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BLANCA A. GONZALEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

BLANCA A. GONZALEZ, Case No.: CIVSB2028936

Plaintiff,

VS.

FCA US, LLC; MOSS BROS CHRYSLER DODGE JEEP RAM SAN BERNARDINO; and DOES 1 through 10, inclusive,

Defendants.

NOTICE OF RULING RE: DEFENDANT FCA US, LLC'S MOTION TO COMPEL ARBITRATION AND STAY ACTION

Date: May 24, 2021 Time: 9:00 a.m. Dept: S28

Action Commenced: December 16, 2020

Trial Date: TBD

TO ALL THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 24, 2021, Defendant FCA US LLC's Motion to Compel Arbitration and Stay the Action came for hearing in the above-captioned matter. Regina Lotardo Esq. appeared on behalf of Plaintiff Blanca A. Gonzalez. There was no appearance on behalf of Defendant FCA US, LLC. Plaintiff submitted on the Tentative Due to the lack of appearance by the Defendant FCA US LLC there was no oral argument. After reviewing the documents the Court adopted its tentative ruling denying Plaintiff's Request for Judicial Notice

TENTATIVE RULINGS

Be advised that there are 2 tentative rulings posted for:

For May 24, 2021

Department S-28
Judge Lynn M. Poncin

If all parties wish to submit on a tentative ruling, no appearance is required at the hearing, unless specified otherwise in the tentative ruling. If all parties submit, please notify the Judicial Assistant for Department S-28 (909-708-8698) by 4:00 p.m. the day before the hearing. In that case, the tentative ruling posted on the Court's website (or e-mailed to parties) will automatically become the final ruling of the court.

If you do not wish to submit on a tentative ruling, you must appear for the hearing via CourtCall or in person. Failure to appear is deemed a waiver of oral argument.

The prevailing party on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

1. Gonzalez v. FCA US, LLC

Case No. CIVSB22028936 Petition to Compel Arbitration

I. PROCEDURAL/FACTUAL BACKGROUND

On December 16, 2020, Blanca A. Gonzalez ("Plaintiff") filed this "lemon law" action against Defendants FCA US, LLC ("FCA" or "Defendant")) and Moss Bros Chrysler Dodge Jeep Ram San Bernardino ("Moss Bros") (collectively "Defendants").

On March 29, 2021, Defendants filed this motion to compel arbitration.

On May 10th, Plaintiff voluntarily dismissed Moss Bros.

(1) Statement of Law – Motion to Compel Arbitration

California Law

Code of Civil Procedure sections 1280 et seq. provide a procedure for the summary determination of whether a valid agreement to arbitrate exists, and such summary procedure satisfies both state and federal law. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th394, 413.)

Under Code of Civil Procedure section 1281.2, a party to an arbitration agreement may move to compel arbitration if another party to the agreement refuses to arbitrate, and the court shall order the parties to arbitrate if it determines an agreement to arbitrate exists, unless it determines:

- (a) The right to compel arbitration has been waived by the petitioner;
- (b) Grounds exist for the revocation of the agreement; or
- (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact.

The party may also seek a stay of pending litigation either by itself or in conjunction with a petition to compel contract arbitration. A stay must be granted where a court has previously ordered arbitration of the dispute or an application for such an order has been made but not ruled upon. (Code Civ. Proc., § 1281.4.)

California law favors the enforcement of valid arbitration agreements. (*Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 320; *In re Tobacco I* (2004) 124 Cal.App.4th 1095, 1103.) Any doubts to arbitration will be resolved against the party asserting a defense to arbitration, whether the issue is construction of contract language, waiver, delay or any like defense to arbitrability. (*Erickson, supra,* 35 Cal.3d at p. 320; *In re Tobacco I, supra,* 124 Cal.App.4th at p. 1103.)

The Court must determine when a petition to compel arbitration is filed and accompanied by prima facie evidence of a written arbitration agreement whether the agreement exists, if any defense to its enforcement is raised, and whether the agreement is enforceable. (*Rosenthal, supra*, 14 Cal.4th at p. 413.) The petitioner bears the burden of proving the existence of the arbitration agreement by preponderance of the evidence. (*Id.*) If the party opposing the petition raises a defense to enforcement, then he bears the burden of producing evidence and proving by preponderance of the evidence any fact necessary to the defense. (*Id.*) The trial court's role is to resolve these factual issues. (*Id.* at p. 414.)

Federal Law

The Federal Arbitration Act (FAA), at 9 U.S.C. §1, et seq., also authorizes enforcement of arbitration clauses unless grounds exist in law or equity for the revocation of any contract. (9 U.S.C. § 2). The enforcement language of the FAA is almost identical to Code of Civil Procedure section 1281. In situations governed by the FAA, conflicting state law is preempted in either state or federal courts. (*Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 477 ["The FAA contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration But even when Congress has not completely displaced state regulation in an area, state law may nonetheless be pre-empted to the extent that it actually conflicts with federal law "].)

To compel arbitration under the FAA, the Court must find an agreement exists for arbitration between the parties and the agreement covers the dispute. (*AT&T*

Technologies, Inc. v. Communications Workers of America (1986) 475 U.S. 643, 648-649.)

The enforcement of an arbitration clause is a matter of ordinary state-law contract principles. (*AT&T Mobility LLC v. Concepcion* (2011) 131 S.Ct. 1740, 1745 ("*Concepcion*"); *First Options v. Kaplan* (1995) 514 U.S. 938, 944.) Arbitration agreements are on equal footing with other contracts and should be enforced according to their terms. (*Concepcion, supra,* 131 S.Ct. at p. 1745.) The phrase in the FAA, 9 U.S.C. §2, providing arbitration agreements can be declared unenforceable on grounds of law or equity for revocation permits then invalidating such agreement on contract defenses of fraud, duress, or unconscionability. (*Id.* at p. 1746.)

State rules of procedure, including those governing petitions to compel arbitration, apply in state court proceedings except where such rules would defeat the purpose of the federal law. (*Rosenthal, supra,* 14 Cal.4th at p. 409-410.) Similar to California law, any doubt about the arbitrability of a dispute under the FAA is resolved in favor of arbitration. (*Concepcion, supra,* 475 U.S. at p. 650.)

(2) Analysis of FCA's Motion

This motion was initially filed by FCA and Moss Bros. Prior to filing her opposition, Plaintiff voluntarily dismissed Moss Bros.

FCA moves to compel arbitration pursuant to an arbitration agreement set forth in the Retail Installment Sale contract executed by Plaintiff. A copy of that contract is attached as Exhibit A to the declaration of Mr. Glenn Moss, the President of Moss Bros.

The sales contract shows Plaintiff purchased of a new 2015 Chrysler 300 from Moss Bros on October 16, 2015. (Moss Decl. ¶¶2-5, Ex. A.) It is consistent with

Plaintiff's complaint, which alleges that on October 15, 2015, she purchased a 2015 Chrysler 300, "which was manufactured and or distributed by Defendant FCA." (Compl. ¶9.)

The sales contract states: "You, the Buyer (and Co-Buyer, if any) may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Seller-Creditor (sometimes 'we' or 'us' in this contract), the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below." In the box listing the "Seller-Creditor," the sales contract identifies only Moss Bros. (Ex. A.)

Essentially, Plaintiff argues: (1) Moss Bros has been dismissed, and the arbitration agreement is expressly limited to disputes between Plaintiff and Moss Bros; (2) relatedly, the agreement expressly limits the right to elect arbitration to Plaintiff and Moss Bros; (3) FCA, as a nonsignatory, cannot compel arbitration under an equitable estoppel theory because Plaintiff is suing FCA for fraud and warranty claims, which are not dependent on Plaintiff's sales contract with Moss Bros; and (4) FCA cannot compel arbitration because it is not a third-party beneficiary to the arbitration agreement.

Generally, a nonsignatory may enforce an arbitration clause on grounds of equitable estoppel when the claims against the nonsignatory are "dependent upon, or founded in and inextricably intertwined with," the obligations imposed by the agreement containing the arbitration clause. (*Goldman v. KPMG LLP* (2009) 173 Cal.App.4th 209, 217-218; *Marenco v. DirectTV LLC* (2015) 233 Cal.App.4th 1409, 1419-1420 [equitable estoppel doctrine required employee who signed arbitration agreement with predecessor corporation to arbitrate claims against nonsignatory successor corporation

(employees who continued working after merger impliedly accepted successor corporation's decision to continue existing terms of employment, including arbitration agreement)].)

In support of its motion, FCA cites *Felisilda v. FCA US LLC* (2020) 53

Cal.App.5th 486, which bears some resemblance to this case. *Felisilda* involves one of the same defendants, FCA, and it involves the exact same arbitration provision as does this case. The Felisildas purchased a used vehicle from a dealer. When the vehicle turned out to be a lemon, they sued both the dealer and the manufacturer. (*Id.* at p. 489.) When the dealer moved to compel arbitration based upon the same arbitration contract as that at issue in this case, the manufacturer filed a notice of non-opposition, and the trial court compelled the Felisildas to arbitrate their claims against both the dealer and the manufacturer. The Court of Appeal upheld the decision compelling the Felisildas to arbitrate their claims against the manufacturer "because the Felisildas expressly agreed to arbitrate claims arising out of the condition of the vehicle—even against third party nonsignatories to the sales contract." (*Id.* at 497.)

As mentioned, Moss Bros was still FCA's codefendant when this motion was filed. Thus, at the time they filed this motion, Defendants argued *Felisilda* is controlling. But Plaintiff since dismissed Moss Bros.

Plaintiffs argues this case is distinguishable from *Felisilda* because she has dismissed Moss Bros and is now only suing FCA, a nonsignatory and nonparty to the arbitration agreement. She contends this case is therefore distinct from *Felisilda*.

Notably, like Plaintiff in this case, the plaintiffs in *Felisilda* also dismissed the auto dealer. However, in *Felisilda*, the plaintiffs dismissed the dealer after the trial court

ordered the plaintiffs' claims against the dealer and the manufacturer to arbitration. (See *Felisilda, supra*, 53 Cal.App.5th at p. 489 ["The trial court ordered the Felisildas to arbitrate their claim against both Elk Grove Dodge and FCA. In response, the Felisildas dismissed Elk Grove Dodge."].)

The *Felisilda* Court explained why it agreed with the trial court that the plaintiffs' claims against FCA, a nonsignatory, were subject to arbitration:

Based on language in the sales contract and the nature of the Felisildas' claim against FCA, we conclude the trial court correctly ordered that the entire matter be submitted to arbitration. In signing the sales contract, the Felisildas agreed that "[a]ny claim or dispute, whether in contract, tort, statute or otherwise . . . between you and us . . . which arises out of or relates to . . . [the] condition of this vehicle . . . shall . . . be resolved by neutral, binding arbitration and not by a court action." (Italics added.) Here, the Felisildas' claim against FCA relates directly to the condition of the vehicle.

In their complaint, the Felisildas alleged that "express warranties accompanied the sale of the vehicle to [them] by which FCA . . . undertook to preserve or maintain the utility or performance of [their] vehicle or provide compensation if there was a failure in such utility or performance." Thus, the sales contract was the source of the warranties at the heart of this case. The Felisildas noted they "delivered the vehicle to an authorized FCA . . . repair facility for repair of the nonconformities." However, "FCA . . . has failed to either promptly replace the new motor vehicle or promptly make restitution in accordance with the Song-Beverly Consumer Warranty Act."

The Felisildas' claim against FCA directly relates to the condition of the vehicle that they allege to have violated warranties they received as a consequence of the sales contract. Because the Felisildas expressly agreed to arbitrate claims arising out of the condition of the vehicle—even against third party nonsignatories to the sales contract—they are estopped from refusing to arbitrate their claim against FCA. Consequently, the trial court properly ordered the Felisildas to arbitrate their claim against FCA.

(*Felisilda, supra*, 53 Cal.App.5th at pp. 496-497 (emphasis added in appellate opinion).)

The federal cases cited by Plaintiff are somewhat distinguishable because the plaintiffs in those cases brought suit *only* against the manufacturer. (See *Kramer v. Toyota Motor*

Corp. (9th Cir. 2013) 705 F.3d 1122, 1127 ["The language of the contracts thus evidences Plaintiffs' intent to arbitrate arbitrability with the Dealerships and no one else. The Dealerships are not a party to this action."]; Nation v. BMW of N. Am., LLC (C.D. Cal. 2020) 2020 U.S. Dist. LEXIS 246435, *10-11 ["But Felisilda is not directly on point, because the Felisildas sued both the manufacturer and the dealer. Nation, on the other hand, sued only BMW NA."]; Ruderman v. Rolls Royce Motor Cars, LLC, 2021 U.S. Dist. LEXIS 10080, *10-11 ["But Felisilda is not directly on point, because the Felisildas sued both the manufacturer and the dealer. Ruderman, on the other hand, sued only Rolls-Royce."].)

Although not cited by the parties, the Southern District essentially agreed with Plaintiff just weeks ago, stating:

A district court has since analyzed *Felisilda* in a case like this one. [Citation.] In *Ruderman*, the [Central District] distinguished *Felisilda*, explaining:

But Felisilda is not directly on point, because the Felisildas sued both the manufacturer and the dealer. Ruderman, on the other hand, sued only Rolls-Royce. Felisilda, therefore, does not change state law that directly controls this case. Kramer remains the controlling precedent for this case. Under the Kramer line of cases, Rolls-Royce cannot compel Ruderman to arbitrate his claims against it under the doctrine of equitable estoppel.

[Citations.]

The Court agrees. As the *Felisilda* court highlighted, the arbitration provision mentions claims regarding the "condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract)." (Sales Contract 2.) But that language is only one part of the definition of a covered claim. The arbitration provision first defines claims as those "between you and us or our employees, agents, successors or assigns." (Sale Contract at 2.) Neither the dealership nor one of its "employees, agents, successors, or assigns" is named in this lawsuit or seeking to enforce the arbitration provision. [Internal citation.] Thus, the Court similarly finds *Felisilda* to be distinguishable. The

reasoning in *Kramer* and *Jurosky*^[1] convincingly addresses these circumstances. Consequently, the Court finds Defendant is not entitled to enforce the Sale Contract's arbitration provision under the equitable estoppel doctrine.

(Safley v. BMW of N. Am., LLC (S.D. Cal. Feb. 5, 2021) 2021 U.S. Dist. LEXIS 22577, *19-20.)

Nevertheless, the *Safley* Court also acknowledged in a footnote that it "recognizes this area of the law is uncertain. There are at least several appeals pending before the Ninth Circuit involving the applicability of *Kramer* to comparable arbitration provisions." (*Id.* at fn. 5.)

FCA's motion presents a close call. But Plaintiff's opposition argument that Felisilda is distinguishable is persuasive.

First, as discussed, the procedural facts in *Felisilda* are distinct from those in this case. In its reply, FCA argues that "[i]n *Felisilda*, the plaintiffs similarly dismissed the dealership prior to the court's ruling." (Reply 2:12-13.) That is not accurate. (See *Felisilda, supra*, 53 Cal.App.5th 486, 491 ["the trial court determined the Felisildas' claim against Elk Grove Dodge was so intertwined with the claim against FCA that the entirety of the matter was arbitrable under the sales contract. *After the trial court ordered the matter to arbitration*, the Felisildas dismissed Elk Grove Dodge from the action." (emphasis added)].) It is unclear how the *Felisilda* Court would have ruled if the plaintiffs had dismissed their claims against the dealership prior to opposing the motion to compel arbitration.

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¹ Jurosky v. BMW of N. Am. (S.D. Cal. 2020) 441 F. Supp. 3d 963.

Second, the *Felisilda* Court's analysis of *Kramer* and its progeny is questionable. The *Felisilda* Court began its analysis by citing authority which permits a nonsignatory to invoke an arbitration agreement under a theory of equitable estoppel. Under that theory, the nonsignatory must show the plaintiff's claims against it are "intimately founded in and intertwined' with the underlying contract obligations." (*Felisilda, supra,* 53 Cal.App.5th 486, 495, quoting *Boucher v. Alliance Titl* The *Felisilda* Court's criticism of the "*Jurosky* court's glossing over [of] language in an arbitration clause that expressly includes third party nonsignatories" is unwarranted. Contrary to the Court of Appeal's conclusion, the language in the arbitration clause at issue in *Jurosky*, which is the same as that of the arbitration provision in this case, does not *expressly include* FCA as a nonsignatory to the arbitration agreement.

In the sales contract, Plaintiff is defined as "You" or "the Buyer." Moss Bros is defined as "we" or "us." The arbitration provision in the sales contract requires arbitration of any claim or dispute "between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) "

(Ex. A (emphasis added).)

The *Jurosky* Court did not gloss over the third-party language. In fact, it spent more than a page discussing the issue, captioned "Broader Language." (See *Jurosky*, *supra*, 441 F. Supp. 3d 963, 973-974.) In that discussion, the *Jurosky* Court explained: "[W]hen read in context, the language plainly does not give BMW the right to compel arbitration. Rather, the language refers to types of disputes between *Plaintiff and the*

dealership that may be arbitrated by *Plaintiff or the dealership*." (*Id.* at p. 973 (emphasis in original).)

The same is true here. Plaintiff and Moss Bros agreed to arbitrate claims between each other and between Plaintiff and Moss Bros' "employees, agents, successors or assigns." There is no evidence demonstrating FCA is an employee, agent, successor, or assign of Moss Bros in this case (and such a conclusion seems implausible). The qualifier—"which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract)"—describes the *types* of disputes between Plaintiff and Moss Bros which may be arbitrated. Notwithstanding the holding in *Felisilda*, it does not appear to be an *express* inclusion of FCA.

FCA's arguments suffer the same two flaws as does the Court of Appeal's analysis in *Felisilda*. First, as discussed, they both incorrectly conclude the arbitration provision expressly applies to *any* third parties as long as the claims relate to the condition of the vehicle. (*See* Reply 5:15-18; *Felisilda*, *supra*, 53 Cal.App.5th at p. 498 ["the Felisildas' agreement to the sales contract constituted express consent to arbitrate their claims regarding vehicle condition even against third parties"].) Second, FCA and *Felisilda* both appear to conflate the interpretation of the third-party language in the arbitration agreement with whether Plaintiff's claims against FCA are *intimately founded in and intertwined with* the sales contract obligations.

"Where a nonsignatory seeks to enforce an arbitration clause, the doctrine of equitable estoppel applies in two circumstances: (1) when a signatory must rely on the terms of the written agreement in asserting its claims against the nonsignatory or the claims are 'intimately founded in and intertwined with' the underlying contract." (*Kramer, supra*, 705 F.3d at p. 1128, citing

Goldman v. KPMG LLP (2009) 173 Cal.App.4th 209, 221.)

Assuming, for the sake of argument, that FCA fell under the category of "employees, agents, successors, or assigns," the analysis would then turn to whether Plaintiff's complaint "arises out of or relates to . . . purchase or condition of [the] vehicle." But that would ostensibly be much easier to show than having to show Plaintiff's claims against FCA are intimately founded in and intertwined with the sales contract obligations.

The entire analysis in *Felisilda* is dedicated to distinguishing its own facts from those in federal cases. It does not include analysis of whether the plaintiffs' claims against FCA were intimately founded in and intertwined with the sales contract obligations.

FCA has not demonstrated that Plaintiff's claims against it "rely on the terms" of the sales agreement Plaintiff executed with Moss Bros. (*In re Henson* (9th Cir. 2017) 869 F. 3d 1052, 1060 ["We expressly rejected Toyota's argument that the plaintiffs' claims were necessarily based on the Purchase Agreements merely because the lawsuit was predicated on the bare fact that a vehicle purchase occurred."], citing *Kramer, supra*, 705 F.3d at pp.1124-25.)

Here, as in *Kramer*, Plaintiff's warranty and fraud claims against FCA are not intimately founded in and intertwined with the obligations in Moss Bros' sales contract.

That Plaintiff's claims would not exist but for her purchase of the vehicle does not mean

that her claims are "intertwined with" the sales contract. FCA's argument to the contrary "confuses the concept of 'claims founded in and intertwined with the agreement containing the arbitration clause' with but-for causation." (*DMS Servs., LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1356-57 [finding that while a party's claims would not exist but for deductible agreements, the claims were not "inextricably intertwined with" the agreements].)

In *Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 306, our Court of Appeal explained that "[t]he fundamental point' [of equitable estoppel] is that a party is 'not entitled to make use of [a contract containing an arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its application in defining the forum in which [his or] her dispute . . . should be resolved." But here, Plaintiff "do[es] not seek to simultaneously invoke the duties and obligations of [FCA] under the [purchase contract], as it has none, while seeking to avoid arbitration. Thus, the inequities that the doctrine of equitable estoppel is designed to address are not present." (*Kramer, supra*, 705 F.3d at 1134.)²

In short, when read in context, the language of the arbitration provision plainly does not give FCA the right to compel arbitration as a third-party beneficiary or otherwise. Rather, the language refers to types of disputes between Plaintiff and Moss Bros which may be arbitrated by Plaintiff or the dealership. FCA's motion neither demonstrates that Plaintiff's claims against FCA rely on the terms of the sales contract,

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² Notably, the sales contract distinguishes between seller and manufacturer warranties. (*See* Ex. A at p. 4 of 5, ¶4 ["WARRANTY SELLER DISCLAIMS" paragraph, which states: "This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide."].)

nor does it demonstrate Plaintiff's claims against FCA are inextricably intertwined with the obligations under the sales contract so as to support FCA's contention that it may compel arbitration under an equitable estoppel theory.

FCA's reliance on *Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486 is not persuasive for the reasons discussed. Moreover, *Felisilda* is distinguishable from this case because it involves a motion to compel arbitration granted in favor of a signatory auto dealership and a nonsignatory auto manufacturer. Because Plaintiff dismissed Moss Bros, this motion is brought only by a nonsignatory manufacturer.

II. <u>Tentative Ruling</u>

The Court:

(1) **DENIES** Plaintiff's request for judicial notice of Exhibits A through E as unnecessary (legal authority, not evidence based on court records); and

(2) **DENIES** Defendant FCA US, LLC's motion to compel arbitration because FCA failed to demonstrate the existence of an arbitration agreement between Plaintiff and FCA, or that FCA may enforce the arbitration agreement between Plaintiff and (now-dismissed) Defendant Moss Bros on equitable grounds.

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PROOF OF SERVICE 1 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES 2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Strategic Legal Practices, 1840 3 Century Park East, Suite 430, Los Angeles, California 90067. 4 On May 24, 2021, I served the document(s) described as: 5 NOTICE OF RULING RE: DEFENDANT FCA US, LLC'S MOTION TO COMPEL 6 ARBITRATION AND STAY ACTION 7 on the interested parties in this action by sending [] the original [or] $[\checkmark]$ a true copy thereof [\(\) to interested parties as follows [or] [] as stated on the attached service list: **BOWMAN AND BROOKE LLP BOWMAN AND BROOKE LLP** 9 Mikaela Jackson, Esq. Richard L. Stuhlbarg, Esq. 970 West 190th Street, Suite 700 10 750 B. Street, Suite 2200 Torrance, California 90502 San Diego, California 92101 Mikaela.Jackson@bowmanandbrooke.com 11 Richard.Stuhlbarg@bowmanandbrooke.com Tammy.Bokmuller@bowmanandbrooke.com 12 BowmanFCAwarranty@bowmanandbrooke.com efilefca@bowmnandbrooke.com 13 **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) [] 14 for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for 15 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully 16 prepaid at Los Angeles, California. 17 **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, [1] California, by e-email delivery as agreed between the parties on the parties listed herein at their most known e-mail address or e-mail of record in this action 18 19 BY OVERNIGHT DELIVERY: I am "readily familiar" with this firm's practice of [] collection and processing correspondence for overnight delivery. Under that practice, 20 overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or 21 delivered by our office to a designated collection site. 22 I declare under penalty of perjury under the laws of the State of California that the 23 foregoing is true and correct. 24 Executed this May 24, 2021, at Los Angeles, California. 25 Kim Johnson 26 27 28

PROOF OF SERVICE