IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 16-cv-02611-RBJ

PATRICK HOGAN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PILGRIM'S PRIDE CORPORATION,
WILLIAM W. LOVETTE,
FABIO SANDRI,

Defendants.

ORDER ON DEFENDANTS' MOTION TO DISMISS

This matter is before the Court on defendants Pilgrim's Pride Corporation, William W. Lovette's, and Fabio Sandri's motion to dismiss plaintiff's second amended complaint, ECF No. 58. For the foregoing reasons, defendants' motion is GRANTED.

I. FACTUAL AND PROCEDURAL BACKGROUND

This is a federal securities class action against Pilgrim's Pride Corporation ("Pilgrim"), a leading chicken producer; William W. Lovette, Pilgrim's Chief Executive Officer; and Fabio Sandri, Pilgrim's Chief Financial Officer ("defendants"). ECF No. 48-1 at 6. George Fuller is the lead plaintiff in this case and asserts claims on behalf of not only himself but also all of those similarly situated, i.e., those who purchased or otherwise acquired Pilgrim securities between

February 21, 2014 and November 17, 2016. The following facts are derived from the second amended complaint and are assumed to be true solely for the purposes of this order.

Pilgrim is one of the largest producers and sellers of chicken in the United States and accounts for 16.6 percent of the domestic market for chicken products. ECF No. 47 at 14, ¶33. Pilgrim specifically focuses on the production and sale of broilers, which are standard, non-kosher, non-organic chickens under thirteen weeks of age. *Id*. at 19, ¶34. Broilers comprise at least 98 percent of the chicken sold in the United States. *Id*. The broiler industry, including Pilgrim, is vertically integrated. This means that companies in the broiler industry "own or tightly control almost all aspects of broiler production from breeding, hatching, rearing, feeding, processing, and selling." *Id*. at 16–17, ¶40. The broiler industry is characterized by inelastic demand, meaning that the demand for broilers "does not meaningfully increase or decrease with changes in price; however, a decrease in supply will increase prices." *Id*. at 19, ¶35. Traditionally the broiler market followed a boom and bust cycle. When prices for broilers would rise, the chicken producers would ramp up production to capture more revenue, resulting in a boom. However, the resulting oversaturation of the market would cause prices to fall, resulting in a bust. *Id*. at 15–16, ¶36.

Another unique feature of the broiler industry is its "highly concentrated and familial" nature. The number of companies involved in the broiler industry has apparently decreased significantly over the years. *Id*. at 19, ¶45. Three companies—Pilgrim, Tyson, and Sanderson—occupy 46 percent of the total market share, and the top five companies control over 65 percent of the market. *Id*. According to plaintiff it is common for executives of a company to leave and begin working for one of its competitors. Additionally, like many industries, the broiler industry has numerous associations and committees that individuals from broiler companies can join. These associations and committees host meetings and retreats that provide industry members opportunities to interact with one another. *Id*. at ¶49.

Although the relevant class period is February 21, 2014 through November 17, 2016, plaintiff alleges that the actions giving rise to this lawsuit date back to 2007. In 2007 and 2008 the broiler industry experienced a particularly low "bust," because rising feed ingredients resulted in significant market pressure. According to plaintiff, Pilgrim declared bankruptcy in December 2008 as a result of this dramatic bust. *Id*. at 4, ¶9. Pilgrim emerged from bankruptcy following a sale of its majority stake to its parent company, JBS SA ("JBS"). Plaintiff alleges that, in an effort to achieve post-bankruptcy stability, "Pilgrim coordinated with fellow industry participants—together comprising approximately 95 percent of the market—to embark an orchestrated reduction of the broiler supply." *Id*. at 8, ¶10. The broiler companies apparently worked together to ensure that each company adhered to the bargain and did not flood the market with chicken. To do this, the conspirators used a "unique, highly detailed data sharing service known as Agri Stats, through which the companies exchanged comprehensive proprietary data concerning each company's operations, production, inventory, cost and pricing, compiled in nearly real time." *Id*. The companies' tactics for keeping the chicken supply down included reducing eggs, reducing broiler breeder flocks, destroying chicks or eggs, temporarily or permanently shutting down facilities, and exporting eggs and chicks.

The broiler companies allegedly used the Agri Stats data to coordinate two tranches of significant Broiler production cuts. The first major one occurred in 2009-2010, and the second in 2011-2012. In February 2014—the beginning of the class period—broiler prices were expected to increase, and breeder flocks were reduced. The broiler companies also allegedly manipulated the Georgia Dock and Urner Barry, the leading wholesale chicken prices indices. While the rest of the chicken industry dealt with a drastic drop in prices in 2015 and 2016, there was no corresponding decline in broiler prices. In fact, the broiler price on the Georgia Dock barely moved during this time period, and it even increased slightly in 2015. *Id*. at 10, ¶12. During the class period, Pilgrim reported record-breaking financial results, including profit margins of more than 16 percent, which were nearly three times what other companies had historically achieved on average. *Id*. By December 2014 Pilgrim's stock was trading at over thirty-eight dollars per share, when just six years earlier it had been trading at under $0.15 per share.

Pilgrim explained their increased profit margins based on their fundamentally transforming their business model and improving better product mix and operational improvements "to achieve a level of unprecedented financial success and stability." *Id*. Plaintiff contends that Pilgrim's growth was instead a result of the price fixing scheme that is the subject of this lawsuit. According to plaintiff, the defendant company and the individual defendants made numerous false statements with regard to Pilgrim's success.

Various sources became aware of the alleged price fixing scheme in the poultry industry. On September 2, 2016 a group of Pilgrim's wholesale customers and numerous other broiler producers filed a class action in the Northern District of Illinois, alleging that Pilgrim and other broiler companies participated in an illegal anti-competitive scheme in violation of federal antitrust law. *Id*. at 7-8, ¶17. In November 2016 both the New York Times and the Washington

Post published articles discussing the apparent scheme. *Id*. at ¶18. This alleged scheme has continued to garner national media attention and has resulted in numerous federal lawsuits.

The initial complaint in this case was filed on October 20, 2016, and Patrick Hogan was listed as the lead plaintiff on this case. ECF No. 1 The initial complaint alleged two causes of action. The first involved Section 10(b) and Rule 10b-5 violations of the Securities and Exchange Act ("Exchange Act"). The second involved alleged violations of Section 20(a) of the Exchange Act. Id. at 22–25.

On May 11, 2017 plaintiff filed his first amended complaint in which George Fuller replaced Patrick Hogan as the lead plaintiff, and the same causes of action were alleged. *See* ECF No. 29. Mr. Fuller purchased 3,859 shares of Pilgrim securities on January 16, 2015 at the price of $34.00 per share. On February 19, 2015 plaintiff purchased 3,627 additional Pilgrim shares at $27.95 per share. ECF No. 8-1 at 3. In the first amended complaint—the first complaint in which Mr. Fuller was included as lead plaintiff—the alleged misrepresentations began in fiscal year 2013. ECF No. 29 at 57. Mr. Fuller alleges that the misrepresentations continued through 2016. In addition, Mr. Fuller included "additional support for falsity and scienter" in the form of facts tending to show the following: the broiler industry coordinated production cuts in 2008 and 2009 and again in 2011 and 2012 that led to reductions in broiler breeder flocks. ECF No. 29 at 3.

On June 12, 2017 defendants filed a motion to dismiss the first amended class action complaint. ECF No. 34. That motion was granted on March 14, 2018 because the Court found that "plaintiff did not plead the underlying antitrust conspiracy with sufficient particularity." ECF No. 41 at 18. The Court further stated that plaintiff's securities case was "essentially

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