IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD DENNIS, on behalf of himself and all others similarly situated,

Plaintiff

v.

THE ANDERSONS INC., CARGILL, INC., AND JOHN/JANE DOES NOS. 1-50.

Defendants.

Case No. 1:20-cv-04090

Hon. Charles R. Norgle

ORDER

Defendant The Andersons Inc.'s motion to transfer is denied [14]. Defendants' joint motion to dismiss [36] is granted in part and denied in part with leave to renew. Plaintiff's request to amend his complaint is granted. Plaintiff may file an amended complaint within 30 days of this order. If Plaintiff does so, Defendants may renew their motion to dismiss no later than 21 days after Plaintiff files an amended complaint.

MEMORANDUM OPINION

Plaintiff filed this class action lawsuit against The Andersons Inc. ("Andersons"), Cargill, Inc. ("Cargill"), and unnamed individual defendants, alleging that in the fall of 2017 the Defendants manipulated the commodities market for soft red winter wheat. Andersons moved to transfer the case to the Northern District of Ohio. Defendants then jointly moved to dismiss the complaint. For the reasons below, the Court denies Andersons' motion to transfer and grants in part and denies in part Defendants' motion to dismiss.

I. Background

Plaintiff alleges that Andersons and Cargill are large diversified conglomerates who trade "futures and physical commodities, including wheat and other grains." Dkt. 21, Am. Compl. ¶¶2-3. Andersons is an Ohio corporation, headquartered in Ohio, and Cargill is Delaware corporation with a principal place of business in Minnesota. Am. Compl. ¶¶32-33. Plaintiff alleges that Defendants manipulated the commodities market for soft red winter wheat by flooding the wheat cash market, artificially suppressing demand.

Andersons allegedly established a significant bear spread through the purchase of certain futures contracts, betting against the market for soft red winter wheat such that Andersons would profit if the price of the wheat went down. Then, Andersons and Cargill allegedly conspired to artificially reduce the price of soft red winter wheat by creating an illusion of lower demand. First, Plaintiff alleges that Defendants began "jointly selling physical wheat in the cash market to wheat buyers in November 2017," ultimately causing "Toledo-area buyers [to satisfy] their demand for wheat in the cash market and were able to offset their futures positions for the December contract." Am. Compl. ¶74. Plaintiffs allege that this suppressed demand in the cash market for soft red winter wheat. Id.

Second, on November 29, 2017, Plaintiff alleges that the Defendants registered 2,000 wheat shipping certificates with the Chicago Board of Trade, which "represents 10 million bushels or 600 million pounds of wheat." Am. Compl. ¶5. "The Andersons and Cargill discussed and understood that the prices of December 2017 wheat futures and options would decline and that The Andersons, in connection with the Agreement with Cargill, would then repurchase the certificates at artificially reduced prices." Id. ¶74. With the wheat prices artificially low, Andersons executed on its bear spread position, profiting from the low prices it created. Id. Finally, after "the spread prices widened, The Andersons repurchased wheat from participants who were matched to The Andersons' certificates." Id. Ultimately, "by December 22, 2017, The Andersons had repurchased 1,330 of the 2,000 certificates." Id. "Because Defendants had manipulated the price lower, The Andersons were able to buy back all of the wheat at a lower price than when the certificates were first registered." Id.

All the relevant trades were made using the Chicago Board of Trade's electronic trading system, which uses servers located in Chicago, Illinois. Id. ¶21. Andersons' headquarters, where its traders likely made the trades, is located in Maumee, Ohio, a suburb of Toledo. Dkt. 15 at 13. There is no allegation that any trade was made on the physical floor of the Chicago Board of Trade, which is sometimes referred to as "floor trading" or "pit trading."

The Chicago Mercantile Exchange ("CME"), the parent of the Chicago Board of Trade, investigated the trades made by Defendants. In July 2020, the CME found that Andersons' conduct violated the trading rules by engaging in conduct contrary to the "just and equitable principles of trade," acting "detrimental to the interest or welfare of the Exchange," and engaging in "dishonorable or uncommercial conduct." Dkt. 42-1; CME GROUP, CBOT Rulebook, 4 – Enforcement of Rules, §§32(B)(2), 432(Q), 432(T) (last accessed July 7, 2021) available at https://www.cmegroup.com/content/dam/cmegroup/rulebook/CBOT/I/4.pdf. The CME fined Andersons $2,000,000. Similarly, in September 2020, the CME found that Cargill "was a party to a joint marketing agreement with a Grain Merchant" to "register and deliver a significant amount of December 2017 Soft Red Winter Wheat ('SRW') to benefit the Grain Merchant's futures and options positions related to the grain subject to the joint marketing agreement." Dkt. 42-2. The CME found that on "November 29, 2017, the Grain Merchant registered 2,000 SRW certificates, and, as anticipated, the market widened to trade into its resting bids at prices beneficial to its wheat futures position" and "repurchased 1,330 of the 2,000 certificates." Id. The CME fined Cargill $500,000 for violations the rules of the Chicago Board of Trade. Id.

Plaintiff filed the original complaint in this case on July 10, 2020 and an amended complaint on October 9, 2020 to include Cargill and the CME's ruling against it. Andersons moved to transfer the case on September 14, 2020, and Defendants jointly moved to dismiss the case on December 23, 2020.

II. Motion to Transfer

"For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." 28 U.S.C. § 1404(a). This provision "is merely a codification of the doctrine of *forum non conveniens* for the subset of cases in which the transferee forum is within the federal court system; in such cases, Congress has replaced the traditional remedy of outright dismissal with transfer." Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas, 571 U.S. 49, 50 (2013).

Transfer of venue is appropriate under Section 1404(a) when "(1) venue was proper in the transferor district, (2) venue and jurisdiction would be proper in the transferee district, and (3) the transfer will serve the convenience of the parties and the witnesses, as well as the interests of justice." Post Media Sys. LLC v. Apple Inc., 2020 WL 833089, at *1 (N.D. Ill. Feb. 20, 2020) (cleaned up); Cent. States Se. & Sw. Areas Pension Fund v. Mills Inv., LLC, 2011 WL 4901322, at *1 (N.D. Ill. Oct. 14, 2011). The burden is on the requesting party to demonstrate that "transferee district is clearly more convenient than the transferor district." Schwartz v. Osofsky, 2011 WL 635685, at *1 (N.D. Ill. Feb. 8, 2011) (cleaned up). "The weighing of factors for and against transfer necessarily involves a large degree of subtlety and latitude, and, therefore, is committed to the sound discretion of the trial judge." Coffey v. Van Dorn Iron Works, 796 F.2d

217, 219 (7th Cir. 1986); Post Media Sys. LLC v. Apple Inc., 2020 WL 833089, at *1 (N.D. Ill. Feb. 20, 2020).

The parties do not dispute that venue is proper here and in the Northern District of Ohio, satisfying the first two elements for transfer under Section 1404(a). The parties dispute the remaining element, as to whether "the transfer will serve the convenience of the parties and the witnesses, as well as the interests of justice." Post Media, 2020 WL 833089, at *1. When considering convenience, courts generally weigh "availability of and access to witnesses," "each party's access to and distance from resources in each forum," "the location of material events," and the "relative ease of access to sources of proof." Rsch. Automation, Inc. v. Schrader-Bridgeport Int'l, Inc., 626 F.3d 973, 978 (7th Cir. 2010). When considering whether the transfer would be in "the interests of justice," courts look to efficient administration of the claims and "factors including docket congestion and likely speed to trial in the transferor and potential transferee forums, each court's relative familiarity with the relevant law, the respective desirability of resolving controversies in each locale, and the relationship of each community to the controversy." Id. These considerations are weighed against the plaintiff's choice of forum, which is given strong deference. Gueorguiev v. Max Rave, LLC, 526 F. Supp. 2d 853, 857 (N.D. Ill. 2007) ("Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.").

On convenience, Andersons argues that the material events took place in Ohio because the trades were electronically submitted from Andersons' headquarters and the alleged scheme included selling wheat on the cash market to buyers in Toledo. Dkt 15 at 6-7. Andersons argues that the "fact that some of the 'ultimate effects' of the alleged scheme may have manifested themselves on the CBOT in Illinois is irrelevant, because the conduct that led to any such effects did not occur in Illinois." Id. at 8-9. Plaintiff argues that situs of the material events took place in Chicago because Andersons and Cargill directed their scheme towards the Chicago Board of Trade, made their allegedly unlawful trades on the Chicago Board of Trade's system, and were ultimately reprimanded and fined by the Chicago Board of Trade. As Plaintiff puts it, the "singular link between Plaintiff—a Florida resident, The Andersons—an Ohio company, and Cargill—a Minnesota company, is the CBOT, located in Chicago." Dkt. 22 at 6. The Court agrees with Plaintiff that most of the material events took place in Chicago because the two defendants allegedly formed a joint venture targeting the wheat market through the Chicago Board of Trade.

Andersons argues that Ohio would be most convenient for witnesses since the allegedly unlawful trades were executed from Andersons' Ohio headquarters. However, as Plaintiff argues, Ohio is only convenient for Andersons. Chicago is closer to Minnesota, where Cargill is based. The likely non-party witnesses, such as employees of the Chicago Board of Trade, are also located in Chicago. Gueorguiev v. Max Rave, LLC, 526 F. Supp. 2d 853, 858 (N.D. Ill. 2007) ("The convenience of party witnesses is less relevant than the convenience of non-party witnesses, since party witnesses normally must appear voluntarily."). Further, the declaration Andersons provided in support of its motion to transfer does not discuss individual witnesses and their importance to its case, which is necessary for this factor to weigh in favor of the movant. Bowe Bell Howell Co. v. Immco Employees' Ass'n, 2004 WL 1244143, at *6 (N.D. Ill. June 2, 2004) ("In order to overcome the deference to the plaintiff's choice of forum by arguing witness convenience, the defendant must show that the testimony of these particular witnesses is necessary to its case."). It is unclear what the balance of the witnesses would look like considering that Andersons is based in Ohio, Cargill is based in Minnesota, and the Chicago Board of Trade is based in Illinois. But Plaintiff has stipulated that it will "negotiate in good faith to take depositions where witnesses are located, including in Ohio," reducing the burden on Andersons' potential witnesses. Dkt. 22 at 13. Further, virtually all document discovery today occurs electronically and thus does not favor any location. Ultimately, Andersons has not shown that it would be more convenient for the parties and witnesses for the case to be litigated in Ohio rather than in this Court.

Andersons argues that transferring this case would further the interests of justice and promote judicial efficiency because the "median time from filing to trial in civil matters in the Northern District of Illinois was 36.7 months, compared to 18.6 months in the Northern District of Ohio. See Federal Court Management Statistics, June 2020, available at https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2020/06/30-1." Dkt. 15 at 15. Further, Andersons argues that "the District of Ohio is well versed in the federal statutes at issue" and "is equally capable of handling this case and interpreting the federal law at issue." Id. at 15-16 (cleaned up). Plaintiff argues that the time-to-trial statistic is less important than the time-to-disposition statistic, which shows only a one-month difference between the Districts' average time to disposition. Plaintiff also argues that this Court has significant experience with commodities cases. Further, Plaintiff argues that this "District—where the actual trading activities occurred—has the strongest interest in resolving the controversy" because much of the relevant trading activities occurred with the Chicago Board of Trade.

The Court agrees that this District has the greatest interest in resolving the matter as it has a strong interest in the trading activities that occur through the Chicago Board of Trade, especially in this case where the Chicago Board of Trade has taken regulatory action against the Defendants for the alleged misconduct at issue. Schwartz v. Osofsky, 2011 WL 635685, at *2 (N.D. Ill. Feb. 8, 2011); Tung v. Sears, 2014 WL 6883436, at *4 (N.D. Ill. Dec. 3, 2014). Ultimately, the only factor that favors Andersons' motion is the modest difference in judicial efficiency. But that difference is not so great as to outweigh the other factors, much less the deference afforded to Plaintiff's choice of forum. As a result, the Court denies Andersons' motion to transfer.

III. Motion to Dismiss

Because this case will remain here, the Court turns to Defendants' joint motion to dismiss. It should first be noted that the parties filed briefs in excess of fifteen pages without seeking leave of this Court, violating Local Rule 7.1, which provides that "[n]either a brief in support of or in opposition to any motion nor objections to a report and recommendation or order of a magistrate judge or special master shall exceed 15 pages without prior approval of the court." Although the Court has the authority to strike motions and briefs exceeding the page limit, it declines to do so here. Rather, the Court admonishes the parties to comply with the Local Rules and warns them against repeated violations.

Defendants seek (1) to dismiss Plaintiff's Commodities Exchange Act claims as barred by the statute of limitations, (2) to dismiss the request for punitive damages from Plaintiff's Commodities Exchange Act claims, (3) to dismiss Plaintiff's antitrust claims for purported pleading failures, and (4) to dismiss Plaintiff's unjust enrichment claim for failing plead controlling state law. The Court will address each in turn.

A. The Commodities Exchange Act's statute of limitations does not clearly bar Plaintiff's claims asserted thereunder.

Plaintiff brings four claims under the Commodities Exchange Act, which the parties agree are subject to a two-year statute of limitations that begins to run when "when the plaintiff knew or in the exercise of reasonable diligence should have known of defendant's alleged misconduct." In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig., 2013 WL 212908, at *7 (N.D. Ill. Jan. 18, 2013) (quoting Dyer v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 928 F.2d 238, 240 (7th Cir.1991)). At the motion to dismiss stage, a court will not dismiss a claim based on an affirmative statute-of-limitations defense unless "the plaintiff pleads himself out of court by alleging facts sufficient to establish the complaint's tardiness." Cancer Found., Inc. v. Cerberus Cap. Mgmt., LP, 559 F.3d 671, 674–75 (7th Cir. 2009).

Defendants argue that because Plaintiff's claims "are all based on public events that were readily observed by and available to market watchers, including Plaintiff, in November and December 2017" that the events "were sufficient to trigger the CEA's two-year statute of limitations no later than December 2017, rendering Plaintiff's CEA claims—filed two and a half years later—untimely." Dkt 37 at 14. Defendants argue that "[e]vents sufficient to arouse suspicion or curiosity trigger the limitations period" occurred, including "'storm warnings' that would have prompted a reasonably diligent plaintiff to begin investigating and discover the alleged violation," providing Plaintiff with what Defendant refers to as "constructive knowledge." Dkt. 37 at 15. Defendants conclude that the "sudden market disruption, predicted and observed price declines, and Plaintiff's loss shortly thereafter all revealed Plaintiff's CEA injury and triggered the statute of limitations by December 2017 at the latest," rendering Plaintiff's July 2020 complaint and subsequent amendment untimely. Defendants further argue that the Court should take notice of a news article and a tweet about Andersons' large registration of shipping certifications. Andersons says these show that Plaintiff should have known something foul may have been afoot in November 2017.

Plaintiff argues that the "statute begins to run when a plaintiff is placed on inquiry notice, *i.e.*: when the plaintiff knew or in the exercise of reasonable diligence should have known of defendant's alleged misconduct." Dkt 42 at 13. Plaintiff contends that he was not on inquiry notice because he did not know the identities of all defendants and none of Defendants' "supposed storm warnings" put Plaintiff on notice that he had purchased wheat futures at artificially high prices. Plaintiff also argues that dismissing his claims now would be premature.

As a threshold matter, neither party correctly articulates the knowledge requirement necessary to trigger the two-year statute of limitations under the Commodities Exchange Act. Defendant claims that the "constructive knowledge" standard applies and defines it as when a plaintiff becomes aware of facts "sufficient to arouse suspicion or curiosity." Dkt. 37 at 15. Plaintiff claims that the "inquiry notice" standard applies and defines it as "when the plaintiff knew or in the exercise of reasonable diligence should have known of defendant's alleged misconduct." Dkt 42 at 13. Neither of these definitions are correct and both parties appear to misunderstand the implications for the two standards. Let's set the record straight.

Inquiry notice is "[n]otice attributed to a person when the information would lead an ordinarily prudent person to investigate the matter further; esp., the time at which the victim of an alleged securities fraud became aware of facts that would have prompted a reasonable person to investigate." NOTICE, Black's Law Dictionary (11th ed. 2019); Antelis v. Freeman, 799 F. Supp. 2d 854, 860 (N.D. Ill. 2011) ("'Inquiry notice' has been defined as when a potential plaintiff learns, or should have learned through the exercise of ordinary diligence, facts sufficiently probative of fraud that would induce a reasonable person to investigate whether he might have a claim."). Once a plaintiff is on inquiry notice, that plaintiff has a duty to reasonably investigate. If a plaintiff investigates and discovers the misconduct, the plaintiff then has actual knowledge of the misconduct. If a plaintiff fails to reasonably investigate, courts will attribute knowledge of the misconduct to the plaintiff effective on the date a reasonable inquiry would have uncovered the misdeeds, also known as constructive knowledge. Thus, constructive knowledge is "[k]nowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person." KNOWLEDGE, Black's Law Dictionary (11th ed. 2019). Ploss v. Kraft Foods Grp., Inc., 197 F. Supp. 3d 1037, 1066 (N.D. Ill. 2016) ("The limitations period begins to run when the plaintiff has actual or constructive knowledge—that is, when she knew or in the exercise of reasonable diligence should have known of defendant's alleged misconduct.") (cleaned up).

Importantly, the statute of limitations under the Commodities Exchange Act does not run on the date a plaintiff receives inquiry notice. Rather, the statute of limitations is triggered once a plaintiff has constructive knowledge. The Supreme Court provided helpful guidance distinguishing between these important concepts in its Merck decision, which held that the statute of limitations for securities fraud is triggered on the date the plaintiff has constructive knowledge, not the date she acquires inquiry notice:

> We conclude that the limitations period in § 1658(b)(1) begins to run once the plaintiff did discover or a reasonably diligent plaintiff would have discovered the facts constituting the violation—whichever comes first. In determining the time at which "discovery" of those "facts" occurred, terms such as "inquiry notice" and "storm warnings" may be useful to the extent that they identify a time when the facts would have prompted a reasonably diligent plaintiff to begin investigating. But the limitations period does not begin to run until the plaintiff thereafter discovers or a reasonably diligent plaintiff would have discovered the facts constituting the violation, including scienter—irrespective of whether the actual plaintiff undertook a reasonably diligent investigation.

Merck & Co. v. Reynolds, 559 U.S. 633, 653 (2010) (cleaned up). The Seventh Circuit also applied the distinction between inquiry notice and constructive knowledge in the copyright context:

> "inquiry notice" is not a substitute for actual or constructive discovery, and that clarification is instructive here. The concept of inquiry notice may help to identify the time at which a reasonable plaintiff can be expected to start investigating a possible violation of his rights, but it does not itself trigger the statute of limitations. Accordingly, the district court should not have used inquiry notice as the starting date for the statute of limitations.

Chicago Bldg. Design, P.C. v. Mongolian House, Inc., 770 F.3d 610, 616 (7th Cir. 2014). This same distinction applies to claims arising under the Commodities Exchange Act. Thus, the two-year statute of limitations is triggered only once a plaintiff exercising reasonable diligence would have discovered defendants alleged misconduct.

Here, Defendants point only to allegations that might raise the possibility that Plaintiff was on inquiry notice sometime in late 2017. However, Defendants do not point to anything that conclusively establishes that Plaintiff, exercising reasonable diligence, would have discovered Defendants' alleged misconduct sometime before July 2018 (two years before Plaintiff filed this action). On a motion to dismiss, "long as there is a conceivable set of facts, consistent with the complaint, that would defeat a statute-of-limitations defense, questions of timeliness are left for summary judgment (or ultimately trial)." Sidney Hillman Health Ctr. of Rochester v. Abbott Lab'ys, Inc., 782 F.3d 922, 928 (7th Cir. 2015). Defendants have the burden to show otherwise and have failed to conclusively establish that a prudent plaintiff would have discovered the Defendants' alleged misconduct before July 2018. Brown v. Cty. of Will, 2005 WL 1138642, at *4 (N.D. Ill. May 9, 2005).

Even if the statute of limitations were triggered by inquiry notice, it is unclear that Plaintiff was on inquiry notice in late 2017. The fact that Andersons registered a large quantity of shipping certifications could have been a bona fide transaction. Like in Ploss, "Any number of reasonable conclusions other than manipulation would have been plausible . . ." based on that transaction. Further, Defendants ask the Court to make several factual findings that are inappropriate on a motion to dismiss. For example, Defendants contend that a one-page Reuters article put Plaintiff on inquiry notice because the article quoted an industry commentor as saying that the registration of the large number of shipping certifications "would suggest that the delivery was not their best sale." Dkt 37 at 19. Defendants claim that "[i]t is well known in industry parlance that saying the registration is not TAI's 'best sale' is the same as saying it was uneconomical." Dkt. 37 at 19. But it is not the role of the Court on a motion to dismiss to determine which sayings have specific meanings in a given industry. That is a fact-bound determination that may require expert testimony, the resolution of which is best reserved for summary judgment or trial. Determining what a reasonable commodities investor would have surmised from Andersons' registration of a large number of shipping certificates is a significant factual inquiry that this Court will not resolve at this stage. Ploss v. Kraft Foods Grp., Inc., 197 F. Supp. 3d 1037, 1066 (N.D. Ill. 2016). Defendants' motion to dismiss Plaintiff's claims under the Commodities Exchange Act is denied.

B. The Commodities Exchange Act does not permit Plaintiff to seek punitive damages in this case.

The Commodities Exchange Act permits punitive damages against individuals who willfully and intentionally violate the Act "in the execution of an order on the floor of a registered entity." 7 U.S.C. § 25(a)(3). Defendants move to dismiss Plaintiff's request for punitive damages under the Commodities Exchange Act because punitive damages under the Act "are available only in limited circumstances involving violations by floor brokers in the execution of orders on the physical floor of an exchange that are not present here." Dkt. 37 at 26. Plaintiff contends that the statute expressly permits punitive damages for individuals other than floor brokers and appears to suggest that the trade need not be executed on the physical floor of the exchange so long as it was traded through the exchange. Dkt 42 at 19-20.

"Which interpretation is correct? To decide, we start with the text of the statute." Babb v. Wilkie, 140 S. Ct. 1168, 1172 (2020). "It's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute." New Prime Inc. v. Oliveira, 139 S. Ct. 532, 539 (2019) (cleaned up). "After all, only the words on the page constitute the law adopted by Congress and approved by the President." Bostock v. Clayton Cty., Georgia, 140 S. Ct. 1731, 1738 (2020). "If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people's representatives." Id.

Section 25(a)(1)(D)(i) of the Commodities Exchange Act prohibits "the use or employment of . . . in connection with a swap, or a contract of sale of a commodity . . . any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate. . . ." 7 U.S.C. § 25(a)(1)(D)(i). In paragraph (1) of that Section, the statute provides that "Any person (other than a registered entity or registered futures association) who violates this chapter . . . shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D)." 7 U.S.C. § 25(a)(1) (emphasis added). The punitive damages provision references that definition: "In any action arising from a violation in the execution of an order on the floor of a registered entity, the person referred to in paragraph (1) shall be liable for . . . punitive or exemplary damages equal to no more than two times the amount of such actual damages." 7 U.S.C. § 25(a)(3). The punitive damages provision also provides:

> if an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

7 U.S.C. § 25(a)(3)(B).

Defendants' first argument that only floor brokers can be liable for punitive damages defies the text of the statute. Defendants latch on to the second portion of the Section 25(a)(3)(B) concerning liability for floor brokers and conclude that the "provision principally provides for an award of punitive damages directed against 'floor broker[s] in connection with the execution of a customer order.'" Dkt. 37 at 18. But "principally provides" is not the same as "exclusively provides." Although the statute contemplates liability for floor brokers, its scope is not limited to floor brokers. Section 25(a)(3) provides that "the person referred to in paragraph (1)" may be liable for punitive damages. 7 U.S.C. § 25(a)(3). That paragraph provides for liability against "any person who violates this chapter," and is not limited to floor brokers. The Court declines to add limiting language to the statute.

Defendants' second argument is more persuasive. Defendants contend that the punitive damages provision applies only to conduct related to orders executed on the physical floor of the Chicago Board of Trade, otherwise known as floor trading or pit trading. Section 25(a)(3)(B) provides that "in any action arising from a violation in the <u>execution of an order on the floor of a registered entity</u>, the person referred to in paragraph (1) shall be liable for" punitive damages where the violation is willful and intentional. 7 U.S.C. § 25(a)(3)(B) (emphasis added). According to the complaint, the trades at issue were made electronically—not through floor trading or pit trading at the Chicago Board of Trade. Am. Compl. ¶21. Because the trades were not made on the physical floor of the exchange, Defendants argue, the plain text of the statute precludes the recovery of punitive damages. Plaintiff's argument on this issue is not clear, but Plaintiff appears to take the position that the purpose of the statute is to regulate trades occurring through the exchange, as opposed to illegal off-exchange trades or trades in the cash market. <u>See</u> dkt. 42 at 19-20. Viewed charitably, Plaintiff's position could be construed to be that the Court should look to Congress's intent in passing the statute to determine whether Congress meant the phrase, the "execution of an order on the floor of a registered entity," to mean any trade made with the registered entity.

The ordinary rule of statutory construction is that the Court looks to the plain language of the statute and the public meaning of the words therein at the time the statute passed. New Prime Inc., 139 S. Ct. at 539; Bostock, 140 S. Ct. at 1738. Black's Law Dictionary, both before and after the enactment of the punitive damages provision, provides a definition of "floor" in this context, which is: "The trading area where stocks and commodities are bought and sold on an exchange[. E.g.,] the broker placed his buy order with the trader on the floor of the NYSE." FLOOR, Black's Law Dictionary (11th ed. 2019); FLOOR, Black's Law Dictionary (5th ed. 1979). Thus, the ordinary meaning of the word "floor" in this context means the physical place where commodity trading occurs at exchanges. This interpretation is supported by the rules and regulations of the Chicago Board of Trade, which distinguish between trades made "on the floor" and trades made through the Chicago Board of Trade's electronic trading system, "Globex." Compare CME GROUP, CBOT Rulebook, 5 – Trading Qualifications And Practices, §511.A (last accessed July 7, 2021) available at https://www.cmegroup.com/content/dam/cmegroup/rulebook/CBOT/I/5.pdf (providing member authorization rules for "floor trading") with id. §511.B (providing member authorization rules for "Globex Trading"); see also id. §531.B (providing different rules for pit trading and electronic trading).

Further, a sound interpretation endeavors to give each word meaning in a statute, avoiding an interpretation that causes surplusage. Nielen-Thomas v. Concorde Inv. Servs., LLC, 914 F.3d 524, 528 (7th Cir. 2019) ("We must also, if possible, give effect to every clause and word of a statute, taking care not to read words into the text or to treat any words as surplusage."). Here, the phrase "the floor of" in "any action arising from a violation in the execution of an order on the floor of a registered entity" would be rendered largely meaningless by Plaintiff because Plaintiff's interpretation would effectively cause the statute to read: "in any action arising from a violation in the execution of an order on a registered entity." Congress did use that broader language in a prior paragraph of the same section of the same statute: " . . . other than an option purchased or sold on a registered entity or other board of trade." 7 U.S.C. § 25(a)(1)(C)(i) (emphasis added). Congress could have used broader language in Section 25(a)(3), permitting punitive damages arising from the execution of an order "on a registered entity," "through a registered entity," or "with a registered entity." But Congress instead chose to use "on the floor of a registered entity." Those words must be given meaning.

It appears that Plaintiff's position is that what Congress meant by trades made "on the floor of a registered entity" is any trade made through an exchange, as opposed to off-exchange trades. However, courts do not venture beyond the plain meaning of a statute's words to consider the intent of Congress unless a plaintiff shows that the statute is ambiguous. For a statute to be ambiguous, there must be "multiple plausible interpretations" for "the court to search beyond the statute's plain language." In re Shelton, 592 B.R. 193, 206 (Bankr. N.D. Ill. 2018). Plaintiff has provided none.

Ultimately, it is not the role of this Court to update or expand statutes. Bostock, 140 S. Ct. at 1738. "If Congress determines later that the plain language of the statute does not accurately reflect the true intent of Congress, it is for Congress to amend the statute." Patriotic Veterans, Inc. v. Indiana, 736 F.3d 1041, 1047 (7th Cir. 2013). Congress has amended the Commodities Exchange Act numerous times since Section 25(a)(3) was passed and has considered additional amendments. 7 U.S.C.A. § 25 (West) (collecting records of amendments to the Commodities Exchange Act in 2000, 2008, and 2010). If Congress desired to expand the availability of punitive damages to include violations committed through an electronic trading system, it could have and still can. But without the presence of textual ambiguity, the Court will not second-guess the words Congress passed into law and thereby risk circumventing the democratic process. "If the plain wording of the statute is clear, our work is at an end." Ortega v. Holder, 592 F.3d 738, 743 (7th Cir. 2010). And so it is.

The Defendants' motion to dismiss Plaintiff's request for punitive damages under the Commodities Exchange Act is granted.

C. Plaintiff's claim for unjust enrichment and claims under the Sherman Act are dismissed with leave to refile a second amended complaint.

Defendants moved to dismiss Plaintiff's claims under the Sherman Act as well as Plaintiff's claim for unjust enrichment based on pleading deficiencies. Dkt. 37 at 27-28. Plaintiff defends the sufficiency of his claims but requests in the alternative that the Court permit him to file a second amended complaint. Dkt. 42 at 27-28. Plaintiff already amended his complaint pursuant to Federal Rule of Civil Procedure 15(a)(1) to add Cargill as a Defendant but not to address any pleading deficiencies. The Court declines to rule on the substance of these potentially underdeveloped claims. These claims are dismissed without prejudice, and Plaintiff has leave to file a second amended complaint within 30 days of this order. If Plaintiff files a second amended complaint, Defendant may renew its motion to dismiss these claims within 21 days of the Plaintiff's amended complaint.

IT IS SO ORDERED.

ENTER:

CHARLES RONALD NORGLE, Judge
United States District Court

DATE: July 9, 2021