E.D. Virginia,
Richmond Division.

Jonathan SPEIGHT, Plaintiff,
v.
LYFT, INC., et al., Defendants.

Civil Action No. 3:20cv189–HEH
|
Signed 01/28/2021

Attorneys and Law Firms

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Christine Mary Costantino, Samantha Leader Brooks, Seyfarth Shaw LLP, Washington DC, for Defendants.

MEMORANDUM OPINION (Granting Motions to Compel Arbitration)

Henry E. Hudson, Senior United States District Judge

***1** Plaintiff Jonathan Speight (*pro se* "Plaintiff") filed this lawsuit in the Richmond City Circuit Court on February 24, 2020 (ECF No. 1-1), and Defendant Lyft, Inc. ("Lyft") subsequently removed the suit to this Court on March 19, 2020 (ECF No. 1). This matter is before the Court on two Motions to Compel Arbitration. Lyft filed a Motion to Compel Arbitration (ECF No. 13) and Defendants John Zimmer, Logan Green, Stephen Taylor, Cabell Rosanelli, and Todd Morgan ("individual Defendants," collectively "Defendants") filed a near-identical Motion to Compel Arbitration (ECF No. 26).

The parties have filed memoranda supporting their respective positions, and the matter is ripe for this Court's review. The Court will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before it, and oral argument would not aid in the decisional process. *See* E.D. Va. Local Civ. R. 7(J). For the reasons that follow, the Court will grant Defendants' Motions to Compel Arbitration and will stay the matter pending arbitration. [1]

It is well established that district courts must liberally construe a *pro se* litigant's complaint. *Laber v. Harvey*, 438 F.3d 404, 413 n.3 (4th Cir. 2006). Courts, however, need not attempt "to discern the unexpressed intent of the plaintiff." *Id.* Nor does the requirement of liberal construction excuse a clear failure in the pleadings to allege a federally cognizable claim. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990). As the United States Court of Appeals for the Fourth Circuit explained in *Beaudett v. City of Hampton*, "[t]hough [*pro se*] litigants cannot, of course, be expected to frame legal issues with the clarity and precision ideally evident in the work of those trained in law, neither can district courts be required to conjure up and decide issues never fairly presented to them." 775 F.2d 1274, 1276 (4th Cir. 1985).

A "complaint must provide 'sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.' " *Turner v. Thomas*, 930 F.3d 640, 644 (4th Cir. 2019) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "Allegations have facial plausibility 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' " *Tobey v. Jones*, 706 F.3d 379, 386 (4th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 679). A court, however, "need not accept legal conclusions couched as facts or unwarranted inferences, unreasonable conclusions, or arguments." *Turner*, 930 F.3d at 644 (quoting *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 365 (4th Cir. 2012)).

***2** Construing Plaintiff's Amended Complaint liberally, Plaintiff brings claims for breach of contract and for violations of Title VII of the Civil Rights Act of 1964 ("Title VII") and the Age Discrimination in Employment Act ("ADEA"). (Am. Compl. 10–13, ECF No. 8.) Plaintiff also alleges a conspiracy to interfere with civil rights claim under 42 U.S.C. § 1985, as well as state law claims for negligence and fraud, but these claims are substantively identical to his discrimination and breach of contract claims. (*Id.* at 8–13.) Therefore, the Court will only address whether Plaintiff's Title VII, ADEA, and breach of contract claims are arbitrable.

Broadly, Plaintiff's Title VII and ADEA claims both arise out of allegations that, based on his age, race, and gender, Defendants denied him a marketing position with Lyft, failed to provide him support at marketing events that he facilitated on behalf of Lyft, treated him differently from younger, white employees, excluded him and all men from a " '[f]emale' only driver safety event," failed to pay him as required by his contract, and terminated him improperly. (*Id.* at 1–9.) In support of his breach of contract claim, Plaintiff restates that Defendants discriminated against him and withheld his

pay, and adds allegations that he was not terminated in compliance with the terms of his contract and was denied the opportunity to arbitrate or mediate his claims. (*Id.* at 10–13.) Plaintiff states in three places in the Amended Complaint that Lyft "never honored Plaintiff's request for Arbitration or Mediation," but filed multiple briefs opposing Defendants' Motions to Compel Arbitration. (*Id.*) Interpreting Plaintiff's Amended Complaint and filings liberally, the Court will still assess whether Plaintiff's claims are bound by an arbitration clause.

Plaintiff states that he "is a male, African American who worked as a Lyft driver and Local Driver Advisory Council Consultant" ("LDAC" Consultant). (*Id.* at 2.) He applied for a "Marketing Specialist" position with Lyft on March 26, 2019. (*Id.*) Lyft requested a two-minute video on March 27, 2019, as part of the application process for the marketing position. (*Id.* at 3.) Plaintiff argues that a statistical lack of representation of people of color in leadership positions at Lyft's office in Richmond, combined with the video requirement, demonstrate that he was denied the marketing position based upon his age and race. (*Id.* at 3.) The Amended Complaint states that "[a]round [May 22, 2019,] Plaintiff learned that he had not been selected to the Marketing Specialist position and a significantly younger, white female was hired." (*Id.* at 4.)

***3** On May 1, 2019, "Plaintiff was informed that he was selected for a different position in the Local Driver's Advisory Council as a consultant." (*Id.*) Accordingly, he signed a consulting agreement ("the Agreement") on May 2, 2019. (*Id.*) Plaintiff lays out the remainder of his allegations in chronological order as occurring between the execution of the Agreement on May 2, 2019 and his termination around the end of January, 2020.[2] (*Id.* 4–9.) The Agreement is a written agreement, attached to the Amended Complaint, that includes an arbitration provision. (*Id.* Ex. E, ECF No. 8-6.) The arbitration provision provides, in relevant part, that:

> [A]ny and all claims, disputes or controversies between [Plaintiff] and [Lyft] arising out of or relating in any way to this Agreement ..., including any claims arising out of or related in any way to [Plaintiff's] relationship with or Services for [Lyft] and/or its affiliates, shall be submitted to final and binding arbitration to the fullest extent allowed by law. This arbitration obligation shall apply to any and all claims, causes of action, in law or equity of any nature whatsoever, whether arising in contract, tort or statute, between [Plaintiff] and [Lyft] and/or their affiliated entities (including their owners, directors, managers, employees, agents, and officers)....

(*Id.* at 5.) The Agreement further "expressly delegate[s] to the arbitrator the authority to determine the arbitrability of any dispute, including the scope, applicability, validity, and enforceability of this arbitration provision." (*Id.*)

A party may compel arbitration under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*, only if the party establishes:

> (1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of the defendant to arbitrate the dispute.

Am. Gen. Life & Accident Ins. Co. v. Wood, 429 F.3d 83, 87 (4th Cir. 2005) (citing *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002)). Any uncertainty regarding the scope of arbitrable issues agreed to by the parties must be resolved "in favor of arbitration." *Hill v. PeopleSoft USA, Inc.*, 412 F.3d 540, 543 (4th Cir. 2005) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)); *see Adkins*, 303 F.3d at 500 ("Underlying this policy is Congress's view that arbitration constitutes a more efficient dispute resolution process than litigation."). Whether a dispute is arbitrable is a question of contract interpretation, and courts must give effect to the parties' intentions as expressed in their agreement. *Wachovia Bank Nat'l Ass'n v. Schmidt*, 445 F.3d 762, 767 (4th Cir. 2006). The scope of arbitrable issues is "to be decided by the court, not the arbitrator, '[u]nless the parties clearly and unmistakably provide otherwise.' " *Summer Rain*

v. Donning Co./Publ'rs, Inc., 964 F.2d 1455, 1459 (4th Cir. 1992) (quoting *AT&T Techs. v. Commc'ns Workers*, 475 U.S. 643, 649 (1986)). Both the United States Supreme Court and the Fourth Circuit have construed language demonstrating the parties' intent "to arbitrate any dispute that '*ar[ose] out of or related to*' " a contract "to be broad arbitration clauses capable of an expansive reach." *Am. Recovery Corp. v. Comput. Thermal Imaging, Inc.*, 96 F.3d 88, 93 (4th Cir. 1996) (alterations in original).

In deciding whether a dispute is arbitrable, "the court should apply 'ordinary state-law principles that govern the formation of contracts.' " *Johnson v. Circuit City Stores, Inc.*, 148 F.3d 373, 377 (4th Cir. 1998) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). "[G]enerally applicable [state] contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening [the FAA]." *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996); *see* Va. Code § 8.01-581.01 ("A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract.").

***4** The party opposing arbitration bears the burden of proving that the claims are not appropriate for arbitration. *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 91 (2000). In such an instance, the "court[ ] should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement nor ... its enforceability ... is in issue. Where a party contests either or both matters, 'the court' [not the arbitrator] must resolve the disagreement." *Bates v. Lundy Motors, LLC*, No. 3:16cv133–HEH, 2016 WL 6089827, at *4 (E.D. Va. Sept. 30, 2016), *adopted by Bates v. Lundy, LLC*, No. 3:16cv133–HEH, 2016 WL 6089727, at *1 (E.D. Va. Oct. 17, 2016) (quoting *Granite Rock Co. v. Int'l Brotherhood of Teamsters*, 561 U.S. 287, 299–300 (2010)).

In this case, Defendants may compel arbitration under the FAA. Plaintiff's claims, as laid out in the Amended Complaint, evince a dispute between Plaintiff and Defendants. *See Am. Gen. Life & Accident Ins. Co.*, 429 F.3d at 87. The Agreement contains an arbitration provision that covers the relationship, including the dispute laid out in the Amended Complaint, between Plaintiff, Lyft, and the individual Defendants. *See id.* The Agreement describes Plaintiff's duties, in part, as consulting "with Lyft local and HQ team members." (Am. Compl. Ex. E at 7.) Lyft is an internet-based ridesharing company. Lyft, Inc., BLOOMBERG (Jan. 26, 2021, 8:00 AM), https://www.bloomberg.com/profile/company/LYFT:US. Lyft's principal place of business is in San Francisco, California. (Am. Compl. Ex. E at 2.) Considering Lyft's reliance on the internet for its business operations, and the multistate nature of the parties' relationship, the Agreement evidences the relationship of the transaction to interstate commerce. *See Am. Gen. Life & Accident Ins. Co.*, 429 F.3d at 87. Finally, as previously stated, this Court construes Plaintiff's briefs in opposition to Defendants' Motions to Compel Arbitration as a refusal to arbitrate despite Plaintiff's contradictory statements in the Amended Complaint. *See id.*

Plaintiff states four plausible arguments in opposition to Defendants' Motions to Compel Arbitration: (1) his claims do not fall within the scope of the arbitration provision; (2) Defendants' motions were not timely filed; (3) the Agreement is an unfair and unconscionable contract of adhesion; and (4) Plaintiff is exempt from the FAA under 9 U.S.C. § 1.[3] First, Plaintiff's claims as alleged in the Amended Complaint fall entirely within the time period and scope of the parties' relationship under the Agreement. Furthermore, the arbitration provision contains expansive language binding the parties to arbitrate "any claims arising out of or related in any way to [Plaintiff's] relationship" with Defendants. (Am. Compl. Ex. E at 5.) However, the parties expressly delegated all issues regarding the arbitrability of any dispute and the scope of the arbitration provision to the arbitrator. (*Id.*) Accordingly, the scope of the arbitration clause must be determined by the arbitrator, not the Court. *See Summer Rain*, 964 F.2d at 1459. This Court finds that the arbitration provision in the Agreement requires that Plaintiff's claims as alleged in the Amended Complaint be submitted to arbitration. The Court also submits to the arbitrator any issues regarding the scope of the arbitration clause or the arbitrability of any pending dispute.

***5** Second, Defendants' motions are timely. Lyft filed its Motion to Compel Arbitration on May 11, 2020 (ECF No. 13), less than twenty-one days after Plaintiff filed his Amended Complaint on April 27, 2020 (ECF No. 8), and in accordance with Federal Rule of Civil Procedure 12(a)(1)(A)(i). Todd Morgan was served with the Amended Complaint on June 4, 2020. (ECF No. 24.) Logan Green and John Zimmer were served with the Amended Complaint on June 8, 2020. (ECF

No. 25.) Stephen Taylor and Cabell Rosanelli have not yet been served. Accordingly, the individual Defendants' Motion to Compel Arbitration, filed on June 25, 2020 (ECF No. 26), was filed within twenty-one days of when they were served with the Amended Complaint. *See* FED. R. CIV. P. 12(a)(1)(A)(i).

Third, the Agreement is an enforceable contract. The Agreement was formed in Virginia, thus Virginia law governs this Court's analysis of any contract defenses, including that the Agreement is an unfair or unconscionable contract of adhesion. *See Doctor's Assocs., Inc.*, 517 U.S. at 687; *see also* Va. Code § 8.01-581.01. A contract of adhesion is a form contract "prepared by one party" and "to be signed by another party in a weaker position." *PHC-Martinsville, Inc. v. Dennis*, No. CL14-483, 2017 WL 4053898, at *2 n.4 (Va. Sept. 14, 2017) (internal citations omitted). Whether the Agreement is a contract of adhesion is only a factor for this Court to weigh in determining if the Agreement is unconscionable; contracts of adhesion are not per se unconscionable. *See id.* Furthermore, a party "can implicitly waive" a "public policy" unconscionability argument "by ratifying the contract and seeking a recovery on it." *Meuse v. Henry*, 819 S.E.2d 220, 230 n.3 (Va. 2018). Plaintiff alleges breach of contract claims in his Amended Complaint, therefore ratifying the Agreement by seeking recovery on it, while attempting to discredit it in his opposition brief. Finally, Plaintiff simply states that the Agreement "is a 'contract of adhesion' due to unequal bargaining power, unfairness, and unconscionability." (Pl. Br. Opp. 6, ECF No. 29.) Considering the conspicuous lack of evidence or argument before this Court regarding how the Agreement is unconscionable, the Court finds that the Agreement and the enclosed arbitration provision are both enforceable.

Plaintiff lastly argues that he is exempt from the FAA under 9 U.S.C. § 1. He cites, without argument or application to the instant case, a variety of cases discussing the exceptions to the FAA contained in § 1. (*Id.* at 10–12.) Section 1 exempts from the FAA "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The United States Supreme Court held in *Circuit City v. Adams* that § 1 applies to employment contracts of transportation workers, not to all employment contracts. 532 U.S. 105, 119 (2001). The Court further clarified in *New Prime, Inc. v. Oliveira* that § 1 applies to independent contractors as well as to employees. 139 S. Ct. 532, 540–44 (2019). "However, § 1 of the FAA represents a narrowly targeted exception to a well-established, broad preference in favor of arbitration." *Adkins*, 303 F.3d at 505. Plaintiff here was not conducting "work related to the interstate transportation of goods" under the Agreement as a LDAC Consultant. *Id.* At most, within his broader relationship with Defendants, Plaintiff was involved in local transportation as a rideshare driver, but the Agreement contemplates consulting work unrelated to transport. The Court therefore finds that Plaintiff is not exempted from the FAA.

Defendants ask this Court to dismiss this action pursuant to the binding arbitration provision, or, in the alternative, to stay the proceeding pending arbitration. However, this Court's ability to dismiss an action pursuant to a binding arbitration provision is unsettled. The FAA states that courts "satisfied that the issue involved ... is referable to arbitration ... shall on application of one of the parties stay the trial of the action until such arbitration has been had." 9 U.S.C. § 3. In *Choice Hotels International, Inc. v. BSR Tropicana Resort, Inc.*, the Fourth Circuit stated that "dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable," but ultimately held that, because at least some of the plaintiff's claims were not arbitrable, dismissal of the complaint in its entirety would not be appropriate. 252 F.3d 707, 709–10, 712 (4th Cir. 2001). *Choice Hotels* is at odds with the Fourth Circuit's earlier opinion, *Hooters of America, Inc. v. Phillips*, where the court did not recognize dismissal as an option for courts interpreting arbitration clauses, but rather stated only that "[w]hen a valid agreement to arbitrate exists between the parties and covers the matter in dispute, the FAA commands the federal courts to stay any ongoing judicial proceedings ... and to compel arbitration." 173 F.3d 933, 937 (4th Cir. 1999). Courts similarly faced with the Fourth Circuit's ambiguity on this point have erred on the side of staying proceedings pending arbitration. *See, e.g., Blount v. Northrup Grumman Info. Tech. Overseas, Inc.*, No. 1:14cv919, 2014 WL 5149704, at *5 (E.D. Va. Oct. 14, 2014); *Green v. Zachry Indus., Inc.*, 36 F. Supp. 3d 669, 678 (W.D. Va. 2014). Absent conclusive authority to the contrary, this Court will follow the FAA and will stay proceedings pending the outcome of arbitration.

***6** Based on the foregoing analysis, Defendants' Motions to Compel Arbitration (ECF Nos. 13, 26) will be granted, and this action will be stayed pending the outcome of arbitration. The parties will be required to notify the Court as to the outcome of arbitration within five days following completion of arbitration. An appropriate Order will accompany this Memorandum Opinion.

All Citations

Not Reported in Fed. Supp., 2021 WL 298192

Footnotes

1 Plaintiff filed a Motion for Defense Deposit and Investment of Funds in the Court Registry Investment System (ECF No. 20) and three separate motions for default judgment as to individual Defendants Todd Morgan (ECF No. 28); Todd Morgan, Logan Green, and John Zimmer (ECF No. 34); and Cabell Rosanelli (ECF No. 39). The Court need not address these motions at this juncture as the Court will grant Defendants' Motions to Compel Arbitration and will stay this matter pending arbitration.

2 The Amended Complaint states that Plaintiff was "under review" as of January 29, 2020, and then that he was terminated on February 8, 2019. (*Id.* at 9.) The exact date of Plaintiff's termination is unclear because his alleged termination date predates the signing of the contract.

3 Plaintiff filed five briefs under various titles in which he purports to reply to Defendants' Motions to Compel Arbitration. (ECF Nos. 18, 21, 23, 29, 30.) In these filings, Plaintiff raises a wide variety of arguments and issues ranging from general opinions regarding the Black Lives Matter movement to additional support for his claims as alleged in the Amended Complaint. Plaintiff also cites a variety of cases discussing arbitration clauses in the context of the Fair Labor Standards Act ("FLSA"). (ECF No. 29.) As Plaintiff has not filed any claims under the FLSA, consideration of these cases is unnecessary. The Court here only addresses Plaintiff's plausibly relevant and procedurally appropriate arguments.

Peterson v. Lyft, Inc.

United States District Court for the Northern District of California, San Francisco Division

November 19, 2018, Decided; November 19, 2018, Filed

Case No. 16-cv-07343-LB

Reporter
2018 U.S. Dist. LEXIS 197164 *; 2018 WL 6047085

PETE ***PETERSON***, Plaintiff, ***v***. ***LYFT***, ***INC.***, Defendant.

Core Terms

arbitrator, arbitration provision, unconscionable, delegate, parties, questions, argues, arbitration agreement, consumer, Driver, compel arbitration, unmistakable, disputes, procedural unconscionability, authorities, unilateral, binding, clicked, button

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For ***Lyft***, ***Inc.***, Defendant: Jonathan Hugh Blavin, LEAD ATTORNEY, Attorney at Law, Munger, Tolles & Olson, LLP, San Francisco, ***CA***.

Judges: LAUREL BEELER, United States Magistrate Judge.

Opinion by: LAUREL BEELER

Opinion

ORDER GRANTING MOTION TO COMPEL ARBITRATION AND DISMISSING ACTION

Re: ECF No. 39

INTRODUCTION

Plaintiff Pete ***Peterson*** brings this putative class action against the ridesharing company ***Lyft***, ***Inc.*** ***Lyft*** twice denied Mr. ***Peterson***'s applications to be a driver, based on a background "consumer report" that a screening company ran on ***Lyft***'s behalf on Mr. ***Peterson***. Mr. ***Peterson*** alleges that ***Lyft*** violated the *Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 et seq.*, which provides that a person or entity using a consumer report for employment purposes must provide the subject with certain information — a copy of the report and a written description of the subject's rights under the FCRA — before it can take any adverse action based on **[*2]** the report. *15 U.S.C. § 1681b(b)(3)(A)*. ***Lyft*** moves to compel arbitration of Mr. ***Peterson***'s FCRA claim based on an arbitration provision contained in its Terms of Service. The court held a hearing on ***November*** 15, ***2018***.

The court finds that (1) the parties entered into a binding agreement that contains an arbitration provision, (2) the parties in their arbitration provision delegated questions about the arbitrability of disputes — such as whether Mr. ***Peterson***'s FCRA claim falls within the scope of the arbitration provision — to the arbitrator, and (3) the arbitration provision is enforceable and not unconscionable. The court grants ***Lyft***'s motion to compel arbitration and dismisses this action.

STATEMENT

1. *Lyft*'s Terms of Service and the Arbitration Provision

Plaintiff Pete ***Peterson*** created two ***Lyft*** accounts through the ***Lyft*** app.[1] In the process of creating these accounts, he was presented with a screen listing the ***Lyft*** "Terms of Service."[2] Individuals confronting this screen can scroll through the text of the Terms of Service and must click "I accept" to complete the creation of their ***Lyft*** accounts.[3] When someone presses the "I accept" button, a message is sent to ***Lyft***'s server, which records the timestamp of the user's **[*3]** clicking the button.[4] ***Lyft***'s records show (and Mr. ***Peterson*** does not deny) that Mr. ***Peterson*** clicked the "I accept" button in connection with his first ***Lyft*** account on December 13, 2014, and clicked the "I accept" button in connection with his second ***Lyft*** account on February 28, 2015.[5]

On December 13, 2014, the Terms of Service that were in effect, and that the ***Lyft*** app displayed for Mr. ***Peterson***, were a version dated ***November 19***, 2014.[6] On February 28, 2015, the Terms of Service that were in effect, and that the ***Lyft*** app displayed for Mr. ***Peterson***, were a version dated December 22, 2014.[7] Both Terms of Service contain the following provision:

> **Agreement to Arbitrate All Disputes and Legal Claims**
>
> You and We agree that any legal disputes or claims arising out of or related to the Agreement (including but not limited to the use of the ***Lyft*** Platform and/or the Services, or the interpretation, enforceability, revocability, or validity of the Agreement, or the arbitrability of any dispute), that cannot be resolved informally shall be submitted to binding arbitration in the state in which the Agreement was performed. The arbitration shall be conducted by the American Arbitration Association **[*4]** under its Commercial Arbitration Rules (a copy of which can be obtained here), or as otherwise mutually agreed by you and we. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be brought within the time required by applicable law. You and we agree that any claim, action or proceeding arising out of or related to the Agreement must be brought in your individual capacity, and not as a plaintiff or class member in any purported class, collective, or representative proceeding. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative, collective, or class proceeding. YOU ACKNOWLEDGE AND AGREE THAT YOU AND ***LYFT*** ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.[8]

2. Mr. *Peterson*'s Applications to Drive for *Lyft*

In December 2014, Mr. ***Peterson*** applied to drive for ***Lyft***.[9] ***Lyft*** requested a background-screening report from Sterling Infosystems, ***Inc.***, one of the largest employment-background-screening

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[1] Lauzier Decl. - ECF No. 39-1 at 3 (¶ 6). Citations refer to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of documents.

[2] *Id.* (¶ 7).

[3] *Id.* at 4 (¶ 8).

[4] *Id.*

[5] *Id.* at 3 (¶ 6), 4 (¶¶ 10, 12).

[6] *Id.* at 4 (¶ 9); *see* Lauzier Decl. Ex. A (***November*** 2014 Terms of Service) — ECF No. 39-2.

[7] Lauzier Decl. — ECF No. 39-1 at 4 (¶ 11); Lauzier Decl. Ex. B (December 2014 Terms of Service) — ECF No. 39-3.

[8] Lauzier Decl. — ECF No. 39-1 at 5 (¶ 13); Lauzier Decl. Ex. A (***November*** 2014 Terms of Service) — ECF No. 39-2 at 14; Lauzier Decl. Ex. B (December 2014 Terms of Service) — ECF No. 39-3 at 23.

[9] First Amend. Compl. ("FAC") — ECF No. 22 at 4 (¶ 15).

companies in the nation.[10] In early January 2015, Sterling **[*5]** completed its report and delivered it to ***Lyft***.[11] The report adjudged Mr. ***Peterson*** ineligible for employment based on ***Lyft***'s hiring criteria.[12] ***Lyft*** did not provide Mr. ***Peterson*** with a copy of the Sterling report or a copy of his rights under the FCRA.[13]

In December 2015, Mr. ***Peterson*** communicated with ***Lyft***, saying that his application was denied the previous year and asking to be reconsidered.[14] A ***Lyft*** representative contacted Mr. ***Peterson*** and asked him to provide the telephone number or email address associated with his first application so that ***Lyft*** could locate his file, including his Sterling background report.[15] Mr. ***Peterson*** provided the phone number that he used for his 2014 application.[16] A ***Lyft*** representative then contacted Mr. ***Peterson*** and told him that ***Lyft*** uses Sterling to conduct background checks and that Mr. ***Peterson*** should contact Sterling directly "to dispute the charges" on his profile that made him ineligible for employment.[17] ***Lyft*** did not notify Mr. ***Peterson*** in writing that it took adverse action against him and did not provide Mr. ***Peterson*** with a copy of the Sterling report or a copy of his rights under the FCRA.[18]

In May 2016, Mr. ***Peterson*** was able to see the Sterling **[*6]** report for the first time.***19***[1] The report had grading for six separate categories, all of which were "Complete" or "Clear," with the exception of the county-criminal-record-search category, which had a grading of "Consider."[20]

ANALYSIS

"The *Federal Arbitration Act (FAA)* requires courts to 'place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms.'" *Poublon **v**. C.H. Robinson Co., 846 F.3d 1251, 1259 (9th Cir. 2017)* (quoting *AT&T Mobility LLC **v**. Concepcion, 563 U.S. 333, 339, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)*). ***Lyft*** argues, and Mr. ***Peterson*** does not meaningfully dispute, that Mr. ***Peterson***'s clicking of the "I accept" button rendered the ***Lyft*** Terms of Service a binding contract between him and ***Lyft***. *Cf., e.g., In re Facebook Biometric Info. Privacy Litig., 185 F. Supp. 3d 1155, 1166 (**N.D. Cal.** 2016)*. It thus is enforceable according to its terms.

The parties dispute two issues: (1) whether Mr. ***Peterson***'s FCRA claim is arbitrable (as defined in the arbitration provision in the Terms of Service) and (2) whether the arbitration provision is unconscionable. For the following reasons, the court holds that (1) the parties' contract delegates questions of whether Mr. ***Peterson***'s FCRA claim is arbitrable to the arbitrator and (2) the arbitration provision is not unconscionable.

1. Delegation

1.1 Governing Law

"Generally, in deciding whether to compel arbitration, a court must determine **[*7]** two 'gateway' issues: (1) whether there is an agreement to arbitrate between the parties; and (2) whether the agreement covers the dispute." *Brennan **v**. Opus Bank, 796 F.3d 1125, 1130 (9th Cir. 2015)* (citing *Howsam **v**. Dean Witter Reynolds, **Inc.**, 537 U.S. 79, 84, 123 S. Ct. 588, 154 L. Ed. 2d 491 (2002)*). "However, these

[10] *Id.* at 3 (¶ 11), 5 (¶ 18).

[11] *Id.* at 5 (¶ 18).

[12] *Id.* (¶ ***19***).

[13] *Id.*

[14] *Id.* (¶ 20).

[15] *Id.* (¶ 23).

[16] *Id.* (¶ 24).

[17] *Id.* at 5-6 (¶ 25).

[18] *Id.* at 6 (¶ 26)

[19] *Id.* (¶ 27).

[20] *Id.* (¶ 28).

gateway issues can be expressly delegated to the arbitrator where 'the parties *clearly and unmistakably* provide otherwise.'" *Id.* (emphasis in original) (quoting *AT&T Technologies, **Inc. v.** Communications Workers of America, 475 U.S. 643, 649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986)*). "[I]f there is clear and unmistakable evidence of an intent to delegate, a court should inquire as to whether the assertion of arbitrability is 'wholly groundless.'" *Khraibut **v.** Chahal, No. C15-04463 CRB, 2016 U.S. Dist. LEXIS 35514, 2016 WL 1070662, at *4 (**N.D. Cal.** Mar. 18, 2016)* (citing *Qualcomm **Inc. v.** Nokia Corp., 466 F.3d 1366, 1371 (Fed. Cir. 2006)*). "If a court finds that the assertion of arbitrability is even loosely related to the claims, 'it should stay the action pending a ruling on arbitrability by the arbitrator.'" *2016 U.S. Dist. LEXIS 35514, [WL] at *7* (quoting *Zenelaj **v.** Handybook **Inc.**, 82 F. Supp. 3d 968, 975 (**N.D. Cal.** 2015)*).

1.2 Application

The parties' arbitration provision here expressly provides that "legal disputes or claims arising out of the Agreement (including but not limited to . . . the arbitrability of any dispute), . . . shall be submitted to binding arbitration[.]" As another court in this district has held in connection with this same ***Lyft*** Terms-of-Service arbitration provision, this language "explicitly refer[ring] arbitrability questions to an arbitrator is evidence that the parties clearly and unmistakably **[*8]** have referred the arbitrability question to the arbitrator." *Loewen **v. Lyft, Inc.**, 129 F. Supp. 3d 945, 954 (**N.D. Cal.** 2015)* (citing *Anderson **v.** Pitney Bowes, **Inc.**, No. C 04-4808 SBA, 2005 U.S. Dist. LEXIS 37662, 2005 WL 1048700, at *3 (**N.D. Cal.** May 4, 2005)*).

Additionally, ***Lyft***'s assertion of arbitrability here is not "wholly groundless." *Cf. Khraibut, 2016 U.S. Dist. LEXIS 35514, 2016 WL 1070662, at *4*. The Terms of Service say the following:

> By accepting this Agreement, a Driver agrees that We may obtain information about the Driver, including without limitation the Driver's driving record, references and credit information. A Driver hereby authorizes Us to perform a background check on Driver, and further agrees to provide any necessary authorization to facilitate Our access to the Driver's official driving record, references and credit information during the term of the Agreement.[21]

Mr. ***Peterson***'s FCRA claim arises out of ***Lyft***'s background checks, and hence the claim is at least loosely related to a "legal dispute[] or claim[] arising out of the Agreement" that the parties agreed to arbitrate. *Cf. 2016 U.S. Dist. LEXIS 35514, [WL] at *7*.

Mr. ***Peterson*** argues that parties cannot delegate questions of arbitrability to an arbitrator by ***incorporating*** into their agreement by reference the American Arbitration Association's ("AAA") arbitration rules.[22] But the parties did not delegate **[*9]** questions of arbitrability to an arbitrator by ***incorporating*** the AAA rules. Instead, the parties' contract expressly delegates questions of the arbitrability of any dispute to the arbitrator. Mr. ***Peterson***'s cases — which involve arbitration provisions that did not expressly delegate questions of arbitrability to the arbitrator and instead relied on provisions in AAA rules about delegation — are inapposite. *Cf. Loewen, 129 F. Supp. 3d at 966 **n**.4* ("Plaintiffs cite cases holding that mere reference to the Commercial Rules is insufficient to delegate authority in contracts of adhesion in the context of consumer disputes. However, in this case there is an express delegation clause in addition to reference to the AAA Commercial Arbitration Rules, so these cases are inapposite."); *accord Taylor **v.** Shutterfly, **Inc.**, No. 18-cv-00266-BLF, **2018** U.S. Dist. LEXIS 154925, **2018** WL 4334770, at *6 (**N.D. Cal.** Sept. 11, **2018**)* ("This Court need not reach that issue [of incorporation of AAA rules] because as discussed above the parties' Arbitration Agreement in the

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[21] Lauzier Decl. Ex. A (***November*** 2014 Terms of Service) — ECF No. 39-2 at 5; Lauzier Decl. Ex. B (December 2014 Terms of Service) — ECF No. 39-3 at 9.

[22] Pl. Opp'***n*** — ECF No. 49 at 7-8.

Terms of Use 'clearly and unmistakably' delegates the gateway issues to the arbitrator."); *DeVries **v.** Experian Info. Sols., **Inc.**, No. 16-cv-02953-WHO, 2017 U.S. Dist. LEXIS 26471, 2017 WL 733096, at *9 (**N.D. Cal.** Feb. 24, 2017)* (finding that an arbitration provision that stated "[a]ll issues are for the arbitrator to decide, including the **[*10]** scope and enforceability of this arbitration provision . . ., and the arbitrator shall have exclusive authority to resolve any such dispute relating to the scope and enforceability of this arbitration provision . . ., including, but not limited to any claim that all or any part of this arbitration provision or Agreement is void or voidable," "constitutes clear and unmistakable evidence that the parties agreed that the arbitrator will decide the questions of arbitrability").[23]

Mr. ***Peterson*** also claims that the parties' contract is unclear as to whether the AAA Commercial Rules or Consumer Rules would apply and argues that this defeats ***Lyft***'s argument that the parties agreed to delegate questions of arbitrability to the arbitrator.[24] Mr. ***Peterson*** cites no authority to support his argument,[25] and courts have rejected it. *Khraibut, 2016 U.S. Dist. LEXIS 35514, 2016 WL 1070662, at *5* (question about which AAA rules apply "does not create enough ambiguity or confusion to defeat a 'clear and unmistakable' showing" of delegating questions of arbitrability to the arbitrator where the various AAA rules contained the same language regarding delegation); *Galen **v.** Redfin Corp., No. 14-cv-05229-TEH, 2015 U.S. Dist. LEXIS 161111, 2015 WL 7734137, at *7 (**N.D. Cal.** Dec. 1, 2015)* (same).[26]

2. Unconscionability

2.1 Governing [*11] Law

The FAA provides that arbitration agreements are unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." *9 U.S.C. § 2*. "[G]enerally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening" federal law. *Doctor's Assocs. **v.** Casarotto, 517 U.S. 681, 687, 116 S. Ct. 1652, 134 L. Ed. 2d 902 (1996)*. The court determines whether the putative arbitration agreement is enforceable under the laws of the state where the contract was formed. *First Options of Chicago, **Inc. v.** Kaplan, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995)*; *Ingle **v.** Circuit City Stores, 328 F.3d 1165, 1170 (9th Cir. 2003)*.

In ***California***, contractual unconscionability has both procedural and substantive components. *Armendariz **v.** Found. Health Psychcare Servs., **Inc.**, 24 **Cal.** 4th 83, 114, 99 **Cal.** Rptr. 2d 745, 6 P.3d 669 (2000)*. "In order to establish such a defense, the party opposing arbitration must demonstrate that the contract as a whole or a specific clause in the contract is both procedurally and substantively unconscionable." *Poublon, 846 F.3d at 1260* (citing *Sanchez **v.** Valencia Holding Co., LLC, 61 **Cal.** 4th 899, 910, 190 **Cal.** Rptr. 3d 812, 353 P.3d 741 (2015))*. "Procedural and substantive unconscionability 'need not be present in the same degree.'" *Id.* (quoting *Sanchez, 61 **Cal.***

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[23] By contrast, *Ingalls **v.** Spotify USA, **Inc.**, No. C 16-03533 WHA, 2016 U.S. Dist. LEXIS 157384, 2016 WL 6679561, at *3 (**N.D. Cal. Nov.** 14, 2016)*, which Mr. ***Peterson*** cites, involved an argument that the parties had agreed to delegate the question of arbitrability because the agreement ***incorporated*** AAA rules (which provided for delegation) and not an argument that the parties' agreement itself expressly provided for delegation.

[24] Pl. Opp'***n*** — ECF No. 49 at 6-7.

[25] *See id.*

[26] The AAA's Commercial Rules and Consumer Rules have identical provisions regarding delegation: both provide that "The arbitrator shall have the power to rule on his or her 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." Blavin Decl. Ex. C (AAA Commercial Rules) — ECF No. 39-8 at 14 (R-7(a)); Blavin Decl. Ex. ***D*** (AAA Consumer Rules) — ECF No. 39-9 at 18 (R-14(a)).

4th at 910). "Rather, there is a sliding scale: 'the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.'" *Id.* (quoting Sanchez, 61 **Cal.** 4th at 910). "Under ***California*** law, 'the party opposing arbitration bears the burden **[*12]** of proving . . . unconscionability.'" *Id.* (quoting Pinnacle Museum Tower Ass'***n*** ***v.*** Pinnacle Mkt. Dev. (US), LLC, 55 **Cal.** 4th 223, 236, 145 **Cal.** Rptr. 3d 514, 282 P.3d 1217 (2012)).

2.2 Application

As the party opposing arbitration, Mr. ***Peterson*** has the burden of proving unconscionability.

2.2.1 Procedural unconscionability

The only thing Mr. ***Peterson*** offers regarding procedural unconscionability is an argument that the arbitration provision is a contract of adhesion.[27] At best, this presents a minimal level of procedural unconscionability. *Cf.* Loewen, 129 F. Supp. 3d at 958 (finding that this same ***Lyft*** Terms-of-Service agreement presented "a minimal degree of procedural unconscionability"). Consequently, "'the [arbitration] agreement will be enforceable unless the degree of substantive unconscionability is high.'" Poublon, 846 F.3d at 1261 (quoting Serpa ***v.*** **Cal.** Sur. Investigations, **Inc.**, 215 **Cal.** App. 4th 695, 704, 155 **Cal.** Rptr. 3d 506 (2013)).

2.2.2 Substantive unconscionability

Mr. ***Peterson*** first argues that the arbitration provision is substantively unconscionable because it provides for delegation of the question of arbitrability under the AAA Commercial Rules when, so he argues, ***Lyft*** itself believes the AAA Consumer Rules should apply.[28] This overly simplifies ***Lyft***'s argument. ***Lyft*** argues that the applicable AAA Commercial Rules themselves provide that disputes arising out of a consumer arbitration agreement may be administered under the AAA Consumer Rules.[29] In **[*13]** any event, Mr. ***Peterson*** cites no authorities that support his argument or satisfy his burden of establishing unconscionability.[30]

Mr. ***Peterson*** next argues that the arbitration provision is substantively unconscionable because ***Lyft*** can unilaterally modify it.[31] Mr. ***Peterson*** cites no authorities that support his argument.[32] The Ninth Circuit has held that a unilateral modification clause does not per se make an arbitration provision unconscionable, because "***California*** courts have held that the implied covenant of good faith and fair dealing prevents a party from exercising its rights under a unilateral modification clause in a way that would make it unconscionable." *Tompkins* ***v.*** *23andMe,* ***Inc.****, 840 F.3d 1016, 1033 (9th Cir. 2016)* (citing cases). "Although . . . a unilateral modification provision itself may be unconscionable, . . . such an unconscionable provision [does not necessarily] make[] the arbitration provision or the contract as a whole unenforceable." *Id.* (citing Ingle ***v.*** Circuit City Stores, **Inc.**, 328 F.3d 1165, 1179 & ***n***.23 (9th Cir. 2003)). Additionally, even if the unilateral modification were unconscionable, Mr. ***Peterson*** does not claim that ***Lyft*** acted unreasonably to alter the contract terms, so this at best presents mild substantive unconscionability. *Cf.* Loewen, 129 F. Supp. 3d at 959-60.

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[27] Pl. Opp'***n*** — ECF No. 49 at 11.

[28] *Id.* at 11-12.

[29] Def. Mot. — ECF No. 39 at ***n***.14 ("[T]he Commercial Arbitration Rules explain that any 'dispute arising out of a consumer arbitration agreement will be administered under the AAA's Consumer Arbitration Rules.'") (quoting Blavin Decl. Ex. C (AAA Commercial Rules) — ECF No. 39-8 at 11 (R-1)); Def. Reply — ECF No. 50 at 12 ("[T]here is no ambiguity as to the applicable AAA Rules — it is clear that the Commercial Rules generally apply but that the arbitrator may nonetheless apply the Consumer Rules when appropriate.").

[30] *See* Pl. Opp'***n*** — ECF No. 49 at 11-12.

[31] *Id.* at 12.

[32] *See id.*

Third, Mr. ***Peterson*** argues that **[*14]** AAA rules contain a privacy provision that is unconscionable, citing *Ting **v**. AT&T, 319 F.3d 1126 (9th Cir. 2003)*.[33] As the Ninth Circuit has held, subsequent ***California*** state-court decisions have undermined the holding in *Ting*. Under current ***California*** and Ninth Circuit law, privacy provisions like the one at issue do not render the arbitration provision unconscionable. *Poublon, 846 F.3d at 1265-67* (citing *Ting, Sanchez **v**. CarMax Auto Superstores **Cal.** LLC, 224 **Cal.** App. 4th 398, 408, 168 **Cal.** Rptr. 3d 473 (2014)*, and other authorities).

Finally, Mr. ***Peterson*** argues that the arbitration provision waives his statutory right to bring a claim under the ***California*** Private Attorney General Act ("PAGA") and that this waiver is unconscionable.[34] This argument fails for two reasons. First, the Ninth Circuit has held that while a PAGA-claim waiver in an agreement is unenforceable, such a waiver does not render an arbitration provision in the agreement substantively unconscionable. *Poublon, 846 F.3d at 1264*. Second, Mr. ***Peterson*** has not pleaded a PAGA claim in any event, and thus lacks standing to challenge a PAGA waiver provision that is not being applied to him. *Gerton **v**. Fortiss, LLC, No. 15-cv-04805-TEH, 2016 U.S. Dist. LEXIS 19297, 2016 WL 613011, at *3 **n**.3 (**N.D. Cal.** Feb. 16, 2016)* (citing *Arellano **v**. T-Mobile USA, **Inc.**, No. 10-05663 WHA, 2011 U.S. Dist. LEXIS 41667, 2011 WL 1362165, at *5 (**N.D. Cal.** Apr. 11, 2011))*.

CONCLUSION

The court finds that (1) the parties entered into a binding agreement that contains an arbitration provision, (2) the parties in their **[*15]** arbitration provision delegated questions about the arbitrability of disputes — such as whether Mr. ***Peterson***'s FCRA claim falls within the scope of the arbitration provision — to the arbitrator, and (3) the arbitration provision is enforceable and not unconscionable. The court grants ***Lyft***'s motion to compel arbitration and dismisses this action. *Cf. Loewen, 129 F. Supp. 3d at 966* ("Because the Court concludes that arbitration should be compelled, it has the discretion to stay the case under *9 U.S.C. § 3* or dismiss the litigation entirely. Neither side has presented any compelling reason to keep this case on the Court's docket and the case is hereby dismissed.") (citations omitted).

IT IS SO ORDERED.

Dated: ***November 19, 2018***

/s/ Laurel Beeler

LAUREL BEELER

United States Magistrate Judge

JUDGMENT

On ***November 19, 2018***, the court granted defendant ***Lyft, Inc.***'s motion to compel arbitration and dismiss the First Amended Complaint. Pursuant to *Federal Rule of Civil Procedure 58*, the court hereby ENTERS judgment in favor of defendant ***Lyft, Inc.***, and against plaintiff Pete ***Peterson***. The court directs the Clerk of Court to close the file in this matter.

IT IS SO ORDERED.

Dated: ***November 19, 2018***

/s/ Laurel Beeler

LAUREL BEELER

United States Magistrate Judge

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[33] *Id.*

[34] *Id.* at 13-14.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CASEY LOEWEN, et al.,

Plaintiffs,

v.

LYFT, INC.,

Defendant.

Case No. 15-cv-01159-EDL

ORDER GRANTING MOTION TO COMPEL ARBITRATION AND DISMISS ACTION; DENYING MOTION TO STRIKE SUR-REPLY; GRANTING MOTION TO FILE STATEMENT OF RECENT DECISION

I. Introduction

This is a putative class action brought by Plaintiffs Casey Loewen and Jonathan Wright individually and on behalf of others similarly situated against Defendant Lyft, Inc. This Court has previously denied Plaintiff's motion to compel pre-arbitration discovery. Now before the Court is Defendant's motion to compel arbitration and dismiss the litigation. The Court heard oral argument on the motion on July 7, 2015. For the following reasons, the motion is GRANTED.

II. Background

Lyft is a San Francisco-based transportation network company that facilitates peer-to-peer ridesharing through its mobile-phone application (the "Lyft App") by connecting passengers who need a ride to drivers who have a car. Compl. ¶ 11. In order to become a Lyft driver, new applicants need to fill out an application, take a "welcome ride," and pass a background check, in that order. Id.¶ 12. The application asks for personal and automobile information. Id. The welcome ride consists of meeting with a Lyft mentor, a vehicle inspection, and a practice ride. Id. The background check examines the applicant's driving record and criminal history. Id. Parts of the background check are conducted by Lyft while others are conducted by third-party vendors. Id. Once a driver is approved, he or she may immediately begin giving rides. Id.

In order to use the Lyft App, whether as a rider or a driver, users must agree to Lyft's Terms of Service ("TOS"). Brannstrom Decl. ¶ 4, Exh. 2. When a user downloads and attempts to use the Lyft App for the first time, the user is presented with a screen that displays the text of Lyft's TOS. Id. ¶ 6. The user has the opportunity to scroll all the way through the text. Id. The user must click "I accept," and agree to the TOS, in order to proceed to use the Lyft App. Id. While users can apply to become a driver through the Lyft App, they cannot become a driver without first downloading the Lyft App and consenting to the TOS. Id. Individuals can also apply to become Lyft drivers through Lyft's website. Id. ¶ 11. In order to apply via the website, users must access the "Drive" page and then fill out a form with basic information including their name, email address, city, phone number, and any applicable referral code. Id. ¶ 11. On the initial webpage, there is a checkbox that states "I agree to the Lyft terms." Id. "Lyft terms" is a hyperlink that leads to a website containing the TOS. Id. Only after the "I agree" box has been checked can prospective drivers submit their application by selecting the "BECOME A DRIVER" button. Id. If these prospective drivers have not already downloaded the Lyft App, they are required to download the Lyft App and consent to the TOS before they can access the Lyft App and use the Lyft Platform as a driver. Id.

Plaintiff Loewen initially agreed to the TOS through the Lyft app on July 6, 2013, while the 2013 version of the TOS was in effect. Id. ¶ 8-9, Ex. 1-2. Plaintiff Wright agreed to the TOS on both the website and the app on February 27, 2015, while the 2014 version of the TOS was in effect. Id. ¶ 14-16, Exs. 2-4. Both the 2013 and 2014 TOS advise users that in order to "register for the services provided on Lyft," they must "agree to be bound by the terms and conditions of [the] agreement." Id. Exh. 4 at 2; see also id., Exh. 2 at 1-2 (stating that users must accept the Terms of Service "before . . . us[ing] any of the Services"). Both the 2013 TOS and 2014 TOS contain arbitration provisions, though they differ in how they define their scope. Id. Ex. 2 at 12-13 (2013 TOS arbitration provision covers "any legal disputes or claims between the Parties," provides that questions of arbitrability are reserved for the Court, and is silent on the availability of class arbitration); Ex. 4 at 22 (2014 TOS arbitration provision covers "any legal disputes or claims arising out of or related to the Agreement," delegates questions of arbitrability to the

arbitrator, and includes an express class action waiver). Id. Though Lyft made separate arguments with respect to each named Plaintiff based on the differing terms of the 2013 and 2014 TOS in its moving papers, as set forth in their subsequent papers and confirmed at oral argument, the parties agree that for purposes of this motion the 2014 TOS applies to both Plaintiffs. See Opp. at 4 ("Loewen is bound by the 2014 TOS, not the 2013 TOS"). Therefore, the Court only addresses the 2014 TOS.

The 2014 TOS contains the following arbitration agreement:

> **Agreement to Arbitrate All Disputes and Legal Claims**
> You and We agree that any legal disputes or claims arising out of or related to the Agreement (including but not limited to the use of the Lyft Platform and/or the Services, or the interpretation, enforceability, revocability, or validity of the Agreement, or the arbitrability of any dispute), that cannot be resolved informally shall be submitted to binding arbitration in the state in which the Agreement was performed. The arbitration shall be conducted by the American Arbitration Association under its Commercial Arbitration Rules (a copy of which can be obtained here), or as otherwise mutually agreed by you and we. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be brought within the time required by applicable law. You and we agree that any claim, action or proceeding arising out of or related to the Agreement must be brought in your individual capacity, and not as a plaintiff or class member in any purported class, collective, or representative proceeding. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative, collective, or class proceeding. YOU ACKNOWLEDGE AND AGREE THAT YOU AND LYFT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.

Id. Exh. 4 at 22. The 2014 also provides that: "We may amend this Agreement at any time by posting the amended terms on the Lyft Platform. If We post amended terms on the Lyft Platform, You may not use the services without accepting them. Except as stated below, all amended terms shall automatically be effective after they are posted on the Lyft Platform." Id. at 2.

On or about February 25, 2015, Lyft launched two $1,000 new driver referral programs (the "Promotions") in fifteen cities across the county. Compl.¶ 13. The first was the "$1,000 Double-Sided Referral Bonus," whereby a current Lyft driver could refer new drivers, and the referring driver and the new driver would each receive $1,000 provided that the new driver: (1) applied on or after midnight on February 25th; (2) entered his or her referrer's code on signup; and (3) completed his or her first ride on or before March 5th. Id. ¶ 14. The second was the "$1,000

Sign-On Bonus," which essentially allowed new drivers to sign up directly without the need of being referred. Id. ¶ 16. To qualify, a new driver had to: (1) apply on or after midnight on February 25th; (2) enter a code upon signup; and (3) complete his or her first ride on or before March 5th. Id. Although new drivers did not have trouble filling out their applications, inputting the appropriate promotion codes, and completing their "welcome rides," Plaintiffs allege that Lyft and its third-party vendors did not process background checks fast enough to ensure that the new drivers would be able to give their first ride by March 5th. Id. According to Plaintiffs, despite the fact that Lyft originally stated that it would only take a "couple days" to approve a background check, many new drivers were told by Lyft and its third-party vendors that it could take at least one to two weeks to process their background checks. Id. As a result, some new drivers were unable to give their first ride by March 5th, causing them and their referring drivers to forfeit the $1,000 bonus. See id. ¶¶ 22, 29, 34.

On March 11, 2015, Plaintiffs Casey Loewen and Jonathan Wright filed this putative class action against Lyft asserting claims for breach of contract, fraud, and negligent misrepresentation. See Compl. ¶¶ 40–93. On April 17th, 2015, Lyft responded by filing this Motion to Compel Individual Arbitration and Dismiss the Action. Dkt. #14.

III. Legal Standard

The Federal Arbitration Act ("FAA") provides that "a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740, 1745 (2011) (quoting 9 U.S.C. § 2). The FAA thus makes clear that "courts must place arbitration agreements on an equal footing with other contracts." Id. In deciding whether a dispute is arbitrable, courts must consider: (1) whether a valid agreement to arbitrate exists; and (2) whether the scope of that agreement to arbitrate encompasses the claims at issue. Chiron Corp. v. Ortho Diagnostic Sys., 207 F.3d 1126, 1130 (9th Cir. 2000). If a party seeking to compel arbitration establishes these two factors, the court must compel arbitration. Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 218 (1985) ("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.") (emphasis in original). When a contract contains an arbitration clause, there is a presumption of arbitrability such that doubts should be resolved in favor of coverage. AT&T Techs. v. Commc'ns Workers of Am., 475 U.S. 643, 650 (1986). This presumption is particularly strong in the case of broad arbitration clauses. Id. Where a contract delegates the question of arbitrability to an arbitrator, the court's inquiry is limited to whether the demand for arbitration is "wholly groundless." Clarium Capital Management LLC v. Choudhury, 2009 WL 331588, at *5 (N.D.Cal. Feb. 11, 2009).

Despite the strong policy favoring enforcement of arbitration agreements, generally applicable contract defenses such as fraud, duress, or unconscionability are applicable to arbitration agreements as they are to other contracts. Concepcion, 131 S. Ct. at 1746 (citing Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681, 687 (1996)). Under California law, "courts may refuse to enforce any contract found 'to have been unconscionable at the time it was made,' or may 'limit the application of any unconscionable clause.'" Id. (citing Cal. Civ. Code § 1670.5(a)).

Though there are various iterations of the test for unconscionability under California law, it has most recently been explained by the California Supreme Court in Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899, 910-12 (2015)[1] as follows:

> "'One common formulation of unconscionability is that it refers to "'an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.'" [Citation.] As that formulation implicitly recognizes, the doctrine of unconscionability has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results.'" (Sonic II, supra, 57 Cal.4th at p. 1133, 163 Cal.Rptr.3d 269, 311 P.3d 184.)
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> "'The prevailing view is that [procedural and substantive unconscionability] must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability.'[Citation.] But they need not be present in the same degree. 'Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves.'[Citations.] In other words, the more substantively oppressive the contract term, the less evidence of

[1] Lyft has filed an administrative motion requesting that the Court consider this recent case. See Dkt. No. 34-1. The administrative motion is GRANTED and the Court has considered this case.

procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa."(Armendariz v. Foundation Health Psychare Services, Inc. (2000) 24 Cal.4th 83, 114, 99 Cal.Rptr.2d 745, 6 P.3d 669 (Armendariz).) Courts may find a contract as a whole "or any clause of the contrat" to be unconscionable. (Civ .Code, § 1670.5, subd. (a).)

As we stated in Sonic II:"The unconscionability doctrine ensures that contracts, particularly contracts of adhesion, do not impose terms that have been variously described as "'overly harsh'" (Stirlen v. Supercuts, Inc. (1997) 51 Cal.App.4th 1519, 1532, 60 Cal.Rptr.2d 138), '"unduly oppressive"' (Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 925, 216 Cal.Rptr. 345, 702 P.2d 503 (Perdue)), "'so one-sided as to 'shock the conscience'" (Pinnacle Museum Tower Assn. v. Pinnacle Market Development (2012) 55 Cal.4th 223, 246, 145 Cal.Rptr.3d 514, 282 P.3d 1217 (Pinnacle)), or 'unfairly one-sided' (Little [v. Auto Stiegler, Inc. (2003)] 29 Cal.4th [1064], 1071, 130 Cal.Rptr.2d 892, 63 P.3d 979). All of these formulations point to the central idea that unconscionability doctrine is concerned not with 'a simple old-fashioned bad bargain' (Schnuerle v. Insight Communications Co. (Ky.2012) 376 S.W.3d 561, 575 (Schnuerle)), but with terms that are 'unreasonably favorable to the more powerful party' (8 Williston on Contracts (4th ed.2010) § 18.10, p. 91). These include 'terms that impair the integrity of the bargaining process or otherwise contravene the public interest or public policy; terms (usually of an adhesion or boilerplate nature) that attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law, fine-print terms, or provisions that seek to negate the reasonable expectations of the nondrafting party, or unreasonably and unexpectedly harsh terms having to do with price or other central aspects of the transaction.'(Ibid.)" (Sonic II, supra, 57 Cal.4th at p. 1145, 163 Cal.Rptr.3d 269, 311 P.3d 184.) Because unconscionability is a contract defense, the party asserting the defense bears the burden of proof. (Id. at p. 1148, 163 Cal.Rptr.3d 269, 311 P.3d 184.)

We further observed in Sonic II, and reaffirm today, that "an examination of the case law does not indicate that 'shock the conscience' is a different standard in practice than other formulations or that it is the one true, authoritative standard for substantive unconscionability, exclusive of all others."(Sonic II, supra, 57 Cal.4th at p. 1159, 163 Cal.Rptr.3d 269, 311 P.3d 184.) Nor do we see any conceptual difference among these formulations. Rather, "courts, including ours, have used various nonexclusive formulations to capture the notion that unconscionability requires a substantial degree of unfairness beyond 'a simple old-fashioned bad bargain." ' (Id. at p. 1160, 163 Cal.Rptr.3d 269, 311 P.3d 184, italics added.) This latter qualification is important. Commerce depends on the enforceability, in most instances, of a duly executed written contract. A party cannot avoid a contractual obligation merely by complaining that the deal, in retrospect, was unfair or a bad bargain. Not all one-sided contract provisions are unconscionable; hence the various intensifiers in our formulations: "overly harsh," "unduly oppressive," "unreasonably favorable." (See Pinnacle, supra, 55 Cal.4th at p. 246, 145 Cal.Rptr.3d 514, 282 P.3d 1217 ["A contract term is not substantively unconscionable when it merely gives one side a greater benefit...."].) We clarify today that these formulations, used throughout our case law, all mean the same thing.

An evaluation of unconscionability is highly dependent on context. (See Williams v. Walker–Thomas Furniture Co. (D.C.Cir.1965) 350 F.2d 445, 450 ["The test is not simple, nor can it be mechanically applied."].) The doctrine often requires inquiry into the "commercial setting, purpose, and effect" of the contract or contract provision. (Civ.Code, § 1670.5, subd. (b); accord, Sonic II, supra, 57

> Cal.4th at pp. 1147–1148, 163 Cal.Rptr.3d 269, 311 P.3d 184; Walker–Thomas Furniture, at p. 450 [unconscionability must "be considered 'in the light of the general commercial background and the commercial needs of the particular trade or case' "].) As we have recognized, " 'a contract can provide a "margin of safety" that provides the party with superior bargaining strength a type of extra protection for which it has a legitimate commercial need without being unconscionable." ' (Armendariz, supra, 24 Cal.4th at p. 117, 99 Cal.Rptr.2d 745, 6 P.3d 669; see Walker–Thomas Furniture, at p. 450 ["where no meaningful choice was exercised upon entering the contract," the test is "whether the terms are 'so extreme as to appear unconscionable according to the mores and business practices of the time and place' "].) And, as noted, the substantive unfairness of the terms must be considered in light of any procedural unconscionability. The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement.
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> Moreover, our unconscionability standard is, as it must be, the same for arbitration and nonarbitration agreements. (Concepcion, supra, 563 U.S. at p. ––– [131 S.Ct. at p. 1747].) Of course, unconscionability can manifest itself in different ways, depending on the contract term at issue. (See, e.g., Washington Mutual Bank v. Superior Court (2001) 24 Cal.4th 906, 916–917, 103 Cal.Rptr.2d 320, 15 P.3d 1071 [choice of law clause]); City of Santa Barbara v. Superior Court (2007) 41 Cal.4th 747, 777, 62 Cal.Rptr.3d 527, 161 P.3d 1095 [waivers of liability provision]); Moreno v. Sanchez (2003) 106 Cal.App.4th 1415, 1434, 131 Cal.Rptr.2d 684 [statutes of limitation provision]; Smith, Valentino & Smith, Inc. v. Superior Court (1976) 17 Cal.3d 491, 495–496, 131 Cal.Rptr. 374, 551 P.2d 1206 [forum selection clause].) But the application of unconscionability doctrine to an arbitration clause must proceed from general principles that apply to any contract clause. In particular, the standard for substantive unconscionability—the requisite degree of unfairness beyond merely a bad bargain—must be as rigorous and demanding for arbitration clauses as for any contract clause.

Id. at 910-912.

IV. Sur-Reply

After briefing on this motion was complete but before oral argument, Plaintiff filed an unauthorized sur-reply. See Dkt. No. 26. Lyft filed a motion to strike the sur-reply pursuant to Northern District Civil Local Rule 7-3(d) which prohibits any filings after the reply is filed without prior court approval. Dkt. No. 27. Plaintiffs did not request the Court's permission to file a sur-reply, or explain why they could not have included these arguments earlier. Nevertheless, to the extent that it is not repetitive of Plaintiffs' earlier briefing and is helpful to the Court's analysis, the Court has considered the sur-reply. Therefore, Lyft's motion to strike the sur-reply is DENIED. During oral argument, the Court granted Lyft permission to file a response to the sur-reply and the Court has considered Lyft's response as well.

V. Discussion

A. The Delegation Clause Is Enforceable

The 2014 TOS expressly provides that: "You and We agree that any legal disputes or claims arising out of or related to the Agreement (including but not limited to the use of the Lyft Platform and/or the Services, or the interpretation, enforceability, revocability, or validity of the Agreement, or the arbitrability of any dispute), that cannot be resolved informally shall be submitted to binding arbitration in the state in which the Agreement was performed." Brannstrom Decl. Exh. 4 (2014 TOS) at 22.

1. Clear and Unmistakable Delegation of Arbitrability

Under federal law, "[t]he question whether parties have submitted a particular dispute to arbitration . . . is an issue for judicial determination unless the parties clearly and unmistakably provide otherwise." Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83 (2002) (internal citations, quotation marks, and modifications omitted). If the parties clearly and unmistakably assign the arbitrability question to the arbitrator, "the court should perform a second, more limited inquiry to determine whether the assertion of arbitrability is 'wholly groundless.'" An arbitration provision that explicitly refers arbitrability questions to an arbitrator is evidence that the parties clearly and unmistakably have referred the arbitrability question to the arbitrator. See, e.g., Anderson v. Pitney Bowes, Inc., 2005 WL 1048700, at *3 (N.D.Cal. May 4, 2005) ("one need not reference extrinsic materials" where an arbitration clause "facially gives an arbitrator the exclusive authority to determine his or her own jurisdiction"). Here, the language of the 2014 TOS itself reveals the parties' clear and unmistakable intent to delegate the threshold question of arbitrability to the arbitrator.[2]

[2] Lyft also argues that this intent is confirmed by incorporation of the American Arbitration Association Commercial Arbitration Rules. See Brannstrom Decl. Exh. 4 at 22. Some courts have held that when an arbitration agreement incorporates rules that empower an arbitrator to decide issues of arbitrability, as is the case here with respect to the AAA Commercial Arbitration Rules, the incorporation itself serves as clear and unmistakable evidence of the parties' intent to delegate arbitrability to an arbitrator. See, e.g., Clarium, 2009 WL 331588, at *5. However, while this may be the rule with respect to disputes between sophisticated business entities, it does not necessarily extend to disputes involving consumers. See Ajamian v. CantorCO2e, L.P., 203 Cal. App. 4th 771, 790 (2012); Oracle Am. Inc. v. Myriad Group A.G., 724 F.3d 1069, 1075 n.2 (9th Cir. 2013); Tompkins v. 23andMe, Inc., No. 5:13-CV-05682-LHK, 2014 WL 2903752, at *11 (N.D. Cal. June 25, 2014) ("the Ninth Circuit declined to hold that incorporation of arbitration rules shows 'clear and unmistakable evidence' of an agreement to delegate arbitrability when

However, even where there is clear and unmistakable evidence of an intent to delegate questions of arbitrability to the arbitrator, the enforceability of the delegation provision itself is a separate, threshold issue for this Court to determine. See Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 70-71 (2010) ("An agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other. The additional agreement is valid under § 2 'save upon such grounds as exist at law or in equity for the revocation of any contract,' and federal courts can enforce the agreement by staying federal litigation under § 3 and compelling arbitration under § 4."). Plaintiffs argue that here, the delegation provision itself is unenforceable because it is both procedurally and substantively unconscionable and the Court, not an arbitrator, should decide the question of arbitrability.

2. Procedural Unconscionability

"Procedural unconscionability concerns the manner in which the contract was negotiated and the respective circumstances of the parties at that time, focusing on the level of oppression and surprise involved in the agreement." Chavarria v. Ralphs Grocery Co., 733 F.3d 916, 922 (9th Cir. 2013). "Oppression addresses the weaker party's absence of choice and unequal bargaining power that results in "no real negotiation." Id. (quoting A & M Produce, 186 Cal.Rptr. at 122). "Surprise involves the extent to which the contract clearly discloses its terms as well as the reasonable expectations of the weaker party." Id. (citing Parada v. Super. Ct., 176 Cal.App.4th 1554 (2009)).

Plaintiffs argue that the delegation clause is procedurally unconscionable because it is contained in what is indisputably a contract of adhesion. See Pokorny v. Quixtar, Inc., 601 F.3d 987, 996 (9th Cir. 2010) (quoting Ting v. AT&T, 319 F.3d 1126, 1148 (9th Cir. 2003)) ("contract is procedurally unconscionable under California law if it is 'a standardized contract, drafted by the party of superior bargaining strength, that relegates to the subscribing party only the opportunity to

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consumers are involved). However, regardless of any impact the incorporation of the AAA Commercial Arbitration Rules may have on the delegation of enforceability and arbitrability, in this case the arbitration agreement itself contains an express delegation clause so Lyft need not rely on the AAA Commercial Arbitration Rules to support its arguments in favor of delegation.

adhere to the contract or reject it.'"); Aral v. EarthLink, Inc., 134 Cal. App. 4th 544, 557 (2005) (clickwrap agreement presented on a take it or leave it basis procedurally unconscionable); Merkin v. Vonage Am. Inc., No. 13-08026, 2014 WL 457942, at *6 (C.D. Cal. Feb. 3, 2014) ("Such 'take-it-or-leave-it' contracts of adhesion are frequently found to be oppressive under California law."). Lyft does not dispute that the delegation clause is contained in an adhesion contract, but persuasively argues that this creates a low degree of procedural unconscionability and there are no other factors making the delegation clause more procedurally unconscionable. See Sanchez v. Valencia Holding Co., LLC, 61 Cal 4th 899, 915 (2015) (internal citation omitted) ("Here the adhesive nature of the contract is sufficient to establish some degree of procedural unconscionability. Yet 'a finding of procedural unconscionability does not mean that a contract will not be enforced, but rather that courts will scrutinize the substantive terms of the contract to ensure they are not manifestly unfair or one-sided.'").

Plaintiffs respond that the oppression of this adhesion contract is amplified because they were required to assent to the TOS to "obtain a necessary source of income," and liken the TOS to an employment agreement. See Chavarria v. Ralphs Grocery Co., 733 F.3d 916, 922 (9th Cir. 2013) (agreement to arbitrate procedurally unconscionable where employee could only agree to be bound or seek work elsewhere). Lyft contends that unlike in Chavarria, Plaintiffs are not employees but rather independent contractors. See Brannstrom Decl. Ex. 4 (2014 TOS) at 24 (specifying no employment relationship established by agreement and drivers are independent contractors). For purposes of this motion, the Court need not and does not decide the complex question of whether Plaintiffs should be considered employees or independent contractors. First, even if Plaintiffs are considered employees, the bonus at issue is not for performing their regular duties as drivers but instead for a separate referral program. Furthermore, this dispute does not involve any non-waivable statutory employment claims. Instead, Plaintiffs' claims are limited to breach of contract, fraud and negligent misrepresentation relating to an alleged failure to pay a referral bonus and are far more akin to a consumer dispute than an employment dispute. Additionally, even if the 2014 TOS is viewed through the lens of an employment contract, the level of unconscionability still depends on whether there are other elements of oppression or

surprise. As the California Court of Appeals stated in Serpa v. California Sur. Investigations, Inc., 215 Cal. App. 4th 695, 704 (2013), as modified (Apr. 19, 2013), as modified (Apr. 26, 2013) (internal citations omitted), even though the potential employee there had no opportunity to negotiate the terms of an agreement containing an arbitration agreement, "this adhesive aspect of an agreement is not dispositive. When, as here, there is no other indication of oppression or surprise, 'the degree of procedural unconscionability of an adhesion agreement is low, and the agreement will be enforceable unless the degree of substantive unconscionability is high.'"

As discussed below, Plaintiffs have not demonstrated any oppression or surprise beyond that inherent in any adhesion contract, and there is thus a low degree of procedural unconscionability. Plaintiffs first rely on the fact that the 2014 TOS grants Lyft the unilateral right to modify the TOS, including the delegation provision, without prior notice. See Merkin v. Vonage Am. Inc., No. 2:13-CV-08026-CAS, 2014 WL 457942, at *7 (C.D. Cal. Feb. 3, 2014) (finding that a defendant's frequent exercise of its unilateral power to modify an adhesion contract resulted in a high degree of oppression). Though Merkin did discuss unilateral modification in the context of procedural unconscionability, it clarified that its analysis turned on whether the defendant's "actual and repeated modification of the TOS . . . 'result[ed] in no real negotiation and an absence of meaningful choice,' thus making the TOS oppressive." Id. The court expressly distinguished cases focused on whether the power of one party to unilaterally modify the contract renders that contract substantively unconscionable. Id. at *7 n.5. Here, Plaintiffs do not argue that Lyft modified the TOS so frequently or significantly as to make it oppressive and thus significantly procedurally unconscionable, as was the case in Merkin. Therefore, the effect of the unilateral modification provision at issue in this case is examined later in this Order in the context of substantive unconscionability.

Plaintiffs further contend that a "high degree of oppression" makes a showing of surprise unnecessary to find procedural unconscionability, but Plaintiffs have not established a high degree of oppression. Alternatively, Plaintiffs argue that they were surprised because they "do not remember ever seeing, signing, or agreeing to any arbitration agreement, or a corresponding delegation clause." Opp. at 8 (citing Loewen Decl. ¶ 6; Wright Decl. ¶ 4). They argue that the

arbitration agreement is on page 22 of a 32 page agreement accessed from a hyperlink on a website, and when the TOS is viewed via the Lyft App accessed from a mobile phone one has to scroll "through countless pages of microscopic and cryptic text just to find and read the arbitration agreement and corresponding delegation clause." Opp. at 9. Plaintiffs cite one case involving wage and hour and related violations of the Fair Labor Standards Act finding an employment agreement procedurally unconscionable in part because the plaintiff did not remember signing the arbitration agreement and did not know what arbitration meant. See Perez v. Maid Brigade, Inc., No. C 07-3473 SI, 2007 WL 2990368, at *5 (N.D. Cal. Oct. 11, 2007). The Perez court found it important that the plaintiff was a "maid who does not speak English," whereas the employer was a company with access to legal counsel. Id. Unlike Perez, Plaintiffs here do not have a language issue and this dispute does not directly concern their employment relationship.

Moreover, even if Plaintiffs could be considered employees, this is not an employment dispute involving nonwaivable statutory rights as was the case in Perez, but rather is more akin to a consumer dispute. Plaintiffs' subjective inability to recall seeing the delegation clause (or the arbitration agreement generally) is not a basis for finding procedural unconscionability in this context. See Blau v. AT&T Mobility, C-11-00541-CRB, 2012 WL 10546, at *4-5 (N.D.Cal. Jan. 3, 2012). Lyft "was under no obligation to highlight the arbitration clause of its contract, nor was it required to specifically call that clause to [Plaintiffs'] attention. Any state law imposing such an obligation would be preempted by the FAA." See Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899, 914 (2015).

Further, neither Plaintiff can claim surprise with respect to the delegation clause, or the arbitration clause generally, where they both assented to the terms of the TOS by clicking "I agree" on the Lyft App, and Wright also agreed on the website. Unlike in cases where a party trying to enforce an arbitration agreement relies on a delegation provision in AAA rules referenced but not included in the arbitration agreement, here the terms of the TOS were displayed on the screen, Plaintiffs had the opportunity to scroll through the terms prior to assent, and the delegation provision is expressly contained in the 2014 TOS under a bolded, large font heading relating to arbitration. This renders the TOS at most "minimally procedurally unconscionable." See

Hodsdon v. DirecTV, LLC, No. C 12-02827 JSW, 2012 WL 5464615, at *5 (N.D. Cal. Nov. 8, 2012) (arbitration provision "minimally procedurally unconscionable because it is undisputedly a contract of adhesion" where no other indicia of procedural unconscionability found). In their sur-reply, Plaintiffs also argue that Defendants should have required users to click "I agree" to the arbitration provision specifically, in addition to the TOS as a whole, to eliminate any surprise. However, Plaintiffs do not cite any case requiring a separate assent to an arbitration provision in a click-through agreement, and the Court declines to create such a requirement here.

Plaintiffs also rely on Tompkins v. 23andMe, Inc., No. 5:13-CV-05682-LHK, 2014 WL 2903752, at *14 (N.D. Cal. June 25, 2014), in which Judge Koh held that an adhesion contract was procedurally unconscionable. The agreement there provided minimal notice to customers because it purported to bind all users and purchasers even though the website did not require users to acknowledge the TOS prior to purchase. Moreover, even if customers located and clicked a hyperlink to the TOS, they had to hunt for the arbitration provision appearing at the very end of the TOS as a subparagraph to the final section titled "Miscellaneous," and then obtain and review separate AAA rules to determine objectionable provisions. Plaintiffs argue that similarly here, even if they located the arbitration agreement on the website or Lyft App, they would then need to click on another hyperlink to evaluate the incorporated AAA rules. However, this case differs significantly from Tompkins in that prospective drivers including Plaintiffs were required to view and assent to the TOS before accessing the Lyft App and Platform, the dispute resolution section of the TOS is clearly labeled, and there is a hyperlink to the AAA Rules. The fact that the AAA rules were not included in the body of the TOS does not make the delegation clause procedurally unconscionable. See Hodsdon v. DirecTV, LLC, No. C 12-02827 JSW, 2012 WL 5464615, at *5 (N.D. Cal. Nov. 8, 2012) ("recent cases have held that procedural unconscionability can be avoided if the arbitration rules are incorporated into the contract by reference, such incorporation is clear, and the rules are readily available"). In their sur-reply, Plaintiffs cite Haisha Corp. v. Sprint Solutions, Inc., No. 14CV2773-GPC MDD, 2015 WL 224407, at *8 (S.D. Cal. Jan. 15, 2015) for the position that Hodson is the minority view and failure to include a copy of the AAA rules contributes to procedural unconscionability. However, Haisha also held that "based on

federal caselaw and state law rules of contract interpretation, incorporation by reference of the arbitration rules is sufficient to excuse attachment of the arbitration rules as long as the rules are easily accessible and the plaintiff has the means and capacity to retrieve them." Here, the AAA rules were clearly incorporated by reference and linked by hyperlink in the 2014 TOS, and there is no argument that the Rules were not also readily available elsewhere. Therefore Plaintiffs' argument is unpersuasive.

Finally, Plaintiffs argue that there is an element of surprise because parties do not ordinarily expect an arbitrator, rather than a court, to determine his or her own jurisdiction. Plaintiffs rely on Murphy v. Check 'N Go of Cal., Inc., 156 Cal. App. 4th 138, 145 (2007) and Bruni v. Didion, 160 Cal. App. 4th 1272, 1295 (2008), as modified (Mar. 24, 2008). However, more recent caselaw has called the reasoning of these cases -- i.e., that delegation is outside the reasonable expectation of the parties -- into question without deciding the issue and determined that, in any event, unexpected delegation by itself would not necessarily establish unconscionability. See Malone v. Superior Court, 226 Cal. App. 4th 1551, 1570, n.20 (2014).

For all of the foregoing reasons, Plaintiffs have established a minimal degree of procedural unconscionability as to the 2014 TOS. "Yet 'a finding of procedural unconscionability does not mean that a contract will not be enforced, but rather that courts will scrutinize the substantive terms of the contract to ensure they are not manifestly unfair or one-sided.'" Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899, 915 (2015) (quoting Gentry v. Superior Court, 42 Cal. 4th 443, 469 (2008)).

3. Substantive Unconscionability

An arbitration provision is substantively unconscionable if it is "overly harsh" or generates "one-sided' results." Armendariz, 24 Cal.4th at 114; see also Ingle v. Circuit City Stores, Inc., 328 F.3d 1165, 1172 (9th Cir.2003) (defining substantive unconscionability as whether the terms of an agreement are so one-sided as to "shock the conscience"). The California Supreme Court has recently clarified that "these formulations, used throughout our case law, all mean the same thing" and are intended to "capture the notion that unconscionability requires a substantial degree of unfairness beyond 'a simple old-fashioned bad bargain.'" Sanchez v. Valencia Holding Co.,

LLC, 61 Cal. 4th 899, 911-12 (2015). "Commerce depends on the enforceability, in most instances, of a duly executed written contract. A party cannot avoid a contractual obligation merely by complaining that the deal, in retrospect, was unfair or a bad bargain. Not all one-sided contract provisions are unconscionable." Id. at 911. Plaintiffs here argue that two terms of the 2014 TOS, as applied to the delegation provision, render the delegation provision substantively unconscionable and unenforceable.

a. Unilateral Right to Modify

Plaintiffs first argue that the delegation provision is substantively unconscionable because the 2014 TOS grants Lyft the unilateral right to modify the TOS, including the delegation provision, without prior notice. See Ingle v. Circuit City Stores, Inc., 328 F.3d 1165, 1179 (9th Cir. 2003) ("By granting itself the sole authority to amend or terminate the arbitration agreement, Circuit City proscribes an employee's ability to consider and negotiate the terms of her contract. Compounded by the fact that this contract is adhesive in the first instance, this provision embeds its adhesiveness by allowing only Circuit City to modify or terminate the terms of the agreement. Therefore, we conclude that the provision affording Circuit City the unilateral power to terminate or modify the contract is substantively unconscionable.").

However, in Ashbey v. Archstone Prop. Mgmt., Inc., No. 12-55912, 2015 WL 2193178, at *1 (9th Cir. May 12, 2015), albeit an unpublished and therefore non-precedential case, the Ninth Circuit has recently explained, based on a recent California case, that unilateral modification provisions "are not substantively unconscionable because they are always subject to the limits 'imposed by the covenant of good faith and fair dealing implied in every contract.'" Id. (quoting Serpa v. Cal. Sur. Investigations, Inc., 215 Cal. App. 4th 695, 706 (2013)). Because the plaintiff in Ashbey did not plead that the defendant acted unreasonably to alter the contract terms, including the arbitration clause, so as to breach the implied covenant of good faith and fair dealing, there was no substantive unconscionability and therefore the Court did not even discuss procedural unconscionability. Id. The California appellate court decision in Serpa was decided after Ingle, and several decisions of federal courts have since followed Serpa rather than Ingle. See, e.g., Tompkins v. 23andMe, Inc., 2014 WL 2903752 (N.D.Cal. June 25, 2014), *17

(unilateral modification provision separate from arbitration provision and no showing of how it specifically rendered the arbitration clause substantively unconscionable); but see Mohamed v. Uber Technologies, Inc., 2015 WL 3749716 (N.D.Cal. June 9, 2015) (predicting that California Supreme Court would hold that unilateral modification provision substantively unconscionable). Plaintiffs respond that the covenant of good faith and fair dealing relates to whether a contract as a whole is illusory, not whether an arbitration provision is substantively unconscionable, and cites cases distinguishing these two doctrines. See, e.g., Dominguez v. Alden Enterprises, Inc., No. B203182, 2009 WL 27156, at *8 (Cal. Ct. App. Jan. 6, 2009) (even though a unilateral modification provision might not render a contract illusory as a whole, a unilateral modification provision that did not provide for notice was substantively unconscionable because "it insert[ed] an element of unduly harsh or oppressive results"); McLemore v. Circuit City Stores, Inc., 2005 WL 1634981, at *5 (Cal. Ct. App. July 13, 2005) (same).

As was the case in Tompkins, here the unilateral modification provision is entirely separate from the delegation provision so it is unclear to what extent it should be considered in this context. Further, the Court finds it unnecessary to delve into the complex issue of the overlap between the concepts of illusory contracts and unconscionable contract terms as applied to this unilateral modification provision, because the Court assumes without deciding that the unilateral modification provision here is at least minimally substantively unconscionable. The provision gives Lyft the one-sided power to modify its TOS by posting amended terms, and Lyft appears to have exercised that power on at least one occasion. The Court is unpersuaded by Lyft's argument that the unilateral modification provision is not implicated because Lyft has not sought to enforce the provision against either Plaintiff. Lyft relies on Meyer v. T-Mobile USA Inc., 836 F.Supp.2d 994, 1003 (N.D.Cal. 2011), where the court held that the plaintiff lacked standing to challenge a unilateral update provision where it had not been applied to her. However, unconscionability is evaluated at the time the contract went into effect and not how it may be applied in the future, so the Court declines to adopt the reasoning of Meyer. Lyft also argues that Plaintiff Loewen cannot claim that the unilateral modification provision is unconscionable where he is seeking to enforce the provision against himself by arguing that the 2014 TOS, as opposed to the 2013 TOS, applies

to him, and he should not be allowed to use the provision both offensively and defensively. However, the unilateral modification provision is a part of the agreement at issue, and whether or not it is unconscionable does not depend on who is trying to enforce it.

b. Excessive Costs and Fees

Plaintiffs also argue that the delegation clause is substantively unconscionable because the 2014 TOS adopts the AAA Commercial Arbitration Rules, rather than the AAA Employment or Consumer Arbitration Rules. All of these AAA rules are before the Court because they are attached to Plaintiffs' Request for Judicial Notice (Dkt. No. 24-4) and Supplemental Request for Judicial Notice (Dkt. No. 26-1) and Defendant's Request for Judicial Notice (Dkt. No. 33). As no party has challenged or questioned the accuracy of these submissions, the requests for judicial notice are GRANTED and the Court has considered the various AAA rules submitted.

According to Plaintiffs, the AAA Commercial Arbitration Rules impermissibly require Plaintiffs to pay excessive administration fees not normally associated with litigation, because they require the party bringing a claim to pay the entire filing fee up front (the fee depends on the amount of the claim) and divide other arbitration-related costs equally between the parties. See Pl.'s RJN Ex. D at 28, 38-39, 42. In contrast, the AAA Employment and Consumer Arbitration Rules require employers to pay all costs unique to arbitration (such as arbitrator compensation and expenses, administrative and room rental fees) while the employee/consumer is only required to pay a $200 filing fee. See RJN Ex. B (AAA Employment Rules) at 32-34; Ex. C (AAA Consumer Rules) at 34-35.

Plaintiffs initially contended that, under the AAA Commercial Rules, the filing fee in this case could be $7,700 to $12,900 in light of their $5 million class action claim. They argued that this would impose a "significant financial burden" on them and deter them from bringing their claims. See RJN Ex. D at 39; Wright Decl. ¶ 8; Loewen Decl. ¶ 10. However, the AAA Supplementary Rules for Class Arbitration apply to any dispute arising out of an agreement that provides for arbitration pursuant to any of the AAA rules where a party submits a dispute to arbitration on behalf of a purported class, and the Supplementary Rules govern in the case of any inconsistency with other AAA rules. See Pl's Supp. RJN Ex. E. During oral argument, Plaintiffs

conceded that the AAA Supplementary Rules for Class Arbitration could apply to this dispute, but argued that they would first have to pay the AAA Commercial Rules filing fee to be assigned an arbitrator who will then decide what rules to apply and whether to allow a class arbitration to proceed. Plaintiffs appear to misinterpret the Supplementary Rules. Under the Supplementary Rules, an initial filing fee of $3,350 is "payable in full by a party making a demand for treatment of a claim . . . as a class action," with supplemental fees to be paid by the requesting party in accordance with the AAA Commercial Arbitration Rules fee schedule only if the arbitration proceeds beyond the "clause construction award" phase. Id. Thus, at most Plaintiffs would be required to pay an initial fee of $3,350 to initiate the arbitration process. Further, the arbitrator must apply the AAA Rules most appropriate to the dispute. See RJN Ex. C at R-1(a)(4) (consumer rules apply where an arbitration agreement is contained within a consumer agreement that specifies a particular set of rules other than the consumer rules); RJN Ex. D at R-1 (employment disputes must be administered under AAA Employment Rules). Given the nature of this dispute involving common law, consumer-type claims, it is very unlikely that AAA would apply its Commercial Rules to this dispute despite their identification in the 2014 TOS.

Lyft also contends that the 2014 TOS does not require the application of the AAA Commercial Arbitration Rules because it states that the arbitration will be conducted under the Commercial Arbitration Rules "or as otherwise mutually agreed by you and we." Brannstrom Decl. Ex. 4 (2014 TOS) at 22. Lyft argues that this phrase makes application of the AAA Commercial Arbitration Rules optional and therefore the fees associated with these rules do not necessarily apply. Lyft cites Htay Htay Chin v. Advanced Fresh Concepts Franchise Corp., 194 Cal. App. 4th 704, 713-14 (2011), in which the court of appeals could not conclude that a plaintiff would incur prohibitive AAA Commercial Arbitration fees as the rules were not in the record and therefore the court could not determine whether the rules required AAA arbitration of the dispute. However, given that Lyft is seeking to enforce the arbitration agreement and compel AAA arbitration, the parties have not agreed to any other rules or forum, and the AAA Commercial Arbitration Rules are in the record, Lyft's argument is unpersuasive.

Lyft also argues that under the AAA Commercial Arbitration Rules fee schedule, the filing

fee for a claim under $75,000 is $750. Plaintiffs have not contested the class action waiver in connection with the 2014 TOS, and their individual claims relate to a $1,000 promotion. Therefore, according to Lyft, their individual claims are less than $75,000 and at most they would be required to pay a $750 fee to initiate individual arbitration. See Blau v. AT&T Mobility, 2012 WL 10546, *8 (N.D.Cal. Jan. 3, 2012) (ignoring class costs given class action waiver). However, it appears that Plaintiffs intend to attempt to pursue relief on behalf of a class despite the express class action waiver in the 2014 TOS. Assuming without deciding that Plaintiffs could be required to pay as much as $3,350 under the applicable AAA Rules to initiate class arbitration and have an arbitrator decide the issue of whether the arbitration can proceed on a classwide basis, the question is whether the incorporation of these AAA arbitration rules renders the delegation provision substantively unconscionable and, if so, to what degree.

Plaintiffs rely heavily on Armendariz v. Found. Health Psychcare Servs., Inc., 24 Cal. 4th 83, 110-11 (2000), where the California Supreme Court concluded that, "when an employer imposes mandatory arbitration as a condition of employment, the arbitration agreement or arbitration process cannot generally require the employee to bear any type of expense that the employee would not be required to bear if he or she were free to bring the action in court." However, the California Supreme Court has subsequently limited its holding in Armendariz to cases concerning nonwaivable statutory rights such as those under the Fair Employment and Housing Act, Cal. Govt. Code § 12900, et seq. ("FEHA"), and it does not necessarily extend to common law, consumer-type claims such as those asserted by the Plaintiffs here. See Boghos v. Certain Underwriters at Lloyds of London, 36 Cal. 4th 495, 507 (2005).

As noted above, following oral argument on this motion, the California Supreme Court issued a decision in Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899 (2015). Sanchez involved a consumer dispute where a car dealer sought to enforce an arbitration agreement contained in a form contract against a luxury car purchaser. Sanchez clarified California's test for unconscionability, and held that the arbitration clause in question was not sufficiently substantively unconscionable to be unenforceable. Relevant to this case, Sanchez discussed a provision in the arbitration agreement concerning appellate arbitration filing fees and costs.

Specifically, the agreement in Sanchez provided that "the appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs." Id. at 908. The appellate court had held that this clause was unconscionable because it was inadequate for consumers who could not afford to initiate the appeal process given the large costs involved. Id. at 909-910.

The California Supreme Court reversed. The Court noted that, "[i]n the context of mandatory employment arbitration of unwaivable statutory rights, we have held that arbitration agreement 'cannot generally require the employee to bear any type of expense that the employee would not be required to bear if he or she were free to bring the action in court." Id. at 918 (quoting Armendariz, 24 Cal. 4th at 110-111). The Court reaffirmed its "categorical approach" for employment disputes in light of the "particularly acute" economic pressure on job seekers to sign an employment contract containing an arbitration agreement. Id. at 919-920. However, the Court distinguished disputes involving consumer protection statutes, and for consumer disputes adopted a case-by-case determination of affordability of arbitration fees. Id. The Court stated that the requirement that the consumer front the appellate filing fees or other arbitration costs had the potential to deter the consumer from using the appeal process, but determined that the fee provision could not be deemed unconscionable absent a showing that the "fees and costs in fact would be unaffordable or would have a substantial deterrent effect" in the case before it. Id. at 920. In Sanchez, the Court held that the plaintiff was purchasing a high end luxury item when he entered into the contract, and there was no evidence to suggest that he could not afford the cost of the appellate filing fees, so the fee provision was not substantively unconscionable as applied to him. Id. at 921. Based on the Court's analysis in Sanchez, the relevant questions here are: 1) if this is viewed as an employment dispute, whether the arbitration rules impose "any type of expense that the employee would not be required to bear if he or she were free to bring the action in court;" or 2) if this is viewed as a consumer dispute, under the facts of this case whether the "fees and costs in fact would be unaffordable or would have a substantial deterrent effect" on the Plaintiffs. Even assuming arguendo that this case could be viewed as an employment dispute, a view the Court does not endorse given the common law, consumer-type claims at issue, it does not

appear that the AAA Rules impose any type of expense that Plaintiffs would not be required to pay in court.

The Court is aware that some courts following Armendariz have held that the AAA Commercial Rules fee schedule is substantively unconscionable where a stronger party attempts to impose it on a weaker party in the employment context. See, e.g., Dunham v. Environmental Chem. Corp., 2006 WL 2374703, at *9 (N.D.Cal. Aug. 16, 2006) (stating that the cost sharing provision of the commercial rules is unconscionable under Armendariz as applied to employees, but not deciding which set of arbitration rules applied to the case). Additionally, in Mohamed v. Uber Technologies, Inc., __ F. Supp. 3d __, 2015 WL 3749716, at *1, 15 n.24 (N.D.Cal. June 9, 2015), the court denied the defendants' motion to compel arbitration of a dispute involving a transportation service's use of background checks in its hiring and firing decisions in violation of the Fair Credit Reporting Act. The court held that a delegation clause was substantively unconscionable where the arbitration agreement provided for the application of JAMS rules that would require the employee-claimant to "pay a number of hefty fees of a type he would not normally pay in court" and "advance his pro rata portion of these fees just to get the arbitration started, and just to determine whether he needs to arbitrate his claims at all." Id. at *29. The court cited evidence that the plaintiff would be unable to pay the arbitration fee required to litigate even the limited issue of arbitrability under the delegation clause, and held that the delegation clause was therefore substantively unconscionable. Id. However, Mohamed was decided before Sanchez. Moreover, it was an employment dispute involving nonwaivable statutory rights as opposed to the common law claims at issue here, and examined JAMS fees that appear to be larger than those at issue here. Further, the Mohamed court was primarily focused on an express, non-severable Private Attorney General Act, Cal. Labor Code § 2698, et seq. ("PAGA") waiver as a reason to invalidate the entire agreement, and held that four other unconscionable provisions (including the fee provision), *taken together*, permeated the agreement with unconscionability while alone they would not. Id. at *31. Two of the four provisions deemed unconscionable in Mohamed are not even at issue with respect to the delegation clause here.

Here, though the initial filing fee (which the Court assumes could be as high as $3,350) is

higher for arbitration than for litigation, the AAA Rules are flexible and provide mechanisms to waive or apportion fees and for low-cost arbitration. See RJN Ex. D (AAA Commercial Rules) at 39 (fee schedule), 26 (fees can be apportioned in interim or final award), 28 (hardship waiver), 34 (low cost arbitrations for small claims); Lyft RJN Ex. 1 (describing procedures for administrative fee waivers and pro bono arbitrations). In light of these protective provisions within the AAA Rules, the general reference to the AAA Commercial Rules is not a significantly substantively unconscionable term. See Tompkins v. 23andMe, Inc., No. 5:13-CV-05682-LHK, 2014 WL 2903752, at *17 (N.D. Cal. June 25, 2014) (holding that a filing fee of $975 under the AAA Commercial Rules to pursue a claim relating to a $95 purchase did not "'shock[] the conscience,' particularly relative to litigation expenses."); see also DiGiacomo v. Expression Center for New Media, Inc., 2008 WL 4239830 (N.D.Cal. Sept. 15, 2008) (refusing to find fee structure of AAA commercial arbitration rules substantively unconscionable because the rules provide for the waiver of fees and therefore "do not require plaintiff to bear any type of overly-harsh expense or unconscionable cost that he would not be required to incur in litigation"); Chavez v. Bank of America, 2011 WL 4712204 (N.D.Cal. Oct. 7, 2011) (application of AAA commercial rules and associated fee provision did not render arbitration agreement unconscionable in light of special rules for consumer disputes that contained a separate fee schedule making arbitration more reasonable for consumers; $700 filing fee for claim of a "couple of hundred dollars" did not shock the conscience).

Similarly, if this is viewed as a consumer dispute, there is insufficient evidence that the AAA fees Plaintiffs would be required to pay are unaffordable or would have a substantial deterrent effect on their pursuit of arbitration. As discussed above, the AAA Rules have procedures for fee waivers and hardship provisions and the parties appear to agree that Plaintiffs would likely qualify for a reduced arbitration fee given their income and assets.[3] Plaintiffs claim

[3] Lyft initially took the position that there was insufficient evidence of Plaintiffs' financial condition and assets at the time they entered into the agreement. However, in its response to Plaintiffs' sur-reply, Lyft argues that Plaintiffs would likely be eligible for a hardship waiver under the AAA rules because their income appears to be less than 300% of the federal poverty guidelines. See Response at 3 n.2.

in their declarations that they earn approximately $2,000 to $3,000 per month, and that paying a filing fee under the AAA Commercial Rules would impose a significant financial burden on them. However, these declarations were based on Plaintiffs' mistaken understanding of the AAA fee schedule and their belief that they would be responsible for approximately $7,000 to $12,000 in arbitration filing fees based on their own valuation of their class claims under the AAA Commercial Rules, as opposed to the $3,350 under the AAA Supplementary Class Action Rules. Additionally, Plaintiffs paid this Court's approximately $400 filing fee without requesting a waiver, and do not explain why they could not pay the arbitration filing fee or request a fee waiver from AAA.

Plaintiffs rely on Gutierrez v. Autowest, Inc., 114 Cal. App. 4th 77 (2003), as modified on denial of reh'g (Jan. 8, 2004), where the court held that application of the AAA Commercial Rules fee provision to a consumer class action dispute involving an adhesive contract that mandated arbitration, where there was evidence that the consumer could not pay, was "unduly harsh and one-sided, defeats the expectations of the nondrafting party, and shocks the conscience." However, in Gutierrez, the parties agreed about the amount of fees to be paid, there was no dispute about the ability to pay, and there was no class action waiver in the arbitration agreement. Further, on remand, the Gutierrez trial court was directed to exercise its discretion as to whether to sever the fee provision and enforce the arbitration provision.

In sum, with respect to the threshold issue of the delegation provision, the Court finds that procedural unconscionability is inherently present because the contract is one of adhesion, but the degree of procedural unconscionability is low. The contract is also at most minimally substantively unconscionable in light of the unilateral modification provision and the reference to the AAA Commercial Rules and the implicit incorporation by reference of its corresponding fee structure. Under the sliding scale approach, "[b]ecause the degree of procedural unconscionability is minimal, the agreement is unenforceable only if the degree of substantive unconscionability is high." Serafin v. Balco Properties Ltd., LLC, 235 Cal. App. 4th 165, 185 (2015), review denied (June 10, 2015) (internal citations omitted). In light of the low degree of both procedural and substantive unconscionability present in the 2014 TOS, the delegation clause

is enforceable. Therefore, the Court need only consider whether Lyft's demand for arbitration is "wholly groundless" before deferring the question of arbitrability to the arbitrator.

B. Lyft's Demand for Arbitration is Not "Wholly Groundless"

The arbitration provision of the 2014 TOS broadly provides that, 'You and We agree that any legal disputes or claims arising out of or related to the Agreement (including but not limited to the use of the Lyft Platform and/or the Services, or the interpretation, enforceability, revocability, or validity of the Agreement, or the arbitrability of any dispute), that cannot be resolved informally shall be submitted to binding arbitration in the state in which the Agreement was performed." Brannstrom Decl. Ex. 4 at 22. Plaintiff argues that Lyft's demand for arbitration is wholly groundless and arbitration should not be compelled because the arbitration clause does not extend to their claims for breach of contract, fraud and negligent misrepresentation arising from Lyft's alleged failure to pay referral bonuses in connection with the Promotion. Plaintiffs contend that if Lyft had wanted to arbitrate this dispute, it should have drafted a broader arbitration clause.

Given the broad arbitration clause in the 2014 TOS, it covers the claims at issue here. See Simula Inc. v. Autoliv, Inc., 175 F.3d 716, 721 (9th Cir. 1999) (the phrase "arising out of or relating to" in an arbitration agreement must be construed broadly, and the factual allegations at issue "need only 'touch matters' covered by the contract containing the arbitration clause and all doubts are to be resolved in favor of arbitration."); see also Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 624 n.13 (1985). The entire dispute arises from an alleged failure to pay bonuses for signing new drivers up to the Lyft Platform as part of the Promotion, and every step of the process for becoming a new driver as part of the Promotion was facilitated by the Lyft Platform and governed by the TOS. Thus, the dispute directly "touches" the subject matter of the 2014 TOS, which governs all aspects of driving for Lyft, as well as the Lyft Platform, which Lyft drivers are required to use. As the Court previously held in its Order denying Plaintiff's motion to compel discovery, "given the broad scope of the 2014 TOS arbitration provision, it is not 'wholly groundless' for Lyft to contend that it covers Plaintiffs' claims here." Dkt. No. 23.

C. The Delegation Provision Covers Both Enforceability and Arbitrability

Plaintiffs also argue that even if the delegation clause is enforceable, it does not clearly and unmistakably delegate the issue of enforceability (as opposed to arbitrability, which Plaintiffs appear to concede is clearly and unmistakably delegated if the clause is enforceable), so this Court must evaluate enforceability of the arbitration agreement as a whole. Specifically, Plaintiffs argue that because "the Agreement" is defined as the entire TOS and is not limited to the arbitration provision, the delegation clause is not clear and unambiguous that enforceability of the arbitration provision, as opposed to the TOS as a whole, is delegated to the arbitrator. Plaintiffs attempt to create ambiguity where none exists. The arbitration provision itself clearly and unambiguously delegates both arbitrability and enforceability of the arbitration provision to the arbitrator.[4]

D. Stay or Dismiss

Because the Court concludes that arbitration should be compelled, it has the discretion to stay the case under 9 U.S.C. § 3 or dismiss the litigation entirely. See Sparling v. Hoffman Constr. Co., 864 F.2d 635, 638 (9th Cir.1988); see also Hopkins & Carley, ALC v. Thomson Elite, No. 10–CV–05806–LHK, 2011 U.S. Dist. LEXIS 38396, at *28 (N.D.Cal. Apr. 6, 2011) ("Where an arbitration clause is broad enough to cover all of a plaintiff's claims, the court may compel arbitration and dismiss the action."). Neither side has presented any compelling reason to keep this case on the Court's docket and the case is hereby dismissed. See Tompkins v. 23andMe, Inc., No. 5:13-CV-05682-LHK, 2014 WL 2903752, at *18 (N.D. Cal. June 25, 2014) (compelling arbitration and dismissing rather than staying case because parties had not identified any concerns about statute of limitations and dismissal would render the decision immediately appealable).

VI. CONCLUSION

Because the delegation clause is enforceable and Lyft's demand for arbitration is not

[4] Plaintiffs also argue that reference to the AAA Commercial Arbitration Rules is insufficient evidence of clear and unmistakable intent to delegate the issue of enforceability of the arbitration provision. These Rules provide that an arbitrator "shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement." RJN Ex. D at 13. Plaintiffs cite cases holding that mere reference to the Commercial Rules is insufficient to delegate authority in contracts of adhesion in the context of consumer disputes. However, in this case there is an express delegation clause in addition to reference to the AAA Commercial Arbitration Rules, so these cases are inapposite. See also supra fn.1.

wholly groundless, the Court hereby GRANTS Lyft's Motion to Compel Arbitration and Dismiss the Action.

IT IS SO ORDERED.

Dated: September 15, 2015

ELIZABETH D. LAPORTE
United States Magistrate Judge

3	Wells v. Lyft	**Case Management Conference** The CMC is vacated. **Arbitration Motion** Defendant Lyft, Inc.'s Motion to Compel Arbitration is granted. (See Code Civ. Proc., § 1281.2.) Plaintiff shall submit her claims against defendant Lyft Inc. to binding arbitration pursuant to their agreement. This action is stayed pending completion of arbitration. (See Code Civ. Proc., § 1281.4.) The court sets a status conference re binding arbitration for 6/6/24 at 10 am. Defendant met its burden to show a written arbitration agreement exists that covers plaintiff's claims and is governed by the FAA. (See Code Civ. Proc., § 1281.2; see also *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413 [elements]; McCachern decl., Ex. 5 ¶ 17.) All plaintiffs' causes of action "arise[] out of" or are "related to" plaintiff's use of Lyft's ride-share service. (McCachern decl., Ex. 5 ¶ 17(a); accord *EFund Capital Partners v. Pless* (2007) 150 Cal.App.4th 1311, 1322.) Plaintiff fails to show any exception why arbitration should not be enforced. (See *Rosenthal, supra,* 14 Cal.4th at p. 413.) Plaintiff's "clickwrap" cases are inapt because plaintiff affirmatively accepted the terms and conditions in the Lyft application. (See McCachern decl. ¶¶ 12 (intro), (c), (d), 13-16 & Exs. 1, 4-5.) The arbitration clause, while lengthy, is reasonably comprehensible. It provides in Allcaps: "YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION" and "ALL DISPUTES AND CLAIMS BETWEEN US . . . SHALL BE EXCLUSIVELY RESOLVED BY BINDING ARBITRATION . . . . ." (McCachern decl., Ex. 5 ¶ 17.) This is broad enough to include personal injury claims. The agreement clearly and unmistakably delegates authority to determine the arbitration agreement's enforceability in this case to the arbitrator. (See *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1197.) It provides for arbitration of disputes "arising out of or related to: this Agreement . . . (including the . . . enforcement, interpretation or validity thereof) . . . ."

		The severability clauses do not create any ambiguity. The general severability clause does not contemplate any court ruling or even use the word "court." It provides in passive voice that if "any portion of this Arbitration Agreement is deemed illegal or unenforceable . . . such provision shall be severed . . . ." (McCachern decl., Ex. 5 ¶ 17(h).) In context, this reasonably refers to a decision by the arbitrator. The "class action & PAGA waiver" severability clauses do not create any ambiguity, either. (McCachern decl., Ex. 5 ¶ 17(b), (c).) This is not a class action or a PAGA case, unlike *Jack*, and so the confusion apparent in that case is not present here. Even if the court could address the unconscionability claim, it would find the agreement enforceable. Plaintiff shows some procedural unconscionability in the prolix contract of adhesion. But plaintiff has not shown sufficient substantive unconscionability. Her argument largely addresses the AAA Commercial Arbitration Rules, but the operative agreement incorporates the AAA Consumer Arbitration Rules. (McCachern decl., Ex. 5 ¶ 17(d).) As the agreement is expressly "governed by the Federal Arbitration Act" (McCachern decl., Ex. 5 ¶ 17(a)) without explicitly or implicitly adopting California procedural law, Code of Civil Procedure section 1281.2(c) is unavailable. "Under the [FAA], the court's only option in these circumstances is to stay the court proceeding and compel the arbitration." (*Rodriguez v American Technols., Inc*. (2006) 136 Cal.App.4th 1110, 1117.) Defendant shall give notice.

[1] The Court arrives at this result even when considering Plaintiff's defective Separate Statement.

Case Number: 22STCV16058 **Hearing Date:** August 10, 2023 **Dept:** 27

Tentative Ruling

Judge Kerry Bensinger, Department 27

HEARING DATE: **August 10, 2023** TRIAL DATE: **November 13, 2023**

CASE: **Wayne McDonald, et al. v. Lyft Inc., et al.**

CASE NO.: **22STCV16058**

MOTION TO COMPEL ARBITRATION

AND STAY PENDING COMPLETION OF ARBITRATION

MOVING PARTY: Defendant Lyft, Inc.

RESPONDING PARTY: Plaintiff Valentina Lore

I. INTRODUCTION

On June 27, 2020, Plaintiff Lore sustained injuries in a motor vehicle collision.[1] Plaintiff Lore used the Lyft platform to arrange a ride with Defendant Luis Ceja Salcedo (Salcedo or Defendant Salcedo). Salcedo was the driver and Plaintiff was a passenger. Defendants Luciana Nunez and/or Lyft owned and entrusted the vehicle to Salcedo. The vehicle driven by Defendant Salcedo rear-ended a vehicle driven by Plaintiffs McDonald and Sissle. The McDonald and Sissle vehicle then rear-ended a third-party vehicle.

As relevant here, on May 27, 2022, Plaintiff sued Salcedo, Lyft, and Nunez for Motor Vehicle and General Negligence. Lyft answered the Complaint on October 31, 2022.

On June 16, 2023, Lyft filed this motion to compel arbitration and to stay the proceedings pending completion of arbitration.

Plaintiff opposes and Lyft replies.

II. LEGAL STANDARDS

"On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement." (Code Civ. Proc. §1281.2, subds. (a), (b).) Under the Federal Arbitration Act, a court's inquiry is limited to a determination of (1) whether a valid arbitration agreement exists and (2) whether the arbitration agreement covers the dispute. (9 U.S.C., § 4; ¿*Chiron Corp. v. Ortho Diagnostics Systems, Inc.*¿(9th Cir. 2000) 207 F.3d 1126, 1130;¿*Howsam¿v. Dean Witter Reynolds, Inc.*¿(2002) 537 U.S. 79, 84;¿*see¿Simula, Inc. v. Autoliv, Inc.*¿(9th Cir. 1999) 175 F.3d 716 [if the finding is affirmative on both counts the FAA requires the Court to enforce the arbitration agreement in accordance with its terms].) If a clause delegating enforcement under the FAA exists, the court may only adjudicate the enforceability of the delegation clause itself; if found enforceable, questions regarding the enforceability of the underlying agreement as a whole is reserved for the arbitrator. (*Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 72.) In order for a delegation clause to be enforceable, there must be a showing that the parties "clearly and mistakably agreed that an arbitrator, not a court, would decide the question of enforceability." (*Peleg v. Neiman Marcus Group, Inc.* (2012) 204 Cal.App.4th 1425, 1442.) This showing is fulfilled if the arbitration agreement provides that its "enforcement" shall be governed by the FAA. (*Victrola 89, LLC v. Jaman Props. 8 LLC* (2020) 46 Cal.App.5th 337, 355-56.)

"If an application has been made to a court . . . for an order to arbitrate a controversy . . . the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies." (Code of Civ. Proc., § 1281.4.)

III. DISCUSSION

A. *Controlling Law*

Here, the arbitration agreement expressly states that "the agreement to arbitrate ("Arbitration Agreement") is governed by the Federal Arbitration Act". (Motion, Ex. 5, ¶ 17(a).) Parties to an arbitration agreement may voluntarily elect to have the Federal Arbitration Act ("FAA") govern enforcement of that

agreement. (*Victrola 89*, *supra*, 46 Cal.App.5th at p. 355.) Here, the parties have so elected. Accordingly, the Court finds that the FAA applies.

B. *Existence of an Agreement*

Under both Title 9 section 2 of the United States Code (known as the FAA) and Title 9 of Part III of the California Code of Civil Procedure commencing at section 1281 (known as the California Arbitration Act, hereinafter "CAA"), arbitration agreements are valid, irrevocable, and enforceable, except on such grounds that exist at law or equity for voiding a contract. (*Winter v. Window Fashions Professions, Inc.* (2008) 166 Cal.App.4th 943, 947.) The party moving to compel arbitration must establish the existence of a written arbitration agreement between the parties. (Code of Civ., Proc. § 1281.2.) In ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law help guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.) Once petitioners allege that an arbitration agreement exists, the burden shifts to respondents to prove the falsity of the purported agreement, and no evidence or authentication is required to find the arbitration agreement exists. (See *Condee v. Longwood Mgt. Corp.* (2001) 88 Cal.App.4th 215, 219.)

"With respect to the moving party's burden to provide evidence of the existence of an agreement to arbitrate, it is generally sufficient for that party to present a copy of the contract to the court. (See *Condee*, *supra*, 88 Cal.App.4th at 218; see also Cal. Rules of Court, rule 3.1330 ["A petition to compel arbitration or to stay proceedings pursuant to Code of Civil Procedure sections 1281.2 and 1281.4 must state, in addition to other required allegations, the provisions of the written agreement and the paragraph that provides for arbitration. The provisions must be stated verbatim or a copy must be physically or electronically attached to the petition and incorporated by reference"].) Once such a document is presented to the court, the burden shifts to the party opposing the motion to compel, who may present any challenges to the enforcement of the agreement and evidence in support of those challenges. [Citation]" (*Baker v. Italian Maple Holdings, LLC* (2017) 13 Cal.App.5th 1152, 1160.)

Here, Lyft has met its initial burden of showing that an arbitration agreement exists between the parties. On November 19, 2019, Plaintiff accepted Lyft's updated Terms of Service ("TOS"). (Motion, Ex. 1, Sniegowski Decl., ¶ 12c.) The TOS was updated on August 26, 2019. As found in Lyft's August 2019 Terms, the arbitration provision states in pertinent part:

> "(a) Agreement to Binding Arbitration Between You and Lyft.
>
> Except as expressly provided below, ALL DISPUTES AND CLAIMS BETWEEN US (EACH A "CLAIM" AND COLLECTIVELY, "CLAIMS") SHALL BE EXCLUSIVELY RESOLVED BY BINDING ARBITRATION SOLELY BETWEEN YOU AND LYFT. These Claims include, but are not limited to, any dispute, claim or controversy, whether based on past, present, or future events, arising out of or relating to: … the Lyft Platform … background checks performed by or on Lyft's behalf, … unfair competition, … fraud, defamation … claims arising under federal or state consumer protection laws; … and all other federal and state statutory and common law claims."

(Motion, Ex. 5, ¶ 17(a).)

Here, Plaintiff suffered an injury on June 27, 2020 arising out of her use of the Lyft platform. Consequently, this arbitration agreement would encompass Plaintiff's injury.

Plaintiff does not dispute having assented to the August 2019 TOS or deny the existence of the arbitration agreement. Rather, Plaintiff argues that the arbitration agreement is not valid because Plaintiff did not have reasonable notice of the TOS. However, Plaintiff's argument, which is unsupported by any citation to authority or evidence, fails to address the uncontested fact that Plaintiff assented to the TOS (and by extension, the arbitration agreement) on three occasions. Nor does she dispute having used the Lyft platform to request the ride at issue. (Motion, Ex. 2.) Plaintiff essentially seeks to be relieved of assenting to the TOS because she did not read the TOS, or at least the arbitration agreement.

Based on the foregoing, the Court finds that Lyft has proven the existence of the arbitration agreement.

C. *Waiver*

Plaintiff argues that Lyft waived the right to arbitrate by (1) unreasonably delaying in pursuing arbitration, and (2) engaging in litigation.

The Court finds that Lyft did not waive its right to arbitrate. "To decide whether a waiver has occurred, the court focuses on the actions of the person who held the right." (*Morgan v. Sundance* (2022) 142 S.Ct. 1708, 1713.) "Courts have recognized that where the FAA applies, whether a party has waived a right to arbitrate is a matter of federal, not state, law. [Citation.]" (*Davis v. Shiekh Shoes, LLC* (2022) 84 Cal.App.5th 956, 963.)

In *St. Agnes v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1196, the California Supreme Court adopted a multi-factor test from the Tenth Circuit opinion in *Peterson v. Shearson/American Express, Inc.* (10th Cir. 1988) 849 F.2d 464 wherein a court may consider: (1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether the "litigation machinery has been substantially invoked" and the parties "were well into preparation of a lawsuit" before the party notified the opposing party of an intent to arbitrate; (3) whether a party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay; (4) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings: (5) whether important intervening steps [*e.g.,* taking advantage of judicial discovery procedures not available in¿arbitration] had taken place; and (6) whether the delay affected, misled, or prejudiced the opposing party.¿ (*Peterson*, *supra*, 849 F.2d at pp. 467-68; *St. Agnes*, at p. 1196.) ¿¿However, following the U.S. Supreme Court's decision in *Morgan*, courts may no longer condition a determination of waiver on prejudice.¿ (See *Morgan*, *supra*, at p. 1713.)¿ The remaining *Peterson* factors are proper considerations in the waiver inquiry.¿ (*Davis*, *supra*, at p. 963.)¿

Here, the sum of Lyft's conduct fails to demonstrate a waiver of the arbitration right. First, Lyft did not unreasonably delay. Courts have held that waiver is not found even when a fourteen-month period separates the filing of the original complaint and the filing of the motion to compel.¿ (See, e.g., *Khalatian v. Prime Time Shuttle, Inc.* (2015) 237 Cal.App.4th 651-52.) Here, only eleven months separate the filing of the Complaint and Lyft's motion to compel. Indeed, even less time has passed between the filing of Lyft's Answer and this motion.

Second, Lyft has not invoked the litigation machinery. Since the filing of its Answer on October 31, 2022, Lyft has not resorted to court intervention save for the filing of this motion to compel arbitration. Plaintiff points out that Lyft has engaged in discovery. Engaging in discovery is certainly participating in the litigation. However, mere participation in the litigation is insufficient, standing alone, to establish waiver. (*St. Agnes*, *supra*, 31 Cal.4th at p. 1203.) There must also be some judicial litigation of the merits of arbitrable issues. (*Ibid*.) Here, Plaintiff makes no showing that Lyft has pursued judicial litigation of the merits of arbitrable issues. In sum, Lyft has acted *consistently* with its right to arbitrate.

D. *Unconscionability*

Plaintiff next argues the arbitration agreement is unconscionable.

"The party resisting arbitration bears the burden of proving unconscionability." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247 (*Pinnacle*).) "[U]nconscionability has both a 'procedural' and a 'substantive' element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114, citations omitted.) These elements are evaluated on a "sliding scale": "the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Ibid*.) The unconscionability defense requires a showing of both procedural and substantive unconscionability. (*Ibid*.)

"A procedural unconscionability analysis 'begins with an inquiry into whether the contract is one of adhesion.'" (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126 (*OTO*); accord, *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000)¿24 Cal.4th 83, 113.) An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power "on a take-it-or-leave-it basis." (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1245; see *OTO,* at p. 68; *Armendariz,* at p. 113.) The pertinent question, then, is whether circumstances of the contract's formation created such oppression or surprise that closer scrutiny of its overall fairness is required. (See¿*Baltazar,*¿at pp. 1245-1246;¿*Farrar v. Direct Commerce, Inc.*¿(2017) 9 Cal.App.5th 1257, 1267-1268.) "Oppression¿occurs where a contract involves lack of negotiation and meaningful choice,¿surprise¿where the allegedly unconscionable provision is hidden within a prolix printed form." (*Pinnacle, supra,* 55 Cal.4th at p. 247; see¿*De La Torre v. CashCall, Inc.* ¿(2018) 5 Cal.5th 966, 983 [cleaned up].)

"Substantive unconscionability examines the fairness of a contract's terms. . . . [The] 'doctrine is concerned not with "a simple old-fashioned bad bargain" [citation], but with terms that are "unreasonably

favorable to the more powerful party.'" [Citation.] Unconscionable terms "'impair the integrity of the bargaining process or otherwise contravene the public interest or public policy'" or attempt to impermissibly alter fundamental legal duties." (*OTO*, *supra*, 8 Cal.5th at p. 130; accord, *Baltazar, supra*, 62 Cal.4th at pp. 1244-1245; *Lange v. Monster Energy Co.* (2020) 46 Cal.App.5th 436, 448.)

Plaintiff argues that the arbitration agreement is procedurally and substantively unconscionable because Plaintiff cannot be expected to appreciate the legal implications of agreeing to arbitrate her claims given that her highest level of education is high school. Plaintiff further argues that it is unconscionable to expect users of the Lyft platform to read the TOS when it spans 43 pages. And last, Plaintiff charges that the TOS is one-sided and presented in a "take it or leave it" manner. These arguments fail.

First, a failure to read the TOS is no defense. A "cardinal rule of contract law is that a party's failure to read a contract, or to carefully read a contract, before signing it is no defense to the contract's enforcement." (*Desert Outdoor Advertising v. Superior Court* (2011) 196 Cal.App.4th 866, 872.) "[O]ne who assents to a contract is bound by its provisions and cannot complain of unfamiliarity with the language of the instrument." (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 710.) Here, it is undisputed that Plaintiff assented to the terms of the TOS on more than one occasion.

Second, Plaintiff's argument that the TOS is one-sided and presented in a "take it or leave it" manner is not well taken. Plaintiff's attempt to point to the power imbalance between Lyft and Plaintiff ignores that this is not, for example, an employment situation where an employment offer is conditioned on agreeing to arbitrate claims against an employer. Plaintiff, here, has a choice to use or not use the Lyft platform. The risk of coercion in this context is minimal. At least Plaintiff has not presented evidence to the contrary. Rather, the uncontroverted evidence shows that Plaintiff chose to use the Lyft platform many times over.

In sum, Plaintiff fails to show how the TOS and its presentation to Plaintiff is so unconscionable as to preclude enforcement of the arbitration agreement.

IV. CONCLUSION

The motion to compel arbitration is granted.¿

The Court will hear from the parties regarding whether to stay the state case or proceed in both forums simultaneously.

Moving party to give notice.

Dated: August 10, 2023

Kerry Bensinger

Parties who intend to submit on this tentative must send an email to the Court at SSCDEPT27@lacourt.org indicating intention to submit on the tentative as directed by the instructions provided on the court website at www.lacourt.org. Please be advised that if you submit on the tentative and elect not to appear at the hearing, the opposing party may nevertheless appear at the hearing and argue the matter. Unless you receive a submission from all other parties in the matter, you should assume that others might appear at the hearing to argue. If the Court does not receive emails from the parties indicating submission on this tentative ruling and there are no appearances at the hearing, the Court may, at its discretion, adopt the tentative as the final order or place the motion off calendar.

---

[1] Plaintiff Lore sued Defendants Lyft, Inc., Salcedo, Luciana Nunez and Does 1-50, Case No. 22STCV17653, on May 27, 2022. The related case *Wayne McDonald and Kimberly Sissle v. Salcedo, Nunez and Lyft,* Case No. 22STCV16058, was filed on May 13, 2022. *McDonald v. Salcedo*, Case No. 22STCV16058, is the lead case. The cases were consolidated on May 8, 2023.

Case Number: 22STCV21379 **Hearing Date:** August 10, 2023 **Dept:** 27

Tentative Ruling

Judge Kerry Bensinger, Department 27

HEARING DATE: **August 10, 2023** TRIAL DATE: **December 28, 2023**

CASE: **David Brian Rios v. City of Los Angeles, et al.**

CASE NO.: **22STCV21379**

MOTION TO CONTINUE TRIAL

MOVING PARTY: Defendant Ronald Merenstein and Rosalien Merenstein

RESPONDING PARTY: No opposition

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEJANAE ODHAM,

Plaintiff,

vs.

LYFT, INC.; JULIUS GREENE, and DOES 1 to 50, inclusive,

Defendants.

Case No. CGC-22-603322

~~[PROPOSED]~~ ORDER GRANTING DEFENDANT LYFT, INC.'S MOTION TO COMPEL ARBITRATION

Date: May 8, 2023
Time: 9:30 a.m.
Dept.: 302

Action Filed: *December 7, 2022*
Trial Date: *None Set*

Defendant Lyft, Inc.'s motion to compel arbitration and stay is granted. The motion to change venue set for May 18, 2023, is off calendar.

Defendant establishes that plaintiff assented to defendant's terms of service, which includes the agreement to arbitrate. (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.4th 528 [explaining burden necessary to establish an agreement to arbitrate].) The Simmons declaration demonstrates that plaintiff agreed to arbitrate under the December 9, 2020, terms of service. Plaintiff clicked a button agreeing to those terms. (Simmons Decl., pars. 15-17.) The court overrules plaintiff's objections to that declaration. Ms. Simmons demonstrates a foundation for her statements and relies on admissible business records. (Evidence Code sec. 1271.) "It is well established that Lyft's method of obtaining [] assent to its Terms of Service [by] presenting the terms of the agreement and requiring users to click 'I Agree' before they can access

the service" is binding and sufficient to enforce Lyft's contractual arbitration clause. (*Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 11 (D.D.C. 2021); *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1176-1177[distinguishing between clickwrap and browsewrap agreements and noting that clickwrap agreements, which require affirmative acknowledgement, are generally enforceable].)

The court rejects plaintiff's unconscionability argument. The parties agreed that the Federal Arbitration Act ("FAA") governs the parties' agreement and the arbitration agreement contains a clear and unmistakable delegation clause. (Simmons Decl., Ex. 4, par. 17(a).) The party seeking arbitration bears the burden of proving the existence of an arbitration agreement, and the party opposing arbitration bears the burden of proving any defense. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) To the extent plaintiff avers that the delegation clause is unconscionable, plaintiff fails to meet her burden. (See *Malone v. Superior Court* (2014) 226 Cal.App.4th 1551, 1560 ["the court must determine whether the delegation clause itself may be enforced (and can only delegate the general issue of enforceability to the arbitrator if it first determines the delegation clause is enforceable)."].)

"Unconscionability consists of both procedural and substantive elements. The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. [Citations.]" (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246.) "Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided. [Citations.] A contract term is not substantively unconscionable when it merely gives one side a greater benefit; rather, the term must be 'so one-sided as to "shock the conscience." ' [Citation.]" (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC*, supra, 55 Cal.4th at p. 246.)

Plaintiff demonstrates slight procedural unconscionability. While the contract was adhesive, plaintiff could have employed other ride options and adhesive contracts are generally enforceable. (*Bruni v. Didion* (2008) 160 Cal.App.4th 1272, 1289.) Plaintiff also could have taken more time to review the terms of service but chose not to. Defendant's willingness to waive fees where a plaintiff proceeds without an attorney does not shock the conscience.

Lastly, plaintiff cannot rely on CCP 1281.2(b) to avoid arbitration since the FAA governs the parties' relationship. (*Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 355 [explaining FAA preemption]; *Rodriguez v. American Technologies, Inc.* (2006) 136 Cal.App.4th 1110, 1122.)

IT IS SO ORDERED.

Date: 5/8/23

By: _____
Honorable Judge Richard B. Ulmer Jr.
JUDGE OF THE SUPERIOR COURT

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Attorneys for Defendant
LYFT, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

CHRISTOPHER DANIEL CLARK, an individual, Plaintiff, vs. LYFT, INC, a Delaware corporation; KI HONG KIM, an individual; IRFANULLAH FAIZI, an individual; and DOES 1 through 100, Inclusive, Defendants.	CASE NO. 23STCV00132 *Assigned to the Honorable Jill Feeney, Dept. 30* **NOTICE OF RULING** Complaint Filed: January 4, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE THAT on April 28, 2023, at 1:30 p.m., Defendant Lyft, Inc.'s Motion to Compel Arbitration and Stay Proceedings was heard before the Honorable Jill Feeney in Department 30 of the above-entitled Court. Robin G. Sagstetter of GORDON REES SCULLY MANSUKHANI, LLP appeared on behalf of Defendant LYFT, INC. Dario C. Gomez of CULVER LEGAL, LLC appeared on behalf of Plaintiff CHRISTOPHER DANIEL CLARK. Naveen Q. Feroz of STRAUS MEYERS, LLP appeared on behalf of Defendant KI HONG KIM. Cheyenne J. Page of HORTON, OBERRECHT & KIRKPATRICK appeared on behalf of Defendant IRFANULLAH FAIZI.

///

At the hearing, the Court made the following rulings and issued the following orders:

1. Defendant Lyft, Inc.'s Motion to Compel Arbitration and Stay Proceedings is GRANTED based on the following reasoning:

> The evidence shows that Lyft had a clickwrap format to manifest agreement to its Terms of Service. By clicking the button, Plaintiff agreed to Defendant's Terms of Service, thereby agreeing to arbitrate. While the agreement was adhesive in nature, it was not procedurally unconscionable to any significant degree. Neither was the agreement substantively unconscionable. Nothing in it is harsh, one-sided or unduly oppressive. Given the early stages of this lawsuit, Lyft has not waived its right to compel arbitration.

2. The action is stayed pending completion of arbitration.

3. A Conference Re: Status of Arbitration Proceedings is set for October 27, 2023 at 8:30 a.m. in Department 30 of the Spring Street Courthouse.

4. Counsel are ordered to file JOINT Report Re: Status of Arbitration Proceedings (5) five court days prior to October 27, 2023.

5. The Arbitration Stay will be lifted upon filing of Request for Dismissal as to Defendant Lyft, Inc.

6. Moving party to give notice of ruling.

7. Attached hereto as Exhibit A is a copy of the applicable tentative ruling, which became the ruling of the Court at the hearing.

DATED: May 1, 2023 GORDON REES SCULLY MANSUKHANI, LLP

By: _____

Jeffrey A. Swedo
Robin Sagstetter
Attorneys for Defendant
LYFT, INC.

Gordon Rees Scully Mansukhani, LLP
5 Park Plaza, Suite 1100
Irvine, CA 92614

EXHIBIT “A”

DEPARTMENT 30 LAW AND MOTION RULINGS

***PLEASE NOTE*:**

The parties are encouraged to meet and confer concerning this tentative ruling to determine if there is an agreement to submit.

Regardless of whether there is any such agreement, each party who wishes to submit must send an email to the Court at SSCdept30@LACourt.org indicating the party's intention to submit.

Include the word "SUBMITS" in all caps and the case number in the subject line of the email and in the body provide the date and time of the hearing, your name, your contact information, the party you represent, whether that party is a plaintiff, defendant, cross-complainant, cross-defendant, claimant, or non-party.

If a party submits but still intends to appear at the hearing, include the words "SUBMITS BUT WILL APPEAR" in the subject line of the email.

If the Court does not receive emails from the parties indicating submission on this tentative ruling and there are no appearances at the hearing, the Court may, at its discretion, adopt the tentative as the final order or place the motion off calendar.

Unless all the parties have submitted, the Court will hear argument from any party that appears at the hearing and wishes to argue. The Court may change its tentative as a result of the argument and adopt the changed tentative as the final order at the end of that hearing, even if all the parties are not present.

Be advised that after the Court has posted/issued a tentative ruling, the Court has the inherent authority to prohibit the withdrawal of said motion and may adopt the tentative ruling as the order of the Court.

Case Number: 23STCV00132 **Hearing Date:** April 28, 2023 **Dept:** 30

*** TENTATIVE MODIFIED AT HEARING

Christopher Daniel Clark v. Lyft, Inc. et al.

23STCV00132

Motion to Compel Arbitration, by Defendant

Ruling: Granted. Action is stayed pending completion of arbitration.

Conference Re: Status of Arbitration Proceedings is set for 10/27/2023 at 8:30 a.m. in Department 30 of the Spring Street Courthouse.

Counsel are ordered to file JOINT Report Re: Status of Arbitration Proceedings (5) court days prior to 10/27/2023 .

**** The Arbitration Stay will be lifted upon filing of Request for Dismissal as to Defendant Lyft, Inc.

Moving party to give notice of ruling.

Reasoning:

The evidence shows that Lyft had a clickwrap format to manifest agreement to its Terms of Service. By clicking the button, Plaintiff agreed to Defendant's Terms of Service, thereby agreeing to arbitrate. While the agreement was adhesive in nature, it was not procedurally unconscionable to any significant degree. Neither was the agreement substantively unconscionable. Nothing in it is harsh, one-sided or unduly oppressive. Given the early stages of this lawsuit, Lyft has not waived its right to compel arbitration.

Gordon Rees Scully Mansukhani, LLP
5 Park Plaza, Suite 1100
Irvine, CA 92614

PROOF OF SERVICE

Christopher Daniel Clark vs. Lyft, Inc., et al.
Los Angeles County Superior Court Case No. 23STCV00132

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. One of my business address(es) is: Gordon Rees Scully Mansukhani, LLP, 5 Park Plaza, Suite 1100, Irvine, CA 92614. On **May 1, 2023,** I served the within documents:

NOTICE OF RULING

☐ **BY FACSIMILE.** By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ **BY PERSONAL SERVICE.** I caused the document(s) listed above to be personally served to the person(s) at the address(es) set forth below.

☐ **BY U.S. MAIL.** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at Irvine, addressed as set forth below.

☐ **BY OVERNIGHT SERVICE.** By placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Gordon & Rees LLP described below, addressed as follows:

☑ **BY ELECTRONIC.** By transmitting via **ELECTRONIC MAIL** the document(s) listed above to the electronic mail (e-mail) address as follows:

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **May 1, 2023**, at Los Angeles, California.

Ambokile' Kokayi

SERVICE LIST

Thanos Simoudis, Esq. David F. Merabi, Esq. Dario Gomez, Esq. **CULVER LEGAL, LLC** 5670 Wilshire Blvd., Suite 1370 Los Angeles, CA 90036 Email: thanos@culverlegal.com; david@culverlegal.com; dario@culverlegal.com info@culverlegal.com ***Attorneys for Plaintiff***	Kimberly S. Oberrecht, Esq. Cheyenne J. Page, Esq. **HORTON, OBERRECHT & KIRKPATRICK** 101 W. Broadway, Suite 600 San Diego CA 92101 Email: cpage@hortonfirm.com LGIlkerson@hortonfirm.com ***Attorneys for Defendant/Cross-Complainant IRFANULLAH FAIZI***
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
DAVID WHITE,	)	Civil Action No. 2024-CP-10-06252
Plaintiff,	)	
vs.	)	**LYFT, INC. d/b/a LYFT DRIVES SOUTH CAROLINA, INC.'S MOTION TO RECONSIDER**
LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE,	)	
Defendants.	)	

Lyft Inc., d/b/a Lyft Drives South Carolina, Inc. (hereinafter "Lyft"), pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*, moves the Court to reconsider its Order dated August 21, 2025, denying Lyft's Motion to Compel Arbitration and Stay Proceedings (the "Order") and requests the Court either:

(1) grant Lyft's Motion to Compel Arbitration for the reasons stated herein; or

(2) clarify that the Order is without prejudice to Lyft's ability to refile should additional material facts supporting application of the Terms of Service come to light.

The grounds for this motion are set forth herein. Any arguments, factual positions, and legal positions asserted prior to, during, and after the hearing on Lyft's Motion to Compel Arbitration not herein listed are adopted and incorporated the same as if fully set forth herein as additional grounds supporting this motion.

INTRODUCTION

Plaintiff David White ("Plaintiff") ***does not contest*** he and Lyft entered into an arbitration agreement, providing that "ALL DISPUTES AND CLAIMS" between them, including any arising out of or relating to the "Lyft Platform," "Rideshare Services," and "all other federal and state

statutory and common law claims," "SHALL BE EXCLUSIVELY RESOLVED BY BINDING ARBITRATION" (the "Arbitration Agreement"). (Lyft's Mot. to Compel Arb. ("MTCA"), **Ex. A-3** ¶ 17(a); MTCA, **Ex. A-5** ¶ 17(a)). Plaintiff ***does not contest*** the Federal Arbitration Act ("FAA") governs the Arbitration Agreement. More critical, Plaintiff ***does not contest*** the Arbitration Agreement contains a clear and unmistakable delegation clause, which expressly delegates *to the arbitrator* "[a]ll disputes concerning the arbitrability of a Claim (including disputes about the ***scope***, ***applicability***, ***enforceability***, revocability or validity of the Arbitration Agreement)." (MTCA, **Ex. A-3** ¶ 17(a); MTCA, **Ex. A-5** ¶ 17(a)) (emphasis added).

Under the FAA, the express terms of the Arbitration Agreement and delegation clause, and the ***uncontested evidentiary record*** before this Court, there is but one question this Court must answer: "'whether the parties have a contract that provides for arbitration of some issues.'" *Mod. Perfection, LLC v. Bank of Am., N.A.*, 126 F.4th 235, 241 (4th Cir. 2025) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 945 (1995)). The answer to that question *must be yes*; there is no evidence to the contrary. As the validity of the parties' delegation clause has not been specifically challenged (not even mentioned in Plaintiff's Opposition), this "'court may not decide an arbitrability question that the parties have delegated to an arbitrator' 'even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless.'" *Mod. Perfection, LLC*, 126 F.4th at 241 (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67 (2019)).

To be clear, Lyft's argument that the Arbitration Agreement applies to Plaintiff's claims is far from groundless even based upon the limited ***evidentiary record*** before this Court. Regardless, this is an issue for an arbitrator to decide under the agreed upon and binding delegation clause. Nonetheless, the Court decided this issue and improperly relied on Plaintiff's counsel's

uncorroborated statements. As a matter of law, these statements are not evidence. The only evidence Plaintiff submitted is his Complaint is wherein he alleges he was injured while a passenger in a vehicle providing rideshare services on the Lyft Platform. (Compl. ¶¶ 32-37). Even if the issues of scope and applicability of the Arbitration Agreement were before this Court (they are not), there is no evidence Plaintiff was not utilizing rideshare services or the Lyft Platform, or that his claims do not otherwise fall within the scope of the Arbitration Agreement. There is insufficient evidence to provide the Court with "positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001).

Pursuant to the express terms of the Arbitration Agreement and delegation clause, Plaintiff ***and Lyft*** must submit their respective evidence regarding the circumstances of Plaintiff's presence in the subject vehicle, including Plaintiff's use (or non-use) of the Lyft Platform, to the arbitrator. And the arbitrator will, *based upon an adequate evidentiary record*, determine whether the Arbitration Agreement applies to Plaintiff's claims. This is what the parties clearly and unmistakably intended.

For these reasons, and settled case law, an arbitrator is required to decide gateway issues such as arbitrability. The Court's only decision at this stage is whether an arbitration agreement exists, which is easy to answer given Plaintiff's admission and agreement to Lyft's Terms of Service (the "TOS") that include the Arbitration Agreement. Accordingly, Lyft requests this Court reconsider its Order, find that Plaintiff and Lyft's Arbitration Agreement exists, and permit an arbitrator to determine the gateway issue of arbitrability.

STANDARD OF REVIEW

"A motion to alter or amend [a] judgment shall be served not later than 10 days after receipt of written notice of the entry of [an] order." Rule 59(e), SCRCP. "A party *may* wish to file such a motion when he believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wished for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments." *Id.* at 21, 602 S.E.2d at 778. Thus, "a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id.* at 21-22, 602 S.E.2d at 778-79. Further, "[t]here is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." *Id.* at 22, 602 S.E.2d at 779.

ARGUMENT

I. The Order Exceeds the Court's Authority and Should be Reconsidered.

The FAA governs the Arbitration Agreement. (MTCA, **Ex. A-3** ¶ 17(a); MTCA, **Ex. A-5** ¶ 17(a)). This is uncontested.

Under the FAA, a court may generally decide only two narrow "gateway" issues to determine whether to compel arbitration: (1) whether a valid arbitration agreement exists and (2) threshold questions of arbitrability. (MTCA at 14) (citing *Henry Schein, Inc.*, 586 U.S. at 67; *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002)).

However, contracting parties may contract to delegate threshold arbitrability issues—such as scope, applicability, enforceability, and validity of an arbitration agreement—to an arbitrator.

Henry Schein, Inc., 586 U.S. at 67; *Gibbs v. Haynes Invs., LLC*, 967 F.3d 332, 337 (4th Cir. 2020) (stating "when an agreement 'clearly and unmistakably' delegates the threshold issue of arbitrability to the arbitrator, a court must enforce that delegation clause and send that question to arbitration."); *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 699 (S.C. Ct. App. 2022) (stating "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.") (internal quotations omitted).

Where, as here, disputes as to the scope, applicability, enforceability, and validity of the Arbitration Agreement have been so delegated, the Court is left to answer one question: did "'the parties have a contract that provides for arbitration of some issues.'" *Mod. Perfection, LLC,* 126 F.4th at 241 (quoting *First Options of Chicago*, 514 U.S. at 945); *accord Henry Schein*, 586 U.S. at 68, 69. If the answer is yes, the Court *must* send the claims to arbitration; there is simply "no place for the exercise of discretion." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985); *Henry Schein, Inc.*, 586 U.S. 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.")

A. There is No Dispute the Parties Entered into an Arbitration Agreement.

Plaintiff does not dispute he agreed twice to Lyft's TOS, which contains the Arbitration Agreement. (Pl.'s Opp. at 1). Nor does Plaintiff dispute the Arbitration Agreement requires him and Lyft to arbitrate claims. The inquiry as to whether the parties have an agreement to arbitrate is the Court's **only** inquiry at this stage. *See Henry Schein, Inc.*, 586 U.S. at 68, 69; *Mod. Perfection, LLC*, 126 F.4th at 241. There is no dispute Lyft and Plaintiff have such an agreement. Indeed, Plaintiff admitted we do. There is nothing more for the Court to decide, because, as discussed above, and in more detail, *infra*, the parties clearly and unmistakably delegated **all** issues of arbitrability, specifically

including disputes as to whether the parties' Arbitration Agreement applies to Plaintiff's claims, to the arbitrator. This alone should end the Court's inquiry and result in compelling arbitration. *Henry Schein, Inc.*, 586 U.S. at 69 ("[I]f the agreement delegates the arbitrability issue to an arbitrator, *a court may not decide the arbitrability issue*.") (emphasis added).

The Order errs by making no finding on the *sole* issue before this Court of whether Plaintiff and Lyft have an agreement to arbitrate. (*See generally* Order). As such, the Court should reconsider its Order and determine an arbitration agreement between Plaintiff and Lyft exists. As this is (and was) the sole issue before this Court, it was an error for the Court to make any further findings, specifically including on issues of scope, applicability, and enforceability—all of which are delegated to the arbitrator for resolution.

B. Plaintiff and Lyft Clearly and Unmistakably Agreed to Delegate All Issues of Arbitrability, Including Scope, Applicability, and Enforceability, to an Arbitrator, Pursuant to the Parties' Unchallenged Delegation Clause.

Like Plaintiff's Opposition, the Order is silent on the delegation clause in the parties' Arbitration Agreement. For ease of reference, Lyft reiterates the uncontested, clear, and unmistakable delegation clause as follows:

> All disputes concerning the **arbitrability** of a Claim (including disputes about the **scope**, **applicability, enforceability**, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator . . . .

(MTCA, **Ex. A-3** ¶ 17(a); MTCA, **Ex. A-5** ¶ 17(a)) (emphases added).

Where such a delegation clause exists, a court retains its ability to determine the validity of that clause only if "the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause specifically, rather than the arbitration agreement as a whole." *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020); *see Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 130 (2010)* ("Unless [Plaintiff] 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 Agreement as a whole for the arbitrator."); *Mod. Perfection, LLC*, 126 F.4th at 243 ("*Rent-A-Center* makes clear that parties resisting arbitration cannot get out from under a delegation clause by attacking the rest of the agreement to arbitrate and instead must challenge the validity of the delegation provision in particular.") (internal quotations omitted).

Plaintiff has made no such challenge. In fact, the words "delegate," "delegation," and "delegating" do not appear in Plaintiff's Opposition, nor does a single term of the parties' delegation clause. Moreover, Plaintiff did not assert any arguments at the hearing regarding delegation. Because Plaintiff has not challenged the validity of the delegation clause, the Court has nothing left to do; it "must respect the parties' decision as embodied in the contract" and enforce the delegation clause. *Henry Schein, Inc.*, 586 U.S. at 65; *Doe,* 430 S.C. at 608, 846 S.E.2d at 877.

However, the Court overlooked the delegation clause and proceeded directly to the merits. This is an error.

Regarding scope and applicability, the Order states, the TOS do not govern Plaintiff's claim. (Pl.'s Opp. at 6-8; Order at 2-4). The Order finds the TOS only govern "a user's active use or access of the Lyft Platform or Defendant Lyft's services" and because "Plaintiff's claims do not stem from his use of either the Lyft Platform or its Rideshare Services" the TOS—including the arbitration provision—do not apply. (Order at 2-4). These are indisputably determinations regarding the "scope" and "applicability" of the Arbitration Agreement – determinations which have been delegated exclusively to the arbitrator. (*See, e.g.*, *id.* at 2, I.A.) ("Defendant Lyft's TOS clearly define the **scope** of the agreement containing the arbitration clause.") (emphasis added); *Henry Schein, Inc.*, 586 U.S. at 67.

Likewise, this Court found the Arbitration Agreement to be unconscionable, which is a matter of contract "enforceability"—not formation—the resolution of which Plaintiff and Lyft *clearly and unmistakably* agreed to delegate to the arbitrator. *See* (MTCA, **Ex. A-3** ¶ 17(a); MTCA, **Ex. A-5** ¶ 17(a)) ("All disputes concerning the arbitrability of a Claim (including disputes about the . . . **enforceability** . . . of the Arbitration Agreement) shall be decided by the arbitrator . . . .") (emphasis added); *see* S.C. Code Ann. § 36-2-302; *Lucey v. Meyer*, 401 S.C. 122, 139, 736 S.E.2d 274, 283 (Ct. App. 2012) (treating unconscionability as a question of contract enforceability).

In reaching and determining these issues of arbitrability, this Court, in its Order, ran afoul of the *Byrd* opinion from the United States Supreme Court because the Court utilized "discretion" in determining that which has been delegated to the arbitrator – scope and arbitrability. *Byrd*, 470 U.S. at 218. As further held by the United States Supreme Court in *Henry Schein, Inc.*, "a court has 'no business weighing the merits of [a] grievance' because the 'agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious.'" 586 U.S. at 68-69 (citations omitted) (internal quotation marks omitted).

To reach a decision, any decision, on scope, applicability, unenforceability, or any of the other issues of arbitrability that the parties have clearly, unmistakably, and exclusively delegated to the arbitrator, is erroneous. The Court should reconsider its ruling and allow the arbitrator to decide questions of arbitrability, as the parties' intended.

This is where the Court's analysis must end, and arbitration must be compelled. However, to further address the Order, Lyft states as follows.

C. No Evidence Supports the Court's Finding that Plaintiff's Claims Do Not Fall Within the Arbitration Agreement.

Even if the scope of Plaintiff's claims was not delegated, which it was, Plaintiff failed to provide ***any evidence*** that his claims do not fall within the Arbitration Agreement. The sole factual allegation regarding Plaintiff's conduct on December 26, 2021 is as follows:

> On December 26, 2021, at approximately 2:11 pm, Plaintiff was a passenger in a vehicle driven by Defendant White that was illegally parked on the side of Delano Street in Charleston, South Carolina. Defendant White also had a passenger in the backseat that had requested transportation from Defendant Lyft earlier in the day.

(Compl. ¶ 8). These two sentences are the totality of the evidence Plaintiff submitted to this Court in support of his argument that his claim does not arise under the TOS because he was not using Lyft's rideshare services at the time of the accident. First, Paragraph 8 of the Complaint, standing alone, does not actually allege Plaintiff was (or was not) using Lyft's rideshare services at the time of the accident. Even if it could be read as such, it is insufficient to defeat Lyft's Motion to Compel Arbitration.

Second, the Order references several unsubstantiated statements *of Plaintiff's counsel*, which are not tied to any evidence in the record and have never been supported by any evidence before the Court. These references are not immaterial—they form the factual basis for this Court's finding that Plaintiff's claims do not fall within the scope of the parties' Arbitration Agreement and include the following:

1. "[Plaintiff] was riding with a friend who was a Lyft driver"; (no cite to the record)
2. "[Plaintiff] did not order a Lyft nor ride with someone else who ordered a Lyft to a requested destination"; (no cite to the record)
3. "Plaintiff was not utilizing the Lyft Platform or its Rideshare Services at the time of the subject collision"; (no cite to the record) and

4. "Plaintiff's claims do not stem from his use of either the Lyft Platform or its Rideshare Services." (no cite to the record)

(Order at 2-3).

Simply put, there is no evidence *in the record* regarding Plaintiff's relationship with the passenger or driver, and no evidence in the record that he was not using the Lyft Platform or Rideshare Services at the time of the accident. Not only did the Court err in deciding this arbitrability issue, but the Court also erred by relying on Plaintiff's counsel's representations without support and substantiation from an affidavit of Plaintiff. *See Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001); *Higgins v. MUSC*, 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997); *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 508 n.7, 443 S.E.2d 401, 406 n.7 (Ct. App. 1994).

The submitted evidence to this Court, rather, is the plain language of the Arbitration Agreement, which provides **all claims** between Plaintiff and Lyft are subject to arbitration. (MTCA, **Ex. A-3** ¶ 17(a); MTCA, **Ex. A-5** ¶ 17(a)) (emphasis added). The Arbitration Agreement does not require Plaintiff to be directly engaged in Lyft's services to be applicable. (*See, e.g.*, **Exhibit A**, examples where courts across the country have enforced Lyft's Arbitration Agreement against non-requesting passengers). The inability of Plaintiff to adduce any evidence that his claims do not fall within the "all disputes and claims" language of the Arbitration Agreement, requires arbitration to be ordered. *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("[U]nless the Court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

Nevertheless, whether Plaintiff's claims fall within the TOS is (and was) not properly before this Court, as Plaintiff agreed to have an arbitrator decide the gateway issue of arbitrability—twice.[1]

II. The Arbitration Provision is Enforceable.

While ignoring the delegation clause, which expressly covers any issue regarding the enforceability of the Arbitration Agreement—Plaintiff argued the Arbitration Agreement is unenforceable on grounds of unconscionability, and this Court improperly agreed. This decision is unsupported by record evidence and South Carolina law. (Pl.'s Opp. at 3-6; Order at 4-7).

First and foremost, adhesion contracts are enforceable. A "take-it-or-leave-it contract of adhesion is not *per se* unconscionable, even though it may indicate one party lacked a meaningful choice." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001). Indeed, "the South Carolina Supreme Court has noted the standardization of contracts is 'a rational and economically efficient response to the rapidity of market transactions and the high costs of negotiations.'" *Morgan v. Advance Am.*, No. 4:07-3235-TLW-TER, 2008 WL 4191754, at *15 (D.S.C. Sept. 5, 2008) (quoting *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898, 902 (Ct. App. 1998)).

Next, the record is devoid of proof showing the TOS are unconscionable. "In South Carolina, 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.'" *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 85, 749 S.E.2d 139, 148 (Ct. App. 2013) (quoting *Simpson v. MSA of*

[1] This argument applies in equal force to the Order's analysis regarding Plaintiff's claim not arising out of a business or contractual relationship.

Myrtle Beach, Inc., 373 S.C. 14, 24–25, 644 S.E.2d 663, 668 (2007)) (emphasis added); *see Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (unconscionability is "due to both an absence of meaningful choice *and* oppressive, one-sided terms.") (emphasis added); *see also Colletti v. Monitronics Int'l, Inc.*, No. 0:15-4838-TLW, 2016 WL 11563370, at *4 (D.S.C. Aug. 4, 2016) (quoting *Carson v. LendingTree LLC*, 456 F. App'x 234, 236 (4th Cir. 2011)), *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 754 (2022), *reh'g denied* (Nov. 17, 2022), *cert. denied*, 143 S. Ct. 2581, 216 L. Ed. 2d 1192 (2023); *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996).

Proving unconscionability is Plaintiff's burden. *See Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014) ("'[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.'" (quoting *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91 (2000))). Plaintiff has fallen woefully short of meeting that burden.

A. There is No Evidence Plaintiff Lacked a Meaningful Choice in Entering into the Arbitration Agreement; Plaintiff's Counsel's Statements are Not Evidence.

"'A party seeking to prove an arbitration agreement is unconscionable must allege he lacked a meaningful choice as to the arbitration clause specifically, not merely that he lacked a meaningful choice as to the contract as a whole.'" *Dixon v. Pattee*, 442 S.C. 233, 173, 898 S.E.2d 158 (Ct. App. 2023) (quoting *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 613, 879 S.E.2d 746, 755 (2022)).

Plaintiff did not prove he lacked a meaningful choice. In fact, Plaintiff proved nothing as Plaintiff never provided *any* evidence whatsoever. Specifically, Plaintiff never alleged he lacked a meaningful choice as to the arbitration provision. Rather, Plaintiff's ***counsel*** asserted a general argument that the TOS include oppressive and one-sided terms. (Pl.'s Opp. at 5-6). Plaintiff never

alleged he did not have the judgment to understand the arbitration clause. Rather, Plaintiff's ***counsel*** argued Plaintiff did not have the business judgment to understand the effect of the arbitration clause contained in the TOS. (*Id.* at 5). And Plaintiff never alleged he did not have counsel present. Rather, Plaintiff's ***counsel*** argued Plaintiff did not have counsel present to provide assistance during the account creation process. (*Id.*). Plaintiff did not submit an affidavit to support his attorney's arguments, and the case law is clear – treating a statement made by a party's own counsel as the evidence that supports a finding in favor of that party **is erroneous as a matter of law**. *See Trivelas v. S.C. Dept. of Transportation*, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001); *Higgins v. MUSC*, 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997); *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 508 n.7, 443 S.E.2d 401, 406 n.7 (Ct. App. 1994).

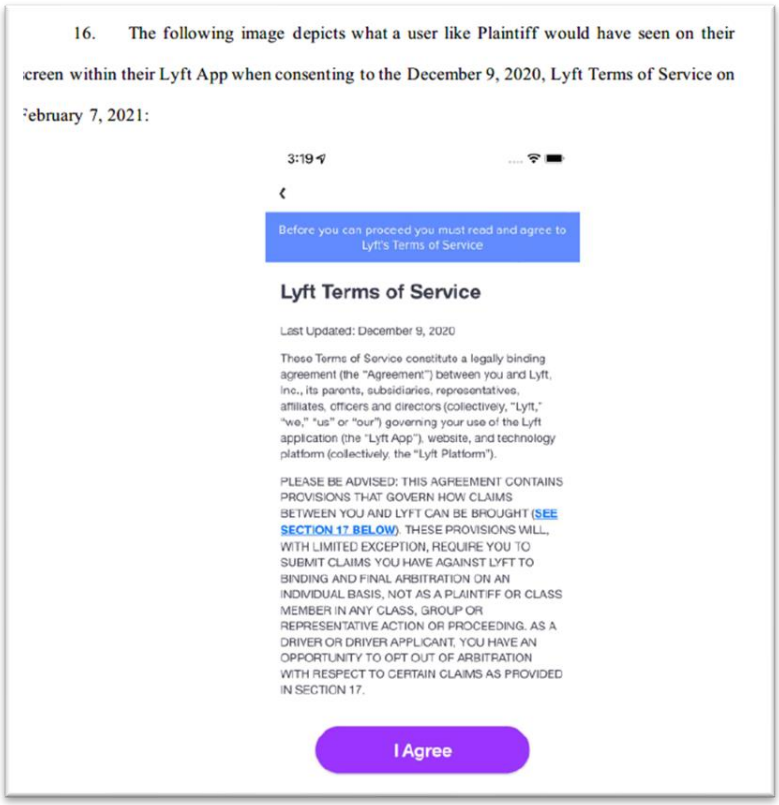
Additionally, the Court erred in finding the Arbitration Agreement was "buried within a 38-page document" and was "inconspicuous in nature, particularly when viewed on a mobile device." (Order at 6). As an initial matter, this is inconsistent with the Court's finding that "Lyft's TOS clearly define the scope of the agreement containing the arbitration." (*See id.* at 2). In support of this finding, the Court references text found on the first page of the Arbitration Agreement. (*See id.*) Also located on the first page of the TOS, *in between the text referenced by the Court*, is the following:

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

(MTCA, **Ex. A-3** at 1; MTCA, **Ex. A-5** at 1).

Unlike Plaintiff's Opposition, which is predicated on Plaintiff's ***counsel's*** self-serving proclamations, Lyft submitted evidence, including the sworn affidavit of Paul McCachern, Safety

Program Lead for Lyft, who, among other matters, further describes the presentation of these and other terms of the TOS to users like Plaintiff:



16. The following image depicts what a user like Plaintiff would have seen on their screen within their Lyft App when consenting to the December 9, 2020, Lyft Terms of Service on February 7, 2021:

3:19

Before you can proceed you must read and agree to Lyft's Terms of Service

Lyft Terms of Service

Last Updated: December 9, 2020

These Terms of Service constitute a legally binding agreement (the "Agreement") between you and Lyft, Inc., its parents, subsidiaries, representatives, affiliates, officers and directors (collectively, "Lyft," "we," "us" or "our") governing your use of the Lyft application (the "Lyft App"), website, and technology platform (collectively, the "Lyft Platform").

PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE BROUGHT (SEE SECTION 17 BELOW). THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS, GROUP OR REPRESENTATIVE ACTION OR PROCEEDING. AS A DRIVER OR DRIVER APPLICANT, YOU HAVE AN OPPORTUNITY TO OPT OUT OF ARBITRATION WITH RESPECT TO CERTAIN CLAIMS AS PROVIDED IN SECTION 17.

I Agree

(Aff. of Paul McCachern, ¶ 16). Mr. McCachern goes on to testify that the "**SEE SECTION 17 BELOW**" is also an internal link that takes users directly to Section 17 of the Arbitration Agreement. (*Id.* ¶ 17). The evidence before the Court establishes, therefore, these terms are neither "buried" nor "inconspicuous" – and Mr. McCachern's affidavit is the only *evidence* the Court should (and could) consider on this issue.[2] Since none of these assertions were ever supported by

[2] Lyft also provided the Court with several opinions from other courts expressly finding the TOS were not unconscionable. *See, e.g., Williams v. Lyft, Inc.*, No. 4:22-cv-3394, ECF No. 41, at *9-10 (S.D. Tex. May 28, 2024) (enforcing delegation clause where "Williams's exclusive argument in opposition to Lyft seeking to enforce the arbitration provision is a challenge to the validity and enforceability of the agreement as a whole"); *Spain v. Lyft, Inc.*, --- F.Supp.3d ---, No. 1:23-cv-419, 2024 WL 907435, at *4 (D. Colo. Jan. 16, 2024) ("[T]he provision [in Lyft's Terms of Service] includes a delegation clause that says a dispute about the scope of the agreement is for

evidence of any sort, and Lyft's evidence remains uncontested, the Court erred in adopting Plaintiff's assertions as true and using them as the basis to find unconscionability. (*See* Order at 6).

B. There is No Evidence the Arbitration Agreement Contains Oppressive or One-Sided Terms (Let Alone Both).

"Terms are oppressive when 'no reasonable person would make them and no fair and honest person would accept them.'" *York*, 406 S.C. at 88, 749 S.E.2d at 149–150 (quoting *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668). However, a plain language review shows the terms of the Arbitration Agreement ***mutually*** apply to Plaintiff ***and Lyft***. (MTCA, **Ex. A-3 ¶¶** 15 & 17; MTCA, **Ex. A-5 ¶¶** 15 & 17). This alone undercuts any finding of unconscionability. *Damico*, 437 S.C. at 615 ("Mutuality [] is a paramount consideration when assessing the substantive unconscionability of a contract term.") (citation omitted).

Nor are the terms of the Arbitration Agreement oppressive. In finding the terms are, Plaintiff pointed to, and this Court relied upon, the waiver of a jury trial, inability to participate in a class action, and inability to appeal an arbitration decision. (Order at 6). First, the "loss of the right to a jury trial is a necessary and fairly obvious consequence of an agreement to arbitrate." *Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d 302, 307 (4th Cir. 2001). To find waiver of a

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the arbitrator to decide."); *Rogers v. Lyft, Inc.*, 452 F. Supp. 3d 904, 918 (N.D. Cal. 2020), *aff'd*, No. 20-15689, 2022 WL 474166 (9th Cir. Feb. 16, 2022), *aff'd*. No. 20-15689, 2022 U.S. App. LEXIS 4219 (9th Cir. Feb. 16, 2022) ("[S]ection 17(a) clearly and unmistakably delegates threshold questions of arbitrability to the arbitrator as a general matter."); *Peterson v. Lyft, Inc.*, No. 16-cv-07343-LB, 2018 U.S. Dist. LEXIS 197164, at *3 (N.D. Cal. Nov. 19, 2018) (the delegation clause "explicitly refer[ring] arbitrability questions to an arbitrator is evidence that the parties clearly and unmistakably have referred the arbitrability question to the arbitrator."); *Loewen v. Lyft, Inc.*, 129 F. Supp. 3d 945, 966 (N.D. Cal. 2015) (same); *Amber Vaatete v. Lyft, Inc.*, No. 23SMCV03631, at *2 (Superior Ct. Los Angeles Cnty., CA, November 3, 2023) (same).

Plaintiff never provided one opinion finding otherwise. (*See generally* Pl.'s Opp.)

jury trial renders an arbitration agreement unconscionable would eliminate arbitration, which is entirely inconsistent with the FAA. Second, this is not a class action lawsuit, so it is not clear what relevance the purported inability to participate in such a lawsuit has here. But to the extent it does, that is not, as a matter of law, evidence of unconscionability. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (holding that the FAA preempts judicial rules regarding the unconscionability of class arbitration waivers in consumer contracts). And third, the whole purpose of arbitration is to allow the parties to engage in efficient and streamlined proceedings. *See, e.g.*, *id.* at 344 ("The FAA's overarching purpose is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate informal, streamlined proceedings"). Full and final arbitration is one way to accomplish that. Notwithstanding, the Arbitration Agreement expressly permits an award to be challenged in a court of competent jurisdiction under the FAA. (MTCA, **Ex. A-3** ¶ 17(g); MTCA, **Ex. A-5** ¶ 17(g)).

C. The Order Improperly Considers Section 15 of the TOS in Deciding Arbitration.

Plaintiff's argument, and the Court's adoption of that argument, regarding the effect of the limitation of liability clause in Section 15 of the TOS is improper for the Court's analysis of whether the parties entered into a binding *arbitration agreement*. The validity of an arbitration agreement "is distinct from the substantive validity of the contract as a whole." *Huskins*, 439 S.C. at 366 (citation omitted); *see also Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016) (noting "in conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract").

Plaintiff failed to meet his burden regarding the delegation clause and unconscionability argument. For all these reasons, the Court equally lacks evidence on which to anchor its Order;

therefore, the Court should reconsider the Order and find the TOS conscionable[3], or, alternatively, compel the matter to arbitration so an arbitrator can make a determination regarding the Arbitration Agreement's enforceability or conscionability as the parties' agreement provides.

III. The Limitation of Liability Provision Should Be Severed from the Court's TOS Analysis.

While Lyft takes the position that the limitation of liability provision is conscionable and should not be the basis for the Court's decision regarding valid contract formation, the Court can and should severe this section from the TOS analysis. *See Huskins*, 439 S.C. at 370–71 (deciding to sever two sentences in an arbitration agreement that did not contain a severability clause and "affirm the circuit court's order compelling arbitration as modified"); (*See* MTCA, **Ex. A-3** ¶ 17(h); MTCA, **Ex. A-5** ¶ 17(h) ("in the event that any portion of this Arbitration Agreement is deemed illegal or unenforceable . . . such provision shall be severed and the remainder of the Arbitration Agreement shall be given full force and effect.").

As found by this Court in a similarly argued case by Order of Judge Frank R. Addy, Jr. Civil Action No. 2023-CP-10-03260:

> This Court notes that the limitation of liability provision as contained in section 15 of the terms of service is not in section 17 of the arbitration agreement, and this limitation of liability may well constitute an impermissibly onerous provision in that, if controlling, Lyft would have essentially no liability under any scenario. Lyft essentially concedes on page 16 of its reply brief that, should the provisions of section 15 be found to be unconscionable, this paragraph can be severed from the Terms of Service agreement. Again, the Court notes Plaintiff's well-argued position with respect to this issue, but the Court issues no formal ruling concerning the enforceability of section 15.

(**Exhibit B**, Judge Addy Order, Nov. 26, 2024).

[3] Lyft still maintains this is outside the scope of the Court's function at the motion to compel arbitration stage, but if the Court finds this is within its scope, Lyft requests this relief.

Likewise, any suggestion that Plaintiff will be without remedy because of the limitation of liability provision in arbitration is without merit. This is a low-speed, impact collision wherein Plaintiff was allegedly injured as a passenger in a motor vehicle. As indicated in oral argument, there is more than enough coverage—if liability is found and the policy is applicable—with the $1,000,000 policy in effect for the driver, Defendant Alicia White, and Lyft in the underlying case[4].

CONCLUSION

For the reasons stated above, all issues of validity, enforceability, arbitrability, and scope have been uncontestably delegated to the arbitrator. Therefore, Lyft Inc., d/b/a Lyft Drives South Carolina, Inc. respectfully requests the Court reconsider the Order and compel the parties to arbitration for an arbitrator to determine whether the Terms of Services and Arbitration Agreement govern Plaintiff David White's claims against Lyft Inc., d/b/a Lyft Drives South Carolina, Inc. and stay these proceedings pending the outcome of that arbitration.

Respectfully submitted,

By: s/*Sarah T. Eibling*
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Attorney for Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc.

Columbia, South Carolina

September 2, 2025

[4] Lyft reserves its right to challenge the applicability of the policy in the event this Court continues to hold, or the arbitrator finds, Plaintiff's claims fall outside the TOS.

Exhibit A

Compilation of Orders

Superior Court of California, County of San Joaquin

Tentative Ruling

Date: 01/23/2025 **Case Number:** STK-CV-UAT-2024-0003912

Jefferson Burgett, an individual on behalf of Alan Burgett, deceased vs Lyft, Inc., a corporation et al.

Event: Motion to Compel
Event Date: 01/24/2025 at 9:00 AM in Department 10D

Motion to compel arbitration
TENTATIVE RULING NOTICE

Tentative rulings for Law and Motion will be posted electronically beginning at 1:30 p.m. the day before the hearing. Any party wishing to contest or argue the tentative ruling must email the court at civilcourtclerks@sjcourts.org. that they intend to appear remotely no later than 4:00 PM on the day before the scheduled hearing. The Department and Case Number must be in the header of the email. The email must include the Department, Case number, Case Name, Motion, party's name and email, date and time of the hearing, issues they plan to argue, and that they have informed the opposing party. The party must also notify affected counsel, or unrepresented parties, that they intend to appear, no later than 4:00 PM on the day before the scheduled hearing. Unless the Court and opposing counsel have been notified, the tentative ruling shall become the ruling of the Court without oral argument.

To attend the remote hearing with Judge Kronlund in Dept. 10-D: Call into (209) 992-5590, then follow the prompts and use the Bridge # and Pin # as follows:

Bridge # 6940
Pin # 3782

Tentative Ruling

Defendant Lyft, Inc.'s motion to compel arbitration and stay this action is Granted.
Pursuant to the Lyft App., which Plaintiffs agreed to upon downloading the App and subsequent use of the rideshare services, the FAA applies and the broad language of the arbitration agreement at Ph. 17(a) includes a delegation clause over arbitrability of a claim, to the Arbitrator.
The delegation clause agreed to by the parties requires that the Arbitrator decides whether the agreement to arbitrate encompasses the claims filed herein, stemming from Alan Burgett's presence in a Lyft which he didn't order. Samuel v. Islam, (2024) WL5249012.
Plaintiffs consented to arbitration by agreeing to the App, which consent was obtained during the downloading process. A prerequisite to using the Lyft App and the rideshare services was agreement by Plaintiffs to the arbitration clause. Osvatics v. Lyft, Inc. (2021) 535 F.Supp.3d 1, 11.
The arbitration clause is broad, and encompasses federal and state law claims. The claims at issue relate to Lyft's rideshare services, and fall within the board terms of the arbitration agreement.
By downloading the App., the user agrees to the arbitration terms, even if not the one who ordered the particular Lyft rideshare at issue.
The Court does not believe discovery is needed where the matter can be resolved on the law and undisputed facts. Republic of Kazakhstan v. Chapman (2022) 585 F.Supp.3d 597, 609. Like the Kazakhstan court stated: 'Because the facts material to compelling arbitration of arbitrability are established on the record before the Court, the plaintiffs' request for discovery is denied.' Such is the case here. Plaintiffs' request for discovery is likewise Denied.

Court will sign the Proposed Order submitted with this motion.

Barbara A. Kronlund

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

24CV100789: ZAMIEROWSKI vs GEREMARIAM, et al.
04/10/2025 Hearing on Motion to Compel Arbitration in Department 20

Tentative Ruling - 04/08/2025 Karin Schwartz

The Motion to Compel Arbitration filed by Lyft, Inc. on 02/24/2025 is Granted.

Defendant Lyft, Inc.'s Motion to Compel Arbitration is GRANTED.

BACKGROUND

Plaintiff Marianne Zamierowski ("Plaintiff") initiated this action on November 22, 2024 for general negligence and motor vehicle negligence. Plaintiff alleges that on August 20, 2024, she attempted to board a vehicle operated by Defendant Tecle Gerermariam, in Geremariam's agency and employment of Defendant Lyft, Inc. ("Defendant" or "Lyft") when she was injured by the vehicle. (Compl. p. 5.)

Lyft moves to compel arbitration pursuant to the arbitration agreement within Lyft's Terms of Service ("TOS"). (Declaration of Paul McCachern ("McCachern Dec.") Exh. 3.) Lyft further moves to stay proceedings as to Lyft pending resolution of arbitration.

McCachern is Lyft's Safety Program Lead since August 2022. (McCachern Dec. ¶ 1.) He states that Plaintiff created a Lyft user account on October 21, 2023. (*Id.* ¶ 11.) In so doing, McCachern states that Plaintiff affirmatively accepted Lyft's Terms of Service ("TOS") on the Lyft App both before and after the subject incident. (*Id.* ¶ 12, Exh. 2.) McCachern states that the Lyft's December 12, 2022 TOS were in effect at the time of the subject incident. (*Id.* ¶ 14.)

The TOS "governs . . . use of the Lyft application . . . , website, and technology platform (collectively, the 'Lyft Platform')." (Exh. 3, p. 1.) It "govern[s]" how "claims" may be "brought." (*Id.*) "By entering into this Agreement, and/or by using or accessing the Lyft Platform," the signatory "expressly acknowledge[s]" that they understand the agreement and agree to be bound by it. (*Id.*)

A separate provision explains that the "Lyft Platform provides a marketplace where, among other things, persons who seek transportation to certain destinations ('Riders') can be matched with transportation options to such destinations," such as by requesting a ride from a rideshare driver ("Drivers:"). (*Id.*, § 1.) This provision defines "Users" as including "Riders," along with Drivers. (*Id.*)

The TOS provides for arbitration of "all disputes and claims between us," subject to exceptions not present here, including any "dispute, claim, or controversy . . . arising out of or relating to . . . this Agreement . . . [and] the Lyft Platform":

> PLEASE BE ADVISED: THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS BETWEEN YOU AND LYFT CAN BE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

24CV100789: ZAMIEROWSKI vs GEREMARIAM, et al.
04/10/2025 Hearing on Motion to Compel Arbitration in Department 20

BROUGHT (SEE SECTION 17 BELOW). **THESE PROVISIONS WILL, WITH LIMITED EXCEPTION, REQUIRE YOU TO: (1) WAIVE YOUR RIGHT TO A JURY TRIAL, AND (2) SUBMIT CLAIMS YOU HAVE AGAINST LYFT TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS, GROUP, OR REPRESENTATIVE ACTION OR PROCEEDING.** …

By entering into this Agreement, and/or by using or accessing the Lyft Platform, you expressly acknowledge that you understand this Agreement (including the dispute resolution and arbitration provisions in Section 17) and accept all terms. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM OR ANY OF THE SERVICES PROVIDED THROUGH THE LYFT PLATFORM. …

17. DISPUTE RESOLUTION AND ARBITRATION AGREEMENT

(a) Agreement to Binding Arbitration Between You and Lyft.

YOU AND LYFT MUTUALLY AGREE TO WAIVE OUR RESPECTIVE RIGHTS TO RESOLUTION OF DISPUTES IN A COURT OF LAW BY A JUDGE OR JURY AND AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION, as set forth below. This agreement to arbitrate ("Arbitration Agreement") is governed by the Federal Arbitration Act ("FAA"); …

Except as expressly provided below, ALL DISPUTES AND CLAIMS BETWEEN US (EACH A "CLAIM" AND COLLECTIVELY, "CLAIMS") SHALL BE EXCLUSIVELY RESOLVED BY BINDING ARBITRATION SOLELY BETWEEN YOU AND LYFT. These Claims include, but are not limited to, any dispute, claim or controversy, whether based on past, present, or future events, arising out of or relating to: this Agreement and prior versions thereof (including the breach, termination, enforcement, interpretation or validity thereof), the Lyft Platform, the Rideshare Services, the Lyft Services, … any other goods or services made available through the Lyft Platform by Lyft or a third-party provider… and all other federal and state statutory and common law claims. All disputes concerning the arbitrability of the Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator, except as expressly provided below.

BY AGREEING TO ARBITRATION, YOU UNDERSTAND THAT YOU AND LYFT ARE WAIVING THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL FOR ALL CLAIMS, EXCEPT AS EXPRESSLY OTHERWISE

> PROVIDED IN THIS ARBITRATION AGREEMENT. This Arbitration Agreement is intended to require arbitration of every claim or dispute that can be lawfully arbitrated, except for those claims and disputes which by the terms of this Arbitration Agreement are expressly excluded from the requirement to arbitrate.

(Exh. 3, pp. 1-2, 22-24, Sections 17, emphasis in original.)

LEGAL STANDARD

An agreement to submit disputes to arbitration "is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract." (Code Civ. Proc., § 1281; see 9 U.S.C. § 2.)

On review of a motion to arbitrate, "the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) grounds exist for the recission of the agreement." (Code Civ. Proc. § 1281.2.)

DISCUSSION

Preliminarily, Lyft failed to mention in its opening brief that Plaintiff did not call for the Lyft ride at issue but, instead, was a guest of another individual who utilized the Lyft app and their own account to hail the ride. This is an obviously material fact that impacts the legal analysis, and yet it was raised by Plaintiff in their opposition to the motion, rather than by Lyft in the moving papers. Consequently, the legal authorities that best support Lyft's position were mentioned for the first time in their reply brief. Lyft's failure to mention or brief a material fact of this nature is, at best, surprising and concerning. Notwithstanding, based on the legal authorities, the Court shall grant the motion.

Plaintiff does not dispute the existence of the TOS and its arbitration provision. Plaintiff opposes the motion on the ground that the arbitration agreement is not enforceable because (1) the subject Lyft ride was arranged for by another Lyft user, through that person's Lyft account; and (2) the injury occurred before she entered the Lyft vehicle. Plaintiff contends that under these facts, she did not engage Lyft's Rideshare Services, which is required prior to the TOS and its arbitration provision coming into effect.

Whether the incident falls within Plaintiff's own, separate, contractual relationship with Lyft will turn on construction of terms within that agreement, such as (1) whether the claims in this lawsuit "aris[e] out of or relate[e] to . . . the Lyft Platform," and (2) whether Plaintiff is a "User" or "Rider" as defined in the TOS based on the facts of this case. These questions relate to the "scope, applicability, and enforceability" of the Agreement.

The scope of arbitration is a matter of agreement between the parties. (*Harshad & Nasir Corp. v.*

Global Sign Systems, Inc. (2017) 14 Cal.App.5th 423, 542.) "Ordinarily, the question whether a particular claim or issue is subject to arbitration is a matter to be determined by the trial court, not the arbitrator. When, however, the parties clearly and unmistakably provide otherwise, the arbitrator may determine the scope of the arbitration." (*Id.* at p. 543, internal citations omitted.) That is the case here. (McCachern Dec. Exh. 3 at § 17 "[D]isputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement . . .shall be decided by the arbitrator," subject to exceptions not at issue here].)

CONCLUSION

Lyft's motion to compel arbitration is GRANTED. The proceedings are STAYED as to Lyft only, pending resolution of the arbitration.

The initial case management conference scheduled for April 24, 2025 is CONTINUED to October 15, 2025 at 3:00 PM in Department 20. No less than 15 days prior to the CMC, the parties shall file CMC statements which either advise the Court of the status of arbitration proceedings, or request a continuance if the arbitration remains pending.

If a party does not timely contest the foregoing Tentative Ruling and appear at the hearing, the Tentative Ruling will become the order of the court.

HOW DO I CONTEST A TENTATIVE RULING?

THROUGH ECOURT
Notify the Court and all the other parties no later than 4:00 PM one court day before the scheduled hearing, and briefly identify the issues you wish to argue through the following steps:
1. Log into eCourt Public Portal
2. Case Search
3. Enter the Case Number and select "Search"
4. Select the Case Name
5. Select the Tentative Rulings Tab
6. Select "Click to Contest this Ruling"
7. Enter your Name and Reason for Contesting
8. Select "Proceed"

BY EMAIL
Send an email to the DEPARTMENT CLERK and all the other parties no later than 4:00 PM one court day before the scheduled hearing. This will permit the department clerk to send invitations to counsel to appear remotely.

BOTH ECOURT AND EMAIL notices are required.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

South District, Governor George Deukmejian Courthouse, Department S25

23LBCV02250
SARAH KEITH, AN INDIVIDUAL AND SUCCESSOR-IN-INTEREST TO DECEDENT, MARISSA OFFLEE;, et al. vs LYFT, INC., A DELAWARE CORPORATION;, et al.

July 22, 2025
11:44 AM

Judge: Honorable Nicole M. Heeseman
Judicial Assistant: M. Briel
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 07/08/2025 for Hearing on Motion to Compel Arbitration, now rules as follows:
Legal Standard

Under California and federal law, public policy favors arbitration as an efficient and less expensive means of resolving private disputes. (Moncharsh v. Heily & Blasé (1992) 3 Cal.4th 1, 8-9; AT&T Mobility LLC v. Concepcion (2011) 563 U.S. 333, 339.) Accordingly, whether an agreement is governed by the California Arbitration Act or the Federal Arbitration Act, courts resolve doubt about an arbitration agreement's scope in favor of arbitration. (Moncharsh, supra, 3 Cal.4th at p. 9; Comedy Club, Inc. v. Improv West Associates (9th Cir. 2009) 553 F.3d 1277, 1284; see also Engalla v. Permanente Med. Grp., Inc. (1997) 15 Cal.4th 951, 971-972 ["California law incorporates many of the basic policy objectives contained in the Federal Arbitration Act, including a presumption in favor of arbitrability [citation] and a requirement that an arbitration agreement must be enforced on the basis of state law standards that apply to contracts in general [citation]."].) "[U]nder both the FAA and California law, 'arbitration agreements are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'" (Higgins v. Superior Court (2006) 140 Cal.App.4th 1238, 1247.)

Enforceability of an arbitration agreement is determined pursuant to the FAA, which requires that: (1) parties have entered into a written arbitration agreement, (2) there exists an independent basis for federal jurisdiction, and (3) the underlying transaction involves interstate commerce. (Cosmotek Mumessillik Ve Ticaret Ltd Sirkketi v. Cosmotek USA, Inc. (D.Conn.1996) 942 21 F.Supp. 757, 759.) If the transaction between the parties does not implicate interstate commerce,

the court applies the forum state's substantive laws. (Howard Fields & Associates v. Grand Wailea Co. (D.Hawaii 1993) 848 F.Supp. 890, 893.)

The party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence. (Engalla, supra, 15 Cal.4th 951, 972.) A petition to compel arbitration must allege both a "written agreement to

arbitrate" the controversy, and that a party to that agreement "refuses to arbitrate" the controversy. (Code Civ. Proc., § 1281.2.) It then becomes plaintiff's burden, in opposing the motion, to prove by a preponderance of the evidence any fact necessary to her opposition. (Ibid.)

"Code of Civil Procedure section 1281.2 requires a trial court to grant a petition to compel arbitration 'if the court determines that an agreement to arbitrate the controversy exists.'" (Avery v. Integrated Healthcare Holdings, Inc. (2013) 218 Cal.App.4th 50, 59 [quoting Code Civ. Proc., § 1281.2].) Accordingly, "when presented with a petition to compel arbitration, the court's first task is to determine whether the parties have in fact agreed to arbitrate the dispute." (Id., at p. 59.) Generally, on a petition to compel arbitration, the court must grant the petition unless it finds either (1) no written agreement to arbitrate exists; (2) the right to compel arbitration has been waived; (3) grounds exist for revocation of the agreement; or (4) litigation is pending that may render the arbitration unnecessary or create conflicting rulings on common issues. (Ibid.; see also Condee v. Longwood Management Corp. (2001) 88 Cal.App.4th 215, 218-219.) "In these summary proceedings the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination." (Avery, supra, 218 Cal.App.4th at p. 59; accord Rosenthal v. Great Western Financial Securities Corp. (1996) 14 Cal.4th 394, 413.)

A motion to compel arbitration or stay proceedings must state verbatim the provisions providing for arbitration or must have a copy of them attached. (Cal. Rules of Court, rule 3.1330.)

Request for Judicial Notice

The Court GRANTS Plaintiffs Wilhoit and Harris' Request for Judicial Notice of Exhibits 10-15.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

South District, Governor George Deukmejian Courthouse, Department S25

23LBCV02250
SARAH KEITH, AN INDIVIDUAL AND SUCCESSOR-IN-INTEREST TO DECEDENT, MARISSA OFFLEE;, et al. vs LYFT, INC., A DELAWARE CORPORATION;, et al.

July 22, 2025
11:44 AM

Judge: Honorable Nicole M. Heeseman
Judicial Assistant: M. Briel
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning. (Herrera v. Deutsche Bank National Trust Co. (2011) 196 Cal.App.4th 1366, 1375.) When judicial notice is taken of a document, the truthfulness and proper interpretation of the document are disputable. (Ibid.) Judicial notice of a Court record is limited to the existence of the documents and is not the same as taking notice of the truth of any matters or facts stated therein. (Ibid.)

Evidentiary Objections

The evidentiary objections to Defendant's submitted declarations and exhibits (No. 1 -5) are overruled.

Ruling

The Court finds that the enforceability of the Arbitration Agreement falls under the California Arbitration Act, i.e., Code of Civil Procedure section 1281.2, et seq. While the Arbitration Agreement provides that it is governed by the Federal Arbitration Act ("FAA"), the procedural provisions of the FAA, i.e., 9 U.S.C. sections 3, 4, 10, and 11, must be expressly incorporated into the terms of the Arbitration Agreement to be enforceable under the FAA. Otherwise, the California Arbitration Act applies as the default procedural rules. (Victrola 89, LLC v. Jaman Properties 8, LLC (2020) 46 Cal.App.5th 337, 345 ["[T]he FAA's procedural provisions (9 U.S.C. §§ 3, 4, 10, 11) do not apply unless the contract contains a choice-of-law clause expressly incorporating them."]) It also follows then that the reference to Delaware law under the Arbitration Agreement is insufficient to invoke the alternative procedural provisions of Delaware arbitration laws since it does not expressly incorporate the procedural rules of Delaware arbitration law. (See id.; McCachern Decl., Ex. 6 [December 9, 2020 Lyft Terms of Service] ¶ 17(a) at p. 17; Ex. 7, ¶ 17; Ex. 8 [December 12, 2022 Lyft Terms of Service] ¶ 17(a) at p. 22.)

Existence of Arbitration Agreement

"With respect to the moving party's burden to provide evidence of the existence of an agreement to arbitrate, it is generally sufficient for that party to present a copy of the contract to the court." (Baker v. Italian Maple Holdings, LLC (2017) 13 Cal.App.5th 1152, 1160.) Defendant Lyft has

met its initial burden of showing that an arbitration agreement exists between the parties. Plaintiff Wilhoit affirmatively accepted Lyft's Terms of Service within the Lyft application on four (4) separate occasions – at the first instance during the account creation process, and subsequently thereafter when Defendant Lyft updated its Terms of Service. (McCachern Decl., ¶ 12(a-g); Exs. 1-8.)

The Court finds that the evidence Defendant Lyft submitted is sufficient to establish the validity of the Arbitration Agreement by a preponderance of the evidence. (McCachern Decl., Ex. 6, ¶ 17(a) at p. 17.) Defendant Lyft has established that Plaintiff Wilhoit signed the Terms of Service containing the Arbitration Agreement on at least four separate occasions. (McCachern Decl., ¶ 12, Ex. 1.) Not being able to recall signing an agreement on one occasion is perhaps understandable, but failure to recall signing on four separate occasions leads this Court to the conclusion that Plaintiff either knew or should have known of the Arbitration Agreement. (See Desert Outdoor Advertising v. Superior Court (2011) 196 Cal.App.4th 866, 872 ["A cardinal rule of contract law is that a party's failure to read a contract, or to carefully read a contract, before signing it is no defense to the contract's enforcement."])

The general rule is that only a party to an arbitration agreement may enforce it, though there are exceptions. (Ronay Family Limited Partnership v. Tweed (2013) 216 Cal.App.4th 830, 837; JSM Tuscany, LLC v. Superior Court (2011) 193 Cal.App.4th 1222, 1236 ["[O]ne must be a party to an arbitration agreement to be bound by it or invoke it."].)

One exception is equitable estoppel. (Jenks v. DLA Piper Rudnick Gray Cary US LLP (2015) 243 Cal.App.4th 1, 8-9.) Equitable estoppel applies when the claims are "based on the same facts and are inherently inseparable from the arbitrable claims against signatory defendants." Garcia v. Pexco, LLC (2017) 11 Cal.App.5th 782, 786 [quoting Boucher v. Alliance Title Co., Inc. (2005) 127 Cal.App.4th 262, 271].) Here, the Court finds equitable estoppel applies. Plaintiff Harris, the spouse of Plaintiff Wilhoit, received the benefits of use of Lyft's terms of the agreement between Defendant and Plaintiff Wilhoit. Additionally, Plaintiff Harris' claims "are based on the same facts and are inherently inseparable from Plaintiff Wilhoit's claims, which are subject to the Arbitration Agreement.

Covered Claims

Lyft must then show that the terms of the Arbitration Agreement cover the claims in question. The terms of the arbitration provision from each iteration of Lyft's Terms of Service provide that it governs any dispute between Lyft and its users. (McCachern Decl., Ex. 2 ¶ 17(a); Ex. 4 ¶ 17(a); Ex. 6 [December 9, 2020 Terms of Service] ¶ 17(a) ["All disputes concerning the arbitrability of a Claim (including disputes about the scope, applicability, enforceability, revocability or validity of the Arbitration Agreement) shall be decided by the arbitrator, except as expressly provided below"]; Ex. 8 ¶ 17(a).) The scope of this provision is sufficiently broad to encompass Plaintiff's claims against Lyft in this action. (McCachern Decl., Ex. 6 ¶ 17(b) at p. 18.) The Court finds that Lyft has also established this burden. Further, the Court is not persuaded by Plaintiffs Wilhoit and Harris' argument that one or more of the exceptions of the delegation provision of the Arbitration Agreement apply to this scenario or that the delegation provision is invalid or enforceable. (See Opp., pp. 10:1-28 to 12:1-5; 14:16-25 to 15:1:7.) The scope of this delegation clause is sufficiently broad to encompass Plaintiff Wilhoit's claim.

Unconscionability

"[P]rocedural and substantive unconscionability must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of

unconscionability." (Armendariz v. Foundation Health Psychcare Services, Inc. (2000) 24 Cal.4th 83, 102 ("Armendariz").) The courts invoke a sliding scale which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves, i.e., the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa. (Id., at p. 114.) Plaintiff bears the burden of proving that the provision at issue is both procedurally and substantively unconscionable.

"Procedural unconscionability focuses on the elements of oppression and surprise. [Citations] 'Oppression arises from an inequality of bargaining power which results in no real negotiation and an absence of meaningful choice … Surprise involves the extent to which the terms of the bargain are hidden in a 'prolix printed form' drafted by a party in asuperior bargaining position.' [Citations]" (Roman v. Superior Court (2009) 172 Cal.App.4th 1462, 1469.)

"Substantive unconscionability focuses on the actual terms of the agreement and evaluates whether they create 'overly harsh' or ''one-sided' results' [Citations] that is, whether contractual provisions reallocate risks in an objectively unreasonable or unexpected manner. [Citation]. Substantive unconscionability 'may take various forms,' but typically is found in the employment context when the arbitration agreement is 'one-sided' in favor of the employer without sufficient justification, for example, when 'the employee's claims against the employer, but not the employer's claims against the employee, are subject to arbitration.' [Citations]" (Roman, supra, 172 Cal.App.4th at pp. 1469-1470.)

The Court finds that Plaintiffs' arguments of unconscionability are conclusory. Therefore, the Court rejects Plaintiff's arguments on this point.

Code of Civil Procedure section 1281.2

Plaintiffs Wilhoit and Harris and Plaintiffs Keith and Offlee contentions that Code of Civil Procedure section 1281.2 prohibits arbitration where third parties are involved is without merit. The Court has the discretion under that code provision to send a matter to arbitration while staying the litigation as to the remaining parties. (CCP § 1281.2(d).) While the claims of Keith and Offlee are not subject to the terms of the Arbitration Agreement, this does not prohibit the Court from sending Wilhoit's and Harris' claims to arbitration.

Ruling

The Court grants Defendant's Motion to Compel Arbitration as to Plaintiffs Wilhoit and Harris. Plaintiffs Wilhoit and Harris' claims against Defendant Lyft are stayed pending arbitration.

Post-Arbitration Status Conference is scheduled for December 19, 2025 at 8:30 AM in Dept. S25.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

South District, Governor George Deukmejian Courthouse, Department S25

23LBCV02250
SARAH KEITH, AN INDIVIDUAL AND SUCCESSOR-IN-INTEREST TO DECEDENT, MARISSA OFFLEE;, et al. vs LYFT, INC., A DELAWARE CORPORATION;, et al.

July 22, 2025
11:44 AM

Judge: Honorable Nicole M. Heeseman
Judicial Assistant: M. Briel
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

Case Management Conference scheduled for September 15, 2025 is advanced and vacated. Case Management is scheduled for December 19, 2025 at 8:30 AM in Dept. S25

The case is ordered stayed pending binding arbitration as to Keith Harris (Plaintiff) and Vonda Kay Wilhoit (Plaintiff).

Post-Arbitration Status Conference is scheduled for 12/19/2025 at 08:30 AM in Department S25 at Governor George Deukmejian Courthouse.

On the Court's own motion, the Case Management Conference scheduled for 09/15/2025 is advanced to this date and continued to 12/19/2025 at 08:30 AM in Department S25 at Governor George Deukmejian Courthouse.

The Clerk is to give notice

Certificate of Mailing is attached.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

WILLIAM WALKER IV, ET AL,

Plaintiff,

v.

LYFT, INC. ET AL,

Defendants.

Case No. 2022 CA 002704 V
Judge Robert R. Rigsby

OMNIBUS ORDER

Before the Court are two motions. First, is the Defendant Deshawn Maurice Salmond's *Motion to Compel Discovery*, filed on January 26, 2023. Despite the lack of opposition, Defendant failed to comply with Judge Rigsby's Supplement to General Order on Trial Procedures, Section VI.

Second, is *Defendatn Lyft, INC.'s Motion to Compel Arbitration and Stay These Proceedings*, filed on October 4, 2022, opposed on November 1, 2022, and replied to on January 20, 2023. Defendant Lyft ("Lyft") points to an arbitration clause in its Terms of Service which stipulates to binding arbitration. Mot. at 7. Plaintiffs asserts that there is not sufficient evidence that there was an arbitration agreement, and that the Terms of Service cannot reasonably be construed to apply to Plaintiff Bost's personal injury claim.

When reviewing motions to compel arbitration, there is a "well established preference for arbitration when the parties have expressed a willingness to arbitrate." *Friend v. Friend*, 609 A.2d 1127, 1139 (D.C. 1992). Additionally, in situations such as this it has been determined that "[a]ny reasonable smartphone user would understand that by clicking on" Lyft's consent button, "he was

agreeing to [Lyft's Terms of Service]." *Gambo v. Lyft*, ---- F.Supp.3d ----, 2022 WL 16961132 (D.D.C. Nov. 16, 2022). Finally, when there is a doubt as to whether the arbitration agreement covered specific conduct, "doubts should be resolved in favor of coverage." *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986). Moreover, arbitrability of claims is left up to contract. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S.Ct. 524, 528 (2019).

Here, it is established that each Plaintiff in this case at least clicked the button that agrees to Lyft's Terms of Service. Opp. at 7. Given that "[a]ny reasonable smartphone user would understand that by clicking on" Lyft's consent button, "he was agreeing to [Lyft's Terms of Service]," it also means that all Plaintiffs assented to the arbitration clause within the Terms of Service. Additionally, whether Plaintiff Bost's personal injury claim would be within the coverage of the arbitration clause is left up to the arbitrator, because the Terms of Service specifically state that is the agreement between Lyft and users. Lyft Ex. 2. Therefore, this Court must **GRANT** Lyft's motion to compel arbitration and **STAY** this case.

Accordingly, and based on the entire record herein, it is this the 1st day of March, 2023, hereby

ORDERED that Defendant's *Motion to Compel Discovery* is **DENIED**; it is further

ORDERED that *Defendatn Lyft, INC.'s Motion to Compel Arbitration and Stay These Proceedings*, is **GRANTED**; it is further

ORDERED that this case is **STAYED** and Plaintiffs are hereby required to submit their claims against Lyft in private arbitration pursuant to the Terms of Service; it is further

ORDERED that all future dates are **VACATED** to await further instruction (including the hearing on Friday March 3, 2023).

SO ORDERED.

Robert R. Rigsby, Associate Judge
Superior Court of the District of Columbia

Copies to *Counsel of Record* via Odyssey.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TIMOTHY M. WILLIAMS, Plaintiff,	§ § §	
VS.	§	CIVIL ACTION NO. 4:22-CV-03394
YORDANO DUVERGER, *et al.*, Defendants.	§ § §	

ORDER

Before the Court are Defendant Lyft, Inc.'s motion for summary judgment for lack of subject matter jurisdiction (Dkt. 32) and motion to compel arbitration (Dkt. 34). Having reviewed the briefing and applicable law, the Court concludes that it has subject matter jurisdiction and compels arbitration.

I. BACKGROUND

This case arises from personal injuries Plaintiff Timothy Williams allegedly sustained while attempting to enter a vehicle driven by Defendant Yordano Duverger, a driver for Lyft, a rideshare service. (Dkt. 12 at p. 2). Williams, who alleges he is disabled, was getting into the vehicle when Duverger allegedly started to drive away before Williams closed the door and secured himself. (*Id.* at pp. 2-5). Williams sued both Lyft and Duverger.

Lyft maintains that the Court lacks subject matter jurisdiction. Alternatively, Lyft seeks to enforce an arbitration provision it claims Williams assented to. Williams urges that the Court has subject matter jurisdiction and arbitration is inappropriate because he never agreed to arbitrate.

II. LEGAL STANDARDS

A. Subject Matter Jurisdiction

It is well-settled that "[f]ederal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). While "[c]ourts have an independent obligation to determine whether subject-matter jurisdiction exists," *Hertz Corp. v. Friend*, 559 U.S. 77, 94, 130 S.Ct. 1181, 175 L.Ed.2d 1029 (2010) (citing *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006)), parties may also challenge a federal court's subject matter jurisdiction, *Kumar v. Frisco Indep. Sch. Dist.*, 443 F. Supp. 3d 771, 777 (E.D. Tex. 2020). "The burden of establishing subject matter jurisdiction rests upon the party asserting jurisdiction." *Volvo Trucks N. Am., Inc. v. Crescent Ford Trucks Sales, Inc.*, 666 F.3d 932, 935 (5th Cir. 2012); *Settlement Funding, L.L.C. v. Rapid Settlements, Ltd.*, 851 F.3d 530, 537 (5th Cir. 2017) (citation omitted).

The Federal Arbitration Act ("FAA") governs the enforceability of arbitration agreements in federal court. *See* 9 U.S.C. § 1 *et seq*. However, the FAA does not create an independent basis for federal jurisdiction, thus, "there must be diversity of citizenship or some other independent basis for federal jurisdiction before the order can issue." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 26 n.32, 103 S.Ct. 927, 942 n.32, 74 L.Ed.2d 765 (1983).

B. The FAA

Enforcing an arbitration agreement under the FAA involves two analytical steps. "The first is contract formation—whether the parties entered into *any arbitration*

agreement at all." *Kubala v. Supreme Prod. Servs., Inc.*, 830 F.3d 199, 201 (5th Cir. 2016) (emphasis in original). "The second involves contract interpretation to determine whether *this* claim is covered by the arbitration agreement." *Id.* (emphasis in original). The analysis changes at the second step, however, when the arbitration agreement contains a delegation clause giving the arbitrator the responsibility to decide threshold issues of arbitrability. *See First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995). In other words, "if the party seeking arbitration points to a purported delegation clause, the court's analysis is limited." *Kubala*, 930 F.3d at 202. In that instance, the court performs the first step: analysis of contract formation. At the second step, if there is a valid contract, the court must determine whether the purported delegation clause in fact evinces the intent to have the arbitrator decide whether the claims must be arbitrated. *Id.*

"When the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract." *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. 63, 71, 139 S.Ct. 524, 531, 202 L.Ed.2d 480 (2019). If "a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding." *Smith v. Spizzirri*, 601 U.S. ----, ---- S.Ct. ----, 2024 WL 2193872, at *4 (May 16, 2024).

C. Summary Judgment

Summary judgment is appropriate when the pleadings, the discovery, and any affidavits show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the record "could

not lead a rational trier of fact to find for the non-moving party," then no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

III. ANALYSIS

A. The Court has subject matter jurisdiction over this matter.

When a party questions a federal court's subject matter jurisdiction, that issue must be resolved before reaching any others. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (citing *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977)). Lyft's motion for summary judgment argues that the Court lacks subject matter jurisdiction over what it characterizes as "a motor vehicle incident between Texas citizens." (Dkt. 32 at p. 3).

At the outset, the Court notes that a motion for summary judgment is not the appropriate procedural mechanism for raising a challenge to subject matter jurisdiction. *See Stanley v. Cent. Intelligence Agency*, 639 F.2d 1146, 1157 (5th Cir. 1981) ("Since the granting of summary judgment is a disposition on the merits of the case, a motion for summary judgment is not the appropriate procedure for raising the defense of lack of subject matter jurisdiction."); *see also Hix v. U.S. Amry Corps. of Engineers*, 155 F. App'x 121, 128 (5th Cir. 2005) (explaining "the district court erred when it dismissed the claims against J & S on summary judgment instead of on Rule 12(b)(1) grounds"). For this reason, Lyft's motion for summary judgment is **DENIED**.

However, the Court will not simply assume it has jurisdiction. Rather, "the basis upon which jurisdiction depends must be alleged affirmatively and distinctly and cannot be established argumentatively or by mere inference." *Getty Oil Corp. v. Ins. Co. of N.A.*, 841 F.2d 1254, 1259 (5th Cir. 1988) (citing *Ill. Cent. Gulf R. Co. v. Pargas, Inc.*, 706 F.2d 633, 636 & n.2 (5th Cir. 1983)). As such, the Court will examine the allegations presented to analyze its subject matter jurisdiction.

When Williams originally filed this lawsuit, he alleged that Lyft and Duverger's negligence caused his injuries. (Dkt. 1 at p. 4). Williams averred that he is a citizen of Texas. (*Id.* at p. 3). He also stated that Duverger is a citizen of the same state. (*Id.*). Lyft immediately argued that the Court lacked subject matter jurisdiction because there were no federal claims alleged and complete diversity amongst the parties did not exist. (Dkt. 7). Subsequently, Williams filed an amended complaint wherein he now alleges that, in addition to claims for negligence, he is a disabled individual and Lyft discriminates against those with disabilities by failing to train drivers on the strictures of the Americans with Disabilities Act ("ADA")—a federal statute. *See* 42 U.S.C. §§ 12181 *et seq*; (Dkt. 12). Williams further alleges that, despite Lyft previously being sued for alleged violations of the ADA, the underlying incident shows that Lyft has failed to "make the necessary changes that will ensure the safety of [its] disabled passengers." (Dkt. 12 at p. 2) (emphasis omitted). A liberal reading of Williams's first amended complaint reveals that he sufficiently invokes the ADA which, of course, presents a federal question. *See Quezada v. Bechtel OG & C Constr. Servs., Inc.*, 946 F.3d 837, 843 (5th Cir. 2020) ("Here, the

underlying dispute between [plaintiff] and [defendant] arises out of the ADA, a federal statute. Because the arbitration claims would thus be subject to federal-question jurisdiction absent the arbitration agreement, the district court ha[s] authority to resolve the parties' motions under … the FAA."), *abrogated on other grounds by Badgerow v. Walters*, 596 U.S 1, 142 S.Ct. 1310, 212 L.Ed.2d 355 (2022); *see also Polyflow, L.L.C. v. Specialty RTP, L.L.C.*, 993 F.3d 295, 302 (5th Cir. 2021) ("[The defendant]'s argument that [plaintiff] did not plead the federal claims until its [first amended complaint] is unconvincing. What matters is that a federal question [] animated the underlying dispute, not whether [plaintiff] listed them in its original complaint."). As such, the Court finds that it has subject matter jurisdiction.

B. The Parties Must Arbitrate

Lyft moves to compel arbitration based on "Terms of Service" it argues Williams agreed to when he registered an account to use the rideshare services on its software platform. (Dkt. 34 at p. 3). Williams responds that he did not register for an account with Lyft. (Dkt. 35 at p.2).

1. The Terms of Service.

Before requesting a ride on Lyft's platform, users are first required to create an account using a software application (the "Lyft App"). (Dkt. 34-1 at ¶¶ 4, 7). To create the account, the user must provide a name, email address, and phone number. (*Id.* at ¶ 7). Next, the user is prompted to accept the "Terms of Service." (*Id.* at ¶ 8).

Paul McCachern, the Safety Program Lead for Lyft, submitted a declaration stating he accessed Lyft's records and determined that Williams created three separate user accounts through the Lyft App. (*Id.* at ¶ 11). The Lyft App required Williams to scroll through the entirety of the Terms of Service and select an option stating "I Agree" to the terms before having access to the rideshare platform. (*Id.* at ¶¶ 13, 15). According to McCachern, Lyft's records demonstrate that Williams accepted the Terms of Service on four separate occasions—the three times he created a new account and again when the terms were later revised. (*Id.* at ¶ 12).

The Terms of Service include an arbitration provision. (*Id.* at ¶ 15). The arbitration provision provides that the parties "AGREE TO RESOLVE ANY DISPUTE BY ARBITRATION." (*Id.* at p. 22). The disputes subject to the arbitration provision "include, but are not limited to, any dispute, claim or controversy, … arising out of or relating to: … the Lyft Platform, the Service, [or] any other goods or services made available through the Lyft Platform …." (*Id.*). More explicitly, covered disputes include claims arising under the ADA. (*Id.*).

2. Williams accepted the Terms of Service.

Williams argues, with no evidence, that he did not register on the Lyft App, so he never agreed to the Terms of Service. (Dkt. 35 at p. 2). As support, Williams calls into question evidence that Lyft did not submit, such as debit card numbers, ride history showing the addresses traveled to, and general account information. (*Id.*).

"Where the very existence of a contract containing the relevant arbitration agreement is called into question, the federal courts have authority and responsibility to decide the matter." *Arnold v. Homeaway, Inc.*, 890 F.3d 546, 550 (5th Cir. 2018) (cleaned up) (quotations and citations omitted). Background principles of state contract law control the interpretation of the formation, validity, and scope of arbitration agreements, "including the question of who is bound by them." *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630, 129 S.Ct. 1896, 173 L.Ed.2d 832 (2009); *Carey v. 24 Hour Fitness, USA, Inc.*, 669 F.3d 202, 205 (5th Cir 2012).

Under California law,[1] a contract requires manifestation of mutual assent—whether by written or spoken word or by conduct. *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904, 910 (N.D. Cal. 2011) (citing *Windsor Mills, Inc. v. Collins & Aikman Corp.*, 25 Cal. App. 3d 987, 101 Cal. Rptr. 347 (1972)). Such a manifestation is judged objectively, via an outward manifestation or expression of assent. *Windsor Mills*, 25 Cal. App. 3d at 992, 101 Cal. Rptr. 347.

Lyft submitted evidence that Williams agreed to the Terms of Service on four occasions. (Dkt. 34 at p. 4). Williams, however, did not proffer any evidence, and instead simply contends that he was not the holder of the account that summoned the specific ride

[1] Courts apply the contract law of the state that governs the agreement. *Wash. Mut. Fin. Grp. v. Bailey*, 364 F.3d 260, 264 (5th Cir. 2004). Lyft cites Texas cases on this point, appearing to argue that Texas law applies, while Williams does not take any position on this issue. (Dkt. 36 at p. 6). However, the Terms of Service, which include the arbitration provision Lyft seeks to enforce, has a choice of law clause designating California law. (Dkt. 34-1 at p. 28). Without the benefit of briefing from the parties on this issue, the Court has reviewed Texas and California law and concludes that the same result would attain under either body of jurisprudence. Seeing no reason to depart from the parties' choice of law, the Court will apply California law.

that led to his injury. (Dkt. 35 at p. 2). But as discussed above, the initial inquiry is whether there was an agreement to arbitrate *any claims at all*—not whether Williams registered the specific account that was used to hail Duverger the date of the incident. Based on the evidence presented, the Court finds that Lyft has demonstrated by a preponderance of the evidence that Williams objectively assented to the Terms of Service, and the parties have a valid contract with an arbitration agreement. *See Norcia v. Samsung Telecommunications Am., LLC*, 845 F.3d 1279, 1285 (9th Cir. 2017) (explaining that a party who is bound by a contract is bound by all its terms under California law). Therefore, Williams is bound by the arbitration agreement.

3. The delegation clause.

The parties' "written provision … to settle by arbitration a controversy," 9 U.S.C. § 2, contains a clause that gives the arbitrator the authority to decide "the scope, applicability, enforceability, revocability or validity" of the agreement. (Dkt. 34-1 at p. 22). This provision is a delegation clause. The only question remaining after finding a valid agreement with a delegation clause is "whether the purported delegation clause is in fact a delegation clause." *Kubala*, 830 F.3d 199, 202 (5th Cir. 2016).

Williams's exclusive argument in opposition to Lyft seeking to enforce the arbitration provision is a challenge to the validity and enforceability of the agreement as a whole. (Dkt. 35 at p. 2). Williams's argument is unavailing here because the Supreme Court "require[s] the basis of challenge to be directed specifically to the agreement to arbitrate before the court will intervene." *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 71, 130

S.Ct. 2772, 2778, 177 L.Ed.2d 403 (2010); *accord Edwards v. Doordash, Inc.*, 888 F.3d 738, 744 (5th Cir. 2018) ("If there is an agreement to arbitrate with a delegation clause, and absent a challenge to the delegation clause itself, we will consider that clause to be valid and compel arbitration."). Because Williams does not expressly attack the delegation clause, the Court "must enforce [the arbitration agreement] under §§ 3 and 4." *Id.* at 72.

Based on the foregoing, Lyft's motion to compel arbitration is **GRANTED**, and the Court **COMPELS** arbitration consistent with the agreement of the parties.

IV. CONCLUSION

Lyft's motion for summary judgment (Dkt. 32) is **DENIED**. Lyft's motion to compel arbitration (Dkt. 34) is **GRANTED**. The Court **COMPELS** arbitration and **STAYS** this matter as to Lyft and Williams. The Court retains Williams' claim against Duverger on the docket.

SIGNED at Houston, Texas on May 28, 2024.

George C. Hanks Jr.

GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE

CRUSER, MITCHELL, NOVITZ, SANCHEZ, GASTON & ZIMET, LLP
Douglas V. Sanchez, Esq. – 039851989
Mack Cali Corporate Center
50 Tice Boulevard, Suite 250
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Attorneys for Defendant,
Lyft, Inc.

RAUL M. PASSEGGI, and NINA V. PASSEGGI, Plaintiffs, vs. JOSE E. MASACHECALVA, DANIA CARABALI, MADELINE MEJIAS, JOSEPH V. MOHAREB, LYFT, INC., JOHN DOES 1-100 (fictitious designations); and ABC CORPORATION 1-100 (fictitious designations), Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO.: UNN-L-306-24 CIVIL ACTION **ORDER**

THIS MATTER having been opened to the Court upon the application of Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP, attorneys for Defendant, Lyft, Inc., for an Order compelling Plaintiffs, Raul M. Passeggi and Nina V. Passeggi to arbitrate their claims against Lyft pursuant to their agreement to submit all claims against one another to arbitration, and to stay the state court proceedings against Lyft, and the Court having considered the motion papers and any papers submitted in opposition thereto; and for good cause having been shown;

IT IS on this 19 of July, 2024.

ORDERED that Defendant, Lyft, Inc.'s motion to compel Plaintiffs to submit their claims against Lyft, Inc. to arbitration is hereby **GRANTED**; and it is further

ORDERED that Plaintiffs' state court lawsuit, Docket No.: UNN-L-306-24, is hereby **STAYED** as to Lyft, Inc., only; and it is further

ORDERED that should Plaintiffs wish to proceed on their claims against Lyft, Plaintiffs shall promptly file a demand for arbitration pursuant to the AAA Consumer Rules, unless Plaintiffs and Lyft otherwise agree; and it is further

ORDERED that a copy of this Order shall be served upon all parties within seven (7) days from the date hereof.

/s/ Mark P. Ciarrocca

Hon. Mark P. Ciarrocca, P.J.Cv. LS.C.

_____ Opposed

X Unopposed

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Lyft Inc.

DOMONIQUE AMONOO AND J'ANIQUE STRACK, Plaintiff(s), vs. SRJIJAN BAJRACHARYA, FRANK BOATENG, NEW WORLD VAN LINES, LYFT, INC., JOHN DOES 1-10 and ABC CORP. 1-10 (names being fictitious as true identities are unknown at this time), Defendant(s).	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO.: ESX-L-3955-23 CIVIL ACTION **ORDER**

THIS MATTER having been opened to the Court upon the application of Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP, attorneys for Defendant, Lyft, Inc., for an Order compelling Plaintiffs, Domonique Amonoo and J'anique Strack, to arbitrate their claims against Lyft pursuant to their agreement to submit all claims against one another to arbitration, and to stay the state court proceedings against Lyft, and the Court having considered the motion papers and any papers submitted in opposition thereto; and for good cause having been shown;

IT IS on this 24th of January, 2025.

ORDERED that Defendant, Lyft, Inc.'s motion to compel Plaintiffs to submit their claims against Lyft, Inc. to arbitration is hereby **GRANTED**; and it is further *

ORDERED that Plaintiffs' state court lawsuit, Docket No.: ESX-L-3955-23, is hereby

until the arbitration is completed (no later than 6 months)

STAYED as to Lyft, Inc., only; and it is further

ORDERED that should Plaintiffs wish to proceed on their claims against Lyft, Plaintiffs shall promptly file a demand for arbitration pursuant to the AAA Consumer Rules, unless Plaintiffs and Lyft otherwise agree; and it is further

ORDERED that a copy of this Order shall be served upon all parties within seven (7) days from the date hereof.

*For the reasons stated on the record.

Cynthia D. Santomauro

Cynthia D. Santomauro, J.S.C.

X Opposed

_____ Unopposed

4897-6063-6424, v. 1

Exhibit B

2024.11.26 (Lewis) Order Granting Defendant's Motion to Compel

FORM 4

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **IN THE COURT OF COMMON PLEAS**	**JUDGMENT IN A CIVIL CASE** **CASE NO. 2023-CP-10-03260**
DORIS LEWIS	LATASHA PELZER AND LYFT, INC.
PLAINTIFF(S)	DEFENDANT(S)
Submitted by: COURT	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other Appeal Dismissed

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order attached) ☒ Statement of Judgment by the Court:

THIS MATTER CAME BEFORE THE COURT on October 30, 2024 at the 3:30 PM time slot for a WebEx hearing on Defendant Lyft's motion to compel arbitration. Plaintiff was represented by Dyllan Rankin, Esq. Defendant Lyft was represented by Sarah Eibling, Esq. The Court afforded Lyft additional time to file a response to Plaintiff's memorandum which had been filed shortly before the hearing; Lyft did so by filing a reply brief on November 12, 2024 which the Court has reviewed in concert with Plaintiff's earlier brief. The Court finds as follows:

The Court finds that Lyft's motion should be granted, and the Court directs enforcement of section 17 of Lyft's Terms of Service agreement. The validity, scope, enforceability, and arbitrability of the agreement may be addressed by the arbiter.

The Court notes that the limitation of liability provision as contained in section 15 of the terms of service is not in section 17 of the arbitration agreement, and this limitation of liability may well constitute an impermissibly onerous provision in that, if controlling, Lyft would have essentially no liability under any scenario. Lyft essentially concedes on page 16 of its reply brief that, should the provisions of section 15 be found to be unconscionable, this paragraph can be severed from the Terms of Service agreement. Again, the Court notes Plaintiff's well-argued position with respect to this issue, but the Court issues no formal ruling concerning the enforceability of section 15.

Accordingly, Defendant's motion to compel arbitration is granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ Frank R. Addy, Jr. — **Circuit Court Judge**

2159 — **Judge Code**

Nov. 26, 2024 — **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Dyllan Rankin

ATTORNEY(S) FOR THE APPELLANT(S)

Sarah Eibling

ATTORNEY(S) FOR THE RESPONDENT(S)

CLERK OF COURT

Court Reporter: WebEx recording. Contact South Carolina Court Administration to request a transcript of the proceedings.

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption: Doris Lewis VS Latasha Pelzer , defendant, et al

Case Number: 2023CP1003260

Type: Order/Form 4

So Ordered

S/ Frank R. Addy, Jr.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CIVIL ACTION NO. 2024-CP-10-06252
DAVID WHITE,)	
)	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO RECONSIDER COURT'S ORDER DENYING DEFENDANT'S MOTION TO STAY AND COMPEL ARBITRATION**
Plaintiff,)	
)	
vs.)	
)	
LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE)	
)	
)	
Defendants.)	

COMES NOW Plaintiff, David White, by and through his undersigned counsel, hereby submits this Memorandum in Opposition of Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc.'s (hereinafter "Defendant Lyft") Motion to Reconsider the Order of the Court dated August 21, 2025. Defendant filed a Motion to Stay and Compel Arbitration on March 24, 2025, and the Court heard oral arguments on July 31, 2025. By order dated August 21, 2025, The Honorable Jennifer B. McCoy denied Defendant Lyft's Motion to Stay and Compel Arbitration. Defendant Lyft has requested the Court reconsider its ruling. However, the issues have been heard and ruled upon. All parties were given a full and fair opportunity to present their arguments to the Court; therefore, Plaintiff respectfully requests this Court deny Defendant Lyft's motion to reconsider in its entirety.

STATEMENT OF THE CASE

On December 26, 2021, at approximately 2:11 pm, Plaintiff was a passenger in a vehicle driven by Defendant Alicia White that was illegally parked on the side of Delano Street in Charleston, South Carolina. Complaint ¶ 8. Defendant White also had a passenger in the backseat that had requested transportation from Defendant Lyft earlier in the day. *Id*. As Defendant White prepared to leave her illegally parked position on the side of Delano Street, suddenly and without

warning, the vehicle being driven by Jane Doe left the roadway and side swiped the vehicle in which Plaintiff was a passenger. *Id.* at ¶ 10. Upon information and belief, Defendant Doe was distracted and violently collided with Defendant White's vehicle as it was illegally parked on the side of Delano Street. *Id.* at ¶ 11. Defendant Doe then fled the scene without stopping. *Id.* at ¶ 13. As a result of the motor vehicle collision, Plaintiff sustained injuries. *Id.* at ¶ 14.

Importantly, Plaintiff was not utilizing the Lyft platform at the time of the collision and had not requested transportation services from Lyft. Nowhere in Plaintiff's Complaint does it state that Plaintiff was a driver for Lyft, nor was he a passenger who had booked a ride through the Lyft application at the time of the subject collision. Rather, Plaintiff was merely a passenger in Defendant White's vehicle at the time of the collision, riding along with her when she decided to start accepting requests for transportation from Lyft participants. *Id.* at ¶ 8. The collision was, in part, due to Defendant White illegally parking her vehicle on the side of a public roadway and then attempting to re-enter the roadway before it was safe to do so while conducting separate Lyft business with another passenger. *Id.* at ¶ ¶ 8 -11.

Plaintiff filed a complaint against all Defendants in Charleston County Court of Common Pleas on December 18, 2024. Defendant Lyft filed an Answer to Plaintiff's complaint on February 20, 2025. Approximately three months after Plaintiff filed his complaint, Defendant filed the instant Motion to Stay and Compel Arbitration on March 24, 2025. The Honorable Jennifer B. McCoy heard oral arguments on the motion on July 31, 2025. On August11, 2025, the Court entered a Form 4 Order denying the Defendant's Motion to Stay and Compel Arbitration and requiring Plaintiff's counsel to submit a formal order. The Court subsequently adopted the order drafted by Plaintiff's Counsel on August 21, 2025. Defendant filed a Motion to Reconsider on

September 2, 2025, requesting the Court to reconsider its Order in full pursuant to Rule 59(e), SCRCP.

STANDARD OF REVIEW

Rule 59(e), SCRCP, allows a court to alter or amend a judgment upon a party's timely motion. Under South Carolina law, a motion to reconsider is appropriate in two situations. First, "a party may wish to file a motion when he believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court reconsider or rule on it." *Elam v. S.C. Dep't of Transp.,* 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Second, "a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* A party's dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. *Id.*

ARGUMENT

I. Defendant Lyft's Motion to Reconsider raises the same arguments already rejected by this Court at the July 31, 2025, hearing.

The Court should deny the Motion to Reconsider as it has already heard the arguments made by Defendant Lyft previously and denied it. Motions to Reconsider are not meant to allow a party to repeat the arguments originally made and hope for a different outcome. The Federal Rules upon which the State Rules are based address this point more specifically. According to the discussion of Rule 59 of the Federal Rules of Civil Procedure, courts note that, "[M]otions for reconsideration will not be granted absent highly unusual circumstances." *See McDowell v. Calderon,* 197 F.3d 1253, 1255 (9th Cir. 1999). Such motions do not provide litigants with an opportunity to have a "second bite of the apple." *See Sequa Corp. v. GBJ Corp.* 156 F.3d 136 (2nd Cir. 1998). The discussion further states, "motions for reconsideration are not vehicles for re-litigating old issues…nor are they motions for initial consideration." *See National Ecological*

Foundation v. Alexander, 496 F.3d 466, 477 (6th Cir. 2007). A motion to reconsider is not a motion to re-examine the evidence and arguments before the Court at the initial proceeding and are appropriately granted only under highly unusual circumstances.

In the case at bar, Defendant Lyft has failed to provide any evidence that the Court misunderstood, failed to fully consider, or failed to rule on an argument or issue presented to the Court in its memorandum in support or during the hearing on July 31, 2025. Defendant Lyft is simply making the same arguments already made but is now hoping for a different outcome. The arguments presented are ones that were already presented to the court and rejected. It is clear the Defendant is dissatisfied with the Court's decision to deny the Motion to Stay and Compel Arbitration, but such dissatisfaction is not grounds for relief under Rule 59. Thus, Defendant's Motion to Reconsider must be denied.

II. This Court correctly held the Terms of Service were neither triggered nor applicable at the time of the subject collision as Plaintiff was not engaging with Defendant Lyft's Platform, and Defendant Lyft offers no evidence otherwise.

Even in the instance that a court determines a valid agreement to arbitrate exists between parties, the court must go one step further to ascertain whether the agreement applies to the controversy in question. *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 452 (2003). The factual allegations within a complaint must be within the scope of the arbitration agreement. *See Partain v. Upstate Auto. Grp*., 386 S.C. 488, 491-92, 689 S.E.2d 602, 604 (2010) (citing *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2010)). Since an arbitration agreement originates from a contract, a party cannot be required to arbitrate a dispute which he did not agree to. *See Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007) (citing *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118). In order to determine whether an arbitration agreement applies to a claim, the court will analyze whether "a 'significant relationship' exists

between the asserted claims ***and the contract in which the arbitration clause is contained***." *Id.* (citing *Zabinski*, 346 S.C. at 598, 553 S.E.2d at 119) (emphasis added).

This Court's Order confirmed the Terms of Service ("TOS") govern a user's **use of the Lyft Platform and services**, and expressly declined to extend that contract to our current context: Plaintiff was not a "Lyft passenger;" he was riding with someone who was a Lyft driver at the time; and he did not order a Lyft nor ride with someone else who ordered a Lyft. *See generally* Order. The Court further found there is no "significant relationship" between Plaintiff's tort claims (vicarious liability; negligent hiring, training, supervision, retention) and the TOS. *Id.*

Plaintiff's Memorandum in Opposition to Defendant Lyft's Motion to Stay and Compel Arbitration also explained that he **was not utilizing the Lyft Platform for this travel**, and that his negligent-hiring/supervision claims do not arise from his use of the Lyft Platform. Defendant Lyft's reconsideration motion identifies no new evidence or law undermining those findings; it just disagrees and attempts to relitigate scope. That is not a Rule 59(e) error correction.

Defendant Lyft argues that Plaintiff has "offered no evidence" demonstrating he was not using Lyft in some capacity at the time of the wreck. That assertion is false. In addition to Plaintiff's complaint, Plaintiff submits a sworn affidavit affirmatively stating that, at the time of the collision, he was **not utilizing the Lyft platform, was not driving for or on behalf of Lyft, had not requested transportation through the platform, and was not with anyone who had requested transportation through the platform**. *See Affidavit of David White*, attached as **Exhibit A**. Plaintiff further confirms that his role in the events was limited to being a passenger in Defendant Alicia White's vehicle when she unilaterally accepted a separate rideshare request from Lyft customer, Brandon Simmons. *Id.*

This sworn testimony reinforces what Plaintiff alleged in his original complaint—that he was "merely a passenger in the car" when the wreck occurred. *Id.* Defendant Lyft has had ample opportunity to test this fact and to marshal any contradictory evidence from its own records. Defendant Lyft, unlike Plaintiff, has **exclusive access to its internal data and records**, including:

- which driver(s) were active on the Lyft platform prior and/or at the time of the collision;
- which Lyft passenger(s) requested ride(s) prior to the collision;
- which Lyft account(s) were logged in or engaging with the Lyft platform prior to and/or at the time of the collision; and
- whether Plaintiff was tied to an active Lyft transaction at the time of the collision.

Despite having this unique access, Defendant Lyft has presented **no evidence whatsoever** suggesting that Plaintiff was engaging with the Lyft platform or utilizing Lyft's services in any manner that would trigger the application of the TOS. Instead, Defendant Lyft seeks to shift the burden by claiming a lack of proof of non-use, when in fact Defendant Lyft holds the definitive records. The absence of such evidence from Defendant Lyft—paired with Plaintiff's sworn affidavit—confirms this Court's finding that there is no contractual relationship exists between Plaintiff's claims and Defendant Lyft's TOS.

Public policy supports this Court's decision not to extend the TOS beyond when a patron is engaging with the Lyft Platform as doing so would allow enforcement of the TOS **at all times** and **in all circumstances**. This Court was presented with this concern by Plaintiff's counsel during oral arguments. The example provided at that time was that this extension would allow Defendant Lyft to compel arbitration in situations so far removed from the TOS that even a citizen driving away from the Charleston County Courthouse that is struck by a Lyft vehicle would be forced into arbitration just because the citizen agreed to the TOS at some point in the past. This would be

regardless of the fact that the citizen was neither engaging with the Lyft platform nor utilizing Defendant Lyft's services in any manner at the time of this hypothetical collision.

Accordingly, Defendant Lyft's argument fails both factually and legally. There is no basis for reconsideration under Rule 59(e) when the record demonstrates (1) Plaintiff was not using Lyft, and (2) Defendant Lyft, the only party capable of producing data that Plaintiff was somehow engaged with Defendant Lyft at the time of the subject collision, has offered none. Further, this Court followed applicable and binding case law in *Aiken* and correctly ruled that no "significant relationship" exists between Plaintiff's claims and the underlying contract ***in which the subject arbitration clause is contained***.

III. The arbitration clause is unconscionable and therefore unenforceable.

"In conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract." *Smith v. D.R. Horton*, 417 S.C. 42, 48, 790 S.E.2d 1, 4, (2016). Unconscionability, as it pertains to a contractual arbitration clause, is defined as 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, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007). "Whether one party lacks meaningful choice in entering into the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process." *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013). If a court as a matter of law finds any clause of a 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 as to avoid an unconscionable result. S.C. Code Ann. § 36-2-302(1) (2003). In determining whether an arbitration clause is unconscionable, South Carolina courts consider both the absence of

meaningful choice and whether the clause contains oppressive, one-sided terms. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007).

Unsurprisingly, arbitration clauses are often found in contracts of adhesion. An adhesion contract is a standard form contract offered on a "take-it-or-leave it" basis with terms that are not negotiable. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 260, 365 (2001). And while an arbitration clause in an adhesion contract is not *per se* unconscionable, it is a strong indication that there was a lack of meaningful choice in negotiating the terms of the contract and is met with "considerable skepticism" by courts. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007). In determining whether there was an absence of meaningful choice between parties, the South Carolina Supreme Court in *Simpson v. MSA of Myrtle Beach, Inc.*, considered whether the arbitration clause was included in a contract of adhesion between a commercial entity and a consumer, whether the consumer lacked the business judgment necessary to make her aware of the implications of the arbitration agreement, and whether the consumer had a lawyer present to provide any assistance in the matter. 373 S.C. 14, 27, 644 S.E.2d 663, 670 (2007).

In determining whether an arbitration clause is unconscionable and therefore unenforceable, South Carolina courts will also consider whether the contract contains oppressive and one-sided terms. *Id.* at 25. In *Huskins v. Mungo Homes, LLC*, the South Carolina Supreme Court found that an arbitration clause in a contract which shortened the statute of limitations for any claim brought was void and illegal as a matter of public policy and thus unenforceable as it violated S.C. Code Ann. §15-3-140 (2005). 444 S.C. 592, 910 S.E.2d 474 (2024). S.C. Code Ann. §15-3-140 (2005) forbids and renders void any contract clauses attempting to shorten the legal statute of limitations. The court in *Simpson v. MSA of Myrtle Beach, Inc.,* found that the arbitration clause's limitation on statutory remedies was oppressive and one-sided. 373 S.C. at 28-30, 644

S.E. 2d at 670-71 (2007). Furthermore, courts have found that sections of arbitration clauses that purport to shorten the statute of limitations are material to the whole of the arbitration clause and have declined to salvage the remaining sections of the arbitration requirement, instead finding the entire arbitration provision unenforceable. *Huskins v. Mungo Homes, LLC,* 444 S.C. 592, 597, 910 S.E.2d 474, 477 (2024). The court in *Damico v. Lennar Carolinas, LLC,* went as far to say that severing terms from an unconscionable contract of adhesion discourages fair, arms-length transactions and would encourage sophisticated parties to intentionally insert unconscionable terms in the contract. 437 S.C. 596, 604, 879 S.E.2d 746, 751 (2022).

Here, the Terms of Service ("TOS") agreement between Plaintiff and Defendant Lyft is clearly an adhesion contract. The terms of the agreement were not negotiable on Plaintiff's behalf and were presented to him on a "take-it-or-leave-it" basis. As Defendant Lyft conceded in its original motion, "a person cannot complete the account creation process or purchase rideshare services through the Lyft App unless they affirmatively accept and agree to be bound by Lyft's Terms." *See* Def. Lyft's Exhibit A at ¶ 8 in Def. Lyft's Motion to Stay and Compel Arbitration. Plaintiff did not have the business judgment to understand the effect of the arbitration clause contained in the Terms of Service agreement, and did not have counsel present to provide assistance during the account creation process. The arbitration clause is found in section 17 of the subject Terms of Service agreement and contains several oppressive and one-sided terms.

First, section 15 of the Terms of Service contains broad language purporting to exempt Lyft from virtually all liability, stating "IN NO EVENT WILL LYFT...BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES...ARISING OUT OF OR IN CONNECTION WITH THE LYFT PLATFORM, THE RIDESHARE SERVICES, OR THIS AGREEMENT, HOWEVER ARISING

INCLUDING NEGLIGENCE." This provision essentially renders Lyft immune from liability under any scenario, which is impermissibly onerous.

Second, the arbitration clause contains several other oppressive and one-sided terms including the waiver of a jury trial, inability to appeal the arbitration decision, and inability to participate in a class action. Third, the arbitration provision is buried within a 43-page document and is inconspicuous in nature, particularly when viewed on a mobile device as most users would experience it. The subject Terms of Service agreement is a contract of adhesion, Plaintiff lacked meaningful choice and could not negotiate its terms, and the arbitration clause contains several oppressive and one-sided terms. Therefore, this Court did not err in finding the arbitration clause contained in section 17 of the Terms of Service agreement between Plaintiff and Defendant Lyft is unconscionable, and thus unenforceable and the unconscionable terms in the arbitration clause cannot be severed in an attempt to make the clause enforceable.

IV. Defendant Lyft's "delegation clause" argument does not justify reconsideration.

Lyft's motion repeats its view that the delegation clause requires sending arbitrability to an arbitrator and complains this Court "made no finding" on the existence of an agreement. But this Court's Order necessarily addressed **whether the contract containing the arbitration agreement applies at all** and whether the clause is **enforceable**—questions this Court may decide when, as here, the **Terms of Service relationship is inapplicable to the dispute** and the **arbitration provision is unconscionable** under South Carolina law. Defendant Lyft identifies no controlling authority this Court misapprehended, and no overlooked record fact; it just insists the same delegation argument this Court implicitly rejected. Rule 59(e) does not permit re-litigation.

V. Defendant Lyft's alternative request to "clarify" the Order as without prejudice should be denied.

Defendant Lyft asks this Court to declare its denial "without prejudice" to refiling if "additional material facts" arise. This Court's Order already rests on **two independent grounds**—non-applicability of the subject contract in which our arbitration clause is contained and unconscionability—supported by the present record. There is no ambiguity requiring "clarification," and no basis to invite serial Rule 59(e) practice.

CONCLUSION

This Court correctly denied Defendant Lyft's motion to compel arbitration on two independent grounds. Lyft identifies no clear error, no overlooked issue, and no misapprehension of an earlier argument. Plaintiff respectfully requests this Court to uphold its previous, well-reasoned decision and deny Defendant Lyft's Motion to Reconsider pursuant to Rule 59(e), SCRCP.

MILLER, DAWSON, SIGAL & WARD, LLC

By: s/ Jeffrey W. Ward, Jr.

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North Charleston, SC
September 12, 2025

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF DAVID WHITE

A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.

PERSONALLY APPEARED BEFORE ME DAVID WHITE, who at first being duly sworn, deposes and states:

1. My name is David White, and I am over the age of 18.
2. I am mentally competent to make this statement.
3. I am the plaintiff in a lawsuit concerning a motor vehicle collision that occurred on December 26, 2021.
4. The defendants in the lawsuit are Jane Doe, Lyft Inc., d/b/a Lyft Drives South Carolina, Inc., and my wife, Alicia White.
5. On the date of the collision, Defendant Alicia White unilaterally chose to accept a rideshare request from an individual utilizing the Lyft platform while I was already a passenger in her vehicle.
6. Prior to this rideshare request being accepted by Defendant Alicia White, I had never met nor interacted with this individual being driven by Defendant White.
7. I later learned this individual's name was Brandon Simmons.
8. At the time of the collision, I was not utilizing Lyft's platform for rideshare services.
9. At the time of the collision, I was not driving for, or on behalf of, Defendant Lyft Inc., d/b/a Lyft Drives South Carolina, Inc.
10. Just prior to the collision, I personally had not utilized Lyft's platform for rideshare services to request transportation by a Lyft driver.
11. Just prior to the collision, I was not with anyone utilizing Lyft's platform to request rideshare services.

9-11-25
Date

David White

Sworn to and subscribed before me
This 11 day of September 2025

Notary Public for South Carolina

My Commission Expires 7/10/2034

CARLY KNIGHT NOTARY PUBLIC MY COMM. EXP. 7/10/2034 SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
DAVID WHITE,	)	Civil Action No. 2024-CP-10-06252
Plaintiff,	)	
vs.	)	**LYFT, INC. d/b/a LYFT DRIVES SOUTH CAROLINA, INC.'S MOTION TO STRIKE AFFIDAVIT FILED IN OPPOSITION TO LYFT'S 59(e) MOTION TO RECONSIDER**
LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE,	)	
Defendants.	)	

Lyft Inc., d/b/a Lyft Drives South Carolina, Inc. (hereinafter "Lyft"), by and through undersigned counsel, respectfully moves this Court to strike the Affidavit of David White submitted for the first time in support of Plaintiff's Opposition to Lyft's Motion to Reconsider pursuant to Rule 59(e), SCRCP.

INTRODUCTION

Plaintiff David White's ("Plaintiff") opposition to Lyft's Motion to Reconsider pursuant to Rule 59(e) improperly attempts to supplement the record with new evidence by attaching the Affidavit of David White (the "Affidavit"), which was not presented to the Court at any time prior to or at the time of the original hearing. South Carolina courts consistently hold that Rule 59(e) does not serve as a vehicle for introducing new evidence that could have been presented before judgment. Permitting this affidavit into the record at this stage would be fundamentally prejudicial and contrary to well-established law.

Lyft filed its Motion to Compel Arbitration on March 24, 2025 ("the "Motion"). The Motion was set to be heard on June 23, 2025, before the Honorable Maite Murphy. Plaintiff filed his opposition to the Motion on June 19, 2025, and produced *no evidence* in support of his

opposition. Lyft filed its Reply to Plaintiff's Opposition to the Motion on June 22, 2025. The motion hearing on June 23, 2025, was continued because of technical difficulties with the Webex, and was rescheduled for July 31, 2025, before the Honorable Jennifer McCoy. Plaintiff filed nothing between June 23, 2025, and July 31, 2025, hearing date, and further presented *no evidence* at the hearing despite being on notice of Lyft's Reply arguments. Only now, months after Lyft's original filing, and in opposition to Lyft's Motion to Reconsider, does Plaintiff finally acknowledge and attempt to address his failure to introduce *evidence* in support of his opposition to the Motion.

Now, it is too late and outside the scope of a Rule 59(e) motion to reconsider briefing. Plaintiff had ample time to submit evidence in opposition to the Motion, and the evidence he now attempts to submit (a self-serving affidavit with his version of events) was within his control long before the original filing date of March 24, 2025. It remains – Plaintiff has not produced *evidence* in support of counsel's arguments, and the Court should not consider the Affidavit filed for the first time in response to the Motion. The Motion is focused on procedural issues (i.e. the validity, scope, applicability, and enforceability of the parties' agreement to arbitrate), yet the self-serving Affidavit, and Plaintiff's counsel, continue to argue the facts giving rise to this case, which is improper. Plaintiff's argument can and will be heard once the proper venue for Plaintiff's claims against Lyft is determined. For purposes of the instant motion to strike, Plaintiff's affidavit is untimely, cannot be considered, and should be stricken.

ARGUMENT

1. Rule 59(e) is not a mechanism for introducing new evidence.

South Carolina Rule of Civil Procedure 59(e) permits alteration or amendment of a judgment to correct errors of law or fact, or to address newly discovered evidence that could not have been discovered with reasonable diligence before judgment. *See, e.g., Pelican Bldg. Ctrs. v.*

Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993). The Affidavit at issue does not constitute newly discovered evidence; rather, it reflects information that was readily available to Plaintiff prior to the Court's ruling on the Motion and long before Lyft's Motion to Reconsider.

"A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). "The purpose of [a] Rule 59(e), SCRCP, [motion] to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 200, (1988)); *see also Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772 (S.C. 2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments."). "Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Elam*, 361 S.C. at 21 (citing *Arnold*, 309 S.C. at 172 ("purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits")).

Here, the Court cannot reconsider evidence—the Affidavit alleging Plaintiff's version of events—the Court did not consider in the first place. The Court did not consider the Affidavit prior because Plaintiff failed to timely submit it. Plaintiff's attempt to address this deficiency in opposition to Lyft's Motion to Reconsider is improper and should be rejected by this Court.

2. <u>The Affidavit is untimely and prejudicial.</u>

Allowing Plaintiff to rely on a new affidavit at this stage would deny Lyft the opportunity for meaningful rebuttal. South Carolina courts have cautioned against precisely this type of trial-

by-ambush tactic. *See Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999) (Rule 59(e) does not allow a party to raise an issue or evidence that could have been raised before judgment).

3. <u>The Affidavit should be stricken to preserve the integrity of the record.</u>

Because the Affidavit was not part of the record before the Court's Order on the Motion, the Affidavit cannot properly be considered in ruling on a Rule 59(e) motion. The Court's review must be confined to the existing record; any expansion of that record at this stage is impermissible.

Plaintiff included this untimely Affidavit at this point because he understood the *evidence* before the Court regarding his position was lacking. The Court erred by relying on arguments of counsel, which are not evidence, to reach conclusions about the status of Plaintiff on the day of the accident, and in turn, the applicability of Lyft's Terms of Service for such time. It would be further error for the Court to give consideration to the Affidavit at this stage. The record for the Court's consideration and, therefore, reconsideration is and should be limited to that which was before it on July 31, 2025, and the Affidavit was not before it.

What was before the Court on July 31, 2025, was (1) Plaintiff's uncontested acceptance of Lyft's Terms of Service, twice, which contained a clear, conspicuous, and mutual arbitration agreement covering "all claims" between Plaintiff and Lyft; (2) an uncontested, clear, unmistakable, and mutual delegation clause, which gives the arbitrator exclusive authority to resolve any threshold disputes regarding arbitrability, expressly including the validity, scope, applicability, and enforceability of the arbitration agreement; and (3) Plaintiff's acknowledged presence in a vehicle providing rideshare services on the Lyft platform. The statements contained within Plaintiff's untimely Affidavit are all issues that an arbitrator can hear—along with evidence

submitted by Lyft—when resolving any disputes concerning the arbitrability of Plaintiff's claims under the parties' arbitration agreement.

CONCLUSION

For the foregoing reasons, Defendant Lyft Inc., d/b/a Lyft Drives South Carolina, Inc. respectfully requests that the Court strike the Affidavit of David White filed in support of Plaintiff's Opposition to Lyft's Motion to Reconsider pursuant to Rule 59(e) motion, and that the Court decline to consider such affidavit in ruling upon Lyft's motion.

Respectfully submitted,

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Columbia, South Carolina

September 15, 2025

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
DAVID WHITE,	)	Civil Action No. 2024-CP-10-06252
	)	
Plaintiff,	)	
	)	**MOTION OF LYFT, INC. d/b/a LYFT DRIVES SOUTH CAROLINA, INC. TO ACKNOWLEDGE THE AUTOMATIC STAY APPLIES OR, IN THE ALTERNATIVE, FOR SUPERSEDEAS**
vs.	)	
	)	
LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE,	)	
	)	
Defendants.	)	

Pursuant to the automatic stay provisions and other supersedeas/stay provisions set forth in Rule 241, SCACR, Defendant Lyft, Inc. d/b/a Lyft Drive South Carolina, Inc. ("Lyft") moves this Court for an Order acknowledging that the automatic stay is in effect, staying all further judicial proceedings, or, in the alternative, granting supersedeas/stay regarding further judicial proceedings in this case.

PROCEDURAL HISTORY

On March 24, 2025, Lyft moved to compel arbitration and stay the proceedings. After the motion was fully briefed, the Court held a hearing on July 31, 2025. The Court issued a Form 4 Order noting that the motion was denied on August 11, 2025, and directed Plaintiffs' counsel to prepare a formal order. The Court entered its formal Order denying the motion on August 21, 2025. Lyft timely moved to reconsider on September 2, 2025. Lyft also moved to strike the new affidavit that Plaintiff submitted in opposition to the motion to reconsider. The Court denied Lyft's Motion to Reconsider via Form 4 Order dated October 15, 2025. On November 11, Lyft timely filed a notice of appeal of these Orders.

ARGUMENT

Lyft's appeal from the Court's Orders are proper and, under applicable law, require a stay of all proceedings in this case. Under Section 16 of the governing Federal Arbitration Act ("FAA"), an appeal may be taken from an order denying arbitration. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34–35, 524 S.E.2d 839, 842 (Ct. App. 1999) (finding that the circuit court's order refusing to compel arbitration was immediately appealable, citing section 16 of the FAA). Lyft instituted such an appeal. Therefore, under the Supreme Court's June 23, 2023 precedent in *Coinbase*, this Court "must stay its proceedings." *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915, 1918 (2023) (citing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)).

South Carolina law, while displaced by the FAA, is in accord. Rule 241 of the South Carolina Appellate Court Rules provides that "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision," subject to exceptions inapplicable here. Rule 241(a), SCACR. Furthermore, in the alternative, Rule 241 authorizes this Court to grant a supersedeas to "suspend or stay the matters decided in the order, judgment, decree or decision on appeal . . . ." Rule 241(c), SCACR.

Accordingly, this Court should enter an order staying the trial court proceedings pending appeal, or in the alternative, a supersedeas order to the same effect.

I. Under the FAA and Recent Supreme Court Precedent, This Court Must Automatically Stay Its Proceedings.

A. The FAA Governs the Arbitration Agreement Here and Preempts State Law.

As the U.S. Supreme Court has held, federal substantive law preempts state law and controls arbitration issues arising under contracts governed by the FAA. *Preston v. Ferrer*, 552 U.S. 346, 349-50 (2008). The FAA applies to the arbitration agreement here because it

"'evidenc[e] a transaction involving commerce,' specifically interstate commerce." *Towles*, 338 S.C. at 35 (quoting 9 U.S.C. § 2 (1999)); *see also Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013) (holding that arbitration agreement affected interstate commerce and thus was "subject to the FAA").

The Arbitration Agreement at issue here states that: "Except as otherwise indicated above, this agreement shall be enforceable under and subject to the Federal Arbitration Act, 9 U.S.C. Sections 1 *et seq.*" (*See* Arbitration Agreement at ¶ 17(a), Ex. A-5 to Lyft's Motion to Compel Arbitration.) Under the FAA, "arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019)); *see also Airbnb, Inc. v. Doe*, 336 So. 3d 698, 703 (Fla.), cert. denied, 143 S. Ct. 484 (2022) ("The parties agree that issues of arbitrability are governed by the FAA, as required by the contract.").

Furthermore, Lyft unquestionably is engaged in interstate commerce, which Plaintiff has not disputed. Lyft operates a ridesharing software platform that operates in all fifty states, the District of Columbia, and even parts of Canada. (Aff. of Paul McCachern ¶ 4, Ex. A to Lyft's Motion to Compel Arbitration.) The platform includes Lyft's website, technology platform, and mobile device application, all of which operate over the internet. (*Id.* at ¶ 5.) Payment is also transmitted over the internet from rider to driver. (*Id.* at ¶ 6.) "The presence of interstate commerce makes the FAA applicable to the present arbitration agreement," and "the FAA preempts" South Carolina law. *Soil Remediation Co. v. Nu-Way Env't, Inc.*, 323 S.C. 454, 461, 476 S.E.2d 149, 153 (1996).

B. Under Federal Law, this Court Must Automatically Stay Further Proceedings.

Under Section 16 of the FAA, Lyft was entitled to an immediate appeal from the Order. 9 U.S.C. § 16(a). On November 11, Lyft filed a timely notice of appeal. Now, any further proceedings in this Court are subject to an automatic stay.

In *Coinbase*, the U.S. Supreme Court held that a trial court must stay further proceedings during the pendency of an interlocutory appeal on the question of arbitrability. *Coinbase*, 143 S. Ct. at 1919. This ruling is consistent with long-standing Supreme Court precedent holding that a trial court lacks jurisdiction over issues pending before the governing appellate court. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).

As the Supreme Court explained in *Coinbase*, because the question on appeal is "whether the case belongs in arbitration or instead in the [trial] court," "the entire case is essentially 'involved in the appeal'" such that trial court proceedings must be stayed. *Coinbase*, 143 S. Ct. at 1919 (quoting *Griggs*, 459 U.S. at 58). The appellate court must decide "whether 'the litigation may go forward in the [trial] court.'" *Coinbase*, 143 S. Ct. at 1919 (quoting *Bradford-Scott Data Corp. v. Physician Comput. Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997) (Easterbrook, J)). Thus, it "makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one." *Id.* (quoting *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989)).

Absent an automatic stay, Congress's decision to afford a right in the FAA to an interlocutory appeal "would be largely nullified." *Coinbase*, 143 S. Ct. at 1921. Parties would be forced to proceed with trial court proceedings they had contracted to avoid via arbitration, and "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost—even if the court of appeals later concluded that the case actually had belonged in arbitration all along." *Id.* Such an outcome "could potentially force

parties to settle to avoid [trial] court proceedings (including discovery and trial) that they contracted to avoid through arbitration." *Id.* Moreover, allowing the trial court to proceed would "create[] the possibility that the [trial] court will waste scarce judicial resources—which could be devoted to other pressing criminal or civil matters—on a dispute that will ultimately head to arbitration in any event." *Id.*

Stated succinctly, continuing trial court proceedings while arbitrability is pending on appeal "largely defeats the point of the appeal." *Coinbase*, 143 S. Ct. at 1921 (quoting *Bradford-Scott*, 128 F.3d at 505). Accordingly, this Court "must stay its proceedings." *Id*. at 1918.

Lyft respectfully requests that the Court issue an Order acknowledging that the automatic stay is in effect and that all further proceedings in this Court are stayed pending the resolution of the appeals.

II. South Carolina State Law is in Accord.

Because the FAA applies, federal law preempts state law here. But even if state law applied, South Carolina law is in accord with the *Coinbase* directive to grant a stay of trial court proceedings during the pendency of an appeal as to issues of arbitrability.

Rule 205 of the South Carolina Appellate Court Rules provides that, upon service of the notice of appeal, "the appellate court shall have exclusive jurisdiction over the appeal" and all matters "affected by the appeal." Rule 205, SCACR. Correspondingly, Rule 241 provides that, "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision," and that "[t]his automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court." Rule 241,

SCACR. None of the exceptions to this general rule enumerated in subsection (b) to Rule 241 apply here. Thus, even if South Carolina law applied, this Court should enter an order staying proceedings during the pendency of the interlocutory appeals.

Furthermore, the Court also has discretion to issue a supersedeas under Rule 241. A supersedeas should be used to "stay proceedings in the [circuit] court, to preserve the status quo pending the determination of the appeal . . . and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990) (quoting 4A C.J.S. *Appeal & Error* § 662 at 494–95 (1957)). In ruling on a motion for supersedeas, the "court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. For each of the reasons the Supreme Court discussed in *Coinbase*, proceeding with discovery and litigating the merits of the case would moot the contested issues on appeal entirely.

CONCLUSION

For the foregoing reasons, Lyft respectfully moves this Court for an Order that the automatic stay is in effect, staying any further proceedings, or, in the alternative, granting supersedeas to the same effect.

Pursuant to Rule 11, SCRCP, Lyft confirms that consultation regarding this Motion would serve no useful purpose. Lyft reserves the right to file a further supplemental memorandum supporting this motion.

Respectfully submitted,

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Columbia, South Carolina
November 12, 2025

1STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON DAVID WHITE, Plaintiff, vs. LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE, and JANE DOE, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-10-06252 **PARTIAL STIPULATION OF DISMISSAL WITH PREJUDICE (AS TO JANE DOE AND STATE FARM AND UNIVERSAL INSURANCE COMPANY AS UM CARRIERS ONLY)**

WHEREAS, that Plaintiff, Jane Doe, State Farm Fire and Casualty Company, and Universal Insurance Company (as uninsured motorist carriers) have settled and compromised their differences pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure. Plaintiff dismisses with prejudice his claim for uninsured motorist ("UM") benefits against State Farm, Universal Insurance Company, and Defendant "Jane Doe," who is being defended by State Farm Fire and Casualty Company and Universal Insurance Company pursuant to SC § 38-77-150. Each party agrees to bear their own costs and attorney fees. This Stipulation only affects Plaintiff's UM claim against Jane Doe, State Farm, as the uninsured motorist carrier, and Universal Insurance Company, as the uninsured motorist carrier. This Stipulation in no way affects Plaintiff's action against Defendants Lyft, Inc., d/b/a/ Lyft Drives South Carolina, Inc., and Alicia White, which continue to remain active on the court's docket.

[Signature page to follow]

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North Charleston, South Carolina

September 3, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Civil Action 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.

NOTICE OF APPEAL

Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc. ("Lyft") appeals: (1) the Order filed August 21, 2025 Denying Lyft's Motion to Stay and Compel Arbitration and (2) the Order filed October 15, 2025 Denying Lyft's Motion to Reconsider. Copies of the orders are attached hereto. Lyft received written notice of the order denying its motion to reconsider on October 15, 2025.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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November 11, 2025

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Nov 12 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Civil Action 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.

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served all counsel of record in this action with a copy of the document(s) set forth below under Supreme Court Order dated April 24, 2024.

PLEADING(s): Notice of Appeal

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Via Electronic Mail Only

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Attorney for Defendant Alicia White

s/ Blake T. Williams
Blake T. Williams

November 11, 2025

Blake Williams

From:	Blake Williams
Sent:	Tuesday, November 11, 2025 12:12 PM
To:	Ward@MDSWLegal.com; Amy@MDSWLegal.com; dcleveland@cslaw.com
Cc:	Sarah Eibling; Yasmeen Ebbini
Subject:	White v. Lyft et al., No. 2024-CP-10-06252
Attachments:	White - Notice of Appeal.pdf; Ex. A - Order Denying Motion to Stay and Compel Arbitration.pdf; Ex. B - Order Denying Motion to Reconsider.pdf

Counsel,

Attached for service upon you please find a notice of appeal in the above matter.

Thank you,

NELSON MULLINS

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Exhibit A

(August 21, 2025 Order)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON DAVID WHITE, Plaintiff, LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC., ALICIA WHITE and JANE DOE Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2024-CP-10-06252 **ORDER DENYING DEFENDANT LYFT, INC., d/b/a LYFT DRIVES SOUTH CAROLINA, INC.'S MOTION TO STAY AND COMPEL ARBITRATION**

This matter came before the Court on Defendant Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc.'s (hereinafter "Defendant Lyft") Motion to Compel Arbitration and Stay Proceedings, filed March 24, 2025. The Court heard arguments from counsel on July 31, 2025. Having reviewed the Motion, memoranda from parties' counsel, and oral arguments, the Court hereby **DENIES** Defendant Lyft's motion to compel arbitration and stay proceedings. This decision is based on the following:

This matter arises from a motor vehicle collision that occurred on December 26, 2021, at approximately 2:11 pm, when Plaintiff David White (hereinafter "Plaintiff") was a passenger in a vehicle driven by Defendant Alicia White that was illegally parked on the side of Delano Street in Charleston, South Carolina. A Complaint was initiated against Defendants in this Court on December 18, 2024. Defendant Lyft filed an Answer on February 20, 2025. On March 24, 2025, Defendant Lyft filed a Motion to Stay and Compel Arbitration seeking to enforce the arbitration clause contained in Defendant Lyft's Terms of Service ("TOS") with Plaintiff, which is this Motion.

This Court finds that Defendant's Motion shall be denied for two reasons.

I. THE TERMS OF SERVICE DO NOT APPLY TO PLAINTIFF'S CLAIMS.

First and foremost, this Court finds that Defendant Lyft's Terms of Service ("TOS") do not apply to this case for the following reasons:

A. The Terms of Service govern only use of the Lyft Platform and related Services.

Defendant Lyft's TOS clearly define the scope of the agreement containing the arbitration clause. The opening paragraph explicitly states that the "Terms of Service constitute a legally binding agreement . . . between [Plaintiff] and Lyft, Inc., its parents, subsidiaries, representatives, affiliates, officers and directors . . . ***governing [Plaintiff's] use of the Lyft application (the 'Lyft App'), website, and technology platform (collectively, the 'Lyft Platform')***." Def.'s Mot. to Stay & Compel Arbitration, Ex. E, at 1 (emphasis added). The Terms further provide that "IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE LYFT PLATFORM OR ANY OF THE SERVICES PROVIDED THROUGH THE LYFT PLATFORM." *Id.*

This language demonstrates that the TOS, which includes the subject arbitration clause, only govern a user's active use or access of the Lyft Platform or Defendant Lyft's services. This contract creates no broader relationship and does not apply outside of these limited circumstances. Plaintiff was not a "Lyft" passenger at the time of the incident. He was riding with a friend who was a Lyft driver. He did not order a Lyft nor ride with someone else who ordered a Lyft to a requested destination. Defense counsel argued that he is bound by the arbitration provision simply because he had the Lyft app downloaded on his phone. This court is not inclined to extend the provisions of the Lyft app contract in this particular context.

B. Plaintiff's claims against Lyft do not arise out of a business or contractual relationship created by the Terms of Service in the Lyft application.

Since an arbitration agreement originates from a contract, a party cannot be required to arbitrate a dispute to which he did not agree. *See Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 149 (2007) (citing *Zabinski v. Bright Acres Associates*, 346 S.C 580, 596–97). In order to determine whether an arbitration agreement applies to a claim, the court will analyze whether a "significant relationship" exists between the alleged claims and the contract in which the arbitration clause is contained. *Id*.

In this case, Plaintiff alleges that Defendant Lyft is vicariously liable for the actions of Defendant White under *respondeat superior*. Complaint at ¶ 33. Plaintiff also alleges that Defendant Lyft was negligent in inadequately training and supervising agents or employees and negligently hiring unqualified agents or employees, among other allegations. *Id.* at ¶ 34(a)–(h). As previously discussed, *supra*, Defendant Lyft's own TOS clearly define the scope of the agreement, and the opening paragraph explicitly states when the TOS govern and apply. *See* Def.'s Mot. to Stay & Compel Arbitration, Ex. E, at 1.

This Court finds that Lyft's TOS are not triggered regarding the subject incident and Plaintiff's claims. Plaintiff does not allege any breach of the TOS, or reference the TOS whatsoever, in his Complaint. Plaintiff is not alleging a dispute with the Lyft Platform or Rideshare Services, and Plaintiff was not utilizing the Lyft Platform or its Rideshare Services at the time of the subject collision. Plaintiff's claims against Lyft fall first under *respondeat superior* and arise second out of Lyft's negligence in hiring, supervising, and retaining agents or employees. *See* Complaint at ¶ ¶ 33, 34(a)–(h). Plaintiff's claims do not stem from his use of either the Lyft Platform or its Rideshare Services. As there is no link between Plaintiff's claims in his Complaint and the TOS, there is no "significant relationship" between the contract containing the arbitration clause and the allegations within this Complaint as required by the South Carolina Supreme Court

in *Aiken v. World Finance Corporation of South Carolina*. Therefore, Defendant Lyft's TOS do not apply.

II. THE ARBITRATION CLAUSE IS UNCONSCIONABLE AND THEREFORE UNENFORCEABLE.

Even if the Terms of Service ("TOS") did apply, which this Court finds they do not, the arbitration clause found within the TOS would be unenforceable as unconscionable under South Carolina law. "In conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract." *Smith v. D.R. Horton*, 417 S.C. 42, 48 (2016). Unconscionability, as it pertains to a contractual arbitration clause, is defined as 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, Inc.*, 373 S.C. 14, 25 (2007). "Whether one party lacks meaningful choice in entering into the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process." *Gladden v. Boykin*, 402 S.C. 140, 148 (2013). If a court as a matter of law finds any clause of a 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 as to avoid an unconscionable result. S.C. Code Ann. § 36-2-302(1) (2003). In determining whether an arbitration clause is unconscionable, South Carolina courts consider both the absence of meaningful choice and whether the clause contains oppressive, one-sided terms. *Simpson*, 373 S.C. at 25.

Unsurprisingly, arbitration clauses are often found in contracts of adhesion. An adhesion contract is a standard form contract offered on a "take-it-or-leave it" basis with terms that are not negotiable. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 (2001). And while an arbitration clause in an adhesion contract is not *per se* unconscionable, it is a strong indication that there was

a lack of meaningful choice in negotiating the terms of the contract and is met with "considerable skepticism" by courts. *Simpson*, 373 S.C. at 25. In determining whether there was an absence of meaningful choice between parties, the South Carolina Supreme Court in *Simpson v. MSA of Myrtle Beach, Inc.*, considered whether the arbitration clause was included in a contract of adhesion between a commercial entity and a consumer, whether the consumer lacked the business judgment necessary to make her aware of the implications of the arbitration agreement, and whether the consumer had a lawyer present to provide any assistance in the matter. 373 S.C. at 27.

In determining whether an arbitration clause is unconscionable and therefore unenforceable, South Carolina courts will also consider whether the clause contains oppressive and one-sided terms. *Id.* at 25. In *Huskins v. Mungo Homes, LLC*, the South Carolina Supreme Court found that an arbitration clause in a contract which shortened the statute of limitations for any claim brought was void and illegal as a matter of public policy and thus unenforceable as it violated S.C. Code Ann. §15-3-140 (2005). 444 S.C. 592 (2024). S.C. Code Ann. §15-3-140 (2005) forbids and renders void any contract clauses attempting to shorten the legal statute of limitations. The Court in *Simpson* found that the arbitration clause's limitation on statutory remedies was oppressive and one-sided. 373 S.C. at 28–30. Furthermore, courts have found that sections of arbitration clauses that purport to shorten the statute of limitations are material to the whole of the arbitration clause and have declined to salvage the remaining sections of the arbitration requirement, instead finding the entire arbitration provision unenforceable. *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 597 (2024). The Court in *Damico v. Lennar Carolinas, LLC*, went as far to say that severing terms from an unconscionable contract of adhesion discourages fair, arms-length transactions and would encourage sophisticated parties to intentionally insert unconscionable terms in the contract. 437 S.C. 596, 604 (2022).

Here, the TOS agreement between the Plaintiff and Defendant is clearly an adhesion contract. The TOS were not negotiable on the Plaintiff's behalf and were presented to him on a "take-it-or-leave-it" basis. As Defendant Lyft concedes in its Motion, "[a] user cannot access the Lyft software platform without first creating a Lyft user account and cannot request or purchase rideshare services through the Lyft App unless they have affirmatively accepted Lyft's Terms of Service." *See* Def.'s Mot. to Stay & Compel Arbitration, Ex. A, at ¶ 8. Plaintiff did not have the business judgment to understand the effect of the arbitration clause contained in the TOS, and did not have counsel present to provide assistance during the account creation process. The arbitration clause is also found in section 17 of the subject TOS while containing several oppressive and one-sided terms.

First, section 15 of the TOS contains broad language purporting to exempt Lyft from virtually all liability, stating "IN NO EVENT WILL LYFT . . . BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES . . . ARISING OUT OF OR IN CONNECTION WITH THE LYFT PLATFORM, THE RIDESHARE SERVICES, OR THIS AGREEMENT, HOWEVER ARISING INCLUDING NEGLIGENCE." Def.'s Mot. to Stay & Compel Arbitration, Ex. E, at 15. This provision essentially renders Lyft immune from liability under any scenario, which is impermissibly onerous.

Second, the arbitration clause contains additional oppressive and one-sided terms including the waiver of a jury trial, inability to appeal an arbitration decision, and inability to participate in a class action. And third, the arbitration provision is buried within a 38-page document and is inconspicuous in nature, particularly when viewed on a mobile device as most users would experience it. *See* Def.'s Mot. to Stay & Compel Arbitration, Ex. E, at 16–23.

As the subject TOS is a contract of adhesion, this Court determines that Plaintiff lacked meaningful choice and could not negotiate its terms, and that the arbitration clause contains several oppressive and one-sided terms. For these reasons, the arbitration clause of the TOS is unconscionable, and thus unenforceable.

Based on the foregoing evidence, this Court determines Defendant Lyft's Motion to Stay and Compel Arbitration is **DENIED**.

AND IT IS SO ORDERED.

_____
The Honorable Jennifer B. McCoy

Charleston, South Carolina
August ___, 2025

Charleston Common Pleas

Case Caption: David White VS Lyft Inc , defendant, et al

Case Number: 2024CP1006252

Type: Order/Stay

So Ordered

s/Jennifer B. McCoy #2764

Exhibit B

(October 15, 2025 Order)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1006252

David White
PLAINTIFF(S)

Lyft Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant's filed a Motion to Reconsider with this Court on September 2, 2025. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court DENIES Defendant's Motion to Reconsider without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/15/2025 .

RECEIVED
Nov 12 2025
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption: David White VS Lyft Inc , defendant, et al

Case Number: 2024CP1006252

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764