No. 21-____

IN THE

Supreme Court of the United States

FAST AUTO LOANS, INC.,

Petitioner,

v.

JOE MALDONADO, ALFREDO MENDEZ, J. PETER TUMA, JONABETTE MICHELLE TUMA, ROBERTO MATEOS SALMERON,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeal of California, Fourth District

PETITION FOR A WRIT OF CERTIORARI

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July 7, 2021

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QUESTION PRESENTED

Is California's *McGill* rule, under which agreements for individualized arbitration are invalidated when a plaintiff seeks public injunctive relief, preempted by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq*., given this Court's holdings that:

- the FAA requires courts to "enforce arbitration agreements according to their terms," *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1413 (2019);
- arbitration agreements with terms requiring "individualized" arbitration are "protect[ed] pretty absolutely" by the FAA, *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018);
- state law is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the FAA, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011);
- states cannot carve out particular categories of disputes from the operation of the FAA, *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 532 (2012); and
- state courts "must abide by the FAA, which is 'the supreme Law of the Land,' U.S. Const., Art. VI, cl. 2, and by the opinions of this Court interpreting that law," *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 18 (2012)?

CORPORATE DISCLOSURE STATEMENT

Community Loans of America, Inc., a privately held Georgia corporation, owns 100% of Fast Auto Loans, Inc.'s stock.

RULE 14.1(b)(iii) STATEMENT

The following proceedings are directly related to this case:

- *Maldonado, et al. v. Fast Auto Loans, Inc.*, No. 30-2019-01073154-CU-BT-CXC (Cal. Super. Ct. Orange County) (Order filed Nov. 21, 2019).
- *Maldonado, et al. v. Fast Auto Loans, Inc.*, No. G058645 (Cal. Ct. App., 4th App. Dist., Div. Three) (Order filed Jan. 11, 2021).
- *Maldonado, et al. v. Fast Auto Loans, Inc.*, No. S267681 (Cal. Sup. Ct.) (Order filed April 28, 2021).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Fast Auto Loans, Inc. ("Fast Auto") respectfully petitions for a writ of certiorari to review the opinion of the Court of Appeal of California in this case.

OPINIONS BELOW

The opinion of the Court of Appeal of California (App., *infra*, 1a-23a) is reported at 60 Cal. App. 5th 710 (Ct. App. 2021). The order of the Supreme Court of California denying review of the Court of Appeal opinion (App., *infra*, 30a) is unreported, but is available at 2021 Cal. LEXIS 2956 (Cal. Apr. 28, 2021). The opinion of the trial court (the Superior Court of California) is unpublished and is not available on Lexis or Westlaw, but appears at App. 24a-29a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) because the Court of Appeal of California held that the FAA does not preempt California law invalidating agreements for individualized arbitration when a plaintiff seeks public injunctive relief and the Supreme Court of California denied discretionary review. *See Perry v. Thomas*, 482 U.S. 483, 489 n. 7 (1987) (finding jurisdiction under § 1257 to decide whether the FAA preempted a state statute that was construed by the Court of Appeal of California to invalidate arbitration agreements covered by the FAA and the Supreme Court of California denied review); *Southland Corp. v. Keating*, 465 U.S. 1, 6-7 (1984) (finding jurisdiction under § 1257 to decide whether the FAA preempted California law since "to delay review of a state judicial decision denying enforcement of the contract to arbitrate until the state court litigation has run its course would defeat the core purpose

of a contract to arbitrate"); *Volt Info. Sciences, Inc. v. Board of Trustees*, 489 U.S. 468, 473 n. 4 (1989) (finding jurisdiction under § 1257 where the Court of Appeal of California affirmed the trial court's denial of the petitioner's motion to compel arbitration and the Supreme Court of California denied review). *See also DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 51-53 (2015) (granting certiorari and finding FAA preemption where the Court of Appeal of California affirmed the trial court's denial of the petitioner's motion to compel arbitration and the Supreme Court of California denied review); *Preston v. Ferrer*, 552 U.S. 346, 351-52 (2008) (same).

This petition is timely under Supreme Court Rule 13, in that the Court of Appeal of California issued its opinion on January 11, 2021, App. 1a, and the Supreme Court of California denied Fast Auto's motion for discretionary review on April 28, 2021, App. 30a. This petition is filed within 90 days of the latter date.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the U.S. Constitution (art. VI, cl. 2), provides in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Section 2 of the FAA, 9 U.S.C. § 2, provides in pertinent part:

> A written provision in * * * a contract evidencing a transaction involving commerce

> to settle by arbitration a controversy thereafter arising out of such contract or transaction, * * * or an agreement in writing to submit to arbitration an existing controversy arising out of such 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.

INTRODUCTION

Whether the FAA preempts California's *McGill* rule is a recurring but still unresolved question of FAA preemption that is of great importance to Fast Auto and countless companies nationwide that do business in California—the nation's largest state with almost 40 million residents (one-eighth of the U.S. population).[1] That question is also before this Court in another pending petition, *see* Pet. for Cert., *HRB Tax Group, Inc. v. Snarr*, No. 20-1570 (filed May 10, 2021), and was the subject of petitions filed last term by Comcast Corporation and AT&T Mobility LLC.[2]

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[1] Public Policy Institute of California, "Just the Facts," https://www.ppic.org/blog/publication-type/just-the-facts/ (last visited June 29, 2021).

[2] *See Tillage v. Comcast Corp.*, 772 F. App'x 569 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 2827 (2020); *McArdle v. AT&T Mobility LLC*, 772 F. App'x 575 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 2827 (2020). The denial of certiorari in those cases was not a decision on the merits of the FAA preemption issue. *See Halprin v. Davis*, 140 S. Ct. 1200, 1202 (2020) (the denial of certiorari "carries with it no implication whatever regarding the Court's views on the merits of [petitioner's] claims") (citing *Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912, 919 (1950) (Frankfurter, J.)).

In *McGill v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017), the Supreme Court of California held that arbitration agreements that waive the right to seek "public injunctive relief"—relief that has "the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public"—are invalid and unenforceable under state law. *Id.* at 93-94. Construing the FAA's saving clause, 9 U.S.C. § 2, it further held that the "*McGill* rule" is not preempted by the FAA because "[t]he contract defense at issue here—'a law established for a public reason cannot be contravened by a private agreement' (Civ. Code, § 3513)—*is* a generally applicable contract defense, i.e., it is a ground under California law for revoking any contract . . . [and] is not a defense that applies only to arbitration or that derives its meaning from the fact that an agreement to arbitrate is at issue." *Id.* at 94 (emphasis by the court).

A claim for public injunctive relief is nothing more than a representative action under a different name. Earlier attempts by the Supreme Court of California to invalidate arbitration agreements where consumers sought injunctions under state consumer protection statutes were held to be preempted by the FAA. *See*, *e.g.*, *Ferguson v. Corinthian Colleges*, 733 F.3d 928, 934-37 (9th Cir. 2013) (holding that the FAA preempted California's "*Broughton-Cruz* rule" under which agreements to arbitrate claims for public injunctive relief under the Legal Remedies Act, the Unfair Competition Law and the false advertising law were not enforceable). Subsequently, the court devised the *McGill* rule, under which a consumer seeking injunctive relief for "the public at large" is immunized from arbitration agreements that require individualized resolution of disputes since such agreements do not allow "public" relief to be obtained in

court or in arbitration. *See McGill*, 393 P.3d at 90. For defendant companies, public injunctive relief is class-wide injunctive relief on steroids—the "class" is 40 million California residents rather than a defined group of similarly situated customers because the plaintiff is not required to establish that a class should be certified. *Id.* at 92-93.

The *McGill* rule is preempted by the FAA because it requires either that public injunctive relief claims be tried in court, nullifying the parties' choice of arbitration as the venue for resolving disputes, or that such claims be tried in arbitration, overriding the parties' choice of individualized arbitration and exposing companies to virtually the same risk of "bet the ranch" class arbitration that *Concepcion* eliminated because it effectively forces them to arbitrate rights and interests of countless non-parties to the arbitration agreement. In either case, the agreement of the parties to resolve disputes on an individualized basis is not enforced, not because of any defect in the formation of the arbitration agreement, but because it allegedly violates Cal. Civ. Code § 3513 and state public policy. The *McGill* rule is unmistakably a device that circumvents the fundamental premise of *Concepcion*, *Epic Systems* and *Lamps Plus* that agreements calling for individualized arbitration are valid under the FAA and must be enforced according to their terms. *See Concepcion*, 563 U.S. at 352 ("[a]lthough §2's saving clause preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives").

McGill, and its subsequent adoption by the Ninth Circuit in *Blair v. Rent-A-Center, Inc.*, 928 F.3d

819 (9th Cir. 2019), have opened the floodgates to a tsunami of public injunctive relief lawsuits in California, including this case, *HRB Tax Group* and hundreds more.[3] Companies that implement bilateral arbitration programs do so in order to resolve business disputes with specific customers on a one-on-one basis, not to benefit the "general public" in expensive and protracted litigation that is fraught with even more risks than a suit for class-wide injunctive relief under Fed. R. Civ. P. 23(b)(2).

Moreover, in practice, the bar for successfully pleading a public injunctive claim has been set extremely low. Simply inserting the words "public injunctive relief" in the complaint will often suffice. For example, in this case, Respondents were permitted to pursue public injunctive relief even though their complaint *conceded* that certification of a class would easily rectify *all* of the harm they allege—both private *and* public. App. 48a ("[i]f the Classes are certified, the harms to the public and the classes can be easily rectified"). Yet, by including the words "public injunctive relief" at the tail end of their complaint,[4] Respondents were able to invoke the *McGill* rule and dodge their agreement to arbitrate on an individualized basis.

Subsequent to *McGill*, this Court—building upon the foundation laid in *AT&T Mobility LLC v. Concepcion*—held that the right to "individualized"

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[3] *See* Pet. for Cert., *HRB Tax Group, Inc. v. Snarr*, No. 20-1570, Appendix D (App. 29a) (identifying 372 post-*McGill* lawsuits brought against businesses seeking public injunctive relief).

[4] *See* First Amended Complaint, ad damnum clause (App. 56a) (out of twelve specified requests for relief, class certification is first on the list, while public injunctive relief is twelfth).

dispute resolution in an arbitration agreement is "protect[ed] pretty absolutely" by the FAA. *Epic Systems*, 138 S. Ct. at 1621. *See also Lamps Plus*, 139 S. Ct. at 1416 (the FAA "envision[s]" an "individualized form of arbitration"). Nevertheless, in this case, the Court of Appeal of California, citing *McGill* and *Blair*, refused to enforce Fast Auto's arbitration provision and flatly rejected its argument that the FAA preempts the *McGill* rule.

Review should be granted because the *McGill* rule interferes with the fundamental policies underlying the FAA and flouts this Court's precedential decisions interpreting the FAA. Individual arbitration provides a fast, inexpensive, consumer-friendly, convenient and efficient means of resolving customer disputes precisely because it is *not* intended to adjudge claims of non-parties, much less the "general public." *See Lamps Plus*, 139 S. Ct. at 1416 (in individual arbitration, "parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, [and] greater efficiency and speed . . .") (citations omitted). Only this Court can restore the overriding "*national* policy favoring arbitration" embodied in the FAA that businesses rely upon in formulating and pricing their consumer dispute resolution platforms. *See Southland Corp. v. Keating*, 465 U.S. at 10 (emphasis added).

STATEMENT OF THE CASE

A. Procedural History and Preservation of the FAA Preemption Question Herein Presented

On May 30, 2019, Respondents Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette Michelle Tuma, and Roberto Mateos Salmeron ("Respond-

ents")—each of whom had obtained one or more consumer loans from Fast Auto—filed a class action complaint against Fast Auto on behalf of themselves and similarly situated borrowers in the Superior Court of Orange County, California. Respondents alleged that the interest rates on their loans are unconscionable and violate California law. On July 3, 2019, Respondents filed a First Amended Class Action Complaint asserting claims under the California Unfair Competition Law and the Consumer Legal Remedies Act. App. 31a. In addition to class relief, the First Amended Class Action Complaint seeks public injunctive relief to prohibit "future violations of the aforementioned unlawful and unfair practices." App. 56a.

On August 26, 2019, pursuant to the arbitration provision in Respondents' loan agreements requiring disputes to be arbitrated on an individualized basis, Fast Auto moved to compel individual arbitration and stay litigation pending the completion of arbitration.[5] App. 89a. Fast Auto argued, *inter alia*, that the FAA preempts the *McGill* rule. App. 111a-112a. By Order dated November 21, 2019, the Superior Court of California denied First Auto's motion to compel arbitration. Finding *McGill* to be "directly on point," the court held that "the arbitration provision is invalid under California law and cannot be enforced." App. 29a. The court based its decision on the following language from *McGill*:

> The question we address in this case is the validity of a provision in a predispute arbitra-

[5] Respondent Joe Maldonado opted out of the arbitration provision in two of his four loan agreements. Fast Auto asked the Superior Court to stay Mr. Maldonado's non-arbitrable claims pending the completion of arbitration on his arbitrable claims, App. 97a, but the court denied arbitration altogether. App. 24a.

> tion agreement that waives the right to seek this statutory remedy in any forum. We hold that such a provision is contrary to California public policy and is thus unenforceable under California law. We further hold that the Federal Arbitration Act does not preempt this rule of California law or require enforcement of the waiver provision.

App. 28a (quoting *McGill*, 393 P.3d at 87).

Fast Auto timely appealed, again arguing that the FAA preempts the *McGill* rule. App. 8a, 20a. On January 11, 2021 the Court of Appeal of California rejected Fast Auto's arguments and affirmed. App. 1a. The Court of Appeal held in a published opinion:

> [O]ur California Supreme Court in *McGill* held that there is no [FAA] preemption . . . . [W]e are bound to follow the precedent of the California Supreme Court . . . . Moreover, we find its analysis to be legally sound[] and persuasive, as does the Ninth Circuit (*Blair, supra*, 928 F.3d at p. 822 [FAA does not preempt the *McGill* Rule] . . . .) We conclude Lender's arguments the FAA preempts the *McGill* Rule lack merit. . . .

60 Cal. App. 5th at 724-25. App. 21a.

Fast Auto then timely filed a discretionary Petition for Review with the Supreme Court of California which presented the question:

> Is *McGill* preempted by the Federal Arbitration Act ("FAA") given the U.S. Supreme Court's subsequent pronouncements that (a) arbitration agreements requiring "individualized" arbitration are "protect[ed] pretty absolutely" by the FAA, and (b) even if a state law

> defense applies equally to all contracts, it is preempted by the FAA if it interferes with the right to "individualized" arbitration?

App. 69a. The Supreme Court of California denied review on April 28, 2021 in an order without opinion. App. 30a.

REASONS FOR GRANTING THE PETITION

Pursuant to the Supremacy Clause of the U.S. Constitution, art. VI, cl. 2, when a state law conflicts with the FAA, the conflicting state rule is displaced by the FAA through the doctrine of preemption. *See Preston v. Ferrer*, 552 U.S. at 353. A state-law principle that applies solely because a contract to arbitrate is at issue is preempted by the FAA. *Perry*, 482 U.S. at 492 n. 9; *see also Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996) (courts may not "invalidate arbitration agreements under state laws applicable only to arbitration provisions" because "Congress precluded States from singling out arbitration provisions for suspect status . . . ."). Thus, "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." *Concepcion*, 563 U.S. at 341. In addition, a state law doctrine "normally thought to be generally applicable," such as "unconscionability," that is "applied in a fashion that disfavors arbitration" or has a "disproportionate impact on arbitration agreements" also is preempted. *Id.* at 342.

Section 2 of the FAA provides a limited "saving clause" that permits the application of state law defenses that "exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The saving clause "permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such

as fraud, duress, or unconscionability,' but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Concepcion*, 563 U.S. at 339.

After *McGill* was decided, this Court reinforced that arbitration agreements requiring "individualized" arbitration are protected from state interference by the FAA. Building upon the foundation laid in *Concepcion*, this Court held that the right to "individualized" dispute resolution in an arbitration agreement is "protect[ed] pretty absolutely" by the FAA. *Epic Systems, Inc.*, 138 S. Ct. at 1619. *See also Lamps Plus*, 139 S. Ct. at 1416 (the FAA "envision[s]" an "individualized form of arbitration"). As explained in *Epic Systems*, procedures that interfere with the attributes of individualized arbitration are preempted by the FAA:

> Not only did Congress [in the FAA] require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties' chosen arbitration procedures . . . . The parties before us contracted for arbitration. They proceeded to specify the rules that would govern their arbitrations, indicating their intention to use individualized rather than class or collective action procedures. And this much the Arbitration Act seems to protect pretty absolutely . . . .
>
> The [FAA's saving] clause "permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability.'" . . . . At the same time, the clause offers no refuge for "defenses that apply only to arbitration or

> that derive their meaning from the fact that an agreement to arbitrate is at issue." . . . . Under our precedent, this means the saving clause does not save defenses that target arbitration either by name or by more subtle methods, such as by "interfer[ing] with fundamental attributes of arbitration." . . . .
>
> [B]y attacking (only) the individualized nature of the arbitration proceedings, the employees' argument seeks to interfere with one of arbitration's fundamental attributes . . . . Just as judicial antagonism toward arbitration before the Arbitration Act's enactment "manifested itself in a great variety of devices and formulas declaring arbitration against public policy" . . . , we must be alert to new devices and formulas that would achieve much the same result today . . . . And a rule seeking to declare individualized arbitration proceedings off limits is just such a device.

138 S. Ct. at 1619, 1621 (citations omitted).

The *McGill* rule contravenes the principle that the right to individualized arbitration is "protect[ed] pretty absolutely" by the FAA. *Epic Systems*, *supra*. If required to litigate a public injunctive relief claim in court, the company loses all of the benefits of the arbitration agreement. If required to arbitrate a public injunctive relief claim, the company is deprived of the contractual right to resolve disputes on an individualized basis. Moreover, the scope of review of an arbitrator's award is narrow. *See Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572 (2013); *see also Concepcion*, 563 U.S. at 360 ("[f]aced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims"). And,

the risk is exponentially enhanced by the fact that the plaintiff is seeking "public" injunctive relief on behalf of 40 million California residents, not just a discrete group of similarly situated customers. The *McGill* rule thus impermissibly "allow[s] a contract defense to reshape individualized arbitration." *Epic Systems*, 138 S. Ct. at 1623. By its very definition, a claim for public injunctive relief is not intended to primarily benefit the person asserting the claim. The "evident purpose" of public injunctive relief is "to remedy a public wrong" and "not to resolve a private dispute." *McGill*, 393 P.3d at 94. The expanded scope of a public injunctive relief arbitration makes the proceeding much more complex, time-consuming and costly than an individualized proceeding. *See, e.g., Cisneros v. U.D. Registry*, Inc., 39 Cal. App. 4th 548, 564 (Ct. App. 1995) (trial court erred in restricting the scope of the evidence introduced at trial to that directly relevant to each individual plaintiff because public injunction "claimants are entitled to introduce evidence not only of practices which affect them individually, but also similar practices involving other members of the public who are not parties to the action").

In *Swanson v. H&R Block, Inc.*, 475 F. Supp. 3d 967 (W.D. Mo. 2020), plaintiff, a California resident, argued that her claims under the California Consumer Legal Remedies Act, the California Unfair Competition Law and the California False Advertising Law were excluded from arbitration under *McGill*. The court, relying heavily upon both *Epic Systems* and *Lamps Plus*, held that the plaintiff's statutory claims were subject to individual arbitration because "[t]he Supreme Court has repeatedly rejected state contract defenses that interfere with the 'traditionally individualized and informal nature of arbitration.'" *Id.* at

976. According to the court, "*McGill* does not 'save' enforcement of a contract that clearly delineates Plaintiff as the only potential claimant. A state contract defense that mandates reclassification of available relief from one individual to multiple (or in this case, millions) of people impermissibly targets one-on-one arbitration by restructuring the entire inquiry." (*Id.* at 977). Moreover, the *Swanson* court emphasized, "[i]ndividualized arbitration is the type of arbitration the FAA seeks to protect and the Supreme Court has called upon lower courts to be vigilant to new devices that seek to interfere with this goal." (*Id.* at 978). The court thus declined to follow *McGill* and the Ninth Circuit cases following *McGill* because "[t]his Court . . . is not bound by the Ninth Circuit. The Eighth Circuit routinely disagrees with Ninth Circuit precedent, and the Court finds divergence is merited in the current cause. Accordingly, the Court holds *McGill* is preempted by the FAA and Plaintiff's CLRA, UCL and FAL claims (Counts I through III) must be compelled to individual arbitration." *Id.* at 978 (footnote omitted).[6]

In the present case, the Court of Appeal's refusal to enforce consumer arbitration provisions that require individualized arbitration when public injunctive relief claims are asserted directly conflicts with the FAA and this Court's precedential decisions interpreting the FAA. Indeed, the court's ruling exhibits the very judicial hostility to arbitration (cloaked in public policy terms) that the FAA was intended to abolish.

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[6] In light of *Swanson* there is now a conflict in the federal courts on the question of whether the FAA preempts the *McGill* rule, further underscoring the need for this Court's review. *See* Pet. for Cert., *HRB Tax Group, Inc. v. Snarr*, No. 20-1570, pp. 3-4 (filed May 10, 2021).

The Court of Appeal's decision also frustrates the FAA, the "overarching purpose" of which, "evidenced in the text of §§ 2, 3 & 4, is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings." *Concepcion*, 563 U.S. at 340.[7]

Enforcing Fast Auto's arbitration provision as written will not leave Respondents without an equitable remedy if they prevail on the merits because the arbitration provision authorizes the arbitrator to award "injunctive, equitable and declaratory relief . . . in favor of the individual party seeking relief . . . to the extent necessary to provide relief warranted by that party's individual claim." Arbitration Provision, ¶ 14(k), App. 129a. *See, e.g., Marsh v. First USA Bank, N.A.*, 103 F. Supp. 2d 909, 924 (N.D. Tex. 2000) ("Contrary to Plaintiff's contention, an arbitrator may order injunctive relief if allowed to do so under the terms of the arbitration agreement . . . . Clearly, then, Plaintiffs may obtain injunctive relief along with statutory damages if they are successful on their claims. Accordingly, Plaintiffs' statutory rights will be adequately preserved in arbitration, even in the absence of a class action."); *Pyburn v. Bill Heard Chevrolet*, 63 S.W.3d 351, 366 (Tenn. App. 2001) (rejecting argument that plaintiff could not effectively vindicate his right to injunctive relief under state

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[7] Section 4 of the FAA "requires courts to compel arbitration 'in accordance with the terms of the agreement' upon the motion of either party to the agreement . . . ." *Id.* The FAA "leaves no place for the exercise of discretion by a . . . court, but instead mandates that . . . courts shall direct the parties to proceed to arbitration." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985); *accord, KPMG LLP v. Cocchi*, 565 U.S. 18, 25-26 (2011) (per curiam).

consumer protection statute without being able to pursue class relief in court because plaintiff could obtain injunctive relief in arbitration to address his individual statutory claim). An online data base of consumer and employee arbitrations maintained by the American Arbitration Association ("AAA") pursuant to California law[8] shows that in hundreds of arbitrations various forms of equitable relief, including a declaratory judgment, were awarded to consumers or achieved through settlement.

In rejecting FAA preemption, the *McGill* court noted: "The contract defense at issue here—'a law established for a public reason cannot be contravened by a private agreement' (Civ. Code, § 3513)—*is* a generally applicable contract defense, *i.e.*, it is a ground under California law for revoking any contract . . . . It is not a defense that applies only to arbitration or that derives its meaning from the fact that an agreement to arbitrate is at issue." 393 P.3d at 94 (emphasis by the court). However, as subsequently held in *Epic Systems*, even a state law defense that applies to all contracts is preempted by the FAA if (as here) it interferes with the fundamental attributes of arbitration:

> [In *Concepcion*,] this Court faced a state law defense that prohibited as unconscionable class action waivers in consumer contracts. The Court readily acknowledged that the defense formally applied in both the litigation and the arbitration context . . . . But, the Court held, the defense failed to qualify for protection under the saving clause because it

[8] *See* American Arbitration Association, "AAA Consumer and Employment Arbitration Statistics," https://www.adr.org/consumer (last visited June 29, 2021).

> interfered with a fundamental attribute of arbitration all the same. It did so by effectively permitting any party in arbitration to demand classwide proceedings despite the traditionally individualized and informal nature of arbitration. This "fundamental" change to the traditional arbitration process, the Court said, would "sacrific[e] the principal advantage of arbitration – its informality – and mak[e] the process slower, more costly, and more likely to generate procedural morass than final judgment." . . . . [T]he saving clause does not save defenses that target arbitration either by name or by more subtle methods, such as by "interfer[ing] with fundamental attributes of arbitration."

138 S. Ct. at 1622-23 (citations omitted); *accord*, *Lamps Plus*, 139 S. Ct. at 1415 ("state law is preempted to the extent it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA") (citation omitted); *Kindred Nursing Homes v. Clark*, 137 S. Ct. 1421, 1426 (2017) (the FAA "displaces any rule that covertly [discriminates against arbitration] by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements"); *Epic Systems*, 138 S. Ct. at 1623 ("[j]ust as judicial antagonism toward arbitration before the Arbitration Act's enactment 'manifested itself in a great variety of devices and formulas declaring arbitration against public policy,' *Concepcion* teaches that we must be alert to new devices and formulas that would achieve much the same result today").

Moreover, the Section 3513 defense, if carried to its logical extreme, would result in the FAA's saving

clause swallowing the FAA itself, since many if not most statutes can be argued to have been enacted for a "public reason." *See* U.S. National Archives and Records Administration, "Public Laws," www.archives.gov/federal-register/laws (December 28, 2017) ("Most laws passed by Congress are public laws. Public laws affect society as a whole."). As this Court has repeatedly held, a saving clause cannot be held to devour the very statute in which it is contained. *See, e.g., Concepcion*, 563 U.S. at 334 ("Although § 2's saving clause preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives . . . . As we have said, a federal statute's saving clause 'cannot in reason be construed as [allowing] a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot be held to destroy itself.'") (citations omitted). California's *McGill* rule, when viewed in the context of this Court's precedential arbitration decisions, is plainly preempted by the FAA.

CONCLUSION

For the foregoing reasons, Petitioner Fast Auto Loans, Inc. respectfully requests that its Petition for Certiorari be granted.

Respectfully submitted,

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July 7, 2021

APPENDIX

APPENDIX A

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

[Filed 1/11/21]

G058645
(Super. Ct. No. 30-2019-01073154)

JOE MALDONADO et al,

Plaintiffs and Respondents,

v.

FAST AUTO LOANS, INC.

Defendant and Appellant.

OPINION

Appeal from an order of the Superior Court of Orange County, Glenda Sanders, Judge, Affirmed. Request for judicial notice denied.

Ballard Spahr and Marcos D. Sasso for Defendant and Appellant.

Cohelan Khoury & Singer, Isam C. Khoury, Michael D. Singer, and Kristina De La Rosa: Mesriani Law Group and Rodney Mesriani for Plaintiffs and Respondents.

In this putative class action, plaintiffs Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette

Michelle Tuma, and Roberto Mateos Salmeron (collectively referred to as "the Customers" unless otherwise indicated), assert Fast Auto Loans, Inc., (Lender) charged unconscionable interest rates on loans in violation of Financial Code sections 22302 and 22303. Lender filed a motion to compel arbitration and stay the action pursuant to an arbitration clause contained within the Customers' loan agreements. The court denied the motion on the grounds the provision was invalid and unenforceable because it required consumers to waive their right to pursue public injunctive relief, a rule described in *McGill v. Citibank, NA.* (2017) 2 Cal.5th 945 (*McGill*). On appeal, Lender asserts the "*McGill* Rule" does not apply, but even if it did, other claims were subject to arbitration. Alternatively, Lender contends the *McGill* Rule is preempted by the Federal Arbitration Act (FAA: 9 U.S.C. § 1 et seq.). We conclude Lender's contentions on appeal lack merit, and we affirm the court's order.

FACTUAL BACKGROUND

In May 2019, the Customers filed a class action complaint. The operative complaint is the first amended complaint (FAC) and alleges (1) violations of California's Unfair Competition Law (UCL; Bus. & Prof. Code. § 17200 et seq.), and (2) violations of the Consumers Legal Remedies Act (CLRA: Civ. Code, § 1750 et seq.).

In the FAC, the Customers asserted Lender's "business model is to charge exorbitantly high, usurious, and unconscionable interest rates, in direct violation of California law[.]" It alleged Lender was required "by the California Department of Corporations to be licensed as a California Finance Lender" but its license has been inactive. The Customers sought "disgorgement of ill-gotten profits, statutory damages. punitive

damages, public injunctive relief, and attorney's fees and costs."

In the general allegations section of the FAC, the Customers stated the following: "[Lender offered loans] to California consumers, who are in immediate need of cash, at times for emergencies or to make ends meet and have limited credit opportunities. [Lender] provides funding to these consumers subject to loan terms that most consumers are unable to repay in full or which impose such exorbitant interest rates and penalties that it causes the consumer to pay late, re-borrow, and/or default on other financial obligations. The result of this practice is that the vast majority of the loans made by [Lender] are essentially 'interest only' loans and/or subject to default and additional penalties."

The Customers explained Lender's "business model is to charge usurious interest rates so that most consumers . . . are forced to default on their obligations . . . or forced to roll over or re-borrow additional loans from [Lender] at dire and unconscionable interest rates." Consequently, "Consumers are locked in a vicious cycle of repaying many times the face value of the loan without significantly reducing the principal balance owed." One of Lender's business practices is to require their clients "to secure the loans with their personal vehicles" but will offer a loan amount that "exceeds [the] value of the car in order to induce the client to agree to the loan all the while knowing that the client cannot afford to repay this amount." In addition, Lender's practice is to misrepresent the nature of refinancing or modifying loans, falsely telling clients they are receiving better terms and interest rates. The Customers alleged Lender's "ultimate goal" is to "keep clients locked in contracts in perpetuity."

The FAC specifically described the terms of several loans offered to the Customers. Maldonado entered into three unsecured loans. In September 2018, Maldonado agreed to an unsecured loan of $2,819.65, having an annual percentage rate (APR) of 159.09 percent. In November 2018, Maldonado entered into an unsecured loan with an APR of 158.66 percent. in April 2019, Maldonado agreed to an unsecured loan with an APR of 159.09 percent. "The total finance charge for the principal balance of $3,044.60 amounted to $4,696.04, for a total of $7,739.64."

Each of these contracts "imposed an additional $10-15 penalty for each late payment." Additionally, each contained an arbitration provision. Maldonado exercised his right to opt out of the arbitration provision in the April 2019 loan agreement and promissory note but not the other two contracts.

Mendez entered into two loan agreements with Lender. The first one in April 2017 was for $2,595 and had an APR of 180.06 percent. Mendez used his car as security for the loan. The following month, Mendez sought to refinance his prior loan and entered into another agreement using his car as collateral. The second loan had an APR of 174.70 percent and additional penalties for each late payment.

J. Peter Tuma and Jonabette Michelle Tuma were coborrowers on seven different loans with Lender. Using his car as collateral. J. Peter Tuma agreed in August 2016 to borrow $4,015 and pay an APR of 98.52 percent. He later refinanced this loan and agreed to an APR of 102.64 percent plus additional penalties for each late payment. Michelle Tuma used her vehicle as security for a loan in June 2015 for $7,035.30 having an APR or 84.23 percent. Two years later, in July 2017, she used her car as security for a $12,115.53 loan

with an APR of 84.48 percent, In August 2017, she borrowed $14,998.53 (83.81 percent APR) using her car as collateral. In January 2018, she again used her car as security for a $14,559.30 loan (83.49 percent APR). Finally, in April 2018, she borrowed $16,069.50 (85.67 percent APR) and used her car as collateral.

Salmeron entered into four loan agreements. In May 2016, he borrowed $2,516 (122.08 percent APR) and used his car as collateral. In November 2016, he refinanced the loan (now having a principal amount of $5,522.36) and obtained a slightly lower APR of 118.57 percent. In May 2017, he borrowed $4,966 (119.85 percent APR) and again used his car to secure the loan. The following year, January 2018, Salmeron refinanced the May 2017 loan and agreed to an APR of 113.62 percent, His car was used as collateral for the loan.

The complaint's first cause of action, for UCL violations, alleged Lender's practices satisfied the "'unlawful'" and "'unfair'" prongs because it knowingly and intentionally issued loans with interest rates "unconscionable and objectively unreasonable and prohibited by statute[.]" The FAC further alleged Lender violated the UCL by failing to maintain "active and lawful California [f]inancial [l]enders licenses as required by law." The Customers asserted they each suffered financial injury by paying Lender's unlawful interest rates.

The second cause of action was titled "injunctive relief and damages for violations of the [CLRA]." (Capitalization omitted.) The complaint alleged the Customers believed Lender's misconduct was "systematic and continuous, and continues to harm consumers who may be unaware that [Lender] subjects them to unconscionable loan provisions, including uncon-

scionable and usurious loan rates which are prohibited by law." The Customers asserted Lender caused them to suffer economic losses and they believed the "harms are continuous and ongoing and are injurious to the public and consumers . . . ." The complaint stated the Customers would "seek an order from the [c]ourt requiring [Lender] to cease and desist its unlawful practices."

In the prayer for relief, the Customers requested the court to certify the lawsuit as a class action, determine Lender violated consumer protection statutory claims, and issue "a temporary, preliminary and/or permanent order for injunctive relief requiring [Lender] to: (i) cease charging an unlawful interest rate on its loans exceeding $2,500; (ii) and institute corrective advertising and provide written notice to the public of the unlawfully charged interest rate on prior loans[.]" The complaint sought a disgorgement of Lenders "ill-gotten gains to pay restitution" to the class members, distribution of any money recovered, payment of costs, interest, and actual damages permitted by Civil Code section 1780(a)(1)-(5). They sought attorney fees and [p]ublic injunctive relief through the role as a [p]rivate [a]ttorneys [g]eneral prohibiting [Lender] from future violations of the aforementioned unlawful and unfair practices."

Lender filed a motion to compel arbitration, explaining each of the Customers' loan agreements included arbitration provisions. The last term of the agreement (No. 14) was comprised of 16 subdivisions (labeled paragraphs (a) through (p)). One paragraph stated a party could reject the arbitration provision if he or she mailed a written rejection notice following specific instructions. Another one noted the arbitration pro-

vision was governed by the FAA because the agreement involved interstate commerce.

Relevant to this appeal, paragraph 14(d) stated the parties must arbitrate any claim (with a few exceptions) "that in any way arises from or relates to this Agreement or the Motor Vehicle securing this Agreement." Paragraph 14(h), titled "*Class Action Waiver*" provided the consumer had no right to participate in or join "a class action, private attorney general action, or other representative action[.]" (Bold omitted.) Paragraph 14(n), titled "*Severability and Survival*" provided: "If any part of this Arbitration Provision, *other than the Class Action Waiver*, is deemed or found to be unenforceable for any reason, the remainder shall be enforceable." (Italics added.) In short, the agreement required consumers to agree to individual, non-class arbitration.

Lender asserted the arbitration provision was broadly written to cover all of the Customers' claims. In addition, Lender urged the court to enforce the agreement's Class Action Waiver (Class Waiver), which required arbitration take place on an individual basis and the arbitrator may only award relief on behalf of the named parties. It argued the Customers' claim for public injunctive relief under the UCL and CLRA was "nothing more than a transparent attempt to rely upon the '*McGill* Rule' to avoid their contractual obligation to arbitrate what is actually an individual dispute relating to their Agreements." The Customers opposed the motion, arguing the *McGill* Rule applied, and in addition, the agreement was procedurally and substantively unconscionable.

The trial court denied the motion. In its minute order, the court explained the *McGill* Rule applied and the offending provision could not be severed under the

terms of the arbitration agreement's paragraph stating severability did not apply to the Class Waiver provision. It rejected Lender's attempts to factually distinguish the *McGill* case.

DISCUSSION

Lender argues the trial court erred by concluding the arbitration provision was unenforceable under *McGill*, *supra*, 2 Cal.5th 945, because the Customers did not seek a public injunction and, in any event, the FAA preempts *McGill* and requires enforcement of the provision. "Because all the issues raised in this appeal involve only questions of law, we review the trial court's order de novo. [Citation.]" (*Mejia v. DACM Inc*, (2020) 54 Cal.App.5th 691 (*Mejia*).) We conclude the contentions lack merit.

I. *The McGill Rule*

A different panel of this court recently published *Mejia*, *supra*, 54 Cal.App.5th 691, where we prepared a short primer on the *McGill* Rule that we repeat and incorporate here. "In *McGill*, *supra*, 2 Cal.5th 945, a credit card account holder filed a class action against the issuing bank alleging claims under the CLRA, UCL, and the false advertising law (Bus. & Prof. Code, § 17500 et seq.) for deceptive practices in offering a "'credit protector'" insurance plan. The complaint sought money damages, restitution, and an injunction prohibiting the bank 'from continuing to engage in its allegedly illegal and deceptive practices.' [Citation.] The Supreme Court noted such 'public injunctive relief, i.e., injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public,' is among 'the statutory remedies available for a violation of the CLRA, the UCL, and the false advertising law.

[Citation.] [¶] The bank in *McGill* petitioned to compel the account holder to arbitrate her claims on an individual basis based on an arbitration clause in the customer account agreement. The arbitration clause required arbitration of "'All Claims . . . ,'" and stated, "'Claims and remedies sought as part of a class action, private attorney general or other representative action are subject to arbitration on an individual (non-class, non-representative) basis, and the arbitrator may award relief only on an individual (non-class, non-representative) basis," . . . "The arbitrator will not award relief for or against anyone who is not a party. If you or we require arbitration of a Claim, neither you, we, nor any other person may pursue the Claim in arbitration as a class action, private attorney general action or other representative action, nor may such Claim be pursued on your or our behalf in any litigation in any court.'" [Citation.]" (*Mejia*, *supra.* 54 Cal.App.5th at p. 698. italics omitted.)

"The Supreme Court identified the issue in *McGill* as 'whether the arbitration provision is valid and enforceable insofar as it purports to waive McGill's right to seek public injunctive relief *in any forum.*' [Citation.] The high court concluded the arbitration clause had such a sweeping preclusive effect across all fora because the clause barred McGill from pursuing 'Claims and remedies'" on a class or representative basis in both arbitration and "'in any litigation in *any* court.'" [Citation.] Having identified the issue, the court ruled the arbitration provision was 'invalid and unenforceable under California law' precisely because it purports to waive McGill's statutory right to seek [public injunctive] relief.' [Citation.] [¶] In explaining that conclusion, the Supreme Court cited Civil Code section 3513, which provides, in pertinent part, that "'a law established for a public reason cannot be

contravened by a private agreement.'" [Citation.] In other words, a statutory right created to serve a public purpose is *unwaivable.* The court stated, 'By definition, the public injunctive relief available under the UCL, the CLRA, and the false advertising law . . . is primarily "for the benefit of the general public." [Citations,]' [Citation.] Accordingly, the Supreme Court concluded, 'the waiver in a predispute arbitration agreement of the right to seek public injunctive relief under these statutes would seriously compromise the public purposes the statutes were intended to serve. Thus, insofar as the arbitration provision here purports to waive McGill's right to request in any forum such public injunctive relief, it is invalid and unenforceable under California law.' [Citation.]" (*Mejia*, *supra*, 54 Cal.App.5th at pp. 698-699.)

In the *Mejia* case, this court applied the *McGill* Rule. (*Mejia*, *supra*, 54 Cal.App.5th at pp. 702-703.) Plaintiff bought a used motorcycle from a dealership (Del Amo) by paying $500 cash and financing the remainder with a WebBank-issued Yamaha credit card he obtained through the dealership. (*Id.* at p. 694.) Plaintiff applied for the credit card by signing a credit application "acknowledging he had received and read WebBank's Yamaha Credit Card Account Customer Agreement (the credit card agreement), which contained an arbitration provision." (*Ibid.*)

The arbitration terms in the *Mejia* case were remarkably like the ones we are reviewing in this case. (*Mejia*, *supra*, 54 Cal.App.5th at p. 694.) Plaintiff in *Mejia* agreed to a broadly written agreement to arbitrate any claims arising out of the credit agreement. The agreement also contained a class action waiver, that "specifically barred arbitration of all class, representative, or private attorney general

claims[.]" (*Ibid.*) As in the case before us, the class waiver paragraph contained a "'poison pill' provision" specifying the following: "'If any portion of this Arbitration Provision *other than* [*the* Class Waiver provision] is deemed invalid or unenforceable, the remaining portions of this Arbitration Provision shall nevertheless remain valid and in force. If an arbitration is brought on a class, representative, or collective basis. and the limitations on such proceedings in [the Class Waiver provision] are finally adjudicated to be unenforceable, *then no arbitration shall be had.'* (Italics added.)" (*Id*, at p. 695.)

The motorcycle dealership moved to compel arbitration, arguing the plaintiff was seeking private injunctive relief. (*Mejia*, *supra*, 54 Cal.App.5th at pp. 694-695.) It maintained plaintiff was not seeking to prevent future harm to the general public, but only to benefit members of his class of similarly situated individuals. This court disagreed, concluding the dealership's argument the public would not benefit from an injunction made "little sense." (*Id. at* p. 702.) "[Plaintiff's] brief demonstrates the illogic of Del Amo's argument. [Plaintiff] points out his prayer seeks an injunction forcing Del Arno to cease 'selling motor vehicles in the state of California without first providing the consumer with all disclosures mandated by Civil Code [section] 2982 in a single document.' [Plaintiff] asserts, '[T]he prayer is plainly one for a public injunction given that Mejia "seeks to enjoin future violations of California's consumer protection statutes, relief oriented to and for the benefit of the general public." [Citation.] [¶] . . . [Plaintiff's] prayer does not limit itself to relief only for class members or some other small group of individuals; it encompasses "consumers" generally. [Citation.]'" (*Id.* at A. 703.)

In the *Mejia* opinion, this court reviewed the distinctions made between private and public injunctions. "The [Supreme Court's *McGill*] opinion defined 'private injunctive relief' as 'relief that primarily "resolve[s] a private dispute" between the parties [citation] and "rectif[ies] individual wrongs" [citation], and that benefits the public, if at all, only incidentally[.]' [Citation.] The opinion defined 'public injunctive relief' as 'relief that "by and large" benefits the general public [citation] and that benefits the plaintiff "if at all," only "incidental[ly]" and/or as "a member of the general public" [citation].' [Citation.] The high court cited as an example of a public injunction 'an injunction under the CLRA against a defendant's deceptive methods, acts, and practices [which] "generally benefit[s]" the public "directly by the elimination of deceptive practices" and "will . . . not benefit" the plaintiff "directly," because the plaintiff has "already been injured, allegedly, by such practices and [is] aware of them." [Citation.] "[Elven if a CLRA plaintiff stands to benefit from an injunction against a deceptive business practice, it appears likely that the benefit would be incidental to the general public benefit of enjoining such a practice." [Citation.]' [Citation.]" (*Mejia*, *supra.* 54 Cal.App.5th at p. 703.) We concluded in *Mejia* that the "injunctive relief Mejia prays for in the complaint fits the Supreme Court's definition of 'public injunctive relief' in *McGill*, [and there was] no merit to Del Amo's argument *McGill* is inapplicable because Mejia does not seek public injunctive relief." (*Id.* at pp, 703-704.)

This case is distinguishable from those where a plaintiff seeks a private injunction of similarly situated persons. A different panel of this court recently published *Clifford v. Quest Software* (2019) 38 Cal.App.5th 745 (*Clifford*), where we held the plaintiff praying for injunctive relief could not avoid arbitration

of a UCL claim under the *McGill* Rule. In the *Clifford* case, an employee brought various wage and hour claims against his employer. (*Id.* at p. 747.) We pointed out how the private nature of the UCL claim was "immediately evident" from the face of the complaint. "In describing [the employer's] alleged acts of unfair competition, [the employee's] complaint repeatedly refers to wage and hour violations directed at [the *employee*] *only*, such as [the employer's] 'failures to pay [the *employee*] all earned overtime and premium-pay wages,' [the employer's] failure 'to reimburse [the *employee*] for all necessary expenditures or losses incurred by [the *employee*][.]' . . . [the employee] does not allege [the employer's] directed similar conduct at other employees, much less the public at large. [] [The employee's] requests for injunctive relief under the UCL are similarly limited to him as an individual. He alleges [the employer's] 'unfair business practices entitle [*him*] to seek preliminary and permanent injunctive relief, including but not limited to orders that [the employer] account for, disgorge, and restore to [*him*] *all* compensation unlawfully withheld.' (Italics added.) . . . The only express beneficiary of [the employee's] requested injunctive relief is [himself], and the only potential beneficiaries are [the employer's] current employees, not the public at large." (*Id.* at p. 753.)

II. *The McGill Rule Applies Here*

Lender asserts the court erred by failing to consider whether the Customers "were *actually* seeking public injunctive relief" as required by the *McGill* case and its progeny. It asserts that although the Customers requested a public injunction in the complaint, the relief sought "is private because it will, at best, benefit [the Customers] and a discrete, narrowly-defined

group of other . . . customers." It elaborates the narrow group is a class of similarly situated individuals who would borrow money from Lender and agree to a similar arbitration provision. As was the case in *Mejia*, we conclude the argument makes little sense if one looks at all of the allegations in the complaint.

Lender's assertion the Customers seek a private injunction is based on the opening paragraph of the complaint, where the Customers introduced themselves as "individually and on behalf of all other similarly situated, bring[ing] this class action against [Lender] . . . to seek recompense for themselves and other similarly-situated California consumers who take out personal loans from [Lender]." This is language typically used in a class action lawsuit. The proposed class, described in paragraphs 50 through 55 of the complaint, are "persons who obtained loans . . . in an amount more than $2,500.00 from [Lender]."

Lender ignores the operative allegations and specific requests for relief located in sections VI (describing basis for causes of action) and VII (the prayer for relief) of the complaint. In these sections, the Customers alleged Lender's misconduct was ongoing and "injurious to the public and consumers[.]" Because Lender was continuing to provide high interest loans without proper licensing, the consumers alleged the "unlawful conduct will continue" unless the court takes "action to enjoin said practices." They specifically listed in the complaint's prayer "[p]ublic injunctive relief' prohibiting "future violations of the aforementioned unlawful and unfair practices[.]" The Customers clarified the injunctive relief should require Lender to stop charging unlawful interest rates and adopt "corrective advertising."

In short, the Customers' complaint and prayer does not limit the requested remedies for only some class members, but rather encompasses all consumers and members of the public. Moreover, an injunction under the CLRA against Lender's unlawful practices will not directly benefit the Customers because they have already been harmed and are already aware of the misconduct. As stated in *McGill*, any benefit to the Customers is incidental to the "general public benefit of enjoining such a practice.' [Citation.]" (*McGill*, *supra*, 2 Cal.5th at p. 955.)

Lender attempts to limit the reach of the *McGill* Rule by suggesting it only applies to plaintiffs seeking to enjoin *false or misleading advertising* on behalf of the general public. We are not persuaded. California's consumer protection laws must be liberally, not narrowly, applied. "The Legislature enacted the CLRA 'to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.' [Citation.] '[T]o promote' these purposes, the Legislature directed that the CLRA 'be liberally construed and applied.' [Citation.]" (*McGill*, *supra*, 2 Cal.5th at p. 954.) The "CLRA authorizes any consumer who has been damaged by an unlawful method, act, or practice to bring an action for various forms of relief, including [a]n order enjoining the methods, acts, or practices' [citation]." (*Ibid.*) *Similarly*, the purpose of the UCL "'is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services.' [Citation.] . . . '[T]he primary form of relief available under the UCL to protect consumers from unfair business practices is an injunction.' [Citation.]" (*Ibid.*) We found no case, and Lender cites to none, holding the remedy of public injunctions

under CLRA and UCL should be limited to false advertising claims.

We are also unpersuaded by Lender's argument this lawsuit challenges only the interest rates charged in the putative class members' loans, and therefore, they primarily seek private relief with the injunction. To accept this argument, we would have to ignore the complaint's unequivocal request to enjoin Lender from harming other consumers *in future contracts* from outrageous interest rates. As stated above, the consumers have nothing to personally gain from an injunction stopping Lender from imposing high interest rates in future contracts with members of the public. We agree with the Customers' assertion that although "not all members of the public will become customers of [Lender]" this "does not negate the fact that public injunctive relief will nevertheless offer benefits to the general public." The requested injunction cannot be deemed private simply because Lender could not possibly advertise to, or enter into agreements with, every person in California. Such a holding would allow Lender to continue violating the UCL and CLRA because consumers harmed by the unlawful practices would be unable to act as a private attorney general and seek redress on behalf of the public. It is enough that the requested relief has the purpose and effect of protecting the public from Lender's ongoing harm.

Moreover, the Ninth Circuit in *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819, 831, footnote 3 (*Blair*), summarily rejected an argument similar to Lender's contention. It held the *McGill* Rule applied where the plaintiff "s[ought] to enjoin future *violations* of California's consumer protection statutes, relief

oriented to and for the benefit of the general public."[1] (*Ibid.*. italics added.) Additionally, we must follow the *McGill* case, where our Supreme Court held a complaint sought public injunctive relief where it "request[ed], among other things, an injunction prohibiting Citibank from *continuing to engage* in its allegedly illegal and deceptive practices." (*McGill*, *supra*, 2 Cal.5th at p. 953, italics added.)[2]

III. *Class Waiver Not Severable*

Lender asserts the trial court also erred by concluding the entire arbitration provision was unenforceable simply because the Class Waiver clause was invalid. The trial court relied on two sections of the agreement discussing the issue of severability. The agreement's "*Severability and Survival*" provision (paragraph 14n) clearly stated, "If any part of this Arbitration Provi-

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[1] Lender cites to several federal court cases that are not only outdated, but also not binding on this court. We note the Ninth Circuit in *Blair,* and more recently in *Roberts v. AT&T Mobility LLC* (9th Cir. 2020) 801 Fed.Appx. 492, 496, supported application of the *McGill* Rule when a plaintiff seeks to enjoin *future violations* of the CLRA and UCL.

[2] At oral argument, Lender discussed an issue briefly mentioned in its reply brief. It maintained the case should be remanded in light of the Legislatures' recent enactment of Financial Code section 22304.5. subdivision (a) [prohibiting finance lenders from issuing loans between 52,500 and $10,000 with high interest rates]. This provision took effect January 1, 2020, and Lender does not explain why this contention was not included in its opening brief (filed at the end of May 2020), giving Customers a fair opportunity to respond. We need not consider issues raised for the first time in a reply brief, and in any event, this class action specifically alleged Lender executed a loan greater than $10,000 to one of the named plaintiffs (Michelle Tuma). There is no question a public injunction would still prevent a threat of future harm to others.

sion, other than the Class Action Waiver, is deemed or found to be unenforceable for any reason, the remainder shall be enforceable." The Class Waiver provision (paragraph 14h) contained a "poison pill" statement clarifying the issue as follows: "The parties acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between them and is non-severable from this Arbitration Provision. If the Class Action Waiver is limited, voided or found unenforceable, then this Arbitration Provision (except for this sentence) shall be null and void with respect to such proceedings, *subject to the right to appeal* the limitation or invalidation of the Class Action Waiver. The parties acknowledge and agree that under no circumstances will a class action be arbitrated." (Italics added and bold omitted.)

Focusing on the "poison pill" provision. Lender argues the trial court misinterpreted the contract. It proposes that the "subject to the right to appeal" language, italicized above, means the arbitration agreement "does not become null and void unless and until an appeal has been taken from an adverse ruling, and that appeal does not succeed in overturning the trial court's ruling." (Italics and bold omitted.) Alternatively, Lender suggests that if there is any ambiguity in the contractual language it must be construed in favor of arbitration.

Thus, it is Lender's theory that the trial court could not declare the entire arbitration agreement void *until after* this appellate court reviews the viability of the Class Waiver. Lender argues the trial court should have ordered the Customers to arbitrate their claims for damages, disgorgement, and restitution while Lender's appeal about the Class Waiver ruling was pending. This argument raises obvious questions

about what should happen if Lender decided not to appeal. The Customers would not have standing to appeal a favorable ruling. Indeed, we agree with the Customers' assertion Lender's argument is illogical because it requires the appellate court to initially determine the agreement is invalid before the trial court.

We conclude Lender's interpretation of the agreement is incorrect, and in any event, the argument is now moot. As predicted by the Customers, because we have determined the Class Waiver was unenforceable, it follows that the entire arbitration provision becomes void as clearly and unambiguously stated in paragraphs 14(h) [poison pill provision] and 14(n) [severability and survival provision]. If for the sake of argument, we were to accept Lender's interpretation of the "subject to the right to appeal" language, we could not say the trial court erred by denying the motion to arbitrate. After all, we have reached the same conclusion as the trial court. It is no longer relevant the trial court's order may have been premature.[3]

In any event, we do not interpret the agreement as requiring an appellate decision before the trial court could apply the poison pill or severability provisions of the agreement. Both paragraphs 14(h) and 14(n) clearly and unambiguously state the arbitration provi-

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[3] What would be relevant and prejudicial is if the trial court had accepted Lender's interpretation and ordered the Customers to arbitrate their claims for damages and restitution while this appeal was pending. Any award could not be confirmed after this court issued an opinion concluding the claims were not arbitrable. To avoid this predictable result, a trial court would be required to stay all arbitration pending the outcome of the appeal. Lender's interpretation leads to an absurd outcome.

sions cannot be saved if the Class Waiver is deemed invalid. The Class Waiver was unequivocally deemed "non-severable."

We interpret the "subject to" language, when read in context of the entire paragraph, as simply acknowledging Lender's right to appeal the decision and enforce the Class Waiver limitations if successful on appeal. Looking first to the beginning of the paragraph, it contained the parties' unequivocal acknowledgment that "the Class Action Waiver is material and essential to the arbitration of any disputes between them and is non-severable from this Arbitration Provision." The next sentences provided that if the Class waiver provision was "found unenforceable, then this Arbitration Provision (except for this sentence) shall be null and void with respect to such proceedings, *subject to the right to appeal* the limitation or invalidation of the Class Action Waiver. (Italics added.) The comma before the phrase "subject to the right to appeal" signifies separate independent clauses. As written, the agreement does not make the "null and void" clause conditional on the rendering of an appellate opinion. It merely confirms that Lender has the right to appeal, and if successful, enforce the Class Waiver. If Lender intended to qualify the timing of severability and survival of the agreement, the sentence should have stated the arbitration provisions could not be deemed null and void until *after* Lender completed its appeal of the ruling.

V. *The FAA Preemption Question*

Lender's final argument is the FAA preempts *McGill*. It recognizes our California Supreme Court in *McGill* held there is no preemption. (*McGill*, *supra*, 2 Cal.5th at p. 953.) In its briefing, Lender notes two telecommunication companies, AT&T Mobility LLC

and Comcast Corporation, have asked the United States Supreme Court overturn the Ninth Circuit in two companion cases ruling the FAA does not preempt the *McGill* Rule. It asserts we should stay this appeal until the high court renders a decision. Encouraged by these pending petitions, Lender presents a lengthy argument about why our Supreme Court incorrectly decided the *McGill* case.

As noted by the Customers in their briefing, on June 1, 2020, the Supreme Court denied review of the Ninth Circuit rulings. (*AT&T Mobility LLC v. McArdle* (2020 __U.S.__) 140 S.Ct. 2827, 207 L. Ed. 2d 159; *Comcast Corp. v. Tillage* (2020 __U.S.__) 140 S.Ct. 2827, 207 L. Ed. 2d 158.) Insofar as Lender thinks *McGill* was wrongly decided, the argument fails, as we are bound to follow the precedent of the California Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Moreover, we find its analysis to be legally sounds and persuasive, as does the Ninth Circuit.[4] (*Blair*, *supra*, 928 F.3d at p. 822 [FAA does not preempt the *McGill* Rule]; *Tillage v. Comcast Corp.* (9th Cir., June 28, 2019) 772 Fed.Appx. 569; *McArdle v. AT&T Mobility LLC* (9th Cir., 2019 June 28, 2019) 772 Fed.Appx. 575.) We conclude Lender's arguments the FAA preempts the *McGill* Rule lack merit, and there is no basis to stay this appeal.

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[4] In *Blair,* the court explained in a footnote that the panel received briefing and heard argument in two additional cases raising this same question: *McArdle v. AT&T Mobility LLC* (No. 17-17246), and *Tillage v. Comcast Corp.* (No. 18-15288). Those cases are resolved in separate memorandum dispositions filed simultaneously with this opinion." (*Blair*, *supra,* 928 F.3d at p. 822, fn. 1.)

DISPOSITION

The order is affirmed. Appellant's motion for judicial notice of documents relating to Lender's licensing is denied because the information was not before the trial judge and not relevant to our analysis. Respondents shall recover their costs on appeal.

O'LEARY, P. J.

WE CONCUR:

ARONSON. J.

THOMPSON, J.

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

G058645
(Super. Ct. No. 30-2019-01073154)

JOE MALDONADO et al.,

Plaintiffs and Respondents,

v.

FAST AUTO LOANS, INC.,

Defendant and Appellant.

The Center for Consumer Law & Economic Justice, Bet Tzedek, Consumers for Auto Reliability & Safety, and the Housing & Economic Rights Advocates have requested that our opinion filed January 11, 2021, be certified for publication. It appears that our opinion meets the standards set forth in California Rules of Court, rule 8.1105(c). The request is GRANTED. The opinion is ordered published in the Official Reports.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.

Dated: February 5, 2021

APPENDIX B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Civil Complex Center 751 W. Santa Ana Blvd Santa Ana, CA 92701	
SHORT TITLE: Maldonado vs. Fast Auto Loans, Inc.	
CLERK'S CERTIFICATE OF MAILING/ ELECTRONIC SERVICE	CASE NUMBER: 30-2019-01073154-CU-BT-CXC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 11/21/19, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on November 21, 2019, at 3:00:44 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: /s/ A. Pagunsan , Deputy

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 11/21/2019

TIME: 02:53:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Glenda Sanders

CLERK: Antero Pagunsan

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Carolyn J Reza

CASE NO: **30-2019-01073154-CU-BT-CXC**

CASE INIT.DATE: 05/30/2019

CASE TITLE: **Maldonado vs. Fast Auto Loans, Inc.**

CASE CATEGORY: Civil – Unlimited

CASE TYPE: Business Tort

EVENT ID/DOCUMENT ID: 73173556

EVENT TYPE: Chambers Work - Submitted Matter

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 11/15/2019 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court adopts the posted tentative as the final ruling, as follows:

Defendant Fast Auto Loans Inc.'s Motion to Compel Arbitration

In this action, Plaintiffs assert that Defendant charged unconscionable and illegal interest rates in violation of Cal. Fin. Code §§ 22302 & 22303 and CCP § 1670.5. They also allege that Defendant issued the loans without an active lender's license and, further, made untrue representations regarding the loans. Based on their allegations, Plaintiffs allege claims under California's Unfair Competition Law and California's Legal Remedies Act. As one of the requested remedies, Plaintiffs seek public injunctive relief. *Complaint, ¶¶ 2, 82, 84, 86, 89-91 and Prayer for Relief.*

By its motion, Defendant seeks to compel arbitration of the claims pursuant to an arbitration provision included in the "Loan Agreement[s] and Promissory Note[s]" signed by the Plaintiffs.

The arbitration provision (¶ 14 or ¶ 16, depending upon the year of the agreement) includes a class action waiver (¶ 14(h) or 16(h)) which reads, in pertinent part:

> Notwithstanding any other provision of this Agreement, if either you or we elect to arbitrate a Claim, neither you nor we will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or a class member; or (b) to join or consolidate Claims with claims of any other persons (thus, Claims brought by or against one Borrower (or Co-Borrower) may not be joined or consolidated in the arbitration with Claims brought by or against any other borrower who

> obtained a different loan agreement). ***No arbitrator shall have authority to conduct any arbitration in violation of this provision or to issue any relief that applies to any person or entity other than you and/or us individually. . . .*** **The parties acknowledge that the *Class Action Waiver is material and essential in the arbitration of any disputes between them and is non-severable from this Arbitration Provision.*** If the Class Action Waiver is limited, voided or found unenforceable, [then] this Arbitration Provision (except for this sentence) shall be null and void with respect [to such] proceeding, subject to the right to appeal the [limitation] or invalidation of the Class Action Wavier. The parties acknowledge and agree that under no circumstances will a class action be arbitrated."

(Emphasis added).

[The portions in brackets are illegible in the agreements in which the provision appears at ¶ 16(h) due to the inclusion of hole punches in those documents but are legible in those agreements in which the provision appears at ¶ 14(h). As the language is otherwise identical between the two types of agreements, the Court presumes that the bracketed language is included in all agreements.]

Because the arbitration provision purports to prohibit the issuance of relief to "any person or entity" other than the individual borrower, it is unenforceable under California law. *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945.

The *McGill* court began its ruling with the following simple statement:

> In previous decisions, this court has said that the statutory remedies available for a violation of the Consumers Legal Remedies Act, the unfair competition law, and the false advertising law include public injunctive relief, *i.e.*, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public. The question we address in this case is the validity of a provision in a predispute arbitration agreement that waives the right to seek this statutory remedy in any forum. We hold that such a provision is contrary to California public policy and is thus unenforceable under California law. We further hold that the Federal Arbitration Act does not preempt this rule of California law or require enforcement of the waiver provision.

McGill, 2 Cal.5th at 921-952 (internal citations omitted).

As the court explained: "[a]ny one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." *See also Mejia v. Merchants Building Maintenance, LLC* (2019) 38 Cal.App.5th 723, 739-740

The offending provision cannot be severed under the terms of the arbitration provision which states: "If the Class Action Waiver is limited, void or found unenforceable, then this Arbitration Provision (except for this sentence) shall be null and void with respect to

such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver." *Id.*

Moving party attempts to distinguish *McGill* from the facts of this case. The court is unpersuaded by its arguments. *McGill* is directly on point.

The arbitration provision is invalid under California law and cannot be enforced. Defendant's motion to compel arbitration is **denied.**

The Court sets a Status Conference for 01/21/2020 at 01:30 PM in this department.

Parties shall file a joint status conference memorandum five (5) court days prior to the hearing.

Court orders clerk to give notice.

APPENDIX C

IN THE SUPREME COURT OF CALIFORNIA
En Banc

[Filed April 28, 2021]

S267681

JOE MALDONADO *et al.*,

Plaintiffs and Respondents,

v.

FAST AUTO LOANS, INC.,

Defendant and Appellant.

Court of Appeal, Fourth Appellate District,
Division Three

No. G058645

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX D

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF ORANGE

[E-Filed 07/03/2019]

Case No. 30-2019-01073154-CU-BT-CXC

JOE MALDONADO, ALFREDO MENDEZ, J. PETER TUMA, JONABETTE MICHELLE TUMA, ROBERTO MATEOS SALMERON, Individually and On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FAST AUTO LOANS, INC. DBA RPM LENDERS, a California Corporation; and DOES 1 through 300, Inclusive

Defendants.

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW (CAL. BUS. PROF. CODE SECTIONS 17200, *et seq.*)
2. VIOLATIONS OF CALIFORNIA'S LEGAL REMEDIES ACT

JURY TRIAL DEMANDED

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Attorneys for Plaintiffs Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette Michelle Tuma, and Roberto Mateos Salmeron

I. INTRODUCTION

1. Plaintiffs JOE MALDONADO, ALFREDO MENDEZ, J. PETER TUMA, JONABETTE MICHELLE TUMA, ROBERTO MATEOS SALMERON (hereinafter referred to as "Plaintiffs"), individually and on behalf of all other similarly situated, bring this class action against FAST AUTO LOANS, INC. doing business as RPM Lenders and DOES 1 through 300 (hereinafter referred to as "Fast Auto Loans" or "Defendant") to seek recompense for themselves and all other similarly-situated California consumers who take out personal loans from Defendant.

2. Defendant's business model is to charge exorbitantly high, usurious, and unconscionable interest rates, in direct violation of California law. Plaintiffs seek disgorgement of ill-gotten profits, statutory damages, punitive damages, public injunctive relief, and attorney's fees and costs.

3. Plaintiffs make these allegations on information and belief, with the exception of those allegations that pertain to Plaintiffs, or to Plaintiffs' Counsel, which Plaintiffs alleges on personal knowledge.

4. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives, and insurers of Defendant.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, section 10, because this case is a cause not given by statute or other trial courts. The monetary damages sought by Plaintiffs total in excess of this Court's jurisdictional minimum. Defendant is subject to personal jurisdiction in this State.

6. Venue is proper in this Court because the actions at issue occurred in Orange County. Venue is proper in this Court under California Bus. & Prof. Code section 17203 and Code of Civil Procedure sections 395(a) and 395.5 because Defendant does business in the State of California and in the County of Orange County. Plaintiffs also reside within Orange County. The unlawful acts alleged occurred within Orange County have a direct effect on Plaintiffs and others similarly situated within the State of California and Orange County.

III. PARTIES

7. Plaintiffs and those similarly situated are and at all times mentioned herein were individual citizens and residents of the United States of America, State of California.

8. Plaintiff Joe Maldonado is, and all times mentioned herein was, an individual citizen and resident of the State of California.

9. Plaintiff Alfredo Mendez is, and all times mentioned herein was, an individual citizen and resident of the State of California.

10. Plaintiff J. Peter Tuma is, and all times mentioned herein was, an individual citizen and resident of the State of California.

11. Plaintiff Jonabette Michelle Tuma is, and all times mentioned herein was, an individual citizen and resident of the State of California.

12. Plaintiff Roberto Mateos Salmeron is, and all times mentioned herein was, an individual citizen and resident of the State of California.

13. Defendant Fast Auto Loans is a California Corporation registered to do business in California. Defendant operates more than 100 locations throughout California. On information and belief, Defendant did not designate a principal place of business in the state of California in its filings with the Secretary of State

14. Defendant Fast Auto Loan's primary business is offering short-term loans across the nation to low income borrowers with extreme and unconscionable interest rates, at times as high as 180% APR.

15. Lenders like Defendant are required by the California Department of Corporations to be licensed as a California Finance Lender subject to the Cal. Fin. Code sections 22000, *et seq*. However, the Finance Lender's License under which the loans issued herein has been inactive at all relevant times. As a result, Defendant was not exempt from California laws prohibiting usurious interest rates, including but not limited to Cal. Const. Art. XV section 1.

16. Plaintiffs are unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged of Defendants sued as DOES 1 through 300, but are informed and believe and based on that allege the DOE Defendants are legally responsible for the wrongful conduct alleged, and sue these Defendants by such fictitious names. Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

17. Plaintiffs are informed and believe and based thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributed to the other Defendants.

IV. GENERAL ALLEGATIONS

18. Defendant Fast Auto Loans lends to consumers, including to California consumers, who are in immediate need of cash, at times for emergencies or to make ends meet and have limited credit opportunities. Fast Auto Loans provides funding to these consumers subject to loan terms that most consumers are unable to repay in full or which impose such exorbitant interest rates and penalties that it causes

the consumer to pay late, re-borrow, and/or default on other financial obligations. The result of this practice is that the vast majority of the loans made by Defendant Fast Auto Loans are essentially "interest only" loans and/or subject to default and additional penalties.

19. Defendant Fast Auto Loan's business model is to charge usurious interest rates so that most consumers are locked into loans they cannot afford to repay. Consumers are forced to default on their obligations to Fast Auto Loans, or default in other financial areas, or forced to roll over or re-borrow additional loans from Fast Auto Loans at dire and unconscionable interest rates. Consumers are locked in a vicious cycle of repaying many times the face value of the loan without significantly reducing the principal balance owed.

20. Fast Auto Loan's practices include requiring clients to secure the loans with their personal vehicles. Often times, Fast Auto Loan will provide a loan for an amount which exceeds to value of the car in order to induce the client to agree to the loan all the while knowing that the client cannot afford to repay this amount. Fast Auto Loans offers loans in excess of the amount requested or makes representations about the loan which are simply not true. For example, Defendant Fast Auto Loan will state that a client qualified for a "signature loan," while in fact, there is no such thing as a "signature loans." These practices serve the ultimate goal of Fast Auto Loan, which is to keep clients locked in contracts in perpetuity so Fast Auto Loans can reap the benefits of usurious and essentially unlimited interest rates for as long as possible because consumers will keep paying without hope of ever reducing the principal balance owed.

21. When the clients attempt to repay or reduce their principle or request a modification on their loans, Fast Auto Loans lures its clients into refinancing or modifying their current loans under the guise of providing better terms and/or interest rates. Fast Auto Loans does not actually offer them better terms but utilizes these situations as ruse to lure clients into signing contracts containing egregiously high interest rates. For example, Fast Auto Loans tells its clients that they qualify for certain specialized rates when there is no set of qualifications. The only standard is to maximize the amount and duration of interest Fast Auto Loans can continue to impose on its clients.

22. Defendant Fast Auto Loans' pernicious loan terms create a scenario where most consumers take out a loan in times of emergency or financial stress only to find later that the loan is unable to be repaid within any reasonable time period or payment of which impairs their ability to comply with other financial obligations, resulting in the need to re-borrow. In many cases, consumers are unable to simply avoid default. As the loans progresses, Fast Auto Loans reaps significant profits from its exorbitant interest and fees, while consumers are unable to tangibly decrease the principal balance, or are forced to take out additional loans at usurious rates. Once consumers fall into default, Fast Auto Loans compounds its profits by adding default interest and penalties.

JOE MALDONADO

23. On September 14, 2018, Plaintiff Joe Maldonado entered into an unsecured Loan Agreement and Promissory Note with an APR of 159.09%. The total finance charge for the principal balance of $2,819.65 amounted to $2,727.29, for a grand total of $5,546.95.

The loan also imposed an additional $10-15 penalty for each late payment.

24. On November 30, 2018, Plaintiff Joe Maldonado entered into an unsecured Loan Agreement and Promissory Notes with an APR of 158.66%. The total finance charge for the principal balance of $3,019.86 amounted to $3013.75, for a total of $6,033.60. The contract also imposed an additional $10-15 penalty for each late payment. Plaintiff Joe Maldonado exercised his right to opt out of the arbitration provision contained within the November 30, 2018 Loan Agreement and Promissory Note.

25. On April 24, 2019, Plaintiff Joe Maldonado entered into an unsecured Loan Agreement and Promissory Notes with an APR of 159.09%. The total finance charge for the principal balance of $3,044.60 amounted to $4,696.04, for a total of $7,739.64. The contract also imposed an additional $10-15 penalty for each late payment. Plaintiff Joe Maldonado exercised his right to opt out of the arbitration provision contained within the April 24, 2019 Loan Agreement and Promissory Note.

26. Plaintiff Joe Maldonado made at least one payment on each of these loans to Fast Auto Loans, and therefore incurred actual financial losses due the exorbitant and unlawful interest rates charged by Fast Auto Loans. Plaintiff Joe Maldonado also exercised his right to opt out of the arbitration provision contained within the Loan Agreement and Promissory Note.

ALFREDO MENDEZ

27. On April 7, 2017, Plaintiff Alfredo Mendez entered into a Loan Agreement, Promissory Note, and Security Agreement where he put up his car as secu-

rity. The loan agreement with Defendant had APR of 180.06%. The total finance charge for the principal loan amount of $2,595.00 amounted to $3,278.01 for a total of $5,873.01. The loan agreement also imposed additional $10-15 penalties for each late payment.

28. On May 6, 2017, Plaintiff Alfredo Mendez entered into a Loan Agreement, Promissory Note, and Security Agreement to refinance his previous loan containing a balance of $2,629.11, and where he again put up his car as collateral. The loan agreement with Defendant had an APR of 174.70%. The total finance charge for the principal amount of $2,629.11 was $6,922.55 for a total of $9,551.66. The loan agreement also imposed additional $10-15 penalties for each late payment.

29. Plaintiff Alfredo Mendez made at least one payment on each of these loans to Fast Auto Loans, and therefore incurred actual financial losses due the exorbitant and unlawful interest rates charged by Fast Auto Loans.

J. PETER TUMA (and co-borrower JONABETTE TUMA)

30. On August 2, 2016, Plaintiff J. Peter Tuma entered into a Loan Agreement, Promissory Note, and Security Agreement where he put his car up as collateral for a loan. The loan agreement with Defendant had an APR of 98.52%. The finance charge for the principal amount of $4,015.00 amounted to $4,702.15, for a total amount of $8,786.70. The loan agreement also imposed additional $10-15 penalties for each late payment.

31. On May 10, 2016, Plaintiff J. Peter Tuma entered into a Loan Agreement, Promissory Note, and Security Agreement to refinance his previous loan and

where he again put up his car as collateral. The loan agreement with Defendant had an APR of 102.64%. The total finance charge for the principal loan amount of $3,327.74 amounted to $4,702.15 for a total of $8,029.89. The loan agreement also imposed an additional $10-15 penalty for each late payment.

32. Plaintiff J. Peter Tuma made at least one payment on each of these loans to Fast Auto Loans, and therefore incurred actual financial losses due the exorbitant and unlawful interest rates charged by Fast Auto Loans.

JONABETTE TUMA (and co-borrower J. PETER TUMA)

33. On June 27, 2015, Plaintiff Jonabette Tuma entered into a secured Loan Agreement, Promissory Note, and Security Agreement. She put up her car up as collateral. The loan agreement with Defendant had an APR of 84.23%. The total finance charge for the principal amount of $7,035.30 amounted to $7,711.31 for a total of $14,746.61. The loan agreement also imposed additional $10-15 penalties for each late payment.

34. On July 29, 2017, Plaintiff Jonabette Tuma entered into a Loan Agreement, Promissory Note, and Security Agreement and she again put up her car as security. The loan agreement with Defendant had an APR of 84.48%. The total finance charge amounted for the principal loan amount of $12,115.53 was $17,039.65 for a total of $29,155.18. The loan agreement also imposed an additional $10-15 penalty for each late payment.

35. On August 5, 2017, Plaintiff Jonabette Tuma entered into a Loan Agreement, Promissory Note, and Security Agreement and she again put up her car as

collateral. The Loan Agreement with Defendant had an APR of 83.81%. The total finance charge for the principal loan amount of $14,998.53 amounted to $26,892.21 for a total of $41,893.74. The loan agreement also imposed an additional $10-15 penalty for each late payment.

36. On January 31, 2018, Plaintiff Jonabette Tuma entered into a Loan Agreement, Promissory Note, and Security Agreement and she again put up her car as collateral for a loan. The loan agreement with Defendant had an APR of 83.49%. The total finance charge for the principal loan amount of $14,559.30 amounted to $15,348.31 for a total of $29,907.61.

37. On April 27, 2018, Plaintiff Jonabette Tuma entered into a Loan Agreement, Promissory Note, and Security Agreement and she again put up her car as collateral for a loan. The loan agreement with Defendant had an APR of 85.67%. The total finance charge for the principal loan amount of $16,069.50 amounted to $17,619.66 for a total of $33,689.16. The loan agreement also imposed an additional $10-15 penalty for each late payment.

38. Plaintiff Jonabette Tuma made at least one payment on each of these loans to Fast Auto Loans, and therefore incurred actual financial losses due the exorbitant and unlawful interest rates charged by Fast Auto Loans.

ROBERTO MATEOS SALMERON

39. On May 31, 2016, Plaintiff Roberto Salmeron entered into a Loan Agreement, Promissory Note, and Security Agreement where he put up his car as collateral for a loan. The loan agreement with Defendant had an APR of 122.08%. The total finance charge for the principal loan amount of $2,516.00 amounted to

$6,989.49 for a total of $9,505.49. The loan agreement also imposed an additional $10-15 penalty for each late payment.

40. On November 28, 2016, Plaintiff Roberto Salmeron entered into a Loan Agreement, Promissory Note, and Security Agreement to refinance his previous loan. He again put up his car as collateral for a loan. The loan agreement with Defendant had an APR of 118.57%. The total finance charge for the principal loan amount of $5,522.36 amounted to $5,899.92 for a total amount of $11,422.18. The loan agreement also imposed additional $10-15 penalties for each late payment.

41. On May 5, 2017, Plaintiff Roberto Salmeron entered into a Loan Agreement, Promissory Note, and Security Agreement. He again put up his car as collateral for a loan. The loan agreement with Defendant had an APR of 119.85%. The total finance charge for a principal loan amount of $4,966.18 amounted to $7,702.88 for a total amount of $12,669.06. The loan agreement also imposed additional $10-15 penalties for each late payment.

42. On January 23, 2018, Plaintiff Roberto Salmeron entered into a Loan Agreement, Promissory Note, and Security Agreement to refinance his previous loan which remained at $4,966.18. He again put up his car as collateral. The loan agreement with Defendant had an APR of 113.62%. The total finance charge for the principal loan amount of $4,966.18 amounted to $7,771.42 for a total of $12,737.60. The loan agreement also imposed additional $10-15 penalties for each late payment.

43. Plaintiff Roberto Salmeron made at least one payment on each of these loans to Fast Auto Loans,

and therefore incurred actual financial losses due the exorbitant, unconscionable and unlawful interest rates charged by Fast Auto Loans.

44. Fast Auto Loans has a common policy and practice of offering loans with similar terms and provisions as Plaintiffs and to other California consumers.

45. The loan agreement was a consumer contract of adhesion under applicable California and Federal Law. Fast Auto Loans, the party in a position of superior bargaining strength, drafted the agreement and imposed upon Plaintiffs and members of the Class without the opportunity to negotiate any terms. The loan agreements presented to Plaintiffs and the members of the Class were presented on a "take it or leave it" basis. Plaintiffs and the similarly-situated members of the class have zero bargaining power or power to negotiate with regards to any transactions with Fast Auto Loans.

46. Fast Auto Loans knowingly and intentionally made the terms of the loan agreements so onerous that Plaintiffs and members of the Class would be beyond any reasonable ability to repay the amount borrowed.

47. Fast Auto Loans presented the terms of the loan agreements to Plaintiffs rapidly without any actual or reasonable opportunity for review. The loan agreement documents were only provided to Plaintiffs upon the final signing. A reasonable consumer in a similar situation would not understand the interest and penalty provisions by virtue of the method Fast Auto Loans uses to present the information.

48. Plaintiffs did not see, recognize, or understand the terms of the loan agreement documents. A reasonable consumer would similarly not understand the terms, as the business practice of Fast Auto Loans is

to present the information in a deceptive and rapid manner that is intended to disguise the terms of the loans.

49. On information and belief, the terms and conditions of the loans and payments contained within the loan agreement documents described herein and presented to Plaintiffs are similar to the terms and conditions offered to all members of the Class. As alleged herein, Fast Auto Loans institutes a common policy and practice of offering usurious rates for short terms loans of more than $2,500 to Plaintiffs and other similarly-situated Class Members.

V. CLASS ACTION ALLEGATIONS

50. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth.

51. Plaintiffs and the members of the Class have all suffered an injury in fact as a result of the Defendant's unlawful conduct described herein.

52. The "Class Period" means 48 months prior to the filing of the Complaint in this action.

53. Plaintiffs bring this lawsuit on behalf of themselves and other similarly-situated individuals pursuant to Code of Civil Procedure section 382. Subject to additional information obtained through further investigation and/or discovery, the proposed class ("the Unconscionable Rates Class") consists of

> All persons who obtained loans in the State of California in an amount more than $2,500.00 from Defendant Fast Auto Loans within the 48 months preceding the filing of this Complaint, wherein the annual percent-

age rate ("APR") of interest on said loans exceeded 80 percent.

54. Plaintiff also seeks to represent a proposed class ("the Auto Title Loan Class") consisting of:

> All persons who obtained loans in the State of California in an amount more than $2,500.00 from Defendant Fast Auto Loans and which were secured by an automobile title within the 48 months preceding the filing of this Complaint, wherein the annual percentage rate ("APR") of interest on said loans exceeded 80 percent.

55. Plaintiffs reserve the right under California Rules of Court, Rule 3.765(b) and other applicable law to amend or modify the class definitions with respect to issues or in any other ways. Plaintiffs are the Named Representatives and are members of the Classes. Plaintiffs seek class-wide recovery based on the allegations set forth in the complaint. The Court can define the Classes and create additional sub-classes as may be necessary or desirable to adjudicate common issues and claims of the Class Members if, based on discovery of additional facts, the need arises.

56. **Ascertainability.** The members of the Classes are readily ascertainable from Defendant's records of loans issued in the 48 months preceding this filing, and the specific terms and parties identified therein.

57. **Numerosity.** The members of the Classes are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believe, and on that basis allege, that the proposed Classes consist of tens of thousands of members, or more.

58. **Existence and Predominance of Common Questions of Law and Fact.** Common questions of law and fact exist as to all members of the Classes and predominate over any questions affecting only individual Class Members. All members of the Classes have been subject to the same conduct and their claims are based on the widespread dissemination of the unlawful, deceptive, and pernicious conduct by Defendant. The common legal and factual questions include, but are not limited to, the following:

a the nature, scope, and operations of the wrongful practices of Defendant;

b whether Defendant engaged in a course of unfair, unlawful, fraudulent, and/or pernicious conduct in its lending and loan practices;

c whether Defendant knew or should have known that its business practices were unfair, and/or unlawful;

d. whether Defendant owed a duty of care to Plaintiffs and the Classes;

e. whether Defendant's loan products' interest rates were so high that they were unreasonable and/or violated California law and/or public policy;

f. whether Defendant harmed Plaintiffs and the Classes; and

g. whether Defendant was unjustly enriched by its unlawful and unfair business practices.

59. ***Typicality.*** Plaintiffs' claims are typical of the claims of the members of the Classes in that each Plaintiff is a member of the Unconscionable Rates

Class. Plaintiffs Alfredo Mendez, J. Peter Tuma, Jonabette Tuma, and Roberto Salmeron are each a member of the Auto Title Loan Class that they seek to represent. Plaintiffs, like members of the proposed Classes, were induced by Defendant Fast Auto Loans to take out a loan with unfair, unlawful, and objectively oppressive terms.

60. ***Adequacy of Representation.*** Plaintiffs will fairly and adequately protect the interests of the members of the Classes. Plaintiffs have no adverse or antagonistic interests to those of the Classes, and will fairly and adequately protect the interests of the Classes. Plaintiffs have retained counsel experienced in consumer protection law, including class actions. Plaintiffs' attorneys are aware of no interests adverse or antagonistic to those of Plaintiffs and the proposed Classes.

61. ***Superiority.*** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. Individualized litigation would create the danger of inconsistent and/or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the courts and the issues raised by this action. The damages or other financial detriment suffered by individual Class Members may be relatively small compared to the burden and expense that would be entailed by individual litigation of the claims against the Defendant. The injury suffered by each individual member of the proposed Classes is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the proposed Classes to individually

redress effectively the wrongs to them. Even if the members of the proposed Classes could afford such litigation, the Court system could not. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, Class treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently and without unnecessary duplication of effort and expense that numerous individual actions would require. The class action device presents far fewer management difficulties, and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Furthermore, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

62. Unless the Classes are certified, Defendant will continue the unlawful, unfair, and predatory lending practices as described herein. If the Classes are certified, the harms to the public and the Classes can be easily rectified.

63. Furthermore, Defendant has acted or refused to act on grounds that are generally applicable to the Classes so that declaratory and injunctive relief is appropriate to the Classes as a whole, making class certification appropriate.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violations of California's Unfair Competition Law
[Cal. Bus. & Prof. Code §§ 17200, *et seq*.]
(Alleged by Plaintiffs individually and on behalf of the Unconscionable Rates and Auto Title Loan Classes against all Defendants)

64. Plaintiffs re-allege and incorporate the preceding paragraphs as if set forth in full herein.

65. Plaintiffs and Defendant are each "person(s)" as that term is defined by Cal. Bus. & Prof. Code section 17201. Cal. Bus & Prof. Code section 17204 authorizes a private right of action on both an individual and representative basis.

66. Cal. Bus. & Prof. Code section 17204, a provision of the Unfair Competition Law (Bus. & Prof. Code sections 17200-17209), confers standing to prosecute actions for relief not only on the public officials named therein, but on private individuals, i.e., "any person acting for the interests of itself, its members or the general public." Thus, a private Plaintiff who has suffered a financial injury may sue to obtain relief for others.

67. "Unfair competition" is defined by Bus. & Prof. Code section 17200 as encompassing several types of business "wrongs," including: (1) an "unlawful" business act or practice, (2) an "unfair" business act or practice, (3) a "fraudulent" business act or practice, and (4) "unfair, deceptive, untrue or misleading advertising." The definitions in Section 17200 are drafted in the disjunctive, meaning that each of these "wrongs" operates independently from the others.

A. *"Unlawful" Prong*

68. By knowingly and intentionally issuing loans at interest rates that are unconscionable and objectively unreasonable and prohibited by statute, Defendant Fast Auto Loans has routinely engaged in unlawful business practices.

69. The lending practices described herein by Defendant Fast Auto Loans violate Cal. Fin. Code sections 22302 and 22303, and Cal. Civ. Code section 1670.5; *De La Torre v. Cashcall, Inc*. (2018) 5 Cal.5th 966, 973; *Perdue v. Crocker National Bank* (1985) 28 Cal.3d 913, 926.

70. Because Defendant Fast Auto Loans' business entailed violations of both Cal. Fin. Code sections 22302-22303 and/or Cal. Code section 1670.5, Defendant Fast Auto Loans violated California's Unfair Competition Law, Bus. & Prof. Code sections 17200, *et seq*., which provides a cause of action for an "unlawful" business act or practice perpetrated on consumers.

71. Defendant Fast Auto Loans violated Cal. Bus. & Prof. Code sections 17200, *et seq*. through unfair, unlawful, and deceptive business practices. Defendant Fast Auto Loans violated California's Unfair Competition Law, Bus. & Prof. Code sections 17200, *et seq*., which provides a cause of action for an "unlawful" business acts or practices perpetrated on consumers.

72. Defendant Fast Auto Loans had other reasonably available alternatives to further its legitimate business interests, other than the conduct described herein, including continuing its massive campaign to provide loans to consumers at unreasonably high interest rates designed to perpetrate default and a cycle of perpetual payments.

73. Defendant Fast Auto Loans further failed to maintain an active and lawful California Financial Lenders licenses as required by law. It knowingly and unlawfully entered into loans described herein with Plaintiffs and others similarly situated with an inactive lender's license, thereby engaging in an unlawful and unfair business practice.

74. Plaintiffs each suffered actual monetary financial injury in that their payments made to Defendant were for amounts much higher than they would have been but for Defendant's unlawful interest rates charged to Plaintiffs.

75. Plaintiffs reserve the right to allege further conduct that constitutes other unfair business acts or practices. Such conduct is ongoing and continues to this date.

B. *"Unfair" Prong*

76. Defendant Fast Auto Loans' actions and representations constitute an "unfair" business act or practice under sections 17200 in that Defendant's conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.

77. Without limitation, the business practices describe herein are "unfair" and shock the conscience because they offend established public policy, violate California statutory protections, and are objectively immoral, unethical, unconscionable, oppressive, unscrupulous and/or substantially injurious to consumers in that Defendant's conduct caused Plaintiffs and the Class Members to incur debts as a result of an unlawfully charged interest rate.

78. At a date presently unknown to Plaintiffs, but at least four years prior to the filing of this action, and as set forth above, Defendant committed acts of unfair competition as defined by Cal. Bus. & Prof. Code sections 17200, *et seq*., as described herein.

79. Defendant could and should have furthered its legitimate business interests by not perpetrating fraud on the entire representative class of California borrowers by charging an unlawful interest rate. Plaintiffs and other members of the Classes could not have reasonably avoided the injury suffered by each of them.

80. Plaintiffs reserve the right to allege further conduct that constitutes other unfair business acts or practices. Such conduct is ongoing and continues to this date.

SECOND CAUSE OF ACTION
Injunctive Relief and Damages for Violations
of the Consumer Legal Remedies Act
[Cal. Civil Code §§ 1750, *et seq*.]
(Alleged by Plaintiffs individually and on behalf
of the Unconscionable Rates and Auto
Title Loan Classes against all Defendants)

81. Plaintiffs re-allege and incorporate the preceding paragraphs as if set forth in full herein.

82. Concurrently with filing this proposed Class Action Complaint, Plaintiffs delivered Notice to Defendant as required under California's Consumer Legal Remedies Act ("CLRA"), Civil Code section 1782, outlining the claims and allegations of this Complaint (see Exhibit 1 attached hereto). Plaintiffs' Notice demanded that Defendant cease and desist all unlawful loan practices to any and all of Defendant's clients and to refund all unlawful amounts of interest

paid. The Notice demanded that all consumers subject to unconscionable and usurious loan rates described herein be identified and provided with restitution.

83. California Civil Code section 1770(a) provides in pertinent part:

> "(a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful:
>
> (14) Representing that a transaction confers or invo1ves rights, remedies, or obligations that it does not have or invo1ve, or that are prohibited by law.
>
> . . . . . .
>
> (19) Inserting an unconscionable provision in the contract."

84. Plaintiffs are informed and believe, and based thereon allege, that the conduct of Defendant is systematic and continuous, and continues to harm consumers who may be unaware that Defendant subjects them to unconscionable loan provisions, including unconscionable and usurious loan rates which are prohibited by law.

85. Plaintiffs allege that Defendant's conduct violates the subdivisions of Civil Code section 1770 as alleged above and is unlawful.

86. Plaintiffs and all consumers who unwittingly subject to Defendant's unlawful loan practices are suffering and have suffered financial and other economic harm, and continue to do so since as of the date

of this Complaint, Defendant still continues to provide unlawful and usurious loan interest rates.

87. Furthermore, Defendant at all times relevant did not have a lawful financial lenders license. Defendant still continues to provide unlawful and usurious loans despite not having a valid Financial Lenders License.

88. Plaintiffs are informed and believe the harms are continuous and ongoing and are injurious to the public and consumers, and that said harms are as a direct legal result and caused by Defendant's nefarious and unlawful conduct as herein alleged.

89. Since giving Notice in **Exhibit 1**, based on Plaintiffs' knowledge, information, and belief, there has been no compliance, or any effort by any Defendant to comply with Cal. Civil Code sections 1782(b) and/or (c). As a consequence, amendment of the initial Complaint is permitted as a matter of right.

90. At present, no remedy has been provided and absent Court action to enjoin said practices, Plaintiffs are informed and believe the unlawful conduct will continue.

91. At the appropriate time, Plaintiffs will seek an order from the Court requiring Defendant to cease and desist its unlawful practices.

92. Defendant was provided legal notice of claim as shown in **Exhibit 1**, by letter dated May 29, 2019. More than 30 days have elapsed and no notice of cease and desist, cure, remedy, and/or notice and restitution as outlined by Civil Code section 1782(b) has been provided since the date of the May 29, 2019 Notice. Based on that Notice, and *Morgan v. AT&T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1260,

Plaintiffs amend the Complaint to add claims for actual damages, statutory damages, restitution, and treble damages to the extent permitted by the CLRA and Civil Code sections 1780(a)(1)-(5).

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

a. That this action be certified as a Class Action, Plaintiffs be appointed as the representatives of the Classes, and Plaintiffs' attorneys be appointed Class counsel;

b. That Defendant's wrongful conduct alleged herein be adjudged and decreed to violate the consumer protection statutory claims asserted herein;

c. A temporary, preliminary, and/or permanent order for injunctive relief requiring Defendant to: (i) cease charging an unlawful interest rate on its loans exceeding $2,500; (ii) and institute corrective advertising and provide written notice to the public of the unlawfully charged interest rate on prior loans;

d. An order requiring imposition of a constructive trust and/or disgorgement of Defendant's ill-gotten gains and to pay restitution to Plaintiffs and all members of the Classes and, also, to restore to Plaintiffs and members of the Classes all funds acquired by means of any act or practice declared by this court to be an unlawful, fraudulent, or unfair business act or practice, in violation of laws, statutes or regulations, or constituting unfair competition;

e. Distribution of any monies recovered on behalf of members of the Classes via fluid recovery or *cy pres* recovery where necessary and as applicable, to pre-

vent Defendant from retaining the benefits of its wrongful conduct;

f. Awarding costs necessary to perform an accounting and/or administration costs for distribution of restitution to the proposed class;

g. Prejudgment and post judgment interest;

h. For actual damages, restitution, statutory damages, and treble damages to the extent permitted by Cal. Civil Code sections 1780(a)(1)-(5), in an amount according to proof;

i. Exemplary and/or punitive damages for intentional misrepresentations pursuant to, *inter alia*, Cal. Civ. Code section 3294;

j. Costs of this suit;

k. Reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil Procedure section 1021.5;

l. Public injunctive relief through the role as a Private Attorneys General prohibiting Defendant Fast Auto Loans from future violations of the aforementioned unlawful and unfair practices, pursuant to Cal. Bus. & Prof. Code section 17204; and

m. Awarding any and all other relief that this Court deems necessary, just, equitable, and proper.

Dated: July 3, 2019

COHELAN KHOURY & SINGER

By: /s/ Kristina De La Rosa
Kristina De La Rosa, Esq.
Attorneys for Plaintiffs Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette Michelle Tuma, Roberto Mateos Salmeron on behalf of themselves individually and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs demand jury trial for all claims so triable.

Dated: July 3, 2019

COHELAN KHOURY & SINGER

By: /s/ Kristina De La Rosa
Kristina De La Rosa, Esq.
Attorneys for Plaintiffs Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette Michelle Tuma, Roberto Mateos Salmeron on behalf of themselves individually and all others similarly situated

EXHIBIT 1

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(† Also admitted in Illinois)
(Δ Of Counsel)

May 29, 2019

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Fast Auto Loan, Inc.
8601 Dunwood Place,
Suite 406 Atlanta, GA 30350

Fast Auto Loan, Inc.
c/o CT Corporation, Agent
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Notice of Violation of the California Consumer Legal Remedies Act (California Civil Code sections 1750, *et seq.)*

Dear Fast Auto Loan, Inc. Representative:

On behalf of JOE MALDONADO, ALFREDO MENDEZ, J. PETER TUMA, JONABETTE MICHELLE TUMA, ROBERTO MATEOS SALMERON (hereinafter "Plaintiffs"), and all others similarly situated, this letter will notify Fast Auto Loans, Inc. ("Fast Auto") that it has violated the California Consumer Legal Remedies Act ("CLRA") by using methods or practices, or committing acts declared unlawful by Cal. Fin. Code sections 22302-22303 and California Civil Code section 1670.5 related to usurious interest rates in contracts for loans. If Fast Auto fails to respond to this notice within 30 days of the date of this letter, Plaintiff intends to file a complaint seeking damages under the CLRA, as well as other applicable state and federal laws.

STATEMENT OF VIOLATIONS

The unlawful acts committed by Fast Auto, in violation of the CLRA, include but are not limited to, inserting unconscionable provisions in contacts for loans of money in that interest rates for loans of money in excess of $2500 were at rates which violated of Cal. Fin. Code sections 22302-22303 and Cal. Civ. Code section 1670.5. Cal. Fin. Code section 22302 states:

> (a) Section 1670.5 of the Civil Code applies to the provisions of a loan contract that is subject to this division.
>
> (b) A loan found to be unconscionable pursuant to Section 1670.5 of the Civil Code shall be deemed to be in violation of this

> division and subject to the remedies specified in this division.

Cal. Fin. Code section 22303 sets the rates of interest a licensee is permitted to charge for loans of money up to $2,500:

> Every licensee who lends any sum of money may contract for and receive charges at a rate not exceeding the sum of the following:
>
> (a) Two and one-half percent per month on that part of the unpaid principal balance of any loan up to, including, but not in excess of two hundred twenty-five dollars ($225).
>
> (b) Two percent per month on that portion of the unpaid principal balance in excess of two hundred twenty-five dollars ($225) up to, including, but not in excess of nine hundred dollars ($900).
>
> (c) One and one-half percent per month on that part of the unpaid principal balance in excess of nine hundred dollars ($900) up to, including, but not in excess of one thousand six hundred fifty dollars ($1,650).
>
> (d) One percent per month on any remainder of such unpaid balance in excess of one thousand six hundred fifty dollars ($1,650).
>
> This section does not apply to any loan of a bona fide principal amount of two thousand five hundred dollars ($2,500) or more as determined in accordance with Section 22251.

Fast Auto violates the law by charging rates in excess of the amounts delineated above for sums of money loan in amounts greater than $2,500.00, including at rates higher than 80% APR. As a result, Fast Auto

violated the CLRA by inserting unconscionable provision in the contract for loans of money to each affected consumer in that the interest rates (including those rates higher than 80% APR) set in the contract were unlawful and unconscionable.

STATEMENT OF REMEDIES

Plaintiff demands Fast Auto remedy these violations within thirty days of this Notice by:

A. Identify or make reasonable attempts to identify all consumers who entered into a contract for an amount of money greater than $2,500 within the past four years and who were charged interest in excess of the amounts permitted by Cal. Fin. Code sections 22302-22303 and Cal. Civ. Code section 1670,5, including those contracts which were charged interest rates higher than 80% APR;

B. Notify all consumers described above that upon request, Fast Auto will refund all interest charged in excess of the rates set forth in Cal. Fin. Code sections 22302-22303 and Cal. Civ. Code section 1670.5, including those contracts which were charged interest rates higher than 80% APR;

C. In addition to the refund of all interest charged in excess of the rates set forth in Cal. Fin. Code sections 22302-22303 and Cal. Civ. Code section 1670.5 including those contracts which were charged interest rates higher than 80% APR, upon request, Fast Auto will pay interest at the legal rate on the excessive funds Fast Auto

deprived from all consumers as a result of its charging of usurious interest rates;

D. Notify all consumers described above that upon request and reasonable proof, Fast Auto will pay for all injuries or damages from the unlawful and usurious interest rates charged in excess of the rates set forth in Cal. Fin. Code sections 22302-22303 and Cal. Civ. Code section 1670.5, including those contracts which were charged interest rates higher than 80% APR;

E. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all affected consumers;

F. Immediately cease from charging unlawful interest rates above amounts provided in Cal. Fin Code to loans of money greater than $2,500, including interest at rates higher than 80% APR; and

G. Pay Plaintiffs' attorney's fees and costs.

Please direct all communications and responses regarding this notice to Plaintiffs' counsel:

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Thank you for your attention to this matter.

Very truly yours,

COHELAN KHOURY & SINGER

/s/ Kristina De La Rosa, Esq.
Kristina De La Rosa, Esq.

cc: Rodney Mesriani, Esq.

APPENDIX E

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

[E-Filed 3/17/2021]

S267681

JOE MALDONADO, ALFREDO MENDEZ, J. PETER TUMA, JONABETTE MICHELLE TUMA, ROBERT MATEOS SALMERON, Individually, and On Behalf of All Others Similarly Situated,

Plaintiffs-Respondents.

v.

FAST AUTO LOANS, INC.,

Defendant-Appellant.

AFTER DECISION BY THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION 3
No. G058645

FROM THE SUPERIOR COURT, COUNTY OF ORANGE
Case No. 30-2019-01073154-CU-BT-CXC

PETITION FOR REVIEW

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I. ISSUES PRESENTED FOR REVIEW

1. Can borrowers, who asserted class action claims for damages and private injunctive relief against their lender on behalf of themselves and similarly situated borrowers, also seek "public" injunctive relief within the meaning of *McGill v. Citibank, NA.,* 2 Cal. 5th 945, 393 P.3d 85 (Cal. 2017), where (a) they admit in their complaint that certification of the proposed classes will "easily rectif[y]" any harm to the public, and (b) their allegations of ongoing conduct and future harm are implausible given an intervening change in California law that now prohibits the loans in question?

2. Is *McGill* preempted by the Federal Arbitration Act ("FAA") given the U.S. Supreme Court's subsequent pronouncements that (a) arbitration agreements requiring "individualized" arbitration are "protect[ed] pretty absolutely" by the FAA, and (b) even if a state law defense applies equally to all contracts, it is preempted by the FAA if it interferes with the right to "individualized" arbitration?

II. INTRODUCTION

Defendant/Appellant Fast Auto Loans, Inc. ("FAL") respectfully submits this Petition for Review of the Court of Appeal's published Opinion affirming the trial court's denial of FAL's Motion to Compel Arbitration and Stay Action. Review is necessary under California Rule of Court 8.500(b)(1) to secure uniformity of decision and to settle important and unsettled questions of law concerning the application of *McGill* and FAA preemption.

III. STATEMENT OF THE CASE

On May 30, 2019, Plaintiffs-Respondents Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette Michelle Tuma, and Roberto Mateos Salmeron ("Respondents") – all of whom had obtained loans from FAL – filed a class action complaint against FAL on behalf of themselves and similarly situated borrowers in the Superior Court of Orange County, California. Respondents allege that the interest rates on their loans violate California law. On July 3, 2019, Respondents filed a First Amended Complaint ("FAC") asserting claims under the California Unfair Competition Law and the Consumer Legal Remedies Act. The FAC requests certification of two classes:

> (1) the "Unconscionable Rate Class," defined as [a]ll persons who obtained loans in [California] in an amount more than $2,500 from [FAL] within the 48 months preceding the filing of the Complaint, wherein the annual percentage rate ('APR') of interest on said loans exceeded 80 percent", and
>
> (2) the "Auto Title Loan Class," defined as [a]ll persons who obtained loans in [California] in an amount more than $2,500 from [FAL] and which were secured by an automobile title within the 48 months preceding the filing of the Complaint. wherein the annual percentage rate ('APR') of interest on said loans exceeded 80 percent."

[FAC ¶ 53,53]

The FAC prays for the following relief for Respondents and the putative class members:

> a. That this action be certified as a Class Action, Plaintiffs be appointed as the repre-

sentatives of the Classes, and Plaintiffs' attorneys be appointed Class counsel;

b. That Defendant's wrongful conduct alleged herein be adjudged and decreed to violate the consumer protection statutory claims asserted herein;

c. A temporary, preliminary, and/or permanent order for injunctive relief requiring Defendant to: (i) cease charging an unlawful interest rate on its loans exceeding $2,500; (ii) and institute corrective advertising and provide written notice to the public of the unlawfully charged interest rate on prior loans;

d. An order requiring imposition of a constructive trust and/or disgorgement of Defendant's ill-gotten gains and to pay restitution to Plaintiffs and all members of the Classes and, also, to restore to Plaintiffs and members of the Classes all funds acquired by means of any act or practice declared by this court to be an unlawful, fraudulent, or unfair business act or practice, in violation of laws, statutes or regulations, or constituting unfair competition;

e. Distribution of any monies recovered on behalf of members of the Classes via fluid recovery or *cy pres* recovery where necessary and as applicable, to prevent Defendant from retaining the benefits of its wrongful conduct;

f. Awarding costs necessary to perform an accounting and/or administration costs for distribution of restitution to the proposed class;

> g. Prejudgment and post judgment interest;
>
> h. For actual damages, restitution, statutory damages, and treble damages to the extent permitted by Cal. Civil Code sections 1780(a)(1)-(5), in an amount according to proof;
>
> i. Exemplary and/or punitive damages for intentional misrepresentations pursuant to, *inter alia,* Cal. Civ. Code section 3294;
>
> j. Costs of this suit;
>
> k. Reasonable attorneys' fees pursuant to, *inter alia,* California Code of Civil Procedure section 1021.5;
>
> l. Public injunctive relief through the role as a Private Attorneys General prohibiting Defendant Fast Auto Loans from future violations of the aforementioned unlawful and unfair practices, pursuant to Cal. Bus. & Prof. Code section 17204.

[FAC at 17-18] Other than subpart "l" of the Prayer for Relief, the 92-paragraph FAC refers to "public injunctive relief' only one other time, in paragraph 2 of the FAC. [FAC ¶ 2]

On August 26, 2019, pursuant to the arbitration provision in Respondents' loan agreements, FAL moved to compel individual arbitration and stay litigation pending the completion of arbitration. By Order dated November 21, 2019, the Superior Court denied FAL's motion to compel arbitration, finding that it was unenforceable under *McGill* and not preempted by the FAA. On December 6, 2019, FAL filed a Notice of Appeal with the California Court of Appeal, Fourth District. On January 11, 2021, the Court of Appeal

affirmed. *Maldonado v. Fast Auto Loans, Inc.,* 60 Cal. App. 5th 710 (Cal. Ct. App. Jan. 1 I, 2021).

FAL did not seek rehearing in the Court of Appeal. When issued, the Opinion was not designated for publication. On February 5, 2021, the Court of Appeal granted a request for publication filed by several consumer advocacy groups, finding that "[i]t appears that our opinion meets the standards set forth in California Rules of Court, rule 8.1105(c)." Feb. 5, 2021 Order, *Maldonado v. Fast Auto Loans Inc.,* 60 Cal. App. 5th 710 (Cal. Ct. App. Jan. 11, 2021) (No. G058645).

IV. ARGUMENT

A. REVIEW SHOULD BE GRANTED TO CLARIFY THE DISTINCTION BETWEEN "PRIVATE" AND "PUBLIC" INJUNCTIVE RELIEF – THE THRESHOLD QUESTION UNDER *MCGILL*

In *McGill,* this Court held that arbitration agreements that preclude a plaintiff from pursuing "public" injunctive relief in court or in arbitration are invalid under California law. However, as this Court recognized, there is a critical threshold question in each case regarding whether the plaintiff is actually seeking "public" injunctive relief. Under *McGill,* public injunctive relief has "the primary purpose and effect of" prohibiting "unlawful acts that threaten future injury to the general public." 2 Cal. 5th 955. By contrast, private injunctive relief has the primary purpose or effect of "redressing or preventing injury to an individual plaintiff – or to a group of individuals similarly situated to the plaintiff . . ." *Id*. Thus. *McGill* does not apply – and does not preclude enforcement of an arbitration agreement with a class action waiver – if the relief sought by the Respondents "by and large"

would benefit them or a group of similarly situated individuals, even if the public might benefit incidentally. *Id*.

Review should be granted to clarify where the line between "private" and "public" injunctive relief should be drawn under *McGill*. This is an issue of great importance because the answer dictates the forum in which the dispute will be resolved (court or arbitration), as well as who will be involved in the dispute (just the named parties or also class members and/or the general public). Moreover, it is an issue that affects numerous cases in addition to the present one. Since *McGill,* hundreds of public injunctive relief cases have been filed in California state and federal courts.[1] While many of these cases have noted *McGill's* distinction between public and private relief, no bright line has emerged, and the decisions are hard, if not impossible, to reconcile.

The present case exemplifies the need for guidance. In the courts below. Respondents contended that the arbitration provision in their loan agreements is unenforceable under *McGill* because it waives their right to seek "public injunctive relief' in any forum. However, FAL contended that *McGill* does not apply because the relief sought by Respondents is "private" since it would primarily benefit them and the putative class members, and any harm to the "public" would be merely incidental.

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[1] For example, between June 2017 and February 2020, 144 public injunctive relief lawsuits were brought by California consumers against banks, lenders, employers and other companies. *See AT&T Mobility LLC v. McArdle,* 584 F.3d 849 (9th Cir. Cal., 2009), petition for cert. filed, App. G (U.S. Feb. 26, 2020) (No. 19-1078). Since February 2020. public injunctive relief claims have continued to be filed.

FAL argued that the inapplicability of *McGill* is evident on the face of Respondents' FAC, which is replete with references to the putative classes and class members. Respondents seek to represent two "classes" of similarly situated individuals (the "Unconscionable Rate Class" and the "Auto Title Loan Class") who previously "obtained" loans from FAL. (*See* CT pp. 40-41, FAC ¶¶ 53-54) (underlining added). The opening paragraph of the FAC alleges that Respondents "seek recompense for themselves and all other similarly-situated California consumers who take out personal loans from [FAL]." CT p. 32 (FAC ¶ 1.) Both Counts One (UCL) and Two (CLRA) of the FAC are "[a]lleged by Plaintiffs individually and on behalf of the Unconscionable Rates and Auto Title Loan Classes . . . ." CT p. 26-29 (FAC, pp. 12, 15). *See also* CT pp. 22, 26, 28-29 (FAC ¶ 45 ("Plaintiffs and the similarly-situated members of the Class"); *id*. ¶ 46 ("Plaintiffs and members of the Class"); ¶ 49 ("Plaintiffs and other similarly-situated Class members"); ¶ 53 ("Plaintiffs bring this lawsuit on behalf of themselves and other similarly situated individuals"); ¶ 55 ("Plaintiffs seek class-wide recovery"): ¶ 55-65 ("Class Action Allegations"); ¶ 77 ("Defendant's conduct caused Plaintiffs and the Class members to incur debts"); ¶ 79 ("Plaintiffs and other members of the Class"). Most notably, the FAC avers that certification of the Unconscionable Rates and Auto Title Loan classes will easily rectify *all* of the alleged harm – both private *and* public – for which Respondents seek redress in this case:

> Unless the Classes are certified, Defendant will continue the unlawful, unfair, and predatory lending practices as described herein. *If the Classes are certified, the harms to the public and the classes can be easily rectified.*

CT p. 26 (FAC, ¶ 62) (emphasis added). This intense focus on obtaining relief for themselves and the similarly situated putative class members makes it clear that, "by and large," Respondents are seeking private, not public, relief. It is telling that dozens of paragraphs of the FAC reference Respondents and their alleged "Classes," while the term "public injunctive relief" is mentioned only twice – in paragraph 2 of the FAC and at the tail end of the Prayer for Relief.

But the fact that "public injunctive relief' was mentioned at all in the FAC was apparently enough to persuade the Court of Appeal that *McGill* was satisfied. While declaring "that we must follow the *McGill case*" [Op. at 14], the Court of Appeal set the bar so low that almost any complaint that uses the words "public injunctive relief" and contains a boilerplate allegation of "future wrongdoing" no matter how speculative and implausible, will suffice to pass the test – even where, as in this ease, the Respondents' own allegations overwhelmingly show that they *are primarily* seeking to benefit themselves and their similarly situated putative classes.[2]

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[2] Indeed, the "public injunctive relief" allegations in Respondents' FAC are nearly as deficient as those in *Kramer v. Enter. Holdings, Inc.,* No, 19-16354, 826 F. App'x 259 (9th Cir. 2020). There, the Ninth Circuit held that a claim for public injunctive relief was not stated, explaining that:

> Kramer's complaint does not seek public injunctive relief within the meaning of *McGill*. The complaint is specific in requesting damages for him and his proposed class, but it only asks in general terms "for any and all injunctive relief the Court deems appropriate." This requested remedy can easily be satisfied with private injunctive relief' that has the "effect of redressing or preventing injury" to Kramer and his proposed class rather than the general public. *See McGill,*

Respondents in this case clearly have *not* satisfied the *McGill* standards for public injunctive relief even if the "public" may obtain *some* incidental benefit. Review by this Court is needed not only to correct the Court of Appeal's error herein, but to instruct courts in pending and future cases that the bar for stating a claim for public injunctive relief should be set higher. Otherwise, the public injunction remedy will be rendered meaningless,

Review by this Court will help clarify the inconsistent and confusing tangle of *post-McGill* case law. For example, in this case, the Court of Appeal relied heavily on its earlier decision in *Mejia v. DACM Inc.,* 54 Cal. App. 5th 691 (Cal. Ct. App. 2020), which it found to be "remarkably" similar. (Op. at 9). But *Mejia* did not involve any concession by the plaintiffs (as in this case) that class certification will "easily rectif[y]" any harm to the public. The Court of Appeal distinguished another of its prior decisions on which FAL relied, *Clifford v. Quest Software Inc.,* 38 Cal. App. 5th 745 (Cal. Ct. App. 2019), because in *Clifford,* "the private nature of the UCL claim was 'immediately evident' from the face of the complaint." (Op. at 10). But that *is* also true in this case, where, as shown above, the private nature of Respondents' claims are immediately evident from the face of the FAC.

Review by this Court will also help courts evaluate allegations of "future harm" when a plaintiff seeks public injunctive relief. In this case, FAL demonstrated that a change in California law now prohibits finance lenders from charging the interest rates that

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393 P.3d at 90. Thus, his claims must proceed in arbitration.

Id. at *260.

form the basis for Respondents' claims. *See* Cal. Fin. Code § 22304.5(a). Therefore, FAL argued, Respondents' generic allegation of future misconduct is implausible. The Court of Appeal rejected that argument because the FAC alleges that one or two loans of the loans obtained by one of the Respondents may fall outside of the new law. (Op. at 14 n.2.) But the Court of Appeal gave no weight to the fact that the fourteen other loans that are the subject of the FAC indisputably *are* covered by the statutory prohibition and, therefore, any allegation of future harm as to those loans is implausible. *See Delisle v. Speedy Cash,* 818 F. App'x 608, 610 (9th Cir. 2020) (remanding case to district court to determine whether the plaintiff could plausibly continue to allege "ongoing" violations of California law for purposes of *McGill* in light of Cal. Fin. Code 22304.5(a)).[3] In short, in concluding that the allegations of the FAC were sufficient for Respondents to pursue public injunctive relief, the Court of Appeal herein let the tail wag the dog.

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[3] *See also Paul v. Milk Depots, Inc., 62* Cal, 2d 129, 133 (Cal. 1964) ('we cannot assume at this time that Milk Depots will violate the new regulation"); *Eastman v. Allstate Ins. Co.,* No. 14-cv-0703-WQH-NLS, 2014 U.S. Dist. LEXIS 149017, at *11 (S.D. Cal. Oct. 20, 2014) (dismissing UCL claim for injunctive relief because amended complaint contained "no facts demonstrating that there is a 'reasonable probability that the past acts . . . will recur' in the future, even if the present dispute may be a continuing one" (citation omitted)); *Feitelberg v. Credit Suisse First Boston, LLC,* 134 Cal. App. 4th 997, 1022 (Cal. Ct. App. 2005) (affirming dismissal of UCL claim for injunctive relief because the challenged business practice already "is the subject of a federal consent judgment that compels defendants to stop the offending conduct").

B. THIS COURT SHOULD RECONSIDER WHETHER THE FAA PREEMPTS *MCGILL* IN LIGHT OF SUBSEQUENT HIGH COURT AUTHORITY.

This Court should also grant review to reconsider its conclusion that the FAA does not preempt *McGill*. *See McGill,* 2 Cal. 5th at 962, 393 P.3d at 94. In *McGill,* this Court recognized the importance of complying with "high court authority." *Id*. *at* 963, 383 P.3d at 95. In that regard, subsequent to *McGill,* the U.S. Supreme Court, building upon the foundation laid in *AT&T Mobility LLC v*. *Concepcion,* 563 U.S. 333 (2011), has held that the right to "individualized" dispute resolution in an arbitration agreement – such as the arbitration provision in this case – is "protect[ed] pretty absolutely" by the FAA. *Epic Systems Corp*. *v*. *Lewis*. 138 S. Ct. 1612, 1621 (2018). *See also Lamps Plus Inc*. *v*. *Valera,* 139 S. Ct. 1407, 1416 (2019) (the FAA "envision[s]" an "individualized form of arbitration").[4]

"In individual arbitration, "parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, [and] greater efficiency and speed . . . ."

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[4] In June 2020, the U.S. Supreme Court denied two petitions for certiorari raising the issue of whether the FAA preempts *McGill*. *See Tillage v*. *Comcast Corp*., 772 F. App'x 569 (9th Cir. 2019), *cert*. *denied,* 140 S. Ct. 2827 (2020), and *McArdle v*. *AT&T Mobility LLC,* 772 F. App'x 575 (9th Cir. 2019), *cert*. *denied,* 140 S. Ct. 2827 (2020). However, the denial of certiorari was not a ruling on the merits of the FAA preemption issue, which remains open. *See Halprin v*. *Davis,* 140 S. Ct. 1200, 1202 (2020) (the denial of certiorari "carries with it no implication whatever regarding the Court's views on the merits of [petitioner's] claims") (citing *Maryland v*. *Baltimore Radio Show, Inc*., 338 U.S. 912, 919 (1950) (Frankfurter, J.)).

Lamps Plus, 139 S. Ct. at 1416 (citations omitted). As emphasized in *Epic Systems,* procedures that interfere with these attributes of individualized arbitration are preempted by the FAA:

> Not only did Congress [in the FAA] require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties' chosen arbitration procedures . . . . The parties before us contracted for arbitration. They proceeded to specify the rules that would govern their arbitrations, indicating their intention to use individualized rather than class or collective action procedures. And this much the Arbitration Act seems to protect pretty absolutely . . . .
>
> The [FAA's saving] clause "permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability.'". . . . At the same time, the clause offers no refuge for "defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." . . . . Under our precedent, this means the saving clause does not save defenses that target arbitration either by name or by more subtle methods, such as by "interfer[ing] with fundamental attributes of arbitration." . . . .
>
> [B]y attacking (only) the individualized nature of the arbitration proceedings, the employees' argument seeks to interfere with one of arbitration's fundamental attributes . . . . Just as judicial antagonism toward arbitration before the Arbitration Act's enactment "manifested itself in a great variety of devices and

> formulas declaring arbitration against public policy" . . . , we must be alert to new devices and formulas that would achieve much the same result today . . . . And a rule seeking to declare individualized arbitration proceedings off limits is just such a device.

138 S. Ct. at 1619, 1621 (citations omitted),

Requiring defendant companies to litigate claims for public injunctive relief, whether in court or in arbitration, deprives them of the right to individualized arbitration that is "protect[ed] pretty absolutely" by the FAA. *Epic Systems, supra*. If required to litigate a public injunctive relief claim in court, the company loses all of the benefits of the arbitration agreement. If required to arbitrate a public injunctive relief claim, the company is deprived of the contractual right to resolve disputes on an individualized basis. By its very definition, a claim for public injunctive relief is not intended to primarily benefit the person asserting the claim. The "evident purpose" of public injunctive relief is "to remedy a public wrong" and "not to resolve a private dispute." *McGill,* 2 Cal. 5th at 961. The expanded scope of a public injunctive relief arbitration makes the proceeding much more complex, time-consuming and costly than an individualized proceeding. *See, e.g., Cisneros v. U.D. Registry. Inc.,* 39 Cal. App. 4th 548, 564 (Cal. Ct. App. 1995) (trial court erred in restricting the scope of the evidence introduced at trial to that directly relevant to each individual plaintiff because public injunction "claimants are entitled to introduce evidence not only of practices which affect them individually, but also similar practices involving other members of the public who are not parties to the action").

To be sure, there are procedural differences between public injunctive relief claims and class claims. In a class action, a named plaintiff seeks to represent a class of similarly situated putative class members. A public injunctive relief claim is prosecuted by a single plaintiff for the benefit of the public. But in other important respects, insofar as the impact on defendant companies is concerned, public injunctive relief claims and class action claims under Federal Rule of Civil Procedure 23(b)(2) are more alike than they are different. Arbitrating a public injunctive relief claim poses virtually the same risk to companies as a Rule 23(b)(2) class arbitration. There is a risk in both proceedings that a company will be ordered to alter its business practices, products or services, which can substantially affect its operations. *See, e.g., McGill,* 393 P.3d at 91 (plaintiff sought an order requiring Citibank "to immediately cease such acts of unfair competition and enjoining [Citibank] from continuing to conduct business via the unlawful, fraudulent or unfair business acts and practices complained of herein and from failing to fully disclose the true nature of its misrepresentations"). Moreover, the risks inherent in a public injunctive relief arbitration, like the risks inherent in a class arbitration, are magnified by the narrow scope of review of an arbitrator's award. *See Oxford Health Plans LLC. v. Sutter,* 133 S. Ct. 2064 (2013); *see also Concepcion,* 563 U.S. at 350 ("[f]aced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims").

Enforcing FAL's arbitration provision as written[5] will not leave Respondents without an equitable

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[5] *See Stott-Nielsen. S.A. v. AnimalFeeds Int'l Corp.,* 559 U.S. 662, 682 (2010) ("[T]he central or 'primary' purpose of the FAA is

remedy because the arbitration provision authorizes the arbitrator to award "injunctive. equitable and declaratory relief . . . in favor of the individual party seeking relief . . . to the extent necessary to provide relief warranted by that party's individual claim." [Tr. at 97.] *See, e.g., Marsh v. First USA Bank, N.A.,* 103 F. Supp. 2d 909, 924 (ND. Tex. 2000) ("Contrary to Plaintiff's contention, an arbitrator may order injunctive relief if allowed to do so under the terms of the arbitration agreement . . . . Clearly, then, Plaintiffs may obtain injunctive relief along with statutory damages if they are successful on their claims. Accordingly, Plaintiffs' statutory rights will be adequately preserved in arbitration, even in the absence of a class action."); *Pyburn v. Bill Heard Chevrolet,* 63 S. W.3d 351, 366 (Tenn. App. 2001) (rejecting argument that plaintiff could not effectively vindicate his right to injunctive relief under state consumer protection statute without being able to pursue class relief in court because plaintiff could obtain injunctive relief in arbitration to address his individual statutory claim). An online database of consumer and employee arbitrations maintained by the American Arbitration Association ("AAA") pursuant to California law[6] shows that in hundreds of arbitrations various forms of equitable relief, including a declaratory judgment, were awarded to consumers or achieved through settlement.

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to ensure that 'private agreements to arbitrate are enforced according to their terms'") (citation omitted); *CompuCredit Corp. v. Greenwood,* 132 S. Ct. 665,669 (2012) (the FAA "requires courts to enforce agreements to arbitrate according to their terms").

[6] *See* AAA Consumer and Employment Arbitration Statistics. available at https://www.adr.org/consumer.

In rejecting FAA preemption, the *McGill* Court noted: "The contract defense at issue here – 'a law established for a public reason cannot be contravened by a private agreement' (Civ. Code. § 3513) – *is* a generally applicable contract defense, i.e., it is a ground under California law for revoking any contract . . . . It is not a defense that applies only to arbitration or that derives its meaning from the fact that an agreement to arbitrate is at issue." 2 Cal. 5th at 962, 393 P.3d at 94. However, as subsequently held in *Epic Systems*, even a state law defense that applies to all contracts is preempted by the FAA if (as here) it interferes with the fundamental attributes of arbitration:

> [In *Concepcion*,] this Court faced a state law defense that prohibited as unconscionable class action waivers in consumer contracts. The Court readily acknowledged that the defense formally applied in both the litigation and the arbitration context . . . . But, the Court held, the defense failed to qualify for protection under the saving clause because it interfered with a fundamental attribute of arbitration all the same. It did so by effectively permitting any party in arbitration to demand classwide proceedings despite the traditionally individualized and informal nature of arbitration. This "fundamental" change to the traditional arbitration process, the Court said, would "sacrific[e] the principal advantage of arbitration – its informality – and mak[e] the process slower, more costly, and more likely to generate procedural morass than final judgment." . . . . [T]he saving clause does not save defenses that target arbitration either by name or by more

> subtle methods, such as by "interfer[ing] with fundamental attributes of arbitration."

138 S. Ct. at 1622-23 (citations omitted); *accord, Lamps Plus,* 139 S. Ct. at 1415 (". . . state law is preempted to the extent it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the FAA') (citation omitted).

Moreover, the Section 3513 defense, if carried to an extreme, would result in the FAA's saving clause swallowing the FAA itself, since many if not most statutes can be viewed as having been enacted for a public purpose. *See* U.S. National Archives and Records Administration, "Public Laws" (2020) ("Most laws passed by Congress are public laws. Public laws affect society as a whole."), available at https://www.archives.gov/federal-register/laws. As the U.S. Supreme Court has repeatedly held, a saving clause cannot be held to devour the very statute in which it is contained. *See, e.g., AT&T Mobility LLC v. Concepcion,* 563 U.S. at 343 ("Although § 2's saving clause preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives . . . . As we have said, a federal statute's saving clause 'cannot in reason be construed as fallowing] a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot be held to destroy itself.'") (citations omitted).

V. CONCLUSION

For all of the foregoing reasons, Defendant-Appellant Fast Auto Loans, Inc. respectfully requests that this Court grant its Petition for Review.

March 17, 2021 Respectfully submitted,

BALLARD SPAHR LLP

By: */s/ Marcos D. Sasso*
Marcos D. Sasso

Attorneys for Defendant-Appellant Fast Auto Loans, Inc.

CERTIFICATION OF WORD COUNT

I certify in accordance with California Rules of Court, rule 8.504(d) that this brief contains 4,532 words as calculated by the Microsoft Word version 2016.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 17, 2021

/s/ Marcos D. Sasso
Marcos D. Sasso

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2021, a copy of the foregoing Petition for Review of Appellant Fast Auto Loans, Inc. was served upon the following counsel electronically via TrueFiling:

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Respectfully submitted,

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APPENDIX F

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

[E-Filed: August 26, 2019]

Case No. 30-2019-01073154-CU-BT-CXC

JOE MALDONADO, ALFREDO MENDEZ, J. PETER TUMA, JONABETTE MICHELLE TUMA, ROBERTO MATEOS SALMERON, Individually, and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

FAST AUTO LOANS, INC. dba RPM LENDERS, a California Corporation, and DOES 1 through 300, Inclusive,

Defendants.

UNLIMITED JURISDICTION

[Assigned to the Hon. Glenda Saunders]

NOTICE OF MOTION AND MOTION OF DEFENDANT FAST AUTO LOANS, INC. TO COMPEL ARBITRATION AND STAY ACTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: October 4, 2019
Time: 1:30 p.m.
Dept.: CX 101
Action Filed: May 30, 2019
Trial Date: None

[Declaration of John A. Busic Filed and
[Proposed] Order Lodged Concurrently Herewith]

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on October 4, 2019 at 1:30 p.m. or as soon thereafter as the matter may be heard in Department CX 101 of this court located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, defendant Fast Auto Loans, Inc. ("FAL"), will and hereby does move this Court, pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the "FAA") and California Code of Civil Procedure sections 1281.2, 1281.4 and 1281.7, for an Order compelling plaintiffs Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette Michelle Tuma and Roberto Mateos Salmeron (collectively, "Plaintiffs") to arbitrate their

claims against FAL in this action on an individual basis and to stay the instant action pending the outcome of the arbitration proceedings.

This Motion is made on the grounds that a valid and enforceable agreement to arbitrate exists between the parties that encompasses the claims brought by Plaintiffs in this action; that, pursuant to the FAA, Plaintiffs must arbitrate their claims as required by the arbitration agreement; and that the instant action should be stayed pending completion of the arbitration.

This Motion is supported by the Notice of Motion, the accompanying Memorandum of Points and Authorities in Support, Declaration of John A. Busic and attached exhibits, all papers and pleadings on file in this action and upon such other and further evidence and argument as may be presented to the Court, and all matters to which this Court may take judicial notice.

DATED: August 26, 2019

BALLARD SPAHR LLP
MARCOS D. SASSO

By: */s/ Marcos D. Sasso*
Marcos D. Sasso

Attorneys for Defendant
FAST AUTO LOANS, INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By the instant Motion, defendant Fast Auto Loans, Inc. ("FAL") seeks to compel arbitration of the claims asserted by plaintiffs Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette Michelle Tuma, and Roberto Mateos Salmeron (collectively, "Plaintiffs") regarding claims relating to allegedly improper and unconscionable interest rates on loans obtained by Plaintiffs from FAL. Regardless of their merits (or lack thereof), Plaintiffs' claims must be resolved in individual arbitrations pursuant to the Arbitration Provision contained in the loan agreements signed by each Plaintiff.[1]

There is no dispute that Plaintiffs' loans are governed by a written loan agreement—indeed, Plaintiffs concede in the First Amended Complaint entering into written agreements with FAL. The loan agreements signed by Plaintiffs include the binding Arbitration Provision requiring that all claims between Plaintiffs and FAL relating to their agreement with FAL be resolved in individual arbitration. The Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* ("FAA"), which mandates a liberal policy favoring the enforcement of arbitration agreements and requires that any doubts regarding whether a dispute is subject to arbitration be resolved

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[1] As discussed below, Plaintiff Maldonado exercised his right to opt out of the Arbitration Provision with respect to two of his loans with FAL. Thus, FAL does not seek to compel arbitration of the claims relating to those loan agreements and, instead, requests that the claims pertaining to those agreements be stayed pending completion of arbitration proceedings as to Plaintiff Maldonado's remaining claims.

in favor of arbitration. The United States Supreme Court has made absolutely clear that arbitration agreements governed by the FAA must be enforced as written, including agreements, like the Arbitration Provision here, requiring individual, non-class arbitration. *See AT&T Mobility LLC v. Concepcion,* 563 U.S. 333, 336, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011); *Epic Sys. Corp. v. Lewis,* 138 S. Ct. 1612, 1632 (2018) ("The policy may be debatable but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written.").

Accordingly, the Motion should be granted, and the action should be stayed pursuant to Section 3 of the FAA and California law pending the completion of the arbitration.

II. FACTUAL BACKGROUND

A. Plaintiff Joe Maldonado

On or about June 15, 2018, plaintiff Joe Maldonado ("Maldonado") entered into a loan agreement with FAL. (Declaration of John A. Busic ("Busic Decl.") ¶ 4, Ex. 1.) Maldonado refinanced at least three times, and in each instance, Maldonado signed a new agreement with FAL, on September 14, 2018, November 30, 2018 and April 24, 2019, respectively. (*Id.* ¶¶ 5-7, Exs. 2-4; *see also* First Amended Complaint ("FAC"). ¶¶ 23-25.) Each agreement contains an Arbitration Provision permitting either party to elect binding arbitration. (*Id.* ¶ 4-7, Exs. 1-4 ¶ 14.) Per the terms of the Arbitration Provision, Maldonado had the right to opt out of the Arbitration Provision for each loan within 30 days of the date of the loan agreements without affecting any other provision of the agreement. (*Id.* ¶ 8, Exs. 1-4 ¶ 14(b).) FAL has a record of Maldonado opting out of the November 30, 2018 and April 24, 2019

agreements; FAL has no record of Maldonado opting out of the Arbitration Provision for any of his other loans. (*Id.* ¶ 9.)

B. Plaintiff Alfredo Mendez

On or about April 7, 2017, plaintiff Alfredo Mendez ("Mendez") entered into a loan agreement with FAL. (Busic Decl. ¶ 10, Ex. *5; see also* FAC. ¶ 27.) On or about May 6, 2017, Mendez refinanced his loan and signed a new agreement with FAL. (*Id.* ¶ 11, Ex. 6; *see also* FAC. ¶ 28.) Both agreements contain an Arbitration Provision permitting either party to elect binding arbitration. (*Id.* ¶¶ 10-11, Exs. 5-6 ¶ 16.) Per the terms of the Arbitration Provision, Mendez had the right to opt out of the Arbitration Provision for each loan within 30 days of the date of the loan agreements without affecting any other provision of the agreement. (*Id.* ¶ 12.) Mendez did not opt out of the Arbitration Provision. (*Id.* ¶ 13.)

C. Plaintiff Roberto Salmeron

On or about May 31, 2016, plaintiff Roberto Salmeron ("Salmeron") entered into a loan agreement with FAL. (Busic Decl. ¶ 14, Ex. *7; see also* FAC. ¶ 39) Salmeron refinanced his loan with FAL at least three times, and in each instance, Salmeron signed a new agreement with FAL, on November 28, 2016, May 5, 2017 and January 23, 2018, respectively. (*Id.* ¶¶ 15-17, Exs. 8-10; *see also* FAC. ¶¶ 40-42.) Each agreement signed by Salmeron contains an Arbitration Provision permitting either party to elect binding arbitration. (*Id.* ¶¶ 14-17, Exs. 7-10 ¶ 16.) Per the terms of the Arbitration Provision, Salmeron had the right to opt out of the Arbitration Provision for each loan within 30 days of the date of the loan agreements without affecting any other provision of the agreement. (*Id.* ¶ 18, Exs. 7-

10 ¶ 16(b).) Salmeron never opted out of the Arbitration Provision for any of his loans. (*Id.* ¶ 19.)

D. Plaintiff J. Peter Tuma

On or about August 2, 2016, plaintiff J. Peter Tuma ("Mr. Tuma") entered into a loan agreement with FAL. (Busic Decl. ¶ 20, Ex. 11; *see also* FAC. ¶ 30.) On or about May 10, 2018, Mr. Tuma refinanced his loan and signed a new agreement with FAL. (*Id.* ¶ 21, Ex. 12; *see also* FAC. ¶ 31.) Plaintiff Jonabette Tuma is a co-borrower on each of Mr. Tuma's loans and signed each agreement. (*Id.* ¶¶ 20-21, Exs. 11-12.) Both agreements contain an Arbitration Provision permitting either party to elect binding arbitration. (*Id*) Per the terms of the Arbitration Provision, Mr. Tuma (and the co-borrower Jonabette Tuma) had the right to opt out of the Arbitration Provision for each loan within 30 days of the date of the loan agreements without affecting any other provision of the agreement. (*Id.* ¶ 22, Exs. 11-12 ¶ 16(b).) Mr. Tuma and co-borrower Jonabette Tuma did not opt out of the Arbitration Provision. (*Id.* ¶ 23.)

E. Plaintiff Jonabette Michelle Tuma

On or about June 27, 2015, plaintiff Jonabette Michelle Tuma ("Ms. Tuma") entered into a loan agreement with J.W.P. Lenders Corporation ("J.W.P."), a predecessor to FAL. (Busic Decl. ¶ 24, Ex. 13.) Ms. Tuma refinanced her loan at least three times, and in each instance, Ms. Tuma signed a new agreement, on July 29, 2017, August 5, 2017, January 31, 2018 and April 27, 2018, respectively. (*Id.* ¶¶ 25-28, Exs. 14-17; *see also* FAC. ¶¶ 33-37.) Mr. Tuma is a co-borrower on each of Ms. Tuma's loans and signed each agreement. (*Id.* ¶¶ 24-28, Exs. 13-17.) Each agreement signed by Ms. Tuma (and co-borrower Mr. Tuma)

contains an Arbitration Provision permitting either party to elect binding arbitration. (*Id.*) Per the terms of the Arbitration Provision, Ms. Tuma (and co-borrower Mr. Tuma) had the right to opt out of the Arbitration Provision for each loan within 30 days of the date of the loan agreements without affecting any other provision of the agreement. (*Id.* ¶ 29.) Ms. Tuma and co-borrower Mr. Tuma never opted out of the Arbitration Provision for any of her loans. (*Id.* ¶ 30.)

F. The Arbitration Provision

Each of the Plaintiffs' agreements includes the Arbitration Provision. (Busic Decl. ¶¶ 4-30, Exs. 1-17.) The Arbitration Provision permits either party to elect binding arbitration of "Claims," which are defined, *inter alia,* as "any claim, dispute or controversy between you and us . . . that in any way arises from or relates to this Agreement or the Motor Vehicle securing this Agreement." (*Id.* Exs. 1-4 ¶ 14(d), Exs. 5-17 ¶ 16(d).) The term "Claim" has the "broadest possible meaning" and it "includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity (including any claim for injunctive or declaratory relief)." (*Id.*) The Arbitration Provision further provides that it is governed by the FAA. (*Id.* Exs. 1-4 ¶ 14(c), Exs. 5-17 ¶ 16(c).) The Arbitration Provision also contains a Class Action Waiver pursuant to which Plaintiff agreed that if any party elects arbitration of a covered claim, such arbitration will proceed on an individual (non-class action) basis. (*Id.* Exs. 1-4 ¶ 14(h), Exs. 5-17 ¶ 16(h).)

G. The Allegations Of The Complaint

On July 3, 2019, Plaintiffs filed the FAC, asserting claims on their individual behalves and putative class

claims upon behalf of the following two putative classes:

> The "Unconscionable Rate Class": "All persons who obtained loans in [California] in an amount more than $2,500 from [FAL] within the 48 months preceding the filing of the Complaint, wherein the annual percentage rate ('APR') of interest on said loans exceeded 80 percent." (FAC ¶ 53.)
>
> The "Auto Title Loan Class": "All persons who obtained loans in [California] in an amount more than $2,500 from [FAL] and which were secured by an automobile title within the 48 months preceding the filing of the Complaint, wherein the annual percentage rate ('APR') of interest on said loans exceeded 80 percent." (FAC ¶ 54.)

In general, Plaintiffs challenge the rates charged on their loans as "unconscionable and objectively unreasonable and prohibited by statute," and in violation of sections 22302-303 of the Financial Code and/or section 1670.5 of the Civil Code. (FAC ¶¶ 68-70.) Plaintiffs assert claims for violation of the Unfair Competition Law, Bus. & Prof. Code section 17200, *et seq.* (the "UCL"), and the Consumer Legal Remedies Act, Civ. Code section 1750, *et seq.* (the "CLRA").[2] (*Id.* ¶¶ 65-92.) Plaintiffs seek damages, disgorgement, restitution, and an order enjoining FAL from charging

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[2] While the merits are not before the Court, Plaintiffs' suggestion in the FAC that FAL's finance lender's license is, and has been inactive, is untrue. FAL is, and during all relevant times has been, licensed as a California Finance Lender, as required by the California Department of Corporations. *See* https://docqnet.dbo.ca.gov/licensesearch/.

an allegedly "unlawful interest rate" on loans exceeding $2,500, requiring "corrective advertising and [that FAL] provide a written notice to the public of the unlawfully charged interest rate on prior loans," as well as "public injunctive relief' pursuant to the UCL. (*Id* at 17 (prayer for relief).)

III. ARGUMENT

A. Plaintiffs' Claims Are Subject To Binding Arbitration Pursuant To The Arbitration Provision.

1. The Arbitration Provision Is Valid.

Section 2 of the FAA mandates that binding arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; *see Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440, 443, 126 S. Ct. 1204, 163 L. Ed. 2d 1038 (2006) ("Section 2 [of the FAA] embodies the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts . . . "). The United States Supreme Court has made clear that the FAA is extremely broad and applies to any transaction directly or indirectly affecting interstate commerce. *See, e.g., Allied-Bruce Terminix Cos., Inc. v. Dobson,* 513 U.S. 265, 277, 115 S. Ct. 834, 130 L. Ed. 2d 753 (1995); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395, 401, 87 S. Ct. 1801, 18 L. Ed. 2d 1270 (1967).

The FAA promotes a "liberal federal policy favoring arbitration agreements," and "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, 24, 103 S.Ct. 927, 941 (1983); *see also Perry v. Thomas,*

482 U.S. 483, 490, 107 S. Ct. 2520, 96 L. Ed. 2d 426 (1987) (stating that arbitration agreements falling within the scope of the FAA "must be 'rigorously enforce[d]'" (citations omitted)). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H Cone Mem'l Hosp.,* 460 U.S. at 2425; *see also Perry,* 482 U.S. at 490 (stating that arbitration agreements falling within the scope of the FAA "must be 'rigorously enforce[d]'") (citations omitted).

The United States Supreme Court has consistently confirmed that the FAA "requires courts to enforce the bargain of the parties to arbitrate" and "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *KPMG LLP v. Cocchi,* 132 S. Ct. 23, 25-26, 181 L. Ed. 2d 323 (2011) (per curiam) (citations omitted; emphasis in original); *see also Am. Express Co. v. Italian Colors Rest.,* 133 S. Ct. 2304, 2309, 186 L. Ed. 2d 417 (2013) (stating that "courts must 'rigorously enforce' arbitration agreements according to their terms") (citations omitted); *Concepcion,* 563 U.S. at 344 (confirming that the "'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms.'"); *see also Lamps Plus, Inc. v. Varela,* 139 S. Ct. 1407, 1415 (2019) ("The FAA requires courts to 'enforce arbitration agreements according to their terms.") (citation omitted); *Henry Schein, Inc. v. Archer & White Sales, Inc.,* 139 S. Ct. 524, 529 (2019); *Epic Sys. Corp.,* 138 S. Ct. at 1632; *Marmet Health Care Ctr., Inc. v. Brown,* 132 S. Ct. 1201, 1203, 182 L. Ed. 2d 42 (2012); *CompuCredit Corp. v. Greenwood,* 132 S. Ct. 665, 669, 181 L. Ed. 2d 586 (2012).

Under the FAA, arbitration must be compelled where, as in this case: (1) a valid, enforceable agreement to arbitrate exists; and (2) the claims at issue fall within the scope of that agreement. *See Chiron Corp. v. Ortho Diagnostic Sys., Inc.,* 207 F.3d 1126, 1130 (9th Cir. 2000).[3] The party resisting arbitration bears the burden of showing that the arbitration agreement is invalid or does not encompass the claims at issue. *Green Tree Fin. Corp.-Ala. v. Randolph,* 531 U.S. 79, 92, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000).

Here, it is undisputed that the parties entered into written contracts containing the Arbitration Provision. Indeed, the Arbitration Provision was part of each agreement with FAL signed by Plaintiffs. Under the terms of the Arbitration Provision, FAL has elected to arbitrate Plaintiffs' claims and to stay the action pending completion of arbitration.[4] The Arbitration

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[3] The FAA preempts any state law impediments to enforcing arbitration agreements according to their terms, even under the guise of generally applicable contract principles. *See Concepcion,* 563 U.S. at 350-52 (states may not superimpose judicial procedures on arbitration); *id.* at 341 ("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.") (citing *Preston v. Ferrer,* 552 U.S. 346, 353, 128 S. Ct. 978, 169 L. Ed. 2d 917 (2008)); *Stolt-Nielsen S. A. v. AnimalFeeds Intl Corp.,* 559 U.S. 662, 683, 130 S. Ct. 1758, 176 L. Ed. 2d 605 (2010) ("[P]arties are 'generally free to structure their arbitration agreements as they see fit."); *see also Southland Corp. v. Keating,* 465 U.S. 1, 16, 104 S. Ct. 852, 79 L. Ed. 2d 1 (1984) (striking down California law that sought to insulate certain issues from arbitration).

[4] As discussed below, FAL seeks a stay of Plaintiff Maldonado's claims relating to the agreements he signed on November 30, 2018 and April 24, 2019, pending completion of arbitration of his, and the other Plaintiffs', remaining claims. *See infra* at 12.

Provision is a valid agreement to arbitrate under the FAA.[5] Accordingly, Plaintiffs are bound by its terms.

2. Plaintiffs' Claims Fall Within the Arbitration Agreement's Scope.

Where the parties have entered into a binding arbitration agreement, as in the instant case, there is a presumption that any dispute between the parties is arbitrable. *Moses H. Cone Mem'l Hosp.,* 460 U.S. 1, 24-25 (1983). Therefore, an "order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *AT&T Techs., Inc. v. Commc 'ns Workers of Am.,* 475 U.S. 643, 650, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration . . . ." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 626, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985); *see also Simula, Inc. v. Autoliv, Inc.,* 175 F.3d 716, 719 (9th Cir. 1999) ("The standard for demonstrating arbitrability is not high."). Where the clause is broad, as is the Arbitration Provision here, there is a heightened presumption of arbitrability such that, "'[in] the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail.'" *AT&T Techs.,* 475 U.S. at 650 (quoting *United Steelworkers of Am. v. Warrior & Gulf*

[5] The parties have contractually agreed that the Arbitration Provision and their respective loan agreements are governed by the FAA. (*See* Busic Decl., Exs. 1-4 ¶ 14(c), Exs. 5-17 ¶ 16(c).)

Navigation Co., 363 U.S. 574, 584-85, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960)).[6]

Moreover, the FAA creates a body of federal substantive law of arbitrability that is binding on California and other state courts as well as federal courts. As the U.S. Supreme Court instructed in *Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440, 445 (2006):

> [I]n *Southland Corp. [v. Keating,* 465 U.S. 1(1984)], we held that the FAA "created a body of federal substantive law," which was "applicable in state and federal courts" . . . . We rejected the view that state law could bar enforcement of §2, even in the context of state-law claims brought in state court.

Here, the Arbitration Provision's broad scope covers any possible dispute alleged by Plaintiffs in this case. The Arbitration Provision broadly provides for the arbitration of "any claim, dispute or controversy between you *[i.e.,* Plaintiffs] and us *[i.e.,* FAL] . . . that in any way arises from or relates to this Agreement . . . ." (*See* Busic Decl., Exs. 1-4 ¶ 14(d), Exs. 5-17 ¶ 16(d).) Per the Arbitration Provision, the term "Claim" has the "broadest possible meaning," and "includes disputes based upon contract, . . . consumer rights, . . . and claims for monetary damages and injunctive or declaratory relief." (*Id.*) Plaintiffs' claims

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[6] *See also Ferguson v. Corinthian Colls., Inc.,* 733 F.3d 928, 938 (9th Cir. 2013) (holding that the terms such as "any disputes," "all claims," and disputes "arising from my enrollment" are broad in scope); *Simula, Inc.,* 175 F.3d at 721 (holding that "language 'arising in connection with' reaches every dispute between the parties having significant relationship to the contract and all disputes having their origin or genesis in the contract").

arising from, and relating to, their contracts with FAL and the interest rates charged on their loans pursuant to those contracts fall squarely within the scope of the Arbitration Provision and must be arbitrated.

3. Plaintiffs' Claims Must Be Arbitrated on an Individual Basis

The "'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms.'" *Concepcion,* 563 U.S. at 344 (quoting *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.,* 489 U.S. 468, 478 (1989)). Thus, "parties may agree to limit the issues subject to arbitration, to arbitrate according to specific rules, and to limit with whom a party will arbitrate its disputes." *Concepcion,* 563 U.S. at 344 (emphasis omitted) (citations omitted). "Arbitration is a matter of contract, and the FAA requires courts to honor parties' expectations." *Id.* at 351 (citation omitted); *see also Howsam v. Dean Witter Reynolds, Inc.,* 537 U.S. 79, 83 (2002) ("[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.") (quoting *United Steelworkers of Am. v. Warrior & Gulf Nay. Co.,* 363 U.S. 574, 582 (1960)); *E.E.O.C. v. Waffle House, Inc.,* 534 U.S. 279, 289 (2002) ("[N]othing in the [FAA] authorizes a court to compel arbitration of any issues, or by any parties, that are not already covered in the agreement.").

Based on the foregoing authority, the Arbitration Provision should be enforced as written, including the requirement that arbitration take place on an individual basis, and that the arbitrator only award relief on behalf of Plaintiffs. Because the parties have agreed only to individual arbitration and relief on an individual basis, the FAA requires arbitration to

proceed on an individual basis. This is the law of the land as mandated by the U.S. Supreme Court. *See Concepcion,* 563 U.S. at 336; *Epic Sys. Corp.,* 138 S. Ct. at 1632.

This includes Plaintiffs' purported claim for public injunctive relief under the UCL and the CLRA, which is nothing more than a transparent attempt to rely upon the "*McGill* Rule" to avoid their contractual obligation to arbitrate what is actually an individual dispute relating to their Agreements. In *McGill v. Citibank,* 2 Cal. 5th 945 (2017), the California Supreme Court distinguished between public injunctive relief and non-public injunctive relief, explaining that "public injunctive relief under the UCL . . . is relief that has 'the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public," while "[r]elief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—***or to a group of individuals similarly situated to the plaintiff***—*does* not constitute public injunctive relief" *McGill,* 2 Cal. 5th at 955 (citation and internal quotations omitted, emphasis added). Despite their conclusory allegations to the contrary, the relief sought by Plaintiffs is not "public" injunctive relief, as it will only benefit, at best, Plaintiffs and other FAL customers "similarly situated" to Plaintiffs, i.e., customers in the alleged "Unconscionable Rate Class" and "Auto Title Loan Class" who have loans in an amount more than $2,500 with an interest rate of more than 80% and either secured by an automobile title or not.

These claims seek relief on behalf of a limited class of consumers, i.e., similarly situated FAL customers, rather than the general public. Moreover, the claims do not arise from the "deceptive advertising or

marketing to the general public as in *McGill,"* but rather the "contractual rights and obligations" between the parties." *See Sponheim v. Citibank, NA.,* No. SACV 19-264 JVS (ADSx), 2019 U.S. Dist. LEXIS 100857, at *10-18 (C.D. Cal. June 10, 2019) (compelling arbitration and rejecting *McGill* argument because claims failed to meet standard of "public" injunctive relief). Under similar facts, courts have disregarded a plaintiff's characterization of the relief sought as "public" injunctive relief and compelled arbitration pursuant to the FAA. *See, e.g. McGovern v. US. Bank N.A.,* 362 F. Supp. 3d 850, 859 (S.D. Cal. 2019) (rejecting *McGill* argument because relief sought was "merely incidental to [plaintiff's] primary aim of gaining compensation for injury."); *Johnson v. JP Morgan Chase Bank, NA.,* No. EDCV 17-2477 JGB (SPx), 2018 U.S. Dist. LEXIS 167272, 2018 WL 4726042, at *6 (C.D. Cal. Sept. 18, 2018) (compelling arbitration because "[m]erely requesting relief which would generally enjoin a defendant from wrongdoing does not elevate requests for injunctive relief to requests for public injunctive relief," and finding that any injunctive relief would provide "no real benefit to the public at large," since the only individuals who would benefit were other Chase customers).[7]

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[7] *See also Rappley v. Portfolio Recovery Assocs., LLC,* No. 17-cv-00108-JGB, 2017 U.S. Dist. LEXIS 144182, 2017 WL 3835259, at *6 (C.D. Cal. Aug. 24, 2017) (rejecting attempt to craft "allegations and prayer for relief in a manner that appears to constitute public injunctive relief" under *McGill* because "a closer inspection reveals that the relief she seeks is intended to redress and prevent further injury to a group of plaintiffs who have already been injured."); *Wright v. Sirius XM Radio Inc.,* No. SACV 16-01688, 2017 U.S. Dist. LEXIS 221407, 2017 WL 4676580, at *9 (C.D. Cal. June 1, 2017) (distinguishing *McGill* because any public benefit of enjoining defendant from misrepre-

Here, as in the foregoing cases, Plaintiffs similarly bring their claims on behalf of a limited, specific group of FAL customers, characterized by Plaintiffs as the "Unconscionable Rate Class" and the "Auto Title Loan Class," seeking relief that would primarily benefit Plaintiffs and similarly situated customers who have contracts with FAL. Any benefit to the "general public" would clearly be incidental to the primary relief sought by Plaintiffs, which includes damages for the allegedly improper interest rates, as well as disgorgement of the amounts already paid by Plaintiffs and putative class members. Accordingly, Plaintiffs' request for injunctive relief does not seek "public" injunctive relief as a matter of law, and Plaintiffs' UCL and CLRA claims must be arbitrated on an individual basis pursuant to the FAA.[8]

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senting or failing to disclose certain practices is "merely 'incidental"); *Croucier v. Credit One Bank, NA.,* No. 18-cv-20 MMA (JMA), 2018 WL 2836889, at *5 (S.D. Cal. June 11, 2018) (finding *McGill* inapplicable where relief would primarily benefit a class of similarly situated individuals); *Kim v. Tinder, Inc.,* No. 18-cv-03093 JFW (ASx), 2018 WL 6694923, at * 3 (C.D. Cal. July 12, 2018) (finding *McGill* inapplicable and holding that "[a]n injunction that purports to control only the price charged to users of Tinder's dating app who wish to subscribe to Tinder Plus and are age 30 or over is clearly one that would not affect the public at large and, therefore, would only qualify as a private injunction.").

[8] FAL also contends that the FAA preempts the *McGill* Rule because, *inter alia,* the FAA protects the parties' right to choose individualized resolution of their claims, *see Concepcion* and *Epic Sys. Corp., supra,* and the *McGill* Rule is not a ground "at law or in equity for the revocation of any contract," 9 U.S.C. § 2, but rather singles out arbitration for special treatment. *See Kindred Nursing Centers Ltd. v. Clark,* 137 S. Ct. 1421 (2017). However, because Plaintiffs' claims, on their face, do not even state viable claims for public injunctive relief under California law, this Court will not need to address that issue. In the unlikely event that the

B. The Action Must be Stayed Pending Arbitration

Under the FAA and California law, this action should be stayed pending arbitration. *See* 9 U.S.C. § 3 (requiring action be stayed "until such arbitration has been held" in accordance with the arbitration agreement); Cal. Civ. Proc. Code § 1281.4 (court "shall" stay action "until an arbitration is had in accordance with the order to arbitrate"); *see also Collins v. Burlington N R.R. Co.,* (9th Cir. 1989) 867 F.2d 542, 545 (remanding case where district court failed to

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Court does reach the FAA preemption issue, FAL requests that this action be stayed pending the final resolution of two appeals now pending in the Ninth Circuit. *See Tillage v. Comcast Corp.,* No, 18-15288, 2019 U.S. App. LEXIS 19496 (9th Cir. June 28, 2019), and *McArdle v. AT&T Mobility, LLC,* No. 17-17246, 2019 U.S. App. LEXIS 19495 (9th Cir. June 28, 2019). In both of those cases the Ninth Circuit followed its holding in *Blair v. Rent-A-Center, Inc.,* No. 17-17221, 2019 U.S. App. LEXIS 19476 (9th Cir. 2019), that the FAA does not preempt the *McGill* Rule. Nevertheless, on August 9, 2019, the defendants in *Tillage* and *McArdle* filed petitions for rehearing with the Ninth Circuit. It is anticipated that if rehearing is denied, one or both of those defendants will file a petition for a writ of certiorari with the U.S. Supreme Court, and it is reasonably probable that the Court will grant review given its longstanding interest in FAA preemption issues. Accordingly, if this Court reaches the FAA preemption issue, it should stay Plaintiffs' claims pending the final disposition of the *Tillage* and *McArdle* appeals, including review by the Supreme Court. A stay is warranted when, as here, it would "simplify[] . . . questions of law . . . ." *See Lockyer v. Mirant Corp.,* 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall,* 300 F.2d 265, 268 (9th Cir. 1962)). Such a stay would be warranted here because there is a compelling argument that the Ninth Circuit's FAA preemption analysis is contrary to Supreme Court precedent and a stay would simplify the issues, allowing the parties (and the Court) to know, with certainty, what law governs the enforceability of Plaintiffs' claims under the FAA.

consider whether a stay was appropriate as a result of binding arbitration agreement); *Rodriguez v. Am. Techs., Inc.,* 136 Cal. App. 4th 1110, 1122 (2006) (holding that procedural aspects of FAA, including Section 3 of the FAA, apply in California courts); *Sheffer v. Samsung Telecomms. Am., LLC,* No. CV 13-3466-GW AJWX, 2014 WL 792124, *1 (C.D. Cal. Feb. 6, 2014) (dismissing class claims with prejudice since arbitration agreement required individual arbitration of all claims, but staying 141 proceedings" in action pending completion of individual arbitration).

Here, the action must be stayed pending the completion of the individual arbitration proceedings for each Plaintiff. In addition, regarding Plaintiff Maldonado's claims arising under his November 30, 2018 and April 24, 2019 loan agreements, those claims should also be stayed pending completion of the arbitration as to his remaining claims. Under both the FAA and California law, courts routinely compel arbitration as to certain claims while other claims remain stayed in court pending completion of the arbitration proceedings. *See KPMG LLP v. Cocchi,* 565 U.S. 18, 22 (2011); *Broughton v. Cigna Healthplans,* 21 Cal. 4th 1066, 1077 (1999).

Accordingly, the Court should order this matter stayed pending the arbitration.

IV. CONCLUSION

For the aforementioned reasons, FAL respectfully requests that the Court grant the Motion and compel individual arbitration of Plaintiffs' claims in accordance with the express terms of the valid and enforceable Arbitration Provision governing Plaintiffs' loans. In addition, this Court should stay this action pending the completion of arbitration proceedings.

DATED: August 26, 2019

BALLARD SPAHR LLP
MARCOS D. SASSO

By: */s/ Marcos D. Sasso*
Marcos D. Sasso

Attorneys for Defendant
FAST AUTO Loans, INC.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is BALLARD SPAHR LLP, 2029 Century Park East, Suite 800, Los Angeles, CA 90067-2909. On August 26, 2019, I served the within documents:

NOTICE OF MOTION AND MOTION OF DEFENDANT FAST AUTO LOANS, INC. TO COMPEL ARBITRATION AND STAY ACTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

- ☐ BY FAX: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ BY HAND: by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below. X
- ☑ BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ BY E-MAIL: by attaching an electronic copy of the document(s) listed above to the e-mail address listed below.
- ☐ BY OVERNIGHT MAIL: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☐ BY PERSONAL DELIVERY: by causing personal delivery by First Legal Network of the document(s) listed above to the person(s) at the address(es) set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 26, 2019, at Los Angeles, California.

/s/ Shari L. Green
Shari L. Green

SERVICE LIST

Joe Maldonado, et al. v. Fast Auto Loans, Inc.

Orange County Superior Court Case
No. 30-2019-01073154-CU-BT-CXC

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APPENDIX G

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

[E-Filed: August 26, 2019]

Case No. 30-2019-01073154-CU-BT-CXC

JOE MALDONADO, ALFREDO MENDEZ, J. PETER TUMA, JONABETTE MICHELLE TUMA, ROBERTO MATEOS SALMERON, Individually, and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

FAST AUTO LOANS, INC. dba RPM LENDERS, a California Corporation, and DOES 1 through 300, Inclusive,

Defendant.

UNLIMITED JURISDICTION

[Assigned to the Hon. Glenda Saunders]

DECLARATION OF JOHN A. BUSIC
IN SUPPORT OF MOTION OF DEFENDANT
FAST AUTO LOANS, INC. TO COMPEL
ARBITRATION AND STAY ACTION

Date: October 4, 2019

Time: 1:30 p.m.

Dept.: CX 101

Action Filed: May 30, 2019

Trial Date: None

[Notice Of Motion And Motion, Memorandum In Support Filed and [Proposed] Order Lodged Concurrently Herewith]

DECLARATION OF JOHN A. BUSIC

I, JOHN A. BUSIC, hereby declare:

1. I am an employee of Fast Auto Loans, Inc. ("FAL"). I have been with FAL for approximately 2 years, 10 months. Except where based upon review of records and documents regularly maintained in the ordinary course of business, all of the matters set forth below are within my personal knowledge and, if called as a witness, I could and would testify competently to the matters stated herein. I submit this declaration in support of FAL's Motion to Compel Arbitration and to Stay Action.

2. In connection with my employment, I have personal knowledge of FAL's general business practices with respect to its borrowers. I have access to and am generally familiar with the records maintained by FAL with respect to its borrowers' loans, including, in particular, the agreements between FAL and its customers.

3. The exhibits to this declaration are all true and correct business records FAL, or its affiliates, created

and maintained in the ordinary course of regularly conducted business activity, and as part of FAL's regular practice of creating and maintaining such records, and also were made at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. The statements set forth in this declaration are true and correct to the best of my knowledge, information and belief. Except where based upon information provided by persons working under my direction and supervision, the statements contained herein are based on my personal knowledge or review of FAL's records, including records pertaining to the loans issued to plaintiffs Joe Maldonado, Alfredo Mendez, J. Peter Tuma, Jonabette Michelle Tuma and Roberto Mateos Salmeron. If called as a witness, I am competent to testify to the statements contained herein. Portions of the exhibits have been redacted to exclude personal information.

Joe Maldonado

4. On June 15, 2018, plaintiff Joe Maldonado ("Maldonado") obtained a loan from FAL. A true and correct copy of the Loan Agreement signed by Mr. Maldonado is attached hereto as Exhibit 1. Paragraph 14 of the Loan Agreement includes an arbitration provision (the "Arbitration Provision").

5. On September 14, 2018, Mr. Maldonado refinanced his loan and signed a new Loan Agreement. A true and correct copy of the Loan Agreement signed by Mr. Maldonado on September 14, 2018 is attached hereto as Exhibit 2. Paragraph 14 of the Loan Agreement includes the Arbitration Provision.

6. On November 30, 2018, Mr. Maldonado refinanced his loan again and signed another new Loan Agreement. A true and correct copy of the Loan

Agreement signed by Mr. Maldonado on November 30, 2018 is attached hereto as Exhibit 3. Paragraph 14 of the Loan Agreement includes the Arbitration Provision.

7. Finally, on April 24, 2019, Mr. Maldonado refinanced his loan a third time and signed another new Loan Agreement. A true and correct copy of the Loan Agreement signed by Mr. Maldonado on April 24, 2019 is attached hereto as Exhibit 4. Paragraph 14 of the Loan Agreement includes the Arbitration Provision.

8. With respect to each Loan Agreement he signed, Mr. Maldonado was given the right to opt out of the Arbitration Provision within 30 days of the date of the Loan Agreement without affecting any other provision of the Agreement. See Exs. 1-4 at ¶ 14(b).

9. FAL has a record of receiving from Mr. Maldonado a written rejection notice of the Arbitration Provision only with respect to the November 30, 2018 and April 29, 2019 Loan Agreements. FAL has no record of Mr. Maldonado opting out of the Arbitration Provision with respect to his remaining Loan Agreements. As part of the ordinary course of its business, FAL maintains copies of written rejection notices received in the records for each specific customer. I reviewed the records for Mr. Maldonado's loans and the only written rejection notices I located were with respect to the November 30, 2018 and April 24, 2019 Loan Agreements. Had Mr. Maldonado sent a written rejection notice with respect to his remaining Loan Agreements, it would be part of the records for his loans maintained by FAL in the ordinary course of business.

Alfredo Mendez

10. On April 7, 2017, plaintiff Alfredo Mendez ("Mendez") obtained a loan from FAL. A true and correct copy of the Loan Agreement signed by Mr. Mendez is attached hereto as Exhibit 5. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

11. On May 6, 2017, Mr. Mendez refinanced his loan and signed a new Loan Agreement. A true and correct copy of the Loan Agreement signed by Mr. Mendez on May 6, 2017 is attached hereto as Exhibit 6. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

12. With respect to each Loan Agreement he signed, Mr. Mendez was given the right to opt out of the Arbitration Provision within 30 days of the date of the Loan Agreement without affecting any other provision of the Agreement. See Exs. 5-6 at ¶ 16(b).

13. FAL has no record of receiving from Mr. Mendez a written rejection notice of the Arbitration Provision with respect to either of the Loan Agreements he signed. Had Mr. Mendez sent a written rejection notice, it would be part of the records for his loans maintained by FAL in the ordinary course of business. I reviewed the records for Mr. Mendez's loans and there is no record of receiving any written rejection notice from him.

Roberto Mateos Salmeron

14. On May 31, 2016, plaintiff Roberto Mateos Salmeron ("Salmeron") obtained a loan from FAL. A true and correct copy of the Loan Agreement signed by Mr. Salmeron is attached hereto as Exhibit 7.

Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

15. On November 28, 2016, Mr. Salmeron refinanced his loan and signed a new Loan Agreement. A true and correct copy of the Loan Agreement signed by Mr. Salmeron on November 28, 2016 is attached hereto as Exhibit 8. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

16. On May 5, 2017, Mr. Salmeron refinanced his loan again and signed another new Loan Agreement. A true and correct copy of the Loan Agreement signed by Mr. Salmeron on May 5, 2017 is attached hereto as Exhibit 9. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

17. Finally, on January 23, 2018, Mr. Salmeron refinanced his loan a third time and signed another new Loan Agreement. A true and correct copy of the Loan Agreement signed by Mr. Salmeron on January 23, 2018 is attached hereto as Exhibit 10. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

18. With respect to each Loan Agreement he signed, Mr. Salmeron was given the right to opt out of the Arbitration Provision within 30 days of the date of the Loan Agreement without affecting any other provision of the Agreement. See Exs. 7-10 at ¶ 16(b).

19. FAL has no record of receiving from Mr. Salmeron a written rejection notice of the Arbitration Provision with respect to either of the Loan Agreements he signed. Had Mr. Salmeron sent a written rejection notice, it would be part of the records for his loans maintained by FAL in the ordinary course of business. I reviewed the records for Mr. Salmeron's

loans and there is no record of receiving any written rejection notice from him.

J. Peter Tuma

20. On August 2, 2016, plaintiff J. Peter Tuma ("Tuma") obtained a loan from FAL. A true and correct copy of the Loan Agreement signed by Mr. Tuma, and the co-borrower Jonabette Michelle Tuma, is attached hereto as Exhibit 11. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

21. On May 10, 2018, Mr. Tuma refinanced his loan and signed a new Loan Agreement. A true and correct copy of the Loan Agreement signed by Mr. Tuma, and the co-borrower Jonabette Michelle Tuma, on May 10, 2018 is attached hereto as Exhibit 12. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

22. With respect to each Loan Agreement he signed, Mr. Tuma, and the co-borrower Jonabette Michelle Tuma, was given the right to opt out of the Arbitration Provision within 30 days of the date of the Loan Agreement without affecting any other provision of the Agreement. See Exs. 11-12 at ¶ 16(b).

23. FAL has no record of receiving from Mr. Tuma (or co-borrower Jonabette Michelle Tuma) a written rejection notice of the Arbitration Provision with respect to either of the Loan Agreements he signed. Had Mr. Tuma (or co-borrower Jonabette Michelle Tuma) sent a written rejection notice, it would be part of the records for his loans maintained by FAL in the ordinary course of business. I reviewed the records for Mr. Tuma's loans and there is no record of receiving any written rejection notice from him or co-borrower Jonabette Michelle Tuma.

Jonabette Michelle Tuma

24. On June 27, 2015, Ms. Tuma obtained a loan from J.W.P. Lenders Corporation ("J.W.P."); J.W.P. is a predecessor to FAL. A true and correct copy of the Loan Agreement signed by Ms. Tuma (and co-borrower Mr. Tuma) on June 27, 2015 is attached hereto as Exhibit 13. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

25. On July 29, 2017, Ms. Tuma refinanced her loan and signed a new Loan Agreement. A true and correct copy of the Loan Agreement signed by Ms. Tuma (and co-borrower Mr. Tuma) on July 29, 2017 is attached hereto as Exhibit 14. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

26. On August 5, 2017, Ms. Tuma refinanced her loan and signed a new Loan Agreement. A true and correct copy of the Loan Agreement signed by Ms. Tuma (and co-borrower Mr. Tuma) on August 5, 2017 is attached hereto as Exhibit 15. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

27. On January 31, 2018, Ms. Tuma refinanced her loan and signed a new Loan Agreement. A true and correct copy of the Loan Agreement signed by Ms. Tuma (and co-borrower Mr. Tuma) on January 31, 2018 is attached hereto as Exhibit 16. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

28. On April 27, 2018, Ms. Tuma refinanced her loan and signed a new Loan Agreement. A true and correct copy of the Loan Agreement signed by Ms. Tuma (and co-borrower Mr. Tuma) on April 27, 2018 is attached hereto as Exhibit 17. Paragraph 16 of the Loan Agreement includes the Arbitration Provision.

29. With respect to each Loan Agreement she signed, Ms. Tuma was given the right to opt out of the Arbitration Provision within 30 days of the date of the Loan Agreement without affecting any other provision of the Agreement. See Exs. 13-17 at ¶ 16(b).

30. FAL has no record of receiving from Ms. Tuma (or co-borrower Mr. Tuma) a written rejection notice of the Arbitration Provision with respect to any of the Loan Agreements she signed. Had Ms. Tuma (or co-borrower Mr. Tuma) sent a written rejection notice, it would be part of the records for his loans maintained by FAL in the ordinary course of business. I reviewed the records for Ms. Tuma's loans and there is no record of receiving any written rejection notice from her (or co-borrower Mr. Tuma).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 08/23/19

/s/ John A. Busic
JOHN A. BUSIC

LOAN AGREEMENT AND PROMISSORY NOTE

Lender: Fast Auto Loans, Inc. DBA RPM Lenders **Address:** 2539 S. MAIN ST SANTA ANA, CA 92707 (714) 513-0003	**Today's Date:** 06/15/2018 05:38 PM **Estimated Funding Date:** 06/15/2018	**Maturity Date:** 05/31/2019
Borrower Information: **Name:** JOE MALDONADO **Address:** [redacted]	**Co-Borrower:** **Name:** None **Address:** N/A N/A	**Contract #:** SL-CA1107-180615-3563-00 **California Financing Law License Number:** 603-G606

Disclosures Made in Compliance with Federal Truth in Lending

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
158.66 % (e)	$2,594.51 (e)	$2,600.00	$5,194.51 (e)

Security: This loan is unsecured.

Prepayment: If you pay off early, you will not have to pay a penalty and will not be entitled to a refund.

Late Charge: We will assess a late charge of ten dollars ($10) for each payment received ten (10) or more days after its due date or fifteen dollars ($15) for each payment received fifteen (15) or more days after its due date.

See below for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Your Payment Schedule (e) will be:

Number of Payments	Amount of Payments	When Payments Are Due
1	$369.36	07/13/2018
22	$209.80	Every 14 days, beginning 07/27/2018
1	$209.55	05/31/2019

(e) means Estimated.

Itemization of Amount Financed:

$ 2,600.00 Amount given to you directly

$ 0.00 Amount paid on your prior account

$ 0.0 Administrative Fee

Less

-$ 0.0 Prepaid Finance Charge (Administrative Fee)

Amount paid to others on your behalf

$ 0.00 to N/A

$ 2,600.00 **Amount Financed**

(Total)

This Loan Agreement and Promissory Note ("Agreement") is executed by and between the BORROWER and LENDER on the date set forth above. As used in this Agreement, the terms "we," "us" and "our" mean the LENDER listed above. Similarly, as used in this Agreement, the terms "you" and "your" mean the BORROWER listed above.

1. Promise to Pay; How We May Seek Payments. Borrower and Co-Borrower, jointly and severally, (collectively hereinafter referred to as "BORROWER") promise to pay to LENDER either in immediately available United States currency or by any optional authorization signed by you (including the Optional Recurring Electronic Payment Authorization), the Total of Payments shown above when due in accordance with the Payment Schedule shown above, until the Amount Financed, together with accrued and unpaid finance charges, has been fully repaid, together with any costs incurred by us in collecting said amounts. All sums due hereunder shall be paid without prior demand, notice or claim of set off. You, without penalty, have the right to prepay the outstanding balance at any time prior to maturity. You may authorize electronic payments by signing the authorization captioned "Optional Recurring Electronic Payment Authorization." **SIGNING THIS AUTHORIZATION IS COMPLETELY OPTIONAL.** Your bank may impose fees in connection with rejected payments, and you agree that we do not have any liability for such fees. If you know that a payment will be rejected (because, for example, there is not enough money in your bank account), you should contact us so that we can attempt to make alternate payment arrangements. If there is any missing or erroneous information in or with your application regarding your bank or your bank account, you authorize us to verify and correct such information.

2. Estimates in Truth in Lending Act Disclosures. LENDER had to estimate the Annual Percentage Rate, Finance Charge, Total of Payments, and Payment Schedule in the Truth in Lending Act Disclosures because we do not know exactly when the proceeds of the Loan will be credited to your bank account ("Funding Date"). We based our estimate on your Loan proceeds being disbursed on the Estimated Funding Date shown above. Delays caused by our bank or your bank, bank holidays, or your failure to return any calls we make to you to verify your information and other circumstances beyond our control may result in the Funding Date occurring after the date we estimate.

3. Interest Rate. Interest under this Agreement will be calculated on a simple interest basis commencing on the Funding Date and shall accrue at a daily rate of **1/365th** of 160.00 % multiplied by the unpaid principal balance (the Principal, less the amount the Principal has been reduced by payments) for each day that any amount remains due to LENDER. Interest is computed on the basis of the number of days actually elapsed.

Borrowers' Initials JMA

PAID

4. **Payments.** BORROWER agrees to pay LENDER interest and Principal in accordance with the Payment Schedule shown above. LENDER will apply all payments on the date received by LEND[illegible]n the following order: (1) unpaid costs and expen[illegible]hich you have agreed to pay LENDER pursuant to this Agreement; (2) accrued but unpaid intere[illegible]d (3) unpaid principal balance. Payments made [illegible]ddition to regularly scheduled payments will be applied in the same manner.

5. **Scheduled Payment Amounts.** The Payment Schedule shown above assumes that all of your payments are made on time. If you are late making a payment, the amount of your last scheduled payment may be greater than disclosed in the Payment Schedule. Likewise, if you are late making a payment, the Finance Charge and Total of Payments may be greater than disclosed above. Interest continues to accrue on the unpaid principal balance, regardless of whether you have been charged a delinquency fee because of a delinquent payment. BORROWER, without penalty, has the right to fully prepay the unpaid principal balance at any time prior to maturity and will not be obligated to pay any unaccrued interest. Any prepayment (except for a prepayment in full) will not relieve BORROWER's obligation to make any later scheduled payment, according to the Payment Schedule above, until all sums due are fully repaid.

6. **Administrative Fee.** BORROWER agrees to pay to LENDER the Administrative Fee. The Administrative Fee shall be fully earned as of the date this Agreement is executed. No Administrative Fee shall be due under this paragraph if this Agreement is a refinancing of an existing loan with LENDER and the BORROWER has already paid an Administrative Fee on the existing loan and less than one year has elapsed since BORROWER paid a previous Administrative Fee to LENDER.

7. **Late Charge.** BORROWER agrees to pay to LENDER a delinquency fee of ten dollars ($10) for each payment that is not received by LENDER ten (10) or more days after its due date or fifteen dollars ($15) for each payment that is not received by LENDER fifteen (15) or more days after its due date. The delinquency fee will not be collected more than once for the same default and may be collected at the time of the default or at any time thereafter. If the delinquency fee is deducted from any payment received after default occurs, and the deduction results in the default of a subsequent installment, no fee will be collected for the resulting default.

8. **Additional Products & Services.** BORROWER understands that the purchase of any other product or service offered by LENDER is not a requirement of obtaining a loan from LENDER. BORROWER further understands that the purchase of any other product or service can be in cash and does not need to be financed as part of this Agreement.

9. **BORROWER's Representations and Warranties.** BORROWER represents and warrants that BORROWER has the right to enter into this Agreement, is at least 18 years of age, has the financial ability to repay this loan, and that all information the BORROWER has given to LENDER is true and correct. BORROWER understands and acknowledges that no credit insurance is offered with this Agreement.

10. **Events of Default.** The following constitute events of default under this Agreement: (a) BORROWER does not pay the full amount of any payment when due; (b) BORROWER fails to keep any of BORROWER's promises under this Agreement; or (c) any representation, warranty, or information given to the LENDER by BORROWER is false or misleading, other than any misstatement with reference to BORROWER'S credit or financial standing.

11. **LENDER's Rights in the Event of Default.** Upon the occurrence of any event of default, the LENDER may at its option, and without notice or demand, do any one or more of the following: (a) declare the whole outstanding balance due under this Agreement due and payable at once and proceed to collect it; (b) exercise all other rights, powers and remedies given by law; and (c) recover from BORROWER all charges, costs and expenses, including all collection costs and reasonable attorney's fees incurred or paid by the LENDER in exercising any right, power or remedy provided by this Agreement or by law. In the event of default, the interest shall continue to accrue until the unpaid Amount Financed, together with all accrued and unpaid interest and costs, is fully repaid.

12. **General.** (a) BORROWER agrees to pay a returned check fee of fifteen dollars ($15) for the return by a depositary institution of a dishonored check, negotiable order of withdrawal or share draft; (b) if more than one BORROWER executes this Agreement, each BORROWER will be jointly and severally liable; (c) this Agreement shall be construed, applied and governed by the laws of the State of California; (d) the unenforceability or invalidity of any portion of this Agreement shall not render unenforceable or invalid the remaining portions hereof; (e) time is of the essence of this Agreement; and (f) this Agreement constitutes the entire Agreement between the parties, and no other agreements, representations or warranties other than those stated herein shall be binding unless reduced to writing and signed by both parties.

13. **Important Additional Disclosures.** This loan is made pursuant to the California Financing Law, Division 9 (commencing with Section 22000) of the Financial Code.

14. **ARBITRATION PROVISION.** This Arbitration Provision describes when and how a Claim (as defined below) may be arbitrated. Arbitration is a method of resolving disputes in front of one or more neutral persons, instead of having a trial in court in front of a judge and/or jury. It can be a quicker and simpler way to resolve disputes.

READ THIS ARBITRATION PROVISION CAREFULLY AS IT WILL HAVE A SUBSTANTIAL IMPACT ON HOW LEGAL CLAIMS YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED.

YOU HAVE THE RIGHT TO REJECT (NOT BE BOUND BY) THIS ARBITRATION PROVISION AS DESCRIBED BELOW. If you do not reject this Arbitration Provision and a Claim is arbitrated, neither you nor we will have the right to: (1) have a court or a jury decide the Claim; (2) engage in information-gathering (discovery) to the same extent as in court; (3) participate in a class action, private attorney general or other representative action in court or in arbitration; or (4) join or consolidate a Claim with claims of any other person. The right to appeal is more limited in arbitration than in court and other rights in court may be unavailable or limited in arbitration.

(a) *Special Definitions*: As solely used in the Arbitration Provision, the terms "we," "us" and "our" mean (i) the Lender (listed on the top of the first page of this Agreement), its parent companies, wholly or majority-owned subsidiaries, affiliates, successors, assigns and any of their employees, officers and directors, and (ii) any third party providing any goods and services in connection with the origination, servicing or collection of this Agreement. "You" means Borrower (including any Co-Borrower) listed on the top of the first page of this Agreement.

(b) *Your Right to Reject:* **If you don't want this Arbitration Provision to apply, you may reject it by mailing us a written rejection notice which contains all of the following: (i) the date of this Agreement and a description of the Motor Vehicle; (ii) the names, addresses and phone numbers of each of the Borrowers for this Agreement; and (iii) a statement that all of the Borrowers reject the Arbitration Provision of this Agreement. The rejection notice must be sent by certified mail, return receipt requested, to LENDER at: P.O. Box 500785 Atlanta, Georgia, 31150, Attn: Arbitration Rejection Notice. A rejection notice is only effective if it is signed by all Borrowers and Co-Borrowers and if we receive it within thirty (30) days after the date of this Agreement. If you reject this Arbitration Provision, that will not affect any other provision of this Agreement or the status of your Agreement. If you don't reject this Arbitration Provision, it will be effective as of the date of the Agreement. If you reject this Arbitration Provision, that will not constitute a rejection of any prior arbitration provision between you and us. Even if you previously rejected an arbitration provision between you and us, you will be bound by this Arbitration Provision unless you reject it.**

(c) *Federal Arbitration Act:* The parties agree and acknowledge that this Arbitration Provision and this Agreement evidence a transaction involving interstate commerce and, therefore, a federal statute, the Federal Arbitration Act (Title 9 of the United States Code) ("FAA"), shall govern the interpretation and enforcement of this Arbitration Provision and proceedings pursuant thereto. To the extent state law is applicable under and is not preempted by the FAA, the law of the state applicable under the paragraph of this Agreement titled "Governing Law" shall apply.

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(d) *What Claims Are Covered:* "Claim" means any claim, dispute or controversy between you and us, whether preexisting, present or future, that in any way arises from or relates to this Agreement or the [redacted] Vehicle securing this Agreement. "Claim" has [redacted] broadest possible meaning, and includes initial claims, counterclaims, cross-claims and third-party claims, federal, state, local and administrative claims and claims which arose before the effective date of this Arbitration Provision. It includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity and claims for monetary damages and injunctive or declaratory relief.

However, "Claim" does not include: (i) any dispute or controversy about the validity, enforceability, coverage or scope of this Arbitration Provision or any part thereof (including, without limitation, the Class Action Waiver set forth below and/or this sentence), all such disputes or controversies are for a court and not an arbitrator to decide. But any dispute or controversy that concerns the validity or enforceability of the Agreement as a whole is for the arbitrator, not a court, to decide; (ii) the exercising of any self-help or non-judicial remedies by you or us, for example, our right to enforce our security interest and to obtain possession of the Collateral by using self-help; (iii) any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind; (iv) any individual action brought by you or us in small claims court, or your State's equivalent court. However, if that small claim action is transferred, removed or appealed to a different court, you or we then have the right to choose arbitration. Moreover, this Arbitration Provision will not apply to any Claims that are the subject of a class action filed in court that is pending as of the effective date of this Arbitration Provision in which you are alleged to be a member of the putative class for as long as such class action is pending. In addition to offering loans that are secured by the consumer's motor vehicle (like this Agreement), from time to time Lender may offer loans to consumers involving the delayed deposit of a personal check. If you are also a party to any other loan agreement of any type with Lender, the arbitration provision in that loan agreement shall apply to that agreement.

(e) *Electing Arbitration; Starting an Arbitration Proceeding:* Either you or we may elect to arbitrate a Claim by giving the other party written notice of the intent to arbitrate the Claim or by filing a motion to compel arbitration of the Claim. This notice may be given before or after a lawsuit has been filed concerning the Claim or with respect to other Claims brought later in the lawsuit, and it may be given by papers filed in the lawsuit. Each of the arbitration administrators listed below has specific rules for starting an arbitration proceeding. Regardless of who elected arbitration or how arbitration was elected, the party asserting the Claim (i.e., the party seeking money damages or other relief from a court or an arbitrator) is responsible for starting the arbitration proceeding. Thus, if you assert a Claim against us in court, and we elect to arbitrate that Claim by filing a motion to compel arbitration which is granted by the court, you will be responsible for starting the arbitration proceeding.

(f) *Choosing the Administrator:* The arbitration administrator will be: American Arbitration Association ("AAA"), 1633 Broadway, 10th Floor, New York, NY 10019, www.adr.org 1-800-778-7879; or JAMS, 620 Eight Avenue, 34th Floor, New York, NY 10018, www.jamsadr.com, 1-800-352-5267. You may contact these organizations directly if you have any questions about the way they conduct arbitrations or want to obtain a copy of their rules and forms (which are also available on their websites). However, if the AAA and JAMS are unable or unwilling to serve as administrator, the parties may agree upon another administrator or, if they are unable to agree, a court shall select the administrator or arbitrator. No company may serve as administrator, without the consent of all parties, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of the Class Action Waiver in this Arbitration Provision.

(g) *The Arbitrator:* A single arbitrator will be appointed by the administrator and must be a practicing attorney with ten or more years of experience or a retired judge.

(h) *Class Action Waiver:* **Notwithstanding any other provision of this Agreement, if either you or we elect to arbitrate a Claim, neither you nor we will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or class member; or (b) to join or consolidate Claims with claims of any other persons (thus, Claims brought by or against one Borrower (or Co-Borrower) may not be joined or consolidated in the arbitration with Claims brought by or against any other borrower who obtained a different loan agreement). No arbitrator shall have authority to conduct any arbitration in violation of this provision or to issue any relief that applies to any person or entity other than you and/or us individually. (Provided, however, that the Class Action Waiver does not apply to any lawsuit or administrative proceeding filed against us by a state or federal government agency even when such agency is seeking relief on behalf of a class of borrowers including you. This means that we will not have the right to compel arbitration of any claim brought by such an agency). The parties acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between them and is non-severable from this Arbitration Provision. If the Class Action Waiver is limited, voided or found unenforceable, then this Arbitration Provision (except for this sentence) shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.**

(i) *Location of Arbitration:* Any arbitration hearing that you attend must take place at a location reasonably convenient to your residence.

(j) *Cost of Arbitration:* At your written request, we will pay all filing, hearing and/or other fees charged by the administrator and arbitrator to you for Claim(s) asserted by you in an individual arbitration after you have paid an amount equivalent to the fee, if any, for filing such Claim(s) in state or federal court (whichever is less) in the judicial district in which you reside. (If you have already paid a filing fee for asserting the Claim(s) in court, you will not be required to pay that amount again). In addition, the administrator may have a procedure whereby you can seek a waiver of fees charged to you by the administrator and arbitrator. We will always pay any fees or expenses that we are required to pay by law or the administrator's rules or that we are required to pay for this Arbitration Provision to be enforced. We will not ask you to pay or reimburse us for any fees we pay the Administrator.

(k) *What Law the Arbitrator will Apply:* The arbitrator will not be bound by judicial rules of procedure and evidence that would apply in a court, nor by state or local laws that relate to arbitration proceedings. The arbitrator will apply the same statutes of limitation and privileges that a court would apply if the matter were pending in court. (A "statute of limitations" is the time period allowed by law for initiating a lawsuit or other court action). In determining liability or awarding damages or other relief, the arbitrator will follow the applicable substantive law, consistent with the FAA, that would apply if the matter had been brought in court. The arbitrator may award any damages or other relief or remedies that would apply under applicable law to an individual action brought in court, including, without limitation, punitive damages (which shall be governed by the Constitutional standards employed by the courts) and injunctive, equitable and declaratory relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim). The arbitrator will have the authority to award fees and costs of attorneys, witnesses and experts to the extent permitted by the Agreement, the administrator's rules or applicable law. However, with respect to Claim(s) asserted by you in an individual arbitration, we will pay your reasonable attorney, witness and expert fees and costs if and to the extent you prevail, if applicable law requires us to or if we must bear such fees and costs in order for this Arbitration Provision to be enforced.

(l) *Right to Discovery:* In addition to the parties' rights to obtain discovery pursuant to the arbitration rules of the administrator, either party may submit a written request to the arbitrator to expand the scope of discovery normally allowable under the arbitration rules of the administrator. The arbitrator shall have discretion to grant or deny that request.

(m) *Arbitration Result and Right of Appeal:* At the timely request of either party, the arbitrator shall write a brief explanation of the grounds for the decision. Judgment upon the award given by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision is final and binding, except for any right of appeal provided by the FAA. However, in an arbitration administered by JAMS, if the amount of the Claim exceeds $50,000, any party can, within 14 days after the entry of the award by the arbitrator, appeal the award to a three-arbitrator panel administered by JAMS. The panel shall

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reconsider anew any aspect of the initial award requested by the appealing party. The decision of the panel shall be by majority vote. The appeal will be conducted pursuant to the JAMS Optional Ap[illegible] Procedure, available at http://www.jamsadr.com[illegible]optional-appeal-procedure. Reference in this Arbitration Provision to "the arbitrator" shall me[illegible]e panel if an appeal of the arbitrator's decision h[illegible]been taken. The costs of such an appeal will be borne in accordance with subparagraph (j) above, captioned "Costs of Arbitration." Any final decision of the appeal panel is subject to judicial review only as provided under the FAA.

(n) *Severability and Survival:* If any part of this Arbitration Provision, other than the Class Action Waiver, is deemed or found to be unenforceable for any reason, the remainder shall be enforceable. This Arbitration Provision shall survive the repayment of all amounts owed under this Agreement, any legal proceeding, or any use of a self-help remedy by us to collect a debt owed by you to us, and any bankruptcy by you, to the extent consistent with applicable bankruptcy law.

(o) *Conflicts:* Arbitration of a Claim must comply with this Arbitration Provision. In the event of a conflict between the provisions of this Arbitration Provision, on the one hand, and any applicable rules of the AAA or JAMS or other administrator used or any other terms of this Agreement, on the other hand, the provisions of this Arbitration Provision shall control. This Arbitration Provision supersedes any other arbitration provision between the parties that may otherwise be applicable.

(p) *Notice and Cure; Special Payment:* Prior to initiating a Claim, you may send us a written Dispute Claim Notice. In order for a Dispute Claim Notice to be valid and effective, it must: (a) state your name, address and Contract number; (b) be signed by you; (c) describe the basis of your Claim and the amount you would accept to resolve the Claim; (d) state that you are exercising your rights under the "Notice and Cure" paragraph of the Arbitration Provision; and (e) be sent to us by certified mail, return receipt requested, at Fast Auto Loans, Inc., P.O. Box 500785 Atlanta, Georgia, 31150, Attn: Dispute Claim Notice. This is the only method by which you can submit a Dispute Claim Notice. You must give us a reasonable opportunity, not less than 30 days, to resolve the Claim. If, and only if, (i) you submit a Dispute Claim Notice in accordance with this paragraph on your own behalf (and not on behalf of any other party); (ii) you cooperate with us by promptly providing the information we reasonably request; (iii) we refuse to provide you with the relief you request before an arbitrator is appointed; and (iv) the matter then proceeds to arbitration and the arbitrator subsequently determines that you were entitled to such relief (or greater relief), you will be entitled to a minimum award of at least $7,500 (not including any arbitration fees and attorneys' fees and costs to which you will also be entitled). We encourage you to address all Claims you have in a single Dispute Claim Notice and/or a single arbitration. Accordingly, this $7,500 minimum award is a single award that applies to all Claims you have asserted or could have asserted in the arbitration, and multiple awards of $7,500 are not contemplated.

NOTICE OF BORROWER'S RESPONSIBILITY

PURSUANT TO SECTION 1788.21 OF THE CALIFORNIA CIVIL CODE, YOU ARE REQUIRED TO NOTIFY LENDER OF ANY CHANGE IN YOUR NAME, ADDRESS OR EMPLOYMENT WITHIN A REASONABLE TIME AFTER SUCH CHANGE OCCURS.

FOR INFORMATION CONTACT THE DEPARTMENT OF BUSINESS OVERSIGHT, STATE OF CALIFORNIA

DO NOT SIGN THIS AGREEMENT UNLESS YOU HAVE READ IT, INCLUDING THE ARBITRATION PROVISION, OR IF IT HAS ANY BLANKS. YOU WILL RECEIVE A COPY OF THIS AGREEMENT.

Borrower

Co-Borrower

LENDER

by: Its Authorized Representative

Authorization to Deliver Advertisements or Telemarketing Messages Using Text Messages, E-Mails & Other Electronic Communications

You hereby authorize us to deliver or cause to be delivered to you advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice. You hereby further authorize us to deliver these messages via e-mails, text messages and other electronic communications to the telephone number and e-mail listed below. To receive such communications you must provide a valid e-mail address, telephone number or other contact information for an applicable communications device. You should be aware that your wireless provider or other communications carrier may charge you applicable text messaging rates for each text message or other electronic communication that is sent to you or received by you. You represent to us that you are the owner or an authorized user of the wireless or other communications device for which you have provided an e-mail address, a telephone number or other contact information. You understand that receipt of this loan is not conditioned upon your consent to this authorization.

-Your e-mail address: N/A

-Your mobile phone number: [redacted]

-Your Signature: _____ -Date: 06/15/2018

st Auto Loans, Inc. DBA RF
Lenders

REMINDER TO BORROWER AND
ACKNOWLEDGMENT OF ABILITY TO REPAY LOAN

1. This is an installment loan. It is repaid by making a series of approximately equal payments.* The Annual Percentage Rate on this loan is 158.66 %.

2. Although the loan is structured as an installment loan, we encourage you to pay more than your scheduled payment on each installment so that you pay-off your loan more quickly.

3. All interest due must be paid before any payment will be credited toward the reduction of principal.

4. **Please note, this is a higher interest loan. You should go to another source if you have the ability to borrow at less than the Annual Percentage Rate shown above.**

5. **ACKNOWLEDGMENT OF ABILITY TO REPAY LOAN.** By signing below you hereby acknowledge that you have given true and correct information concerning your income, other monthly obligations and employment. You further acknowledge that given this information you believe you have the ability to repay this loan.

I have read the above, including the **ACKNOWLEDGMENT OF ABILITY TO REPAY LOAN** and I understand its contents.

JOE MALDONADO
BORROWER

DATE: 06/15/2018

None
CO-BORROWER

DATE: 06/15/2018

* Check your loan agreement for the exact amount of your payments and other terms and conditions.

Borrowers' Initials _____

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