

January 9, 2023

Meredith Kopit Levien
Chief Executive Officer
New York Times
620 8th Avenue
New York, NY 10018

Via Electronic Mail

Re: Inclusion of Arbitration Clause and Class Action Waiver in Terms of Service

Ms. Levien:

We write on behalf of Public Citizen, a non-profit membership organization with more than 500,000 members and supporters nationwide that works to protect consumers and ensure greater access to justice for all people by leading the charge against the use of forced arbitration clauses in consumer contracts.¹ We are deeply concerned by The New York Times' recent addition of forced arbitration, waiver of right to trial by jury, and waiver of class action clauses (Forced Arbitration Clause) to its terms of service.²

As you are aware, such Forced Arbitration Clauses deny your subscribers access to the courts and require them to participate in a biased and unregulated "judicial" process that decreases the likelihood that they will seek legal redress when warranted.³ We request that the NY Times immediately strike these clauses from the newspaper's terms of service.

This change in the NY Times' terms of service is deeply troubling. With more than 10 million paid subscribers, the NY Times has achieved unquestionable success developing a successful business model in the digital age, with ambitions to reach "every English-speaking person seeking to understand and engage with the world."⁴ Given the public service the NY Times provides for an enormous national and international paid

¹ See, Public Citizen, Coalition Letter in Support of H.R. 963, the Forced Arbitration Injustice Repeal (FAIR) Act (Mar. 15, 2022), available at <https://www.citizen.org/wp-content/uploads/FAIR-Act-House-Letter-2022F.pdf>; see also, Public Citizen, Coalition Letter to Amtrak Over Forced Arbitration (Dec. 10, 2019), Available at, https://www.citizen.org/wp-content/uploads/Coalition-letter-re-Amtrak-arb-clause_-12-10-19.pdf.

² The New York Times, Terms of Service, available at https://help.nytimes.com/hc/en-us/articles/115014893428-Terms-of-service?launch_id=18239245#12.

³ Jessica Silver-Greenberg, Robert Gebeloff, *Arbitration Everywhere: Stacking the Deck of Justice*, THE NEW YORK TIMES (Oct., 31, 2015).

⁴ The New York Times Company, Our Strategy, available at <https://www.nytc.com/press/our-strategy/>.

subscription membership, your inclusion of a Forced Arbitration Clause to your terms of service is deeply concerning.⁵

Your own investigative reporting has described the utilization of forced arbitration clauses as “a way to circumvent the courts and bar people from joining together in class-action lawsuits.”⁶ You have further reported that arbitration venues “bear[] little resemblance to court”⁷ in that they have instead been utilized “to create an alternate system of justice”⁸ by virtually privatizing the justice system. And yet, in an ironic twist, your updated terms of service characterize arbitrators as “neutral.”⁹

Against the backdrop of the holiday season, the NY Times rolled out its updated terms of service in a matter as “swift and virtually unnoticed” as your reporting has described the rollouts of updated terms at other corporations.¹⁰ Indeed, December 19, 2022, was a silent night at the NY Times’ legal offices. While your tens of millions of subscribers slept, with the click of a mouse, they lost their fundamental right to their day in court to address any disputes that might arise with the NY Times.¹¹

Your coverage of the ubiquitous nature of arbitration clauses in day-to-day activities laments that these clauses now play a role in all manners of quotidian life—from private schooling, electric car sales, car leases, cellular phone sales, credit card agreements, nursing home care, and funeral homes agreements, to home renovations and medical service agreements.¹² You have now added subscribing to the NY Times to the list.

When forced arbitration clauses are combined with class action bans, judges, arbitrators, consumers, and advocates cannot assess or remedy the full scope of wrongdoing that affects multiple victims. We need not remind you of the damaging role that lack of transparency plays in harming the most vulnerable members of our communities.¹³

Based on your own reporting, one would expect the NY Times to reject the use of arbitration clauses and class action waivers. Instead, you have surreptitiously incorporated them into your terms of service—a true disservice to your subscribers.

⁵ *See, Id.*

⁶ Silver-Greenberg, *supra*, note 2.

⁷ Jessica Silver-Greenberg, Michael Corkery, *In Arbitration, a ‘Privatization of the Justice System*, THE NEW YORK TIMES (Nov., 1, 2015).

⁸ *Id.*

⁹ The New York Times, *supra*, note 1.

¹⁰ *See*, Silver-Greenberg, *supra*, note 6.

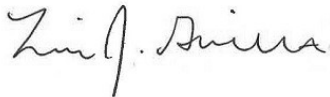
¹¹ *See, supra*, note 1. The NY Times’ terms of service page was updated on December 19, 2022 however, your subscribers were notified of these changes via electronic message seven days later on December 26, 2020.

¹² *See*, Silver-Greenberg, *supra*, note 6.; Michael Corkery, Jessica Silver-Greenberg, *In Religious Arbitration, Scripture Is the Rule of Law*, THE NEW YORK TIMES (Nov., 2, 2015). *See also*, Jessica Naudziunas, Poh Si Teng, *Beware the Fine Print*, THE NEW YORK TIMES (Nov., 1, 2015), and Jack Ewing, *Tesla’s Direct Sales Model Helps It Thwart Customer Lawsuits*, THE NEW YORK TIMES (Dec. 19, 2022).

¹³ *See*, Paula Span, *Arbitration Has Come to Senior Living. You don’t have to sign up.*, THE NEW YORK TIMES (Sept. 24, 2022).

It is not too late for you to reverse course and to live up to your stated values, laudable reporting on this issue, stated mission to make each of your readers' lives richer and more fulfilling, and all of society stronger *and more just*.¹⁴ We request that you immediately strike the Forced Arbitration Clause from your terms of service because doing so is the fair and ethical thing to do. Please contact Martha Perez-Pedemonti at mperezpedemonti@citizen.org or (203) 512-8244 with any questions.

Sincerely,



Lisa Gilbert
Executive Vice President
Public Citizen
Congress Watch Division



Martha Perez-Pedemonti
Counsel for Civil Justice & Consumer Rights
Public Citizen
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¹⁴ NY Times, Mission and Values, *available at*, <https://www.nytc.com/company/>.