PROPOSED TENTATIVE

On April 22, 2025, plaintiff Jared Swift filed a complaint against defendants Carmotive, Inc. (dba as Carmotive Strike Acceptance, Inc.) and American Constructors Indemnity Co. (collectively, defendants), advancing six (6) causes of action, as follows:1) violation of the Consumer Legal Remedies Act (Civ. Code, § 1750, et seq.); 2) violation of the Federal Odometer Act, (49 U.S.C. § 32701, et seq.); 3) fraud; 4) negligent misrepresentation; 5) violation of the unfair competition law (Bus. & Prof. Code, § 17200, et seq.); and 6) a violation of Vehicle Code section 11711. American Constructors Indemnity Co., issued a bond to Carmotive, as required pursuant to Vehicle Code section 11710. Briefly, on August 10, 2024, plaintiff purchased a 2019 Jeep Renegade from Carmotive. The purchase included a service contract, which was assigned to Carmotive Strike Acceptance, Inc. Defendants represented that the vehicle had only 59,500 miles, and that it had been inspected and had "no problems." After the purchase, plaintiff discovered the odometer had been "rolled back," and the vehicle had "mechanical problems, including knocking sound and problems with the ignition components and wear and tear consistent with a vehicle over 100,000 miles."

On May 27, 2025, defendants filed a joint motion to compel arbitration pursuant to Code of Civil Procedure section 1281.2. They argue that pursuant to the retail installment sale contract between plaintiff and defendants, involving the sale of the 2019 Jeep Renegade, plaintiff agreed to arbitrate the disputes raised in the operative pleading. The contract is labelled "Retail Installment Contract – Simple Finance Charge (With Arbitration Provision)" (hereafter, agreement). Plaintiff has filed opposition, claiming that the arbitration agreement as a whole is unenforceable, based on concepts of procedural and substantive unconscionability. Defendants filed a reply on June 25, 2025. All briefing has been reviewed.

Page 5 of the arbitration agreement reads in relevant part as follows: "Any claim or dispute, whether in contract, tort, statute or otherwise (***including the interpretation and scope of this Arbitration Provision, any allegation of waiver of rights under this Arbitration Provision, and the arbitrability of the claim or dispute***), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or conditions of this Vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract, shall, at your or our election, ***be resolved by neutral, binding arbitration and not be court action***." (Emphasis added.) The arbitration is governed by the Federal Arbitration Act (FAA).

Resolution of defendant's motion to compel can be made at the gateway stage, in light of the highlighted language above, and given the nature of plaintiff's challenges advanced in opposition. Although a court typically decides the threshold questions whether an arbitration is valid and enforceable, including fraud in the inducement and illegality of the agreement (including unconscionability), an exception to this rule applies under the FAA when the parties have ***clearly and unmistakably agreed*** to delegate questions regarding the validity of the arbitration clause to the arbitration. The parties to an arbitration agreement can agree in a delegation provision to arbitrate "gateway" questions of "arbitrability," such as whether the parties have agreed to arbitrate or whether the agreement covers a particular controversy. (*J.R. v. Electronic Arts. Inc.* (2024) 98 Cal.App.5th 1107, 1114, quoting *Rent-A-Center W., Inc. v.*

Jackson (2010) 461 U.S. 63, 70 (hereafter, *Rent-A-Center*.) "An agreement to arbitrate a gateway issue – otherwise known as a delegation provision – is simply an additional, antecedent agreement the party seeking arbitrations asks . . .[a] court to reenforce." (*J.R., supra*, at p. 1114.) Further, because each agreement is severable, the arbitration agreement is severable from the overarching agreement containing it, and the delegation provision is severable from the arbitration containing it. (*Id.* at p. 1117, citing *Rent-A-Center, supra*, at pp. 70-72.) If a delegation clause exists clearly and unmistakably, the party opposing the enforcement of a delegation provision must challenge the delegation provision ***specifically*** (*J.R., supra,* at p. 1114.) Absent such a challenge, a court must treat the delegation provision as valid and enforce it, "leaving any challenge to the validity of [the arbitration agreement or] the [a]greement as whole for the arbitrator." (*Ibid*.)

Case law has explored what constitutes "specificity" of the challenge, that if made, requires the court, not the arbitrator, to determine the enforceability of the delegation clause itself.

The court starts with *Rent-A-Center, supra*, 561 U.S. 63, the seminal case on the topic, in which plaintiff filed an employment discrimination suit against his former employer; the employer responded by seeking arbitration based on an arbitration agreement that was separate from the underlying employment contract and contained a delegation clause. (*Id*. at pp. 65-66.) The employee opposed the motion, arguing the arbitration agreement was unconscionable. (*Id*. at p. 66.) But the employee challenged only the validity of the arbitration contract and never "even mention[ed] the delegation provision." (*Id*. at p. 72.) On that record, the United States Supreme Court found the arbitrator, not the court, was required to consider the enforceability of the delegation clause because the employee had not challenged the delegation provision itself. (*Id.* at p. 72-76.) The court reasoned that the delegation clause must be viewed as a separate agreement nested within the arbitration agreement, and unless the clause is directly challenged, the arbitrator must resolve all of the disputed issues. (*Ibid.*) *Rent-A-Court* made the observation that "had [the employee] challenged the delegation provision by arguing that these [alleged unconscionable] procedures *as applied* to the delegation provision rendered *that provision* unconscionable, the challenge could have been considered by the court." (*Id*. at p. 74, italics in original.) The *Rent-A-Center* court also noted that if "the claim had been 'fraud in the inducement of the arbitration clause itself,' then the court would have considered it." (*Id*. at p. 71.) That had not been done.

Nielsen Contracting, Inc. v. Applied Underwriters, Inc. (2018) 22 Cal.App.5th 1096 provides additional guidance on what is considered a sufficiently "specific" challenge following *Rent-A-Center, supra*. "California courts have recognized that a court is the appropriate entity to resolve challenges to a delegation clause nested in an arbitration clause when a specific contract challenge is made to the delegation clause." (*Id.* at p. 1109, citations omitted.) The *Nielson* court explained further: "Relying on *Rent-A-Center*, defendants contend a court may rule on the enforceability of a delegation clause only if the plaintiff's challenge to delegation clause is different from the plaintiff's challenge to the entire contract or to the entire arbitration agreement." (*Id.* at p. 1111.) The court rejected that argument. "If we were to accept defendants' argument that courts are precluded from ruling on specific contract defenses to delegation clauses merely because the same defense is also brought to invalidate other related contractual

provisions, we would be treating delegation clauses differently than other contractual clauses, a determination that would be inconsistent with the FAA, as interpreted by the United States Supreme Court." (*Ibid*.) "This hypothetical – that *if* the plaintiff had directed the unconscionability challenges . . . against the delegation clause *in addition to* asserting the same unconscionability challenge against the delegation clause against the arbitration agreement itself, the 'challenge [to the delegation clause] should have been considered by the court' – illustrates that the focus of the court's attention must be on whether the particular challenge is directed at the delegation clause, not whether the same challenges are also directed at the agreement or agreements in tow which the delegation clause is embedded or nested. [Citation.] Under *Rent-A-Center*'s reasoning, whether the challenge is the same as or different from the challenge is not dispositive of whether the challenge is specifically directed at the delegation clause." (*Id.* at p. 1111; see also *Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121, 131 [if the party's challenge is directed to the agreement as a whole – even if it applies equally to the delegation clause – the delegation clause is enforced and the arbitrator, not the court will determine whether the agreement is enforceable].)

Malone v. Superior Court (2014) 226 Cal.App.4th 1551 is also illustrative. The *Malone* court observed that courts have treated the delegation clause as a separate agreement to arbitrate the issues of enforceability. "In other words, courts have separately enforced an enforceable delegation clause; thus, it has been held that whether the arbitration agreement as a whole is ultimately held to be unenforceable will have no bearing on the enforcement of the delegation clause itself. [Citation.] [¶] For this reason, when a party is claiming that an arbitration agreement is unenforceable, it is important to determine whether the party is making a specific challenge to the enforceability of the delegation clause or is simply arguing that the agreement as a whole is unenforceable. If the party's challenge is directed to the agreement as a whole—even if it applies equally to the delegation clause—the delegation clause is severed out and enforced; thus, the arbitrator, not the court, will determine whether the agreement is enforceable. In contrast, if the party is making a specific challenge to the delegation clause, 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)." (*Malone, supra,* 226 Cal.App.4th at pp. 1559–1560, citing *Rent-A-Center, supra,* 561 U.S. at p. 70.) In *Malone,* the employee "argued both that the arbitration agreement was unconscionable generally, and that the delegation clause was unconscionable under" three California appellate decisions, "which held such clauses to be unenforceable." (*Malone,* at pp. 1555, 1560.) The employee's unconscionability challenge to the delegation clause "stood alone" because it was "distinct" from the challenge to the agreements' other clauses. (*Id.* at p. 1558, fn. 4.)

Trinity v. Life Ins. Co. of North America (2022) 78 Cal.App.5th 1111 further expounds on the appropriate standard. Notwithstanding a provision that clearly and unmistakably delegates arbitrability issues to the arbitrator, if a party is claiming that it never agreed to arbitration clause at all – e.g., if it is claiming forgery or fraud in the factum – then the court not the arbitrator must consider the claim. "This approach is consistent with the principle that arbitration is a matter of

contract – a party cannot be compelled to arbitrate pursuant to contract to which the party never agreed." (*Id*. at p. 1123; see also *J.R., supra,* 98 Cal.App.5th at p. 1116 [party challenges the validity of the delegation clause specifically when he or she "disaffirms the entirety of any" agreement he entered into with defendant at all, as there is no requirement that a party use the words "delegation provision"]; *Garcia v. Stoneledge Furniture* (2024) 102 Cal.App.5th 41, 50 [when plaintiff challenges the existence of an agreement to arbitrate between the parties by claiming she did not sign arbitration, the issue of arbitrability is to be decided by the court, not the arbitrator, because the gateway questions of arbitrability presupposes the existence of an agreement between the parties, which the court necessarily decides].)

With these standards in mind, defendant has shown that there is a delegation clause, to the effect that the arbitrator is charged with determining arbitrability of the claim or dispute in the first instance. The language at issue in the arbitration provision (highlighted above) provides that the arbitrator, not the court, is charged with "the interpretation and scope of the Arbitration Provision, any allegation of waiver of rights under this Arbitration Provision and the arbitrability of the claim or dispute[.]" Further, courts have determined that similar language reflects a "clear and unmistakable" desire by parties that the arbitrator and not the court is charged with gateway issues, such as the arbitrability of the conflict. (See, e.g., *Rashad Jimerson, v. Sun Technical Services, LLC, et al.* (S.D. Cal., June 6, 2025, No. 24-CV-1150-BAS-VET) 2025 WL 1639415, at *5 [" 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."]; *Loewan v. Lyft, Inc*. (N.D. Cal. 2015) 129 F.Supp.3d 945. 95 [same]; see also *Peterson v. Lyft, Inc.* (N.D. Cal., Nov. 19, 2018, No. 16-CV-07343-LB) 2018 WL 6047085, at *3 [where arbitration agreement expressly provides that "arbitrability of any dispute" shall be submitted to arbitration clearly and unmistakably establishes delegation of gateway issues to the arbitrator];*Hueston v. Westlake Portfolio Management, LLC* (C.D. Cal., June 27, 2024, No. EDCV 24-0380 JGB (SHKX)) 2024 WL 4472247, at *5 [where arbitration agreement provides that any "claim or dispute, whether in contract, tort or otherwise (*including the interpretation and scope of this clause and the arbitrability of any issue*) . . . shall . . . be resolved by neutral, binding arbitration and not by a court action," language clearly and unmistakably delegates disputes related to arbitrability to the arbitrator]; *Gennarelli v. Charter Communications, Inc.* (C.D. Cal., Apr. 22, 2021, No. 219CV09635JLSADS) 2021 WL 4826612, at *5 [where arbitration agreement provides that "all disputes related to arbitrability of any claim or controversy" must be resolved through binding arbitration clearly and unmistakably indicated that the gateway issues of scope and validity must be decided by the arbitrator].) The delegation clause here reads similarly; it thus "clearly and unmistakably" refers questions of "arbitrability" of any claim or dispute to the arbitrator, not the court. Plaintiff in opposition does not challenge defendant's claim that this is a delegation clause.[1]

[1] The arbitration agreement also permits either party to choose between the American Arbitration Association (AAA) or the National Arbitration and Mediation as the arbitration organization, meaning both sets of rules are

Further, after a close examination of plaintiff's opposition, it is apparent to the court that plaintiff does not "specifically" challenge the delegation clause. Plaintiff's unconscionability challenges are directed to the arbitration agreement *as a whole*, not to the delegation clause in particular. For example, plaintiff contends that the contract as a whole is adhesive, that the entirety of the arbitration provision was buried on page 5 of the agreement, that the arbitration provision as a whole is misleading, that it improperly involves the complete absence of discovery, and that it allows defendant to unilaterally select the pool of arbitrators. None of these arguments go to the validity of the delegation clause.

This was the same situation addressed by the United States Supreme Court in *Rent-A-Center, supra.* There, plaintiff "challenged only the validity of the contract as a whole. Nowhere in his opposition to Rent-A-Center's motion to compel arbitration did he even mention the delegation provision." (*Id*. at p. 72.) More pointedly, the high court noted that none of the plaintiff's claims regarding unconscionability were "specific to the delegation provision." Any claim that the arbitration agreement was "one-sided" "did not go to the validity of the delegation clause." Further, plaintiff argued the other substantive unconscionability arguments – the fee-splitting arrangement or the limitations on discovery – "rendered the entire Agreement invalid," without making any arguments specific to the delegation provision. (*Id.* at p. 74.) While plaintiff in *Rent-A-Center* noted the existence of the delegation clause, plaintiff's "unconscionability arguments made no mention of it," claiming the "entire agreement" as a whole was unconscionable. These types of arguments were insufficient to challenge the delegation clause, meaning the court was required to grant the motion to compel arbitration and allow the arbitrator to determine such gateway issues. (*Id*. at p. 72.) *The same is true here*. (See *Nickson, supra*, 90 Cal.App.5th at p. 943 ["Here, as in that case, a delegation clause is contained in an arbitration agreement. In both cases, the employee has challenged the enforceability of the agreement as a whole, not the delegation clause in particular. Finally, as in *Rent-A-Center*, the delegation to the arbitrator to decide enforceability is clear and unmistakable. Thus, it is for the arbitrator, not a court, to determine the Agreement is unconscionable"]; *Najarro v. Superior Court* (2021) 70 Cal.App.5th 871, 889 [petitioners have not specifically challenged the delegation clause; those petitioners who signed the contract must have their enforcement challenges determined by the arbitrator "unless they can show that they never entered into any agreement at all"]; *Aanderud v. Superior Court, supra*, 13 Cal.App.5th at p. 895 ["When determining whether a delegation clause is unconscionable, any claim of unconscionability must be specific to the delegation

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incorporated into the arbitration agreement. The court notes that plaintiff, in opposition, relies heavily on the "Consumer Arbitration Rules and Mediation Procedures" under the AAA. There is currently a split of authority on whether such rules offer "clear and unmistakable" agreement between the parties in establishing a delegation clause when the rules contemplate that the arbitrator is imbued with the authority to make gateway determinations of arbitrability. (See, e.g., *Aanderud v. Superior Court, supra,* 13 Cal.App.5th at p. 893, fn. 5 [identifying split of authority and listing cases on both sides of the determination].) The court does not rely on these arbitration rules as a basis for concluding that there was a "clear and unmistakable" intent by the parties for the arbitrator to determine any gateway issues, as 1) the parties do not rely on this rationale nor acknowledge the split of authority; and 2) the clear language in the arbitration agreement otherwise resolves the issue.

clause."].) Plaintiff omits any discussion of the delegation clause in opposition. This case is therefore factually similar to *Rent-A-Center* and progeny.

Plaintiff's general challenges stand in *sharp* contrast to the focused challenges made in *Nielson,* in which plaintiffs asserted a specific, substantive challenge to the delegation clause separate from the challenge to the arbitration clause and the underlying contracts. (*Nielson, supra,* 22 Cal.App.4th at p. 1113.) They also stand in contrast to the focused challenges made in *Malone*. There, according to the appellate court, "Malone argued both that the arbitration agreement was unconscionable generally, and that the delegation clause was unconscionable under [there cases]. As Malone made a specific challenge to the delegation clause, the trial court was required to resolve the merits of that challenge. . . ." (*Id*. at p. 1560.) Nor is there anything offered by plaintiff in his opposition that can be deemed remotely akin to the arguments advanced in *J.R.* and progeny. Plaintiff does not disaffirm the contract, claim that it was entered into fraudulently (*Trinity, supra,* 78 Cal.App.5th at pp. 1123), or otherwise challenge the very existence of the arbitration contract itself (i.e., there is no issue as to whether any agreement to arbitrate existed between the parties). (*Garcia, supra*, 102 Cal.App.5th at p. 50 ["delegation of such questions presupposes the existence of an agreement between the parties, which the court had to necessarily decide before it could enforce such delegation"].)

Plaintiff relies on *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 890 in support of his claim that the arbitration provision is substantively unconscionable. Nothing in *Sanchez,* however, involved a challenge to the court's ability to determine arbitrability based on rules associated with a delegation clause, as detailed above. It was undisputed in *Sanchez* that the trial court was the entity charged with examining whether the arbitration agreement was enforceable based on unconscionability rules. (*Id.* at p. 907 [" we hold that [United States Supreme Court authority] requires enforcement of the class waiver but does not limit unconscionability rules applicable to other provisions of the arbitration agreement"].) It is well settled that a case is not authority for a proposition not considered therein or an issue not presented by its own facts. (*McConnell v. Advantest America, Inc.* (2023) 92 Cal.App.5th 596, 611.)

For all of these reasons, the court grants defendant's motion to compel arbitration, as the court finds 1) the arbitration provision clearly and unmistakably contains a delegation clause, requiring the arbitrator to determine all gateway issues of arbitrability; and 2) plaintiff does not specifically challenge the unconscionability of the delegation clause, focusing his argument about unconscionability on the arbitration agreement as a whole, without mentioning the delegation clause at all, as was the case in *Rent-A-Center*. It is for the arbitrator, not the court, to determine the issue of arbitrability. Accordingly, the court stays the current matter pursuant to section 1281.4 pending completion of the arbitration proceedings. (*Gaines v. Fidelity National Title Ins. Co.* (2016) 62 Cal.4th 1081, 1096 [once a court orders a controversy to arbitration, it must, "upon motion of a party to such action or proceeding, stay the action or proceeding until an

arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies," citing to § 1281.4].)

The parties are directed to appear at the hearing either in person or by Zoom.