

Court Compels Arbitration Based on Text Message Agreement

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A district court has granted a motion to compel arbitration based on an arbitration clause in an agreement sent via text message and agreed to via a reply text.

Lexington Law Firm, a debt collection company, was sued in a putative class action under the Electronic Funds Transfer Act after purportedly deducting funds without consent.

Lexington moved to compel arbitration. It had sent the named plaintiff a text message agreement that contained an arbitration clause requiring him “to arbitrate all disputes and claims between [him] and Lexington on an individual basis only.” The plaintiff responded with a text that said: “Agree.” The plaintiff opposed Lexington’s motion. He claimed, *inter alia*, that there was no mutual assent and that the arbitration clause was unconscionable because it was a contract of adhesion and because it was so broadly worded. The district court disagreed.

The plaintiff had been given the agreement and had agreed to it. The court distinguished, among other things, cases involving “browsewrap” agreements in which a website user “agreed” to terms and conditions merely by using a website. Although the court found the agreement minimally procedurally unconscionable because it was a contract of adhesion, that did not render the agreement unconscionable as a whole. The agreement was not substantively unconscionable merely because it was broadly worded, at least where, as here, the plaintiff’s claims were related to the agreement he signed. The court therefore dismissed the putative class action.

[*Starace v. Lexington Law Firm*](#), No. 1:18-cv-01596 (E.D. Cal. June 27, 2019).

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