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

TANEESHA CROOKS, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,
formerly known as WACHOVIA
BANK, N.A.,

Defendant.

Case No. 18-cv-0219 DMS (JLB)

**ORDER GRANTING MOTION
TO COMPEL ARBITRATION**

Pending before the Court is Defendant Wells Fargo Bank, N.A.’s motion to compel arbitration. Plaintiff Taneesha Crooks filed an opposition, and Defendant filed a reply. For the following reasons, the Court grants Defendant’s motion and stays further proceedings pending arbitration.

**I.
BACKGROUND**

On October 30, 2013, Plaintiff purchased a used 2006 Nissan Armada from Kearny Mesa Toyota in San Diego, California. (Declaration of J. Tann Pace (“Pace Decl.”) ¶ 4, Ex. A; Declaration of Taneesha Crooks (“Crooks Decl.”) ¶ 4.) When Plaintiff purchased the vehicle, she signed a Retail Installment Sales Contract with

1 the dealership, which assigned its rights in the Contract to Defendant. (*Id.* ¶ 5, Ex.
2 A; Compl. ¶ 22.) In a signature section of the Contract entitled “Agreement to
3 Arbitrate[,]” Plaintiff was reminded, “By signing below, you agree that, pursuant to
4 the Arbitration Provision on the reverse side of this contract, you or we may elect to
5 resolve any dispute by neutral, binding arbitration and not by a court action.” (Pace
6 Decl. ¶ 4, Ex. A.) The Contract contained an arbitration provision, which appears
7 in a section labeled “**ARBITRATION PROVISION**” and includes the following
8 pertinent language:

9 **EITHER YOU OR WE MAY CHOOSE TO HAVE ANY**
10 **DISPUTE BETWEEN US DECIDED BY ARBITRATION AND**
11 **NOT IN COURT OR BY JURY TRIAL.**

12 ...

13 Any claim or dispute, whether in contract, tort, statute or otherwise
14 (including the interpretation and scope of this Arbitration Provision,
15 and the arbitrability of the claim or dispute), between you and us or our
16 employees, agents, successors or assigns, which arises out of or relates
17 to your credit application, purchase or condition of this vehicle, this
18 contract or any resulting transaction or relationship (including any such
19 relationship with third parties who do not sign this contract) shall, at
20 your or our election, be resolved by neutral, binding arbitration and not
21 by a court action.... Any arbitration under this Arbitration Provision
22 shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et[.] seq.)
23 and not by any state law concerning arbitration. This Arbitration
24 Provision shall survive any termination, payoff or transfer of this
25 contract....

26 (Pace Decl. ¶ 4, Ex. A.)

27 On October 20, 2016, Plaintiff filed a Chapter 7 bankruptcy petition. (Compl.
28 ¶ 23; Crooks Decl. ¶ 5.) On January 18, 2017, Plaintiff’s debts were successfully
discharged in the bankruptcy action. (Compl. ¶¶ 25–26, 30.) Plaintiff did not
reaffirm the debt obligation to Defendant. (Crooks Decl. ¶ 7.)

Plaintiff alleges that on March 7, 2017, Defendant “submitted an unauthorized
account review credit inquiry to Equifax.” (Compl. ¶ 32.) Plaintiff claims the
inquiry was unauthorized and illegal because “Defendant was on notice of Plaintiff’s

1 discharge and thus, had no reason to pull Plaintiff’s credit report.” (*Id.* ¶¶ 34–35.)

2 On January 31, 2018, Plaintiff filed the present action against Defendant,
3 asserting violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681–
4 92x. Defendant now moves to enforce the arbitration provision in the Contract,
5 which Plaintiff opposes.

6 II.

7 LEGAL STANDARD

8 The Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.*, governs the
9 enforcement of arbitration agreements involving interstate commerce. *Am. Express*
10 *Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2308–09 (2013). “The overarching
11 purpose of the FAA ... is to ensure the enforcement of arbitration agreements
12 according to their terms so as to facilitate streamlined proceedings.” *AT & T*
13 *Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011). “The FAA ‘leaves no place
14 for the exercise of discretion by a district court, but instead mandates that district
15 courts *shall* direct the parties to proceed to arbitration on issues as to which an
16 arbitration agreement has been signed.” *Kilgore v. KeyBank, Nat. Ass’n*, 718 F.3d
17 1052, 1058 (9th Cir. 2013) (quoting *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S.
18 213, 218 (1985)).

19 “The standard for demonstrating arbitrability is not a high one; in fact, a
20 district court has little discretion to deny an arbitration motion, since the [FAA] is
21 phrased in mandatory terms.” *Republic of Nicaragua v. Standard Fruit Co.*, 937
22 F.2d 469, 475 (9th Cir. 1991). “Moreover, the scope of an arbitration clause must
23 be interpreted liberally and ‘as a matter of federal law, any doubts concerning the
24 scope of arbitrable disputes should be resolved in favor of arbitration.’” *Concat LP*
25 *v. Unilever, PLC*, 350 F. Supp. 2d 796, 804 (N.D. Cal. 2004) (quoting *Moses H.*
26 *Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983)). In
27 determining whether to compel arbitration, a court must determine two “gateway”
28 issues: “(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether

1 the agreement encompasses the dispute at issue.” *Kilgore*, 673 F.3d at 955–56
 2 (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir.
 3 2000)). If both requirements are satisfied, “the [FAA] requires the court to enforce
 4 the arbitration agreement in accordance with its terms.” *Id.* The burden of proving
 5 that the claims at issue are not suitable for arbitration is on the party resisting
 6 arbitration. *Green Tree Fin. Corp.–Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

7 III.

8 DISCUSSION

9 A. Delegation of Arbitrability

10 Plaintiff contends it is the role of this Court to determine the scope of the
 11 arbitration provision. Defendant responds the threshold questions of arbitrability
 12 must be decided by an arbitrator, not the Court, because the arbitration provision
 13 delegates these gateway issues to an arbitrator.

14 “[P]arties can agree to arbitrate ‘gateway’ questions of ‘arbitrability,’ such as
 15 whether the parties have agreed to arbitrate or whether their agreement covers a
 16 particular controversy.” *Rent-A-Ctr., West, Inc. v. Jackson*, 561 U.S. at 63, 68–69
 17 (2010). These gateway issues can be expressly delegated to the arbitrator where “the
 18 parties clearly and unmistakably provide otherwise.” *AT & T Techs., Inc. v.*
 19 *Commc’ns Workers of Am.*, 475 U.S. 643, 649 (1986). “Such [c]lear and
 20 unmistakable evidence of agreement to arbitrate arbitrability might include ... a
 21 course of conduct demonstrating assent ... or ... an express agreement to do so.”
 22 *Momot v. Mastro*, 652 F.3d 982, 988 (9th Cir. 2011) (citations and internal quotation
 23 marks omitted). For arbitration agreements under the FAA, “the court is to make
 24 the arbitrability determination by applying the federal substantive law of arbitrability
 25 absent clear and unmistakable evidence that the parties agreed to apply non-federal
 26 arbitrability law.”¹ *Brennan v. Opus Bank*, 796 F.3d 1125, 1129 (9th Cir. 2015)

27
 28 ¹ Federal law governs the arbitration question because the arbitration provision is covered by the FAA and the parties have not clearly and unmistakably designated

1 (internal citations and quotation marks omitted).

2 The Ninth Circuit has held “language ‘delegating to the arbitrators the
3 authority to determine the validity or application of any of the provisions of the
4 arbitration clause[] constitutes an agreement to arbitrate threshold issues concerning
5 the arbitration agreement.’” *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1208
6 (9th Cir. 2016) (quoting *Momot*, 652 F.3d at 988). Here, the language of the
7 arbitration provision evidences the parties’ clear and unmistakable intent to delegate
8 the threshold questions of arbitrability to an arbitrator. The arbitration provision
9 provides, in part, “Any claim or dispute, ... (including the interpretation and the
10 scope of this Arbitration Provision, and the arbitrability of the claim or dispute), ...
11 shall, ... be resolved by neutral, binding arbitration and not by a court action.” (Pace
12 Decl. ¶ 4, Ex. A.) Based on the language of the arbitration provision, the Court finds
13 the parties agreed to arbitrate the gateway issues, including whether Plaintiff’s
14 FCRA claim is within the scope of the arbitration agreement.² See *Gadomski v.*
15 *Wells Fargo Bank N.A.*, 281 F. Supp. 3d 1015, 1020 (E.D. Cal. 2018) (holding
16 parties agreed to arbitrate gateway issues because the arbitration agreement provides
17 “[a] claim may include, but shall not be limited to, *the issue of whether any*
18 *particular claim must be submitted to arbitration.*”).

19 **B. “Wholly Groundless” Inquiry**

20 In cases where the parties “clearly and unmistakably intend to delegate the
21 power to decide arbitrability to an arbitrator,” the Court’s inquiry is “limited ... [to]
22 whether the assertion of arbitrability is ‘wholly groundless.’” *Qualcomm Inc. v.*
23 *Nokia Corp.*, 466 F.3d 1366, 1371 (Fed. Cir. 2006) (applying Ninth Circuit law)
24 (citing *Dream Theater, Inc. v. Dream Theater*, 124 Cal. App. 4th 547 (Cal. Ct. App.
25 2004)). The “wholly groundless” inquiry allows courts to prevent a party from
26

27 that nonfederal arbitrability law applies. See *Brennan*, 796 F.3d at 1129.

28 ² The Court declines to address Plaintiff’s other arguments relating to questions of
arbitrability because they must be decided by the arbitrator.

1 “asserting any claim at all, no matter how divorced from the parties’ agreement, to
2 force an arbitration.” *Id.* at 1373 n.5. In conducting this inquiry, a court “should
3 look to the scope of the arbitration clause and the precise issues that the moving
4 party asserts are subject to arbitration.” *Id.* at 1374. “Because any inquiry beyond
5 a ‘wholly groundless’ test would invade the province of the arbitrator, whose
6 arbitrability judgment the parties agreed to abide by ..., the district court need not,
7 and should not, determine whether [a plaintiff’s claims] are in fact arbitrable.” *Id.*
8 If a court finds that the assertion of arbitrability is not “wholly groundless,” it should
9 stay the action pending a ruling on arbitrability by the arbitrator. *Id.*; *see Khraibut*
10 *v. Chahal*, No. C15-04463 CRB, 2016 WL 1070662, at *7 (N.D. Cal. Mar. 18, 2016)
11 (“If ... the assertion of arbitrability is even loosely related to the claims, ‘[courts]
12 should stay the action pending a ruling on arbitrability by the arbitrator.’”) (quoting
13 *Zenelaj v. Handybook Inc.*, 82 F. Supp. 3d 968, 975 (N.D. Cal. 2015)).

14 The arbitration provision is broad, encompassing “[a]ny claim or dispute, ...
15 between you and us ... which arises out of or relates to your credit application,
16 purchase or condition of this vehicle, this contract or any resulting transaction or
17 relationship[.]” (Pace Decl. ¶ 4, Ex. A.) In light of the broad scope of the arbitration,
18 the allegations in the Complaint do not foreclose the possibility the FCRA claim
19 relates to the relationship of the parties giving rise to the arbitration provision. *See*
20 *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582–
21 83 (1960) (“An order to arbitrate the particular grievance should not be denied unless
22 it may be said with positive assurance that the arbitration clause is not susceptible of
23 an interpretation that covers the asserted dispute. Doubts should be resolved in favor
24 of coverage.”). The Court therefore finds Defendant’s assertion of arbitrability is
25 not “wholly groundless.” *See Kin Wah Kung v. Experian Info. Sols., Inc.*, No. C 18-
26 00452 WHA, 2018 WL 2021495, at *5 (N.D. Cal. May 1, 2018) (finding motion to
27 compel arbitration was not “wholly groundless” where arbitration clause broadly
28 covered all matters “relating in any way to” the agreement at issue); *see also In re:*

1 *Lithium Ion Batters Antitrust Litig.*, No. 13-MD-02420-YGR, 2016 WL 5791357, at
2 *5 (N.D. Cal. Oct. 4, 2016) (Even finding “retroactive application of an arbitration
3 agreement is not ‘wholly groundless’ where the arbitration provision is broad.”). To
4 respect the province of the arbitrator, no opinion is expressed on whether the FCRA
5 claim falls within the scope of the arbitration provision.

6 **C. Enforceability of the Arbitration Provision**

7 Plaintiff opposes the enforcement of the arbitration provision on the basis that
8 the Contract was terminated by her bankruptcy discharge. Specifically, Plaintiff
9 contends the Contract was rescinded and not reaffirmed, and no relationship existed
10 between the parties as a result of her bankruptcy discharge. A bankruptcy discharge,
11 however, “extinguishes only the personal liability of the debtor.” *Johnson v. Home*
12 *State Bank*, 501 U.S. 78, 83 (citation omitted). While the personal liability for the
13 underlying debt is discharged, many courts have held a bankruptcy discharge does
14 not render a valid arbitration agreement unenforceable. *See Delgado v. Ally Fin.,*
15 *Inc.*, No. 3:17CV02189BENJMA, 2018 WL 2128661, at *5 (S.D. Cal. May 8, 2018);
16 *Gadomski*, 281 F. Supp. 3d at 1019; *see also McMahan v. Byrider Sales of Indiana*
17 *S, LLC*, No. 3:17-CV-00064-GNS, 2017 WL 4077013, at *4 (W.D. Ky. Sept. 14,
18 2017); *Mann v. Equifax Info. Servs., LLC*, No. 12-CV-14097, 2013 WL 3814257, at
19 *3 (E.D. Mich. July 22, 2013); *Green Tree Servicing, LLC v. Brough*, 930 N.E.2d
20 1238, 1243 (Ind. Ct. App. 2010). In any event, the arbitration provision explicitly
21 provides, “This Arbitration Provision shall survive any termination, payoff or
22 transfer of this contract.” Thus, by its express terms, even if the Contract was
23 terminated as a result of Plaintiff’s bankruptcy discharge, the arbitration provision
24 survives.

25 Nevertheless, relying on the Ninth Circuit’s decision in *In re Eber*, 687 F.3d
26 1123 (9th Cir. 2012), Plaintiff argues the Court should deny the motion because
27 arbitration would preclude her from obtaining the “fresh start” granted by the
28 Bankruptcy Code, thereby creating an inherent conflict between compelling

1 arbitration and the purpose of the Bankruptcy Code. Courts have “the discretion to
2 decline to enforce an otherwise applicable arbitration provision only if the arbitration
3 would conflict with the underlying purpose of the Bankruptcy Code.” *Id.* at 1130
4 (citation omitted). The Ninth Circuit has made it clear that there is “no evidence in
5 the text of the Bankruptcy Code or in the legislative history suggesting that Congress
6 intended to create an exception to the [Federal Arbitration Act] in the Bankruptcy
7 Code.” *In re Eber*, 687 F.3d at 1129. And the Court finds enforcing the arbitration
8 provision does not conflict with the Bankruptcy Code. The arbitration provision is
9 at issue due to Plaintiff’s FCRA claim, not because Defendant is attempting to
10 collect a debt that has been discharged. Moreover, “simply enforcing a provision
11 which defines the venue for resolving the instant dispute does not deprive [Plaintiff]
12 of [a] “fresh start” granted by the bankruptcy code.” *Gadomski*, 281 F. Supp. 3d at
13 1019 (quoting *Mann*, 2013 WL 3814257, at *9). Accordingly, Plaintiff has failed to
14 show the arbitration provision is unenforceable.

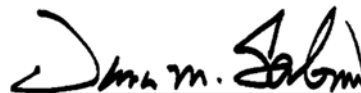
15 **III.**

16 **CONCLUSION**

17 For the foregoing reasons, Defendant’s motion to compel arbitration is
18 granted. Defendant’s request for judicial notice is denied because the documents
19 contained therein were not necessary to the resolution of the present motion. The
20 Court stays the litigation to permit an arbitrator to decide the questions of
21 arbitrability, and then, if permissible, to arbitrate the substantive claim. Within 14
22 days of the completion of the arbitration proceedings, the parties shall jointly submit
23 a report advising the Court of the outcome of the arbitration, and a request to dismiss
24 the case or vacate the stay.

25 **IT IS SO ORDERED.**

26 Dated: June 4, 2018

27 

28 Hon. Dana M. Sabraw
United States District Judge