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 A. 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 Case No. 2022 L 010057 Hon. Patrick T. Stanton, Judge Presiding

DEFENDANTS-APPELLEES' RESPONSE BRIEF

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This interlocutory appeal is brought under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, and the Illinois Uniform Arbitration Act, 710 ILCS 5/1 *et seq.*, pursuant to Illinois Supreme Court Rule 307(a)(1). On July 10, 2024, the circuit court denied the motion of Defendants-Appellees Uber Technologies, Inc. and Rasier, LLC (collectively, "Uber") to compel the arbitration of Plaintiff-Appellant Gloria S. Geller's claim under the Illinois Wrongful Death Act, 740 ILCS 180/1 *et seq.* V2SR257 (A15).[1] The court found that Plaintiff entered into an arbitration agreement with Uber, and that the agreement assigned to an arbitrator exclusive responsibility to resolve "all threshold arbitrability issues, including issues relating to whether the Terms are applicable." V2SR233-34; V1SR89. But the circuit court denied Uber's motion to compel, concluding that Plaintiff's wrongful-death claim was not arbitrable. V2SR233-34, 257. On June 17, 2025, the appellate court reversed, holding that the parties' agreement required an arbitrator, not the court, to decide arbitrability, and that the agreement was not unconscionable. 2025 IL App (1st) 241458-U (A1-14). This Court granted Plaintiff leave to appeal on September 24, 2025. This is not an appeal from a jury verdict. No questions are raised on the pleadings.

[1] Citations to "Br. _" are to Plaintiff's opening brief. Citations to "A_" are to the appendix to Plaintiff's opening brief. Citations to "V_SR_" are to the Supporting Record filed with the court of appeals. Citations to "Sealed V_SR_" are to those portions of the Supporting Record filed under seal.

ISSUES PRESENTED FOR APPEAL

1. Whether the appellate court correctly held that, under *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019), the delegation provision in Plaintiff's arbitration agreement was enforceable, such that the circuit court could not decide the issue of the arbitrability of Plaintiff's wrongful-death claim.

2. Whether the appellate court erred in holding that it retained authority to decide whether Plaintiff's arbitration agreement was unconscionable despite the delegation clause requiring an arbitrator to decide that issue.

3. Whether, assuming it had authority to decide the issue, the appellate court correctly concluded that Plaintiff's arbitration agreement was neither procedurally nor substantively unconscionable.

STATUTORY PROVISIONS INVOLVED

Section 2 of the Federal Arbitration Act provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

9 U.S.C. § 2.

Section 4 of the Federal Arbitration Act provides, in relevant part:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such

> agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. … The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

9 U.S.C. § 4.

Section 1 of the Illinois Uniform Arbitration Act provides, in relevant part:

> A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist for the revocation of any contract[.]

710 ILCS 5/1.

Section 2 of the Illinois Uniform Arbitration Act provides, in relevant part:

> (a) On application of a party showing an agreement described in Section 1, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.
>
> …
>
> (d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this Section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

> (e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

710 ILCS 5/2(a), (d), (e).

Section 1 of the Illinois Wrongful Death Act provides, in relevant part:

> Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, including punitive damages when applicable, in respect thereof, then and in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, including punitive damages when applicable, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony….

740 ILCS 180/1.

Section 2 of the Illinois Wrongful Death Act provides, in relevant part:

> (a) Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person….

740 ILCS 180/2(a).

INTRODUCTION

The FAA requires that all courts, nationwide, "enforce arbitration contracts according to their terms." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67 (2019). That is true not only when the parties agree to arbitrate "the merits of a particular dispute," but also when they agree to arbitrate "'gateway' questions of 'arbitrability,' such as whether … [the parties'] agreement covers a particular controversy," *id.* at 67-68 (quoting *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68-70 (2010)), or whether the parties' agreement is "unconscionable" under state law, *see Rent-A-Center*, 561 U.S. at 65. If a party to such an agreement "refus[es] … to arbitrate," federal law requires that a court "make an order directing the parties to proceed to arbitration in accordance with the terms of the[ir] agreement." 9 U.S.C. § 4.

Plaintiff Gloria Sheridan Geller—the personal representative of the estate of decedent Mark A. Geller—concedes that she accepted a contractual offer from Uber requiring her to arbitrate disputes with Uber. She concedes, too, that this agreement delegates to the arbitrator the exclusive authority to decide if the agreement applies to particular claims. Yet she nonetheless refuses to proceed in arbitration. She insists a court, rather than an arbitrator, must decide whether her wrongful-death claim is within the scope of her arbitration agreement because, in her view, her agreement applies only to claims arising out of *her own* use of Uber's services, and so does not cover her wrongful-death claim, which arose out of Mr. Geller's use of Uber's services.

As the appellate court correctly recognized, the Supreme Court's decision in *Henry Schein* forecloses Plaintiff's argument. That case holds that delegation provisions, like any other arbitration agreement, must be "enforce[d] … according to their terms," even if the court believes the argument that the agreement covers a particular claim is "wholly groundless." 586 U.S. at 67-68. Under *Henry Schein*, courts cannot "short-circuit" a contractual agreement to arbitrate arbitrability and rule upon the agreement's scope. *Id.* at 65. That question is for the arbitrator alone to decide. This case really is that simple.

Plaintiff's arguments to the contrary do not move the needle. Although she spends pages discussing *Carter v. SSC Odin Operating Company, LLC.*, 2012 IL 113204, that case is irrelevant here. As Plaintiff acknowledges, *Carter* holds that the administrator of a decedent's estate cannot be required to arbitrate a wrongful-death claim by virtue of *the decedent's* arbitration agreement. But Uber never sought to bind Plaintiff to *Mr. Geller's* promise to arbitrate. This case is about what *Plaintiff's own arbitration agreement* requires. *Carter* did not address the issue; *Henry Schein* does. As for Plaintiff's contention that courts must *always* resolve whether a claim is "related to" or "remote from" an arbitration agreement before enforcing the agreement—even if doing so contravenes a delegation provision—*Henry Schein* forecloses it. Plaintiff's position is just the "wholly groundless" exception that *Henry Schein* rejected by another name, and this Court cannot overrule the United States Supreme Court's binding—and unequivocal—interpretation of the FAA.

Plaintiff also reprises her meritless arguments that the arbitration agreement she accepted is both procedurally and substantively unconscionable. At the outset, the appellate court erred in failing to recognize that, because Plaintiff has not asserted that the delegation provision itself is unconscionable, that provision required an arbitrator rather than the court to decide the question of the arbitration agreement's unconscionability. But though the appellate court erred by considering the issue, there is no question it reached the correct outcome. Because the arbitration agreement was clear and conspicuous, accepting Plaintiff's arguments would require holding *all* clickwrap agreements to be procedurally unconscionable, and that is not the law. And there is nothing unfair or one-sided about the arbitration agreement. Accepting Plaintiff's argument on substantive unconscionability therefore would require outright defiance of the FAA, which mandates enforcement of arbitration agreements.

STATEMENT OF FACTS

A. Factual Background

Uber is a technology company that uses proprietary technology to develop and maintain app-based, multi-sided platforms. V1SR54.[2] Uber's flagship platform is the Rides platform, which pairs individuals seeking a ride to the

[2] Co-defendant Rasier, LLC, is "a wholly owned subsidiary of [Uber]," V1SR8, and—contrary to Plaintiff's assertion, *see* Br. 22 & n.3—a party to the Arbitration Agreement at issue in this case, *see* V1SR87 (stating that the Terms of Use to which Plaintiff agreed bind both Uber "*and its subsidiaries*" (emphasis added)). For simplicity, this brief refers to both Defendants collectively as "Uber."

destination of their choosing ("Riders") with a driver willing to provide it. *See id.* To request a ride, a Rider must (1) download the Rider version of the Uber App (the "Rider App") onto a phone or tablet, (2) register for an account, and (3) agree to the Rider App's Terms of Use. *See* V1SR54-55, 20-21. After completing those steps, Riders may use the Rider App to request a ride. *See id.*

Plaintiff alleges that Mr. Geller used the Rider App to request a ride to Chicago's Midway Airport and was matched with a driver named Ejaz Rathore. V1SR7, 11. During the ride, Mr. Rathore lost control of his vehicle, resulting in Mr. Geller's death. V1SR7-8.

Plaintiff is the "appointed Independent Administrator" of Mr. Geller's estate. V1SR8. She has pleaded two sets of claims against Uber: (1) survivorship claims on behalf of Mr. Geller, *see* V1SR9-10, 12-14; and (2) a claim for wrongful death under the Illinois Wrongful Death Act, 740 ILCS 180/1 *et seq.*, on her own behalf, *see* V1SR1-8, 10-12.

B. Uber's Motion to Compel Arbitration

On March 23, 2023, Uber moved pursuant to 9 U.S.C. § 4 and 710 ILCS 5/2 to compel arbitration of all of Plaintiff's claims. V1SR19-35; V1SR168-96; *see also* Sealed V1SR1-162; Sealed V2SR163-347. As relevant here, those provisions state that a court that "find[s] that an agreement for arbitration [between the parties] was made in writing and that there is a default in proceeding thereunder … shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof." 9 U.S.C. § 4; *accord* 710 ILCS 5/2(a) (similar).

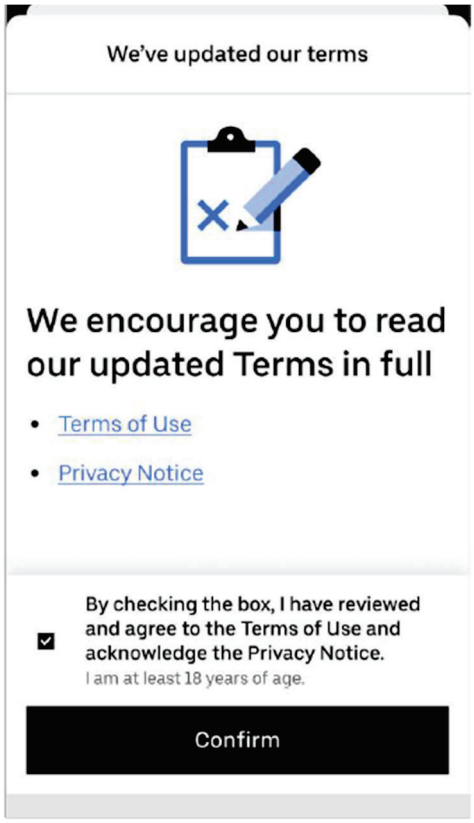
Uber contended that because both Plaintiff and Mr. Geller entered their own, independent arbitration agreements with Uber, and because each of those arbitration agreements required an arbitrator to decide the threshold issue of "arbitrability" (*i.e.*, whether a given claim is covered by the agreement), the circuit court had to direct the parties to proceed with arbitration.

1. The Arbitration Agreements

Before the circuit court, Uber introduced undisputed evidence that both Plaintiff and Mr. Geller each separately entered into their own materially identical arbitration agreements with Uber. *See* V1SR55-57.

a. Plaintiff Accepts Uber's Terms of Use. Uber identified a Rider account created on May 11, 2016 in Plaintiff's name—"Sheridan Geller"—and linked to both Plaintiff's phone number, V1SR57; V1SR86, and to an email address using Plaintiff's first name and "her prior [last] name," V1SR172; *see* Sealed V1SR5; Sealed V1SR20. The account's ride history, moreover, showed that the user took dozens of rides between September 2016 and August 2021, thirty-eight of which were to or from addresses associated with Mr. Geller, Plaintiff's husband. *See* Sealed V1SR4-5; Sealed V2SR229-347. For her part, Plaintiff did not dispute any of this evidence or offer evidence of her own to suggest that she was not the owner of this account. *See* V1SR172-73.

Uber's records indicated that on March 28, 2021, Plaintiff's account "was presented with [the following] in-app blocking pop-up screen," V1SR56:



V1SR85. This screen prevented Plaintiff from making further "use of the Uber app unless or until" she first "clicked the checkbox" certifying that she was of legal age and "agreed to the Terms of Use" and then further "clicked the large 'Confirm' button at the bottom of the screen." V1SR57.

According to Uber's records, "the Account Holder clicked the checkbox and tapped 'Confirm' on March 28, 2021," *id.*, at "5:33:26 PM," V1SR86. Undisputed testimony showed that a user's acceptance of the Terms of Use is "electronically captured, recorded, maintained and stored in the ordinary course of Uber's business at the time of the events being recorded," and that this "record of the user's consent cannot be manually edited." V1SR57. Plaintiff offered no evidence suggesting she had not, in fact, agreed to the Terms of Use. *See* V1SR172-73.

b. The Arbitration Agreement in the Terms of Use. The Terms of Use to which Plaintiff assented, *see* V1SR87-98, contained a clear and conspicuous arbitration provision, *see* V1SR88-90 (the "Arbitration Agreement").

On the first page of the Terms of Use, in all capital letters, Plaintiff was advised that the Terms of Use "contain[] provisions that govern how claims between [Plaintiff] and Uber can be brought, including [an] [A]rbitration [A]greement," and that she should "review the [A]rbitration [A]greement below carefully, as it requires you to resolve all disputes with Uber … , with limited exceptions, through final and binding arbitration." V1SR87 (capitalization altered). It further advised: "By entering into this [Arbitration A]greement, you expressly acknowledge that you have read and understand all of the terms of this agreement and have taken time to consider the consequences of this important decision." *Id.* (capitalization altered).

The Arbitration Agreement itself then emphasized its scope: "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." V1SR88 (emphasis added). And Paragraph (a) of the Arbitration Agreement provided:

> [Y]ou 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.

Id.

c. The Delegation Clause in the Terms of Use. Paragraph (c) of the Arbitration Agreement discussed the Agreement's "[r]ules and [g]overning [l]aw." V1SR89. Three aspects of Paragraph (c) are notable here. *First*, it specified that any arbitration would "be administered by the American Arbitration Association ('AAA') in accordance with the AAA's Consumer Arbitration Rules (the 'AAA Rules') then in effect[.]" *Id.* *Second*, Paragraph (c) memorialized the parties' "agree[ment] … that the [FAA] … will govern [the Arbitration Agreement's] interpretation and enforcement and proceedings pursuant thereto," as well as the parties' "intent … that the FAA and AAA Rules shall preempt all state laws to the fullest extent permitted by law." *Id.*

Third, and finally, Paragraph (c) included what is known as a delegation clause (the "Delegation Clause"), which provided:

> The parties agree that the arbitrator ('Arbitrator'), and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. 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.

Id.

Plaintiff acknowledges accepting all the foregoing terms. *E.g.*, Br. 7 (conceding she "had an Uber app and, therefore, an arbitration agreement").

d. Mr. Geller Agreed to Materially Identical Terms of Use. Plaintiff concedes that Uber proved that Mr. Geller entered into his own binding arbitration agreement with Uber. *See* V1SR55-56, 59-84; Br. 7 (agreeing that Mr. Geller "had an Uber app" and that "[a]long with the Uber app came … an arbitration agreement"). Mr. Geller's agreement was substantively identical to Plaintiff's in all material respects. *See* V1SR62, 66-67.

2. The Motion to Compel

In view of the foregoing, Uber argued that Plaintiff was contractually bound to pursue all her claims in arbitration. Specifically, Uber argued that, under Illinois law, survival claims "are subject to arbitration agreements entered into by a decedent," so Mr. Geller's arbitration agreement required Plaintiff to "pursue her survival claims in arbitration." V1SR179; *see Carter*, 2012 IL 113204, ¶34 (explaining that "the Survival Act" permits decedent's administrator "to maintain those … actions that had already accrued to the decedent prior to death"). And Uber argued *separately* that Plaintiff's wrongful-death claim "accrued to the estate administrator"—that is, to Plaintiff in her individual capacity—upon "the decedent's death." V1SR180. At that point, Plaintiff's *own* Arbitration Agreement came into play, and its Delegation Clause required an "arbitrator to resolve" the threshold issue of whether Plaintiff's "wrongful death claim is … within the scope of [her] [A]rbitration [A]greement." *Id.*

Plaintiff made three arguments in response, two of which are no longer at issue. *First*, she argued that Uber failed to demonstrate that she and Mr. Geller had accepted the Terms of Use. V1SR104-15. But Plaintiff now concedes both she and Mr. Geller "had .... arbitration agreement[s]" with Uber. Br. 7. *Second*, Plaintiff argued that Mr. Geller's arbitration agreement "[wa]s not binding" because Plaintiff "was not a party to that ... contract." V1SR115 (emphasis omitted). But Uber has never contended that Plaintiff is bound by Mr. Geller's agreement with respect to her wrongful-death claim, and the appellate court did not rule on this basis; that issue is thus not before this Court either.

Plaintiff's third argument is the only one still relevant. She argued that "the conduct of Uber [wa]s so egregious and one-sided" that the arbitration agreements were both procedurally and substantively unconscionable. V1SR116-17; *see* V1SR120-22 (similarly arguing that the agreements were invalid as "against public policy"). Importantly, Plaintiff contended only that the Arbitration Agreement was unconscionable in its entirety; she identified nothing allegedly unconscionable about the Delegation Clause in particular. *See* V1SR116-22.

C. The Decisions Below

1. The Circuit Court's Decision

The circuit court granted Uber's motion to compel arbitration in part and denied it in part. *See* V2SR197-242, 257.

First, the circuit court granted Uber's motion to compel arbitration of Plaintiff's survival claims. V2SR233. It found that Mr. Geller "entered" "a

contract" with Uber when he accepted the Terms of Use, and that this contract "included an arbitration clause." *Id.* The court then concluded that because Plaintiff's survival claims belonged to Mr. Geller's estate, Mr. Geller's arbitration agreement applied and required the claims to be arbitrated. *See* V2SR233-34; *see Carter*, 2012 IL 113204, ¶57.

Second, the court refused to compel arbitration of Plaintiff's claim under the Wrongful Death Act. *Id.* Invoking this Court's holding in *Carter*, 2012 IL 113204, ¶57, the court first determined that although Mr. Geller's "agreement covers the … survival actions," it did not require arbitration of "the wrongful death" claim. V2SR234. The court then agreed this case differs from *Carter* because the estate administrator—Plaintiff—had *independently* entered into *her own* arbitration agreement with Uber. V2SR233-34. However, the circuit court found that this distinction made no difference, deeming Plaintiff's "[A]rbitration [A]greement … largely irrelevant to the claims she is asserting on the wrongful death, because … the [A]rbitration [A]greement talks about [Plaintiff's] usage [of Uber]; not her husband's usage." V2SR234. The court therefore held that Plaintiff's wrongful-death claim was not "within the scope" of her Arbitration Agreement. *Id.* The court did not reconcile its conclusion about the Arbitration Agreement's scope with the Delegation Clause, which assigned exclusive responsibility "for determining all threshold arbitrability issues, including issues relating to whether the Terms are applicable," to the arbitrator rather than the court, V1SR89, never referencing the Delegation Clause at all.

To avoid the mandatory stay of her wrongful-death claim pending the arbitration of the survival claims, Plaintiff voluntarily dismissed her survival claims with prejudice. *See* V2SR234.

2. The Appellate Court's Decision

The appellate court reversed. *See* A1-14.

Waiver. The appellate court first rejected Plaintiff's argument that Uber waived its argument about her Arbitration Agreement, explaining that Uber attached a copy of Plaintiff's Arbitration Agreement to its "initial motion to compel arbitration" and that "the circuit court heard argument regarding [Plaintiff']s [A]rbitration [A]greement" and issued a ruling interpreting its scope. *See* A4-5.

Unconscionability. The appellate court next rejected Plaintiff's contention that the "[A]rbitration [A]greement … , including the [D]elegation [C]lause, is unconscionable." A5. Initially, the court held that, although the plain terms of the Delegation Clause "delegate[] the issue of unconscionability to the arbitrator," it was obligated to override the contractual text and decide the unconscionability question itself because it construed *Coinbase, Inc. v. Suski* to mean "that a delegation clause cannot delegate the general validity of an arbitration agreement to the arbitrator." A5 (citing 602 U.S. 143 (2024)). From there, the appellate court addressed Plaintiff's unconscionability arguments on the merits.

"Procedural unconscionability refers to impropriety during the formation of a contract that deprives a party of a meaningful choice." A6-7. The appellate

court found no such unconscionability here, explaining that Uber advised Plaintiff of the Arbitration Agreement in "bold all-capital type" and "bold headings" that were "conspicuous and not[] … hidden in a maze of fine print." A7. Further, the court reasoned that Plaintiff "had reasonable opportunities to review the terms when she agreed to them," and that whether she in fact reviewed the agreement before assenting to it via the Rider App was irrelevant. A7-8. The court was unconcerned that the Arbitration Agreement was a contract of adhesion, explaining that under settled Illinois law such agreements are unconscionable only if the offeror is shown to have engaged in "impropriety, coercion, or overreaching," and here, there was no evidence of misconduct on Uber's part. A8-9. Because Plaintiff "was free to reject the [T]erms of [U]se and use a different rideshare service instead," A9, she was not "deprive[d] … of [a] meaningful choice," A6-7, so the Agreement was not procedurally unconscionable.

The appellate court then concluded that the Arbitration Agreement was not "so one-sided as to oppress or unfairly surprise an innocent party," and so was not substantively unconscionable. A9 (citation omitted). The court first rejected Plaintiff's arguments that she was "prevented … from using the Rider App unless she consented to the [T]erms of [U]se" and that the Arbitration Agreement was "lost within a vast number of pages of text," explaining that these arguments went to procedural rather than substantive unconscionability. A9-10. Next, the court rejected Plaintiff's argument that it was substantively unconscionable for the Agreement to "deprive[] her of the right to seek judicial redress," relying on this

Court's precedent rejecting that argument. A10 (citing *Melena v. Anheuser-Busch, Inc.*, 219 Ill 2d 135, 151 (2006)).[3]

Delegation. Having concluded that the Arbitration Agreement was not unconscionable, the appellate court turned to the circuit court's ruling regarding the Agreement's scope. The court explained that the parties "dispute[d] … whether the [A]rbitration [A]greement applie[d] to [Plaintiff]'s wrongful death claims." A11. But while the circuit court had endeavored to resolve that question, V2SR234, the appellate court held that "[t]he circuit court had no authority to [do so]" because the Delegation Clause in the Agreement "unambiguously provide[d] that the arbitrator must resolve this dispute of arbitrability," A11-12. This result, the appellate court explained, was "mandate[d]" by binding "United States Supreme Court authority." A12 (citing *Henry Schein*, 586 U.S. at 68).

In reaching this conclusion, the court emphasized it was not holding that Plaintiff was bound by *Mr. Geller's* separate "arbitration agreement with Uber." *Id.* (citing *Carter*, 2012 IL 113204, ¶60). Rather, the appellate court recognized that "[t]he wrongful death claims belong to [Plaintiff] individually and she is the plaintiff on those claims." A13 (citing *Carter*, 2012 IL 113204, ¶33). Instead, "[t]he question … [wa]s *who decides* whether [Plaintiff]'s claims for wrongful death fall

[3] The appellate court also rejected Plaintiff's argument that no agreement was formed at all because "Uber did not provide consideration for the [A]rbitration [A]greement," explaining that it was undisputed "that there was consideration for her agreement to Uber's [T]erms of [U]se" overall, and that this consideration sufficed "to support the subsidiary arbitration clause as well." A10 (quoting *Hartz v. Brehm Preparatory Sch., Inc.*, 2021 IL App (5th) 190327, ¶45).

within the scope of *her* [A]rbitration [A]greement with Uber"—not Mr. Geller's agreement. A12. And the Delegation Clause "answers that question clearly: the arbitrator decides." *Id.* This was true, the court continued, even though Plaintiff contended "that her wrongful death claims are unrelated to her use of the Rider App," because *Henry Schein* makes clear that courts may not "short-circuit" valid delegation clauses "and decide … arbitrability … themselves" just because they believe "the argument that the arbitration agreement applies to the particular dispute [to be] 'wholly groundless.'" *Id.* (quoting 586 U.S. at 65).

The appellate court accordingly concluded that "the arbitrator must decide whether [Plaintiff]'s wrongful death claims fall within the scope of her [A]rbitration [A]greement." A13.

STANDARD OF REVIEW

This Court reviews *de novo* the denial of Uber's motion to compel the arbitration of Plaintiff's wrongful-death claims. *See Clanton v. Oakbrook Healthcare Ctr., Ltd.*, 2023 IL 129067, ¶31.

ARGUMENT

The FAA mandates that courts enforce arbitration agreements according to their terms—including agreements to delegate threshold questions of arbitrability to an arbitrator. That federal mandate controls.

Plaintiff concedes she entered into an Arbitration Agreement with Uber and that the Agreement expressly delegated to the arbitrator exclusive authority to decide whether particular claims fall within the Agreement's scope. Under the

plain terms of that Delegation Clause—and the unambiguous holding of the U.S. Supreme Court's decision in *Henry Schein*—that makes this an easy case: as a matter of federal law, the circuit court could not decide whether Plaintiff's wrongful-death claim is arbitrable.

Plaintiff's contrary arguments fail. Her reliance on this Court's decision in *Carter* is misplaced; *Carter* held only that an estate administrator cannot be bound to arbitrate a wrongful-death claim by virtue of *the decedent's* arbitration agreement. That question is not presented here, where Plaintiff entered into *her own* Arbitration Agreement with Uber. And Plaintiff's contention that courts must always decide whether a claim is sufficiently "related to" an arbitration agreement before enforcing a delegation clause is simply the "wholly groundless" exception that *Henry Schein* expressly rejected by another name. This Court is bound by the Supreme Court's interpretation of federal law.

As for Plaintiff's unconscionability arguments, they are meritless. For one, since Plaintiff challenged only her Arbitration Agreement as a whole, not the Delegation Clause specifically, the United States Supreme Court's decision in *Rent-A-Center* required the arbitrator to decide the unconscionability issue. In any event, the appellate court correctly concluded that the Agreement is neither procedurally nor substantively unconscionable. Accepting Plaintiff's arguments to the contrary would require invalidating *all* app-based arbitration agreements, and possibly all online user agreements of any form—a result foreclosed by common sense, Illinois law, and the FAA.

I. THE APPELLATE COURT CORRECTLY HELD THAT THE ARBITRATOR MUST DECIDE IF PLAINTIFF'S WRONGFUL-DEATH CLAIM IS ARBITRABLE.

A. The Delegation Clause Unambiguously Requires the Arbitrator to Decide the Threshold Issue of Whether the Arbitration Agreement Applies to Plaintiff's Wrongful-Death Claim.

Section 2 of the FAA renders arbitration agreements "valid, irrevocable, and enforceable" nationwide, 9 U.S.C. § 2, embodying "a liberal federal policy favoring arbitration," *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Section 2's command is as easy to apply as it is to understand: simply put, "courts must enforce arbitration contracts according to their terms." *Henry Schein*, 586 U.S. at 67; *see Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985) ("[A]t bottom," the FAA reflects "a policy guaranteeing the enforcement of private contractual arrangements."); *see also Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (explaining that the FAA "leaves no place for the exercise of discretion … , but instead mandates that … courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed").

Crucially, Section 2 requires enforcement not only of "agree[ments] to have an arbitrator decide … the merits of a particular dispute," but also of subsidiary agreements to arbitrate "'gateway' questions of 'arbitrability,' such as whether … [the parties'] agreement covers a particular controversy"—so-called delegation clauses, like the Delegation Clause here. *Henry Schein*, 586 U.S. at 67-68. That is so because "an 'agreement to arbitrate a gateway issue [like arbitrability] is simply

an additional, antecedent agreement … , and the FAA operates on this additional arbitration agreement just as it does on any other.'" *Id.* at 68 (quoting *Rent-A-Center*, 561 U.S. at 70); *see also, e.g.*, *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (where "the parties agree to submit the arbitrability question itself to arbitration[]," courts should review "the arbitrator's decision about *that* matter" under the same standard as "any other matter that parties have agreed to arbitrate"). Accordingly, "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract…. even if the court thinks that the argument that the arbitration agreement applies to [the] particular dispute is wholly groundless." *Henry Schein*, 586 U.S. at 68; *see* pp. 29-38, *infra* (discussing the demise of the wholly-groundless exception).

That principle makes this a simple case. Plaintiff concedes she accepted Uber's Terms of Use, and further concedes that those Terms of Use included both an Arbitration Agreement requiring arbitration of "any dispute, claim, or controversy in any way arising out of or relating to … [Plaintiff's] relationship with Uber," V1SR88, and a Delegation Clause granting the arbitrator "exclusive authority to resolve …. all threshold arbitrability issues, including … whether the Terms are applicable" to a given dispute, V1SR89. Under the FAA, this contract must be "enforce[d] … according to [its] terms." *Henry Schein*, 586 U.S. at 67. And, as the appellate court correctly concluded, those terms "unambiguously provide[] that the arbitrator must resolve," A11, the "threshold arbitrability issue[]" of whether the Arbitration Agreement is "applicable" to Plaintiff's

wrongful-death claim, V1SR89. "The circuit court [thus] had no authority to find that [Plaintiff]'s wrongful death claims do not fall within the scope of her [A]rbitration [A]greement with Uber." A11-12. Under clear federal law, that issue was for the arbitrator alone.

B. Plaintiff's Arguments to the Contrary Are Unavailing.

Plaintiff urges this Court to nonetheless refuse to enforce the Delegation Clause "according to [its] terms." *Henry Schein*, 586 U.S. at 67. First, she argues she cannot be bound by Mr. Geller's arbitration agreement. *See* Br. 8-19. But Plaintiff punches at a straw man because Uber's argument—and the appellate court's ruling—is based on *Plaintiff's* Arbitration Agreement with Uber, not Mr. Geller's. Second, Plaintiff argues that her wrongful-death claim is not arbitrable because it "did not arise under [*her*] contract" with Uber. *Id.* at 22 (emphasis omitted); *see id.* at 20-36. But that is the argument the United States Supreme Court rejected in *Henry Schein*, and this Court cannot chart a different course on this issue of federal law.

At bottom, Plaintiff is bound by—and this Court must enforce—the contract she accepted. The contract requires an arbitrator, not the court, to decide if the parties' Arbitration Agreement applies to Plaintiff's wrongful-death claim.

1. Plaintiff Is Bound to Arbitrate by *Her Own* Arbitration Agreement, Not Mr. Geller's.

Plaintiff devotes multiple pages of her brief to a proposition that is neither relevant nor disputed: relying on this Court's decision in *Carter v. SSC Odin*

Operating Company, LLC., 2012 IL 113204, Plaintiff argues she is not bound to arbitrate her claim for wrongful death by Mr. Geller's arbitration agreement with Uber. *See* Br. 8-19. To put it plainly, Uber does not seek to enforce *Mr. Geller's* arbitration agreement against Plaintiff with respect to her claim for wrongful death.[4] It seeks to hold Plaintiff to *her own* Arbitration Agreement. Both the appellate court and the circuit court were therefore correct in determining that *Carter* is not implicated here. *See* A12-13; V2SR233-34.

To the extent there is a debate to be had on this point, it is important to distinguish between what *Carter* holds and what it does not. In *Carter*, the decedent died in the care of a nursing home, and Carter, the administrator of the decedent's estate, sued the nursing home under the Wrongful Death Act. *See* 2012 IL 113204, ¶4. The nursing home moved to compel arbitration, pointing to two arbitration agreements *the decedent* had with the nursing home—one "signed by [the decedent] herself" and another "signed by [Carter] as [the decedent]'s 'Legal Representative.'" *Id.* ¶5. Carter opposed the motion to compel, arguing that because under Illinois law she (not the decedent) controlled the wrongful-death

[4] Plaintiff's opening brief contains several offhand remarks suggesting that Uber impermissibly "changed" its argument between its opening motion-to-compel brief and its reply brief in support of that motion. Br. 1; *see id.* at 5, 8-9. The appellate court correctly rejected that argument. A4-5. And the issue is not before this Court: plaintiff waived it by not briefing it in her petition for leave to appeal, *see 1350 Lake Shore Assocs. v. Healey*, 223 Ill. 2d 607, 629 (2006), and waived it again by failing to make any actual waiver argument in her opening brief before this Court, *see People ex rel. Daley v. Warren Motors, Inc.*, 114 Ill. 2d 305, 321 (1986) ("Points not argued may be considered waived.").

claim, she could not be bound to arbitrate that claim by virtue of *the decedent's* arbitration agreement. *See id.* ¶10.

This Court agreed, explaining that "the Wrongful Death Act created a new cause of action that does not accrue until death" and that this new "claim … does not belong to the decedent" or the decedent's estate. *Id.* ¶¶34, 60. Rather, the statute requires such claims to "be brought by and in the names of the [decedent]'s personal representatives." 740 ILCS 180/2(a). The Court thus deemed it crucial that Carter had "signed the [arbitration] agreement [only] as [the decedent]'s legal representative, and not in her individual capacity or on her own behalf as a potential wrongful-death plaintiff." *Carter*, 2012 IL 113204, ¶30. As a result, the Court held that "the [decedent's] arbitration agreement is not binding upon [Carter] with regard to the wrongful-death claim." *Id.*

The holding in *Carter* thus is a straightforward application of the principle that "nonsignatories to a contract are typically not bound" by it. *Id.* ¶31. Because it was undisputed that Carter had not, "in her individual capacity," entered into *any* contract with the defendant nursing home, *id.* ¶¶30-31, there was no "written agreement for arbitration" with respect to which Carter was "the party in default" of an obligation to arbitrate, 9 U.S.C. § 4.

Carter goes no further than that. It does not recognize what Plaintiff seems to believe: a categorical rule of Illinois contract law rendering unenforceable all agreements requiring the arbitration of claims brought under the Wrongful Death Act. Rather, *Carter* holds only that arbitration of such claims cannot be compelled

based on a contract accepted by *the decedent*. The other cases Plaintiff cites, *see* Br. 11-15, do not alter the scope of *Carter*'s holding; all involved the same facts as in *Carter*—a wrongful-death plaintiff who was not herself a party to an arbitration agreement with the wrongful-death defendant.[5] Thus, as Plaintiff seemingly recognizes, these cases amount to a rote application of *Carter*'s straightforward holding 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*." Br. 11 (emphasis added).

But as both courts below correctly recognized, *Carter* has no application here. Unlike the plaintiff in *Carter*, Plaintiff concedes she *has* accepted an Arbitration Agreement with Uber "in her individual capacity [and] on her own behalf." 2012 IL 113204, ¶30; *see* Br. 7. Under the FAA, that Agreement must be "enforce[d] … according to [its] terms." *Henry Schein*, 586 U.S. at 67. Those terms require the parties to arbitrate arbitrability. And although Plaintiff insists the Arbitration Agreement does not cover her wrongful-death claim, that is a question about the Agreement's scope that must, pursuant to the Delegation

[5] *See Mikoff v. Unlimited Dev., Inc.*, 2024 IL App (4th) 230513, ¶47 ("[T]here is nothing in the record to show that any arbitration agreement was ever formed between defendants and [plaintiffs] *in an individual capacity*." (emphasis added)), *appeal denied*, 244 N.E.3d 226 (Ill. 2024); *Key v. Accolade Healthcare of the Heartland, LLC*, 2024 IL App (4th) 221030, ¶39 (arbitration agreement "signed by [the] decedent"); *White v. Wright*, 2023 IL App (1st) 231617-U, ¶22 ("plaintiff [was] not bound by *the decedent's agreement* to arbitrate the wrongful death claims" (emphasis added)); *Cole v. Granite Nursing & Rehab. Ctr., LLC*, No. 22-cv-312, 2022 WL 1306333, at *1 (S.D. Ill. May 2, 2022) (arbitration agreement "signed by … [the decedent]"), *appeal denied*, 238 N.E.3d 315 (Ill. 2024).

Clause, be decided by an arbitrator in the first instance, *see* pp. 21-23, *supra*; *pp.* 29-38, *infra*.

From there, Plaintiff resorts to insisting that as a matter of Illinois law she is "a purely nominal party" in the wrongful-death suit, which in her telling renders "her own contractual relations [with Uber]"—*i.e.*, her Arbitration Agreement—"irrelevant." Br. 13. But while the decedent's administrator "is merely a nominal party to [a wrongful-death] action, effectively filing suit as a statutory trustee on behalf of the [decedent's] surviving spouse and next of kin, who are the true parties in interest," Br. 15 (quoting *Carter*, 2012 IL 113204, ¶33); *see* 740 ILCS 180/2(a), the administrator's status as trustee does *not* mean "the claim [does not] belong[] to her individually." Br. 14. To the contrary, Plaintiff cites (at 16-17) decades of Illinois law holding that "it is th[e] administrator"—not the statutory beneficiaries—"who possesses the sole right of action [and] control over the [wrongful-death] suit," *Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768, ¶92 (quoting *Will v. Northwestern Univ.*, 378 Ill. App. 3d 280, 289 (1st Dist. 2007) (emphasis omitted)), and that the administrator has the sole "right to institute *and the right to settle*" such a suit, *id.* (emphasis added). If an administrator can *settle* a wrongful-death claim, she necessarily can agree to *arbitrate* such a claim; after all, arbitration "is no more than a contractual … way of settling legal claims." *Badgerow v. Walters*, 596 U.S. 1, 9 (2022).

Indeed, the unacknowledged upshot of Plaintiff's argument is that wrongful-death claims in Illinois can *never* be arbitrated. Under *Carter*, the

decedent cannot require his administrator to arbitrate a wrongful-death claim. And, on Plaintiff's view, neither the administrator nor the statutory beneficiaries can decide to arbitrate. The administrator, Plaintiff says, is merely a "nominal party" to the wrongful-death suit who cannot agree to arbitrate the claim (though, again, Plaintiff never explains why this is so), while the statutory beneficiaries are incapable of agreeing to arbitrate because they "cannot institute the claim, cannot prosecute the claim, [and] cannot settle the claim." Br. 18.[6] According to Plaintiff, therefore, the Illinois Wrongful Death Act creates a statutory Catch-22 under which arbitration is never available.

The problem with Plaintiff's suggestion "that arbitration should *n[ever]* be compelled in … wrongful death case[s]," Br. 12 (emphasis added), is that it is preempted by federal law. "When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011). That rule applies to wrongful-death claims. As the Supreme Court explained in *Marmet Health Care Center, Inc. v. Brown*, "[t]he [FAA]'s text includes no exception for … wrongful-death claims," so a state-law "prohibition against predispute agreements to arbitrate … [such] claims" is preempted because it "is contrary to the terms and coverage of the FAA." 565 U.S. 530, 532-33 (2012).

[6] Because Plaintiff's status as administrator gave her ownership of and control over the wrongful-death claim—and thus the power to decide to arbitrate it—Plaintiff errs in suggesting that the appellate court's decision turned upon Plaintiff's status as *beneficiary*. *See* Br. 14-19.

That is why this Court in *Carter* emphasized that it was *not* adopting the "categorical antiarbitration rule" that Plaintiff now proposes. 2012 IL 113204, ¶60.

In sum, although Plaintiff is "a nonparty to [Mr. Geller's] arbitration agreement[]," *id.*, she certainly *is* a party to *her own* Arbitration Agreement. So, because Plaintiff (1) formed an Arbitration Agreement with Uber in her individual capacity and (2) *could have* (as a matter of federal law) agreed to arbitrate her wrongful-death claim, the only question is whether she in fact did so. As the appellate court correctly held, the Delegation Clause in Plaintiff's Arbitration Agreement with Uber requires the arbitrator to decide that issue.

2. Plaintiff's Attempt to Evade *Henry Schein* Fails.

Plaintiff's response to the Delegation Clause is to insist it is irrelevant here because her Arbitration Agreement "related exclusively to her own use of" Uber and so does not apply to her wrongful-death claim, which "has its real source in [*Mr. Geller's*] use of … Uber." Br. 20, 25-26. Plaintiff's attempt to evade the Delegation Clause she accepted—and to render *Henry Schein* toothless in the process—cannot succeed.

The Supreme Court in *Henry Schein* addressed whether, "when a contract [clearly] delegates the arbitrability question to an arbitrator," courts can "short-circuit the process" and "decide the arbitrability question themselves," if they believe "the argument that the arbitration agreement applies to the particular dispute is 'wholly groundless.'" 586 U.S. at 65. The Court answered that question in the negative, holding "that the 'wholly groundless' exception is inconsistent with

the text of the [FAA] and with [the Court's] precedent." *Id.* at 68. The rule emerging from *Henry Schein* is simple:

> When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless.

Id.

In arguing that a court can nonetheless decide whether her wrongful-death claim is too "remote" from or "unrelated" to the Agreement to be covered, *see* Br. 33-34, Plaintiff seeks to resurrect the wholly-groundless exception by another name. But just as "[t]he [FAA] does not contain a 'wholly groundless' exception," *Henry Schein*, 586 U.S. at 65, so too is Plaintiff unable to point to any plausible textual basis for the "remoteness" or "unrelatedness" exception she posits: those words appear nowhere in the statute, and courts "are not at liberty to rewrite the statute passed by Congress and signed by the President." *Id.*; *see also, e.g.*, *Badgerow*, 596 U.S. at 11 (courts have "no warrant to redline the FAA").

Plaintiff's only argument even referencing the FAA's text—an allusion to Section 2's promise that arbitration agreements are "valid" if they require arbitration of "controvers[ies] … *arising out of [the parties'] contract*," Br. 30-31 (quoting *Moritz v. Universal City Studios LLC*, 54 Cal. App. 5th 238, 248 (2020) (quoting 9 U.S.C. § 2))—is one the United States Supreme Court considered in *Henry Schein* and rejected. The respondent in *Henry Schein* pointed to language

in Section 3 of the FAA stating that courts must stay litigation "'upon being satisfied that the issue' is 'referable to arbitration' *under the 'agreement,'* " and to language in Section 4 directing courts to "compel arbitration '*in accordance with the terms of the agreement*' when the court is 'satisfied that *the making of the agreement for arbitration … is not in issue*,'" in order to argue that the FAA's repeated references to the parties' "agreement" meant, "in essence, that a court must always resolve questions of arbitrability and that an arbitrator may never do so." 586 U.S. at 69 (emphases added). But the United States Supreme Court brushed off that argument with ease: "[T]hat ship has sailed." *Id.* Once again, *Henry Schein* could not have stated its rule more clearly: "[I]f a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court *may not* decide the arbitrability issue." *Id.* (emphasis added). The ship has therefore sailed on Plaintiff's argument as well.[7]

It should go without saying that the handful of lower-court decisions Plaintiff marshals, *see* Br. 22-34, do not give this Court license to ignore *Henry Schein*. This Court, "like any other state or federal court, is bound by th[e] [Supreme] Court's interpretation of federal law," *James v. City of Boise*, 577 U.S. 306, 307 (2016), and "it is th[e] [Supreme] Court's prerogative alone to overrule

[7] To the extent Plaintiff now seeks to relitigate the question "whether a valid [A]rbitration [A]greement exists" between the parties, Br. 35 (citation omitted); *see id.* at 22-25, 34-36, Plaintiff waived that argument by conceding in the appellate court that she agreed to both the Arbitration Agreement and the Delegation Clause, *see Daley*, 114 Ill. 2d at 321, and waived it again by failing to raise the issue in her petition for leave to appeal, *see 1350 Lake Shore*, 223 Ill. 2d at 629.

one of its precedents," *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997). In the primary decision on which Plaintiff relies, *Peterson v. Devita*, the First District Appellate Court flouted this principle by purporting to "harmonize[]" *Henry Schein* with that court's conception of "common sense"—essentially by ignoring *Henry Schein*. 2023 IL App (1st) 230356, ¶35. But just as there is no wholly-groundless exception to Section 2 of the FAA, there is no "common-sense" exception to the Supremacy Clause. *See* U.S. Const., art. VI, cl. 2; *Martin v. Hunter's Lessee*, 14 U.S. 304, 347-48 (1816) (explaining that, while "[j]udges of equal learning and integrity, in different states, might differently interpret a statute," such differing interpretations would cause "mischief[]" unless the Supreme Court provides for "*uniformity* of decisions throughout the whole United States").

In any event, the decisions *Peterson* cited for this purported harmonization power do not support it. In *Airbnb, Inc. v. Rice*, 518 P.3d 88 (Nev. 2022), the Nevada Supreme Court faithfully applied *Henry Schein* in a case much like this one, holding (five-to-two) that the parties had to arbitrate the arbitrability of an estate administrator's wrongful-death claim against Airbnb because the administrator "had [an] Airbnb account[]" and "had agreed" to Airbnb's terms of use, which included a delegation clause, *id.* at 89-92. The court recognized that *Henry Schein* required this result even though (in its view) "[t]he facts underlying … [the] wrongful death action ha[d] no relation to [the administrator's] … use of Airbnb's services or platform," *id.* at 91—precisely the claim Plaintiff makes here. The supposed harmonization power *Peterson* embraced came from a two-Justice

dissent in *Rice*. *See id.* at 92-93 (Stiglich, J., dissenting). And while both *Peterson* and the *Rice* dissent cited *Moritz v. Universal City Studios LLC*, 54 Cal. App. 5th 238 (2020), the majority in *Rice* correctly distinguished *Moritz* from cases like this one because *Moritz* involved "multiple … arbitration agreements" and so presented a question not implicated here: *which* contract governed? *Rice*, 518 P.3d at 92; *cf. Coinbase, Inc. v. Suski*, 602 U.S. 143, 145, 152 (2024) (holding that when parties enter into multiple arbitration agreements with conflicting delegation provisions, the court decides "which contract controls").[8]

Given that *Peterson*'s poorly-reasoned rule cannot be squared with *Henry Schein*, it is no surprise that courts across the nation have rejected it in favor of

[8] Plaintiff also invokes *Slaughter v. National Railroad Passenger Corp.*, 460 F. Supp. 3d 1, 7-8 (D.D.C. 2020), but that case likewise involved multiple conflicting contracts and is thus distinguishable on the same grounds. *See* Br. 26-28. And the other authorities on which Plaintiff relies, *see id.* at 20-28, are even less on point. *Litton Financial Printing Division v. NLRB* did not involve a delegation provision at all and addressed an issue not presented here: under what circumstances a dispute arising after an arbitration agreement has by its terms expired must nonetheless be arbitrated. *See* 501 U.S. 190, 193, 203-08 (1991). In *Metropolitan Life Insurance Co. v. Bucsek*, the court held that the parties' "agreement d[id] not clearly and unmistakably provide for arbitration of the question of arbitrability." 919 F.3d 184, 196 (2d Cir. 2019). In *Lloyd's Syndicate 457 v. FloaTEC, L.L.C.*, the court determined that the parties "never 'entered into *any arbitration agreement at all*.'" 921 F.3d 508, 515 (5th Cir. 2019) (citation omitted). And in *Breadeaux's Pisa, LLC v. Beckman Brothers, Ltd.*, the court concluded that a party had "waived its [contractual] arbitration rights" by "'substantially invok[ing] the litigation machinery' rather than promptly seeking arbitration." 83 F.4th 1113, 1117-19 (8th Cir. 2023) (citation omitted). None of these cases shed any light on the issue in this case, since Plaintiff and Uber plainly entered into an Arbitration Agreement, the Agreement had not expired, the Agreement required arbitrating arbitrability, and there is no assertion that Uber has waived its right to arbitrate.

Henry Schein's actual holding: "If there is a delegation clause, the court has no authority to decide the arbitrability question but must instead grant the motion to compel arbitration." *Rice*, 518 P.3d at 92; *see, e.g.*, *New Heights Farm I, LLC v. Great Am. Ins. Co.*, 119 F.4th 455, 461 (6th Cir. 2024) (party "must present [] threshold question to the arbitrator, and that is so no matter how strong or weak [the other party's] rejoinders may be"); *Mod. Perfection, LLC v. Bank of Am., N.A.*, 126 F.4th 235, 242-43 (4th Cir. 2025); *Young v. Experian Info. Sols., Inc.*, 119 F.4th 314, 321 (3d Cir. 2024); *Eska v. Jack Schmitt Ford, Inc.*, 2023 IL App (5th) 220812-U, ¶18. These cases reflect a nationwide consensus that *Henry Schein* means what it says: when the parties agree to a delegation clause, courts may not "short-circuit the process and decide … arbitrability," even if they believe the argument for arbitrability is "wholly groundless." 586 U.S. at 65.

Though Plaintiff frames her argument in terms of "relatedness" or "remoteness" and not whether the claim to arbitrability is "wholly groundless," at bottom, what she seeks is another judge-made exception to the FAA's requirements to address what she views as Uber's "frivolous attempt[] to transfer [her] dispute[] from the court system to arbitration." *Id.* at 68. *Henry Schein* established a "straightforward rule" rejecting such arguments: "[O]nce the parties subject some set of issues to an arbitrator for resolution, and once the parties clearly and unmistakably assign to an arbitrator the authority to decide whether disputes fit within that set of issues, the question whether a particular dispute is arbitrable is strictly for the arbitrator, not a court." *Commc'ns Workers of Am. v.*

AT&T Inc., 6 F.4th 1344, 1349 (D.C. Cir. 2021). This Court is not free to adopt the same exception *Henry Schein* rejected under a different name. *See, e.g.*, *Bossé v. New York Life Ins. Co.*, 992 F.3d 20, 30 (1st Cir. 2021) (holding that argument that a "court must assess whether the particular dispute falls within the scope of the arbitration agreement to determine whether the arbitrability of that dispute was delegated to the arbitrator" is "prohibited by … *Henry Schein*").

One of Plaintiff's own cases—the Fifth Circuit's decision in *Lloyd's Syndicate 457 v. FloaTEC, L.L.C.*—confirms that her position is wrong. *Lloyd's Syndicate* explained that, "[t]o assess whether a claim must be arbitrated, [courts should] follow a two-step analysis." 921 F.3d 508, 514 (5th Cir. 2019). "At step one, 'the court must determine whether the parties entered into *any arbitration agreement at all*.'" *Id.* (citation and quotation marks omitted). Plaintiff here concedes that the answer to this step-one question is yes: she has an Arbitration Agreement with Uber. *See* Br. 7. Having "answer[ed] 'yes' at the first step," *Lloyd's Syndicate* indicates that the court should then "proceed to …. step two," which involves "a 'limited' inquiry" into "[w]hether the [parties'] agreement contains a valid delegation clause." 921 F.3d at 514. Again, the answer here is yes: the parties' Agreement contains the Delegation Clause and, as explained below, *see* pp. 42-55, *infra*, the Delegation Clause is valid. In those circumstances, *Lloyd's Syndicate* continued, "a 'motion to compel arbitration should be granted in almost all cases.'" 921 F.3d at 514 (citation omitted). But *Henry Schein* overruled the last four words of that sentence—"in almost all cases"—since the only exception

Lloyd's Syndicate discussed was the now-defunct wholly-groundless exception. *See id.* at 514-15 & n.3. Thus, after *Henry Schein*, if a court answers yes to both *Lloyd's Syndicate* questions, there is no other option: it "must" compel arbitration. *Henry Schein*, 586 U.S. at 71.

Nor is Plaintiff correct to suggest that faithfully applying *Henry Schein* will produce "absurd and catastrophic" results. Br. 36; *see id.* at 8 ("unjust, unlawful and absurd"); *id.* at 19 ("absurd [and] unjust"); *id.* at 33 ("absurd"). Once again, *Henry Schein* considered this argument and rejected it. In rejecting the notion that enforcing delegation provisions as written might incentivize "frivolous motions to compel arbitration," the Court explained that "[a]rbitrators can efficiently dispose of frivolous cases by quickly ruling that a claim is not in fact arbitrable" and sending it back to court. 586 U.S. at 71. Moreover, "under certain circumstances," arbitrators may also "impos[e] fee-shifting and cost-shifting sanctions … [to] help deter and remedy frivolous motions to compel." *Id.*

That is not all. *Henry Schein* also left open the possibility that if an arbitrator claims jurisdiction over a dispute when he has no good faith basis for doing so, then a claimant may be able to obtain back-end review of that determination by filing a Section 10 petition to vacate the arbitrator's award on the grounds that the arbitrator "'exceeded' his or her 'powers'" by deeming the claim arbitrable. *Id.* at 69-70; *see* 9 U.S.C. § 10(a)(4). But, as the Court concluded, courts cannot leverage that potential for back-end review to claim the front-end power to decide the arbitrability question when the parties agreed that such

power would reside exclusively in the arbitrator. At bottom, "Congress designed the [FAA] in a specific way," and courts "may not rewrite the statute simply to accommodate [Plaintiff's] policy concern[s]." *Henry Schein*, 586 U.S. at 70-71.

In the end, the narrowness of Uber's request that this Court "enforce" the Delegation Clause "according to [its] terms" bears emphasis. *Id.* at 67. Uber freely acknowledges that, because "arbitration is a creature of contract," *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 585-86 (2008), Plaintiff cannot be compelled to arbitrate her wrongful-death claim if she did not agree to do so. But the question is not whether Plaintiff in fact agreed to do so; it is "[w]ho decides that threshold arbitrability question?" *Henry Schein*, 586 U.S. at 65. Plaintiff's Delegation Clause says the arbitrator does. And there is nothing wrong with that, since the Supreme Court has "decline[d] to indulge the presumption"—implicit in Plaintiff's argument—that arbitrators are inherently less "competent, conscientious [or] impartial" than courts. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 30 (1991). All of Plaintiff's arguments about how her Arbitration Agreement applies only to claims that arise from "[Plaintiff]'s own use of the [Rider] [A]pp or of a[n] Uber ride," Br. 25, are arguments she can—and, under the Delegation Clause, must—make to the arbitrator. Uber believes it has strong arguments to the contrary, but in the end, the issue must be decided by the arbitrator. Uber will of course respect the arbitrator's decision. But just the same, because the Arbitration Agreement here "delegates the arbitrability question to

an arbitrator" in the first instance, this Court also "must respect the parties' decision as embodied in the[ir] contract." *Henry Schein*, 586 U.S. at 71.

Under *Henry Schein*, the appellate court correctly concluded that the circuit court "possess[ed] no power" to "override the [parties'] contract" and "decide the arbitrability issue." *Id.* at 68; *see* A12. This Court should affirm.

II. THE APPELLATE COURT SHOULD HAVE REFRAINED FROM DECIDING THE ISSUE OF UNCONSCIONABILITY, BUT IT DID SO CORRECTLY IN ANY EVENT.

The appellate court correctly observed that the Delegation Clause in Plaintiff's Arbitration Agreement "delegates the issue of unconscionability to the arbitrator," A5, but incorrectly concluded that the U.S. Supreme Court's recent decision in *Coinbase* overrides the parties' Agreement on this point, *see* A5-6. Because Plaintiff challenged only the Arbitration Agreement as a whole rather than the Delegation Clause specifically, *Rent-A-Center* required enforcement of the parties' antecedent decision to arbitrate unconscionability by compelling arbitration of that issue.

In any event, though it should not have decided the unconscionability issue, the appellate court correctly determined that Plaintiff's claims of unconscionability are meritless.

A. The Delegation Clause Required the Arbitrator, Not the Court, to Decide the Issue of Unconscionability.

At the outset, the appellate court should have sent the unconscionability issue to the arbitrator. The Delegation Clause provides that "[t]he Arbitrator

shall … be responsible for determining … whether the Terms are … unconscionable." V1SR89. Just like the parties' decision to delegate *arbitrability* to the arbitrator, *see* pp. 21-23, *supra*, their decision to delegate the question of *unconscionability* "is simply an additional, antecedent agreement, … and the FAA operates on this additional arbitration agreement just as it does on any other." *Rent-A-Center*, 561 U.S. at 70. Again, courts "must treat [an agreement to delegation unconscionability] as valid under § 2, and must enforce it [by compelling arbitration] under … [§] 4, leaving any challenge to the validity of the [arbitration] [a]greement as a whole for the arbitrator." *Id.* at 72. There is only one exception: if—and only if—a party lodges an unconscionability challenge to "the delegation provision specifically," a court may assess the delegation provision itself. *Id.*

Rent-A-Center was a case much like this one: the parties entered into a contract "to arbitrate claims arising out of [the plaintiff]'s employment with Rent-A-Center," *id.* at 71, and the agreement contained a provision delegating the issue of the agreement's unconscionability to the arbitrator, *see id.* at 65-66. The plaintiff, Jackson, argued that the arbitration agreement as a whole was unconscionable under Nevada law, but did not object to the delegation provision in particular. *See id.* at 72-73. But the Supreme Court explained that, in arguing that the arbitrator was required to decide the issue of unconscionability, Rent-A-Center had asked the Court only "to enforce … the delegation provision," and that "antecedent agreement" was "severable" from "the rest of the agreement to arbitrate claims arising out of Jackson's employment with Rent-A-Center." *Id.* at

70-71; *see also id.* ("[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract." (citation omitted)).

Here, as in *Rent-A-Center*, Plaintiff "challenged only the validity of the [arbitration] contract as a whole"—not of the Delegation Clause in particular. *Id.* at 72. Plaintiff's substantive unconscionability argument revolves around the purported unfairness of submitting her *substantive claims* against Uber to the arbitrator. *See* Br. 45-49; V1SR119-20. And her procedural unconscionability argument is that she was deprived of a "free choice" and "meaningful notice" that agreeing to the Terms of Use would result in an "important loss of civil rights"—that is, once again, the ability to prosecute her substantive claims against Uber before a jury. Br. 40-41; *see* V1SR116-20. But Plaintiff has never identified anything procedurally or substantively unconscionable about "the delegation provision specifically." *Rent-A-Center*, 561 U.S. at 72. So, as in *Rent-A-Center*, because Plaintiff failed to "challenge[] the delegation provision specifically," the appellate court was required to "treat it as valid under § 2" and to "enforce it under … [§] 4." *Id.*

The appellate court erred in concluding that *Coinbase, Inc. v. Suski*, required a different result. *See* A5-6. In *Coinbase*, "the parties had two contracts: one mandating arbitration—including disputes about arbitrability—and a separate contract designating California courts as the appropriate forum." *Lackie Drug Store, Inc. v. OptumRx, Inc.*, 143 F.4th 985, 998 (8th Cir. 2025) (discussing

Coinbase). *Coinbase* holds that if parties have "multiple agreements that conflict as to … who decides arbitrability, … a court needs to decide what the parties have agreed to—*i.e.*, which contract controls." *Id.* (quoting *Coinbase*, 602 U.S. at 145). Unlike in *Coinbase*, here there is no separate contract providing that a court should decide the threshold arbitrability question. Instead, Plaintiff agreed to "only one contract" with Uber—one that "contains an arbitration clause with a delegation provision." *Coinbase*, 602 U.S. at 152. In those circumstances, *Coinbase* itself acknowledged that *Rent-A-Center*'s rule would apply as usual: "absent a successful challenge to the delegation provision, courts must send all arbitrability disputes to arbitration." *Id.* So, nothing in *Coinbase* suggests "that a delegation clause cannot delegate the general validity of an arbitration agreement to the arbitrator." A5.

At minimum, even if the appellate court believed Plaintiff *had* satisfied *Rent-A-Center*'s requirement of challenging the Delegation Clause specifically, it should have limited itself to deciding whether *the Delegation Clause* was unconscionable.[9] If the Delegation Clause was not unconscionable, then the court had to enforce it under Sections 2 and 4 and send the question of the Arbitration Agreement's unconscionability to the arbitrator. Only if the Delegation Clause

[9] The rare cases in which courts have deemed delegation itself to be unconscionable involved agreements that delegated arbitrability to a patently corrupt arbitrator. *See, e.g.*, *Gingras v. Think Fin., Inc.*, 922 F.3d 112, 128 (2d Cir. 2019). Plaintiff has not alleged that the AAA—the arbitrator in this case—is such an arbitrator.

was itself unconscionable, and thus invalid, could the court then take the further step of assessing the unconscionability of the Arbitration Agreement as a whole.

B. In Any Event, the Appellate Court Correctly Determined That the Arbitration Agreement Was Not Unconscionable.

Regardless, the appellate court correctly held that Plaintiff's Arbitration Agreement with Uber was neither procedurally nor substantively unconscionable. *See* A5-10. Indeed, Plaintiff's arguments to the contrary, if accepted, would upend decades of settled contract law and undermine the clear federal policy embodied in the FAA—sweeping consequences she gladly invites. If this Court reaches this issue, it should reject Plaintiff's arguments.

Plaintiff begins with a broadside against *all* app-based consumer arbitration agreements. According to Plaintiff, "Congress did not, [and] could not, envision arbitration agreements styled 'terms of use,' presented electronically on screens half the size of a postcard." Br. 37-38.[10] That may or may not be true. But in enacting the FAA, Congress announced a "national policy favoring arbitration [that] places arbitration agreements *on equal footing with all other contracts*."

[10] Plaintiff cites a report issued by "the National Consumer Law Center" discussing a study purporting to show that most consumers who accept terms of use do not understand the arbitration provisions. Br. 38 & n.4. Because the statistics in this report are neither "generally known" nor "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," they are not subject to judicial notice, *People v. Castillo*, 2022 IL 127894, ¶39 (quoting Ill. R. Evid. 201(b)), so this Court may not consider them. Regardless, the statistics are irrelevant because consumers are "charged with knowledge of and assent to the terms and conditions of the contract[s] [they] sign[]," regardless of whether they choose to read them before signing. *Mulligan v. Loft Rehab. & Nursing of Canton, LLC*, 2023 IL App (4th) 230187, ¶47.

Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 443 (2006) (emphasis added). Thus, if Illinois law recognizes that consumers can use iPhones to accept contracts *at all*, then the FAA "preclude[s] [the] State[] from singling out arbitration provisions for suspect status." *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996); *see Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 251-52 (2017) (discussing FAA preemption). And indeed, Illinois—like every other State in the Union—provides for the enforceability of electronic contracts. 815 ILCS 333/1 *et seq.*[11] That legislative judgment forecloses Plaintiff's arguments.

Similar principles dispatch Plaintiff's unfounded claims about the horrors of arbitration. Plaintiff insists courts should not require consumers to proceed in "private tribunal[s] 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." Br. 38. In Plaintiff's view, arbitration is "effectively [a] Star Chamber proceeding[], secretly conducted to the derogation of public courts." *Id.* But "that ship," too, "has sailed." *Henry Schein*, 586 U.S. at 69. As the Supreme Court has explained, because arbitrators are as "competent, conscientious and impartial" as courts,

[11] Illinois is one of 49 states to have adopted the Uniform Electronic Transactions Act. *See* Uniform Law Commission, *Electronic Transactions Act*, https://www.uniformlaws.org/committees/community-home?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034 (last visited Feb. 25, 2026). The sole exception, New York, has enacted a similar law. *See* N.Y. State Tech. Law §§ 301 *et seq.* And in any event, the federal E-Sign Act, *see* 15 U.S.C. §§ 7001 *et seq.*, provides for the enforceability of electronic contracts as a matter of federal law and would preempt any state law to the contrary.

Gilmer, 500 U.S. at 30, "we are well past the time [for] judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals," *Mitsubishi*, 473 U.S. at 626-27. In enacting the FAA, Congress rejected concerns like Plaintiff's in favor of "a liberal federal policy *favoring* arbitration agreements." *Moses H. Cone*, 460 U.S. at 24 (emphasis added). Congress could reverse course if it wished. But no court can displace Congress's legislative judgment.

That Plaintiff's primary submission requires this Court to disregard the FAA's express congressional policy speaks volumes. As explained below, Plaintiff has no serious arguments that her Arbitration Agreement—contained in Terms of Use that "ha[ve] been widely upheld by courts across the country" as a valid "means of acquiring binding assent from consumers," *Wu v. Uber Techs., Inc.*, 260 N.E.3d 1060, 1074 (N.Y. App. Div. 2024) (collecting cases)—is so procedurally or substantively unfair as to be unenforceable. Instead, as Plaintiff herself all but admits, the upshot of her argument is that *all* "arbitration agreement[s] styled [as] 'terms of use,' presented electronically" are invalid. Br. 37-38. This Court should decline Plaintiff's invitation to render the State of Illinois an island unto itself in the world of contract law.

1. The Arbitration Agreement Was Not Procedurally Unconscionable.

Plaintiff asserts that the Arbitration Agreement was procedurally unconscionable because Plaintiff "had no reasonable opportunity to review [its] terms" before agreeing to it. Br. 40. Plaintiff's argument is meritless.

"Procedural unconscionability consists of some impropriety [by one contracting party] during the process of forming the contract depriving [the other] party of a meaningful choice." *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 23 (2006) (citation omitted). A party seeking to invalidate a contract on grounds of procedural unconscionability must demonstrate "[s]ome added coercion or overreaching" beyond the fact that the contractual counterparty offered online terms of service on a take-it-or-leave-it basis with an arbitration clause presented "in fine print in language that the average consumer might not fully understand." *Tortoriello v. Gerald Nissan of N. Aurora, Inc.*, 379 Ill. App. 3d 214, 233 (2d Dist. 2008) (quoting *Kinkel*, 223 Ill. 2d at 26).

Plaintiff asserts four grounds of procedural unconscionability: (1) she "had no meaningful free choice" in accepting the Terms of Use; (2) she had no "meaningful notice of the important loss of civil rights that would be occasioned by accepting [those] [T]erms"; (3) the Arbitration Agreement was improperly "nestled in the midst of a 23-page document intended to be read on the screen of a smartphone"; and (4) the Arbitration Agreement "constituted an improper contract of adhesion." Br. 40-45.[12] All these arguments fail. Because Plaintiff identifies no "added coercion or overreaching" on Uber's part, *Tortoriello*, 379 Ill. App. 3d at 233, the Arbitration Agreement is not procedurally unconscionable.

[12] Plaintiff wrongly asserts that "[t]he appellate court addressed the issue of procedural unconscionability in a single paragraph." Br. 39 (citing A7-8, ¶24). The appellate court's discussion of the subject in fact ran *four* full paragraphs spanning more than two full pages of its opinion. *See* A6-9, ¶¶ 22-26.

Free choice. Plaintiff's first argument is a nonstarter. She claims Uber deprived her of a "meaningful free choice" because it "block[ed] the use of the [Rider A]pp until the [Terms of Use] were agreed to[.]" Br. 40 (emphasis omitted). Though Plaintiff does not say so expressly, her argument seems to be that Uber must permit users—for some unspecified amount of time sufficient to provide "a real opportunity to review [the] terms" and "possibly even consult with an attorney"—to use the Rider App to "secure transportation" *without* first agreeing to the Terms of Use. Br. 40-41. Plaintiff cites no cases holding that a service provider cannot deny service to users who do not agree to the terms of providing that service. There are no such cases.

Nor does it matter that individuals might be presented with new Terms of Use when they have an "urgent" need for transportation. *Id.* At the outset, Plaintiff has never asserted she herself faced such a dilemma or that she did not *in fact* have time to review the Terms of Use before agreeing to them. Regardless, as the appellate court correctly found, if Plaintiff wanted more time to review the Terms of Use, she could have called a cab or "use[d] a different rideshare service instead." A8-9; *see, e.g.*, *Larned v. First Chicago Corp.*, 264 Ill. App. 3d 697, 700 (1st Dist. 1994) (rejecting challenge to Visa's terms of use where plaintiff "freely chose to obtain this Visa card from among a number of other credit cards offering similar benefits"). What matters is that the Arbitration Agreement was "in [Plaintiff's] possession and she either read [it] or *could have read [it] if she had chosen to do so*." *Kinkel*, 223 Ill. 2d at 26 (emphasis added). And because Plaintiff

"could have read [the Terms of Use] if [she] saw fit, … it was [her] duty to do so." *Shulman v. Moser*, 284 Ill. 134, 139 (1918); *see also, e.g.*, *Mulligan*, 2023 IL App (4th) 230187, ¶47 ("[I]n cases where consumers sign contracts, courts generally hold the consumer is charged with knowledge of and assent to the terms and conditions of the contract he or she signed.") (collecting cases).

Meaningful notice. The same precedent dooms Plaintiff's next assertion—that "Uber never gave the customer meaningful notice of the important loss of civil rights that would be occasioned by accepting its terms" because it merely "encourage[d] [riders] to read [the] updated terms in full." Br. 41. Again, Plaintiff "could have read [the Terms of Use] if she had chosen to do so," *Kinkel*, 223 Ill. 2d at 26, and "it was [her] duty to do so," *Shulman*, 284 Ill. at 139. Plaintiff is no less bound by the Terms of Use she agreed to if she agreed to them without reading them. *See Mulligan*, 2023 IL App (4th) 230187, ¶47; *Domer v. Menard, Inc.*, 116 F.4th 686, 694 (7th Cir. 2024) (explaining that "[o]ne way to assent to and form a contract online is for a customer to click on an 'I Accept' button as part of a 'clickwrap' agreement" and that "[c]ourts around the country have recognized that this type of electronic 'click' can suffice to signify the acceptance of a contract" (citation omitted)).

Inconspicuousness. Plaintiff next asserts that she cannot be bound by the Arbitration Agreement because it was "nestled in the midst of a 23-page document intended to be read on the screen of a smartphone." Br. 41. Plaintiff's argument would apply equally to every clause in every app-based terms-of-use contract,

rendering all such contracts procedurally unconscionable. But that is not the law, either in Illinois or anywhere else. *See* pp. 42-44, *supra*.

Plaintiff's reliance (at 41-42) on *Arbogast v. Chicago Cubs Baseball Club, LLC*, 2021 IL App (1st) 210526, is misplaced. There, a reporter received a press pass to cover the Chicago Cubs, and the Cubs asserted that by accepting the credential the reporter agreed "to the terms and conditions of [a] website referenced on the back of the credential." *Id.* ¶22. The court held that because "the contractual nature of the physical credential itself [was] not obvious," the reporter was not "on notice that the Cubs considered [his] use [of the pass] to constitute assent to the terms of a contract." *Id.* ¶28. But here, the contractual nature of the Terms of Use could not have been clearer. Uber notified Plaintiff it had "updated [its] terms," "encourage[d] [her] to read [those] updated Terms in full," and—before it would permit her to continue using its services—required her both (1) to check a box certifying that she was of legal age and "*ha[d] reviewed and agree[d] to* the Terms of Use" and (2) to press a large button labeled "Confirm." V1SR85 (emphasis added). This case could not be farther from *Arbogast*.

Plaintiff asserts that the appellate court "never even considered" whether the Arbitration Agreement was "hidden in a maze of fine print." Br. 43. That is an odd claim, since the court expressly found that "[t]he [A]rbitration [A]greement is conspicuous *and nothing is hidden in a maze of fine print*." A7 (emphasis added). And rightly so. As the court explained, the "first page" of the Terms of

Use "feature[d] a notice in bold all-capital type" advising users that if they accepted the terms they would be "require[d] … to resolve all disputes with Uber … through final and binding arbitration." A7 (quoting V1SR87 (capitalization and boldface omitted)). The Arbitration Agreement itself appeared in Section 2 of the Terms of Use, *see* V1SR88, with large bold headings labeled "**2. Arbitration Agreement**" and "**(a) Agreement to Binding Arbitration Between You and Uber.**" V1SR88. The first sentence of the Agreement reiterated that, "[b]y agreeing to the Terms, you agree that you are required to resolve any claim that you may have against Uber … in arbitration as set forth in this Arbitration Agreement." *Id.* And it went on to clarify that, by agreeing to arbitration, both Plaintiff and Uber were "waiving the right to a trial by jury." *Id.*

Plaintiff does not engage with any of the Arbitration Agreement's actual terms or attempt to explain why "the manner in which [those] terms of use were presented was not procedurally fair." Br. 42-43. That is because she could not do so. This is not a case in which the defendant "made no effort to inform [the] plaintiff about the terms or the implications of the arbitration provision and all of the rights and benefits [the] plaintiff would be waiving or foregoing by executing the agreement." *Dick-Ipsen v. Humphrey, Farrington & McClain, P.C.*, 2024 IL App (1st) 241043, ¶28, *appeal denied*, 246 N.E.3d 1186 (Ill. 2024). To the contrary, as the appellate court correctly concluded, both the Arbitration Agreement and the consequences of accepting it were "conspicuous." A7; *see Wu*, 260 N.E.3d at 1076 (collecting cases and holding that "Uber's clickwrap process put[s] [users] on

inquiry notice of the … terms—including the prominently placed arbitration agreement—and [they] manifest[] [their] assent to those terms by both clicking on the box and pressing the 'confirm' button").

Contract of adhesion. Plaintiff's final argument—that the Arbitration Agreement "constituted an improper contract of adhesion," Br. 44—is equally without merit. As this Court has explained, terms of use containing arbitration clauses "presented in fine print in language that the average consumer might not fully understand …. are a fact of modern life." *Kinkel*, 223 Ill. 2d at 26.

> Consumers routinely sign such agreements to obtain credit cards, rental cars, land and cellular telephone service, home furnishings and appliances, loans, and other products and services. It cannot reasonably be said that all such contracts are so procedurally unconscionable as to be unenforceable.

Id.; *see Larned*, 264 Ill. App. 3d at 700-01 (rejecting argument that Visa's user agreement was an invalid adhesion contract). Plaintiff says a different result is warranted here because Uber "[b]lock[ed] the use of the [Rider A]pp" until users agreed to the updated terms. Br. 44. But so too do car rental agencies and credit card companies block the use of their services until users agree to the terms of use. That is how terms of use work. Once again, accepting Plaintiff's argument here would require invalidating millions of consumer contracts. As *Kinkel* recognized, that is not the law.

2. The Arbitration Agreement Was Not Substantively Unconscionable.

Plaintiff's assertions that the Arbitration Agreement was substantively unconscionable similarly fall flat. "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.'" *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48, 60 (2011) (quoting *Kinkel*, 223 Ill. 2d at 28 (quotation marks omitted)). The Terms here come nowhere close to satisfying that demanding standard.

Plaintiff starts with two arguments unrelated to substantive unconscionability. *First*, she asserts that, because the Terms of Use "purport[ed] to be [a] modification of a prior agreement," this modification needed to be, but was not, supported by new consideration. Br. 45. As the appellate court correctly noted, *see* A10, this argument concerns contract *formation*, not unconscionability, and it fails on its own terms: In exchange for Plaintiff's assent to the Arbitration Agreement, Uber promised to permit Plaintiff to continue using its service.[13] That is far more than the proverbial peppercorn. *See Hartz v. Brehm Preparatory Sch., Inc.*, 2021 IL App (5th) 190327, ¶47 (arbitration agreement supported by consideration where defendant required to provide services). *Second*, Plaintiff's

[13] Because this question goes to contract formation, it was properly decided by the court rather than the arbitrator. *See, e.g., Lloyd's Syndicate*, 921 F.3d at 514 (explaining that courts must first "determine 'whether the parties entered into *any arbitration agreement at all*'") (citation omitted).

claim that "th[e] [A]rbitration [A]greement was an unfair surprise," Br. 46-47, merely repackages her *procedural* unconscionability argument, *see* A9-10, and it fails for the reasons already given, *see* pp. 44-50, *supra*.

Plaintiff's actual arguments for a finding of substantive unconscionability fare no better. On page 47 of her brief, Plaintiff rattles off a slew of purported indicators of unfairness. All fail.

First, Plaintiff says the Arbitration Agreement was unconscionable because it involved "an agreement to arbitrate claims arising from [Plaintiff's] use of the [Rider] [A]pp." Br. 47. The FAA obviously preempts this argument. *See Doctor's Assocs.*, 517 U.S. at 687; *Kindred Nursing*, 581 U.S. at 251-52 (similar).

Second, Plaintiff takes issue with the Agreement's class-action waiver. *See* Br. 47. But such waivers are enforceable and not unconscionable as a matter of federal law, *see Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 508-10 (2018), and anyway, because Plaintiff has not brought a class action, she lacks standing to challenge it, *see, e.g.*, *Fausett v. Walgreen Co.*, 2025 IL 131444, ¶39.

Third, Plaintiff contends it is unfair to require her "to arbitrate any claims she might have [had] before the [A]rbitration [A]greement was ever entered into." Br. 47. But Section 2 applies with equal force to arbitration agreements entered into after a claim has already accrued, *see* 9 U.S.C. § 2, and in any event Plaintiff's claim here accrued *after* she agreed to Uber's Terms of Use.

Fourth, Plaintiff points out that her Agreement purported to bind third-parties (like Plaintiff's heirs and assigns) bringing claims arising out of Plaintiff's

use of Uber. *See* Br. 47 (citing V1SR88). But Plaintiff is not a third party and so lacks standing to assert that claim, too; and regardless, as *Carter* demonstrates, whether nonsignatories may be bound by Plaintiff's Arbitration Agreement is an issue of contract formation, not unconscionability. *See* 2012 IL 113204, ¶¶30-61 (holding agreement unenforceable as to nonsignatory's claims brought in her own name but enforceable as to nonsignatory's claims brought on signatory's behalf); *see also Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009).

Fifth, Plaintiff suggests it is unconscionable for agreements to include a delegation provision, *see* Br. 47, but such provisions are categorically enforceable as a matter of federal law, *see Henry Schein*, 586 U.S. at 67-68.

Sixth, Plaintiff challenges the Agreement's provision indicating that "state law would be preempted by the FAA regardless of whether or not the agreement involved interstate commerce[.]" Br. 47. But the FAA *does* preempt state law, *see Concepcion*, 563 U.S. at 341, and regardless, Plaintiff has never argued (and does not now argue) that the Terms of Use do not involve interstate commerce.

Seventh, Plaintiff asserts that the Agreement requires Plaintiff to pay her own arbitration fees, Br. 47, but that is not true. The Agreement states that Plaintiff's "responsibility to pay any … fees will be solely as set forth in the AAA Rules." V1SR90. And those rules provide that, if Plaintiff succeeds in her claims,

the arbitrator may award her "attorney's fees and costs, in accordance with applicable law."[14] That is no different than if Plaintiff were proceeding in court.

The only precedent Plaintiff substantively discusses, *Turner v. Concord Nursing & Rehabilitation Center, LLC*, 2023 IL App (1st) 221721, *appeal denied*, 221 N.E.3d 347 (Ill. 2023), confirms Plaintiff has not cleared the high bar for demonstrating substantive unconscionability. *See* Br. 46-47, 49. In *Turner*, a nursing home required residents to sign an arbitration agreement that capped damages at $250,000 for *any* claim a resident may have against the nursing home, precluded residents from collecting punitive damages, and waived residents' statutory entitlement to collect attorneys' fees. *See* 2023 IL App (1st) 221721, ¶6. The court held that, "[b]y limiting [residents] to $250,000 in damages and prohibiting an arbitrator from awarding [them] attorney fees, … the agreement contravenes Illinois law and is substantively unconscionable." *Id.* ¶35. But as the appellate court recognized, this case is nothing like *Turner*, because the Arbitration Agreement here "requires both parties to arbitrate disputes and does not limit the damages that [Plaintiff] may recover," A9, and also permits Plaintiff to recover attorneys' fees consistent with applicable law, *see* p. 53 & n.14, *supra*. Plaintiff does not dispute these points. *See* Br. 47-48.

[14] Am. Arbitration Ass'n, *Consumer Arbitration Rules and Mediation Procedures*, R-46(a) (eff. May 1, 2025), https://www.adr.org/media/yawntdvs/2025_consumer_arbitration_rules.pdf.

Finally, Plaintiff argues that although the Terms of Use do not cap her damages, they contain "something even more draconian": what Plaintiff calls "a complete exculpation clause." Br. 48 (citing V1SR91). Plaintiff's reference appears to be to the language in the Terms of Use stating that Uber drivers are "independent third party providers" who "are not … agents … or employees of Uber in any way." V1SR91 (capitalization omitted). But this language has nothing to do with the Arbitration Agreement. Whether drivers using Uber's platforms are independent contractors or employees is a question of substantive law affecting the merits of any claim Plaintiff brings against Uber, and that is true whether the case proceeds in court or in arbitration. Nor, in any event, is there anything "draconian" about Uber operating "a platform for services" that matches individuals seeking rides to independent contractors willing to provide them. Br. 48. Individuals choose to use Uber *because* it operates a platform that is fast, efficient, and easy to use—a direct result of the platform's structure.

At bottom, all of Plaintiff's substantive unconscionability arguments suffer from the same fatal defect. At their core, they are all simply assertions that there is something inherently unconscionable about arbitration itself. But both Congress in enacting the FAA and the U.S. Supreme Court in interpreting it have resoundingly rejected that assertion. This Court should do the same.

CONCLUSION

For the foregoing reasons, the decision of the appellate court should be affirmed in part and vacated in part.

Dated: February 25, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Clifford W. Berlow, hereby certify that this brief conforms to the requirements of Illinois Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages/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, and the certificate of service, is 14,364 words.

/s/ Clifford W. Berlow
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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 A. 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 Case No. 2022 L 010057 Hon. Patrick T. Stanton, Judge Presiding

NOTICE OF FILING

TO: All Parties on the Attached Service List

PLEASE TAKE NOTICE that on February 25, 2026, the undersigned caused **Defendants-Appellees' Response Brief** to be electronically submitted to the Clerk of the Supreme Court of Illinois, in the above-captioned case by using the Odyssey eFileIL system.

Dated: February 25, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Clifford W. Berlow, an attorney, hereby certify that on February 25, 2026, I caused **Defendants-Appellees' Response Brief** and **Notice of Filing**, to be submitted to the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I certify that upon acceptance of the response for filing, I will cause 6 copies of the above named document to be transmitted to the Court via UPS overnight delivery, postage prepaid within 5 days of that notice date. I further certify that on February 25, 2026, I caused one copy of the above-named filing to be served upon all parties listed below by electronic mail, to the email addresses designated by the parties:

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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/ Clifford W. Berlow
Counsel for Defendants-Appellees