

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOHN MANGANO and MICHAEL
LEIFMAN, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

BLOCKFI, BLOCKFI, INC.,
BLOCKFI TRADING, LLC,
BLOCKFI LENDING, LLC,

Defendants.

Case No. 2:22-cv-01112

Hon. Kevin McNulty, U.S.D.J.

Hon. Cathy L. Waldor, U.S.M.J.

Motion Day: December 5, 2022

Oral Argument Requested

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO DISMISS THE CLASS ACTION AMENDED COMPLAINT
OR IN THE ALTERNATIVE TO STRIKE THE CLASS ALLEGATIONS**

Judith H. Germano (N.J. Atty. #017172010)
Gwen M. Schoenfeld (N.J. Atty. #025491990)
GERMANO LAW LLC
460 Bloomfield Avenue, Suite 200
Montclair, New Jersey 07042
jgermano@germanolaw.com
gwens@germanolaw.com
(201) 247-7970

Jeffrey T. Scott (N.J. Atty. #051881996)
Julia A. Malkina (admitted *pro hac vice*)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
scottj@sullcrom.com
malkinaj@sullcrom.com
(212) 558-4000

September 12, 2022

*Attorneys for BlockFi Inc., BlockFi Lending
LLC, and BlockFi Trading LLC*

TABLE OF CONTENTS

	<i>Page</i>
PRELIMINARY STATEMENT	1
BACKGROUND	5
A. The Parties	5
B. The BIA	5
C. The SEC and State Resolutions.....	8
D. Plaintiffs’ Claims.....	8
ARGUMENT.....	10
I. The Amended Complaint Must Be Dismissed Because Plaintiffs Lack Article III Standing.....	11
A. Plaintiffs fail to plead an injury in fact.....	12
B. Plaintiffs fail to plead causation	17
II. The Amended Complaint Must Be Dismissed Because Plaintiffs Do Not State a Claim	19
A. Plaintiffs’ federal securities claims suffer from a myriad of defects.....	19
B. The Amended Complaint’s grab bag of state common law, registration, and consumer claims cannot save it from dismissal	29
III. Plaintiffs’ Securities Act and Blue Sky Claims Must Be Dismissed Because Plaintiffs Do Not Satisfy the Tender Requirement.....	36
IV. Even if the Amended Complaint States a Claim (It Does Not), the Class Allegations Must Be Stricken Because Plaintiffs Waived Their Right to Bring Class Claims.....	37
CONCLUSION.....	40

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Abel Holding Co. v. Am. Dist. Tel. Co.</i> , 350 A.2d 292 (N.J. Super. Ct. 1975)	36
<i>In re Adams Golf, Inc. Sec. Litig.</i> , 381 F.3d 267 (3d Cir. 2004)	21
<i>Adv. Acupuncture Clinic, Inc. v. Allstate Ins. Co.</i> , 2008 WL 4056244 (D.N.J. Aug. 26, 2008)	38
<i>Affiliated Ute v. United States</i> , 406 U.S. 128 (1972).....	27
<i>In re Am. Med. Collection Agency, Inc. Sec. Litig.</i> , 2021 WL 5937742 (D.N.J. Dec. 16, 2021).....	14
<i>Anisfeld v. Cantor Fitzgerald & Co.</i> , 631 F. Supp. 1461 (S.D.N.Y. 1986)	36
<i>In re AOL Time Warner, Inc. Sec. & ERISA Litig.</i> , 381 F. Supp. 2d 192 (S.D.N.Y. 2004)	16, 37
<i>Arafa v. Health Express Corp.</i> , 243 N.J. 147 (2020)	39
<i>Argabright v. Rheem Mfg. Co.</i> , 201 F. Supp. 3d 578 (D.N.J. 2016).....	34
<i>Armstrong v. Exceptional Child Ctr., Inc.</i> , 575 U.S. 320 (2015).....	27
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	11
<i>Atalese v. U.S. Legal Servs. Grp., LP</i> , 219 N.J. 430 (2014)	39
<i>Ato Ram, II, Ltd. v. SMC Multimedia Corp.</i> , 2004 WL 744792 (S.D.N.Y. Apr. 7, 2004)	27, 28

Ballay v. Legg Mason Wood Walker, Inc.,
925 F.2d 682 (3d Cir. 1991)21

Ballentine v. United States,
486 F.3d 806 (3d Cir. 2007)11

Baraka v. McGreevey,
481 F.3d 187 (3d Cir. 2007)11

Basic Inc. v. Levinson,
485 U.S. 224 (1988).....27

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007).....10, 11

Belmont v. MB Inv. Partners, Inc.,
708 F.3d 470 (3d Cir. 2013)26

Boluka Garment Co. v. Canaan, Inc.,
547 F. Supp. 3d 439 (S.D.N.Y. 2021)4

Bosland v. Warnock Dodge, Inc.,
933 A.2d 942 (N.J. App. Div. 2007)34, 35

In re Broderbund/Learning Co. Sec. Litig.,
294 F.3d 1201 (9th Cir. 2002)3, 20

Brokers’ Servs. Mktg. Grp. v. Cellco P’ship,
2012 WL 1048423 (D.N.J. Mar. 28, 2012)39

Browne v. Nat’l Coll. Student Loan Tr.,
2021 WL 6062306 (D.N.J. Dec. 22, 2021).....11, 17

Buck v. Hampton Twp. Sch. Dist.,
452 F.3d 256 (3d Cir. 2006)6

Carmack v. Amaya Inc.,
258 F. Supp. 3d 454 (D.N.J. 2017).....28

City of Pontiac Ret. Sys. v. UBS AG,
752 F.3d 173 (2d Cir. 2014)22

Clapper v. Amnesty Int’l USA,
568 U.S. 398 (2013).....12

Clark v. McDonald’s Corp.,
213 F.R.D. 198 (D.N.J. 2003).....5

D’Agostino v. Appliances Buy Phone, Inc.,
2015 WL 10434721 (N.J. App. Div. Mar. 8, 2016)36

DaimlerChrysler Corp. v. Cuno,
547 U.S. 332 (2006).....12

Davis v. Michael Anthony Auto Sales Inc.,
2017 WL 1034444 (N.J. App. Div. Mar. 17, 2017)39

In re Dreyfus Aggressive Growth Mut. Fund Litig.,
2000 WL 1357509 (S.D.N.Y. Sept. 20, 2000)23

Edmonson v. Lincoln Nat’l Life Ins. Co.,
725 F.3d 406 (3d Cir. 2013)18

Erica P. John Fund, Inc. v. Halliburton Co.,
563 U.S. 804 (2011).....27

Estrada v. J&J,
2017 WL 2999026 (D.N.J. July 14, 2017)14

Finkelman v. Nat’l Football League,
877 F.3d 504 (3d Cir. 2017)3

Fischer v. Governor of N.J.,
842 F. App’x 741 (3d Cir. 2021)18

Fogel v. Vega,
759 F. App’x 18 (2d Cir. 2018)22

G.A. Thompson & Co. v. Partridge,
636 F.2d 945 (5th Cir. 1981)36, 37

Goldfarb v. Solimine,
245 A.3d 570 (N.J. 2021)29

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.