

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIK CROWL, KEITH WADE, ERIC O'REILLY, ALTON PARKER, STEVEN HEY, NATHAN COHEN, SAMUEL GLICK, FARSHID SEPASSI, ROBERT NEELY, ANTHONY WATSON, TYLER HANDLEY, QWNTM CAPITAL LIMITED LIABILITY LIMITED PARTNERSHIP, DAVID WARD, ANDRE PAEZ, and SALEM ALOBAID,

Plaintiffs,

v.

STRONGBLOCK, DAVID MOSS, BRIAN ABRAMSON, COREY LEDERER, KONSTANTIN SHKUT, AND JOHN DOE DEFENDANTS 1-5,

Defendants.

Case No. 1:22-cv-7313-VSB

JURY TRIAL DEMANDED

PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS AND COMPEL ARBITRATION

Payton H. Poliakoff
GOVERNMENT LAW GROUP, PLLC
Museum Plaza Building
200 S Andrews Avenue, Suite 601
Fort Lauderdale, Florida 33301
Tel.: (954) 909-0580
ppoliakoff@govlawgroup.com

Daniel B. Ravicher
ZEISLER PLLC
45 Rockefeller Plaza, 20th Floor
New York, NY 10111
Tel.: (212) 671-1921
Fax: (888) 229-1921
dan@zeisler-law.com

Counsel for Plaintiffs

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
BACKGROUND	1
A. The Strongblock Node Purchase Page.....	1
B. Strongblock, Inc.....	4
ARGUMENT	5
I. Plaintiffs Did Not Have Notice of or Assent to Any Agreement to Arbitrate.....	5
A. Plaintiffs Did Not Have Notice of the Terms of Service	5
B. Defendants Have Failed to Show Plaintiffs Assented to the Terms of Service.	8
II. The Agreement to Arbitrate Is Unenforceable Because It Prevents Effective Vindication of Plaintiffs' U.S. Securities Act Claims	10
CONCLUSION.....	12

TABLE OF AUTHORITIES

<i>Am. Exp. Co. v Italian Colors Restaurant</i>	10
570 U.S. 228 (2013).....	10
<i>Berkson v. Gogo, LLC</i>	6, 9
97 F. Supp. 3d 359 (E.D.N.Y 2015)	6, 9
<i>Cap Gemini Ernst & Young, U.S., L.L.C. v. Nackel</i>	5
346 F.3d. 360 (2d Cir. 2003).....	5
<i>Celltrace Commc 'ns Ltd. v. Acacia Research Corp.</i>	5
15-CV-4746 (AJN), 2016 WL 3407848 (S.D.N.Y. June 16, 2016)	5
<i>Celltrace Commc 'ns Ltd v. Acacia Research Corp.</i>	5
689 F. App'x 6 (2d Cir. 2017)	5
<i>Duran v. J. Hass Group, L.L.C.</i>	5
531 F. App'x. 146 (2d. Cir. 2013)	5
<i>Eisen v. Venulum Ltd.</i>	11, 12
244 F. Supp. 3d 324 (W.D.N.Y. 2017).....	11, 12
<i>Hines v. Overstock.com, Inc.</i>	6
380 F. App'x. 22 (2d Cir. 2010)	6
<i>Meyer v. Uber Techs., Inc.</i>	7, 10
868 F.3d 66 (2d Cir. 2017).....	7, 10
<i>Nguyen v. Barnes & Noble, Inc.</i>	6
763 F.3d 1171 (9th Cir. 2014)	6
<i>Nicosia v. Amazon.com, Inc.</i>	5
834 F.3d 220 (2d Cir. 2016).....	5
<i>Plazza v. AIRBNB, INC.</i>	7, 8
289 F. Supp. 3d 537 (S.D.N.Y. 2018).....	7, 8
<i>Ragone v. Atl. Video at Manhattan Ctr.</i>	5
595 F.3d 115 (2d Cir. 2010).....	5
<i>Rent-A-Center, West, Inc., v. Jackson</i>	5
561 U.S. 63 (2010).....	5
<i>Schnabel v. Trilegiant Corp.</i>	8
697 F.3d 110 (2d Cir. 2012).....	8

<i>Sgouros v. TransUnion Corp.,</i> No. 14-CV-1850, 2015 WL 507584 (N.D. Ill. Feb. 5, 2015)	6
<i>Specht v. Netscape Commc'ns Corp.</i> 150 F. Supp. 2d 585 (S.D.N.Y. 2001).....	10
<i>Starke v. SquareTrade, Inc.</i> 913 F.3d 279 (2d Cir. 2019).....	6
<u>Other Authorities</u>	
9 U.S.C. §4 (2022).....	5

INTRODUCTION

Defendants' Motion to Dismiss and Compel Arbitration should be denied because Plaintiffs neither had notice of nor assented to any agreement to arbitrate. Regarding notice, the purported agreement to arbitrate is buried in the middle of a Terms of Service that was never presented to Plaintiffs but was instead merely linked to via a dark blue link at the very bottom of a long list of other unrelated details on a black background on a node purchase page. Regarding assent, contrary to Defendant Moss' declaration, the node purchase page changed over time and for a relevant period did not require node purchasers to agree to the Terms of Service, but rather merely read them. Defendants admit they do not collect any personal information from purchasers of nodes and, as a result, they cannot directly show that any Plaintiff agreed to arbitrate disputes.

Regardless, the January 16, 2021, Terms of Service agreement to arbitrate, which applies to Plaintiffs given they all purchased nodes after that date, is unenforceable because the choice of law clause in the Terms of Service states "the internal laws of the Cayman Islands without regard to choice-of-law rules" apply and application of that law would prevent effective vindication of Plaintiffs' U.S. Securities Act claims given they are not recognized by Cayman Islands law.

BACKGROUND

A. The Strongblock Node Purchase Page

Plaintiffs purchased Strongblock nodes from Defendants by visiting the Strongblock website App located at <https://app.strongblock.com/>, connecting their electronic cryptocurrency wallet, and clicking on the "Create Node" button. Doing this displayed to Plaintiffs a "Create Your Node" page, which Plaintiffs will refer to as the "Node Purchase" page, as it is the page from which the purchase of nodes is completed.

In his declaration supporting Defendants' motion, Mr. Moss provided a January 1, 2021, screenshot of the Node Purchase page. Doc. 24-1, p. 4. Relevant here are the facts that the page

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