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The stand-alone, small link to the terms and conditions page of defendant’s website did not suffice to waive the plaintiff’s constitutional rights.

Childs v. Fitness Int’l, LLC et al (U.S. District Court, EDPA, May 23, 2023)

The plaintiff signed a membership agreement that did not contain an arbitration provision. The defendant gym’s website contained a small link to its Terms and Conditions, which contained an arbitration clause. However, there were no facts to indicate that the plaintiff agreed to the Terms and Conditions or a confirmation that she even read the Terms and Conditions when she created her online profile using the gym’s app or website. Therefore, the court denied the defendant’s motion to compel arbitration for this claim because it found no explicit agreement to arbitrate.

While the court acknowledged that some websites contain “browsewrap” agreements that may bind the user to terms and conditions

through continual use of the website, the court commented that it often turns on whether the terms are reasonably conspicuous and not hidden in obscure places on the website. The stand-alone, small link to Terms and Conditions in this case did not suffice to waive the plaintiff’s constitutional rights.



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