Corrected Appellant brief
filed by order of 12/23/25

No. 132066

In the

Supreme Court of Illinois

GLORIA S. GELLER, as Independent Administrator of the Estate of Mark Geller, Deceased,

Plaintiff-Appellant,

v.

UBER TECHNOLOGIES, INC. and RASIER, LLC,

Defendants-Appellees,

and

ERIN MURPHY, as Special Representative of the Estate of Ejaz Rathore, Deceased,

Defendant.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-24-1458.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, 2022 L 010057.
The Honorable **Patrick T. Stanton**, Judge Presiding.

CORRECTED APPELLANT'S BRIEF AND ARGUMENT

BRADLEY M. COSGROVE
(bmc@cliffordlaw.com)
CHARLES R. HASKINS
(crh@cliffordlaw.com)
CLIFFORD LAW OFFICES, P.C.
120 North LaSalle Street, 36th Floor
Chicago, Illinois 60602
(312) 625-6192

Counsel for Plaintiff-Appellant
Gloria S. Geller

ORAL ARGUMENT REQUESTED

CP COUNSEL PRESS (800) 4-APPEAL • (624953)

POINTS and AUTHORITIES

NATURE OF THE ACTION

This case arises from a wrongful death action brought by Plaintiff Gloria S. Geller (Sheridan Geller) as Independent Administrator of the Estate of her deceased husband, Mark Geller, who died in an automobile crash while be driven in an Uber ride share by Ejaz Rathore, who was also killed in the crash. The action was brought against Defendants Uber Technologies, Inc (Uber), Raisier, LLC, and Ejaz Rathore. Pursuant to Section 2-619 of the Code of Civil Procedure, Uber moved to dismiss the complaint based on an arbitration agreement purportedly entered into by the decedent. Later, Raisier, LLC was joined into the motion, and the argument was changed, contending that arbitration should be compelled because the administrator, Sheridan, also had such an agreement. The Estate of Ejaz Rathore has not been part of those proceedings. The circuit court ordered that the Survival Act counts of the Complaint go to arbitration but denied the motion with respect to the wrongful death counts. The issue of whether arbitration was to be arbitrated was determined on the pleadings, no evidence having been heard.

From that order, the Defendants appealed to the appellate court, which reversed the circuit court. Plaintiff has now been given leave to appeal from that order and asks that the order of the appellate court be reversed, and the order of the circuit court be affirmed.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court misread this Court's opinion in *Carter v. SSC Odin Operating Co.* and incorrectly held that claim for wrongful death belonged to Sheridan Geller individually?

2. Whether the appellate court misread the Supreme Court's decision in *Henry Schein, Inc. v. Archer & White Sales, Inc*., 586 U.S. 63 (2019), and incorrectly held that the terms of Sheridan's agreement mandated arbitration?

3. Whether the appellate court ignored important facts of record and incorrectly held that Uber's "terms of Use," were not unconscionable?

STATEMENT OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to Supreme Court Rules 307 and 315. From an order of the Circuit Court of Cook County denying Defendants' section 2-619 motion to dismiss or compel arbitration [A 15] a timely Rule 307 notice of interlocutory appeal was filed [A 16-20] and that appeal duly prosecuted. On June 17, 2025, the appellate court entered a Rule 23 Order, reversing the circuit court. A 1-14. Plaintiff filed a timely Petition for Leave to Appeal which was allowed on September 24, 2025. A 21. Plaintiff filed her Rule 315(h) election to file an additional brief [A 22-24] the time for which was extended until November 19, 2025, by this Court's Order. A 25. The Plaintiff's Brief and Argument has been filed on or before that date.

STATEMENT OF FACTS

This appeal arises from a Section 2-619 motion filed by Uber in the Circuit Court of Cook County, seeking the dismissal or arbitration of a wrongful death case filed against it by Sheridan Geller, administrator of the Estate of her husband Mark Geller. That motion was granted in part with respect to the survival action but denied with respect to the wrongful death claim. Defendants filed a Notice of Interlocutory Appeal pursuant to Supreme Court Rule 306 and ultimately a Brief supported by a Rule 328 record. That Supporting Record is in four volumes. The first (V1SR) contains most of the "common law

record;" V2SR contains the transcript of hearing conducted before Judge Stanton along with the dispositive order and Defendants' Notice of Appeal. The two remaining volumes (Sealed V1SR and Sealed V2SR) are exhibits that were filed under seal in support of Defendants' Reply.

The operative complaint at the time of Uber's motion was Plaintiff's Third Amended Complaint [V1SR 1-17], which essentially alleged a cause of action against Uber, Raiser LLC (its subsidiary) and the Estate of Ejaz Rathore (the driver) for wrongful death and survival damages arising from a crash which took place on I-55 on April 19, 2022. On March 23, 2023, Uber filed a Section 2-619 motion to dismiss or alternatively to compel arbitration V1SR 19-98. The gist of the motion was that Mark Geller had agreed to Uber's "terms of use" which required that the claim be arbitrated. V1SR 33-34. The motion also stated that '[t]o the extent it may be relevant, Plaintiff Sheridan Geller, the Decedent's wife, also agreed to the Arbitration Agreement, in the same manner the Decedent did outlined above, on March 28, 2021." V1SR 23. Uber's motion also contained, *inter alia* the Affidavit of Alejandra Vasquez who affirmed regarding Uber's securing "terms of use" agreements [V1SR 54-57] and supplied the foundation for the Mark Geller "terms of use" agreement [V1SR 61-82] and that of Sheridan Geller. V1SR 87-98.

Plaintiff thereupon filed a motion for permission to conduct discovery pursuant to Supreme Court Rule 191(b) [V1SR 99-102] which was allowed. V1SR 103. Pursuant to that order, the discovery deposition of the affiant, Alejandra Vasquez (by that time Alejandra O'Connor), was conducted on December 14, 2023. At her deposition Ms. Vasquez stated that she was a paralegal at Uber and her job was to assist litigation attorneys for requests related to discovery in tort litigation. V1SR 125, pp. 8-9. However, throughout

her deposition Ms. Vasquez stated that she did not have personal knowledge of much of what was contained in the affidavit, and that many of her assertions were based simply on assumptions. V1SR 132, pp 33-34, 36-37, 49-50. As Uber's lead paralegal, Ms. Vasquez testified that she has never been involved in another case where Uber could not verify whether the plaintiff was actually the person who signed up for the Uber application. V1SR 133, p. 40. She further testified that she is familiar with other applications that mandate a photograph be taken of the person signing up to use the app when accepting the terms of service in order to give companies proof of the identity of the person who accepted the terms of service, but that Uber did not require any such and they do not have any proof that Mark or Sheridan ever personally accepted the terms of service. V1SR 133 p. 37.

Ms. Vasquez testified further that Uber did not require a person to scroll through the terms of use before accepting, nor did they require a person to enter the terms of use at all before accepting. V1SR 149, pp. 101-102, 104. She further stated that they have no signature at all from Mark Geller for its terms of use [V1SR, 148, p.99] and that it is possible that someone other than Mark Geller signed up for his account and clicked the necessary boxes, and then the account remained logged in. V1SR 135, p. 48.

As for the terms themselves, Ms. Vasquez testified that if a rider did not agree to a term, they could not negotiate with Uber to change or amend a term in the contract. V1SR 148, p. 98. Ms. Vasquez stated that Uber does not give users the option to defer the terms of use, and that in order to use the app riders must consent to the terms. V1SR 140, p. 68. Ms. Vasquez did not know why Uber did not afford consumer-riders a period of time to consider or contemplate the terms of use. V1SR 140, p. 68. She did confirm that once a

user clicked the box accepting the terms of use, there was no way for the user to thereafter renege on that agreement. V1SR 150, pp. 106-107.

The deposition testimony further showed that Uber did not provide any warning to consumers that by clicking "agree" they are forfeiting their constitutional rights. V1SR 136, pp. 51-52. She stated that Uber does not have any requirement that important contractual provisions be initialed or acknowledged at all. V1SR 147-148, pp. 96-97. She testified further that she herself had often approved terms of use in apps without reading any of the contents. V1SR 140, p. 66.

Based on the foregoing testimony, and Uber's answers to written interrogatories, the Plaintiff filed her Response to Uber's motion on March 7, 2024. V1SR 104-167. In that response, in addition to arguing that the issue was controlled by the Supreme Court's decision in *Carter v. SSC Odin Operating Co*., LLC [V1SR 115-116], Plaintiff argued, *inter alia*, that Uber had not carried its burden because its attached affidavit did not actually support its motion [V1SR 110-115], and that the arbitration agreement was unconscionable. V1SR 116-122.

On April 4, 2024, Uber filed its Reply [V1SR 169-196] which attached a new affidavit from Ms. Vasquez. V1SR 186-187. This Reply now focused on the position that the Administrator, Sheridan Geller, herself had agreed to Uber's "Terms of Use," and that therefore she herself had an arbitration clause. V1SR 179-181. This argument was not made in Uber's original motion. Also new was the addition of Raiser, LLC, which had not been part of the original motion.

The hearing on Uber's motion was conducted on June 10, 2024, before Honorable Patrick Stanton, one of the judges of the Circuit Court of Cook County. V2SR 197-242. At

the hearing, counsel for Uber stressed its position that the agreement's delegation clause was dispositive of the issue [V2SR 228-29], while Plaintiff's counsel argued that the dispute did not arise from Sheridan's use of her Uber app, and therefore her "terms of use" was not controlling. V2SR 209-11. After hearing the arguments of counsel, the court ruled that Mark Geller's arbitration agreement required that the survival action be sent to arbitration [V2SR 233] but ruled that arbitration of the wrongful death case could not be compelled. *Id*. The trial court having so ruled, Plaintiff moved the voluntary dismissal of the survival action [V2SR 234], and an Order was accordingly entered. V2SR 257.

On July 16, 2024, Uber and Raiser filed a Notice of Interlocutory Appeal pursuant to Supreme Court Rule 307(a)(1). V2SR 259-263. The matter was then heard by the First District of the Appellate Court, which after full briefing, but without oral argument, entered a Rule 23 order reversing the circuit court and remanding it for further proceedings. A 1-14. In reaching its order the appellate court decided three issues—that the wrongful death claim belonged to Sheridan Geller and that therefore her agreement with Uber applied to the case [A 13 at ¶ 40]; that the delegation language in Sheridan's agreement required that the wrongful death case be sent to arbitration [A 11-12 at ¶¶36-38]; and that the agreement was not unconscionable. A 7 at ¶ 24; A 9 at ¶ 29. In reaching its decision, the appellate court relied heavily on this Court's opinion in *Carter v. SSC Oden Operating Company*, LLC., 2012 IL 113204 and the United States Supreme Court decision in *Henry Schein, Inc. v. Archer & White Sales, Inc*., 586 U.S. 63 (2019).

On July 1, 2025, Plaintiff filed her Rule 315 Petition for Leave to Appeal, which was allowed on September 24, 2025. A 21. Plaintiff has now filed her Brief asking that the

appellate court's order with respect the wrongful death complaint be reversed, and that the circuit court's order denying the motion to dismiss or compel arbitration be affirmed.

STANDARD OF REVIEW

Where the question on appeal concerns the trial court's construction of an arbitration agreement, the question is one of law that we review *de novo*. *Carr v. Gateway, Inc*., 241 Ill.2d 15, 20, (2011). Similarly, questions regarding the construction of a contract and questions about the unconscionability of a contract or one of its provisions present questions of law that are reviewed *de novo*. *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 22 (2006). Accordingly, it is Plaintiff's position that all the issues presented in this appeal are reviewed *de novo* by this Court.

INTRODUCTION TO ARGUMENT

The case at bar involves an unusual feature which must be clearly grasped before the real character of the case can be understood. This is a wrongful death case, and the decedent was one Mark Geller. He had an Uber app, which he used to secure the ride during which he met his death. Along with the Uber app came a "Terms of Use" agreement which included, among numerous other terms, an arbitration agreement. An action was commenced in the Circuit Court of Cook County by the Independent Administrator of his estate, which, not surprisingly, was his wife, Sheridan Geller. Sheridan, pursuant to the terms of Illinois Wrongful Death Statute (740 ILCS 180/1 *et seq.*) was the beneficiary of the wrongful death claim. As it happens, she also had an Uber app and, therefore, an arbitration agreement. Hence, Sheridan is involved in this case in a double capacity; first as administrator and then as beneficiary. These are two distinct and separate statuses, and should not be confused, as Plaintiff believes both the Defendants and the appellate court

have done, which confusion has produced the unjust, unlawful and absurd result that the wrongful death claim here has been sent to arbitration because of Sheridan's arbitration agreement even though the case arose from Mark's use of his own app. It is the Plaintiff's position that insofar as Sheridan is involved in this case as administrator this Court's holding in *Carter v. SSC Odin Operating Co*., 2012 IL 113204 prohibits the enforcement of the arbitration clause; that insofar as she is a merely a beneficiary of the claim, and that whether she is viewed as administrator or beneficiary, her agreement with Uber was to arbitrate claims arising from *her use* of the app and service, not somebody else's. Plaintiff's position, therefore, is that the circuit court's original order, which declined to send the wrongful death case to arbitration (V2SR 257) was correct, and that the appellate court's order, which reversed the circuit court, was incorrect and should now be reversed.

ARGUMENT

I
THE APPELLATE COURT MISUNDERSTOOD THIS COURT'S OPINION IN CARTER v. SSC ODIN IN HOLDING THAT THE WRONGFUL DEATH CLAIM BELONGED TO PLAINTIFF IN HER CAPACITY AS BENEFICIARY

This Court's decision in *Carter v. SSC Odin Operating Co*., LLC, 2012 IL 113204 was central to the case at bar as it was presented to the circuit court. There, Uber had filed a Section 2-619 motion seeking dismissal of the case as to it, or in the alternative, that it be sent to arbitration. V1SR 19-34, exhibits excluded. The basis of Uber's motion was that Mark Geller, the decedent, had agreed to Uber's terms of use, which included an agreement to arbitrate. V1SR 21 *et seq*. No argument was made with respect to Sheridan Geller having agreed to Uber's terms of use, other than to mention that "[t]o *the extent it may be relevant*, Plaintiff Sheridan Geller, the Decedent's wife, also agreed to the Arbitration Agreement, in the same manner the Decedent did outlined above, on March 28, 2021." V1SR 21,

emphasis added. The Plaintiff filed her Response [V1SR 104-123, exhibits excluded] after which a Reply was filed. V1SR 168-196. This document worked numerous changes in the landscape of the case. First, it was prepared by new counsel, who had not been involved in the original motion [V1SR 179-181]; next, Raiser, LLC, was suddenly added as a movant [V1RS 168]; and, most importantly, for the first time it was argued that the case should go to arbitration because of Sheridan's agreement with Uber. V1SR 179-181.

At the hearing in the circuit court, the Defendants' argument was presented by Mr. Berlow who had prepared the Reply, and who argued that the whole case had to be decided in arbitration based in part on Sheridan having her own agreement with Uber. V2SR 200-208. Plaintiff argued that this Court's decision in *Carter* precluded the wrongful death case from going to arbitration, and that Sheridan's agreement with Uber did not matter because the wrongful death was related to Mark's use of his own Uber, with which Sheridan had nothing to do. Judge Stanton agreed, saying [V2SR 234]:

> I agree that with regard to the actions brought on behalf of Sheridan Geller, that her arbitration agreement is largely irrelevant to the claims she is asserting on the wrongful death, because as pointed by Counsel, the arbitration agreement talks about her usage; not her husband's usage. So I don't believe that they fall within ·the scope to arbitrate that agreement.

After hearing all the arguments of counsel, the court ruled that Mark Geller's arbitration agreement required that the survival action be sent to arbitration [V2SR 233] but ruled that arbitration of the wrongful death case could not be compelled. *Id*. The trial court having so ruled, Plaintiff moved the voluntary dismissal of the survival action [V2SR 234], and an Order was accordingly entered. V2SR 257. It was upon this record that the case went up on appeal.

The circuit court's decision was correct. Following this Court's decision in *Carter*, an arbitration agreement does not bind a decedent's estate.

This Court has held clearly that an arbitration clause binds only those who are the parties to it, carefully considering the question of whether a decedent's representative was bound by an arbitration clause executed by the decedent. The Court noted that arbitration agreements were a creature of contract, and that no one was bound by a contract into which they themselves had not entered. The Court therefore concluded:

> "[T]he FAA " 'requires courts to enforce the bargain of the parties to arbitrate.' " (citations omitted) Plaintiff here is not a party to the bargain to arbitrate….We agree with the decision of the courts below that plaintiff cannot be compelled to arbitrate the wrongful-death claim against defendant."

Carter v. SSC Odin Operating Co., LLC, 2012 IL 113204, ¶¶ 60-61.

In *Carter*, the plaintiff filed a complaint in a nursing home case alleging both wrongful death and survival actions. *Id.* at ¶ 4. The decedent was a resident of a nursing home in both 2005 and 2006. The defendant filed a motion to compel arbitration, relying on two identical arbitration agreements executed over successive years. *Id.* at ¶ 5. In fact, in *Carter*, the administrator plaintiff had actually signed one of the arbitration agreements for the decedent as his "Legal Representative". *Id.* This Court affirmed the decisions of the circuit and appellate courts that "the wrongful-death claim was not arbitrable" [*Id.* at ¶ 7], finding that plaintiffs who bring wrongful death suits in representative capacities cannot be compelled to arbitrate because they were not a party to the arbitration agreement. *Id.* at ¶¶ 60-61. The Court dilated on this concept noting that arbitration is a "creature of contract" [*Id.* at ¶ 55; citing *Board of Managers of the Courtyards at the Woodlands Condominium Ass'n. v. IKO Chicago, Inc.*, 183 Ill. 2d 66, 74 (1998)], and that the FAA's policy favoring arbitration does not alter these principles. *Id.* The Court went on to quote the United States

Supreme Court in *Equal Employment Opportunity Comm'n v. Waffle House, Inc.*, 534 U.S. 279, 293-294 (2002), stating [internal citations omitted]:

> "The FAA directs courts to place arbitration agreements on equal footing with other contracts, but it 'does not require parties to arbitrate when they have not agreed to do so.' 'Arbitration under the [FAA] is a matter of consent, not coercion.' It goes without saying that a contract cannot bind a nonparty."

The rule that the *Carter* court affirmed is now well-settled in Illinois, and numerous cases have followed it agreeing that the administrator of a decedent's estate is a nominal party to prosecute the statutory claim and is not bound by the agreement of the decedent to arbitrate. See, e.g.: *Mikoff v. Unlimited Development, Inc*., 2024 IL App (4th) 230513, ¶48 ("[t]he supreme court's decision in *Carter II* controls the determination of whether the wrongful death claims must be sent to arbitration."); *Key v. Accolade Healthcare of the Heartland, LLC*, 2024 IL App (4th) 221030, ¶39 ("In *Carter*, 2012 IL 113204, ¶ 57… our supreme court held that a wrongful death claim is not subject to an arbitration agreement signed by a decedent. This was true even though the arbitration agreement in *Carter* purported to bind the decedent's heirs and the executor of her estate."); *White v. Wright*, 2023 IL App (1st) 231617-U, ¶ 27 ("[I]n Illinois plaintiff's wrongful death claims are not bound by the agreement."). Hence, the law is clear that the administrator of a decedent's estate cannot be compelled to arbitrate a wrongful death claim by reason of the decedent having entered into an arbitration agreement. An arbitration agreement is a creature of contract, a "matter of consent, not coercion…and [i]t goes without saying that a contract cannot bind a nonparty." *Carter*, at ¶ 55. But what formerly went "without saying" has now become a question of controversy, since the appellate court did indeed order that the wrongful death claim be sent to arbitration.

At this point, the language of the appellate court's order requires careful inspection. The pivotal paragraphs read as follows [A 12-13, ¶¶38, 40[1]]:

> ¶ 38 Sheridan argues that her late husband's arbitration agreement with Uber does not bind her as the administrator of his estate. That may be true (see Carter v. SSC Odin Operating Co., LLC, 2012 IL 113204, ¶ 60), but that is beyond the question presented to this court. The question here is who decides whether Sheridan's claims for wrongful death fall within the scope of her arbitration agreement with Uber. The delegation clause answers that question clearly: the arbitrator decides.
>
> * * *
>
> ¶ 40 Sheridan further argues that the arbitration agreement does not apply to her because she is a party to this case only in a representative role as administrator of Mark's estate. We disagree. The wrongful death claims belong to Sheridan individually and she is the plaintiff on those claims. See Carter, 2012 IL 113204, ¶ 33.

Plaintiff maintains that the foregoing decision of the appellate court is entirely incorrect. It constitutes an end around of this Court's rule that arbitration should not be compelled in a wrongful death case since the administrator is not a party to the decedent's agreement, is merely a nominal party who, as administrator, has no interest in proceeds of the claim. This is true even when the administrator is herself a beneficiary.

Particularly instructive with respect to this is the federal court decision in *Cole v. Granite Nursing & Rehab. Ctr., LLC*, No. 22-CV-312-JPG, 2022 WL 1306333 (S.D. Ill. May 2, 2022). There, as here, the wife was the administrator of her husband's estate, and the defendant sought to bar the wrongful death claim with an arbitration agreement entered into by her husband. Finding that *Carter* had declared that an arbitration agreement could not oust the circuit court's jurisdiction over a wrongful death case, the court further explained:

> *Carter* relied on a fundamental principle of contract law that in no way depended on the nature of the decedent's agreement as an arbitration clause.

---

[1] Paragraph 39 concerns Sheridan's position that the wrongful death claims are not related to her agreement with Uber. That issue is discussed in the next section of this Brief.

> That fundamental principle—that a party to an agreement cannot bind a non-party—applies to all sorts of agreements. Indeed, had the decedent's agreement been about choice of law, judicial forum, allocation of costs and fees, confidentiality, or any number of standard contract provisions, the results would have been the same. *Curtis Cole could not have bound his personal representative to those agreements for her wrongful death claims*.

Id. at *4, emphasis added. In *Cole* the court also wrote: "the *Carter* court rejected the argument that a decedent's agreement to arbitrate disputes bars litigation of any dependent wrongful death claims of her spouse or next of kin. *Carter* [¶ 54]. The court reasoned that limitations a decedent places on his own cause of action cannot overcome the fundamental common law contract law principle that parties are not bound to arbitrate where they have not agreed to do so." *Cole* at *3

Plaintiff believes the reasoning of *Cole* is sound, and that it correctly understood this Court's opinion in *Carter*. The fact that the administrator is also a beneficiary should not change his or her status as a nominal party into one whose status determines whether the case must be arbitrated. Seemingly, the appellate court agrees with this theory, stating that such "may be true," but then goes on to hold that "[t]he wrongful death claims belong to Sheridan individually and she is the plaintiff on those claims." A 13, ¶ 40.

Plaintiff finds that holding confusing. Is the appellate court saying that claim belongs to Sheridan because she is the Plaintiff, *i.e*., the administrator, or because she is the beneficiary, or both? Plaintiff believes that answering that question is important to a proper review of this case.

First, as discussed above, *Carter* precludes her being bound in her capacity as administrator, which is to say, as the plaintiff. As a purely nominal party, her own contractual relations would be irrelevant. Moreover, if the claim actually belonged to Sheridan individually, in order to prosecute she would have to be the one to bring the action.

But that is not the law. Sheridan's status as administrator is fortuitous. A beneficiary need not be administrator; any competent person can administer an estate in Illinois. *In re Est. of Stinnette*, 2024 IL App (2d) 230174, ¶ 25 Section 9-1 of the Probate Act (755 ILCS 5/9-1 (West 2020)) states that any "person who has attained the age of 18 years, is a resident of the United States, is not of unsound mind, is not an adjudged person with a disability as defined in this Act and has not been convicted of a felony, is qualified to act as administrator." The administration of a decedent's estate is a creature of statute. When an individual dies intestate, a qualified individual may assume the duty of administrator to settle and distribute the decedent's assets under the supervision of the court. "Thus, the powers of an administrator are derivative of the powers of a court, so that the administrator is essentially acting as an agent of the court pursuant to its control and direction." *In re Est. of Zagaria*, 2013 IL App (1st) 122879, ¶ 15. Although the administrator may be the beneficiary of the wrongful death claim, her function as administrator is independent of that fact. Manifestly, the fact that Sheridan Geller is the administrator does not constitute a basis for the assertion that the claim belongs to her individually.

Nothing in *Carter* or the *Cole* case suggest that a beneficiary being administrator changes the administrator's status or character. With respect to that question, the Defendants themselves can help us out. This Court is entitled to take notice of its own filings [*People v. Byrnes*, 4 Ill. 2d 109, 111 (1954); *People v. Knight*, 75 Ill. 2d 291, 296–97 (1979)], and therefore will perhaps recall Defendants' statement at page 4 of their Answer to Petition for Leave to Appeal, where they conceded that "the appellate court's decision had nothing to do with [Sheridan's] status as an estate administrator." Although

the Plaintiff disagrees with the correctness of the appellate court's holding, Defendants' description seems an apt description of where the appellate court finally came down.

In support of its holding, the appellate court cites ¶ 33 of *Carter.* A 13, ¶ 40. That paragraph states in pertinent part:

> "Although section 2 provides that every wrongful-death action shall be brought by and in the names of the "personal representatives" of the deceased, the action is filed for the "exclusive benefit of the surviving spouse and next of kin of such deceased person. 740 ILCS 180/2 (West 2006). Thus, the personal representative in a wrongful-death claim is "merely a nominal party to this action, effectively filing suit as a statutory trustee on behalf of the surviving spouse and next of kin, who are the true parties in interest."

Carter, 2012 IL 113204, ¶ 33. That is the language upon which the appellate court relied without explanation. It is certainly true that this Court said that a next of kin is a beneficiary under the statute, and therefore the real party in interest. It did not say that the wrongful death claim, the chose in action, *belonged* to the beneficiary. Given these considerations: that the Wrongful Death Act is a statutory remedy, that the administrator is the trustee under the statute, and that the next of kin are the beneficiaries of that trust, the Plaintiff is constrained to doubt the wrongful death claim actually "belongs" to a beneficiary in any meaningful way. There are numerous reasons for that doubt.

First, the Wrongful Death act provides a statutory remedy. It is not insignificant that the FAA treats statutory remedies differently than claims in general, refusing to enforce arbitration agreements that preclude recourse to them. *Hengle v. Asner*, 433 F. Supp. 3d 825, 846 (E.D. Va. 2020) some citations omitted, aff'd *sub nom*. *Hengle v. Treppa*, 19 F.4th 324 (4th Cir. 2021).("Consistent with…contract principles, the Supreme Court has recognized that arbitration agreements that operate 'as a prospective waiver of a party's right to pursue statutory remedies' are not enforceable because they are in violation of

public policy." (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc*., 473 U.S. 614, 637 n.19, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985)). *Id*. at 846. Illinois' statutory scheme has already decided the relationship of the parties. The wrongful death claim is for the administrator to prosecute, the proceeds of the wrongful death go to the beneficiaries, the next of kin, if any. That the beneficiaries are the real parties in interest is neither surprising nor material. The beneficiaries of a trust arrangement are always the real parties in interest, but it remains that "[t]he trustee is a necessary party because he *holds legal title*." (*Peoples Bank & Trust Co. of Rockford v. Gregory*, 347 Ill. 397, 399 (1932), emphasis added.

Further, while in most trust arrangements beneficiaries have standing to maintain their own actions as concerns causes of actions unrelated to trust property itself [see: *23-25 Building Partnership v. Testa Produce, Inc*., 381 Ill. App. 3d 751, 755 (2008)], no such latitude is permitted under the Wrongful Death Act. Rather, the Wrongful Death Act does not create an individual right in any beneficiary under the Act to bring suit; the action must be brought by and in the name of the deceased's personal representative. *Rodgers v. Consolidated R.R. Corp*., 136 Ill.App.3d 191, 194 (1985); *Johnson v. Village of Libertyville*, 150 Ill. App. 3d 971, 974 (1986), overruled in part on other grounds in *Mio v. Alberto-Culver Co*., 306 Ill. App. 3d 822, 827 (1999).

The status of a beneficiary in the context of this statutory remedy was made very clear in the well-known case of *Cushing v. Greyhound Lines*, where the court wrote:

> A wrongful death cause of action must be brought by, and in the name of, the representative or administrator of the decedent's estate, and *"it is this administrator who possesses the sole right of action or control over the suit."* (Emphasis added.) *Will v. Northwestern University*, 378 Ill.App.3d 280, 289 (2007). The *Will* court further explained that estate beneficiaries of a wrongful death action are not "parties" of record in their individual

> capacities to the suit, have no right of action or control over the suit, and have no standing to appeal the suit. The administrator's right to control the wrongful death action has long been recognized. See, e.g., *Rodgers v. Consolidated R.R. Corp*., 136 Ill.App.3d 191, 193 (1985) ("In Illinois, wrongful death suits must be brought by and in the name of the personal representative of the deceased. The personal representative possesses the sole right of action or control over the litigation.") *In re Estate of Harnetiaux*, 91 Ill.App.2d 222, 227, 234 N.E.2d 81 (1968) (Wrongful Death Act contains no requirement that a guardian of the minor child intervene in wrongful death action; it is the administrator, and not the heir, who has both the right to institute and the right to settle a wrongful death action). Thus, consistent with these principles, we concluded that neither beneficiary had standing in this appeal as a party and, therefore, could not participate in oral argument.

Cushing, 2012 IL App (1st) 100768, ¶ 92.

The status of the beneficiaries under the statute is, as these cases show, devoid of any control or participation in the wrongful death claim. Their only interest is in the proceeds of that claim as it may be secured by the administrator via trial or settlement and thereafter approved by the circuit court. This is made very clear by the language in the case of *Addison v. Health & Hospital Governing Commission of Cook County.*, 56 Ill. App. 3d 533 (1977), where the court wrote [at 535, emphasis added]:

> Here the right of action accrued not to the minor beneficiary, but to the adult administrator. In Illinois, wrongful death actions must be brought by and in the name of the personal representative of the deceased; and any amount recovered is for the exclusive benefit of the surviving spouse and next of kin. The administrator possesses the sole right of action or control over the litigation. Section 2 of the Illinois Wrongful Death Act does not create an individual right for a plaintiff bringing suit; rather it affords *a cause of action for the benefit of the deceased's estate*.

The highlighted language would appear to be in conflict with the language of many cases, including this Court's discussion in *Carter* concerning the difference between the wrongful death and survival claims. See: *Carter*, 2012 IL 113204 at ¶ 34. But in reality, while *Carter* is certainly correct, *Addison* is not wrong—it is a question of focus.

There is no doubt that a wrongful death claim is not part of a decedent's common law estate—the estate which marshals the decedent's assets, pays just claims, and distributes what is left according to the terms of a will or the laws of intestacy. A wrongful death claim stands outside that process because proceeds of the claim are not available to satisfy either creditors or heirs, but only "next of kin" as Illinois defines that term. For example, distant relatives, while potentially heirs of a decedent, do not qualify as "next of kin," and a wrongful death case cannot be prosecuted for their benefit. So, to that extent, a wrongful death claim is not part of a decedent's estate. But on the other hand, a wrongful death case is very much a part of the statutory estate. The same circuit court that controls the common law estate approves the appointment of the representative that will prosecute the wrongful death claim. Likewise, the court determines and approves the distribution of the proceeds between the next of kin. 740 ILCS 180/2(b). If, however, there are no qualifying next of kin, then the administrator actually prosecutes the wrongful death case for certain classes of creditors, such a medical providers. 740 ILCS 180/2(c)(1-2). So clearly, the wrongful death claim, while not part of the traditional or common law estate, is definitely part of the statutory estate, and under control of the court.

The appellate court misread this Court's decision in *Carter* when it assumed that beneficiaries, as the real parties in interest (that is, those who would receive the proceeds), thereby became the legal owners of the claim itself. As discussed above, they are not. Beneficiaries cannot institute the claim, cannot prosecute the claim, cannot settle the claim, and if there are more than one of them, are subject to the circuit court's order as to the distribution of the proceeds. A wrongful death claim does not "belong" to the beneficiaries individually. While the law sometimes describes wrongful death beneficiaries as though

they were plaintiffs to avoid jury confusion, it is not true that the claim actually belongs to them. The appellate court was incorrect when it decided otherwise, a holding that was pivotal to its resolution of this case.

Further, while the appellate court's order refers exclusively to Sheridan Geller, the ruling cannot be limited to her. *Melton v. Moore*, 964 F.2d 880, 881–82 (9th Cir. 1992) (once a court "has applied a rule of law to the litigants in one case it must do so with respect to all others not barred by procedural requirements or *res judicata*). Ordinarily, a court will express a rule of law and then apply it to the facts of the case. Here, the appellate court has made an unarticulated assumption that the general rule is the one expressed by this Court in *Carter*; but as discussed above, it most definitely is not. The appellate court's holding is a novel, unsupportable rule—that a beneficiary's arbitration agreement compels arbitration regardless of how remote that beneficiary may be from the facts giving rise to the wrongful death. That is the general rule that will surely be taken from the appellate court's decision, and, unless corrected by this Court, will produce unjust and absurd results: a wrongful death case will be sent to arbitration whenever one beneficiary has an arbitration agreement with one defendant, even if the decedent had no such agreement with any defendant. The Defendants, however, may wish to argue that the appellate court has impliedly already ruled [A 12-13, ¶ 39] that it doesn't matter how absurd or unjust the circumstances may be, if there is delegation clause, this Court is without power or authority to wrest the case from the arbitrator's maw. But that decision is based on another misreading of another case, *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 139 S. Ct. 524 (2019), which issue the Plaintiff will next address.

II
THE APPELLATE COURT MISUNDERSTOOD THE OPINION IN HENRY SCHEIN IN DECIDING THAT ARBITRATION WAS REQUIRED UNDER THE FACTS OF THIS CASE

On appeal below, the Plaintiff had argued, just as she had in the circuit court [V2SR 209-210], that her agreement related exclusively to her own use of the her own app, per the actual language of the "Terms of Use" language, not to anyone else's, and that therefore her agreement did not relate to her husband's use, with which she had no part or participation. The panel did not exactly disagree with that contention, but in the spirit of the United States Supreme Court's decision in *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 139 S. Ct. 524 (2019), determined that as long as there is a delegation clause, that question goes to the arbitrator. *Henry Schein* at 586 U.S. 65. A 12-13, ¶ 39.[2] But the appellate court did not properly understand or apply *Henry Schein*, nor did it appreciate the sound logic of the Opinion of the Sixth Division of the same District presented in *Peterson v. Devita*, 2023 IL App (1st) 230356—a case the panel completely ignored though it was strongly urged upon it.

In order to understand where the appellate court went astray, it is necessary to examine the facts and language of *Henry Schein* itself. Many courts have recognized that Henry Schein dealt with a "narrow issue." *Metropolitan Life Ins. Co. v. Bucsek*, 919 F.3d 184,

---

[2] That paragraph states:

> ¶ 39 Sheridan also contends that her wrongful death claims are unrelated to her use of the Rider App. This argument essentially contends that Sheridan's wrongful death claims fall outside the scope of the arbitration agreement. See Schein, 586 U.S. at 65. The delegation clause requires the arbitrator to resolve that dispute. Moreover, Schein expressly rejects courts' attempts to "short-circuit the [arbitration] process and decide the arbitrability question themselves if the argument that the arbitration agreement applies to the particular dispute is 'wholly groundless.' " Id. at 65, 71. The FAA does not include such exceptions and we may not create "our own exceptions to the statutory text." Id. at 70.

190–91 (2d Cir. 2019); similarly, the court in *Breadeaux's Pisa, LLC v. Beckman Bros*., 83 F.4th 1113, 1118 (8th Cir. 2023), correctly described the ruling in *Henry Shein* in the following way in its holding that the decision should not expanded:

> The Supreme Court in Henry Schein ruled on a narrow issue: "whether the 'wholly groundless' exception is consistent with the [FAA]."The Court noted that some federal courts were determining whether issues were arbitrable "[e]ven when the parties' contract delegates the threshold arbitrability question to an arbitrator[.]" The Supreme Court rejected the "wholly groundless" exception.

83 F.4th at 1118, Internal citations omitted.

The facts in *Henry Schein* are as simple as the decision itself is narrow. Very briefly stated, the parties had entered into a commercial contract which had an arbitration agreement and a delegation clause, along with a carve out for claims for injunctive relief. Archer & White Sales, Inc. sued Henry Schein in a complaint that *inter alia* sought an injunction. Henry Schein nonetheless demanded arbitration. In the proceedings below, it was decided that Henry Schein's argument for arbitration was, under the facts of that case, wholly groundless, availing themselves of the "wholly groundless exception;" a practice of lower courts for expeditiously disposing of meritless claims for arbitration. The Supreme Court held, however, that the Federal Arbitration Act made no provision for such an exception, that arbitration agreements were contracts and the parties thereto could agree to their terms, and that such agreements should not be overridden by the courts regardless of the apparent merits of the matter before them. Hence the court ruled:

> "The question presented in this case is whether the "wholly groundless" exception is consistent with the Federal Arbitration Act. We conclude that it is not. The Act does not contain a "wholly groundless" exception, and we are not at liberty to rewrite the statute passed by Congress and signed by the President."

Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. at 65.

The foregoing language, however, was only part of what the *Henry Schein* court held. The court also stated, importantly for the case at bar, that "[u]nder the Federal Arbitration Act, parties to a contract may agree that an arbitrator rather than a court will resolve disputes *arising out of the contract*." *Id*, emphasis added. The significance of this statement is that the entire point of the Illinois appellate court's decision in *Peterson v. Devita*, 2023 IL App (1st) 230356 ¶ 37, is that the injury that arose from somebody else's use of their own app did *not arise under the contract of the plaintiff*. *Peterson* is not alone; there have been a number of decisions, from both state and federal courts, that have understood that rule to preclude delegation of arbitrability under circumstances similar to the case at bar.

One of the first courts to consider the scope and implications of *Henry Schein* was the Fifth Circuit Court of Appeals in *Lloyd's Syndicate 457 v. FloaTEC, L.L.C.*, 921 F.3d 508 (5th Cir. 2019). That case was pending before that court when *Henry Schein* was decided, and it was argued that the *Schein* decision required that the case be sent to arbitration. The question in that case was whether the plaintiff, which was not a party to the original contract, could demand arbitration under a delegation clause.[3] The court determined that *Henry Schein* did not require that the issue of arbitrability be sent to arbitration for a reason that is very significant for these proceedings—the issue of delegation is secondary to a predicate and more important issue: whether a valid agreement to arbitrate the dispute exists at all. The court wrote:

> *Schein* simply rejected the "wholly groundless" exception to arbitrability delegations. 139 S.Ct. at 529. It did not change—to the contrary, it reaffirmed—the rule that courts must first decide whether an arbitration agreement exists at all. See id. at 530 ("To be sure, before referring a dispute

[3] It should be noted, at this point, that these facts are not entirely foreign to the case at bar, since one of the Defendants here, Rasier, LLC, is in fact not a party to "Terms of Use" for either Sheridan or Mark Geller.

> to an arbitrator, the court determines whether a valid arbitration agreement exists.").

It is at this point that, in Plaintiff's estimation, the appellate court came to confusion, not appreciating that the intent of the parties to submit a particular dispute to arbitration is for a court to decide prior to all else.

It must be recalled that *Henry Schein* itself had noted that "[t]he relevant contract between the parties provided for arbitration of any dispute *arising under or related to the agreement*." *Henry Schein*, 586 U.S. at 63, 139 S. Ct. at 526, emphasis added. The court in *Henry Schein* did not suggest that there was valid delegation agreement for any possible controversy that might ever arise between the parties. What is or is not related to the agreement is, as in the case of other contracts, a function of the intentions of the parties. In the case of *Metropolitan Life Ins. Co. v. Bucsek*, 919 F.3d 184 (2d Cir. 2019), the court wrote an informative analysis of the accepted legal principles and *Henry Schien*'s influence upon them. There the court wrote [at 190-191, emphasis added]:

> [P]ersons involved in a dispute are ordinarily entitled to have access to a court for the resolution of the dispute. It is a fundamental tenet of law that only by agreeing to arbitrate does a person surrender the right of access to a court for the resolution of a legal dispute that is subject to adjudication. See AT & T Techs., Inc. v. Comms. Workers of America, 475 U.S. 643, 648, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986) ("[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. This axiom recognizes the fact that arbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration." (internal quotation marks and citations omitted)). *The right of access to courts is of such importance that courts will retain authority over the question of arbitrability of the particular dispute unless "the parties clearly and unmistakably provide[d]" that the question should go to arbitrators.* Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83, 123 S.Ct. 588, 154 L.Ed.2d 491 (2002). This rule is designed to guard against "the risk of forcing parties to arbitrate a matter that they may well not have agreed to arbitrate." Id. at 83–84, 123 S.Ct. 588. Were the courts to cede to arbitrators resolution of the arbitrability of the dispute (absent the clear and unmistakable agreement of the parties to that effect), this would incur an

> unacceptable risk that parties might be compelled to surrender their right to court adjudication, without their having consented. See First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 945, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995). In Henry Schein, the Supreme Court recently reaffirmed the proposition of First Options that courts "should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so." Henry Schein, 139 S.Ct. at 531 (quoting First Options, 514 U.S. at 944, 115 S.Ct. 1920). Accordingly, in the absence of an arbitration agreement that clearly and unmistakably elects to have the resolution of the arbitrability of the dispute decided by the arbitrator, the question whether the particular dispute is subject to an arbitration agreement "is typically an issue for judicial determination." Granite Rock Co. v. Int'l Bhd. of Teamsters, 561 U.S. 287, 296, 130 S.Ct. 2847, 177 L.Ed.2d 567 (2010) (internal citation and quotation marks omitted).

The court in *Metropolitan Life* concluded that the fact that a claim of arbitrability is groundless does not necessarily mean that the parties did not intend to have the question of arbitrability determined by arbitrators, rather the court should consider all the evidence "of the intentions of the arbitration agreement." 919 F.3d at 195. The reason focused on the intentions of the parties, saying: "courts were warned not to 'assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so." [*Henry Schein*] at 531 (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).

The intention of the parties are key. "When deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally…should apply ordinary state-law principles that govern the formation of contracts." *Id.* Then speaking of Illinois law, the *First Options* court continued [514 U.S.at 944]: "The relevant state law here, for example, would require the court to see whether the parties objectively revealed an intent to submit the arbitrability issue to arbitration." citing *Estate of Jesmer v. Rohlev*, 241 Ill.App.3d 798, 803 (1993). In the case at bar, the appellate court held that Sheridan's arbitration agreement with…unambiguously delegates the question of arbitrability to the

arbitrator." A 13, ¶ 41. But, as the foregoing cases show, the issue is not merely whether there is an arbitration agreement, but whether the parties intended to arbitrate the dispute *sub judice*.

"[B]efore referring a dispute to an arbitrator," therefore, "the court determines whether a valid arbitration agreement exists." *Coinbase, Inc. v. Suski*, 602 U.S. 143, 148–49, 144 S. Ct. 1186, 1192–93, 218 L. Ed. 2d 615 (2024), citing *Henry Schein*, 586 U.S., at 69. As stated in *Litton Financial Printing Div., a Div. of Litton Bus. Sys., Inc. v. N.L.R.B.*, 501 U.S. 190, 192 (1991), arbitration agreements apply "only where a dispute has its real source in the contract." The appellate court made no effort to analyze the agreement between Sheridan and the Defendants. Those terms, as reflected by the Exhibit attached to Defendants original Section 2-619 motion, in pertinent part, state as follows S.R.88, emphasis added:

> Except as expressly provided below in Section 2(b), you and Uber agree that any dispute, claim or controversy in any way arising out of or *relating to* (i) these Terms and prior versions of these Terms, or the existence, breach, termination, enforcement, interpretation, scope, waiver, or validity thereof, (ii) *your access to or use of the Services* at any time, (iii) incidents or accidents resulting in personal injury that you allege occurred in connection with *your use of the Services*, whether the dispute, claim or controversy occurred or accrued before or after the date you agreed to the Terms, or (iv) *your relationship with Uber*, will be settled by binding arbitration between you and Uber, and not in a court of law. This Agreement survives after your relationship with Uber ends.

The foregoing language clearly indicates a limited intent with respect to the agreement to arbitrate, one that involves Sheridan's own use of the app or of a Uber ride herself. The incident giving rise to this action did not involve Sheridan, but Mark's use of his own application, and Mark's ride in an Uber that resulted in his death. Sheridan did not log into the Uber app, did not order the ride, and did not have any involvement in this transaction/occurrence between Mark and Uber. While the defendants might try to argue

for a broader meaning of the language, such an interpretation would not constitute a clear and unmistakable delegation required by *Henry Schein*. The language of the "Terms of Use" is inconsistent with an obligation to arbitrate a dispute that has its real source in somebody else's use of the Uber app. Such inconsistency is contrary to an unambiguous delegation. *T3 Enterprises, Inc. v. Safeguard Bus. Sys., Inc.*, 164 Idaho 738, 747, 435 P.3d 518, 527 (2019). In fact, the plain language of the contract does not suggest its application to any other person's use of the app whatsoever. The following case will demonstrate that concept very clearly.

Slaughter v. National R.R. Passenger Corp., 460 F. Supp. 3d 1 (D.D.C. 2020), involved a visually impaired railroad customer who brought an action to require the railroad to make its mobile website and mobile phone application accessible to individuals with visual impairments. This action arose out of the customer's use of the railroad's mobile app and website, which did not have an arbitration agreement. The customer had also bought a ticket, which did carry with it an arbitration agreement. The railroad sought dismissal of the action pursuant to the railroad ticket's arbitration agreement. The court in *Slaughter* denied the railroad's motion for the reason that there existed no valid agreement to arbitrate this dispute. Significant is the language and rationale of that decision.

First, the court noted that ordinarily, in deciding whether to compel arbitration, courts are charged with determining two "gateway" issues: (1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the agreement covers the dispute. Citing: *Howsam v. Dean Witter Reynolds, Inc.,* 537 U.S. 79, 84, (2002). It is only when the parties "clearly and unmistakably" agree to delegate the issue of arbitrability that the court loses its ability to determine the "gateway issues," as was held in *Henry Schein*. *Slaughter*, 460

F. Supp. 3d at 7. The railroad contended that arbitration clause relating to the ticket purchase extended to the issue sub judice. The court, however, held that the railroad's argument missed the mark, stating that:

> "A delegation clause is merely a specialized type of arbitration agreement." New Prime Inc. v. Oliveira, —— U.S. ——, 139 S. Ct. 532, 538, 202 L.Ed.2d 536 (2019). The same principles of contract apply. Thus, a delegation clause is controlling "only where the court *is satisfied that the parties agreed [to delegate gateway issues as to] that dispute*." Granite Rock, 561 U.S. at 297, 130 S.Ct. 2847. Here, the delegation clause provides that the parties intended to delegate gateway questions with respect to disputes that unmistakably arise under the Ticket Agreement. That clause does not, however, address the predicate question the court faces, which is whether the terms of the Ticket Agreement—or the EULA and Website Agreement—apply to the present dispute. The former contains a delegation clause; the latter two do not. *Determining which agreement controls is a question for the court to resolve, not an arbitrator*. Gibbs v. Stinson, 421 F. Supp. 3d 267, 290 (E.D. Va. 2019) ("The Court's task is not to determine whether certain issues are arbitrable, but whether a valid delegation provision exists."); Portier v. NEO Tech. Sols., No. 3:17-cv-30111-TSH, 2019 WL 7945683, at *8 (D. Mass. Dec. 31, 2019) (holding that delegation clauses could not compel arbitration of gateway issues *because the contracts containing the delegation clauses did not apply to the instant dispute*).
>
> Henry Schein is not to the contrary. Henry Schein concerned a judge-made "wholly groundless" exception to the gateway arbitrability decision that allowed courts to consider whether the issues in dispute were "subject to arbitration" even where the "contract delegate[d] the arbitrability question to an arbitrator." 139 S. Ct. at 528, 529. But as the Court in Henry Schein reaffirmed, "[t]o be sure, before referring a dispute to an arbitrator, *the court determines whether a valid arbitration agreement exists*." Id. at 530 (emphasis added) (citing 9 U.S.C. § 2). Accordingly, this court's task is to determine whether the parties *agreed to arbitrate this dispute,* and it is to that task that the court now turns.

Slaughter, 460 F. Supp. 3d at 7–8, emphasis added.

The argument advanced by the defendant in *Slaughter* is very similar to that advanced by the Defendants here and accepted by the appellate court. There the Railroad argued that by its terms, the Ticket Agreement's arbitration clause applied to all claims, disputes, or controversies, past, present, or future, that otherwise would be resolved in a court of law

or before a forum other than arbitration, and argued that the plain language of the arbitration clause evinced the parties' intent to arbitrate the subject dispute—and indeed, nearly every conceivable dispute between Plaintiff and Amtrak—to the arbitration clause. The court, however, rejected that argument noting simply that the controversy did not arise for plaintiff's use of anything related to the ticket agreement. The court concluded that to "accept Amtrak's contrary position would mean that the Ticket Agreement's arbitration provision is tantamount to *roving arbitration clause*, filling in gaps where dispute-resolution provisions are absent and supplanting forum selection clauses that are present, notwithstanding the actual terms of the separate agreement. *The parties cannot possibly have intended such a result.*" 460 F. Supp. 3d at 9, emphasis added.

The similarities between *Slaughter* and the case at bar are clear and compelling. There, the dispute did not arise from the use of the app burdened with an arbitration agreement. The same is true of the case at bar. The *Slaughter* court rightly concluded that there was no valid arbitration agreement with respect to the dispute. That is exactly the decision that the appellate court should have reached in the case at bar.

That *Henry Schein* did not deprive the court of the ability to decide the validity of agreements before moving on to the applicability of delegation clauses, was a concept carefully treated in one of the cases relied upon by *Slaughter*. In *Gibbs v. Stinson*, 421 F. Supp. 3d 267 (E.D. Va. 2019), the issue was the validity of an arbitration agreement purporting to deprive the plaintiff of the right to pursue statutory claims. The defendant argued that the question fell within the scope of the arbitration agreement and therefore, pursuant to *Henry Schein*, could not be decided by the court. The *Gibbs* court rejected this argument saying that defendant had misread *Schein*, and that where the controversy was

whether a valid agreement existed with respect to instant dispute, that the opinion in *Henry Schein* itself had reserved that jurisdiction to the courts. *Gibbs*, 421 F. Supp.3d at 290, quoting *Henry Schein*, 139 S.Ct. at 530. Gibbs stated succinctly: "The Court's task is not to determine whether certain issues are arbitrable, but whether a valid delegation provision exists." *Id*.

Also instructive is the California decision in *Moritz v. Universal City Studios LLC*, 54 Cal. App. 5th 238, 268 Cal. Rptr. 3d 467 (2020). That case turned upon the principles that arbitration agreements are simply contracts, and as such must be understood and applied consistently with the intentions of the parties. The facts of that decision very briefly are these:

For more than sixteen years the plaintiff had worked for the defendant Universal studios as producer of the film "The Fast and the Furious," and many sequels, collectively known as the Fast & Furious franchise. This was in 2001. In 2019, there was a spin-off production called "Fast & Furious Presents: Hobbs & Shaw," in which production plaintiff was involved pursuant to an oral contract with Universal. A dispute arose with respect to this project, and Universal sought arbitration pursuant to its written agreement with plaintiff. See generally: *Moritz*, 268 Cal. Rptr. 3d at 469–70. The *Moritz* court held that there was no valid arbitration agreement with respect to the present dispute because it did not relate to production agreements for earlier films in the franchise. *Moritz*, 268 Cal. Rptr. 3d at 474.

Referring to the decision is *Henry Schein* that threshold arbitrability questions could be delegated only so long as the parties' agreement does so by 'clear and unmistakable' evidence" (*Moritz*, 268 Cal. Rptr. 3d at 474), the *Moritz* court went to hold:

> We conclude not only is it not clear and unmistakable here that the parties agreed to delegate arbitrability questions concerning Hobbs & Shaw to an arbitrator, *no reasonable person in their position would have understood the…arbitration provisions to require arbitration of any future claim of whatever nature or type, no matter how unrelated to the agreements nor how distant in the future the claim arose.*

Moritz, 268 Cal. Rptr. 3d at 474, emphasis added.

The Court will appreciate how closely these circumstances mirror those in the case at bar. But *Moritz* had other important observations relevant to the questions now before this Court. Citing the Supreme Court's language in *Litton Financial Printing Div., a Div. of Litton Bus. Sys., Inc. v. N.L.R.B*., 501 U.S. 190, 192 (1991), that arbitration agreements apply "only where a dispute has its real source in the contract," the *Moritz* court rightly concluded that "[t]he object of an arbitration clause is to implement a contract, not to transcend it. No authority permits sending a matter to arbitration simply *because the same parties agreed to arbitrate a different matter*. *Moritz*, 268 Cal. Rptr. 3d at 474, emphasis added.

Although the defendant in *Moritz* vigorously argued a position virtually identical to that urged by Uber and adopted by the appellate court (i.e., that once there is an arbitration agreement containing a delegation clause the case automatically goes to arbitration to determine any questions), the court carefully and cogently analyzed the language in *Henry Schein* to demonstrate that no such result was contemplated by that decision. The court noted that *Henry Schein* did indeed reject the "wholly groundless" exception practiced in some courts because a court may not override the contract, but continued:

> But *Schein* presupposes a dispute arising out of the contract or transaction, i.e., some minimal connection between the contract and the dispute. That is so because under the FAA, contractual arbitration clauses are "valid, irrevocable, and enforceable" if they purport to require arbitration of any "controversy thereafter *arising out of such contract*." (9 U.S.C. § 2.) Schein expressly understood that the act requires enforcement of arbitration clauses

> with respect to disputes " 'thereafter arising out of such contract.' " The FAA requires no enforcement of an arbitration provision with respect to *disputes unrelated to the contract in which the provision appears*. Appellants' argument that an arbitration provision creates a perpetual obligation to arbitrate any conceivable claim that Moritz might ever have against them is plainly inconsistent with the FAA's explicit relatedness requirement.

Moritz, 268 Cal. Rptr. 3d at 475-76, emphasis added, internal citations omitted.

It hardly needs explanation to see how the logic of this decision applies to the case at bar. It was for the court to decide whether there was a valid arbitration agreement with respect to the dispute *sub judice* and, like all contracts, the contract there had to be interpreted in accordance with the reasonable intentions of the parties. That principle, along with the rule that arbitration agreements apply only where a dispute has its real source in the contract, is the cornerstone of all the decisions which Plaintiff has just discussed, and *Henry Schein* is in no way to the contrary, for in that case there was absolutely no issue but that the dispute had its source in the contract. And they all point the way to the proper resolution of the case at bar.

Plaintiff does not ask this Court to adopt *Moritz*, or *Slaughter*, or any of the other cases reviewed above, for that has already taken place in the decision in *Peterson v. Devita*, 2023 IL App (1st) 230356—a case that has never been overruled, but has been approved for its rulings with respect to requirement that an arbitration agreement relate to the subject dispute (*Gaines v. Ciox Health, LLC*, 2024 IL App (5th) 230565, ¶ 27; *Matthew-Ajayi v. Airbnb, Inc*., No. CV ADC-23-3035, 2024 WL 1769186, at *2 (D. Md. Apr. 24, 2024)); for its decision with respect to agency *(In re Est. of Dukes*, 2025 IL App (5th) 240645, ¶ 23; *United States Securities and Exchange Comm'n v. Equitybuild, Inc*., No. 18 CV 5587, 2024 WL 3069682, at *9 (N.D. Ill. June 20, 2024)); and with respect to its decision regarding benefit estoppel (*Schultz v. Sinav Ltd*., 2024 IL App (4th) 230366, ¶¶ 145-146; *Coatney v.*

Ancestry.com DNA, LLC, 93 F.4th 1014, 1025 (7th Cir. 2024); *Angelilli v. Activision Blizzard, Inc*., No. 23-CV-16566, 2025 WL 524276, at *12 (N.D. Ill. Feb. 18, 2025). Yet, though vigorously and extensively urged before it, the panel never made an effort to distinguish *Peterson* from the case before it. Seemingly, it could not. But *Peterson* is good law and is worthy of this Court's approval.

Peterson v. Devita, 2023 IL App (1st) 230356 was a case in which the plaintiff had been permanently injured when the railing gave way on an elevated porch deck of a home booked by a friend through Airbnb, Inc. Peterson sued Airbnb, among others, alleging negligence. Airbnb moved to stay the proceedings and compel arbitration, arguing that Peterson accepted Airbnb's terms of service by creating an Airbnb account several years earlier, though he never used the site. The contract mandated that claims and disputes 'arising out of or relating to' use of its platform be arbitrated and an arbitrator must decide the threshold issue of arbitrability." *Peterson* at ¶ 2.

The *Peterson* court rejected the defense argument that the plaintiff was bound to arbitrate by reason of his own agreement with Airbnb, focusing on well-established legal principles. Noting that the FAA reflects the fundamental principle that arbitration is a matter of contract, the court continued [at ¶ 22, certain citations omitted]:

> a court should order arbitration "only where the court is satisfied that neither the formation of the parties' arbitration agreement *nor* (absent a valid provision specifically committing such disputes to an arbitrator) its enforceability or applicability to the dispute is in issue." (Emphasis in original.) Granite Rock Co. v. International Brotherhood of Teamsters, 561 U.S. 287, 299 (2010). "Where a party contests either or both matters, 'the court' must resolve the disagreement." Id. at 299-300. State law contract formation principles determine whether a contract exists between the parties. Janiga, 615 F.3d at 742 (citing Kaplan, 514 U.S. at 944, 115 S.Ct. 1920).

The court agreed with prior decisions that *Henry Schein* rejected the argument that an arbitration provision creates a perpetual obligation to arbitrate any conceivable claim that may ever be asserted. *Id*. at ¶ 33. It was further persuaded by the rationale of the decisions in *Moritz v. Universal City Studios LLC*, 54 Cal. App. 5th 238, 268 Cal. Rptr. 3d 467 (2020) and the dissent in *Airbnb, Inc. v. Rice*, 138 Nev. 682, 518 P.3d 88 (2022), that absurd consequences should be avoided (*Peterson v. Devita*, 2023 IL App (1st) 230356, ¶¶ 35-36). Although Peterson had his own arbitration agreement, the injury he suffered was unrelated to his use of the app or his securing accommodations via Airbnb. It was wholly fortuitous that he attended a party where his host had secured a venue through that online community marketplace. Consequently, there was no valid agreement to arbitrate his dispute. Accordingly, the court concluded [*Id*. at ¶ 37]:

> Peterson was not a party or participant in booking the property where the accident occurred and cannot be required to arbitrate under the facts in this case. Because we find no binding arbitration agreement, we need not address Airbnb's arguments on whether Peterson's claims fall within the agreement's scope.

The similarities between *Peterson* and the case at bar are clear. In both cases, the plaintiffs had arbitration agreement with the defendants which related to their use of the app and the services provided thereunder. In both cases, the dispute arose without reference to their use of the app, and the only connection with the case was somebody else's use of their own app. Arbitration agreements should apply "only where a dispute has its real source in the contract." *Litton Financial Printing Div., a Div. of Litton Bus. Sys., Inc. v. N.L.R.B*., 501 U.S. 190, 192 (1991). In the case of *Peterson* and the case at bar, the disputes are unrelated to the plaintiffs' agreements. Factually, the cases could hardly be more similar except for this. In *Peterson*, the plaintiff was the person actually physically injured; in the

case at bar, the plaintiff sues only in a representative capacity and herself sustained no physical injury, which makes her case even more remote than *Peterson*.

The appellate court did not consider the *Peterson* case, neither its holding nor its logic. Its failure to do so is reflected in the decision that it reached.

First, the appellate court found that Sheridan was the owner of the claim. As was discussed in the previous point, Plaintiff does not believe the panel was correct. But with respect to the question of mandatory delegation, whether the wrongful death claim was or was not her property does not mean that the dispute related to her own remote agreement with Uber. In *Peterson*, the claim was definitely the plaintiff's (he was the one who had been physically injured), but it remained that there was no valid agreement to arbitrate that particular dispute. Similarly, in *Slaughter v. National R.R. Passenger Corp*., 460 F. Supp. 3d 1 (D.D.C. 2020), the claim was clearly the plaintiff's but that did not result in the arbitration agreement she had with the railroad substituting for a valid agreement to arbitrate the particular dispute. Likewise in *Moritz v. Universal* the claim was certainly the plaintiff's but was so remote in time as to preclude the conclusion that the parties intended the arbitration agreement to apply to the subject dispute. In short, even if the wrongful death claim did belong to Sheridan, that would not mean that there was a valid agreement to arbitrate a wrongful death claim related to her husband's use of the app. The appellate court misunderstood *Henry Schein* in reaching a contrary result.

Paragraphs 36 and 37 [A 11-12] express the heart of the appellate court's ruling, asserting that *Henry Schein* requires that "if an arbitration agreement delegates issues of arbitrability to an arbitrator, a court may not decide those issues." But that holding, even in the language of *Henry Schein* itself, is quite literally secondary to the rule that before the

question of delegation can be even addressed, there has to be a valid agreement to arbitrate the particular dispute. *Henry Schein* noted that there could be an agreement that the arbitrator resolve threshold disputes "*arising out of the contract*." *Henry Schien*, 586 U.S. at 65. *Henry Schein* did not say that the question of whether a valid contract existed was one for arbitration. On the contrary *Henry Schein* stated that: "To be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." 586 U.S. at 69, referencing section 2 of the FAA, which states: "A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract*. 586 U.S. at 67, emphasis added. That is what the statute states, and as the *Schein* court observed "we are not at liberty to rewrite the statute passed by Congress and signed by the President." 586 U.S. at 67. Accordingly, it must be conceded that the *Schein* court neither expressed nor intended to hinder that limitation of arbitration agreements central to the creating statute itself. Hence, the law is clear that "*before* referring a dispute to an arbitrator, *the court determines* whether a valid arbitration agreement exists." *Coinbase, Inc. v. Suski*, 602 U.S. 143, 149 (2024), emphasis added.

Because the appellate court ignored Plaintiff's arguments about *Peterson v. Devita* and other related cases, it completely missed this preliminary step and went on to decide the question without regard to that crucial legal principle. In consequence, although the panel acknowledged that Sheridan's argument that it was not her use of the Uber app but her husband's might well be true [A 12, ¶ 38], it erroneously failed to understand that whether there existed a valid agreement to arbitrate this particular dispute, was a predicate matter

for a court to decide. Under the appellate court's interpretation of *Schein*, the presence of a delegation agreement would automatically send the case to arbitration regardless of how unrelated or remote the actual dispute would be to the intendments of the agreement itself. This result would be absurd and catastrophic to citizens in Illinois. As discussed above, numerous cases have rejected this expansive interpretation of *Henry Schein,* nor does that case compel a contrary view.

It is notable that this Court's opinion in *Carter v. SSC Odin Operating Co*., LLC, 2012 IL 113204 is effectively a decision embodying the idea that there must be a valid agreement to arbitrate, albeit being pre-*Schein* it is not framed in exactly those terms. The essence of that decision is that an arbitration agreement by a decedent could bind the estate with respect to a survival action, since that claim at one time belonged to the decedent, but could not bind the administrator as to the wrongful death claim, which is statutory and never part of the estate. *Carter* 2012 IL 113204, ¶ 30. It is a question properly decided by the court before the question of delegation is ever reached.

Further, whether a valid contract exists is not limited to questions of remoteness, such as the ones previously discussed in this section, but also includes other state law issues. Like other contracts, an arbitration agreement "may be invalidated by a state law contract defense of general applicability, such as fraud, duress, or unconscionability." *Carter v. SSC Odin Operating Co*., 2012 IL 113204, ¶ 18. It is to those grounds of invalidity that the Plaintiff asks the Court to now turn its attention.

III
THE APPELLATE COURT FAILED TO PROPERLY CONSIDER THE FACTS OF RECORD IN DECIDING THAT UBER'S TERMS OF USE WERE NOT UNCONSCIONABLE

It is axiomatic that statutes are to be construed consistently with their legislative intent, looking first "to the plain meaning of the statute's language, viewed in light of the statute's purpose." *People ex rel. Smith v. Tobin*, 2025 IL 131213 ¶ 9. The Federal Arbitration Act (FAA) was enacted in 1925, Pub. L. No. 68-401, 43 Stat. 883, codified as amended at 9 U.S.C. § 1 *et seq*. That intent and purpose was discussed in *Hughes-Bechtol, Inc. v. W. Virginia Bd. of Regents*, 527 F. Supp. 1366 (S.D. Ohio 1981), aff'd, 737 F.2d 540 (6th Cir. 1984), where the court observed [at 1382]:

> Representative Graham, who authored the report accompanying the arbitration bill submitted to the House of Representatives, H.R.Rep.No.96, 68th Cong., 1st Sess. 1 (1924), emphasized during debate on the bill in the House, that the bill "does not involve any new principle of law ... creates no new legislation, grants no new rights, except a remedy to enforce an agreement in commercial contracts and in admiralty contracts." 65 Cong.Rec. 1931 (1924) (remarks of Rep. Graham)…. "(a)rbitration agreements are purely matters of contract, and the effect of the bill is simply to make the contracting party live up to his agreement.... an arbitration agreement is placed upon the same footing as other contracts…" Id. at 1.

As for the plain meaning of the statute's language, that is made clear by section 2, which states (emphasis added):

> A *written provision* in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter *arising out of such contract or transaction* ... shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract*.

Whatever else we may know about the legislative intent is that Congress intended these agreements for commercial transactions, both on land and at sea, conducted by businesses, dealing with written contracts that were the subjects of negotiation, probably with the advice of counsel, and represent a true and considered agreement between the parties for

their mutual convenience and benefit—such as disputes between them being conducted secretly. Congress did not, could not, envision arbitration agreement styled "terms of use," presented electronically on screens half the size of a postcard.

During the summer of 2023, the National Consumer Law Center made public a recently completed study conducted by University of Michigan law and psychology professor Dr. Roseanna Sommers, who found that more than 99% of consumers who use popular products and services such as Netflix, Cash App, or Hulu, had no idea they are subject to forced arbitration; fewer than 1% of consumers correctly understood that forced arbitration robs them of their fundamental and constitutional right, protected by the Seventh Amendment, to seek accountability through public courts; and less than 5% of consumers could recall reading anything about forced arbitration, even when presented with typical consumer terms and conditions containing a forced arbitration clause.[4]

Clearly, one of the reasons for these shocking statistics is that the entity requiring the arbitration agreement gives little or no notice of its character. That was certainly true in the case at bar, where customers were simply "encouraged" to read the "terms of use," without any suggestion that they might contain anything of importance, much less that they were forfeiting their right to a trial in a court of law, that they were bound to proceed in a private tribunal possibly prejudiced in favor of their adversary, secretly conducted without a jury and with limited rights of appeal, possibly fixed in an inconvenient venue but certainly conducted at the customer's own cost. These are effectively Star Chamber proceedings, secretly conducted to the derogation of public courts. See discussion in *United*

[4] https://www.nclc.org/study-99-of-consumers-unaware-they-are-subject-to-forced-arbitration/#:~:text=Forced%20arbitration%20is%20a%20one,containing%20a%20forced%20arbitration%20clause. Last visited November 3, 2025.

States v. Gecas, 120 F.3d 1419, 1446–47 (11th Cir. 1997). Fortunately, Illinois law is equipped to remedy circumstances that are one-sided and unfair.

A. Procedural Unconscionability

Illinois, guided by the decisions of this Court, does not hesitate to invalidate agreements that are procedurally or substantively unconscionable. *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 59-60 (2011); *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 22-24 (2006). Both these issues were raised by the Plaintiff in the Circuit Court in Response to Uber's Section 2-619 motion. V1SR 116-119. In light of its resolution of the motion based on *Carter v. SSC Odin Operating Co*., 2012 IL 113204, Judge Stanton never reached that issue.V2SR 263. But insofar as the appellate court is authorized to affirm on any basis that appears of record [*Kravis v. Smith Marine, Inc.*, 60 Ill. 2d 141, 147 (1975)] both grounds for unconscionability were raised in the appellate court. The panel, however, rejected them both, without regard to the actual facts in the case as disclosed by the record.

The appellate court addressed the issue of procedural unconscionability in a single paragraph, stressing that the fact that the terms of use contained an arbitration agreement that appeared on the first page of the electronic presentation and was therefore conspicuous. A 7-8, ¶ 24. The appellate court found also that "Sheridan had reasonable opportunities to review the terms when she agreed to them on two separate occasions: when she first signed up for an Uber account and again when Uber updated the terms of service." *Id*. That was essentially the basis for the appellate court's decision, ignoring virtually all the facts that were presented by the record before it.

First, with respect to a previous "terms of use" to which Sheridan is alleged to have agreed, it was not part of Uber's motion below and does not appear in the record.

Accordingly, that document is *de hors* the record and there is no way to know what it did or did not say. With respect to the "terms of use" that is disclosed by the record [V1SR 87-98], all we know about it procedurally is what Uber hinted in its initial section 2-619 motion to dismiss that "[t]o the extent it may be relevant, Plaintiff Sheridan Geller, the Decedent's wife, also agreed to the Arbitration Agreement, *in the same manner the Decedent did*…on March 28, 2021." V1SR 21, emphasis added. It is the manner in which the agreement was secured that constituted the crux of the Plaintiff's argument about procedural unconscionability, the facts of which were fully disclosed via sworn testimony of the Uber's own agent and affiant—facts establishing that the user had no reasonable opportunity to review the terms.

In the case at bar, the record disclosed the sworn testimony of Alejandra Vasquez O'Connor [V1SR 124-151] and Uber's sworn answers to Interrogatories. V1SR 157-163. Both of these documents were competent evidence in this Section 2-619 proceeding, and even if they weren't considered by the appellate court, they can certainly be considered by this Court now. And the facts that these documents show are compelling.

First, the user had no meaningful free choice. Uber *would block the use of the app* until the "terms and conditions" were agreed to; there was no period of time when Uber's services could be used while the terms were being considered; likewise, there was no option to defer acceptance of the revised terms and conditions. V1SR 158, Ints. 4 and 5. Uber's own Affiant was unable to explain why Uber gave the customer no time to consider the revised terms. V1SR 140, p.68. Moreover, there was no prior notice of the fact that this demand for agreement would be forthcoming. In short, the user was suddenly and unexpectantly put on the spot. Uber's is a ride share app. It would be opened only when

the user needed to secure transportation. That need would often be urgent. Uber certainly could have given its customers prior notice of its intentions, and a real opportunity to review its terms, possibly even consult with an attorney. Unlike a formal, written contract, one would not associate using an app with needing a lawyer, but in view of the magnitude of rights which Uber claims are to be forever lost by the click of a button, the advice of counsel would not have been inappropriate.

Further, Uber never gave the customer meaningful notice of the important loss of civil rights that would be occasioned by accepting its terms. The pop-up warning box which blocked the use of the app states only that it had updated its terms and "We encourage you to read our updated terms in full." V1SR 59. Such language hardly even suggests the dire loss of rights resulting from clicking the button in order to unlock the app to get a ride. Significantly, in her deposition, Uber's Affiant admitted that Uber never gave the user a warning that the forfeiture of rights was involved. V1SR 136, p. 52.

Finally, this forfeiture of rights was nestled in the midst of a 23-page document intended to be read on the screen of a smartphone. Under the case law, this is an important consideration.

> Regardless of the type of online agreement, the circumstances of the transaction must provide the offeree with reasonable notice that the terms of an agreement are being offered and that certain acts or conduct by the offeree will constitute acceptance of the offer….Determining whether an Internet user has agreed to online terms of service is a "fact-intensive" inquiry. See Sgouros v. TransUnion Corp., 817 F.3d 1029, 1034-35 (7th Cir. 2016) (applying Illinois contract law). Courts may consider whether the web pages adequately communicated all the terms and conditions of the agreement and whether the circumstances support the assumption that the purchaser received *reasonable notice of those terms and conditions*.

Gaines v. Ciox Health, LLC, 2024 IL App (5th) 230565, ¶ 29, emphasis added. The *Gaines* court had specifically relied on *Arbogast v. Chicago Cubs Baseball Club, LLC,* 2021 IL

App (1st) 210526, ¶ 27, which had held that an offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he is unaware, contained in a document whose contractual nature is not obvious."

Plaintiff submits that the foregoing facts support the inference that Uber specifically intended that its customers, who would be suddenly confronted with a blocked app probably at the time they were in need of transportation, would simply click the acceptance button without actually looking at the terms of use itself. That's what Uber's affiant admitted that she herself had done in similar situations. V1SR 140 at 65.

This Court has defined the factors "depriving a party of meaningful choice." They are all present in the case at bar: the user had no "opportunity to understand the terms of the contract," the important terms of which were "hidden in a maze of [electric] fine print." *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48, 60 (2011). The appellate court found that nothing in the terms was hidden in a maze of fine print [A 7-8, ¶ 24], but Plaintiff respectfully maintains that any document meant to be viewed on a smartphone is effectively in fine print.

Noting that procedural unconscionability results from some impropriety during the process of forming the contract that deprives a party of a meaningful choice, the court in *Dick-Ipsen v. Humphrey, Farrington & McClain, P.C.*, 2024 IL App (1st) 241043, ¶27, appeal denied, 246 N.E.3d 1186 (Ill. 2024), wrote, emphasis added:

> Procedural unconscionability generally refers to a situation where a term is so difficult to find, read, or understand that the plaintiff cannot fairly be said to have been aware he was agreeing to it. Kinkel, 223 Ill. 2d at 22, 306 Ill.Dec. 157, 857 N.E.2d 250. "This analysis also takes into account the disparity of bargaining power between the drafter of the contract and the party claiming unconscionability." Id. When deciding whether a contract or a provision thereof is procedurally unconscionable, courts may consider "all the circumstances surrounding the transaction including the manner in

> which the contract was entered into, *whether each party had a reasonable opportunity to understand the terms of the contract, and whether important terms were hidden in a maze of fine print; both the conspicuousness of the clause and the negotiations relating to it are important*, albeit not conclusive factors in determining the issue of unconscionability." *Id*. at 23, 306 Ill.Dec. 157, 857 N.E.2d 250.

This language relates well to the facts in the case at bar.

Following *Kinkel v. Cingular Wireless, LLC*, 223 Ill.2d 1, 22 (2006), this Court, in *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48, 60 (2011), discussing procedural unconscionability, set out the parameters for determining whether a contract is procedurally unconscionable stating [at 59-60; internal citations omitted, emphasis added]:

> Procedural unconscionability consists of "some impropriety during the process of forming the contract depriving a party of meaningful choice." Factors to be considered in determining whether an agreement is procedurally unconscionable include whether each party had the opportunity to understand the terms of the contract, whether important terms were " 'hidden in a maze of fine print,'" and *all of the circumstances surrounding the formation of the contract*.

The record in this case fits squarely with this Court's criteria. The appellate court never mentioned those facts; and as far as Plaintiff can discern, never even considered them. Yet the entire question of procedural unconscionability turns upon whether the app user had reasonable notice of the true character of the agreement and a meaningful opportunity to inspect and consider it. In the case at bar there was neither. Sheridan was deprived of a meaningful choice in light of all the circumstances disclosed by the record in this case.

This Court is not bound by the appellate court's analysis or decision. All the evidence concerning this issue is presented in the record, and this Court is in as good a position to adjudge of it as was the court below. The appellate court ignored those crucial, uncontested facts about the manner in which the "terms of use" were presented and assent of the user secured. Plaintiff asks that this Court not ignore them. Considering the actual facts, Plaintiff

believes the Court will not share the appellate court's conclusion but rather will agree with her that the manner in which Uber's terms of use were presented was not procedurally fair.

B. An Adhesion Agreement.

In relation to its decision regarding procedural unconscionability, the appellate court also discussed the Plaintiff's argument that arbitration and delegation terms constituted an improper contract of adhesion. A 8-9, ¶ 26. The panel correctly noted that not all adhesion clauses are improper, but noted, also correctly, that "for a contract of adhesion to be unconscionable, the party "offering" the contract of adhesion must commit some form of wrongdoing such as 'coercion or overreaching' or concealing critical information." Citing *Zuniga v. Major League Baseball*, 2021 IL App (1st) 201264, ¶ 15, quoting *Tortoriello v. Gerald Nissan of North Aurora, Inc*., 379 Ill. App. 3d 214, 233 (2008)). But because the appellate court had ignored the established facts of the manner in which Uber's "terms of use" had been secured, it failed to correctly apply the foregoing law to reach a proper result. Blocking the use of the app without prior notice was certainly coercing, especially since Uber knew and intended that the user would rely on the app for transportation. Failure to advise the user that modified terms of use included terms that would deprive the user of his or her rights to proceed in a court of law, was certainly to conceal critical information—indeed, what information about the "terms of use" could be more critical or less expected. Simply saying that Uber "encouraged" the user to read the "terms of use" was not enough when it is manifest that Uber had orchestrated the whole matter in a way to discourage reading the terms of use and provided the user with a very limited opportunity to do so. The appellate court's decision with respect to the arbitration clause as an adhesion contract was entirely dependent upon its previous (and incorrect) finding that the arbitration and

delegation clauses of the "terms of use" was not procedurally unconscionable. The record does not support either of those views, and the appellate court's Order should now be reversed.

C. Substantive Unconscionability.

In addition to its being procedurally unconscionable, Plaintiff complained below that arbitration and delegation language was substantively unconscionable. Although noting that "[s]ubstantive unconscionability 'concerns the actual terms of the contract and examines the relative fairness of the obligations assumed'" [A 9-10, ¶ 30], the appellate court did not consider the whole agreement but based its decision on Uber's being required to arbitrate, and there being no limit to the recovery of damages. A 9, ¶ 28. Again, the appellate court's order failed to consider the actual facts presented by the record.

The "terms of use" relied upon by Uber appear in the record at V1SR 87-98. A document more one-sided and self-serving it is difficult to imagine.

First, this purports to be the modification of a prior agreement, but there is no suggestion that Sheridan was given any additional consideration for agreeing to that modification. By the service agreement, Sheridan gained access to the Uber drivers, and Uber gained customers for its business. The essential promises were Uber's promise to provide rides and the user's promise to pay for them. The customer gained no benefit by reason of the arbitration agreement and Uber suffered no detriment thereby. The only benefit she received was the one she previously had—the ability to request and pay for rides from Uber vehicles. The appellate court failed to give adequate attention to these facts. A 10, ¶ 32. The issue deserved more regard than the panel gave it.

An important case, strongly urged on the appellate court, was its own decision in *Turner v. Concord Nursing & Rehab. Ctr., LLC*, 2023 IL App (1st) 221721, appeal denied, 221 N.E.3d 347 (Ill. 2023). In that case a purported arbitration agreement was found to be both procedurally and substantively unconscionable because, *inter alia*, of the one-sidedness of its terms. The *Turner* court wrote [at ¶ 38]:

> "Consideration" comprises "'bargained-for exchange of promises or performances, and may consist of a promise, an act or a forbearance.' " Carter, 2012 IL 113204, ¶ 23, 364 Ill.Dec. 66, 976 N.E.2d 344 (quoting McInerney v. Charter Golf, Inc., 176 Ill. 2d 482, 487, 223 Ill.Dec. 911, 680 N.E.2d 1347 (1997), citing Restatement (Second) of Contracts § 71 (1981)). An act or promise beneficial to one party while disadvantageous to the other satisfies consideration to support a contract. Id. Thus, the enforceability of a plaintiff's promise to arbitrate, rather than to litigate, and forgo his right to statutory attorney fees depends on whether the defendant suffered a detriment or whether the plaintiff received a benefit in exchange for that promise.

There was nothing bargained for when Uber suddenly and unexpectedly blocked the user's transportation app until the terms of use had been agreed to. This Court in *Kinkel v. Cingular Wireless, LLC*, 223 Ill.2d 1, 23-24, (2006) wrote:

> To be a part of the bargain, a provision limiting the defendant's liability must, unless incorporated into the contract through prior course of dealings or trade usage, have been bargained for, brought to the purchaser's attention or be conspicuous. *** Nor does the mere fact that both parties are businessmen justify the utilization of unfair surprise to the detriment of one of the parties.

To say that this arbitration agreement was an unfair surprise understates the matter. Uber's pop-up which blocked, according to their own exhibit [V1SR 85] merely told the user that Uber "encouraged" them to read their updated terms. It said nothing about an arbitration agreement, nothing about a loss of every citizen's right to seek judicial redress; nothing even to stress its importance at any level. Plaintiff respectfully suggests that no reasonable inference is possible other than that Uber hoped and intended that the one-step act of

checking its "Confirm" box would be made without actually wading through its lengthy, miniscule text on a tiny screen. Uber's Affiant, Alejandra Vasquez, testified that that's what she herself would do. V1SR 140 at 66.

While it suffered no detriment, Uber, itself secured, in addition to an agreement to arbitrate claims arising from her use of the app [SR 88], a waiver of participation in any class action [SR 88]; an agreement to arbitrate any claims she might have before the arbitration agreement was ever entered into [SR 88]; a stipulation that the agreement applied even to claims of heirs, beneficiaries, assigns, and other third parties third parties where the claim arose from her use of the app [SR 88]; a forfeiture of the statutorily created right to have threshold issues decided by a court [5] [SR 89]; an agreement that the protection of state law would be preempted by the FAA regardless of whether or not the agreement involved interstate commerce; and an agreement that Sheridan pay the fees of the arbitration. SR 90. Plaintiff submits that these terms "are so one-sided as to oppress or unfairly surprise an innocent party." *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 60 (2011). But there is more.

The appellate court found the terms were not substantively unconscionable because both Sheridan and Uber were required to arbitrate their claims. A 9, ¶ 29. The record does not support that conclusion. First of all, Uber's undertaking to arbitrate *its* claims is essentially illusory. What meaningful claims is it ever likely to have against Sheridan? Moreover, the appellate statement of the record isn't even correct. By the terms of the

[5] "The legislative history of the Act establishes that the purpose behind its passage was to ensure *judicial* enforcement of privately made agreements to arbitrate. We therefore reject the suggestion that the overriding goal of the Arbitration Act was to promote the expeditious resolution of claims." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219 (1985), emphasis added.

agreement, Sheridan is required to arbitrate all past claims, and future claims, even after she has terminated her relationship with Uber. The language states: "This Agreement survives after your relationship with Uber ends." SR 88. Uber on the other hand, reserves the right to modify the terms unilaterally at any time [SR 87] or, if it prefers, simply walk away from the agreement. See, SR 87: "Uber may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason." Clearly, the terms of this agreement are one-sided and oppressive.

The other basis upon which the appellate court rejected substantive unconscionability was that the agreement did not place a limitation on damages, which the appellate court apparently believed was a touchstone of unconscionability. A 9, ¶¶ 28-29. But while the agreement may not contain a specific limitation of damages, it has something even more draconian—effectively a complete exculpation clause. The contract, in fact, reads that the user agrees that Uber is merely a platform for services, it does not transport the user, that drivers are not its employees or agents, express or implied, and that nothing Uber does acts to create any such agency. SR 91. In short, Uber's "terms of use" requires an agreement that it is not responsible for any injury occasioned by the acts of the driver, regardless of what the truth of the matter might be.

The appellate court's refusal to acknowledge the actual language of Sheridan's "terms of use" is entirely inconsistent with what this Court requires in considering the issue of whether an agreement is substantively unconscionable. Substantive unconscionability concerns the actual terms of the contract and examines "'the relative fairness of the obligations assumed,' " asking whether the terms are " 'so one-sided as to oppress or

unfairly surprise an innocent party.' " *Kinkel v. Cingular Wireless, LLC*, 223 Ill.2d 1, 22 (2006), quoted in *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48, 59–60, 949 N.E.2d 639, 647 (2011). The *Kinkel* court had clearly held that [*Id.* at 28]:

> We have said that substantive unconscionability is concerned with the "'relative fairness of the obligations' " assumed under the agreement, and that indications of substantive unconscionability are " 'contract terms so one-sided as to oppress or unfairly surprise an innocent party, an overall imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity.'"

Applying that definition to the case at bar, it is manifest that the provisions of the purported agreement are improvident, oppressive, or totally one-sided, which is the definition of a substantively unconscionable agreement. *Streams Sports Club, Ltd. v. Richmond*, 99 Ill.2d 182, 191 (1983). Likewise, the *Kinkel* court wrote: "Indicative of substantive unconscionability are contract terms so one-sided as to oppress or unfairly surprise an innocent party, *an overall imbalance in the obligations and rights imposed by the bargain*, and significant cost-price disparity." 223 Ill. 2d at 28, emphasis added. Uber's terms of use fail to pass that test. Further, "A contract or clause may be declared unenforceable based on either procedural or substantive unconscionability *or a combination of both*." *Turner v. Concord Nursing & Rehab. Center, LLC*, 2023 IL App (1st) 221721, ¶20, emphasis added. In the case at bar, the facts clearly demonstrate that the substance of the arbitration agreement, the suddenness of its presentations, the blocking of the app's use until acceded to, its length and inaccessibility, its failure to disclose that important civil and constitutional rights were involved, all support the conclusion that the agreement was both procedurally and substantively unconscionable, and the appellate court's decision upholding the agreement should be reversed.

CONCLUSION

The appellate court's order should be reversed. It was mistaken with respect to every one of its significant decisions. It incorrectly interpreted *Carter* as holding that next of kin were the owners of a wrongful death action. It incorrectly interpreted *Henry Schein* when it held that the questions in the case at bar must be arbitrated even though the language of the agreement did not present a clear and unmistakable agreement of the parties to arbitrate this dispute. Finally, the appellate court, contrary to the teaching of *Kinkel* and *Phoenix*, failed to consider all the circumstances presented by the record before it when it held that the arbitration and delegation agreement was not unconscionable. Accordingly, Plaintiff asks this Court to reverse the judgment of the appellate court, affirm the judgment of the trial court, and remand for further proceedings consistent with this Court's Order or Opinion.

Dated : December 10, 2025

Respectfully Submitted,

/s/ Bradley M. Cosgrove
Attorney for Plaintiff-Appellant

Bradley M. Cosgrove (bmc@cliffordlaw,com)
Charles Haskins (crh@cliffordlaw.com)
Clifford Law Offices
120 N. LaSalle Street, 36th Floor
Chicago, Illinois 60602
(312) 899-9090

CERTIFICATION OF COMPLIANCE

I certify that this Brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 50 pages.

/s/ Bradley M. Cosgrove

Appendix

TABLE OF CONTENTS TO THE APPENDIX

2025 IL App (1st) 241458-U

No. 1-24-1458

Order filed June 17, 2025

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

GLORIA SHERIDAN GELLER, as Independent Administrator of the Estate of MARK GELLER, deceased,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	No. 22 L 10057
v.	)	Honorable Patrick T. Stanton,
UBER TECHNOLOGIES, INC. and RASIER, LLC,	)	Judge, presiding.
Defendants-Appellants.		

PRESIDING JUSTICE VAN TINE delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the circuit court's denial of defendants' motion to compel arbitration because the parties' arbitration agreement delegates the question of arbitrability to the arbitrator. We remand this matter for further proceedings consistent with this order.

¶ 2 Defendants Uber Technologies, Inc. and Rasier, LLC (collectively "Uber") appeal from the circuit court's denial of their motion to compel arbitration of plaintiff Gloria Sheridan Geller's (Sheridan) wrongful death claims. Sheridan's claims arise out of the death of her husband, Mark

Geller, in an automobile accident. On appeal, Uber contends that the circuit court exceeded its authority because a delegation clause in Sheridan's arbitration agreement with Uber requires the arbitrator, not the court, to decide whether Sheridan's wrongful death claims fall within the scope of the arbitration agreement. For the following reasons, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Sheridan sued Uber and the estate of a deceased Uber driver, Ejaz Rahore, for negligence. Sheridan alleges that on April 19, 2022, her husband Mark requested a ride through Uber's rideshare application and Rathore picked him up. While driving on the Stevenson Expressway, Rathore lost control of the vehicle and crashed, killing him and Mark. Sheridan's complaint alleges survival claims on behalf of Mark's estate and Sheridan's own claims under the Wrongful Death Act (740 ILCS 180/0.01 *et seq.* (West 2022)) for the loss of her husband.

¶ 5 Uber is a rideshare technology platform that connects drivers to customers through an application (Rider App). As a condition of using the Rider App, customers must create an account and accept Uber's terms of use. When Uber updates the terms of use, customers must accept the updated terms before using the Rider App. The terms of use include an arbitration agreement that requires customers to arbitrate "any claim" they have against Uber.

¶ 6 Uber filed a motion to compel arbitration, which argued that when Mark and Sheridan each independently signed up for the Rider App, they both agreed to terms of use that required arbitration of any claims they had against Uber.

¶ 7 Sheridan did not dispute that such an arbitration agreement existed in Uber's terms of use, but she argued that the arbitration agreement was unconscionable. Sheridan also contended that

Mark's arbitration agreement with Uber did not bind her personally or as the administrator of his estate.

¶ 8 Uber's reply argued that the arbitration agreement was not unconscionable. Uber further contended that because Sheridan's wrongful death claims were her own claims for the loss of her husband (as opposed to claims belonging to the estate), Sheridan's arbitration agreement required her to arbitrate those claims.

¶ 9 Finally, Uber highlighted that Sheridan's arbitration agreement included a delegation clause as follows:

> "The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Terms are applicable, unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel. If there is a dispute about whether this Arbitration Agreement can be enforced or applies to a dispute, you and Uber agree that the arbitrator will decide that issue."

Uber contended that, pursuant to this delegation clause, the arbitrator, not the circuit court, had to decide whether Sheridan's wrongful death claims fell within the scope of her arbitration agreement.

¶ 10 The circuit court held oral argument, but not an evidentiary hearing, on Uber's motion to compel arbitration. The court granted Uber's motion as to the estate's survival claims but denied the motion as to Sheridan's wrongful death claims. The court first determined that Uber's terms of use were a valid contract that included an arbitration agreement. The court then found that the estate's survival claims fell within the scope of Mark's arbitration agreement. However, the court concluded that Sheridan's wrongful death claims did not fall within the scope of her arbitration

agreement because those claims did not arise out of Sheridan's use of Uber; rather, they arose out of Mark's use of Uber. The court did not address the delegation clause. Uber filed a timely interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017).

¶ 11 II. ANALYSIS

¶ 12 Uber contends that, pursuant to the delegation clause, the circuit court had no authority to decide whether Sheridan's wrongful death claims fell within the scope of her arbitration agreement. Uber argues that only the arbitrator has authority to decide that issue.

¶ 13 Uber appeals pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). See *Salsitz v. Kreiss*, 198 Ill. 2d 1, 11 (2001) (order compelling arbitration "is injunctive in nature and subject to interlocutory appeal under paragraph (a)(1) of [Rule 307]."). "Generally, where an interlocutory appeal is brought under Rule 307(a)(1), the only issue is whether there was a showing sufficient to sustain the circuit court's order granting or denying the motion to compel arbitration." *Gaines v. Ciox Health, LLC*, 2024 IL App (5th) 230565, ¶ 24. When the circuit court denies a motion to compel arbitration "without an evidentiary hearing, and solely on the basis of documentary evidence, our standard of review is *de novo*." *Schmitz v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 405 Ill. App. 3d 240, 244 (2010).

¶ 14 A. Forfeiture

¶ 15 Sheridan first argues that we should not consider Uber's argument that the delegation clause in her arbitration agreement controls because Uber's arguments in the circuit court focused on Mark's arbitration agreement, not Sheridan's. Sheridan contends that Uber did not raise *her* arbitration agreement until its reply in support of its motion to compel arbitration.

¶ 16 We disagree. Uber first mentioned Sheridan's arbitration agreement in the initial motion to compel arbitration and attached a copy of her arbitration agreement to that motion. It is true that Uber's *focus* shifted to Sheridan's arbitration agreement in the reply, but Uber did not reveal the existence of her arbitration agreement for the first time in its reply and does not raise that issue for the first time on appeal. Moreover, the circuit court heard argument regarding Sheridan's arbitration agreement. That is how the court found that Sheridan's wrongful death claims were not within the scope of her arbitration agreement. Accordingly, the issue of Sheridan's arbitration agreement is properly before us. See, *e.g.*, *Moore v. Board of Education of City of Chicago*, 2016 IL App (1st) 133148, ¶ 36 (the reviewing court may consider issues raised in the circuit court that are related to the judgment being appealed).

¶ 17 B. Unconscionability

¶ 18 Sheridan contends that her arbitration agreement with Uber, including the delegation clause, is unconscionable.

¶ 19 A delegation clause requires the arbitrator to decide certain threshold issues "such as whether [an arbitration] agreement covers a particular controversy." *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68-70 (2010).

¶ 20 In this case, the delegation clause delegates the issue of unconscionability to the arbitrator. It provides that "[t]he Arbitrator shall also be responsible for determining *** whether the Terms are *** unconscionable." However, the United States Supreme Court has indicated that a delegation clause cannot delegate the general validity of an arbitration agreement to the arbitrator. In *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024), a delegation clause provided that "without limitation, disputes arising out of or related to the interpretation or application of the Arbitration

Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement *** *shall be decided by an arbitrator and not by a court or judge*." (Emphasis in original.) *Id.* at 146. The Supreme Court found that when a party challenges the validity of an arbitration agreement, the "court *must* consider the challenge before ordering compliance" with the arbitration agreement even if a delegation clause purports to reserve that issue for the arbitrator. (Emphasis in original.) *Id.* at 151. That rule applies to unconscionability as well because if a court finds that an arbitration agreement as a whole is unconscionable, then it cannot enforce a delegation within that arbitration agreement. See *Turner v. Concord Nursing & Rehabilitation Center, LLC*, 2023 IL App (1st) 221721, ¶ 20 (unconscionability "may invalidate an arbitration agreement"). Therefore, we will resolve Sheridan's unconscionability arguments and will not delegate unconscionability to the arbitrator despite what the delegation clause says. We must address unconscionability first because if we find that Sheridan's arbitration agreement is unconscionable, then we cannot enforce the delegation clause as Uber requests.

¶ 21 An arbitration agreement is a contract and "may be invalidated by a state law contract defense of *** unconscionability." *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 18. A contract may be unenforceable if it is procedurally or substantively unconscionable. *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 60 (2011) (citing *Kinkel v. Cingular Wireless, LLC*, 223 Ill. 2d 1, 22 (2006)). Sheridan argues both theories of unconscionability.

¶ 22 1. Procedural Unconscionability

¶ 23 Sheridan contends that the arbitration agreement is procedurally unconscionable. Procedural unconscionability refers to impropriety during the formation of a contract that deprives

a party of meaningful choice. *Kinkel*, 223 Ill. 2d at 23 (quoting *Frank's Maintenance & Engineering, Inc. v. C.A. Roberts Co.*, 86 Ill.App.3d 980, 989-90 (1980)). Courts consider all of the circumstances surrounding the formation of the contract, such as "whether each party had a reasonable opportunity to understand the terms of the contract, and whether important terms were hidden in a maze of fine print." *Id.* Procedural unconscionability exists when the contractual terms are "so difficult to find, read, or understand" that a party cannot reasonably be expected to understand them. *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 100 (2006).

¶ 24 We find that Sheridan's arbitration agreement is not procedurally unconscionable. The first page of Uber's terms of use feature a notice in bold all-capital type that the terms include an arbitration provision "that requires [Sheridan] to resolve all disputes with Uber *** through final and binding arbitration." The three-page arbitration agreement itself starts on the second page of Uber's terms of use with bold headings. It provides: "By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber on an individual basis in arbitration as set forth in this Arbitration Agreement." The arbitration agreement is conspicuous and nothing is hidden in a maze of fine print. See *Phoenix Insurance Co.*, 242 Ill. 2d at 60; *cf. Kinkel*, 223 Ill. 2d at 27 (arbitration agreement unconscionable where it provided no terms regarding costs of arbitration, and only stated that such information was available upon request). Furthermore, Sheridan had reasonable opportunities to review the terms when she agreed to them on two separate occasions: when she first signed up for an Uber account and again when Uber updated the terms of service. See *id.* Consumers have a duty to read contracts to which they agree. See *Reazuddin v. Gold Coast Exotic Imports, LLC*, 2022 IL App (1st) 210763-U, ¶ 76. Sheridan may or may not have actually read the terms of use when she signed up for the Rider App or when

she agreed to the updated terms of use, but the arbitration agreement is not so confusing or obscured as to render it procedurally unconscionable.

¶ 25 Relatedly, Sheridan argues that the arbitration agreement is a contract of adhesion. A contract of adhesion is a nonnegotiable form agreement that one party "offers" on a take-it-or-leave-it basis. *Zuniga v. Major League Baseball*, 2021 IL App (1st) 201264, ¶ 15. However, contracts of adhesion are not always procedurally unconscionable. *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 72-73 (2011); *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 152-53 (2006). For a contract of adhesion to be unconscionable, the party "offering" the contract of adhesion must commit some form of wrongdoing such as "coercion or overreaching" or concealing critical information. (Internal quotations omitted.) *Zuniga*, 2021 IL App (1st) 201264, ¶¶ 15-18 (quoting *Tortoriello v. Gerald Nissan of North Aurora, Inc.*, 379 Ill. App. 3d 214, 233 (2008)). This court has held that an arbitration agreement is not procedurally unconscionable "merely because a business sought to impose it through a standardized, take-it-or-leave-it contract over which the consumer had no ability to negotiate." *Id.* ¶ 15.

¶ 26 In this case, Sheridan's arbitration agreement with Uber is a contract of adhesion because Uber "offered" it on a nonnegotiable, take-it-or-leave-it basis. See *id.* However, Sheridan fails to show that Uber committed any impropriety, coercion, or overreaching as to render the arbitration agreement procedurally unconscionable. *Cf. id.* ¶ 32 (finding contract of adhesion unconscionable where a baseball ticket bound the ticketholder "to an extensive eight-paragraph arbitration provision that was not provided to her"); *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 353 (2009) (finding rental agreement unconscionable where the property manager prevented plaintiff from reading terms of the agreement and rushed the plaintiff into signing it). On the contrary, Uber

displayed the terms of use, including the arbitration agreement, to Sheridan when she signed up for the Rider App and again when it was updated. Sheridan was free to reject the terms of use and use a different rideshare service instead. See *Kinkel,* 223 Ill. 2d at 26. Accordingly, we find that the arbitration agreement is not procedurally unconscionable.

¶ 27 2. Substantive Unconscionability

¶ 28 Sheridan also argues that the arbitration agreement is substantively unconscionable. A contract is substantively unconscionable when its terms "are so one-sided as to oppress or unfairly surprise an innocent party." (Internal quotations omitted.) *Phoenix Insurance Co.*, 242 Ill. 2d at 60. An arbitration agreement is oppressively one-sided when it requires only one party to arbitrate (see *Hwang v. Pathway LaGrange Property Owner, LLC*, 2024 IL App (1st) 240534, ¶ 20 (collecting cases)) or where the arbitration agreement limits the recovery of damages (*Turner*, 2023 IL App (1st) 221721, ¶ 35).

¶ 29 We find that Sheridan's arbitration agreement is not substantively unconscionable. The arbitration agreement requires both parties to arbitrate disputes and does not limit the damages that Sheridan may recover.

¶ 30 Sheridan argues that the arbitration agreement unfairly surprised her because (1) Uber prevented her from using the Rider App unless she consented to the terms of use and (2) the arbitration agreement is "lost within a vast number of pages of text." Being blocked from using the Rider App without first agreeing to the terms of use is irrelevant to the question of substantive unconscionability. Substantive unconscionability "concerns the *actual terms* of the contract and examines the relative fairness of the obligations assumed." (Emphasis added.) *Hutcherson v. Sears Roebuck & Co.*, 342 Ill. App. 3d 109, 121 (2003). Furthermore, Sheridan cannot reasonably claim

that she was unfairly surprised by the arbitration agreement when she had ample opportunity to review the terms of use. As we discussed above, the arbitration agreement is not hidden in "a vast number of pages of text." The arbitration agreement is not hidden or inaccessible. While Sheridan characterizes these arguments as addressing substantive unconscionability, they are more like the issues of procedural unconscionability we have already addressed above.

¶ 31 Sheridan also argues the arbitration agreement deprives her of the right to seek judicial redress. However, our supreme court has rejected the argument that an arbitration agreement is unconscionable on that basis. *Melena*, 219 Ill. 2d at 151; see *e.g.*, *City of Springfield v. Ameren Illinois Co.*, 2018 IL App (4th) 170755, ¶ 38 ("Parties may contract away rights, even those of a constitutional or statutory nature."). The court held that the right to "a judicial forum" applies only after the plaintiff establishes that litigation should proceed before a court. *Melena*, 219 Ill. 2d at 151. If the claims are properly before an arbitrator pursuant to a valid arbitration agreement, there is no such right. *Id.*

¶ 32 Finally, Sheridan argues that Uber did not provide consideration for the arbitration agreement. Consideration is an element of contract formation, so this argument concerns whether a contract exists, not whether the contract is unconscionable. See *id.* Moreover, when "an arbitration clause is contained within a larger agreement, the consideration for the agreement as a whole is sufficient to support the subsidiary arbitration clause as well." *Hartz v. Brehm Preparatory School, Inc.*, 2021 IL App (5th) 190327, ¶ 45. Sheridan does not dispute that there was consideration for her agreement to Uber's terms of use. Therefore, we reject her argument that Uber had to provide additional consideration to support the arbitration agreement contained within those terms of use. See *id.*

¶ 33 B. Delegation

¶ 34 Having concluded that Sheridan's arbitration agreement with Uber is not unconscionable, we now consider whether to enforce the agreement's delegation clause as Uber requests. Uber argues that pursuant to the delegation clause, the circuit court did not have authority to decide whether Sheridan's wrongful death claims fell within the scope of her arbitration agreement. Uber maintains that the delegation clause requires the arbitrator to decide that issue.

¶ 35 Sheridan's arbitration agreement provides that "the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ('FAA'), will govern its interpretation." Under the FAA, "parties can agree to arbitrate gateway questions of arbitrability, such as whether *** whether their agreement covers a particular controversy." (Internal quotations omitted.) *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67-68 (2019). If an arbitration agreement delegates issues of arbitrability to an arbitrator, a court may not decide those issues. *Id.*

¶ 36 In this case, the delegation clause provides that "[t]he Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Terms are applicable ***. If there is a dispute about whether this Arbitration Agreement *** applies to a dispute, you and Uber agree that the arbitrator will decide that issue." Here, there is a dispute about whether the arbitration agreement applies to Sheridan's wrongful death claims. Uber argues that the arbitration agreement applies because it covers *all* of Sheridan's claims, including her wrongful death claims. Sheridan contends that the arbitration agreement does not apply to her wrongful death claims for a variety of reasons, including the fact that those claims do not arise out of her own use of Uber. The delegation clause unambiguously provides that the arbitrator must resolve this dispute of arbitrability. The circuit court had no authority to find that Sheridan's wrongful

death claims do not fall within the scope of her arbitration agreement with Uber. The delegation clause makes clear that only the arbitrator can resolve that issue at this stage, and we must enforce the delegation clause as written. See *id.*

¶ 37 United States Supreme Court authority mandates this conclusion. The Court has held that "[w]hen the parties' contract delegates the arbitrability question to an arbitrator *** a court possesses no power to decide the arbitrability issue." *Schein*, 586 U.S. at 68. When a "contract contains an arbitration clause with a delegation provision, then, absent a successful challenge to the delegation provision, courts must send all arbitrability disputes to arbitration." *Coinbase, Inc.*, 602 U.S. at 152. In this case, Sheridan has not successfully challenged the delegation provision, so we must send all arbitrability disputes to arbitration. See *id.*

¶ 38 Sheridan argues that her late husband's arbitration agreement with Uber does not bind her as the administrator of his estate. That may be true (see *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 60), but that is beyond the question presented to this court. The question here is *who decides* whether Sheridan's claims for wrongful death fall within the scope of *her* arbitration agreement with Uber. The delegation clause answers that question clearly: the arbitrator decides.

¶ 39 Sheridan also contends that her wrongful death claims are unrelated to her use of the Rider App. This argument essentially contends that Sheridan's wrongful death claims fall outside the scope of the arbitration agreement. See *Schein*, 586 U.S. at 65. The delegation clause requires the arbitrator to resolve that dispute. Moreover, *Schein* expressly rejects courts' attempts to "short-circuit the [arbitration] process and decide the arbitrability question themselves if the argument that the arbitration agreement applies to the particular dispute is 'wholly groundless.' " *Id.* at 65,

71. The FAA does not include such exceptions and we may not create "our own exceptions to the statutory text." *Id.* at 70.

¶ 40 Sheridan further argues that the arbitration agreement does not apply to her because she is a party to this case only in a representative role as administrator of Mark's estate. We disagree. The wrongful death claims belong to Sheridan individually and she is the plaintiff on those claims. See *Carter*, 2012 IL 113204, ¶ 33.

¶ 41 We hold that Sheridan's arbitration agreement with Uber is not unconscionable and its delegation clause unambiguously delegates the question of arbitrability to the arbitrator. "[A] court may not decide an arbitrability question that the parties have delegated to an arbitrator." *Id.* at 69. Therefore, the arbitrator must decide whether Sheridan's wrongful death claims fall within the scope of her arbitration agreement.

¶ 42 Finally, we note that the procedural history of this case has produced somewhat contradictory outcomes. Uber accepted the circuit court's ruling that the estate's survival claims fell under the scope of Mark's arbitration agreement with Uber even though Mark's agreement contained essentially the same delegation clause as Sheridan's agreement. Yet in this appeal, Uber argues that, pursuant to the delegation clause, the circuit court had no authority to decide whether Sheridan's wrongful death claims fall within the scope of her arbitration agreement. In our view, Uber has taken inconsistent positions on what authority the circuit court has pursuant to the delegation clauses. However, neither party has appealed the circuit court's ruling with respect to the survival claims, so we are unable to reconcile that ruling with our ruling in this appeal.

¶ 43 III. CONCLUSION

¶ 44 For the foregoing reasons, we reverse the judgment of the circuit court and remand this matter for further proceedings consistent with this order.

¶ 45 Reversed and remanded.

Order (02/25/21) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Gloria Geller
v.
Uber Technologies, Inc., et al

No. 2022 L 10057

ORDER

Judge Patrick T. Stanton
JUL 10 2024
Circuit Court - 2184

This cause coming to be heard on Defendants' Motion to Dismiss or Compel Arbitration, it is hereby ordered:

(1) Transcript of Ruling is incorporated herein; 4251

(2) Defendants' Motion is Granted as to Survival Act claims, which are compelled to Arbitration; 4216

(3) Defendants' Motion is Denied as to Wrongful Death claims, which are stayed pending arbitration; 5271 4368

(4) Plaintiffs orally move to voluntarily dismiss Survival Act claims; 6271

(5) Defendants' objection to voluntary dismissal based upon lack of jurisdiction entered and continued until August 15, 2024;

Attorney No.: _____
Name: Albright WEBMED
Atty. for: Defendant Uber
Address: 55 West Monroe #3800
City/State/Zip: Chicago, IL 60603
Telephone: 312.706.3003

ENTERED:

Dated: _____, _____

Judge _____ Judge's No.

(6) Case continued for further status on August 15, 2024 at 9:30 a.m.; 4614

IRIS Y. MARTINEZ, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(7) Court notes merits discovery previously stayed due to waiver of arbitration concerns by defense

SR257

FILED
7/16/2024 3:01 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010057
Calendar, C
28530145

APPEAL TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, LAW DIVISION

GLORIA S. GELLER, as Independent Administrator of the Estate of MARK GELLER, Deceased, Plaintiff-Appellee, v. UBER TECHNOLOGIES, INC., RASIER, LLC, and GENESIS ROMERO, As Special Representative of the Estate of Ejaz Rathore, Deceased. Defendants (Defendants-Appellants are Uber Technologies, Inc. and Rasier, LLC).	Case No. 2022L010057 Calendar C Hon. Patrick T. Stanton Appeal Pursuant to: Illinois Supreme Court Rule 307(a)(1)

UBER TECHNOLOGIES, INC.'S AND RASIER, LLC'S NOTICE OF INTERLOCUTORY APPEAL

PLEASE TAKE NOTICE that Defendants-Appellants Uber Technologies, Inc. and Rasier, LLC (collectively, "Uber") hereby appeal to the Illinois Appellate Court, First Judicial District ("Appellate Court"), from the Circuit Court's July 10, 2024 Order ("Order"), denying in part Uber's motion to dismiss and to compel arbitration as to Plaintiff's Third Amended Complaint. A copy of the Order is attached hereto as Exhibit A. Uber respectfully requests that the Appellate Court reverse the portion of the Order denying in part Uber's motion to dismiss and to compel arbitration of Plaintiff's Complaint.

Dated: July 16, 2024

Respectfully submitted,

DEFENDANTS UBER TECHNOLOGIES, INC. AND RASIER, LLC

By: */s/ Clifford W. Berlow*
One of the Attorneys for Defendants Uber Technologies, Inc. and Rasier, LLC

Clifford W. Berlow (Firm No. 05003)
Jenner & Block LLP
353 N. Clark Street
Chicago, Illinois 60654
Phone: (312) 222-9350
Email: cberlow@jenner.com

Loren S. Cohen (Firm No. 16741)
Dean Athans
Lara R. Lickhalter
Wilson Elser Moskowitz Edelman & Dicker LLP
55 West Monroe Street, Suite 3800
Chicago, Illinois 60603-5016
Phone: 312.704.0550 main
Email: loren.cohen@wilsonelser.com
Email: dean.athans@wilsonelser.com
Email: lara.lickhalter@wilsonelser.com

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2024, I electronically filed the foregoing with the Clerk of the Court for the Circuit Court of Cook County and that the foregoing was served on all counsel of record via electronic service or in some other authorized manner.

/s/ Clifford W. Berlow
One of the Attorneys for Defendants Uber Technologies, Inc. and Rasier, LLC

Clifford W. Berlow (Firm No. 05003)
Jenner & Block LLP
353 N. Clark Street
Chicago, Illinois 60654
Phone: (312) 222-9350
Email: cberlow@jenner.com

Loren S. Cohen (Firm No. 16741)
Dean Athans
Lara R. Lickhalter
Wilson Elser Moskowitz Edelman & Dicker LLP
55 West Monroe Street, Suite 3800
Chicago, Illinois 60603-5016
Phone: 312.704.0550 main
Email: loren.cohen@wilsonelser.com
Email: dean.athans@wilsonelser.com
Email: lara.lickhalter@wilsonelser.com

FILED
7/16/2024 3:01 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010057
Calendar, C
28530145

EXHIBIT A

Order (02/25/21) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Gloria Geller
v.
Uber Technologies, Inc. et al

No. 2022 L 10057

ORDER

Judge Patrick T. Stanton
JUL 10 2024
Circuit Court - 2184

This cause coming to be heard on Defendants' Motion to Dismiss or Compel Arbitration, it is hereby Ordered:

(1) Transcript of Ruling is incorporated herein; 4251

(2) Defendants' Motion is Granted as to Survival Act claims, which are compelled to Arbitration; 4216

(3) Defendants' Motion is Denied as to Wrongful Death claims, which are stayed pending arbitration; 5271 4318

(4) Plaintiffs orally move to voluntarily dismiss Survival Act claims; 6271

(5) Defendants' objection to voluntary dismissal based upon lack of jurisdiction entered and continued until August 15, 2024;

Attorney No.: _____
Name: Albright WERMED
Atty. for: Defendant Uber
Address: 55 West Monroe #3800
City/State/Zip: Chicago, IL 60603
Telephone: 312.706.3003

ENTERED:

Dated: _____, _____

Judge _____ Judge's No.

(6) Case continued for further status on August 15, 2024 at 9:30 a.m.; 4616

IRIS Y. MARTINEZ, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(7) Court notes merits discovery previously stayed due to waiver of arbitration concerns by defense

SR263

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

September 24, 2025

In re: Gloria Sheridan Geller, etc., Appellant, v. Uber Technologies, Inc., et al., etc., Appellees. Appeal, Appellate Court, First District. 132066

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause. We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed with the Clerk's office.

With respect to oral argument, a case is made ready upon the filing of the appellant's reply brief or, if cross-relief is requested, upon the filing of the appellee's cross-reply brief. Any motion to reschedule oral argument shall be filed within five days after the case has been set for oral argument. Motions to reschedule oral argument are not favored and will be allowed only in compelling circumstances. The Supreme Court hears arguments beginning the second Monday in September, November, January, March, and May. Please see Supreme Court Rule 352 regarding oral argument.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

132066

No. 132066

IN THE
SUPREME COURT OF ILLINOIS

GLORIA S. GELLER, as Independent Administrator of the Estate of Mark Geller, Deceased, Plaintiff-Appellant, v. UBER TECHNOLOGIES, INC. and RASIER, LLC, Defendant-Appellees, and ERIN MURPHY, as Special Representative of the Estate of Ejaz Rathore, Deceased, Defendant.	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-24-1458 There heard on Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division, there heard as matter 2022 L 010057 The Honorable Patrick T. Stanton, Judge Presiding

PLAINTIFF-APPELLANT'S NOTICE OF ELECTION TO FILE ADDITIONAL BRIEF PURSUANT TO SUPREME COURT RULE 315(h)

Plaintiff-Appellant, GLORIA S. GELLER, as Independent Administrator of the Estate of MARK GELLER, Deceased, by their attorneys, notifies the Clerk of the Supreme Court pursuant to Supreme Court Rule 315(h) that they elect to file an additional brief.

/s/ Bradley M. Cosgrove
Clifford Law Offices
120 N. LaSalle Street
Chicago IL 60602
(312) 899-9090
bmc@cliffordlaw.com
Attorneys for the Plaintiff—Appellant

E-FILED
10/3/2025 4:33 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

132066

No. 132066

IN THE
SUPREME COURT OF ILLINOIS

GLORIA S. GELLER, as Independent Administrator of the Estate of Mark Geller, Deceased, Plaintiff-Appellant, v. UBER TECHNOLOGIES, INC. and RASIER, LLC, Defendant-Appellees, and ERIN MURPHY, as Special Representative of the Estate of Ejaz Rathore, Deceased, Defendant.	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-24-1458 There heard on Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division, there heard as matter 2022 L 010057 The Honorable Patrick T. Stanton, Judge Presiding

NOTICE OF FILING and PROOF OF SERVICE

To: Clifford W. Berlow (cberlow@jenner.com)
Andrew L. Osborne (aosborne@jenner.com)
JENNER & BLOCK LLP

Loren S. Cohen
(loren.cohen@wilsonelser.com)
Lara R. Lickhalter
(lara.lickhalter@wilsonelser.com)
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

Michelle L. Bisognani
(michelle.bisognani@francomoroney.com)
Erin Murphy
(erin.murphy@francomoroney.com)
FRANCO MORONEY BUENIK LLC

PLEASE TAKE NOTICE that on October 3, 2025, I filed with the Clerk of the Supreme Court of Illinois, via Illinois File & Serve the PLAINTIFF-APPELLANT'S NOTICE OF ELECTION TO FILE ADDITIONAL BRIEF PURSUANT TO SUPREME COURT RULE 315(h), a true copy of which is attached hereto, and herewith served upon you.

/s/ Bradley M. Cosgrove
Bradley M. Cosgrove

132066

— CERTIFICATE OF SERVICE —

Bradley M. Cosgrove, one of the attorneys for Plaintiff-Appellee certifies that on October 3, 2025, he caused to be electronically filed the foregoing Notice of Election to File Additional Brief Pursuant to Supreme Court Rule 315(h) with the Supreme Court of Illinois, and that the same day he caused said to be served upon all counsel of record, hereinabove listed, via electronic mail.

/s/Bradley M. Cosgrove

Affidavit of Proof of Service

Under penalties as provided by law pursuant to Section 1- 109 of the Code of Civil Procedure, the above signed certifies that the statements set forth in this instrument are true and correct.

/s/ Bradley M. Cosgrove

Bradley M. Cosgrove
Charles R. Haskins
CLIFFORD LAW OFFICES, P.C.
120 North LaSalle Street, Suite 3600
Chicago, Illinois 60602
T: (312) 899-9090
bmc@cliffordlaw.com
crh@cliffordlaw.com

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

October 21, 2025

Bradley Michael Cosgrove
Clifford Law Offices, P.C.
120 North LaSalle Street, Suite 3600
Chicago, IL 60602

In re: Geller v. Uber Technologies, Inc.
132066

Today the following order was entered in the captioned case:

Unopposed motion by Appellant for an extension of time for filing appellant's brief to and including November 19, 2025. Allowed.

Order entered by Chief Justice Theis.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Clifford Warren Berlow
Lara Rebecca Lickhalter
Melissa Aniela Murphy-Petros
Michelle L. Bisognani

TABLE OF CONTENTS TO RECORD ON APPEAL

I. VOLUME 1 OF 2

II. VOLUME 2 OF 2

TABLE OF CONTENTS OF SEALED RECORD ON APPEAL

III. VOLUME 1 OF 2

IV. VOLUME 2 OF 2

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

GLORIA S. GELLER, as Independent Administrator of the Estate of Mark Geller, Deceased, *Plaintiff-Appellant,* v. UBER TECHNOLOGIES, et al., *Defendants-Appellees,* and ERIN MURPHY, as Special Representative of the Estate of Ejaz Rathore, Deceased, *Defendant.*	)	No. 132066

The undersigned, being first duly sworn, deposes and states that on December 10, 2025, the Corrected Appellant's Brief and Argument was electronically filed and served upon the Clerk of the above court. On December 10, 2025, service of the Corrected Brief will be accomplished electronically through the filing manager, Odyssey EfileIL to the following counsel of record:

Clifford W. Berlow (cberlow@jenner.com)
Andrew L. Osborne (aosborne@jenner.com)
JENNER & BLOCK LLP

Loren S. Cohen
(loren.cohen@wilsonelser.com)
Lara R. Lickhalter
(lara.lickhalter@wilsonelser.com)
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

Michelle L. Bisognani
(michelle.bisognani@francomoroney.com)
Erin Murphy
(erin.murphy@francomoroney.com)
FRANCO MORONEY BUENIK LLC

Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Bradley M. Cosgrove
Bradley M. Cosgrove

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Bradley M. Cosgrove
Bradley M. Cosgrove