

## Non-signatories Are Bound To Arbitration Agreement – You Know, the Ones That Did NOT Sign the Contract

Article By:

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**Oh, no. But I never signed the contract.** In *Bentley v. Control Grp. Media Co.*, No. 19-CV-2437-DMS-RBB, 2020 U.S. Dist. LEXIS 118076 (S.D. Cal. July 6, 2020) the Court sided with defendants, The Control Group Media Company, Inc. (a holding company for the other defendants), Instant Checkmate, LLC, and Truthfinders, LLC (collectively, “Defendants”) and granted their motion to compel arbitration. Defendants’ motion for limited expedited discovery was denied as moot.

Here, Plaintiffs’ putative class action arises from Defendants’ failure to remove Plaintiffs’ criminal record information from their websites. Plaintiffs and putative class members hired an online service (Easy Expunctions) to “expunge certain criminal records related to past offenses qualifying for expungement or sealing under Texas law.” The package Plaintiffs and putative class members purchased included the “providing [of] legal notice to all background check companies, including Defendants, to remove their expunged criminal records.” Easy Expunctions mailed said notice to Defendants on multiple occasions. Defendants did not acquiesce in the removal of expunged criminal records.

Plaintiffs sued Defendants, alleging violations of (1) the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, *et seq.*, and (2) Texas Business & Commercial Code §§ 109.001-.007. Defendants seek to enforce the arbitration agreement contained in their websites’ “Terms of Use.” Defendants argue that Easy Expunctions, through its subscription to Defendants’ websites on behalf of Plaintiffs, agreed to mandatory arbitration. Plaintiffs argue Easy Expunctions gathered evidence on its own, acted “independently” of Plaintiffs, and thus Easy Expunctions subscribed to Defendants’ website, not Plaintiffs. The arbitration agreement stated, in part:

...YOU AND INSTANT CHECKMATE UNDERSTAND AND AGREE THAT ALL CLAIMS, DISPUTES OR CONTROVERSIES BETWEEN YOU AND INSTANT CHECKMATE, ITS PARENTS, AFFILIATES, SUBSIDIARIES OR RELATED COMPANIES [...] SHALL BE RESOLVED BY THE FINAL AND BINDING ARBITRATION PROCEDURES SET BELOW...

In its analysis, the Court noted that the subject contract is bound by the Federal Arbitration Act (“FAA”) and that determining whether parties have agreed to arbitration turns on “general state-law principles of contract interpretation, while giving due regard to the federal policy of arbitration.” The court went on to list the five theories pursuant to which a non-signatory can be forced to observe an

arbitration clause: (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing alter ego, and (5) estoppel.

Here, the Court found that Plaintiffs were bound by the arbitration agreement due to equitable estoppel. Specifically, the Court noted, “[e]quitable estoppel is particularly appropriate where a non-signatory has [acquired a] direct benefit from a contract containing an arbitration clause.” According to the Court, said benefits included, Easy Expunctions subscribing to Defendants’ websites, agreeing to the ‘Terms of Use,’ paying Defendants’ fees, accessing and reviewing Plaintiffs’ criminal records via Defendants’ websites, and ultimately reporting the results to the Plaintiffs. The Court doubled down on this analysis by holding, “without Easy Expunctions’ acceptance of the ‘Terms of Use,’ Plaintiffs have no evidence to support their claims of Defendants’ wrongdoing [because] Plaintiffs’ Complaint arises out of, relates to, and exploits the benefits of said subscriptions.”

The Court has stayed the immediate litigation to permit an arbitrator to decide the questions of arbitrability. If permissible, the substantive claims will be arbitrated as well.

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