IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MICHAEL HEARN individually and on behalf of all other similarly situated consumers, Plaintiff, v. COMCAST CABLE COMMUNICATIONS, LLC, Defendant.	CIVIL ACTION FILE NO. 1:19-CV-1198-TWT

OPINION AND ORDER

This is a class action under the Fair Credit Reporting Act. It is before the Court on Defendant Comcast Cable's Motion to Compel Individual Arbitration and Stay Litigation [Doc. 6]. For the reasons set forth below, Defendant Comcast Cable's Motion to Compel Individual Arbitration and Stay Litigation [Doc. 6] is DENIED.

I. Background

A. The Plaintiff's Claim

The Plaintiff Michael Hearn alleges that he called Defendant Comcast Cable Communications to inquire about its services on or about March 5, 2019. Class Action Compl. ¶ 8. During the call, a representative for the Defendant made a "hard pull" of the Plaintiff's consumer report, damaging his credit

score. *Id.* ¶¶ 12-14. The Plaintiff alleges that he did not consent to a credit check, was not a customer of the Defendant at the time, and did not request any services before or after the Defendant pulled his consumer report. *Id.* ¶¶ 9-10. The Plaintiff alleges that the Defendant obtained the Plaintiff's consumer report for an "impermissible purpose" in violation of various provisions of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. *Id.* ¶¶ 37-46. The Plaintiff sues on behalf of two putative classes of Georgia residents whose consumer reports were either (1) impermissibly accessed or (2) impermissibly used by the Defendant. *Id.* ¶ 22.

B. The Arbitration Provision

The Defendant argues that the Plaintiff's FCRA claim is covered by an arbitration agreement previously entered into by the parties. The Plaintiff contracted with the Defendant for services at his current address from December of 2016 through August of 2017.[1] The Plaintiff signed a work order

[1] The Defendant has submitted two declarations from its Director of Regulatory Compliance, Nicole Patel, in which she testifies that the Plaintiff previously contracted for services with the Defendant and that the purpose of the Plaintiff's March 2019 call was to inquire about reconnecting services. *See* Patel Decl., Ex. A to Def.'s Mot. to Compel Arbitration [Doc. 6-1]; Patel Suppl. Decl., Ex. A to Def.'s Reply in Supp. of Mot. to Compel Arbitration [Doc. 18-1]. Attached to Ms. Patel's first declaration is an "Agreement for Residential Services" (the "2016 Service Agreement") and a signed work order from 2016 (the "2016 Work Order"). *See* Ex. 1 to Patel Decl. [Doc. 6-2]; Ex. 2 to Patel Decl. [Doc. 6-3]. The Plaintiff has submitted his own declaration in which he admits to previously receiving services but denies that the purpose of the March 2019 call was to inquire about reconnecting services. Hearn Decl., Ex. A to Pl.'s Resp. to Mot. to Compel Arbitration [Doc. 16-1].

on December 20, 2016, acknowledging receipt of a "Comcast Welcome Kit" that contained, inter alia, the 2016 Service Agreement. *See* 2016 Work Order, at 3. The first page of the 2016 Service Agreement notifies the customer that "**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION IN SECTION 13 THAT AFFECTS YOUR RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ALL SERVICE(S).**" *See* 2016 Service Agreement, at 1 (emphasis in original). The arbitration provision in Section 13 of the Agreement states that it is governed by the Federal Arbitration Act and covers "[a]ny Dispute involving [the customer] and Comcast." *Id.* § 13(a). The provision defines the term "Dispute" as:

> any claim or controversy related to Comcast, including but not limited to any and all: (1) claims for relief and theories of liability, whether based in contract, tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (2) claims that arose before this or any prior Agreement; (3) claims that arise after the expiration or termination of this Agreement, and (4) claims that

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In adjudicating the Defendant's motion to compel arbitration, the Court is not limited to the four corners of the Plaintiff's complaint. *See Liles v. Ginn-La West End, Ltd.*, 631 F.3d 1242, 1244 n.5, 1249 n.13 (11th Cir. 2011) (noting that a court can consider extrinsic evidence in a motion to change venue and that a motion to compel arbitration is essentially a specialized motion to change venue). The Court will therefore consider the parties' testimonial and documentary evidence in adjudicating the Defendant's motion. But, because the Court must apply a "summary-judgment-like" standard to factual disputes on a motion to compel arbitration, it will view the evidence in the light most favorable to the Plaintiff. *In re Checking Account Overdraft Litig.*, 754 F.3d 1290, 1294 (11th Cir. 2014) (holding that an order compelling arbitration is "in effect a summary disposition of the issue of whether or not there has been a meeting of the minds on the agreement to arbitrate") (quoting *Magnolia Capital Advisors, Inc. v. Bear Stearns & Co.*, 272 Fed. Appx. 782, 785 (11th Cir. 2008)).

> are currently the subject of purported class action litigation in which you are not a member of a certified class.

Id. § 13(b). The provision states that the customer has the right to opt out of arbitration by notifying the Defendant's legal department in writing within thirty days of receipt of the Agreement. *Id.* § 13(d). [2] The provision further states that the customer waives his or her right to arbitrate or litigate claims against the Defendant in a collective action. *Id.* § 13(h). Finally, the provision contains a survival clause stating that the parties' agreement to arbitrate survives termination of the Agreement. *Id.* § 13(k).

The Defendant contends that the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, governs the arbitration provision contained within the 2016 Service Agreement and that the Plaintiff's FCRA claim falls within its broad scope. The Defendant argues that the Court should therefore stay these proceedings pending arbitration of the Plaintiff's FCRA claim. *See* 9 U.S.C. §§ 3-4. The Federal Arbitration Act covers any arbitration provision that is (1) in writing and (2) is part of a contract "evidencing a transaction involving [interstate] commerce." 9 U.S.C. § 2; *see also Klay v. All Defendants*, 389 F.3d 1191, 1200 n.9 (11th Cir. 2004). The Plaintiff does not dispute that the arbitration

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[2] The customer has the option of notifying the legal department by mail or through an online portal accessible through the Defendant's website. *Id.* Ms. Patel testifies, and the Plaintiff does not contest, that the Plaintiff never notified that the Defendant that he was opting out of the arbitration provision contained within the 2016 Service Agreement. Patel Decl. ¶¶ 10-12.

provision is in writing and that, by contracting for telecommunications services, the parties engaged in a transaction involving interstate commerce. Therefore, the Court will consider and apply precedent construing the Federal Arbitration Act in adjudicating the Defendant's motion.

II. Legal Standard

The Federal Arbitration Act "embodies a liberal federal policy favoring arbitration agreements." *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1367 (11th Cir. 2005) (citation and punctuation omitted). Section 2 of the Federal Arbitration Act provides in relevant part that "[a] written provision in any maritime transaction or 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. When considering a motion to compel arbitration pursuant to the Federal Arbitration Act, the Court must first "determine whether the parties agreed to arbitrate that dispute." *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 626 (1985). If they have, the Court must then determine whether the arbitration clause is valid. It may be unenforceable on grounds that would permit the revocation of any contract, such as fraud or unconscionability. *See id.*, at 627 ("[C]ourts should remain attuned to well-supported claims that the agreement to arbitrate resulted from the sort of fraud or overwhelming economic power that would provide grounds

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