Smith v. Built USA LLC

United States District Court for the Middle District of Florida, Tampa Division

December 1, 2025, Decided; December 1, 2025, Filed

Case No: 8:25-cv-01288-MSS-LSG

Reporter
2025 U.S. Dist. LEXIS 233651 *; 2025 LX 576117

ELLIOT SMITH, individually and behalf of all others similarly situated, Plaintiff, v. BUILT USA LLC d/b/a REDLINE SOCIETY, Defendant.

Counsel: **[*1]** For Elliot Smith, individually and on behalf of all others similarly situated, Plaintiff: Manuel Santiago Hiraldo, LEAD ATTORNEY, Hiraldo P.A., Ft. Lauderdale, FL USA; Michael Eisenband, Eisenband Law, P.A., Fort Lauderdale, FL USA.

Judges: MARY S. SCRIVEN, UNITED STATES DISTRICT JUDGE.

Opinion by: MARY S. SCRIVEN

Opinion

ORDER

THIS CAUSE comes before the Court for consideration of Defendant Built USA LLC d/b/a Redline Society's ("Defendant") Motion to Compel Arbitration, (Dkt. 15), Plaintiff Elliot Smith's ("Plaintiff") response in opposition thereto, (Dkt. 16), and Plaintiff's Notice of Supplemental Authority. (Dkt. 26) In the Motion, Defendant asserts this action violates an enforceable arbitration provision that requires Plaintiff to arbitrate the claims in the Amended Complaint. Upon consideration of all relevant filings, case law, and being otherwise fully advised, Defendant's Motion is **DENIED**.

I. BACKGROUND

Plaintiff Elliot Smith initiated this action against Defendant Redline Society, LLC on May 21, 2025 for violations of the *Telephone Consumer Protection Act (the "TCPA")* and the *Florida Telephone Solicitation Act (the "FTSA"), Fla. Stat. § 501.059*. (Dkt. 1) Plaintiff filed the Amended Complaint on June 27, 2025. (Dkt. 13) In the Amended Complaint, Plaintiff alleges his phone number has been listed on the National Do Not **[*2]** Call List since January 27, 2025. (Id. at ¶ 16) Plaintiff uses this phone number for personal purposes; it is not associated with a business. (Id. at ¶ 15) Plaintiff alleges he asked Defendant to stop contacting him on December 10, 2024. (Id. at ¶ 9) Nonetheless, he alleges Defendant continued to message him on January 25, 2025; January 27, 2025; January 29, 2025; January 30, 2025; January 31, 2025; February 6, 2025; February 8, 2025; February 9, 2025; February 10, 2025; February 26, 2025; February 27, 2025; March 2, 2025; March 13, 2025; March 14, 2025; March 16, 2025; March 18, 2025; March 19, 2025; March 20, 2025; March 23, 2025; March 24, 2025; March 25, 2025; March 26, 2025; March 27, 2025; and April 7, 2025. (Id. at ¶ 9)

In its Motion to Compel Arbitration, Defendant maintains Plaintiff signed up for a Redline Society promotional giveaway posted on TikTok prior to receiving the text messages. (Dkt. 15 at 4) In support of this assertion, Defendant submits an affidavit by its President, Neal Spiegel, to explain the promotions marketed by Redline Society and to show the entry created by Plaintiff's alleged enrollment on December 4, 2024. (Dkt. 15-1 at 2) The affidavit also includes **[*3]** a small screen clipping from the Redline Society website where Plaintiff would have signed up for the promotion. (Id. at 3) In the photo, the Privacy Policy and Terms and Conditions links are pictured in a red box and in gray text. (Id. at 3) The affidavit also states the Terms and Conditions include an alternate dispute resolution procedure. (Id. at 3) The arbitration provision at issue, which is included in the "Terms and Conditions" section of the Redline Society website (hereinafter "Website Terms and Conditions"), states, in pertinent part:

> THIS SECTION LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS, COLLECTIVE, OR REPRESENTATIVE CLAIM OR ACTION IN ARBITRATION AND LITIGATION, AND THE RIGHT TO CERTAIN REMEDIES AND FORMS OF RELIEF. OTHER

RIGHTS THAT YOU OR Redline Society WOULD HAVE IN COURT, SUCH AS APPELLATE REVIEW, ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

Binding Individual Arbitration: In the event that there is a dispute, claim, or controversy between you and Us, or between you and Stodge Inc. d/b/a Postscript or any other third-party service provider acting on Our behalf to transmit **[*4]** the mobile messages within the scope of the Program, arising out of or relating to federal or state statutory claims, common law claims, this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate ("Dispute"), such Dispute will be, to the fullest extent permitted by law and applicable rules, determined by arbitration before one arbitrator, provided, however, that no party shall be precluded from seeking remedies in small claims court for disputes or claims within the scope of its jurisdiction. Whether a Dispute falls within the jurisdictional limits of small claims court is for the small claims court to decide. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Dispute will be given the broadest possible meaning permitted by law. It includes, but is not limited to: (a) any dispute or claim that arose before the existence of these or any prior Terms and Conditions (including, but not limited to, claims relating to advertising); (b) any dispute or claim that is currently the subject **[*5]** of a purported class action litigation in which you are not a member of a certified class; and (c) any dispute or claim that may arise after termination of these Terms and Conditions and our relationship with you and Stodge Inc. d/b/a Postscript or any other third-party service provider acting on Our behalf. Dispute, however, does not include disagreements or claims concerning patents, copyrights, trademarks, trade secrets, or other intellectual property, and claims of piracy or unauthorized use of intellectual property. The arbitrator shall decide all issues that relate to the scope, validity, and enforceability of the Agreement. You and Redline Society agree that these Terms and Conditions evidence a transaction in interstate commerce and that this arbitration agreement will be interpreted and enforced in accordance with the *Federal Arbitration Act* and U.S. federal arbitration law and not state arbitration law.

(Dkt. 15-1 at 3-7)

Defendant argues that when Plaintiff signed up for the promotional giveaway he thereby consented to Defendant's Terms and Conditions, including the arbitration provision. (Dkt. 15 at 4) Defendant also argues the alleged conduct at issue "falls squarely within the scope of the arbitration **[*6]** clause contained in the Terms and Conditions." (Id. at 7) For this reason, Defendant requests the Court stay the proceedings and compel the Parties to arbitrate the instant dispute. (Id. at 9)

Defendant filed the instant motion on July 25, 2025. (Dkt. 15) Plaintiff filed his Response on July 26, 2025, (Dkt. 16), and Notice of Supplemental Authority on November 11, 2025. (Dkt. 26) This cause is now ripe for review.

II. LEGAL STANDARD

The Federal Arbitration Act (the "FAA") entitles litigants in federal court to a stay of any action that is subject to an arbitration agreement. See *9 U.S.C. § 3*. To determine whether a dispute between parties is covered by the terms of an arbitration agreement, a court applies the federal substantive law of arbitrability. *Lawson v. Life of the South Ins. Co., 648 F.3d 1166, 1170 (11th Cir. 2011)*. The FAA reflects a federal policy favoring arbitration. *Jones v. Waffle House, Inc., 866 F.3d 1257, 1263-64 (11th Cir. 2017)*. "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id. at 1264*. (internal quotations omitted).

Nonetheless, arbitration is a matter of contract, and "the FAA's strong proarbitration policy only applies to disputes that the parties have agreed to arbitrate." *Klay v. All Defendants, 389 F.3d 1191, 1200 (11th Cir. 2004)*; see also Valiente v. NexGen Global LLC, No. 23-13308, 2025 WL 3140480, at *3 (11th Cir. Nov. 10, 2025). Thus, "[w]hen presented with a motion to compel arbitration, a district court will consider three factors: (1) whether **[*7]** a valid agreement to arbitrate exists, (2) whether an arbitrable issue exists, and (3) whether the right to arbitrate was waived." *Abellard v. Wells Fargo Bank, N.A., No. 19-CV-60099, 2019 U.S. Dist. LEXIS 80707, 2019 WL 2106389, at *2 (S.D. Fla. May 14, 2019)*. Plaintiff disputes the first factor, whether a valid agreement to arbitrate exists. (Dkt. 16)

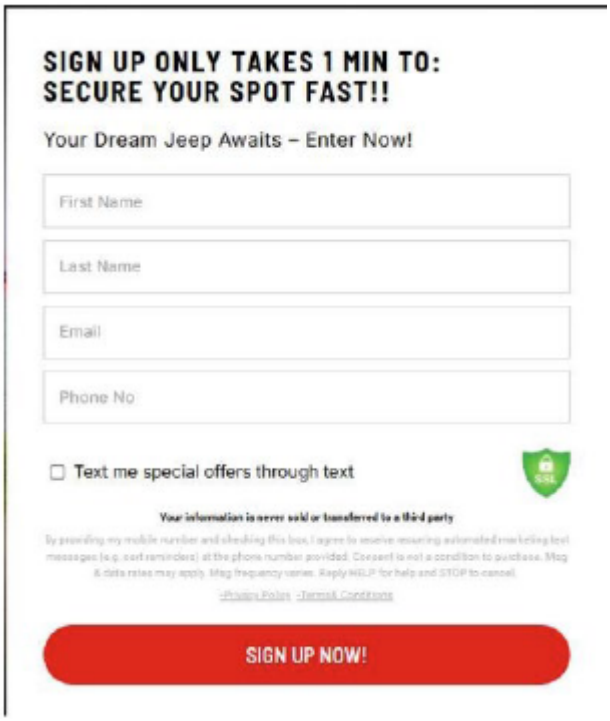
When determining whether the parties agreed arbitrate a certain dispute, a court must first consider "any formation challenge to the contract containing the arbitration clause," *Solymar Invs., Ltd. v. Banco Santander S.A., 672 F.3d 981, 990 (11th Cir. 2012)*, because "a party plainly cannot be bound by an arbitration clause to which it does not consent." *BG Grp., PLC v. Republic of Argentina, 572 U.S. 25, 134 S. Ct. 1198, 1213, 188 L. Ed. 2d 220 (2014)* (citing *Granite Rock Co. v. Int'l Bhd. of Teamsters, 561 U.S. 287, 299, 130 S. Ct. 2847, 177 L. Ed. 2d 567 (2010)*); see also *De Beers Centenary AG v. Hasson, 751 F. Supp. 2d 1297, 1303 n.5 (S.D. Fla. 2010)* ("A party cannot be bound under the FAA to arbitrate by 'default.'").

"The threshold question of whether an arbitration agreement exists at all is simply a matter of contract" governed by state law. *Bazemore v. Jefferson Capital Sys., LLC, 827 F.3d 1325, 1329, 1330 (11th Cir. 2016)* (quoting *First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995)*). Plaintiff and Defendant agree that the question of contract formation is to be governed by Florida law. (Dkt. 16 at 2)

III. ANALYSIS

Florida courts recognize two types of online contracts: "clickwrap" agreements and "browsewrap" agreements. *Johnson v. Whaleco, Inc., 5:23-cv-403-GAP-PRL, 2023 U.S. Dist. LEXIS 184104, at *4 (M.D. Fla. Oct. 13, 2023)*. A clickwrap agreement "occurs when a website directs a purchaser to the terms and conditions of the sale and requires the purchaser to click a box to acknowledge that they have read those terms and conditions." *Bell v. Royal Seas Cruises, Inc., No.19-CV-60752-RAR, 2020 U.S. Dist. LEXIS 172255, 2020 WL 5639947 (S.D. Fla. Sept. 21, 2020)* (citing *MetroPCS Commc'ns, Inc. v. Porter, 273 So. 3d 1025, 1028 (Fla. 3d DCA 2018)*). **[*8]** "A 'browsewrap' agreement occurs when a website merely provides a link to the terms and conditions and does not require the purchaser to click an acknowledgement during the checkout process. The purchaser can complete the transaction without visiting the page containing the terms and conditions." Id. Florida "law imposes a heightened burden on a party seeking to enforce agreements that are more akin to browsewrap than clickwrap." See Valiente, 2025 WL 3140480, at *5 (quoting *Mia. Dolphins, Ltd. v. Engwiller, 410 So. 3d 685, 689 (Fla. 3d DCA 2025)*). "Under Florida law, a browsewrap agreement is enforceable when the purchaser has actual knowledge of the terms and conditions, or when the hyperlink to the terms and conditions is conspicuous enough to put a reasonably prudent person on inquiry notice." *Derriman v. Mizzen and Main LLC, 710 F. Supp. 3d 1129, 1139 (M.D. Fla. 2023)* (quoting *MetroPCS Commc'ns, Inc., 273 So. 3d at 1028*) (internal quotations omitted).

Here, the agreement at issue is a browsewrap agreement. A full visual[1] of the online sign up form is depicted below:



Defendant's Affidavit states that Plaintiff assented to Website Terms & Conditions by clicking the sign-up button. Yet, there is no allegation that Plaintiff had to click a button to acknowledge he assented to the Website Terms and Conditions specifically, nor is there a box to acknowledge assent in the photo above.[2]

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[1] Defendant includes only a cropped photo of the "Terms and Conditions" hyperlink and the "Sign Up Now!" button. The Court takes judicial notice of the full sign up box in Plaintiff's Motion, (Dkt. 16 at 2), as publicly announced on the website. *Fed. R. Evid. 201*; see also, e.g., Termarsch v. Argent Mortg. Co., LLC., No. 8:07-CV-1725-T-30TBM, 2008 WL 1776592, at *4 n. 4 (M.D. Fla. Apr. 16, 2008) (taking judicial notice of information available on publicly accessible website).

[2] See Valiente, 2025 WL 3140480, at *7 ("By including an explicit consent to receive 'emails, calls, and SMS text messages' without mentioning arbitration, in fact, the "Go To Step #2" button suggests the opposite of [Defendant's] argument—i.e., that a website user was not consenting to

Without **[*9]** a requirement to click an acknowledgement of assent to terms and conditions, the agreement is browsewrap in nature.

Courts consistently enforce the terms of browsewrap agreements where the website user has actual notice of the agreement. See *Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1176-77 (9th Cir. 2014)* (collecting cases). There is no information alleged as to whether Plaintiff had actual notice. Defendant asserts that Plaintiff signed up for a Redline Society promotional giveaway, clicked the red sign up box, and checked a box to receive future texts, but this does not indicate actual notice of the agreement. (Dkt. 15 at 3-4)

When "there is no evidence that the website user had actual knowledge of the agreement, the validity of the browsewrap agreement turns on whether the website puts a reasonably prudent user on inquiry notice of the terms of the contract." *Nguyen, 763 F.3d at 1177*. To determine whether a user had inquiry notice of a browsewrap agreement, courts look to "the clarity and conspicuousness of [the] terms." *Babcock v. Neutron Holdings, Inc., 454 F. Supp. 3d 1222, 1230 (S.D. Fla. 2020)* (citation omitted). "In the context of web-based contracts, clarity and conspicuousness are a function of the design and content of the relevant interface." Id. (citations and quotations omitted). Although not binding, "courts commonly consider **[*10]** the following factors when analyzing browsewrap agreements: color, size, positioning, language, and design of the hyperlink and its accompanying text." *Tejon v. Zeus Networks, LLC, 725 F. Supp. 3d 1351, 1355 (S.D. Fla. 2024)* (citation omitted).

Plaintiff cites several cases to argue that the Website Terms & Conditions were not clear and conspicuous. The Court finds three of the cases particularly persuasive and sufficiently similar. In *Tejon*, the court found the arbitration agreement was not enforceable because the terms of service were in small, light gray font below the large, bright red subscription button. *725 F. Supp. 3d at 1356*. In addition, the language of the text before and after the terms could have led a user to believe the terms and conditions were on that very webpage, not a separate one. Id. The court also noted that "hyperlinks are usually displayed in a blue font, as a means to stand out from the rest of the page." Id.

Similarly, in *Farsian*, the court found no valid arbitration agreement because the Terms were hyperlinked in gray font without enough contrast from the remainder of the paragraph, and the terms were located below the action button. *Farsian v. Alphalete Athletics, LLC, No. 24-61027-CIV, 2025 U.S. Dist. LEXIS 33619, 2025 WL 1591452, at *4 (S.D. Fla. Feb. 25, 2025)* The court also found that the lack of blue font for the hyperlinks and "[m]erely underlining the hyperlinks, without more, **[*11]** does not provide sufficient contrast from the other gray font of identical size and capitalization on the webpage." Id.

Finally, in Johnson, the court found the placement of the terms did not put a reasonable person on inquiry notice because the Terms were in "a very light gray font against a white background, devoid of underlined text or any conspicuous visual cues." *Johnson, 2023 U.S. Dist. LEXIS 184104, at *8*. The terms in Johnson were below the bright orange continue button, but they did include a statement that said, "By continuing, you agree to our Terms of Use and Privacy & Cookie Policy." *2023 U.S. Dist. LEXIS 184104, [WL] at *2*. Still, the Court found the color, font, and placement of the terms were not sufficient to put the plaintiff on notice. *2023 U.S. Dist. LEXIS 184104, [WL] at *9-10*.

Here, similar to *Johnson*, *Tejon*, and *Farsian*, the Website Terms and Conditions are hyperlinked in a miniscule light gray font on a similar color background. See *Johnson, 2023 U.S. Dist. LEXIS 184104, at *2* (white background, gray text); *Tejon, 725 F. Supp. 3d at 1354* (black background, gray text); *Farsian, 2025 U.S. Dist. LEXIS 33619, 2025 WL 1591452, at *4* (light gray background, dark gray text). The font here is "so small it is barely legible to the naked eye." *Berman v. Freedom Fin. Network, LLC, 30 F.4th 849, 856-57 (9th Cir. 2022)*. More so, like Farsian, there is no statement that informs the user that clicking the Sign Up Now button binds them to the terms. *Farsian, 2025 U.S. Dist. LEXIS 33619, 2025 WL 1591452, at *4*. And while the Terms and Conditions at issue are above **[*12]** the bright red button, this is not sufficient to shift the analysis in favor of providing inquiry notice. See *Bell v. Royal Seas Cruises, Inc., No. 19-CV-60752, 2020 U.S. Dist. LEXIS 85273, 2020 WL 5742189 (S.D. Fla. May 13, 2020)*, R. & R. adopted, *No. 19-CIV-60752-RAR, 2020 U.S. Dist. LEXIS 172255, 2020 WL 5639947 (S.D. Fla. Sept. 21, 2020)* (finding a user who clicked "Continue" assented to the terms where the terms were above the continue button *and* the link was preceded by a short sentence that said "I understand and agree to email marketing, the Terms & Conditions which includes mandatory arbitration, and Privacy Policy"). The placement, color, and font size of the hyperlinks in the Website Terms and

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arbitration by clicking 'Go To Step #2.'").

Conditions also indicate a possible intent to camouflage the terms, which "militates strongly against finding the existence of an agreement to arbitrate." *Johnson, 2023 U.S. Dist. LEXIS 184104, at *8*. In sum, Defendant did not provide sufficient inquiry notice due to the size and color of the font, the placement of the text, and the lack of indication that the Sign Up Now button bound the Plaintiff to the Website Terms and Conditions.

Defendant primarily relies on two cases to argue the arbitration provision should be upheld. (Dkt. 15 at 7, 8) The facts in those cases are distinguishable from the facts at hand. In *Derriman*, the terms were conspicuously placed "on top of the (contrasting) dark blue button," "directly above the sign-up button[,] **[*13]** and set off from the text below in a box of its own." *Derriman, 710 F. Supp. 3d at 1140*. Further, the company "provided a sufficient explanation of the legal significance of clicking on the button in the statements immediately above it." *Id. at 1141*. The plaintiff in *Derriman* was also required to "double opt-in" by sending a text message confirming his subscription to the messages after clicking the sign up button. Id. Similarly, in *Greenberg*, the offer stated, "By clicking 'Sign me up' you agree to receive email promotions and other general email messages from subway Group. In addition you agree to the Subway Group Privacy Statement and Terms of Use." *Greenberg v. Doctors Associates, Inc., 338 F. Supp. 3d 1280, 1282 (S.D. Fla. 2018)*. These cases are not persuasive because Defendant's website did not include a similar statement advising Plaintiff of the legal significance of clicking the sign-up button.

The court in *Goldstein* summed it up well: "the comparatively miniscule size of the typeface used to notify the purchaser that he is agreeing to certain 'Terms and Policies' and its light grey color render it practically unreadable." *Goldstein v. Fandango Media, LLC, No. 9:21-CV-80466-RAR, 2021 U.S. Dist. LEXIS 139153, 2021 WL 6617447, at *3 (S.D. Fla. July 27, 2021)*. The practically unreadable Website Terms and Conditions here do not provide sufficient inquiry notice to find a valid browsewrap agreement. As such, the Court finds there is no properly formed Arbitration **[*14]** Agreement between the parties and Defendant's Motion is **DENIED**.

IV. CONCLUSION

Upon consideration of the foregoing, the Court hereby **ORDERS**:

1. Defendant Redline Society's Motion to Compel Arbitration, (Dkt. 15), is hereby **DENIED**.

DONE and **ORDERED** in Tampa, Florida this 1st day of December 2025.

/s/ Mary S. Scriven

MARY S. SCRIVEN

UNITED STATES DISTRICT JUDGE

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