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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KATHRYN M. ROBINSON,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

ONSTAR, LLC and DOES 1 through  
50,

Defendant.

CASE NO. 15cv1731-WQH-BGS  
ORDER

HAYES, Judge:

The matters before the Court are the Amended Motion to Dismiss Complaint Pursuant to Rule 12(b)(1) and to Compel Arbitration (ECF No. 38)<sup>1</sup> filed by Defendant, the Motion in Limine filed by Plaintiff (ECF No. 31), and the Motion to Strike filed by Plaintiff (ECF No. 36).

**I. Procedural Background**

On July 2, 2015, Plaintiff Kathryn Robinson commenced this action by filing the Class Action Complaint in the San Diego County Superior Court. (ECF No. 1-2 at 6). Plaintiff seeks to represent a nationwide and/or California class of OnStar Telematics Services (“OTS”) customers whose bank or credit card accounts OnStar were allegedly charged without first obtaining all authorizations required by law. The Complaint asserts four causes of action: (1) violation of the Electronic Funds Transfer Act

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<sup>1</sup> The Court denies Defendant’s Motion to Dismiss Complaint Pursuant to Rule 12(b)(1) and to Compel Arbitration (ECF No. 15) as moot.

1 (“EFTA”), 15 U.S.C. § 1693 *et seq.*; (2) violation of the Automatic Renewal Law  
2 (“ARL”), California Business and Professions Code § 17600, *et seq.*; and (3) and (4)  
3 two violations of the Unfair Competition Law (“UCL”), California Business and  
4 Professions Code § 17200, *et seq.*

5 On August 4, 2015, Defendant OnStar removed this action to this Court based  
6 on the existence of federal question, 28 U.S.C. § 1331, and pursuant to the Class Action  
7 Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). (ECF No. 1).

8 On September 11, 2015, Defendant filed the Motion to Dismiss Complaint  
9 Pursuant to Rule 12(b)(1) and to Compel Arbitration (ECF No. 15) and Request for  
10 Judicial Notice<sup>2</sup> (ECF No. 15-5). On October 26, 2015, Plaintiff filed an opposition to  
11 the Motion to Compel Bilateral Arbitration (ECF No. 18) and objections to Defendant’s  
12 Request for Judicial Notice (ECF No. 18-3). On November 9, 2015, Defendant filed  
13 a reply. (ECF No. 19).

14 On April 19, 2016, the Court held an evidentiary hearing to address whether  
15 OnStar or GM sent a copy of the OnStar Terms and Conditions to Plaintiff by mail; and  
16 whether the OnStar Terms and Conditions were available to Plaintiff on the website of  
17 OnStar when she activated OTS.<sup>3</sup> On April 19, 2016, Plaintiff filed a motion in limine  
18 seeking to strike evidence expected to be proffered at the evidentiary hearing. (ECF  
19 No. 31).

20 On May 24, 2016, Defendant filed a post-hearing brief. (ECF No. 35). On the  
21 same day, Plaintiff filed a post-hearing brief and a Motion to Strike. (ECF No. 36).

22 \_\_\_\_\_  
23 <sup>2</sup> Defendant requested that the Court take judicial notice of two documents  
24 attached to the Declaration of Nicholis S. Festa: (1) Exhibit A, which is a copy of the  
25 GM Customer Incentive and OnStar Acknowledgment signed by Plaintiff’s husband,  
26 Scott Robinson, in connection with his December 2013 vehicle lease and (2) Exhibit B,  
27 which is a copy of the OnStar Terms and Conditions in effect at the time the Robinsons  
28 leased their vehicle in December 2013. (ECF No. 15-5). Both documents were  
admitted into evidence during the evidentiary hearing, therefore the Court denies  
Defendant’s request for Judicial Notice as moot.

<sup>3</sup> Prior to the hearing, the parties stipulated for purposes of this motion that a copy  
of the OnStar Terms and Conditions was not in the glove box of the leased vehicle.  
(ECF No. 30 at 2).

1 On June 3, 2016, Defendant filed an Amended Motion to Dismiss Complaint  
2 Pursuant to Rule 12(b)(1) and to Compel Arbitration. (ECF No. 38). On June 7, 2016,  
3 Plaintiff filed a response to Defendant's post-hearing brief. (ECF No. 40). On June 17,  
4 2016, Defendant filed a response to Plaintiff's post-hearing brief. (ECF No. 41). On  
5 June 24, 2016, Defendant filed a reply. (ECF No. 43). On August 2, 2016, Plaintiff  
6 filed a notice of supplemental authority. (ECF No. 44). On August 8, 2016, Defendant  
7 file a response. (ECF No. 45).

## 8 **II. Factual Background**

9 On December 15, 2013, Plaintiff's husband leased a new 2014 Cadillac ATS  
10 sedan ("Cadillac"). The Cadillac was equipped with OTS, which includes emergency  
11 assistance, hands-free calling, and navigation. The Cadillac lease came with a one-year  
12 period of free OTS. To activate the free trial, a customer had to press the blue OnStar  
13 button on the rearview mirror of the car, which would initiated a cellular telephone call  
14 with OnStar. Plaintiff's husband signed a GM Customer Incentive and OnStar  
15 Acknowledgment form ("OTS Acknowledgment").<sup>4</sup> Plaintiff testified that she sat next  
16 to her husband when he signed the OTS Acknowledgment. (ECF No. 47 at 27:12-21).  
17 The OTS Acknowledgment provides,

### 18 OnStar Terms and Conditions Acknowledgment

19 I acknowledge that I have received the Terms and Conditions applicable  
20 to the OnStar Services. Copies are available in my vehicle glove box,  
from my dealer, at [www.onstar.com](http://www.onstar.com) or by contacting OnStar directly.

### 21 Cancellation of OnStar Services

22 I acknowledge that the OnStar services are provided under a continuous  
23 service contact that will remain in effect until cancelled by me or OnStar.  
I understand that to request cancellation of OnStar services, I must press  
24 the blue OnStar button in my car or call 1.888.4ONSTAR.

### 25 Payment Methods

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26  
27 <sup>4</sup> Plaintiff concedes that her husband signed the acknowledgment form, but  
28 contends that the form should be "stricken as irrelevant and immaterial to this Court's  
determination of whether OnStar formed an agreement to arbitrate with" Plaintiff.  
(ECF No. 36-1 at 10). The Court finds the acknowledgment form relevant and denies  
Plaintiff's Motion to Strike the acknowledgment form.

1 Unless I indicate otherwise to OnStar, I understand that if I provide OnStar  
2 with my credit or debit card information at any time, it will be . . .  
3 automatically charged when payment for my OnStar Plan becomes due (at  
the then current rate).

4 (ECF No. 38-3 at 2).

5 Plaintiff testified that a few days later, on or about December 17, 2013, she  
6 activated the OTS by pressing the blue OnStar button located on the Cadillac's rearview  
7 mirror, which initiated a cellular telephone call to OnStar. Plaintiff testified that during  
8 the call with OnStar she gave her debit card number to the OnStar agent to purchase  
9 some minutes. On December 17, 2014, after the one-year free OTS trial period, OnStar  
10 withdrew \$29.90 from Plaintiff's bank account using her debit card account number.  
11 This occurred again from January-March 2015. Upon noticing the charges for the first  
12 time in March 2015, Plaintiff called OnStar and cancelled her account.

13 At the evidentiary hearing, Plaintiff testified that she was not aware that the OTS  
14 was subject to Terms and Conditions. Plaintiff testified that she was not aware that the  
15 OnStar Terms and Conditions contained an arbitration provision. Plaintiff testified that  
16 she found a copy of the OnStar Terms and Conditions in her home office and that "[i]t  
17 was folded into a letter from US Bank." (ECF No. 47 at 17:18-20). Plaintiff testified  
18 that the letter, dated January 8, 2014, concerned insurance for the Cadillac, and that she  
19 did not take the letter out of the envelope. Plaintiff testified that she did not see the  
20 OnStar Terms and Conditions until she was asked by her attorney to look for documents  
21 related to the Cadillac lease or OnStar.

22 The OnStar Terms and Conditions<sup>5</sup> states in part,

23 HOW WE'LL RESOLVE DISPUTE BETWEEN US. If you and we have  
24 a disagreement related to **OnStar** service, we'll try to resolve it by talking  
25 with each other. If we can't resolve it that way, **WE BOTH AGREE, TO**  
26 **THE FULLEST EXTENT PERMITTED BY LAW, TO USE**  
**CONFIDENTIAL ARBITRATION, NOT LAWSUITS** (except for  
small claims court cases) **TO RESOLVE THE DISPUTE.**

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28 <sup>5</sup> Prior to the hearing, the parties stipulated that the OnStar Terms and Condition  
attached to the Festa Declaration (ECF No. 15, Exhibit B) was in effect when Plaintiff  
activated OTS. (ECF No. 30 at 2).

1  
2 (ECF No. 38-5 at 5 ¶ 39). The OnStar Terms and Conditions also states,

3 2. PAYMENT. If you have a credit or debit card account or similar  
4 payment account on file with us, we'll automatically charge it monthly if  
you have not otherwise prepaid your subscription. . . .

5 3. STARTING YOUR **OnStar** SERVICE. You can only get and use  
6 **OnStar** service by accepting this agreement. [Y]ou accept this agreement  
7 and start your **OnStar** service when . . . you speak with and **OnStar**  
8 **advisor** and register for **OnStar** service, OR when you (or someone you  
9 authorize to use your Car) use the **OnStar** service or accept any of its  
benefits (including using a Car with active **OnStar Equipment**). If you  
do **ANY** one or more of these four things to accept, you're bound by this  
agreement . . . .

10 4. DURATION OF YOUR **OnStar** SERVICE. Your **OnStar** service  
11 starts as set out above and continues without end until you or we cancel  
12 the service as allowed in this agreement.

13 5. ENDING YOUR **OnStar** SERVICE. You can cancel your **OnStar**  
14 service at any time. All you have to do is call us or press the blue **OnStar**  
15 button in your Car and tell an **OnStar** Advisor you want to cancel service  
. . . .

16 *Id.* ¶¶ 2-5.

### 17 **III. Motion to Compel Arbitration**

18 The Federal Arbitration Act (“FAA”) provides that arbitration agreements  
19 generally shall be “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. Where grounds  
20 “exist at law or in equity for the revocation of any contract, “courts may decline to  
21 enforce such agreements. *Id.* A party seeking to compel arbitration under the Federal  
22 Arbitration Act (“FAA”) must prove, by a preponderance of the evidence: (1) the  
23 existence of a valid written agreement to arbitrate in a contract; and (2) that the  
24 agreement to arbitrate encompasses the dispute at issue. *Cox v. Ocean View Hotel*  
25 *Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008).

#### 26 **A. Contentions of the Parties**

27 Defendant contends that Plaintiff “received or had access to the OnStar Terms  
28 and Conditions that contained the arbitration provision.” (ECF No. 38-1 at 8).

1 Defendant contends that Plaintiff's claims fall within the scope of that provision.  
2 Defendant asserts that Plaintiff had a copy of the OnStar Terms and Conditions and  
3 whether she chose to read the terms "is irrelevant." *Id.*

4 Plaintiff contends that the parties have no agreement to arbitrate because Plaintiff  
5 did not assent to be bound by the OnStar Terms and Conditions. (ECF No. 41).  
6 Plaintiff contends that the Acknowledgment form signed by Plaintiff's husband does  
7 not adequately incorporate the Terms and Conditions by reference and cannot bind  
8 Plaintiff. Plaintiff contends that even if a valid agreement existed, it is unconscionable.

### 9 **B. Receipt of Arbitration Agreement**

10 The Court held an evidentiary hearing to determine whether Plaintiff had access  
11 to a copy of the OnStar Terms and Conditions. At the evidentiary hearing, the Court  
12 addressed two evidentiary issues: (1) whether OnStar or GM sent a copy of the OnStar  
13 Terms and Conditions to Plaintiff by mail; and (2) whether the OTS Terms and  
14 Conditions were available to Plaintiff on the website of OnStar when she activated  
15 OTS. *See* ECF No. 30. Plaintiff testified that she found a copy of the OnStar Terms  
16 and Conditions in her home office and that "[i]t was folded into a letter from US Bank."  
17 (ECF No. 47 at 17:18-20). Plaintiff testified that the letter, dated January 8, 2014,  
18 concerned insurance for the Cadillac. *Id.* at 18:2-7. The Court finds Plaintiff's  
19 testimony that she believed that US Bank somehow got a copy of the OTS Terms and  
20 Conditions and mailed them to her not credible. The Court finds that the evidence at  
21 the evidentiary hearing supports the conclusion that Plaintiff received a copy of the  
22 OnStar Terms and Condition.<sup>6</sup>

### 23 **C. Validity of the Arbitration Agreement**

24 "Arbitration is a product of contract. Parties are not required to arbitrate their  
25 disagreements unless they have agreed to do so." *Davis v. Nordstrom, Inc.*, 755 F.3d  
26 1089, 1092 (9th Cir. 2014). When determining whether a valid contract to arbitrate

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28 <sup>6</sup> Because the Court does not rely on OnStar's website or mailing evidence to reach its conclusion, the Court denies Plaintiff's Motion in Limine (ECF No. 31) and Motion to Strike (ECF No. 36) as moot.

1 exists, the courts apply state law principles. *Id.* “It is undisputed that under California  
2 law, mutual assent is a required element of contract formation.” *Knutson v. Sirius XM*  
3 *Radio Inc.*, 771 F.3d 559, 565 (9th Cir. 2014). “Mutual assent may be manifested by  
4 written or spoken words, or by conduct and acceptance of contract terms may be implied  
5 through action or inaction.” *Id.* (internal citations and quotation marks omitted).  
6 “Thus, an offeree, knowing that an offer has been made to him but not knowing all of  
7 its terms, may be held to have accepted, by his conduct, whatever terms the offer  
8 contains.” *Id.* (internal quotation marks omitted). “Courts must determine whether the  
9 outward manifestations of consent would lead a reasonable person to believe the offeree  
10 has assented to the agreement.” *Id.*

11 In *Knutson*, the plaintiff purchased a vehicle from Toyota that included a 90-day  
12 trial subscription to Sirius XM satellite radio. 771 F.3d at 561-62. About a month after  
13 his trial subscription was activated, the plaintiff received a “Welcome Kit” from Sirius  
14 that included a Customer Agreement with an arbitration agreement. *Id.* The plaintiff  
15 stated that he did not read the Customer Agreement and was unaware of the arbitration  
16 clause. In denying the motion to compel arbitration, the Ninth Circuit Court of Appeals  
17 held that “[a] reasonable person in [the plaintiff’s] position could not be expected to  
18 understand that purchasing a vehicle from Toyota would simultaneously bind him or  
19 her to any contract with Sirius XM, let alone one that contain an arbitration provision  
20 without any notice of such terms.” *Id.* at 566. The court concluded,

21 Nothing in the record . . . indicates that Sirius XM’s offer was clearly and  
22 effectively communicated to Knutson by mailing him the Customer  
23 Agreement. Knutson would only have had notice of his opportunity to  
24 cancel his subscription, or the effect of his continued use of the service, if  
25 he opened the Welcome Kit from Sirius and read all of the documents  
26 therein, which—in view of his lack of awareness of any contractual  
27 relationship with Sirius—he had no reason to do.

28 *Id.*

29 In this case, Plaintiff had notice that the Cadillac came with a one-year free trial  
30 of OTS and that in order to activate the free trial she had to press the blue OnStar  
31 button located on the Cadillac’s rearview mirror, which activated a cellular telephone

1 call to OnStar. During that call, Plaintiff gave OnStar her debit card information to  
2 purchase minutes. Unlike in *Knutson*, where the car came with the free trial without the  
3 plaintiff activating the service, Plaintiff in this case had to contact OnStar to activate the  
4 free trial. *See e.g. Knutson*, 771 F.3d at 565. By contacting OnStar directly to activate  
5 the free trial of OTS, Plaintiff had notice that she was entering into a contractual  
6 relationship with OnStar. *See e.g., Bischoff v. DirecTV, Inc.*, 180 F. Supp. 2d 1097,  
7 1101 (C.D. Cal. 2002) (Compelling arbitration where the plaintiff specifically elected  
8 to receive the service directly from the service provider). Unlike *Knutson*, Plaintiff  
9 gave OnStar her debit card number and purchased minutes from OnStar which further  
10 supports the conclusion that Plaintiff had notice that she was entering into a contractual  
11 relationship with OnStar. *See Knutson*, 771 F.3d at 567 (“Here, by contrast [of  
12 *Bischoff*] there is no evidence that [the plaintiff] purchased anything from Sirius XM,  
13 or even knew that he was entering into a contractual relationship with the satellite radio  
14 service provider.”). Even if Plaintiff was unaware of all of the terms of OnStar’s offer  
15 for a free one-year trial, by activating the services Plaintiff accepted OnStar’s offer.  
16 *See Knutson*, 771 F.3d at 565 (“[A]n offeree, knowing that an offer has been made to  
17 him but not knowing all of its terms, may be held to have accepted, by his conduct,  
18 whatever terms the offer contains.”).

19 After activating the OTS, Plaintiff received a copy of the OnStar Terms and  
20 Condition. The Terms and Conditions state that any dispute shall be resolved by  
21 arbitration. If Plaintiff disagreed with those terms, she could have cancelled her  
22 services, but she did not. *See Cal. Civ. Code § 1589* (“A voluntary acceptance of the  
23 benefit of a transaction is equivalent to a consent to all the obligations arising from it,  
24 so far as the facts are known, or ought to be known, to the person accepting.”). The  
25 Court finds that Defendant has proved by a preponderance of the evidence that Plaintiff  
26 received a copy of the OnStar Terms and Conditions and assented to those terms,  
27 including the arbitration agreement. *See Cal. Civ. Code § 1589* (“A voluntary acceptance  
28 of the benefit of a transaction is equivalent to a consent to all the obligations arising



1 from it, so far as the facts are known, or ought to be known, to the person accepting.”).

2 The Court finds that the arbitration agreement encompasses the dispute at issue

### 3 **C. Unconscionability**

4 “Under the FAA savings clause, state law that arose to govern issues concerning  
5 the validity, revocability, and enforceability of contracts generally remains applicable  
6 to arbitration agreements.” *Kilgore v. KeyBank Nat’l Ass’n*, 718 F.3d 1052, 1058 (9th  
7 Cir. 2013) (quotation omitted). “Thus, generally applicable contract defenses, such as  
8 fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements  
9 . . . .” *Id.* (quotation omitted). “Under California law, a contractual provision is  
10 unenforceable if it is both procedurally and substantively unconscionable.” *Id.* (citing  
11 *Armendariz Found. Health Psychcare Servs., Inc.*, 24 Cal.4th 83, 114 (2000)). “[T]he  
12 more substantively oppressive the contract term, the less evidence of procedural  
13 unconscionability is required to come to the conclusion that the term is unenforceable,  
14 and vice versa.” *Armendariz*, 24 Cal.4th at 114. “[T]he party opposing arbitration has  
15 the burden of proving the arbitration provision is unconscionable.” *Higgins v. Superior*  
16 *Court*, 140 Cal. App. 4th 1238, 1249 (2006) (quotation omitted).

17 “An evaluation of unconscionability is highly dependent on context. . . . The  
18 doctrine often requires inquiry into the commercial setting, purpose, and effect of the  
19 contract or contract provision.” *Sanchez*, 61 Cal. 4th at 911. Unconscionability refers  
20 to “an absence of meaningful choice on the part of one of the parties together with  
21 contract terms which are unreasonably favorable to the other party.” *Id.* at 910. “The  
22 ultimate issue in every case is whether the terms of the contract are sufficiently unfair,  
23 in view of all relevant circumstances, that a court should withhold enforcement.” *Id.*  
24 at 912. “As with any contract, the unconscionability inquiry requires a court to examine  
25 the totality of the agreement’s substantive terms as well as the circumstances of its  
26 formation to determine whether the overall bargain was unreasonably one-sided.”  
27 *Sonic-Calabasas A, Inc. v. Moreno*, 57 Cal.4th 1109, 1146 (2013). “The  
28 unconscionability doctrine ensures that contracts, particularly contracts of adhesion, do

1 not impose terms that have been variously described as overly harsh, unduly oppressive,  
2 so one-sided as to shock the conscience, or unfairly one-sided.” *Sanchez*, 61 Cal. 4th  
3 at 911-12 (internal citations and quotation marks omitted).

4 **i. Substantive Unconscionability**

5 Plaintiff contends that the arbitration agreement is substantively unconscionable  
6 because it allows OnStar to unilaterally modify the terms and it has a 60-day limitations  
7 period for disputes relating to charges. Plaintiff contends that it is unconscionable  
8 because it has a prohibition on attorney’s fees, restricts remedies, and contains a broad  
9 confidentiality agreement. Defendant contends that the arbitration agreement is not  
10 substantively unconscionable because California courts have enforced arbitration  
11 agreements that limit fees and remedies and have confidentiality requirements.

12 “Substantive unconscionability focuses on the one-sidedness or overly harsh  
13 effect of the contract term or clause.” *Kilgore*, 718 F.3d 1052, 1058 (quotation  
14 omitted). “The term [substantive unconscionability] focuses on the terms of the  
15 agreement and whether those terms are so one-sided as to shock the conscience.” *Davis*  
16 *v. O’Melveny & Myers*, 458 F.3d 1066, 1075 (9th Cir. 2007) (quotations omitted),  
17 *overruled on other grounds by Kilgore v. KeyBank Nat’l Ass’n*, 673 F.3d 947, 960 (9th  
18 Cir. 2012). Substantive unconscionability “turns not only on a one-sided result, but also  
19 on an absence of a justification for it.” *A&M Produce Co. v. FMC Corp.*, 135 Cal. App.  
20 3d 473, 487 (1982) (quotation omitted). “[T]he standard for substantive  
21 unconscionability—the requisite degree of unfairness beyond merely a bad bargain—must  
22 be as rigorous and demanding for arbitration clauses as for any contract clause.”  
23 *Sanchez*, 61 Cal.4th at 912.

24 The Court of Appeals for the Ninth Circuit has “found confidentiality provisions  
25 to be substantively unconscionable when applied to a large class of customers.”  
26 *Kilgore*, 718 F.3d at 1059 n. 9 (citing *Ting v. AT&T*, 319 F.3d 1126, 1151–52 (9th  
27 Cir.2003)); but cf. *Concepcion*, 131 S.Ct. at 1749 (an arbitration agreement “can be  
28 specified, for example, ... that proceedings be kept confidential to protect trade

1 secrets”); *Mercurio v. Superior Court*, 116 Cal. Rptr .2d 671 (Ct. App. 2002) (“While  
2 [the California] Supreme Court has taken notice of the ‘repeat player effect,’ the court  
3 has never declared this factor renders the arbitration agreement unconscionable per  
4 se.”).

5 In this case, the agreement states that the agreement may be changed by OnStar  
6 “by giving you 30 days notice (or a longer period if required by law). (ECF No. 38-5  
7 ¶ 9). Plaintiff does not contend that Defendant has modified the Agreement. Under  
8 these circumstances, we conclude that “the implied covenant of good faith and fair  
9 dealing limits the employer’s authority to unilaterally modify the arbitration agreement  
10 and save that agreement from being illusory and thus unconscionable. *See Peng v. First*  
11 *Republic Bank*, 162 Cal. Rptr. 3d 545, 554 (Ct. App. 2013). The agreement states that  
12 any objections to fees must be brought to OnStar’s attention within 60 days, *unless* “the  
13 law does not allow a limit or the law requires a longer period.” *Id.* ¶ 24. The agreement  
14 limits recovery of fees, liability, remedies “UNLESS FORBIDDEN BY LAW.” *Id.* ¶  
15 36. After reviewing the arbitration agreement, the Court finds that the agreement is not  
16 substantively unconscionable as it is not “so one-sided as to shock the conscience.”  
17 *See Davis*, 458 F.3d at 1075.

## 18 **ii. Procedural Unconscionability**

19 Plaintiff contends that the arbitration agreement is procedurally unconscionable  
20 because it is a contract of adhesion. Plaintiff asserts that it is unconscionable because  
21 surprise “is also present.” (ECF No. 41 at 30.) Specifically, Plaintiff asserts that the  
22 arbitration clause is contained in paragraph thirty-nine of a fifteen page pamphlet and  
23 does not provide the arbitration rules. Plaintiff asserts that the agreement is  
24 unconscionable because OnStar can unilaterally change the rules. Defendant contends  
25 that the arbitration agreement is not procedurally unconscionable because contracts of  
26 adhesion are routinely enforced and there is no element of surprise.

27 “Procedural unconscionability focuses on the factors of surprise and oppression.”  
28 *Kilgore*, 718 F.3d at 1059 (quotation omitted). “Oppression arises from an inequality

1 of bargaining power that results in no real negotiation and an absence of meaningful  
2 choice,’ while ‘[s]urprise involves the extent to which the supposedly agreed-upon  
3 terms are hidden in a prolix printed form drafted by the party seeking to enforce them.’”  
4 *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1280 (9th Cir. 2006) (quoting *Flores v.*  
5 *Transamerica HomeFirst, Inc.*, 93 Cal. App. 4th 846, 853 (2001)).

6 A contract “will be denied enforcement if, considered in its context, it is unduly  
7 oppressive . . . .” *Armendariz*, 24 Cal. 4th at 113. Contracts of adhesion signed by a  
8 weaker party in oppressive circumstances may contribute to a finding of procedural  
9 unconscionability. *See Sanchez*, 61 Cal.4th at 915; *see also Higgens v. Superior Court*,  
10 140 Cal. App. 4th 1238, 1248 (2006) (“a contract of adhesion is a standardized contract  
11 that is imposed and drafted by the party of superior bargaining strength and relegates  
12 to the other party only the opportunity to adhere to the contract or reject it”).

13 The arbitration agreement in this case is written in simple language that can be  
14 understood by an ordinary user. The agreement is written with words in bold and in all-  
15 capitals to highlight the important terms. The agreement includes reference to  
16 arbitration rules that would apply to any dispute and states that OnStar will pay the cost  
17 of any filing fee and any “further administrative and arbitrator fees.” (ECF No. 15-4  
18 at 5). After review, the Court concludes that the arbitration agreement includes terms  
19 that are material to ensuring the agreement is reasonable fair to both parties. The  
20 arbitration agreement is not procedurally unconscionable.

#### 21 **IV. Conclusion**


22 The Court finds that Defendant has proved by a preponderance of the evidence  
23 that Plaintiff received a copy of the OnStar Terms and Conditions and assented to those  
24 terms, including the arbitration agreement. The Court finds that the arbitration  
25 agreement is not substantively or procedurally unconscionable. Defendant’s motion to  
26 compel arbitration is granted.

27 IT IS HEREBY ORDERED that Defendant’s Amended Motion to Dismiss  
28 Complaint Pursuant to Rule 12(b)(1) and to Compel Arbitration (ECF No. 38) is

1 granted. Pursuant to 9 U.S.C. section 4, the parties are directed to proceed to arbitration  
2 in accordance with the terms of the DRA. Pursuant to 9 U.S.C. section 3, the claims of  
3 the following Opt-ins are STAYED in favor of arbitration

4 IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Complaint  
5 Pursuant to Rule 12(b)(1) and to Compel Arbitration (ECF No. 15), Plaintiff's Motion  
6 In Limine (ECF No. 31), and Plaintiff's Motion to Strike (ECF No. 36) are denied as  
7 moot.

8 DATED: August 25, 2016

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10 **WILLIAM Q. HAYES**  
11 United States District Judge  
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