

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 21 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

SHAWN ESPARZA, on behalf of herself,  
and all others similarly situated,

Plaintiff-Appellee,

v.

SMARTPAY LEASING, INC.,

Defendant-Appellant.

No. 17-17175

D.C. No. 3:17-cv-03421-WHA

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
William Alsup, District Judge, Presiding

Submitted March 15, 2019\*\*  
San Francisco, California

Before: W. FLETCHER, WATFORD, and HURWITZ, Circuit Judges.

This is an action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, filed by Shawn Esparza against SmartPay Leasing, Inc. SmartPay appeals from the district court’s denial of a motion to compel arbitration. We have

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction over this interlocutory appeal under 9 U.S.C. § 16(a)(1)(C), and affirm.

The district court correctly held the TCPA claims in this case are not subject to the arbitration clause in the cell-phone lease agreement between Esparza and SmartPay. The arbitration clause applies only to claims “arising from or in any way related to” the lease agreement. Esparza’s claims do not arise from or relate to the lease. *See United States ex rel. Welch v. My Left Foot Children’s Therapy, LLC*, 871 F.3d 791, 798–99 (9th Cir. 2017). At most, her claims involve a website participation agreement which authorized SmartPay to send certain text messages to Esparza. The participation agreement does not have an arbitration clause. *See Samson v. NAMA Holdings, LLC*, 637 F.3d 915, 923 (9th Cir. 2011) (“[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” (internal quotation marks and citation omitted)).

**AFFIRMED.**