



# BUSINESS & FACILITIES

News and Legal Developments in Business,  
Contracts, Construction and Property

## **When A Company Modifies A Contract, It Must Provide Notice To All Parties And Allow The Parties To Consent To The New Term**

In 2014, Rachel Stover purchased Experian’s credit score subscription service. The terms of the service required Stover to arbitrate all claims arising out of the subscription service and contained a change-of-terms provision stating that, each time Stover accessed Experian’s website, she consented to “the then current terms” (i.e. new or different terms added or revised after 2014). Stover cancelled her Experian subscription one month after purchase and later claimed that Experian fraudulently marketed this credit score as information that lenders review when determining consumers’ creditworthiness.

Stover accessed the Experian website again in 2018, one day before she filed her complaint. At that time, the arbitration provision had changed to exclude certain disputes from arbitration. Stover argued that her dispute was not subject to arbitration pursuant to the 2018 terms. Experian disagreed and argued that a mere visit to the website after the parties terminated their business relationship was insufficient to activate a change in the original terms because Stover had no opportunity to review the new terms and conditions before visiting the website. Experian moved in the trial court to compel arbitration of Stover’s claims. The trial court granted Experian’s motion but held that the 2018 terms applied because of the plain language of the 2014 terms. Stover appealed.

The Ninth Circuit Court of Appeal affirmed the trial court ruling, but held that Experian’s 2014 terms applied because Stover did not receive notice of the 2018 version of the terms and conditions. The Court of Appeal held that ruling otherwise would undermine the contract principle requiring mutual assent. The Court of Appeal reasoned that in order to bind parties to new terms pursuant to a change-of-terms provision, the parties must have express notice and an opportunity to review those changes. Thus, the 2018 changed terms did not apply because Stover did not have notice of them and Experian could compel arbitration of her claims under the 2014 arbitration provision.

*Stover v. Experian Holdings, Inc.* (2020) 978 F.3d 1082.

**NOTE:**

*If a company modifies contract terms and conditions, even with an express change-of-terms clause, it must provide notice to all parties in a manner that allows the parties to expressly consent to the new or changed terms. LCW can help companies navigate the terms of any contract and evaluate appropriate and effective notification strategies*

This article was written by, Associate [Monica M. Espejo](#) from the Sacramento office of Liebert Cassidy Whitmore. Monica is a member of the firm's Business and Facilities practice group, which assists public agency clients in matters including construction, contracts, purchase agreements and real property. Monica can be reached at (916) 584-7021 or at [mespejo@lcwlegal.com](mailto:mespejo@lcwlegal.com). For more information regarding the update above or about our firm please visit our website at <http://www.lcwlegal.com>, or contact one of our offices below.

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6033 W. Century Blvd.  
5<sup>th</sup> Floor  
Los Angeles, CA 90045  
(310) 981-2000

135 Main Street  
7<sup>th</sup> Floor  
San Francisco, CA 94105  
(415) 512-3000

5250 North Palm Ave.  
Suite 310  
Fresno, CA 93704  
(559) 256-7800

401 West "A" Street,  
Suite 1675  
San Diego, CA 92101  
(619) 481-5900

400 Capitol Mall  
Suite 1260  
Sacramento, CA 95814  
(916) 584-7000