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## The Negative Effects of Arbitration Clauses in Meal Delivery Service Subscriptions

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# THE NEGATIVE EFFECTS OF ARBITRATION CLAUSES IN MEAL DELIVERY SERVICE SUBSCRIPTIONS

*Amanda Pasternak*

This past June, Daily Harvest, a vegan meal delivery service that sells soups, smoothies, and more<sup>1</sup> recalled one of its products, French Lentil + Leek Crumbles, after hundreds of consumer reports of gastrointestinal illness, potential liver function issues, and other adverse reactions.<sup>2</sup> According to the Food and Drug Administration (FDA), from April 28 to June 17, 2022, around 28,000 units of the recalled product were distributed to consumers throughout the United States via online sales, direct delivery, and retail sales.<sup>3</sup> Samples were also given to a small number of consumers.<sup>4</sup> Daily Harvest received around 470 reports of illness, which the FDA took immediate steps to investigate.<sup>5</sup> Consumers on social media have reported experiencing nausea, fevers, vomiting, and headaches.<sup>6</sup> Some have even had to undergo surgery to remove their gallbladders.<sup>7</sup>

Although a lawsuit has been filed on behalf of various victims, including Carol Ready, an Oklahoma State University professor, they find themselves at an extreme hurdle due to Daily

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<sup>1</sup> Madison Yauger, *I Tried Daily Harvest for 2 Weeks—Here’s What I Learned About This Plant-Based Food Company*, HEALTH (Dec. 16, 2021), <https://www.health.com/food/daily-harvest-review> [<https://perma.cc/5F2G-57XC>].

<sup>2</sup> Rachel Drori, *Updates on our Voluntary Recall of French Lentil + Leek Crumbles*, DAILY HARVEST (July 19, 2022, 3:45 PM), <https://www.daily-harvest.com/content/french-lentil-leek-crumbles-advisory#> [<https://perma.cc/JEH3-9XZA>].

<sup>3</sup> *Daily Harvest Issues Voluntary Recall of French Lentil + Leek Crumbles Due to Potential Health Risk*, FDA (June 23, 2022), <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts/daily-harvest-issues-voluntary-recall-french-lentil-leek-crumbles-due-potential-health-risk#:~:text=From%20April%2028%20to%20June,store%20in%20Los%20Angeles%2C%20CA.> [<https://perma.cc/Y3GB-4H82>].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Janet Nguyen, *Daily Harvest Recall Raises Concerns About the Need for More Food Regulation*, MARKETPLACE (June 30, 2022), <https://www.marketplace.org/2022/06/30/daily-harvest-recall-raises-concerns-about-the-need-for-more-food-regulation/> [<https://perma.cc/32ZD-QX32>].

<sup>7</sup> Scott Medintz, *You Can’t Take Daily Harvest to Court if its Food Made You Sick*, CONSUMER REP. (July 22, 2022), <https://www.consumerreports.org/mandatory-binding-arbitration/meal-delivery-services-and-mandatory-binding-arbitration-a1799836056/> [<https://perma.cc/5HX7-6BEE>].

Harvest’s arbitration clause present in their terms of use.<sup>8</sup> On July 7, lawyers for the company moved to halt Ready’s lawsuit and send the case to arbitration, pursuant to the arbitration clause that Ready agreed to upon subscription to the service.<sup>9</sup> Although Ready says she “had no idea such a thing even existed,” Daily Harvest will likely prevail.<sup>10</sup> This is because courts have typically been reluctant to let consumers out of arbitration agreements, even when the terms are contained in documents or manuals that few consumers actually read.<sup>11</sup>

This has major repercussions for consumers and public health. Although meal-kit services have grown in popularity in recent years, such services are considered retail food establishments, meaning that they are exempt from food-facility registration requirements.<sup>12</sup> This means that regulation falls to state and local officials, with the FDA being only minorly involved.<sup>13</sup> Policy experts believe that such services are not well-regulated and would like to see the FDA become more involved in their regulation.<sup>14</sup> According to Jaydee Hanson, the policy director at the Center for Food Safety, “a lot of vegetable-based products [are having] more and more problems. Some of it gets down to where the product is being raised.”<sup>15</sup> For instance, some vegetables may have been raised near animal production operations, which has the potential to leave runoff in the water supply.<sup>16</sup>

The health of consumers and the general public should be a priority for companies and the government. Allowing companies like Daily Harvest to get away with halting lawsuits due to arbitration clauses (which many consumers aren’t even aware of) breaks trust with consumers

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Nguyen, *supra* note 6.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

and prevents injured plaintiffs from having an opportunity to be heard in court. For instance, some Daily Harvest customers have expressed their frustration with how the meal delivery service has handled reports of adverse reactions, stating that they no longer trust the company.<sup>17</sup> The confidentiality of arbitration prevents the public from obtaining key information about the cause of the outbreaks and the circumstances surrounding them, information that they might want to know in order to be more educated on and aware of such issues.<sup>18</sup>

According to Paul Bland, the executive director of the nonprofit legal advocacy organization “Public Justice”, arbitration is “particularly troubling in a food-safety setting...if companies are making mistakes, they can literally kill people.”<sup>19</sup> Allowing plaintiffs to litigate meal delivery service cases despite the presence of an arbitration clause would provide injured plaintiffs with the opportunity to seek accountability and heal,<sup>20</sup> as well as encourage these companies to be more careful in the future.

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<sup>17</sup> *Id.*

<sup>18</sup> Medintz, *supra* note 7 (explaining that finding out the precise cause of an outbreak is the kind of information that is only obtained by navigating the U.S. Court system, not via arbitration).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (stating that Carol Ready filed her lawsuit because she wanted accountability and to heal, both physically and emotionally).