Filed 11/4/26

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

DOVE A. BOGGUESS et al., Plaintiffs and Respondents, v. UBER TECHNOLOGIES, INC., Defendant and Appellant.	A174376 (San Francisco City & County Super. Ct. No. CGC-24-620811)

Plaintiffs and respondents Dove A. Bogguess and Douglas John Marrone (plaintiffs) use defendant and appellant Uber Technologies, Inc.'s (Uber) smartphone rideshare application. Plaintiffs brought this putative class action under California's unfair competition law (UCL) (Bus. & Prof. Code, § 17200 et seq.) and false advertising law (FAL) (Bus. & Prof. Code, § 17500 et seq.) alleging Uber employed a deceptive pricing scheme. They contend that, pursuant to this scheme, Uber "advertises that the price it shows consumers on its ride-sharing application is 'the price [the consumer will] pay at the end of the ride,' " but, in fact, the price displayed is only " 'an *estimate*' " and Uber "frequently" charges more than the displayed price. Plaintiffs seek to enjoin Uber from, among other things, "advertising prices that are lower than the prices consumers will actually pay" and to obtain restitution and/or disgorgement of the amounts plaintiffs and class members allegedly paid in excess of the displayed price.

Uber moved to compel arbitration of plaintiffs' claims pursuant to its terms of use (Agreement), which requires users to arbitrate disputes with Uber on an individual basis. The Agreement includes a class action waiver that bars plaintiffs from seeking public injunctive relief in any forum, in violation of *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945 (*McGill*). The Agreement also provides that, if the waiver is unenforceable, "any class, collective, coordinated, consolidated, and/or representative claims subject to the unenforceable or unlawful" waiver "shall proceed in a court of competent jurisdiction." The trial court denied Uber's motion to compel arbitration, concluding that plaintiffs seek public injunctive relief and that the language of the Agreement did not require arbitration of plaintiffs' requests for individual relief.

On appeal, Uber contends that the trial court erred in concluding plaintiffs seek public injunctive relief and that, even if plaintiffs seek such relief, the court erred in failing to grant the motion to arbitrate plaintiffs' requests for individual relief.

We affirm. The trial court properly concluded plaintiffs' requested relief, which would benefit "all potential customers" of Uber's rideshare platform (*Khan v. Coinbase, Inc.* (2025) 115 Cal.App.5th 518, 532 (*Khan*)), was a request for a public injunction. The court also properly concluded the Agreement does not require severance. The Agreement is ambiguous on that issue, and we construe it against Uber, the drafter, under Civil Code section 1654, particularly because the Agreement is a contract of adhesion.[1] (See

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[1] Civil Code section 1654 provides, "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist."

All further statutory references are to the Civil Code unless otherwise indicated.

Sandquist v. Lebo Automotive, Inc. (2016) 1 Cal.5th 233, 247–248 (*Sandquist*) [section 1654 is a "general principle of contract interpretation [that] applies equally to the construction of arbitration provisions"].)

This rule of contract law, known as the *contra proferentem* rule, is an "interpretive canon" that " ' "embod[ies] . . . [a] legal doctrine[] centuries older than our Republic." ' " (*Loper Bright Enterprises v. Raimondo* (2024) 603 U.S. 369, 435, fn. 5.) Nevertheless, Uber argues application of the rule is preempted by the Federal Arbitration Act (FAA) (9 U.S.C. § 1 et seq.) under the principle that "ambiguities about the scope of an arbitration agreement must be resolved in favor of arbitration." (*Lamps Plus, Inc. v. Varela* (2019) 587 U.S. 176, 189 (*Lamps Plus*).) We disagree. *Lamps Plus* clarifies that preemption here would be inconsistent with the FAA. In holding that the *contra proferentem* rule could not be applied to impose class arbitration, the court reaffirmed that " '[t]he first principle that underscores all of our arbitration decisions' is that '[a]rbitration is strictly a matter of consent' " and concluded that "ambiguity does not provide a sufficient basis to conclude that parties" consented to class arbitration. (*Id.* at pp. 184–185.) In this matter, application of the *contra proferentem* rule ensures arbitration is unavailable absent consent, and, for this reason, application of the *contra proferentem* rule is not preempted by the FAA. We affirm the trial court's order.

BACKGROUND

Uber is a company that operates a smartphone-based platform that connects riders in need of transportation with drivers who provide it. To access Uber's smartphone application, riders must first create an Uber account and enter into the Agreement. The parties concur that the relevant Agreement is that modified in January 2023.

The Arbitration Agreement

The first page of the Agreement states in capitalized font that it includes an "arbitration agreement" requiring riders "to resolve all disputes with Uber on an individual basis" and that, "with limited exceptions, . . . [they] are waiving [their] right to seek relief in a court of law and to have a jury trial on [their] claims." (Capitalization omitted.)

The Agreement requires parties to arbitrate, among other things, "any dispute, claim, or controversy in any way arising out of or relating to . . . access to or use of [Uber's application] at any time." The Agreement contains a "Class Action Waiver," whereby "[t]he parties . . . expressly waive the right to seek, recover, or obtain any non-individual relief" or "to have any dispute, claim, or controversy brought, heard, administered, resolved, or arbitrated as a class, collective, coordinated, consolidated, and/or representative action."

To the extent a court finds the class action waiver unenforceable, the Agreement specifies that (1) "any class, collective, coordinated, consolidated, and/or representative claims subject to the unenforceable or unlawful portion(s) shall proceed in a court of competent jurisdiction"; (2) "the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration"; (3) "the unenforceable or unlawful portion(s) shall be severed from" the Agreement; and (4) severance "shall have no impact whatsoever on the enforceability, applicability, or validity of the Arbitration Agreement or the arbitrability of any remaining claims asserted by you or Uber." The Agreement also includes a general severability clause, which similarly provides, "If any portion of this Arbitration Agreement is found to be unenforceable or unlawful for any reason, (i) the unenforceable or unlawful provision shall be severed from these Terms; (ii) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the

remainder of the Arbitration Agreement or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement; and (iii) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration." The Agreement states that it is governed by the FAA because it relates to "a transaction involving interstate commerce."

The Present Action and the Alleged Deceptive Pricing Scheme

In December 2024, plaintiffs filed the present action under California's UCL and FAL. The Complaint alleges Uber introduced "upfront" pricing on its application in 2016. Uber claimed that feature allowed consumers to see the " 'actual fare before they request [a] ride.' " Uber stated that its upfront pricing " 'removes all of the guesswork and the risk' " for a consumer and that " 'Uber takes a loss . . . when the actual driver [fare] is higher than the estimated rider price.' "

Around January 2020, Uber announced it would start showing consumers in California " 'an estimated price range, rather than a firm fixed price when they request a trip.' " Under that model, the price paid depended on the ride's actual time and distance. In April 2021, Uber announced it was abandoning estimated pricing due to poor customer demand. Uber explained that removal of upfront pricing " 'caused a substantial decrease in trip requests' " because " 'most riders are simply not taking trips . . . without an upfront price.' "

The Complaint alleges that, although Uber told the public it was returning to the upfront pricing model, and it advertises that the price it

displays is " 'the price [the consumer will] pay at the end of the ride,' " the upfront price Uber shows consumers is in fact only an "estimate." The Complaint alleges, "After any given ride, if Uber determines that it underestimated the time or length of the ride, Uber can—and frequently does—charge the consumer more than the price it advertised."

Plaintiffs sought certification of a class of "[a]ll individuals and entities in California who at any time in the past four years have paid Uber a price for a ride that was higher than the price advertised by Uber for that ride." Plaintiffs requested preliminary and permanent injunctive relief to prevent Uber "from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint, by advertising prices that are lower than the prices consumers will actually pay." And plaintiffs requested "restitution and/or disgorgement of the amounts that Plaintiffs and the Class members have paid to Uber for rides that were in excess of the Upfront Price advertised."

Uber's Motion to Compel Arbitration

Uber moved to compel plaintiffs to arbitrate their individual requests for relief, to dismiss plaintiffs' representative requests for relief, and to stay proceedings pending arbitration. Plaintiffs opposed and argued that, under *McGill*, *supra*, 2 Cal.5th 945, the class action waiver was invalid as to their request for public injunctive relief, and that, under the language of the Agreement, the entirety of the action should remain in court. Uber argued *McGill* did not apply because plaintiffs sought a private injunction and, in any event, any request for public injunctive relief should be stayed pending arbitration of the remainder of plaintiffs' action.

In July 2025, the trial court denied Uber's motion, holding that *McGill*

precluded enforcement of the class action waiver as to plaintiffs' request for public injunctive relief. Among other things, the court observed that plaintiffs "allege deceptive representations to the public at large as well as to *potential* and existing customers" because "[t]he challenged representations appear on first view of Uber's website" and "on screens in Uber's rideshare app that a potential customer may view even if the customer does not request and purchase a ride." Comparing the present case to *Kramer v. Coinbase, Inc.* (2024) 105 Cal.App.5th 741 (*Kramer*), the trial court rejected "Uber's attempt to cast this action as an action for private injunctive relief based on the mere existence of class allegations, the fact that the public injunctive relief may not benefit the entire public as a diffuse whole, or the notion that, irrespective of the fact that the public at large is alleged to have been harmed, certain individuals suffered more harm because they, ultimately, paid higher prices in addition to being exposed to the deceptive statements and advertising." The court also held that plaintiffs' "additional request for disgorgement of amounts collected by Uber above and beyond the advertised prices" did not "overwhelm[] or transform[] the gravamen of this action and the public character of the . . . primary injunctive relief requested by the plaintiffs."

The trial court then concluded that plaintiffs' request for injunctive relief could not be severed from the remainder of the action because the arbitration agreement allowed only "claims" to be severed. The court relied on two previous California consumer law cases construing "claim" in an arbitration severance clause to mean "cause of action." (See *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819 (*Blair*); *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186 (*Jack*).) The trial court explained: "Plaintiffs assert two claims or causes of action under the UCL and FAL both of which are subject

to the unlawful waiver of public injunctive relief under *McGill*. Based on the savings and severability language in the class action waiver, these claims are to be litigated in court. There are no other 'claims' to be severed for arbitration, and neither precedent nor the 2023 Agreement support the proposition that the court should sever *remedies* or divide up components of the claims."

The present appeal followed. In October 2025, this court granted Uber's petition for writ of supersedeas, staying trial court proceedings pending resolution of this appeal.[2]

DISCUSSION

This appeal arises from the trial court's order denying Uber's motion to compel arbitration. "When, as here, a trial court's order denying a [motion] to compel arbitration is based on a question of law," the order is reviewed "de novo." (*Kramer*, *supra*, 105 Cal.App.5th at p. 746.)

I. *Plaintiffs Seek a Public Injunction*

In *McGill*, *supra*, 2 Cal.5th 945, the California Supreme Court "explained that the injunctive relief available under California's consumer protection statutes can be either public or private, and it used its prior decisions to clarify the distinction between these two types of relief: 'public injunctive relief . . . is relief that has "the primary purpose and effect of" prohibiting unlawful acts that threaten future injury to the general public'; by contrast, relief 'that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive

[2] In April 2026, this court granted an application by the Chamber of Commerce of the United States of America (Chamber of Commerce) to file an amicus curiae brief in support of Uber. Plaintiffs filed a response.

relief.' [Citation.] The *McGill* court also clarified that the determination whether a plaintiff is seeking public or private injunctive relief can be made based solely on the complaint's allegations and prayer for relief." (*Khan*, *supra*, 115 Cal.App.5th at pp. 525–526, quoting *McGill*, at pp. 955–958.) The Supreme Court cited as an example of a public injunction "an injunction under the [Consumers Legal Remedies Act (CLRA)] against a defendant's deceptive methods, acts, and practices [which] 'generally benefit[s]' the public 'directly by the elimination of deceptive practices' and 'will . . . not benefit' the plaintiff 'directly,' because the plaintiff has 'already been injured, allegedly, by such practices and [is] aware of them.' [Citation.] '[E]ven if a CLRA plaintiff stands to benefit from an injunction against a deceptive business practice, it appears likely that the benefit would be incidental to the general public benefit of enjoining such a practice.' " (*McGill*, at p. 955.)

As relevant here, *McGill* proceeded to conclude that a "provision in the parties' arbitration agreement that purported to waive the statutory right to seek public injunctive relief in any forum was invalid and unenforceable under California law. [Citation.] Specifically, the court applied . . . section 3513, which provides: 'Any one may waive the advantage of a law intended solely for their benefit. But a law established for a public reason cannot be contravened by a private agreement.' Pursuant to section 3513 and attendant case law, waiver of a statutory right is permissible only if the ' "statute's 'public benefit . . . is merely incidental to [its] primary purpose,' " ' and ' " 'any public purpose' " ' would not be seriously compromised by the waiver. [Citation.] A waiver of the statutory right to seek public injunctive relief available under the UCL, CLRA, and FAL does not meet these requirements because the ' "evident purpose" ' of public injunctive relief is ' "to remedy a public wrong," "not to resolve a private dispute" [citation], and

any benefit to the plaintiff requesting such relief "likely . . . would be incidental to the general public benefit of enjoining such a practice." ' " (*Khan*, *supra*, 115 Cal.App.5th at pp. 526–527, quoting *McGill*, *supra*, 2 Cal.5th at p. 961.)

In the present case, Uber does not dispute that *McGill* would bar enforcement of the Agreement as to public injunctive relief. Instead, Uber argues, "Plaintiffs' proposed injunction falls squarely in the private-relief camp. It would affect only a small subset of existing Uber users: those who have already downloaded the app, created an Uber account, requested a ride, and received an upfront price that was lower than the price actually paid." At the outset, like the trial court, we reject Uber's assertion that plaintiffs do not seek to enjoin the company's false public advertisements. The Complaint alleges, "On its website and elsewhere Uber publicly advertises to consumers that the Upfront Price they see on Uber's application is 'the price they'll pay at the end of the ride.' " The Complaint also alleges, "Uber's claim that it shows consumers 'the price they'll pay at the end of the ride' is false and misleading, in violation of California's [UCL] and [FAL]." The Complaint states it seeks "a public injunction requiring Uber to comply with California's consumer protection laws" and requests "[a]n order permanently enjoining Uber from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint by advertising prices that are lower than the prices consumers will actually pay." We agree with the trial court that it is unreasonable to conclude the requested injunction does not encompass the allegedly false public advertising.

Based on the allegations regarding Uber's false public advertisements, the trial court concluded the injunction sought was public under the reasoning of *Kramer*, *supra*, 105 Cal.App.5th 741. In *Kramer*, the plaintiffs

alleged a cryptocurrency company misrepresented the security features of its platform in public advertisements. (*Id.* at pp. 744, 749.) *Kramer* observed that the "complaint asserts [the defendant] is continuing to misrepresent its security measures precisely to deceive the general public into creating accounts, investing money, and utilizing its services. The complaint seeks injunctive relief to bar [the defendant] from continuing to make such statements to the public." (*Id.* at p. 751, fn. omitted.) Similarly, the trial court concluded that plaintiffs seek to enjoin Uber from false public advertising regarding their pricing.

In any event, it is immaterial whether the Complaint seeks an injunction against public-facing advertisements. In *Khan*, *supra*, 115 Cal.App.5th at page 530, the court rejected the proposition "that conduct directed at a defendant's customers can never support a request for public injunctive relief." There, the plaintiff, who had created a user account to access the defendant's online digital currency services, filed suit under the UCL and FAL. (*Id.* at p. 522.) The plaintiff alleged the defendant charged "customers a 'hidden' fee to conduct transactions" that is not "displayed on any of the screens that the customer reviews when placing an order." (*Ibid.*) The plaintiff alleged the defendant "deceptively leads reasonable consumers to believe that the price quoted for a cryptocurrency transaction . . . includes all fees the consumer will pay to complete the transaction" and sought "an injunction prohibiting [the defendant] from continuing to engage in these unlawful practices." (*Id.* at p. 523.) As in the present case, *Khan* involved a request for an injunction to prohibit an allegedly deceptive pricing scheme in offers to registered users of an online platform.

In *Khan*, the defendant argued, "the injunction [the plaintiff] seeks cannot possibly benefit the public because only existing Coinbase customers

can access the platform on which the allegedly unlawful conduct occurs." (*Khan*, *supra*, 115 Cal.App.5th at p. 529.) In rejecting that argument, *Khan* reasoned, "the unlawful business practice that [the plaintiff] describes and seeks to enjoin affects the general public because any member of the public may access and elect to use Coinbase's online platform. True, a potential Coinbase customer must first create a user account before attempting to make a trade, but this is simply the online equivalent of driving to, parking at, and walking into a brick-and-mortar store. Creating a user account is the threshold a potential customer must cross before transacting business with Coinbase, and . . . Coinbase did not 'demonstrate that it restricts access to its services in a meaningful way,' or that 'any member of the public cannot simply create credentials and access Coinbase's services.' " (*Ibid*.)

Khan specifically rejected a contention that the lack of public advertising meant the injunction sought private relief, stating, "*Kramer* does not hold or intimate that Coinbase can avoid lawsuits for public injunctive relief so long as its misleading statements do not appear in public advertisements." (*Khan*, *supra*, 115 Cal.App.5th at p. 531.) *Khan* explained, "the statutory violations that [the plaintiff] alleges do not arise from a promise that Coinbase made to a specific group of existing customers, but from the manner in which Coinbase describes its prices and fees to all potential customers on the Simple Trade platform. The public stands to benefit from the requested relief, if it prevents Coinbase from continuing to engage in the alleged deception." (*Id.* at p. 532; see also *Maldonado v. Fast Auto Loans, Inc.* (2021) 60 Cal.App.5th 710, 722 ["although 'not all members of the public will become customers of [the defendant]' this 'does not negate the fact that public injunctive relief will nevertheless offer benefits to the general public' "]; *Mejia v. DACM Inc.* (2020) 54 Cal.App.5th 691, 703 [" '[the

plaintiff]'s prayer does not limit itself to relief only for class members or some other small group of individuals; it encompasses "consumers" generally' "]; see also *Ramsey v. Comcast Cable Communications, LLC* (2023) 99 Cal.App.5th 197, 211–212 (*Ramsey*) [following *Maldonado* and *Mejia*].)

The same reasoning applies here. We reject amicus curiae Chamber of Commerce's argument (and equivalent arguments by Uber) that this case is materially distinct from *Khan* because "no price exists until the user enters a specific pickup location and destination and receives an individualized quote based on real-time conditions." In *Khan*, *supra*, 115 Cal.App.5th at page 522, the allegedly deceptive percentage-based fee was "not displayed on any of the screens that the customer reviews when placing an order" and only shown on an " 'Order Preview' " screen after a customer entered a request to purchase digital currency. Consequently, the deceptive pricing in *Khan* was also tied to individual orders. In any event, the crucial point is that the requested injunction would protect potential customers from Uber's allegedly deceptive pricing practices. Uber cannot evade consumer protection laws just because its allegedly deceptive scheme is complicated.

Uber also attempts to distinguish *Khan* on the basis that the plaintiff there did not also seek monetary relief. However, "[t]hat [p]laintiffs seek a monetary recovery in addition to injunctive relief does not preclude a determination that they seek a public injunction." (*Vaughn v. Tesla, Inc.* (2023) 87 Cal.App.5th 208, 229, fn. 14 (*Vaughn*); see also *McGill*, *supra*, 2 Cal.5th at p. 957, fn. 1 [noting that plaintiff sought monetary relief in addition to public injunctive relief].) As *Khan* explained, "When the primary purpose of an injunction is to prohibit an ongoing violation of consumer protection laws, the relief sought is usually public relief because the benefit to the plaintiff or a group of similarly situated individuals is not materially

different from the benefit that inures to the broader public." (*Khan*, *supra*, 115 Cal.App.5th at p. 530.) Under that analysis, plaintiffs' request for an injunction clearly seeks public relief, even though they also seek restitution and/or disgorgement.

We reject Uber's reliance on *Hodges v. Comcast Cable Communications, LLC* (9th Cir. 2021) 21 F.4th 535 (*Hodges*). *Hodges* was a putative class action brought by a former Comcast subscriber who alleged the defendant violated federal and state law in the way it collected and used subscriber personal data. (*Id.* at pp. 537–538.) As explained in *Khan*, *Hodges* "concluded that the complaint in that case sought private relief because the plaintiff's requests stood to benefit only the defendant's cable subscribers." (*Khan*, *supra*, 115 Cal.App.5th at p. 534.) *Khan* distinguished the case because the relief sought in *Khan* "would not benefit only a discrete class of persons, such as the class of individuals who transacted business on the [defendant's] platform in the years leading up to the filing of the complaint." (*Id.* at p. 534.) The same reasoning applies here. In any event, to the extent *Hodges* is in conflict with *Khan*, we follow *Khan*. (See *Ramsey*, *supra*, 99 Cal.App.5th at p. 207 [declining to follow *Hodges* and concluding that "an injunction that benefits both existing and potential Comcast subscribers qualifies as a public injunction"]; *Vaughn*, *supra*, 87 Cal.App.5th at p. 231, fn. 16 [declining to follow *Hodges* and opining that "the analysis of the dissent [in *Hodges*] is more consistent with *McGill*"].)[3]

[3] Amicus curiae the Chamber of Commerce cites various federal district court cases and an unreported Ninth Circuit decision that it argues support Uber's position that plaintiffs do not seek a public injunction under *McGill*. Those decisions follow *Hodges* and, because they precede *Khan*, they fail to address *Khan's* reasoning, with which we agree.

We also reject Uber's contention that plaintiffs' requested injunction is not public because, Uber asserts, it "would require numerous individualized inquiries" and "[t]he only way to determine compliance . . . is to evaluate each individual ride and the unique circumstances associated with that ride." In support, Uber relies on an assertion in *Hodges* that public injunctive relief is "prospective injunctive relief that aims to restrain future violations of law for the benefit of the general public as a whole . . . and that does so without requiring consideration of the individual claims of non-parties." (*Hodges*, *supra*, 21 F.4th at p. 548.) We are hesitant to read that language to create an additional basis for a finding that an injunction does not seek public relief. Under *McGill*, the sole inquiry is whether the injunction "has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public." (*McGill*, *supra*, 2 Cal.5th at p. 951.) As plaintiffs point out, "*McGill* did not condition the public nature of an injunction on ease of enforcement."

In any event, we need not resolve that issue because the present case does not implicate the concerns identified in *Hodges*, *supra*, 21 F.4th 535. *Hodges* affirmed the public nature of an injunction request in *Blair*, *supra*, 928 F.3d 819, that "sought to stop [the defendant] from using an unlawful pricing structure [citation], thereby enjoining 'future violations' of California law in a manner that diffusely benefitted the general public as a whole." (*Hodges*, at p. 544.) *Hodges* characterized as private *other* injunctions sought in *Blair*, noting that the *Blair* court "did not rely on the *other* forms of injunctive relief that the plaintiff requested . . . , namely, an order requiring [the defendant] to perform a retroactive 'accounting of monies obtained from California consumers' and to provide 'individualized notice to those consumers of their statutory rights.' [Citation.] . . . [T]hese other forms of

requested relief in *Blair* were retrospective, aimed at a specific class of persons (*i.e.*, those who already had Rent-A-Center contracts), or would require individualized consideration of the private rights and obligations of particular non-parties." (*Id.* at p. 544, fn. 4.) In the present case, Uber has not shown that plaintiffs' forward-looking injunction request is materially different from the request in *Blair* that *Hodges* described as requesting public relief.[4] (See also *Khan*, *supra*, 115 Cal.App.5th at p. 534 [declining to follow *Hodges* and stating that the plaintiff's claim does not "require the court to consider the private rights and obligations of individual nonparties, as by requiring a judicial assessment of the fairness of their individual transactions"].)[5]

The reasoning in *Khan* is fully applicable in the present case. (See also *Kramer*, *supra*, 105 Cal.App.5th at pp. 747–750 [summarizing other

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[4] In *Blair*, the plaintiffs alleged violation of a California law prohibiting " 'unfair or unconscionable conduct toward consumers' who enter into rent-to-own agreements." (*Blair*, *supra*, 928 F.3d at p. 822.) The law "sets statutory maximums for both the 'total of payments' amount for installment payments and the 'cash price' for rent-to-own items. [Citation.] These maximums are set in proportion to the 'documented actual cost' of the items to the lessor/seller." (*Id.* at p. 823.) Uber has not shown the forward-looking injunctive request in the present case would require more individualized inquiries than the equivalent request in *Blair*.

[5] We also reject Uber's reliance on the decisions in *Clifford v. Quest Software Inc.* (2019) 38 Cal.App.5th 745 and *Torrecillas v. Fitness International, LLC* (2020) 52 Cal.App.5th 485. As explained in *Kramer*, "both *Clifford* and *Torrecillas* involved alleged wage and hour violations" and "involved complaints that focused on harm to the plaintiff and did not seek broader injunctive relief." (*Kramer*, *supra*, 105 Cal.App.5th at p. 750.) We similarly reject Uber's reliance on *Kilgore v. KeyBank, N.A.* (9th Cir. 2013) 718 F.3d 1052, where the court noted that "[t]he injunctive relief sought . . . , for all practical purposes, relates only to past harms suffered by the members of the limited putative class." (*Id.* at p. 1061.)

California cases analyzing "whether a complaint asserts public or private injunctive relief under the framework set forth in *McGill*"].) It is clear a request for an injunction to stop allegedly deceptive pricing practices on the widely used Uber platform is a request for a public injunction. Accordingly, the trial court properly concluded that the Agreement's waiver of the right to seek nonindividual relief is unenforceable as to plaintiffs' request for injunctive relief.[6]

II. *The Request for a Public Injunction Is Not Severable*

In the alternative, Uber argues that plaintiffs' request for a public injunction is severable from their requests for restitution and/or disgorgement. Uber asks this court to direct the trial court to stay the portion of its action seeking public injunctive relief pending arbitration of plaintiffs' requests for individual relief. Resolution of that issue requires us to construe the relevant portions of the Agreement. As explained below, we conclude that the Agreement is ambiguous and that we are required to apply California's rule that ambiguities in an agreement are construed against the drafter (§ 1654)—which for convenience we refer to by its Latin name, the *contra proferentem* rule. (*Lamps Plus*, *supra*, 587 U.S. at p. 186; see also *Mitchell v. Exhibition Foods, Inc.* (1986) 184 Cal.App.3d 1033, 1042.)[7] We

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[6] Uber also asserts that the trial court "fashioned a new *per se* rule" because the court commented that the UCL and FAL, " 'by their very nature, exist to protect the public.' " It is clear the court did *not* employ a per se rule that all injunction requests under the UCL and FAL are public within the meaning of *McGill*. Instead, the trial court followed the ruling in *Kramer*, *supra*, 105 Cal.App.5th 741. As explained herein, the court's ruling is more clearly supported in *Khan*. Thus, we need not address Uber's contention that a per se rule would be preempted by the FAA.

[7] We requested and received supplemental briefing from the parties regarding the applicability of the *contra proferentem* rule in this case.

reject Uber's argument that the FAA preempts application of that rule. The *contra proferentem* rule is a neutral, generally applicable state rule of contract interpretation. *Lamps Plus* held the rule was preempted in that case only because it would have imposed class arbitration without consent, " 'interfer[ing] with fundamental attributes of arbitration and thus creat[ing] a scheme inconsistent with the FAA.' " (*Lamps Plus*, at p. 188.) Given that application of the rule in the present case presents no such concerns and effectuates the first principle of consent, the *contra proferentem* rule is not preempted and the entirety of plaintiffs' action must be litigated in court.

A. *The FAA and Interpretation of Arbitration Agreements*

Section 2 of the FAA provides in relevant part: "A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." (9 U.S.C. § 2.) "That provision creates substantive federal law regarding the enforceability of arbitration agreements, requiring courts 'to place such agreements upon the same footing as other contracts.' " (*Arthur Andersen LLP v. Carlisle* (2009) 556 U.S. 624, 630 (*Arthur Andersen*); accord, *Coinbase, Inc. v. Suski* (2024) 602 U.S. 143, 148 (*Suski*); see also *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, 418 (*Morgan*) ["The federal policy is about treating arbitration contracts like all others, not about fostering arbitration"]; *Western Bagel Co., Inc. v. Superior Court* (2021) 66 Cal.App.5th 649, 662 (*Western Bagel*) [the FAA " ' " 'declare[s] a national policy favoring arbitration' of claims that parties contract to settle in that manner" ' "].)

" 'A petition to compel arbitration is simply a suit in equity seeking specific performance of a contract.' " (*Mendoza v. Trans Valley Transport*

(2022) 75 Cal.App.5th 748, 764.) Although "state law is preempted to the extent it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA" (*Lamps Plus*, *supra*, 587 U.S. at p. 183), the FAA does not "alter background principles of state contract law regarding the scope of agreements" (*Arthur Andersen*, *supra*, 556 U.S. at p. 630). Thus, " '[g]eneral principles of California contract law guide the court' " in determining " 'whether the parties *actually agreed* to arbitrate the dispute.' " (*Ford Motor Warranty Cases* (2025) 17 Cal.5th 1122, 1128, italics added; see also *Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 21 [" 'An arbitration agreement is subject to the same rules of construction as any other contract' "]; accord, *Mendoza*, at p. 764; *Western Bagel*, *supra*, 66 Cal.App.5th at p. 662.)

" ' " 'Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. [Citation.] Such intent is to be inferred, if possible, solely from the written provisions of the contract.' " ' " (*TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, 27.) Generally, " '[t]he whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.' " (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495, 503.) A " ' "provision will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable." ' " (*TRB Investments*, at p. 27.) "[A]mbiguities in written agreements are to be construed against their drafters." (*Sandquist*, *supra*, 1 Cal.5th at p. 247; see also § 1654.)[8]

[8] To the extent Uber argues that *only* the question of " 'the existence' " of an arbitration agreement is governed by state contract law, and *not* the "scope" of the agreement, any such argument is plainly contrary to the authorities cited above. (See, e.g., *Arthur Andersen*, *supra*, 556 U.S. at p. 630

B. *The Agreement Is Ambiguous*

It is undisputed that the Agreement requires arbitration of disputes and that it contains a class action waiver that violates *McGill*, *supra*, 2 Cal.5th 945 to the extent it bars plaintiffs from seeking public injunctive relief in any forum. The parties agree the Agreement contains specific and general severability provisions, as described previously, but they disagree whether those provisions require that plaintiffs' requests for individual relief be sent to arbitration. We conclude the Agreement is ambiguous on that issue.

Plaintiffs argue, and the trial court concluded, that the language "any class, collective, coordinated, consolidated, and/or representative claims subject to the unenforceable or unlawful portion(s) [of the class action waiver] shall proceed in a court of competent jurisdiction" means that the entirety of each of their two causes of action (under the UCL and the FAL) must be litigated in court. They primarily rely on the decisions in *Blair*, *supra*, 928 F.3d 819 and *Jack*, *supra*, 91 Cal.App.5th 1186, which were also California

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[the FAA does not "purport[] to alter background principles of state contract law regarding the scope of agreements"]; see also *Sandquist*, *supra*, 1 Cal.5th at p. 248 [section 1654 "applies equally to the construction of arbitration provisions"].) Uber's argument is a misapplication of cases stating that *no* presumption in favor of arbitration applies where the existence of an arbitration agreement is at issue. (See *Johnson v. Walmart Inc.* (9th Cir. 2023) 57 F.4th 677, 680–681; *Goldman, Sachs & Co. v. City of Reno* (9th Cir. 2014) 747 F.3d 733, 742.) That *limitation* on application of the presumption in favor of arbitration should not be read to mean that state law principles do *not* apply to construing the scope of an arbitration agreement, which would be contrary to the fundamental proposition that arbitration agreements are to be treated the same as other contracts, as stated in *Arthur Andersen*, *Sandquist*, and numerous other decisions.

consumer protection actions.[9] Both cases involved waivers that violated *McGill* and considered whether the language of the applicable agreements required the severance of requests for public injunctive relief. Both cases involved identical severability language providing that, if a court decides that a waiver is unenforceable "as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court." (*Blair*, at p. 831; *Jack*, at p. 1209.)

Blair, decided first, observed that "[p]arties are welcome to agree to split decisionmaking between a court and an arbitrator" by "requiring the arbitrator to adjudicate liability first" and "carv[ing] out only the potential public injunctive remedy" for a court's determination. (*Blair*, *supra*, 928 F.3d at p. 831.) But *Blair* concluded the parties had *not* done so, reasoning that a " 'claim for relief,' as that term is ordinarily used, is synonymous with 'claim' or 'cause of action.' " (*Ibid.*) *Jack* followed *Blair* in rejecting the defendant's argument that "the parts of plaintiffs' three causes of action that involve a prayer for public injunctive relief should be severed from arbitration and plaintiffs should be ordered to arbitrate 'liability, damages, and non-public injunctive relief.' " (*Jack*, *supra*, 91 Cal.App.5th at p. 1209.) The court commented, "it is far more reasonable to read 'claim for relief' to refer to a person's claim and not to a particular remedy requested in respect to a claim." (*Ibid.*; see also *Vasquez v. Cebridge Telecom CA, LLC* (N.D.Cal. 2021) 569 F.Supp.3d 1016, 1028–1029 [also following *Blair*]; cf. *Lag Shot LLC v.*

[9] *Blair* involved the UCL, the Consumers Legal Remedies Act (CLRA), and two other consumer protection laws (*Blair*, *supra*, 928 F.3d at p. 823); *Jack* involved the FAL, the UCL, and the CLRA (*Jack*, *supra*, 91 Cal.App.5th at p. 1192).

Facebook, Inc. (N.D.Cal. 2021) 545 F.Supp.3d 770, 785 [the "severance clause explicitly permits the severability of a 'request for particular relief' "].)[10]

Plaintiffs assert, "Uber drafted its severability clause against that backdrop." It is true that, had Uber or plaintiffs researched the meaning of "claim" in January 2023, their understanding of the term would have been informed by the *Blair* decision, which involved the same consumer protection context and the exact same issue as in the present case. (See *Ford v. The Silver F, Inc.* (2025) 110 Cal.App.5th 553, 568 (*Ford*) ["The parties to a contract are presumed to have had the existing law in mind when they executed their agreement"].) Thus, Uber was on constructive notice that, if it sought "to split decisionmaking between a court and an arbitrator" (*Blair*, *supra*, 928 F.3d at p. 831), the term "claim" was, at best, a problematic word to use to accomplish that end. We conclude that one reasonable interpretation of the Agreement is that the entirety of plaintiffs' UCL and FAL causes of action must proceed in court.

On the other hand, Uber emphasizes that "the FAA '*requires* piecemeal resolution [of related disputes in different forums] when necessary to give effect to an arbitration agreement,' " including " 'piecemeal litigation of "arbitrable and inarbitrable remedies derived from the same statutory claim." ' " (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1125 (*Adolph*); see also *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 662 (*Viking River*).) Uber argues that the Agreement reflects an intent to sever only the inarbitrable request for a public injunction, because the

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[10] Plaintiffs also cite to the decision *Duran v. EmployBridge Holding Co.* (2023) 92 Cal.App.5th 59, but there the agreement stated broadly that "claims under [the Private Attorneys General Act (PAGA)] are not arbitrable," which is naturally read as excluding the entirety of the cause of action. (*Id.* at p. 66.)

Agreement states that "the unenforceable or unlawful portion(s) [of the waiver] shall be severed" and "severance of the unenforceable or unlawful portion(s) shall have no impact whatsoever on the enforceability, applicability, or validity of the Arbitration Agreement or the arbitrability of any remaining claims."

Uber analogizes the present case to *Viking River*, which held the FAA preempted a state law rule that "preclude[d] division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." (*Viking River*, *supra*, 596 U.S. at p. 662.) The court stated that the parties' arbitration agreement required severance, reasoning "the severability clause in the agreement provides that if the waiver provision is invalid in some respect, any 'portion' of the waiver that remains valid must still be 'enforced in arbitration.' Based on this clause, [the defendant] was entitled to enforce the agreement insofar as it mandated arbitration of [the plaintiff's] individual PAGA claim. The lower courts refused to do so based on the rule that PAGA actions cannot be divided into individual and non-individual claims. Under our holding, that rule is preempted, so [the defendant] is entitled to compel arbitration of [the plaintiff's] individual claim." (*Ibid.*)

Viking River stands for the proposition that arbitration agreements should be enforced where they reflect an intent to sever a cause of action into arbitrable and nonarbitrable components. But *Viking River* is of little help in construing the language of the Agreement. The decision nowhere recites in detail the language of its arbitration agreement, apparently because there was no dispute that the severance clause required arbitration of individual requests for relief if the FAA preempted the California rule, which was the actual issue in the case. (*Viking River*, *supra*, 596 U.S. at pp. 647, 649, 662.) That is, *Viking River* is not authority regarding the meaning of "claim" in

arbitration agreements or the effect of language in arbitration agreements that exempt certain "claims" from arbitration. (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1176 ["[I]t is axiomatic that cases are not authority for propositions not considered"].) Thus, we reject Uber's assertion that *Viking River* "interpreted" a "materially identical savings clause" to require severance and arbitration of individual requests for relief.

Uber also heavily relies on the language of the arbitration agreement in *Adolph*, *supra*, 14 Cal.5th 1104, but that decision did not construe the agreement. The court recited the language of the agreement in explaining the procedural history, but the issue on appeal was whether the plaintiff had standing "to litigate claims on behalf of other employees under PAGA." (*Id.* at pp. 1114–1115.) The court declared: "We limited our review to the question of PAGA standing and express no view on the parties' arguments regarding the proper interpretation of the arbitration agreement." (*Id*. at pp. 1128–1129.)

Another case Uber relies upon, *Gregg v. Uber Technologies, Inc.* (2023) 89 Cal.App.5th 786, is distinguishable. There, the severance clause stated that " 'any representative action brought under PAGA on behalf of others must be litigated in a civil court . . . .' " (*Id.* at p. 798.) In finding the plaintiff's request for individual relief arbitrable, the court emphasized that the clause referred to "a 'representative action' under PAGA 'brought on behalf of *others*' " and reasoned that "[t]o interpret the language at issue to mean an entire PAGA lawsuit, including both its individual and nonindividual components, would render the phrase 'brought on behalf of others' surplusage." (*Id.* at p. 800.) In contrast, the Agreement exempts from arbitration "any class, collective, coordinated, consolidated, and/or representative claims subject to the unenforceable or unlawful portion(s)" of

the waiver. Uber points to no language rendered surplusage by plaintiffs' interpretation; under the reasoning of *Gregg*, a "representative claim" subject to an unenforceable waiver may refer to a cause of action seeking representative relief (as plaintiffs argue, based on the *Blair* and *Jack* decisions) or just the request for representative relief (as Uber argues).

Uber also argues the *Jack* and *Blair* decisions erred in treating the term "claim" as clear and dispositive, because the term has "varied meanings." The point is well taken. "Claim" has no single legal meaning: "claim" may refer to a "cause of action" or it may refer to a "claim for relief." (Black's Law Dict. (12th ed. 2024); see also *Dziubla v. Piazza* (2020) 59 Cal.App.5th 140, 148, fn. 4 ["the terms 'cause of action' and 'claim' can have different meanings depending on the context in which they are used"].) Indeed, some of the seminal arbitration cases discussed herein employ the term loosely. In *Viking River*, the term "claim" is used to refer to both the overall Private Attorneys General Act (PAGA) cause of action as well as the individual and representative requests for relief. (*Viking River*, *supra*, 596 U.S. at p. 648 [referencing question of whether "PAGA claims" may "be split into arbitrable individual claims and nonarbitrable 'representative' claims"]; see also *McGill*, *supra*, 2 Cal.5th at p. 966 [referring to "public injunctive relief claims"].)

Thus, the word "claim" had no single, clear meaning at the time of the 2023 Agreement. And the parties point to no other aspects of the Agreement that conclusively support one construction of "claim" over another. Uber repeatedly emphasizes the language that "severance of the unenforceable or unlawful portion(s) shall have no impact whatsoever on the . . . arbitrability of any remaining claims." But that language does not avoid the ambiguity of the term "claim," because if "claim" means "cause of action," then that

provision only preserves the arbitrability of any causes of action not impacted by the unenforceable waiver. Uber implicitly concedes that the Agreement as a whole is ambiguous, arguing, "Read in context, 'claim' *can be reasonably understood* to mean a demand for relief . . . ." (Italics added.) Since that is *a* reasonable interpretation rather than the *only* reasonable interpretation, the Agreement is ambiguous as to whether it requires severance of the entirety of the causes of action seeking public injunctions, or only the portions of the causes of action requesting that relief.[11]

C. *The FAA Does Not Preempt the* Contra Proferentem *Rule in the Present Case*

In California, the *contra proferentem* rule appears in section 1654, and is located in a portion of the Civil Code governing the interpretation of contracts. (§ 1635 et seq.) Section 1635 provides, "All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code." Section 1637 provides, "For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this Chapter are to be applied." Relevant here, section 1654 provides, "In cases of uncertainty not removed by the preceding rules,

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[11] Uber also argues that, even if the parties had intended "claim" to refer to a "cause of action," severance would still be required because a cause of action corresponds to a primary right and the statutes involved here give rise to "*two* primary rights"—rights based on differing individual and public interests. (*Mejia v. Merchants Building Maintenance, LLC* (2019) 38 Cal.App.5th 723, 739, disapproved on another ground in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196, fn. 8.) The argument is misplaced. Even assuming plaintiffs' UCL and FAL causes of action involve two primary rights—a point plaintiffs dispute—there is no basis to conclude that the parties *intended* "claim" to refer to causes of action as defined under the primary rights analysis rather than as pled in the complaint. Thus, Uber's argument, at the most, only identifies a further ambiguity in the word "claim."

the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." In *Sandquist*, *supra*, 1 Cal.5th at page 247, the California Supreme Court quoted the Restatement's explanation of the rationale for the rule: " 'Where one party chooses the terms of a contract, he is likely to provide more carefully for the protection of his own interests than for those of the other party. He is also more likely than the other party to have reason to know of uncertainties of meaning. Indeed, he may leave meaning deliberately obscure, intending to decide at a later date what meaning to assert. In cases of doubt, therefore, so long as other factors are not decisive, there is substantial reason for preferring the meaning of the other party.' "

Sandquist applied the *contra proferentem* rule in interpreting an arbitration agreement to determine if the agreement allocated to the court or the arbitrator the question of whether class arbitration was permissible. (*Sandquist*, *supra*, 1 Cal.5th at p. 241.) The court first recited the default rule that "when the allocation of a matter to arbitration or the courts is uncertain, we resolve all doubts in favor of arbitration." (*Id.* at p. 247.) The court explained that, "*All else being equal*, this presumption tips the scales in favor of allocating the class arbitration availability question to the arbitrator." (*Ibid.*, italics added.) The court then explained that a second interpretative principle— that "ambiguities in written agreements are to be construed against their drafters"—also applied. (*Ibid.*) The court quoted from the Restatement, as recited above, and stated, "Thus, where, as here, the written agreement has been prepared entirely by the employer, it is a 'well established rule of construction' that any ambiguities must be construed against the drafting employer and in favor of the nondrafting employee. [Citations.] Moreover, '[t]he rule requiring the resolution of ambiguities

against the drafting party "applies with peculiar force in the case of a contract of adhesion. Here the party of superior bargaining power not only prescribes the words of the instrument but the party who subscribes to it lacks the economic strength to change such language." ' " (*Id.* at p. 248.)

The *Sandquist* court emphasized that "[t]his general principle of contract interpretation applies equally to the construction of arbitration provisions. [Citations.] Where the drafter of a form contract has prepared an arbitration provision whose application to a particular dispute is uncertain, ordinary contract principles require that the provision be construed against the drafter's interpretation and in favor of the nondrafter's interpretation." (*Sandquist*, *supra*, 1 Cal.5th at p. 248; see also *Victoria v. Superior Court* (1985) 40 Cal.3d 734, 739 (*Victoria*); accord, *Rebolledo v. Tilly's, Inc.* (2014) 228 Cal.App.4th 900, 913.) Ultimately, although both the default presumption in favor of arbitration and the *contra proferentem* rule favored sending the issue to arbitration, *Sandquist* focused on the latter rule: "To the extent that omission creates any ambiguity, it is [the employer] that 'drafted an ambiguous document, and . . . cannot now claim the benefit of the doubt.' [Citation.] We conclude, as a matter of state contract law, the parties' arbitration provisions allocate the decision on the availability of class arbitration to the arbitrator, rather than reserving it for a court." (*Sandquist*, at p. 248.) Thus, *Sandquist* holds that the *contra proferentem* rule applies to the interpretation of ambiguous arbitration agreements, especially standard form agreements.

Uber argues that, if the Agreement is ambiguous, the *contra proferentem* rule is preempted by the FAA and "ambiguities about the scope of an arbitration agreement must be resolved in favor of arbitration." (*Lamps Plus*, *supra*, 587 U.S. at p. 189.) In *Lamps Plus*, the United States Supreme

Court held the FAA preempted application of the *contra proferentem* rule to impose class arbitration where the agreement was ambiguous about its availability. (*Id.* at p. 178.) The court explained that an ambiguous agreement cannot "provide the necessary 'contractual basis' for compelling class arbitration" because "[c]lass arbitration is not only markedly different from the 'traditional individualized arbitration' contemplated by the FAA, it also undermines the most important benefits of that familiar form of arbitration." (*Id.* at p. 183.) *Lamps Plus* extended a previous decision holding "a court may not compel arbitration on a classwide basis when an agreement is 'silent' on the availability of such arbitration." (*Id.* at p. 178 [referencing *Stolt-Nielsen S.A. v. AnimalFeeds Internat. Corp.* (2010) 559 U.S. 662].)

Lamps Plus reaffirmed the proposition that "state contract principles" are applied to " 'enforce arbitration agreements according to their terms,' " but the court explained that "state law is preempted to the extent it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA." (*Lamps Plus*, *supra*, 587 U.S. at p. 183.) *Lamps Plus* emphasized that the " 'first principle that underscores all of our arbitration decisions' is that '[a]rbitration is strictly a matter of consent.' " (*Id.* at p. 184.) "Because of [the] 'crucial differences' between individual and class arbitration," "courts may not infer consent to participate in class arbitration absent an affirmative 'contractual basis for concluding that the party *agreed* to do so.' " (*Id.* at p. 185.)

Turning to the *contra proferentem* rule, *Lamps Plus* observed it is a rule that "applies 'only as a last resort' when the meaning of a provision remains ambiguous after exhausting the ordinary methods of interpretation. [Citation.] At that point, *contra proferentem* resolves the ambiguity against

the drafter based on public policy factors, primarily equitable considerations about the parties' relative bargaining strength." (*Lamps Plus*, *supra*, 587 U.S. at p. 186.) The court acknowledged it is a doctrine of contract interpretation that "enjoys a place in every hornbook and treatise on contracts" but cautioned that " 'the reach of the canon construing contract language against the drafter must have limits.' " (*Id.* at p. 187.) *Lamps Plus* then explained that the circumstances in the case brought "those limits into focus" because "[u]nlike contract rules that help to interpret the meaning of a term, and thereby uncover the intent of the parties, *contra proferentem* is by definition triggered only after a court determines that it *cannot* discern the intent of the parties. When a contract is ambiguous, *contra proferentem* provides a default rule based on public policy considerations . . . ." (*Ibid.*) That presented a problem, because " '[C]lass arbitration, to the extent it is manufactured by [state law] rather than consen[t], is inconsistent with the FAA.' " (*Ibid.*)

Lamps Plus concluded, "Like silence, ambiguity does not provide a sufficient basis to conclude that parties to an arbitration agreement agreed to 'sacrifice[] the principal advantage of arbitration.' " (*Lamps Plus*, *supra*, 587 U.S. at p. 185.) Therefore, the court held, "The general *contra proferentem* rule cannot be applied to impose class arbitration in the absence of the parties' consent." (*Id.* at p. 188.) "Courts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis. The doctrine of *contra proferentem* cannot substitute for the requisite affirmative 'contractual basis for concluding that the part[ies] *agreed* to [class arbitration].' " (*Id.* at p. 189.)

Uber fails to point to anything in the reasoning of *Lamps Plus* that suggests the FAA preempts the *contra proferentem* rule where application of

the rule would not manufacture consent to a " 'scheme' " that " 'interferes with fundamental attributes of arbitration and [is] thus . . . inconsistent with the FAA.' " (*Lamps Plus*, *supra*, 587 U.S. at p. 188; see also *Winns v. Postmates Inc.* (2021) 66 Cal.App.5th 803, 814 [*Lamps Plus* "held that the FAA preempts California's *contra proferentem* rule . . . when the rule is used 'to impose class arbitration in the absence of the parties' consent' "].) Instead, Uber points to the court's statement that its holding is "consistent with a long line of cases holding that the FAA provides the default rule for resolving certain ambiguities in arbitration agreements. For example, we have repeatedly held that ambiguities about the scope of an arbitration agreement must be resolved in favor of arbitration." (*Lamps Plus*, at p. 189.)[12] But

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[12] The basis for the presumption is unclear. The United States Supreme Court case that articulated the presumption, *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.* (1983) 460 U.S. 1, cited a number of prior federal circuit decisions and based the presumption on the "liberal federal policy favoring arbitration agreements" in section 2 of the FAA. (*Moses*, at pp. 24–25.) But section 2 only provides for the enforceability of arbitration *agreements* and it is well established that "[t]he federal policy is about treating arbitration contracts like all others, not about fostering arbitration." (*Morgan*, *supra*, 596 U.S. at p. 418; see also *Calderon v. Sixt Rent a Car, LLC* (11th Cir. 2021) 5 F.4th 1204, 1215–1221 (conc. opn. of Newsom, J.) [forcefully criticizing "the *Moses H. Cone* rule"].)

In addition, the presumption in favor of arbitration may be less broad than the parties assume. The presumption does not apply in determining the existence of an arbitration agreement (see fn. 8, *ante*); the presumption does not apply in determining whether an arbitrator or court decides arbitrability (see, e.g., *First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944); and *Granite Rock Co. v. Internat. Brotherhood of Teamsters* (2010) 561 U.S. 287 (*Granite Rock*) states the presumption applies "only where a validly formed and enforceable arbitration agreement is ambiguous about whether it covers the dispute at hand" (*id.* at p. 301). It is consistent with those determinations to conclude that the presumption in favor of arbitration may not apply to severability, a *procedural* issue involved in this case. (See *Morgan*, *supra*, 596 U.S. at p. 419 ["the text of the FAA makes clear that

Lamps Plus did not suggest that the presumption in favor of arbitration required preemption of the *contra proferentem* rule where its application does not disfavor arbitration but instead reinforces the requirement of consent.

It is well established that the FAA "preempts any state rule discriminating on its face against arbitration" and "also displaces any rule that covertly accomplishes the same objective by disfavoring contracts that . . . have the defining features of arbitration agreements." (*Kindred Nursing Centers L.P. v. Clark* (2017) 581 U.S. 246, 251; see also *DIRECTV, Inc. v. Imburgia* (2015) 577 U.S. 47, 58 [rejecting lower court's application of *contra proferentem* rule not because the rule is inconsistent with the FAA but because it was not applied neutrally].) *Lamps Plus* expanded the scope of FAA preemption where application of the *contra proferentem* rule, despite its neutrality, resulted in imposition of classwide arbitration *without consent*. As the court explained, "At issue in this case is the interaction between a state contract principle for addressing ambiguity and a 'rule[] of fundamental importance' under the FAA, namely, that arbitration 'is a matter of consent, not coercion.' " (*Lamps Plus*, *supra*, 587 U.S. at pp. 183–184.)

Lamps Plus's centering of the principle of consent clarifies that the FAA does not preempt a neutral state contract rule like *contra proferentem* where application of the rule ensures there is consent to arbitrate a dispute. As the United States Supreme Court has repeatedly emphasized, "[a]rbitration is strictly 'a matter of consent,' [citation], and thus 'is a way to

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courts are not to create arbitration-specific procedural rules"]; *Volt Information Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.* (1989) 489 U.S. 468, 476 (1989) ["There is no federal policy favoring arbitration under a certain set of procedural rules"]; *Kristian v. Comcast Corp.* (1st Cir. 2006) 446 F.3d 25, 62 (*Kristian*) ["application of the class arbitration bar's savings clause does not raise a question about the scope of the arbitration agreement"].)

resolve those disputes—*but only those disputes*—that the parties have agreed to submit to arbitration.' " (*Granite Rock*, *supra*, 561 U.S. at p. 299; accord, *Suski*, *supra*, 602 U.S. at p. 148; *Viking River*, *supra*, 596 U.S. at p. 651; *Lamps Plus*, *supra*, 587 U.S. at p. 184.) " '[T]he federal policy favoring arbitration' " is "merely an acknowledgment of the FAA's commitment to 'overrule the judiciary's longstanding refusal to enforce agreements to arbitrate and to place such agreements upon the same footing as other contracts.' " (*Granite Rock*, at p. 302; see also *Morgan*, *supra*, 596 U.S. at pp. 418–419.) *Granite Rock* cautioned, "We have applied the presumption favoring arbitration . . . only where it reflects, and derives its legitimacy from, a judicial conclusion that arbitration of a particular dispute is what the parties intended because their express agreement to arbitrate [is] . . . best construed to encompass the dispute." (*Granite Rock*, at p. 303.)

As we have already established, an arbitration agreement is properly construed using neutral state contract laws, and in California that includes the *contra proferentem* rule. Because the rule is "triggered only after a court determines that it *cannot* discern the intent of the parties" (*Lamps Plus*, *supra*, 587 U.S. at p. 187), the rule ensures that a party is not obligated to arbitrate a dispute it did not actually agree to arbitrate. This is especially true in cases, like the present one, involving an adhesive contract, where the nondrafter lacked an opportunity to clarify ambiguities during contract negotiation. (See *Sandquist*, *supra*, 1 Cal.5th at p. 248.) Application of the rule thus effectuates the "first principle" of consent repeatedly emphasized by the United States Supreme Court, including in *Lamps Plus*. (See also *Viking River*, *supra*, 596 U.S. at pp. 659–660 ["The most basic corollary of the principle that arbitration is a matter of consent is that 'a party can be forced

to arbitrate only those issues it specifically has agreed to submit to arbitration' "].)[13]

Applying state law, the California Supreme Court reached a similar conclusion in *Victoria*, *supra*, 40 Cal.3d 734 and, recently, in *Fuentes v. Empire Nissan, Inc.* (2026) 19 Cal.5th 93 (*Fuentes*). In *Victoria*, the court concluded the *contra proferentem* rule took precedence over the *state* presumption in favor of arbitration in interpreting a standard form agreement. (*Id.* at p. 744; accord, *Morales v. Superior Court* (2026) 122 Cal.App.5th 239, 248.) The court explained that construing such a contract against the drafter " 'does not serve as a mere tie-breaker.' [Citation.] Instead, 'it rests upon fundamental considerations of policy[, in] view of the somewhat fictional nature of intent in standardized contracts . . . .' " (*Victoria*, at p. 744.) Like the United States Supreme Court in *Granite Rock* and other cases, *Victoria* observed, "Although '[t]he law favors contracts for arbitration of disputes between parties' [citation], ' "there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate." ' " (*Victoria*, at p. 744; see also *Sandquist*, *supra*, 1 Cal.5th at p. 252.)

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[13] *Lamps Plus* stated that the court had "emphasized" the " 'foundational FAA principle' " of consent "many times," citing six prior Supreme Court decisions going back decades. (*Lamps Plus*, *supra*, 587 U.S. at p. 184.) The court explained, "Consent is essential under the FAA because arbitrators wield only the authority they are given. That is, they derive their 'powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution.' [Citation.] Parties may generally shape such agreements to their liking by specifying with whom they will arbitrate, the issues subject to arbitration, the rules by which they will arbitrate, and the arbitrators who will resolve their disputes. [Citation.] Whatever they settle on, the task for courts and arbitrators at bottom remains the same: 'to give effect to the intent of the parties.' " (*Ibid.*)

In *Fuentes*, *supra*, 19 Cal.5th 93, the California Supreme Court similarly concluded the *contra proferentem* rule takes precedence over the state presumption in favor of arbitration.[14] In that case, an employer and employee entered into an arbitration agreement and subsequent "confidentiality agreements," and there was an "ambiguity concerning whether the parties intended claims under the confidentiality agreements to be subject to mandatory arbitration." (*Fuentes*, at p. 109.) The Court of Appeal applied the presumption in favor of arbitration in resolving the ambiguity. (*Id.* at p. 111.) *Fuentes* concluded the Court of Appeal "erred in applying a presumption in favor of arbitration." (*Ibid.*) At the outset, the court emphasized that "Arbitration ' " ' "is strictly a matter of consent" ' " '—absent an agreement to arbitrate, *the default rule is that parties may litigate breach of contract claims in court*." (*Id.* at p. 109.) In rejecting the Court of Appeal's reliance on the presumption, the court reasoned (like the United States Supreme Court in *Morgan*, *Granite Rock*, and other cases) that " 'the policy " 'favoring' " arbitration is not one of promoting arbitration over litigation, but instead of ensuring that arbitration agreements are not disfavored, i.e., that they are treated like other contracts.' " (*Id.* at p. 110.) "The Court of Appeal contravened this equal treatment principle by relying on 'the principle that the law strongly favors arbitration' to support its interpretation of the confidentiality agreements as mandating arbitration." (*Ibid.*) Instead, the Court of Appeal should have applied the *contra*

[14] The *Fuentes* decision does not reference the FAA, so we presume the decision was decided under California law.

proferentem rule and "resolv[ed] ambiguities in meaning against the drafting party." (*Ibid.*)[15]

Although *Victoria* and *Fuentes* were decided under California law, Uber has not argued that consent is critical under the California policy but *secondary* under the federal policy. That is, Uber has not argued consent is *less* important under the FAA. We are unaware of any basis for such a conclusion. To the contrary, as noted previously, *Lamps Plus* emphasized that consent is the " 'first principle that underscores all of [the FAA] arbitration decisions' " (*Lamps Plus*, *supra*, 587 U.S. at p. 184) and California decisions characterize the California policy as equivalent to the federal policy (*Sandquist*, *supra*, 1 Cal.5th at p. 247; *Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 25–26).

Uber cites to *Erickson v. Aetna Health Plans of California, Inc.* (1999) 71 Cal.App.4th 646, which stated that the *contra proferentem* rule "is subordinate to the policy favoring arbitration when construing FAA agreements." (*Id.* at p. 658, citing *Chan v. Drexel Burnham Lambert, Inc.* (1986) 178 Cal.App.3d 632, 639.) To similar effect are federal circuit court decisions that have declined to apply the *contra proferentem* rule. (See *Huffman v. Hilltop Companies, LLC* (6th Cir. 2014) 747 F.3d 391, 396–397; *Dialysis Access Center, LLC v. RMS Lifeline, Inc.* (1st Cir. 2011) 638 F.3d

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[15] The Maine and Florida high courts reached the same conclusion as the California Supreme Court in *Victoria* and *Fuentes*. (See *Barrett v. McDonald Investments, Inc.* (Me. 2005) 870 A.2d 146, 149–152 (*Barrett*); *Seifert v. U.S. Home Corp.* (Fla.1999) 750 So.2d 633, 641–642.) In *Barrett*, the Supreme Judicial Court of Maine acknowledged that "[t]he presumption in favor of substantive arbitrability advances the Maine Legislature's 'strong policy favoring arbitration,' " but held that "the balance tips in favor of applying the equitable rule favoring the construction of the contract against the drafter" in cases involving a contract of adhesion. (*Barrett*, at pp. 149, 151.)

367, 382, fn. 14; *Hudson v. ConAgra Poultry Co.* (8th Cir. 2007) 484 F.3d 496, 503; *Kristian*, *supra*, 446 F.3d at p. 35; *McKee v. Home Buyers Warranty Corp. II* (5th Cir. 1995) 45 F.3d 981, 984–985.) However, all of those decisions preceded *Lamps Plus* and therefore necessarily did not grapple with the decision's teaching that ambiguous contract language is insufficient to establish consent under the FAA. Nor did those cases otherwise consider whether the federal presumption preempts the *contra proferentem* rule where application of the rule effectuates consent.

California cases subsequent to *Lamps Plus* are consistent with our conclusion that the *contra proferentem* rule applies here. The decision in *Western Bagel*, *supra*, 66 Cal.App.5th 649 extended *Lamps Plus* to preclude application of the *contra proferentem* rule to impose nonbinding arbitration because a binding decision is a " ' "fundamental attribute[] of arbitration" ' " under the FAA. (*Western Bagel*, at pp. 663–665.) The court explained, "Just as 'individual arbitration' is a ' "fundamental attribute[] of arbitration" ' 'envisioned by the FAA' (i.e., because of, inter alia, its 'lower costs, greater efficiency and speed') [citation], so too is 'the expectation "that the arbitrator's decision will be both binding and final[,]" ' given that this characteristic safeguards ' "arbitral efficiency" ' too." (*Id.* at pp. 665–666.) Other California decisions cite *Lamps Plus* but do not construe ambiguous agreements. (See *Ford*, *supra*, 110 Cal.App.5th at p. 570 [agreement unambiguous]; *Barrera v. Apple American Group LLC* (2023) 95 Cal.App.5th 63, 83, 85–86 [same]; *Westmoreland v. Kindercare Education LLC* (2023) 90 Cal.App.5th 967, 979, 981 [same]; *Vaughn*, *supra*, 87 Cal.App.5th at pp. 219–220 [same].)[16]

[16] In *Vaughn*, *supra*, 87 Cal.App.5th at page 218, footnote 5, this court stated that *Lamps Plus* mandates "a different rule" than the *contra proferentem* rule applied in *Sandquist*, *supra*, 1 Cal.5th 233. That statement

Similarly, in *Toothman v. Redwood Toxicology Laboratory, Inc.* (2026) 120 Cal.App.5th 412, the court stated it was unnecessary to decide whether it was required to "resolve any ambiguities in favor of arbitration" because the agreement was not ambiguous. (*Id.* at p. 417.)[17]

Finally, Uber argues that plaintiffs have not contended the Agreement is unconscionable or shown that formation of the Agreement involved "a high degree of procedural unconscionability." (*Fuentes*, *supra*, 19 Cal.5th at p. 110.) But Uber does not deny that the Agreement is a contract of adhesion, and the *contra proferentem* rule applies " ' "with peculiar force in the case of a contract of adhesion." ' " (*Sandquist*, *supra*, 1 Cal.5th at p. 248; accord, *Fuentes*, at p. 110; 11 Williston on Contracts (4th ed. 2026) § 32:12).[18]

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was dicta, because the agreement in the case was not ambiguous. (*Vaughn*, at pp. 219–220.) We now disavow that overly broad dicta.

[17] Another recent case, *Srivastava v. BMW of North America, LLC* (2026) 122 Cal.App.5th 944, 951, references the California law presumption in favor of arbitration without discussing *Lamps Plus* or the *contra proferentem* rule, or acknowledging the *Victoria*, *Sandquist*, or *Fuentes* decisions.

[18] On its face, section 1654 does not require indicia of procedural unconscionability or a contract of adhesion to justify application of the *contra proferentem* rule. (But see 11 Williston on Contracts (4th ed. 2026) § 32:12 [stating that application of the *contra proferentem* rule may vary based on "the degree of sophistication of the contracting parties or the degree to which the contract was negotiated"].) We note that the Maine high court observed that its holding in favor of the *contra proferentem* rule "does not affect the presumption favoring arbitrability when such provisions are actually negotiated, or when parties of equal bargaining power are involved. We merely hold that when a party drafts an agreement requiring arbitration, and offers it to individuals on a take-it-or-leave-it basis, the drafter bears the risk if its chosen language is found to be ambiguous." (*Barrett*, *supra*, 870 A.2d at p. 152.)

Nothing in the United States Supreme Court's FAA case law generally, or the court's articulation of the presumption in favor of arbitration specifically, requires this court to conclude the FAA preempts a state rule of contract interpretation that treats arbitration agreements like other agreements and, as applied to contracts of adhesion, effectuates the principle of consent. Because the *contra proferentem* rule is not preempted by the FAA in this case, we construe the ambiguous Agreement against the drafter, Uber, and conclude as a matter of California contract law that the parties did not agree to piecemeal resolution of the causes of action in the complaint.

DISPOSITION

The trial court's order is affirmed. Costs on appeal are awarded to plaintiffs.

SIMONS, Acting P. J.

We concur.

BURNS, J.
CHOU, J.

(A174376)

Dove A. Bogguess et al. v. Uber Technologies, Inc. (A174376)

Trial Court:	Superior Court of California, City and County of San Franciso
Trial Judge:	Hon. Jeffrey S. Ross
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