

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 3

Honorable William J. Monahan, Presiding

Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 2/29/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (2/28/2024) you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: **408-882-2430** When you can call: **Monday to Friday, 8:30 am to 12:30 pm**

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept. and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
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LINE 1	23CV426813	ALLEN MOYER vs SELECT PORTFOLIO SERVICING, INC.	<p>Motion: Strike portions of complaint and demurrer to complaint by defendant Select Portfolio Servicing, Inc. (Defendant')</p> <p>Both motions are unopposed. Defendant's request for judicial notice is GRANTED. Defendant's demurrer to the complaint is sustained with 20 days leave to amend. Defendant's motion to strike portions of the complaint is moot.</p> <p>Defendant to prepare order.</p>
LINE 2	23CV419874	Wells Fargo Bank, N.A. vs Queenie Marquez	<p>Hearing: Motion for summary judgment by Plaintiff Wells Fargo Bank, N.A. ("Plaintiff")</p> <p>Unopposed and GRANTED.</p> <p>Plaintiff to prepare order and [proposed] judgment.</p>
LINE 3	23CV416151	Lorraine Martinez vs American Honda Motor Company, Inc. et al	<p>Motion: Compel arbitration and for order staying the proceedings by Defendant American Honda Motor Co., Inc.</p> <p>Ctrl click (or scroll down) on Line 3 for tentative ruling.</p> <p>The court will prepare the order.</p>
LINE 4	22CV400748	Visby Medical, Inc. vs TACKL Health	<p>Motion: Withdraw as attorney-- Thomas P. Quinn by Defendant Tackl-It, LLC, sued herein as Tackl Health</p> <p>GRANTED. (Plaintiff Visby Medical Inc.'s opposition is OVERRULLED. See NOTICE TO CLIENT on page 2 of [proposed] order.)</p> <p>Thomas P. Quinn to prepare order.</p>

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LINE 5	22CV401211	JAMES BRADY et al vs PEOPLEWHIZ, INC.	Motion: Leave to File First Amended Complaint by Plaintiffs James Brady, et al Unopposed and GRANTED. Plaintiffs have 10 days leave to file the First Amended Complaint. Plaintiffs to prepare order.
LINE 6	22CV409331	A.O. vs DOE 1	Hearing: Pro Hac Vice Counsel Darrell L. Cochran for plaintiff A.O. Unopposed and GRANTED. Moving party to prepare order.
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Case Name: *Lorraine R Martinez vs American Honda Motor Co., Inc.*

Case No.: 23CV416151

Defendant American Honda Motor Co., Inc. ("AHM" or "Defendant")'s motion for order compelling plaintiff Lorraine R Martinez (Plaintiff) to arbitrate claims in this action pursuant to the provisions in the CLOSED-END MOTOR VEHICLE LEASE AGREEMENT-CALIFORNIA ("Lease Agreement") agreed to by Plaintiff, as well as the Federal Arbitration Act ("FAA") 9 U.S.C. section 1 et seq. and the California Arbitration Act ("CAA") and the California Code of Civil Procedure ("CCP") section 1280, et seq., is DENIED.

Defendant's motion pursuant to 9 U.S.C. section 3 and CCP section 1281.4 for a stay in this action is DENIED.

Legal Standards

Both federal law and California law favor the enforcement of valid arbitration agreements. The United States Supreme Court has often reaffirmed the long-standing "liberal federal policy favoring arbitration," and the "fundamental principle that arbitration is a matter of contract" stating, "[i]n line with these principles, courts must place arbitration agreements on equal footing with other contracts... and enforce them according to their terms." (See, e.g., *AT&T Mobility, LLC v. Concepcion* (2011) 563 U.S. 333, 131 S.Ct. 1740, 1745-46.) Courts are required to resolve any doubt as to whether a dispute falls within an arbitration provision in favor of arbitration. (See *AT&T Tech., Inc. v. Comm. Workers of Am.* (1986) 475 U.S. 643, 649-50, 106 S.Ct. 1415.)

"The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration. [Citation.]'" (*Buckner v. Tamarin* (2002) 98 Cal.App.4th 140, 142; see also CCP § 1280 [right to arbitrate depends on contract].)

"A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract." (CCP § 1281.)

"On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists [unless it makes certain determinations]." (CCP § 1281.2.)

"Under both federal and state law, arbitration agreements are valid and enforceable, unless they are revocable for reasons under state law that would render any contract revocable. Reasons that would render any contract revocable under state law include fraud, duress, and unconscionability." (*Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 239, citations omitted.)

"The party seeking to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of an arbitration agreement. The party opposing the petition bears the burden of establishing a defense to the agreement's enforcement by a preponderance of the evidence. In determining whether there is a duty to arbitrate, the trial court must, at least to some extent, examine and construe the agreement." (*Tiri, supra*, at p. 239, citations omitted.)

Discussion

This case involves a 2020 Honda Pilot VIN: 5FNYP6H63LB015269 ("Subject Vehicle") that Plaintiff leased from AutoNation Honda Fremont ("Honda Fremont") on January 6, 2020, pursuant to the Lease Agreement. A copy of the Lease Agreement is attached to the Declaration of Catherine Song as Exhibit A. (See Song. Decl. ¶2, Ex. A.)

Page 3 of the Lease Agreement between Plaintiff and Honda Fremont contains the following language, and signature line immediately underneath the language bearing Plaintiff's signature:

15. ARBITRATION

The parties agree that any unresolved disputes shall be submitted to arbitration in accordance with the Arbitration clause (Section 52). By initialing this Section, I am confirming that I have read this Section and the Arbitration clause, including the method of opting out of arbitration.

Lessee's Initials _____

(See Song Decl. ¶2, Ex. A [Lease Agreement, Page 3, bold in original with Plaintiff's initials "LM".])

On the page six of the Lease Agreement there is a section titled "ARBITRATION: PLEASE READ THIS SECTION CAREFULLY." (*Id.* at p. 6. Emphasis in original.) Defendant contends that the arbitration provision below that heading allows either party (or third parties who do not sign the contract) to arbitrate all of the claims Plaintiff alleges in his complaint:

YOU AGREE THAT ANY CLAIM THAT YOU MAY HAVE IN THE FUTURE MUST BE RESOLVED THROUGH BINDING ARBITRATION. YOU WAIVE THE RIGHT TO HAVE YOUR DISPUTE HEARD IN COURT AND WAIVE THE RIGHT TO BRING CLASS CLAIMS.

(*Id.*)

Pertinently, the arbitration provision provides for the scope of the provision to include: By signing the Arbitration Consent, [Lessee] elect[s] to have disputes resolved by arbitration. [Lessee], HONDA or any involved third party may pursue a Claim. "Claim" means any dispute between [Lessee], HONDA, or any involved third party relating to your account, this Lease, or our relationship including [...] the Vehicle, its performance and any representations, omissions or warranties.

(See *Id.*, emphasis added.)

Lessee] may opt out [of the Arbitration Provision] within 30 days of signing this Lease by sending a signed, written notice to HONDA at Honda Financial Services, P.O. Box 165007, Irving, TX 75018. HONDA reserves the right to make changes to this provision after providing written notice and an opportunity to opt out.

(See *Id.*)

In Section 11 of the Lease Agreement, the Lessor (“Dealer”) [i.e., Honda Fremont] explicitly “[...] makes no express or implied warranties or representations as to the vehicle’s condition...or warranties whatsoever.” (See Song. Decl., Ex. A.)

The subsequent text in the Lease Agreement discloses, in detail, the terms of the arbitration provision and the limitations that the provisions place on the party’s respective rights. (*Id.*) The arbitration provision also states that “[Lessee] and HONDA agree and acknowledge that this Lease affects interstate commerce and the Federal Arbitration Act (“FAA”) [9 U.S.C. § 1 et seq.] applies.” (*Id.*)

The Complaint’s causes of action include violation of the Song-Beverly Act against Defendant. Defendant contends that each of the allegations arise directly from the lease or condition of the Subject Vehicle. Accordingly, while Defendant denies Plaintiff’s allegations, Defendant requests that all the causes of action be resolved through arbitration, pursuant to the Lease Agreement.

The Lease Agreement is only signed by Plaintiff and Honda Fremont. It was *not* signed by Defendant.

The Court finds that:

- (1) Equitable Estoppel does not apply because the manufacturer (AHM) has not shown that the claims against it are founded in or intertwined with the Lease Agreement;**
- (2) The manufacturer (AMH)’s warranty outside of the contract is not a part of the Lease Agreement;**
- (3) The manufacturer (AMH) is not a third-party beneficiary of the Lease Agreement; and**
- (4) There is no agency that gives the manufacturer (AMH) the right to compel arbitration as an undisclosed principal.**

The situation here - where a non-signatory automobile manufacturer attempts to compel a consumer to arbitration - is similar to that in *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, review pending at *Ochoa v. Ford Motor Co. (In re Ford Motor Warranty Cases)* (2023) Cal. LEXIS 4235. On the other hand, the Court finds that *Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486 - in which a signatory automobile dealership moved to compel arbitration based on the contract that it signed - is neither binding nor persuasive.

The *Ford Motor Warranty Cases* held that: (1) equitable estoppel does not apply because the manufacturer has not shown that the claims against it are founded in or intertwined with the contract; (2) the manufacturer's warranty outside of the contract is not a part of the contract; (3) the manufacturer is not a third-party beneficiary of the contract; and (4) there is no

agency connection that gives the manufacturer the right to compel arbitration as an undisclosed principal. (*Ford Motor Warranty Cases*, *supra*, 89 Cal.App.5th at pp. 1332, 1335, 1336, 1340.)

Further, several recent cases have agreed with the holdings in *Ford Motor Warranty Cases*. These cases include: *Montemayor v. Ford Motor Co.* (2023) 92 Cal.App.5th 958, 968, 972; *Kielar v. Superior Court* (2023) 94 Cal.App.5th 614, 620-621; and *Yeh v. Superior Court* (2023) 95 Cal.App.5th 264, 269-279.¹ The facts and reasoning in these cases are also similar to the situation in the case before the Court today.²

The Court adopts the reasoning of the *Ford Motor Warranty Cases* and its progeny and declines to compel arbitration with the non-signatory manufacturer (AHM) based on the arbitration provision in the Lease Agreement.

Conclusion

Defendant's motion to compel arbitration and for stay pending arbitration are DENIED.

The court will prepare the order.

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¹ There are many more cases cited by Plaintiff in footnote 2 on page 1 of the Opposition.

² Although the *Ford Motor Warranty Cases* and its progeny involved a sales contract, the reasoning would be the same with respect to this Lease Agreement.

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