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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRENDA HAGEMAN et al.,  
  
Plaintiffs,  
  
v.  
  
HYUNDAI MOTOR AMERICA,  
  
Defendant.

Case No. 8:23-cv-01045-HDV-KES

**ORDER DENYING DEFENDANT'S  
MOTION TO COMPEL ARBITRATION  
[DKT. NO. 37]**

1 **I. INTRODUCTION**

2 This putative class action involves allegedly defective tow hitch wiring in Hyundai’s Palisade  
3 vehicles. Before the Court is Hyundai Motor America’s (“Hyundai”) Motion to Compel Arbitration  
4 (the “Motion”) [Dkt. No.37]. Hyundai maintains that when Plaintiffs signed up for optional  
5 Bluelink services at a local dealership, they agreed to arbitration of all claims relating in any way to  
6 their vehicles.

7 The Motion presents three distinct legal questions. First, does the delegation clause in the  
8 parties’ arbitration agreement require this Court to refer all questions—including that of  
9 arbitrability—to a third-party arbitrator? Second, is the arbitration agreement itself valid? And  
10 third, does the agreement by its terms cover the claims alleged here?

11 As to the initial foundational issue, the Court concludes that the delegation clause does *not*  
12 contain “clear and unmistakable” language sufficient to refer all questions to an arbitrator because  
13 the agreement expressly reserves class issues to the Court. On the second question of validity, the  
14 Court finds that the Hyundai arbitration agreement is a contract of adhesion—rife with both  
15 procedural and substantive unconscionability—that if interpreted as Hyundai cynically suggests  
16 would potentially cause enormous surprise and prejudice to its broader customer base.

17 Most importantly, on the substantive merits of the third question, Hyundai’s interpretation of  
18 the arbitration agreement is patently absurd. Under no reasonable reading of the plain language of  
19 this agreement can Plaintiffs’ product defect claims be covered under the arbitration provisions  
20 simply because the relatively minor Bluelink contract—a contract that offers “concierge services”  
21 and has nothing to do with the rest of the Hyundai Palisade—used the term “vehicle.” To the  
22 contrary, accepting Hyundai’s breathtakingly broad reading would contravene hundreds of years of  
23 contract interpretation principles going back to William Blackstone.<sup>1</sup> Hyundai’s Motion is denied.

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25  
26 <sup>1</sup> In making this argument, Hyundai joins Disney and others in the rogues’ gallery of corporate  
27 weaponization and abuse of the arbitration agreement. See Jessie Yeung & Jon Passantino, *Disney*  
28 *Reverses Course on Bid to Block Wrongful Death Lawsuit by Widower Who had Disney +*, CNN  
(Aug. 19, 2024), [www.cnn.com/2024/08/19/business/disney-arbitration-wrongful-death-lawsuit-intl-hnk/index.html](http://www.cnn.com/2024/08/19/business/disney-arbitration-wrongful-death-lawsuit-intl-hnk/index.html).

1 **II. FACTUAL BACKGROUND**

2 Hyundai sold Plaintiffs and putative class members 2020–2022 Hyundai Palisade vehicles  
3 with allegedly defective tow hitch wiring modules. First Amended Complaint (“FAC”) ¶ 1 [Dkt.  
4 No. 19]. Plaintiffs and class members paid approximately \$475–\$750 for optional tow hitch and tow  
5 wiring harness module accessories to operate an attached trailer’s turn signals and brake lights. *Id.*  
6 ¶ 2. As alleged in the FAC, the tow wiring harness modules contain defects causing them to short  
7 circuit and catch on fire. *Id.* ¶ 4.

8 Hyundai issued a recall on August 22, 2022 and admitted that “debris and moisture  
9 accumulation on the tow hitch harness module printed circuit board may cause an electrical short,  
10 which can result in a fire and that a fire while parked or driving can increase the risk of injury.” *Id.*  
11 (cleaned up). After issuing the recall, Hyundai directed purchasers to return their vehicles to  
12 Hyundai for repairs. *Id.* ¶ 5. But the repairs only disabled the tow hitch wiring such that the turn  
13 and brake signals no longer worked. *Id.* As a result, many purchasers can no longer use their  
14 vehicles to tow.

15 Plaintiffs brought this action on June 14, 2023 and filed a First Amended Complaint on  
16 October 16, 2023. *See* Complaint [Dkt. No. 1]; FAC. Plaintiffs assert eleven claims against  
17 Hyundai for (1) unjust enrichment, (2) breach of implied warranty under New Jersey law, (3) breach  
18 of express warranty under New Jersey law, (4) breach of implied warranty under Pennsylvania law,  
19 (5) breach of express warranty under Pennsylvania law, (6) breach of express warranty under Utah  
20 law, (7) breach of express warranty under Minnesota law, (8) breach of express warranty under  
21 South Carolina law, (9) breach of implied warranty under New Hampshire law, (10) breach of  
22 express warranty under New Hampshire law, and (11) breach of express warranty under Arizona  
23 law. *See* FAC.

24 Hyundai filed a Motion to Dismiss on October 30, 2023 seeking dismissal of all claims.  
25 [Dkt. No. 22]. The unjust enrichment claim was stricken and the breach of express warranty claims  
26 were dismissed. [Dkt. No. 35]. The case was previously before District Judge Cormac J. Carney  
27 and was transferred to this Court on May 31, 2024.

28 On April 24, 2024, Hyundai filed its Motion to Compel Individual Arbitration. *See* Motion.

1 Hyundai asserts that Plaintiffs enrolled in Hyundai Bluelink Services,<sup>2</sup> a communication and  
2 technology feature in their cars, during a Dealer-Assisted enrollment process. *Id.* at 1. To enroll in  
3 the Bluelink services, Plaintiffs had to agree to a Connected Services Agreement (“CSA”). *Id.*  
4 Plaintiffs were required to click a box acknowledging that they have read and agree to the Bluelink  
5 Terms and Conditions, which included a hyperlink to the then effective Connected Services  
6 Agreement. Declaration of Vijay Rao (“Rao Decl.”) Exhibit I. The terms and conditions of the CSA  
7 contained an arbitration provision, which states as follows:

8 Hyundai and you agree to arbitrate any and all disputes and claims between us arising out of  
9 or relating to this Agreement, Connected Services, Connected Services Systems, Service  
10 Plans, your Vehicle, use of the sites, or products, services, or programs you purchase, enroll  
11 in or seek product/service support for, whether you are a Visitor or Customer, via the sites or  
12 through mobile application, except any disputes or claims which under governing law are not  
13 subject to arbitration, to the maximum extent permitted by applicable law. This agreement to  
14 arbitrate is intended to be broadly interpreted and to make all disputes and claims between us  
15 subject to arbitration to the fullest extent permitted by law.

16 Rao Decl. Ex. E-F ¶ 15.C.(a), Ex. G-H ¶ 14.C.(a)). “Hyundai” is defined in the CSA to include  
17 “Hyundai Motor America.” Rao Decl. Ex. E-H at p.1. “You” is defined as any person who  
18 “purchased, leased, [or subscribed] to a Vehicle equipped with ... the Connected Services and/or has  
19 activated the Connected Services.” *Id.*

20 The arbitration clause goes on to state that “You agree that, by entering into this Agreement,  
21 you and Hyundai are each waiving the right to a trial by jury or to participate in a class or  
22 representative action to the maximum extent permitted by law.” Rao Decl. Ex. E-F ¶ 15.C.(a), G-H  
23 ¶ 14.C.(a). And “ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN  
24 INDIVIDUAL BASIS TO THE MAXIMUM EXTENT PERMITTED BY LAW; CLASS  
25 ARBITRATIONS, CLASS ACTIONS OR REPRESENTATIVE ARBITRATIONS ARE NOT  
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27 <sup>2</sup> Hyundai describes Bluelink services as an optional connected services systems that has various  
28 features such as remote start, remote door lock, remote care finders, on demand diagnostics and  
alerts, enhanced roadside assistance, and emergency assistance. FAC at ¶ 4.

1 PERMITTED.” *Id.* (all caps in original). The arbitration provision also contains a delegation clause  
2 which represents that:

3 [a]ll issues are for the arbitrator to decide, including the scope and enforceability of this  
4 arbitration provision as well as the Agreement’s other terms and conditions, and the arbitrator  
5 shall have exclusive authority to resolve any such dispute relating to the scope and  
6 enforceability of this arbitration provision or any other term of this Agreement including, but  
7 not limited to any claim that all or any part of this arbitration provision or Agreement is void  
8 or voidable. However if putative class or representative claims are initially brought by either  
9 party in a court of law, and a motion to compel arbitration is brought by any party, then the  
10 court shall decide whether this agreement permits class proceedings. For the avoidance of  
11 doubt, the court and arbitrator shall be bound by the terms of this Agreement, including with  
12 regard to the class and representative waiver provision.

13 *Id.* The parties did not submit with their Motion papers any of the standardized purchase contracts  
14 that customers typically sign when purchasing a Hyundai vehicle. At oral argument, counsel for  
15 Hyundai essentially conceded that such contracts do not normally contain an arbitration provision.

16 On August 1, 2024, the Court heard oral argument on the Motion. [Dkt. No. 50]. The Court  
17 then ordered supplemental briefing on the issue of unconscionability, which the parties filed  
18 simultaneously on September 10, 2024. [Dkt. Nos. 55, 56].

### 19 **III. LEGAL STANDARD**

20 The Federal Arbitration Act (“FAA”) “governs arbitration agreements in contracts evincing  
21 ‘a transaction involving commerce.’” *Zoller v. GCA Advisors, LLC*, 993 F.3d 1198, 1201 (9th Cir.  
22 2021) (quoting 9 U.S.C. § 2). It “declares ‘a liberal federal policy favoring arbitration’ and provides  
23 that such agreements ‘shall be valid, irrevocable, and enforceable, save upon such grounds as exist at  
24 law or in equity for the revocation of any contract.’” *Id.* (quoting *AT&T Mobility LLC v.*  
25 *Concepcion*, 563 U.S. 333, 339 (2011) and 9 U.S.C. § 2).

26 The FAA allows “[a] party aggrieved by the alleged failure, neglect, or refusal of another to  
27 arbitrate under a written agreement for arbitration [to] petition any United States district court ... for  
28 an order directing that such arbitration proceed in the manner provided for in such agreement.”

1 9 U.S.C. § 4. A district court’s role is “limited to ‘determining (1) whether a valid agreement to  
2 arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.’” *Revitch*  
3 *v. DIRECTV, LLC*, 977 F.3d 713, 716 (9th Cir. 2020) (quoting *Chiron Corp. v. Ortho Diagnostic*  
4 *Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). “If the answer to both questions is yes, then the  
5 FAA requires a court ‘to enforce the arbitration agreement in accordance with its terms.’” *Id.*  
6 (quoting *Chiron Corp.*, 207 F.3d at 1130). “In construing an arbitration agreement, courts must  
7 ‘apply ordinary state-law principles that govern the formation of contracts.’” *Wolsey, Ltd. v.*  
8 *Foodmaker, Inc.*, 144 F.3d 1205, 1210 (9th Cir. 1998) (quoting *First Options of Chicago, Inc. v.*  
9 *Kaplan*, 514 U.S. 938, 944 (1995)). “[A]mbiguities about the scope of an arbitration agreement must  
10 be resolved in favor of arbitration.” *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1418 (2019); *see*  
11 *also Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983).

12 Pursuant to Section 2 of the FAA, there are two types of challenges to arbitration agreements:  
13 “One type challenges specifically the validity of the agreement to arbitrate, and the other challenges  
14 the contract as a whole, either on a ground that directly affects the entire agreement (e.g., the  
15 agreement was fraudulently induced), or on the ground that the illegality of one of the contract’s  
16 provisions renders the whole contract invalid.” *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70  
17 (2010) (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 (2010)). If a party  
18 challenges the validity of the arbitration agreement under Section 2, then the court “must consider  
19 the challenge before ordering compliance with that agreement.” *Id.* at 71.

## 20 **IV. DISCUSSION**

### 21 **A. Delegation Clause**

22 The Supreme Court has explained that “[t]he delegation provision is an agreement to  
23 arbitrate threshold issues concerning the arbitration agreement.” *Rent-A-Center*, 561 U.S. at 68.  
24 Parties may agree to arbitrate the gateway question of arbitrability, as the principle of arbitration is a  
25 matter of contract law. *Id.* at 69. For an issue to be delegated, ‘it must be shown by ‘clear and  
26 unmistakable’ evidence that the parties intended to delegate the issue to the arbitrator.” *Ajamian v.*  
27 *CantorCO2e*, 203 Cal. App. 4th 771, 781, (2012); *see also Brennan v. Opus Bank*, 796 F.3d 1125,  
28 1130 (9th Cir. 2015) (applying same standard). Clear and unmistakable is a “heightened standard.”

1 *Rent-A-Center*, 561 U.S. at 70 n. 1.

2 Here, the CSA’s arbitration provision contains a delegation clause, which states “[a]ll issues  
3 are for the arbitrator to decide, including the scope and enforceability of this arbitration provision as  
4 well as the Agreement’s other terms and conditions, and the arbitrator shall have exclusive authority  
5 to resolve any such dispute relating to the scope and enforceability of this arbitration provision or  
6 any other term of this Agreement. . . .” Rao Decl. Ex. E-F ¶ 15.C, G-H ¶ 14.C. Therefore, before  
7 determining whether the arbitration agreement itself is valid, the Court must first determine whether  
8 Plaintiffs agreed to delegate the gateway question of arbitrability to the arbitrator where, as here, the  
9 case is a putative class action.

10 After reviewing the relevant language of the parties’ agreement, the Court concludes that the  
11 CSA does *not* meet this heightened standard. Although Section 14.C. states that “all issues are for  
12 the arbitrator to decide”, it goes on to say *in the same section*, “[h]owever if putative class or  
13 representative claims are initially brought by either party in a court of law, and a motion to compel  
14 arbitration is brought by any party, then the court shall decide whether this agreement permits class  
15 proceedings.” *Id.* That is exactly the situation here. So which is it? Does an arbitrator or the Court  
16 decide if a Plaintiff in a putative class action must go to arbitration? Or does the Court first decide  
17 the question of whether the agreement permits class treatment (presumably including the question of  
18 class certification) and, if so, then leave the case to proceed as a class action in arbitration?<sup>3</sup> The  
19 language is the very opposite of “clear and unmistakable.” To the contrary, it is convoluted at best  
20 and contradictory at worst.

21 Moreover, the delegation language in the CSA is inconsistent with the severability clause in  
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23 <sup>3</sup> The Court can imagine many other possible interpretations and variations on how to attempt to  
24 reconcile these two clauses. What is clear is that Hyundai wants to have its cake and eat it too—*i.e.*,  
25 to require the arbitrator to decide (almost) everything but to create a huge carve-out benefitting  
26 Hyundai so that only a judge—and not an arbitrator—can allow a case to proceed as a class  
27 (presumably so that an appeal can be filed, if necessary). But that still leaves the initial question up  
28 in the air because it is unclear who decides if a *class plaintiff* must go to arbitration in the first  
instance? And if this Motion is granted and the case goes to an arbitrator, when exactly would the  
Court decide “whether this agreement permits class treatment”?

1 Section 16(E), which states that “[i]f any part of this Agreement is considered invalid *by a court* or  
2 arbitrator, the rest of it will remain enforceable.” Rao Decl. Ex. E-F ¶ 16.E, G-H ¶ 15.E (emphasis  
3 added). These contradictory provisions are similar to those in *Baker v. Osborne Dev. Corp.*, 159  
4 Cal. App. 4th 884 (2008). In *Baker*, the California Court of Appeal refused to enforce a delegation  
5 clause that read “[a]ny disputes concerning the interpretation or enforceability of this arbitration  
6 agreement, including without limitation, its revocability or voidability for any cause . . . shall be  
7 decided by the arbitrator.” 159 Cal. App. 4th at 888–89. A severance provision in the same  
8 agreement maintained that severance was allowed if “any provision of this arbitration agreement  
9 shall be determined by the arbitrator *or by any court* to be unenforceable.” *Id.* at 891 (emphasis  
10 added). The Court in *Baker* found that the arbitration agreement did not clearly and unmistakably  
11 reserve to the arbitrator the determination of whether the arbitration agreement was enforceable  
12 because one provision stated that these issues were to be decided by the arbitrator while a separate  
13 provision implied that a court could find it unenforceable. *See id.* at 893–94. Many other California  
14 courts have similarly held that, where (as here) arbitration agreements that include severability  
15 clauses imply a role for the court, gateway issues of arbitrability are not clearly and unmistakably  
16 referred solely to the arbitrator. *See, e.g., Peleg v. Neiman Marcus Grp., Inc.*, 204 Cal. App. 4th  
17 1425, 1444 (2012) (“[W]e conclude the inconsistency between the Agreement's delegation and  
18 severability provisions indicates the parties did not clearly and unmistakably delegate enforceability  
19 questions to the arbitrator.”); *Parada v. Superior Court*, 176 Cal. App. 4th 1554, 1566 (2009)  
20 (cleaned up) (“Use of the term ‘trier of fact of competent jurisdiction’ instead of ‘arbitration panel’  
21 or ‘panel of three (3) arbitrators’ suggests the trial court also may find a provision, including the  
22 arbitration provision, unenforceable. The arbitration provisions of the [relevant agreement], as the  
23 one in *Baker*, did not ‘clearly and unmistakably’ reserve to the arbitration panel the issue whether  
24 those arbitration provisions were unenforceable.”).

25 In summary, Hyundai has not demonstrated clear and unmistakable language delegating the  
26 question of arbitrability to the arbitrator. The Court must therefore address these issues.

27 **B. Unconscionability**

28 “Federal law provides that arbitration agreements generally shall be valid, irrevocable, and



1 enforceable except when grounds exist at law or in equity for the revocation of any contract.”  
2 *Circuit City Stores, Inc. v. Mantor*, 335 F.3d 1101, 1105 (9th Cir. 2003) (citations omitted). When  
3 evaluating the validity of an arbitration agreement, “federal courts ‘apply ordinary state-law  
4 principles that govern the formation of contracts.’” *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171,  
5 1175 (9th Cir. 2014) (quoting *First Options of Chicago*, 514 U.S. at 944). Because  
6 unconscionability is a defense that applies to contracts, a court may refuse to enforce an  
7 unconscionable arbitration agreement. *See id.*

8 “Under California law, unconscionability has both procedural and substantive elements, and  
9 both elements must be present for a court to invalidate a contract on the ground of  
10 unconscionability.” *Baker*, 159 Cal. App. 4th at 894. But both elements need not be present in the  
11 same degree, because “procedural unconscionability must be measured in a sliding scale with  
12 substantive unconscionability.” *Parada*, 176 Cal. App. 4th at 1569–70. Therefore, “the more  
13 substantively oppressive the contract term, the less evidence of procedural unconscionability is  
14 required to come to the conclusion that the term is unenforceable, and vice versa.” *Armendariz v.*  
15 *Found. Health Psychcare Servs, Inc.*, 24 Cal. 4th 83, 114 (2000).

16 Applying this standard as discussed below, the Court concludes that the CSA’s arbitration  
17 agreement—if read broadly to cover all mechanical issues relating to the vehicle, as Hyundai  
18 suggests—would be unconscionable and therefore unenforceable.

### 19 1. Procedural unconscionability

20 The California Supreme Court in *Armendariz* explained that procedural unconscionability  
21 focuses on oppression or surprise due to unequal bargaining power. *Armendariz*, 24 Cal. 4th at 114.  
22 “Oppression arises from an inequality of bargaining power which results in no real negotiation and  
23 an absence of meaningful choice. Surprise involves the extent to which the supposedly agreed-upon  
24 terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the  
25 disputed terms.” *Tiri v. Lucky Chances, Inc.*, 226 Cal. App. 4th 231, 245 (2014) (cleaned up).

26 The oppression element is generally satisfied when the contract is one of adhesion.  
27 *Cobarruviaz v. Maplebear, Inc.*, 143 F. Supp. 3d 930, 941 (N.D. Cal. 2015). A contract of adhesion  
28 “signifies a standardized contract, which, imposed and drafted by the party of superior bargaining

1 strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.”  
2 *Armendariz*, 24 Cal. 4th at 113 (quoting *Neal v. State Farm Ins. Cos.*, 188 Cal. App. 2d 690, 694  
3 (1961)).<sup>4</sup>

4 Here, the CSA is undoubtedly a contract of adhesion. Plaintiffs were required to sign the  
5 CSA to access the Bluelink services presented to them by the Hyundai dealerships. Plaintiffs did not  
6 have any bargaining power when they signed, and the CSA was certainly not the subject of any  
7 negotiation. To the contrary, it was presented on a standardized form, drafted, and imposed by a  
8 party of superior bargaining strength that left Plaintiffs only with the option of adhering to it or  
9 rejecting it. Moreover, Plaintiffs did not have a right to opt-out of the CSA. *See Cobarruviaz*, 143  
10 F. Supp. 3d at 941.

11 The finding that the CSA is an adhesion contract “heralds the beginning, not the end, of our  
12 inquiry into its enforceability.” *Morris v. Redwood Empire Bancorp*, 128 Cal. App. 4th 1305, 1319  
13 (2005). Procedural unconscionability also requires a determination of the factors of surprise and  
14 oppression. *Parada*, 176 Cal. App. 4th at 1571. The analysis on surprise involves the extent to  
15 which the “challenged term is hidden in a prolix printed form or is otherwise beyond the reasonable  
16 expectation of the weaker party.” *Morris*, 128 Cal. App. 4th at 1321.

17 The arbitration provisions in the CSA were not hidden. They consist of 11 paragraphs under  
18 the large font heading of “Resolving Disputes.” *See Rao Decl. Ex. E-F ¶ 15, G-H ¶ 14*. But it is  
19 unclear whether Plaintiffs were provided ample time to read and study the CSA. There are simply  
20 not enough facts in the parties’ submissions regarding the “Dealer Assisted Process” used to sign the  
21 CSA. Without more, the Court must assume that a reasonable consumer had time and opportunity to  
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23 <sup>4</sup> In analyzing whether an arbitration provision is oppressive, courts look not only to an absence of  
24 power to negotiate the terms of a contract, but also to the absence of reasonable market alternatives.  
25 The oppression factor may be defeated if the complaining party had a meaningful choice of  
26 reasonably available alternative sources of supply from which to obtain the desired goods and  
27 services free of the terms claimed to be unconscionable.” *Morris v. Redwood Empire Bancorp*, 128  
28 Cal. App. 4th 1305, 1320 (2005) (quoting *Dean Witter Reynolds, Inc. v. Superior Court*, 211 Cal.  
App. 3d 758, 772 (1989)). That cannot be shown here since the Hyundai telematics by all accounts  
only operates on the Bluelink platform.

1 read the relevant language; nothing to the contrary has been shown.

2 But surprise here comes in another form. While the arbitration terms themselves were not  
3 hidden, the counter-intuitive interpretation that Hyundai advances (that this arbitration agreement  
4 commits the consumer to arbitration involving all mechanical issues relating to the car) certainly was  
5 not explained or disclosed prior to the Bluelink onboarding process.<sup>5</sup> It is safe to assume that any  
6 reasonable consumer would be surprised (nay, shocked) to learn that a Bluelink services agreement  
7 was intended to shorten the statute of limitations and require binding arbitration of serious physical  
8 injuries (including wrongful death) so long as the tort involved the “vehicle.”

9 If that is what Hyundai truly intended, it should have made that point crystal clear. To that  
10 end, California courts have consistently maintained that “where a contractual provision would defeat  
11 the strong expectation of the weaker party, it may also be necessary to call his attention to the  
12 language of the provision.” *Parada*, 176 Cal. App. 4th at 1571 (quoting *Wheeler v. St. Joseph*  
13 *Hosp.*, 63 Cal. App. 3d 345, 359–360 (1976)). There is no evidence to indicate that Hyundai called  
14 attention to the broader scope that its reading of the arbitration provision requires.

15 In short, the Court concludes that the CSA contains a significant degree of procedural  
16 unconscionability.

## 17 2. Substantive unconscionability

18 “Substantive unconscionability centers on the terms of the agreement and whether those  
19 terms are so one-sided as to shock the conscience.” *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165,  
20 1172 (9th Cir. 2003) (quoting *Kinney v. United Healthcare Servs. Inc.*, 70 Cal. App. 4th 1322, 1330  
21 (1999)). Plaintiffs contend that various provisions in the CSA meet this test, including the shortened  
22 statute of limitations and the overbroad “vehicle” language. Supplemental brief to Opposition at 8–9  
23 [Dkt. No. 55].

24 The Court agrees. Plaintiffs assert warranty claims under the laws of seven states. Each of  
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26 <sup>5</sup> In truth, the Court doubts that Hyundai’s lawyers and executives themselves envisioned this broad  
27 reading when it was first drafted. Indeed, if that was the intent, why not include the language in the  
28 purchase contract rather than in an optional service agreement?

1 these states has adopted the UCC, and outside of South Carolina, each state provides statutes of  
2 limitation of *four years* for breach of warranty claims.<sup>6</sup> But the CSA provides that “except where  
3 prohibited by law, you are not allowed to bring any claim against Hyundai (or any other third party  
4 beneficiary) more than *one year* after the claim arises.” See Rao Decl. Ex. E-F ¶ 15.B, G-H ¶ 14.B  
5 (emphasis added). Hyundai’s interpretation of the Bluelink statute of limitation provision would  
6 therefore supersede the UCC, supersede California’s Song Beverly Consumer Warranty Act as well  
7 as parallel laws of other states, and severely decrease the time in which consumers could bring  
8 warranty claims for literally anything relating to the vehicle—from defective engine parts to faulty  
9 brake systems to design defects in the transmission. This statute of limitation as proposed  
10 unquestionably shocks the conscience.

11 Moreover, the *entire* arbitration agreement is unconscionable if read broadly to cover the  
12 entire vehicle. As discussed above, by adding the two words “the vehicle” into the CSA, Hyundai  
13 purports to force consumers to arbitrate every conceivable claim. Reading the CSA in this way  
14 would eliminate a consumer’s right to a jury trial for every possible *tort* claim against Hyundai,  
15 including multi-million-dollar personal injury claims. Again, it is difficult to imagine a more  
16 unconscionable result flowing from a relatively unknown and nondescript onboarding contract  
17 relating to concierge and emergency calling services.

18 And there can be no question that, in practice at least, the provision would be entirely one-  
19 sided since it is inconceivable that a Bluelink customer would invoke this arbitration clause over a  
20 serious mechanical issue unconnected to the Hyundai telematics module. The Ninth Circuit has  
21 frowned upon these one-way contracts. In *Ingle*, for example, the Ninth Circuit found that an  
22 arbitration provision in an employment contract was substantively unconscionable because the  
23 benefit of the arbitration agreement flowed effectively in one direction. *Ingle*, 328 F.3d at 1173–75.

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26 <sup>6</sup> See N.J. Stat. Ann. § 12A:2-725(1) (“An action for breach of any contract for sale must be  
27 commenced within four years . . . .”); 13 Pa. Stat. and Cons. Stat. Ann. § 2725(a) (same); UT Code §  
28 70A-2-725(1) (same); Minn. Stat. Ann. § 336.2-725(1) (same); N.H. Rev. Stat. Ann. § 382-A:2-  
725(1) (same); Ariz. Rev. Stat. Ann. § 47-2725(A) (same); see also S.C. Code Ann. § 15-3-530(1)  
 (“an action upon a contract, obligation, or liability. . .” must be filed within three years.).

1 Although the arbitration agreement at issue subjected the employer and employee to the same terms,  
2 the Court found that the possibility that Circuit City would initiate an action against one of its  
3 employees was so remote as to render the provision unilateral in practice. *See id.* at 1174–75. The  
4 same result must be said to apply here.

5 **C. Scope of the Arbitration Agreement**

6 But even assuming, *arguendo*, that the arbitration provision is *not* unconscionable, Hyundai’s  
7 Motion should be denied as a straightforward matter of contract interpretation. The Court would  
8 then have to examine the question of “whether the agreement encompasses the dispute at issue.”  
9 *Chiron Corp.*, 207 F.3d at 1130. The question would thus become: Does the Bluelink-related  
10 arbitration agreement cover the Plaintiffs’ warranty claims regarding the defective tow hitches? The  
11 Court concludes that it does not.

12 Because arbitration agreements are governed by contract law, when “enforcing an agreement  
13 to arbitrate or construing an arbitration clause, courts and arbitrators must ‘give effect to the  
14 contractual rights and expectations of the parties.’” *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*,  
15 559 U.S. 662, 682 (2010) (quoting *Volt v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468,  
16 479 (1989)). In interpreting a contract, courts look to (a) the ordinary and popular meaning of the  
17 terms; (b) give effect to surrounding provisions to avoid superfluity; (c) read the contract as a whole;  
18 and (d) avoid an absurd or inequitable result. *See Schertzer v. Bank of America*, 109 F.4th 1200,  
19 1208 (9th Cir. 2024) (citations omitted). “In cases of uncertainty . . . the language of a contract  
20 should be interpreted most strongly against the party who caused the uncertainty to exist.” *Int’l Bhd.*  
21 *of Teamsters, Local 396 v. NASA Servs.*, 957 F.3d 1038, 1046 (9th Cir. 2020) (quoting Cal. Civ.  
22 Code § 1654).

23 One of the cornerstone principles of contract interpretation is the “absurd-results canon”,  
24 which requires courts to apply the plain language of the text unless doing so would lead to an  
25 absurdity. *See Revitch*, 977 F.3d at 718–19 (“By contrast, we use the absurd-results canon to discern  
26 the mutual intent of the parties based on their reasonable expectations at the time of contract.”);  
27 *Thomas v. Cricket Wireless, LLC*, 506 F. Supp. 3d 891, 902 (N.D. Cal. 2020) (“Under California  
28 law, the mutual intent of the contracting parties must be ascertained from the written terms of the

1 contract alone unless it would lead to absurd results.”); *see also* Cal. Civ. Code § 1638 (“The  
2 language of a contract is to govern its interpretation, if the language is clear and explicit, and does  
3 not involve an absurdity.”). Indeed, this maxim has its roots in the English common law going back  
4 hundreds of years. *See* Williams Blackstone, Commentaries on the Laws of England 70 (A. Strahan  
5 and W. Woodfall, 12th ed., 1793) (“The doctrine of the law then is this: that precedents and rules  
6 must be followed, unless flatly absurd or unjust . . .”).

7 For all the reasons discussed above, the Court concludes that Hyundai’s proposed reading of  
8 the arbitration clause would lead to precisely the type of absurdity that the law abhors. Doing so  
9 would elevate form over substance far beyond the bounds of acceptable advocacy. And it would  
10 render utterly farcical the foundational principle—already stretched in the context of arbitration  
11 agreements—that contracts are to be interpreted to give effect to the mutual intentions of the parties.

12 Were this not enough, Hyundai’s argument also fails under the whole-text canon. *See*  
13 Antonin Scalia and Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012)  
14 (Under the “whole-text” canon of interpretation, if practicable, a text should be read in a manner that  
15 gives meaning to every part, and “[c]ontext is a primary determinant of meaning.”). Under this well-  
16 known guide to contract interpretation, courts are tasked with considering the entirety of the  
17 document—including its context—to determine its meaning. *See id.* Hyundai’s interpretation of the  
18 disputed language is entirely inconsistent with this hermeneutical principle because it turns a blind  
19 eye to the extensive language indicating very clearly that the CSA is all about the “Connected  
20 Services.” To give just one example, the first three sentences of the CSA state:

21 Welcome to Hyundai Blue Link for your Hyundai vehicle, or Genesis Connected Services for  
22 your Genesis vehicle (collectively “Connected Services”). You are choosing to enroll in a  
23 Connected Services service plan (“Service Plan”). These Terms and Conditions are the  
24 agreement between us *regarding our provision of Connected Services to you.*  
25 *See* Rao Decl. Ex. E-H (emphasis added). Reading the CSA in context and in its entirety, everything  
26 in the relevant language—from the titles, to the definitions, to the discussion of remedies—makes  
27 clear to a customer that the contract is about (and is *only* about) the Bluelink services.

28 In short, the Court concludes that the arbitration provision in the CSA does not cover the

1 Plaintiffs' warranty claims in the present action.<sup>7</sup>

2 **V. CONCLUSION**

3 For the reasons discussed above, Hyundai's Motion to Compel Arbitration is denied.

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5 Dated: December 10, 2024



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Hernán D. Vera  
United States District Judge

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<sup>7</sup> The parties devote significant discussion to the question of whether the provisions in dispute can be severed. But that argument misses the point. Hyundai's motion is denied for two reasons—because the arbitration provision would be unconscionable if applied as Hyundai suggests, and because Plaintiffs' claims nonetheless fall outside the scope of the arbitration provision under a proper interpretation of the CSA. Severing all or a portion of the offending language is immaterial to this analysis.