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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Carissa Perry,  
10 Plaintiff,  
11 v.  
12 Exeter Finance LLC, et al.,  
13 Defendants.  
14

No. CV-25-01552-PHX-DWL  
**ORDER**

15 Carissa Perry (“Plaintiff”), who is proceeding *pro se*, alleges that Exeter Finance  
16 LLC (“Exeter”) and Cobra Equity Holdco LLC (“Cobra”) (together, “Defendants”) engaged in “a calculated scheme of financial misconduct” following the repossession of  
17 her car “that culminated in the issuance of a fraudulent Form 1099-C, unlawful credit reporting, and sustained economic retaliation—all following [Plaintiff’s] full performance  
18 under a binding settlement agreement.” (Doc. 9 at 1.) In her 90-page complaint, Plaintiff asserts 18 causes of action under federal and state law. Defendants have, in turn, moved  
19 to compel arbitration. (Doc. 19.) For the reasons that follow, the motion is granted.  
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23 **BACKGROUND**

24 I. Factual Allegations

25 A. **The Retail Installment Sales Contract**

26 On or about July 25, 2020, Plaintiff “entered into a Retail Installment Sales Contract  
27 [‘RISC’] with Earnhardt Lexus in Phoenix, Arizona, to finance a used 2016 Toyota Corolla  
28

1 with approximately 65,079 miles.” (Doc. 9 ¶ 35.)<sup>1</sup> “The total amount financed under the  
2 agreement was \$13,967.24, with an annual percentage rate (APR) of 26.25%. The loan  
3 was structured for repayment over 72 months in fixed monthly installments of \$390.97.”  
4 (*Id.* ¶ 36.) The RISC “reflected a total scheduled repayment amount of \$28,149.84 over  
5 the full term.” (*Id.* ¶ 37.) “Immediately upon execution, the [RISC] was assigned to  
6 [Exeter], who assumed the role of creditor and servicer for all purposes related to the  
7 account.” (*Id.* ¶ 38.) “Between July 2020 and 2023, [Plaintiff] made 47 monthly payments  
8 totaling \$19,905.89 toward the account.” (*Id.* ¶ 39.)

9 The RISC contains an arbitration provision (“the Arbitration Provision”). (Doc. 20  
10 at 8.) The Arbitration Provision appears in a separate box from other provisions of the  
11 RISC and is titled, in bold letters, “**ARBITRATION PROVISION PLEASE REVIEW**  
12 **– IMPORTANT – AFFECTS YOUR LEGAL RIGHTS.**” (*Id.*) The Arbitration  
13 Provision provides:

14 **1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE**  
15 **BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT**  
16 **OR BY JURY TRIAL.**

17 **2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR**  
18 **RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR**  
19 **CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE**  
20 **AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION**  
21 **OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.**

22 **3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE**  
23 **GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND**  
24 **OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT**  
25 **MAY NOT BE AVAILABLE IN ARBITRATION.**

26 Any claim or dispute, whether in contract, tort, statute or otherwise  
27 (including the interpretation and scope of this Arbitration Provision, and the

28 <sup>1</sup> Plaintiff submitted a declaration, including exhibits, in support of the complaint. (Doc. 14.) Plaintiff states that Exhibit A to that declaration is a “true and correct” copy of the RISC. (*Id.* at 2.) However, Exhibit A appears to be an incomplete copy of the RISC that omits the arbitration provision at issue here. (*Id.* at 8-10.) Defendants’ declaration in support of their motion to compel arbitration attaches what appears to be a complete version of the RISC that includes the arbitration provision. (Doc. 20 at 5-9.) Plaintiff does not dispute the authenticity of the complete RISC provided by Defendants. When referring to the RISC throughout this order, the Court therefore relies on the complete RISC provided by Defendants. (*Id.*)

1 arbitrability of the claim or dispute), between you and us or our employees,  
2 agents, successors or assigns, which arises out of or relates to your credit  
3 application, purchase or condition of this vehicle, this contract or any  
4 resulting transaction or relation, (including any such relationship with third  
5 parties who do not sign this contract) shall, at your or our election, be  
6 resolved by neutral, binding arbitration and not by a court action. If federal  
7 law provides that a claim or dispute is not subject to binding arbitration, this  
8 Arbitration Provision shall not apply to such claim or dispute. Any claim or  
9 dispute is to be arbitrated by a single arbitrator on an individual basis and not  
10 as a class action. You expressly waive any right you may have to arbitrate a  
11 class action. You may choose the American Arbitration Association  
12 ([www.adr.org](http://www.adr.org)) or any other organization to conduct the arbitration subject to  
13 our approval. You may get a copy of the rules of an arbitration organization  
14 by contacting the organization or visiting its website.

15 Arbitrators shall be attorneys or retired judges and shall be selected pursuant  
16 to the applicable rules. The arbitrator shall apply governing substantive law  
17 and the applicable statute of limitations. The arbitration hearing shall be  
18 conducted in the federal district in which you reside unless the Seller Creditor  
19 is a party to the claim or dispute, in which case the hearing will be held in  
20 the federal district where this contract was executed. We will pay your filing,  
21 administration, service or case management fee and your arbitrator or hearing  
22 fee all up to a maximum of \$5000, unless the law or the rules of the chosen  
23 arbitration organization require us to pay more. The amount we pay may be  
24 reimbursed in whole or in part by decision of the arbitrator if the arbitrator  
25 finds that any of your claims is frivolous under applicable law. Each party  
26 shall be responsible for its own attorney, expert and other fees, unless  
27 awarded by the arbitrator under applicable law. If the chosen arbitration  
28 organization's rules conflict with this Arbitration Provision, then the  
provisions of this Arbitration Provision shall control. Any arbitration under  
this Arbitration Provision shall be governed by the Federal Arbitration Act  
(9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration. Any  
award by the arbitrator shall be in writing and will be final and binding on  
all parties, subject to any limited right to appeal under the Federal Arbitration  
Act.

You and we retain the right to seek remedies in small claims court for  
disputes or claims within that court's jurisdiction, unless such action is  
transferred, removed or appealed to a different court. Neither you nor we  
waive the right to arbitrate by using self-help remedies, such as repossession,  
or by filing an action to recover the vehicle, to recover a deficiency balance,  
or for individual injunctive relief. Any court having jurisdiction may enter  
judgment on the arbitrator's award. This Arbitration Provision shall survive  
any termination, payoff or transfer of this contract. If any part of this

1 Arbitration Provision, other than waivers of class action rights, is deemed or  
2 found to be unenforceable for any reason, the remainder shall remain  
3 enforceable. If a waiver of class action rights is deemed or found to be  
4 unenforceable for any reason in a case in which class action allegations have  
been made, the remainder of this Arbitration Provision shall be unenforceable.

5 *Id.*

#### 6 **B. The Repossession And Deficiency Notices**

7 In or about October 2023, “Defendants conducted a nonjudicial repossession of  
8 [Plaintiff’s] vehicle.” (Doc. 9 ¶ 40.) On or about November 21, 2023, the vehicle was sold  
9 at auction. (*Id.* ¶ 45.) Thereafter, “Defendants issued a post-sale ‘Deficiency Letter’ dated  
10 November 28, 2023” and “claimed a deficiency balance of \$8,599.72.” (*Id.* ¶¶ 41, 43.)  
11 The complaint proceeds to allege several deficiencies with the repossession of Plaintiff’s  
12 vehicle, the sale of Plaintiff’s vehicle, and the deficiency notices provided to Plaintiff.

#### 13 **C. The Settlement Agreement**

14 In October 2024, Plaintiff and Exeter “executed a written settlement agreement”  
15 (“Settlement Agreement”). (*Id.* ¶ 46. *See also* Doc. 14 at 12-15; Doc. 20 at 11-14.)  
16 Plaintiff alleges that she executed the Settlement Agreement “under extreme financial  
17 duress, induced by Defendants’ unlawful conduct and deliberate suppression of material  
18 disclosures required under federal and state law.” (Doc. 9 ¶ 46.) Plaintiff alleges that the  
19 Settlement Agreement “was presented in a coercive and deceptive manner, following an  
20 unlawful repossession and facially defective post-sale notices,” and she asserts that the  
21 Settlement Agreement “is void and unenforceable under established doctrines of fraudulent  
22 inducement, lack of consideration, and unconscionability, and reflects a broader pattern of  
23 abusive conduct.” (*Id.*) Plaintiff also alleges that the RISC “was nullified, superseded, or  
24 rendered unenforceable by statutory violations, fraud in the inducement, and the execution  
25 of [the Settlement Agreement].” (*Id.* ¶ 16.) Per the Settlement Agreement, Plaintiff  
26 “remitted \$650.” (*Id.* ¶ 47.)

27 The Settlement Agreement contains two provisions, excerpted here, that are relevant  
28 to Defendants’ motion to compel arbitration:

1 The Parties agree that except as expressly provided in this [Settlement]  
2 Agreement, all other terms contained within the original [RISC], including  
3 without limitation those relating to Exeter’s security interest in and lien on  
4 the Vehicle, shall survive and are incorporated by reference into the terms of  
this [Settlement] Agreement.

5 (Doc. 20 at 11 § I.A.iii.)

6 Customer(s) will comply with the Settlement Payment Terms set forth above  
7 and all other [RISC] terms that are not impacted by this [Settlement]  
8 Agreement.

9 (*Id.* at 12 § I.B.ii.)

10 **D. The IRS Form 1099-C And Credit Reporting Issues**

11 In November 2024, Plaintiff “received an IRS Form 1099-C stating that \$5,374.43  
12 had been canceled.” (Doc. 9 ¶ 51. *See also* Doc. 14 at 17.) The IRS Form 1099-C was  
13 issued by Cobra, not Exeter. (Doc. 9 ¶ 51.) The complaint alleges that “Cobra is the parent  
14 company of co-Defendant Exeter” and that Cobra “affirmatively exercised creditor  
15 authority over Plaintiff’s account.” (*Id.* ¶ 21.) The complaint alleges various issues with  
16 Cobra’s issuance of the IRS Form 1099-C.

17 Plaintiff further alleges that “[d]espite issuing the IRS Form 1099-C in November  
18 2024 . . . Defendants continued to furnish false, derogatory, and legally inconsistent  
19 information to consumer reporting agencies” and “failed to update the tradeline to reflect  
20 the debt as canceled or settled in full.” (*Id.* ¶ 58.) Plaintiff “submitted formal disputes to  
21 all three major credit bureaus, including Equifax, TransUnion, and Experian, demanding  
22 deletion or correction of the materially false tradelines. . . . Despite this, Defendants  
23 accessed [Plaintiff’s] credit report in June 2025 . . . and unilaterally altered negative  
24 account data during [the pending] litigation—without notifying [Plaintiff] in writing.” (*Id.*  
25 ¶ 61.)

26 **E. Plaintiff’s Formal Demands And CFPB Complaint**

27 On or about April 24, 2025, Plaintiff “served a formal legal demand letter to both  
28 Exeter and Cobra outlining their violations and providing a final opportunity to correct

1 their conduct.” (*Id.* ¶ 63. *See also* Doc. 14 at 34.)<sup>2</sup> Plaintiff alleges that despite this formal  
2 demand, Exeter continued updating the tradeline with derogatory remarks. (Doc. 9 ¶¶ 64-  
3 66.)

4 On April 26, 2025, Plaintiff “filed a formal complaint with the Consumer Financial  
5 Protection Bureau (CFPB) against Exeter,” to which Exeter responded. (*Id.* ¶ 81. *See also*  
6 Doc. 14 at 41-43.)

7 Plaintiff “issued a second legal notice on April 29, 2025, styled as a final 48-hour  
8 demand letter.” (Doc. 9 ¶ 78.) On May 5, 2025, Exeter responded with a “non-substantive  
9 acknowledgement email from its ‘Office of the President.’” (*Id.* ¶ 79. *See also* Doc. 14 at  
10 26.) Plaintiff “promptly replied to the acknowledgement, reiterating [her] concerns, yet  
11 ha[s] received no further communication or substantive resolution from Exeter.” (Doc. 9  
12 ¶ 79.)

#### 13 F. The Alleged Harm

14 Plaintiff alleges that “[a]s a direct result of Defendants’ continued reporting of false,  
15 derogatory, and misleading information, [Plaintiff was] denied vehicle financing on more  
16 than thirty (20) separate occasions.” (*Id.* ¶ 68.) “Each denial specifically cited the presence  
17 of the Exeter tradeline . . . .” (*Id.*) As a result, Plaintiff “lost access to over \$500,000 in  
18 cumulative vehicle financing opportunities.” (*Id.* ¶ 70.) Plaintiff has also been “forced to  
19 rent a vehicle continuously since November 2024,” and she has “incurred more than  
20 \$15,000 in vehicle rental expenses” and “continue[s] to suffer ongoing emotional distress,  
21 reputational harm, and material financial instability.” (*Id.* ¶¶ 71-72.)

#### 22 II. Procedural History

23 On June 13, 2025, Plaintiff filed the complaint. (Doc. 9.) That same day, Plaintiff  
24 also filed, among other things, an application to proceed *in forma pauperis* and an  
25 emergency motion for temporary injunctive relief. (Docs. 10, 11.)

26 On June 30, 2025, the Court issued an order that, among other things, granted  
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28 <sup>2</sup> Exhibit H to Plaintiff’s declaration purports to be a copy of Plaintiff’s demand letter,  
but the exhibit appears to be incomplete. (Doc. 14 at 34.)

1 Plaintiff's motion to proceed *in forma pauperis* and denied Plaintiff's motion for temporary  
2 injunctive relief. (Doc. 15.) The Court also screened the complaint pursuant to 28 U.S.C.  
3 § 1915(e) and held that the complaint was "sufficient to meet the low threshold for  
4 proceeding past the screening stage." (*Id.* at 2, citation omitted.)

5 On September 19, 2025, Defendants moved to compel arbitration and stay the  
6 litigation pending arbitration. (Doc. 19.) That motion is now fully briefed (Docs. 21-23)  
7 and neither side requested oral argument.

## 8 DISCUSSION

### 9 I. Legal Standard

10 The Federal Arbitration ("FAA") applies to contracts "evidencing a transaction  
11 involving commerce." 9 U.S.C. § 2.<sup>3</sup> Under the FAA, written agreements to arbitrate  
12 disputes "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at  
13 law or in equity for the revocation of any contract." *Id.* Thus, absent a valid contractual  
14 defense, the FAA "leaves no place for the exercise of discretion by a district court, but  
15 instead mandates that district courts *shall* direct the parties to proceed to arbitration on  
16 issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc.,*  
17 *v. Byrd*, 470 U.S. 213, 218 (1985).

18 In general, a district court's role under the FAA is "limited to determining (1)  
19 whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement  
20 encompasses the dispute at issue." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d  
21 1126, 1130 (9th Cir. 2000). These two issues are sometimes referred to as the "gateway"  
22 questions of arbitrability. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010).

23 As the parties seeking to compel arbitration, Defendants bear the burden of proof.  
24 *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th Cir. 2015). "It is  
25 permissible to consider evidence outside the pleadings when resolving a motion to compel  
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27 <sup>3</sup> The parties do not dispute that the FAA applies here. (Doc. 19 at 6-7; Doc. 21 at 1.  
28 *See also* Doc. 20 at 8 [The Arbitration Provision in the RISC provides: "Any arbitration  
under this Arbitration Provision shall be governed by the [FAA] (9 U.S.C. § 1 et seq.) and  
not by any state law concerning arbitration."].)

1 arbitration. To the extent there are conflicts in the evidence submitted by the parties, the  
2 court applies a standard similar to that applicable for a motion for summary judgment.”  
3 *Scott-Ortiz v. CBRE Inc.*, 501 F. Supp. 3d 717, 721 (D. Ariz. 2020) (cleaned up).

4 “In determining whether parties have agreed to arbitrate a dispute, we apply general  
5 state-law principles of contract interpretation, while giving due regard to the federal policy  
6 in favor of arbitration by resolving ambiguities as to the scope of arbitration in favor of  
7 arbitration.” *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1044 (9th Cir. 2009)  
8 (cleaned up). *See also Davis v. Nordstrom, Inc.*, 755 F.3d 1089, 1093 (9th Cir. 2014).

## 9 II. The Parties’ Arguments

10 Defendants “move to compel arbitration of [Plaintiff’s] claims and stay the litigation  
11 pending completion of the arbitration.” (Doc. 19 at 1.) First, Defendants argue that  
12 although the two gateway questions are normally “answered by the Court,” “where, as here,  
13 an arbitration agreement expressly delegates to an arbitrator the decision concerning the  
14 enforceability and scope of the arbitration agreement, the arbitrator—not the court—has  
15 exclusive authority to determine these issues.” (*Id.* at 7.) Defendants argue that “[h]ere,  
16 the Arbitration Provision in the RISC contains a clear and unmistakable delegation clause,  
17 stating that the arbitrator, and not a court, must resolve any dispute concerning ‘the  
18 interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or  
19 dispute.’” (*Id.* at 8.) Defendants also argue, in the alternative, that “even absent the  
20 delegation clause, the result is the same: Plaintiff is required to arbitrate her claims against  
21 Defendants.” (*Id.*) Specifically, Defendants argue that “it is undeniable that Plaintiff  
22 expressly agreed to arbitrate her claims with Defendants” because “the Arbitration  
23 Provision is highlighted with a text box, bolding and all caps on a page that Plaintiff  
24 expressly signed,” “[t]he Arbitration Provision is further referenced on the first and last  
25 pages of the RISC,” and “the RISC title announces that it is a contract ‘with Arbitration  
26 Provision.’” (*Id.* at 8-9.) Defendants also argue that “Plaintiff reaffirmed the entire  
27 RISC—including her agreement to arbitrate—when she entered into the Settlement  
28 Agreement” because the Settlement Agreement provides that the “terms contained within

1 the original [RISC] . . . shall survive and are incorporated by reference into the terms of  
 2 this [Settlement] Agreement.” (*Id.*) And Defendants argue that Plaintiff’s claims are  
 3 encompassed by the “exceptionally broad” Arbitration Provision. (*Id.* at 9-10.) Second,  
 4 Defendants argue that Plaintiff’s claims against Cobra are also subject to arbitration  
 5 because “the Arbitration Provision expressly applies not only to claims arising out of the  
 6 RISC itself, but to ‘any resulting transaction or relationship (including any such  
 7 relationship with third parties).” (*Id.* at 10-11.) Alternatively, Defendants argue that  
 8 Plaintiff’s claims against Cobra are subject to arbitration under the doctrine of alternative  
 9 estoppel. (*Id.* at 11-13.)

10 In response, Plaintiff first argues that the fully integrated Settlement Agreement  
 11 supersedes the RISC and that the Settlement Agreement “contains no arbitration clause, no  
 12 delegation provision, and no incorporation of any prior arbitration term.” (Doc. 21 at 1.)  
 13 Plaintiff argues that under Supreme Court precedent, “it is for this Court, not an arbitrator,  
 14 to determine which contract governs and whether arbitration may be compelled.” (*Id.*)  
 15 Plaintiff also contends that, in the Settlement Agreement, Defendants “preserved lien rights  
 16 in precise language but deliberately omitted arbitration.” (*Id.* at 2.) Second, Plaintiff  
 17 argues that “[e]ven if—hypothetically—the prior arbitration clause had survived, it  
 18 includes a federal-law carve-out: ‘If federal law provides that a claim or dispute is not  
 19 subject to binding arbitration, this arbitration provision shall not apply.’” (*Id.* at 8.)  
 20 Plaintiff argues that this carve-out applies here because her “claims under the FDCPA,  
 21 FCRA, and TILA . . . arise under federal law, and the arbitration clause itself acknowledges  
 22 that those claims are not subject to binding arbitration.” (*Id.*)<sup>4</sup> Third, Plaintiff argues that

23 <sup>4</sup> Plaintiff argues that her “claims are based exclusively on violations of federal law.”  
 24 (Doc. 21 at 14.) This is inaccurate. The complaint an array of claims under state law,  
 25 including Count Three – Violation of Arizona Uniform Commercial Code (Doc. 9 ¶¶ 106-  
 26 17); Count Four – Breach of Contract and Fraudulent Inducement (*id.* ¶¶ 118-29); Count  
 27 Six – Violation of Arizona Consumer Fraud Act (*id.* ¶¶ 139-48); Count Seven – Unjust  
 28 Enrichment and Equitable Restitution (*id.* ¶¶ 149-56); Count Nine – Declaratory Relief:  
 Settlement Agreement Is Void for Lack of Consideration and Failure of Performance (*id.*  
 ¶¶ 167-75); Count Ten – Violation of Arizona Credit Reporting Law (*id.* ¶¶ 176-84); Count  
 Eleven – Common Law Fraud / Intentional Misrepresentation (*id.* ¶¶ 185-93); Count  
 Twelve – Promissory Estoppel (*id.* ¶¶ 194-201); Count Thirteen – Declaratory Relief:  
 Tradeline Is Legally Void and Misleading (*id.* ¶¶ 202-08); Count Fourteen – Breach of the  
 Covenant of Good Faith and Fair Dealing (*id.* ¶¶ 209-19); and Count Fifteen – Negligent

1 even if the RISC and its Arbitration Provision controls, § 4 of the FAA contains a  
2 “condition precedent to any order compelling arbitration” that “requires a movant to show  
3 that arbitration was ‘refused’ before seeking judicial compulsion,” and “Defendants never  
4 satisfied the threshold requirement of FAA § 4” because “[t]hey did not serve a written  
5 demand to arbitrate, did not notify Plaintiff of any election to arbitrate, did not initiate or  
6 identify any arbitral forum, did not contact AAA or any administrator, and did not provide  
7 Plaintiff any opportunity to accept or reject arbitration before filing this Motion.” (*Id.* at  
8 2-3.) Fourth, Plaintiff argues that even if the Court were to find that the RISC’s Arbitration  
9 Provision applies, “it would remain unenforceable” because it “is structurally incoherent,  
10 procedurally ambiguous, and substantively unconscionable.” (*Id.* at 9.) For example,  
11 Plaintiff argues that the Arbitration Provision “vaguely provides that ‘you or we may  
12 choose arbitration,’ with no mandatory trigger, no opt-in deadline, no procedural roadmap,  
13 and no identifiable arbitral forum unless unilaterally approved by the stronger party” and  
14 “preserves only Exter’s self-help and litigation rights.” (*Id.*) Plaintiff argues that “[c]ourts  
15 interpreting such clauses routinely find them unconscionable, void for vagueness, or both.”  
16 (*Id.*) Fifth, Plaintiff argues that “[g]ateway issues of arbitrability—including existence,  
17 formation, scope, and enforceability—are for the Court to decide, not arbitrators, unless  
18 delegation is ‘clear and unmistakable,’” and she argues that there is no delegation here  
19 and/or that the delegation language in the Arbitration Provision “is not an enforceable  
20 delegation clause under federal law.” (*Id.* at 5.) Sixth, Plaintiff argues that because her  
21 “present lawsuit arises from conduct that occurred entirely after execution of the Settlement  
22 Agreement and in violation of its terms,” her claims “all . . . fall outside the scope of any  
23 prior agreement.” (*Id.* at 10, 16.) Seventh, Plaintiff argues that “[p]ublic policy, equity,  
24 and Article III of the U.S. Constitution weigh heavily against allowing Defendants to  
25 sidestep judicial review.” (*Id.* at 15.) Last, Plaintiff argues that “arbitration rights—like  
26 any contractual right—may be waived by conduct inconsistent with an intent to arbitrate”  
27 and that “Defendants’ silence in the face of [Plaintiff’s] demand letters, [her] CFPB

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Misrepresentation (Common Law – Arizona) (*id.* ¶¶ 220-27).

1 complaint, and their receipt of formal service—followed by months of litigation conduct  
2 before ever mentioning arbitration—is textbook waiver.” (*Id.* at 4.)<sup>5</sup>

3 In reply, Defendants dispute Plaintiff’s “conten[tion] that there is no delegation  
4 clause,” arguing that “the Arbitration Provision includes an explicit, unmistakable and  
5 unambiguous delegation clause.” (Doc. 23 at 2.) Defendants also dispute Plaintiff’s  
6 “conten[tion] that the delegation clause is contradictory,” arguing that “if a party elects  
7 arbitration, the arbitration is mandatory.” (*Id.*) Defendants argue that because the  
8 delegation clause is valid, “[a]lthough Plaintiff asserts various defenses to arbitration, these  
9 remaining defenses are to the Arbitration Provision generally, not the delegation clause  
10 specifically.” (*Id.* at 3 n.3.) Defendants next argue that “[a]lthough mooted by the  
11 delegation clause, none of Plaintiff’s remaining challenges to arbitration are valid in any  
12 event.” (*Id.* at 3.) Specifically, Defendants argue that § 4 of the FAA “does not include  
13 such a notice, demand and refusal requirement.” (*Id.*) And Defendants argue that “even if  
14 there was such a notice and rejection requirement (there is not), and even if there was no  
15 delegation clause (there is), Plaintiff’s procedural challenge to arbitration based on an  
16 imaginary condition precedent must be resolved by an arbitrator.” (*Id.* at 4.) Next,  
17 Defendants argue that they did not waive their right to arbitration because their deadline to  
18 respond to the complaint was September 19, 2025, and “[o]n that day Defendants filed their  
19 Motion.” (*Id.* at 5.) Defendants further argue that their failure to seek to compel arbitration  
20 in response to Plaintiff’s “written demands and CFPB complaint” are “pre-litigation

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22 <sup>5</sup> Plaintiff is proceeding *pro se*, but she still “must follow the same rules of procedure  
23 that govern other litigants.” *Ghadimi v. Ariz. Bank & Tr.*, 2025 WL 2928933, \*4 (D. Ariz.  
24 2025) (quoting *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987), *overruled on other*  
25 *grounds by Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012)). The Court notes that  
26 for at least two cases cited in Plaintiff’s opposition—*Anderson v. Dean Witter Reynolds,*  
27 *Inc.*, 306 F.3d 726 (9th Cir. 2002), and *Chavez v. Bank of Am.*, 2014 WL 2159382 (D. Ariz.  
28 2014)—the citation provided does not return the case identified. Furthermore, Plaintiff’s  
opposition misattributes apparently fake quotations to real cases. (*See, e.g.*, Doc. 21 at 12,  
citing *Matterhorn, Inc. v. NCR Corp.*, 763 F.2d 866, 868 (7th Cir. 1985)). “It appears the  
incorrect citations may be the result of [Plaintiff] using artificial intelligence to draft [her]  
filings.” *Ghadimi*, 2025 WL 2928933 at \*4. “But whether [Plaintiff] used artificial  
intelligence or simply imagined the cases [her]self, filing documents that contain such  
cases results in confusion and unnecessary work for opposing parties and the court. In the  
future, filing documents with fictitious cases will subject [Plaintiff] to sanctions under Rule  
11.” *Id.*

1 conduct that cannot form the basis of waiver.” (*Id.* at 6.) Defendants also dispute  
2 Plaintiff’s argument that her claims are subject to a “federal-law carve-out” in the  
3 Arbitration Provision. (*Id.* at 6-7.) Next, Defendants argue that the “Settlement Agreement  
4 does not supersede the Arbitration Provision.” (*Id.* at 7, cleaned up.) Specifically,  
5 Defendants argue that Plaintiff “ignores the fact that she expressly incorporated by  
6 reference the RISC into the Settlement Agreement.” (*Id.*) Furthermore, Defendants argue  
7 that the Arbitration Provision, by its own terms, “expressly survives the termination of the  
8 RISC in any event.” (*Id.* at 8.) Defendants then dispute Plaintiff’s arguments that the  
9 Arbitration Provision is unconscionable. (*Id.* at 9-11.) Specifically, Defendants argue that  
10 “there is no ambiguity in the Arbitration provision,” “there is no unconscionable carve out  
11 for self-help repossession or collection remedies,” and “the Arbitration Provision expressly  
12 provides for governing rules, forum and procedure.” (*Id.* at 10.) Last, Defendants argue  
13 that Plaintiff’s “last ditch effort” to invoke public policy fails because “the FAA ‘reflects  
14 an emphatic federal policy in favor of arbitral dispute resolution.’” (*Id.* at 11, citation  
15 omitted.)

### 16 III. Analysis

#### 17 A. **Contract Formation And Delegation Clause**

18 As noted, a district court’s role under the FAA is generally “limited to determining  
19 (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement  
20 encompasses the dispute at issue.” *Chiron Corp.*, 207 F.3d at 1130. Furthermore,  
21 “[a]lthough these questions are ordinarily resolved by the court, parties may agree to  
22 arbitrate one or both of the gateway issues by including a delegation clause in the  
23 arbitration agreement.” *Williams v. Experian Info. Sols. Inc.*, 2024 WL 3876171, \*11 (D.  
24 Ariz. 2024). “An agreement to arbitrate a gateway issue is simply an additional, antecedent  
25 agreement the party seeking arbitration asks the federal court to enforce, and the FAA  
26 operates on this additional arbitration agreement just as it does on any other.” *Rent-A-*  
27 *Center*, 561 U.S. at 70. The evidence of the parties’ intent to delegate such issues must be  
28 “clear and unmistakable.” *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015).

1 Even if an arbitration provision includes a clause delegating gateway issues to the  
2 arbitrator, certain issues remain non-delegable and must be decided by the court. *Williams*,  
3 2024 WL 3876171 at \*11. For example, “contract-formation issues are always matters for  
4 judicial resolution . . . even in the presence of a delegation clause.” *Caremark, LLC v.*  
5 *Chickasaw Nation*, 43 F.4th 1021, 1030 (9th Cir. 2022). The Ninth Circuit has held that  
6 there are three guiding “principles” to assist in determining who—the district court or the  
7 arbitrator—should decide certain issues:

8 First, a court must resolve any challenge that an agreement to arbitrate was  
9 never formed, even in the presence of a delegation clause. Next, a court must  
10 also resolve any challenge directed specifically to the enforceability of the  
11 delegation clause before compelling arbitration of any remaining gateway  
12 issues of arbitrability. Finally, if the parties did form an agreement to  
13 arbitrate containing an enforceable delegation clause, all arguments going to  
14 the scope or enforceability of the arbitration provision are for the arbitrator  
15 to decide in the first instance.

14 *Id.*

15 1. The First *Caremark* Principle

16 Beginning with the first of these principles, Plaintiff does not appear to argue that  
17 an arbitration agreement (or the RISC or Settlement Agreement) was never *formed*. At  
18 most, Plaintiff makes the conclusory argument in her response brief that she “specifically  
19 challenge[s] the *enforceability* of the arbitration clause—not just the contract overall.”  
20 (Doc. 21 at 5. *See also id.* at 7 [“Plaintiff specifically challenges the arbitration clause  
21 itself, not merely the broader contract.”].) But Plaintiff does not argue in her response  
22 brief, for example, that there was no “offer, acceptance, consideration, a sufficiently  
23 specific statement of the parties’ obligations, [or] mutual assent” with respect to the  
24 Arbitration Provision in the RISC. *Buckholtz v. Buckholtz*, 435 P.3d 1032, 1035 (Ariz. Ct.  
25 App. 2019) (citation omitted).<sup>6</sup> True, the complaint alleges that the RISC “is unenforceable  
26 due to statutory violations, fraud in the inducement, lack of consideration, and procedural

27 \_\_\_\_\_  
28 <sup>6</sup> Because the parties’ briefs do not directly address which state’s law governs the  
issue of contract formation but generally cite Arizona caselaw, the Court assumes that  
Arizona law applies.

1 irregularities.” (Doc. 9 ¶ 13. *See also, e.g., id.* ¶¶ 16, 49.) The complaint also alleges that  
2 the Settlement Agreement “is void and unenforceable under established doctrines of  
3 fraudulent inducement, lack of consideration, and unconscionability.” (*Id.* ¶ 46. *See also,*  
4 *e.g., id.* ¶¶ 47, 49, 113, 116, 123, 124, 128.) But as an initial matter, Plaintiff’s allegations  
5 that the RISC and Settlement Agreement “lack consideration”—which would be a question  
6 of contract formation—are conclusory, lack any factual support, and are belied by the  
7 agreements themselves. Plaintiff’s remaining challenges (at least as identified in the  
8 complaint) appear to be directed at the validity and enforceability of the RISC and  
9 Settlement Agreement contracts generally, not the Arbitration Provision itself. *Caremark*,  
10 43 F.4th at 1029 (“In general, courts may resolve challenges *directed specifically to the*  
11 *validity of the arbitration provision itself.* If there is no such challenge—or if such a  
12 challenge fails—the court must send to the arbitrator any other challenges, including  
13 challenges to the validity of the contract as a whole. For instance, in the presence of an  
14 otherwise-valid arbitration provision, a challenge that the entire agreement was  
15 fraudulently induced or that the illegality of one of the contract’s provisions renders the  
16 whole contract invalid must be sent to the arbitrator.”) (cleaned up, emphasis added).

17 Nevertheless, Plaintiff also argues that the RISC (including its Arbitration  
18 Provision) was superseded by the Settlement Agreement and that “it is for this Court, not  
19 an arbitrator, to determine which contract governs.” (Doc. 21 at 1.) Whether the  
20 Settlement Agreement superseded the RISC is not a gateway question subject to delegation.  
21 Instead, it “is effectively a ‘contract-formation issue[,]’ and such issues are ‘always matters  
22 for judicial resolution.’” *Williams*, 2024 WL 3876171 at \*15 (quoting *Caremark*, 43 F.4th  
23 at 1030). *See also id.* at \*17 (“[A] dispute over whether an earlier version of a contract has  
24 been superseded by a later version . . . is best conceptualized as a non-delegable question  
25 of contract formation.”). In a nutshell, Plaintiff argues that the Settlement Agreement  
26 superseded the RISC, and because the Settlement Agreement was “integrated” and  
27 “contains no arbitration clause,” the “omission” of such an arbitration provision from the  
28 Settlement Agreement is “binding.” (Doc. 21 at 7-8.)

1 Plaintiff's argument is unavailing. The RISC, including its Arbitration Provision,  
2 is expressly incorporated by reference into the Settlement Agreement. Section I.A.iii of  
3 the Settlement Agreement provides:

4 The Parties agree that except as expressly provided in this [Settlement]  
5 Agreement, all other terms contained within the original [RISC], including  
6 without limitation those relating to Exeter's security interest in and lien on  
7 the Vehicle, shall survive and are incorporated by reference into the terms of  
8 this [Settlement] Agreement.

8 (Doc. 20 at 11.)<sup>7</sup> Under § I.A.iii, the terms of the RISC are expressly incorporated by  
9 reference into the Settlement Agreement unless "expressly provided" otherwise in the  
10 Settlement Agreement. That requirement is not satisfied here—both sides agree that the  
11 Settlement Agreement is silent regarding arbitration. Thus, the RISC's Arbitration  
12 Provision is incorporated by reference into the Settlement Agreement.

13 In an attempt to avoid this conclusion, Plaintiff's emphasizes that "Defendants  
14 preserved their lien rights with precision but elected not to preserve any arbitration clause."  
15 (Doc. 21 at 8.) But § I.A.iii provides that "all other terms contained within the original  
16 [RISC], *including without limitation* those relating to Exeter's security interest in and lien  
17 on the Vehicle, shall survive and are incorporated by reference." (Doc. 20 at 11.) The use  
18 of the phrase "including without limitation" forecloses Plaintiff's argument.

19 Nor is there any merit to Plaintiff's argument that "[t]his case presents precisely the  
20 contractual conflict identified by the Supreme Court in" *Coinbase, Inc. v. Suski*, 602 U.S.  
21 143 (2024). (Doc. 21 at 1.) In *Coinbase*, "[t]he parties . . . executed two contracts. The  
22 first contained an arbitration provision with a delegation clause; per that provision, an  
23 arbitrator must decide all disputes under the contract, including whether a given  
24 disagreement is arbitrable. The second contract contained a forum selection clause,  
25 providing that all disputes related to that contract must be decided in California courts."

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26 <sup>7</sup> Section I.B.ii also provides that "Customer(s) will comply with the Settlement  
27 Payment Terms set forth above *and all other [RISC] terms* that are not impacted by this  
28 [Settlement] Agreement." (Doc. 20 at 12, emphasis added.) Because nothing in the  
Settlement Agreement "impacts" the RISC's Arbitration Provision, the Settlement  
Agreement does not extinguish the RISC's Arbitration Provision.

1 *Coinbase*, 602 U.S. at 145. The question presented was: “When two such contracts exist,  
2 who decides the arbitrability of a contract-related dispute between the parties—an  
3 arbitrator or the court?” *Id.* The Supreme Court held that the “court needs to decide . . .  
4 which contract controls.” *Id.* Although *Coinbase* answers the question of *who* (i.e., the  
5 Court) determines whether a subsequent agreement supersedes a prior agreement  
6 containing an arbitration provision, *Coinbase* does not answer the second (related) question  
7 of *whether* a subsequent agreement (i.e., the Settlement Agreement) that incorporates by  
8 reference a prior agreement containing an arbitration provision (i.e., the RISC)  
9 extinguishes the arbitration provision in the prior agreement. Indeed, *Coinbase* is factually  
10 distinguishable from this case because, there, the subsequent agreement contained a forum  
11 selection clause explicitly calling for disputes to be decided in California courts, directly  
12 contradicting the prior agreement’s arbitration provision. In contrast, the Settlement  
13 Agreement is silent on dispute resolution and incorporates all terms from the prior RISC  
14 unless expressly contradicted by the Settlement Agreement.

15 In answering *whether* the Settlement Agreement incorporates by reference the  
16 Arbitration Provision of the RISC, the Court finds *Weatherguard Roofing Co. v. D.R. Ward*  
17 *Const. Co.*, 152 P.3d 1227 (Ariz. Ct. App. 2007), instructive. There, Ward entered into a  
18 “prime contract” to construct a home for the Gaskins. *Id.* at 1228. Ward also entered into  
19 subcontracts with Weatherguard for certain aspects of the project. *Id.* Following  
20 completion of the project, the Gaskins served a demand for arbitration on Ward seeking  
21 damages for construction defects. *Id.* Ward, in turn, demanded arbitration with the  
22 subcontractors (including Weatherguard) to indemnify him for claims arising from the  
23 subcontractors’ work. *Id.* Weatherguard opposed the arbitration demand, arguing that (1)  
24 “it was not contractually obligated to arbitrate Ward’s indemnity claim” because the  
25 general conditions—which provided for indemnity—“never became part of its subcontract  
26 with Ward”; (2) “even if the general conditions became part of the subcontract, the general  
27 conditions did not incorporate by reference, and thus did not bind Weatherguard to, the  
28 arbitration provision in the prime contract”; and (3) “because the subcontract contained

1 express provisions governing arbitration, which Ward admitted did not require  
2 Weatherguard to arbitrate Ward’s indemnity claim, these ‘more specific’ provisions  
3 controlled the ‘more general’ arbitration provision in the prime contract.” *Id.* at 1229. The  
4 Arizona Court of Appeals “disagree[d] with each argument.” *Id.*

5 As for Weatherguard’s first argument, the court held that “it is a basic rule of  
6 contract construction that to incorporate by reference: The reference must be *clear and*  
7 *unequivocal* and must be called to the attention of the other party, he must consent thereto,  
8 and the terms of the incorporated document must be known or easily available to the  
9 contracting parties.” *Id.* (cleaned up). The court held that because the subcontract  
10 contained the language “The attached General Conditions are part of the subcontract,”  
11 “[t]his statement made clear that the separate general conditions were part of the  
12 subcontract.” *Id.* The same is true here—§ I.A.iii of the Settlement Agreement clearly and  
13 unequivocally provides that “except as expressly provided in” the Settlement Agreement,  
14 the terms of the RISC “shall survive and are incorporated by reference into the terms of”  
15 the Settlement Agreement. (Doc. 20 at 11.)

16 As for Weatherguard’s second argument, the court rejected the notion “that an  
17 arbitration provision in one agreement cannot be incorporated by reference into another  
18 agreement absent a specific reference to arbitration.” *Weatherguard Roofing*, 152 P.3d at  
19 1231. The court held that “contrary to Weatherguard’s argument, no specific word or  
20 phrase—such as a specific reference to arbitration—is required.” *Id.* Here, although  
21 § I.A.iii does not expressly identify the Arbitration Provision as one of the terms of the  
22 RISC being incorporated by reference into the Settlement Agreement, § I.A.iii is  
23 nevertheless clear that “except as provided in this [Settlement] Agreement, *all other terms*  
24 contained within the original [RISC] . . . shall survive and are incorporated by reference.”  
25 (Doc. 20 at 11, emphasis added.)

26 As for Weatherguard’s third argument, the court held that the references to litigation  
27 in the subcontract did not preclude arbitration. *Weatherguard Roofing*, 152 P.3d at 1233.  
28 Plaintiff appears to make a similar argument. Pointing to § XII of the Settlement

1 Agreement, Plaintiff argues that this section “reaffirms that litigation was fully  
2 contemplated” and contends that “Courts have repeatedly held that such language does not  
3 create a binding arbitration clause.” (Doc. 21 at 8.) But the only purported case Plaintiff  
4 cites in support of her position—*Anderson v. Dean Witter Reynolds, Inc.*, 306 F.3d 726,  
5 740 (9th Cir. 2003)—appears to be a hallucinated citation. At any rate, Plaintiff’s argument  
6 is at odds with *Weatherguard*.

7 Finally, although the analysis could end there, the Arbitration Provision in the RISC  
8 also provides: “This Arbitration Provision shall survive any termination, payoff or transfer  
9 of this contract.” (Doc. 20 at 8.) Therefore, even if the Settlement Agreement did not  
10 incorporate by reference the terms of the RISC (it did), Plaintiff has failed to provide any  
11 explanation as to how or why the Settlement Agreement extinguishes the RISC’s  
12 Arbitration Provision in light of this clause providing for its survival.

13 In sum, as for *Caremark*’s first principle, an agreement to arbitrate was formed.

#### 14 2. The Second *Caremark* Principle

15 *Caremark*’s second principle is that “a court must also resolve any challenge  
16 directed specifically to the enforceability of the delegation clause before compelling  
17 arbitration of any remaining gateway issues of arbitrability.” *Caremark*, 43 F.4th at 1030.  
18 As noted, the evidence of the parties’ intent to delegate gateway issues of arbitrability must  
19 be “clear and unmistakable.” *Brennan*, 796 F.3d at 1130.

20 One of Plaintiff’s arguments appears to be that the Arbitration Provision in the RISC  
21 lacks a delegation clause. (*See, e.g.*, Doc. 21 at 2, emphasis added [“Where—as here—  
22 there is no valid or enforceable agreement governing the claims asserted, *no delegation of*  
23 *arbitrability*, and no procedural compliance with the FAA, the Motion must be denied in  
24 full.”]; *id.* at 5 [“No Delegation Exists Here”]; *id.* at 6 [“That is not a delegation clause. . . .  
25 In fact, the clause never once mentions the words ‘delegate,’ ‘delegation,’ ‘exclusive  
26 authority,’ or anything resembling language that would shift gateway decisions to an  
27 arbitrator.”]; *id.* at 7 [“Even if a delegation clause existed (it does not) . . . .”].) Any such  
28 argument is without merit. By expressly agreeing that “the interpretation and scope of this

1 Arbitration Provision, and the arbitrability of the claim or dispute . . . shall . . . be resolved  
2 by neutral, binding arbitration and not by a court action” (Doc. 20 at 8), the parties provided  
3 “clear and unmistakable” evidence of their intent to arbitrate arbitrability. *See, e.g., Adams*  
4 *v. Conn Appliances Inc.*, 2017 WL 3315204, \*2-3 (D. Ariz. 2017) (where arbitration  
5 provision explicitly provided that it “[c]overs *any dispute concerning the arbitrability of*  
6 *any such controversy or claim,*” holding that “[t]he Supreme Court and this Circuit  
7 repeatedly have concluded that similar delegation language is sufficiently clear and  
8 unmistakable evidence that the parties intended to arbitrate questions of arbitrability”).

9 Equally meritless is Plaintiff’s argument that no delegation clause was formed  
10 because the Arbitration Provision does “no[t] reference . . . AAA Rule 7 or JAMS Rule  
11 11” or any other “institutional rules that confer gateway authority.” (Doc. 21 at 6.) True,  
12 the Ninth Circuit has held that “incorporation of the AAA rules constitutes clear and  
13 unmistakable evidence that contracting parties agreed to arbitrate arbitrability.” *Brennan*,  
14 796 F.3d at 1130. The Ninth Circuit has also held that “[i]ncorporation of the JAMS  
15 arbitration rules by reference constitutes clear and unmistakable evidence that the parties  
16 agree to arbitrate arbitrability.” *Patrick v. Running Warehouse, LLC*, 93 F.4th 468, 481  
17 (9th Cir. 2024). But Plaintiff has not cited, nor has the Court located, any case suggesting  
18 that the incorporation of such institutional rules is a prerequisite to the formation of a  
19 delegation clause. Nor would such a rule make sense—incorporating AAA and/or JAMS  
20 rules may be one way of evincing clear intent to arbitrate arbitrability, but it is not the only  
21 way. Indeed, in *Sedbrook v. Select Asset Recovery Grp., LLC*, 2025 WL 1023994 (D. Ariz.  
22 2025), the court held that an arbitration provision with language identical to the one in the  
23 RISC “clearly and unmistakably delegates the question of arbitrability to the arbitrator.”  
24 *Id.* at \*2.<sup>8</sup> *See also Jacksen v. Chapman Scottsdale Autoplex, LLC*, 2021 WL 3410912, \*1,

25  
26 <sup>8</sup> Defendants argue, and Plaintiff does not appear to dispute, that Plaintiff’s claims  
27 against Cobra, a non-signatory, are also subject to arbitration to the extent Plaintiff’s claims  
28 against Exeter are subject to arbitration. (Doc. 19 at 10-13; Doc. 23 at 2 n.2.) At any rate,  
at issue in *Sedbrook* was an arbitration provision with language identical to the Arbitration  
Provision in the RISC. *Sedbrook*, 2025 WL 1023994 at \*2. There, “[t]he parties  
disagree[d] on whether Defendants as nonsignatories may invoke the arbitration clause  
against Plaintiff, a signatory.” *Id.* The court held that this was a “question[] of arbitrability

1 5 (D. Ariz. 2021) (holding that a similar contractual arbitration provision “clearly and  
2 unmistakably delegates gateway issues to the arbitrator”); *Johnson v. Santander Consumer*  
3 *USA Inc.*, 2015 WL 7567483, \*1-2 (D. Ariz. 2015) (same).

4 Of course, “[e]ven if the delegation of arbitrability is clear and unmistakable, the  
5 provision may be unenforceable if the delegation provision itself is unconscionable.”  
6 *Drake v. Conn’s HomePlus*, 2019 WL 2568841, \*2 (D. Ariz. 2019) (citing *Rent-A-Center*,  
7 561 U.S. at 71-74). “When a court finds that the parties unmistakably delegated the  
8 question of arbitrability to the arbitrator, then ‘the only remaining question is whether the  
9 particular agreement to *delegate* arbitrability—the Delegation Provision—is itself  
10 unconscionable.” *Id.* (quoting *Brennan*, 796 F.3d at 1132). “However, if the whole  
11 agreement is challenged on unconscionability grounds, rather than the delegation provision  
12 specifically, ‘the question of whether the agreement, as a whole, is unconscionable must  
13 be referred to the arbitrator.’” *Id.* (quoting *Nagrampa v. Mailcoups, Inc.*, 469 F.3d 1257,  
14 1263-64 (9th Cir. 2006)).

15 Here, Plaintiff argues that “[t]he *arbitration language* is structurally incoherent,  
16 procedurally ambiguous, and substantively unconscionable. It vaguely provides that ‘you  
17 or we may choose arbitration,’ with no mandatory trigger, no opt-in deadline, no procedural  
18 roadmap, and no identifiable arbitral forum unless unilaterally approved by the stronger  
19 party. It preserves only Exeter’s self-help and litigation rights—including repossession  
20 and court enforcement—while denying the consumer any mutual escape. Courts  
21 interpreting such clauses routinely find them unconscionable, void for vagueness, or both.”  
22 (Doc. 21 at 9, emphasis added. *See also id.* at 16, emphasis added [“[T]he 2020 *arbitration*  
23 *clause* is procedurally and substantively unconscionable under both FAA§ 2 and Arizona  
24 law. The clause is riddled with ambiguity (‘you or we may choose arbitration’), offers  
25 carveouts solely in Defendants’ favor (repossession, collection, litigation), and fails to  
26 designate any governing rules, forum, or procedure. It lacks mutuality, fails for vagueness,  
27 and is unenforceable as a matter of public policy.”].)

28 \_\_\_\_\_  
the Contract clearly delegates to the arbitrator.” *Id.* The same is true here.

1           The problem for Plaintiff is that many of these unconscionability arguments appear  
2 to challenge the RISC’s Arbitration Provision generally, not the delegation clause  
3 specifically. “[A] challenge to the validity of an entire arbitration agreement—[including]  
4 an unconscionability challenge—must be decided by the arbitrator if the agreement  
5 includes a delegation clause that is not directly challenged. . . . [A] party must challenge[]  
6 the delegation provision specifically for a court to intervene.” *Caremark*, 43 F.4th at 1029  
7 (cleaned up). In *Bielski v. Coinbase, Inc.*, 87 F.4th 1003 (9th Cir. 2023), the Ninth Circuit  
8 identified two principles to determine what a plaintiff must do to sufficiently challenge a  
9 delegation provision specifically: “First, a party resisting arbitration must mention that it  
10 is challenging the delegation provision and make specific arguments attacking the  
11 provision in its opposition to a motion to compel arbitration. Second, a party may challenge  
12 the delegation provision and the arbitration agreement for the same reasons, so long as the  
13 party specifies why each reason renders the specific provision unenforceable.” *Id.* at 1009-  
14 10.

15           It’s a close call whether Plaintiff’s arguments can be said to challenge the delegation  
16 clause specifically as opposed to the Arbitration Provision generally. On the one hand,  
17 Plaintiff specifies several times that her unconscionability arguments are directed at “[t]he  
18 arbitration language” (Doc. 21 at 9) and at “the 2020 arbitration clause” (*id.* at 16). Indeed,  
19 Plaintiff states in her opposition: “I specifically challenge the enforceability of *the*  
20 *arbitration clause.*” (*Id.* at 5, emphasis added. *See also id.* at 7, emphasis added [“Plaintiff  
21 specifically challenges *the arbitration clause itself* . . .”].) On the other hand, Plaintiff’s  
22 opposition does mention the delegation clause and argues that it “is not an enforceable  
23 delegation clause under federal law.” (*Id.* at 5.) Plaintiff also argues, for example, that the  
24 Arbitration Provision is “internally contradictory” because it does not “unambiguously vest  
25 authority over arbitrability with an arbitrator.” (*Id.*) And Plaintiff argues that “Defendants’  
26 attempt to cast this convoluted and contingent clause as a clear delegation is not only  
27 legally incorrect—it is deceptive.” (*Id.* at 7.)

28           In an abundance of caution, and in light of her *pro se* status, the Court will assume

1 that Plaintiff has sufficiently challenged the enforceability of the delegation clause  
2 specifically. Even so, her arguments regarding unconscionability and unenforceability are  
3 without merit. For example, Plaintiff argues that the phrase “shall . . . be resolved by  
4 arbitration . . . at your or our election” is “internally contradictory” because the use of  
5 “shall” “signals an imperative” but “at your or our election” “renders it conditional.” (Doc.  
6 21 at 5. *See also id.* at 9 [“It vaguely provides that ‘you or we may choose arbitration,’  
7 with no mandatory trigger, no opt-in deadline, no procedural roadmap, and no identifiable  
8 arbitral forum unless unilaterally approved by the stronger party.”].) But these phrases are  
9 not contradictory or confusing. Under the Arbitration Provision, either party may elect to  
10 resolve a dispute by arbitration, and if either party so elects, arbitration (with delegation of  
11 arbitrability to the arbitrators) is mandatory. Furthermore, Plaintiff may choose the AAA  
12 or other rules to govern the arbitration, and her choice of governing rules is subject to  
13 Exeter’s approval. It’s unclear what Plaintiff means when she refers to the lack of an “opt-  
14 in deadline” or “procedural roadmap”; regardless, the Arbitration Provision provides  
15 extensive guidance regarding the procedure to be followed in choosing the arbitrator, the  
16 allocation of fees for the arbitration, and the forum in which the arbitration should take  
17 place. (Doc. 20 at 8.) This language is not so vague or confusing as to render the delegation  
18 clause ambiguous or unenforceable.

19 As for Plaintiff’s argument that the Arbitration Provision is one-sided because it  
20 “preserves only Exeter’s self-help and litigation rights—including repossession and court  
21 enforcement—while denying the consumer any mutual escape” (Doc. 21 at 9), that  
22 argument—to the extent it can even be seen as targeted toward the delegation clause  
23 specifically, as opposed to the Arbitration Provision generally—is unavailing. *See, e.g.,*  
24 *Jones v. Gen. Motors Corp.*, 640 F. Supp. 2d 1124, 1134-35 (D. Ariz. 2009) (arbitration  
25 agreement not unconscionable where it contained self-help provision, specifically for  
26 repossession, which the plaintiff argued benefited only the defendant).

27 As for Plaintiff’s argument that the Arbitration Provision is unconscionable because  
28 it “fails to designate any governing rules, forum, or procedure” (Doc. 21 at 16), that is

1 simply untrue. The Arbitration Provision provides that Plaintiff may choose the AAA or  
2 other rules to govern the arbitration, subject to Exeter’s approval. (Doc. 20 at 8.) It  
3 provides that the arbitrator must be an attorney or retired judge selected pursuant to the  
4 chosen arbitral organization’s rules. (*Id.*) It also provides that “[t]he arbitrator shall apply  
5 the governing substantive law and the applicable statute of limitations. The arbitration  
6 hearing shall be conducted in the federal district in which [Plaintiff] reside[s] unless the  
7 Seller Creditor is a party to the claim or dispute, in which case the hearing will be held in  
8 the federal district where [the RISC] was executed.” (*Id.*) It also provides for how costs  
9 will be distributed. (*Id.*)

10 Nor do Plaintiff’s undeveloped references to “[p]ublic policy, equity, and Article III  
11 of the U.S. Constitution” (Doc. 21 at 15) support a finding of unconscionability,  
12 particularly as applied to the delegation clause specifically. The policy behind the FAA  
13 supports “direct[ing] the parties to proceed to arbitration on issues as to which an  
14 arbitration agreement has been signed.” *Dean Witter Reynolds*, 470 U.S. at 218.  
15 Accordingly, Plaintiff has not shown the delegation clause in the Arbitration Provision is  
16 unconscionable or unenforceable.<sup>9</sup>

## 17 2. The Third *Caremark* Principle

18 *Caremark*’s third and final principle is that “if the parties did form an agreement to  
19 arbitrate containing an enforceable delegation clause, all arguments going to the scope or  
20 enforceability of the arbitration provision are for the arbitrator to decide in the first  
21 instance.” *Caremark*, 43 F.4th at 1030. Because the parties did form an agreement to  
22 arbitrate, which contained an enforceable delegation clause, Plaintiff’s remaining  
23 arguments regarding the unconscionability of the Arbitration Provision, the RISC, or the  
24 Settlement Agreement are for the arbitrator to decide.

25 Several of Plaintiff’s other arguments again raise questions for the arbitrator, not the

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26 <sup>9</sup> Plaintiff also appears to argue that because the delegation clause does not contain  
27 “clause-severability language that would isolate delegation from other provisions” (Doc.  
28 21 at 6), that somehow renders the delegation clause unenforceable. Plaintiff provides no  
support for this argument, and the Court is unaware of any authority supporting such an  
argument.

1 Court. For example, Plaintiff argues at length that the Arbitration Provision “contains an  
2 express carve-out—which fatally undermines any claim of total or automatic  
3 applicability.” (Doc. 21 at 6.) Plaintiff points to language in the Arbitration Provision that  
4 provides: “If federal law provides that a claim or dispute is not subject to binding  
5 arbitration, this Arbitration Provision shall not apply to such claim or dispute.” (*Id.*) But  
6 whether Plaintiff’s claims fall within this carve-out is a delegated question regarding the  
7 scope of the Arbitration Provision. *Oracle Am., Inc. v. Myriad Grp. A.G.*, 724 F.3d 1069,  
8 1076 (9th Cir. 2013). Put another way, whether federal law provides that some or all of  
9 Plaintiff’s claims are not subject to binding arbitration is an “arbitrability determination,  
10 which the parties have clearly and unmistakably delegated to the arbitrator.” *Id.*

11 Likewise, Plaintiff argues that her claims “arise[] from conduct that occurred  
12 entirely after execution of the Settlement Agreement and in violation of its terms.” (Doc.  
13 21 at 10.) But to the extent Plaintiff is attempting to argue that her claims are not subject  
14 to arbitration because they occurred post-settlement, that question, again, is one of scope  
15 that has been delegated to the arbitrator.

16 Plaintiff also argues at length that Defendants did not demand, and she did not  
17 refuse, arbitration, and she contends that § 4 of the FAA requires such a demand and refusal  
18 as a condition precedent to arbitration. (Doc. 21 at 2-4.) But even assuming for the sake  
19 of argument that Plaintiff’s understanding of § 4 is correct, the question of Defendants’  
20 satisfaction of this condition precedent to arbitrability would be a question for the arbitrator  
21 to decide. *Cf. Quantum Fluids LLC v. Kleen Concepts LLC*, 2021 WL 242104, \*7 (D.  
22 Ariz. 2021) (“The Court need not decide whether Kleen satisfied, or should be excused  
23 from satisfying, all of the ADR Clause’s prerequisites to arbitration (*i.e.*, engaging in at  
24 least three negotiation sessions and then engaging in mediation) because that issue has been  
25 delegated to the arbitrator to decide in the first instance.”). Indeed, even if the Arbitration  
26 Provision did not have an enforceable delegation clause, the satisfaction of a condition  
27 precedent to arbitrability would still be presumptively a question for the arbitrator. *BG*  
28 *Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 34-35 (2014) (“[C]ourts presume that the

1 parties intend arbitrators, not courts, to decide disputes about the meaning and application  
2 of particular procedural preconditions for the use of arbitration. . . . And they include the  
3 satisfaction of ‘prerequisites such as time limits, notice, laches, estoppel, and other  
4 conditions precedent to an obligation to arbitrate.’”) (cleaned up).

#### 5 B. Waiver

6 As noted, Plaintiff argues that Defendants waived their right to arbitrate through  
7 their pre- and post-litigation conduct. (Doc. 21 at 11-13.) Specifically, Plaintiff argues  
8 that Defendants “were served by the U.S. Marshal and waited more than 60 days—without  
9 raising arbitration as an affirmative defense, without responding to [Plaintiff’s] pre-  
10 litigation demands, and without initiating any arbitral forum—before filing this Motion.”  
11 (*Id.* at 15-16.)

12 The first question that must be addressed is who decides whether Defendants have  
13 waived, through their litigation conduct, their right to arbitrate—the Court or the arbitrator?  
14 The Ninth Circuit “ha[s] made clear that courts generally decide whether a party has waived  
15 his right to arbitration by litigation conduct. If the parties intend that an arbitrator decide  
16 that issue under a particular contract, they must place clear and unmistakable language to  
17 that effect in the agreement.” *Martin v. Yasuda*, 829 F.3d 1118, 1124 (9th Cir. 2016). As  
18 discussed, the Arbitration Provision provides that “[a]ny claim or dispute, . . . including  
19 the *interpretation and scope* of this Arbitration Provision, and the *arbitrability* of the claim  
20 or dispute . . . shall . . . be resolved by neutral, binding arbitration.” (Doc. 20 at 8, emphasis  
21 added.) The Court concludes that this language does not provide clear and unmistakable  
22 evidence, sufficient to overcome the presumption of judicial resolution, of the parties’  
23 intent to have an arbitrator decide issues of waiver by litigation conduct. *See, e.g.*,  
24 *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1209 & n.4 (9th Cir. 2016) (even where the  
25 “Agreements delegated to the arbitrators the authority to decide issues relating to the  
26 ‘enforceability, revocability or validity of the Arbitration Provision or any portion of the  
27 Arbitration Provision,” “[t]he arbitration agreements may not have clearly and  
28 unmistakably delegated to the arbitrator the authority to decide the question of waiver by

1 litigation conduct”); *Morgan Stanley & Co. LLC v. Couch*, 659 F. App’x 402, 404-05 (9th  
2 Cir. 2016) (concluding, where the arbitration clause provided that “any dispute as to the  
3 arbitrability of a particular issue or claim pursuant to this arbitration provision is to be  
4 resolved in arbitration,” that “[t]his language, requiring that the arbitrability of individual  
5 *issues* or *claims* be resolved by the arbitrator, does not encompass disputes over whether  
6 the clause remains valid in light of the parties’ litigation conduct” and that “[t]he arbitration  
7 clause is not clear and unmistakable evidence that the parties intended for an arbitrator to  
8 decide claims of waiver by litigation”); *In re Chrysler Pacifica Fire Recall Prods. Liab.*  
9 *Litig.*, 143 F.4th 718, 723 (6th Cir. 2025) (“Here, although the clauses at issue broadly  
10 delegate to arbitration all disputes over the sales contracts’ ‘validity,’ ‘enforceability,’  
11 ‘scope,’ and ‘arbitrability,’ they do not cover gateway questions such as waiver through  
12 inconsistent litigation conduct. . . . [A]lthough the clauses do mention questions of  
13 ‘arbitrability,’ we believe that this lone reference falls well short of the clear and  
14 unmistakable language needed for FCA to overcome the presumption of judicial  
15 resolution.”) (citations omitted); *Marie v. Allied Home Mortg. Corp.*, 402 F.3d 1, 15 (1st  
16 Cir. 2005) (concluding, where the arbitration agreement provided for the submission of  
17 claims and disputes to arbitration “including the arbitrability of any such controversy or  
18 *claim*,” that the use of the term “arbitrability” did not “evinced[] a clear and unmistakable  
19 intent to have waiver issues decided by the arbitrator” and thus “the question of waiver of  
20 Allied’s right to arbitrate due to its participation in EEOC proceedings is properly for the  
21 judge”).

22 Even so, Plaintiff’s waiver argument fails on the merits. “A determination of  
23 whether the right to compel arbitration has been waived must be conducted in light of the  
24 strong federal policy favoring enforcement of arbitration agreements.” *Martin*, 829 F.3d  
25 at 1124 (citation omitted). “Because waiver of the right to arbitration is disfavored, any  
26 party arguing waiver of arbitration bears a heavy burden of proof.” *Id.* (citation omitted).  
27 “[T]he test for waiver of the right to compel arbitration consists of two elements: (1)  
28 knowledge of an existing right to compel arbitration; and (2) intentional acts inconsistent

1 with that existing right.” *Hill v. Xerox Bus. Servs., LLC*, 59 F.4th 457, 468 (9th Cir. 2023).

2 The second element is not satisfied here. Although Plaintiff is correct that  
3 Defendants’ “first act in this Court was to file a Motion to Compel Arbitration” (Doc. 21  
4 at 12), this does not remotely qualify as action inconsistent with Defendants’ right to  
5 arbitration. “[A] party acts inconsistently with exercising the right to arbitrate when it (1)  
6 makes an intentional decision not to move to compel arbitration and (2) actively litigates  
7 the merits of a case for a prolonged period of time in order to take advantage of being in  
8 court.” *Martin v. TEKsystems Mgmt. Inc. (Fn)*, 2021 WL 2334389, \*5 (D. Ariz. 2021)  
9 (quoting *Newirth by & through Newirth v. Aegis Senior Communities, LLC*, 931 F.3d 935,  
10 941 (9th Cir. 2019)). On the same day that Defendants were required to answer the  
11 complaint, they moved to compel arbitration. There was no litigation activity by  
12 Defendants beforehand. This is the antithesis of the sort of conduct that might support a  
13 finding of waiver. *Cf. id.* (“Here, American Airlines only filed an answer to Plaintiff’s  
14 complaint before filing the instant Motion to Compel Arbitration. Although the answer  
15 failed to assert the affirmative defense of arbitration, American has not actively litigated  
16 the merits of the case for a prolonged period of time and in fact has made an intentional  
17 decision to move to compel arbitration. In light of American’s actions and the strong policy  
18 against finding a waiver of arbitration, this Court finds that American has not acted  
19 inconsistent with its right to arbitrate.”).

20 As for Plaintiff’s arguments regarding Defendants “ignor[ing] [Plaintiff’s] multiple  
21 written demand letters and CFPB complaint” (Doc. 21 at 12), failing to make a pre-  
22 litigation demand for arbitration does not amount to waiver. After all, waiver “requires  
23 conduct inconsistent with the arbitration remedy,” and passive pre-litigation inaction by a  
24 defendant who is merely being threatened with suit is not inconsistent with that remedy.  
25 *Okabayashi v. Travelers Home & Marine Ins. Co.*, 2015 WL 6447400, \*3 (D. Ariz. 2015).  
26 *See also Specialty Merch. Corp. v. Navigators Ins. Co.*, 2012 WL 12892158, \*3 (C.D. Cal.  
27 2012) (“Plaintiffs nevertheless argue that Defendant had acted inconsistently with its  
28 arbitration right by failing to submit the dispute to arbitration during the approximately

1 twelve-month period leading up to the filing of this action, in which the Parties exchanged  
2 correspondence regarding the denial of Plaintiffs’ claims. This argument is unavailing . . . .  
3 Plaintiffs offer no authority to support the proposition that a party’s pre-litigation failure to  
4 invoke the right to arbitration alone could constitute a waiver.”<sup>10</sup>

5 C. Stay

6 Defendants ask the Court to stay this action pending completion of the arbitration.  
7 (Doc. 19 at 13.) “When a district court finds that a lawsuit involves an arbitrable dispute,  
8 and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay  
9 the proceeding.” *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024). Accordingly, Defendants’  
10 stay request is granted.

11 Accordingly,

12 **IT IS ORDERED** that:

- 13 1. Defendants’ motion to compel arbitration (Doc. 19) is **granted**.
- 14 2. This action is **stayed**. Within 10 days of the conclusion of the arbitration  
15 proceeding, Defendants must file a status report.

16 Dated this 26th day of February, 2026.

17  
18  
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20 \_\_\_\_\_  
21 Dominic W. Lanza  
22 United States District Judge  
23

24 <sup>10</sup> The Court is also unpersuaded by Plaintiff’s argument, handwritten on the exhibits  
25 to her declaration (Doc. 22 at 10), that by responding to Plaintiff’s CFPB complaint and  
26 advising her to “request information and/or documentation in accordance with the civil  
27 procedure and local court rules associated with” the pending litigation, Defendants waived  
28 their right to arbitrate. *Cf. Specialty Merch. Corp.*, 2012 WL 12892158 at \*3 (“The fact  
that Defendant also expressly advised Plaintiffs of their administrative remedy with the  
California Department of Insurance, as required by section 2695.7(b)(3) of the California  
Code of Regulations, is not inconsistent with Defendant’s reservation of its rights under  
the Policy, including its right to arbitration.”).