PROPOSED TENTATIVE

Defendant Hyundai Motor Company (defendant) asks the court to grant its motion to compel arbitration, filed pursuant to Code of Civil Procedure section 1281.2, as to both causes of action alleged in the operative pleading and arising under the Song Beverly Consumer Warranty Act (hereafter, Song Beverly Act). Defendant does not rely on the sales contract between the plaintiff and the dealer as the basis for contractual arbitration[1], but instead on the arbitration agreement on pages 13 and 14 of the "2021 Owner's Handbook & Warranty Handbook" (hereafter, 2021 Warranty) that accompanied the sale of the vehicle purchased by plaintiff. The 2021 Warranty itself contains the arbitration clause.[2]

This is not the first time the court has addressed this issue. In *Reed, et al. v. Hyundai Motor America,* Case No. 23CV00183, the court granted a motion to compel based on the presence of a similar arbitration clause in a similar warranty handbook. In so doing, the court relied on federal district court case law authority, interpreting California law, to support defendant's position that arbitration can be compelled even though the arbitration agreement was in a warranty handbook, as here, following the reasoning of and conclusions reached in the following decisions to be persuasive:

- *Dardashty v. Hyundai Motor America* (C.D. Cal., Aug. 16, 2024, No. 2:23-CV-09710-MRA-BFM) 2024 WL 4744024, at *4. The *Dardashty* court observed that plaintiff was relying on the terms of the warranty as a basis for lawsuit, and yet at the same time left out the terms of the arbitration agreement from the Warranty. The court concluded this was inappropriate. "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.' [Citation.] 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]; see *Boucher v. All. Title Co.* (2005) 127 Cal App.4th 262, 269 ["A nonsignatory is estopped from refusing to comply with an arbitration clause when it receives a direct

[1] The California Supreme Court granted review in *Ford Motor Warranty Cases*, S279969. (B312261; 89 Cal.App.5th 1324; Los Angeles County Superior Court; BC596216), to review the following issue: "Do manufacturers' express or implied warranties that accompany a vehicle at the time of sale constitute obligations arising from the sale contract, permitting manufacturers to enforce an arbitration agreement in the contract pursuant to equitable estoppel?" This case does not implicate this issue because defendant is not relying on the sales contract, but the arbitration clause contained in "2021 Owner's Handbook & Warranty Information" it issued with the warranty.

[2] The relevant language of the 2021 Warranty reads as follows: "If you purchased . . . Your Hyundai vehicle in the State of California, you and we each agree that any claim or disputes us . . . related to arising out of your vehicle purchase, use of you vehicle, the vehicle warranty, representations in the warranty, or the duties contemplated under the warranty, including without limitation claims related to 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, shall be resolved by ***binding arbitration*** at either you or our election, even if the claim is initially filed in a court of law . . . ." (Bold and italics added.) It seems clear that the scope of arbitration clause covers plaintiff's claims advanced under Song Beverly Act.

benefit from a contract containing an arbitration clause"]; *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)." The court found the Arbitration Agreement was valid.

- *Guaschino v. Hyundai Motor America* (C.D. Cal., Sept. 27, 2023, No. CV2304354MWFJPRX) 2023 WL 8126846, at *4. "Plaintiff relies on the warranties contained in the Warranty Agreement to bring claims under the Song-Beverly and Magnusson-Moss Warranty Acts, and Plaintiff is thus subject to the Arbitration Provision in the Warranty Agreement, assuming (1) the arbitration clause was properly available to Plaintiff at the time of contract formation and (2) the arbitration clause is not otherwise unconscionable"].) The court found that under the doctrine of equitable estoppel, plaintiff cannot assert claims based on a Warranty Agreement while contesting an arbitration clause in that same agreement.
- *Vargas-Lopez v. Hyundai Motor America* (C.D. Cal., Feb. 13, 2023, No. 822CV01526FWSJDE) 2023 WL 3035331, at *4. "The court first considers whether the arbitration agreement is unenforceable because it was 'buried; in the warranty." Although defendant was a signatory and plaintiff was not a nonsignatory, the court observed that under California law equitable estoppel applies when a non-signatory seeks to avoid arbitration while relying on the other terms of a contract, relying on *Boucher v. All. Title Co.*, 127 Cal. App. 4th 262, 269 (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. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000)). The court's analysis considered whether equitable estoppel applied regardless of plaintiff being a non-signatory, and the court found it did. "Accordingly, the court finds that Plaintiff is simultaneously relying on the terms of the warranty to assert claims while attempting to avoid the arbitration agreement contained in the warranty, and that equitable estoppel applies. *See Kramer*, 705 F.3d at 1128-29." (*Id.* at p. 6.)
- *Mendoza v. Hyundai Motor America* (C.D. Cal., Dec. 15, 2022, No. CV 22-210-DMG (AFMX)) 2022 WL 19333333, at *5. "Plaintiffs cannot reasonably claim they did not know Defendant's Warranty was an offer or that they lacked notice of Defendant's arbitration terms. Plaintiffs invoked Defendant's Warranty numerous times for repairs during the Warranty period, and Plaintiffs now seek to enforce the Warranty against Defendant by bringing various breach of warranty claims in this action. *See* Compl. at 18-19; *see also Windsor Mills*, 25 Cal. App. 3d at 992 ("an offeree, knowing that an offer has been made to him but not knowing all of its terms, may be held to have accepted, by his conduct, whatever terms the offer contains."). Plaintiffs cannot selectively ignore the Warranty's arbitration provision while knowingly exploiting the Warranty's benefits,"

distinguishing *Norcia v. Samsung Telecomm. Am., LLC*, 845 F.3d 1279, 1285 (9th Cir. 2017)

- *Ford v. Hyundai Motor America* (C.D. Cal., Oct. 5, 2021, No. 8:20-CV-00890-FLA (ADSX)) 2021 WL 7448507, at *8. "Thus, the Arbitration Provision is binding and enforceable against the California Plaintiffs, despite the fact that they did not sign an acknowledgement of the 2020 Owner's Handbook." "The California Plaintiffs cite *Norcia v. Samsung Telecomms. Am., LLC*, 845 F.3d 1279 (9th Cir. 2017), to argue that the Ninth Circuit has held that an arbitration agreement buried in a warranty agreement was unenforceable, based on the plaintiff's lack of access to the full warranty policy before purchase and the inconspicuousness of the arbitration agreement. . . . *Norcia* is distinguishable. [¶] 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. *Id.* at 1285. 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. *Id.* at 1285-86. Here, in contrast, the California Plaintiffs have asserted breach of warranty claims based on the [Warranty] . . . ." Plaintiffs cannot they lacked notice of the arbitration terms as contemplated under *Norcia*, because "they invoked Defendant's Warranty terms numerous times for repairs during the Warranty period, and Plaintiffs now seek to enforce the Warranty against Defendant by bringing various breach of warranty claims in this action. . . . Plaintiff's cannot selectively ignore the Warranty's arbitration provision while knowingly exploiting the Warranty's benefits."

Plaintiff in opposition has presented a new argument not addressed by this court or raised or addressed by the federal district court cases cited above. Plaintiff points to the following statutory language under a provision of the Song Beverly Act, Civil Code section 1793.1, subdivision (a)(1), which reads in full as follows:

> "Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall fully set forth those warranties in simple and readily understood language, which shall clearly identify the party making the express warranties, ***and which shall conform to the federal standards for disclosure of warranty terms and conditions set forth in the federal Magnuson-Moss Warranty – Federal Trade Commission Act (15 U.S.C. Sec. 2301)[3] and in regulations of the Federal Trade Commission adopted pursuant to that act***." (Emphasis added.)

[3] The MMWA Improvement Act governs warranties for consumer products distributed in interstate commerce, and is intended to supplement state law. (*Ochian v. BMW of North America, LLC* (2014) 226 Cal.App.4th 1322, 1330-1331.) The MMWA calls for the application of state written and implied warranty law, not the creation of additional federal law, except in specific instances in which it expressly prescribes a regulating rule. (*Id* at p. 1330.)

This statutory language clearly incorporates into the Song Beverly Act matrix the requirements, rules, and interpretations promulgated under the Magnuson-Moss Warranty-Federal Trade Commission Act (MMWA), as interpreted by the Federal Trade Commission (FTC). In this regard, Title 15 United States Code section 2310, subdivision (a) provides that the FTC "shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies." Given the clear and obvious import of the statutory language in Civil Code section 1793.1, subdivision (a)(1), highlighted above, any rules promulgated by the FTC addressing informal dispute settlement procedures into warranties governed by the MMWA applies to the Song Beverly Act.

Code of Federal Regulations, title 16, Part 703 details the requirements for informal resolution procedures contained in a warranty under the MMWA. In the definition section of 16 Code of Federal Regulations section 703.1, the FTC uses the term "mechanism," which is defined as an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title 1 to [MMWA], as provided in section 110 of the Act, 15 U.S.C. 2310." Section 703.5 details how the "mechanism" should work. (16 C.F.R. § 705.5). Section 703.5, subdivision (j) provides as follows: "***Decisions of the Mechanism shall not be legally binding on any person***. However, the warrantor shall act in good faith, as provided in § 703.2(g) of this part. In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a)(3) of the Act, 15 U.S.C. 2310(a)(3)."(Emphasis added.)

The FTC from the outset has interpreted the highlighted language), dating back to 1975, as precluding ***binding arbitration agreements contained in warranties otherwise governed by the MMWA.*** ". . . Several industry representatives contended that the warrantors should be allowed to require consumers to resort to mechanisms whose decisions would be legally binding (e.g., binding arbitration). [Fn. omitted.] The Rule does not allow this for two reasons. First, as the Staff Report indicates, Congressional intent was that decisions of Section 110 Mechanisms not be legally binding. [Fn. Omitted.] Second, even if binding Mechanisms were contemplated by Section 110 of the Act, the Commission is not prepared, at this point in time, to develop guidelines for a system in which consumers would commit themselves, at the time of product purchase, to resolve any difficulties in a binding, nonjudicial proceeding. The Commission is not convinced that any guidelines which t set out could ensure sufficient protection for consumers." (40 Fed. Reg. 60168, 60210 (Dec. 31, 1975).) The FTC went on: "Two witnesses were concerned that the Rule as written would not allow the use of binding arbitration by the parties after the Mechanism had rendered a decision. [Fn. Omitted.] As the Staff Report makes clear [fn. Omitted.], there is nothing in the Rule which precludes the use of any other remedies by the parties following a Mechanism decision. The warrantor, the Mechanism, or any other group can offer a binding arbitration option to consumers who are dissatisfied with the

Mechanism decision or warrantor intentions. ***However, reference within the written warranty to any binding, nonjudicial remedy is prohibited by the Rule and the Act.***" (*Id* at 60211.)

The FTC as of 2015 continued to put the same gloss on section 703(j), despite continued criticism. "During the 1996-1997 rule review, some commentators asked the Commission to deviate from its position that Rule 703 bans mandatory binding arbitration in warranties. The Commission, however, relying on its previous analysis and the [Magnuson-Moss Warranty – Federal Trade Commission Act] statutory language, reaffirmed the view that the [Act] and Rule 703 prohibit mandatory binding arbitration. [Fn. Omitted.] . . . ." While the Commission acknowledged that "two appellate courts[4] have questioned whether Congress intended binding arbitration to be considered a type of [informal dispute resolution mechanism], which would potentially place binding arbitration outside the scope of the [Act], the Commission concluded 'Rule 703 will continue to prohibit warrantors from including binding arbitration clauses in this contracts [warranties] with consumers that would require consumers to submit warranty disputes to binding arbitration. [Fn. Omitted.}" The Commission in 2015 (during the last rule review determination) "reaffirms its long-held view that the [Act] disfavors, and authorities the Commission to prohibit, mandatory binding arbitration in warranties." (80 Fed. Reg. 42710-01, 42718 (July 20, 2025).)

Despite the Commission's interpretation, and despite the language of Civil Code section 1793.1, which expressly requires this court to follow the FTC's interpretations of its regulations as noted above, the issue remains whether the MMWA actually bars binding arbitration when the arbitration clause is in the warranty, and thus, by implication, would bar binding arbitration when the agreement is contained in a warranty under the Song Beverly Act. In other words, should the court follow the FTC's conclusions, or those of federal courts (such as *Walton* and *Davis*, see fn. 4, *ante*), which conclude the MMWA does not bar binding arbitration agreements, and thus, by implication neither would the Song Beverly Act?[5]

The court through its own research has found one federal district court case in California that has addressed this issue. (*Phillips-Harris v. BMW of North America, LLC* (C.D. Cal., May

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[4] *Davis v. S. Energy Homes, Inc.* (11th Cir. 2002) 305 F.3d 1268, examined whether "the [Act] permits or precludes enforcement of binding arbitration agreements with respect to written warranty claims, " and concluded (contrary to the Commission) that arbitration agreements are not informal dispute settlement procedures and thus not subject to FTC *regulations* requiring disclosures. (See also *Walton v. Rose Mobile Homes, LLC* (5th Cir. 2002) 298 F.3d 470, 471 [same].) These cases concluded the FTC's interpretation was erroneous. The Ninth Circuit disagreed with *Smith* and *Walton* in *Kolev v. Euromoters West/Autho Gallery* (9th Cir. 2011) 658 F.3d 10124, 1030, although the Ninth Circuit withdrew the opinion (676 F.3d 857 (9t Cir. 2012th Circ), pending resolution of related issue by the California Supreme Court in *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899. The court will circle back to these federal cases later in this order.

[5] Defendant's reply, filed on December 10, 2024, addresses these issues. The court observes that in conjunction with its reply, defendant has filed a second, supplemental declaration, which has five new exhibits attached. Two of the exhibits (Exhibit 1 and Exhibit 5) are orders from two separate superior court judges from Los Angeles County Superior Court. The court reminds counsel that no party can cite to or rely on superior court orders as authority pursuant to California Rules of Court, rule 8.1115. The other three exhibits involve federal district court cases this court cited to in the beginning of this order.

20, 2020, No. CV202466MWFAGRX) 2020 WL 2556346, at *11, *rev'd and remanded* (9th Cir., Jan. 7, 2022, No. 20-55612) 2022 WL 72355.[6]) The federal district court in *Phillips Harris* concluded in relevant part as follows:

> "Even if a valid arbitration agreement existed between Plaintiff and BMW, Plaintiff further argues that her warranty claims are not subject to binding arbitration. [Citation.] Specifically, she argues that the federal Magnuson Moss Warranty Act ('MMWA') bars the enforcement of arbitration provisions covering warranty agreements. Regulations under 16 C.F.R. § 703 and the corresponding rulings, which impose certain restrictions on binding informal settlement. (*See id.* at 18-22). While Plaintiff has not asserted an MMWA claim, she argues that the Song-Beverly Act incorporates MMWA rules regarding arbitration by reference. [Citation.]
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> The Court notes that Plaintiff failed to cite any authority holding that binding arbitration is barred under the MMWA. In fact, federal circuit courts that have addressed this exact issue have held otherwise. (*See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. Abrams*, 899 F.2d 1315, 1317 (2d Cir. 1990) ("[N]othing in the [MMWA] or the FTC Regulations forbids a warrantor from entering into binding arbitration."); *Walton v. Rose Mobile Homes LLC*, 298 F.3d 470, 479 (5th Cir. 2002) ("We hold that the MMWA does not preclude binding arbitration of claims pursuant to a valid binding arbitration agreement, which the courts must enforce pursuant to the FAA."); *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268, 1280 (11th Cir. 2002) ("After a thorough review of the MMWA and the FAA, combined with the strong federal policy favoring arbitration, we hold that written warranty claims arising under the Magnuson–Moss Warranty Act may be subject to valid binding arbitration agreements."). [¶] Following such authority, district courts in this circuit have similarly held that MMWA and the FTC regulations do not bar arbitration of written warranty claims. *See e.g., Jones v. Gen. Motors Corp.*, 640 F. Supp 2d 1124, 1137, 1140 (D. Ariz. 2009) ("The legislative history of the MMWA likewise provides no

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[6] The Ninth Circuit did not address the lower federal district court's analysis on the relevant points discussed in the text of this order. As noted in the text, the lower federal district court in *Phillips Harris* ultimately concluded that the MMWA does not preclude binding arbitration, concluding, as did Smith and Walton, that the FTC's interpretation is erroneous, meaning the bar does not apply to Song-Beverly Act warranties. This conclusion was made in order to reinforce the lower federal court's determination that BMW could enforce the arbitration agreement that was part of a lease agreement with the dealer, to which BMW was not a signatory. According to the lower court in *Phillips Harris*, BMW met its obligation to show it could enforce the arbitration agreement as a third party beneficiary under California law. The Ninth Circuit disagreed, concluding BMW failed to demonstrate it was a third party beneficiary under California law. (*Phillips-Harris v. BMW of North America, LLC* (9th Cir., Jan. 7, 2022, No. 20-55612) 2022 WL 72355, at *1 ["BMW has failed to establish any of these elements"].) Nothing in the Ninth Circuit decision undermines or casts doubts upon the lower's courts observations that are relevant here -- the MMWA (and thus Song Beverly Act) do not preclude binding arbitration agreements, seemingly irrespective of whether the arbitration agreement is contained in a lease agreement or in a warranty. The court thus finishes where it started, finding the rationale and reasoning of the five federal district court cases cited at start of this order to be persuasive on the ultimate issue at play.

indication that Congress intended to preclude resolution of its claims through binding arbitration. . . . Under the plain meaning of these terms, binding arbitration is not an 'informal settlement.' Binding arbitration formally and finally resolves a legal claim; it does not involve the voluntary surrender of the right to pursue a claim.")[7]; *Brown v. BYRV, Inc.*, No. 3:14-CV-01213-AC, 2015 WL 4507159, at *18 (D. Or. July 24, 2015) ("[A]fter careful consideration, the court follows the well-reasoned opinions of the Fifth and Eleventh Circuits skillfully applying the *McMahon* and *Chevron* tests to the question of whether the MMWA prohibits binding arbitration. Accordingly, the court finds the MMWA does not prohibit enforcement of a binding, pre-dispute arbitration provision found in a written warranty."].)

The Court finds no reason to deviate from such well-reasoned authority. ***Accordingly, the Court determines that the MMWA (and by extension, the Song-Beverly Act) does not prohibit binding arbitration.*** (*Phillips-Harris, supra, at p.* *11.)"

The court determines under the reasoning of *Phillips Harris,* and the two cases cited therein, *Jones v. General Motors Corp., and Brown v. BYRV,* that a binding arbitration agreement contained in a warranty provision, such as at issue here, is permissible under the MMWA, despite the FTA's interpterion and regulations to the contrary, and, therefore, as a result, the binding arbitration in this case can be enforced under the Song Beverly Act within the meaning of Civil Code section 1793.1. While the court acknowledges that the issue has not yet been resolved definitively, [8] the clear majority of cases addressing the issue seem to support defendant's position. The court therefore finds that defendant has met its burden pursuant to Code of Civil Procedure section 1281.2 to show a binding arbitration agreement between the parties and has demonstrated that its scope covers the causes of action advanced in plaintiff's operative pleading.

This conclusion requires the court to address defendant's and plaintiff's remaining claims.

Initially, the court grants defendant's request to take judicial notice of plaintiff's complaint filed in this matter. Although the court does not need judicial notice to examine a document in its own case file, as the request is unopposed it is granted.

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[7] As recently noted more recently by a Florida appellate court, relying *on Jones in Krol v. FCA US., LLC* (2019) 273 So.3d 198, "[t]e United States Supreme Court has not addressed whether MMWA claims are arbitrable, and state and lower federal courts are divided on the issue.[3] However, both federal circuit courts to consider the issue have concluded that the MMWA does not prohibit binding arbitration of written warranty claims," citing Davis and Walton." After considering the MMWA and its legislative history, the federal policy favoring binding arbitration, and the persuasive federal circuit court opinions, we conclude that the MMWA permits pre-dispute binding arbitration of written warranty claims." (*Id.* at p. 204.)

[8] (See, e.g., *Pitchwood v. Oakwood Mobile Homes,* Inc. (2000 W.D. Virg.) 124 F.2d 958 [following the FTC's regulations and not *Walton* and *Davis,* and cases cited therein].)

Plaintiff raises two evidentiary objections, both revolving around the declaration of defense attorney Ali Ameripour, and Exhibit 2 attached thereto, which is the 2021 Warranty, which contains the warranty and arbitration clause at issue. Plaintiff objects to Ms. Ameripour statements that the "attached hereto as Exhibit 2" is a true and correct copy of Plaintiff's 2021 Owner's Handbook & Warranty Information." Plaintiff claims she has no personal knowledge of the document, that the admissible lacks foundation, and it is hearsay. She also challenges the admissibility of the document based on hearsay.

The court overrules both objections. It overrules the authentication/foundation objections pursuant to Evidence Code section 1414, which provides that a writing may be authenticated by evidence that a party against whom it is offered has at any time admitted its authenticity, or has been acted upon as authenticated by the party against whom it is covered. This document is the very same one plaintiff relies upon as the basis for its two causes of action for breach of express/implied warranties. The court also overrules the hearsay objection for the reason that plaintiff is relying on the substance of the document for its truth when advancing the two causes of action. At a minimum the rule of completeness seems to apply 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].)

On the merits, plaintiff asserts that the arbitration clause cannot be enforced because it was "surreptitiously inserted into a warranty manual." In making this claim, defendant relies on *Norcia v. Samsung Telecommunications America, LLC* (9th Cir.) 2017 845 F.3d 1279. The majority of federal cases cited at the beginning of this order, however, have rejected similar claims raised by plaintiff. Representative is *Ford v. Hyundai Motor America*, in which defendant (as here) filed a motion to compel arbitration based on an arbitration clause in the 2020 Owner's Warranty Handbook. Plaintiff cited to *Norcia* to argue that an arbitration agreement buried in a warranty agreement was unenforceable, based on the plaintiff's lack of access to the full warranty policy before purchase and the inconspicuousness of the arbitration agreement. (*Ford v. Hyundai Motor America* (C.D. Cal., Oct. 5, 2021, No. 8:20-CV-00890-FLA (ADSX)) 2021 WL 7448507, at *7.) The court distinguished *Norcia*. "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. *Id.* at 1285. 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. *Id.* at 1285-86. Here, in contrast, the California Plaintiffs have asserted breach of warranty claims based on the [2020 Owner's Handbook]," 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." *(Ibid*.) The same is true here.

Next, plaintiff contends that the court cannot enforce the arbitration clause because it is unconscionable. When a party claims that an arbitration agreement or provision is unenforceable due to its unconscionability, a court must determine whether the agreement or provision was

unconscionable at the time it was made. (*Prima Donna Dev. Corp. v. Wells Fargo Bank, N.A* (2019) 42 Cal.App.5th 22, 37; *Sanchez, supra*, 61 Cal.4th at p. 920.) "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." (*OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 125.) Thus, " '[t]he unconscionability doctrine " 'has both a procedural and a substantive element.' " ' " (*Swain v. LaserAway Medical Group, Inc.* (2020) 57 Cal.App.5th 59, 67.)

The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power.' (*OTO, supra*, 8 Cal.5th at p. 125.) " ' " '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.' " ' " (*Id.* at p. 126, italics omitted.) Courts have also found oppression or surprise when an arbitration agreement or provision has not identified the applicable rules governing arbitration. (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 245 ["The level of oppression is increased when, as here, the employer not only fails to provide a copy of the governing rules, but also fails to clearly identify which rules will govern so the employee could locate and review them."]; *Carlson v. Home Team Pest Defense, Inc.* (2015) 239 Cal.App.4th 619, 633 [finding failure to disclose the applicable arbitration rules constituted surprise].)

Substantive unconscionability, on the other hand, " 'pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.' " (*OTO, supra*, 8 Cal.5th at p. 125; *Swain, supra*, 57 Cal.App.5th at p. 67.) "This analysis 'ensures that contracts, particularly contracts of adhesion, do not impose terms that have been variously described as " ' "overly harsh" ' " [citation], " 'unduly oppressive' " [citation], " 'so one-sided as to "shock the conscience" ' " [citation], or "unfairly one-sided" [citation]. All of these formulations point to the central idea that the unconscionability doctrine is concerned not with "a simple old-fashioned bad bargain" [citation], but with terms that are "unreasonably favorable to the more powerful party." ' " (*OTO*, at pp. 129–130; *Prima Donna, supra*, 42 Cal.App.5th at p. 38.)

The court finds there is sufficient procedural unconscionability based on adhesion sufficient to trigger a determination of whether the terms are substantively unconscionable.

Defendant contends that the arbitration is substantively unconscionable because 1) it deprives her of a jury trial; 2) there will be "limited due process" because discovery is limited" as there is no right to depositions; and 3) the 2015 Arbitration Study, Consumer Financial Protection Bureau, March 2015, presented to Congress and addressing arbitrations before AAA, observes consumers win only 20.3 percent of cases, recover only 12 cents on the dollar on average, and "have repeat players" in 90 percent of the consumer disputes. Plaintiff has not

attached the report, but directs the court to a website at http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015

The court finds no substantive unconscionability. The essence of substantive unconscionability rests in a determination that the contractual terms are overharsh or one-sided. Plaintiff claims cursorily that the arbitration agreement is substantively unconscionable because "it deprives [p]laintiff of the constitutional right to jury trial." Not so. If the jury trial waiver involved a right to jury waiver *in a court of law*, plaintiff would be right. (See, e.g., *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 961; see *also Lange v. Monster Energy Company* (2020) 46 Cal.App.5th 436, 452 [waiver of jury trial right inherent in arbitration agreements is not substantively unconscionable; a predispute jury trial waiver right in court action is unconscionable].) The waiver of a jury trial right in the arbitration clause at issue here involves a waiver of the right inherent in arbitration, not a predispute waiver of right to jury trial in a court of law. It is not unconscionable.

As for discovery, the arbitration clause makes it clear that arbitration will be governed by JAMS under its Streamlined Arbitration Rules. Arbitration agreements routinely adopt streamline discovery procedures, and these are characteristic of arbitration agreements. (*Sonic - Calabasas A, Inc. v. Moreno* (2013) 57 Cal.App.4th 1109, 1168.) "Limited discovery, in itself, cannot be the basis for finding an arbitration agreement unconscionable, because such a rule would impermissibly rely on the fact that an agreement to arbitrate is at issue."(*Zaborowski v. MHN Gov't Servs.*, 936 F. Supp. 2d 1145, 1154 (N.D. Cal. 2013); see *Steele v. Lending Club Corporation* (N.D. Cal., Oct. 3, 2018, No. 18-CV-02023-RS) 2018 WL 4773147, at *4.) Rule 13 of the JAMS Streamlined Rules provides that the "necessity of additional information exchange shall be determined by the Arbitrator based upon reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness." In a consumer case, parties may take discovery of third party parties with the approval of the Arbitrator. There is no reason to assume that these provisions will not provide plaintiff adequate discovery if reasonable needed. (See, e.g., *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 540 [rules that allow arbitrator to resolve discovery disputes in manner that allows expanded discovery removes or eliminates unconscionability].) The discovery limitations are not unconscionable.

Defendant's reliance on the March 2015 Consumer Financial Protection Bureau, Report to Congress, which analyzed arbitration cases under the AAA, is misplaced. Initially, the study involved arbitration with AAA, not JAMS. More specifically, case law is clear – unconscionability is not concerned with a "simple old fashioned bad bargain" but with terms that are unreasonable favorable to the more powerful party. (*Sanchez, supra*, 61 Cal.4th at p. 911.) The inquiry focuses on the actual terms of the agreement. (*Bruni v. Didion* (2008) 160 Cal.App.4th 1272, 1288-1289.) Here, the report at issue contains unsworn evidence in the form of a study showing generally that consumers win less often based on the repeat-player effect, and

otherwise receive smaller awards. But courts have rejected similar claims as a basis to show unconscionability. (See, e.g., *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 179 ["We too are not prepared to say without more evidence the 'repeat player' effect is enough to render an arbitration agreement unconscionable].) In any event, there is no evidence offered here that defendant Hyundai is a "repeat player" that gives it an unfair advantage in arbitration. (See *McManus v. CIBC World Markets Corp.* (2003) 109 Cal.App.4th 76, 94 [arbitration provision governing selection of arbitrators was not unconscionable where the plaintiff "presented no evidence" that the "arbitration procedures would entail a 'repeat player effect' "].)

Finally, plaintiff claims that the arbitration agreement is unenforceable because it violates the Song Beverly Act public policy provision contained in Civil Code section 1790.1, which provides in full as follows: " Any waiver by the buyer of consumer goods of the provisions of this chapter, as expressly provided in this chapter, shall be deemed contrary to public policy and shall be unenforceable and void." This provision applies, according to plaintiff, ***because the sales contract*** which contemplated the sale of the vehicle does not involve interstate commerce, and thus is not governed by the Federal Arbitration Act (FAA), but the California Arbitration Act (CAA), meaning the waiver rule above would apply and thus preclude arbitration. For this proposition plaintiff relies on *Woolls v. Superior Court* (2005) 127 Cal.App.4th 197, 211. (See also *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1207 [an exception to the rule that a parties cannot arbitrate wage and hour claims occurs when there is federal preemption by the FAA, as applied to contracts evidencing interstate contracts].[9]) Alternatively, plaintiff insists that even if the FAA applies, the arbitration waiver violates Civil Code section 1790.1, under the authority of *Rhinehart v. Nissan North America, Inc*. (2023) 92 Cal.App.5th 1016, which addressed whether the settlement and release term waiver violated Civil code section 1790.1.

Plaintiff's reliance on *Woolls* is misplaced. In *Woolls,* the arbitration agreement was silent as to whether the arbitration agreement was governed by federal law (FAA) or state law (CAA) (*Woolls, supra,* at p. 201), meaning the burden was on the moving party to show FAA preemption when the arbitration agreement failed to comply with California law (in order to effectuate arbitration pursuant to Business and Professions Code section 7191 involving contract work on residential property), a burden that was not met. (*Id*. at pp. 211-215.) Here, defendant was not required to prove that the FAA preempts California law, nor was it required to prove the involvement of interest commerce in order to show that federal law applies to the alleged arbitration agreement in this matter. It is unambiguously clear from the face of the arbitration clause (as contained in the 2021 Warranty) that arbitration was governed by federal (FAA), not state law. (See 2021 Warranty, p. 14 ; see also *Rodriguez v. Equifax Information Services, LLC* (S.D. Cal., June 9, 2022, No. 321CV01421BENKSC) 2022 WL 2079710, at *4 [FAA applies

[9] *Hoover* in fact is no help to plaintiff, for the *Hoover* court, while recognizing the issue of federal preemption under the FAA, did not address the issue, concluding the trial court properly found the employer waived any right to compel arbitration. (206 Cal.App.4th at pp. 1205-1206.)

because arbitration provision explicitly states that any claims will be governed by the FAA"].) Indeed, plaintiff makes no challenge to this portion of the arbitration provision. *Woolls* and progeny are inapplicable.[10]

The court also finds *Rhinehart* distinguishable. *Rhinehart* involved a discussion of Civil Code section 1790.1 of the Song Beverly Act in the context of a release executed as a part of a pre-litigation settlement between plaintiff and defendants, including Nissan North America, Inc., and Mossy Nissan, Inc. While the appellate court ultimately rejected the notion that the antiwaiver provision noted above categorically prohibited all settlement agreement, it nevertheless concluded under the circumstances of the case the settlement agreement and release contravenes the antiwaiver provision and was therefore void. (*Id.* at p. 1020-1021.) *At no point in its opinion* did *Rhinehart* address the impact of Civil Code section 1790.1 on contractual arbitration agreements otherwise sanctioned under the FAA, the issue here. More to the point, *Rhinehart* did not purport to address the general rule that the FAA governs enforceability of arbitration agreements in contracts involving interstate commerce; nor did it address the liberal policy favoring arbitration as reflected by the FAA. (See, e.g., *Rashid v. BMW of North America, LLC* (S.D. Cal. 2021) 521 F.Supp.3d 968, 972–973, *on reconsideration,* (S.D. Cal., June 15, 2021, No. 20CV573-L-DEB) 2021 WL 2433925.) As observed by defendant in reply, plaintiff fails to cite to one case (state or federal) that has applied Civil Code section 1790.1 to preclude arbitration otherwise governed by the FAA. This court will not be the first.

Summary:

- The court grants defendant's request for judicial notice.
- The court overrules both of plaintiff's evidentiary objections.
- The court finds that defendant has satisfied its burden to show by a preponderance of evidence that an arbitration agreement exists between the parties and that its scope covers the causes of action advanced by plaintiff. In so concluding, the court finds the analysis in *Phillips-Harris v. BMW of North America, LLC* (C.D. Cal., May 20, 2020, No. CV202466MWFAGRX) 2020 WL 2556346, at *11, *rev'd and remanded* (9th Cir., Jan. 7, 2022, No. 20-55612) 2022 WL 72355), and

[10] In any event, even if the court found *Woolls* relevant, a number of federal district courts have concluded that automobile purchase and finance agreements affect interstate commerce for purposes of compelling arbitration. *(Rodriguez, supra, 2*022 WL 2079710, at p, 4; *Hamby v. Power Toyota Irvine*, No. 11-cv-0544-BTM-BGS, 2012 WL 13036860, *1–2 (S.D. Cal. Mar. 22, 2012); *Camarillo v. Balboa Thrift & Loan Ass'n*, No. 20-cv-00913-BEN-BLM, 2021 WL 409726, at *10 (S.D. Cal. Feb. 4, 2021).) Perhaps more significantly, federal appellate courts have determined that buying a car involves interstate commerce. (*Rota-McLarty v. Santander Consumer USA, Inc.* (4th Cir. 2012) 700 F.3d 690, 697-98 ['[T]he broad impact of consumer automobile lending on the national economy' is evident."]; *United States v. Evans* (8th Cir. 2001) 272 F.3d 1069, 1080 ["[T]he purchase of an automobile from a commercial used car dealer" involves interstate commerce].; *Kingsport Motors, Inc. v. Chrysler Motors Corp.* (6th Cir. 1981) 644 F.2d 566, 572 [financing the purchase of a car affects interstate commerce].) The court finds these authorities persuasive in the present context, even if the court is required to go beyond the express language of the arbitration clause language and determine whether interstate commerce is implicated.

the cases cited therein, to be persuasive, and concludes that because binding arbitration can be imposed when contained in a warranty under the Magnusson-Moss Warranty – Federal Trade Commission Act, it can be imposed when an arbitration agreement is contained in a warranty under the Song Beverly Act. The court thus finds the analysis contained *Dardashty v. Hyundai Motor America* (C.D. Cal., Aug. 16, 2024, No. 2:23-CV-09710-MRA-BFM) 2024 WL 4744024, at *4,; *Guaschino v. Hyundai Motor America* (C.D. Cal., Sept. 27, 2023, No. CV2304354MWFJPRX) 2023 WL 8126846, at *4 ; *Vargas-Lopez v. Hyundai Motor America* (C.D. Cal., Feb. 13, 2023, No. 822CV01526FWSJDE) 2023 WL 3035331, at *4 ; *Mendoza v. Hyundai Motor America* (C.D. Cal., Dec. 15, 2022, No. CV 22-210-DMG (AFMX)) 2022 WL 19333333, at *5; and *Ford v. Hyundai Motor America* (C.D. Cal., Oct. 5, 2021, No. 8:20-CV-00890-FLA (ADSX)) 2021 WL 7448507, at *8, to be relevant, persuasive, and thus determinative of the issue.

- The court rejects plaintiff's reliance on *Norcia v. Samsung Telecommunications America, LLC* (9th Cir.) 2017 845 F.3d 1279, for the same reason many of the federal district court cases cited above have rejected its application.
- The court finds that while there was procedural unconscionability based on adhesion, defendant has failed to show any substantive unconscionability. Both must be present to be support unconscionability.
- Finally, the court finds that the arbitration agreement is governed by the FAA, and, further, that Civil Code section 1790.1, as interpreted by *Rhinehart v. Nissan North America, Inc*. (2023) 92 Cal.App.5th 1016, does not preclude arbitration here.
- The court therefore grants defendant's motion to compel arbitration and stays the matter pursuant to Code of Civil Procedure section 1281.4
- The parties should come prepared to discuss future CMC dates.
- The parties are directed to appear either in person or by Zoom.