

Not So Fast: District Court Rejects TCPA Plaintiff's Attempt To Opt Out of Arbitration By Filing Suit



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Many consumer finance agreements contain binding arbitration clauses, if not most. At least some of these agreements grant consumers the ability to opt out of the clause within a certain period of time, typically 60 days. And as TCPA defense attorneys are all-too-familiar, many plaintiffs simply ignore the binding agreements and file suit in court anyway.

Which begs the question: what happens if a plaintiff files suit within the opt-out period? A complaint is a written document; does it satisfy an in-writing opt-out provision? The District of Nevada answered that question in the negative – filing suit in court is not an effective opt out of an arbitration provision. *See Hanson v. Tmx Fin.*, 2:18-cv-00616, 2019 U.S. Dist. LEXIS 44476 (D. Nev. March 19, 2019).

The plaintiff in *Hanson* entered into a loan agreement with the defendant that contained an arbitration clause. The clause provided that the plaintiff may opt out within 60 days of entering into the agreement by sending written notification to a specific mailing address. The plaintiff didn't opt out within 60 days, but did file a TCPA lawsuit. That didn't take long! The defendant removed the case to federal court, then moved to compel arbitration. The plaintiff responded that his rapid-fire lawsuit constituted an effective opt out.

The court rejected the plaintiff's rapid-filed-lawsuit argument and compelled arbitration. It held that the arbitration clause contained a very specific mechanism to opt out, including sending a written notice containing specific information to a specific address. The court enforced the clause as written and rejected the plaintiff's "substantial compliance" argument.

The case serves as an important lesson in drafting arbitration clauses. If you are going to include an opt-out provision, make sure that it is very clearly drafted and contains specific details on what a consumer must do to opt out. The defendant in *Hanson* had such a provision. But with a hastily crafted or poorly worded opt-out clause, the result might very well have been different.

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