

Past Conduct Subject to Arbitration: TCPA Claim Compelled to Arbitration Even Where Calls Pre-Dated Arbitration Clause

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TCPA cases are commonly compelled to arbitration so a ruling enforcing an arbitration provision in a TCPA suit is hardly noteworthy these days. Nonetheless a ruling out of the Southern District of Florida shows just how far courts are willing to go to enforce the parties' arbitration agreements.

In *Kent v. Citibank, N.A.*, CASE NO. 19-60260-CIV-DIMITROULEAS/SNOW, 2019 U.S. Dist. LEXIS 124478 (S.D. F. July 24, 2019) the Plaintiff contended that Defendant had made calls violating the TCPA as early as September, 2016. Yet the cardholder agreement containing the arbitration clause the Defendant wished to enforce was entered into months later. Since the arbitration clause in the cardholder agreement applied to “past, present, or future” conduct—and the messages were otherwise within the scope of the “disputes” subject to arbitration—the court concluded that the fact that messages were sent before the arbitration agreement was entered into did not defeat the motion to compel.

Notably, the Eleventh Circuit recently held in *Gamble v. New England Auto Finance, Inc.* that text messages sent *after* a contract terminates are not subject to an arbitration clause within the terminated contract. Notice that *Kent* presents the opposite scenario—the texts at issue occurred before the arbitration provision was consummated. By entering into a contract sweeping “past” conduct within the scope of arbitration, however, the Plaintiff was found to have agreed to sweep all such claims out of court

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