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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Schnellecke Logistics USA LLC, et al.,

No. CV-22-01893-PHX-SMB

10 Plaintiffs,

ORDER

11 v.

12 Lucid USA Incorporated, et al.,

13 Defendants.
14

15 Pending before the Court is Defendants Lucid USA Inc. and Lucid Motors Canada,
16 ULC's (collectively "Lucid") Motion to Compel Arbitration of the Claims in the First
17 Amended Complaint, and to Dismiss and/or Stay Proceedings. (Doc. 21.) Plaintiffs
18 Schnellecke Logistics USA, LLC and Schnellecke Logistics Arizona, LLC (collectively
19 "Schnellecke") filed a Response (Doc. 27), and Lucid filed a Reply (Doc. 28).
20 Additionally, the Court read and considered the supplemental memorandums that were
21 provided at the Court's request. (Docs. 35 & 36.) The Court exercises its discretion to
22 resolve this Motion without oral argument. *See* LRCiv 7.2(f) ("The Court may decide
23 motions without oral argument."). After reviewing the parties' arguments and the relevant
24 law, the Court will grant Lucid's Motion for the following reasons.

25 **I. BACKGROUND**

26 This case involves a contract dispute between Lucid, which manufactures electric
27 luxury vehicles (Doc. 21 at 3), and Schnellecke, a third-party logistics company (Doc. 16
28 at 2). Lucid hired Schnellecke "to provide warehousing, light manufacturing/assembly,

1 and supplement management, including, but not limited to managing, storing, loading,
2 moving, transferring, delivering, kiting, sub-assemblies and otherwise handling supplier-
3 owned products.” (Doc. 16 at 2.) The parties entered into a Master Services Agreement
4 (“MSA”) on March 7, 2022, in which they memorialized their intent to contract. (*Id.*)
5 About two weeks later, the parties entered into a separate Statement of Work agreement
6 (“SOW”) that set forth the specifics of their contractual relationship. (*Id.*) On July 21,
7 2022, Lucid gave Schnellecke written, 30-days’ notice of its termination of the MSA and
8 SOW. (*Id.* at 3.) Schnellecke continued to provide logistics services until August 20, 2022.
9 (*Id.* at 4.)

10 On two occasions in August 2022, Schnellecke sent Lucid invoices totaling
11 \$5,029,762.67. (*Id.*) Lucid had issued a purchase order authorizing payment of invoices
12 for work already performed “up to \$5.3 million.” (*Id.*) Two invoices totaling
13 \$2,644,965.79 were due to be paid by September 1, 2022, and another invoice totaling
14 \$2,384,796.88 was due to be paid the following month. (*Id.*) Lucid did not pay the
15 invoiced amounts by the appropriate due dates, and on September 7, 2022, Lucid
16 communicated its intent to reject all invoices sent by Schnellecke based on “substandard
17 performance of the [third-party logistics] services” Schnellecke provided. (*Id.* at 5.) Lucid
18 instead communicated it believed to have sustained \$130 million in damages related to
19 Schnellecke’s substandard performance. (*Id.*) Lucid also informed Schnellecke of its
20 belief that Schnellecke failed to return more than \$17,000 worth of computer equipment.
21 (*Id.* at 6.)

22 Schnellecke filed this lawsuit in Maricopa County Superior Court. (*See* Doc. 1.)
23 Lucid removed the action to this Court and now moves to compel arbitration. (*See id.*;
24 Doc. 21.)

25 **II. LEGAL STANDARD**

26 The Federal Arbitration Act (“FAA”) provides that written agreements to arbitrate
27 disputes “shall be valid, irrevocable, and enforceable, save upon such grounds that exist at
28 law or in the equity for the revocation of a contract.” 9 U.S.C. § 2; *see also AT&T Mobility*

1 *LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (discussing the liberal federal policy
2 favoring valid arbitration agreements). The FAA “leaves no room for the exercise of
3 discretion by a district court, but instead mandates that district courts *shall* direct the parties
4 to proceed to arbitration on issues as to which an arbitration agreement has been signed.”
5 *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985). “The court’s role is to answer
6 two gateway questions: does a valid agreement to arbitrate exist, and does the agreement
7 encompass the dispute at issue.” *Adams v. Conn Appliances Inc.*, No. CV-17-00362-PHX-
8 DLR, 2017 WL 3315204, at *1 (D. Ariz. Aug. 3, 2017) (citing *Chiron Corp. v. Ortho*
9 *Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). If so, the court must compel
10 arbitration. *Id.*

11 “Where a contract contains an arbitration clause, courts apply a presumption of
12 arbitrability as to particular grievances, and the party resisting arbitration bears the burden
13 of establishing that the arbitration agreement is inapplicable.” *Wynn Resorts, Ltd. v. Atl.-*
14 *Pac. Cap., Inc.*, 497 Fed. Appx. 740, 742 (9th Cir. 2012). However, state law is not entirely
15 displaced from federal arbitration analysis because “generally applicable contract defenses,
16 such as fraud, duress, or unconscionability, may be applied to invalidate arbitration
17 agreements without contravening § 2 [of the FAA].” *Ticknor v. Choice Hotels Int’l, Inc.*,
18 265 F.3d 931, 936–37 (9th Cir. 2001) (citing *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S.
19 681, 686 (1996)).

20 **III. DISCUSSION**

21 The parties do not dispute some key features of this case. The parties agree that
22 California law governs their dispute, that Schnellecke assented to the MSA, and that the
23 MSA contains a mandatory arbitration provision. (*See* Docs. 21 at 6 n.7, 7, 10; 27 at 3.)
24 But Schnellecke contends the arbitration provision is inapplicable to its claims due to
25 superseding language in the SOW. (Doc. 27 at 7.) Schnellecke also contends the
26 arbitration provision is invalid because it is unconscionable. (*Id.* at 8.)

27 Multiple contracts govern the parties’ contractual relationship. Schnellecke
28 contends the SOW represents the parties’ final word on the issue of arbitrability, while

1 Lucid contends the MSA controls. “The Supreme Court has emphasized that the ‘first
2 principle’ of its arbitration decisions is that ‘[a]rbitration is strictly a matter of consent and
3 thus is a way to resolve those disputes—*but only those disputes*—that the parties have
4 agreed to submit to arbitration.” *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733,
5 741–42 (9th Cir. 2014) (quoting *Granite Rock Co. v. Int’l Bd. of Teamsters*, 561 U.S. 287,
6 299 (2010)). District courts apply state law principles of contract interpretation to
7 determine whether the parties have consented to arbitration while respecting the federal
8 policy “in favor of arbitration by resolving ambiguities as to the scope of arbitration in
9 favor of arbitration.” *Id.* at 742 (quoting *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042,
10 1044 (9th Cir. 2009)).

11 The MSA sets forth:

12 Any Dispute will be resolved first through good faith negotiations between
13 the parties. If the Dispute cannot be resolved through good faith negotiation,
14 then the parties agree to submit the Dispute to mediation. . . . If the Dispute
15 is not otherwise resolved through negotiation or mediation within a
16 reasonable time period (such time period not to exceed seventy-five (75)
days, the Dispute shall be submitted to binding arbitration with the American
Arbitration Association . . . and arbitration will be the exclusive forum for
adjudication of the dispute.

17 (Doc. 26 at 44.) Again, neither party disputes the MSA’s content or its directive to submit
18 the parties’ contractual disputes to arbitration.

19 The SOW “specifies the additional terms and conditions specific to the operation at
20 the Lucid Arizona Campus of plants under which [Schnellecke] will provide contract
21 warehouse services and shuttles on occasion to Lucid.” (*Id.* at 4.) The SOW contains an
22 “Order of Precedence” provision stating, “[i]n the event of any conflict between the
23 provisions of this SOW and any Attachment, the order of precedence is as follows”: the
24 SOW, the SOW Attachments, instructions on the front of Lucid’s release or broadcast
25 schedule, the MSA. (*Id.*) As to disputes, the SOW includes a “Governing Law and Venue”
26 provision that asserts the SOW will be governed by California law and “[n]otwithstanding
27 Section 21.1 of the MSA, the Parties may elect to commence any dispute resolution or
28 litigation action in the venue of the County of Maricopa.” (*Id.* at 23.)

1 **A. MSA & SOW**

2 Schnellecke argues its claims “might have fallen within the scope of the MSA’s
3 arbitration provision . . . had they not agreed to the superseding Forum Selection Clause in
4 the SOW.” (Doc. 27 at 3–4.) But Schnellecke’s interpretation of these agreements is
5 unsupported by the contracts’ language. Schnellecke relies on the SOW’s Order of
6 Precedence provision to assert that the SOW’s forum selection clause displaces the MSA’s
7 arbitration agreement. (Doc. 27 at 7–8) (citing *Galaxia Elecs. Co., Ltd. v. Luxmax, U.S.A.*,
8 No. LA CV16-05144 JAK (GJSx), 2018 WL 11421517, at *8 (C.D. Cal. June 6, 2018)
9 (“Whether the arbitration clause . . . was superseded by the forum-selection clause in the
10 [subsequent agreement], . . . depends on whether the forum-selection clauses in those
11 agreements are ‘sufficiently specific to impute to the contracting parties the reasonable
12 expectation that they are superseding, displacing, or waiving an earlier arbitration
13 obligation.’”) (quoting *Goldman*, 747 F.3d at 743)).

14 The SOW does not clearly displace the MSA, because the Order of Precedence
15 provision only seeks to resolve conflicts between provisions in this SOW itself or the SOW
16 attachments. (See Doc. 26 at 4.) The purportedly conflicting contractual provisions are
17 not based on the SOW or any SOW attachment, but rather the SOW and the MSA. The
18 Order of Precedence provision is therefore inapplicable to the Court’s construing the
19 MSA’s mandatory arbitration provision and the SOW’s forum selection clause. Lucid
20 asserts the two provisions do not conflict. The Court agrees. As Lucid notes, the MSA
21 identified Alameda County, California as the exclusive venue for potential disputes. (*Id.*
22 at 43.) The SOW clearly displaced that choice of venue by expressing that the parties *may*
23 file dispute resolutions or litigation in Maricopa County. (*Id.* at 23.) Contrary to
24 Schnellecke’s argument, the forum selection clause merely *permits* the parties to file any
25 dispute resolution or lawsuits in Maricopa County should they mutually agree to deviate
26 from their earlier agreement. The Court thus finds that the SOW’s language creates no
27 reasonable expectation that the parties have superseded, displaced, or waived the MSA’s
28 mandatory arbitration provision. See *Goldman*, 747 F.3d at 743.

1 Finally, as Lucid points out, Ninth Circuit law supports their position that the venue
2 or forum selection clauses are not in conflict with the arbitration clause. Venue provisions
3 are necessary because “[n]o matter how broad the arbitration clause, it may be necessary
4 to file an action in court to enforce an arbitration agreement, or to obtain a judgment
5 enforcing an arbitration award, and the parties may need to invoke the jurisdiction of a
6 court to obtain other remedies.” *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1209 (9th
7 Cir. 2016) (alteration in original) (quoting *Dream Theater, Inc. v. Dream Theater*, 124
8 Cal.App.4th 547, 556 (Cal. Ct. App. 2004), *as modified on denial of reh'g* (Dec. 28, 2004)).
9 “[B]road arbitration clauses are not rendered ambiguous when they preserve some role for
10 courts.” *Jacksen v. Chapman Scottsdale Autoplex, LLC*, No. CV-21-00087-PHX-DGC,
11 2021 WL 3410912, at *5 (D. Ariz. July 21, 2021).

12 **B. Unconscionability**

13 Schnellecke argues the arbitration agreement is unenforceable because it is
14 unconscionable. (Doc. 27 at 8.) Under California law, an agreement may be deemed
15 unconscionable only if it is both procedurally and substantively unconscionable. *Kilgore*
16 *v. KeyBank, Nat’l Ass’n*, 718 F.3d 1052, 1058 (9th Cir. 2013). “These two prongs operate
17 on a sliding scale: the lesser the procedural unconscionability, the greater substantive
18 unconscionability must be shown, and vice versa.” *MacClelland v. Cellco P’ship*, 609 F.
19 Supp. 3d 1024, 1033 (N.D. Cal. July 1, 2022). Procedural unconscionability focuses on
20 “oppression or surprise that results from unequal bargaining power” while substantive
21 unconscionability deals more with “overly harsh or one-sided results.” *Klink v. ABC*
22 *Phones of N.C.*, No. 20-cv-06276-EMC, 2021 WL 3709167, at *9 (N.D. Cal. Aug. 20,
23 2021).

24 **1. Procedural Unconscionability**

25 Schnellecke contends the arbitration agreement is procedurally unconscionable
26 because it is a contract of adhesion and contains an element of surprise. (Doc. 27 at 9–10.)
27 An arbitration agreement is at least minimally procedurally unconscionable if it is an
28 adhesion contract. *MacClelland*, 609 F. Supp. 3d at 1033. But being an adhesion contract

1 alone is insufficient to invalidate an arbitration agreement. *Id.* An adhesion contract is “a
2 standardized contract, drafted by the party of superior bargaining strength, that relegates to
3 the subscribing party only the opportunity to adhere to the contract or reject it.” *Ting v.*
4 *AT&T*, 319 F.3d 1126, 1148 (9th Cir. 2003).

5 Schnellecke claims Lucid, “a large, powerful vehicle manufacturer” drafts standard
6 form contracts to its benefit “without any opportunity to negotiate.” (Doc. 27 at 10.)
7 Schnellecke continues, asserting Lucid expressly represented that the MSA was non-
8 negotiable. (*Id.*) Lucid counters that aside from Schnellecke’s characterization of Lucid
9 as large and powerful, Schnellecke points to no evidence that Lucid had superior
10 bargaining strength. (Doc. 28 at 8.) Lucid also notes that Schnellecke is a sophisticated
11 corporate entity in the business of providing the exact services Lucid sought. (*Id.*) Citing
12 *Cotchett, Pitre & McCarthy v. Universal Paragon Corp.*, 187 Cal. App. 4th 1405, 1421
13 (Cal. Ct. App. 2010), Lucid argues the parties’ equal sophistication precludes a finding that
14 Lucid had superior bargaining strength. (Doc. 28 at 8.) The Court agrees. The court in
15 *Cotchett* noted that the party challenging the contract’s enforceability was a corporate
16 client that “could have employed any of a number of law firms in lieu of” the plaintiff law
17 firm. 187 Cal. App. 4th at 1421. And the executed fee agreement “was a private business
18 transaction between equally matched parties.” *Id.* Here, the parties are also equally
19 matched. Lucid is a car manufacturer that sought third-party logistics services of the type
20 that Schnellecke ordinarily provided. Schnellecke freely chose to take on Lucid as its client
21 and cites to no evidence to support its conclusory assertion that Lucid had superior
22 bargaining strength. After reviewing the MSA, Schnellecke could have rejected Lucid’s
23 business and continued servicing other clients. Even if Lucid drafted and proposed the
24 MSA on a take-it-or-leave-it basis, the parties’ equal bargaining power eliminates a finding
25 that the MSA was a contract of adhesion.

26 “Surprise involves the extent to which the supposedly agreed-upon terms are hidden
27 in a prolix printed form drafted by the party seeking to enforce them.” *Newton v. Am. Debt*
28 *Servs., Inc.*, 854 F. Supp. 2d 712, 722–23 (N.D. Cal. 2012). Schnellecke asserts it was

1 unaware of the MSA’s arbitration provision and that even with careful review, the
2 arbitration clause was inconspicuously placed because the MSA’s subheading is titled
3 “Disputes.” (Doc. 27 at 10–11; *see also* Doc. 26 at 44.) Schnellecke also asserts it had
4 “no reason to know of the arbitration provision because its primary contract—the SOW—
5 was clear as to its rights to litigate.” (*Id.* at 11.) The Court finds Schnellecke’s assertions
6 lack merit. The parties executed the MSA weeks before they executed the SOW. (*See id.*
7 at 1.) The MSA is an 18-page document organized by many headings and subheadings.
8 In section 21.2, which is titled “Disputes,” the MSA expresses the parties’ intent to resolve
9 disputes through negotiations, then mediation, then arbitration. (Doc. 26 at 44.)
10 Schnellecke seems to suggest it would have had proper notice of the arbitration agreement
11 had section 21.2 been titled “Arbitration” instead of “Disputes.” Such a suggestion is
12 disingenuous. Section 21.2 is the only provision that addresses how to resolve disputes,
13 and “Dispute” is a defined term on the first substantive page of the MSA.

14 While Schnellecke believes that its full agreement with Lucid was set out in the
15 SOW, it does not dispute the contractual nature of the MSA or the MSA’s purpose to
16 contextualize their future agreements. *See id.* Schnellecke’s reliance on what it describes
17 as the SOW’s superseding language is unfounded, as that agreement was executed weeks
18 after signing the MSA. Schnellecke had an opportunity to review the MSA and its terms
19 as well as an opportunity to object to the MSA’s arbitration agreement. That Schnellecke
20 did not “notice” that the agreement it signed contained an arbitration agreement does not
21 relieve Schnellecke of the MSA’s obligations. Finding the MSA was not a contract of
22 adhesion and that the arbitration provision was not a surprise, the Court concludes
23 Schnellecke has failed to establish procedural unconscionability.

24 **2. Substantive Unconscionability**

25 “Substantive unconscionability focuses on the effects of the contractual terms and
26 whether they are overly harsh or one-sided.” *Newton*, 854 F. Supp. 2d at 724 (cleaned up).
27 “The term focuses on the terms of the agreement and whether those terms are so one-sided
28 as to shock the conscience.” *Soltani v. W. & S. Life Ins. Co.*, 258 F.3d 1038, 1043 (cleaned

1 up). Schnellecke argues the arbitration provision is substantively unconscionable because
2 it greatly limits Schnellecke’s remedies. (Doc. 27 at 13.)

3 Schnellecke specifically challenges the following language in the arbitration
4 provision: “the Dispute shall be submitted to binding arbitration with the American
5 Arbitration Association (“AAA”) in accordance with the AAA’s Commercial Arbitration
6 Rules then in effect, *as amended by this Agreement*.” (*Id.*; Doc. 26 at 44.) The arbitration
7 provision continues, “[t]he arbitrator(s) will have the authority to apportion liability
8 between the Parties but will not have the authority to award any damages or remedies not
9 available under, or in excess of, the express terms of this Agreement.” (*Id.*) Schnellecke
10 argues this language has “unilaterally amended the AAA rules to its sole advantage,
11 by . . . preventing the arbitrator from awarding damages or remedies ‘not available under’
12 the Agreement.” (Doc. 27 at 13.) Both the MSA and SOW set forth damages and
13 obtainable relief.

14 The MSA sets out in relevant part:

15 **17.5 Exclusion of Certain Damages**

16 (a) in no event will Lucid be liable to [Schnellecke] or to any third
17 party for any loss of use, revenue or profit or for any consequential,
18 incidental, indirect, exemplary, special or punitive damages whether arising
19 out of breach of agreement, tort (including negligence) or otherwise,
regardless of whether such damage was foreseeable and whether or not such
party has been advised of the possibility of such damages.

20 (b) Lucid will not be liable for any damage or injury to the person,
21 business (or any loss of income therefrom), goods, wares, merchandise or
22 other property of [Schnellecke], [Schnellecke]’s employees, invitees,
23 customers or any other person in or about the Lucid facilities, whether such
24 damage or injury is caused by or results from: (a) fire, steam, electricity,
25 water, gas or rain; (b) the breakage, leakage, obstruction or other defects of
26 pipes, sprinklers, wires, appliances, plumbing, air condition or lighting
27 fixtures or any other cause; (c) conditions arising in or about the Lucid
28 facilities or in connection with the Service, or from other sources or places;
or (d) any act or omission of any third party at the Lucid facilities.

17.6 Liability

[Schnellecke] will be liable to Lucid for any loss of business, interruption of
business, lost profits or goodwill, indirect, special, incidental, exemplary or
consequential damages arising out of this Agreement, subject to the

1 following caps (which do not pertain to damages resulting from
2 [Schnellecke]’s gross negligence or willful misconduct). This annual
3 contract value is based on approved invoices for twelve (12) consecutive
4 months using a rolling invoice value.

5 Annual Contract Value	6 Annual Liability Limit	7 Per Incident Limit
8 \$0-\$5M	\$150K	\$50K
\$5,000,001-\$10M	\$375K	\$125K
\$10,000,001-\$20M	\$600K	\$200K
\$20M+	\$900K	\$300K

9 **19.3(e) Specific Performance and Injunctive Relief**

10 **[SCHNELLEKE] ACKNOWLEDGES THAT LUCID WILL SUFFER**
11 **IRREPARABLE HARM IF LUCID INVOKES RIGHTS UNDER THIS**
12 **SECTION AND [SCHNELLECKE] FAILS TO COOPERATE WITH**
13 **LUCID IN THE TRANSITION OF THE PERFORMANCE OF**
14 **SERVICES TO TRANSFEREE(S) IN ACCORDANCE WITH THE**
15 **TERMS OF THIS SECTION AND IN A TIMELY MANNER.**
16 **BECAUSE LUCID DOES NOT HAVE AN ADEQUATE REMEDY AT**
17 **LAW AND WOULD BE IRREPARABLY HARMED BY SUCH A**
18 **FAILURE, [SCHNELLECKE] AGREES THAT LUCID IS ENTITLED**
19 **TO INJUNCTIVE RELIEF . . . INCLUDING SPECIFIC**
20 **PERFORMANCE . . . [SCHNELLECKE] WAIVES, TO THE**
21 **FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, THE**
22 **RIGHT TO NOTICE IN CONNECTION WITH ANY JUDICIAL**
23 **PROCEEDINGS INSTITUTED BY LUCID TO ENFORCE ITS**
24 **RIGHTS UNDER THIS SECTION.**

25 (Doc. 26 at 41–42.)

26 The SOW sets out in relevant part:

27 6.19.2.3. [Schnellecke] is liable for all costs to rework damaged Products to the
28 extent caused by [Schnellecke]’s negligence including, but not limited to, in house,
cosmetic and damages to any scrap exposure as well.

6.19.4.1. [Schnellecke] is one hundred (100) percent liable for all in house damage
(including cosmetic damage) caused by [Schnellecke]. The liability includes Product
replacement costs and replacement transportation and re-boxing services.

6.19.4.3. [Schnellecke] will accept full financial liability for all costs associated with
repairing and re-boxing Products that is damage is caused by [Schnellecke].

6.22. [Schnellecke] is liable for any direct damages for the loss or damage to
Products caused by [Schnellecke], its employees, subcontractors and/or agents during the
performance of the 3PL Services subject to the maximum amount of ten million

1 (10,000,000) United States dollars (USD) in the aggregate for all events occurring during
2 each twelve (12) month period during the effectiveness of this SOW.

3 (*Id.* at 17–18.)

4 Schnellecke highlights these provisions to note that the MSA and SOW effectively
5 preclude it from recovery because they omit any mention of Schnellecke’s recoverable
6 damages. (Doc. 27 at 15.) Citing *Harper v. Ultimo*, 113 Cal. App. 4th 1402, 1406 (Cal.
7 Ct. App. 2003), Schnellecke argues an arbitration agreement that limits one party from
8 receiving a full recovery while only slightly limiting the other party’s damages is
9 substantively unconscionable. (Doc. 27 at 16–17.) Schnellecke also cites *Stirlen v.*
10 *Supercuts, Inc.*, 51 Cal. App. 4th 1519, 1530 (Cal. Ct. App. 1997), where the California
11 Court of Appeals affirmed the trial court’s conclusion that the parties’ arbitration
12 agreement was “so one-sided as to be unconscionable,” because “Defendants can use the
13 court system for certain claims, but the plaintiff must use arbitration for all his, with very
14 limited damages.” (Doc. 27 at 16 n.4.)

15 Lucid distinguishes the cases Schnellecke cites, arguing that those cases involve
16 only consumer or employment contracts, and asserts courts ordinarily uphold limitations
17 of liability in “commercial agreements between sophisticated parties.” (Doc. 28 at 11)
18 (citing *Food Safety Net Servs. v. Eco Safe Sys. USA, Inc.*, 209 Cal. App. 4th 1118, 1126
19 (Cal. Ct. App. 2012). In *Food Safety*, the California Court of Appeals held the limitation
20 of liability provision was not unconscionable despite the agreement’s effectively limiting
21 the plaintiff’s liability for breaches of contract and negligence. 209 Cal. App. 4th at 1127.
22 The *Food Safety* court affirmed the parties’ right to contract one party’s protection from
23 “unlimited liability.” *Id.* at 1126. Lucid also cites *TSI USA LLC v. Uber Techs., Inc.*, No.
24 17-cv-03536-HSG, 2020 WL 5257873, at *4 (N.D. Cal., Sept. 3, 2020), to argue that
25 parties are allowed to limit their liability as laid out in the MSA and SOW. (Doc. 28 at
26 12.) The *TSI* court found that such a limitation of liability clause is not unenforceable
27 merely because one party “may be unable to recover substantial costs from [the other].”
28 *Id.* at *4–5 (affirming a \$200,000 liability cap and reiterating that “[i]f Plaintiff incurred

1 costs under the Agreements that it cannot recoup because of the termination, that was
2 Plaintiff's hazard in entering into the Agreements with this limitation of liability
3 provision.”).

4 The Court finds the limitation of liability clause does not render the MSA and SOW
5 substantively unconscionable. The MSA's definition of "Dispute" includes breaches or
6 termination of the agreements and any dispute about non-contractual obligations related to
7 them. (*See* Doc. 26 at 31.) Though the MSA precludes Schnellecke from recovering many
8 types of damages, it does not foreclose Schnellecke's recovery of direct damages resulting
9 from Lucid's breaching the agreements. The damages cap table from section 17.6 does not
10 limit Schnellecke's recovery in any way. Rather, it sets forth limits on damages that Lucid
11 can recover from Schnellecke for various types of damages including loss of business and
12 lost profits. (*See id.* at 41.) Section 6.22 from the SOW is similar, limiting Lucid's
13 potential recovery from loss or damage to its products to a maximum \$10 million amount.
14 (*Id.* at 18.) The Court also rejects Schnellecke's characterization of section 19.3(e).
15 Section 19 establishes a three-year term and explains the method and obligations related to
16 termination. (*See id.* at 42.) Section 19.3(e) permits Lucid to seek injunctive relief or
17 specific performance should Schnellecke not cooperate with Lucid in transitioning logistics
18 services upon termination of the parties' agreements. The MSA therefore does not
19 eliminate Schnellecke's access to judicial relief while simultaneously protecting Lucid's.
20 None of these provisions shock the Court's conscience. *See Baltazar v. Forever 21, Inc.*,
21 367 P.3d 6, 14 (Cal. 2016). "A contract can provide a 'margin of safety' that provides the
22 party with superior bargaining strength a type of extra protection for which it has a
23 legitimate commercial need without being unconscionable." *Id.* at 15. Section 19.3(e)
24 illustrates Lucid's commercial need to prevent disruption to logistical services. None of
25 the provisions Schnellecke cite support a finding of substantive unconscionability. In the
26 absence of either procedural or substantive unconscionability, the Court finds the
27 arbitration agreement is enforceable.

28 IV. CONCLUSION

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Accordingly,

IT IS ORDERED granting Lucid’s Motion to Compel Arbitration of the Claims in the First Amended Complaint, and to Dismiss and/or Stay Proceedings. (Doc. 21.) This case will be dismissed.

IT IS FURTHER ORDERED instructing the Clerk of Court to terminate this case.

Dated this 23rd day of August, 2023.



Honorable Susan M. Brnovich
United States District Judge