

DATE: [Insert Date]

TO: [Client Name/Executive Team]

FROM: [Law Firm/Legal Counsel Name]

RE: Legal Advisory: Enforceability of Class Action Waivers in E-Commerce Transactions

1. PURPOSE

This memorandum evaluates the enforceability of class action waiver provisions within your e-commerce platform's Terms of Service and provides recommendations to mitigate litigation risk.

2. CURRENT LEGAL STANDING

Under the Federal Arbitration Act (FAA) and relevant case law (e.g., *AT&T Mobility LLC v. Concepcion*), class action waivers are generally enforceable when coupled with a valid arbitration agreement. However, enforceability depends heavily on "contract formation"-specifically, whether the consumer provided informed consent.

3. ENFORCEABILITY DETERMINANTS

- **Notice Type:** "Clickwrap" agreements (requiring a checkbox) are highly favored by courts over "Browsewrap" agreements (links at the bottom of the page).
- **Conspicuousness:** Waivers must be prominent. Using bold, capitalized, or boxed text is necessary to ensure the provision is not considered "hidden."
- **Unconscionability:** The terms must not be overly one-sided. Including a "small claims court" exception or a 30-day opt-out provision increases the likelihood of enforcement.

4. RECENT CHALLENGES: "MASS ARBITRATION"

While waivers prevent class actions in court, plaintiffs' firms now utilize "Mass Arbitration," filing thousands of individual claims simultaneously to trigger significant administrative fees. We recommend reviewing your indemnity and fee-shifting clauses to address this specific trend.

5. RECOMMENDATIONS

- Implement a mandatory "I Accept" checkbox at the point of purchase or account creation.
- Hyperlink the Terms of Service in a high-contrast color.
- Ensure the Class Action Waiver is located near the top of the agreement or clearly labeled in the Table of Contents.
- Retain version-controlled logs of which version of the terms a customer accepted and when.

6. CONCLUSION

To maintain a robust defense against representative litigation, your digital interface must prioritize clear notice and affirmative consent. Please contact us to review your specific checkout flow for compliance.

Sincerely,

[Signature]

[Printed Name]

[Title]