PARTIES/ATTORNEYS

Plaintiff	Megan Alice Washington and Michael David Washington	Quill & Arrow LLP Erik Schmitt
Defendant	Hyundai Motor America	Theta Law Firm, LLP Soheyl Tahsildoost Ali Ameripour

TENTATIVE RULING

For all the reasons discussed below, the motion to compel arbitration is granted. Defendant's request for judicial notice is granted. Plaintiffs' evidentiary objections are overruled.

Defendant has satisfied its burden to show by a preponderance of evidence that an arbitration provision in the Owner's Handbook and Warranty Information is a valid arbitration agreement between the parties and that its scope covers the causes of action advanced by plaintiff. The court finds the analysis contained *Dardashty v. Hyundai Motor America* (C.D. Cal. 2024) 745 F.Supp. 986; *Guaschino v. Hyundai Motor America* (C.D. Cal. 2023) 2023 WL 8126846, at *4; *Vargas-Lopez v. Hyundai Motor America* (C.D. Cal., 2023) 2023 WL 3035331, at *4; *Mendoza v. Hyundai Motor America* (C.D. Cal. 2022) 2022 WL 19333333, at *5; and *Ford v. Hyundai Motor America* (C.D. Cal. 2021) 2021 WL 7448507, at *8 to be relevant, persuasive, and thus determinative, meaning the arbitration clause is enforceable under the doctrine of equitable estoppel.

The court rejects reliance on *Norcia v. Samsung Telecommunications America, LLC* (9th Cir.) 2017 845 F.3d 1279, for the same reason the federal district court in *Ford, supra*, rejected reliance on the case, and on *Hernandez v. LG Electronics U.S.A. Inc.* (C.D. Cal. 2024) 2024 WL 1601260 for the reasons stated below.

The court finds that even if there were procedural unconscionability based on principles of contract adhesion, defendant has failed to show any substantive unconscionability based on the grounds articulated in opposition. Both forms of unconscionability must be present, and they are not.

This conclusion obviates the need for the court to discuss the applicability of the second basis for arbitration advanced by the defendant under the Bluelink contract.

The parties should be prepared to discuss at the hearing future CMC dates to monitor the progress of arbitration.

On January 14, 2022, plaintiffs Megan Alice Washington and Michael David Washington purchased a 2022 Hyundai Santa Cruz. Plaintiffs allege that their vehicle is covered by a warranty, including a 5-year/60,000 mile express bumper-to-bumper warranty and a 10-year/100,000 mile powertrain warranty (which, inter alia, covers the engine and transmission, as well as various emissions warranties that exceed the time and mileage limitations of the bumper-to-bumper and powertrain warranties).[1] (Complaint, ¶9.) Plaintiffs contend the vehicle was sold and delivered with serious defects and nonconformities to warranty including, but not limited to, suspension, engine, electrical, and emission system defects. In May 2024, the vehicle was presented for repair for excessive shaking as well as to address the illuminated "Check Engine" light. In July 2024, the vehicle was again presented to address the illuminated "Check Engine" light. On May 8, 2025, plaintiffs filed a complaint against defendant Hyundai Motor America (Hyundai or defendant) advancing three causes of action predicated on violations of the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790, et seq.) (the Song-Beverly Act).

On July 30, 2025, defendant filed a motion to compel arbitration pursuant to Code of Civil Procedure section 1281.2, identifying two distinct bases for arbitration. The first is the arbitration provision in the 2022 Owner's Handbook and Warranty Information. The second is contained in the "Bluelink" services[2] contract between defendant and plaintiff, entitled "Connected Services Agreement Terms and Conditions." Opposition and reply have been filed. All briefing has been reviewed.

Evidentiary Issues

[1] Although plaintiff does not identify the source of the warranties discussed in the operative pleading, they must be the warranties located in the "2022 Owner's Handbook & Warranty Information" that accompanied the vehicle when it was sold, a copy of which is attached as Exhibit 3 to attorney Ameripour's declaration, as that document references both terms identified by plaintiff in the operative pleading. (Ameripour Decl., Exh. 3, p. 16.)

[2] Bluelink services is a "connected car system that includes various functions and features." (Vijay Rao Dec., at ¶ 3.) "To enroll in Bluelink services, customers must agree to the then-effective Connected Services Agreement ('CSA'). Hyundai makes a copy of the CSA available to every customer who enrolls in the Bluelink services plan. The CSA is often called the 'Terms & Conditions' or 'Terms & Conditions.'"

Defendant asks the court to take judicial notice of plaintiff' operative pleading. As the request is unopposed, it should be granted.

Plaintiffs raise two evidentiary objections, both revolving around the declaration of defense attorney Ali Ameripour, and Exhibit 3 attached thereto, which is the 2022 Owner's Handbook and Warranty Information containing both the warranty and the arbitration clause at issue. The court overrules those objections, as will be discussed later in the ruling.

Finally, the court notes defense counsel submits new law in a declaration accompanying the reply, which includes four orders from the federal district courts, each of which the court was already aware. It is well settled that new argument cannot be included in a reply – at least without affording the nonmoving party an opportunity to address it. Here, however, both parties were well aware of these cases, having already briefed a motion on nearly identical facts in January 2025. (*Reyes v. Hyundai Motor America* (24CV054570 [Beebe, J.].) No continuance is necessary to permit further briefing.

Agreement

Code of Civil Procedure section 1281.2 provides that a court "shall order the petitioner and the respondent to arbitrate a 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 . . . ."

Whether the arbitration is governed by the Federal Arbitration Act (FAA) or the California Arbitration Act (CAA), "when a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement—either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see [Code Civ. Proc.,] § 1281.2, subds. (a) & (b))—that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal* v. *Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; see also *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951. 972-976 [opposing party has burden to show a defense, such as waiver, by a preponderance of evidence].)

Whether an agreement to arbitrate exists is analyzed on state law principles. (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938; *Peleg v. Neiman*

Marcus Group, Inc. (2012) 204 Cal.App.4th 1425, 1466—the FAA relies on state-law contract principles in determining whether an arbitration agreement exists.) The initial burden is on the party petitioning to compel arbitration to prove the existence of the agreement by a preponderance of the evidence. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.) By attaching a copy of the agreement to its petition, defendant may satisfy the initial burden of establishing the existence of an arbitration agreement. (*Condee v. Longwood Management Corp*. (2001) 88 Cal.App.4th 215, 217–219.)

Only one contractual basis for arbitration need be proven by defendant pursuant to Code of Civil Procedure section 1281.2, and in that regard, the court will focus exclusively on the viability of the arbitration provision contained in the 2022 Owner's Handbook and Warranty Information. [3] Section 4 is titled Hyundai Warranty Information. It begins by outlining an alternative dispute resolution process for all vehicles, which is immediately followed with:

> **"BINDING ARBITRATION FOR CALIFORNIA VEHICLES ONLY**
>
> **PLEASE READ THIS SECTION IN ITS ENTIRETY AS IT AFFECTS YOUR RIGHTS THIS SECTION DOES NOT PRECLUDE YOU FROM FIRST PURSUING ALTERNATIVE DISPUTE RESOLUTION THROUGH BBB AUTO LINE AS DESCRIBED IN THE "ALTERNATIVE DISPUTE RESOLUTION" PROVISION IN SECTION 3 OF THIS HANDBOOK**.
>
> If you purchased or leased your Hyundai vehicle in the State of California, you and we, Hyundai Motor America, each agree that any claim or disputes between us [ ] related to or arising out of your vehicle purchase, advertising for the vehicle, the vehicle warranty, representations in the warranty, or the duties contemplated under the warranty, including without limitation claims related to false or misleading advertising, unfair competition, breach of contract or warranty, the failure to conform the vehicle to warranty, failure to repurchase or replace your vehicle, or claims for refund or partial refund of your vehicle's purchase price (excluding personal injury claims), but excluding claims brought under the Magnuson-Moss Warranty Act, shall be resolved by binding arbitration at either your or our election, even if the claim is initially filed in a court of law. If either you or we elect to resolve our dispute via arbitration (as opposed to a court of law), such binding arbitration shall be administered by and through JAMS Meditation, Arbitration and

[3] The court makes no decision whether arbitration is required under the Bluelink agreement, an issue that appears to be on appeal. (*Hageman v. Hyundai Motor America* (C.D. Cal. 2024) 758 F.Supp.3d 1194, appeal pending, Case No. 24-7823.)

ADR Services (JAMS) under its Streamlined Arbitration Rule & Procedures, or the American Arbitration Association (AAA) under its Consumer Arbitration Rules. We will pay all fees for any arbitration except for the initial filing fee of $250 for JAMS or $200 for AAA. . .”

(Ameripour Decl., Exh. 3, p. 12.)

It concludes:

“**IF YOU PURCHASED OR LEASED YOUR VEHICLE IN CALIFORNIA, YOUR WARRANTY IS MADE SUBJECT TO THE TERMS OF THIS BINDING ARBITRATION PROVISION, BY USING THE VEHICLE, OR REQUESTING OR ACCEPTING BENEFITS UNDER THIS WARRANTY, INCLUDING HAVING ANY REPAIRES PERFORMED UNDER WARRANTY, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE CONTACT US AT OPT-OUT@HMAUSA.COM WITHIN THIRTY (30) DAYS OF YOUR PURCHASE OR LEASE TO OPT-OUT OF THIS ARBITRATION PROVISION.**”

(Ameripour Decl., Exh. 3, p. 14 [emphasis in original].)

Defendant has the burden under Code of Civil Procedure 1281.2 of showing there is an enforceable arbitration agreement, and further, that the alleged controversies are covered by the scope of the arbitration agreement. (*Trinity v. Life Ins. Co. of North American* (2022) 78 Cal.App.5th 1111, 1120.) If the party opposing arbitration raises a defense, the burden is on plaintiff to prove it as the nonmoving party. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236 [unconscionability is a defense the party opposing arbitration has the burden of proving].)

Existence of Valid Agreement to Arbitrate

Basic principles of contract law govern the existence of a valid agreement to arbitrate. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) An essential element of any contract is consent. (CACI 302.) A party's acceptance of an agreement to arbitrate may be express, as where a party signs the agreement. A signed agreement is not necessary, however, and a party's acceptance may be implied in fact, such as where an employee's continued employment constitutes acceptance of an arbitration agreement proposed by the employer (*Pinnacle Museum Tower Assn., supra*, 55 Cal.4th at 236) or by failing to exercise a right to opt out of an arbitration agreement when given the opportunity to do so (*Norcia v. Samsung Telecommunications America, LLC* (9th Cir.) 2017 845 F.3d 1279, 1285-1285). The latter requires reasonable notice of the duty to opt out. (*Id.*)

Here, plaintiffs have directly challenged the validity of this purported agreement by specifically attesting that they never signed the "agreement," were "never personally provided with a copy" of it, and in fact, never assented to it. (Plaintiffs Decl., ¶ 4-6.) They argue were never put on reasonable notice that the arbitration provision in the Owner's Handbook existed and as a result, they never assented to it by their silence or otherwise.

Defendant argues that plaintiffs are equitably estopped from asserting this argument. Nonsignatories to an arbitration agreement may be bound by the agreement on an equitable estoppel theory. (*JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1237, fn. omitted; *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 220–221, 229–234.) "When [a nonsignatory] plaintiff is suing on a contract—on the basis that, even though the plaintiff was not a party to the contract, the plaintiff is nonetheless entitled to recover for its breach, the plaintiff should be equitably estopped from repudiating the contract's arbitration clause." (*JSM Tuscany*, at pp. 1239–1240, 123 Cal.Rptr.3d 429.) " '[T]he linchpin for equitable estoppel is ... fairness.' " (*UFCW & Employers Benefit Trust v. Sutter Health* (2015) 241 Cal.App.4th 909, 929.)

The parties cited no California appellate cases examining the enforceability of an arbitration provision presented to the buyer in a vehicle warranty, as is the case here. But there are at least *five* (5) federal district court cases that have considered this very issue, specifically the arbitration provision in Hyundai's Owner's Handbook and Warranty Information, and all five courts granted Hyundai's motion to compel arbitration. (*Dardashty v. Hyundai Motor America* (C.D. Cal. 2024) 745 F.Supp.3rd 986; *Guaschino v. Hyundai Motor America* (C.D. Cal. 2023) 2023 WL 8126846, at *4; *Vargas-Lopez v. Hyundai Motor America* (C.D. Cal., 2023) 2023 WL 3035331, at *4; *Mendoza v. Hyundai Motor America* (C.D. Cal. 2022) 2022 WL 19333333, at *5; and *Ford v. Hyundai Motor America* (C.D. Cal. 2021) 2021 WL 7448507, at *8.)[4] All addressed and ultimately rejected the same or similar arguments that plaintiff has made here, finding a motion to compel arbitration was appropriate by reference to California law.

Dardashty v. Hyundai Motor America is a good example of how these courts reached their decisions based on the concept of equitable estoppel under California law. There, plaintiff filed a complaint raising, among other claims, violations of the Song Beverly Act based on the fact the leased Hyundai Kona electric vehicle was defective. Hyundai filed a motion to compel arbitration, relying on a similar (almost verbatim) arbitration provision as is at issue in this case, in the 2023 Owner's

[4] Although the court may not rely on unpublished California cases, the California Rules of Court do not prohibit citation to unpublished federal cases, which may properly be cited as persuasive authority. (Cal. Rules of Court, rule 8.1115; *In re Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18; *Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 251, fn. 6.)

Handbook & Warranty Information, which, as here, was filed with the motion to compel arbitration. (*Dardashty, supra,* 745 F.Supp. at 992.) Hyundai sought to compel arbitration of all claims, arguing that they fell squarely within the arbitration clause in the Handbook.

After dismissing objections that the Owner's Handbook & Warranty Information was not properly authenticated, the federal district court observed plaintiff's claims intimately relied on the existence of the Warranty containing the arbitration provision and explained:

> "The Ninth Circuit has held that '[e]quitable estoppel precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes." (*Kramer v. Toyota Motor Corp.* (9th Cir. 2013) 705 F.3d 1122, 1128 (analyzing equitable estoppel pursuant to California contract law) (citation omitted). See also *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000) ("In the arbitration context, the doctrine [of equitable estoppel] recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act." (citations omitted)); *Boucher v. All. Title Co.*, 127 Cal. App. 4th 262, 269, 25 Cal.Rptr.3d 440 (2005) ("A nonsignatory is estopped from refusing to comply with an arbitration clause when it receives a direct benefit from a contract containing an arbitration clause." (citing *Int'l Paper Co.*, 206 F.3d at 418)); *cf. Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018) (explaining that incorporation-by-reference treats certain extensively relied on documents as though they are part of the complaint itself to prevent plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those same documents that weaken their claims)."

Accordingly, the district court found that plaintiff was equitably estopped from denying it consented to the arbitration provision in the Owner's Handbook and Warranty Information. (*Dardashty, supra,* 745 F.Supp.3rd at 995.)

Plaintiffs rely on *Norcia v. Samsung Telecommunications America, LLC* (9th Cir.) 2017 845 F.3d 1279, for the proposition that under California law an offeree's inaction is generally insufficient to form a contract. In *Norcia*, plaintiff purchased a Samsung Galaxy S4 cell phone from Verizon Wireless. After purchasing the phone, plaintiff and a Verizon Wireless employee took it, still in its sealed Samsung box, to a table where the employee helped Norcia transfer his contacts from his old phone

to the new phone. Norcia took the phone with him as he left the store, but he declined to take the box and the rest of its contents. The box contained, among other things, a "Product Safety & Warranty Information" brochure. The Standard Limited Warranty section explained the scope of Samsung's express warranty. In addition to explaining Samsung's obligations, the procedure for obtaining warranty service, and the limits of Samsung's liability, the warranty section contained a clause requiring arbitration of all disputes arising from the limited warranty or the sale. Norcia subsequently filed a class action complaint against Samsung, alleging that Samsung misrepresented the Galaxy S4's storage capacity. Samsung moved to compel arbitration. The district court held that receipt of the brochure did not form an agreement to arbitrate the claims and the appellate court upheld the ruling. Plaintiffs argue that here, like in *Norcia*, their assent cannot be inferred.

The court in *Ford v. Hyundai Motor America, supra,* considered the ruling in *Norcia* and declined to follow it:

> "In *Norcia*, it was undisputed that the plaintiff did not expressly assent or otherwise engage in any conduct to show he agreed to be bound by any agreement in the brochure at issue. Accordingly, the Ninth Circuit held that the warranty agreement only constituted the defendant's offer to arbitrate all disputes with the plaintiff, rather than an enforceable agreement. Here, in contrast, the California Plaintiffs have asserted breach of warranty claims based on the [2020 Owner's Handbook \and Warranty Information]," and have at least shown his/her awareness of it, to the extent she is bound by, the terms of the 2020 Owner's Handbook, which contained the [the warranty] and Arbitration Provision. Thus, *Norcia* is factually inapposite."
>
> (*Ford v. Hyundai Motor America, supra,* 2021 WL 7448507, at *7 [cleaned up].)

The *Guaschino* court also rejected application of *Norcia* because "Norcia did not bring any claims for breach of warranty." (*Guaschino, supra,* 2023 WL 8126846, at *4.) The same is true here. *Norcia* is inapposite for the same reasons articulated in *Ford* and *Guaschino.*

Plaintiffs also assert that *Hernandez v. LG Electronics U.S.A. Inc.* (C.D. Cal. 2024) 2024 WL 1601260 supports their proposition. In *Hernandez,* the court rejected LG's argument the plaintiffs could not claim the benefits of the warranty contract while seeking to avoid its requirement to arbitrate. (*Hernandez, supra,* at *5—" The warranty agreement is separate from, and does not impose the "burden" of, the arbitration agreement. In other words, Plaintiffs were entitled to the "benefits" of the warranty regardless of whether they were subject to the "burden" of the arbitration agreement.") Considering the weight of district court authority

considering the same issue in the context of the very arbitration provision at hand, the court is not persuaded to follow *Hernandez.*

Even if it were, the *Hernandez* case is distinguishable. In *Hernandez,* "the Court [could not] find that a reasonable consumer was on notice of the Arbitration Clause contained in the warranty section of the owner's manual because "the covers of the owner's manuals do not indicate that there are terms and conditions within (or even that there was warranty information inside). [] The table of contents on the next page also fails to indicate that there are terms and conditions inside, and only indicates that there is a warranty chapter. [] It is only until the beginning of the respective warranty sections (on page 51 or 65) that the Arbitration Clause appears. (*Id.* at *5.) Here, the Owner's Handbook and Warranty Information contains a table of contents with entries for the warranty chapter as well as an alternative dispute resolution *and* the binding arbitration statement for California vehicles:

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*** FOR ROADSIDE ASSISTANCE CALL 1-800-243-7766 (See page 5 for details)**

The Owner's Handbook and Warranty thus did put plaintiffs on notice. The agreement has an opt-out provision in boldface, capital letters (Ameripour Decl., Exh. 3, p. 14) that plaintiffs did not exercise, showing their assent. This provision is thus not similarly situated to that considered by the *Hernandez* court.

In summary, the court is persuaded by the district court line of authority that the arbitration provision here is enforceable under the equitable estoppel doctrine. Plaintiffs in the instant action are similarly situated to plaintiffs in each one of the district court cases to the extent the all rely on the warranty to advance Song-Beverly Act causes of action while eschewing or ignoring the arbitration provision contained in the very same warranty.[5] The court is not persuaded to follow

[5] The first and third causes of action are based on violations of Civil Code section 1793.2, which imposes obligations on a manufacturer who sells goods for which it has made an express warranty.

Hernandez in light of this authority. Even if the court were to follow *Hernandez*, it would find the Owner's Handbook and Warranty gave sufficient notice and an opportunity for plaintiffs to opt-out, which they did not do.

Having considered the merits of the arguments, the court must pause here to address plaintiffs' objections to the Owner's Handbook and Warranty based on the argument that defendant has not properly authenticated it. Specifically, plaintiffs object to attorney Ameripour's attestation that the "attached hereto as Exhibit 3" is a true and correct copy of their Owner's Handbook & Warranty Information" because he has no personal knowledge of the document. (Evid. Code, § 702, subd. (a) ["[T]he testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against a party's objection, such personal knowledge must be shown before the witness may testify concerning the matter.").) A declaration must "establish a foundation based on personal knowledge for authenticating any of the documents attached." (*San Diegans for Open Gov't v. San Diego State University Research Foundation* (2017) 11 Cal.App.5th 477, 108.)

The court overrules the objections. Evidence Code section 1414 subdivision (b) provides that a writing may be authenticated by evidence that a party against whom it is offered has acted upon it as if it were authentic. Although the complaint does not offer this warranty as an exhibit, plaintiffs have not denied that it is, in fact, the very same one they rely upon as the basis for its Song-Beverly Act causes of action. Plaintiffs have therefore, at a minimum, acted upon this document as if it is authenticated. (*Dardashty, supra*, 745 F.Supp.3d at 994—plaintiff's objection "woefully unpersuasive" since plaintiff relied on the same warranty in the complaint.)

The court also overrules the hearsay objection because plaintiffs are relying on the substance of the document for its truth when advancing its causes of action. At a minimum the rule of completeness as embodied in Evidence Code section 356 [where part of a writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party] applies.

The court finds there is a valid agreement to arbitrate.

Unconscionability

"The 'general principles of unconscionability are well established. A contract is unconscionable if one of the parties lacked a meaningful choice in deciding whether to agree and the contract contains terms that are unreasonably favorable to the other party. Unconscionability has both a procedural and a substantive element. The party resisting enforcement of an arbitration agreement has the

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The existence of an express warranty is asserted at routinely throughout the complaint. (Complaint, ¶¶ 4, 8-9, 19, 24, 26, 47, 48, 50, 51.)

burden to establish unconscionability." (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 492 [cleaned up].)

"Procedural unconscionability 'addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. This element is generally established by showing the agreement is a contract of adhesion, i.e., a standardized contract which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it. Adhesion contracts are subject to scrutiny because they are not the result of freedom or equality of bargaining. However, they remain valid and enforceable unless the resisting party can also show that one or more of the contract's terms is substantively unconscionable or otherwise invalid." (*Ramirez, supra*, 16 Cal.5th at pp. 492–493 [cleaned up].)

"Substantive unconscionability looks beyond the circumstances of contract formation and considers 'the fairness of an agreement's actual terms' focusing on whether the contract will create unfair or one-sided results. Substantively unconscionable contractual clauses reallocate risks in an objectively unreasonable or unexpected manner. [¶] Both procedural and substantive elements must be present to conclude a term is unconscionable, but these required elements need not be present to the same degree. Courts apply a sliding scale analysis under which the more substantively oppressive [a] term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa Whether a contract is fair or works unconscionable hardship is determined with reference to the time when the contract was made and cannot be resolved by hindsight by considering circumstances of which the contracting parties were unaware." (*Ramirez, supra*, 16 Cal.5th at p. 493 [cleaned up].)

Here, the court rejects the proposition that the provision amounted to a contract of adhesion. (See *Guaschino, supra*, 2023 WL 8126846, at *6 [finding plaintiff did not meet burden to show virtually the same warranty that is at issue here to be procedurally unconscionable, rejecting argument that there was any surprise or oppression]; *Vargas-Lopez, supra,* 2023 WL at *7 [same].) Even if found the provision to be a contract of adhesion, plaintiffs must still show substantive unconscionability to prevail.

Plaintiffs make no argument that the Owner's Handbook and Warranty is substantively unconscionable. (See *Guaschino, supra*, 2023 WL 8126846, at *6 [finding plaintiff did not meet burden to show virtually the same warranty that is at issue here to be substantively unconscionable, rejecting argument that it would force him to waive "unwaivable statutory rights" under the Song-Beverly Act];]; *Vargas-Lopez, supra,* 2023 WL at *7 [same].) The only arguments presented of substantive unconscionability apply to the Bluelink agreement.

Plaintiffs have failed their burden to show unconscionability.

Scope of the Arbitration Agreement

Given that there is an enforceable arbitration agreement, the question then becomes whether the agreement encompasses the dispute at issue. The court finds that it does. Here, the arbitration clause contains a broad, mandatory arbitration provision requiring arbitration of:

> "any claim or disputes ... related to or arising out of your vehicle purchase, advertising for the vehicle, use of your vehicle, the performance of the vehicle, any service relating to the vehicle, the vehicle warranty, representations in the warranty, or the duties contemplated under the warranty, including without limitation claims related to false or misleading advertising, unfair competition, breach of contract or warranty, the failure to conform a vehicle to warranty, failure to repurchase or replace your vehicle, or claims for a refund or partial refund of your vehicle's purchase price (excluding personal injury claims), but excluding claims brought under the Magnuson-Moss Warranty Act, [to] be resolved by binding arbitration at either your or our election, even if the claim is initially filed in a court of law."
>
> (Ameripour Decl., Exh. 3, p. 12.)

The arbitration provision further states that "[it] is intended to be broadly interpreted and to make all disputes and claims ... relating to or arising out of [the] vehicle purchase, use or performance of [the] vehicle, or the vehicle warranty subject to arbitration to the maximum extent permitted by law." (*Id*. at 16.)

The Ninth Circuit has held that arbitration agreements containing such broad language reach "every dispute between the parties having a significant relationship to the contract and all disputes having their origin or genesis in the contract." (*Simula, Inc. v. Autoliv, Inc.* (9th Cir. 1999) 175 F.3d 716; see also *Cape Flattery Ltd. v. Titan Mar., LLC* (9th Cir. 2011) 647 F.3d 914, 922 ("[W]hen parties intend to include a broad arbitration provision, they provide for arbitration 'arising out of or relating to' the agreement."); *Mediterranean Enterprises, Inc. v. Ssangyong Corp*. (9th Cir. 1983) 708 F.2d 1458, 1464 (distinguishing between narrow arbitration clauses limited to "arising out of" an agreement and broader clauses referencing disputes "relating to" an agreement.) Thus, "[t]o require arbitration, [Plaintiff's] factual allegations need only 'touch matters' covered by the contract containing the arbitration clause and all doubts are to be resolved in favor of arbitrability." (*Simula, Inc.*, *supra*, 175 F.3d at 721.)

As noted in footnote 5, the first and third causes of action arise only because there is an express warranty. The existence of an express warranty is asserted at numerous times throughout the complaint. (Complaint, ¶¶ 4, 8-9, 19, 24, 26, 47, 48, 50, 51.) The second cause of action for breach of implied warranty sufficiently relates to or arises out of "any service relating to [the] vehicle," "use of [the] vehicle," and "the duties contemplated under the warranty." (*Dardashty, supra*, 745 F.Supp.3d at 996-997.) In other words, there would be no claims under the Song-Beverly Act but for the warranty. The court finds that all of plaintiffs' claims arise out of the duties contemplated under the Owner's Handbook and Warranty.

The motion to compel arbitration is granted.