No. 22-2948

United States Court of Appeals for the Third Circuit

DANA JENNINGS, on his own behalf and on behalf of other similarly situated persons; JOSEPH A. FURLONG, on his own behalf and on behalf of other similarly situated persons,

Appellees,

v.

CARVANA, LLC,

Appellant.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania, No. 5:21-cv-05400,
Hon. Edward G. Smith, District Judge

BRIEF FOR APPELLANT AND JOINT APPENDIX VOLUME 1

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit Rule 26.1, Appellant Carvana, LLC makes the following disclosure:

Carvana, LLC has as a member Carvana Operations HC, LLC, which has as a member Carvana Group, LLC, which has as a member Carvana Co. Sub LLC, which has as a member Carvana Co., a publicly traded corporation. No other publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

Page

Page

TABLE OF AUTHORITIES

Page(s)

CASES

Page(s)

Page(s)

Page(s)

Page(s)

FEDERAL STATUTES

STATE STATUTES

Page(s)

OTHER AUTHORITIES

INTRODUCTION

In 2021, Plaintiffs Dana Jennings and Joseph A. Furlong each purchased a vehicle from Defendant Carvana, LLC, a nationwide car dealer. Each transaction was memorialized in a single agreement spanning three expressly interconnected documents—a Retail Purchase Agreement (RPA), a Retail Installment Sales Contract (RISC), and an Arbitration Agreement. In this lawsuit, Plaintiffs allege that Carvana breached a contractual promise to properly license, title, and register their vehicles in Pennsylvania. The parties' dispute over that promise is unambiguously covered by their Arbitration Agreements, which require arbitration of "any claim, dispute [or] controversy … arising out of" the "Retail Purchase Agreement … and/or the related Retail Installment Contract." JA64-65; JA70-71. This case therefore plainly belongs in arbitration.

In the district court, Plaintiffs did not dispute that they knowingly agreed to arbitration and that they failed to exercise their contractual right to opt out of arbitration within 30 days of their purchase. Instead, their sole argument was that the Arbitration Agreements were not enforceable under Pennsylvania's Motor Vehicle Sales Finance Act (MVSFA) because they appeared in different documents from the RISCs. The district court agreed with that interpretation of Pennsylvania law. That decision was wrong and should now be overturned.

The district court held that under the MVSFA, "*all agreements*" between an installment buyer and seller—"regardless of the subject matter"—"must be found in one document, the retail installment sale contract." JA1, 11. Here, although Plaintiffs had each signed three documents memorializing their agreement on the same day at the same time, the court held that two of those documents—the RPA and Arbitration Agreement—were *void ab initio* and thus "not independently enforceable." JA12.

The district court's holding misinterprets the MVSFA's text and runs counter to both the common law and common sense. At the time of their purchase, Plaintiffs and Carvana obviously did not believe that two of the three documents they signed would immediately become unenforceable. And nothing in the MVSFA's text requires this senseless result.

The MVSFA states that an "installment sale contract shall … contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold." 12 Pa. C.S. §6221(a)(2). While that provision requires that all agreements related to the installment sale be contained in a single "*contract*," it does not require that they be contained in a single *document*. And Pennsylvania common law has long recognized that where several documents governing the same transaction are executed at the same time, those documents must be read in tandem as a single, integrated contract. That is especially so where, as here, the RPA

expressly incorporates by reference *both* the RISC *and* the Arbitration Agreement, thereby creating a single contract governing the transaction and satisfying the MVSFA.

The district court recognized that the MVSFA permits incorporation by reference but refused to enforce the parties' Arbitration Agreement because the RPA incorporated the RISC and not the other way around. According to the district court, if the RISC had incorporated the RPA and the Arbitration Agreement, all three documents would be enforceable. But because it was the RPA that did the incorporating, the MVSFA voided the RPA and Arbitration Agreement. That interpretation of the MVSFA finds no grounding in the statute's text. On the contrary, the MVSFA supplies a broad definition for "installment sale contract" that covers *any* contract formed by multiple documents regardless of which document does the incorporating.

The district court's contrary reading of the MVSFA is also fundamentally inconsistent with the law's purpose. The MVSFA was enacted more than 70 years ago to protect Pennsylvanians from car dealers who were using unscrupulous tactics to obscure their exorbitant interest rates for financing. But Plaintiffs do not—and cannot—contend that Carvana misled them in any way as to the terms of their financing or the agreement to arbitrate. Rather, by providing the Arbitration Agreement in its own document—instead of burying it in the middle of the RISC—

Carvana was able to highlight its significance to Plaintiffs and make absolutely clear its effect on Plaintiffs' rights to go to court. By contrast, the district court's one-document rule will harm buyers by invalidating favorable agreements not contained in the RISC. In this case, for example, the district court's interpretation has the effect of nullifying Plaintiffs' right to cancel their purchases within seven days—a key contractual right granted by the RPA and *not* the RISC. For all those reasons, the district court erred in reading the MVSFA as imposing a single-document rule.

In any event, even if the district court were correct that the MVSFA imposes a single-document rule—which it does not—its decision should still be reversed, for at least two additional and independent reasons.

First, the MVSFA applies only to agreements "relating to the installment sale" of a vehicle. 12 Pa. C.S. §6221(a)(2). It follows that any one-document rule would—at most—require all *installment financing provisions* to be included in the RISC. The MVSFA's list of required "[c]ontents" is focused on financing terms. *See id.* §6222. And the MVSFA provides that sellers may "*contract for*, collect or receive" non-financed fees and costs "from the buyer *independently of* [the RISC]." *Id.* §6242(c)(1) (emphasis added). Here, because the Arbitration Agreement is not a financing term, it need not be included in the RISC under the MVSFA and so is enforceable.

Second, under the district court's one-document construction of the MVSFA, Plaintiffs' claims would fail on the merits and should be dismissed outright. Plaintiffs' suit is premised entirely on an obligation created by the RPA, not the RISC. The RPA is the only document that requires Carvana to title, license, and register Plaintiffs' vehicles. If documents outside of the RISC are unenforceable, then the RPA is unenforceable—and Plaintiffs have no claim. Accordingly, if the district court's expansive interpretation of the MVSFA is correct, then it was error to not dismiss Plaintiffs' claims arising out of the now-void RPA. Either way, this Court should reverse.

JURISDICTIONAL STATEMENT

Carvana removed this case to federal court pursuant to the Class Action Fairness Act. *See* 28 U.S.C. §§1441, 1446, 1453. The district court had jurisdiction under 28 U.S.C. §1332(d). On September 30, 2022, that court entered an opinion and order denying Carvana's motion to compel arbitration and to dismiss. *See* JA1-17. On October 26, 2022, Carvana timely filed a notice of appeal. *See* JA18-20. This Court has jurisdiction over this appeal under 9 U.S.C. §16(a). *See Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 591-92 (3d Cir. 2004); *see also BP P.L.C. v. Mayor of Baltimore*, 141 S. Ct. 1532, 1538 (2021) (noting that where a statute permits immediate appeal of "an order," the Court of Appeals has jurisdiction over "the whole of a district court's 'order'").

STATEMENT OF THE ISSUES

1. Whether the MVSFA requires all agreements between an installment seller and buyer, including non-financing terms, to be contained in a single document, rather than a single contract comprised of multiple documents incorporated by reference into one another. *See* JA1-2, 8-12.

2. Whether, assuming Plaintiffs' RPAs are unenforceable under the MVSFA, the district court erred in not dismissing Plaintiffs' claims, which arise from obligations established by the RPAs. *See* JA13-15.

STATEMENT OF RELATED CASES

A case involving similar questions regarding the effect of the MVSFA on an arbitration agreement is currently pending in the Eastern District of Pennsylvania. *See Bradley* v. *Carvana, LLC*, No. 22-cv-2525. The case is stayed pending resolution of this appeal. *See* Order, Dkt. No. 20 (Nov. 9, 2022).

STATEMENT OF THE CASE

A. Legal Background

Section 2 of the Federal Arbitration Act (FAA) directs that parties' 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. That provision "reflect[s] both a 'liberal federal policy favoring arbitration,' and the 'fundamental principle that arbitration is a matter of contract.'" *AT&T Mobility LLC*

v. Concepcion, 563 U.S. 333, 339 (2011) (citations omitted). It also reflects Congress's desire to combat "longstanding judicial hostility to arbitration agreements." *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 89 (2000) (citation omitted).

In this case, the district court invalidated the parties' Arbitration Agreements under Pennsylvania's MVSFA. The Pennsylvania Legislature enacted the MVSFA in 1947 to "protect [Pennsylvania] citizens from abuses presently existing in the installment sale of motor vehicles." 69 P.S. §602 (1947).[1] Such abuses consisted primarily of price "goug[ing]" in the form of exorbitant—and often hidden—interest rates. *See* Pa. House Legis. J. ("House Journal") at 2255 (May 5, 1947)[2]; *see also* Wilbur C. Plummer & Ralph A. Young, *Abuses in Retail Installment Financing, and their Regulation*, *in Sales Finance Companies and Their Credit Practices* 227-43 (1940).[3]

At the time, vehicle installment sales were largely unregulated, and there was no cap on the amount of interest sellers could charge. *See* House Journal at 2255. As a result, sellers regularly charged as much as 120% interest, and even in one

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[1] In 2013, the Legislature repealed 69 P.S. §§601 to 637.1 and transferred the majority of the MVSFA's provisions to 12 Pa. C.S. §§6201 to 6275, with some minor modifications that are not relevant to this case.

[2] Available at https://www.legis.state.pa.us/WU01/LI/HJ/1947/0/19470505.pdf.

[3] Available at https://www.nber.org/system/files/chapters/c5663/c5663.pdf.

instance, the astronomical rate of 2,320%. *See id.* at 2255-56. At the same time, sellers often engaged in "unscrupulous" practices to obscure these sky-high rates. *See id.* at 2256. For example, the MVSFA's sponsor related the remarkable story of a car dealer who, despite pocketing $45 out of every $100 he financed, described his profits as "none of [his customers'] business." *Id.*; *see also* Plummer & Young, *supra*, at 231-32 ("Spokesmen for sales finance companies … stoutly deny the need for an 'effective interest' quotation of charges. They insist that for most purposes it is sufficient if the customer knows the dollar amount of finance charge ….").

To protect consumers from these overpriced rates and prevent them from being left in the dark as to how much they were paying for financing, the MVSFA made several changes to the law. First, and most importantly, the MVSFA established statutory caps on interest rates. *See* 12 Pa. C.S. §6243 (originally codified at 69 P.S. §619) (capping rates at 7.5%, 10%, 18% or 21%, depending on the vehicle's characteristics). Second, the MVSFA required installment sellers to obtain business licenses, so government officials could more easily oversee their activities. *See* 12 Pa. C.S. §6211 (originally codified at 69 P.S. §604). Third, the MVSFA placed various restrictions on refinancing, late fees, and repossession. *See* 12 Pa. C.S. §§6244-6245, 6251-6261 (originally codified at 69 P.S. §§620-621, 623-627).

Finally and most relevant here, to prevent installment sellers from concealing their rates or otherwise misleading purchasers on financing, the MVSFA provided that an "installment sale contract shall" (1) "be in writing," (2) "contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold," and (3) "be complete as to all essential provisions before the buyer signs the contract." 12 Pa. C.S. §6221(a) (originally codified at 69 P.S. §613). The statute further defined those "essential provisions" to include the total "purchase price of the motor vehicle," the "finance charge," the "payment schedule," and any "[o]ther charges necessary or incidental to the sale or financing of a motor vehicle." 12 Pa. C.S. §6222(5) (originally codified at 69 P.S. §614).

To ensure that the statute would cover all "installment sale contracts" regardless of how they were denominated, the Legislature defined that term in extremely broad language. With respect to vehicle sales, the MVSFA defines an "installment sale contract" as "[a] contract for the retail sale of a motor vehicle, *or a contract that has a similar purpose or effect*," if the buyer agrees to make or does make "two or more scheduled payments" toward the purchase price. 12 Pa. C.S. §6202 (emphasis added) (originally codified at 69 P.S. §603(10)). With respect to vehicle leases, the term covers "*any form of contract, however nominated*, for the bailment or leasing of a motor vehicle," "*or any other arrangement having a similar purpose or effect*," under which the buyer agrees to pay "a sum substantially

equivalent to or in excess of the value of the motor vehicle" and "[o]wnership of the motor vehicle may be transferred to the buyer." 12 Pa. C.S. §6202 (emphasis added). Notably, because the problems the MVSFA was intended to address concerned only financing, the MVSFA's provisions do not apply to non-financed purchases, such as when the buyer pays the full price in cash. *See id.*; *see also* JA11 n.5.

B. Factual and Procedural Background

1. Carvana is an online used car dealer that allows consumers to shop for, finance, and purchase a vehicle from the comfort of their home. Carvana sells its vehicles at a fixed price, without any of the haggling or sales gimmicks of traditional used-car dealerships.

In January and June 2021, respectively, Plaintiffs Jennings and Furlong purchased vehicles from Carvana on an installment sale basis. *See* JA42; JA46. On the day of their purchase, each Plaintiff signed three interlocking documents memorializing the transaction—an RPA, a RISC, and an Arbitration Agreement. These documents contain overlapping terms but provide unique details on different aspects of the contract: purchasing terms in the RPA, financing terms in the RISC, and dispute-resolution terms in the Arbitration Agreement.

The RPA is a three-page document that serves as the foundation of Carvana's agreement with any buyer. The RPA memorializes the basic terms of the sale, and expressly cross-references both the RISC and Arbitration Agreement. The first page

identifies the buyer, the make and model of the vehicle, the purchase price of that vehicle, the value of any trade-in vehicle, and other costs and fees associated with the sale, including the license plate, title, and registration fees at issue here. JA42; JA46. It also contains a box labeled "Finance Charge," which notes the "dollar amount" a purchaser's financing "credit will cost [her]" and directs the purchaser to "[s]ee Retail Installment Contract for more information." JA42; JA46. The next page of the RPA is dedicated primarily to describing Carvana's Vehicle Return Program, which "give[s]" the buyer "the ability to return the Vehicle to Carvana and terminate this retail purchase agreement and any retail installment contract executed in connection therewith" after a seven-day test period, provided certain conditions are met (e.g., the car has suffered only reasonable wear and tear). JA43; JA47. Finally, the last page of the RPA provides additional disclosures and includes the following provision expressly incorporating the parties' agreement to arbitrate disputes: "**Arbitration Agreement:** The arbitration agreement entered into between you and Dealer is incorporated by reference into and is part of this Agreement." JA44; JA48.

Because Plaintiffs financed their purchases, they also each signed a RISC to supplement the RPA. The RISC is a six-page document that provides further details on financing. The first page of the RISC contains a "Truth-in-Lending Disclosure," which states the annual financing rate and the total amount in dollars the financing

will cost. JA50; JA57. The next page includes an "Itemization of Amount Financed." JA51; JA59. As part of that itemization, the RISC states the total amount of fees that Carvana will collect from Plaintiffs to be "Paid to Public Officials (incl. filing fees)" under the RPA. JA 51; JA59. Unlike the RPA, the RISC does not further specify which fees are included in this line item, what the fees are for, or how much each individual fee is. The remaining pages of the RISC contain disclosures relating to optional insurance that may be purchased. JA52-54; JA58, 60-61. The penultimate page of the RISC states that the RISC contains the parties' "entire agreement" as to financing. *See* JA52, 54; JA58, 61 ("Your and our entire agreement is contained in this Contract. There are no unwritten agreements regarding this Contract," where "Contract" is defined as "this Retail Installment Contract and Security Agreement." (emphasis omitted)).

Finally, the parties here also signed an Arbitration Agreement, which is a five-page document that provides that "either" party "can decide to resolve" any covered dispute "by using arbitration." JA64; JA70. That document defines covered disputes to include "any claim, dispute [or] controversy between you and us arising from or related to … [t]he Contract," "[t]he vehicle or the sale of the vehicle," and "[t]he relationships resulting from the Contract," where "Contract" is defined to "mean[] the Retail Purchase Agreement … and/or the related Retail Installment Contract and Security Agreement." JA64-65; JA70-71. The Arbitration Agreement

also contains an incorporation-by-reference provision, which provides that it "is part of, and is hereby incorporated into, the Contract." JA64; JA70.

The Arbitration Agreement goes on to describe the arbitration process in detail and to repeatedly caution purchasers that, "[b]y choosing arbitration, we are both giving up our right to go to court." JA64-67; JA70-73; *see* JA68; JA74 ("**THE AGREEMENT MAY SUBSTANTIALLY LIMIT YOUR RIGHTS IN THE EVENT OF A DISPUTE.**"). The document further notifies buyers, in bolded and underlined language, of their "**Right to Reject this Agreement**" by email or certified mail within 30 days of their purchase. JA65; JA71; *see also* JA64; JA70 ("**[Y]ou can decide to opt out and reject this arbitration agreement**"); *id.* ("**Unless you opt out of the Arbitration Agreement, it will substantially affect your rights in the event of a dispute between you and us.**"). Neither Jennings nor Furlong allege that they exercised, or even attempted to exercise, their rights to reject the Arbitration Agreements.

2. In November 2021, several months after their respective purchases, Plaintiffs filed this putative class action in Pennsylvania state court. *See* Notice of Removal 1, Dkt. No. 1. Plaintiffs alleged that (as stated in the RPA) they had each paid a $38 registration fee, $16 license plate fee, and $55 title fee to Carvana to provide registration, license, and title services in Pennsylvania, which Carvana allegedly failed to properly do. *See* JA78, 80 (¶¶12, 24); *see also* JA42; JA46.

Plaintiffs sought actual and treble damages for breach of contract and violation of Pennsylvania's Unfair Trade Practice Consumer Protection Law (UTPCL). *See* JA104-06 (¶¶190-208). Plaintiffs sought these damages on behalf of themselves and a putative class of "[a]ll persons in the United States east of the Mississippi River who entered into contracts with CARVANA to purchase vehicles since November 5, 2019, and CARVANA agreed to provide car registration services with non-temporary and permanent vehicle registrations in the state of their residence," along with a similarly defined sub-class of Pennsylvania customers. JA99 (¶169a).

In December 2021, Carvana successfully removed the case to federal district court under the Class Action Fairness Act. *See* 28 U.S.C. §§1441, 1446, 1453; Notice of Removal, Dkt. No. 1. Carvana then moved to compel arbitration. In the district court, Plaintiffs did not dispute that they had signed the Arbitration Agreement, that they had failed to timely opt out, or that the Arbitration Agreement covered this dispute. Instead, Plaintiffs' sole argument was that the MVSFA, *see* 12 Pa. C.S. §6221(a)(2), invalidated the Arbitration Agreements because the RISCs did not expressly incorporate them.

The district court agreed and denied Carvana's motion to compel arbitration based on *Knight v. Springfield Hyundai*, 81 A.3d 940 (Pa. Super. Ct. 2013)—a non-binding intermediate state court decision. Relying on *Knight*, the Court interpreted the MVSFA's requirement that an "installment sale contract shall … contain all the

agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold," 12 Pa. C.S. §6221(a)(2), as "creat[ing] a one-document rule." JA9. Under that rule, the court held, "*all* agreements" between an installment buyer and seller—"regardless of the subject matter"—"must be found *somewhere* within the [RISC]." JA9-11. The district court further explained that, under this one-document rule, the RPA and Arbitration Agreement could have been considered "within" the RISC if they had been attached to the RISC ("incorporated in-fact") or referenced therein ("incorporated … by reference"). JA9-10. However, because they were neither attached to the RISC nor cross-referenced therein, they were not independently enforceable. *See* JA12. That was so, even though all three documents were signed on the same day, at the same time, and as part of the same transaction—and even though both the RPA and the Arbitration Agreement expressly incorporated the RISC by reference. *See id*. The court further held that the MVSFA, so construed, was not preempted by the FAA. JA10-12.

Finally, the district court held that Plaintiffs' claims, which were based on license, title, and registration obligations imposed by the RPAs, could proceed—even though, according to the district court, the RPAs themselves were not independently enforceable. *See* JA13-15. Although the district court had previously acknowledged that "the RPAs itemize the[] fees" underlying Plaintiffs' claims, "while the RISCs do not," JA7, the court did not address Carvana's equitable-

estoppel argument that Plaintiffs could not seek to enforce certain provisions of the RPAs (i.e., the license, title, and registration provisions), but not others (i.e., the incorporation of the Arbitration Agreements). *See* JA127, 129-33 (raising this argument); JA164-66 (same). Instead, the court merely held that Plaintiffs had pled facts sufficient to support their breach-of-contract and UTCPL claims. The district court never addressed the effect of invalidating the RPAs on Plaintiffs' claims.

3. Following the denial of its motion to compel arbitration and dismiss, Carvana noticed the instant appeal and sought a stay of the district court proceedings. Plaintiffs objected to the stay, contending that Carvana had no right to this interlocutory appeal. The district court disagreed and granted a stay under this Court's precedent stating that "the filing of an interlocutory appeal pursuant to Section 16(a) of the FAA automatically deprives the trial court of jurisdiction" unless the appeal is "determined to be frivolous or forfeited." JA31 (quoting *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007)). Concluding that the appeal was not "frivolous or forfeited" and acknowledging Carvana's argument that the arbitration issue was complicated enough to have required oral argument, the district court stayed its proceedings. *See* JA34-37.

SUMMARY OF ARGUMENT

I. The district court erred in concluding that Pennsylvania's MVSFA renders the parties' signed Arbitration Agreements unenforceable. That result would nullify

the clear intent of the contracting parties, directly contravening the overriding purpose of contract law. For two central reasons, this Court should reject the district court's reading and compel arbitration.

First, the MVSFA does not displace Pennsylvania's common law principle that multiple documents signed as part of a single transaction must be interpreted together as a single, integrated contract. This principle has two subsidiary rules that are relevant here. First, parties may expressly incorporate one document into another by clearly referencing the former in the latter. This is called explicit incorporation by reference. Here, the RPA explicitly incorporates both the RISC and the Arbitration Agreement by reference. Second, even in the absence of any express cross-references, Pennsylvania law also provides for implicit incorporation by reference, whereby incorporation is inferred from the surrounding context, such as the fact that the same parties signed multiple documents on the same day, at the same time, as part of a single transaction. Both of these rules lead to the same result here: The RPA, RISC, and Arbitration Agreement form a single enforceable contract.

That single contract complies with the MVSFA's requirement that "all agreements … relating to the installment sale" be contained in one contract. 12 Pa. C.S. §6221(a)(2). Indeed, the MVSFA defines "installment sale contract" in broad terms, encompassing contracts that are formed by several distinct but interconnected documents like the three documents here. *Id.* §6202. Moreover, Pennsylvania's

Administrative Code presumes that sellers may memorialize their installment sale agreements in multiple documents. *See* 37 Pa. Code §301.4(a)(3).

Beyond the text, the MVSFA's legislative history demonstrates that the Pennsylvania Legislature did not intend to adopt a novel one-document rule. Such a rule provides no additional protection to purchasers; indeed, by providing the Arbitration Agreement in another document (rather than combining it with the installment financing provisions in one lengthy document), dealerships like Carvana can better flag its significance for purchasers' litigation rights. By contrast, the district court's one-document rule may actually harm consumers by vitiating contractual protections that are not included in the RISC. Here, for example, *only* the RPAs—and not the RISCs—grant buyers a right to cancel the contract within seven days. A rule that would invalidate Plaintiffs' Arbitration Agreements for not being included in the RISC would also invalidate that right to cancel. This Court should not adopt an interpretation of Pennsylvania law that nullifies the clear intent of the contracting parties—and certainly not under the mistaken impression that such an interpretation would protect consumers.

Second, and at a minimum, even if the MVSFA can be read as imposing a one-document rule in contravention of the common law, that rule is limited to an agreement's financing terms. The Legislature enacted the MVSFA to regulate installment financing, not vehicle sales more generally. The MVSFA provides that

the installment sale contract must "contain all the agreements between a buyer and an installment seller *relating to the installment sale* of the motor vehicle." 12 Pa. C.S. §6221(a)(2) (emphasis added). As the rest of the statute makes clear, the only terms that "relat[e] to the installment sale" are those concerned with financing. *See, e.g.*, *id.* §6222 (with the exception of certain identifying information, listing only financing terms as required components of the contract). Indeed, the statute expressly provides that an installment seller may "*contract for*, collect or receive [certain, non-financed] fees and costs from the buyer *independently of the contract* [*i.e.*, the RISC]." *Id.* §6242(c)(1) (emphasis added). The district court's one-document rule—which requires all agreements "regardless of the subject matter" to be contained in a single document—runs directly contrary to this statutory text. Non-financing terms, like the arbitration provisions at issue here, need not be included in the RISC.

The unpublished intermediate appellate court's decision in *Knight* does not require a different result. *Knight* was a thinly briefed case of first impression that did not address the vast majority of the arguments made above and that this Court is not bound to follow. Once the MVSFA's text, legislative history, and purpose are closely examined, it is apparent that the Pennsylvania Legislature was not intending to and did not impose a rule that all terms, whether related to financing or not, be contained in a single document.

II. Even if the district court correctly interpreted Pennsylvania law, it still erred in failing to dismiss Plaintiffs' claims. Those claims are premised on contractual rights and promises established by—and laid out with specificity in—the RPAs. Unlike the RPAs, Plaintiffs' RISCs do not enumerate the title, license, and registration fees and services out of which Plaintiffs' claims arise. Plaintiffs are plainly seeking to enforce rights under the RPAs—the very agreements they say are null and void under the MVSFA. But Plaintiffs cannot have it both ways: If the RPAs are *void ab initio*, as Plaintiffs maintain, their claims fail on the merits. Moreover, equitable estoppel prevents Plaintiffs from seeking to invalidate the RPAs with respect to their incorporation of the Arbitration Agreements, while at the same time trying to enforce the RPAs with respect to their fee provisions. If Plaintiffs are right that the RPAs are invalid, then their claims must be dismissed.

ARGUMENT

This Court "exercise[s] plenary review over questions regarding the validity and enforceability of an agreement to arbitrate." *Quilloin v. Tenet HealthSystem Philadelphia, Inc.*, 673 F.3d 221, 228 (3d Cir. 2012) (citation omitted). The district court incorrectly denied Carvana's motion to compel arbitration and to dismiss for two independent reasons—first, by incorrectly interpreting Pennsylvania law; and second, by failing to appreciate the effect of its interpretation of Pennsylvania law

on Plaintiffs' ability to sustain claims based on the RPAs. This Court should reverse and either send the case to arbitration or dismiss it outright.

I. THE PARTIES' ARBITRATION AGREEMENTS MUST BE ENFORCED

Plaintiffs voluntarily entered into agreements to arbitrate, fully informed of the effect those agreements would have on their right to bring this lawsuit. Plaintiffs had ample opportunity to opt out, but they never did so. Now, Plaintiffs seek to rewrite the terms of their deal, under the guise of a flawed interpretation of the MVSFA.

But the MVSFA does not nullify the Arbitration Agreements, for two independent reasons. *First*, the MVSFA requires one *contract*, not one *document*, and the Arbitration Agreement is part of a single contract also encompassing the RPA and RISC. *Second*, whether the MVSFA imposes a one-contract or a one-document requirement, that requirement applies only to the installment financing terms—and arbitration is not an installment financing term. This Court should thus reject Plaintiffs' arguments and enforce the Arbitration Agreements as written.

A. The Arbitration Agreements Are Part Of A Single Enforceable Contract Also Encompassing The RPA And RISC

1. Under Pennsylvania law, "the parties' contracting intent is paramount." *Kripp v. Kripp*, 849 A.2d 1159, 1165 (Pa. 2004). The overarching goal of contractual interpretation in Pennsylvania, as everywhere else, is "to ascertain and

give effect to the intent of the contracting parties," as "embodied in the writing itself." *Murphy v. Duquesne Univ. of the Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001). This principle has two subsidiary rules that are relevant where, as here, the parties have chosen to use multiple documents to memorialize a single transaction.

First, Pennsylvania law provides that the contracting parties may expressly indicate their intent "to have one document's provision[s] read into a separate document" through "incorporation by reference." 11 Williston on Contracts §30:25 (4th ed. 2022, Westlaw). Explicit incorporation by reference is effective so long as the "underlying contract makes clear reference to a separate document, the identity of the separate document may be ascertained, and incorporation of the document will not result in surprise or hardship." *Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 447 (3d Cir. 2003) (discussing Pennsylvania law); *see also Century Indem. Co. v. Certain Underwriters at Lloyd's, London, subscribing to Retrocessional Agreement Nos. 950548, 950549, 950646*, 584 F.3d 513, 534 (3d Cir. 2009) ("[I]ncorporation by reference is generally effective to accomplish its intended purpose where ... the provision to which reference is made has a reasonably clear and ascertainable meaning." (second alteration in original) (quoting *Bernotas v. Super Fresh Food Mkts., Inc.*, 816 A.2d 225, 231 (Pa. Super. Ct. 2002), *rev'd on other grounds*, 863 A.2d 478 (Pa. 2004)).

When one writing incorporates another by reference, the latter "becomes constructively a part of" the former and "the two form a single instrument." 11 Williston on Contrasts §30.25. For example, the Pennsylvania Supreme Court has held that where a contractor agreed to complete his work consistent with all city ordinances and an ordinance provided that any work related to paving would be finished within two years, a "stipulation to finish [that] work within two years … must therefore be considered as written into the contract." *City of Philadelphia v. Jewell's Est.*, 20 A. 281, 282 (Pa. 1890). Likewise, that same court has explained that "reference in a will to an extrinsic document or writing incorporates the latter as *part of* the will itself." *Clark v. Dennison*, 129 A. 94, 95 (1925) (emphasis added). This rule of incorporation by reference extends to arbitration agreements just like any other contractual provision. *See Century Indem.*, 584 F.3d at 534.

Second, "[a]part from the explicit incorporation by reference," "the principle that all writings which are part of the same transaction are interpreted together also applies when incorporation by reference of another writing may be *inferred* from the context surrounding the execution of the writings in question." 11 Williston on Contracts §30:26 (emphasis added). Thus, even when two documents "do not by their terms refer to each other," they "will be considered and construed together as one contract or instrument" if they are "executed at the same time, by the same contracting parties, for the same purpose, and in the course of the same transaction."

Id.; *see Shehadi v. Ne. Nat'l Bank of Pa.*, 378 A.2d 304, 306 (Pa. 1977) ("The Pennsylvania cases indicate that even where there is no specific reference to a prior agreement or prior agreements, several contracts shall be interpreted as a whole and together."); *Kroblin Refrigerated Xpress, Inc. v. Pitterich*, 805 F.2d 96, 107-08 (3d Cir. 1986) (summarizing Pennsylvania law). This rule is premised on the common-sense understanding that, when parties sign multiple documents as part of a single transaction, the documents are a package deal. In line with this foundational principle, Pennsylvania courts have long rejected invitations to hold that a single document controls where the parties have chosen to "express their agreement in … several documents" and "no single writing embodied or was intended to embody the whole of the parties' understanding." *Int'l Milling Co. v. Hachmeister, Inc.*, 110 A.2d 186, 191-92 (Pa. 1955) (collecting cases).

As relevant here, the Pennsylvania Supreme Court has previously applied this rule in the context of automobile installment sales. *See Calderoni v. Berger*, 50 A.2d 332 (Pa. 1947). In *Calderoni*, the plaintiff had purchased a used car "under a bailment lease" to be paid "in installments." *Id.* at 332. At the time of the sale, the buyer had received "[t]hree written papers": "(1) an agreement of sale," which stated that the buyer would purchase "'fire, theft, & 50.00 deductible'" insurance; "(2) a bailment lease," which stated that buyer would purchase "'fire and theft'" insurance; and "(3) a receipt," which stated that the buyer had purchased insurance

"'[i]nclud[ing] property dam. & [l]iability also.'" *Id.* (quoting documents). Following a car accident, the seller argued that only the bailment lease constituted a valid contract between the parties and therefore the buyer was not owed any insurance payments for the damage to his vehicle, which was not caused by fire or theft. But the Pennsylvania Supreme Court disagreed. Noting that all three writings had been signed as part of the same transaction, the court held that it was "clear that the parties did not intend the written bailment lease to constitute the final and complete contract between them." *Id.* at 333. The court therefore held that the seller owed the buyer payment for the damage to his car, as stated in the receipt and agreement of sale.

2. In Carvana's case, both the forgoing principles—explicit incorporation by reference and implicit incorporation by reference—establish that the RPA, RISC, and Arbitration Agreement must be read together as a single contract.

First, the foundational agreement—the RPA—explicitly incorporates both the RISC and the Arbitration Agreement by reference. The RPA lists the exact amount of each Plaintiff's total financing charge as stated in their RISCs, directs each Plaintiff to "see Retail Installment Contract for more information" on their financing, and provides each Plaintiff with the right to "terminate this retail purchase agreement and any retail installment contract executed in connection herewith" under certain conditions. JA42-43; JA46-47 (referencing the RISC four more times); *compare*

JA42 (Jennings RPA listing finance charge as $8,330.56), *and* JA46 (Furlong RPA listing finance charge as $5,513.89), *with* JA50 (Jennings RISC listing finance charge as $8,330.56), *and* JA57 (Furlong RISC listing finance charge as $5,513.89). The RPA further states that the "arbitration agreement … is incorporated by reference and is part of this Agreement." JA44; JA48. In return, the Arbitration Agreement incorporates itself into the RPA and RISC, stating that this "Agreement is part of, and is hereby incorporated into, the Contract," where "Contract" is defined to "mean[] the Retail Purchase Agreement … and/or related Retail Installment Contract and Security Agreement." JA64; JA70.

These cross-references are more than sufficient to meet Pennsylvania's flexible incorporation by reference test. The incorporated documents are all "clear[ly] reference[d]," and their "identity" may be easily "ascertained." *Standard Bent Glass*, 333 F.3d at 447; *see Chuang v. OD Expense LLC*, 742 F. App'x 670, 675 n.13 (3d Cir. 2018) ("clear intent to incorporate by reference suffices where there is no express incorporation-by-reference provision"). Moreover, because all three documents were supplied at the same time, their incorporation cannot "result in surprise or hardship" to Plaintiffs. *Standard Bent Glass*, 333 F.3d at 447. This is not a case where the sole reference to arbitration was buried in a single clause of a "207-page booklet" incorporated by reference "into a one-page contract," *see id.* at 447 n.10 (citing *Weiner v. Mercury Artists Corp.*, 130 N.Y.S.2d 570, 571 (N.Y. App.

Div. 1954)), or a case involving a "daisy-chain of cross-references" through several documents not provided to the plaintiff, *see Chesapeake Appalachia, LLC v. Scout Petroleum, LLC*, 809 F.3d 746, 761 (3d Cir. 2016). Thus, under the principle of explicit incorporation by reference, the RPA, RISC, and Arbitration Agreement should be interpreted to form a single contract.

Second, even setting aside these express cross-references, the principle of implicit incorporation by reference likewise compels the conclusion that the documents should be read together as a single contract. All three documents were signed "at the same time, by the same contracting parties, for the same purpose, and in the course of the same transaction." 11 Williston on Contracts §30.26. The parties understood that all three documents were components of a single deal. Thus, even in the absence of any cross-references, these documents must be read together to form "one contract." *Id.*; *see also Scott v. Bryn Mawr Arms, Inc.*, 312 A.2d 592, 596 (Pa. 1973) ("[W]ritings executed as a part of the same transaction are to be read together as a single agreement.").

In short, under ordinary principles of Pennsylvania contract law, the Arbitration Agreement is part and parcel of each Plaintiff's overarching contract, and must be enforced as part of that contract.[4]

[4] The RISC's integration clause does not render the Arbitration Agreement unenforceable. "The presence of an integration clause" is not dispositive, especially

B. The MVSFA Provides No Justification For Nullifying The Parties' Agreement To Arbitrate

The district court misinterpreted the MVSFA as creating a novel, one-document rule that displaces standard principles of contract interpretation and nullifies the RPA and Arbitration Agreement. It reached that conclusion based on the MVSFA's directive that "[a]n installment sale contract shall … contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold." 12 Pa. C.S. §6221(a)(2). But as explained above, the RPA, RISC, and Arbitration Agreement form a single "installment sale contract" that contains all of the parties' agreements and thus satisfies the MVSFA. *Id.* Moreover, even if the MVSFA could be interpreted as imposing a novel one-document rule found nowhere else in state contract law, that rule requires only that all *financing* terms be included in the RISC, as is the case here. Either way, the parties' agreement to arbitrate is valid and enforceable.

"where, as here, [the document] assertedly does not fully express the essential elements of the parties' undertakings." *Int'l Milling*, 110 A.2d at 191; *see also Kroblin Refrigerated Xpress*, 805 F.2d at 107-08 (collecting Pennsylvania cases); JA9 (acknowledging that the clause was "not determinative"). "Without the information supplied by the [RPA], the [RISC] is incomplete" as to certain terms, such as the buyer's right to cancel the contract and the license, title, and registration obligations at issue here. *Neville v. Scott*, 127 A.2d 755, 757 (Pa. Super. Ct. 1956). Thus, in context, the RISC's integration clause is best read as stating that the RISC contains the parties' "[e]ntire [a]greement" *as to financing*, not as to the entire sale. JA54; JA61; *see also Johnson ex rel. Johnson v. JF Enters., LLC*, 400 S.W.3d 763, 767 (Mo. 2013); *Farrell v. Rd. Ready Used Cars, Inc.*, No. 3:17-CV-2030 (JCH), 2018 WL 1936143, at *5 (D. Conn. Apr. 24, 2018).

1. *Carvana's Contract With Each Plaintiff Satisfies The MVSFA Because All The Agreements Are Contained In One Contract*

The MVSFA provides that "[a]n installment sale contract shall … contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold." 12 Pa. C.S. §6221(a)(2). While that language plainly requires that all agreements relating to the installment sale be contained in a single *contract*, it does not require that all such agreements be contained in a single *document*. Here, as explained above, the parties' three interconnected agreements—the RPA, RISC, and Arbitration Agreement—form a single contract consistent with the MVSFA, for two independent reasons.

First, under the doctrine of explicit incorporation by reference, each Plaintiff has one "installment sale contract" that contains all of the parties' agreements related to the installment sale. The MVSFA defines an "installment sale contract" in two ways. For sales, the statute defines it as "[a] contract for the retail sale of a motor vehicle, or a contract that has a similar purpose or effect," if the buyer agrees to make or does make "two or more scheduled payments" toward the purchase price. 12 Pa. C.S. §6202. For lease agreements, the MVSFA defines it as "any form of contract, however nominated, for the bailment or leasing of a motor vehicle," "or any other arrangement having a similar purpose or effect," if the buyer agrees to pay "a sum substantially equivalent to or in excess of the value" of the vehicle and may thereby obtain "[o]wnership" of it. *Id.*

The former definition fits this transaction like a glove. The RPA is plainly a "contract for the retail sale of a motor vehicle." And the RPA expressly incorporates both the RISC and the Arbitration Agreement, forming one overarching contract. *Supra* at 25-27. That contract—by virtue of its incorporation of the RISC—requires each Plaintiff to make two or more payments toward the purchase of their vehicle. The contract thus qualifies as an "installment sale contract" under the MVSFA's definition, and its arbitration requirement is fully enforceable.

Here, the district court recognized that the principle of incorporation by reference survives the MVSFA. *See* JA8-10. But the district court erred in concluding that to qualify as an "installment sale contract" under the MVSFA, the incorporation-by-reference language must appear in the RISC and not in the RPA. JA1-2, 8. There is no substantive difference between a contract comprised of an RPA that expressly incorporates a RISC and Arbitration Agreement, and a contract comprised of a RISC that expressly incorporates an RPA and Arbitration Agreement. Both qualify as "installment sale contract[s]" under the MVSFA.

Indeed, nothing in the MVSFA's text or legislative history justifies treating substantively identical contracts differently based on the title affixed to the top of the incorporating agreement. On the contrary, the MVSFA itself repeatedly disclaims any interest in a document's formal title. The definition of "installment sale contract" emphasizes its own breadth over and over, referring to a "contract for

the retail sale of a motor vehicle, *or a contract that has a similar purpose or effect*," or "*any form of contract, however nominated*, for the bailment or leasing of a motor vehicle," "*or any other arrangement having a similar purpose or effect*." 12 Pa. C.S. §6202 (emphasis added). Under that definition, the contract formed by the RPA, RISC, and Arbitration Agreement qualifies, regardless of whether it may technically bear the title "Retail Purchase Agreement," instead of "Retail Installment Sale Contract."

Second, even setting aside the RPA's explicit incorporation by reference of the RISC and Arbitration Agreement, all three documents *still* form a single, integrated contract consistent with the MVSFA's requirements. The common law is clear that documents signed at the same time, by the same parties, and as part of the same transaction should "be construed together as constituting one agreement." *Appeal of Fessler*, 75 Pa. 483, 490 (1874). Because each Plaintiff signed all three documents on the same day as part of the same sale, they form one contract satisfying the MVSFA's requirement that "all the agreements … relating to the installment sale" be included in the "installment sale contract." 12 Pa. C.S. §6221(a)(2).

2. *The MVSFA Does Not Displace The Common Law Principles Of Incorporation By Reference*

The MVSFA does not displace the common-law rules of explicit and implicit incorporation by reference, which make Plaintiffs' documents into a single contract. "Statutes are never presumed to make any innovation in the rules and principles of

the common law or prior existing law beyond what is expressly declared in their provisions." *In re Tr. Under Deed of David P. Kulig Dated Jan. 12, 2001*, 175 A.3d 222, 231 (Pa. 2017) (citation omitted); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 318 (2012) ("A statute will be construed to alter the common law only when that disposition is clear."). And here, nothing in the MVSFA expressly or clearly alters the common-law rule that multiple documents that cross-reference one another and are signed as part of the same transaction shall be construed together as a single contract. On the contrary, the statute's text, legislative history, and purpose, as well as the case law from other jurisdictions interpreting similarly worded statutes, all support reading the MVSFA to be consistent with these background common law principles.

a. *Text.* The MVSFA provides that "[a]n installment sale contract shall … contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold." 12 Pa. C.S. §6221(a)(2). As explained above, that language requires that all agreements relating to the installment sale be contained in a single *contract*, not a single *document*. And the MVSFA's broad definitions of "installment sale contract" further underscore that point by covering the waterfront of potential contractual forms for sales and leases, including the multiple-document form used by Carvana here. *Id.* §6202.

Nothing in any of these provisions expressly or implicitly displaces common law incorporation-by-reference principles, and Pennsylvania's Administrative Code supports the conclusion that no such displacement was intended. The Code requires car dealers to provide purchasers with "an exact copy of *each document* required by law to be provided including, but not limited to[,] the agreement of sale, installment sales contract, odometer statement, and warranty and other documents in which legal obligations are imposed on the buyer." 37 Pa. Code §301.4(a)(3) (emphasis added). In other words, the Administrative Code anticipates that buyers will receive more than one document creating "legal obligations" that bind them, including, as relevant here, an "agreement of sale" (*i.e.*, RPA) *and* an "installment sales contract" (*i.e.*, RISC). *Id.*[5]

b. *History and Purpose.* The MVSFA's legislative history further confirms that the Pennsylvania Legislature did not intend the statute to impose a novel one-document rule. *See Gruber v. Owens-Illinois Inc.*, 899 F.2d 1366, 1373-74 (3d Cir. 1990) (considering "the evils that the Act [was] designed to thwart" in interpreting

[5] Notably, other state statutes with identical language to the MVSFA contain provisions expressly stating that sellers may provide buyers with multiple documents related to the sale. *Compare* N.J. Stat. Ann. §17:16C-21 ("Every retail installment contract … shall contain all of the agreements between the retail buyer and retail seller relating to the installment sale …."), *with* N.J. Stat. Ann. §17:16C-37 ("No retail installment contract or retail charge account or *separate instruments executed in connection therewith* shall contain any power of attorney …." (emphasis added)).

a statute). As previously explained, the central purpose of the Act was to cap interest rates at reasonable levels and to ensure buyers understood the terms they were agreeing to. At the time the statute was enacted, installment sellers were charging exorbitant rates, often without informing their customers of the true cost of their financing. *See* House Journal at 2255-56; *supra* at 7-8. The Act addressed these concerns by listing the minimum terms that each installment sale contract must include, such as the purchase price of the vehicle, the finance charge, and the payment schedule. *See* 12 Pa. C.S. §6222. The Act did not respond by artificially limiting car sellers to a single writing.

Indeed, such a limitation would provide no additional, meaningful protection to consumers. Under the district court's one-document rule, if Carvana had stapled the Arbitration Agreement to the RISC or had incorporated the former by reference into the latter, both contracts would be enforceable. But because Carvana merely provided Plaintiffs with these two documents at the same time during the same transaction, the former can no longer be enforced. From the buyer's perspective, there is no difference between these two transactions. In fact, the latter may actually better alert the customer to the significance of the Arbitration Agreement. By requiring a separate signature on the Arbitration Agreement, the buyer may better understand both the effect of that agreement on her rights and the fact that she can opt out of arbitration while still receiving financing.

By contrast, the district court's one-document interpretation would upend parties' settled expectations and harm consumers. The one-document rule is a two-way street. While documents outside of the RISC may contain provisions benefiting the seller, they may also contain provisions benefiting the purchaser. But under the district court's rule, *both* sets of provisions would be unenforceable.

This case is the perfect example. Here, the RPA grants buyers the right to cancel the contract under certain conditions—a right that is *not* present in the RISC. *See* JA43; JA47 ("giv[ing]" buyers the right to "terminate this retail purchase agreement and any retail installment contract executed in connection herewith" after a test period). Under the district court's rule, a consumer could not enforce this provision in court if he were denied the opportunity to return his vehicle. This Court should not interpret the MVSFA to require this senseless result.

Again, the purpose of the MVSFA is to protect consumers from unscrupulous financing practices, not to invalidate voluntary and fully informed agreements. Plaintiffs have never alleged that Carvana hid the ball in any way as to their Arbitration Agreements. Indeed, those Agreements advised Plaintiffs of their rights several times, in bolded and underlined language. *See Glomb v. St. Barnabas Nursing Home, Inc.*, 240 A.3d 921, 2020 WL 5437736, at *3-4 (Pa. Super. Ct. 2020) (collecting cases upholding similar arbitration provisions against allegations they were procedurally unconscionable). Plaintiffs' Arbitration Agreements should not

be invalidated based on a misreading of the statute that has no basis in that law's text or purpose and that, in many cases, will actually harm consumers.

c. Binding or Persuasive Precedent. Finally, although the Pennsylvania Supreme Court has yet to interpret the MVSFA, its *Calderoni* decision and the case law of other courts interpreting similar provisions are consistent with interpreting the MVSFA to allow parties to use multiple documents.

Calderoni held that three documents signed as part of a single sale had to be interpreted together. *Calderoni*, 50 A.2d at 333. That decision preceded the enactment of the MVSFA by just a few short months—yet *Calderoni* made no mention of that pending legislation. And in the decade that followed, multiple Supreme Court cases reaffirmed *Calderoni*'s holding without suggesting that it was in any way undercut by that statute. *See Int'l Milling*, 110 A.2d at 191-92; *Mathers v. Roxy Auto Co.*, 101 A.2d 680, 682 (Pa. 1954).[6]

Moreover, other state courts have interpreted statutes worded similarly to the MVSFA in line with *Calderoni*. For example, Maryland's highest court rejected a

[6] A more recent Pennsylvania Supreme Court case reinforces the general principle that incorporation by reference is a legitimate means of satisfying a statutory command that certain information be contained in a particular writing. *See Kassouf v. Twp. of Scott*, 883 A.2d 463, 471-72 (Pa. 2005) (holding that "four corners" of a township letter denying a developer's subdivision application need not contain all statutorily required information, so long as the letter "incorporated by reference" a separate document containing the necessary information).

proposed one-document reading of its law, which provides that "[a] vehicle sales contract or agreement shall be evidenced by an instrument in writing containing all of the agreements of the parties." Md. Code Regs. §11.12.01.15(A); *see Ford v. Antwerpen Motorcars Ltd.*, 117 A.3d 21, 25-29 (Md. 2015). The vehicle purchasers in that case had argued that the law established a "Single Document Rule," because it required all of the parties' agreements to be "'contain[ed]'" in "'*an instrument*.'" *Id.* at 26 (emphasis added) (citation omitted). But the Maryland Court of Appeals rejected that interpretation: "[T]he mere use of a singular term such as 'an instrument' or 'a contract' does not prevent the application of [ordinary common-law principles]." *Id.* at 27. The court declined to read the law as "supplanting … longstanding common law contract principles permitting the construction or reading of multiple documents together as part of a single transaction." *Id.* at 26-27. In doing so, the court affirmed a prior Fourth Circuit opinion, which had concluded that the phrase "an instrument" was far too thin a reed to support the conclusion that Maryland legislators had overturned "an entire established body of Maryland law governing contract interpretation." *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 700 n.8 (4th Cir. 2012); *see Ford*, 117 A.3d at 27-28 (citing favorably *Rota-McLarty*).

Maryland courts are not alone. Connecticut courts have also rejected the proposition that a law providing that "'[e]very retail installment contract … shall

contain all the agreements of the parties'" "suspends the common law contract principle permitting the construction of multiple documents together as part of a single transaction." *Farrell v. Rd. Ready Used Cars, Inc.*, No. 3:17-CV-2030 (JCH), 2018 WL 1936143, at *3-4 (D. Conn. Apr. 24, 2018) (citation omitted). In *Farrell*, a Connecticut district court held that an arbitration provision contained in a purchase order (equivalent to the RPA in this case) was valid and binding as to the plaintiffs' claims arising out of that order, even though the accompanying RISC did not contain an arbitration agreement. *See* 2018 WL 1936143, at *3-6; *see also A-1 Auto Serv., Inc. v. Horkavy*, No. CV960392187, 2001 WL 686821, at *3 (Conn. Super. Ct. May 24, 2001) (finding that both the retail purchase order and the retail installment contract "were valid and binding on the parties").

As these cases demonstrate, the mere fact that the MVSFA provides that the installment sale contract shall "contain all the agreements between a buyer and an installment seller" does not mean it requires those agreements to be contained within the four corners of a single document. Like other state statutes, the MVSFA can, and should be, interpreted consistently with longstanding principles of contract law that permit parties to memorialize their agreements in multiple documents.

3. *To The Extent The MVSFA Imposes A One-Document Rule, It Does So Only With Respect To Installment Financing Terms*

Even assuming that the MVSFA can be read as imposing a one-document rule in contravention of the common law, that rule is limited to "agreements … relating

to the installment sale," and the only agreements that "relat[e] to the installment sale" are financing terms. 12 Pa. C.S. §6221(a)(2). As explained above, the MVSFA is not concerned with every possible agreement installment buyers and sellers may have; instead, it is concerned specifically with *financing*. *See supra* at 7-10. Thus, to the extent that the Act is read as altering well-settled principles of contract interpretation, that alteration should not extend beyond a requirement that all financing terms appear in a single document. *See Everhart v. PMA Ins. Grp.*, 938 A.2d 301, 307 (Pa. 2007) ("It is well established that 'statutes are not presumed to make changes in the rules and principles of the common law … beyond what is expressly declared in their provisions.'" (citation omitted)); Scalia & Garner, *supra*, at 318-19. Because an agreement to arbitrate is not a financing term, the Arbitration Agreement at issue here is enforceable, even assuming the MVSFA requires a single document.

a. *Text.* That the MVSFA is exclusively concerned with financing is evidenced by both its title—the Motor Vehicle Sales *Financing* Act—and its text. *See Cen v. Att'y Gen.*, 825 F.3d 177, 194 (3d Cir. 2016) (finding "confirmation" for an interpretation in a statute's title). The MVSFA provides that the RISC must "contain all the agreements between a buyer and an installment seller relating to the *installment sale* of the motor vehicle." 12 Pa. C.S. §6221(a)(2) (emphasis added).

And, as at least three other provisions of the statute make clear, the only terms that "relat[e] to the installment sale" are those concerned with installment financing.

First, the provision laying out an installment contract's required "contents" focuses on financing. *Id.* §6222. With the exception of certain identifying information (like a description of the vehicle), every term that must be included in the RISC is closely related to the buyer's financing. *See, e.g.*, *id.* §6222(5)(i) ("purchase price"); *id.* §6222(5)(vi) ("principal amount financed"); *id.* §6222(5)(vii) ("finance charge"); *id.* §6222(5)(ix) ("payment schedule").

Second, another provision of the MVSFA expressly contemplates that the parties can have two different contracts relating to the sale, so long as the installment contract contains the financing terms. Section 6242 of the MVSFA provides that sellers may agree to pay certain incidental fees and costs to the Commonwealth on behalf of buyers, such as license and registration fees. *Id.* §6242(b). "With respect to [those fees and costs], the seller may either: "(1) *contract for*, collect or receive the fees and costs from the buyer *independently of the contract* [i.e., the RISC]; or (2) extend credit to the buyer for the fees and costs and include them in the principal amount financed under the contract." *Id.* §6242(c). The first option unambiguously contemplates a separate, enforceable contract apart from the RISC for non-financed fees and costs. The MVSFA itself thus makes clear that not *every* agreement between an installment buyer and seller must be within the RISC.

Third, a final provision of the MVSFA—located in the same statutory section as the provision relied on by Plaintiffs here—provides that an installment seller must inform the buyer that the purchase of "specific items"—"includ[ing] a service contract, warranty, debt cancellation agreement, debt suspension agreement, and [certain] insurance products"—is not a requirement of the buyer's financing. *Id.* §6221(e)(2)(iii)(A). As above, this provision anticipates that buyers may make other, non-financing agreements outside of the RISC. *See also id.* §6222(5)(v)(B) (providing that "charges for a debt cancellation agreement and debt suspension agreement" need only be included in the RISC if "the seller agrees to extend credit to the buyer" for them).

The district court's holding in this case flies in the face of these provisions. Under the district court's rule, "*all* agreements" between an installment seller and buyer "must be within" the document labeled as the RISC, "*regardless of the subject matter*." JA11 (second emphasis added). That requirement simply cannot be squared with the statute's express recognition that sellers may enter into separate agreements with buyers for the payment of non-financed fees and costs, service contracts, warranties, and the like.

b. *History and Purpose.* That rule likewise cannot be squared with any sensible understanding of the Legislature's intent. The Pennsylvania Legislature enacted the MVSFA to "protect its citizens from abuses presently existing in the

installment sale of motor vehicles." 69 P.S. §602 (1947) (emphasis added). The MVSFA thus focused on "insuring honest and efficient consumer *credit service*," not on regulating vehicle sales more generally. *Id.* (emphasis added). In light of that, the MVSFA should not (and cannot) be read as requiring a single document for agreements that have essentially nothing to do with the buyer's financing or credit.

c. *Persuasive Precedent.* The Minnesota Supreme Court has interpreted a similarly worded statute as requiring only that all financing terms be included in the installment sale contract. *See Scott v. Forest Lake Chrysler-Plymouth-Dodge*, 611 N.W.2d 346 (Minn. 2000); Minn. Stat. Ann. §53C.08, subdiv. 1(a) ("Every retail installment contract … shall contain all the agreements of the parties …."). In *Scott*, the car purchaser had signed a retail installment contract and a separate conditional delivery agreement, which provided that the former would be void if financing was not approved. 611 N.W.2d at 347. The purchaser also signed a vehicle purchase contract, which stated that it was not valid until the buyer accepted the credit extended. *Id.* at 348. The initial lender denied financing, but the dealer later arranged for financing from a second lender at an increased annual percentage rate. The buyer signed the new financing documents and then sued, contending that the conditional delivery agreement was void because it was not contained in the original retail installment contract. The Minnesota Supreme Court disagreed. That court adopted the dealership's position that the law was "not intended to require that *all*

agreements between the seller and buyer be literally recorded in the retail installment contract." *Id.* at 350. Rather, "its purpose [was] to prohibit separate or side agreements containing credit terms contradicting those in the retail installment contract." *Id.* Accordingly, the law required "only … that the buyer be informed of the *credit* terms" in the RISC. *Id.* at 352.

The Minnesota Supreme Court went on to explain that this reading of the statute best accorded with the realities of the parties' transaction. There, as here, the "retail installment contract set[] forth the details of how the financing [was] to work," while the "vehicle purchase contract set[] forth the terms of the actual purchase … dependent upon financing approval." *Id.* at 352. Meanwhile, the "conditional delivery agreement … obligated the buyer to return [the car] if financing [was] not approved." *Id.* No agreement was complete without the others. The Court therefore "reject[ed]" the plaintiff's "argument that all of these documents are subsumed into the retail installment contract as contrary to the clear objective of the [Minnesota law], its statutory scheme and to our well-considered case precedent." *Id.* The same analysis applies here.

In short, because the Arbitration Agreement is not a credit term, it need not be included in the document labeled the RISC, even assuming that the MVSFA imposes a one-document rule. Like the conditional delivery agreement in *Scott*, the Arbitration Agreement does not "'change any [of the RISC's] terms,'" *id.* at 351

(citation omitted)—it simply explains how disputes over the vehicle purchase will be resolved. Thus, even assuming that the MVSFA requires that all financing terms be contained in a single document, that rule is satisfied and the Arbitration Agreement is enforceable.

4. Knight *Is Neither Binding Nor Persuasive*

1. Instead of focusing on the MVSFA's text, legislative history, and purpose, the district court relied heavily on *Knight v. Springfield Hyundai*, 81 A.3d 940 (Pa. Super. Ct. 2013)—a Pennsylvania state intermediate appellate court decision—to justify its one-document interpretation of the MVSFA. *See* JA8-9. *Knight* was the first appellate court decision to address the question at issue here, and it concluded that the MVSFA rendered unenforceable an arbitration agreement not contained within the RISC. *See* 81 A.3d at 947-49. But *Knight* is not binding on this Court, and it was wrongly decided.

Although the decisions of state intermediate appellate courts "'must be accorded significant weight,'" this Court is "not bound by [those decisions] … if other sources present 'a persuasive indication that the highest state court would rule otherwise.'" *Roma v. United States*, 344 F.3d 352, 361 (3d Cir. 2003) (citation omitted); *see also In re Makowka*, 754 F.3d 143, 148 (3d Cir. 2014) (noting that a federal court interpreting state law "may discount state appellate decisions it finds flawed"). Where, as here, the "plain language" of the statute—read consistently with

longstanding common-law principles of contract interpretation—is contrary to the state appellate court's decision, that "constitutes, in and of itself, a 'persuasive indication'" that the state supreme court would rule the other way. *Roma*, 344 F.3d at 362.

Knight barely "attempt[ed] to base its holding on the language of the statute." *Id.*; *see Makowka*, 754 F.3d at 148 (declining to follow appellate decision that "conflict[ed] with the text and structure" of the relevant statute). Its entire textual analysis consists of a single sentence, declaring the provision of the MVSFA providing that the RISC "'shall contain all of the agreements between the buyer and the seller relating to the installment sale'" to be "clear and unambiguous." *Knight*, 81 A.3d at 948 (citation omitted). Such an *ipse dixit* does not require this Court's deference. *See Makowka*, 754 F.3d at 152 (finding it "difficult to give credence to" an intermediate appellate decision "in light of the decision's sparse reasoning").

Knight does not address most of the arguments raised above. To start, the opinion does not discuss the common-law rules of explicit and implicit incorporation by reference, or the presumption against interpreting state statutes to surreptitiously modify the common law. That oversight is not surprising, as the dealership did not cleanly present these arguments to the Superior Court. *See Knight* Brief of Appellees, 2013 WL 7119051, at *10-11 (Pa. Super. Sept. 18, 2013). Likewise, *Knight* makes no mention of the other provisions in the MVSFA that define an

"installment sale contract" in broad terms, and that clarify that installment sellers may enter separate agreements for the payment of non-financed costs, warranties, and the like. 12 Pa. C.S. §§6202, 6221(e)(2)(iii)(A); *see also id.* §6242(b)-(c). Consequently, *Knight* does not analyze whether a multi-document contract could constitute an "installment sale contract" under the MVSFA's definition; nor does *Knight* address whether any one-document requirement in the MVSFA is limited to financing terms. Finally, *Knight* does not discuss, let alone cite, any other case law interpreting similarly worded state statutes.

The sole argument discussed above that *Knight* does address is the proposition that Pennsylvania's Administrative Code "contemplates that there will be more than one document executed" in the installment sale of a motor vehicle. 81 A.3d at 948 (citation omitted); *see supra* at 33. *Knight* rejected that argument, reasoning that (1) the Administrative Code applies to both financed and non-financed sales, (2) no one disputes that the latter can involve multiple documents, so (3) the Code does not necessarily prove that the former can involve multiple documents too. But nothing in the Code suggests that financed sales should be treated differently from non-financed sales. And in any event, even if the Code were not dispositive standing alone, that does not undercut the force of all the other statutory provisions *Knight* failed to consider, which plainly show that the MVSFA does not impose a one-document rule applicable to all agreements.

Ultimately, *Knight* was a case of first impression, in which the dealership provided scant argument in support of its interpretation of the MVSFA. *See* 81 A.3d at 948 ("There are no cases interpreting [the relevant provision] of the MVSFA.").[7] Moreover, the dealership was alleged to have engaged in particularly unsavory conduct, which may well have swayed the Superior Court. *See id.* at 944 (describing dealership's lies to the buyer and repossession of the vehicle "without notice or warning").

Whatever the case, the *Knight* court did not have an adequate opportunity to consider the manifold arguments in favor of interpreting the MVSFA as consistent with the common law and as limited to financing terms. This Court now has that opportunity. Because longstanding common law principles; the Pennsylvania Supreme Court's decision in *Calderoni*; the MVSFA's text, legislative history, and purpose; and the decisions of other courts interpreting similar state statutes all cut against *Knight*, this Court should decline to follow that decision. *See Gruber*, 899 F.2d at 1369-70 (noting that when deciding whether to follow a decision, this Court

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[7] Although *Knight* did not acknowledge these decisions, a federal district court and a Pennsylvania trial court had previously interpreted the relevant provision of the MVSFA and concluded that the MVSFA did *not* impose a one-document rule. *See Dunn v. B & B Auto.*, Civil Action No. 12-cv-377, 2012 WL 2005223, at *3-4 (E.D. Pa. June 5, 2012); *Walker v. Metro Auto Sales, Inc.*, No. 120901343, 2013 WL 2321112, at *2 (Pa. Com. Pl. Feb. 22, 2013), *rev'd*, 2014 WL 10937074, at *3 (Pa. Super. Ct. Apr. 7, 2014) (holding that the court was "bound" by its recent decision in *Knight*).

considers "what the Pennsylvania Supreme Court has said in related areas" and "decisions from other jurisdictions that have discussed the issue").

2. In any event, *Knight* is distinguishable from this case. *Knight* involved a dispute arising directly out of the terms of the RISC. There, the buyer had advised the dealer that "she was cancelling the RISC because of Dealer's misconduct." 81 A.3d at 944. Thus, the ultimate dispute centered on that document. Here, by contrast, Plaintiffs' claims arise directly out of their RPAs, which create the obligation to license, title, and register Plaintiffs' cars in Pennsylvania. Even assuming that claims regarding the enforceability of the *RISC* cannot be arbitrated unless the *RISC* incorporates the Arbitration Agreement, that does not mean that claims regarding the enforceability of the *RPA* cannot be arbitrated when the *RPA* contains an arbitration clause.

That difference matters. Indeed, a Pennsylvania trial court, which is bound to follow *Knight*, recently compelled arbitration in a case against Carvana where the buyer's complaints arose out of the Buyer's Order and not the RISC. *See* Order, *Burden v. Carvana, LLC*, No. 200801110 (Pa. Ct. Com. Pl. Dec. 4, 2020); Reply to Mot. to Compel 7, No. 200801110 (Pa. Ct. Com. Pl. Nov. 13, 2020) ("Plaintiff affirmatively relies on a series of alleged obligations—including provisions in the

'Buyer's Order'—that clearly lie outside the four corners of the RISC."). *Knight* does not control this case either.[8]

* * *

In short, "[t]he paramount goal of contract interpretation is to determine the intent of the parties." *Baldwin v. Univ. of Pittsburgh Med. Ctr.*, 636 F.3d 69, 75 (3d Cir. 2011) (citation omitted). Here, the parties clearly intended that all three documents would govern their transactions. Because nothing in Pennsylvania law requires this Court to depart from that intent, the Court should enforce the parties' Arbitration Agreements.

C. The District Court's Interpretation Of The MVSFA Is Preempted By The FAA

For the reasons noted above, the district court's one-document interpretation of the MVSFA is unpersuasive as a matter of statutory construction. But even if that interpretation were correct, it would only a create a conflict between the MVSFA and the FAA—which would mean that the MVSFA is preempted.

Section 2 of the FAA provides that an arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for

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[8] Since *Knight*, the Pennsylvania Superior Court has released two unpublished opinions on this issue, but neither opinion involved any significant re-examination or consideration of the statutory question. *See Zentner v. Brenner Car Credit, LLC*, 273 A.3d 1033, 2022 WL 368276, at *3 (Pa. Super. Ct. 2022); *Walker v. Metro Auto Sales Inc.*, No. 254 EDA 2013, 2014 WL 10937074, at *3 (Pa. Super. Ct. Apr. 7, 2014).

the revocation of any contract." 9 U.S.C. §2. Section 2 thus "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." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (quoting *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)).

The district court's interpretation of the MVSFA is not a ground for the revocation of "*any* contract," because it applies only to one type of contract (installment sale contracts) in one type of industry (motor vehicles). 9 U.S.C. §2 (emphasis added). Several courts have held that state laws that apply to one specific type of contract or industry are preempted by the FAA. For example, the First Circuit has concluded that a state law that applies "to one type of provision, venue clauses, in one type of agreement, franchise agreements … does not apply to *any* contract," and thus cannot invalidate an arbitration agreement under Section 2. *KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42, 51 (1st Cir. 1999) ("[B]ecause [the law] is not a generally applicable contract defense, it is, if applied to arbitration agreements, preempted by §2 of the FAA."). The Second Circuit has reached the same conclusion with respect to a law targeting only "one sort of contract provision (forum selection) in only one type of contract (a franchise agreement)." *Doctor's Assocs., Inc. v. Hamilton*, 150 F.3d 157, 163 (2d

Cir. 1998); *see also Carter v. SSC Odin Operating Co.*, 927 N.E.2d 1207, 1219 (Ill. 2010) (collecting cases holding that "[s]tate laws that are applicable to arbitration contracts and some other types of contracts, but not *all* contracts, are not grounds for the revocation of *any* contract" (first emphasis added)). Here, because the MVSFA does not apply to all contracts, or even all contracts for vehicle sales, but is instead limited to installment contracts for vehicle sales, it is preempted if read as requiring one document in contravention of the common law.

II. IF THE RPAS ARE NOT ENFORCEABLE, PLAINTIFFS' CLAIMS MUST BE DISMISSED

If the district court's expansive interpretation of the MVSFA is correct, then it erred by declining to dismiss Plaintiffs' claims. As explained above, those claims depend on an obligation that is created *only* in the RPAs. The RPAs establish Carvana's obligation to register, license, and title Plaintiffs' vehicles in Pennsylvania, and spell out the $38 state registration fee, $16 state license plate fee, and $55 state title fee that Carvana receives and remits to the state on the customer's behalf. *See* JA42; JA46. If, as the district court held, the RPAs are not independently enforceable, then Plaintiffs have no claim.

Even setting aside that holding, foundational principles of equitable estoppel prevent Plaintiffs from "seek[ing] to enforce" certain of the RPAs' terms while simultaneously "turn[ing] [their] back on the portions of the contract[s] … [they] find[] distasteful." *Sanford v. Bracewell & Guiliani, LLP*, 618 F. App'x 114, 118

(3d Cir. 2015) (citations omitted). Plaintiffs cannot "walk away from the arbitration clauses" contained in their RPAs while at the same time "embrac[ing]" other provisions in those documents "to prove [their] claims and [their] damages." *Friedman v. Yula*, 679 F. Supp. 2d 617, 628 (E.D. Pa. 2010).

In the district court, Plaintiffs attempted to cast their claims as grounded in the RISCs, but that argument is unavailing. The RISCs do not establish the obligation at issue here. On the contrary, the RISCs' sole reference to the fees is a line item for an amount "Paid to Public Officials (incl. filing fees)." JA51; JA59. Without the RPA, it is impossible to know *which* filing tasks Plaintiffs paid for and *how much*. Nor is the amount "Paid to Public Officials" simply the total amount of fees at issue in this case. Rather, that line item includes lien filing and local use fees that Plaintiffs have no objection to. *Compare* JA42 ($38 registration fee, $55 title fee, $16 license plate fee, $26 lien filing fee, and $5 local use fee), *and* JA46 ($38 registration fee, $55 title fee, $16 license plate fee, and $26 lien filing fee), *with* JA51 ($140 "Paid to Public Officials"), *and* JA59 ($135 "Paid to Public Officials"). Therefore, Plaintiffs cannot make out their claims based on the RISCs.

Other state courts have held that where a Plaintiffs' suit concerns obligations established only in the RPA, the suit must go forward under the RPA or not at all. *See Lowe v. Nissan of Brandon, Inc.*, 235 So. 3d 1021, 1027 (Fla. Dist. Ct. App. 2018) ("[W]hile [Plaintiff] claims that the [challenged] Fee was incorporated into

the sale price of the vehicle as listed in the [RISC], without the [RPA] she cannot establish the necessary facts to proceed on her claims" because only the RPA provides "both the explanation for the Fee and the Fee amount"); *see also Farrell*, 2018 WL 1936143, at *5-6 (agreeing with *Lowe* where the RISC did not "reflect the fees [Plaintiff] paid for the allegedly undelivered services"). The same is true here.

Plaintiffs suggested in the district court that their claims really do arise under the RISCs, because the MVSFA requires Carvana to itemize the fees paid to public officials in the RISCs. *See* JA139-40. Specifically, the MVSFA provides that the RISC must contain "[t]he following items in writing and in a clear and conspicuous manner, with each component of each subparagraph listed separately." 12 Pa. C.S. §6222(5). One such component is "[o]ther charges necessary or incidental to the sale or financing of a motor vehicle." *Id.* §6222(5)(v). The MVSFA further provides that the "[c]osts and charges under sections 6222 (relating to contents) and 6242 (relating to other costs included in the amount financed) shall be separately itemized in an installment sale contract as to their nature and amounts." *Id.* §6224. Plaintiffs argued below that these provisions, taken together, required Carvana to itemize the license plate, title, and registration fees in the RISC.[9]

[9] Notably, Plaintiffs do not allege in their amended complaint that Carvana violated these provisions of the MVSFA, or even cite them. *See generally* JA75-108.

As an initial matter, as explained above, the MVSFA does not require Carvana to use a single document at all. Because the fees were itemized in the RPA—which expressly incorporates the RISC by reference—that is enough to satisfy the MVSFA. But even assuming the MVSFA requires Carvana to use a single document labeled the RISC, the RISCs here satisfy the cited provisions. The MVSFA requires only that sellers include a line item for "other charges necessary or incidental to the sale or financing of a motor vehicle" that is "separately itemized" from the purchase price and other financed components. 12 Pa. C.S. §§6222(5)(v), 6224. The line item for the amount "Paid to Public Officials" suffices.

Accordingly, if this Court agrees with the district court that the RPAs are not independently enforceable, it should remand with directions for the district court to dismiss Plaintiffs' claims, which are premised on the obligations created by the RPAs.

CONCLUSION

This Court should reverse the judgment of the district court and either send the case to arbitration or dismiss Plaintiffs' claims on the merits.

Dated: February 23, 2023

Respectfully submitted,

s/ Roman Martinez

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COMBINED CERTIFICATIONS

1. CERTIFICATE OF BAR MEMBERSHIP

I, Roman Martinez, counsel for Appellant Carvana, LLC, hereby certify pursuant to Rule 28.3(d) that I am a member in good standing of the bar of the Court of Appeals for the Third Circuit.

2. CERTIFICATE OF WORD COUNT

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B) and Local Rule 32.1, I hereby certify that the foregoing brief contains 12,980 words as counted using the word-count feature in Microsoft Word 365, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 and a 14-point Times New Roman font.

3. CERTIFICATE OF IDENTICAL BRIEFS

Pursuant to Local Rule 31.1(c), I certify that the text of the electronic and hard copy forms of this brief are identical.

4. CERTIFICATE OF VIRUS CHECK

Pursuant to Local Rule 31.1(c), I certify that a virus check of the electronic PDF version of this brief was performed using Microsoft Defender Antivirus, which was updated February 23, 2023, and according to that program no virus was detected.

Respectfully submitted,

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No. 22-2948

United States Court of Appeals for the Third Circuit

DANA JENNINGS, on his own behalf and on behalf of other similarly situated persons; JOSEPH A. FURLONG, on his own behalf and on behalf of other similarly situated persons,

Appellees,

v.

CARVANA, LLC,

Appellant.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania, No. 5:21-cv-05400,
Hon. Edward G. Smith, District Judge

JOINT APPENDIX:
Volume 1, pp. 1-20

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TABLE OF CONTENTS

VOLUME 1 (JA1-20)

I. Required Materials Pursuant to L.A.R. 32.2(c)

VOLUME 2 (JA21-282)

II. Dockets, Pursuant to Fed. R. App. P. 30(a)(1)(A) (JA21-27)

III. Record: Other Relevant Orders Pursuant to Fed. R. App. P. 30(a)(1)(B) and L.A.R. 30.3(a) (JA28-40)

IV. Record: Relevant Contracts, Pursuant to Fed. R. App. P. 30(a)(1)(D) and L.A.R. 30.3(a) (JA41-74)

III. Record: Other Relevant Parts of the Record, Pursuant to Fed. R. App. P. 30(a)(1)(D) and L.A.R. 30.3(a) (JA75-282)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANA JENNINGS and JOSEPH A. FURLONG, Individually and on Behalf of All Others Similarly Situated,	:	
Plaintiffs,	:	CIVIL ACTION NO. 21-5400
v.	:	
CARVANA LLC,	:	
Defendant.	:	

MEMORANDUM OPINION

Smith, J. September 30, 2022

The Federal Arbitration Act ("FAA") provides as a matter of federal law that agreements to arbitrate disputes are enforceable to the same extent as other contracts. But the FAA provides no right to enforce an agreement to arbitrate that may not be enforced under neutral principles of state contract law. Pennsylvania has a single-document rule applicable to the installment sales of motor vehicles that requires *all agreements* between buyers and sellers must be found in one document, the retail installment sales contract. As part of the transactions at issue here, each plaintiff executed a valid retail installment sales contract. The defendant also had each plaintiff sign an arbitration agreement which was incorporated into a third document, a retail purchase agreement ("RPA") but, inexplicably, failed to incorporate either the arbitration agreement or the RPA into the retail installment sales contract. Under Pennsylvania's single-document rule, the RPA and arbitration agreement are subsumed by the RISC and thus are not independently enforceable. The retail installment sales contracts at issue also specifically provide that the retail installment sales contract itself is the entire contract between the parties. The defendant now asks us to bring to bear the preemption power of the FAA to compel arbitration despite the

unenforceability of the arbitration agreement under state law. Notwithstanding the liberal federal policy favoring arbitration agreements, this court finds that federal preemption will not save the otherwise unenforceable arbitration agreements.

Two Pennsylvania citizens have commenced a proposed class action against a national used car dealer in which they claim that the dealer breached its contract with them and violated Pennsylvania's Unfair Trade Practices and Consumer Protection Law when the dealer failed to timely transfer titles for purchased vehicles. This delay allegedly prevented the purchasers and other individuals in the proposed class from being able to legally drive the vehicles because they could not timely register the vehicles or purchase adequate insurance coverage.

The dealer has now filed a motion to compel arbitration and, in the alternative, a motion to dismiss. Regarding the motion to compel arbitration, the dealer contends that the respective RPAs include an arbitration provision that expressly incorporates an agreement to arbitrate the disputes at issue in this case. The purchasers counter that under the Pennsylvania Motor Vehicle Sales Finance Act ("MVSFA"), the retail installment sales contract ("RISC"), (which does not include an agreement to arbitrate) subsumes the retail purchase agreement and should govern the dispute. They argue that because the RISC makes no mention of an arbitration agreement, the court should deny the motion to compel arbitration.

After carefully considering the parties' arguments on the motion to compel arbitration, the court agrees with the plaintiffs that their dispute in this case is not subject to compulsory arbitration because (1) the MVSFA requires "all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold" to be included in the RISC; and (2) the RISC executed between the dealer and the plaintiffs did not include an arbitration agreement nor did it incorporate the arbitration agreement by reference. In the alternative, the dealer argues that

this court should dismiss the amended complaint for failure to state a claim, but at this early stage of the litigation, the complaint is adequate to withstand the motion to dismiss.

I. ALLEGATIONS AND PROCEDURAL HISTORY

The plaintiffs, Dana Jennings ("Jennings") and Joseph A. Furlong ("Furlong"), who are both Pennsylvania citizens, commenced this consumer protection action by filing a putative class action complaint against the defendant, Carvana LLC ("Carvana"), in the Court of Common Pleas of Philadelphia County on November 5, 2021. Doc. No. 1, Ex. 1. On December 9, 2021, Carvana removed the matter to this court under 28 U.S.C. §§ 1441, 1453, invoking federal jurisdiction under the general diversity statute, 28 U.S.C. § 1332(a), and the Class Action Fairness Act ("CAFA"), 28 U.S.C. §§ 1332(d). *See* Notice of Removal at ECF p. 3, Doc. No. 1. Prior to Carvana filing a response to the complaint, the plaintiffs filed an amended complaint on January 13, 2022. Doc. No. 8.

In the amended complaint, the plaintiffs allege they each purchased a vehicle online from Carvana, a national used car dealer incorporated in Georgia. Am. Compl. at ¶¶ 3, 12, 24, Doc. No. 8. As part of the transaction, they both agreed to pay, and did pay, *inter alia*, a $38 state registration fee, $16 license plate fee, and $55 state title fee. *Id.* at ¶¶ 12, 24, 36–37. Despite paying these fees, the plaintiffs claim that Carvana "failed to complete" the permanent registration of their vehicles. *Id.* at ¶¶ 36–37. Instead, Carvana provided them with temporary license tags "without the legal right or authorization to do so." *Id.* at ¶¶ 17, 29.

Specifically, Carvana gave Jennings six temporary license tags: two from the Arizona Department of Transportation, two from the Tennessee Department of Revenue, and one from the Commonwealth of Pennsylvania. *Id.* at ¶ 17. Neither Arizona nor Tennessee had authorized Carvana to issue these temporary registrations. *Id.* at ¶ 19. Jennings allegedly relied upon

Carvana's promise to properly register the vehicle in Pennsylvania, as her "trade-in of the prior vehicle and her payments on the purchased vehicle" demonstrate. *Id.* at ¶ 20. As of the amended complaint's filing, however, Carvana still had not provided Jennings with a permanent registration. *Id.* at ¶ 21.

As to Furlong, Carvana first provided him with an Arizona temporary license tag. *Id.* at ¶ 27. When that tag expired, Carvana sent him a Tennessee temporary tag. *Id.* at ¶ 29. Furlong, like Jennings, relied upon Carvana's promise to properly register the vehicle in Pennsylvania. *Id.* at ¶ 30. Unlike its experience with Jennings, Carvana eventually provided Furlong with permanent registration in December 2021, approximately six months after he purchased his vehicle. *Id.* at ¶ 31.

Both plaintiffs allege actual damages amounting to $93 (including the $38 state registration fee, $16 license plate fee, and $55 state title fee)[1] "for licensing and registration for the vehicle[s] which [Carvana] failed to complete." *Id.* at ¶¶ 36–37. They set forth claims for breach of contract and violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1–10 ("UTPCPL"). *Id.* at ¶¶ 190–208. The plaintiffs seek to represent a class of individuals defined as:

> All persons in the United States east of the Mississippi River who entered into contracts with CARVANA to purchase vehicles since November 5, 2019, and CARVANA agreed to provide car registration services with non-temporary and permanent vehicle registrations in the state of their residence.

Id. at ¶ 169(a). They also seek to represent a subclass of "[a]ll persons from the Commonwealth of Pennsylvania who are members of the Nationwide Class." *Id.* at ¶ 169(b).[2]

[1] The plaintiffs' claims for actual damages is inconsistent with the amounts they paid, as those amounts total $99.
[2] The issue of class certification is not yet before this court.

In response to the amended complaint, Carvana filed the instant motion to compel arbitration and to dismiss on January 28, 2022. Doc. No. 18. The plaintiffs filed a response in opposition to the motion on February 18, 2022. Doc. No. 22. Carvana filed a reply brief on March 11, 2022. Doc. No. 24. Shortly thereafter, on March 23, 2022, the plaintiffs filed a sur-reply. Doc. No. 27. On June 1, 2022, the plaintiffs provided notice of supplemental authority, Doc. No. 31, to which Carvana responded on June 3, 2022. Doc. No. 32. The court heard oral argument on the motion on June 7, 2022. Doc. Nos. 33, 34. Carvana's motion to compel arbitration and to dismiss is now ripe for disposition.

Agreements at Issue

In the present case, both plaintiffs signed (1) a RISC; (2) a RPA; and (3) an Arbitration Agreement in connection with their respective vehicle purchases. *See* Am. Compl., Ex. 1, Jennings RISC, Ex. 2, Furlong RISC, Doc. Nos. 13-2, 13-3; Def. Carvana, LLC's Mot. to Compel Arbitration and to Dismiss ("Mot. To Compel Arb."), Ex. A, Jennings RPA; Ex, B, Jennings Arbitration Agreement; Ex. C, Furlong RPA; Ex. D, Furlong Arbitration Agreement, Doc. Nos. 19-1, 18-4, 19-2, 18-6.[3] Central to the parties' dispute is whether the RISCs or RPAs govern. Carvana argues the claims arise out of the RPAs, while the plaintiffs contend that the RISCs have subsumed the RPAs and accordingly, the court should only consider the RISCs. *See* Am. Compl. at ¶ 6; Mot. To Compel Arb. at 11.

Retail Installment Sales Contracts

The RISCs at issue contain numerous required details, including: the full names and addresses of all parties to the contract; the date that the buyer signed the contract; a description of the motor vehicles sold sufficient to identify each vehicle; and itemized costs relating to the amount

[3] The plaintiffs filed the RISCs separately from the amended complaint. *See* Doc. No. 13. Carvana filed amended RPAs as exhibits to its motion. *See* Doc. No. 19.

financed. Am. Compl., Ex. 1, Jennings RISC, Ex. 2, Furlong RISC, Doc. Nos. 13-2, 13-3. Each RISC contains a clause stating Pennsylvania law governs the terms of the Contract. Am. Compl., Ex. 1, Jennings RISC, Ex. 2, Furlong RISC, Doc. Nos. 13-2, 13-3.

Notably, the RISCs do not make any reference to the RPA or the arbitration agreement. Further each RISC contains an integration clause. *See* Am. Compl., Ex. 1, Jennings RISC, Ex. 2, Furlong RISC, Doc. Nos. 13-2, 13-3. The integration clause reads as follows:

> **Entire Agreement.** Your and our entire agreement is contained in this Contract. There are no unwritten agreements regarding this Contract. Any change to this Contract must be in writing and signed by you and us.

Am. Compl., Ex. 1, Jennings RISC, Ex. 2, Furlong RISC, Doc. Nos. 13-2, 13-3. The RISCs go on to define "Contract" as "refer[ing] to this Retail Installment Contract and Security Agreement". Am. Compl., Ex. 1, Jennings RISC, Ex. 2, Furlong RISC, Doc. Nos. 13-2, 13-3. Finally, included in the Itemization of Amount Financed section, the RISCs contain a line item titled "amount Paid to Public Officials (incl. filing fees)". *See* Am. Compl., Ex. 1, Jennings RISC at 3, Ex. 2, Furlong RISC at 4, Doc. Nos. 13-2, 13-3. The RISC does not define these fees any further.

Retail Purchase Agreements and Arbitration Agreements

The RPAs, each titled "Retail Purchase Agreement — Pennsylvania —", contain much of the same information as the RISCs with a few notable differences. The RPAs include language applying the law of the state of the dealership listed on the RPA itself. Mot. To Compel Arb., Ex. A, Jennings RPA (dealership listed in Pennsylvania); Ex. C, Furlong RPA (dealership listed in Georgia); Doc. Nos. 19-1, 19-2. On the last page, the RPA includes a clause referring to an arbitration agreement and explicitly incorporates the agreement by reference. Mot. To Compel Arb., Ex. A, Jennings RPA; Ex. C, Furlong RPA; Doc. Nos. 19-1, 19-2. ("**Arbitration Agreement:** The arbitration agreement entered into between you and Dealer is incorporated by

reference into and is part of this Agreement"). The arbitration agreements, each respectively signed by the plaintiffs, summarize the arbitration process, explain how to opt-out of the arbitration agreement, and list the rights waived by failing to opt-out. Mot. To Compel Arb., Ex. A, Jennings RPA; Ex. C, Furlong RPA; Doc. Nos. 19-1, 19-2.

The plaintiffs' alleged damage stems from these state registration fees, license plate fees, and state title fees.[4] The RPAs itemize these fees, while the RISCs do not. *Compare* Jennings, RISC (listing the disputed fees under the line item "Paid to Public Officials (incl. filing fees)"), *and* Furlong RISC (same), *with* Jennings RPA (itemizing the fees); Furlong RPA (same). The RPAs specifically reference a "Registration Fee" of $38, a "License Plate – Electronic Issuance Fee" of $16, and a "Title Fee" of $55 while the RISCs identify the disputed fees "as a total" summed amount aggregated under the description, "Paid to Public Officials". *See* Jennings RPA; Furlong RPA; Pl.'s Opp'n to Def,'s Mot. to Compel Arbitration and to Dismiss ("Pl.'s Opp'n") at 4, Doc. No. 22.

II. DISCUSSION

A. Standard of Review – Motions to Compel Arbitration

The FAA "creates a body of federal substantive law establishing and governing the duty to honor agreements to arbitrate disputes." *Century Indem. Co. v. Certain Underwriters at Lloyd's, London, Ssubscribing to Retrocessional Agreement Nos. 950548, 950549, 950646*, 584 F.3d 513, 522 (3d Cir. 2009) (citations omitted). Section 2 of the FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "The purpose of the Act was to abolish the common law rule that arbitration agreements were not judicially enforceable." *Cost Bros. v. Travelers Indem.*

[4] The sum of these fees equal the actual damages claimed by the plaintiffs. *See* Pl. Mot. in Opp'n to Defs. Mot. to Compel Arbitration and to Dismiss at 4.

Co., 760 F.2d 58, 60 (3d Cir. 1985) (citations omitted). This "strong federal policy favoring arbitration, however, does not lead automatically to the submission of a dispute to arbitration upon the demand of a party to the dispute." *Century Indem. Co.*, 584 F.3d at 523. Instead, "[b]efore compelling a party to arbitrate pursuant to the FAA, a court must determine that (1) there is an agreement to arbitrate and (2) the dispute at issue falls within the scope of that agreement." Id. (citations omitted).

Before it may compel arbitration, a court must initially find that there is a valid agreement to arbitrate. *Id.* Courts look to state law to determine whether a contractual arbitration agreement is valid. *Trippe Mfg. Co. v. Niles Audio Corp.*, 401 F.3d 529, 532 (3d Cir. 2005) ("due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration"). An arbitration agreement will be enforceable if valid under state law. *See id.* Here, the key issue is whether these arbitration agreements, which were not incorporated into the RISC, are valid and enforceable under Pennsylvania law. *Id.*

B. MVSFA and Special Rules of Installment Contracts

In 1947, the Pennsylvania Legislature enacted the MVSFA in an attempt to:

> "promote the welfare of its inhabitants and to protect its citizens from abuses presently existing in the installment sale of motor vehicles, and to that end exercise the police power of the Commonwealth to bring under the supervision of the Commonwealth all persons engaged in the business of extending consumer credit in conjunction with the installment sale of motor vehicles; to establish a system of regulation for the purpose of insuring honest and efficient consumer credit service for installment purchasers of motor vehicles; and to provide the administrative machinery necessary for effective enforcement."

69 P.S. § 602 (now 12 Pa. C.S. § 6221). Pursuant to the MVSFA, if a buyer is purchasing a vehicle via installment sale, the contract must be in writing, signed by the buyer and the seller, "**and shall contain all of the agreements between the buyer and the seller** relating to the installment sale of the motor vehicle sold[.]" 69 P.S. § 613(A) (emphasis added); *see also Knight v. Springfield*

Hyundai, 81 A.3d 940, 948 (Pa. Super. Ct. 2013) (noting that the plain language of the MVSFA causes a RISC to subsume all other agreements relating to the installment purchase of a vehicle). This statute creates a one-document rule for the installment purchases of vehicles; *all agreements* must be incorporated into the RISC, either in-fact or by reference. *See Knight*, 81 A.3d at 948 (holding that for installment contracts all agreements must be in a single document); *Kent v. Drivetime Car Sales LLC.*, 2020 WL 3892978, at *3 (E.D. Pa. July 10, 2020) (finding a valid arbitration agreement when it was incorporated by reference into the RISC).

Further, courts look to whether the RISC included a complete integration clause. *Knight*, 81 A.3d at 948. In *Knight*, the court held that a RISC that contained an integration clause stating the RISC contained the entire agreement between the purchaser and dealer was persuasive to whether a valid, enforceable arbitration agreement existed. *Id.* at 948–49. These clauses, while not determinative, illustrate whether the parties intended for other documents to have been considered as the entire agreement between the parties. *See Kent*, 81 A.3d at 948 (determining that the RISC at issue did subsume the other purchase documents because it contained an integration clause).

Over the past few years, several cases have analyzed this issue. All agree that under the MVSFA, when a consumer purchases a motor vehicle through an installment agreement, the RISC subsumes other agreements, so long as they are not incorporated in-fact or by reference into the installment contract. *See Knight*, 81 A.3d at 948 (no valid arbitration agreement when not incorporated into the RISC); *Mount v. Peruzzi of Langhorne*, 2021 WL 3708714, at *3 (E.D. Pa. Aug. 20, 2021) (same); *Gregory v. Metro Auto Sales, Inc.*, 158 F. Supp.3d 302, 305 (E.D. Pa. 2016) (same); *Kent* 2020 WL 3892978 (E.D. Pa. July 10, 2020) (holding that an arbitration agreement is enforceable when the RISC incorporates the arbitration agreement by reference). In an installment sale of a vehicle, for additional agreements or contracts to be enforceable, they must

be found *somewhere* within the installment contract. *See Knight*, 81 A.3d at 948; *Mount*, 2021 WL 3708714, at *3.

The defendant argues that the FAA preempts the MVSFA's rule as it would stand as an obstacle to the purposes and objectives of the federal law. State laws that conflict with federal law are "without effect." *Dooner v. DiDonato*, 971 A.2d 1187, 1193 (2009) (quoting *Altria Group, Inc. v. Stephanie Good*, 555 U.S. 70, 76 (2008)). Although federal preemption of state laws may be found in any of three ways, *see Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 497 n.6 (Pa. 2016) (discussing express preemption, field preemption, and conflict preemption), the defendant only raises conflict preemption. *See Volt Info. Sci., Inc. v. Bd. of Tr. of Leland Stanford Junior Univ.*, 489 U.S. 468, 477 (1989) ("The FAA contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration."). Conflict preemption typically arises where compliance with both federal and state law is impossible, or when the state law stands as an obstacle to the accomplishment of the full purposes and objectives of the United States Congress. *Holt's Cigar Co. v. City of Philadelphia*, 10 A.3d 902, 918 n.4 (Pa. 2011); *see Volt*, 489 U.S. at 477. However, the Supreme Court has cautioned that obstacle preemption does not justify a "freewheeling judicial inquiry" into whether state laws are "in tension" with federal objectives, as such a standard would undermine the principle that "it is Congress rather than the courts that preempts state law." *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 607 (2011).

The Supreme Court has repeatedly stated that the FAA establishes "a liberal federal policy favoring arbitration agreements." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (quoting *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). The FAA requires courts to compel arbitration of claims subject to an arbitration agreement, "even if a state

law would otherwise exclude it from arbitration." *Taylor*, 147 A.3d at 509. The only exception, under the FAA's saving clause, that permits courts to not enforce an arbitration agreement is when there is a generally applicable contract law defense. *Id.*; *see also AT & T Mobility LLC v. Concepcion*, 563 U.S. 333, 343 (2011) (overturning a state law that purposefully discriminated against arbitration agreements relative to other contractual agreements).

In 2018, in *Epic Sys. Corp.*, 138 S. Ct. at 1622, the Supreme Court clarified that the saving clause of the FAA prohibits state laws that would discriminate against arbitration agreements, explicitly or discretely. 9 U.S.C. § 4. "[T]he clause establishes a sort of 'equal-treatment' rule for arbitration contracts." *Id.*; *see also Kindred Nursing Centers L.P. v. Clark*, 137 S.Ct. 1421, 1426 (2017) (holding a state law that discriminates specifically against arbitration agreements to be in direct conflict with the FAA). The FAA's saving clause permits agreements to arbitrate to be invalidated by "generally applicable contract defenses." *Concepcion*, 563 U.S., at 339. However, the saving clause will not permit contract defenses that disproportionately "apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Id.*

C. Enforceability of the Arbitration Clause in the RPAs

Whether there is a valid arbitration agreement is a question for state law. *See Trippe Mfg. Co.*, 401 F.3d at 532. Here, the MVSFA requires that for the purchase of a vehicle through an installment contract, *all* agreements must be within the RISC.[5] 12 Pa. C.S. § 6221. For any agreement in an installment contract of a vehicle, regardless of the subject matter, the MVSFA sets the same requirements. Despite the federal government and Pennsylvania's "healthy regard for the federal policy favoring arbitration" *Taylor*, 147 A.3d at 509, the MVSFA does not come in direct conflict with the FAA and thus, is not preempted. *See also Epic Sys. Corp.*, 138 S. Ct. at

[5] The defendant is correct that the MVSFA only applies to installment sales and would not bar enforcement of the arbitration agreements for non-installment sales of vehicles. Mot. to Compel Arb. at 11; *see* 12 Pa. C.S. § 6221(a).

1622 (noting contract defenses that treat arbitration agreements equally to all other agreements will fall within the FAA's saving clause).

The MVSFA treats arbitration agreements no differently than any other contractual provision. 12 Pa. C.S. § 6221. The MVSFA's requirement that all agreements be found in the RISC is a generally applicable contract defense and provides equal treatment to arbitration agreements. *Cf. Epic Sys. Corp.*, 138 S. Ct. at 1622 (requiring equal treatment for arbitration contracts to satisfy the saving clause of the FAA). The RISCs, here, do not mention the existence of either the RPAs or the arbitration agreements. To the contrary, they contain integration clauses that state the RISCs contain the complete agreement of the parties. Here, under the MVSFA's rule for installment sales for vehicles, the RPA and Arbitration agreements are subsumed into the RISC and are not independently enforceable. *See Knight*, 81 A.3d at 948 (holding the RISC subsumes all other agreements under the MVSFA); *Mount*, 2021 WL 3708714, at *3 (requiring the RISC to include reference to an arbitration agreement for the arbitration agreement to be enforceable).

D. Pennsylvania Law Applies

Next, the defendant argues that Georgia law should govern Furlong's claims while Pennsylvania law should apply to Jennings. "Pennsylvania courts will uphold choice-of-law provisions in contracts to the extent that the transaction bears a reasonable relation to the chosen forum." *Gay v. CreditInform*, 511 F.3d 369, 390 (3d Cir.2007) (quoting *Churchill Corp. v. Third Century, Inc.*, 396 Pa. Super. 314, 578 A.2d 532, 537 (1990)). As discussed above, installment contracts executed in Pennsylvania are governed by the MVSFA, which provides that a single document, i.e. the RISC, shall contain all of the applicable contract terms. In the RISCs at issue here, both Jennings and Furlong's documents explicitly choose Pennsylvania law to govern the contract. *See* Am. Compl., Ex. 1, Jennings RISC ("**Governing Law and Interpretation.** This

Contract is governed by the law of Pennsylvania and applicable federal law and regulations."), Ex. 2, Furlong RISC (same), Doc. Nos. 13-2, 13-3.

The defendant points to Furlong's RPA and argues that Georgia state law should govern his claim. Mot. To Compel Arb. at 3, (Doc. No. 18). However, this argument fails as installment contracts executed in Pennsylvania fall under the MVSFA. Further illustrating the point that Pennsylvania law should govern and thus the Pennsylvania choice of law provision should apply is that the RPA executed between Carvana and Furlong is titled "Retail Purchase Agreement — Pennsylvania —". Mot. To Compel Arb. Ex. C, Furlong RPA; Doc. No. 19-2. Despite these conflicting choice of law provisions between the RISC and the RPA, the RISC is the operative document and the contract has a reasonable and substantial relationship to the chosen forum state. *See Gay*, 511 F.3d at 390 (applying the contract's choice of law provision even though other states also had substantial relationships to the contract).

E. Plaintiff States a Claim Under Breach of Contract and UTPCLP

Next, the defendant moves to dismiss both of the plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6). Under Rule 12(b)(6), a complaint must be dismissed if it fails "to state a claim upon which relief can be granted." Fed. R. Civ. P 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* On a motion to dismiss under Rule 12(b)(6), all factual allegations of the complaint are accepted as true, viewed in the light most favorable to the plaintiff, and all reasonable inferences are drawn in the plaintiff's favor. *See Blanyar v. Genova*

Prods. Inc., 861 F.3d 426, 431 (3d Cir. 2017); *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). However, the assumption of truth does not apply to legal conclusions, such as "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678 (citation omitted). "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id*. at 679.

Count I of the plaintiff's amended complaint alleges that the defendant breached their contractual duties by failing to permanently license and register the vehicles despite collecting fees to do so. Further, the plaintiffs allege that the defendant improperly issued temporary plates, in violation of Arizona and Tennessee law, as well as their duty of good faith under contract. Ariz. Rev. Stat. 28 § 28-2156; Tenn. Code Ann. § 55-4-115(a)(1)-(2). Under Pennsylvania law, to state a claim for breach of contract a plaintiff must plead (1) the existence of a contract, including its essential terms, (2) the defendant's breach of a duty imposed by those terms, and (3) actual loss or injury as a direct result of the breach. *See Angino v. Wells Fargo Bank, N.A.*, 666 F. App'x 204, 207 (3d Cir. 2016); *Stein v. Matheson*, 539 F. Supp. 3d 463, 472 (E.D. Pa. 2021).

Count II of the plaintiff's amended complaint alleges that the defendant violated UTPCPL. To state a UTPCPL claim, a private plaintiff must allege (1) a deceptive act that is likely to deceive a consumer acting reasonably under the circumstances; (2) justifiable reliance; and (3) ascertainable loss caused by that justifiable reliance. *Velazquez v. State Farm Fire & Cas. Co.*, 2020 WL 1942784, at *3 (E.D. Pa. Mar. 27, 2020); *see also Kemezis v. Matthews*, 394 F. App'x 956, 959 (3d Cir. 2010) (a private plaintiff must allege sufficient "facts from which plausible inferences of deceptive conduct and justifiable reliance thereon can be drawn").

In the Amended Complaint, the plaintiff sufficiently alleges violations of both breach of contract and violations of the UTPCPL. *See Genomind, Inc. v. UnitedHealth Grp. Inc.*, No. CV

21-373, 2021 WL 3929723 at *7 (E.D. Pa. Sept. 1, 2021) (permitting claims to survive a 12(b)(6) motion to dismiss when the parties agreed on a methodology for one party to pay certain fees); *Dixon v. Northwestern Mutual*, 146 A.3d 780, 790 (Pa. Super. Ct. 2016) ("Any deceptive conduct 'which creates a likelihood of confusion or of misunderstanding can constitute a cognizable claim' under the UTPCPL") (quoting *Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC*, 40 A.3d 145, 151 (Pa. Super. Ct. 2012).

III. CONCLUSION

For the foregoing reasons, the defendant's Motion to Compel Arbitration and to Dismiss is **DENIED**.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANA JENNINGS and JOSEPH A. FURLONG, Individually and on Behalf of All Others Similarly Situated,	:	
Plaintiffs,	:	CIVIL ACTION NO. 21-5400
v.	:	
CARVANA LLC,	:	
Defendant.	:	

ORDER

AND NOW, this 30th day of September, 2022, upon consideration of the defendant's Motion to Compel Arbitration and to Dismiss (Doc. No. 18), the plaintiff's Response in Opposition (Doc. No. 22), the defendant's reply to the response (Doc. No. 24), and the plaintiff's Sur-Reply (Doc. No. 27), it is **ORDERED** as follows:

1. The defendant's Motion to Compel Arbitration and to Dismiss (Doc. No. 18) is **DENIED**;

2. The defendant shall file an answer to the complaint by no later than **Friday, October 21, 2022**;

3. The court will hold an initial pretrial conference on **Wednesday, November 23, 2022**, at 10:00 a.m., at the Holmes Building, 101 Larry Holmes Drive, 4th Floor, Easton, PA 18042;

4. Prior to the initial pretrial conference, the parties should confer and prepare a joint report pursuant to Federal Rule of Civil Procedure 26(f). This joint report should be e-mailed to chambers **no later than three days** prior to the initial pretrial conference; and

5. The parties shall commence discovery immediately.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANA JENNINGS and JOSEPH A. FURLONG, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. CARVANA, LLC, Defendant.	Case No. 5:21-cv-05400 Hon. Edward G. Smith

DEFENDANT CARVANA, LLC'S NOTICE OF APPEAL

Notice is hereby given that Carvana, LLC, Defendant in the above-captioned case, hereby appeals to the United States Court of Appeals for the Third Circuit from the Memorandum Opinion dated and entered on September 30, 2022 [Dkt. 36] and the Order dated and entered on September 30, 2022 [Dkt. 37].

Dated: October 17, 2022

Respectfully submitted,

/s/ *Eric Leon*

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CERTIFICATE OF SERVICE

I, Eric Leon, hereby certify that I caused a copy of the foregoing to be served on the parties listed below, via the Court's ECF system, on October 17, 2022.

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Dated: October 17, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2023, I caused a copy of the foregoing Brief for Appellant and Joint Appendix Volume 1 to be served by electronic means, via the Court's CM/ECF system, on all counsel registered to receive electronic notices.

Respectfully submitted,

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