

Court Upholds Mass Class Action Opt-Out Permitting Individual Arbitrations

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No company would relish the prospect of defending against a class action lawsuit and thousands of related individual arbitrations at the same time. But following a recent federal court ruling, Google (and its parent company, Alphabet) find themselves in exactly that position. In February 2025, the United States District Court for the Northern District of California rejected Google's efforts to invalidate the mass opt-out of over 69,000 individuals from a class action in order to pursue individual arbitrations. The case, *In re Google Assistant Privacy Litigation* (No. 5:19-cv-04286), centers on allegations that Google Assistant-enabled devices recorded users' private conversations, and Google used the resulting data, without the device users' consent. The court's ruling has far-reaching implications for arbitration and class action strategies.

Case Overview

The litigation stems from claims that Google Assistant devices unintentionally recorded private conversations through what plaintiffs refer to as "False Accepts." These unintended recordings, plaintiffs argue, resulted in unauthorized data collection and privacy violations. Google, on the other hand, denies the allegations, maintaining that any such recordings were either user-triggered or incidental, and were handled in line with its privacy policy.

In December 2023, the court certified a class of U.S. consumers, covering individuals who purchased Google Assistant-enabled devices between May 18, 2016, and December 16, 2022. Class members were notified of their rights, including the option to opt out if they preferred to pursue claims independently.

Dispute Over Mass Opt-Out

Following the certification, 69,507 individuals submitted an opt-out request through the law firm Labaton Keller Sucharow LLP, signaling their intent to leave the class and pursue individual arbitration claims against Google. Google contested the mass opt-out, arguing it failed to comply with procedural standards and deprived individuals of making fully informed, independent decisions.

Google's Challenges

Google's opposition to the opt-out relied on two key arguments:

- **Due Process Concerns** – The company claimed the mass opt-out undermined the individual claimants' ability to make fully-informed decisions for themselves about whether to opt out, as it was orchestrated by a law firm on behalf of the participants.
- **Procedural Invalidity**– Google argued that the lack of individual signatures rendered the opt-out submission invalid under the class action's notice requirements.

The Court's Decision

The court ruled against Google, upholding the validity of the opt-out request. The court determined that:

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- **Individual Authorization Was Clear** – Direct consent from the involved individuals was established by the record evidence, making the opt-out legitimate.
- **Procedural Irregularities Were Insufficient Grounds** – The court held that technical deficiencies, such as the lack of individual signatures, did not justify overriding the participants' expressed intent.

Broader Implications

This ruling emphasizes that courts may validate mass opt-outs if evidence of individual consent is provided, even if procedural formalities are not strictly followed. The decision serves as a warning to defendants in class action cases that mass opt-outs, often aimed at transitioning disputes into individual arbitrations, may be challenging to overturn.

For Google, the ruling could result in navigating thousands of individual arbitration claims instead of a consolidated class action. Importantly, the language of the potentially applicable Google arbitration agreements expressly excludes consolidation of individual arbitrations. As we have explained **in another e-alert**, under a recent Ninth Circuit decision, that likely means Google cannot take advantage of consolidating those opt-out arbitrations and therefore may face significant arbitration costs. More broadly, the case represents a growing recognition of mass opt-outs, potentially influencing future strategies in litigation involving major corporations.

The authors are members of Miller Canfield's International Dispute Resolution Group. If you have questions regarding the implications of this case to your business, please contact the authors or your Miller Canfield attorney.